

# BRING TO MEETING

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



*Executive Council*

*Meeting*

## AGENDA

Swissotel Quito – Ecuador  
Av. 12 de Octubre 1820 y Cordero  
Quito - Ecuador  
Phone: (593-2) 2567-600

Friday, January 30, 2009  
5:00 p.m.

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**BRING TO THE MEETING**

Real Property, Probate and Trust Law Section  
Executive Council Meeting  
Swissotel Quito - Ecuador

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**AGENDA**

- I. **Presiding** — Sandra Diamond, Chair
- II. **Attendance** — Michael A. Dribin, Secretary
- III. **Minutes of Previous Meeting** — Michael A. Dribin, Secretary
  1. Approval of September 20, 2008 Executive Council Meeting Minutes **pp. 9-27**
- IV. **Chair's Report** — Sandra F. Diamond
  1. 2008 – 2009 RPPTL Executive Council Schedule **pp. 28**
- V. **Chair-Elect's Report** — John B. Neukamm
  1. 2009 – 2010 RPPTL Executive Council Schedule **pp. 29**
- VI. **Liaison with Board of Governors Report** — Daniel L. DeCubellis
  1. BOG Summary – December 2008 **pp. 30**
- VII. **Treasurer's Report** — W. Fletcher Belcher
  1. 2008 – 2009 Monthly Report Summary **pp. 31-32**
- VIII. **Circuit Representative's Report** — Margaret A. Rolando, Director
  1. First Circuit – Kenneth Bell; W. Christopher Hart; Colleen Coffield Sachs
  2. Second Circuit – J. Breckenridge Brannen; Sarah S. Butters; Victor L. Huszagh; John T. Lajoie
  3. Third Circuit – John J. Kendron; Guy W. Norris
  4. Fourth Circuit – William R. Blackard, Jr.; Harris LaRue Bonnette, Jr., Roger W. Cruce
  5. Fifth Circuit – Del G. Potter; Arlene C. Udick
  6. Sixth Circuit – Robert N. Altman; David R. Carter; Gary L. Davis; Robert C. Dickinson, III; Luanne E. Ferguson; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M. Stinson; Kenneth E. Thornton; Hugh C. Umstead
  7. Seventh Circuit – Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells
  8. Eighth Circuit – John Frederick Roscow, IV; Richard M. White Jr.
  9. Ninth Circuit – David J. Akins; Russell W. Divine; Amber J. F. Johnson; Thomas Michael Katheder; Stacy A. Prince; Randy J. Schwartz; Joel H. Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
  10. Tenth Circuit – Gregory R. Deal; Sandra Graham Sheets; Robert S. Swaine
  11. Eleventh Circuit – Carlos A. Battle; Mary E. Clarke; Thomas M. Karr; Nelson C. Keshen; Marsha G. Madorsky; William T. Muir; Adrienne Frischberg Promoff; J. Eric Virgil; Diana S. C. Zeydel
  12. Twelfth Circuit – Kimberly A. Bald; Michael L. Foreman; L. Howard Payne; P. Allen Schofield
  13. Thirteenth Circuit – Lynwood F. Arnold, Jr.; Michael Bedke; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O’Ryan; William R. Platt; R. James Robbins
  14. Fourteenth Circuit – Brian Leebrick
  15. Fifteenth Circuit – Elaine M. Bucher; Glen M. Mednick; Lawrence Jay Miller; Robert M. Schwartz

16. Sixteenth Circuit – Julie A. Garber
17. Seventeenth Circuit – James R. George; Robert B. Judd; Shane Kelley; Alexandra V. Rieman
18. Eighteenth Circuit – Jerry W. Allender; Steven C. Allender; Stephen P. Heuston
19. Nineteenth Circuit – Jane L. Cornett; Richard J. Dungey
20. Twentieth Circuit – Michael T. Hayes; Alan S. Kotler; Jon Scuderi; Dennis R. White; D. Keith Wickenden

**IX. Real Property Division** — *George J. Meyer, Real Property Division Director*

**Action Items**

1. Title Insurance Committee – *Kristopher Fernandez*  
Approval of re-wording of Section’s existing legislative position with respect to file and use title insurance **pp. 33-54**

**Information Items**

1. Title Issues and Standards Committee – *Patricia Jones*  
BOG approval and adoption of Section’s Uniform Title Standards

**X. Probate and Trust Division** — *Brian J. Felcoski, Probate Division Director*

**Information Items**

1. FBA Proposal  
Delegation to CoTrustee White Paper **pp. 55-58**
2. FBA  
Antilapse Proposal **pp. 59-60**

**XI. General Standing Committee Reports** — *John B. Neukamm, Director and Chair-Elect*

1. **ActionLine** – Rich Caskey, Chair; Scott Pence and Rose LaFemina, Co-Vice Chairs
2. **Amicus Coordination** – Bob Goldman; John W. Little and Kenneth Bell, Co-Chairs **pp. 61**
  - A. *Pugliese v. Pukka Development* 11<sup>th</sup> Circuit Opinion **pp. 62-76**
  - B. *Sims v. New Falls Corporation* Amicus Brief **pp. 77-93**
3. **Budget** – W. Fletcher Belcher, Chair; Pamela O. Price, Vice Chair
4. **Bylaws** - W. Fletcher Belcher, Chair
5. **CLE Seminar Coordination** – Jack Falk, Jr., Chair; Laura Sundberg and Sylvia Rojas, Co-Vice Chairs
  - A. CLE Schedule 2009 – 2010 **pp. 94-95**

6. **2008 Convention Coordinator** – Marilyn Polson, Chair; Dresden Brunner, Vice Chair
7. **Fellowships** – Tae Kelly Bronner and Phillip Baumann, Co-Chairs
8. **Florida Bar Journal** – Richard R. Gans, Chair Probate Division; William Sklar, Chair Real Property Division
9. **Legislative Review** – Burt Bruton, Jr., Chair; Michael Gelfand and Debra Boje, Co-Vice Chairs **pp. 96-98**
10. **Legislative Update Coordinators** – Sancha Brennan Whynot, Chair; Stuart Altman and Robert Swaine, Co-Vice Chairs
11. **Liaisons:**
  - A. **ABA:** Edward Koren; Julius J. Zschau
  - B. **American Resort Development Assoc. (ARDA):** Laurence Kinsolving; Jerry Aron; Wayne Sobien
  - C. **BLSE:** Howard Payne; Robert Stern; Michael Sasso
  - D. **Business Law Section:** Marsha Rydberg
  - E. **BOG:** Daniel L. DeCubellis, Board Liaison
    - 1) Approval of RPPTL Section Legislative Positions **pp. 99-100**
  - F. **CLE Committee:** Jack Falk, Jr.
  - G. **Clerks of the Circuit Court:** Thomas K. Topor
  - H. **Council of Sections:** Sandra F. Diamond; John B. Neukamm
  - I. **E-Filing Agencies:** Judge Mel Grossman; Patricia Jones
  - J. **FLEA / FLSSI:** David Brennan; John Arthur Jones; Roland Chip Waller
  - K. **Florida Bankers:** Stewart Andrew Marshall; Mark T. Middlebrook
  - L. **Judiciary:** Judge Jack St. Arnold; Judge Gerald B. Cope Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Maria M. Korvick; Judge Lauren Laughlin; Judge Celeste H. Muir; Judge Larry Martin; Judge Robert Pleus; Judge Susan G. Sexton; Judge Richard Suarez; Judge Winifred J. Sharp; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr.
  - M. **Law Schools and Student RPPTL Committee:** Alan Fields; Stacy Kalmanson
  - N. **Liaison to the OCCRC:** Joseph George
  - O. **Out of State:** Michael Stafford; John E. Fitzgerald, Pam Stuart
  - P. **Young Lawyers Division:** Rhonda Chung DeCambre Stroman
12. **Long Range Planning Committee** – John B. Neukamm, Chair
13. **Member Communications and Information Technology** – Keith S. Kromash, Chair; Alfred Colby, Co-Chair
14. **Membership Development & Communication** – Phillip Baumann, Chair; Mary Clarke, Vice Chair
15. **Membership Diversity Committee** – Tae Kelley Bronner and Fabienne Fahnestock Co-Chairs
16. **Mentoring Program** – Steven L. Hearn, Chair; Jerry Aron and Guy Emerich, Co-Vice Chairs **pp. 101-116**

17. **Model and Uniform Acts** – Bruce Stone and Katherine Frazier, Co-Chairs
18. **Professionalism & Ethics** – Adele Stone and Deborah Goodall, Co-Chairs
19. **Pro Bono** – Andrew O'Malley, Chair; Adele I. Stone and David Garten, Co-Vice Chair  
 A. FASH December 2008 and January 2009 Meeting Minutes **pp. 117-120**  
 B. FASH Program Statistics **pp. 121**
20. **Sponsor Coordinators** – Kristen Lynch, Chair; Debbie Goodall and Wilhelmina Kightlinger, Co-Vice Chairs
21. **Strategic Planning** – John Neukamm, Chair; Sandra Diamond, Melissa J. Murphy, and Laird Lyle, Co-Vice Chairs

**XII. Real Property Division Committee Reports** — *George J. Meyer, Real Property Division Director*

1. **Affordable Housing** – Jaimie Ross, Chair; Charles Elsesser, Jr., Vice-Chair
2. **Condominium and Planned Development** – Robert S. Freedman, Chair; Steven Mezer, Vice-Chair
3. **Construction Law** – Wm. Cary Wright, Chair; Brian Wolf and April Atkins, Co-Vice-Chairs
4. **Construction Law Institute** – Lee Weintraub, Chair; Wm. Cary Wright and Michelle Reddin, Co-Vice Chairs
5. **Construction Law Certification Review Course** – Fred Dudley, Chair; Kim Ashby, Vice Chair
6. **Development and Governmental Regulation of Real Estate** – Eleanor Taft, Chair; Nicole Kibert, Vice Chair
7. **FAR/BAR Committee and Liaison to FAR** – William J. Haley, Chair; Frederick Jones, Vice Chair
8. **Land Trusts and REITS** – S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
9. **Landlord and Tenant** – Arthur J. Menor, Chair; Neil Shoter, Vice Chair
10. **Legal Opinions** – David R. Brittain and Roger A. Larson, Co-Chairs
11. **Liaison with Eminent Domain Committee** – Susan K. Spurgeon
12. **Liaison with Florida Brownfields Association** – Frank L. Hearne
13. **Liaisons with FLTA** – Norwood Gay and Alan McCall Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick, Lee Huzagh, Co-Vice Chairs
14. **Mobiles Home and RV Parks** – Jonathan J. Damonte, Chair; David Eastman, Vice-Chair

15. **Mortgages and Other Encumbrances** – Jeffrey T. Sauer, Chair; Salome Zikakis and Jo Spear, Co-Vice Chairs
16. **Real Estate Certification Review Course** – Robert Stern, Chair; Ted Conner and Guy Norris, Co-Vice Chairs
17. **Real Property Forms** – Barry B. Ansbacher, Chair; Kristy Parker Brundage, Vice Chair
18. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop, Vice Chair
19. **Real Property Litigation** – Mark A. Brown, Chair; Eugene E. Shuey and Martin Awerbach, Co-Vice Chairs
20. **Real Property Problems Study** – Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair
21. **Title Insurance & Title Insurance Liaison** – Homer Duvall, Chair; Kristopher Fernandez, Vice Chair
22. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham, Stephen Reynolds, and Karla Gray, Co-Vice Chairs

**XIII. Probate Division Committee Reports** — *Brian J. Felcoski, Probate Division Director*

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela Adams, Chair
2. **Ad Hoc Committee on Homestead Life Estates** – Shane Kelley, Chair
3. **Advance Directives** – Rex E. Moule, Chair; Marjorie Wolasky, Vice Chair
4. **Asset Preservation** – Jerome Wolf, Chair; Brian Sparks, Vice Chair
5. **Charitable Organizations and Planning** – Michael W. Fisher, Co-Chair; Thomas C. Lee, Jr., Michael Stafford and Jeffrey Baskies, Co-Vice Chairs
6. **Estate and Trust Tax Planning** – Richard Gans, Chair; Craig Mundy, Vice-Chair
7. **Guardianship Law and Procedure** – Debra Boje and Alexandra Rieman, Co-Chairs, Andrea L. Kessler, Vice Chair
8. **Insurance** – L. Howard Payne, Chair; David Silberstein, Vice Chair
9. **IRA's and Employee Benefits** – Kristen Lynch, Chair; Linda Griffin, Vice-Chair
10. **Liaison with Corporate Fiduciaries** – Seth Marmor, Chair; Robin King, Co-Vice Chair; Gwynne Young, Co-Vice Chair; Joan Crain, Corporate Fiduciary Chair
11. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky, Co-Chairs
12. **Liaison with Statewide Public Guardianship Office** - Michelle Hollister, Chair

13. **Liaisons with Tax Section** – David Pratt; Brian C. Sparks; Donald R. Tescher
14. **Power of Attorney** – Tami Conetta, Chair; David Carlisle, Vice-Chair
15. **Principal and Income Committee** – Edward F. Koren, Chair
16. **Probate and Trust Litigation** – William Hennessey, Chair; Thomas Karr and Jon Scuderi, Co-Vice Chairs
17. **Probate Law and Procedure** – Charles Ian Nash, Chair, Sam Boone, Anne Buzby and Shane Kelley, Co-Vice Chairs
18. **Trust Law** – Barry Spivey, Chair; Christopher Boyett and Laura Stephenson, Co-Vice Chairs
19. **Wills, Trusts and Estates Certification Review Course** – Anne Buzby, Chair; Deborah Russell, Vice Chair

#### **XIV. Adjourn**



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

**Special Thanks to the**

**GENERAL SPONSORS**

**Attorneys' Title Insurance Fund**

**Ashar Group LLC**

**Chicago Title Insurance Company**

**Community Foundations of Florida**

**Fidelity National Title Insurance Company**

**First American Title Insurance Company**

**Gibraltar Bank**

**Howard Frazier Barker Elliott**

**LandAmerica Financial Group, Inc.**

**Management Planning, Inc.**

**Old Republic National Title Insurance**

**Regions Bank**

**Stewart Title Guaranty Company**

**SoftPro**

**SunTrust Bank**

**The Florida Bar Foundation**

**Wachovia Trust**



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

**Special Thanks to the**

**COMMITTEE SPONSORS**

**Ashar Group Life Settlement Specialists**  
Insurance Committee

**Community Foundations of Florida**  
Charitable Organizations Committee

**Mellon Bank and Wealth Transfer Planning**  
Probate Law & Procedure Committee

**First American Title Insurance Company**  
Condominium & Planned Development Committee

**Pensco Trust**  
IRAs & Employee Benefits Committee

**Management Planning, Inc.**  
Estate & Trust Tax Planning Committee

**Northern Trust Bank of Florida**  
Trust Law Committee

**Business Valuation Analysts**  
Probate and Trust Litigation

**DRAFT**

**Real Property, Probate and Trust Law Section  
Executive Council Meeting  
The Old Capitol - Tallahassee, Florida  
December 6, 2008**

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**AGENDA**

**I. Presiding — Sandra F. Diamond, Chair**

Sandy called the meeting to order at 10:00 a.m. Sandy called the members' attention to the beautiful and historic surroundings of the meeting, in the Old Capitol Building and thanked those responsible, particularly Yvonne Sherron, for making the arrangements for the meeting. Sandy introduced Andrew Edel, who welcomed the Executive Council and spoke to the members about some of the historical underpinnings of the restored Old Capitol Building.

**II. Attendance — Michael A. Dribin, Secretary**

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

**III. Minutes of Previous Meeting — Michael A. Dribin, Secretary**

The Minutes of the Executive Council meeting held at Key Biscayne, Florida on September 20, 2008, included in the Agenda materials at pp. 1-58, were approved without change, with one correction to the attendance roster.

**IV. Chair's Report — Sandra F. Diamond, Chair**

Sandy announced with regret the recent death of Past Section Chair John Sutherland, who was Chair during the 1974-1975 Bar year. She informed the Council that John's memory would be observed during the Section's Annual Convention.

Sandy recognized and thanked the sponsors for the Executive Council meeting, committee meetings and social activities, all of whom are noted in the Agenda materials.

Sandy recognized and expressed the thanks of the entire Section for the services of Yvonne Sherron, who had been serving as interim Section Administrator. Sandy then introduced the new Section Administrator, Liz Smith, and welcomed her.

**V. Chair-Elect's Report** — John B. Neukamm, Chair-Elect

2009 – 2010 RPPTL Executive Council schedule of meetings, Agenda materials, page 60

**VI. Liaison with Board of Governors Report** — Daniel L. DeCubellis

Dan reported and referred the members to the summary of the Board of Governors October, 2008 meeting, appearing in the Agenda materials at page 61.

**VII. Treasurer's Report** — W. Fletcher Belcher 1. 2008 – 2009 Monthly Report

Fletch reviewed the summary of the Section's financial status appearing at pages 62-66 of the Agenda materials.

**VIII. Circuit Representative's Report** — Margaret A. Rolando, Director

Peggy reported on the status of the Florida Attorneys Assisting Homeowners Program. She first introduced Kent Spuhler, Director of Florida Legal Service, who reported that over 12,000 calls had been received expressing interest in participating in the program. Of these, about 500 had been assigned to volunteer attorneys and another 1270 had been screened and qualified and were awaiting assignment to attorneys.

Peggy reminded the Council of the Section's commitment to participate in this program by having members of the Council commit to represent individuals. She urged each member to recruit six new volunteers or to go back to those who had already been assigned a case to ask that they agree to additional assignments. She referred those present to [www.floridaprobono.org](http://www.floridaprobono.org) as a site to obtain more information and to sign up to volunteer.

1. First Circuit – Kenneth Bell; W. Christopher Hart; Colleen Coffield Sachs
2. Second Circuit – J. Breck Brannen; Sarah S. Butters; Victor L. Huszagh; John T. Lajoie
3. Third Circuit – John J. Kendron; Guy W. Norris
4. Fourth Circuit – William R. Blackard, Jr.; Harris LaRue Bonnette, Jr., Roger W. Cruce
5. Fifth Circuit – Del G. Potter; Arlene C. Udick
6. Sixth Circuit – Robert N. Altman; David R. Carter; Gary L. Davis; Robert C. Dickinson, III; Luanne E. Ferguson; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M. Stinson; Kenneth E. Thornton; Hugh C. Umstead
7. Seventh Circuit – Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells

8. Eighth Circuit – John Frederick Roscow, IV; Richard M. White Jr.
9. Ninth Circuit – David J. Akins; Russell W. Divine; Amber J. F. Johnson; Thomas Michael Katheder; Stacy A. Prince; Randy J. Schwartz; Joel H. Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
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12. Twelfth Circuit – Kimberly A. Bald; Michael L. Foreman; L. Howard Payne; P. Allen Schofield
13. Thirteenth Circuit – Lynwood F. Arnold, Jr.; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O’Ryan; William R. Platt; R. James Robbins
14. Fourteenth Circuit – Brian Leebrick
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19. Nineteenth Circuit – Jane L. Cornett; Richard J. Dungey
20. Twentieth Circuit – Michael T. Hayes; Alan S. Kotler; Jon Scuderi; Dennis R. White; D. Keith Wickenden

**IX. Real Property Division** — George J. Meyer, Real Property Division Director

**Action Items**

1. Title Issues and Standards Committee – Patricia Jones, Chair Section approval of revised Uniform Title Standards Chapter 16 (Recording, Notices and Priorities).

On behalf of the Title Issues and Standards Committee, Pat announced that the Committee was recommending, in an effort to reflect recent court decisions, the approval of revised Uniform Title Standards Chapter 16, as reflected at pp. 67-84 of the Agenda materials. The Committee’s motion to approve the proposed revisions to Chapter 16 of the Uniform Title Standards was unanimously adopted.

2. Liaison with Florida Brownfields Association Committee – Frank Hearne, Chair--Approval of legislative position supporting in general Brownfields development in Florida.

On behalf of the Liaison with Florida Brownfields Association Committee, Frank moved that the Section approve of and adopt the concept of the legislative position supporting Brownfields development in Florida, as reflected in pages 85-88 of the Agenda materials. The Committee's motion was unanimously approved. The Committee's motion to find such action to be within the purview of the Section also was unanimously approved.

### **Information Items**

1. George Meyer reported that the Real Property Litigation Committee had submitted a final revised draft of revised Section 48.23 (Lis Pendens), which had previously been approved by the Section. The revised draft could be found as part of the Agenda package at pages 89-97. This final draft incorporates all of the grammatical, stylistic and other nonsubstantive edits that were made to the draft that was attached to the Key Biscayne Executive Council Meeting Agenda.
2. George Meyer reported that the Condominium & Planned Development Committee, Robert Freedman, Chair, had expressed some concerns about the draft of HB 27, which seeks to amend certain Sections of Chapters 34, 718 and 720, F.S. The Committee will be working with the bill's sponsors and with the Section's Legislative Committee to address those concerns. The bill appears at pages 98-155 of the Agenda materials.

### **X. Probate and Trust Division — Brian J. Felcoski, Probate and Trust Division Director**

#### **Action Items**

1. Probate Law and Procedure Committee – Charles I. Nash, Chair
  - A. Amendments to Sections 731.201(21), 733.201(3) and 733.504(1) – replacing the definition of “incompetent” with “incapacitated person”.

On behalf of the Probate Law and Procedure Committee, Anne Buzby made a presentation in support of the proposed legislation reflected at pages 156-159 of the Agenda materials, seeking to replacing the definition of “incompetent” with “incapacitated person” in the Probate Code and making other corresponding statutory changes. The Committee's motion to approve the proposed legislative position was unanimously adopted. The Committee's motions to find such action to be within the purview of the Section and to authorize the expenditure of Section's funds in support of that initiative also were unanimously approved.

2. Trust Law Committee – Barry F. Spivey, Chair
  - A. Amendment to Section 736.0105 to make Section 736.0107 a mandatory provision under the Florida Trust Code that is not subject to change by the terms of the trust.

On behalf of the Trust Law Committee, Barry made a presentation in support of the proposed legislation reflected at pages 160-165 of the Agenda materials, seeking to provide that the provision of F.S. Section 736.0107, which is entitled "Governing Law", is to be considered a mandatory provision pursuant to F.S. Section 736.0105. The Committee's motion to approve the proposed legislative position was unanimously adopted. The Committee's motions to find such action to be within the purview of the Section and to authorize the expenditure of Section's funds in support of that initiative also were unanimously approved.

- B. Amendment to Section 736.0703(9) – technical corrections to directed trustee legislation passed in 2008.

On behalf of the Trust Law Committee, Barry made a presentation in support of the proposed legislation reflected at pages 166-167 of the Agenda materials, seeking to make technical corrections to F.S. Section 736.0703(9), dealing generally with the right of a settlor who is designating more than one trustee to provide that one co-trustee can direct the actions of another co-trustee with respect to specific areas of trust administration. Barry pointed out that, on the last line of the Summary, Section I, on page 166, the words "willful conduct" should be "willful misconduct". The Committee's motion to approve the proposed legislative position was unanimously adopted. The Committee's motions to find such action to be within the purview of the Section and to authorize the expenditure of Section's funds in support of that initiative also were unanimously approved.

### **Information Items**

- 1. Brian Felcoski reported that the Executive Committee of the Section had approved the suggested recommendations of the Tax Section for comments to IRS Notice 2008-63, 2008-31 IRB 261. The approved comments appear at pages 168-178 of the Agenda materials.

### **XI. General Standing Committee** — John B. Neukamm, Director and Chair-Elect

#### **Action Items**

- 1. Amicus Coordination Committee – Robert W. Goldman and John W. Little, Co-Chairs
  - A. On behalf of the Committee, Bob notified the Council that, as ordered by the Third District Court of Appeal, the Committee had made an amicus appearance and had submitted an amicus brief in Open Permit Services of Florida vs. Curtiss. The brief was filed on November 12, 2008 and appears at pages 179-196 of the Agenda materials. Bob's motion on behalf of the Committee to ratify this appearance and brief was unanimously approved.
  - B. Bob further reported that, again based on an order of the Third District Court of Appeal which appears at pages 197-198 of the Agenda materials,

the Section had been ordered to file an amicus appearance and to file an amicus brief in Skylake Insurance Agency vs. NMB Plaza. Bob indicated that, while the brief was originally due to be filed on December 15, 2008, an extension had been granted for sixty days. Bob's motion on behalf of the Committee for authorization to make the appearance and prepare and file the brief was unanimously approved.

C. Bob further reported that, again based on an order of the Third District Court of Appeal which appears at page 199 of the Agenda materials, the Section had been ordered to file an amicus appearance and to file an amicus brief in Sims v. New Falls Corp. Bob indicated that, while the brief was originally due to be filed on December 15, 2008, an extension had been granted for sixty days. Bob's motion on behalf of the Committee for authorization to make the appearance and prepare and file the brief was unanimously approved.

D. Bob also announced that former Florida Supreme Court Justice Kenneth Bell had agreed to join the Committee.

2. Budget Committee – W. Fletcher Belcher, Chair; Pamela O. Price, Vice Chair

A. On behalf of the Budget Committee, Fletch reported that the Executive Committee had approved two changes to the current year's budget. He presented them for ratification:

(i.) As to expense line item 84247, the description be changed from "Leadership Conference Registrations" to "Officer Travel" and that the amount budgeted be increased from \$1,200.00 to \$2,500.00, to authorize reimbursement to Section officers for expenses incurred in attending activities such as The Florida Bar Leadership Conference, Council of Sections meetings and Board of Governor meetings. The Committee's motion for ratification of the action of the Executive Committee in approving this change was unanimously adopted.

(ii.) As to expense line item 84301, the description be changed from "Awards" to "Service Recognition and Awards" to authorize payment or reimbursement for a broader range of items recognizing service to the Section. The Committee's motion for ratification of the action of the Executive Committee in approving this change was unanimously adopted.

B. Fletch then reviewed the Committee's proposed Section budget for 2009-2010. The proposed budget had been transmitted submitted to the Council as supplementary material and appears as **Exhibit "A"** to these minutes. The Committee's motion to adopt the budget as reflected in Exhibit "A" to these minutes was unanimously adopted.

**XII. General Standing Committee Reports**– John B. Neukamm, Director and Chair-Elect

1. **Actionline** – Rich Caskey, Chair; Scott Pence and Rose LaFemina, Co-Vice Chairs – John Neukamm made a presentation on behalf of the Committee, indicating that submission for the next issue is due by January 31, 2009.
2. **Amicus Coordination** – Bob Goldman and John W. Little, Co-Chairs – No further report.
3. **Budget** – W. Fletcher Belcher, Chair; Pamela O. Price, Vice Chair – No further report.
4. **Bylaws** – W. Fletcher Belcher, Chair – Fletch reported on behalf of the Committee that three meetings of the Committee had been conducted since the Key Biscayne meeting of the Executive Council. He reported that significant progress had been made and he looked forward to having a presentation to the Council at the May, 2009 meeting.
5. **CLE Seminar Coordination** – Jack Falk, Jr., Chair; Laura Sundberg and Sylvia Rojas, Co-Vice Chairs – Jack presented on behalf of the Committee and indicated that the 2009-2010 calendar had been put together and that chairpersons were being arranged for all scheduled seminars.
6. **2008 Convention Coordinator** – Marilyn Polson, Chair; Dresden Brunner, Vice Chair – Marilyn presented on behalf of the Committee and reported that a joint seminar with both divisions of the Section was planned and its tentative title was “General Real Estate Issues for Dirt and Death Lawyers”.
7. **Fellowship** – Tae Kelly Bronner and Phillip Baumann, Co-Chairs – Phil reporter on behalf of the Committee that the Fellows were active, attending Executive Council and committee meetings and were working on their respective projects.
8. **Florida Bar Journal** – Richard R. Gans, Chair Probate Division; William Sklar, Chair Real Property Division – Bill reported on behalf of the Committee that articles had been written through June, 2009 and that the Committee needed more articles, particularly in the eminent domain and principal and income areas. He indicated that approximately three months lead time was needed for submission of articles.
9. **Legislative Review** – Burt Bruton, Jr., Chair; Michael Gelfand and Debra Boje, Co-Vice Chairs – Michael reported on some developments in Miami-Dade County, concerning ordinances which generally make lenders liable for code violations on foreclosed properties until the properties are sold. Michael reported that the Committee was monitoring the possibility of these ordinances being extended on a state wide basis.

Pete Dunbar reported that the Senate Committee chairs had been selected and that

House chairs were in the process of being selected. He also indicated that, as a result of the economy and the tremendous strains on the state budget, the upcoming legislative session was likely to have many “outside of the box” approaches. Pete urged those designated within the Section to act as liaisons with his office to be prepared to provide responses to inquiries within 48 hours.

10. **Legislative Update Coordinators** – Sancha Brennan Whynot, Chair; Stuart Altman and Robert Swaine, Co-Vice Chairs – No report.
11. **Liaison Committees:**
  - A. **ABA:** Edward Koren; Julius J. Zschau – No report.
  - B. **American Resort Development Assoc. (ARDA):** Laurence Kinsolving; Jerry Aron; Wayne Sobien – No report.
  - C. **BLSE:** Howard Payne; Robert Stern; Michael Sasso – A report was offered which indicated that 51 applicants were going to be sitting for the construction law certification.
  - D. **Business Law Section:** Marsha Rydberg – No report
  - E. **BOG:** Daniel L. DeCubellis, Board Liaison – No further report.
  - F. **CLE Committee:** Jack Falk, Jr. – No further report.
  - G. **Clerks of the Circuit Court:** Thomas K. Topor – No report.
  - H. **Council of Sections:** Sandra F. Diamond; John B. Neukamm – No report.
  - I. **E-filing Agencies:** Judge Mel Grossman; Patricia Jones – No report.
  - J. **FLEA / FLSSI:** David Brennan; John Arthur Jones; Roland Chip Waller – Chip reported on behalf of the Committee that over 500 persons had attended the FLEA seminar.
  - K. **Florida Bankers:** Stewart Andrew Marshall; Mark T. Middlebrook – No report.
  - L. **Judiciary:** Judge Jack St. Arnold; Judge Gerald B. Cope Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Maria M. Korvick; Judge Lauren Laughlin; Judge Celeste H. Muir; Judge Larry Martin; Judge Robert Pleus; Judge Susan G. Sexton; Judge Richard Suarez; Judge Winifred J. Sharp; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr. – No report.
  - M. **Law Schools and Student RPPTL Committee:** Alan Fields; Stacy Kalmanson – Alan reported on behalf of the Committee that Section-supported law school activities at Florida State University, the University

of Florida, Coastal College, and Stetson University have been quite active. Alan indicated that on February 19, 2009, he was looking for volunteers to attend informal meetings at Coastal and at St. Thomas.

- N. **Liaison to the OCCRC:** Joseph George, – Joe reported on behalf of the Committee and urged review of the materials that had been submitted at Pages 200-219 of the Agenda materials.
- O. **Out of State:** Michael Stafford; John E. Fitzgerald, Pam Stuart. No report.
- P. **Young Lawyers Division:** Rhonda Chung DeCambre Stroman – No report.
- 12. **Long Range Planning Committee** – John B. Neukamm, Chair – John reported on behalf of the Committee that it was meeting in Tampa on January 16, 2009, to prepare the nominations for the 2009-2010 Section year.
- 13. **Member Communications and Information Technology** – Keith S. Kromash, Chair; Alfred Colby, Co-Chair – Al reported on behalf of the Committee that the website was working well and that some tweaks were being made to it. He indicated that Bill Crawford will communicate with all committee chairs about use of the website.
- 14. **Membership Development & Communication** – Phillip Baumann, Chair; Mary Clarke, Vice Chair – Phil gave a report on behalf of the Committee.
- 15. **Membership Diversity Committee** – Tae Kelley Bronner and Fabienne Fahnestock Co-Chairs – Fabienne reported on behalf of the Committee that there were a number of activities being conducted on an ongoing basis on behalf of the Committee and thanked those who had been participating.
- 16. **Mentoring Program** – Steven L. Hearn, Chair; Jerry Aron and Guy Emerich, Co- Vice Chairs – Guy reported on behalf of the Committee that a survey was going out to mentors/mentees with respect to their experiences.
- 17. **Model and Uniform Acts** – Bruce Stone and Katherine Frazier, Co-Chairs – No report.
- 18. **Professionalism & Ethics** – Adele Stone and Deborah Goodall, Co-Chairs – No report.
- 19. **Pro Bono** – Andrew O'Malley, Chair; Adele I. Stone and David Garten, Co-Vice Chair – Andrew reported on behalf of the FLASH Program and added some supplementary comments to the report given by Peggy Rolando previously.

20. **Sponsor Coordinators** – Kristen Lynch, Chair; Debbie Goodall and Wilhelmina Kightlinger, Co-Vice Chairs—Wilhelmina reported on behalf of the Committee that additional sponsors were needed and urged all Section members to support Section sponsors.
21. **Strategic Planning** – John Neukamm, Chair; Sandra Diamond, Melissa J. Murphy, and Laird Lyle, Co-Vice Chairs – John reported on behalf of the Committee that a retreat is scheduled on April 17-18, 2009 at Mount Dora and that Dresden Brunner had graciously agreed to handle the arrangements for the retreat at the Lakeside Inn.

**XIII. Real Property Division Committee Reports** — George J. Meyer, Real Property Division Director

1. **Affordable Housing** – Jaimie Ross, Chair; Charles Elsesser, Jr., Vice-Chair
2. **Condominium and Planned Development** – Robert S. Freedman, Chair; Steven Mezer, Vice-Chair
3. **Construction Law** – Wm. Cary Wright, Chair; Brian Wolf and April Atkins, Co-Vice-Chairs
4. **Construction Law Institute** – Lee Weintraub, Chair; Wm. Cary Wright and Michelle Reddin, Co-Vice Chairs
5. **Construction Law Certification Review Course** – Fred Dudley, Chair; Kim Ashby, Vice Chair
6. **Development and Governmental Regulation of Real Estate** – Eleanor Taft, Chair; Nicole Kibert, Vice Chair
7. **FAR/BAR Committee and Liaison to FAR** – William J. Haley, Chair; Frederick Jones, Vice Chair
8. **Land Trusts and REITS** – S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
9. **Landlord and Tenant** – Arthur J. Menor, Chair; Neil Shoter, Vice Chair
10. **Legal Opinions** – David R. Brittain and Roger A. Larson, Co-Chairs
11. **Liaison with Eminent Domain Committee** – Susan K. Spurgeon
12. **Liaison with Florida Brownfields Association** – Frank L. Hearne
13. **Liaisons with FLTA** – Norwood Gay and Alan McCall Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick, Lee Huzagh, Co-Vice Chairs

14. **Mobiles Home and RV Parks** – Jonathan J. Damonte, Chair; David Eastman, Vice-Chair
15. **Mortgages and Other Encumbrances** – Jeffrey T. Sauer, Chair; Salome Zikakis and Jo Spear, Co-Vice Chairs
16. **Real Estate Certification Review Course** – Robert Stern, Chair; Ted Conner and Guy Norris, Co-Vice Chairs
17. **Real Property Forms** – Barry B. Ansbacher, Chair; Kristy Parker Brundage, Vice Chair
18. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop, Vice Chair
19. **Real Property Litigation** – Mark A. Brown, Chair; Eugene E. Shuey and Martin Awerbach, Co-Vice Chairs
20. **Real Property Problems Study** – Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair
21. **Title Insurance & Title Insurance Liaison** – Homer Duvall, Chair; Kristopher Fernandez, Vice Chair
22. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham, Stephen Reynolds, and Karla Gray, Co-Vice Chairs

**XIV. Probate Division Committee Reports** — Brian J. Felcoski, Probate Division Director

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela Adams, Chair
2. **Ad Hoc Committee on Homestead Life Estates** – Shane Kelley, Chair
3. **Advance Directives** – Rex E. Moule, Chair; Marjorie Wolasky, Vice Chair
4. **Asset Preservation** – Jerome Wolf, Chair; Brian Sparks, Vice Chair
5. **Charitable Organizations and Planning** – Michael W. Fisher, Co-Chair; Thomas C. Lee, Jr., Michael Stafford and Jeffrey Baskies, Co-Vice Chairs
6. **Estate and Trust Tax Planning** – Richard Gans, Chair; Craig Mundy, Vice-Chair
7. **Guardianship Law and Procedure** – Debra Boje and Alexandra Rieman, Co-Chairs, Andrea L. Kessler, Vice Chair
8. **Insurance** – L. Howard Payne, Chair; David Silberstein, Vice Chair

9. **IRA's and Employee Benefits** – Kristen Lynch, Chair; Linda Griffin, Vice-Chair
10. Liaison with Corporate Fiduciaries – Seth Marmor, Chair; Robin King, Co-Vice Chair; Gwynne Young, Co-Vice Chair; Joan Crain, Corporate Fiduciary Chair
11. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky, Co-Chairs
12. **Liaison with Statewide Public Guardianship Office** - Michelle Hollister, Chair
13. **Liaisons with Tax Section** – David Pratt; Brian C. Sparks; Donald R. Tescher
14. **Power of Attorney** – Tami Conetta, Chair; David Carlisle, Vice-Chair
15. **Principal and Income Committee** – Edward F. Koren, Chair
16. **Probate and Trust Litigation** – William Hennessey, Chair; Thomas Karr and Jon Scuderi, Co-Vice Chairs
17. **Probate Law and Procedure** – Charles Ian Nash, Chair, Sam Boone, Anne Buzby and Shane Kelley, Co-Vice Chairs
18. **Trust Law** – Barry Spivey, Chair; Christopher Boyett and Laura Stephenson, Co-Vice Chairs
19. **Wills, Trusts and Estates Certification Review Course** – Anne Buzby, Chair; Deborah Russell, Vice Chair

**XV. Adjourn**

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	06-07 Actual	07-08 Actual	08-09 Budget	09-10 Proposed Budget
Real Prop Probate & Trust Revenue	1,203,816	964,812	915,063	968,678
Dues	293,615	306,086	302,450	303,300
31431 Dues	451,660	469,368	465,000	465,000
31432 Affiliate Dues	240	1,800	1,200	1,750
31433 Dues-Retained TFB Gr	(158,285)	(165,082)	(163,750)	(163,450)
Revenue	910,201	658,726	612,613	665,378
31435 Admin Fee Adj	32,535	4,963	0	0
32012 Sct Share Online CLE	1,870	0	0	0
32191 CLE Courses	333,180	222,438	180,000	180,000
32293 Section Differential	50,945	28,079	0	20,000
34704 Actionline Advertisi	0	17,929	12,000	12,000
35008 Spouse Program	2,660	1,860	10,000	0
35101 Exhibit Fees	19,000	4,250	18,000	15,000
35201 Sponsorships	264,600	162,500	182,500	210,000
35603 Bd/Council Mtg Regis	0	0	0	160,000
36998 Credit Card Fees	(3,525)	(4,174)	(3,600)	(5,000)
38499 Investment Allocatio	65,560	28,214	63,713	73,378
39202 Reimb Council Recrea	384	0	0	0
39998 Meeting Deposits	143,059	192,695	150,000	0
Real Prop Probate & Trust Expend	571,900	769,946	757,070	872,486
71002 Telephone Distributi	0	1,099	0	1,000
51101 Employee Travel	2,366	9,857	4,205	6,525
81411 Promotional Printing	0	910	0	0
84001 Postage	2,135	2,529	8,500	7,000
84002 Printing	600	914	2,500	2,500
84006 Newsletter	38,544	26,518	40,000	40,000
84009 Supplies	71	549	300	300
84010 Photocopying	513	447	500	500
84015 Officers Conference	819	1,375	1,200	1,200
84016 Scrivener	500	0	0	0
84051 Officers Travel Expe	0	0	0	3,000
84052 Meeting Travel Expen	706	1,620	0	0
84054 CLE Speaker Expense	1,599	1,007	3,000	3,000
84061 Reception	0	8,465	0	0
84062 Luncheons	0	14,715	0	0
84101 Committee Expenses	45,985	49,834	40,000	50,000
84102 Public Info & Websit	946	0	0	0
84106 Realtor Relations	1,650	2,150	5,000	5,000
84107 Diversity Initiative	0	1,974	15,000	15,000

EXH. "A" TO 12.6.08 MINUTES

	06-07 Actual	07-08 Actual	08-09 Budget	09-10 Proposed Budget
84109 Spouse Program	0	325	0	0
84110 Exhibitor Fees	1,256	0	0	0
84115 Entertainment	0	3,075	0	0
84201 Board Or Council Mee	275,617	393,656	300,000	400,000
84216 Strategic Planning M	10,845	1,027	10,000	0
84238 Council Mtg Recreati	24,383	25,138	25,000	35,000
84239 Hospitality Suite	19,977	7,086	20,000	20,000
84241 Spouse Functions	6,584	8,830	10,000	0
84247 Leadership Conf Regi	0	0	1,200	0
84253 Sleeping Rooms	0	866	0	0
84270 Misc Seminars	0	12,577	0	0
84279 Council Members Hanc	3,341	2,270	3,500	3,500
84301 Awards	5,916	2,892	5,000	0
84310 Law School Liaison	2,617	0	5,000	7,500
84322 Fellowships-Exc Cou	0	0	10,000	10,000
84422 Website	43,285	53,802	50,000	50,000
84501 Legislative Consulta	60,000	100,000	100,000	100,000
84503 Legislative Travel	7,465	11,519	12,000	12,000
84524 Memorial Tributes	233	268	500	500
84701 Council Of Sections	0	300	0	300
84998 Operating Reserve	0	0	67,806	79,317
84999 Miscellaneous	80	314	500	500
85064 Service Recognition	0	0	0	5,000
88221 Speaker Workshops	171	0	0	0
88230 Speakers Expense	0	152	0	0
88252 Course Credit Fee	150	0	0	0
88262 Meeting Meals	0	8,510	0	0
88265 Refreshment Breaks	0	30	0	0
88269 Breakfast	0	895	0	0
Admin & Internal Svcs	13,476	12,451	16,359	13,844
86431 Meetings Administrat	4,737	4,637	5,124	4,456
86543 Graphics & Art	8,739	7,814	11,235	9,388
Beginning Fund Balance	448,073	917,093	910,187	1,048,252

EXH. "A" TO 12.6.08 MINUTES (CONT.)

	06-07 Actual	07-08 Actual	08-09 Budget	09-10 Proposed Budget
RPPTL Convention Revenue	55,720	54,986	92,000	92,000
Revenue	55,720	54,986	92,000	92,000
32001 Registrations	0	0	0	50,000
35101 Exhibit Fees	19,500	18,750	18,000	18,000
35201 Sponsorships	36,500	36,750	25,000	25,000
35901 Misc Seminars	0	0	0	0
36991 Allowances	0	0	0	0
36998 Credit Card Fees	(119)	(514)	(1,000)	(1,000)
RPPTL Convention Expense	102,693	175,351	126,493	121,018
62202 Meeting Room Rental	5,000	0	5,000	0
51101 Employee Travel	2,154	2,177	3,152	2,288
81411 Promotional Printing	0	0	500	500
81412 Promotional Mailing	0	0	5,000	5,000
84001 Postage	844	9	1,000	1,000
84002 Printing	259	64	250	250
84109 Spouse Program	3,500	0	4,000	0
84110 Exhibitor Fees	0	0	250	250
84115 Entertainment	12,976	6,451	20,000	20,000
84253 Sleeping Rooms	4,396	0	2,500	2,500
84270 Misc Seminars	3,959	12,403	0	0
84301 Awards	0	596	0	0
88262 Meeting Meals	68,768	152,901	80,000	84,800
Admin & Internal Svcs	837	718	4,841	4,430
86431 Meetings Administrat	0	0	1,445	1,532
86532 Advertising News	0	0	2,000	2,000
86543 Graphics & Art	837	718	1,396	898

EXH. "A" TO 12.6.08 MINUTES (CONT.)

	06-07 Actual	07-08 Actual	08-09 Budget	09-10 Proposed Budget
Trust Officer Liaison Conf Revenue	119,384	206,089	89,500	87,500
Revenue	119,384	206,089	89,500	87,500
32001 Registrations	117,787	127,447	90,000	90,000
32301 Course Materials	954	650	500	500
35003 Ticket Events	0	4,245	0	0
35201 Sponsorships	0	75,750	0	0
35722 Meals	2,108	(20)	0	0
36998 Credit Card Fees	(1,447)	(1,983)	(1,000)	(3,000)
Trust Officer Liaison Conf Expense	189,677	177,955	167,156	170,807
61201 Equipment Rental	9,628	6,222	5,000	5,000
51101 Employee Travel	2,881	2,689	3,152	2,684
81411 Promotional Printing	1,101	1,385	500	500
81412 Promotional Mailing	5,288	5,783	5,500	5,500
84001 Postage	119	685	2,000	2,000
84002 Printing	6,965	9,556	1,500	1,500
84009 Supplies	0	25	200	200
84061 Reception	76,028	69,428	60,000	65,000
84062 Luncheons	44,312	24,400	35,000	30,000
84064 Golf Tourn Expenses	11,259	11,089	7,000	11,000
88211 Steering Committee	0	0	1,500	1,500
88230 Speakers Expense	7,086	4,260	3,000	3,000
88231 Speakers Travel	0	494	0	0
88232 Speakers Meals	0	6	0	0
88233 Speakers Hotel	0	193	0	0
88241 Outline Prt-Inhouse	0	0	4,000	4,000
88252 Certification Fee	150	300	150	150
88265 Refreshment Breaks	5,509	0	7,500	7,500
88269 Breakfast	18,262	35,838	28,000	28,000
Admin & Internal Svcs	1,089	5,593	3,154	3,273
86532 Advertising News	0	0	2,158	2,158
86543 Graphics & Art	1,089	1,193	996	1,115
86623 Registrars	0	4,400	0	0

EXH. "A" TO 12.6.08 MINUTES (CONT.)

	06-07 Actual	07-08 Actual	08-09 Budget	09-10 Proposed Budget
Legislative Update Revenue	54,614	30,386	24,320	40,905
Revenue	54,614	30,386	24,320	40,905
32001 Registrations	750	0	0	0
32006 Live Web Cast	0	0	0	8,500
32010 Legal Span On-line	0	1,979	0	750
32201 Audio Tapes	17,845	4,800	4,800	0
32205 Compact Disc	31,566	20,805	16,800	19,200
32207 DVD	0	0	0	10,000
32301 Course Materials	5,000	3,000	2,900	3,000
36998 Credit Card Fees	(474)	(198)	(180)	(545)
Legislative Update Expense	100,406	81,499	103,958	115,323
61201 Equipment Rental	9,500	5,845	9,500	10,000
51101 Employee Travel	1,226	2,150	3,152	2,938
75102 1st Class & Misc Mai	9	22	300	300
75401 Express Mail	609	682	1,000	1,500
81411 Promotional Printing	2,117	0	1,000	1,000
81412 Promotional Mailing	5,864	0	3,500	3,500
84001 Postage	1,439	105	1,500	1,500
84002 Printing	32	75	650	700
84012 Registration Support	0	0	3,000	3,000
84061 Reception	0	0	2,500	2,500
84062 Luncheons	28,135	26,389	28,500	30,000
84238 Council Mtg Recreati	2,335	0	0	0
84241 Spouse Functions	1,179	0	0	0
84254 Speaker Gifts	0	1,500	2,000	2,000
84258 Web Services	0	0	0	6,000
84999 Miscellaneous	0	2,177	0	0
88230 Speakers Expense	3,000	5,366	4,000	4,000
88231 Speakers Travel	140	0	0	0
88232 Speakers Meals	340	0	0	0
88233 Speakers Hotel	3,360	0	3,700	3,700
88239 Speakers Other Exp	1,343	0	0	0
88241 Outline Prt-Inhouse	8,656	1,857	2,000	3,000
88242 Outline Prt-Contract	5,746	12,957	13,000	13,000
88252 Certification Fee	150	0	150	0
88265 Refreshment Breaks	5,500	4,856	5,500	5,500
88269 Breakfast	13,326	9,500	10,000	10,000
88281 A/V Ctr Dup/Prod	0	836	800	1,600
Time Distribution	0	0	500	500

EXH. "A" TO 12.6.08 MINUTES (CONT.)

	06-07 Actual	07-08 Actual	08-09 Budget	09-10 Proposed Budget
83431 CLE Courses	0	0	500	500
Admin & Internal Svcs	6,374	7,159	7,706	9,085
86431 Meetings Administrat	0	0	487	0
86432 Time Taping Editing	0	3,743	3,800	4,500
86532 Advertising News	340	671	734	800
86543 Graphics & Art	1,254	1,278	1,285	1,285
86623 Registrars	4,780	1,467	1,400	2,500

EXH. "A" TO 12.6.08 MINUTES (CONT.)

## RPPTL SECTION BUDGET OVERVIEW

	<u>2006-7</u> <u>Actual</u>	<u>2007-8</u> <u>Actual</u>	<u>2008-9</u> <u>Budget</u>	<u>2009-10</u> <u>Proposed</u> <u>Budget</u>
<b>Beginning Fund Balance</b>	448,073	917,093	910,187	1,048,252
<b>General:</b>				
Revenue	1,203,816	964,812*	915,063	968,678
Expenses	571,900	769,946	757,070	872,486**
Net	631,916	194,866*	157,993	96,192
<b>ATO:</b>				
Revenue	119,384	206,089	89,500	87,500
Expenses	189,677	177,955	167,156	170,807
Net	(70,293)	28,134	(77,656)	(83,307)
<b>LU:</b>				
Revenue	54,614	30,386	24,320	40,905
Expenses	100,406	81,499	103,958	115,323
Net	(45,792)	(51,113)	(79,638)	(74,418)
<b>Convention:</b>				
Revenue	55,720	54,986*	92,000	92,000
Expenses	102,693	175,351	126,493	121,018
Net	(46,973)	(120,365)*	(34,493)	(29,018)
<b>Combined:</b>				
Revenue	1,433,534	1,256,273	1,120,883	1,189,083
Expenses	964,676	1,204,751	1,154,677	1,279,634**
Adjustment	+ 162	-73		
Net	469,020	51,449	(33,794)	(90,551)**
<b>Ending Fund Balance</b>	917,093	968,542	876,393	957,701

\* General Revenue of \$964,812 includes \$36,704 of Convention Revenue. Convention Revenue of \$54,986 does not include \$36,704 of convention revenue posted to General Revenue.

\*\* Budget expenses include \$79,317 "Operating Reserve"

EXH. "A" TO 12.6.08 MINUTES (CONT.)

RPPTL 2008 – 2009  
Executive Council Meeting Schedule  
(Sandra Diamond's Year)

<b>Date</b>	<b>Location</b>
July 24 – July 27, <u>2008</u>	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida
September 18 – September 21, <u>2008</u>	<b>Executive Council Meeting</b> Ritz-Carlton Key Biscayne, Florida
December 4 – December 7, <u>2008</u>	<b>Executive Council Meeting</b> DoubleTree Hotel Tallahassee, Florida
*January 29 – February 2, <u>2009</u> & February 2 – February 6, <u>2009</u>	<b>Executive Council Meeting / Out-of-State Meeting</b> Swissotel Quito Quito Ecuador & Galapagos Islands Cruise
May 21 – May 24, <u>2009</u>	<b>Executive Council Meeting / RPPTL Convention</b> Renaissance Vinoy Resort St. Petersburg, Florida

RPPTL 2009 - 2010  
Executive Council Meeting Schedule  
JOHN NEUKAMM'S YEAR

<b>Date</b>	<b>Location</b>
July 30 – August 2, 2009	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida
September 24 – September 27, 2009	<b>Executive Council Meeting</b> Ritz-Carlton, Naples Naples, Florida
January 14 – January 17, 2010	<b>Executive Council Meeting</b> The Casa Monica Hotel St. Augustine, Florida
March 16 – March 21, 2010	<b>Executive Council Meeting / Out-of-State Meeting</b> The Ritz-Carlton, Kapalua Lahaina, Maui Hawaii
May 27 – May 30, 2010	<b>Executive Council Meeting / RPPTL Convention</b> Tampa Marriott – Waterside Hotel & Marina Tampa, Florida

At its December 12, 2008, meeting in Orlando, The Florida Bar Board of Governors:

- Approved 13 legislative positions for the 2008-10 biennium. Legislation Committee Chair Greg Coleman said all were renewals of positions the board had approved for the 2006-08 legislative sessions. The positions include maintaining the Supreme Court's authority over the court system and the legal profession, supporting adequate funding for the court system including public defenders and state attorneys, supporting the Supreme Court's certification of the need for new judges, supporting a substantial pay raise for federal judges, getting adequate funding for the Civil Legal Assistance Act, and opposing the indiscriminate shackling of juveniles in court proceedings.

- Heard a report from Coleman and Legislative Consultant Steve Metz on the Bar coordinating its efforts with the Supreme Court to get better funding for the court system in the state's current economic crisis. Metz noted that the court and others are looking at the more than \$300 million in fees and fines currently collected by court clerks and returned to the state's general revenue fund, of which less than \$14 million is earmarked for the courts. More of the effort will be detailed and worked out at the summit on state court funding January 16 at the Midyear Meeting in Miami.

- Heard a report from Investment Committee Chair Ian Comisky that while the stock market is down 35 to 45 percent, the Bar's investment portfolio is down only about 15 percent. He said the Investment Committee is continuing to monitor the funds. President-elect Jesse Diner added that the difficult economy and investments mean the Bar will be facing a tough time with its 2009-10 budget, but that he does not foresee an increase in Bar annual membership fees.

- Heard a report from President-elect Jesse Diner on the recent planning retreat. He said the Strategic Planning Committee reaffirmed the Bar's existing priorities, but that economic considerations were giving them a special urgency. The four top goals remain protecting the courts including getting adequate funding, protecting the legal profession, protect access to the courts, and improving communications with Bar members and the public. On the latter, Diner said the Bar will be exploring using technology to improve communications and efficiency.

- Passed on final reading several rules, including one which allows for the emergency placing on the inactive list an attorney who has an incapacity not related to misconduct which affects that member's ability to competently practice law. The board also gave final approval to a new Standing Board Policy which provides guidelines for exempting some recipients of public reprimands from having to appear before the board under certain circumstances with the approval of the designated reviewer after discussion with staff counsel.

- Heard a report from Board Review Committee on Professional Ethics Chair David Prather that the committee postponed action on a revision to Ethics Opinion 90-6, which addresses an attorney's duties when he or she discovers a criminal defense client is proceeding under a false name. Prather said the committee heard extensive debate on the matter at its December 11 meeting, and requested that staff draft alternatives for the BRC to consider on the revised opinion. He said the issue will come to the board at its January 30 meeting.

- Approved revisions of Supreme Court-approved residential eviction forms. The revisions reflect statutory changes and the revised forms will be filed with the Supreme Court.



## RPPTL FINANCIAL SUMMARY

2008 – 2009 [July 1, 2008 – November 30, 2008<sup>1</sup>]

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Revenue: \$615,514\*

Expenses: \$548,178

Net:	\$67,336
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\* \$164,100 of this figure represents revenue from corporate sponsors.

<p><u>RPPTL Fund Balance (6-31-08)</u></p>
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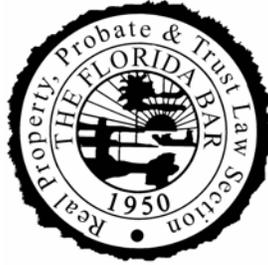
<p>\$ 968,552</p>
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<p><u>RPPTL CLE</u></p>
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<p>RPPTL YTD Actual CLE Revenue \$109,853</p>
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<p>RPPTL Budgeted CLE Revenue \$205,000</p>
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<sup>1</sup> This report is based on the tentative unaudited detail statement of operations dated 11/30/2008.



**RPPTL Financial Summary from Separate Budgets**  
2008 – 2009 [July 1, 2008 – November 30, 2008<sup>1</sup>]  
FINAL YEAR END REPORT

**General Budget**

Revenue:	\$ 544,971
Expenses:	\$ 441,083
Net:	\$ 103,888

**Attorney / Trust Officer Liaison Conference**

Revenue:	\$ 15,781
Expenses:	\$ 5,141
Net:	\$ 10,640

**Legislative Update**

Revenue:	\$ 54,762
Expenses:	\$ 101,636
Net:	(\$46,874)

**Convention**

Revenue:	\$ 0
Expenses:	\$ 318
Net:	\$(318)

**Roll-up Summary (Total)**

Revenue:	\$ 615,514
Expenses:	\$ 548,178
Net Operations:	\$ 67,336

Reserve (Fund Balance):	\$ 968,552
<b>GRAND TOTAL</b>	<b>\$1,035,888</b>

<sup>1</sup> This report is based on the tentative unaudited detail statement of operations dated 11/30/2008

By Senator Bennett

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1                   A bill to be entitled  
2           An act relating to title insurance; creating s.  
3           626.8422, F.S.; authorizing a title insurance agent or  
4           agency to charge a reasonable fee for certain  
5           services; providing that such charges are not part of  
6           the rate charged by the title insurer; requiring that  
7           certain information regarding each charge be filed  
8           with the Office of Insurance Regulation; requiring  
9           that the office publish such information by specified  
10          means; prohibiting charges for certain services from  
11          being set below the cost to provide such services;  
12          amending s. 626.9541, F.S.; deleting certain portions  
13          of clarifying language related to the payment of  
14          certain portions of premium; prohibiting the payment  
15          of any portion of the premium as consideration for the  
16          referral of title insurance business; amending s.  
17          627.7711, F.S.; expanding the definition of "premium"  
18          to include endorsements, commitments, or other  
19          contracts; providing additional exceptions to the  
20          scope of the term "premium"; providing a method of  
21          calculation of premium; creating s. 627.7712, F.S.;  
22          authorizing a title insurance agent or agency to  
23          charge a reasonable fee for certain services;  
24          providing that such charges are not part of the rate  
25          charged by the title insurer; requiring that certain  
26          information regarding each charge be filed with the  
27          office; requiring that the office publish such  
28          information by specified means; prohibiting charges  
29          for certain services from being set below the cost to

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30 provide such services; amending s. 627.780, F.S.;

31 prohibiting a person from knowingly quoting, charging,

32 accepting, collecting, or receiving a premium for

33 title insurance other than the premium approved by the

34 office; amending s. 627.782, F.S.; providing for the

35 approval of rates; requiring that each title insurer

36 make an annual filing with the office on or before a

37 specified deadline demonstrating that the rate for

38 such insurance is actuarially sound; prohibiting rates

39 for such filing from including certain charges,

40 commission, or compensation; providing methods by

41 which filing requirements may be satisfied; requiring

42 that the office issue a notice of intent to approve or

43 disapprove the filing on or before a specified

44 deadline; providing that such notice constitutes

45 agency action; providing that requests for supporting

46 information, mathematical or mechanical corrections,

47 or notification of the office's preliminary findings

48 do not toll the deadline date; providing that a rate

49 be deemed approved if the office does not issue the

50 required notice within the specified period; requiring

51 that the office review a rate filing to determine if

52 the rate is excessive, inadequate, or unfairly

53 discriminatory; requiring that the office consider

54 certain factors and information when making such

55 review; providing standards upon which a rate may be

56 found excessive, inadequate, or unfairly

57 discriminatory; authorizing the office to require an

58 insurer to provide, at the insurer's expense, any

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59 information necessary to evaluate the condition of the  
60 company and reasonableness of the filing; authorizing  
61 the office to review certain information at any time;  
62 requiring that the office initiate proceedings to  
63 disapprove a rate and notify the insurer if the office  
64 finds on a preliminary basis that a rate is excessive,  
65 inadequate, or unfairly discriminatory; requiring that  
66 an insurer, upon receipt of such notice from the  
67 office, provide certain information within a specified  
68 period; requiring that the office issue a notice of  
69 intent to approve or a notice of intent to disapprove  
70 within a specified period; providing that an insurer  
71 has the burden of proof to show by a preponderance of  
72 the evidence that a rate is not excessive, inadequate,  
73 or unfairly discriminatory; prohibiting an insurer  
74 from altering a rate after its receipt of notice from  
75 the office that a rate may be excessive, inadequate,  
76 or unfairly discriminatory for a specified period;  
77 providing exceptions; authorizing the office to  
78 disapprove without notice any rate increase filed by  
79 an insurer during the prohibited period; requiring  
80 that certain individuals affiliated with a title  
81 insurer certify specified information on a form  
82 approved by the Financial Services Commission when  
83 submitting a rate filing; providing that it is a  
84 violation of state law for a certifying officer or  
85 actuary to knowingly make a false certification;  
86 providing that failure to provide such certification  
87 results in a filing being disapproved without

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88 prejudice; authorizing an insurer to refile a rate  
89 filing under such circumstances; defining the term  
90 "actuary"; authorizing an insurer to apply for an  
91 extension of time to make a filing under certain  
92 circumstances; authorizing the office to exempt a  
93 company from filing rates or rate certifications under  
94 certain circumstances; authorizing the office to order  
95 insurers not meeting certain filing requirements to  
96 discontinue the issuance of policies for which the  
97 required filing was not made until such time that the  
98 office determines that the required filing has been  
99 submitted properly; providing for application of an  
100 approved rate; authorizing the commission to require  
101 by rule that licensees submit certain information  
102 determined by the office as necessary to analyze  
103 premium rates, retention rates, or the condition of  
104 the title insurance industry; authorizing the  
105 commission to adopt rules; amending s. 627.7845, F.S.;  
106 providing that an insurer is liable to the insured for  
107 damages up to three times the amount of coverage under  
108 certain conditions; repealing s. 627.783, F.S.,  
109 relating to rate deviation; providing for application  
110 of the act; providing an effective date.

111  
112 Be It Enacted by the Legislature of the State of Florida:

113  
114 Section 1. Section 626.8422, Florida Statutes, is created  
115 to read:

116 626.8422 Charges for services.-

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117       (1) A title insurance agent or agency may charge a  
118 reasonable fee for primary title services, title searches, and  
119 closing services or the components thereof actually performed by  
120 the agent or agency. Any charges under this section do not  
121 constitute a part of the rate charged by the title insurer for  
122 the issuance of the title insurance form, policy, commitment, or  
123 contract issued in connection therewith. The agent or agency  
124 must file with the office the amount of each such charge or  
125 change to such charge, including the components thereof,  
126 together with related information as required by the office on a  
127 form adopted by the office. The office shall publish the  
128 information collected from agents or agencies pursuant to this  
129 section via the Internet or otherwise as the office deems  
130 sufficient to apprise the public of costs for these services  
131 among the various agents or agencies.

132       (2) Charges for the services or components of services  
133 described in subsection (1) set by the agent or agency may not  
134 be set below the cost to provide such services.

135       Section 2. Paragraph (h) of subsection (1) of section  
136 626.9541, Florida Statutes, is amended to read:

137       626.9541 Unfair methods of competition and unfair or  
138 deceptive acts or practices defined.—

139       (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE  
140 ACTS.—The following are defined as unfair methods of competition  
141 and unfair or deceptive acts or practices:

142       (h) *Unlawful rebates.*—

143       1. Except as otherwise expressly provided by law, or in an  
144 applicable filing with the office, knowingly:

145       a. Permitting, or offering to make, or making, any contract

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146 or agreement as to such contract other than as plainly expressed  
147 in the insurance contract issued thereon;

148       b. Paying, allowing, or giving, or offering to pay, allow,  
149 or give, directly or indirectly, as inducement to such insurance  
150 contract, any unlawful rebate of premiums payable on the  
151 contract, any special favor or advantage in the dividends or  
152 other benefits thereon, or any valuable consideration or  
153 inducement whatever not specified in the contract;

154       c. Giving, selling, or purchasing, or offering to give,  
155 sell, or purchase, as inducement to such insurance contract or  
156 in connection therewith, any stocks, bonds, or other securities  
157 of any insurance company or other corporation, association, or  
158 partnership, or any dividends or profits accrued thereon, or  
159 anything of value whatsoever not specified in the insurance  
160 contract.

161       2. Nothing in paragraph (g) or subparagraph 1. of this  
162 paragraph shall be construed as including within the definition  
163 of discrimination or unlawful rebates:

164       a. In the case of any contract of life insurance or life  
165 annuity, paying bonuses to all policyholders or otherwise  
166 abating their premiums in whole or in part out of surplus  
167 accumulated from nonparticipating insurance; provided that any  
168 such bonuses or abatement of premiums is fair and equitable to  
169 all policyholders and for the best interests of the company and  
170 its policyholders.

171       b. In the case of life insurance policies issued on the  
172 industrial debit plan, making allowance to policyholders who  
173 have continuously for a specified period made premium payments  
174 directly to an office of the insurer in an amount which fairly

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175 represents the saving in collection expenses.

176 c. Readjustment of the rate of premium for a group  
177 insurance policy based on the loss or expense thereunder, at the  
178 end of the first or any subsequent policy year of insurance  
179 thereunder, which may be made retroactive only for such policy  
180 year.

181 d. Issuance of life insurance policies or annuity contracts  
182 at rates less than the usual rates of premiums for such policies  
183 or contracts, as group insurance or employee insurance as  
184 defined in this code.

185 e. Issuing life or disability insurance policies on a  
186 salary savings, bank draft, preauthorized check, payroll  
187 deduction, or other similar plan at a reduced rate reasonably  
188 related to the savings made by the use of such plan.

189 3.a. No title insurer, or any member, employee, attorney,  
190 agent, or agency thereof, shall pay, allow, or give, or offer to  
191 pay, allow, or give, directly or indirectly, as inducement to  
192 title insurance, or after such insurance has been effected, any  
193 rebate or abatement of the premium or any other charge or fee,  
194 or provide any special favor or advantage, or any monetary  
195 consideration or inducement whatever.

196 b. Nothing in this subparagraph shall be construed as  
197 prohibiting the payment of fees to attorneys at law, duly  
198 licensed to practice law in the courts of this state, for  
199 professional services, ~~or as prohibiting the payment of earned~~  
200 ~~portions of the premium to duly appointed agents or agencies who~~  
201 ~~actually perform services for the title insurer.~~ Nothing in this  
202 subparagraph shall be construed as prohibiting a rebate or  
203 abatement of an attorney's fee charged for professional

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204 ~~services, or that portion of the premium that is not required to~~  
 205 ~~be retained by the insurer pursuant to s. 627.782(1),~~ or any  
 206 other agent charge or fee to the person responsible for paying  
 207 the premium, charge, or fee.

208 c. No insured named in a policy, or any other person  
 209 directly or indirectly connected with the transaction involving  
 210 the issuance of such policy, including, but not limited to, any  
 211 mortgage broker, real estate broker, builder, or attorney, any  
 212 employee, agent, agency, or representative thereof, or any other  
 213 person whatsoever, shall knowingly receive or accept, directly  
 214 or indirectly, any rebate or abatement of any portion of the  
 215 title insurance premium or of any other charge or fee or any  
 216 monetary consideration or inducement whatsoever, except as set  
 217 forth in sub-subparagraph b.; provided, in no event shall any  
 218 portion of the attorney's fee, any portion of the premium ~~that~~  
 219 ~~is not required to be retained by the insurer pursuant to s.~~  
 220 ~~627.782(1),~~ any agent charge or fee, or any other monetary  
 221 consideration or inducement be paid directly or indirectly for  
 222 the referral of title insurance business.

223 Section 3. Subsection (2) of section 627.7711, Florida  
 224 Statutes, is amended to read:

225 627.7711 Definitions.—As used in this part, the term:

226 (2) "Premium" means the charge, ~~as specified by rule of the~~  
 227 ~~commission, that is~~ made by a title insurer for a title  
 228 insurance policy, endorsement, commitment, or other contract for  
 229 ~~including the charge for performance of primary title services~~  
 230 ~~by a title insurer or title insurance agent or agency, and~~  
 231 incurring the risks incident to the ~~such~~ policy, endorsement,  
 232 commitment, or other contract under the several classifications

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233 of title insurance contracts and forms, and upon which charge a  
234 premium tax is paid under s. 624.509. As used in this part or in  
235 any other law, with respect to title insurance, the word  
236 "premium" does not include a commission or any reimbursement for  
237 primary title services, title searches, closing services, or any  
238 component thereof performed by a title insurer, title insurance  
239 agent, or agency. The premium shall be calculated by multiplying  
240 the approved rate by each \$1,000 of title insurance limits  
241 provided.

242 Section 4. Section 627.7712, Florida Statutes, is created  
243 to read:

244 627.7712 Charges for services.-

245 (1) A title insurance agent or agency may charge a  
246 reasonable fee for primary title services, title searches, and  
247 closing services or the components thereof actually performed by  
248 the agent or agency. Any charges under this section do not  
249 constitute a part of the rate charged by the title insurer for  
250 the issuance of the title insurance form, policy, commitment, or  
251 contract issued in connection therewith. The agent or agency  
252 must file with the office the amount of each such charge or  
253 change to such charge, including the components thereof,  
254 together with related information as required by the office on a  
255 form adopted by the office. The office shall publish the  
256 information collected from agents or agencies pursuant to this  
257 section via the Internet or otherwise as the office deems  
258 sufficient to apprise the public of costs for these services  
259 among the various agents or agencies.

260 (2) Charges for the services or components of services  
261 described in subsection (1) set by the agent or agency may not

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262 be set below the cost to provide such services.

263 Section 5. Subsection (1) of section 627.780, Florida  
264 Statutes, is amended to read:

265 627.780 Illegal dealings in premium.—

266 (1) A person may not knowingly quote, charge, accept,  
267 collect, or receive a premium for title insurance other than the  
268 premium approved by the office ~~adopted by the commission~~, except  
269 as provided in s. 626.9541(1)(h)3.b.

270 Section 6. Section 627.782, Florida Statutes, is amended to  
271 read:

272 627.782 Approval ~~Adoption~~ of rates.—

273 (1) Each title insurer shall make an annual filing with the  
274 office no later than 12 months after the date of that insurer's  
275 previous filing which demonstrates that the rate is actuarially  
276 sound. Rates for the required filing may not include any charge  
277 for primary title services, closing services, or title searches  
278 as defined in s. 627.7711 or any commission or other  
279 compensation made to title agents or agencies.

280 (a) The filing requirements of this section shall be  
281 satisfied by one of the following methods:

282 1. A rate filing prepared by an actuary containing  
283 documentation demonstrating that the proposed rates are not  
284 excessive, inadequate, or unfairly discriminatory pursuant to  
285 applicable rating laws and rules of the commission.

286 2. If no rate change is proposed, a filing consisting of a  
287 certification by an actuary that the existing rate is  
288 actuarially sound and not excessive, inadequate, or unfairly  
289 discriminatory.

290 (b) The office shall finalize its review by issuing a

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291 notice of intent to approve or a notice of intent to disapprove  
292 within 90 days after the date of its receipt of the filing. The  
293 notice of intent to approve and the notice of intent to  
294 disapprove constitute agency action for purposes of chapter 120.  
295 Requests for supporting information, requests for mathematical  
296 or mechanical corrections, or notification to the insurer by the  
297 office of its preliminary findings do not toll the 90-day period  
298 during any such proceeding. The rate shall be deemed approved if  
299 the office does not issue a notice of intent to approve or a  
300 notice of intent to disapprove within 90 days after the date of  
301 its receipt of the filing.

302 (c) Upon receipt of a rate filing, the office shall review  
303 the rate filing to determine if the rate is excessive,  
304 inadequate, or unfairly discriminatory. The office shall, in  
305 accordance with generally accepted and reasonable actuarial  
306 principles and techniques, consider the following factors when  
307 making such determination:

308 1. Each title insurer's loss experience and prospective  
309 loss experience within and without this state under closing  
310 protection letters, policies, endorsements, commitments, and  
311 other contracts and policy liabilities.

312 2. A reasonable margin for profit and contingencies,  
313 including contingent liability under s. 627.7865, sufficient to  
314 allow title insurers to earn a rate of return on their capital  
315 which will attract and retain adequate capital investment in the  
316 title insurance business and maintain an efficient title  
317 insurance delivery system.

318 3. Past expenses and prospective expenses for the  
319 administration and handling of risks.

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320 4. Liability for defalcation.

321 5. The degree of competition among insurers for the risk  
322 insured.

323 6. Investment income reasonably expected by the insurer,  
324 consistent with the insurer's investment practices, from  
325 premiums anticipated in the filing, plus any other expected  
326 income from currently invested assets representing the amount  
327 expected on unearned premium reserves and loss reserves. The  
328 commission may adopt rules using reasonable techniques of  
329 actuarial science and economics to specify the manner in which  
330 insurers must calculate investment income attributable to such  
331 classes of insurance written in this state and the manner in  
332 which such investment income must be used in the calculation of  
333 insurance rates. The manner of calculation shall contemplate  
334 allowances for a profit factor and investment income that  
335 produce a reasonable rate of return; however, investment income  
336 from invested surplus must not be considered.

337 7. The reasonableness of the judgment reflected in the  
338 filing.

339 8. Dividends, savings, or unabsorbed premium deposits  
340 allowed or returned to Florida policyholders, members, or  
341 subscribers.

342 9. The adequacy of loss reserves.

343 10. The cost of reinsurance.

344 11. Trend factors, including trends in actual losses per  
345 insured unit for the insurer making the filing.

346 12. Other relevant factors that affect the frequency or  
347 severity of claims or expenses.

348 (d) After consideration of the rate factors provided in

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349 paragraph (c), a rate may be found by the office to be  
350 excessive, inadequate, or unfairly discriminatory based upon the  
351 following standards:

352 1. Rates shall be deemed excessive if they are likely to  
353 produce a profit from Florida business which is unreasonably  
354 high in relation to the risk involved in the class of business  
355 or if expenses are unreasonably high in relation to services  
356 rendered.

357 2. Rates shall be deemed excessive if, among other things,  
358 the rate structure established by a title insurer provides for  
359 replenishment of surpluses from premiums if the replenishment is  
360 necessitated by investment losses.

361 3. Rates shall be deemed inadequate if the rates and the  
362 investment income attributable to them are clearly insufficient  
363 to sustain projected losses and expenses in the class of  
364 business to which they apply.

365 (e) In reviewing a rate filing, the office may require the  
366 insurer to provide, at the insurer's expense, all information  
367 necessary to evaluate the condition of the company and the  
368 reasonableness of the filing according to the criteria  
369 enumerated in this section.

370 (f) The office may at any time review a rate, rating  
371 schedule, rating manual, or rate change; the pertinent records  
372 of the insurer; and market conditions. If the office finds on a  
373 preliminary basis that a rate may be excessive, inadequate, or  
374 unfairly discriminatory, the office shall initiate proceedings  
375 to disapprove the rate and shall notify the insurer. Upon being  
376 notified, the insurer shall, within 60 days, file with the  
377 office all information that, in the belief of the insurer,

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378 proves the reasonableness, adequacy, and fairness of the rate or  
379 rate change. The office shall issue a notice of intent to  
380 approve or a notice of intent to disapprove pursuant to the  
381 procedures of paragraph (b) within 90 days after the date of its  
382 receipt of the insurer's initial response. In such instances and  
383 in any administrative proceeding relating to the legality of the  
384 rate, the insurer has the burden of proof to show by a  
385 preponderance of the evidence that the rate is not excessive,  
386 inadequate, or unfairly discriminatory. After the office  
387 notifies an insurer that a rate may be excessive, inadequate, or  
388 unfairly discriminatory, unless the office withdraws the  
389 notification, the insurer may not alter the rate except to  
390 conform with the office's notice until the earlier of 120 days  
391 after the date the notification was provided or 180 days after  
392 the date of the implementation of the rate. The office may,  
393 subject to chapter 120, disapprove without the required 60-day  
394 notification any rate increase filed by an insurer within the  
395 prohibited period or during the time that the legality of the  
396 increased rate is being contested.

397 (g) When submitting a rate filing, the chief executive  
398 officer or the chief financial officer of the title insurer and  
399 the chief actuary of the title insurer must certify the  
400 following information on a form approved by the commission,  
401 under oath, and subject to penalty of perjury:

402 1. The signing officer and actuary have reviewed the rate  
403 filing;

404 2. Based on the knowledge of the signing officer and  
405 actuary, the rate filing does not contain any untrue statement  
406 of a material fact or omit a material fact necessary to make the

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407 statements not misleading, in light of the circumstances under  
408 which such statements were made;

409 3. Based on the knowledge of the signing officer and  
410 actuary, the information and other factors described in this  
411 section, including, but not limited to, investment income,  
412 present the basis of the rate filing in all material respects  
413 for the periods presented in the filing; and

414 4. Based on the knowledge of the signing officer and  
415 actuary, the rate filing reflects all premium savings that are  
416 reasonably expected to result from legislative enactments and  
417 are in accordance with generally accepted and reasonable  
418 actuarial techniques.

419  
420 A signing officer or actuary who knowingly makes a false  
421 certification under this subsection commits a violation of s.  
422 626.9541(1)(e) and is subject to the penalties prescribed in s.  
423 626.9521. Failure to provide such certification by the officer  
424 and actuary shall result in the rate filing being disapproved  
425 without prejudice. Under such circumstances, the insurer or  
426 rating organization may refile its rate filing with the required  
427 certification. As used in this paragraph, the term "actuary"  
428 means an individual who is a member of the Casualty Actuary  
429 Society or the American Academy of Actuaries.

430 (h) If, at the time a filing is required under this  
431 section, an insurer is in the process of completing a rate  
432 review, the insurer may apply to the office for an extension of  
433 up to an additional 30 days to make the filing. The request for  
434 an extension must be received by the office no later than the  
435 date the filing is due.

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436 (i) After receiving a request to be exempted from the  
437 provisions of this section before the filing is due, the office  
438 may, due to insignificant numbers of policies in force or  
439 insignificant premium volume, exempt a company from filing rates  
440 or rate certification as required by this section.

441 (j) If an insurer fails to meet the filing requirements of  
442 this subsection and does not submit the filing within 60 days  
443 following the date on which the filing is due, the office may,  
444 in addition to any other penalty authorized by law, order the  
445 insurer to discontinue the issuance of policies for which the  
446 required filing was not made until such time that the office  
447 determines that the required filing has been submitted properly.

448 ~~(1) Subject to the rating provisions of this code, the~~  
449 ~~commission must adopt a rule specifying the premium to be~~  
450 ~~charged in this state by title insurers for the respective types~~  
451 ~~of title insurance contracts and, for policies issued through~~  
452 ~~agents or agencies, the percentage of such premium required to~~  
453 ~~be retained by the title insurer which shall not be less than 30~~  
454 ~~percent. However, in a transaction subject to the Real Estate~~  
455 ~~Settlement Procedures Act of 1974, 12 U.S.C. ss. 2601 et seq.,~~  
456 ~~as amended, no portion of the premium attributable to providing~~  
457 ~~a primary title service shall be paid to or retained by any~~  
458 ~~person who does not actually perform or is not liable for the~~  
459 ~~performance of such service.~~

460 ~~(2) In adopting premium rates, the commission must give due~~  
461 ~~consideration to the following:~~

462 ~~(a) The title insurers' loss experience and prospective~~  
463 ~~loss experience under closing protection letters and policy~~  
464 ~~liabilities.~~

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465 ~~(b) A reasonable margin for underwriting profit and~~  
466 ~~contingencies, including contingent liability under s. 627.7865,~~  
467 ~~sufficient to allow title insurers, agents, and agencies to earn~~  
468 ~~a rate of return on their capital that will attract and retain~~  
469 ~~adequate capital investment in the title insurance business and~~  
470 ~~maintain an efficient title insurance delivery system.~~

471 ~~(c) Past expenses and prospective expenses for~~  
472 ~~administration and handling of risks.~~

473 ~~(d) Liability for defalcation.~~

474 ~~(e) Other relevant factors.~~

475 ~~(3) Rates may be grouped by classification or schedule and~~  
476 ~~may differ as to class of risk assumed.~~

477 ~~(4) Rates may not be excessive, inadequate, or unfairly~~  
478 ~~discriminatory.~~

479 ~~(2)-(5) The approved rate ~~premium~~ applies to each \$100 of~~  
480 ~~insurance issued to an insured.~~

481 ~~(3)-(6) The approved rate applies ~~premium rates~~ apply~~  
482 ~~throughout this state.~~

483 ~~(7) The commission shall, in accordance with the standards~~  
484 ~~provided in subsection (2), review the premium as needed, but~~  
485 ~~not less frequently than once every 3 years, and shall, based~~  
486 ~~upon the review required by this subsection, revise the premium~~  
487 ~~if the results of the review so warrant.~~

488 ~~(4)-(8) The commission may, by rule, require licensees under~~  
489 ~~this part to annually submit statistical information, including~~  
490 ~~loss and expense data, as the office ~~department~~ determines to be~~  
491 ~~necessary to analyze premium rates, retention rates, and the~~  
492 ~~condition of the title insurance industry.~~

493 ~~(5) The commission may establish procedures for the~~

21-00493-09

2009444\_\_

494 required filings by rule.

495 Section 7. Subsection (1) of section 627.7845, Florida  
496 Statutes, is amended to read:

497 627.7845 Determination of insurability required;  
498 preservation of evidence of title search and examination.-

499 (1) A title insurer may not issue a title insurance  
500 commitment, endorsement, or title insurance policy until the  
501 title insurer has caused to be made a determination of  
502 insurability based upon the evaluation of a reasonable title  
503 search or a search of the records of a Uniform Commercial Code  
504 filing office, as applicable, has examined such other  
505 information as may be necessary, and has caused to be made a  
506 determination of insurability of title or the existence,  
507 attachments, perfection, and priority of a Uniform Commercial  
508 Code security interest, including endorsement coverages, in  
509 accordance with sound underwriting practices. If an insurer or  
510 its agent is negligent in performing the activities required in  
511 this subsection, the insurer is liable to the insured for  
512 damages up to three times the amount of coverage.

513 Section 8. Section 627.783, Florida Statutes, is repealed.

514 Section 9. This act shall take effect July 1, 2009, and  
515 applies to title insurance forms, contracts, commitments, or  
516 policies issued on or after that date.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

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

## GENERAL INFORMATION

**Submitted By** Kristopher E. Fernandez, Vice-Chair, Title Insurance Committee of the Real Property Probate & Trust Law Section

**Address** 114 S. Fremont Avenue, Tampa, Florida 33606  
Telephone: (813) 832-6340

**Position Type** Section Committee, RPPTL Section, The Florida Bar  
(Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Kristopher E. Fernandez**, Kristopher E. Fernandez, P.A. 114 S. Fremont Avenue, Tampa, Florida 33606; (813) 832-6340  
**Burt Bruton**, Greenberg Traurig, P.A., 1221 Brickell Avenue, Miami, FL 33131, Telephone (305) 579-0593  
**Peter M. Dunbar**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533  
**Martha J. Edenfield**, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533  
(List name, address and phone number)

### Appearances

#### Before Legislators

(SAME)

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

#### Meetings with

#### Legislators/staff

(SAME)

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

## PROPOSED ADVOCACY

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

### If Applicable,

#### List The Following

SB 444

(Bill or PCB #)

Senator Bennett

(Bill or PCB Sponsor)

#### Indicate Position

Support   X   **Oppose**

Technical  
Assistance

                      
**Other**

### Proposed Wording of Position for Official Publication:

Opposes adoption of a "file and use" system for the determination of title insurance rates in the State of Florida, supplanting a promulgated rate system in which the state regulatory agency determines rates based on actuarial analysis of statutorily determined criteria.

### Reasons For Proposed Advocacy:

The RPPTL Section opposes adoption of a file and use system for the determination of title insurance rates in the State of Florida, The Section believes this proposed change would be disruptive to the title insurance industry, would have detrimental effects on title insurance agents, including attorneys acting in their capacity as title insurance agents, and would not benefit consumers. This request is a reiteration and rewording of the Section's existing legislative position #48, opposing the adoption of a file-and-use rate system in Florida. See attached white paper.



**RPPTL White Paper**  
**(2009 Legislative Session – SB 444)**

The Real Property, Probate & Trust Section of the Florida Bar (the “RPPTL Section”) opposes the passage of Senate Bill 444.

**I. SUMMARY**

Proposed Senate Bill 444 (2009) would create a two-tiered “file and use” system of determining title insurance rates in Florida. The system proposed by this bill would have detrimental effects on title insurance agents in Florida, including attorneys issuing title insurance policies, and would not benefit consumers.

**II. CURRENT SITUATION**

Currently, Florida Statutes provide for the Office of Insurance Regulation (“OIR”) to promulgate title insurance rates based on clearly established statutory criteria and actuarial analysis.

**III. EFFECT OF PROPOSED CHANGES**

The proposed SB 444 proposes the following changes:

A two tier “file and use” system would be created. The first tier would require title insurance underwriters to make an annual filing of the rates the title insurer plans to charge for title insurance commitments, policies and endorsements. The rates are subject to approval by the OIR. The insurer would retain 100% of the filed rate.

The second tier would require each title insurance agent to file the rates the agent will charge for primary title services, title searches and closing services. The OIR will publish the filed rates on the internet. The rates are not subject to approval and there is no validation of the reasonableness of charges other than a requirement that the charges may not be set below cost. The requirement of publishing closing charges and charging not less than cost negates the provisions in Chapter No. 2007-44 (signed into law on May 22, 2007), which separated the business of insurance from the business of real estate closings and eliminated the OIR’s authority to regulate closing charges.

Proposed Senate Bill 444 would also provide that insurers may be liable for damages up to three times the amount of coverage if they or their agents negligently perform certain functions, including determination of insurability, title searches or examination of off-record information. This would eliminate the economic loss rule as applied to title insurance. Agents might be expected to contribute to any insurers’ damages payments if their negligence was found to be the cause of the damages payments.

The bill discounts the importance of title insurance agents, including attorneys issuing title insurance policies, in Florida. Title insurance agents perform valuable and important roles in the underwriting function of title insurance. The charges for these functions would no longer be subject to the cost and market analysis currently existing. The public would be placed at greater risk without this safeguard.

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

The proposal may have an adverse fiscal impact on state or local governments. Allowing insurers to file and use whatever rate the OIR will approve, is likely to result in a downward spiral on title insurance rates. The state relies, in part, on a premium tax paid by title insurers, which is based on a percentage of the title insurance rate, or more correctly the “premium,” paid in insured Florida real estate transactions. The downward spiral of the rates likely to result from a “file and use” system would result in less premium tax being collected by the state.

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

The same downward spiral would result in a title insurance industry that would be less solvent. The current statutory program of promulgating rates was originally enacted to prevent the price-war mentality and downward rate spiral that resulted in title insurer solvency issues in the late 1970’s and early 1980’s.

#### **VI. CONSTITUTIONAL ISSUES**

None known at this time.

#### **VII. OTHER INTERESTED PARTIES**

Title insurance underwriters as well as non-attorney title agents will be adversely impacted by the proposal, as described above, and will be interested in this bill.

**Delegation to Cotrustees  
WHITE PAPER**

PROPOSED AMENDMENTS TO FLORIDA STATUTE 736.0703 and 736.0807

Presented By  
**Florida Bankers Association**  
January 9, 2009

I. SUMMARY

The purpose of the proposed amendments to s. 736.0703 F.S. and s. 736.0807 F.S. is to allow cotrustees to delegate investment functions to one of the cotrustees and to clarify that when investment functions are delegated, the delegation rules in the Prudent Investor Act apply.

II. CURRENT SITUATION

The new Florida Trust code took effect July 1, 2007. As with all substantial legislation, technical amendments to clarify the original intent continue to be identified.

Section 736.0807 F.S. allows a trustee to delegate duties and powers so long as the trustee uses reasonable care in selecting the agent, establishing the scope of the delegation and periodically reviewing the actions of the agent.

Section 518.112 F.S. provides the same authority to a trustee with respect to investment functions, but contains a notice requirement not contained in the Trust Code. The notice provision is inconsistent with s. 736.0807 F.S.

Section 736.0703 F.S. prohibits a trustee from delegating to a cotrustee "the performance of a function the settlor reasonably expect the cotrustees to perform jointly." This provision creates doubt that a cotrustee can delegate investment management functions to another cotrustee, although the trustees could clearly delegate such functions to a qualified third-party agent pursuant to s. 736.0807 F.S. and s. 518.112 F.S.

III. EFFECT OF PROPOSED CHANGE GENERALLY

The proposed changes would create an exception to the general rule prohibiting delegation to a cotrustee of a function the settlor reasonably expected the cotrustees to perform jointly. The change would allow the delegation of investment functions to a qualified cotrustee notwithstanding that the settlor may have expected all cotrustees to exercise that function jointly. The proposed changes also clarify that when investment functions are delegated to a cotrustee, the delegation rules in s. 518.112 F.S. apply. Those rules require that notice be given to beneficiaries of a trust that investment

functions are to be delegated to a cotrustee. The delegation rules also provide that the delegating trustee is relieved of liability for the investment decisions, actions, or omissions of the cotrustee to whom the functions are delegated.

#### IV. ANALYSIS

The proposed legislation effectively applies the fiduciary delegation rules of s 518.112 F.S. to delegation of investment functions from one cotrustee to another, notwithstanding the general rule of s. 736.0703 F.S. that cotrustees may not delegate among themselves the performance of a function that the settlor may reasonably have expected them to perform jointly. However, it is clear that a trust settlor can specifically *require* that cotrustees jointly exercise investment functions in the terms of a trust.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS--None

VI. DIRECT IMPACT ON PRIVATE SECTOR--None

VII. CONSTITUTIONAL ISSUES—None apparent

VIII. OTHER INTERESTED PARTIES—None known at this time

### 736.0703. Cotrustees

(1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees or a majority of the remaining cotrustees may act for the trust.

(3) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other provision of law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another cotrustee.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) A cotrustee may not delegate to another cotrustee the performance of a function the settlor reasonably expected the cotrustees to perform jointly. A cotrustee may revoke a delegation previously made. Notwithstanding any other provision of this section a trustee may delegate investment functions to a cotrustee by complying with the requirements of s. 518.112.

(6) Except as otherwise provided in subsection (7), a cotrustee who does not join in an action of another cotrustee is not liable for the action.

(7) Except as otherwise provided in subsection (9), each cotrustee shall exercise reasonable care to:

(a) Prevent a cotrustee from committing a breach of trust.

(b) Compel a cotrustee to redress a breach of trust.

(8) A dissenting cotrustee who joins in an action at the direction of the majority of the cotrustees and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the action.

(9) If the terms of a trust instrument provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power. Except in cases of willful misconduct on the part of the directed trustee of which the excluded trustee has actual knowledge, an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power, regardless of the information available to the excluded trustees. The excluded trustees are relieved of any obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power. The trustee or trustees having the power to direct or prevent

actions of the trustee shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power.

**736.0807. Delegation by trustee**

(1) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) Selecting an agent.

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.

(c) Reviewing the agent's actions periodically, in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with subsection (1) is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(4) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

(5) When delegating investment functions, a trustee must comply with the requirements of s. 518.112.

# Florida Trust Code

## Survivorship with Respect to Future Interests

Presented By  
Florida Bankers Association  
January 6, 2009

The new Florida Trust Code took effect July 1, 2007. As with all substantial legislation, technical amendments to clarify the original intent continue to be identified.

Section 736.1106 F.S. provides that a future interest under a trust is dependent on the beneficiary surviving the “distribution date.” Distribution date is defined as the “time when the future interest is to take effect in possession or enjoyment...”

It has been suggested in commentary that this language means that a beneficiary of a trust who is entitled to a distribution forfeits the entitlement if the beneficiary dies prior to “actual receipt” of the distribution. This result may shift the distribution from the spouse or heirs of the deceased beneficiary to others. The forfeiture provisions increase pressure on trustees to administer distributions quickly rather than thoughtfully.

An amendment is proposed to S. 736.1106(1)(b) that clarifies that the distribution date is the time when the right of possession and enjoyment arises, not the time that actual possession or enjoyment is realized. The change clarifies that an entitlement is not forfeited merely because it has not been paid out.

### Text of Proposal:

#### **736.1106. Antilapse; survivorship with respect to future interests under terms of inter vivos and testamentary trusts; substitute takers**

(1) As used in this section, the term:

(a) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(b) "Distribution date," with respect to a future interest, means the time when the future interest is to take effect ~~in possession or enjoyment~~. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day. The distribution date refers to the time that the right arises and is not necessarily the time that any benefit of the right is realized.

(c) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(d) "Future interest under the terms of a trust" means a future interest created by an inter vivos or testamentary transfer to an existing trust or creating a trust or by an exercise of a power of appointment to an existing trust directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

(e) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who did not predecease the distribution date or is not deemed to have predeceased the distribution date by operation of law.

(2) A future interest under the terms of a trust is contingent upon the beneficiary surviving the distribution date. Unless a contrary intent appears in the trust instrument, if a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take per stirpes the property to which the beneficiary would have been entitled if the beneficiary had survived the distribution date.

(3) In the application of this section:

(a) Words of survivorship attached to a future interest are a sufficient indication of an intent contrary to the application of this section.

(b) A residuary clause in a will is not a sufficient indication of an intent contrary to the application of this section, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(4) If, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) If the future interest was created by the exercise of a power of appointment, the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust.

(b) If no taker is produced by the application of paragraph (a) and the trust was created in a nonresiduary devise or appointment in the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(c) If no taker is produced by the application of paragraph (a) or paragraph (b), the property passes to those persons, including the state, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile if the transferor died when the disposition is to take effect in possession or enjoyment.

For purposes of paragraphs (b) and (c), the term "transferor" with respect to a future interest created by the exercise of a power of appointment, means the donor if the power was a nongeneral power and the donee if the power was a general power.

(5) Subsections (1)-(4) apply to all trusts other than trusts that were irrevocable before the effective date of this code. > Sections 732.603, > 732.604, and > 737.6035, as they exist on June 30, 2007, continue to apply to other trusts executed on or after June 12, 2003.

## AMICUS COMMITTEE REPORT

January 13, 2009

*OPEN PERMIT SERVICES OF FLORIDA, INC., v. THOMAS SCOTT CURTISS*, 3D DCA (obligations of purchaser/seller pending closing)

Brief filed.

Oral Argument 1/24/09

*SIMS v. NEW FALLS CORP.*, 3D DCA (Choice of law)

Brief filed.

*SKYLAKE INSURANCE AGENCY v. NMB PLAZA, LLC*, 3D DCA (application or not of 689.01 and miscellaneous)

Brief on extension.

*SAVERIO PUGLIESE, MICHAEL J. MIEVES, ANTONIO SALADINO, and STEPHEN MATOLYAK v. PUKKA DEVELOPMENT, INC.*, 11<sup>th</sup> Cir.

Brief filed.

Case decided favorably.

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[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 07-15198  
\_\_\_\_\_

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT DEC 9, 2008 THOMAS K. KAHN CLERK
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D. C. Docket Nos. 07-14040-CV-FJL  
07-14083-CV-FJL

SAVERIO PUGLIESE,  
MICHAEL J. MIEVES,  
ANTONIO SALADINO,  
STEPHEN MATOLYAK,

Plaintiffs-Appellees,

versus

PUKKA DEVELOPMENT, INC.,

Defendant-Appellant,

JACK B. OWEN, JR.,

Defendant.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Florida  
\_\_\_\_\_

**(December 9, 2008)**

Before HULL, MARCUS and KRAVITCH, Circuit Judges.

KRAVITCH, Circuit Judge:

Pukka Development appeals the district court's order granting summary judgment to Plaintiffs Saverio Pugliese, Michael Mieves, Antonio Saladino and Stephen Matolyak. This case turns on the interpretation of sections 1702 and 1703(d) of the Interstate Land Sales Act (the "ILSA"). We disagree with the district court's interpretation of the statute. We therefore reverse the district court's decisions to grant Plaintiffs' motion for summary judgment and to deny Pukka's motion for the same.

### **BACKGROUND**

Twenty-two months after entering into contracts to purchase individual units in Pukka's condominium development of seventy-eight units, Plaintiffs attempted to revoke their contracts pursuant to § 1703(d) of the ILSA, 15 U.S.C. § 1703(d). Pukka responded that the contracts at issue were exempt from § 1703(d), and thus could not be revoked. Plaintiffs filed suit seeking to rescind their contract obligations. The parties filed cross-motions for summary judgment. Finding no disputed issues of fact, the district court granted summary judgment as a matter of law for Plaintiffs and denied Pukka's motion for summary judgment based on its interpretation of the statutory language.

In § 1703(d), the ILSA provides purchasers and lessees of real estate "lots" a two-year right of revocation of the contract under certain circumstances. Section

1703(d) states “Any contract or agreement which is for the sale or lease of a lot *not exempt under section 1702* of this title which does not provide [certain safeguards within the terms of the contract] may be revoked at the option of the purchaser or lessee for two years from the date of the signing of such contract or agreement.” 15 U.S.C. § 1703(d) (emphasis added). The parties do not dispute that the required safeguards were not included in the contracts, and that the contracts would therefore be revocable unless exempt. Thus, this case turns on the meaning of the phrase “not exempt under section 1702” in § 1703(d).

Section 1702 contains three subsections. Section 1702(a) exempts the sale or lease of certain properties or “lots” from all ILSA provisions. Section 1702(b) exempts the sale or lease of other lots from ILSA registration and disclosure requirements. It states “the provisions requiring registration and disclosure (as specified in section 1703(a)(1) of this title and sections 1704 through 1707 of this title) shall not apply to [sales or leases of certain types of lots].” 15 U.S.C. § 1702(b). Subsection (b)(1) identifies “lots in a subdivision containing fewer than one hundred lots.” 15 U.S.C. § 1702(b)(1). Section 1702(c) provides for the creation of rules or regulations exempting lots from other provisions of the ILSA.

The parties agree that the contracts here involve lots in a subdivision containing fewer than one hundred lots and are therefore exempt from the

registration and disclosure provisions of the ILSA under § 1702(b)(1). The parties disagree, however, on whether the language “not exempt under section 1702” in § 1703(d) makes these contracts also exempt from the right of revocation provided in § 1703(d).

Pukka submitted an opinion letter written by Ivy Jackson, the Director of the RESPA and Interstate Land Sales office of the U.S. Department of Housing and Urban Development (“HUD”) as support for its position that any lot exempt from any provision of the ILSA under § 1702 would also be exempt from the revocation provision of § 1703(d).<sup>1</sup> In the letter, Jackson wrote that “[t]he requirements of . . . § 1703(d) do not apply to the sale or lease of lots that are exempt under the 100 lots provision of 15 U.S.C. § 1702(b)(1) (or any other exemption of § 1702).” The district court disregarded this letter, citing Samara Development Corp. v. Marlow, 556 So.2d 1097 (Fla. 1990), a Florida Supreme Court opinion construing other portions of the ILSA. In Samara, the plaintiff argued that deference was owed to HUD interpretations supporting its position. Id. at 1099. The Samara court held that the regulations did not resolve the statutory interpretation question before it, and that the court was, therefore, free to

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<sup>1</sup> HUD is the agency responsible for administration of the ILSA and has been granted authority to promulgate rules and regulations relating to ILSA. 15 U.S.C. §§ 1715, 1718.

conduct its own analysis to determine the meaning of the statutory provision in question. Id. The district court in this case, relying on Samara, concluded that “full agency deference is not always warranted.”<sup>2</sup>

The district court acknowledged that the Florida court of appeals had issued an opinion finding that lots exempt under § 1702(b)(1) were exempt from § 1703(d), Mayersdorf v. Paramount Boynton, LLC, 910 So.2d 887 (Fla. Ct. App. 2005), but noted that that case was not binding authority.

The district court held that, under the plain language of the statute, § 1703(d) “simply . . . refer[s] the reader to where the exemptions are found” and that § 1702(b)(1) “clearly limits [the] scope [of the exemption for lots enumerated there] to specified, related provisions.” Thus, the court held that the ILSA exempted contracts from § 1703(d) only if the exemption given in § 1702 so provides. The court, therefore, concluded that the contracts here are not exempt from § 1703(d) and may be revoked within two years. Accordingly, the district court granted summary judgment for Plaintiffs and denied Pukka’s motion for summary judgment. Pukka timely appealed.

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<sup>2</sup> We note, however, that the Samara court did not rely on the regulations because the court found that the regulations did not provide clear guidance on the issue before it, not because it felt that no deference was owed to agency regulations. 556 So.2d at 1099.

Since the district court's decision issued, two other opinions from the Southern District of Florida have been handed down addressing the same ILSA provisions. Trotta v. Lighthouse Point Land Company, LLC, 551 F. Supp. 2d 1359 (S.D. Fla. 2008); Meridian Ventures, LLC v. One North Ocean, LLC., 538 F. Supp. 2d 1359 (S.D. Fla. 2007). Both cases followed the district court's opinion in this case and concluded that lots are exempt from the right of revocation laid out in § 1703(d) only if they are already so exempt under § 1702. A court from the Eastern District of Virginia, however, disagreed and held that the plain, unambiguous language of the statute indicates that developers exempt under any provision of § 1702 are exempt from § 1703(d) as well. Bartley v. Merrifield Town Ctr. Ltd. P'ship., No. 1:08cv145, slip op. at 3 (E.D. Va. Sept. 30, 2008).

Three *amicus curiae* briefs were filed in this appeal from the United States on behalf of HUD, the Real Property Probate and Trust Law Section of the Florida Bar, and the Florida Home Builders Association together with the National Association of Home Builders. All three support Pukka's position that "not exempt under section 1702" means that if any exemption under § 1702 applies, the contract is then also exempt from the right of revocation in § 1703(d).

## **STANDARD OF REVIEW**

“We review the district court’s grant of summary judgment de novo, applying the same legal standards that bound the district court, and viewing all facts and reasonable inferences in the light most favorable to the nonmoving party.” Cruz v. Publix Super Markets, Inc., 428 F.3d 1379, 1382 (11th Cir. 2005) (citation and quotation omitted). Summary judgment is appropriate when “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). We also review the district court’s interpretation of a statute and the application of law de novo. Holton v. City of Thomasville School Dist., 490 F.3d 1257, 1261 (11th Cir. 2007).

## **DISCUSSION**

Pukka contends that the language “not exempt under section 1702” signifies that § 1703(d) does not apply to the sale of any lot that is exempt from any other provision of the ILSA under § 1702. Pukka argues that the contracts here are exempt from § 1703(d) because they are exempt from the registration and disclosure provisions under § 1702(b)(1).

Plaintiffs contend that the phrase “not exempt under section 1702” simply refers the reader to § 1702, and the sale of a lot is exempt from § 1703(d) only if it is already so exempt under the terms of § 1702. Plaintiffs concede that the contracts in this case are exempt from the registration and disclosure provisions of

the Act through § 1702(b)(1), but argue that those are the *only* provisions of the ILSA from which they are exempt. Thus, Plaintiffs argue that the right of revocation in § 1703(d) remains applicable.

In interpreting a statute, we start with the plain language of the provisions to be interpreted. United States v. Silva, 443 F.3d 795, 797-98 (11th Cir. 2006) (“If the statute’s meaning is plain and unambiguous, there is no need for further inquiry.”). We apply the plain language of a statute unless doing so would lead to an absurd result. Id. at 798.

This case turns on whether the phrase “exempt under section 1702” adds meaning to § 1703(d) (Appellant’s interpretation) or whether it merely references the exemptions found in § 1702 (Appellees’ interpretation). “It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’” TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (quoting Duncan v. Walker, 533 U.S. 167, 174 (2001)). This principle favors Appellant’s reading, which gives meaning to the phrase “not exempt under section 1702.” It is not, however, unheard of for statutes to use language that refers the reader to another section but does not itself add new meaning. In the ILSA itself, for example, § 1703(a)(2) uses language similar to the language in

§ 1703(d), and states that § 1703(a)(2) applies to “any lot not exempt under section 1702(a) of this title.” Because § 1702(a) already exempts lots from *all* provisions of the Act, this language does not add meaning but merely serves as a reminder that some lots are exempt from all provisions of the ILSA. See also BP Am. Prod. Co. v. Burton, 549 U.S. 84, 98 (2006) (holding that statutory language is not “mere surplusage” where it “clarifies” the application of the provision).

On the other hand, “[i]t is well settled that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” Duncan v. Walker, 533 U.S. 167, 173 (2001) (internal citation and alterations omitted). In subsections 1703(a)(1), (b), and (d), Congress used the phrase “not exempt under section 1702,” but in §1703(a)(2) Congress used the more specific phrase “not exempt under section 1702(a).” This illustrates that Congress understood how to be more specific, but chose not to do so in § 1703(d). Congress chose to be less specific in § 1703(d) and used the broader “not exempt under section 1702” language, suggesting that we should give meaning to that choice and endorse Pukka’s interpretation.

Acknowledging that Congress knew how to specify § 1702(a) as the only applicable exemption but chose not to do so in § 1703(d), we hold that Appellees’

interpretation improperly adds language to § 1703(d). If we were to agree with Plaintiffs, we would in essence change the language from “not exempt under section 1702” to “not exempt under section 1702(a).” “We are not . . . authorized to revise statutory provisions in the guise of interpreting them.” In re Hendrick, 524 F.3d 1175 (11th Cir. 2008).

Plaintiffs argue that interpreting § 1703(d) to add exemptions improperly creates judicial exceptions. See Allstate Life Ins. Co. v. Miller, 424 F.3d 1113, 1116 n.5 (11th Cir. 2005) (“Specifically, where the legislature has included certain exceptions . . . , the doctrine of *expressio unis est exclusio alterius* counsels against judicial recognition of additional exceptions.”). We disagree. By following Pukka’s reading of these statutory provisions, we do not add judicial exceptions on top of enumerated legislative exceptions; rather, we simply interpret the statute itself as providing legislative exceptions in § 1703(d) in addition to other legislative exceptions discussed in § 1702.

Although both parties argue that the statutory language is plain and unambiguous, both also argue that the plain meaning supports their interpretation. This indicates ambiguity. Furthermore, the existence of divergent court opinions also suggests ambiguity. Smiley v. Citibank (North Dakota), N.A., 517 U.S. 735, 739 (1996).

Where statutory language is ambiguous, we will defer to the interpretation of the government agency entrusted to administer the statute “if it is ‘based on a permissible construction’ of the Act.” Barnhart v. Walton, 535 U.S. 212, 218 (2002) (quoting Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984)). Chevron deference applies to agency rules promulgated in the exercise of the authority to make rules carrying the force of law granted to the agency by Congress. United States v. Mead, 533 U.S. 218, 226-27 (2001). HUD is the agency responsible for administration of the ILSA and has been granted authority to promulgate rules and regulations relating to ILSA. 15 U.S.C. §§ 1715, 1718.

Current HUD regulations do not provide guidance on this issue, despite Appellant’s assertions to the contrary. Nowhere do the regulations speak to the interplay between § 1703(d) and § 1702(b). See 24 C.F.R. §§ 1710, *et seq.* Past

regulations, however, do speak specifically to the question before us.<sup>3</sup> Prior to 1996, the regulations included the statement:

A contract or agreement, including a promissory note, for the sale or lease of a lot not exempt under §§ 1710.5–1710.16 of this chapter [including § 1710.6, the exemption for properties with less than 100 lots] *may be revoked* by a purchaser within two years from the date of signing the contract or agreement . . . .

24 C.F.R. § 1715.4(a) (1995)(emphasis added). This language served to clarify the right of revocation provided in 15 U.S.C. § 1703(d), and established that if a lot was exempt from the registration and disclosure provisions under § 1702(b), then it was also exempt from § 1703(d). We conclude that HUD’s reading of the ILSA in these prior regulations is a permissible construction of the statute because ample tenets of statutory construction support HUD’s reading of § 1703(d) that sales and leases of lots are exempt from the § 1703(d) right of revocation if exempt from any provision of the ILSA under § 1702. These regulations would therefore be accorded Chevron deference were they still in effect. The question

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<sup>3</sup> Plaintiffs argue that we should not consider HUD’s prior regulations because those arguments were not raised before the district court. See BUC Int’l Corp. v. Int’l Yacht Council Ltd., 489 F.3d 1129, 1140 (11th Cir. 2007) (noting that this court does not consider issues raised for the first time on appeal in a civil case). Although new claims or issues may not be raised, new *arguments* relating to preserved claims may be reviewed on appeal. Yee v. City of Escondido, 503 U.S. 519, 534 (1992) (“Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.”) Pukka raised the question of HUD’s interpretation of these ILSA provisions before the district court, and thus references to legislative history and prior regulations not presented below are more accurately characterized as new arguments, rather than new issues.

then is whether deletion of these regulations deprives them of all deference, or whether they still retain a role in our analysis.<sup>4</sup>

However, we need not reach the issue of whether to accord Chevron deference to HUD's prior ILSA regulations because even if the prior regulations were not entitled to Chevron deference, other evidence of the agency's interpretation is entitled to substantial deference under Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944); see Buckner v. Florida Habilitation Network, Inc., 489 F.3d 1151, 1155 (11th Cir. 2007). "Under Skidmore, an agency's interpretation may merit some deference depending upon the 'thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'" Buckner, 489 F.3d at 1155 (quoting Skidmore, 323 U.S. at 140). The letter from HUD's director of RESPA and Interstate Land Sales stated her opinion that "[t]he requirements of . . . § 1703(d) do not apply to the sale or lease of lots that are exempt under the 100 lots provision of 15 U.S.C. §

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<sup>4</sup> Furthermore, HUD's regulation was deleted in 1996 "[i]n an effort to comply with the President's regulatory reform initiatives." 61 Fed. Reg. 13,596 (March 27, 1996). HUD removed § 1715.4 from the regulations in order to "streamline the Interstate Land Sales Registration Program regulations by eliminating provisions that are repetitive of statutes or are otherwise unnecessary." Id. Evidently, HUD did not delete the regulatory guidance on this issue because it no longer agreed with the statutory interpretation advanced; rather, HUD felt the statute already made it clear that lots exempt under § 1702(b) were exempt from § 1703(d) and that regulations stating so were not necessary.

1702(b)(1) (or any other exemption of § 1702).” This brief letter does not provide enough detail for this court to evaluate the thoroughness of HUD’s reasoning. The stated opinion is, however, “consistent with earlier and later pronouncements” by HUD on this issue in the prior regulations that existed from 1980 until 1996. See 45 Fed. Reg. 40, 497 (June 13, 1980) (adopting the now deleted regulations discussed above). In addition, the United States’ *amicus* brief also represents HUD’s interpretation of the ILSA warranting Skidmore deference. See Auer v. Robbins, 519 U.S. 452, 462 (1997) (affording deference to an agency’s interpretation of its regulations even when that interpretation was first expressed in an *amicus* brief to the Court). The brief is thoroughly reasoned and demonstrates a high level of consideration given to the issue; the brief thoroughly and rationally analyzes the statute, the legislative history, and the policy implications of the statutory interpretation. And the opinion set forth in the brief is consistent with the position HUD has always held on the meaning of “not exempt under section 1702” in § 1703(d). We thus owe Skidmore deference to the *amicus* brief.

Under Skidmore, we defer to HUD’s longstanding opinion that the phrase “not exempt under section 1702” found in § 1703(d) means that if the sale or lease of a lot is exempt from *any* ILSA provision under § 1702, then it is also exempt

from the right of revocation granted in § 1703(d). In accordance with this reading of the ILSA, Plaintiffs did not have a right to revoke their contracts to purchase condominiums developed by Pukka, and summary judgment in their favor in this contract rescission action was improper. Additionally, Pukka was entitled to entry of summary judgment in its favor, and the denial of its motion for summary judgment was improper.

### **CONCLUSION**

For the foregoing reasons, we **REVERSE** the district court and remand for proceedings consistent with this opinion.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
THIRD DISTRICT

CASE NO. 3D08-133  
LT NO. 07-297

EUGENE SIMS AND  
CHRISTINE SIMS,

Appellants,

vs.

NEW FALLS CORPORATION,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF FLORIDA  
ELEVENTH JUDICIAL CIRCUIT

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

*AMICUS CURIAE*

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## IDENTITY AND INTEREST

The Real Property Probate & Trust Law Section of The Florida Bar (“Section”) is a group of Florida lawyers who practice in the areas of real estate, trust and estate law, and who are dedicated to serving all Florida lawyers and the public in these fields of practice. The Section produces educational materials and seminars, assists the public pro bono, drafts legislation, drafts rules of procedure, and occasionally befriends courts to assist on issues related to our fields of practice.<sup>1</sup> Our Section has over 10,000 members.

The Section’s interest in this case stems from this Court’s invitation to participate in this case as we believe it is our professional duty to assist the Court in matters of this nature.

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<sup>1</sup>For example, see *Open Permit Services of Florida, Inc. v. Curtiss*, Case No. 3D07-3258 (Fla. 3d DCA); *McKean v. Warburton*, 919 So. 2d 341 (Fla. 2005); *May v. Illinois Nat. Ins. Co.*, 771 So. 2d 1143 (Fla. 2000); *Bitterman v. Bitterman*, 714 So. 2d 356 (Fla.1998); *Friedberg v. SunBank/Miami*, 648 So. 2d 204 (Fla. 3d DCA 1994).

## QUESTIONS PRESENTED

On October 14, 2008, this Court entered an order, on its own motion, inviting the Section to file an amicus brief in this case. We were asked to address the issue on appeal and, to the extent ascertainable, why the form FNMA/FHLMC note was silent on choice of law while the form FNMA/FHLMC security deed contained a choice of law provision.

In this case, both parties appear to agree that the security deed in question was previously foreclosed by a senior lien holder. As a result, the underlying action was brought solely to enforce the promissory note. The Section's expertise and ability to assist the Court is somewhat limited in this case. Indeed, this action involves commercial enforcement of a promissory note and the surrounding Uniform Commercial Code (U.C.C.) provisions, rather than real estates issues surrounding enforcement of a mortgage securing a note. With respect to the question involving choice of law provisions, the Section has obtained input from Fannie Mae and Freddie Mac concerning their form documents which is detailed below.

Accordingly, we accept the Court's invitation to file an amicus brief.<sup>2</sup>

Because we have not reviewed the record below, our discussion focuses on legal questions in a vacuum, without regard to the facts of this case.

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<sup>2</sup> This filing was approved by the Executive Committee of the Board of Governors of The Florida Bar on December 22, 2008 consistent with applicable standing board policies. It is tendered solely by this Section, supported by the separate resources of this voluntary organization - not in the name of The Florida Bar, and without implicating the mandatory membership fees paid by any Florida Bar licensee.

## SUMMARY OF ARGUMENT

In its final judgment, the trial court held that there were no disputed issues of material fact as to liability and damages and therefore summary judgment in favor of the plaintiff was appropriate. In granting this summary judgment, the trial court considered the defendant's statute of limitations defense and determined that Georgia's six year limitation period applied to this action. The trial court determined that it was the parties' intent that the choice of law language in the security deed applied to the note as well.

The Section has not reviewed the record below. Rather, the Section's review and analysis is based upon our understanding and interpretation of the documents and provisions at issue.

In our view, had the action been filed to enforce the note by foreclosing on the security deed, the choice of law provision in the security deed would come into play. Where the security deed has been extinguished, however, and the action is brought in the commercial arena to enforce the note (which is silent on choice of law), absent a specific intent of the parties on the choice of law, the choice of law provisions of the forum state would control. How that question is answered in the later scenario as between this plaintiff and defendant is beyond the expertise of the Section.

## ARGUMENT

### I. THE TERMS OF THE SECURITY DEED SHOULD NOT BE JUDICIALLY IMPOSED ON THE PROMISSORY NOTE.

As a general matter of real estate practice, when funds are borrowed to purchase a property, that debt is evidenced by a promissory note secured by a mortgage (here a security deed) on the property.<sup>3</sup> At other times, funds are borrowed and property is used as collateral for the loan. In these situations, the debt is generally evidenced by a promissory note and accompanying mortgage. In either situation, if the borrower fails to pay the debt owed, a foreclosure action is typically brought on the note and mortgage.

Based upon the facts presented by the parties in their briefs, in this particular case the note and security deed were a second lien on property. That security deed was foreclosed, however, when an action was brought to enforce the first mortgage. As a result, the only remaining document securing the debt was the note which served as the basis for the action filed in Florida. In light of the Court's inquiry as to why one form FNMA/FHLMC document contained a choice of law

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<sup>3</sup> Mortgages (sometimes referred to as mortgage deeds) and deeds of trust are the most commonly used types of mortgage instruments. The security deed is an instrument used by only a few states (including Georgia) and differs legally in operation from a mortgage but accomplishes the same result. *See e.g. Northwest Carpets, Inc. v. First National Bank of Chatsworth*, 630 S.E. 2d 407, 409 (Ga. 2006).

provision while the other did not, the Section received input from Fannie Mae and Freddie Mac. Attached as an appendix to this brief is a letter received by the Section from the office of counsel at Fannie Mae and Freddie Mac.

According to Fannie Mae and Freddie Mac the choice of law provision in the security deed was included with an expectation that enforcement of the mortgage would occur through a foreclosure action in which the note reflecting the indebtedness and security deed reflecting the security for repayment would be considered together and the choice of law provision in the security deed would govern in that action. A Georgia choice of law in the security deed was logical because only a Georgia court would have jurisdiction over the property and ownership issues. On the other hand, if a suit to enforce the note were maintained separately from an action to foreclose on the property under the terms of the security deed, in their view the applicable law would be determined by the choice of law provisions of the forum jurisdiction. This understanding as to the distinction between an action on the note and mortgage and an action simply on the note is shared by the Section.

While the reasons underlying this difference in the documents begins to move beyond this Section's expertise into areas of the law more typically encountered by our colleagues in the Business Law Section of The Florida Bar, it

appears that the answer lies, at least in part, in the U.C.C. The U.C.C. generally does not govern as to interests in real property or mortgages, but does come into play with promissory notes, whether secured by real property or not. Promissory notes are fundamentally a creature governed by Article III of the U.C.C., codified in Florida in Chapter 673, and governed by the interpretation, rights and defenses, and enforcement mechanisms set forth in the U.C.C. Specifically, the Section directs the Court's attention to § 673.1041 (1) (c) and § 673.1061 (1) (b) and (c) of the Florida Statutes. These sections define "negotiable instruments" and "unconditional promises." The legal reason why the form promissory note is silent as to choice of laws and does not incorporate by reference the terms of the security deed appears to be that the inclusion of such terms could affect the negotiable status of the note. The "negotiability" of an instrument in turn relates to "holder in due course" status set forth in § 673.3021, and holder in due course status determines, among other things, what defenses can and cannot be raised in defense of a debt.<sup>4</sup>

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<sup>4</sup> These concerns are illustrated by the decision in *Holly Hill Acres, Ltd. v. Charter Bank of Gainesville*, 314 So. 2d 209 (Fla 2d DCA 1975). In that case, the Second District explained the legal distinction between simply referencing the existence of a mortgage, as in this case, and a situation where the note actually incorporates the terms of the mortgage into the note. In later instance, negotiability is extinguished, holder in due course status is lost and additional defenses to foreclosure can be raised. *Id.* at 211.

With respect to the question of which law should be applied in this particular case to determine the applicable statute of limitations, that issue appears to bring into play questions about the intent of the parties, as well as questions concerning choice of laws, U.C.C. provisions concerning selection of governing law,<sup>5</sup> and the substantive/procedural debate on statutes of limitation. The former area is fact specific while the later areas are beyond the expertise of the Section.

In sum, the Section cautions that in phrasing any ruling care be taken to avoid the implication that Florida judicially incorporates the terms of a security deed or mortgage into a note. This is because incorporation of the terms of the mortgage would arguably destroy the negotiability of promissory notes and open all foreclosure actions to otherwise barred collateral defenses. A reading of the note and security deed in pari-materia with one another, determining the “intent of the parties,” a ruling based on the application of Florida’s choice of law provisions, or on the difference between Fla. Stat. § 673.1811 and Ga. Stat. § 11-3-118 (a), does not seem to have such far reaching implications.

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<sup>5</sup> See e.g. § 671.105 (1) Fla. Stat. (2008). The Section also notes that it appears that the Florida and Georgia versions of the U.C.C. are very similar. One difference is the distinction between § 673.1811 in Florida, which uses Chapter 95 for its statute of limitations and Georgia’s adoption of the U.C.C. model of six years in Ga. Stat. § 11-3-118 (a).

## CONCLUSION

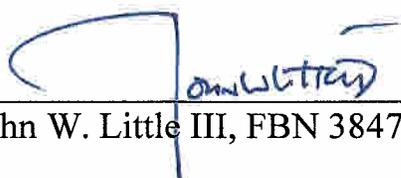
For the foregoing reasons, care should be taken to avoid judicially incorporating terms of a security deed or mortgage into a note. Absent a factual determination that the parties' intent was to rely upon a particular choice of law, it appears the forum state's choice of law provisions come into play.

Respectfully Submitted,

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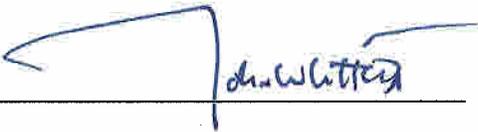
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## CERTIFICATE OF FONT COMPLIANCE

The undersigned hereby certifies that this computer-generated brief complies with the font requirements of Rule 9.210(a)(2), Fla.R.App.P., as submitted in Times New Roman 14-point.

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

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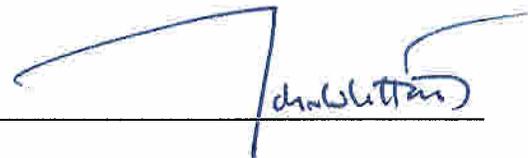
## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Motion has been furnished by U.S. Mail this 22<sup>d</sup> day of December, 2008 to the following:

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

A handwritten signature in blue ink, appearing to read "John W. Little III", is written over a horizontal line. The signature is stylized and includes a large, sweeping flourish that extends upwards and to the right.

John W. Little III, FBN 384798

IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
THIRD DISTRICT

CASE NO. 3D08-133  
LT NO. 07-297

EUGENE SIMS AND  
CHRISTINE SIMS,

Appellants,

vs.

NEW FALLS CORPORATION,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT OF FLORIDA  
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APPENDIX TO BRIEF OF  
THE REAL PROPERTY PROBATE & TRUST LAW SECTION  
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Re: Eugene Sims and Christine Sims vs. New Falls Corporation  
The District Court of Appeal of Florida for the Third District  
Case No. 3D08-133

Dear Mr. Little:

We received a copy of the Court's communication dated October 14, 2008, requesting that the Florida Bar file an amicus curiae brief in the above case. To assist you in responding to the Court's request for an explanation as to why the Note identified as FNMA/FHLMC Uniform Instrument - Georgia Second Mortgage (the "Note") is silent on choice of law while the Security Deed identified as FNMA/FHLMC Uniform Instrument - Georgia Second Mortgage (the "Security Deed") contains a choice of law provision, we can provide some insight.

The choice of law provision in the Security Deed was inserted with the expectation that enforcement of the mortgage loan would occur through a foreclosure action in which the Note reflecting the indebtedness and the Security Deed reflecting the security for repayment of that indebtedness would be considered together as an integrated contract and that the choice of law provision in the Security Deed would govern the enforcement of the Note. We intended that if a suit to enforce the Note were maintained separately from an action to foreclose on the property under the terms of the Security Deed, the applicable law would be determined by the choice of law provisions of the forum jurisdiction.

If you have any further questions about the Uniform Instruments, please feel free to call either Lisa O'Donald at Fannie Mae (202-752-7712) or Judy Agard at Freddie Mac (703-903-2502).

Sincerely yours,

/s/ Wendy Samuel  
Associate General Counsel

/s/ Wilma Lewis  
Managing Associate General Counsel  
Litigation

/s/ Lisa O'Donald  
Associate General Counsel

/s/ Judith Agard  
Associate General Counsel  
Mortgage Law

Fannie Mae

Freddie Mac

**RPPTL Section CLE Schedule  
2009 – 2010**

<b>Dates</b>	<b>Course Title</b>	<b>RPPTL Committee</b>	<b>Program Chair</b>
January 23, 2009	Foreclosure & Creditor's Rights	Real Property Litigation	Gene Shuey
February 12 – 13, 2009	Annual Trust & Estate Symposium		Bill Hennessey
March 5 – 7, 2009	Construction Law Institute	Construction Law Institute	Lee Weintraub
March 5 – 7, 2009	Construction Law Certification Review Course	Construction Law Certification Review Course	Fred Dudley
March 19 – 20, 2009		Probate Law & Procedure	Linda Griffin
April 3 – 4, 2009	Advanced Real Estate Law and Certification Review Course	Real Property Certification Review Course	Robert Stern
April 3 – 4, 2009	Wills, Trusts & Estates Certification Review Course	Wills, Trusts & Estates Certification Review Course	Marilyn Polson
April 23, 2009	The Ins and Outs of Condominium Law	Condominium & Planned Development	Rob Freedman & Steve Mezer
April 24, 2009	Condominium Developer's Attorney Seminar	Condominium & Planned Development	Rob Freedman & Steve Mezer
May 22, 2009	RPPTL Convention	Convention	Marilyn Polson & Dresden Brunner
June 18 – 21, 2009	Attorney/Trust Officer Liaison Conference	Attorney/Trust Officer Liaison	Seth Marmor
October 1 – 2, 2009	RESPA and Regulatory Compliance	Title Insurance, Development & Govt. Regulation of Real Estate and Condominium & Planned Development	Eleanor Taft
October 22 – 23, 2009	Guardianship Law	Guardianship Law	Debra Boje & David Carlisle
November 5 – 6, 2009	Commercial Leasing	Landlord & Tenant	Neil Shoter
November 12 – 13, 2009		Trust Law	John Moran
December 10 – 11,		Estate Planning	Richard Gans

2009			
January 28 – 29, 2010	Environmental and Land Use Considerations for a Real Estate Transaction	Development & Govt. Regulation of Real Estate, Property Insurance and Environmental & Land Use Law Section	Nancy Stuparich and Jay Mussman
February 11 – 12, 2010	Annual Trust & Estate Symposium		Bill Hennessey
March 5 – 6, 2010		Condominium & Planned Development and Property Insurance	
March 25 – 26, 2010		Probate Law	
April 8 – 10, 2010	Construction Law Institute	Construction Law Institute	
April 8 – 10, 2010	Construction Law Certification Review Course	Construction Law Certification Review Course	
April 22 – 23, 2010		Land Trusts & REITs	Katherine Frazier
April 29 – 30, 2010		Power of Attorney	Tami Conetta

## MEMORANDUM

TO: Burt Bruton, Chairman  
Legislative Review Committee, RPPTL Section

FROM: Pete Dunbar, Martha Edenfield, Gene Adams and Josh Aubuchon

DATE: January 15, 2009

RE: Real Property, Probate and Trust Law Section Issues for 2009

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The initial tracking chart for the 2009 Regular Session is attached. Most of the Section's initiatives are still in bill drafting and have not been numbered in the system as of this date. We are still early in the filing process and only about 25% of the legislation that will be filed is actually in the system.

Key legislation that may affect the practice of Section members is highlighted below, but committee members are encouraged to review the tracking summary to identify any additional legislation that will need close monitoring in the coming months. The full text of each bill can be found on the legislative web sites. ([www.flsenate.gov](http://www.flsenate.gov); [www.myfloridahouse.com](http://www.myfloridahouse.com); and [www.leg.state.fl.us](http://www.leg.state.fl.us).)

### **SECTION INITIATIVES**

**Real Estate Transfers—Save Our Homes: HB 101 by Representative Hukill and SB 744 by Senator Altman** are companion measures proposed by the **Section initiative** to amend and clarify Subsection 193.155 (3) to permit the transfer of homestead property to a person's spouse without losing the benefits under Save Our Homes.

**Healthcare Advance Directives: HB 153 by Representative Anderson and SB 540 by Senator Fasano** is the **Section initiative** expanding the definition of health care information to comply with HIPAA to allow a designated health care surrogate to have access to all health information of a principal needed to make decisions on behalf of the principal. It would also allow, under appropriate circumstances, for the health care surrogate to make health care decisions without the need for an incapacity determination.

**UPIA: HB 379 by Representative Wood** is the **Section initiative** amending parts of Chapter 738 to provide methods for trustees to characterize deferred compensation plans and other similar arrangements; to provide a means of defining receipts into trusts for such plans; and providing a more complete definition to guide trustees for such plans. The Senate companion bill has not been filed.

**Foreclosure Consultants: SB 646 by Senator Fasano** is a **Section initiative** that revises the legislation passed in 2008 dealing with “foreclosure rescue consultants” to clarify the conduct that is exempt for the provisions of the law when preformed by an attorney. The House companion bill has not been filed.

### **OTHER LEGISLATION OF INTEREST**

**Community Associations: HB 27 by Representative Ambler** proposes a variety of changes to the chapters governing condominiums and mandatory homeowners associations. The bill is basically identical to the measure that passed unanimously in both Houses in 2008, but it was vetoed by the Governor who had concerns over two sections dealing with swimming pool drains. Both of the objectionable sections were removed from the bill before it was filed. **HB 27** does include Representative Ambler’s “Home Court” initiative.

**Condominiums–Fire Safety: HB 41 by Representative Waldman and SB 244 by Senator Ring** are companion bills that provide an exemption from chapter 31.3.3.4.1 of the NFPA 101 Life Safety Code for two-story condominiums.

**Doc Stamps–“Short-Sales”:** **HB 55 by Representative Jenne and SB 728 by Senator Bennett** are companion bills that limit excise tax to the amount of the “short-sale” of real property when the sale price is less than the outstanding mortgage amount.

**Timeshare–Sales Tax on Rentals: HB 61 by Representative Precourt and SB 392 by Senator Haridopolos** would clarify the sales tax obligations and collections procedures for the rental payments made for timeshare unit occupancy.

**Doc Stamp Taxes: HB 93 by Representative Pafford** would amend Chapter 201 to overturn *Crescent Miami Center LLC v. DOR* and impose doc stamps on the transfer of personal property. The **Section opposes** the bill and has provided technical assistance to the Chairman of the Senate Finance and Tax Committee.

**Service of Process: HB 113 by Representative Frishe and SB 412 by Senator Crist** are similar bills that revise procedures for the service of process by the sheriff. Earlier versions of the bills contained concerns by the Section relating to the priority of liens, but both bills currently contain language that **resolve the Section’s concerns**.

**Foreclosure–Notice Requirement: HB 205 by Senator Kreegal** would authorize each judicial circuit to create a diversion pilot program to help avoid the foreclosure of owner-occupied residential property.

**Foreclosure–Notice Requirement: SB 228 by Senator Joyner** would require lienholders to serve an additional notice, based upon the statutory language in the bill, warning the owner about service providers offering to save the home from foreclosure.

**Doc Stamp Taxes: HB 237 by Representative Hudson** would amend Chapter 201 in an attempt to exempt interspousal transfers of homestead property from documentary stamp tax charges.

**Guardianship: HB 305 by Representative Schwartz** would create a Part II of Chapter 415 to be known as the “Uniform Adult Guardianship & Protective Proceedings Jurisdiction Act.” The bill provides for interstate cooperation in guardianship matters and recognition of orders entered in other state jurisdictions.

**Foreclosure–Notice Requirement: HB 401 by Representative Weinstein and SB 454 by Senator Fasano** would require the lessor of property to notify the lessee of the dwelling unit that the unit is the subject of a foreclosure proceeding or a threatened foreclosure proceeding. The bill would provide for a new statutory notice form and provides penalties for the failure to provide the notice.

**Title Insurance: SB 444 by Senator Bennett** revises the regulatory procedures governing title insurance agents, charges for service by title agents, and title insurance products. The bill provides for file-and-use procedures and approval of rates by the Office of Insurance Regulation. The Office is a proponent of the bill.

**Construction Lien Law: SB 466 by Senator Wise** will require a contractor to provide the owner with a statement of the Owner’s Rights and Responsibilities Under Florida’s Construction Lien Law and a signed copy of the statement must be filed with the application for a building permit.

**Landlord-Tenant–Domestic Violence: SB 596 by Senator Rich** revises Chapter 83 to permit victims of domestic violence to terminate a lease before the end of the lease term under certain circumstances of domestic abuse and directs the landlord to change the lock on the premise under certain circumstances of domestic abuse.

**Condominiums–Guardrails: SB 664 by Senator Sobel** extends the deadline (for two years) until 2016 for the requirement to retrofit condominium common areas with guardrails and handrails.

**Condominiums–Insurance: SB 714 by Senator Jones** modifies the provisions of ss. 718.111 (11) enacted in 2008 by repealing mandatory requirement for unit owner insurance and making other technical changes to insurance requirements of the condominium association.

PMD\tmz



# The Florida Bar



**John G. White, III**  
President

**John F. Harkness, Jr.**  
Executive Director

**Jesse H. Diner**  
President-elect

December 15, 2008

Ms. Sandra Fascell Diamond, Chair  
Real Property, Probate & Trust Law Section  
Williamson, Diamond & Caton, P.A.  
9075 Seminole Boulevard  
Seminole, FL 33772-3150

Re: Report of Florida Bar Board of Governors Action

**VIA E-MAIL ONLY**

Dear Ms. Diamond:

During its regular meeting on December 12, 2008 the Board of Governors of The Florida Bar considered the eight requests by the Real Property, Probate & Trust Law Section for new section legislative positions.

Upon review of those requests, the Board determined the proposals were consistent with applicable Bar policy concerning section legislative activity (SBP 9.50) and opted to not prohibit section advocacy of those issues. Consistent with your submission, these newly recognized positions of the Real Property, Probate and Trust Law Section will be officially published within the 2008-10 Master List of Positions as follows:

Supports amendment to F.S. §501.1377 to exclude lawyers, law firms, pro-bono and legal aid programs, title agents and the servicing, restructuring and workout companies employed by the holders of mortgages from the definition of "foreclosure rescue consultant."

Supports legislation and/or regulatory action that establishes certainty within F.S. §201.02 as to the documentary stamp taxes due with regard to any debt forgiveness in connection with a short sale and which provides accurate sale price information for use by tax assessors and private property appraisers.

Supports amendment of FS §731.201 to add a definition of "minor" to the Florida Probate Code consistent with the definition in the Florida Guardianship code.

Supports amendment of F.S. §732.108(2) to provide that the four-year statute of limitations under F.S. §95.11(3)(b) does not apply to actions to establish paternity under §732.108(2) after the death of the alleged father.

Supports amendment of F.S. §193.155(3) to clarify that transfers of ownership interests, whether legal or equitable, pursuant to which the same person or that person's spouse continues to hold legal or equitable title of the homestead real property or otherwise

continues to qualify for the homestead exemption under the requirements of F.S. §196.031, Florida Statutes, will not be treated as a change in ownership for purposes of re-setting the "Save Our Homes" cap.

Supports amendments of the elective share statutes: (i) to clarify that transfers made in satisfaction of the elective share are inter vivos transfers; (ii) to clarify that the elective estate excludes certain assets under the community property laws of Florida or of any other state; (iii) to clarify the treatment of nonqualifying trusts under FS § 732.2075; (iv) to clarify FS § 732.2075 regarding contributions from direct recipients of assets within the elective estate; and (v) to amend FS § 732.2135 regarding the assessment of attorneys' fees when a spouse withdraws an election

Supports: (i) amendment of FS § 739.201 to add a savings provision protecting against inadvertent disqualification of certain post-mortem disclaimers under §2518 of the Internal Revenue Code; (ii) amendment of § 739.402(2)(a) to correct a typographical error; and (iii) amendment of § 739.501 to clarify interpretation of Florida's long-standing statutory prohibition on disclaimers by insolvent persons.

Supports clarification of F.S. 193.1556 regarding: (i) whether a separate notice to the property appraiser of a change of ownership of real property is required when the real property is conveyed by an instrument recorded in the public records; (ii) whether any notice to the property appraiser is required pursuant to the statute with respect to transfers of interests in publicly traded companies or parent companies; and (iii) whether the statute requires disclosure of the identity of beneficial owners of trusts or of business entities.

As you know, legislative advocacy by sections must conform to Bylaw 2-7.5 of the Rules Regulating The Florida Bar which specifies that such activities by a section be clearly distinguished from the separate agenda of The Florida Bar.

And, for the benefit of all involved in Bar legislative activities, the Office of Governmental Affairs maintains a listing of individuals who might be directly lobbying legislators on any section position. Our listing includes the names of all "contacts" listed on your original Legislative Position Request Form as well as the section chair and legislative chair. However, if you anticipate legislative visits or appearances by persons other than those cited above, please advise us as soon as possible.

If you have any questions or need further assistance, please do not hesitate to contact me.

Sincerely,



Elizabeth May  
Administrative Assistant

RPPTL SECTION OF THE FLORIDA BAR

*MENTORING  
PROGRAM*

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*The RPPTL wishes to acknowledge and thank the American Intellectual Property Law Association (AIPLA) for granting permission to use its copyrighted Mentor Program materials as a general format for these materials developed by the RPPTL Mentoring Committee. Information on the AIPLA can be found at its website: [www.aipla.org](http://www.aipla.org).*

## SUMMARY

The RPPTL desires to encourage the personal and professional growth of members who have recently become active in real property, probate or trust law matters. The Mentoring Program focuses on the following elements:

Each Mentor is assigned no more than two Mentees and each Mentee is assigned to only one Mentor.

Mentors are required to meet with each Mentee no less than one hour every month.

Mentors serve for at least one year.

Mentors are paired with Mentees according to geographical considerations, practice areas, and other considerations.

Mentor/Mentee relationships will be evaluated periodically.

The Mentoring Program will actively encourage participation by diverse groups of attorneys.

A goal of the RPPTL Section is to encourage the development of professionalism, ethics and knowledge of the Section's membership especially as it pertains to young lawyers and diverse lawyers. One methodology to encourage this goal is to establish mentoring opportunities.

Mentoring facilitates learning by creating relationships between groups of willing participants, guided by generally accepted mentoring techniques. Formal mentoring can accelerate an attorney's professional development. The mentoring program strives to facilitate the process by which attorneys achieve their personal best as professionals. The Mentoring Program will be administered by the Mentoring Committee of the RPPTL Executive Council.

A Mentor is assigned to serve as a role model and counselor to one or two Mentees. The Initial efforts of the Mentoring Committee will focus on mentorship pairings. In addition to volunteers, Circuit Representatives will be asked to be involved in the Mentoring Program, primarily as Mentors. The target members of the Section are:

- Young Lawyers
- Diverse Lawyers

Attorney mentoring commonly evolves where an attorney, a Mentor, having greater skill or ability in a particular field of endeavor, helps another attorney, a Mentee, learn the same skills or abilities that the Mentor has found to be most valuable. Bearing in mind that Mentees may learn such skills or abilities on their own, although less well or more slowly, effective Mentors create a context and environment for Mentees to learn in a more efficient manner.

Mentoring is an ongoing process whereby attorneys tend to learn new skills as they develop needs and interests that the new skills will satisfy. Therefore, a discussion of the Mentee's needs and interests is an appropriate starting point for the mentoring process so that the Mentor's professional experiences can be evaluated. Each mentor will have their own style, yet, Mentors should encourage and facilitate active participation by the Mentee in a series of professional experiences, engaging the Mentee in follow-up discussions.

The ongoing challenge of any mentoring program is to provide the Mentee with valuable career guidance. The focus of this program is to improve the likelihood of success of the Mentee's career in the RPPTL field by introducing the Mentee to new skills, and reinforcing skills that the Mentee already has acquired. Moreover, the Mentee's development can be enriched through exposure to the Mentor's professional contacts.

The Section will facilitate mentoring with its mentoring program, but the responsibility for the success of the mentoring experience is up to the Mentor and the Mentee. Our goal is to instill a degree of professionalism in the Mentee and help the Mentee develop his or her own degree of heightened professionalism.

# MENTOR SELECTION

## *CRITERIA*

Mentors will be selected based upon the combination of their desire to voluntarily serve, as well as their willingness to devote a minimum of one hour of uninterrupted time every month per Mentee, to meet with each assigned Mentee. Ideally, the Mentor will be able to devote more time to each Mentee. The Mentor should be a successful professional and recognized leader, and must be a member of the Section.

## *PAIRING*

Mentors will be paired with Mentees by a subcommittee of the Mentoring Committee, upon evaluation of the Mentor Participation Agreement, attached as Appendix A, completed by the Mentor. Pairing considerations include the Mentor's area of expertise, level of professional experience, and location. Mentors and Mentees must practice in the same circuit.

## *TIME COMMITMENT AND DURATION*

Mentoring sessions can be conducted telephonically, however, no less than twice a year the Mentor and Mentee shall meet in person. Social interaction such as a lunch is encouraged. Each Mentor will serve for one year, beginning with the commencement of The Florida Bar Annual year in June. The Mentor's term is renewable. Unsuccessful Mentor/Mentee pairings may be terminated early.

## *CONFIDENCE*

The Mentor should inspire his or her Mentees with confidence that the entire process is being conducted with the utmost confidentiality and the Mentor and Mentee must use their best efforts to keep confidences. No client confidences shall be discussed between Mentor and mentee. No client names may be used. Mentor and Mentee must be careful not to create attorney/client relationships with clients of the Mentee. Each Mentee should feel comfortable discussing various aspects of their career and personal development.

# MENTOR RESPONSIBILITIES

## *PRINCIPAL RESPONSIBILITY*

To offer the Mentee advice and guidance likely to improve the potential for the Mentee's advancement as an attorney specializing in RPPTL matters. Meetings can be either telephonic or in person, except the requirement for two face to face meetings per year. The Mentor must devote his or her total attention to providing the Mentee with advice and guidance.

## *EVALUATION*

At the conclusion of each one-year term, the Mentor shall provide the Mentoring Committee with a written evaluation of the mentoring program, by completing the form attached as Appendix C. Measures of success of the Mentor's efforts will be substantiated if a Mentee advances in position and responsibility at work, increases his/her involvement in the Section, appreciates and develops ethical behaviors, and advances in professionalism toward clients, other members of the Bar, and the judiciary, becomes a better lawyer, and ultimately, becomes a Mentor.

## *DISCUSSION*

Effective mentoring occurs when the Mentor's guidance reinforces the Mentee's existing skills, and facilitates the Mentee's acquisition of applicable new practice skills. The advice and guidance should be based upon the Mentor's career experiences and professional training. Examples and stories help illustrate key points. The Mentor should frequently request feedback from the Mentee through insightful questions.

Mentoring feedback is a two-way function, and the Mentee should feel comfortable asking the Mentor questions that demonstrate the Mentee's career and personal growth. In this way, the Mentee is encouraged to draw new skills from the Mentor and to have the Mentor reinforce existing skills.

## *CONFIDENTIALITY*

The entire mentoring process must be conducted with the utmost confidentiality, and the substance of the Mentor-Mentee discussions may not be included in the Mentor's program evaluation. Client names may not be mentioned.

# MENTEE SELECTION

## *CRITERIA*

Mentee selection will be based upon the Mentee's interest in the program, coupled with a willingness to devote a minimum of one hour of uninterrupted time every month to meet with the Mentor. The Mentee must be a member of the Section.

## *PAIRING*

Mentees will be paired with mentors by a sub-committee of the Mentoring Committee based upon the Mentor Request form (Appendix B) to be completed by the Mentee. Pairing considerations include the Mentee's area of expertise, level of professional experience, level of activity in the Section, career development interests, geography and areas of particular interest in the Section. Although mentoring sessions can be conducted telephonically, geographic preference will be an important factor, to encourage in-person contact. Mentee pairing will be conducted without regard to race or gender.

## *TIME COMMITMENT AND DURATION*

The Mentee must meet with the Mentor for at least one hour per month. The meeting should be uninterrupted, so that the Mentee is devoting his or her total attention to receiving the advice and guidance offered by the Mentor. The initial meeting should be in person. Twice per year a face to face meeting is required. The mentoring term will last for one year. The mentoring term is renewable indefinitely.

## *DISCUSSION*

Mentees should discuss with their Mentors their expectations of the mentoring relationship and of the program in general. If the Mentor and Mentee cannot agree on a set of mutual expectations, an alternate pairing can be arranged.

# MENTEE RESPONSIBILITIES

## *PRIMARY RESPONSIBILITY*

Receive in good spirit the advice and guidance offered by the Mentor. The Mentee's overall responsibility in the mentoring process is to learn from the Mentor in a manner that tends to advance the Mentee's career. In other words, it is the Mentee's primary responsibility to learn new practice skills that can be applied to the Mentee's current career situation, and to reinforce successful skills that the Mentee has already learned.

## *METRICS*

At the conclusion of each one-year term, the Mentee is asked to provide the Mentoring Committee with a written evaluation of the mentoring program. The goal of the program is to enhance the Mentee's advancement in position and responsibility at work, involvement in professional activities, ethical behavior, and professionalism.

## *CONFIDENTIALITY*

The entire mentoring process must be conducted with the utmost confidentiality, and the substance of the Mentor-Mentee discussions should not be included in the Mentee's program evaluation. Client confidences and client names may not be disclosed to the Mentor.

# PROFESSIONAL RESPONSIBILITY

## *PROFESSIONAL CONDUCT*

All Mentor/Mentee interaction is to be conducted on a professional basis reflecting the highest ethical and behavioral standards.

## *SEXUAL HARASSMENT*

Sexual harassment, or harassment of any kind, toward either a Mentor or Mentee, including same gender sexual harassment, is totally unacceptable, strictly prohibited and will not be tolerated.

## *CLIENT AND CORPORATE RESPONSIBILITY*

Neither the Mentor, nor the Mentee shall, under any circumstances, disclose attorney-client information, client proprietary information, or any other client confidence to the other.

# APPENDIX A

## RPPTL MENTOR PARTICIPATION AGREEMENT

If you would like to have a Mentee assigned to you pursuant to the RPPTL Mentoring Program, please provide the following information:

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Business Phone: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Education (Schools attended, degrees obtained, year of graduation):

College (Graduate and Post-graduate):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Law School:

\_\_\_\_\_

Bar Admissions (State and Year of Admission):

\_\_\_\_\_

Current Employment:

Employer: \_\_\_\_\_  
Number of attorneys: \_\_\_\_\_  
Year of Hire: \_\_\_\_\_

Are you Board Certified? \_\_\_\_\_ If yes, please list your area(s) of certification:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you a member of:

RPPTL Executive Council? Yes \_\_\_\_\_ No \_\_\_\_\_  
ACTEC ? Yes \_\_\_\_\_ No \_\_\_\_\_  
ACREL? Yes \_\_\_\_\_ No \_\_\_\_\_

Please list all ABA, Florida Bar, RPPTLS, or Local Bar Association committees on which you presently serve:

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Describe your area of practice, including the Judicial Circuits in which you primarily practice:

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Are there any unique or special characteristics or background you would prefer for a mentee, or any time or other constraints that need to be considered in assigning a mentee?

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By executing this request, you are agreeing to the following terms and conditions of the RPPTL Mentoring Program:

- A. Participation in the RPPTL Mentoring Program does not contemplate and is not intended to create a formal association between the mentor and mentee (or the mentee's employer), or any attorney client relationship between the mentor and the ultimate client of the mentee (or the mentee's employer). The mentor shall advise the mentee of the mentee's ultimate responsibility to exercise independent professional judgment on behalf of the mentee's clients.
- B. The mentor is obligated to ensure the entire process is being conducted with the utmost confidentiality and must use the mentor's best efforts to maintain that confidentiality. No confidential client information or communications shall be discussed between mentor and mentee. The mentor shall not disclose the identity of any clients and shall advise the mentee of the mentee's responsibility to avoid communications that would violate client confidentiality.
- C. The mentor agrees to attend an initial conference with the assigned mentee in person, and shall maintain communications with the mentee no less than one hour per month for a minimum term of six months.

D. At the end of the six month term, the mentor agrees to provide evaluation information to the RPPTL Mentoring Program Committee.

AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Mentor

# APPENDIX B

## RPPTL MENTOR REQUEST

If you would like to have a Mentor assigned pursuant to the RPPTL Mentoring Program, please provide the following information:

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Business Phone: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Education (Schools attended, degrees obtained, year of graduation):

College (Graduate and Post-graduate):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Law School:

\_\_\_\_\_

Bar Admissions (State and Year of Admission):

\_\_\_\_\_

Current Employment:

Employer: \_\_\_\_\_  
Number of attorneys: \_\_\_\_\_  
Year of Hire: \_\_\_\_\_

Describe your area of practice, including the Judicial Circuits in which you primarily practice:

\_\_\_\_\_  
\_\_\_\_\_

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Please describe what you wish to gain through the RPPTL Mentoring Program:

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Are there any unique or special characteristics or background you would prefer for a mentor or any time or other constraints that need to be considered in assigning a mentor to you?

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By executing this request, you are agreeing to the following terms and conditions of the RPPTL Mentoring Program:

- A. Participation in the RPPTL Mentoring Program does not contemplate and is not intended to create a formal association between the mentor and mentee (or the mentee's employer), or any attorney client relationship between the mentor and the ultimate client of the mentee (or the mentee's employer). The mentee must ultimately exercise independent professional judgment on behalf of the mentee's clients.
- B. The mentee is obligated to ensure the entire process is being conducted with the utmost confidentiality and must use the mentee's best efforts to maintain that confidentiality. No confidential client information or communications shall be discussed between mentor and mentee. The mentee shall not disclose the identity of any clients.
- C. The mentee agrees to attend an initial conference with the assigned mentor in person, and shall maintain communications with the mentor no less than one hour per month for a minimum term of six months.
- D. At the end of the six month term, the mentee agrees to provide evaluation information to the RPPTL Mentoring Program Committee.

AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Mentee





**SAFE AT HOME**  
Florida Attorneys Saving Homes  
*A Pro Bono Foreclosure Prevention Project*

Conference Call  
January 15, 2009

Present: Drew O'Malley, Adele Stone, Alice Vickers, John Neukamm, Terry Hill & Dionne Meyers

- I. FASH Reports – The group requested a breakdown on the number of open cases. FLS will provide a breakdown of the numbers on the open cases by January 16, 2009.
- II. The Florida Bar - Terry stated that there has been a drastic decrease in the number of calls received and the number of online applications received.
- III. Measuring Success – A review of the closed case reports indicates that there has been a small percentage of success. After some discussion of the codes used to close cases, the group requested a breakdown of the closed cases as it relates to the codes used in the case management system. This breakdown will include the number of clients who have gone into foreclosure.

In response to inquiry as it regards the low success rates, Alice offered an explanation from her review of the case closure forms:

It seems that there is a problem in lag time when cases have been referred-clients seem to be confused; but it is very likely that many of the attorneys are still working their cases and have not turned in their case closure forms.

IV. State Legislation – HB 205 requires that a conciliation conference take place between the Lender and Borrower provided the Borrower contact a housing credit agency and be processed within 45 days. The group felt strongly that the 45 days is impractical and cannot be followed. The group decided to present the Mortgage Law Committee with this issue of the 45 days.

V. Federal Legislation – Alice provided the group with information that concerns possible licensing requirements for attorneys who are performing ancillary representation (ie. volunteer work) for homeowners faced with the crisis of foreclosure. Alice will keep the group posted.

VI. Alex Sink's Letter – Kent will follow up with the group as it regards progress with Alex Sink and Ben Diamond on the letter to the Banks.

VII. Training- next week, FLS will be recording Lynn Drysdale, a nationally recognized consumer expert at JALA who will be doing an hour training on Truth in Lending issues. This will not be a live event, but will be taped and posted in the library.

VIII. Law Students – Drew will be meeting with the folks at Stetson. Perhaps the project can use the students to do research for the attorneys as well as property searches.

IX. Publication of Volunteer List – Terry informed the group that the Florida Bar will be publishing the list of attorneys who have volunteered for the project in its February 15<sup>th</sup> issue.

**X. The next call will be January 26, 2009 at 9am.**



Florida Attorneys Saving Homes

***A Pro Bono Foreclosure Prevention Project***

**December 2, 2008**

**Minutes of Weekly Conference Call:** Drew O'Malley, Adele Stone, Peggy Rolando, Kent Spuhler, Terry Hill, John Neukamm, Alice Vickers, Sheila Meehan, Jennifer Newton & Dionne Meyers.

**Statistics:**

The Florida Bar receives approximately 12-20 intakes per day  
FLS reported that there were 503 cases assigned; 49 closed  
1270 cases unassigned; 71 closed  
603 cases have been rejected, and  
767 cases are pending processing.

**To Suspend or Not To Suspend...that was the Question:**

After reviewing the statistics, the group grew very concerned that continued intake of applications from homeowners, especially, in light of the approximately 1200 waiting cases would be a disservice to those distressed and desperately waiting for an attorney.

In light of the heightened awareness of the great need for attorneys, there was a discussion on whether the project should suspend taking in more applications. The final consensus was to have Terry Hill speak with Jack Harkness and Jay White to get their thoughts on the subject.

**Volunteer Recruitment:**

There was extensive discussion on recruitment of volunteers. The group agreed that volunteer recruitment should be expanded to the Young Lawyers Division and other members of the Bar.

Reviewing /Brainstorming other volunteer recruitment techniques:

- (1) David Carter's seminars/campaign for attorney volunteers,
- (2) Creating serious training at the law schools,
- (3) FSU – Kent, Dionne & Jennifer gave a presentation at FSU a few weeks ago and the leader of the group said that he would be contacting FLS after finals;
- (4) There was also talk of the project having some time to regroup because the Banks/Crist have announced a moratorium on foreclosures for the holidays;

**Training:**

Three (3) modules have been posted to the probono website and the last module will be posted on 12/04/08.

There will be another webinar call with Cora Fulmore on 12/18/08 at 12:00 noon – a blast email invitation will be sent to each volunteer/Captain/Lt.

**RPPTL Executive Council Meeting in Tallahassee, FL:**

Friday, December 5, 2008 at 4:15 p.m. at the Doubletree – Dionne will attend.

Saturday, December 6, 2008 at 10:30 a.m. at the Capitol – Kent will attend.

**Floridaprobono.org:**

It was requested that the Saving Homes logo be placed more prominently on the website.

**Success Stories:**

Alice has received and reviewed approximately 40-50 case closure forms so far; only a handful have had some form of modifications done: this includes interest rate reduced, length of loan extended etc.

The bulk of them have been closed because the client withdrew or received foreclosure summons or the attorney was unable to contact the client.

**CFO Sink/Ben Diamond:**

Ben says that CFO Sink was very enthusiastic and liked the draft letter.

**New Contacts with Countrywide:**

Kent contacted Mike Fields who connected FLS to the upper level contacts with Countrywide. The contact information will be emailed to all lawyers holding Countrywide cases.

There was some discussion as to whether the new contact information had been vetted by FLS. Alice reassured the group that the new contacts have all been cleared with FLS.

**The Blast Email:**

It was agreed that to make the email an “attention grabber” the email would feature “the finger” – similar to the logo that Uncle Sam uses.

**Next Meeting** scheduled for 9:00 am on December 12, 2008.

As of 1-16-09 the case management system reflects the following data:

1843 Open Cases (172 Cases in Property Search Status; 8 Cases Waiting to be Rejected; 602 Cases Assigned; 1061 Unassigned)

<b>Opened Cases Statistics</b>		
<b>Cases Assigned</b>	602	33%
<b>Waiting for property search</b>	172	9%
<b>Waiting to be rejected</b>	7	0%
<b>Cases Unassigned</b>	1062	58%
<b>Total</b>	<b>1843</b>	<b>100%</b>

127 Closed Cases (57 cases were closed after client withdrew application; 23 of these cases were closed due to client entering into foreclosure; 7 cases were closed after attorney successfully negotiated a settlement; 7 cases were closed after attorney performed brief services such as attempting to obtain a modification but being unsuccessful; 33 of these cases were closed for other reasons *i.e.* client was able to obtain a modification on his/her own, client borrowed money from relative and no longer delinquent, etc)

<b>Closed Cases Statistics</b>		
<b>Client Withdrew</b>	57	45%
<b>Negotiated Settlement</b>	7	6%
<b>Entered Foreclosure- Change in Eligibility Status</b>	23	18%
<b>Brief Services</b>	7	6%
<b>Other</b>	33	26%
<b>Total</b>	<b>127</b>	<b>100%</b>

840 Rejected Cases (All cases rejected for various reasons such as client determined not to be working poor, client already in foreclosure, etc.)