

BRING TO MEETING

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



Executive Council Meeting

AGENDA

Biltmore Estate - Asheville, North Carolina



Saturday, November 17, 2012
10:30 a.m.

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting
November 17, 2012
Biltmore Estate - Asheville, North Carolina

AGENDA

- I. [Presiding](#) — *Wm. Fletcher Belcher, Chair*
- II. [Attendance](#) — *Deborah Packer Goodall, Secretary*
- III. [Minutes of Previous Meetings](#) — *Deborah Packer Goodall, Secretary*
Motion to Approve Minutes of September 15, 2012 Executive Council Meeting at Key Biscayne. **pp. 1.**
- IV. [Chair's Report](#) — *Wm. Fletcher Belcher*
 1. 2012–13 RPPTL Executive Council Meeting Schedule. **pp. 35.**
 2. Introduction and comments from sponsors of the Executive Council lunch: The Florida Bar Foundation and U.S. Trust
 3. Acknowledgement of Section sponsors. **pp. x-xii**
- V. [Chair-Elect's Report](#) — *Margaret Ann Rolando*
2013 – 2014 RPPTL Executive Council Meeting Schedule. **pp. 36.**
- VI. [Liaison with Board of Governors' Report](#) — *Andrew B. Sasso, Jr.*
- VII. [President of The Florida Bar's Report](#) — *Gwynne A. Young*
- VIII. [Treasurer's Report](#) — *Andrew M. O'Malley*
2012-13 September Report Summary. **pp. 37.**
- IX. [Director of At-Large Member's Report](#) — *Debra L. Boje*
- X. [Probate and Trust Law Division](#) — *Michael A. Dribin, Director*

Information Items:

1. Ad Hoc Study Committee on Estate Planning Conflict of Interest — *William T. Hennessey III, Chair*

Report on status of Board of Governors consideration of RPPTL Section proposed legislative position pertaining to gifts to attorneys.

2. Guardianship and Power of Attorney Committee — *Sean W. Kelley, Chair*

Report by Tami F. Conetta on status of proposed legislative changes and revisions to Florida Power of Attorney Act (Ch. 709, Florida Statutes).

3. Report by Laird A. Lile regarding issues being considered by Florida Court Technology Commission committee regarding web access to probate and guardianship court records.

4. Estate and Trust Tax Planning Committee — *Elaine M. Bucher, Chair*

Report [tentative] on status of any significant developments regarding proposed legislation dealing with federal estate and gift taxes after January 1, 2013.

XI. Real Property Law Division — *Michael J. Gelfand, Director*

Action Item:

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

Motion to refer to Executive Committee for consideration and action after comment and discussion by Executive Council, the adoption as a legislative position, amendments to the Florida Vacation Plan and Timesharing Act, §§ 721.81, 721.84, 721.855, 721.856, amending the existing process for non-judicial foreclosure of time-share interests, to find that the position is in the purview of the Section. Timeshare Fclr Leg Pos Req 121029. **pp. 59.** Timeshare Fclr White Paper 121029. **pp. 41.** Timeshare Fclr Prop Bill Text 121029. **pp. 47.**

Information Items:

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

Correspondence dated September 19, 2012 to Unlicensed Practice of Law Committee of The Florida Bar in support of the Section's position seeking an advisory opinion regarding Licensed Community Association Managers, responding to comments and submissions to the Unlicensed Practice of Law Committee. **pp. 39.** UPL Comm Web Post MkUp. **pp. 62.**

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

Correspondence dated September 28, 2012 from Lloyd Granet, Chair, Real Estate Certification Committee, to Ms. Dawna Bicknell, Director – Legal Specialization & Education, reporting Real Estate Certification Committee's decision regarding no dilution of Real Property "brand" and that the Committee should have no responsibility for review of applications or the examination. Letter to LSE Director - Sept 28, 2012. **pp. 65.**

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

Posting on www.rpptl.org Private Member Home page of Revised (CR-1a Rev. 9/12 © 2010) FAR/BAR Residential Real Estate Contract, Condominium Rider, including non-developer seller disclosure that “condominium documents” are available as required by s.718.503(2)(c).

XII. General Standing Committees — *Margaret “Peggy” Rolando, Director and Chair-Elect*

Action Item:

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

Motion to refer to Executive Committee for consideration and action after comment and discussion by Executive Council, proposal to establish annual dues of \$20.00 for affiliate Section members who are law students enrolled in an accredited Florida law school.

Information Item:

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

Report by Jerry Aron or Michael Gelfand on meeting of The Florida Bar Professional Ethics Committee regarding new statutory requirement that attorneys and law firms have separate trust account for each title insurer for real estate transactions and the issue of whether it is permissible for a title insurer to audit any accounts or transactions other than those relating to the title insurance policy that it underwrote. Letter dated September 19, 2012 to Professional Ethics Committee. **pp. 67.**

XIII. 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
2. **Ad Hoc Trust Account** – Roland “Chip” Waller, Chair
3. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs
4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
5. **Budget** – Andrew M. O’Malley, Chair; Pamela O. Price and Daniel L. DeCubellis, Co-Vice Chairs
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) **pp. 71.**

7. **Convention Coordination (2013)** – S. Katherine Frazier, Chair; Angela Adams, Tae Bronner and Debra Boje, Co-Vice Chairs
8. **Fellows and Mentoring** – Marsha G. Madorsky, Co-Chair (Fellowship), Guy Emerich, Co-Chair (Mentoring); Brenda Ezell and Sharaine Sibblies, Co-Vice Chairs.
9. **Florida Electronic Filing & Service** – Patricia P. Jones, Rohan Kelley and Laird A. Lile, Co-Chairs
10. **Homestead Issues Study** – Shane Kelley, Co-Chair (Probate & Trust); Deborah Boyd, Co-Chair (Real Property)
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
12. **Legislative Update (2013)** –Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Sharaine Sibblies and Stacy Kalmanson, Co-Vice Chairs
13. **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
14. **Long-Range Planning** – Margaret A. Rolando, Chair
15. **Meetings Planning** – George Meyer, Chair

16. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner and William Parady, Co-Vice Chairs
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.
18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
19. **Pro Bono** – Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs
20. **Professionalism and Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miller, Co-Vice Chairs
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)
 - B. **Florida Bar Journal** - Kristen M. Lynch, Co-Chair (Probate & Trust); David Brittain, Co-Chair (Real Property)
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
23. **Strategic Planning** – Margaret A. Rolando, Chair

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

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

6. **Ad Hoc Committee on Treatment of Life Insurance Payable to Revocable Trust** – Pamela O. Price, 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 and 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



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

Special Thanks to the

GENERAL SPONSORS

Attorneys' Title Fund Services, LLC - Ted Conner
Overall Sponsors - Legislative Update & Convention & Spouse Breakfast

Fidelity National Title Group - Pat Hancock
Real Property Roundtable

First American Title Insurance Company - Alan McCall
Friday Night Dinner

Harris Private Bank - Joan Kayser
Thursday Lunch

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 - George Lange
Friday Night Dinner

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

SunTrust Bank - Steve Peck
Probate Roundtable

The Florida Bar Foundation - Jane Curran
Saturday Lunch

U.S. Trust - Stacey Cole
Saturday Lunch

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

Wright Private Asset Management, LLC – Diane Timpany
Hospitality Suite



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

Special Thanks to the

FRIENDS OF THE SECTION

Business Valuation Analysts, LLC - *Tim Bronza*

Guardian Trust - *Ashley Gonnelli*

Sheldrick, McGehee and Kohler, LLC - *Steven Rosenbloom*

Simplifile - *Pat Sponem*



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

Special Thanks to the

COMMITTEE SPONSORS

BNY Mellon Wealth Management – *Joan Crain*
IRA, Insurance & Employee Benefits Committee
&
Probate Law & Procedure Committee

Business Valuation Analysts – *Tim Bronza*
Trust Law Committee

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

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

Guardian Trust – *Ashley Gonnelli*
Guardianship & Power of Attorney Committee

Key Private Bank – *Kathleen A. Saigh*
Asset Protection Committee

Management Planning, Inc. – *Roy Meyers / Joe Gitto*
Estate & Trust Tax Planning Committee

Northern Trust – *Brett Rees*
Trust Law Committee

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

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

EXECUTIVE COUNCIL MEETING

**Saturday September 15, 2012
The Ritz Carlton, Key Biscayne, Florida**

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

Mr. William Fletcher Belcher called the meeting to order at 10:09 a.m., Saturday September 15, 2012, in Salons 1 and 2 of The Ritz Carlton Hotel, Key Biscayne, Florida.

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. Mr. Belcher noted that there was now a column for Real Property and Probate and Trust designations for purposes of having a substantive listserv. Mr. Belcher asked members to confirm that their designation was correct and, if not, to note it on the attendance roster. [*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 July 28, 2012, at the Breakers Hotel, appearing at page 1 of the Agenda Materials¹.

The Motion was approved unanimously.

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

Mr. Belcher thanked Burt Bruton and his band, Road Kill, for last night's entertainment. Mr. Belcher welcomed the law students present from Stetson and University of Florida. Mr. Belcher thanked the volunteers who have offered to assist with the registration table. Although he expected 10 – 12 responses to his email requesting assistance, he received over 80 volunteers.

Mr. Belcher thanked the General Sponsors and the Friends of the Section for their support.

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

Mr. Belcher reported that William ("Bill") Haley died on August 6th, 2012. Fred Jones made a motion to adopt a Memorial Resolution honoring Bill's dedicated service and accomplishments. Ms. Goodall read the resolution.

Mr. Belcher moved:

To approve the Resolution honoring Bill Haley.

Motion passed unanimously.

Mr. Belcher reported on the need for the Executive Committee to act in between Executive Council meetings with regard to a proposal from the Florida Bar CLE Committee to the Council of Sections regarding providing free CLE for all full time government lawyers at all live CLE programs produced by the Sections. On behalf of the RPPTL section, the Executive Committee voted to oppose this proposal and to communicate that position by letter and to the Council of Sections meeting.

Mr. Belcher advised as to the progress of the directory and thanked Dresden Brunner for her assistance. There are still a few members who need to update their information or update the photos.

Mr. Belcher discussed the issue with room blocks at hotels and asked for assistance in cancelling rooms through Yvonne in order to preserve the room rate at the block rate.

Mr. Belcher reviewed the schedule for the rest of the meetings for this year and in detail the Asheville meeting. Mr. Belcher discussed the remaining events for this meeting including dinner at the Rusty Pelican meeting in the lobby for departure at 6:15.

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

Ms. Rolando announced that the Executive Council meetings for 2013 – 2014 meetings are listed in the Agenda, page 34, and announced that all of the hotels are finalized and reminded council members that the room reservations are usually available 12 months in advance so check the schedule and the calendar.

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

Mr. Belcher was away from the podium and Ms. Rolando introduced Andy Sasso, our Liaison from the Board of Governors, Mr. Sasso reported on the three free CLE offered by the Florida Bar covering the topics of e-filing, e-service, and e-discovery including the digital accessibility of electronically filed documents. All information on these programs is available on the Florida Bar website and can be downloaded or accessible by podcast. The topics include including electronic discovery, redacting confidential information, and availability of documents that are e-filed. He complemented Rohan Kelley and Laird Lile on the electronic service webinar. Mr. Sasso noted that pursuant to the Rules of Judicial Administration, lawyers are not *required* to do a separate pleading with a notice of the lawyer's email but rather the lawyer

should be sure that the email address is on the next pleading filed. Mr. Sasso introduced the issue of the Judicial Merit Retention. Mr. Sasso asked Sandra Diamond to comment on “The Vote’s in Your Court” campaign. Ms. Diamond asked everyone to review the materials on the Florida Bar website with regard to the campaign including the video by Justice Sandra Day O'Connor and to help to spread the word regarding the program.

VII. Treasurer's Report – Andrew O'Malley, Treasurer.

Mr. Andrew O'Malley noted that the Treasurer's financial summary is set forth in the Agenda, starting at page 35 – 36. He advised that there is not much to report at this stage of the year because these figures reflect only the first month of revenue and not much of the expenses. Mr. O'Malley entertained questions from the floor and clarified that the CLE figure shown on page 35 is for the first month of the new fiscal year only and does not reflect the total revenue from the fiscal year ending June 30, 2012. Mr. O'Malley addressed questions regarding the budget details beginning on page 195 of the Agenda. He reported that the Section is running on a deficit and that this will be discussed in more detail during the General Standing Committee action item on the budget.

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

Ms. Debra Boje reported on the continued efforts of the At Large Members (ALMs) to work in conjunction with many of our other committees including Membership and Diversity, and CLE. The ALMs will host a reception after the certification review courses for the local members in addition to those attending the course. Ms. Boje reported that the ALMs will be helping to spread the word about our CLE courses among their local groups. The ALMs are also working in conjunction with FLEA to reach out to legal assistants who can be associate members of the Section. The ALMs are also continuing to work with the Mike Stafford on reaching our out of state members.

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

Mr. Gelfand introduced the following:

Action Items.

1. Real Estate Entities and Land Trusts Committee — *Wilhelmina Kightlinger*,
Chair

Ms. Kightlinger reported on the final version of the Florida Land Trust Act. The materials begin at page 37 of the Agenda. Ms. Kightlinger reported that this has been a collaborative effort between both the Real Property and the Probate and Trust Law sections and has been featured at several meetings including the Vinoy, the Breakers and is now an action item. She reviewed the revisions to the statute since it was reported on at the Breakers. Ms. Kightlinger thanked Katherine

Frazier, Burt Bruton, Bruce Stone, Pam Price, Wayne Sobien, Pat Hancock, and Pat Jones and others too numerous to name.

Ms. Kightlinger moved:

To adopt as a proposed legislative position amendments to the Florida Land Trust Act and Florida Trust Code to define and distinguish land trusts more clearly from other express trusts; to revise and relocate statutory title estoppel provisions separately from the land trust statute; to codify other Florida land trust principles and practices; 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 gave a report on the committee’s support of the creation of a new category of Board Certification for Condominium and Planned Development as a sub-specialty of Real Estate Law Certification. See Agenda for materials beginning on page 84. Mr. Mezer moved:

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.

The motion passed unanimously.

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

Mr. Mezer reported on recent federal and state case law that the Committee believes requires amendments to certain dates and time limits impacting the Condominium Act. The first deals with a timing issue regarding when a declaration of condominium can be recorded based upon certain requirements under the Federal Interstate Land Sales Full Disclosure Act (“ILSFDA”), the second deals with existing conflicting district court cases regarding when a condominium unit is created and the third addresses an extension of time for adding proposed new phases to existing condominiums. Mr. Mezer moved:

To adopt as a proposed legislative position supporting the replacement of dates triggering certain developer obligations relating to the creation of a condominium; to clarify when a condominium unit is created; to extend the period for adding phases to a condominium; to amend the Condominium Act; to find that the position is in the Section’s purview; and to expend funds in support of the position.

The motion passed unanimously.

Mr. Gelfand thanked Steven Mezer and the Condominium and Planned Development Committee on the efforts to work through issues between at least two very distinct groups of interests including those who represent developers and those that represent unit owners.

4. Real Property Litigation Committee — *Martin S. Awerbach, Chair*

Mr. Awerbach gave a report on the history of the issues involving electronic publications of legal notices, protections for the public and due process concerns given the wide spread use of the internet and the economic costs of publication. The materials begin on page 110 of the Agenda. Mr. Awerbach reported that the existing statutes had been enacted following vigorous opposition by the newspaper industry and the statutes that were enacted were substantially different from what had initially been proposed by the Section. First, in the existing statute, any mistake in the web version of the notice is deemed harmless error and the committee believes this section needs to be removed. Also, Mr. Awerbach expressed concern about the use of electronic affidavits in lieu of paper affidavits existing under the current law. Mr. Awerbach reported that his committee had worked with the groups representing the newspapers and he believes that there has been agreement on the proposed wording of the statute. Mr. Awerbach moved:

To adopt as a proposed legislative position supporting the creation of requirements for electronic publication and addressing due process concerns, including amendment to F.S. s. 50.0211, s. 50.041 and s. 50.061; to find that the position is in the Section's purview; and to expend funds in support of the position. Materials begin on Page 110 of the Agenda.

The motion passed unanimously.

5. Real Property Litigation Committee — *Martin S. Awerbach, Chair*

Mr. Awerbach reported that there have been some changes to the language that appear in the materials beginning on page 117 regarding the proposed amendments to Florida Statute Section 49.021. Given the revisions and because there have been some concerns expressed by the probate lawyers regarding the timing for probate and the appointment of ad litem, Mr. Awerbach moved:

To table this item.

Motion to table carried by a two-thirds voice vote.

Mr. Gelfand thanked Mr. Awerbach for his efforts especially in regard to working with the interests of the newspaper groups.

6. *Ad Hoc* Foreclosure Reform Committee — *Jerry Aron, Chair*

Mr. Aron reviewed the background of where we have been with regard to foreclosure reform legislation. Although our Section had approved legislation that was presented to the Florida Legislature in the last session, no legislation was ultimately passed. The legislation was passed by the House but not by the Senate. The proposed bill and white paper and materials are found in the Agenda beginning on page 123. Mr. Aron moved:

To adopt as a proposed legislative position supporting foreclosure reform to expedite and streamline the judicial foreclosure process while preserving and protecting fundamental fairness and the property rights and due process rights of the holders of interests in or affecting Florida real property; to find that the position is in the Section’s purview; and to expend funds in support of the position.

Secretary Note: Original Motion included reference to abandoned property which was deleted from proposal on the floor.

The motion passed.

Mr. Gelfand thanked Mr. Aron for his efforts with regard to the foreclosure reform legislation.

Information Item:

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

Mr. Jones reported on the needed revisions to the FAR/BAR Residential Real Estate Contract, Condominium Rider to include non-developer seller disclosure (in conspicuous text per F.S. s. 718.103(14)) that “condominium documents” are available as required by s. 718.503(2)(c). Rider A to FAR BAR inadvertently left out bolding and added additional white space as required.

Mr. Gelfand asked that an article be put in ActionLine, that a notice be put on the public side of the RPPTL website and that perhaps an email blast be sent out to our section members alerting of these revisions.

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

Mr. Michael A. Dribin thanked the committee sponsors of the Probate and Trust Law Division. Mr. Dribin introduced the following items:

Action Items:

1. Guardianship and Power of Attorney Committee – *Sean W. Kelley, Chair*

Mr. Dribin introduced Sean Kelley. Mr. Kelley discussed the proposed revisions of statutes involving procedures for approval of settlements for wards and confidentiality of settlements for wards. The materials begin on page 155 of the Agenda. Mr. Kelley moved:

To adopt as proposed legislative positions the following: (a) amending F.S. §744.3025(1), dealing generally with the process of approval by the court of a settlement in favor of a minor and the appointment of a guardian ad litem to represent the interests of the minor, to provide that the court may appoint a guardian ad litem if the court believes a guardian ad litem is necessary to protect the interests of the minor; (b) creating new F.S. §744.387(5), dealing generally with settlement of claims by or against the guardian of either a minor or adult incapacitated person, to provide that all court records which relate to the settlement of a claim, including any report of the guardian ad litem, shall generally be confidential; and, (c) to amend F.S. §744.3701, dealing generally with inspection of reports, to provide that pleadings seeking court approval of a settlement on behalf of a ward or minor may only be inspected under limited circumstances; and finding that such legislative positions are within the purview of the RPPTL Section.* The materials begin at page 155 of the Agenda.

The Motion was approved unanimously.

Mr. Kelley moved:

To expend funds.

The Motion was approved unanimously.

2. Guardianship and Power of Attorney Committee – *Sean W. Kelley, Chair*

Mr. Kelley discussed the materials found on page 163 of the Agenda concerning a clarification the statute concerning attorney's fees and whether expert witness testimony is required. Mr. Kelley moved:

To adopt as proposed legislative positions the following: (a) amending F.S. §744.108(8) to make it clear that the determination of reasonable fees for any attorney who has rendered services to the ward or for any attorney for the alleged incapacitated person appointed by the Court is part of the guardianship administration process; and, (b) to create F.S. §744.108(9) to provide that, in the process of determining reasonable compensation for a guardian or reasonable compensation for an attorney who has rendered

services to the ward or who was appointed by the Court to represent the alleged incapacitated person, any party may provide expert testimony after notice to the other parties and, if expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the guardianship estate; and finding that the proposed legislative positions are within the purview of the RPPTL Section.* See Agenda materials beginning on page 163.

The Motion was approved unanimously.

Mr. Kelley moved:

To expend funds.

The Motion was approved unanimously.

3. Guardianship and Power of Attorney Committee – *Sean W. Kelley, Chair*

Mr. Kelley introduced the proposed legislation found on page 168 of the Agenda. This proposal involves payment to members of the examining committee. Mr. Kelley moved:

To adopt as a proposed legislative position amending F.S. §744.331(7) to allow members of the examining committee appointed by the Court in an incapacity proceeding to be paid by the state as court appointed experts pursuant to F.S. § 29.004(3), under those circumstances where the petition for incapacity is dismissed by the court and no guardian is appointed and, finding that the proposed legislative position is within the purview of the RPPTL Section.

The Motion was approved unanimously.

Mr. Kelley moved:

To expend funds.

The Motion was approved unanimously.

Mr. Dribin thanked Mr. Kelley and his committee for their hard work.

4. IRA, Employee Benefits and Insurance Committee – *Linda S. Griffin and L. Howard Payne, Co-Chairs*

Ms. Griffin introduced the proposed legislation in the Agenda beginning on page 174. Ms. Griffin explained that this is to correct two mistaken references that were in the initial legislation. Ms. Griffin moved:

To adopt as a proposed legislative position amending F.S. §732.703 to correct a statutory reference contained therein and to include the defined term “governing instrument” rather than the language “instrument directing the disposition of the asset at death”, in order to be consistent with other language of the statute and, finding that the proposed legislative position is within the purview of the RPPTL Section.* See Agenda materials beginning on page 174.

The Motion was approved unanimously.

Ms. Griffin moved:

To expend funds.

The Motion was approved unanimously

5. Trust Law Committee – *Shane Kelley, Chair*

Mr. Kelley introduced the proposed legislation found on page 179 of the Agenda. This issue deals with the definition of qualified beneficiary including the word “distribute” which does not currently appear in the trust code. Mr. Kelley moved:

To adopt as a proposed legislative position amending F.S. §736.0103 by adding new definitional subsections (22) (“distributee”) and (23) (“permissible distributee”), so as to eliminate any confusion, particularly in the context of trust accountings, with similar definitions appearing in the Probate Code and, finding that the proposed legislative positions are within the purview of the RPPTL Section.

The Motion was approved unanimously.

Mr. Kelley moved:

To expend funds.

The Motion was approved unanimously.

Information Item:

1. Ad Hoc Study Committee on Estate Planning Conflict of Interest -- *William T. Hennessey III, Chair*

Paul Roman reported that the proposed legislation on gifts to lawyers (proposed F.S. §736.0103) that has been approved by our section has been reviewed by the Professional Ethics Committee (“PEC”) of the Florida Bar. The PEC has requested a meeting to discuss the proposed legislation. Bill Hennessey will be

attending the PEC meeting in conjunction with the Florida Bar meetings in Orlando next Friday, September 22, 2012 at 9:30 am.

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

Ms. Rolando introduced the following:

Action Items:

1. Ad Hoc Trust Account Committee – Roland "Chip" Waller, Chair

Secretary Note: This item was heard out of order immediately before the Probate and Trust Law Action Items.

Mr. Waller presented a summary of the committee's task and noted that the Committee report begins on page 184 of the Agenda. Previously, our section had voted to support the Board of Governor's position that only attorneys may sign trust account checks. The Board of Governors argued this position to the Florida Supreme Court. The Florida Supreme Court declined to accept the Board of Governor's position because of concerns raised by solo practitioners and lawyers from small firm. The Supreme Court asked the Florida Bar for input after further study of the issue. Currently, non-lawyers can be authorized to sign on trust account checks and there are no safe guards in place. The committee was asked to review the issue and provide recommendations. Mr. Waller moved:

To consider whether the Section shall submit recommendations to the Florida Bar and the Florida Supreme Court for safeguards when non-lawyers sign trust account checks.

The Motion passed.

2. Ad Hoc Trust Account Committee – Roland "Chip" Waller, Chair

Because the Executive Council voted to submit Section recommendations for safeguards when non-lawyers sign trust account checks to The Florida Bar and Florida Supreme Court, the Executive Council then discussed the Committee proposals and recommendation as set forth in the Committee Report.

There are three committee recommendations: (1) for the Florida Bar to adopt ABA Model Rules for Client Trust Account Records (adopted by the ABA on August 9, 2010) including Rule 2 dealing with Client Trust Account Safeguards (2) requiring non-lawyers to be bonded and (3) requiring lawyers and non-lawyers to be certified to sign trust account checks by passing a test on trust account accounting and rules regulating the attorney's trust account.

There was significant discussion regarding recommendations (2) and (3).

Ms. Rolando asked if the committee would allow an amendment to the recommendations and Mr. Waller agreed. Ms. Rolando moved:

To amend the committee report to provide that the Section would recommend only the adoption of (1) regarding the ABA Model Rules and that items (2) and (3) be considered as suggestions but not firm recommendations.

The Motion to amend Passed.

Ms. Rolando moved:

To submit to the Florida Bar a recommendation that the Florida Bar adopt the ABA Model Rules for Client's Trust Account Records adopted by the ABA on August 9, 2010 and that the committee proposals regarding bond for non lawyer signatories (item 2) and required testing on trust accounting rules (item 3) be submitted to the Florida Bar as suggestions but not firm recommendations.

The Motion Passed.

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

Mr. O'Malley discussed the Budget proposal included in the Agenda on page 195. Mr. O'Malley explained that we are addressing the budget much earlier in the year because this is our last in state meeting for this year. Mr. O'Malley thanked Yvonne Sherron and the Budget Committee for the work in reviewing the numbers.

Mr. O'Malley reviewed the Budget Summary on page 199 of the Agenda first and noted that the figures reflect a Florida Bar mandated operating reserve that we have never needed. Mr. O'Malley also noted that the projections are very conservative because wherever possible the Committee over-estimated expenses and under-estimated revenue.

Mr. O'Malley then turned to the line items beginning on page 195 and noted that the Dues line item includes a possible dues increase of \$10.00 for the year 2013-2014 that may be approved at some later point by the Executive Council. If approved, this will be the first dues increase in 9 years despite the increase in costs, the relatively flat revenue, and the enhanced services that our Section has provided through CLE webinars and ALMs services among other services. Mr. O'Malley also noted that some other sections currently have higher dues than the RPPTL Section.

Mr. O'Malley then reviewed the CLE Revenue and noted that the costs of producing seminars have continued to increase and, in some cases, lower attendance at various programs so the projected revenue is reduced slightly.

Mr. O'Malley reviewed the estimates for Council Meetings and that we will be looking at controlling costs. Mr. O'Malley reviewed the increased projections based upon the expansion of our website. Mr. O'Malley reviewed the sub-budgets.

Mr. O'Malley moved:

To approve the Section 2013 – 2014 Budget as it appears on the Agenda beginning on page 195.

The Motion was approved unanimously.

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

Letter from Donald Workman, President of the Out-of-State Division of The Florida Bar, seeking to establish a network of out of state members of The Florida Bar and to develop and maintain professional relationships between in-state members and out-of-state members. **pp.** [GSC Attachment #3]

XII. 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

No report.

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

See the Agenda, page 200 for a copy of a letter submitted by the Section to The Florida Bar’s Professional Ethics Committee requesting an Ethics Opinion regarding the requirements of F.S. s. 626.8473(8) for a separate trust account for transactions when an attorney serves as a title or real estate settlement agent, discussing the issues raised by the legislation and suggesting solutions.

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

Ms. Mastin reported that the seminar that had been scheduled for next week has been postponed until the beginning of 2013 in Ft. Lauderdale. Also, the Committee will be assembling if you are interested in being included in the registry of mediators or arbitrators, please

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

Ms. Rolando reported for the Amicus committee and noted that the Appellee's answer brief that attacked the Amicus brief has been stricken in the *North Carillon* case. Also, the Amicus brief has been filed in the case of *James Michael Aldrich v. Laurie Basile, et al.* (SC11-2147). Additional information is provided in the Supplemental Agenda materials.

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).

Mr. Freedman reported on the tremendous success of the free webinar on E-filing and thanked Mr. Lile and Mr. Rohan Kelley for their presentations. There were 1,307 separate attendees who connected to the webinar – the number of attendees is actually higher, as numerous law firms and court clerks had multiple individuals attending although only one person actually registered. Mr. Freedman also thanked Nicole Kibert for her help on the logistics for the webinar. The schedule of CLE courses can be found on page 206 of the Agenda. One program that is not on the list is the out of state program that will be held on October 4, 2012. Sandy Diamond, Laird Lile and Barry Spivey will all be presenting at that program. Mr. Freedman thanked Mike Stafford for his assistance in lining up the speakers so quickly. Mr. Freedman also announced the beginning of the monthly 1 hour lunch time audio webinars beginning on October 30th. The first will be e-Ethics on e-Discovery. Be sure to check the website for additional information on topics, pricing and registration. He also reported on the successful CLE seminar chair training session that was held on Thursday and thanked Sarah Butters and Jennifer Tobin for their assistance.

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

Angela Adams reported that planning is underway for the convention May 23 – 26th (Memorial Day weekend) in St. Pete.

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

Guy Emerich re-introduced the fellows. Each fellow has already been assigned to a specific project and they also write the case law updates for ActionLine.

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

Ms. Rolando thanked Mr. Lile and Mr. Kelley for the awesome job on the seminar. Mr. Lile reported that electronic e-mail service is coming on September 1st and electronic filing is coming April 1, 2013 so there will be another seminar scheduled on or about March 20, 2013.

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

No report.

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

Mr. Swaine reported that we 25 different pieces of legislation that our Legislation team will be tracking and that timely and helpful responses to every inquiry received will be very helpful and much appreciated.

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

Mr. Koren reported that there will be a meeting next week in Chicago. Since the last meeting, a report on transfer taxes has been submitted to Congress. Mr. Koren also reported on the status of various estate tax proposals with the Senate passage of a bill that excluded estate tax so we may end up with the House and the Senate passing totally different bills.

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

Mr. Silberstein thanked those that attended the certification reception at the Florida Bar Meeting. BLSE is working with an exam consultant and the results are being shared with the committees to modify certain exams for better standardization across all specialties. Mr. Silberstein reported that deadlines are fast approaching for applications to take the certification exams.

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

Mr. Lile reported that Ken Burke has been appointed as a Liaison from the Clerks of Court to our section. Mr. Lile noted that the e-portal board is currently meeting monthly and that he is attempting to attend each meeting. There will be a proposed ethics opinion discussed at the Florida Bar mid-year meetings next week, that, if adopted, will affirmatively indicate that attorneys will be authorized to allow our staff to have access to our e-filing credentials to facilitate the process of e-filing.

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

FLSSI - Mr. Brennan reported that they are gearing up to edit, draft review, and organize the probate and guardianship forms. A disc of all of the forms is being provided to the probate judges at their Marco Island meeting.

FLEA - Mr. Brennan announced that the Annual Probate Team will be held October 5th and 6th in Orlando.

- 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.

Mr. Stafford reported that our out of state membership now stands at approximately 940 representing an increase of over 100 from last year. There are efforts to enhance that number by offering the October 4th CLE in Atlanta. He thanked Barry Spivey, Laird Lile, and Sandy Diamond. Mr. Stafford also announced that we will invite Florida lawyers living in North Carolina to our Asheville meeting. Ms. Rolando thanked Mike Stafford and Yvonne Sherron for the out-reach efforts on the personal letters sent to out of state lawyers in New York and New Jersey and the Atlanta area earlier this year. *[Secretary Note: see the letter from the Out-of-State Division President, Donald Workman in the Agenda on page 204 – 205]*

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 the business law section will be working on an assignment for the benefit of creditors and she believes certain people on the real estate side will be interested in reviewing that legislation.

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

No report.

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

Ms. Brunner reported that the committee met and has selected a proposal to recommend to the Executive Committee. The Committee is preparing a survey to be sent to each committee. Ms. Brunner thanked those committees that have updated their webpages. Each committee is also asked to designate a liaison to the communications committee to act as the point person. Ms. Brunner reminded us that the committee websites should be kept up to date with the mission statement and meeting minutes. Please continue to send Bill Crawford the information that needs to be posted. His email address is wlcrawford@gmail.com.

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.

Mr. Arnold reported that the infomercial is wrapping up. The Membership Committee is Working with ALMs and reaching out to new members and law students. The Committee is focused on having contacts with each of the Florida law schools. Mr. Arnold announced a reception for University of Florida to be hosted by Melissa Murphy at her home on Friday, October 5th.

Ms. Sibblies reported on 2 upcoming diversity events coming up. The first is a scholarship gala 2 weeks from tonight at the Seminole Hard Rock casino. The second event is the 9th Annual Minority Mentoring Picnic, which will take place on Saturday, November 10, 2012 at Amelia Earhart Park in Hialeah, Florida from noon to 4 pm. This is a very large event. We sponsor the event and will have a tent on site. Volunteers are needed to attend and to be present in the tent. Ms. Sibblies asked that anyone interested in helping to contact her.

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.

Ms. Stone reported on the need for help in Tampa. Ms. Stone made a plea for additional help from Section members so that the committee can accomplish more of the good pro bono work that it wants to do.

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

The RPPTL Repertoire Ethics Smethics Players presented a skit dealing with the topics of “fee sharing” among nonaffiliated lawyers, issues of non-lawyers preparing estate planning documents and lawyers preparing documents for “clients” that the lawyer has never spoken to. Materials were sent in a separate e-mail several days ago including Florida Bar Ethics opinions 67-37A, 76-35, 67-15 and 95-2.

[*Secretary’s note:* the skit was presented immediately after the At Large Members’ Director’s report and immediately before the Real Property Action Items.]

Mr. Weintraub reported that there will be holding twice yearly webinars for ethics credits. The first will be on e-discovery. The Committee still is monitoring the Supreme Court’s Task Force on grievance process for professionalism concerns. The Committee is monitoring two proposed advisory opinions – the first addresses cloud computing and confidentiality concerns and the second involves technology that apparently diverts website searching for specific law firms to other firms.

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)

Ms. Rojas thanked the staff and the authors for the summer issue of ActionLine. Amber Johnson has been soliciting many Articles but need more real property articles. Deadline for articles for the winter issue Article is October 31st. Ms. Rojas reviewed the articles and features that are already planned for the next issue.

Ms. Rolando thanked Ms. Rojas for the excellent issue of ActionLine.

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

Ms. Lynch reminded everyone that the publication guidelines should be 12 pages double spaced and that the column needs to be submitted on behalf of the section. If you have a real estate topic, please contact David Brittain and if it is a probate or trust law article, please contact Kristen.

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

Ms. Lynch thanked the executive council members for maintaining the gratitude shown to all of our wonderful sponsors. Ms. Lynch thanked her vice-chairs.

Ms. Rolando thanked Ms. Lynch for all of her continued hard work.

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

No report.

XIII. 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.
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.
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.

XIV. 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 Suzzanne 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

XV. Adjournment -- Mr. Belcher thanked those Executive Council members that stayed to the very end of the meetings. There being no further business to come before the Executive Council, the meeting was unanimously adjourned at 12:55pm.

Respectfully submitted,

Deborah P. Goodall, Secretary

ADDENDUM A

ATTENDANCE ROSTER SEPTEMBER 15, 2012

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			
Rolando, Margaret A., Chair-Elect	√		X	X			
Gelfand, Michael J., Real Property Law Div. Director	√		X	X			
Dribin, Michael A., Probate and Trust Law Div. Director		√	X	X			
Goodall, Deborah P., Secretary		√	X	X			
O'Malley, Andrew M., Treasurer	√		X	X			
Spivey, Barry F., Legislation Co-Chair		√	X	X			
Swaine, Robert S., Legislation Co-Chair	√		X	X			
Freedman, Robert S., Seminar Coordinator	√		X	X			
Boje, Debra L., Director of At-Large Members		√	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			
Adcock, Jr., Louie N., Past Chair		√					
Akins, David J.		√	X	X			
Alexander, Bruce G.	√						
Altman, Robert N.		√					
Altman, Stuart H.		√	X	X			
Arnold, Jr., Lynwood F.	√			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					
Aron Jerry E. Past Chair	√		X	X			
Awerbach, Martin S.	√		X	X			
Bald, Kimberly A.	√		X				
Ballaga, Raul P.	√		X				
Banister, John R.	√						
Batlle, Carlos A.		√	X	X			
Baumann, Phillip A.		√		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				
Boone, Jr., Sam W.		√					
Boyd, Deborah	√		X				
Brenes-Stahl, Tattiana P.		√	X	X			
Brennan, David C. Past Chair		√	X				
Brittain, David R.	√		X	X			
Bronner, Tae K.		√	X	X			
Brown, Mark A.	√		X	X			
Brunner, S. Dresden		√	X	X			
Bruton, Jr., Ed Burt	√		X	X			
Bucher, Elaine M.		√	X				
Bush, Benjamin B.	√						

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					
Butters, Sarah S.		√	X	X			
Buzby-Walt, Anne		√	X				
Carlisle, David R.		√	X	X			
Caskey, John R.		√	X	X			
Christiansen, Patrick T. Past Chair	√		X				
Conetta, Tami F.		√		X			
Conner, W. Theodore	√		X	X			
Cope, Jr., Gerald B.	√		X	X			
Cornett, Jane L.	√		X	X			
Davies, Christopher	√		X	X			
DeCubellis, Daniel L.	√		X	X			
Detzel, Lauren Y.		√	X	X			
Diamond, Benjamin F.		√	X				
Diamond, Sandra F. Past Chair		√	X	X			
Dollinger, Jeffrey	√		X				
Dudley, Frederick R.	√		X				
Duvall, III, Homer	√		X	X			
Eckhard, Rick	√		X				
Ellison, Jason M.	√		X	X			
Emerich, Guy S.		√	X	X			
Ezell, Brenda B.	√		X	X			
Falk, Jr., Jack A.		√	X	X			
Fallon, Cynthia		√	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					
Farach, Manuel	√						
Felcoski, Brian J., Past Chair		√	X	X			
Fernandez, Kristopher E.	√		X	X			
Fields, Alan B.	√		X				
Fitzgerald, Jr., John E.		√		X			
Fleece, III, Joseph W.		√	X	X			
Flood, Gerard J.		√	X	X			
Foreman, Michael L.		√	X	X			
Frazier, S. Katherine	√		X	X			
Gans, Richard R.		√	X	X			
Gay, III, Robert Norwood	√		X	X			
George, James		√	X	X			
Godelia, Vinette D.	√		X				
Goethe, Jeffrey S.		√	X	X			
Goldman, Robert W. Past Chair		√	X				
Gonzalez, Aniella	√		X	X			
Graham, Robert M.	√		X	X			
Granet, Lloyd	√		X	X			
Griffin, Linda S.		√	X	X			
Grimsley, John G. Past Chair		√					
Grossman, Honorable Melvin B.		√	X				
Guttmann, III, Louis B. Past Chair	√		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					
Hamrick, Alexander H.		√	X	X			
Hancock, Patricia J.	√			X			
Hart, W.C.	√		X				
Hayes, Honorable Hugh D.		√	X	X			
Hayes, Michael Travis		√	X	X			
Hearn, Steven L. Past Chair		√	X				
Hearne, Frank L.	√						
Henderson, Jr., Reese J.	√			X			
Henderson, III, Thomas N.	√		X	X			
Hennessey, III, William T.		√	X	X			
Heron, Lisa Colon	√		X	X			
Heuston, Stephen P.		√	X	X			
Hutson, Denise L.	√		X	X			
Isom, Honorable Claudia R.		√					
Isphording, Roger O. Past Chair		√	X	X			
Johnson, Amber Jade F.		√	X	X			
Jones, Darby		√	X				
Jones, Frederick W.	√		X	X			
Jones, Jennifer W.		√	X	X			
Jones, John Arthur Past Chair		√	X				
Jones, Patricia P.H.	√		X	X			
Judd, Robert B.		√	X	X			
Kalmanson, Stacy O.	√		X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Asheville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Karibjanian, George		√	X				
Karr, Mary		√	X	X			
Karr, Thomas M.		√	X	X			
Kayser, Joan B. Past Chair		√		X			
Kelley, Rohan Past Chair		√	X	X			
Kelley, Sean W.		√	X	X			
Kelley, Shane		√	X	X			
Kibert, Nicole C.	√		X				
Kightlinger, Wilhelmina F.	√		X	X			
King, Robin J.		√	X	X			
Kinsolving, Ruth Barnes Past Chair	√						
Koren, Edward F. Past Chair		√	X				
Korvick, Honorable Maria M.		√	X	X			
Kotler, Alan Stephen		√	X	X			
Kromash, Keith S.		√	X	X			
Kurian, Sanjay	√			X			
Kypreos, Theodore S.		√	X	X			
LaFemina, Rose		√					
Lane, Jr., William R.		√	X	X			
Lange, George		√	X	X			
Lannon, Patrick J.		√	X	X			
Larson, Roger A.	√		X	X			
Laughlin, Honorable Lauren C.		√					

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					
Law, Lester		√	X				
Leebrick, Brian D.	√		X				
Lile, Laird A. Past Chair		√		X			
Little, III, John W.	√		X				
Lucchi, Elisa F.		√					
Lynch, Kristen M.		√	X	X			
Madorsky, Marsha G.		√	X	X			
Marger, Bruce Past Chair		√		X			
Marmor, Seth A.		√		X			
Marshall, III, Stewart A.		√		X			
Mastin, Deborah Bovarnick	√		X	X			
McCall, Alan K.	√			X			
McElroy, IV, Robert Lee		√	X	X			
Menor, Arthur J.	√		X	X			
Mezer, Steven H.	√		X	X			
Middlebrook, Mark T.		√	X	X			
Miller, Lawrence J.		√	X	X			
Moran, John C.		√	X	X			
Moule, Jr., Rex E.		√	X	X			
Muir, Honorable Celeste H.		√	X	X			
Murphy, Melissa J. Past Chair	√		X	X			
Nash, Charles I.		√	X	X			
Neukamm, John B. 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					
Nguyen, Hung V.		√	X	X			
Norris, John E.	√						
Parady, William A.		√	X	X			
Pasem, Navin	√						
Payne, L. Howard		√	X				
Pence, Scott P.	√		X	X			
Pepper-Dickinson, Tasha K.		√	X				
Peterkin, Rachel	√						
Platt, William R.		√	X	X			
Pleus, Jr., Honorable Robert J.							
Pollack, Anne Q.	√		X	X			
Polson, Marilyn M.		√	X				
Pratt, David		√					
Price, Pamela O.		√	X	X			
Prince-Troutman, Stacey A.		√		X			
Pyle, Michael A.		√	X	X			
Reddin, Michelle A.	√						
Renzio, Bryan	√			X			
Reynolds, Stephen H.	√		X				
Rieman, Alexandra V.		√	X	X			
Robbins, Jr., R.J.	√		X	X			
Roberts, III, Hardy L.	√		X				
Robinson, Charles F.		√	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					
Rojas, Silvia B.	√		X	X			
Roman, Paul E.		√		X			
Russell, Deborah L.		√	X	X			
Russick, James C.	√		X	X			
Rydberg, Marsha G.	√		X	X			
Sachs, Colleen C.	√						
Sasso, Andrew		√	X	X			
Sasso, Michael C.	√						
Sauer, Jeffrey T.	√		X				
Schafer, Jr., Honorable Walter L.		√					
Schnitker, Clay A.	√		X				
Schofield, Percy A.	√		X				
Scholnik, Barry A.	√						
Schwartz, Honorable Lawrence A.		√					
Schwartz, Robert M.	√		X	X			
Scuderi, Jon		√	X	X			
Sheets, Sandra G.		√	X				
Shoter, Neil B.	√		X	X			
Sibblies, Sharaine A.		√		X			
Silberman, Honorable Morris							
Silberstein, David M.		√	X	X			
Sklar, William P.	√						
Smart, Christopher 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					
Smith, G. Thomas Past Chair	√		X				
Smith, Wilson Past Chair		√					
Sobien, Wayne J.	√		X	X			
Sparks, Brian C.		√	X	X			
Spurgeon, Susan K.	√		X	X			
St. Arnold, Honorable Jack R.		√					
Stafford, Michael P.		√	X	X			
Staker, Karla J.	√		X				
Stern, Robert G.	√		X	X			
Stone, Adele I.	√		X	X			
Stone, Bruce M. Past Chair		√					
Suarez, Honorable Richard J.							
Sundberg, Laura K.		√	X				
Swaine, Jack Michael Past Chair	√		X				
Taft, Eleanor W.	√		X	X			
Taylor, Richard W.	√		X	X			
Tescher, Donald R.		√	X	X			
Thomas, Honorable Patricia V.		√	X				
Thornton, Kenneth E.	√		X	X			
Tobin, Jennifer S.	√		X	X			
Tritt, Jr., Arnold D.	√		X				
Udick, Arlene C.	√		X	X			
Virgil, Eric		√					

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Asheville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Waller, Roland D. Past Chair	√		X	X			
Weintraub, Lee A.	√		X	X			
Wells, Jerry B.		√	X	X			
White, Jr., Richard M.		√	X	X			
Whynot, Sancha B.		√	X	X			
Wilder, Charles D.		√	X	X			
Williamson, Julie Ann S. Past Chair	√			X			
Wohlust, Gary Charles		√	X				
Wolasky, Marjorie E.		√	X	X			
Wolf, Jerome L.		√	X				
Wright, William Cary	√		X				
Wright, Thomas D.	√			X			
Young, Gwynne A.			X				
Zikakis, Salome J.	√		X	X			
Zschau, Julius J. Past Chair	√						

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

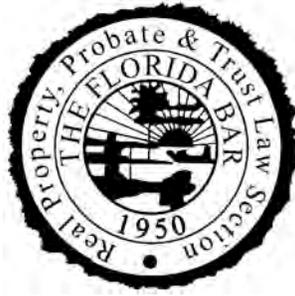
RPPTL 2012 - 2013
Executive Council Meeting Schedule
W. Fletcher Belcher's YEAR

Date	Location
July 25 – July 28, 2012	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$199.00 Cut-off Date: June 25, 2012
September 13 – September 15, 2012	Executive Council Meeting Ritz Carlton Key Biscayne Key Biscayne, Florida Reservation Phone # 1-800-241-3333 http://www.ritzcarlton.com/keybiscayne Room Rate: \$169.00 Cut-off Date: August 22, 2012
November 15 – November 18, 2012	Executive Council Meeting/Out of State The Inn on Biltmore Estates Asheville, North Carolina Reservation Phone #1-866-779-6277 www.biltmore.com/stay/rates Room Rate: \$219.00 Cut-off Date: October 15, 2012
February 7 – February 10, 2013	Executive Council Meeting Hotel Duval Tallahassee, Florida Reservation Phone #1-888-236-2427 http://www.hotelduval.com Room Rate: \$149.00 Cut-off Date: January 16, 2013
May 23 – May 26, 2013	Executive Council Meeting / RPPTL Convention The Vinoy St. Petersburg, Florida http://www.marriott.com/hotels/travel/tpasr-renaissance-vinoy-resort-and-golf-club Reservation Phone # 1-888-303-4430 Room Rate \$149.00 Cut-off Date: May 5, 2013

RPPTL 2013 - 2014
Executive Council Meeting Schedule

Peggy Rolando's YEAR

Date	Location
July 24 – 28, 2013	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 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: \$487,395

Expenses: \$ 268,365

Net:	\$219,030
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Beginning Fund Balance (7-1-12)

\$ 843,909

YTD Fund Balance (9-30-12)

\$ 1,062,939

RPPTL CLE

RPPTL YTD Actual CLE Revenue
\$61,784

RPPTL Budgeted CLE Revenue
\$244,500

¹ This report is based on the **tentative unaudited** detail statement of operations dated 9/30/2012.



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

General Budget

Revenue:	\$ 487,395
Expenses:	\$ 268,365
Net:	\$ 219,030

Legislative Update

Revenue:	\$ 39,460
Expenses:	\$ 92,496
Net:	(\$53,036)

Convention

Revenue:	\$ 190
Expenses:	\$ 2
Net:	\$ 188

Miscellaneous Section Service Courses

Revenue:	\$ 0
Expenses:	\$ 0
Net:	\$ 0

Roll-up Summary (Total)

Revenue:	\$ 527,045
Expenses:	\$ 360,863
Net Operations:	\$ 166,182

Reserve (Fund Balance):	\$ 843,909
GRAND TOTAL	\$1,010,091

¹ This report is based on the tentative unaudited detail statement of operations dated 9/30/2012.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee
Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602

Position Type The Florida Bar, RPPTL Section and Committee

CONTACTS

Jerry E. Aron, P.A., 2505 Metrocentre Blvd., Suite 301, West Palm Beach, Fl. 33407; 561-478-0511
Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602 (813) 204-6492
Peter Dunbar, Pennington, Moore, et al, P.O. Box 10095 Tallahassee, Florida, 32302-2095 (850) 222-3533
Martha J. Edenfield, Pennington, Moore, et al, P.O. Box 10095 Tallahassee, Florida, 32302-2095 (850) 222-3533

Board & Legislation Committee Appearance Contacts Above
(List name, address and phone number)

Appearances before Legislators Contacts Above
(List name and phone # of those appearing before House/Senate Committees)

Meetings with Legislators/staff Contacts Above
(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 _____

	(Bill or PCB #)		(Bill or PCB Sponsor)
Indicate Position	_____ Support	Oppose	Technical Assistance Other

Proposed Wording of Position for Official Publication: Support correction of procedural issues relating to trustee foreclosures of timeshares, including amendments to sections 721.82, 721.855, and 721.856, of the Florida Statutes

Reasons For Proposed Advocacy:
The timeshare trustee foreclosure laws adopted in 2010 have been found to have procedures that are impractical and contrary to the legislature's intent.

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: The RPPTL opposed nonjudicial foreclosure of timeshares, however, the RPPTL worked with ARDA to improve their bill in 2010.

Others

(May attach list if more than one)

(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

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

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

3. (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

WHITE PAPER
Trustee Foreclosure

I. SUMMARY

In 2010 the Florida legislature passed CS/CS/HB No. 1411 which amends and adds certain sections to Chapter 721 of the Florida Statutes regarding timeshares. These amendments effectively adopted a nonjudicial foreclosure process for timeshare mortgage and assessment foreclosures. Rather than title the process nonjudicial foreclosure it is titled trustee foreclosure as the trustee handles the foreclosure process rather than the judiciary. This bill was proposed by and pushed by American Resort Development Association (“ARDA”), the timeshare industry trade group. The Real Property, Probate and Trust Law Section of the Florida Bar (“RPPTL”) has a long standing position which opposes nonjudicial foreclosures, however, at the request of the RPPTL’s lobbyist the RPPTL worked with ARDA to reach a number of compromises that would satisfy due process and other concerns of the RPPTL. Many, but not all, of the RPPTL’s proposals were adopted in the final bill.

After 2 years of trustee foreclosures it is apparent, like with any new procedure, that there are glitches. ARDA and trustees that are utilizing the current statute have raised various technical concerns and those concerns are addressed in a glitch bill proposed by ARDA.

ARDA has requested RPPTL’s review and approval of their proposed modifications to the existing statute. Although the RPPTL continues to oppose nonjudicial foreclosure, the RPPTL believes it is prudent to work with ARDA and resolve glitches provided they are consistent with the original bill.

II. CURRENT SITUATION

The proposed legislation attempts to resolve various glitches relating to the current trustee foreclosure process. Without resolution of these glitches the process is substantially undermined and ineffective. Further, the problems have caused unnecessary delays and expenses.

III. SECTION-BY-SECTION ANALYSIS

1. *Provide That The Trustee May Use Known Or Determined Address*

Statutory Provision: Section 721.82(9), Florida Statutes (definition of notice address).

Proposal: Provide that if the trustee knows or locates a correct address that is not the notice address, trustee can use the known or determined address even if obligor has not updated the official notice address.

Explanation: Eliminates unnecessary expenses and facilitates delivery to obligors at correct address.

2. ***Clarify That Trustee Foreclosure Procedure May Be Used For Deceased Obligor***

Statutory Provision: Section 721.82(10), Florida Statutes (definition of obligor).

Proposal: Include a provision that recognizes that a personal representative can act on behalf of deceased obligor for purposes of the trustee foreclosure process.

Explanation: Eliminates any uncertainty that the trustee foreclosure process may not be used if obligor is deceased.

3. ***Permit International Service By Country's Equivalent to Certified, Registered Mail***

Statutory Provision: Section 721.82(11), Florida Statutes (definition of permitted delivery service).

Proposal: Amend definition of permitted delivery service to permit the trustee to use another country's equivalent of certified, registered mail.

Explanation: By using the type of delivery service recognized by a country for obligors in residing in such country, it reduces expenses and increases the likelihood that delivery will occur.

4. ***Allow Title Search To Be Provided Any Time Prior To Notice Of Sale***

Statutory Provision: Section 721.855(2)(c)(1) and Section 721.856(2)(b)(1), Florida Statutes.

Proposal: Allow the title search to be performed at any point in the process prior to the sending and publication of the notice of sale instead of requiring the title search to be obtained prior to commencement of

the trustee foreclosure procedure; provided, however, that the action cannot proceed if additional or incorrect obligors or junior interest-holders are determined from the title search until such obligors and junior interest-holders are served.

Explanation: By allowing the title search to be obtained at a later date, the trustee can remove or reduce the chance that the sale will take place without knowledge of a lis pendens filed after the action has commenced and avoids the expense of additional title searches.

5. ***Provide For Recording Of Lis Pendens***

Statutory Provision: Section 721.855(4)(c) and Section 721.856(4)(c)721.855(5)(c), Florida Statutes

Proposal: Provide for the recording of a lis pendens for the purpose of notifying potential claimants and interested parties of the action and to establish a priority right against future claims.

Explanation: Under the current version of the law, it is unclear that the initiated trustee foreclosure action has priority over future claimants, which is compounded by the provision that the trustee may not proceed with a sale if a lis pendens has been filed.

6. ***Correct Reference to “Permitted Delivery Service” As An Alternative To Permitted Delivery Service***

Statutory Provision: Section 721.855(5)(a) and Section 721.856(5)(a) 721.82(9), Florida Statutes.

Proposal: Amend the cited provisions to remove the reference of “permitted delivery service” as an alternative to permitted delivery service and simply provide that the notice be sent by “certified mail, registered mail or permitted delivery and by first class mail.”

Explanation: The inclusion of “permitted delivery service” as an alternative to permitted deliver service was unintended and circular.

7. ***Clarify Standard For Trustee Ascertaining of Signature***

Statutory Provision: Section 721.855(5), Section 721.856(5), Section 721.855(14) and Section 721.856(13), Florida Statutes.

Proposal: Include a good faith standard in connection with the requirement that the trustee ascertain that it is the obligor who signed the return receipt either because all or a portion of the name is on the receipt or the trustee can determine otherwise that it is the obligor. Provide that if the trustee in good faith makes such a determination, than it will not be a violation of the section.

Explanation: The current requirement to ascertain the obligor's signature together with the potential third degree felony liability for intentional trustee violations means that trustees are resorting to publication in most actions even though obligors may have received delivery of notices.

8. ***Provide That Service May Be Perfected By Delivery To Any Of The Obligors At Same Address***

Statutory Provision: Section 721.855(5) and Section 721.856(5), Florida Statutes

Proposal: Amend the statute to provide that service may be perfected as to all obligors at the same address if at least one obligor is served at that address instead of the current requirement that each obligor be served even if at the same address.

Explanation: The current version adds unnecessary expense and time delays and is not effective since often obligors at the same address will not accept certified, registered mail after the first obligor is served at that address.

9. ***Clarify That Trustee Affidavit Does Not Need To State Diligent Search Conducted If Not Required***

Statutory Provision: Section 721.855(5)(f) and Section 721.856(5)(f), Florida Statutes

Proposal: Amend the provision requiring the trustee to attest in the trustee affidavit of compliance that a diligent search for a new address was conducted if service is refused, returned, returned as undeliverable or the identity of the signatory cannot be ascertained.

Explanation: If service is perfected in a manner that does not require a diligent search, then the trustee should not be required to attest that a diligent search was conducted.

10. ***Clarify Information Required To Be Included In Published Notice Of Default***

Statutory Provision: Section 721.855(5)(c) and Section 721.856(5)(c), Florida Statutes

Proposal: Reduce the list of information required to be included in the published Notice of Default.

Explanation: The type and amount of information required is more than is necessary to provide adequate notice of the default. A more streamlined version will still put the obligor on notice of the default without adding unnecessary expense or confusion.

11. ***Correct Typographical Error Of Repeating Phrase***

Statutory Provision: Section 721.855(5)(e) and Section 721.856(5)(e), Florida Statutes.

Proposal: The phrase “name and address on the envelopes containing the service” is repeated in the cited provision.

Explanation: Clean-up of unintentional typographical error.

12. ***Enable Trustee To Use Third Party To Provide Auction Services***

Statutory Provision: Section 721.855(7)(b) and §721.856(7)(b), Florida Statutes.

Proposal: Permit the trustee to use a third party to conduct the trustee foreclosure auction; provided, however, that the trustee remains liable for the conduct of the sale.

Explanation: It is not economically feasible for a trustee to conduct sales in multiple counties throughout the state.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposed bill is a glitch bill resolving various technical problems. As a result the bill does not have any fiscal impact on state and local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Resolving the glitches in the existing trustee foreclosure process will assist lenders, timeshare associations and managers in foreclosing mortgages on timeshare interest and timeshare estates. The changes will have a direct positive financial effect by resolving various confusing provisions which required additional efforts by the trustee.

VI. CONSTITUTIONAL ISSUES

Although the original timeshare bill contained constitutional issues, most of which – through the RPPTL’s efforts – were resolved, it is believed that this proposed bill contains no additional constitutional issues. Although there are some revisions in the proposed bill dealing with service of process it is not believed that these proposed changes adversely impact any constitutional issues that may have already existed in the existing legislation.

VII. OTHER INTERESTED PARTIES.

This bill is being proposed by ARDA. They are seeking the RPPTL’s support without the need to spend RPPTL’s funds.

**ARDA FLORIDA PROPOSED 2013 AMENDMENTS TO
CHAPTER 721, FLORIDA STATUTES, RELATED TO TRUSTEE FORECLOSURES**

721.82 Definitions.—As used in this part, the term:

(9) “Notice address” means:

(a) As to an assessment lien, the address of the owner of a timeshare interest as reflected by the books and records of the timeshare plan under ss. 721.13(4) and 721.15(7).

(b) As to a mortgage lien:

1. The address of the mortgagor as set forth in the mortgage, the promissory note or a separate document executed by the mortgagor at the time the mortgage lien was created, or the most current address of the mortgagor according to the records of the mortgagee; and

2. If the owner of the timeshare interest is different from the mortgagor, the address of the owner of the timeshare interest as reflected by the books and records of the mortgagee.

(c) As to a junior interestholder, the address as set forth in the recorded instrument creating the junior lien or interest, or in any recorded amendment thereto changing the address, or in any written notification by the junior interestholder to the foreclosing lienholder changing the address.

(d) As to an owner of a timeshare interest, mortgagor or junior interestholder whose current address is not the address as determined by either paragraphs (9)(a), (9)(b) or (9)(c), such address as is known to be the current address.

(10) “Obligor” means the mortgagor, the person subject to an assessment lien, or the record owner of the timeshare interest, or the personal representative, court appointed counsel or guardian ad litem on behalf of such mortgagor, person subject to an assessment lien or record owner of the timeshare interest.

(11) “Permitted delivery service” means any nationally recognized common carrier delivery service, ~~or international airmail service that allows for return receipt service,~~ or such service as recognized by an international jurisdiction to be the equivalent of certified, registered mail for such jurisdiction.

* * *

721.84 Appointment of a registered agent; duties.—

(6) Unless otherwise provided in this section, a registered agent in receipt of any notice or other document addressed from the lienholder to the obligor in care of the registered agent at the

registered office must mail, by ~~first class~~first-class mail if the obligor's address is within the United States, and by international air mail if the obligor's address is outside the United States, with postage fees prepaid, such notice or documents to the obligor at the obligor's last designated address within 5 days after receipt.

* * *

721.855 Procedure for the trustee foreclosure of assessment liens.—The provisions of this section establish a trustee foreclosure procedure for assessment liens.

(2) INITIATING THE USE OF A TRUSTEE FORECLOSURE PROCEDURE.—

(c)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor; the notice address of the obligor; the timeshare interest; the date that the notice of the intent to file a lien was given, if applicable; the official records book and page number where the claim of lien is recorded; and the name and notice address of any junior interestholder. ~~The affidavit shall be accompanied by a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days before the date of the affidavit.~~

* * *

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A trustee may sell an encumbered timeshare interest foreclosed under this section if:

- (a) The trustee has received the affidavit from the lienholder under paragraph (2)(c);
- (b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);
- (c) There is no lis pendens recorded and pending against the same timeshare interest prior to the recording of the notice of lis pendens pursuant to paragraph (5)(h), and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;
- (d) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); ~~and~~
- (e) The notice of sale required under subsection (6) has been recorded in the official records of the county or counties in which the timeshare interest is located; and
- (f) The lienholder has delivered to the trustee a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days of the date that it is delivered to the trustee. If it is determined from

the title search that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this s. 721.855 have been served on such correct or additional obligors or junior interestholders and all applicable time periods have expired.

* * *

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: “The undersigned obligor exercises the obligor’s right to object to the use of the trustee foreclosure procedure contained in section 721.855, Florida Statutes.”

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.855, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee’s receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee’s sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered

mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected:

I. If ~~if~~ the notice is returned as undeliverable within 30 calendar days after the trustee sent the notice,

II. If ~~if~~ the trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt either because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt, or

III. If ~~if~~ the receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder, as applicable, is returned refused, or the trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt either because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt ~~or the receipt from the obligor or junior interestholder, as applicable, is returned refused.~~ If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, and the manner in which the notices were mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received; ~~and the name and address on the envelopes containing the notice.~~

(f) If notice is perfected by publication under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that after diligent search and inquiry was made for the current address for the person, unless such diligent search was not required because service was refused, returned as undeliverable or the trustee has ascertained that that the obligor or junior interestholder, as applicable, is the person who signed the receipt. The affidavit shall also include a statement that notice was perfected by publication, and shall set forth the information required by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation, whichever is applicable. No other action of the trustee is necessary to perfect notice.

(g) Notice under subparagraph (a) or subparagraph (b) of this subsection shall be deemed perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 only if a notice of lis pendens is recorded in the official records of the county in which the deed conveying the timeshare interest to the obligor was recorded and

such notice has not expired pursuant to subsection (2) of s. 48.23 or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.
2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.
3. The name and contact information of the trustee.
4. The legal description of the timeshare interest.
5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this s. 721.855.

* * *

(6) NOTICE OF SALE.—

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. The~~If~~ a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h) which has not expired or otherwise been discharged, the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.

* * *

(7) MANNER OF SALE.—

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee; provided, however, that the trustee shall remain liable for the conduct of the sale and the actions of such third party with respect to the conduct of the sale.

* * *

(14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It shall not be a violation of this section for a trustee to incorrectly ascertain that it is the obligor who signed the return receipt as required in s. 721.855(5); provided, however, that the trustee makes a good faith effort to properly ascertain that it is the obligor who signed the return receipt in accordance with s. 721.855(5).

* * *

721.856 Procedure for the trustee foreclosure of mortgage liens.—The provisions of this section establish a trustee foreclosure procedure for mortgage liens.

(2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

(b)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor, the notice address of the obligor, the timeshare interest, the official records book and page number where the mortgage is recorded, and the name and notice address of any junior interestholder. ~~The affidavit shall be accompanied by a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days before the date of the affidavit.~~

* * *

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A trustee may sell an encumbered timeshare interest foreclosed under this section if:

- (a) The trustee has received the affidavit from the lienholder under paragraph (2)(b);
- (b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);
- (c) There is no lis pendens recorded and pending against the same timeshare interest prior to the initiation of the trustee foreclosure action and provided a notice of lis pendens has been recorded pursuant to paragraph (5)(h), and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;
- (d) The trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien;
- (e) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); ~~and~~
- (f) The notice of sale required under subsection (6) has been recorded in the official records of the county in which the mortgage was recorded; and
- (g) The lienholder has delivered to the trustee a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days of the date that it is delivered to the trustee. If it is determined from the title search that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed

until the notices required pursuant to this s. 721.855 have been served on such correct or additional obligors or junior interestholders and all applicable time periods have expired.

* * *

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: “The undersigned obligor exercises the obligor’s right to object to the use of the trustee foreclosure procedure contained in section 721.856, Florida Statutes.”

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.856, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee’s receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee’s sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected:

I. If ~~if~~ the notice is returned as undeliverable within 30 calendar days after the trustee sent the notice,

II. If ~~if~~ the trustee cannot, in good faith, ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt either because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt, or

III. If ~~if~~ the receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, to the new address. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder, as applicable, is returned refused, or the trustee cannot, in good faith, ascertain from the receipt that the obligor or junior interestholder, as applicable, is the person who signed the receipt either because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt ~~or the receipt from the obligor or junior interestholder, as applicable, is returned refused~~. If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall

identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notice was mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received; ~~and the name and address on the envelopes containing the notice.~~

(f) If notice is perfected under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that after diligent search and inquiry was made for the current address for the person, unless such diligent search was not required because service was refused, returned as undeliverable or the trustee has ascertained that the obligor or junior interestholder, as applicable, is the person who signed the receipt. The affidavit shall also include ~~a statement that notice was perfected by publication, and shall set forth~~ the information required by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation, whichever is applicable. No other action of the trustee is necessary to perfect notice.

(g) Notice under subparagraph (a) or subparagraph (b) of this subsection shall be deemed perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 only if a notice of lis pendens is recorded in the official records of the county or counties in which the mortgage is recorded and such notice has not expired pursuant to subsection (2) of s. 48.23 or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.

2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.
3. The name and contact information of the trustee.
4. The legal description of the timeshare interest.
5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this s. 721.856.

* * *

(6) NOTICE OF SALE.—

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. ~~The~~If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h), which has not expired or otherwise been discharged, the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.

(d)1. The trustee shall publish the notice of sale in a newspaper of general circulation in the county or counties in which the timeshare interest is located at least once a week for 2 consecutive weeks before the date of the sale. The last publication shall occur at least 5 calendar days before the sale.

2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

* * *

(7) MANNER OF SALE.—

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee; provided, however, that the trustee shall remain liable for the conduct of the sale and the actions of such third party with respect to the conduct of the sale.

* * *

(13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It shall not be a violation of this section for a trustee to incorrectly ascertain that it is the obligor who signed the return receipt as required in s. 721.855(6);

provided, however, that the trustee makes a good faith effort to properly ascertain that it is the obligor who signed the return receipt in accordance with s. 721.855(6).

REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION



THE
FLORIDA
BAR

CHAIR

Wm. Fletcher Belcher
540 Fourth Street North
St. Petersburg, FL 33701-2302
(727) 821-1249
wfbelcher@gmail.com

CHAIR-ELECT

Margaret Ann Rolando
Shutts & Bowen, LLP
Miami, FL
(305) 379-9144
mrolando@shutts.com

**DIRECTOR, PROBATE AND
TRUST LAW DIVISION**

Michael A. Dribin
Harper Meyer Perez Hagen
O'Connor Albert & Dribin LLP
Miami, FL
(305)-577-5415
mdribin@harpermeyer.com

**DIRECTOR, REAL PROPERTY
LAW DIVISION**

Michael J. Gelfand
Gelfand & Arpe
West Palm Beach, FL
(561) 655-6224
mjgelfand@gelfandarpe.com

SECRETARY

Deborah Packer Goodall
Holland & Knight, LLP
Fort Lauderdale, FL
(954) 525-1000
debbie.goodall@hklaw.com

TREASURER

Andrew M. O'Malley
Carey O'Malley Whitaker
& Mueller, P.A.
Tampa, FL
(813) 250-0577
aomalley@cowmpa.com

LEGISLATION CO-CHAIRS

Barry F. Spivey
Spivey & Fallon, P.A.
Sarasota, FL
(941) 8401991
barry.spivey@spiveyfallonlaw.com

Robert S. Swaine
Swaine & Harris, P.A.
Sebring, FL
(863) 385-1549
bob@heartlandlaw.com

DIRECTOR, AT-LARGE MEMBERS

Debra L. Boje
Gunster, Yoakley & Stewart, P.A.
Tampa, FL
(813) 222-6614
dboje@gunster.com

IMMEDIATE PAST CHAIR

George J. Meyer
Carlton Fields, P.A.
Tampa, FL
(813) 223-7000
gmeyer@carltonfields.com

PROGRAM ADMINISTRATOR

Yvonne D. Sherron
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5626
Fax: (850) 561-5825
ysherron@flabar.org

www.RPPTL.org

September 19, 2012

VIA E-MAIL ONLY @ jpicker@flabar.org

Unlicensed Practice of Law Committee
of The Florida Bar
ATTN: Jeffrey T. Picker
651 E. Jefferson Street
Tallahassee, Florida 32399-2300

Re: Formal Advisory Opinion Request Regarding
Licensed Community Association Managers

Dear Committee Members:

It has come to our Section's attention that there have been recent communications from licensed community association managers and members of community association boards of directors to the Committee regarding the pending request for an advisory opinion which you have received from the RPPTL Section of the Florida Bar.

Recognizing that the Committee is not taking testimony at Thursday's meeting, that the Committee extended its hearing time at the June meeting to accommodate all speakers, and that there were written submissions prior to the June meeting, the Section respectfully submits the following brief comments and observations for consideration by the Committee:

1. None of the manager or owner communications which we have seen recognize the fiduciary duty which the law places on directors of community associations.
2. Most, if not all, of the manager and director communications express concern about increased costs. To the extent that there is an increase, it must be considered as a necessary expense of protecting the homes and property rights of the members in the exercise of the directors' fiduciary responsibilities. No evidence has been presented to support a conclusion that the cost will be so large as to penalize a community, especially considering the cost of correcting problems resulting from the unauthorized practice of law. The

converse may even be true because a reduction in unauthorized practice will reduce costly mistakes. If there will be any financial impact from this type of decision, it should have been seen in 1996, following the first ruling of the Florida Supreme Court on this issue. No one has provided any evidence of a negative financial impact from that decision.

3. In response to the argument raised by some that the Section's request is designed to increase our attorney revenues, one might just as easily say that Licensed Community Association Managers' comments are motivated by their own financial interests. In our experience, a significant portion of the litigation involving community associations is caused by incomplete or inaccurate interpretations of the governing documents or statutes. Litigation costs are enormous and rules that are designed to ensure that community associations get the proper legal advice will go a long way toward decreasing their expenses.
4. Some communications indicate that attorneys are consulted appropriately while others state that all tasks outlined in the March letter are performed by licensed community association managers, which demonstrates the confusion that currently exists among licensed community association managers and directors.
5. Simply knowing what is stated in chapters 718, 719 and 720 of the Florida Statutes and the community association documents, without also having training and understanding of real property law, contract law, corporate law, administrative law, construction law, foreclosure law, bankruptcy law, and other fields which are utilized by the community association attorney, does not qualify someone to give legal advice to community associations.
6. It has been stated that the DBPR has not received any complaints against licensed community association managers for UPL. This is due to the fact that the DBPR does not regulate UPL. The Florida Bar has reported that it did receive numerous complaints of UPL by licensed community association managers in 2011.
7. None of the communications which we have seen address the fact that contracts with Licensed Community Association managers routinely contain indemnification and "hold harmless" provisions, which leave associations and their members without recourse and without a remedy when errors are made by managers. The public is better protected when the listed tasks are performed by attorneys who have been educated, trained and authorized to practice law and who are held accountable for their work. To keep this

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submission short, the manager indemnification provisions have been transmitted by a separate email.

We sincerely thank the Unlicensed Practice of Law Committee of The Florida Bar for its consideration of the Section's request and these supplemental comments.

Very truly yours,

William F. Belcher

Wm. Fletcher Belcher, Chair
Real Property, Probate & Trust Law Section
of The Florida Bar

Formal Advisory Opinions

Rule 10-9.1 of the Rules Regulating The Florida Bar allows the Standing Committee on Unlicensed Practice of Law to issue proposed formal advisory opinions concerning activities which may constitute the unlicensed practice of law. Requests for advisory opinions must be in writing addressed to The UPL Department, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300. The request for an advisory opinion must state in detail all operative facts upon which the request for opinion is based and contain the name and address of the petitioner. Rule 10-9.1(a)(2) defines petitioner as an individual or organization seeking guidance as to the applicability, in a hypothetical situation, of the prohibitions against the unlicensed practice of law.

No opinion may be entered with respect to any case or controversy pending in any court in Florida and no informal opinions shall be issued. Rule 10-9.1(c). The proposed advisory opinion is only an interpretation of the law and does not constitute final court action. If the Standing Committee agrees to accept the request for a formal advisory opinion, notice will be published and a public hearing will be held. At the hearing, the committee will take testimony from all interested individuals. Written testimony may also be submitted prior to the hearing. The holding of a hearing does not guarantee the issuance of a proposed formal advisory opinion.

After the hearing, the Standing Committee will vote on whether to issue a proposed formal advisory opinion and on the substance of the opinion. If the Standing Committee finds that the conduct constitutes the unlicensed practice of law, the proposed formal advisory opinion is filed with the Supreme Court of Florida. If the Standing Committee finds that the conduct does not constitute the unlicensed practice of law, the Standing Committee may publish the opinion in the Florida

Bar News or the committee may file the proposed opinion with the Supreme Court of Florida.

The petitioner and interested parties may file comments in support of or in opposition to the proposed formal advisory opinion. The Standing Committee is given an opportunity to reply. Any party may request oral argument before the Court.

Formal Advisory Opinion Request Regarding Community Association Managers

The Standing Committee on Unlicensed Practice of Law is currently considering a request for formal advisory opinion on whether certain activities when performed by community association managers constitute the unlicensed practice of law. 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 include the drafting of a claim of lien and satisfaction of claim of lien; preparing a notice of commencement; determining the timing, method, and form of giving notices of meetings; determining the votes necessary for certain actions by community associations; addressing questions asking for the application of a statute or rule; and advising community associations whether a course of action is authorized by statute or

rule.

The petitioner also asked if it was the unlicensed practice of law for a community association manager to engage in any of the following activities: 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.

A public hearing was held on the request on June 22, 2012. The committee debated the issue at their September meeting. The committee directed staff to draft a proposed opinion for its review. The proposed opinion will not change any of the rulings made by the Court in the 1996 opinion. Clarification by example will be provided on 2 activities (items 6 and 7 from the request) and 2 activities not raised in 1996 (items 10 and 13 from the request) will be addressed using the 1996 opinion as guidance. Whether an opinion will be filed with the Court is an unanswered question at this point.

Review written testimony: [Part 1](#) , [Part 2](#) , [Part 3](#) , [Part 4](#) [Part 5](#) , [Part 6](#) . **Review transcript of public hearing.** The committee is no longer accepting written testimony.

2011 Request

In 2011, the Standing Committee considered a request for formal advisory opinion on whether a nonlawyer who assists a property owner in a short sale transaction is engaged in the unlicensed practice of law and whether the answer would be different if the nonlawyer was a real estate licensee regulated under chapter 475, Fla. Stat., a title insurance agency/agent regulated under chapter 626, Fla. Stat., or a mortgage broker or other individual regulated under chapter 494, Fla. Stat. The transcript of the hearing and the written testimony can be accessed at the following: [transcript of the public hearing](#) and the [written testimony](#).

The committee voted to decline to issue a formal advisory opinion. The committee felt that the question was too broad and the public hearing did not elicit testimony that was helpful. The matter can be reconsidered if someone submits a more specific question. In the

meantime, the committee voted to continue the existing policy and review matters on a case-by-case basis. The committee offers the following **guidance**. 

[Revised: 09-25-2012]

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September 28, 2012

Ms. Dawna Bicknell
Director – Legal Specialization & Education
651 East Jefferson Street
Tallahassee, FL 32399-2300

RE: Proposed Condominium and Planned Development Law Certification

Dear Ms. Bicknell:

Earlier this summer the Condominium and Planned Development Committee of the Real Property, Probate and Trust Law Section (RPPTL) started investigating the possibility of establishing an area of certification for attorneys practicing in this area. As you recall, members of that committee contacted you about how to make application. A suggestion was made to consider making application as a subspecialty area under the Real Estate certification standards. It also did a survey to gauge interest in this area of certification.

The Real Estate Certification Committee voted during its July 11 meeting to do a survey before making a recommendation to the Board of Legal Specialization and Education regarding whether or not this area of law should be a subspecialty of the real estate certification standards or be a stand-alone certification area. The survey was sent August 22 to all board certified real estate attorneys and to all of the members of the Condominium and Planned Development Committee of the RPPTL Section. I am attaching copies of the surveys for your information.

During the September 21, 2012 meeting of the Real Estate Certification Committee, the following decisions were made regarding a subspecialty area of law dealing with condominium and planned development law:

1. If a condominium and planned development law certification area is approved as a subspecialty of real estate certification, the “brand” of real estate certification should not be allowed to be diluted by the creation of a perception that an individual certified in that area has also met the criteria for certification in real estate.

2. The Real Estate Certification Committee should not be responsible for the review of applicants' files and determining their eligibility for condominium and planned development law certification. Likewise, it should not be responsible for the development and review of the condominium and planned development law certification exam or any other duties normally assigned to committees (for example – reviewing educational programs in question, examination petitions, etc.).

Sincerely,

Ms. Dawna Bicknell
Director – Legal Specialization and Education
September 28, 2012
Page 2 of 2

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Lloyd Granet
Chair, Real Estate Certification Committee

LG/cv

cc: Real Estate Certification Committee

Attachments: 2

REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION



THE
FLORIDA
BAR

CHAIR

Wm. Fletcher Belcher
540 Fourth Street North
St. Petersburg, FL 33701-2302
(727) 821-1249
wfbelcher@gmail.com

CHAIR-ELECT

Margaret Ann Rolando
Shutts & Bowen, LLP
Miami, FL
(305) 379-9144
mrolando@shutts.com

**DIRECTOR, PROBATE AND
TRUST LAW DIVISION**

Michael A. Dribin
Harper Meyer Perez Hagen
O'Connor Albert & Dribin LLP
Miami, FL
(305)-577-5415
mdribin@harpermeyer.com

**DIRECTOR, REAL PROPERTY
LAW DIVISION**

Michael J. Gelfand
Gelfand & Arpe
West Palm Beach, FL
(561) 655-6224
mjgelfand@gelfandarpe.com

SECRETARY

Deborah Packer Goodall
Holland & Knight, LLP
Fort Lauderdale, FL
(954) 525-1000
debbie.goodall@hklaw.com

TREASURER

Andrew M. O'Malley
Carey O'Malley Whitaker
& Mueller, P.A.
Tampa, FL
(813) 250-0577
aomalley@cowmpa.com

LEGISLATION CO-CHAIRS

Barry F. Spivey
Spivey & Fallon, P.A.
Sarasota, FL
(941) 8401991
barry.spivey@spiveyfallonlaw.com

Robert S. Swaine
Swaine & Harris, P.A.
Sebring, FL
(863) 385-1549
bob@heartlandlaw.com

DIRECTOR, AT-LARGE MEMBERS

Debra L. Boje
Gunster, Yoakley & Stewart, P.A.
Tampa, FL
(813) 222-6614
dboje@gunster.com

IMMEDIATE PAST CHAIR

George J. Meyer
Carlton Fields, P.A.
Tampa, FL
(813) 223-7000
gmeyer@carltonfields.com

PROGRAM ADMINISTRATOR

Yvonne D. Sherron
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5626
Fax: (850) 561-5825
ysherron@flabar.org

www.RPPTL.org

September 19, 2012

VIA E-MAIL ONLY to: Ethics_Opinions@flabar.org
lokeeffe@gibblaw.com
eto@flabar.org

Professional Ethics Committee
of The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300

Attn: Elizabeth Clark Tarbert
Ethics Counsel

Attn: Loretta C. O'Keeffe, Esquire
Subcommittee Chair

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:

The Real Property, Probate & Trust Law Section ("Section") appreciates the opportunity to comment upon Subcommittee Draft Proposed Advisory Opinion 12-4 (September 13, 2012) ("Draft"). The Section's Real Property Law Division considered the Draft at its meeting on September 15, 2012. There appeared to be a narrow consensus that the following provisions were workable: (1) a separate trust account for each different title insurer used by the lawyer or law firm; or (2) one separate trust account with the consent from the various title insurers to audit only the information related to transaction the title insurer had underwritten. While obtaining the client's informed consent to allow audits by multiple title insurers regarding the clients' transactions is ideal, this alternative is impractical except for those law firms with a small number of clients.

Despite the narrow consensus, many members voiced significant objections to the provision in the Draft which would prohibit multiple title

insurers from auditing a single trust account for real estate and title transactions. The Draft indicates that such an audit would violate an attorney's duty to maintain confidentiality. Some title insurers were concerned about the anti-trust implications of industry representatives agreeing to limit the scope of such audits. In addition, the title insurers and attorneys with audit experience questioned the ability to conduct meaningful audits if the auditor is prohibited from "following the money" when transferred to another trust account or if the auditor is unable to reconcile the transactions with bank statements that included transactions with other title insurers. In those circumstances, without the ability to follow the money through multiple accounts, meaningful audits would be impossible. Auditors need to be given the tools to determine the source and timing of all funds involved in their transactions in real time. Limiting access to only one of multiple escrow accounts will severely impair an auditor's ability to investigate whether an agent is engaging in fraud and greatly enhance an attorney agent's ability to conceal improper activity.

Please note that under F.S. 626.8473, the client has the right to fully preserve client confidentiality by specifically requesting that its funds be maintained in an account that is not subject to audit. The last clause of F.S. 626.8473 ("unless maintaining funds in the separate account for a *particular client* would violate applicable rules of The Florida Bar." [emphasis added]) was designed to preserve this option for a particular client.

I. Factual Background.

A predicate to any discussion concerning trust accounts for real estate transactions is the rationale for the Florida Legislature's creation of F.S. 626.8473.

A. Study Advisory Council.

The genesis for this new law is found in the 2009 Title Insurance Study Advisory Council. Defalcations by attorney agents in the last decade resulted in significant losses to title insurers. The misuse of funds led the Advisory Council to recommend legislation to "require attorneys engaged in title insurance to maintain . . . a separate escrow account for the funds to be held in escrow in which title insurance will be issued." (Final Report and Recommendations, December 31, 2012, page 8)

B. Auditing.

The Florida Legislature accepted this recommendation, granting title insurers a vehicle to audit attorney title agents' title insurance funds. Audits are a routine and customary risk assessment and management tool employed by businesses to verify the accuracy of the statements in an organization's account, to deter and expose fraud and to detect weaknesses in its internal controls. There is also a public policy justification for allowing audits to protect the client, the public and the financial stability of the title

insurance industry. This public policy is reinforced by The Florida Bar's strict enforcement of trust account disbursements, not only to protect the client but also to assure the public that an attorney will properly handle real estate transaction funds.

The Section believes that it is imperative that the Committee's final opinion balance the duty to maintain client confidences with realities of what is practical in real estate transactions. Title insurance is a necessary component of nearly all bona fide arms-length real estate transactions: conveyances, mortgages and long-term commercial leases. Simply stated, title insurance facilitates the real estate market by assuring the efficacy of title.

The Bar has recognized the traditional and significant role of attorneys in real estate transactions, including the examination of title and issuance of title insurance policies as title agents. The real estate attorney's position has eroded over the years with the growth of non-attorney title and closing agents. Consequently, to a large extent, parties to real estate transactions have lost the advice of informed counsel which can mitigate costly disputes and litigation. The attorney has a fiduciary duty to protect the interest of the client, while the non-attorney title agent does not have that obligation.

Significantly, in this market shift, title insurers have the ability to audit their non-attorney agents without confidentiality impediments. Thus, the Draft opinion's confidentiality stance could significantly undermine the role of attorneys in real estate transactions and deprive the parties of valuable counsel. The Florida Bar should not be espousing a position that lessens client protections, diminishes the role of attorneys in real estate transactions and discourages business relationships between title insurers and attorney agents.

In a separate but related area, the Supreme Court of Florida's approach to the issue of trust account checks signatories would favor auditing requirements that take into account practical concerns, not just aspirational concepts. First, the Court has rejected stringent rules prohibiting non-attorneys from signing trust account checks. The Court expressly considered the need "to accommodate the issues raised by solo practitioners and lawyers in small firms." *In re Amendments to the Rules Regulating the Florida Bar (Biannual Report)*, ___ So. 3d ___ (No. SC10-1967, April 13, 2012). Second, the decision leaves in place a broad group able to sign checks, not just regulated attorneys.

C. Circumstances.

We would like to believe that attorneys are not involved in the significant losses to citizens of this State; however, sadly, that belief is not always justified. A review of nearly any edition in last few years of the *The Florida Bar News* quickly reveals that a very small, but still significant, number of "bad apples" cause great harm. These bad attorneys directly injure their clients and the title insurers, both of whom suffer losses

from fraud. Public confidence in the sanctity of attorney trust accounts and the profession generally is significantly undermined by attorney fraud and defalcations.

II. Practical Considerations.

Treating virtually all information that an attorney receives in connection with a transaction as confidential without exception is not only contrary to established practice, but is also impractical and frequently contrary to the client's interest in an expedited closing. The Draft does not give sufficient weight to the exception in Rule 4-1.6(c)(1) that allows a lawyer to reveal information relating to the representation of a client to the extent necessary "to serve the client's interest unless it is information the client specifically requires not to be disclosed" The commentary to the Rule explicitly recognizes that "[a] lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority."

The Draft fails to account for the fact that the attorney must frequently disclose information about the client or real estate transaction in order to accomplish the client's objective of closing the transaction. Real estate practitioners have historically exchanged information with many third-party vendors involved in the real estate title transaction. For example, the transactional attorney routinely provides title insurers with the names of the parties, parcel information, purchase price, mortgagee, mortgage amount, and other information. The attorney also has a need to disclose information about the client and the transaction during the course of exercising due diligence, ordering title information or commitment, preparing for closing, investigating zoning and land use, requesting estoppel information from mortgagees, tenants, condominium associations, homeowner associations and real estate brokers, and arranging for surveys, environmental inspections, physical inspections and geotechnical testing.

An ethical threshold that does not serve the client's best interest and is not practical to apply is counterproductive. Impractical ethical mandates create unintended violations on a regular basis. Subjecting otherwise everyday and accepted conduct to sanction on a potentially arbitrary basis generates disregard, if not contempt, for the threshold.

III. Conclusion.

If attorney agents are permitted to hide behind trust account confidentiality while title insurers that bear the losses are not permitted to take reasonable preventive or investigative action, then title insurers will have little incentive to retain and cultivate their strong relations with attorney agents. In Florida, the issuance of title insurance and the legal representation in the transaction are often linked. Both clients and the general

Professional Ethics Committee
of The Florida Bar
September 19, 2012
Page 5

public will suffer if fewer attorneys are involved in real estate transactions and title insurance.

There is an undeniable tension between protecting the public, the marketplace, and the touchstone of confidentiality. However, the Draft's position that an attorney may not permit multiple title insurance companies to audit a single trust account used exclusively for real estate and title transactions materially impairs the ability of title insurers to conduct necessary and appropriate audits and ignores their significant benefit to the client and the public.

If you have any questions regarding any of our recommendations or comments, please contact me at (727) 821-1249 or the RPPTL Section's Chair-Elect, Peggy Rolando, at (305) 379-9144. Thank you for your consideration of the Section's recommendations and supporting comments.

Very truly yours,

William F. Belcher

Wm. Fletcher Belcher, Chair
Real Property, Probate & Trust Law Section
of The Florida Bar

cc: Lynwood Arnold, Esq.
Gwynne A. Young, Esq.
Laird A. Lile, Esq.
Sandra F. Diamond, Esq.
Adele I. Stone, Esq.
Roland "Chip" Waller, Esq.
Margaret A. Rolando, Esq.
Michael J. Gelfand, Esq.
Jerry Aron, Esq.
William Sklar, Esq.
Alan Fields, Esq.
Yvonne Sherron
All Via E-Mail

RPPTL 2012-2013 CLE Calendar

Date	Title of Seminar	Committee	#	Location	Program Chair	Speakers	CLE Committee Liaison
July 25, 2012	Drafting Powers of Attorney – What Works? It's All in the Eye of the Beholder!		1536	Breakers*	Deborah Russell and Michael Foreman	See Note 1 below	
July 26-28, 2012	Legislative Update		1425	Breakers*			
August 28, 2012	What RPPTL Lawyers Need to Know About E-Service and E-Filing			12:00-1:00- webinar	Rohan Kelley and Laird Lile	Rohan Kelley and Laird Lile	Rob Freedman
September 13-16, 2012	EC Meeting			Key Biscayne			
October 4, 2012	Power, Trust, (e)Service and Privilege: What an Out of State (and In-State, too!) Florida Practitioner Needs to Know (CANCELLED!)	Joint Program – RPPTL and Out of State Division	1508	Atlanta		Laird Lile, Sandy Diamond, Barry Spivey	Rob Freedman
October 5-6, 2012	FLEA Probate			Orlando			
October 30, 2012	E-Ethics for E-Discovery: Considerations and Solutions for the E-Practitioner	Professionalism and Ethics		1 hour e-CLE	Lee Weintraub	Perry M. Adair and Daniel DeSouza	Rob Freedman
November 15 - 18, 2012	EC Meeting			Asheville, NC			
November 30, 2012	It's Not Too Late – Year End Estate and Asset Protection Planning Techniques - Views from Washington DC ... And More	Joint Estate Tax and Asset Protection	1509	Tampa*	Elaine Bucher and Brian Sparks	See Note 2 below	Sarah Butters
December 5, 2012	What RPPTL Lawyers Need to Know About Corporate Entities: Selection, Function and Utilization			1 hour e-CLE	Rob Freedman	David Burke and Cristin Keane	Rob Freedman
January 23, 2013	What RPPTL Lawyers Need to Know About The Fight Against Money Laundering and Terrorist Financing			1 hour e-CLE	Rob Freedman	Kevin Shepherd and Duncan Osborne	Rob Freedman
January 25, 2013	Secrets of CDDs: Unveiling the Mysteries and Unlocking the Possibilities	Joint RPPTL/Environmental Land Use	1455	Tampa*	Anne Pollack		Brian Leebrick
February 7-10, 2013	EC Meeting			Tallahassee			
February 15-16, 2013	Real Property Certification Review Course	Real Property Certification Review Course	1450	Orlando*	Ted Connor		Jennifer Tobin
February 21, 2013	Title TBD	Probate Law	1510	Tampa*	Tae Kelley Bronner		Sarah Butters
February 26, 2013	Till Divorce Do Us Part.... The New Beneficiary Designation Legislation	IRA, Insurance and Employee Benefits		1 hour e-CLE	Linda Griffin	Linda Griffin and Kristin Lynch	Rob Freedman
February 28, 2013	Alternate Dispute Resolution Considerations for Real Property, Construction, Probate and Trust Law Practices	Alternate Dispute Resolution	1507	Ft. Lauderdale*	Deborah Mastin		Laura Sundberg
March 7-9, 2013	Construction Law Certification Review Course	Construction Law Certification Review Course	1452	Orlando	Lee Weintraub		Brian Leebrick
March 7-9, 2013	6th Annual Construction Law Institute	Construction Law Institute	1453	Orlando	Cary Wright		Brian Leebrick
March 20, 2013	The New E-Filing Requirements – What Every Practitioner Needs to Know			1 hour e-CLE	Rohan Kelley and Laird Lile	Rohan Kelley and Laird Lile	Rob Freedman
April 5, 2013	Title TBD	Condominium and Planned Development Committee	1456	Orlando*	Jane Cornett		Rob Freedman
April 5-6, 2013	Wills, Trust & Estate Certification Review Course	Wills, Trust & Estate Certification Review Course	1451	Orlando*	Richard Gans		Laura Sundberg
April 12, 2013	Title TBD	Real Property Litigation	1506	Tampa*	Marty Awerbach		Jennifer Tobin

RPPTL 2012-2013 CLE Calendar

Date	Title of Seminar	Committee	#	Location	Program Chair	Speakers	CLE Committee Liaison
April 26, 2013	Title TBD	Real Property Finance and Lending		Tampa*	Bill Sklar		Brian Leebrick
May 1, 2013	Title TBD	Property & Liability Insurance/Suretyship		1 hour e-CLE	Cary Wright or Fred Dudley		
May 9-11, 2013	Fund Assembly						
May 10, 2013	Trust & Estate Symposium		1460	Tampa*	Shane Kelley		Sarah Butters
May 15, 2012	Ethical Issues Inherent in the New Computer Age	Professionalism and Ethics		1 hour e-CLE	Rich Caskey		
May 23-26, 2013	EC Meeting			St. Petersburg			
May 24, 2013	Convention Seminar	Seminar Coordination	1511	St. Pete	Katherine Frazier		Jennifer Tobin
June 14-15, 2013	Title TBD	Attorney/Trust Officer Liaison Conference	1462	Breakers	Jack Falk		Sarah Butters

*Webcast & Live

- non-RPPTL program
- Executive Council meeting
- 1 hour lunchtime RPPTL e-CLE program
- full day RPPTL program
- 1/2 day RPPTL program

Note 1: Jennifer Robinson, Charlie Robinson, Michael Foreman, James Russick, Angela Adams, Laird Lile, Richard Stockton

Note 2: Ronald Acutt, James Carlisle, Gideon Rothschild, Barry Nelson, Chris Riser, Rob Lancaster, Richard Franklin, Charlie Nash, Lester Law, Lou Nostro, George Karibjanian