

**Real Property, Probate and Trust Law Section
Executive Council Meeting
The Breakers Resort
Palm Beach, Florida
July 23, 2022
9:45 a.m.**

Agenda

- I. **Presiding** — *Sarah Butters, Chair*
- II. **Secretary's Report** — *Sancha Brennan, Secretary*
 1. Motion to approve the minutes of the June 4, 2022 meeting of the Executive Council held at the Hawks Cay Resort in Duck Key, FL. **p. 9**
 2. Meeting Attendance. **p. 27**
- III. **Chair's Report** — *Sarah Butters, Chair*
 1. Thank you to our Sponsors!
 2. Introduction and comments from Sponsors. **p. 39**
 3. Milestones.
 4. Interim Actions Taken by the Executive Committee.

Approval of request from the Fifth DCA for an amicus brief in the case of *Gursky v. Armer*. See report of the Amicus Committee for more information.
 5. **2022-2023 Executive Council Meetings. p. 42**
 6. General Comments of the Chair.
- IV. **Liaison with Board of Governors Report** — *Roland Sanchez Medina, Liaison*
- V. **Chair-Elect's Report** — *Katherine Frazier, Chair-Elect*
 1. 2023-2024 Executive Council meetings. **p. 43**
- VI. **Treasurer's Report** — *Jon Scuderi, Treasurer*

1. Statement of Current Financial Conditions. **p. 44**

VII. Director of At-Large Members Report — *Steven H. Mezer, Director*

VIII. CLE Seminar Coordination Report — *Angela Adams (Probate & Trust) and Lee A. Weintraub (Real Property), Co-Chairs*

1. Upcoming CLE programs and opportunities. **p. 45**

IX. Legislation Committee – *Wilhelmina F. Kightlinger (Real Property) and Larry Miller (Probate & Trust), Co-Chairs*

Action Item:

1. Legislative Consultant Contract approval.
Motion to (A) approve the Legislative Advisory Agreement with Dean, Dunbar, P.A. for the years beginning September 1, 2022 and ending August 31, 2024; and (B) expend Section funds in furtherance of the Agreement. **p. 46**

X. General Standing Division Report — *S. Katherine Frazier, Chair-Elect*

Information Items:

1. **Ad Hoc RTOD Committee** – *Christopher W. Smart and Steve Kotler, Co-Chairs*

Update on proposed RTODD legislation.

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

The Court has solicited amici curiae in the attached order in the *Gursky v. Armer et al* pending in the 5th DCA, with a deadline to file of August 1, 2022. **p. 51**

3. **Communications Committee** - *Michael V. Hargett, Chair* **p. 53**

4. **Fellows Committee** - *Christopher A. Sajdera and Angela K. Santos, Chairs*

Introduction of 2022-2024 Fellows: Sandra Boisrond, Jade Davis, Jeanette Mora, and Janaye Pieczynski

5. **Law School Mentoring & Programming Committee** – *Johnathan L. Butler and Kimberlee C. Smith, Co-Chairs*

Update on committee programming.

6. **Liaison with Clerks of Circuit Court** – *Laird A. Lile, Liaison*

Update on matters of interest.

7. **Membership and Inclusion Committee** – *S. Dresden Brenner, Chair*

Update on committee programming

8. **Professionalism and Ethics Committee** - *Andrew B. Sasso, Chair*

“Do ‘Z’ words belong in Bar Rules?” published in *The Florida Bar News*. p. 56

9. **Publications ActionLine Committee** – *Michael Bedke and Erin Finlen, Co-Chairs*

Update on matters of interest.

XI. **Real Property Law Division Report** — *Wm. Cary Wright, Division Director*

General Comments and Recognition of Division Sponsors.

Action Item:

1. **Title Issues and Standards Committee** – *Rebecca L.A. Wood, Chair*

Motion to approve revisions to Chapter 17 – Marketable Record Title Act (MRTA) of the Uniform Title Standards. p. 59

2. **Real Estate Leasing Committee** – *Christopher A. Sajdera, Chair*

Motion to: (A) Approve RPPTL Section position opposing legislation authorizing the use of security deposit replacement products (a/k/a fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices; (B) find such legislative position is within the purview of the RPPTL Section; and (C) expend such funds in support of the proposed legislative position. p. 90

3. **Real Property Litigation Committee** – *Manuel Farach, Chair*

Motion to: (A) approve amendments to §702.036, Fla. Stat. (2021) to include liens other than mortgage foreclosures, such as community association liens and construction liens, and to provide prevailing party attorneys’ fees in post-foreclosure litigation for redress of wrongful foreclosure judgments brought by junior lienholders improperly foreclosing senior liens; (B) find such legislative position is within the purview of the RPPTL Section; and (C) expend such funds in support of the proposed legislative position. p. 97

XII. Probate and Trust Law Division Report — *John C. Moran, Division Director*

General Comments and Recognition of Division Sponsors.

Action Item:

1. Joint Proposal – Estate and Trust Planning Committee – *Richard Sherrill, Chair* and **Probate Law and Procedure Committee** – *Theodore Kypreos, Chair*

Proposed legislation amending Fla. Stat. § 198.41 to suspend those provisions which govern the imposition, reporting, and collection of the Florida Estate Tax. **p. 108**

Motion to:

- (A) support proposed amendment to Fla. Stat. § 198.41 to suspend those provisions which govern the imposition, reporting, and collection of the Florida Estate Tax;
- (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.

XIII. Probate and Trust Law Division Committee Reports — *John Moran, Division Director*

- 1. **Ad Hoc ART Committee** — Alyse Reiser Comiter, Chair; Jack A. Falk and Sean M. Lebowitz, Co-Vice Chairs
- 2. **Ad Hoc Committee on Electronic Wills** — Frederick “Ricky” Hearn, Chair; Jenna G. Rubin, Vice Chairs
- 3. **Ad Hoc Guardianship Law Revision Committee** — Nicklaus J. Curley, Stacey B. Rubel and David C. Brennan, Co-Chairs; Sancha Brennan, Vice Chair
- 4. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** — Barry F. Spivey, Chair; Sean W. Kelley and Shelly Wald Harris, Co-Vice Chairs
- 5. **Asset Protection** — Michael Sneeringer, Chair; Richard R. Gans and Justin Savioli, Co-Vice-Chairs
- 6. **Attorney/Trust Officer Liaison Conference** — Mitchell A. Hipsman, Chair; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Michael Rubenstein, Gail G. Fagan, and Eammon W. Gunther, Co-Vice Chairs
- 7. **Charitable Planning and Exempt Organizations Committee** — Denise S. Cazobon, Chair; Kelly Hellmuth and Alyssa Razook Wan, Co-Vice-Chairs
- 8. **Elective Share Review Committee** — Jenna G. Rubin, Chair; Cristina Papanikos and Lauren Y. Detzel, Co-Vice-Chairs

9. **Estate and Trust Tax Planning** — Richard N. Sherrill, Chair; Al Stashis, Andrew Thompson and Sasha Klein, Co-Vice Chairs
10. **Guardianship, Power of Attorney and Advanced Directives** — Stacy B. Rubel, Chair; Elizabeth M. Hughes, Stephanie Cook, Caitlin Powell and Jacobeli Behar, Co-Vice Chairs
11. **IRA, Insurance and Employee Benefits** — Charles W. Callahan, III, Co-Chairs; Rebecca Bell and Rachel B. Oliver, Co-Vice-Chairs
12. **Liaisons with ACTEC** — Elaine M. Bucher, Tami F. Conetta, Thomas M. Karr, Charles I. Nash, L. Howard Payne and Diana S.C. Zeydel
13. **Liaisons with Elder Law Section** — Travis Finchum and Marjorie E. Wolasky
14. **Liaisons with Tax Section** — William R. Lane, Jr., Brian Malec and Brian C. Sparks
15. **Liaison with Professional Fiduciary Council** — Darby Jones
16. **OPPG Delegate** — Nick Curley
17. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Jolyon D. Acosta and Keith B. Braun, Co-Vice Chairs
18. **Probate and Trust Litigation** — J. Richard Caskey, Chair; Cady Huss and R. Lee McElroy, IV, Co-Vice Chairs
19. **Probate Law and Procedure** — Theodore S. Kypreos, Chair; Benjamin F. Diamond, Stacey Prince Troutman, and Grier Pressley, Co-Vice Chairs
20. **Trust Law** — Matthew H. Triggs, Chair; Jennifer J. Robinson, David J. Akins, Jenna G. Rubin, and Mary E. Karr, Co-Vice Chairs
21. **Wills, Trusts and Estates Certification Review Course** — Rachel Lunsford, Chair; J. Allison Archbold, Eric Virgil, and Jerome L. Wolf, Co-Vice Chairs

XIV. Real Property Law Division Committee Reports — *W. Cary Wright, Division Director*

1. **Ad Hoc Hayslip** – Brian Hoffman, Chair; Michael V. Hargett and James C. Russick, Co-Vice Chairs
2. **Attorney Banker Conference** — Salome J. Zikakis, Chair; Kristopher E. Fernandez, and R. James Robbins, Jr., Co-Vice Chairs
3. **Commercial Real Estate** — E. Ashley McRae, Chair; Brian Hoffman and Alexandra D. Gabel, Co-Vice Chairs
4. **Condominium and Planned Development** — Alex Dobrev and Allison L. Hertz, Co-Chairs; Russel Robbins, Vice Chair
5. **Condominium and Planned Development Law Certification Review Course** — Jane L. Cornett and Christine M. Ertl, Co-Chairs; Allison L. Hertz, Vice Chair
6. **Construction Law** — Sanjay Kurian, Chair; Bruce D. Partington and Elizabeth B. Ferguson, Co-Vice Chairs
7. **Construction Law Certification Review Course** — Gregg E. Hutt, Chair; Jason Quinterro and Scott P. Pence, Co-Vice Chairs
8. **Construction Law Institute** — Brad R. Weiss, Chair; Deborah B. Mastin and Trevor Arnold, Co-Vice Chairs
9. **Development & Land Use Planning** — Colleen C. Sachs and Lisa B. Van Dien, Co-Chairs; Jin Liu, Vice Chair

10. **Insurance & Surety** —Katherine L. Heckert, Chair; Debbie Crockett, Vice Chair
11. **Liaisons with FLTA** — Alan K. McCall, Melissa Jay Murphy, Alan B. Fields and James C. Russick
12. **Liaison with American College of Real Estate Lawyers (ACREL)** — Martin A.Schwartz and William P. Sklar
13. **Liaison with American College of Construction Lawyers (ACCL)** — George J. Meyer
14. **Liaison with Florida Realtors** – Trey Goldman

15. **Real Estate Certification Review Course** — Lloyd Granet, Chair; Martin S. Awerbach, Laura M. Licastro and Jason M. Ellison, Co-Vice Chairs
16. **Real Estate Leasing** —Christopher A. Sajdera, Chair; Kristen K. Jaiven and Ryan McConnell, Co-Vice Chairs
17. **Real Property Finance & Lending** — Jason M. Ellison, Chair; Deborah B. Boyd and Jin Liu, Co-Vice Chairs
18. **Real Property Litigation** — Manuel Farach, Chair; Amber E. Ashton, Amanda Kison and Shawn G. Brown, Co-Vice Chairs
19. **Real Property Problems Study** — Anne Q. Pollack, Chair; Susan K. Spurgeon, Reese Henderson and Brian W. Hoffman, Co-Vice Chairs
20. **Residential Real Estate and Industry Liaison**— Nicole M. Villarroel and Kristen K. Jaiven. Co-Chairs; James A. Marx and Rich McIver, Co-Vice Chairs
21. **Title Insurance and Title Insurance Industry Liaison**— Christopher W. Smart, Chair; Leonard F. Prescott, IV, Jeremy T. Cranford, and Michelle G. Hinden, Co-Vice Chairs
22. **Title Issues and Standards** — Rebecca L.A. Wood and Amanda K. Hersem, Co-Chairs; Robert M. Graham, Karla J. Staker and Melissa Scaletta, Co-Vice Chairs

XV. General Standing Division Committee Reports — *Katherine Frazier, General Standing Division Director and Chair-Elect*

1. **Ad Hoc Civil Rules Revisions** – Michael V. Hargett and Shawn Brown, Co-Chairs
2. **Ad Hoc RTOD** — Steve Kotler and Chris Smart, Co-Chairs; Jeff Goethe, Vice Chair
3. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
4. **Budget** — Jon Scuderi, Chair; Tae Kelley Bronner. Linda S. Griffin, and Pamela O. Price, Co-Vice Chairs
5. **Communications** – Michael V. Hargett, Chair; Laura Sundberg, Vice Chair
6. **CLE Seminar Coordination** — Lee A. Weintraub and Angela Adams, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Tatianna Brenes-Stahl, Silvia B. Rojas, and Stacy O. Kalmanson, Co-Vice Chairs
7. **Convention Coordination** —Deborah Boje, Chair; Tae Kelley Bronner and Yoshi Smith, Co-Vice Chairs
8. **Disaster and Emergency Preparedness and Response** —Colleen

- Sachs, Chair; Amy Beller and Michael Bedke, Co-Vice Chairs
9. **Fellows** — Christopher A. Sajdera and Angela Santos, Co-Chairs; Bridget Friedman and Terrance Harvey, Co-Vice Chairs
 10. **Homestead Issues Study** — Jeff Baskies, Chair; Shane Kelley, Jeremy Cranford and Burt Bruton, Co-Vice Chairs
 11. **Information Technology** — Hardy L. Roberts III, Chair; Alexander B. Dobrev, Jesse B. Friedman, Sean Lebowitz, and Jourdan Haynes, Co-Vice Chairs
 12. **Law School Mentoring & Programing** — Johnathan Butler and Kymberlee Curry Smith, Co-Chairs; Guy Storms Emerich, Lilleth Bailey and Kristine L. Tucker, Co-Vice Chairs
 13. **Legislation** — Larry Miller (Probate & Trust) and Wilhemina Kightlinger (Real Property), Co-Chairs; Travis Hayes and Nick Curley (Probate & Trust), Chris Smart, Manuel Farach and Arthur J. Menor (Real Property), Co-Vice Chairs
 14. **Legislative Update (2022-2023)** — Brenda Ezell and Salome J. Zikakis, Co-Chairs; Gutman Skrande, Jennifer S. Tobin, and Kit van Pelt, Co-Vice Chairs
 15. **Liaison with:**
 - a. **American Bar Association (ABA)** — Robert S. Freedman, Edward F. Koren, George J. Meyer and Julius J. Zschau
 - 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 and Robert Stern
 - e. **Judiciary** — Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Mark A. Speiser, and Judge Michael Rudisill
 - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
 - g. **TFB Board of Governors** — Roland Sanchez Medina
 - h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
 - i. **TFB CLE Committee** — Angela Adams and Lee A. Weintraub
 - j. **TFB Council of Sections** — Sarah Butters and S. Katherine Frazier
 - k. **TFB Pro Bono Legal Services** — Lorna E. Brown-Burton
 16. **Long-Range Planning** — S. Katherine Frazier, Chair
 17. **Meetings Planning** — George J. Meyer, Chair
 18. **Membership and Inclusion** — S. Dresden Brunner, Chair; Annabella Barboza, Vinette D. Godelia, Eryn Riconda, and Roger A. Larson, Co-Vice Chairs
 19. **Model and Uniform Acts** — Patrick J. Duffey and Adele I. Stone, Co-Chairs; Chris Wintter and Amber Ashton, Co-Vice Chairs
 20. **Professionalism and Ethics** — Andrew B. Sasso, Chair; Elizabeth A. Bowers, Alexander B. Dobrev, Rt. Judge Celeste Muir, and Laura Sundberg, Co-Vice Chairs
 21. **Publications ActionLine** — Erin Finlen and Michael A. Bedke, Co-Chairs (Editors in Chief); Alexander Douglas, Daniel L. McDermott, Jeanette Moffa, Paul E. Roman, Seth Kaplan and Michelle Hinden, Co-Vice Chairs
 22. **Publications Florida Bar Journal** — J. Allison Archbold (Probate & Trust) and Homer Duvall, III (Real Property), Co-Chairs; Marty J. Solomon and Mark Brown (Editorial Board — Real Property), Brandon Bellew, Jonathan

- Galler and Brian Sparks (Editorial Board – Probate & Trust), Co- Vice Chairs
23. **Sponsor Coordination** — Bill Sklar, Chair; Patrick C. Emans, Marsha G. Madorsky, Jason J. Quintero, J. Michael Swaine, Alex Hamrick, Rebecca Bell, and Arlene C. Udick, Co-Vice Chairs
 24. **Strategic Planning** —S. Katherine Frazier, Chair
 25. **Strategic Planning Implementation** — Robert Freedman, Michael J. Gelfand, Michael A. Dribin, Deborah Goodall, Andrew M. O'Malley and Margaret A. “Peggy” Rolando, Co-Chairs

XVI. Adjourn: Motion to Adjourn.

**Real Property, Probate and Trust Law Section
Executive Council Meeting
Hawks Cay Resort
Duck Key, Florida
June 4, 2022
10:30 am**

Meeting Minutes

I. Presiding— *Robert S. Swaine, Chair*

1. The Chair called the meeting to order at 10:37 a.m. and thanked the General Sponsors and Friends of the Section.

II. Secretary's Report— *Wm. Cary Wright, Secretary*

1. Cary Wright presented the minutes of the April 2, 2022 meeting of the Executive Council held at the AC Marriott Hotel in Tallahassee, Florida for approval. A motion was made to approve the minutes, which was seconded. The motion passed unanimously.
2. Meeting attendance roster was then circulated.

III. Chair's Report— *Robert S. Swaine, Chair*

1. The Chair recognized and thanked the Section's General sponsors and the Friends of the Section.

General Sponsors

WFG National Title Insurance Co.

Management Planning, Inc.

JP Morgan

Old Republic National Title Insurance Company

Westcor Land Title Insurance

First American Title Insurance Company

Attorneys' Title Fund Services, LLC

Fidelity National Title Group

Stout Risius Ross, Inc.

Guardian Trust

The Florida Bar Foundation

Stewart Title

The Friends of the Section

Business Valuation Analysts, LLC

CATIC

Cumberland Trust

Fiduciary Trust International of the South

Heritage Investment

North American Title Insurance Company

Probate Cash

Title Resources Guaranty Company

Valuation Services, Inc.

Wells Fargo Private Bank

2. Introduction and comments from Sponsors.
 - Bob introduced Melissa Murphy of The Fund. Melissa thanked the Section for allowing The Fund to sponsor the Section.
3. Milestones.
 - Bob recognized the birth of Rebecca Cleland's daughter, Lucy Cleland.
 - Bob also recognized the following who received Section Awards at the Annual Meeting:
 - THE ROBERT C. SCOTT MEMORIAL AWARD - Frederick W. Jones
 - JOHN ARTHUR JONES ANNUAL SERVICE AWARD - Michael V. Hargett and Cady L. Haas
 - THE WILLIAM S. BELCHER LIFETIME PROFESSIONALISM AWARD - William ("Bill") P. Sklar

- RISING STAR AWARD - Elizabeth M. MacDonald Hughes and Kristen N. King Jaiven
4. Interim actions taken by Executive Committee.

The Executive Committee unanimously approved the Comment and Request for Oral Argument by The Real Property, Probate, and Trust Law Section of The Florida Bar by email vote on May 27, 2022.

IV. Liaison with Board of Governors Report — *Scott Westheimer*

1. Scott was recently elected as President-Elect of the Florida Bar. He thanked the Section for welcoming him to the Section as the BOG Liaison. He then introduced Roland Sanchez-Medina, who is the incoming liaison from the Board of Governors. Roland then provided the BOG report.
 - Roland noted that The BOG met on March 25 (virtually) and voted unanimously to approve an approximately \$45 million Bar general fund budget proposal, which requires Supreme Court approval, and maintains a 22-year trend of avoiding member dues increases. Based on the sound fiscal policies of the Board, there will be no dues increase in the foreseeable future.
 - Roland noted that the Supreme Court directed the Bar to provide alternative proposals to “improve the delivery of legal services to Florida consumers and ... assure Florida lawyers play a proper and prominent role in the provision of these services,” and gave it until December 31, 2022, to provide its recommendations to the Court. The BOG voted to establish the Special Committee for Greater Public Access to Legal Services for this purpose.
 - The meeting was then interrupted by Mike Swaine, with a mimosa and bloody mary in his hand, so that Mike could welcome Bob to the back row and thank him for his service to the Section. This is a first in Section history where a father, also a Past Chair, has escorted his son, the Immediate Past Chair, to the coveted back row.

V. Chair-Elect's Report — *Sarah S. Butters, Chair-Elect*

Sarah noted the upcoming 2022-2023 Executive Council meetings:

July 21 – 24, 2022

Executive Meeting & Legislative Update
The Breakers
Palm Beach, Florida

September 28 – October 2, 2022

Out-of-State Executive Council

	Meeting Opal Sands Harborside Bar Harbor, Maine
December 8 – 12, 2022	Executive Council Meeting Four Seasons Orlando, Florida
February 22 – 26, 2023	Executive Council Meeting Sandestin Golf and Beach Resort Destin, Florida
June 1 – 4, 2023	Executive Council Meeting & Annual Convention Opal Sands Delray (contract pending) Delray Beach, Florida

2022-2023 Leadership Appointments

VI. Treasurer's Report — *Jon Scuderi, Treasurer*

1. Jon Scuderi provided the financial summary through February, 2022. He recognized Sancha Brennan and Lee Weintraub for their fine work as CLE Co-Chairs.

VII. Director of At-Large Members Report — *Steven H. Mezer, Director*

- Steve provided the report on the activities of the ALMs. He noted that the ALMs unanimously voted Arlene Udick as ALM of the Year.
- He then gave Rob Freedman his Chair's scrap book and framed poster of the Dave Mathews concert that Rob took the Executive Council to in West Palm Beach during his year as Chair.

VIII. CLE Seminar Coordination Report — *Sancha Brennan (Probate & Trust) & Lee A. Weintraub (Real Property), Co-Chairs*

- Lee Weintraub provided the report of the CLE Seminar Committee. He thanked those involved in providing CLE this past year, as they did a great job and had the best financial year ever.
- Lee recognized the Diversity & Inclusion Committee for providing a CLE on Trust & Estates focused to minority lawyers. Those in attendance received complimentary membership in the Section. As a result, the Section gained over 40 new members this past year.

IX. Legislation Committee – *Wilhelmina Kightlinger and Larry Miller, Co-Chairs*

Larry Miller went through the Section's Legislative Positions contained in the agenda packet plus the following two positions that were contained in the agenda packet:

- Supports legislation resolving technical inconsistencies and errors within Chapters 718 and 720, Florida Statutes that have arisen due to multiple revisions of the Chapters and to provide additional clarification as to how Chapters 718 and 720 are to be applied.
- Supports proposed legislation protecting Florida residents from unintentionally assigning, pledging or waiving rights to assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by implementing clearly defined requirements for waiving the protection of such exemptions.

Action item:

1. Renewal of Legislative Positions

The Legislation Committee moved that the recommendations of the Legislative Committee of the RPPTL Section regarding the renewal of the Section's standing legislative positions, as submitted to the Section's Executive Council at its meeting on June 4, 2022, be approved.

The motion was approved unanimously.

A copy of the Legislative Committee's recommendations are attached hereto as Exhibit A.

X. General Standing Division Report— Sarah S. Butters, Chair-Elect – no report

- Sarah recognized First American for its support of the Section. Lynn Prescott thanked the Section for allowing First American to sponsor the Section.
- Sarah also thanked Old Republic for sponsoring the Section. Jim Russick thanked the Section for allowing Old Republic to sponsor the Section.

Information Items:

1. Liaison with TFB Pro Bono Committee – Lorna Brown-Burton

No Report.

2. Ad Hoc Communications Committee – Mike Hargett, Chair

Mike informed the attendees of the mission of the Ad Hoc Communications Committee, which was constituted at the beginning of 2022. Its mission statement follows:

The RPPTL Ad Hoc Communications Committee's mission is: (i) to further

the RPPTL Section' s visibility, reputation and mission, including promoting diversity and inclusion within its membership; and (ii) to advance the Section' s initiatives. The Committee will utilize traditional marketing and social media resources to enhance member communications and promote the Section's programs and goals.

3. Ad Hoc Revocable Termination on Death Committee – Steve Kotler and Chris Smart, Co-Chairs

- Steve Kotler gave the report of the committee, which includes a plan to roll out the draft legislation to some of the key, larger substantive committees at the upcoming Breakers meeting. He also clarified that the name of the Ad Hoc Committee is Revocable Termination on Death Deed Committee.

4. Fellows – Chris Sajdera, Chair

- Chris introduced Angela Santos who introduced the following fellows who attended the meeting.
 - Terrence Harvey – It was noted that Terrence was appointed Co-Vice Chair of the Fellows Committee.
 - Lilleth Bailey – Lilleth noted that it was her last meeting as a fellow. She thanked everyone for her fellowship opportunity and noted that it was a great experience. She will be a Co-Vice Chair for Law School and Mentoring.
 - Amanda Cummins
 - Melissa Hernandez
 - Tanigueva Reid
 - Erin Miller-Meyers

5. Professionalism and Ethic Committee – Andrew B. Sasso, Chair

Yoshimi Smith introduced the podcast by Gary Lesser, President-Elect of The Florida Bar. This was Chapter 3 – An attorney is an attorney at all times. The “Duty of Lawyers to Be Our Best Selves.”

XI. Real Property Law Division Report — S. Katherine Frazier, Division Director

General comments and recognition of Division Sponsors.

- Katherine recognized the RP Division Sponsors.
- She acknowledged David Shanks of Stewart Title. David thanked the Section for allowing Stewart Title to sponsor the Section.

Action Item:

1. **Title Issues and Standards Committee** – *Rebecca L.A. Wood, Chair*

Motion to approve revisions to Chapter 17 – Marketable Record Title Act (MRTA) of the Uniform Title Standards

- This matter was deferred to The Breakers meeting.

Information Items:

1. **Real Property Finance and Lending Committee** – *Richard S. McIver, Chair*

Consideration of legislation revising section 714.16, *Florida Statutes*, to address several practical issues with the Uniform Commercial Receivership Act including providing for right of redemption, customary closing costs, among others.

Jason Ellison provided the background and need for the glitch bill, which will be an Action Item at The Breakers meeting.

2. **Real Estate Leasing Committee** – *Brenda B. Ezell and Christopher A. Sajdera, Co-Chairs*

Consideration of opposition legislation authorizing the use of security deposit replacement products (a/k/a fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices.

Kristen Jaiven identified the issues of concern that resulted in the Real Estate Leasing Committee opposing this proposed legislation. The Section is concerned about the lack of consumer protection in the proposed bill.

3. **Real Property Litigation Committee** – *Michael V. Hargett, Chair*

Consideration of legislation expanding the finality of foreclosure judgments provided by Section 702.036, *Florida Statutes (2021)*, to include liens other than mortgage foreclosures, such as community association liens and construction liens. Additionally, it will provide prevailing party attorneys' fees in post-foreclosure litigation for redress of wrongful foreclosure judgments brought by junior lienholders improperly foreclosing senior liens. This legislation restores the legitimate business expectations of the citizens of the State of Florida that were upset by Wells Fargo Bank, N.A. v. Tan., 320 So. 3d 782 (Fla. 4th DCA 2021)

Mike Hargett provided the background on the proposed legislation. Mike noted that this will be an Action Item at The Breakers meeting.

XII. **Probate and Trust Law Division Report:** - *John Moran, Division Director*

John recognized and thanked the Probate and Trust Law Division sponsors.

Information Items:

1. Probate Law and Procedure Committee – Travis Hayes, Chair

The *Johnson vs. Townsend* Fix: Proposed legislation clarifies existing Florida law by making targeted modifications to certain provisions of the Florida Probate Code governing creditors' claims, and the related definition of the term "claim," to conform with the existing provisions of the Florida Uniform Disposition of Community Property Rights at Death Act.

Travis Hayes provided the background of the proposed legislation.

2. Joint Proposal – Estate and Trust Planning Committee (Robert Lancaster, Chair) & Probate Law and Procedure Committee (Travis Hayes, Chair)

Proposed legislation amending Fla. Stat. § 198.41 to suspend those provisions which govern the imposition, reporting, and collection of the Florida Estate Tax.

Travis Hayes gave the background for this proposed legislation.

XIII. Probate and Trust Law Division Committee Reports - John Moran, Division Director

Committee Reports were given at the PT Roundtable.

XIV. Real Property Law Division Committee Reports – S. Katherine Frazier, Division Director

RP Committee reports were given at the RP Roundtable.

XV. General Standing Division Committee Reports – Sarah S. Butters, General Standing Division Director and Chair-Elect

No report was given.

XVI. Adjourn -

There was a motion for the meeting to adjourn, which was seconded. The motion passed unanimously.

/s/ Wm. Cary Wright
Wm. Cary Wright
Secretary

EXHIBIT A

Real Property, Probate and Trust Law Section
Legislative Position Renewals Effective July 1, 2022

1. Probate, Trust & Guardianship / Estate Planning

- a. Opposes the expansion of classes that are to serve as agents under a power of attorney beyond the current class of individuals and financial institutions with trust powers.
- b. Supports legislation to provide for alienation of plan benefits under the Florida Retirement System (§121.131 and §121.091 Florida Statutes) Municipal Police Pensions (§185.25 Florida Statutes) and Firefighter Pensions (§175.241 Florida Statutes) in a dissolution proceeding and authorizing such alienation of benefits in a dissolution of marriage under §61.076 Florida Statutes.
- c. Supports legislation to (1) change the titles of §222.11 Florida Statutes to clearly reflect that this statute applies to earnings and is not limited to “wages” (2) provide an expanded definition of “earnings” because the term “wages” is not the exclusive method of compensation and (3) add deferred compensation to the exemption statute.
- d. Supports enactment of new Section 689.151 to the Florida Statutes to: (1) permit an owner of personal property to create a tenancy by the entireties by a direct transfer to the owner and owner's spouse, or a joint tenancy with right of survivorship by a direct transfer to the owner and another person or persons, without requiring an intermediate transfer through a strawman, (2) permit joint tenants to hold unequal shares or interests in personal property in a joint tenancy with right of survivorship while retaining the right of survivorship, (3) and facilitate proving the existence of tenancies by the entireties and joint tenancies with right of survivorship in personal property by codifying and clarifying existing common law evidentiary presumptions.

2. Probate, Trust & Guardianship / Guardianship & Advance Directives

- a. Supports legislation to amend the Baker Act to include a provision under which a guardian may request that the court grant the guardian the authority to involuntarily hospitalize a ward pursuant to the Baker Act.
- b. Opposes the adoption of summary guardianship proceedings outside the protections of Chapter 744, Florida Statutes.
- c. Opposes amendments to F.S. §393.12 that would (i) remove the existing requirement that a guardian advocate for a developmentally disabled adult must be represented by an attorney if the guardian advocate is delegated authority to manage property, (ii) remove the existing requirement that the petition to appoint a guardian advocate must disclose the identity of the proposed guardian advocate, and (iii) expand the list of individuals entitled to receive notice of the guardian advocate proceedings.
- d. Supports clarification of the definition of “income” for calculating Veterans guardianship fees, including an amendment to §744.604, Fla. Stat.

- e. Supports amendments to the Florida Guardianship Law to protect the interest of incapacitated persons, especially minor wards, by making settlements on their behalf confidential.
- f. Opposes the expansion of chapter 709 to include the authority of a parent to assign the custody and control of a minor child through a power of attorney unless proper procedural safeguards are included to assure the proper care and welfare of the minor children.
- g. Supports creation of new statutory procedures for the service of examining committee reports and deadlines for the service and filing of objections to such reports in incapacity proceedings, including revision to s. 744.331, F.S.
- h. Supports proposed legislation to recognize Physician Orders for Life Sustaining Treatment (POLST) under Florida law with appropriate protections to prevent violations of due process for the benefit of the citizens of Florida and the protection of medical professionals and emergency responders who withhold or withdraw treatment based upon POLST, including the amendment of ss. 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, 765.205, 456.072, and the creation of s. 401.46, F.S; and opposes efforts to adopt POLST (Physician Ordered Life Sustaining Treatment) in Florida without appropriate procedural safeguards to protect the wishes of patients and prior advance directives made by the patient.
- i. Opposes amendment to the Florida Constitution, including Commission Proposal 30, which would prevent removal of rights of a person based upon mental disability or mental incapacity unless appropriate safeguards to protect existing guardianship and mental health statutes and which would allow the legislature to establish laws which are intended to protect the welfare of the person and which comply with due process.
- j. Supports amendment to Florida Statutes §744.3701 to clarify existing law on the standard for the court's ordering the production of confidential documents in guardianship proceedings and the parties who have the right to access confidential documents without court order.
- k. Supports amendment to Florida Statutes, including Florida Statutes § 744.331, amending the current statutory procedure for dismissal of a petition to determine incapacity to require a unanimous finding by the examining committee that a person is not incapacitated and creating a new statutory procedure which would allow for the presentation of additional evidence before a petition to determine incapacity is dismissed in the event that there is a unanimous finding of the examining committee that a person is not incapacitated.
- l. Supports amendment to Florida Statutes, including Florida Statutes § 744.1097, to specifically address venue for the appointment of a guardian in minor guardianships proceedings.
- m. Opposes Florida's adoption of the Uniform Guardianship and Protective Proceedings Jurisdiction Act (including the Florida Guardianship and Protective Proceedings Jurisdiction Act) unless the act is substantially revised to provide for better due process protections for incapacitated individuals more consistent with Florida's laws and rewritten with vocabulary consistent with Florida's guardianship laws.

3. Probate, Trust & Guardianship / Probate

- a. Opposes any efforts to enact a statutory will.
- b. Opposes amendment to §733.302, F. S., to expand the class of non-residents which may serve as personal representative because of a concern that any addition to the class may subject the entire statute to a renewed constitutional challenge.
- c. Supports clarification of a person's rights to direct disposition of his or her remains, providing guidance to courts and family members, especially when disputes arise, and absent specific directions, clarifying who is authorized to decide the place and manner of the disposition of a decedent's remains, including an amendment replacing F.S. § 732.804.
- d. Supports proposed legislation allowing a testator to deposit their original will with the clerk's office for safekeeping during their lifetime, and for other custodians to deposit original wills with the clerk for safekeeping when the testator cannot be located.
- e. Opposes legislation, including 2019 Florida Senate Bill 548 and House Bill 409, that would permit remote notarization or remote witnessing of all estate and incapacity planning instruments and related spousal waivers (including electronic wills, powers of attorney, living wills, advance directives, and trust instruments having testamentary aspects), unless such legislation is amended:
 - (a) to safeguard the citizens of Florida from fraud and exploitation;
 - (b) to include protections to ensure the integrity, security, and authenticity of a remotely notarized or remotely witnessed instrument; and
 - (c) to require witnesses be physically present when such documents are executed or other procedures to protect the citizens of Florida, particularly vulnerable adults and the elderly who may have diminished mental capacity or be susceptible to fraud, undue influence, coercion, or duress.
- f. Opposes proposed legislation that would allow banks or other financial institutions in Florida to distribute funds from any account in the name of the decedent (with no pay-on-death or survivor designation) in the absence of an appropriate probate proceeding or other court proceeding, unless safeguards are put in place to protect the rights and interests of persons rightfully entitled to the proceeds, the constitutional rights of the decedent to direct the disposition of his or her property, and the rights of creditors to recover debts through a probate proceeding.
- g. Supports proposed legislation amending Section 733.610, Florida Statutes, by expanding the categories of entities and persons related to the personal representative for purposes of determining whether the personal representative, or someone sufficiently related to the personal representative for conflict purposes, hold a substantial beneficial or ownership interest that could create a conflict of interest when engaging in a sale, encumbrance, or other transaction.
- h. Supports proposed legislation relating to electronic wills and to the testamentary aspects of electronic revocable trusts, that retains the requirement that two subscribing witnesses sign in the

physical presence of the testator and provides for protections to ensure the integrity, security, and authenticity of an electronically signed will or trust.

i. Opposes amendments to the personal representative and trustee attorney fee compensation statutes contained in the Florida Probate Code and the Florida Trust Code unless the amendments preserve the policies currently reflected in each of those codes.

4. Probate, Trust & Guardianship / Trust

a. Opposes legislation abrogating a trustee's duties of loyalty and duties of full and fair disclosure in connection with affiliated investments by a corporate trustee.

b. Supports proposed amendments to F.S. Chapter 736, which provide much needed clarification and guidance regarding the applicability of constitutional devise restrictions and exemption from creditors' claims provisions, as well as the timing and method of passage of title to homestead real property, when that homestead real property is devised through a revocable trust at the time of a settlor's death, including amendment to F.S. §736.0103, the creation of F.S. §736.0508, and the creation of F.S. §736.08115.

c. Supports proposed legislation which would amend s. 736.0708(1), F.S., to provide that when multiple trustees serve together as cotrustees, each cotrustee is entitled to reasonable compensation and that the aggregate compensation charged by all the trustees may be greater than reasonable compensation for a single trustee.

d. Supports proposed amendments to ss. 736.08135(3) and 736.1008(3), F.S., to clarify the duty of a Trustee to account to the qualified beneficiaries of a trust and the form and content of a trust accounting prepared on or after July 1, 2017, and to clarify that the period for which qualified beneficiaries can seek trust accountings.

5. Probate, Trust & Guardianship / Miscellaneous

a. Opposes the amendment of Ch. 726, F.S., by replacing the Uniform Fraudulent Transfer Act with the Uniform Voidable Transactions Act (the "UVTA") unless changes are made to protect the rights of Florida citizens to engage in certain sound and legitimate business, estate, and tax planning techniques and transactions which are currently permitted under Florida law; which do not hinder, delay or defraud creditors; and which do not enhance or diminish the utilization of self-settled spendthrift trusts or single-member limited liability companies by Florida citizens.

b. Supports proposed legislation protecting Florida residents from unintentionally assigning, pledging or waiving rights to assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by implementing clearly defined requirements for waiving the protection of such exemptions.

6. Real Property / Condominiums and Planned Developments

- a. Supports amendments to Chapter 718, Florida Statutes, Condominiums, and Chapter 719 Florida Statutes, Cooperatives, to require that engineers, architects and other design professionals and manufacturers warrant the fitness of the work they perform on condominiums or cooperatives.
- b. Opposes amendments to Chapter 720, F.S., that would require both pre-suit mediation and pre-suit arbitration before filing a civil action over homeowners' association disputes.
- c. Supports legislation providing for electrical elements to three-year warranty, extend subcontractor and supplier warranties to the contractor and to clarify start date for five-year warranty deadline set forth in F.S. §718.203(1)(e).
- d. Supports clarification of Ch 718, F.S.: to confirm that certain operational provisions do not apply to nonresidential condominium associations; to define "nonresidential condominiums;" to clarify that the Division's arbitration program only pertains to residential condominiums; to provide an effective date.
- e. Supports legislation to remove the requirement that statutory late fees must be set forth in a condominium or homeowners' association declaration or bylaws in order for those charges to be imposed, to allow for the collection of such fees by all condominium and homeowner associations, including amendments to F.S. §§718.116 & 718.3085.
- f. Supports legislation to differentiate the administration of nonresidential condominiums from residential condominiums and to eliminate for nonresidential condominium associations certain provisions not appropriate in a commercial setting, including amendments to F.S. Ch. 718.
- g. Opposes legislation that changes the definition of the practice of law to exclude from the definition a community association manager's interpretation of documents or statutes that govern a community association, determination of title to real property, or completion of documents that require interpretation of statutes or the documents that govern a community association, including opposition to SB1466, SB1496, HB7037 and CS/HB7039 (2014).
- h. Supports amending Florida Condominium law pertaining to the termination of condominiums to protect unit owners and provide certainty and predictability to the process.
- i. Opposes creation of criminal penalties for violations of statutes pertaining to condominium association official records and condominium association elections, as well as any change to create criminal penalties for any violation of the Florida Condominium Act for which a criminal penalty does not already exist, including changes to §718.111(12) F.S., and creation of new statutory provisions within Ch. 718 F.S., or otherwise.
- j. Supports replacing mandatory presuit arbitration with the Division of Condominiums for certain disputes between a condominium association and unit owner with mandatory presuit private mediation, including a change to Fla. Stat. 34.01, 718.013, 718.112, 718.117, 718.1255, 718.303, 720.303, 720.306 and 720.311.
- k. Opposes continuing to allow fines in excess of \$1,000 in homeowner associations to become liens for non-monetary damages against the parcel that can be foreclosed, including a change to Fla. Stat. 720.305(2).

l. Supports legislation to clarify that a condominium association has the right to represent its unit owner members in a class action defense, including when an association challenges ad valorem assessments on behalf of its unit owner members to the value adjustment board, and the property appraiser subsequently appeals the VAB's decision to increase owners' taxes. In such instance, the association may represent its unit owner members as a group pursuant to F.R.C.P. 1.221 and Florida Statutes §718.111(3).

m. Supports legislation amending Section 718.113 and Section 718.115 to clarify and enhance the ability of condominium associations and condominium unit owners to use hurricane shutters and other types of hurricane protection to protect condominium property, association property and the personal property of unit owners, and reduce insurance costs for condominium associations and unit owners.

n. Supports legislation resolving technical inconsistencies and errors within Chapters 718 and 720, Florida Statutes, that have arisen due to multiple revisions of the Chapters and to provide additional clarification as to how Chapters 718 and 720 are to be applied.

7. Real Property / Contracts and Disclosures

a. Opposes legislation requiring multiple disclosures by sellers of real property, creating contract rescission rights for buyers and seller liability for damages.

b. Opposes legislation requiring parties to record notices, warnings or reports regarding the physical condition of land or improvements in the public records regarding the title to real property.

8. Real Property / Corporations and LLCs

a. Opposes legislation requiring a Florida corporation or limited liability company to publish notice of its proposed sale of assets other than in regular course of business, or to publish notice of dissolution, including changes to F.S. §607.1202 and §608.4262.

9. Real Property / Courts

a. Oppose the creation of "pilot" court divisions without funding, evaluation criteria, rules of procedure, and competency criteria for magistrates without consideration for current alternate dispute resolution processes.

b. Supports procedures to preserve due process by providing courts with authority to appoint attorney, administrator and guardian ad litem to serve on behalf of known persons, or unknown persons, having claims by, though, under or against a person who is deceased or whose status is unknown, and confirming the sufficiency of prior proceedings in which ad litem have been appointed, including amendment of F.S. §49.021.

10. Real Property / Foreclosures and Judicial Sales

- a. Oppose legislation which would require a foreclosing creditor to notify the debtor that filing a bankruptcy petition before the foreclosure sale may permit the debtor to retain the property and reorganize the indebtedness.
- b. Opposes any amendment to existing Florida law governing real property foreclosures unless those amendments carefully preserve and protect the property rights and due process rights of the holders of interests in or affecting Florida real property.

11. Real Property / Liens and Encumbrances

- a. Opposes efforts to create a lien on real property for work that does not add value to the property and would permit liens against the property of a person other than the party owing a debt.
- b. Supports amendment to F.S. §695.01 and ch 162 to reduce problems regarding hidden liens by: (i) requiring all governmental liens (other than taxes, special assessments and those for utility services) to be recorded in the official records and to state their priority; (ii) clarifying the priority of liens asserted by local governments; and (iii) expanding the homestead determination mechanisms of F.S. §222.01 to apply to other types of liens.
- c. Supports amendments: to s. 95.11(2) and (5), F.S., as to the statute of limitations for actions on payment bonds; to s. 713.08(3) (the statutory form for a claim of lien) to include the separate statement required by F.S. 713.08(1)(c); to s. s. 713.13, F.S. to delete the requirement that the notice of commencement be verified and to clarify the timing of the expiration date of the notice of commencement; to s. 713.18, F.S. as to electronic confirmation of delivery through the U.S. Postal Service.
- d. Supports amendment of: F.S. §713.10(2)(b) to provide that a blanket notice recorded by a landlord remains valid and the landlord's property interest will not be liable for liens arising from tenant improvements even if the leases contain different versions of the lien prohibition language or no lien prohibition language at all, under certain circumstances; and F.S. §713.10(3) to require inclusion of specific language in any claim of lien premised on a landlord's failure to comply so as to provide record notice of the basis of such a claim by a lienor, and to provide that any lien will not take effect as to third parties without notice until 30 days after the recording of the claim of lien.
- e. Opposes selective increase of recording expense to only construction claims of lien, adding additional filing requirements, and concluding that filing a lien beyond the statutory 90-day period is an act of fraud, including opposing amendments to F.S. §§28.24 & 713.08.
- f. Supports the passage of an amendment to existing s. 713.132(3), F.S. to allow termination of a notice of commencement, provided for under s. 713.135, F.S., at any time whether or not construction has ceased as required under existing law.
- g. Supports proposed legislation to: (1) clarify that the interest of a lessor is not subject to improvements made by the lessee of a mobile home lot in s. 713.10, F.S.; and (2) eliminate

ambiguity regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording, including an amendment to s.713.13, F.S.

h. Supports legislative changes to construction lien law in the state of Florida, including changes to Fla. Stat. Ch. 255 and 713.

12. Real Property / Miscellaneous

a. Opposes abolishment of causes of action for architect, engineer, surveyor and mapper professional negligence and other professional breaches of duty.

13. Real Property / Property Rights

a. Opposes any legislation limiting property owners' rights or limiting attorneys' fees in condemnation proceedings.

b. Opposes legislation expanding the definition of sovereign beaches, public beaches or beach access rights over privately owned property without due process of law or compensation for taking of private property rights.

c. Supports legislation to provide a statutory definition for Ejectment actions, provide for jurisdiction in the circuit courts for such actions, eliminate any ambiguity over whether pre-suit notice is required in such actions, and update the language in the existing Ejectment statute.

d. Supports legislation expanding applicability of §697.07 (Assignment of Rents) and §702.10 (Order to Make Payments During Foreclosure) to third parties who acquire properties subject to a mortgage.

14. Real Property / Recording

a. Opposes legislation that impairs the integrity of the recording system in the State of Florida.

15. Real Property / Title Insurance

a. Opposes any portion of the National Association of Insurance Commissioners Title Insurers Model Act and Title Insurance Agent Model Act that may adversely affect Florida attorneys' ability to participate in real estate closing and the issuance of title insurance.

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

c. Opposes elimination of the requirement that title insurance agencies deposit securities having a value of \$35,000 or a bond in that amount for the benefit of any title insurer damaged by an agency's violation of its contract with the insurer.

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2021-2022

Executive Committee	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Hennessey, William ("Bill") Immediate Past Chair		√	√	√	√	√	√
Swaine, Robert S. Chair	√		√	√	√	√	√
Butters, Sarah S. Chair-Elect & General Standing Div. Director		√	√	√	√	√	√
Frazier, S. Katherine Real Property Div. Director	√		√	√	√	√	√
Moran, John C. Probate & Trust Law Div. Director		√	√	√	√	√	√
Wright, Wm. Cary Secretary	√		√	√	√	√	√
Scuderi, Jon Treasurer		√	√	√		√	√
Kightlinger, Wilhelmina Legislation Co-Chair Real Property	√		√	√		√	√
Miller, Lawrence J. Legislation Co-Chair Probate & Trust		√	√	√		√	√
Brennan, Sancha CLE Co-Chair Probate		√	√	√		√	√
Weintraub, Lee A. CLE Co-Chair Real Property	√		√	√	√	√	√
Mezer, Steven H. Director, At-Large Members	√		√	√	√	√	√

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Acosta, Jolyon Delphin		√	√	√		√	√
Adams, Angela M.		√	√	√		√	√
Adams, Joseph	√						
Akins, David J.		√	√	√			

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Alaimo, Marve Ann M.		√	√	√			√
Altman, Stuart H.		√		√			
Archbold, J. Allison		√	√	√			
Arnold, Casey	√		√	√		√	
Aron, Jerry E. Past Chair	√		√				
Ashton, Amber E.	√		√			√	
Awerbach, Martin S.	√		√	√		√	
Bald, Kimberly A.		√	√	√		√	
Barboza, Annabella	√		√	√			
Barr, J. Christopher	√			√		√	
Baskies, Jeffrey		√	√	√			
Battle, Carlos A.		√	√	√	√	√	
Baumann, Phillip A.		√	√	√	√	√	
Beales, III, Walter R. Past Chair	√						
Bedke, Michael A.	√			√		√	
Behar, Jacobeli J.		√	√	√		√	√
Belcher, William F. Past Chair		√				√	√
Bell, Kenneth B.	√				√		
Bell, Rebecca Coulter		√	√	√		√	√
Beller, Amy		√	√	√		√	√
Bellew, Brandon D.		√	√	√			
Bloodworth, Jennifer J.	√		√	√		√	√
Boje, Debra Lynn Past Chair		√	√	√		√	√
Bouchard, Eve	√		√	√			

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Bowers, Elizabeth A.		√		√			
Boyd, Deborah	√		√	√		√	
Braun, Keith Brian		√	√	√			
Brenes-Stahl, Tattiana		√	√	√			
Brennan, David C. Past Chair		√	√				√
Bronner, Tae K.		√		√		√	√
Brown, Mark A.	√		√	√			
Brown, Shawn	√		√	√		√	√
Brown-Burton, Lorna	√			√		√	√
Brunner, S. Dresden		√	√	√			√
Bruton, Jr., Ed Burt	√		√	√		√	
Bucher, Elaine M.		√		√			
Butler, Johnathan		√	√	√		√	
Callahan, Chad W. III		√	√				
Caskey, John R.		√	√	√	√	√	√
Cazobon, Denise		√	√	√		√	
Christiansen, Patrick Past Chair	√		√		√		
Christy, Erin Hope	√		√				
Cole, Stacey L.		√	√				√
Coleman, Jami A.		√	√	√		√	
Comiter, Alyse Reiser		√	√	√		√	
Conetta, Tami F.		√	√	√			
Cope, Jr., Gerald B.	√					√	
Cornett, Jane Louise	√		√	√		√	√

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Cranford, Jeremy	√		√			√	√
Curley, Nick		√	√	√		√	√
Detzel, Lauren Y.		√	√				
Diamond, Benjamin F.		√	√				√
Diamond, Sandra F. Past Chair		√	√	√		√	√
Dobrev, Alex	√		√	√		√	
Dollinger, Jeffrey	√		√	√		√	
Dribin, Michael Past Chair		√	√	√		√	
Duffey, Patrick J.		√	√	√			√
Duvall, III, Homer	√		√				
Eckhard, Rick	√			√			
Ellison, Jason M.	√		√	√		√	√
Emans, Patrick C		√	√	√			
Emerich, Guy S.		√	√			√	
Ertl, Christene M.	√			√		√	√
Evert, Jamison C.		√		√		√	√
Ezell, Brenda B.	√		√	√	√		√
Fagan, Gail		√	√	√		√	√
Falk, Jr., Jack A.		√	√	√			
Farach, Manuel	√		√	√		√	
Felcoski, Brian J. Past Chair		√	√	√	√		√
Ferguson, Elizabeth B.	√		√				
Fernandez, Kristopher E.	√		√	√	√	√	√
Fields, Alan B.	√		√	√			

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Finchum, Travis		√	√	√		√	√
Finlen, Erin F.		√	√	√			
Fitzgerald, Jr., John E.		√	√	√		√	√
Freedman, Robert (Rob) Past Chair	√		√	√	√	√	√
Friedman, Bridget	√		√	√	√		√
Friedman, Jesse B.		√		√		√	
Gabel, Alexandra	√						
Galler, Jonathan		√					
Gans, Richard R.		√	√			√	
Gelfand, Michael J Past Chair	√		√	√	√	√	√
George, James		√	√				
George, Joseph P.		√	√	√	√	√	√
Godelia, Vinette D.	√					√	
Goethe, Jeffrey S.		√	√	√		√	√
Goldman, Louis "Trey"	√		√	√		√	
Goldman, Robert W. Past Chair		√		√			
Goodall, Deborah P. Past Chair		√	√	√			√
Graham, Robert M.	√		√	√			
Granet, Lloyd	√		√	√		√	
Griffin, Linda S.		√	√	√			
Grimsley, John G. Past Chair		√					
Grosso, Jennifer		√	√				
Gunther, Eamonn W.		√	√	√			√
Guttmann, III, Louis B Past Chair	√						

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Hamrick, Alexander H		√	√	√	√	√	√
Hargett, Michael Van	√		√	√	√	√	√
Harris, Shelly W.	√						
Hatcher, Hon. Mary							
Hayes, Hon. Hugh D.							√
Hayes, Michael Travis		√	√	√		√	√
Haynes, Jourdan	√		√	√		√	√
Hearn, Frederick "Ricky"		√	√	√		√	
Hearn, Steven L. Past Chair		√	√			√	√
Heckert, Katie	√		√			√	√
Hellmuth, Kelly		√	√	√		√	
Henderson, Jr., Reese J.	√		√	√		√	
Henderson, III, Thomas N.	√		√	√			
Hersem, Amanda	√		√	√		√	√
Hertz, Allison	√		√	√			√
Heuston, Stephen P.		√	√	√		√	√
Hinden, Michelle						√	
Hipsman, Mitchell Alec		√	√	√		√	√
Hoffman, Brian W.	√		√	√	√	√	√
Hudson, Hon. Margaret "Midge"		√					
Hughes, Elizabeth		√		√			
Huss, Cady L.		√	√			√	√
Hutt, Gregg Evan	√		√	√		√	
Isphording, Roger O. Past Chair		√					

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Jaiven, Kristen King	√		√	√	√	√	√
Jarrett, Sharifa K.		√					
Johnson, Amber Jade		√	√	√		√	√
Jones, Darby			√	√		√	
Jones, Frederick W.	√		√	√		√	√
Kalmanson, Stacy O.	√		√	√		√	√
Kangas, Michael R.		√	√	√			
Kaplan, Seth		√	√	√		√	
Karibjanian, George		√					
Karr, Mary E.		√					
Karr, Thomas M.		√					
Kayser, Joan B. Past Chair		√					
Kelley, Rohan Past Chair		√					√
Kelley, Sean W.		√		√	√	√	
Kelley, Shane		√				√	
Khan, Nishad	√						
Kibert-Basler, Nicole	√		√	√			
Kinsolving, Ruth Barnes, Past Chair	√					√	
Kison, Amanda	√		√	√			
Klein, Sasha	√		√				
Koren, Edward F. Past Chair		√	√	√		√	
Kotler, Alan Stephen		√	√	√		√	√
Kromash, Keith S.		√					
Kurian, Sanjay	√					√	√

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Kypreos, Theodore S.		√	√			√	√
Lancaster, Robert L.		√	√	√		√	
Lane, Jr., William R.		√	√				
Larson, Roger A.	√		√	√			
Lebowitz, Sean	√		√	√			
Licastro, Laura	√		√	√		√	√
Lile, Laird A. Past Chair		√	√	√		√	√
Little, III, John W.	√						
Liu, Jin	√		√	√			√
Lunsford, Rachel Albritton		√	√	√		√	√
Madorsky, Marsha G.		√				√	
Malec, Brian		√	√				
Malfeld, Mariela	√		√			√	
Marger, Bruce Past Chair		√					
Marx, James A.	√		√	√		√	
Mastin, Deborah Bovarnick	√		√	√			
McCall, Alan K.	√					√	
McDermott, Daniel		√	√	√			
McElroy, IV, Robert Lee		√	√	√			√
McIver, Richard	√		√	√		√	√
McRae, Ashley E.	√		√	√		√	√
Menor, Arthur J.	√			√			√
Meyer, George F. Past Chair	√		√	√			
Meyer, Michael	√		√	√		√	

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Middlebrook, Mark		√	√	√	√	√	
Moffa, Jeanette	√						
Muir, Hon. Celeste H.		√	√	√		√	
Murphy, Melissa J. Past Chair	√		√	√	√	√	√
Nash, Charles I.		√		√		√	
Neukamm, John B. Past Chair	√		√	√		√	
Nguyen, Hung V.		√	√	√		√	√
Oliver, Rachel				√			√
O'Malley, Andrew M.	√			√			
Papanikos, Cristina		√	√	√			
Partington, Bruce	√		√			√	
Payne, L. Howard		√					
Pence, Scott P.	√		√	√	√	√	
Percopo, Joe		√		√		√	
Pilotte, Frank		√	√	√	√	√	√
Pinnock, Duane L.		√	√	√			
Pollack, Anne Q.	√		√	√		√	
Powell, Caitlin	√		√	√		√	
Prescott, Leonard	√		√	√			√
Pressley, Grier James			√	√			
Price, Pamela O.		√	√	√			
Quintero, Jason	√						
Redding, John N.	√		√	√		√	
Renzio, Bryan	√			√		√	

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Rieman, Alexandra V.		√	√	√		√	
Robbins, Jr., R.J.	√		√	√		√	
Roberts, III, Hardy L.	√		√	√		√	
Robinson, Jennifer		√	√	√		√	
Rojas, Silvia B.	√		√	√	√	√	√
Rolando, Margaret A. Past Chair	√		√	√		√	√
Roman, Paul E.		√	√	√			
Romano, Antonio						√	
Rubel, Stacy		√	√	√			√
Rubenstein, Michael		√	√				
Rubin, Jenna		√	√	√		√	
Rudisill, Hon. Michael	√				√		√
Russick, James C.	√		√	√	√	√	√
Sachs, Colleen C.	√		√	√		√	√
Sajdera, Christopher	√		√	√			
Santos, Angela		√	√	√		√	√
Sasso, Andrew	√		√	√		√	
Savioli, Justin	√		√	√			
Scaletta, Melissa	√						√
Schwartz, Martin	√		√			√	
Schwartz, Robert M.	√		√	√		√	√
Seigel, Daniel A.	√		√	√			
Sheets, Sandra G.		√	√	√	√		
Sherrill, Richard		√	√	√		√	

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Sklar, William P.	√		√			√	√
Skrande, Gutman		√	√			√	
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.		√	√	√	√	√	
Staker, Karla J.	√		√	√		√	
Stashis, Alfred Joseph		√	√	√		√	
Stern, Robert G.	√		√	√		√	
Stone, Adele I.	√		√	√		√	
Stone, Bruce M. Past Chair		√				√	
Sundberg, Laura K.		√	√	√		√	√
Swaine, Jack Michael Past Chair	√		√	√	√	√	√
Taft, Ellie	√						
Taylor, Richard W.	√						
Thomas, Hon. Patricia		√	√			√	√
Thornton, Kenneth E.	√		√	√		√	

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Tobin, Jennifer S.	√		√	√			
Triggs, Matthew H.		√	√				
Tschida, Joseph John	√		√	√	√	√	√
Tucker, Kristine L.		√	√			√	
Udick, Arlene C.	√		√		√	√	
Van Dien, Lisa Barnett	√		√	√			
Van Lenten, Jason Paul		√		√			
Van Pelt, Kit E.		√	√				√
Villarroel, Nicole Marie	√		√				
Virgil, Eric		√	√	√			√
Waller, Roland D. Past Chair	√		√	√	√	√	√
Warner, Richard	√		√	√			
Weiss, Brad R.	√		√	√			√
Wells, Jerry B.		√	√				
Westheimer, Scott	√		√	√		√	
White, Jr., Richard M.		√		√		√	
Williams, Margaret A.	√		√	√		√	√
Williams, Jorja	√			√		√	
Williamson, Julie Ann Past Chair	√						
Wintter, Christopher		√	√	√		√	√
Wohlust, Gary Charles		√	√	√		√	√
Wolasky, Marjorie E.		√	√	√		√	
Wolf, Jerome L.		√		√			√
Wood, Rebecca	√		√	√		√	

Executive Council Members	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Shanks, David							√
Young, Gwynne A.		√					
Zeydel, Diana S.C.		√	√	√		√	
Zikakis, Salome J.		√	√	√			√
Zschau, Julius J. Past Chair	√					√	

RPPTL Fellows	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Bailey, Lilleth						√	√
Cleland, Nicole Bell							
Cummins, Amanda		√		√		√	√
Harvey, Terrence	√		√	√		√	√
Hernandez, Melissa	√		√	√		√	√
Miller-Meyers, Erin	√		√	√		√	√
Mount, Shayla	√			√		√	
Reid, Taniguea		√	√	√			

Legislative Consultants	Division		July 21 Breakers (Hybrid)	Nov. 3 Fort Myers, FL	March 2 Charleston, SC	March 30 Tallahassee	June 1 Duck Key, FL
	RP	P&T					
Brown, French	√	√	√			√	√
Dunbar, Marc							
Dunbar, Peter M.	√		√	√		√	
Edenfield, Martha Jane	√	√	√			√	√

Roland Sanchez-Medina √

Raul P. Balloga RP √

Madeline Elser PT √

Richard DeNapoli √



Thank you to Our General Sponsors

<u>Event Name</u>	<u>Sponsor</u>	<u>Contact Name</u>	<u>Email</u>
App Sponsor	WFG National Title Insurance Co.	Joseph J. Tschida	jtschida@wfgnationaltitle.com
Executive Council Meeting	Stewart Title	David Shanks	david.shanks@stewart.com
Friday Night Dinner	First American Title Insurance Company	Alan McCall	Amccall@firstam.com
Friday Reception	Westcor Land Title Insurance Company	Laura Licastro	laura.licastro@wltic.com
Overall Sponsor/Convention	Attorneys Title Fund Services, LLC (The Fund)	Melissa Murphy	mmurphy@thefund.com
Overall Sponsor/Leg. Up	Attorneys Title Fund Services, LLC (The Fund)	Melissa Murphy	mmurphy@thefund.com
Probate Roundtable	Stout	Kym Kerin	kkerin@srr.com
Probate Roundtable	Guardian Trust	Ashley Gonnelli	ashley@guardiantrusts.org
Real Property Roundtable	FNF Family of Companies – Florida Agency	Karla Staker	Karla.Staker@fnf.com
Spouse/Guest Breakfast	Attorneys Title Fund Services, LLC (The Fund)	Melissa Murphy	mmurphy@thefund.com
Thursday Grab & Go Lunch	Management Planning, Inc.	Roy Meyers	rmeyers@mpival.com
Thursday Night Reception	J.P. Morgan Private Bank	Carlos Batlle	carlos.a.batlle@jpmorgan.com
Thursday Night Reception	Old Republic Title	Jim Russick	jrussick@oldrepublictitle.com



Thank you to our Friends of the Section Sponsors

<u>Sponsor</u>	<u>Contact</u>	<u>Email</u>
Business Valuation Analysts, LLC	Tim Bronza	tbronza@bvanalysts.com
CATIC	Deb Boyd	dboyd@catic.com
Cumberland Trust	Elizabeth Claiborne	Eclaiborne@cumberlandtrust.com
Estate Inventory Services	Jeremiah Cronin	jeremiah@estateinventoryservices.com
Fiduciary Trust International of the South	Vaughn Yeager	Vaughn.yeager@ftci.com
Heritage Investment	Joe Gitto	jgitto@heritageinvestment.com
Hindman Auctions	Elizabeth Rader	elizabethrader@hindmanauctions.com
National Philanthropic Trust	Ethan Burke	eburke@nptrust.org
Doma Title Insurance	Carlos Rodriguez	Carlos.rodriquez@doma.com
Probate Cash	Karen Iturrino	karen@probatecash.com
Title Resources	Lee Offir	Lee.offir@titleresources.com
Valuation Services	Jeff Bae	jeff@valuationservices.com
Wells Fargo Private Bank	Johnathan Butler	Johnathan.I.butler@wellsfargo.com



Thank you to our Committee Sponsors

<u>Sponsor</u>	<u>Contact</u>	<u>Email</u>	<u>Committee</u>
Real Property Division			
Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com	Commercial Real Estate
Attorneys Title Fund Services, LLC	Melissa Murphy	mmurphy@thefund.com	Real Estate Leasing
Attorneys' Real Estate Councils of Florida, Inc.	Rene Rutan	rrutan@thefund.com	Residential Real Estate and Industry Liaison
CATIC	Deborah Boyd	dboyd@catic.com	Real Property Finance and Lending
First American Title	Alan McCall	Amccall@firstam.com	Condominium and Planned Development
First American Title	Wayne Sobian	wsobian@firstam.com	Real Property Problems Study
Probate Law Division			
BNY Mellon Wealth Management	Joan Crain	Joan.crain@bnymellon.com	Estate and Trust Tax Planning
BNY Mellon Wealth Management	Joan Crain	Joan.crain@bnymellon.com	IRA, Insurance and Employee Benefits
Business Valuation Analysts, LLC	Tim Bronza	tbronza@bvanalysts.com	Trust Law
Coral Gables Trust	John Harris	Jharris@cgtrust.com	Probate and Trust Litigation
Coral Gables Trust	John Harris	jharris@cgtrust.com	Probate Law Committee
Grove Bank and Trust	Marta Goldberg	mgoldberg@grovebankandtrust.com	Guardianship and Advanced Directives
Kravit Estate Appraisal	Bianca Morabito	bianca@kravitestate.com	Estate and Trust Tax Planning
Management Planning Inc.	Roy Meyers	rmeyers@mpival.com	Estate and Trust Tax Planning
Northern Trust	Tami Conetta	Tfc1@ntrs.com	Trust Law

RPPTL 2022-2023
Executive Council Meeting Schedule
Sarah Butters' Year

Limit 1 reservation per registrant, additional rooms will be approved upon special request.

NOTE- Committee meetings may be conducted virtually via Zoom prior to the Executive Council meeting weekend.

Date	Location
July 21 – July 24, 2022	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$250 Premium Room Rate: \$305
September 28 – October 2, 2022	Executive Council Meeting Opal Sands Harborside Bar Harbor, Maine Standard Guest Room Rate (King): \$318 Premium King: \$376
December 8 – 12, 2022	Executive Council Meeting Four Seasons Orlando, FL Standard Guest Room Rate: \$299
February 22 – 26, 2023	Executive Council Meeting Sandestin Golf and Beach Resort Destin, Florida Grand Complex 1 Bedroom: \$195 Hotel Effie Standard Guest Room Rate: \$244
June 1 – June 4, 2023	Executive Council Meeting & Annual Convention Opal Sands Delray (Contract Pending) Delray Beach, FL Standard Guest Room Rate: \$189

*Subject to availability

RPPTL 2023-2024
Executive Council Meeting Schedule
Katherine Frazier's Year

Limit 1 reservation per registrant, additional rooms will be approved upon special request.

NOTE- Committee meetings may be conducted virtually via Zoom prior to the Executive Council meeting weekend.

Date	Location
July 19 – July 23, 2023	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$257 Premium Room Rate: \$314
September 20 – September 24, 2023	Executive Council Meeting Fairmont Le Chateau Frontenac Quebec City, Quebec Standard Guest Room Rate (King): \$359 CDN (Canadian Dollars)
November 8 – November 12, 2023	Executive Council Meeting JW Marriott Tampa Water Street Tampa, FL Standard Guest Room Rate: \$259 King Suite Room Rate: \$289
February 21 – February 25, 2024	Executive Council Meeting Ritz Carlton Grande Lakes Orlando, Florida Standard Room Rate: \$359 JW Marriott Standard Room Rate: \$329
May 29 – June 2, 2024	Executive Council Meeting & Annual Convention Hyatt Regency Coconut Point Bonita Springs, FL Standard Guest Room Rate: \$209



RPPTL Budget Summary

TO DATE REPORT

General Budget

YTD

Revenue	\$ 1,294,439
Expenses	\$ 1,262,476
Net:	\$ 31,963

Attorney Bankers Conf.

YTD

Revenue	\$ 150
Expenses	\$ 5
Net:	\$ 145

CLI

YTD

Revenue	\$ 368,505
Expenses	\$ 265,119
Net:	\$ 103,386

Trust Officer Conference

Revenue	\$ 311,653
Expenses	\$ 179,538
Net:	\$ 132,115

Legislative Update

Revenue	\$ 9,400
Expenses	\$ 48,059
Net:	\$ (38,659)

Convention

Revenue	\$ 103,224
Expenses	\$ 51,677
Net:	\$ 51,547

Roll-up Summary (Total)

Revenue:	\$ 2,087,371
Expenses	\$ 1,808,785
Net Operations	\$ 278,586

Beginning Fund Balance:	\$ 3,030,620
Current Fund Balance (YTD):	\$ 3,309,206
Projected June 2022 Fund Balance	\$ 2,774,360

CLE Calendar (as of 07/07/22)

Date of Presentation	Crs. #	Title	Location
7/8/22	5513	Litigation and Trust Symposium	Webcast
7/22/22	5774	Legislative Update CLE	The Breakers
8/18/22 – 8/20/22	5704	40 th Annual Attorney/Trust Officer Liaison Conference	The Breakers
TBD	5718	Advanced Leasing Symposium	Pre-Recorded
9/7/22	5994	Dangerous Curves Ahead!!! Community Associations and the Dangers of Litigation with Them: The Common Pitfalls and Traps of Litigation involving Community Associations and how to Avoid Them	Audio Webcast
11/18/22	5744	Annual Probate Law CLE	Orlando
2/9/23 – 2/10/23		ETTP/AP Joint CLE	Video Webcast
2/3/23 – 2/4/23		Advanced Condominium Certification Review Course	TBD
3/15/23 – 3/19/23	5988	CLI	JW Marriott Grande Lakes
3/15/23 – 3/19/23	5989	Advanced Construction Law Certification Review Course	JW Marriott Grande Lakes
3/31/23 – 4/1/23	5990	Wills, Trusts and Estates Certification Review Course	TBD
3/31/23 – 4/1/23	5991	Real Property Certification Review Course	TBD
4/21/23	5992	Attorney Bankers Conference	Funky Buddha Brewery, Ft. Lauderdale
4/28/23	5993	Annual Guardianship CLE	Stetson Law School, Tampa

THE FLORIDA BAR
SECTION LEGISLATIVE ADVISING SERVICES AGREEMENT

THIS AGREEMENT is entered into on July ____, 2022, by and between the REAL PROPERTY, PROBATE AND TRUST LAW SECTION of THE FLORIDA BAR ("SECTION"), and DEAN, MEAD, EGERTON, BLOODWORTH, CAPOUANO & BOZARTH, P.A., ("LEGISLATIVE ADVISOR"), who, in consideration as stated below, agree as follows:

1. **Term.** The LEGISLATIVE ADVISOR will serve from September 1, 2022 to August 31, 2024, as a legislative advisor for the SECTION. The LEGISLATIVE ADVISOR agrees to comply with all policies adopted by The Florida Bar Board of Governors and by the SECTION.
2. **Services.**
 - a. The LEGISLATIVE ADVISOR will serve as the advisor regarding legislative, administrative and regulatory matters that affect the SECTION. Peter M. Dunbar will be the lead contact and will be primarily responsible for performing the services to the SECTION under this Agreement. Other professional staff at the firm that will assist are: Martha Edenfield, French Brown, Marc Dunbar, Angela Bonds, Chris Moya and Jennifer Ungru.
 - b. Other Clients
 - 1) The LEGISLATIVE ADVISOR agrees that, if the LEGISLATIVE ADVISOR individually or his/her firm are to represent any client before the Florida Legislature other than set forth in the attached list, the LEGISLATIVE ADVISOR will notify in writing the Executive Director of The Florida Bar, the chair of the Bar's Legislation Committee, and the chair of the SECTION in writing at least 2 days before initiation of any such representation by the LEGISLATIVE ADVISOR.
 - 2) The LEGISLATIVE ADVISOR further agrees not advance on behalf of other clients any legislative position contrary to an official legislative position of The Florida Bar or the SECTION.
 - a) Potential or actual conflicts of interest will be communicated within 24 hours to the Executive Director of The Florida Bar and the chair of the SECTION to facilitate immediate resolution.
 - b) If the conflict cannot be resolved to the satisfaction of The Florida Bar and the SECTION, this agreement will be terminated.
 - 3) The LEGISLATIVE ADVISOR and the SECTION acknowledge that the services to be provided under this Agreement are governed by The Florida Bar's Rules of Professional Conduct, including those provisions relating to conflict of interest between clients.
 - c. The LEGISLATIVE ADVISOR will work on The Florida Bar legislative matters only as directed by the Executive Director of The Florida Bar, when the Executive Director believes that such participation is necessary and in the best interest of the membership of The Florida Bar, unless conflict exists or

it is inappropriate for the LEGISLATIVE ADVISOR to work on The Florida Bar legislative matters.

- 1) In this event, the cost of the LEGISLATIVE ADVISOR's time will be assessed against the SECTION.
 - 2) In this event, the LEGISLATIVE ADVISOR will advise the SECTION and track and report to the SECTION the costs incurred by the LEGISLATIVE ADVISOR.
- d. The LEGISLATIVE ADVISOR will coordinate all activities regarding the Florida Legislature that might affect the SECTION, which includes but is not limited to:
- 1) Identifying legislative issues likely to come before the Legislature during the term of the Agreement that will require services under the Agreement;
 - 2) Notifying the SECTION of any committee hearings of the Legislature that deal with issues that concern any area within the purview of the SECTION;
 - 3) Preparing presentations, when requested, to be made to legislators and their committee staff;
 - 4) Providing to the SECTION summaries of pre-filed and filed bills that deal with areas within the purview of the SECTION and copies of the actual bills when appropriate;
 - 5) Providing weekly reports during the legislative session on the status of legislative matters on which the SECTION has taken a position or has a pending legislative proposal, and providing reports on any new matters filed that are within the purview of the SECTION;
 - 6) Providing all services necessary to promote and support the SECTION's legislative proposals and other matters affecting the SECTION's areas of practice, and work with SECTION-designated contacts to obtain legislative sponsors for the SECTION's proposals;
 - 7) Using best efforts, while working with SECTION representatives, to ensure there is a diversity of legislators that sponsor SECTION legislation from year to year;
 - 8) Alerting the SECTION to the activities of other interested groups relating to legislative proposals promoted by, supported, or opposed by the SECTION; and
 - 9) Reporting on other matters that might affect, or be of interest to, the SECTION and its legislative program, including but not limited to regulation, rulemaking, and the provisions of technical assistance to the Executive Branch, executive branch agencies, and the Florida Legislature.
3. **Payment.** The SECTION will pay the LEGISLATIVE ADVISOR a fee of \$120,000.00, inclusive of all reasonable costs and expenses to be paid in the following manner: \$30,000 payable on September 1, 2022, \$30,000 payable on

December 1, 2022, \$30,000 payable on March 1, 2023, \$30,000 payable on June 1, 2023, \$30,000 payable on September 1, 2023, \$30,000 payable on December 1, 2023, \$30,000 payable on March 1, 2024, and \$30,000 payable on June 1, 2024 plus out-of-pocket expenses in an aggregate amount not to exceed \$20,500 per year for attendance at in-state Executive Council meetings and certain incidental expenses approved by the Section.

4. **Termination.** This Agreement may be terminated by either party upon sixty (60) days' written notice being given, or may be immediately terminated by The Florida Bar if it decides that the LEGISLATIVE ADVISOR or a member of the LEGISLATIVE ADVISOR's firm does not act within the best interest of The Florida Bar. In the event of such termination, the LEGISLATIVE ADVISOR will be entitled to payment of outstanding fees. Monthly fees will be determined on a *pro rata* basis based on the number of days remaining in the applicable month.

5. **Disclosure Requirements.**

- a. Florida law requires lobbying firms to make certain public disclosures regarding their legislative and executive branch lobbying activity, including registering to represent a client and reporting compensation related to all lobbying activity for each client on a quarterly basis, with such compensation reports being subject to a random audit on an annual basis. The SECTION and LEGISLATIVE ADVISOR agree and consent to the disclosure of any information in this Agreement by either party or by The Florida Bar as required by law.
- b. The Florida House of Representatives requires lobbying firms to publicly disclose each issue they are engaged to lobby on behalf of a lobbying client, including specific bill numbers. The Florida House of Representatives also requires lobbying firms representing public sector clients to post the lobbying contract on this [website](#).
- c. Florida lawyers who engage in lobbying activity for a client are bound by the Rules Regulating the Florida Bar that provide that information relating to a client's representation is confidential unless certain limited exceptions apply. Some of the information required to be disclosed by Florida law and the Florida House of Representatives above is considered confidential by The Florida Bar. By entering into this Agreement, the SECTION consents to the disclosure of the required information.

6. **Miscellaneous.**

- a. The LEGISLATIVE ADVISOR always agrees to identify him/herself as a representative of the SECTION and not as a representative of The Florida Bar when working on SECTION matters.
- b. This Agreement will be governed by the laws of the State of Florida.
- c. This Agreement is not assignable by either party.
- d. All notices provided under this Agreement will be in writing and addressed to the undersigned persons and their designees at their email and mailing addresses as set forth in the membership records of The Florida Bar.
- e. This Agreement represents the entire agreement of the parties and may be amended only by a written instrument signed by all parties, unless a

document is referenced in this Agreement and attached; then it is part of this Agreement as if fully incorporated herein.

- f. This Agreement may be executed in counterparts manually or by electronic means, all of which together will constitute one instrument that will be the Agreement.

WITNESS our signatures below.

DATED: _____

SARAH BUTTERS, Section Chair
RPPT Law Section
The Florida Bar

DATED: _____

JOSHUA E. DOYLE
Executive Director
The Florida Bar

DATED: _____

PETER M. DUNBAR
Legislative Advisor

Attachment 1: List of Clients

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

T. Hill ✓

SHANNON K. GURSKY,

Appellant,

v.

CASE NO. 5D21-1488
LT CASE NO. 2019-CP-045807

HARRY M. ARMER, III, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
NANCY KAY ARMER A/K/A NANCY
BOURQUARDEZ ARMER A/K/A KAY B. ARMER,

Appellee.

DATE: June 13, 2022

BY ORDER OF THE COURT:

ORDERED, sua sponte, that the parties are directed to file supplemental briefs addressing how Article X, section 4 of the Florida Constitution should be applied to the facts of this case, given the following:

Prior to her death, the Decedent was the Settlor of a revocable trust into which she deeded her homestead. Upon the Decedent's death, the trust became irrevocable. To qualify for protection under Article X, section 4 of the Florida Constitution, property must be "owned by a natural person." Art. X, § 4(a), Fla. Const. (2021). Please state how this constitutional provision, requiring that property be owned by a natural person, should be applied to

the facts of this case, given that the Settlor's trust became irrevocable after she died.

Supplemental briefs shall not exceed 20 pages and must be filed on or before **July 28, 2022**.

The Court solicits the view of amici curiae, who may file motions to brief this issue pursuant to Florida Rule of Appellate Procedure 9.370(a). All amici curiae briefs must be submitted on or before **August 1, 2022**. A party wishing to respond to an amici curiae brief must do so no later than **August 10, 2022**.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Evander, Eisnaugle and Nardella

cc:

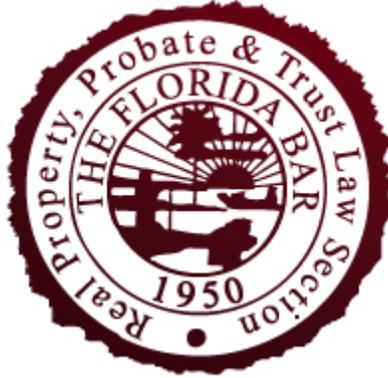
Elizabeth Siano Harris Keith S. Kromash

Joshua Doyle
Florida Bar
Executive Director

Robert S. Swaine
Chair
Real Property, Probate
& Trust Law Section of
the Florida Bar

Diana L. Kellogg
Section Administrator
for the Real Property,
Probate & Trust Law
Section of the Florida
Bar

REAL
PROPERTY,
PROBATE &
TRUST LAW
SECTION



OF THE
FLORIDA
BAR

www.RPPTL.org

RPPTL AD HOC COMMUNICATIONS COMMITTEE

Established February 23, 2022

Michael Hargett, Chair
Laura Kristin Sundberg, Vice Chair
Alexander Hamrick
Hardy Roberts
John Neukamm, Advisor

May 26, 2022

Re: Confidential Request for Proposal

Dear _____,

The Ad Hoc Communications Committee (the “Committee”) of the Real Property Probate and Trust Law Section of the Florida Bar (the “Section”) seeks to engage an outside marketing, advertising, social media and branding firm to aid the Committee and the Section in their mission to serve the citizens of the State of Florida. This Request for Proposal (this “RFP”) is confidential and we ask that you treat it just as you would your other confidential matters.

You are one of five firms selected by the Committee to receive this RFP and we kindly request your written proposal within three weeks of the date of this letter.

I - General Information:

- Please submit all responses to mhargett@barnettbolt.com.
- Please include with your response any law firm or legal marketing experience you have but understand that such experience is not required.
- An initial, partial year, term beginning on July 1, 2022, and ending on December 31, 2022.
- All proposals are subject to the Florida Bar’s Standard Contract Terms and Conditions, revised October 7, 2021.

II – Scope of Work. Your proposal should focus solely upon the following scope of work:

1. The Section has multiple educational objectives each year. Each educational objective will have one or more target audiences. Please provide your specific plan to communicate an educational goal to:
 - a. Citizens of a particular region of the State of Florida, for example the I-4 Corridor, Miami-Dade or Tallahassee targeted at:
 - i. the elderly, 65 years or older, and
 - ii. ages 40 - 65;
 - b. The Florida legislature;
 - c. The members of the Florida Bar; and
 - d. The Section members itself.
2. Your plan should fully detail your approach to each group of recipients, identify the actual communication service(s) used and whether or not such service is owned by you or contracted and performed by others.
3. Your plan should also include any proposed services you can offer to improve each of the Section’s educational goals. The following two examples may be useful:

- a. the Section presents a “Legislative Update” continuing legal education program each year focused on the impact of the year’s legislative initiatives on real property, probate and trust law.
- b. the Section plans to educate the general public, the elderly and the legislature on the challenges faced by caregivers and the elderly.

III – Potential Additions. The following services are outside the current scope of work but may be considered this year or in calendar year 2023:

1. Improve the Section’s existing website.
2. Promote the RPPTL Section in general.
3. Improve member communications/comradery.
4. Advance membership goals and inclusion initiatives to continue to grow the section – improve section visibility to lawyers outside the Section and to non-lawyers (outside marketing and messaging beyond the profession).
5. Advance engagement among members of the Section.
6. Refresh the Section’s social media presences, create social media platforms where the Section is not presently (e.g., Instagram/LinkedIn) and take on the responsibility of social media marketing for the Section.
 - a. In general review the current branding of the Section across all media and organize and improve all such communications and marketing efforts.
 - b. Identify opportunities to offer new value-adds to Section sponsors.
 - c. Improve diversity and inclusion efforts.

Please feel free to reach out to me at (813) 253-2020 if you have any questions.

Sincerely,

Michael V. Hargett

DO 'Z' WORDS BELONG IN BAR RULES?

📅 Jun 08, 2022 👤 By Jim Ash ▶ Senior Editor 📁 Top Stories



Andrew Sasso

A Real Property, Probate and Trust Law Section committee is considering a proposal to scrub so-called “Z” words — “zeal,” “zealous,” and “zealously,” — from the Bar rule book.

“It’s not just the legal profession, people in general relate someone who is ‘zealous’ to someone who is a zealot,” said RPPTL Professionalism and Ethics Committee Chair Andy Sasso. “And I don’t know anyone who would say that someone being a zealot is positive.”

If the committee’s proposed revisions were adopted, Florida would join at least 13 other states, including Georgia, New York, and California, that have removed “Z” words from their rules and commentary.

Sasso acknowledges that the words “zeal,” “zealous,” or “zealously,” don’t appear in Florida Bar rules — they appear in the preamble to Chapter 4, and in a comment to Rule 4-1.3 (Diligence).

But words matter, Sasso said, especially in the legal profession.

“You get into this whole thing, there is no requirement to provide zealous representation, because it’s in the comment, and that’s only aspirational,” he said. “I think it causes a lot of confusion for lawyers.”

Sasso said he decided to take the issue to his committee in April, after the Florida Supreme Court issued a ruling in a disciplinary case, *The Florida Bar v. Schwartz*, 334 So. 3d 298 (Fla. 2022).

“Finally, we reiterate that the requirement to provide zealous representation, as contemplated under our ethical rules ... does not excuse engaging in misconduct, irrespective of one’s intent to benefit the client,” the justices wrote. “As we have previously observed, “[w]e must never permit a cloak of purported zealous advocacy to conceal unethical behavior.”

Sasso said he has been thinking about the issue since his first semester of law school, and his fiancé — now wife — gave him a copy of Black's Law Dictionary.

The only definition he found was a disparaging reference to a witness.

"It says an untechnical term, denotes a witness on a trial of a cause, who manifests a partiality for the side that is calling him, and an eager readiness to tell anything which he thinks may be of advantage to that side," Sasso said.

A recent article in "Ethics and Professionalism," a publication of the ABA Litigation Section, argues that "Z" words should be removed from comments to ABA Model Rules of Professional Conduct.

The authors warn that it "contributes to the problem of lawyers using a misinterpretation of the Model Rules to justify their own uncivil and even unethical behavior — after all, the ordinary meaning of the term 'zealot' is a person who is fanatical and uncompromising."

In Florida Bar rules, the Preamble to Chapter 4, states, in part, that "As an advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."

The Professionalism and Ethics Committee proposed revisions would state, "As an advocate, a lawyer asserts the client's position with commitment and dedication to the interests of the client under the rules of the adversary system."

Another sentence in the preamble states, "Zealous advocacy is not inconsistent with justice."

The committee's proposed revision would state, "Commitment and dedication in advocacy are not inconsistent with justice."

The final "Z" word reference appears in the comment to Rule 4-1.3 (Diligence). It states, in part, "A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."

The committee's proposed revision would simply remove the last nine words of the sentence — "and with zeal in advocacy upon the client's behalf."

The committee is also proposing to introduce a word that has never appeared in a Florida Bar rule or comment — "kindness."

The proposed revision would add the following nine words to the final sentence in the comment to Rule 4-1.3 — “kindness and punctuality are not inconsistent with diligent representation.”

Sasso said he was inspired by an historical document a subcommittee chair recently shared with him — a 1922 letter from Marine Corps Commandant John A. Lejeune to his officers.

“Be kindly and just in your dealings with your men,” Lejeune wrote.

Sasso was intrigued.

“I thought that was really interesting,” he said. “You’ve got the Marine commandant asking his men to be just and kind.”

Sasso stressed that the proposed revisions are only a draft. If the committee approves them, they won’t be presented to the section’s executive council for a final vote until December. After that, the Board of Governors would weigh in. The Supreme Court would have the final say.

Chapter 17
MARKETABLE RECORD TITLE ACT

Standard 17.1

PURPOSE OF THE MARKETABLE RECORD TITLE ACT

STANDARD: THE ACT SHOULD BE RELIED UPON TO ELIMINATE ALL ESTATES, INTERESTS, CLAIMS, COVENANTS, RESTRICTIONS, OR CHARGES THAT FALL WITHIN ITS SCOPE IN ORDER TO RENDER TITLE MARKETABLE.

Problem 1: In 1919, the State of Florida conveyed to the City of Miami certain submerged lands including the mouth of the Miami River. In 1944, the Florida East Coast Hotel Corporation deeded 14 acres on the north side of the Miami River, including a yacht basin at its mouth, to the St. Joe Paper Company. The Florida East Coast Hotel Corporation did not have title to the land described in the deed at the time, but the face of the deed did not refer to the City's ownership. Thereafter, the St. Joe Paper Company filled in and bulkheaded the yacht basin. In 1974, did the St. Joe Paper Company have marketable title to the 14 acres including the filled in yacht basin?

Answer: Yes.

Authorities

& References: F.S. 712.01, et seq. (2020); *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 449 (Fla. 1978) (holding that the Act is constitutional and designed to simplify conveyances, stabilize titles, and give certainty to land ownership; it operates as a curative act, a statute of limitations, and a recording act, is applied retroactively and may even create marketable title in one who claims from a wild or interloping deed as its root of title); *ITT Rayonier, Inc. v. Wadsworth*, 346 So. 2d 1004, 1010 (Fla. 1977) (mother's life estate holder's deed served as root of title to eliminate the remainder interests of her children); *Marshall v. Hollywood, Inc.*, 236 So. 2d 114, 120 (Fla. 1970), *cert. denied*, 400 U.S. 964 (1970) (the Act operates to make title based on a wild deed marketable); *Sawyer v. Modrall*, 286 So. 2d 610, 613 (Fla. 4th DCA 1973); *cert. denied*, 297 So. 2d 562 (Fla. 1974) (the Act operates to eliminate interest created by deed from the Trustees of the Internal Improvement Trust Fund); *Wilson v. Kelley*, 226 So. 2d 123, 128 (Fla. 2d DCA 1969) (quit claim deed may serve as root of title only if it evidences an intent to convey an identifiable interest); *Whaley v. Wotring*, 225 So. 2d 177 (Fla. 1st DCA 1969); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §§14.20 to 14.22 (2020).

Comment: Purpose. The chief purpose of the Act is to extinguish – by operation of law – all stale claims to and ancient defects in title to real property and to limit the period of the search. *Marshall*, 236 So. 2d at 119 (quoting, Catsman, The Marketable Record Title Act and Uniform Title Standards, III Florida Real Property Practice (1965), § 6.2). To effect its purpose, the Act is to be “liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in s. 712.02 subject only to such limitations as appear in s. 712.03.” F.S. 712.10 (2020).

Operation. The Act works by operation of law vesting marketable title free and clear of all claims except for the matters set forth in the limited statutory exceptions in those who – together with their predecessors in title – have held record title to property for thirty years or more. F.S. 712.02 (2020). In determining the effect of the Act, the practitioner should first identify a root of title vesting title in the claimant or its predecessors and confirm it has been of record for 30 years or more. F.S. 712.01(6) (2020). If so, the claimant has marketable record title free and clear of all claims. The practitioner should then consider each of the statutory exceptions in F.S. 712.03 (2020), to determine what matters are not affected by the Act.

STANDARD 17.2

MARKETABLE RECORD TITLE AND ROOT OF TITLE

STANDARD: A PERSON WHO, ALONE, OR TOGETHER WITH PREDECESSORS IN TITLE, HAS BEEN VESTED WITH AN ESTATE OF LAND OF RECORD FOR 30 YEARS OR MORE, HAS MARKETABLE RECORD TITLE TO THAT LAND FREE AND CLEAR OF ALL CLAIMS EXCEPT THE MATTERS SET FORTH AS EXCEPTIONS TO MARKETABILITY IN THE ACT.

Problem 1: The following chain of title appears of record. In 1955, John Doe deeded Blackacre to Richard Roe “for so long as the premises are used for residential purposes.” In 1965, Richard Roe conveyed Blackacre to Simon Grant, without reference to the restriction to residential use. In 2005, is title to Blackacre free and clear of the restriction to residential use contained in the 1955 deed?

Answer: Yes. The 1965 deed constitutes a root of title and the use restrictions contained in the 1955 deed were extinguished by operation of law in 1995.

Problem 2: Same facts as Problem 1 except that in 1994 Simon Grant conveyed Blackacre to Jane Roe “subject to” the 1955 deed, identifying the 1955 deed by official recording book and page. In 2005, is title to Blackacre free and clear of the restriction to residential use contained in the 1955 deed?

Answer: No. The 1965 deed constitutes a root of title and the use restrictions contained in the 1955 deed would only be extinguished by operation of law in 1995. However, restrictions created prior to the root of title shall not be extinguished by law if those restrictions are specifically referenced by book and page of record, instrument number, plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates recorded subsequent to the root of title but prior to the expiration of the 30 year statutory time period. ▲

Formatted: Not Expanded by / Condensed by

Problem 3: Same facts as Problem 1 except that in 1997 Simon Grant deeds Blackacre to Jane Roe “subject to” the 1955 deed, identifying the 1955 deed by official recording book and page. In 2005, is title to Blackacre free and clear of the restriction to residential use contained in the 1955 deed?

Answer: Yes. The 1965 deed constitutes a root of title and the use restrictions contained in the 1955 deed were extinguished by operation of law in 1995, notwithstanding the subsequent specific reference to the 1955 deed in the 1997 deed, a muniment of title.

Problem 4: Same facts as Problem 1 except that the 1965 deed to Simon Grant was not recorded until 1980. In 2005, is title to Blackacre free and clear of the restriction to residential use contained in the 1955 deed?

Answer: No. A root of title must be of record for at least 30 years. Therefore, there is no qualifying root of title that may operate to eliminate the restriction contained in the 1955 deed.

Problem 5: In 1970, Richard Roe owned Blackacre. In 1975, Simon Grant, although he never had title to Blackacre, purported to convey the North half of Blackacre to Thomas Frank. In 2006, does Richard Roe have marketable title to all of Blackacre?

Answer: No. Although the 1975 deed to the North half of Blackacre was a wild deed, it nevertheless ripened into a viable root of title after being of record for 30 years in 2005 and created marketable record title in Thomas Frank free and clear of the claims of Richard Roe.

Problem 6: Same facts as Problem 54. In 2006, does Thomas Frank have marketable record title to the North half of Blackacre?

Answer: Yes. Although the 1975 deed is a wild deed, it purports to create a fee simple estate in Frank in the North half of Blackacre, which sufficiently identifies the land's location and boundaries and has been of record for at least 30 years.

Problem 7: Richard Green is the last grantee in the chain of title to Blackacre by a deed recorded in 1960. John Doe, a stranger to title of Blackacre, died in 1969. John Doe's probate proceedings recorded in 1970 establish that title to Blackacre was transferred to John's sole heir, Ralph Doe. In 2001 is title to Blackacre free and clear of any interest of Richard Green??

Answer: Yes. The court proceedings are a muniment of title to the land and were recorded 30 years prior to the time of determination of marketability. Hence, they qualify as the root of title and Ralph Doe's ownership in Blackacre is free of Richard Green's interest.

Authorities & References: F.S. 712.01, et seq. (2020); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE §§ 2.1-2 (Fla. Bar CLE 9th ed. 2019); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §§ 14.21-.22 (2020); FUND TN 10.01.02.

Comment: A marketable record title is free and clear of all claims except the matters set forth in the limited statutory exceptions. Nevertheless, the careful practitioner may also want to keep in mind the small handful of exceptions based upon judicial interpretations. *See, e.g., Clipper Bay Investments LLC v. State Department of Transportation*, 160 So. 3d 858 (Fla. 2015) (exception for easements in use applies to land owned in fee by the FDOT); *Blanton v. City of Pinellas Park*, 887 So. 2d 1224 (Fla. 2004) (holding that statutory ways of necessity are not subject to the Act because they are not dependent on a review of the historical record but, instead, on the current status of the property); *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) (judicially created exception for restrictive covenants recorded in compliance with government imposed condition of land use approval); *Barney v. Silver Lakes Acres Property*, 159 So. 3d 181 (Fla. 5th DCA 2015) (a deed stating it was "subject to" the obligations of the lot owners to a specifically named owners association was not a "general reference" to the association's restrictive covenants, notwithstanding the absence of the specific book and page of record of the restrictions, thereby bringing the restrictions within the exception of F.S. 712.03(1)); and *Village Carver Phase I, LLC v. Fidelity Nat'l Title Ins.*, 128 So. 3d 107 (Fla. 3d DCA 2013) (rights pursuant to F.S. 704.08 providing relatives and descendants an easement for visitation to a cemetery does not create an interest in real property and therefore such rights are not extinguished by the Act).

Pursuant to the 2022 amendment to the Act, covenants and restrictions that depend upon a zoning requirement, or building or development permit may be extinguished by the Act provided as long as there is not a statement on the face of the first page of the recorded instrument that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval. This amendment was adopted to overrule the decision in *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) (judicially created exception for restrictive covenants recorded in compliance with government-imposed condition of land use approval). Parties holding an interest not extinguished before July 1, 2022, must file a notice pursuant to s. 712.06, F.S., by July 1, 2023, to preserve such interest. Any county av

Formatted: Not Highlight

[defined in s. 125.011\(1\), F.S., must file a notice pursuant to s. 712.06, F.S., by July 1, 2025, to preserve such interest.](#)

The 2022 amendment to the Act also closes the judicial loophole created by *Barney v. Silver Lakes Acres Property*, 159 So. 3d 181 (Fla. 5th DCA 2015). In *Barney*, the court found that a deed stating it was “subject to” the obligations of the lot owners to a specifically named owners association was not a “general reference” to the association’s restrictive covenants, notwithstanding the absence of the specific book and page of record of the restrictions, thereby bringing the restrictions within the exception of F.S. 712.03(1). The 2022 amendment to the Act removes reference to the concept of a “general reference” and, in its place, provides for the only two specific instances in which a muniment of title will serve to preserve an estate, interest, easement, use restriction, or defect. Those two instances are (i) where the interest is referred to in the legal description of the muniment itself by official records book and page number, instrument number, or plat name or (ii) the muniment contains an affirmative statement that it is intended to preserve the interest. This amendment makes clear the deed in the *Barney* case would not have been sufficient to bring the association’s restrictive covenants within the scope of the exception contained in F.S. 712.03(1).

Once a marketable record title has been established, the Act eliminates, by operation of law, all estates, interests, claims, [covenants, restrictions](#), or charges, however denominated, and whoever holds them, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title and declares all such interests to be “null and void.” [The amendments to ss. 712.03 and 712.04, F.S., are intended to clarify existing law, are remedial in nature, and apply to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted before, on, or after the 2022 amendment.](#) F.S. 712.04 (2020). A judicial determination is not required to establish or confirm the operation of the Act. Once an interest has been eliminated by operation of the Act, that interest cannot be “revived” by a specific reference to the interest in the subsequent muniments in the chain of title or by filing a preservation notice, either of which might have created exceptions to marketability had they been recorded within the initial 30-year period. F.S. 712.03(1) & (2) (2020). However, community covenants, conditions and restrictions may be revived by a property owner’s association after the 30-year period if the covenant revitalization procedures are correctly followed. F.S. 712.11-12 (2020) & F.S. 720.403-407 (2020).

The “root of title” concept is a key component in the statutory analysis, and its definition is hard and worthy of attention. A root of title is defined as “any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.” F.S. 712.01(6) (2020). In turn, a title transaction is defined as “any recorded instrument or court proceeding that affects title to any estate or interest in land that describes the land sufficiently to identify its location and boundaries.” F.S. 712.01(7) (2020).

The phrase “the time marketability is being determined” is what requires some explication. Because the Act operates as a matter of law, without need for any judicial determination, and is to be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions, this phrase must be construed to mean 30 years after the date of the recording of any given root of title. Note that there may be many roots of title in any given chain of title, which may overlap and serve to cut off different interests or claims. In other words, the Act is continually at work, clearing up ancient and stale claims. Any other construction of this phrase – such as one requiring a judicial determination – would actually serve to preserve older, more ancient claims while eliminating more recent claims. Such other constructions are plainly contrary to the legislative intent of simplifying and facilitating land title transactions expressed in the statute.

STANDARD 17.3

INTERESTS EXTINGUISHED

STANDARD: ALL ESTATES, INTERESTS, CLAIMS, COVENANTS, RESTRICTIONS, OR CHARGES, THE EXISTENCE OF WHICH DEPENDS UPON ANY ACT, TITLE TRANSACTION, EVENT, OR OMISSION THAT OCCURRED BEFORE THE EFFECTIVE DATE OF A ROOT OF TITLE, ARE EXTINGUISHED BY OPERATION OF THE ACT, EXCEPT THOSE RIGHTS SPECIFICALLY EXCEPTED FROM THE ACT.

Problem 1: A deed to Blackacre executed by John Doe and recorded in 1965 contained: (1) a condition subsequent that the grantor or his heirs could re-enter in the event of a breach of certain specified conditions and (2) a special limitation that the land was conveyed “so long as” it was used for a specified purpose. A warranty deed to Blackacre recorded in 1975 does not mention any conditions or limitations. No notice of a claim based on the conditions or limitations has been filed. In 2006, is title to Blackacre free and clear of the condition subsequent and the possibility of reverter by operation of the Act?

Answer: Yes. The existence of the claims depended upon the 1965 deed, a title transaction occurring prior to 1975 effective date of the root of title, and no exception applies.

Problem 2: Same facts as Problem 1 except that the 1975 deed, or a subsequent warranty deed, contained a provision that the conveyance was “subject to conditions and limitations of record.” In 2006, is title to Blackacre free and clear of the condition subsequent and the possibility of reverter by operation of the Act?

Answer: Yes. An interest disclosed by the muniments of title, beginning with the root of title, may be preserved from operation of the Act but only if the title transaction imposing, transferring, or continuing such interest is specifically identified by reference to the book and page of record or by the name of the recorded plat. F.S. 712.03(1) (2020).

Problem 3: The plat for Blackacre Subdivision, filed in 1925, contained a setback restriction. A deed to Lot 1 in Blackacre Subdivision recorded in 1953 contained a reference to the name of the recorded plat, as did subsequent deeds, but none specifically referenced the setback restriction. In 1984, is title to Blackacre free and clear of the setback restriction by operation of the Act?

Answer: No. A restriction is preserved if the root of title or any subsequent muniments of title recorded within the 30 years immediately following the recording of the root of title refer to the recorded plat that imposed the restriction by name. F.S. 712.03(1) (2020).

Problem 4: A deed to Blackacre recorded in 1955 contains a condition subsequent and the possibility of reverter described in Problem 1. A subsequent root of title is recorded in 1960, without reference to the restriction. In 1991, a deed within the chain of title specifically identifies the condition subsequent and the possibility of reverter by reference to the book and page of record for the 1955 deed. In 1992, is title to Blackacre free and clear of the restriction by operation of the Act?

Answer: Yes. The restriction had been extinguished by operation of the Act in 1990, and the subsequent reference to the book and page of record of the 1955 deed in the 1991 muniment could have no effect on the already-extinguished restriction. F.S. 712.03(1) (2020).

Problem 5: A deed to Blackacre executed by John Doe and recorded in 1965 reserved an easement. A deed to Blackacre recorded in 1975 does not mention the easement. John Doe and his successors in interest have used the easement, or a part of it, since 1965. No notice of a claim based on the easement has been filed. In 2006, was title to Blackacre free and clear of the easement by operation of the Act?

Answer: No. Easements or rights, interests, or servitudes in the nature of easements, rights of way and terminal facilities and mortgages on such rights are preserved by F.S. 712.03(5) (2020) so long as they, or any part thereof, are used.

Problem 6: A deed to Blackacre executed by John Doe and recorded in 1965 reserved all of the subsurface minerals to Blackacre and the right of entry to explore and extract those minerals. A deed to Blackacre in fee simple is recorded in 1975, and it does not mention the 1965 deed, the mineral reservation, or the right of access. No notice of a claim based on the reservation has been filed. In 2006, was title to Blackacre free and clear of the right of entry to explore and extract mineral rights by operation of the Act?

Answer: Yes. Note that this would be the same result even if the 1965 deed had not expressly reserved the right of entry as such right is implicit with the reservation of the subsurface minerals. *See, P & N Investment Corp. v. Florida Ranchettes, Inc.*, 220 So. 2d 451, 453 (Fla. 1st DCA 1969).

Authorities & References: F.S. 712.03-.04 (2020); F.S. 704.05(1) (2020); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §14.22 (2020).

Comment: A "root of title" is any title transaction that purports to create or transfer the estate claimed, describes the land sufficiently to identify its location and boundaries, and has been of record for more than 30 years. F.S. 712.01 (2020); *Marshall v. Hollywood, Inc.*, 224 So. 2d 743, 750 (Fla. 4th DCA 1969), *aff'd* 236 So. 2d 114 (Fla. 1970) (a void deed may be a root of title); *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 446 (Fla. 1978) (wild deed); *Kittrell v. Clark*, 363 So. 2d 373, 374 (Fla. 1st DCA 1978) (probate); *Mayo v. Owens*, 367 So. 2d 1054, 1057 (Fla. 1st DCA 1979) (judgment determining heirs).

The careful practitioner will be vigilant for defects inherent in a root of title. *See, e.g., Marshall v. Hollywood, Inc., supra*, at 751 ("defects in the muniments of title" do not refer to defects or failures in the transmission of title . . . but refer to defects in the make up or constitution of the deed or other muniments of title on which such transmission depends"). *See* Title Standard 17.10 for discussion of defects inherent in the muniments of title.

A restriction arising prior to the date of a root of title is preserved if the root of title or a subsequent muniment of title within the 30 year period immediately following the recording of a root of title contains a specific identification by reference to the name of the recorded plat or book and page of record of the instrument that imposed the restriction. *Sunshine Vistas Homeowners Association v. Caruana*, 623 So. 2d 490, 492 (Fla. 1993). However, a specific identification by reference to the name of the recorded plat ~~or~~ book and page of record, instrument number of the instrument that imposed the restriction or an affirmative statement intent to preserve the restriction in a muniment of title recorded after that restriction has already been extinguished by operation of the Act, has no effect on the already-extinguished restriction. *See*, problem 4 above and comment to Title Standard 17.2.

The Act may operate to extinguish a county's claim of ownership. *Florida DOT v. Dardashti Properties*, 605 So. 2d 120, 122 (Fla. 4th DCA 1992) (County's interest in a strip of land held for right of way was extinguished by the Act).

STANDARD 17.4

RECORDING A NOTICE TO PRESERVE INTERESTS

STANDARD: RECORDING A PROPER NOTICE PRESERVES ESTATES, INTERESTS, CLAIMS, COVENANTS, RESTRICTIONS, OR CHARGES FROM THE OPERATION OF THE ACT.

Problem 1: John Doe, the record owner of Blackacre, gave and recorded a mortgage to Richard Roe encumbering Blackacre, which was recorded in January 1975. The last payment was not due until 2010. On June 15, 1975 a deed to Blackacre, which qualified as a root of title, was recorded but it contained no mention of the mortgage. On June 16, 2005, is Roe's mortgage lien extinguished?

Answer: Yes. _____

Formatted: Tab stops: 3.25", Centered

Problem 2: John Doe gave and recorded a 99-year lease to Richard Roe on July 1, 1975, at which time the lease was recorded, and Roe went into possession of the land. On July 2, 2006, is John Doe's ownership extinguished?

Answer: No. The 1975 transaction created a leasehold interest only. John Doe's fee simple interest would not be extinguished. Filing of notice is necessary only when there is a subsequent title transaction that purports to divest the interest claimed.

Problem 3: The owner of Blackacre Subdivision as developer, joined by Blackacre Homeowners' Association, Inc., filed a Declaration of Covenants and Restrictions for Blackacre Subdivision in 1975. John Doe conveyed Lot 1 in Blackacre Subdivision to Richard Roe in 1978. That deed did not mention the covenants or restrictions, and there is no subsequent amendment to the Declaration of Covenants and Restrictions and no specific reference to the recording information of the Declaration of Covenants and Restrictions in muniments of title in the public record. In 2009, were the CCRs extinguished by operation of the Act as to Lot 1?

Answer: Yes, unless the Blackacre Homeowners' Association either timely preserved the CCRs by filing the statutory notice pursuant to F.S. 712.05(2) or thereafter accomplishes covenant revitalization.

Problem 4: The owner of Whiteacre Business Park as developer filed a Declaration of Covenants, Conditions and Restrictions (CCRs) for Whiteacre Business Park in January 1989. John Doe conveyed Parcel 3 in Whiteacre Business Park to Richard Roe in March 1989. That deed did not mention the CCRs, and there is no subsequent amendment to the CCRs and no specific reference to the recording information of the CCRs in muniments of title in the public record. In 2020, were the CCRs extinguished by operation of the Act as to Parcel 3?

Answer: Yes, unless the Whiteacre Business Park Property Owners' Association either timely preserved the CCRs by filing the statutory notice pursuant to F.S. 712.05(2) or thereafter accomplishes covenant revitalization.

Problem 5: Same facts as Problem 4, except a notice to preserve the CCRs was recorded in December 2018. In 2020, were the CCRs extinguished by operation of the Act as to Parcel 3?

were extinguished by MRTA. The holding in *Matissek* has continuing application outside of the context of the 2018 revision.

For covenants, conditions and restrictions that have lapsed, property owners may avail themselves of covenant revitalization through the Department of Economic Opportunity pursuant to sections 720.403 - .407. Once MRTA has extinguished a Declaration of Covenants, Conditions and Restrictions, title is marketable free of that Declaration. If the Declaration is later revived, then title is again subject to the Declaration. In no event is the Declaration enforceable for the period of time the Declaration was extinguished. Thus, even if the HOA revives the Declaration, it may not retroactively enforce that Declaration retroactively during the time it was previously extinguished.

Effective October 1, 2018, revitalization of covenants or restrictions is available to all types of communities and property owners' associations and is not limited to residential property. F.S. 712.11 & 720.403(3) (2020). Chapter 720, Part III is the sole means of revitalizing covenants, conditions or restrictions that have been extinguished by operation of the Act.

Effective September 4, 2020, section 712.065(1) defines discriminatory restriction as one that restricts ownership, occupancy or use of real property based upon a natural person's characteristic that is protected by the laws of the United States or the State of Florida. These discriminatory restrictions are thus unenforceable and severed from any recorded title transaction. Recording of any notice to preserve such restrictions does not reimpose any discriminatory restriction. F.S. 712.065(2) (2020). A recorded amendment to covenants or restrictions that removes a discriminatory restriction but changes no other provision does not constitute a title transaction occurring after the root of title. F.S. 712.065(3) (2020).

If a false or fictitious claim is asserted by the filing of notice pursuant to the Act, the prevailing party may be entitled to costs and attorney's fees arising out of any action related thereto and damages sustained as a result of the filing of such notice. F.S. 712.08 (2020). The attorney's fees provision of MRTA "does not require deliberate untruthfulness" but includes "mistaken ideas" and claims that are not "real or genuine claims." An award of attorney's fees against a voluntary homeowners' association that was found to be without authority to file a 2004 MRTA preservation notice was upheld absent a finding of a deliberate untruthful intention. *Sand Hill Homeowners Ass'n v. Busch*, 210 So. 3d 706 (Fla. 5th DCA 2017).

STANDARD 17.6

INSTRUMENTS RECORDED SUBSEQUENT TO A ROOT TITLE

STANDARD: THE ACT DOES NOT ELIMINATE ESTATES, INTERESTS, CLAIMS, COVENANTS, RESTRICTIONS, OR CHARGES ARISING OUT OF A TITLE TRANSACTION RECORDED SUBSEQUENT TO THE RECORDING OF A ROOT OF TITLE

Problem 1: John Doe took record title to Blackacre in 1970 by deed which would qualify as a root of title. A deed to Blackacre from Richard Roe to Jane Nokes subsequently recorded in 1980 recites that John Doe died intestate and that Richard Roe was his sole heir at law. No additional instruments have been recorded after the 1980 deed that would qualify as a root of title. In 2007, was title to Blackacre free and clear of Nokes' interest by operation of the Act?

Answer: No. Even if the facts recited in the 1980 deed were not correct – i.e., Doe did not die intestate and Roe was not Doe's sole heir – it is a title transaction (a recorded instrument that affects title to an estate or interest in land, and sufficiently describes the land to identify its location and boundaries). Jane Nokes' interest arose out of and was created by the 1980 deed and is thus not an interest that is extinguished by operation of the Act because it did not arise before or depend upon any act, title transaction, event or omission that occurred before the 1970 root of title.

Problem 2: John Doe took record title to Blackacre in 1970 by a deed which would qualify as a root of title. In 1980, a stranger to title to Blackacre executed and recorded a deed in favor of Jane Nokes. In 2007, was title to Blackacre free and clear of Nokes' interest by operation of the Act?

Answer: No.

Authorities & References: F.S. 712.01, 712.03(4), 712.04 (2020); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §14.23[5] (2020).

Comment: The fact that the Act does not eliminate estates, interests, claims, or charges arising out of a title transaction recorded subsequent to the effective date of a root of title underscores the limits of the Act. The Act *only* eliminates estates, interests, claims, covenants, restrictions, or charges the existence of which depends upon any act, title transaction, event or omission that occurred *before* the effective date of a root of title. F.S. 712.04 (2020). Thus, if an estate, interest, claim, or charge truly "arises out of," i.e., is created by, a title transaction subsequent to the root of title, its existence could not, by definition, depend upon an act, title transaction, event or omission that occurred *before* the effective date of a root of title. *See, e.g., Holland v. Hattaway*, 438 So. 2d 456, 467 (Fla. 5th DCA 1983) ("it is clear that MRTA was not intended to and does not make marketable a title as against adverse record claims that first appear, or that are created, or 'arise' during, or subsequent to the commencement of, the operative 30 year period."). In other words, interests that arise out of title transactions recorded after the effective date of a root of title do not come within the scope of the operation of the Act.

However, the exception is limited to estates, interests, claims, or charges that arise out of title transactions recorded after the effective date of a root of title and will not preserve interests that depend upon any act, title transaction, event or omission that occurred before the effective

STANDARD 17.10

DEFECTS INHERENT IN MUNIMENTS OF TITLE

STANDARD: THE ACT DOES NOT ELIMINATE ANY DEFECTS INHERENT IN THE MUNIMENTS OF TITLE ON WHICH THE ESTATE IS BASED BEGINNING WITH A ROOT OF TITLE AND FOR THIRTY YEARS FROM THE RECORDING OF A ROOT OF TITLE.

Problem 1: In 1975, ABC Corp. purports to convey Blackacre to John Doe. The deed is signed by “Richard Roe as Secretary of ABC Corp.” No corporate resolution was recorded authorizing Richard Roe to execute deeds on behalf of ABC Corp. There is thus a defect on the face of the 1975 deed as it was not signed by a person authorized to do so. Nothing affecting Blackacre has been recorded since then. In 2006, was title to Blackacre free and clear of ABC Corp.’s interest by operation of the Act?

Answer: No. Although the deed may constitute a root of title, it contains a defect inherent on its face because it was signed by an officer who did not have statutory authority to convey ABC Corp.’s real property. Hence, the potential ownership claim of ABC Corp. is not extinguished. F.S. 712.03(1) (2020).

Problem 2: John Doe as the sole owner of Blackacre resided on the property as his homestead with his wife and two children. In 1960 John Doe conveyed Blackacre to Richard Roe for valuable consideration, but without the joinder of his wife. John Doe died in 1969~~7~~, survived by his wife and children. Blackacre was conveyed by Roe to Sam Smith in 1972. No notice of the homestead claim had ever been filed. In 2021, is Smith’s title free and clear of the interests of Doe’s wife and children?

Answer: Yes. The 1972 deed was a root of title and there is no defect inherent on the face of that 1972 deed to indicate that John Doe’s wife and children may have an outstanding interest.

Problem 3: Same facts as Problem 2 except that Richard Roe did not convey to Sam Smith until 2015. In 2021, is Smith’s title free and clear of the interests of Doe’s wife and children?

Answer: No. The 2015 does not qualify as a root of title. The homestead claim renders the 1960 deed void and the 2015 deed does not yet qualify as a root of title because it has not been of record for 30 years.

Authorities
& References:

F.S. 712.01-.04 (2020); *ITT Rayonier, Inc. v. Wadsworth*, 386 F. Supp. 940, 942-43 (M.D. Fla. 1975), accord, *ITT Rayonier, Inc. v. Wadsworth*, 346 So. 2d 1004, 1009 (Fla. 1977); see also, *Reid v. Bradshaw*, 302 So. 2d 180, 181 (Fla. 1st DCA 1974) (homestead rights are not eliminated by the mere passage of time).

Comment: The answer to Problem 2 would probably be the same without regard to whether the homestead owner died before or after the effective date of the root of title since no notice of homestead claim was ever filed. See F.S. 712.04 (2020). However, the *Reid* opinion casts some doubt in the latter instance, and caution should be exercised in such a situation. See also *Conservatory-City of Refuge, Inc. v. Kinney*, 514 So. 2d 377, 378 (Fla. 2d DCA 1987) (holding that the Act did not apply to eliminate homestead claims where the children’s remainder interests did not vest until the homestead owner died, which was after the asserted root of title).

The term “muniments of title” is not defined in the Act. The Fifth District Court of Appeal has defined muniments of title in the context of the Act as “any documentary evidence upon

Chapter 17
MARKETABLE RECORD TITLE ACT

Standard 17.1

PURPOSE OF THE MARKETABLE RECORD TITLE ACT

STANDARD: THE ACT SHOULD BE RELIED UPON TO ELIMINATE ALL ESTATES, INTERESTS, CLAIMS, COVENANTS, RESTRICTIONS, OR CHARGES THAT FALL WITHIN ITS SCOPE IN ORDER TO RENDER TITLE MARKETABLE.

Problem 1: In 1919, the State of Florida conveyed to the City of Miami certain submerged lands including the mouth of the Miami River. In 1944, the Florida East Coast Hotel Corporation deeded 14 acres on the north side of the Miami River, including a yacht basin at its mouth, to the St. Joe Paper Company. The Florida East Coast Hotel Corporation did not have title to the land described in the deed at the time, but the face of the deed did not refer to the City's ownership. Thereafter, the St. Joe Paper Company filled in and bulkheaded the yacht basin. In 1974, did the St. Joe Paper Company have marketable title to the 14 acres including the filled in yacht basin?

Answer: Yes.

Authorities

& References: F.S. 712.01, et seq. (2020); *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 449 (Fla. 1978) (holding that the Act is constitutional and designed to simplify conveyances, stabilize titles, and give certainty to land ownership; it operates as a curative act, a statute of limitations, and a recording act, is applied retroactively and may even create marketable title in one who claims from a wild or interloping deed as its root of title); *ITT Rayonier, Inc. v. Wadsworth*, 346 So. 2d 1004, 1010 (Fla. 1977) (mother's life estate holder's deed served as root of title to eliminate the remainder interests of her children); *Marshall v. Hollywood, Inc.*, 236 So. 2d 114, 120 (Fla. 1970), *cert. denied*, 400 U.S. 964 (1970) (the Act operates to make title based on a wild deed marketable); *Sawyer v. Modrall*, 286 So. 2d 610, 613 (Fla. 4th DCA 1973); *cert. denied*, 297 So. 2d 562 (Fla. 1974) (the Act operates to eliminate interest created by deed from the Trustees of the Internal Improvement Trust Fund); *Wilson v. Kelley*, 226 So. 2d 123, 128 (Fla. 2d DCA 1969) (quit claim deed may serve as root of title only if it evidences an intent to convey an identifiable interest); *Whaley v. Wotring*, 225 So. 2d 177 (Fla. 1st DCA 1969); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §§14.20 to 14.22 (2020).

Comment: Purpose. The chief purpose of the Act is to extinguish – by operation of law – all stale claims to and ancient defects in title to real property and to limit the period of the search. *Marshall*, 236 So. 2d at 119 (quoting, Catsman, *The Marketable Record Title Act and Uniform Title Standards*, III Florida Real Property Practice (1965), § 6.2). To effect its purpose, the Act is to be “liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record title as described in s. 712.02 subject only to such limitations as appear in s. 712.03.” F.S. 712.10 (2020).

Operation. The Act works by operation of law vesting marketable title free and clear of all claims except for the matters set forth in the limited statutory exceptions in those who – together with their predecessors in title – have held record title to property for thirty years or more. F.S. 712.02 (2020). In determining the effect of the Act, the practitioner should first identify a root of title vesting title in the claimant or its predecessors and confirm it has been of record for 30 years or more. F.S. 712.01(6) (2020). If so, the claimant has marketable record title free and clear of all claims. The practitioner should then consider each of the statutory exceptions in F.S. 712.03 (2020), to determine what matters are not affected by the Act.

Constitutionality. For a discussion of the constitutionality of the Act, see FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE §2.1(D)(3) (Fla. Bar CLE 9th ed. 2019). *See also*, *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 449 (Fla. 1978) (holding that the Act is constitutional); *Wichelman v. Messner*, 83 N.W. 2d 800 (Minn. 1957); 71 A.L.R. 2d 816 (1960); Boyer & Shapo, *Florida's Marketable Title Act: Prospects and Problems*, 18 MIAMI L. REV. 103 (1963).

STANDARD 17.2

MARKETABLE RECORD TITLE AND ROOT OF TITLE

STANDARD: A PERSON WHO, ALONE, OR TOGETHER WITH PREDECESSORS IN TITLE, HAS BEEN VESTED WITH AN ESTATE OF LAND OF RECORD FOR 30 YEARS OR MORE, HAS MARKETABLE RECORD TITLE TO THAT LAND FREE AND CLEAR OF ALL CLAIMS EXCEPT THE MATTERS SET FORTH AS EXCEPTIONS TO MARKETABILITY IN THE ACT.

Problem 1: The following chain of title appears of record. In 1955, John Doe deeded Blackacre to Richard Roe “for so long as the premises are used for residential purposes.” In 1965, Richard Roe conveyed Blackacre to Simon Grant, without reference to the restriction to residential use. In 2005, is title to Blackacre free and clear of the restriction to residential use contained in the 1955 deed?

Answer: Yes. The 1965 deed constitutes a root of title and the use restrictions contained in the 1955 deed were extinguished by operation of law in 1995.

Problem 2: Same facts as Problem 1 except that in 1994 Simon Grant conveyed Blackacre to Jane Roe “subject to” the 1955 deed, identifying the 1955 deed by official recording book and page. In 2005, is title to Blackacre free and clear of the restriction to residential use contained in the 1955 deed?

Answer: No. The 1965 deed constitutes a root of title and the use restrictions contained in the 1955 deed would only be extinguished by operation of law in 1995. However, restrictions created prior to the root of title shall not be extinguished by law if those restrictions are specifically referenced by book and page of record, instrument number, plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates recorded subsequent to the root of title but prior to the expiration of the 30 year statutory time period.

Problem 3: Same facts as Problem 1 except that in 1997 Simon Grant deeds Blackacre to Jane Roe “subject to” the 1955 deed, identifying the 1955 deed by official recording book and page. In 2005, is title to Blackacre free and clear of the restriction to residential use contained in the 1955 deed?

Answer: Yes. The 1965 deed constitutes a root of title and the use restrictions contained in the 1955 deed were extinguished by operation of law in 1995, notwithstanding the subsequent specific reference to the 1955 deed in the 1997 deed, a muniment of title.

Problem 4: Same facts as Problem 1 except that the 1965 deed to Simon Grant was not recorded until 1980. In 2005, is title to Blackacre free and clear of the restriction to residential use contained in the 1955 deed?

Answer: No. A root of title must be of record for at least 30 years. Therefore, there is no qualifying root of title that may operate to eliminate the restriction contained in the 1955 deed.

Problem 5: In 1970, Richard Roe owned Blackacre. In 1975, Simon Grant, although he never had title to Blackacre, purported to convey the North half of Blackacre to Thomas Frank. In 2006, does Richard Roe have marketable title to all of Blackacre?

Answer: No. Although the 1975 deed to the North half of Blackacre was a wild deed, it nevertheless ripened into a viable root of title after being of record for 30 years in 2005 and created marketable record title in Thomas Frank free and clear of the claims of Richard Roe.

Problem 6: Same facts as Problem 5. In 2006, does Thomas Frank have marketable record title to the North half of Blackacre?

Answer: Yes. Although the 1975 deed is a wild deed, it purports to create a fee simple estate in Frank in the North half of Blackacre, which sufficiently identifies the land's location and boundaries and has been of record for at least 30 years.

Problem 7: Richard Green is the last grantee in the chain of title to Blackacre by a deed recorded in 1960. John Doe, a stranger to title of Blackacre, died in 1969. John Doe's probate proceedings recorded in 1970 establish that title to Blackacre was transferred to John's sole heir, Ralph Doe. In 2001 is title to Blackacre free and clear of any interest of Richard Green??

Answer: Yes. The court proceedings are a muniment of title to the land and were recorded 30 years prior to the time of determination of marketability. Hence, they qualify as the root of title and Ralph Doe's ownership in Blackacre is free of Richard Green's interest.

Authorities
& References:

F.S. 712.01, et seq. (2020); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE §§ 2.1-.2 (Fla. Bar CLE 9th ed. 2019); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §§ 14.21-.22 (2020); FUND TN 10.01.02.

Comment:

A marketable record title is free and clear of all claims except the matters set forth in the limited statutory exceptions. Nevertheless, the careful practitioner may also want to keep in mind the small handful of exceptions based upon judicial interpretations. *See, e.g., Clipper Bay Investments LLC v. State Department of Transportation*, 160 So. 3d 858 (Fla. 2015) (exception for easements in use applies to land owned in fee by the FDOT); *Blanton v. City of Pinellas Park*, 887 So. 2d 1224 (Fla. 2004) (holding that statutory ways of necessity are not subject to the Act because they are not dependent on a review of the historical record but, instead, on the current status of the property); and *Village Carver Phase I, LLC v. Fidelity Nat'l Title Ins.*, 128 So. 3d 107 (Fla. 3d DCA 2013) (rights pursuant to F.S. 704.08 providing relatives and descendants an easement for visitation to a cemetery does not create an interest in real property and therefore such rights are not extinguished by the Act).

Pursuant to the 2022 amendment to the Act, covenants and restrictions that depend upon a zoning requirement, or building or development permit may be extinguished by the Act as long as there is not a statement on the face of the first page of the recorded instrument that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval. This amendment was adopted to overrule the decision in *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) (judicially created exception for restrictive covenants recorded in compliance with government-imposed condition of land use approval). Parties holding an interest not extinguished before July 1, 2022, must file a notice pursuant to s. 712.06, F.S., by July 1, 2023, to preserve such interest. Any county as defined in s. 125.011(1), F.S., must file a notice pursuant to s. 712.06, F.S., by July 1, 2025, to preserve such interest.

The 2022 amendment to the Act also closes the judicial loophole created by *Barney v. Silver Lakes Acres Property*, 159 So. 3d 181 (Fla. 5th DCA 2015). In *Barney*, the court found that a deed stating it was "subject to" the obligations of the lot owners to a specifically named owners association was not a "general reference" to the association's restrictive covenants, notwithstanding the absence of the specific book and page of record of the restrictions, thereby

bringing the restrictions within the exception of F.S. 712.03(1). The 2022 amendment to the Act removes reference to the concept of a “general reference” and, in its place, provides for the only two specific instances in which a muniment of title will serve to preserve an estate, interest, easement, use restriction, or defect. Those two instances are (i) where the interest is referred to in the legal description of the muniment itself by official records book and page number, instrument number, or plat name or (ii) the muniment contains an affirmative statement that it is intended to preserve the interest. This amendment makes clear the deed in the *Barney* case would not have been sufficient to bring the association’s restrictive covenants within the scope of the exception contained in F.S. 712.03(1).

Once a marketable record title has been established, the Act eliminates, by operation of law, all estates, interests, claims, covenants, restrictions, or charges, however denominated, and whoever holds them, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title and declares all such interests to be “null and void.” The amendments to ss. 712.03 and 712.04, F.S., are intended to clarify existing law, are remedial in nature, and apply to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted before, on, or after the 2022 amendment. F.S. 712.04 (2020). A judicial determination is not required to establish or confirm the operation of the Act. Once an interest has been eliminated by operation of the Act, that interest cannot be “revived” by a specific reference to the interest in the subsequent muniments in the chain of title or by filing a preservation notice, either of which might have created exceptions to marketability had they been recorded within the initial 30-year period. F.S. 712.03(1) & (2) (2020). However, community covenants, conditions and restrictions may be revived by a property owner’s association after the 30-year period if the covenant revitalization procedures are correctly followed. F.S. 712.11-12 (2020) & F.S. 720.403-407 (2020).

The “root of title” concept is a key component in the statutory analysis, and its definition is hard and worthy of attention. A root of title is defined as “any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.” F.S. 712.01(6) (2020). In turn, a title transaction is defined as “any recorded instrument or court proceeding that affects title to any estate or interest in land that describes the land sufficiently to identify its location and boundaries.” F.S. 712.01(7) (2020).

The phrase “the time marketability is being determined” is what requires some explication. Because the Act operates as a matter of law, without need for any judicial determination, and is to be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions, this phrase must be construed to mean 30 years after the date of the recording of any given root of title. Note that there may be many roots of title in any given chain of title, which may overlap and serve to cut off different interests or claims. In other words, the Act is continually at work, clearing up ancient and stale claims. Any other construction of this phrase – such as one requiring a judicial determination – would actually serve to preserve older, more ancient claims while eliminating more recent claims. Such other constructions are plainly contrary to the legislative intent of simplifying and facilitating land title transactions expressed in the statute.

Note that the definition of a root of title requires that it must describe the property interest being conveyed. The interest may be adequately described by warranty covenants within a warranty deed or a special warranty deed, although the absence of warranty covenants does not necessarily prevent an instrument from serving as a root of title. For the same reason, a quit claim deed can serve as a root of title only if the deed quitclaims an identifiable property interest. On the other hand, a quit claim deed that provides only that the grantors remise, release and quitclaim all the right, title, interest, claim, and demand which the grantors have in the land

cannot serve as a root of title because it is unknown what specific right, title, interest, claim, or demand the grantors intended to quitclaim. *Wilson v Kelley*, 226 So. 2d 123, 128 (Fla. 2d DCA 1969). In the *Wilson* case, the court found that a quit claim deed from one co-tenant to another purporting to generically remise, release and quitclaim all right, title, claim, interest, and demand did not qualify as a root of title for purposes of the Act. The court observed that, had the grantors quitclaimed *their* undivided one-half interest in the property, that would have been a sufficient description to qualify as a root of title. The point being that the instrument must describe the land sufficiently to identify the interest that is conveyed.

A wild or interloping deed may constitute a root of title. *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 446 (Fla. 1978).

Statutory exceptions to the operation of the Act are contained in F.S. 712.03 (2020) and are specifically treated in other Standards in this Chapter.

The Act does not eliminate an interest or claim arising out of a title transaction recorded after a root of title, even if the subsequent interest or claim is outside the chain of title, such as a wild deed. *See, Holland v. Hattaway*, 438 So. 2d 456, 468-470 (Fla. 5th DCA 1983) (the Act did not extinguish an easement purportedly created by a wild deed recorded several years after the root of title, although the court held that the easement was extinguished on other grounds). This exception appears to be less an *exception* to the operation of the Act than a reference to interests that are *created after* a root of title which are not, therefore, affected by the Act in the first place.

STANDARD 17.3

INTERESTS EXTINGUISHED

STANDARD: ALL ESTATES, INTERESTS, CLAIMS, COVENANTS, RESTRICTIONS, OR CHARGES, THE EXISTENCE OF WHICH DEPENDS UPON ANY ACT, TITLE TRANSACTION, EVENT, OR OMISSION THAT OCCURRED BEFORE THE EFFECTIVE DATE OF A ROOT OF TITLE, ARE EXTINGUISHED BY OPERATION OF THE ACT, EXCEPT THOSE RIGHTS SPECIFICALLY EXCEPTED FROM THE ACT.

Problem 1: A deed to Blackacre executed by John Doe and recorded in 1965 contained: (1) a condition subsequent that the grantor or his heirs could re-enter in the event of a breach of certain specified conditions and (2) a special limitation that the land was conveyed “so long as” it was used for a specified purpose. A warranty deed to Blackacre recorded in 1975 does not mention any conditions or limitations. No notice of a claim based on the conditions or limitations has been filed. In 2006, is title to Blackacre free and clear of the condition subsequent and the possibility of reverter by operation of the Act?

Answer: Yes. The existence of the claims depended upon the 1965 deed, a title transaction occurring prior to 1975 effective date of the root of title, and no exception applies.

Problem 2: Same facts as Problem 1 except that the 1975 deed, or a subsequent warranty deed, contained a provision that the conveyance was “subject to conditions and limitations of record.” In 2006, is title to Blackacre free and clear of the condition subsequent and the possibility of reverter by operation of the Act?

Answer: Yes. An interest disclosed by the muniments of title, beginning with the root of title, may be preserved from operation of the Act but only if the title transaction imposing, transferring, or continuing such interest is specifically identified by reference to the book and page of record or by the name of the recorded plat. F.S. 712.03(1) (2020).

Problem 3: The plat for Blackacre Subdivision, filed in 1925, contained a setback restriction. A deed to Lot 1 in Blackacre Subdivision recorded in 1953 contained a reference to the name of the recorded plat, as did subsequent deeds, but none specifically referenced the setback restriction. In 1984, is title to Blackacre free and clear of the setback restriction by operation of the Act?

Answer: No. A restriction is preserved if the root of title or any subsequent muniments of title recorded within the 30 years immediately following the recording of the root of title refer to the recorded plat that imposed the restriction by name. F.S. 712.03(1) (2020).

Problem 4: A deed to Blackacre recorded in 1955 contains a condition subsequent and the possibility of reverter described in Problem 1. A subsequent root of title is recorded in 1960, without reference to the restriction. In 1991, a deed within the chain of title specifically identifies the condition subsequent and the possibility of reverter by reference to the book and page of record for the 1955 deed. In 1992, is title to Blackacre free and clear of the restriction by operation of the Act?

Answer: Yes. The restriction had been extinguished by operation of the Act in 1990, and the subsequent reference to the book and page of record of the 1955 deed in the 1991 muniment could have no effect on the already-extinguished restriction. F.S. 712.03(1) (2020).

Problem 5: A deed to Blackacre executed by John Doe and recorded in 1965 reserved an easement. A deed to Blackacre recorded in 1975 does not mention the easement. John Doe and his successors in interest have used the easement, or a part of it, since 1965. No notice of a claim based on the easement has been filed. In 2006, was title to Blackacre free and clear of the easement by operation of the Act?

Answer: No. Easements or rights, interests, or servitudes in the nature of easements, rights of way and terminal facilities and mortgages on such rights are preserved by F.S. 712.03(5) (2020) so long as they, or any part thereof, are used.

Problem 6: A deed to Blackacre executed by John Doe and recorded in 1965 reserved all of the subsurface minerals to Blackacre and the right of entry to explore and extract those minerals. A deed to Blackacre in fee simple is recorded in 1975, and it does not mention the 1965 deed, the mineral reservation, or the right of access. No notice of a claim based on the reservation has been filed. In 2006, was title to Blackacre free and clear of the right of entry to explore and extract mineral rights by operation of the Act?

Answer: Yes. Note that this would be the same result even if the 1965 deed had not expressly reserved the right of entry as such right is implicit with the reservation of the subsurface minerals. *See, P & N Investment Corp. v. Florida Ranchettes, Inc.*, 220 So. 2d 451, 453 (Fla. 1st DCA 1969).

Authorities & References: F.S. 712.03-.04 (2020); F.S. 704.05(1) (2020); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §14.22 (2020).

Comment: A “root of title” is any title transaction that purports to create or transfer the estate claimed, describes the land sufficiently to identify its location and boundaries, and has been of record for more than 30 years. F.S. 712.01 (2020); *Marshall v. Hollywood, Inc.*, 224 So. 2d 743, 750 (Fla. 4th DCA 1969), *aff’d* 236 So. 2d 114 (Fla. 1970) (a void deed may be a root of title); *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 446 (Fla. 1978) (wild deed); *Kittrell v. Clark*, 363 So. 2d 373, 374 (Fla. 1st DCA 1978) (probate); *Mayo v. Owens*, 367 So. 2d 1054, 1057 (Fla. 1st DCA 1979) (judgment determining heirs).

The careful practitioner will be vigilant for defects inherent in a root of title. *See, e.g., Marshall v. Hollywood, Inc., supra*, at 751 (“‘defects in the muniments of title’ do not refer to defects or failures in the transmission of title . . . but refer to defects in the make up or constitution of the deed or other muniments of title on which such transmission depends”). *See* Title Standard 17.10 for discussion of defects inherent in the muniments of title.

A restriction arising prior to the date of a root of title is preserved if the root of title or a subsequent muniment of title within the 30 year period immediately following the recording of a root of title contains a specific identification by reference to the name of the recorded plat or book and page of record of the instrument that imposed the restriction. *Sunshine Vistas Homeowners Association v. Caruana*, 623 So. 2d 490, 492 (Fla. 1993). However, a specific identification by reference to the name of the recorded plat book and page of record, instrument number of the instrument that imposed the restriction or an affirmative statement intent to preserve the restriction in a muniment of title recorded after that restriction has already been extinguished by operation of the Act, has no effect on the already-extinguished restriction. *See*, problem 4 above and comment to Title Standard 17.2.

The Act may operate to extinguish a county’s claim of ownership. *Florida DOT v. Dardashti Properties*, 605 So. 2d 120, 122 (Fla. 4th DCA 1992) (County’s interest in a strip of land held for right of way was extinguished by the Act).

The Act operates to extinguish an otherwise valid claim of common law way of necessity when such claim is not asserted within 30 years of the recording of a root of title. *H & F Land, Inc. v. Panama City-Bay County Airport and Development District*, 736 So. 2d 1167 (Fla. 1999). The Act does not, however, operate to extinguish statutory ways of necessity. *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1233 (Fla. 2004) (receding from *H & F Land, Inc.* to the extent its dicta indicated that the Act applies to statutory ways of necessity).

The Act, subject to its exceptions, serves to eliminate rights of entry to explore and extract mineral rights, whether expressly reserved or implied. *See, Noblin v. Harbor Hills Development, L.P.*, 896 So. 2d 781, 785 (Fla. 5th DCA 1981) (the Act serves to extinguish rights of entry for exploring or mining oil, gas, minerals, or fissionable materials) and F.S. 704.05(1) (2020):

The rights and interests in land which are subject to being extinguished by marketable record title pursuant to the provisions of s. 712.04 shall include rights of entry or of an easement, given or reserved in any conveyance or devise of realty, when given or reserved for the purpose of mining, drilling, exploring, or developing for oil, gas, minerals, or fissionable materials, unless those rights of entry or easement are excepted or not affected by the provisions of s. 712.03 or s.712.04.

but see, F.S. 704.05 (2020) (excluding the rights of entry held by the state or any of its agencies, boards or departments from operation of the Act).

A mineral estate itself may be subject to being extinguished by operation of the Act, but the prudent practitioner will obtain a determination to that effect from a court of competent jurisdiction before deciding that title is free and clear of the mineral estate. F.S. 712.02 & .04 (extinguishing “all *estates*, interests, claims, or charges” (2020, emphasis added)); *see also*, *Kittrell*, 363 So. 2d at 373 (determining that a mineral estate, which otherwise would have been extinguished by the Act, was preserved by one of the statutory exceptions).

STANDARD 17.4

RECORDING A NOTICE TO PRESERVE INTERESTS

STANDARD: RECORDING A PROPER NOTICE PRESERVES ESTATES, INTERESTS, CLAIMS, COVENANTS, RESTRICTIONS, OR CHARGES FROM THE OPERATION OF THE ACT.

Problem 1: John Doe, the record owner of Blackacre, gave and recorded a mortgage to Richard Roe encumbering Blackacre, which was recorded in January 1975. The last payment was not due until 2010. On June 15, 1975 a deed to Blackacre, which qualified as a root of title, was recorded but it contained no mention of the mortgage. On June 16, 2005, is Roe's mortgage lien extinguished?

Answer: Yes.

Problem 2: John Doe gave and recorded a 99-year lease to Richard Roe on July 1, 1975, at which time the lease was recorded, and Roe went into possession of the land. On July 2, 2006, is John Doe's ownership extinguished?

Answer: No. The 1975 transaction created a leasehold interest only. John Doe's fee simple interest would not be extinguished. Filing of notice is necessary only when there is a subsequent title transaction that purports to divest the interest claimed.

Problem 3: The owner of Blackacre Subdivision as developer, joined by Blackacre Homeowners' Association, Inc., filed a Declaration of Covenants and Restrictions for Blackacre Subdivision in 1975. John Doe conveyed Lot 1 in Blackacre Subdivision to Richard Roe in 1978. That deed did not mention the covenants or restrictions, and there is no subsequent amendment to the Declaration of Covenants and Restrictions and no specific reference to the recording information of the Declaration of Covenants and Restrictions in muniments of title in the public record. In 2009, were the CCRs extinguished by operation of the Act as to Lot 1?

Answer: Yes, unless the Blackacre Homeowners' Association either timely preserved the CCRs by filing the statutory notice pursuant to F.S. 712.05(2) or thereafter accomplishes covenant revitalization.

Problem 4: The owner of Whiteacre Business Park as developer filed a Declaration of Covenants, Conditions and Restrictions (CCRs) for Whiteacre Business Park in January 1989. John Doe conveyed Parcel 3 in Whiteacre Business Park to Richard Roe in March 1989. That deed did not mention the CCRs, and there is no subsequent amendment to the CCRs and no specific reference to the recording information of the CCRs in muniments of title in the public record. In 2020, were the CCRs extinguished by operation of the Act as to Parcel 3?

Answer: Yes, unless the Whiteacre Business Park Property Owners' Association either timely preserved the CCRs by filing the statutory notice pursuant to F.S. 712.05(2) or thereafter accomplishes covenant revitalization.

Problem 5: Same facts as Problem 4, except a notice to preserve the CCRs was recorded in December 2018. In 2020, were the CCRs extinguished by operation of the Act as to Parcel 3?

Answer: No. A property owners' association may preserve its CCRs by recording a notice to preserve and protect CCRs pursuant to F.S. 712.05, 712.06 and 720.3032 (2020).

Problem 6: Same facts as Problem 4, except the Whiteacre Business Park Property Owners' Association filed an amendment to the CCRs in December 2018. In 2020, were the CCRs extinguished by operation of the Act as to Parcel 3?

Answer: No. A property owners' association may preserve CCRs by an amendment to the CCRs that is indexed under the legal name of the property owners' association and references the recording information of the CCRs to be preserved pursuant to F.S. 712.05(2)(b) (2020).

Problem 7: Same facts as Problem 4, except the Whiteacre Business Park Property Owners' Association does not file any notice pursuant to F.S. 712.05(2) to preserve and protect covenants and restrictions or amendment to the Declaration of Covenants and Restrictions prior to the expiration of 30 years from the March 1989 deed from John Doe to Richard Roe. In 2020, the Association recorded a revived Declaration of Covenants and other statutorily required documents evidencing covenant revitalization. Are the covenants and restrictions still valid as to Parcel 3?

Answer: Yes. After an interest has been extinguished by operation of the Act, property owners in the Association may revitalize a covenant pursuant to F.S. 720.403 - .407 (2020).

Authorities & References: F.S. 712.03(2), 712.05, 712.06, 712.11, 720.3032(2), 720.403-.407 (2020), 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §14.23[3] (2020).

Comment: The statutory notices merely protect claims, estates, or interests if they otherwise exist and cannot validate or create a new claim, estate or interest. F.S. 712.05(2), 712.06(1)(b) and 720.3032(2) (2020) outline the mechanism for preserving claims from extinguishment, and what must be included in the notice. Chapter 712 was amended effective October 1, 1997, to allow homeowner associations to file a notice under MRTA to preserve covenants and restrictions. F.S. 712.05(2) (2020).

Chapter 712 was further amended effective October 1, 2018, to allow a property owners' association to preserve an interest by filing notice in the official records in the county where the property is located. Property owners' associations are defined as entities operating a property in which the voting membership is comprised of property owners or their agents, or a combination thereof, and for which membership is mandatory, as well as associations of parcel owners authorized to enforce community covenants or restrictions. F.S. 712.01(5) (2020).

Also, effective October 1, 2018, section 712.05(2) provides options for achieving preservation of community covenants and restrictions as follows: by recording in the official records a written notice in accordance with section 712.06 or 720.3032(2); or an amendment to community covenant or restriction referencing the recording information for the covenant or restriction to be preserved. The 2018 revision to section 712.05(2) is contrary to previous case law. The 2018 statutory revision breaks from the precedent set forth in *Matissek v. Waller*, 51 So. 3d 625 (Fla. 2d DCA 2011). In that case the appellate court held that a post-root of title amendment to restrictions was not a muniment of title and since the amended restrictions could not stand alone, both the pre-root restrictions and the post-root amendment

were extinguished by MRTA. The holding in *Matissek* has continuing application outside of the context of the 2018 revision.

For covenants, conditions and restrictions that have lapsed, property owners may avail themselves of covenant revitalization through the Department of Economic Opportunity pursuant to sections 720.403 - .407. Once MRTA has extinguished a Declaration of Covenants, Conditions and Restrictions, title is marketable free of that Declaration. If the Declaration is later revived, then title is again subject to the Declaration. In no event is the Declaration enforceable for the period of time the Declaration was extinguished. Thus, even if the HOA revives the Declaration, it may not retroactively enforce that Declaration retroactively during the time it was previously extinguished.

Effective October 1, 2018, revitalization of covenants or restrictions is available to all types of communities and property owners' associations and is not limited to residential property. F.S. 712.11 & 720.403(3) (2020). Chapter 720, Part III is the sole means of revitalizing covenants, conditions or restrictions that have been extinguished by operation of the Act.

Effective September 4, 2020, section 712.065(1) defines discriminatory restriction as one that restricts ownership, occupancy or use of real property based upon a natural person's characteristic that is protected by the laws of the United States or the State of Florida. These discriminatory restrictions are thus unenforceable and severed from any recorded title transaction. Recording of any notice to preserve such restrictions does not reimpose any discriminatory restriction. F.S. 712.065(2) (2020). A recorded amendment to covenants or restrictions that removes a discriminatory restriction but changes no other provision does not constitute a title transaction occurring after the root of title. F.S. 712.065(3) (2020).

If a false or fictitious claim is asserted by the filing of notice pursuant to the Act, the prevailing party may be entitled to costs and attorney's fees arising out of any action related thereto and damages sustained as a result of the filing of such notice. F.S. 712.08 (2020). The attorney's fees provision of MRTA "does not require deliberate untruthfulness" but includes "mistaken ideas" and claims that are not "real or genuine claims." An award of attorney's fees against a voluntary homeowners' association that was found to be without authority to file a 2004 MRTA preservation notice was upheld absent a finding of a deliberate untruthful intention. *Sand Hill Homeowners Ass'n v. Busch*, 210 So. 3d 706 (Fla. 5th DCA 2017).

STANDARD 17.5

RIGHTS OF PERSONS IN POSSESSION

STANDARD: THE ACT DOES NOT ELIMINATE THE RIGHTS OF PERSONS IN POSSESSION OF LAND.

Problem 1: John Doe was grantee in a deed to Blackacre recorded in 1970, which constitutes a root of title. Nothing further appears of record, but investigation in 2002 disclosed that Richard Roe was in actual open possession of Blackacre. In 2002 is John Doe's title to Blackacre free of the claims of Roe?

Answer: No. Roe's possession was inconsistent with John Doe's record title and was therefore prima facie hostile. Possession by a party with an interest that is subordinate to John Doe, such as a tenant, licensee, or employee, would not divest Doe of title.

Problem 2: Same facts as problem 1, except that Richard Roe only placed a mobile home on the land but never actually resided on it. Is John Doe's interest free from the claims of Richard Roe?

Answer: Yes. F.S. 712.03(3) (2020) requires "possession of the lands" for the exception to apply. Here, Richard Roe was not occupying the lands and was not living in the mobile home that had been placed on the lands.

Problem 3: Mary Smith conveyed Whiteacre to James Johnson in 1971. In 1974, Mary Smith deeded Whiteacre to Becky Buyer by warranty deed. In 2004 Becky Buyer deeded Whiteacre to Joe Brown. Over the years, James Johnson continued to occasionally cross over Whiteacre to get to a parcel of property he owned which was adjacent to Whiteacre. In 2005, is Joe Brown's interest in Whiteacre free and clear of the claims of James Johnson?

Answer: Yes. The term "possession" is not defined in the Act, so the ordinary definition of that term applies. Possession is demonstrated by power and control over the land, as opposed to periodic use or minimal maintenance. James Johnson's occasional use of the property without evidence of visible control over it does not meet the ordinary definition of "possession."

Authorities

& References: F.S. 712.03(3) (2020); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §14.23[4] (2020); *Dorsey v. Robinson*, 270 So. 3d 462 (Fla. 1st DCA 2019); *Dept. of Transp. v. Mid-Peninsula Realty Inv. Grp., LLC*, 171 So. 3d 771 (Fla. 2d DCA 2015).

Comment: No person can have a marketable record title within the meaning of the Act if the land is in the hostile possession of another person. The 712.03(3) exception to the Act for parties in possession limits the application of the Act to establish marketable record title. This exception to the Act does not create new interests.

In the *Mid-Peninsula* case, the Department of Transportation (“DOT”) had obtained an Order of Taking which gave it “full and complete ownership.” Mid-Peninsula acquired title through a wild deed recorded three years after the Order of Taking and sought to quiet title against DOT. The trial court determined DOT’s use of the land did not qualify as possession and the appellate court agreed. The appellate court also held that the section 712.03(5) exception may be applied to rights of way held in fee. *See* Title Standard 17.3.

STANDARD 17.6

INSTRUMENTS RECORDED SUBSEQUENT TO A ROOT TITLE

STANDARD: THE ACT DOES NOT ELIMINATE ESTATES, INTERESTS, CLAIMS, COVENANTS, RESTRICTIONS, OR CHARGES ARISING OUT OF A TITLE TRANSACTION RECORDED SUBSEQUENT TO THE RECORDING OF A ROOT OF TITLE

Problem 1: John Doe took record title to Blackacre in 1970 by deed which would qualify as a root of title. A deed to Blackacre from Richard Roe to Jane Nokes subsequently recorded in 1980 recites that John Doe died intestate and that Richard Roe was his sole heir at law. No additional instruments have been recorded after the 1980 deed that would qualify as a root of title. In 2007, was title to Blackacre free and clear of Nokes' interest by operation of the Act?

Answer: No. Even if the facts recited in the 1980 deed were not correct – i.e., Doe did not die intestate and Roe was not Doe's sole heir – it is a title transaction (a recorded instrument that affects title to an estate or interest in land, and sufficiently describes the land to identify its location and boundaries). Jane Nokes' interest arose out of and was created by the 1980 deed and is thus not an interest that is extinguished by operation of the Act because it did not arise before or depend upon any act, title transaction, event or omission that occurred before the 1970 root of title.

Problem 2: John Doe took record title to Blackacre in 1970 by a deed which would qualify as a root of title. In 1980, a stranger to title to Blackacre executed and recorded a deed in favor of Jane Nokes. In 2007, was title to Blackacre free and clear of Nokes' interest by operation of the Act?

Answer: No.

Authorities & References: F.S. 712.01, 712.03(4), 712.04 (2020); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §14.23[5] (2020).

Comment: The fact that the Act does not eliminate estates, interests, claims, or charges arising out of a title transaction recorded subsequent to the effective date of a root of title underscores the limits of the Act. The Act *only* eliminates estates, interests, claims, covenants, restrictions, or charges the existence of which depends upon any act, title transaction, event or omission that occurred *before* the effective date of a root of title. F.S. 712.04 (2020). Thus, if an estate, interest, claim, or charge truly "arises out of," i.e., is created by, a title transaction subsequent to the root of title, its existence could not, by definition, depend upon an act, title transaction, event or omission that occurred *before* the effective date of a root of title. *See, e.g., Holland v. Hattaway*, 438 So. 2d 456, 467 (Fla. 5th DCA 1983) ("it is clear that MRTA was not intended to and does not make marketable a title as against adverse record claims that first appear, or that are created, or 'arise' during, or subsequent to the commencement of, the operative 30 year period."). In other words, interests that arise out of title transactions recorded after the effective date of a root of title do not come within the scope of the operation of the Act.

However, the exception is limited to estates, interests, claims, or charges that arise out of title transactions recorded after the effective date of a root of title and will not preserve interests that depend upon any act, title transaction, event or omission that occurred before the effective

date of a root of title. For example, in the matter of *Matissek v. Waller*, 51 So. 3d 625, 629 (Fla. 2d DCA 2011), the court found that restrictions recorded in 1971 were eliminated by operation of the Act after the recording of a 1974 root of title, notwithstanding the recording of amended restrictions in 1977 because “the 1977 amendments could not exist independently of the original 1971 restrictions....”

The practitioner should keep in mind that, while F.S. 712.05 was amended after the *Matissek* opinion in order to allow an amendment to a community covenant or restriction to preserve the covenant or restriction, the *Matissek* opinion is still good law and its well-reasoned analysis of how the Act operates may apply in circumstances other than amendments to a community covenant or restriction.

While the Act may not eliminate an estate, interest, claim, or charge arising out of a title transaction recorded subsequent to the effective date of a root of title, it does not affect the validity or invalidity of such estate, interest, claim, or charge.

A wild deed may constitute a root of title. *City of Miami v. St. Joe Paper Co.*, 364 So. 2d 439, 446 (Fla. 1978). With respect to wild deeds, *see* Title Standard 16.5.

STANDARD 17.7

RIGHTS OF PERSONS TO WHOM
TAXES ARE ASSESSED

STANDARD: THE ACT DOES NOT ELIMINATE THE RIGHTS OF A PERSON IN WHOSE NAME THE LAND IS ASSESSED FOR THE PERIOD OF TIME THE LAND IS ASSESSED IN THAT PERSON'S NAME AND FOR THREE YEARS THEREAFTER.

Problem 1: John Doe received title to Blackacre by a warranty deed in 1984. In 2019, John Doe conveyed Blackacre to Mary Jones. It was later discovered that Blackacre had been assessed on the county tax rolls in the name of Richard Roe since 2015. In 2020, is Mary Jones's title free and clear of Richard Roe's interest, if any, in the property by operation of the Act?

Answer: No. However, what rights, if any, Roe had in and to the property would need to be ascertained. This exception to the Act only prevents destruction of existing rights and does not create any new rights. Roe would have to establish his purported interest based on something more than the mere payment of property taxes.

Problem 2: Same facts as Problem 1 except that 2016 is the last year that Blackacre is assessed in the name of Richard Roe. During 2017 through 2019 Blackacre was assessed in the name of John Doe. In 2020, is Mary Jones's title free and clear of Richard Roe's interest, if any, in the property by operation of the Act?

Answer: Yes. Jones's title is subject to the rights of Roe, if any, for only three years after Blackacre was last assessed in Roe's name. This assumes that no other exception is applicable to preserve any rights of Roe.

Authorities & References: F.S. 712.03(6) (2020); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §14.23[6](2020).

Comment: This exception creates a need to review the county tax rolls for the three years prior to the date that title is being examined. However, it is important to note that the Act does not operate to establish any rights to the property in the party to whom taxes are assessed. Any such rights would have to be established in an appropriate judicial proceeding.

STANDARD 17.8

APPLICATION OF THE ACT TO RIGHTS OF THE UNITED STATES, FLORIDA, TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND AND WATER MANAGEMENT DISTRICTS IS LIMITED

STANDARD: THE ACT DOES NOT ELIMINATE ANY RIGHT, TITLE, OR INTEREST RESERVED BY THE STATE OF FLORIDA OR THE UNITED STATES IN A PATENT OR DEED AND DOES NOT ELIMINATE ANY INTEREST HELD BY THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, WATER MANAGEMENT DISTRICTS CREATED UNDER CHAPTER 373, OR THE UNITED STATES.

Problem 1: John Doe conveyed Blackacre to Richard Roe by warranty deed recorded in 1988. Blackacre lies on a navigable river and is improved with an estate home, seawall and dock that were built on land that was formerly partially submerged. The previous conveyance of Blackacre into private ownership was without express reservation of those portions of the land underlying navigable waters. In 2020, is Richard Roe's interest free and clear of the State of Florida's interest as sovereign in any submerged or formerly submerged lands by operation of the Act?

Answer: No. The Act does not operate to divest the State of Florida of title to sovereignty lands waterward of the ordinary high-water mark of navigable rivers.

Problem 2: The Southwest Florida Water Management District acquired title to Whiteacre in 1983. In 1985, Richard Roe conveyed Whiteacre to Simon Grant by a special warranty deed. In 2020, was Simon Grant's interest free and clear of any interest of the District by operation of the Act?

Answer: No. The Act does not operate to extinguish any right, title or interest held by any water management district created under chapter 373.

**Authorities
& References:**

F.S. 712.03(9) & 712.04 (2020).

Comment:

With respect to submerged sovereignty land, *see* F.S. 712.03(7) (2020) (effective June 15, 1978); *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So. 2d 167 (Fla. 1986), cert. den. 479 U.S. 1065 (1987) (holding that the Act as originally enacted and as subsequently amended did not operate to divest the state of title to sovereignty lands, even though conveyances of state lands to private interests encompassed sovereignty lands within the lands being conveyed); 1 BOYER, *FLORIDA REAL ESTATE TRANSACTIONS* § 14.23[7] (2020); *FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE* § 2.7 (Fla. Bar CLE 9th ed. 2019).

The Act does not affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title. F.S 712.04 (2020). Effective July 1, 2010, section 712.03(9) F.S., created an exception to the Act for any right, title or interest held by the Trustees of the Internal Improvement Trust Fund, any water management district created under chapter 373, or the United States. As amended, the Act does not apply to eliminate those governmental interests whether created by reservation or otherwise. F.S 712.04 (2020).

STANDARD 17.9

Elimination of Dower

[Intentionally Deleted; see archived version for text]

STANDARD 17.10

DEFECTS INHERENT IN MUNIMENTS OF TITLE

STANDARD: THE ACT DOES NOT ELIMINATE ANY DEFECTS INHERENT IN THE MUNIMENTS OF TITLE ON WHICH THE ESTATE IS BASED BEGINNING WITH A ROOT OF TITLE AND FOR THIRTY YEARS FROM THE RECORDING OF A ROOT OF TITLE.

Problem 1: In 1975, ABC Corp. purports to convey Blackacre to John Doe. The deed is signed by “Richard Roe as Secretary of ABC Corp.” No corporate resolution was recorded authorizing Richard Roe to execute deeds on behalf of ABC Corp. There is thus a defect on the face of the 1975 deed as it was not signed by a person authorized to do so. Nothing affecting Blackacre has been recorded since then. In 2006, was title to Blackacre free and clear of ABC Corp.’s interest by operation of the Act?

Answer: No. Although the deed may constitute a root of title, it contains a defect inherent on its face because it was signed by an officer who did not have statutory authority to convey ABC Corp.’s real property. Hence, the potential ownership claim of ABC Corp. is not extinguished. F.S. 712.03(1) (2020).

Problem 2: John Doe as the sole owner of Blackacre resided on the property as his homestead with his wife and two children. In 1960 John Doe conveyed Blackacre to Richard Roe for valuable consideration, but without the joinder of his wife. John Doe died in 1969, survived by his wife and children. Blackacre was conveyed by Roe to Sam Smith in 1972. No notice of the homestead claim had ever been filed. In 2021, is Smith’s title free and clear of the interests of Doe’s wife and children?

Answer: Yes. The 1972 deed was a root of title and there is no defect inherent on the face of that 1972 deed to indicate that John Doe’s wife and children may have an outstanding interest.

Problem 3: Same facts as Problem 2 except that Richard Roe did not convey to Sam Smith until 2015. In 2021, is Smith’s title free and clear of the interests of Doe’s wife and children?

Answer: No. The 2015 does not qualify as a root of title. The homestead claim renders the 1960 deed void and the 2015 deed does not yet qualify as a root of title because it has not been of record for 30 years.

**Authorities
& References:**

F.S. 712.01-.04 (2020); *ITT Rayonier, Inc. v. Wadsworth*, 386 F. Supp. 940, 942-43 (M.D. Fla. 1975), *accord*, *ITT Rayonier, Inc. v. Wadsworth*, 346 So. 2d 1004, 1009 (Fla. 1977); *see also*, *Reid v. Bradshaw*, 302 So. 2d 180, 181 (Fla. 1st DCA 1974) (homestead rights are not eliminated by the mere passage of time).

Comment: The answer to Problem 2 would probably be the same without regard to whether the homestead owner died before or after the effective date of the root of title since no notice of homestead claim was ever filed. *See* F.S. 712.04 (2020). However, the *Reid* opinion casts some doubt in the latter instance, and caution should be exercised in such a situation. *See also* *Conservatory-City of Refuge, Inc. v. Kinney*, 514 So. 2d 377, 378 (Fla. 2d DCA 1987) (holding that the Act did not apply to eliminate homestead claims where the children’s remainder interests did not vest until the homestead owner died, which was after the asserted root of title).

The term “muniments of title” is not defined in the Act. The Fifth District Court of Appeal has defined muniments of title in the context of the Act as “any documentary evidence upon

which title is based... [such as] deeds, wills, and court judgments through which a particular land title passes and upon which its validity is based.” *Cunningham v. Haley*, 501 So. 2d 649, 652 (Fla. 5th DCA 1986, *reh’g den.* 1987). The court went on to state that “[m]uniments of title do more than merely ‘affect’ title; they must carry title and be a vital link in the chain of title.” *Id.*

General Information

Submitted by: *(name of VBG or individual)* Real Estate Leasing Committee of the Real Property, Probate, and Trust Law Section

Address: *(address and phone #)* C/O Chris Sajdera, Chair: 200 East Palmetto Park Road, Suite 103, Boca Raton, Florida 33432 (561-910-3082)

Position Level: *(name of VBG)* Real Property, Probate, and Trust Law Section of the Florida Bar

Proposed Advocacy

Complete #1 below if the issue is legislative or #2 if the issue is political; #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Oppose legislation authorizing the use of security deposit replacement products (a/k/a fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices.

2. Political Proposal

3. Reasons For Proposed Advocacy

a. Per SBP 9.50(a), does the proposal meets the following requirements?
(select one) X Yes ___ No

- It is within the group’s subject matter jurisdiction as described in the VBG’s bylaws;
- It is beyond the scope of the bar’s permissible legislative or political activity, **or** within the bar’s permissible scope of legislative or political activity **and** consistent with an official bar position on that issue; **and**
- It does not have the potential for deep philosophical or emotional division among a substantial segment of the bar’s membership.

b. Additional Information: Security deposit replacement products can cause unintended financial implications on unknowing consumers and present ambiguity regarding the applicability of the Landlord Tenant Act.

Referrals to Other Voluntary Bar Groups

VBGs must provide copies of the proposed legislative or political activity to all bar divisions, sections, and committees that may be interested in the issue. See SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Include all comments received as part of your submission. The online form may be submitted before receiving comments but only after the proposal has been provided to other bar divisions, sections, or committees.

Public Interest Law Section

Business Law Section

Contacts

Board & Legislation Committee Appearance *(list name, address and phone #)*

Wilhelmina F. Kightlinger, Legislation Co-Chair of the RPPTL Section.

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Pete M. Dunbar, French Brown, and Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone (850) 999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Pete M. Dunbar, French Brown, and Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone (850) 999-4100

WHITE PAPER

FEES IN LIEU OF SECURITY DEPOSITS

I. SUMMARY

This White Paper discusses the impact of offering security deposit replacement products (a/k/a fees in lieu of security deposits) to tenants in residential real estate transactions in lieu of placing a traditional security deposit - explaining both the consumer interests and technical issues to be considered if such products are to be authorized and regulated in the state of Florida.

II. CURRENT SITUATION

The practice of offering tenants in residential real estate lease transactions the option to pay a recurring, nonrefundable fee in lieu of placing a traditional security deposit presents numerous consumer protection issues and concerns as to how such fees are treated under the Florida Residential Landlord and Tenant Act (Chapter 83, *Florida Statutes*). Leading security deposit replacement companies (for example: LeaseLock, Rhino, and Jetty) (“SDR Companies”) offer a mix of insurance-type products, including bonds, that are marketed either to landlords (or property management companies) or directly to tenants (collectively, “SDR Products”). While these products appear to alleviate the high up-front costs tenants face when entering a new rental agreement, the sale of such products could lead to predatory practices on consumers given the absence of regulatory oversight, nonexistence of a cap on fees, and the lack of coverage such products offer tenants against landlord claims for damages and repair costs – costs that would typically be covered by a security deposit.

III. EFFECT OF PROPOSED CHANGES

SDR Companies operate under strict, one-sided agreements that seek to strip away tenant’s rights under the Florida Residential Landlord and Tenant Act (Chapter 83, *Florida Statutes*), including the rights tenants have to respond to damage claims made by landlords and the rights tenants have in security deposit funds held in connection with a rental agreement.

F. S. 83.49(3) establishes the process landlords must follow to make a claim against a security deposit and the rights tenants have to respond to such claims. Security deposits both ensure a tenant’s performance under a rental agreement and protects the landlord against damage caused to the property (collectively “Security Deposit Claims”). SDR Products provide an alternative to this process whereby fees are paid by the tenant to the landlord (or the landlord’s insurer) in lieu of the security deposit. The tenant, however, often remains liable to the landlord (or the landlord’s insurer) for any damage to the property beyond ordinary wear and tear as a result of the insurer’s subrogation rights and the ambiguity as to whether such fees fall under the definition of “Security Deposit” under the Florida Residential Landlord and Tenant Act. The result is that a tenant could unknowingly be billed for Security Deposit Claims (after paying recurring fees throughout the term of the rental agreement) that would usually be covered by a security deposit under protection of the Florida Residential Landlord and Tenant Act.

IV. ANALYSIS

SDR Products and the agreements used by, and practices of, SDR Companies in connection with such products present numerous consumer protection concerns, including but not limited to:

- a. Caps on Fees and Regulatory Oversight. A tenant who purchases a SDR Product will be faced with the requirement to pay nonrefundable fees throughout the original term of the rental agreement and all renewal terms compared to a traditional security deposit that is placed at the commencement of a rental agreement and transfers over to any renewal term(s) (and has the potential to be fully or partially refunded at the conclusion of the rental agreement). SDR Products are insurance products, since the tenant is paying for coverage instead of depositing funds. Accordingly, the Florida Office of Insurance Regulation should ensure tenants are not paying exorbitant amounts to obtain such coverage, including a cap on fees for initial policies and bonds and a lower cap on renewals, and should otherwise regulate this form of insurance just like it does other insurance products.
- b. Failure to Purchase Insurance. Funds should be used to purchase insurance for the protection of tenant. If a fee is collected by a landlord but insurance coverage is not provided, the funds should be designated as a Security Deposit under the Florida Residential Landlord and Tenant Act.
- c. Coverage for Claims. SDR Products could leave tenants in a situation in which they have paid recurring, nonrefundable fees throughout the term of the rental agreement (and renewals) but are still obligated to pay Security Deposit Claims due to the insurer's subrogation rights. This practice is misleading to tenants who believe they are paying into a security deposit or for an insurance policy and could lead to unexpected and inequitable costs imposed on tenants. If an SDR product is obtained, the tenant should be protected against claims by the landlord to the same extent as would have applied had a security deposit been posted.
- d. Non-Discrimination. Tenants should not be discriminated against for using an SDR Product instead of placing a traditional security deposit. Specifically, if a tenant presents an offer to lease property to a landlord that includes the use of an SDR Product, the landlord should not consider the tenant's decision to use an SDR Product as a factor in deciding whether to accept or decline the offer.
- e. Credit Protection. Credit reporting on tenant defaults under the terms of SDR Product agreements should be limited to situations in which both the tenant did default on the agreement and was unable to work out an alternative solution with the landlord.
- f. Disclosures. Proper guidelines should be established to ensure tenants receive adequate disclosures prior to purchasing SDR Products that clearly outline the risks associated with using such products.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

SDR Products have a direct positive economic impact on the SDR Companies and possibly landlords who choose to charge a fee in lieu of a security deposit but not purchase insurance coverage (or landlords who profit from increasing the fee beyond the insurance premium). Property management companies could also see a positive economic impact, as such fees could create a new revenue stream especially if they are paid anything of value in connection with the sale of the product. SDR Products could be a benefit to tenants who cannot come up with an upfront security deposit but can afford to pay an additional monthly fee for an SDR Product but could also negatively impact tenants if the fee amounts do not bear a reasonable proportion to the amount of the security deposit that would have otherwise been required and do not provide the tenant with coverage for Security Deposit Claims. The SDR Companies use of credit reporting in connection with their standard contracts could also have long-term negative financial implications for tenants.

VII. CONSTITUTIONAL ISSUES

The agreements used by SDR Companies often have one-sided provisions that strip tenants of their rights to due process. At least two leading SDR Companies require tenants to submit to arbitration or small claims courts in which a jury trial is waived. This practice divests tenants of their rights under the Florida Residential Landlord and Tenant Act and puts them in a vulnerable position when they have to ultimately respond to the insurer for Security Deposit Claims made by their landlord.

VIII. OTHER INTERESTED PARTIES

The Public Interest Law Section
Business Law Section



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

To: Leadership of the Business Law Section
From: Real Property, Probate and Trust Law Section, RP Leasing Committee
Re: Proposed Legislative Position re: Opposition to Fees in Lieu of Security Deposits

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is to :

Oppose legislation authorizing the use of security deposit replacement products (a/k/a fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices.

Thanks for your consideration of this request. Please let us know if your section will provide comments.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

To: Leadership of the Public Interest Law Section
From: Real Property, Probate and Trust Law Section, RP Leasing Committee
Re: Proposed Legislative Position re: Opposition to Fees in Lieu of Security Deposits

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is to :

Oppose legislation authorizing the use of security deposit replacement products (a/k/a fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices.

Thanks for your consideration of this request. Please let us know if your section will provide comments.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

(850) 561-5600
www.FLORIDABAR.org

VOLUNTARY BAR GROUP LEGISLATIVE OR POLITICAL ACTIVITY WORKSHEET

- This worksheet is for voluntary bar groups (VBGs) to gather and share information before submitting an [official request](#) for approval of legislative or political activity, whether new or rollover.
- SBP 9.11 definitions:
 - Legislative or political activity is “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
 - A VBG is “a group within The Florida Bar funded by voluntary member dues in the current and immediate prior bar fiscal years.”
- VBGs must advise TFB of proposed legislative or political activity and identify all groups the proposal has been submitted to. If comments have been received, they should be attached; if they have not been received, the proposal may still be submitted to the Legislation Committee. *See* SBP 9.50(d).
 - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
 - If expedited review is requested, the Executive Committee may review the proposal.
 - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

651 East Jefferson Street • Tallahassee, FL 32399-2300 • FAX: (850) 561-9405

General Information

Submitted by: *Real Property Litigation Committee of the Real Property, Probate, and Trust Law Section*

Address: *c/o Michael Hargett, Chair, 601 Bayshore Blvd., Suite 700, Tampa, Florida, 33609 (813) 253-2020.*

Position Level: *Real Property, Probate and Trust Law Section of the Florida Bar*

Proposed Advocacy

Complete #1 below if the issue is legislative or #2 if the issue is political; #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

This legislation will expand the finality of foreclosure judgments provided by § 702.036 Fla. Stat. (2021) to include liens other than mortgage foreclosures, such as community association liens and construction liens. Additionally, it will provide prevailing party attorneys' fees in post-foreclosure litigation for redress of wrongful foreclosure judgments brought by junior lienholders improperly foreclosing senior liens. This legislation restores the legitimate business expectations of the citizens of the State of Florida that were upset by Wells Fargo Bank, N.A. v. Tan., 320 So. 3d 782 (Fla. 4th DCA 2021).

2. Political Proposal – Not Applicable

3. Reasons for Proposed Advocacy

a. Per SBP 9.50(a), does the proposal meets the following requirements?
(select one) Yes No

- It is within the group's subject matter jurisdiction as described in the VBG's bylaws;
- It is beyond the scope of the bar's permissible legislative or political activity, **or** within the bar's permissible scope of legislative or political activity **and** consistent with an official bar position on that issue; **and**
- It does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

b. Additional Information: _____

Referrals to Other Voluntary Bar Groups

VBGs must provide copies of the proposed legislative or political activity to all bar divisions, sections, and committees that may be interested in the issue. See SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Include all comments received as part of your submission. The online form may be submitted before receiving comments but only after the proposal has been provided to other bar divisions, sections, or committees.

*Business Law Section of the Florida Bar
Florida Banker's Association*

Contacts

Board & Legislation Committee Appearance *(list name, address and phone #):*

Wilhelmina F. Kightlinger, RP Legislative Co-Chair, 1408 N. Westshore Blvd., Suite 900, Tampa, FL 33607 (612) 371-1123

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees):*

*Peter Dunbar, French Brown, and Martha Edenfield , Dean Mead & Dunbar, 215 S. Monroe, Suite 815, Tallahassee, FL 32301 *850) 999-4100*

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

*Peter Dunbar, French Brown, and Martha Edenfield , Dean Mead & Dunbar, 215 S. Monroe, Suite 815, Tallahassee, FL 32301 *850) 999-4100*



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

April 20, 2022

To: Leadership of the Business Law Section, via Liaison:

Manuel Farach mfarach@mrachek-law.com

Fr: Michael Hargett, RPPTL Real Property Litigation Committee, Chair

Re: Proposed Legislative Position re: Proposal to Clarify the Finality of
Foreclosure Judgments – Revising § 702.036

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the referenced issue and I have attached a copy of our (a) White Paper and (b) Legislative Proposal to the transmittal e-mail.

Thanks for your consideration of this request. Please let us know if your section will provide comments.

Sincerely,

Michael V. Hargett



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

April 20, 2022

To: Leadership of the Florida Banker's Association, via Liaisons:

Mark Thomas Middlebrook middlebrookmark0523@gmail.com
Robert Gary Stern rstern@trenam.com

Fr: Michael Hargett, RPPTL Real Property Litigation Committee, Chair

Re: Proposed Legislative Position re: Proposal to Clarify the Finality of
Foreclosure Judgments – Revising § 702.036

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the referenced issue and I have attached a copy of our (a) White Paper and (b) Legislative Proposal to the transmittal e-mail.

Thanks for your consideration of this request. Please let us know if your section will provide comments.

Sincerely,

Michael V. Hargett

1 A bill to be entitled
2 An act amending s. 702.036, F.S. and providing an effective date.

3

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

5

6 Section 1. Section 702.036, Florida Statutes, is amended to
7 read:

8 702.036 Finality of ~~mortgage~~ foreclosure judgment.-

9 (1)

10 (a) In any action or proceeding in which a party seeks to set
11 aside, invalidate, or challenge the validity of a final
12 judgment of foreclosure of a mortgage or other lien or to
13 establish or reestablish a lien or encumbrance on ~~the real~~
14 property in abrogation of the final judgment of foreclosure of
15 a mortgage or other lien, the court shall treat such request
16 solely as a claim for monetary damages and may not grant
17 relief that adversely affects the quality or character of the
18 title to the property, if:

19 1. The party seeking relief from the final judgment of
20 foreclosure of the mortgage or lien was properly served
21 in the foreclosure lawsuit as provided in chapter 48 or
22 chapter 49.

23 2. The final judgment of foreclosure of the mortgage or
24 lien was entered as to the property.

RM:6724080:1

25 3. All applicable appeals periods have run as to the
26 final judgment of foreclosure of the mortgage or lien
27 with no appeals having been taken or any appeals having
28 been finally resolved.

29 4. The property has been acquired for value, by a person
30 not affiliated with the foreclosing ~~lender-mortgage~~
31 holder, the foreclosing lien holder or the foreclosed
32 owner, at a time in which no lis pendens regarding the
33 suit to set aside, invalidate, or challenge the
34 foreclosure appears in the official records of the county
35 where the property was located.

36 (b) This subsection does not limit the right to pursue any
37 other relief to which a person may be entitled, including, but
38 not limited to, compensatory damages, punitive damages,
39 statutory damages, consequential damages, injunctive relief,
40 or fees and costs, which does not adversely affect the
41 ownership of the title to the property as vested in the
42 unaffiliated purchaser for value.

43 (2) For purposes of this section, the following, without
44 limitation, shall be considered persons affiliated with the
45 foreclosing lender:

46 (a) The foreclosing ~~lender-mortgage holder, the foreclosing~~
47 lien holder or any loan servicer for the loan being
48 foreclosed;

RM:6724080:1

49 (b) Any past or present owner or holder of the ~~loan mortgage~~
50 or lien being foreclosed;

51 (c) Any maintenance company, holding company, foreclosure
52 services company, or law firm under contract to any entity
53 listed in paragraph (a), paragraph (b), or this paragraph,
54 with regard to the ~~loan mortgage or lien~~ being foreclosed; or

55 (d) Any parent entity, subsidiary, or other person who
56 directly, or indirectly through one or more intermediaries,
57 controls or is controlled by, or is under common control with,
58 any entity listed in paragraph (a), paragraph (b), or
59 paragraph (c).

60 (3) After foreclosure of a mortgage based upon the enforcement of
61 a lost, destroyed, or stolen note, a person who is not a party to
62 the underlying foreclosure action but who claims to be the person
63 entitled to enforce the promissory note secured by the foreclosed
64 mortgage has no claim against the foreclosed property after it is
65 conveyed for valuable consideration to a person not affiliated
66 with the foreclosing lender or the foreclosed owner. This section
67 does not preclude the person entitled to enforce the promissory
68 note from pursuing recovery from any adequate protection given
69 pursuant to s. 673.3091 or from the party who wrongfully claimed
70 to be the person entitled to enforce the promissory note under s.
71 702.11(2) or otherwise, from the maker of the note, or from any
72 other person against whom it may have a claim relating to the
73 note.

RM:6724080:1

74 (4) When a party seeks relief from a final judgment foreclosing a
75 mortgage or lien, or files a separate action attacking such a
76 final judgment, and claims that it holds or held a lien superior
77 in right, priority or dignity to the mortgage or the lien
78 foreclosed in the judgment, then the court shall award the party
79 prevailing on that claim its reasonable attorney's fees incurred
80 in such litigation. This subsection applies whether the
81 litigation seeking relief from the final judgment occurs in the
82 case in which the judgment was entered or in any separate case or
83 proceeding.

84 (5) As used in this section, the word "property" refers
85 exclusively to real property.

86 Section 2. This act shall take effect July 1, 2022.

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

WHITE PAPER

**PROPOSAL TO CLARIFY THE FINALITY OF
FORECLOSURE JUDGMENTS – REVISING § 702.036**

I. SUMMARY

This proposal would expand the finality of foreclosure judgments provided by § 702.036 beyond mortgages to include other types of liens, such as the liens of community associations and materialmen. The proposal would also make the losing party liable for the prevailing party attorney’s fees in post-foreclosure litigation where a foreclosed party claims that its lien was superior to that of the foreclosing party. The legislation does not have a fiscal impact on state funds.

II. CURRENT SITUATION

The current situation, created by Fla. Stat. § 702.036 and *Wells Fargo Bank, N.A. v. Tan, infra*, is that the holder of junior mortgage can foreclose a senior lien with impunity if it serves a senior lienholder with process and obtains a default against the senior lienholder. This is a dramatic departure from long-standing Florida Supreme Court law, as described below, and creates an incentive for junior lienors to improperly attempt to foreclose senior liens.

For over 80 years prior to *Tan*, Florida law allowed a senior lienholder to ignore, without risk, foreclosure lawsuits initiated by junior lienholders. *Cone Bros. Const., Co., v. Moore*, 141 Fla. 420 (1940). The *Cone Bros.* decision allowed senior lienholders to avoid the expense of foreclosure actions improperly brought against them by, for example, junior home equity lenders, homeowner’s associations and materialmen. If a junior lienholder were to improperly include a senior lienholder as a party to a foreclosure lawsuit and obtain a judgment purporting to extinguish the senior interest, *Cone Bros.* held that such foreclosure would be “wrongful” and void ab initio as to such senior lienholder.

In *Wells Fargo Bank, N.A. v. Tan*, 320 So. 3d 782, (Fla. 4th DCA 2021), the Fourth DCA acknowledged the inability of a junior lienholder to require a senior lienholder to participate in a foreclosure action—consistent with *Cone Bros.* However, the *Tan* Court was the first to apply Fla. Stat. § 702.36 (the “Mortgage Finality Statute”) in such a situation. The *Tan* Court held that under the Mortgage Finality Statute Wells Fargo’s senior mortgage was indeed extinguished, leaving Wells Fargo with only a claim for monetary damages.

Tan’s application of § 702.036 dramatically changed the business expectations of the citizens and lenders in the State of Florida, created a significant risk of senior lienholders being foreclosed in actions improperly brought by junior lienholders, and added unnecessary expense and litigation to Florida’s overburdened court system.

III. EFFECT OF PROPOSED CHANGE

To vindicate legitimate business expectations and reduce litigation, the proposal adds new subsection (4) in § 702.036, which shifts the attorneys' fees incurred by an improperly foreclosed senior lienholder onto the junior lienholder who wrongfully foreclosed the senior lien. The attorney's fee provision is reciprocal, requiring that a party who erroneously claims its foreclosed lien was senior must pay the attorney's fees incurred by an innocent plaintiff responding to the claim.

Proposed changes to subsections (1) and (2) remedy shortfalls in § 702.036 that limit its scope to mortgages alone. Improper foreclosure actions instituted by other junior lienholders are equally harmful and should also be included both parts of the statute: (a) the existing finality provisions; and (b) the proposed new fee-shifting provision.

IV. ANALYSIS

The following describes the changes being proposed:

1. Sections 702.036(1)(a) is amended to provide that the statute applies to final judgments of foreclosures of mortgages and other liens, such as community association liens and construction liens.

2. Sections 702.036(2)(a)-(c) are likewise amended to provide that the statute applies to final judgments of foreclosure of mortgages and other liens, such as community association liens and construction liens.

3. Section 702.036(4) is added to provide for attorneys' fees for the prevailing party in litigation over an allegedly improper foreclosure of a senior lien.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal is likely to reduce burdens on the court system arising from litigation over lien priorities occasioned by junior lienholders improperly attempting to foreclose senior lienholders, which they can presently attempt with impunity.

VI. DIRECT IMPACT ON PRIVATE SECTOR

The proposal does not have a direct fiscal impact on the private sector, but it may have the indirect impact of avoiding increased borrowing costs by reducing lenders' litigation expenses.

VII. CONSTITUTIONAL ISSUES

The proposal does not have any constitutional issues.

VIII. OTHER INTERESTED PARTIES

The Business Law Section of The Florida Bar, the Florida Bankers Association.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

(850) 561-5600
www.FLORIDABAR.org

VOLUNTARY BAR GROUP LEGISLATIVE OR POLITICAL ACTIVITY WORKSHEET

- This worksheet is for voluntary bar groups (VBGs) to gather and share information before submitting an [official request](#) for approval of legislative or political activity, whether new or rollover.
- Political activity is defined in SBP 9.11 as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- VBGs must advise TFB of proposed legislative or political activity and identify all groups the proposal has been submitted to. If comments have been received, they should be attached; if they have not been received, the proposal may still be submitted to the Legislation Committee. *See* SBP 9.50(d).
 - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
 - If expedited review is requested, the Executive Committee may review the proposal.
 - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

General Information

Estate & Trust Tax Planning Committee and

Submitted by: *(name of VBG or individual)* Probate Law & Procedure Committee, RPPTL

Address: *(address and phone #)* c/o 3001 Tamiami Trail No, Suite 400, Naples, FL 34103, (239) 649-3178
and c/o 5551 Ridgewood Drive, Suite 501, Naples, FL 34108, (239) 514-1000 ext. 2015

Position Level: *(name of VBG)* RPPTL Committee

651 East Jefferson Street • Tallahassee, FL 32399-2300 • FAX: (850) 561-9405

Proposed Advocacy

Complete #1 below if the issue is legislative, #2 if the issue is political; #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Support of legislation to amend Fla. Stat. Sec. 198.41 to render Chapter 198 (which imposes the Florida estate tax) ineffective for as long as there is no federal state death tax credit or no federal generation-skipping transfer tax credit allowable under the Internal Revenue Code of 1986, as amended.

2. Political Proposal

3. Reasons For Proposed Advocacy

- a. Is the proposal consistent with *Keller v. State Bar of California*, 496 US 1 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1989)? Yes
- b. Which goal or objective of the Bar’s strategic plan is advanced by the proposal?
Objective II - Enhance the legal profession and the public's trust and confidence in attorneys and the justice system
- c. The proposal: (*see SBP 9.50(a) - check all that apply*)
 - X is within the group’s subject matter jurisdiction as described in the group’s bylaws;
 - _____ is beyond the scope of the bar’s permissible legislative or political activity, or within the bar’s permissible scope of legislative or political activity and consistent with an official bar position on that issue; and
 - _____ does not have the potential for deep philosophical or emotional division among a substantial segment of the bar’s membership.
- d. Additional Information: _____

Referrals to Other Voluntary Bar Groups

The VBG must provide copies of the proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. *See* SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Include all comments received as part of your submission. The submission may be made before receiving comments but only after the proposal has been provided to other bar divisions, sections, or committees.

Tax Law Section; Title Issues & Standards Committee, RPPTL

Contacts

Board & Legislation Committee Appearance *(list name, address and phone #)*

Lawrence J. Miller, Co-Chair, Legislation Committee
Gutter, Chaves, Josepher et al.
2101 NW Corporate Boulevard, Suite 107
Boca Raton, FL 33431-7343
(561) 998-7847

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar & Martha J. Edenfield
Dean, Mead & Dunbar
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
(850) 999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Peter M. Dunbar & Martha J. Edenfield
Dean, Mead & Dunbar
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
(850) 999-4100



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

To: Leadership of the Tax Law Section
Section/Division/Committee

From: Estate & Trust Tax Planning Committee and the Probate Law and Procedure Committee,
Real Property Probate and Trust Law Section

Re: Proposed Legislative Position re: Suspension of Chapter 198, Florida Statutes

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is in support of :

Legislation amending Sec. 198.41 regarding Florida estate tax

Thanks for your consideration of this request. Please let us know if your section will provide comments.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

To: Leadership of the Title Issues & Standards Committee,
Real Property Probate and Trust Law Section
Section/Division/Committee

From: Estate & Trust Tax Planning Committee and the Probate Law and Procedure Committee,
Real Property Probate and Trust Law Section

Re: Proposed Legislative Position re: Suspension of Chapter 198, Florida Statutes

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is in support of :

Legislation amending Sec. 198.41 regarding Florida estate tax

Thanks for your consideration of this request. Please let us know if your section will provide comments.

1 A bill to be entitled

2 An act to render Chapter 198, Florida Statutes,
3 which imposes the Florida estate tax, ineffective for
4 as long as there is no federal state death tax credit or
5 federal generation-skipping transfer tax credit.

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

8 Section 1. Section 198.41, Florida Statutes, is
9 amended to read:

10 **198.41 Effectiveness of this chapter, etc.**

11 (1) Except as provided in this section, ~~T~~this
12 chapter shall remain in force and effect so long as the
13 Government of the United States retains in full force
14 and effect as a part of the Revenue Laws of the United
15 States a Federal Estate Tax, and this chapter shall
16 cease to be operative as and when the Government of the
17 United States ceases to impose any Estate Tax of the
18 United States.

19 (2) This chapter shall not apply with respect to
20 the estate of a decedent who dies after December 31,

21 2004, if, upon the death of the decedent, a state death
22 tax credit or state generation-skipping transfer tax
23 credit is not allowable pursuant to the provisions of
24 the Internal Revenue Code of 1986, as amended.

WHITE PAPER

PROPOSED AMENDMENT OF F.S. SECTION 198.41 TO RENDER CHAPTER 198, FLORIDA STATUTES, WHICH IMPOSES THE FLORIDA ESTATE TAX INEFFECTIVE FOR AS LONG AS THERE IS NO FEDERAL STATE DEATH TAX CREDIT OR NO FEDERAL GENERATION-SKIPPING TRANSFER TAX CREDIT

I. SUMMARY

The Estate and Trust Tax Planning Committee and the Probate Law and Procedure Committee of the Real Property Probate and Trust Law Section of the Florida Bar jointly recommend that the Section support legislation to suspend those Florida Statutes which govern the imposition, reporting and collection of the Florida estate tax. Specifically, the Committees recommend that Fla. Stat. §198.41, which already proscribes the effectiveness of Chapter 198, be amended to provide that all of Chapter 198 be ineffective for as long as there is no federal state death tax credit or no federal generation-skipping transfer tax credit allowable under the Internal Revenue Code of 1986, as amended. By suspending the effectiveness all of Chapter 198, the requirement thereunder that a personal representative provide the probate court with proof of the payment of Florida estate tax or non-liability for the tax would also be suspended for estates of decedents dying after December 31, 2004. The suspension of this requirement will improve judicial efficiency and permit probate courts to close probate estates and discharge personal representatives more promptly.

II. CURRENT SITUATION

Chapter 198 of the Florida Statutes imposes an estate tax on the estate of a Florida decedent, limited to the amount allowable as a credit against the decedent's federal estate tax for state death tax paid. Essentially, Chapter 198 codifies a "revenue sharing" arrangement between the state and the federal government. However, the federal Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") phased out the allowable state death tax credit beginning 2001, and eliminated that credit with respect to decedents dying after December 31, 2004 and before January 1, 2011. The American Taxpayer Relief Act of 2012 ("ATRA") has since made the elimination of the state death tax credit permanent. Inasmuch as the levy of Florida estate tax was statutorily tied to the amount of the allowable federal state death tax credit, the phase out and eventual elimination of that credit resulted in the phase out and ultimate "zeroing out" of Florida estate tax liability for the estates of those decedents passing away on or after January 1, 2005.

Nevertheless, Chapter 198 still imposed upon the personal representatives of such estates a requirement to file a Florida state death tax return even if that return simply reported no Florida estate tax being due. In response, Fla. Stat. §198.13 was amended in 2007 to remove the filing requirement.¹ Now, no Florida estate tax return need be filed by the personal representative of the estate of a decedent who dies after December 31, 2004, if the estate will not be allowed a state death tax credit or a generation-skipping transfer tax credit under the Internal Revenue Code of 1986, as amended.² Further, a copy of a federal estate tax return reporting a generation-skipping

¹ See CS/SB 2482

² Fla. Stat. 198.13(4)(a)

transfer in connection with a decedent who dies after December 31, 2004, is not required to be filed with the Florida Department of Revenue (the “DOR”).³ Although EGTRRA, ATRA and the 2007 addition of Fla. Stat. §198.13(4) practically nullified the imposition, reporting and collection of the Florida estate tax for after 2004, Chapter 198 continues to remain in effect.

In particular, Fla. Stat. §198.26 continues to impose upon the personal representative of a decedent’s estate the obligation to prove the payment of or non-liability for the Florida estate tax, despite the fact that such tax is no longer collected by the DOR with respect to the estates of decedents who die after December 31, 2004. For decedents who died prior to January 1, 2005, personal representatives would commonly file a non-taxable certificate or a receipt of payment issued by the DOR as conclusive proof.⁴ However, now that Fla. Stat. §198.13 has dispensed with the filing of Florida estate tax returns in most cases,⁵ the DOR no longer issues such certificates or receipts for estates of decedents dying on or after January 1, 2005. Under Fla. Stat. §198.26, courts can consider as such proof an affidavit of non-liability for the tax made by the personal representative of a “nontaxable estate”.⁶ Form DR-312 and Form DR-313 developed by the DOR serves that purpose.

However, the term “nontaxable estate” is not defined within Chapter 198. The term could be construed to refer to an estate that is not required to file a Florida estate tax return, which would then encompass the estates of all decedents dying after December 31, 2004. However, at least one court has more narrowly construed the term to refer to an estate that that is not required to file a *federal* estate tax return. Under that more narrow reading, the court would be unable to consider the personal representative’s affidavit of non-liability for Florida estate tax if the decedent’s estate is subject to federal estate tax liability pursuant to the Internal Revenue Code. If prevented from using Form DR-313 or a similar affidavit as proof of non-liability for the Florida estate tax, the personal representative of a federally taxable estate would otherwise have no conclusive proof that the estate is not subject to Florida estate tax. In such cases, Fla. Stat. §198.26 is an impediment to the timely and efficient discharge of a personal representative.

III. EFFECT OF PROPOSED CHANGES

To address the serious administrative inefficiency resulting from such narrow interpretations of Fla. Stat. §198.26, the Estate and Trust Tax Planning Committee and the Probate Law and Procedure Committee jointly propose that the Real Property Probate and Trust Law Section of the Florida Bar support legislation to amend Fla. Stat. §198.41, which currently ties the effectiveness of Chapter 198 to the federal government’s continued imposition of a federal estate tax. That statute would already render all of Chapter 198 ineffective if federal legislation eliminates the federal estate tax. The Committees’ proposal seeks to amend Fla. Stat. §198.41 to add a new subsection that would also suspend the application of Chapter 198 to the current situation where federal estate tax continues to be imposed while Florida estate tax has been effectively nullified.

³ Fla. Stat. 198.13(4)(b)

⁴ Fla. Stat. 198.26

⁵ Fla. Stat. 198.13(4)

⁶ Fla. Stat. 198.26

The proposed amendment of Fla. Stat. §198.41 borrows language from Fla. Stat §198.13(4) and would render all of Chapter 198, Florida Statutes, ineffective as to the estates of all decedents dying after December 31, 2004. If enacted, for such estates, Fla. Stat. §198.26 will not be applicable and will no longer serve to block the timely closure of probate proceedings. Florida probate courts would no longer need to require the personal representative of such an estate to submit proof of the payment of the Florida estate tax as a prerequisite to the discharge of that personal representative. As a result, probate courts will be able to close probate estates and discharge personal representatives more promptly and efficiently.

Collaterally, title insurance underwriters may no longer find it necessary to seek recordation of such proof as a prerequisite to the issuance of title insurance. Currently, where the chain of title for real property at issue includes a conveyance from a decedent, Forms DR-312 or DR-313 are often recorded as proof that there is no Florida estate tax lien with respect to such property, particularly when an owner or purchaser of real property seeks to secure title insurance. If all of Chapter 198 is rendered ineffective with respect to decedents who die after December 31, 2004, as a matter of law there would no Florida estate tax upon their estates and therefore no need to prove the non-existence of a Florida estate tax lien.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None. Since no Florida estate tax is currently collected with respect to decedents dying on or after December 31, 2004, the suspension of Chapter 198 will have no fiscal effect.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None.

VI. CONSTITUTIONAL ISSUES

None.

V. OTHER INTERESTED PARTIES

Tax Law Section of the Florida Bar

Title Issues & Standards Committee, Real Property Probate and Trust Law Section of the Florida Bar