



**SUPPLEMENT  
TO  
RPPTL EXECUTIVE COUNCIL AGENDA  
Saturday, August 1, 2015  
(Numbering Follows Published Agenda)**

**IV. Chair's Report** — Michael J. Gelfand

5. **NEW:** Creation of Committees:

Ad Hoc Condominium Estoppel Letter Committee, Chair: Melissa Murphy; Co-Vice-Chairs, Leonard Prescott and Steven Mezer

Ad Hoc Study Committee on POLST (Physician Orders For Life Sustaining Treatment, Co-Chairs: Jeff Baskies and Tom Karr.

6. **NEW:** TFB Staff Support.

**XI. Real Property Law Division Report** — Andrew M. O'Malley, Director

Action Items:

Real Property Litigation Committee — Susan K. Spurgeon, Chair.

B. Motion: to adopt as a Section legislative position to support an amendment to F.S. 95.281, clarifying that F.S. 95.281 is a statute of repose, not a statute of limitation, clarifying the formula for determining the repose period for a lien arising from advances by a mortgagee, and to restore to a mortgage holder the common law subrogation right it had for tax advances before enactment of this section; to find that the legislative position is within the purview of the Section; and, to expend Section funds in support of the position. **SUBSTITUTE DOCUMENTATION ATTACHED.**

C. Motion to adopt as a Section legislative position to support amendments to F.S. 57.011, to repeal the non-resident cost bond requirement, and to F.S. 559.715 to amend the assignment of consumer debt notice; to find that the legislative position is within the purview of the Section; and, to expend Section funds in support of the position. **SUBSTITUTE DOCUMENTATION ATTACHED.**

**NEW:** Ad Hoc Condominium Estoppel Letter Committee, Chair: Melissa Murphy; Co-Vice-Chairs, Leonard Prescott and Steven Mezer

Motion: to request the Section Executive Committee to consider proposals from the Ad Hoc Community Association Estoppel Committee, to approve a Section legislative position amend F.S. 718.116, 719.108 and 720.30851, that would:

1. Clarify and specify the process and content for both the requesting and issuing of the estoppel certificate in a statutory form template.
2. Provide a limitation on charges for obtaining the estoppel information;
3. Provide a time frame for payment of fees for preparation and delivery of the estoppel certificate;
4. Exclude from any fee caps those accounts that involve delinquencies or disputed amounts; and;
5. Identify the person or entity responsible for providing the estoppel information, deadlines for delivery and create an opportunity for updated information to be provided;

to consider the position within the purview of the Section; and, to authorize the expenditure of Section funds in support of the position.

## **XII. Probate and Trust Law Division Report** — Debra L. Boje, Director

### **Informational Items:**

2. **NEW:** Digital Assets and Information Study Committee – J. Eric Virgil, Chair; Michael Travis Hayes and S. Dresden Brunner, Co-Vice Chairs

Comparison of Uniform Fiduciary Access to Digital Assets Act to Section's earlier proposed bill text. **NEW DOCUMENTATION ATTACHED.**

## **XIII. General Standing Division Report** — Deborah P. Goodall, General Standing Division Director and Chair-Elect

### Action Items:

2. Legislation Committee — Tae Kelley Bronner (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs.

Motion to approve the Dean Mead Agreement for legislative consultant services for a 2 year term relating back to July 1, 2015 and to expend Section funds. **NEW DOCUMENTATION ATTACHED**

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

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

## GENERAL INFORMATION

**Submitted By** David W. Rodstein, Chair, Joint Subcommittee on Stale Mortgages,  
Subcommittee of the Real Property Probate & Trust Law Section (RPPTL  
Approval Date \_\_\_\_\_, 20\_\_\_\_)

**Address** 101 Plaza Real South, Suite 207, Boca Raton, FL 33432  
Telephone: 954-514-9276

**Position Type** RPPTL Section

## CONTACTS

### Board & Legislation Committee Appearance

**Robert S. Freedman**, Carlton Fields Jordan Burt, Corporate Center Three  
at International Plaza, 4221 W. Boy Scout Boulevard, Tampa, Florida  
33607-5780

**Peter M. Dunbar**, Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth,  
P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone:  
(850) 999-4100

**Martha J. Edenfield**, Dean, Mead, Egerton, Bloodworth, Capouano &  
Bozarth, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301,  
Telephone: (850) 999-4100

### Appearances

**Before Legislators** (SAME)

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

### Meetings with

**Legislators/staff** (SAME)

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

## PROPOSED ADVOCACY

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

### If Applicable,

**List The Following** N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

**Indicate Position** Support \_\_\_\_\_ Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

"Support a clarification and simplification of the statute of repose applicable to mortgage liens and restoration of subrogation rights for property tax advances through changes to Fla. Stat. § 95.281."

### Reasons For Proposed Advocacy:

(1) To clarify that F.S. § 95.281 is a statute of repose and not of limitations; (2) To create uniformity between the repose period applicable to advances made by a mortgagee for the benefit of the property and that applicable to the mortgage debt; and, (3) To restore to mortgagees the common law subrogation rights for the payment of property taxes, which promotes fundamental fairness by giving the mortgagee a superior lien for the tax paid.



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

**White Paper**

**Proposal To Amend § 95.281, Fla. Stat.**

**I. SUMMARY**

This proposal is intended:

- (1) to clarify the character of § 95.281 as a statute of repose versus a statute of limitation;
- (2) to make the repose period for a lien arising from advances by a mortgagee simpler to calculate; and
- (3) to restore to mortgage holders the common law subrogation rights they had for tax advances prior to enactment of this section.

**II. CURRENT SITUATION**

Under current § 95.281, the situation is as follows.

- (1) The title reads: “*Limitations*; instruments encumbering real property.” (Emphasis added).
- (2) The lien for advances by a mortgagee appears unclear as to whether such lien rights may expire five years after the date of the advance, no matter when the lien of the mortgage expires.
- (3) A mortgagee that advances property taxes has no right of subrogation to the lien of the taxing authority, unless he or she obtains an assignment of the tax certificate.

**III. EFFECT OF PROPOSED CHANGES**

**1. The title will be amended to change the word “Limitations” to “Repose.”**

This change is required to correct a quirk of legislative history. When the statute was originally passed in 1945 (as § 95.28), it was both the statute of limitations for mortgage foreclosures and the statute of repose.<sup>1</sup> At that time, the word “Limitations” in the title was a reasonable description.

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<sup>1</sup> The limitations language stated: “no action or proceeding of any kind shall begin to enforce or foreclose the mortgage...” after the specified time periods. The repose language provided that the lien of the mortgage “shall terminate.” This difference recognizes the fundamental difference in Florida between statutes of limitation, which affect only the ability to file an action, and statutes of repose, which terminate the right on which an action would be based.

However, in 1974 the statute was amended by deleting the limitations language, leaving only the repose language and was renumbered to § 95.281. *See* Ch. 74-382, § 18, Laws of Florida; *Houck Corp. v. New River, Ltd., Pasco*, 900 So. 2d 601, 603-04 (Fla. 2d DCA 2005).

**2. The lien for advances by a mortgagee is clarified to expire at the same time as the lien for the mortgage debt expires.**

The first sentence of current § 95.281(1)(c) makes the lien of a mortgagee that advances payment for items such as taxes and insurance terminate 5 years after the date of the advance. Depending upon when the advance is made, this can result in the lien for the advance terminating earlier than the lien of the mortgage debt or later than the lien for the mortgage debt.

That is an inconsistency that has no justification in the legislative history and creates a lack of uniformity in the termination of the mortgagee's rights. Additionally, since most mortgages have a term that says the mortgage secures repayment of such advances, the statute creates a potential litigation issue over which time limit should apply – the one for advances or the one for the mortgage debt. The amendment deletes this sentence, resulting in greater uniformity of application, reducing legislative complexity, and removing a litigation issue that could affect hundreds of thousands of mortgages.

**3. The amendment will restore to a mortgagee that advances property taxes the common law right of subrogation without needing a special assignment.**

At common law, a mortgagee that advanced property taxes was always subrogated by to the superior lien position of the governmental taxing authority – both before and after the 1945 passage of § 95.281. *Prudential Ins. Co. of Am. v. Baylarian*, 168 So. 7, 9 (Fla. 1936) (before); *H.K.L. Realty Corp. v. Kirtley*, 74 So. 2d 876, 878-79 (Fla. 1954) (after). However, in 1955, the statute was amended to require the mortgagee obtain an assignment of the tax certificate before that subrogation would attach.

The RPPTL Subcommittee on “Stale” Mortgages has found no legislative history explaining the motivation for this added requirement. Practitioners in the RPPTL Real Property Litigation Committee and the Real Property Finance & Lending Committee with substantial experience in litigation over lien priorities unanimously affirmed that practitioners and courts ignore this section and grant subrogated priority rights to a mortgagee without requiring the assignment.

The requirement, if enforced, would have several drawbacks. First, it discourages mortgagees in junior positions or positions of doubtful priority from paying delinquent taxes because they may be throwing away “good money after bad” should a senior lien foreclose them. Second, it creates an off-record documentation issue affecting lien priority. Title examiners have no way of verifying from the official records whether a junior mortgagee that paid substantial amounts of taxes has as first priority lien securing those taxes or a junior lien securing them. That results in uncertainty for underwriting of new loans and other transactions. Third, it is fundamentally unfair for junior mortgagees who protect the interests of senior lienholders from a tax deed sale not to have a superior lien for the amounts they advanced.

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

- (1) Correcting the name of the statute will have no impact, other than clarifying the law for the benefit of governments and the private sector alike.
- (2) Making the lien for advances terminate at the same time as the lien for the mortgage debt will simplify the law and increase uniformity for the benefit of governments and the private sector alike.
- (3) Restoring the subrogation rights of mortgagees that advance taxes will benefit state and local governments by encouraging the holders of mortgages with junior priority and questionable priority to pay delinquent tax bills. This will result in earlier payment of property tax obligations.

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

- (1) Correcting the name of the statute will have no impact, other than clarifying the law for the benefit of governments and the private sector alike.
- (2) Making the lien for advances terminate at the same time as the lien for the mortgage debt will simplify the law and increase uniformity for the benefit of governments and the private sector alike.
- (3) Restoring the subrogation rights of mortgagees that advance taxes will benefit the private sector. First, the rights of mortgage holders that advance payment for taxes will have greater protection for the monies advanced. Second, title examiners and title underwriters will be better able to assess the priority of liens without reference to off-record assignments of tax certificates.

**VI. CONSTITUTIONAL ISSUES**

There are no known constitutional issues. Section 3 of the proposed legislation is a savings clause meant to avoid any constitutional issues.

**VII. OTHER INTERESTED PARTIES**

This proposal has been approved by the RPPTL Real Property Litigation Committee and the RPPTL Real Property Finance & Lending Committee. It is likely of interest to the following additional RPPTL Committees and should be approved by them:

\_\_\_\_\_.

It is also likely of interest to the mortgage lending industry, the title underwriting industry, the title examination industry, state and local governments, and consumer advocacy groups.

1 A bill to be entitled

2 An act relating to statute of repose for instruments encumbering  
3 real property; amending s. 95.281, F.S.

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

5 Section 1. Section 95.281, Florida Statutes, is amended as  
6 follows:

7 95.281. ~~Limitations~~ Repose; instruments encumbering real  
8 property

9 (1) The lien of a mortgage or other instrument encumbering  
10 real property, herein called mortgage, except those specified in  
11 subsection (5), shall terminate after the expiration of the  
12 following periods of time:

13 (a) If the final maturity of an obligation secured by a  
14 mortgage is ascertainable from the record of it, 5 years after  
15 the date of maturity.

16 (b) If the final maturity of an obligation secured by a  
17 mortgage is not ascertainable from the record of it, 20 years  
18 after the date of the mortgage, unless prior to such time the  
19 holder of the mortgage:

20 1. Rerecords the mortgage and includes a copy of the  
21 obligation secured by the mortgage so that the final maturity is  
22 ascertainable; or

23 2. Records a copy of the obligation secured by the mortgage  
24 from which copy the final maturity is ascertainable and by



25 affidavit identifies the mortgage by its official recording data  
26 and certifies that the obligation is the obligation described in  
27 the mortgage;

28 in which case the lien shall terminate 5 years after the  
29 date of maturity.

30 ~~(c) For all obligations, including taxes, paid by the~~  
31 ~~mortgagee, 5 years from the date of payment. A mortgagee shall~~  
32 ~~have no right of subrogation to the lien of the state for taxes~~  
33 ~~paid by the mortgagee to protect the security of his or her~~  
34 ~~mortgage unless he or she obtains an assignment from the state~~  
35 ~~of the tax certificate. Redemption of the tax certificate shall~~  
36 ~~be insufficient for subrogation.~~

37 Section 2. Section 95.051(1), Florida Statutes, is amended  
38 as follows:

39 (1) The running of the time under any statute of  
40 limitations except ss. ~~95.281~~, 95.35, and 95.36 is tolled by:

41 Section 3. This act shall take effect upon becoming law.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

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

## GENERAL INFORMATION

**Submitted By** Susan K. Spurgeon, Chair, Real Property Litigation Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date \_\_\_\_\_, 2015)

**Address** 2701 N. Rocky Point Dr. Suite 900  
Tampa, FL 33607  
Telephone: (813) 639-9599

**Position Type** Real Property Litigation Committee, Real Property Division, RPPTL Section, The Florida Bar

## CONTACTS

### Board & Legislation Committee Appearance

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[susan@penningtonlaw.com](mailto:susan@penningtonlaw.com); [sue@penningtonlaw.com](mailto:sue@penningtonlaw.com)

**Robert S. Freedman**, Carlton, Fields, Jorden, Burt, P.A., Corporate Center Three at International Plaza, 4221 W. Boy Scout Boulevard, Tampa, Florida 33607-5780 Telephone (813) 229-4149 ; [rfreedman@cfjblaw.com](mailto:rfreedman@cfjblaw.com)

**Peter M. Dunbar**, Dean Mead, 215 S. Monroe St. Suite 815 Tallahassee, Florida 32301, Telephone (850) 577-0095

**Martha J. Edenfield**, Dean Mead, 215 S. Monroe St. Suite 815 Tallahassee, Florida 32301, Telephone (850) 577-0095

(List name, address and phone number)

### Appearances

**Before Legislators** (SAME)

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

### Meetings with

**Legislators/staff** (SAME)

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

## PROPOSED ADVOCACY

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

### If Applicable,

**List The Following** Amendment to Fla. Stat. § § 57.011 & 559.715

(Bill or PCB #)

(Bill or PCB Sponsor)

**Indicate Position** Support  Oppose  Tech Asst.  Other

### Proposed Wording of Position for Official Publication:

Delete the requirement that out of state plaintiffs file a \$100 cost bond as set out in § 57.011; and 2) clarify and codify existing law by providing that a condition precedent to filing a petition or complaint to collect a debt is not created by . § 559.715.

### Reasons for Proposed Advocacy:

As set out in Judge Altenbernd's concurring opinion in *Focht v. Wells Fargo Bank, N.A.*, 124 So.3d 308, 312 (Fla. 2d DCA 2013) the judiciary have requested legislation to curb the use of non-substantive defenses to stall civil actions. The proposed legislation will not harm the litigants and will streamline some proceedings.

**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 specifically as to these statutes.  
(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**

None]  
(Name of Group or Organization) (Support, Oppose or No Position)

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

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

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

## WHITE PAPER

### BILL TO DELETE NON-RESIDENT COST BOND AND AMEND ASSIGNMENT OF CONSUMER DEBT NOTICE - PROPOSED REVISIONS TO SECTION 57.011 AND SECTION 559.715, FLORIDA STATUTES

#### 1. SUMMARY

The proposed bill will serve: (1) To remove the anachronism that requires a non-resident plaintiff to post a \$100 cost bond and (2) To codify and clarify that the notice a creditor must provide a borrower of the assignment of a debt is not a condition precedent to the filing of a petition or complaint to collect a debt.

#### 2. CURRENT SITUATION

Florida continues to have elevated numbers of foreclosure cases with tens of thousands of cases pending and forecasts for continued foreclosures above the historical norm. The “foreclosure crisis” has illustrated the need to eliminate requirements which do not protect consumers and does not benefit the state (the \$100 cost bond). Further there is a need to clarify and codify that the Florida Consumer Collection Practices Act, of which Section 559.715 is a part, does not provide that its requirements are a condition precedent to the filing of a petition or complaint to collect a debt. These changes will help streamline civil actions and reduce the time between debtor default and a final decision.

Florida Statutes Section 57.011 requires plaintiffs who are not “residents” of Florida to post a \$100 cost bond. Defense counsel move to dismiss civil actions, including foreclosures, filed by out of state plaintiffs for failing to post the required bond, stalling the case until the bond is posted. The bond cost goes to a private bond company and not to the State. Thus, eliminating the requirement will not have a fiscal impact on the State.

Florida Statutes Sections 559.551 – 559.784 is known as the Florida Consumer Collection Practices Act. (The protections afforded are in addition to those provided by the federal Fair Debt Collection Practices Act) Florida Statutes Section 559.715 requires the assignee of a debt to provide written notice of the assignment at least 30 days before any action to collect the debt. Defense counsel have begun to assert with regularity that this section requires, as a condition precedent, that a lender provide a written notice of assignment of the mortgage/note at least 30 days before filing suit. Debtors routinely seek to dismiss the action on the basis of failure to comply with this “condition precedent”. Courts have held that the filing of a foreclosure lawsuit is the enforcement of a security agreement and not a debt collection activity under the Federal and Florida acts. (*Trent v. Mortgage Electronic Registration Systems, Inc.*, 618 F.Supp.2d 1356 (M.D. Fla. 2007)). Further, the Florida act provides a number of remedies for its violation, but dismissal of a lawsuit or arbitration proceeding is not among them. (See *U.S. Bank N.A. v. Lord*, 2014 WL 3674680, at \*3 - \*4 (Fla. 6<sup>th</sup> Cir. 2014). There is nothing in the Florida Act to suggest that Section 559.715 was intended to act as a condition precedent to filing a petition or complaint to collect a debt.

### 3. EFFECT OF PROPOSED CHANGE

The proposed amendments will help expedite civil actions by allowing cases to be addressed on their merits. The requirement of posting a \$100 cost recovery bond by “foreign” litigants will be eliminated, streamlining all litigation, including foreclosures. The statute will codify and clarify existing law by providing that Section 559.715 does not create a condition precedent to filing a petition or complaint to collect a debt.

### 4. ANALYSIS

The following describes the changes being proposed:

a. Section 57.011 would be deleted to remove the requirement that a non-resident plaintiff post a \$100 cost bond. First enacted in 1828, this statute no longer serves a purpose. It is used to harass and as a stall tactic.

b. Section 559.715 would be amended to codify and clarify that it does not create a condition precedent to the filing of a petition or complaint to collect a debt. This codifies the holding of Judge Rondolino of the Sixth Judicial Circuit in *U.S. Bank N.A. v. Lord*, 2014 WL 3674680 (Fla. 6<sup>th</sup> Jud. Cir. 2014).

### 5. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal will have no fiscal impact on State and Local governments.

### 6. DIRECT IMPACT ON PRIVATE SECTOR

This proposal will streamline the civil actions by focusing litigation on substantive, rather than technical defenses. The impact of repealing Section 57.011 is negligible.

The amendment to Section 599.715 merely codifies and clarifies that this statute was never intended to create a condition precedent to filing a petition or complaint to collect a debt.

These amendments will help reduce the length of time between a borrower’s default and a final decision being rendered.

### 7. CONSTITUTIONAL ISSUES

There is no constitutional issue raised by the repeal of Section 57.011 or the proposed amendment to Section 559.715.

### 8. OTHER INTERESTED PARTIES

Financial lending institutions, county clerks, judiciary, foreclosure defense bar, consumer attorneys.

BILL

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to \_\_\_\_\_; providing an effective date.

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

5  
 6 **Section 1.** Section 57.011, F.S., is amended to read as  
 7 follows:

8 ~~**57.011 Costs; security by nonresidents.** — When a nonresident~~  
 9 ~~plaintiff begins an action or when a plaintiff after beginning an~~  
 10 ~~action removes himself or herself or his or her effects from the~~  
 11 ~~state, he or she shall file a bond with surety to be approved by~~  
 12 ~~the clerk of \$100, conditioned to pay all costs which may be~~  
 13 ~~adjudged against him or her in said action in the court in which~~  
 14 ~~the action is brought. On failure to file such bond within 30 days~~  
 15 ~~after such commencement or such removal, the defendant may, after~~  
 16 ~~20 days' notice to plaintiff (during which the plaintiff may file~~  
 17 ~~such bond), move to dismiss the action or may hold the attorney~~  
 18 ~~bringing or prosecuting the action liable for said costs and if~~  
 19 ~~they are adjudged against plaintiff, an execution shall issue~~  
 20 ~~against said attorney.~~

21 **Section 2.** Section 559.715, F.S., is amended to read as  
 22 follows:

23 559.715 Assignment of consumer debts.— This part does not  
 24 prohibit the assignment, by a creditor, of the right to bill and

BILL

ORIGINAL

YEAR

25 collect a consumer debt. However, the assignee must give the debtor  
 26 written notice of such assignment as soon as practical after the  
 27 assignment is made, but at least 30 days before any action to  
 28 collect the debt. The assignee is a real party in interest and may  
 29 bring an action to collect a debt that has been assigned to the  
 30 assignee and is in default. This Section shall not be considered  
 31 as creating a condition precedent to the filing of a petition or  
 32 complaint to collect a debt.

33 **Section 3.** This act shall take effect upon becoming law.  
 34

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Estate representative's access to the <i>content of a decedent's electronic communications</i> .	Permitted unless the decedent opted out while alive.	Not permitted unless a court finds that the decedent consented to disclosure and the estate indemnifies the custodian. The request must specifically identify the account.	Not permitted unless the decedent consented to disclosure. Custodian may request a court order specifically identifying the account and finding consent. Indemnification not required.
Estate representative's access to <i>other digital assets</i> of a decedent.	Permitted unless the decedent opted out while alive.	Unless the decedent opted out, access to one year's worth of records permitted with a court order only if relevant to resolve fiscal assets of the estate.	Permitted unless the decedent opted out or the court directs otherwise. Custodian may request a court order specifically identifying the account and finding that access is reasonably necessary for estate administration.
Conservator's access to the <i>content of a protected person's electronic communications</i> .	Permitted if access ordered by the court.	Not addressed.	Custodian need not disclose contents without the express consent of the protected person, but may suspend or terminate an account for good cause if requested by the conservator.
Conservator's access to <i>other digital assets</i> of a protected person.	Permitted if access ordered by the court.	Not addressed.	Permitted if authorized by the conservatorship order. Custodian may require specific identification of the account and evidence linking the account to the protected person.
Agent's access to the <i>content of a principal's electronic communications</i> .	Permitted if expressly authorized by the principal.	Not addressed.	Permitted if expressly authorized by the principal. Custodian may require specific identification of the account and evidence linking the account to the principal.



Issue	Original UFADAA	PEAC Act	Revised UFADAA
Agent's access to <i>other digital assets</i> .	Permitted under a grant of general or specific authority.	Not addressed.	Permitted under a grant of general or specific authority. Custodian may require specific identification of the account and evidence linking the account to the principal.
Trustee's access to the <i>contents of electronic communications</i> of a trust account.	Permitted unless prohibited by the user, trust, or court.	Not addressed.	Permitted when trustee is the original user. Also permitted when the trustee is not the original user if authorized by the trust. Custodian may require specific identification of the account and evidence linking the account to the trust.
Trustee's access to <i>other digital assets</i> of the trust.	Permitted unless prohibited by the user, trust, or court.	Not addressed.	Permitted unless prohibited by the user, trust, or court. Custodian may require specific identification of the account and evidence linking the account to the trust.

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Effect of boilerplate term-of-service prohibiting fiduciary access.	A blanket prohibition on fiduciary access is void as against public policy.	Not specifically addressed, but terms-of-service arguably enforceable by the reference to “other applicable law” (i.e. contract law) in Sec. 3(c).	Three tiered approach: <ol style="list-style-type: none"> <li>1. A user’s direction using an online tool prevails over an offline direction and over the terms-of-service <i>if</i> the direction can be modified or deleted at all times.</li> <li>2. A user’s direction in a will, trust, power of attorney, or other record prevails over the boilerplate terms-of-service.</li> <li>3. If a user provides no direction, the terms-of-service control, or other law controls if the terms-of-service are silent on fiduciary access.</li> </ol>
Effect of other terms-of-service.	Not addressed.	Recipient has no greater rights than the user.	Unless they conflict with a user’s direction, terms-of-service are preserved and the fiduciary has no greater rights than the user.

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Procedure for disclosing digital assets.	Not addressed, but use of the term “access” throughout the act arguably contemplates the fiduciary logging on to the user’s account.	Provider not required to allow a requesting party to assume control of a deceased user’s account.	The custodian has three options for disclosing digital assets: <ol style="list-style-type: none"> <li>1. Allow the requestor to access the user’s account.</li> <li>2. Allow the requestor to partially access the user’s account if sufficient to perform the necessary tasks.</li> <li>3. Provide the requestor with a “data dump” of all digital assets held in the account.</li> </ol>
Administrative fees.	Not addressed.	Not addressed.	A custodian may assess a reasonable administrative charge for the cost of disclosing a user’s digital assets.
Deleted assets.	Not addressed.	Deleted assets need not be disclosed.	Deleted assets need not be disclosed.
Unduly burdensome requests.	Not addressed.	Court shall quash an unduly burdensome order.	A request for some, but not all, of a user’s digital assets need not be fulfilled if segregation is unduly burdensome. Instead, either party may petition the court for further instructions.
Fiduciary duties.	Incorporated by a generic reference to “other law.”	Not addressed.	Expressly incorporated.

Issue	Original UFADAA	PEAC Act	Revised UFADAA
Account termination.	Not addressed.	Not addressed.	If termination would not violate a fiduciary duty, the fiduciary may request account termination rather than disclosure of assets. A custodian may require specific identification of the account and evidence linking the account to the user.
Joint accounts.	Not addressed.	Custodian need not disclose if aware of any lawful access to the account following the death of the user.	Custodian need not disclose if aware of any lawful access to the account after receipt of the disclosure request.
Timely compliance.	Required within [60] days, or fiduciary may request an order of compliance.	Not addressed.	Required within [60] days, or fiduciary may request an order of compliance. The order must contain a finding that disclosure does not violate 18 U.S.C. § 2702.
Custodian immunity.	Custodian is immune from liability for an act or omission done in good faith compliance with the act.	Custodian not liable for compliance in good faith with a court order issued pursuant to the act.	Custodian is immune from liability for an act or omission done in good faith compliance with the act.

## AGREEMENT

THIS AGREEMENT entered into to be effective as of the first day of July, 2015, by and between the REAL PROPERTY, PROBATE AND TRUST LAW SECTION of THE FLORIDA BAR, hereinafter referred to as "SECTION" and Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., hereinafter referred to as "LEGISLATIVE CONSULTANT", who, and in consideration as hereinafter expressed agree as follows: The LEGISLATIVE CONSULTANT shall serve for two (2) years beginning July 1, 2015, as a legislative consultant for the SECTION. The LEGISLATIVE CONSULTANT agrees to comply with all policies adopted by The Florida Bar Board of Governors and by SECTION. The services that LEGISLATIVE CONSULTANT shall provide to SECTION are as follows:

1. To serve as legislative consultant in all those matters which affect the SECTION.
2. The LEGISLATIVE CONSULTANT agrees that if the LEGISLATIVE CONSULTANT or its individuals and employees are to represent any client before the Florida Legislature (other than set forth on the attached listing), the LEGISLATIVE CONSULTANT will so notify in writing the Executive Director of The Florida Bar, the Chair of The Florida Bar's Legislation Committee, the Co-Chairs of the SECTION, and the Chair of the SECTION's Legislative Committee at least five (5) days prior to initiation of any such representation by the LEGISLATIVE CONSULTANT and that any subsequent conflicts will be disclosed immediately.
3. The LEGISLATIVE CONSULTANT agrees to work on Florida Bar legislative matters when directed by the Executive Director of The Florida Bar when the Executive Director believes that such participation is necessary and in the best interest of the membership of The Florida Bar. In this event, the cost of the LEGISLATIVE CONSULTANT's time will be assessed against this SECTION unless this use creates a shortage or hardship on the SECTION. In that event, The Florida Bar may reimburse the SECTION for the appropriate amount of the legislative expense.
4. The LEGISLATIVE CONSULTANT agrees to coordinate all activities regarding the Florida Legislature which might affect the SECTION.

5. The SECTION will pay the LEGISLATIVE CONSULTANT for the provision of services as set forth herein a fee of One Hundred and Twenty Thousand and 00/100 DOLLARS (\$120,000), inclusive of all reasonable costs and expenses to be paid in the following manner: \$30,000 payable on each July 1<sup>st</sup>, \$30,000 payable on each October 1<sup>st</sup>, \$30,000 payable on each January 1<sup>st</sup>, and \$30,000 on each March 1<sup>st</sup> during the term hereof.

a) The Section shall reimburse the Legislative Consultant for transportation (at the minimum rates approved by The Florida Bar for mileage and at the lowest coach class airfare available) and lodging (at the lowest negotiated group rates) when attending Executive Council meetings.

b) With respect to incidental expenses, the Section shall reimburse the fees paid by Legislative Consultant to register as the Section's legislative and executive lobbyist, an appropriately prorated portion of Legislative Consultant's online research, Lobby Tools and in-session mobile phone charges, and such other incidental expenses that may be approved from time to time by the Section.

6. The LEGISLATIVE CONSULTANT hereby agrees to identify him or herself at all times as a representative of said SECTION and not a representative of The Florida Bar when working on SECTION matters.

7. The SECTION and LEGISLATIVE CONSULTANT further agree and consent to the disclosure of any information in this agreement by either party or by The Florida Bar as required by law, to include disclosure to the Florida Legislature of any amounts paid to the LEGISLATIVE CONSULTANT pursuant to this agreement.

THIS AGREEMENT is not assignable by either party and may be terminated by either party upon sixty (60) days written notice being given or may be immediately terminated by The Florida Bar if it decides that the LEGISLATIVE CONSULTANT or its attorneys or employees are acting or have not acted within the best interest of The Florida Bar.

*Signatures on next page*

WITNESS our hands and seal to be effective the day and year first year written above.

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Witness

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Michael J. Gelfand, Section Chair  
Real Property, Probate and Trust Law Section  
The Florida Bar

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Witness

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John F. Harkness, Jr.  
Executive Director  
The Florida Bar

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Witness

Theresa Zerke

Witness

Peter M. Dunbar

Peter M. Dunbar, Legislative Consultant  
Dean Mead et al.

Amy A. A.

Witness

Theresa Zerke

Witness

Martha Edenfield

Martha Edenfield, Legislative Consultant  
Dean Mead et al.

Amy A. A.

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Cari Roth, Legislative Consultant  
Dean Mead et al.

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Witness

Theresa Zerke

Witness

Brittany Finkbeiner

Brittany Finkbeiner, Legislative Consultant  
Dean Mead et al.

Amy A. A.

Witness

**CONTRACT ADDENDUM**

By mutual consent of the parties hereto and consistent with the enactment of revisions to Sections 11.045 and 112.3215 and related provisions of the Florida Statutes during the 2005-B Special Session of the Legislature, the contract with DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A. ("Firm") is revised to identify the services and the compensation for said services in the following categories:

1. **Lobbying before the Legislature:** The client and Firm agree that the portion of time and services under the Agreement that is to be devoted to influencing or attempting to influence legislative action or non-action through oral or written communication or attempting to obtain the goodwill of members of the Legislature and employees of the Legislature shall be equal to forty percent (40%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$48,000.00.

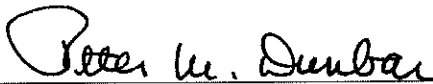
2. **Lobbying before the Executive Branch:** The client and Firm agree that the portion of time and services under the Agreement that is to be devoted to influencing or attempting to influence an agency with respect to a decision of the agency in the area of policy through oral or written communication or attempting to obtain the goodwill of an agency official or employee shall be equal to twenty percent (20%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$24,000.00.

3. **Other Non-Lobbying Services:** The client and Firm agree that the portion of time and services under the Agreement to be devoted to non-lobbying services for the client, its members and employees, including, but not limited to, preparation of CLE educational written and oral offerings and briefings, legal research, attendance at meetings of the client and related travel, communications with judicial and court administration officials and the preparation of written articles, opinions and reports for the client, shall be equal to forty percent (40%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$48,000.00.

Except as modified hereby, the terms and conditions of the contract with Dean Mead et al. are ratified and confirmed to be effective this 1 day of July, 2015.

DEAN, MEAD, EGERTON, BLOODWORTH,  
CAPOUANO & BOZARTH, P.A.

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

By:   
PETER M. DUNBAR

By: \_\_\_\_\_

THE FLORIDA BAR

By: \_\_\_\_\_



**Names of Clients**

Americas Gateway Logistics Center, LLC  
B.J. Alan Companies  
Bowling Centers Association of Florida  
Charlotte County  
City of Clearwater  
Conference of Circuit Judges of Florida  
Evans Properties  
Florida Bar, The  
Florida Outdoor Advertising Association  
Florida Voters Coalition  
Funeral Services, Inc.  
JEA  
Lykes Bros. Inc.  
Manatee County Board of County Commissioners  
Marriott International, Inc.  
Marriott Vacations Worldwide Corporation  
Parkway Maintenance & Management Company  
Pinellas County Board of County Commissioners  
Pinellas Education Foundation  
Real Property, Probate & Trust Law Section  
Stronach Group, The  
Tampa Bay Water

**Agencies**

Legislative & Executive Branch  
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Updated (June 2015)

## **ADDENDUM**

This is an addendum this \_\_\_\_\_ of July, 2015 to the Agreement between Michael J. Gelfand, Section Chair, Real Property, Probate and Trust Law Section and The Florida Bar, John F. Harkness, Jr. Executive Director The Florida Bar, Peter M. Dunbar Dean Mead et al., Martha Edenfield, Legislative Consultant, Dean Mead et al., Cari roth, Legislative Consultant, Dean Mead et al., and Brittany Finkbeiner, Legislative Consultant, Dean Mead et al., Dated July 1, 2015. It is further agreed that:

1. That The Legislative Consultant shall serve as consultant regarding legislative, administrative and regulatory matters which affect the Section. Although other professional personnel at his law firm shall assist and support him, Peter M. Dunbar shall be the lead contact and shall be personally primarily responsible for performing the services (including coordinating and reporting) to the Section under this Agreement. In that regard, Peter M. Dunbar shall make a presentation at the Section's Annual Legislative Update Seminar and shall personally attend each Section Executive Council meeting held within the State of Florida. Peter M. Dunbar anticipates that Martha Edenfield, Cari Roth, Brittany Finkbeiner, and Ashley Gault shall perform work under his direction. Any other professional personnel from the Legislative Consultant's law firm may only provide service under this Agreement with the prior approval of the Section.

2. The Legislative Consultant agrees that if Peter M. Dunbar individually, or the Legislative Consultant intends or desires to represent any client before the Florida Legislature or any regulatory or administrative body (other than those disclosed on the attachment to this Agreement), the Legislative Consultant shall notify, in writing, the Executive Director of The Florida Bar, the Chair of The Florida Bar's Legislation

Committee, the Chair of the Section, and the Chair of the Section's Legislative Committee at least five (5) days prior to commencement of that representation.

3. If an actual conflict, or even the potential for a conflict, arises between a position of the Section and a position of any other client represented by the Legislative Consultant or his law firm, the Legislative Consultant shall immediately notify, in writing, the Chair of the Section and the Chair of the Section's Legislative Committee. The Legislative Consultant and the Section acknowledge that the services to be provided under this Agreement are governed by The Florida Bar's Rules of Professional Conduct, including those provisions relating to conflict of interest between clients. Consequently, the Legislative Consultant shall not represent any other client which would have a position which would conflict with a position of the Section. If a conflict arises between a position of the Section and another existing client of the Legislative Consultant or his law firm, unless such conflict is waived by the affected clients, then the Legislative Consultant agrees that neither he nor his law firm may represent either the Section or the other party. Under such circumstances, an appropriate reduction in the fee otherwise due under this Agreement shall be made and the Section may engage other representation for the particular matter.

4. The Legislative Consultant agrees to work on Florida Bar legislative matters when directed by the Executive Director of The Florida Bar when the Executive Director believes that such participation is necessary and in the best interest of the membership of The Florida Bar. In this event, the fee for such services performed by the Legislative Consultant shall be assessed against the Section unless this creates a shortage or hardship on the Section. In that event, The Florida Bar may reimburse the Section for

the appropriate amount of the legislative expense. This fee, if any, is deemed included within the total fee specified within this Agreement. The Legislative Consultant shall keep the Section advised of all such legislative matter requests from the Executive Director, and shall track and report to the Section the time expended and costs incurred by the Legislative Consultant in responding to such requests.

5. The Legislative Consultant agrees to coordinate all activities regarding the Florida Legislature which might affect the Section. "Coordination" shall include, but is not limited to, the following:

A. The Legislative Consultant shall identify legislative issues likely to come before the Legislature during the term of the Agreement and which shall require services under the Agreement.

B. The Legislative Consultant, in advance of (as well as during) the legislative session, shall notify the Section of any committee hearings of the Legislature dealing with an issue affecting or concerning any area within the purview of the Section.

C. The Legislative Consultant shall work with Section designated contacts to prepare presentations, where appropriate, to be made to legislators and their committee staff.

D. The Legislative Consultant shall provide to the Section summaries of profiled and filed bills dealing with the areas within the purview of the Section and copies of the actual bills when appropriate. Special procedures approved by the Section shall be used to insure timely distribution during the legislative session.

E. The Legislative Consultant shall, during the legislative session, provide weekly written reports on the status of legislative matters on which the Section

has taken a position or has a pending legislative proposal. Additionally, reports shall be given upon any new matters which are filed and which are within the purview of the Section.

F. The Legislative Consultant shall provide all services necessary to promote and support the Section's legislative proposals and other matters affecting the Section's areas of practice. The Legislative Consultant shall coordinate, with Section designated contacts, obtaining legislative sponsors for the Section's proposals. The Legislative Consultant shall use best efforts, working with Section representatives, to ensure that there is a diversity of legislators who sponsor Section legislation from year to year. The Section's policy is to use as wide a group of sponsors as possible while at the same time recognizing that a sponsor must be an ardent proponent of the proposal.

G. The Legislative Consultant shall alert the Section to the activities of other interested groups relating to legislative proposals promoted by, supported, or opposed by the Section.

6. The Legislative Consultant shall coordinate other matters which might affect, or be of interest to, the Section and its legislative program, including but not limited to regulation, rulemaking, and the provisions of technical assistance to the Executive Branch, executive branch agencies and the Florida Legislature.

WITNESS our hands and seal to be effective the day and year first year written above.

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Witness

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Michael J. Gelfand, Section Chair  
Real Property, Probate & Trust Law Section  
The Florida Bar

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John F. Harkness, Jr.  
Executive Director  
The Florida Bar

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PETER M. DUNBAR, Legislative Consultant  
Dean, Mead et al.

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Martha Edenfield, Legislative Consultant  
Dean Mead et al.

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Cari Roth, Legislative Consultant  
Dean Mead et al.

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Brittany Finkbeiner, Legislative Consultant  
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