



**The Four Seasons
Orlando, FL**

**Saturday, December 8, 2018
9:00 am**

BRING THIS AGENDA TO THE MEETING

**NOTE: The Agenda will be posted to the
meeting APP.**

Real Property, Probate and Trust Law Section
Executive Council Meeting
The Four Seasons
Orlando, FL
December 8, 2018

Agenda

Note: Agenda Items May Be Considered on a Random Basis

I. **Presiding** — Debra L. Boje, *Chair*

II. **Attendance** — Sarah Swaim Butters, *Secretary*

III. **Minutes of Previous Meeting** — Sarah Swaim Butters, *Secretary*

Motion to approve the minutes of September meeting of Executive Council held at the Westin Hotel, Rome, Italy **pp. 10 - 26**

IV. **Chair's Report** — *Debra L. Boje, Chair*

1. Recognition of Guests

2. Recognition of General Sponsors and Friends of the Section **pp. 27 - 29**

3. Milestones

4. Update on Hurricane Michael Relief Efforts

5. Upcoming Executive Council Meetings **p. 30**

V. **Liaison with Board of Governors Report** — Steven W. Davis

VI. **Chair-Elect's Report** — *Robert S. Freedman, Chair-Elect*

2019-2020 Meeting Schedule. **p. 31**

VII. **Treasurer's Report** — *Wm. Cary Wright, Treasurer*

Statement of Current Financial Conditions. **p. 32**

VIII. **Director of At-Large Members Report** — *Lawrence Jay Miller, Director*

IX. **CLE Seminar Coordination Report** — *Steven H. Mezer (Real Property) and John C. Moran (Probate & Trust), Co-Chairs* **p. 33**

X. General Standing Division — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

Action Items:

1. Homestead Issues Study – *Jeffrey S. Goethe and J. Michael Swaine, Co-Chairs*

Motion (A) to adopt as a Section position proposed legislation to amend Section 719.103(25), Florida Statutes, to provide much needed clarification and guidance regarding the inurement of the constitutional exemption from creditors' claims upon the death of a Florida resident who owns a leasehold cooperative unit; (B) to find that such legislative position is within the purview of the RPPTL Section; and (C) to expend Section funds in support of the proposed legislative position. **pp. 34 - 51**

2. 2019-2020 Budget — *Wm. Cary Wright, Treasurer and Chair, Budget Committee*

Motion to approve the proposed Real Property, Probate and Trust Law Section Budget for the fiscal year 2019 – 2020. **pp. 52 - 60**

Informational Items:

1. Ad Hoc Florida Bar Leadership Academy — *Kristopher E. Fernandez and Brian E. Sparks, Co-Chairs*

Report on William Reece Smith Jr. Leadership Academy application process and qualifications. **p. 61**

2. Liaison with Clerks of the Court — *Laird A. Lile, Liaison*

Update on Clerks' activities.

3. Law School Mentoring & Programing — *Lynwood F. Arnold, Jr., Chair*

Update on committee activities.

4. Sponsorship Committee — *Jason J. Quintero and Eric C. Virgil, Co-Chairs*

5. Professionalism and Ethics — *Gwynne A. Young, Chair*

Discussion of proposed replacement of the current Rules Regulating the Florida Bar 4-1.14 (Representing a Client Under a Disability) with ABA Model Rule of Professional Conduct 1.14 (Client with Diminished Capacity). **pp. 62 – 66**

6. Professionalism and Ethics — *Gwynne A. Young, Chair*

Vignette - Reviewing Estate Planning Documents for Out of State Lawyers. **p. 67 - 70**

XI. [Probate and Trust Law Division Report](#) — *William T. Hennessey, Director*

Information Items:

1. Probate and Trust Litigation Committee — *J. Richard Caskey, Chair*

Motion to (A) adopt as a Section legislative position support for proposed amendments clarifying the personal representative's exclusive authority to pursue causes of action on behalf of the estate, including but not limited to claims for the return of probate assets wrongfully transferred prior to the decedent's death, including changes to Fla. Stat. §§ 731.201(32), 733.607(1), 733.612(20), and 733.802(2); (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 71 - 81**

2. Trust Law Committee — *Angela Adams, Chair*

Motion to (A) adopt as a Section legislative position support for the "Florida Directed Trust Act", a modified version of the Uniform Directed Trust Act, which clarifies and changes various aspects of the Florida Statutes relating to directed trusts; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 82 - 113**

3. Probate Law and Procedure Committee — *M. Travis Hayes, Chair*

Motion to (A) adopt as a Section legislative position support for proposed legislation to improve notice of administration to surviving spouse to include notice that an extension of the deadline for taking an elective share may be requested prior to the expiration of the deadline for making the election, including changes to Fla. Stat. § 733.212(2)(e); (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 114 - 120**

XII. [Real Property Law Division Report](#) — *Robert S. Swaine, Division Director*

Action Items:

1. Title Issues and Title Standards Committee — *Christopher Smart, Chair*

Motion to: (A) create Section 95.2311, F.S., which would establish a method of correcting obvious typographical errors in legal descriptions contained in deeds of real property; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 121 - 129**

XIV. Probate and Trust Law Division Committee Reports — *William T. Hennessey, Director*

1. **Ad Hoc Guardianship Law Revision Committee** — David C. Brennan, Chair; Nicklaus J. Curley, Stacey B. Rubel and Sancha Brennan Whynot, Co-Vice Chairs
2. **Ad Hoc Committee on Electronic Wills** — Sarah S. Butters, Chair; Angela McClendon Adams, Thomas M. Karr, Co-Vice-Chairs
3. **Ad Hoc Florida Business Corporation Action Task Force** — Brian C. Sparks and M. Travis Hayes, Co-Chairs
4. **Ad Hoc Study Committee On Professional Fiduciary Licensing** — Angela McClendon Adams and Darby Jones, Co-Chairs
5. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** — William T. Hennessey, Chair; Paul Edward Roman, Vice-Chair
6. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** — Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
7. **Asset Protection** — Brian M. Malec, Chair; Richard R. Gans and Michael A. Sneeringer, Co-Vice-Chairs
8. **Attorney/Trust Officer Liaison Conference** — Tattiana Patricia Brenes-Stahl, Chair; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Patrick C. Emans, Gail G. Fagan and Mitchell A. Hipsman, Co-Vice Chairs
9. **Elective Share Review Committee** — Lauren Young Detzel and Charles I. Nash, Co-Chairs; Jenna Rubin, Vice-Chair
10. **Estate and Trust Tax Planning** — Robert L. Lancaster, Chair; Tasha K. Pepper-Dickinson and Jenna G. Rubin, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** — Nicklaus Joseph Curley, Chair; Brandon D. Bellew, Darby Jones, and Stacey Beth Rubel Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** — L. Howard Payne Chair; Charles W. Callahan, III and Alfred J. Stashis, Co-Vice Chairs
13. **Liaisons with ACTEC** — Elaine M. Bucher, Bruce M. Stone, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** — Charles F. Robinson and Marjorie Ellen Wolasky
15. **Liaisons with Tax Section** — Lauren Young Detzel, William R. Lane, Jr., and Brian C. Sparks

16. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith Braun, Co-Vice Chairs
17. **Probate and Trust Litigation** — John Richard Caskey, Chair; James R. George and R. Lee McElroy, IV, Co-Vice Chairs
18. **Probate Law and Procedure** — M. Travis Hayes, Chair; Amy B. Beller, Theodore S. Kypreos and Cristina Papanikos, Co-Vice Chairs
19. **Trust Law** — Angela McClendon Adams, Chair; Tami Foley Conetta, Jack A. Falk, Mary E. Karr, and Matthew H. Triggs, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** — Jeffrey S. Goethe, Chair; J. Allison Archbold, Rachel Lunsford, and Jerome L. Wolf, Co-Vice Chairs

XIII. Real Property Law Division Reports — *Robert S. Swaine, Director*

1. **Attorney-Loan Officer Conference** — Robert G. Stern, Chair; Kristopher E. Fernandez and Wilhelmina F. Kightlinger, Co-Vice Chairs
2. **Commercial Real Estate** — Adele Ilene Stone, Chair; E. Burt Bruton, R. James Robbins, Jr. and Martin A. Schwartz, Co-Vice Chairs
3. **Condominium and Planned Development** — William P. Sklar, Chair; Alexander B. Dobrev, Vice Chair
4. **Condominium and Planned Development Law Certification Review Course** — Richard D. DeBoest, II and Sandra Krumbein, Co-Chairs
5. **Construction Law** — Scott P. Pence, Chair; Reese J. Henderson, Jr. and Neal A. Sivyer, Co-Vice Chairs
6. **Construction Law Certification Review Course** — Melinda S. Gentile and Deborah B. Mastin, Co-Chairs; Elizabeth B. Ferguson and Gregg E. Hutt, Co-Vice Chairs
7. **Construction Law Institute** — Sanjay Kurian, Chair; Diane S. Perera, Jason J. Quintero and Bryan R. Rendzio, Co-Vice Chairs.
8. **Development & Land Use Planning** — Julia L. Jennison, Chair; Colleen C. Sachs, Vice Chair
9. **Insurance & Surety** — Scott P. Pence and Michael G. Meyer, Co-Chairs; Frederick R. Dudley, Katherine L. Heckert and Mariela M. Malfeld, Co-Vice Chairs
10. **Liaisons with FLTA** — Alan K. McCall and Melissa Jay Murphy, Co-Chairs; Alan B. Fields and James C. Russick, Co-Vice Chairs
11. **Real Estate Certification Review Course** — Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach and Brian W. Hoffman, Co-Vice Chairs

12. **Real Estate Leasing** — Brenda B. Ezell, Chair; Richard D. Eckhard and Christopher A. Sajdera, Co-Vice Chairs
13. **Real Estate Structures and Taxation** — Michael A. Bedke, Chair; Deborah Boyd and Lloyd Granet, Co-Vice Chairs
14. **Real Property Finance & Lending** — David R. Brittain and Richard S. McIver, Co-Chairs; Bridget M. Friedman and Robert G. Stern, Co-Vice Chairs
15. **Real Property Litigation** — Marty J. Solomon, Chair; Amber E. Ashton, Manuel Farach and Michael V. Hargett, Co-Vice Chairs
16. **Real Property Problems Study** — Lee A. Weintraub, Chair; Mark A. Brown, Jason Ellison, Stacy O. Kalmanson, and Susan Spurgeon, Co-Vice Chairs
17. **Residential Real Estate and Industry Liaison** — Salome J. Zikakis, Chair; Raul P. Ballaga, Louis E. “Trey” Goldman, James Marx and Nicole M. Villarroel, Co-Vice Chairs
18. **Title Insurance and Title Insurance Liaison** — Brian W. Hoffman, Chair; Cynthia A. Riddell, Vice Chair
19. **Title Issues and Standards** — Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Melissa Sloan Scaletta and Karla J. Staker, Co-Vice Chairs

XV. [General Standing Committee Reports](#) — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

1. **Ad Hoc Florida Bar Leadership Academy** — Kristopher E. Fernandez and Brian C. Sparks, Co-Chairs; J. Allison Archbold, Vice Chair
2. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
3. **Budget** — Wm. Cary Wright, Chair; Linda S. Griffin, Tae Kelley Bronner, and Pamela O. Price, Co-Vice Chairs
4. **CLE Seminar Coordination** — Steven H. Mezer and John C. Moran, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Paul E. Roman (Ethics), Silvia B. Rojas, Yoshimi O. Smith, Co-Vice Chairs
5. **Convention Coordination** — Linda S. Griffin, Chair; Angela McLendon Adams, Tae Kelley Bronner and Darby Jones, Co-Vice Chairs
6. **Fellows** — Jennifer Jones Bloodworth and Benjamin Diamond, Co-Chairs; Joshua Rosenberg and Angel Santos, Co-Vice Chairs
7. **Florida Electronic Filing & Service** — Rohan Kelley, Chair
8. **Information Technology** — Neil Barry Shoter, Chair; Erin Christy, Alexander B. Dobrev, Jesse Friedman, Keith S. Kromash, William A. Parady, Hardy Roberts,

and Michael Sneeringer, Co-Vice Chairs

9. **Homestead Issues Study** — Jeffrey S. Goethe (Probate & Trust) and J. Michael Swaine (Real Property), Co-Chairs; Michael J. Gelfand, Melissa Murphy and Charles Nash, Co-Vice Chairs
10. **Law School Mentoring & Programing** — Lynwood F. Arnold, Jr., Chair; Phillip A. Baumann, Guy Storms Emerich and Elizabeth Hughes, Co-Vice Chairs
11. **Legislation** — Jon Scuderi (Probate & Trust) and S. Katherine Frazier (Real Property), Co-Chairs; Theodore S. Kypreos and Robert Lee McElroy, IV (Probate & Trust), Manuel Farach and Art Menor (Real Property), Co-Vice Chairs
12. **Legislative Update (2018)** — Stacy O. Kalmanson, Chair; Brenda Ezell, Michael Travis Hayes, Thomas Karr, Kymberlee Curry Smith, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
13. **Legislative Update (2019)** — Stacy O. Kalmanson and Thomas Karr, Co-Chairs; Brenda Ezell, Theodore Stanley Kypreos, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
14. **Liaison with:**
 - a. **American Bar Association (ABA)** — Edward F. Koren, Julius J. Zschau, George J. Meyer and Robert S. Freedman
 - b. **Clerks of Circuit Court** — Laird A. Lile
 - c. **FLEA / FLSSI** — David C. Brennan and Roland D. “Chip” Waller
 - d. **Florida Bankers Association** — Mark T. Middlebrook
 - e. **Judiciary** — Judge Linda R. Allan, Judge Jaimie R. Goodman, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Janis B. Keyser, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J. Suarez, Judge Patricia V. Thomas, and Judge Jessica J. Ticktin
 - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
 - g. **TFB Board of Governors** — Steven W. Davis
 - h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
 - i. **TFB CLE Committee** — Steven H. Mezer
 - j. **TFB Council of Sections** — Debra L. Boje and Robert S. Freedman
 - k. **TFB Pro Bono Committee** — Melisa Van Sickle
15. **Long-Range Planning** — Robert S. Freedman, Chair
16. **Meetings Planning** — George J. Meyer, Chair
17. **Membership and Inclusion** — Annabella Barboza and Brenda Ezell, Co-Chairs; S. Dresden Brunner, Vinette Dawn Godelia, and Kymberlee Curry Smith
18. **Model and Uniform Acts** — Bruce M. Stone and Richard W. Taylor, Co-Chairs
19. **Professionalism and Ethics** — Gwynne A. Young, Chair; Alexander B. Dobrev,

Andrew B. Sasso, and Laura Sundberg, Co-Vice Chairs

20. **Publications (ActionLine)** — Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); George D. Karibjanian, Sean M. Lebowitz, Paul E. Roman and Lee Weintraub, Co-Vice Chairs.
21. **Publications (Florida Bar Journal)** — Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board — Probate & Trust), Cindy Basham (Editorial Board — Probate & Trust), Michael A. Bedke (Editorial Board — Real Property), Homer Duvall (Editorial Board — Real Property) and J. Allison Archbold (Editorial Board), Co-Vice Chairs
22. **Sponsor Coordination** — Jason J. Quintero and J. Eric Virgil, Co-Chairs; Patrick C. Eman, Marsha G. Madorsky, Deborah L. Russell, J. Michael Swaine, and Arlene C. Udick, Co-Vice Chairs
23. **Strategic Planning** — Debra L. Boje and Robert S. Freedman, Co-Chairs

XVI. [Adjourn:](#) Motion to Adjourn.

MINUTES
Of the Real Property, Probate and Trust Law Section
Executive Council Meeting
September 29, 2018
Westin Excelsior
Rome, Italy

I. Call to Order — Debra L. Boje, *Chair*

The meeting was called to order at approximately 7:55pm by Chair Debra L. Boje. Ms. Boje welcomed all to the meeting and reminded the Section members that the next Executive Council meeting was to be held in Orlando in December of 2018.

II. Attendance —

The attendance sheet/roster was circulated and is attached to these Minutes as Addendum A.

III. Minutes of Previous Meeting — Sarah Butters, *Secretary*

Upon a Motion duly made and seconded, the Minutes from the July meeting at the Breakers in Palm Beach were unanimously approved.

IV. Chair's Report — *Debra L. Boje, Chair*

1. Recognition of Guests – The Chair began with a recognition of guests, including numerous non-members.
2. Recognition of General Sponsors and Friends of the Section.
3. Milestones - None reported.
4. Upcoming Executive Council Meetings – The Chair then reviewed the upcoming meeting schedule for the 2018-2019 Bar year.

Orlando – Four Seasons Hotel – December 5 - 9, 2018

Amelia Island Plantation – March 13 – 17, 2019

5. Action Item – A motion was made and duly seconded to recognize G. Thomas Smith as an honorary Section member in recognition of his outstanding contributions in the field of real property. The Motion passed unanimously.

V. Liaison with Board of Governors Report — Steven W. Davis

No report.

VI. Chair-Elect's Report — *Robert S. Freedman, Chair-Elect*

Mr. Freedman advised that the schedule for the Executive Council meetings will be included in the Orlando Executive Council agenda, and that it is also in the RPPTL Directory.

VII. Treasurer's Report — *Wm. Cary Wright, Treasurer*

Treasurer Wright provided a report. He noted that the Section ended 2017-2018 year-end in the black, with about \$150,000 in net operations for the year.

VIII. Director of At-Large Members Report — *Lawrence Jay Miller, Director*

No report.

IX. CLE Seminar Coordination Report — *Steven H. Mezer (Real Property) and John C. Moran (Probate & Trust), Co-Chairs*

Silvia Rojas gave a brief report.

X. General Standing Division — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

Informational Items:

1. 2019-2020 Budget – *Wm. Cary Wright, Treasurer*

2. Sponsorship Committee – *Jason J. Quintero and Eric C. Virgil, Co-Chairs*

Rob Freedman noted that we are looking at the sponsor program and are expected to make changes within the next two years. The goal is to provide more value to the sponsors.

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

No report.

XI. Real Property Law Division Report — *Robert S. Swaine, Division Director*

No report.

XII. Probate and Trust Law Division Report – *William T. Hennessey, Director*

No report.

XII. Probate and Trust Law Division Committee Reports – *William T. Hennessey, Director*

No report.

XIII. Real Property Law Division Committee Reports — *Robert S. Swaine, Director*

No report.

XIV. General Standing Committee Reports — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

Laird Lile provided a report on the Liaison with the Clerks. He noted that the Clerks of Courts are seeking to standardize e-filing across the state.

Pete Dunbar provided a brief update on legislative matters. He also advised that he had just found out that Senator Dorothy Hukill, a longtime friend of the Section and sponsor of numerous Section initiatives over the years, had resigned her seat because of illness.

Mr. Freedman then provided updates for two standing committees. As for the Amicus Committee, Mr. Freedman advised that several requests have been received recently for the Section to get involved on lower court appeals, and the Amicus Committee determined that Section involvement either needed to wait if and when an appeal reaches the Supreme Court, or that the matter was not one which the Amicus Committee believed a clear Section position could be stated.

Mr. Freedman then provide a report from the Sponsorship Committee. He advised that work to provide increased benefits to sponsors was underway and that further details and information would be forthcoming.

XV. Adjourn: Motion to Adjourn.


Brian Sparks gave a special introduction to the trip to Pompei and Mt. Vesuvius. He encouraged people to wear comfortable attire and walking shoes. The weather was predicted to be between the low 60s and 70s, with clear skies.

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2018-2019

Executive Committee	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Boje, Debra Lynn Chair		√	√	DB			
Freedman, Robert S. Chair-Elect & General Standing Div. Director	√		√	RST			
Hennessey, William Probate & Trust Law Div. Director		√	√				
Swaine, Robert S. Real Property Div. Director	√		√				
Butters, Sarah S. Secretary		√	√				
Wright, Wm. Cary Treasurer	√		√	✓			
Frazier, S. Katherine Legislation Co-Chair Real Property	√		√				
Scuderi, Jon Legislation Co-Chair Probate		√	√				
Moran, John C. CLE Co-Chair Probate		√	√				
Mezer, Steven H. CLE Co-Chair Real Property	√		√				
Miller, Lawrence J. Director, At Large Members		√					
O'Malley, Andrew Immediate Past Chair	√						

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Acosta, Jolyon Delphin		√	√				
Adams, Angela M.		√	√				
Akins, David J.		√	√	DA			
Allan, Hon. Linda R.							
Altman, Stuart H.		√	√				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Archbold, J. Allison		√	√				
Arnold, Jr., Lynwood	√		√				
Aron, Jerry E. Past Chair	√		√				
Ashton, Amber E.	√		√				
Awerbach, Martin S.	√		√				
Bald, Kimberly A.		√	√	KAB			
Ballaga, Raul P.	√						
Barboza, Annabella	√		√				
Basham, Cindy		√					
Baskies, Jeffrey		√	√				
Battle, Carlos A.		√	√				
Baumann, Phillip A.		√	√	PBS			
Beales, III, Walter R. Past Chair	√		√				
Bedke, Michael A.	√		√				
Belcher, William F. Past Chair		√	√				
Bell, Kenneth B.	√						
Bell, Rebecca Coulter		√		KB			
Beller, Amy		√	√				
Bellew, Brandon D.		√	√				
Ben-Moussa, Shari D.	√						
Bloodworth, Jennifer J.	√		√				
Bonevac, Judy B.		√	√				
Bowers, Elizabeth A.		√	√				
Boyd, Deborah	√		√				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Braun, Keith Brian		✓	✓				
Brenes-Stahl, Tattiana		✓	✓				
Brennan, David C. Past Chair		✓	✓				
Brittain, David R.	✓		✓				
Bronner, Tae K.		✓	✓				
Brown, Mark A.	✓		✓				
Brown, Shawn	✓		✓				
Brunner, S. Dresden		✓					
Bruton, Jr., Ed Burt	✓		✓				
Bucher, Elaine M.		✓	✓				
Butler, Johnathan		✓	✓				
Callahan, Chad W. III		✓					
Carlisle, David R.		✓					
Caskey, John R.		✓	✓				
Christiansen, Patrick Past Chair	✓		✓	PTC			
Christy, Douglas G. III	✓		✓				
Christy, Erin Hope	✓		✓				
Cohen, Howard Allen	✓		✓				
Cole, Stacey L.		✓	✓				
Conetta, Tami F.		✓	✓				
Cope, Jr., Gerald B.	✓		✓	GBC			
Cornett, Jane Louise	✓						
Costello, T. John, Jr.		✓					
Curley, Nick		✓	✓				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Davis, Steven W.	√		√				
DeBoest II, Richard Dearborn	√		√				
Detzel, Lauren Y.		√					
Diamond, Benjamin F.		√	√				
Diamond, Sandra F. Past Chair		√					
Direktor, Kenneth S.	√						
Dobrev, Alex	√		√				
Dollinger, Jeffrey	√						
Dribin, Michael Past Chair		√	√				
Dudley, Frederick R.	√						
Duffey, Patrick J.		√	√				
Duvall, III, Homer	√		√				
Duz, Ashley Nichole		√	√				
Eckhard, Rick	√						
Ellison, Jason M.	√		√				
Emans, Patrick C		√	√				
Emerich, Guy S.		√	√				
Ertl, Christene M.	√		√				
Ezell, Brenda B.	√		√				
Fagan, Gail		√	√				
Falk, Jr., Jack A.		√	√				
Farach, Manuel	√						
Faulkner, Debra Ann		√					
Felcoski, Brian J. Past Chair		√	√				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Ferguson, Elizabeth B.	✓		✓				
Fernandez, Kristopher E.	✓		✓				
Fields, Alan B.	✓						
Fitzgerald, Jr., John E.		✓					
Flood, Gerard J.		✓	✓				
Foreman, Michael L.		✓	✓				
Friedman, Bridget	✓		✓				
Friedman, Jesse B.		✓	✓				
Galler, Jonathan		✓	✓				
Gans, Richard R.		✓	✓				
Gelfand, Michael J Past Chair	✓		✓				
Gentile, Melinda S.	✓						
George, James		✓	✓				
George, Joseph P.	X	✓	✓	PC			
Godelia, Vinette D.	✓						
Goethe, Jeffrey S.		✓	✓				
Goldman, Louis "Trey"	✓		✓				
Goldman, Robert W. Past Chair		✓	✓				
Goodall, Deborah P. Past Chair		✓	✓	DJ			
Goodman, Hon. Jaimie Randall							
Graham, Robert M.	✓		✓				
Granet, Lloyd	✓		✓				
Griffin, Linda S.		✓	✓	JL			
Grimsley, John G. Past Chair		✓					

Free man, Gill


Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Grosso, Jennifer		√					
Gunther, Eamonn W.		√	√				
Gurgold, Eric		√	√				
Guttman, III, Louis B Past Chair	√		√				
Hamrick, Alexander H		√	√				
Hancock, Patricia J.	√						
Hargett, Michael Van	√		√				
Harriett-Wartenberg, Stephanie		√					
Hayes, Hon. Hugh D.			√				
Hayes, Michael Travis		√	√				
Hearn, Frederick "Ricky"		√	√				
Hearn, Steven L. Past Chair		√	√	SLD			
Heckert, Katie	√		√				
Henderson, Jr., Reese J.	√		√				
Henderson, III, Thomas N.	√						
Heuston, Stephen P.		√	√				
Hipsman, Mitchell Alec		√	√				
Hoffman, Brian W.	√		√	BWH			
Horstkamp, Julie A.	√		√				
Hudson, Hon. Margaret "Midge"			√				
Hughes, Elizabeth		√	√				
Hutt, Gregg Evan	√		√				
Isphording, Roger O. Past Chair		√		ROE			
Jennison, Julia Lee	√		√				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Johnson, Amber Jade		✓	✓				
Jones, Darby		✓	✓				
Jones, Frederick W.	✓		✓	Handwritten mark			
Jones, Patricia P.H.	✓		✓	Handwritten mark			
Judd, Robert B.		✓	✓				
Kalmanson, Stacy O.	✓		✓				
Kangas, Michael Ryan		✓					
Karibjanian, George		✓					
Karr, Mary E.		✓	✓				
Karr, Thomas M.		✓	✓				
Kayser, Joan B. Past Chair		✓					
Keane, Cristin C.	✓						
Kelley, Rohan Past Chair		✓		Handwritten mark			
Kelley, Sean W.		✓					
Kelley, Shane		✓	✓				
Keyser, Hon. Janis Brustares				Handwritten mark			
Khan, Nishad	✓		✓				
Kibert-Basler, Nicole	✓		✓				
Kightlinger, Wilhelmina F.	✓						
Kinsolving, Ruth Barnes, Past Chair	✓						
Koren, Edward F. Past Chair		✓	✓	Handwritten mark			
Korvick, Hon. Maria			Handwritten mark	Handwritten mark			
Kotler, Alan Stephen		✓	✓				
Kromash, Keith S.		✓					

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Krumbein, Sandra Elizabeth	√		√				
Kurian, Sanjay	√		√				
Kypreos, Theodore S.		√	√				
LaFemina, Rose M.		√	√				
Lancaster, Robert L.		√	√				
Lane, Jr., William R.		√	√				
Larson, Roger A.	√		√				
Leathe, Jeremy Paul		√					
Lebowitz, Sean M.		√	√				
Leebrick, Brian D.	√						
Lile, Laird A. Past Chair		√	√	<i>ALC</i>			
Lindsey, Hon. Norma							
Little, III, John W.	√		√				
Lopez, Sophia A.		√		<i>SM</i>			
Lunsford, Rachel Albritton		√		<i>RA</i>			
Madorsky, Marsha G.		√		<i>MG</i>			
Malec, Brian		√	√				
Malfeld, Mariela	√		√				
Marger, Bruce Past Chair		√					
Marshall, III, Stewart		√	√				
Marx, James A.		√	√				
Mastin, Deborah Bovarnick	√		√				
McCall, Alan K.	√		√				
McElroy, IV, Robert Lee		√	√				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
McIver, Richard	√		√				
McRae, Ashley E.	√		√				
Melanson, Noelle M.		√	√				
Menor, Arthur J.	√						
Meyer, George F. Past Chair	√		√				
Meyer, Michael	√		√				
Middlebrook, Mark T.		√	√	<i>[Signature]</i>			
Mize, Patrick		√					
Moule, Jr., Rex Everet		√					
Muir, Hon. Celeste H.			√				
Murphy, Melissa J. Past Chair	√		√	<i>[Signature]</i>			
Nash, Charles I.		√					
Neukamm, John B. Past Chair	√		√				
Nguyen, Hung V.		√	√				
Papanikos, Cristina		√	√				
Parady, William A.	√		√				
Payne, L. Howard		√	√				
Pence, Scott P.	√		√				
Pepper-Dickinson, Tasha K.		√	√				
Perera, Diane	√						
Pilotte, Frank		√	√				
Pleus, Jr., Hon. Robert							
Pollack, Anne Q.	√		√				
Price, Pamela O.		√					

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Pyle, Michael A.		√					
Quintero, Jason	√		√				
Redding, John N.	√		√				
Renzio, Bryan	√						
Reynolds, Stephen H.		√					
Riddell, Cynthia	√						
Rieman, Alexandra V.		√	√				
Robbins, Jr., R.J.	√		√				
Roberts, III, Hardy L.	√						
Robinson, Charles F.		√					
Rodstein, David William	√						
Rojas, Silvia B.	√		√	<i>SMH</i>			
Rolando, Margaret A. Past Chair	√		√	<i>MAR</i>			
Roman, Paul E.			√	√			
Rosenberg, Joshua			√	√			
Rubel, Stacy			√	√			
Rubin, Jenna			√	√			
Russell, Deborah L.			√				
Russick, James C.	√			√			
Rydberg, Marsha G.	√			√			
Sachs, Colleen C.	√			√			
Santos, Angela			√	√			
Sajdera, Christopher	√			√			
Sasso, Andrew	√			√			

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Scaletta, Melissa Sloan	√		√				
Schwartz, Martin	√		√				
Schwartz, Robert M.	√		√				
Schwinghamer, Jamie		√	√				
Seaford, Susan	√						
Seigel, Daniel A.	√		√				
Sheets, Sandra G.		√	√				
Sherrill, Richard		√	√				
Shoter, Neil B.	√		√				
Silberman, Hon. Morris							
Silberstein, David M.		√					
Sivyer, Neal Allen	√		√				
Sklar, William P.	√		√				
Smart, Christopher W.	√		√				
Smith, Kymberlee C.	√		√				
Smith, G. Thomas Past Chair/Honorary Member	√						
Smith, Yoshimi O.			√	√			
Sneeringer, Michael			√	√			
Solomon, Marty	√						
Sparks, Brian C.			√	√			
Speiser, Hon. Mark A.							
Spivey, Barry F.			√	√			
Spurgeon, Susan K.		√		√			
Stafford, Michael P.			√	√			

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Staker, Karla J.	√		√				
Stashis, Alfred Joseph		√	√				
Stern, Robert G.	√		√				
Stone, Adele I.	√		√				
Stone, Bruce M. Past Chair		√	√				
Suarez, Hon. Richard							
Sundberg, Laura K.		√	√				
Swaine, Jack Michael Past Chair	√		√				
Taylor, Richard W.	√		√				
Thomas, Hon. Patricia			√				
Thornton, Kenneth E.	√		√				
Ticktin, Hon. Jessica J.							
Tobin, Jennifer S.	√		√				
Triggs, Matthew H.		√	√				
Tschida, Joseph John	√		√				
Tucker, Kristine L.		√					
Udick, Arlene C.	√		√	AC/21			
Van Dien, Lisa Barnett	√		√				
Van Lenten, Jason Paul		√	√				
Van Pelt, Kit E.		√	√	(M)			
VanSickle, Melissa	√		√				
Villarroel, Nicole Marie	√		√				
Villavicencio, Stephanie		√					
Virgil, Eric		√	√				

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Waller, Roland D. Past Chair	√		√	WW			
Weintraub, Lee A.	√		√				
Wells, Jerry B.		√					
White, Jr., Richard M.		√	√				
Whynot, Sancha B.	√		√				
Wilder, Charles			√				
Williams, Margaret A.	√		√				
Williamson, Julie Ann Past Chair	√						
Wintter, Christopher		√					
Wohlust, Gary Charles		√	√				
Wolasky, Marjorie E.		√		MW			
Wolf, Jerome L.		√	√				
Young, Gwynne A.		√	√	YAG			
Zeydel, Diana S.C.		√	√				
Zikakis, Salome J.		√	√	SD			
Zschau, Julius J. Past Chair	√		√				

RPPTL Fellows	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Abukodeir, Samah		√	√				
Barr, James C.	√						
Cazobon, Denise		√	√				
Coleman, Jami		√					
de la Riva, Lian		√	√				
Jackson, Gabrielle	√		√				
McDermott, Daniel L.		√	√				

RPPTL Fellows	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Peregrin, Jacqueline J.	✓		✓				

Legislative Consultants	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Brown, French		✓	✓				
Dobson, Michael	✓		✓				
Dunbar, Peter M.	✓		✓	PMD-			
Edenfield, Martha Jane	✓	✓	✓	MS			
Finkbeiner, Brittany		✓	✓				
Roth, Cari L.			✓				

Guest sign in	Division	
	RP	P&T
Alaimo, Marve Ann		✓
Behar, Jacobeli J.		✓
Broadwater, Carolyn	✓	
Davis, Steven BOG Liaison	✓	
Finchum, Travis	n/a	n/a
Foster-Morales, Dori BOG		✓
Groover, Lea Anne		✓
Hall, Thomas		✓
Noll, R. Dale	✓	
<i>Cela, Paula</i>	✓	✓
<i>Amaro M. Barbara</i>		

maria ROBYCK
MAR K...

Fink, Erin Farrington

KLEINKNECHT, ROBERT

Zayas, Angelica

delvo, Lourdes

...

Sept 29, 2015 Italy

July 28 - Sept 29, 11:30



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Overall Sponsor/Leg. Update	Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com



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Coral Gables Trust	John Harris	jharris@cgtrust.com	Probate Law Committee
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First American Title	Wayne Sobian	wsobien@firstam.com	Real Estate Structures and Taxation
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Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com	Commercial Real Estate
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Hopping Green & Sams	Vinette D. Godelia	vinetteg@hgslaw.com	Development and Land Use

Real Property, Probate & Trust Law Section 2018-2019 Executive Council Meetings

DATES LOCATIONS

December 5-9, 2018

Executive Council Meeting

Four Seasons Hotel

Orlando, Florida

Room Rates:

Standard Guest Rooms: \$285 (single/double occupancy)

Park View Rooms: \$399 (single/double occupancy)

March 13-17, 2019

Executive Council Meeting

Omni Resorts

Amelia Island Plantation, Florida

Room Rates:

Hotel/Villa Guestrooms \$259 (single/double occupancy)

One Bedroom Oceanfront Villa: \$299 (single/double occupancy)

Two Bedroom Oceanfront Villa: \$399.00 (single/double occupancy)

Three Bedroom Oceanfront Villa: \$459 (single/double occupancy)

May 30-June 2, 2019

Executive Council Meeting & Convention

Opal Sands Resort

Clearwater Beach, Florida

Room Rate:

\$239 Deluxe Gulf Front (single/double occupancy)

NOTE: All Reservations will have strict cancellation policies that will result in forfeiture of deposits and/or payment in full for rooms cancelled. Please carefully review cancellation policies before booking your room. When the link opens up for booking more details will be provided.

Real Property, Probate & Trust Law Section

2019-2020 Executive Council Meetings

DATES LOCATIONS

July 24 – 27, 2019

Executive Council Meeting & Legislative Update

The Breakers

Palm Beach, Florida

Room Rate: Deluxe Room - \$229 (Run of House King); Premium Room - \$280 (Run of House); Atlantic Room - \$395 (Oceanfront View ROH)

November 6 – 9, 2019

Executive Council & Committee Meetings

JW Marriott Marquis Miami

Miami, Florida

Standard Guest Room Rate: \$269 (single/double)

January 29 – February 2, 2020

Executive Council & Committee Meetings

Grand Hyatt Tampa Bay

Tampa, Florida

Standard Guest Room Rate: \$225 (single/double)

April 1 – April 5, 2020

Out of State Executive Council Meeting

Hotel Okura Amsterdam

Amsterdam, The Netherlands

Room Rates: Superior Guest Room (2 twins/1 king): €295 single, €320 double (inclusive of breakfast)

Executive Junior Suite: €385 single, €420 double (inclusive of breakfast)

May 28 – May 31, 2020

Executive Council Meeting & Convention

Loews Sapphire Falls

Orlando, Florida

Standard Guest Room Rate (two queens): \$209 (single/double), \$234 (triple), \$259 (quad)

Limit 1 reservation per registrant, additional rooms will be approved upon special request. Each hotel has a 30 day cancellation policy on all individual room reservations.



RPPTL Financial Summary from Separate Budgets

2018-2019 [July 1 - October 31] YEAR

TO DATE REPORT

General Budget

YTD

Revenue	\$ 1,039,753
Expenses	\$ (577,135)
Net:	\$ 462,618

Attorney Loan Officer

YTD

Revenue	\$ 15,250
Expenses	\$ (41,962)
Net:	\$ (26,712)

CLI

YTD

Revenue	\$ 1,390
Expenses	\$ (112)
Net:	\$ 1,278

Trust Officer Conference

Revenue	\$ 273,614
Expenses	\$ (39,747)
Net:	\$ 233,867

Legislative Update

Revenue	\$ 44,224
Expenses	\$ (77,672)
Net:	\$ (33,448)

Convention

Revenue	\$ -
Expenses	\$ -
Net:	\$ -

Roll-up Summary (Total)

Revenue:	\$ 1,374,231
Expenses	\$ (736,629)
Net Operations	\$ 637,602

Beginning Fund Balance:	\$ 1,823,975
Current Fund Balance (YTD):	\$ 2,461,577
Projected June 2018 Fund Balance	\$ 1,678,493

CLE Schedule 2018-19

<i>Course Date</i>	<i>Course #</i>	<i>Course Title</i>	<i>Location/Venue</i>	<i>Program Chair</i>
12/11/2018	3188	<i>Expert Witness Seminar</i>	Audio Webcast	John Moran
12/12/2018	3119	<i>RPPTL Practice Series: Resolving Defective or Deficient IRA Beneficiary Designations</i>	Audio Webcast	John Moran
1/16/2019	2990	<i>RPPTL Audio Webcast: Cell Site Leasing</i>	Audio Webcast	Chris Sajdera
1/16/2019	3142	<i>RPPTL Audio Webcast: Spousal Rights in Probate Proceedings</i>	Audio Webcast	Brandon Bellew
1/29/2019		<i>RPPTL Audio Webcast: Practice Series - Guardianship Litigation</i>	Audio Webcast	John Moran / Jamie Schwinghamer
2/13/2019	2989	<i>RPPTL Audio Webcast: Medical Marijuana</i>	Audio Webcast	Chris Sajdera
2/19/2019		<i>RPPTL Audio Webcast: Practice Series - Modifying, Changing & Terminating Irrevocable Trusts</i>	Audio Webcast	John Moran / Yoshimi Smith
2/22/2019	2985	<i>Condominium Law Certification Review</i>	JW Marriott, Orlando	Sandra Krumbein / Richard DeBoest
3/7/2019	2984	<i>13th Annual Construction Law Institute</i>	JW Marriott, Orlando	Sanjay Kurian
3/7/2019	2950	<i>Construction Law Certification Review</i>	JW Marriott, Orlando	Deb Mastin/Mindy Gentile
3/20/2019	2988	<i>RPPTL Section Audio Webcast #7 The Marketable Record Title Act (MRTA)</i>	Audio Webcast	Steve Mezer
3/29/2019	2977	<i>Trust and Estate Symposium</i>	Fort Lauderdale	Rich Caskey/Angela Adams/Lee McElroy
4/5/2019	2976	<i>Wills Trusts and Estates Certification Review</i>	Orlando (HYATT AIRPORT)	Jeff Goethe
4/12/2019	2978	<i>RP Cert Review - NEW DATE</i>	JW Marriott, Orlando	Manny Farach
4/12/2019	2980	<i>Ins and Outs of Condo Law</i>	Tampa	TBD
4/17/2019	2987	<i>RPPTL Section Audio Webcast #8 Insurance</i>	Audio Webcast	Steve Mezer
4/26/2019	2981	<i>Guardianship CLE</i>	Tampa	Darby Jones/Nick Curley
5/3/2019	2982	<i>Estate and Trust Planning and Wealth Preservation</i>	Fort Lauderdale	Rob Lancaster
5/14/2019		<i>RPPTL Audio Webcast: Practice Series TBD</i>	Audio Webcast	John Moran
5/15/2019	2986	<i>RPPTL Section Audio Webcast #9 Community Association's Budget / Assessment / Reserve Issues</i>	Audio Webcast	Steve Mezer
6/1/2019	2983	<i>2019 RPPTL Convention CLE</i>	Clearwater	Debra Boje
6/3/2019		<i>RPPTL Audio Webcast: Practice Series TBD</i>	Audio Webcast	John Moran
6/19/2019		<i>RPPTL Section Audio Webcast #10 Developer Exercise of Reserved Rights - How far can they go?</i>	Audio Webcast	Steve Mezer

1 A bill to be entitled

2 An act relating to Florida’s constitutional homestead property and leasehold cooperatives;
3 amending section 719.103(25), F.S.; confirming that a cooperative unit is a forms of real
4 property ownership that qualifies for protected homestead status;

5 Be it Enacted by the Legislature of the State of Florida:

6 Section 1. Section 719.103(25), Florida Statutes, is amended to read:

7 (25) “Unit” means a part of the cooperative property which is subject to exclusive use and
8 possession. A unit may be improvements, land, or land and improvements together, as specified
9 in the cooperative documents. An interest in a unit is an interest in real property.

10

WHITE PAPER

PROPOSED AMENDMENT TO § 719.103(25) FLA. STAT.

I. SUMMARY

The proposed change to section 719.103(25), Florida Statutes, is intended to reconcile inconsistent applications of constitutional homestead protections for a form of real estate ownership governed by Chapter 719, Florida Statutes. The change is necessary to ensure the implementation of Florida's long-standing public policy of protecting the homes of Florida residents and their families. The proposed change will insure that the constitutional homestead protections for surviving spouses and minor children, as well as other heirs, are recognized for property that clearly qualifies for constitutional homestead protections during the owner's lifetime.

II. Current Situation

Article X, section 4, of The Florida Constitution protects the owners of homestead property and their family in four different ways:

- (1) The homestead residence is from the claims of the owner's creditors during the owner's lifetime.¹
- (2) The homestead residence is protected from the claims of the owner's creditors after the owner's death if the home passes to the owner's family after the owner's death.²
- (3) A surviving spouse is protected by requiring his or her signature on a deed or mortgage conveying or mortgaging the homestead residence during the owner's lifetime.³

¹ Article X, section 4(a), Fla. Const.

² Article X, section 4(b), Fla. Const.

- (4) When the owner dies, the constitution protects surviving spouses and minor children by ensuring that they receive an interest in the homestead residence.⁴

The Florida Supreme Court has recognized the policy behind these protections:

The purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law.⁵

Article X, section 4(a) grants an exemption to “property owned by a natural person” meeting certain size and contiguity requirements. The exemption is limited to “the residence of the owner or his family.” The words, “owned” and “residence” have been consistent since the 1868 Constitution. The 1868 Constitution extended the exemption to the “residence and business house” of the owner within a municipality. The 1969 Constitution restricted the exemption to the “residence of the owner or his family” when the homestead was within a municipality. The definition in subsection 4(a) applies to the protections in subsections 4(b) and 4(c). The courts, however, have struggled with the application of these protections in different factual situations, including situations where the residence was a leasehold cooperative unit.

A. Condominium Units

The law is clear that the ownership of a condominium unit is an interest in real property that qualifies for the constitutional homestead protections.⁶ Originally, condominium units and cooperative units were both governed by Chapter 711, Florida Statutes.⁷

³ Article X, section 4(c), Fla. Const.

⁴ Article X, section 4(c).

⁵ *Snyder v. Davis*, 699 So. 2d 999, 1002 (Fla.1997), citing *Public Health Trust v. Lopez*, 531 So. 2d 946 (Fla. 1988).

⁶ *King v. King*, 652 So. 2d 1199 (Fla. Dist. Ct. App. 1995).

⁷ *See Phillips v. Hirshon*, 958 So. 2d 425 (Fla. Dist. Ct. App. 2007); Laws of Florida, s. 1, Ch. 76-222.

B. Cooperative Units

Cooperative units are treated like other real property for almost every purpose under Florida law. When planning for the devise of a cooperative unit,⁸ or dealing with the devise of a cooperative unit during a probate administration, Florida residents and their families are frequently surprised to discover, or do not know, that a cooperative is treated as personal property in some instances. This limited exception is based upon a 1978 Florida Supreme Court decision that denied the constitutional protection for a surviving spouse because her deceased husband's home was a cooperative apartment.⁹ The Florida Supreme Court has held that the definition of homestead found in Article X, section 4(a), applies to the homestead protections in subsections 4(b) and 4(c) of Article X, section 4.¹⁰ These sections refer to the ownership of real property.

1. The Cooperative Act

The ownership of cooperative units is governed by The Cooperative Act, which was enacted in 1976. The effective date was January 1, 1977. The Cooperative Act provides three key definitions:

Section 719.103(12), F.S., "Cooperative" means that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

Section 719.103(14), F.S., "Cooperative parcel" means the shares or other evidence of ownership in a cooperative representing an undivided share in the

⁸ The Cooperative Act was created by Ch. 76-222, Laws of Florida. Prior the enactment of the Act, provisions for the cooperative form of ownership were included within the Condominium Act.

⁹ *In re Wartel's Estate*, 357 So. 2d 708 (Fla. 1978).

¹⁰ *Holden v. Estate of Gardner*, 420 So. 2d 1082, 1085 (Fla. 1982).

assets of the association, together with the lease or other muniment of title or possession.

Section 719.103(25), F.S., “Unit” means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents.

Section 719.103(26), F.S. “Unit owner” or “owner of a unit” means the person holding a share in the cooperative association and a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property.

These definitions include key concepts for the application of homestead protections, including:

- Ownership;
- Muniment of title;¹¹
- Beneficial use;
- Title; and
- Possession.

A residential cooperative is defined within the Cooperative Act as one with units that are intended for use as a “private residence, domicile, or *homestead*...”¹² [Emphasis added]

2. Rulings by Florida Courts

The Florida Supreme Court has long recognized that an ownership in real estate which passes upon the owner’s death can qualify as protected homestead. In *Miller v. Finnegan*, the court ruled:

That property which creditors could not take from the head of the family when he was living they cannot take from his heirs after his death. This is what the

¹¹ The Florida Supreme Court relied upon the following definition: "Muniments of title" is defined thus: "Documentary evidence of title. The instruments of writing and written evidences which the owner of lands, possessions, or inheritances has, by which [one] is entitled to defend the title. . . ." *Sunshine Vistas Homeowners Ass'n v. Caruana*, 623 So. 2d 490, 491 n.2 (Fla. 1993), citing *Black's Law Dictionary* 1019 (6th ed. 1990).

¹² § 719.103(22), Fla. Stat. (2013).

constitution plainly said to anyone who might become a creditor....Whatever interest of the ancestor was in the land, it descends to and vests in the heir, whether it be a term of years, a fee simple, or other estate extending beyond the life of the ancestor.”¹³

In re Estate of Wartels involved the rights of a surviving spouse under Article X, s. 4(c) of the Florida Constitution.¹⁴ Mr. Wartels died in 1974 (prior to the enactment of the Cooperative Act in 1976 and its effective date on January 1, 1977), owning shares in a cooperative association which in turn assigned occupancy rights to an apartment that he shared with his wife. The court focused on the ownership of stock, noting that Florida Courts had not rendered an opinion on the recent changes to cooperative laws.

“As the owner of a cooperative apartment has only a stock interest in the corporation and not in the realty, the property is not subject to the law controlling descent of homesteads. Shares of stock in the cooperative apartment corporation would be subject to devise or devolution under general law and would not be within the general provisions of Article X, §4 of the Florida Constitution, restricting devise of a homestead under stated conditions. Opinion # 071-19 of the Attorney General of Florida, February 9, 1971.”¹⁵

[Emphasis added]

After his death, Mr. Wartels’ widow invoked the constitutional protection as a surviving spouse under Article X, section 4(c). The Florida Supreme Court, citing *Pasco v. Harley*¹⁶, *Hill v. First National Bank*¹⁷, and *Milton v. Milton*¹⁸, held that “homestead property must consist of an interest in realty,” and that a cooperative apartment is not real property. Again, there was no

¹³ *Miller v. Finnegan*, 7 So. 140,142 (Fla. 1890).

¹⁴ *In re Wartel’s Estate*, 357 So. 2d 708 (Fla. 1978).

¹⁵ *In re Wartel’s Estate*, 338 So. 2d 48, 49 (Fla. 3d DCA 1976).

¹⁶ *Pasco v. Harley*, 75 So. 30 (Fla. 1917).

¹⁷ *Hill v. First National Bank*, 73 Fla. 1092, 75 So. 614 (1917).

discussion about a leasehold or other interest granting possessory rights in a cooperative unit. The court concluded that the constitutional protection for surviving spouses was not available to Mr. Wartels' widow because an interest in a cooperative unit was not real property under common law.

The *Pasco*, *Hill*, and *Milton* decisions, however, held that a leasehold interest is an "interest in realty" for purposes of other constitutional protections within Article X, s. 4. The *Hill* decision held that "[t]he exemptions 'from forced sale under process of any court,' of certain homestead property 'owned by the head of a family residing in this state,' have reference to the beneficial interests as owned by the head of a family in the specified classes of property."¹⁹ The court focused on the possessory rights required for the constitutional protections, rather than legal title.

In 2002, the Fifth District held that an interest in a leasehold cooperative is protected from the claims of creditors during the owner's lifetime.²⁰ The Fifth DCA distinguished *Wartels* and held that *Wartels* applied to the constitutional restrictions on the devise of homestead at the owner's death, but not the constitutional homestead protection from forced sale:

In *In re Estate of Wartels*, 357 So. 2d 708, (Fla. 1978), the court held that a co-op is not homestead for purposes of the laws relating to devise and descent. However, in *Ammerman v. Markham*, 222 So. 2d 423 (Fla. 1969), the court held that a co-op may qualify as homestead for purposes of taxation. This dichotomy reveals that there is no definition of homestead that may be used with precision in all cases and that *Wartels* and *Ammerman* are not necessarily controlling

¹⁸ *Milton v. Milton*, 63 Fla. 533, 58 So. 718 (1912).

¹⁹ *Hill v. First National Bank*, 75 So. at 616, citing *Pasco v. Harley*, 73 Fla. at 827-28.

²⁰ *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566 (Fla. 5th DCA 2002).

regarding the issue of whether a co-op qualifies as homestead for purposes of the exemption from forced sale under Article X, Section 4(a)(1).²¹

The Florida Supreme Court declined to review *Southern Walls*.²²

In *Phillips v. Hirshon*,²³ the Third District felt constrained to follow *Wartels* in a case involving constitutional restrictions on the devise of homestead in Article X, section 4(c). The Third District certified a conflict between *Wartels* and *Southern Walls* because they both examined the application of the same section of the Florida Constitution, but reached different results.²⁴

In *Geraci v. Sunstar EMS*, the Second District declined to apply the holding in *Wartels* and instead focused on the policy behind the constitutional exemption from forced sale and the perspective of the homeowner, citing several cases where homestead status was determined by considering the homeowner's possessory rights, rather than the legal title to the property.²⁵ The Second District went on to distinguish *Wartels*:

We recognize that at least two courts have refused to so distinguish *Wartels*. See *In re Lisowski*, 395 B.R. 771, 777 (Bank. M.D. Fla. 2008) (concluding that, under *Wartels*, the homestead exemption from forced sale applies only to improved land or real property that is owned by the debtor); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3d DCA 2007) (holding that a co-op did not qualify for homestead exemption for purposes of descent and devise because it was not an interest in realty under *Wartels*). However, we do not find the reasoning of these cases persuasive because they do not adequately reconcile the supreme court's decision in *Wartels* with the court's jurisprudence extending the exemption from forced sale to other beneficial interests in land and not limiting the exemption to a fee

²¹ *Southern Walls Inc. v. Stillwell Corp.*, 810 So. 2d at 569.

²² *Southern Walls, Inc. v. Stilwell Corp.*, 829 So.2d 919 (Fla. 2002).

²³ *Phillips v. Hirshon*, 958 So. 425 (Fla. 3d DCA 2007).

²⁴ After initially accepting jurisdiction, reviewing briefs, and hearing oral argument, The Florida Supreme Court dismissed jurisdiction.. *Levine v. Hirshon*, 980 So. 2d 1053 (Fla. 2008).

²⁵ *Sunstar EMS v. Geraci*, 93 So. 3d 384 (Fla. 2d DCA 2013).

simple interest.²⁶

3. The Cooperative Act

Cooperatives were originally included within the Condominium Act. Section 74-104, of the Laws of Florida, 1974, created § 711.42(14) which defined a cooperative unit as

“...part of the cooperative property which is to be subject to private ownership. A unit may be improvements, land, or land and improvements together as specified in the cooperative documentation.”

The Cooperative Act enacted in 1977 created a stand-alone chapter for cooperatives. The effective date was January 1, 1977. Chapter 76-222, Laws of Florida. Section 719.103, which defined “residential homestead.”

(16) "Residential cooperative" means a cooperative consisting of **cooperative units**, any of which are intended for use as a private residence, domicile, or **homestead**. A cooperative is not a residential cooperative if the use of the units is intended as primarily commercial or industrial and not more than three units are intended to be used for private residence, domicile, or **homestead** or if the units are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the cooperative. If a cooperative is a residential cooperative under this definition, but has units intended to be commercial or industrial, then the cooperative is a residential cooperative with respect to those units intended for use as a private residence, domicile, or **homestead**, but not a residential cooperative with respect to those units intended for use commercially or industrially.

[Emphasis added.] Although the Cooperative Act was not in effect when Mr. Wartels died, it is clear that the cooperative unit occupied by an individual who died after the effective date of The Cooperative Act should qualify as constitutionally protected homestead.

Current law defines a “unit owner” as “the person holding a share in the cooperative association **and a lease or other muniment of title or possession of a unit...**”²⁷ [Emphasis

²⁶ *Id.*

²⁷ § 719.103(26), Fla. Stat.

added] In cases where an individual only owns shares of stock in the cooperative corporation, they do not meet the statutory definition of “owner” because they do not have a lease or other document conveying a leasehold or other interest in real property. The *Estate of Wartels* decisions in the Third District and the Florida Supreme Court reflect that Mr. Wartels only owned stock in the cooperative association that held title to the land on which Mr. Wartels’ apartment was constructed. The history of key sections of The Cooperative Act and the opinion of the Third District Court of Appeals reflect that Mr. Wartels may not have held a cooperative unit as defined under The Cooperative Act. Changes in key provisions are as follows:

Laws of Florida, Ch. 74-104	Laws of Florida, Ch. 76-222 (Eff. January 1, 1977)	Current Statutes
(Ch. 711 had no statement of purpose as to cooperatives.)	<p>§719.102 The purpose of this chapter is to give statutory recognition to the cooperative form of ownership of real property.</p> <p>It shall not be construed as repealing or amending any law now in effect, except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to cooperatives.</p>	<p>§719.102 The purpose of this chapter is to give statutory recognition to the cooperative form of ownership of real property.</p> <p>It shall not be construed as repealing or amending any law now in effect, except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to cooperatives.</p>

Laws of Florida, Ch. 74-104	Laws of Florida, Ch. 76-222 (Eff. January 1, 1977)	Current Statutes
§711.42 (8) “Cooperative” means that form of ownership of improved property under which units are subject to ownership by one or more owners, which ownership is evidenced by a lease or other muniment of title or possession granted by the association as the owner of the cooperative property.	§719.103 (12) “Cooperative” means that form of ownership of improved <u>real</u> property under which <u>there are</u> units are subject to ownership by one or more owners, which <u>and the</u> ownership is evidenced by <u>an ownership interest in the association and a</u> lease or other muniment of title or possession granted by the association as the owner of <u>all</u> the cooperative property.	§719.103 (12) “Cooperative” means that form of ownership of improved real property under which units are subject to ownership by one or more owners, which ownership is evidenced by <u>wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and</u> a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

4. Other Statutes Affecting Leaseholds.

The Florida Attorney General has recognized that “Section 196.041(1), Florida Statutes, provides that lessees who own a bona fide leasehold interest in a residential parcel with a term of 98 years or more qualify for a homestead exemption.”²⁸

An interest in a lease for a term of more than one year is an “interest in realty” subject to Florida’s Statute of Frauds.²⁹

A leasehold interest for a term in excess of one year is an interest in realty that must be conveyed with the formalities required of a deed or by duly executed will.³⁰

Stock in a leasehold cooperative organized for residential purposes is not subject to the

²⁸ Florida Attorney General Opinion 2007-33.

²⁹ § 725.01, Fla. Stat. ; *Campbell v. McLaurin Inv. Co.*, 74 Fla. 501, 77 So. 277, (Fla. 1917).

³⁰ § 689.01, Fla. Stat.

regulations that otherwise apply to securities.³¹

Documentary Stamp Taxes are due on the conveyance of an interest in a leasehold cooperative because it is statutorily recognized as the transfer of an interest in real property.³²

5. Current Real Estate Practices

The proposed change will not impact existing real estate practices. Attorneys' Title Fund Services, LLC, in its Fund Title Notes, recognizes the *Sunstar v. Geraci* holding and treats a cooperative unit as an interest in realty subject to constitutional homestead protections.

B. Descent and Devise. The analysis of the Florida courts in decisions dealing with the real or personal property nature of leaseholds has been inconsistent. See *Geraci v. Sunstar*, 93 So.3d 384 (Fla. 2d DCA 2012). Therefore, for insuring purposes, a leasehold interest will be treated as both a homestead real property interest and as a personal property interest. Upon the death of the lessee, probate proceedings will be required, and conveyances or assignments of the leasehold interest will be required from the personal representative of the estate and from the devisees in a testate estate, who are included with Sec. 732.103, F.S., or decedent's heirs in an intestate estate. Also, conveyances or assignments of the leasehold will be required from those entitled to the homestead under Secs. 732.401 and 732.4015, F.S., if the devise of the leasehold would not be authorized by the Florida Constitution if it were homestead. In the event the leasehold is conveyed or assigned or mortgaged after the probate proceedings have been closed, then those entitled to the leasehold interest as personal property and as real property would have to execute the instrument to be insured.³³

The Title Notes also authorize the issuance of a title insurance policy for the ownership of an interest in a leasehold cooperative.³⁴

6. Uncertainty Under Current Law

The protections intended to preserve the home of a Florida resident and his or her family

³¹ § 517.061(14), Fla. Stat.; see also *Willmont v. Tellone*, 137 So. 2d 610, 612 (Fla. 2d DCA 1962).

³² § 201.02(2), Fla. Stat. (2007); Rule 12B-4.013(8), F.A.C.

³³ Title Note 19.01.03, The Fund Title Notes, page 19-4 (The Attorneys' Title Insurance Fund, Inc. 2016).

³⁴ Title Note 19.03.01.

are subject to technical, legal distinctions that the average Floridian would not understand or anticipate. The application of *Wartels* appears to be limited to cases under Article X, section 4(c) involving restrictions on the devise of homestead when the unit owner dies. It should be limited to cases involving deaths prior to the effective date of the Cooperative Act. The Florida Supreme Court has not overruled, distinguished, or receded from *Wartels*. The Second District Court of Appeals has refused to apply *Estate of Wartels* to the constitutional exemption from creditor claims after the owner's death. Multiple courts have also refused to apply *Estate of Wartels* to the constitutional protection from creditor claims during the owner's lifetime.³⁵ As a result, trial courts are faced with uncertainty concerning the status of a cooperative unit as constitutionally protected homestead for all purposes under Article X, section 4, of the Florida Constitution.

III. EFFECT OF PROPOSED CHANGE

The proposed changes would be consistent with the long-standing public policy of the State of Florida in protecting the homes of Floridians and their families. The changes would resolve uncertainty that currently exists due to inconsistent decisions by Florida courts and recognize the policy as set forth in the Cooperative Act as enacted in 1976. This would avoid unnecessary litigation and provide certainty for Floridians as they plan their estates and for the surviving family members of deceased Florida residents. The change would not affect existing practices for the transfer of ownership in a cooperative unit.

³⁵ Some would point out that a residence occupied pursuant to lease is protected under § 222.05, Florida Statutes, but not protected under Article X, section 4 of the Florida Constitution. The statutory protection can be traced back to 1869 (Laws of Florida 1869, s. 5, ch. 1715).

IV. PROPOSED CHANGE

The proposed statutory change is as follows:

719. 103. Definitions.

(25) “Unit” means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents. An interest in a unit is an interest in real property.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

There will be no direct impact on state and local governments. The restrictions on the devise of homestead and the protection from creditor claims are found in Article X, section 4 of the Florida Constitution. Courts have upheld the constitutional protection from credit claims during the owner’s lifetime and upon the owner’s death.

The homestead ad valorem property tax exemption is found in Article VII, section 6, as implemented in chapter 193, Florida Statutes. The homestead exemption for taxes already applies to cooperative units, so the proposed changes will have no impact on ad valorem property taxes or the exemptions relating thereto.

The imposition of documentary stamp taxes already applies to cooperative units. 12B-4.013(8), F.A.C. The legislation will not impact documentary stamp taxes.

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

There will be no direct economic impact on the private sector. In certain individual situations, the proposed changes could result in a benefit by providing certainty with regard to the ownership of real property after the owner’s death, would protect the rights of a surviving

spouse in a manner that is consistent with Florida public policy concerning homestead protections, and would avoid litigation in some instances.

VII. CONSTITUTIONAL ISSUES

Article X, section 4 prohibits the devise of homestead real property when the decedent is survived by a spouse or minor child, but permits a devise to the surviving spouse if the decedent is not survived by a minor child. The descent of homestead property which cannot be devised, or homestead which is the subject of an invalid devise, is left to the legislature. The proposed change does not conflict with constitutional provisions and promotes the public policy implemented by Article X, section 4, of the Florida Constitution.

The proposed change will have no impact on the constitutional homestead exemption for ad valorem property taxes, as provided in Article VII, section 6 and Chapter 196, Florida Statutes.

The proposed change will have no impact on the constitutional protection against the claims of the owner's creditors during the owner's lifetime, as provided in Article X, section 4(a) and Chapter 222, Florida Statutes.

It will add certainty with respect to the claims of a decedent's creditors when an interest in a cooperative unit or parcel is devised to family members.

It will also confirm the protections for the surviving spouses and minor children of Floridians who choose to reside in a home that is subject to The Cooperative Act.

VIII. OTHER INTERESTED PARTIES

The Elder Law Section of the Florida Bar

The Florida Land Title Association

The Florida Bankers Association

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By J. Michael Swaine, Co-Chair, Homestead Issues Study Committee, a General Standing Committee of the Real Property Probate & Trust Law Section
Address: 425 S. Commerce Ave., Sebring, FL 33870-3702

Telephone: 863-385-1549

Jeffrey S. Goethe, Co-Chair, Homestead Issues Study Committee, a General Standing Committee of the Real Property Probate & Trust Law Section
Address: 3119 Manatee Avenue West, Bradenton, FL 34205
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Position Type Homestead Issues Study Committee, a General Standing Committee of the RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

Jon Scuderi, Goldman Felcoski & Stone, P.A., 850 Park Shore Drive, Suite 203, Naples, Florida 34103, Telephone: (239) 436-1988, Email: jscuderi@gfsestatelaw.com

Peter M. Dunbar, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: pdunbar@deanmead.com

Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: medenfield@deanmead.com

Appearances

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

**Meetings with
Legislators/staff** (SAME) _____
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

To support a proposed amendment to Section 719.103(25), Florida Statutes, to provide much needed clarification and guidance regarding the inurement of the constitutional exemption from creditors' claims upon the death of a Florida resident who owns a leasehold cooperative unit.

Reasons For Proposed Advocacy:

While Florida probate law provides reasonable certainty regarding the rights of creditors, beneficiaries, and the personal representative when a decedent devises his or her homestead real property that is not the decedent's residence in the form of a leasehold cooperative unit. The proposed legislation would recognize the homestead heirs' exemption from forced sale to pay the claims of the deceased owner's creditors. It would also reconcile the protections for surviving spouses and minor children under Article X, section 4, of the Florida Constitution, with the protection from forced sale under the same section. Additional explanations are provided in the White Paper.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE
 (Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one) NONE
 (Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

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

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

 The Florida Land Title Association
(Name of Group or Organization) (Support, Oppose or No Position)

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

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	15-16 Actual	16-17 Actuals	17-18 Final Budget	17-18 Actuals	18-19 Final Budget	19-20 Proposed Budget
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SUMMARY

Beginning Fund Balance	\$ 1,066,946	\$ 1,477,972	\$ 1,684,323	\$ 1,684,323	\$ 1,823,975	\$ 1,537,580
Net Operations *	141,554	277,789	5,285	(4,779)	(101,400)	(202,600)
Legislative Update	28,094	(34,438)	(49,995)	(23,622)	(46,700)	(29,395)
Convention	(70,543)	(161,847)	(97,850)	(81,136)	(150,400)	(144,400)
Attorney Trust Officer	249,512	(2,328)	76,650	135,203	38,700	65,500
CLI**	62,409	121,880	69,830	125,911	94,780	107,525
Attorney Loan Officer		5,291		(11,935)	(26,375)	(19,400)
Special Projects***	0	0	(112,500)	0	(95,000)	0
Ending Fund Balance #	\$ 1,477,972	\$ 1,684,323	\$ 1,575,743	\$ 1,823,965	\$ 1,537,580	\$ 1,314,810

* Net Operations other than Legis. Update, Convention, Attorney Trust Officer Conf. and CLI beginning in 16-17.

** CLI was previously included in CLE roll up reflected in Net Operations from the General Tab until 2015-2016.

*** Special projects was previously in Net Oper. from the Gen. Tab until 2016-2017. In 16-17 Budget for Spec. Proj. was returned to Gen.

Includes small adjustments for rounding differences

'@ The original budget adopted by the section was revised to accommodate the new process developed for TFB overhead.

THE FLORIDA BAR
Real Property, Probate and Trust Law General
Budget 2019-2020

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3001-Annual Fees	\$608,400	\$616,160	\$597,000	\$597,000	600,000
3002-Affiliate Fees	4,980	7,440	4,400	4,400	5,000
Total Fee Revenue	613,380	623,600	601,400	601,400	605,000
3301-Registration-Live	134,539	169,726	170,000	170,000	220,000
3331-Registration-Ticket	(245)				
Total Registration Revenue	134,294	169,726	170,000	170,000	170,000
3351-Sponsorships	186,363	211,750	180,000	180,000	180,000
3391 Section Profit Split	321,485	226,705	210,000	250,000	260,000
3392-Section Differential	23,040	27,480	25,000	27,000	25,000
Other Event Revenue	530,888	465,935	415,000	457,000	465,000
3561-Advertising	7,998	16,560	20,000	8,000	12,000
Advertising & Subscription Revenue	7,998	16,560	20,000	8,000	12,000
3899-Investment Allocation	150,494	112,048	38,419	101,383	50,000
Non-Operating Income	150,494	112,048	38,419	101,383	50,000
Total Revenue	1,437,054	1,387,869	1,244,819	1,337,783	1,302,000
4131-Telephone Expense	1,847	535	1,400	2,000	2,000
4134-Web Services	42,377	35,811	52,500	75,000	75,000
4301-Photocopying			300	300	300
4311-Office Supplies	521	1,684	700	700	1000
Total Staff & Office Expense	44,745	38,030	54,900	78,000	78,300
5051-Credit Card Fees	3,159	12,274	3,500	12,000	12,000
5101-Consultants	109,538	120,000	120,000	120,000	120,000
5581-Legislative Consultant Travel**	NEW	NEW	NEW	NEW	15,000
5121-Printing-Outside	42,072	49,796	73,500	118,500	120,000
5199-Other Contract Services		46,279	30,000	10,000	10,000
Total Contract Services	154,769	228,349	227,000	260,500	277,000
5501-Employee Travel	11,851	13,799	12,000	12,000	16,000
5531-Board/Off/Memb Travel	28,291	22,977	25,000	35,000	20,000
Total Travel	40,142	36,776	37,000	47,000	36,000
6001-Post 1st Class/Bulk	1,330	26,671	2,000	2,000	2,000
6101-Products Purch for Sale	30,000				0
6311-Mtgs General Meeting	490,751	649,814	510,000	550,000	600,000
6325-Mtgs Hospitality	29,821	49,654	30,000	35,000	35,000
6361-Mtgs Entertainment	7,007				
6399-Mtgs Other		6,543	19,000	19,000	15,000
6401-Speaker Expense	2,168		1,000	7,500	7,500
6451-Committee Expense	86,756	93,897	100,000	100,000	110,000
6531-Brd/Off Special Project		4,994	85,300	35,000	50,000
6599-Brd/Off Other	3,490	5,772	10,000	11,000	11,000
7001-Grant/Award/Donation	11,903	16,414	22,200	28,500	8,000
5521-Law School Programming*	NEW	NEW	NEW	NEW	5,500
5522-Professional Outreach*	NEW	NEW	NEW	NEW	3,000
5520-Diversity Initiatives*	NEW	NEW	NEW	NEW	12,000
7011-Scholarship/Fellowship	18,591	22,669	32,500	27,000	27,000
7999-Other Operating Exp	2,000	(1,000)		5,000	5,000
8901-Eliminated IntFund Exp	3,000	3,250		0	0
Total Other Expense	686,817	878,678	812,000	820,000	891,000
8021-Section Admin Fee	207,623	209,770	203,715	207,500	220,000
8101-Printing In-House	24,869	1,687	1,000	1,000	2,000
8111-Meetings Services		50			0
Total Admin & Internal Expense	232,492	211,507	204,715	208,500	222,000
9692-Transfer Out-Council of Sections	300	300	300	300	300
Total InterFund Transfers Out	300	300	300	300	300
Total Expense	1,159,265	1,393,640	1,335,915	1,414,300	1,504,600

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
Net Income	277,789	(5,771)	(91,096)	(76,517)	(202,600)

*The Grant/Award-Donation Line item has been split out to three new line items including Law School Programming, Professional Outreach, and Diversity Initiatives.

** The Legislative Consultant Travel Line Item has been added in 2019-20

THE FLORIDA BAR
Real Property Construction Law Institute
2019-2020 Budget

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3301-Registration-Live	\$87,820	\$96,185	\$70,000	\$80,000	90,000
3331-Registration-Ticket	2,657	2,730	1,300	2,000	2,000
Total Registration Revenue	90,477	98,915	71,300	82,000	92,000
3351-Sponsorships	173,665	183,575	170,000	170,000	190,000
3392-Section Differential	(1,020)				0
Other Event Revenue	172,645	183,575	170,000	170,000	190,000
3401-Sales-CD/DVD	24,835	16,243	4,000	15,000	15,000
3411-Sales-Published Materials	540	1,260	500	500	500
Sales, Rents & Royalties Revenue	25,375	17,503	4,500	15,500	15,500
3699-Other Operating Revenue			800	800	800
Other Revenue Sources			800	800	800
Total Revenue	288,497	299,993	246,600	268,300	298,300
5051-Credit Card Fees	3,515	2,147	2,500	4,000	4,000
5181-Speaker Honorarium		1,500	1,500	1,000	5,000
Total Contract Services	3,515	3,647	4,000	5,000	9,000
5501-Employee Travel	1,163	2,034	1,350	1,500	2,000
5571-Speaker Travel	3,017	2,083	4,000	4,000	4,000
Total Travel	4,180	4,117	5,350	5,500	6,000
6001-Post 1st Class/Bulk	6	5	25	25	25
6021-Post Express Mail	152	161	45	45	200
6319-Mtgs Other Functions		19,020	12,400	18,000	15,000
6321-Mtgs Meals	49,083	50,596	35,000	50,000	50,000
6325-Mtgs Hospitality	35,955	37,496	55,000	30,000	40,000
6341-Mtgs Equip Rental	25,802	21,666	23,700	22,000	25,000
6399-Mtgs Other	17,277				0
6401-Speaker Expense	8,646	6,004	7,900	10,900	12,000
7999-Other Operating Exp	412	1,556	2,600		1,500
Total Other Expense	137,333	136,504	136,670	130,970	143,725
8011-Administration CLE	14,300	25,000	25,000	25,000	25,000
8101-Printing In-House	1,832	1,292	850	2,000	2,000
8131-A/V Services	2,836	2,947	2,600	3,250	3,250
8141-Journal/News Service	2,471	425	1,650	1,650	1,650
8171-Course Approval Fee	150	150	150	150	150
Total Admin & Internal Expense	21,589	29,814	30,250	32,050	32,050
Total Expense	166,617	174,082	176,270	173,520	190,775
Net Income	121,880	125,911	70,330	94,780	107,525

THE FLORIDA BAR
RPPTL Legislative Update
Budget 2019 -2020

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3321-Registration-Webcast	\$16,385	\$7,007	\$20,000	\$15,000	15,000
Total Registration Revenue	16,385	7,007	20,000	15,000	15,000
3341-Exhibit Fees	6,100	15,000	12,500	14,000	14,000
3351-Sponsorships		700			0
Other Event Revenue	6,100	15,700	12,500	14,000	14,000
3401-Sales-CD/DVD	36,000	34,526	20,500	34,000	34,000
3411-Sales-Published Materials	1,400	950	1,000	500	500
Sales, Rents & Royalties Revenue	37,400	35,476	21,500	34,500	34,500
Total Revenue	59,885	58,183	54,000	63,500	63,500
4111-Rent Equipment	10,013	10,653			
4301-Photocopying			50	50	100
4311-Office Supplies			150	150	150
Total Staff & Office Expense	10,013	10,653	200	200	250
5031-A/V Services	1,495		1,495	1,500	1,495
5051-Credit Card Fees	647	1,288	700	1,270	2,000
5121-Printing-Outside	13,831	3,341	16,200	4,500	5,000
5199-Other Contract Services	4,661	2,318			0
Total Contract Services	20,634	6,947	18,395	7,270	8,495
5501-Employee Travel	1,962	1,204	2,200	2,000	3,000
5571-Speaker Travel	1,216	342	500	1,300	1,500
Total Travel	3,178	1,546	2,700	3,300	4,500
6001-Post 1st Class/Bulk	9	31	50	50	50
6021-Post Express Mail	464	364	500	500	500
6321-Mtgs Meals	40,410			55,500	45,000
6325-Mtgs Hospitality	8,405	819	42,000	1,500	1,500
6341-Mtgs Equip Rental		52,556	14,500	13,500	15,000
6401-Speaker Expense	5,222	2,651	13,500	6,600	5,000
7001-Grant/Award/Donation		220	4,600		5,000
7999-Other Operating Exp	470	55		500	500
Total Other Expense	54,980	56,696	75,150	78,150	72,550
8011-Administration CLE	500	2,000	1,000	1,000	1,000
8101-Printing In-House	2	7	350	300	350
8131-A/V Services	4,043	3,806	4,000	6,000	4,000
8141-Journal/News Service	824		1,600	1,600	1,600
8171-Course Approval Fee	150	150	150	150	150
Total Admin & Internal Expense	5,519	5,963	7,100	9,050	7,100
Total Expense	94,324	81,805	103,545	97,970	92,895
Net Income	(34,439)	(23,622)	(49,545)	(34,470)	(29,395)

* Please note: The 2017-18 Legislative Update Meals expense line item was incorrectly added to the 6341 Equipment Rental Line item.

THE FLORIDA BAR
RPPTL Attorney Trust Officer Liaison Conference
2019 -2020 Budget

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3301-Registration-Live	(\$65)	\$163,336	\$160,700	\$150,000	160,000
3331-Registration-Ticket	1,079	3,154	10,000	10,000	10,000
Total Registration Revenue	1,014	166,490	170,700	160,000	170,000
3341-Exhibit Fees	400	77,300	60,000	40,000	60,000
3351-Sponsorships	(2,550)	69,000	60,000	60,000	60,000
Other Event Revenue	(2,150)	146,300	120,000	100,000	120,000
3401-Sales-CD/DVD	7,040	8,140	3,000	3,000	5,000
3411-Sales-Published Materials	3,300	480	1,000	1,000	1,000
Sales, Rents & Royalties Revenue	10,340	8,620	4,000	4,000	6,000
Total Revenue	9,204	321,410	294,700	264,000	296,000
4111-Rent Equipment	1,750	33,115		17,000	0
Total Staff & Office Expense	1,750	33,115		17,000	0
5051-Credit Card Fees	796	7,115	2,750	8,000	8,000
5121-Printing-Outside	870	5	2,500	3,500	2,500
Total Contract Services	1,666	7,120	5,250	11,500	10,500
5501-Employee Travel		2,108	2,000	3,000	2,000
5571-Speaker Travel	1,235	1,248	4,000	4,000	4,000
Total Travel	1,235	3,356	6,000	7,000	6,000
6001-Post 1st Class/Bulk	3	9	1,000		1,000
6021-Post Express Mail	99	81	150	150	150
6319-Mtgs Other Functions		9,881	8,000	8,000	10,000
6321-Mtgs Meals		43,182	42,000	57,000	57,000
6325-Mtgs Hospitality		64,445	100,000	85,000	85,000
6341-Mtgs Equip Rental	(1,750)	(12,626)	17,000		17,000
6401-Speaker Expense	2,904	2,862		4,100	4,100
7999-Other Operating Exp	1	1,475	4,100		1,000
Total Other Expense	1,257	109,309	172,250	154,250	175,250
8011-Administration CLE		25,000	25,000	25,000	25,000
8101-Printing In-House		1,386	2,000	2,000	2,000
8131-A/V Services	5,475	5,621	5,200	6,200	7,000
8141-Journal/News Service		850	1,600	1,600	1,600
8171-Course Approval Fee	150	450	750	750	150
Total Admin & Internal Expense	5,625	33,307	34,550	35,550	35,750

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
Total Expense	11,533	186,207	218,050	225,300	227,500
Net Income	(2,329)	135,203	76,650	38,700	68,500

THE FLORIDA BAR
RPPTL Convention
2019-20 Budget

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3301-Registration-Live	\$58,157	\$57,838	\$40,000	\$45,000	50,000
Total Registration Revenue	58,157	57,838	40,000	45,000	50,000
3341-Exhibit Fees	6,250	8,000	10,000	10,000	10,000
3351-Sponsorships	(175)		10,000	10,000	10,000
Other Event Revenue	6,075	8,000	20,000	20,000	20,000
Total Revenue	64,232	65,838	60,000	65,000	65,000
4111-Rent Equipment	15,027	20,523	21,000	21,000	0
4311-Office Supplies		11	0		
Total Staff & Office Expense	15,027	20,534	21,000	21,000	20,000
5051-Credit Card Fees	1,073	1,757	900	1,200	3,000
Total Contract Services	1,073	1,757	900	1,200	3,000
5501-Employee Travel	1,597	2,786	2,500	2,500	2,500
Total Travel	1,597	2,786	2,500	2,500	2,500
6001-Post 1st Class/Bulk	305	200	20	500	500
6321-Mtgs Meals	200,746	111,107	125,000	175,000	150,000
6341-Mtgs Equip Rental	NEW	NEW	NEW	NEW	20,000
6361-Mtgs Entertainment	7,331	10,605	8,000	14,000	13,000
Total Other Expense	208,382	121,912	133,020	189,500	183,500
8101-Printing In-House			400	400	400
Total Admin & Internal Expense			400	400	400
Total Expense	226,079	146,989	157,820	214,600	209,400
Net Income	(161,847)	(81,151)	(97,820)	(149,600)	(144,400)

THE FLORIDA BAR
RPPTL Attorney Loan Officer
Budget 2019 -2020

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3301-Registration-Live	\$250	\$8,075	\$17,500	\$12,000	15,000
Total Registration Revenue	250	8,075	17,500	12,000	15,000
3341-Exhibit Fees	2,875	(1,375)	4,000	5,000	5,000
3351-Sponsorships	3,000	7,500	5,000	5,000	5,000
Other Event Revenue	5,875	6,125	9,000	10,000	10,000
3401-Sales-CD/DVD					2,000
Total Revenue	6,125	14,200	26,500	22,000	25,000
5051-Credit Card Fees	105	377	500	500	500
Total Contract Services	105	377	500	500	500
5501-Employee Travel		1,203	700	2,000	1,500
5571-Speaker Travel		712	0		1,000
Total Travel		1,915	700	2,000	2,500
6321-Mtgs Meals		5,380	23,000	25,000	12,500
6325-Mtgs Hospitality		8,087			7,000
6341-Mtgs Equip Rental		4,826	2,000	5,000	5,000
6401-Speaker Expense		535	2,000	2,000	3,000
7999-Other Operating Exp	154		3,725	3,725	2,000
Total Other Expense	154	18,828	30,725	35,725	29,500
8011-Administration CLE		5,000	5,000	10,000	10,000
8101-Printing In-House		15			200
8131-A/V Services					550
8141-Journal/News Service	425				1,000
8171-Course Approval Fee	150		150	150	150
Total Admin & Internal Expense	575	5,015	5,150	10,150	11,900
Total Expense	834	26,135	37,075	48,375	44,400
Net Income	5,291	(11,935)	(10,575)	(26,375)	(19,400)

\$3,500.00 IS AVAILABLE TO 2 RPPTL SECTION MEMBERS!

Interested in participating in The Florida Bar Wm. Reece Smith, Jr. Leadership Academy? Two RPPTL Section scholarships cover out of pocket travel and hotel expenses incurred in attending the Leadership Academy up to \$3,500.00.

WHAT IS THIS? The Florida Bar will soon begin accepting applications for the 2019 Leadership Academy, a one-year multi-session training program designed to assist a diverse and inclusive group of lawyers in becoming better leaders within our profession while enhancing their leadership skills.

GOALS OF THE LEADERSHIP ACADEMY.

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

HOW DOES IT WORK? In support of the Leadership Academy, the RPPTL Section will select up to 2 active contributing members of a RPPTL Section Committee, to apply to the Leadership Academy as the Section's scholarship nominee.

If a RPPTL Section nominee is chosen as an Academy Fellow, the Section will reimburse the participant up to \$3,500 for out of pocket travel and hotel expenses incurred in attending the Leadership Academy. To receive the scholarship, the nominee(s) if chosen by The Florida Bar as a Leadership Academy Fellow must agree to remain actively involved in the RPPTL Section after the conclusion of the Leadership Academy.

A full explanation of the Florida Bar Wm. Reece Smith, Jr. Leadership Academy, is available on the Florida Bar's website at <http://www.floridabar.org/leadershipacademy>.

An application form will be posted to the RPPTL website soon. For any questions regarding the RPPTL Section scholarships for The Florida Bar Wm. Reece Smith, Jr. Leadership Academy, ***or to request an application***, contact Kristopher E. Fernandez, (813) 832-6340, kfernandez@kfernandezlaw.com, Brian C. Sparks, (813) 222-8515, brian.sparks@hwlaw.com or Allison Archbold, (941) 960-8825, jaa@archbold.law.

3094 **MODEL RULE: 1.14, CLIENT WITH DIMINISHED CAPACITY**

3095 **SUMMARY of Substantive Changes Adopted by the ABA House of Delegates**

3096 Changes terminology from clients with a “disability” to clients with “diminished capacity,”
3097 which is explained as a change in terminology only. New rule also focuses on degrees of a
3098 client’s capacity with provisions for emergency legal assistance for clients with seriously
3099 diminished capacity and sets forth protective measures a lawyer may take short of requesting a
3100 guardian if a lawyer reasonably believes that there is risk of substantial harm unless action is
3101 taken. Commentary provides guidance to attorneys dealing with clients with diminished
3102 capacity. Old commentary regarding an attorney acting as “de facto” guardian for the client was
3103 deleted.

3104 **How ABA Rule DIFFERS from EXISTING FLORIDA Rule**

3105 Florida Rule 4-1.14 uses the term “disability,” but otherwise is substantially the same as the new
3106 ABA model rule. The ABA commentary eliminates the provision in the Florida comment that if
3107 a client suffering a disability has no guardian or legal representative, “the lawyer often must act
3108 as *de facto* guardian,” adds a provision regarding consultation with family members, eliminates
3109 the provision imposing an obligation on lawyers to seek the appointment of a legal guardian and
3110 adds detailed guidance for lawyers regarding the taking of protective action.

3111 **RECOMMENDATION of Yes or No and REASONS**

3112 **YES.** The committee recommends adoption of the new ABA Model Rule as providing superior
3113 guidance to lawyers than the existing rule. The committee specifically discussed whether
3114 deletion of the commentary “the lawyer often must act as *de facto* guardian” is desirable. The
3115 committee concluded that if the ABA Model Rule is adopted, there is no need for this provision.
3116 The new ABA Rule 1.14(b) provides that “when the lawyer reasonably believes that the client
3117 has diminished capacity, is at risk of substantial physical, financial or other harm unless action is
3118 taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably
3119 necessary protective actions, including consulting with individuals or entities that have the
3120 ability to take action to protect the client” Paragraph 5 of the commentary to the Rule sets
3121 out in detail the various types of protective action a lawyer may take if he reasonably believes
3122 that a client is at risk of substantial physical, financial or other harm. These detailed provisions
3123 are much more helpful than the vague statement that a lawyer must often act as a *de facto*
3124 guardian.

3125 **FLORIDA’S Rule in LEGISLATIVE FORMAT**

3126 **RULE 4-1.14 CLIENT UNDER A DISABILITY WITH DIMINISHED CAPACITY**

3127 **(a) Maintenance of Normal Relationship.** When a client's ability capacity to make
3128 adequately considered decisions in connection with ~~the~~ a representation is ~~impaired~~ diminished,

3129 whether because of minority, mental disability, or for some other reason, the lawyer shall, as far
3130 as reasonably possible, maintain a normal client-lawyer relationship with the client.

3131 **(b) Appointment of Guardian.** ~~A lawyer may seek the appointment of a guardian or~~
3132 ~~take other protective action with respect to a client only when~~ When the lawyer reasonably
3133 believes that the client has diminished capacity, is at risk of substantial physical, financial or
3134 other harm unless action is taken and cannot adequately act in the client's own interest, the
3135 lawyer may take reasonably necessary protective action, including consulting with individuals or
3136 entities that have the ability to take action to protect the client and, in appropriate cases, seeking
3137 the appointment of a guardian ad litem, conservator or guardian.

3138 **(c) Confidentiality.** Information relating to the representation of a client with
3139 diminished capacity is protected by the rule on confidentiality of information. When taking
3140 protective action pursuant to this rule, the lawyer is impliedly authorized under the rule on
3141 confidentiality of information to reveal information about the client, but only to the extent
3142 reasonably necessary to protect the client's interests.

3143 **Comment**

3144 [1] The normal client-lawyer relationship is based on the assumption that the client, when
3145 properly advised and assisted, is capable of making decisions about important matters. When the
3146 client is a minor or suffers from a diminished mental capacity disorder or disability, however,
3147 maintaining the ordinary client-lawyer relationship may not be possible in all respects. In
3148 particular, ~~an a severely~~ incapacitated person may have no power to make legally binding
3149 decisions. Nevertheless, a client ~~lacking legal competence with diminished capacity~~ often has
3150 the ability to understand, deliberate upon, and reach conclusions about matters affecting the
3151 client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate
3152 ~~degrees of competence~~. For example, children as young as 5 or 6 years of age, and certainly
3153 those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings
3154 concerning their custody. So also, it is recognized that some persons of advanced age can be
3155 quite capable of handling routine financial matters while needing special legal protection
3156 concerning major transactions.

3157 [2] The fact that a client suffers a disability does not diminish the lawyer's obligation to
3158 treat the client with attention and respect. ~~If the person has no guardian or legal representative,~~
3159 ~~the lawyer often must act as de facto guardian.~~ Even if the person ~~does have~~ has a legal
3160 representative, the lawyer should as far as possible accord the represented person the status of
3161 client, particularly in maintaining communication.

3162 [3] The client may wish to have family members or other persons participate in
3163 discussions with the lawyer. When necessary to assist in the representation, the presence of such
3164 persons generally does not affect the applicability of the attorney-client evidentiary privilege.
3165 Nevertheless, the lawyer must keep the client's interests foremost and, except for protective
3166 action authorized under paragraph (b), must to look to the client, and not family members, to

3167 make decisions on the client's behalf.

3168 [4] If a legal representative has already been appointed for the client, the lawyer should
3169 ordinarily look to the representative for decisions on behalf of the client. ~~If a legal representative~~
3170 ~~has not been appointed, the lawyer should see to such an appointment where it would serve the~~
3171 ~~client's best interests. Thus, if a disabled client has substantial property that should be sold for~~
3172 ~~the client's benefit, effective completion of the transaction ordinarily requires appointment of a~~
3173 ~~legal representative. In many circumstances, however, appointment of a legal representative~~
3174 ~~may be expensive or traumatic for the client. Evaluation of these considerations is a matter of~~
3175 ~~professional judgment on the lawyer's part. In matters involving a minor, whether the lawyer~~
3176 ~~should look to the parents as natural guardians may depend on the type of proceeding or matter~~
3177 ~~in which the lawyers is representing the minor. If the lawyer represents the guardian as distinct~~
3178 ~~from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer~~
3179 ~~may have an obligation to prevent or rectify the guardian's misconduct. See rule 4-1.2(d).~~

3180 **Taking Protective Action**

3181 [5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial
3182 or other harm unless action is taken, and that a normal client-lawyer relationship cannot be
3183 maintained as provided in paragraph (a) because the client lacks sufficient capacity to
3184 communicate or to make adequately considered decisions in connection with the representation,
3185 then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such
3186 measures could include: consulting with family members, using a reconsideration period to
3187 permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking
3188 tools such as durable powers of attorney or consulting with support groups, professional
3189 services, adult-protective agencies or other individuals or entities that have the ability to protect
3190 the client. In taking any protective action, the lawyer should be guided by such factors as the
3191 wishes and values of the client to the extent known, the client's best interests and the goals of
3192 intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing
3193 client capacities and respecting the client's family and social connections.

3194 [6] In determining the extent of the client's diminished capacity, the lawyer should
3195 consider and balance such factors as: the client's ability to articulate reasoning leading to a
3196 decision, variability of state of mind and ability to appreciate consequences of a decision; the
3197 substantive fairness of a decision; and the consistency of a decision with the known long-term
3198 commitments and values of the client. In appropriate circumstances, the lawyer may seek
3199 guidance from an appropriate diagnostician.

3200 [7] If a legal representative has not been appointed, the lawyer should consider whether
3201 appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's
3202 interests. Thus, if a client with diminished capacity has substantial property that should be sold
3203 for the client's benefit, effective completion of the transaction may require appointment of a legal
3204 representative. In addition, rules of procedure in litigation sometimes provide that minors or
3205 persons with diminished capacity must be represented by a guardian or next friend if they do not

3206 have a general guardian. In many circumstances, however, appointment of a legal representative
3207 may be more expensive or traumatic for the client than circumstances in fact require. Evaluation
3208 of such circumstances is a matter entrusted to the professional judgment of the lawyer. In
3209 considering alternatives, however, the lawyer should be aware of any law that requires the
3210 lawyer to advocate the least restrictive action on behalf of the client.

3211 **Disclosure of client's condition**

3212 [8] Rules of procedure in litigation generally provide that minors or persons suffering
3213 mental disability shall be represented by a guardian or next friend if they do not have a general
3214 guardian. However, disclosure of the client's disability can diminished capacity
3215 could adversely affect the client's interests. For example, raising the question of diminished
3216 capacity could, in some circumstances, lead to proceedings for involuntary commitment.
3217 Information relating to the representation is protected by rule 4-1.6. Therefore, unless authorized
3218 to do so, the lawyer may not disclose such information. When taking protective action pursuant
3219 to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even
3220 when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure,
3221 paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities
3222 or seeking the appointment of a legal representative. At the very least, the lawyer should
3223 determine whether it is likely that the person or entity consulted with will act adversely to the
3224 client's interests before discussing matters related to the client. The lawyer's position in such
3225 cases is an unavoidably difficult one. The lawyer may seek guidance from an appropriate
3226 diagnostician.

3227 **Emergency Legal Assistance**

3228 [9] In an emergency where the health, safety or a financial interest of a person with
3229 seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may
3230 take legal action on behalf of such a person even though the person is unable to establish a
3231 client-lawyer relationship or to make or express considered judgments about the matter, when
3232 the person or another acting in good faith on that person's behalf has consulted with the lawyer.
3233 Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably
3234 believes that the person has no other lawyer, agent or other representative available. The lawyer
3235 should take legal action on behalf of the person only to the extent reasonably necessary to
3236 maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who
3237 undertakes to represent a person in such an exigent situation has the same duties under these
3238 Rules as the lawyer would with respect to a client.

3239 [10] A lawyer who acts on behalf of a person with seriously diminished capacity in an
3240 emergency should keep the confidences of the person as if dealing with a client, disclosing them
3241 only to the extent necessary to accomplish the intended protective action. The lawyer should
3242 disclose to any tribunal involved and to any other counsel involved the nature of his or her
3243 relationship with the person. The lawyer should take steps to regularize the relationship or
3244 implement other protective solutions as soon as possible. Normally, a lawyer would not seek

3245 compensation for such emergency actions taken.

Materials for Vignette - Orlando

Reviewing Estate Planning Documents for Out of State Lawyers

1. Hypothetical Fact Pattern

Willy Willdrafter is a New York lawyer who represents a number of very wealthy New York clients. One of his clients, Donny Deepocketz, has a residence in Palm Beach and a penthouse apartment in New York City. Donny has declared his domicile to be in Florida and spends most of the year in Florida. Willy has prepared new estate planning documents, including a will, revocable trust, Florida durable power of attorney, and designation of health care surrogate for Donny. Willy has sent you business in past and asks whether you can review the documents for “Florida compliance” and supervise the execution of the documents for Donny who is currently in Florida. Can you assist Willy? Who is the client - Willy or Donny?

2. Key Considerations

a. Unauthorized Practice of Law. The Florida Bar, Florida attorneys, and the citizens of Florida undoubtedly have an interest in making sure that out-of-state unlicensed attorneys are not permitted to practice law in the State of Florida. Among other things, it maintains the integrity of the legal profession. In fact, the unlicensed practice of law in Florida is a third degree felony. Pursuant to Rule 4-5.5(a) of the Rules Regulating the Florida Bar, Florida lawyers are not permitted to assist a non-lawyer in engaging in the unlicensed practice of law. Would it be considered aiding and abetting the unauthorized practice of law to assist Willy Willmaker?

The definition of unlicensed practice of law in Rule 10- 2.1(c), Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, covers attorneys admitted in other jurisdictions who are not licensed to practice in Florida. Florida courts have defined practice of law broadly:

“if the giving of [the] advice and performance of [the] services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.”

Florida Bar v. Sperry, 140 So. 2d 587, 591 (Fla. 1962), vacated on other grounds, 373 U.S. 379 (1963).

When applying this test, courts have held that “the single most important concern in the Court's defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation.” Florida Bar v. Moses, 380 So. 2d 412, 417 (Fla. 1980). The Florida Supreme Court noted in Sperry that the practice of law includes the rendering of advice to others as to their rights and obligations under the law even though such matters may not then or ever be subject to proceedings in court. Sperry, 140 So. 2d at 591.

Rule 4-5.5(c)(4) provides a broad exception that allows an out-of-state lawyer to provide legal services

on a “temporary basis” in Florida if they are performed for a client who resides in or has an office in the jurisdiction in which the lawyer is authorized to practice.

Further, over 30 years ago, in *Florida Bar v. Larkin*, 298 So.2d 371 (Fla. 1974), the Florida Supreme Court seemed to endorse the practice of having Florida counsel review documents prepared by an out-of-state attorney. In *Larkin*, the Supreme Court of Florida determined that the preparation of a will by a person not authorized to practice law in the State of Florida constituted the unlicensed practice of law. However, the *Larkin* court suggested that if the out-of-state attorney had the documents reviewed and approved by a Florida lawyer, the out-of-state attorney would avoid the claim of the unlicensed practice of law. Many practitioners followed the tacit approval of the Florida Supreme in the *Larkin* opinion.

In 2003, Florida Bar ethics counsel created a stir when it issued Florida Bar Staff Opinion 24894 (September 3, 2003). The opinion dealt with how a Florida lawyer should respond to correspondence or demands from out-of-state lawyers who are legal advice to their clients interpreting Florida real estate documents, Florida condominium documents, and Florida law in general. The opinion noted, in many instances, the lawyers are writing on behalf of clients who reside in Florida part-time and have a residence in the location where the lawyer is admitted. Florida Bar ethics counsel considered the activities of the out-of-state lawyer in writing demand letters and interpreting Florida legal documents as the unauthorized practice of law.

Shortly after this opinion was released, *ActionLine* printed article wherein the author opined that if this ethics opinion were interpreted literally it may prohibit Florida lawyers from reviewing estate planning documents for out-of-state lawyers because it could amount to the aiding and abetting the unauthorized practice of law. Keith S. Kromash, *A Primer on Florida Attorneys’ Ethical Obligation to Avoid Assisting in the Unauthorized Practice of Law- Florida Bar Staff Opinion 24894*, *ActionLine*, The Florida Bar, RPPTL Section (Spring 2004). Many other commentators picked up on this issue around the country.

Ultimately, the Division Director for Ethics, UPL, and Professionalism for the Florida Bar took the unique step of writing a letter to the Chair of the RPPTL Section on May 25, 2004 clarifying the Staff Opinion and the *ActionLine* article. The letter is published in the *ActionLine* Fall 2004 edition. The letter noted that the Staff Opinion was written in response to a specific set of facts regarding an attorneys own conduct and is not necessarily applicable to anyone other than the inquiring attorney on the specific facts presented. The letter noted that the *ActionLine* article presented “additional facts and scenarios not presented in the staff opinion” as well as opinions that are not necessarily that of The Florida Bar. The letter noted:

“There are many situations where a Florida attorney may communicate with a member of another state bar on Florida matters. For example, out-of-state attorneys may consult with a Florida attorney on Florida law as it relates to a real estate transaction for the purpose of giving that information to their client or incorporating that information into an opinion for their client. Such communication is not prohibited. Nor is the Florida attorney prohibited from reviewing the documents as stated in the article. As noted in the article, Florida attorneys are often asked to review estate planning documents drafted by out-of-state attorneys. This review is not improper and is in fact encouraged.”

Thus, it appears that a Florida lawyer, at least in some circumstances, may safely review estate planning documents prepared by out of state counsel.

b. Who is the client? Assuming the unauthorized practice of law issues are not implicated, there is still a second issue which needs to be addressed, to wit, who is the client? Can the lawyer review the documents on behalf of the law firm and receive compensation from the law firm? Is it better to represent the client or the firm? The answers are unclear. However, the following issues should be considered:

- Rule 4-1.2 permits a lawyer to limit the scope of a representation if the limitation is reasonable under the circumstances and the client gives informed consent confirmed in writing. If your review is limited to “Florida compliance”, does it make sense to have the client confirm the scope of the representation? Does the client understand the scope of your review?
- Rule 4-1.4 requires a lawyer to communicate with the client and explain a matter to the extent reasonably necessary to permit the client to make an informed decision.
- Rule 4-1.5(g) only permits a division of fees between lawyers who are not in the same firm if the total fee is reasonable and (a) the division is in proportion to the services performed by each lawyer; or (b) the client agrees in writing, each lawyer assumes joint responsibility and is available to consult with the client, and the fee agreement specifies the division of fees.
- Rule 4-1.6, which is patterned on the model rule, requires a lawyer to keep information confidential unless it is reasonably necessary to serve a client’s interest.

Most lawyers expect that they will be charged with the duty to properly supervise other lawyers within their own firm. However, many lawyers may not realize that, under certain circumstances, they may have duties to supervise a lawyer who is not only associated with another law firm, but who practices law in another state. In the case of *Whalen vs. Degraff*, 863 N. Y. S. 2d 100 (2008 N. Y. Slip Op. 06342), plaintiff/client initially retained defendant/lawyer (“Lawyer 1”) to represent her in a partnership dispute. Lawyer 1 ultimately obtained a judgment for client in the amount \$1,235,976.00 against Julius Gerzof. Before the judgment was satisfied, Gerzof died a resident of Florida. Lawyer 1 sought the assistance of a Florida attorney (“Lawyer 2”) to preserve client’s rights against Gerzof’s estate. Lawyer 2 did not properly preserve client’s rights in Gerzof’s estate and Lawyer 1 got sued by client for, among other things, vicarious liability for Lawyer 2’s action and/or negligently failing to supervise Lawyer 2. The court ultimately found Lawyer 1 liable for damages to client.

The court found that the general rule is that a lawyer is not ordinarily liable for the acts or omissions of co-counsel in another firm because that lawyer is usually an independent agent of the client. (Restatement (Third) of Law Governing Lawyers, § 58, comment e) In this case, however, Lawyer 1 solicited Lawyer 2 and obtained his assistance without client’s knowledge. Although client was later advised that Lawyer 2 had been retained by Lawyer 1, client had no contact with Lawyer 2 and did not enter into a retainer agreement with Lawyer 2. Lawyer 1 conceded that client completely relied on him

to take the necessary steps to protect her interests in the Florida estate. The court found that under those circumstances, Lawyer 1 assumed responsibility to client for the Florida estate claim and Lawyer 2 became a “sub-agent” of Lawyer 1. As such, Lawyer 1 had a duty to supervise the actions of Lawyer 2. The court again cited to Restatement (Third) of Law Governing Lawyers, § 58, comment e, as well as Restatement (Third) Agency, § 3.15 and Restatement (Second) Agency, §§ 5 and 406.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By _____ J. Richard Caskey _____, Chair, ___ Probate and Trust Litigation Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date _____, 2018)

Address _____ 777 S. Harbour Island Blvd. Suite 215, Tampa, FL 33602
Telephone: (_____ 813 _____) 443-5709

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

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Appearances

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

**Meetings with
Legislators/staff** (SAME)
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A
(Bill or PCB #) (Bill or PCB Sponsor)

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

Proposed Wording of Position for Official Publication:

Support the proposed amendments clarifying the personal representative's exclusive authority to pursue causes of action on behalf of the estate, including but not limited to claims for the return of probate assets wrongfully transferred prior to the decedent's death, including changes to Fla. Stat. §§ 731.201(32), 733.607(1), 733.612(20), and 733.802(2).

Reasons For Proposed Advocacy:

The proposed amendments add language and make changes to Florida Statutes §§ 731.201(32), 733.607(1), 733.612(20), and 733.802(2) to clarify that causes of action owned by a decedent at the time of death are property of the estate and that the personal representative is the proper party to pursue such causes of action on behalf of the estate. Currently, there is tension in Florida law relating to when a

personal representative is necessary in proceedings to recover the decedent's assets, particularly assets transferred during the life of the decedent ("inter-vivos transfers"). A divergence among Florida courts has created confusion as to the proper party to pursue these claims on behalf of the estate and has failed to establish a clear rule about when the estate would be indispensable to these causes of action. The proposed amendments clarify the personal representative's exclusive authority to pursue causes of action on behalf of the estate, including but not limited to claims for the return of probate assets wrongfully transferred prior to the decedent's death.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE
 (Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
 (May attach list if more than one) NONE
 (Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

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

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

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

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

WHITE PAPER

PROPOSED AMENDMENTS OF F.S. SECTIONS 731.201(32), 733.607(1), 733.612(20), and 733.802(2)

A. SUMMARY

The proposed amendments add language and make changes to Florida Statutes §§ 731.201(32), 733.607(1), 733.612(20), and 733.802(2) to clarify that causes of action owned by a decedent at the time of death are property of the estate and that the personal representative is the proper party to pursue such causes of action on behalf of the estate. The proposed amendments clarify the personal representative's exclusive authority to pursue causes of action on behalf of the estate, including but not limited to claims for the return of probate assets wrongfully transferred prior to the decedent's death.

B. CURRENT SITUATION

Currently, there is tension in Florida law relating to when a personal representative is necessary in proceedings to recover the decedent's assets, particularly assets transferred during the life of the decedent ("inter-vivos transfers"). A divergence among Florida courts has created confusion as to the proper party to pursue these claims on behalf of the estate and has failed to establish a clear rule about when the estate would be indispensable to these causes of action.

Historically, several Florida Courts, including most recently the Fourth District Court of Appeal in *Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016), have permitted a decedent's heirs, individually, to pursue claims to set aside inter-vivos conveyances of the decedent, without requiring that the decedent's estate be joined as a party to the suit.

Conversely, a line of several other more recent Florida cases have held that the task of recovering property for the benefit of the Estate is the duty of the personal representative (or administrator ad litem when the personal representative has a conflict) and should not be entrusted to individual beneficiaries.

Although §733.607 clearly *authorizes* the personal representative to bring these claims, the Fourth District Court of Appeals in *Parker v. Parker* interprets §733.607 to hold that causes of action to set aside inter-vivos transfers of the decedent are not exclusively the personal representative's actions while also setting a precedent that the estate is not an indispensable party to the proceedings. While the law in this area appears to be particularly fact sensitive, the *Parker* decision is in conflict with other decisions which have held that, where an estate is open, the personal representative – as opposed to the individual beneficiaries - is the proper party to bring claims to recover the decedent's property.

It is further difficult to reconcile the holding in *Parker* with §733.609 which states, in part, "Any person taking, converting, or intermeddling with the property of a decedent shall be liable to the personal representative or curator, when appointed, for the value of the property so taken or converted and for all damages to the estate caused by the wrongful action." Florida law bestows numerous fiduciary duties on personal representatives and none on individual beneficiaries. *See* Fla. Stat. §733.604 (2017). The personal representative is charged with acting

in the best interest of the estate and is also required to consider the claims of creditors and other interested persons when settling and distributing estate assets. The personal representative is best suited to pursue a decedent's and the estate's causes of actions under the existing themes and intent of the Florida Probate Code. These proposed amendments serve to clarify that position.

1. SECTION-BY SECTION ANALYSIS

a. The existing language of §731.201(32) does not include or address “causes of action” as being an asset of the estate.

The relevant portion of Florida Statute § 731.201(32) currently reads as follows:

“(32) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership by the decedent or their estate.”

The lack of specificity in §731.201(32) has led to confusion and inconsistent interpretations among Florida courts as to the whether the decedent's “causes of action” are estate assets, subject to the personal representative's control. For example, in *Parker v. Parker*, the court cited to §733.607 and noted that “every personal representative has a right to, and shall take possession or control of, the decedent's property.” The *Parker* Court found that properties transferred prior to the decedent's death were not part of “the decedent's property” and, as a result, not subject to the personal representative's control under §733.607. The Court ultimately allowed individual beneficiaries to pursue claims for the recovery of estate assets, essentially circumventing the probate process by failing to recognize the rights of creditors, administrative or priority claims, and other non-party beneficiaries. The proposed amendment to §731.201(32) serves to clarify that the causes of action themselves (of either the estate or those the decedent had at time of death) are “property” of the estate and therefore subject to the personal representative's possession and control.

b. The existing statutory language in §733.607 does not explain that it is the estate's personal representative who has exclusive standing to pursue claims for the return of estate assets that were fraudulently transferred prior to the decedent's death – unless the claims have been otherwise properly distributed, abandoned, or adjudicated.

The relevant portion of Florida Statute §733.607 currently reads as follows:

(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of

the estate until distribution and may maintain an action to recover possession of property or to determine the title to it.

Consequently, Florida courts have interpreted §733.607(1) to afford contradicting duties and rights to personal representatives versus individual estate beneficiaries. A few of the contradictory opinions are discussed below.

The Fourth District Court of Appeal in *Parker v. Parker*, authorized individual children of a decedent to pursue claims for the return of estate assets by citing to several Florida cases that have “repeatedly permitted a decedent’s children to pursue claims to set aside inter-vivos conveyances based upon allegations of undue influence, without requiring that the decedent’s estate be joined as a party to the suit.” The Court further noted that the defendants had provided no authority to support their position that, under §733.607, the estate is an indispensable party to an action to set aside inter-vivos conveyances due to alleged undue influence. Ultimately, the Fourth District concluded that the decedent’s estate was not so essential to the suit that a final decision could not be rendered without joining the estate as a party.

Prior to *Parker*, several Florida cases held conversely that the personal representative is the proper party to recover the decedent’s assets on behalf of the estate. The courts relied on §733.607 and the personal representative’s duty to take control of the decedent’s property and his or her right to pursue valuable claims of the estate.

In *All Children’s Hosp. Inc. v. Owens*, 754 So. 2d 802 (Fla. 2d DCA 2000), the Second District Court of Appeal reviewed the inter-vivos transfer of over \$1.7 million to the decedent’s caretaker and ultimately held that it is the general duty of the personal representative to settle and distribute the estate and, pursuant to §733.607, the personal representative has the specific statutory authority to recover estate assets and determine title to them.

The Second District was concerned with duplicating efforts of an administrator ad litem during pendency of the estate, citing to Fla. Stat. §731.303(2)(b)(3). The Second District took issue with allowing individual beneficiaries to obtain personal monetary judgments that were likely to compete with the personal representative’s efforts to settle and distribute the estate. Finally, the Second District reasoned that “the Charities’ right to eventually receive a share of any residue left in the estate does not give them the right to obtain a constructive trust for their own benefit over property they claim should be within the estate.”

Similarly, in *Traub v. Zlatkiss*, 559 So.2d 443 (Fla. 5th DCA 1990), a widow sued the business partner of the decedent to set aside inter-vivos transfers based on the decedent’s purported attempt to diminish her elective share. The widow sought a constructive trust over property and a return of assets to the decedent’s estate. The Fifth District Court of Appeal noted that the wife had a “procedural impediment” to her cause of action and explained that rescission and constructive trust actions are to be brought by the personal representative of the estate and cannot be directly asserted by the widow. Specifically, the Fifth District explained, “in cases where transfers by decedents are subject to rescission upon classic grounds such as fraud, undue influence, mistake, or lack of mental capacity, the cause of action for rescission, or to establish a constructive trust, is in the personal representative of the decedent’s estate and cannot be directly asserted by the widow.”

The existing statutory language in §733.607 has led to competing opinions among appellate courts as to the proper party to bring the decedent's and estate's causes of action. The proposed amendment to §733.607 clarifies that the personal representative has the exclusive right to maintain an action to recover possession of property or to determine the title to it. The cause of action would be treated as any other estate property, which is subject to abandonment, assignment, distribution, or adjudication by order of the court.

c. The existing language in §733.612(20) does not make clear that the personal representative may also prosecute or defend claims or proceedings in any jurisdiction for the protection of the *decedent's property* in addition to protection of the estate's property.

The relevant portion of Florida Statute § 733.612(20) currently reads as follows:

“733.612 Transactions authorized for the personal representative; exceptions.— Except as otherwise provided by the will or court order, and subject to the priorities stated in s. 733.805, without court order, a personal representative, acting reasonably for the benefit of the interested persons, may properly:...

(20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative....”

The *Parker* decision appeared to turn on this distinction – i.e. the court distinguished between a personal representative's responsibilities for assets held in the decedent's name at death versus those that were no longer in the decedent's name upon passing. Other courts have noted that claims related to inter-vivos transfers impact the estate's involvement in the litigation such that the personal representative is necessary to pursue the claims. For example, in *Kestner v. Helm*, 425 F. Supp 771 (M.D. Fla. 1977), the Middle District explained, “Under Florida law, a prior confidential relationship between a donor and donee raises a prima facie question covering the voidness of an inter-vivos gift because of undue influence. If the plaintiff should prevail in having the inter-vivos transfer of money from the decedent to the defendant set aside as void, those funds would become assets of the estate, subject to the dispositive provisions of his will. Obviously, then, there is a compelling necessity that the interests of the decedent's estate be represented concerning the money at stake in the controversy.”

The proposed amendment to §733.612(20) disavows the distinction drawn by the *Parker* court and clarifies the personal representative's duty to prosecute or defend claims for the protection of the estate, the decedent's property, and of the personal representative. Read together with the amendments to §731.201, the personal representative will have the authority to prosecute or defend all claims involving the estate's property, including causes of action of the estate and causes of action the decedent had at death.

d. Finally, the existing language in §733.802 does not allow a beneficiary to petition the court to compel a personal representative to act or to seek the appointment of an administrator ad litem when the personal representative has delayed or failed to maintain an action to recover possession of property or to determine title to it.

The relevant portion of Florida Statute § 733.802 currently reads as follows:

“733.802. Proceedings for compulsory payment of devises or distributive interest.

- (1) Before final distribution, no personal representative shall be compelled:
 - (a) To pay a devise in money before the final settlement of the personal representative’s accounts,
 - (b) To deliver specific personal property devised, unless the personal property is exempt personal property,
 - (c) To pay all or any part of a distributive share in the personal estate of a decedent, or
 - (d) To surrender land to any beneficiary, unless the beneficiary establishes that the property will not be required for the payment of debts, family allowance, estate and inheritance taxes, claims, elective share of the surviving spouse, charges, or expenses of administration or to provide funds for contribution or to enforce equalization in case of advancements....”

The proposed amendment to §733.607 clarifies that the personal representative has the exclusive authority to bring causes of action for the return of the decedent’s property or for fraudulent transfers yet allows interested persons a mechanism to compel the personal representative to take action or to avoid delay. The proposed amendment to §733.802 ensures that a beneficiary or other interested person is allowed to petition the court to compel the personal representative to act or to seek the appointment of an administrator ad litem.

C. EFFECT OF PROPOSED CHANGES

The proposed amendment adds language to §731.201(32) and serves to clarify that the decedent’s property includes “cause of action of the estate and causes of action the decedent had at the time of death”. The personal representative is charged with the recovery and possession of the decedent’s property and this may include property that was transferred during the life of the decedent. The proposed amendment to §731.201(32) will clarify the personal representative’s authority over all of the decedent’s property, including causes of action for the return of property.

The proposed amendment adds language to §733.612(20) and serves to establish that the personal representative has the duty to prosecute and defend claims or proceedings for the protection of the estate, the decedent’s property, and of the personal representative. The addition establishes the personal representative’s duty to prosecute claims and causes of action of the estate or that the decedent had at death which may include claims for fraudulent gifts or other improper inter-vivos transfers.

The proposed amendment adds language to §733.607(1) and serves to clarify that it is the personal representative who has exclusive standing to pursue causes of action on behalf of the estate. The personal representative maintains this exclusive right until the cause of action has been distributed, abandoned, or otherwise adjudicated by the court. This clarification recognizes the fiduciary duties of a personal representative and preserves the function and role of a probate administration in Florida. Allowing the personal representative the first opportunity to pursue

these claims recognizes these causes of action as potentially valuable estate assets, subject to the personal representative's and the court's oversight and aligning the estate's causes of action with any other estate assets, that the personal representative has responsibilities not only to beneficiaries but to all interested persons including creditors and other claimants. The personal representative is the party best suited to bring the estate and decedent's causes of action and the amendments to §733.607(1) clarify this position and directly overturn *Parker v. Parker*.

The proposed amendment to §733.802 creates a new subsection (2). The language reinforced the intent of this Chapter and specifically §733.607 to allow beneficiaries or other interested persons to seek to compel a personal representative to act or to seek the appointment of an administrator ad litem. The proposed amendment to §733.802 is intended to provide specific remedies available to beneficiaries and interested persons in scenarios where a personal representative is unwilling or unable to pursue an estate's cause of action and where the estate administration is delayed or nearing a statute of limitations.

D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None

E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None

F. CONSTITUTIONAL ISSUES

None

G. OTHER INTERESTED PARTIES

Florida Elder Law Section.

WPB_ACTIVE 8998955.1

1 A bill to be entitled

2 An act relating to probate; amending s. 731.201(32), F.S. in part; adding to the definition
3 of property to include estate causes of action; amending s. 733.607, F.S. in part;
4 providing the personal representative with exclusive standing to pursue estate causes of
5 action; amending s. 733.612(20), F.S. in part; clarifying a personal representative's
6 authority over a decedent's property; amending s. 733.802, F.S. in part; creating a
7 mechanism to compel an inoperative personal representative; and providing an effective
8 date.

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

11
12 Section 1. Subsection (32) of Section 731.201, Florida Statutes is amended, to read:

13
14 731.201 General definitions.— Subject to additional definitions in subsequent chapters that are
15 applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in
16 s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

17 (32) "Property" means both real and personal property or any interest in it and anything that
18 may be the subject of ownership, including causes of action of the estate and causes of action the
19 decedent had at the time of death.

20
21 Section 2. Subsection (1) of Section 733.607, Florida Statutes, is amended to read:

22
23 733.607 Possession of estate.—

24 (1) Except as otherwise provided by a decedent's will, every personal representative has a right
25 to, and shall take possession or control of, the decedent's property, except the protected
26 homestead, but any real property or tangible personal property may be left with, or surrendered
27 to, the person presumptively entitled to it unless possession of the property by the personal
28 representative will be necessary for purposes of administration. The request by a personal
29 representative for delivery of any property possessed by a beneficiary is conclusive evidence that
30 the possession of the property by the personal representative is necessary for the purposes of
31 administration, in any action against the beneficiary for possession of it. The personal
32 representative shall take all steps reasonably necessary for the management, protection, and
33 preservation of the estate until distribution and ~~may has the exclusive right to~~ maintain an action
34 to recover possession of property or to determine the title to it. The personal representative has
35 no duty to maintain a cause of action that has been abandoned, assigned, distributed, or otherwise
36 adjudicated by court order.

37
38 Section 3. Subsection (20) of Section 733.612, Florida Statutes, is amended to read:

39
40 733.612. Transactions authorized for the personal representative; exceptions

41 Except as otherwise provided by the will or court order, and subject to the priorities stated in s.
42 733.805, without court order, a personal representative, acting reasonably for the benefit of the
43 interested persons, may properly:

44 (20) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate,
45 the decedent's property, and of the personal representative.

46

47 Section 4. Subsection Subsections (2) and (3) of Section 733.802, Florida Statutes,
48 are renumbered as subsection (3) and (4), and a new subsection (2) is added to that section, to
49 read:

50

51 § 733.802. Proceedings for compulsory payment of devises or distributive interest.

52 (1) Before final distribution, no personal representative shall be compelled:

53 (a) To pay a devise in money before the final settlement of the personal representative's
54 accounts,

55 (b) To deliver specific personal property devised, unless the personal property is exempt
56 personal property,

57 (c) To pay all or any part of a distributive share in the personal estate of a decedent, or

58 (d) To surrender land to any beneficiary, unless the beneficiary establishes that the property will
59 not be required for the payment of debts, family allowance, estate and inheritance taxes, claims,
60 elective share of the surviving spouse, charges, or expenses of administration or to provide funds
61 for contribution or to enforce equalization in case of advancements.

62 (2) Nothing herein, or in §733.607 of this Chapter, shall be construed so as to prevent a
63 beneficiary or other interested person, upon a showing of proper cause, from petitioning the court
64 to compel a personal representative to act or to seek the appointment of an administrator ad litem
65 where a personal representative fails to maintain an action to recover possession of property or to
66 determine title to it.

67 ~~(2)~~ (3) An order directing the surrender of real property or the delivery of personal property by
68 the personal representative to the beneficiary shall be conclusive in favor of bona fide purchasers
69 for value from the beneficiary or distributee as against the personal representative and all other
70 persons claiming by, through, under, or against the decedent or the decedent's estate.

71 ~~(3)~~ (4) If the administration of the estate has not been completed before the entry of an order of
72 partial distribution, the court may require the person entitled to distribution to give a bond with
73 sureties as prescribed in s. 45.011, conditioned on the making of due contribution for the
74 payment of devises, family allowance, estate and inheritance taxes, claims, elective share of the
75 spouse, charges, expenses of administration, and equalization in case of advancements, plus any
76 interest on them.

77

78 Section 5. This act shall take effect upon becoming law and shall apply to all
79 proceedings pending before such date and all cases commenced on or after the effective date.

80 WPB_ACTIVE 8998944.1

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Angela M. Adams, Chair, Trust Law Committee of the Real Property, Probate, & Trust Law Section (RPPTL Approval Date _____, 20__)

Address Angela M. Adams
Law Office of Wm. Fletcher Belcher
540 Fourth Street North
St. Petersburg, Florida 33701
(727) 821-1249

Position Type Trust Law Committee, Real Property, Probate, & Trust Law Section, The Florida Bar
(Florida Bar, section, division, committee or both)

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Appearances

Before Legislators (SAME)

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

**Meetings with
Legislators/staff** (SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A

(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support proposed legislation creating the "Florida Uniform Directed Trust Act", a modified version of the Uniform Directed Trust Act, which clarifies and changes various aspects of the Florida Statutes relating to directed trusts.

Reasons For Proposed Advocacy:

Numerous legal issues arise regarding directed trusts (trusts whose terms grant a person other than a trustee a power over some aspect of the trust's administration). Principal among them are (a) applicable fiduciary

WHITE PAPER

Florida Uniform Directed Trust Act

I. SUMMARY

This legislation adopts the Uniform Directed Trust Act (“UDTA”) into Chapter 736, with modifications. The Act provides statutory provisions relating to directed trusts (trusts whose terms grant a person other than a trustee a power over some aspect of the trust’s administration). The UDTA has extensive comments regarding its provisions, which provide further information on the background and operation of its provisions beyond the provisions of this White Paper.

II. CURRENT SITUATION & GENERAL NEED FOR ACT

Numerous legal issues arise regarding directed trusts. Principal among them are (a) applicable fiduciary duties that apply to the non-trustee holding power (the “trust director”) and the trustee that is being directed (the “directed trustee”), (b) what trust director powers should be exercised without duty (that is, should not be covered by the Act), (c) the liability of a trust director, including limitations and defenses, (d) how the location of a trust director impacts the principal place of administration of the trust, (e) what powers a trust director has that are not expressed in the trust agreement, (f) required duties of a trust director and a directed trustee to provide information to each other, and to provide information to beneficiaries, (g) duties of the trust director and a directed trustee to monitor, inform or advise the other, (h) how to apply these issues to circumstances when one trustee is directing another trustee (since “directed trusts” are limited to trusts where the directing person is not a trustee, (i) personal jurisdiction over a trust director, and (j) a determination of what other provisions of the Trust Code should apply to trust directors.

Numerous trusts are established under Florida law that include one or more powers granted to non-trustees. Fla.Stats. §736.0808 presently addresses some of the above-described issues, but its coverage is narrow and limited. There is little in the way of case law in Florida on most of these issues, leaving trust directors, trustees, and beneficiaries without direction on these issues and requiring litigation to establish law on a case-by-case basis. Recognizing the importance of having statutory law on these subjects, many other states and common law countries have enacted legislation of varying scope dealing with many of these subjects. The UDTA was promulgated to provide a comprehensive statutory arrangement to address all of these issues and would be of welcome benefit to all parties involved with directed trusts.

III. MISC. ASPECTS

The statutory provisions are in two segments. The first is changes to existing Florida Trust Code provisions. These are changes needed to coordinate with the separate Act Part, and to include provisions of the Act that are better placed elsewhere in the Trust Code than in a separate Act

part, such as definitions relating to Act provisions. The second segment is a new Part XIV of the Trust Code entitled "Directed Trusts."

It was determined that a separate Part was superior to scattered inclusion of the UDTA provisions throughout the Trust Code. This preserves the UDTA structure to obtain the benefits of close coordination with a uniform act, and the Directed Trust Act provisions are discrete enough to warrant a separate part. This also assists in avoiding undue complexity by excluding provisions throughout the Trust Code that may not be of relevance to trusts without directed trust features.

Like most Trust Code provisions, the provisions of the Act are a set of default rules that can be overridden in the trust instrument (except as otherwise noted).

IV. SECTION-BY-SECTION ANALYSIS

A. *Section 736.0103 – Definitions (Modification to Existing Statute)*

Current Situation: This provision provides definitions applicable throughout the Trust Code.

Effect of Proposed Changes: Adds new definitions applicable to the directed trusts, principally including:

1. "Directed trust" – a trust which includes a power of direction;
2. "Directed trustee" – a trustee subject to direction by a trust director;
3. "Power of direction" – a power over a trust granted to a person by the trust terms that is exercisable by the person when not serving as a trustee;
4. "Terms of a trust" – expands the current definition to include trust terms established by or amended by a trustee, a trust director, a court order, or a nonjudicial settlement agreement; and
5. "Trust director" – a person who has a power of direction under the trust terms to the extent exercisable while that person is not a trustee.

B. *Section 736.0105(2)(b) – Default and Mandatory Rules (Modification to Existing Statute)*

Current Situation: This provision provides that the terms of a trust may not modify the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

Effect of Proposed Changes: This provision would now be subject to the authority regarding such issues as they related to directed trusts otherwise provided in new Sections 736.1409, 736.1411, and 736.1412.

C. Section 736.0603(3)- Settlor Powers (Modification to Existing Statute)

Current Situation: While a trust is revocable, the duties of the trustee are owed exclusively to the settlor.

Effect of Proposed Changes: A new provision is added to provide that a trustee may follow a direction of the settlor that is contrary to the trust provisions while a trust is revocable.

D. Section 736.0703(9) – Cotrustees (Modification to Existing Statute)

Current Situation: This provision relates to the duties and obligations of trustees when the trust provisions provide a power to direct or prevent action by one trustee vis-à-vis another trustee.

Effect of Proposed Changes: This provision is removed since these provisions are now addressed in the new Part.

E. Section 736.0808 – Powers to Direct (Modification to Existing Statute)

Current Situation: This provision is currently the operative provision for duties, powers, and obligations relating to powers of direction granted to non-trustees.

Effect of Proposed Changes: This provision is removed since its subject matter is now entirely addressed in the new Part in numerous provisions thereof.

F. Section 736.1008 – Limitations on Proceedings Against Trustees (Modification to Existing Statute)

Current Situation: This provision relates to limitations on proceedings against trustees regarding items disclosed in a trust disclosure document.

Effect of Proposed Changes: Trust directors will now have the same protections as trustees for items disclosed in a trust disclosure document (whether issued by a trustee or a trust director). The definition of a “trust disclosure document” is expanded to include an accounting or other written report prepared by a trust director. A “limitation notice” may now be issued by a trust director, and the notice language regarding an action by a beneficiary for breach of trust is no longer limited to an action against the trustee (so as to have the effect of including an action against either/or a trustee or trust director).

G. Part XIV – Directed Trusts

Effect of Proposed Changes: Establishes a new Part under the Trust Code, which will encompass Sections 736.1401 through 736.1418. The last two digits of each section number are in accord with the corresponding or source sections of the UDTA.

H. Section 736.1403 – Application; Principal Place of Administration (new)

736.1403(1) - Effect of Proposed Changes: Provides that this Part will apply to a trust, wherever created, if it has its principal place of administration in Florida. It further provides the Part will apply only to decisions or actions occurring after the effective date of enactment of the Part. If

the principal place of administration is moved to Florida, the Part applies only decisions or actions occurring after such a move.

736.1403(2) - Effect of Proposed Changes: Expands the statutory rules on “principal place of administration” to include Florida if the trust terms so provide and a trust director’s principal place of business is located in or a trust director is a resident of Florida. Thus the location of a trust director in Florida is sufficient in itself to allow Florida to be the principal place of administration.

I. Section 736.1405 - Exclusions (New)

Effect of Proposed Changes: Under the Act, a non-trustee holding a power over a trust by its terms is subject to the Act. Nonetheless, certain powers are excluded from the Act. Principal among the effects of such exclusion is that the power holder is not subject to any fiduciary duty unless otherwise imposed by the trust terms. These excluded powers are:

A Power of Appointment. Under current law, a non-trustee holder of a power of appointment holds a mere personal power and does not have any fiduciary duties regarding the exercise of the power (absent contrary trust terms). This exclusion is continued by excepting powers of appointment from the Act provisions. The Act provides that a power to terminate a trust is a power of appointment for this purpose.

A trust may grant a power to create, modify or terminate a power of appointment. The provision does not characterize such a power as a power of appointment for these purposes and subjects such a power to the Act and its concomitant fiduciary duties. That is, a direct power of appointment over property is materially different than a power that does not directly impact property but instead is a power to create, modify, or terminate a power of appointment, and it was determined that the broad authority under the latter warranted the imposition of fiduciary duties on the power holder. Nonetheless, the last clause of 736.1405(3)(b) is intended to clarify that if a holder of a traditional power of appointment with power thereunder to create a new trust or other property interest has with the power the ability to create a new power of appointment (*e.g.*, under the new trust arrangement), such power in the original power holder to create a new power of appointment should nonetheless still be a power of appointment for these purposes. This is because in that instance the power to create, modify or terminate is only an adjunct to the power of appointment and cannot be exercised separate and apart from an appointment otherwise occurring under the power.

A Power to Appoint or Remove a Trustee or Trust Director.

A Power of a Settlor over a Trust While it is Revocable by that Settlor.

A Power of a Beneficiary to the Extent the Exercise or Nonexercise of the Power Affects the Beneficial Interest of the Beneficiary or Another Beneficiary Represented by That Power.

A Power If the Trust Provides it is a Nonfiduciary Power, and it Must be Held in a Nonfiduciary Capacity to Achieve the Settlor’s Tax Objectives. This provision is to allow for the availability of grantor trust treatment for federal income tax purposes to a settlor via certain

common planning techniques (which do not function if the power holder has a fiduciary duty regarding that power).

A Power If the Trust Provides it is a Nonfiduciary Power and Allows Reimbursement to Settlor of Income Tax Liabilities Attributable to the Income of the Trust. This allows a trust director to pay the income tax liabilities of a settlor attributable to the grantor trust status free of a conflicting duty to trust beneficiaries.

A Power to Add or Release a Power If Such Power Can Affect the Grantor Trust Status of the Trust. Again relating to grantor trusts, this permits the trust director to toggle such status on or off (to the extent allowed under federal income tax law) free of a duty to trust beneficiaries.

J. SECTION 736.1406 – Powers of Trust Director (New)

Effect of Proposed Changes: This provision limits the powers of a trust director to the powers granted in the trust instrument, except it will also establish further powers not expressly granted that are appropriate to the exercise or nonexercise of the power that is granted. It also provides that trust directors with joint powers must act by majority decision.

K. SECTION 736.1407 – Limitations on Trust Director (New)

Effect of Proposed Changes: A trust director with powers relating to Medicaid payback or a charitable interest is subject to the same rules as a trustee would be under regarding those items.

L. SECTION 736.1408 – Duty and Liability of Trust Director (New)

Effect of Proposed Changes: A trust director is subject to the same fiduciary duty and liability as a trustee would have it had such a power. However, such duty and liability can be reduced under the trust instrument in the same manner as a trust instrument can reduce the duty and liability of a trustee. Thus, for example, since the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries cannot be eliminated by the trust instrument under Section 736.0105(2)(b) for a trustee, the same minimum duty applies to the duty of a trust protector. The terms of the trust may also impose a duty or liability on a trust protector that would not otherwise apply to a similarly acting trustee.

A trust director that is a health care provider that is licensed, certified, or otherwise authorized or permitted by law will not be under any duty or liability under the Act when acting in such capacity.

M. SECTION 736.1409 – Duty and Liability of Directed Trustee (New)

Current Law: Under Section 736.0808(2), a directed trustee is obligated to act to follow a trust director's power of direction. However, it shall not act if such action would be "manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust."

Effect of Proposed Changes. A directed trustee again is obligated to act on the direction received, with the modification that the direction to act is to take *reasonable* action to comply.

Under this provision, a directed trust is not permitted to act regarding a power of direction if by so doing the trustee would be engaging in “willful misconduct.” The standard is a departure from the standard described above under current law.

Aside from the language of the UDTA itself, the “willful misconduct” limitation on acting is appropriate since it is the same standard applicable under current law when one trustee has power to direct a co-trustee to act. Since that standard is acceptable under current law when one fiduciary is directing another, and since a trust director is now imbued under the Act with the same fiduciary duties as a trustee under Section 736.1408, it is appropriate that the willful misconduct standard is similarly applied to a directed trustee under the Act. That is, no compelling policy reasons could be discerned why a trustee that is being directed should have a different limitation dependent on whether the directing person is a cotrustee with fiduciary duties or a trust director with fiduciary duties.

The Act does not have a definition of “willful misconduct.” Nor does the Trust Code. Some states do provide for a definition in their statutory trust provisions, such as Delaware. The draftpersons determined that such a definition was outside of the scope and purpose of implementing this Act, and may have a collateral impact in other areas of Florida law even if the definition was statutorily limited to this the Trust Code or these provisions. Nonetheless, the draftpersons intend that the directed trustee's compliance with the exercise or nonexercise of a power of direction that itself constitutes a breach of fiduciary duty (such as the duty to diversify) by the trust director does not, in and of itself, constitute willful misconduct by the directed trustee. Willful misconduct should require the directed trustee's own intent to harm the trust or its beneficiaries, not mere negligence, gross negligence, recklessness or indifference as to the consequences of its actions. A broader interpretation of willful misconduct that does not require intent to harm would be contrary to the operation of directed trusts as intended by settlors and contrary to the ability of directed trustees to accept direction without hesitation or obstruction due to liability concerns.

The Act provides limits on the exercise of a power of direction to release a trustee or trust director from liability for breach of trust.

The provision provides that a directed trustee that has reasonable doubt about its duty under this Section can apply to the court for instructions, with attorney fees and costs to be paid from the trust as provided in the Trust Code.

Beyond the foregoing duty imposed on the directed trustee, the Act permits trust terms to impose additional duties and liabilities on a directed trustee.

N. Section 736.1410 – Information Exchange and Reliance (New)

Effect of Proposed Changes. Each of a trustee and a trust director has a duty to provide information to the other to the extent the information relates to powers or duties of both of them. They may act in reliance on such information without committing a breach of trust unless

their action constitutes willful misconduct. A trust director is also required to provide information to a qualified beneficiary upon a written request to the extent the information is reasonably related to the powers or duties of the trust director.

The draftspersons intend that a trust director has no other direct duty to account or provide information to a beneficiary (although a trust director may in its discretion issue a trust disclosure document to commence the statute of limitations for breach of trust per Section 736.1413(2)). They considered adding an express provision to that effect, but for purposes of not departing from the UDTA language when possible, no such language was included.

O. Section 736.1411 – No Duty to Monitor, Inform or Advise (New)

Effect of Proposed Changes. A trustee has no duty to monitor a trust director, nor to advise a settlor, beneficiary, trustee, or trust director as to how the trustee might have acted differently than the trust director. A trust director likewise has no duty to monitor a trustee or another trust director, nor to advise a settlor, beneficiary, trustee or another trust director as to how the trust director might have acted differently than a trustee or another trust director. The provision does not bar a trustee or trust director from doing any of the foregoing, and if done the actor does not assume a duty to continue to do so in the future.

P. SECTION 736.1412 – Application to Cotrustee (New)

Effect of Proposed Changes. When trust terms confer a power on one or more trustees to the exclusion of another trustee to direct or prevent actions of the other trustee, the trustee subject to direction has the same duties and liabilities as imposed under the Act on a directed trustee under Sections 736.1409 through 736.1411. The policy is that the trustee in both circumstances is being directed by another fiduciary and thus there is no justification for imposing different rules or standards on the trustee subject to direction based on whether the person giving direction is a trustee or a trust director. Regarding the required standard of conduct for liability, the willful misconduct standard of current Section 736.0603(9) continues to apply, and thus this aspect of trustee liability remains the same as under current law.

Q. SECTION 736.1413 – Limitations on Actions Against a Trust Director (New)

Effect of Proposed Changes: The same limitations period under Section 736.1008 that applies to a breach of trust action against a trustee is applied to breach of trust actions against trust directors. Similarly, a trust director can benefit from the six months shortened limitations period under current law through the issuance of a qualified trust accounting or written report.

R. SECTION 736.1414 – Defenses in Action Against a Trust Director (New)

Effect of Proposed Changes: A trust director is provided with the same defenses in a breach of trust action as are available to a trustee.

S. SECTION 736.1415 – Court Jurisdiction Over a Trust Director (New)

Effect of Proposed Changes: A trust director is subject to the personal jurisdiction of Florida courts by accepting appointment. Other permissible methods of obtaining jurisdiction continue to apply.

T. SECTION 736.1414 – Misc. Application of Trust Code Provisions to Trust Directors (New)

Effect of Proposed Changes: The Trust Code contains numerous provisions that apply to trustees. Without further statutory modifications, these provisions would not apply to a trust director. The draftspersons determined that numerous of the provisions should apply to a trust director, while others should not. Thus, a blanket inclusion or exclusion of Trust Code trustee provisions to trust directors was deemed inappropriate. Instead, the draftspersons reviewed all applicable provisions and determined which should be extended to trust directors. Items in the Trust Code that apply to trustees and are not expressly made applicable to a trust director by this provision or elsewhere in the Act are intended not to apply to a trust director. The list is lengthy, so the reader is directed to Section 736.1414 of the proposed Act for those specific items.

This section applies the rules of Section 736.0701 for acceptance of trusteeship by a trustee to acceptance of the office of trust director by a named trust director. Because of the nature of many trust director powers, limiting acceptance to the means described in Section 736.0701 may leave interested persons (including the trust director) in doubt as to whether a trust director has accepted the office. This is because it is relatively demonstrable when a trustee undertakes its office by accepting trust property or exercising powers or performing duties, all of which constitute acceptance under Section 736.0701(2). So acceptance by a trustee can be readily ascertained by determining whether a trustee undertook any such items. However, many trust director powers do not involve accepting trust property nor immediately exercising powers or performing duties. An example would be the power to amend a trust, which may not be acted upon for many months or years. Absent compliance with a method of acceptance provided in the trust agreement, it would be difficult to know if a trust director has accepted its office. This section of the Act permits a trustee, settlor, or a qualified beneficiary to make a written demand on a trust director to accept or confirm prior acceptance of the office, and the trust director must respond within 60 days. The draftspersons believed it would be problematic to automatically disqualify the trust director for failing to respond within that 60 day period, but intend that the mandatory obligation to respond can be enforced by an action of an interested person to obtain a determination by a court of competent jurisdiction as to acceptance or non-acceptance.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal should not have any material economic costs or benefits to members of the private sector.

VII. CONSTITUTIONAL ISSUES

The proposal should not raise any constitutional issues.

VIII. OTHER INTERESTED PARTIES

Tax Section

The Florida Bankers Association

WPB_ACTIVE 8998998.1

1 **UNIFORM DIRECTED TRUST ACT**

2 **736.0103 Definitions.—Unless the context otherwise requires, in this code:**

3 [add following definitions and renumber all subsequent subparagraphs in the
4 section]

5 () “Directed trust” means a trust for which the terms of the trust grant a
6 power of direction.

7 () “Directed trustee” means a trustee that is subject to a trust director's
8 power of direction.

9 () “Power of direction” means a power over a trust granted to a person by
10 the terms of the trust to the extent the power is exercisable while the person is not
11 serving as a trustee. The term includes a power over the investment, management,
12 or distribution of trust property or other matters of trust administration. The term
13 excludes the powers described in s. 736.1405(2).

14 (21) ~~“Terms of a trust” means the manifestation of the settlor’s intent~~
15 ~~regarding a trust’s provisions as expressed in the trust instrument or as may be~~
16 ~~established by other evidence that would be admissible in a judicial proceeding:~~

17 (A) except as otherwise provided in subparagraph (B), the
18 manifestation of the settlor's intent regarding a trust's provisions as:

19 (i) expressed in the trust instrument; or

20 (ii) established by other evidence that would be admissible in a

21 judicial proceeding; or

22 (B) the trust's provisions as established, determined, or amended by:

23 (i) a trustee or trust director in accordance with applicable law;

24 (ii) court order; or

25 (iii) a nonjudicial settlement agreement under s. 736.0111.

26 () “Trust director” means a person that is granted a power of direction by

27 the terms of a trust to the extent the power is exercisable while the person is not

28 serving as a trustee. The person is a trust director whether or not the terms of the

29 trust refer to the person as a trust director and whether or not the person is a

30 beneficiary or settlor of the trust.

31

32 **736.0105 Default and mandatory rules.—**

33 (1) Except as otherwise provided in the terms of the trust, this code governs
34 the duties and powers of a trustee, relations among trustees, and the rights and
35 interests of a beneficiary.

36 (2) The terms of a trust prevail over any provision of this code except:

37 (a) The requirements for creating a trust.

38 (b) Subject to ss. 736.1409, 736.1411 and 736.1412, tThe duty of the
39 trustee to act in good faith and in accordance with the terms and purposes of
40 the trust and the interests of the beneficiaries....

41

42 **736.0603 Settlor’s powers; powers of withdrawal.—**

43 (1) While a trust is revocable, the duties of the trustee are owed exclusively
44 to the settlor.

45 (2) During the period the power may be exercised, the holder of a power of
46 withdrawal has the rights of a settlor of a revocable trust under this section to the
47 extent of the property subject to the power.

48 (3) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a
49 direction of the settlor that is contrary to the terms of the trust while a trust is
50 revocable.

51

52 **736.0703 Cotrustees.—**

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

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

57 (3) Subject to s. 736.1412, a~~A~~ cotrustee must participate in the performance
58 of a trustee’s function unless the cotrustee is unavailable to perform the function
59 because of absence, illness, disqualification under other provision of law, or other
60 temporary incapacity or the cotrustee has properly delegated the performance of

61 the function to another cotrustee.

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

67 (5) A cotrustee may not delegate to another cotrustee the performance of a
68 function the settlor reasonably expected the cotrustees to perform jointly, except
69 that a cotrustee may delegate investment functions to a cotrustee pursuant to and in
70 compliance with s. 518.112. A cotrustee may revoke a delegation previously made.

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

73 (7) Except as otherwise provided in ~~subsection (9)~~ s. 736.1412, each
74 cotrustee shall exercise reasonable care to:

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

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

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

80 ~~(9) If the terms of a trust provide for the appointment of more than one~~

81 trustee but confer upon one or more of the trustees, to the exclusion of the others,
82 the power to direct or prevent specified actions of the trustees, the excluded
83 trustees shall act in accordance with the exercise of the power. Except in cases of
84 willful misconduct on the part of the excluded trustee, an excluded trustee is not
85 liable, individually or as a fiduciary, for any consequence that results from
86 compliance with the exercise of the power. An excluded trustee does not have a
87 duty or an obligation to review, inquire, investigate, or make recommendations or
88 evaluations with respect to the exercise of the power. The trustee or trustees having
89 the power to direct or prevent actions of the excluded trustees shall be liable to the
90 beneficiaries with respect to the exercise of the power as if the excluded trustees
91 were not in office and shall have the exclusive obligation to account to and to
92 defend any action brought by the beneficiaries with respect to the exercise of the
93 power. The provisions of s. 736.0808(2) do not apply if the person entrusted with
94 the power to direct the actions of the excluded trustee is also a cotrustee.

95

96 **736.0808 Powers to direct.—**

97 (1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a
98 direction of the settlor that is contrary to the terms of the trust while a trust is
99 revocable.

100 (2) If the terms of a trust confer on a person other than the settlor of a

101 ~~revocable trust the power to direct certain actions of the trustee, the trustee shall act~~
102 ~~in accordance with an exercise of the power unless the attempted exercise is~~
103 ~~manifestly contrary to the terms of the trust or the trustee knows the attempted~~
104 ~~exercise would constitute a serious breach of a fiduciary duty that the person~~
105 ~~holding the power owes to the beneficiaries of the trust.~~

106 ~~(3) The terms of a trust may confer on a trustee or other person a power to~~
107 ~~direct the modification or termination of the trust.~~

108 ~~(4) A person, other than a beneficiary, who holds a power to direct is~~
109 ~~presumptively a fiduciary who, as such, is required to act in good faith with regard~~
110 ~~to the purposes of the trust and the interests of the beneficiaries. The holder of a~~
111 ~~power to direct is liable for any loss that results from breach of a fiduciary duty.~~

112

113 **736.1008 Limitations on proceedings against trustees.—**

114 (1) Except as provided in subsection (2), all claims by a beneficiary against a
115 trustee for breach of trust are barred as provided in chapter 95 as to:

116 (a) All matters adequately disclosed in a trust disclosure document
117 issued by the trustee or a trust director, with the limitations period beginning
118 on the date of receipt of adequate disclosure.

119 (b) All matters not adequately disclosed in a trust disclosure document
120 if the trustee has issued a final trust accounting and has given written notice

121 to the beneficiary of the availability of the trust records for examination and
122 that any claims with respect to matters not adequately disclosed may be
123 barred unless an action is commenced within the applicable limitations
124 period provided in chapter 95. The limitations period begins on the date of
125 receipt of the final trust accounting and notice.

126 (2) Unless sooner barred by adjudication, consent, or limitations, a
127 beneficiary is barred from bringing an action against a trustee for breach of trust
128 with respect to a matter that was adequately disclosed in a trust disclosure
129 document unless a proceeding to assert the claim is commenced within 6 months
130 after receipt from the trustee or a trust director of the trust disclosure document or a
131 limitation notice that applies to that disclosure document, whichever is received
132 later.

133 (3) When a trustee has not issued a final trust accounting or has not given
134 written notice to the beneficiary of the availability of the trust records for
135 examination and that claims with respect to matters not adequately disclosed may
136 be barred, a claim against the trustee for breach of trust based on a matter not
137 adequately disclosed in a trust disclosure document is barred as provided in chapter
138 95 and accrues when the beneficiary has actual knowledge of:

139 (a) The facts upon which the claim is based, if such actual knowledge
140 is established by clear and convincing evidence; or

141 (b) The trustee’s repudiation of the trust or adverse possession of trust
142 assets.

143 Paragraph (a) applies to claims based upon acts or omissions occurring on or after
144 July 1, 2008. A beneficiary’s actual knowledge that he or she has not received a
145 trust accounting does not cause a claim to accrue against the trustee for breach of
146 trust based upon the failure to provide a trust accounting required by s. 736.0813 or
147 former s. 737.303 and does not commence the running of any period of limitations
148 or laches for such a claim, and paragraph (a) and chapter 95 do not bar any such
149 claim.

150 (4) As used in this section, the term:

151 (a) “Trust disclosure document” means a trust accounting or any other
152 written report of the trustee or a trust director. A trust disclosure document
153 adequately discloses a matter if the document provides sufficient
154 information so that a beneficiary knows of a claim or reasonably should
155 have inquired into the existence of a claim with respect to that matter.

156 (b) “Trust accounting” means an accounting that adequately discloses
157 the information required by and that substantially complies with the
158 standards set forth in s. 736.08135.

159 (c) “Limitation notice” means a written statement of the trustee or a
160 trust director that an action by a beneficiary ~~against the trustee~~ for breach of

161 trust based on any matter adequately disclosed in a trust disclosure document
162 may be barred unless the action is commenced within 6 months after receipt
163 of the trust disclosure document or receipt of a limitation notice that applies
164 to that trust disclosure document, whichever is later. A limitation notice may
165 but is not required to be in the following form: “An action for breach of trust
166 based on matters disclosed in a trust accounting or other written report of the
167 trustee or a trust director may be subject to a 6-month statute of limitations
168 from the receipt of the trust accounting or other written report. If you have
169 questions, please consult your attorney.” . . .

171 **Part XIV: DIRECTED TRUSTS**

172 [736.1401 SHORT TITLE](#)

173 [736.1402 DEFINITIONS](#)

174 [736.1403 APPLICATION; PRINCIPAL PLACE OF ADMINISTRATION](#)

175 [736.1405 EXCLUSIONS](#)

176 [736.1406 POWERS OF TRUST DIRECTOR](#)

177 [736.1407 LIMITATIONS ON TRUST DIRECTOR](#)

178 [736.1408 DUTY AND LIABILITY OF TRUST DIRECTOR](#)

179 [736.1409 DUTY AND LIABILITY OF DIRECTED TRUSTEE](#)

180 [736.1410 DUTY TO PROVIDE INFORMATION](#)

181 [736.1411 NO DUTY TO MONITOR, INFORM, OR ADVISE](#)

182 [736.1412 APPLICATION TO COTRUSTEE](#)

183 [736.1413 LIMITATION OF ACTION AGAINST TRUST DIRECTOR](#)

184 736.1414 DEFENSES IN ACTION AGAINST TRUST DIRECTOR

185 736.1415 JURISDICTION OVER TRUST DIRECTOR

186 736.1416 OFFICE OF TRUST DIRECTOR

187 736.1418 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL

188 COMMERCE ACT

189 SECTION 19. REPEALS; CONFORMING AMENDMENTS

190 SECTION 20. EFFECTIVE DATE

191

192 **736.1401 SHORT TITLE.** — This part may be cited as the Florida Uniform
193 Directed Trust Act.

194

195 **736.1403 APPLICATION; PRINCIPAL PLACE OF**
196 **ADMINISTRATION.—**

197 (1) This part applies to a trust, whenever created, that has its principal place
198 of administration in this state, subject to the following rules:

199 (a) If the trust was created before [the effective date of this part], this
200 part applies only to a decision or action occurring on or after the effective date of
201 this part.

202 (b) If the principal place of administration of the trust is changed to
203 this state on or after [the effective date of this part], this part applies only to a
204 decision or action occurring on or after the date of the change.

205 (2) In addition to the provisions of s. 736.0108, in a directed trust, terms of

206 the trust which designate the principal place of administration of the trust in
207 Florida are valid and controlling if a trust director’s principal place of business is
208 located in or a trust director is a resident of Florida.

209

210 **736.1405 EXCLUSIONS. —**

211 (1) In this section, “power of appointment” means a power that enables a
212 person acting in a nonfiduciary capacity to designate a recipient of an ownership
213 interest in or another power of appointment over trust property.

214 (2) Unless the terms of a trust expressly provide otherwise by specific
215 reference to this Part XIV or this s. 736.1405(2), this part does not apply to:

- 216 (a) a power of appointment;
- 217 (b) a power to appoint or remove a trustee or trust director;
- 218 (c) a power of a settlor over a trust while it is revocable by that settlor;
- 219 (d) a power of a beneficiary over a trust to the extent the exercise or
220 nonexercise of the power affects the beneficial interest of:

- 221 1. the beneficiary; or
- 222 2. another beneficiary represented by the beneficiary under s.
223 736.0301 through s. 736.0305 with respect to the exercise or nonexercise of the
224 power;

225 (e) a power over a trust if the terms of the trust provide that the power

226 is held in a nonfiduciary capacity, and

227 1. the power must be held in a nonfiduciary capacity to achieve
228 the settlor's tax objectives under the United States Internal Revenue Code of 1986,
229 as amended, and regulations issued thereunder, as amended; or

230 2. it is a power to reimburse the settlor for all or a part of the
231 settlor's income tax liabilities attributable to the income of the trust; or

232 (f) a power to add or to release a power under the trust instrument if
233 the power subject to addition or release causes the settlor to be treated as the owner
234 of or any portion of the trust for federal income tax purposes.

235 (3) Unless the terms of a trust provide otherwise, a power granted to a
236 person other than a trustee:

237 (a) to designate a recipient of an ownership interest in trust property,
238 including a power to terminate a trust, is a power of appointment and not a power
239 of direction; and

240 (b) to create, modify or terminate a power of appointment, is a power
241 of direction and not a power of appointment, except a power to create a power of
242 appointment exercisable only as adjunct to and part of the exercise of a power of
243 appointment.

244

245 **736.1406 POWERS OF TRUST DIRECTOR. —**

246 (1) Subject to s. 736.1407, the terms of a trust may grant a power of
247 direction to a trust director.

248 (2) A power of direction includes only those powers granted by the terms of
249 the trust.

250 (3) Unless the terms of a trust provide otherwise:

251 (a) a trust director may exercise any further power appropriate to the
252 exercise or nonexercise of a power of direction granted to the trust director under
253 subsection (1); and

254 (b) trust directors with joint powers must act by majority decision.

255

256 **736.1407 LIMITATIONS ON TRUST DIRECTOR.**— A trust director is
257 subject to the same rules as a trustee in a like position and under similar
258 circumstances in the exercise or nonexercise of a power of direction or further
259 power under s. 736.1406(3)(a) regarding:

260 (1) a payback provision in the terms of a trust necessary to comply with the
261 reimbursement requirements of Medicaid law in Section 1917 of the Social
262 Security Act, 42 U.S.C. Section 1396p(d)(4)(A)[, as amended][, and regulations
263 issued thereunder, as amended]; and

264 (2) a charitable interest in the trust, including notice regarding the interest to
265 the Attorney General.

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736.1408 DUTY AND LIABILITY OF TRUST DIRECTOR.—

(1) Subject to subsection (2), with respect to a power of direction or further power under s. 736.1406(3)(a):

(a) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

1. if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

2. if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(b) the terms of the trust may vary the trust director’s duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this part to provide health care in the ordinary course of the trust director’s business or practice of a profession, to the extent the trust director acts in that capacity the trust director has no duty or liability under this part.

(3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

286

287 **736.1409 DUTY AND LIABILITY OF DIRECTED TRUSTEE. —**

288 (1) Subject to subsection (2), a directed trustee shall take reasonable action
289 to comply with a trust director's exercise or nonexercise of a power of direction or
290 further power under s. 736.1406(3)(a) and the trustee is not liable for such
291 reasonable action.

292 (2) A directed trustee must not comply with a trust director's exercise or
293 nonexercise of a power of direction or further power under s. 736.1406(3)(a) to the
294 extent that by complying the trustee would engage in willful misconduct.

295 (3) An exercise of a power of direction under which a trust director may
296 release a trustee or another trust director from liability for breach of trust is not
297 effective if:

298 (a) the breach involved the trustee's or other director's willful
299 misconduct;

300 (b) the release was induced by improper conduct of the trustee or
301 other director in procuring the release; or

302 (c) at the time of the release, the trust director did not know the
303 material facts relating to the breach.

304 (4) A directed trustee that has reasonable doubt about its duty under this
305 section may apply to the court for instructions, with attorney fees and costs to be

306 paid from assets of the trust in the manner provided in this code.

307 (5) The terms of a trust may impose a duty or liability on a directed trustee
308 in addition to the duties and liabilities under this part.

309

310 **736.1410 DUTY TO PROVIDE INFORMATION. —**

311 (1) Subject to s. 736.1411, a trustee shall provide information to a trust
312 director to the extent the information is reasonably related both to:

313 (a) the powers or duties of the trustee; and

314 (b) the powers or duties of the trust director.

315 (2) Subject to s. 736.1411, a trust director shall provide information to a
316 trustee or another trust director to the extent the information is reasonably related
317 both to:

318 (a) the powers or duties of the trust director; and

319 (b) the powers or duties of the trustee or other trust director.

320 (3) A trustee that acts in reliance on information provided by a trust director
321 is not liable for a breach of trust to the extent the breach resulted from the reliance,
322 unless by so acting the trustee engages in willful misconduct.

323 (4) A trust director that acts in reliance on information provided by a trustee
324 or another trust director is not liable for a breach of trust to the extent the breach
325 resulted from the reliance, unless by so acting the trust director engages in willful

326 misconduct.

327 (5) A trust director shall provide information within the trust director's
328 knowledge or control to a qualified beneficiary upon a written request of a
329 qualified beneficiary to the extent the information is reasonably related to the
330 powers or duties of the trust director.

331

332 **736.1411 NO DUTY TO MONITOR, INFORM, OR ADVISE. —**

333 (1) Notwithstanding s. 736.1409(1), unless the terms of a trust provide
334 otherwise:

335 (a) a trustee does not have a duty to:

336 1. monitor a trust director; or

337 2. inform or give advice to a settlor, beneficiary, trustee, or trust
338 director concerning an instance in which the trustee might have acted differently
339 than the trust director; and

340 (b) by taking an action described in paragraph (a), a trustee does not
341 assume the duty excluded by paragraph (a).

342 (2) Notwithstanding s. 736.1408(1), unless the terms of a trust provide
343 otherwise:

344 (a) a trust director does not have a duty to:

345 1. monitor a trustee or another trust director; or

346 2. inform or give advice to a settlor, beneficiary, trustee, or
347 another trust director concerning an instance in which the trust director might have
348 acted differently than a trustee or another trust director; and

349 (b) by taking an action described in paragraph (a), a trust director does
350 not assume the duty excluded by paragraph (a).

351

352 **736.1412 APPLICATION TO COTRUSTEE.—**

353 (1) The terms of a trust may provide for the appointment of more than one
354 trustee but confer upon one or more of the trustees, to the exclusion of the others,
355 the power to direct or prevent specified actions of the trustees.

356 (2) The excluded trustees shall act in accordance with the exercise of the
357 power in the manner, and with the same duty and liability, as a directed trustee
358 with respect to a trust director's power of direction under s. 736.1409 through s.
359 736.1411.

360 (3) The trustee or trustees having the power to direct or prevent actions of
361 the excluded trustees shall be liable to the beneficiaries with respect to the exercise
362 of the power as if the excluded trustees were not in office and shall have the
363 exclusive obligation to account to and to defend any action brought by the
364 beneficiaries with respect to the exercise of the power.

365

366 **736.1413 LIMITATION OF ACTION AGAINST TRUST DIRECTOR. —**

367 (1) An action against a trust director for breach of trust must be commenced
368 within the same limitation period as under s. 736.1008 an action for breach of trust
369 against a trustee in a like position and under similar circumstances.

370 (2) A trust accounting or any other written report of a trustee or a trust
371 director has the same effect on the limitation period for an action against a trust
372 director for breach of trust that such trust accounting or written report would have
373 under s. 736.1008 in an action for breach of trust against a trustee in a like position
374 and under similar circumstances.

375

376 **736.1414 DEFENSES IN ACTION AGAINST TRUST DIRECTOR. —** In an
377 action against a trust director for breach of trust, the trust director may assert the
378 same defenses a trustee in a like position and under similar circumstances could
379 assert in an action for breach of trust against the trustee.

380

381 **736.1415 JURISDICTION OVER TRUST DIRECTOR. —**

382 (1) By accepting appointment as a trust director of a trust subject to this part,
383 the trust director submits to the personal jurisdiction of the courts of this state
384 regarding any matter related to a power or duty of the trust director.

385 (2) This section does not preclude other methods of obtaining jurisdiction

386 over a trust director.

387

388 **736.1416 OFFICE OF TRUST DIRECTOR.—**

389 (1) Unless the terms of a trust provide otherwise, the rules applicable to a
390 trustee apply to a trust director regarding the following matters to the extent of the
391 powers, duties, and office of the trust director:

392 (a) role of court under s.736.0201;

393 (b) proceedings for review of employment of agents and review of
394 compensation of trustee and employees of a trust under s. 736.0206;

395 (c) representation by holder of power of appointment under s.
396 736.0302(4);

397 (d) designated representative under s. 736.0306(2);

398 (e) requirements for creation of a trust under s. 736.0402(3);

399 (f) as to allowing application by the trust director for judicial
400 modification, termination, combination or division under ss. 736.04113,
401 736.04114, 736.04115, or 736.0414(2) if the trust director is so authorized by the
402 terms of the trust;

403 (g) discretionary trusts and the effect of a standard under s. 736.0504;

404 (h) creditors' claims against settlor under s. 736.0505(1)(c);

405 (i) trustee's duty to pay expenses and obligations of settlor's estate

406 under s. 736.05053(4);

407 (j) acceptance under s. 736.0701;

408 (k) giving of bond to secure performance under s. 736.0702;

409 (l) vacancy and appointment of successor under s. 736.704;

410 (m) resignation under s. 736.0705;

411 (n) removal under s. 736.706;

412 (o) reasonable compensation under s. 736.0708;

413 (p) reimbursement of expenses under s. 736.0709;

414 (q) discretionary power and tax savings provisions under s. 736.0814;

415 (r) administration pending outcome of contest or other proceeding

416 under s. 736.08165;

417 (s) applicability of chapter 518 under s. 736.0901;

418 (t) nonapplication of prudent investor rule under s. 736.0902;

419 (u) remedies for breach of trust under s. 736.1001;

420 (v) damages for breach of trust under s. 736.1002;

421 (w) damages in absence of breach under s. 736.1003;

422 (x) attorney's fees and costs under s. 736.1004;

423 (y) trustee's attorney fees under ss. 736.1007 (5) through 736.1007(7);

424 (z) reliance on trust instrument under s. 736.1009;

425 (aa) exculpation under s. 736.1011;

426 (bb) events affecting administration under s. 736.1010;

427 (cc) beneficiary's consent, release, or ratification under s. 736.1012;

428 and

429 (dd) limitations on actions against certain trusts under s. 736.1014.

430 (2) If a person has not accepted a trust directorship under the terms of the
431 trust or under s. 736.0701 or a trustee, settlor, or a qualified beneficiary of the trust
432 is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified
433 beneficiary of the trust may make a written demand on a person designated to
434 serve as a trust director, with a written copy to the trustees, to accept or confirm
435 prior acceptance of the trust directorship in writing. A written acceptance, written
436 acknowledgment of prior acceptance, or written declination of the trust
437 directorship, shall be delivered by the designated trust director within 60 days of
438 receipt of such demand to all trustees, qualified beneficiaries, and the settlor if
439 living.

440

441 **EFFECTIVE DATE.** The provisions of this Act take effect July 1, 2020.

442 WPB_ACTIVE 8998996.1

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By M. Travis Hayes, Chair, Probate Law and Procedure Committee of the Real Property Probate & Trust Law Section

Address 5551 Ridgewood Drive, #501, Naples, FL 34108
Telephone: (239) 514-1000

Position Type Probate Law and Procedure Committee, RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

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Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: medenfield@deanmead.com

Appearances

Before Legislators (SAME)

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

Meetings with

Legislators/staff (SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support for proposed legislation to improve notice of administration to surviving spouse to include notice that an extension of the deadline for taking an elective share may be requested prior to the expiration of the deadline for making the election, including changes to Fla. Stat. § 733.212(2)(e)

Reasons For Proposed Advocacy:

The Notice of Administration provided to a surviving spouse says that an election to take an elective share must be filed within a specific time period, but fails to mention that the deadline for filing the election may be extended upon request. Because the current notice fails to mention that an extension may be requested prior to the deadline for making the election, the notice is incomplete, if not inaccurate and misleading. By requiring the Notice of Administration that is served on the surviving spouse to include an express reference to F.S. §732.2135(2) and the availability of an extension of the deadline, the proposed legislation will provide clarity and properly notify the surviving spouse of the procedures for pursuing his or her elective share rights. Please see the attached White Paper.

WHITE PAPER

PROPOSED REVISIONS TO §733.212(2)(e)

I. SUMMARY

The purpose of the proposed change is to improve the notice provided to a surviving spouse, or an attorney in fact or guardian of the property of a surviving spouse, regarding the potential availability of an extension of time for making an election to take an elective share. The proposed change would amend §733.212(2)(e) to require that the Notice of Administration served on a surviving spouse (or his or her agent) include a reference to the extension relief available under §732.2135(2) for timely making the elective share election. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

Currently, §733.212(2), Florida Statutes, includes a requirement that the Notice of Administration state:

(e) That an election to take an elective share must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.

When an election is made by the surviving spouse's guardian or attorney in fact, court approval for making the election is required.

732.2125. Right of election; by whom exercisable.

The right of election may be exercised:

- (1) By the surviving spouse.
- (2) With approval of the court having jurisdiction of the probate proceeding by an attorney in fact or a guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

§732.2135 recognizes the possibility of a petition for extension of time to make the election. 732.2135 also provides for a tolling of time upon the filing of a petition for extension or a petition for approval to make the election.

732.2135. Time of election; extensions; withdrawal.--

- (4) A petition for an extension of the time for making the election or for approval to make the election shall toll the time for making the election.

2017 Legislative Changes

During the 2017 legislative session, § 732.2135 was amended to recognize that a will contest or other proceeding relating to the construction or reformation of the will could affect the amount passing to a surviving spouse in a probate proceeding, which in turn could affect the amount of the elective share due a surviving spouse.

732.2135 Time of election; extensions; withdrawal.

- (1) Except as provided in subsection (2), the election must be filed on or before the earlier of the date that is 6 months after the date of service of a copy of the notice of administration on the surviving spouse, or an attorney in fact or guardian of the property of the surviving spouse, or the date that is 2 years after the date of the decedent's death.
- (2) Within the period provided in subsection (1). or 40 days after the date of termination of any proceeding which affects the amount the spouse is entitled to receive under s. 732.2075(1), whichever is later, but no more than 2 years after the decedent's death, the surviving spouse or an attorney in fact or guardian of the property of the surviving spouse **may petition the court for an extension of time for making an election.** For good cause shown, the court may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

[Emphasis added]

The Problem

The importance of following the substantive content of the Notice of Administration relates to the validity of the notice. It is arguable that a Notice of Administration which does not satisfy the requirements of the statute is not effective notice and the time for asserting rights does not begin to run until a valid notice is served, including the surviving spouse's assertion of elective share rights.

Does the current substantive content of the Notice of Administration properly advise a surviving spouse of the right to *request an extension of time* to make an elective share election

after the conclusion of a proceeding that affects the amount of the surviving spouse's elective share entitlement, such as a will contest or proceedings to reform or construe a will?

§ 733.212(2)(e) is currently incomplete, if not inaccurate and misleading, in its failure to refer to the possibility or process for extending the time to file an election under §732.2135(2). Under 732.2135(2), eligibility for extension is for “good cause”, which is quite broad, and is not necessarily limited to a case where the extension is necessary due to a will contest or other “proceeding which affects the amount the spouse is entitled to receive under 732.2075(1).” The concern is amplified by the fact that 733.212(2)(c) includes a reference to an extension for challenging the validity of the will, venue, or jurisdiction; and 733.212(2)(d) includes a reference to the “automatic” extension for filing for exempt property. But 733.212(2)(e) is silent on the possibility of an extension when it comes to making the election to take an elective share.

III. EFFECT OF PROPOSED CHANGE

The proposed amendment to §733.212(2)(e) would provide more clarity and improve the quality of notice to the surviving spouse regarding the timeliness of making the elective share election. This is accomplished by requiring the Notice of Administration to include an express reference to §732.2135(2) and its procedures for petitioning the court for an extension of time to make the elective share election.

The Florida Bar Probate Rules Committee and the Florida Supreme Court adhere to the policy that Florida Statutes contain the substantive law and the Probate Rules contain procedure. As a result, the Probate Rules describe deadlines affecting substantive rights as occurring “within the time required by law.” This not only separates substantive matters from procedural matters, but also avoids the potential for inconsistency when a statute is changed and the corresponding rule is not immediately updated. The corresponding Probate Rule relating to 733.212 and the Notice of Administration is Rule 5.240. Because 5.240(b)(5) states that “an election to take an elective share must be filed within the time provided by law,” the proposed change to 733.212(2)(e) will not disrupt or require revisions to the Probate Rules.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct economic impact on the private sector.

VI. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by the proposal.

VII. OTHER INTERESTED PARTIES

N/A

WPB_ACTIVE 8998936.1

1 A bill to be entitled

2 An act relating to the Notice of Administration served in
3 a probate proceeding and the contents of the notice
4 relating to a surviving spouse's elective share, amending
5 section 733.212(2)(e).

6 Be it Enacted by the Legislature of the State of Florida:

7 Section 1. Section 733.212(2)(e), Florida
8 Statutes, is amended to read:

9 733.212. Notice of Administration; filing of
10 objections.-

11 (2) The notice shall state:

12 (e) That, unless an extension is granted under s.
13 732.2135(2), an election to take an elective share must be
14 filed on or before the earlier of the date that is 6 months
15 after the date of service of a copy of the notice of
16 administration on the surviving spouse, or an attorney in
17 fact or a guardian of the property of the surviving spouse,
18 or the date that is 2 years after the date of the
19 decedent's death.

20 Section 2. This bill shall take effect on July 1, 2019
21 and shall apply to all notices served after its effective
22 date.

23 WPB_ACTIVE 8998934.1

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Christopher Smart, Esq., Chair, Title Issues and Standards Committee of the Real Property Probate and Trust Law Section (RPPTL Approval December _____, 2018)

Address 4221 W. Boy Scout Blvd., Tampa, Florida 33607
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Position Type Title Issues and Standards Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

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Board & Legislation Committee Appearance

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Appearances

Before Legislators (SAME)

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

Meetings with

Legislators/staff (SAME)

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

PROPOSED ADVOCACY

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

If Applicable,

List The Following N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support _____

Oppose _____

Tech Asst. _____

Other _____

Proposed Wording of Position for Official Publication:

Supports proposed legislation to create Section 95.2311, which would establish a method of correcting obvious typographical errors in legal descriptions contained in real property deeds.

Reasons For Proposed Advocacy:

Real estate transactions are delayed because of obvious typographical error in legal descriptions. This statute when applicable would make it unnecessary to obtain a corrective deed or to bring a judicial action to reform deeds containing obvious typographical erroneous.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position [NONE?]
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others

(May attach list if more than one)

[NONE?]
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

[List here other Bar sections, committees or attorney organizations]
(Name of Group or Organization) (Support, Oppose or No Position)

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

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

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

WHITE PAPER

PROPOSED CREATION OF SECTION 95.2311 FLORIDA STATUTES

Prepared by the Real Property, Probate and Trust Law Section of the Florida Bar

Title Issues and Standards Committee

I. SUMMARY

This bill would create a new section in the Florida Statutes, Section 95.2311. It is intended to cure obvious typographical errors in legal descriptions and thereby eliminate the need to bring law suits to quiet title when obvious errors are found in the legal descriptions of recorded deeds. The idea behind the statute is that the grantor intended to convey title to real property to which she held an interest at the time of the deed. The statute excludes situations in which the grantor owned other property in the same subdivision, condominium, or cooperative within the past five years immediately prior to executing the deed containing the erroneous legal description. This exclusion safeguards against the statute being misapplied in situations where the grantor's intent could have been to convey another property.

The bill provides that a curative notice which identifies the intended and correct legal description must be recorded.

The proposed bill has a narrow focus in that it applies only to obvious errors in deeds and does not apply to transfers of title by judicial order or to quit claim deeds. It also does not apply to deeds that contain metes and bounds legal descriptions. Finally, the bill states that the deed containing the legal description may have only one error or omission, which will further help to ensure that the bill addresses only the most obvious typographical errors.

There are already several laws on the books in Florida which provide curative periods for correcting errors in recorded instruments. Florida also already has an adverse possession law. At least five states (Georgia, North Carolina, Ohio, Texas and Virginia) have similar laws which in some cases are significantly more forgiving than this proposal. This bill would make such titles that fall within the parameters of the bill marketable without a costly and time-consuming lawsuit to quiet title. It will expedite the real estate transfers and benefit the parties involved in the transaction. Finally, it gives effect to the intent of the original parties to the deed.

II. SECTION-BY-SECTION ANALYSIS

A. Sub-Section 95.2311 (1) states the definitions that are used in the proposed statute. The three terms defined are erroneous deed, intended real property, and scrivener's error. Quit claim deeds are excluded from the definition of erroneous deed and are therefore not covered by this bill. The definition of scrivener's error lists the limited number of legal description errors and omissions covered by the proposed statute.

(1) Definitions:

(a) “Erroneous deed” means any containing a scrivener’s error, except quit claim deeds prepared by the grantee which on their face show that only minimum documentary stamps were paid.

(b) “Intended real property” means the real property vested in the grantor and intended to be conveyed by the grantor in the erroneous deed.

(c) “Scrivener’s error” means not more than one of the following errors or omissions in the legal description of the intended real property:

(1) An error or omission in no more than one of the lot or block identifications of a recorded platted lot, or two errors if the lot and block identifications are transposed; or

(2) An error or omission in no more than one of the unit, building, or phase identifications of a condominium or cooperative unit; or

(3) An error or omission in no more than one of the name or recording information of the plat, condominium declaration, or cooperative covenants; or

(4) An erroneous identification of the county in which the intended real property is located; or

(5) An error or omission in no more than one of a directional designation or numerical fraction of a tract of land that is described as a fractional portion of a Section, Township or Range. An error or omission in the directional description and numerical fraction of the same call shall be considered one error.

B. Sub-Section 95.2311 (2) establishes that an erroneous deed will be held to convey title to the intended real property as if there had been no scrivener’s error.

(2) Subject to subsections (3) and (4) of this section, the erroneous deed will be held to convey title to the intended real property as if there had been no scrivener’s error; and each subsequent deed containing the identical scrivener’s error will be held to convey title to the intended real property as if there had been no such identical scrivener’s error.

C. Sub-Section 95.2311 (3) states the criteria for the statute to have effect.

(3) Subsection (2) only applies if:

(a) The intended real property was owned by the grantor of the first erroneous deed at the time the first erroneous deed was executed.

(b) The grantor did not own any property other than the intended real property in the subdivision, condominium, or cooperative described in the erroneous deed at any time within five years prior to the date that the erroneous deed was executed.

(c) The intended real property is not described by a metes and bounds legal description.

(d) A curative notice in substantially the same form as set forth in subsection (6) is recorded in the Official Records of the county in which the intended real property is located, evidencing the intended real property to be conveyed by the grantor.

D. Sub-Section 95.2311 (5) establishes the form of the Curative Notice. The scrivener's affidavit identifies the recording information, and legal description of both the erroneous described property and the intended real property to be conveyed. It also includes an assertion by the scrivener as to the legal description of the real property that was intended to be conveyed.

(4) *Curative Notice. The Curative Notice must be in substantially the following form:*

*Curative Notice, Per Sec. 95.2311, F.S.
Scrivener's Error in Legal Description*

The undersigned does hereby swear and affirm:

1. *The deed which transferred title from _____, to _____, dated _____, and recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Official Records of _____ County, Florida (herein after referred to as "original erroneous deed"), and contained the following erroneous legal description:*

[insert erroneous legal description]

[if required]

2. *The deed transferring title from _____ to _____ and recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Official Records of _____ County, Florida, contained the same erroneous legal description described in the original erroneous deed.*

[insert the erroneous legal description] [repeat paragraph 2 for each subsequent deed as necessary]

3. *This notice is made to establish that the real property described as: [insert legal description of the intended real property] (hereinafter referred to as the "intended real property") was the real property that was to have been conveyed in the original erroneous deed.*

4. *I have examined the Official Records of the county in which the intended real property is located for the requisite period of time and have determined the following:*

(a) *The Deed dated _____, and recorded on _____ in O.R. Book _____, Page _____ and/or Instrument Number _____, Official Records of _____ County, Florida, establishes that the intended real property was owned by the grantor of the original erroneous deed at the time the original erroneous deed was executed.*

(b) *The property described in the original erroneous deed was not owned by the grantor named in the original erroneous deed on the date of the original erroneous deed nor within the five (5) years immediately preceding the date when the original erroneous deed was executed, and accordingly, grantor named in the original erroneous deed did not have the authority to convey the property described in the original erroneous deed.*

5. Pursuant to the provisions of Sec. 95.2311, it shall be deemed the original erroneous deed conveyed the intended real property to the grantee named in the original erroneous deed.

Signature: _____
Printed Name: _____

STATE OF _____
COUNTY OF _____

Sworn to under oath, subscribed and acknowledged before me this ____ day of _____, 20 ____ by _____, who is/are personally known to me or who has/have produced _____ as identification.

[affix seal with Notary name and
Commission number/expiration date]

Notary Signature: _____

F. Sub-Section 95.2311(5) states that the corrective notice shall be recorded in the county in which the intended real property is located.

(5) The Recording Office of the County where the intended real property is located will record the corrective notice evidencing the intent of the grantor in the erroneous deed to convey the intended real property to the grantee in the erroneous deed and a likewise intent for each subsequent deed.

G. Sub-Section 95.2311 (6) states that the corrective notice operates as the correction of the erroneous deed and relates back to the date of the recordation of the erroneous deed.

(6) The corrective notice recorded pursuant to this section operates as a correction of the erroneous deed, and the correction relates back to the date of recordation of the erroneous deed as if the erroneous deed and all subsequent deeds containing the identical scrivener's error contained the legal description for the intended real property when recorded.

H. Sub-Section 95.2311 (7) states that the remedies under this section are not exclusive.

(7) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of Florida other than this section.

1 A bill to be entitled

2 An act relating Chapter 95; providing for curative procedures to correct certain
3 errors in legal descriptions in deeds; amending Chapter 95, F.S.; and providing for an
4 effective date.

5
6 Be It Enacted by the Legislature of the State of Florida

7
8 Section 1. Section 95.2311, Florida Statutes, is created to read:

9 **95.2311 – Description Errors in Deeds; Curative Procedures**

10 (1) Definitions:

11 (a) “Erroneous deed” means any deed containing a scrivener’s error, except quit
12 claim deeds prepared by the grantee which on their face show that only minimum
13 documentary stamps were paid.

14 (b) “Intended real property” means the real property vested in the grantor and
15 intended to be conveyed by the grantor in the erroneous deed.

16 (c) “Scrivener’s error” means not more than one of the following errors or omissions
17 in the legal description of the intended real property:

18 (1) An error or omission in no more than one of the lot or block identifications of
19 a recorded platted lot, or two errors if the lot and block identifications are
20 transposed; or

21 (2) An error or omission in no more than one of the unit, building, or phase
22 identifications of a condominium or cooperative unit; or

23 (3) An error or omission in no more than one of the name or recording
24 information of the plat, condominium declaration, or cooperative covenants; or

25 (4) An erroneous identification of the county in which the intended real property
26 is located; or

27 (5) An error or omission in no more than one of a directional designation or
28 numerical fraction of a tract of land that is described as a fractional portion of a
29 Section, Township or Range. An error or omission in the directional description
30 and numerical fraction of the same call shall be considered one error.

31 (2) Subject to subsections (3) and (4) of this section, the erroneous deed will be held to
32 convey title to the intended real property as if there had been no scrivener’s error; and each
33 subsequent deed containing the identical scrivener’s error will be held to convey title to the
34 intended real property as if there had been no such identical scrivener’s error.

35 (3) Subsection (2) applies only if:

36 (a) The intended real property was owned by the grantor of the first erroneous deed at
37 the time the first erroneous deed was executed.

38 (b) The grantor did not own any property other than the intended real property in the
39 subdivision, condominium, or cooperative described in the erroneous deed at any time
40 within five years prior to the date that the erroneous deed was executed.

41 (c) The intended real property is not described by a metes and bounds legal
42 description.

43 (d) A curative notice in substantially the same form as set forth in subsection (6) is
44 recorded in the Official Records of the county in which the intended real property is
45 located, evidencing the intended real property to be conveyed by the grantor.

46 (4) Curative Notice. A curative notice must be in substantially the following form:

Curative Notice, Per Sec. 95.2311, F.S.
Scrivener's Error in Legal Description

The undersigned does hereby swear and affirm:

1. The deed which transferred title from _____, to _____, dated _____, and recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Official Records of _____ County, Florida (herein after referred to as "original erroneous deed"), and contained the following erroneous legal description:

[insert erroneous legal description]

[if required]

2. The deed transferring title from _____ to _____ and recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Official Records of _____ County, Florida, contained the same erroneous legal description described in the original erroneous deed.

[insert the erroneous legal description][repeat paragraph 2 for each subsequent deed as necessary]

3. This notice is made to establish that the real property described as: [insert legal description of the intended real property] (hereinafter referred to as the "intended real property") was the real property that was to have been conveyed in the original erroneous deed.

4. I have examined the Official Records of the county in which the intended real property is located for the requisite period of time and have determined the following:

(a) The Deed dated _____, and recorded on _____ in O.R. Book _____, Page _____ and/or Instrument Number _____, Official Records of _____ County, Florida, establishes that the intended real property was owned by the grantor of the original erroneous deed at the time the original erroneous deed was executed.

(b) The property described in the original erroneous deed was not owned by the grantor named in the original erroneous deed on the date of the original erroneous deed nor within the five (5) years immediately preceding the date when the original erroneous deed was executed, and accordingly, grantor named in the original erroneous deed did not have the authority to convey the property described in the original erroneous deed.

5. Pursuant to the provisions of Sec. 95.2311, it shall be deemed the original erroneous deed conveyed the intended real property to the grantee named in the original erroneous deed.

Signature: _____

Printed Name:

STATE OF _____

COUNTY OF _____

Sworn to under oath, subscribed and acknowledged before me this ____ day of _____, 20 ____ by _____, who is/are personally known to me or who has/have produced _____ as identification.

[affix seal with Notary name and

Commission number/expiration date] Notary Signature: _____

(4) The Recording Office of the County where the intended real property is located will record the corrective notice evidencing the intent of the grantor in the erroneous deed to convey the intended real property to the grantee in the erroneous deed and a likewise intent for each subsequent deed.

(5) The corrective notice recorded pursuant to this section operates as a correction of the erroneous deed, and the correction relates back to the date of recordation of the erroneous deed as if the erroneous deed and all subsequent deeds containing the identical scrivener's error contained the legal description for the intended real property when recorded.

(6) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of Florida other than this section.

Section 2. This act shall take effect upon becoming a law.

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