

BRING TO MEETING

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



Executive Council Meeting

AGENDA

Vinoy Renaissance Resort
501 5th Avenue NE
St. Petersburg, FL 33701
(727)894-1000

Saturday, May 25, 2013
10:00 a.m.

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting
May 25, 2013
Vinoy Renaissance Resort – St. Petersburg, FL

AGENDA

- I. [Presiding](#) — *Wm. Fletcher Belcher, Chair*
- II. [Attendance](#) — *Deborah Packer Goodall, Secretary*
- III. [Minutes of Previous Meeting](#) — *Deborah Packer Goodall, Secretary*

Motion to Approve Minutes of February 9, 2013, Executive Council Meeting in Tallahassee, FL. **p. 1**

- IV. [Chair's Report](#) — *Wm. Fletcher Belcher*

1. Recognition of guests
2. Introduction and comments from sponsors of Executive Council lunch (The Florida Bar Foundation and U.S. Trust)
3. Debut of RPPTL Membership Video produced by Membership, Diversity and Law School Liaison Committee
4. Acknowledgement of Section sponsors **p. 42**
5. Special acknowledgement of Guardian Trust's sponsorship of Yankees vs. Rays
6. Recognition of distinguished 2012-2013 awards recipients
7. Recognition of Program Co-Chairs for Convention Homestead Seminar
8. Recognition of distinguished Friday luncheon speaker
9. Receipt of letter of appreciation from family of William J. Haley **p. 45**
10. Recognition of Convention Coordination Committee
11. A new General Standing Committee has been created as follows: Integrity Awareness and Coordination Committee. The mission of the Committee will be to preserve the Section's reputation for integrity by promoting awareness and understanding of applicable conflict of interest principles and bylaw provisions

among components of the Section, coordinating the uniform and consistent application of these principles and provisions within components of the Section, and by other appropriate means

12. Reminder of 3:00 p.m. departure from Vinoy to Yankees vs. Rays baseball event

V. [Chair-Elect's Report](#) — *Margaret Ann Rolando*

2013 – 2014 RPPTL Section Executive Council Meeting Schedule. **p. 46**

VI. [Liaison with Board of Governors' Report](#) — *Andrew B. Sasso*

VII. [President of The Florida Bar's Report](#) — *Gwynne A. Young*

VIII. [Treasurer's Report](#) — *Andrew M. O'Malley*

2012-13 Monthly May Report Summary. **p. 47**

IX. [Director of At-Large Member's Report](#) — *Debra L. Boje*

X. [Probate and Trust Law Division](#) — *Michael A. Dribin, Director*

Action Items:

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** — *Angela M. Adams, Chair*

To adopt as proposed legislative positions the following: (a) the enactment of new F.S. §733.6075 (liability of non-probate transferees for enforceable claims); (b) the amendment of F.S. §733.607 (possession of estate) by the addition of new subsections (3), (4), and (5); (c) the amendment of F.S. §733.702(1) (limitations on presentation of claims); (c) the amendment of F.S. §733.705 (payment of and objection to claims) by the addition of a new subsection (12); and (d) the amendment of F.S. § 733.707 (order or payment of expenses and obligations) by the addition of a new subsection (4); all for the purpose of creating an orderly process for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when the decedent's probate estate and any revocable trust as to which the decedent was the grantor are insufficient to pay all enforceable claims; and finding that such legislative positions are within the purview of the RPPTL Section.* **p. 49**

2. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** — *Angela M. Adams, Chair*

To adopt as proposed legislative positions the amendment of F.S. §726.102 and F.S. §733.607 to clarify that a fiduciary of a decedent's estate may bring an action under Florida's fraudulent transfer and fraudulent conversion statutes for the benefit of the creditors of a decedent's estate to recover assets transferred by the decedent during his

or her lifetime, when there are otherwise insufficient assets to pay claims of valid creditors of the estate; and finding that such legislative positions are within the purview of the RPPTL Section.* **p. 79**

3. Probate and Trust Litigation Committee — *Thomas M. Karr, Chair*

To adopt as proposed legislative positions the following: (a) the amendment of F.S. §736.0207 by the addition of a new subsection (1) to clarify that in an action to contest the validity or revocation of all or part of a trust, the contestant has the burden of proof to establish grounds for invalidity, and (b) the amendment of F.S. §733.107(2) to clarify and confirm its applicability in all circumstances in which the presumption of undue influence is established, including trust contests as well as challenges to inter vivos gifts; and finding that such legislative positions are within the purview of the RPPTL Section.* **p. 85**

***If the proposed legislative positions are approved by the Executive Council, an additional committee motion will be presented seeking authorization for the RPPTL Section to expend Section funds in support of the proposed legislative positions.**

XI. [Real Property Law Division](#) — *Michael J. Gelfand, Director*

Action Items:

1. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

To amend the Section position approved September 15, 2012, to support the establishment of a Condominium and Planned Development Law Sub-Specialty Certification under the auspices of the Real Estate Law Certification and amendments to the Rules Regulating the Florida Bar relating to Certification, and to find that the position is in the Section's purview, by substituting revised proposed Condominium Certification Rules, and to find that the amended position is within the Section's purview. Proposed Rev Cdm Cert Rules. **p. 92**

2. Residential Real Estate and Industry Liaison Committee — *Frederick W. Jones, Chair*

To approve the following revised proposed FARBAR Residential Contract Forms: FARBAR K Rev Sum. **p. 97**; FARBAR as is Resid Cont. **p. 104**; FARBAR Resid Cont. **p. 117**; and FARBAR CR. **p. 131**

Information Items:

1. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

Proposed Advisory Opinion, FAO #2012-2, Activities of Community Association Managers. CAM Proposed Advisory Opinion. **p. 164**

2. Ad Hoc Foreclosure Reform Committee — Jerry Aron, Chair

The Committee reports that the Foreclosure Reform Bill (HB 87) has passed the Legislature after more than three years of hard work, fine-tuning and effort by the Ad Hoc Committee, and even more work and dedication by our sponsors – Representative Kathleen Passidomo and Senator Jack Latvala – and our government affairs consultants. It will be submitted for signature by the Governor. The Section has written a letter to Governor Scott expressing its support of the bill and requesting that he sign it into law. **p. 189**

This project started with a request for technical assistance by Rep. Passidomo, a board certified real estate attorney and long-time Section member. A small ad hoc group was appointed to assist her in converting her legislative initiative into statutory language. That group consisted of Jerry Aron, Burt Bruton, Mark Brown, Alan Fields and Jeff Sauer. As the draft language was refined, it was circulated to the various RPPTL committees. The Committee sought and received input from the Section and from other groups, including MERS, consumer groups, mortgage bankers, the Florida Bankers Association, and additional revisions were made. The work-product was presented at several Real Property Roundtables, and adopted as a RPPTL Section position at two different Executive Council meetings (for different legislative cycles). In spite of that, there was some opposition from a few Section members and a group of foreclosure defense attorneys submitted a letter to the Florida Bar News (attached) questioning the Section for its approach. The Committee's Report, the foreclosure defense attorney's letter to The Florida Bar News, and the RPPTL Section's response, are attached. **p. 192**

XII. General Standing Committees — Margaret "Peggy" Rolando, Director and Chair-Elect

Action Item:

1. Fellows and Mentoring Committee — Marsha G. Madorsky, Co-Chair (Fellowship)

A motion for approval to (1) seek applications from the Section membership for the Fellowship Program annually instead of every other year; (2) appoint a new class of up to four (4) Fellows each year to serve for up to a two year period with the renewal of the appointment for the second year based on satisfactory performance during the first year; and (3) amend the budget for the Fellowship Program for 2013-2014 to increase the amount allocated to Fellows from \$10,000 to \$20,000 per year to accommodate the increased number of Fellows. See the attached report from the Committee. **p. 187**

Information Items:

1. Ad Hoc Leadership Academy Selection Committee — Tae Kelley Bronner, Chair

Following the Section's approval of two scholarships for RPPTL nominees to the Florida Bar Leadership Academy, the Committee asked potential applicants to submit a copy of their Florida Bar Leadership Academy application to the RPPTL Committee by March 15,

2013. The Committee received 12 excellent applications for consideration. After a thorough review of all applications, the Committee selected Brenda Ezell and Tatiana Brenes-Stahl as the nominees to receive a potential scholarship if they were chosen as fellows for the Florida Bar Leadership Academy. Both have been selected as fellows for the Leadership Academy by the Florida Bar Leadership Academy Selection Committee and will be receiving the RPPTL Section scholarships. See the attached full report from the Committee. **p. 201**

2. Ad Hoc Trust Account Committee — *Roland “Chip” Waller, Chair*

The Professional Ethics Committee of The Florida Bar has been asked for an advisory ethics opinion concerning audits by title insurers of a trust account maintained for real property transactions which routinely contain funds for the multiple participants in a real estate closing beyond the buyer and seller, including title insurers, following enactment of Section 626.8473(8), Florida Statutes, which became effective July 1, 2012. The PEC and its Subcommittee on this issue are experiencing significant difficulty in making a determination. The next meeting of the PEC is scheduled for Friday, June 28, 2013. In an effort to provide advice and practical insights from practitioners in the field, the Section's Ad Hoc Trust Account Committee and the leadership of the Real Property Law Division have provided the Professional Ethics Committee with an additional letter containing substantial technical information in support of our position. **p. 202** In addition, the Section has provided the Committee with a draft of a proposed ethical opinion that is consistent with our position. **p. 216**

3. Membership, Diversity and Law School Liaison Committee — *Michael A. Bedke, Chair*

Please see detailed reports from Michael A. Bedke, Chair; Lynwood T. Arnold, Jr., Co-Vice Chair (Diversity); and Stacy Kalmanson, Co-Vice Chair (Law Schools) regarding the Committee's extensive initiatives, including the infomercial, diversity programs, successful recruitment law student affiliate members, law school liaison programs, new mentoring initiative, continuation of communication and retention projects and outreach programs. Michael and Lynwood's report is attached at **p. 221** and Stacy's report is attached at **p. 223**.

4. Member Communications and Information Technology Committee — *Nicole Kibert, Chair*

The two agreements related to the Section website, (1) Website Development Agreement with Blueflame Consulting, Inc. for the design and development of a new website for RPPTL.org; and (2) interim Website Hosting and Maintenance Agreement for RPPTL.org with First Step Internet, L.L.C., have been executed and are in force. With regard to the new website, the initial work is underway and the Committee anticipates receiving the initial design for the website in mid-May. It will then be vetted by the Committee. In addition, the process of building the website architecture is under way. The Committee will be showcasing the new website design at the Breakers meeting (Disclaimer: while the design will be completed at that time, but all information may not have been ported over yet).

The updated guidelines for maintaining committee website pages and listserves are now posted on the Member Communications and Information Technology Committee page. Please follow these guidelines when sending update requests to assist our new webmaster with efficiently responding to update requests. The guidelines are also attached to the agenda for ease of reference. The website guidelines are attached at **p. 225** and the listserve guidelines are attached at **p. 227**.

5. Pro Bono Committee — *Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs*

The Committee conducted a survey of the Section Executive Council members to determine the level of interest in participation in pro bono legal work at a state-wide level. The results of the survey compiled by Mike Garcia of The Florida Bar are attached. A total of 102 completed surveys were received for a response rate of 38%. The response rate is considered excellent when compared to response rates for all surveys and just above average when compared to other section executive council surveys. See the attached survey results at **p. 231**.

While the survey results revealed widespread support for pro bono service in general, they indicated that the Section is not the avenue through which most members would choose to offer such services. Most telling is the response to question 3, wherein the vast majority of respondents are “Not Likely at All to Volunteer” for the various services listed. Question 4 yielded similar results with a high percentage “Not Likely at All to Volunteer” to either fundraise or be a standby volunteer for pro bono projects and a very small percentage being “Very Likely to Volunteer”. Question 8 reveals that only 5% would be willing to serve on the Pro Bono Committee, 95% would not be willing to serve.

Based on the survey results and the Committee’s difficulty in obtaining acceptance of pro bono projects and recruiting members, the Pro Bono Committee recommends that its purpose would be better served through an ad hoc committee convened by the Chair as and when needed.

XIII. General Standing Committee Reports — Margaret “Peggy” Rolando, Director and Chair-Elect

1. **Ad Hoc Leadership Academy Selection** – Tae Kelley Bronner, Chair
2. **Ad Hoc LLC Monitoring** – Lauren Y. Detzel and Ed Burt Bruton, Co-Chairs
3. **Ad Hoc Trust Account** – Roland “Chip” Waller, Chair
4. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs
5. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
6. **Budget** – Andrew M. O’Malley, Chair; Pamela O. Price and Daniel L. DeCubellis, Co-Vice Chairs
7. **CLE Seminar Coordination** – Robert Freedman, Chair; Laura Sundberg and Sarah Butters, Co-Vice Chairs (Probate & Trust); Brian Leebrick and Jennifer Tobin, Co-Vice Chairs (Real Property) **pp. 239**
8. **Convention Coordination (2013)** – S. Katherine Frazier, Chair; Angela Adams, Tae Bronner and Debra Boje, Co-Vice Chairs
9. **Fellows and Mentoring** – Marsha G. Madorsky, Co-Chair (Fellowship), Guy Emerich, Co-Chair (Mentoring); Brenda Ezell and Sharaine Sibblies, Co-Vice Chairs.
10. **Florida Electronic Filing & Service** – Patricia P. Jones, Rohan Kelley and Laird A. Lile, Co-Chairs
11. **Homestead Issues Study** – Shane Kelley, Co-Chair (Probate & Trust); Deborah Boyd, Co-Chair (Real Property)
12. **Legislation** – Barry F. Spivey, Co-Chair (Probate & Trust), Robert Swaine, Co-Chair (Real Property); William T. Hennessey, III, Co-Vice Chair (Probate & Trust), Alan Fields, Co-Vice Chair (Real Property); Susan K. Spurgeon and Michael A. Bedke, Legislative Reporters
13. **Legislative Update (2013)** –Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Sharaine Sibblies and Stacy Kalmanson, Co-Vice Chairs
14. **Liaison with:**
 - A. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau

- B. **Board of Legal Specialization and Education (BLSE)** – Michael C. Sasso, W. Theodore Conner, David M. Silberstein and Deborah L. Russell
 - C. **Clerks of Circuit Court** – Laird A. Lile
 - D. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland Chip Waller
 - E. **Florida Bankers Association** – Stewart Andrew Marshall, III, and Mark Thomas Middlebrook
 - F. **Judiciary** – Judge Jack St. Arnold, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Celeste H. Muir, Judge Robert Pleus, Judge Lawrence A. Schwartz, Judge Richard Suarez, Judge Morris Silberman, Judge Patricia V. Thomas and Judge Walter L. Schafer, Jr.
 - G. **Out of State Members** – Michael P. Stafford and John E. Fitzgerald, Jr.
 - H. **The Florida Bar** – Gwynne A. Young
 - I. **TFB Board of Governors** – Andrew Sasso
 - J. **TFB Business Law Section** – Marsha G. Rydberg
 - K. **TFB CLE Committee** – Robert Freedman
 - L. **TFB Council of Sections** – Wm. Fletcher Belcher and Margaret A. Rolando
- 15. **Long-Range Planning** – Margaret A. Rolando, Chair
 - 16. **Meetings Planning** – George Meyer, Chair
 - 17. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner and William Parady, Co-Vice Chairs
 - 18. **Membership, Diversity and Law School Liaison** – Michael A. Bedke, Chair; Lynwood T. Arnold, Jr., Co-Vice Chair (Diversity); Stacy Kalmanson, Co-Vice Chair (Law Schools), Phillip A. Baumann, Co-Vice Chair (Special Projects), Navin Pasem, Co-Vice Chair (Diversity); Benjamin B. Bush, Frederick R. Dudley, Jason M. Ellison, Brenda B. Ezell, Jennifer Jones and Mary Karr, Law School Liaisons.
 - 19. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
 - 20. **Pro Bono** – Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs
 - 21. **Professionalism and Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miller, Co-Vice Chairs
 - 22. **Publications:**
 - A. **ActionLine** – Silvia Rojas, Chair; Scott P. Pence, Shari Ben Moussa and Navin Pasem, Co-Vice Chairs (Real Property); Amber Jade Johnson, George Karibjanian and Hung V. Nguyen, Co-Vice Chairs (Probate & Trust)
 - B. **Florida Bar Journal** - Kristen M. Lynch, Co-Chair (Probate & Trust); David Brittain, Co-Chair (Real Property)

23. **Sponsor Coordination** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Aniella Gonzalez, J. Michael Swaine, Adele I. Stone, Marilyn M. Polson, and W. Cary Wright, Co-Vice Chairs
24. **Strategic Planning** – Margaret A. Rolando, Chair

XIV. Probate and Trust Law Division Committee Reports — *Michael A. Dribin, Director*

1. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
2. **Ad Hoc Committee on Treatment of Life Insurance Payable to Revocable Trust** – Richard R. Gans, Chair
3. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Sean W. Kelley and Charles F. Robinson, Co-Vice Chairs
4. **Ad Hoc Study Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
5. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** – William T. Hennessey III, Chair
6. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair
7. **Asset Protection** – Brian C. Sparks, Chair; Marsha G. Madorsky, Vice-Chair
8. **Attorney/Trust Officer Liaison Conference** – Jack A. Falk, Jr., Chair; Mary Biggs Knauer, Corporate Fiduciary Chair; Patrick Lannon, Deborah Russell and Laura Sundberg, Co-Vice Chairs
9. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
10. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
11. **Guardianship and Power of Attorney** – Sean W. Kelley, Chair; Seth A. Marmor, Tattiana Brenes-Stahl, Cynthia Fallon and David Brennan, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** – Linda Suzanne Griffin and L. Howard Payne, Co-Chairs; Anne Buzby-Walt and Lester Law, Co-Vice Chairs

13. **Liaisons with Elder Law Section** – Charles F. Robinson, Marjorie Wolasky and Sam W. Boone, Jr.
14. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks, Donald R. Tescher and Harris L. Bonnette, Jr.
15. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
16. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi, J. Richard Caskey and Jerry Wells, Co-Vice Chairs
17. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; John C. Moran, Paul Roman and James George, Co-Vice Chairs
18. **Trust Law** – Shane Kelley, Chair; Angela M. Adams and Tami F. Conetta, Co-Vice Chairs
19. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Laura Sundberg and Jerome L. Wolf, Co-Vice Chairs

XV. [Real Property Law Division Reports](#) — *Michael J. Gelfand, Director*

1. **Ad Hoc Foreclosure Reform** – Jerry Aron, Chair; Mark Brown, Burt Bruton, Alan Fields, and Jeffrey Sauer, Co-Vice Chairs.
2. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Jim Robbins, Co-Vice Chairs.
3. **Condominium and Planned Development** – Steven H. Mezer, Chair; Jane Cornett and Christopher Davies, Co-Vice-Chairs.
4. **Construction Law** – Arnold D. Tritt, Chair; Lisa Colon Heron, Scott Pence and Hardy Roberts, Co-Vice Chairs.
5. **Construction Law Certification Review Course** – Lee Weintraub, Chair; Bruce Alexander, Deborah Mastin and Bryan Rendzio, and Co-Vice Chairs.
6. **Construction Law Institute** – W. Cary Wright, Chair; Reese Henderson and Sanjay Kurian, Co-Vice Chairs.
7. **Development & Green Building** – Anne Pollack, Chair; Arlene Udick and Vinette Godelia, Co-Vice Chairs.
8. **Landlord and Tenant** – Neil Shoter, Chair; Rick Eckhard and Lloyd Granet, Co-Vice Chairs.

9. **Legal Opinions** – Kip Thornton, Chair; Dan DeCubellis, Vice-Chair.
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields, James C. Russick and Barry Scholnick, Co-Vice Chairs.
11. **Property & Liability Insurance/Suretyship** – W. Cary Wright and Fred Dudley, Co-Chairs.
12. **Real Estate Certification Review Course** – Ted Conner, Chair; Raul Ballaga and Jennifer Tobin, Co-Vice Chairs.
13. **Real Estate Entities and Land Trusts** – Wilhelmina Kightlinger, Chair; Burt Bruton, Vice-Chair.
14. **Real Property Finance & Lending** – Dave R. Brittain, Chair; Deborah Boyd, Brenda Ezell and Bill Sklar, Co-Vice Chairs.
15. **Real Property Forms** – Homer Duval, III, Chair; Arthur J. Menor and Silvia Rojas, Co-Vice Chairs.
16. **Real Property Litigation** – Marty Awerbach, Chair; Manny Farach and Susan Spurgeon, Co-Vice Chairs.
17. **Real Property Problems Study** – S. Katherine Frazier, Chair; Mark A. Brown, Patricia J. Hancock and Salome Zikakis, Co-Vice Chairs.
18. **Residential Real Estate and Industry Liaison** – Frederick W. Jones, Chair; Denise Hutson, Vice Chair.
19. **Title Insurance and Title Insurance Liaison** – Kristopher Fernandez, Chair; Raul Ballaga and Dan DeCubellis, Co-Vice Chairs.
20. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Patricia P. Jones and Karla J. Staker, Co-Vice Chairs.

XVI. [Adjourn](#)

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

EXECUTIVE COUNCIL MEETING

**Saturday, February 9, 2013
First District Court of Appeal, Tallahassee, Florida**

I. Call to Order – William Fletcher Belcher, Chair.

The meeting was held at the First District Court of Appeal in Courtroom 1 in Tallahassee, Florida. Mr. William Fletcher Belcher called the Executive Council meeting to order at 10:17am.

II. Attendance – Deborah Packer Goodall, Secretary.

Deborah Goodall reminded members that the attendance roster was circulating to be initialed by Council members in attendance at the meeting.

[Secretary's Note: The roster showing members in attendance is attached as Addendum A.]

III. Minutes of Previous Meeting – Deborah Packer Goodall, Secretary.

Ms. Goodall moved:

To approve the Minutes of the Executive Council Meeting occurring on Saturday November 17, 2012, at the Lioncrest Veranda at the Biltmore Estate, Asheville, North Carolina appearing at page 1 of the Agenda Materials ¹.

The Motion was approved unanimously.

IV. Chair's Report – William Fletcher Belcher, Chair

Mr. Belcher expressed his gratitude to Yvonne Sherron for her hard work in organizing this entire meeting in her hometown.

Mr. Belcher thanked and introduced Stephen M. Nevels, the Marshal at the First District Court of Appeal. Mr. Nevels welcomed our group and provided some insight into the building materials of the Courthouse. He advised that the Courthouse has received Gold LEEDS level (and that it almost made platinum status).

¹ References in these minutes to Agenda pages are to the Executive Council Meeting Agenda posted at www.RPPTL.org.

Mr. Belcher introduced our four law students that are in attendance this morning: Jessica Baker, 3L - FSU, Ashley Duz, 3L at FSU, David Glickman, 1L at FSU, and Michelle Adams, 3L at FSU. Mr. Belcher acknowledged the participation of these law students as well as many others who were present at the committee meetings and round tables. He welcomed them, thanked them for their interest and encouraged them to stay involved in the Section.

Mr. Belcher announced that there is a get well card circulating as well as note cards for people who want to send well wishes to Pam Price. He expressed that even while recovering, she has been responding to emails regarding the Land Trust Legislation.

Mr. Belcher thanked the Florida Bar Foundation and U.S. Trust, our sponsors for the Executive Council lunch that will be served back at the Hotel Duval after our meeting today. There was not a representative present from the Florida Bar Foundation. On behalf of U.S. Trust, Stacey Cole spoke briefly and introduced the other members of U.S. Trust in attendance.

Mr. Belcher also thanked our General Sponsors and the Friends of the Section. He noted that for the first time, the names of our sponsors along with the names of the sponsor representatives and contact information are included in our meeting handouts.

The following sponsors were recognized and thanked for their support:

Attorneys' Title Fund Services, LLC – Ted Conner
BMO Private Bank – Joan Kayser
Fidelity National Title Group – Pat Hancock
First American Title Insurance Company - Alan McCall/Deborah Boyd
JP Morgan – Carlos Battle
Management Planning, Inc. – Roy Meyers and Joe Gitto
Old Republic National Title Insurance Company – Jim Russick
Regions Private Wealth Management – Margaret Palmer
SRR – Garry Marshall
The Florida Bar Foundation – Jane Curran
U.S. Trust – Stacey Cole
Wells Fargo Private Bank – Mark Middlebrook/George Lange/Alex Hamrick
Wright Private Asset Management, LLC – Diane Timpany

The following Friends of the Section were recognized and thanked for their support:

Business Valuation Analysts, LLC – Tim Bronza
Guardian Trust – Ashley Gonnelli
iBeria Wealth Advisors – Hector Sikes (new since last meeting)
Simplifile – Pat Sponem

Mr. Belcher introduced Bill Haley's children in attendance, Meg, PJ, and Jimbo Haley and Ms. Goodall read the resolution unanimously adopted by the Executive Council at the September 15, 2012. A framed version of the resolution was presented to the family. After the resolution was read, there was a standing ovation in honor of Bill Haley.

Mr. Belcher announced the upcoming meetings and events for the annual Convention to be held over Memorial Day weekend at the Vinoy in St. Pete. The Thursday night event will include a visit to the Chihuly exhibit located close to the Vinoy. Mr. Belcher announced that the Saturday night event will include a Yankees/Rays baseball game. The registration for the Saturday event will be earlier than the general registration for the Convention so Mr. Belcher urged those interested in going to the baseball game to sign up early and to make the hotel reservations to include Saturday night.

Mr. Belcher discussed the newly formed Ad Hoc Leadership Academy Study Committee to make recommendations regarding our Section's involvement with the Florida Bar Leadership Academy. Mr. Belcher has appointed Peggy Rolando as the chair of the Committee. Serving on the committee are Mike Dribin, Mike Gelfand, Tae Bronner, Bob Swaine, and Dan DeCubellis.

Mr. Belcher introduced Ms. Rolando to further discuss the Leadership Academy Study Committee. Ms. Rolando announced that the committee had already met by telephone and she proposed, in lieu of the motion included in the agenda, a substitute motion to add that the nomination by the Section was open to all members of the Section's Executive Council and all active, contributing members of a Section committee. Ms. Rolando also discussed that an earlier version of the Leadership Academy proposal from the Florida Bar had contained a provision requiring a nominee to have been in practice for a period of 3 – 15 years. That qualification was subsequently removed from the Florida Bar guidelines and Ms. Rolando proposed removing the requirement from the Ad Hoc Leadership Academy Study Committee Motion. The substituted motion was distributed.

Ms. Rolando provided some background on the initiative. The Florida Bar has seen a decrease in the interest level in participation of the various committees at the Florida Bar level and Gene Pettis, President Elect of the Florida Bar, has proposed a program entitled a Leadership Academy that would be comprised of 40 fellows – 20 from the northern part of the state comprised of areas covered by the 1st, 2nd and 5th DCAs and 20 from the southern part of the state comprised of the areas covered by the 3rd and 4th DCAs. The Florida Bar will pay all overhead and operating costs of the Leadership Academy. There will be 20 scholarships available on a need basis. Each Section is being encouraged to offer scholarships to Section members if they are accepted as fellows. The applications will be available on March 1, 2013. The deadline for submission is April 1, 2013. The fellows will meet 6 times per year starting with the Florida Bar Convention to be held in June of 2013. There will be 3 meetings per year that will be statewide meeting for all participants. The other 3 meetings will be geographically located so that it will be less disruptive to the participants as they will not have to travel as far. The sessions will run from Friday at noon until Saturday at noon and will include educational classes (the proposed curriculum is located in the Agenda), networking, fellowship and dinner. The fellows are not selected by the Florida Bar Board of Governors but rather by a separate Leadership Academy selection committee.

Ms. Rolando described the proposed structure of a new General Standing Committee of the Section comprised of 7 members – a chair, 3 members from the Probate Division and 3 members from the Real Property Division. The Committee will be tasked with reviewing the applications in a procedure very similar to what we do for our own Fellows. The Committee

would be authorized to select from the pool of applicants up to 2 members of our Executive Council or active contributing members of a Section Committee, to be eligible to be reimbursed up to \$3,500 per applicant if the applicant is ultimately accepted into the Leadership Academy.

Ms. Rolando introduced Andy Sasso, our Liaison from the Board of Governors to further discuss the Leadership Academy. Mr. Sasso complemented Ms. Rolando on her detailed report. Mr. Sasso reported on the Leadership Academy that was, in fact, approved by the Board of Governor's at its meeting last week. Mr. Sasso added that the Florida Bar had studied programs developed in other states and adopted a program that the Board of Governors believes to be a compilation of the best of the various programs.

He reported that the mission of the Academy is to enhance the skills of a diverse and inclusive group of lawyers selected from across the state that will enable them to become effective leaders throughout the Bar, our profession and the greater community.

He further reported that the Goals of the Academy include:

- To enhance leadership skills of a diverse and inclusive group of lawyers;
- To identify, nurture and inspire effective leadership within the Bar and the legal community;
- To enhance the diversity of leaders within the Bar;
- To build relationships among the Bar leaders across disciplines within the profession; and
- To raise the level of awareness and engagement among lawyers regarding issues facing the legal profession through the study of ethics, professional and public service issues.

Mr. Sasso offered to answer any questions about the Academy and encouraged the Section to support the initiative. Mr. Sasso reported that he believes this is an important program and he encouraged our section to participate. The program is a one year program.

Ms. Rolando clarified that we are not obligated to support any applicant unless the applicant is selected by our Section's General Standing selection committee. Also, at the end of the first year, assuming that there are participants from our section, we will have an evaluation of the Leadership Academy based on feedback from the participants and from the Executive Committee.

Ms. Rolando moved the substituted motion of the Ad Hoc Leadership Academy Study Committee:

To approve the Section's participation in The Florida Bar's Leadership Academy for the Bar year beginning July 1, 2013, subject to the following terms and conditions:

- That all members of the Section's Executive Council or active, contributing members of a Section committee are eligible to apply for nomination by the Section to the Leadership Academy;
- That the Executive Committee will appoint a 7 person General Standing Committee entitled the Leadership Academy Committee, consisting of a chair, 3 representatives from the Probate and Trust Law Division and 3 representatives from the Real Property Law Division, to oversee the Section's participation in the Leadership Academy and to select the applicants to be the Section's nominee(s) to the Leadership Academy;
- That the Section will nominate up to 2 members of the Executive Council or active, contributing members of a Section committee selected by a Leadership Academy Committee to attend the Leadership Academy;
- That in the event the Section's nominee(s) are chosen by The Florida Bar's selection committee to attend the Leadership Academy, the Section will reimburse each such participant up to the sum of \$3,500 for out of pocket travel and hotel expenses incurred in attending the Leadership Academy; and
- That the Section's continued participation in the Leadership Academy after the initial Bar year of participation is subject to satisfactory evaluation of the effectiveness of the program by the Section-sponsored participants and the Executive Committee.

To find that participation in the Leadership Academy is within the purview of the Section; and to authorize the expenditure of funds for the purposes described above.

After discussion, Ruth Kinsolving moved:

To amend to add an additional provision to include a commitment of the participant to remain active in the Section if the participant receives financial support from the Section.

The motion to amend was accepted by Ms. Rolando and the following provision was added.

- That the Section nominee(s), if chosen and if reimbursed from Section funds, will be advised that he or she is expected to remain actively involved in the Section after the conclusion of the Leadership Academy.

Ms. Rolando moved to approve the substituted motion, as amended:

To approve the Section's participation in The Florida Bar's Leadership Academy for the Bar year beginning July 1, 2013, subject to the following terms and conditions:

- That all members of the Section’s Executive Council or active, contributing members of a Section committee are eligible to apply for nomination by the Section to the Leadership Academy;
- That the Executive Committee will appoint a 7 person General Standing Committee entitled the Leadership Academy Committee, consisting of a chair, 3 representatives from the Probate and Trust Law Division and 3 representatives from the Real Property Law Division, to oversee the Section’s participation in the Leadership Academy and to select the applicants to be the Section’s nominee(s) to the Leadership Academy;
- That the Section will nominate up to 2 members of the Executive Council or active, contributing members of a Section committee selected by a Leadership Academy Committee to attend the Leadership Academy;
- That in the event the Section’s nominee(s) are chosen by The Florida Bar’s selection committee to attend the Leadership Academy, the Section will reimburse each such participant up to the sum of \$3,500 for out of pocket travel and hotel expenses incurred in attending the Leadership Academy;
- That the Section nominee(s), if chosen and if reimbursed from Section funds, will be advised that he or she is expected to remain actively involved in the Section after the conclusion of the Leadership Academy; and
- That the Section’s continued participation in the Leadership Academy after the initial Bar year of participation is subject to satisfactory evaluation of the effectiveness of the program by the Section-sponsored participants and the Executive Committee.

To find that participation in the Leadership Academy is within the purview of the Section; and to authorize the expenditure of funds for the purposes described above.

After additional discussion, the Motion Passed Unanimously.

V. Executive Committee Report – William Fletcher Belcher, Chair

Mr. Belcher reported that there were four actions taken by the executive committee since the Asheville meeting.

1. Two actions were taken pursuant to a delegation of authority conferred by the Executive Council to the Executive Committee at the Asheville meeting.
 - a. Approved (by vote of more than two-thirds of its members) the proposal of the Condominium & Planned Development Committee (Steven H. Mezer, Chair) to adopt a legislative position supporting technical corrections to the Florida Vacation Plan and Timesharing Act by amending §§ 721.81, 721.84, 721.855, and 721.856 to change the

existing process for non-judicial foreclosure of timeshare interests and to find that the position is within the purview of the Section. See pages 72-91 of the Agenda Materials.

b. Approved (by vote of more than two-thirds of its members) the proposal of the Membership, Diversity and Law School Liaison Committee (Michael A. Bedke, Chair) to establish non pro-ratable annual dues of \$20.00 for affiliate Section members who are law students enrolled in an accredited Florida law school.

2. Two actions were taken after determining that the matter required action before the next meeting of the Executive Council

a. Approved (by vote of more than two-thirds of its members) the proposals of the Power of Attorney Committee (Tami Conetta, Chair) to adopt a legislative position supporting technical corrections to the Florida Power of Attorney Act by amending §§ 709.2102, 709.2103, 709.2105, 709.2106, 709.2114, 709.2116, 709.2119, 709.2120, 709.2121, 709.2202, 709.2207, and 709.2208; find that the position is within the purview of the Section; and approve the expenditure of Section funds to advocate for the position. See pages 92-110 of the Agenda Materials. Mr. Belcher reported that Ms. Conetta will further report on this matter later today.

b. Approved (by vote of more than two-thirds of its members) the proposals of Elaine Bucher, Chair of the Estate and Trust Tax Planning Committee, to support the amendment of §198.13(4) by deleting the last sentence of that subsection which currently provides that “The provisions of this subsection do not apply to estates of decedent’s dying after December 31, 2012.” so that the filing of Florida estate tax returns will not be unnecessarily required; find that the position is within the purview of the Section; and approve the expenditure of Section funds to advocate for the position. See pages 111-113 of the Agenda Materials. Mr. Belcher reported that this will be reported on in further detail later today.

VI. Chair-Elect's Report – Margaret Rolando, Chair-Elect.

Ms. Rolando reviewed the meeting schedule including the many activities that have been suggested for the Lisbon meeting. The schedule of future meetings is listed in the Agenda Materials beginning at page 28.

VII. Liaison with Board of Governors Report – Andy Sasso, Board of Governors Liaison.

In addition to his prior report on the Leadership Academy, Mr. Sasso reported on two additional items – the new advertising rules and modification to chapter 5 on trust accounts.

Mr. Sasso reported that last week (January 31) the Supreme Court adopted new rules regarding lawyer advertising which will become effective on May 1, 2013. Mr. Sasso reported on the major changes. The new advertising rules will apply to all forms of written and electronic communications – including websites and social networking and video sharing sites in addition

to other media such as television ads, print ads, and radio ads. Under the new rules, ads may contain past results if they are objectively verifiable and testimonials will be allowed with certain restrictions. The new rules require that filings of all advertising of any type (with certain enumerated exceptions) must be filed 20 days before they are mailed or published. Mr. Sasso encouraged everyone to read the new rules as well as the Supreme Court opinion including the interesting dissents.

Mr. Sasso also reported that the Chair sent a letter to the Florida Bar about a month ago proposing some changes to Chapter 5 of the Rules Regulating the Florida Bar dealing with trust accountings. The Disciplinary Procedure Committee (the DPC), of which Mr. Sasso is a member, met last week but the committee did not have time to address the issue. Mr. Sasso indicated that many of the changes recommended by the Chair in his letter are similar to the rules adopted by the ABA. In the past, the DPC has been mindful of the ABA rules and the DPC has already received a report from the Florida Bar auditor on how the ABA rules differ from the current Florida Bar rules. Mr. Sasso reported that the matter is under study by the DPC and that the chair of the DPC had sent a letter to Mr. Belcher that he likely had not yet received.

Mr. Belcher thanked Mr. Sasso for his dedication and his preparation for all of our meetings. Mr. Sasso received a round of applause from the Executive Council.

Mr. Belcher announced and welcomed a very special guest – Mr. Ken Burke. Mr. Burke is clerk of court for Pinellas County and recent past president of the Florida Association of Court Clerks and Comptrollers. He has been appointed as a liaison to our Section. Mr. Belcher advised that Mr. Burke is a CPA by training and was formerly a manager of a law firm in Pinellas County.

Mr. Burke stated that he was glad to be at our meeting. First, he complimented Peter Dunbar on his hard work for our Section with the Florida Legislature. He thanked Mr. Belcher and Laird Lile for their leadership and facilitating the liaison positions. He noted that Mr. Lile is our Section's Liaison to the Clerks of Court and the Clerks felt it would be beneficial to have a Liaison from the Clerks to our Section. He has been in attendance at our meetings since Thursday and he noted that the goal of his being here as a liaison is to solve problems before they become big problems. He has already met with some attorneys on some specific concerns dealing with access to probate court filings and some issues involved with what documents are recorded pursuant to the Guardianship statutes. Mr. Burke asked our Section members to report to him if we are aware of information available on one clerk's website that is particularly useful so that it can be shared with other clerks. He thanked Mr. Belcher and the members of the Section for our hospitality and advises that he looks forward to continuing our work together.

VIII. President's Report – *Gwynne Young, President of the Florida Bar*

No report.

IX. Treasurer's Report – *Andrew O'Malley, Treasurer.*

Mr. Andrew O'Malley reported that the financial summary through December is located in the Agenda Materials beginning on page 29. Mr. O'Malley reported that we are about where we expected to be midway through the fiscal year both in terms of revenue and expenses. Mr. O'Malley reported that almost \$90,000 of our revenue is attributable to sponsorship so he asked the members to please thank our sponsors. Mr. O'Malley thanked Kristen Lynch, chair of the Sponsorship Committee, who Ms. Rolando reported is not present at this meeting because she has the flu.

Mr. O'Malley also reported that almost \$100,000 of revenue has come from CLE programs and he thanked Rob Freedman and the CLE committee for their hard work. Mr. O'Malley noted that the bulk of our CLE programs are yet to come. He also noted that Mr. Freedman will be reporting later this morning on some cost cuts that may save us tens of thousands of dollars.

X. At Large Members' Report - Debra Boje, At Large Members' Director.

Ms. Debra Boje reported on the work of the At Large Members and the continued efforts to reach out to the general Section members. She reported once the new advertising rules are posted on our website, the ALMs will do an e-blast to spread the word that the report is available.

The ALMs will be sending invitations to the local Section members to come to the Convention and attend our committee meetings and our CLE. Ms. Boje asked the committee chairs to attempt to post the agendas to the website as early as possible (hopefully at least 10 days before the Convention) so that those Section members that are visiting will have a better idea of what the committees are doing.

Ms. Boje reported that the ALMS are continuing to work closely with the Membership, Diversity and Law School Liaison Committee. As previously reported, we had 14 to 16 law students that attended various events this weekend and the ALMs were paired with the law students to welcome them and accompany them to committee meetings that interested the law students. Ms. Boje reported that they intend to have a similar procedure at the Convention.

Ms. Boje reported that the ALMs are helping with advertising for CLEs by sending local e-blasts to attorneys in the area including the upcoming ADR seminar. Ms. Boje also stated that the ALMs stand by ready to help other committees for example by sending e-blasts, or providing a source for information on what is happening in other regions.

XI. Real Property Law Division – Michael J. Gelfand, Real Property Law Division

Before introducing Michael Gelfand, Mr. Belcher thanked the Real Property Division Committee Sponsors:

Attorneys' Title Fund Services, LLC - Commercial Real Estate Committee

First American Title Insurance Company - Condominium & Planned Development Committee

Mr. Belcher introduced Mr. Gelfand. Mr. Gelfand thanked Fred Jones for coordinating the meeting with the Haley family.

Action Items.

1. Condominium & Planned Development Committee — Steven H. Mezer, Chair

Mr. Steven Mezer discussed the need to amend the legislation regarding estoppel letters. The proposal as well as additional information and the white paper can be found on pages 114-121 of the Agenda Materials. Mr. Mezer reported that the proposal establishes the time for which condominium and homeowners' associations would have to respond to requests for estoppel, the duration for which the estoppel letter would be good, the content to be contained in the estoppel letters and the fees to be charged and the scheduling for updates and related items for the estoppel.

There was discussion regarding consistency of this proposed legislation with existing Federal Legislation dealing with transfer fees (see v on page 118 of the Agenda Materials) and Mr. Mezer reported that if a transfer fee is charged, it must be disclosed which is consistent with the Federal Legislation.

Mr. Mezer moved:

To adopt as a proposed legislative position supporting amendments concerning estoppel letters issued by condominium and homeowners' associations, including amendments to s. 718.116 and 720.30851, F.S.; to find that the position is in the Section's purview; and to expend funds in support of the position.

The motion passed unanimously.

2. Condominium & Planned Development Committee — Steven H. Mezer, Chair

Mr. Mezer introduced the next issue concerning late fees. The proposal as well as additional information and the white paper can be found on pages 122 – 126 in the Agenda Materials.

Mr. Mezer moved:

To adopt as a proposed legislative position supporting removal of statutory requirements that existing statutory late fees be stated in a condominium or a homeowners' association declaration or bylaws, including amendments to 718.116 and 720.3085 F.S.; to find that the position is in the Section's purview; and to expend funds in support of the position.

The Motion was approved unanimously.

3. Condominium & Planned Development Committee — Steven H. Mezer, Chair

Mr. Mezer reviewed the last action item. He reported that the all three of these action items had been approved unanimously by the committee and the first two action items also passed unanimously at the Real Property Roundtable. This proposal had one vote in opposition at the Roundtable. Mr. Mezer noted that the committee would like to sort out portions of the condominium act that apply only to residential condominiums and those that apply to nonresidential condominiums. The proposal as well as additional information and the white paper can be found on pages 127 – 152 of the Agenda Materials.

Mr. Mezer moved:

To adopt as a proposed legislative position supporting the differentiation of statutory regulations for non-residential condominiums, including amendments to Chapter 718, F.S.; to find that the position is in the Section’s purview; and to expend funds in support of the position.

The Motion was approved unanimously.

Information Item:

1. Condominium & Planned Development Committee — Steven H. Mezer, Chair

Mr. Gelfand reported that this information item was already discussed in the Chair’s report.

Pursuant to delegation from Executive Council to Executive Committee with authority to act, the Executive Committee’s approval of: Condominium & Planned Development Committee’s (Steven H. Mezer, Chair) proposal to adopt a legislative position supporting technical corrections to the Florida Vacation Plan and Timesharing Act by amending §§ 721.81, 721.84, 721.855, and 721.856 to change the existing process for non-judicial foreclosure of timeshare interests, and to find that the position is within the purview of the Section. See pages 72-91 of the Agenda Materials.

2. Landlord and Tenant Committee — Neil Shoter, Chair

Mr. Gelfand reported that Mr. Shoter was under the weather and unable to attend; however, Mr. Gelfand encouraged the attendees to review the issue reported in the Agenda Materials at pages 153 – 162. The matter concerns a potential flaw in the form used for residential landlord tenant agreements regarding enforcement of early termination fees. Mr. Gelfand advised caution in utilizing early termination fees in the event the clause or the lease may be unenforceable.

3. Residential Real Estate and Industry Liaison — Frederick W. Jones, Chair

Mr. Jones reported that the Florida Realtor-Attorney Joint Committee has a rotating body with 11 attorneys and 11 realtors comprising the membership. The 11 attorneys are appointed by the Board of Governors for a 2 year term. Mr. Jones thanked the lawyers that had served on the committee including Brenda Ezell from Jacksonville, Kris Fernandez from Tampa and Arlene Udick from The Villages. In December, the following 5 lawyers were appointed to two year terms: Kerry Ann Schultz of Pensacola, Mercedes Gonzales Hale of North Tampa, Thomas D. Wright of Marathon, Gary Nagle of Boca Raton and G. Thomas Ball of Orlando.

Mr. Jones also reported that the FAR BAR contract has been revised again and there will be a 2013 revised version presented between now and the May meeting. Mr. Jones expects this to be an action item at the Convention in May.

Mr. Gelfand also thanked Denise Hutson for her service on the Florida Realtor-Attorney Joint Committee.

XII. Probate and Trust Law Division – *Michael A. Dribin, Probate and Trust Law Division Director.*

Before introducing Michael Dribin, Mr. Belcher thanked the Probate Division Committee Sponsors:

BNY Mellon - IRA, Insurance Employee Benefits Committee and Probate Law Committee

Business Valuation Analysts, LLC – Trust Law Committee

Coral Gables Trust – Probate and Trust Litigation Committee

Guardian Trust – Guardianship and Power of Attorney Committee

Key Private Bank – Asset Protection Committee

Management Planning Inc - Estate and Trust Tax Planning Committee

Northern Trust – Trust Law Committee

Sable Trust - Estate and Trust Tax Planning Committee

Mr. Dribin introduced several information items.

Information Items:

1. Former Power of Attorney Committee (acting as ad hoc POA “glitch” committee)
— Tami Conetta, Chair

Ms. Conetta reported on the changes to the Power of Attorney Act contained in the glitch bill and described in the Agenda Materials on pages 92 – 110. This item was also discussed in the Chair’s report earlier today. Ms. Conetta gave an overview of the glitch bill and described some of the changes including:

Clarification of the ability to require that the original durable power of attorney can be required to be recorded in a real estate transaction;

Enumeration of various documents that are excepted out of Chapter 709 including stock powers and powers and delegation given to agents of trustees under Chapter 736;

Clarification regarding the ability of agents to delegate authority to third persons (for example delegation to attorneys or CPAs including certain governmental forms including an IRS Power of Attorney Form 2848, DMV car title paperwork, etc); and

Clarification of the definition of financial institution to specifically include broker/dealers.

Ms. Conetta thanked everyone involved including the Florida Bankers and our Legislative Consultants for the help in getting this into the Legislative hopper this session.

2. Wills, Trusts and Estates Certification Review Course Committee — Richard R. Gans, Chair

Rick Gans reported that the seminar will be held April 5th and Mr. Gans reported that the CLE course is helpful even to those not taking the exam. Report on dates, topics and speakers for 2013 Course can be found at page 168 of the Agenda Materials.

3, Estate and Trust Tax Planning – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs

Tasha Pepper-Dickinson reported on the legislative fix Mr. Belcher previously mentioned in the Executive Committee report. The information is included in the Agenda Materials on pages 111-113.

Subsection 198.13(4) of the Florida Statutes currently provides that with respect to the estate of a decedent who dies after December 31, 2004, if, upon the death of the decedent, a state death tax credit or generation- skipping transfer credit is not allowable pursuant to the Internal Revenue Code, (a) the personal representative of the estate is not required to file a Florida estate tax return in connection with the estate, and (b) the person who would otherwise be required to file a return reporting a generation-skipping transfer is not required to file such a return in connection with the estate.

However, Subsection 198.13(4) of the Florida Statutes further provides that the foregoing provision does not apply to estates of decedents dying after December 31, 2012.

The provisions of the Internal Revenue Code eliminating the state death tax credit and state generation-skipping transfer tax credit had been scheduled to sunset on December 31, 2012. However, as a result of the passage of The American Taxpayer Relief Act of 2012, the state death tax credit and state generation-skipping transfer tax credit were permanently eliminated and replaced with a federal estate tax deduction for state death taxes. Accordingly, the committee determined that the language of Subsection 198.13(4) of the Florida Statutes indicating that subsection (4) does not apply to estates of decedents dying after December 31, 2012 should be removed so that the filing of Florida estate tax returns will not be unnecessarily required.

XIII. General Standing Division – *Margaret "Peggy" Rolando, Director and Chair-Elect.*

Ms. Rolando introduced the following:

Action Items:

1. Budget Committee — Andrew M. O'Malley, Chair.

Mr. O'Malley introduced the action item and reminded the Executive Council that this topic had been introduced back at the Key Biscayne meeting in September.

Mr. O'Malley moved:

To approve an increase in Section annual dues from \$50.00 to \$60.00, effective July 1, 2013.

There was extensive discussion both for and against the dues increase. Those in favor of the dues increase spoke to the fact that our section provides many valuable services to our members for the price of the dues and that the increase is warranted. Other advocates of the dues increase spoke to the need for a balanced budget and that we should not be approving a budget that shows a deficit. Those that were opposed to the dues increase discussed the burden that the increase would to practitioners – especially those in small firms.

In the course of the extensive dialogue on the topic of the dues increase, and in order to present a full picture of the Budget Committee motions, Mr. O'Malley discussed the second Budget Committee action item to be considered today. Mr. O'Malley explained that this action item that isn't in the agenda materials because the opportunity to consider this motion only recently surfaced because of some changes in the personnel of the Florida Bar budget office but that the Budget Committee thought it important to consider because it could have a positive impact on our Section budget and it should be considered in the context of the dues increase.

Mr. O'Malley reported that the Budget Committee thinks this may be the right time to approach the Florida Bar to request an adjustment of how the Florida Bar assesses its overhead to certain Section revenue and expenses. Mr. O'Malley explained that this will not be the first time that the Section has tried to approach the Florida Bar on this topic. It has been reported that the time may be right for the Florida Bar to reconsider this request.

Mr. O'Malley reported that Mr. Belcher had made some inquiry and there may be some receptivity at the Florida Bar level for the Section to make this request for an adjustment.

Mr. Belcher added that the Florida Bar looks at our expenses as a base for assessing overhead and the essence of this motion is to ask the Florida Bar to basically protect and make "tax free" our sponsorship revenue and the expenses that we pay to our Legislative Consultants. In other words and to oversimplify, Mr. Belcher explained that we, as the RPPTL Section, will ask the Florida Bar to reconsider how the "taxes" are levied such that we can protect sponsorship money and Legislative Consultant Expenses so that there will be no "tax" allocated to these items. We would seek to have sponsorship revenue and Legislative Consultant expenses netted out of the total RPPTL expenses before the "tax" is applied.

Mr. Belcher reminded that this is ultimately a Florida Bar and Board of Governor decision that we cannot control but we believe the time might be right to ask for the policy to be reconsidered.

Mr. Gelfand reiterated that we will be asking the bar not to tax us with administrative expenses on certain items that we do not think should be taxed.

Mr. Gelfand (and others) spoke to issue of dues increases as well.

Upon the conclusion of the discussion, the first motion was repeated:

To approve an increase in Section annual dues from \$50.00 to \$60.00, effective July 1, 2013.

The motion was approved by vote of more than two-thirds of the members present.

2. **Budget Committee – Andrew M. O'Malley, Chair**

Next, on behalf of the Budget Committee, Mr. O'Malley moved:

That the RPPTL Section requests the Florida Bar to amend its existing policies to protect:

(1) CLE Sponsorship Revenue

(2) Section Sponsorship Revenue and

(3) Section Expenses for Legislative Consultants

from all allocations and assessments related to, directly or indirectly, expenses incurred by the Florida Bar and to delegate to the Section's Executive Committee the authority to negotiate the details of such amended policies.

The motion was approved unanimously.

3. Member Communications and Information Technology Committee — Nicole Kibert, Chair

Nicole Kibert reported that this is a follow up report to the previous report given at Key Biscayne relating to the responses to the RFP for the redesign of our new website. Ms. Kibert advised that there are two proposed agreements included in the Agenda Materials. The first agreement is with Blueflame Consulting, Inc. (Blueflame) for the development of our new website and is included in the Agenda Materials on pages 169-191. The second agreement is with First Step Internet, L.L.C. (First Step) for interim website hosting and maintenance of our existing website during the interim period until the new website is ready to go live and is included in the Agenda Materials on pages 192 – 194.

Ms. Kibert reported that the goal will be to have a very easy interface so that the substantive committee chairs or the technology delegates from each committee will be able to upload materials directly to the new website in order to save on the cost of maintaining our new website. She reported that currently our section spends about \$45,000 per year on website maintenance and the committee hopes that after the initial outlay, our future expenditures will be about \$10,000 - \$15,000 per year.

Ms. Kibert reported that the new site will allow for uploads of video and will allow committees to have blogs if desired. The new contract will allow 4 hours per month of assistance and if more time is needed, additional blocks of time can be purchased.

There was discussion regarding the size of the company and the expected turnaround time for response to inquiries. Ms. Kibert advised that Blueflame is a Tampa based company with about 10 – 12 designers. She also reported that the Blueflame has a good track record and had been recommended to her by other attorneys in Tampa that had used the company. She reported that it wasn't until after Blueflame had responded to the RFP and that the committee had selected them as the first choice that she learned that George Meyer was friends with the owner of Blueflame. As stated in the Agenda Materials, Mr. Meyer has recused himself from participation in this matter. Ms. Kibert also reported that both contracts include commitments to quick turnaround time (within 24 hours on normal business days) to respond to requests for assistance or postings. She reminded that the goal will be for less required assistance from the company because it should be as easy as using email for committees to update information on the website. If we exceed our 4 hour allocation, we will be billed for the additional time.

Ms. Rolando advised that there are still some ongoing negotiations with Blueflame and requested that the motion be amended to include that the Executive Council approve the form of a contract with a Not to Exceed amount of \$43,000 subject to Executive Committee approval of several schedules including the payments, performance, and insurance requirements.

Ms. Rolando also advised that Ms. Kibert was able to negotiate a good contract for our ongoing maintenance with First Step – the company that currently maintains our server and our listserv. The contract is for \$750 per month for up to 10 hours per month of service and is intended to stay in place during the interim period while our new website is being built. After the new website is live, we will have 4 hours per month free and if we need additional time, we

can buy it from Blueflame or from First Step with the idea that we will have a reliable system with a back-up and built in response times in order to address concerns expressed by many committee chairs and council members in the past.

Ms. Rolando moved:

To approve: (1) Website Development Agreement with Blueflame Consulting, Inc. for the design and development of a new website for RPPTL.org; and (2) expenditure of Section funds for the purposes set forth in the Agreement not to exceed \$43,000 and subject to the Executive Committee approval of the payment and performance schedule and the insurance schedule..

The Motion was approved unanimously.

Mr. Gelfand asked that this decision be kept confidential until the negotiations are completed and the vendors can be notified through the proper channels.

Next, Ms. Rolando moved:

To approve: (1) interim Website Hosting and Maintenance Agreement for RPPTL.org with First Step Internet, L.L.C. for the hosting and maintenance of the existing website for RPPTL.org and the Section's listserves; and (2) expenditure of Section funds for the purposes set forth in the Agreement.

The Motion approved unanimously.

Ms. Rolando congratulated and thanked Ms. Kibert, Scott Pence and the members of the committee for their hard work.

Information Items:

1. Ad Hoc Trust Account Committee — Roland “Chip” Waller, Chair; Jerry Aron, Alan Fields, Michael Gelfand and Bill Sklar, Subcommittee members; and Professionalism and Ethics Committee — Lee Weintraub, Chair

Jerry Aron and Lynwood Arnold reported on the status of the proposed Ethics Opinion 2012-4. Mr. Aron explained the background of this issue that began with legislation passed during the last legislative session that requires real estate lawyers holding funds from real estate transactions to keep those funds separate from other trust account funds. As a result of that statute, there were a number of questions regarding how that would work in practice. Because this issue concerns the duty of confidentiality under the rules regulating the Florida Bar, the Florida Bar Professional Ethics Committee (PEC) is involved and has appointed a subcommittee to review the issue. Mr. Aron reported that Lynwood Arnold serves on the PEC and also serves on the PEC subcommittee dealing with the issue. Mr. Arnold has been the liaison to our Section with regard to this issue. The PEC subcommittee has drafted a proposed Ethics Opinion included in the Agenda Materials at pages 195 – 199.

The Section continued to have some difficulty with the proposal and at a meeting of the PEC in West Palm Beach in January, Mr. Gelfand, Mr. Aron and Mr. Arnold appeared to express concerns about the proposal as written because it currently requires a separate trust account for each title insurance underwriter unless the attorney receives informed consent from the client. Also present at the meeting were title insurance company representatives Ted Conner and Jim Russick who spoke against the proposal as written. Mr. Aron reported that the subcommittee suggestion did not pass and it is expected to be addressed at the next PEC meeting in June. Mr. Aron indicated that the Section is working on a proposal to present to the PEC in the hopes that the Section's concerns will be addressed.

Mr. Arnold added that he was the dissenting vote on the subcommittee regarding the proposal that went before the entire PEC. Mr. Arnold believes that if the Section representatives had not been present at the January meeting, the subcommittee proposal would have passed. Mr. Arnold also thanked Alan Fields for his written comments. Mr. Arnold requested feedback from anyone in the Section.

Ms. Rolando thanked Mr. Arnold, Mr. Aron and Mr. Gelfand for their continuing efforts.

2. Ad Hoc Trust Account Committee — Roland “Chip” Waller, Chair

No oral report but see the Agenda Materials at pages 200-215 which includes a copy of the letter from the Section to The Florida Bar recommending the adoption of Model ABA Rules for client trust account records including safeguards when non-lawyers sign trust account checks.

3. Amicus Coordination — Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs

(Secretary's Note: This matter was heard out of order and immediately after the Leadership Academy discussion to accommodate Bob Goldman's travel schedule as he has been in Tallahassee all week for the Supreme Court oral arguments in the 2 cases reported below.)

Mr. Goldman reported on the 2 oral arguments held this week in cases where the section had filed amicus briefs.

A. The first case discussed was the *North Carillon, LLC* case (the developer escrow account case). Mr. Goldman stated that he does not know how the case will be decided, but that it did seem that by the end of the argument, the Court was convinced that the old law was not clear and the Court may decide that the 2010 clarification retroactively applied statute was OK; however, Mr. Goldman stated that the Court may decide that jurisdiction was improvidently granted or the Court may decide that the developer needs only one account but separate accountings and either of those rulings would allow the court to decide the case without hitting the issue on whether there is a statute of limitations on clarifying amendments to existing law. Mr. Goldman reported that the oral arguments can be viewed online and invited anyone interested to view and see where the Court is headed.

B. Mr. Goldman also reported on the second case of *Aldrich v. Basile*. This case involved an E-Z will form with no residuary clause. The will listed with specificity the property that was to be devised. After creating the will, the testator inherited substantial assets and never changed her will. The trial court and the First DCA (originally) ruled that there must be some way to interpret the law to create a residuary clause; however the First DCA changed its own mind and held that the assets not devised would pass by intestacy. Mr. Goldman believes that the Supreme Court will likely affirm the First DCA.

4. Membership, Diversity and Law School Liaison Committee — Michael A. Bedke, Chair

Lynwood Arnold gave a follow up to Mr. Belcher's report on the law student initiation. He reported that there had been a great meeting at FSU about a week ago with 16 students in attendance and 8 of those present signed up to become affiliate law school members. Approximately 10 other law school members have enrolled in the affiliate program from other law schools. The committee is attempting to schedule events at each law school in the state. Mr. Arnold reported on some upcoming meet and greet events.

Tara Rao reported that the Hillsborough County Bar Association annual diversity networking event will be held on Saturday, February 16th from 1 – 4 pm. There will be a panel on Diversity Initiatives and we will have a booth at the event. Anyone interested in attending and sitting in the booth should contact Ms. Rao.

Jason Ellison reported on the March 14th meet and greet in the Tampa Club which will be held from 6 – 8 pm. He reported that they expect a good turnout from Stetson law students and he encouraged all in the Tampa Bay vicinity to attend.

5. Pro Bono Committee — Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs

Tasha Dickinson reported on the Section's receipt of a request from Florida's Children First, Inc. asking our members to register on the organization's new website to volunteer for pro bono legal work for children and families. Additional information is available at www.f4cf.org.

Ms. Dickinson also reported that Pro Bono Committee has created a survey that hopefully will be sent out in the next couple of weeks. The survey is designed to help the Pro Bono Committee and the Executive Committee decide what the Pro Bono Committee should be to the Section.

6. Sponsor Coordination — Kristen Lynch, Chair

In the absence of Kristen Lynch, Mr. Belcher announced during his Chair's report that iBERIA Wealth Advisors has become a Friend of the Section, Attorneys' Title Fund Services, LLC, an existing General Sponsor of the Section, has also become a committee sponsor for the Commercial Real Estate Committee, BMO Private Bank (f/k/a Harris Bank), an existing General Sponsor, has upgraded its sponsorship from the Thursday lunch to co-sponsoring the Probate and Trust Law Division Roundtable and Wright Private Asset Management, LLC has become the General Sponsor of the Hospitality Suite.

XIV. General Standing Committee Reports – Margaret “Peggy” Rolando, Director and Chair-Elect

1. **Ad Hoc LLC Monitoring** – Lauren Y. Detzel and Ed Burt Bruton, Co-Chairs

Burt Bruton reported that the Business Law Section has completed the draft LLC legislation. Mr. Bruton reported that although the NCCUSL LLC Legislation did not include statutory authority provisions for transactions involving real estate, the Florida committee listened to the concerns expressed by the Real Property division and kept the existing provisions for authority to transfer real estate therefore it will be very easy to check to verify that the person signing for the LLC has the authority to act. Mr. Bruton also reported that the stand alone legislation that had been passed several years ago to deal with the ability of the creditor to reach the LLC interest by something other than a charging order has been retained in the new act. The proposed act also contains the same provisions for mergers and conversions of LLCs. Mr. Bruton reported that the proposed act also contains safe harbor provisions for when an LLC is doing business in the state. Mr. Bruton indicated that the proposed act was a very fine work product and he hoped that it comes out of bill drafting in substantially the same form. The committee will review the bill when it comes back. Mr. Bruton indicated that the Business Law Section would like our stamp of approval and Mr. Bruton reported that when the final bill is ready to go to the legislature, if there is time, he would like to see our Section consider doing so.

2. **Ad Hoc Trust Account** – Roland “Chip” Waller, Chair

No report.

3. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs

No report.

4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs

No further report.

5. **Budget** – Andrew M. O’Malley, Chair; Pamela O. Price and Daniel L. DeCubellis, Co-Vice Chairs

No further report.

6. **CLE Seminar Coordination** – Robert Freedman, Chair; Laura Sundberg and Sarah Butters, Co-Vice Chairs (Probate & Trust); Brian Leebrick and Jennifer Tobin, Co-Vice Chairs (Real Property).

Robert Freedman reported on the upcoming CLE programs and the money saving change to discontinue printing the colored inserts to the Florida Bar Journal that we have been advised will save the Section \$9,500 - \$10,000 per program. Mr. Freedman reported on a recent E-CLE program on Money Laundering that is available for download and certain information from the speakers has been provided to be posted on the public and private side of the website for free. The schedule for CLE programs is found on page 233 of the Agenda Materials. Mr. Freedman highlighted some upcoming programs including the certification review courses, an E-CLE on beneficiary designations, and a program on E-filing. In conjunction with the condo law program in Orlando on April 5th, there will be a 2 hour standalone ethics CLE program on attorneys' fees. For those attending the condo law seminar, the fee includes attendance at this program. For others, the ethics program will be separately priced at \$75. There has been one change to the schedule in the Agenda Materials – Real Property Litigation has been moved to the fall.

7. **Convention Coordination (2013)** – S. Katherine Frazier, Chair; Angela Adams, Tae Bronner and Debra Boje, Co-Vice Chairs

Ms. Frazier says that she looks forward to seeing anyone at the Convention.

8. **Fellows and Mentoring** – Marsha G. Madorsky, Co-Chair (Fellowship), Guy Emerich, Co-Chair (Mentoring); Brenda Ezell and Sharaine Sibbles, Co-Vice Chairs.

No report.

9. **Florida Electronic Filing & Service** – Patricia P. Jones, Rohan Kelley and Laird A. Lile, Co-Chairs

Mr. Rohan Kelley reported that electronic service is here now and electronic filing will be here on April 1st.

10. **Homestead Issues Study** – Shane Kelley, Co-Chair (Probate & Trust); Deborah Boyd, Co-Chair (Real Property)

Deb Boyd reported that there were not enough members in attendance to have a meeting because of flight delays but that they did hold a working group discussion. Ms. Boyd reported that there had been an agreement, in concept, to some type of super power that could be granted to a trustee of a trust to permit the sale of homestead property if the power is contained in the document. There is still ongoing discussion of when, how and if creditor protection would apply.

11. **Legislation** – Barry F. Spivey, Co-Chair (Probate & Trust), Robert Swaine, Co-Chair (Real Property); William T. Hennessey, III, Co-Vice Chair (Probate &

Trust), Alan Fields, Co-Vice Chair (Real Property); Susan K. Spurgeon and Michael A. Bedke, Legislative Reporters

Barry Spivey reported on various legislative provisions that are pending including the POA glitch bill and an all-inclusive estates bill that includes everything the the trust law committee, the probate law committee and the ad hoc committee on jurisdiction passed this year. There are a couple of guardianship bills and a hold over matter from last year regarding disposition of human remains that has been introduced by the Death Care Coalition. Tae Bronner has provided comments and we are monitoring it although it is not our bill.

Bob Swaine reported that the real estate bills are all in the hopper and the turnaround time for responses and comments to inquiries is about to become much shorter so please answer quickly when asked. Mr. Swaine also encouraged committees that anticipate having any proposed legislation for next year to have that legislation substantially completed by the Convention so that other committees will have time to comment or review as needed so that we can be as well positioned next year as we were this year.

12. **Legislative Update (2013)** –Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Sharaine Sibblies and Stacy Kalmanson, Co-Vice Chairs

No report.

13. **Liaison with:**

- A. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau

Ed Koren reported that he had worked on a compilation on the estate tax bill. The ABA Spring Meeting will be in Washington DC May 2 – 3, 2013. Mr. Koren announced that all of the substantive committees are now meeting monthly at lunchtime via conference call so he encouraged people to join the section and become involved with the committees as travel to the in person meetings is not the only way to be involved.

- B. **Board of Legal Specialization and Education (BLSE)** – Michael C. Sasso, W. Theodore Conner, David M. Silberstein and Deborah L. Russell

No report.

- C. **Clerks of Circuit Court** – Laird A. Lile

No further report.

- D. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland Chip Waller

No report.

- E. **Florida Bankers Association** – Stewart Andrew Marshall, III, and Mark Thomas Middlebrook

No report.

- F. **Judiciary** – Judge Jack St. Arnold, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Celeste H. Muir, Judge Robert Pleus, Judge Lawrence A. Schwartz, Judge Richard Suarez, Judge Morris Silberman, Judge Patricia V. Thomas and Judge Walter L. Schafer, Jr.

No report.

- G. **Out of State Members** – Michael P. Stafford and John E. Fitzgerald, Jr.

No report.

- H. **The Florida Bar** – Gwynne A. Young

No report.

- I. **TFB Board of Governors** – Andrew Sasso

No further report.

- J. **TFB Business Law Section** – Marsha G. Rydberg

Ms. Rydberg reported that Mr. Bruton had covered her report.

- K. **TFB CLE Committee** – Robert Freedman

No further report.

- L. **TFB Council of Sections** – Wm. Fletcher Belcher and Margaret A. Rolando

No report.

14. **Long-Range Planning** – Margaret A. Rolando, Chair

Ms. Rolando reported that there will be a meeting of the long range planning committee at Shutts & Bowen in Tampa on March 4, 2013. Lunch will be served.

15. **Meetings Planning** – George Meyer, Chair

No report.

16. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner and William Parady, Co-Vice Chairs

No further report.

17. **Membership, Diversity and Law School Liaison** – Michael A. Bedke, Chair; Lynwood T. Arnold, Jr., Co-Vice Chair (Diversity); Stacy Kalmanson, Co-Vice Chair (Law Schools), Phillip A. Baumann, Co-Vice Chair (Special Projects), Navin Pasem, Co-Vice Chair (Diversity); Benjamin B. Bush, Frederick R. Dudley, Jason M. Ellison, Brenda B. Ezell, Jennifer Jones and Mary Karr, Law School Liaisons.

No further report.

18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs

No report.

19. **Pro Bono** – Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs.

No further report.

20. **Professionalism and Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miller, Co-Vice Chairs.

Larry Miller reported that the committee website has been updated to include a database of the probate and estate planning related ethics opinions along with hot links to the rules and cases. To access the database, log in the RPPTL website and go to the committee website. The committee will be moving on to real property related opinions next. Mr. Miller requested that members contact him with any suggestions for the committee.

21. **Publications:**

- A. **ActionLine** – Silvia Rojas, Chair; Scott P. Pence, Shari Ben Moussa and Navin Pasem, Co-Vice Chairs (Real Property); Amber Jade Johnson, George Karibjanian and Hung V. Nguyen, Co-Vice Chairs (Probate & Trust)

Silvia Rojas reported that the new Actionline will be coming out on March 15th. She thanked all of the authors and all of the editors. Ms. Rojas suggested that each substantive committee appoint a liaison to Actionline.

Ms. Rolando thanked Ms. Rojas for her hard work on Actionline.

- B. **Florida Bar Journal** - Kristen M. Lynch, Co-Chair (Probate & Trust); David Brittain, Co-Chair (Real Property)

David Brittain reported that there is a back log of exceptionally high quality articles through the June/July issue and he thanked the authors.

22. **Sponsor Coordination** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Aniella Gonzalez, J. Michael Swaine, Adele I. Stone, Marilyn M. Polson, and W. Cary Wright, Co-Vice Chairs

No report.

23. **Strategic Planning** – Margaret A. Rolando, Chair

No report.

XV. Probate and Trust Law Division Committee Reports– *Michael A. Dribin – Director*

1. **Ad Hoc Committee on Creditors’ Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
2. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
3. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Sean W. Kelley and Charles F. Robinson, Co-Vice Chairs
4. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair
5. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair
6. **Asset Protection** – Brian C. Sparks, Chair; Marsha G. Madorsky, Vice-Chair

7. **Attorney/Trust Officer Liaison Conference** – Jack A. Falk, Jr., Chair; Mary Biggs Knauer, Corporate Fiduciary Chair; Patrick Lannon, Deborah Russell and Laura Sundberg, Co-Vice Chairs
8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
9. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
10. **Guardianship and Power of Attorney** – Sean W. Kelley, Chair; Seth A. Marmor, Tattiana Brenes-Stahl, Cynthia Fallon and David Brennan, Co-Vice Chairs
11. **IRA, Insurance and Employee Benefits** – Linda Suzanne Griffin and L. Howard Payne, Co-Chairs; Anne Buzby-Walt and Lester Law, Co-Vice Chairs
12. **Liaisons with Elder Law Section** – Charles F. Robinson, Marjorie Wolasky and Sam W. Boone, Jr.
13. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks, Donald R. Tescher and Harris L. Bonnette, Jr.
14. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
15. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi, J. Richard Caskey and Jerry Wells, Co-Vice Chairs
16. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; John C. Moran, Paul Roman and James George, Co-Vice Chairs
17. **Trust Law** – Shane Kelley, Chair; Angela M. Adams and Tami F. Conetta, Co-Vice Chairs
18. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Laura Sundberg and Jerome L. Wolf, Co-Vice Chairs

XVI. Real Property Division Committee Reports - Michael J. Gelfand, Director.

1. **Ad Hoc Foreclosure Reform** – Jerry Aron, Chair; Mark Brown, Burt Bruton, Alan Fields, and Jeffrey Sauer, Co-Vice Chairs.

Mr. Jerry Aron reported on the status of the bill that is currently moving in the House of Representatives. He reminded that this bill is truly a compromise bill - the lenders' attorneys are not completely happy and the borrowers' lawyers are not completely happy – which some say is the sign of true compromise bill.

The bill deals with issues concerning the proving up the promissory note, reducing the time for a deficiency judgment, fixing some issues on the order to show cause provisions and dealing with the finality of foreclosure lawsuits.

Mr. Gelfand reminded that this has been a Section priority item for the past 5 – 10 years and to ensure due process rights are retained for the citizens of the state. Mr. Gelfand encouraged anyone with questions, to please contact him or Mr. Aron.

2. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Jim Robbins, Co-Vice Chairs.
3. **Condominium and Planned Development** – Steven H. Mezer, Chair; Jane Cornett and Christopher Davies, Co-Vice-Chairs.
4. **Construction Law** – Arnold D. Tritt, Chair; Lisa Colon Heron, Scott Pence and Hardy Roberts, Co-Vice Chairs.
5. **Construction Law Certification Review Course** – Lee Weintraub, Chair; Bruce Alexander, Deborah Mastin and Bryan Rendzio, and Co-Vice Chairs.
6. **Construction Law Institute** – W. Cary Wright, Chair; Reese Henderson, Sanjay Kurian and Rachel Peterkin, Co-Vice Chairs.
7. **Governmental Regulation** – Anne Pollack, Chair; Arlene Udick and Vinette Godelia, Co-Vice Chairs.
8. **Landlord and Tenant** – Neil Shoter, Chair; Rick Eckhard and Lloyd Granet, Co-Vice Chairs.
9. **Legal Opinions** – Kip Thornton, Chair; Dan DeCubellis, Vice-Chair.
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields, James C. Russick and Barry Scholnick, Co-Vice Chairs.
11. **Property & Liability Insurance/Suretyship** – W. Cary Wright and Fred Dudley, Co-Chairs.
12. **Real Estate Certification Review Course** – Ted Conner, Chair; Raul Ballaga and Jennifer Tobin, Co-Vice Chairs.
13. **Real Estate Entities and Land Trusts** – Wilhelmina Kightlinger, Chair; Burt Bruton, Vice-Chair.
14. **Real Property Finance & Lending** – Dave R. Brittain, Chair; Deborah Boyd, Brenda Ezell and Bill Sklar, Co-Vice Chairs.

15. **Real Property Forms** – Homer Duval, III, Chair; Arthur J. Menor and Silvia Rojas, Co-Vice Chairs.
16. **Real Property Litigation** – Marty Awerbach, Chair; Manny Farach and Susan Spurgeon, Co-Vice Chairs.
17. **Real Property Problems Study** – S. Katherine Frazier, Chair; Mark A. Brown, Patricia J. Hancock and Salome Zikakis, Co-Vice Chairs.

Katherine Frazier reported that the committee will be conducting a review of the witness requirements on non-testamentary real property transactional documents taking into account many issues including evolving technology. The subcommittee will be chaired by Wayne Sobien and Jim Russick. Ms. Frazier invited input from a broad cross section of lawyers including title company lawyers, litigators, or transactional lawyers.

18. **Residential Real Estate and Industry Liaison** – Frederick W. Jones, Chair; William J. Haley and Denise Hutson, Co-Vice Chairs.
19. **Title Insurance and Title Insurance Liaison** – Kristopher Fernandez, Chair; Raul Ballaga and Dan DeCubellis, Co-Vice Chairs.
20. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Patricia P. Jones and Karla J. Staker, Co-Vice Chairs.

XVII. Adjournment -- Mr. Belcher thanked those in attendance for remaining until the end and especially thanked our sponsors. Mr. Belcher reviewed the plans for tonight's dinner.

There being no further business to come before the Executive Council, the meeting was unanimously adjourned at 1:08 pm.

Respectfully submitted,

Deborah P. Goodall, Secretary

ADDENDUM A

ATTENDANCE ROSTER

FEBRUARY 9, 2013

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2012-2013

Executive Committee	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Belcher, William F., Chair		√	X	X	X	X	
Rolando, Margaret A., Chair-Elect	√		X	X	X	X	
Gelfand, Michael J., Real Property Law Div. Director	√		X	X	X	X	
Dribin, Michael A., Probate and Trust Law Div. Director		√	X	X	X	X	
Goodall, Deborah P., Secretary		√	X	X	X	X	
O'Malley, Andrew M., Treasurer	√		X	X	X	X	
Spivey, Barry F., Legislation Co-Chair		√	X	X	X	X	
Swaine, Robert S., Legislation Co-Chair	√		X	X		X	
Freedman, Robert S., Seminar Coordinator	√		X	X	X	X	
Boje, Debra L., Director of At-Large Members		√	X	X	X	X	
Meyer, George F., Immediate Past Chair	√		X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Adams, Angela M.		√	X	X	X		
Adcock, Jr., Louie N., Past Chair		√					
Akins, David J.		√	X	X		X	
Alexander, Bruce G.	√						
Altman, Robert N.		√				X	
Altman, Stuart H.		√	X	X	X		

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Arnold, Jr., Lynwood F.	√			X		X	
Aron Jerry E. Past Chair	√		X	X	X	X	
Awerbach, Martin S.	√		X	X		X	
Bald, Kimberly A.	√		X			X	
Ballaga, Raul P.	√		X			X	
Banister, John R.	√						
Battle, Carlos A.		√	X	X		X	
Baumann, Phillip A.		√		X	X		
Beales, III, Walter R. Past Chair	√						
Bedke, Michael A.	√		X				
Bell, Kenneth B.	√						
Ben Moussa, Shari D.	√		X	X			
Bonnette, Jr., Harris L.		√	X		X	X	
Boone, Jr., Sam W.		√					
Boyd, Deborah	√		X			X	
Brenes-Stahl, Tattiana P.		√	X	X		X	
Brennan, David C. Past Chair		√	X			X	
Brittain, David R.	√		X	X		X	
Bronner, Tae K.		√	X	X		X	
Brown, Mark A.	√		X	X	X		
Brunner, S. Dresden		√	X	X	X		
Bruton, Jr., Ed Burt	√		X	X	X	X	

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Bucher, Elaine M.		√	X			X	
Bush, Benjamin B.	√						
Butters, Sarah S.		√	X	X		X	
Buzby-Walt, Anne		√	X			X	
Carlisle, David R.		√	X	X			
Caskey, John R.		√	X	X			
Christiansen, Patrick T. Past Chair	√		X				
Conetta, Tami F.		√		X	X	X	
Conner, W. Theodore	√		X	X		X	
Cope, Jr., Gerald B.	√		X	X			
Cornett, Jane L.	√		X	X		X	
Davies, Christopher	√		X	X		X	
DeCubellis, Daniel L.	√		X	X	X		
Detzel, Lauren Y.		√	X	X	X	X	
Diamond, Benjamin F.		√	X		X		
Diamond, Sandra F. Past Chair		√	X	X	X		
Dollinger, Jeffrey	√		X			X	
Dudley, Frederick R.	√		X			X	
Duvall, III, Homer	√		X	X		X	
Eckhard, Rick	√		X				
Ellison, Jason M.	√		X	X	X	X	
Emerich, Guy S.		√	X	X		X	

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Ezell, Brenda B.	√		X	X		X	
Falk, Jr., Jack A.		√	X	X		X	
Fallon, Cynthia		√	X	X	X	X	
Farach, Manuel	√					X	
Felcoski, Brian J., Past Chair		√	X	X		X	
Fernandez, Kristopher E.	√		X	X		X	
Fields, Alan B.	√		X			X	
Fitzgerald, Jr., John E.		√		X		X	
Fleece, III, Joseph W.		√	X	X			
Flood, Gerard J.		√	X	X	X		
Foreman, Michael L.		√	X	X	X	X	
Frazier, S. Katherine	√		X	X	X	X	
Gans, Richard R.		√	X	X		X	
Gay, III, Robert Norwood	√		X	X		X	
George, James		√	X	X		X	
Godelia, Vinette D.	√		X			X	
Goethe, Jeffrey S.		√	X	X	X	X	
Goldman, Robert W. Past Chair		√	X			X	
Gonzalez, Aniella	√		X	X			
Graham, Robert M.	√		X	X	X	X	
Granet, Lloyd	√		X	X			
Griffin, Linda S.		√	X	X		X	

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Grimsley, John G. Past Chair		√			X	X	
Grossman, Honorable Melvin B.		√	X				
Guttman, III, Louis B. Past Chair	√		X		X		
Hamrick, Alexander H.		√	X	X	X	X	
Hancock, Patricia J.	√			X			
Hart, W.C.	√		X			X	
Hayes, Honorable Hugh D.		√	X	X			
Hayes, Michael Travis		√	X	X		X	
Hearn, Steven L. Past Chair		√	X			X	
Hearne, Frank L.	√						
Henderson, Jr., Reese J.	√			X			
Henderson, III, Thomas N.	√		X	X	X		
Hennessey, III, William T.		√	X	X		X	
Heron, Lisa Colon	√		X	X			
Heuston, Stephen P.		√	X	X			
Hutson, Denise L.	√		X	X		X	
Isom, Honorable Claudia R.		√					
Isphording, Roger O. Past Chair		√	X	X	X		
Johnson, Amber Jade F.		√	X	X	X	X	
Jones, Darby		√	X				
Jones, Frederick W.	√		X	X		X	
Jones, Jennifer W.		√	X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Jones, John Arthur Past Chair		√	X				
Jones, Patricia P.H.	√		X	X		X	
Judd, Robert B.		√	X	X			
Kalmanson, Stacy O.	√		X	X		X	
Karibjanian, George		√	X			X	
Karr, Mary		√	X	X			
Karr, Thomas M.		√	X	X		X	
Kayser, Joan B. Past Chair		√		X	X	X	
Kelley, Rohan Past Chair		√	X	X	X	X	
Kelley, Sean W.		√	X	X	X	X	
Kelley, Shane		√	X	X	X	X	
Kibert, Nicole C.	√		X			X	
Kightlinger, Wilhelmina F.	√		X	X			
King, Robin J.		√	X	X	X	X	
Kinsolving, Ruth Barnes Past Chair	√					X	
Koren, Edward F. Past Chair		√	X			X	
Korvick, Honorable Maria M.		√	X	X	X		
Kotler, Alan Stephen		√	X	X			
Kromash, Keith S.		√	X	X		X	
Kurian, Sanjay	√			X		X	
Kypreos, Theodore S.		√	X	X		X	
LaFemina, Rose		√					

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Lane, Jr., William R.		√	X	X			
Lange, George		√	X	X	X	X	
Lannon, Patrick J.		√	X	X			
Larson, Roger A.	√		X	X	X		
Laughlin, Honorable Lauren C.		√					
Law, Lester		√	X			X	
Leebrick, Brian D.	√		X		X		
Lile, Laird A. Past Chair		√		X	X		
Little, III, John W.	√		X				
Lucchi, Elisa F.		√					
Lynch, Kristen M.		√	X	X			
Madorsky, Marsha G.		√	X	X	X		
Marger, Bruce Past Chair		√		X			
Marmor, Seth A.		√		X		X	
Marshall, III, Stewart A.		√		X		X	
Mastin, Deborah Bovarnick	√		X	X			
McCall, Alan K.	√			X	X		
McElroy, IV, Robert Lee		√	X	X		X	
Menor, Arthur J.	√		X	X			
Mezer, Steven H.	√		X	X	X	X	
Middlebrook, Mark T.		√	X	X	X	X	
Miller, Lawrence J.		√	X	X		X	

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Moran, John C.		√	X	X	X	X	
Moule, Jr., Rex E.		√	X	X			
Muir, Honorable Celeste H.		√	X	X		X	
Murphy, Melissa J. Past Chair	√		X	X		X	
Nash, Charles I.		√	X	X		X	
Neukamm, John B. Past Chair	√		X	X		X	
Nguyen, Hung V.		√	X	X			
Norris, John E.	√						
Parady, William A.		√	X	X			
Pasem, Navin	√						
Payne, L. Howard		√	X		X	X	
Pence, Scott P.	√		X	X			
Pepper-Dickinson, Tasha K.		√	X			X	
Peterkin, Rachel	√						
Platt, William R.		√	X	X			
Pleus, Jr., Honorable Robert J.							
Pollack, Anne Q.	√		X	X	X		
Polson, Marilyn M.		√	X			X	
Pratt, David		√					
Price, Pamela O.		√	X	X			
Prince-Troutman, Stacey A.		√		X			
Pyle, Michael A.		√	X	X		X	

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Reddin, Michelle A.	√						
Renzio, Bryan	√			X		X	
Reynolds, Stephen H.	√		X			X	
Rieman, Alexandra V.		√	X	X			
Robbins, Jr., R.J.	√		X	X	X	X	
Roberts, III, Hardy L.	√		X		X		
Robinson, Charles F.		√	X	X	X	X	
Rojas, Silvia B.	√		X	X		X	
Roman, Paul E.		√		X		X	
Russell, Deborah L.		√	X	X	X		
Russick, James C.	√		X	X	X	X	
Rydberg, Marsha G.	√		X	X		X	
Sachs, Colleen C.	√					X	
Sasso, Andrew		√	X	X	X	X	
Sasso, Michael C.	√						
Sauer, Jeffrey T.	√		X			X	
Schafer, Jr., Honorable Walter L.		√					
Schnitker, Clay A.	√		X		X		
Schofield, Percy A.	√		X			X	
Scholnik, Barry A.	√						
Schwartz, Honorable Lawrence A.		√					
Schwartz, Robert M.	√		X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Scuderi, Jon		√	X	X		X	
Sheets, Sandra G.		√	X				
Shoter, Neil B.	√		X	X			
Sibblies, Sharaine A.		√		X	X		
Silberman, Honorable Morris							
Silberstein, David M.		√	X	X			
Sklar, William P.	√					X	
Smart, Christopher W.	√		X	X			
Smith, G. Thomas Past Chair	√		X		X	X	
Smith, Wilson Past Chair		√					
Sobien, Wayne J.	√		X	X			
Sparks, Brian C.		√	X	X		X	
Spurgeon, Susan K.	√		X	X		X	
St. Arnold, Honorable Jack R.		√					
Stafford, Michael P.		√	X	X	X	X	
Staker, Karla J.	√		X			X	
Stern, Robert G.	√		X	X			
Stone, Adele I.	√		X	X		X	
Stone, Bruce M. Past Chair		√					
Suarez, Honorable Richard J.							
Sundberg, Laura K.		√	X		X	X	
Swaine, Jack Michael Past Chair	√		X		X		

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Taft, Eleanor W.	√		X	X			
Taylor, Richard W.	√		X	X		X	
Tescher, Donald R.		√	X	X			
Thomas, Honorable Patricia V.		√	X		X	X	
Thornton, Kenneth E.	√		X	X	X		
Tobin, Jennifer S.	√		X	X	X		
Tritt, Jr., Arnold D.	√		X				
Udick, Arlene C.	√		X	X			
Virgil, Eric		√				X	
Waller, Roland D. Past Chair	√		X	X	X	X	
Weintraub, Lee A.	√		X	X	X	X	
Wells, Jerry B.		√	X	X	X	X	
White, Jr., Richard M.		√	X	X		X	
Whynot, Sancha B.		√	X	X			
Wilder, Charles D.		√	X	X	X		
Williamson, Julie Ann S. Past Chair	√			X			
Wohlust, Gary Charles		√	X		X	X	
Wolasky, Marjorie E.		√	X	X			
Wolf, Jerome L.		√	X			X	
Wright, William Cary	√		X		X	X	
Wright, Thomas D.	√			X			
Young, Gwynne A.			X		X		

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Zikakis, Salome J.	√		X	X		X	
Zschau, Julius J. Past Chair	√				X	X	

RPPTL Fellows	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Hoffman, Brian W.	√		X	X	X	X	
Khan, Nishad	√		X	X			
Melanson, Noelle M.		√	X	X		X	
Rao, Tara		√	X	X		X	

Legislative Consultants	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Adams, Howard Eugene			X				
Aubuchon, Josh	√		X	X			
Dunbar, Peter M.			X	X	X	X	
Edenfield, Martha			X		X	X	



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

Special Thanks to the

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Probate Roundtable

Fidelity National Title Group - Pat Hancock
Real Property Roundtable

First American Title Insurance Company - Alan McCall
Friday Night Dinner

JP Morgan - Carlos Batlle / Alyssa Feder
Thursday Night Reception

Management Planning, Inc. - Roy Meyers / Joe Gitto
Thursday Lunch

Old Republic National Title Insurance Company - Jim Russick
Thursday Night Reception

Regions Private Wealth Management - Margaret Palmer
Friday Night Dinner

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

The Florida Bar Foundation - Jane Curran
Saturday Lunch

U.S. Trust - Stacey Cole
Saturday Lunch

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

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Real Property, Probate & Trust Law Section**

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iBERIA Wealth Advisors - *Hector Sikes*

Nuview IRA, Inc. – *Glen Mathers*

Simplifile - *Pat Sponem*



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Real Property, Probate & Trust Law Section**

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IRA, Insurance & Employee Benefits Committee
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Probate Law & Procedure Committee

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Trust Law Committee

Coral Gables Trust – *John Harris*
Probate and Trust Litigation Committee

First American Title Insurance Company – *Alan McCall*
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Estate & Trust Tax Planning Committee

Northern Trust – *Brett Rees*
Trust Law Committee

Sabal Trust Company – *Susan Mittermayr / Ron Koepsel*
Estate & Trust Tax Planning Committee

February 12, 2013

Wm. Fletcher Belcher
540 Fourth Street North
St.Petersburg. FL 33701 2305

Dear Mr. Fletcher:

My children were delighted by the presentation of the Resolution honoring their father. It was an impressive meeting and I regret that I had a previous engagement and was not able to attend.

Please let the other members of the Executive Council of the Real Property Probate & Trust Law Section know how happy we are at your recognition of Bill Haley and his years of work.

He did love the law!

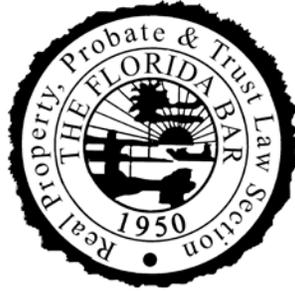
Regards,


Jo Haley

RPPTL 2013 - 2014
Executive Council Meeting Schedule

Peggy Rolando, Chair 2013-14

Date	Location
July 24 – 28, 2013	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 888-211-1669 www.thebreakers.com Room Rate: \$206.00 Cut-off Date: June 24, 2013
September 18 – 22, 2013	Executive Council Meeting/Out of State Four Seasons Hotel Ritz Lisbon Lisbon, Portugal Phone # 351 (21)381-1400 www.fourseasons.com/lisbon/ Room Rate: 245 Euros Cut-off Date: August 28, 2013
November 20 – 24, 2013	Executive Council Meeting Ritz Carlton Sarasota Sarasota, Florida Reservation Phone # 800-241-3333 http://www.ritzcarlton.com/sarasota Room Rate: \$205.00 Cut-off Date: October 21, 2013
February 6 – 9, 2014	Executive Council Meeting Ritz Carlton Amelia Island Amelia Island, Florida Reservation Phone # 800-241-3333 http://www.ritzcalton.com/amelia Room Rate: \$199.00 Cut-off Date: January 6, 2014
May 29 – June 1, 2014	Executive Council Meeting / RPPTL Convention South Seas Island Resort Captive, Florida http://www.southseas.com Reservation Phone # 877-597-9696 Room Rate \$165.00 Cut-off Date: May 7, 2014



RPPTL FINANCIAL SUMMARY

2012 – 2013 (July 1 - June 30¹)

Revenue: \$ 790,111

Expenses: \$ 738,008

Net:	\$ 52,103
------	-----------

Beginning Fund Balance (7-1-12)

\$ 843,909

YTD Fund Balance (5-1-13)

\$ 854,185

RPPTL CLE

RPPTL YTD Actual CLE Revenue
\$93,276

RPPTL Budgeted CLE Revenue
\$244,500

¹ This report is based on the **tentative unaudited** detail statement of operations dated 5/1/2013.



RPPTL Financial Summary from Separate Budgets
2012 – 2013 [July 1 - June 30¹]
YEAR TO DATE REPORT

General Budget

Revenue:	\$ 790,111
Expenses:	\$ 738,008
Net:	\$ 52,103

Legislative Update

Revenue:	\$ 52,541
Expenses:	\$ 95,036
Net:	(\$42,495)

Convention

Revenue:	\$ 6,075
Expenses:	\$ 5,464
Net:	\$ 611

Miscellaneous Section Service Courses

Revenue:	\$ 0
Expenses:	\$ 115
Net:	(\$115)

Roll-up Summary (Total)

Revenue:	\$ 848,787
Expenses:	\$ 838,511
Net Operations:	\$ 10,276

Reserve (Fund Balance):	\$ 843,909
GRAND TOTAL	\$ 854,185

¹ This report is based on the tentative unaudited detail statement of operations dated 5/1/2013.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Angela M. Adams, Chair, Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets of the Real Property, Probate and Trust Law Section

Address 540 Fourth Street, N., St. Petersburg, FL 33701
Telephone: (727) 821-1249, Email: amemadams@gmail.com

Position Type Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets of the RPPTL Section of The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

William T. Hennessey, Gunster, Yoakley & Stewart P.A., 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL, Telephone: (561) 650-0663, Email: whennessey@gunster.com

Michael A. Dribin, Harper Meyer, et al., 201 S. Biscayne Blvd., Suite 800, Miami, FL 33131-4329, Telephone: (305) 577-5415

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 N/A at this time

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

Meetings with

Legislators/staff N/A at this time

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A at this time

(Bill or PCB #)

(Bill or PCB Sponsor)

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

Proposed Wording of Position for Official Publication:

Support legislation that would amend §§733.607, 733.702, 733.705, and 733.707, Florida Statutes, and enact §733.6075, Florida Statutes, to create an orderly process for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when the decedent's probate estate and any revocable trust are insufficient to pay all enforceable claims.

Reasons For Proposed Advocacy:

Florida's Probate Code and Florida's Trust Code provide the framework for the orderly administration of decedents' probate and trust assets, including the identification, verification, and payment of creditors' claims. Under Florida's long-established probate system and public policy, distribution is made to a decedent's beneficiaries or heirs only after all expenses of administration, taxes, and the decedent's debts are paid.

However, this public policy is being thwarted in certain cases because of the increased popularity of "will substitutes" or non-probate transfers which allow a decedent's assets to pass by operation of law, outside of the probate process and the framework established for the payment of a decedent's debts. Specific examples of these "will substitutes" or non-probate transfers are: property registered as transfer-on-death, pay-on-death accounts, Totten Trust accounts (also known as tentative trusts, "in trust for," or "ITF" accounts), and assets held as joint tenants with right of survivorship. A decedent's interest in these non-probate assets passes at the decedent's death by operation of law to the named transferee or joint tenant, and is not part of the decedent's probate estate from which creditors are to be paid under the framework of Florida's probate system.

There is no doubt that during a person's life, his or her creditors can reach that person's interest in non-exempt, non-probate assets such as those described above. However, there is confusion and disagreement among practitioners and the public as to whether, after a debtor's death, the creditors of the now-deceased debtor (the decedent) can reach the decedent's interest in non-exempt, non-probate assets passing by operation of law. Even if a decedent's creditors can presently reach a decedent's interest in some non-exempt, non-probate assets, there are other problems under the existing situation, including the following:

1. Transferees of a decedent's non-exempt, non-probate assets inherit while creditors with enforceable claims are not paid if probate and revocable trust assets are insufficient.
2. Transferees of a decedent's non-exempt, non-probate assets are unaware of their potential liability to decedent's creditors.
3. Given that a personal representative owes duties to all interested persons, including unpaid creditors, does a personal representative of an insolvent estate who knows that the decedent had an interest in non-exempt, non-probate assets owe unpaid creditors a duty to collect these assets for the benefit of unpaid creditors? Does a personal representative who fails to advise unpaid creditors of such assets incur any liability?
4. As between creditors, (1) each is on its own to discover and pursue a decedent's interest in non-exempt, non-probate assets, creating a race among creditors to discover and recover from non-probate assets, and (2) creditors that should be in the same class will not be treated equally (e.g., a judgment creditor may pursue a non-probate transferee and be paid from the decedent's interest in that non-exempt, non-probate assets, while other judgment creditors go unpaid).
5. Non-probate transferees are treated unfairly as between each other. For example, one non-probate transferee may be pursued by a creditor and have to pay the decedent's debt while other non-probate transferees retain their benefits without any obligation of contribution.
6. The 3-month (§733.702) and 2-year (§733.710) non-claim statutes do not bar claims against the transferee of a decedent's interest in non-probate assets. Accordingly, creditors may pursue the transferees of the decedent's interest in non-exempt, non-probate assets, outside of probate and these time bars.

The proposed legislation addresses the above-described issues and inequities by establishing an orderly process for the payment of legitimate, enforceable creditors' claims from a decedent's interest in non-exempt, non-probate assets when the decedent's probate estate and any revocable trusts are insufficient to pay all creditors. The proposed procedure is similar to the existing procedure where a decedent's revocable trust must pay creditors when the probate estate is insufficient. See §§733.607, 733.707 and 736.05053, Florida Statutes.

1 A bill to be entitled

2
3 An act relating to the payment of creditors' claims from the non-exempt,
4 non-probate assets of a decedent; amending s. 733.607, F.S.; creating s.
5 733.6075, F.S. providing liability of transferees of decedent's non-probate
6 assets for enforceable claims; amending s. 733.702, F.S.; amending s.
7 733.705, F.S.; amending s. 733.707, F.S.; providing an effective date.
8

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

10
11 Section 1. Subsections (3), (4), and (5) are added to section 733.607, Florida
12 Statutes, to read:

13 733.607. Possession of estate.-- ~~{(c) " 733.607. Possession of estate. " (f D)~~

14 (1) Except as otherwise provided by a decedent's will, every personal
15 representative has a right to, and shall take possession or control of, the decedent's
16 property, except the protected homestead, but any real property or tangible personal
17 property may be left with, or surrendered to, the person presumptively entitled to it
18 unless possession of the property by the personal representative will be necessary for
19 purposes of administration. The request by a personal representative for delivery of
20 any property possessed by a beneficiary is conclusive evidence that the possession of
21 the property by the personal representative is necessary for the purposes of
22 administration, in any action against the beneficiary for possession of it. The personal
23 representative shall take all steps reasonably necessary for the management,
24 protection, and preservation of the estate until distribution and may maintain an action
25 to recover possession of property or to determine the title to it.

26 (2) If, after providing for statutory entitlements and all devises other than
27 residuary devises, the assets of the decedent's estate are insufficient to pay the
28 expenses of the administration and obligations of the decedent's estate, the personal
29 representative is entitled to payment from the trustee of a trust described in s.
30 733.707(3), in the amount the personal representative certifies in writing to be required
31 to satisfy the insufficiency.

32 (3) (a) At any time after the entry of an order appointing a personal
33 representative, the personal representative may file a notice stating that the personal
34 representative will not exercise the powers described in s. 733.6075.

35 (b) The notice shall, so far as is known by the personal representative at the
36 time the notice is served,:

37 1. State whether the assets of the estate and any trusts described in s.
38 733.707(3) are sufficient to pay the known enforceable claims of creditors or whether
39 that information is unknown,

40 2. State the aggregate value of all non-exempt, non-probate assets in which the
41 decedent had an interest at the time of death except those assets held in a trust
42 described in s. 733.707(3), and

43 3. Be served upon all interested persons, including unpaid creditors of the
44 decedent with enforceable claims and holders or transferees of decedent's non-exempt,
45 non-probate assets.

46 (c) The information required by this paragraph may be contained in the notice to
47 creditors or in a separate document.

48 (4) On or before 4 months from the date of first publication of the notice to
49 creditors, if the assets of the decedent's estate and all trusts described in s. 733.707(3)
50 are or may be insufficient to pay the enforceable claims of the decedent's estate, the
51 personal representative shall file a notice of insufficiency stating that the assets of the
52 decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to
53 pay the expenses of administration, obligations of the decedent's estate, and
54 enforceable claims of creditors.

55 (5)(a) If the assets of the decedent's estate and all trusts described in s.
56 733.707(3), are insufficient to pay the expenses of administration, obligations of the
57 decedent's estate, and enforceable claims of creditors, the personal representative or
58 creditor's representative is entitled to payment from the transferee of the decedent's
59 non-probate assets in the amount the personal representative or creditor representative
60 certifies in writing to be required to satisfy the insufficiency and shall pay from the
61 decedent's interest in non-probate assets the enforceable claims of creditors in the
62 order set forth below:

63 1. Class 1 - Reasonable funeral, interment, and grave marker expenses,
64 whether paid by a guardian, the personal representative, or any other person, not to
65 exceed the aggregate of \$6,000.

66 2. Class 2 - Debts and taxes with preference under federal law, and claims
67 pursuant to ss. 409.9101 and 414.28.

68 3. Class 3 - Reasonable and necessary medical and hospital expenses of the
69 last 60 days of the last illness of the decedent, including compensation of the persons
70 attending the decedent.

71 4. Class 4 - Arrearage from court-ordered child support.

72 5. Class 5 - All other claims, including those founded on judgments or decrees
73 rendered against the decedent during the decedent's lifetime, and any excess over the
74 sums allowed in paragraph (b).

75 (b) After paying any preceding class, if the decedent's interest in non-probate
76 assets is insufficient to pay all of the next succeeding class, the creditors of the latter
77 class shall be paid ratably in proportion to their respective claims.

78 Section 2. Section 733.6075, Florida Statutes, is created to read: 733.6075.
79 Liability of Non-probate Transferees for Enforceable Claims.--

80 (1) For purposes of this section and ss. 733.607, 733.702, 733.705, and
81 733.707, the term:

82 (a) "Creditor representative" means any person, including a creditor with an
83 enforceable claim, appointed by the court pursuant to s.733.6075(3). The creditor
84 representative is a fiduciary who owes fiduciary duties to all unpaid creditors with
85 enforceable claims.

86 (b) "Decedent's interest" means that portion of an asset, including the whole,
87 which the decedent had, immediately before death, the right to withdraw or use without
88 the consent of, or duty to account to any person.

89 (c) "Enforceable claim" means a claim of a creditor of the decedent which was
90 timely filed in the probate proceeding and would be paid from the assets of the
91 decedent's probate estate or a trust described in s. 733.707(3), if sufficient assets
92 existed to pay the claim in full. It does not include contingent claims.

93 (d) "Exempt property" means property or an interest in property that is exempt by
94 law from claims of creditors, including but not limited to:

- 95 1. Protected homestead as defined in the Florida Probate Code,
96 2. Exempt property as described in the Florida Probate Code ,
97 3. Property or accounts held in tenancy by the entirety,
98 4. Property exempt from the claims of creditors under Chapter 222, and
99 5. Property exempt from the claims of creditors under federal law.

100 (e) "Non-exempt property" means property that is not described in subsection (d),
101 above.

102 (f) "Non-probate asset" means the decedent's interest in non-exempt property,
103 other than real property, passing to a transferee by means other than by will, intestate
104 succession, or power of appointment which is only effective at death.

105 (g) "Non-probate transfer" means a valid transfer of a non-probate asset
106 effective at death, to the extent that the transferor immediately before death had power,
107 acting alone, to prevent the transfer by revocation, withdrawal, or otherwise, and instead
108 to use the property for the benefit of the transferor or apply it to discharge claims
109 against the transferor's probate estate.

110 (2) Except as otherwise provided by statute, a transferee of a non-probate
111 transfer is liable to the decedent's estate for the enforceable claims of creditors against
112 the decedent's estate to the extent the probate estate and all trusts described in
113 §733.707(3) are insufficient to satisfy those claims. The liability of a non-probate
114 transferee may not exceed the value of non-probate transfers received or controlled by
115 that transferee.

116 (3) In the event that the personal representative elects not to exercise the
117 powers under this section or is subsequently relieved of that duty, the court may appoint
118 any person, including a creditor with an enforceable claim, as a creditor representative
119 to exercise those powers in the name of the estate against the transferee of the
120 decedent's interest in those assets. A creditor representative may be appointed at any
121 time prior to the entry of an order of discharge. A creditor with an enforceable claim
122 that has not been paid in full and who has received notice that the assets of the

123 decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to
124 pay its enforceable claim(s), may:

125 (a) Use the discovery available under the probate rules to determine whether
126 the decedent had an interest at the time of death in any non-exempt, non-probate
127 assets, the nature of those assets, the value of the decedent's interest, and the name
128 and address of the non-probate transferees of each of those assets.

129 (b) Request and receive from the personal representative any information
130 concerning non-exempt, non-probate assets in which the decedent may have had an
131 interest, known to, or which in the course of administration of the estate becomes
132 known to, the personal representative, including the nature of the assets, the value at
133 the date of the decedent's death, the value of the decedent's interest, and the name and
134 address of the transferee.

135 (c) Object to discharge and may be given reasonable time to pursue the rights
136 and remedies under this section.

137 (4) The personal representative or, if the personal representative has filed the
138 notice that he or she will not exercise the powers under this section, the creditor
139 representative, shall make a diligent search to determine whether at the time of death,
140 the decedent had an interest in any non-probate assets. Impracticable and extended
141 searches are not required.

142 (a) If the personal representative or creditor representative, after diligent search,
143 fails to locate a non-probate asset as required by this section, the personal
144 representative or creditor representative is not liable to any person or entity for the
145 failure.

146 (b) If a non-probate asset exists but is not discovered during the administration of
147 the estate and creditors with enforceable claims against the decedent's estate were not
148 paid in full, those creditors are not precluded from reopening the estate and pursuing
149 the non-exempt assets, except as provided in s.733.702(1).

150 (5) All banks and financial institutions doing business in this state shall, upon the
151 presentation of a certified copy of letters of administration or order appointing creditor
152 representative, furnish the personal representative or creditor representative the
153 following information or documentation for all accounts in which the decedent had an

154 interest on the date of his or her death: account number, account title, copy of
155 signature card or other account opening documentation, account balance on the date of
156 decedent's death, and any information reasonably necessary to determine the
157 decedent's interest.

158 (6) A transferee of a decedent's non-probate asset shall pay to the personal
159 representative of the decedent's estate or the creditor representative any amounts that
160 the personal representative or creditor representative certifies in writing to the
161 transferee are required to pay the enforceable claims of the decedent's estate. If the
162 decedent had an interest at the time of death in more than one non-probate asset, the
163 personal representative or creditor representative is not required to seek pro-rata
164 payment from all transferees of the decedent's non-probate assets, and a transferee of
165 a decedent's non-probate asset who is required to pay all or any part of the decedent's
166 interest to the personal representative or creditor representative in excess of that
167 transferee's pro-rata share may seek contribution from other transferees of such assets.

168 (7) No expenses or obligations described in s. 733.707(1)(a), (e), and (g) shall be
169 paid from a decedent's non-probate assets except those expenses, including any costs
170 and attorney's fees, incurred in connection with obtaining payment from a transferee.

171 (8) In the event that the personal representative elects to exercise the powers
172 described in this section and is a transferee of a decedent's non-probate asset which is
173 recoverable under this section, the court may appoint an administrator ad litem to
174 represent the estate in a proceeding against the personal representative as transferee
175 of a decedent's non-probate asset.

176 (9) A personal representative or creditor representative may utilize procedures
177 under s.69.031 for non-probate assets and any other remedies available under law.

178 (10) The court shall award taxable costs as in chancery actions, including
179 attorney's fees, in all actions for the recovery of the value of the decedent's interest in
180 non-probate asset(s), and in actions by transferees to enforce contribution.

181 Section 3. Subsection (1) of Section 733.702, Florida Statutes, is amended to
182 read:

183

184 733.702. Limitations on presentation of claims.--

185 (1) If not barred by s. 733.710, no claim or demand against the decedent's estate
186 or against any of the decedent's non-probate assets that arose before the death of the
187 decedent, including claims of the state and any of its political subdivisions, even if the
188 claims are unmatured, contingent, or unliquidated; no claim for funeral or burial
189 expenses; no claim for personal property in the possession of the personal
190 representative; and no claim for damages, including, but not limited to, an action
191 founded on fraud or another wrongful act or omission of the decedent, is binding on the
192 estate, on the personal representative, or on any beneficiary or transferee of the
193 decedent's non-probate assets unless filed in the probate proceeding on or before the
194 later of the date that is 3 months after the time of the first publication of the notice to
195 creditors or, as to any creditor required to be served with a copy of the notice to
196 creditors, 30 days after the date of service on the creditor, even though the personal
197 representative has recognized the claim or demand by paying a part of it or interest on it
198 or otherwise. The personal representative may settle in full any claim without the
199 necessity of the claim being filed when the settlement has been approved by the
200 interested persons.

201 Section 4. Subsection (12) is added to Section 733.705, Florida Statutes, to
202 read:

203 733.705. Payment of and objection to claims.--

204 (12) Notwithstanding any other provision of this section, a transferee of the
205 decedent's non-probate asset shall have the right to assert any defense to liability as to
206 a claim against the decedent in an action to recover all or any portion of the decedent's
207 non-probate asset from the transferee without the filing of an objection to the claim in
208 the probate proceeding, and the creditor whose claim is challenged shall be joined as a
209 third party if that creditor is not otherwise a party. This subsection shall not apply to a
210 transferee of the decedent's non-probate asset who is also a beneficiary as defined in s.
211 731.201 as of the decedent's date of death.

212

213 Section 5. Subsection (4) is added to Section 733.707, Florida Statutes, to read:
214 733.707. Order of payment of expenses and obligations.--

215 (4) Any portion of a non-probate asset with respect to which a decedent had an
216 interest immediately prior to death is liable for enforceable claims of the decedent's
217 estate to the extent the decedent's estate is insufficient to pay them as provided in s.
218 733.607(5).

219 Section 6. This act shall be effective for all decedents dying on or after January
220 1, 2015.

WHITE PAPER

Proposed amendment of §§733.607, 733.702, 733.705, and 733.707, Florida Statutes, and enactment of §733.6075, Florida Statutes, to create an orderly process for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when the probate estate and any revocable trust are insufficient to pay all enforceable claims.

I. SUMMARY

Currently, there is confusion as to whether a decedent's non-exempt, non-probate assets (other than those held in the decedent's revocable trust) are reachable by the decedent's creditors. This proposed legislation creates an orderly process for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when a decedent's probate estate and any revocable trust are insufficient to pay all enforceable claims.

II. CURRENT SITUATION

Florida's Probate Code, Chapters 731-735, Florida Statutes, and Florida's Trust Code, Chapter 736, Florida Statutes, provide the framework for the orderly administration of decedents' probate and trust assets, including the identification, verification, and payment of creditors' claims. See Chapter 733, Part VII, Florida Statutes. This framework reflects the policy which is firmly rooted in English history that the laws of succession and inheritance should protect the rights of a decedent's creditors. Under Florida's long-established probate system and public policy, distribution is made to a decedent's beneficiaries or heirs only after all expenses of administration, taxes, and the decedent's debts are paid. See §733.608, Florida Statutes, (directing that all assets in the hands of the personal representative are applied to payment of devises, family allowance, elective share, estate and inheritance taxes, claims, charges, expenses of administration, and *obligations of decedent's estate.*) and §733.707 (dictating the order of payment of estate obligations, expenses, taxes, and creditors' claims, all of which have priority over payment of devises and distributions to beneficiaries.) In other words, a decedent's beneficiaries only inherit those probate and revocable trust assets, if any, which are left after all expenses, taxes, and debts are paid.

The right of a decedent's legitimate creditors to be paid is evident in Florida law. Personal representatives are fiduciaries who must use their authority to benefit, not only the heirs and devisees of the decedent, but also the creditors of the decedent. See §733.602(1), Florida Statutes; *Campbell v. Owen*, 132 So.2d 212 (Fla. 2d DCA 1961); and *Fla. Jur. 2d, Decedent's Property* §625. Florida's Probate Code requires that, in addition to publishing notice to creditors for two consecutive weeks, the personal representative must make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable, even if the claims are unmatured, contingent, or unliquidated. See §733.2121(1), Florida Statutes. A

decedent's creditors are entitled to notice even if they know that the estate is being probated. *Foster v. Cianci*, 773 So.2d 1181 (Fla. 2d DCA 2000).

Following the explosion in popularity of revocable trusts in the 1980's, Florida amended §§733.607 and 733.707, Florida Statutes, to provide that the assets of a decedent's revocable trust are subject to the expenses of estate administration and the obligations of the decedent's estate to the extent that the decedent's estate is insufficient to pay them. §§733.607(2) and 733.707(3), Florida Statutes. These amendments, together with their counterpart in the Florida Trust Code, §736.05053(1), Florida Statutes, created a procedure for the orderly payment of a decedent's enforceable creditors' claims from the decedent's revocable trust when the decedent's probate estate is insufficient to pay those claims.

In situations where a probate estate is not opened and the decedent had a revocable trust, the trustee of the decedent's trust is required to file a notice of trust with the court of the county of the settlor's domicile alerting creditors of the existence of the trust. See §736.05055, Florida Statutes. A creditor of the decedent then has the option of opening a probate proceeding and seeking payment from the decedent's revocable trust pursuant to the statutes described in the preceding paragraph.

The foregoing clearly demonstrates Florida's public policy that a decedent's legitimate creditors with enforceable claims are to be paid prior to beneficiaries or heirs inheriting the decedent's non-exempt assets. However, this public policy is being thwarted in certain cases because, in addition to the popularity of revocable trusts, will substitutes have grown in popularity, presumably to avoid expensive estate planning, the time and expense of probate, and perhaps the payment of debts. Increasingly, it appears that will substitutes are being used to transfer decedents' assets by operation of law, and the value of these non-probate transfers can be very significant while the probate estate is very modest.

The Uniform Nonprobate Transfers on Death Act is codified in Article VI of the Uniform Probate Code. Section 6-102 of the UPC "clarifies that the recipients of nonprobate transfers [excluding transferees of a survivorship interest in a joint tenancy of real property and assets exempt from creditors] can be required to contribute to pay allowed claims and statutory allowances to the extent the probate estate is inadequate." (UPC §6-102, Comment 1)

In June 2010, the California Law Revision Commission published a lengthy background study on the Liability of Nonprobate Transfer for Creditor Claims and Family Protections.¹ That study's observations and conclusions include:

- the puzzling phenomenon that creditors have allowed the protections of the probate system to slip away from them (p. 10);

¹ California is significantly behind Florida on this issue in that California does not yet have a procedure for the payment of creditors' claims from decedents' revocable trusts.

- that “the policy, if any, that supports immunization of nonprobate property from a decedent’s creditors and dependents is not obvious” (p. 10); and
- that “all nonprobate transfers, including the decedent’s interest in joint tenancy property, should be liable for a debt of the decedent” (p. 154).

The following are examples of assets that pass outside of probate by operation of law or will substitutes which are not exempt from creditors during a person’s life:

1. Property registered in “beneficiary form” pursuant to Florida’s Transfer-on-Death Statute, Chapter 711 (i.e., where the words “transfer on death,” “TOD,” “pay on death,” or “POD” appear after the name of the owner and before the name of the beneficiary).
2. Accounts established under Florida’s Pay-on-Death Statute, §655.82, Florida Statutes:
 - a. Where there is a “pay-on-death” designation in favor of one or more beneficiaries (i.e., the beneficiary has no rights in the account during the owner’s life, but acquires the account balance at the owner’s death).
 - b. Where there is a “survivorship” designation (i.e., both parties share ownership during their lives, but the survivor becomes the sole owner).
3. Survivorship accounts established under the multiple party account statute, §655.79, Florida Statutes.
4. Totten or Tentative Trust accounts established under former F. S. §655.81, which was repealed in 2001. When §655.81 was repealed, §655.825(1) was enacted so that any Totten Trust accounts would be treated as pay-on-death accounts under §655.82.²
5. Tangible personal property held as joint tenants with right of survivorship (e.g., antiques, collections, art, vehicles, etc.).

² Section 655.825(1), Florida Statutes, enacted in 2001, provides that:

Because deposits in trust are also accounts with a pay-on-death designation as described in s. 655.82, it is the intent of the Legislature that the provisions of s. 655.82 shall apply to and govern deposits in trust. References to s. 655.81 in any depository agreement shall be interpreted after the effective date of this act as references to s. 655.82.

6. Real property held as joint tenants with right of survivorship (but not entireties property which is exempt from creditors).

There is no doubt that during a person's life, his or her creditors can reach that person's interest in the above-described non-exempt, non-probate assets. However, there is confusion among practitioners and the public as to whether, after a debtor's death, the creditors of the now-deceased debtor (the decedent) can reach the decedent's interest³ in such non-exempt, non-probate assets passing by operation of law.

With respect to property registered as transfer-on-death (hereinafter "TOD property"), pay-on-death accounts (hereinafter "POD accounts"), and Totten Trust accounts, the following authorities suggest that a decedent's interest in these non-probate assets can be reached by a creditor of the decedent:

1. The Florida Transfer-on-Death statute expressly provides that it does not limit the rights of creditors of owners against beneficiaries and other transferees under other laws of this state. §711.509(2), Florida Statutes.
2. RESTATEMENT (SECOND) OF TRUSTS §58 Comments d (ALI 1959), states that "[C]reditors of a person who makes a savings deposit upon a tentative [or Totten] trust can reach his interest since he has such extensive powers over the deposit as to justify treating him as in substance the unrestricted owner of the deposit. So also, on the death of the depositor if the deposit is needed for the payment of his debts, his creditors can reach it."
3. Bogart, *The Law of Trusts and Trustees*, §233, states that: "[B]ecause of the complete control reserved by the depositor establishing a Totten or savings account trust, funds in such an account at death are usually held subject to the claims of creditors and the surviving spouse of the depositor."
4. *Kearney v. Unibay Co.*, 466 So.2d 271 (Fla. 4th DCA 1985), cites the following statement from *Scott on Trusts* §330.12, with approval: "Since the depositor has complete control over the deposit during his lifetime, . . . he is treated as the owner insofar as his creditors are concerned. His creditors can reach the deposit while he is living, and can reach it as part of his estate on death."
5. *Serpa v. North Ridge Bank*, 547 So.2d 199 (Fla. 4th DCA 1991), cites the following statement from *In re Estate of Schuck*, 419 Pa. 466, 214 A.2d

³ In each of these cases (i.e., TOD property, POD accounts, joint accounts, Totten Trust accounts, JTWR0S tangible property, and JTWR0S real property), the specific property interest being considered is only that interest which was solely owned and controlled by the decedent at the time of his or her death and which passed outside of probate by reason of his or her death.

629, 631 (1965), with approval: "A tentative [Totten] trust may be revoked, among other means, . . . by facts and circumstances resulting in inadequacy of the estate assets to satisfy the testamentary gifts, funeral and administration expenses, taxes and other charges."

6. *Rice v. Schember*, 15 FLW C17 (Fla. 6th Jur. Cir. Pinellas Co. 1990), held that a "Totten trust is revoked, as a matter of law, if the estate assets are insufficient to pay administrative, funeral, and medical expenses." *But see Nahar v. Nahar*, 576 So.2d 862 (Fla. 3d DCA 1991) and *In re Barret's Estate*, 137 So.2d 587 (Fla. 1st DCA 1962) which hold that costs of administration may not be paid out of Totten Trust assets which the probate court has not yet determined are subject to probate.

However, the answer is less clear with respect to assets titled as "joint tenants with right of survivorship" (hereinafter "JTWROS"), such as financial accounts, tangible property, and real property titled with the decedent and one or more others, as JTWROS. Although creditors can reach a joint tenant's interest in joint tenancy property during the tenant's life, some authorities appear to suggest that the interest of a joint tenant cannot be reached by his/her creditors after his/her death. *C.J.S., Joint Tenancy*, §37, citing *Hurlbert v. Shackleton*, 560 So.2d 1276 (Fla. 1st DCA 1990) (A fraudulent transfer case stating in dicta that a judgment creditor's lien on joint tenant's interest in stocks and bonds held as JTWROS was no longer viable after joint tenant's death.) and *Perrott v. Frankie*, 605 So.2d 118 (Fla. 2d DCA 1992) (The attempted fraudulent transfer by one joint tenant of his interest to other joint tenant was void, and property reverted to previous joint tenancy. Since the creditor's lien was not perfected prior to the debtor's death, the property passed to the surviving joint tenant free of the creditor's lien.). See also, *D.A.D., Inc. v. Moring*, 218 So.2d 451 (Fla. 4th DCA 1969) (A valid mortgage given by a joint tenant to encumber her interest in real property created a lien on her interest in the property, but that lien terminated upon her death and was not, thereafter, enforceable against the surviving joint tenant who had not signed the mortgage, and owned the entire property upon the death of the debtor joint tenant.).

Currently, practitioners are divided on the issue of whether or not the *Hurlbert* and *Perrott* cases are legal authority for the proposition that, upon the death of a joint tenant, a creditor cannot reach the deceased joint tenant's interest in an asset which was titled in the names of the decedent and another as JTWROS. If, in fact, a creditor cannot reach the deceased joint tenant's interest in an asset which was titled in the names of the decedent and another as JTWROS upon the death of a joint tenant, then these would be the only type of assets which are available to creditors during life but exempt from creditors solely by reason of death.

To the extent that a decedent's interest in non-exempt, non-probate assets can be reached by creditors, it is unlikely that a creditor can reach these assets through the probate proceeding because, by definition, they are not assets of the decedent's probate estate and are beyond the in rem jurisdiction of the probate court. (The possible exception to this is Totten Trust or POD accounts under a revocation theory, which would appear to make the decedent's interest in the account an asset of the decedent

subject to administration.) Also, the trust claims statute is applicable only to revocable trusts and does not encompass these other non-exempt, non-probate assets. See §§733.607, 733.707, and 736.05053, Florida Statutes. By definition, "trusts created by the form of the account or by the deposit agreement at a financial institution" are excluded from the term "trust" in the Florida Trust Code. §731.201(34), Florida Statutes.

Under the current Florida law, the existing problems include:

1. Transferees of a decedent's non-exempt, non-probate assets inherit while creditors with enforceable claims are not paid if probate and revocable trust assets are insufficient.
2. The 3-month (§733.702) and 2-year (§733.710) non-claim statutes do not bar claims against the transferee of a decedent's interest in non-probate assets because the applicability of those statutes is expressly limited to claims against "the decedent's estate, the personal representative, and the beneficiaries." Accordingly, creditors may pursue the transferees of the decedent's interest in TOD property, POD accounts, and Totten Trust accounts, and possibly JTWR0S assets, outside of probate and these time bars.
3. Given that a personal representative owes duties to all interested persons, including unpaid creditors, does a personal representative of an insolvent estate who knows that the decedent had an interest in non-exempt, non-probate assets owe unpaid creditors a duty to collect these assets for the benefit of unpaid creditors? Does a personal representative who fails to advise unpaid creditors of such assets incur any liability?
4. Creditors that should be in the same class are not treated equally. For example, (1) a judgment creditor(s) may recover from non-exempt, non-probate assets, while other judgment creditors go unpaid, and (2) as between creditors, each is on its own to discover and pursue a decedent's interest in non-exempt, non-probate assets, creating a race among creditors to discover and recover from non-probate assets.
5. There may be multiple judicial proceedings, e.g., multiple creditors against a single transferee, or one or more creditors against multiple transferees.
6. Non-probate transferees will probably be treated unfairly as between each other. For example, one non-probate transferee may be pursued by a creditor and have to pay the decedent's debt while other non-probate transferees retain their benefits without any obligation of contribution.
7. Transferees of a decedent's non-exempt, non-probate assets are unaware of their potential liability to decedent's creditors.

III. EFFECT OF PROPOSED CHANGES

A. Generally

The effect of the proposed legislation is to establish an orderly process for the payment of legitimate, enforceable creditors' claims from a decedent's interest in non-exempt, non-probate assets when the decedent's probate estate and any revocable trusts are insufficient to pay all creditors. The proposed procedure is similar to the existing procedure where a decedent's revocable trust must pay creditors when the probate estate is insufficient. See §§733.607, 733.707 and 736.05053, Florida Statutes. However, unlike the revocable trust's liability for expenses of administration and statutory allowances, the transferee of a decedent's interest in non-exempt, non-probate assets would only be liable for the payment of legitimate debts of the decedent (and any costs and fees incurred in recovering the non-exempt, non-probate assets).

With respect to TOD property, POD accounts, and Totten Trust accounts, the proposed legislation will not change creditors' current rights to recover the value of a decedent's interest in non-exempt, non-probate assets nor will it change transferees' existing liability. However, it will create an orderly, more fair procedure for the payment of enforceable claims of creditors from a decedent's interest in non-exempt, non-probate assets when the probate estate and any revocable trust are insufficient to pay all enforceable claims.

With respect to assets held as JTWROS, it is unclear whether the proposed legislation will change existing law. However, if the decedent's interest in JTWROS assets was reachable by the decedent's creditors at the instant before death, there is no reason that the interest should not be reachable by decedent's creditors after his or her death. The decedent's creditors should not be prejudiced or deprived of rights merely by reason of the decedent's death. Strong policy considerations would seem to support this conclusion. It would seem that, regardless of whether a decedent uses a will or a will substitute to transfer his property at death, his or her interest in any property should be subject to the claims of creditors *unless* that property is in some manner exempt from creditors by the Florida Constitution or state or federal statute.

B. Specifics of the proposed legislation

1. Definitions - Proposed new §733.6075(1)

Definitions applicable to §§ 733.607, 733.702, 733.705, and 733.707 are set forth in new §733.6075(1).

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

(1) For purposes of this section and ss. 733.607, 733.702, 733.705, and 733.707, the term:

(a) "Creditor representative"⁴ means any person, including a creditor with an enforceable claim,⁵ appointed by the court pursuant to s.733.6075(3). The creditor representative is a fiduciary who owes fiduciary duties to all unpaid creditors with enforceable claims.

(b) "Decedent's interest" means that portion of an asset, including the whole, which the decedent had, immediately before death, the right to withdraw or use without the consent of, or duty to account to any person.⁶

(c) "Enforceable claim" means a claim of a creditor of the decedent which was timely filed in the probate proceeding and would be paid from the assets of the decedent's probate estate or a trust described in s. 733.707(3), if sufficient assets existed to pay the claim in full. It does not include contingent claims.

(d) "Exempt property" means property or an interest in property that is exempt by law from claims of creditors, including but not limited to:⁷

1. Protected homestead as defined in the Florida Probate Code,

2. Exempt property as described in the Florida Probate Code,

3. Property or accounts held in tenancy by the entirety,

4. Property exempt from the claims of creditors under Chapter 222, and

5. Property exempt from the claims of creditors under federal law.

⁴ The term "administrator ad litem," which is used in the Probate Code, was considered and rejected because it may imply greater authority or responsibility than intended in this proposed legislation and result in unintended consequences.

⁵ Any creditor appointed to pursue non-exempt, non-probate assets should be a non-contingent creditor with an enforceable claim against decedent's estate because a contingent creditor should not have access to pre-judgment discovery of decedent's assets.

⁶ This definition uses the same concept and language similar to §732.2035(2) of the Elective Share statute, except this definition is not limited to accounts or securities as the Elective Share definition is.

⁷ There is no intention to reduce or limit existing exemptions.

References to specific statutes are omitted in favor of a general reference to the Florida Probate Code to avoid having to make amendments if the statutes are amended or renumbered in the future.

(e) "Non-exempt property" means property that is not described in subsection (c), above.

(f) "Non-probate asset" means the decedent's interest in non-exempt property, other than real property⁸, passing to a transferee by means other than by will, intestate succession, or power of appointment which is only effective at death.⁹

(g) "Non-probate transfer" means a valid transfer of a non-probate asset effective at death, to the extent that the transferor immediately before death had power, acting alone, to prevent the transfer by revocation, withdrawal, or otherwise, and instead to use the property for the benefit of the transferor or apply it to discharge claims against the transferor's probate estate.

provides: 2. Proposed §733.6075(2) is the essence or "guts" of the proposal. It

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(2) Except as otherwise provided by statute, a transferee of a non-probate transfer is liable to the decedent's estate for the enforceable claims of creditors against the decedent's estate to the extent the probate estate and all trusts described in §733.707(3) are insufficient to satisfy those claims. The liability of a non-probate transferee may not exceed the value of non-probate transfers received or controlled by that transferee.

3. Order of abatement - Proposed amendment to add §733.607(5)

The proposed legislation designates the order in which a decedent's assets will be used to pay creditors' claims as follows: first is the probate estate, second is any revocable trust, and last is any non-exempt, non-probate assets. Section §733.607, Florida Statutes, is amended to add the following:

⁸ The real property members of the RPPTL section are almost unanimously opposed to this proposed legislation being applicable to real estate. Although the intent is to limit liability to the transferee, they believe that there will be significant title issues created if real estate is subject to this legislation. The UPC provision, 6-102(1)(a), also excludes real estate.

⁹ A power to withdraw should be a non-probate asset subject to creditors' claims. For example, if a decedent had a power to withdraw which had not lapsed at his/her death, then the property which the decedent had the right to withdraw was reachable by his creditors during his/her life and should be subject to the payment of claims after death.

§733.607. Possession of the estate.

* * * *

(5)(a) If the assets of the decedent's estate and all trusts described in s. 733.707(3), are insufficient to pay the expenses of administration, obligations of the decedent's estate, and enforceable claims of creditors, the personal representative or creditor's representative is entitled to payment from the transferee of the decedent's non-probate assets in the amount the personal representative or creditor representative certifies in writing to be required to satisfy the insufficiency and shall pay from the decedent's interest in non-probate assets the enforceable claims of creditors in the order set forth below:¹⁰

1. Class 1 - Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of \$6,000.

2. Class 2 - Debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28.

3. Class 3 - Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of the persons attending the decedent.

4. Class 4 - Arrearage from court-ordered child support.

5. Class 5 - All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in paragraph (b).¹¹

¹⁰ Subsection (5) is similar to 733.607(2), regarding payments from the trustee of revocable trusts. However, subsection (2) uses "obligations of the decedent's estate." The Committee decided to use the term "enforceable claims" in subsection (5) to make it clear that non-probate, non-exempt assets are not to be used to pay elective share, pretermitted spouse, pretermitted child, family allowance, or general expenses of administration unrelated to the collection of non-probate assets.

¹¹ The purpose of this proposed legislation is to create an orderly procedure to pay from the decedent's interest in non-exempt, non-probate assets only those creditors with enforceable claims who could have reached decedent's interest in those assets during his/her life. The description of the creditors to be paid and order of payment is the same as under 733.303, but excludes post-death obligations because those creditors would have had no right to decedent's non-probate assets during his/her life and statutory entitlements (see footnote 8).

(b) After paying any preceding class, if the decedent's interest in non-probate assets is insufficient to pay all of the next succeeding class, the creditors of the latter class shall be paid ratably in proportion to their respective claims.¹²

4. The personal representative

The proposed process starts with the personal representative, but great care was taken over several years of drafting to limit the duties of the personal representative, protect the personal representative from liability, and give the personal representative the option of opting out of the process very early in the probate proceeding.

a. Proposed amendment to add §733.607(3) allows the personal representative to "opt out."

§733.607. Possession of the estate.

* * * *

(3) (a) At any time after the entry of an order appointing a personal representative, the personal representative may file a notice stating that the personal representative will not exercise the powers described in s. 733.6075.

(b) The notice shall, so far as is known¹³ by the personal representative at the time the notice is served, :

1. State whether the assets of the estate and any trusts described in s. 733.707(3) are sufficient to pay the known enforceable claims of creditors or whether that information is unknown,

2. State the aggregate value of all non-exempt, non-probate assets in which the decedent had an interest at the time of death except those assets held in a trust described in s. 733.707(3), and

3. Be served upon all interested persons, including unpaid creditors of the decedent with enforceable claims and holders or transferees of decedent's non-exempt, non-probate assets¹⁴.

¹² Same language as F.S. 733.707(2).

¹³ Throughout the proposed legislation, the personal representative is only obligated to disclose "known" information. The Committee rejected the concept of "know or reasonably should know or have known" because of the increased risk of litigation against the personal representative.

¹⁴ The notice to holders can be viewed as a "notice to the transferees to

(c) The information required by this paragraph may be contained in the notice to creditors or in a separate document.

b. Proposed amendment to add §733.607(4) - Regardless of whether the personal representative has previously “opted out,” after the claims period the personal representative must notify interested persons if the assets of the decedent’s estate and all revocable trusts, are or may be insufficient to pay the enforceable claims of creditors. Because the solvency of the estate may depend upon the outcome of a disputed claim or the value of a particular asset, the personal representative is not required to make a determination that the estate is or is not solvent, but is permitted to notify creditors if an insolvency is possible. The duty to make an assessment regarding the solvency of the estate is upon the personal representative because that is the person with access to the most information regarding the decedent’s assets and liabilities.

§733.607. Possession of the estate.

* * * *

(4) On or before 4 months from the date of first publication of the notice to creditors, if the assets of the decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to pay the enforceable claims of the decedent's estate, the personal representative shall file a notice of insufficiency stating that the assets of the decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to pay the expenses of administration, obligations of the decedent's estate, and enforceable claims of creditors.¹⁵

c. If the personal representative opts out - Proposed new §733.6075(3)

If the personal representative opts out, a creditor representative may be appointed to exercise the powers to search for and recover the decedent’s interest in non-exempt, non-probate assets on behalf of the estate.

spend” or a “notice to alert them of the possible need for the assets and assist them in avoiding the transferee liability imposed by the statute.” The Committee decided to notify the transferee to protect innocent transferees from spending assets for which they may incur later liability.

¹⁵ The personal representative may opt out early, but must still notify creditors of an insufficiency or possible insufficiency. The burden is upon the creditor to inquire as to the existence or extent of any non-exempt, non-probate assets.

The creditor representative may:

- § be a creditor with an enforceable claim
- § be appointed at any time prior to the entry of an order of discharge.

Because the solvency of the estate may not be known until the petition for discharge is filed, the proposed legislation permits a creditor with an enforceable claim that has not been paid in full to object to discharge and be given a reasonable time to pursue the rights and remedies created under the proposed legislation.

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(3) In the event that the personal representative elects not to exercise the powers under this section or is subsequently relieved of that duty, the court may appoint any person, including a creditor with an enforceable claim, as a creditor representative to exercise those powers in the name of the estate against the transferee of the decedent's interest in those assets. A creditor representative may be appointed at any time prior to the entry of an order of discharge. A creditor with an enforceable claim that has not been paid in full may:

* * * *

(b) Object to discharge and may be given reasonable time to pursue the rights and remedies under this section.

d. If the personal representative is a transferee of a decedent's non-probate asset - Proposed new §733.7065(8)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(8) In the event that the personal representative elects to exercise the powers described in this section and is a transferee of a decedent's non-probate asset which is recoverable under this section, the court may appoint an administrator ad litem to represent the estate in a proceeding against the personal representative as transferee of a decedent's non-probate asset.

5. Identifying a decedent's non-exempt, non-probate assets -
Proposed new §733.6075(4) and (5)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(4) The personal representative or, if the personal representative has filed the notice that he or she will not exercise the powers under this section, the creditor representative, shall make a diligent search to determine whether at the time of death, the decedent had an interest in any non-probate assets. Impracticable and extended searches are not required.¹⁶

(a) If the personal representative or creditor representative, after diligent search, fails to locate a non-probate asset as required by this section, the personal representative or creditor representative is not liable to any person or entity for the failure.¹⁷

(b) If a non-probate asset exists but is not discovered during the administration of the estate and creditors with enforceable claims against the decedent's estate were not paid in full, those creditors are not precluded from reopening the estate and pursuing the non-exempt assets, except as provided in s.733.702(1).

(5) All banks and financial institutions doing business in this state shall, upon the presentation of a certified copy of letters of administration or order appointing creditor representative, furnish the personal representative or creditor representative the following information or documentation for all accounts in which the decedent had an interest on the date of his or her

¹⁶ This language is similar to F.S. 733.2121(3)(a) & (c) regarding search for and notice to creditors.

It is contemplated that any costs associated with this search shall be an ordinary expense of administration because such information is generally discovered during the administration of an estate and such a search is necessary in connection with determining any estate tax liability.

¹⁷ The Committee discussed whether to include a requirement of good faith in this subsection and decided not to do so because the similar statute requiring the personal representative to make a diligent search for creditors does not have a good faith requirement. The duty to search for non-probate assets is intended to be equal to the duty to search for creditors. A diligent search would, in most cases, include reviewing the decedent's tax returns and mail.

death: account number, account title, copy of signature card or other account opening documentation, account balance on the date of decedent's death, and any information reasonably necessary to determine the decedent's interest.¹⁸

6. Freezing or securing the decedent's interest in non-exempt, non-probate assets - Proposed new §733.6075(3) and (9)

Section 6-102(i) of the Uniform Probate Code includes the following provision:

Unless a written notice asserting that a decedent's probate estate is nonexistent or insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, the following rules apply:

(1) Payment or delivery of assets by a financial institution, registrar, or other obligor, to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

Although such a provision would be useful to freeze accounts in which a decedent had an interest, the provision poses several potential problems, including:

§ the manner in which the notice must be given to the financial institution,
§ whether freezing an account without a court order violates due process, and
§ who would have the obligation of managing/protecting securities while they are frozen.

Since Florida law presently includes methods for freezing assets, the problematic UPC provision was rejected and methods existing under Florida law are specifically incorporated into the proposed legislation, including §69.031, Florida Statutes.

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(3) A creditor with an enforceable claim that has not been paid in full and who has received notice that the assets of the decedent's estate and all trusts described in s. 733.707(3) are or may be insufficient to pay its enforceable claim(s), may:

¹⁸

The Committee decided it was not necessary to add a time frame for the bank's compliance pursuant to 733.6075(5).

(a) Use the discovery available under the probate rules to determine whether the decedent had an interest at the time of death in any non-exempt, non-probate assets, the nature of those assets, the value of the decedent's interest, and the name and address of the non-probate transferees of each of those assets.

(b) Request and receive from the personal representative any information concerning non-exempt, non-probate assets in which the decedent may have had an interest, known to, or which in the course of administration of the estate becomes known to, the personal representative, including the nature of the assets, the value at the date of the decedent's death, the value of the decedent's interest, and the name and address of the transferee.

(c) Object to discharge and may be given reasonable time to pursue the rights and remedies under this section.

* * * *

(9) A personal representative or creditor representative may utilize procedures under s.69.031 for non-probate assets and any other remedies available under law.

7. Transferee's obligations and rights

a. Pay to the personal representative or creditor representative the amount required to pay enforceable claims - Proposed new §733.6075(6)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

(6) A transferee of a decedent's non-probate asset shall pay to the personal representative of the decedent's estate or the creditor representative any amounts that the personal representative or creditor representative certifies in writing to the transferee are required to pay the enforceable claims of the decedent's estate. . . .¹⁹

b. Transferee is liable for the value of decedent's interest in non-exempt, non-probate assets, i.e., transferee liability - Proposed amendment to add §733.707(4)

¹⁹ The Committee voted not to require the personal representative and creditor representative to seek pro-rata payment from all transferees of the decedent's non-probate assets. It was determined that such a requirement would be unduly burdensome and unreasonable to impose upon the personal representative or creditor representative. Instead, a transferee who is required to pay more than his/her pro-rata share may seek contribution from other transferees.

733.707. Order of payment of expenses and obligations

(1) The personal representative shall pay the expenses of the administration and obligations of the decedent's estate in the following order:

* * * *

(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation, as defined in paragraph (e), either alone or in conjunction with any other person, is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate is insufficient to pay them as provided in s. 733.607(2).

* * * *

(4) Any portion of a non-probate asset with respect to which a decedent had an interest immediately prior to death is liable for enforceable claims of the decedent's estate to the extent the decedent's estate is insufficient to pay them as provided in s. 733.607(5).

c. Transferee who is required to contribute to the payment of enforceable claims has the right to challenge a creditor's claim, even if the time for objection to claims has expired - Proposed amendment to add §733.705(12)

733.705. Payment of and objection to claims

* * * *

(12) Notwithstanding any other provision of this section, a transferee of the decedent's non-probate asset shall have the right to assert any defense to liability as to a claim against the decedent in an action to recover all or any portion of the decedent's non-probate asset from the transferee without the filing of an objection to the claim in the probate proceeding, and the creditor whose claim is challenged shall be joined as a third party if that creditor is not otherwise a party. This subsection shall not apply to a transferee of the decedent's non-probate asset who is also a beneficiary as defined in s. 731.201 as of the decedent's date of death.

d. Transferee who is required to pay more than a pro-rata share has a right of contribution against other transferees - Proposed new §733.6075(6)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(6) . . . If the decedent had an interest at the time of death in more than one non-probate asset, the personal representative or creditor representative is not required to seek pro-rata payment from all transferees of the decedent's non-probate assets, and a transferee of a decedent's non-probate asset who is required to pay all or any part of the decedent's interest to the personal representative or creditor representative in excess of that transferee's pro-rata share may seek contribution from other transferees of such assets.

8. Fees and costs - Proposed new §733.6075(7) and (10)

§733.6075. Liability of Non-probate Transferees for Enforceable Claims

* * * *

(7) No expenses or obligations described in s. 733.707(1)(a), (e), and (g) shall be paid from a decedent's non-probate assets except those expenses, including any costs and attorney's fees, incurred in connection with obtaining payment from a transferee.

* * * *

(10) The court shall award taxable costs as in chancery actions, including attorney's fees, in all actions for the recovery of the value of the decedent's interest in non-probate asset(s), and in actions by transferees to enforce contribution.²⁰

9. Currently, transferees of a decedent's interest in non-exempt, non-probate assets are not protected by the limitation on claims. Consistent with the proposed legislation to provide for the payment of enforceable creditors' claims from a decedent's non-exempt, non-probate assets if the probate estate and any revocable trust are insufficient to pay all of those claims, all creditors should be required to file a claim in the probate proceeding (and be paid through that process) and transferees should be protected from creditors seeking recovery outside the probate process.

²⁰ This provision is intended to apply when the personal representative or creditor representative has to file an action to determine or collect the decedent's interest in non-exempt, non-probate assets. Fees for searching for such assets and certifying the need for such assets to pay enforceable claims is an ordinary expense of administration.

This provision may result in the estate paying a transferee's attorney's fees for the unsuccessful attempt by the personal representative to recover non-probate assets. It would also be applicable in disputes over the value of the decedent's interest in non-probate assets.

The following amendment to § 733.702(1) is proposed to accomplish those purposes:

§733.702. Limitations on presentation of claims

(1) If not barred by s. 733.710, no claim or demand against the decedent's estate or against any of the decedent's non-probate assets that arose before the death of the decedent, including claims of the state and any of its political subdivisions, even if the claims are unmatured, contingent, or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of the decedent, is binding on the estate, on the personal representative, or on any beneficiary or transferee of the decedent's non-probate assets unless filed in the probate proceeding on or before the later of the date that is 3 months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the interested persons.

10. The proposed legislation will be effective for all decedents dying on or after January 1, 2015.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None.

VI. CONSTITUTIONAL ISSUES

None.

V. OTHER INTERESTED PARTIES

Elder Law Section of The Florida Bar (Opposed).

The Florida Bankers Association.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Angela M. Adams, Chair, Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets of the Real Property, Probate and Trust Law Section

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Position Type Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets of the RPPTL Section of The Florida Bar

CONTACTS

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Committee Appearance**

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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 N/A at this time

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

Meetings with

Legislators/staff N/A at this time

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A at this time

(Bill or PCB #)

(Bill or PCB Sponsor)

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

Proposed Wording of Position for Official Publication:

Support legislation that would amend §§726.102 and 733.607, Florida Statutes, to clarify that a fiduciary of a decedent's estate may bring an action under Florida's fraudulent transfer and fraudulent conversion statutes for the benefit of the creditors of a decedent's estate.

Reasons For Proposed Advocacy:

Under current Florida law, it is unclear whether a fiduciary of a decedent's estate may bring an action under the fraudulent transfer or fraudulent conversion statutes for the benefit of the decedent's unpaid creditors. This proposed legislation eliminates the current uncertainty and clearly allows a fiduciary of a decedent's estate to maintain an action under Florida's fraudulent transfer and fraudulent conversion statutes.

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

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

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

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

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

1 A bill to be entitled

2
3 An act relating to the right of a fiduciary to maintain a fraudulent transfer or
4 fraudulent conversion action on behalf of the creditors of a decedent's
5 estate; amending s. 726.102, F.S.; amending s. 733.607, F.S.; providing
6 an effective date.

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

9
10 Section 1. Subsection (4) of Section 726.102, Florida Statutes, is amended to
11 read:

12 §726.102. Definitions.--

13 As used in ss. 726.101 – 726.112:

14 * * * *

15 (4) "Creditor" means a person who has a claim. An executor, personal
16 representative, curator, administrator ad litem, or creditor representative on behalf of the
17 creditors of a decedent's estate is a "creditor" under this chapter. A creditor of a
18 deceased debtor must follow the claims procedure set forth in the Florida Probate Code.

19 Section 2. Subsection (6) is added to section 733.607, Florida Statutes, to read:

20 733.607. Possession of estate.--

21 (6) If it appears, after payment of the expenses of administration and
22 obligations of the decedent's estate, the remaining estate is insufficient to pay claims of
23 creditors, then with court approval, a personal representative, curator, administrator ad
24 litem, or creditor representative acting for the benefit of estate creditors, may maintain
25 an action pursuant to chapter 726 to recover assets transferred by the decedent.

26 Section 7. This act shall be effective for all decedents dying on or after January
27 1, 2015.

WHITE PAPER

Proposed amendment of §§726.102 and 733.607, Florida Statutes, to clarify that a fiduciary of a decedent's estate may bring an action under Florida's fraudulent transfer and fraudulent conversion statutes for the benefit of the creditors of a decedent's estate.

I. SUMMARY

Under current Florida law, it is unclear whether a fiduciary of a decedent's estate may bring an action under the fraudulent transfer or fraudulent conversion statutes for the benefit of the decedent's unpaid creditors. This proposed legislation eliminates the current uncertainty and clearly allows a fiduciary of a decedent's estate to maintain an action under Florida's fraudulent transfer and fraudulent conversion statutes.

II. CURRENT SITUATION

Florida's Uniform Fraudulent Transfer Act (hereinafter "UFTA") is set forth in Chapter 726, Florida Statutes. In general, a fraudulent transfer may be proved by establishing the debtor's actual intent to hinder, delay, or defraud creditors, or by showing that a transfer left the debtor insolvent. The remedies available to a creditor who has proved a fraudulent transfer include avoidance of the transfer or a judgment for the value of the asset transferred. See, §§726.108 and 726.109, Florida Statutes. These remedies are enforceable against both the transferor and transferee.

The fraudulent conversion statute is §222.30, Florida Statutes. It provides that a conversion of non-exempt assets to assets exempt from the claims of creditors is a fraudulent conversion and may be avoided if the debtor made the conversion with the intent to hinder, delay, or defraud creditors.

It appears to be well-settled that Florida's fraudulent transfer and fraudulent conversion statutes apply to traditional estate planning devices such as trusts, joint accounts, pay-on-death accounts, transfer-on-death registrations, insurance, annuities, and charitable gifts. While the statutes and case law clearly allow a "creditor" to bring a fraudulent transfer or fraudulent conversion action, those statutes and cases generally contemplate or deal with a transferor who is still alive.

The UFTA defines a "creditor" as "a person who has a claim." §726.102(4), Florida Statutes. A "claim" is defined as "a right to payment, whether or not the right has been reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." §726.102(3), Florida Statutes.

Currently, Florida law does not clearly address what happens when the transferor is dead, his/her estate is insolvent, and the personal representative knows or learns that prior to death, the decedent engaged in one or more transfers that left his/her estate unable to pay creditors. Does the personal representative or other fiduciary of the

decedent's estate have the ability to bring fraudulent transfer or fraudulent conversion actions for the benefit of the decedent's unpaid creditors?

III. EFFECT OF PROPOSED CHANGES

The proposed legislation will clearly authorize a fiduciary of a decedent's estate to bring fraudulent transfer or fraudulent conversion actions on behalf of the creditors of the decedent's estate. It would also prevent a creditor from maintaining a fraudulent transfer action during the period from the decedent's death to 2 years after death, and force creditors to use the claims procedure in the Florida Probate Code, rather than allow creditors to pursue their own fraudulent transfer or conversion action outside of the probate process.

The proposed amendments are as follows:

§726.102. Definitions

As used in ss. 726.101 – 726.112:

* * * *

(4) "Creditor" means a person who has a claim. An executor, personal representative, curator, administrator ad litem, or creditor representative on behalf of the creditors of a decedent's estate is a "creditor" under this chapter. A creditor of a deceased debtor must follow the claims procedure set forth in the Florida Probate Code.

§733.607. Possession of the estate.

* * * *

(6) If it appears, after payment of the expenses of administration and obligations of the decedent's estate, the remaining estate is insufficient to pay claims of creditors, then with court approval, a personal representative, curator, administrator ad litem, or creditor representative acting for the benefit of estate creditors, may maintain an action pursuant to chapter 726 to recover assets transferred by the decedent.

It is also proposed that the legislation be effective for all decedents dying on or after January 1, 2015.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None.

VI. CONSTITUTIONAL ISSUES

None.

V. OTHER INTERESTED PARTIES

Elder Law Section of The Florida Bar.

Trial Lawyers Section of The Florida Bar.

Florida Bankers Association.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Thomas M. Karr, Chair, Probate and Trust Litigation Committee of the Real Property Probate & Trust Law Section

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Position Type Probate and Trust Litigation Committee, RPPTL Section, The Florida Bar

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Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, FL 32302-2095, Telephone: (850) 222-3533

Appearances

Before Legislators N/A at this time

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

Meetings with

Legislators/staff N/A at this time

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A at this time

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose

Technical

Other

Assistance _____

Proposed Wording of Position for Official Publication:

Support legislation that would (i) amend Florida Statute §736.0207 to clarify that in an action to contest the validity or revocation of all or part of a trust, the contestant has the burden of proof to establish grounds for invalidity, and (ii) amend Florida Statute §733.107(2) to clarify and confirm its applicability in all circumstances in which the presumption of undue influence is established, including trust contests as well as challenges to inter vivos gifts.

A bill to be entitled

An act relating to burden of proof in trust contests; amending 736.0207, F.S.; amending 733.107, F.S.; providing an effective date.

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

Section 1. Section 736.0207, Florida Statutes, is amended to read:

736.0207 Trust contests. --

(1) In an action to contest the validity or revocation of all or part of a trust, the contestant shall have the burden of establishing the grounds for invalidity.

(2) An action to contest the validity of all or part of a revocable trust, or the revocation of part of a revocable trust, may not be commenced until the trust becomes irrevocable by its terms or by the settlor's death. If all of a revocable trust has been revoked, an action to contest the revocation may not be commenced until after the settlor's death. This section does not prohibit such action by the guardian of the property of an incapacitated settlor.

Section 2. Subsection (2) of section 733.107, Florida Statutes, is amended to read:

733.107. Burden of proof in contests; presumption of undue influence. --

(1) In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. A self-proving affidavit executed in accordance with s. 732.503 or an oath of an attesting witness executed as required in s. 733.201(2) is admissible and establishes prima facie the formal execution and attestation of the will. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought.

(2) As to any transaction or event to which the presumption of undue influence applies, that ~~The presumption of undue influence~~ implements public policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under ss. 90.301-90.304.

28 Section 3. This act shall take effect upon becoming law and shall apply to all
29 proceedings pending before such date and all cases commenced on or after the effective date.

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WHITE PAPER

PROPOSED LEGISLATIVE CLARIFICATION REGARDING THE BURDEN OF PROOF IN TRUST CONTESTS

I. SUMMARY

The proposed legislation amends Florida Statutes § 736.0207 to clarify that the burden of proof in a trust contest is on the contestant without imposing a burden on the proponent of the trust instrument to establish prima facie its formal execution. The proposal also amends § 733.107(2) to clarify that, as to any transaction or event to which the presumption of undue influence applies, when the presumption of undue influence is established, it shifts the burden of proof.

II. CURRENT FLORIDA LAW

The Florida Probate Code and Florida Trust Code provide that all or any part of a will, trust (including an amendment or restatement), revocation of a will, or revocation of a trust, is void if it is procured by fraud, duress, mistake, or undue influence. See Fla. Stat. § 732.5165 and §736.0406. Although both Codes specify grounds for a will contest or trust contest, only the Probate Code contains a provision designating which party has the burden of proof. See, Fla. Stat. § 733.107. Florida Statutes §733.107(1) designates which party has the burden of proof in a will contest as follows:

“In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. A self-proving affidavit executed in accordance with s. 732.503 or an oath of an attesting witness executed as required in s. 733.201(2) is admissible and establishes prima facie the formal execution and attestation of the will. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought.”

Fla. Stat. § 733.107(1).

Under Florida Statutes § 733.107, the proponent of the will has the initial burden of proving due execution of the will. Thereafter, the burden shifts to the will contestant to prove the grounds for the will contest. There is no statute designating who has the burden of proof of due execution in a trust contest. As a general proposition, under Florida law, the plaintiff or petitioner has the burden of proof. Accordingly, in the absence of a statute, the contestant in a trust contest as the plaintiff or petitioner should have the burden of proof. However, because trusts are often referred to as “will substitutes” and revocable trusts frequently have testamentary aspects, there is confusion among practitioners and courts as to whether the proponent of a trust, like a will proponent, has the burden of proving due execution of the trust before the burden shifts to the trust contestant to prove the grounds for the trust contest.

Further, as it relates to undue influence cases, Florida Statutes § 733.107(2) provides that the “presumption of undue influence implements public policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under ss. 90.301-90.304.” The effect of this statute is to shift the burden of proof in an undue influence case to the proponent if the contestant establishes a presumption of undue influence. Hack v. Janes, 878 So.2d 440, 443 (Fla. 5th DCA 2004). Under Florida law, a presumption of undue influence will arise with respect to a transaction if the contestant can show that a person in confidential relationship was active in procuring a document under which the contestant is a substantial beneficiary. In re Carpenter's Estate, 253 So.2d 697, 703 (Fla. 1971). Under the Florida Evidence Code, the presumption of undue influence is a policy-based presumption which shifts the burden of proof. Section 733.107(2) recognizes that the burden-shifting nature of the presumption of undue influence is applicable whenever that presumption is established. See, Newman v. Brecher, 887 So. 2d 384 (Fla. 4th DCA 2004) RBC Ministries v. Tompkins, 974 So.2d 569, 571-72 (Fla. 2d DCA 2008). Because § 733.107(2) is located in the Florida Probate Code, it could be argued that it only applies in will contests. The statute is intended to all undue influence proceedings, including trust contests and challenges to the validity of inter vivos gifts.

III. EFFECT OF PROPOSED STATUTORY CHANGE

The proposed legislation amends Florida Statutes § 736.0207(1) to make it clear that the contestant in a trust contest has the burden of proof on all issues, including proving that the trust was not properly executed. The proposed legislation also amends § 733.107(2) to clarify and confirm its applicability in all circumstances in which the presumption of undue influence is established, including trust contests and challenges to inter vivos gifts.¹

The proposed amendments do not seek to change Florida law, but rather to codify what the Real Property, Probate and Trust Law Section believes is the current state of Florida case law. These amendments will eliminate the confusion that has arisen and give courts needed guidance in trust contests as there is currently no statute addressing the burden of proof in trust contests.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This proposal clarifies that the burden of proof in a trust contest is on the contestant without imposing a burden on the proponent of the trust document to establish prima facie its formal execution, and clarifies that when the presumption of

¹ The Supreme Court of Florida has expressed its approval of statutes explicitly incorporating §90.304 into a statutory presumption. See, Universal Ins. Co. of North America v. Warfel, 82 So.3d 47, 55-60 (Fla. 2012).

undue influence is established in a proceeding, including trust contests, it shifts the burden of proof. Therefore, no net impact on the private sector is expected.

VI. CONSTITUTIONAL ISSUES

There do not appear to be any constitutional issues that arise as a result of this proposal.

VII. OTHER INTERESTED PARTIES

None.

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29 developers, lenders, governmental agencies, and investors in matters related to community
30 associations and planned developments; drafting governing documents or their amendments
31 and preparing filings with governmental agencies which regulate community associations or
32 planned developments; serving in or for governmental agencies which regulate community
33 associations or planned developments; representation of parties in construction lien and defect
34 claims, collection of assessment actions, governing document and community association
35 statutory enforcement and dispute actions, and other litigation, arbitration, and mediation in
36 matters relating to community associations or planned developments; and planning,
37 development, construction, and financing of condominium or planned development
38 communities.

39 (c) **Practice of Law.** The “practice of law” for this area is set out in rule 6-
40 3.5(c)(1).

41 **RULE 6-29.3 MINIMUM STANDARDS**

42 (a) **Minimum Period of Practice.** The applicant must have been engaged in the
43 practice of condominium and planned development law for at least 5 years immediately
44 preceding the date of application.

45 (b) **Substantial Involvement.** The applicant must demonstrate continuous and
46 substantial involvement in the practice of law, of which at least 40 percent has been spent in
47 active participation in condominium and planned development law during at least 3 of the 5
48 years immediately preceding the date of application.

49 (c) **Practical Experience.** The applicant must demonstrate substantial practical
50 experience in condominium and planned development law by providing examples of at least
51 20 substantive tasks or services performed on behalf of, or in connection with, community
52 associations and planned developments, such as:

53 (1) drafting, reviewing, interpreting, or revising of development and
54 governing documents, title instruments and reports, title insurance policies, contracts for sale
55 and purchase, and statutory and administrative laws, rules, and provisions;

- 56 (2) drafting of financing instruments for developers, lenders, investors, or
57 community associations;
- 58 (3) planning and drafting project legal structures and entities;
- 59 (4) dealing with development funds and associated development documents;
- 60 (5) drafting of other project related documents;
- 61 (6) serving as an arbitrator or counsel for a party in an arbitration;
- 62 (7) serving as a mediator or counsel for a party in a mediation;
- 63 (8) drafting opinion letters;
- 64 (9) serving as legal counsel at a trial, on appeal, or in administrative hearings;
- 65 (10) representing owners, purchasers, developers, lenders, investors, community
66 associations, governmental agencies, or political subdivisions in matters relating to
67 condominium and planned development law; or
- 68 (11) any other activity deemed appropriate by the condominium and planned
69 development law certification committee.

70 The applicant must also describe through examples or narrative, the applicant's law
71 practice of representing community associations, developers, lenders, investors, or owners in
72 matters involving condominium and planned development law during the 5-year period
73 preceding the date of application. The examples or narrative must include the approximate
74 number and type of clients the applicant has represented during the 5-year period.
75 Consideration will be given to those applicants who have served as in-house counsel or who
76 have been employed by governmental agencies.

77 **(d) Peer Review.** The applicant must submit the names and addresses of 5
78 individuals, who neither are relatives nor current associates or partners, as references to attest
79 to the applicant's substantial involvement, practical experience, and competence in
80 condominium and planned development law, as well as the applicant's character, ethics, and

108 with the requirements of rule 6-29.3(c).

109 **(c) Education.** The applicant must demonstrate completion of at least 75 credit
110 hours of approved continuing legal education in condominium and planned development law,
111 in accordance with the standards set forth in rule 6-29.3(e).

112 **(d) Peer Review.** The applicant must submit the names and addresses of at least 3
113 individuals, who neither are relatives nor current associates or partners, as references to attest
114 to the applicant's substantial involvement, practical experience, and competence in
115 condominium and planned development law, as well as the applicant's character, ethics, and
116 reputation for professionalism in the practice of law. At least 2 of the 3 references must be
117 attorneys or judges, and at least 1 must be a member of The Florida Bar. The condominium
118 and planned development law certification committee may, at its option, send reference forms
119 to other attorneys and judges.

120

2013 Revisions to FR/BAR RESIDENTIAL CONTRACT FOR SALE AND PURCHASE,
FR/BAR “AS/IS” CONTRACT and COMPREHENSIVE RIDERS

SUMMARY OF EDITS, ADDITIONS AND DELETIONS

The Florida Realtor-Attorney Joint Committee and its FR/BAR Contract subcommittee have reviewed the 2010 version of the Florida Realtor/Florida Bar Contract documents, together with comments and input from various sources around the state, and have drafted 2013 revised documents to update and amend the current forms. These documents and all suggestions for revisions to these forms have been reviewed by the Joint Committee which has approved the 2013 revisions being submitted to the Florida Realtors and The Florida Bar for final comments and approval.

This summary accompanies the “DRAFT” documents which are being submitted to the RPPTL Section of TFB for approval. Copies are included in the Agenda and written materials for the Section’s Executive Council meeting scheduled on May 25, 2013, and copies are posted on the RPPTL Section website. While it is intended that these are the “final” contract documents, as submitted, they are “DRAFT” documents for review, comment, edit and approval by the Section for TFB and are not intended as contract documents for use by anyone. Once these 2013 revised Contract documents are approved by FR and TFB they will be printed in final and appropriate format for dissemination and use. Until then, the 2010 version will continue to be the contract for general use.

The “DRAFT” documents which are posted or included in the electronic version of the Section EC materials reflect the 2013 proposed **changes or additions in red** and the deletions in ~~black line strike through type~~.

Highlights of Significant Changes:

1. The Residential Contract For Sale and Purchase

Changes in General:

New form number: Florida Realtors/Florida Bar-2, Rev. 7/13 [new proposed rev. date]

In an effort to make the forms and use of specific words consistent, where appropriate, the following changes are made throughout the documents:

- “from” is changed to “after” when used to identify performance or action required, and
- “will” is changed to “shall” when used to specify a party’s performance or action.

Changes by paragraph:

1. (d) Personal Property: Check boxes previously provided in this section were removed as we understood there was confusion on how and when to use them and there were reports that they were often intentionally and unintentionally mis-used. The 2013 form returns to the earlier contract forms by listing the most common personal property items and appliances included in residential sales and three (3) of the items previously in the check boxes (refrigerator(s), storm shutters/panels and smoke detectors) were

added into the preprinted list of seller owned items, if existing on the property on date of initial offer, to be included in the purchase. In the event other items of personal property are to be included or excluded in the purchase, blank lines exist for inserting this information in Paragraph 1. (e).

2. (a) Initial Deposit: Deleted the check with the option that the initial deposit “is to be made upon acceptance” and added a default, specifically, if neither check box is checked the initial deposit is to be made as specified in sub-section (ii), i.e., within _____ (if left blank, then 3) days after Effective Date. There was no “default” provided if no box was checked in the previous contract.

2. (b) Additional deposit: Default time for Buyer to make an additional deposit was extended from 3 to 10 days.

3. (b) Effective Date: Redefined criteria to calculate “Effective Date.” The 2013 version now defines it to be the date the last party has signed or initialed **and delivered** the offer or counter-offer, rather than determined merely by the date the last party signed or initialed the offer. The act of establishing the Effective Date for the contract has been an ongoing issue and this is a compromise to avoid adding a line somewhere in the contract stating language similar to “The Effective Date of this Contract is _____” which can only be filled in by a party or an agent/licensee after the offer or final counter-offer is fully signed or initialed by the both parties.

6. (b) Occupancy and Possession: The changes and additions in paragraph 6 were made with the intention of clarifying that the Property being purchased will be delivered to Buyer free of tenants or occupants or future leases or tenancies, unless the new check box in Paragraph 6(b) is checked on the Contract. Paragraph 6(b) incorporates portions of the previous STANDARD D, and it provides that Seller must disclose the facts and terms of leases or third party post-closing occupancy rights in writing to Buyer and deliver copies of any written leases to Buyer, all within 5 days after Effective Date. If the leases or terms of occupancy are not acceptable to Buyer, Buyer may terminate the contract within 5 days after receipt if from Seller. Previously STANDARD D required the disclosure of lease(s) within 5 days after Inspection Period which usually occurred later in the transaction and this has been replaced by the new 6(b). This change was generated to require disclosure of leases and future tenancies up front due to problems in areas where there are a number of seasonal rental properties and future tenancies are not always evident or discoverable at contract or Closing if the transaction occurred in the off season.

8. (b) Financing: Added new check box with the word “other” and a blank line for describing the type of loan the Buyer seeks. (Could insert USDA or FHA 203K where Buyer previously didn’t have the ability to do so in the Financing provision). Additionally, a default provision of 30 years was added to describe the term of the loan being sought if left blank.

Contract was reworded with regard to the parties’ rights to cancel the contract if Loan Commitment is not obtained by Loan Commitment Date. Buyer is obligated to notify Seller in writing upon Buyer’s receipt of Loan Commitment. If Buyer fails to obtain Loan Commitment timely, the contract states either party may cancel thereafter under certain

specified conditions. Cancellation can occur up to the earlier of (i) Buyer notifying Seller in writing that Loan Commitment was obtained or that Buyer has waived the financing contingency, or (ii) 7 days prior to Closing Date. If neither party does timely terminate, the provision specifies the financing contingency is waived by Buyer.

9. (b) Costs to be Paid By Buyer: Added to the list of Buyer's Costs is the Owner's Policy Premium if the Miami-Dade/Broward Regional Provision is checked. This was always a Buyer's cost per 9(c)(iii) but it wasn't reflected in 9(b).

9. (c) Title Evidence and Insurance: Municipal lien search was added to the definition of Owner's Policy and Charges, clarifying that the party who pays the cost of title under 9(c)(i) or 9(c)(ii) will also pay for the cost of the municipal lien search. Para. 9(c)(iii) already addresses this.

10. (d) Flood Zone: Clause now has a blank for parties to insert the amount of time Buyer has to terminate the contract per this flood provision with a default of 20 days if not filled in. Previously, contract provided termination had to occur within 20 days after Effective Date. Also, the committee sought input from FEMA and with it's staff proposals we have added more precise terminology and a provision that the National Flood Insurance Act of 2012 mandates that flood insurance rates will be increasing on pre FIRM non-primary structures (residential structures in which the insured or spouse will not be residing in the structure at least 80% of the time), which will require a flood elevation certificate be obtained.

10. (i) FIRPTA Tax Withholding: This Disclosure provision has added a requirement that Seller inform Buyer in writing if Seller is a "foreign person" for purposes of FIRPTA and that Seller and Buyer shall comply with FIRPTA. In tracking FIRPTA language, it now provides that Seller can provide Buyer with a certification of non-foreign status, if applicable. The clause references a new STANDARD V, previously a Rider, which sets out some FIRPTA requirements and it specifically advises the parties to seek legal counsel and tax advice regarding these requirements and their respective obligations.

12. (b)(i) General Inspection: Added the ability of Seller to receive a copy of the relevant portion of an inspector's report regarding an item that Buyer requests Seller to repair, if the Seller submits the written request for the report dealing with such item.

12. (b)(iii) General Property Repairs; 12. c(i) WDO Repairs; and 12. d(ii) Close-out of Building Permits: Changed time frame to 10 days (rather than 5) for Seller to have costs estimated for items requiring repair pursuant to the General Repairs Items, WDO damage or Permit Inspection items.

18. STANDARD D. Lease Information: Revised in conjunction with Paragraph 6. The time for Seller to furnish to Buyer Estoppel Letters or a Seller's affidavit regarding the rental details is changed to "at least 10 days prior to Closing" (rather than 5 days after Inspection Period). Lease Information is no longer used as term of art in this Contract. Lease(s) aren't referenced in this STANDARD as Paragraph 6 requires Buyer to provide them to Seller within 5 days after Effective Date. If the information in the Estoppel Letters or in the Seller's affidavit differs materially from leases or Seller's representations provided pursuant to para. 6, Buyer may terminate.

STANDARD F. Time: Clarification added that all time periods or [new] dates specified in the contract, except for time for acceptance and Effective Date, will extend to the next business day if they end or occur on Saturday, Sunday or national legal holiday.

STANDARD I. (ii) Closing Documents: The first sentence was changed so that the Seller is to execute and deliver the deed, bill of sale and other documents necessary to transfer title, with the costs of preparation of these determined by Paragraph 9. This provision in the existing contract was potentially in conflict with Paragraph 9 and often times, especially if Seller was not represented by Counsel, there were actual or attempted double charges at closing if Buyer was paying for Title Insurance since some of the listed documents were deemed to be included in closing services and a part of the “Owner’s Policy and Charges” paid by party paying for the Owner’s Policy. The last sentence simplifies what Buyer is to furnish and pay for outside of the otherwise defined charges.

STANDARD O. Contract Not Recordable etc.: Added the word “Delivery” and “Contract Execution” to the caption of this STANDARD. This was considered relevant because delivery is now a component of determining the Effective Date and this STANDARD, in part, addresses acts which constitute delivery. Also, a sentence was added that the parties intend to be bound to the contract if executed by use of electronic signatures.

STANDARD T. Loan Commitment Added a statement that neither pre approval nor prequalification letters will be considered Loan Commitment for this contract. Although the previous STANDARD defined “Loan Commitment” directly for FL Stat., since this is a big issue in transactions subject to financing this clause was added to clarify what is not Loan Commitment and we added “for the purposes of this Contract” so as not to be controlling this term outside of our Contract.

STANDARD V. FIRPTA: “Foreign” investors are major players, as Sellers and Buyers, in various areas of the state and this one of the primary elements of the Contract documents that the Committee got a lot of calls, comments and inquiries on. In an effort to make this Contract more comprehensive, we added language and substantially changed the language previously in the FIRPTA Rider when it was decided to move this into the Contract. We had a lot of input from real estate practitioners, tax attorneys and CPA’s and attempted to track FIRPTA Code language in insure, as best as possible, that there was full disclosure and opt our provisions if a party was at risk. This STANDARD attempts to inform and describe in general the parties’ rights and responsibilities as they pertain to various provisions, exemptions, procedures and options provided for in Section 1445 of the Internal Revenue Code in the event that the Seller is a “foreign person” and, thus, eliminating the need for the FIRPTA rider. However, it is complex and no summary of this nature is fully complete or bullet proof so the parties are, again, advised to seek legal or tax advice.

19. Addenda. Rider A is changed from “Condo Assn” to “Condo Rider;” Rider H has added “Flood” to reflect change in title and content of the Rider; Rider I previously entitled FIRPTA has been “Reserved” because it is new STANDARD V; and Rider P (Lead Based Paint Disclosure) is renamed.

2. The “AS/IS” Residential Contract For Sale And Purchase

The changes in the Standard FR/BAR Contract, as discussed, are also made in AS/IS Contract unless the provision is not also included in the AS/IS.

New form number: FloridaRealtors/Florida Bar-ASIS-2, Rev. 7/13

The following are changes specific to the AS/IS Contract:

10. (j) Seller Disclosure- In the second sentence, the word “stated” has been changed to “provided to” since the preceding sentence did not state anything specific or provide a line for the Seller to “state” or disclose any such facts in the contract and it also allows this provision to cover verbal disclosure, if any.

12. Property Inspection and Right to Cancel: Clarified in the event the parties did not fill in a time frame to perform inspections of the Property that the default would be 15 days after Effective Date. Previously the provision said 15 days from the Effective Date which created some confusion. This revision also removes the word “immediately” from the clause that said if the Contract was terminated, that Deposit was to be “immediately” returned to Buyer. The deposit will still be returned to the Buyer, but the word immediately sometimes created unreasonable expectations on the part of the Buyer.

STANDARD W. Has been added as “Reserved” since it was realized that the previous AS/IS Contract simply omitted “V” and “W” from the STANDARDS. “V” is now FIRPTA.

STANDARD X. Buyer Waiver of Claims. The first sentence is reworded so that “to the extent permitted by law” applies claims against Seller and any real estate licensee. We had input from several So. Florida attorneys and our committee agreed that this was confusing as previously worded. Also, we attempted to clarify that the waiver applies to physical defects. (Never intended to cover title or survey defects but there seemed to be some sentiment that the contract may have implied that.) A provision is added that Seller is not relieved of obligations to comply with Johnson v Davis found in Paragraph 10 (j) (this was already in the AS IS Rider for standard Contract) and, further, that the clause is to survive Closing.

3. Comprehensive Riders to Residential Contract For Sale And Purchase

Rider A. Condominium – Form was renamed “Condominium Rider.” In paragraphs 1 and 2 (c), default provisions were added for the number of days (i) for Buyer to be approved prior to Closing by the Association if required, (ii) for Seller to initiate the approval process and (iii) for the parties to sign documents to give those with first rights of refusal an opportunity to exercise. Paragraph 3(a) has new check boxes to indicate whether condominium assessments or rent payments on recreation areas are to be made quarterly, semi-annually and annually in addition to monthly, which was the only option provided for in the previous version of this Rider. An additional line was provided to describe a second condo assessment in the event

there is more than one. This additional description is not intended to be used to describe an HOA fee, because that is not a condo assessment. Since an HOA fee should be noted on a separate form, Rider B, a new provision is added at the end of the Fees and Assessments to direct the parties to see Rider B, HOA/Community Disclosure, if the condo is also part of an HOA where there are other assessments, etc.

Rider B. Homeowners' Association/Community Disclosure: The introductory sentence was changed to specify that the HOA form is provided to the Buyer prior to Buyer executing the Contract for Sale and the parties acknowledge same when they initial this Rider.

Rider C. Seller Financing: Added language and a blank line to define the term of the mortgage with a default of 30 years in the event the blank for the term is not filled in.

Rider E. FHA/VA: For an FHA loan, (1) a default of \$250 was added to Paragraph 2(a) which describes a cap on appraisal repairs, and (2) the words purchase price were added to Paragraph (3) to describe the minimum appraised value required for the contingency to be fulfilled and the blank line previously used to describe the required value was omitted.

Rider F. Appraisal Contingency: Changes Buyer's obligation to deliver copy of the appraisal obtained by Buyer to Seller. Now Buyer is to deliver the copy of the appraisal to Seller within 3 days of the date that the contract specifies the appraisal is to be obtained. Clarification added that that the Appraisal Contingency is in addition to provisions of Paragraph 8(b), if checked.

Rider G. Short Sale Approval: Paragraph (4) now provides that if Seller doesn't deliver Seller's Accepted Short Sale Approval (instead of merely notice that seller obtained an approval) by Short Sale Approval Deadline either party can cancel the contract. Also sets out a new formula for Contract Expiration Date, which is 30 days after expiration (including extensions) of the Short Sale Approval Deadline. As such, anytime the Short Sale Approval Deadline is extended, the Contract Expiration Date will also automatically extend. This will prevent the Contract Expiration Date from occurring prior to the Short Sale Approval. Paragraph (5) changes calculation of Contract Expiration Date from the Effective Date to commencing from the date of Buyer's receipt of short Sale Approval.

Rider H. Homeowner's Insurance: Added subparagraph (b) to make Buyer's offer contingent on Buyer obtaining flood insurance through the National Flood Insurance Program at a price not to exceed the cap and date inserted in the contract. As a result the title to the Rider was also changed to add "/Flood".

Rider K. As Is: Clarified that this waiver applies to physical defects as changed in the AS/IS Contract provision, as well. (See discussion under STANDARD X of AS/IS Contract.)

Rider P. Lead Based Paint Disclosure: Reversed the place for Listing Licensee and Selling Licensee to sign

Rider BB. Binding Arbitration: Added (1) that the American Arbitration Association will serve as arbitrator unless the parties other mutually agree otherwise and (2) that the arbitration must be initiated within the number of years the parties' insert in the blank, (with the default provision being 5 years) from Closing Date set forth in the Contract.

Changes are reflected in red print (additional language), and strike throughs (deletions) altogether representing the 2013 revisions 4/18/13

“AS IS” Residential Contract For Sale And Purchase
 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1* **PARTIES:** _____ ("Seller"),
 2* and _____ ("Buyer"),
 3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
 4 (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and
 5 any riders and addenda ("Contract");

6 **1. PROPERTY DESCRIPTION:**
 7* (a) Street address, city, zip: _____
 8* (b) Property is located in: _____ County, Florida. Real Property Tax ID No: _____
 9* (c) **Real Property: The legal description is** _____
 10 (c) ~~Legal description of the Real Property:~~ _____

11* _____
 12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
 13 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded **in Paragraph 1(e)**
 14 **below or by other terms of the Contract.**

15 (d) Personal Property: **Unless excluded in Paragraph 1(e) or by other terms of this Contract,** the following items
 16 **which are** owned by Seller and existing on the Property as of the date of the initial offer, are included in the
 17 purchase ("Personal Property"): (i) range(s)/ovens(s), **refrigerator(s)**, dishwasher(s), disposal, ceiling fan(s),
 18 intercom, light fixture(s), **drapery rods and draperies, blinds, and other window treatments, smoke detector(s),**
 19 garage door opener(s), ~~and security gate and other access devices,~~ and **storm shutters/panels ("Personal**
 20 **Property").** and (ii) those additional items checked below. ~~If additional details are necessary specify below. If~~
 21 ~~left blank, the item below is not included.~~

- | | | | |
|--|--|---|--|
| <input type="checkbox"/> Refrigerator(s) | <input type="checkbox"/> Security system | <input type="checkbox"/> Pool barrier/fence | <input type="checkbox"/> Storage shed |
| <input type="checkbox"/> Microwave oven | <input type="checkbox"/> Window/wall a/c | <input type="checkbox"/> Pool equipment | <input type="checkbox"/> TV antenna/satellite dish |
| <input type="checkbox"/> Washer | <input type="checkbox"/> Generator | <input type="checkbox"/> Pool heater | <input type="checkbox"/> Water softener/purifier |
| <input type="checkbox"/> Dryer | <input type="checkbox"/> Above-ground pool | <input type="checkbox"/> Spa or hot tub with heater | <input type="checkbox"/> Storm shutters and panels |
| <input type="checkbox"/> Stand-alone ice maker | | | |

22
 23 The ~~only~~ **Other items of Personal Property items** included in this purchase, and any additional details
 24* regarding ~~Personal Property~~, if necessary, are: _____
 25*

26 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

27* (e) The following items are excluded from the purchase: _____
 28*

29* **2. PURCHASE PRICE (U.S. currency):** \$ _____

30 (a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)** \$ _____

31* The initial deposit made payable and delivered to "Escrow Agent", named below, **either**
 32 **(CHECK ONE):** (i) accompanies offer or ~~is to be made upon acceptance (Effective Date)~~ or (ii) is to
 33 be made within _____ (if left blank, then 3) days after Effective Date. **IF NEITHER BOX IS CHECKED, THEN**
 34* **OPTION (ii) SHALL BE DEEMED SELECTED.**

35* Escrow Agent Information: Name: _____
 36* Address: _____ Phone: _____
 37 E-mail: _____ Fax: _____

38* (b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then ~~3~~**10**)
 39* days after Effective Date \$ _____

40 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

41* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 _____

42 (d) Other: _____ \$ _____

43 (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire
44* transfer or other **COLLECTED** funds \$ _____
45 **NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**
46 3. **TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**
47* (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before _____
48* _____, this offer shall be deemed withdrawn and the Deposit, if any, ~~will~~ **shall** be returned to
49 Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day
50 the counter-offer is delivered.
51 (b) The effective date of this Contract ~~will~~ **shall** be the date when the last one of the Buyer and Seller has signed
52 or initialed **and delivered** this offer or final counter-offer ("Effective Date").
53 4. **CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur
54 and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered
55* ("Closing") on _____ ("Closing Date"), at the time established by the Closing Agent.
56 5. **EXTENSION OF CLOSING DATE:**
57 (a) If Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth In Lending Act (TILA)
58 notice requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements,
59 not to exceed 7 days.
60 (b) If extreme weather or other condition or event constituting "Force Majeure" (see STANDARD G) causes: (i)
61 disruption of utilities or other services essential for Closing, or (ii) Hazard, Wind, Flood or Homeowners'
62 insurance, to become unavailable prior to Closing, Closing ~~will~~ **shall** be extended a reasonable time up to 3
63 days after restoration of utilities and other services essential to Closing, and availability of applicable Hazard,
64 Wind, Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance
65* has not occurred within _____ (if left blank, **then** 14) days after Closing Date, then either party may
66 terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the
67 Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.
68 6. **OCCUPANCY AND POSSESSION:**
69* (a) ~~Unless the box in Paragraph 6(b) is checked otherwise stated herein, Seller shall, at Closing, deliver~~
70 ~~occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also,~~
71 ~~Seller shall have removed all personal items and trash from the Property and shall deliver occupancy and~~
72 ~~possession, along with all keys, garage door openers, access devices and codes, as applicable, to Buyer. If~~
73 ~~Property is intended to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or~~
74 ~~occupants shall be disclosed pursuant to STANDARD D. If occupancy is to be delivered before Closing,~~
75 ~~Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for~~
76 ~~maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of~~
77 ~~time of taking occupancy.~~
78 (b) **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY BY THIRD PARTIES AFTER**
79* **CLOSING:**
80 ~~If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond~~
81 ~~Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written~~
82 ~~lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole~~
83 ~~discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this~~
84 ~~Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items~~
85 ~~from Seller. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D.~~
86 7. **ASSIGNABILITY: (CHECK ONE):** Buyer may assign and thereby be released from any further liability under
87* this Contract; may assign but not be released from liability under this Contract; or may not assign this
88* Contract.
89 8. **FINANCING:**
90 (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing
91* contingency to Buyer's obligation to close.
92 (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA
93* VA other _____ (describe) loan on the following terms within _____ (if left blank, then 30)
94* days after Effective Date ("Loan Commitment Date") for: **(CHECK ONE):** fixed, adjustable, fixed or
95* adjustable rate loan in the principal amount of \$ _____ or _____ % of the Purchase Price, at
96* an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's
97* creditworthiness), and for a term of _____ (if left blank, then 30) years ("Financing").
98* Buyer ~~will~~ **shall** make mortgage loan application for the Financing within _____ (if left blank, then 5) days
99* after Effective Date and use good faith and diligent effort to obtain a written loan commitment for the

Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

~~If Buyer does not receive Loan Commitment, then Buyer may terminate this Contract by delivering written notice to Seller, and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.~~

~~If Buyer does not deliver written notice to Seller of receipt of Loan Commitment or Buyer's written waiver of this financing contingency, then after Loan Commitment Date Seller may terminate this Contract by delivering written notice to Buyer and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.~~

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract up to the earlier of:

- i. Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or
- ii. 7 days prior to Closing Date.

If either party timely cancels this Contract pursuant to this Paragraph 8, and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.

If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default; (2) Property related conditions of the Loan Commitment have not been met (except when such conditions are waived by other provisions of this Contract); (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of Buyer's lender, in which event(s) the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

- (c) Assumption of existing mortgage (see rider for terms).
- (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

CLOSING COSTS, FEES AND CHARGES

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any fees
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Other: _____
- HOA/Condominium Association estoppel
- Recording and other fees needed to cure title
- Seller's attorneys' fees

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

(b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Other: _____
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owners' Policy Premium (if Paragraph 9 (c) (iii) is checked).

- (c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 5) days prior to Closing Date, a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium and charges for owner's policy endorsements, title

157 search, **municipal lien search** and closing services (collectively, "Owner's Policy and Charges") shall be paid,
158 as set forth below (**CHECK ONE**):

159 * (i) Seller ~~will~~ **shall** designate Closing Agent and pay for Owner's Policy and Charges (but not including
160 charges for closing services related to Buyer's lender's policy and endorsements and loan closing, which
161 amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select); or

162 * (ii) Buyer ~~will~~ **shall** designate Closing Agent and pay for Owner's Policy and Charges and charges for
163 closing services related to Buyer's lender's policy, endorsements, and loan closing; or

164 * (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]**: Seller ~~will~~ **shall** furnish a copy of a prior owner's
165 policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title
166 evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search;
167 and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for
168 Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more
169 * than \$ _____ (if **left** blank, then \$200.00) for abstract continuation or title search ordered or
170 performed by Closing Agent.

171 (d) **SURVEY**: At least 5 days prior to Closing, Buyer may, at Buyer's expense, have the Real Property surveyed
172 and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a
173 copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

174 * (e) **HOME WARRANTY***At Closing, Buyer Seller N/A ~~will~~ **shall** pay for a home warranty plan issued
175 * by _____ at a cost not to exceed \$ _____. A
176 home warranty plan provides for repair or replacement of many of a home's mechanical systems and major
177 built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty
178 period.

179 (f) **SPECIAL ASSESSMENTS**: At Closing, Seller ~~shall~~ **will** pay: (i) the full amount of liens imposed by a public
180 body ("public body" does not include a Condominium or Homeowner's Association) that are certified,
181 confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or
182 assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted
183 in a lien being imposed on the Property before Closing. Buyer ~~will~~ **shall** pay all other assessments. **If special**
184 **assessments may be paid in installments (CHECK ONE)**:

185 (a) **Seller shall pay installments due prior to Closing and Buyer shall pay installments due after**
186 **Closing. Installments prepaid or due for the year of Closing shall be prorated.**

187 (b) **Seller shall pay the assessment(s) in full prior to or at the time of Closing.**

188 **IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.**

189 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district
190 (CDD) pursuant to Chapter 190 F.S. which lien shall be ~~treated as an ad valorem tax and~~ prorated pursuant to
191 STANDARD K.

192 DISCLOSURES

193 10. DISCLOSURES:

194 (a) **RADON GAS**: Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in
195 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that
196 exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding
197 radon and radon testing may be obtained from your county health department.

198 (b) **PERMITS DISCLOSURE**: **Except as may have been disclosed by Seller to Buyer in a written**
199 **disclosure, Seller does not know of any improvements made to the Property which were made without**
200 **required permits or made pursuant to permits which have not been properly closed.**

201 (c) **MOLD**: Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned
202 or desires additional information regarding mold, Buyer should contact an appropriate professional.

203 (d) **FLOOD ZONE; ELEVATION CERTIFICATION**: Buyer is advised to verify by elevation certificate which flood
204 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to
205 improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"
206 or "Coastal **Barrier Resource High Hazard Areas Act**" **designated area or otherwise protected area identified**
207 **by the U.S. Fish and Wildlife Service under the Coastal Barrier Resource Areas Act and the lowest finished**
208 **floor elevation for building and /or flood insurance rating purposes is below minimum flood elevation or is in**
209 **eligible for flood insurance through the National Flood Insurance Program**, Buyer may terminate this Contract
210 by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date, failing which
211 Buyer accepts existing elevation of buildings and flood zone designation of Property. **The National Flood**
212 **Insurance Reform Act of 2012 (referred to as Biggert-Waters 2012) will phase in actuarial rating of pre-Flood**

Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 80% of the year) and an elevation certificate shall be required for actuarial rating.

- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint ~~disclosure~~ is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FIRPTA TAX WITHHOLDING:** ~~If Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA").~~ Buyer and Seller ~~will~~ shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. ~~If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. . Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.~~
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as ~~stated~~ provided for in the preceding sentence or otherwise disclosed in writing: (1) Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation; and (2) Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

- 11. **PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, and those repairs, replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement").
- 12. **PROPERTY INSPECTION; RIGHT TO CANCEL:**
 - (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** *Buyer shall have _____ (if blank, 15) days from after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be immediately returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.*
 - (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.
 - (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control

269 relating to improvements to the Property which are the subject of such open or needed Permits, and shall
270 promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to
271 resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary
272 authorizations, consents, or other documents necessary for Buyer to conduct inspections and have estimates
273 of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or
274 become obligated to expend, any money.

- 275 (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and
276 cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties
277 to Buyer.

278 **ESCROW AGENT AND BROKER**

- 279 **13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds
280 and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow
281 within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions
282 of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting
283 demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent
284 may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties
285 or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow
286 until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall
287 determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction
288 of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such
289 action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate,
290 except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate
291 broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve
292 escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

293 Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder,
294 or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable
295 attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent.
296 Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is
297 due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing
298 or termination of this Contract.

- 299 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition,
300 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate
301 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property
302 and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the
303 Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or
304 public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND
305 GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND
306 FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL,
307 WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each
308 individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and
309 employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees
310 at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection
311 with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of
312 information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or
313 failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task
314 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral,
315 recommendation or retention of any vendor for, or on behalf of Indemnifying Party; (iv) products or services
316 provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such
317 vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors
318 and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will
319 not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph
320 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this
321 Contract.

322 **DEFAULT AND DISPUTE RESOLUTION**

323 **15. DEFAULT:**

- 324 (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract,
325 including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the

326 Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this
327 Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further
328 obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity
329 to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon
330 default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however,
331 Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to
332 pay to Cooperating Broker.

- 333 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after
334 reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,
335 Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting
336 from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific
337 performance.

338 This Paragraph 15 shall survive Closing or termination of this Contract.

- 339 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and
340 Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be
341 settled as follows:

- 342 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to
343 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph
344 16(b).
345 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida
346 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").
347 The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be
348 sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16
349 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph
350 16 shall survive Closing or termination of this Contract.

- 351 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted
352 by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in
353 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to
354 recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting
355 the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

356 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

357 **18. STANDARDS:**

358 **A. TITLE:**

- 359 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in
360 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached
361 thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be
362 discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an
363 owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring
364 Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive
365 land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by
366 governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the
367 subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public
368 utility easements of record (located contiguous to real property lines and not more than 10 feet in width as
369 to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent
370 years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach
371 addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists
372 at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect.
373 Marketable title shall be determined according to applicable Title Standards adopted by authority of The
374 Florida Bar and in accordance with law.
375 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify
376 Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title
377 Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend
378 Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A.
379 Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts
380 to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it
381 then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of

382 **STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) Continued**
383

384 cure acceptable to Buyer and Buyer’s attorney) and the parties will close this Contract on Closing Date
385 (or if Closing Date has passed, within 10 days after Buyer’s receipt of Seller’s notice). If Seller is unable to
386 cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver
387 written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within
388 which Seller shall continue to use reasonable diligent effort to remove or cure the defects (“Extended
389 Cure Period”); or (b) electing to accept title with existing defects and close this Contract on Closing Date
390 (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer’s
391 receipt of Seller’s notice), or (c) electing to terminate this Contract and receive a refund of the Deposit,
392 thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable
393 diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract
394 shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from
395 all further obligations under this Contract.

- 396 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon
397 encroach on setback lines, easements, or lands of others; or violate any restrictions, covenants, or applicable
398 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice
399 of such matters, together with a copy of Survey, to Seller within 5 days after Buyer’s receipt of Survey, but no
400 later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the
401 notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller
402 has delivered a prior survey, Seller shall, at Buyer’s request, execute an affidavit of “no change” to the Real
403 Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.
- 404 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to
405 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of
406 access.
- 407 **D. LEASES INFORMATION:** Seller shall, ~~within 5 days after Inspection Period,~~ **at least 10 days prior to Closing,**
408 ~~furnish to Buyer copies of all written leases and estoppel letters from each tenant(s)/occupant(s) specifying~~
409 ~~nature and duration of tenant’s occupancy, rental rates, advanced rent and security deposits paid by tenant(s)~~
410 ~~and occupant(s), and income and expense statements for preceding 12 months (“Lease Information”)~~
411 ~~(“Estoppel Letter(s))”).~~ **If Seller is unable to obtain such Estoppel Letters from tenant(s), the same**
412 **information shall be furnished by Seller to Buyer within that time period in the form of a Seller’s affidavit, and**
413 **Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If terms of the lease(s)**
414 **differ materially from Seller’s representations, Estoppel Letter(s) or Seller’s affidavit, if any, differ materially**
415 **from Seller’s representations and leases provided pursuant to Paragraph 6,** Buyer may deliver written notice
416 to Seller within 5 days after receipt of ~~such Lease Information,~~ **such Lease Information,** but no later than 5 days prior to Closing Date,
417 terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all
418 further obligations under this Contract. Seller shall, at Closing, deliver and assign all ~~original~~ leases to Buyer
419 who shall assume Seller’s obligation thereunder.
- 420 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting; (i) to the absence of any financing
421 statement, claims of lien or potential lienors known to Seller, and (ii) that there have been no improvements or
422 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been
423 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by
424 all general contractors, subcontractors, suppliers and materialmen in addition to Seller’s lien affidavit setting
425 forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that
426 all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for
427 damages have been paid or will be paid at Closing.
- 428 **F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.**
429 **Other than time for acceptance and Effective Date as set forth in Paragraph 3, Any time periods provided for**
430 **or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein,** which shall
431 **end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m.**
432 **(where the Property is located) of the next business day.**
- 433 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be
434 liable to each other for damages so long as performance or non-performance of the obligation is delayed,
435 caused or prevented by Force Majeure. “Force Majeure” means: hurricanes, earthquakes, floods, fire, acts of
436 God, unusual transportation delays, wars, insurrections, acts of terrorism, and any other cause not reasonably
437 within control of Buyer or Seller, and which, by exercise of reasonable diligent effort, the non-performing party
438

439 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") Continued**

440
441 is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended
442 for the period that the Force Majeure prevents performance under this Contract, provided, however, if such

443
444 Force Majeure continues to prevent performance under this Contract more than 14 days beyond Closing
445 Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit
446 shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

447 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
448 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters
449 described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be
450 transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in
451 this Contract.

452 **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

453 (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the
454 attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of
455 title insurance, or, if no title insurance, designated by Seller. Closing may be conducted by mail or
456 electronic means.

457 (ii) **CLOSING DOCUMENTS:** ~~At Closing, Seller shall furnish and pay for,~~ **at or prior to Closing, execute and**
458 **deliver,** as applicable, deed, bill of sale, certificate(s) of title **or other documents necessary to transfer title**
459 **to any part of the Property,** construction lien affidavit(s), owner's possession **and no lien** affidavit(s), **and**
460 assignment(s) of leases, ~~and corrective instruments.~~ Seller shall provide Buyer with paid receipts for all
461 work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable,
462 ~~mortgage, mortgage note, security agreement, financing statements,~~ **the** survey, base elevation
463 certification, and ~~other~~ documents required by Buyer's lender.

464 (iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title
465 Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as
466 amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent
467 shall, **subject to COLLECTION of all closing funds,** disburse at Closing the brokerage fees to Broker
468 and the net sale proceeds to Seller.

469 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide
470 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following
471 escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing
472 Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable,
473 through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller
474 shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure
475 the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer,
476 be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property,
477 vacate the Real Property and re- convey the Property to Seller by special warranty deed and bill of sale; and
478 (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights
479 against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties
480 contained in the deed or bill of sale.

481 **K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as
482 of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate
483 taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees,
484 insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of
485 insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or
486 decreased as may be required by prorations to be made through day prior to Closing. Advance rent and
487 security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to
488 Seller. Taxes shall be prorated based on current year's tax with due allowance made for maximum allowable
489 discount, homestead and other exemptions. If Closing occurs on a date when current year's millage is not
490 fixed but current year's assessment is available, taxes will be prorated based upon such assessment and
491 prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's
492 tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which
493 improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon
494 prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which,
495 request shall be made to the County Property Appraiser for an informal assessment taking into account

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") Continued

available exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

- L. **ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.
- M. **RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.
- N. **1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.
- O. **CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:**
Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A legible facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. **This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act of 1996 and other applicable laws**
- P. **INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.
- Q. **WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.
- R. **RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.
- S. **COLLECTION or COLLECTED:** "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of Closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.
- T. **LOAN COMMITMENT:** "Loan Commitment" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower. **Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract.**
- U. **APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the real property is located.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") Continued

V. **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** If a seller of U. S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires the buyer of the real property to withhold 10% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for \$300,000 or less.

(i) No withholding is required under Section 1445 if the Seller is not a "foreign person," provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification of non-foreign status from Seller, signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold 10% of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, if any required, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold 10% of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

W. RESERVED

X. **BUYER WAIVER OF CLAIMS:** *To the extent permitted by law, Buyer waives any claims against Seller and, to the extent permitted by law, against any real estate licensee involved in the negotiation of this Contract, for any damage or defects or other damage pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.*

ADDENDA AND ADDITIONAL TERMS

19. **ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (Check if applicable):

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> A. Condominium Assn. Rider | <input type="checkbox"/> L. RESERVED | <input type="checkbox"/> R. Rezoning | <input type="checkbox"/> Y. Seller's Attorney Approval |
| <input type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> M. Defective Drywall | <input type="checkbox"/> S. Lease Purchase/Lease Option | <input type="checkbox"/> Z. Buyer's Attorney Approval |
| <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> N. Coastal Construction Control Line | <input type="checkbox"/> T. Pre-Closing Occupancy | <input type="checkbox"/> AA. Licensee-Personal Interest in Property |
| <input type="checkbox"/> D. Mortgage Assumption | <input type="checkbox"/> O. Insulation Disclosure | <input type="checkbox"/> U. Post-Closing Occupancy | <input type="checkbox"/> BB. Binding Arbitration |
| <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> P. Pre-1978 Housing Statement (Lead Based Paint)- Disclosure (Pre-1978 Housing) | <input type="checkbox"/> V. Sale of Buyer's Property | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> F. Appraisal Contingency | <input type="checkbox"/> Q. Housing for Older Persons | <input type="checkbox"/> W. Back-up Contract | _____ |
| <input type="checkbox"/> G. Short Sale | | <input type="checkbox"/> X. Kick-out Clause | _____ |
| <input type="checkbox"/> H. Homeowners'/Flood Ins. | | | |
| <input type="checkbox"/> I. FIRPTA Reserved | | | |
| <input type="checkbox"/> J. Interest-Bearing Acct. | | | |
| <input type="checkbox"/> K. RESERVED | | | |

610 * 20. **ADDITIONAL TERMS:** _____
611 _____
612 _____
613 _____
614 _____
615 _____
616 _____
617 _____
618 _____
619 _____
620 _____
621 _____
622 _____
623 _____
624 _____
625 _____
626 _____
627 _____

COUNTER-OFFER/REJECTION

628
629 * Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and
630 deliver a copy of the acceptance to Seller).
631 * Seller rejects Buyer's offer.

632 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE**
633 **OF AN ATTORNEY PRIOR TO SIGNING.**

634 **THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

635 *Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms*
636 *and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions*
637 *should be negotiated based upon the respective interests, objectives and bargaining positions of all interested*
638 *persons.*

639 AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO
640 BE COMPLETED.

641
642
643 * Buyer: _____ Date: _____

644
645
646
647
648 * Buyer: _____ Date: _____

649
650
651
652
653 * Seller: _____ Date: _____

654
655
656
657
658 * Seller: _____ Date: _____

660 Buyer's address for purposes of notice Seller's address for purposes of notice
661 * _____
662 * _____
663 * _____
664 _____

665 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled
666 to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent

667 to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the
668 parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the
669 escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing
670 Broker to Cooperating Brokers.

671 _____
672 *

673 **Cooperating Sales Associate, if any**

674

675 * _____

676 **Cooperating Broker, if any**

Listing Sales Associate

Listing Broker

DRAFT

Changes are reflected in red print (additional language), and strike throughs (deletions) altogether representing the 2013 revisions 4/18/13

Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1* **PARTIES:** _____ ("Seller"),
 2* and _____ ("Buyer"),
 3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
 4 (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and
 5 any riders and addenda ("Contract");

6 **1. PROPERTY DESCRIPTION:**

- 7* (a) Street address, city, zip: _____
- 8* (b) Property is located in: _____ County, Florida. Real Property Tax ID No: _____
- 9* (c) **Real Property: The legal description is** _____
- 10 (c) ~~Legal description of the Real Property:~~ _____

11* _____
 12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
 13 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded **in Paragraph 1(e)**
 14 **below or by other terms of this Contract.**

15 (d) **Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract,** the following items
 16 **which are** owned by Seller and existing on the Property as of the date of the initial offer, are included in the
 17 purchase ("Personal Property"): (i) range(s)/ovens(s), **refrigerator(s)**, dishwasher(s), disposal, ceiling fan(s),
 18 intercom, light fixture(s), **drapery rods and draperies, blinds, and other window treatments, smoke detector(s),**
 19 garage door opener(s), and security gate and other access devices, and **storm shutters/panels** ("Personal
 20 **Property"). and (ii) those additional items checked below. If additional details are necessary specify below. If**
 21 **left blank, the item below is not included.**

- | | | | |
|--|--|---|--|
| <input type="checkbox"/> Refrigerator(s) | <input type="checkbox"/> Security system | <input type="checkbox"/> Pool barrier/fence | <input type="checkbox"/> Storage shed |
| <input type="checkbox"/> Microwave oven | <input type="checkbox"/> Window/wall a/c | <input type="checkbox"/> Pool equipment | <input type="checkbox"/> TV antenna/satellite dish |
| <input type="checkbox"/> Washer | <input type="checkbox"/> Generator | <input type="checkbox"/> Pool heater | <input type="checkbox"/> Water softener/purifier |
| <input type="checkbox"/> Dryer | <input type="checkbox"/> Above-ground pool | <input type="checkbox"/> Spa or hot tub with heater | <input type="checkbox"/> Storm shutters and panels |
| <input type="checkbox"/> Stand-alone ice maker | | | |

22
 23 The ~~only~~ **Other items of Personal Property items** included in this purchase, and any additional details
 24* regarding ~~Personal Property~~, if necessary, are: _____

25* _____
 26 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

27* (e) The following items are excluded from the purchase: _____

28* **2. PURCHASE PRICE (U.S. currency):** \$ _____

29* (a) Initial deposit to be held in escrow in the amount of **(checks subject to COLLECTION)** \$ _____
 30 The initial deposit made payable and delivered to "Escrow Agent", named below, **either**
 31* **(CHECK ONE):** (i) accompanies offer or is to be made upon acceptance (Effective Date) or (ii) is to
 32 be made within _____ (if left blank, then 3) days after Effective Date. **IF NEITHER BOX IS CHECKED, THEN**
 33 **OPTION (ii) SHALL BE DEEMED SELECTED.**

34* Escrow Agent Information: Name: _____
 35* Address: _____ Phone: _____
 36* E-mail: _____ Fax: _____

37* (b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then ~~3~~**10**)
 38* days after Effective Date \$ _____

39* (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

40* (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8

41* (d) Other: _____ \$ _____

43 (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire
44* transfer or other **COLLECTED** funds \$ _____

45 **NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**

46 3. **TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**

47* (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before _____
48* _____, this offer shall be deemed withdrawn and the Deposit, if any, ~~will~~ **shall** be returned to
49 Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day
50 the counter-offer is delivered.

51 (b) The effective date of this Contract ~~will~~ **shall** be the date when the last one of the Buyer and Seller has signed
52 or initialed **and delivered** this offer or final counter-offer ("Effective Date").

53 4. **CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur
54 and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered
55* ("Closing") on _____ ("Closing Date"), at the time established by the Closing Agent.

56 5. **EXTENSION OF CLOSING DATE:**

57 (a) If Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth In Lending Act (TILA)
58 notice requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements,
59 not to exceed 7 days.

60 (b) If extreme weather or other condition or event constituting "Force Majeure" (see STANDARD G) causes: (i)
61 disruption of utilities or other services essential for Closing, or (ii) Hazard, Wind, Flood or Homeowners'
62 insurance, to become unavailable prior to Closing, Closing ~~will~~ **shall** be extended a reasonable time up to 3
63 days after restoration of utilities and other services essential to Closing, and availability of applicable Hazard,
64 Wind, Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance
65* has not occurred within _____ (if left blank, **then** 14) days after Closing Date, then either party may
66 terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the
67 Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

68 6. **OCCUPANCY AND POSSESSION:**

69* (a) ~~Unless the box in Paragraph 6(b) is checked otherwise stated herein, Seller shall, at Closing, deliver~~
70 ~~occupancy and possession, of the Property to Buyer free of tenants, occupants and future tenancies. Also,~~
71 ~~Seller shall have removed all personal items and trash from the Property and shall deliver occupancy and~~
72 ~~possession, along with all keys, garage door openers, access devices and codes, as applicable, to Buyer. If~~
73 ~~Property is intended to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or~~
74 ~~occupants shall be disclosed pursuant to STANDARD D. If occupancy is to be delivered before Closing,~~
75 ~~Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for~~
76 ~~maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of~~
77 ~~time of taking occupancy, except with respect to any items identified by Buyer pursuant to Paragraph 12, prior~~
78 ~~to taking occupancy, which require repair, replacement, treatment or remedy.~~

79* (b) **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY BY THIRD PARTIES AFTER**
80 **CLOSING:**
81 ~~If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond~~
82 ~~Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written~~
83 ~~lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole~~
84 ~~discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this~~
85 ~~Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items~~
86 ~~from Seller. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D.~~

87* 7. **ASSIGNABILITY: (CHECK ONE):** Buyer may assign and thereby be released from any further liability under
88* this Contract; may assign but not be released from liability under this Contract; or may not assign this
89 Contract.

90 8. **FINANCING:**

91* (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing
92 contingency to Buyer's obligation to close.

93* (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA
94* VA other _____ (describe) loan on the following terms within _____ (if left blank, then 30)
95* days after Effective Date ("Loan Commitment Date") for: **(CHECK ONE):** fixed, adjustable, fixed or
96* adjustable rate loan in the principal amount of \$ _____ or _____ % of the Purchase Price, at
97* an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's
98* creditworthiness), and for a term of _____ (if left blank, then 30) years ("Financing").

99 Buyer ~~will~~ shall make mortgage loan application for the Financing within _____ (if left blank, then 5) days
100 after Effective Date and use good faith and diligent effort to obtain a written loan commitment for the
101 Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully
102 informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's
103 mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

104 ~~If Buyer does not receive Loan Commitment, then Buyer may terminate this Contract by delivering written~~
105 ~~notice to Seller, and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all~~
106 ~~further obligations under this Contract.~~

107 ~~If Buyer does not deliver written notice to Seller of receipt of Loan Commitment or Buyer's written waiver of~~
108 ~~this financing contingency, then after Loan Commitment Date Seller may terminate this Contract by delivering~~
109 ~~written notice to Buyer and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all~~
110 ~~further obligations under this Contract.~~

111 **Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does**
112 **not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this**
113 **Contract up to the earlier of:**

- 114 i. Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected
115 to waive the financing contingency of this Contract; or
116 ii. 7 days prior to Closing Date.

117 **If either party timely cancels this Contract pursuant to this Paragraph 8, and Buyer is not in default under the**
118 **terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further**
119 **obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8,**
120 **then this financing contingency shall be deemed waived by Buyer.**

121
122 If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter
123 close, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default; (2) Property
124 related conditions of the Loan Commitment have not been met (except when such conditions are waived by
125 other provisions of this Contract); (3) appraisal of the Property obtained by Buyer's lender is insufficient to
126 meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of Buyer's lender, in
127 which event(s) the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all further
128 obligations under this Contract.

129 * (c) Assumption of existing mortgage (see rider for terms).

130 * (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

131 CLOSING COSTS, FEES AND CHARGES

132 9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

133 (a) COSTS TO BE PAID BY SELLER:

- 134 • Documentary stamp taxes and surtax on deed, if any fees • HOA/Condominium Association estoppel
135 • Owner's Policy and Charges (if Paragraph 9(c)(i) is checked) • Recording and other fees needed to cure title
136 • Title search charges (if Paragraph 9(c)(iii) is checked) • Seller's attorneys' fees
137 • Other:
138 *

139 Seller ~~will~~ shall pay the following amounts/percentages of the Purchase Price for the following costs and
140 * expenses:

141 (i) up to \$ _____ or _____ % (1.5% if left blank) for General Repair Items ("General Repair
142 * Limit"); and

143 (ii) up to \$ _____ or _____ % (1.5% if left blank) for WDO treatment and repairs ("WDO
144 * Repair Limit"); and

145 (iii) up to \$ _____ or _____ % (1.5% if left blank) for costs associated with closing out open or
146 expired building permits and obtaining required building permits for any existing improvement for which a
147 permit was not obtained ("Permit Limit").

148 If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the
149 repairs, replacements, treatments or permitting as required by Paragraph 12, then, sums equal to 125% of
150 estimated costs to complete the applicable item(s) (but, not in excess of applicable General Repair, WDO
151 Repair, and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual cost of required
152 repairs, replacements, treatment or permitting exceed applicable escrowed amounts, Seller shall pay such
153 actual costs (but, not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth
154 above).

155 Any unused portion of escrowed amount(s) shall be returned to Seller.

156 (b) **COSTS TO BE PAID BY BUYER:**

- 157 • Taxes and recording fees on notes and mortgages
- 158 • Recording fees for deed and financing statements
- 159 • Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- 160 • Survey (and elevation certification, if required)
- 161 • Lender's title policy and endorsements
- 162 • HOA/Condominium Association application/transfer fees
- 163 • Loan expenses
- 164 • Appraisal fees
- 165 • Buyer's Inspections
- 166 • Buyer's attorneys' fees
- 167 • All property related insurance
- 168 • **Owners' Policy Premium (if Paragraph**
- 169 **9 (c) (iii) is checked.**
- 170 • Other: _____

163 (c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 5) days prior to Closing Date, a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium ~~and charges for owner's policy endorsements~~, title search, **municipal lien search** and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below (**CHECK ONE**):

- 173 * (i) Seller ~~will~~ **shall** designate Closing Agent and pay for Owner's Policy and Charges (but not including charges for closing services related to Buyer's lender's policy and endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select); or
- 174 (ii) Buyer ~~will~~ **shall** designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements, and loan closing; or
- 175 (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller ~~will~~ **shall** furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ _____ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

176 (d) **SURVEY:** At least 5 days prior to Closing, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

177 (e) **HOME WARRANTY:** At Closing, Buyer Seller N/A ~~will~~ **shall** pay for a home warranty plan issued by _____ at a cost not to exceed \$ _____. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

178 (f) **SPECIAL ASSESSMENTS:** At Closing, Seller ~~will~~ **shall** pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer ~~will~~ **shall** pay all other assessments. **If special assessments may be paid in installments (CHECK ONE):**

179 * (a) **Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.**

180 * (b) **Seller shall pay the assessment(s) in full prior to or at the time of Closing.**

181 **IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.**

182 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190 F.S. which lien shall be ~~treated as an ad valorem tax and~~ prorated pursuant to STANDARD K.

206 **DISCLOSURES**

207 **10. DISCLOSURES:**

208 (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

- 212 (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written
 213 disclosure, Seller does not know of any improvements made to the Property which were made without
 214 required permits or made pursuant to permits which have not been properly closed.
- 215 (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned
 216 or desires additional information regarding mold, Buyer should contact an appropriate professional.
- 217 (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood
 218 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to
 219 improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"
 220 or "Coastal Barrier Resource High Hazard Areas Act" designated area or otherwise protected area identified
 221 by the U.S. Fish and Wildlife Service under the Coastal Barrier Resource Areas Act and the lowest finished
 222 floor elevation for building and /or flood insurance rating purposes is below minimum flood elevation or is
 223 ineligible for flood insurance through the National Flood Insurance Program, Buyer may terminate this
 224 Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date,
 225 failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The
 226 National Flood Insurance Reform Act of 2012 (referred to as Biggert-Waters 2012) will phase in actuarial
 227 rating of pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the
 228 insured or spouse does not reside for at least 80% of the year) and an elevation certificate shall be required
 229 for actuarial rating.
- 230 (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information
 231 Brochure required by Section 553.996, F.S.
- 232 (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint ~~disclosure~~
 233 is mandatory.
- 234 (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS**
 235 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS'**
 236 **ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**
- 237 (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT
 238 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED
 239 TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY
 240 IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN
 241 HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT
 242 THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- 243 (i) **FIRPTA TAX WITHHOLDING:** ~~if~~ Seller shall inform Buyer in writing if Seller is a "foreign person" as defined
 244 * by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller will ~~will~~ shall comply with
 245 FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person",
 246 Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury,
 247 to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information
 248 pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their
 249 respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- 250 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which
 251 are not readily observable and which have not been disclosed to Buyer.

252 **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

- 253 11. **PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, and those repairs,
 254 replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but
 255 not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance
 256 Requirement").
- 257 12. **PROPERTY INSPECTION AND REPAIR:**
- 258 (a) **INSPECTION PERIOD:** By the earlier of 15 days after Effective Date or 5 days prior to Closing Date
 259 ("Inspection Period"), Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections
 260 described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d)
 261 below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's
 262 obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract
 263 does not close, Buyer will shall repair all damage to Property resulting from Buyer's inspections, return
 264 Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property
 265 upon its completion.
- 266 (b) **GENERAL PROPERTY INSPECTION AND REPAIR:**

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- (i) **General Inspection:** Those items specified in Paragraph 12(b)(ii) below, which Seller is obligated to repair or replace (“General Repair Items”) may be inspected (“General Inspection”) by a person who specializes in and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida license to repair and maintain the items inspected (“Professional Inspector”). Buyer shall, within the Inspection Period, inform Seller of any General Repair Items that are not in the condition required by (b)(ii) below by delivering to Seller ~~either a written notice or~~ **and upon written request by Seller** a copy of the portion of Professional Inspector’s written report dealing with such items.
 - (ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage: ceiling, roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical, security, sprinkler, septic and plumbing systems and machinery, seawalls, and dockage, are, and shall be maintained until Closing, in “Working Condition” (defined below). Torn screens (including pool and patio screens), fogged windows, and missing roof tiles or shingles ~~will~~ **shall** be repaired or replaced by Seller prior to Closing. Seller is not required to repair or replace “Cosmetic Conditions” (defined below), unless the Cosmetic Conditions resulted from a defect in an item Seller is obligated to repair or replace. “Working Condition” means operating in the manner in which the item was designed to operate. “Cosmetic Conditions” means aesthetic imperfections that do not affect Working Condition of the item, including, but not limited to, pitted marcite; tears, worn spots and discoloration of floor coverings, wallpapers, or window treatments; nail holes, scrapes, scratches, dents, chips or caulking in ceilings, walls, flooring, tile, fixtures, or mirrors; and minor cracks in walls, floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio floors. Cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks, leakage or structural damage.
 - (iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary to bring items into the condition specified in Paragraph 12(b)(ii) above. Seller ~~will~~ **shall** within ~~5-10~~ days after receipt of Buyer’s written notice or General Inspection report, either have the reported repairs to General Repair Items estimated by an appropriately licensed person and a copy delivered to Buyer, or have a second inspection made by a Professional Inspector and provide a copy of such report and estimates of repairs to Buyer. If Buyer’s and Seller’s inspection reports differ and the parties cannot resolve the differences, Buyer and Seller together ~~will~~ **shall** choose, and equally split the cost of, a third Professional Inspector, whose written report ~~will~~ **shall** be binding on the parties. If costs to repair General Repair Items equals or is less than the General Repair Limit, Seller ~~will~~ **shall** have repairs made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair Limit, then within 5 days after a party’s receipt of the last estimate: (A) Seller may elect to pay the excess by delivering written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of General Repair Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and agreeing to accept the balance of General Repair Items in their “as is” condition, subject to Seller’s continuing Maintenance Requirement. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.
- (c) **WOOD DESTROYING ORGANISM (“WDO”) INSPECTION AND REPAIR:**
- (i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business (“WDO Inspector”) to determine the existence of past or present WDO infestation and damage caused by infestation (“WDO Inspection”). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector’s written report to Seller if any evidence of WDO infestation or damage is found. “Wood Destroying Organism” (“WDO”) means arthropod or plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying fungi, that damages or infests seasoned wood in a structure, excluding fences.
 - (ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDO found by Buyer’s WDO Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller’s cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller ~~will~~ **shall** within ~~5-10~~ days after receipt of Buyer’s WDO Inspector’s report, have reported WDO damage estimated by an appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a copy delivered to Buyer. Seller ~~will~~ **shall** have treatments and repairs made in accordance with Paragraph 12(f) below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property exceeds the WDO Repair Limit, then within 5 days after receipt of Seller’s estimate, Buyer may deliver written notice to Seller agreeing to pay the excess, or designating

324 which WDO repairs Seller shall make (at a total cost to Seller not exceeding the WDO Repair Limit), and
325 accepting the balance of the Property in its "as is" condition with regard to WDO infestation and damage,
326 subject to Seller's continuing Maintenance Requirement. If Buyer does not deliver such written notice to
327 Seller, then either party may terminate this Contract by written notice to the other, and Buyer shall be
328 refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

329 (d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**

330 (i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to
331 determine whether there exist any open or expired building permits or unpermitted improvements to the
332 Property ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of
333 the existence of any open or expired building permits or unpermitted improvements to the Property.

334 (ii) **Close-Out of Building Permits:** Seller will ~~will~~**shall**, within ~~5~~**10** days after receipt of Buyer's Permit
335 Inspection notice, have an estimate of costs to remedy Permit Inspection items prepared by an
336 appropriately licensed person and a copy delivered to Buyer. No later than 5 days prior to Closing Date,
337 Seller shall, up to the Permit Limit have open and expired building permits identified by Buyer or known to
338 Seller closed by the applicable governmental entity, and obtain and close any required building permits
339 for improvements to the Property. Prior to Closing Date, Seller will provide Buyer with any written
340 documentation that all open and expired building permits identified by Buyer or known to Seller have
341 been closed out and that Seller has obtained required building permits for improvements to the Property.
342 If final permit inspections cannot be performed due to delays by the governmental entity, Closing Date
343 shall be extended for up to 10 days to complete such final inspections, failing which, either party may
344 terminate this Contract, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from
345 all further obligations under this Contract.

346 If cost to close open or expired building permits or to remedy any permit violation of any governmental
347 entity exceeds Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A)
348 Seller may elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written
349 notice to Seller accepting the Property in its "as is" condition with regard to building permit status and
350 agreeing to receive credit from Seller at Closing in the amount of Permit Limit. If neither party delivers
351 such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded
352 the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

353 (e) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date
354 prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through
355 (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of
356 Personal Property are on the Property and to verify that Seller has maintained the Property as required by the
357 Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all
358 other contractual obligations.

359 (f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:**

360 All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately
361 licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality,
362 value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except
363 as provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable
364 repair, treatment and maintenance contracts and warranties to Buyer.

365 **ESCROW AGENT AND BROKER**

366 **13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds
367 and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow
368 within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions
369 of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting
370 demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent
371 may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties
372 or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow
373 until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall
374 determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction
375 of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such
376 action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate,
377 except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate
378 broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve
379 escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

380 Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder,
381 or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable
382 attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent.
383 Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is
384 due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing
385 or termination of this Contract.

386 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition,
387 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate
388 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property
389 and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the
390 Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or
391 public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND
392 GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND
393 FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL,
394 WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each
395 individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and
396 employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees
397 at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection
398 with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of
399 information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or
400 failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task
401 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral,
402 recommendation or retention of any vendor for, or on behalf of Indemnifying Party; (iv) products or services
403 provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such
404 vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors
405 and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will
406 not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph
407 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this
408 Contract.

409 **DEFAULT AND DISPUTE RESOLUTION**

410 **15. DEFAULT:**

411 (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract,
412 including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the
413 Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this
414 Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further
415 obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity
416 to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon
417 default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however,
418 Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to
419 pay to Cooperating Broker.

420 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after
421 reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,
422 Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting
423 from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific
424 performance.

425 This Paragraph 15 shall survive Closing or termination of this Contract.

426 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and 427 Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be 428 settled as follows:

429 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to
430 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph
431 16(b).

432 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida
433 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").
434 The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be
435 sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16

436 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph
437 16 shall survive Closing or termination of this Contract.

438 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted
439 by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in
440 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to
441 recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting
442 the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

443 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

444 **18. STANDARDS:**

445 **A. TITLE:**

446 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in
447 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached
448 thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be
449 discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an
450 owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring
451 Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive
452 land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by
453 governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the
454 subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public
455 utility easements of record (located contiguous to real property lines and not more than 10 feet in width as
456 to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent
457 years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach
458 addendum); provided, that, unless waived by Paragraph 12 (a), there exists at Closing no violation of the
459 foregoing and none prevent use of the Property for **RESIDENTIAL PURPOSES**. If there exists at Closing
460 any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect.
461 Marketable title shall be determined according to applicable Title Standards adopted by authority of The
462 Florida Bar and in accordance with law.

463 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify
464 Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title
465 Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend
466 Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A.
467 Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts
468 to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it
469 then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of
470 cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date
471 (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to
472 cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver
473 written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within
474 which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended
475 Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date
476 (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's
477 receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit,
478 thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable
479 diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract
480 shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from
481 all further obligations under this Contract.

482 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon
483 encroach on setback lines, easements, or lands of others; or violate any restrictions, covenants, or applicable
484 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice
485 of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no
486 later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the
487 notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller
488 has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real
489 Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.
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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") Continued

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- C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.
 - D. LEASES INFORMATION:** Seller shall, ~~within 5 days after Inspection Period,~~ **at least 10 days prior to Closing,** furnish to Buyer ~~copies of all written leases and estoppel letters from each tenant(s)/occupant(s) specifying nature and duration of tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant(s) and occupant(s), and income and expense statements for preceding 12 months ("Lease Information") ("Estoppel Letter(s)).~~ If Seller is unable to obtain **such Estoppel Letters from tenant(s),** the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant(s) **or occupant(s)** to confirm such information. ~~If terms of the lease(s) differ materially from Seller's representations,~~ **Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and leases provided pursuant to Paragraph 6,** Buyer may deliver written notice to Seller within 5 days after receipt of **such Lease Information,** but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all ~~original~~ leases to Buyer who shall assume Seller's obligation thereunder.
 - E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting; (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller, and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.
 - F. TIME:** Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** **Other than time for acceptance and Effective Date as set forth in Paragraph 3,** Any time periods provided for **or dates specified** in this Contract, **whether preprinted, handwritten, typewritten or inserted herein,** which shall end **or occur** on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.
 - G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, acts of terrorism, and any other cause not reasonably within control of Buyer or Seller, and which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.
 - H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.
 - I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**
 - (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance, or, if no title insurance, designated by Seller. Closing may be conducted by mail or electronic means.
 - (ii) **CLOSING DOCUMENTS:** ~~At Closing, Seller shall furnish and pay for,~~ **at or prior to Closing, execute and deliver,** as applicable, deed, bill of sale, certificate(s) of title **or other documents necessary to transfer title to any part of the Property,** construction lien affidavit(s), owner's possession **and no lien** affidavit(s), and assignment(s) of leases, ~~and corrective instruments.~~ Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable,

STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”) Continued

(iii) ~~mortgage, mortgage note, security agreement, financing statements,~~ the survey, base elevation certification, and other documents required by Buyer’s lender.

(iv) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller’s title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re- convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller’s mortgagee will be paid to Seller. Taxes shall be prorated based on current year’s tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when current year’s millage is not fixed but current year’s assessment is available, taxes will be prorated based upon such assessment and prior year’s millage. If current year’s assessment is not available, then taxes will be prorated on prior year’s tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year’s millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at either party’s request, be readjusted upon receipt of current year’s tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty (“Casualty Loss”) and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property “as is” together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller’s sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) under Section 1031 of the Internal Revenue Code (“Exchange”), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided,

663 Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be
 664 subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to
 665 the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.
 666 (iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this
 667 transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the
 668 applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for
 669 disbursement in accordance with the final determination of the IRS, as applicable.
 670 (v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms
 671 8288 and 8288-A, as filed.

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 673
 674 **ADDENDA AND ADDITIONAL TERMS**

675 **19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into
 676 this Contract (**Check if applicable**):

- | | | | |
|---|--|---|--|
| 677 * <input type="checkbox"/> A. Condominium Assn. Rider | <input type="checkbox"/> L. Right to Inspect/
Cancel | <input type="checkbox"/> R. Rezoning | <input type="checkbox"/> Y. Seller's Attorney
Approval |
| 678 <input type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> M. Defective Drywall | <input type="checkbox"/> S. Lease Purchase/
Lease Option | <input type="checkbox"/> Z. Buyer's Attorney
Approval |
| 679 <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> N. Coastal Construction
Control Line | <input type="checkbox"/> T. Pre-Closing
Occupancy | <input type="checkbox"/> AA. Licensee-Personal
Interest in Property |
| 680 <input type="checkbox"/> D. Mortgage Assumption | <input type="checkbox"/> O. Insulation Disclosure | <input type="checkbox"/> U. Post-Closing Occupancy | |
| 681 <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> P. Pre-1978 Housing
Statement (Lead Based Paint)-
Disclosure (Pre-1978 Housing) | <input type="checkbox"/> V. Sale of Buyer's
Property | <input type="checkbox"/> BB. Binding Arbitration
Other _____ |
| 682 <input type="checkbox"/> F. Appraisal Contingency | | <input type="checkbox"/> W. Back-up Contract | _____ |
| 683 <input type="checkbox"/> G. Short Sale | <input type="checkbox"/> Q. Housing for Older
Persons | <input type="checkbox"/> X. Kick-out Clause | _____ |
| 684 | | | _____ |
| 685 <input type="checkbox"/> H. Homeowners'/Flood Ins. | | | |
| 686 <input type="checkbox"/> I. FIRPTA Reserved | | | |
| 687 <input type="checkbox"/> J. Interest-Bearing Acct. | | | |
| 688 <input type="checkbox"/> K. "As Is" | | | |

689 * **20. ADDITIONAL TERMS:** _____
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707 **COUNTER-OFFER/REJECTION**

- 708 * Seller counters Buyer's offer (to accept the counter-offer, Buyer must sign or initial the counter-offered terms and
 709 deliver a copy of the acceptance to Seller).
 710 * Seller rejects Buyer's offer.

711 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE**
 712 **OF AN ATTORNEY PRIOR TO SIGNING.**

713 **THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

714

715 *Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms*
716 *and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions*
717 *should be negotiated based upon the respective interests, objectives and bargaining positions of all interested*
718 *persons.*

719 AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO
720 BE COMPLETED.

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723 * Buyer: _____ Date: _____

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738 * Seller: _____ Date: _____

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740 Buyer's address for purposes of notice Seller's address for purposes of notice
741 * _____
742 * _____
743 * _____
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745 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled
746 to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent
747 to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the
748 parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the
749 escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing
750 Broker to Cooperating Brokers.

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752 * _____
753 **Cooperating Sales Associate, if any** **Listing Sales Associate**

754
755 * _____
756 **Cooperating Broker, if any** **Listing Broker**

Comprehensive Rider to the Residential Contract For Sale And Purchase 4/8/13
 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

A. CONDOMINIUM ASSOCIATION DISCLOSURE RIDER

1. CONDOMINIUM ASSOCIATION APPROVAL:

(a) The Association's approval of Buyer (**CHECK ONE**) is is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than _____ (if left blank, then 5) days prior to Closing. Within _____ (if left blank, then 5) days after Effective Date Seller shall initiate the approval process with the Association and Buyer shall apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract ~~will~~ shall terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. RIGHT OF FIRST REFUSAL:

- (a) The Association (**CHECK ONE**): has does not have a right of first refusal ("Right"). If the Association has a Right, this Contract is contingent upon the Association, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the Association is not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto).
- (b) The members of the Association (**CHECK ONE**): have do not have a Right. If the members do have a Right, this Contract is contingent upon the members, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the members are not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration.
- (c) Buyer and Seller shall, within _____ (if left blank, then 5) days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and process the matter with the Association and members, including personal appearances, if required.
- (d) If, within the stated time period, the Association, the members of the Association, or both, fail to provide the written confirmation or the Right has not otherwise expired, then this Contract ~~will~~ shall terminate and the Deposit ~~will~~ shall be refunded to the Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.
- (e) If the Association or a member timely exercises its or their Right, this Contract ~~will~~ shall terminate and the Deposit ~~will~~ shall be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract, and Seller ~~will~~ shall pay to Broker the full commission at Closing in recognition that Broker procured the sale.

3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

- (a) **Condominium Association** Assessment(s) and Rents: Seller represents that the current ~~annual~~ **Association** assessment(s) ~~installments~~ is/are
 \$ _____ payable (**CHECK ONE**): ~~per month~~ monthly quarterly semi-annually annually
 and if more than one Association assessment
 \$ _____ payable (**CHECK ONE**): monthly quarterly semi-annually annually
 and the current rent on recreation areas, if any
 \$ _____ payable (**CHECK ONE**): monthly quarterly semi-annually annually

A. CONDOMINIUM ASSOCIATION DISCLOSURE RIDER (CONTINUED)

~~shall be made current by Seller at Closing, and Buyer shall reimburse Seller for prepayments.~~

All annual assessments levied by the Association and rent on recreational areas, if any, shall be made current by Seller at Closing, and Buyer shall reimburse Seller for prepayments.

- (b) Fees: Seller ~~will~~ **shall** pay all fines imposed against the Unit **by the Condominium Association** as of Closing Date and any fees the Association charges to provide information about ~~its fees on the Property~~ **including assessment(s) and fees.** ~~and will bring annual assessment installments and similar periodic fees and rents on any recreational areas current as of Closing Date.~~

If Property is part of a Homeowners' Association, see Rider B. Homeowners' Association/Community Disclosure for further information including additional assessments and fees.

- (c) Special Assessments and Prorations:

(i) ~~Seller~~ represents that Seller is not aware of any special or other assessment that has been levied by the Association or that has been an item on the agenda, or reported in the minutes, of the Association within twelve (12) months prior to Effective Date, ("pending") except as follows: _____

(ii) If special assessments levied or pending exist as of the Effective Date are disclosed above by Seller and may be paid in installments (**CHECK ONE**): Buyer Seller (if left blank, then Buyer) shall pay installments due after Closing Date. **If Seller is checked, Seller will shall pay the assessment in full prior to or at the time of Closing.**

(iii) ~~If~~ special assessments levied or pending exist as of the Effective Date and have not been disclosed above by Seller, then Seller shall pay such assessments in full at the time of Closing.

(iv) If, after Effective Date, the Association imposes a special assessment for improvements, work or services, which was not pending as of the Effective Date, then Seller ~~will~~ **shall** pay all amounts due before Closing Date and Buyer ~~will~~ **shall** pay all amounts due after Closing Date.

(v) ~~A~~ special assessment shall be deemed levied for purposes of this paragraph on the date when the assessment has been approved as required for enforcement pursuant to Florida law and the condominium documents listed in Paragraph 5.

(vi) ~~Association~~ assets and liabilities, including Association reserve accounts, shall not be prorated.

- (d) Litigation: Seller represents that Seller is not aware of pending or anticipated litigation affecting the Property or the common elements, if any, except as follows: _____

4. SPRINKLER SYSTEM RETROFIT:

If, pursuant to Sections 718.112(2)(l), F.S., the Association has voted to forego retrofitting its fire sprinkler system or handrails and guardrails for the condominium units, then prior to Closing Seller shall furnish to Buyer the written notice of Association's vote to forego such retrofitting.

5. NON-DEVELOPER DISCLOSURE:

(CHECK ONE):

(a) THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

(b) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE

A. CONDOMINIUM ASSOCIATION DISCLOSURE RIDER (CONTINUED)

TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

6. BUYER'S REQUEST FOR DOCUMENTS:

Buyer is entitled, at Seller's expense, to current copies of the condominium documents specified in Paragraph 5, above. Buyer (**CHECK ONE**): requests does not request a current copy of the documents specified in Paragraph 5, above. If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents.

7. BUYER'S RECEIPT OF DOCUMENTS:

(**COMPLETE AND CHECK ONLY IF CORRECT**) Buyer received the documents described in Paragraph 5, above, on _____.

8. COMMON ELEMENTS; PARKING:

The Property includes the unit being purchased and an undivided interest in the common elements and an appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration:

Parking Space(s) # _____ Garage # _____ Other: _____

9. INSPECTIONS AND REPAIRS:

The rights and obligations arising under Paragraphs 11 and 12 of this Contract to maintain, repair, replace or treat are limited to Seller's individual condominium unit and unless Seller is otherwise responsible do not extend to common elements, limited common elements, or any other part of the condominium property.

10. GOVERNANCE FORM:

PURSUANT TO CHAPTER 718, FLORIDA STATUTES, BUYER IS ENTITLED TO RECEIVE FROM SELLER A COPY OF THE GOVERNANCE FORM IN THE FORMAT PROVIDED BY THE DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES OF THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, SUMMARIZING THE GOVERNANCE OF THE CONDOMINIUM ASSOCIATION.

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Comprehensive Rider to the Residential Contract For Sale And Purchase 4/1/13
 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



When initialed by all parties, the parties acknowledge that the disclosure set forth below was provided to Buyer prior to execution of ~~clauses below will be incorporated into the Florida Realtors/Florida Bar Contract For Sale and Purchase~~ between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____ **Seller's Initials** _____

B. HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE

IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THIS DISCLOSURE.

Disclosure Summary For _____
 (Name of Community)

- (a) AS A BUYER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION ("ASSOCIATION").
- (b) THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS ("COVENANTS") GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.
- (c) YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____.
- (d) YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.
- (e) YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.
- (f) THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____.
- (g) THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.
- (h) THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.
- (i) THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

 DATE BUYER

 DATE BUYER

**Comprehensive Rider to the
Residential Contract For Sale And Purchase 4/1/13**
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

**C. SELLER FINANCING
(PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER)**

Seller agrees to hold a note secured by (CHECK ONE): a first a second purchase money mortgage, executed by Buyer in the principal amount of \$ _____ at _____ % interest per annum for term of _____ (if left blank, then 30) years, payable in equal (CHECK ONE): monthly quarterly annual payments of \$ _____ each, including interest, with the first payment due _____ month(s) after Closing. This (CHECK ONE): is is not a balloon mortgage. If it is a balloon mortgage, the final payment will exceed the periodic payments thereon, and the entire unpaid principal balance plus accrued interest shall be due and payable in _____ months or _____ years from date of Closing. If a second mortgage, the amount of the first mortgage shall not exceed the amount set forth in Paragraph 2(c), and a default in the first mortgage shall, at the option of the holder, constitute a default of the second mortgage.

The purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of repayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, mortgage note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by state or national banks or other residential lending institutions located in the county where the Real Property is located. All Personal Property and leases being conveyed or assigned ~~will~~ shall, at Seller's option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title.

**Comprehensive Rider to the
Residential Contract For Sale And Purchase 3/13/13**
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

D. ASSUMPTION OF EXISTING MORTGAGE(S)

The Property is encumbered by an existing mortgage, in the amount of \$_____, which has a variable interest rate; or a fixed interest rate of _____% per annum. At time of title transfer, some fixed interest rates are subject to increase; if increased, the rate shall not exceed _____% per annum. Seller shall furnish a statement from each mortgagee stating the principal balance, method of payment, interest rate and status of mortgage or authorize Buyer or Closing Agent to obtain the same. If Buyer has agreed to assume a mortgage which requires approval of Buyer by the mortgagee for assumption, then Buyer shall promptly obtain the necessary application and diligently complete and return it to the mortgagee. Any mortgagee charge(s), not to exceed \$_____ (if left blank, then 1% of amount assumed), shall be paid by Buyer. If Buyer is not accepted by mortgagee or the requirements for assumption are not in accordance with the terms of this Contract or mortgagee makes a charge in excess of the stated amount, Seller or Buyer may rescind this Contract by written notice to the other party unless either elects to pay the increase in interest rate or excess mortgage charges.

**Comprehensive Rider to the
Residential Contract For Sale And Purchase 4/1/13**
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

E. FEDERAL HOUSING ADMINISTRATION (FHA)/U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)

1. DEFINITIONS:

- (a) "Contract" is the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase (2013 ed.), to which this Rider is attached and intended to amend.
- (b) "Property" is the Property which is the subject matter of this Contract.
- (c) "HUD" is the Department of Housing and Urban Development.
- (d) "Purchaser" is the Buyer named in this Contract.

2. INSPECTIONS AND APPRAISAL:

In addition to the requirements of Paragraph 12 of this Contract, Seller shall comply with applicable FHA or VA regulations regarding termite inspection, roof inspection, and appraisal repairs (collectively "Appraisal Repairs"). The cost to Seller for Appraisal Repairs will shall not exceed \$ _____, (if left blank, then \$250.00) which cost is in addition to the costs required to be paid under Paragraphs 9 (a) and 12 (b), (c) and (d).

3. **(CHECK IF APPLICABLE): FHA FINANCING:** It is expressly agreed that notwithstanding any other provisions of this Contract, the Purchaser shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the Purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement lender setting forth the appraised value of the Property of not less than \$ _____, the purchase price. The Purchaser shall have the privilege and option of proceeding with consummation of this Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The Purchaser should satisfy himself/herself that the price and condition of the Property are acceptable.

- (a) **Fees, Prepayments:** Purchaser shall pay all loan expenses, except tax service fee which fee, if charged by Buyer's lender, shall be paid by Seller up to a maximum of \$ _____ (if left blank, then \$100.00).
- (b) **Appraisal Repairs:** If the cost of Appraisal Repairs exceeds the limit imposed by Paragraph 2 above, Seller must, within 3 days after receiving notice of the excess cost, give Purchaser written notice of Seller's intention to pay some, all, or none of the excess amount. If Seller elects to pay less than the full amount of the excess cost, Purchaser may elect to pay the balance or cancel this Contract. Purchaser's election must be in writing and provided to Seller within 3 days after receiving written notice of Seller's election.
- (c) **Certification:** We, the undersigned Seller, Purchaser and Broker involved in this transaction each certify individually and jointly that the terms of this Contract are true and correct to the best of our knowledge and belief and that any other agreements entered into by any of these parties in connection with this transaction are part of, or attached to, this Contract.

4. **(CHECK IF APPLICABLE): VA FINANCING:** It is expressly agreed that, notwithstanding any other provision of this Contract, the Purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the Property described herein, if this Contract purchase price or cost exceeds the reasonable value of the Property as established by the U.S. Department of Veterans Affairs. The Purchaser shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of reasonable value established by the U.S. Department of Veterans Affairs.

**Comprehensive Rider to the
Residential Contract For Sale And Purchase 4/1/13**
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

F. APPRAISAL CONTINGENCY

This Contract is contingent upon Buyer or ~~Buyer's lender~~ obtaining, at Buyer's expense, a written appraisal from a licensed Florida appraiser, stating that the appraised value of the Property is at least \$ _____ (if left blank, then the Purchase Price), and ~~delivering a copy of such appraisal to Seller~~ on or before _____. If the appraisal states that the appraised value of the Property is less than the above value, Buyer ~~may~~, **shall deliver a copy of such appraisal to Seller** within 3 days after the above date and deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit paid shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and continuing with this Contract without regard to the appraised value of the Property, **except as provided in Paragraph 8(b) if it is checked.**

If Buyer fails to timely obtain an appraisal, or having timely obtained such appraisal fails to timely deliver notice of Buyer's exercise of the right to terminate granted above, this contingency shall be waived and removed, and Buyer ~~will~~ **shall** continue with this Contract, **without waiving any of Buyer's rights in Paragraph 8(b) if it is checked.**

**Comprehensive Rider to the
Residential Contract For Sale And Purchase 4/1/13**
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Buyer's Initials _____ Seller's Initials _____

G. SHORT SALE APPROVAL CONTINGENCY

1. **Approval of Seller's Lender(s) and Requirements for Seller's Approval of Short Sale.** This Contract is contingent upon: (a) Seller's lender(s) and all other lien holder(s) (collectively "Seller's Lender") approving the Purchase Price, terms of this Contract and the HUD-1 settlement statement; (b) Seller's Lender's agreement to accept a payoff which is less than the balance due on the loan or other indebtedness; and (c) Seller's Lender's agreement to release and provide a satisfaction of the mortgage(s) and/or other lien(s) encumbering the Property (the "Mortgage(s)") upon receipt of reduced payoff amount(s).

Approval of, or agreement to, items (a) through (c) by Seller's Lender is referred to as "Short Sale Approval". However, an approval by Seller's Lender which does not provide a waiver and complete release of any claim(s) for a deficiency against Seller for sums due Seller's Lender under the Mortgage(s) as of the payoff date, or which requires additional terms or obligations affecting either party shall not be deemed "Short Sale Approval" unless the party affected accepts those additional terms or obligations in writing. A copy of a Short Sale Approval accepted by Seller shall be delivered by Seller to Buyer and Closing Agent within 3 days of Seller's receipt of such Short Sale Approval.

2. **Application for Approval of Short Sale.** Seller shall within _____ (if left blank, then 10) days after Effective Date obtain from Seller's Lender their application forms for a "short sale", and Seller ~~will~~ shall diligently complete and return such forms to Seller's Lender within 5 days thereafter and promptly provide such additional documents as may be requested by Seller's Lender.

3. **Status of Short Sale Approval Application.** Seller hereby authorizes Seller's Lender to provide Buyer and Buyer's Broker and Closing Agent with information stating the status of Seller's application for approval of a Short Sale and notice of the approval(s) or denial(s) of such application(s). Seller shall promptly notify Buyer when Seller obtains Short Sale Approval as provided in Paragraph 1 above, or denial of such approval from Seller's Lender.

4. **Short Sale Approval Deadline; Termination.** If Seller does not deliver ~~a copy of Seller's accepted Short Sale Approval~~ written notice to Buyer ~~that Seller has obtained Short Sale Approval~~ within _____ (if left blank, then 90) days from Effective Date ("Short Sale Approval Deadline"), then either party may thereafter terminate this Contract by delivering written notice to the other party, and the Deposit ~~will~~ shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

This Contract shall automatically terminate if Seller has not delivered the Short Sale Approval to Buyer within _____ (if blank, then 120) days from Effective Date ~~30 days after expiration of the Short Sale Approval Deadline, including any extension(s) of the Short Sale Approval Deadline~~ ("Contract Expiration Date"), in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

5. **Time Periods.** The time for making the Initial Deposit ~~specified in Paragraph 2(a)~~ and for calculating the Short Sale Approval Deadline ~~and Contract Expiration Date~~ shall be computed from the Effective Date. All other time periods and other obligations under this Contract shall commence from the date of Buyer's receipt of Short Sale Approval pursuant to Paragraph 1 above.

6. **Closing Date.** The Closing Date shall be _____ (if left blank, then 45) days after Buyer receives Short Sale Approval pursuant to Paragraph 1 above.

G. SHORT SALE APPROVAL CONTINGENCY (CONTINUED)

7. Back-up Offers. (CHECK ONE - If no option is checked, then option (a) shall be deemed selected):

- (a) **Seller's Agreement Not to Accept Other Contracts or Offers.** During the term of this Contract, Seller shall not accept or enter into any back-up offers, contracts, options or other agreements concerning the sale of the Property.
- (b) **Seller's Right to Accept Back-up Contracts or Offers.** During the term of this Contract, Seller may accept or enter into bona fide "back-up" contracts or offers to purchase the Property that are conditioned upon a failure of the Closing of the sale contemplated by this Contract.

8. Acknowledgement by Seller.

- (a) If Seller is advised of Seller's Lender's refusal to participate in any short sale, Seller agrees to immediately communicate this to Buyer and Broker.
- (b) Seller acknowledges that Broker has advised Seller to consult with professionals for any tax, legal or specialized advice and has been encouraged to discuss other options with legal counsel of Seller's choosing prior to entering into this short sale transaction.

9. Acknowledgement by Buyer.

- (a) Buyer acknowledges Seller's Lender is not a party to this Contract and therefore is not obligated to approve this Contract; that Seller's acceptance of this Contract does not guarantee Seller's Lender's acceptance; and Seller's Lender is under no obligation to consider, respond, approve or advise either Seller or Buyer, or Broker as to any offer submitted to it.
- (b) Buyer further acknowledges that Seller and/or Broker shall not be liable for delays caused by Seller's Lender or costs and expenses (such as payments for loan applications, inspections and appraisals) incurred by Buyer under this Contract if Seller's Lender does not complete the short sale after Seller's receipt of Short Sale Approval.

10. Termination Upon Foreclosure Sale. If during the term of this Contract, the Property is sold at foreclosure sale prior to the parties obtaining Short Sale Approval and Closing the transaction contemplated by this Contract, this Contract shall be terminated, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

**Comprehensive Rider to the
Residential Contract For Sale And Purchase 4/1/13**
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

H. HOMEOWNER'S/FLOOD INSURANCE

(CHECK IF APPLICABLE)

(a) **Homeowner's Insurance:** If Buyer is unable to obtain comprehensive homeowner's insurance coverage (including windstorm) from a standard carrier or the Citizen's Property Insurance Corporation at a first year annual premium(s) not to exceed \$_____ or _____% of the Purchase Price by _____, 20____ (if left blank, then the earlier of 30 days after Effective Date or 5 days prior to Closing Date), Buyer may terminate this Contract by delivering written notice to the Seller by the date set forth in this Paragraph, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(b) **Flood Insurance:** If Buyer is unable to obtain flood insurance through the National Flood Insurance Program at a first year premium not to exceed \$_____ or _____% of the purchase price by _____, 20____ (if left blank, then the earlier of 30 days after Effective Date or 5 days prior to Closing Date), Buyer may cancel this Contract by delivering written notice to Seller by the date set forth in this Paragraph, and Buyer's deposit(s) shall be refunded.

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Buyer's Initials _____

Seller's Initials _____

~~I. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA")~~

{Note: Modified and Moved to STANDARD V in Contract} **RESERVED**

~~If a Seller is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires a buyer of real property to withhold 10% of the amount realized by the Seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption applies. The primary exemptions are (1) Seller provides Buyer with an affidavit that Seller is not a "foreign person", (2) Seller provides Buyer with a Withholding Certificate providing for reduced or eliminated withholding, or (3) the gross sales price is \$300,000 or less, Buyer is an individual who purchases the Property to use as a residence, and Buyer or a member of Buyer's family has definite plans to reside at the Property for at least 50% of the number of days the Property is in use during each of the first two 12-month periods after transfer. Buyer and Seller agree to execute and deliver as directed any instrument, affidavit, or statement reasonably necessary to comply with the requirements of FIRPTA, including delivery of their respective federal taxpayer identification numbers ("TIN") or Social Security Numbers to the Closing Agent. If Seller applies for a withholding certificate but the application is still pending as of the Closing, Buyer agrees to place the 10% tax in escrow at Seller's expense to be disbursed in accordance with the final determination of the IRS, provided Seller so requests and gives Buyer notice of the pending application in accordance with Section 1445 and implementing regulations. In the event Buyer does not pay sufficient COLLECTED funds at Closing to meet the withholding requirement, Seller shall deliver to Buyer at Closing the additional COLLECTED funds necessary to satisfy the requirement. Buyer shall timely disburse the funds to the IRS, and provide Seller with copies of the tax forms and receipts.~~

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Buyer's Initials _____

Seller's Initials _____

J. INTEREST-BEARING ACCOUNT

All Deposits ~~will~~ shall be held by Escrow Agent in an interest-bearing escrow account at _____ (Financial Institution) with all accrued interest to be paid to _____ at Closing. Deposits ~~will~~ shall accrue interest only from the date the Financial Institution receives and credits the Deposits through the date Escrow Agent is notified that the transaction is scheduled for Closing and the funds are transferred. Escrow Agent is authorized to deduct \$ _____ as a service charge from the earned interest before disbursing the funds.

**Comprehensive Rider to the
Residential Contract For Sale And Purchase 4/1/13**
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Buyer's Initials _____

Seller's Initials _____

K. "AS IS"

1. SELLER'S OBLIGATIONS WITH RESPECT TO THE PROPERTY; LIMITATIONS:

- (a) Paragraph 9(a)(i) (General Repair Limit), Paragraph 9(a)(ii) (WDO Repair Limit), Paragraph 9(a)(iii) (Permit Limit), Paragraph 11 (Property Maintenance), and Paragraph 12 (Property Inspection and Repair) are deleted.
- (b) This Rider does not relieve Seller's disclosure obligations under Paragraph 10(j). **However, Except as provided for required in this Rider, (1) Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation and (2) Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property.**
- (c) Subject to the provisions and limitations of this Rider, **and to the extent permitted by law**, Buyer waives any claims against Seller and, ~~to the extent permitted by law~~, against any real estate licensee involved in the negotiation of this Contract, for any ~~defects or other damage~~ **or defects pertaining to the physical condition of the Property** that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer.

2. INSPECTION PERIOD AND RIGHT TO CANCEL:

- (a) Buyer shall have _____ (if left blank, then 15) days from Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities shall be made available by the Seller during the Inspection Period.
- (b) If this Contract is terminated or if the transaction contemplated by this Contract does not close, Buyer ~~will~~ **shall** repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion. This provision shall survive termination of this Contract.
- (c) If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller on or before expiration of the Inspection Period. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer; thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Subparagraph 2(b), above.
- (d) If Buyer elects to proceed with this Contract or fails to timely terminate this Contract on or before expiration of the Inspection Period, then, except for Seller's continuing AS IS Maintenance Requirement under Paragraph 3 below, Buyer waives Seller's obligation(s) to make repair(s), replacement(s), or treatment(s) or close open or expired Permits, accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, in their "as is" condition(s), and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.

3. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:

Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement"). Seller shall, upon reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and that the Property has been maintained as required by this Paragraph 3. At Buyer's option and cost, Seller ~~will~~ **shall**, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

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Buyer's Initials _____

Seller's Initials _____

L. RIGHT TO INSPECT AND RIGHT TO CANCEL

1. In lieu of the Inspection Period set forth in Paragraph 12(a), Buyer shall have _____ (if left blank, then 15) days from Effective Date ("Right To Inspect Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities shall be made available by the Seller during the Right To Inspect Period. Any inspections permitted under Paragraph 12 which Buyer desires to make must be completed during the Right To Inspect Period.
2. If this Contract is terminated or the transaction contemplated by this Contract does not close, Buyer ~~will~~ **shall** repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion. This provision shall survive termination of this Contract.
3. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice to Seller on or before expiration of the Right To Inspect Period and the Deposit shall be refunded to Buyer; thereby releasing Buyer and Seller from all further obligations under this Contract, except as provided in Subparagraph 2, above.
4. If Buyer elects to proceed with this Contract or fails to timely terminate this Contract on or before expiration of the Right To Inspect Period, then this Contract ~~will~~ **shall** remain in effect and:
 - (a) If, during the Right To Inspect Period, Buyer has conducted inspections permitted by Paragraph 12 and timely reports to Seller in writing within the Right To Inspect Period any items requiring repair, replacement, treatment, or the need to obtain and close Permits under such Paragraph 12, then Seller shall pay up to the applicable amounts required by Paragraph 9(a)(i),(ii), or (iii); or
 - (b) If, during the Right To Inspect Period Buyer: (i) fails to conduct inspections permitted by Paragraph 12, or (ii) conducts inspections, but fails to timely deliver to Seller a written notice or report required by Paragraphs 12 (b), (c), or (d), then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported.
5. If this Contract does not close, Buyer ~~will~~ **shall** repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

**Comprehensive Rider to the
Residential Contract For Sale And Purchase 4/1/13**
THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

M. DEFECTIVE DRYWALL

During the time Florida was experiencing building material shortages, some homes were built or renovated using drywall imported from or manufactured in China or elsewhere which reportedly emit levels of sulfur, methane and/or other volatile organic compounds that cause corrosion of air conditioner and refrigerator coils, copper tubing, electrical wiring, computer wiring and other household items as well as create noxious odors which may also pose health risks ("Defective Drywall").

1. **Seller's Knowledge:** Except as indicated below, Seller has no actual knowledge of the presence of Defective Drywall or the existence of any information, records, reports, or other documents pertaining to Defective Drywall affecting the Property: (describe all known Defective Drywall information and list all available documents pertaining to Defective Drywall and provide documents, if any, to Buyer before accepting Buyer's offer) _____

2. **Defective Drywall Inspection: (Check One):**

- (a) Buyer waives the opportunity to conduct a risk assessment or inspection for the presence of Defective Drywall and accepts the Drywall in the Property in its existing condition.
- (b) Buyer, at Buyer's expense, may have a home inspector, licensed contractor or other licensed professional (if required by law) to conduct an inspection or risk assessment of the Property for the presence of Defective Drywall within _____ (if left blank, then 15) days from the Effective Date ("Drywall Inspection Period"). If the drywall inspection or risk assessment reveals the presence of Defective Drywall or reveals damage to the Property resulting from the Defective Drywall and the cost to remove/replace the Defective Drywall or damage resulting from the Defective Drywall exceeds \$ _____ (if left blank, then \$500.00), Buyer may cancel this Contract by giving written notice to Seller on or before expiration of the Drywall Inspection Period. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer; thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Paragraph 3 below. If Buyer fails to timely cancel or fails to conduct the inspections permitted in this Paragraph, Buyer may not terminate this Contract pursuant to this Addendum.

IF NEITHER BOX IS CHECKED, THEN OPTION (b) SHALL BE DEEMED SELECTED.

3. **Repair of Inspection Damages to Property:** Buyer shall be responsible for prompt payment for such inspections and repair all damages to the Property resulting from the inspections.

4. **Professional Advice:** Buyer acknowledges that Broker has not conducted any independent investigations to verify the accuracy or completeness of any representations about Defective Drywall made by Broker or Seller. Buyer agrees to rely solely on Seller, professional inspectors, governmental agencies or any third parties retained by the Buyer regarding any issue related to Defective Drywall.

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Buyer's Initials _____

Seller's Initials _____

N. COASTAL CONSTRUCTION CONTROL LINE

The Real Property which is the subject of this Contract is or may be located either partially or totally seaward of the Coastal Construction Control Line ("CCCL"), as defined in Section 161.053 F.S. The Property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the Property being purchased. Florida law requires Seller to provide Buyer with an affidavit, or a survey meeting the requirements of Chapter 472 of the Florida Statutes, delineating the location of the CCCL on the Real Property at or prior to the Closing, unless Buyer waives this requirement in writing. This Property may be in the Coastal Building Zone ("CBZ") and therefore be subject to governmental regulation.

- Buyer waives the right to receive a CCCL affidavit or survey.
- Buyer requests a CCCL affidavit or survey within the time allowed to deliver evidence of title.

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Buyer's Initials _____

Seller's Initials _____

O. INSULATION DISCLOSURE FOR NEW RESIDENCE

Insulation has been or will be installed in the new residence as follows:

<u>Location</u>	<u>Type</u>	<u>Thickness</u>	<u>Manufacturer R-Value</u>
Interior Walls			
Flat Ceiling Area			
Sloped Ceiling Area			
Common Walls Between House & Garage			
Exterior Walls			
Other _____			

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Buyer's Initials _____ Seller's Initials _____

**P. LEAD-BASED PAINT DISCLOSURE
(Pre-1978 Housing)**

Lead-Based Paint Warning Statement

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspection in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

Seller's Disclosure (INITIAL)

- _____ (a) Presence of lead-based paint or lead-based paint hazards (**CHECK ONE BELOW**):
 - Known lead-based paint or lead-based paint hazards are present in the housing.
 - Seller has no knowledge of lead-based paint or lead-based paint hazards in the housing.
- _____ (b) Records and reports available to the Seller (**CHECK ONE BELOW**):
 - Seller has provided the Buyer with all available records and reports pertaining to lead-based paint or lead-based paint hazards in the housing. List documents: _____
 - Seller has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing.

Buyer's Acknowledgement (INITIAL)

- _____ (c) Buyer has received copies of all information listed above.
- _____ (d) Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.
- _____ (e) Buyer has (**CHECK ONE BELOW**):
 - Received a 10-day opportunity (or other mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards; or
 - Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards.

Licensee's Acknowledgement (INITIAL)

- _____ (f) Licensee has informed the Seller of the Seller's obligations under 42 U.S.C. 4852(d) and is aware of Licensee's responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ SELLER	_____ Date	_____ BUYER	_____ Date
_____ SELLER	_____ Date	_____ BUYER	_____ Date
_____ Selling Listing Licensee	_____ Date	_____ Listing Selling Licensee	_____ Date

Any person or persons who knowingly violate the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 may be subject to civil and criminal penalties and potential triple damages in a private civil lawsuit.

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Buyer's Initials _____

Seller's Initials _____

Q. HOUSING FOR OLDER PERSONS

Buyer acknowledges that the owners' association, developer or other housing provider intends the Property to provide housing for older persons as defined by federal law. While Seller and Broker make no representation that the Property actually qualifies as housing for older persons, the housing provider has stated that it provides housing for persons who are 62 years of age and older. 55 years of age and older.

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Buyer's Initials _____

Seller's Initials _____

R. REZONING CONTINGENCY

Buyer's obligations hereunder are expressly conditioned upon Buyer, at Buyer's expense, applying for and obtaining rezoning or change of land use of the described Property to the zoning or land use category of _____, under (county/ city) ordinances and land use regulations. Buyer's obligations are further conditioned upon obtaining such Comprehensive Land Use Plan ("CLUP") amendment(s) as may be necessary to permit such rezoning. Seller agrees to such rezoning/CLUP amendment(s).

Buyer agrees to promptly apply for and diligently pursue said rezoning/CLUP amendment(s). If final government action on said rezoning application has not been obtained by _____ ("Date"), then either party thereafter, by written notice to the other, may terminate this Contract, in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract; provided, however, if as of Date, the final public hearing has been scheduled before the governmental board or commission having final authority, then the deadline for satisfaction of this condition shall be extended to the day after the public hearing, but in no event more than _____ (if left blank, then 10) days after Date. The Closing shall occur within _____ (if left blank, then 10) days following final rezoning approval and, if applicable, land use change.

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Buyer's Initials _____

Seller's Initials _____

S. LEASE PURCHASE/LEASE OPTION

This Contract is contingent upon Buyer and Seller executing a lease/purchase lease/option agreement containing mutually agreeable terms within 5 days from Effective Date. Attorney's fees for preparation of the lease/purchase or lease/option agreement shall be paid by: (**CHECK ONE**) Buyer Seller split equally by the Buyer and Seller (if not checked, then split equally). If the lease/purchase of lease/option agreement is not executed within the time stated above, this Contract shall be terminated and the Deposit refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

T. PRE-CLOSING OCCUPANCY BY BUYER

This Contract is contingent upon Buyer and Seller within _____ (if left blank, then 10) days after Effective Date delivering to each other a mutually agreeable written lease prepared at (**CHECK ONE**): Seller's expense Buyer's expense split equally by the Buyer and Seller (if not checked, then split equally), for Buyer to take possession of the Property on _____. The written lease shall provide that upon Buyer taking possession, Paragraph 11 (Property Maintenance) and 12 (Property Inspection and Repair) are no longer applicable and Buyer thereby accepts the Property in its existing condition, relieving Seller of any repair, replacement, treatment or remedy obligations, except with respect to any items identified by Buyer pursuant to Paragraph 12 prior to taking occupancy which require repair, replacement, treatment or remedy; Buyer shall then have the sole obligation of maintaining the Property and shall assume all risk of loss; and Buyer shall pay a monthly rent of \$ _____, plus applicable sales tax, if any, payable monthly in advance.

If the parties fail to mutually agree to a written lease within the time period stated above and Buyer has not taken occupancy of the Property, then either party by written notice to the other may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

U. POST-CLOSING OCCUPANCY BY SELLER

This Contract is contingent upon Buyer and Seller within _____ (if left blank, then 10) days prior to Closing Date delivering to each other a mutually acceptable written lease prepared at (**CHECK ONE**): Seller's expense Buyer's expense, split equally by the Buyer and Seller (if not checked, then split equally), for Seller to remain in possession of the Property until _____ days after Closing. The written lease shall provide that Seller shall pay a monthly rent of \$_____ payable monthly in advance and that Seller's maintenance obligation under Paragraph 11 shall continue after Closing until possession is delivered to Buyer; however, Seller's repair, replacement, treatment and remedy obligations under Paragraph 12 shall not be extended beyond Closing.

If the parties fail to deliver a mutually acceptable written lease within the time period stated above, then either party by written notice to the other may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

V. SALE OF BUYER'S PROPERTY

This Contract is contingent on the sale and closing of Buyer's property located at _____

Upon entering into a contract for the sale of Buyer's property, Buyer will **shall** give Seller a copy of such contract with the third parties' identification and purchase price information obliterated. If the sale of Buyer's property does not close by _____, Buyer may, within 3 days thereafter deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit shall be refunded to Buyer; thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and all financing contingences, and continue with this Contract.

Buyer's property is is not presently under contract for sale. If Buyer's property is under contract, Buyer shall provide Seller with a copy of the contract on or before _____.

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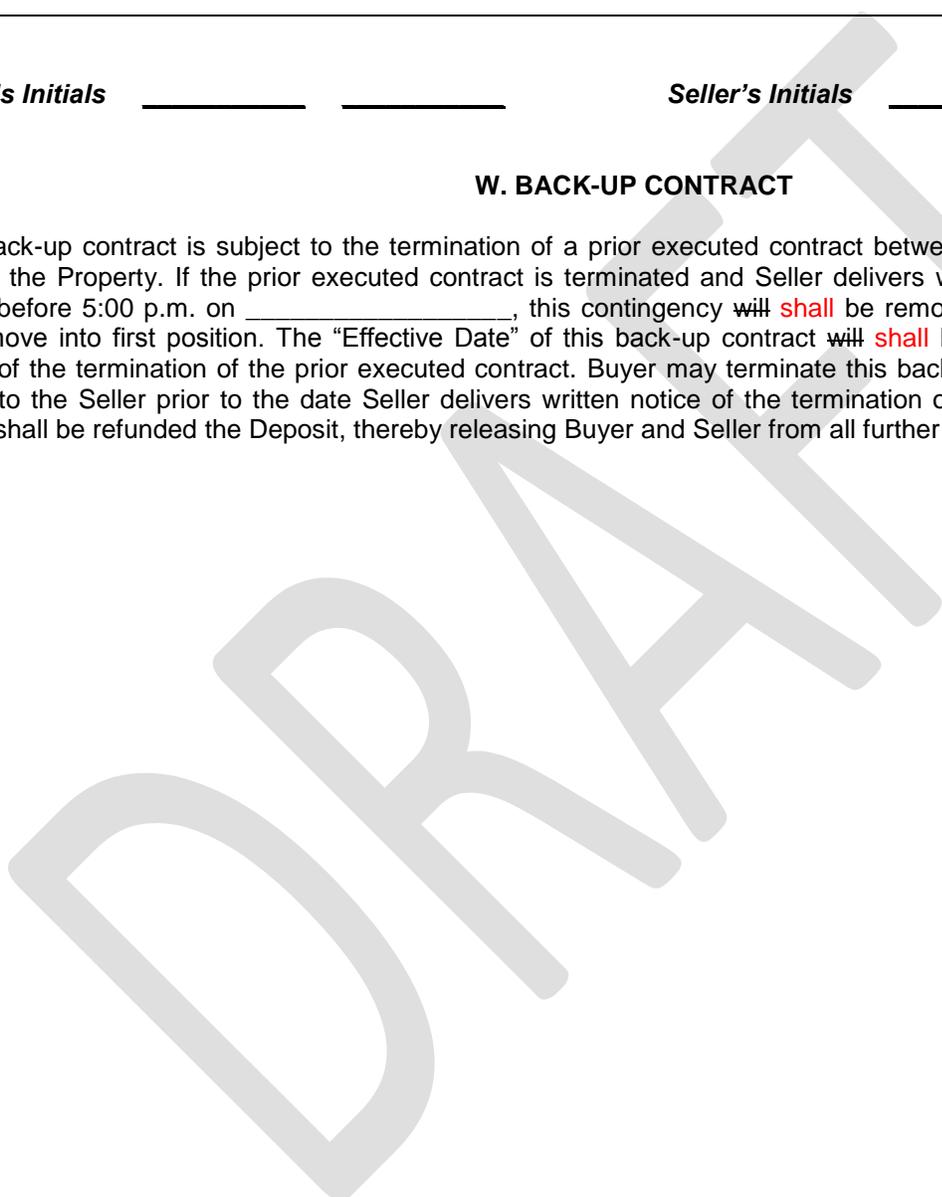
If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

W. BACK-UP CONTRACT

This back-up contract is subject to the termination of a prior executed contract between Seller and a third party for the sale of the Property. If the prior executed contract is terminated and Seller delivers written notice of the termination to Buyer before 5:00 p.m. on _____, this contingency ~~will~~ shall be removed and this back-up contract ~~will~~ shall move into first position. The "Effective Date" of this back-up contract ~~will~~ shall be the date Seller delivers written notice of the termination of the prior executed contract. Buyer may terminate this back-up Contract by delivering written notice to the Seller prior to the date Seller delivers written notice of the termination of the prior executed Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.



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Buyer's Initials _____

Seller's Initials _____

X. KICK OUT CLAUSE

Seller will have the right to continue to show the Property and solicit and enter into bona fide back-up purchase contracts with third parties that are subject to the termination of this primary Contract. Upon entering into a back-up contract, Seller will give Buyer a copy of the back-up contract with the third parties' identification and purchase price information obliterated. To continue with this primary Contract, Buyer must make an additional deposit of \$_____ to Escrow Agent, within 3 days from receipt of the back-up contract. By giving the additional deposit to Escrow Agent within 3 days, Buyer waives all contingencies for financing and sale of Buyer's property and the parties will close on Closing Date. The additional deposit will be credited to Buyer at Closing. If Buyer fails to timely make the additional deposit, then this primary Contract ~~will~~ shall terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

Y. SELLER'S ATTORNEY APPROVAL

This Contract is contingent upon Seller's attorney approving this Contract. If Seller's attorney disapproves this Contract, then Seller may terminate this Contract by delivering written notice to Buyer on or before _____, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

Z. BUYER'S ATTORNEY APPROVAL

This Contract is contingent upon Buyer's attorney approving this Contract. If Buyer's attorney disapproves this Contract, then Buyer may terminate this Contract by delivering written notice to Seller on or before _____, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

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Buyer's Initials _____

Seller's Initials _____

AA. LICENSEE DISCLOSURE OF PERSONAL INTEREST IN PROPERTY

_____ has an active or inactive real estate license and has a personal interest in the Property (specify if licensee is related to a party, or is acting as Buyer or Seller, etc.) _____

DRAFT

**Comprehensive Rider to the
Residential Contract For Sale And Purchase**

4/1/13



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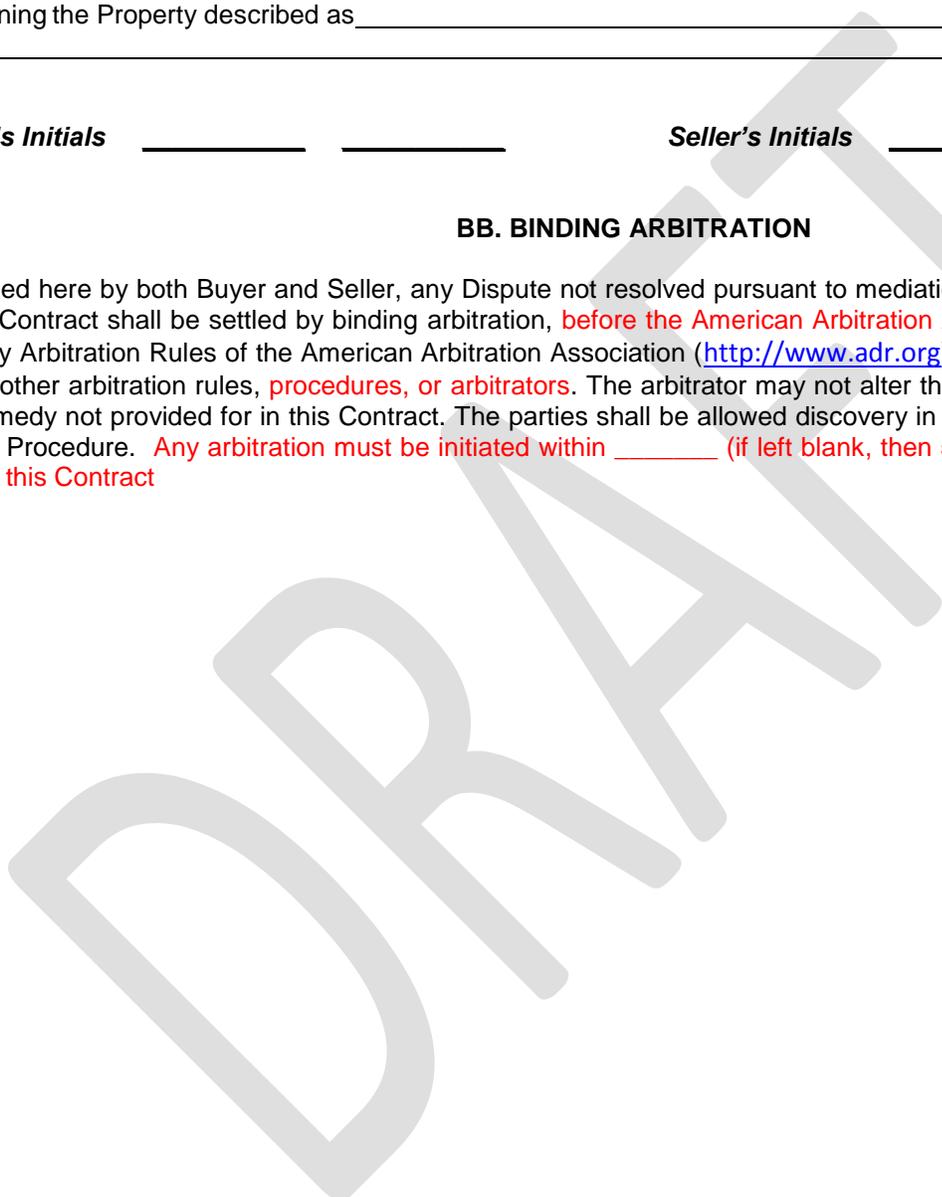
If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

Buyer's Initials _____

Seller's Initials _____

BB. BINDING ARBITRATION

If initialed here by both Buyer and Seller, any Dispute not resolved pursuant to mediation as provided in Paragraph 16(b) of this Contract shall be settled by binding arbitration, before the American Arbitration Association, using the Real Estate Industry Arbitration Rules of the American Arbitration Association (<http://www.adr.org>) unless the parties mutually agree to use other arbitration rules, procedures, or arbitrators. The arbitrator may not alter the terms of this Contract nor award any remedy not provided for in this Contract. The parties shall be allowed discovery in accordance with the Florida Rules of Civil Procedure. Any arbitration must be initiated within _____ (if left blank, then 5) years after the Closing Date set forth in this Contract



THE FLORIDA BAR
STANDING COMMITTEE ON THE
UNLICENSED PRACTICE OF LAW

FAO #2012-2, ACTIVITIES OF COMMUNITY ASSOCIATION MANAGERS

PROPOSED ADVISORY OPINION

This proposed advisory opinion is only an
interpretation of the law and does not
constitute final court action.

May 15, 2013

INTRODUCTION

Pursuant to rule 10-9 of the Rules Regulating The Florida Bar, The Florida Bar's Real Property, Probate & Trust Law Section petitioned the Standing Committee on Unlicensed Practice of Law ("the Standing Committee") for an advisory opinion on the activities of community association managers ("CAMS").¹

The petitioner sought confirmation that the activities found to be the unlicensed practice of law in the *1996 opinion (The Florida Bar re: Advisory Opinion – Activities of Community Association Managers, 681 So. 2d 1119 (Fla. 1996))* continue to be the unlicensed practice of law. Those activities (hereinafter "1996 opinion") include the following:

- A. drafting of a claim of lien and satisfaction of claim of lien;
- B. preparing a notice of commencement;
- C. determining the timing, method, and form of giving notices of meetings;
- D. determining the votes necessary for certain actions by community associations;
- E. addressing questions asking for the application of a statute or rule; and
- F. advising community associations whether a course of action is authorized by statute or rule.

¹ Although the request for opinion addresses CAMS specifically, the Standing Committee's opinion would apply to the activities of any nonlawyer.

The petitioner also asked if it was the unlicensed practice of law for a CAM to engage in any of the following activities (hereinafter “2012 request”):

1. Preparation of a Certificate of assessments due once the delinquent account is turned over to the association’s lawyer;
2. Preparation of a Certificate of assessments due once a foreclosure against the unit has commenced;
3. Preparation of Certificate of assessments due once a member disputes in writing to the association the amount alleged as owed;
4. Drafting of amendments (and certificates of amendment that are recorded in the official records) to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;
5. Determination of number of days to be provided for statutory notice;
6. Modification of limited proxy forms promulgated by the State;
7. Preparation of documents concerning the right of the association to approve new prospective owners;
8. Determination of affirmative votes needed to pass a proposition or amendment to recorded documents;
9. Determination of owners’ votes needed to establish a quorum;
10. Drafting of pre-arbitration demand letters required by 718.1255, Fla.

Stat.;

11. Preparation of construction lien documents (e.g. notice of commencement, and lien waivers, etc.);
12. Preparation, review, drafting and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;
13. Identifying, through review of title instruments, the owners to receive pre-lien letters; and
14. Any activity that requires statutory or case law analysis to reach a legal conclusion.

Pursuant to Rule 10-9.1(f) of the Rules Regulating The Florida Bar, public notice of the hearing was provided on The Florida Bar's website, in *The Florida Bar News*, and in the *Orlando Sentinel*. The Standing Committee held a public hearing on June 22, 2012.

Testifying on behalf of the petitioner was Steve Mezer, an attorney who is the chairman of the Condominium and Planning Development Committee of the Real Property Probate and Trust Law Section of The Florida Bar, and attorney Scott Peterson. In addition to the petitioner, the Standing Committee received testimony from Mitchell Drimmer, a CAM; Jeffrey M. Oshinsky, General Counsel of Association Financial Services, a licensed collection agency; Andrew Fortin,

Vice-President of Government Relations for Associa, a community management company; Kelley Moran, Vice-President of Rampart Properties and a CAM; Robert Freedman, an attorney; Erica White, prosecuting attorney for the Regulatory Council of Community Association Managers located within the Department of Business and Professional Regulation; Jane Cornett, an attorney; Tony Kalliche, Executive Vice-President and general counsel for the Continental Group, a community association management firm; David Felice, an attorney, a CAM, and owner of a community association management firm; Christopher Davies, an attorney; Brad van Rooyen, Executive Director of the Chief Executive Offices of Management Companies; Victoria Laney; Alan Garfinkel, an attorney; and Michael Gelfand, an attorney. There were also several individuals present to observe the hearing.

In addition to the testimony presented at the hearing, the Standing Committee received written testimony which has been filed with this Court. Included in the written testimony was a form petition that was submitted by hundreds of homeowner and condominium associations. As the petitions are substantially the same, only one has been filed with the Court as part of the written testimony. By and large the testimony reflects the belief that the previous guidance provided by the Court in its *1996 opinion* provides adequate guidance in this area and another opinion is not necessary. The testimony also reflected their

concerns that too much regulation in this area will raise the cost of living in these communities and could potentially have a serious financial impact on community associations, property owners, and CAMS.

BACKGROUND

CAMS are licensed through the Department of Business and Professional Regulation, Division of Professions, pursuant to Sections 468.431 – 468.438, Florida Statutes, and Florida Administrative Code chapters 61E14 and 61-20. Written testimony of Dr. Anthony Spivey, Tab B. State law defines community association management as including the following activities: “controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.” Section 468.431(2), Florida Statutes. There are over 18,500 individuals and over 1600 businesses licensed as CAMS in Florida. Written testimony of J. Layne Smith, Tab C.

1996 Opinion

When the Court considered the activities of CAMS in 1996, it relied on *Sperry*² to determine what activity constitutes the practice of law:

² *The Florida Bar v. Sperry*, 140 So. 2d 587, 597 (Fla. 1962), *vacated on other*

[I]n determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of [the] advice and performance of [the] services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Applying the test, the Court held that:

[T]he practice of law includes the giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court.³

The Standing Committee and Court found that those activities that required the interpretation of statutes, administrative rules, community association governing documents or rules of civil procedure constituted the practice of law.⁴ Drafting documents, even if form documents, which require a legal description of the property or which determine or establish legal rights are also the practice of law.⁵ As the opinion noted, failure to complete or prepare these forms accurately could result in serious legal and financial harm to the property owner.⁶ Thus, the Court found the following activities when performed by a CAM would constitute

grounds, 373 U.S. 379 (1963).

³ *Id.*

⁴ *1996 opinion* at 1123.

⁵ *Id.* At 1123.

⁶ *Id.*

the unlicensed practice of law:

- completing BPR Form 33-032 (frequently asked questions and answers sheet);
- drafting a claim of lien, satisfaction of claim of lien, and notice of commencement form;
- determining the timing, method and form of giving notice of meetings;
- determining the votes necessary for certain actions which would entail interpretation of certain statutes and rules; and
- answering a community association's question about the application of law to a matter being considered or advising a community association that a course of action may not be authorized by law, rule, or the association's governing documents.

The Standing Committee and Court found that those activities that were ministerial in nature and did not require significant legal expertise and interpretation or legal sophistication or training did not constitute the practice of law.⁷ The Court found that the following activities when performed by a CAM would not constitute the unlicensed practice of law:

- completion of two Secretary of State forms (change of registered

⁷ *Id.*

agent or office for corporations, and annual corporation report),

- drafting certificates of assessments,
- drafting first and second notices of date of election,
- drafting ballots,
- drafting written notices of annual or board meetings,
- drafting annual meeting or board meeting agendas, and
- drafting affidavits of mailing.

The Standing Committee and Court found that other activities existed in a more grey area and whether or not they constituted the unlicensed practice of law would depend on the specific factual circumstances.⁸ The Court found the following activities to be dependent on the specific circumstances:

- modification of limited proxy forms promulgated by the state
- drafting a limited proxy form, and
- drafting documents required to exercise the community association's right of approval or right of first refusal on the sale or lease of a parcel

The Court found that modification of limited proxy forms promulgated by the State that involved ministerial matters could be performed by a CAM.⁹ The Court found the following modifications to be ministerial matters:

⁸ *Id* at 1122.

⁹ *Id* at 1124.

- modifying the form to include the name of the community association;
- phrasing a yes or no voting question concerning either waiving reserves or waiving the compiled, reviewed, or audited financial statement requirement;
- phrasing a yes or no voting question concerning carryover of excess membership expenses; and
- phrasing a yes or no voting question concerning the adoption of amendments to the Articles of Incorporation, Bylaws, or condominium documents.¹⁰

For more complicated modifications, the Court found that an attorney must be consulted.

Regarding the drafting of a limited proxy form, the Court found that those items which were ministerial in nature, such as filling in the name and address of the owner, do not constitute the practice of law. But if drafting of an actual limited proxy form or questions in addition to those on the preprinted form is required, the CAM should consult with an attorney.¹¹

The Court also found that the drafting of documents required to exercise a community association's right of approval or first refusal to a sale or lease may require the assistance of an attorney, since there could be legal consequences to the

¹⁰ *Id.*

¹¹ *Id.*

decision.¹² Although CAMS may be able to draft the documents, they cannot advise the association as to the legal consequences of taking a certain course of action.¹³

It is the opinion of the Standing Committee that no changes are needed to the *1996 opinion* and those activities found to be the unlicensed practice of law continue to be the unlicensed practice of law and those activities that did not constitute the unlicensed practice of law are still not the unlicensed practice of law. However, the Standing Committee felt that in order to provide further guidance to CAMS and members of The Florida Bar, some of the 1996 activities which are part of the current request needed clarification. The Standing Committee also felt that activities that were not addressed in 1996 should be addressed using the *1996 opinion* as guidance.

2012 Request

Petitioner's request set forth 14 activities. Each activity will be addressed.

- 1. Preparation of a Certificate of assessments due once the delinquent account is turned over to the association's lawyer;**
- 2. Preparation of a Certificate of assessments due once a foreclosure against the unit has commenced;**
- 3. Preparation of Certificate of assessments due once a member disputes in writing to the association the amount alleged as owed;**

In the *1996 opinion* the Court found that the preparation of certificates of

¹² *Id.*

¹³ *Id.*

assessments were ministerial in nature and did not require legal sophistication or training. Therefore, it was not the unlicensed practice of law for a CAM to prepare certificates of assessments.

None of the oral or written testimony provided a compelling reason why these certificates of assessment would warrant different treatment from those previously addressed by the Court in the *1996 opinion*. Thus, it is the opinion of the Standing Committee that a CAM's preparation of these documents would not constitute the unlicensed practice of law.

4. Drafting of amendments (and certificates of amendment that are recorded in the official records) to declaration of covenants, bylaws, and articles of incorporation when such documents are to be voted upon by the members;

In the *1996 opinion*, the Court held that the drafting of documents which determine substantial rights is the practice of law. The governing documents set forth above determine substantial rights of both the community association and property owners. Consequently, under the *1996 opinion*, the preparation of these documents constitutes the unlicensed practice of law.

Further, in *The Florida Bar v. Town*, 174 So. 2d 395 (Fla. 1965), the Court held that a nonlawyer may not prepare bylaws, articles of incorporation, and other documents necessary to the establishment of a corporation, or amendments to such documents. Amendments to a community association's declaration of covenants, bylaws, and articles of incorporation can be analogized to the corporate documents

discussed in *Town*. Therefore, it is the opinion of the Standing Committee that the Court's holding in the *1996 opinion* should stand and nonlawyer preparation of the amendments to the documents would constitute the unlicensed practice of law.

5. Determination of number of days to be provided for statutory notice;

In the *1996 opinion*, the Court found that determining the timing, method, and form of giving notices of meetings requires the interpretation of statutes, administrative rules, governing documents, and rules of civil procedure and that such interpretation constitutes the practice of law. Thus, if the determination of the number of days to be provided for statutory notice requires the interpretation of statutes, administrative rules, governing documents or rules of civil procedure, then, as found by the Court in 1996, it is the opinion of the Standing Committee that it would constitute the unlicensed practice of law for a CAM to engage in this activity. If this determination does not require such interpretation, then it would not be the unlicensed practice of law.

6. Modification of limited proxy forms promulgated by the State;

In the *1996 opinion*, the Court found that the modification of limited proxy forms that involved ministerial matters could be performed by a CAM, while more complicated modifications would have to be made by an attorney.¹⁴ The Court found the following to be ministerial matters:

¹⁴ *Id.*

- modifying the form to include the name of the community association;
- phrasing a yes or no voting question concerning either waiving reserves or waiving the compiled, reviewed, or audited financial statement requirement;
- phrasing a yes or no voting question concerning carryover of excess membership expenses; and
- phrasing a yes or no voting question concerning the adoption of amendments to the Articles of Incorporation, Bylaws, or condominium documents.¹⁵

For more complicated modifications, the Court found that an attorney must be consulted. The *1996 opinion* did not provide any examples of more complicated modifications which would require consultation with an attorney. The Standing Committee believes this activity requires further clarification by example.

Using the examples given by the Court, the types of questions that can be modified without constituting the unlicensed practice of law do not require any discretion in the phrasing. For example, the sample form provided by the state has the following question: “Do you want to provide for less than full funding of reserves than is required by § 718.112(2)(f), Florida Statutes, for the next fiscal/calendar year? _____ YES _____ NO.” There is no discretion

¹⁵ *Id.*

regarding the wording, it is a yes or no question. The question could be reworded as follows: “ Section 718.112(2)(f), Florida Statutes discusses funding of reserves. Do you want to provide for less than full funding of reserves than is required by the statute for the next fiscal/calendar year? _____ YES _____ NO.” It is still a yes or no question. As no discretion is involved, it does not constitute the unlicensed practice of law to modify the question.

On the other hand, if the question requires discretion in the phrasing or involves the interpretation of statute or legal documents, the CAM may not modify the form. After the above question regarding the reserves the form states “If yes, vote for one of the board proposed options below: (The option with the most votes will be the one implemented.) LIST OPTIONS HERE.” Listing the options would be a modification of the form. If what to include in the list requires discretion or an interpretation of statute, an attorney would have to be consulted regarding the language and the CAM could not make a change. For example, §718.112(f) has language regarding when a developer may vote to waive the reserves. The statute discusses the timing of the waiver and under what circumstances it may occur. As a question regarding this waiver requires the interpretation of statute, a CAM could not modify the form by including this question without consulting with a member of The Florida Bar. As found in the *1996 opinion*, making such a modification would constitute the unlicensed practice of law.

7. Preparation of documents concerning the right of the association to approve new prospective owners;

In the *1996 opinion*, the Court found that drafting the documents required to exercise a community association's right of approval or first refusal to a sale or lease may or may not constitute the unlicensed practice of law depending on the specific factual circumstances. It may require the assistance of an attorney, since there could be legal consequences to the decision. Although CAMs may be able to draft the documents, they cannot advise the association as to the legal consequences of taking a certain course of action. Thus, the specific factual circumstances will determine whether it constitutes the unlicensed practice of law for a CAM to engage in this activity.

This finding can also be applied to the preparation of documents concerning the right of the association to approve new prospective owners. While there was no testimony giving examples of such documents, the Court's underlying principal that if the preparation requires the exercise of discretion or the interpretation of statutes or legal documents, a CAM may not prepare the documents.¹⁶ For example, the association documents may contain provisions regarding the right of first refusal. Preparing a document regarding the approval of new owners may require an interpretation of this provision. An attorney should be consulted to ensure that the language comports with the association documents. On the other

¹⁶ *Id* at 1123.

hand, the association documents may contain a provision regarding the size of pets an owner may have. Drafting a document regarding this would be ministerial in nature as an interpretation of the documents is generally not required.

8. Determination of affirmative votes needed to pass a proposition or amendment to recorded documents;

9. Determination of owners' votes needed to establish a quorum;

In the *1996 opinion*, the Court found that determining the votes necessary to take certain actions – where the determination would require the interpretation and application both of condominium acts and of the community association's governing documents – would constitute the practice of law. Thus, if these determinations require the interpretation and application of statutes and the community association's governing documents, then it is the opinion of the Standing Committee that it would constitute the unlicensed practice of law for a CAM to make these determinations. If these determinations do not require such interpretation and application, it is the opinion of the Standing Committee that they would not constitute the unlicensed practice of law.

10. Drafting of pre-arbitration demand letters required by 718.1255, Fla. Stat.;

Under Section 718.1255, Fla. Stat., prior to filing an action in court, a party to a dispute must participate in nonbinding arbitration. The non-binding arbitration is before the Division of Florida Condominiums, Time Shares, and Mobile Homes (hereinafter "the Division"). Prior to filing the petition for arbitration with the

Division, the petitioner is required to serve a pre-arbitration demand letter on the respondent, providing:

1. advance written notice of the specific nature of the dispute,
2. a demand for relief, and a reasonable opportunity to comply or to provide the relief, and
3. notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires the dismissal of the petition without prejudice.

In the *1996 opinion*, the Court found that if the preparation of a document requires the interpretation of statutes, administrative rules, governing documents, and rules of civil procedure, then the preparation of the documents constitutes the practice of law. It is the opinion of the Standing Committee that the preparation of a pre-arbitration demand letter would not require the interpretation of the above-referenced statute. The statutory requirements appear to be ministerial in nature, and do not appear to require significant legal expertise and interpretation or legal sophistication or training. Consequently, the preparation of this letter would not satisfy the second prong of the *Sperry* test, which requires that the person providing the service possess legal skill and a knowledge of the law greater than that possessed by the average citizen. For these reasons, it is the opinion of the

Standing Committee that the preparation of a pre-arbitration demand letter by a CAM would not constitute the unlicensed practice of law.

Moreover, an argument can be made that the activity, even if the practice of law, is authorized. As noted in the Petitioner's March 28, 2012, letter, the Division has held that the statute does not require an attorney to draft the letter. Formal Advisory Opinion request, Tab A. In *The Florida Bar v. Moses*, 380 So. 2d 412 (Fla. 1980), the Court held that the legislature could oust the Supreme Court's authority to protect the public and authorize a nonlawyer to practice law before administrative agencies. As the Division of Florida Condominiums, Time Shares, and Mobile Homes has held that a nonlawyer may prepare the letter, the activity is authorized and not the unlicensed practice of law.

11. Preparation of construction lien documents (e.g. notice of commencement, and lien waivers, etc.);

In the *1996 opinion*, the Court found that the drafting of a notice of commencement form constitutes the practice of law because it requires a legal description of the property and this notice affects legal rights. Further, failure to complete or prepare this form accurately could result in serious legal and financial harm to the property owner.¹⁷

While the *1996 opinion* did not specifically address the preparation of lien waivers, the *1996 opinion* found that preparing documents that affect legal rights

¹⁷ *Id* at 1123.

constitutes the practice of law. A lien waiver would certainly affect an association's legal rights. Further, as suggested by one of the witnesses, the area of construction lien law is a very complicated and technical area. Tr., p. 40, l. 10-19, Tab D. Therefore, it is the Standing Committee's opinion that the preparation of construction lien documents by a CAM would constitute the unlicensed practice of law.¹⁸

12. Preparation, review, drafting and/or substantial involvement in the preparation/execution of contracts, including construction contracts, management contracts, cable television contracts, etc.;

In the *1996 opinion*, the Court found that the preparation of documents that established and affected the legal rights of the community association was the practice of law. Further, in *Sperry*, the court found the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, was the practice of law. Thus, it is the Standing Committee's opinion that it constitutes the unlicensed practice of law for a CAM to prepare such contracts for the community association.

13. Identifying, through review of title instruments, the owners to receive pre-lien letters;

The testimony on this subject was mixed. Some witnesses felt that this

¹⁸ *In re Advisory Opinion – Nonlawyer Preparation of Notice to Owner and Notice to Contractor*, 544 So. 2d 1013 (Fla. 1989). the Court held that it was not the unlicensed practice of law for nonlawyers to complete notice to owner and preliminary notice to contractor forms under the mechanic's lien laws so those forms are not included in the current opinion.

activity was ministerial and would not be the unlicensed practice of law (Written testimony of Jeffrey M. Oshinsky, Tab E, Mark R. Benson, Tab F, and R. L. Reimer, Tab G), while others thought that this would constitute the unlicensed practice if performed by a CAM (Written testimony of Nicholas F. Lang, Shawn G. Brown, and Emily L. Lang, Tab H). However, none of the testimony defined what was meant by identifying the owners to receive pre-lien letters.

It is the opinion of the Standing Committee that if the CAM is only searching the public records to identify who has owned the property over the years, then such review of the public records is ministerial in nature and not the unlicensed practice of law. In other words, if the CAM is merely making a list of all record owners, the conduct is not the unlicensed practice of law.

On the other hand, if the CAM uses the list and then makes the legal determination of who needs to receive a pre-lien letter, this would constitute the unlicensed practice of law. This determination goes beyond merely identifying owners. It requires a legal analysis of who must receive pre-lien letters. Making this determination would constitute the unlicensed practice of law.

14. Any activity that requires statutory or case law analysis to reach a legal conclusion.

In the *1996 opinion* the Court found that it constituted the unlicensed practice of law for a CAM to respond to a community association's questions concerning the application of law to specific matters being considered, or to advise

community associations that a course of action may not be authorized by law or rule. The court found that this amounted to nonlawyers giving legal advice and answering specific legal questions, which the court specifically prohibited in *The Florida Bar v. Raymond James & Assoc.*, 215 So. 2d 613 (Fla. 1968) and *Sperry*.

Further, in *The Florida Bar v. Warren*, 655 So. 2d 1131 (Fla. 1995), the Court held that it constitutes the unlicensed practice of law for a nonlawyer to advise persons of their rights, duties, and responsibilities under Florida or federal law and to construe and interpret the legal effect of Florida law and statutes for third parties. In *The Florida Bar v. Mills*, 410 So. 2d 498 (Fla. 1982), the Court found that it constitutes the unlicensed practice of law for a nonlawyer to interpret case law and statutes for others.

Thus, it is the Standing Committee's opinion that it would constitute the unlicensed practice of law for a CAM to engage in activity requiring statutory or case law analysis to reach a legal conclusion.

CONCLUSION

The findings of the Court in *The Florida Bar re: Advisory Opinion – Activities of Community Association Managers*, 681 So. 2d 1119 (Fla. 1996) should not be disturbed and answer many of the questions posed by the Petitioner. Areas which required clarification have been clarified by way of example using the *1996 opinion* as guidance. Similarly, activities that were not addressed in 1996 are

addressed using the *1996 opinion* and other case law as guidance. This proposed advisory opinion is the Standing Committee on Unlicensed Practice of Law's interpretation of the law.

Respectfully Submitted,
/s/ Nancy Blount by Jeffrey T. Picker

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PROPOSAL TO EXPAND THE FELLOWS PROGRAM

A motion for approval to (1) seek applications from the membership for the RPPTL Fellowship Program annually instead of every other year; (2) appoint a new class of up to four (4) Fellows each year to serve for up to a two year period with the renewal of the appointment for the second year based on satisfactory performance during the first year; and (3) to amend the budget for the Fellowship Program for 2013-2014 to increase the amount allocated to Fellows from \$10,000 to \$20,000 per year to accommodate the increased number of fellows.

The mission of the Fellowship Program will continue to be to attract and retain young lawyers in RPPTL. The objective behind creating annual classes is to admit Fellows into the program on an annual basis to promote continuity and provide for mentorship among the Fellows themselves from the then serving "older" fellows. By admitting a new class on an annual basis to serve for up to two years, the Fellows will be given the opportunity to overlap and learn from each other on a rolling basis rather than having a new class start fresh every two years with no older fellows "committed and available" for guidance to the newly chosen fellows. Moreover, adding a class every year will produce an increased number of graduating Fellows who will be prepared to continue their involvement in the leadership of RPPTL. The performance of each Fellow will be reviewed and evaluated by the Committee at the end of his or her first year as a Fellow. Assuming a Fellow meets the performance requirements in the guidelines for the Fellowship program which are set forth below, the Fellow will be reappointed for a second year.

No other changes to the Fellows Program are sought through this motion. The request to increase the budget for the program commencing 2013-2014 is because there will be up to eight (8) Fellows during each succeeding year and all can continue to receive a subsidy of up to \$2,500 annually (not to exceed actual out of pocket expenses) to offset the costs of attending RPPTL Section meetings.

Below is an excerpt from the RPPTL website outlining the existing fellowship program:

The mission of the Fellowship Program is to attract and retain young lawyers to the Real Property Probate and Trust Law Section of The Florida Bar (RPPTL). One method of achieving this goal is by providing subsidized Fellowships to qualified individuals interested in becoming active in the substantive work of the Section. The Fellowship program allows these individuals to be substantially involved in the Section work, receive leadership training and work closely with leading attorneys in their field. It is our desire that through this program the Section will cultivate and develop future leaders to continue the strong presence of the RPPTL Section as a leader in The Florida Bar. Our Fellowship program is also designed to supplement and support the efforts of the membership diversity committee and the membership development committee of the Section.

The Fellowship Program is open to all lawyers who are members of the RPPTL Section

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and (a) have been admitted to the bar for fewer than 10 years or (b) are younger than 36 years of age. This program will award a maximum of 4 Fellowships per year. Applicants should be able to demonstrate that a substantial portion of their practice is focused in the area of Real Property, Probate or Trust law. Fellowships are provided for a two-year term. The RPPTL Section has over 50 active committees and an Executive Council with more than 225 active members. The Executive Council (and the Section committees) meet on a quarterly basis, beginning in June each year, at locations throughout the state of Florida. The quarterly meetings of the Executive Council usually run from Thursday through Saturday and include substantive work and social events for networking. Each Fellow will receive a subsidy of up to \$2,500 annually (not to exceed actual out-of-pocket expenses) to help defray the expense of attending RPPTL Section meetings. Each Fellow will also be assigned a social mentor, who is a member of the Executive Council, to assist the Fellow in maximizing his or her experience as a Fellow and attending RPPTL social events. In addition, each Fellow will be assigned a committee mentor to assist the Fellow's active involvement in the committee that most closely fits the Fellow's practice area with the goal of maximizing his or her professional development through the program.

In return for the RPPTL Section commitments, a Fellow is required to attend a minimum of three Executive Council meetings per year, serve as an active member of either the membership development committee or the membership diversity committee and be an active member of at least one substantive committee. As an active committee member, the Fellow will be required to complete one substantive work project on behalf of the committee on an annual basis. This project may include writing an article in his or her area of expertise for ActionLine (the Section's publication), chairing a subcommittee, or drafting proposed legislation on behalf of the committee. To assure these requirements are fulfilled, each Fellow must submit a work plan to the Fellowship committee by October of each year, which outlines the substantive work project they have chosen, and a report at the end of each year.

At the end of the Fellowship term, we are confident all Fellows will find the program helped them to enhance their development personally and professionally. We also sincerely hope that all Fellows will continue to be actively involved in the RPPTL Section committees and work towards becoming a member of the Executive Council.

REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION



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May 10, 2013

The Honorable Rick Scott
Governor of Florida
The Capitol
400 South Monroe Street
Tallahassee, FL 32399-0001

Re: An Act Relating To Mortgage Foreclosures (CS/CS/HB 87).

Dear Governor Scott:

On behalf of its more than 10,000 members, including real estate practitioners throughout the State of Florida, The Florida Bar's Real Property, Probate, and Trust Law Section greatly appreciates this opportunity to urge you to sign CS/CS/HB 87, an Act Relating To Mortgage Foreclosures. This Act is the first comprehensive legislative initiative to reform Florida's mortgage foreclosure process since the onset of the foreclosure crisis in our State.

The Section and its real estate practitioners have a unique view of how Florida's foreclosure crisis has gripped Florida's economy, including the negative impact on each branch of State government, as well as the State's citizens and businesses. Foreclosing a contested mortgage in Florida has become an extraordinarily lengthy process. Whether this extended time period is attributable to lender inaction, borrower delay, overcrowded dockets, or otherwise, debate by interested parties for half a decade has failed to produce any solution. That failure has hurt not only individual property owners, but entire communities, as evidenced by abandoned properties depressing market prices and unpaid assessments draining community associations.

Instead of ignoring a problem for which many believe there is no solution, the Section's Executive Council has pursued its commitment to help find a solution by working closely with the Act's very capable legislative sponsors, Senator Latvala and Representative Passidomo. The Section's legislative position supporting the foreclosure reforms contained in the Act was approved by its full 240 member Executive

Council upon the recommendation of the Sections's Ad Hoc Foreclosure Reform Committee. The deliberative process followed by the Section in this matter was broad, lengthy, and open, and it included extensive input from many sources and much discussion with interested parties and groups to insure that all voices and viewpoints were fully considered. It is clear that the interests of all Floridians would be better served by seeking well-reasoned and balanced reforms to Florida's judicial foreclosure process.

The Section has remained keenly aware that foreclosure reform must fairly balance the competing interests of the property owner, the lender, and the good faith purchaser of foreclosed property. Consistent with that goal, the Section has vigorously opposed any amendments to existing Florida law governing real property foreclosures unless they preserve and protect the property and due process rights of those parties in a fundamentally fair way, including review and oversight by an independent judiciary.

CS/CS/HB 87 represents a balanced approach that contains appropriate provisions protecting the respective interests of property owners, lenders, and good faith purchasers. Some of these protections are summarized below:

- The legislation is constitutional; it does not impair existing contractual obligations or impose a penalty on prior conduct.
- The legislation maintains the burden of proof on the plaintiff/lender and imposes additional requirements for stating a cause of action for foreclosure, including allegations showing that the plaintiff is a person presently entitled to enforce the note and, if the plaintiff is then in possession of the original note, a certificate to that effect under penalty of perjury. In order to obtain a show cause order, the Plaintiff is required to properly state a cause of action for foreclosure in a complaint that is verified under penalty of perjury. Only when a plaintiff has complied with those requirements may the court issue a show cause order requiring a defendant to file some paper that raises a genuine issue of material fact or constitutes a legal defense in order to avoid the entry of a foreclosure judgment. This procedure does not shift the burden of proof or persuasion to the home owner or eliminate the applicability of the evidence code in evidentiary hearings in foreclosure cases. The legislation fully protects fundamental due process and property rights.
- The legislation allows community associations to expedite foreclosures that have been filed but not actively pursued.

- The legislation preserves due process by allowing anyone with a legitimate defense to defend a foreclosure action.
- The legislation protects owners of residential property by reducing the statute of limitations for obtaining deficiency judgments from five years to one year, and exempts owner-occupied residences from orders to show cause why they should not be required to either make payments during the pendency of the foreclosure proceeding or vacate the premises.
- The legislation gives additional certainty and protection to good faith purchasers for value who acquire foreclosed property after the final judgment of foreclosure by providing that title to the property cannot be later challenged. However, this protection only applies if the party attempting to challenge the purchaser's title was properly served in the foreclosure action, final judgment of foreclosure has been entered, the appeal periods have run, and the purchaser is not affiliated with the foreclosing lender or the owner. All appellate rights are fully preserved.

While fully respecting differing or opposing points of view, the Section continues to believe that foreclosure reform which seeks to responsibly expedite and streamline the judicial foreclosure process without compromising fundamental fairness or the property and due process rights of those holding interests in the property is very much in the best interest of the citizens of Florida.

The Real Property, Probate and Trust Law Section of The Florida Bar respectfully requests you to sign, not veto, CS/CS/HB 87.

Respectfully submitted

William F. Belcher

Wm. Fletcher Belcher, Chair
Real Property, Probate and Trust Law Section
The Florida Bar

TO: R.P.P.T.L. Executive Council
FROM: Ad Hoc Committee on Foreclosure Reform
DATE: May 9, 2013
RE: Foreclosure Reform Bill (HB 87) Passes

We are pleased to report that after more than three years of hard work, fine-tuning and effort by the *Ad Hoc* Committee, and even more work and dedication by our sponsors – Representative Kathleen Passidomo and Senator Jack Latvala – and our government affairs consultants –Pete, Martha and the whole Pennington Gang, the foreclosure reform bill (HB 87) was adopted in the legislature and will be submitted for signature by the Governor. Our thanks to each of them for their hard work and support.

As many of you recall, this project started with a request for technical assistance by Rep. Kathleen Passidomo, herself a highly regarded board certified real estate attorney and long-time section member. A small ad hoc group was appointed to assist Representative Passidomo in converting her legislative vision into statutory language. That group consisted of Jerry Aron, Burt Bruton, Mark Brown, Alan Fields and Jeff Sauer. As the draft language was refined, it was circulated to the various RPPTL committees, input was sought and received from within the Section and from other groups, including MERS, consumer groups, mortgage bankers, the Florida Bankers Association, and further revisions were made. The work-product was presented at several Real Property Round Tables, and adopted as a RPPTL Section position at two different Executive Council meetings (for different legislative cycles, the bill having been approved in the House but didn't make it all the way to the Senate floor during the first legislative cycle). In spite of that, there was some disagreement among section members. A group of foreclosure defense attorneys submitted a letter to the Bar News (attached) attacking the Section for its approach, and Fletch Belcher's responded (Also attached).

The key provisions of the final bill as adopted by the legislature will do the following:

Section 1- Shortens the statute of limitations period for a lender to seek a deficiency judgment from the current five years to 1 year beginning July 1, 2013.

Section 2- is a constitutional "savings" provision. It allows a one year window, until July 1, 2014, for the filing of deficiency actions which are not currently barred (less than five years old) but which wouldn't meet the new one year limit.

Section 3-creates new §702.105, which is intended to expedite the foreclosure process and avoid a repeat of some of the "Robo-Signing," fraud and other problems of the past, by requiring the foreclosing lender to do their homework before filing and provide additional information (usually requested in discovery anyway) at the time of filing the original foreclosure complaint. Among other things, the lender must certify that they are in physical possession of the original promissory note, and where it is located; the details of any delegated authority by which the foreclosing plaintiff is operating, and where the complaint seeks to re-establish a lost note, it must attach the lost note affidavit and evidentiary backup.

This section generated criticism from Henry Trawick who felt it was inappropriate (and a violation of the spirit of the Rules of Civil Procedure) to require pleading of specific facts regarding the

ownership of the note and other details. A number of improvements were made to this section as a result of comments from the mortgage law committee and others – including express recognition of electronic promissory notes. This section became the subject of sometimes heated debate as to whether it was necessary to prove the plaintiff was BOTH the holder of the note AND the owner of mortgage as a precondition to filing foreclosure. The *Ad Hoc* committee did substantial research on this question and concluded (a) that being the “person entitled to enforce” under §673.3011 was the core requirement for filing a foreclosure suit; and (b) that the mortgage “followed the note,” regardless of recorded mortgage assignments.¹

Section 4- creates new §702.15 in an effort to eliminate the current uncertainty about when a final judgment of foreclosure is truly “final.” It provides certainty that a good faith purchaser of a previously foreclosed property will not be dispossessed in a later challenge. While the law school answer is that a judgment is final when all of the appeals periods have run and any appeals resolved, there are exceptions. Motions for relief from a judgment based on mistake, newly discovered evidence, or fraud can be filed up to a year after the judgment. Motions alleging that the judgment was void or discharged must be filed within a reasonable time and are not limited to the one year bar. The allegations that underlying mortgage ownership documents were being created by “robo-signing” creates the potential for attempts, perhaps years later, to reopen completed foreclosures as having been by the “wrong” lender.

This section provides that (1) after the homeowner has been properly served, (2) lost the home in a foreclosure, (3) lost on any appeals, AND (4) the property has been sold by the foreclosing lender to an unrelated third party for value –there can be no further challenges that call into question the new owners’ interest in the property. The former homeowner’s claim is converted into one for money damages against the lender who wrongly foreclosed, and that damages claim may not impact the marketability of the property in the new owner.

This too was a focus of opposition to the bill. A sizeable number of consumer advocates and members of the foreclosure defense bar would strike the public policy balance on this question in favor of dispossessing a subsequent purchaser in order to restore ownership to a fraudulently foreclosed past owner (no longer living there as the foreclosure is complete). While this is certainly an arguable public policy position, it was not the balance struck by the *Ad Hoc* committee in working with Rep. Passidomo. The *Ad Hoc* committee was of the view that (a) the original homeowner had the opportunity to conduct discovery and assert fraud and any other defenses during the original foreclosure; (b) the original homeowner is no longer in possession after a foreclosure and appeals are completed, or would be subject to the issuance of a writ of possession; and (c) that on the whole the equities were with the new purchaser.

The finality provision also was criticized as both an unconstitutional taking and that the new remedy of money damages against the lender for an improper foreclosure was inadequate.

¹ See e.g. Johns v. Gillian, 134 Fla. 575, 184 So. 140 (Fla. 1938) (“The transfer of the note ... operates as an assignment of the mortgage securing the debt, and it is not necessary that the mortgage papers be transferred [I]f there had been no written assignment, [Plaintiff] would be entitled to foreclose in equity upon proof of his purchase of the debt.”); Perry v. Fairbanks Capital, 888 So.2d 725 (Fla. 5th DCA, 2004) (“A mortgage is the security for the payment of the negotiable promissory note, "and is a mere incident of and ancillary to such note.”); Chemical Residential Mortgage v. Rector, 742 So.2d 300 (Fla. 1st DCA, 1998) (“Because the lien follows the debt, there was no requirement of attachment of a written and recorded assignment of the mortgage in order for the appellant to maintain the foreclosure action); and WM Specialty Mortgage v. Salomon, 874 So.2d 680 (Fla. 4th DCA 2004).

We would remind those believing the finality provision worked an unconstitutional taking to consider that the preconditions to finality included proper service, a full judicial foreclosure and opportunity for appellate review. We submit that a full judicial process, with appeals is due process. While no one will dispute that land is unique, especially one's former homestead with all of its memories – that parcel is just as unique to the new buyer. Besides which “unwinding” of the foreclosure would still leave the prior homeowner subject to a mortgage often in excess of the value of the property, and facing a properly conducted foreclosure.

Section 5- clarifies the computation of the amount of a deficiency judgment as to an owner occupied residence. It is to be computed as the difference between the judgment amount (or, in the case of a short sale, the outstanding debt) and the fair market value of the property on the date of sale. This section also rephrases some archaic language based on the historic distinction between courts of equity and law.

Section 6- cleans up some provisions of the existing law allowing an “order to show cause” in a foreclosure action. Specific changes to existing law include:

- Allowing a condominium or homeowners association or other subordinate defendant to use this mechanism to move a case forward even when the foreclosing lender has elected not to.
- Eliminating the requirement under current law for a separate hearing to issue the order to show cause and schedule the second hearing. As revised, the initial review will happen in chambers, upon an *ex parte* review of the court file, without the need for a separate hearing.
- Eliminating the mandate in the current law to hold the second hearing within 60 days, leaving the scheduling to the discretion of the court and their calendars.
- Clarifying current law to expressly provide that the standard for granting a final judgment at an order to show cause hearing is the same standard as for granting summary judgment. Expressly allowing the court to extend and continue the order to show cause hearing without further notice if the time originally scheduled is insufficient.

This section also generated substantial comment and criticism during the legislative process. Those critiques can be characterized as falling generally into three categories:

- One set of critiques failed to understand that the show cause mechanism has been part of Florida's foreclosure law for many years and that the first section of the statute sets forth what is to be in the notice to the property owner (which should warn them of the “worst” case) rather than setting forth the more deliberative and balanced legal standards for entering a final judgment. There was also the continuing confusion about the distinction between §702.10(1) – allowing a show cause for a final foreclosure judgment applicable to any type of property and §702.10(2) allowing a hearing to show cause why interim payments shouldn't be required during the pendency of the foreclosure, which is a remedy limited to commercial and non-owner-occupied residential properties.
- A second set of critiques were based on a feeling that the timeframes for a show cause hearing were too short for the property owner to properly respond. A subset of this argument was that it would force the property owner to file responsive papers before receiving necessary discovery. The *Ad Hoc* committee felt that the times for a show cause hearing (as

amended in the bill) were reasonable as they exceeded the times for entry of a default, and were not outside of the current time frames for scheduling a summary judgment hearing. We would point out that the standard for decision in the show cause context was the easily defeated standard of a summary judgment. As with summary judgment, an affidavit from the party opposing the entry of judgment as to the need for further discovery should be sufficient to avoid entry of a final judgment, just as it is at the show cause stage in accord with Fla. R. Civ. Pro. 1.510(f)

- The third set of critiques came out only after the ruling in Barnunn, LLC v. Talmer Bank, Case No. 2D12-446, (Fla. 2^d DCA, 2013) in February 2013. In that case, the 2nd District ruled that under the language of the existing statute, the filing of *any paper* in opposition to foreclosure, whether or not meritorious or legally relevant, was sufficient to preclude the entry of a final judgment at the show cause hearing. The working group believed that the efficient use of judicial resources should permit the court to review and rule on the legal sufficiency of an asserted defense – in the same manner as it would in response to a motion for summary judgment – and if the matters raised in opposition to foreclosure did not rise to the level of stating at least a colorable defense, the court should have the authority to proceed with entering judgment. In response to this case, authority was built into the amendments to §702.10, allowing the court to distinguish between a filing asserting “My Dog Ate My Homework” – generally not a legally cognizable defense -- and one asserting “the Bank’s Dog ate my Check” which may set up a disputed issue of material fact.

Sections 7- provides examples of acceptable means of providing adequate protections for lost & stolen notes under §673.3091. While resisted by the bankers, this section was not considered a change in the law. Adequate protections have been a requirement for the re-establishment of a lost note since the UCC was adopted. Unfortunately compliance has been spotty, and it is hoped that by restating the requirement in the mortgage foreclosure statutes this U.C.C. requirement will start to be applied consistently in foreclosure actions. Section 7 also creates a new cause of action allowing the actual holder of supposedly lost note to recover directly from the adequate protections without the need of naming the wrongly foreclosed homeowner in the suit.

Section 8- Provides that the procedures in the bill are remedial and apply to notes and mortgages made before or after the date of the act, but that the new complaint requirements are only applicable to lawsuits filed after July 1, 2013.

This law will be effective upon signature by the Governor, although certain sections have different implementation dates.

Foreclosure Legislation

We write as members of The Florida Bar and in some cases as members of the Real Property, Probate and Trust Law Section to express our deep concern with the section's support of Senate Bill 1666 and House Bill 87, which propose to materially change the rules governing foreclosures in Florida.

The proposed amendments are in complete derogation to fundamental tenets of due process and property rights. The passing of this legislation would completely disregard the evidence code, allowing courts to presume liability with only a prima facie showing by the plaintiff, and without opportunity of homeowners to conduct discovery into possible abuses by the banking industry that often result in out-of-court settlements between lenders and homeowners, or a rash of voluntary dismissals by the banks.

This proposed legislation would effectively undo 250 years of American jurisprudence, returning us to a legal dark age. Furthermore, certain proposed amendments would apply retroactively, creating ex post facto provisions which violate both our state and federal constitutions.

The proposed legislation favors banks, retired judges, homeowners' associations and title insurance companies, and disfavors homeowners and newspapers. While banks support the bills because they provide them with an expedited procedure of foreclosure, many of these procedures will effectively reduce the financial incentive for lenders to participate in short sales and negotiated settlements that are helping restabilize the Florida real estate economy.

SB 1666 proposes to dramatically increase the use of retired senior judges, an issue that has profound constitutional implications. Article V of Florida's Constitution requires that judges who reach the age of 70 retire and cease to maintain full case loads. The Florida Constitution also requires judges who preside over cases reside in the communities in which they serve and face the will of the voting public through retention votes. The proposed legislation completely ignores these fundamental protections. Foreclosure judgments entered by these senior judges will perpetually be attacked as unconstitutional, which will create unsettled cases for potentially decades, making matters ultimately worse. Overburdening of the district courts of appeal that are already struggling to keep up is not sound policy.

These bills are more interested in protecting the banking and the title insurance industries than protecting the larger interests of the Constitution, the judicial system as a whole, and the rights of homeowners. The "Finality of Foreclosure" provisions in these bills prevent homeowners from ever getting their home back even after a fraudulent foreclosure is overturned; rather, the homeowner would be entitled to economic damages only. No matter how blatant the fraud, no matter how obvious the forgery, no matter what errors are committed, once a judgment is entered, the wronged homeowner could never get that property back again.

We see no reason why there should be a special legislative exemption for an industry that has collected billions from policy premiums paid by homeowners over the years to protect them from defective title. Effectively, the Legislature would be giving the industry a huge subsidy by providing this unnecessary protection.

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Should this legislation pass, the negative consequences to homeowners would far outweigh any alleged benefits to lenders, the title insurance industry, and the court system. The quantum of harm to consumers and to our legal system as a whole should shock any attorney. For example, one provision allows the retroactive application of the law to existing cases. As attorneys, even the thought of ex post facto laws should cause grave concern, creating a very dangerous slippery slope in the future in other areas of the law. If passed, these bills will change the standard in the middle of a case and subject the litigants to a new legal standard that did not exist when the case was filed. Next, the bills propose to shift the burden of proof to defendant homeowners. The plaintiff in all suits has the burden of proof to substantiate its allegations. The bills usurp the role of appellate courts by providing safe harbor for lender mortgage fraud by making foreclosure judgments final. The bills also overturn a long-standing law that only requires depositing of payments into a court's registry where agreed upon, by the parties, in the mortgage to instead now require that any homeowner who is not occupying his or her home pay his or her mortgage in full or immediately lose possession.

Homeowners, who are already fighting an uphill battle in defending foreclosures, would effectively have little chance at defending their rights at a preliminary hearing where the banks need only show a prima facie case to foreclose. Bank fraud and robo-signing, which have primarily been exposed through discovery during the foreclosure process, will likely remain buried should the proposed summary procedures be permitted, and would not have been uncovered in the first place had these laws been in place at the time. These fast and loose procedures build a house of cards that could eventually collapse without the proper procedural and substantive safeguards in place. The more than 30,000 dismissals (in 2012 alone) for incomplete or fraudulent documentation is indicative of the banks' own acknowledgment of their legal shortfalls.

This unfortunate track record is well documented and required the Florida Supreme Court to take unprecedented action. Never before in the history of Florida jurisprudence has the Supreme Court amended a Rule of Civil Procedure, as they did with Rule 1.110(b), in order to try to protect the courts and the public from the financial industry's rampant use of false documents in courts across this state.

We realize that proponents of the bills are willing to sacrifice due process rights for the sake of expediency. The unfortunate, even awful, irony here is that these bills will not achieve the intended result. A major impetus for the bills is that associations should be able to schedule a "show cause" hearing so they can accelerate foreclosure cases that the banks are slow to prosecute. This would, in theory, get nonpaying homeowners out of these homes, replacing them with homeowners who will pay the associations. The fatal problem with this concept is that associations can schedule "show cause" hearings, but they can't file the requisite bank documents for the bank to obtain a foreclosure judgment, nor can the associations force the banks to file said documents. Banks won't prosecute their own foreclosure cases to judgment, and no amount of legislation, certainly not these bills, can force them to do so.

While we all agree that Florida's courts are struggling to cope with thousands of pending foreclosure cases, this proposed legislation is not the solution. We must not undermine due process and fairness in our legal system in a foolhardy rush to clear the backlog of foreclosures at the expense of the integrity of our judicial system. We deserve better. Florida's homeowners deserve better. We call on the section leadership to withdraw their support of the bills and stop lobbying for the bills' passage.

As published in the April 15, 2013 edition of The Florida Bar News

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RPPTL Section Responds

The Real Property, Probate and Trust Law Section appreciates this opportunity to address misperceptions concerning the context in which it is advocating certain reforms to our judicial foreclosure system.

The Bar has a unique view of how Florida's foreclosure crisis has gripped Florida's economy, including the negative impact on the judicial branch and the legal profession. Foreclosing a contested mortgage in Florida has become an extraordinarily lengthy process. Whether this extended time period is attributable to lender inaction, borrower delay, overcrowded dockets, or otherwise, debate by interested parties for half a decade has failed to produce any solution. That failure has hurt not only individual property owners, but entire communities, as evidenced by abandoned properties depressing market prices and unpaid assessments draining community associations.

Instead of ignoring a problem for which many believe there is no solution, the section's Executive Council has pursued its commitment to help find a solution. The section's legislative position on foreclosure reform was approved by its full 240-member Executive Council upon the recommendation of the section's Ad Hoc Foreclosure Reform Committee. The deliberative process followed by the section in this matter was broad, lengthy, and open, and it included extensive input from many sources and much discussion with interested parties, groups, and numerous section members to ensure that all voices and viewpoints were fully considered. After taking the lead in the fight against nonjudicial foreclosure legislation, it became clear to the section that the interests of all Floridians would be better served by seeking well-reasoned reforms to Florida's judicial foreclosure process.

The section has remained keenly aware that foreclosure reform must fairly balance the competing interests of the property owner, the lender, and the good faith purchaser of foreclosed property. Consistent with that goal, the section has vigorously opposed any amendments to existing Florida law governing real property foreclosures unless they preserve and protect the property and due process rights of those parties in a fundamentally fair way. The section also recognizes that some groups oppose foreclosure reform and support inaction for the sole purpose of delaying foreclosure, and it firmly believes that inaction and delay for the sake of delay serves to undermine trust in the courts and the independence of the judiciary.

The position taken by the section on foreclosure reform is a balanced one that contains appropriate provisions protecting the respective interests of property owners, lenders, and good faith purchasers. Thus, the section respectfully disagrees with many of the conclusions

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stated in the above letter regarding **HB 87** and SB 1666. A few of the letter's more extreme assertions are the following:

1. *The use of senior judges is unconstitutional.* Article V, Section 2(b) of the Florida Constitution expressly authorizes the use of senior judges. Further, the letter's broad and unjustified attack on the distinguished service of senior judges due to an alleged lack of accountability overlooks the Supreme Court's continuing oversight and recurring review process which invites and encourages input from attorneys who practice within the jurisdiction in which the senior judge serves.
2. Some of the proposed amendments would apply retroactively, creating ex post facto provisions which violate both our state and federal constitutions. The proposed changes in the way that foreclosure cases are processed are constitutional, as they do not impair existing contractual obligations or impose a penalty on prior conduct.
3. *The proposed amendments would shift the burden of proof to defendant homeowners and would completely disregard the evidence code.* The bills do neither. The bills impose additional requirements for stating a cause of action for foreclosure, including allegations showing that the plaintiff is a person presently entitled to enforce the note and, if the plaintiff is presently in possession of the original note, a certificate to that effect under penalty of perjury. In order to obtain a show cause order, the plaintiff is required to properly state a cause of action for foreclosure in a complaint that is verified under penalty of perjury. Only when a plaintiff has complied with those requirements may the court issue a show cause order requiring a defendant to file some paper that raises a genuine issue of material fact or constitutes a legal defense in order to avoid the entry of a foreclosure judgment. This procedure essentially applies a summary judgment standard to the show cause hearing and does not shift the burden of proof or persuasion to the defendant or eliminate the applicability of the evidence code in evidentiary hearings in foreclosure cases.
4. *The proposed amendments are in complete derogation of fundamental tenets of due process and property rights.* The bills fully protect fundamental due process and property rights. Nothing in the bills prevent anyone with a legitimate defense from defending a foreclosure action. The bills also protect owners of residential property by reducing the statute of limitations for obtaining deficiency judgments from five years to one year, and exempt owner-occupied residences from orders to show cause why they should not be required to make payments during the pendency of the foreclosure proceeding or vacate the premises.
5. *The proposed amendments would prevent homeowners from ever getting their home back even after a fraudulent foreclosure is overturned.* The bills would give additional certainty and protection to good faith purchasers for value who acquire foreclosed property after the final judgment of foreclosure by providing that title to the property cannot be later challenged. However, this protection only applies if the party attempting to challenge the purchaser's title was properly served in the foreclosure action, final judgment of foreclosure has been entered, the appeal periods have run, and the purchaser is not affiliated with the foreclosing lender or the owner. Because all appellate rights are fully preserved, the letter's assertion that this aspect of the bills usurp the role of appellate courts and provides a safe harbor for lender mortgage fraud is incorrect.

While fully respecting differing or opposing points of view, the section continues to believe that foreclosure reform, which seeks to responsibly expedite and streamline the judicial foreclosure process without compromising fundamental fairness or the property and due process rights of those holding interests in the property, is very much in the best interest of the citizens of Florida.

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Wm. Fletcher Belcher, Chair

Real Property, Probate and Trust Law Section of The Florida Bar

RPPTL Leadership Academy Selection Committee Report

The Leadership Academy Selection Committee (hereafter "Selection Committee") was charged with selecting up to 2 members of the Executive Council or active, contributing members of a RPPTL Section Committee to apply for nomination to the Florida Bar Leadership Academy and, if chosen as a fellow in the Leadership Academy, to receive a scholarship of up to \$3,500 for out of pocket travel and hotel expenses incurred in attending the Leadership Academy.

Immediately after formation of the Selection Committee, the committee members went to work advertising the program and soliciting applications. To be eligible for the RPPTL Section scholarship(s), potential applicants were asked to submit a copy of their Florida Bar Leadership Academy application to the Selection Committee on or before March 15, 2013. Given the small time frame for applicants to complete the application, the Selection Committee was happy to receive 12 excellent applications for consideration. After a lengthy review of all applications, the Selection Committee selected Brenda Ezell and Tatiana Brenes-Stahl as the nominees to receive a potential scholarship if they were chosen as fellows by the Florida Bar Leadership Academy.

The Selection Committee is happy to report that both Brenda Ezell and Tatiana Brenes-Stahl have been chosen as fellows for the Leadership Academy by the Florida Bar Leadership Academy Selection Committee and will be receiving the RPPTL Section scholarships. Our Standing Committee will continue to work with Ms. Ezell and Ms. Stahl over the next year as they begin their participation in the Leadership Academy as part of the inaugural class!

The committee would like to thank all of the applicants and congratulate Ms. Stahl and Ms. Ezell on their selection. We are confident Ms. Stahl and Ms. Ezell will be excellent representatives of our Section in the program and we are looking forward to having them apply the skills they learn to their work in our Section!

REAL PROPERTY,
PROBATE &
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April 16, 2013

VIA ELECTRONIC MAIL

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Re: Request for Ethics Opinion Regarding Requirements of
Section 626.8473(8), Florida Statutes, for a Separate Trust
Account for Transactions When an Attorney Serves as a
Title or Real Estate Settlement Agent

Dear Members of the Professional Ethics Committee:

As a consequence of confusion within the Bar resulting from the enactment of s. 626.8473(8), Fla. Stat., in 2012, the RPPTL Section has previously requested the Professional Ethics Committee of The Florida Bar to issue a new Ethics Opinion reaffirming Opinion 93-5 and clarifying it to specifically address the related issues raised by the enactment of s. 626.8473(8).

The essence of the Section's position is that disclosure by an attorney incident to an audit pursuant to s. 626.8473(8) of a separate trust account maintained by the attorney exclusively for funds received in connection with transactions in which the attorney is serving as a title or

real estate settlement agent serves the client's interest and is therefore permissible under Rule of Professional Conduct 4-1.6(c).

Realizing the complexity of these issues and their great importance to attorneys practicing real estate law in Florida, through this letter and the attached proposed draft opinion, the Section respectfully seeks to assist the Committee by providing information, technical assistance, and analysis. If the Committee has any questions or if there are any other ways in which the Section can provide support the Committee concerning this matter, please do not hesitate to contact any of the following RPPTL representatives: Margaret Ann Rolando, RPPTL Chair-Elect, MRolando@shutts.com; Michael J. Gelfand, Real Property Law Division Director, MJGelfand@gelfandarpe.com; or Jerry E. Aron, Former RPPTL Chair, JAron@aronlaw.com.

The discussion regarding a proposed ethics opinion addressing s. 626.8473(8) may benefit from the following foundational information describing the unique expectations and requirements present in administering an escrow relating to real estate transactions.

Preserving the Public's Access to Legal Counsel in Real Estate Transactions

The public is best served by access to the knowledge, skill and training of attorneys in conducting real estate transactions. Legislative, regulatory and market pressures demand oversight of the escrow and trust accounts through which billions of dollars flow annually for Florida real estate transactions.

In two years alone (2008 and 2009), one title insurer suffered losses of \$65 million when funds held for Florida real estate transactions were stolen from attorney controlled trust accounts by attorneys or their employees. Three Florida domestic title insurers have been required to cease issuing policies in significant part due to theft from attorney trust accounts. While the bulk of trust account theft losses were sustained by title insurers, significant sums were also lost by members of the public. In response to such losses and other issues, the Florida Legislature created the Title Insurance Study Advisory Council, chaired by then Lt. Governor Jeff Kottkamp.

The Advisory Council's Final Report and Findings issued in 2009 noted that questions were raised regarding "who should be allowed to establish escrow accounts and remit funds to preclude the misuse of those funds." After hearing testimony concerning Florida Ethics Opinion 93-5, the Council recommended that attorneys engaging in title insurance transactions be required "to maintain in a separate escrow account for the funds to be held." This recommendation was the impetus for s. 626.8473(8), which includes language drawn from Florida Ethics Opinion 93-5. Without the protections of this statute, title insurers and other parties may no longer permit attorneys to hold funds from real estate transaction and act as title insurance agents. At particular risk would

be attorneys in smaller firms. The negative impact on real estate attorneys and the representation of their clients would be significant.

The financial services market is also moving to require oversight of trust and escrow accounts. The Service Providers Bulletin issued by the Consumer Financial Protection Bureau (created by the federal Dodd-Frank Act) on April 13, 2012, stated that:

“The Consumer Financial Protection Bureau (CFPB) expects supervised banks and non-banks to oversee their business relationships with service providers in a manner that ensures compliance with Federal consumer protection finance law, which is designed to protect the interests of consumers and avoid consumer harm.”

Although the Bulletin approves of the use of third party providers, it hastens to add that doing so “does not absolve the supervised bank or non-bank of responsibility for complying with Federal consumer financial law to avoid consumer harm.” The CFPB set forth its expectation that lenders have “an effective process for managing the risks of service provider relationships [and] should take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers.”

The crux of the CFPB Bulletin delineates the steps expected of lenders when considering or entering into third party provider arrangements. “These steps should include, but are not limited to:

- Conducting thorough due diligence to verify that the service provider understands and is capable of complying with Federal consumer financial law;
- Requesting and reviewing the service provider’s policies, procedures, internal controls, and training materials to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
- Including in the contact with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;
- Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and
- Taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

The definition of “Service Providers” contained in the Dodd-Frank Act includes title and settlement agents, including attorney agents. Lenders are demanding a mechanism to meet the CFPB requirements relative to title and settlement agents. Giving title insurers the full ability for “on-going monitoring” of trust accounts may be necessary to meet the requirement of determining whether the provider is complying with Federal consumer financial laws such as RESPA.

Attorneys as Title Insurance Agents

Florida citizens benefit from attorney title insurance agents far more than any other state. Over 4,000 Florida attorneys are available to assist the public as title insurance agents. The percentage of policies issued by independent title insurance agents in the three most active states are:

California – 15%
Texas – 50%
Florida – 85%

Approximately two-thirds of the independent title insurance agents in Florida are attorneys. Agent oversight is an important component of a title insurer’s ability to manage risk. Licensed title agents are required by Fla. Admin Code §69O-186.009 to provide the appointing title insurer with a completed escrow account reconciliation monthly. In this time of extraordinary loss by title insurers, attorneys must be permitted to demonstrate their good stewardship of the funds of others to preserve the role of attorney agents for the benefit of the public.

The role of the closing protection letter deserves special comment. Lenders and purchasers routinely send millions of dollars to real property settlement agents to be held in trust or escrow and appropriately disbursed as directed by the lender. With the amount of money at risk, lenders will not send the money to independent settlement agents without certain assurances from title insurers, which are given in the form of closing protection letters. Without such assurances, many lenders and purchasers will not permit attorney agents to hold trust or escrow funds and will only conduct such business directly with title insurers, thus depriving the public of the benefits of an attorney conducting the real estate closing. The provisions of closing protection letters, which protect lenders and purchasers from fraud or dishonesty of the agent in handling the lender’s funds, are defined in the Florida Administrative Code.

In order to serve clients by acting as settlement agents, attorneys must request this additional coverage for lenders and purchasers from title insurers, who have a very legitimate interest in protecting the trust and escrow funds held by attorneys and must be able to take reasonable measures to manage the risk associated with this additional protection for the attorneys’ clients.

Client's Best Interest and Expectations of Confidentiality

The client's expectation of confidentiality with respect to the source and disbursement of trust or escrow funds in a real estate transaction is fundamentally different than in most other types of legal representation, where it is rarely in the client's interest to disclose information relating to the representation to a third party. In the real estate transaction, the attorney is specifically engaged to collect and disburse funds in accord with the terms of the contract. That process necessarily requires the disclosure of information regarding the receipt and disbursement of those funds – sometimes as expressly required in the contract, other times to further the goal of closing the transaction – to a number of third parties. Disclosing information regarding all receipts and distributions in a real estate transaction is necessary to serve the client's interest.

In addition, Federal law requires the complete and accurate disclosure of all funds received and disbursed by settlement agents in transactions regulated by the Real Estate Settlement Procedures Act (RESPA).

Some of the many examples unique to real estate transactions in which it is necessary to disclose information concerning receipts and disbursements in order to serve the client's interest are as follows:

Residential Transaction with a Purchase Money Mortgage

Florida attorneys close hundreds of thousands of transactions each year. Note that the attorney's client may be the buyer, the seller or the lender. An attorney will owe certain duties to each of the parties irrespective of which party is the attorney's client.

Parties interested in the transaction:

Seller – Will require confirmation from attorney that attorney has received buyer's deposit in cleared funds.

Buyer – Will require confirmation from attorney that estoppel letters have been obtained from lienholders and payments are timely paid.

Holder of existing mortgage – Responds to a payoff request from attorney settlement agent with information on the amount necessary to satisfy an outstanding mortgage.

Purchase money lender - Will require buyer to invest buyer's own funds into the property, often 20% of the purchase price. Lender will require attorney settlement agent to verify that buyer's funds have come from a source acceptable to lender. Past abuses have included buyer's cash to close coming directly or indirectly from the seller, inflating the apparent sales price of the property. Lender will require closing protection letter that

is consistent with Fla. Admin. Code 69O-186.010 from settlement/title agent's insurer as a condition of permitting an independent attorney agent to receive lender's proceeds. Lender will also require attorney to provide the HUD-1 settlement statement disclosing all receipts and disbursements prior to funding the mortgage. The form and disclosures required by the HUD-1 are promulgated pursuant to 12 U.S.C.A. §2603 of the Real Estate Settlement Procedures Act (RESPA).

Title insurer – Attorney agent's title insurer is interested in the trust account in three ways:

1. Upon closing, insurer's portion of the title insurance premium is property of insurer. RESPA requires disclosure of insurer's portion on settlement statement.
2. Pursuant to closing protection letter, title insurer has agreed, subject to certain conditions, to reimburse lender for actual loss sustained by reason of:
 - a. Failure of attorney agent to comply with written instructions related to the status of title or obtain any document specifically required by the lender; and
 - b. Fraud or dishonesty of the attorney agent in handling lender's funds or documents. Insurer must be able to verify attorney's representations to lender regarding source of funds, often requiring examination of multiple trust accounts.
3. Confirm payments to prior lienholders have cleared in order to discharge contractual obligations to buyer and lender.

Attorney agent – As a settlement agent closing a transaction subject to the federal Real Estate Settlement Procedures Act, attorney is required to complete and distribute a HUD-1 settlement statement and must:

1. Accurately disclose all funds received, together with the recipient and amount of all funds distributed; and
2. Execute the following Settlement Agent Certification on the HUD-1 settlement statement:

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

Condominium or Homeowner's Association – Attorney agent advances estoppel letter fee and receives funds designated to pay outstanding association dues and fees.

Real estate brokers and salesmen – Real estate commissions earned by real estate licensees are disclosed on the settlement statement and are to be paid directly from the attorney's real estate related trust account.

Homeowner's insurance company – Property insurance companies frequently issue a binder prior to the closing and buyer and lender require payment of the premium by the settlement agent from the attorney's real estate related trust account.

Surveyors – Surveyors routinely deliver completed surveys to attorney title/settlement agent with instructions for payment from the real estate related trust account.

Child support recipients (via clerk of court) – Recorded certificates of delinquency constitute a cloud on the title to real estate. Title/settlement agents, including attorney agents, disburse millions of dollars a year from trust and escrow accounts to pay delinquent child support obligations.

Construction lien holders (recorded and unrecorded) – Contractors, subcontractors, laborers and parties supplying materials for the improvement of real estate are entitled to liens against the property if they are unpaid. Attorney agent will determine any amount unpaid and satisfy the lien with payment from the real estate related trust account.

County recording offices – Attorney settlement agents are required to communicate the exact consideration paid for real estate and the amount of any mortgage to the county recording office and pay the calculated taxes from the real estate related trust account.

Receipts and Disbursements

A ledger card ("Balance Sheet") and settlement statement (HUD-1 Settlement Statement) for a typical real estate transaction is attached to illustrate the following points:

1. The funds of buyer, seller and lender are held for a very short time. The HUD-1 Settlement Statement disclosing the planned receipt and disbursement of all funds must be approved prior to attorney's receipt of funds.

2. Disbursements are made to a large number of parties. Each party is interested in the escrow funds and is aware funds are being received to be disbursed to them. The the information concerning the existence of the funds in trust is not confidential. These parties may include buyer, seller, prior lender(s), new lender, real estate brokers and salesmen, title insurers, surveyors, home warranty companies, homeowner's associations, condominium associations, home inspectors, judgment holders, child support recipients, construction lien holders (recorded and unrecorded), and county recording offices.
3. The title insurer's check is often prepared and dated the date of closing, but held until the policy is prepared and issued 30 to 60 days later, during which time attorney is holding funds of the title insurer.

Commercial Transaction

Commercial transactions are not subject to the disclosures mandated by RESPA for residential transactions. However, commercial transactions also require the accurate disclosure of the consideration for the transaction when recording documents, the debt secured by mortgages, verification of cash to close, and confirmation of deposits and escrows held for tenant deposits. Purchasers and lenders in commercial transactions routinely require closing protection letters with the attendant title insurer risk and exposure described above.

Proposed Opinion

Upon careful consideration of the unique aspects of representation of a client involved in a real estate transaction and the multiple obligations to parties other than clients, the attached proposed opinion is respectfully submitted in hopes that it will facilitate the work of the Committee and its Subcommittee on Real Estate Trust Accounts on this matter.

Sincerely yours,

William F. Belcher

Wm. Fletcher Belcher, Chair
Real Property, Probate and Trust Law Section
of The Florida Bar

Professional Ethics Committee
April 16, 2013
Page 9

cc: Gwynne A. Young, Esq.
Laird A. Lile, Esq.
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Adele I. Stone, Esq.
Stewart A. Marshall, III, Esq.

Margaret A. Rolando, Esq.
Michael J. Gelfand, Esq.
Roland "Chip" Waller. Esq.
Jerry Aron, Esq.
William Sklar, Esq.
Yvonne Sherron
ALL VIA E-MAIL



A. Settlement Statement (HUD-1)

B. Type of Loan

1. FHA
 2. RHS
 3. Conv. Unins.
 4. V.A.
 5. Conv. Ins.

6. File Number

Sample File

7. Loan Number

61638695

ID:

8. Mortg. Ins. Case Num.

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER: Bob Buyer and Belinda Buyer, husband and wife
Address of Borrower: 654 Oreo Circle, Orlando, Florida 32801

E. NAME OF SELLER: Samuel Seller and Sandy Seller, husband and wife
Address of Seller: 543 Pecan Avenue, Winter Garden, Florida 34787

F. NAME OF LENDER: Nutter Butter Bank
Address of Lender: 54 Lorna Doone Way, Green Bay, Wisconsin 54302

G. PROPERTY LOCATION: 543 Pecan Avenue, Winter Garden, Florida 34787

H. SETTLEMENT AGENT: Keebler, Nabisco & Amos, P.A.
Address: 123 Milano Way, Orlando, Florida 32822
Place of Settlement: 123 Milano Way, Orlando, Florida 32822

I. SETTLEMENT DATE: 6/26/12

Phone: 407-765-4321

DISBURSEMENT DATE: 6/26/12

J. Summary of borrower's transaction		K. Summary of seller's transaction	
100. Gross amount due from borrower:		400. Gross amount due to seller:	
101. Contract sales price	550,000.00	401. Contract sales price	550,000.00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (Line 1400)	19,422.65	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance:		Adjustments for items paid by seller in advance:	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. HOA Dues from 06/26/12 to 06/30/12	8.20	408. HOA Dues from 06/26/12 to 06/30/12	8.20
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross amount due from borrower:	569,430.85	420. Gross amount due to seller:	550,008.20
200. Amounts paid or in behalf of borrower:		500. Reductions in amount due to seller:	
201. Deposit or earnest money	50,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	410,000.00	502. Settlement charges to seller (line 1400)	33,440.00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Principal amount of second mortgage		504. Payoff of first mortgage loan	428,079.00
205.		505. Payoff of second mortgage loan	15,781.97
206.		506.	
207.		507.	
208. Principal amt of mortgage held by seller		508. Principal amt of mortgage held by seller	
209. Buyer credit for doc stamps on deed	3,850.00	509. Buyer credit for doc stamps on deed	3,850.00
209a.		509a.	
209b. Ceiling fan replacement credit	225.00	509b. Ceiling fan replacement credit	225.00
209c. OF6, Title Search & Municipal Lien Search	3045.00	509c. OF6, Title Search & Municipal Lien Search	3045.00
Adjustments for items unpaid by seller:		Adjustments for items unpaid by seller:	
210. City/town taxes		510. City/town taxes	
211. County taxes from 01/01/12 to 06/26/12	4,268.39	511. County taxes from 01/01/12 to 06/26/12	4,268.39
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total paid by/for borrower:	471,388.39	520. Total reductions in amount due seller:	488,689.36
300. Cash at settlement from/to borrower:		600. Cash at settlement to/from seller:	
301. Gross amount due from borrower (line 120)	569,430.85	601. Gross amount due to seller (line 420)	550,008.20
302. Less amount paid by/for the borrower (line 220)	(471,388.39)	602. Less total reductions in amount due seller (line 520)	(488,689.36)
303. Cash (<input checked="" type="checkbox"/> From <input type="checkbox"/> To) Borrower:	98,042.46	603. Cash (<input checked="" type="checkbox"/> To <input type="checkbox"/> From) Seller:	61,318.84

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

L. Settlement charges		Paid from Borrower's Funds at Settlement	Paid from Seller's Funds at Settlement
700. Total Real Estate Broker Fees	\$33,000.00		
Division of commission (line 700) as follows:			
701. \$ 16,500.00	to Homefinders Realty Company		
702. \$ 16,500.00	to Sunshine Realty, Inc.		
703. Commission paid at settlement			33,000.00
704.			
705.	to		
800. Items Payable in Connection with Loan			
801. Our origination charge	\$1,000.00 (from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen	(from GFE #2)		
803. Your adjusted origination charges	to Nutter Butter Bank (from GFE A)	1,000.00	
804. Appraisal fee	to The Appraisal Company (from GFE #3)	395.00	
805. Credit report	to Credit Bureau, Inc. (from GFE #3)	11.00	
806. Tax service fee	to Nutter Butter Bank	78.00	
807. Flood certification	to (from GFE #3)		
808.	to		
809.	to		
810.	to		
811.	to		
812.	to		
813.	to		
900. Items Required by Lender to Be Paid in Advance			
901. Daily interest charges from 06/26/12 to 07/01/12 @ 48.4100 /day (from GFE #10)		242.05	
902. Mortgage insurance premium for months to (from GFE #3)			
903. Homeowner's insurance premium for 1 years to Oatmeal Surety (from GFE #11) 6459.00 POC (B)*			
904. Flood insurance premium for years to			
905.	years to		
1000. Reserves Deposited with Lender			
1001. Initial deposit for your escrow account (from GFE #9)		6,585.10	
1002. Homeowner's insurance 4 months @ \$538.25 per month \$2,153.00			
1003. Mortgage insurance months @ per month			
1004. Property taxes 10 months @ \$766.16 per month \$7,661.60			
1005. Flood insurance months @ per month			
1006.	months @ per month		
1007.	months @ per month		
1008.	months @ per month		
1009. Aggregate accounting adjustment (\$3,229.50)			
1100. Title Charges			
1101. Title services and lender's title insurance (from GFE #4)		1,100.00	
1102. Settlement or closing fee to Keebler, Nabisco & Amos, P.A. \$500.00			
1103. Owner's title insurance to Old Republic Nat. Title/Keebler, Nabisco (from GFE #5) OF6-2825.00		2,825.00	
1104. Lender's title insurance to Old Republic Nat. Title/Keebler, Nabisco \$360.00 MF6-25.00;5.1-25;8.1-25;F9-285.00			
1105. Lender's title policy limit \$410,000.00			
1106. Owner's title policy limit \$550,000.00			
1107. Agent's portion of the total title insurance premium \$2,229.50 to Keebler, Nabisco & Amos, P.A.			
1108. Underwriter's portion of the total title insurance premium \$955.50 to Old Republic National Title Insurance Compar			
1109. Abstract or title search to Keebler, Nabisco & Amos, P.A. \$40.00			
1110.	to		
1111.	to		
1112.	to		
1113.	to		
1200. Government Recording and Transfer Charges			
1201. Government recording charges (from GFE #7)		181.50	
1202. Deed \$18.50 Mortgage(s) \$163.00 Releases \$20.00 \$181.50			20.00
1203. Transfer taxes (from GFE #8)		6,105.00	
1204. City/County tax/stamps Deed \$0.00 Mortgage(s) \$820.00			
1205. State tax/stamps Deed \$3,850.00 Mortgage(s) \$1,435.00			
1206.			
1207.			
1208.			
1300. Additional Settlement Charges			
1301. Required services that you can shop for (from GFE #6)		300.00	
1302. Survey to Blackburn Surveying, Inc. \$300.00			
1303. Home Warranty to Home Saver, Inc.			300.00
1304. Estoppel Fee to Vision One Group, Inc.			120.00
1305. HOA Dues (7/1/12 - 6/30/13) to Vision One Group, Inc.		600.00	
1306.	to		
1307.	to		
1308.	to		
1309.			
1400. Total Settlement Charges			
(Enter on lines 103, Section J and 502, Section K)		19,422.65	33,440.00

* POC (B) = Paid outside of closing by borrower

** The exception rate option was used in this file

* POC (S) = Paid outside of closing by seller

HUD-1 SETTLEMENT STATEMENT ADDENDUM

File Number: Sample File

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrower(s)

Bob Buyer

Belinda Buyer

Seller(s)

Samuel Seller

Sandy Seller

Settlement Agent

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Keebler, Nabisco & Amos, P.A.

By: _____

Date: _____

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

BALANCE SHEET

Closing File Number Sample File
Closing Date 06/26/2012
Disbursement Date 06/26/2012
Seller Samuel Seller and Sandy Seller
Buyer Bob Buyer and Belinda Buyer
Property Address 543 Pecan Avenue Winter Garden Florida 34787
Account Number

DEPOSITS

Homefinders Realty Company	Broker Deposit	\$50,000.00	201
Nutter Butter Bank	Principal amount of new loan(s)	\$410,000.00	202
	Tax service fee	(\$78.00)	806
	Credit report	(\$11.00)	805
	Daily interest charges from	(\$242.05)	901
	Your adjusted origination charges	(\$1,000.00)	803
	Appraisal fee	(\$395.00)	804
	Initial deposit for your escrow account	(\$6,585.10)	1001
Nutter Butter Bank	Loan Proceeds	\$401,688.85	202
Bob Buyer and Belinda Buyer	Cash from Borrower	\$98,042.46	303
TOTAL DEPOSITS		\$549,731.31	

DISBURSEMENTS

Bank of America, N.A.	Payoff of first mortgage loan	\$428,079.00	504
Bank of America, N.A.	Payoff of second mortgage loan	\$15,781.97	505
Samuel Seller and Sandy Seller	Cash to Seller	\$61,318.84	603
Homefinders Realty Company	Broker's Commission	\$16,500.00	701
Sunshine Realty, Inc.	Broker's Commission	\$16,500.00	702
Old Republic National Title Insurance Company	Underwriter's portion of the total title insurance premium	\$955.50	1108
Orange County Comptroller	-(Release)	\$20.00	1202
Blackburn Surveying, Inc.	Survey	\$300.00	1302
Home Saver, Inc.	Home Warranty	\$300.00	1303
Vision One Group, Inc.	Estoppel Fee	\$120.00	1304
Vision One Group, Inc.	HOA Dues (7/1/12 - 6/30/13)	\$600.00	1305
Keebler, Nabisco & Amos, P.A.	Miscellaneous Title Charges	\$700.00	C 1101
	Agent's portion of the total title insurance premium	\$2,229.50	C 1107
	Abstract or title search	\$40.00	C 1109
Keebler, Nabisco & Amos, P.A.	Title Charges	\$2,969.50	
Orange County Comptroller	-(Deed)	\$18.50	C 1202
	-(Mortgage)	\$163.00	C 1202
	City/County tax/stamps-(Mortgage)	\$820.00	C 1204
	State tax/stamps-(Deed)	\$3,850.00	C 1205
	State tax/stamps-(Mortgage)	\$1,435.00	C 1205
Orange County Comptroller	Recording Fees	\$6,286.50	
TOTAL DISBURSEMENTS		\$549,731.31	

Proposed Ethics Opinion

A member of The Florida Bar has requested an advisory ethics opinion concerning the auditing of a trust account maintained for real property transactions which routinely contain funds for the multiple participants in a real estate closing beyond the buyer and seller, including title insurers, in the context of a recent legislative action. The legislature adopted section 626.8473 (8), Florida Statutes, effective July 1, 2012, which states:

An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

The inquirer asks two questions which will be addressed in turn. However, the following considerations are common to both questions.

Members of The Florida Bar continue to be guided by Opinion 93-5.

Opinion 93-5 states that:

An attorney who is an agent for a title insurance company may not permit the title insurer to audit the attorney's general trust account without consent of the affected clients. The attorney, however, need not obtain client consent before permitting the insurer to audit a special trust account used exclusively for transactions in which the attorney acts as the title or real estate settlement agent.

...

With regard to audits of a special trust account, however, one of the exceptions to the Rule 4-1.6 duty of confidentiality is relevant. Subdivision (c)(1) authorizes an attorney to disclose confidential information "to serve the client's interest unless it is information the client specifically requires not to be disclosed." The committee recognizes that audits by title insurance underwriters are necessary to ensure the safety of the funds deposited in the special trust account and thus facilitate a satisfactory conclusion for those whose funds are placed in the account. Consequently, if a special trust account is used exclusively for transactions in which the attorney is acting as the title or real estate settlement agent, the attorney ethically may permit the proposed audits unless the attorney has been specifically directed otherwise by the client.

The committee recognizes the truly special nature of a trust account utilized solely to hold funds escrowed for a real estate transaction. Traditionally, in litigation or other dispute context, a trust

account was considered as a conduit of funds between two parties, one of whom was the attorney's client, and one who was an opponent, facilitating a settlement.

The real estate trust account, and correspondingly, the duty of an attorney holding and disbursing funds through that account, is quite different. An attorney receives funds from and distributes to many sources and recipients. Settlement agents, including attorneys, are bound by instructions from numerous parties involved in a real estate transaction regarding disbursement of the funds. To facilitate transactions sought by the client, the attorney holding escrow funds in a trust account disseminates information about funds held and disbursed without a client's express authorization. The information about funds held obviously is obtained as part of representation of the client; however, dissemination is necessary to serve the client's interest. Information flows to and from lenders, current and future, other lienholders, vendors providing services to the property or to facilitate the closing such as inspectors and surveyors.

Signing a settlement statement, and satisfying the requirements of a title insurance commitment, the attorney acting as escrow/settlement agent confirms to the title insurer and other participants that the attorney has funds to properly satisfy claims and charges. Funds in a trust account utilized for many transactions have to be verified to ensure not only proper technical compliance with accounting rules, but also that the funds are properly allocated so that no participants in any title transaction flowing through the trust account are hurt.

Just as the attorney maintaining the account, a title insurer frequently has financial responsibilities to assure that funds received in connection with an insured real estate transaction are properly applied, liens and mortgages satisfied, taxes paid, and property interests acquired. In addition to exposure to title insurers under the title insurance policy executed by the attorney agent, attorney agents routinely seek and receive closing protection letters from appointing title insurers to lenders and purchasers in the transaction an attorney is closing for a client. Closing protection letters offer additional assurances from the title insurer to the lender and purchaser that the attorney agent, subject to certain conditions, will follow instructions regarding the application of funds received from the lender. The title insurer is accordingly a third party entitled to an accounting under Rule 5-1.1 as discussed below. An audit helps ensure a client, as well as other parties to whom an attorney may be responsible, that funds escrowed in a trust account for a transaction are properly handled. Many attorneys maintain multiple real estate trust fund accounts. Transaction funds are frequently moved from one real estate trust account to another; this requires a review of all real estate related trust accounts through which funds related to insured transactions have flowed.

Section 626.8473 (8) Florida Statutes, draws from a 2009 Final Report of the Title Insurance Study Advisory Council created by the 2008 Florida Legislature and Florida Ethics Opinion 93-5. The Final Report recommended that attorneys engaged in title insurance maintain a separate escrow account for transactions in which title insurance will be issued. It must be observed that an attorney's clients are among the class the statute seeks to protect. This finding is consistent with the committee's finding in Opinion 93-5 that such audits are "necessary to ensure the safety of the funds... ."

Unless a client has specifically directed confidentiality, a client does not have an expectation of confidentiality regarding funds received and disbursed in a real estate transaction given the requirements of disclosure of all distributions to many parties and the statutory requirement to permit audits. The attorney's duty to the client includes the duty to conduct the closing in accordance with the contract and receive and disburse the funds properly, not just with respect to the client but to all the parties making payments or receiving funds in connection with the closing

The "client's interest" exception is not the end of the analysis. Rule 5-1.1(e), imposes additional obligations upon a lawyer is acting as escrow agent in a transaction. Rule 5-1.1(e) provides:

"Upon receiving funds or other property in which a client or third party has an interest, a lawyer shall promptly notify the client or third person. ... a lawyer ... upon request by the client or third person, shall promptly render a full accounting regarding such property."

By virtue of the exposures of the title insurance policy issued by the attorney agent and the broad assurances to lenders and purchasers the attorney agent has sought in the form of the closing protection letter from the appointing title insurer, the title insurer is a third party with an interest in the escrow funds. The title insurer is entitled to an accounting of all funds in a real estate transaction. This accounting may be provided by an audit.

Accordingly, it is not an ethical violation to permit title insurers to audit without client consent pursuant to Rule 4-1.6 (c)(1) as furthering the client's interest and pursuant to Rule 5-1.1.

Question 1: Is an attorney permitted to allow a title insurance company to audit the firm's special trust account used exclusively for real estate and title transactions without the informed consent of the clients who have no involvement with that particular title insurance company?

The first question asked by the inquiring attorney seeks greater clarity on the narrow issue of whether an attorney may permit the title insurer's to audit these special trust account records of real estate transactions in addition to those transactions insured by the auditing title insurer.

The issue is controlled by Rule 4-1.6, Rules Regulating The Florida Bar. This rule describes an attorney's ethical duty of confidentiality:

(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 consents after disclosure to the client.

* * * *

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

(1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;

* * * *

(5) to comply with the Rules of Professional Conduct.

As noted in Opinion 93-5, subdivision (c)(1) authorizes an attorney to disclose information “to serve the client’s interest unless it is information the client specifically requires not to be disclosed.” Thus an attorney may disclose trust account information, including information regarding transactions not insured by the auditing title insurer, to serve the client’s interest.

The public policy inherent in section 626.8473 (8), Florida Statutes, supports such a determination. Such audits may reveal trust account errors, defalcations by employees and procedural weaknesses. A partial audit by a title insurer limited solely to the transactions insured by it, does not provide the same protections or benefits to the client as a complete audit of the real estate trust accounts. In fact, such a partial audit would provide a false sense of security to the public and clients, while providing a ready mechanism for hiding frauds and thefts.

An attorney may ethically permit such audits of special trust accounts by any of the firm’s title insurers without obtaining client consent unless the client has specifically required that certain information not be disclosed.

While good law firm management practices may suggest that the possibility of title insurer audits be disclosed to the client, and that the firm enter into binding nondisclosure agreements with the title insurer, prohibiting disclosure of trust account information to third parties by the title insurer except in the case of fraud, criminal activity or violation of bar rules, such disclosures or agreements are not ethically required. Such nondisclosure agreements are consistent with other practices such as engaging certified public accountants to reconcile trust accounts.

If an attorney receives specific instruction from a client that all or a portion of the client’s information may not be disclosed, the attorney may hold such client’s funds in a separate trust account containing only that particular client’s funds and may not allow a title insurer to audit that specific account. This procedure is accommodated by section 626.8473 (8), Florida Statutes, and does not create a conflict with the statute. Recognizing the public policy inherent in section 626.8473 (8), Florida Statutes, and the committee’s finding in Opinion 93-5 that such audits are “necessary to ensure the safety of the funds... .” an attorney should advise the client requesting complete confidentiality of the benefits of title insurer audits prior to creating a separate account that will not be available for audit.

It should be noted that while a special trust account may be created pursuant to the requirements of section 626.8473 (8), Florida Statutes, any attorney trust account containing nominal or short term funds as defined by Rule 5-1.1 (g)(1)(A) shall be subject to the Interest on Trust Accounts (IOTA) Program of Rule 5-1.1, irrespective of

whether the trust account was created to comply with section 626.8473 (8), Florida Statutes.

Question 2: If an attorney is not ethically permitted to allow a title insurer to audit the special trust account without the clients' informed consent because the special trust account involves unrelated transactions, but new section 626.8473(8), Florida Statutes, requires that attorney to allow the audit, does the attorney abide by the ethics rules or the statute?

As discussed above, an attorney is ethically permitted to allow a title insurer to audit the special trust account without the clients' informed consent, even if the special trust account involves unrelated transactions. As such, there is no conflict between the ethical duty of an attorney and the requirements of section 626.8473(8), Florida Statutes.

**MEMBERSHIP, DIVERSITY AND LAW SCHOOL LIAISON
INFORMATIONAL REPORT TO EXECUTIVE COUNCIL – ANNUAL MEETING
VINOY HOTEL, ST. PETERSBURG, FLORIDA
MAY 25, 2013**

The Membership, Diversity and Law School Liaison Committee is wrapping up an extremely successful year. The tremendous strides forward are largely due to the support of the Section's leadership (both staff and volunteer) as well as the input from the At-Large Members (ALMs) and members of the Executive Committee. The true "heavy lifting", however, was handled by Lynwood Arnold, Stacy Kalmanson, Phil Baumann, Guy Emerich, Navin Pasem, Sharaine Sibbles, Jason Ellison, Ben Bush, Jennifer Jones and, of course, Yvonne Sherron.

The following is a summary of the Committee's work/accomplishments:

1. INFOMERCIAL: The "Infomercial" is debuting at the Convention. We hope you like it, use it/show it during your CLE programs and recommend it to potential new RPPTL members. Nicole Kibert is working to incorporate various "vignettes" from the Infomercial into the Section's website. We believe our Section is the first Section of The Florida Bar to incorporate this type of communication tool into membership recruitment and retention efforts. Incoming Florida Bar President Eugene Pettis praised the Section's use of the Infomercial and is encouraging other Sections to follow RPPTL's lead.

2. LAW STUDENT DUES PILOT PROGRAM/LAW SCHOOL OUTREACH: The Committee is extremely thankful for the approval of the program which allows for law students at accredited law schools to join the Section as Affiliate members for \$20. After only a couple months of the "roll-out", we have three dozen new Affiliate members. With more than 70 students involved in "death" and "dirt" related groups at NOVA alone, active groups at UF and Stetson, a new active group at Barry, and renewed interest at FAMU, this is a very target-rich environment. The outgoing president of the NOVA law group is an LLM candidate at UM next year and he has already expressed interest in starting a student group at UM. We plan to build on the contacts made and the programs delivered this year (see the attached report from Stacy Kalmanson) by visiting every law school in the State next year. We expect to triple the number of Affiliate members by the 2014 Convention. NOTE: Stacy Kalmanson is officially leaving the Law School Liaison after more than a decade of service. As part of the succession plan, several committee members are already very prepared for the role of Co-Chair and Stacy is preparing the definitive "How To" Guide for the next Co-Chair, including contact information for the incoming student group leaders and the administration/faculty advisors.

3. MENTORING. As we take our relationship with the law schools to the "next level," we plan to re-invigorate our mentoring program. Next year will see us focus the mentoring efforts on working with Affiliate members on interviewing techniques and other projects to help them find jobs. The Committee has been test-driving this concept for approximately one month. To date, several students have been "placed" or successfully assisted in their efforts to become employed.

4. DIVERSITY OUTREACH: The Section continues to be a leader in the area of diversity and inclusion. In addition to the usual sponsorships of, and attendance at, the Annual Minority Mentoring Picnic in Miami, the SABA 2012 South Asian Leadership Forum, the Annual Diversity Networking Event in Tampa, the Hillsborough Association of Women Lawyers (HAWL) Summer Diversity CLE and Mixer (May 29, 2013) and the like, the Committee is doing a 360° review of the Section's activities in this area to ensure the Section is welcoming to all members and prospective members, particularly in light of The Florida Bar having its first African-American President next year.

5. COMMUNICATIONS: This year, the Committee developed a successful communications stream. We have created (i) "welcome" letters sent to new Section members; (ii) "reminder" letters sent out by the Section Chair right before a member has his/her dues lapse and (iii) a "we want you back" letter that the Chair of the Membership Committee sends to "dropped" members. This communication plan was tracked and proved very positive in its impact on retention. We have also worked with the At-Large Members (ALMs) to send "Save the Date" notices inviting rank and file members to attend "Section" meetings (as opposed to calling them "Executive Council" meetings). In the coming Bar Year, the Committee looks to communicate and coordinate even more with the ALMs, members of the Executive Council and Committee Chairs.

6. THE FINAL TALLY: To date, we have increased our membership by approximately 450 members over this time last year, yielding another year of record Section membership. Additionally, we have 36 student Affiliate members to date.

7. POINT OF PERSONAL PRIVILEGE: The Committee would be remiss if we did not give a "shout out" to our fearless leader and Section Chair, Fletch Belcher. Fletch spent hours with us improving the Infomercial, making sure we measure twice and cut once, developing a worthy product that will have a shelf life and provide a reasonable return on investment. Fletch also took a personal interest in our law school outreach efforts, attending events, recognizing our new Affiliates and leading by example. Finally, Fletch provided both vision and attention to details in the development of our communications/"welcome" stream. It has been an honor to be a part of the Belcher Administration!



Membership, Diversity & Law School Liaison Update

By: Stacy Kalmanson, Co-vice chair of the committee

Diversity Programs

This year, Mike Bedke, Lynwood Arnold, Sharaine Sibbles, Tara Rao and Navin Pasem took our diversity outreach to an entirely new level. Through their efforts, RPPTL has sponsored events in Tampa and Miami, where RPPTL members have interacted with hundreds of law students (and practitioners around the state). This group also mentors students and educates student and practitioners regarding the benefits of RPPTL membership and involvement.

Law School Liaison Programs

Like the diversity programs, the success of the law school liaison programs depends entirely upon RPPTL volunteers. We cannot thank these section members enough for hosting events, speaking at and attending programs, mentoring students and making the section look fabulous. We hosted two “large” social events – one at Melissa Murphy’s house for the University of Florida Levin College of Law students and one at the Tampa Club (organized by Jason Ellison for students from Stetson University College of Law, Florida State University College of Law, St. Thomas School of Law and University of Florida Levin College of Law). Throughout the year, certain individuals served as speakers and/or mentors – those individuals are listed below:

<p>Barry University Dwayne O. Andreas School of Law April Atkins Alex Hamrick Stacey Prince- Troutman Chuck Wilder</p>	<p>Nova Southeastern Tattiana Brenes-Stahl Dale Bruschi Aniella Gonzalez Rebecca Osorio Bill Parady Barry Scholnik Lee Weintraub Salome Zikakis</p>
<p>Florida A & M University College of Law Nishad Khan Fred Jones Stacy Prince-Troutman Jason Perkins Arlene Udick</p>	<p>Stetson University College of Law Mike Bedke Edwin Boyer Jason Ellison Lara Fernandez Rob Stern Gwynne Young</p>
<p>Florida State University College of Law Gene Adams Lynwood Arnold Ben Bush</p>	<p>University of Florida Levin College of Law Mike Bedke Melissa Murphy Rob Stern</p>

In addition, we appreciate the help and support of our law school and diversity programs by Fletch Belcher, Peggy Rolando, and the At-Large Members. Lastly, thank you to all of the Executive Council members and Yvonne Sherron for making these students feel welcome at meetings, including them in conversations and mentoring them.

Law Student Affiliate Members for 2013

Our law student affiliate program (started in February) has been a huge success. The new law student affiliates are:

A. Cody Emerson
Andrew Oates
Ashley Duz
Austin Hale
Brandon Pfluger
Caitlin Powell
Cari Allen
Carter McMillan
Charis Campbell
Chelsea Sims
Christina Doan
Daniel K. Miles
Danielle Amico
David Houston
Dean Makris
Dylan Shea
Eric Fisher
Frank Leung
James Glover
Jessica Baker
Justin Bennett
John Loar
Jonathan Wells
Laura Jo Lieffers
Michael Niles
Michelle Adams
Paige Baker
Phylicia D.C. Pearson
Robert Laur
Robert Volpe
Ryan Abernethy
Sam Craparo
Sean Hernandez
Seth Benes
Stuart Boone
Thomas Hagen

RPPTL Committee Webpage Guidelines

Updated April 18, 2013

The RPPTL Strategic Plan includes activating the Section website to make it a resource for our members and provide information for members desiring to get involved with Section activities. The Member Communications and Information Technology Committee is tasked with implementing this goal. The memo is the initial step in activating the Section website (www.rpptl.org).

I. Designate Communication Liaison – Due October 1

In order to make the website worth visiting, each committee is responsible for providing timely and appropriate content for their committee webpage. Please designate your “Communication Liaison” and communicate that person’s contact information to either your website liaison (as designated below) by October 1. If a liaison is not appointed, the default will be the committee chair.

II. Evaluate Current Committee Webpage – Due November 1

Please visit your committee webpage and determine what needs to be updated to meet the minimum requirements outlined below. When the Section switched website companies, the old information was brought over to the new website so it is likely there is some content on your committee webpage.

III. Maintain Committee Webpage - Ongoing

A. Minimum Requirements

1. Review and update Committee Mission Statement/Description at least annually
2. Update Committee Roster at least quarterly
3. Timely post Committee Agendas & Minutes & White Papers

B. Optional

1. Develop links section
2. Post articles by committee members
3. Post committee work products
4. Post large attachments for committee projects rather than emailing

IV. How do I update the committee webpage?

A. All website change requests should be sent to the RPPTL webmaster, First Step Internet at WebDev@fsr.com. Please title your email subject line with “RPPTL:[committee/news/whatever you are requesting]”

B. Updating guidelines:

1. The most important thing to include in your change request is the name of the committee’s page that you are updating – you can alternately include the URL.
2. When submitting new copy, please do not use the "hyperlinks" feature of Word to make things links. Instead, just write the text out that you want linked and put the link in parenthesis next to it. For example, what should be done is: *Contact (link: http://_____) for more information.*
3. If it's just a simple edit, e-mail instructions to First Step Internet, for example "In the second paragraph, change 2012 to 2013." Please do not, however, use "In the second line of the second

paragraph..." because copy can wrap vastly differently from computer to computer - instead, just try to be as clear as possible without referencing lines (sentences would be fine, as in "The third sentence of the second paragraph"). Please do not rely on the features of Outlook (font, color, bolding) to indicate changes that need to be made. Instead, attach a document if you want to use these features. You can edit the existing text in MS Word (use track changes for best results, or change your font to RED).

4. In general, for PowerPoint presentations, please post in PDF. If you wish, you can submit presentations in both formats; otherwise First Step Internet will convert them to PDF for you.

V. What Does The Communication Liaison Do?

- A. Provide committee content to the Webmaster
- B. Moderating the committee's listserve, if applicable
- C. Be the contact person for the Member Communications and Information Technology Committee

VI. Questions? Contact the Member Communications and Technology Committee

- 1. Chair – Nicole Kibert – nkibert@carltonfields.com
- 2. Vice-Chair Probate – Dresden Brunner - Dbrunner@dresdenbrunnerlaw.com
- 3. Vice-Chair Real Property – Bill Parady – bparady@parziklaw.com
- 4. General Standing Committees:
 - a. ActionLine through Liaison to FLEA/FLSSI - Dresden Brunner
 - b. Liaison with Florida Bankers through Strategic Planning Committee - Bill Parady

RPPTL Listserve Guidelines

Updated April 18, 2013

RPPTL has a robust listserv system which is easily customizable to accommodate your committee needs.

1. **Know Your Committee's Listserv email address.** A list of committee listservs are attached as exhibit. If your committee doesn't have one, please email WebDev@fsr.com and our webmaster can set one up for you.
2. **Maintain Your Committee's Listserv.**
 - a. You, or your designee, can manage your listserv directly by requesting a password from the RPPTL Webmaster at WebDev@fsr.com. Thereafter, you can add, delete or modify subscribers by visiting this webpage and logging in: <http://rpptl.org/DrawOnePage.aspx?PageID=105>
 - b. Our webmaster can also maintain your list for you.
3. **Moderated v. Open**
 - a. Moderated listservs required you, or your designee, to approve postings to the listserv.
 - b. Open listservs allow for anyone in the committee to post to the listserv.
 - c. Most RPPTL listservs are open.
4. **Listsrv Advantages**
 - a. Automatically updates email addresses so no concerns about people replying all to old emails.
 - b. Large committee emails may get caught in spam filters due to the large number of addressees
5. **Listsrv Purpose and Function.** Gives committee members an easy way to connect for use as a sounding board and exchange information exchange. Each committee can set the groundrules for how you want to use your listserv. Generally discussion is limited to legal and business issues about committee related issues including:
 - a. News, comments, and rumors;
 - b. Legislation (proposed or passed);
 - c. Copies of newsletters, articles, legal memos, announcements, model documents, checklists, summaries, and other practice aids;
 - d. Publication or speaking opportunities;
 - e. Requests for recommendations of local counsel or specialized counsel;
 - f. Optional: Help wanted & jobs sought
6. **How to post.**
 - a. To post a message, send email to: the committee listserv address.
 - b. When your message goes out, the name of the "sender" will be the list on behalf of your email address.
 - c. The subject matter line will be whatever you typed when you sent your posting.
7. **Attachments.**
 - a. It is good practice to post attachments on the committee webpage rather than emailing around file.
 - b. Any attachments should be only in Word or PDF format.

- c. Whenever you reasonably can, please convert your message into the text of an email message instead. For example, if you are posting a brief summary of an important case, "block select" the text of your summary in Word, then copy it into the body of an email message. That way you won't inflict an unnecessary attachment on a bunch of people.
 - d. Give every attachment a file name that will help the recipient know and remember what it is and make a judgment about whether it's worth reading. Windows filenames can be 200 characters long, or longer. Use them.
8. **Replies, Scope Of.** When you receive each RPPTL Listserv message, it will look as if it came from just the original sender, just one person. As soon as you "Reply" to it, though, the return address will automatically change to the general address for postings to RPPTL Listserv. So whatever you send will go to the ENTIRE list, even if you choose "Reply" rather than "Reply All." This usually makes sense, because most of the time your responses should go to the entire list. If you really intend to reply just to the original sender (which we encourage if your reply will not be of broad interest), please edit the addressee field so your reply goes only to the original sender. For example, if someone has announced a change of firms and you want to congratulate them, don't "REPLY" to their posting. Send them a new email message outside of the RPPTL Listserv – doublecheck the to box of your email!
9. **Replies, Format.** Replies should include the text of the message being replied to, but feel free to delete accumulated disclaimers, etc. Consider whether to update the subject matter line if it has become outdated.
10. **Set Membership Criteria; New Members.** To keep volume low and quality high, many committees limit listserv access to committee members. Some committees allow anyone to join.
11. **Waiver Of Disclaimers; Confidentiality.** By posting to a RPPTL list, you waive any confidentiality, forwarding, or other restrictions in any disclaimer in your email message. This is a public forum, even though membership is limited. Post no confidential information.
12. **Caveats.** All postings are automatically subject to these disclaimers, caveats, warnings, and disclosures, none of which need be stated: Every posting represents the personal opinion of the sender, only at the moment of sending, and does not bind or estop the sender or their colleagues, organization, or clients in any way. All intellectual property rights are reserved. No posting shall be construed as legal advice or as establishing an attorney-client relationship. No reader of a posting should rely on it. Postings may be inaccurate, misguided, misleading, or stupid. Any attachments might contain viruses. Use a virus checker.

EXHIBIT

RPPTL Listserves - <http://rpptl.org/DrawOnePage.aspx?PageID=105>

General Standing Committees

Legislative Review Committee - legislativereview@lists.flabarrpptl.org

Liaison with Law Schools - lawschools@lists.flabarrpptl.org

Membership Diversity Committee - diversitycom@lists.flabarrpptl.org

Model and Uniform Acts - modelanduniformacts@lists.flabarrpptl.org

Professionalism & Ethics - professionalismandethics@lists.flabarrpptl.org

Pro Bono - probono@lists.flabarrpptl.org

Probate Division Committees

Ad Hoc Committee on Creditors' Rights to Non-Probate Assets - ad_hoc_creditorrightsnonprobate@lists.flabarrpptl.org

Advance Directives - advancedirectives@lists.flabarrpptl.org

Asset Preservation - asset@lists.flabarrpptl.org

Charitable Organizations and Planning - charitableorgs@lists.flabarrpptl.org

Estate and Trust Tax Planning - ettpc@lists.flabarrpptl.org

Guardianship Law and Procedure - guardian@lists.flabarrpptl.org

Insurance - insurance@lists.flabarrpptl.org

IRAs and Employee Benefits - irabene@lists.flabarrpptl.org

Power of Attorney - dpoa@lists.flabarrpptl.org

Principal and Income - principal_income@lists.flabarrpptl.org

Probate and Trust Litigation - probateandtrustlitigation@lists.flabarrpptl.org

Probate Law and Procedure - plc@lists.flabarrpptl.org

Trust Law - tlc@lists.flabarrpptl.org

Wills, Trusts and Estates Certification Review Course - willstrustsstatescertrevcourse@lists.flabarrpptl.org

Real Property Division Committees

Affordable Housing - affordablehousing@lists.flabarrpptl.org

Condominium and Planned Development - condomania@lists.flabarrpptl.org

Construction Law - constructionlaw@lists.flabarrpptl.org

Construction Law Institute - constructionlawinstitute@lists.flabarrpptl.org

Construction Law Certification Review Course - constructionlawcertrevcourse@lists.flabarrpptl.org

Development and Green Building Committee (fka Government Regulation Committee) - greenbuilding@lists.flabarrpptl.org

FAR/BAR Committee and Liaison to FAR - farbar@lists.flabarrpptl.org

Land Trusts and REITS - landtrustcomm@lists.flabarrpptl.org

Landlord and Tenant - landten@lists.flabarrpptl.org

Legal Opinions - legalopinions@lists.flabarrpptl.org

Liaisons with FLTA - FLTA@lists.flabarrpptl.org

Mobiles Home and RV Parks - mobilehomeandrmparks@lists.flabarrpptl.org

Mortgages and Other Encumbrances - mortgages@lists.flabarrpptl.org

Real Estate Certification Review Course - realestatecertrevcourse@lists.flabarrpptl.org

Real Property Forms - realpropertyforms@lists.flabarrpptl.org

Real Property Insurance - realpropertyinsurance@lists.flabarrpptl.org

Real Property Litigation - realpropertylitigation@lists.flabarrpptl.org

Real Property Problems Study - problemstudy@lists.flabarrpptl.org

Title Insurance - titleinsurance@lists.flabarrpptl.org

Title Issues and Standards - titleissuesandstandards@lists.flabarrpptl.org



THE FLORIDA BAR

**Results of the 2013
RPPTL Section Executive
Council Survey on the
Section's Pro Bono
Committee**

April 2013

2013 RPPTL Section Executive Council Survey on the Section’s Pro Bono Committee

A link to an electronic survey was e-mailed on March 14, 2013 to 270 members of the Executive Council of the Real Property, Probate and Trust Law Section. By the March 22, 2013 cut-off date, 102 completed surveys were received for a response rate of **38%**.

In reporting the results, all percentages were rounded to the nearest whole percent (example: 34.5% equals 35%). For this reason, totals may vary from 99 to 101 percent. Note that several questions are "multiple response questions." This means that respondents were encouraged to check all responses which apply to a given situation. Thus, multiple response questions will not total 100 percent.

1. Please rank how important the following components should be to the mission of the RPPTL Section Pro Bono Committee:

<u>Category</u>	<u>Critical Percent</u>	<u>Very Important Percent</u>	<u>Somewhat Important Percent</u>	<u>Not Important At All Percent</u>
Act as a clearinghouse to recruit volunteers for pro bono projects brought to the Section by others (e.g. “FASH” Program)	4	49	36	11
Maintain a volunteer base to be available for projects at a local level, as needed	8	34	45	13
Proactively create pro bono projects for members of the Section to participate in	4	20	47	29
Raise funds for The Florida Bar Foundation to be distributed to Legal Aid Programs around the state	5	6	38	51

1A. Please list any other components you would like to see included in the Pro Bono Committee's mission:

* Coordination with local legal services programs to be certain there is not any duplication of efforts.

- * Evaluate proposed pro bono projects by others and recommend participation or not to the leadership of the section.
- * I think we should be assisting where there is a need that is brought to us, but I do not like the idea of actively finding projects to do. It seems like we try to find a need, rather than react when a need is presented.

2. How should the RPPTL Section’s Pro Bono Committee function?

<u>Category</u>	<u>Percent</u>
As an ad hoc committee to be called on from time to time, as needed	52
As a standing committee of the section	47
Other	1

2a. If "Other", please specify: (Includes comments made by those who checked the “Other” category response box or checked a different response box and provided general commentary)

- * A standing committee of the Section to be called on from time to time, as needed (similar to the Amicus Coordination general standing committee).
- * I think the Section’s Pro Bono Committee and the Amicus should consider becoming a combination.
- * Instead of putting old members of the Executive Council out to pasture when they have to decrease their participation in the Section, allow them to remain a member of the Executive Council if they do some pro bono work.
- * It should function as an ad hoc committee of the section. If there’s a worthy project, then we can put it to good use.
- * The Members at Large should function as the Section’s Pro Bono Committee as, and when, needed.
- * Unsure. Probably feel that if the Section doesn't make the Committee a priority, we will not do anything

3. How likely are you to volunteer pro bono services if the Section’s Pro Bono Committee developed any of the following projects for the benefit of indigent or low income clients?

<u>Category</u>	<u>Very Likely to Volunteer Percent</u>	<u>Somewhat Likely to Volunteer Percent</u>	<u>Somewhat Unlikely to Volunteer Percent</u>	<u>Not Likely at All to Volunteer Percent</u>
Preparing advance directives and simple wills for seniors	14	23	5	58
Representing a qualified buyer (i.e. a buyer who has been screened by the Florida Housing Coalition and found to be unable to afford an attorney) in the purchase of an affordable housing unit	8	13	10	69
Serving as court-appointed counsel for incapacitated persons under Chapter 744 (Guardianship)	6	12	10	72
Filing a quiet title action for homestead property	3	16	11	70
Representing guardian advocates of developmentally disabled adults	3	14	11	72
Representing minors in Juvenile Dependency Court	2	4	12	82

4. How likely would you be to participate as a volunteer in the following events, if implemented by the Pro Bono Committee?

<u>Category</u>	<u>Very Likely to Volunteer Percent</u>	<u>Somewhat Likely to Volunteer Percent</u>	<u>Somewhat Unlikely to Volunteer Percent</u>	<u>Not Likely at All to Volunteer Percent</u>
“Standby” volunteer for a pro bono project in your community	12	30	19	39
Fundraising events	2	26	29	43

5. If the Pro Bono Committee developed any of the projects or events mentioned in Questions 3 and 4, how many pro bono service hours would you volunteer for on an annual basis?

<u>Category</u>	<u>Percent</u>
None at this time	36
1 to 10 hours	35
11 to 20 hours	20
21 to 30 hours	7
31 to 40 hours	2
More than 40 hours	0

6. Have you provided pro bono services for a RPPTL Section project in the last five years?

<u>Category</u>	<u>Percent</u>
Yes	43
No	57

7. What are your primary areas of practice? (MULTIPLE RESPONSE QUESTION – CHECK ALL THAT APPLY)

<u>Category</u>	<u>Percent</u>
Probate Administration	44
Trusts and Estate Planning	44
Real Estate (includes Community Association practice)	42
Litigation	20
Construction Law	4
Other	14

7a. If "Other", please specify:

- * Business law.
- * Commercial and business litigation, generally corporate fiduciary.
- * Elder law.
- * Elder law and asset protection.

- * Eminent domain; environmental law.
- * Guardianship. **(2 Responses).**
- * I am only practicing three part days a week. I currently give two hours one day a month to our Community Law Program and usually have at least one pro bono client/project on my desk at all times. I also serve in the SCOPE Program for The Florida Bar. I am 82 years old. Currently I am participating in Stetson/Community Law wills for the Greatest Generation project.
- * I serve as a professional fiduciary and guardian. I have many, many pro bono awards.
- * I work in-house to a trust company, and I'm precluded from doing anything that has the appearance of the practice of law (even on a pro bono basis).
- * In house corporate.
- * In house counsel to a title insurer. It is a very difficult to support pro bono work from within such an environment.
- * In-house counsel with Attorneys' Title Fund Services, LLC. (As such, I am not able to represent parties in proceedings listed in #3 above.)
- * Semi-retired; not actively engaged in the private practice of law.
- * Tax controversies and tax litigation.
- * Tax planning tax problems and controversies.
- * Title insurance.
- * Trust and estate litigation.

8. Would you be willing to serve on the RPPTL Section Pro Bono Committee? (If yes, please email your interest to Florida Bar RPPTL Section Administrator Yvonne Sherron

<u>Category</u>	<u>Percent</u>
Yes, I would	5
No, not at this time	95

9. Please list any comments or suggestions you have regarding the RPPTL Section Pro Bono Committee:

- * For the most part, pro bono activity in the trusts and estate arena is best solicited at the local level. Each circuit has its particular needs. I think the Section pro bono activities can be fulfilled on a statewide basis when there is an unusual (FASH) need, but on a select "as needed" basis.
- * I already spend a significant number of pro bono hours for our local Community Law Program. As with most projects, those attorneys who already provide pro bono services will likely volunteer to do more.
- * I believe that the suggested areas of need mentioned above are best addressed at the local bar association level.
- * I have nothing against pro bono work. For over 30 years I have represented minors in Juvenile Court dependency cases through the Orange County Bar legal aid. I currently have 5 cases which take up a fair amount of time so I am somewhat hesitant to take more time away from my practice.
- * I provide considerable pro bono (100+) hours annually to several local charitable organizations within my circuit regarding the preparation of complex gift agreements with donors. I find that this type of service has great value to these organizations and those served by their missions, which a limited number of attorneys have the expertise to provide. Therefore, it would be socially inefficient for me to provide basic advance directive planning or guardianship services when others without my expertise could be called on to do so.
- * I think that pro bono ought to be done mostly through the local bar associations and legal aid services.
- * It is a worthwhile project. As I am currently not in private practice, I cannot assist in issues involving representing clients or filing suits but could assist in other events. Every Section member should welcome helping in whatever capacity is available to them.
- * It would be helpful to remind people that a portion of their United Way contributions can be directed to local Legal Aid organization. It's an easy way to satisfy two annual worthy needs to give.
- * Keep in mind many of the members spend numerous hours each year creating and presenting CLE programs and running section committees. While those services are not considered pro bono, they are a valuable service to the Bar and the Section and take a lot of time out of the office and away from clients. It is often difficult to add additional pro bono hours on top of the commitments already required by the Section.

- * Our circuit works closely with the Bar Association Legal Aid Society and Gulf Coast Legal Services to provide pro bono services. Although I appreciate the efforts of the RPPTL Section in providing pro bono services, I hope the efforts can be coordinated with local organizations that need all the help they can get. In the past, I have contributed both services and financial contributions through the local organization.
- * Provide many hours and projects at the local bar level, in addition to "normal" charitable work. Understand the need for a Pro Bono committee, but I presently contribute many hours. The committee should not be a fundraiser. There are too many other charitable demands.
- * To create interest in members to participate on pro bono projects there needs to be some typical examples of what a project will be like and to identify any pro bone matters that will not be undertaken by this committee. It will be important that the projects that are undertaken will succeed.
- * We have, in the past, assisted with one or another pro bono campaign generated or aided by the Section. However, our small firm has 2 dozen+ active pro bono cases at any given time. We are not looking for the Section to create more. Most charitable case work is locally generated and the agencies and advocates in our area know the soft-touch attorneys and have no trouble finding us.
- * Whatever the committee does, it should be coordinate its efforts with The Florida Bar Foundation.

Attendance at 2012-2013 RPPTL CLE Programs

Date	Seminar	#	Location	In-Person Attendance			Webcast/Webinar			After Market Buys
				Total	RPPTL	Non-RPPTL	Total	RPPTL	Non-RPPTL	
July 25, 2012	Drafting Powers of Attorney – What Works? It's All in the Eye of the Beholder!	1536	Palm Beach *	83	69	14	29	27	2	73
July 26 - 28, 2012	Legislative Update	1425	Palm Beach *	423	N/A - figures not tracked		25	0	25	116
August 28, 2012	What RPPTL Lawyers Need to Know About E-Service and E-Filing	10293	Webinar				1,307	N/A - figures not tracked		
October 30, 2012	E-Ethics for E-Discovery: Considerations and Solutions for the E-Practitioner	1554	Webinar				15	11	4	18
November 30, 2012	It's Not Too Late – Year End Estate and Asset Protection Planning Techniques - Views from Washington DC ... And More	1509	Tampa*	56	38	18	39	32	7	24
December 5, 2012	Everything You Need to Know About Corporate Entities: Selection, Function and Utilization	1555	Webinar				52	48	4	46
January 23, 2013	What RPPTL Lawyers Need to Know About The Fight Against Money Laundering and Terrorist Financing	1556	Webinar				16	14	2	4
January 25, 2013	Secrets of CDDs: Unveiling the Mysteries and Unlocking the Possibilities ¹	1455	Tampa *	52	31	21	21	14	7	28
Feb. 15 - 16, 2013	Advanced Real Estate Law & Certification Review Course	1450	Orlando*	94	73	21	13	10	3	51
February 21, 2013	Probate Law 2013	1510	Tampa *	91	65	26	63	53	10	101
February 26, 2013	Till Divorce Do Us Part.... The New Beneficiary Designation Legislation	1557	Webinar				11	9	2	7
February 28, 2013	Alternate Dispute Resolution Considerations for Real Property, Construction, Probate and Trust Law Practices ²	1507	Ft. Lauderdale*	34	20	14	18	15	3	
March 7 - 9, 2013	Construction Law Certification Review Course	1452	Orlando	154	127	27	N/A - no webcast			18
March 7 - 9, 2013	6th Annual Construction Law Institute	1453	Orlando	82	62	20	N/A - no webcast			
March 20, 2013	The New E-Filing Requirements – What Every Practitioner Needs to Know	1558	Webinar				192	179	13	25
April 5, 2013	Community Association Law – The New Normal	1456	Orlando*	50	36	14	17	17	0	
April 5, 2013	Attorney Fees: Statutes, Contracts, Rules - Ethical Considerations and Fatal Mistakes	1591	Orlando*	4	2	2	9	8	1	
April 5 - 6, 2013	Wills, Trust & Estate Certification Review Course	1451	Orlando*	58	47	11	13	13	0	
April 26, 2013	Commercial Real Estate Finance – Lessons Learned and A Brave New World!	1590	Tampa*							
May 10, 2013	Trust & Litigation Symposium 2013	1460	Tampa* & FTL							
May 15, 2013	Ethical Issues Inherent in the New Computer Age	1739	Webinar							
May 24, 2013	Homestead Issues For Real Estate and Probate Lawyers - Hitting a Home Run with Homestead	1511	St. Pete				N/A - no webcast			
May 29, 2013	Insurance Coverage for Construction Defects	1738	Webinar							
June 14-15, 2013	32nd Attorney/Trust Officer Liaison Conference	1462	Palm Beach							
Totals:				1,181	570	188	1,840	450	83	511

* Webcast & Live

1 Joint Program with ELULS - equal split of revenues and expenses

2 Joint Program with ADR Section - equal split of revenues and expenses