

ADDENDUM "A"

MINUTES OF THE REAL PROPERTY, PROBATE AND TRUST LAW SECTION Probate Roundtable Saturday, October 8, 2016 Disney's Boardwalk, Lake Buena Vista, Florida

I. Call to Order – *Deborah P. Goodall, Chair*

The meeting was held in sunny Orlando at Disney's Boardwalk in Lake Buena Vista, Florida after our Executive Council members suffered quite a scare with Hurricane Matthew bearing down on Florida over the prior three days. Most committee meetings scheduled on Thursday and Friday were cancelled due to the storm. Our members in attendance in Orlando spent an enjoyable three days together "in fellowship" at the lovely Boardwalk resort while the city of Orlando remained under a mandatory curfew.

Our Chair, Ms. Deborah P. Goodall, called the meeting to order at 8:30 a.m. on Saturday, October 8, 2016 noting how grateful she was to everyone who rode out the storm. Despite the circumstances, everyone maintained a great attitude. Our Executive Council members had a great bonding experience. Ms. Goodall thanked Mary Ann Obos and our "ride out" crew at the Boardwalk, including of chef and meeting planner, who literally stayed with us straight through the entire weekend. The Council responded with much and well-deserved applause.

Ms. Goodall expressed thoughts and prayers for our friends in Daytona, St. Augustine, and Jacksonville who were significantly impacted by the storm.

II. Attendance – *William T. Hennessey, Secretary*

Mr. Hennessey reminded all members to sign the attendance roster. The roster showing members in attendance is attached as Addendum "A". Attendance will be excused for everyone missing this meeting.

III. Minutes of Previous Meeting – *William T. Hennessey, Secretary*

Mr. Hennessey moved:

To approve the Minutes of the July 30, 2016 meeting of the Executive Council held at The Breakers Hotel, Palm Beach, Florida. (See Agenda pages 10-40.)

The Motion was unanimously approved.

IV. **Chair's Report** – *Deborah P. Goodall*

A. **Recognition of General Sponsors and Friends of the Section**

Ms. Goodall thanked each of our General Sponsors and Friends of the Section listed on pages 41-43 of the Agenda:

General Sponsors

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

Thursday Lunch
Management Planning, Inc. – Roy Meyers

Thursday Night Reception
JP Morgan – Carlos Batlle/Alyssa Feder

Old Republic National Title Insurance Company – Jim Russick

Friday Night Reception
Wells Fargo Private Bank – Mark Middlebrook/George Lange/Alex Hamrick

Friday Night Dinner
First American Title Insurance Company – Alan McCall

Probate Roundtable
SRR (Stout Risius Ross Inc.) – Garry Marshall
Guardian Trust- Ashley Gonnelli

Real Property Roundtable
Fidelity National Title Group – Pat Hancock

Saturday Lunch
The Florida Bar Foundation – Bruce Blackwell

Saturday Dinner
Wright Investors' Service – Stephen Soper

RPPTL Meeting App
WFG National Title Insurance Company – Joseph Tschida

Friends of the Section

Business Valuation Analysts, LLC – Tim Bronza

Corporate Valuation Services, Inc. – Tony Garvy
Fiduciary Trust International – Claudia Reithauser
North American Title Insurance Company – Andres San Jorge
Valley National Bank - Jacquelyn McIntosh
Valuation Services, Inc. – Jeff Bae, JD, CVA
Wilmington Trust – David Fritz

B. Announcements. Ms. Goodall reported that Saturday evening's dinner at the Boathouse has been cancelled due to Hurricane Matthew but that food and beverages will be available at our bowling excursion at Splitsville in Disney Springs. Debbie Boje was clearly relieved upon hearing the news that bowling was not cancelled.

RPPTL Epcot T-Shirts were made available to the Executive Committee members in attendance.

Ms. Goodall reported that John Neukamm had crushed the competition at The Breakers and won the App contest for the most posts. He was presented with an Apple Watch at The Breakers by our App Sponsor WFG National Title Insurance Company. Ms. Goodall then announced that Mr. Neukamm had won the App contest again at this meeting but that he had graciously declined to be named back-to-back champ. Rachel Lunsford was crowned the App Champion of the Disney Meeting.

C. Report of Interim Action of Executive Committee. Ms. Goodall reported that since the last Executive Council meeting there was a flurry of amicus committee activity requiring the Executive Committee to take immediate action. The specific items will be discussed in the formal report of the Amicus Committee.

D. Upcoming Executive Council Meetings. Our upcoming meeting schedule with room block information is listed at page 71 of the Agenda. Ms. Goodall explained that we are trying to open more rooms in the block for each of our meetings. She requested the Council members contact Whitney Kirk (not Mary Ann Obos) to be added to the room waitlists.

Ms. Goodall announced that (God willing) our next meeting will be in December in Key West. At which point, the entire Council in unison "knocked on wood", threw salt over their shoulders, and rubbed their lucky rabbits' feet so as not to tempt fate given the unexpected turn of events this weekend. We are planning to have a fishing tournament on Sunday after the meetings. Any Council members who are interested should let Mary Ann know so that we can get a head count to reserve enough charter boats. We are also taking a Saturday night dinner cruise to watch the boat parade. It's expected to last about three hours.

Note from your secretary: With all due respect to our Chair and my good friend, Ms. Goodall, I would plan for a long boat trip given the weather situation at this meeting...think Gilligan's Island:



V. Liaison with Board of Governors Report – Lansing C. Scriven.

Ms. Goodall introduced Mr. Scriven who gave his report as Section liaison to the Board of Governors. Mr. Scriven reported that the Florida Supreme Court adopted a rule change that will require all Florida lawyers to take three hours of technology-related courses during a three year cycle, increasing the total required hours from 30 to 33. The rule change is effective January 1, 2017. Mr. Scriven also reported that the Board of Governors is planning for how to best seek representation on the Constitutional Revision Commission. The Constitutional Revision Commission meets every 20 years to discuss and propose changes to the Florida Constitution. It consists of 15 members appointed by the Governor, 9 members appointed by the Speaker of the House, 9 members appointed by the President of the Senate, 3 members appointed by the Chief Justice of the Florida Supreme Court, and 1 member appointed by the Attorney General. It begins in 2017. The Florida Bar is underrepresented on the Commission. Some of the topics which may be part of the discussions include whether rule-making authority should be removed from the Florida Supreme Court to legislature, whether the regulation of lawyers should be removed to the executive branch, whether the judicial nominating process should be altered with diminished lawyer input, and whether the JQC function should be moved to the legislature. The proposals will ultimately go directly to the ballot. Chief Justice Labarga, Governor Scott, and Senate President Gardiner are all accepting applications for the Commission. It will be one of the biggest issues facing the Bar because of what's at stake.

VI. Chair-Elect's Report – Andrew M. O'Malley

Mr. O'Malley reported that the links for The Breakers and Boston hotels are now open. He already has contingency plans in place in Boston in the event of a nor'easter.

The Fairmont Copley Place in Boston is absolutely gorgeous. He promised that we would not be assigned Salons IV-VI (inside joke for those of us at The Boardwalk) which will now take on the unlucky 13th floor status among us Reptiles. Mr. O'Malley has an event planned at the Kennedy Center but is otherwise soliciting suggestions for the meeting.

VII. Treasurer's Report – *Tae Kelley Bronner.*

Ms. Bronner reported on the RPPTL Financial Summary set forth on page 73 of the Agenda. The Section is in excellent financial shape with more than \$1.4 million in reserves. Our seminars have been very profitable thanks to the great work of all of Section members. We are planning programs to give back to the Section membership.

VIII. Director of At-Large Members Report – *S. Katherine Frazier.*

Ms. Frazier reported that the No Place Like Home project is up and running in Hillsborough, Miami-Dade, and North Florida with plans to expand statewide. An ALMs liaison has been appointed for each substantive committee to provide ALMs support and updates as needed. The liaisons should be reaching out to the committee chairs before the next meeting.

IX. CLE Seminar Coordination Report – *Robert Swaine (Real Property) and Shane Kelley (Probate & Trust), Co-Chairs.*

Bob Swain congratulated and thanked all of our speakers for a fantastic and profitable CLE year. The Section is working on a best practices guide to provide a uniform manual for materials and presentations. All of our upcoming seminars are listed on Page 74 of the Agenda.

X. Probate and Trust Law Division Report (Part I)—*Debra L. Boje, Director*

Debra Boje, as Probate Division Director, recognized and thanked each of our committee sponsors in the Probate Division, which are listed on page 49 of the Agenda:

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

Business Valuation Analysts – Tim Bronza
Trust Law Committee

Coral Gables Trust – John Harris
Probate and Trust Litigation Committee

Kravit Estate Appraisal – Bianca Morabito
Estate and Tax Planning Committee

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

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

Northern Trust – Tami Conetta
Trust Law Committee

A. Action Items:

1. Ad Hoc POLST Committee - *Tae Bronner, Most Knowledgeable*

Tae Bronner presented as an ACTION ITEM the report of the Ad Hoc POLST Committee. The particular committee was formed over a year ago when the Florida legislature began considering a proposed statute which would have allowed POLST forms to be signed by physicians without constitutional safeguards in place for patients. POLST stands for Physician Orders for Life Sustaining Treatment. POLST are similar to a living will in that they provide instructions for life sustaining treatment. The difference is that, unlike a living will, they are effective immediately. The prior proposed statute purported to allow the physician to enter such orders in the file without requiring client consent. The Ad Hoc POLST Committee has proposed a statute which will require physicians to explain the consequence of a POLST and obtain client consent. It will be a statutory regulated form. Physicians will need to sign an affidavit certifying that they explained the consequences and its impact on treatment. Our statute is intended to protect the rights of the elderly and incapacitated to have a say their treatment. Health care surrogates and proxies will be able to provide the necessary consent for a POLST. The Section has a current position opposing POLST legislation unless proper safeguards are put in place. This new position will allow our legislative consultants to advocate for our version of the POLST legislation. The Legislative Position Request, Proposed Bill, and White Paper are located in the Agenda at pages 113-143.

Upon conclusion of the report, the committee made a motion to: (A) adopt as a Section position legislation to recognize Physician Orders for Life Sustaining Treatment under Florida law with appropriate protections to prevent violations of due process for the benefit of the citizens of Florida, including the creation of s. 406.46, Florida Statutes; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.

The motion passed unanimously.

2. Elective Share Review Committee --- *Lauren Detzel, Chair*

Bill Hennessey and Lauren Detzel presented the report of the Elective Share Review Committee. At last Executive Committee meeting, Lauren Detzel and Shane Kelley explained in detail a number of proposed changes to our elective share statutes. The most important statutory changes will result in a sliding scale for the percentages of

the elective share based upon the length of the marriage. The Family Law Section has reviewed our proposal and will not be taking a position on the legislation. This is good news as it will allow us to proceed without opposition.

The primary changes to the proposal since The Breakers Executive Council meeting relate to extensions of time. The proposal was revised to make it clear that a spouse will be able to seek an election within 40 days after the conclusion of a proceeding, like a will contest, which impacts the amount the surviving spouse receives. The language is similar to that already in the Probate Code as it relates to exempt property. The language prevents a spouse from being barred from making the election by an unanticipated will contest. The outside timeframe for making the election will be two years. These changes were discussed in concept at The Breakers meeting.

The Executive Council engaged in a healthy debate concerning the attorneys' fee provisions contained at lines 402-418 of the proposed legislation. Some concern was expressed about ambiguity in the proposal about what triggers a potential award of fees in connection with elective share proceedings. The general intent is that the Court should have discretion to award fees in disputed or contested proceedings. Concern was raised that the proposal does not accomplish that intent. A number of specific changes to the language were requested. Ms. Boje appointed a working group to discuss proposed changes to address the concerns raised and report back to the Executive Council.

Action was deferred until later in the meeting.

3. Probate Law and Procedure --- Travis Hayes (Admirable "Fill-In" for John Moran, Chair)

Mr. Hayes presented as an ACTION ITEM a report from the Probate Law and Procedure Committee on a proposed Section Position which would support legislation (§ 732.902) allowing a testator to deposit their original will with the clerk's office for safekeeping during their lifetime, and for the other custodians to deposit original wills with the clerk for safekeeping when the testator cannot be located. The proposed statute specifically addresses the issue of orphan wills where the testator cannot be located. The deposited will remains confidential in the Court file. The clerk must make an electronic copy and retain the original will for 20 years. We do not expect opposition from the court clerks but we do expect a fee to be charged for depositing a will. The full legislation position request form, white paper, and proposed bill were included in the Agenda at pages 195-203.

Upon conclusion of the report, the committee made a motion to: (A) adopt as a Section position legislation allowing a testator to deposit their original will with the clerk's office for safekeeping during their lifetime, and for the other custodians to deposit original wills with the clerk for safekeeping when the testator cannot be located; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.

The motion passed unanimously.

4. Trust Law Committee --- Angela Adams, Chair

Ms. Boje welcomed Ms. Adams to the podium noting how glad we all are that she made it here safely... given that she was riding with Fletch Belcher. Ms. Adams looked no worse for the wear and was ready to get down to business. Ms. Adams presented as an **ACTION ITEM** a report from the Trust Law Committee on a proposed Section Position which would support legislation to reaffirm Florida's well established jurisprudence in favor of donative freedom so that the settlor's intent is paramount when applying and interpreting both Florida trust law and the terms of a trust. When Florida enacted the Trust Code, §§ 736.0105 and 736.0404 provided that the terms of the trust must be for the "benefit of the beneficiary." When enacted, the Section felt that these statutes were innocuous because trustees always must enact in the best interest of the beneficiaries. Some legal scholars are now claiming that the "benefit of the beneficiary" language trumps settlor intent such that the focus is now on what's best for the beneficiary even if it is inconsistent with the settlor's wishes. The proposal will make it clear that settlor intent is paramount and includes changes to §§736.0103(11), 736.0105(2)(c), and 736.0404, Florida Statutes. The proposal is intended to be clarifying in nature and will apply retroactively. Several other states have already made similar clarifying revisions. The full report, including a legislative position request form, white paper, and bill are located at pages 204-212.

Upon conclusion of the report, the committee made a motion to: (A) adopt as a Section position legislation to reaffirm Florida's well established jurisprudence in favor of donative freedom so that the settlor's intent is paramount when applying and interpreting both Florida trust law and the terms of a trust, including changes to §§736.0103(11), 736.0105(2)(c), and 736.0404, Florida Statutes; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.

The motion was approved unanimously.

XI. General Standing Division – Andrew M. O'Malley, General Standing Division Director and Chair-Elect.

A. Information Items:

1. Ad Hoc Leadership Academy - Brian Sparks and Kris Fernandez, Co Chairs

Mr. Fernandez reported that the William Reese Smith Jr. Leadership Academy is taking applications again. The applications will be available December 1, 2016 on the Florida Bar website. The Ad Hoc Leadership Academy committee will start taking applications for RPPTL members by December 15, 2016. The applications will be due back to the Florida Bar (independent of submissions to the committee) by January 13,

2017. The RPPTL Section will select 2 applicants who will receive a \$3,500 scholarship to attend Leadership Academy sessions.

2. Amicus Coordination – Kenneth Bell, Gerald Cope, Robert Goldman and John Little, Co-Chairs

Mr. Goldman reported that the amicus committee has three matters currently pending.

In Smith v. Smith, the 4th DCA certified as a matter of great public importance the following question: “Where the fundamental right to marry has not been removed from a ward under section 744.3215(2)(a), Florida Statutes, does the statute require the ward to obtain approval from the court prior to exercising the right to marry, without which approval the marriage is absolutely void, or does such failure render the marriage voidable, as court approval could be conferred after the marriage?” In the underlying opinion, the court found that a marriage of an incapacitated ward, who had the right to marry removed, could not be ratified after the marriage because the marriage was void. Mr. Goldman reported that amicus committee has filed a brief on behalf of the Section taking the position that the ward can seek later court approval of the marriage. The Elder Law Section has taken a completely different view.

Mr. Goldman reported that the RPPTL Section has made the very, very rare move of wading into a DCA decision. The decision at issue is Ober v. Town of Lauderdale-By-The Sea (Agenda pages 54-62). It is currently on rehearing at the 4th DCA. The 4th DCA held that the lis pendens statute discharges liens that exist or arise prior to final judgement of foreclosure unless the appropriate steps are taken to protect those interests but that it does not affect liens that accrue after the final judgment but before the sale. The Section believes that the statutory scheme reflects that the certificate of title, not the final judgment, ends the case and that liens filed after final judgment but before certificate of title is issued are subject to discharge under the lis pendens statute. The 4th DCA granted our motion to appear as an amicus. The amicus committee is finalizing its brief.

The amicus committee is also addressing the 3d DCA’s decision of Save Calusa Trust v. Andrews Holdings, LTD, wherein the court held that a restriction in a covenant that is required as part of a zoning approval is exempt from extinguishment by Florida’s Marketable Record Title Act. The Florida Supreme Court has not yet ruled on whether it will accept jurisdiction. It is before the Court on conflict jurisdiction. The amicus committee has filed a notice of intent letting the court know that the RPPTL Section would like to take a position if it accepts jurisdiction.

Public Service Announcement: Mr. Goldman encouraged everyone to attend our meetings in December in Key West. He assured the Council that there will be no excuses--- wind, rain, hurricanes, or floods--- which can prevent Thursday night’s entertainment, the greatest musical ever presented, the Doyle and Debbie Show. It’s an amazing show, which is pee your pants funny. All adults should plan to attend.

Mr. O'Malley commended the amicus committee for the tremendous amount of time and spectacular job representing the Section. The Council responded with well-deserved gratitude.

3. Liaison with Clerks of Court – Laird Lile and William “Ted” Conner

Mr. O'Malley noted that clerks are generally following 4th DCA's in United Bank v. Estate of Frazee. In Frazee, the 4th DCA affirmed a trial court's decision which found that a creditor claim was untimely because it was filed in paper form with the clerk rather than electronically. The Frazee court noted that the Rules of Judicial Administration require Florida lawyers to file all pleadings electronically. Clerks are generally now refusing to accept paper filings in accordance with the **Frazee** decision.

4. Model and Uniform Acts – Bruce Stone and Richard Taylor, Co-Chairs

Mr. O'Malley encouraged the Council members to review pages 77-78 of the Agenda which lists seven new acts being promulgated by the Uniform Law Commission.

Mr. Hennessey reported that the Section is continuing to work with the Business Law Section to address concerns with the Uniform Voidable Transactions Act. The Tax Law Section has already voted to oppose the Act. The Business Law Section has passed its version of the Uniform Voidable Transactions Act without our comments. We expect the Business Law Section to move forward with their proposal this legislative session. Our primary objections to the Act relate to the comments which are part of the Act rather than the text of the Act itself. The comments jeopardize a number of estate planning techniques which are regularly used as part of tax planning. The RPPTL Section is trying to come up with a solution which will address our concerns without having to oppose the Act.

5. Professionalism and Ethics – Paul Roman, Chair

Mr. O'Malley thanked the ALMs for their good work on the “No Place Like Home” project.

Katherine Frazier presented a report from FinCen Geographic Targeting Order (GTO) Working Group. The materials are in the agenda at pages 84-102. Ms. Frazier thanked the committee members who have worked hard on assessing the impact of FinCen's GTO. The GTO requires certain financial disclosures involving cash transactions for residential real estate sales of \$1 million or more in Broward, Miami-Dade, and Palm Beach Counties. From any ethics perspective, the disclosures will

require that confidential information be provided on the necessary forms. Client consent will be necessary to make the required disclosures. There are also US Code provisions which create liability when lawyers give advice in structuring transactions. Florida Ethics opinion 92-5, dealing with similar issues, provides that client consent is required before disclosure can be made. The Committee will likely be seeking an additional updated ethics opinion on the duties of lawyers in complying with the GTO. The Committee will also work to educate the membership on the ethics issues and will be preparing proposed form language to include in engagement letters to obtain necessary consent.

XII. Real Property Division Report—Andrew O'Malley (filling in for Robert Freedman, Real Property Division Director)

A. Recognition of Real Property Committee Sponsors

Mr. O'Malley presented the report of the Real Property Division noting that Mr. Freedman had a blowout on the way to the meeting. Yes, sad but true. Unfortunately, Mr. Freedman's right flip flop blew a strap sidelining him for the day's meeting. (Actually, our good friend caught a bug and was under the weather... feel better Rob!) Mr. O'Malley began the Real Property Division reports by recognizing and thanking each of our committee sponsors in the Real Property Division, which are listed on Page 43 of the Agenda.

Committee Sponsors

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

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

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

Hopping Green & Sams – Vinette Godelia
Development and Land Use

B. Information Items

1. Commercial Real Estate Committee – Adele Stone

Mr. O'Malley noted that the RPPTL Section has an active position concerning proposed legislation for assessment of multiple parcel buildings. The Executive Council approved the position in 2014. Materials are included at pages 103-112 of the Agenda. The legislation will likely move forward during the next session.

2. Real Estate Litigation Committee- Marty Schwartz

Mr. Schwartz reported that the committee is working on a proposed statutory fix for the Ober v. Town of Lauderdale-By-The Sea decision. The Ober decision creates two problems. The first problem relates to the potential attachment of a lien between final judgment and the issuance of certificate of title as explained above in the report from the amicus committee. The second problem relates to existing titles wherein liens may not have been foreclosed as originally thought. There are many titles out there where liens were recorded after the final judgment but before the certificate of title. The problems will likely be discovered when people attempt to sell property. There may be a need to quiet title. The committee is working on a proposal which in concept would provide:

“Unless it expires, is withdrawn, or is otherwise discharged, a recorded lis pendens giving notice of pendency of a proceeding shall remain in effect on the property described in the notice through the date of issuance of any instrument transferring title pursuant to a judicial sale in the original action. The preceding sentence will clarify existing law.”

This clarification to existing law may be necessary even if the Ober decision is changed on rehearing so that we do not have a problem in another DCA. Mr. Schwartz thanked the subcommittee for its hard work on the proposal.

Mr. Schwartz reported that the committee also heard a report on electronic notarization of documents which are now being permitted in states like Virginia. The concept is that the notary does not actually have to be present to notarize a document. Virginia is already executing documents in this manner. Florida may consider similar legislation in the future.

XIII. Probate and Trust Law Division Report (Part 2)— Debra L. Boje, Director

Debra Boje, as Probate Division Director, presented Part 2 of the Probate and Trust Law Division.

A. Informational Items:

1. Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process --- Fletch Belcher

Fletch Belcher reported on an **Information Item** from the Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process. The proposed legislation would address and legislatively overrule the Court’s holdings in *Corya v. Sanders*, 155 So. 3d 1279 (Fla. 4th DCA 2015). The proposed legislation would §736.08135 and §736.1008, Fla. Stat., to clarify that: (A) §736.08135(3) does not limit the beginning period for which a trustee of an irrevocable trust is statutorily required

to render a trust accounting to beneficiaries; and (B) a beneficiary's actual knowledge of the existence of an irrevocable trust and that he or she has not received a trust accounting does not commence the running of any limitations or laches period that would bar the beneficiary's assertion of a claim or cause of action against the trustee for breach of trust based upon the trustee's failure to provide a trust accounting as required by law. The legislation is intended to clarify existing law. The proposed legislative position request form, white paper, and proposed bill are included in the Agenda at pages 213-224.

2. Estate & Trust Tax Planning --- David J. Akins, Chair

Mr. Akins reported that Section has worked jointly with the Tax Law Section in preparing comments to the Internal Revenue Service's proposed regulations under section 2704 of the Internal Revenue Code, that were released to the public on August 2, 2016. The comments are in draft form and will be timely submitted. A report is included in the Agenda at pages 225-241. The Executive Committee will be approving the final version of the comments before they are submitted.

B. Action Item

1. Elective Share Review Committee --- Lauren Detzel, Chair

Lauren Detzel reported that the working group has agreed in concept on revised language concerning the attorneys' fee provisions found at lines 402-418 of the proposed legislation. The new proposal will be removing lines 414-416 (subsection (3)) of the proposed legislation which provides that "nothing in this section shall be construed to create or impose personal liability..." It was decided that this language should be removed because someone with very little at stake could create extensive and costly litigation. The working group also suggested that the fee provisions in subsection (1) which is contained at lines 403-408 be limited to circumstances in which an objection is made to any part of the elective share proceedings. Uncontested matters will generally not permit an award of attorneys' fees. "In its discretion" was removed from line 404 because it is duplicative of the remainder of the paragraph. Line 409-412 will be modified to make it clear that the court can award a money judgment against a party's personal assets such that it is not just limited to a party's interest in the estate.

The Elective Share Review Committee agreed to accept the recommendations of the working group. With those changes, the committee made a motion to: (A) adopt as a Section position legislation to amend the Florida's Elective Share Statute, Sections 732.201-732.2155, including changes to the manner in which protected homestead is included in the elective estate and how it is valued for purposes of satisfying the elective share; quantify the amount of the elective share which the surviving spouse is entitled with reference to the length of the marriage; add a provision to assess interest on persons who are very delinquent in fulfilling their statutory obligations to pay or contribute towards satisfaction of the elective share; add a new section that specifically addresses awards of attorney's fees and costs from elective

share proceedings (subject to the Executive Committee revising the proposed attorneys' fee provisions to provide in all proceedings concerning the elective share in which an objection is filed that the court will have the ability to award taxable costs, including fees, as in chancery actions as discussed above in these minutes); and make changes to Chapter 738 to assure qualification for certain elective share trusts that contain so called unproductive property; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.

The motion passed unanimously.

XIV. Adjourn

Ms. Goodall once again thanked the Boardwalk staff for all of their assistance this weekend under the most difficult of circumstances. Mr. O'Malley thanked Debbie Goodall again for being the epitome of absolute grace under pressure. The Council responded with thunderous applause and a well-deserved standing ovation. There being no further business to come before the Executive Council, a motion to adjourn was unanimously approved at approximately 10:10 a.m. This brought to close a Ms. Goodall's not-soon-to-be-forgotten "hurricane meeting" as Chair.

Respectfully submitted,

William T. Hennessey, Secretary