

**[Approved at the Executive Council meeting on \_\_\_\_\_]**

**MINUTES  
of the  
Real Property, Probate and Trust Law Section  
EXECUTIVE COUNCIL MEETING  
(August 20, 2005)  
(The Ritz-Carlton, Palm Beach, Florida)**

Julius James Zschau, Section Chair, presiding

The Section Chair, Julius James Zschau, called the meeting to order at 10:00 a.m.

**I. Attendance** – Wm. Fletcher Belcher, Secretary.

The attendance roster was circulated by the Secretary to be initialed by Council members in attendance at the meeting. Attendance is shown cumulatively on circulated attendance rosters. It is the responsibility of the Council member to promptly bring any corrections to the attention of the Secretary.

**II. Minutes of Previous Meeting** – Wm. Fletcher Belcher, Secretary.

The Secretary requested a motion to approve the Minutes of the Executive Council Meeting of May 28, 2005, included in agenda package and, upon motion duly made, seconded and unanimously carried, those Minutes were approved.

**III. Chair's Report** – Julius J. Zschau, Chair.

Jay acknowledged the presence of Alan Bookman, President of The Florida Bar, welcomed him to the Executive Council meeting, and thanked him for his hard work and support of the Section.

**IV. Treasurer's Report** – John Neukamm, Treasurer.

John referred to the financial summaries included in the agenda package at pages 8-11. He further reported that the \$169,801.00 of Section support received from sponsors during fiscal year 2004-2005 was largely responsible for the fact that revenue for that period exceeded expenses by \$28,501.00.

**V. Circuit Representatives Director's Report** – George Meyer, Director.

George reported that a statement of the Section's expectations from circuit representatives and the activities for which they are responsible is being finalized and will be sent to all circuit representatives in the near future.

## **VI. Action Items:**

1. General Standing Committees - Rohan Kelley, Chair-Elect.
  - a. Budget Committee. John B. Neukamm, Chair, reported on the status of the Section's project to produce a 26 minute historical film (DVD) commemorating its 50<sup>th</sup> anniversary for presentation at the Section's 2006 Convention. The participants in this project include Richard Warner, Walter Beales, John Neukamm and Terry Hill. Memos prepared by Laird Lile and Richard Warner concerning this project are included in the agenda package at pages 197-199. On August 2, 2005, the Executive Committee approved an amendment to the Section's 2005-06 budget allocating \$10,000.00 for the payment of actual out-of-pocket production costs incurred in producing this film, subject to the requirement that any revenue derived from sponsorships, underwriting opportunities, contributions or sales associated with the film be used to reimburse the Section for expenses incurred by it in producing the film. Upon motion duly made, seconded and unanimously carried, the budget amendment approved by the Executive Committee was ratified.
  - b. Legislative Review Committee. Brian Felcoski, Chair; reported that the Committee requests Executive Council approval for the renewal of the Section's agreement with Peter M. Dunbar for legislative consulting services upon the terms contained in the proposed agreement included in the agenda package at pages 192-196, for a period 2 years beginning on September 1, 2005, with no increase in cost. Upon motions duly made, seconded and unanimously carried, the proposed agreement was approved and found to be within the purview of the Section.
  - c. Rohan Kelley, Chair-Elect, reported that the Construction Law Certification Review Course Committee had called attention to a pending proposal to amend Board of Legal Specialization and Education Rule 2.11(a), which currently prohibits any participation by certification committee members (who prepare the certification exams) on seminar committees (who teach the certification review courses). Upon motion duly made, seconded and unanimously carried, a resolution was adopted requesting that the Board of Legal Specialization and Education amend its rules and policies to permit appropriate limited interaction between certification committee members and seminar committees so that certification review courses can be made more relevant to the substantive areas tested on certification exams, provided that the interaction would not amount to the seminar committees "teaching" the exams.

2. Probate & Trust Law Division – Sandra F. Diamond, Director.
  - a. Probate Law & Procedure Committee. Fletch Belcher reported that the Committee has approved proposed legislation amending sections 733.212 (notice of administration), 732.2135 (elective share), and 732.402 (exempt property), in the manner set forth in the proposal included in the agenda package at pages 39-44, and recommends that the Executive Council adopt a legislative position advocating the proposed legislation. The purpose of the proposed amendments is to: (1) include notice of the deadlines for filing petitions to determine exempt property and elections to take an elective share in the notice of administration; (2) clarify the manner of determining all deadlines referred to in the notice of administration to eliminate the problem that arose in *May v. Illinois*; and (3) establish the manner for determining deadlines that flow from service of notice of administration in those cases where service of notice of administration does not occur because it has been waived. Upon motions duly made, seconded and unanimously carried, a Section legislative position advocating the proposed legislation was adopted, the legislative position was found to be within the purview of the Section, and the expenditure of Section funds to advocate the proposed legislation was approved.
  - b. Probate Law & Procedure Committee. Debra Lynn Boje, Chair, reported that the Committee approved proposed legislation amending sections 731.201, 732.102, 732.103, 732.104, 732.108, 732.401, 732.4015, 732.507, and 732.603 (concerning the definitions and use of the terms “descendants,” “lineal descendants,” “collateral heirs,” “child,” and “children”), in the manner set forth in the proposal included in the agenda package at pages 45-49, and recommends that the Executive Council adopt a legislative position advocating the proposed legislation. Upon motions duly made, seconded and unanimously carried, a Section legislative position advocating the proposed legislation was adopted, the legislative position was found to be within the purview of the Section, and the expenditure of Section funds to advocate the proposed legislation was approved.
  - c. Estate & Trust Tax Planning Committee. Guy Emerich, Chair, reported that the Committee, in conjunction with the Tax Section, prepared comments to the Internal Revenue Service regarding Revenue Procedure 2005-24 on behalf of both Sections, which were approved by the Executive Committee on July 15, 2005, and are included in the agenda package at pages 50-53. Upon motions duly made, seconded and unanimously carried, the Executive Committee’s approval of the comments was ratified and they were found to be within the purview of the Section.

- d. Guardianship Law & Procedure Committee. David Russell Carlisle, Chair, reported that the Committee approved proposed legislation amending sections 744.3701 in the manner set forth in the agenda package at pages 54-56, and recommends that the Executive Council adopt a legislative position advocating the proposed legislation. The purpose of the proposed amendments is to provide audits of guardianship reports with the same exemption from disclosure as a public record as currently exists for the guardianship reports themselves. Upon motions duly made, seconded and unanimously carried, a Section legislative position advocating the proposed legislation was adopted, the legislative position was found to be within the purview of the Section, and the expenditure of Section funds to advocate the proposed legislation was approved.
- e. IRA's & Employee Benefits Committee. Linda S. Griffin, Vice-Chair, reported that the Committee had been requested by the Family Law Section to assist it in drafting proposed legislative amendments providing that qualified domestic relations orders entered in dissolution proceedings are effective to assign benefits under various governmental retirement or pension plans, and requests authorization from the Executive Council to provide such assistance. The role of the Section in this matter is to merely provide technical assistance to the Family Law Section in drafting proposed legislative amendments (which were distributed to the Executive Council), and not to initiate, adopt or advocate a legislative position. Upon motion duly made, seconded and unanimously carried, the Committee was authorized to provide technical assistance to the Family Law Section in connection with drafting such proposed legislative amendments.
- f. Laird A. Lile recommended that the Executive Council approve proposed statutory amendments concerning the elective share to the following sections: 732.2025 (elective share trust), 732.2035 (elective estate), 732.2075 (sources), and 222.21 (exemptions), which proposed amendments were distributed to the members of the Executive Council at the meeting. Upon motions duly made, seconded and unanimously carried: the rule requiring that proposed legislation and recommendations of the initiating committee be made agenda items and that copies be affixed to the agenda and distributed to all Executive Council members at least 1 week prior to the Executive Council meeting, was waived; a Section legislative position advocating the proposed legislation was adopted; the legislative position was found to be within the purview of the Section; and the expenditure of Section funds to advocate the proposed legislation was approved.

- g. Ad Hoc Trust Code Revision Committee. Brian J. Felcoski, Co-Chair, reported that the Committee approved proposed omnibus legislation which would create a new Florida Trust Code, the text of which is set forth in the agenda package at pages 57-192, and recommends that the Executive Council adopt a legislative position advocating the proposed legislation. Brian reported that the project began approximately 4 years ago, when the Section's Trust Law Committee began a section-by-section analysis of the Uniform Trust Code to determine if, and if so, how, each section would change existing Florida law. After that process was completed, the project then became the responsibility of a newly-formed Ad Hoc Trust Code Revision Committee, consisting of 17 members representing many diverse groups and interests, including the Tax Section, the Elder Law Section, the Florida Bankers Association, and the Florida Institute of Certified Public Accountants. Brian then described the extensive meetings and other activities of that Committee over the last 3 years, consisting of thousands of volunteer hours, and noted that the Committee was also receiving the able assistance and support of Professor David Powell, as scrivener and consultant. Brian also noted that the Florida Bankers Association had a parallel committee assigned to study the proposed Florida Trust Code and monitor the work of the Section's Ad Hoc Trust Code Revision Committee, and that negotiations and other discussions with that group were ongoing, including issues concerning the bankers' legislative proposals to authorize the expansion of affiliated products and services. Lastly, Brian reported that the proposed Florida Trust Code had been the subject of presentations at the Section's Annual Convention in May, and at the Probate and Trust Law Division Roundtable meeting. Upon motions duly made, seconded and unanimously carried, a Section legislative position advocating the proposed legislation was adopted, the legislative position was found to be within the purview of the Section, and the expenditure of Section funds to advocate the proposed legislation was approved.

The Chair-Elect noted that the Section had adopted a position opposing the affiliated products and services legislation proposed by the Florida Bankers Association in 2003, and confirmed his understanding that the any changes or amendments to the Section's proposed Florida Trust Code will require the approval of the Executive Council or its Executive Committee.

3. Real Property Law Division – Melissa Jay Murphy, Director.

Title Issues and Standards Committee. Patricia P. Jones, Chair; reported that the Committee approved amendments to Chapters 6 and 7 of the Uniform Title Standards in the manner set forth in the agenda package at

pages 12-23. Upon motions duly made, seconded and unanimously carried, the proposed amendments were approved and found to be within the purview of the Section.

Melissa also reported that action on proposed amendments to Chapter 8 of the Uniform Title Standards (construction liens), as well as proposed amendments to the Florida Land Trust Act, are being deferred until the November meeting.

## **VII. Reports:**

1. General Standing Committees – Rohan Kelley, Chair-Elect.
  - a. Liaison with The Florida Bar Board of Governors. Gwynne Young, Chair, reported on the Board of Governors' approval at its June meeting of a budget proposal that is generally more favorable to the Bar's larger sections than the prior policy.
  - b. Long-Range Planning Committee. Jerry Aron reported that the Committee, whose membership consists of past Section Chairs, was presenting a Bonnie Bevis with plaque recognizing and memorializing her more than 17 years of devoted and invaluable service to the Section from 1987 to 2005.
  - c. Sponsor Coordinators Committee. Charlie Nash, Co-Chair, reported that the Committee is currently evaluating the prospect of soliciting sponsorships for Section CLE seminars and committee meetings.
  - d. Strategic Planning Meeting 2006 Committee. Tom Smith, former Chair of the Committee, briefly reported on the activities of the 2005 Strategic Planning Meeting at Howie-in-the-Hills, as did the 3 group facilitators for that meeting, Peggy Rolando, Burt Bruton and Brian Felcoski. Brian commented on positive developments which have occurred since the meeting with respect to Section's relationship with The Florida Bar, particularly Terry Hill's performance on behalf of the Section, and progress with respect to budget policy issues with the Bar's Budget Committee and Board of Governors. Burt briefly commented on recommendations from the 2005 meeting concerning rotation of leadership positions on Section committees, implementation of annual self-evaluations by Section committees, defining expectations for circuit representatives, and the Divisions conducting their more routine housekeeping business at their respective roundtable breakfast meetings, rather than at meetings of the full Executive Council.

2. Probate & Trust Law Division - Sandra F. Diamond, Director.
  - a. Advance Directives & HIPAA Committee. Rex E. Moule, Jr., Chair, reported that the Committee was working on a new proposed living will form, and also working with the Power of Attorney Committee concerning healthcare authority provisions contained in powers of attorney.
  - b. Estate & Trust Tax Planning Committee. Guy Emerich, Chair, reported that the Committee was reviewing issues presented by ***Chawla v. Transamerica Occidental Life Insurance Company*** concerning whether the trustee of an irrevocable life insurance trust has an insurable interest in the life of the grantor. Guy also reported that the Committee has done extensive work in conjunction with the Tax Section in preparing comments to the Internal Revenue Service regarding Revenue Procedure 2005-24 on behalf of both Sections, which are included in the agenda package at pages 50-53, and are the subject of an action item.
  - c. Probate & Trust Litigation Committee. Jack A. Falk Jr., Chair, reported that more than 50 persons attended the most recent meeting of the Committee, at which it overwhelmingly approved proposed legislation providing that there should be a blanket privilege for confidential communications between a fiduciary and a fiduciary's attorney (i.e., that there should be no "fiduciary exception" to the attorney-client privilege). The proposed legislation will be an action item for the Executive Council at its November meeting in Sarasota.
3. Real Property Law Division – Melissa Jay Murphy, Director.
  - a. Bankruptcy, Creditor Rights & Real Estate Committee. Marsha G. Rydberg, Chair, reported that the recent dramatic revisions to the Bankruptcy Code will affect debtor's homestead exemption claims.
  - b. Condominium and Planned Development Committee – Michael J. Gelfand, Chair. It was reported that it is likely that the statutory procedure for termination of a condominium will be revised in the next legislative session.
  - c. Land Trusts and REITS Committee – Robert G. Stern, Chair. It was reported that action on proposed amendments to the Florida Land Trust Act, is being deferred until the November meeting, and that it is likely that the Act will be revised in the next legislative session.

- d. Property Rights in Real Property Committee – Susan K. Spurgeon, Chair. It was reported that the Committee is studying a possible legislative response to the Supreme Court’s ruling in ***Kelo v. City of New London***.
- e. Real Property Forms Committee – Michael Pyle, Chair. It was reported that the Committee is developing new construction lien forms that will be presented as an action item at the November meeting.
- f. Real Property Problems Study Committee – Barry Barnett Ansbacher, Chair. It was reported that the Committee is studying possible amendments to: (1) the platting statute to permit the filing of “de minimus” plats; and (2) the statute requiring the deletion of the survey exception.

There being no further business, the meeting was adjourned at 12:25 p.m.

Respectfully Submitted,

Wm. Fletcher Belcher  
Secretary