

BRING TO MEETING

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



Executive Council Meeting

AGENDA

The Eden Roc Hotel
4525 Collins Avenue
Miami Beach, FL 33140
Phone: (305) 531-0000

Saturday, May 28, 2011
10:00 a.m.

BRING TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting

The Eden Roc – Miami Beach, FL

AGENDA

- I. [Presiding](#) — *Brian J. Felcoski, Chair*
- II. [Attendance](#) — *Debra L. Boje, Secretary*
- III. [Minutes of Previous Meeting](#) — *Debra L. Boje, Secretary*
 1. Approval of 2/26/2011 Executive Council Meeting Minutes and Roster **pp. 10-24**
- IV. [Chair's Report](#) — *Brian J. Felcoski*
- V. [Chair-Elect's Report](#) — *George J. Meyer*
 1. 2011 – 2012 RPPTL Executive Council Schedule **pp. 25**
- VI. [Liaison with Board of Governors Report](#) — *Daniel L. DeCubellis*
 1. BOG Summary – March 25, 2011 **pp. 26-28**
- VII. [Treasurer's Report](#) — *Michael A. Dribin*
 1. 2010-11 Monthly Report Summary **pp. 29-48**
- VIII. [Circuit Representative's Report](#) — *Andrew O'Malley, Director*
 1. First Circuit – W. Christopher Hart; Colleen Coffield Sachs
 2. Second Circuit – J. Breck Brannen; Sarah S. Butters; John T. Lajoie
 3. Third Circuit – John J. Kendron; Guy W. Norris; Michael S. Smith; Clay Alan Schnitker
 4. Fourth Circuit – Roger W. Cruce; Brenda Ezell
 5. Fifth Circuit – Del G. Potter; Arlene C. Udick
 6. Sixth Circuit – Robert N. Altman; Gary L. Davis; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M. Stinson; Kenneth E. Thornton; Hugh C. Umstead; Richard Williams, Jr.
 7. Seventh Circuit – Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells
 8. Eighth Circuit – Jeffrey R. Dollinger; Richard M. White Jr.
 9. Ninth Circuit – David J. Akins; Amber J. Johnson; Stacy A. Prince; Joel H. Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
 10. Tenth Circuit – Sandra Graham Sheets; Robert S. Swaine; Craig A. Mundy
 11. Eleventh Circuit – Carlos A. Battle; Raul Ballaga; Aniella Gonzalez; Thomas M. Karr; Patrick J. Lannon; Marsha G. Madorsky; William T. Muir; Hung Nguyen; Adrienne Frischberg Promoff; Eric Virgil
 12. Twelfth Circuit – Kimberly A. Bald; Michael L. Foreman; P. Allen Schofield
 13. Thirteenth Circuit – Lynwood F. Arnold, Jr.; Michael A. Bedke; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O’Ryan; William R. Platt; R. James Robbins; Stephen H. Reynolds; Susan K. Spurgeon
 14. Fourteenth Circuit – Brian Leebrick
 15. Fifteenth Circuit – Elaine M. Bucher; Glen M. Mednick; Robert M. Schwartz
 16. Sixteenth Circuit – Julie A. Garber
 17. Seventeenth Circuit – 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
 20. Twentieth Circuit – Sam W. Boone; John T. Cardillo; Michael T. Hayes; Alan S. Kotler; Jon Scuderi; D. Keith Wickenden

IX. Probate and Trust Law Division – *Wm. Fletcher Belcher, Probate and Trust Law Division Director*

Information Item

1. Ethics Opinion 10-3 (Final) issued by the Professional Ethics Committee of The Florida Bar regarding the lawyer's ethical duty of confidentiality owed to a deceased client. **Pp. 49-52**

Action Item

1. Guardianship & Advance Directives Committee – *Sean W. Kelley and Alexandra V. Rieman, Co-Chairs*

Support a legislative position to amend s. 744.301, F.S., to provide that the "parents," rather than the "mother and father," are the natural guardians of their minor child, and change existing references to "custody" to "parental responsibility." **Pp. 53-57**

X. Real Property Division — *Margaret A. Rolando, Real Property Division Director*

Action Items

1. Title Issues and Standards Committee - *Patricia Jones, Chair*

Requests approval of Chapter 20, Marital Property, and Chapter 21, Descriptions, of the Uniform Title Standards. **Pp. 58-80**

2. Condominium and Planned Development Committee - *Robert Freedman and Steven Mezer, Co-Chairs*

Requests approval of a proposal to amend Section 718.403 to allow condominium associations with a vote of the association members to extend the 7 year statutory deadline for adding phases to a condominium. The extension cannot be more than 10 years from the date of recording the declaration of condominium (meaning that the maximum extension period would be 3 years), and the vote for extension cannot occur until the last 3 years of the original 7 year period. **Pp. 81-87**

Information Items

1. The Executive Committee approved Brian Felcoski's sending the attached letter to the Federal Housing Finance Agency (FHFA) commenting on its proposed rules on Private Transfer Fee Covenants. Last fall, the Section sent its comments on and objections to proposed guidelines issued by FHFA regarding restricting the purchase of mortgage loans secured by residential property subject to private transfer fee covenants. FHFA's proposed rules address many -- but not all -- of the concerns raised in the Section's October 14, 2010 letter. Although the proposed rules represent a substantial improvement over the FHFA's prior effort, certain ambiguous definitions create issues. The Real Property Problem Study Committee prepared the attached letter on behalf of the Section regarding its concerns. The Condominium and Planned Development Committee reviewed the letter as well. **Pp. 88-92**
2. The Real Property and Liability Insurance Committee is expanding the scope of its responsibilities to include suretyship.

XI. General Standing Committee — *George J. Meyer, Director and Chair-Elect*

Action Item

1. Bylaws Committee moves for the approval and adoption of the various edits made by the Board of Governors to the Section's revised Bylaws, as set forth in **pp. 93-110**

Information Item

1. Court Reform Legislation Letters to Mayanne Downs **pp. 111-120**

XII. General Standing Committee Reports – *George J. Meyer, Director and Chair-Elect*

1. **Actionline** – J. Richard Caskey, Chair; Scott P. Pence and Rose M. LaFemina, Co-Vice Chairs
2. **Amicus Coordination** – Robert W. Goldman, John W. Little, III and Kenneth B. Bell Co-Chairs
3. **Budget** – Michael A. Dribin, Chair; Pamela O. Price, Vice Chair
4. **Bylaws** – W. Fletcher Belcher, Chair
5. **CLE Seminar Coordination** – Deborah P. Goodall, Chair; Sancha B. Whynot, Laura Sundberg and Sylvia B. Rojas, Co-Vice Chairs
 - A. 2010 – 2011 CLE Schedule **pp. 121**
6. **2011 Convention Coordinator** – S. Katherine Frazier and Jon Scuderi, Co Chairs
Michael A. Dribin, Vice Chair
7. **Fellowship** – Michael A. Bedke, Chair; Tae Kelley Bronner and Phillip Baumann, Co-Vice Chairs

2010 New Fellows: Benjamin Bush, Elisa Lucchi, Theodore Kypreos, Navin R Pasem
8. **Florida Bar Journal** – Kristen M. Lynch, Chair Probate Division; William P. Sklar, Chair Real Property Division
9. **Legislative Review** – Michael J. Gelfand, Chair; Alan B. Fields and Barry F. Spivey, Co-Vice Chairs
 - A. Legislative Report **pp.124-130**
10. **Legislative Update 2011** – Robert S. Swaine, Chair; Stuart H. Altman, Charles I. Nash, and R. James Robbins, Co-Vice Chairs
11. **Liaison Committees:**
 - A. **ABA:** Edward F. Koren; Julius J. Zschau
 - B. **BLSE:** Michael C. Sasso, W. Theodore Conner, David M. Silberstein, Anne Buzby-Walt.
 - C. **Business Law Section:** Marsha G. Rydberg
 - D. **BOG:** Daniel L. DeCubellis
 - E. **CLE Committee:** Deborah P. Goodall

- F. **Clerks of the Circuit Court:** Laird A. Lile
 - 1. Liaison Report **pp. 122-123**
 - G. **Council of Sections:** Brian J. Felcoski and George J. Meyer
 - H. **FLEA / FLSSI:** David C. Brennan; John Arthur Jones; Roland Chip Waller
 - I. **Florida Bankers:** Stewart Andrew Marshall, III; Mark T. Middlebrook
 - J. **Judiciary:** Judge Jack St. Arnold, Judge Gerald B. Cope, Jr., Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Claudia Rickert Isom, Judge Maria M. Korvick; Judge Beth Krier, Judge Lauren Laughlin; Judge Celeste H. Muir; Judge Robert Pleus; Judge Lawrence Allen Schwartz; Judge Richard Suarez; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr.
 - K. **Law Schools:** Frederick R. Dudley, Stacy O. Kalmanson, and Professor James J. Brown
 - L. **Out of State:** Michael P. Stafford; John E. Fitzgerald, Jr., Gerard J. Flood
- 12. **Long Range Planning Committee** – George J. Meyer, Chair
 - 13. **Member Communications and Information Technology** – Alfred A. Colby, Chair; S. Dresden Brunner and Nicole C. Kibert, Co – Vice Chair
 - 14. **Membership Services** – Phillip A. Baumann, Chair; Mary E. Karr, Vice Chair
 - 15. **Membership Diversity Committee** – Lynwood T. Arnold, Jr., and Fabienne E. Fahnestock, Co-Chairs; Karen Gabbadon, Vice-Chair
 - 16. **Mentoring** – Guy S. Emerich, Chair; Jerry E. Aron and Keith S. Kromash, Co-Vice Chairs
 - 17. **Meeting Planning Committee** – Sandra F. Diamond, Chair
 - 18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
 - 19. **Professionalism & Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miler, Co-Vice Chairs
 - 20. **Pro Bono** – Gwynne A. Young and Adele I. Stone, Co Chair; Tasha K. Pepper-Dickinson, Vice Chair
 - 21. **Sponsor Coordinators** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Jon Scuderi, J. Michael Swaine, Adele I. Stone, Marilyn M. Polsen, Co-Vice Chairs
 - 22. **Strategic Planning** – George J. Meyer, Chair

XIII. [Probate and Trust Law Division Committee Reports](#) - *Wm. Fletcher Belcher - Director*

- 1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
- 2. **Ad Hoc Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair
- 3. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair
- 4. **Asset Preservation** – Jerome L. Wolf and Brian C. Sparks, Co-Chairs

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

XIV. Real Property Division Committee Reports

1. **Condominium and Planned Development** – Robert S. Freedman, Co-Chair; Steven Mezer, Co-Chair; Jane Cornett, Vice-Chair
2. **Construction Law** – Brian Wolf, Chair; Hardy Roberts and Arnold Tritt, Co Vice-Chairs
3. **Construction Law Institute** – Wm. Cary Wright, Chair; Michelle Reddin and Reese Henderson, Co-Vice Chairs
4. **Construction Law Certification Review Course** – Kim Ashby, Chair; Bruce Alexander and Melinda Gentile, Co Vice-Chair
5. **Governmental Regulation of Real Estate** – Eleanor Taft, Chair; Nicole Kibert, Kristen Brundage and Frank L. Hearne, Co Vice-Chairs
6. **Residential Real Estate Committee and Industry Liaison** – Frederick Jones, Chair; William J. Haley, Vice Chair

7. **Land Trusts** – S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
8. **Landlord and Tenant** – Neil Shoter, Chair; Scott Frank, Vice Chair
9. **Legal Opinions** – David R. Brittain and Roger A. Larson, Co Chairs; Burt Bruton, Vice Chair
10. **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
11. **Mortgages and Other Encumbrances** – Salome Zikakis, Chair; Robert Stern, Co-Vice Chair
12. **Real Estate Certification Review Course** – Ted Conner, Chair; Guy W. Norris and Raul Ballaga, Co-Vice Chairs
13. **Real Property Forms** – Homer Duval, III, Chair; Jeffrey T. Sauer and Arthur Menor, Vice Chairs
14. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop and Wm. Cary Wright, Co-Vice Chairs
15. **Real Property Litigation** – Mark A. Brown, Chair; Eugene E. Shuey and Martin Awerbach, Co-Vice Chairs
16. **Real Property Problems Study** – Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair
17. **Title Insurance & Title Insurance Liaison** – Melissa Murphy, Chair; Homer Duvall and Kristopher Fernandez, Co-Vice Chairs
18. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham, Karla Gray and Christopher Smart, Co-Vice Chairs

XV. Adjourn



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

Special Thanks to the

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

Special Thanks to the

COMMITTEE SPONSORS

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Florida Bar Foundation
Probate Law & Procedure Committee

Coral Gables Trust
Guardianship & Advanced Directives Committee

First American Title Insurance Company
Condominium & Planned Development Committee

Management Planning, Inc.
Estate & Trust Tax Planning Committee

Northern Trust, N.A.
Trust Law Committee

Business Valuation Analysts
Probate and Trust Litigation

**THE FLORIDA BAR
REAL PROPERTY PROBATE AND TRUST LAW SECTION**

**MINUTES
OF
EXECUTIVE COUNCIL MEETING
(SATURDAY, FEBRUARY 26, 2011)**

CALL TO ORDER. The annual out of state meeting of The Florida Bar's Real Property Probate and Trust Law Section's Executive Council was called to order by Section Chair, Mr. Brian Felcoski, at 8:37 a.m. at the Four Seasons Resort "The Biltmore," Loggia Ballroom, 1260 Channel Drive, Santa Barbara, California,

QUORUM. A quorum was present. Officers present in addition to the Chair were Chair-Elect George Meyers, Real Property Division Director Margaret "Peggy" Rolando, and Circuit Representatives Director Andrew O'Malley. The Chair circulated the attendance roster, a copy of which is attached.

MINUTES. The Chair referred members to the Minutes on Agenda page 10. A motion to waive the reading and approve the minutes of the Section's Council Meeting occurring on November 6, 2010, was approved unanimously.

CHAIR'S REPORT. The Chair updated Section members concerning the progress of the out of state meeting and events planned for the remainder of the day.

SPONSORS. The Chair reminded Council members of the strong support provided by sponsors which facilitate Section efforts. The sponsors include:

Attorneys Title Insurance Fund Services. Mr. Tom Smith reminded attendees that "The Fund" consists of two entities, The Fund "Inc.," and The Fund "Services." The Fund is not impaired. The Services entity is undertaking new enhancements to enhance the real estate services. These include: Closing Services, in essence performing the "back office" that law offices would otherwise undertake; Surety and Bonding; Malpractice Coverage, subject to finalization, including a projected 12.5 discount on certain rates.

Management Planning.

Harris Private Bank.

Howard, Barker Frazier, & Elliot, Inc., and SunTrust Bank whom normally sponsor the Probate Roundtable Breakfast. A representative of the SunTrust Bank noted their lending services department.

Stewart Title and The Florida Bar Foundation sponsored lunch. Adele Stone requested Council members to consider The Foundation's audit and development ability as well as recalling the valuable services to communities provided by The Foundation.

US Trust.

CHAIR-ELECT REPORT. Chair-Elect George Meyers reviewed the 2011 - 2012 Executive Council Meeting Schedule appearing on page 47, of the Agenda.

JUDICIARY. The Chair recognized the attendance of the Honorable Maria Korvick and of the Honorable Celeste Muir, two of the many Judges participating in Section efforts. He recalled discussions occurring with the Judges this weekend regarding alternative dispute resolution mechanisms.

BOARD OF GOVERNORS. Ms. Adele Stone was present on behalf of the Board of Governors. She introduced Mr. Jesse Diner, past president of The Florida Bar. Mr. Diner noted the serious court funding issues now before the Legislature.

TREASURER'S REPORT. The Chair referred members to Agenda materials starting at page 52.

CIRCUIT REPRESENTATIVES REPORT. Circuit Representatives Director Andrew O'Malley reported that the reorganization of Circuit Representatives as "At-Large-Members" is occurring well. The Members' Services Committee is placing Circuit Representatives to be in touch with, and to attend, local voluntary bars and creating liaisons. Circuit Representatives are supporting the Bar's diversity commitment, including participating in the Central Florida Diversity Picnic next Saturday. Mr. O'Malley also noted that there are a number of Section members running for seats on the Board of Governors.

REAL PROPERTY DIVISION REPORT. Real Property Law Division Director Margaret "Peggy" Rolando reported:

On May 1, the ATLA Title Insurance Form approved by the Department of Insurance will be placed into service.

The Section was requested to assist the Unauthorized Practice of Law Committee's review of non-lawyer official assistance in the "short sale" arena. This included participation by our Mortgage Law and our Professionalism Committees resulting in a letter on behalf of the Section found on page 71, of the Agenda. The Section was also represented at a standing room only, day long hearing this month in Orlando by Frederick Jones the "Reals" Chair. Council member Jim Russick also was in attendance. Discussions at the hearing were reported to have centered upon to what extent a non-lawyer may participate in short sales, including the related question of who may negotiate reductions in amounts owed from selling short sale borrowers to lenders. The UPL Committee did not appear to intend to roll back any precedent.

A long term review is anticipated, with a report in the Spring of 2012 or thereafter.

PROBATE & TRUST DIVISION REPORT. In the absence of Probate & Trust Law Division Director, the Chair reviewed information items at Agenda pages 73-77, noting:

Ethics Advisory Opinion 10.3, addressing representative duties to a decedent client.

The Florida Supreme Court Florida Probate Rules Committee, which is not a Section committee, provided recommendations on the so called “caveat rule.” Tae Kelley Bronner coordinated an excellent response in support of this Section’s position. The recommendations of the Section are at page 78, of the Agenda.

GENERAL STANDING DIVISION REPORTS. Chair-Elect, George Meyer, reported:

The Section’s Long Range Standing Committee met in February, and provided its recommendations for 2011-2012, officer positions which will be supplemented with eighteen to twenty additional names of individuals rotating off committees which have been approved by the Long Range Standing Committee.

The CLE Committee report is found at page 88, of the Agenda.

LEGISLATIVE REVIEW COMMITTEE: Legislative Review Committee Chair Michael J. Gelfand reported that the Section is pursuing ten legislative positions, and is monitoring and responding to at least fifteen other legislative proposals. This list will likely lengthen as we enter the session. Council members who identify new proposals of concern, either positive or negative, should have the concern reviewed by the appropriate committee chair and committee legislative liaison for reporting to the Legislative Review Committee. Mr. Gelfand reported on the following:

Probate.

Olmstead. The Section through the work of William Lane, Lauren Detzel and Richard Gans who expended significant time and energy coordinated a unified response with the Tax and Business Law Sections. The RPPTL Section’s position has a sponsor and is moving forward.

Estates. Four Section initiatives are combined in a single bill.

Power of Attorney. The Chapter 709 re-write, proposed by a committee chaired by Ms. Tami Conetta has sponsors in the House and Senate.

Fiduciary Administration. A long dormant Section position, a proposed amendment to the Evidence Code to preserve the attorney-client privilege between a fiduciary that fiduciary’s counsel, originally drafted by the current Section Chair, has been the subject of legislative action.

Real Property.

Design Professionals. The Section's legislative consultants assisted to help ensure that the design professional liability immunity gubernatorial veto was not overridden in December. The Bill has been re-proposed and the Section is gearing up opposition.

Condominiums. The annual legislative re-consideration of the Condominium and Homeowners' Association Acts is of interest and concern to the Section.

Construction Liens. The Landlord-Tenant Committee's efforts spearheaded by Mr. Art Menor to resolve problems created by an appellate decision regarding contractor liens in the shopping center and apartment context is also proceeding forward.

Foreclosures. Significant efforts to adopt Non-Judicial Foreclosures, also referred to as "BAF" or "Bank Administered Foreclosures," is the subject of the Section's most intense efforts to help ensure that the due process rights of Florida's land holders are not violated.

In response to the Section Chair's request, legislative consultant Mr. Peter Dunbar discussed the Legislature's proposals regarding procedural rule changes, noting that Mr. Mark Brown coordinated efforts of others to provide a response to three proposals that are of concern. This is primarily a "Big Bar" matter for which the Section is providing technical support. Mr. Dunbar stated that the related three bills passed unanimously out of their committees this week. Of related and continuing significant concern is the status of legislative funding, requiring a supplemental funding bill to be passed by mid-March or the Courts will not be funded as of April 1, another matter that is the subject of the "Big Bar."

GOOD & WELFARE. Past Section Chair Bruce Stone extended congratulations to the Section Chair for his efforts, noting the success of his daughter flying to a number of schools, being admitted to each of them, and finally regaling the Chair with a audio clip of his daughter's school of choice.

ADJOURNMENT. The meeting adjourned at 9:10 a.m. without objection.

Respectfully submitted,

Michael J. Gelfand
For Debra Boje, Secretary

ATTENDANCE ROSTER

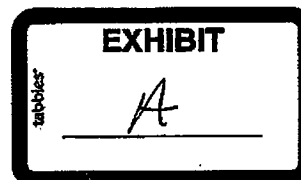
REAL PROPERTY PROBATE & TRUST LAW SECTION EXECUTIVE COUNCIL MEETINGS 2010 - 2011

Executive Committee	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Felcoski, Brian J., Chair	X	X	X	<i>BJF</i>	
Meyer, George J., Chair-Elect	X	X	X	<i>GM</i>	
Belcher, Wm. Fletcher, Probate & Trust Law Div. Director	X	X	X		
Rolando, Margaret A., Real Property Law Div. Director	X	X	X	<i>MAR</i>	
Boje, Debra L., Secretary	X	X	X		
Dribin, Michael A., Treasurer	X	X			
Gelfand, Michael J., Legislation Chair	X	X	X	<i>MJG</i>	
Goodall, Deborah, Seminar Coordinator	X	X	X		
O'Malley, Andrew M., Director of Circuit Representatives	X	X	X	<i>AM</i>	
Neukamm, John B., Immediate Past Chair	X	X	X		

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Adams, Angela M.	X	X	X		
Adcock, Jr., Louie N., Past Chair					
Akins, David James	X	X	X		
Alexander, Bruce					
Allender, Jerry W.	X				
Allender, Steven C.	X				
Altman, Robert N.	X		X		
Altman, Stuart H.	X	X	X	<i>SH</i>	

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Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Arnold, Jr., Lynwood F.	X	X			
Aron, Jerry E., Past Chair	X	X	X		
Ashby, Kimberly		X			
Atkins, April					
Awerbach, Martin	X	X	X	<i>MAB</i>	
Bald, Kimberly	X	X	X		
Ballaga, Raul P.	X	X		<i>JTB</i>	
Banister, John R.	X	X			
Battle, Carlos Alberto	X	X	X	<i>CAB</i>	
Baumann, Phillip A.	X	X	X		
Beales III, Walter Randolph, Past Chair	X				
Bedke, Michael	X	X	X		
Bell, Honorable Kenneth					
Bonnette, Jr., Harris L.	X	X	X		
Boone, Jr., Sam Wood	X	X			
Brannen, J. Brecken					
Brennan, David Clark, Past Chair	X	X			
Brittain, David Ross	X	X	X		
Bronner, Tae Kelley	X	X	X		
Brown, J.J.					
Brown, Mark A.	X	X	X	<i>MAB</i>	
Brundage, Kristen Blaine Parker					
Brunner, S. Dresden	X	X			
Bruton, Jr., Burt	X	X	X		
Bucher, Elaine M.	X	X	X		
Butters, Sarah		X	X		
Buzby, Anne K.		X	X		
Cardillo, John T.		X			
Carlisle, David Russell	X	X	X	<i>D</i>	


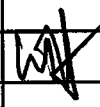
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57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Caskey, J. Richard	X	X			
Christiansen, Pat, Past Chair	X	X	X		
Colby, Alfred		X			
Conetta, Tami Foley	X	X	X	<i>BC</i>	
Conner, William Theodore			X		
Cope, Honorable Gerald B., Jr.	X				
Cornett, Jane L.		X			
Cruce, Roger W.	X		X		
Davis, Gary	X				
DeCubellis, Dan L.	X	X	X		
Detzel, Lauren Y.	X	X	X		
Diamond, Sandra F., Past Chair	X	X	X		
Dickinson, Tasha	X	X			
Dollinger, Jeffrey		X	X		
Dudley, Frederick Raymond	X	X	X		
Duvall III, Homer		X	X	<i>ED</i>	
Elzeer, John S.	X	X	X		
Emerich, Guy Storms	X	X			
Ezell, Brenda B.	X	X	X		
Falk, Jack A.	X	X	X		
Fahnestock, Fabienne E.	X				
Fernandez, Kristopher	X	X	X		
Fields, Alan Beaumont	X	X	X		
Fitzgerald, Jr., John Edward	X		X		
Fleece III, Joseph W.	X	X	X	<i>JK</i>	
Flood, Gerard J.	X	X	X	<i>JK</i>	
Foreman, Michael Loren	X	X			
Frazier, Susan Katherine	X	X	X		
Freedman, Robert Scott	X	X	X		
Gabbadon, Karen					

RM:7797410:1

57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Gans, Richard Roy	X	X			
Garber, Julie Ann					
Gay III, Robert Norwood	X				
Gentile, Melinda					
Goethe, Jeffrey	X	X	X		
Goldman, Robert W., Past Chair	X		X		
Gonzalez, Aniella	X	X			
Graham, Robert Manuel	X	X	X		
Gray, Karla S.	X				
Greer, Honorable George W.					
Griffin, Linda S.	X	X	X		
Grimsley, John Gall, Past Chair					
Grossman, Honorable Melvin B.	X	X			
Guttmann III, Louis B., Past Chair		X			
Haley, William James					
Hancock, Patricia J.	X	X			
Hart, W. Christopher	X	X	X		
Hayes, Honorable Hugh D.	X		X		
Hayes, M. Travis	X	X	X		
Hearn, Steven Lee, Past Chair		X			
Hearne, Frank L.	X	X	X		
Henderson, Reese		X	X		
Henderson, Thomas	X	X	X		
Hennessey III, William Thomas	X	X			
Heuston, Stephen Paul	X	X	X		
Huszagh, Victor Lee					
Isom, Honorable Claudia Rickert					
Isphording, Roger O., Past Chair	X	X	X		
Johnson, Amber Jade F.	X	X	X		

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Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Jones, Frederick Wayne	X	X	X		
Jones, John Arthur, Past Chair		X	X		
Jones, Patricia P. Hendricks	X	X	X		
Judd, Robert Brian	X	X			
Kalmanson, Stacy O.	X	X	X		
Karr, Mary		X			
Karr, Thomas M.		X			
Kayser, Joan Bradbury, Past Chair		X			
Kelley, Rohan, Past Chair	X	X		<i>JK</i>	
Kelley, Sean	X	X	X	<i>SK</i>	
Kelley, Shane	X	X	X	<i>SK</i>	
Kendon, John		X	X		
Kilbert, Nicole C.	X	X	X		
Kightlinger, Wilhelmina F.	X	X	X		
King, Robln	X	X	X		
Kinsolving, Ruth Barnes, Past Chair			X	<i>RBC</i>	
Koren, Edward F., Past Chair			X		
Korvick, Honorable Maria Marinello	X	X		<i>MMK</i>	
Kotler, A. Stephen	X	X	X		
Krier, Honorable Beth					
Kromash, Keith Stuart	X	X	X		
LaFemina, Rose	X		X	<i>RML</i>	
Lajoie, John Thomas					
Lane, William	X	X	X	<i>WRL</i>	
Lange, Jr., George W.	X	X	X		
Lannon, Patrick	X	X	X		
Larson, Roger Allen	X	X		<i>RAL</i>	
Laughlin, Honorable Lauren					
Leebrick, Brian	X	X			
Lile, Laird, Past Chair		X	X		

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Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Little III, John Wesley	X		X		
Lynch, Kristen M.	X	X	X		
Madorsky, Marsha G.	X	X	X		
Marger, Bruce, Past Chair	X				
Marmor, Seth		X			
Marshall III, Stewart Andrew		X	X		
McCall, Alan K.	X	X	X	<i>AK</i>	
Mednick, Glenn M.	X		X		
Menor, Arthur James	X	X	X		
Mezer, Steven H.	X	X	X		
Middlebrook, Mark Thomas	X	X	X		
Miller, Lawrence Jay		X	X		
Moran, John	X	X	X		
Moule, Rex E.	X		X		
Muir, Honorable Celeste	X	X	<i>exm</i>	<i>exm</i>	
Muir, William T.	X		X	<i>WTM</i>	
Mundy, Craig A.	X				
Murphy, Melissa, Past Chair	X	X			
Murphy, Jeanne			X		
Mussman, Jay D.	X	X	X		
Nash, Charles Ian	X	X	X		
Nguyen, Hung V.		X		<i>HVN</i>	
Norris, Guy W.	X	X	X		
Northrop, Andrea	X				
Norris, John E., Past Chair		X			
O'Ryan, Christian Felix	X	X			
Payne, L. Howard		X	X	<i>LWP</i>	
Pence, Scott	X				
Platt, William R.	X		X		
Pleus, Jr., Honorable Robert James					

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Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Polson, Marilyn Mewha	X	X	X		
Potter, Del G.					
Pratt, David		X	X		
Promoff, Adrienne F.	X				
Price, Pamela O.	X	X	X		
Prince-Troutman, Stacy A.	X	X			
Pyle, Michael A.	X	X	X		
Reddin, Michelle A.		X			
Reinhardt, Joe					
Reynolds, Stephen			X		
Rieman, Alexandra V.	X	X	X		
Robbins, James, Jr.	X	X	X		
Roberts, Hardy		X	X	HLR	
Robinson, Charles F.	X	X	X		
Rojas, Silvia B.	X	X	X		
Roman, Paul	X	X		PM	
Roscow IV, John Frederick	X				
Russell, Deborah L.	X	X	X		
Russick, James C.	X	X	X	JCB	
Rydberg, Marsha G.	X	X	X		
Sachs, Colleen Coffield	X	X			
Sasso, Michael Cornelius		X			
Sauer, Jeffrey Thomas	X	X			
Schaefer, Jr. , Honorable Walter L.					
Schnitker, Clay	X				
Schofield, Percy Allen	X	X	X		
Scholnik, Barry	X				
Schwartz, Robert M.		X	X		
Scuderi, Jon	X	X	X		
Sheets, Sandra Graham	X	X			

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Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Shoter, Neil	X	X	X		
Shuey, Eugene Earl	X	X	X		
Silberman, Honorable Morris					
Silberstein, David Mark	X	X	X		
Sklar, William Paul	X				
Smart, Christopher	X				
Smith, G. Thomas, Past Chair	X	X	X	<i>YTS</i>	
Smith, Michael S.		X			
Smith, Wilson, Past Chair					
Sobien, Wayne	X	X			
Sparks, Brian Curtis	X	X	X		
Spivey, Barry F.	X	X	X	<i>BFB</i>	
Spurgeon, Susan K.	X		X		
St. Arnold, Honorable Jack					
Stafford, Michael P.	X	X	X	<i>MPS</i>	
Stephenson, Laura P.	X	X	X		
Stern, Robert Gary	X	X	X		
Stinson, Sherri M.	X				
Stone, Adele Ilene	X	X	X	<i>WIS</i>	
Stone, Bruce M., Past Chair		X		<i>BA</i>	
Suarez, Honorable Richard					
Sundberg, Laura K.	X	X	X	<i>LKS</i>	
Swaine, Jack Michael, Past Chair	X			<i>JMA</i>	
Swaine, Robert S.	X				
Taft, Eleanor W.		X	X		
Taylor, Richard W.	X	X			
Tescher, Donald Robert		X	X		
Thomas, Honorable Patricia Vitter	X		X		
Thomton, Kenneth E.	X	X	X		
Tritt, Arnold	X	X	X		


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Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Udick, Arlene	X	X	X		
Umsted, Hugh Charles	X		X		
Virgil, Eric	X		X	JEV	
Waller, Roland D., Past Chair	X	X	X		
Weintraub, Lee A.	X	X	X		
Wells, Jerry	X	X	X		
White, Jr.; Richard M.	X	X	X		
Whynot, Sancha Brennan	X	X	X		
Wickenden, D. Keith	X			DKW	
Wilder, Charles D.	X	X	X		
Williams, Jr., Richard	X	X			
Williamson, Julie Ann Stulce, Past Chair	X				
Wohlust, G. Charles	X	X	X		
Wolasky, Marjorie Ellen	X	X	X		
Wolf, Brian	X				
Wolf, Jerome Lee	X				
Wright, Wm. Cary	X	X	X	CW	
Young, Gwynne Alice	X	X	X		
Zikakis, Salome	X	X	X	JZ	
Zschau, Julius Jay, Past Chair		X	X		
			X		
Legislative Consultants					
Adams, Gene	X	X	X		
Aubuchon, Joshua D.	X	X	X		
Dunbar, Peter M.	X	X		PMD	
Edenfield, Martha		X	X	ME	

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Executive Committee	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Guests and Fellows					
Armstrong, David G.	X				
Boyd, Deborah	X		X		
Brenes-Stahl, Tattiana		X			
Bush, Ben	X	X	X		
Byrnes, Gentry		X			
Callahan, Chad	X				
Cole, Stacey		X			
Fallon, Cynthia	X				
George, Joseph P.	X				
Godella, Vnette			X		
Hailey, Phyllis	X				
Hale, Russ	X	X	X		
Hamrick, Alex		X			
Kypreos, Theo	X	X	X		
Lucchi, Elisa	X	X	X		
Marx, James	X				
Mirpuri, Shelley			X		
Pasem, Narvin	X	X	X		
Sibbles, Sharaine			X		
Stone, Andrea		X			
Stuart, Pam	X	X			
Thurlow, Thomas, III	X				
Topor, Thomas K.	X				
Wintter, Christopher			X		
ANDREW, MIKE				X	
PAGAN, GAIL				X	
NICE, MARINA				X	

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Executive Committee	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Guests and Fellows (Continued)					

RPPTL 2011 - 2012
Executive Council Meeting Schedule
George Meyer's YEAR

Date	Location
August 4 – August 7, 2011	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$190.00 Cut-off Date: July 3, 2011
September 21 – September 25, 2011	Executive Council Meeting / Out-of-State Meeting Four Seasons – Prague Prague, Czech Republic Reservation Phone # 420-221-427-000 http://www.fourseasons.com/prague/ Room Rate: \$362.00 Cut-off Date: August 31, 2011
December 1 – December 4, 2011	Executive Council Meeting Marco Island Marriott Marco Island, Florida Reservation Phone #1-800-438-4373 http://www.marcoislandmarriott.com/ Room Rate: \$189.00 Cut-off Date: November 9, 2011
March 1 – March 4, 2011	Executive Council Meeting Sawgrass Marriott Ponte Vedra Ponte Vedra, Florida Reservation Phone #1-800-457-4653 http://www.sawgrassmarriott.com/ Room Rate: \$149.00 Cut-off Date: February 8, 2012
May 31 – June 3, 2012	Executive Council Meeting / RPPTL Convention Don CeSar Beach Resort St. Petersburg, Florida Reservation Phone # 1-800-282-1116 http://www.loewshotels.com/en/Hotels/St-Pete-Beach-Resort/Overview.aspx Room Rate \$160.00 Cut-off Date: May 9, 2012

BOARD OF GOVERNORS REPORT

Dan DeCubellis, Board Liaison

At its March 25, 2011, meeting in Orlando, The Florida Bar Board of Governors:

RPPTL SECTION MATTERS:

SECTION REPORT

Heard a report on the achievements and ongoing work of the Real Property Probate and Trust Law Section from Section chair **Brian Felcoski**.

BYLAWS

The revised Section Bylaws were approved unanimously by the Program Evaluation Committee and were presented to the board for first reading. The Bylaws will be presented for final approval at the May meeting.

PROPOSED ADVISORY OPINION 10-3

Proposed Advisory Opinion 10-3 in its final form as adopted by the Professional Ethics Committee was presented to the board as an informational item. **Barry Spivey** and **Fletcher Belcher** were instrumental in assisting the Professional Ethics Committee with this opinion over a period of several months.

E-FILING

Heard a report from **Laird Lile** regarding the work of the Florida eFiling Authority. He described some of the issues associated with statewide integration and interaction with the Clerks of Court around the State.

BOARD OF GOVERNORS ELECTIONS

Past RPPTL Section chair **Sandra Fascell Diamond** and Executive Council member **Adele I. Stone** have been elected to the Board of Governors.

OTHER MATTERS:

JUDICIAL QUALIFICATIONS COMMISSION

Heard former Bar President Miles McGrane, chair of the Judicial Qualifications Commission, ask the board to oppose a proposed constitutional amendment in the Florida Legislature that would dramatically reduce confidentiality of complaints made to the JQC.

ADVERTISING RULES

Heard Board Review Committee of Professional Ethics Chair Carl Schwait report that the committee will be presenting its recommendations for amending Bar advertising rules at the board's May 27 meeting. He said the Supreme Court has ordered that the amendments be submitted to it no later than July 5.

SPECIAL COMMITTEE TO STUDY MANDATORY PARALEGAL REGULATION

Heard the final recommendations from the Special Committee to Study Mandatory Paralegal Regulation, which have been referred to the Program Evaluation Committee. The special committee recommended that lawyers could not in any communications refer to support staff as a paralegal unless that person is a Florida Registered Paralegal. A minority report from the special committee opposes that recommendation. During the Program Evaluation Committee report, Chair Greg Coleman said the Bar had surveyed registered paralegals and out of more than 2,000 responses, only 40 were in favor of mandatory paralegal regulation.

LEGISLATIVE POSITIONS

Approved a legislative position opposing numerous pending legislative bills and proposed constitutional amendments which would dramatically undermine the courts as now written. Opposed bills include splitting the Supreme Court into civil and criminal supreme courts, eliminating the Bar's role in nominating candidates for some judicial nominating commission seats, removing JNCs from the selection process for DCA judges and Supreme Court justices (that bill also creates Senate confirmation for those jurists), and requiring that justices and DCA judges get 60 percent approval in retention elections. (Another measure would have the Legislature take over procedural rule-making from the Supreme Court; the Bar already has a legislative position opposing that concept) The board approved resolution also set out four principles for legislation affecting the judicial branch: a stable, secure, adequate, and permanent source of funding for the courts; the efficient, fair, and impartial functioning of the courts and administration of justice that recognizes the courts as a co-equal branch of government; providing access to the courts and legal services for all Floridians; and a continued meaningful role in the judicial selection process.

By a separate motion, the board also approved a legislative position opposing the proposed constitutional amendment that at some point in the process would make public all complaints filed against judges with the JQC.

COURT FUNDING

Bar Chief Legislative Counsel Steve Metz said after a rocky start, the courts appeared to be doing reasonably well in the budget process for the 2011-12 fiscal year. The House preliminary plan would have cut judicial salaries by 8 percent, but the Speaker interceded and included enough money to keep judicial salaries intact. Attempts to reduce overall judicial pensions appear to have failed, although judges may wind up contributing to their pensions, as will other state employees including court staff.

Chief Justice Charles Canady spoke to the board on the court's current year budget crisis, caused by a sharp reduction in foreclosure filings which provide the bulk of the court system's funding. He said House and Senate leaders were amenable to a plan for the courts to borrow funding to make it to the end of the fiscal year, but that Gov. Rick Scott asked for more information and so far had only agreed to provide funding to keep the courts going until the end of April. He also praised the House Speaker for restoring money to prevent a judicial salary cut, which Canady said would have undermined the ability to attract and keep qualified judges. He warned, though, that the preliminary House budget, perhaps by mistake, eliminated 14 law clerks from the Supreme Court, which he said would substantially undermine the court's ability to efficiently handle cases.

BUDGET

Approved the Bar budget for the 2011-12 fiscal year. The budget projects revenues of around \$38 million and slightly less expenditures.

DEATH PENALTY PROCESS REVIEW

Heard from Mark Schlakman, of the Florida State University Center for Human Rights, who presented a letter from former Supreme Court Justice Raoul Cantero calling for the Bar to endorse a review of Florida's death penalty process. President Downs said the Executive Committee will review and act on that matter.

NEW MEMBER BENEFITS

Approved, at the recommendation of the Member Benefits Committee, three new benefits for Bar members: Medjet Assistance, an insurance program guaranteeing medical transport when traveling; Sears Commercial Marketplace, which offers a wide range of online shopping for home and office products; and STI Tabs3 Trust Accounting Software, which assists lawyers in setting up and maintaining their trust accounts.

PUBLIC MEMBER OF THE BOARD OF GOVERNORS

Recommended to the Supreme Court Winston W. Gardner, Jr., of Orlando, Steven S. Oscher of Tampa, and Marni F. Stahlman of Winter Park to replace Arnell Bryant-Willis as a public member on the board.



RPPTL FINANCIAL SUMMARY

2010 – 2011 [July 1, 2010 – March 31, 2011¹]

Revenue: *\$902,871

Expenses: \$812,747

Net: \$90,124

*\$153,466 of this figure represents revenue from corporate sponsors and exhibitors

Beginning Fund Balance (7-1-10)

\$ 1,024,000

YTD Fund Balance (3-31-11)

\$1,114,124

RPPTL CLE

RPPTL YTD Actual CLE Revenue
\$118,967

RPPTL Budgeted CLE Revenue
\$198,100

¹ This report is based on the tentative unaudited detail statement of operations dated 3/31/2011.



RPPTL Financial Summary from Separate Budgets
2010 – 2011 [July 1, 2010 – March 31, 2011¹]
YEAR TO DATE REPORT

General Budget

Revenue:	\$ 849,106
Expenses:	\$ 729,880
Net:	\$ 119,226

Legislative Update

Revenue:	\$ 48,614
Expenses:	\$ 82,235
Net:	(\$33,621)

Convention

Revenue:	\$ 93
Expenses:	(\$2,624) <i>credit</i>
Net:	\$2,717

Attorney Trust Officer Conference

Revenue:	\$ 0
Expenses:	\$ 1,350
Net:	(\$ 1,350)

Miscellaneous Section Service Courses

Revenue:	\$ 5,058
Expenses:	\$ 1,906
Net:	\$ 3,152

Roll-up Summary (Total)

Revenue:	\$ 902,871
Expenses:	\$ 812,747
Net Operations:	\$ 90,124

Reserve (Fund Balance):	\$ 1,024,000
GRAND TOTAL	\$ 1,114,124

¹ This report is based on the tentative unaudited detail statement of operations dated 3/31/2011.

	March 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Real Prop Probate & =====				
31431 Section Dues	450	459,200	465,000	98.75
31432 Affiliate Dues	50	1,900	1,750	108.57
31433 Admin Fee to TFB	-35	-159,982	-163,450	97.88

Total Dues Income-Net	465	301,118	303,300	99.28

32001 Registrations	0	3,888	157,250	2.47
32006 Live Web Cast	0	11,500	8,750	131.43
32010 Legal Span On-line	0	2,602	750	346.93
32191 CLE Courses	17,093	118,967	198,100	60.05
32205 Compact Disc	705	15,235	28,800	52.90
32207 DVD	235	5,640	10,000	56.40
32293 Section Differential	3,590	17,427	35,000	49.79
32301 Course Materials	0	2,400	3,500	68.57
34704 Actionline Advertise	1,200	14,700	15,000	98.00
35003 Ticket Events	-120	72,914	0	*
35101 Exhibit Fees	0	12,500	37,600	33.24
35201 Sponsorships	8,125	140,966	277,750	50.75
35603 Bd/Council Mtg Regis	36,410	59,707	120,000	49.76
38499 Investment Allocatio	4,886	123,307	44,785	275.33

Other Income	72,124	601,753	937,285	64.20

Total Revenues	72,589	902,871	1,240,585	72.78

36998 Credit Card Fees	-148	4,234	5,924	71.47
51101 Employee Travel	2,329	5,508	10,241	53.78
61201 Equipment Rental	0	9,325	20,000	46.63
71001 Telephone/Direct	0	700	1,200	58.33
71005 Internet Charges	0	483	1,100	43.91
75102 1st Class & Misc Mai	0	35	300	11.67
75401 Express Mail	20	745	1,500	49.67
81411 Promotional Printing	0	1	2,000	0.05
81412 Promotional Mailing	0	620	14,000	4.43
84001 Postage	71	2,006	5,700	35.19
84002 Printing	0	377	3,950	9.54
84006 Newsletter	5,196	26,540	40,000	66.35
84009 Supplies	0	54	500	10.80
84010 Photocopying	45	234	500	46.80
84012 Registration Support	0	5,079	3,000	169.30
84015 Officers Conference	0	460	1,200	38.33
84016 Scrivener	0	0	5,000	0.00
84051 Officers Travel Expe	0	2,029	3,000	67.63
84054 CLE Speaker Expense	717	927	4,500	20.60
84061 Reception	0	494	67,500	0.73
84062 Luncheons	0	23,333	60,000	38.89
84064 Golf Tourn Expenses	0	0	11,000	0.00
84101 Committee Expenses	937	58,442	65,000	89.91

	March 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Real Prop Probate & =====				
84106 Realtor Relations	150	3,150	5,000	63.00
84107 Diversity Initiative	0	2,234	15,000	14.89
84110 Exhibitor Fees	0	0	250	0.00
84115 Entertainment	0	0	20,000	0.00
84201 Board Or Council Mee	83,386	409,808	400,000	102.45
84216 Strategic Planning M	3,244	4,890	10,000	48.90
84238 Council Mtg Recreati	12,477	49,384	35,000	141.10
84239 Hospitality Suite	6,169	14,967	15,000	99.78
84253 Sleeping Rooms	0	0	2,500	0.00
84254 Speaker Gifts	0	1,591	2,000	79.55
84258 Web Services	0	5,025	6,000	83.75
84279 Council Members Hand	0	2,055	3,500	58.71
84310 Law School Liaison	0	138	7,500	1.84
84322 Fellowships-Exc Cou	0	6,362	10,000	63.62
84422 Website	250	39,110	75,000	52.15
84501 Legislative Consulta	25,000	75,000	100,000	75.00
84503 Legislative Travel	0	10,133	20,000	50.67
84524 Memorial Tributes	0	0	500	0.00
84701 Council Of Sections	0	0	300	0.00
84998 Operating Reserve	0	0	85,092	0.00
84999 Miscellaneous	0	0	500	0.00
85064 Service Recognition	0	1,299	5,000	25.98
86432 Time Taping Editing	0	5,995	4,500	133.22
88211 Steering Committee	0	0	1,500	0.00
88230 Speakers Expense	0	1,319	7,000	18.84
88233 Speakers Hotel	0	4,062	3,700	109.78
88239 Speakers Other Exp	0	24	0	*
88241 Outline Prt-Inhouse	0	92	7,000	1.31
88242 Outline Prt-Contract	0	11,403	13,000	87.72
88252 Course Credit Fee	0	200	150	133.33
88260 Meeting Parking	0	716	0	*
88262 Meeting Meals	2,000	-3,308	84,000	-3.94
88265 Refreshment Breaks	0	4,309	13,000	33.15
88269 Breakfast	0	7,328	38,000	19.28
88281 A/V Ctr Dup/Prod	0	0	1,600	0.00

Total Operating Expenses	141,843	798,912	1,318,707	60.58

86431 Meetings Administrat	540	5,080	4,500	112.89
86532 Advertising News	0	1,614	2,958	54.56
86543 Graphics & Art	329	7,130	12,698	56.15
86623 Registrars	0	11	2,500	0.44

Total TFB Support Services	869	13,835	22,656	61.07

Total Expenses	142,712	812,747	1,341,363	60.59

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Preliminary Unaudited Stmt of Operations
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|                                    | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget   | Percent<br>Budget |
|------------------------------------|--------------------------|-------------------------|----------|-------------------|
| Total Real Prop Probate &<br>===== |                          |                         |          |                   |
| Net Operations                     | -70,123                  | 90,124                  | -100,778 | -89.43            |
| 21001 Fund Balance                 | 0                        | 1,024,000               | 895,690  | 114.33            |
| Total Current Fund Balance         | -70,123                  | 1,114,124               | 794,912  | 140.16            |

|                                     | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget | Percent<br>Budget |
|-------------------------------------|--------------------------|-------------------------|--------|-------------------|
| Total RP Miscellaneous Cou<br>===== |                          |                         |        |                   |
| Total Dues Income-Net               | 0                        | 0                       | 0      | *                 |
| 32001 Registrations                 | 0                        | 3,795                   | 0      | *                 |
| 32010 Legal Span On-line            | 0                        | 598                     | 0      | *                 |
| 32205 Compact Disc                  | 0                        | 665                     | 0      | *                 |
| Other Income                        | 0                        | 5,058                   | 0      | *                 |
| Total Revenues                      | 0                        | 5,058                   | 0      | *                 |
| 36998 Credit Card Fees              | -1                       | 7                       | 0      | *                 |
| 75102 1st Class & Misc Mai          | 0                        | 3                       | 0      | *                 |
| 75401 Express Mail                  | 0                        | 35                      | 0      | *                 |
| 86432 Time Taping Editing           | 0                        | 1,765                   | 0      | *                 |
| Total Operating Expenses            | -1                       | 1,810                   | 0      | *                 |
| 86543 Graphics & Art                | 0                        | 85                      | 0      | *                 |
| 86623 Registrars                    | 0                        | 11                      | 0      | *                 |
| Total TFB Support Services          | 0                        | 96                      | 0      | *                 |
| Total Expenses                      | -1                       | 1,906                   | 0      | *                 |
| Net Operations                      | 1                        | 3,152                   | 0      | *                 |
| Total Current Fund Balance          | 1                        | 3,152                   | 0      | *                 |

|                                  | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget | Percent<br>Budget |
|----------------------------------|--------------------------|-------------------------|--------|-------------------|
| C1226 Fire on the Coast<br>~~~~~ |                          |                         |        |                   |
| Total Dues Income-Net            | 0                        | 0                       | 0      | *                 |
| 32001 Registrations              | 0                        | 3,795                   | 0      | *                 |
| 32010 Legal Span On-line         | 0                        | 53                      | 0      | *                 |
| 32205 Compact Disc               | 0                        | 665                     | 0      | *                 |
| Other Income                     | 0                        | 4,513                   | 0      | *                 |
| Total Revenues                   | 0                        | 4,513                   | 0      | *                 |
| 36998 Credit Card Fees           | -1                       | 7                       | 0      | *                 |
| 75102 1st Class & Misc Mai       | 0                        | 3                       | 0      | *                 |
| 75401 Express Mail               | 0                        | 27                      | 0      | *                 |
| 86432 Time Taping Editing        | 0                        | 175                     | 0      | *                 |
| Total Operating Expenses         | -1                       | 212                     | 0      | *                 |
| 86623 Registrars                 | 0                        | 11                      | 0      | *                 |
| Total TFB Support Services       | 0                        | 11                      | 0      | *                 |
| Total Expenses                   | -1                       | 223                     | 0      | *                 |
| Net Operations                   | 1                        | 4,290                   | 0      | *                 |
| Total Current Fund Balance       | 1                        | 4,290                   | 0      | *                 |

|                                   | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget | Percent<br>Budget |
|-----------------------------------|--------------------------|-------------------------|--------|-------------------|
| C1240 Time Out/Tampa A/V<br>~~~~~ |                          |                         |        |                   |
| Total Dues Income-Net             | 0                        | 0                       | 0      | *                 |
| 32010 Legal Span On-line          | 0                        | 545                     | 0      | *                 |
| Other Income                      | 0                        | 545                     | 0      | *                 |
| Total Revenues                    | 0                        | 545                     | 0      | *                 |
| 75401 Express Mail                | 0                        | 8                       | 0      | *                 |
| 86432 Time Taping Editing         | 0                        | 1,590                   | 0      | *                 |
| Total Operating Expenses          | 0                        | 1,598                   | 0      | *                 |
| 86543 Graphics & Art              | 0                        | 85                      | 0      | *                 |
| Total TFB Support Services        | 0                        | 85                      | 0      | *                 |
| Total Expenses                    | 0                        | 1,683                   | 0      | *                 |
| Net Operations                    | 0                        | -1,138                  | 0      | *                 |
| Total Current Fund Balance        | 0                        | -1,138                  | 0      | *                 |

|                                      | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget         | Percent<br>Budget |
|--------------------------------------|--------------------------|-------------------------|----------------|-------------------|
| <b>Real Prop Probate &amp; Trust</b> |                          |                         |                |                   |
| 31431 Section Dues                   | 450                      | 459,200                 | 465,000        | 98.75             |
| 31432 Affiliate Dues                 | 50                       | 1,900                   | 1,750          | 108.57            |
| 31433 Admin Fee to TFB               | -35                      | -159,982                | -163,450       | 97.88             |
| <b>Total Dues Income-Net</b>         | <b>465</b>               | <b>301,118</b>          | <b>303,300</b> | <b>99.28</b>      |
| 32191 CLE Courses                    | 17,093                   | 118,967                 | 198,100        | 60.05             |
| 32293 Section Differential           | 3,590                    | 17,427                  | 35,000         | 49.79             |
| 34704 Actionline Advertise           | 1,200                    | 14,700                  | 15,000         | 98.00             |
| 35003 Ticket Events                  | -120                     | 72,914                  | 0              | *                 |
| 35201 Sponsorships                   | 8,125                    | 140,966                 | 187,000        | 75.38             |
| 35603 Bd/Council Mtg Regis           | 36,410                   | 59,707                  | 120,000        | 49.76             |
| 38499 Investment Allocatio           | 4,886                    | 123,307                 | 44,785         | 275.33            |
| <b>Other Income</b>                  | <b>71,184</b>            | <b>547,988</b>          | <b>599,885</b> | <b>91.35</b>      |
| <b>Total Revenues</b>                | <b>71,649</b>            | <b>849,106</b>          | <b>903,185</b> | <b>94.01</b>      |
| 36998 Credit Card Fees               | -194                     | 3,132                   | 3,700          | 84.65             |
| 51101 Employee Travel                | 2,329                    | 4,047                   | 4,724          | 85.67             |
| 71001 Telephone/Direct               | 0                        | 700                     | 1,200          | 58.33             |
| 71005 Internet Charges               | 0                        | 483                     | 1,100          | 43.91             |
| 81411 Promotional Printing           | 0                        | 1                       | 0              | *                 |
| 84001 Postage                        | 71                       | 1,957                   | 3,000          | 65.23             |
| 84002 Printing                       | 0                        | 377                     | 1,500          | 25.13             |
| 84006 Newsletter                     | 5,196                    | 26,540                  | 40,000         | 66.35             |
| 84009 Supplies                       | 0                        | 54                      | 300            | 18.00             |
| 84010 Photocopying                   | 45                       | 234                     | 500            | 46.80             |
| 84015 Officers Conference            | 0                        | 460                     | 1,200          | 38.33             |
| 84016 Scrivener                      | 0                        | 0                       | 5,000          | 0.00              |
| 84051 Officers Travel Expe           | 0                        | 2,029                   | 3,000          | 67.63             |
| 84054 CLE Speaker Expense            | 717                      | 927                     | 4,500          | 20.60             |
| 84101 Committee Expenses             | 937                      | 58,442                  | 65,000         | 89.91             |
| 84106 Realtor Relations              | 150                      | 3,150                   | 5,000          | 63.00             |
| 84107 Diversity Initiative           | 0                        | 2,234                   | 15,000         | 14.89             |
| 84201 Board Or Council Mee           | 83,386                   | 409,808                 | 400,000        | 102.45            |
| 84216 Strategic Planning M           | 3,244                    | 4,890                   | 10,000         | 48.90             |
| 84238 Council Mtg Recreati           | 12,477                   | 49,384                  | 35,000         | 141.10            |
| 84239 Hospitality Suite              | 6,169                    | 14,967                  | 15,000         | 99.78             |
| 84279 Council Members Hand           | 0                        | 2,055                   | 3,500          | 58.71             |
| 84310 Law School Liaison             | 0                        | 138                     | 7,500          | 1.84              |
| 84322 Fellowships-Exc Cou            | 0                        | 6,362                   | 10,000         | 63.62             |
| 84422 Website                        | 250                      | 39,110                  | 75,000         | 52.15             |
| 84501 Legislative Consulta           | 25,000                   | 75,000                  | 100,000        | 75.00             |
| 84503 Legislative Travel             | 0                        | 10,133                  | 20,000         | 50.67             |
| 84524 Memorial Tributes              | 0                        | 0                       | 500            | 0.00              |
| 84701 Council Of Sections            | 0                        | 0                       | 300            | 0.00              |
| 84998 Operating Reserve              | 0                        | 0                       | 85,092         | 0.00              |

|                                    | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget  | Percent<br>Budget |
|------------------------------------|--------------------------|-------------------------|---------|-------------------|
| Real Prop Probate & Trust<br>~~~~~ |                          |                         |         |                   |
| 84999 Miscellaneous                | 0                        | 0                       | 500     | 0.00              |
| 85064 Service Recognition          | 0                        | 1,299                   | 5,000   | 25.98             |
| -----                              |                          |                         |         |                   |
| Total Operating Expenses           | 139,777                  | 717,913                 | 922,116 | 77.85             |
| -----                              |                          |                         |         |                   |
| 86431 Meetings Administrat         | 540                      | 5,080                   | 4,500   | 112.89            |
| 86543 Graphics & Art               | 329                      | 6,887                   | 9,400   | 73.27             |
| -----                              |                          |                         |         |                   |
| Total TFB Support Services         | 869                      | 11,967                  | 13,900  | 86.09             |
| -----                              |                          |                         |         |                   |
| Total Expenses                     | 140,646                  | 729,880                 | 936,016 | 77.98             |
| -----                              |                          |                         |         |                   |
| Net Operations                     | -68,997                  | 119,226                 | -32,831 | -363.15           |
| -----                              |                          |                         |         |                   |
| 21001 Fund Balance                 | 0                        | 1,024,000               | 895,690 | 114.33            |
| -----                              |                          |                         |         |                   |
| Total Current Fund Balance         | -68,997                  | 1,143,226               | 862,859 | 132.49            |
| -----                              |                          |                         |         |                   |

|                                     | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget  | Percent<br>Budget |
|-------------------------------------|--------------------------|-------------------------|---------|-------------------|
| Total Trust Officer Liaiso<br>===== |                          |                         |         |                   |
| Total Dues Income-Net               | 0                        | 0                       | 0       | *                 |
| 32001 Registrations                 | 0                        | 0                       | 107,250 | 0.00              |
| 32301 Course Materials              | 0                        | 0                       | 500     | 0.00              |
| 35101 Exhibit Fees                  | 0                        | 0                       | 9,600   | 0.00              |
| 35201 Sponsorships                  | 0                        | 0                       | 65,750  | 0.00              |
| Other Income                        | 0                        | 0                       | 183,100 | 0.00              |
| Total Revenues                      | 0                        | 0                       | 183,100 | 0.00              |
| 36998 Credit Card Fees              | -27                      | 434                     | 1,020   | 42.55             |
| 51101 Employee Travel               | 0                        | 0                       | 2,698   | 0.00              |
| 61201 Equipment Rental              | 0                        | 0                       | 10,000  | 0.00              |
| 81411 Promotional Printing          | 0                        | 0                       | 500     | 0.00              |
| 81412 Promotional Mailing           | 0                        | 0                       | 5,500   | 0.00              |
| 84001 Postage                       | 0                        | 0                       | 200     | 0.00              |
| 84002 Printing                      | 0                        | 0                       | 1,500   | 0.00              |
| 84009 Supplies                      | 0                        | 0                       | 200     | 0.00              |
| 84061 Reception                     | 0                        | 0                       | 65,000  | 0.00              |
| 84062 Luncheons                     | 0                        | 0                       | 30,000  | 0.00              |
| 84064 Golf Tourn Expenses           | 0                        | 0                       | 11,000  | 0.00              |
| 88211 Steering Committee            | 0                        | 0                       | 1,500   | 0.00              |
| 88230 Speakers Expense              | 0                        | 0                       | 3,000   | 0.00              |
| 88241 Outline Prt-Inhouse           | 0                        | 0                       | 4,000   | 0.00              |
| 88252 Course Credit Fee             | 0                        | 200                     | 150     | 133.33            |
| 88260 Meeting Parking               | 0                        | 716                     | 0       | *                 |
| 88265 Refreshment Breaks            | 0                        | 0                       | 7,500   | 0.00              |
| 88269 Breakfast                     | 0                        | 0                       | 28,000  | 0.00              |
| Total Operating Expenses            | -27                      | 1,350                   | 171,768 | 0.79              |
| 86532 Advertising News              | 0                        | 0                       | 2,158   | 0.00              |
| 86543 Graphics & Art                | 0                        | 0                       | 1,115   | 0.00              |
| Total TFB Support Services          | 0                        | 0                       | 3,273   | 0.00              |
| Total Expenses                      | -27                      | 1,350                   | 175,041 | 0.77              |
| Net Operations                      | 27                       | -1,350                  | 8,059   | -16.75            |
| Total Current Fund Balance          | 27                       | -1,350                  | 8,059   | -16.75            |

|                                            | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget  | Percent<br>Budget |
|--------------------------------------------|--------------------------|-------------------------|---------|-------------------|
| <u>Trust Officer Liaison Conf</u><br>~~~~~ |                          |                         |         |                   |
| Total Dues Income-Net                      | 0                        | 0                       | 0       | *                 |
| 32001 Registrations                        | 0                        | 0                       | 107,250 | 0.00              |
| 32301 Course Materials                     | 0                        | 0                       | 500     | 0.00              |
| 35101 Exhibit Fees                         | 0                        | 0                       | 9,600   | 0.00              |
| 35201 Sponsorships                         | 0                        | 0                       | 65,750  | 0.00              |
| Other Income                               | 0                        | 0                       | 183,100 | 0.00              |
| Total Revenues                             | 0                        | 0                       | 183,100 | 0.00              |
| 36998 Credit Card Fees                     | 0                        | 0                       | 1,020   | 0.00              |
| 51101 Employee Travel                      | 0                        | 0                       | 2,698   | 0.00              |
| 61201 Equipment Rental                     | 0                        | 0                       | 10,000  | 0.00              |
| 81411 Promotional Printing                 | 0                        | 0                       | 500     | 0.00              |
| 81412 Promotional Mailing                  | 0                        | 0                       | 5,500   | 0.00              |
| 84001 Postage                              | 0                        | 0                       | 200     | 0.00              |
| 84002 Printing                             | 0                        | 0                       | 1,500   | 0.00              |
| 84009 Supplies                             | 0                        | 0                       | 200     | 0.00              |
| 84061 Reception                            | 0                        | 0                       | 65,000  | 0.00              |
| 84062 Luncheons                            | 0                        | 0                       | 30,000  | 0.00              |
| 84064 Golf Tourn Expenses                  | 0                        | 0                       | 11,000  | 0.00              |
| 88211 Steering Committee                   | 0                        | 0                       | 1,500   | 0.00              |
| 88230 Speakers Expense                     | 0                        | 0                       | 3,000   | 0.00              |
| 88241 Outline Prt-Inhouse                  | 0                        | 0                       | 4,000   | 0.00              |
| 88252 Course Credit Fee                    | 0                        | 200                     | 150     | 133.33            |
| 88265 Refreshment Breaks                   | 0                        | 0                       | 7,500   | 0.00              |
| 88269 Breakfast                            | 0                        | 0                       | 28,000  | 0.00              |
| Total Operating Expenses                   | 0                        | 200                     | 171,768 | 0.12              |
| 86532 Advertising News                     | 0                        | 0                       | 2,158   | 0.00              |
| 86543 Graphics & Art                       | 0                        | 0                       | 1,115   | 0.00              |
| Total TFB Support Services                 | 0                        | 0                       | 3,273   | 0.00              |
| Total Expenses                             | 0                        | 200                     | 175,041 | 0.11              |
| Net Operations                             | 0                        | -200                    | 8,059   | -2.48             |
| Total Current Fund Balance                 | 0                        | -200                    | 8,059   | -2.48             |



|                            | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget | Percent<br>Budget |
|----------------------------|--------------------------|-------------------------|--------|-------------------|
| C1210 2011 RPTOLC<br>~~~~~ |                          |                         |        |                   |
| Total Dues Income-Net      | 0                        | 0                       | 0      | *                 |
| Other Income               | 0                        | 0                       | 0      | *                 |
| Total Revenues             | 0                        | 0                       | 0      | *                 |
| 36998 Credit Card Fees     | -27                      | 434                     | 0      | *                 |
| 88260 Meeting Parking      | 0                        | 716                     | 0      | *                 |
| Total Operating Expenses   | -27                      | 1,150                   | 0      | *                 |
| Total TFB Support Services | 0                        | 0                       | 0      | *                 |
| Total Expenses             | -27                      | 1,150                   | 0      | *                 |
| Net Operations             | 27                       | -1,150                  | 0      | *                 |
| Total Current Fund Balance | 27                       | -1,150                  | 0      | *                 |

|                                   | March<br>2011<br>Actuals | YTD<br>10-11<br>Actuals | Budget  | Percent<br>Budget |
|-----------------------------------|--------------------------|-------------------------|---------|-------------------|
| Total Legislative Update<br>===== |                          |                         |         |                   |
| Total Dues Income-Net             | 0                        | 0                       | 0       | *                 |
| 32006 Live Web Cast               | 0                        | 11,500                  | 8,750   | 131.43            |
| 32010 Legal Span On-line          | 0                        | 2,004                   | 750     | 267.20            |
| 32205 Compact Disc                | 705                      | 14,570                  | 28,800  | 50.59             |
| 32207 DVD                         | 235                      | 5,640                   | 10,000  | 56.40             |
| 32301 Course Materials            | 0                        | 2,400                   | 3,000   | 80.00             |
| 35101 Exhibit Fees                | 0                        | 12,500                  | 15,000  | 83.33             |
| Other Income                      | 940                      | 48,614                  | 66,300  | 73.32             |
| Total Revenues                    | 940                      | 48,614                  | 66,300  | 73.32             |
| 36998 Credit Card Fees            | -17                      | 570                     | 184     | 309.78            |
| 51101 Employee Travel             | 0                        | 993                     | 1,467   | 67.69             |
| 61201 Equipment Rental            | 0                        | 9,200                   | 10,000  | 92.00             |
| 75102 1st Class & Misc Mai        | 0                        | 32                      | 300     | 10.67             |
| 75401 Express Mail                | 20                       | 710                     | 1,500   | 47.33             |
| 81411 Promotional Printing        | 0                        | 0                       | 1,000   | 0.00              |
| 81412 Promotional Mailing         | 0                        | 620                     | 3,500   | 17.71             |
| 84001 Postage                     | 0                        | 49                      | 1,500   | 3.27              |
| 84002 Printing                    | 0                        | 0                       | 700     | 0.00              |
| 84012 Registration Support        | 0                        | 5,079                   | 3,000   | 169.30            |
| 84061 Reception                   | 0                        | 494                     | 2,500   | 19.76             |
| 84062 Luncheons                   | 0                        | 23,333                  | 30,000  | 77.78             |
| 84254 Speaker Gifts               | 0                        | 1,591                   | 2,000   | 79.55             |
| 84258 Web Services                | 0                        | 5,025                   | 6,000   | 83.75             |
| 86432 Time Taping Editing         | 0                        | 4,230                   | 4,500   | 94.00             |
| 88230 Speakers Expense            | 0                        | 1,319                   | 4,000   | 32.98             |
| 88233 Speakers Hotel              | 0                        | 4,062                   | 3,700   | 109.78            |
| 88239 Speakers Other Exp          | 0                        | 24                      | 0       | *                 |
| 88241 Outline Prt-Inhouse         | 0                        | 92                      | 3,000   | 3.07              |
| 88242 Outline Prt-Contract        | 0                        | 11,403                  | 13,000  | 87.72             |
| 88265 Refreshment Breaks          | 0                        | 4,309                   | 5,500   | 78.35             |
| 88269 Breakfast                   | 0                        | 7,328                   | 10,000  | 73.28             |
| 88281 A/V Ctr Dup/Prod            | 0                        | 0                       | 1,600   | 0.00              |
| Total Operating Expenses          | 3                        | 80,463                  | 108,951 | 73.85             |
| 86532 Advertising News            | 0                        | 1,614                   | 800     | 201.75            |
| 86543 Graphics & Art              | 0                        | 158                     | 1,285   | 12.30             |
| 86623 Registrars                  | 0                        | 0                       | 2,500   | 0.00              |
| Total TFB Support Services        | 0                        | 1,772                   | 4,585   | 38.65             |

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User id : EBRENNEIS

Preliminary Unaudited Stmt of Operations  
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	March 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Legislative Update =====				
Total Expenses	3	82,235	113,536	72.43
Net Operations	937	-33,621	-47,236	71.18
Total Current Fund Balance	937	-33,621	-47,236	71.18

	March 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Legislative Update ~~~~~				
Total Dues Income-Net	0	0	0	*
32006 Live Web Cast	0	0	8,750	0.00
32010 Legal Span On-line	0	0	750	0.00
32205 Compact Disc	0	0	28,800	0.00
32207 DVD	0	0	10,000	0.00
32301 Course Materials	0	0	3,000	0.00
35101 Exhibit Fees	0	12,500	15,000	83.33
Other Income	0	12,500	66,300	18.85
Total Revenues	0	12,500	66,300	18.85
36998 Credit Card Fees	-8	128	184	69.57
51101 Employee Travel	0	255	1,467	17.38
61201 Equipment Rental	0	9,200	10,000	92.00
75102 1st Class & Misc Mai	0	0	300	0.00
75401 Express Mail	0	0	1,500	0.00
81411 Promotional Printing	0	0	1,000	0.00
81412 Promotional Mailing	0	620	3,500	17.71
84001 Postage	0	49	1,500	3.27
84002 Printing	0	0	700	0.00
84012 Registration Support	0	5,079	3,000	169.30
84061 Reception	0	494	2,500	19.76
84062 Luncheons	0	23,333	30,000	77.78
84254 Speaker Gifts	0	1,591	2,000	79.55
84258 Web Services	0	0	6,000	0.00
86432 Time Taping Editing	0	0	4,500	0.00
88230 Speakers Expense	0	326	4,000	8.15
88233 Speakers Hotel	0	0	3,700	0.00
88241 Outline Prt-Inhouse	0	0	3,000	0.00
88242 Outline Prt-Contract	0	11,403	13,000	87.72
88265 Refreshment Breaks	0	4,309	5,500	78.35
88269 Breakfast	0	7,328	10,000	73.28
88281 A/V Ctr Dup/Prod	0	0	1,600	0.00
Total Operating Expenses	-8	64,115	108,951	58.85
86532 Advertising News	0	0	800	0.00
86543 Graphics & Art	0	61	1,285	4.75
86623 Registrars	0	0	2,500	0.00
Total TFB Support Services	0	61	4,585	1.33
Total Expenses	-8	64,176	113,536	56.52

	March 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Legislative Update ~~~~~				
Net Operations	8	-51,676	-47,236	109.40
Total Current Fund Balance	8	-51,676	-47,236	109.40

	March 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
C1037 2009 Legislative Upd				
Total Dues Income-Net	0	0	0	*
32010 Legal Span On-line	0	1,336	0	*
32205 Compact Disc	0	2,115	0	*
32207 DVD	0	705	0	*
Other Income	0	4,156	0	*
Total Revenues	0	4,156	0	*
36998 Credit Card Fees	-3	41	0	*
75102 1st Class & Misc Mai	0	5	0	*
75401 Express Mail	0	43	0	*
Total Operating Expenses	-3	89	0	*
Total TFB Support Services	0	0	0	*
Total Expenses	-3	89	0	*
Net Operations	3	4,067	0	*
Total Current Fund Balance	3	4,067	0	*

	March 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
C1216 2010 Legislative Upd ~~~~~				
Total Dues Income-Net	0	0	0	*
32006 Live Web Cast	0	11,500	0	*
32010 Legal Span On-line	0	668	0	*
32205 Compact Disc	705	12,455	0	*
32207 DVD	235	4,935	0	*
32301 Course Materials	0	2,400	0	*
Other Income	940	31,958	0	*
Total Revenues	940	31,958	0	*
36998 Credit Card Fees	-6	401	0	*
51101 Employee Travel	0	738	0	*
75102 1st Class & Misc Mai	0	27	0	*
75401 Express Mail	20	667	0	*
84258 Web Services	0	5,025	0	*
86432 Time Taping Editing	0	4,230	0	*
88230 Speakers Expense	0	993	0	*
88233 Speakers Hotel	0	4,062	0	*
88239 Speakers Other Exp	0	24	0	*
88241 Outline Prt-Inhouse	0	92	0	*
Total Operating Expenses	14	16,259	0	*
86532 Advertising News	0	1,614	0	*
86543 Graphics & Art	0	97	0	*
Total TFB Support Services	0	1,711	0	*
Total Expenses	14	17,970	0	*
Net Operations	926	13,988	0	*
Total Current Fund Balance	926	13,988	0	*

	March 2011 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
RPPTL Convention ~~~~~				
Total Dues Income-Net	0	0	0	*
32001 Registrations	0	93	50,000	0.19
35101 Exhibit Fees	0	0	13,000	0.00
35201 Sponsorships	0	0	25,000	0.00
Other Income	0	93	88,000	0.11
Total Revenues	0	93	88,000	0.11
36998 Credit Card Fees	91	91	1,020	8.92
51101 Employee Travel	0	468	1,352	34.62
61201 Equipment Rental	0	125	0	*
81411 Promotional Printing	0	0	500	0.00
81412 Promotional Mailing	0	0	5,000	0.00
84001 Postage	0	0	1,000	0.00
84002 Printing	0	0	250	0.00
84110 Exhibitor Fees	0	0	250	0.00
84115 Entertainment	0	0	20,000	0.00
84253 Sleeping Rooms	0	0	2,500	0.00
88262 Meeting Meals	2,000	-3,308	84,000	-3.94
Total Operating Expenses	2,091	-2,624	115,872	-2.26
86543 Graphics & Art	0	0	898	0.00
Total TFB Support Services	0	0	898	0.00
Total Expenses	2,091	-2,624	116,770	-2.25
Net Operations	-2,091	2,717	-28,770	-9.44
Total Current Fund Balance	-2,091	2,717	-28,770	-9.44

PROFESSIONAL ETHICS OF THE FLORIDA BAR

OPINION 10-3 February 1, 2011

A lawyer's ethical obligations regarding a request for confidential information of a deceased client by the personal representative, beneficiaries or heirs-at-law of a decedent's estate, or their counsel, will vary depending on the circumstances. A lawyer may disclose confidential information to serve the deceased client's interests, unless the deceased client previously instructed the lawyer not to disclose the information. Whether and what information may be disclosed will depend on who is making the request, the information sought, and other factors. Doubt should be resolved in favor of nondisclosure. When compelled to disclose information via subpoena, a lawyer must disclose all information sought that is not privileged, and raise privilege as to any information for which there is a good faith basis to do so.

RPC: 4-1.6

Opinions: 65-7, 70-40, 71-29, 72-40, 92-5

Statutes: §90.502

The Professional Ethics Committee has been requested by the Florida Bar Board of Governors to render an advisory opinion on the issue of the ethical obligations of a lawyer when the personal representative, beneficiaries or heirs-at-law of a decedent's estate, or their counsel request confidential information regarding a decedent. This opinion addresses only the situation where the decedent's lawyer does not represent the personal representative. The analysis of the issue is the same for each person who may request such information, although the answer for each will depend on the individual facts and circumstances of the particular situation and may differ, depending on who is requesting the information and why.

Although a lawyer's ethical obligation of confidentiality and the evidentiary matter of attorney-client privilege are related, the two issues are distinct. Confidentiality is much broader than privilege. According to Rule 4-1.6, Rules of Professional Conduct, all information relating to a client's representation is confidential and may not be voluntarily disclosed by the lawyer without either the client's consent or the application of a relevant exception to the confidentiality rule. The comment to Rule 4-1.6 provides further guidance, in stating: "[t]he confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." On the other hand, privilege is much narrower as an evidentiary matter set forth in Florida Statutes § 90.502, which provides generally that a lawyer cannot be compelled to disclose communications between a lawyer and client that were made for the purpose of seeking and/or receiving legal advice without the client's consent or other waiver. Questions of confidentiality arise any time a lawyer is asked to disclose information relating to a client's representation. The question of privilege only arises when a lawyer is compelled by a court, i.e. via subpoena, to disclose confidential communications made for the purpose of obtaining legal advice. Regarding privilege, the comment to Rule 4-1.6 provides as follows:

If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, rule 4-1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal

of competent jurisdiction requiring the lawyer to give information about the client.

Rule 4-1.6 provides as follows:

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

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

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

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

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

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

(e) Limitation on Amount of Disclosure. When disclosure is mandated or permitted, the lawyer shall disclose no more information than is required to meet the requirements or accomplish the purposes of this rule.

The comment to the rule states that "[t]he duty of confidentiality continues after the client-lawyer relationship has terminated."

A request for information from a personal representative, beneficiaries or heirs-at-law of a decedent's estate, or their counsel will generally involve information "relating to the representation of a client," and a lawyer ordinarily should not voluntarily disclose such information. See Florida Ethics Opinion 92-5. There are exceptions to the confidentiality rule that either require or permit a lawyer to disclose confidential information. See Rule 4-1.6(b) and (c), Rules Regulating The Florida Bar. The Committee cannot envision every instance in which a personal representative, beneficiaries or heirs-at-law of a decedent's estate, or their counsel may request information from a decedent's lawyer, but will provide several examples in an effort to illustrate the appropriate analysis.

The exception to the confidentiality rule that is most likely to apply in such requests is set forth in subdivision (c)(1): "to serve the client's interest unless it is information the client specifically requires not to be disclosed." Thus, if a personal representative asks for confidential information relating to a decedent's estate plan and the decedent's lawyer determines that disclosure of the information would aid in the proper distribution of the decedent's estate according to the decedent's wishes, the lawyer may properly disclose the information to the personal representative, unless the decedent specifically required that the information be kept confidential. For example, in Florida Ethics Opinion 72-40, a client instructed the inquiring lawyer who was hired to assist the client with estate planning to "forget" that the client had a "large amount of bearer bonds, registered jointly with his wife." The opinion concludes that the lawyer may not disclose the existence of these assets to the bank which was to be the sole executor of the client's estate unless the client gave consent to the disclosure or unless ordered to do so by a court, whether the inquiry was made before or after the client's death. The opinion states that "the duty to preserve a client's confidences survives his death. . . ." Thus, a lawyer must undertake the appropriate analysis under the confidentiality rule, even if it is the personal representative who requests information of the decedent from a lawyer who assisted in the decedent's estate planning and the information sought relates specifically to that estate plan.

Similarly, if a beneficiary or heir-at-law asks for specific information and the decedent's lawyer determines that voluntary disclosure of the information would serve the decedent's interests, the lawyer may disclose that specific information. For example, a lawyer might provide a copy of the decedent's will or disclose information relating to the execution of a will to a beneficiary or heir-at-law if the lawyer reasonably believes that disclosure of the information would forestall litigation by the beneficiary or heir-at-law, thereby conserving assets of the estate in the exercise of the lawyer's professional discretion. However, information that the decedent specifically required the lawyer not to disclose to others may not be disclosed by the lawyer to the beneficiary or heir-at-law, regardless of whether the information is privileged. For example, a deceased client may have specifically instructed the lawyer not to disclose information to anyone about a child born out of wedlock or an extra-marital relationship.

Under Florida Statutes §90.502(3)(c), the personal representative may claim the privilege on behalf of the decedent. It would be difficult for the personal representative to claim or waive privilege on behalf of the decedent without knowing the content of the information which is subject to the privilege. Therefore, a lawyer who represented the decedent in estate planning matters may disclose information from the file to the personal representative, unless the decedent specifically required that the information not be disclosed. Disclosure of such information is impliedly authorized, to the extent the decedent did not specifically require that its confidentiality be maintained, to carry out the decedent's wishes involving the estate.

On the other hand, a lawyer who represented the decedent on matters other than estate planning would have no such implied authorization to disclose information to the personal representative. For example, a lawyer who represented a client in a criminal defense matter would not have implied authorization to disclose information to the personal representative, but instead should decline to voluntarily provide information to the personal representative or other third parties unless an exception to the confidentiality rule clearly applies.

Similarly, beneficiaries or heirs-at-law may attempt to compel the decedent's lawyer to provide information that the lawyer has determined within the lawyer's professional discretion not to provide voluntarily, because either disclosure would not serve the decedent's interests or the decedent has previously indicated that the information must not be disclosed. When under compulsion of a subpoena, the lawyer acts ethically by complying with the subpoena as to any information sought that is not privileged. However, the lawyer should raise the appropriate privilege on behalf of the decedent regarding any information for which there is a good faith basis to raise privilege and request that the court make a determination as to disclosure of the information. As above, the lawyer should not make any disclosure of information which the lawyer believes in good faith to be privileged until the court orders disclosure of the information. If the court finds that the information is not privileged or that an exception to privilege applies, the lawyer may either comply with the order by disclosing the information or "first exhaust all appellate remedies." See Rule 4-1.6(d) and Florida Ethics Opinions 65-7, 70-40, and 71-29.

Doubts about whether information should be voluntarily disclosed should be resolved in favor of nondisclosure.

[Revised: 03-29-2011]

1 A bill to be entitled

2 An act relating to the definition and authority of natural guardians; amending s.744.301 F.S.;

3 revising the definition of natural guardians; providing an effective date.

4

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

6

7 Section 1. Subsections (1) and (2) of section 744.301, Florida Statutes, are amended

8 to read:

9

10 744.301 Natural guardians.--

11 (1) ~~The mother and father parents~~ jointly are natural guardians of their own children

12 and of their adopted children, during minority. If one parent dies, the surviving parent remains

13 the sole natural guardian even if he or she remarries. If the marriage between the parents is

14 dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has

15 been granted or if the parents have been granted shared parental responsibility ~~custody of the~~

16 ~~child is awarded. If the parents are given joint custody,~~ then both continue as natural guardians.

17 If the marriage is dissolved and neither the father nor the mother is given custody parental

18 responsibility ~~of~~ for the child, neither shall act as natural guardian of the child. The mother of a

19 child born out of wedlock is the natural guardian of the child and is entitled to primary

20 residential care and custody of the child unless a court of competent jurisdiction enters an order

21 stating otherwise.

22 (2) Except as otherwise provided in this Chapter, nNatural guardians are authorized,

23 on behalf of any of their minor children, without appointment, authority, or bond, when the

24 amounts received, in the aggregate, do not exceed \$15,000 to:

25 (a) Settle and consummate a settlement of any claim or cause of action accruing to

26 any of their minor children for damages to the person or property of any of said minor children;

27 (b) Collect, receive, manage, and dispose of the proceeds of any such settlement;

28 (c) Collect, receive, manage, and dispose of any real or personal property distributed

29 from an estate or trust;

30 (d) Collect, receive, manage, and dispose of and make elections regarding the

31 proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the

32 benefit of, the child; and

33 (e) Collect, receive, manage, dispose of, and make elections regarding the proceeds

34 of any benefit plan as defined by s. 710.102, of which the minor is a beneficiary, participant, or

35 owner,

36 ~~without appointment, authority, or bond, when the amounts received, in the aggregate, do not~~

37 ~~exceed \$15,000.~~

38

39

40 Section 2. This act shall take effect October 1, 2012.

41

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Seth A. Marmor, Co-Vice Chair, Guardianship and Advanced Directives Committee of the Real Property Probate & Trust Law Section

Address Shapiro Blasi Wasserman & Gora, PA, 7777 Glades Road, Suite 400, Boca Raton, FL 33434 Telephone (561) 477-7800

Position Type Guardianship and Advanced Directives Committee, RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

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Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533
(List name, address and phone number)

Appearances

Before Legislators

(SAME)

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

Meetings with

Legislators/staff

(SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following

N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose

Tech Asst.

Other

Proposed Wording of Position for Official Publication:

To provide that the "parents," rather than the "mother and father," are the natural guardians of their minor child, and change the current references to "custody" to "parental responsibility," by amending s. 734.301, F.S.

Reasons For Proposed Advocacy:

The current statute provides that the "mother and father" are the natural guardians of their minor child. The proposed amendment changes the reference to "mother and father" to "parents" in order to clarify that same-sex parents resulting from adoptions are the natural guardians of their minor children. The proposed amendment also changes the current references to "custody" to "parental responsibility" to conform to terminology currently used in ch. 61, F.S.

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

Most Recent Position [NONE]
 (Indicate Bar or Name Section) (Support or Oppose) (Date)

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

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

Family Law Section of TFB Support
(Name of Group or Organization) (Support, Oppose or No Position)

Elder Law Section of TFB Support
(Name of Group or Organization) (Support, Oppose or No Position)

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

WHITE PAPER

NATURAL GUARDIANS DEFINED – SECTION 744.301

I. SUMMARY

Natural Guardians play a significant role in the orderly transfer of property, settlement of disputes and other activities for minor children. When a natural guardian can represent the interest of a minor, there is usually a significant reduction in legal expense and time needed to complete the matter. As the scope of the authority of a natural guardian is generally limited to financial matters that do not exceed \$15,000.00, it is essential that the applicable Florida Statutes clearly identify the natural guardian(s) of a minor. Section 744.301 needs revision in two significant areas. The first modification is needed to accommodate the possibility that an adoption may result in a child having two parents of the same sex. The second change is needed to conform the terminology used in that statute to that currently found in the family law statutes dealing with child custody and parental responsibility.

II. CURRENT SITUATION

Section 744.301 currently provides that “the mother and father jointly are natural guardians of their own children and their adopted children” Comity requires Florida to recognize the legal adoption of the minor granted in another State. In some adoption situations, a child may have two parents who are the same sex. The current statute does not accommodate those situations because it provides that the “joint natural guardians” are the “mother and father.”

Section 744.301 also currently provides that, in the event of dissolution of marriage, the parent who is awarded “custody” of a minor child is the natural guardian (and that parents who are awarded “joint custody” of minor children continue as their natural guardians). The family law statutes found in chapter 61 were previously amended to substitute “parental responsibility” for the concept of “child custody.” Those changes also placed a greater emphasis on parental responsibility. It is now unusual for a court to award sole parental responsibility to one parent; rather, parents are generally awarded shared parental responsibility for decision making during the minority of their child. Additionally, when creating a Parenting Plan for their minor child, at the time of dissolution of marriage, the parents are authorized to delegate responsibility for certain decisions to one parent. As a result, Section 744.301 requires revision to conform to the related changes to chapter 61.

III. EFFECT OF PROPOSED CHANGES

If the proposed amendments are adopted, the identity of natural guardians will be clarified. Same-sex parents will be the joint natural guardians of their minor children. It will also be clear that parents who are granted shared parental responsibility will both be natural guardians, and that a parent who is granted sole parental responsibility will be the natural guardian. These

changes will better coordinate different areas of the law, allowing them to interact as intended using current and common statutory terminology.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Clarity in determination of natural guardians will save by money by reducing the need for Court proceedings to determine the identity and status of natural guardian.

V. DIRECT IMPACT ON PRIVATE SECTOR

None anticipated.

VI. CONSTITUTIONAL ISSUES

None anticipated.

VII. OTHER INTERESTED PARTIES

1. Family Law Section of TFB.
2. Elder Law Section of TFB.

CHAPTER 20

MARITAL PROPERTY

STANDARD 20.1

RECITAL OF UNMARRIED STATUS

STANDARD: THE RECITAL IN AN INSTRUMENT OF RECORD THAT A PERSON IS UNMARRIED MAY BE RELIED UPON IN THE ABSENCE OF ANY EVIDENCE IN THE CHAIN OF TITLE OR OTHER KNOWN FACTS INDICATING THAT THE PERSON WAS MARRIED.

Problem 1: John Doe, and the sole owner of Blackacre, conveyed it, describing himself as a single man. Nothing of record indicates that Doe was married prior to the recording of the deed. Is an examiner justified in relying on the recital of marital status?

Answer: Yes.

Problem 2: John Doe, the sole owner of Blackacre, conveyed it, describing himself as a single man. Several years previously, John Doe and Mary Doe, his wife, had joined in a mortgage of Blackacre. Nothing of record shows the termination of the marital status ~~or the disposition of Mary's dower rights.~~ Is an examiner justified in assuming that the grantee takes free of any possible ~~dower or~~ homestead rights?

Answer: No. An examiner should require satisfactory record evidence of ~~the disposition of the wife's dower interest, if any, and the~~ elimination of any possible homestead ~~problems.~~ rights.

~~Problem 3: Mary Doe, the sole owner of Blackacre, which was not homestead property, conveyed it in 1960, describing herself as a single woman. Several years previously, Mary Doe and John Doe, her husband, had joined in a mortgage of Blackacre. Nothing of record indicates that the requirement of joinder by John Doe was unnecessary or otherwise satisfied. Is the examiner justified in relying on the recital and assuming the conveyance is valid?~~

~~Answer: No. Since the conveyance was made prior to January 7, 1969, it is not valid unless joinder is unnecessary by reason of death or divorce or if Mary was a free dealer. If the conveyance was invalid, a conveyance from the present title holder would be necessary. With respect to joinder in a conveyance of homestead property, see Title Standard 18.1 (Alienation Of Homestead Property — Joinder Of Spouse).~~

Authorities & References: FLORIDA REALPROPERTY TITLE EXAMINATION AND INSURANCE §3.57 (CLE 6th ed. 2010); 2 PATTON ON TITLES §§339, 391-93 (2d ed. 1957); BASYE, CLEARING LAND TITLES §35 (2d ed. 1970); ATIF FUND TN 20.02.03, 20.02.05, 20.02.06.

Comment: Although the recital of marital status may be binding as to the grantor or mortgagor, it does not eliminate the rights of one who is not a party. However, the improbability of outstanding interests that are not indicated by the chain of title justifies reliance. Any contrary facts coming to the examiner's attention, although not in the chain of title, cannot be ignored.

A recital that a person is unmarried may include a reference to the person being single, a widow or widower. However, a designation as widow or widower of a particular spouse does not

necessarily indicate current marital status. See [ATIFUND TN 20.02.02-03](#).

TITLE STANDARDS 20.2 – 20.10

[Title Standards deleted. See archived version for text.]

CONVEYANCES BY MARRIED WOMEN—JOINDER OF
HUSBAND PRIOR TO JANUARY 7, 1969

~~STANDARD: PRIOR TO JANUARY 7, 1969, A CONVEYANCE OR ENCUMBRANCE OF REAL
PROPERTY BY A MARRIED WOMAN REQUIRED THE JOINDER OF HER HUSBAND.~~

~~Problem 1: Mary Doe, a married woman, owned Blackacre. In 1960 Mary Doe, acting alone, executed a deed of Blackacre to Richard Roe. Was the conveyance valid?~~

~~Answer: No.~~

~~Problem 2: Same facts as Problem 1, except that in 1964 Richard Roe obtained from John Doe, Mary's husband, a separate conveyance of any interest he might have in Blackacre. Did this validate the original deed executed by Mary Doe in 1960?~~

~~Answer: No. A separate instrument by a husband to confirm his wife's conveyance did not constitute joinder.~~

~~Authorities & References: F.S. 693.01, 708.04, 708.08 (1969); *Bogle v. Perkins*, 240 So.2d 801 (Fla. 1970); *Zofnas v. Holwell*, 234 So.2d 1 (Fla. 1970); *Carn v. Haisley*, 22 Fla. 317 (1886); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §21.02[2] (1980); ATIF TN 20.03.02.~~

~~Comment: A deed executed by a married woman without the joinder of her husband may be made effective through the operation of the doctrine of estoppel. *Zofnas v. Holwell*, 234 So.2d 1 (Fla. 1970).~~

~~Joinder of the husband was not required if the married woman was a free dealer. F.S. 62.021 (1969). However, if the property was homestead, joinder would be necessary even though the married woman was a free dealer. *Bigelow v. Dunphe*, 143 Fla. 603, 197 So. 328 (1940); ATIF TN 16.01.02, 16.04.05.~~

~~STANDARD 20.3
CONVEYANCES BY MARRIED WOMEN—JOINDER OF
HUSBAND ON OR AFTER JANUARY 7, 1969~~

~~STANDARD: ON OR AFTER JANUARY 7, 1969, A CONVEYANCE OR ENCUMBRANCE OF REAL PROPERTY, OTHER THAN HOMESTEAD, BY A MARRIED WOMAN DOES NOT REQUIRE THE JOINDER OF HER HUSBAND.~~

~~Problem: Mary Doe, a married woman, owned Blackacre, which was not homestead property. In 1974 Mary Doe, acting alone, executed a deed of Blackacre to Richard Roe. Was the conveyance valid?~~

~~Answer: Yes.~~

~~Authorities & References: FLA. CONST. art. X, §5; F.S. 708.08 (1979); *Emhart Corp. v. Brantley*, 257 So.2d 273 (3d D.C.A. Fla. 1972); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §21.02[3] (1980); ATIF TN 20.03.01.~~

~~Comment: The Standard is inapplicable to homestead property. See Title Standard 18.1 (Alienation of Homestead Property—Joinder Of Spouse).~~

STANDARD 20.4

POWER OF ATTORNEY — MARRIED WOMEN'S PROPERTY

~~STANDARD: PRIOR TO JANUARY 7, 1969, A POWER OF ATTORNEY USED TO CONVEY OR ENCUMBER A MARRIED WOMAN'S REAL PROPERTY WAS INEFFECTIVE UNLESS HER HUSBAND JOINED IN THE EXECUTION OF IT, EXCEPT THAT IF THE POWER OF ATTORNEY WAS TO THE HUSBAND, HE NEED NOT JOIN IN ITS EXECUTION ON OR AFTER MAY 14, 1957.~~

~~Problem 1: In 1960 Mary Doe, a married woman and the sole owner of Blackacre, gave Richard Roe a power of attorney authorizing him to convey it. The power of attorney was executed with all the formalities of a deed and was recorded. John Doe, Mary's husband, did not join in the execution of the power of attorney. Richard Roe, as attorney in fact, executed a deed to Blackacre to Simon Grant in 1961 and John Doe joined in the execution of the deed. Was the deed valid?~~

~~Answer: No.~~

~~Problem 2: Same facts as Problem 1 except that they all took place on or after January 7, 1969. Was the deed valid?~~

~~Answer: Yes, assuming Blackacre was not homestead property. See Title Standard 18.4 (Alienation Of Homestead Property — Power Of Attorney).~~

~~Problem 3: In 1960 Mary Doe, the sole owner of Blackacre, gave John Doe, her husband, a power of attorney authorizing him to convey it. The power of attorney was executed with all the formalities of a deed and was recorded. John Doe did not join in the execution of the power of attorney. John Doe, as attorney in fact, executed a deed to Blackacre to Simon Grant in 1960. John Doe joined in the execution of the deed as the husband of Mary Doe. Was the deed valid?~~

~~Answer: Yes.~~

~~Authorities & References: F.S. 693.01, 693.14, 708.04, 708.08 (1969); 1 BOYER FLORIDA REAL ESTATE TRANSACTIONS §28.06 (1980).~~

~~Comment: F.S. 693.01, 693.14, and 708.04 were repealed, and 708.08 was amended, effective October 1, 1970. A married woman can convey or encumber her separate non-homestead property without joinder of her husband since January 7, 1969. See Title Standard 20.3 (Conveyances By Married Women — Joinder Of Husband On Or After January 7, 1969).~~

STANDARD 20.5

~~ELIMINATION OF INCHOATE DOWER IN REAL
PROPERTY CONVEYED BEFORE DEATH~~

~~STANDARD: WITH RESPECT TO A MARRIED MAN DYING ON OR AFTER OCTOBER 1, 1973,
INCHOATE DOWER IN REAL PROPERTY CONVEYED BEFORE DEATH HAS BEEN
ELIMINATED.~~

~~Problem: John Doe, a married man, executed a deed in 1972 conveying Blackacre, his separate non-homestead property, to Richard Roe in which Mary Doe, John's wife, did not join. John Doe died in 1974. Richard Roe desired to sell Blackacre. Did he have marketable title?~~

~~Answer: Yes. Mary Doe's dower claim extended only to the real property owned by John Doe at his death.~~

~~Authorities & References: F.S. 731.34-.35 (1973); F.S. 732.111, 732.201, 732.213 (1979); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §§21.00, 21.01 (1980).~~

~~Comment: The spouse may still be required to join in the execution of a mortgage of real property for the lien of the mortgage to be free of dower. F.S. 731.34 (1973); 5 FUND CONCEPT 47 (Sept. 1973); 6 FUND CONCEPT 4 (Jan. 1974). However, mortgages executed on or after January 1, 1976 are free of dower. F.S. 732.111 (1979); ATIF TN 2.04.02.~~

STANDARD 20.6

RELEASE OF DOWER—PRIOR TO
OCTOBER 1, 1973

~~STANDARD: IN A CONVEYANCE OR MORTGAGE OF REAL PROPERTY BY A MARRIED MAN PRIOR TO OCTOBER 1, 1973, INCHOATE DOWER OPERATED AS AN ENCUMBRANCE UPON THE GRANTEE'S TITLE UNLESS IT WAS RELEASED BY THE JOINDER OF THE GRANTOR'S WIFE IN THE CONVEYANCE OR MORTGAGE, OR OTHERWISE RELINQUISHED OR BARRED.~~

~~Problem 1: John Doe, a married man, executed a deed in 1960 conveying Blackacre to Richard Roe in which Mary Doe, John's wife, did not join. Did Richard Roe acquire marketable title?~~

~~Answer: No. Although the conveyance may have been valid, Blackacre may be subject to Mary Doe's claim of dower.~~

~~Problem 2: Same facts as Problem 1, except Mary Doe executed a quitclaim deed to Richard Roe in 1962. Did Richard Roe acquire marketable title?~~

~~Answer: Yes. Dower could be relinquished by separate instrument. However, if John Doe had died prior to the execution of the quitclaim deed it would be necessary to determine whether Mary Doe had remarried. The dower right could have vested in fee and the joinder of Mary Doe's subsequent husband would have been required.~~

~~Problem 3: John Doe, a single man, conveyed Blackacre to Richard Roe in 1960, reserving a life estate. In 1962 John married Mary. In 1964 John Doe conveyed the life estate to Richard Roe without Mary's joinder. Did Richard Roe acquire marketable title in fee?~~

~~Answer: Yes. Property conveyed prior to marriage was not subject to dower. Since the life estate would have terminated upon John's death there would be no estate to which Mary's dower interest could attach.~~

~~Authorities & References: F.S. 693.02-.03 (1969) (repealed 1970); F.S. 731.34-.35 (1971); F.S. 708.08 (1979); *Gore v. General Properties Corp.*, 149 Fla. 690, 6 So. 2d 837 (1942); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §21.01 (1980).~~

~~Comment: Prior the 1933 Probate Act dower consisted only of a life estate, so proof of the widow's death eliminated any problem. See ATIF TN 2.06.02, 22.03.10.~~

~~Dower may be barred by laches or estoppel. See *Johnson v. Hayes*, 52 So.2d 109 (Fla. 1951); *Pingree v. DeHaven*, 90 Fla. 42, 105 So. 147 (1925).~~

~~In order to take dower, the widow had to elect within nine months, unless extended, after the first publication of notice to creditors. This did not address the situation where there was no probate proceeding. See F.S. 731.35 (1971).~~

~~With respect to various methods of extinguishing dower or preventing it from attaching see Boyer & Miller, *Furthering Title Marketability By Substantive Reforms With Regard To Marital Rights*, 18 MIAMI L. REV. 561, 578-86 (1964).~~

~~When the wife failed to join in the husband's conveyance, F.S. 95.23, the 20-year curative act, cannot be relied on to eliminate her inchoate dower rights, even though the husband's deed has~~

~~been on record for at last 20 years. See ATIF TN 10.01.04, 27.01.03. A defective joinder, however, may be cured by F.S. 95.23, 95.26, or 694.08. (F.S. 95.23 and 95.26 have been amended and combined into 95.231, eff. January 1, 1975).~~

~~With respect to dower and leases, see Title Standard 20.9 (Dower — Leases).~~

~~As to the priority of a purchase money mortgage, see Title Standard 9.8 (Priority Of Purchase Money Mortgage Over Dower).~~

STANDARD 20.7

[Title Standard deleted. See archived version for text.]

~~RELEASE OF DOWER—ON OR AFTER OCTOBER 1, 1973~~

~~STANDARD: ON OR AFTER OCTOBER 1, 1973, UNRELINQUISHED INCHOATE DOWER IN REAL PROPERTY CONVEYED BEFORE DEATH OPERATES AS AN ENCUMBRANCE UPON THE GRANTEE'S TITLE ONLY IF THE MARRIED GRANTOR DIED PRIOR TO OCTOBER 1, 1973 AND, WITHIN THREE YEARS OF THE DATE OF HIS DEATH, HIS WIDOW CAUSED TO BE RECORDED AN INSTRUMENT INDICATING THAT SHE HAS ELECTED OR MAY ELECT TO TAKE DOWER.~~

~~Problem 1: John Doe, a married man, executed a deed in 1972 conveying Blackacre, his separate non-homestead property, to Richard Roe. May Doe, John's wife, did not join in the conveyance. John Doe died in June. Richard Roe desired to sell Blackacre in 1974. Did he have marketable title at that time?~~

~~Answer: No. Mary Doe could assert her dower claim until June, 1976 unless otherwise barred.~~

~~Problem 2: Same facts as Problem 1 except John Doe died in December, 1973. Did Richard Roe have marketable title in 1974?~~

~~Answer: Yes. Inchoate owner in real property conveyed before death was eliminated with respect to married men dying after October 1, 1973.~~

~~Problem 3: John Doe, a married man, executed a deed in 1967 conveying Blackacre, his separate non-homestead property, to Richard Roe. Mary Doe, John's wife, did not join in the conveyance. John Doe died in 1968. His estate has not been probated. In December, 1972 Mary Doe caused to be recorded in the county in which Blackacre was located an instrument which: (1) gave a specific legal description of Blackacre (2) named Richard Roe as the record owner (3) stated the state of John Doe's death and his place of residence at the time of his death and (4) stated that she may elect to take dower. Richard Roe desired to sell Blackacre in 1974. Did he have marketable title at that time?~~

~~Answer: No. Assuming Mary Doe's dower had not been otherwise relinquished or barred, the recording of the instrument prior to January 1, 1973 would preserve her dower interests.~~

~~Problem 4: John Doe, a married man, executed a deed in 1972 conveying Blackacre, his separate non-homestead property, to Richard Roe. May Doe, John's wife, did not join in the conveyance. John Doe died in June, 1973. His estate has not been probated. In 1974 Mary Doe caused to be recorded in the county in which Blackacre was located an instrument which: (1) gave a specific legal description of Blackacre (2) named Richard Roe as the record owner (3) stated the date of John Doe's death and his place of residence at the time of his death and (4) stated that she may elect to take dower. Would Richard Roe have marketable title in 1978?~~

~~Answer: No. Assuming Mary Doe's dower had not been otherwise relinquished or barred recording of the instrument would preserve her dower interests.~~

~~Authorities & References: F.S. 731.34 .35 (1973); F.S. 732.111, 732.201, 732.212 .214 (1979); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §21.01 (1980).~~

Comment:

~~Dower of a widow of any man dying prior to October 1, 1973 is barred *whether or not her husband's estate is administered* unless the instrument indicating election of or intention to elect dower is filed within three years of the date of her husband's death. However, no dower was barred if the instrument was filed for record before January 1, 1973. *F.S. 731.35(4)* (1973).~~

~~This Standard may not apply to unrelinquished inchoate dower rights in real property mortgaged on or after October 1, 1973. See Comment, Title Standard 20.5 (Elimination Of Inchoate Dower In Real Property Conveyed Before Death).~~

~~In general, any pre-existing rights to dower have expired as of October 1, 1976 unless the instrument has been filed. *F.S. 732.213* (1979); ATIF TN 2.04.02. See *Creary v. Estate of Creary*, 338 So. 2d 26 (1st D.C.A. Fla. 1976) as to retroactive application of *F.S. 732.213*.~~

STANDARD 20.8

[Title Standard deleted. See archived version for text.]

~~POWER OF ATTORNEY — RELEASE OF DOWER
PRIOR TO OCTOBER 1, 1970~~

~~STANDARD: PRIOR TO OCTOBER 1, 1970, THE RELINQUISHMENT OF DOWER, ACCOMPLISHED BY VIRTUE OF A POWER OF ATTORNEY EXECUTED BY A MARRIED WOMAN TO A THIRD PERSON, WITHOUT THE JOINDER OF HER HUSBAND, IS NOT ACCEPTABLE.~~

~~Problem: Mary Doe gave Richard Roe a power of attorney authorizing him to release her dower in the conveyance of Blackacre. The power of attorney was executed with all the formalities of a deed and was recorded. John Doe, Mary's husband, did not join in the execution of the power of attorney. In 1960, John Doe, the sole owner of Blackacre, conveyed it to Stephen Grant. Richard Roe signed the deed "Mary Doe, by Richard Roe, her attorney in fact." John Doe died in 1972. Does Stephen Grant have marketable title?~~

~~Answer: No, provided Mary Doe's dower was not otherwise relinquished or barred by law.~~

~~Authorities
& References: F.S. 693.02, 693.14, 708.08 (1969).~~

~~Comment: Prior to May 14, 1957 the husband was required to join in the execution of the power of attorney even if it was to himself. At that time F.S. 693.14 was amended to eliminate this requirement.~~

~~F.S. 708.08(1) (1979) may retroactively validate relinquishments made between January 7, 1969 and October 1, 1970.~~

~~F.S. 693.14, expressly requiring the joinder of the husband in the context of this Standard, was repealed, effective October 1, 1970.~~

STANDARD 20.9

[Title Standard deleted. See archived version for text.]

~~DOWER—LEASES~~

~~STANDARD: A LEASE OF REAL PROPERTY IS SUBJECT TO THE INCHOATE DOWER RIGHTS OF THE WIFE OF THE LESSOR.~~

~~Problem: John Doe, the sole owner of Blackacre, leased it to Richard Roe in 1960 for 99 years. Mary Doe, John's wife, did not join in the lease. John Doe died in 1972. May Mary Doe claim dower in Blackacre?~~

~~Answer: Yes. This assumes that Mary Doe's dower has not been barred by law or otherwise relinquished.~~

~~Authorities & References: *Cantor v. Palmer*, 163 So.2d 508 (3d D.C.A. Fla. 1964).~~

~~Comment: Since the interest of a lessee is considered to be personal property, release of dower by the wife of the lessee upon the cancellation of a lease is not required.~~

~~With respect to the issue of the existence of inchoate dower rights, see Title Standard 20.5 (Elimination of Inchoate Dower In Real Property Conveyed Before Death).~~

STANDARD 20.10

[Title Standard deleted. See archived version for text.]

~~DIVORCE AS BARRING DOWER~~

~~STANDARD: A VALID DIVORCE OR DISSOLUTION OF MARRIAGE BARS DOWER NOTWITHSTANDING THE LACK OF JOINDER BY THE WIFE IN A PRIOR CONVEYANCE OR ENCUMBRANCE OF REAL PROPERTY.~~

~~Problem: In 1965, John Doe conveyed Blackacre, which was not homestead property, to Richard Roe. Mary Doe, John's wife, did not join in the conveyance. Subsequently John Doe and Mary Doe were divorced. Did Richard Roe have marketable title, after the divorce, free of any claim of dower?~~

~~Answer: Yes. Although Mary Doe's inchoate dower right was not eliminated by the conveyance in which she did not join, it was eliminated by the valid divorce decree.~~

~~Authorities & References: F.S. 731.34 (1973); *Simons v. First Nat'l Bank*, 381 U.S. 81 (1965); *Busch v. Busch*, 68 So.2d 350 (Fla. 1953); *Pawley v. Pawley*, 46 So.2d 464 (Fla. 1950), *cert. den.* 340 U.S. 866; *Bowler v. Bowler*, 159 Fla. 447, 31 So.2d 751 (1947); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §21.01[2] (1980); FLORIDA FAMILY LAW §4.40 (CLE 2d ed. 1972).~~

~~Comment: With respect to the issue of the existence of inchoate dower rights, see Title Standard 20.5 (Elimination Of Inchoate Dower In Real Property Conveyed Before Death).~~

CHAPTER 20

MARITAL PROPERTY

STANDARD 20.1

RECITAL OF UNMARRIED STATUS

STANDARD: THE RECITAL IN AN INSTRUMENT OF RECORD THAT A PERSON IS UNMARRIED MAY BE RELIED UPON IN THE ABSENCE OF ANY EVIDENCE IN THE CHAIN OF TITLE OR OTHER KNOWN FACTS INDICATING THAT THE PERSON WAS MARRIED.

Problem 1: John Doe, and the sole owner of Blackacre, conveyed it, describing himself as a single man. Nothing of record indicates that Doe was married prior to the recording of the deed. Is an examiner justified in relying on the recital of marital status?

Answer: Yes.

Problem 2: John Doe, the sole owner of Blackacre, conveyed it, describing himself as a single man. Several years previously, John Doe and Mary Doe, his wife, had joined in a mortgage of Blackacre. Nothing of record shows the termination of the marital status. Is an examiner justified in assuming that the grantee takes free of any possible homestead rights?

Answer: No. An examiner should require satisfactory record evidence of elimination of any possible homestead rights.

Authorities & References: FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE §3.57 (CLE 6th ed. 2010); FUND TN 20.02.03, 20.02.05.

Comment: Although the recital of marital status may be binding as to the grantor or mortgagor, it does not eliminate the rights of one who is not a party. However, the improbability of outstanding interests that are not indicated by the chain of title justifies reliance. Any contrary facts coming to the examiner's attention, although not in the chain of title, cannot be ignored.

A recital that a person is unmarried may include a reference to the person being single, a widow or widower. However, a designation as widow or widower of a particular spouse does not necessarily indicate current marital status. See FUND TN 20.02.03.

TITLE STANDARDS 20.2 – 20.10

[Title Standards deleted. See archived version for text.]

CHAPTER 21
DESCRIPTIONS

STANDARD 21.1

TEST OF SUFFICIENCY OF PROPERTY DESCRIPTION

STANDARD: IF THE DESCRIPTION OF LAND CONVEYED IN A DEED IS SUCH THAT A SURVEYOR, BY APPLYING THE RULES OF SURVEYING, CAN LOCATE THE SAME, SUCH DESCRIPTION IS SUFFICIENT, AND THE DEED WILL BE SUSTAINED IF IT IS POSSIBLE FROM THE WHOLE DESCRIPTION TO ASCERTAIN AND IDENTIFY THE LAND INTENDED TO BE COVERED CONVEYED.

Problem 1: The lots in Block 5 of Country Club Estates are numbered consecutively, except for one unnumbered tract lying between Lots 5 and 8 and the plat of the subdivision shows no lots numbered 6 and 7. The original subdivider purported to convey Lot 6, Block 5, Country Club Estates to Richard Roe. Is Roe's title marketable?

Answer: No.

Problem 2: Same facts as above except that the original subdivider attempted to convey Lot 6, Block 5, Country Club Estates to Richard Roe by a metes and bounds description. Is Roe's title marketable?

Answer: Yes.

Problem 3: Title to Blackacre was conveyed to Roe by a deed in which the last call in the metes and bounds legal description read "continue 160 feet to the "point of beginning." The actual distance for the call pursuant to a survey of the property is 200 feet to the point of beginning. Is Roe's title marketable?

Answer: Yes. A surveying rule of construction as well as Florida case law establishes that in locating parcels of land, natural or artificial monuments control over courses and distances. Accordingly, errors in courses or distances in calls that run to a fixed point may be ignored. See *Trustees of Internal Improvement Fund v. Westone*, 222 So.2d 10 (Fla. 1969) and *Bridges v. Thomas*, 118 So.2d 549 (Fla. 2d DCA 1960).

Authorities & References: *Maynard v. Miller*, 132 Fla. 269, 182 So. 220 (1938); *Burns v. Campbell*, 131 Fla. 630, 180 So. 46 (1938); 19 FLA. JUR. 2d *Deeds* §1248 (19802011); FUND TN 13.03.09.

Comment: The standard uses the example of a deed, but the principle applies to any instrument containing a legal description.

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STANDARD 21.2
DESIGNATION OF COUNTY IN METES
AND BOUNDS DESCRIPTIONS

STANDARD: A DESCRIPTION OF PROPERTY DESCRIBED AS BEING IN THE STATE OF FLORIDA AND BY METES AND BOUNDS IN A STATED SECTION, TOWNSHIP, AND RANGE WITHOUT ANY COUNTY DESIGNATION IS SUFFICIENTLY DEFINITE.

Problem: John Doe conveyed Blackacre which he owned, describing it as being in the State of Florida and by metes and bounds in Section 12, Township 5 N, Range 29 W. No county was designated in the deed. Is a corrective deed showing the county in which the land lies necessary?

Answer: No. Since the section, township and range are definitely given as a part of the description, the location can be ascertained without question as to the county in which the land lies.

Authorities & References: *Miller v. Griffin*, 99 Fla. 976, 128 So. 416 (1930); *Black v. Skinner Mfg. Co.*, 53 Fla. 1090, 43 So. 919 (1907); *Peacock v. Feaster*, 52 Fla. 565, 42 So. 889 (1906); 19 FLA. JUR. 2d *Deeds* §~~125129~~ (19802011); ~~ATIF-FUND~~ TN 13.03.03.

STANDARD 21.3

~~EXCEPTION CONVEYANCE DESCRIBED ONLY BY REFERENCE
TO PREVIOUS RECORDED DOCUMENT CONVEYANCE~~

~~STANDARD: A CONVEYANCE WHICH CONTAINS A DEFINITE ACREAGE DESCRIPTION BUT EXCEPTS A PORTION OF THE LAND DESCRIBED ONLY BY REFERENCE TO A PREVIOUSLY RECORDED CONVEYANCE, DESCRIBES THE LAND ONLY BY A REFERENCE TO A PREVIOUSLY RECORDED INSTRUMENT. WITHOUT RECITING THE DESCRIPTION SET FORTH IN THE PREVIOUS CONVEYANCE INSTRUMENT, IS NOT INVALID FOR WANT OF SUFFICIENT DESCRIPTION VALID, EVEN IF/THOUGH THE TITLE EXAMINER MUST GO OUTSIDE OF THE TO ANOTHER INSTRUMENT TO DETERMINE WHAT IS IDENTIFY THE PROPERTY CONVEYED.~~

Problem: A recorded conveyance from John Doe to Richard Roe contains the description, "All of the property conveyed to me in that certain deed from Simon Grant recorded in Official Records Book 4645347392, Page 4047798, of the Official Records of Broward County, Florida,"the West 1/2 of Section 31, Township 35 South, Range 18 East," and is followed by the language "except what has been previously conveyed by grantor to Simon Grant described in deed recorded in Official Records Book 1, page 2." The deed ~~to~~from Simon Grant conveyed the South 1/2 of the West 1/2 of Sec. 34~~3~~, Township 35~~48~~ South, Range 18~~42~~ East. Is the description in the conveyance to Richard Roe sufficient~~?~~ to convey the North 1/2 of the West 1/2 of the Section?

Answer: Yes.

Authorities & References: *Gradolph v. Ricou*, 104 Fla. 237, 139 So. 579 (1932); ~~26 C.J.S. Deeds §101 (1956);~~ *Hutchinson Island Realty, Inc. v. Babcock Ventures, Inc.*, 867 So.2d 528 (Fla. 5th DCA 2004); 19 FLA. JUR. 2d *Deeds* §§~~132-133~~137 (49892011); FUND TN 13.03.04.

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Comment: It is preferable and the better practice generally to have the complete description, including any exception, set out in the one instrument, but such a description as noted above is sufficient to allow positive identification of the property intended to be conveyed.

The standard uses the example of a deed, but the principle applies to any instrument containing a legal description.

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STANDARD 21.4
CONFLICT BETWEEN SPECIFIC DESCRIPTION AND
STATEMENT OF ACREAGE

STANDARD: IF A DEED CONTAINS A SPECIFIC DESCRIPTION OF THE PROPERTY SUCH AS BY GOVERNMENT SURVEY, METES AND BOUNDS, OR REFERENCE TO A PLAT, TOGETHER WITH A STATEMENT OF THE ACREAGE, THE ~~MORE CERTAIN SPECIFIC DESCRIPTION BY BOUNDARIES~~ PREVAILS OVER THE STATEMENT OF ACREAGE, UNLESS AN INTENT TO CONVEY A CERTAIN QUANTITY IS ~~MANIFEST~~CLEARLY STATED.

Problem: A recorded conveyance from John Doe to Richard Roe contains a description by metes and bounds, in a certain Section, Township, Range and County, followed by the words "the same being 33 acres, more or less." A surveyor employed by Roe in anticipation of a subsequent conveyance determines that, in fact, the property described within the stated bounds contains 37 acres. Is a corrective deed necessary to enable Roe to pass marketable title to the described tract including the excess acreage?

Answer: No.

Authorizes & References: *Jackson v. Magbee*, 21 Fla. 622 (1885); *Benecke v. U.S.*, 356 F.2d 439 (5th Cir. 1966); *U.S. v. 329.22 Acres of Land*, 307 F.Supp. 34 (M.D. Fla. 1968), *aff'd* 418 F.2d 551 (5th Cir. 1969); ~~*Jackson v. Magbee*, 21 Fla. 622 (1885)~~; 19 FLA. JUR. 2d ~~Deeds §§126, 139-140~~143 (19802011).

Comment: The standard applies only to a deed with a specific description accompanied by a statement of acreage. Where the deed indicates an intention to convey a specific number of acres, but the specific description does not coincide with this intention, or where the intention of the parties is in doubt, the standard is not applicable.

CHAPTER 21

DESCRIPTIONS

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Problem 1: The lots in Block 5 of Country Club Estates are numbered consecutively, except for one unnumbered tract lying between Lots 5 and 8 and the plat of the subdivision shows no lots numbered 6 and 7. The original subdivider purported to convey Lot 6, Block 5, Country Club Estates to Richard Roe. Is Roe's title marketable?

Answer: No.

Problem 2: Same facts as above except that the original subdivider attempted to convey Lot 6, Block 5, Country Club Estates to Richard Roe by a metes and bounds description. Is Roe's title marketable?

Answer: Yes.

Problem 3: Title to Blackacre was conveyed to Roe by a deed in which the last call in the metes and bounds legal description read "continue 160 feet to the "point of beginning." The actual distance for the call pursuant to a survey of the property is 200 feet to the point of beginning. Is Roe's title marketable?

Answer: Yes. A surveying rule of construction as well as Florida case law establishes that in locating parcels of land, natural or artificial monuments control over courses and distances. Accordingly, errors in courses or distances in calls that run to a fixed point may be ignored. See *Trustees of Internal Improvement Fund v. Westone*, 222 So.2d 10 (Fla. 1969) and *Bridges v. Thomas*, 118 So.2d 549 (Fla. 2d DCA 1960).

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Comment: The standard uses the example of a deed, but the principle applies to any instrument containing a legal description.

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Problem: John Doe conveyed Blackacre which he owned, describing it as being in the State of Florida and by metes and bounds in Section 12, Township 5 N, Range 29 W. No county was designated in the deed. Is a corrective deed showing the county in which the land lies necessary?

Answer: No. Since the section, township and range are definitely given as a part of the description, the location can be ascertained without question as to the county in which the land lies.

Authorities & References: *Miller v. Griffin*, 99 Fla. 976, 128 So. 416 (1930); *Black v. Skinner Mfg. Co.*, 53 Fla. 1090, 43 So. 919 (1907); *Peacock v. Feaster*, 52 Fla. 565, 42 So. 889 (1906); 19 FLA. JUR. 2d *Deeds* §129 (2011); FUND TN 13.03.03.

STANDARD 21.3

CONVEYANCE DESCRIBED ONLY BY REFERENCE
TO PREVIOUS RECORDED DOCUMENT

STANDARD: A CONVEYANCE WHICH DESCRIBES THE LAND ONLY BY A REFERENCE TO A PREVIOUSLY RECORDED INSTRUMENT, WITHOUT RECITING THE DESCRIPTION SET FORTH IN THE PREVIOUS INSTRUMENT, IS VALID, EVEN THOUGH THE TITLE EXAMINER MUST GO TO ANOTHER INSTRUMENT TO IDENTIFY THE PROPERTY CONVEYED.

Problem: A recorded conveyance from John Doe to Richard Roe contains the description, "All of the property conveyed to me in that certain deed from Simon Grant recorded in Official Records Book 47392, Page 798, of the Official Records of Broward County, Florida." The deed from Simon Grant conveyed the South 1/2 of the West 1/2 of Sec. 33, Township 48 South, Range 42 East. Is the description in the conveyance to Richard Roe sufficient?

Answer: Yes.

Authorities & References: *Gradolph v. Ricou*, 104 Fla. 237, 139 So. 579 (1932); *Hutchinson Island Realty, Inc. v. Babcock Ventures, Inc.*, 867 So.2d 528 (Fla. 5th DCA 2004); 19 FLA. JUR. 2d *Deeds* §§137 (2011); FUND TN 13.03.04.

Comment: It is preferable and the better practice generally to have the complete description, including any exception, set out in the one instrument, but such a description as noted above is sufficient to allow positive identification of the property intended to be conveyed.

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Problem: A recorded conveyance from John Doe to Richard Roe contains a description by metes and bounds, in a certain Section, Township, Range and County, followed by the words “the same being 33 acres, more or less.” A surveyor employed by Roe in anticipation of a subsequent conveyance determines that, in fact, the property described within the stated bounds contains 37 acres. Is a corrective deed necessary to enable Roe to pass marketable title to the described tract including the excess acreage?

Answer: No.

Authorizes & References: *Jackson v. Magbee*, 21 Fla. 622 (1885); *Benecke v. U.S.*, 356 F.2d 439 (5th Cir. 1966); *U.S. v. 329.22 Acres of Land*, 307 F.Supp. 34 (M.D. Fla. 1968), *aff'd* 418 F.2d 551 (5th Cir. 1969); 19 FLA. JUR. 2d *Deeds* §143 (2011).

Comment: The standard applies only to a deed with a specific description accompanied by a statement of acreage. Where the deed indicates an intention to convey a specific number of acres, but the specific description does not coincide with this intention, or where the intention of the parties is in doubt, the standard is not applicable.

1 An act relating to condominium phasing: amending s. 718.403; providing
2 for an effective date.

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

4 Section 1. Subsection (1) of Section 718.403, Florida Statutes, is hereby
5 amended to read as follows:

6 (1) Notwithstanding the provisions of s. 718.110, a developer may develop a
7 condominium in phases, if the original declaration of condominium submitting the initial
8 phase to condominium ownership or an amendment to the declaration which has been
9 approved by all of the unit owners and unit mortgagees provides for and describes in
10 detail all anticipated phases; the impact, if any, which the completion of subsequent
11 phases would have upon the initial phase; and the time period ~~(which may not exceed 7~~
12 ~~years from the date of recording the declaration of condominium)~~ within which all
13 phases must be added to the condominium and comply with the requirements of this
14 section and at the end of which the right to add additional phases expires. All phases
15 must be added to the condominium within 7 years from the date of recording the
16 declaration of condominium submitting the initial phase to condominium ownership,
17 unless an extension of the 7-year period is approved by the voting interests. An
18 amendment extending the 7-year period shall require the approval of the same
19 percentage of voting interests necessary to amend the declaration as provided in the
20 original recorded declaration or as amended under the procedures provided therein. If
21 the declaration as originally recorded, or as amended under the procedures provided
22 therein, does not specify the percentage of voting interests necessary to adopt
23 amendments, then at least 75 percent of the voting interests of the association must

24 approve the extension of the 7-year period. An extension of the 7-year period may only
25 be submitted for approval of the voting interests during the last 3 years of the 7-year
26 period. The amendment to the declaration shall describe the time period within which
27 all phases must be added to the condominium which shall be no longer than 10 years
28 from the date of recording the declaration of condominium submitting the initial phase to
29 condominium ownership. Notwithstanding the provisions of s. 718.110, an amendment
30 extending the 7-year period is not an amendment subject to s. 718.110(4).

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

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Robert S. Freedman, Co-Chair, Condominium and Planned Development Committee of the Real Property Probate & Trust Law Section

Address c/o Carlton Fields, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607 - Telephone: (813) 223-7000

Position Type Condominium and Planned Development Committee, RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

Robert S. Freedman, Carlton Fields, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607, Telephone (813) 223-7000
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Michael J. Gelfand, Gelfand & Arpe, P.A. 1555 Palm Beach Lakes Blvd., Suite 1220, West Palm Beach, FL 33401-2323, Telephone (561) 655-6224
Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533

Appearances

Before Legislators (SAME)

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

Meetings with

Legislators/staff (SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A

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

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

Proposed Wording of Position for Official Publication:

“Support amendments to Section 718.403, Florida Statutes, to permit the addition of proposed phases to a condominium beyond the current maximum period of 7 years from the date of recordation of the declaration of condominium upon proper vote of the association membership, to provide an effective date.”

Reasons For Proposed Advocacy:

Florida law presently states that a proposed phase cannot be added to a condominium later than 7 years after the date of recordation of the declaration of condominium. In the present economy, numerous distressed condominiums could have additional units added to their scope (either built or to-be-built), which will provide additional monies to pay their expense and provide financial stability to the association and the unit owners, but for the existence of the strict 7 year time period. The proposed amendments will enable the 7 year period to be extended for up to 3 additional years, upon a vote of the association membership, thereby enabling the submission of additional units to a condominium regime (most likely through the workout of distressed unsubmitted properties to successor purchasers) and providing increased economic stability for the association because there will be more owners paying for the common expenses (thereby benefitting the original condominium constituents).

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

Most Recent Position _____ None _____
(Date) (Indicate Bar or Name Section) (Support or Oppose)

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

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

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

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

(Name of Group or Organization)

(Support, Oppose or No Position)

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

WHITE PAPER

AMENDMENTS TO PERMIT EXTENDING THE PERIOD FOR ADDING PHASES TO A CONDOMINIUM AND TO PROVIDE APPLICABLE PROCEDURES - PROPOSED REVISIONS TO SUBSECTION (1) OF SECTION 718.403, FLORIDA STATUTES

1. SUMMARY

The purpose of the proposed changes to Section 718.403(1), Florida Statutes, is (a) to create a mechanism enabling the extension of the current statutory time period for adding proposed phases to an existing phased condominium, and (b) to provide applicable procedures.

2. SITUATION

Section 718.403(1) presently requires that a proposed phase in a phased condominium must be submitted to an existing condominium regime within 7 years from the date of recordation of the declaration of condominium. There are no exceptions to this hard time frame. The current economic climate has led to numerous partially-developed condominium projects falling into distress or to otherwise fail, thereby creating problems for the existing unit owners, condominium associations, municipalities and developers. A once-viable condominium project may now be facing the expiration of phasing time periods due to decreased demand for units in the phases that have not yet been added to the condominium or limited financial ability of the original developer to complete the project. A troubled condominium project may require more time to add additional phases than is currently permitted by Section 718.403(1), F.S. The proposed amendments to Section 718.403(1) provide the necessary modifications to permit proposed phases to be added to a condominium beyond the 7-year time period and provide the necessary procedures for doing so through association membership vote.

3. EFFECT OF PROPOSED CHANGE

The proposed amendments will permit additional proposed phases to be added to a condominium beyond the 7-year time period currently required by Section 718.403(1), F.S. and provide applicable procedures for doing so under the overall statutory scheme.

4. ANALYSIS

The proposed changes to Section 718.403(1) will permit proposed phases to be added to a condominium beyond the 7-year time period currently mandated by the statute, if proper authorization is obtained from the association membership. The association membership can vote to amend the declaration of condominium to extend the statutory 7 year period for up to an additional 3 year period of time. Specifically, an

extension vote will require the approval of the same percentage of voting interests necessary to amend the declaration of condominium as provided in the original recorded declaration or as amended under the procedures provided therein (and if the declaration of condominium, as originally recorded or as amended, does not provide a mechanism for amendments, then the vote of at least seventy-five percent of the voting interests of the association must approve the extension). Any vote to amend the declaration of condominium to extend the 7 year time period may only occur during the last 3 years of the 7 year period.

5. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

6. DIRECT IMPACT ON PRIVATE SECTOR

This proposal gives distressed, failing or failed condominium projects additional time to have subsequent phases added to the condominium, thereby encouraging the sale of condominium units that were originally planned for the condominium and the workout of distressed unsubmitted properties such that a successor purchaser can submit the property to condominium ownership under the originally-contemplated regime. Moreover, the ability to add additional condominium units will result in increased economic stability for the association because there will be more owners paying for the common expenses, thereby benefitting the original condominium constituents. Finally, providing a mechanism enabling a proposed phase to be added to the condominium beyond the 7-year period will allow for the best and highest use of the real property as originally intended.

7. CONSTITUTIONAL ISSUES

There are no constitutional issues raised by this proposal.

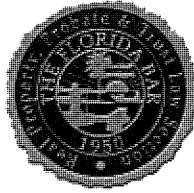
8. OTHER INTERESTED PARTIES

None are known at this time.

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Re: Proposed Part 1228 Rule on Private Transfer Fee Covenants
(RIN 2590-AA41)

SECRETARY

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Dear Mr. Pollard:

On behalf of the Real Property, Probate and Trust Law Section of The Florida Bar ("Section"), I am submitting comments regarding the Federal Housing Finance Agency's Proposed Part 1228 Rule on Private Transfer Fee Covenants (RIN 2590-AA41) (the "Proposed Rule") announced in the Agency's Feb 1, 2011 News Release.

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The Section is a group of over 9,500 Florida lawyers who practice in the areas of real estate, probate, trust and estate law, and who are dedicated to serving all Florida lawyers and the public in these fields of practice. We produce educational materials and seminars, assist the public pro bono, draft legislation, draft rules of procedure, and occasionally offer advice to the judicial, legislative and executive branches to assist on issues related to our fields of practice.

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The Section is writing to the Federal Housing Finance Agency ("Agency") because the Section has a substantial, institutional history and perspective involving private transfer fee covenants and how they are used in practice. The perspective of the Section is oftentimes broader and more independent than those of individuals or a particular constituency. Indeed, the Section and its executive council are comprised of members who represent virtually every segment of the residential real estate market, including condominium unit owners, residential lenders, consumer purchasers, real estate brokers, contractors, non-developer controlled community associations, construction lenders and developers, to name a few.

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So, we appreciated the opportunity to submit comments at an earlier stage of this process and are supportive of the “carve outs” for existing encumbrances and condominium and home owners’ associations in the latest draft. However, as is so often the case, the “Devil is in the Details” and we suggest the language of the Proposed Rule is still problematic in several details:

1. Definition of “Direct Benefit”

The term “Direct Benefit” as defined presents a number of concerns:

a. The phrasing around the term “exclusively” in its various usages is problematic as applied to specific examples:

- i. How narrowly is “exclusively” to be read? May the association use some of the proceeds to pay salaries, postage, or for contracted services from a management company? Are the fees and charges payable for estoppel letters or certificates issued by the association or its authorized agent “exclusively” for the direct benefit of the encumbered property?¹ None of these charges seem to fall within the “direct benefit” definition. Absent a clarification of the rule, a covered association would have to maintain a very strict segregation of funds derived from an “excepted transfer fee covenant.” Perhaps more importantly, the actual use of the proceeds of a private transfer fee is not something that can usually be determined from a review of the recorded covenant.
- ii. A normal development practice is to have a separate condominium association for each condominium component of the development, and for those to cooperate through membership in a master association embodying all of the condominium associations. A similar legal structure has been used in many large scale developments. Each “neighborhood” will have its own homeowners’ association under a “master association.” In many circumstances, the assessments and transfer fees are assessed and collected by the lowest level association and distributed upstream.

The exclusivity concepts in the Proposed Rule present difficulties as applied to this type of stacked multi-tier associations. There is no express approval for a group of related (or unrelated) associations to cooperate on common cultural, educational, recreational or other activities. Further, the 1,000 yard (a little over ½ mile) limitation contained in the definition of “adjacent or contiguous property” is not sufficient for some of Florida’s large scale developments. The Proposed Rule also needs to address the potential cooperation among existing associations whose assessments may or may not fall within the scope of the rule.

¹ The charge for an estoppel letter itself is a “private transfer fee” as defined in that it is “required to be paid in connection with or as a result of a transfer of title to real estate.” Thus, the question becomes whether the estoppel letter fee provides a “direct benefit” “exclusively” to the encumbered properties so as to be exempt.

- iii. Consider the payment by a homeowners' association for road maintenance in a community where (as is the norm) only the subdivision lots are subject to the encumbrance. While this is obviously not the intent of the Proposed Rule, the first sentence of the definition states that the proceeds must be used "exclusively to support maintenance and improvements to encumbered properties." The following sentence states "such benefit must flow to ... the encumbered properties and their common areas or to adjacent or contiguous property." But the term "benefit" in that context could easily be interpreted as limited to the "cultural, educational, charitable, recreational," etc. benefits listed in the prior clause and not to the more narrow category of "maintenance and improvements"
- b. The rationale used to sell legislatures on investing public funds in environmental and conservation programs has often been that they provide benefit to all of mankind, even when they are not readily accessible to most citizens. Applying the exclusive benefit concept to environmental and conservation programs is thus problematic.
- c. The last sentence of the definition of "Direct Benefit" reads:

A private transfer fee covenant will be deemed to provide a direct benefit when members of the general public may use the facilities funded by the transfer fees in the burdened community and adjacent or contiguous property only upon payment of a fee, except that *de minimis* usage may be provided free of charge for use by a charitable or other not-for-profit group.

While this may be the appropriate standard for the use of a clubhouse or a golf course, many of the projects funded by an association will be in the nature of roads, landscaping, irrigation, street lighting, parks, and playgrounds and other common areas where the exclusion of non-residents is simply not feasible and, in the case of roads in an un-gated community, not desirable.

2. Definition of Private Transfer Fee.

The definition is still too inclusive. Under the Proposed Rule, FNMA, FHLMC and the Federal Home Loan Banks would not be permitted to hold any property encumbered by a non-exempt private transfer fee covenant. Unfortunately, as defined, the prohibition would apply to:

- a. Standard Fannie/Freddie mortgages, which include a “due on sale” clause². Again, this is clearly not the intent – but highlights the drafting concerns.
- b. Deferred commission or participation agreements in which the seller, a Realtor[®], or other party is entitled to a payment based upon subsequent appreciation, development, or sale of the property.
- c. Contracts in which a payment is due from the owner upon the sale of the property. It is not uncommon to tie the timing of a payment under a contract or of an unsecured debt to a liquidity event, like the sale of a certain property, and to record those agreements to assure payment.
- d. Participating mortgages in which additional payments are due based on subsequent appreciation, development, or sale of the property.
- e. A mortgage which provides for the payment of a fee should the lender consent to a sale and assumption.

If these latter types of agreements are evidenced in the public records, even if subordinate to the mortgage being acquired by the Regulated Entities, it would seemingly fall within these definitions and preclude the holding of the mortgage.

3. Mechanical/Implementation Issues.

The application of the Proposed Rule to each individual parcel, as distinguished from transfer fee covenants which apply to an entire condominium or subdivision, adds a significant level of complexity. If the Proposed Rule is limited to the subdivision or condominium level, the certifications normally done prior to the first FNMA/FHLMC mortgage in a community could be expanded to cover transfer fees³. However, applying the Proposed Rule to every single parcel will presumably necessitate some sort of certification process for every mortgage before that mortgage may be placed with one of the Regulated Entities.

The land title industry is not currently equipped to satisfy that need. Under current practices, the title insurance agent will identify covenants and restrictions affecting the property generally.

² In pertinent part, the “due on sale” language of FNMA form 3010 reads:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender’s prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.

This falls within the definition of a “Private transfer fee,” as it is a “payment, imposed by a covenant, restriction or other similar document and required to be paid in connection with or as a result of a transfer of title to real estate.” Since the due on sale clause is contained within the recorded mortgage that runs with the land, the clause meets the test of a private transfer fee covenant. The mere fact that its enforcement is discretionary on the part of the mortgage holder cannot be viewed as a basis for circumventing the rule, or any transfer fee covenant could be drafted as discretionary.

³ To the extent it can be determined from an examination of the public records.

Alfred M. Pollard, General Counsel
Federal Housing Finance Agency
April 8, 2011
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The agent may also offer certain specific coverages under the ALTA form 4, 5 and 9 series of endorsements. Current examination practices do not include a review and analysis of whether anything in those covenants or other recorded instruments might constitute a private transfer fee as defined in the Proposed Rule, and given the multiple requirements for “exclusivity” of benefit discussed above, an examination of the record alone will not be sufficient to determine whether a transfer fee is exempt.

Under Florida administrative rules, title agents and insurers are prohibited from providing “affirmative coverages” beyond the scope of the approved policy forms and endorsements. Fla. Admin. Code §69O-186.005(7)(b). Any certification by the agent or insurer – even in letter form -- that a property is not encumbered by a non-exempt private transfer fee covenant would likely be a violation of this regulation. In the medium term, it may be possible for underwriters to negotiate a “work-around” of some type for their agents, or working with ALTA to develop and get approval for an appropriate “No Transfer Fees” endorsement – but either of those approaches cannot be accomplished before the proposed effective date of the Proposed Rule.

As discussed above, the prohibition on purchasing and investing is of “properties encumbered by private transfer fee covenants” without regard to whether those interests may be subordinate to the mortgage being acquired. It is thus possible for events occurring subsequent to the recording of the mortgage to render a mortgage ineligible under the Proposed Rule (and such events may not require the consent of the parcel owner, and may well occur without the knowledge of the parcel owner). Certifications made at the time the mortgage was made could not reveal such matters (or necessarily the potential or likelihood of occurrence), so presumably some sort of recertification would be required prior to acquisition by the regulated entities (if a new certification is even possible).

This draft of the Proposed Rule is a substantial improvement over the Proposed Guidance, but would still benefit from further elaboration and clarification.

Thank you for the opportunity to offer our insights into this process.

Sincerely,

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

Brian J. Felcoski, Chair

**PROPOSED BYLAWS OF
THE REAL PROPERTY, PROBATE AND TRUST LAW SECTION
OF THE FLORIDA BAR**

April 2011

Base Document: Proposed Bylaws approved by RPPTL Executive Council on 8-7-10 (including Members-At-Large to At-Large-Members amendment approved on 11-6-10)

Redline: Changes anticipated to be required by Board of Governors

Article I
NAME AND PURPOSES

Section 1. Name. The name of this organization is “The Real Property, Probate and Trust Law Section of The Florida Bar” (“section”).

Section 2. Purposes. The purposes of the section are:

(a) To provide an organization within The Florida Bar open to persons having an interest in real property (including construction), probate, trust, or related fields of law, that furthers the knowledge and practices of members in those areas;

(b) To inculcate in its members the principles of duty and service to the public; and

(c) To serve the public and its members by improving the administration of justice and advancing jurisprudence in the fields of real property (including construction), probate, trust, and related fields of law, through all appropriate means, including the development and implementation of legislative, administrative, and judicial positions; continuing legal education programs; standards for ethical and competent practice by lawyers; and professional relationships between real property (including construction), probate, and trust lawyers, and other lawyer and nonlawyer groups.

Article II
SECTION MEMBERSHIP

Section 1. Membership Types. The membership of the section shall be the active members (“active section member”), affiliate members (“affiliate section member”), and honorary members (“honorary section member”) hereafter described:

(a) Active section members. Any member of The Florida Bar in good standing may become an active section member by applying for such membership and paying the section’s annual dues. Any person who is an active section member who ceases to be a member of The Florida Bar in good standing also ceases to be a member of the section. Reinstatement as a member of The Florida Bar in good standing shall automatically reinstate the person as an active section member, provided that the member is current in the payment of section dues.

(b) Affiliate section members. The Executive Council of the section (“executive council”) may, in its discretion (after review and approval of the applicant’s qualifications for membership), enroll as an affiliate section member, any person who has shown the dual capacity of interest in and contribution to the section’s activities and who is either a law student enrolled in an accredited Florida law school, a graduate of any law school, or a legal assistant, as defined below. Affiliate section members shall pay the annual dues prescribed by the executive council and shall have all the privileges of active section members, except that they may not vote or hold any office or position in the section. The number of affiliate section members shall not exceed 1/3 of the number of active section members.

For purposes of this Article, a legal assistant is a person who assists a member of The Florida Bar in the delivery of legal services in the area of real property (including construction), probate, trust, and related fields of law, and who has satisfied the following minimum requirements:

1. Successful completion of the certified legal assistant (CLA) examination of the National Association of Legal Assistants, Inc.;
2. Graduation from an ABA-approved program of study for legal assistants or graduation from any accredited law school;

3. Graduation from a course of study for legal assistants which is institutionally accredited, but not ABA-approved, and which requires not less than the equivalent of 60 semester hours of classroom study;
4. Graduation from a course of study for legal assistants, other than those set forth in 2 and 3, above, plus not less than 6 months of in-house training as a legal assistant;
5. A bachelor degree in any field, plus not less than 1 year of in-house training as a legal assistant; or
6. Five years of in-house training as a legal assistant.

(c) Honorary section members. Any person whom the executive council shall find to have made outstanding contributions in the fields of real property (including construction), probate, trust, or related fields of law, may be made an honorary section member by the executive council. An honorary section member shall have no vote at section meetings, shall not be entitled to hold any office or position in the section, and shall not be required to pay dues.

~~——(d) All members of the section shall be required to observe the standards of professionalism and ethical conduct expected of members of The Florida Bar, and legal assistants who are affiliate section members shall also be required to observe and adhere to the Code of Ethics and Professional Responsibility established by the National Association of Legal Assistants, Inc. The executive council, by 2/3 vote of the members present at a meeting, may terminate section membership for misconduct involving moral turpitude or the failure to observe the standards of conduct established by these bylaws. Any proposed termination of section membership by the executive council shall be an agenda item at an in-state meeting, and the affected member shall be given reasonable notice of the basis for the proposed termination and an opportunity to be heard at that meeting.~~
[MOVED TO NEW SECTION 4.]

Section 2. Membership Year. The membership year of the section runs concurrently with the membership year of The Florida Bar.

Section 3. Dues. The executive council shall establish the amount of annual section dues payable from time to time by the members of the section. The dues so

~~established will be effective when approved~~ for each type of section membership, subject to approval by the Board of Governors of The Florida Bar (“board of governors”). Annual section dues shall be payable in advance of each year of section membership. There will be no proration of annual section dues ~~except for first-year members of The Florida Bar.~~ After becoming a section member, dues are payable in advance of each membership year; provided, however, each person who is admitted to The Florida Bar shall be extended an invitation to become a member of the section, and upon acceptance, such member shall be entitled to a waiver of the dues for the first year of membership in the section, according to the following formula:—

— (a) ~~If a person is admitted to membership in The Florida Bar after June 30, but prior to December 31, of any calendar year, then that member will not be required to pay section dues until the June 30th following such member’s admission to The Florida Bar.~~

— (b) ~~If a person is admitted to membership in The Florida Bar after January 1, but prior to June 30, of any calendar year, that member will not be required to pay section dues until June 30 of the calendar year next succeeding the calendar year of the member’s admission to The Florida Bar (e.g. if admitted to The Florida Bar on March 1, no section dues will be payable until the fiscal year beginning July 1.)~~

— ~~The Florida Bar shall bill section dues simultaneously with the billing(s) for regular dues of The Florida Bar. Any member of the section whose section dues are not paid by the date that The Florida Bar dues become delinquent thereupon ceases to be a member of the section.~~

(a) The Florida Bar shall bill active members of the section for annual section dues simultaneously with billing for regular membership dues of The Florida Bar. Members of The Florida Bar who become active section members shall not be required to pay annual section dues for the first fiscal year following their admission to The Florida Bar.

(b) Annual section dues for affiliate members of the section shall initially accompany applications for affiliate section membership and shall thereafter be paid by the date the membership dues for The Florida Bar become due.

(c) Any member of the section whose annual section dues are not paid by the date Florida Bar membership dues become delinquent ceases to be a member of the section.

(d)Section 4. Membership Standards. All members of the section shall be required to observe the standards of professionalism and ethical conduct expected of members of The Florida Bar, and legal assistants who are affiliate section members shall also be required to observe and adhere to the Code of Ethics and Professional Responsibility established by the National Association of Legal Assistants, Inc. The executive council, by 2/3 vote of the members present at a meeting, may terminate section membership for misconduct involving moral turpitude or the failure to observe the standards of conduct established by these bylaws. Any proposed termination of section membership by the executive council shall be an agenda item at an in-state meeting, and the affected member shall be given reasonable notice of the basis for the proposed termination and an opportunity to be heard at that meeting.

[THIS SECTION 4 WAS MOVED FROM FORMER SECTION 1(d) WITHOUT CHANGE, EXCEPT FOR ADDITION OF HEADING.]

Article III ORGANIZATION

The section is divided into 2 divisions, “the real property law division” and “the probate and trust law division.” The section and its real property law division shall be served by committees and section liaisons that operate under the supervision of the real property law division director. The section and its probate and trust law division shall be served by committees and section liaisons that operate under the supervision of the probate and trust law division director. The section shall also be served by general standing committees and section liaisons that operate under the supervision of the chair-elect.

Article IV OFFICERS, ELECTED POSITIONS, AND EXECUTIVE COMMITTEE

Section 1. Officers. The officers of the section are the section chair, the chair-elect, the secretary, the treasurer, the real property law division director, the probate and trust law division director, the immediate past section chair, and the at-large-members director (“section officers”). The section officers, the

representatives for out-of-state members of the section, and the at-large-members, shall be selected in the manner set forth in this Article IV.

Section 2. Qualifications. No person may serve as a section officer or in a position as representative for out-of-state members or at-large-members unless they are an active section member, and the loss of that status shall cause the office or position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in:

- (i) the payment of membership fees or dues; or
- (ii) completing continuing legal education requirements,

reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant office or position if it has not been filled.

Section 3. Executive Committee. The section officers, together with the chairs of the section CLE seminar coordination committee and legislation committee, shall serve as the executive committee of the section (“executive committee”), which shall be the planning agency for the executive council. The executive committee shall also have the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and on any other matter which the executive committee reasonably determines requires action between meetings of the executive council. All action taken by the executive committee on behalf of the executive council shall be reported to the executive council at its next meeting. The executive committee shall not take any action that conflicts with the policies and expressed wishes of the executive council. The executive committee shall also:

- (i) make recommendations for consideration by the chair-elect in appointing chairs and vice chairs of section committees and section liaisons;
- (ii) make recommendations for consideration by the section’s long-range planning committee (“long-range planning committee”) in submitting nominees for at-large-members; and

(iii) perform such other duties as may be directed by the executive council or prescribed in these bylaws.

Section 4. Nominating Procedure.

(a) The long-range planning committee, which shall consist of all past section chairs who are members of the executive council and be chaired by the chair-elect, shall submit nominees to the section for election to the offices of chair-elect, secretary, real property law division director, probate and trust law division director, treasurer, at-large-members director, and to the positions of representatives for out-of-state members and at-large-members. If the office of chair-elect becomes vacant during the year, the nominations submitted by the long-range planning committee for the following year shall include a nominee for the office of section chair. The long-range planning committee shall notify the members of the section of the names of the nominees no later than 60 days prior to the section's annual meeting ("election meeting"). In submitting nominations for at-large-members and, the long-range planning committee shall consider recommendations from the at-large-members director and the executive committee.

(b) No nominations for any elected office or position other than those made by the long-range planning committee will be permitted, except that nominations may be made by a written nominating petition signed by 25 or more active section members and submitted to the section chair not less than 30 days prior to the election meeting. If more than one person is nominated for any elected office or position, the section chair, assisted by such special committees as the section chair may appoint, will announce the procedures to be followed for that election.

(c) Each nominee will be permitted to prepare a statement of no more than 500 words, containing such information about the nominee as the nominee may choose, to be reproduced and distributed by the section to its members, either as an article in the section's publication, Action Line, or separately. Any such statement shall also be distributed at the election meeting.

Section 5. Election and Term of Offices and Positions.

(a) The section officers, the representatives for out-of-state members, and the at-large-members, shall be elected by majority vote of the active section members in physical attendance at the election meeting, which shall be held prior

to July 1 of each year. Voting by proxy shall not be permitted. At the election meeting ~~(i)~~ the section chair, chair-elect, and secretary shall determine the number of active section members in physical attendance and entitled to vote; ~~(ii)~~ and voting will be by written, secret ballot prepared in advance; ~~(iii)~~ if no nominee receives a majority vote for an office or position, additional balloting will take place between the 2 nominees receiving the greatest number of votes until the required majority is obtained; and ~~(iv)~~ the RResults of the election will be immediately announced by the section chair.

(b) The nominees so elected shall serve for a period of 1 year, beginning on July 1. The chair-elect shall automatically become section chair upon expiration of the term as chair-elect or upon the death, resignation, or removal of the section chair.

Section 6. Duties of Officers.

(a) Section Chair. The section chair shall be the chief executive officer and principal representative of the section, and shall preside at all meetings of the section, the executive council, and the executive committee. The section chair shall also be responsible for reports to The Florida Bar or the board of governors and for performing such other duties as may be prescribed in these bylaws or which customarily pertain to the office of section chair. The section chair is an ex-officio member of all section committees.

(b) Chair-elect. The chair-elect shall be responsible for: (i) ~~for~~ the general standing committees and any projects assigned to them, including the preparation and submission of any required reports; (ii) ~~for~~ such duties as the section chair, the executive council, or the executive committee may designate; and (iii) ~~for~~ performing such other duties as may be prescribed in these bylaws or customarily pertain to the office of chair-elect. In addition, in the case of the temporary disability or absence of the section chair, the chair-elect shall serve as acting section chair, but only for the duration of the section chair's disability or absence. Any issue concerning the disability or absence of the section chair shall be determined by the executive committee, subject to review by the executive council.

(c) Secretary. The secretary shall make and record: (i) minutes of meetings of the executive council (including record of attendance); (ii) significant actions taken by the executive committee, including all actions which exercise any

function of the executive council; and (iii) the election results at the election meeting, and shall file all of those records with the permanent records of the section at The Florida Bar headquarters in Tallahassee. The secretary shall also report and keep a record of all policies adopted by the section as a separate record.

(d) Division Directors. The real property law division director and the probate and trust law division director shall be responsible for the section committees within their respective divisions, and for the projects assigned to them, including the preparation and submission of reports of such section committees as may be required.

(e) Treasurer. The treasurer and the appropriate staff of The Florida Bar shall make certain that the financial affairs of the section are administered in a manner authorized by the section's budget and in accordance with the standing policies of the board of governors. The treasurer shall monitor and review for correctness all accounts, reports and other documents pertaining to section funds, revenues and expenditures that are furnished by the staff of The Florida Bar. No reimbursement may be made to any member of the section without approval of the treasurer, and any reimbursement to the treasurer must be approved by the section chair or chair-elect. The treasurer shall: (i) work with the chair-elect to prepare and submit a projected budget to the executive council; (ii) report from time to time on the section's present and projected financial condition, advising the executive committee and the executive council as to the financial impact of any proposed action that might have a significant impact on the financial condition of the section; and (iii) prepare such other recommendations and special reports of financial affairs of the section as may be requested by the section chair.

(f) At-Large-Members Director. The at-large-members director shall:

(i) in consultation with the executive committee, define any responsibilities of the at-large-members;

(ii) be responsible to the section for the at-large-members;

(iii) evaluate the performance of the at-large-members on an annual basis; and

(iv) provide recommendations for consideration by the long-range

planning committee in submitting nominees for at-large-members.

(g) Immediate Past Section Chair. The immediate past section chair shall provide counsel, guidance and advice to the executive committee.

Section 7. Vacancies.

(a) If the office of section chair becomes vacant, the chair-elect shall immediately assume the office of section chair, and shall serve as section chair for the remainder of the unexpired term, as well as for the following term for which the chair-elect was elected to serve as section chair.

(b) If the office of chair-elect becomes vacant, the section chair shall assume the duties of the office of chair-elect for the remainder of the unexpired term. In that event, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(c) If the offices of section chair and chair-elect both become vacant, the long-range planning committee shall convene an emergency meeting and select a qualified person to serve as section chair for the remainder of the unexpired term. In that event, the person selected as section chair shall also assume the duties of the office of chair-elect for the remainder of the unexpired term and, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(d) If any office other than section chair or chair-elect becomes vacant within 6 weeks of the next scheduled in-state meeting of the executive council, the vacancy shall be filled for the remainder of the unexpired term by the executive council at that meeting. If no in-state meeting is scheduled within 6 weeks following the creation of such a vacancy, it shall be filled for the remainder of the unexpired term by the executive committee.

(e) Vacancies in the positions of representative for out-of-state members and at-large-members shall be filled by the section chair.

Article V EXECUTIVE COUNCIL

Section 1. Powers and Duties. The executive council is the governing body of the section and shall have the power and duty to fully administer these bylaws, including the power to exercise all authority expressed or implied in these bylaws and to employ necessary personnel on behalf of the section.

Section 2. Membership. The executive council shall consist of the section chair, the chair-elect, the real property law division director, the probate and trust law division director, the treasurer, the secretary, the at-large-members director, the chairs and vice chairs of section committees, the section liaisons, the member of the board of governors appointed as its liaison representative to the section, the at-large-members, the past section chairs, and the representatives for out-of-state members of the section.

Section 3. At-large-Members and Regional Representation. The existence of the at-large-members category is intended to help the section achieve the goal of maintaining active, productive members on the executive council, while preserving regional representation. To be considered for such a position, a prospective at-large-member must demonstrate the willingness and ability, through previous committee leadership or otherwise, to assist the section with its needs. To the extent that the section officers, chairs and vice chairs of section committees, section liaisons, and representatives for out-of-state members of the section serving on the executive council do not include geographical representation from each judicial circuit and outside of Florida, the at-large-members should include such representation when reasonably practicable.

Section 4. Attendance. Regular attendance by executive council members at executive council meetings is requisite to the proper performance of their duties and responsibilities. Accordingly, if any past section chair is absent from 10 consecutive in-state executive council meetings, or if any other member of the executive council is absent from 3 consecutive in-state executive council meetings in any membership year, such member shall be deemed to have resigned from the executive council, and any section office or position held by that person shall be deemed vacant. In such event, the resigned member shall not be eligible for election to or membership on the executive council for the next succeeding membership year unless: (i) the executive committee, upon a showing of good cause for the absences, waives the attendance requirement for the membership year involved; and (ii) the waiver is announced at a formal meeting of the executive council and duly recorded in the minutes of the meeting. Any vacancy created by

the absence of a member as herein provided shall be filled as provided in these bylaws.

Article VI
SECTION COMMITTEES AND LIAISONS

Section 1. Committees. The section chair shall have the authority to establish and dissolve such ~~section~~-committees and liaison positions as the section chair deems necessary or advisable, except that the section chair may not dissolve the section legislation committee or the CLE seminar coordination committee. The section chair shall promptly report such changes to the executive council, and they shall be effective until and unless disapproved by the executive council.

Section 2. Section Committee Chairs and Liaisons. Prior to July 1 of each year, after considering the recommendations of the executive committee, the chair-elect shall make the following appointments for the coming year: (i) chairs of the section's real property law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (ii) chairs of the section's probate and trust law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (iii) chairs of the section's general standing committees, and such vice chairs of those committees and as the chair-elect deems necessary; and (iv) ~~and~~ section liaisons to other sections and groups. The section chair shall have the power to remove chairs and vice chairs of section committees and section liaisons if the section chair believes that it is in the best interest of the section to do so, and to fill vacancies in those positions (including vacancies resulting from the section chair's creation of new section committees or liaison positions).

Section 3. Committee Members. The chair of each section committee may appoint and remove members to and from that committee, except that a committee chair may not remove a vice chair of the committee.

Section 4. Section Membership Requirement. No person may serve as a member of any section committee unless they are a member of the section. No person may serve as a (i) chair, vice chair, or voting member of any section committee; or (ii) section liaison, unless they are an active section member, and the loss of that status shall cause the position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar

in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements, reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant position if it has not been filled.

Section 5. Committee Reports. The chair of each section committee shall submit a written annual report of the committee's activities during the year to the executive committee by the date requested by the section chair. All recommendations contained in such reports are confidential and shall not be disclosed outside the executive committee without approval of the section chair.

Article VII MEETINGS

Section 1. Annual/Election Meeting of the Section. The section chair shall designate the annual meeting of the section each year, which shall be the election meeting and be held prior to July 1. The executive council may call special meetings of the section provided at least 30 days notice thereof shall be given. The active section members in physical attendance at any meeting of the section shall constitute a quorum for the transaction of business, and a majority vote of those in physical attendance will be binding. Voting by proxy shall not be permitted.

Section 2. Executive Council Meetings. There shall be no fewer than 3 in-state meetings of the executive council each year. The executive council may act or transact business herein authorized, without meeting, by written or electronic approval of the majority of its members. The section chair may call meetings of the executive council by giving no less than 15 days notice to its members. Those present at a meeting of the executive council duly called will constitute a quorum, and a majority vote of those present will be binding, unless a greater majority is required by these bylaws for a particular matter. Voting by proxy shall not be permitted.

Section 3. Executive Committee Meetings. The executive committee shall meet as directed by the section chair, and shall hold an organizational meeting prior to each membership year at a time, date, and place selected by the section chair. The section chair shall fix the date and location of each meeting and shall give written, electronic, or oral notice of such date and location to each executive

committee member at least 7 days prior to the meeting. A majority of the executive committee may exercise its powers unless a greater majority is required by these bylaws for a particular matter, and it is not necessary that a formal meeting be held for action, action by mail, e-mail, or telephone being sufficient. Voting by proxy shall not be permitted.

Section 64. Conduct of Meetings. The current edition of Robert's Rules of Order shall govern the conduct of all meetings of the section and its subdivisions, except that provisions contained in these bylaws shall prevail over any conflicting provision in those Rules. The section chair may appoint a parliamentarian to advise and assist the section chair or any other person presiding over a meeting of the section or any of its subdivisions in connection with any procedural issues that may arise. Non-members of the executive council may address the executive council with the permission of the section chair or upon 2/3 vote of the members of the executive council present (without debate).

[THIS SECTION 4 WAS MOVED FROM FORMER SECTION 6, ARTICLE IX, WITHOUT CHANGE]

Article VIII

LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL POSITIONS

Section 1. Authority. The section may be involved in legislative, administrative, and judicial (including amicus curiae and court rule) activities that are within the purview of the section. Activities are within the purview of the section if they are significant to the judiciary, the administration of justice, the fundamental legal rights of the public, or the interests of the section, provided they are consistent with the purposes of the section and the policies promulgated by the board of governors, including the requirements that:

(a) the issue involved is within the substantive areas of real property (including construction), probate, trust, or related fields of law;

(b) the issue is beyond the scope of permissible legislative activity of The Florida Bar, or is within the permissible scope of legislative activity of The Florida Bar, but the proposed section position is not inconsistent with an official position of The Florida Bar on that issue; and

(c) the issue is not one that carries the potential of deep philosophical or

emotional division among a substantial segment of the membership of The Florida Bar.

Section 2. Section Positions. A “section position” is a legislative, administrative, or judicial (including amicus curiae and court rule) position that complies with Section 1 of this Article and has been adopted by the section in accordance with this Article. A section position, which may be expressed as a concept, may either support or oppose a matter. Any advocacy by the section shall be based upon a section position and comply with the requirements of this Article.

Section 3. Legislation Committee. The section legislation committee shall consist of a chair, a vice chair for real property, a vice chair for probate and trust, the section chair, the chair-elect, the director of the real property law division, the director of the probate and trust law division, and such other members of the executive council as are appointed by the chair of the section legislation committee with the approval of the section chair. The section legislation committee shall coordinate the legislative activities of the section and act as a liaison between (i) the executive council (or its executive committee); and (ii) the section lobbyist and legislative and administrative bodies.

Section 4. Procedures for Adopting and Reporting Section Positions.

(a) A proposed section position shall be an agenda item and supporting documentation shall be distributed to the executive council at least one week prior to the executive council meeting unless those requirements are waived by 2/3 of the members of the executive council present at that meeting.

(b) A section position may be proposed by a section committee.

(c) To adopt a section position, the executive council must, by a 2/3 vote of the members present: (i) find that the proposal is within the purview of the section, as defined in Section 1 of this Article; and (ii) approve the proposal. Voting by proxy shall not be permitted. Whenever, because of time constraints, the executive council cannot meet to adopt a section position prior to the time when legislative, administrative, or judicial action is required, the executive committee may, by a 2/3 vote of its members, adopt a section position. Any section position adopted by the executive committee must be reported to the executive council at its next meeting.

(d) Written notice of the adoption of a section position shall be promptly given to The Florida Bar, and it shall be circulated for comment to all divisions, sections, and committees of The Florida Bar that are believed to be interested in the matter.

(e) A section position may not be advanced ~~by the section~~ unless it has been submitted to, and not disapproved by, the board of governors. A section position shall remain in force for the current biennial legislative session unless rescinded by the board of governors.

(f) In even-numbered years, the section legislation committee shall recommend those section positions to be renewed at the executive council meeting held in conjunction with the election meeting of the section.

(g) The section shall not participate as an amicus curiae without the consent of the board of governors.

(h) Section positions shall be clearly identified as positions of the section, and not those of The Florida Bar.

Section 5. Expenses Incurred in Advancing Section Positions. If the section lobbyist or section chair requests the appearance of a section member to advance a section position, the member's reasonable expenses shall be paid by the section in accordance with its budgetary policies.

Section 6. Section Lobbyist. Subject to the approval of the board of governors, the section may retain a lobbyist to assist the section in its legislative activities or matters.

Article IX MISCELLANEOUS

Section 1. Integrity of Section Proceedings - Disclosure of Conflict and Recusal. A member of the executive council or any section committee shall not participate in a section matter if circumstances exist that may reasonably be expected to cause that participation to undermine confidence in the integrity of the section, executive council, or section committee. Where any fact or circumstance exists that may reasonably bring into question an accusation of bias, prejudice, or

conflict of interest on the part of a member while participating in a section matter, it is the duty and responsibility of any member having knowledge of such fact or circumstance to make full disclosure of such fact or circumstance to the executive council or section committee. A bias, prejudice, or conflict of interest may arise from a member's personal interests, employment, or client relationships. When such an issue arises, the chair or other person presiding over the proceeding may request the member to voluntarily refrain from participation and voting with respect to the matter. In addition, recusal may be ordered by 2/3 of the members present of the executive council or section committee. Upon recusal, the member may not vote or otherwise participate in proceedings concerning the matter. If recusal should have occurred but did not, the integrity of section proceedings and the validity of its actions shall not be adversely affected.

Section 2. Action of The Florida Bar. No action of the section shall be represented or construed as the action of The Florida Bar until it has been approved by The Florida Bar.

Section 3. Compensation and Expenses. No salary or other compensation may be paid to any member of the section for performance of services to the section, but members of the section may be reimbursed for such reasonable and necessary telephone expenses, reproduction expenses and other similar out-of-pocket expenses that such member incurs in the performance of services for the section.

Section 4. Policies of the Section. Policies adopted by the executive council, including section policies, shall be maintained in a separate journal at The Florida Bar Headquarters in Tallahassee, Florida together with the other official records of the section.

Section 5. Amendments. These bylaws may be amended only with the consent of the board of governors upon recommendation made by the executive council.

~~Section 6. Conduct of Meetings. The current edition of Robert's Rules of Order shall govern the conduct of all meetings of the section and its subdivisions, except that provisions contained in these bylaws shall prevail over any conflicting provision in those Rules. The section chair may appoint a parliamentarian to advise and assist the section chair or any other person presiding over a meeting of~~

~~the section or any of its subdivisions in connection with any procedural issues that may arise. Non-members of the executive council may address the executive council with the permission of the section chair or upon 2/3 vote of the members of the executive council present (without debate).~~

[MOVED TO ARTICLE VII, NEW SECTION 4, WITHOUT CHANGE.]

Section 76. Notice. Any requirement in these bylaws that notice (whether written or otherwise), information, or materials be furnished may be satisfied by: (i) any method of delivery specified in the requirement; (ii) transmitting the notice, information or materials by e-mail to any e-mail address provided by the recipient to The Florida Bar; or (iii) posting the notice, information, or materials to the section's website and notifying the member of the posting by e-mail to any e-mail address provided by the recipient to The Florida Bar.

Section 87. Effective Date. These bylaws shall be effective as of July 1, 2010, or upon their adoption by the executive council, or upon their approval by the board of governors, whichever occurs later. Upon the effective date of these bylaws and for the remainder of the term for which they were elected, each existing circuit representative shall automatically become an at-large-member, and the existing circuit representatives director shall automatically become the at-large-members director.

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Re: PCB CVJS 11-01 and 02 Concerning Proposed Changes
to Rulemaking Process

Dear Paul:

SECRETARY

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I am writing on behalf of the Real Property Probate and
Trust Law Section in response to your request for comment on
PCB CVJS 11-01 and -02 regarding proposed changes to the
current rulemaking process.

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Our Section firmly believes that rule making authority
should ultimately rest in the Florida Supreme Court. Accordingly,
we do not and cannot support the current proposals as drafted.
However, we do feel strongly that there are many aspects of the
current process which can be improved. We will be sending a
separate letter focused on areas wherein reform may be
warranted in the coming days.

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In the meantime, the purpose of this letter is to provide our
technical comment on the current proposal. The bullet points
below focus on the procedural mechanisms set forth in the
proposed legislation and the areas in which they can be improved.

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1. The proposed multi-tiered committee process is
cumbersome and creates the opportunity for extended delays in
the promulgation of new or revised rules. Under the proposal,
proposed rules must make their way through multiple committees
with each committee chair, as well the Florida Supreme Court,
apparently having leeway as to what will be on the agenda. In
particular, the agenda for the Rules Committee is to be set by its
chair (§ 43.47(5)(g), lines 199-200). The agenda for the Judicial
Conference is then set by the chief justice (§ 43.47(5)(h), lines
210-211). Stops at multiple committees with busy agendas would

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almost certainly create gridlock in the process. If this proposal were adopted, it would seem to make sense to, at a minimum, require the agenda at each level to include any rules changes approved by a lower committee. For example, the Rules Committee agenda should be required to include any proposal approved by a subcommittee and the Judicial Conference agenda should be required to include any proposal adopted by the Rules Committee.

Our current model wherein various committees with substantive expertise submit proposed rules changes directly to the Supreme Court for consideration is preferable. However, if a legislative change is made to the process, it should be coupled with a requirement that the Florida Supreme Court review any proposals approved by the Judicial Conference (or by a Florida Bar rules committee) at least as often as annually and that the Court issue an opinion on a proposal within a reasonable time after it is submitted.

2. Although the proposal is being reported as being similar to the federal rulemaking process, in the federal process, the Congress has a statutory period of 7 months to act on any rules prescribed by the Supreme Court. If the Congress does not enact legislation to reject, modify, or defer the rules, they take effect as a matter of law on December 1. 28 U.S.C. §§ 2074, 2075. Under the current proposal, the Florida Legislature is required to enact a rule before it takes effect. As a result, the proposed rulemaking process is subject to the time constraints and priorities of a particular legislative session. Rule changes may be stalled or delayed if rulemaking is not a high priority of leadership during a particular legislative session by any multitude of processes, including not be assigned to a Committee.

3. The current proposal does not appear to encourage or invite participation from leading practitioners in the rulemaking process. In particular, there are no requirements for the composition of the members of the standing committee on court rules, other advisory committees or any advisory subcommittees except that they shall be chaired by a sitting judge and include attorneys, academics and a member of the general public (§ 43.46(6), lines 94-100). Given the technical aspects of many of our practice areas, including probate, appeals, family law and the like, we believe that it is important that the advisory committees contain practitioners who have experience in the substantive area of the law being addressed by the committee.

Further, the omission of practicing attorneys as eligible chairs of the advisory committees (§43.46(6)) is certainly problematic. Judges are presently facing unprecedented budget constraints. Without the financial resources to travel to committee meetings, and given the time constraints of dockets, it is unrealistic to demand that our judiciary dedicate the time and resources necessary to chair these important committees. The current rulemaking committee process has consistently provided dedicated intelligent volunteers who have served diligently. Advisory committee chairs should not be limited to sitting judges.

4. There appear to be gaps in the current proposal as it relates to the promulgation of local rules, jury instructions, and forms. Under the proposal, local rules and administrative orders may be adopted by inferior courts so long as they are "permitted" by the Judicial Conference and the Supreme Court (§ 43.47(8), lines 263-264 and 269-270). It is unclear whether this means authorized in general terms, or that each local rule or administrative order must be specifically approved.

Further, under the proposal, advisory committees may recommend forms and jury instructions (§43.47(8)). However, the proposal does not identify how they are approved. Are they required to be approved by the Supreme Court or the Judicial Conference?

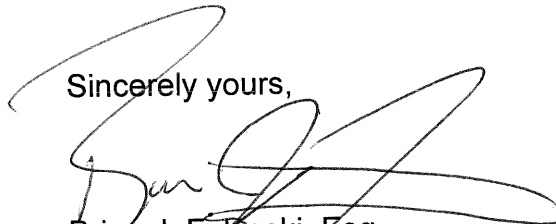
5. An excellent aspect of the proposal is the requirement that the judicial conference and substantive subcommittees be required to maintain a web page on which current drafts of proposals being considered or submitted to the Supreme Court are posted (§ 43.46(9)). While the various Rules Committees have websites, it is difficult for a practitioner who is not a member of the committee to review and comment upon the proposals being considered. It would be helpful to, among other things, have each committee proposal being considered separately indexed with a link to the current draft and an indication as to its current status. For example, the proposed E-Filing rules are a critical issue facing our practice because of the necessity of preserving certain original documents like wills and codicils. However, the Rules of Judicial Administration page does not include a ready link to current version of the proposed E-Filing rule so that our members can determine the status of the proposal and determine whether further comment is necessary. A well maintained website would be an excellent tool to facilitate review and comments by attorneys. In addition, it will provide interested practitioners with a mechanism to track a proposal and provide comment during the committee process before a proposed rule has been submitted and approved by a committee. This will facilitate cooperation and understanding of the nuances of the different practice areas during the drafting process.

6. The proposal provides that the Legislature by general law may disregard the entire rule making process. The proposal as drafted provides that statutes override the rules, even as to procedural aspects. (§ 25.371(1), Lines 41-44).

7. Lastly, and perhaps most importantly in this debate, the proposal does not appear to clearly distinguish between court procedure, Rules Regulating the Florida Bar, including admissions, and rules relating to the qualification and appointment of judges. As the debate over this proposal continues, consideration should be given to treating amendments to our court procedure different than the Rules Regulating the Bar. There may very well be different solutions available for the different categories of rules. If the legislature desires to change the manner in which procedure is adopted, it does not necessarily need those same rules to apply as it relates to the regulation of our practice. It is critical that we maintain this distinction if the proposal moves forward.

Thank you for inviting our comments. We look forward to participating in a healthy debate concerning the current rulemaking process and working with you on this important project.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brian J. Felcoski". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Brian J. Felcoski, Esq.
Chair of the RPPTL Section of
The Florida Bar

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March 24, 2011

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Re: Proposed Changes to Rulemaking Process

Dear Paul:

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Following up on my letter of earlier this week, I am writing on behalf of the Real Property Probate and Trust Law Section in response to the recent debate concerning our rulemaking process in Florida. As I indicated in my prior letter, the RPPTL Section agrees that the responsibility for adopting the procedure to be used in the courts, as well as the Rules Regulating the Florida Bar, should ultimately rest in the Florida Supreme Court. Accordingly, the Section cannot support the current legislative initiatives which are being proposed, as drafted. However, we do feel strongly that reform is necessary and that a healthy debate concerning the current process and how it can be improved can be a catalyst for much needed change. To that end, as the legislature considers changes to the current process, we believe that the following issues should be considered by The Florida Bar as part of the discussion:

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1. Despite our opposition to the current legislative solution, one of the benefits of the legislative proposal is that it allows changes to the rules to be proposed on a yearly basis. This concept is long overdue. As you know, the RPPTL Section has a number of very active committees which are dedicated to studying our current law in the area of Estates, Trusts, Guardianship, Real Property, and Construction and addressing areas of needed change. Unfortunately, it is very difficult to react to problems or effect change in a system wherein rules are submitted on three year cycles with an additional year of lag time before a rule change is effective. While emergency rule changes can be submitted to address a statutory change, the problem may not always be the result of a statutory change. It may be caused

by case law or other circumstances. Three years is too long to wait for proposed changes to take effect.

The RPPTL Section would prefer to keep our current model wherein various committees with substantive expertise submit rules directly to the Supreme Court. However, we would like to see all of the rules subject to review by the Florida Supreme Court on annual basis with a requirement that the Court issue an opinion on a proposal within a reasonable time after it is submitted. Further, given the substantive expertise of our various Sections, we should consider an alternate additional procedure for proposing rules whereby a Section of The Florida Bar, with approval of the Board of Governors, can submit proposed rule changes directly to the Supreme Court for consideration and bypass the current committee process. The current process by which Section legislative positions are reviewed by the Board of Governors works very well as it relates to vetting proposals among the various Sections which are impacted by proposed legislation. The same process can be used for proposed changes to rules which are suggested by a Section of the Bar.

2. Given the technical aspects of many of our practice areas, including probate, appeals, family law and the like, we believe that it is critically important that the Rules Committees contain leading practitioners who have experience in the substantive area of the law being addressed by the committee. For example, as it relates to our Section, we believe that it is critical to have active RPPTL Section members appointed and serving on the Probate Rules Committee. We have had difficulties in the past with RPPTL Section initiatives being significantly delayed or, alternatively, substantially modified during the rulemaking process without the benefit of the same scrutiny they would receive during review by the RPPTL Section where they would have to pass review by a substantive committee, our entire Executive Council, and RPPTL's Executive Committee. We must find a better way to allow our Florida Bar Rules Committees to run more efficiently and work in tandem with our Sections. To that end, we believe that Section leadership should have a significant voice in who is appointed to Rules Committees which impact the law relevant to those Sections.

Further, we believe that it is important to maintain a greater degree of continuity in the rulemaking process. The current structure contains term limits which prevent highly-qualified and dedicated members from continuing service beyond three years. Further, chairs are only permitted to serve a one year term. While it is important to develop new leadership and to encourage committee participation, such short term limits and forced turnover creates significant gaps in institutional knowledge and stymies the development of natural leaders from within the committee process, all to the detriment of the Bar, the judiciary, and the public. We would suggest that committee members and chairs be permitted to serve for longer terms at the recommendation of the leadership of the impacted Sections and the Bar.

Ideally, any reform would remove the politics from the appointments and place the emphasis on the individual committee members' qualifications. Input by the

Sections which are impacted by the work of the various committees should be a key component of the reform.

3. As the debate over this proposal continues, we believe that it is critically important to safeguard the Supreme Court's oversight of the Rules Regulating the Florida Bar. It is unclear in the current proposals whether the legislature intends to assume responsibility for the Bar Rules. We believe that it is important to maintain this distinction and that this should be a significant point of negotiation as the legislation makes its way through the committee process.

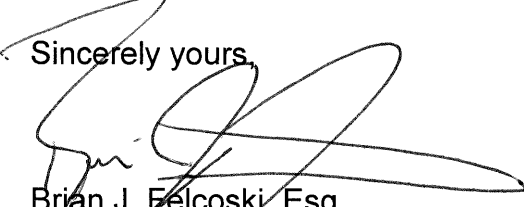
4. We agree with the legislature's goal of providing the members of the Bar and the public at large with greater access to the work of our Rules Committees. At present, The Florida Bar has committee websites which contain materials relating to proposed rule changes. However, the manner in which the page is structured makes it difficult for Bar members who are not on the committee to track proposed rule changes. In particular, the committee pages do not contain clear links to rule changes being proposed or considered. It would be helpful to, among other things, have each committee proposal being considered separately indexed with a link to the current draft, an indication as to its current status, and current comments to the proposal. This will allow interested practitioners with a mechanism to track a proposal and provide comment during the committee process before a proposed rule has been submitted and approved by a committee. It is much easier to address comments if they are made as part of the debate during the committee process as opposed to after it is already submitted to the Florida Supreme Court.

In sum, we believe that there are a number of areas in which the current rulemaking process can and should be improved. We believe that reform should include the following concepts:

- (a) Proposed rule changes should be permitted on an annual basis;
- (b) The Florida Supreme Court should be required to issue an opinion on proposed rules within a reasonable time after they are submitted;
- (c) Section leaders should have significant input in the selection of members, as well as the chairs, of the Rules committees which impact their area of practice;
- (d) There should be more flexibility in the number of years committee members and chairs are permitted to serve to allow for a reasonable succession process and emphasis should be placed on the individual committee members' qualifications; and
- (e) Committees should be required to maintain an up-to-date accessible website containing agenda materials, current drafts of proposed rules, and a description as to the status of any pending rules so that the members of the Florida Bar and the public can comment on proposed rule changes while they work their way through the committee process before they are submitted to the Supreme Court.

We believe that these issues should be given thoughtful consideration and ultimately addressed in the near future *regardless of whether the current proposal works its way through the legislature*. Thank you for inviting our comment and participation in this debate.

Sincerely yours,



Brian J. Felcoski, Esq.
Chair of the RPPTL Section of
The Florida Bar

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**REAL PROPERTY,
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TRUST LAW
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April 12, 2011

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Re: Proposed Changes to Rulemaking Process

Dear Mayanne:

SECRETARY

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I am writing on behalf of the Real Property Probate and Trust Law Section to express our appreciation and support for the work of The Florida Bar as the discussions continue in the Florida Legislature concerning our judicial system. We understand that a number of lawyers and some segments of the Bar have been critical of the Bar's approach in the legislative process. We appreciate and support your efforts to stay involved in the discussion and to do your best to shape the debate in a positive direction. We believe that these efforts are essential to preserving the independence of the judiciary, including obtaining a stable funding source for the courts.

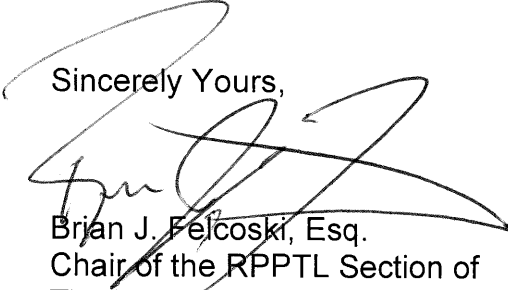
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If the members of the RPPTL Section can be of assistance as the legislative process continues, please let us know.

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Sincerely Yours,

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cc: Paul F. Hill, Esq., General Counsel for The Florida Bar
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May 5, 2011

Mayanne Downs, Esq.
President of The Florida Bar
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Re: Court Reform Legislation

Dear Mayanne:

On behalf of the Real Property Probate and Trust Law Section, I wanted to express our sincere appreciation and support for all of your hard work in responding to proposed legislation affecting our court system. We know you traveled a long and hard road, but we believe your efforts helped to shape the legislation in a way that maintains the independence of the judiciary. Congratulations on a job well done.

Sincerely yours,

Brian J. Felcoski, Esq.
Chair of the RPPTL Section of
The Florida Bar

RPPTL 2010-2011 CLE Calendar

DATE	SEMINAR	COURSE #	CITY	HOTEL
August 6, 2010	* 31st Annual Legislative & Case Law Update	1216	Palm Beach	The Breakers
August 26, 2010	* Oil Spill Impacts in Real Property Practice	1225	Tampa	Marriott
September 14, 2010	* FAR/BAR	1134	Orlando	FAR Office
November 12, 2010	* Mortgage Law & Problem Studies	1159	Tampa	Airport Marriott
November 19, 2010	* Estate Planning & Asset Preservation	1147	Orlando	Hilton
January 2011 TBD	* Real Property Litigation	1155	Tampa	Airport Marriott
Mar. 17 - 18, 2011	* Probate Law	1177	Ft. Lauderdale/Tampa	Hyatt Pier 66 / Airport Marriott
Mar. 31 - April 02, 2011	4th Annual Construction Law Institute	1179	Orlando	Omni Resort @ Championsgate
Mar. 31 - April 02, 2011	Construction Law Certification Review Course	1180	Orlando	Omni Resort @ Championsgate
April 8 - 9, 2011	* Wills, Trusts & Estates Certification Review Course	1186	Orlando	Hyatt Regency Airport
April 8 - 9, 2011	* Real Estate Certification review Course	1185	Orlando	Hyatt Regency Airport
April 15, 2011	* Condominium Law & Condominium Association Law	1191	Tampa	Airport Marriott
May 6, 2011	* Development & Government Regulation	1197	Tampa	Airport Marriott
May 12-13, 2011	* Trust & Estate Symposium	1167	Tampa/Ft. Lauderdale	Airport Marriott/Marriott Bay
May 27, 2011	* Real Property, Probate and Trusts Law Convention Seminar	1205	Miami	Eden Roc
June 15 - 19, 2011	* 30th Annual Attorney Trust Officer Liaison Conference	1210	Palm Beach	The Breakers

* Webcast Program

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May 2011

To: Executive Committee of the
Real Property, Probate and Trust Law Section (“Section”) of
The Florida Bar

From: Laird A. Lile, liaison to Clerks of the Circuit Court

In my capacity as liaison to the Clerks of the Circuit Court, I am pleased to report to the Section’s Council, through its Executive Committee. During the Section’s 2010 to 2011 year, I have interacted extensively with several of the Clerks of the Circuit Court (“Clerks”), their counsel, and their association, the Florida Association of Court Clerks & Comptrollers (“FACC”). During this interaction, I have communicated the Section’s interest in assisting with, and resolving, issues of mutual concern. The Section has established a very cooperative relationship with the Clerks and the FACC staff. My recommendation is to continue the interaction and dialogue, with an enhanced effort to proactively identify issues and facilitate solutions.

Some of the issues and events with which your liaison was involved include:

1. Presentations at Section seminars provided the opportunity to convey to Section members information received from Clerks regarding areas of mutual interest. These presentations included “E-Filing...E-Service...E-Courts...Egads” at the 2011 Trust and Estate Symposium and “So You Think You Know All of the Rules” presented at Probate Law Committee’s seminar.
2. The official legislative position of The Florida Bar regarding adequate funding of the state court system was revised to include “the offices of the clerks of the circuit and county courts performing court-related functions.”
3. As a member of the Florida Court Technology Commission, I interacted extensively with Clerks and their staff on technology related issues.
4. The Legislation Chair for the FACC, who is also the Sarasota County Clerk, and I have discussed issues of mutual interest between the FACC and the Section, including the requirements related to depositing Wills and Codicils with Clerks.

5. The General Counsel to the Hillsborough Clerk has identified issues of mutual interest, including implementing the requirements under Rule 2.420 regarding confidentiality of court filings.
6. The eFiling Authority, sometimes referred to as the Portal Authority, is the group responsible for the electronic gateway for electronic filing in court proceedings. The Clerks comprising the board are from Columbia County, Bay County, Leon County, Clay County, Hernando County, Orange County, Sarasota County, and Palm Beach County. Tom Hall, the Clerk of the Florida Supreme Court is also a member of the board. The Authority held meetings in Lee County, Orange County, and Leon County, all of which I attended.
7. The concept of the Portal rejecting a filing was eliminated as the result of collaborative efforts among interested groups, including the authority board members.
8. The Portal Authority deferred action regarding access to the Portal by non-lawyers and requested a study group to provide recommendations. Two of the six members of the Section's Executive Council are on that group, lead by the Palm Beach County Clerk.
9. The implementation of the confidentiality requirements, found in Rule of Judicial Administration 2.420, required significant attention. Those issues provided opportunities to interact with Clerks.
10. Serving on the local (Collier) implementing committee for e-filing and receiving comments from other Section members who are serving on similar committees has provided insight as to issues with filing through the statewide portal.
11. The comment filed with the Supreme Court by the FACC regarding the proposed e-filing rule did not object to the position of the Probate Rules Committee regarding originals of Wills and Codicils.
12. I have been invited to attend the FACC's annual meeting in June.

Thank you for the opportunity to serve the Section as liaison to the Clerks of the Circuit Court.

Respectfully submitted,

Laird

Laird A. Lile

REVISED POST SESSION REPORT

NUMERICAL INDEX SUMMARY OF 2011 LEGISLATIVE ISSUES

**Michael J. Gelfand, Legislative Committee Chairman
and
Peter M. Dunbar, Martha J. Edenfield,
Howard "Gene" Adams and Josh Aubuchon
RPPTL Legislative Counsel**

May 11, 2011

The *revised* post-Session report follows below. The Session produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were a part of the Section's legislative package. The Section's initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The parts following list other items of interest that passed and items of interest that did not pass.

The Governor has only taken final action on a few of the measures, and the appropriate Session Law number follows the summary on each bill where the Governor has approved the legislation. The full text of each enrolled bill, as well as applicable legislative staff reports, are available on the legislative web sites (www.flsenate.gov; www.myfloridahouse.com; and www.leg.state.fl.us). A summary of each measure that passed appears below in numerical bill order.

I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE

"Olmstead Fix": CS/HB 253 by Representative Stargel and Senator Simmons modifies the decision in the *Olmstead* case as it relates to charging orders against a member's transferable interest in an LLC. This was a joint **Section initiative** with the Business Law and Tax Sections. (**Chapter 2011-__**, *Laws of Florida*.)

“Estates” Bill: CS/HB 325 by Representative Wood and Senator Joyner contains five of the **Section’s initiatives**—(1) will modifications, (2) trust modifications, (3) attorney’s fees and costs, and (4) intestate succession. CS/HB 325 also includes the **Section’s fiduciary privilege initiative** sponsored by Senator Thrasher that was added by amendment before final passage of the legislation. (*Chapter 2011-__*, *Laws of Florida.*)

IRA: HB 469 by Representative Stargel and Senator Flores is the **Section’s initiative** to clarify the exemption of inherited IRAs from claims by creditors. (*Chapter 2011-__*, *Laws of Florida.*)

Management of Institutional Funds: CS/CS/CS/HB 599 by Representative Passidomo and Senator Richter provides new requirements for the management of funds held by an institution exclusively for charitable purposes. It provides standards of conduct in managing and investing institutional funds, and it authorizes the management and investment funds to be delegated by the institution. (*Chapter 2011-__*, *Laws of Florida.*)

Power of Attorney: SB 670 by Senator Joyner and Representative Harrison is the **Section’s initiative** to update the provisions of Chapter 709 relating to powers of appointment and powers of attorney by creating new Parts I and II in the chapter. (*Chapter 2011-__*, *Laws of Florida.*)

Electronic Recording: HB 951 by Representative Albritton and Senator Latvala is the **Section’s initiative** that ratifies the validity of electronic documents that have been submitted and accepted by the county recorder for recordation in the public records. (*Chapter 2011-__*, *Laws of Florida.*)

Title Insurance: CS/HB 1007 by Representative Bernard is a comprehensive insurance bill, and the legislation contains two sections dealing with impaired title insurance companies. **Section 3** creates a new section 631.400 that authorizes the receiver for an insolvent title insurance company to engage in rehabilitation activities to protect policyholders. **Section 4** of the bill creates new section 631.401 and authorizes a surcharge of up to \$25 to fund the rehabilitation efforts of the receiver. (*Chapter 2011-__*, *Laws of Florida.*)

Condominium and Community Associations: CS/CS/CS/HB 1195 by Representative Moraitis and Senator Fasano is the major community association package for the Session. It includes the **Section’s (1) “Bulk Buyer” initiative, (2) partial termination initiative, and (3) CATV bulk contract initiative for HOAs**, and it proposes a series of changes to the provisions in Chapters 718, 719 and 720. The legislation would make the following changes: (*Chapter 2011-__*, *Laws of Florida.*)

1. **Records:** The legislation clarifies the confidential records requirement for condominium and mandatory homeowners associations and permits waivers by unit owners for community directories.

2. **Board Meetings:** The legislation clarifies the notice and meeting procedures for condominium associations, and it provides for clarification of the procedures for board elections when the election is not contested as well as the certification procedures for newly elected board members. The bill also conforms the speaking privilege for homeowners at meetings of the board of directors to those of unit owners at meetings of a condominium board.

3. **Agreements and Leases:** The bill changes the vote for lease and membership agreement approvals in a condominium association from two-thirds to a majority of unit owners in a condominium.

4. **Collection and Delinquencies:** The legislation clarifies the collection procedures when levying on the rents of a tenant in a condominium, cooperative or homeowners association. The bill provides a new form for providing notice of the association's demand to the tenant, and it contains a new limitation on the liability of a condominium sub-association for obligations due a master association.

5. **Fines and Delinquencies:** The legislation provides clarification to the fining and suspension procedures against delinquent condominium unit owners, cooperative unit owners, and home owners.

Construction Liens—Tenant Improvements: CS/CS/SB 1196 by Senator Bogdanoff and Representative Moraitis is the Section initiative to correct the problems created by the *Everglades Electric* decision, and it clarifies the construction lien law with regard to improvements by a tenant to the property of the landlord. (*Chapter 2011-__*, *Laws of Florida.*)

Guardianship—Public Records Exemption: HB 7085 by Representative Young reenacts the public records exemptions for any court order appointing a monitor in a guardianship proceeding under s. 744.107 and any court order for an emergency court monitor under s. 744.1075. (*Chapter 2011-__*, *Laws of Florida.*)

II. **INITIATIVES OF INTEREST**

Service of Process—Condominiums: HB 59 by Representative Julien requires a gated residential community, including a condominium or cooperative, to grant unannounced access to an authorized process server to serve process on a defendant or witness who resides within, or is known to reside within the residential community. (*Chapter 2011-__*, *Laws of Florida.*)

Open House Parties—Homes and Condominiums: CS/HB 105 by Representative Goodson increases the penalties applicable to a person who permits an "open house party" to take place in a residence where alcohol or drugs are available to minors when such person does not take reasonable steps to prevent the possession or consumption of the alcohol or drugs. (*Chapter 2011-__*, *Laws of Florida.*)

Negligence: CS/SB 142 by Senator Richter changes the apportionment of damages in product liability cases where additional or enhanced injury is alleged; it reorganizes the comparative fault statute by moving “negligence action” to the definitions’ subsection in the comparative fault statute; and it contains legislative intent language to retroactively apply and overrule the holding in *D’Amario v. Ford Motor Company*. (**Chapter 2011-__**, **Laws of Florida.**)

Value Adjustment Board Appeals: CS/CS/CS/HB 281 by Representative Logan requires a person challenging the assessed value of property to pay at least 75 percent of the ad valorem taxes before the taxes become delinquent. It also requires a person challenging the denial of a classification or an exemption to pay the amount of tax that the taxpayer believes in good faith to be owed. (**Chapter 2011-__**, **Laws of Florida.**)

Property Tax Assessment Limitation: CS/CS/CS/CS/CS/HJR 381 by Representative Dorworth is a proposed constitutional amendment intending to reduce the annual growth in the assessment limitation for non-homestead property and prohibits increases in both homestead and non-homestead property in a year when the market value of the properties decreases. (**On the November 2012 General Election ballot.**)

Building Code Enforcement: CS/HB 407 by Representative Perry provides that local building officials may not require the inspection of any portion of a building that is not directly impacted prior to the issuance of a residential building permit for a single-family structure or two-family building. (**Chapter 2011-__**, **Laws of Florida.**)

Property Insurance: CS/CS/CS/SB 408 by Senator Richter provides significant changes to the regulatory scheme for property insurance in the state, particularly with regard to sinkhole insurance, wind coverage, and the role of public adjusters. Section 7 of the legislation provides for new restrictions on the contract activities and relationship between a condominium association and public adjusters following a casualty loss under the condominium’s master policy. (**Chapter 2011-__**, **Laws of Florida.**)

Water Management District—Surface Water Permits: CS/HB 421 by Representative Bembry revises the current agricultural exemption for permitting the diversion of surface waters. The bill permits a landowner to request a determination from the Department of Agriculture when a dispute occurs regarding the use of the exemption with a water management district. (**Chapter 2011-__**, **Laws of Florida.**)

Property Tax Liens: CS/SB 478 by Senator Thrasher tolls the time of the expiration period for a tax certificate and the statute of limitations relating to the tax certificate proceedings during the period of an intervening bankruptcy. (**Chapter 2011-__**, **Laws of Florida.**)

Property Tax Discount—Disabled Veterans: CS/SJR 592 by Senator Bennett is a proposed constitutional amendment intending to allow partially or totally disabled veterans who were not Florida residents at the time of entering the military to qualify for combat-related disability ad valorem tax discounts on homestead property. ***(On the November 2012 General Election ballot.)***

Judgment Interest: CS/HB 567 by Representative Hudson directs the Chief Financial Officer to adjust the statutory rate of interest for judgments on a quarterly basis using the discount rate of the Federal Reserve. ***(Chapter 2011-__, Laws of Florida.)***

Estate Tax Returns: CS/HB 641 by Representative Mayfield extends the filing provisions of section 198.13 from 2010 to 2012, and it provides that the filing requirements do not apply to a decedent's estate after December 31, 2012. ***(Chapter 2011-__, Laws of Florida.)***

Mobile Home Tenancies: CS/SB 650 by Senator Jones modifies the requirements of Chapter 723 to permit local enforcement of violations of the Mobile Home Act. It also clarifies the right-of-first refusal option available to park residents at the time a mobile home park is offered for sale. ***(Chapter 2011-__, Laws of Florida.)***

Property Rights: CS/CS/SB 701 by Representative Eisnaugle amends the Burt Harris Private Property Rights Act to provide that a temporary impact on development which extends for more than one year may constitute an "inordinate burden" under the Act, thereby entitling the property owner to relief under the Act. ***(Chapter 2011-__, Laws of Florida.)***

Building Construction and Inspection: CS/CS/CS/HB 849 by Representative Davis updates the provisions of the Florida Building Code; modifies the "sustainable" building requirements for structures built with state funds; modifies the qualifying criteria for person engaged in building construction and inspection, mold assessment, landscape architecture, and glazing and glass installation. It requires new safety features for public swimming pools and spas; it contains the setback requirements for propane tanks found in CS/SB 960; it modifies the construction requirements under the Americans with Disabilities Act; and it amends section 553.842 to prohibit the marketing and sale of products as hurricane or windstorm protection unless the products have been approved for such purposes. ***(Chapter 2011-__, Laws of Florida.)***

Vacation Rentals: CS/CS/CS/HB 883 by Representative Horner revises the definition of "vacation rentals" in Chapter 509 and preempts local regulation of vacation rentals (with a grandfathering for current ordinances). In addition to condominium and timeshare units, "vacation rentals" have been expanded to include single-family, two-family and four-family homes that are used for transient public lodging. The bill also contains new provisions that prohibit the distribution of handbills in public lodging establishments without permission of the lodging establishment. ***(Chapter 2011-__, Laws of Florida.)***

Propane Tank Setbacks: CS/SB 960 by Senator Bennett prohibits the Department of Agriculture from requiring compliance with the minimum separation distances of NFPA 58 for separation between a liquefied petroleum tank and a building, adjoining property line, other liquefied petroleum gas tank, or any source of ignition except of distances specified in the 2011 edition of NFPA 58. (*Chapter 2011-__*, *Laws of Florida.*)

Ad Valorem Property Taxes: CS/CS/HB 1141 by Representative Steube implements the provisions of the constitutional amendment extending an additional property tax exemption for deployed members of the military. (*Chapter 2011-__*, *Laws of Florida.*)

Adverse Possession: SB 1142 by Senator Dockery requires that a person seeking to claim property by adverse possession to send to the property owner of record a copy of the return filed with the property appraiser. The legislation places new occupancy and maintenance requirements on a person who claims the right of adverse possession, and it places new restrictions on the returns filed by such person with county property appraiser. (*Chapter 2011-__*, *Laws of Florida.*)

Growth Management: HB 7001 by Representative Workman reenacts portions of existing law related to comprehensive planning and land development, amended by Chapter 2009-96, to resolve pending litigation regarding the single subject limitation and mandates provision of the Florida Constitution. (*Chapter 2011-14*, *Laws of Florida.*)

Affordable Housing: HB 7003 by Representative Workman reenacts portions of existing law related to affordable housing found in Chapter 2009-96 to resolve pending litigation regarding the constitutionality of that legislation. It reconfirms the affordable housing ownership and rental programs, and it continues to provide a reduction in the tax burden for affordable housing projects. (*Chapter 2011-15*, *Laws of Florida.*)

Growth Management: HB 7207 by Representative Aubuchon is a lengthy and comprehensive bill dealing with growth management. The legislation covers 349 pages and includes provisions that redefine urban sprawl and urban infill; it revises the component elements in local and sector plans and defers more land use decisions to local governments; it revises the content of future land use elements in plans and the currency and conservation elements of local plans; it modifies the policies for rural land stewardship areas; and the legislation raises the substantial deviation thresholds for DRIs, extends the build-out under DRI development orders by 4 years, and makes other modifications to the development requirements chapter 380. (*Chapter 2011-__*, *Laws of Florida.*)

III. INITIATIVES OF INTEREST THAT FAILED

Estate Tax: HB 183 by Representative McBurney and SB 1006 by Senator Altman proposed to amend s. 198.03 relating to the imposition of taxes on the estates of nonresident decedents. This is basically the same legislation that the Section monitored in 2010. The bill died in committee when the Legislature adjourned.

Design Professionals—Liability Limitation: SB 288 by Senator Negron was legislation that intended to limit the liability for malpractice or negligence by design professionals to incidents that resulted in personal injury or property damage. The legislation would have eliminated tort remedies for property owners, condominium associations, and homeowners association. The **Section opposed** the legislation, and the bill was killed in committee by the Senate.

Mobile Home Tenancies: HB 583 by Representative Roberson and SB 832 by Senator Fasano proposed to modify the requirements of Chapter 723 relating to the amendment of prospectuses, and it would have revised the disclosure requirements of mobile home park owners, clarifying what constituted market area for comparable mobile home parks. The **Section had concerns** over the impact on property rights in the bill and the legislation died in committee when the Legislature adjourned.

Non-Judicial Foreclosure--Commercial: HB 799 by Representative Young and SB 1288 by Senator Hays was a proposal initiated by the Florida Bankers Association. The **Section opposed** the legislation, and bills were not heard in either House and died when the Legislation adjourned.

Title Insurance: CS/HB 1229 by Representative Holder and SB 1468 by Senator Altman was the comprehensive legislation to revise the regulation of title insurance in Florida based upon the report of the Task Force chaired by Lt. Governor Kottkamp. The Section supported the principles adopted by the Task Force that were contained in the Legislation. The Legislation died in committee when the Legislature adjourned, but a portion of the legislation dealing with insolvent companies passed in CS/HB 1007.
