

**Real Property, Probate and Trust Law Section
Executive Council Meeting
Opal Grand Resort
Delray Beach, Florida
June 3, 2023
10:00 a.m. (E.T.)**

Agenda

- I. **Presiding** — *Sarah Butters, Chair*
- II. **Secretary's Report** — *Sancha Brennan, Secretary*
 - 1. Motion to approve the minutes of the February 25, 2023 meeting of the Executive Council held at The Hotel Effie in SanDestin, Florida. **p. 8**
 - 2. Meeting Attendance. **p. 23**
- III. **Chair's Report** — *Sarah Butters, Chair*
 - 1. Thank you to our Sponsors!
 - 2. Introduction and comments from Sponsors. **p. 40**
 - 3. Milestones.
 - 4. General Comments of the Chair.
- IV. **Board of Governors Report**— *Gary Lesser, President*
- V. **Chair-Elect's Report** — *Katherine Frazier, Chair-Elect*
 - 1. 2023-2024 Executive Council meetings. **p. 43**
 - 2. 2023-2024 Leadership Appointments **p. 44**
- VI. **General Standing Division Report** — *S. Katherine Frazier, Division Director and Chair-Elect*

Informational Items:

- 1. **Professionalism and Ethics Committee** – *Andrew Sasso, Chair*

Proposed revisions to The Florida Bar Rules Of Professional Conduct, Chapter 4 Preamble and Rule 4-1.3 Comment **p. 51**

2. **Liaison to the Judiciary** – *Hon. Michael J. Rudisill, Liaison*

Update on matters of interest.

3. **Fellows** - *Christopher A. Sajdera and Angela Santos, Co-Chairs*

Update on matters of interest.

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

1. Statement of Current Financial Conditions. **p. 52**

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

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

1. Upcoming CLE programs and opportunities. **p. 60**

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

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

General Comments and Recognition of Division Sponsors.

Informational Item:

1. Principal and Income Committee – Edward Koren & Pamela Price, Co-Chairs

Proposed legislation to update Florida’s Uniform Principal and Income Act, which generally follows the new Uniform Fiduciary Income and Principal Act in order to achieve greater consistency among state laws, but includes certain modifications that reflect Florida public policy choices. **p. 61**

2. Probate Law and Procedure Committee – Theodore Kypreos, Chair

The Johnson v. Townsend Fix: Proposed legislation to clarify existing Florida law by statutorily exempting certain title disputes from Florida's probate creditor claims procedure; creating a new dispute resolution mechanism and two-year statute of repose designed for such title disputes; making narrowly focused modifications to the Florida Probate Code to reduce the risk of unintended forfeitures of certain property rights. **p. 177**

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

General Comments and Recognition of Division Sponsors.

Information Item:

1. **Title Insurance and Title Insurance Industry Liaison** — *Chris Smart, Chair; Jeremy Cranford, Len Prescott and Michelle Hinden, Co-Vice Chairs.*

Proposal to amend section 28.223, Florida Statute, governing Clerks of the Circuit Courts, to ensure the availability of necessary information about deceased individuals contained in the land records maintained by the Clerks so that proper heirs can be identified in the chain of title and protect the public interest of certainty in the ownership of real property. **p. 204**

2. **Real Property Problems Study** — *Ann Pollack, Chair; Brian Hoffman, Susan Spurgeon, and Reese Henderson, Co-Vice Chairs*

Proposed Legislation relating to notice by mail or courier; amending Section 1.101, Florida Statutes to include electronic confirmation; providing retroactive application and an effective date. **p. 209**

3. **Florida Bar Attorney/Realtor Joint Committee** — *Colleen Sachs and Julie Horstkamp, Co-Chairs of FR/BAR Contracts Subcommittee*

Update on matters of interest.

XIII. Probate and Trust Law Division Committee Reports — *John C. 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, 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 Barlow, 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. **Liaison with the FSGA** – Stephanie Cook
15. **Liaisons with Tax Section** — William R. Lane, Jr., Brian Malec and Brian C. Sparks
16. **Liaison with Professional Fiduciary Council** — Darby Jones
17. **OPPG Delegate** — Nick Curley
18. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Jolyon D. Acosta and Keith B. Braun, Co-Vice Chairs
19. **Probate and Trust Litigation** — J. Richard Caskey, Chair; Cady Huss and R. Lee McElroy, IV, Co-Vice Chairs
20. **Probate Law and Procedure** — Theodore S. Kypreos, Chair; Benjamin F. Diamond, Stacey Prince Troutman, and Grier Pressley, Co- Vice Chairs
21. **Trust Law** — Matthew H. Triggs, Chair; Jennifer J. Robinson, David J. Akins, Jenna G. Rubin, and Mary E. Karr, Co-Vice Chairs
22. **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 — *Wm. Cary Wright, Division Director*

1. **Ad Hoc Hayslip** – Brian W. Hoffman, Chair; James C. Russick and Manuel Farach, Co-Vice Chairs
2. **Ad Hoc UCRERA** - Manuel Farach, Chair; Jason M. Ellison and James C. Russick, Co-Vice Chairs
3. **Attorney Banker Conference** — Salome J. Zikakis, Chair; Kristopher E. Fernandez, and R. James Robbins, Jr., Co-Vice Chairs
4. **Commercial Real Estate** — E. Ashley McRae, Chair; Brian W. Hoffman, Brenda B. Ezell, and Alexandra D. Gabel, Co-Vice Chairs
5. **Condominium and Planned Development** — Alexander B. Dobrev and Allison L. Hertz, Co-Chairs; Russel Robbins, Vice Chair
6. **Condominium and Planned Development Law Certification Review Course** — Jane L. Cornett and Christine M. Ertl, Co-Chairs; Allison L. Hertz, Vice Chair
7. **Construction Law** — Sanjay Kurian, Chair; Bruce D. Partington and Elizabeth B. Ferguson, Co-Vice Chairs
8. **Construction Law Certification Review Course** — Gregg E.

- Hutt, Chair; Jason J. Quinterro and Scott P. Pence, Co-Vice Chairs
9. **Construction Law Institute** — Brad R. Weiss, Chair; Deborah B. Mastin and Trevor B. Arnold, Co-Vice Chairs
 10. **Development & Land Use Planning** — Colleen C. Sachs and Lisa B. Van Dien, Co-Chairs; Jin Liu, Vice Chair
 11. **Insurance & Surety** —Katherine L. Heckert, Chair; Debbie S. Crockett, Vice Chair
 12. **Liaisons with FLTA** — Alan K. McCall, Melissa Jay Murphy, Alan B. Fields and James C. Russick
 13. **Liaison with American College of Real Estate Lawyers (ACREL)** — Martin A. Schwartz and William P. Sklar
 14. **Liaison with American College of Construction Lawyers (ACCL)** — George J. Meyer
 15. **Liaison with Florida Realtors** – Louis E. “Trey” Goldman
 16. **Real Estate Certification Review Course** — Lloyd Granet, Chair; Martin S. Awerbach, Laura M. Licastro and Jason M. Ellison, Co-Vice Chairs
 17. **Real Estate Leasing** —Christopher A. Sajdera, Chair; Kristen K. Jaiven and Ryan J. McConnell, Co-Vice Chairs
 18. **Real Property Finance & Lending** — Jason M. Ellison, Chair; Deborah B. Boyd and Jin Liu, Co-Vice Chairs
 19. **Real Property Litigation** — Manuel Farach, Chair; Amber E. Ashton, Amanda R. Kison and Shawn G. Brown, Co-Vice Chairs
 20. **Real Property Problems Study** — Anne Q. Pollack, Chair; Susan K. Spurgeon, Reese J. Henderson Jr. and Brian W. Hoffman, Co-Vice Chairs
 21. **Residential Real Estate and Industry Liaison**— Nicole M. Villarroel and Kristen K. Jaiven. Co-Chairs; James A. Marx and Richard S. McIver, Co-Vice Chairs
 22. **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
 23. **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 Bylaws** - Robert S. Swaine and William T. Hennessey, III, Co-Chairs
2. **Ad Hoc Civil Rules Revisions** – Michael V. Hargett and Shawn Brown, Co-Chairs
3. **Ad Hoc RTOD** — Steve Kotler and Chris Smart, Co-Chairs; Jeff Goethe, Vice Chair
4. **Ad Hoc Series LLC** - James A. Marx, James C. Russick and Michael A. Sneeringer, Co-Chairs
5. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
6. **Budget** — Jon Scuderi, Chair; Tae Kelley Bronner. Linda S. Griffin, and Pamela O. Price, Co-Vice Chairs
7. **Communications** – Michael V. Hargett, Chair; Laura Sundberg, Vice Chair

8. **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
9. **Convention Coordination** — Deborah Boje, Chair; Tae Kelley Bronner and Yoshi Smith, Co-Vice Chairs
10. **Disaster and Emergency Preparedness and Response** — Colleen Sachs, Chair; Amy Beller and Michael Bedke, Co-Vice Chairs
11. **Fellows** — Christopher A. Sajdera and Angela Santos, Co-Chairs; Bridget Friedman and Terrance Harvey, Co-Vice Chairs
12. **Homestead Issues Study** — Jeff Baskies, Chair; Shane Kelley, Jeremy Cranford and Burt Bruton, Co-Vice Chairs
13. **Information Technology** — Hardy L. Roberts III, Chair; Alexander B. Dobrev, Jesse B. Friedman, Sean Lebowitz, and Jourdan Haynes, Co-Vice Chairs
14. **Law School Mentoring & Programing** — Johnathan Butler and Kymberlee Curry Smith, Co-Chairs; Guy Storms Emerich, Lilleth Bailey and Kristine L. Tucker, Co-Vice Chairs
15. **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
16. **Legislative Update (2022-2023)** — Brenda Ezell and Salome J. Zikakis, Co-Chairs; Gutman Skrande, Jennifer S. Tobin, and Kit van Pelt, Co-Vice Chairs
17. **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
18. **Long-Range Planning** — S. Katherine Frazier, Chair
19. **Meetings Planning** — George J. Meyer, Chair
20. **Membership and Inclusion** — S. Dresden Brunner, Chair; Annabella Barboza, Vinette D. Godelia, Eryn Riconda, and Roger A. Larson, Co-Vice Chairs
21. **Model and Uniform Acts** — Patrick J. Duffey and Adele I. Stone, Co-Chairs; Chris Wintter and Amber Ashton, Co-Vice Chairs
22. **Professionalism and Ethics** — Andrew B. Sasso, Chair; Elizabeth A. Bowers, Alexander B. Dobrev, Rt. Judge Celeste Muir, and Laura Sundberg, Co-Vice Chairs

23. **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
24. **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
25. **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
26. **Strategic Planning** — Robert S. Freedman and William T. Hennessey, III, Co-Chairs
27. **Strategic Planning Implementation** — Robert Freedman, Andrew M. O'Malley, Robert S. Swaine, William T. Hennessey, III, and Debra L. Boje, Co-Chairs

XVI. Adjourn: Motion to Adjourn.

Real Property, Probate and Trust Law Section
Executive Council Meeting
Sandestin Beach Resort & Hotel Effie
Destin, Florida
February 25, 2023
9:00 a.m. (CT)/10:00 a.m. (EST)

MINUTES

I. Presiding — Sarah Butters, Chair

Chair Butters announced that the annual Executive Council Directory was now available online and in printed form; and is available from Hilary Stephens to those members attending in person, in the back of the room.

The Chair called the meeting to order at 9:02 a.m. CT /10:02 a.m. EST and welcomed the members attending by Zoom, an hour later, from the Sandestin Resort, noting that the resort is not actually in Destin – but South Walton in Okaloosa County.

Chair Butters recognized Amy Beller, Vice Chair of the Disaster and Emergency Preparedness and Relief Committee, who then welcomed to the stage, South Walton Firefighter, Michael Neese, who advised members that CPR training has changed quite a bit over the years and offered a refresher on the steps to CPR:

1. Check to see if the patient is alert/awake;
2. If you do not get a response, check the patient for a carotid pulse, listen to their chest for breathing and watch to see if there is a rise and fall of the chest to indicate breathing;
3. If not, and you are alone, go call 911. If someone else is with you, direct that person to call 911;
4. If the person is not breathing, you will want to start chest compressions only;
5. Administering breaths/breathing is no longer recommended to perform unless you have a proper breathing mask available (humans have about 4-6 minutes of reserve oxygen);
6. Locate the proper hand placement to begin chest compressions (near the middle of the patient's breastbone);
7. Place your hands on top of each other on the patient's chest, square your shoulders over the patient's chest and use your upper body and shoulders to apply the compressions (2"-2.5" inches of depth for an adult and 1"-1.5" inches for an infant (using 2 fingers for compressions for infant));
8. Continue compressions at a rate of 100-120 compressions per minute, or if you have a breathing mask, alternate 30 compressions to 3 rescue breaths.
9. He then described how to use an AED – to apply a shock to the patient's chest, and then continue compressions;

He then polled the Council members for questions:

Question from a Council member – *Do you perform CPR if someone is coming out of the water?* Answer: Yes. Roll them on their left side first to clear out their airway and then continue with compressions. Remember your ABC's: airway, breathing, circulation.

Question from a Council member – *Do you recommend the use of AEDs (automatic external defibrillators)?* Answer: Yes.

Member, David Akins, then reported that his law firm's office manager arranged to have CPR instruction for his firm and found it to be beneficial; and recommends that other firms consider doing the same.

If you have any questions regarding CPR, the use of AEDs or would like to schedule a CPR course, you can reach the South Walton Fire District at info@swfd.org or call 850-267-1298 M-F 8am-4:30pm, or your local fire department.

II. Secretary's Report — Sancha Brennan, Secretary

Sancha Brennan reported on some of the misconceptions and issues members were having with Council attendance requirements, reminded members that to remain on the Council, they cannot be absent at three or more consecutive, in-state Executive Council meetings, and reminded members to refer to the minutes from the prior meeting to verify their attendance is accurately reported.

She then presented the minutes of the December 10, 2022, meeting of the Executive Council held at The Four Seasons, in Orlando, Florida, calling for a motion to approve. Larry Miller made the following motion:

1. MOTION:

To approve the minutes of the December 10, 2022, meeting of the Executive Council held at The Four Seasons in Orlando, Florida. p. 8

Motion seconded by: John Moran. No discussion.

The motion PASSED unanimously

Secretary Brennan recognized former Section Chair, Roland "Chip" Waller, who inquired about a name list being circulated. Section Administrator, Hilary Stephens, identified the list as a directory pickup checklist, unrelated to attendance.

2. Secretary Brennan then circulated the Meeting Attendance Roster

III. Chair's Report — Sarah Butters, Chair

1. Thank you to all of the members who have made the trip to attend the meeting in person.

2. Chair Butters recognized special guests in attendance at the meeting:

Terry Hill, Director of Programs Division, Florida Bar (and former RPPTL Section Administrator)

Leroy Smith, Director of Professional Development, Florida Bar

Steven Goodall, (former honorary Section Administrator) not in attendance
Iris Elijah, President of the Young Lawyers Section

Chair Butters also reported on the joint RPPTL/EL Sections' caucus that was held Friday afternoon by invitation to leader of the Elder Law Section. The purpose of the meeting was for section leaders to meet and identify areas where the sections overlap and those that cause conflict, and to initiate dialogue between the section leaders. She thanked the members of the Elder Law Section who accepted the invitation and made the trip to attend the meeting, specifically recognizing:

Harry Krooks, ELS Chair
Victoria Heuler, ELS Chair-Elect
Kandace Rudd, ELS - Medicaid Committee Chair
Randy Bryan, ELS Former Chair
Jason Waddell, ELS Former Chair

Chair Butters then thanked the law students in attendance at the committee meetings.

3. Chair Butters then offered a huge thank you to the General Sponsors of the Section, acknowledging the new changes to the sponsorship structure and offering our deepest appreciation for their patience and flexibility as we have developed and begin the roll-out of that new program. She specifically thanked the Section's **General Sponsors** for their dedication to supporting the work of the Section:

FNF
First American Title
The Fund
Guardian Trust
J.P. Morgan
MPI
Old Republic Title
Stewart Title
Stout
Westcor
WFG Title Insurance

Thank you, too, to the **Friends of the Section**, for your continuing support of CLE, the Convention and other programming and meetings:

Business Valuation Analysts
CATIC
Cumberland Trust

Estate Inventory Services
Fiduciary Trust International
Heritage Investment Group
Hindman
National Philanthropic Trust
doMa
Title Resources and Valuations Services, Inc.

4. INTERIM ACTION: The Chair reported on an Interim Action that was necessary for the Executive Committee to address between the last full Executive Council meeting held in December in Orlando and the current meeting. The contract for the ActionLine Editor, Colleen Schuster, was up for renewal and was presented to the Executive Committee for approval and passed, unanimously. A copy of the renewal contract was published in the meeting Agenda.

5. INTERIM ACTION: Chair Butters explained that the existing Bylaws provide that if an EC member does not attend sufficient meetings each Bar year, they are “deemed” to have resigned, without further action. She reminded members to check the meeting minutes to verify the accuracy of the attendance records. Per Section 4, Article V, RPPTL Bylaws – the Executive Committee is required to publish the list of members to whom good cause attendance waivers are granted. Chair Butters announced to the Council that since the last EC meeting, the Executive Committee met and granted attendance waivers for the 2021-22 Bar Year to the following:

Kenneth Bell, Elizabeth Bowers Stoops, Chad Callahan, Erin Christy, Lauren Detzel, Benjamin Diamond, Homer Duvall, Elizabeth Ferguson, Alexandra Gabel, Jonathan Galler, Shelly Harris, Hon. Mary Hatcher, Hon. Hugh Hayes, Hon. Margaret Hudson, Sharifa Jarrett, Mary Karr, Thomas Karr, Sasha Klein, William Lane, John Little, Brian Malec, Jeanette Moffa, Howard Payne, Jason Quintero, Michael Rubenstein, David Shanks, Marty Solomon, Hon. Mark Speiser, Ellie Taft, Matt Triggs, Nicole Villarroel, Jerry Wells, and Gwynne Young

6. Chair Butters reported that the fantastic Convention Committee has quite an event planned at the Opal Sands, in Delray Beach from June 1st-4th and introduced Tae Bronner, who presented on behalf of the steering committee.

We will have a typical meeting schedule on Thursday, with the annual meeting on Friday at lunch and the Executive Committee meeting on Saturday morning.

The Thursday night reception will be held on the beach at the Delray Beach Club. The CLE Committee has developed a homestead seminar that will be available by separate registration on Friday. Then, on Friday night there will

be an awards dinner and reception with a Western-themed afterparty with a DJ and line dancing, and Western-styled Section Olympics. The roundtables will be held before the EC meeting on Saturday and on Saturday night there will be an evening at Silverball Arcade, with desserts.

We have some amazing sponsors for the convention that are helping us out with the hospitality suite, transportation, custom room keys, technology, and a game room for the kids. We are restricted by the number of rooms available this year, so please reserve only one room per member registrant. Also, the buzz in the room is true – there will be a mechanical bull.

7. **Sponsor Recognition:** Chair Butters introduced **David Shanks from Stewart Title** who first challenged her to ride the mechanical bull (and see who can stay on longer). To which, our fearless Chair replied, “There is never a challenge I won’t accept!” David then expressed that **Stewart Title** is happy to be sponsors, the legal and legislative issues we tackle are important and **Stewart** is very happy to be a part of it! Thank you!

8. The Chair then announced recent Section **Milestones**, reflecting on how she has enjoyed compiling the Milestones section of her report as it is a reminder of what a wonderful community we have built in the RPPTL Section:
 - (A) With great sadness, she announced the passing of **Broward County Circuit Judge, the Honorable Melvin Grossman**, who remained involved in the law not only throughout the state and in our Section, but also at a national level, providing testimony before the US Congress;
 - (B) The loss of real property Section member, **Richard J. Dungy**, who passed and will missed;
 - (C) The retirement of long-time Circuit Judge of the 20th Circuit, **Honorable Hugh D. Hayes**, who has also become a grandfather again to Granddaughter, **Madelyn Harper Hayes**, the newest member of the Hayes Clan. Congratulations to Executive Council Member, **Travis Hayes** and his wife, Kevyn.
 - (D) In fact, there has been a **Baby Boom** in the EC: Congratulations are also in order for Section Executive Council Members also welcoming new babies:
 - o **Nicole Villarroel**
 - o **Janaye Pieczynski, Section Fellow, daughter named Daphne Ellis Pieczynski**
 - (E) Congratulations to **Manny Farrach** on his election to the Florida Bar Board of Governors.
 - (F) Congratulations to **Jamie Marx** on election as a Fellow to the American College of Mortgage Attorneys.
 - (G) Congratulations to **Chris Sajdera** – on his February 18, 2023, nuptials!

9. **Sponsor Recognition:** Chair Butters then introduced Section sponsor **JP Morgan**, and introduced **Carlos Batlle** who addressed the Council. He offered thanks to Sarah, who is riding off into the sunset and to Diana and Hilary for their contributions to the Section. He then remembered JP Morgan’s first Marketing Manager in the Orlando office, Joe Terry, who passed away a

year and a half ago as a result of a heart attack. Carlos mentioned that there was a defibrillator located on a different floor in the building and had it been on the same floor, it may have made a difference. Thank you to Amy Beller for bringing attention to the need to have the training and the equipment at your office. The RPPTL Section is the first professional organization that JP Morgan sponsored. In addition to the Orlando office, they have offices located in Miami, Tampa, Naples, Palm Beach, Jacksonville and a new office located in Ft. Lauderdale. Please let us know if you haven't met your local JP Morgan team and he will be happy to make the introductions. On behalf of my colleagues Alyssa and Alex, thank you for allowing us to continue to sponsor.

10. Chair Butters then introduced Former Section Chair, Rob Freedman, the Chair-Elect of the American Bar Association Real Property Trust and Estate Law Section (ABA Liaison to the RPPTL Section) – who announced the ABA's National CLE Conference in Washington D.C. May 11-12th which will include 2 full days of programming. The ABA is structured in a similar format to the Florida Bar and organized in substantive law divisions. The Real Property, Trust and Estate Law Section, is nationwide, but is not much bigger than the Florida Bar's RPPTL Section, with @13,000 members. If you or associates in your firm are looking for a national platform and would like to be appointed to a particular committee or leadership position, please reach out to Rob who may be able to assist you.
11. Chair Butters recognized Iris Elijah, the President of the Florida Bar's Young Lawyer's Division who appeared in person. As Associate General Counsel for FIU, she resides in Miami and serves as one of only two government lawyers in the history of the Young Lawyer's Division. Having had experience in both probate and real property, she has enjoyed attending our committee meetings and appreciates the warm welcome. She has implemented several initiatives in the Young Lawyer's Division designed to facilitate the work with other Bar sections. The Young Lawyers Division has designated a Section Liaison who is working closely with the RPPTL Section, named Maria McCorkle In addition, she and the Division's President-elect, Anisha Patel, are looking forward to working with incoming RPPTL Section Chair, Katherine Frazier, and bringing even more young lawyers to the RPPTL Section in the coming year.

IV. Board of Governors Report— *Roland Sanchez-Medina, President-Elect*
No Report

Sponsor Recognition: Chair Butters introduced **First American Title** and welcomed **Jennifer Bloodworth** to the microphone. Ms. Bloodworth expressed her thanks to Chair Butters for scheduling a meeting in northwest Florida; and was excited to welcome local underwriting counsel, Valerie Watson, to attend the RPPTL meetings in person. Ms. Bloodworth reflected the awe of her colleague at the work that the Section does and reiterated the need to continue conducting our meetings, in person, because much of the work that is done is not just in the committee meetings, but in the hallways, at the dinners and in the hospitality suite. She inquired of Tae Bronner about the meetings in Delray, "Will the bull riding be taking place of the RP (Dirt) vs PT (Death) Division beach games?" To

which, Chair Butters confirmed that the Division Olympics will, indeed, be Western-themed this year. Ms. Bloodworth requested the RP Division members pay attention to the types of events for which they should be in training the next few months.

V. [Chair-Elect's Report](#) — *Katherine Frazier, Chair-Elect*

Chair-Elect Frazier directed the members to page 47 of the meeting agenda to the schedule of Executive Council meetings for the 2023-2024 Bar year. Of course, the first meeting of the Bar year will be at The Breakers in Palm Beach, which is a Section favorite July 19th – July 23rd. The next meeting will be in Quebec City in September. The details are still being finalized, but we are getting close and expect that the registration may roll out before the convention.

Don't forget to plan ahead – you WILL need a passport!

We are planning a historic river cruise on the *Fleuve Saint-Laurent* (for those not brushing up on their French, that's the Saint Lawrence River), with daytime excursion options ranging from architectural tours, cycling tours, tour of the Citadel, tour of *Île d'Orléans*, an agricultural island in the middle of *Fleuve Saint-Laurent*. For evening event options, we are considering a dine-around of restaurants in Quebec City, an evening at the summer mansion of Prince Edward, Duke of Kent, at Montmorency Falls, and dinner at the Parliament, which is one of the oldest Parliamentary buildings in North America.

Please keep an eye out for the registration.

7/19/23 - 7/23/23	The Breakers, Palm Beach, Florida
9/20/23 – 9/24/23	Fairmont Le Chateau Frontenac, Quebec City, Canada
11/8/23 – 11/12/23	JW Marriot Tampa Water Street, Tampa, Florida
2/21/24 – 2/25/24	Ritz Carlton Grande Lakes, Orlando, Florida
5/29/24 – 6/2/24	Hyatt Regency Coconut Point, Bonita Springs, Florida

Sponsor Recognition: Chair-Elect, Frazier, expressed a big thank you to **Jim Russick** and **Old Republic Title** for everything they do to support the Section and for their sponsorship.

VI. [General Standing Division Report](#) — *S. Katherine Frazier, Division Director and Chair-Elect*

1. [Communications Committee](#) - *Michael V. Hargett, Chair*

Chair-Elect Frazier announced that the Committee had withdrawn its motion to approve the amended and restated Communications Agreement between the Section and Schifino Lee. She offered a huge thank you to Michael Hargett and Laura Sundberg for all of their hard work and encouraged members to participate in the committee meeting and to be on the lookout for upcoming meeting announcements.

2. [Ad Hoc Civil Rules Revisions Committee](#) – *Michael V. Hargett, and Shawn G. Brown, Co-Chairs*

Mike Hargett addressed the Council on behalf of the committee to provide an update on the status of The Supreme Court of Florida and the Report and Recommendations of the Workgroup on Improved Resolution of Civil Cases. Mr. Hargett announced that The Supreme Court ultimately declined to adopt the recommendations of its workgroup and adopted the two primary objectives outlined in the Response submitted by the Section. First, with regard to Civil Procedure Rule 1.200, which provides for the streamlined, standard and complex litigation tracks, while civil proceedings will continue in that manner, The Supreme Court adopted the Section’s primary response relative to those issues and as a result, that rule will not apply to probate, trust and guardianship proceedings. The Supreme Court also adopted the Section’s recommendations related to the initial disclosures rule, which had a number of unintended consequences, including increasing the cost of all litigation. The Supreme Court advised the Civil Rules Committee to institute initial disclosures in the manner in which they are done in federal lawsuits. The Supreme Court distributed assignments to several committees and responses are due in July. There will be changes and we can expect that it will be much harder to be granted a trial continuance in the future. Many thanks to the committee members for their hard work: Shawn Brown, Eric Virgil, Cady Huss, Rich Caskey and Bruce Partington.

3. Professionalism and Ethics Committee – Andrew Sasso, Chair

Chair-Elect Frazier then introduced Andrew Sasso, who appeared by Zoom to provide the Committee’s Report. Mr. Sasso then introduced Colonel Larry Miccolis, the Chair of the subcommittee reviewing the Rules Regulating the Florida Bar and the use of the terms “zealously” and “zealous.”

Colonel Miccolis, who recently retired from the US Marine Corps after 20 years of dedicated service as a Lieutenant Colonel and Helicopter Squad Commander now resides in Tampa and serves as an adjunct professor at Stetson University College of Law. He thanked Andy for the introduction and the members of the subcommittee for their dedicated work: Kimberly Bald, Erin Finlen, Caitlein Jammo, and Marlene Watson. He also thanked Andy Sasso and Ret. Judge Linda Allan for their guidance and subcommittee oversight. He then reported that the subcommittee began their work in April of 2022, by first looking at the definition, history and etymology of the terms “zealous” and “zealously,” the subcommittee reviewed Florida caselaw and the Rules Regulating the Florida Bar, specifically, Rule 4-1.3, and conducted a survey of all other state jurisdictions. The subcommittee found that “Z” terms were often associated with negative, extraneous behavior and character and they found similar treatment of those terms in Florida courts and our professional rules. The subcommittee also noted that there is not necessarily a defined duty in our law or rules to utilize a particular standard of advocacy. Therefore, the use of “Z” terms cause confusion and encourage bad, unprofessional or unethical behavior or may also serve to shield that kind of behavior. Other state jurisdictions have removed those terms from their rules of conduct, as a result of similar findings, while some jurisdictions did not have those terms, without providing any explanatory commentary.

Colonel Miccolis then directed the Council to review the subcommittee's proposal to amend the Rules Regulating The Florida Bar to remove the words "zealously" and "zealous" from the preamble to Chapter 4 and the word "zeal" from the comment to Rule 4-1.3, as published in the meeting agenda at page 83.

The committee has received comments to the white paper from members of the Elder Law Section, judges and law students and the reactions to the work of the subcommittee (and the proposed language) has been positive, including the following from Jeff Boismeyer: "The words "zeal" and "zealous" are related to the term "zealot" and the ordinary meaning of the word zealot is a person who is fanatical and uncompromising. There is no place in the Bar rules or in a lawyer's practice for fanatical or uncompromising conduct."

The subcommittee recommended and the Professionalism and Ethics Committee voted unanimously to remove the "Z" terms from our Bar rules; and the plan is that this will be voted on by the Section at the next Executive Council meeting and then presented to the Board of Governors.

Mr. Sasso then introduced Yoshi Smith to present the Ethics Podcast. Yoshi explained that the committee would be discontinuing the ethics podcast presentations at the Executive Council meetings and would instead be making the podcasts available to all Florida Bar Members as a link from the CLE website. The committee chose "RPPTL Ethics Podcast, Overlooked and Misunderstood Ethical issues."

The Committee then played the fourth and final episode in its Podcast series featuring the respected, long-standing Section and Executive Council Member, Barry Spivey, who guided us through an attorney's ethical duties when disclosing information regarding a deceased client.

Thank you to the Professionalism and Ethics Committee.

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

Chair-Elect Frazier then directed the Council to the materials and the written report submitted by Laird Lile as the Liaison to the Clerks of Court.

Sponsor Recognition: Chair-Elect Frazier then thanked **Business Valuation Advisory** and Roy Meyers for their sponsorship.

5. **Liaison with TFB Pro Bono** – *Lorna E. Brown-Burton, Liaison*

Lorna E. Brown-Burton, appearing by Zoom, then provided an update on matters of interest:

The Standing Committee on Pro Bono Legal Services met in January at the Bar's winter meeting and are working on:

- (A) Increasing participation throughout the circuits in utilizing the jury compensation waiver forms, which are forms that jurors can use to donate their compensation to a non-profit organization, including legal aid;
- (B) Promoting an advance directive clinic for attorneys who want to provide those types of services with electronic forms that are automatically generated from an intake form;
- (C) Promoting a pro bono CLE, available at the InReach platform and approved for 3.5 hours of general credit and 2.5 hours of ethics credit
- (D) Creating a judicial advisory pro bono committee – with judges from various circuits to provide different perspectives;
- (E) She announced that since 2017, the Florida Bar has provided free legal services, but that after Hurricane Ian, the financial intake threshold was raised to users below the 400% federal poverty level and a legal services category was created for real property permitting after disasters; and
- (F) Developing CLE training videos that will be promoted on the Bar’s website.

6. Fellows - Christopher A. Sajdera and Angela Santos, Co-Chairs

Angela Santos, appearing by Zoom, gave the report for the Fellows Committee. They are just starting with applications for the new class of Fellows. The application is available on the website. If you know of any good candidates, please encourage them to apply. The deadline is at some point in April. She then called upon the current Fellows present, in person, to introduce themselves and let the Council know what they are currently working on:

- (A) Sandy Boisrond – Estate and Trust side attorney from South Florida, a 1st year Fellow, introduced herself and indicated that she is working on law school programming, guardianship and is looking to get more involved;
- (B) Amanda Cummins – Probate and Trust side attorney and 2nd year fellow, she is currently working on the homestead CLE and an article, if anyone has topic ideas, please let her know;
- (C) Taniquea Reid, appearing by Zoom introduced herself, she is practicing out of Palm Beach County;
- (D) Shayla Mount, appearing by Zoom, is an association attorney out of Orlando;
- € Jeannette Mora, appearing by Zoom from Orlando, is a probate and guardianship attorney; and
- (F) Janaye Pieczynski, appearing from Tallahassee.

Former Section Chair, Michael Gelfand, addressed the Council. Fellows are important – they are the future of the Section. We need to identify young attorneys who might not otherwise be exposed to our Section and encourage them to apply to be Fellows.

Sponsor Recognition. Chair-Elect Frazier, then introduced **Laura Licastro** from **Westcor** – Ms. Licastro expressed her thanks to the Section for being involved and appreciation with how the members of the Section come together and make things better for Florida citizens, She announced that Westcor launched a new website: www.wltic.com. If you want to find out about our commercial division, or becoming an agent, please check it out. She recognized the CEO and President, Mary O'Donnell, former President of the ALTA and we hope to see everyone at the dinner cruise this evening.

VII. Treasurer's Report — Jon Scuderi, Treasurer

Treasurer, Jon Scuderi, provided the financial summary of the Section and explained that while we have had more meeting expenses (e.g., Zoom), and the Section has not been immune to significant market fluctuations, we have the strength to withstand them; and overall continue to do well. He thanked Tae Bronner for her continued help and recognized the assistance of former Chair, Laird Lile, with his assistance working with the Bar to help separate the investment performance from the Section's operational performance in the Bar reports produced to the Section.

Sponsor Recognition. Mr. Scuderi then introduced **Stacy Kalmanson**, with **FNF**, and thanked **FNF** for its sponsorship of the Section. **Stacy Kalmanson** then addressed the Section, expressing appreciation to the Section and for the opportunity to be a sponsor.

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

Steve Mezer provided the Report of the At Large Members, who met on Thursday. One half of the ALMS members appeared in person and the others appeared by Zoom.

Thank you to Sarah for holding the meeting in such a beautiful location. We have a better appreciation for what our members from north Florida must do regularly to attend meetings in south Florida.

- (A). Report from Jonathan Butler and Rebecca Bell regarding law schools involved with the ALMS and presented programs. They presented Title 101, a CLE with Joe Tschida and John Redding; and also presented a program at UF and FSU (the program held at UF had an amazing turnout with 17 RPPTL members attending to network with students in a program called "RPPTL Alphabet Soup" and held in conjunction with the North Florida Association of Real Estate Attorneys). There were so many attendees, the venue was overflowing.
Congratulations to everyone for a wonderful success!
- (B). Ricky Hearn is looking for some information regarding e-wills.
- (C). Mitchell Hipsman is looking for a volunteer from our group to assist with taking on some casework for a member who passed away. Arlene and Colleen made sure to get that task posted on our website. If you look on the "Help Wanted" tab on the website, those items are posted there.
- (D) We had reports from the various Circuits: 1st, 12th, 13th, and 6th, Richard

Warner reported from the Keys. He developed a program in the Keys and has built it over the past year or so and it has been well received. In the 12th Circuit, a program was organized with the judges and was presented in both Manatee and in Sarasota, with over 100 attendees in Sarasota alone. They are working now on civil rules and remote proceedings and how to effectively represent our clients in those proceedings. The 13th and 6th Circuits have been working together and working with the Hispanic Bar. In addition, the Section served as a sponsor of the Diversity Fair in Hillsborough County, with our efforts reaching both locally and across the state.

- (E) The cornerstone project, of course, has been No Place Like Home. Mike Bedke spoke to the ALMS, but will also be providing a 2.0 hour CLE at the Delray meeting, that includes 1.5 hours of training on Disaster and Emergency Preparedness specific to the real property and probate issues that we see and another half hour on electronics/technology. Jenna Hudson from the Bay Area Legal Services will be helping with the training. We would like to thank Laird Lile for putting us in touch with Collier County, so that we could provide assistance to the Hurricane Ian Relief efforts. Laird appeared by Zoom and thanked the ALMS for their assistance in Collier County. Steve announced the new ALMS slogan: ALMS, we get the job done!

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

1. CLE Co-Chair Angela Adams greeted the Council and reported that financially, CLE is doing very well and that is due to the work of our speakers and committee chairs – thank you! She then directed the Council to the CLE schedule produced at page 120 of the meeting agenda, and specifically to the hefty list of upcoming programs (18 scheduled, plus convention, coming up in the next few months). She reminded the substantive committee chairs who would be working on hour-long webcasts, to please start looking at the calendar, so the Committee could work on spreading out the CLE offerings to balance the calendar. Please keep an eye out for e-mail marketing blasts, as we will be posting upcoming events and those programs that will be expiring (after 18 months). Thank you to everyone!
 - *Council member, Jeff Dollinger, was recognized and inquired as to how the CLE prices for Section members were determined; and if we are doing well financially, perhaps we can provide a Section benefit to our members by reducing CLE prices for members?*

Chair, Angela Adams, explained that the CLE prices were set by the Florida Bar, not the Section, specifically, and even though the CLEs are successful, they are expensive to put on. As an example, hybrid programs require additional technology and AV expenses, including the travel costs of the AV technician. Additionally, while CLE is certainly doing well, it is only a piece of the total budget and the income from CLEs helps to support other Section initiatives.

- *Former Chair, Laird Lile, was recognized and inquired as to whether, if the opportunity arose, the Section would have the bandwidth and interest in putting on basic or introductory-level CLEs (as the current CLE requirements allow only the Young Lawyers Division to do that).*

Chair Adams along with her Co-Chair, Lee Weintraub, both indicated that the Section would be interested, noting that the Section generally provided the speakers to the YLD programming for topics in our practice areas, in any event.

2. Chair Adams announced that the Co-Chair and Vice-Chair Training will be held in person in Delray Beach in order to make sure that leadership had the training before the beginning of the new Bar year.
3. Co-Chair, Lee Weintraub, addressed the Council and remarked on the prior inquiries from Messrs. Dollinger and Lile. Over the past year, we have revamped the way we are marketing CLEs and that project has now been completed. Now, we are refocusing CLE efforts and are able to address these kinds of issues.
4. Angela directed the Council to the CLE QR scan code on the screen, directing members to the InReach online catalog of CLE offerings. She then introduced Travis Finchum, from Guardian Trust.

Sponsor Recognition. **Travis Finchum** from **Guardian Trust** greeted the Council members, explaining that Guardian Trust is a not-for-profit corporation that serves as trustee for special needs trusts in Florida. We are happy to sponsor the Probate and Trust round table, and for those members of the Council who might have clients in need of these services, we also manage these trusts in a pooled environment for cost efficiency and have had about 20 years of experience and are happy to serve as a resource for you. So, please remember us and please reach out.

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

Co-Chair, Wilhelmina Kightlinger, provided the report of the Legislative Committee, announcing that the legislative positions are now posted on the website and the white papers, to the extent that we have them, are hyperlinked. Special thanks to Nick Curley for doing that. Please check the white papers online and check in your offices to see if you have any white papers that we might be missing. If you participated in any of the legislation and have additional information that should be posted, please provide that to your legislative chairs.

Reminder: If you are thinking about legislation for 2024, you will need to be an information item at the Delray meeting and an action item at the Breakers meeting. Be prepared.

Please be aware of your subject matter experts on your committee and be ready if we call upon you. We may need a response from you within hours during the legislative session, so please be ready.

On behalf of the Legislative Committee, we would like to recognize the Ad Hoc Series LLC Committee: Micheal Sneeringer, Jamie Marks and Jim Russick who were the Co-Chairs, and the committee members Chris Smart, Michelle Uth (sp?), Rich McIver, Amber Ashton and Burt Bruton. Thank you so much. We also want to recognize the amazing Condo Committee co-chairs, Alex Dobrev and Allison Hertz and their subject matter experts, who have been an invaluable help to us and to the Legislature, particularly with the Surfside Glitch bill.

Co-Chair, Larry Miller, addressed the Council, thanks to all of the subject matter experts and thank you to Nick Curley and Travis Hayes, who have been at the ready. We have some heavy lifting coming up: The Principal and Income Act, which will be an information item at the Delray Beach meeting and kudos to that committee for the hard work they have done. Please remember to include an Effective Date. The Kerney bill is the most recent example of why the effective date matters.

Co-chair, Willie Kightlinger, then thanked the work of her Vice-Chairs, Art Menor, Manny Farach and Chris Smart

XI. [Real Property Law Division Report](#) — *Wm. Cary Wright, Division Director*

Division Director, Cary Wright, then invited **Melissa Murphy**, from **The Fund** to address the Council, remarking that she sprinted up to the front of the room at the round table.

Sponsor Recognition. Melissa Murphy, of **The Fund** then addressed the Council, thanking the Council for the continued support of **The Fund**. She reminded the Council that the relationship between **The Fund** and the Section goes back decades – and we at The Fund very much appreciate it.

Director Wright then welcomed Katie Heckert, the Chair from the Insurance and Surety Committee to introduce the information item.

Information Item:

1. Insurance and Surety Committee – *Katherine Heckert, Chair*

Katie Heckert appeared on behalf of the Insurance and Surety Committee and introduced her Vice-Chair, Debbie Crockett, and committee members, Mark Boyle, Michael Castle, Chip Moore, Mathew Denehy, Michelle Hinson Scott Pence, Rob Friedman, Mark Nation, Steve Sellers, Reid Grimm, Chip Merlin, Randy Moore, Matt Beiber and Dave Eastman. Thanking them for all of their work.

The Committee is in the process of pursuing an application to establish a new board certification in Insurance Coverage Law. There are currently 26 other areas of board certification. The Committee is collecting petitions from people who would like to be certified in insurance coverage law. While only 100 are required to apply for a new certification area, the Committee has already gathered 195. Katie referred the Council to pages 122-157 of the meeting agenda, where the information item was published. She called for questions, but hearing none, she advised that the Committee expects to be back at the

Delray meeting with an Action Item.

Sponsor Recognition. Cary Wright invited **WFG National Title Insurance Company** and **Joe Tschida** to say a few words. Joe Tschida explained that WFG is very proud to serve as a sponsor for the Section and is the app sponsor. He noted that Steven Goodall was attending the Destin meeting and recalled that when WFG first started to sponsor the Section, he was only 17, and was great with all technology and helpful in creating the app.

Cary announced that he has an extra ticket to the dinner cruise if anyone was looking to go.

XII. Probate and Trust Law Division Report — *John C. Moran, Division Director*
Division Director, John Moran, reminded everyone to sign the attendance roster and for those on Zoom, to contact Secretary, Sancha Brennan, with any attendance concerns.

Although there were no Division Committee Reports to give, Director Moran explained that there were several substantial projects coming up at the Delray meeting.

The Principal and Income Committee has been working for a long time and will be submitting a substantial rewrite of the Florida Uniform Principal and Income Act, bringing Florida's Act closer in line to the more recent Uniform Act.

There will be an information item coming out of the Probate Law and Procedure Committee, regarding the Johnson v. Townsend case, dealing with a surviving spouse's claim to community property in a probate estate.

Then, out of the Trust Law Committee and Probate and Trust Litigation Committee dealing with new method for trustees to get discharged.

Sponsor Recognition. Chair Butters recognized Section sponsor, **STOUT** and thanked **STOUT** for its sponsorship of the Section.

She then made an announcement about the plans for the dinner cruise, requesting that all attendees be on time as the boat will be leaving at 4:00pm and is expected to be back by 7:30-7:45 p.m. Attendees can walk to the boat @1/2 mile, or there will be a shuttle available.

The Hospitality Suite will end at 10:00 p.m. to accommodate the resort's "quiet hours."

Adjourn: At 11:59 a.m. the meeting was adjourned.

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2022-2023

Executive Committee	Division		7/21/22 Breakers	9/28/22 Bar Harbor, MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray, FL
	R	P					
Butters, Sarah S. Chair		PT	√	√	√	√	
Frazier, S. Katherine Chair-Elect & Div. Director General Standing	RP		√		√	√	
Wright, Wm. Cary Division Director Real Property	RP		√		√	√	
Moran, John C. Division Director Probate & Trust		PT	√	√	√	√	
Brennan, Sancha Secretary		PT	√	√	√	√	
Scuderi, Jon Treasurer		PT	√		√	√	
Kightlinger, Wilhelmina Legislation Co-Chair Real Property	RP		√		√	√	
Miller, Lawrence J. Legislation Co-Chair Probate & Trust		PT	√		√	√	
Adams, Angela M. CLE Co-Chair Probate & Trust		PT	√		√	√	
Weintraub, Lee A. CLE Co-Chair Real Property	RP		√	√	√	√/Z	
Mezer, Steven H. Director At-Large Members	RP		√		√	√	
Swaine, Robert S. Immediate Past Chair	RP		√		√		

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Acosta, Jolyon Delphin		PT	√		√	√	
Akins, David J.		PT	Z	√	√	√	
Alaimo, Marve Ann M.		PT	√		√	√	
Altman, Stuart H.		PT				W/Z	
Archbold, J. Allison		PT	√		Z	√	
Arnold, Casey		PT	√		√/Z	√	
Arnold, Trevor	RP		√		√	√	
Aron, Jerry E. Past Chair	RP			√			
Ashton, Amber E.	RP		√		√/Z		
Awerbach, Martin S.	RP		Z		Z	Z	
Bald, Kimberly A.		PT	√		√	Z	
Bailey, Lilleth		PT	Z		√	Z	
Ballaga, Raul	RP		√		√		
Barboza, Annabella	RP		√		Z	Z	
Baskies, Jeffrey		PT	√		Z		
Battle, Carlos A.		PT	√		√	√	
Baumann, Phillip A.		PT	√	√		Z	
Beales, III, Walter R. Past Chair	RP		√				
Bedke, Michael A.	RP		√				
Behar, Jacobeli J.		PT	√		√	Z	
Belcher, William F. Past Chair		PT	√				
Bell, Kenneth B.	RP						

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Bell, Rebecca Coulter		PT	√	√	√	Z	
Beller, Amy		PT	Z		√	√	
Bellew, Brandon D.		PT	√		√		
Bloodworth, Jennifer J.	RP		Z/√		√	√	
Boje, Debra Lynn Past Chair		PT	√		√	Z	
Bouchard, Eve		PT	√		√	Z	
Bowers-Stoops, Elizabeth A.		PT			√/Z	Z	
Boyd, Deborah		PT	Z		Z	Z	
Braun, Keith Brian		PT	Z		√	Z	
Brenes-Stahl, Tattiana		PT	Z/√		√	Z	
Brennan, David C. Past Chair		PT	√				
Bronner, Tae K.		PT	√		√	Z	
Brown, Mark A.	RP						
Brown, Shawn	RP		√		√	Z	
Brown-Burton, Lorna	RP		Z		√/Z	Z	
Brunner, S. Dresden		PT	Z		Z	√	
Bruton, Jr., Ed Burt	RP		Z/√		√	Z	
Bucher, Elaine M.		PT	√		√		
Butler, Johnathan		PT	√		√/Z	Z	
Callahan, Chad W. III		PT	Z		Z	Z	
Caskey, John "Rich"		PT	√		√	Z	
Cazobon, Denise		PT	Z		√	Z	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Christiansen, Patrick Past Chair	RP				√		
Christy, Erin Hope	RP		√				
Cole, Stacey L.		PT				√	
Coleman, Jami A.		PT			Z	Z	
Comiter, Alyse Reiser		PT				Z	
Conetta, Tami F.		PT	√		√	Z	
Cook, Stephanie		PT	√		√	Z	
Cope, Jr., Gerald B.	RP		Z		Z	Z	
Cornett, Jane Louise	RP		√			Z	
Cranford, Jeremy	RP		√		Z	√	
Crockett, Debbie	RP		√		√		
Curley, Nick		PT	Z	√	√	Z	
Detzel, Lauren Y.		PT	√	WR	√	Z	
Diamond, Benjamin F.		PT	√		√	√	
Diamond, Sandra F. Past Chair		PT	√	√	√	Z	
Dobrev, Alex	RP		√		√	Z	
Dollinger, Jeffrey	RP				√	√	
Douglas, Alexander		PT	√		√	Z	
Dribin, Michael Past Chair		PT	√	√	Z	Z	
Duffey, Patrick J.		PT	√		√		
Duvall, III, Homer	RP		√		Z	√	
Eisel, Jeffrey		PT	√		√	Z	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Ellison, Jason M.	RP		√		√	Z	
Emans, Patrick C		PT	√				
Emerich, Guy S.		PT	Z			Z	
Ertl, Christene M.	RP		√		√	Z	
Evert, Jamison C.		PT			√	Z	
Ezell, Brenda B.	RP		√	√		√	
Fagan, Gail		PT	Z/√		√	√	
Falk, Jr., Jack A.		PT	Z		Z	Z	
Farach, Manuel	RP		√	√	√	√	
Felcoski, Brian J. Past Chair		PT	√		√	Z	
Ferguson, Elizabeth B.	RP				Z	Z	
Fernandez, Kristopher E.	RP		√		√	√	
Fields, Alan B.	RP		√		√	√	
Finchum, Travis		PT	√			√	
Finlen, Erin F.		PT	√		√	Z	
Fitzgerald, Jr., John E.		PT	√		√	Z	
Freedman, Robert (Rob) Past Chair	RP		Z	√	Z	√	
Friedman, Bridget		PT	√	√	√		
Friedman, Jesse B.		PT	Z				
Fugate, Norm	RP		Z		√		
Gabel, Alexandra	RP					Z	
Galler, Jonathan		PT					

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Gans, Richard R.		PT	√		√		
Gelfand, Michael J Past Chair	RP		√	√	√/Z	√	
George, Joseph P.		PT	√	√	√		
Godelia, Vinette D.	RP				√		
Goethe, Jeffrey S.		PT	√		√	√	
Goldman, Louis “Trey”	RP		√		√	√	
Goldman, Robert W. Past Chair		PT	√		√		
Goodall, Deborah P. Past Chair		PT	√	√	√	√	
Graham, Robert M.	RP				Z	Z	
Granet, Lloyd	RP		√		√	Z	
Griffin, Linda S.		PT	√		√/Z		
Grimsley, John G. Past Chair		PT					
Gunther, Eamonn W.		PT	√			Z	
Guttmann, III, Louis B Past Chair	RP						
Hamrick, Alexander H		PT	√			Z	
Hargett, Michael	RP		√		√	√	
Harris, Shelly W.		PT	√		Z	Z	
Harvey, Terrance	RP		√		Z	Z	
Hatcher, Hon. Mary							
Hayes, Hon. Hugh D.			√		√		
Hayes, Michael Travis		PT	√		Z	Z	
Haynes, Jourdan	RP		Z		√	Z	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Hearn, Frederick "Ricky"		PT	√	√	√	Z	
Hearn, Steven L. Past Chair		PT	Z	√			
Heckert, Katherine (Katie)	RP		WR	√	√/Z	√	
Hellmuth, Kelly		PT	Z		Z	Z	
Henderson, Jr., Reese J.	RP						
Henderson, III, Thomas N.	RP		Z		√	Z	
Hennessey, William ("Bill") Past Chair		PT	√	√	√	√	
Hersem, Amanda	RP		Z	√	Z	Z*	
Hertz, Allison	RP		√		√	Z	
Heuston, Stephen P.		PT	Z/√		√/Z	Z	
Hinden, Michelle	RP		√		√	Z	
Hipsman, Mitchell Alec		PT	√		√	Z	
Hoffman, Brian W.	RP		√		√	√	
Hudson, Hon. Margaret "Midge"		PT	√				
Hughes, Elizabeth		PT	√		√	√	
Huss, Cady L.		PT	√		√	Z	
Hutt, Gregg Evan	RP		√			Z	
Isphording, Roger O. Past Chair		PT					
Jaiven, Kristen King	RP		√		√	Z	
Jarrett, Sharifa K.		PT					
Johnson, Amber Jade		PT	√		√	Z	
Jones, Darby		PT	√		√	Z	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Jones, Frederick W.	RP		√		√	√	
Kalmanson, Stacy O.	RP		√		√	√	
Kangas, Michael R.		PT	√		√	Z	
Kaplan, Seth		PT	Z		√	Z	
Karr, Mary E.		PT					
Karr, Thomas M.		PT			Z	Z	
Kaysner, Joan B. Past Chair		PT					
Kelley, Rohan Past Chair		PT	√	√	√		
Kelley, Sean W.		PT	√		√		
Kelley, Shane		PT	√		√		
Kibert-Basler, Nicole	RP					√	
Kinsolving, Ruth Barnes Past Chair	RP					√	
Kison, Amanda	RP		√		√		
Klein, Sasha		PT					
Koren, Edward F. Past Chair		PT	√				
Kotler, Alan Stephen		PT	Z		√	√	
Kurian, Sanjay	RP				√	Z	
Kypreos, Theodore S.		PT	√		√		
Lane, Jr., William R.		PT					
Larson, Roger A.	RP		√		Z	Z	
Lebowitz, Sean		PT	Z		√	Z	
Licastro, Laura	RP		√		√	√	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Lile, Laird A. Past Chair		PT	√	√	√	Z	
Little, III, John W.	RP						
Liu, Jin	RP		√		√	Z	
Lunsford, Rachel Albritton		PT	Z		√	Z	
Madorsky, Marsha G.		PT	Z		Z	Z	
Malec, Brian		PT	√		√	Z	
Marger, Bruce Past Chair		PT					
Marx, James A.	RP		√		√	Z	
Mastin, Deborah Bovarnick	RP		√			Z	
McCall, Alan K.	RP		Z				
McConnell, Ryan	RP		√		√	Z	
McDermott, Daniel		PT	√		Z	Z	
McElroy, IV, Robert Lee		PT	Z		Z		
McIver, Richard	RP		√		√	Z	
McRae, Ashley E.	RP		√		√	√/Z	
Menor, Arthur J.	RP				√		
Meyer, George F. Past Chair	RP		√		√	Z	
Meyer, Michael	RP		Z		√/Z	Z	
Middlebrook, Mark	RP		√		√		
Moffa, Jeanette		PT					
Muir, Hon. Celeste H.		PT	√		√/Z	Z	
Murphy, Melissa J. Past Chair	RP		√	√		√	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Nash, Charles I.		PT	Z		Z	Z	
Neukamm, John B. Past Chair	RP				√	√	
Nguyen, Hung V.		PT	√			Z	
O'Malley, Andrew M. Past Chair	RP		Z	√	Z		
Papanikos, Cristina		PT	√		√	Z	
Partington, Bruce	RP				√/Z	WR	
Payne, L. Howard		PT					
Pence, Scott P.	RP		√		√		
Percopo, Joe		PT	Z		Z	Z	
Pilotte, Frank		PT	Z		√/Z	√/Z	
Pinnock, Duane L.		PT				Z	
Pollack, Anne Q.	RP		Z/√	√	√/Z	Z	
Powell, Caitlin		PT	√		√	Z	
Prescott, Leonard	RP		√		√		
Pressley, Grier James		PT	√		√	√	
Price, Pamela O.		PT	Z		√	Z	
Prince-Troutman, Stacy		PT	Z		√	√/Z	
Quintero, Jason	RP				Z	√	
Redding, John N.	RP		√		√	√	
Riconda, Eryn		PT	√				
Rieman, Alexandra V.		PT	√		Z	Z	
Robbins, Jr., R. James	RP		Z/√		Z	Z	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Robbins, Russell	RP		Z		√		
Roberts, III, Hardy L.	RP				Z	Z	
Robinson, Jennifer		PT	Z		Z	Z	
Rojas, Silvia B.	RP		√	√	√	√	
Rolando, Margaret A. Past Chair	RP		√		√		
Roman, Paul E.		PT	√	√	√	√/Z	
Romano, Antonio		PT			Z	Z	
Rubel, Stacy		PT	Z/√		√	Z	
Rubenstein, Michael		PT				Z	
Rubin, Jenna		PT	Z		Z	Z	
Rudisill, Hon. Michael	RP				√	√	
Russick, James C.	RP		√		√		
Sachs, Colleen C.	RP		√		√	√	
Sajdera, Christopher	RP		√		√		
Sanchez-Medina, Roland			√		Z		
Santos, Angela		PT	√		√	Z	
Sasso, Andrew		PT	Z		Z	Z	
Savioli, Justin		PT	Z		Z	Z	
Scaletta, Melissa	RP		√		√	√	
Schwartz, Martin	RP					Z	
Schwartz, Robert M.	RP		√		Z	Z	
Seigel, Daniel A.		PT	√	√	√	Z	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Shanks, David	RP		√			√/Z	
Sheets, Sandra G.		PT	√		Z	Z	
Sherrill, Richard		PT	√		Z		
Sklar, William P.	RP		√		√	√	
Skrande, Gutman	RP		Z		Z	Z	
Smart, Christopher W.		PT	√		√	√	
Smith, Kymberlee C.	RP		√		√		
Smith, G. Thomas Past Chair/Hon. Member	RP						
Smith, Yoshimi O.		PT	√			√	
Sneeringer, Michael		PT	√		√/Z	√	
Solomon, Marty	RP		√		Z		
Sparks, Brian C.		PT	√		√	Z	
Speiser, Hon. Mark A.		PT	√			WR	
Spivey, Barry F.		PT	√		√	Z	
Spurgeon, Susan K.	RP		√	√	√	√	
Stafford, Michael P.		PT	√		√		
Staker, Karla J.	RP		√		√	√	
Stashis, Alfred Joseph		PT	Z		Z	√	
Stern, Robert G.	RP		√		Z	Z	
Stoops, Elizabeth					Z		
Stone, Adele I.	RP		Z		√	√	
Stone, Bruce M. Past Chair		PT				Z	

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Sundberg, Laura K.		PT	Z	√	√	√	
Swaine, Jack Michael Past Chair	RP		√	√			
Taft, Ellie	RP					√	
Taylor, Richard W.	RP		Z		√	√	
Thomas, Hon. Patricia		PT		√		√	
Thompson, Andrew		PT	√		√	√	
Thornton, Kenneth E. "Kip"	RP		√		√	Z	
Tobin, Jennifer S.	RP		Z/√				
Triggs, Matthew H.		PT	Z				
Tschida, Joseph John	RP		√		√	√	
Tucker, Kristine L.		PT	√		Z		
Udick, Arlene C.	RP		√		√	√	
Van Dien, Lisa Barnett	RP		√		√	Z	
Van Lenten, Jason Paul		PT	√			√	
Van Pelt, Kit E.		PT	Z		Z	Z	
Villarroel, Nicole Marie	RP		√		√		
Virgil, Eric		PT			√/Z		
Waller, Roland D. Past Chair	RP		√		√	√	
Wan, Alyssa Razook		PT	Z				
Warner, Richard		PT	√		√	Z	
Weiss, Brad R.	RP		√		√		
Wells, Jerry B.		PT					

Executive Council Members	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Williams, Margaret A.	RP		Z		√		
Williams, Jorja		PT	√		√		
Williamson, Julie Ann Past Chair	RP		√				
Wintter, Christopher		PT	√		√	√	
Wohlust, Gary Charles		PT	√		√		
Wolasky, Marjorie E.		PT	√		√	√	
Wolf, Jerome L.		PT	√		Z		
Wood, Rebecca	RP		√		√	√	
Young, Gwynne A.		PT					
Zeydel, Diana S.C.		PT					
Zikakis, Salome J.	RP		√		Z	√	
Zschau, Julius J. Past Chair	RP					√	

Affiliate Members

Fellows	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Boisrond, Sandy		PT	√		√	√	
Cummins, Amanda		PT	√		√	√	
Davis, Jade	RP		√		√	Z	
Hernandez, Melissa	RP						
Mora, Jeanette		PT	√		√	Z	
Mount, Shayla	RP				√	√	
Piezynski, Janaye	RP		√	√	Z	Z	
Reid, Taniquea		PT	√		√	√/Z	

Legislative Consultants	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Brown, French	RP		√			√	
Dunbar, Marc						√	
Dunbar, Peter M.	RP		√	√		√	
Edenfield, Martha Jane		PT	√		√	√	

Guests	Division		7/21/22 Breakers	9/28/22 Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 rd Delray
	R	P					
Barlow, Rachel			Z		Z		
Caplano, Klarika	√					√	
Clark, Danielle					Z	Z	
Doddridge, Ryan						Z	
Elijah, Iris Young Lawyers Section						√	
Fanzlaw, Amy					Z	Z	
Goss, Jacob						Z	
Groover, Lea Anne					Z	Z	
Hill, Terry The Florida Bar						√	
Khan, Nishad	√		√/Z		√		
Lancaster, Rob					Z		
Linde, Matthew					Z	Z	
Manfredi, Cynthia						√	
Marzam, Jacqueline	√					√	
Miccolis, Lawrence						Z	
Miller, Erin			Z		Z	Z	
Noll, Dale						Z	
Offir, Liron					Z		
Orihuela, Victor			Z				
Osborne, Daniel						√	
Persante, Robert			√		√		
Primeau, John			Z		Z	Z	
Roberts, Tance					Z	Z	
Sinn, Stefan						Z	
Slater, Debra					Z		
Smith, Leroy The Florida Bar						√	
Stotts, Darren					Z		

Tabak, Marcia					Z		
Watson, Marlene			Z			Z	
Weaver, Ron			Z				
White, Richard			Z		Z	Z	
Yergey, David III						Z	
Zuroweste, Zack		√	√		√		



Thank you to Our General Sponsors

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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
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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



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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 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, Canada Standard Guest Room Rate (King): \$359 CAD (Canadian Dollars) *Reminder – You will need your passport!
November 8 – November 12, 2023	Executive Council Meeting JW Marriott Tampa Water Street Tampa, Florida 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, Florida Standard Guest Room Rate: \$209

2023-2024 RPPTL Leadership Chart

4/24/2023

General Standing

Committee	Name	Title
Ad Hoc Bylaws	Robert ("Bob") S. Swaine	Co-Chair
	William ("Bill") T. Hennessey, III	Co-Chair
Ad Hoc Protocols	Stacy O. Kalmanson	Chair
	Colleen C. Sachs	Vice Chair
Ad Hoc Rules Revisions	Michael V. Hargett	Co-Chair
	Thomas M. Karr	Co-Chair
	J. Richard ("Rich") Caskey	Co-Chair
Ad Hoc RTOD (Revocable Transfer on Death)	Christopher ("Chris") W. Smart	Co-Chair
	Alan S. ("Steve") Kotler	Co-Chair
	Jeffrey ("Jeff") S. Goethe	Vice Chair
Ad Hoc Series LLC	James A. Marx	Co-Chair
	James C Russick	Co-Chair
	Michael A Sneeringer	Co-Chair
Amicus Coordination	Kenneth B. Bell	Co-Chair
	Gerald B. Cope, Jr.	Co-Chair
	Robert W. Goldman	Co-Chair
	John W. Little, III	Co-Chair
Budget	S. Dresden Brunner	Chair
	Tae K. Bronner	Co-Vice Chair
	Linda S. Griffin	Co-Vice Chair
	Pamela O. Price	Co-Vice Chair
	Alfred ("Al") J. Stashis, Jr.	Co-Vice Chair
Communications	Michael V. Hargett	Chair
	Laura K. Sundberg	Vice Chair
CLE Coordination	Angela M. Adams	Co-Chair (PT)
	Brenda B. Ezell	Co-Chair (RP)
	Robert ("Rob") Lancaster	Co-Vice Chair (PT)
	Tattiana Brenes-Stahl	Co-Vice Chair (PT)
	Amanda R. Kison	Co-Vice Chair (RP)
	Stacy O. Kalmanson	Co-Vice Chair (RP)
	Silvia B. Rojas	Co-Vice Chair (RP)
Yoshimi O. Smith	Co-Vice Chair (PT)	
Convention Coordination	Tae K. Bronner	Co-Chair
	Stacy O. Kalmanson	Co-Chair
Disaster and Emergency Preparedness and Response	Colleen C. Sachs	Chair
	Amy B. Beller	Co-Vice Chair
	Michael A. Bedke	Co-Vice Chair

Fellows	Bridget M. Friedman	Co-Chair
	Terrance L. Harvey	Co-Chair
	Melissa M. Hernandez	Co-Vice Chair
	Taniquea C. Reid	Co-Vice Chair
Homestead Issues Study	Jeffrey ("Jeff") A. Baskies	Chair
	Jeremy T. Cranford	Co-Vice Chair
	E. Burt Bruton	Co-Vice Chair
	Shane Kelley	Co-Vice Chair
Information Technology	Hardy L. Roberts, III	Chair
	Alexander ("Alex") B. Dobrev	Co-Vice Chair
	Jesse B. Friedman	Co-Vice Chair
	Jourdan Haynes	Co-Vice Chair
Law School Outreach	Kymberlee C. Smith	Chair
	Kristine L. Tucker	Co-Vice Chair
	Lilleth Bailey	Co-Vice Chair
	Amanda C. Cummins	Co-Vice Chair
Legislation	Sancha C. Brennan	Co-Chair (PT)
	Steven H. Mezer	Co-Chair (RP)
	Arthur J. Menor	Co-Vice Chair (RP)
	Christopher ("Chris") W. Smart	Co-Vice Chair (RP)
	M. Travis Hayes	Co-Vice Chair (PT)
	Nicklaus ("Nick") J. Curley	Co-Vice Chair (PT)
	Michael V. Hargett	Co-Vice Chair (RP)
Benjamin ("Ben") F. Diamond	Co-Vice Chair (PT)	
Legislative Update	Salome J. Zikakis	Co-Chair (RP)
	Kit van Pelt	Co-Chair (PT)
	Gutman Skrande	Co-Vice Chair (PT)
	Jennifer S. Tobin	Co-Vice Chair (RP)
Liaison with:	ABA	
	Edward F. Koren	
	Robert ("Rob") S. Freedman	
	George J. Meyer	
	Julius J. Zschau	
	Business Law Section	
	Manuel ("Manny") Farach	
	Gwynne A. Young	
	Clerks of Circuit Court	
	Laird A. Lile	
	FLEA/FLSSI	
	David C. Brennan	
	Roland ("Chip") D. Waller	
	Florida Bankers Association	
	Robert G. Stern	
	Mark T. Middlebrook	
	Judiciary	
Judge Mary Hatcher		
Judge Hugh D. Hayes		
Judge Mark A. Speiser		
Judge Michael Rudisill		
TFB Pro Bono Committee		
Lorna Brown-Burton		
Out-of-State Members		

	John E. Fitzgerald, Jr.	
	Nicole C. Kibert Basler	
	Michael P. Stafford	
	TFB Board of Governors	
	Rosalyn Sia Baker-Barnes	
	TFB CLE Committee	
	Angela M. Adams	
	Brenda B. Ezell	
	TFB Council of Sections	
	John C. Moran	
	S. Katherine Frazier	
Long-Range Planning	S. Katherine Frazier	Chair
Meetings Planning	George J. Meyer	Chair
Membership and Inclusion	Lawrence ("Larry") J. Miller	Chair
	Annabella Barboza	Co-Vice Chair
	Shayla M. Johnson-Mount	Co-Vice Chair
	Eryn E. Riconda	Co-Vice Chair
	Joseph M. Percopo	Co-Vice Chair
Model and Uniform Acts	Patrick J. Duffey	Co-Chair (PT)
	Amber E. Ashton	Co-Chair (RP)
	Michael A. Bedke	Co-Vice Chair (RP)
	Cullen I. Boggus	Co-Vice Chair (PT)
Professionalism and Ethics	Andrew B. Sasso	Chair
	Alexander ("Alex") B. Dobrev	Co-Vice Chair
	Elizabeth A. Bowers Stoops	Co-Vice Chair
	Laura K. Sundberg	Co-Vice Chair
	Judge Celeste Hardee Muir	Co-Vice Chair
Publications ActionLine	Erin F. Finlen	Co-Chair (PT)
	Michelle G. Hinden	Co-Chair (RP)
	Alexander S. Douglas, II	Co-Vice Chair (PT)
	Gregg I. Strock	Co-Vice Chair (RP)
	Seth R. Kaplan	Co-Vice Chair (PT)
	Daniel L. ("Danny") McDermott	Co-Vice Chair (PT)
	Paul E. Roman	Co-Vice Chair (Ethics)
Publications Florida Bar Journal	Homer Duvall, III	Co-Chair (RP)
	J. Allison Archbold	Co-Chair (PT)
	Marty J. Solomon	Co-Vice Chair (RP)
	Brian C. Sparks	Co-Vice Chair (PT)
	Jonathan A. Galler	Co-Vice Chair (PT)
Sponsor Coordination	Arlene C. Udick	Co-Chair (RP)
	Rebecca C. Bell	Co-Chair (PT)
	Jason J. Quintero	Co-Vice Chair (RP)
	Patrick C. Emans	Co-Vice Chair (PT)
	Marsha G. Madorsky	Co-Vice Chair (PT)
	J. Michael Swaine	Co-Vice Chair (PT)

Strategic Planning	Robert ("Rob") S. Freedman	Co-Chair
	William ("Bill") T. Hennessey, III	Co-Chair
Strategic Planning Implementation	Robert ("Bob") S. Swaine	Co-Chair
	Debra L. Boje	Co-Chair
	Robert ("Rob") S. Freedman	Co-Chair
	William ("Bill") T. Hennessey, III	Co-Chair
	Sarah S. Butters	Co-Chair

Probate and Trust Law Division

Ad Hoc Guardianship Law Revision	Nicklaus ("Nick") J. Curley	Co-Chair
	Stacy B. Rubel	Co-Chair
	David C. Brennan	Co-Chair
	Sancha K. Brennan	Vice Chair
Ad Hoc Committee on Electronic Wills	Frederick ("Ricky") L. Hearn	Chair
	Jenna G. Rubin	Vice Chair
Ad Hoc Study Committee on Jurisdiction and Due Process	Barry F. Spivey	Chair
	Sean W. Kelley	Co-Vice Chair
	Shelly Wald Harris	Co-Vice Chair
Ad Hoc ART	Alyse Reiser Comiter	Chair
	Sean M. Lebowitz	Co-Vice Chair
	Jack A. Falk, Jr.	Co-Vice Chair
Asset Protection	Michael A. Sneeringer	Chair
	Richard ("Rick") R. Gans	Co-Vice Chair
	Justin M. Savioli	Co-Vice Chair
	Patrick J. Lannon	Co-Vice Chair
Attorney/Trust Officer Liaison Conference	Mitchell A. Hipsman	Chair
	Stacey L. Cole	Co-Vice Chair
	Gail G. Fagan	Co-Vice Chair
	Eamonn W. Gunther	Co-Vice Chair
	Michael M. Rubenstein	Co-Vice Chair
Charitable Planning and Exempt Organizations	Denise B. Cazobon	Chair
	Kelly L. Hellmuth	Co-Vice Chair
	Alyssa R. Wan	Co-Vice Chair
Elective Share Review	Jenna G. Rubin	Chair
	Lauren Y. Detzel	Co-Vice Chair
	Cristina Papanikos	Co-Vice Chair
	Jason P. Van Lenten	Co-Vice Chair
Estate & Trust Tax Planning	Richard N. Sherrill	Chair
	Alfred ("Al") J. Stashis, Jr.	Co-Vice Chair
	Andrew H. Thompson	Co-Vice Chair
	Jolyon D. Acosta	Co-Vice Chair
Guardianship, Power of Attorney & Advance Directives	Stacy B. Rubel	Chair
	Elizabeth ("Liz") M. Hughes	Co-Vice Chair
	Jacobi J. Behar	Co-Vice Chair
	Caitlin M. Powell	Co-Vice Chair
	Stephanie L. Cook	Co-Vice Chair
IRA, Insurance & Employee Benefits	Charles W. ("Chad") Callahan	Chair

	Rebecca C. Bell	Co-Vice Chair
	Rachel N. Barlow	Co-Vice Chair
Liaisons with American College of Trust and Estate Counsel (ACTEC)		
	Elaine M. Bucher	Liaison
	Diana S.C. Zeydel	Liaison
	Charlie I. Nash	Liaison
	Tami F. Conetta	Liaison
	L. Howard Payne	Liaison
	Jerome L. Wolf	Liaison
Liaison with Florida State Guardianship Association (FSGA)		
	Stephanie Cook	Liaison
Liaisons with Elder Law Section		
	Travis D. Finchum	Liaison
	Marjorie E. Wolasky	Liaison
Liaisons with Tax Law Section		
	Brian M. Malec	Liaison
	William R. Lane, Jr.	Liaison
	Brian C. Sparks	Liaison
Liaison with Professional Fiduciary Council		
	Darby Jones	Liaison
Office of Public and Professional Guardians Delegate (OPPG)		
	Nicklaus ("Nick") J. Curley	Delegate
Principal and Income		
	Edward F. Koren	Co-Chair
	Pamela O. Price	Co-Chair
	Keith B. Braun	Co-Vice Chair
	Jolyon D. Acosta	Co-Vice Chair
Probate and Trust Litigation		
	Robert ("Lee") McElroy, IV	Chair
	Cady L. Huss	Co-Vice Chair
	Darren M. Stotts	Co-Vice Chair
Probate Law & Procedure		
	Theodore S. Kypreos	Chair
	Benjamin F. Diamond	Co-Vice Chair
	Stacey Prince-Troutman	Co-Vice Chair
	J. Grier Pressly, III	Co-Vice Chair
Trust Law		
	David J. Akins	Chair
	Jennifer J. Robinson	Co-Vice Chair
	Jenna G. Rubin	Co-Vice Chair
	M. Travis Hayes	Co-Vice Chair
Wills, Trusts & Estates Certification Review Course		
	Rachel A. Lunsford	Chair
	J. Eric Virgil	Co-Vice Chair
	J. Allison Archbold	Co-Vice Chair

Real Property Division

Ad Hoc Hayslip		
	Brian W. Hoffman	Chair
	James ("Jim") C. Russick	Co-Vice Chair
	Russell M. Robbins	Co-Vice Chair
Ad Hoc UCRERA		
	Manual ("Manny") Farach	Chair
	James ("Jim") C. Russick	Co-Vice Chair
	Jason M. Ellison	Co-Vice Chair
Attorney Banker Conference		
	Kristopher E. Fernandez	Co-Chair
	Salome J. Zikakis	Co-Chair
	R. James ("Jim") Robbins, Jr.	Vice-Chair

Commercial Real Estate	E. Ashley McRae	Chair
	Alexandra D. Gabel	Co-Vice Chair
	Annabella Barboza	Co-Vice Chair
	Erin M. Miller	Co-Vice Chair
Condominium and Planned Development Law Certification Review Course	Christene M. Ertl	Chair
	Alessandra Stivelman	Vice-Chair
Condominium and Planned Development	Alexander B. Dobrev	Co-Chair
	Allison Hertz	Co-Chair
	Russell M. Robbins	Vice Chair
Construction Law	Sanjay Kurian	Chair
	Elizabeth B. Ferguson	Co-Vice Chair
	Bruce D. Partington	Co-Vice Chair
Construction Law Certification Review Course	Gregg E. Hutt	Chair
	Jason J. Quintero	Co-Vice Chair
	Scott P. Pence	Co-Vice Chair
Construction Law Institute	Bradley R. Weiss	Chair
	Trevor B. Arnold	Co-Vice Chair
	Haley R. Maple	Co-Vice Chair
Development and Land Use	Lisa B. Van Dien	Chair
	Jin Liu	Vice Chair
Insurance and Surety	Adele I. Stone	Co-Chair
	Debbie S. Crockett	Co-Chair
	Anne Q. Pollack	Vice Chair
Liaison with Florida Land Title Association (FLTA)	Melissa J. Murphy	Liaison
	Alan K. McCall	Liaison
	Alan B. Fields	Liaison
	James ("Jim") C. Russick	Liaison
Liaison with American College of Real Estate Lawyers (ACREL)	Martin A. Schwartz	Liaison
	William ("Bill") P. Sklar	Liaison
Liaison with American College of Construction Lawyers (ACCL)	George J. Meyer	Liaison
Liaison with Florida Realtors	Louis ("Trey") E. Goldman, III	Liaison
Real Estate Certification Review Course	Lloyd Granet	Chair
	Martin ("Marty") S. Awerbach	Co-Vice Chair
	Laura M. Licastro	Co-Vice Chair
	Jason M. Ellison	Co-Vice Chair
Real Estate Leasing	Christopher ("Chris") A. Sajdera	Chair
	Kristen K. Jaiven	Co-Vice Chair
	Ryan J. McConnell	Co-Vice Chair
Real Property Finance and Lending	Jason M. Ellison	Chair
	Deborah B. Boyd	Co-Vice Chair
	Jin Liu	Co-Vice Chair
Real Property Litigation	Manuel ("Manny") Farach	Co-Chair
	Shawn G. Brown	Co-Chair
	Amanda B. Kison	Co-Vice Chair
	Terrance L. Harvey	Co-Vice Chair

Real Property Problems Study	Susan K. Spurgeon	Chair
	Brian W. Hoffman	Co-Vice Chair
	Amber E. Ashton	Co-Vice Chair
Residential Real Estate and Industry Liaison	Nicole M. Villarroel	Co-Chair
	Kristen K. Javien	Co-Chair
	James ("Jamie") A. Marx	Co-Vice Chair
	Richard ("Rich") S. McIver	Co-Vice Chair
Title Insurance and Title Insurance Liaison	Christopher W. Smart	Chair
	Jeremy Cranford	Co-Vice Chair
	Leonard F. Prescott, IV	Co-Vice Chair
	Michelle G. Hinden	Co-Vice Chair
Title Issues and Standards	Rebecca Wood	Co-Chair
	Amanda K. Hersem	Co-Chair
	Karla J. Staker	Co-Vice Chair
	Robert ("Bob") M. Graham	Co-Vice Chair
	Melissa Scaletta	Co-Vice Chair

PROPOSED REVISIONS TO THE FLORIDA BAR RULES OF PROFESSIONAL CONDUCT, CHAPTER 4 PREAMBLE AND RULE 4-1.3 COMMENT

CHAPTER 4. RULES OF PROFESSIONAL CONDUCT PREAMBLE: A LAWYER'S RESPONSIBILITIES

As a representative of clients, a lawyer performs various functions. As an adviser, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an advocate, a lawyer ~~zealously~~ asserts the client's position with commitment and dedication to the interests of the client under the rules of the adversary system. As a negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

A lawyer's responsibilities as a representative of clients, an officer of the legal system, and a public citizen are usually harmonious. ~~Zealous Commitment and dedication in~~ advocacy ~~is are~~ not inconsistent with justice. Moreover, unless violations of law or injury to another or another's property is involved, preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and heed their legal obligations, when they know their communications will be private.

Comment

Conduct

All prior references in this Chapter to a lawyer's duty to act zealously, as a zealous advocate, or with zeal upon the client's behalf have been removed. Zealous advocacy has been invoked in our profession as an excuse for unprofessional behavior. In Fla. Bar v. Buckle, The Florida Supreme Court stated "[w]e must never permit a cloak of purported zealous advocacy to conceal unethical behavior." 771 So. 2d 1131, 1133 (Fla. 2000). These Rules are meant to illustrate the special responsibility and high standards of professionalism in this field and zealousness as it has been applied in practice does not align with these ideals. A lawyer's conduct should strive to be respectful, considerate, and diligent in the practice of law.

RULE 4-1.3 DILIGENCE

Comment

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. 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~~. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See rule 4-1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

THE FLORIDA BAR
Real Property Probate and Trust Law Section Rollup
For the Ten Months Ending April 30, 2023

	April	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior YTD Variance (\$)	FYE Actual 2022
3001-Annual Fees	1,510	679,270	625,200	54,070	625,200	666,280	12,990	666,280
3002-Affiliate Fees	(140)	12,540	5,000	7,540	5,000	10,780	1,760	10,780
Total Fee Revenue	1,370	691,810	630,200	61,610	630,200	677,060	14,750	677,060
3301-Registration-Live	70,945	668,782	512,500	156,282	512,500	537,707	131,075	545,073
3331-Registration-Ticket	-	12,300	12,000	300	12,000	-	12,300	-
Total Registration Revenue	70,945	681,082	524,500	156,582	524,500	537,707	143,375	545,073
3341-Exhibit Fees	(3,250)	99,900	65,500	34,400	65,500	9,400	90,500	9,400
3351-Sponsorships	(17,025)	579,600	468,000	111,600	468,000	528,675	50,925	523,675
3391 Section Profit Split	(14,416)	539,363	260,000	279,363	260,000	418,400	120,963	451,920
3392-Section Differential	1,920	17,640	15,000	2,640	15,000	14,040	3,600	18,300
Other Event Revenue	(32,771)	1,236,503	808,500	428,003	808,500	970,515	265,988	1,003,295
3401-Sales-CD/DVD	4,810	51,757	22,000	29,757	22,000	45,640	6,117	56,340
3411-Sales-Published Materials	-	-	1,500	(1,500)	1,500	-	-	-
Sales, Rents & Royalties Revenue	4,810	51,757	23,500	28,257	23,500	45,640	6,117	56,340
3561-Advertising	-	2,000	18,000	(16,000)	18,000	6,917	(4,917)	8,969
Other Revenue Sources	-	2,000	18,000	(16,000)	18,000	6,917	(4,917)	8,969
3699-Other Operating Revenue	-	-	800	(800)	800	-	-	-
3901-Eliminated InterFund Revenue	-	350	-	350	-	-	350	-
Other Revenue Sources	-	350	800	(450)	800	-	350	-
Total Revenue	44,354	2,663,502	2,005,500	658,002	2,005,500	2,237,838	425,664	2,290,737
4134-Web Services	2,890	39,301	75,000	(35,699)	75,000	51,297	(11,997)	58,168
4301-Photocopying	-	-	100	(100)	100	-	-	-
4311-Office Supplies	124	1,180	5,150	(3,970)	5,150	1,278	(98)	1,672
Total Staff & Office Expense	3,015	40,481	80,250	(39,769)	80,250	52,576	(12,094)	59,841
5031-AV Services	-	79	-	79	-	-	79	-
5051-Credit Card Fees	1,822	28,661	29,200	(539)	29,200	21,428	7,233	29,152
5101-Consultants	-	120,600	120,000	600	120,000	30,000	90,600	108,634
5121-Printing-Outside	-	61,508	127,500	(65,992)	127,500	59,411	2,097	79,460
5181-Speaker Honorarium	-	-	5,000	(5,000)	5,000	-	-	-
5199-Other Contract Services	-	53,955	125,000	(71,045)	125,000	79	53,876	3,769
Total Contract Services	1,822	264,804	406,700	(141,896)	406,700	110,918	153,886	221,015
5501-Employee Travel	780	18,424	33,250	(14,826)	33,250	18,405	19	25,411
5531-Board/Off/Memb Travel	-	3,061	20,000	(16,940)	20,000	9,895	(6,835)	9,895
5571-Speaker Travel	13,409	23,672	27,600	(3,928)	27,600	20,510	3,161	21,863
5581-Consultant Travel	-	10,888	15,000	(4,112)	15,000	5,543	5,346	5,543
5599-Other Travel	636	636	-	636	-	-	636	-
Total Travel	14,825	56,681	95,850	(39,169)	95,850	54,354	2,327	62,712
6001-Post 1st Class/Bulk	21,749	25,337	11,575	13,762	11,575	24,154	1,184	35,477
6021-Post Express Mail	-	165	850	(685)	850	464	(299)	633
6211-Promot Exhibit Exp	-	-	-	-	-	535	(535)	535
6251-Promotion Sponsorship	-	-	-	-	-	500	(500)	500
6311-Mtgs General Meeting	96,102	764,091	750,000	14,091	750,000	663,159	100,932	656,515
6319-Mtgs Other Functions	33,402	45,575	35,000	10,575	35,000	26,378	19,197	27,579
6321-Mtgs Meals	88,130	216,865	357,000	(140,135)	357,000	177,820	39,045	540,786
6325-Mtgs Hospitality	84,434	256,264	156,500	99,764	156,500	140,081	116,184	140,081
6341-Mtgs Equip Rental	46,840	78,282	103,000	(24,718)	103,000	80,769	(2,487)	114,534
6361-Mtgs Entertainment	14,179	25,784	40,000	(14,216)	40,000	-	25,784	50,646
6399-Mtgs Other	-	3,320	15,000	(11,680)	15,000	4,823	(1,503)	4,823
6401-Speaker Expense	-	-	7,500	(7,500)	7,500	120	(120)	2,942
6451-Committee Expense	23,134	136,381	100,000	36,381	100,000	84,647	51,735	91,776
6531-Brd/Off Special Project	-	265	50,000	(49,735)	50,000	21,133	(20,868)	21,133
6599-Brd/Off Other	-	1,000	15,000	(14,000)	15,000	727	273	727
7001-Grant/Award/Donation	4,257	6,638	13,000	(6,362)	13,000	4,782	1,855	6,551
7003-Div Int Grants	-	2,584	12,000	(9,416)	12,000	1,500	1,084	2,000
7004-Law School Prog.	538	1,859	5,500	(3,641)	5,500	412	1,448	412
7006-Professional Outreach	-	500	3,000	(2,500)	3,000	-	500	-

7011-Scholarship/Fellowship	1,090	13,361	27,000	(13,639)	27,000	11,564	1,797	18,667
7999-Other Operating Exp	122	2,080	8,300	(6,220)	8,300	(12,471)	14,551	(12,471)
Total Other Expense	413,976	1,580,352	1,710,225	(129,873)	1,710,225	1,231,096	349,256	1,703,847
8011-Administration CLE	7,150	37,850	56,500	(18,650)	56,500	51,000	(13,150)	51,000
8021-Section Admin Fee	979	251,865	229,354	22,511	229,354	245,819	6,047	245,819
8101-Printing In-House	137	894	8,600	(7,706)	8,600	1,652	(758)	3,507
8131-A/V Services	210	5,617	10,800	(5,183)	10,800	11,036	(5,419)	11,099
8141-Journal/News Service	-	1,275	5,850	(4,575)	5,850	425	850	425
8171-Course Approval Fee	-	450	450	-	450	150	300	300
8901-Eliminated IntEnt Exp	-	6,500	3,000	3,500	3,000	6,000	500	6,000
Total Admin & Internal Expense	8,476	304,451	314,554	(10,103)	314,554	316,082	(11,631)	318,149
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	-	500
Total InterFund Transfers Out	-	500	500	-	500	500	-	500
Total Expense	442,115	2,247,270	2,608,079	(360,809)	2,608,079	1,765,526	481,744	2,366,064
Operating Income	(397,761)	416,233	(602,579)	1,018,812	(602,579)	472,313	(56,080)	(75,327)
3899-Investment Income (loss)	30,875	186,199	148,906	37,293	148,906	(237,055)	423,254	(347,542)
Total Nonoperating Revenue (Expenses)	30,875	186,199	148,906	37,293	148,906	(237,055)	423,254	(347,542)
Change in Net Position	(366,886)	602,431	(453,673)	1,056,104	(453,673)	235,257	367,174	(422,869)
Net Position								
2001-Beginning of the year, restated (Fund Balance)	-	2,607,751				3,030,620		3,030,620
End of the Year (Current Month)	-	3,210,182				3,265,877		2,607,751

THE FLORIDA BAR
Real Property, Probate and Trust Law General
For the Ten Months Ending April 30, 2023

	April	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3001-Annual Fees	1,510	679,270	625,200	54,070	625,200	666,280	12,990	666,280
3002-Affiliate Fees	(140)	12,540	5,000	7,540	5,000	10,780	1,760	10,780
Total Fee Revenue	1,370	691,810	630,200	61,610	630,200	677,060	14,750	677,060
3301-Registration-Live	(590)	248,575	180,000	68,575	180,000	238,337	10,238	148,347
Total Registration Revenue	(590)	248,575	180,000	68,575	180,000	238,337	10,238	148,347
3351-Sponsorships	(26,625)	181,875	180,000	1,875	180,000	195,750	(13,875)	198,750
3391 Section Profit Split	(14,416)	539,363	260,000	279,363	260,000	418,400	120,963	451,920
3392-Section Differential	1,920	17,640	15,000	2,640	15,000	14,040	3,600	18,300
Other Event Revenue	(39,121)	738,878	455,000	283,878	455,000	628,190	110,688	668,970
3561-Advertising	-	2,000	18,000	(16,000)	18,000	6,917	(4,917)	8,969
Other Revenue Sources	-	2,000	18,000	(16,000)	18,000	6,917	(4,917)	8,969
3901-Eliminated InterFund Revenue	-	350	-	350	-	-	350	-
Other Revenue Sources	-	350	-	350	-	-	350	-
Total Revenue	(38,341)	1,681,613	1,283,200	398,413	1,283,200	1,550,503	131,109	1,503,346
4134-Web Services	2,890	39,301	75,000	(35,699)	75,000	51,297	(11,997)	58,168
4311-Office Supplies	124	1,180	5,000	(3,820)	5,000	1,278	(98)	1,672
Total Staff & Office Expense	3,015	40,481	80,000	(39,519)	80,000	52,576	(12,094)	59,841
5051-Credit Card Fees	66	5,898	13,000	(7,102)	13,000	8,763	(2,864)	17,063
5101-Consultants	-	120,600	120,000	600	120,000	30,000	90,600	108,634
5121-Printing-Outside	-	58,738	120,000	(61,262)	120,000	59,121	(383)	79,170
5199-Other Contract Services	-	53,280	125,000	(71,720)	125,000	-	53,280	2,500
Total Contract Services	66	238,517	378,000	(139,483)	378,000	97,884	140,633	207,367
5501-Employee Travel	-	14,191	20,000	(5,809)	20,000	14,353	(162)	15,585
5531-Board/Off/Memb Travel	-	3,061	20,000	(16,940)	20,000	9,895	(6,835)	9,895
5581-Consultant Travel	-	10,888	15,000	(4,112)	15,000	5,543	5,346	5,543
5599-Other Travel	636	636	-	636	-	-	636	-
Total Travel	636	28,776	55,000	(26,224)	55,000	29,791	(1,015)	31,023
6001-Post 1st Class/Bulk	21,731	24,509	10,000	14,509	10,000	24,060	450	34,883
6211-Promot Exhibit Exp	-	-	-	-	-	535	(535)	535
6251-Promotion Sponsorship	-	-	-	-	-	500	(500)	500
6311-Mtgs General Meeting	86,102	753,022	750,000	3,022	750,000	623,914	129,108	651,612
6319-Mtgs Other Functions	-	818	-	818	-	938	(120)	2,139
6325-Mtgs Hospitality	437	33,654	35,000	(1,346)	35,000	27,911	5,743	27,911
6399-Mtgs Other	-	-	15,000	(15,000)	15,000	3,377	(3,377)	3,377
6401-Speaker Expense	-	-	7,500	(7,500)	7,500	120	(120)	2,942
6451-Committee Expense	23,134	136,381	100,000	36,381	100,000	84,647	51,735	91,776
6531-Brd/Off Special Project	-	265	50,000	(49,735)	50,000	21,133	(20,868)	21,133
6599-Brd/Off Other	-	1,000	15,000	(14,000)	15,000	727	273	727
7001-Grant/Award/Donation	4,257	4,679	8,000	(3,321)	8,000	3,181	1,499	4,950
7003-Div Int Grants	-	2,584	12,000	(9,416)	12,000	1,500	1,084	2,000
7004-Law School Prog.	538	1,859	5,500	(3,641)	5,500	412	1,448	412
7006-Professional Outreach	-	500	3,000	(2,500)	3,000	-	500	-
7011-Scholarship/Fellowship	1,090	13,361	27,000	(13,639)	27,000	11,564	1,797	18,667
7999-Other Operating Exp	-	-	5,000	(5,000)	5,000	3	(3)	3
Total Other Expense	137,289	972,634	1,043,000	(70,366)	1,043,000	804,521	168,113	863,567
8021-Section Admin Fee	979	251,865	229,354	22,511	229,354	245,819	6,047	245,819
8101-Printing In-House	-	473	2,000	(1,527)	2,000	915	(442)	2,769
8901-Eliminated IntEnt Exp	-	6,500	3,000	3,500	3,000	6,000	500	6,000
Total Admin & Internal Expense	979	258,838	234,354	24,484	234,354	252,733	6,104	254,588
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	-	500
Total InterFund Transfers Out	-	500	500	-	500	500	-	500
Total Expense	141,984	1,539,745	1,790,854	(251,109)	1,790,854	1,238,004	301,741	1,416,886

Operating Income	<u>(180,325)</u>	<u>141,868</u>	<u>(507,654)</u>	<u>649,522</u>	<u>(507,654)</u>	<u>312,499</u>	<u>(170,631)</u>	<u>86,460</u>
3899-Investment Income (loss)	30,875	186,199	148,906	37,293	148,906	(237,055)	423,254	(347,542)
Total Nonoperating Revenue (Expenses)	<u>30,875</u>	<u>186,199</u>	<u>148,906</u>	<u>37,293</u>	<u>148,906</u>	<u>(237,055)</u>	<u>423,254</u>	<u>(347,542)</u>
Change in Net Position	<u>(149,450)</u>	<u>328,066</u>	<u>(358,748)</u>	<u>686,814</u>	<u>(358,748)</u>	<u>75,443</u>	<u>252,623</u>	<u>(261,082)</u>

THE FLORIDA BAR
Real Property Legislative Update
For the Ten Months Ending April 30, 2023

	April	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3341-Exhibit Fees	-	-	14,000	(14,000)	14,000	9,400	(9,400)	9,400
3351-Sponsorships	4,000	20,400	-	20,400	-	-	20,400	-
Other Event Revenue	4,000	20,400	14,000	6,400	14,000	9,400	11,000	9,400
3401-Sales-CD/DVD	550	9,125	-	9,125	-	-	9,125	-
Sales, Rents & Royalties Revenue	550	9,125	-	9,125	-	-	9,125	-
Total Revenue	4,550	29,525	14,000	15,525	14,000	9,400	20,125	9,400
4301-Photocopying	-	-	100	(100)	100	-	-	-
4311-Office Supplies	-	-	150	(150)	150	-	-	-
Total Staff & Office Expense	-	-	250	(250)	250	-	-	-
5031-AV Services	-	79	-	79	-	-	79	-
5051-Credit Card Fees	153	823	700	123	700	155	669	261
5121-Printing-Outside	-	2,663	5,000	(2,337)	5,000	290	2,373	290
Total Contract Services	153	3,566	5,700	(2,134)	5,700	445	3,121	551
5501-Employee Travel	-	1,106	3,000	(1,895)	3,000	1,457	(352)	1,457
5571-Speaker Travel	-	5,165	6,500	(1,335)	6,500	4,626	539	4,626
Total Travel	-	6,271	9,500	(3,229)	9,500	6,083	188	6,083
6001-Post 1st Class/Bulk	8	364	50	314	50	3	360	3
6021-Post Express Mail	-	-	500	(500)	500	10	(10)	10
6311-Mtgs General Meeting	-	1,069	-	1,069	-	-	1,069	-
6321-Mtgs Meals	-	44,878	45,000	(122)	45,000	26,998	17,880	26,998
6325-Mtgs Hospitality	-	-	1,500	(1,500)	1,500	679	(679)	679
6341-Mtgs Equip Rental	-	9,359	15,000	(5,641)	15,000	10,871	(1,512)	10,871
7001-Grant/Award/Donation	-	1,958	5,000	(3,042)	5,000	1,601	357	1,601
7999-Other Operating Exp	-	-	500	(500)	500	280	(280)	280
Total Other Expense	8	57,628	67,550	(9,922)	67,550	40,443	17,185	40,443
8011-Administration CLE	-	1,000	500	500	500	1,000	-	1,000
8101-Printing In-House	-	200	1,000	(800)	1,000	-	200	-
8131-A/V Services	-	105	-	105	-	-	105	-
8141-Journal/News Service	-	-	1,600	(1,600)	1,600	-	-	-
8171-Course Approval Fee	-	150	-	150	-	-	150	-
Total Admin & Internal Expense	-	1,455	3,100	(1,645)	3,100	1,000	455	1,000
Total Expense	161	68,919	86,100	(17,181)	86,100	47,971	20,948	48,077
Operating Income	4,389	(39,394)	(72,100)	32,706	(72,100)	(38,571)	(823)	(38,677)

THE FLORIDA BAR
Real Property Trust Officer Liaison Conference
For the Ten Months Ending April 30, 2023

	April	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	(680)	219,443	160,000	59,443	160,000	176,610	42,833	176,610
3331-Registration-Ticket	-	8,550	10,000	(1,450)	10,000	-	8,550	-
Total Registration Revenue	(680)	227,993	170,000	57,993	170,000	176,610	51,383	176,610
3341-Exhibit Fees	-	73,400	40,000	33,400	40,000	-	73,400	-
3351-Sponsorships	(400)	92,875	80,000	12,875	80,000	115,950	(23,075)	107,950
Other Event Revenue	(400)	166,275	120,000	46,275	120,000	115,950	50,325	107,950
3401-Sales-CD/DVD	620	13,712	5,000	8,712	5,000	18,600	(4,888)	22,320
3411-Sales-Published Materials	-	-	1,000	(1,000)	1,000	-	-	-
Sales, Rents & Royalties Revenue	620	13,712	6,000	7,712	6,000	18,600	(4,888)	22,320
Total Revenue	(460)	407,980	296,000	111,980	296,000	311,160	96,820	306,880
5051-Credit Card Fees	179	9,250	8,000	1,250	8,000	7,495	1,755	6,648
5121-Printing-Outside	-	107	2,500	(2,393)	2,500	-	107	-
Total Contract Services	179	9,356	10,500	(1,144)	10,500	7,495	1,861	6,648
5501-Employee Travel	-	1,303	2,000	(697)	2,000	2,061	(758)	2,061
5571-Speaker Travel	-	5,098	8,100	(3,002)	8,100	6,656	(1,558)	6,656
Total Travel	-	6,401	10,100	(3,699)	10,100	8,717	(2,316)	8,717
6001-Post 1st Class/Bulk	3	195	1,000	(805)	1,000	85	110	85
6021-Post Express Mail	-	98	150	(52)	150	215	(117)	297
6319-Mtgs Other Functions	-	5,198	10,000	(4,802)	10,000	5,899	(702)	5,899
6321-Mtgs Meals	-	63,970	57,000	6,970	57,000	48,345	15,625	48,345
6325-Mtgs Hospitality	-	135,613	70,000	65,613	70,000	52,218	83,395	52,218
6341-Mtgs Equip Rental	-	19,683	30,000	(10,317)	30,000	19,151	532	19,151
6399-Mtgs Other	-	3,320	-	3,320	-	1,447	1,874	1,447
7999-Other Operating Exp	-	4	1,000	(996)	1,000	2,869	(2,865)	2,869
Total Other Expense	3	228,080	169,150	58,930	169,150	130,228	97,852	130,310
8011-Administration CLE	-	14,850	25,000	(10,150)	25,000	25,000	(10,150)	25,000
8101-Printing In-House	-	6	3,000	(2,994)	3,000	-	6	-
8131-A/V Services	-	5,120	7,000	(1,880)	7,000	5,392	(272)	5,427
8141-Journal/News Service	-	850	1,600	(750)	1,600	-	850	-
8171-Course Approval Fee	-	-	150	(150)	150	-	-	150
Total Admin & Internal Expense	-	20,826	36,750	(15,924)	36,750	30,392	(9,566)	30,577
Total Expense	182	264,664	226,500	38,164	226,500	176,833	87,831	176,252
Operating Income	(642)	143,317	69,500	73,817	69,500	134,327	8,989	130,628

THE FLORIDA BAR
Real Property Construction Law Institute
For the Ten Months Ending April 30, 2023

	April	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	-	129,560	100,000	29,560	100,000	122,760	6,800	122,760
3331-Registration-Ticket	-	3,750	2,000	1,750	2,000	-	3,750	-
Total Registration Revenue	-	133,310	102,000	31,310	102,000	122,760	10,550	122,760
3351-Sponsorships	-	244,300	190,000	54,300	190,000	216,975	27,325	216,975
Other Event Revenue	-	244,300	190,000	54,300	190,000	216,975	27,325	216,975
3401-Sales-CD/DVD	3,640	28,920	15,000	13,920	15,000	26,890	2,030	33,870
3411-Sales-Published Materials	-	-	500	(500)	500	-	-	-
Sales, Rents & Royalties Revenue	3,640	28,920	15,500	13,420	15,500	26,890	2,030	33,870
3699-Other Operating Revenue	-	-	800	(800)	800	-	-	-
Other Revenue Sources	-	-	800	(800)	800	-	-	-
Total Revenue	3,640	406,530	308,300	98,230	308,300	366,625	39,905	373,605
5051-Credit Card Fees	89	10,100	4,000	6,100	4,000	5,012	5,089	5,179
5181-Speaker Honorarium	-	-	5,000	(5,000)	5,000	-	-	-
5199-Other Contract Services	-	675	-	675	-	79	596	1,269
Total Contract Services	89	10,775	9,000	1,775	9,000	5,091	5,685	6,448
5501-Employee Travel	(320)	725	2,000	(1,275)	2,000	534	191	534
5571-Speaker Travel	11,671	11,671	9,000	2,671	9,000	9,229	2,442	10,581
Total Travel	11,351	12,396	11,000	1,396	11,000	9,763	2,633	11,115
6001-Post 1st Class/Bulk	7	270	25	245	25	6	264	261
6021-Post Express Mail	-	67	200	(133)	200	238	(171)	325
6319-Mtgs Other Functions	33,402	39,559	25,000	14,559	25,000	19,541	20,018	19,541
6321-Mtgs Meals	88,130	88,130	75,000	13,130	75,000	102,477	(14,347)	102,477
6325-Mtgs Hospitality	82,920	82,920	45,000	37,920	45,000	59,272	23,648	59,272
6341-Mtgs Equip Rental	46,840	49,240	35,000	14,240	35,000	50,747	(1,507)	50,747
7999-Other Operating Exp	122	2,076	1,500	576	1,500	(15,623)	17,699	(15,623)
Total Other Expense	251,421	262,262	181,725	80,537	181,725	216,658	45,604	217,000
8011-Administration CLE	-	14,850	25,000	(10,150)	25,000	25,000	(10,150)	25,000
8101-Printing In-House	-	78	2,000	(1,922)	2,000	737	(660)	737
8131-A/V Services	210	392	3,250	(2,858)	3,250	5,644	(5,252)	5,672
8141-Journal/News Service	-	425	1,650	(1,225)	1,650	425	-	425
8171-Course Approval Fee	-	150	150	-	150	150	-	150
Total Admin & Internal Expense	210	15,895	32,050	(16,155)	32,050	31,956	(16,062)	31,984
Total Expense	263,071	301,328	233,775	67,553	233,775	263,468	37,860	266,548
Operating Income	(259,431)	105,202	74,525	30,677	74,525	103,157	2,045	107,057

THE FLORIDA BAR
Real Property Convention
For the Ten Months Ending April 30, 2023

	April	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	63,815	62,804	60,000	2,804	60,000	-	62,804	97,357
Total Registration Revenue	63,815	62,804	60,000	2,804	60,000	-	62,804	97,357
3341-Exhibit Fees	(3,250)	26,500	10,000	16,500	10,000	-	26,500	-
3351-Sponsorships	7,500	31,500	10,000	21,500	10,000	-	31,500	-
Other Event Revenue	4,250	58,000	20,000	38,000	20,000	-	58,000	-
Total Revenue	68,065	120,804	80,000	40,804	80,000	-	120,804	97,357
5051-Credit Card Fees	1,167	2,178	3,000	(822)	3,000	-	2,178	(2)
Total Contract Services	1,167	2,178	3,000	(822)	3,000	-	2,178	(2)
5501-Employee Travel	-	-	5,000	(5,000)	5,000	-	-	5,774
5571-Speaker Travel	1,738	1,738	-	1,738	-	-	1,738	-
Total Travel	1,738	1,738	5,000	(3,262)	5,000	-	1,738	5,774
6001-Post 1st Class/Bulk	-	-	500	(500)	500	-	-	246
6311-Mtgs General Meeting	10,000	10,000	-	10,000	-	39,245	(29,245)	4,903
6321-Mtgs Meals	-	17,387	175,000	(157,613)	175,000	-	17,387	362,967
6341-Mtgs Equip Rental	-	-	20,000	(20,000)	20,000	-	-	33,765
6361-Mtgs Entertainment	14,179	25,784	40,000	(14,216)	40,000	-	25,784	50,646
Total Other Expense	24,179	53,171	235,500	(182,329)	235,500	39,245	13,927	452,526
8101-Printing In-House	-	-	400	(400)	400	-	-	-
Total Admin & Internal Expense	-	-	400	(400)	400	-	-	-
Total Expense	27,084	57,087	243,900	(186,813)	243,900	39,245	17,842	458,297
Operating Income	40,981	63,717	(163,900)	227,617	(163,900)	(39,245)	102,962	(360,941)

CLE Calendar (as of 5/24/23)

Date of Presentation	Crs. #	Title	Location
7/21/23	6985	43 rd Annual Legislative and Case Law Update	The Breakers, Palm Beach
8/17/23 – 8/19/23	6900	Attorney/Trust Officer Liaison Conference	The Breakers, Palm Beach
8/23/23	6044	Negotiation of a Construction Loan	Webcast
9/13/23		Lunch & Learn – from Principal and Income Committee	Webcast
9/14/23	6059	Real Property Litigation CLE on Mediation	Webcast
10/20/23		Charitable Planning Symposium	Webcast
11/17/23		Probate Law	TBD



The Florida Bar

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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.

General Information

Submitted by: *(name of VBG or individual)* Principal and Income Committee, RPPTL

Address: *(address and phone #)* c/o 3825 PGA Blvd., Suite 701, Palm Beach Gardens, FL 33410

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

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

Support of legislation to fully amend Chapter 738, Principal and Income, in order to update and improve this Chapter.

2. Political Proposal

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.

Tax Law Section; Estate and Trust Tax Planning Committee, Trust Law Committee, IRA, Insurance and Employee Benefits Committee and Probate Law and Procedure Committee of 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 Blvd, 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

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(850) 999-4100

**PRINCIPAL AND INCOME COMMITTEE OF
THE REAL PROPERTY, PROBATE AND TRUST
LAW SECTION OF THE FLORIDA BAR
WHITE PAPER ON PROPOSED FLORIDA
UNIFORM FIDUCIARY INCOME AND
PRINCIPAL ACT (Chapter 738)**

I. SUMMARY

The proposed legislation updates Florida’s Uniform Principal and Income Act, which is 20 years old. The legislation generally follows the new Uniform Fiduciary Income and Principal Act in order to achieve greater consistency among state laws, but includes certain modifications that reflect Florida public policy choices.

II. CURRENT SITUATION

Florida adopted the Florida Uniform Principal and Income Act in 2002.¹ This Act was based upon the Revised Uniform Principal and Income Act (1997) with certain modifications. The National Conference of Commissioners on Uniform State Laws has adopted a new principal and income act, known as the Uniform Fiduciary Income and Principal Act (“UFIPA”), in order to adapt “to changes in the design and use of trusts.” Six states have enacted UFIPA, and all but three states have adopted a prior version of the Uniform Principal and Income Act.

**III. EFFECT OF PROPOSED CHANGES
(DETAILED ANALYSIS OF PROPOSED STATUTE)**

The proposed legislation updates the Florida Uniform Principal and Income Act, and its numbering is designed to correspond with UFIPA rather than with the current Florida Uniform Principal and Income Act. The Principal and Income Committee of the Real Property Probate and Trust Law Section made an effort, whenever possible, to adopt UFIPA language while still respecting public policy choices found in the existing statute. For ease of use, the statute will remain in Chapter 738. The existing statute is referred to as the “Current Statute”, and the proposed legislation is referred to as the “Proposed Statute”.

A. Section 738.102 Definitions

Similar to Current Statute §738.102, the definitions are applicable to the entire Chapter 738. However, the number and breadth of the definitions have increased to incorporate UFIPA terminology and concepts focused on allocations between income and principal as applied to wills, trusts, life estates and term interests.

Certain definitions remain substantially unchanged from current Florida law: accounting period, income, mandatory income interest, and person. Definitions for the terms court, estate,

¹ Over the years, Florida has enacted limited amendments to this Act.

personal representative, and record were added to mirror UFIPA but do not impact or change current policy in a meaningful way.

The following incorporate changes to the current definitions:

Beneficiary - the term distinguishes between current income beneficiaries (newly defined to include a beneficiary who may or must receive net income even while receiving principal) and current principal beneficiaries, as well as encompasses persons holding life estate or term interests.

Fiduciary - the term is broadened. It now applies to those with a power to direct, those under delegation of a fiduciary, those who hold property for a successor beneficiary who may be affected by principal/income allocations, as well as to those already considered in current law - the personal representative and trustee.

Income interest - defines an income interest as a right of a “current income beneficiary” and includes a current beneficiary’s use of property held by a fiduciary.

Net Income - enlarges the definition to include application to a unitrust and to include an income to principal adjustment.

Principal - changes the focus from that which is distributed to a remainder beneficiary to that either held for distribution to, for production of income for, or for use by, a current or successor beneficiary. Encompasses current income beneficiaries who receive principal distributions.

Terms of the Trust - broadens the current definition to extend to wills, life estates, and term interests. The proposed definition more closely follows the definition in the Florida Trust Code, §736.0103(24).

The following are newly added to define the meaning of the term:

Distribution - clarifies that a distribution is only a payment received by a person in the person’s capacity as beneficiary and does not apply to payments received for compensation or rent, etc.

Personal representative - broadly defines who can be considered to perform as a personal representative.

Record - incorporates changing technology in defining a record - can be tangible or electronic.

Settlor - clarifies that anyone who creates or contributes to a trust, including a testator, is a settlor.

Successive Interest – the interest of a successor beneficiary.

Successor beneficiary – the person entitled to income, principal, or use of property at the end of a current interest.

Trust - defines a trust by type, as well as by describing what is not a trust.

Trustee - clarifies that a trustee is not a personal representative.

Will - legally effective testamentary disposition and extends to include a codicil or amendment.

Certain definitions were added to further specific or appropriate federal income tax results:

Independent person - this definition was added for federal tax purposes and substantially mirrors the definition of “related or subordinate party” in Internal Revenue Code Section 672(c).

Special tax benefit - included to preserve identification of contributions qualifying for the annual gift tax exclusion, to preserve Qualified Subchapter S Trust status, to qualify a transfer to a trust for the federal marital tax deduction, and to provide generation skipping transfer tax exemption to a trust.

The following non-UFIPA definition is retained in Florida law:

Carrying Value - this definition from current Florida law was retained as part of the proposed law; however, it has been slightly revised to reference potential adjustments set forth in Florida Probate Rule 5.346. The fair market value of assets at the time the asset is received by the fiduciary is a concept necessary for other sections: Proposed Statute §738.401 (Character of Receipts), §738.410 (Liquidating Assets), and §738.602 (Distributions to Successor Beneficiary), and Florida Probate Rule 5.346 (Fiduciary Accounting). Section 738.104 Governing Law.

Current Law: No provision currently.

Effect of Proposed Changes: If the principal place of administration of a trust or estate or the situs of property not held in trust or an estate is Florida, the trustee is governed by this chapter - except as otherwise provided in the terms of the trust or elsewhere in this chapter.

B. Section 738.201 Fiduciary Duties; General Principles

Current Law: Current Statute §738.103 addresses fiduciary duties generally and sets forth general principles for allocating receipts and disbursements to or between principal and income, including that the terms of the trust or will control over the Current Statute, that receipts and disbursements are allocated to principal unless otherwise directed by the terms of the trust or the chapter, and that a fiduciary is to administer the trust or estate impartially, based on what is fair and reasonable to all beneficiaries (specifically referring to the exercise of the power to adjust under Current Statute §738.104). The Current Statute also includes a presumption that a determination made in accordance with the Current Statute is fair and reasonable to all beneficiaries. The Current Statute uses the defined terms “terms of a trust” and “will” to refer to and include application to estates, wills, and personal representatives, as well as trusts and trustees, except where the context otherwise requires. Current Statute §738.103 provides the Current Statute is applicable to any trust or estate administered in Florida.

Effect of Proposed Changes: Proposed Statute §738.201 has been renumbered from §738.103 to correspond to UFIPA §201 and substantially retains the concepts of existing law with

four exceptions: The newly defined term “terms of a trust” includes wills; there is added an express requirement that a fiduciary act in good faith (although the concept of good faith was found throughout the Current Statute); although not in UFIPA, the general principles for allocating receipts and disbursements now require a fiduciary to add undistributed income to principal within 65 days after the fiscal year end (unless otherwise provided in the terms of the trust); and Proposed Statute §738.201 now includes the list of factors currently set forth in Current Statute §738.104(2) (applicable in exercising the power to adjust) and makes those factors applicable to all fiduciary decisions under new Chapter 738, including the exercise of powers in administering a unitrust, not only the power to adjust.

Although restructured and streamlined, the fiduciary decision factors relocated from Current Statute §738.104(2) to Proposed Statute §738.201(5) are substantively the same as in the Current Statute with the following exceptions: In keeping with UFIPA, Proposed Statute §738.201’s list of factors to consider substitutes the objective “terms of the trust” for the subjective “intent of the grantor”; although omitted in UFIPA, Proposed Statute §738.201’s list of factors retains the Current Statute’s “identity and circumstances of the beneficiaries” as a factor to be considered in exercising fiduciary powers.

C. Section 738.202 Review of Exercise of Discretionary Power; Request for Instruction

Current Law: Current Statute §738.105 (entitled Judicial Control of Discretionary Powers) applies to a court’s review of a trustee’s exercise or non-exercise of any discretionary power under the Current Statute, and specifically applies to a decision to transfer principal to income or vice versa, and determining the relevancy and weight of the factors listed in Current Statute §738.104 to be considered by a trustee in exercising its discretion. The Current Statute expressly provides that a court may not determine a trustee abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion. If the court finds the trustee abused its discretion, the court is directed to take certain actions to restore the beneficiaries to the positions they would have occupied if the trustee had not abused its discretion, including distributing additional amounts from the trust, withholding future distributions, recovering over-distributed amounts, and payment from the trustee’s own funds (disgorgement). There is a mechanism for petitioning the court with respect to a proposed exercise or non-exercise of the trustee’s discretion and, if the petition alleges the statutorily required elements, places on a challenging beneficiary the burden of establishing that such exercise or non-exercise will result in an abuse of discretion. There is also a provision directing payment of the trustee’s costs and attorney’s fees from the trust in defending an action the court determines did not involve an abuse of discretion.

Effect of Proposed Changes: Proposed Statute §738.202 has been renumbered from §738.105 to correspond to UFIPA §202 and substantially retains the concepts of existing law with four exceptions: The Proposed Statute uses the term fiduciary instead of trustee and applies to all fiduciaries; the Proposed Statute defines “fiduciary decisions” expressly to include the fiduciary’s allocation between income and principal and the exercise or non-exercise of any power under the Proposed Statute, including the power to adjust and administering a unitrust; in keeping with UFIPA, the Proposed Statute omits as unnecessary the statement prohibiting the court from substituting its discretion for that of the fiduciary; upon finding a fiduciary abused its discretion, the remedies available to the court now also expressly include all remedies authorized by law, including those authorized in the Florida Trust Code Statute §736.1001 (remedies for breach of

trust) and §736.1002 (damages for breach of trust), as well as compelling a fiduciary to take any actions listed under Proposed Statute §738.401 (unitrust conversion).

Proposed Statute §738.202(3)(a)-(f) retains the express ordering rules of Current Statute §738.105(3)(a)-(c), including the express authorization for the court to order disgorgement by the fiduciary (a remedy which is omitted in UFIPA).

D. Section 738.203 Fiduciary's Power to Adjust

Current Law: Current Statute §738.104 authorizes a Trustee to adjust between income and principal only if certain conditions are present and only if, after considering certain enumerated factors, the Trustee determines the adjustment is necessary to administer the trust impartially, based on what is fair and reasonable to all beneficiaries, unless otherwise intended under the terms of the trust (referred to as a standard of impossibility); the Trustee is prohibited from exercising the power to adjust under circumstances in which an adverse tax result would occur (the result would deprive the trust of a tax benefit or impose a tax burden), including loss of the marital deduction, annual gift tax exclusion, annuity or unitrust treatment, and estate and gift tax exposure for the trustee. Current Statute §738.104 authorizes the release of all or part of the power to adjust permanently or for a specified period and expressly negates any inference of impropriety because the Trustee does not exercise the power to adjust. Current Statute §738.104 includes a transition rule with respect to trusts in existence on January 1, 2003.

Effect of Proposed Changes: Proposed Statute §738.203 applies to all fiduciaries (not just trustees), and eliminates the conditions required under the Current Statute and replaces the standard of impossibility with a standard of assistance, permitting the exercise of the power to adjust if the fiduciary determines the exercise will assist the fiduciary to administer the trust or estate impartially. The factors to be considered in making the decision have been moved from Current Statute §738.104 to Proposed Statute §738.201 (general principles applicable to all fiduciary decisions under the chapter, including the power to adjust). The Proposed Statute continues the prohibition against exercising the power to adjust when adverse consequences may result (adding S corporation disqualification, loss of generation skipping transfer tax exemption, and loss of public benefits as additional adverse consequences) and continues the transition rule for trusts in existence on January 1, 2003. Proposed Statute §738.203 authorizes the appointment of a co-fiduciary not subject to the prohibition rules (if none is then serving) to exercise the power to adjust.

The Proposed Statute provides for the delegation as well as the release of the power to adjust and includes the presumption that, unless otherwise provided, a release or delegation of the power to adjust is a release or delegation of the entire power and such a release or delegation is permanent. The Proposed Statute clarifies that the exercise of the power to adjust may apply to the immediately preceding period, current period, and one or more subsequent periods. The Proposed Statute includes new accountability procedures, requiring the exercise to be included in the annual accounting report or communicated at least annually to the trust's Qualified Beneficiaries (as that term is defined in the Florida Trust Code).

E. Overview of Proposed Statute §§738.301-738.310

Current Law: Current Statute §738.1041 specifically authorizes a unitrust and provides that the unitrust amount is considered to be the net income of the trust for purposes of

permitting or requiring income distributions to the trust's income beneficiary. Under the Current Statute, an income trust may be converted to a unitrust or a unitrust may be converted to an income trust. Further, a unitrust may be express (meaning that it was created as such by the Settlor).

Trusts intended to qualify under the Internal Revenue Code for the marital deduction, charitable deduction, and generation skipping tax exemption and certain other trusts must distribute all their "income". Treasury Regulations specifically permit a unitrust amount to substitute for net income if the requirements for unitrusts are authorized by state statute. The Treasury Regulations contain an example of standards that if met will qualify a unitrust interest as an income interest for tax purposes. Current Statute §738.1041 meets these "safe harbor" requirements.

The Revised Uniform Principal and Income Act (which was adopted in Florida with amendments) predated this unitrust Treasury Regulation and did not contain a unitrust statute. Many states, including Florida, have adopted their own unitrust statutes.

UFIPA includes a unitrust in Article 3.

Effect of Proposed Changes: Proposed Statute §§738.301-738.310 replace Current Statute §738.1041 and generally follow the order of UFIPA Article 3. However, these Article 3 provisions have been modified to stay within the safe harbor standards of the Treasury Regulations and to add some provisions from existing Florida law. The official comments to UFIPA acknowledge that many of its unitrust provisions exceed the safe harbor limits, and UFIPA §309(b) limits the application of its provisions to the safe harbor limits in the case of trusts qualifying for a "special tax benefit", such as trusts intended to qualify for the estate or gift tax marital deduction, exemption from generation-skipping transfer tax (GST tax), or as a subchapter S trust (QSST). These exclusions are buried in UFIPA at the end of Article 3 (in §309) which then must then be read in conjunction with the definitions section in UFIPA Article 1 at §102(19) to see the definition of a special needs trust. Further, this "special tax benefit trust" is defined in terms of United States Code sections which makes this provision difficult to understand. If, in the future, these safe harbor standards are relaxed by the Treasury Regulations, the new format of Proposed Statute §§738.301-738.310 will facilitate modification. In the meantime, Florida should not be the test case to depart from the safe harbor standards.

The safe harbor standards require that the unitrust be limited to the 3-5% unitrust range, and that a calendar year be used. Under the safe harbor standards, the unitrust amount must be based upon the net value of the unitrust assets determined annually or averaged on a multiple year basis. Current Statute §738.1041 permits averaging over 3 years, *i.e.*, the January 1 fair market value of the trust value for the current year, plus the January 1 value as the preceding two years. Further, under the safe harbor standards, express unitrusts must be specifically authorized by state statute. (Express unitrusts are those contained in the trust instrument itself.) Current Statute §738.1041(10) specifically authorizes express unitrusts within the safe harbor standards.

Since the Proposed Statute is based on UFIPA Article 3 as well as Current Statute §738.1041, changes from both UFIPA and from the Current Statute are noted.

F. Section 738.301 Definitions

Current Law: Current Statute §738.1041(a) includes definitions relevant to a

unitrust.

Effect of Proposed Changes: Proposed Statute §738.301 expands the definitions to include a definition of an “income trust” and “net fair market value of a trust”. The UFIPA definitions have been modified to use provisions from existing Florida law, as follows:

738.301(3) Definition of Income Trust

UFIPA §301(3) defines an income trust as a trust that is not a unitrust. By definition, that would include an annuity trust but for the exclusion in UFIPA §309(2)(b) for some trusts excluded by citation to complex Internal Revenue Code provisions. That complexity is unnecessary. The UFIPA definition has been modified in Proposed Statute §738.301(3) to use the Florida definition of an income trust from Current Statute §738.1041(1)(d). The existing Florida definition is more meaningful for those who may not be familiar with these Internal Revenue Code citations and the trusts they cover.

738.301(4) Definition of net fair market value of a trust.

The UFIPA §301(4) definition of net fair market value of a trust has been modified to net out “reasonably known” noncontingent liabilities of the trust as under present Florida law. With that change, it will be consistent with current Florida law.

G. Section 738.302 Application; Duties and Remedies

Current Law: Current Statute §738.1041 applies to the conversion of an income trust to a unitrust and to the reconversion of an income trust to a unitrust.

Effect of Proposed Changes: UFIPA §302(a) provides that the Unitrust Article 3 applies to an income trust and to an express unitrust. An express unitrust is one that has been created by the grantor of the trust. Thus, UFIPA does not expressly apply to a unitrust created by conversion from an income trust. However, other UFIPA provisions make it clear it was intended to apply to a converted unitrust as well. The Current Statute applies to an express unitrust, an income trust converted to a unitrust, and a unitrust converted (or reconverted) to an income trust.

Proposed Statute §738.302(1)(c) has been added to provide that §§738.301–738.310 additionally applies to a unitrust that has been *converted* from an income trust to make it consistent with current Florida law.

UFIPA §302(d) [Proposed Statute §738.302(4)] provides that the Unitrust provisions apply to estates in limited circumstances where the trust is a beneficiary of the estate. Note that the UFIPA §303 election by a fiduciary to convert an estate to a unitrust is a separate provision and is found in Proposed Statute §738.303. A fiduciary is defined in UFIPA §102(8) and includes a trustee and a personal representative as is applicable.

H. Section 738.303 Authority of Fiduciary

Current Law: Current Statute §738.1041(2) does not set forth an impartiality standard for a trustee in determining the unitrust rate, although it does require a disinterested trustee or other person to determine the unitrust rate.

Under the Current Statute, a beneficiary has 60 days to object to a conversion.

Effect of Proposed Changes: The notice provisions of UFIPA §303 are less stringent than existing Florida law. Proposed Statute §738.303 has been modified in Proposed Statute §738.303(2)(d) to be consistent with the stricter Florida provisions so that the beneficiaries to be notified include *all* of the qualified beneficiaries and requires certain status of at least one of each class of beneficiaries.

The notice period for objecting to a unitrust conversion has been changed in Proposed Statute §738.303(5) from the 90-day notice period of UFIPA to a 60-day notice period for objecting to a notice of Unitrust conversion as provided under the Current Statute §738.1041(2)(e).

I. Proposed Statute §738.304 includes substantially similar notice requirements to the notice requirements found in Current Statute §738.1041(2).

J. Section 738.305 Unitrust Policy

Current Law: Current Statute §738.1041(2)(a) provides that a trust converting to a unitrust, reconverting to an income trust or changing the percentage used to calculate the unitrust rate or the method used to determine fair market value must adopt a “written statement”.

Effect of Proposed Changes: UFIPA §305 describes only the mandatory provisions of a Unitrust Policy. UFIPA §309 permits the Unitrust Policy to contain more than the mandatory provisions. The provisions in UFIPA §309 that permit the Unitrust Policy to contain more than the mandatory provisions have been moved and are now in Proposed Statute §738.305(3) where they are more visible. Among the mandatory provisions that must be included in the Unitrust Policy are the unitrust rate (or the method for determining the rate) and the method for determining value. Value is determined under Proposed Statute §738.307.

K. Section 738.306 Unitrust Rate

Current Law: Current Statute §738.1041(2) requires a unitrust rate not greater than 5%, nor less than 3%. Further, if there is an interested trustee, the unitrust rate is determined based on 50% of the rate defined in Internal Revenue Code Section 7520 (the “7520 rate”), in effect for the month the conversion becomes effective and for each January thereafter; however, if 50% of the 7520 rate exceeds 5%, the unitrust percentage is 5% and if 50% of the 7520 rate is less than 3%, the unitrust percentage is 3%.

Effect of Proposed Changes: UFIPA §306 permits a wide range of unitrust rates using market indexes, other published data or a mathematical blend of rates over a stated number of periods. UFIPA has no limits except for Special Tax Benefit Trusts.

Proposed Statute §738.306 modifies the UFIPA provision to limit the unitrust rates so that the rate so determined will be not less than 3% nor more than 5% per annum, whether or not the trust is a Special Tax Benefit Trust. Additionally, Proposed Statute §738.306 adds a provision that determines the rate if the fiduciary is not an independent person. That rate is based on the 7520 rate in effect for the month the conversion becomes effective and for each January thereafter; however, if the 7520 rate exceeds 5%, the unitrust percentage is 5% and if the 7520 rate is less than 3%, the

unitrust percentage is 3%. UFIPA does not limit this determination by a disinterested trustee when the rate determined is between 3%-5%.

While UFIPA does not limit the rate if it is between 3% and 5%, there are nontax concerns when an interested person is a trustee. The conversion to a unitrust could be abusive in a high interest environment or a reconversion to an income trust could be abusive in a very low interest environment. As a result, Current Statute §738.1041(2) and the Proposed Statute limit the discretion by utilizing the 7520 rate if the fiduciary is not an independent person.

L. Section 738.307 Applicable Value

Current Law: Current Statute §738.1041(2)(b) permits a trustee to determine which assets, if any, are excluded in determining the unitrust amount and specifically excludes (i) any residential property or tangible personal property a beneficiary has the right to occupy or possess and control, (ii) any asset specifically devised and its income, and (iii) any assets while held in the decedent's estate.

Effect of Proposed Changes: Proposed Statute §738.307 modifies the UFIPA provision to permit assets to be excluded as set forth in Current Statute §738.1041(2)(b)2.b(I), (II) and (III), even if the trust is a Special Tax Benefit Trust or the trustee is an interested person. Specifically excluded are: (i) any residential property or tangible personal property a beneficiary has the right to occupy or possess and control, (ii) any asset specifically devised and its income, and (iii) any assets while held in the decedent's estate. The use of these assets in clause (i) by the beneficiary is tantamount to a life estate interest.

The UFIPA definition of value has been modified in Proposed Statute §738.307(3) to exclude from the value of a trust the value of certain assets while held in decedent's estate. Further, the interest given to a beneficiary in Proposed Statute §738.307(3)(a) is tantamount to a life estate and the value of a trust should not include specifically given property described in Proposed Statute §738.307(3)(b). These assets are excluded from value under Florida's present unitrust statute.

M. Proposed Statute §738.308 modifies the UFIPA provision to require the calendar year. If the unitrust is in effect for only a part of the calendar year, then the "unitrust year" is that part. This is consistent with Current Statute §738.1041(2).

N. Section 738.309 Express Unitrust

Current Law: Current Statute §738.1041(10) authorizes the creation of an express unitrust and provides parameters that are within the safe harbor limitations required by the Treasury Regulations under Internal Revenue Code Section 643.

Effect of Proposed Changes: UFIPA defined an express unitrust but did not specifically authorize it. There is a concern that merely defining an express unitrust may not provide the statutory authority required by the Treasury Regulations under Internal Revenue Code Section 643.

Proposed Statute §738.309 specifically authorizes an express unitrust and specifies parameters that meet the safe harbor standards. It permits unitrust distributions to exceed 5% but the excess over 5% is regarded as a principal distribution. The statute permits a trustee to convert a

unitrust to an income trust unless the express trust prohibits it. Proposed Statute §738.309 also contains provisions prioritizing the source of the distributions from an express unitrust (for income tax purposes) unless the grantor expressly provides otherwise.

O. Section 738.310 Other Rules

Current Law: Current Statute §738.1041(4)(b) authorizes the trustee to allocate capital gain to income following the conversion from an income trust to a unitrust for income tax purposes. (The Treasury Regulations under Internal Revenue Code Section 643 require statutory authority for such allocation.)

Effect of Proposed Changes: Proposed Statute §738.310 contains provisions prioritizing the source of the distributions for income tax purposes following the conversion of an income trust to a unitrust.

P. Section 738.401 Character of Receipts from Entity

Current Law: Current Statute §738.401 characterizes receipts from entities and deviates from the prior Revised Uniform Principal and Income Act by applying several Florida specific rules: (i) lookback rules (applying a portion of large receipts to income, at a rate of 3% per year), (ii) rules applicable to receipts from public entities, (iii) provisions regarding private (non-independent) trustees administering investment entities, (iv) treating as principal money received from a RIC or REIT if short-term capital gain within the entity, and (v) treating as income dividends elected to be reinvested by the fiduciary. Florida favors objective calculations in lieu of the exercise of fiduciary discretion.

Effect of Proposed Changes: The Florida specific rules are retained. However, the lookback rule is limited to three years, as the current unlimited lookback rule has presented difficulties to fiduciaries in administration. Proposed Statute §738.401 has been restructured to more closely match the overall organization of UFIPA and to promote uniformity among the states. UFIPA also includes additional details on certain concepts (chains of entities, distributions of tangible personal property, and qualifications on an entity's classification of its distribution) which have been incorporated into the Proposed Statute.

Q. Proposed Statute §§738.402-738.408 are substantially similar to Current Statute §§738.402-738.601.

R. Section 738.409 Deferred Compensation, Annuity, or Similar Payment

Current Law: Current Statute §738.602 characterizes receipts from deferred compensation accounts (such as IRAs), annuities, and other similar arrangements. The section determines "income of the fund" and compares such amount to payments actually received from the fund; the lesser of such amounts is allocated to income and the remainder is allocated to principal. The section allows the fiduciary to elect to determine income under traditional accounting principles or a calculation based on a percentage of assets. The section includes special rules for trusts qualifying for the marital deduction.

Effect of Proposed Changes: Proposed Statute §738.409 uses the more customary

term “internal income” in lieu of “income of the fund”. An accounting period concept has been added (generally expected to be a calendar year), helping to balance the allocation of intra-period receipts between income and principal. The Proposed Statute specifically authorizes fiduciaries to transfer assets from principal to income, as may be necessary to fully fund the internal income of the fund and distribute such income to the beneficiary.

S. Proposed Statute §738.410 is substantially similar to Current Statute §738.603.

T. Section 738.411 Minerals, Water, and Other Natural Resources

Current Law: Current Statute §738.604 allocates receipts 90% to principal and 10% to income.

Effect of Proposed Changes: The proposal, following UFIPA, migrates away from the 90/10 allocation and allows federal tax depletion rules to be used as a safe harbor.

U. Proposed Statute §738.412 is substantially similar to Current Statute §738.605.

V. Section 738.413 Marital Deduction Property Not Productive of Income.

Current Law: Current Statute §738.606 provides a safe harbor to ensure that a trust intending to qualify for the estate tax marital deduction allows the surviving spouse to make property productive of income (as required in a marital deduction trust). It also contemplates a unitrust conversion and Florida’s elective share laws.

Effect of Proposed Changes: Proposed Statute §738.413 retains current law and authorizes a surviving spouse to petition a court to make property productive using one of the options noted in the section and further provides that the section may be overridden as explicitly set forth in this Section.

W. Section 738.414 Derivative or Option

Current Law: Current Statute §738.607 allocates all amounts received from these instruments to principal.

Effect of Proposed Changes: The proposal, following UFIPA, employs an allocation 90% to principal and 10% to income.

X. Section 738.415 Asset Backed Security

Current Law: Current Statute §738.608 applies receipts in exchange for the trust’s or estate’s entire interests during a single accounting period to principal and applies all other receipts 90% to principal and 10% to income.

Effect of Proposed Changes: The proposal, following UFIPA, modifies the definition of an “asset backed security” to more closely align with the Securities and Exchange Commission definition and applies the 90/10 rule to all receipts.

Y. Section 738.416 Other Financial Instrument or Arrangement is a new section, intended to be a “catch-all” provision to allocate other types of financial arrangements; such arrangements are to be allocated in accordance with the 90% to principal and 10% to income rules used for derivatives, options, and asset-backed securities.

Z. Section 738.501 Disbursement from Income

Current Law: Current Statute directs one-half of certain compensation and expenses, but all of the ordinary expenses incurred in connection with trust property that primarily concerns the income interest, to be disbursed from income. However, there is no guidance with respect to a situation where there is insufficient income to disburse the amount charged. It appears the likely solution would be to borrow the deficit from principal. However, fiduciaries were left without guidance when addressing such an issue.

Effect of Proposed Changes: Proposed Statute §738.501 provides two changes. The words "To the extent income is sufficient" have been added to the end of Proposed Statute §738.501(1)(a) and (b) as well as Proposed Statute §738.501(3). This addition specifically addresses a situation where there is not enough income to disburse the full amount charged.

Additionally, in Proposed Statute §738.501(2), the fiduciary is granted the discretion to disburse the remaining amounts charged to income provided in Proposed Statute §738.501(a) and (b) to the extent (i) the fiduciary is an independent person and (ii) the disbursement would be in the interest of the beneficiaries. A fiduciary will utilize such discretion where, for example, there is an investment policy or overarching goal of preserving trust principal.

AA. Section 738.502 Disbursements from Principal

Current Law: The Current Statute does not address where there is insufficient income to account for the amount charged under Current Statute §738.701. Specifically, this section states the “remaining one-half” of the compensation and expense disbursements addressed in Current Statute §738.701(1) and (2) shall be disbursed from principal. Also, the Current Statute states the fiduciary shall disburse from principal: all of trustee’s compensation for preparing property for sale; payments on the principal of trust debt; and expenses of proceedings that primarily concerns trust principal.

Effect of Proposed Changes: The change to Proposed Statute §738.502 provides that principal shall be disbursed in an amount equal to the remaining balance of the compensation and expenses provided for in Proposed Statute §738.501(1)(a) and (b) as well as Proposed Statute §738.501(3).

Proposed Statute §738.502 allows the fiduciary to use income to disburse the balance of those amounts charged to income in Proposed Statute §738.501(1)(a) & (b) before principal is used.

Additionally, the proposed changes will keep Current Statute §738.702(1)(f) as Proposed Statute §738.502(1)(h). Taxes properly charged to principal referred to in Internal Revenue Code Sections 2056A(b)(1)(A) and 2601 are not imposed because of the death of a decedent and, therefore, would not be captured by the comparable UFIPA section.

Internal Revenue Code Section 2056A(b)(1)(A) imposes estate tax on a principal distribution from a Qualified Domestic Trust made before the death of the surviving spouse. This distribution is properly charged to principal but would not be included in UFIPA §502(1)(g), as this section specifically limits the included tax to one which is “imposed because of the death of a decedent.” As such, Current Statute §738.702(1)(f) is retained as Proposed Statute §738.502(1)(h) as this section does not limit the taxes to be included as those derived from the death of a decedent.

Internal Revenue Code Section 2601 imposes a generation-skipping transfer (“GST”) tax on all generation skipping transfers, including taxable distributions and taxable terminations. Internal Revenue Code Section 2621(b) indicates that the trust may pay the GST tax. When a principal distribution is subject to the GST tax, it is properly chargeable to principal. Further, when principal distributions are limited to a health, education, maintenance and support standard, the principal beneficiary would, by definition of the standard, not have extra cash to pay the GST tax due on the principal distribution. Therefore, it would be advisable for Internal Revenue Code Section 2621(b) to be utilized and, thus, the GST tax paid from trust principal. Again, this is not considered by UFIPA §502(1)(g), as this tax is not “imposed because of the death of a decedent.” As such, Current Statute §738.702(1)(f) is retained as Proposed Statute §738.502(1)(h) as this section does not limit the taxes to be included as those derived from the death of a decedent.

BB. Section 738.503 Transfer from Income to Principal for Depreciation

Current Law: Current Statute §738.703 allows a fiduciary to transfer a reasonable amount of the net cash receipts from a principal asset, subject to depreciation to principal. However, this is restricted against depreciation of property that is used, or made available to a beneficiary, during the administration of a decedent’s estate, or if the fiduciary is accounting for the business or other activity separately pursuant to Current Statute §738.403. Further, any amount of depreciation taken for an asset shall be presumed to be a reasonable amount of depreciation (“Florida Depreciation Safe Harbor”).

Effect of Proposed Changes: Proposed Statute §738.503 leaves this section relatively unchanged, with three exceptions. Proposed Statute §738.503(1) outlines the definition of depreciation. The Current Statute’s definition of depreciation was retained as it expresses numbers numerically instead of by words. However, the term “fixed asset” has been replaced with the term “tangible asset”, as the term has been adopted throughout Proposed Statute Chapter 738. Proposed Statute §738.503(2)(c)(1) also excludes depreciation for assets accounted for as a liquidating asset pursuant to new §738.410. Finally, the Florida Depreciation Safe Harbor has been excluded from Proposed Statute §738.503, based upon the Committee’s guiding principle to adopt UFIPA provisions unless there is a compelling reason to retain the Current Statute. No compelling reason was found. The result is to hold the fiduciary to a higher standard with regard to the amount of depreciation taken.

CC. Section 738.504 Reimbursement of Income from Principal

Current Law: Currently, Florida does not have a comparable section to UFIPA §504. As such, there is not a section allowing a fiduciary to reimburse principal from income.

Effect of Proposed Changes: Proposed Statute §738.503 allows a fiduciary to transfer an appropriate amount of principal to income in one or more accounting periods to either reimburse, or provide a reserve, in the following situations: when an amount is charged to principal

but paid from income because principal is illiquid; when a disbursement of income is made to prepare property for sale; and for any disbursement of principal specified in Proposed Statute §738.502(1).

DD. Section 738.505 Reimbursement of Principal from Income

Current Law: Current Statute §738.704 allows a fiduciary to transfer an appropriate amount of income to principal in one or more accounting periods to either reimburse or provide a reserve in the following situations: when an unusually large amount is charged to income but paid from principal; when disbursements are made to prepare property for rent; and for disbursements related to environmental matters. Further, if principal is found insufficient for the principal balance of payments due on mortgaged property or property with a security interest, income may be applied. This borrowing of income shall receive priority for reimbursement when principal cash becomes available. However, if the property has multiple successive income interests, no lien on the property is created when the income interest creating the principal deficiency ends.

Effects of Proposed Changes: Proposed Statute §738.505 adds §738.505(2)(b) back into the Proposed Statute as this was recently deleted per Florida Staff Analysis. This section allows fiduciaries to make an “appropriate” disbursement from income for the cost of a principal improvement or addition of a new asset, or to provide a reserve if this addition/construction is contemplated. Current Statute §738.704(4) has been divided into new Proposed Statute §§738.505(2)(b), 738.505(2)(d), and 738.505(3) as this simplifies the reading of the section. Also, Proposed Statute §738.505(3) clarifies that when a current income interest of a principal asset ends and a successive income interest remains, the fiduciary may continue to transfer those appropriate amounts from income to principal specified in this section.

EE. Section 738.506 Income Taxes

Current Law: With regard to income tax, Current Statute §738.705 states the fiduciary shall disburse from income those amounts allocated to income, and from principal those amounts allocated to principal. These same allocation rules shall be followed on the trust’s or estate’s share of an entity’s taxable income, except that principal shall be used to disburse amounts that exceed total receipts from the entity. However, pursuant to Current Statute §738.705(4), a fiduciary shall adjust income or principal receipts, pursuant to a given formula (“Formula”), to the extent the trust or estate’s income taxes are reduced, but not eliminated, due to a deduction for payments made to a beneficiary.

Effects of Proposed Changes: The proposed changes are mostly within Proposed Statute §738.505(4). The use of “but not eliminated” has been deleted, as this implies that if a distribution eliminates income taxes, an adjustment should not be made to income receipts. This would result in the opposite of the intention of this section. Further, the Formula outlining the amount distributable to a beneficiary has been deleted. A trust’s tax year usually ends on December 31st. On this date, the trust’s after-tax income will not be known in the following situations: when an Internal Revenue Code Section 643(g) election is made within 65 days after the close of the taxable year allowing a fiduciary to treat a payment of tax as made by the beneficiary; when an Internal Revenue Code Section 663(b) election is made within 65 days after the close of the taxable year to treat any distribution to a beneficiary within those 65 days as made on the last day of the previous tax year; and due to passthrough entities not having their accountings complete by year end. Proposed Statute §738.506(5) has been added in response to Florida Statute §738.08145(1)(a),

allowing for the fiduciary to reimburse the “owner” of a “grantor trust” for the income taxes paid. Proposed Statute §738.506(5) states that the income tax reimbursement shall be made proportionately from income and principal based upon the allocation of receipts from the entity, and principal to the extent the tax exceeds receipts.

FF. Section 738.507 Adjustment between Principal and Income because of Taxes

Current Law: Current Statute §738.706 states a fiduciary may adjust principal and income to offset the shifting of economic interests or tax benefits between income and remainder beneficiaries due to: elections and decisions made by a fiduciary; a tax imposed on the fiduciary or beneficiary due to a distribution from the estate or trust; or the taxable income of an entity owned by an estate or trust includable in the taxable income of the estate, trust or beneficiary. Further, when an estate tax marital deduction or charitable contribution deduction is reduced due to a fiduciary deducting an amount paid from principal for income tax purposes resulting in the amount of income tax paid by an estate, tax or trust decreasing, the income tax payor shall reimburse principal for the amount of tax not paid (“Deduction Adjustment”). However, this amount of reimbursement is limited to the extent the principal used would have qualified for the stated deduction.

Effects of Proposed Changes: The only change to the Current Statute is the addition of Proposed Statute §738.507(3), which specifies that a fiduciary that charges a beneficiary under the above-stated Deduction Adjustment may offset the charge by obtaining payment from the beneficiary, withholding future distributions to the beneficiary, or adopting another method or combination of methods.

GG. Section 738.508 Apportionment of Property Expenses between Tenant and Remainderman

Current Law: Current Statute §738.801 is entitled Apportionment of Expenses; Improvements. This section addresses the apportionment of property expenses between tenants and remainderman. The tenant shall be allocated: all ordinary expenses incurred in connection with the administration, management or preservation of property; recurring premiums on insurance covering loss of property or income; and expense relating to environmental matters attributable to use of property by the tenant. The remainderman shall be allocated: payments on the principal of the debt secured by the property, except if allocated to tenant; expenses of a proceeding that concerns primarily the title to the property and not the tenant’s estate; environmental matters not allocated to the tenant; and extraordinary repairs. Further, any improvement shall be borne by the tenant if the improvement is not reasonably expected to outlast the estate of tenant. If the improvement is to outlast the estate of tenant, the cost of the improvement is prorated between the tenant and remainderman, taking into consideration the expected duration of the improvement as well as the life expectancy of the tenant. Finally, the governing instrument of an estate or agreement of the parties may override this statute.

Effect of Proposed Changes: Current Statute §738.801 has been moved to Proposed Statute §738.508 and is now entitled Apportionment of Property Expenses Between Tenant and Remainderman. No substantive changes have been made to Proposed Statute §738.508.

HH. Proposed Statute §738.601 is substantially similar to Current Statute §738.201.

II. Section 738.602 Distribution to successor beneficiary --

Current Law: Current Statute §738.202 provides for the distribution of the net income among residuary and remainder beneficiaries. The Current Statute includes certain public policy choices in subparagraphs (2)(b) and (2)(c), relating to the use of fair market values in valuing distributions to a beneficiary, and in paragraphs (1) and (5), relating to the use of carrying values (as opposed to fair market values) in determining the allocation of net income.

Effect of Proposed Changes: Proposed Statute §738.602 retains these Florida public policy choices, which were not found in UFIPA.

JJ. Proposed Statute §§738.701 and 738.702 are substantially similar to Current Statute §§738.301 and 738.302.

KK. Section 738.703 Apportionment when income interest ends –

Current Law: Current Statute §738.303 provides for the apportionment of income after an income interest ends. The Current Statute provides for the proration of a untrust amount.

Effect of Proposed Change: The reference to a unitrust has been deleted as it is covered elsewhere in the Proposed Statute.

LL. Section 738.802 Relation to Electronic Signatures in Global and National Commerce Act –

Effect of Proposed Changes: Proposed Statute §738.802 is not found in the Current Statute. It will modify and limit the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, *et seq.* (except for Section 101(c) of that Act), but it does not authorize electronic delivery of any notices described in Section 103(b) of that Act.

MM. Section 738.804 Application –

Current Law: The Current Statute provides that Chapter 738 applies “to any receipt or expense received or incurred and any disbursement made after January 1, 2003,” by a trust or estate, whether established before or after January 1, 2003.

Effect of Proposed Change: Proposed Statute §738.804 provides that the new Chapter 738 will apply to any receipt or expense received or disbursed on or after January 1 of the year after enactment by any trust or estate, whether then in existence or established afterward.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposed legislation should not have a fiscal impact on state and local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Adoption of the proposed legislation would benefit members of the private sector by both creating greater consistency with the laws of other states and by updating principal and income

principles to reflect modern behavior.

VI. CONSTITUTIONAL ISSUES

It is not anticipated that this legislation will raise constitutional issues.

VII. OTHER INTERESTED PARTIES

In preparing this proposal, this committee worked closely with the Florida Bankers Association and the Florida Institute of CPAs. This committee has also consulted with the Tax Section of the Florida Bar and members of the Tax Section were members of this committee.

1 A bill to be entitled

2 An act relating to income and principal regarding
3 estates, trusts, and other fiduciary arrangements;
4 replacing provisions of law related to income and
5 principal; providing an effective date.

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

8 Section 1. Chapter 738, Florida Statutes is amended to
9 read:

10 738.101 Short title.—This chapter may be cited as the
11 “Florida Uniform Fiduciary Income and Principal Act.”

12 738.102 Definitions.—As used in this chapter, the
13 term:

14 (1) “Accounting period” means a calendar year unless a
15 fiduciary selects another period of 12 calendar months or
16 approximately 12 calendar months. The term includes a part
17 of a calendar year or another period of 12 calendar months
18 or approximately 12 calendar months which begins or ends
19 when an income interest ends.

20 (2) “Asset-backed security,” as provided in s.
21 738.415, means a security that is serviced primarily by the
22 cash flows of a discrete pool of fixed or revolving
23 receivables or other financial assets that by their terms
24 convert into cash within a finite time. The term includes
25 rights or other assets that ensure the servicing or timely

26 distribution of proceeds to the holder of the asset-backed
27 security. The term does not include an asset to which s.
28 738.401, s. 738.409, or s. 738.414 applies.

29 (3) "Beneficiary" includes:

30 (a) for a trust:

31 1. a current beneficiary, including a current income
32 beneficiary and a beneficiary that may receive only
33 principal;

34 2. a remainder beneficiary; and

35 3. any other successor beneficiary;

36 (b) for an estate, an heir, and a devisee; and

37 (c) for a life estate or term interest, a person that
38 holds a life estate, a term interest, or a remainder or
39 other interest following a life estate or term interest.

40 (4) "Carrying value" means the fair market value at
41 the time the assets are received by the fiduciary. For an
42 estate and for a trust described in s. 733.707(3) after the
43 grantor's death, the assets are considered received as of
44 the date of death. If there is a change in fiduciaries, a
45 majority of the continuing fiduciaries may elect to adjust
46 the carrying values to reflect the fair market value of the
47 assets at the beginning of their administration. If such
48 election is made, it must be reflected on the first
49 accounting filed after the election. For assets acquired
50 during the administration of the estate or trust, the

51 carrying value is equal to the acquisition costs of the
52 asset. Carrying value of assets should not be arbitrarily
53 "written up" or "written down." In some circumstances,
54 including but not limited to those described in ss. 738.410
55 and 738.602, carrying value may be adjusted with proper
56 disclosure to reflect changes in carrying value applied in
57 a consistent manner.

58 (5) "Court" means a circuit court of this state.

59 (6) "Current income beneficiary" means a beneficiary
60 to which a fiduciary may or must distribute net income,
61 whether or not the fiduciary also may distribute principal
62 to the beneficiary.

63 (7) "Distribution" means a payment or transfer by a
64 fiduciary to a beneficiary in the beneficiary's capacity as
65 a beneficiary, without consideration other than the
66 beneficiary's right to receive the payment or transfer
67 under the terms of the trust as defined in this s. 738.102,
68 will, life estate, or term interest. "Distribute",
69 "distributed", and "distributee" have corresponding
70 meanings.

71 (8) "Estate" means a decedent's estate. The term
72 includes the property of the decedent as the estate is
73 originally constituted and the property of the estate as it
74 exists at any time during administration.

75 (9) "Fiduciary" includes a trustee, trust director
76 determined under s. 736.0103, personal representative, and
77 person acting under a delegation from a fiduciary. The term
78 includes a person that holds property for a successor
79 beneficiary whose interest may be affected by an allocation
80 of receipts and expenditures between income and principal.
81 If there are two or more co-fiduciaries, the term includes
82 all co-fiduciaries acting under the terms of the trust and
83 applicable law.

84 (10) "Income" means money or other property a
85 fiduciary receives as current return from principal. The
86 term includes a part of receipts from a sale, exchange, or
87 liquidation of a principal asset, to the extent provided in
88 ss. 738.401-738.416.

89 (11) "Income interest" means the right of a current
90 income beneficiary to receive all or part of net income,
91 whether the terms of the trust require the net income to be
92 distributed or authorize the net income to be distributed
93 in the fiduciary's discretion. The term includes the right
94 of a current beneficiary to use property held by a
95 fiduciary.

96 (12) "Independent person" means a person that is not:

97 (a) for a trust:

98 1. a qualified beneficiary determined under s.

99 736.0103;

100 2. a settlor of the trust;

101 3. an individual whose legal obligation to support a
102 beneficiary may be satisfied by a distribution from the
103 trust; or

104 4. any trustee whom an interested distributee has the
105 power to remove and replace with a related or subordinate
106 party.

107 (b) for an estate, a beneficiary;

108 (c) a spouse, parent, brother, sister, or issue of an
109 individual described in paragraph (a) or (b);

110 (d) a corporation, partnership, limited liability
111 company, or other entity in which persons described in
112 paragraphs (a)-(c), in the aggregate, have voting control;
113 or

114 (e) an employee of a person described in paragraph
115 (a), (b), (c) or (d).

116 (13) "Internal Revenue Code" means the Internal
117 Revenue Code of 1986, as amended.

118 (14) "Mandatory income interest" means the right of a
119 current income beneficiary to receive net income that the
120 terms of the trust require the fiduciary to distribute.

121 (15) "Net income" means the total allocations during
122 an accounting period to income under the terms of a trust
123 and this chapter minus the disbursements during the period,
124 other than distributions, allocated to income under the

125 terms of the trust and this chapter. To the extent the
126 trust is a unitrust under ss. 738.301-738.310, the term
127 means the unitrust amount determined under ss. 738.301-
128 738.310. The term includes the amount of an adjustment from
129 principal to income under s. 738.203. The term does not
130 include the amount of an adjustment from income to
131 principal under s. 738.203.

132 (16) "Person" means an individual, estate, trust,
133 business or nonprofit entity, public corporation,
134 government or governmental subdivision, agency, or
135 instrumentality, or other legal entity.

136 (17) "Personal representative" means an executor,
137 administrator, successor personal representative, special
138 administrator, or person that performs substantially the
139 same function with respect to an estate under the law
140 governing the person's status.

141 (18) "Principal" means property held in trust for
142 distribution to, production of income for, or use by a
143 current or successor beneficiary.

144 (19) "Record" means information that is inscribed on a
145 tangible medium or that is stored in an electronic or other
146 medium and is retrievable in perceivable form.

147 (20) "Settlor" means a person, including a testator,
148 that creates or contributes property to a trust. If more
149 than one person creates or contributes property to a trust,

150 the term includes each person, to the extent of the trust
151 property attributable to that person's contribution, except
152 to the extent another person has the power to revoke or
153 withdraw that portion.

154 (21) "Special tax benefit" means:

155 (a) exclusion of a transfer to a trust from gifts
156 described in s. 2503(b) of the Internal Revenue Code
157 because of the qualification of an income interest in the
158 trust as a present interest in property;

159 (b) status as a qualified subchapter S trust described
160 in s. 1361(d) (3) of the Internal Revenue Code at a time the
161 trust holds stock of an S corporation described in s.
162 1361(a) (1) of the Internal Revenue Code;

163 (c) an estate or gift tax marital deduction for a
164 transfer to a trust under s. 2056 or s. 2523 of the
165 Internal Revenue Code which depends or depended in whole or
166 in part on the right of the settlor's spouse to receive the
167 net income of the trust;

168 (d) exemption in whole or in part of a trust from the
169 federal generation-skipping transfer tax imposed by s. 2601
170 of the Internal Revenue Code because the trust was
171 irrevocable on September 25, 1985, if there is any
172 possibility that:

173 1. a taxable distribution, as defined in s. 2612(b) of
174 the Internal Revenue Code could be made from the trust: or

175 2. a taxable termination, as defined in s. 2612(a) of
176 the Internal Revenue Code could occur with respect to the
177 trust; or

178 (e) an inclusion ratio, as defined in s. 2642(a) of
179 the Internal Revenue Code, of the trust which is less than
180 one, if there is any possibility that:

181 1. a taxable distribution, as defined in s. 2612(b) of
182 the Internal Revenue Code, could be made from the trust; or

183 2. a taxable termination, as defined in s. 2612(a) of
184 the Internal Revenue Code could occur with respect to the
185 trust.

186 (22) "Successive interest" means the interest of a
187 successor beneficiary.

188 (23) "Successor beneficiary" means a person entitled
189 to receive income or principal or to use property when an
190 income interest or other current interest ends.

191 (24) "Terms of a trust" means:

192 (a) except as otherwise provided in paragraph (b), the
193 manifestation of the settlor's intent regarding a trust's
194 provisions as:

195 1. expressed in the will or trust instrument; or
196 2. established by other evidence that would be
197 admissible in a judicial proceeding.

198 (b) the trust's provisions as established, determined,
199 or amended by:

200 1. a trustee or trust director in accordance with
201 applicable law;

202 2. court order; or

203 3. a nonjudicial settlement agreement under s.
204 736.0111.

205 (c) for an estate, a will; or

206 (d) for a life estate or term interest, the
207 corresponding manifestation of the rights of the
208 beneficiaries to the extent provided in s. 738.508.

209 (25) "Trust":

210 (a) includes:

211 1. an express trust, private or charitable, with
212 additions to the trust, wherever and however created; and

213 2. a trust created or determined by judgment or decree
214 under which the trust is to be administered in the manner
215 of an express trust; and

216 (b) does not include:

217 1. a constructive trust;

218 2. a resulting trust; conservatorship; custodial
219 arrangement under the Florida Uniform Transfers to Minors
220 Act; business trust providing for certificates to be issued
221 to beneficiaries; common trust fund; land trust under s.
222 689.071; trust created by the form of the account or by the
223 deposit agreement at a financial institution; voting trust;
224 security arrangement; liquidation trust; or trust for the

225 primary purpose of paying debts, dividends, interest,
226 salaries, wages, profits, pensions, retirement benefits, or
227 employee benefits of any kind; or

228 3. an arrangement under which a person is a nominee,
229 escrowee, or agent for another.

230 (26) "Trustee" means a person, other than a personal
231 representative, that owns or holds property for the benefit
232 of a beneficiary. The term includes an original,
233 additional, or successor trustee, whether or not appointed
234 or confirmed by a court.

235 (27) "Will" means any testamentary instrument
236 recognized by applicable law which makes a legally
237 effective disposition of an individual's property,
238 effective at the individual's death. The term includes a
239 codicil or other amendment to a testamentary instrument.

240 738.103 Scope.—Except as otherwise provided in the
241 terms of a trust or this chapter, this chapter applies to:

242 (1) a trust or estate; and

243 (2) a life estate or other term interest in which the
244 interest of one or more persons will be succeeded by the
245 interest of one or more other persons to the extent
246 provided in s. 738.508.

247 738.104 Governing law.—Except as otherwise provided in
248 the terms of a trust or this chapter, this chapter applies
249 when this state is the principal place of administration of

250 a trust or estate or the situs of property that is not held
251 in a trust or estate and is subject to a life estate or
252 other term interest described in s. 738.103(2). By
253 accepting the trusteeship of a trust having its principal
254 place of administration in this state or by moving the
255 principal place of administration of a trust to this state,
256 the trustee submits to the application of this chapter to
257 any matter within the scope of this chapter involving the
258 trust.

259 738.201 Fiduciary duties; general principles.—

260 (1) In making an allocation or determination or
261 exercising discretion under this chapter, a fiduciary
262 shall:

263 (a) act in good faith, based on what is fair and
264 reasonable to all beneficiaries;

265 (b) administer a trust or estate impartially, except
266 to the extent the terms of the trust manifest an intent
267 that the fiduciary shall or may favor one or more
268 beneficiaries;

269 (c) administer the trust or estate in accordance with
270 the terms of the trust, even if there is a different
271 provision in this chapter; and

272 (d) administer the trust or estate in accordance with
273 this chapter, except to the extent the terms of the trust

274 provide otherwise or authorize the fiduciary to determine
275 otherwise.

276 (2) A fiduciary's allocation, determination, or
277 exercise of discretion under this chapter is presumed to be
278 fair and reasonable to all beneficiaries. A fiduciary may
279 exercise a discretionary power of administration given to
280 the fiduciary by the terms of the trust, and an exercise of
281 the power that produces a result different from a result
282 required or permitted by this chapter does not create an
283 inference that the fiduciary abused the fiduciary's
284 discretion.

285 (3) A fiduciary shall:

286 (a) add a receipt to principal, to the extent neither
287 the terms of the trust nor this chapter allocates the
288 receipt between income and principal;

289 (b) charge a disbursement to principal, to the extent
290 neither the terms of the trust nor this chapter allocates
291 the disbursement between income and principal; and

292 (c) within 65 days after the fiscal year end, add any
293 undistributed income to principal, unless otherwise
294 provided by the terms of the trust.

295 (4) A fiduciary may exercise the power to adjust under
296 s. 738.203(1), convert an income trust to a unitrust under
297 ss. 738.301-738.310, change the percentage or method used
298 to calculate a unitrust amount under ss. 738.301-738.310,

299 or convert a unitrust to an income trust under ss. 738.301-
300 738.310, if the fiduciary determines the exercise of the
301 power will assist the fiduciary to administer the trust or
302 estate impartially.

303 (5) Factors the fiduciary must consider in making the
304 determination under subsection (4) include:

305 (a) the terms of the trust;

306 (b) the nature, distribution standards, and expected
307 duration of the trust;

308 (c) the effect of the allocation rules, including
309 specific adjustments between income and principal, under
310 ss. 738.301-738.416;

311 (d) the desirability of liquidity and regularity of
312 income;

313 (e) the desirability of the preservation and
314 appreciation of principal;

315 (f) the extent to which an asset is used or may be
316 used by a beneficiary;

317 (g) the increase or decrease in the value of principal
318 assets, reasonably determined by the fiduciary;

319 (h) whether and to what extent the terms of the trust
320 give the fiduciary power to accumulate income or invade
321 principal or prohibit the fiduciary from accumulating
322 income or invading principal;

323 (i) the extent to which the fiduciary has accumulated
324 income or invaded principal in preceding accounting
325 periods;

326 (j) the effect of current and reasonably expected
327 economic conditions;

328 (k) the reasonably expected tax consequences of the
329 exercise of the power; and

330 (l) the identity and circumstances of the
331 beneficiaries.

332 (6) Except as provided in ss. 738.301-738.310, this
333 chapter pertains to the administration of a trust and is
334 applicable to any trust that is administered in this state
335 or under its law. This chapter also applies to any estate
336 that is administered in this state unless the provision is
337 limited in application to a trustee, rather than a
338 fiduciary.

339 738.202. Judicial review of exercise of discretionary
340 power; request for instruction.—

341 (1) In this section, "fiduciary decision" means:

342 (a) a fiduciary's allocation between income and
343 principal or other determination regarding income and
344 principal required or authorized by the terms of the trust
345 or this chapter;

346 (b) the fiduciary's exercise or nonexercise of a
347 discretionary power regarding income and principal granted

348 by the terms of the trust or this chapter, including the
349 power to adjust under s. 738.203, convert an income trust
350 to a unitrust under ss. 738.301-738.310, change the
351 percentage or method used to calculate a unitrust amount
352 under ss. 738.301-738.310, convert a unitrust to an income
353 trust under ss. 738.301-738.310, or the method used to make
354 property productive of income under s. 738.413; or

355 (c) the fiduciary's implementation of a decision
356 described in paragraph (a) or (b).

357 (2) The court may not order a fiduciary to change a
358 fiduciary decision unless the court determines that the
359 fiduciary decision was an abuse of the fiduciary's
360 discretion. A court may not determine that a fiduciary
361 abused its discretion merely because the court would have
362 exercised the discretion in a different manner or would not
363 have exercised the discretion.

364 (3) If the court determines that a fiduciary decision
365 was an abuse of the fiduciary's discretion, the court may
366 order a remedy authorized by law, including s. 736.1001 and
367 s. 736.1002. Following such a determination by the court,
368 the remedy is to place the beneficiaries in the positions
369 the beneficiaries would have occupied if the fiduciary had
370 not abused its discretion, as follows:

371 (a) The court may order the fiduciary to exercise or
372 refrain from exercising the power to adjust under s.
373 738.203;

374 (b) The court may order the fiduciary to exercise or
375 refrain from exercising the power to convert an income
376 trust to a unitrust under ss. 738.301-738.310, change the
377 percentage or method used to calculate a unitrust amount
378 under ss. 738.301-738.310, or convert a unitrust to an
379 income trust under ss. 738.301-738.310;

380 (c) The court may compel the fiduciary to take any of
381 the actions listed under s. 738.413;

382 (d) To the extent the abuse of discretion has resulted
383 in no distribution to a beneficiary or a distribution that
384 is too small, the court shall require the fiduciary to
385 distribute from the trust to the beneficiary an amount the
386 court determines will restore the beneficiary, in whole or
387 in part, to his or her appropriate position;

388 (e) To the extent the abuse of discretion has resulted
389 in a distribution to a beneficiary that is too large, the
390 court shall restore the beneficiaries, the trust, or both,
391 in whole or in part, to their appropriate positions by
392 requiring the fiduciary to withhold an amount from one or
393 more future distributions to the beneficiary who received
394 the distribution that was too large or requiring that

395 beneficiary to return some or all of the distribution to
396 the trust; or

397 (f) To the extent the court is unable, after applying
398 paragraphs (a)-(e), to restore the beneficiaries or the
399 trust, or both, to the positions they would have occupied
400 if the fiduciary had not abused its discretion, the court
401 may require the fiduciary to pay an appropriate amount from
402 its own funds to one or more of the beneficiaries or the
403 trust or both.

404 (4) On petition by a fiduciary for instruction, the
405 court may determine whether a proposed fiduciary decision
406 will result in an abuse of the fiduciary's discretion. If
407 the petition describes the proposed decision, contains
408 sufficient information to inform the beneficiary of the
409 reasons for making the proposed decision and the facts on
410 which the fiduciary relies, and explains how the
411 beneficiary will be affected by the proposed decision, a
412 beneficiary that opposes the proposed decision has the
413 burden to establish that it will result in an abuse of the
414 fiduciary's discretion.

415 (5) If an action is instituted alleging an abuse of
416 discretion in the exercise or nonexercise of the
417 fiduciary's discretion under this chapter and the court
418 determines no abuse of discretion has occurred, the

419 fiduciary's costs and attorney's fees incurred in defending
420 the action shall be paid from the trust assets.

421 738.203 Fiduciary's power to adjust.—

422 (1) Except as otherwise provided in the terms of a
423 trust or this section, a fiduciary, in a record, without
424 court approval, may adjust between income and principal if
425 the fiduciary determines the exercise of the power to
426 adjust will assist the fiduciary to administer the trust or
427 estate impartially.

428 (2) This section does not create a duty to exercise or
429 consider the power to adjust under paragraph (1) or to
430 inform a beneficiary about the applicability of this
431 section.

432 (3) A fiduciary that in good faith exercises or fails
433 to exercise the power to adjust under subsection (1) is not
434 liable to a person affected by the exercise or failure to
435 exercise.

436 (4) In deciding whether and to what extent to exercise
437 the power to adjust under subsection (1), a fiduciary shall
438 consider all factors the fiduciary considers relevant,
439 including relevant factors in s. 738.201(5) and the
440 application of ss. 738.401(9), 738.408, and 738.413.

441 (5) A fiduciary may not exercise the power under
442 subsection (1) to make an adjustment or under s. 738.408 to

443 make a determination that an allocation is insubstantial
444 if:

445 (a) the adjustment or determination would reduce the
446 amount payable to a current income beneficiary from a trust
447 that qualifies for a special tax benefit, except to the
448 extent the adjustment is made to provide for a reasonable
449 apportionment of the total return of the trust between the
450 current income beneficiary and successor beneficiaries;

451 (b) the adjustment or determination would change the
452 amount payable to a beneficiary, as a fixed annuity or a
453 fixed fraction of the value of the trust assets, under the
454 terms of the trust;

455 (c) the adjustment or determination would reduce an
456 amount that is permanently set aside for a charitable
457 purpose under the terms of the trust, unless both income
458 and principal are set aside for the charitable purpose;

459 (d) possessing or exercising the power would cause a
460 person to be treated as the owner of all or part of the
461 trust for federal income tax purposes and the person would
462 not be treated as the owner if the fiduciary did not
463 possess the power to adjust;

464 (e) possessing or exercising the power would cause all
465 or part of the value of the trust assets to be included in
466 the gross estate of an individual for federal estate tax
467 purposes and the assets would not be included in the gross

468 estate of the individual if the fiduciary did not possess
469 the power to adjust;

470 (f) possessing or exercising the power would cause an
471 individual to be treated as making a gift for federal gift
472 tax purposes;

473 (g) the fiduciary is not an independent person;

474 (h) the trust is irrevocable and provides for income
475 to be paid to the settlor and possessing or exercising the
476 power would cause the adjusted principal or income to be
477 considered an available resource or available income under
478 a public-benefit program; or

479 (i) the trust is a unitrust under ss. 738.301-738.310.

480 (6) If paragraph (5) (d), (e), (f), or (g) applies to a
481 fiduciary:

482 (a) a co-fiduciary to which paragraph (5) (d)-(g) does
483 not apply may exercise the power to adjust, unless the
484 exercise of the power by the remaining co-fiduciary or co-
485 fiduciaries is not permitted by the terms of the trust or
486 law other than this chapter; or

487 (b) if there is no co-fiduciary to which paragraph
488 (5) (d)-(g) does not apply, the fiduciary may appoint a co-
489 fiduciary to which paragraph (5) (d)-(g) does not apply,
490 which may be a special fiduciary with limited powers, and
491 the appointed co-fiduciary may exercise the power to adjust
492 under subsection (1), unless the appointment of a co-

493 fiduciary or the exercise of the power by a co-fiduciary is
494 not permitted by the terms of the trust or law other than
495 this chapter.

496 (7) A fiduciary may release or delegate to a co-
497 fiduciary the power to adjust under subsection (1) if the
498 fiduciary determines that the fiduciary's possession or
499 exercise of the power will or may:

500 (a) cause a result described in paragraph (5) (a), (b),
501 (c), (d), (e), (f), or (h); or

502 (b) deprive the trust of a tax benefit or impose a tax
503 burden not described in paragraph (5) (a), (b), (c), (d),
504 (e), or (f).

505 (8) A fiduciary's release or delegation to a co-
506 fiduciary under subsection (7) of the power to adjust under
507 subsection (1):

508 (a) must be in a record;

509 (b) applies to the entire power, unless the release or
510 delegation provides a limitation, which may be a limitation
511 to the power to adjust:

512 (i) from income to principal;

513 (ii) from principal to income;

514 (iii) for specified property; or

515 (iv) in specified circumstances;

516 (c) for a delegation, may be modified by a re-
517 delegation under this subsection by the co-fiduciary to
518 which the delegation is made; and

519 (d) subject to paragraph (c), is permanent, unless the
520 release or delegation provides a specified period,
521 including a period measured by the life of an individual or
522 the lives of more than one individual.

523 (9) Terms of a trust that deny or limit the power to
524 adjust between income and principal do not affect the
525 application of this section, unless the terms of the trust
526 expressly deny or limit the power to adjust under
527 subsection (1).

528 (10) The exercise of the power to adjust under
529 paragraph (a) in any accounting period may apply to the
530 current period, the immediately preceding period, and one
531 or more subsequent periods.

532 (11) A description of the exercise of the power to
533 adjust under subsection (1) must be:

534 (a) included in a report, if any, sent to
535 beneficiaries under s. 736.0813; or

536 (b) communicated at least annually to the qualified
537 beneficiaries determined under s. 736.0103(19) other than
538 the Attorney General.

539 (12) With respect to a trust in existence on January
540 1, 2003:

541 (a) For purposes of this subsection and subsection
542 (13), the term:

543 1. "Eligible beneficiaries" means:

544 a. If at the time the determination is made there are
545 one or more beneficiaries described in s. 736.0103(19)(c),
546 the beneficiaries described in s. 736.0103(19)(a) and (c);
547 or

548 b. If there is no beneficiary described in s.
549 736.0103(19)(c), the beneficiaries described in s.
550 736.0103(19)(a) and (b).

551 2. "Super majority of the eligible beneficiaries"
552 means:

553 a. If at the time the determination is made there are
554 one or more beneficiaries described in s. 736.0103(19)(c),
555 at least two-thirds in interest of the beneficiaries
556 described in s. 736.0103(19)(a) or two-thirds in interest
557 of the beneficiaries described in s. 736.0103(19)(c), if
558 the interests of the beneficiaries are reasonably
559 ascertainable; otherwise, it means two-thirds in number of
560 either such class; or

561 b. If there is no beneficiary described in s.
562 736.0103(19)(c), at least two-thirds in interest of the
563 beneficiaries described in s. 736.0103(19)(a) or two-thirds
564 in interest of the beneficiaries described in s.
565 736.0103(19)(b), if the interests of the beneficiaries are

566 reasonably ascertainable, otherwise, two-thirds in number
567 of either such class.

568 (b) A fiduciary shall not have the power to adjust
569 under this section until the statement required in
570 subsection (14) is provided and either no objection is made
571 or any objection which is made has been terminated.

572 1. An objection is made if, within 60 days after the
573 date of the statement required in subsection (13), a super
574 majority of the eligible beneficiaries deliver to the
575 fiduciary a written objection to the application of this
576 section to such trust. An objection shall be deemed to be
577 delivered to the fiduciary on the date the objection is
578 mailed to the mailing address listed in the notice provided
579 in subsection (13).

580 2. An objection is terminated upon the earlier of the
581 receipt of consent from a super majority of eligible
582 beneficiaries of the class that made the objection, or the
583 resolution of the objection under paragraph (d).

584 (c) An objection or consent under this section may be
585 executed by a legal representative or natural guardian of a
586 beneficiary without the filing of any proceeding or
587 approval of any court.

588 (d) If an objection is delivered to the fiduciary,
589 then the fiduciary may petition the circuit court for an
590 order quashing the objection and vesting in such fiduciary

591 the power to adjust under this section. The burden will be
592 on the objecting beneficiaries to prove that the power to
593 adjust would be inequitable, illegal, or otherwise in
594 contravention of the grantor's intent. The court may award
595 costs and attorney's fees relating to the fiduciary's
596 petition in the same manner as in chancery actions. When
597 costs and attorney's fees are to be paid out of the trust,
598 the court may, in its discretion, direct from which part of
599 the trust they shall be paid.

600 (e) If no timely objection is made or if the fiduciary
601 is vested with the power to adjust by court order, the
602 fiduciary may thereafter exercise the power to adjust
603 without providing notice of its intent to do so unless, in
604 vesting the fiduciary with the power to adjust, the court
605 determines that unusual circumstances require otherwise.

606 (f)1. If a fiduciary makes a good faith effort to
607 comply with the notice provisions of subsection (13), but
608 fails to deliver notice to one or more beneficiaries
609 entitled to such notice, neither the validity of the notice
610 required under this subsection nor the fiduciary's power to
611 adjust under this section shall be affected until the
612 fiduciary has actual notice that one or more beneficiaries
613 entitled to notice were not notified. Until the fiduciary
614 has actual notice of the notice deficiency, the fiduciary

615 shall have all of the powers and protections granted a
616 fiduciary with the power to adjust under this chapter.

617 2. When the fiduciary has actual notice that one or
618 more beneficiaries entitled to notice under subsection (13)
619 were not notified, the fiduciary's power to adjust under
620 this section shall cease until all beneficiaries who are
621 entitled to such notice, including those who were
622 previously provided with such notice, are notified and
623 given the opportunity to object as provided for under this
624 subsection.

625 (g) The objection of a super majority of eligible
626 beneficiaries under this subsection shall be valid for a
627 period of 1 year after the date of the notice set forth in
628 subsection (13). Upon expiration of the objection, the
629 fiduciary may thereafter give a new notice under subsection
630 (13).

631 (h) Nothing in this section is intended to create or
632 imply a duty of the fiduciary of a trust existing on
633 January 1, 2003, to seek a power to adjust under this
634 subsection or to give the notice described in subsection
635 (13) if the fiduciary does not desire to have a power to
636 adjust under this section, and no inference of impropriety
637 shall be made as the result of a fiduciary not seeking a
638 power to adjust under this subsection.

639 (13) (a) A fiduciary of a trust in existence on
640 January 1, 2003, that is not prohibited under subsection
641 (5) from exercising the power to adjust shall, any time
642 prior to initially exercising the power, provide to all
643 eligible beneficiaries a statement containing the
644 following:

645 1. The name, telephone number, street address, and
646 mailing address of the fiduciary and of any person that may
647 be contacted for further information;

648 2. A notice that unless a super majority of the
649 eligible beneficiaries objects to the application of this
650 section to the trust within 60 days after the date the
651 statement was served, this section shall apply to the
652 trust; and

653 3. A notice that, if this section applies to the
654 trust, the fiduciary will have the power to adjust between
655 income and principal and that such a power may have an
656 effect on the distributions to such beneficiary from the
657 trust.

658 (b) The statement may contain information regarding a
659 fiduciary's obligation with respect to the power to adjust
660 between income and principal under this section.

661 (c) The statement shall be served informally, in the
662 manner provided in the Florida Rules of Civil Procedure
663 relating to service of pleadings subsequent to the initial

664 pleading. The statement may be served on a legal
665 representative or natural guardian of a beneficiary without
666 the filing of any proceeding or approval of any court.

667 (14) A trust exists on January 1, 2003, if it is not
668 revocable on January 1, 2003. A trust is revocable if
669 revocable by the grantor alone or in conjunction with any
670 other person. A trust is not revocable for purposes of this
671 section if revocable by the grantor only with the consent
672 of all persons having a beneficial interest in the
673 property.

674 738.301 Definitions.—For purposes of ss. 738.301-
675 738.310:

676 (1) "Applicable value" means the amount of the net
677 fair market value of a trust taken into account under s.
678 738.307.

679 (2) "Express unitrust" means a trust for which, under
680 the terms of the trust without regard to ss. 738.301-
681 738.310, net income must be calculated as a unitrust
682 amount.

683 (3) "Income trust" means a trust, created by an
684 intervivos or a testamentary instrument, which directs or
685 permits the trustee to distribute the net income of the
686 trust to one or more persons, in fixed proportions or in
687 amounts or proportions determined by the trustee and
688 regardless of whether the trust directs or permits the

689 trustee to distribute the principal of the trust to one or
690 more such persons.

691 (4) "Net fair market value of a trust" means the fair
692 market value of the assets of the trust, less the
693 reasonably known noncontingent liabilities of the trust.

694 (5) "Unitrust" means a trust for which net income is a
695 unitrust amount. The term includes an express unitrust.

696 (6) "Unitrust amount" means an amount computed by
697 multiplying a determined value of a trust by a determined
698 percentage. For a unitrust administered under a unitrust
699 policy, the term means the applicable value, multiplied by
700 the unitrust rate.

701 (7) "Unitrust policy" means a policy described in ss.
702 738.305-738.310 and adopted under s. 738.303.

703 (8) "Unitrust rate" means the rate used to compute the
704 unitrust amount under subsection (6) for a unitrust
705 administered under a unitrust policy.

706 738.302 Application; duties and remedies.—

707 (1) Except as otherwise provided in subsection (2),
708 ss. 738.301-738.310 applies to:

709 (a) an income trust, unless the terms of the trust
710 expressly prohibit use of ss. 738.301-738.310 by a specific
711 reference to this paragraph or corresponding provision of
712 prior law, or an explicit expression of intent that net
713 income not be calculated as a unitrust amount; and

714 (b) an express unitrust, except to the extent the
715 terms of the trust explicitly:

716 1. prohibit use of ss. 738.301-738.310 by a specific
717 reference to this paragraph or corresponding provision of
718 prior law;

719 2. prohibit conversion to an income trust; or

720 3. limit changes to the method of calculating the
721 unitrust amount; and

722 (c) a unitrust that had been converted from an income
723 trust.

724 (2) The provisions of ss. 738.301-738.310 do not apply
725 to a trust described in s. 170(f)(2)(B), 642(c)(5), 664(d),
726 2702(a)(3)(A)(ii) or (iii), or 2702(b) of the Internal
727 Revenue Code.

728 (3) An income trust to which ss. 738.301-738.310
729 applies under subsection (1)(a) may be converted to a
730 unitrust under ss. 738.301-738.310 regardless of the terms
731 of the trust concerning distributions. Conversion to a
732 unitrust under ss. 738.301-738.310 does not affect other
733 terms of the trust concerning distributions of income or
734 principal.

735 (4) The provisions of ss. 738.301-738.310 apply to an
736 estate only to the extent a trust is a beneficiary of the
737 estate. To the extent of the trust's interest in the
738 estate, the estate may be administered as a unitrust, the

739 administration of the estate as a unitrust may be
740 discontinued, or the percentage or method used to calculate
741 the unitrust amount may be changed, in the same manner as
742 for a trust under ss. 738.301-738.310.

743 (5) The provisions of ss. 738.301-738.310 do not
744 create a duty to take or consider action under ss. 738.301-
745 738.310 or to inform a beneficiary about the applicability
746 of ss. 738.301-738.310.

747 (6) A fiduciary that in good faith takes or fails to
748 take an action under ss. 738.301-738.310 is not liable to a
749 person affected by the action or inaction.

750 738.303 Authority of fiduciary.—

751 (1) A fiduciary, without court approval, by complying
752 with subsections (2) and (6), may:

753 (a) convert an income trust to a unitrust if the
754 fiduciary adopts in a record a unitrust policy for the
755 trust providing:

756 1. that in administering the trust the net income of
757 the trust will be a unitrust amount rather than net income
758 determined without regard to ss. 738.301-738.310; and

759 2. the percentage and method used to calculate the
760 unitrust amount;

761 (b) change the percentage or method used to calculate
762 a unitrust amount for a unitrust if the fiduciary adopts in
763 a record a unitrust policy or an amendment or replacement

764 of a unitrust policy providing changes in the percentage or
765 method used to calculate the unitrust amount; or

766 (c) convert a unitrust to an income trust if the
767 fiduciary adopts in a record a determination that, in
768 administering the trust, the net income of the trust will
769 be net income determined without regard to ss. 738.301-
770 738.310 rather than a unitrust amount.

771 (2) A fiduciary may take an action under subsection
772 (1) if:

773 (a) the fiduciary determines that the action will
774 assist the fiduciary to administer a trust impartially;

775 (b) the fiduciary sends a notice in a record, to the
776 qualified beneficiaries determined under ss. 736.0103 and
777 736.0110 in the manner required by s. 738.304, describing
778 and proposing to take the action;

779 (c) the fiduciary sends a copy of the notice under
780 paragraph (b) to each settlor of the trust which is:

- 781 1. if an individual, living; or
- 782 2. if not an individual, in existence;

783 (d) at least one member of each class of the qualified
784 beneficiaries determined under ss. 736.0103 and 736.0110,
785 other than the Attorney General, receiving the notice under
786 paragraph (b) is:

- 787 1. if an individual, legally competent; or
- 788 2. if not an individual, in existence; or

789 3. represented in the manner provided in s.
790 738.304(2); and

791 (e) the fiduciary does not receive, by the date
792 specified in the notice under s. 738.304(4) (e) an objection
793 in a record to the action proposed under paragraph (b) from
794 a person to which the notice under paragraph (b) is sent.

795 (3) If a fiduciary receives, not later than the date
796 stated in the notice under s. 738.304(4) (e), an objection
797 in a record described in s. 738.304(4) (d) to a proposed
798 action, the fiduciary or a beneficiary may request the
799 court to have the proposed action taken as proposed, taken
800 with modifications, or prevented. A person described in s.
801 738.304(1) may oppose the proposed action in the proceeding
802 under this subsection, whether or not the person:

803 (a) consented under s. 738.304(3); or
804 (b) objected under s. 738.304(4) (d).

805 (4) If, after sending a notice under subsection
806 (2) (b), a fiduciary decides not to take the action proposed
807 in the notice, the fiduciary shall notify in a record each
808 person described in s. 738.304(1) of the decision not to
809 take the action and the reasons for the decision.

810 (5) If a beneficiary requests in a record that a
811 fiduciary take an action described in subsection (a) and
812 the fiduciary declines to act or does not act within 60
813 days after receiving the request, the beneficiary may

814 request the court to direct the fiduciary to take the
815 action requested.

816 (6) In deciding whether and how to take an action
817 authorized by subsection (1), or whether and how to respond
818 to a request by a beneficiary under subsection (5), a
819 fiduciary shall consider all factors relevant to the trust
820 and the beneficiaries, including relevant factors in s.
821 738.201(5).

822 (7) A fiduciary may release or delegate the power to
823 convert an income trust to a unitrust under paragraph
824 (1)(a), change the percentage or method used to calculate a
825 unitrust amount under paragraph (1)(b), or convert a
826 unitrust to an income trust under paragraph (1)(c), for a
827 reason described in s. 738.203(7) and in the manner
828 described in s. 735.203(8).

829 738.304 Notice.—

830 (1) A notice required by s. 738.303(2)(b) must be sent
831 in a manner authorized under s. 736.0109 to:

832 (a) the qualified beneficiaries determined under s.
833 736.0103, other than the Attorney General; and

834 (b) each person that is granted a power over the trust
835 by the terms of the trust, to the extent the power is
836 exercisable when the person is not then serving as a
837 trustee:

838 1. including a:

839 a. power over the investment, management, or
840 distribution of trust property or other matters of trust
841 administration; and

842 b. power to appoint or remove a trustee or person
843 described in this paragraph; and

844 2. excluding a:

845 a. power of appointment;

846 b. power of a beneficiary over the trust, to the
847 extent the exercise or nonexercise of the power affects the
848 beneficial interest of the beneficiary or another
849 beneficiary represented by the beneficiary under ss.
850 736.0301-736.0306 with respect to the exercise or
851 nonexercise of the power; and

852 c. power over the trust if the terms of the trust
853 provide that the power is held in a nonfiduciary capacity
854 and the power must be held in a nonfiduciary capacity to
855 achieve a tax objective under the Internal Revenue Code;
856 and

857 (c) each person that is granted a power by the terms
858 of the trust to appoint or remove a trustee or person
859 described in paragraph (b), to the extent the power is
860 exercisable when the person that exercises the power is not
861 then serving as a trustee or person described in paragraph
862 (b).

863 (2) The representation provisions of ss. 736.0301-
864 736.0306 apply to notice under this section.

865 (3) A person may consent in a record at any time to
866 action proposed under s. 738.303(2)(b). A notice required
867 by s. 738.303(2)(b) need not be sent to a person that
868 consents under this subsection.

869 (4) A notice required by s. 738.303(2)(b) must
870 include:

871 (a) the action proposed under s. 738.303(2)(b);

872 (b) for a conversion of an income trust to a unitrust,
873 a copy of the unitrust policy adopted under s.
874 738.303(1)(a);

875 (c) for a change in the percentage or method used to
876 calculate the unitrust amount, a copy of the unitrust
877 policy or amendment or replacement of the unitrust policy
878 adopted under s. 738.303(1)(b);

879 (d) a statement that the person to which the notice is
880 sent may object to the proposed action by stating in a
881 record the basis for the objection and sending or
882 delivering the record to the fiduciary;

883 (e) the date by which an objection under paragraph (d)
884 must be received by the fiduciary, which must be at least
885 30 days after the date the notice is sent;

886 (f) the date on which the action is proposed to be
887 taken and the date on which the action is proposed to take
888 effect;

889 (g) the name and contact information of the fiduciary;
890 and

891 (h) the name and contact information of a person that
892 may be contacted for additional information.

893 738.305 Unitrust policy.—

894 (1) In administering a unitrust under ss. 738.301-
895 738.310, a fiduciary shall follow a unitrust policy adopted
896 under s. 738.303(1) (a) or (b) or amended or replaced under
897 s. 738.303(1) (b).

898 (2) A unitrust policy must provide:

899 (a) the unitrust rate or the method for determining
900 the unitrust rate under s. 738.306;

901 (b) the method for determining the applicable value
902 under s. 738.307; and

903 (c) the rules described in ss. 738.306-738.310 which
904 apply in the administration of the unitrust, whether the
905 rules are:

906 1. mandatory, as provided in ss. 738.307(1),
907 738.307(3), 737.308(1), and 738.310; or

908 2. optional, as provided in ss. 738.306, 738.307(2),
909 and 738.308(2), to the extent the fiduciary elects to adopt
910 those rules.

- 911 (3) A unitrust policy may:
- 912 (a) provide methods and standards for:
- 913 1. determining the timing of distributions;
- 914 2. making distributions in cash or in kind or partly
- 915 in cash and partly in kind; or
- 916 3. correcting an underpayment or overpayment to a
- 917 beneficiary based on the unitrust amount if there is an
- 918 error in calculating the unitrust amount;
- 919 (b) specify sources and the order of sources,
- 920 including categories of income for federal income tax
- 921 purposes, from which distributions of a unitrust amount are
- 922 paid; or
- 923 (c) provide other standards and rules the fiduciary
- 924 determines serve the interests of the beneficiaries.
- 925 738.306 Unitrust rate.—
- 926 (1) A unitrust rate must be at least 3 percent and not
- 927 more than 5 percent. Within those limits, the unitrust rate
- 928 may be:
- 929 (a) a fixed unitrust rate; or
- 930 (b) a unitrust rate that is determined for each period
- 931 using:
- 932 1. a market index or other published data; or
- 933 2. a mathematical blend of market indices or other
- 934 published data over a stated number of preceding periods.

935 3. If the rate calculated under this paragraph (b)
936 would be less than three, the rate shall be three and if
937 the rate calculated would be more than five the rate shall
938 be five.

939 (2) Within the limits of subsection (1) a unitrust
940 policy may provide:

941 (a) a limit on how much the unitrust rate determined
942 under paragraph (1)(b) may increase over the unitrust rate
943 for the preceding period or a mathematical blend of
944 unitrust rates over a stated number of preceding periods;

945 (b) a limit on how much the unitrust rate determined
946 under paragraph (1)(b) may decrease below the unitrust rate
947 for the preceding period or a mathematical blend of
948 unitrust rates over a stated number of preceding periods;
949 or

950 (c) a mathematical blend of any of the unitrust rates
951 determined under paragraph (1)(b) and paragraphs (a) and
952 (b).

953 (3) If the fiduciary is not an independent person, the
954 percentage used to calculate the unitrust amount is the
955 rate determined under s. 7520(a)(2) of the Internal Revenue
956 Code in effect for the month the conversion under this
957 section becomes effective and for each January thereafter;
958 however, if the rate determined under s. 7520(a)(2) exceeds
959 5 percent, the unitrust rate is 5 percent and if the rate

960 determined under s. 7520(a)(2) is less than 3 percent, the
961 unitrust rate is 3 percent.

962 738.307 Applicable value.—

963 (1) A unitrust policy must provide the method for
964 determining the fair market value of an asset for the
965 purpose of determining the unitrust amount, including:

966 (a) the frequency of valuing the asset, which need not
967 require a valuation in every period; and

968 (b) the date for valuing the asset in each period in
969 which the asset is valued.

970 (2) Except as otherwise provided in s. 738.309, a
971 unitrust policy may provide methods for determining the
972 amount of the net fair market value of the trust to take
973 into account in determining the applicable value,
974 including:

975 (a) obtaining an appraisal of an asset for which fair
976 market value is not readily available;

977 (b) exclusion of specific assets or groups or types of
978 assets in addition to those described in subsection (3);

979 (c) other exceptions or modifications of the treatment
980 of specific assets or groups or types of assets.

981 (d) identification and treatment of cash or property
982 held for distribution;

983 (e) use of an average of fair market values over a
984 stated number of preceding periods, not to exceed three
985 calendar years; or

986 (f) determining the reasonably known liabilities of
987 the trust, including treatment of liabilities to conform
988 with the treatment of assets under paragraphs (a)-(e).

989 (3) The following property shall not be included in
990 determining the value of the trust:

991 (a) Any residential property or any tangible personal
992 property that, as of the first business day of the current
993 valuation year, one or more current beneficiaries of the
994 trust have or have had the right to occupy, or have or have
995 had the right to possess or control, other than in his or
996 her capacity as trustee of the trust, and instead the right
997 of occupancy or the right to possession and control is the
998 unitrust amount with respect to such property; however, the
999 unitrust amount must be adjusted to take into account
1000 partial distributions from or receipt into the trust of
1001 such property during the valuation year;

1002 (b) Any asset specifically given to a beneficiary and
1003 the return on investment on such property, which return on
1004 investment shall be distributable to the beneficiary; and

1005 (c) Any asset while held in an estate;

1006 738.308 Period.—

1007 (1) A unitrust policy must provide the period used
1008 under ss. 738.306-738.307. The period must be the calendar
1009 year.

1010 (2) A unitrust policy may provide standards for:

1011 (a) using fewer preceding periods under s.

1012 738.306(1)(b)2. or (2)(a) or (b) if:

1013 1. the trust was not in existence in a preceding
1014 period; or

1015 2. market indices or other published data are not
1016 available for a preceding period;

1017 (b) using fewer preceding periods under s.

1018 738.307(2)(e) if:

1019 1. the trust was not in existence in a preceding
1020 period; or

1021 2. fair market values are not available for a
1022 preceding period; and

1023 (c) prorating the unitrust amount on a daily basis for
1024 a part of a period in which the trust or the administration
1025 of the trust as a unitrust or the interest of any
1026 beneficiary commences or terminates.

1027 738.309 Express Unitrust.-

1028 (1) This section applies to a trust that, by its
1029 governing instrument, requires or permits income or net
1030 income to be calculated as a unitrust amount.

1031 (2) The trustee of an express unitrust may determine
1032 the unitrust amount by reference to the net fair market
1033 value of the unitrust's assets in one or more years.

1034 (3) Distribution of a unitrust amount is considered a
1035 distribution of all of the net income of an express
1036 unitrust and is considered to be an income interest.

1037 (4) The unitrust amount is considered to be a
1038 reasonable apportionment of the total return of an express
1039 unitrust.

1040 (5) An express unitrust that provides or permits a
1041 distribution based on a unitrust rate in excess of five
1042 percent of the net fair market value of the unitrust assets
1043 a year is considered a distribution of all of the income of
1044 the unitrust and a distribution of principal of the
1045 unitrust to the extent that the distribution exceeds five
1046 percent a year.

1047 (6) An express unitrust may or may not provide a
1048 mechanism for changing the unitrust rate similar to the
1049 mechanism provided under s. 738.306, based upon the factors
1050 noted therein, and may or may not provide for a conversion
1051 from a unitrust to an income trust and/or a reconversion of
1052 an income trust to a unitrust under s. 738.303.

1053 (7) If an express unitrust does not specifically or by
1054 reference to s. 738.306 deny a power to change the unitrust

1055 rate or to convert to an income trust under s. 738.303,
1056 then the trustee shall have such power.

1057 (8) The governing instrument of an express unitrust
1058 may grant discretion to the trustee to adopt a consistent
1059 practice of treating capital gains as part of the unitrust
1060 amount to the extent that the unitrust amount exceeds the
1061 income determined as if the trust were not an express
1062 unitrust, or the governing instrument may specify the
1063 ordering of classes of income.

1064 (9) Unless the terms of the express unitrust
1065 specifically provide otherwise as provided in subsection
1066 (8), the distribution of a unitrust amount is considered a
1067 distribution made from the following sources, which are
1068 listed in order of priority:

1069 (a) net accounting income determined under this
1070 chapter as if the trust were not a unitrust;

1071 (b) ordinary income not allocable to net accounting
1072 income;

1073 (c) net realized short-term capital gains;

1074 (d) net realized long-term capital gains; and

1075 (e) the principal of the trust.

1076 (10) The governing instrument of an express unitrust
1077 may provide that the trustee may exclude assets used by the
1078 unitrust's beneficiary, including but not limited to a
1079 residence property or tangible personal property, from the

1080 net fair market value of the unitrust's assets for the
1081 purposes of computing the unitrust amount. The use of these
1082 assets may be considered equivalent to income or to the
1083 unitrust amount.

1084 738.310 Other rules.—

1085 (1) Following the conversion of an income trust to a
1086 unitrust, the trustee shall consider the unitrust amount as
1087 paid from the following sources, which are listed in order
1088 of priority:

1089 (a) net accounting income determined under this
1090 chapter as if the trust were not a unitrust;

1091 (b) ordinary income not allocable to net accounting
1092 income;

1093 (c) net realized short-term capital gains;

1094 (d) net realized long-term capital gains; and

1095 (e) the principal of the trust.

1096 738.401 Character of receipts from entity.—

1097 (1) As used in this section, the term:

1098 (a) "Capital distribution" means an entity
1099 distribution of money which is a:

1100 1. return of capital; or

1101 2. distribution in total or partial liquidation of the
1102 entity.

1103 (b) "Entity":

1104 1. means a corporation, partnership, limited liability
1105 company, regulated investment company, real estate
1106 investment trust, common trust fund, or any other
1107 organization or arrangement in which a fiduciary owns or
1108 holds an interest, whether or not the entity is a taxpayer
1109 for federal income tax purposes; and

1110 2. does not include:

1111 a. a trust or estate to which s. 738.402 applies;

1112 b. a business or other activity to which s. 738.403
1113 applies which is not conducted by an entity described in
1114 subparagraph 1.;

1115 c. an asset-backed security; or

1116 d. an instrument or arrangement to which s. 738.416
1117 applies.

1118 (c) "Entity distribution" means a payment or transfer
1119 by an entity made to a person in the person's capacity as
1120 an owner or holder of an interest in the entity.

1121 (d) "Lookback period" means the current accounting
1122 period and the preceding two accounting periods or, if
1123 less, the number of accounting periods (or portion of
1124 accounting periods) that the interest in the entity has
1125 been held by the fiduciary.

1126 (2) In this section, an attribute or action of an
1127 entity includes an attribute or action of any other entity

1128 in which the entity owns or holds an interest, including an
1129 interest owned or held indirectly through another entity.

1130 (3) Except as otherwise provided in paragraph (4) (b)-
1131 (d), a fiduciary shall allocate to income:

1132 (a) money received in an entity distribution; and

1133 (b) tangible personal property of nominal value
1134 received from the entity.

1135 (4) A fiduciary shall allocate to principal:

1136 (a) property received in an entity distribution which
1137 is not:

1138 1. money; or

1139 2. tangible personal property of nominal value;

1140 (b) money received in an entity distribution in an
1141 exchange for part or all of the fiduciary's interest in the
1142 entity, to the extent the entity distribution reduces the
1143 fiduciary's interest in the entity relative to the
1144 interests of other persons that own or hold interests in
1145 the entity;

1146 (c) money received in an entity distribution that is a
1147 capital distribution, to the extent not allocated to
1148 income; and

1149 (d) money received in an entity distribution from an
1150 entity that is a regulated investment company or real
1151 estate investment trust if the money received represents

1152 short-term or long-term capital gain realized within the
1153 entity.

1154 (5) If the fiduciary elects, or continues an election
1155 made by its predecessor, to reinvest dividends in shares of
1156 stock of a distributing corporation or fund, whether
1157 evidenced by new certificates or entries on the books of
1158 the distributing entity, the new shares retain their
1159 character as income.

1160 (6) Except as otherwise provided in subsections (10)
1161 and (11), money received in an entity distribution is a
1162 capital distribution:

1163 (a) to the extent the entity, at or near the time of
1164 the entity distribution, indicates that such money is a
1165 capital distribution; or

1166 (b) to the extent that the total amount of money and
1167 property received by the fiduciary in the entity
1168 distribution or a series of related entity distributions is
1169 or will be greater than 20 percent of the fiduciary's pro
1170 rata share of the entity's gross assets, as shown by the
1171 entity's year-end financial statements immediately
1172 preceding the initial receipt.

1173 (7) In the case of a capital distribution, the amount
1174 received in an entity distribution allocated to principal
1175 must be reduced to the extent that the cumulative

1176 distributions from the entity to the fiduciary allocated to
1177 income do not exceed the greater of:

1178 (a) A cumulative annual return of 3 percent of the
1179 entity's carrying value computed at the beginning of each
1180 accounting period (or portion of an accounting period),
1181 during the lookback period. If a fiduciary has exercised a
1182 power to adjust under s. 738.203 during the lookback
1183 period, the fiduciary, in determining the total income
1184 distributions from that entity, must take into account the
1185 extent to which the exercise of the power resulted in
1186 income to the fiduciary from that entity for that period.
1187 If the income of a fiduciary during the lookback period has
1188 been computed under ss. 738.301-738.310, the fiduciary, in
1189 determining the total income distributions from the entity
1190 for that period, must take into account the portion of the
1191 unitrust amount paid as a result of the ownership of the
1192 trust's interest in the entity for that period; or

1193 (b) In the case of an entity treated as a partnership,
1194 subchapter S corporation, or disregarded entity under the
1195 Internal Revenue Code, the amount of income tax
1196 attributable to the fiduciary's ownership share of the
1197 entity, based on its pro rata share of the taxable income
1198 of the entity that distributes the money, during the
1199 lookback period, calculated as if all of the tax was
1200 incurred by the fiduciary.

1201 (8) If a fiduciary receives additional information
1202 about the application of this section to an entity
1203 distribution before the fiduciary has paid part of the
1204 entity distribution to a beneficiary, the fiduciary may
1205 consider the additional information before making the
1206 payment to the beneficiary and may change a decision to
1207 make the payment to the beneficiary.

1208 (9) If a fiduciary receives additional information
1209 about the application of this section to an entity
1210 distribution after the fiduciary has paid part of the
1211 entity distribution to a beneficiary, the fiduciary is not
1212 required to change or recover the payment to the
1213 beneficiary but may consider that information in
1214 determining whether to exercise its other powers, including
1215 but not limited to the power to adjust under s. 738.203.

1216 (10) The following applies to money or property
1217 received by a private trustee as a distribution from an
1218 investment entity described in this subsection:

1219 (a) The trustee shall first treat as income of the
1220 trust all of the money or property received from the
1221 investment entity in the current accounting period which
1222 would be considered income under this chapter if the
1223 trustee had directly held the trust's pro rata share of the
1224 assets of the investment entity. For this purpose, all

1225 distributions received in the current accounting period
1226 must be aggregated.

1227 (b) The trustee shall next treat as income of the
1228 trust any additional money or property received in the
1229 current accounting period which would have been considered
1230 income in the prior two accounting periods under paragraph
1231 (a) if additional money or property had been received from
1232 the investment entity in any of those prior 2 accounting
1233 periods. The amount to be treated as income shall be
1234 reduced by any distribution of money or property made by
1235 the investment entity to the trust during the current and
1236 the prior 2 accounting periods which were treated as income
1237 under this paragraph.

1238 (c) The remainder of the distribution, if any, is
1239 treated as principal.

1240 (d) As used in this subsection, the term:

1241 1. "Investment entity" means an entity, other than a
1242 business activity conducted by the trustee described in s.
1243 738.403 or an entity that is listed on a public stock
1244 exchange, which is treated as a partnership, subchapter s
1245 corporation, or disregarded entity under the Internal
1246 Revenue Code, and which normally derives 50 percent or more
1247 of its annual cumulative net income from interest,
1248 dividends, annuities, royalties, rental activity, or other

1249 passive investments, including income from the sale or
1250 exchange of such passive investments.

1251 2. "Private Trustee" means a trustee who is a natural
1252 person but is not an independent person as set forth at s.
1253 738.102.

1254 (11) A fiduciary shall allocate to principal money and
1255 property received by the fiduciary in a distribution or
1256 series of related distributions from a public entity
1257 greater than 10 percent of the fair market value of the
1258 fiduciary's interest in the public entity on the first day
1259 of the accounting period. The amount to be allocated to
1260 principal must be reduced to the extent that the cumulative
1261 distributions from the entity to the fiduciary allocated to
1262 income do not exceed a cumulative annual return of 3
1263 percent of the fair market value of the interest in the
1264 entity at the beginning of each accounting period (or
1265 portion of an accounting period), during the lookback
1266 period. If a fiduciary has exercised a power to adjust
1267 under s. 738.203 during the lookback period, the fiduciary,
1268 in determining the total income distributions from that
1269 entity, must take into account the extent to which the
1270 exercise of that power resulted in income to the fiduciary
1271 from that entity for that period. If the income of the
1272 fiduciary during the lookback period has been computed
1273 under ss. 738.301-738.310, the fiduciary, in determining

1274 the total income distribution from that entity for that
1275 period, must take into account the portion of the unitrust
1276 amount paid as a result of the ownership of the trust's
1277 interest in the entity for that period. As used in this
1278 subsection the term "public entity" means an entity listed
1279 on a public stock exchange.

1280 (12) This section shall be applied before ss. 738.506
1281 and 738.507 and does not modify or change any of the
1282 provisions of those sections.

1283 738.402 Distribution from trust or estate.—

1284 A fiduciary shall allocate to income an amount
1285 received as a distribution of income, including a unitrust
1286 distribution under ss. 738.301-738.310, from a trust or
1287 estate in which the fiduciary has an interest, other than
1288 an interest the fiduciary purchased in a trust that is an
1289 investment entity, and shall allocate to principal an
1290 amount received as a distribution of principal from the
1291 trust or estate. If a fiduciary purchases, or receives from
1292 a settlor, an interest in a trust that is an investment
1293 entity, s. 738.401, s. 738.415, or s. 738.416 applies to a
1294 receipt from the trust.

1295 738.403 Business or other activity conducted by
1296 fiduciary.—

1297 (1) This section applies to a business or other
1298 activity conducted by a fiduciary if the fiduciary

1299 determines that it is in the interests of the beneficiaries
1300 to account separately for the business or other activity
1301 instead of:

1302 (a) accounting for the business or other activity as
1303 part of the fiduciary's general accounting records; or

1304 (b) conducting the business or other activity through
1305 an entity described in s. 738.401(1)(b).

1306 (2) A fiduciary may account separately under this
1307 section for the transactions of a business or other
1308 activity, whether or not assets of the business or other
1309 activity are segregated from other assets held by the
1310 fiduciary.

1311 (3) A fiduciary that accounts separately under this
1312 section for a business or other activity:

1313 (a) may determine:

1314 1. the extent to which the net cash receipts of the
1315 business or other activity must be retained for:

1316 a. working capital;

1317 b. the acquisition or replacement of fixed assets; and

1318 c. other reasonably foreseeable needs of the business
1319 or other activity; and

1320 2. the extent to which the remaining net cash receipts
1321 are accounted for as principal or income in the fiduciary's
1322 general accounting records for the trust;

1323 (b) may make a determination under paragraph (a)
1324 separately and differently from the fiduciary's decisions
1325 concerning distributions of income or principal; and

1326 (c) shall account for the net amount received from the
1327 sale of an asset of the business or other activity, other
1328 than a sale in the ordinary course of the business or other
1329 activity, as principal in the fiduciary's general
1330 accounting records for the trust, to the extent the
1331 fiduciary determines that the net amount received is no
1332 longer required in the conduct of the business or other
1333 activity.

1334 (4) Activities for which a fiduciary may account
1335 separately under this section include:

1336 (a) retail, manufacturing, service, and other
1337 traditional business activities;

1338 (b) farming;

1339 (c) raising and selling livestock and other animals;

1340 (d) managing rental properties;

1341 (e) extracting minerals, water, and other natural
1342 resources;

1343 (f) growing and cutting timber;

1344 (g) an activity to which s. 738.414, s. 738.415, or s.
1345 738.416 applies; and

1346 (h) any other business conducted by the fiduciary.
1347 738.404 Principal receipts.—

1348 A fiduciary shall allocate to principal:
1349 (1) to the extent not allocated to income under this
1350 chapter, an asset received from:
1351 (a) an individual during the individual's lifetime;
1352 (b) an estate;
1353 (c) a trust on termination of an income interest; or
1354 (d) a payor under a contract naming the fiduciary as
1355 beneficiary;
1356 (2) except as otherwise provided in ss. 738.401-
1357 738.416, money or other property received from the sale,
1358 exchange, liquidation, or change in form of a principal
1359 asset;
1360 (3) an amount recovered from a third party to
1361 reimburse the fiduciary because of a disbursement described
1362 in s. 738.502(1) or for another reason to the extent not
1363 based on loss of income;
1364 (4) proceeds of property taken by eminent domain,
1365 except that proceeds awarded for loss of income in an
1366 accounting period are income if a current income
1367 beneficiary had a mandatory income interest during the
1368 period;
1369 (5) net income received in an accounting period during
1370 which there is no beneficiary to which a fiduciary may or
1371 must distribute income; and
1372 (6) other receipts as provided in ss. 738.408-738.416.

1373 738.405 Rental property.—

1374 To the extent a fiduciary does not account for the
1375 management of rental property as a business under s.
1376 738.403, the fiduciary shall allocate to income an amount
1377 received as rent of real or personal property, including an
1378 amount received for cancellation or renewal of a lease. An
1379 amount received as a refundable deposit, including a
1380 security deposit or a deposit that is to be applied as rent
1381 for future periods:

1382 (1) must be added to principal and held subject to the
1383 terms of the lease, except as otherwise provided by law
1384 other than this chapter; and

1385 (2) is not allocated to income or available for
1386 distribution to a beneficiary until the fiduciary's
1387 contractual obligations have been satisfied with respect to
1388 that amount.

1389 738.406 Receipt on obligation to be paid in money.—

1390 (1) This section does not apply to an obligation to
1391 which s. 738.409, s. 738.410, s. 738.411, s. 738.412, s.
1392 738.414, s. 738.415, or s. 738.416 applies.

1393 (2) A fiduciary shall allocate to income, without
1394 provision for amortization of premium, an amount received
1395 as interest on an obligation to pay money to the fiduciary,
1396 including an amount received as consideration for prepaying
1397 principal.

1398 (3) A fiduciary shall allocate to principal an amount
1399 received from the sale, redemption, or other disposition of
1400 an obligation to pay money to the fiduciary. A fiduciary
1401 shall allocate to income the increment in value of a bond
1402 or other obligation for the payment of money bearing no
1403 stated interest but payable or redeemable, at maturity or
1404 another future time, in an amount that exceeds the amount
1405 in consideration of which it was issued. If the increment
1406 in value accrues and becomes payable pursuant to a fixed
1407 schedule of appreciation, it may be distributed to the
1408 beneficiary who was the income beneficiary at the time of
1409 increment from the first principal cash available or, if
1410 none is available, when the increment is realized by sale,
1411 redemption, or other disposition. If unrealized increment
1412 is distributed as income but out of principal, the
1413 principal must be reimbursed for the increment when
1414 realized. If, in the reasonable judgment of the fiduciary,
1415 exercised in good faith, the ultimate payment of the bond
1416 principal is in doubt, the fiduciary may withhold the
1417 payment of incremental interest to the income beneficiary.

1418 738.407 Insurance policy or contract.—

1419 (1) This section does not apply to a contract to which
1420 s. 738.409 applies.

1421 (2) Except as otherwise provided in subsection (3), a
1422 fiduciary shall allocate to principal the proceeds of a

1423 life insurance policy or other contract received by the
1424 fiduciary as beneficiary, including a contract that insures
1425 against damage to, destruction of, or loss of title to an
1426 asset. The fiduciary shall allocate dividends on an
1427 insurance policy to income to the extent premiums on the
1428 policy are paid from income and to principal to the extent
1429 premiums on the policy are paid from principal.

1430 (3) A fiduciary shall allocate to income proceeds of a
1431 contract that insures the fiduciary against loss of:

1432 (a) occupancy or other use by a current income
1433 beneficiary;

1434 (b) income; or

1435 (c) subject to s. 738.403, profits from a business.

1436 738.408 Insubstantial allocation not required.—

1437 (1) If a fiduciary determines that an allocation
1438 between income and principal required by s. 738.409, s.
1439 738.410, s. 738.411, s. 738.412, or s. 738.415 is
1440 insubstantial, the fiduciary may allocate the entire amount
1441 to principal, unless s. 738.203(5) applies to the
1442 allocation.

1443 (2) A fiduciary may presume an allocation is
1444 insubstantial under subsection (1) if:

1445 (a) the amount of the allocation would increase or
1446 decrease net income in an accounting period, as determined
1447 before the allocation, by less than 10 percent; and

1448 (b) the asset producing the receipt to be allocated
1449 has a carrying value less than 10 percent of the total
1450 carrying value of the assets owned or held by the fiduciary
1451 at the beginning of the accounting period.

1452 (3) The power to make a determination under subsection
1453 (1) may be:

1454 (a) exercised by a co-fiduciary in the manner
1455 described in s. 738.203(6); or

1456 (b) released or delegated for a reason described in s.
1457 738.203(7) and in the manner described in s. 738.203(8).

1458 738.409 Deferred compensation, annuity, or similar
1459 payment.—

1460 (1) As used in this section, the term:

1461 (a) "Internal income of a separate fund" means the
1462 amount determined under subsection (2).

1463 (b) "Marital trust" means a trust:

1464 1. of which the settlor's surviving spouse is the only
1465 current income beneficiary and is entitled to a
1466 distribution of all the current net income of the trust;
1467 and

1468 2. that qualifies for a marital deduction with respect
1469 to the settlor's estate under the Internal Revenue Code or
1470 comparable law of any state because:

1471 a. an election to qualify for a marital deduction
1472 under s. 2056(b) (7) of the Internal Revenue Code has been
1473 made;

1474 b. the trust qualifies for a marital deduction under
1475 s. 2056(b) (5) of the Internal Revenue Code; or

1476 c. the trust otherwise qualifies for a marital
1477 deduction.

1478 (c) "Payment" means an amount a fiduciary may receive
1479 over a fixed number of years or during the life of one or
1480 more individuals because of services rendered or property
1481 transferred to the payor in exchange for future amounts the
1482 fiduciary may receive. The term includes an amount received
1483 in money or property from the payor's general assets or
1484 from a separate fund created by the payor.

1485 (d) "Percent calculated" means a percent equal to the
1486 rate determined under s. 7520 of the Internal Revenue Code
1487 in effect for the month preceding the beginning of the
1488 accounting period; however, if the percent calculated
1489 exceeds 5 percent it shall be reduced to 5 percent, and if
1490 the percent calculated is less than 3 percent it shall be
1491 increased to 3 percent. Notwithstanding the preceding
1492 sentence, a fiduciary that is an independent person, as set
1493 forth at s. 738.102, may set the percent calculated at a
1494 percent no less than 3 percent and no greater than 5
1495 percent.

1496 (e) "Separate fund" includes a private or commercial
1497 annuity, an individual retirement account, and a pension,
1498 profit-sharing, stock-bonus, stock-ownership plan, or other
1499 deferred compensation fund holding assets exclusively for
1500 the benefit of a participant or account owner.

1501 (f) "Nonseparate fund" means an annuity, deferred
1502 compensation plan, pension plan, or other fund for which
1503 the value of the participant's or account owner's right to
1504 receive benefits can be determined only by the occurrence
1505 of a date or event as defined in the instrument governing
1506 the fund.

1507 (2) For each accounting period, the following rules
1508 apply to a separate fund:

1509 (a) The fiduciary may determine the internal income of
1510 the separate fund as if the separate fund were a trust
1511 subject to this chapter.

1512 (b) Alternatively, the fiduciary may deem the internal
1513 income of the separate fund to equal the percent calculated
1514 of the value of the separate fund, according to the most
1515 recent statement of value preceding the beginning of the
1516 accounting period. The fiduciary is not liable for good
1517 faith reliance upon any valuation supplied by the person or
1518 persons in possession of the fund. If the fiduciary makes
1519 or terminates an election under this paragraph, the
1520 fiduciary shall make such disclosure in a trust disclosure

1521 document that satisfies the requirements of s.

1522 736.1008(4) (a) .

1523 (c) If the fiduciary cannot determine the value of the
1524 separate fund under paragraph (b), the value of the
1525 separate fund is deemed to equal the present value of the
1526 expected future payments, as determined under s. 7520 of
1527 the Internal Revenue Code for the month preceding the
1528 beginning of the accounting period for which the
1529 computation is made.

1530 (d) A fiduciary may elect the method of determining
1531 the income of the fund pursuant to this subsection and may
1532 change the method of determining income of the fund for any
1533 future accounting period.

1534 (3) A fiduciary shall allocate a payment received from
1535 a separate fund during an accounting period to income, to
1536 the extent of the internal income of the separate fund
1537 during the period, and the balance to principal.

1538 (4) The fiduciary of a marital trust shall:

1539 (a) withdraw from a separate fund the amount the
1540 current income beneficiary of the trust requests the
1541 fiduciary to withdraw, not greater than the amount by which
1542 the internal income of the separate fund during the
1543 accounting period exceeds the amount the fiduciary
1544 otherwise receives from the separate fund during the
1545 period;

1546 (b) transfer from principal to income the amount the
1547 current income beneficiary requests the fiduciary to
1548 transfer, not greater than the amount by which the internal
1549 income of the separate fund during the period exceeds the
1550 amount the fiduciary receives from the separate fund during
1551 the period after the application of paragraph (a); and

1552 (c) distribute to the current income beneficiary as
1553 income:

1554 1. the amount of the internal income of the separate
1555 fund received or withdrawn during the period; and

1556 2. the amount transferred from principal to income
1557 under paragraph (b).

1558 (5) For a trust, other than a marital trust, of which
1559 one or more current income beneficiaries are entitled to a
1560 distribution of all the current net income, the fiduciary
1561 shall transfer from principal to income the amount by which
1562 the internal income of a separate fund during the
1563 accounting period exceeds the amount the fiduciary receives
1564 from the separate fund during the period.

1565 (6) The fiduciary of a nonseparate fund shall
1566 calculate internal income of the fund as the percent
1567 calculated of the present value of the right to receive the
1568 remaining payments as determined under s. 7520(a)(2) of the
1569 Internal Revenue Code for the month preceding the beginning
1570 of the accounting period.

1571 (7) If a fiduciary owns a separate fund or a
1572 nonseparate fund before the effective date of this s.
1573 738.409, as amended, the fiduciary may determine internal
1574 income, allocate payments, and account for unwithdrawn
1575 internal income as provided in this section or in the
1576 manner used by the fiduciary before the effective date of
1577 this s. 738.409. Such fiduciary is not required to consider
1578 subsection (5) of this section. If the fiduciary acquires a
1579 separate fund or a nonseparate fund on or after the
1580 effective date of this s. 738.409, the fiduciary shall
1581 calculate internal income, allocate payments, and account
1582 for unwithdrawn internal income as provided in this
1583 section.

1584 738.410 Liquidating asset.—

1585 (1) As used in this section, the term, "liquidating
1586 asset" means an asset whose value will diminish or
1587 terminate because the asset is expected to produce receipts
1588 for a limited time. The term includes a leasehold, patent,
1589 copyright, royalty right, and right to receive payments
1590 during a period of more than one year under an arrangement
1591 that does not provide for the payment of interest on the
1592 unpaid balance.

1593 (2) This section does not apply to a receipt subject
1594 to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
1595 738.414, s. 738.415, s. 738.416, or s. 738.503.

1596 (3) A fiduciary shall allocate to income a receipt
1597 produced by a liquidating assets to the extent the receipt
1598 does not exceed 5 percent of the carrying value of the
1599 asset at the beginning of the accounting period and to
1600 principal the balance of the receipt.

1601 (4) The amount allocated to principal shall reduce the
1602 carrying value of the liquidating asset, but not below
1603 zero. Amounts received in excess of the remaining carrying
1604 value must be allocated to principal.

1605 738.411 Minerals, water, and other natural resources.—

1606 (1) To the extent a fiduciary does not account for a
1607 receipt from an interest in minerals, water, or other
1608 natural resources as a business under s. 738.403, the
1609 fiduciary shall allocate the receipt:

1610 (a) to income, to the extent received:

1611 1. as delay rental or annual rent on a lease;

1612 2. as a factor for interest or the equivalent of
1613 interest under an agreement creating a production payment;

1614 or

1615 3. on account of an interest in renewable water;

1616 (b) to principal, if received from a production
1617 payment, to the extent subparagraph (a)2. does not apply;

1618 or

1619 (c) between income and principal equitably, to the
1620 extent received:

1621 1. on account of an interest in non-renewable water;

1622 2. as a royalty, shut-in-well payment, take-or-pay
1623 payment, or bonus; or

1624 3. from a working interest or any other interest not
1625 provided for in paragraph (a) or (b) or subparagraph 1. or
1626 2.

1627 (2) This section applies to an interest owned or held
1628 by a fiduciary whether or not a settlor was extracting
1629 minerals, water, or other natural resources before the
1630 fiduciary owned or held the interest.

1631 (3) An allocation of a receipt under paragraph (1)(c)
1632 is presumed to be equitable if the amount allocated to
1633 principal is equal to the amount allowed by the Internal
1634 Revenue Code as a deduction for depletion of the interest.

1635 (4) If a fiduciary owns or holds an interest in
1636 minerals, water, or other natural resources before the
1637 effective date of this section, as amended, the fiduciary
1638 may allocate receipts from the interest as provided in this
1639 section or in the manner used by the fiduciary before the
1640 effective date of this section, as amended. If the
1641 fiduciary acquires an interest in minerals, water, or other
1642 natural resources on or after the effective date of this
1643 section, as amended, the fiduciary shall allocate receipts
1644 from the interest as provided in this section.

1645 738.412 Timber.—

1646 (1) To the extent a fiduciary does not account for
1647 receipts from the sale of timber and related products as a
1648 business under s. 738.403, the fiduciary shall allocate the
1649 net receipts:

1650 (a) to income, to the extent the amount of timber cut
1651 from the land does not exceed the rate of growth of the
1652 timber;

1653 (b) to principal, to the extent the amount of timber
1654 cut from the land exceeds the rate of growth of the timber
1655 or the net receipts are from the sale of standing timber;

1656 (c) between income and principal if the net receipts
1657 are from the lease of land used for growing and cutting
1658 timber or from a contract to cut timber from land, by
1659 determining the amount of timber cut from the land under
1660 the lease or contract and applying the rules in paragraphs
1661 (a) and (b); or

1662 (d) to principal, to the extent advance payments,
1663 bonuses, and other payments are not allocated under
1664 paragraph (a), (b), or (c).

1665 (2) In determining net receipts to be allocated under
1666 subsection (1), a fiduciary shall deduct and transfer to
1667 principal a reasonable amount for depletion.

1668 (3) This section applies to land owned or held by a
1669 fiduciary whether or not a settlor was cutting timber from
1670 the land before the fiduciary owned or held the property.

1671 (4) If a fiduciary owns or holds an interest in land
1672 used for growing and cutting timber before the effective
1673 date of this section, as amended, the fiduciary may
1674 allocate net receipts from the sale of timber and related
1675 products as provided in this section or in the manner used
1676 by the fiduciary before the effective date of this section,
1677 as amended. If the fiduciary acquires an interest in land
1678 used for growing and cutting timber on or after the
1679 effective date of this section, as amended, the fiduciary
1680 shall allocate net receipts from the sale of timber and
1681 related products as provided in this section.

1682 738.413 Marital deduction property not productive of
1683 income.—

1684 (1) If a trust received property for which a gift or
1685 estate tax marital deduction was allowed (or if a trust
1686 received property satisfying the requirements of s.
1687 732.2025(2) (a) and (c), and such property has been used in
1688 whole or in part to satisfy an election by a surviving
1689 spouse under s. 732.2125) and the settlor's spouse holds a
1690 mandatory income interest in the trust, the spouse may
1691 require the trustee, to the extent the trust assets
1692 otherwise do not provide the spouse with sufficient income
1693 from or use of the trust assets to qualify for the
1694 deduction (or to satisfy an election by a surviving spouse

1695 under s. 732.2125), to make property productive of income
1696 within a reasonable time. The Trustee may:

1697 (a) convert property to property productive of income
1698 within a reasonable time;

1699 (b) exercise the power to adjust under s. 738.203;

1700 (c) exercise the power to convert to or from a
1701 unitrust under s. 738.303; or

1702 (d) exercise the fiduciary's authority under the terms
1703 of the trust to otherwise provide the surviving spouse with
1704 sufficient income from or use of the trust assets to
1705 qualify for the marital deduction (or to satisfy an
1706 election by a surviving spouse under s. 732.2125).

1707 (2) The trustee may decide which action or combination
1708 of actions in subsection (1) to take.

1709 (3) Subsection (1) shall apply even though, in the
1710 case of an elective share trust under s. 732.2025(2), a
1711 marital deduction is not made or is only partially made.

1712 (4) The terms of a trust as defined in s. 738.102
1713 shall not supersede this section unless such terms
1714 explicitly reference this section.

1715 738.414 Derivative or option.—

1716 (1) As used in this section, the term "derivative"
1717 means a contract, instrument, other arrangement, or
1718 combination of contracts, instruments, or other
1719 arrangements, the value, rights, and obligations of which

1720 are, in whole or in part, dependent on or derived from an
1721 underlying tangible or intangible asset, group of tangible
1722 or intangible assets, index, or occurrence of an event. The
1723 term includes stocks, fixed income securities, and
1724 financial instruments and arrangements based on indices,
1725 commodities, interest rates, weather-related events, and
1726 credit-default events.

1727 (2) To the extent a fiduciary does not account for a
1728 transaction in derivatives as a business under s. 738.403,
1729 the fiduciary shall allocate 10 percent of receipts from
1730 the transaction and 10 percent of disbursements made in
1731 connection with the transaction to income and the balance
1732 to principal.

1733 (3) Subsection (4) applies if:

1734 (a) a fiduciary:

1735 1. grants an option to buy property from a trust,
1736 whether or not the trust owns the property when the option
1737 is granted;

1738 2. grants an option that permits another person to
1739 sell property to the trust; or

1740 3. acquires an option to buy property for the trust or
1741 an option to sell an asset owned by the trust; and

1742 (b) the fiduciary or other owner of the asset is
1743 required to deliver the asset if the option is exercised.

1744 (4) If this subsection applies, the fiduciary shall
1745 allocate 10 percent to income and the balance to principal
1746 of the following amounts:

1747 (a) an amount received for granting the option;

1748 (b) an amount paid to acquire the option; and

1749 (c) gain or loss realized on the exercise, exchange,
1750 settlement, offset, closing, or expiration of the option.

1751 738.415 Asset-backed security.—

1752 (1) Except as otherwise provided in subsection (2), a
1753 fiduciary shall allocate to income a receipt from or
1754 related to an asset-backed security, as defined in s.
1755 738.102, to the extent the payor identifies the payment as
1756 being from interest or other current return, and to
1757 principal the balance of the receipt.

1758 (2) If a fiduciary receives one or more payments in
1759 exchange for part or all of the fiduciary's interest in an
1760 asset-backed security, including a liquidation or
1761 redemption of the fiduciary's interest in the security, the
1762 fiduciary shall allocate to income 10 percent of receipts
1763 from the transaction and 10 percent of disbursements made
1764 in connection with the transaction, and to principal the
1765 balance of the receipts and disbursements.

1766 738.416 Other financial instrument or arrangement.—

1767 A fiduciary shall allocate receipts from or related to
1768 a financial instrument or arrangement not otherwise

1769 addressed by this chapter. The allocation must be
1770 consistent with ss. 738.414 and 738.415.

1771 738.501 Disbursements from income.—Subject to s.
1772 738.504, and except as otherwise provided in s.
1773 738.601(3)(b) or (c), a fiduciary shall disburse from
1774 income:

1775 (1) one-half of:

1776 (a) the regular compensation of the fiduciary and any
1777 person providing investment advisory, custodial, or other
1778 services to the fiduciary, to the extent income is
1779 sufficient; and

1780 (b) an expense for an accounting, judicial or
1781 nonjudicial proceeding, or other matter that involves both
1782 income and successive interests, to the extent income is
1783 sufficient;

1784 (2) the balance of the disbursements described in
1785 subsection (1), to the extent a fiduciary that is an
1786 independent person determines that making those
1787 disbursements from income would be in the interests of the
1788 beneficiaries;

1789 (3) another ordinary expense incurred in connection
1790 with administration, management, or preservation of
1791 property and distribution of income, including interest, an
1792 ordinary repair, regularly recurring tax assessed against
1793 principal, and an expense of an accounting, judicial or

1794 nonjudicial proceeding, or other matter that involves
1795 primarily an income interest, to the extent income is
1796 sufficient; and

1797 (4) a premium on insurance covering loss of a
1798 principal asset or income from or use of the asset.

1799 738.502 Disbursement from principal.-

1800 (1) Subject to s. 738.505, and except as otherwise
1801 provided in s. 738.601(3)(b), a fiduciary shall disburse
1802 from principal:

1803 (a) the balance of the disbursements described in s.
1804 738.501(1) and (3), after application of s. 738.501(2);

1805 (b) the fiduciary's compensation calculated on
1806 principal as a fee for acceptance, distribution, or
1807 termination;

1808 (c) a payment of an expense to prepare for or execute
1809 a sale or other disposition of property;

1810 (d) a payment on the principal of a trust debt;

1811 (e) a payment of an expense of an accounting, judicial
1812 or nonjudicial proceeding, or other matter that involves
1813 primarily principal, including a proceeding to construe the
1814 terms of the trust or protect property;

1815 (f) a payment of a premium for insurance, including
1816 title insurance, not described in s. 738.501(4), of which
1817 the fiduciary is the owner and beneficiary;

1818 (g) a payment of estate, inheritance, and other
1819 transfer taxes, including penalties, apportioned to the
1820 trust;

1821 (h) a payment related to environmental matters
1822 including:

- 1823 1. reclamation;
- 1824 2. assessing environmental conditions;
- 1825 3. remedying and removing environmental contamination;
- 1826 4. monitoring remedial activities and the release of
1827 substances;
- 1828 5. preventing future releases of substances;
- 1829 6. collecting amounts from persons liable or
1830 potentially liable for the costs of activities described in
1831 clauses 1. through 5.;
- 1832 7. penalties imposed under environmental laws or
1833 regulations;
- 1834 8. other actions to comply with environmental laws or
1835 regulations;
- 1836 9. statutory or common law claims by third parties;
- 1837 and
- 1838 10. defending claims based on environmental matters;
- 1839 and

1840 (i) a payment for a premium for insurance for matters
1841 described in paragraph (h).

1842 (2) If a principal asset is encumbered with an
1843 obligation that requires income from the asset to be paid
1844 directly to a creditor, the fiduciary shall transfer from
1845 principal to income an amount equal to the income paid to
1846 the creditor in reduction of the principal balance of the
1847 obligation.

1848 738.503 Transfer from income to principal for
1849 depreciation.—

1850 (1) For purposes of this section, "depreciation" means
1851 a reduction in value due to wear, tear, decay, corrosion,
1852 or gradual obsolescence of a tangible asset having a useful
1853 life of more than one year.

1854 (2) A fiduciary may transfer to principal a reasonable
1855 amount of the net cash receipts from a principal asset that
1856 is subject to depreciation, but may not transfer any amount
1857 for depreciation:

1858 (a) of the part of real property used or available for
1859 use by a beneficiary as a residence;

1860 (b) of tangible personal property held or made
1861 available for the personal use or enjoyment of a
1862 beneficiary; or

1863 (c) under this section, to the extent the fiduciary
1864 accounts:

1865 1. under s. 738.410 for the asset; or

1866 2. under s. 738.403 for the business or other activity
1867 in which the asset is used.

1868 (3) An amount transferred to principal under this
1869 section need not be separately held.

1870 738.504 Reimbursement of income from principal.—

1871 (1) If a fiduciary makes or expects to make an income
1872 disbursement described in subsection (2), the fiduciary may
1873 transfer an appropriate amount from principal to income in
1874 one or more accounting periods to reimburse income.

1875 (2) To the extent the fiduciary has not been and does
1876 not expect to be reimbursed by a third party, income
1877 disbursements to which subsection (1) applies include:

1878 (a) an amount chargeable to principal but paid from
1879 income because principal is illiquid;

1880 (b) a disbursement made to prepare property for sale,
1881 including improvements and commissions; and

1882 (c) a disbursement described in s. 738.502(1).

1883 (3) If an asset whose ownership gives rise to an
1884 income disbursement becomes subject to a successive
1885 interest after an income interest ends, the fiduciary may
1886 continue to make transfers under subsection (1).

1887 738.505 Reimbursement of principal from income.—

1888 (1) If a fiduciary makes or expects to make a
1889 principal disbursement described in subsection (2), the
1890 fiduciary may transfer an appropriate amount from income to

1891 principal in one or more accounting periods to reimburse
1892 principal or provide a reserve for future principal
1893 disbursements.

1894 (2) To the extent a fiduciary has not been and does
1895 not expect to be reimbursed by a third party, principal
1896 disbursements to which subsection (1) applies include:

1897 (a) an amount chargeable to income but paid from
1898 principal because income is not sufficient;

1899 (b) the cost of an improvement to principal, whether a
1900 change to an existing asset or the construction of a new
1901 asset, including a special assessment;

1902 (c) a disbursement made to prepare property for
1903 rental, including tenant allowances, leasehold
1904 improvements, and commissions;

1905 (d) a periodic payment on an obligation secured by a
1906 principal asset, to the extent the amount transferred from
1907 income to principal for depreciation is less than the
1908 periodic payment; and

1909 (e) a disbursement described in s. 738.502(1).

1910 (3) If an asset whose ownership gives rise to a
1911 principal disbursement becomes subject to a successive
1912 interest after an income interest ends, the fiduciary may
1913 continue to make transfers under subsection (1).

1914 738.506 Income taxes.—

1915 (1) A tax required to be paid by a fiduciary which is
1916 based on receipts allocated to income must be paid from
1917 income.

1918 (2) A tax required to be paid by a fiduciary which is
1919 based on receipts allocated to principal must be paid from
1920 principal, even if the tax is called an income tax by the
1921 taxing authority.

1922 (3) Subject to subsection (4) and ss. 738.504,
1923 738.505, and 738.507, a tax required to be paid by a
1924 fiduciary on a share of an entity's taxable income in an
1925 accounting period must be paid from:

1926 (a) income and principal proportionately to the
1927 allocation between income and principal of receipts from
1928 the entity in the period; and

1929 (b) principal to the extent the tax exceeds the
1930 receipts from the entity in the period.

1931 (4) After applying subsections (1)-(3), a fiduciary
1932 shall adjust income or principal receipts, to the extent
1933 the taxes the fiduciary pays are reduced because of a
1934 deduction for a payment made to a beneficiary.

1935 (5) Subject to the limitations and excluded assets
1936 provided under s. 736.08145, a reimbursement of State or
1937 Federal income tax elected to be made by a fiduciary
1938 pursuant to s. 736.08145 shall be allocated and paid under
1939 paragraph 3(a) and (b).

1940 738.507 Adjustment between principal and income
1941 because of taxes.—

1942 (1) A fiduciary may make an adjustment between income
1943 and principal to offset the shifting of economic interests
1944 or tax benefits between current income beneficiaries and
1945 successor beneficiaries which arises from:

1946 (a) an election or decision the fiduciary makes
1947 regarding a tax matter, other than a decision to claim an
1948 income tax deduction to which subsection (2) applies;

1949 (b) an income tax or other tax imposed on the
1950 fiduciary or a beneficiary as a result of a transaction
1951 involving the fiduciary or a distribution by the fiduciary;

1952 (c) ownership by the fiduciary of an interest in an
1953 entity a part of whose taxable income, whether or not
1954 distributed, is includable in the taxable income of the
1955 fiduciary or a beneficiary; or

1956 (d) an election or decision a fiduciary makes to
1957 reimburse any tax under s. 736.08145.

1958 (2) If the amount of an estate tax marital or
1959 charitable deduction is reduced because a fiduciary deducts
1960 an amount paid from principal for income tax purposes
1961 instead of deducting it for estate tax purposes and, as a
1962 result, estate taxes paid from principal are increased and
1963 income taxes paid by the fiduciary or a beneficiary are
1964 decreased, the fiduciary shall charge each beneficiary that

1965 benefits from the decrease in income tax to reimburse the
 1966 principal from which the increase in estate tax is paid.
 1967 The total reimbursement must equal the increase in the
 1968 estate tax, to the extent the principal used to pay the
 1969 increase would have qualified for a marital or charitable
 1970 deduction but for the payment. The share of the
 1971 reimbursement for each fiduciary or beneficiary whose
 1972 income taxes are reduced must be the same as its share of
 1973 the total decrease in income tax.

1974 (3) A fiduciary that charges a beneficiary under
 1975 subsection (2) may offset the charge by obtaining payment
 1976 from the beneficiary, withholding an amount from future
 1977 distributions to the beneficiary, or adopting another
 1978 method or combination of methods.

1979 738.508 Apportionment of property expenses between
 1980 tenant and remainderman.—

1981 (1) For purposes of this section, the term:

1982 (a) "Remainderman" means the holder of the remainder
 1983 interests after the expiration of a tenant's estate in
 1984 property.

1985 (b) "Tenant" means the holder of an estate for life or
 1986 term of years in real property or personal property, or
 1987 both.

1988 (2) If a trust has not been created, expenses shall be
 1989 apportioned between the tenant and remainderman as follows:

1990 (a) The following expenses are allocated to and shall
 1991 be paid by the tenant:

1992 1. All ordinary expenses incurred in connection with
 1993 the administration, management, or preservation of the
 1994 property, including interest, ordinary repairs, regularly
 1995 recurring taxes assessed against the property, and expenses
 1996 of a proceeding or other matter that concerns primarily the
 1997 tenant's estate or use of the property.

1998 2. Recurring premiums on insurance covering the loss
 1999 of the property or the loss of income from or use of the
 2000 property.

2001 3. Any of the expenses described in subparagraph (b)3.
 2002 which are attributable to the use of the property by the
 2003 tenant.

2004 (b) The following expenses are allocated to and shall
 2005 be paid by the remainderman:

2006 1. Payments on the principal of a debt secured by the
 2007 property, except to the extent the debt is for expenses
 2008 allocated to the tenant.

2009 2. Expenses of a proceeding or other matter that
 2010 concerns primarily the title to the property, other than
 2011 title to the tenant's estate.

2012 3. Except as provided in subparagraph (a)3., expenses
 2013 related to environmental matters, including reclamation,
 2014 assessing environmental conditions, remedying and removing

2015 environmental contamination, monitoring remedial activities
2016 and the release of substances, preventing future releases
2017 of substances, collecting amounts from persons liable or
2018 potentially liable for the costs of such activities,
2019 penalties imposed under environmental laws or regulations
2020 and other payments made to comply with those laws or
2021 regulations, statutory or common law claims by third
2022 parties, and defending claims based on environmental
2023 matters.

2024 4. Extraordinary repairs.

2025 (c) If the tenant or remainderman incurred an expense
2026 for the benefit of his or her own estate without consent or
2027 agreement of the other, he or she must pay such expense in
2028 full.

2029 (d) Except as provided in paragraph (c), the cost of,
2030 or special taxes or assessments for, an improvement
2031 representing an addition of value to property forming part
2032 of the principal shall be paid by the tenant if the
2033 improvement is not reasonably expected to outlast the
2034 estate of the tenant. In all other cases, only a part shall
2035 be paid by the tenant while the remainder shall be paid by
2036 the remainderman. The part payable by the tenant is
2037 ascertainable by taking that percentage of the total that
2038 is found by dividing the present value of the tenant's
2039 estate by the present value of an estate of the same form

2040 as that of the tenant, except that it is limited for a
2041 period corresponding to the reasonably expected duration of
2042 the improvement. The computation of present values of the
2043 estates shall be made by using the rate determined under s.
2044 7520(a)(2) of the Internal Revenue Code, then in effect
2045 and, in the case of an estate for life, the official
2046 mortality tables then in effect under s. 7520 of the
2047 Internal Revenue Code. Other evidence of duration or
2048 expectancy may not be considered.

2049 (3) This section does not apply to the extent it is
2050 inconsistent with the instrument creating the estates, the
2051 agreement of the parties, or the specific direction of the
2052 Internal Revenue Code or other applicable law.

2053 (4) The common law applicable to tenants and
2054 remaindermen supplements this section, except as modified
2055 by this section or other laws.

2056 738.601 Determination and distribution of net income.—

2057 (1) This section applies when:

2058 (a) the death of an individual results in the creation
2059 of an estate or trust; or

2060 (b) an income interest in a trust terminates, whether
2061 the trust continues or is distributed.

2062 (2) A fiduciary of an estate or trust with an income
2063 interest that terminates shall determine, under subsection
2064 (6) and ss. 738.401-738.508 and 738.701-738.703, the amount

2065 of net income and net principal receipts received from
2066 property specifically given to a beneficiary. The fiduciary
2067 shall distribute the net income and net principal receipts
2068 to the beneficiary that is to receive the specific
2069 property.

2070 (3) A fiduciary shall determine the income and net
2071 income of an estate or income interest in a trust which
2072 terminates, other than the amount of net income determined
2073 under subsection (2), under ss. 738.401-738.508 and
2074 738.701-738.703 and by:

2075 (a) including in net income all income from property
2076 used or sold to discharge liabilities;

2077 (b) paying from income or principal, in the
2078 fiduciary's discretion, fees of attorneys, accountants, and
2079 fiduciaries, court costs and other expenses of
2080 administration; and interest on estate and inheritance
2081 taxes and other taxes imposed because of the decedent's
2082 death, but the fiduciary may pay the expenses from income
2083 of property passing to a trust for which the fiduciary
2084 claims an estate tax marital or charitable deduction under
2085 the Internal Revenue Code or comparable law of any state
2086 only to the extent:

2087 1. the payment of the expenses from income will not
2088 cause the reduction or loss of the deduction; or

2089 2. the fiduciary makes an adjustment under s.

2090 738.507(2); and

2091 (c) paying from principal other disbursements made or
2092 incurred in connection with the settlement of the estate or
2093 the winding up of an income interest that terminates,
2094 including:

2095 1. to the extent authorized by the decedent's will,
2096 the terms of the trust, or applicable law, debts, funeral
2097 expenses, disposition of remains, family allowances, estate
2098 and inheritance taxes, and other taxes imposed because of
2099 the decedent's death; and

2100 2. related penalties that are apportioned, by the
2101 decedent's will, the terms of the trust, or applicable law,
2102 to the estate or income interest that terminates.

2103 (4) If a decedent's will or the terms of a trust
2104 provides for the payment of interest or the equivalent of
2105 interest to a beneficiary that receives a pecuniary amount
2106 outright, the fiduciary shall make the payment from net
2107 income determined under subsection (3) or from principal to
2108 the extent net income is insufficient.

2109 (5) A fiduciary shall distribute net income remaining
2110 after payments required by subsection (4) in the manner
2111 described in s. 738.602 to all other beneficiaries,
2112 including a beneficiary that receives a pecuniary amount in
2113 trust, even if the beneficiary holds an unqualified power

2114 to withdraw assets from the trust or other presently
2115 exercisable general power of appointment over the trust.

2116 (6) A fiduciary may not reduce principal or income
2117 receipts from property described in subsection (2) because
2118 of a payment described in s. 738.501 or s. 738.502, to the
2119 extent the decedent's will, the terms of the trust, or
2120 applicable law requires the fiduciary to make the payment
2121 from assets other than the property or to the extent the
2122 fiduciary recovers or expects to recover the payment from a
2123 third party. The net income and principal receipts from the
2124 property must be determined by including the amount the
2125 fiduciary receives or pays regarding the property, whether
2126 the amount accrued or became due before, on, or after the
2127 date of the decedent's death or an income interest's
2128 terminating event, and making a reasonable provision for an
2129 amount the estate or income interest may become obligated
2130 to pay after the property is distributed.

2131 738.602 Distribution to successor beneficiary.—

2132 (1) Except to the extent ss. 738.301-738.310 applies
2133 for a beneficiary that is a trust, each beneficiary
2134 described in s. 738.601(5) is entitled to receive a share
2135 of the net income equal to the beneficiary's fractional
2136 interest in undistributed principal assets, using carrying
2137 values as of the distribution date. If a fiduciary makes
2138 more than one distribution of assets to beneficiaries to

2139 | which this section applies, each beneficiary, including a
2140 | beneficiary that does not receive part of the distribution,
2141 | is entitled, as of each distribution date, to a share of
2142 | the net income the fiduciary received after the decedent's
2143 | death, an income interest's other terminating event, or the
2144 | preceding distribution by the fiduciary.

2145 | (2) In determining a beneficiary's share of net income
2146 | under subsection (1), the following rules apply:

2147 | (a) The beneficiary is entitled to receive a share of
2148 | the net income equal to the beneficiary's fractional
2149 | interest in the undistributed principal assets immediately
2150 | before the distribution date.

2151 | (b) The beneficiary's fractional interest under
2152 | paragraph (a) must be calculated:

2153 | 1. on the aggregate carrying value of the assets as of
2154 | the distribution date; and

2155 | 2. reduced by:

2156 | (i) any liabilities of the estate or trust;

2157 | (ii) property specifically given to a beneficiary
2158 | under the decedent's will or the terms of the trust; and

2159 | (iii) property required to pay pecuniary amounts not
2160 | in trust.

2161 | (c) If a disproportionate distribution of principal
2162 | is made to any beneficiary, the respective fractional

2163 interests of all beneficiaries in the undistributed
2164 principal assets shall be recomputed by:

2165 1. Adjusting the carrying value of the principal
2166 assets to their fair market value before the distribution;

2167 2. Reducing the fractional interest of the recipient
2168 of the disproportionate distribution in the remaining
2169 principal assets by the fair market value of the principal
2170 distribution; and

2171 3. Recomputing the fractional interests of all
2172 beneficiaries in the remaining principal assets based upon
2173 the now restated carrying values.

2174 (d) The distribution date under paragraph (a) may be
2175 the date as of which the fiduciary calculates the value of
2176 the assets if that date is reasonably near the date on
2177 which the assets are distributed. All distributions to a
2178 beneficiary shall be valued based on their fair market
2179 value on the date of distribution.

2180 (3) To the extent a fiduciary does not distribute
2181 under this section all the collected but undistributed net
2182 income to each beneficiary as of a distribution date, the
2183 fiduciary shall maintain records showing the interest of
2184 each beneficiary in the net income.

2185 (4) If this section applies to income from an asset, a
2186 fiduciary may apply the rules in this section to net gain
2187 or loss realized from the disposition of the asset after

2188 the decedent's death, an income interest's terminating
2189 event, or the preceding distribution by the fiduciary.

2190 (5) The carrying value or fair market value of trust
2191 assets shall be determined on an asset-by-asset basis and
2192 is conclusive if reasonable and determined in good faith.
2193 Determinations of fair market value based on appraisals
2194 performed within 2 years before or after the valuation date
2195 are presumed reasonable. The values of trust assets are
2196 conclusively presumed to be reasonable and determined in
2197 good faith unless proven otherwise in a proceeding
2198 commenced by or on behalf of a person interested in the
2199 trust within the time provided in s. 736.1008.

2200 738.701 When right to income begins and ends.—

2201 (1) An income beneficiary is entitled to net income in
2202 accordance with the terms of the trust from the date an
2203 income interest begins. The income interest begins on the
2204 date specified in the terms of the trust or, if no date is
2205 specified, on the date an asset becomes subject to:

2206 (a) the trust for the current income beneficiary; or
2207 (b) a successive interest for a successor beneficiary.

2208 (2) An asset becomes subject to a trust under
2209 paragraph (1) (a):

2210 (a) for an asset that is transferred to the trust
2211 during the settlor's life, on the date the asset is
2212 transferred;

2213 (b) for an asset that becomes subject to the trust
 2214 because of a decedent's death, on the date of the
 2215 decedent's death, even if there is an intervening period of
 2216 administration of the decedent's estate; or

2217 (c) for an asset that is transferred to a fiduciary by
 2218 a third party because of a decedent's death, on the date of
 2219 the decedent's death.

2220 (3) An asset becomes subject to a successive interest
 2221 under paragraph (1)(b) on the day after the preceding
 2222 income interest ends, as determined under subsection (4),
 2223 even if there is an intervening period of administration to
 2224 wind up the preceding income interest.

2225 (4) An income interest ends on the day before an
 2226 income beneficiary dies or another terminating event occurs
 2227 or on the last day of a period during which there is no
 2228 beneficiary to which a fiduciary may or must distribute
 2229 income.

2230 738.702 Apportionment of receipts and disbursements
 2231 when decedent dies or income interest begins.-

2232 (1) A fiduciary shall allocate an income receipt or
 2233 disbursement, other than a receipt to which s 738.601(2)
 2234 applies, to principal if its due date occurs before the
 2235 date on which:

2236 (a) for an estate, the decedent died; or

2237 (b) for a trust or successive interest, an income
2238 interest begins.

2239 (2) If the due date of a periodic income receipt or
2240 disbursement occurs on or after the date on which a
2241 decedent died or an income interest begins, a fiduciary
2242 shall allocate the receipt or disbursement to income.

2243 (3) If an income receipt or disbursement is not
2244 periodic or has no due date, a fiduciary shall treat the
2245 receipt or disbursement under this section as accruing from
2246 day to day. The fiduciary shall allocate to principal the
2247 portion of the receipt or disbursement accruing before the
2248 date on which a decedent died or an income interest begins,
2249 and to income the balance.

2250 (4) A receipt or disbursement is periodic under
2251 subsections (2) and (3) if:

2252 (a) the receipt or disbursement must be paid at
2253 regular intervals under an obligation to make payments; or

2254 (b) the payor customarily makes payments at regular
2255 intervals.

2256 (5) An item of income or obligation is due under this
2257 section on the date the payor is required to make a
2258 payment. If a payment date is not stated, there is no due
2259 date.

2260 (6) Distributions to shareholders or other owners from
2261 an entity to which s. 738.401 applies are due:

2262 (a) on the date fixed by or on behalf of the entity
2263 for determining the persons entitled to receive the
2264 distribution;

2265 (b) if no date is fixed, on the date of the decision
2266 by or on behalf of the entity to make the distribution; or

2267 (c) if no date is fixed and the fiduciary does not
2268 know the date of the decision by or on behalf of the entity
2269 to make the distribution, on the date the fiduciary learns
2270 of the decision.

2271 (7) S. 733.817 controls over any provision of this
2272 chapter 738 to the contrary.

2273 738.703 Apportionment when income interest ends.—

2274 (1) As used in this section, the term "undistributed
2275 income" means net income received on or before the date on
2276 which an income interest ends. The term does not include an
2277 item of income or expense which is due or accrued or net
2278 income that has been added or is required to be added to
2279 principal under the terms of the trust.

2280 (2) Except as otherwise provided in subsection (3),
2281 when a mandatory income interest of a beneficiary ends, the
2282 fiduciary shall pay the beneficiary's share of the
2283 undistributed income that is not disposed of under the
2284 terms of the trust to the beneficiary or, if the
2285 beneficiary does not survive the date the interest ends, to
2286 the beneficiary's estate.

2287 (3) If a beneficiary has an unqualified power to
2288 withdraw more than five percent of the value of a trust
2289 immediately before an income interest ends:

2290 (a) the fiduciary shall allocate to principal the
2291 undistributed income from the portion of the trust which
2292 may be withdrawn; and

2293 (b) subsection (2) applies only to the balance of the
2294 undistributed income.

2295 (4) When a fiduciary's obligation to pay a fixed
2296 annuity or a fixed fraction of the value of assets ends,
2297 the fiduciary shall prorate the final payment as required
2298 to preserve an income tax, gift tax, estate tax, or other
2299 tax benefit.

2300 738.801 Uniformity of application and construction.—In
2301 applying and construing this act, consideration shall be
2302 given to the need to promote uniformity of the law with
2303 respect to its subject matter among states that enact it.

2304 738.802 Relation to electronic signatures in global
2305 and national commerce act.— This chapter modifies, limits,
2306 or supersedes the Electronic Signatures in Global and
2307 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does
2308 not modify, limit, or supersede Section 101(c) of that act,
2309 15 U.S.C. s. 7001(c), or authorize electronic delivery of
2310 any of the notices described in s. 103(b) of that act, 15

2311 U.S.C. s. 7003(b). This chapter also does not modify,
2312 limit, or supersede s. 117.285.

2313 738.803 Severability.—If any provision of this chapter
2314 or its application to any person or circumstance is held
2315 invalid, the invalidity does not affect other provisions or
2316 applications of this chapter which can be given effect
2317 without the invalid provision or application, and to this
2318 end the provisions of this chapter are severable.

2319 738.804 Application.—Except as provided in the terms
2320 of the trust or this chapter, this chapter shall apply to
2321 any receipt or expense received or incurred and any
2322 disbursement made after January 1, [year after enactment],
2323 by any trust or estate, whether established before or after
2324 January 1, [year after enactment], and whether the asset
2325 involved was acquired by the trustee or personal
2326 representative before or after January 1, [year after
2327 enactment]. Receipts or expenses received or incurred and
2328 disbursements made before January 1, [year after
2329 enactment], shall be governed by the law of this state in
2330 effect at the time of the event, except as otherwise
2331 expressly provided in the terms of the trust or in this
2332 chapter.

2333 Section 2. This act shall take effect on January 1,
2334 [year after enactment].

2335

2336

END



The Florida Bar

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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.

General Information

Submitted by: *(name of VBG or individual)*

Real Property, Probate & Trust Law Section of the Florida Bar – Probate Law and Procedure Committee

Address: *(address and phone #)*

c/o Theodore Kypreos, Chair, 505 South Flagler Drive, Suite 1100, West Palm Beach, Florida 33401

Position Level: *(name of VBG)*

Real Property, Probate & Trust Law Section of the Florida Bar – Probate Law and Procedure Committee

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

An amendment to Section 732.217 (1) and (2) Florida Statutes clarifying existing law.

An amendment to Section 732.218 Florida Statutes clarifying existing law.

An amendment to Section 732.219, Florida Statutes confirming that the surviving spouse's interest in property subject to ss. 732.216-732.228, Florida Statutes is not subject to administration in the decedent's probate estate and establishing a procedure and deadline for a surviving spouse to waive rights to property subject to ss. 732.216-732.228, Florida Statutes.

Replacement of Section 732.221, Florida Statutes establishing procedures and deadlines for determining title to property subject to ss. 732.216-732.228, Florida Statutes.

Replacement of Section 732.223, Florida Statutes establishing protections for third parties transferring property subject to ss. 732.216-732.228, Florida Statutes.

An amendment to Section 732.225 Florida Statutes clarifying existing law.

An amendment to Section 732.702 (1), Florida Statutes establishing procedures for a spouse, during a spouse's lifetime, to waive rights under ss. 732.216-732.228, Florida Statutes.

An amendment to Section 733.212, Florida Statutes adding language to the notice of administration regarding the duty of the personal representative to discover property subject to ss. 732.216-732.228, Florida Statutes.

An amendment to Section 733.2121, Florida Statutes adding language to the notice to creditors regarding the duty of the personal representative to discover property subject to ss. 732.216-732.228, Florida Statutes.

An amendment to Section 733.607, Florida Statutes confirming that the surviving spouse’s interest in property subject to ss. 732.216-732.228, Florida Statutes is not subject to administration in the deceased spouse’s probate estate.

2. Political Proposal

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.

Presented to the Real Property, Probate & Trust Law Section of the Florida Bar – Estate and Trust Tax Planning Committee. No Comments received.

Contacts

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

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

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

WHITE PAPER

The *Johnson v. Townsend* Fix Florida Uniform Disposition of Community Property Rights at Death Act (Sections 732.216-732.228, *Florida Statutes*)

I. SUMMARY

Florida is the first choice for relocating retirees within the U.S.,¹ the largest recipient of domestic state-to-state migration within the U.S.,² and the largest recipient of international migration to the U.S.³ Puerto Rico is the most populous U.S. territory,⁴ and Florida is the largest recipient of migrants to the mainland from Puerto Rico.⁵

In *Malleiro v. Mori*, the court observed that “Florida is already a global community and global marketplace. The people of Florida benefit from the way many citizens of distant states and countries visit, invest, and often stay to live out their golden years in Florida. Some are drawn by the comfort of Florida’s sunshine and coastlines. Others come for the security provided by our low tax economy in which the personal income tax is barred by our traditions and expressly by our Florida Constitution. We owe it to them to ensure that their testamentary intentions are strictly honored regarding the disposition of their Florida property.”⁶

In 1992, Florida’s legislature took an important step towards ensuring that the testamentary intentions of this state’s new residents are strictly honored, as applied to married couples relocating from community property jurisdictions, by adopting the Florida Uniform

¹ See Andy Markowitz, AARP, *Top 5 States Where Retirees Are Moving* (January 06, 2023), <https://www.aarp.org/retirement/planning-for-retirement/info-2023/most-popular-relocation-states.html>.

² See Wikipedia.org, *List of U.S. states and territories by net migration* (April 1, 2020 to July 1, 2022), https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_net_migration. See also Kristin Kerns and L. Slagan Locklear, U.S. Census Bureau, *Three New Census Bureau Products Show Domestic Migration at Regional, State, and County Levels* (April 29, 2019), <https://www.census.gov/library/stories/2019/04/moves-from-south-west-dominate-recent-migration-flows.html>.

³ See Wikipedia.org, *List of U.S. states and territories by net migration* (April 1, 2020 to July 1, 2022), https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_net_migration. See also Anthony Knapp, U.S. Census Bureau, *Net Migration between the U.S. and Abroad Added 595,000 to National Population Between 2018 and 2019* (December 30, 2019), <https://www.census.gov/library/stories/2019/12/net-international-migration-projected-to-fall-lowest-levels-this-decade.html>.

⁴ See World Population Review, *United States Territories 2023*, <https://worldpopulationreview.com/country-rankings/united-states-territories>.

⁵ See Brian Glassman, U.S. Census Bureau, *A Third of Movers from Puerto Rico to the Mainland United States Relocated to Florida in 2018* (September 26, 2019), <https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html>.

⁶ *Malleiro v. Mori*, 182 So.3d 5, 11 (Fla. 3d DCA 2015).

Disposition of Community Property Rights at Death Act (sections 732.216-732.228, *Florida Statutes*) (the “Act”).⁷ In 2018, close to three decades after the Act was first adopted, a Florida appellate court for the first time ruled that Florida’s probate creditor claim procedures apply to title disputes arising under the Act, resulting in the unintended forfeiture of a surviving spouse’s property rights. *See Johnson v. Townsend*, 259 So.3d 851 (Fla. 4th DCA 2018).

The primary purpose of this legislation is twofold. First, it clarifies existing Florida law by statutorily exempting title disputes arising under the Act from Florida’s probate creditor claim procedures. Second, it creates a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act.⁸

In addition to the foregoing, this legislation makes targeted and narrowly focused modifications to the Act and other related provisions of the Florida Probate Code to improve clarity and reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

This legislation does not have a fiscal impact on state funds.

II. CURRENT SITUATION

A. The Purpose of the Florida Uniform Disposition of Community Property Rights at Death Act (“Act”)

In 1958, the U.S. Fifth Circuit Court of Appeals summarized the origins and basic principles of the community property system in a case involving Texas law:

The community property system comes from the custom of the women of the Visigoths and other Germanic tribes sharing the fighting and the spoils of war with their men; it owes its strength to the civilized view that marriage is a full partnership. Husband and wife are equal partners. Each has a present, vested half interest in all community property. All property accumulated during marriage is community property, unless it is received by gift, devise, or inheritance. In Texas even income derived from separate property belongs to the community, including interest and dividends from separately owned securities. The husband is the manager of the community. But this management is not equivalent to ownership. He acts as a managing agent or trustee or managing partner of a limited partnership.

⁷ Florida’s Act, with some modifications, is based upon the Uniform Disposition of Community Property Rights at Death Act (“UDCPRDA”), <https://www.uniformlaws.org/viewdocument/act-1971>. The UDCPRDA was promulgated in 1971. The UDCPRDA was replaced in 2021 by the Uniform Community Property Disposition at Death Act (“UCPDDA”), <https://www.uniformlaws.org/committees/community-home?communitykey=425b0732-7ff0-4b28-ada1-fc2b4638f29e>. Florida has not adopted the UCPDDA.

⁸ A statute of repose “bar[s] actions by setting a time limit within which an action must be filed as measured from a specified act, after which time the cause of action is extinguished.” *Hess v. Philip Morris USA, Inc.*, 175 So.3d 687, 695 (Fla. 2015).

The husband may sell or donate community property but not in fraud of his wife’s rights. The earnings of the husband during marriage are community, and property purchased with such earnings is also community. The wife’s rights, aside from managerial control, are the same as the husband’s. Thus, on death or divorce the community is divided equally. Neither spouse has testamentary disposition over the other’s half of the community. The wife has complete testamentary disposition over her half and may leave it even to her paramour.⁹

Domestically, “[t]he community property system has been adopted by nine states: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington, and Wisconsin. The U.S. Territories of Guam and Puerto Rico are also community property jurisdictions.”¹⁰ Approximately 30% of the U.S. population resides in one of our nine community property states, including our two most populous states (California and Texas).¹¹ Internationally, “[u]nder the law of ... most countries in continental Europe and virtually all countries in Latin America, spouses own property ‘in community’ unless they have expressly adopted another marital property regime such as separation of property.”¹²

Under long-established common law spouses relocating to Florida from a community-property jurisdiction retain their rights in property that was community property prior to their change of domicile (as well as in property substituted therefor).¹³ In 1992, Florida’s

⁹ *Commissioner v. Chase Manhattan Bank*, 259 F.2d 231, 239 (5th Cir. 1958) (footnotes omitted).

¹⁰ See IRS, Internal Revenue Manuals (IRM) § 25.18.1.2.2 (03-04-2011), https://www.irs.gov/irm/part25/irm_25-018-001#idm140332604209888.

¹¹ See World Population Review, *US States - Ranked by Population 2020*, <http://worldpopulationreview.com/states>.

<u>Community property states</u>	<u>2023 Population</u>
1. California	40,223,504
2. Texas	30,345,487
3. Washington	7,999,503
4. Arizona	7,379,346
5. Wisconsin	5,955,737
6. Louisiana	4,695,071
7. Nevada	3,225,832
8. New Mexico	2,135,024
9. Idaho	1,920,562
Total	103,880,066

Total 2023 U.S. Population: **339,172,809**

$103,880,066 \div 339,172,809 = 30.63\%$.

¹² See Michael W. Galligan, *International Estate Planning for U.S. Citizens: An Integrated Approach*, Estate Planning, a Thomson Reuters publication (October 2009), <https://www.phillipsnizer.com/siteFiles/24533/International-Estate-Planning-for-U-S-Citizens-An-Integrated-Approach.pdf>.

¹³ See Restatement (First) of Conflict of Laws § 292 (1934). *Movables Held in Community Taken into Another State* (“Movables held by spouses in community continue to be held in community when taken into a state

legislature both simplified and codified this pre-existing common law by adopting the Act. The purpose of the Act is to statutorily preserve “the rights of each spouse in property which was community property prior to change of domicile, as well as in property substituted therefor where the spouses have not indicated an intention to sever or alter their ‘community’ rights. It thus follows the typical pattern of community property which permits the deceased spouse to dispose of ‘his half’ of the community property, while confirming the title of the surviving spouse in ‘her half.’”¹⁴

B. *Johnson v. Townsend*

In 2018, close to three decades after the Act was first adopted, a Florida appellate court for the first time ruled that Florida’s probate creditor claim procedures apply to title disputes arising under the Act, resulting in the unintended forfeiture of a surviving spouse’s property rights. *See Johnson v. Townsend*, 259 So.3d 851 (Fla. 4th DCA 2018). The *Johnson* court held that a surviving spouse’s attempt to confirm her pre-existing right to “her half” of property to which the Act applies is a form of probate creditor “claim,” as that term is defined in section 731.201(4), *Florida Statutes*, and thus subject to the limitations period applicable to creditor claims found in section 733.702(1), *Florida Statutes*, and the 2-year statute of repose applicable to creditor claims found in section 733.710(1), *Florida Statutes*.

Nowhere within the text of the Act or any other provision of the Florida Probate Code is it stated that Florida’s probate creditor claim procedures apply to title disputes arising under the Act, nor does such application comport with the Act’s existing statutory scheme, which explicitly states that one-half of the property to which the Act applies – regardless of who holds title – does not belong to the decedent but is instead the property of the surviving spouse.

Disposition upon death.—Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply **is the property of the surviving spouse** and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent’s one-half of that property is not in the elective estate.

See § 732.219, Fla. Stat. (2023) (emphasis added).

which does not create community interests.”) *See also Quintana v. Ordonez*, 195 So.2d 577, 579-580 (Fla. 3d DCA 1967) (Wife’s vested interest in property acquired while domiciled in Cuba under community property law was not affected by subsequent change of domicile to Florida, a noncommunity property state.)

¹⁴ *See* Uniform Disposition of Community Property Rights at Death Act (UDCPRDA), *Prefatory Note*, <https://www.uniformlaws.org/viewdocument/act-1971>. *See also* § 732.219, Fla. Stat. (2023) (“Disposition upon death.—Upon the death of a married person, **one-half** of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. **One-half** of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state.”) (Emphasis added.)

The effectiveness of the Act is diminished by the uncertainties created by the *Johnson* court's ruling, which for the first time applied Florida's probate creditor claim procedures to title disputes arising under the Act, resulting in the unintended forfeiture of a surviving spouse's property rights.

III. EFFECT OF PROPOSED CHANGES

The proposed changes: (1) clarify existing Florida law by exempting title disputes arising under the Act from the term "claim," as defined in section 731.201(4), *Florida Statutes*, the limitations period applicable to probate creditor claims found in section 733.702(1), *Florida Statutes*, and the 2-year statute of repose applicable to probate creditor claims found in section 733.710(1), *Florida Statutes*; (2) create a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act; and (3) make targeted and narrowly focused modifications to the Act and other related provisions of the Florida Probate Code to improve clarity and reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

SECTION-BY-SECTION ANALYSIS

A. Section 732.217

Current Situation: Property held as tenants by the entirety and homestead property is not property to which the Act applies.

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 732.217, *Florida Statutes*, by adding the new underlined text below:

732.217 Application.—Sections 732.216-732.228 apply to the disposition at death of the following property acquired by a married person:

(1) Personal property, except personal property held as tenants by the entirety, wherever located, which: (a) Was acquired as, or became and remained, community property under the laws of another jurisdiction; (b) Was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, community property; or (c) Is traceable to that community property.

(2) Real property, except homestead and real property held as tenants by the entirety, which is located in this state, and which: (a) Was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as, or which became and remained, community property under the laws of another jurisdiction; or (b) Is traceable to that community property.

B. Section 732.218

Current Situation: The text of section 732.218, *Florida Statutes*, currently contains a double negative.

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 732.218, *Florida Statutes*, by striking the text below:

732.218 Rebuttable presumptions.—In determining whether ss. 732.216-732.228 apply to specific property, the following rebuttable presumptions apply:

(1) Property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as, or to have become and remained, property to which these sections apply.

(2) Real property located in this state, ~~other than homestead and real property held as tenants by the entirety,~~ and personal property wherever located acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property and title to which was taken in a form which created rights of survivorship are presumed to be property to which these sections do not apply.

C. Section 732.219

Current Situation: The effectiveness of the Act is diminished by the uncertainties created by the *Johnson* court's ruling, which resulted in the unintended forfeiture of a surviving spouse's property rights.

Effect of Proposed Changes: The legislation clarifies existing Florida law and reduces the risk of unintended forfeitures of the property rights the Act is intended to preserve by amending the text of section 732.219, *Florida Statutes*, by adding the new underlined text below:

732.219 Disposition upon death; waiver.—

(1) Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse, and is not property of the decedent's probate estate, and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent's probate estate and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent's one-half of that property is not in the elective estate. For purposes of this section, the term "probate estate" means all

property wherever located that is subject to estate administration in any state of the United States or in the District of Columbia.

(2) Subsequent to the filing of a petition for administration, a surviving spouse or any person acting on behalf of a surviving spouse, including, but not limited to, an attorney in fact, agent, guardian of the property, or personal representative of the surviving spouse, may waive the surviving spouse's rights to property to which ss. 732.216-732.228 apply, wholly or partly, by a written contract, agreement, or waiver, signed by the waiving party, if the following or substantially similar language is included in the contract, agreement, or waiver:

“By executing this contract, agreement, or waiver, I intend to waive my rights as a surviving spouse to the property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) applies, or may apply, wholly or partly, as provided herein.”

D. Section 732.221

Current Situation: The effectiveness of the Act is diminished by the uncertainties created by the *Johnson* court's ruling, which resulted in the unintended forfeiture of a surviving spouse's property rights.

Effect of Proposed Changes: The legislation clarifies existing Florida law by exempting title disputes arising under the Act from the term “claim,” as defined in section 731.201(4), *Florida Statutes*, the limitations period applicable to probate creditor claims found in section 733.702(1), *Florida Statutes*, and the 2-year statute of repose applicable to probate creditor claims found in section 733.710(1), *Florida Statutes*. The legislation also creates a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act,¹⁵ by deleting the existing text of section 732.221, *Florida Statutes*, and replacing it with the new underlined text below. The new statute of repose comports with the “announced public policy of this state which requires that estates of decedents be speedily and finally determined.”¹⁶ Finally, in new subsection (b) below, the legislation preserves the existing protections for personal representatives under the Act.

732.221 Demands or disputes regarding title; 2-year statute of repose.—

(a) Demands or disputes regarding title to any property held by the decedent or the decedent's surviving spouse at the time of the decedent's death to which ss. 732.216-732.228 apply, or may apply, shall be determined in a

¹⁵ A statute of repose “bar[s] actions by setting a time limit within which an action must be filed as measured from a specified act, after which time the cause of action is extinguished.” *Hess v. Philip Morris USA, Inc.*, 175 So.3d 687, 695 (Fla. 2015).

¹⁶ *In re Estate of Gay*, 294 So.2d 668, 670 (Fla. 4th DCA 1974).

declaratory judgment action governed by ch. 86. A declaratory judgment action instituted pursuant to this section shall be commenced within 2 years after the decedent's death, or be forever barred. A declaratory judgment action instituted pursuant to this section is not a claim, as such term is defined in s. 731.201. Nothing in s. 733.702 shall require the filing of a statement of claim in the estate of the decedent as a condition precedent to instituting a declaratory judgment action pursuant to this section. Section 733.710 shall not apply to a declaratory judgment action instituted pursuant to this section.

(b) The personal representative or curator has no duty to discover whether any property held by the decedent or the decedent's surviving spouse at the time of the decedent's death is property to which ss. 732.216-732.228 apply, or may apply, unless a written demand is made by the surviving spouse or a beneficiary within 6 months after service of a copy of the notice of administration on the surviving spouse or beneficiary, or by a creditor on or before the later of the date that is 3 months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor.

(c) The declaratory judgment cause of action authorized by this section is extinguished if not commenced prior to expiration of the 2-year statute of repose period set forth in subsection (a). The rights of any person interested as or through a party that fails to commence a timely declaratory judgment action pursuant to this section are forfeit, and the decedent's surviving spouse, personal representative or curator and any other person or entity that at any time is in possession of any property to which ss. 732.216-732.228 apply, or may apply, shall not be subject to liability for any such forfeit rights, and the decedent's personal representative or curator may distribute the assets of the decedent's estate without liability for any such forfeit rights.

E. Section 732.223

Current Situation: The Act is silent regarding protections for third parties transferring property subject to the Act.

Effect of Proposed Changes: The legislation establishes new protections for third parties transferring property subject to the Act by deleting the existing text of section 732.223, *Florida Statutes*, and replacing it with the new underlined text below:

732.223 Protection of payors and other third parties.—

(1) Although a property interest is subject to property rights under ss. 732.216-732.228, a payor or other third party is not liable for paying, distributing, or transferring the property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on

the validity of a governing instrument.

(2) As used in this section the term:

(a) “Governing instrument” means a deed; will; trust; insurance or annuity policy; account with payable-on-death designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; an instrument creating or exercising a power of appointment or a power of attorney; or a dispositive, appointive, or nominative instrument of any similar type.

(b) “Payor” means an insurer, business entity, employer, government, governmental agency or subdivision, or any other person, other than the decedent’s personal representative or a trustee of a trust created by the decedent, authorized or obligated by law or a governing instrument to make payments.

(c) “Person” includes an individual, trust, estate, partnership, association, company, or corporation.

F. Section 732.225

Current Situation: Property held as tenants by the entirety is not property to which the Act applies.

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 732.225, *Florida Statutes*, by adding the new underlined text below:

732.225 Acts of married persons.—Sections 732.216-732.228 do not prevent married persons from severing or altering their interests in property to which these sections apply. The reinvestment of any property to which these sections apply in real property located in this state which is or becomes homestead property or real or personal property held as tenants by the entirety creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

G. Section 732.702

Current Situation: Section 732.702(1), *Florida Statutes*, is silent regarding the procedures for a spouse, during a spouse’s lifetime, to waive rights to property to which the Act applies.

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 732.702(1), *Florida Statutes*, by adding the new underlined text below:

732.702 Waiver of spousal rights.—

(1) The rights of a surviving spouse to an elective share, intestate share, pretermitted share, homestead, property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) applies, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate or any of those rights, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses. The requirement of witnesses shall be applicable only to contracts, agreements, or waivers signed by Florida residents after the effective date of this law. Any contract, agreement, or waiver executed by a nonresident of Florida, either before or after this law takes effect, is valid in this state if valid when executed under the laws of the state or country where it was executed, whether or not he or she is a Florida resident at the time of death. Unless the waiver provides to the contrary, a waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead, property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) applies, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate, by the waiving party in the property of the other and a renunciation by the waiving party of all benefits that would otherwise pass to the waiving party from the other by intestate succession or by the provisions of any will executed before the written contract, agreement, or waiver.

H. Section 733.212

Current Situation: A notice of administration currently provides no notice of the deadlines triggered under the Act upon receipt of service of a notice of administration.

Effect of Proposed Changes: The legislation provides notice of the deadlines triggered under the Act upon receipt of service of a notice of administration by adding the new underlined text below:

733.212 Notice of administration; filing of objections.—

...

(2) The notice shall state:

...

(g) That, the personal representative or curator has no duty to discover whether any property held by the decedent or the decedent’s surviving spouse at the time of the decedent’s death is property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228)

applies, or may apply, unless a written demand is made by the surviving spouse or a beneficiary during the time period set forth in s. 732.221.

I. Section 733.2121

Current Situation: A notice to creditors currently provides no notice of the deadlines triggered under the Act upon receipt of service of a notice to creditors.

Effect of Proposed Changes: The legislation provides notice of the deadlines triggered under the Act upon receipt of service of a notice to creditors by adding the new underlined text below:

733.2121 Notice to creditors; filing of claims.—

(1) Unless creditors' claims are otherwise barred by s. 733.710, the personal representative shall promptly publish a notice to creditors. The notice shall contain the name of the decedent, the file number of the estate, the designation and address of the court in which the proceedings are pending, the name and address of the personal representative, the name and address of the personal representative's attorney, and the date of first publication. The notice shall state that creditors must file claims against the estate with the court during the time periods set forth in s. 733.702, or be forever barred. The notice shall state that a personal representative or curator has no duty to discover whether any property held by the decedent or the decedent's surviving spouse at the time of the decedent's death is property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) applies, or may apply, unless a written demand is made by a creditor during the time period set forth in s. 732.221.

J. Section 733.607

Current Situation: In light of the court's holding in *Johnson v. Townsend*, there is uncertainty regarding whether a surviving spouse's one-half share of property to which the Act applies is subject to administration in the decedent's probate estate. This uncertainty is contrary to the Act's existing statutory scheme, which explicitly states that one-half of the property to which the Act applies does not belong to the decedent but is instead the property of the surviving spouse.¹⁷

Effect of Proposed Changes: The legislation clarifies existing Florida law by amending the text of section 733.607(1), *Florida Statutes*, by adding the new underlined text below:

¹⁷ See § 732.219, Fla. Stat. (2023) (“**Disposition upon death.**—Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply **is the property of the surviving spouse** and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent's one-half of that property is not in the elective estate.”) (Emphasis added.)

733.607 Possession of estate.—

(1) Except as otherwise provided by a decedent’s will, every personal representative has a right to, and shall take possession or control of, the decedent’s property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and may maintain an action to recover possession of property or to determine the title to it. Notwithstanding anything in this section to the contrary, the personal representative has no right to, and shall not take possession or control of, a surviving spouse’s one-half share of property to which the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) applies.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None.

VI. CONSTITUTIONAL ISSUES

The “announced public policy of this state ... requires that estates of decedents be speedily and finally determined.”¹⁸ To that end this legislation creates a new dispute resolution mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act.¹⁹

To the extent these changes result in the forfeiture of pre-existing testamentary property rights, they are a valid and constitutional exercise of Florida’s police power in service of a

¹⁸ *In re Estate of Gay*, 294 So.2d 668, 670 (Fla. 4th DCA 1974).

¹⁹ A statute of repose “bar[s] actions by setting a time limit within which an action must be filed as measured from a specified act, after which time the cause of action is extinguished.” *Hess v. Philip Morris USA, Inc.*, 175 So.3d 687, 695 (Fla. 2015).

legitimate and reasonably related public policy favoring the speedy and final determination of estate proceedings.²⁰

As noted in *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So.2d 64 (Fla.1990), decisions in Florida and in other jurisdictions historically recognized a distinction in the protections to be afforded to property rights versus those afforded to testamentary rights. “The distinction those courts have drawn is that property rights are inalienable rights grounded in natural law, whereas freedom of testation is purely a creation of statute that did not exist at common law.” *Id.* at 67; *see also* Evin Netzer, *Florida Constitutional Law: Demise of the Common Law Distinction Between Testamentary and Property Rights*, 43 Fla. L.Rev. 153, 156 (Jan. 1991) (“[C]ourts historically have viewed testamentary rights as emanating from the legislature, and other real property rights as being fundamental.”).

In *Zrillic*, however, the Florida Supreme Court rejected this dichotomy as arising from “long-abandoned feudal notions of property” and concluded that the testamentary disposition of property was “a specifically expressed [Florida] constitutional property right.” *Zrillic*, 563 So.2d at 67–68. The court thus afforded testamentary rights the same constitutional protections normally provided to other real property rights.

...

Fortunately, the Florida Supreme Court has recently clarified that the test to be applied in evaluating statutes and regulations that infringe on property rights or testamentary rights—at least those that do not require the absolute destruction of property—is not the “least restrictive means” test urged by Judith here, but rather a “reasonable relationship” test. In *Haire v. Florida Department of Agriculture & Consumer Services*, 870 So.2d 774, 783 (Fla.2004), the court explained,

[W]e have held that “[a]ll ... *property rights* are held subject to the fair exercise of the [police] power,” *Golden v. McCarty*, 337 So.2d 388, 390 (Fla.1976) (emphasis supplied), and have used the reasonable relationship test ... to evaluate statutes and regulations that infringe on property rights.

Id. (footnotes omitted).

...

As further explained in *Haire*,

Under this standard of review ... a “state statute must be upheld ... if there is any reasonable relationship between the act and the furtherance of a valid governmental objective.” *Lane v. Chiles*, 698 So.2d 260, 262 (Fla.1997) (emphasis supplied). Specifically, with respect to substantive due process,

²⁰ *See In re Estate of Magee*, 988 So.2d 1 (Fla. 1st DCA 2007) (Elective share statute, in permitting a decedent’s spouse to accept a statutory share, rather than a testamentary share, of decedent’s estate, was rationally related to the legitimate legislative purpose of safeguarding the public welfare, and thus, did not violate the state constitutional provision protecting possession of property.)

a statute is valid if it “bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and is not discriminatory, arbitrary, or oppressive.” *Chicago Title Ins. Co. v. Butler*, 770 So.2d 1210, 1215 (Fla.2000).

870 So.2d at 782.²¹

VII. OTHER INTERESTED PARTIES

None.

²¹ *In re Estate of Magee* at 3 & 5 (emphasis in original).

1 A bill to be entitled

2 An amendment to Section 732.217 (1) and (2) Florida
3 Statutes clarifying existing law; an amendment to Section
4 732.218 Florida Statutes clarifying existing law; an
5 amendment to Section 732.219, Florida Statutes confirming
6 that the surviving spouse's interest in property subject to
7 ss. 732.216-732.228, Florida Statutes is not subject to
8 administration in the decedent's probate estate and
9 establishing a procedure and deadline for a surviving
10 spouse to waive rights to property subject to ss. 732.216-
11 732.228, Florida Statutes; replacement of Section 732.221,
12 Florida Statutes establishing procedures and deadlines for
13 determining title to property subject to ss. 732.216-
14 732.228, Florida Statutes; replacement of Section 732.223,
15 Florida Statutes establishing protections for third parties
16 transferring property subject to ss. 732.216-732.228,
17 Florida Statutes; an amendment to Section 732.225 Florida
18 Statutes clarifying existing law; an amendment to Section
19 732.702 (1), Florida Statutes establishing procedures for a
20 spouse, during a spouse's lifetime, to waive rights under
21 ss. 732.216-732.228, Florida Statutes; an amendment to
22 Section 733.212, Florida Statutes adding language to the
23 notice of administration regarding the duty of the personal
24 representative to discover property subject to ss. 732.216-
25 732.228, Florida Statutes; an amendment to Section
26 733.2121, Florida Statutes adding language to the notice to
27 creditors regarding the duty of the personal representative
28 to discover property subject to ss. 732.216-732.228,
29 Florida Statutes; an amendment to Section 733.607, Florida
30 Statutes confirming that the surviving spouse's interest in
31 property subject to ss. 732.216-732.228, Florida Statutes
32 is not subject to administration in the deceased spouse's
33 probate estate.

[7367.0000034/4167247/4]

34 Be It Enacted by the Legislature of the State of
35 Florida:

36 Section 1. Section 732.217 (1) and (2), Florida
37 Statutes, are revised to read:

38 (1) Personal property, except personal property held
39 as tenants by the entirety, wherever located, which: (a) Was
40 acquired as, or became and remained, community property under
41 the laws of another jurisdiction; (b) Was acquired with the
42 rents, issues, or income of, or the proceeds from, or in
43 exchange for, community property; or (c) Is traceable to that
44 community property.

45 (2) Real property, except homestead and real property
46 held as tenants by the entirety, which is located in this
47 state, and which: (a) Was acquired with the rents, issues,
48 or income of, the proceeds from, or in exchange for, property
49 acquired as, or which became and remained, community property
50 under the laws of another jurisdiction; or (b) Is traceable
51 to that community property.

52 Section 2. Section 732.218(2), Florida Statutes, is
53 revised to read:

54 (2) Real property located in this state, ~~other than~~
55 ~~homestead and real property held as tenants by the entirety~~,
56 and personal property wherever located acquired by a married
57 person while domiciled in a jurisdiction under whose laws
58 property could not then be acquired as community property and
59 title to which was taken in a form which created rights of
60 survivorship are presumed to be property to which these
61 sections do not apply.

62 Section 3. Section 732.219, Florida Statutes, is
63 revised to read:

[7367.0000034/4167247/4]

64 732.219 Disposition upon death; waiver.—

65 (1) Upon the death of a married person, one-half of
66 the property to which ss. 732.216-732.228 apply is the
67 property of the surviving spouse, is not property of the
68 decedent's probate estate, and is not subject to testamentary
69 disposition by the decedent or distribution under the laws of
70 succession of this state. One-half of that property is the
71 property of the decedent's probate estate and is subject to
72 testamentary disposition or distribution under the laws of
73 succession of this state. The decedent's one-half of that
74 property is not in the elective estate. For purposes of this
75 section, the term "probate estate" means all property
76 wherever located that is subject to estate administration in
77 any state of the United States or in the District of Columbia.

78 (2) Subsequent to the filing of a petition for
79 administration, a surviving spouse or any person acting on
80 behalf of a surviving spouse, including, but not limited to,
81 an attorney in fact, agent, guardian of the property, or
82 personal representative of the surviving spouse, may waive
83 the surviving spouse's rights to property to which ss.
84 732.216-732.228 apply, wholly or partly, by a written
85 contract, agreement, or waiver, signed by the waiving party,
86 if the following or substantially similar language is
87 included in the contract, agreement, or waiver:

88 "By executing this contract, agreement, or waiver, I
89 intend to waive my rights as a surviving spouse to the
90 property to which the Florida Uniform Disposition of
91 Community Property Rights at Death Act (ss. 732.216-732.228)
92 applies, or may apply, wholly or partly, as provided herein."

93 Section 4. Section 732.221, Florida Statutes, is
94 repealed and replaced with the following:

[7367.0000034/4167247/4]

95 732.221 Demands or disputes regarding title; 2-year
96 statute of repose.-

97
98 (a) Demands or disputes regarding title to any
99 property held by the decedent or the decedent's surviving
100 spouse at the time of the decedent's death to which ss.
101 732.216-732.228 apply, or may apply, shall be determined in
102 a declaratory judgment action governed by ch. 86. A
103 declaratory judgment action instituted pursuant to this
104 section shall be commenced within 2 years after the decedent's
105 death, or be forever barred. A declaratory judgment action
106 instituted pursuant to this section is not a claim, as such
107 term is defined in s. 731.201. Nothing in s. 733.702 shall
108 require the filing of a statement of claim in the estate of
109 the decedent as a condition precedent to instituting a
110 declaratory judgment action pursuant to this section. Section
111 733.710 shall not apply to a declaratory judgment action
112 instituted pursuant to this section.

113
114 (b) The personal representative or curator has no duty to
115 discover whether any property held by the decedent or the
116 decedent's surviving spouse at the time of the decedent's
117 death is property to which ss. 732.216-732.228 apply, or may
118 apply, unless a written demand is made by the surviving spouse
119 or a beneficiary within 6 months after service of a copy of
120 the notice of administration on the surviving spouse or
121 beneficiary, or by a creditor on or before the later of the
122 date that is 3 months after the time of the first publication
123 of the notice to creditors or, as to any creditor required to
124 be served with a copy of the notice to creditors, 30 days
125 after the date of service on the creditor.

126
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127 (c) The declaratory judgment cause of action authorized by
128 this section is extinguished if not commenced prior to
129 expiration of the 2-year statute of repose period set forth
130 in subsection (a). The rights of any person interested as or
131 through a party that fails to commence a timely declaratory
132 judgment action pursuant to this section are forfeit, and the
133 decedent's surviving spouse, personal representative or
134 curator and any other person or entity that at any time is in
135 possession of any property to which ss. 732.216-732.228
136 apply, or may apply, shall not be subject to liability for
137 any such forfeit rights, and the decedent's personal
138 representative or curator may distribute the assets of the
139 decedent's estate without liability for any such forfeit
140 rights.

141 Section 5. Section 732.223, Florida Statutes, is
142 repealed and replaced with the following:

143 732.223 Protection of payors and other third parties.—

144 (1) Although a property interest is subject to
145 property rights under ss. 732.216-732.228, a payor or other
146 third party is not liable for paying, distributing, or
147 transferring the property to a beneficiary designated in a
148 governing instrument, or for taking any other action in good
149 faith reliance on the validity of a governing instrument.

150 (2) As used in this section the term:

151 (a) "Governing instrument" means a deed; will;
152 trust; insurance or annuity policy; account with
153 payable-on-death designation; security registered in
154 beneficiary form (TOD); pension, profit-sharing,
155 retirement, or similar benefit plan; an instrument
156 creating or exercising a power of appointment or a power

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157 of attorney; or a dispositive, appointive, or nominative
 158 instrument of any similar type.

159 (b) "Payor" means an insurer, business entity,
 160 employer, government, governmental agency or
 161 subdivision, or any other person, other than the
 162 decedent's personal representative or a trustee of a
 163 trust created by the decedent, authorized or obligated
 164 by law or a governing instrument to make payments.

165 (c) "Person" includes an individual, trust,
 166 estate, partnership, association, company, or
 167 corporation.

168 Section 6. Section 732.225, Florida Statutes, is
 169 revised to read:

170 732.225 Acts of married persons.—Sections 732.216–
 171 732.228 do not prevent married persons from severing or
 172 altering their interests in property to which these sections
 173 apply. The reinvestment of any property to which these
 174 sections apply in real property located in this state which
 175 is or becomes homestead property or real or personal property
 176 held as tenants by the entirety creates a conclusive
 177 presumption that the spouses have agreed to terminate the
 178 community property attribute of the property reinvested.

179 Section 7. Section 732.702 (1), Florida Statutes, is
 180 revised to read:

181 732.702 Waiver of spousal rights.—

182 (1) The rights of a surviving spouse to an elective
 183 share, intestate share, pretermitted share, homestead,
 184 property to which the Florida Uniform Disposition of
 185 Community Property Rights at Death Act (ss. 732.216–732.228)
 186 applies, exempt property, family allowance, and preference in
 187 appointment as personal representative of an intestate estate

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188 or any of those rights, may be waived, wholly or partly,
189 before or after marriage, by a written contract, agreement,
190 or waiver, signed by the waiving party in the presence of two
191 subscribing witnesses. The requirement of witnesses shall be
192 applicable only to contracts, agreements, or waivers signed
193 by Florida residents after the effective date of this law.
194 Any contract, agreement, or waiver executed by a nonresident
195 of Florida, either before or after this law takes effect, is
196 valid in this state if valid when executed under the laws of
197 the state or country where it was executed, whether or not he
198 or she is a Florida resident at the time of death. Unless the
199 waiver provides to the contrary, a waiver of "all rights," or
200 equivalent language, in the property or estate of a present
201 or prospective spouse, or a complete property settlement
202 entered into after, or in anticipation of, separation,
203 dissolution of marriage, or divorce, is a waiver of all rights
204 to elective share, intestate share, pretermitted share,
205 homestead, property to which the Florida Uniform Disposition
206 of Community Property Rights at Death Act (ss. 732.216-
207 732.228) applies, exempt property, family allowance, and
208 preference in appointment as personal representative of an
209 intestate estate, by the waiving party in the property of the
210 other and a renunciation by the waiving party of all benefits
211 that would otherwise pass to the waiving party from the other
212 by intestate succession or by the provisions of any will
213 executed before the written contract, agreement, or waiver.

214 Section 8. Section 733.212(2), Florida Statutes, is
215 revised to add a new subsection (g):

216 (g) That, the personal representative or curator has
217 no duty to discover whether any property held by the decedent
218 or the decedent's surviving spouse at the time of the
219 decedent's death is property to which the Florida Uniform

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220 Disposition of Community Property Rights at Death Act (ss.
221 732.216-732.228) applies, or may apply, unless a written
222 demand is made by the surviving spouse or a beneficiary during
223 the time period set forth in s. 732.221.

224 Section 9. Section 733.2121(1), Florida Statutes, is
225 revised to read:

226 (1) Unless creditors' claims are otherwise barred by
227 s. 733.710, the personal representative shall promptly
228 publish a notice to creditors. The notice shall contain the
229 name of the decedent, the file number of the estate, the
230 designation and address of the court in which the proceedings
231 are pending, the name and address of the personal
232 representative, the name and address of the personal
233 representative's attorney, and the date of first publication.
234 The notice shall state that creditors must file claims against
235 the estate with the court during the time periods set forth
236 in s. 733.702, or be forever barred. The notice shall state
237 that a personal representative or curator has no duty to
238 discover whether any property held by the decedent or the
239 decedent's surviving spouse at the time of the decedent's
240 death is property to which the Florida Uniform Disposition of
241 Community Property Rights at Death Act (ss. 732.216-732.228)
242 applies, or may apply, unless a written demand is made by a
243 creditor during the time period set forth in s. 732.221.

244 Section 10. Section 733.607(1), Florida Statutes, is
245 revised to read:

246 (1) Except as otherwise provided by a decedent's will,
247 every personal representative has a right to, and shall take
248 possession or control of, the decedent's property, except the
249 protected homestead, but any real property or tangible
250 personal property may be left with, or surrendered to, the
251 person presumptively entitled to it unless possession of the

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252 property by the personal representative will be necessary for
253 purposes of administration. The request by a personal
254 representative for delivery of any property possessed by a
255 beneficiary is conclusive evidence that the possession of the
256 property by the personal representative is necessary for the
257 purposes of administration, in any action against the
258 beneficiary for possession of it. The personal representative
259 shall take all steps reasonably necessary for the management,
260 protection, and preservation of the estate until distribution
261 and may maintain an action to recover possession of property
262 or to determine the title to it. Notwithstanding anything in
263 this section to the contrary, the personal representative has
264 no right to, and shall not take possession or control of, a
265 surviving spouse's one-half share of property to which the
266 Florida Uniform Disposition of Community Property Rights at
267 Death Act (ss. 732.216-732.228) applies.

268 Section 11. The act shall take effect upon becoming
269 law.

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

White Paper

Proposal to Amend §28.223, Fla. Stat. (Probate Records; recordation)

I. SUMMARY

This proposal to amend §28.223, Florida Statute, governing Clerks of the Circuit Courts, is intended to ensure the availability of necessary information about deceased individuals contained in the land records maintained by the Clerks so that proper heirs can be identified in the chain of title and protect the public interest of certainty in the ownership of real property.

Currently, only certain Orders from the court are recorded in the Official Records, most of which do not list the heirs in an estate. In a testate estate, the Will and Codicils are recorded, thereby evidencing the heirs to an estate, but there are situations where the beneficiaries in the Will differ from the heirs or beneficiaries indicated in the petition due to, for example (1) death of a beneficiary, (2) invalid devise of homestead property (3) disclaimers, or (4) non-existent beneficiary, e.g. incorrectly named charity. In an intestate estate, there is no will to record, so there is often no indication of who the heirs are to the estate in the land records. The only resource available to determine heirs may be to physically appear at the Clerk of Court's office to inspect the court docket. Unfortunately, several Clerks have been destroying court documents, in some cases as early as 10 years' time, thereby eliminating the pleadings that include information regarding the heirs to an intestate estate. For the heirs or their descendants to later convey property owned by the decedent, a costly court determination of heirs would be required. This proposal avoids this problem on a go forward basis.

By amending the statute to require that certain additional petitions and orders affecting the inheritance of real property be recorded, the evidence of heirship will have been forever preserved in our Official Records where documents are not destroyed and would be easily accessible to the public.

II. CURRENT SITUATION

Only the current documents are required by statute to be recorded:

- Wills and Codicils admitted to probate
- Orders revoking the probate of any wills and codicils
- Letters of Administration
- Orders affecting or describing real property
- Final Orders
- Orders of Final Discharge
- Orders of Guardianship

III. EFFECT OF PROPOSED CHANGES

The proposed legislation will require additional documents to be recorded, namely:

- Orders Admitting Will to Probate
- Orders Determining Beneficiaries
- Petitions affecting or describing real property
- Petition for Administration
- Petition for Summary Administration

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have any fiscal impact on state government.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal, on a go forward basis, would lower or eliminate the cost of determinations of heirs after the probate documents are destroyed by the Clerks of Court due to passage of time. The proposal would also provide recorded evidence as to ownership of real property passing through probate in accordance with the succession laws of this state thereby avoiding economic loss to the true heirs of the real property and their descendants. Creditors' rights are also affected by the enhanced ability to identify a debtor's interest in real property.

VI. CONSTITUTIONAL ISSUES

This change in statute does not create constitutional concerns.

VII. OTHER INTERESTED PARTIES

This proposal has been approved by the RPPTL Title Insurance and Title Insurance Liaison Committee. Support is anticipated from the RPPTL _____.

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

White Paper

Proposal to Amend §28.223, Fla. Stat. (Probate Records; recordation)

I. SUMMARY

This proposal to amend §28.223, Florida Statute, governing Clerks of the Circuit Courts, is intended to ensure the availability of necessary information about deceased individuals contained in the land records maintained by the Clerks so that proper heirs can be identified in the chain of title and protect the public interest of certainty in the ownership of real property.

Currently, only certain Orders from the court are recorded in the Official Records, most of which do not list the heirs in an estate. In a testate estate, the Will and Codicils are recorded, thereby evidencing the heirs to an estate, but there are situations where the beneficiaries in the Will differ from the heirs or beneficiaries indicated in the petition due to, for example (1) death of a beneficiary, (2) invalid devise of homestead property (3) disclaimers, or (4) non-existent beneficiary, e.g. incorrectly named charity. In an intestate estate, there is no will to record, so there is often no indication of who the heirs are to the estate in the land records. The only resource available to determine heirs may be to physically appear at the Clerk of Court's office to inspect the court docket. Unfortunately, several Clerks have been destroying court documents, in some cases as early as 10 years' time, thereby eliminating the pleadings that include information regarding the heirs to an intestate estate. For the heirs or their descendants to later convey property owned by the decedent, a costly court determination of heirs would be required. This proposal avoids this problem on a go forward basis.

By amending the statute to require that certain additional petitions and orders affecting the inheritance of real property be recorded, the evidence of heirship will have been forever preserved in our Official Records where documents are not destroyed and would be easily accessible to the public.

II. CURRENT SITUATION

Only the current documents are required by statute to be recorded:

- Wills and Codicils admitted to probate
- Orders revoking the probate of any wills and codicils
- Letters of Administration
- Orders affecting or describing real property
- Final Orders
- Orders of Final Discharge
- Orders of Guardianship

III. EFFECT OF PROPOSED CHANGES

The proposed legislation will require additional documents to be recorded, namely:

- Orders Admitting Will to Probate
- Orders Determining Beneficiaries
- Petitions affecting or describing real property
- Petition for Administration
- Petition for Summary Administration

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have any fiscal impact on state government.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal, on a go forward basis, would lower or eliminate the cost of determinations of heirs after the probate documents are destroyed by the Clerks of Court due to passage of time. The proposal would also provide recorded evidence as to ownership of real property passing through probate in accordance with the succession laws of this state thereby avoiding economic loss to the true heirs of the real property and their descendants. Creditors' rights are also affected by the enhanced ability to identify a debtor's interest in real property.

VI. CONSTITUTIONAL ISSUES

This change in statute does not create constitutional concerns.

VII. OTHER INTERESTED PARTIES

This proposal has been approved by the RPPTL Title Insurance and Title Insurance Liaison Committee. Support is anticipated from the RPPTL _____.

1 **28.223 Probate records; recordation.—**

2 (1) The clerk of the circuit shall record all wills and codicils admitted to probate, ~~petition for commencing~~
3 ~~proceedings in probate court, orders~~ admitting the will to probate, ~~orders~~ determining beneficiaries, orders revoking
4 the probate of any wills and codicils, letters of administration, ~~petitions and~~ orders affecting or describing real
5 property, final orders, orders of final discharge, and orders of guardianship filed in the clerk's office. No other
6 petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except ~~at or~~ the written
7 direction of the court. The direction may be ~~in the order by~~ incorporation ~~in the order~~ of the words "To be recorded,"
8 or words to that effect. Failure to record an order or a judgment shall not affect its validity.

9 (2) The clerk shall record all instruments under this section in Official Records and index them in the same manner
0 as prescribed in s. 28.222.

Field Code Changed

1 (3) All records of a court of this state heretofore exercising probate jurisdiction shall be placed, and remain, in the
2 custody of the clerk and shall be the records of the circuit court. The circuit court may exercise judicial cognizance
3 and power over them as it may over its own records.

4 (4) Certified transcripts of the whole or any part of probate or administration proceedings in any court of this state
5 or of any foreign state or country may be recorded. If the certified copy is not a part of a pending probate proceeding
6 in the court, the person causing it to be recorded shall pay the costs of recordation.

7 (5) The recording of any instrument required or permitted to be recorded under this section in a pending probate or
8 administration proceeding in the county shall be included in the fees prescribed in s. 28.2401.

Field Code Changed



The Florida Bar

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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

Real Property Probate and Trust Law Section of the Florida Bar

Submitted by: *(name of VBG or individual)* - [Real Property Problems Study Committee](#)

Address: *(address and phone #)* [c/o Anne Pollack, Chair, 433 Central Avenue, Suite 400, St. Petersburg, FL 33701 \(813\)898-2836](#)

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, #2 if the issue is political; #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

An act relating to notice by mail or courier; amending s. 1.101, F.S.; to include electronic confirmation; providing retroactive application; providing an effective date.

Three horizontal lines for text entry.

2. Political Proposal

Four horizontal lines for text entry.

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?

III. Strive for Equal Access to and Availability of Legal Services.

Two horizontal lines for text entry.

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;

X 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

X does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

d. Additional Information:

Three horizontal lines for text entry.

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.

[Business Law Section of the Florida Bar- No comments.](#)

[Trial Lawyers Section of the Florida Bar](#)

[City, COunty, and Local Gov't Section of the Florida Bar](#)

Contacts

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

[Wilhelmina F. Kightlinger, Legislation Co-Chair of the RPPTL
Section
3402 West Cypress Street
Tampa, FL 33607
813-519-9956](#)

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
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
850-999-4100](#)

By Senator Click or tap here to enter text.

2024###__

1 A bill to be entitled

2 An act relating to notice by mail or courier; amending s.

3 1.101, F.S.; to include electronic confirmation; providing

4 retroactive application; providing an effective date.

5

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

7

8 Section 1. Section 1.101, Florida Statutes, is amended to

9 read:

10 (11) The words "registered mail" includes certified mail with

11 ~~return receipt requested~~ electronic signature confirmation.

12 (20) Return receipt requested shall include any electronic

13 signature confirmation process adopted by the United State Postal

14 Service or national overnight courier.

15 Section 2. The amendment made by this act to s.1.101, F.S.,

16 is remedial in nature and applies retroactively.

17

18 Section 3. This act shall take effect upon becoming a law.

19

20

21

22

23

24

WHITE PAPER

An Act amending ss. 1.01, F.S., to revise the definition of "registered mail."

I. SUMMARY

The Florida Statutes contain roughly 250 references to "registered mail," "return receipt," and "registered or certified mail." Each of these references directs litigants, creditors, contractors, attorneys, and the like to deliver statutorily required notice or service of process through the United States Postal Service ("USPS"). The statutory references to "registered mail," "certified mail," and "return receipt" contemplate services provided by USPS which enable the sender to track the status of delivery and otherwise confirm delivery has occurred. On January 6, 2020, the Postal Regulatory Commission approved the removal of "return receipt for merchandise." *See*, Postal Bulletin 22546, effective July 1, 2020. While traditionally, parties relied on the return of the "green card" signed by the recipient in order to confirm delivery, this service is no longer available in some areas of the United States. As such, the statutory delivery requirements which contemplated delivery with a "return receipt" as currently set forth in over 250 statutes, may no longer be accomplished in conformance with these statutes.

The proposal seeks to achieve consistency throughout the Florida Statutes by revising the definition of delivery methods available pursuant to Florida law to accomplish the purpose of the original statute, namely, the confirmation of delivery. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

Currently, Section 1.01(11), Florida Statutes, defines "registered mail" to "include certified mail with return receipt requested." As a result of Postal Bulletin 22546, it may no longer be possible in many jurisdictions to send notice via "certified mail with return receipt requested." USPS has updated its services to include electronic tracking and electronic signature services which have effectively taken the place of the green card "return receipt" postcard that was previously returned to the sender to confirm delivery occurred. In light of this change, there is a substantial ambiguity in over 250 Florida Statutes which will result in additional litigation and confusion.

Given the purpose of statutorily required service of process and delivery of notice is to ensure parties have an ample opportunity to address issues which may arise under Florida law, failing to address the lack of availability of "return receipts" will result in arguments over whether delivery by other means satisfies the statutory requirement for delivery by "certified mail," "registered mail," or otherwise which requires a "return receipt." For instance, should a litigant deliver a required notice via Federal Express with a signature required, the purpose of the statute (confirmation of delivery) is accomplished when the recipient electronically signs confirming their receipt. However, because the current statute anticipates delivery via USPS, despite the ability to confirm delivery has occurred, the use of Federal Express arguably is not permitted and the service of such a notice would be a nullity.

III. EFFECT OF PROPOSED CHANGES

The effect of the proposed changes will be to eliminate ambiguities throughout the Florida statutes where service of process or notice is required to be served by "registered mail," and/or

"certified mail return receipt requested." The proposal will allow litigants and attorneys greater leeway in the selection of the method of delivery of process and notice through the United States Postal Services and alternative delivery services which also provide electronic confirmation of delivery, i.e. UPS, DHS, FedEx.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

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

VI. CONSTITUTIONAL ISSUES

The proposal does not give rise to any constitutional issues.

V. OTHER INTERESTED PARTIES

Other groups which may be interested in the proposal include Business Law Section, City, County, and Local Government Section and the Trial Lawyers Section of the Florida Bar, and United States Postal Service.

There is no anticipated opposition to the proposal since it simply codifies existing USPS policy.