# Real Property, Probate and Trust Law ("RPPTL") Section Executive Council Meeting The Breakers Palm Beach, Florida July 22, 2023 9:45 a.m. (E.T.)

## <u>Agenda</u>

- I. <u>Presiding</u> S. Katherine Frazier, Chair
- **II.** <u>Secretary's Report</u> Lee A. Weintraub, Secretary
  - 1. Motion to approve the minutes of the June 3, 2023 meeting of the Executive Council held at The Opal Grand in Delray Beach, Florida. **p. 11**
  - 2. Meeting Attendance. p. 27

#### III. <u>Chair's Report</u> — S. Katherine Frazier, Chair

- 1. Thank you to our Sponsors p. 44
- **2.** Interim Actions Approved by the Executive Committee.
  - (A) Approval of 2023 revisions to The Florida Realtors and The Florida Bar ("FR/BAR") forms submitted by the Florida Realtor-Attorney Joint Committee, as follows: The Residential Contract for Sale and Purchase and The AS-IS Residential Contract For Sale and Purchase, revising the form version, making a format change to the AS-IS version, and including language related to SB 264 concerning the purchase of certain Florida real property by certain foreign principals, as reflected in the Residential Contract for Sale and Purchase (Florida Realtors-Florida Bar-fix) and AS IS Residential Contract for Sale and Purchase (Florida Realtors-Florida Bar-AS IS-fix) draft forms. **p. 46**
  - (B) Approval of Website/Social Media Accounts contract with Tracey Eller as web administrator for one year extension from July 1, 2023, to June 30, 2024. p. 73
  - (C) Approval of contract with graphic designer, Laura Pichard-Murphy, dba Paisley Design, for layout and design work for the ActionLine magazine, from July 1, 2023 to June 30, 2024. **p. 93**
  - (D) Approval of letter and forms on behalf of the RPPTL Section to the Florida Court Clerks & Comptrollers ("FCCC") which provides as

assistance to the FCCC forms that comply with House Bill 1419 for further use as the FCCC deems necessary. p. 104

- (E) Approval of Attendance Waivers
- 3. 2023-2024 Executive Council Meetings p. 116
- 4. Milestones.
- **5.** General Comments of the Chair.
- IV. <u>Board of Governors Report</u>— F. Scott Westheimer, President; Rosalyn Sia ("Sia") Baker-Barnes, Liaison
- V. Chair-Elect's Report John C. Moran, Chair-Elect
  - 1. 2024-2025 Executive Council meetings. p. 117
- VI. <u>Treasurer's Report</u> S. Dresden Brunner, Treasurer
  - 1. Statement of Current Financial Conditions. **p. 118**
- VII. <u>Director of At-Large Members Report</u> Wilhelmina F. Kightlinger, Director
- VIII. <u>CLE Seminar Coordination Report</u> Angela M. Adams (Probate & Trust) and Brenda Ezell (Real Property), Co-Chairs
  - 1. Upcoming CLE programs and opportunities. **p. 136**
- IX. <u>Legislation Committee</u> Steven H. Mezer (Real Property) and Sancha Brennan (Probate & Trust), Co-Chairs
- X. <u>Probate and Trust Law Division Report</u> Jon Scuderi, Division Director

General Comments and Recognition of Division Sponsors.

#### Action Items:

**1.** <u>Principal and Income Committee</u> - Edward F. Koren and Pamela O. 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 including certain modifications that reflect Florida public policy choices. **p. 137** 

## Motion to:

- (A) 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 including certain modifications that reflect Florida public policy choices;
- (B) find that the legislative position is within the purview of the RPPTL Section; and
- (C) expend funds in support of the proposed legislative position.

#### 2. <u>Probate Law and Procedure Committee</u> – Theodore S. Kypreos, Chair

The Johnson v. Townsend Fix: Proposed legislation to clarify existing Florida law by statutorily exempting community property from Florida's probate creditor claims procedure; creating a new dispute resolution mechanism for community property title disputes 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. 253** 

#### Motion to:

- (A) clarify existing Florida law by statutorily exempting community property from Florida's probate creditor claims procedure; creating a new dispute resolution mechanism for community property title disputes and twoyear 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;
- (B) find that the legislative position is within the purview of the RPPTL Section; and
- (C) expend funds in support of the proposed legislative position

# XI. <u>Real Property Law Division Report</u> — Wm. Cary Wright, Division Director

General Comments and Recognition of Division Sponsors.

#### Action Items:

1. <u>Insurance and Surety Committee</u> – Debbie S. Crockett and Adele I. Stone, Co-Chairs

Motion for the RPPTL Section to support the Insurance and Surety Committee's application to the Board of Legal Specialization and Education and The Florida Bar for the creation of a new board certification called "Insurance Coverage Law." **p. 291** 

## **2.** <u>Title Insurance and Title Insurance Industry Liaison</u> – *Christopher W. Smart, Chair*

Proposed legislation to amend section 28.223, Florida Statutes, 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. 340** 

#### Motion to:

- (A) amend section 28.223, Florida Statutes, 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;
- (B) find that the legislative position is within the purview of the RPPTL Section; and
- (C) expend funds in support of the proposed legislative position.

#### 3. <u>Real Property Problems Study</u> – Susan K. Spurgeon, Chair

Proposed legislation relating to notice by mail or courier; amending section 1.101, Florida Statutes to: include electronic confirmation; providing retroactive application; providing an effective date. **p. 347** 

#### Motion to:

- (A) amend section 1.101, Florida Statutes to: include electronic confirmation; providing retroactive application; providing an effective date.
- (B) find that the legislative position is within the purview of the RPPTL Section; and
- (C) expend funds in support of the proposed legislative position.

#### Information Item:

**1.** <u>**Title Issues and Standards**</u> – *Rebecca Wood and Amanda K. Hersem, Co-Chairs.* 

Presentation of a proposed amendment to Standard 00 to remove the masculine pronoun in the recognition of the diversity in the legal community and in the spirit of inclusivity. **p. 354** 

XII. General Standing Committees Report — John C. Moran, Chair-Elect

#### Action Item:

1. <u>Ad Hoc Bylaws Committee</u> -- Robert ("Bob") S. Swaine and William ("Bill") T. Hennessey, III, Co-Chairs

Motion to: (A) recommend approval of the proposed amendments to Articles IV, V, and VII of the RPPTL Section's Bylaws; and (B) authorize transmittal to The Florida Bar Board of Governors with a request for the Board's consent. **p. 355** 

The proposed amendments are reflected in blackline. A complete copy of the RPPTL Section's Bylaws is available on the RPPTL Section website: <a href="https://www.rpptl.org">www.rpptl.org</a>

#### Information Items:

1. <u>Ad Hoc Rules Revisions Committee</u> -- Michael V. Hargett, Thomas M. Karr, J. Richard ("Rich") Caskey, Co-Chairs

Update on Fast Track Report of the Civil Procedure Rules Committee filed July 3, 2023. **p. 360** 

2. Communications Committee -- Michael V. Hargett, Chair

Update on "microsite" and matters of interest.

**3.** <u>Fellows Committee</u> -- Bridget M. Friedman and Terrence L. Harvey, Co-Chairs

Introduction of new Fellows: John Curtis Wade Cherneski, Danielle N. Clark, Sara Ashley Harmon, and Natasha Selvaraj.

4. Information Technology Committee -- Hardy L. Roberts, III, Chair

Update on matters of interests related to artificial intelligence.

5. <u>Professionalism and Ethics Committee</u> -- Andrew B. Sasso, Chair

Update on Florida Supreme Court's July 7, 2023 Opinion In Re: Code for Resolving Professionalism Referrals and Amendments to Rule Regulating The Florida Bar 6-10.3, Case No. SC2023-0884. **p. 375** 

# 6. Liaison with Clerks of Circuit Courts -- Laird A. Lile

Update on matters of interest.

7. <u>Liaisons with Business Law Section</u> -- Manuel ("Manny") Farach and Gwynne A. Young

Update on Business Law Section initiative regarding UCC Article 12 (i.e. cryptocurrency)

8. <u>Liaison with Pro Bono Committee</u> – Lorna E. Brown-Burton

Update on matters of interest.

#### XIII. <u>Probate and Trust Law Division Committee Reports</u> — Jon Scuderi, Division Director

- **1.** Ad Hoc Guardianship Law Revision Nicklaus ("Nick") J. Curley, Stacy B. Rubel, and David C. Brennan, Co-Chairs; Sancha K. Brennan, Vice Chair
- 2. Ad Hoc Committee on Electronic Wills Frederick ("Ricky") L. Hearn, Chair; Jenna G. Rubin, Vice Chair
- **3.** Ad Hoc Study Committee on Jurisdiction and Due Process Barry F. Spivey, Chair; Sean W. Kelley and Shelly Wald Harris, Co-Vice Chairs
- **4.** Ad Hoc ART Alyse Reiser Comiter, Chair; Jack A. Falk, Jr. and Sean M. Lebowitz, Co-Vice Chairs
- **5. Asset Protection** Michael A. Sneeringer, Chair; Richard ("Rick") R. Gans, Patrick J. Lannon, and Justin M. Savioli, Co-Vice-Chairs
- 6. Attorney/Trust Officer Liaison Conference Mitchell A. Hipsman, Chair; Stacey L. Cole, Michael M. Rubenstein, Gail G. Fagan, and Eammon W. Gunther, Co-Vice Chairs
- 7. Charitable Planning and Exempt Organizations Denise S. Cazobon, Chair; Kelly L. Hellmuth and Alyssa R. Wan, Co-Vice-Chairs
- 8. Elective Share Review Jenna G. Rubin, Chair; Cristina Papanikos, Jason P. Van Lenten and Lauren Y. Detzel, Co-Vice-Chairs
- **9.** Estate and Trust Tax Planning Richard N. Sherrill, Chair; Alfred ("Al") J. Stashis, Jr., Andrew H. Thompson and Jolyon D. Acosta, Co-Vice Chairs
- **10.** Guardianship, Power of Attorney and Advanced Directives Stacy B. Rubel, Chair; Elizabeth ("Liz") M. Hughes, Stephanie L. Cook, Caitlin M. Powell and Jacobeli J. Behar, Co-Vice Chairs
- **11. IRA, Insurance and Employee Benefits** Charles ("Chad") W. Callahan, III, Chair; Rebecca C. Bell and Rachel N. Barlow, Co-Vice-Chairs
- **12.** Liaisons with ACTEC Elaine M. Bucher, Tami F. Conetta, Jerome L. Wolf, Charles I. Nash, L. Howard Payne and Diana S.C. Zeydel
- **13.** Liaisons with Elder Law Section Travis D. Finchum and Marjorie E. Wolasky
- **14.** Liaison with the FSGA Stephanie Cook
- **15.** Liaisons with Tax Section William R. Lane, Jr., Brian M. Malec and Brian

C. Sparks

- 16. Liaison with Professional Fiduciary Council Darby Jones
- 17. OPPG Delegate Nicklaus ("Nick") J. 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** R. Lee McElroy, IV, Chair; Cady L. Huss and Darren M. Stotts, Co-Vice Chairs
- **20. Probate Law and Procedure** Theodore S. Kypreos, Chair; Benjamin F. Diamond, Stacey Prince-Troutman, and J. Grier Pressley, III, Co-Vice Chairs
- **21. Trust Law** David J. Akins, Chair; Jennifer J. Robinson, Jenna G. Rubin, and M. Travis Hayes, Co-Vice Chairs
- **22.** Wills, Trusts and Estates Certification Review Course Rachel A. Lunsford, Chair; J. Allison Archbold and J. Eric Virgil, Co-Vice Chairs
- **XIV.** <u>Real Property Law Division Committee Reports</u> Wm. Cary Wright, Division Director
  - **1.** Ad Hoc Hayslip Brian W. Hoffman, Chair; James ("Jim") C. Russick and Russell M. Robbins, Co-Vice Chairs
  - 2. Ad Hoc UCRERA Manuel ("Manny") Farach, Chair; Jason M. Ellison and James ("Jim") C. Russick, Co-Vice Chairs
  - **3.** Attorney Banker Conference Kristopher E. Fernandez and Salome J. Zikakis, Co-Chairs; R. James ("Jim") Robbins, Jr., Vice Chair
  - **4. Commercial Real Estate** É. Ashley McRae, Chair; Annabella Barboza, Erin M. Miller, and Alexandra D. Gabel, Co-Vice Chairs
  - 5. Condominium and Planned Development Alexander B. Dobrev and Allison L. Hertz, Co-Chairs; Russel M. Robbins, Vice Chair
  - 6. Condominium and Planned Development Law Certification Review Course Christine M. Ertl, Chair; Alessandra Stivelman, 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** Bradley R. Weiss, Chair; Haley R. Maple and Trevor B. Arnold, Co-Vice Chairs
  - **10.** Development & Land Use Lisa B. Van Dien, Chair; Jin Liu, Vice Chair
  - **11. Insurance & Surety** Adele I. Stone and Debbie S. Crockett, Co-Chairs; Anne Q. Pollack, Vice Chair
  - **12.** Liaisons with FLTA Alan K. McCall, Melissa J. Murphy, Alan B. Fields and James ("Jim") C. Russick
  - **13.** Liaison with American College of Real Estate Lawyers (ACREL) Martin A.Schwartz and William ("Bill") P. Sklar
  - 14. Liaison with American College of Construction Lawyers (ACCL) George J. Meyer
  - 15. Liaison with Florida Realtors Louis ("Trey") E. Goldman, III
  - **16. Real Estate Certification Review Course** Lloyd Granet, Chair; Martin ("Marty") S. Awerbach, Laura M. Licastro and Jason M. Ellison, Co-Vice

Chairs

- **17. Real Estate Leasing** —Christopher ("Chris") 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 ("Manny") Farach and Shawn G. Brown, Co-Chairs; Amanda R. Kison and Terrence L. Harvey, Co-Vice Chairs
- **20. Real Property Problems Study** Susan K. Spurgeon, Chair; Amber E. Ashton and Brian W. Hoffman, Co-Vice Chairs
- 21. Residential Real Estate and Industry Liaison Nicole M. Villarroel and Kristen K. Jaiven, Co-Chairs; James ("Jamie") A. Marx and Richard ("Rich") 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 ("Bob") M. Graham, Karla J. Staker and Melissa Scaletta, Co-Vice Chairs

# XV. <u>General Standing Committee Reports</u> — John C. Moran, Chair-Elect

- 1. Ad Hoc Bylaws Robert ("Bob") S. Swaine and William ("Bill") T. Hennessey, III, Co-Chairs
- 2. Ad Hoc Protocols Stacy O. Kalmanson, Chair; Colleen C. Sachs, Vice Chair
- **3.** Ad Hoc Rules Revisions Michael V. Hargett, Thomas M. Karr, and J. Richard Caskey, Co-Chairs
- **4.** Ad Hoc RTOD Alan ("Steve") S. Kotler and Christopher ("Chris") W. Smart, Co-Chairs; Jeffrey ("Jeff") S. Goethe, Vice Chair
- 5. Ad Hoc Series LLC James A. Marx, James C. Russick and Michael A. Sneeringer, Co-Chairs
- 6. Amicus Coordination Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
- 7. Budget S. Dresden Brunner, Chair; Tae K. Bronner, Linda S. Griffin, Alfred ("Al") J. Stashis, Jr. and Pamela O. Price, Co-Vice Chairs
- 8. Communications Michael V. Hargett, Chair; Laura K. Sundberg, Vice Chair
- 9. CLE Coordination Brenda B. Ezell and Angela M. Adams, Co-Chairs; Tatianna Brenes-Stahl, Silvia B. Rojas, Robert ("Rob") Lancaster, Amanda R. Kison, Yoshimi O. Smith, and Stacy O. Kalmanson, Co-Vice Chairs
- **10.** Convention Coordination Tae K. Bronner and Stacy O. Kalmanson, Co-Chairs
- **11. Disaster and Emergency Preparedness and Response** Colleen C. Sachs, Chair; Amy B. Beller and Michael A. Bedke, Co-Vice Chairs
- **12.** Fellows Bridget M. Friedman and Terrence L. Harvey, Co-Chairs; Taniquea C. Reid, Vice Chair
- 13. Homestead Issues Study Jeffrey ("Jeff") A. Baskies, Chair; Shane

Kelley, Jeremy T. Cranford and E, Burt Bruton, Co-Vice Chairs

- **14.** Information Technology Hardy L. Roberts III, Chair; Alexander ("Alex") B. Dobrev, Jesse B. Friedman and Jourdan Haynes, Co-Vice Chairs
- **15.** Law School Outreach Kymberlee C. Smith, Chair; Amanda C. Cummins, Lilleth Bailey and Kristine L.Tucker, Co-Vice Chairs
- **16.** Legislation Sancha C. Brennan (PT) and Steven H. Mezer (RP), Co-Chairs; M. Travis Hayes, Benjamin ("Ben") F. Diamond and Nicklaus ("Nick") J. Curley (PT), Christopher ("Chris") W. Smart, Michael V. Hargett and Arthur J. Menor (RP), Co-Vice Chairs
- **17.** Legislative Update Salome J. Zikakis (RP) and Kit van Pelt (PT), Co-Chairs; Gutman Skrande (PT) and Jennifer S. Tobin (RP), Co-Vice Chairs
- 18. Liaison with:
  - **a.** American Bar Association (ABA) Robert ("Rob") S. Freedman, Edward F. Koren, George J. Meyer and Julius J. Zschau
  - **b. Business Law Section** Manuel ("Manny") Farach and Gwynne A. Young
  - c. Clerks of Circuit Courts Laird A. Lile
  - d. FLEA / FLSSI David C. Brennan and Roland D. ("Chip") Waller
  - e. Florida Bankers Association Mark T. Middlebrook and Robert G. Stern
  - **f. Judiciary** —Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Mark A. Speiser, and Judge Michael Rudisill
  - **g.** Out of State Members Nicole C. Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
  - h. TFB Board of Governors Rosalyn Sia Baker-Barnes
  - i. TFB CLE Committee Angela M. Adams and Brenda B. Ezell
  - j. TFB Council of Sections —S. Katherine Frazier and John C. Moran
  - **k. TFB Pro Bono Legal Services** Lorna E. Brown-Burton
- **19.** Long-Range Planning S. Katherine Frazier, Chair
- 20. Meetings Planning George J. Meyer, Chair
- **21. Membership and Inclusion** Lawrence ("Larry") J. Miller, Chair; Annabella Barboza, Shayla M. Johnson-Mount, Eryn E. Riconda, and Joseph M. Percopo, Co-Vice Chairs
- **22. Model and Uniform Acts** Patrick J. Duffey and Amber E. Ashton, Co-Chairs; Michael A. Bedke and Cullen I. Boggus, Co-Vice Chairs
- **23. Professionalism and Ethics** Andrew B. Sasso, Chair; Elizabeth A. Bowers Stoops, Alexander ("Alex") B. Dobrev, Rt. Judge Celeste H. Muir, and Laura K. Sundberg, Co-Vice Chairs
- 24. Publications ActionLine Erin F. Finlen and Michelle G. Hinden, Co-Chairs; Alexander S. Douglas, II, Daniel ("Danny") L. McDermott, Gregg I. Strock, Paul E. Roman, and Seth R. Kaplan, Co-Vice Chairs
- **25.** Publications Florida Bar Journal J. Allison Archbold (PT) and Homer Duvall, III (RP), Co-Chairs; Marty J. Solomon, Brian C. Sparks, and Jonathan A. Galler, Co-Vice Chairs
- **26. Sponsor Coordination** Arlene C. Udick and Rebecca C. Bell, Co-Chairs; Marsha G. Madorsky, Jason J. Quintero, and J. Michael Swaine, Co-Vice Chairs
- **27. Strategic Planning** Robert ("Rob") S. Freedman and William ("Bill") T. Hennessey, III, Co-Chairs

- **28. Strategic Planning Implementation** Robert ("Rob") S. Freedman, Robert ("Bob") S. Swaine, William ("Bill") T. Hennessey, III, Debra L. Boje, and Sarah S. Butters, Co-Chairs
- XVI. Adjourn: Motion to Adjourn.

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.)

# **MINUTES**

I. <u>Presiding</u> — Sarah Butters, Chair The Chair called the meeting to order at 10:13 a.m.

#### II. <u>Secretary's Report</u> — Sancha Brennan, Secretary

Sancha Brennan presented the minutes of the February 25, 2023, meeting of the Executive Council held at The Hotel Effie in Sand estin, Florida, for approval.

#### 1. <u>MOTION</u>:

To approve the minutes of the February 25, 2023, meeting of the Executive Council as published at page 8 of the agenda.

The motion was seconded by Larry Miller. There was no discussion.

#### The motion PASSED, unanimously.

- 2. Secretary Brennan reminded members attending the meeting by ZOOM, that their attendance would be recorded if they connected to the meeting using the link provided when they registered and appeared by video (even if they turned the camera off). If, however, they called into the meeting using a telephone number, their attendance would only appear as a telephone number; and she encouraged members to attend via video using the ZOOM link provided. She also reminded members to review the attendance roster published in the minutes for accuracy. The Delray meeting attendance roster was then delivered to members for circulation.
- III. Chair's Report Sarah Butters, Chair
  - 1. <u>Sponsor Recognition:</u> The Chair recognized and thanked the Section's General Sponsors:

# FNF First American Title Insurance Company Attorney's Title Fund Services Guardian Trust

# J.P. Morgan Private Bank Management Planning MPI Old Republic Title Stewart Title Stout Westcor Land Title Insurance Company WFG National Title Insurance Co.

Thank you to our Sponsors!

The Chair also recognized and expressed appreciation to those Friends of the Section Sponsors:

Business Valuation Analysts CATIC Cumberland Trust Fiduciary Trust International of the South Heritage Investment Hindman Auctions National Philanthropic Trust Doma Title Insurance Probate Cash Title Resources and Valuation Services.

<u>Sponsor Recognition</u>. The Chair then invited **Carlos Batlle**, of **JP Morgan**, the sponsor of the Thursday night reception, to address the Council. Mr. Batlle then thanked the members of the Council for the opportunity to sponsor the Section, noting and appreciating the 'family-like' supportive atmosphere of the group.

# 2. <u>Milestones</u>:

a. The Chair then informed the Council of the passing of Mary Swaine. Not only the spouse of former Section Chair, Michael Swaine, and mother of former Section Chair, Robert "Bob" Swaine, Mary was also a regular attendee and friendly face at Section events and for decades has served the Section as a volunteer, assisting administrative staff and the Executive Committee behind the scenes at meetings and seminars. The Chair noted the nametag flags that members were wearing all weekend in memory of Mary. She then thanked the Past Chairs and members of the Executive Council who showed their support at the Services held in Sebring to celebrate Mary's life. She will be dearly missed.

- b. The Chair then announced the members of the Section's Executive Council who had reached the milestone of practicing law in Florida for 50 years. Congratulations to Bob Schwartz, Pete Dunbar and Patrick Christiansen.
- c. Congratulations to the Executive Council Member Grandparents:
  - Former Section Chair, Michael Gelfand, his daughter, Sarah Gelfand and son in law, Schott Schilson, on their newest arrival, Ruth Louise;
  - Silvia Rojas on her new grandchild; and
  - Former Section Chair, Robert "Rob" Freedman, on the arrival of his new grandchild.
- d. Congratulations to Len Prescott and Alex Dobrev on their election into the American College of Real Estate Lawyers ACREL!
- e. Congratulations to Elizabeth Hughes, recently admitted to the Miami-Dade Bar Association's Circle of Excellence.
- f. Congratulations to former Circuit Judge Celeste Hardee Muir, who was honored by the Miami-Dade Bar Association, receiving the initial recognition of an annual award to be named after her, "The Annual Celeste Hardee Muir Judicial Professionalism and Civility Award"!
- g. Congratulations to Michael Sneeringer, elected to serve on the Collier County Bar Board of Directors.
- h. Congratulations to Christina Papanikos on her election as a Fellow of the American College of Trust and Estate Counsel ACTEC!
- i. A special Thank You, to Roger Larson, for 30 years of service to the Executive Council.
- j. The Chair then announced and congratulated GUY EMERICH, the recipient of the Lynwood Arnold, Jr. Memorial Award, which is an award given to recognize Section members who give greatly of their time and knowledge to enhance diversity within the section, mentoring of law students or young lawyers or the promotion of providing pro bono legal services.
- k. The Chair then recognized the recipients of the John Arthur Jones Annual Service Award: ANDREW SASSO and CHRISTOPHER SMART for their significantly outstanding service to the Section during this Bar year.
- I. JEFFREY GOETHE was then recognized by the Chair as the recipient of the Robert C. Scott Memorial Award. This award, while not granted on an annual basis, is given when the occasion requires, to recognize a

Section member who exemplifies the many years of untiring devotion and continued service of Robert C. Scott, to the Section and its membership.

- m. Congratulations and thank you to TAE BRONNER, recipient of The William Belcher Lifetime Professionalism Award. This award is presented at the discretion of the Council, to an Executive Council member in recognition of their lifetime contributions to the Executive Council, the Section, its members, Florida lawyers and the public in promoting the highest standards of ethics and professionalism.
- n. Elected by vote of the At-Large-Members, Congratulations to COLLEEN SACHS, who was honored with the At-Large-Member of the Year award!
- o. The Rising Star Award, which is given to honor those members who have demonstrated the potential for future Section leadership through their participation in Section committees and projects and made significant contributions to the Section, was awarded this year to JOLYON ACOSTA and ALLISON HERTZ, Congratulations!

# 3. General Comments of the Chair:

Chair Butters then reminded members of the Section how to access the ZOOM meeting links for committee meetings and provided a power point slide directing members how to navigate after logging in to the RPPTL.org website. After clicking the Executive Council dropdown tab to view the menu, click "upcoming meeting info" then "Meeting Schedule with links" to access a full list of all meetings, along with the applicable ZOOM links. She also reminded members to log on using these links, as opposed to using the dial-in option in order for attendance to be recorded.

**Sponsor Recognition**: The Chair then thanked **Stewart Title** for its sponsorship of the Section and recognized **David Shanks** of **Stewart Title** for sponsoring the fun events on Friday night. David thanked the Section for the opportunity to sponsor and congratulated Jason Ellison's son, who won the bull riding contest!

- IV. Board of Governors Report— Chair Butters then introduced Gary S. Lesser, President of the Florida Bar, to a round of applause. President Lesser then offered his thanks to the Section, indicating the Section provides the gold standard for the Bar and acknowledging that the Florida legislature looks to the Section as a leader. President Lesser then addressed the Section to give the Board of Governors report:
  - 1. The Bar has developed a new mentorship program, "Counsel to Counsel' providing mentorship for new lawyers (3 years of experience or less and 3 lawyers or less in the firm). In addition, the Bar is developing an app, targeting young lawyers, called "Milestones" that will help to match and connect young lawyers and their mentors.
  - 2. President Lesser acknowledged that the Supreme Court was very supportive of the program and that Chief Justice Muniz recorded a video in support of the program.

- 3. President Lesser then recognized the contribution of attorney, Zack Zuroweste, to a round of applause, thanking him for his work on this project. Chair Butters announced that Zack had recently been selected to serve on the Executive Council; and President Lesser reminded the members that Zack previously worked with President-Elect, Scott Westheimer, in the creation of Legal Fuel, the online resource for Florida lawyers.
- **4.** President Lesser then informed the Council of the creation of a special court committee, "Greater Access to Justice" that dealt with a number of issues, include non-lawyer law firm ownership. As a result of some of the findings, including a perceived growing disconnect between lawyers and the general public, the Board of Governors created a committee to focus on three areas:
  - The role of pro se litigants and delays in court proceedings
  - The role of pro bono and legal aid
  - The role of affordable legal services

This committee met every other week for a period of 8 months and produced a 267 page report. President Lesser recognized the former Section Chair, Sandra Diamond, and Board of Governors member, who served on the committee and thanked her and the committee for all of their hard work.

**5.** President Lesser thanked the Section for the time; it has been a great year!

Chair Butters then thanked President Lesser and introduced Board of Governors member, Sia Baker Barnes, who will be serving as the Board of Governors Liaison for the Section during the 2023-24 Bar year. Ms. Baker-Barnes greeted the Council, sharing that she is excited to be the serving as the Liaison for the Section and announced that she is also a candidate for President-Elect of the Florida Bar.

**Sponsor Recognition**: The Chair then recognized **Jennifer Bloodworth** and **First American.** Ms. Bloodworth thanked Sarah for a fun Bar year and a fun Friday night event, even though she did not participate in the bull riding contest. She reported that David Brennan forbade Sancha Brennan from participating in the bull riding challenge. Ms. Bloodworth said that she is humbled by the work done by the Section and the work of the condo committee regarding the new challenges with easements and condo terminations. **First American** thanks the Section for supporting **Len Prescott** ("Bob") and his election into ACREL.

**POINT OF ORDER** – raised by former Section Chair, Robert Swaine, who was recognized by Chair Butters, as he brought her a glass of champagne as the 'good news' and her 'Past Chair' name badge – the 'great news' – and escorted her to the back row, amid a round of applause.

# V. <u>Chair-Elect's Report</u> — Katherine Frazier, Chair-Elect

The Chair-Elect, Katherine Frazier, then stepped to the podium, thanking Sarah Butters for a fantastic year as Section Chair and congratulating her elevation to the Back Row.

1. Chair-Elect Frazier then gave her report, first announcing the list of Executive Council meetings published in the agenda:

2023-2024 Executive Council meetings:

7/19/23–7/23/23The Breakers, Palm Beach9/20/23–9/24/23Fairmont Le Chateau Frontenac, Quebec City, Canada11/8/23–11/12/23JW Marriot Tampa, Water Street, Tampa2/21/24-2/25/24Ritz Carlton Grande Lakes, Orlando5/29/24-6/2/24Hyatt Regency Coconut Point, Bonita Springs

The registration information should be rolling out for the Breakers shortly.

2. She then directed the Council to page 44 of the agenda, where the Division Chair and Vice-Chair appointments for the 2023-2024 Bar year are published. She thanked the Council members for their leadership during the 2022-23 Bar year and thanked the CLE committee and CLE Co-Chairs for producing the mandatory leadership training CLE that was recently held.

<u>Sponsor Recognition</u>: The Chair then recognized **Old Republic Title** and **Jim Russick**, who on behalf of **Amber Ashton** and **Trish Ludan** (sp?) offered his thanks to the Section for all the support.

**VI.** <u>General Standing Division Report</u> — *S. Katherine Frazier, Division Director and Chair-Elect,* then gave the report of the General Standing Division:

# ACTION ITEM:

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

Chair-Elect Frazier introduced Andrew Sasso, Chair of the Professionalism and Ethics Committee, congratulating him on his annual service award and directing members to Andy, who appeared by ZOOM, to provide the report of the Professionalism and Ethics Committee.

Andy thanked the Chair-Elect and the Executive Committee for their recognition of him with the award. He then introduced the Chair of the subcommittee, Lt. Col. Lawrence Miccolis, who appeared on ZOOM, and committee member, Erin Finlen, who appeared in person, to present the motion of the committee. Larry thanked both the Section Chair and Chair-Elect for their outstanding leadership and support throughout the year. He also recognized and thanked the members of the subcommittee: Kim Bald, Erin Finlen, Caitlein Jammo, Marlene Watson, Andy Sasso and retired Judge Linda Allan for their all of their work. Lt. Col Miccolis then provided a history of formation of the subcommittee and the method of analyzing and considering the requested changes, providing several examples, including a finding that many young lawyers entering the field have expressed disinterest in joining the career field without the requested change.

# COMMITTEE MOTION:

"Should the Real Property, Probate and Trust Law Section request amendments to Chapter 4 of 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 a committee motion, no second is needed.

Discussion:

The Chair-Elect recognized subcommittee member, Erin Finlen, who addressed the Council, adding to the introduction provided by Larry that the subcommittee felt that there should be an express statement made as to why we would be removing the "z" words. She requests the floor to read a comment that the Committee is proposing to add as an addition to the Rules:

"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.

No other discussion was held.

The question on the motion was called and the committee motion was read into the record by the Chair-Elect.

# The motion PASSED unanimously.

#### **INFORMATION ITEM:**

2. <u>Ad Hoc Bylaws Committee</u> – Robert S. Swaine and William T. Hennessey, III, Co-Chairs

> Former Chair, William ("Bill") Hennessey, presented the proposed amendments to the Section Bylaws of the Real Property, Probate and Trust Law Section.

• He explained that as a result of COVID, the Bylaws were amended to allow virtual attendance at meetings. He spoke with many members of the Section and past Chairs about the pros and cons of virtual attendance vs in-person attendance. Ultimately, the Committee found that while the majority believe that the ability to participate via virtual attendance from time to time has been helpful, it is important that the Executive Council, as a governing body, be able to gather in-person during the year. For that reason, the committee is recommending an in-person attendance requirement for membership as an Executive Council member.

- Some of the other proposed changes include:
  - The Chair-Elect will send out the annual notice, not the Long-Range Planning Committee, 30 days before the Annual Convention meeting, instead of 60 days;
  - Requirement of secret ballot be removed for elections;
  - Attendance requirements for EC members changed to require attendance, in person, at 2 in-state meetings each year;
  - The Chair will have discretion to permit virtual attendance at meetings, but the attendance requirements will still necessitate 2 in-person meetings; and
  - The Chair will have discretion to permit virtual voting, but the requirement will be included in the meeting notice.
- If there are any comments, please let Bill Hennessey know. This is expected to be an Action Item at the Breakers, and, if passed, would be presented to the Board of Governors, with changes anticipated to take effect sometime next year.
- No questions for the Committee.

A full copy of the current bylaws is available on the RPPTL website <u>www.rpptl.org</u>.

**Sponsor Recognition**: The Chair-Elect then recognized sponsor **MPI**. There was no comment provided by **MPI**, and the Chair-Elect thanked **MPI** for its sponsorship.

#### 3. <u>Liaison to the Judiciary</u> – Hon. Michael J. Rudisill, Liaison

The Chair-Elect introduced Judge Michael Rudisill to give the report of the Judiciary Committee. Judge Rudisill first thanked Chair, Sarah Butters, for an awesome year and for allowing time for his report.

He reminded the probate judges that the national conference of probate judges would be coming up in the fall, November 15-19<sup>th</sup>.

Judge Rudisill provided some of his background as a Seminole County 18<sup>th</sup> Circuit Civil and former administrative judge. He has been serving on the bench for 14 years.

He called for members to consider ways that the Section can support the judges. The judges appreciate that the Section members are subject matter experts and judges are generalists and want practitioners to appreciate the need to educate the judges.

He also thanked the CLE Co-Chair, Lee Weintraub.

# 4. <u>Fellows</u> - Christopher A. Sajdera and Angela Santos, Co-Chairs

Chris Sajdera provided an update on the process of selecting the new Fellows for the coming year. There was a great response, with about 39 very strong Page 8 of 15

applications. They are currently conducting the 10 semi-final interviews and are expecting to have another great class of Fellows.

The Chair-Elect then announced an addition to the agenda, a report by the Law School Programming Outreach Committee. *Johnathan Butler and Kymberlee Curry Smith, Co-Chairs* 

#### 5. <u>Law School Programming Outreach Committee</u> – Johnathan Butler and Kymberlee Curry Smith, Co-Chairs

The committee wanted to recognize Sylvia Rojas, Rebecca Wood and Jacki Marzan for their assistance in re-energizing the internship program for law students. They expect that there will be an application available for that program soon. This is an opportunity for the ALMS to volunteer to be a mentor to law students to help recruit new law school students. There is a law school student council meeting coming up on June 15<sup>th</sup> at 5:00 pm so the students can share with the Section what they are doing on campus and help them connect with the Section.

The Chair-Elect then introduced Michael Hargett, who is giving a report from the Civil Rules Committee:

# 6. <u>Ad Hoc Civil Rules Committee</u> – Michael Hargett

Mr. Hargett then provided the Council with information that the Executive Committee may need to take interim action before the Breakers meeting. They anticipate that there will be a heavy lift on the probate side because the Probate Rules Committee will likely need help. With that in mind, they have appointed co-vice chairs: Rich Caskey and Tom Karr, to be ready to assist with this effort. In addition, we anticipate that the Probate Rules Committee will respond and that response is due to be filed July 3<sup>rd</sup>. While we expected there to be a proposed amendment, it is now anticipated that the Probate Rules Committee will respond to the Supreme Court by providing them with 2 options, one of which our Section may prefer over the other. For that reason, we want to be ready to make sure we have an opportunity to be heard on that issue and former Chair, Robert Goldman, has agreed to stand by in the event we need assistance in that regard.

**Sponsor Recognition**: The Chair-Elect then recognized sponsor **Westcor and Laura Licastro. Laura Licastro** addressed the Council, expressing that it is an honor to be a sponsor and an honor to work with all the attorneys in the Section. She enjoys getting involved in all the good that the Section does. If you are interested in becoming a **Westcor** agent, please come and speak with her after the meeting.

# VII. <u>Treasurer's Report</u> — Jon Scuderi, Treasurer

Mr. Scuderi announced that this will be his last report as Treasurer and that Dresden Brunner would be assuming the role as Treasurer for next year. His Report is provided in the agenda and is a report reflecting a balance, 10 months into the Bar year. The CLE Committee has done especially well this year and the balance has increased over last year.

**Sponsor Recognition**: Mr. Scuderi then introduced Section sponsor, **FNF** and **Cynthia Manfretti**, who is pinch-hitting for Karla Staker at the meeting today. She expressed her thanks at what an honor it is to serve as a Section sponsor.

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

Mr. Mezer then addressed the Executive Council, providing the ALMS report.

- 1. He reported that due to space and timing issues, the ALMS did not meet in Delray. However, instead, the space was used for the No Place Like Home CLE that was presented, and he thanked Mike Bedke and Colleen Sachs for putting that awesome program together. The program will be recorded and made available for future viewing ondemand.
- 2. As Johnathan Butler mentioned earlier, on July 13<sup>th</sup> they will be presenting a Landlord Tenant Rights and Responsibilities program and Cooley Law School. Two volunteers have offered to participate, Chris Fernandez and Shawn Brown. If anyone else would like to help, please see Jonathan Butler.
- **3.** On July 27<sup>th</sup>, they will be conducting the mock interviews for law students, also at Cooley from 1:00-3:30. If you would like to participate, we would encourage you to do so.
- 4. Finally, as his last report as Director of ALMS, he thanks Larry Miller, specifically for relinquishing ALMS to him in such good shape and hopes that the incoming Director, Willie Kightlinger, can say the same as she takes over in July. It has been a rewarding experience to work with the ALMS. Thank you so much for all of your work for the Section.

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

Co-Chair, Lee Weintraub gave the report for the CLE Committee.

- 1. Mr. Weintraub first thanked the Chairs and Vice-Chairs for attending the leadership training CLE. If you missed it, the CLE will be posted on the website.
- 2. He notified the membership that the Section is looking to increase the number of CLEs offered in the fall. Mr. Weintraub asked for Committee Chairs to reach out if they have CLE ideas.
- **3.** He recognized Jeff Goethe for the excellent work he did on the Homestead CLE presented at the Convention.
- **4.** Mr. Weintraub then indicated that it was his last meeting as CLE Co-Chair for the Real Property Division. He thanked the Council members for all of their

hard work this year. It is because of all the speakers, pushing through during tough circumstances, that continue to make our programs profitable.

5. Welcome to Brenda Ezell, who is the incoming Real Property Division Co-Chair for CLE for next year.

**Sponsor Recognition**: The Chair-Elect then recognized Section sponsor, **Guardian Trust and Travis Finchum.** Mr. Finchum addressed the Council. **Guardian Trust** is a not-forprofit corporation that serves as trustee for special needs trust. If you need a special needs trust, please reach out to him. Additionally, **Guardian Trust** is a sponsor for the pinball event tonight, and they are happy to serve as the sponsor and look forward to seeing everyone out there.

#### X. <u>Legislation Committee</u> – Wilhelmina F. Kightlinger (Real Property) and Larry Miller (Probate & Trust), Co-Chairs

**Sponsor Recognition**: Larry Miller thanked **Gary Marshall** and **STOUT** for serving as a sponsor of the Section.

Larry Miller then gave the report for the Legislation Committee, as Co-Chair Willie Kightlinger appeared via ZOOM, expressing her disappointment at being unable to attend in-person to see everyone and to show off her pinball wizardry that evening.

Larry then thanked Manny Farrach, Art Menor and Chris Smart, the Legislation Real Property Vice-Chairs, as well as Nick Curley and Travis Hayes, the Vice-Chairs for the Probate side. Great job this year.

The succeeding Chair on the Probate side next year will be Sancha Brennan, with Vice-Chairs, Nick Curley, Travis Hayes and Ben Diamond. For the Real Property side, Co-Chair Steve Mezer will be supported by Vice-Chairs, Chris Smart, Art Menor and Mike Hargett.

As a reminder, next year is an early legislative session, beginning in January, so be sure to submit your legislation requests to the committee early.

Larry Miller then proceeded to pass the bull...]?

Chair-Elect Frazier then thanked Larry Miller and introduced Probate Division Director, John Moran.

XI. <u>Probate and Trust Law Division Report</u> — John C. Moran, Division Director Director Moran introduced two information items.

# **INFORMATION ITEM:**

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

John Moran then invited Jolyon Acosta, Keith Braun and Committee Co-Chairs, Edward Koren and Pamela Price, to the microphone. The Principal and Income Committee has proposed legislation to update Florida's Uniform Page 11 of 15 Principal and Income Act, c. 738.

Over the past 5 years, the Committee has been looking at the current law, which is based on a 1997 act, and was adopted in 2002. The uniform act has been adopted in 6 states and has been introduced in California and Missouri. The goal is to create greater flexibility in the administration of estates and trusts and to modernize the rules.

- Jolyon Acosta then addressed the Council, introducing the Principal and Income Act, located at c. 738 of Florida law. The proposed legislation to update Florida's Uniform Principal and Income Act, generally follows the new Uniform Fiduciary Income and Principal Act in order to achieve greater historical consistency among state laws but includes certain modifications that reflect Florida public policy choices.
- Jolyon explained that standard of impossibility was changed to a standard of assistance; and
- of all the items that were changed, the concept of carrying value stayed the same.
- At Probate RoundTable some slides were presented and can be provided if anyone would like to see them.
- The unitrust provisions remain 3-5%.
- There are subjective rules that relate to distribution from entities. When there is an entity that hasn't made distributions in many years, the lookback period is now three years, which is a change to the uniform and the Florida law.
- Keith Braun then addressed the Council to discuss the provisions that relate specifically to real property practitioners. Generally, it stayed the same. However, he brought to the attention of members that the rental income rules have not changed. Previously, tax depreciation was presumed to be reasonable, but the law is 20 years old; and with all the tax law changes, this no longer makes sense; and this provision has been removed. The third area relates to legal life estates at s.738.801. It remains the same but is moved to a different location in the statutes. Now the fiduciary decides what is reasonable.

John Moran opened the floor for questions, but there were none.

He then informed the Council that the committee will be presenting this as an Action Item at the Breakers next month.

The next Information Item is out of the Probate Law and Procedure Committee.

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

John Moran introduced Theodore Kypreos, Chair of the Probate Law Committee and the subcommittee Chair, Juan Antunez, reminding the Executive Council that this was first presented as an information item at the meeting in the Florida Keys. Theo Kypreos then addressed the Council, providing that the Committee was first formed several years ago in the wake of the Johnson v. Townsend decision, a 2018 decision out of the 4<sup>th</sup> District that determined a surviving spouse that might have a community property claim under Florida's Community Property Act would be subject to the creditor's claim procedure and would need to file a creditor's claim for his or her ½ share of the community property. The Probate Law Committee created this subcommittee to review this issue: whether a surviving spouse is bound by the creditor claim procedure to enforce their right to community property. The proposed legislation was passed by the committee, but after receiving constructive comments at the meeting in Duck Key, some revisions were made at the Destin meeting.

Juan Antunez then addressed the Council, explaining that the current statute provides community property is owned 50/50. The 4<sup>th</sup> DCA construed the statute to provide that a surviving spouse under the community property act must make a claim against the decedents' estate to obtain their ½ interest in the property. Ultimately, this is counter to the intent of the community property act.

The Johnson v. Townsend Fix: Proposed legislation is to clarify existing Florida law by statutorily exempting community property [or community property claims] from Florida's probate creditor claims procedure; creating a new dispute resolution mechanism for community property title disputes and twoyear 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.

The 2-year statute of repose is a compromise. That it is reasonable and feasible to preserve spousal property rights for spouses moving to Florida but balances public policy for finality and expeditiously concluding probate proceedings.

Some of the commentary received at the Roundtable and under consideration include: are we creating traps for the unwary, where personal representatives acting in good faith could get into trouble, by waiving property rights, is that some kind of fraudulent transfer? Should title issues be subject to creditor's claims at all – should we be doing this across the board? These are all items the committee will be looking at to fine tune the statute.

Theo Kypreos then reminded the Council that this was intended to address a narrow situation, with community property and spousal property only. There are other issues raised where this may be used in other contexts/non-spousal contexts. This legislation is not intended to address those issues. However, the Probate Law Committee will consider them separately.

One of those issues is what if a spouse inadvertently waives their community property claims if they don't object timely. The committee is considering a post-administration waiver – if the spouse has creditors. The committee will look at that issue and whether there is a difference if there is an express waiver

versus an inadvertent waiver.

Mr. Moran recognized former Chair, Michael Gelfand, who raised a concern about potential public policy implications. He also urged the committee to work with the RREILs and Title Insurance committees so that we aren't creating pitfalls and traps on the Real Property side with claims lapsing.

John Moran again opened the floor for additional comments or questions and hearing none, closed the discussion.

John Moran reminded the Council to sign the attendance sheet.

He then advised the Council that the amazing decorations created by Donna Kelley for the Friday night reception may be available if anyone is interested in them.

Finally, John Moran welcomed Jon Scuderi, who is coming in to serve as the Probate Division Director at the Breakers meeting.

Katherine Frazier then introduced Cary Wright, Director for the Real Property Division, to give the Real Property Division Report.

# XII. <u>Real Property Law Division Report</u> — *Wm. Cary Wright, Division Director*

**Sponsor Recognition**: Director Wright thanked **The Fund** for their sponsorship and introduced **Melissa Murphy**, who addressed the Council. Melissa reminded the Section that The Fund remains committed to the mission it has had for decades, which is to support you, the Florida real estate attorneys and their practices and their protection of the public. Support of the Section is an essential part of The Fund's mission. **The Fund** has two new initiatives at **The Fund**. The first is a pro-attorney campaign, to encourage the use of attorneys in transactions. The second is an initiative to support young real estate attorneys and ensure that we are supporting them in the way that they want to be supported and the way their practices are developing. Thank you for the opportunity and for your support of **The Fund**.

Director Wright then announced that the Real Property Division has one information Item and introduced Chris Smart, congratulating him on receiving the John Arthur Jones Annual Service Award.

#### **INFORMATION ITEMS**:

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

Chris Smart addressed the Council, presenting the 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.

Chris explained that currently recorded among the public records are wills, codicils, orders revoking probate, letters of administration, orders describing real property, final orders, orders of discharge, and orders of guardianship. The proposed amendment would add to that list of documents: order admitting wills to probate, orders determining beneficiaries, petitions affecting or describing real property, petitions for administration and petitions for summary administration. The purpose of the proposed amendment is to allow those folks searching title to identify who the heirs are and who the owners of the real property are. This is an information item today and hopefully an action item at the Breakers.

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

Director Wright introduced Amber Ashton, who presented the Committee's proposed legislation revising the statutes relating to notice by mail or courier; amending Section 1.101, Florida Statutes to include electronic confirmation; providing retroactive application and an effective date. Ms. Ashton explained that the revisions will make the statutes clearer, addressing the 261 references to "registered mail" a service no longer offered by the US Postal Service. This is expected to be an action item at the Breakers meeting.

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

Director Wright introduced Colleen Sachs, the ALM of the Year Award recipient, who reported on the meeting of the Florida Bar Attorney/Realtor Joint Committee. Ms. Sachs reported that the purpose of the meeting was to discuss language to add to FR/BAR contract, addressing the provisions of Senate Bill 264, prohibiting the purchase of certain real property by certain foreign buyers. The committee took comments at the meeting and passed proposed language. If approved by the Florida Realtors and the Section, there will be a box above the signature line in bold/all caps, providing the statute and listing the countries of concern. The intention is to provide notice and education to buyers and sellers who could be subject to criminal liability and who may not realize they are selling to a buyer who cannot legally purchase the property.

**Sponsor Recognition**: Director Wright then thanked **WFG** and **Joe Tschida** for sponsorship of the Section. Mr. Tschida addressed the Council, thanking Sarah Butters for a great year. Every year he enjoys coming and learning at these meetings. It is a pleasure to support everything this group does. Keep using the meeting app! Thank you.

Director Wright concluded the Real Property Division Report.

XIII. <u>Probate and Trust Law Division Committee Reports</u> — John C. Moran, Division Director Committee Reports were given at the PT Round Table.

# XIV. <u>Real Property Law Division Committee Reports</u> — Wm. Cary Wright, Division Director

Committee Reports were given at the RP Round Table.

#### XV. Adjourn:

Chair-Elect Frazier thanked Sarah Butters and with great pleasure, adjourned the meeting.

<u>/s/ Sancha K. Brennan</u> Sancha K. Brennan Secretary

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

	Div	ision	7/21/22	7/21/22 Breakers MAINE	12/8/22	2/22/23	(12)22
Executive Committee	R	Р	Breakers		Orlando	Destin	6/3/23 Delray
Butters, Sarah S. Chair		РТ	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
Frazier, S. Katherine Chair-Elect & Div. Director General Standing	RP		$\checkmark$		$\checkmark$	$\checkmark$	$\checkmark$
Wright, Wm. Cary <b>Division Director</b> <b>Real Property</b>	RP		$\checkmark$		$\checkmark$	$\checkmark$	$\checkmark$
Moran, John C. Division Director Probate & Trust		PT	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
Brennan, Sancha Secretary		РТ	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$	$\checkmark$
Scuderi, Jon Treasurer		РТ			$\checkmark$	$\checkmark$	
Kightlinger,Wilhelmina Legislation Co-Chair Real Property	RP		$\checkmark$		$\checkmark$	$\checkmark$	Z
Miller, Lawrence J. Legislation Co-Chair Probate & Trust		РТ	$\checkmark$		$\checkmark$	$\checkmark$	$\checkmark$
Adams, Angela M. CLE Co-Chair Probate & Trust		РТ	$\checkmark$		$\checkmark$	$\checkmark$	Z
Weintraub, Lee A. CLE Co-Chair Real Property	RP		$\checkmark$	$\checkmark$	$\checkmark$	$\sqrt{Z}$	$\checkmark$
Mezer, Steven H. Director At-Large Members	RP		$\checkmark$		$\checkmark$	$\checkmark$	$\checkmark$
Swaine, Robert S. Immediate Past Chair	RP		$\checkmark$		$\checkmark$		$\checkmark$

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

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

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

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

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

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

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

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

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

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

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

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

Executive Council	Division		7/21/22	9/28/22	12/8/22	2/22/23	
Members	R	Р	Breakers	Bar Harbor MAINE	Orlando	Destin	June 3 <sup>rd</sup> Delray
Williams, Margaret A.	RP		Z		$\checkmark$		$\sqrt{Z}$
Williams, Jorja		РТ	$\checkmark$		$\checkmark$		$\checkmark$
Williamson, Julie Ann Past Chair	RP		$\checkmark$				
Wintter, Christopher		РТ	$\checkmark$		$\checkmark$		$\checkmark$
Wohlust, Gary Charles		РТ	$\checkmark$		$\checkmark$		$\checkmark$
Wolasky, Marjorie E.		РТ	$\checkmark$		$\checkmark$		$\checkmark$
Wolf, Jerome L.		РТ	$\checkmark$		Z		Z
Wood, Rebecca	RP		$\checkmark$		$\checkmark$		$\checkmark$
Young, Gwynne A.		РТ					
Zeydel, Diana S.C.		РТ					
Zikakis, Salome J.	RP		$\checkmark$		Z	$\checkmark$	$\checkmark$
Zschau, Julius J. <b>Past Chair</b>	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 <sup>rd</sup> Delray
	R	Р					
Boisrond, Sandy		РТ	$\checkmark$		$\checkmark$	$\checkmark$	$\checkmark$
Cummins, Amanda			$\checkmark$		$\checkmark$	$\checkmark$	
Davis, Jade	RP		$\checkmark$		$\checkmark$	Z	
Hernandez, Melissa	RP						
Mora, Jeanette		PT	$\checkmark$		$\checkmark$	Z	$\checkmark$
Mount, Shayla RP					$\checkmark$	$\checkmark$	
Piezynski, Janaye	RP		$\checkmark$	$\checkmark$	Z	Z	Z
Reid, Taniquea		PT	$\checkmark$			$\sqrt{Z}$	

Legislative Consultants	Division		7/21/22 Breakers	9/28/22 Bar Harbor	12/8/22 Orlando	2/22/23 Destin	June 3 <sup>rd</sup> Delray	
Consultants	R	Р	DICARCIS	MAINE	Orianuo	Destin		
Brown, French	Brown, French RP		$\checkmark$			$\checkmark$		
Dunbar, Marc								
Dunbar, Peter M.	RP			$\checkmark$		$\checkmark$		
Edenfield, Martha Jane PT		$\checkmark$		$\checkmark$	$\checkmark$	$\checkmark$		

	Division		<b>E</b> /01/00	9/28/22	10/0/00	2/22/22	T and
Guests	R	Р	7/21/22 Breakers	Bar Harbor MAINE	12/8/22 Orlando	2/22/23 Destin	June 3 <sup>rd</sup> Delray
Antunez, Juan		РТ					
Barlow, Rachel			Z		Z		Z
Caplano, Klarika							
Clark, Danielle					Z	Z	
Cribben, Tamara							Z
DeNapoli, Richard		PT					
Doddridge, Ryan						Z	Z
Elijah, Iris Young Lawyers Section							
Fanzlaw, Amy					Z	Z	
Goss, Jacob						Z	Z
Groover, Lea Anne					Z	Z	
Hill, Terry The Florida Bar							
Khan, Nishad	RP		$\sqrt{Z}$		$\checkmark$		$\checkmark$
Klinedinst, James	RP						$\checkmark$
LaFemina, Rose							Z
Lanigan, David							Z
Lancaster, Rob					Z		
Linde, Matthew					Z	Z	Z
Manfredi, Cynthia						$\checkmark$	
Marshall, Stewart			$\checkmark$	$\checkmark$			$\checkmark$
Marzam, Jacqueline	RP						$\checkmark$
McConnell, Eryn							Z
Miccolis, Lawrence						Z	Z
Miller, Erin			Z		Z	Z	
Noll, Dale						Z	
Offir, Liron					Z		

Orihuela, Victor			Z			
Osborne, Daniel					$\checkmark$	
Persante, Robert						
Primeau, John			Z	Z	Z	
Radan, Patricia	RP					$\checkmark$
Roberts, Tance				Z	Z	$\checkmark$
Sinn, Stefan					Z	
Slater, Debra				Z		
Smith, Leroy The Florida Bar					$\checkmark$	
Stivelman, Alessandra	RP					$\checkmark$
Stotts, Darren				Z	$\checkmark$	$\checkmark$
Strock, Gregg	RP					
Tabak, Marcia				Z		
Watson, Marlene			Z		Z	Z
Weaver, Ron			Z			
White, Richard			Z	Z	Z	Z
Wright, Danya						$\checkmark$
Yergey, David III					Z	
Zuroweste, Zack		$\checkmark$	$\checkmark$		$\checkmark$	$\checkmark$



## Thank you to Our Sponsors

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		<u>Name</u>	
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Platinum	The Fund	Melissa Murphy	mmurphy@thefund.com
Platinum	RealAdvice	Todd Jones	Todd.jones@realadvice.com
APP	WFG National Title Insurance	Joseph J.	jtschida@wfgnationaltitle.com
		Tschida	
Gold	CATIC	Deb Boyd	dboyd@catic.com
Gold	Coral Gables Trust	John Harris	jharris@cgtrust.com
Gold	First American Title Insurance	Len Prescott	lprescott@firstam.com
	Company		
Gold	FNF Family of Companies – Florida	Karla Staker	Karla.staker@fnf.com
Gold	Guardian Trust	Travis Finchum	travis@specialneedslawyers.com
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Gold	Stewart Title Guaranty Company	David Shanks	David.shanks@stewart.com
Gold	Stout	Garry Marshall	gmarshall@stout.com

Gold	Westcor Land Title Insurance	Laura Licastro	Laura.licastro@wltic.com
	Company		
Silver	Management Planning, Inc.	Roy Meyers	rmeyers@mpival.com
Silver	Provise	Steve	athanassie@provise.com
		Athanassie	
Silver	Title Resources Group	Lee Offir	Lee.offir@titleresources.com
Silver	Valuation Services Inc.	Jeff Bae	jeff@valuationservice.com
Bronze	Amerant Bank	Madelayne	mcordero@amerantbank.com
		Cordero	
Bronze	<b>BNY Mellon Wealth Management</b>	Rafaela Vianna	Rafaela.vianna@bnymellon
Bronze	<b>Business Valuation Analysts</b>	Tim Bronza	tbronza@bvanalysts.com
Bronze	Cumberland Trust	Bob Carville	bcarville@cumberlandtrust.com
Bronze	Fiduciary Trust International of the	Vaughn Yeager	Vaughn.yeager@ftci.com
	South		
Bronze	Grove Bank & Trust	Marta Goldberg	mgoldberg@grovebankandtrust.com
Legislative	The Fund	Melissa Murphy	mmpurphy@thefund.com
Update			

Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

		ES:	("Seller"),
and	d		("Buyer"),
(co	llect	that Seller shall sell and Buyer shall buy the following described Real Property and P ively "Property") pursuant to the terms and conditions of this Residential Contract For Sale A ers and addenda ("Contract"):	
		OPERTY DESCRIPTION:	
1.			
	(a) (b)	Street address, city, zip: Located in: County, Florida. Property Tax ID #:	
	(c)	Real Property: The legal description is	
		together with all existing improvements and fixtures, including built-in appliances, built-ir attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in I by other terms of this Contract.	
	(d)	Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the which are owned by Seller and existing on the Property as of the date of the initial offer and	
		purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture	e(s), drapery rods
		and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermos	
		television wall mount(s) and television mounting hardware, security gate and other access	devices, mailbox
		keys, and storm shutters/storm protection items and hardware ("Personal Property").	
		Other Personal Property items included in this purchase are:	· · · · · · · · · · · · · · · · · · ·
		Personal Property is included in the Purchase Price, has no contributory value, and shall be	left for the Buyer.
	(e)	The following items are excluded from the purchase:	
		PURCHASE PRICE AND CLOSING	
2.	PU	RCHASE PRICE (U.S. currency):	\$
		Initial deposit to be held in escrow in the amount of (checks subject to Collection)	
	( )	The initial deposit made payable and delivered to "Escrow Agent" named below	
		(CHECK ONE): (i) accompanies offer or (ii) is to be made within (if left	
		blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN	
		OPTION (ii) SHALL BE DEEMED SELECTED.	
		Escrow Agent Name:	
		Address: Phone:	
	/1. \	Email:	
	(D)	Additional deposit to be delivered to Escrow Agent within (if left blank, then 10) days after Effective Date	
		days after Effective Date	
	(c)	Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8	
	• •		
	(e)	Other:\$ Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other Collected funds (See STANDARD S)	
3.	TIN	IE FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:	
	(a)	If not signed by Buyer and Seller, and an executed copy delivered to all partie	
		, this offer shall be deemed withdrawn and the Deposit, if any,	
		to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2	days after the day
	(1-)	the counter-offer is delivered.	
	(D)	The effective date of this Contract shall be the date when the last one of the Buyer and Se	lier has signed or
٨		initialed and delivered this offer or final counter-offer ("Effective Date"). OSING; CLOSING DATE: The closing of this transaction shall occur when all funds require	ad for closing are
4.		eived by Closing Agent and Collected pursuant to STANDARD S and all closing documen	
		nished by each party pursuant to this Contract are delivered ("Closing"). Unless modified by o	



this Contract, the Closing shall occur on 53\* established by the Closing Agent. 54

### ("Closing Date"), at the time

- **EXTENSION OF CLOSING DATE:** 5. 55 56
  - (a) In the event Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), if Paragraph 8(b) is checked, Loan Approval has been obtained, and lender's underwriting is complete, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 7 davs.
    - (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in STANDARD G.

#### 6. OCCUPANCY AND POSSESSION: 64

- (a) Unless Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property 65 to Buver free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all 66 personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and 67 codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss 68 to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and 69 shall have accepted the Property in its existing condition as of time of taking occupancy (see Rider T PRE-70 CLOSING OCCUPANCY BY BUYER), except with respect to any items identified by Buyer pursuant to 71 Paragraph 12, prior to taking occupancy, which require repair, replacement, treatment or remedy. 72
- (b) CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING. If Property is 73 \* subject to a lease(s) or any occupancy agreements (including seasonal and short-term vacation rentals) after 74 Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof 75 shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all 76 within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of 77 occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such 78 election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the 79 Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) 80 and Seller's affidavit shall be provided pursuant to STANDARD D, except that tenant Estoppel Letters shall not 81 be required on seasonal or short-term vacation rentals. If Property is intended to be occupied by Seller after 82 Closing, see Rider U POST-CLOSING OCCUPANCY BY SELLER. 83
- 7. ASSIGNABILITY: (CHECK ONE): Buyer imay assign and thereby be released from any further liability under 84 \* this Contract; may assign but not be released from liability under this Contract; or may not assign this Contract. 85 \* IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT. 86
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### FINANCING

#### 8. FINANCING: 88

 $\Box$  (a) This is a cash transaction with no financing contingency. 89 \*

(b) This Contract is contingent upon, within (if left blank, then 30) days after Effective Date ("Loan Approval 90 \* Period"): (1) Buyer obtaining approval of a \_ conventional \_ FHA \_ VA or \_ other 91 \* (describe) mortgage loan for purchase of the Property for a (CHECK ONE): fixed, adjustable, fixed or adjustable rate 92 \* in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed % (if left blank, then 93 \* prevailing rate based upon Buyer's creditworthiness), and for a term of (if left blank, then 30) years 94 \* ("Financing"); and (2) Buyer's mortgage broker or lender having received an appraisal or alternative valuation of the 95 Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required for lender 96 to provide Financing for Buyer and proceed to Closing ("Appraisal"). 97

\_ (if left blank, then 5) days after Effective Date (i) Buyer shall make application for Financing within 98 \* and use good faith and diligent effort to obtain approval of a loan meeting the Financing and Appraisal terms of 99 Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period and, thereafter, to close this 100 Contract. Loan Approval which requires Buyer to sell other real property shall not be considered Loan Approval 101 unless Rider V is attached. 102

Buyer's failure to use good faith and diligent effort to obtain Loan Approval during the Loan Approval Period shall 103 be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, 104 but is not limited to, timely furnishing all documents and information required by Buyer's mortgage broker and lender 105 and paying for Appraisal and other fees and charges in connection with Buyer's application for Financing. 106

(ii) Buyer shall, upon written request, keep Seller and Broker fully informed about the status of Buyer's 107 mortgage loan application, loan processing, appraisal, and Loan Approval, including any Property related conditions 108

of Loan Approval. Buyer authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status 109 and progress and release preliminary and finally executed closing disclosures and settlement statements, as 110 appropriate and allowed, to Seller and Broker. 111

(iii) If within the Loan Approval Period, Buyer obtains Loan Approval, Buyer shall notify Seller of same in writing 112 prior to expiration of the Loan Approval Period; or, if Buyer is unable to obtain Loan Approval within the Loan 113 Approval Period but Buyer is satisfied with Buyer's ability to obtain Loan Approval and proceed to Closing, Buyer 114 shall deliver written notice to Seller confirming same, prior to the expiration of the Loan Approval Period. 115

(iv) If Buyer is unable to obtain Loan Approval within the Loan Approval Period, or cannot timely meet the 116 terms of Loan Approval, all after the exercise of good faith and diligent effort, Buyer may terminate this Contract by 117 delivering written notice of termination to Seller prior to expiration of the Loan Approval Period; whereupon, provided 118 Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer 119 and Seller from all further obligations under this Contract. 120

(v) If Buyer fails to timely deliver any written notice provided for in Paragraph 8(b)(iii) or (iv), above, to Seller 121 prior to expiration of the Loan Approval Period, then Buyer shall proceed forward with this Contract as though 122 Paragraph 8(a), above, had been checked as of the Effective Date; provided, however, Seller may elect to terminate 123 this Contract by delivering written notice of termination to Buyer within 3 days after expiration of the Loan Approval 124 Period and, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit 125 thereby releasing Buyer and Seller from all further obligations under this Contract. 126

(vi) If Buyer has timely provided either written notice provided for in Paragraph 8(b)(iii), above, and Buyer 127 thereafter fails to close this Contract, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's 128 default or inability to satisfy other contingencies of this Contract; or (2) Property related conditions of the Loan 129 Approval (specifically excluding the Appraisal valuation) have not been met unless such conditions are waived by 130 other provisions of this Contract; in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer 131 and Seller from all further obligations under this Contract. 132

 $\Box$  (c) Assumption of existing mortgage (see Rider D for terms). 133\*

(d) Purchase money note and mortgage to Seller (see Rider C for terms). 134\*

### **CLOSING COSTS, FEES AND CHARGES**

#### CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS: 9. 136 (a) COSTS TO BE PAID BY SELLER: 137

- Documentary stamp taxes and surtax on deed, if any 138
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked) Recording and other fees needed to cure title 139
- Title search charges (if Paragraph 9(c)(iii) is checked) 140
- HOA/Condominium Association estoppel fees
- Seller's attorneys' fees
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked) Other: 141
- Charges for FIRPTA withholding and reporting 142
  - Seller shall pay the following amounts/percentages of the Purchase Price for the following costs and expenses: \_\_\_\_\_ or \_\_\_\_\_ % (1.5% if left blank) for General Repair Items ("General Repair (i) up to \$ Limit"); and
- (ii) up to \$ or \_\_\_\_\_% (1.5% if left blank) for WDO treatment and repairs ("WDO Repair 146 Limit"); and 147
- % (1.5% if left blank) for costs associated with closing out open or (iii) up to \$ or 148 expired building permits and obtaining required building permits for any existing improvement for which a 149 permit was not obtained ("Permit Limit"). 150

If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the 151 repairs, replacements, treatments or permitting as required by Paragraph 12, then sums equal to 125% of 152 estimated costs to complete the applicable item(s) (but not in excess of applicable General Repair, WDO 153 Repair, and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual costs of Maintenance 154 Requirement or required repairs, replacements, treatment or permitting exceed applicable escrowed amounts, 155 Seller shall pay such actual costs (but not in excess of applicable General Repair, WDO Repair, and Permit 156 Limits set forth above). Any unused portion of escrowed amount(s) shall be returned to Seller. 157

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### [The remainder of this page is intentionally left blank. This Contract continues with Paragraph 9(b) on Page 4 of 14.]

	(1.)	
162		COSTS TO BE PAID BY BUYER:
163		Faxes and recording fees on notes and mortgages       • Loan expenses         Percenting fees for dead and financing statements       • Approint
164		Recording fees for deed and financing statements • Appraisal fees Dwner's Policy and Charges (if Paragraph 9(c)(ii) is checked) • Buyer's Inspections
165 166		Survey (and elevation certification, if required) • Buyer's attorneys' fees
167		Lender's title policy and endorsements • All property related insurance
168		HOA/Condominium Association application/transfer fees • Owner's Policy Premium (if Paragraph
169		Aunicipal lien search (if Paragraph 9(c)(ii) is checked) 9(c)(iii) is checked)
170 *		Other:
171 *		<b>TITLE EVIDENCE AND INSURANCE:</b> At least (if left blank, then 15, or if Paragraph 8(a) is checked,
172	(-)	then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida
173		licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title
174		Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be
175		obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property,
176		Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy
177		premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set
178		forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated
179		and allocated in accordance with Florida law, but may be reported differently on certain federally mandated
180		closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a
181		search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded
182		liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency.
183		(CHECK ONE):
184 *		(i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the
185		premium for Buyer's lender's policy and charges for closing services related to the lender's policy,
186		endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other
187 188 <b>*</b>		provider(s) as Buyer may select; or (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing
188		services related to Buyer's lender's policy, endorsements and loan closing; or
190 *		□ (iii) [ <b>MIAMI-DADE/BROWARD REGIONAL PROVISION</b> ]: Buyer shall designate Closing Agent. Seller shall
190		furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a
192		continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for
193		reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing
194		continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not
195*		be obligated to pay more than \$ (if left blank, then \$200.00) for abstract continuation or title
196		search ordered or performed by Closing Agent.
197	(d)	SURVEY: At least 5 days prior to Closing Date, Buyer may, at Buyer's expense, have the Real Property
198		surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real
199		Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
200*	(e)	HOME WARRANTY: At Closing,  Buyer  Seller  N/A shall pay for a home warranty plan issued by
201*		at a cost not to exceed \$ A home
202		warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in
203	(6)	appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
204	(†)	
205		("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and
206		ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being
207		improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may
208 209		be paid in installments (CHECK ONE):
209 210 <b>*</b>		<ul> <li>□ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing.</li> </ul>
210		Installments prepaid or due for the year of Closing shall be prorated.
212*		(b) Seller shall pay, in full, prior to or at the time of Closing, any assessment(s) allowed by the public body
212		to be prepaid. For any assessment(s) which the public body does not allow prepayment, OPTION (a) shall be
214		deemed selected for such assessment(s).
215		IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
216		This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district
217		(CDD) pursuant to Chapter 190, F.S., or special assessment(s) imposed by a special district pursuant to
218		Chapter 189, F.S., which lien(s) or assessment(s) shall be prorated pursuant to STANDARD K.

### DISCLOSURES

### 10. DISCLOSURES:

- (a) RADON GAS: Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
  - (b) PERMITS DISCLOSURE: Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79, F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) MOLD: Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional. See Rider I MOLD INSPECTION.
- (d) FLOOD ZONE; ELEVATION CERTIFICATION: Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within \_\_\_\_\_\_ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property.
  - (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
  - (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
  - (g) HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.
  - (h) PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
  - (i) FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
- (j) SELLER DISCLOSURE: Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, and those repairs, replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but

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not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement").
 See Paragraph 9(a) for escrow procedures, if applicable.

### 12. PROPERTY INSPECTION AND REPAIR:

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(if left blank, then 15) days after Effective Date ("Inspection (a) **INSPECTION PERIOD:** Buyer shall have 277 \* Period"), within which Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections as 278 described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) 279 below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's 280 obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract 281 does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to 282 its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its 283 completion. 284

### (b) GENERAL PROPERTY INSPECTION AND REPAIR:

- (i) General Inspection: Those items specified in Paragraph 12(b) (ii) below, which Seller is obligated to repair
   or replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in
   and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida
   license to repair and maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection
   Period, inform Seller of any General Repair Items that are not in the condition required by (b)(ii) below by
   delivering to Seller a written notice and upon written request by Seller a copy of the portion of Professional
   Inspector's written report dealing with such items.
- (ii) Property Condition: The following items shall be free of leaks, water damage or structural damage: ceiling, 293 roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items 294 together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical, 295 security, sprinkler, septic, and plumbing systems and machinery, seawalls, dockage, watercraft lift(s) and 296 related equipment, are, and shall be maintained until Closing, in "Working Condition" (defined below). Torn 297 screens (including pool and patio screens), fogged windows, and missing roof tiles or shingles shall be repaired 298 or replaced by Seller prior to Closing. Seller is not required to repair or replace "Cosmetic Conditions" (defined 299 below), unless the Cosmetic Conditions resulted from a defect in an item Seller is obligated to repair or replace. 300 "Working Condition" means operating in the manner in which the item was designed to operate. "Cosmetic 301 Conditions" means aesthetic imperfections that do not affect Working Condition of the item, including, but not 302 limited to: pitted marcite; tears, worn spots and discoloration of floor coverings, wallpapers, or window 303 treatments; nail holes, scrapes, scratches, dents, chips or caulking in ceilings, walls, flooring, tile, fixtures, or 304 mirrors; and minor cracks in walls, floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio 305 floors. Cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must 306 repair or replace, so long as there is no evidence of actual leaks, leakage or structural damage. 307
- (iii) General Property Repairs: Seller is only obligated to make such general repairs as are necessary to bring 308 items into the condition specified in Paragraph 12(b) (ii) above. Seller shall within 10 days after receipt of Buyer's 309 written notice or General Inspection report, either have the reported repairs to General Repair Items completed 310 at Seller's expense, or have repairs estimated by an appropriately licensed person and a copy delivered to 311 Buyer, or have a second inspection made by a Professional Inspector and provide a copy of such report and 312 estimates of repairs to Buyer. If Buyer's and Seller's inspection reports differ and the parties cannot resolve the 313 differences, Buyer and Seller together shall choose, and equally split the cost of, a third Professional Inspector, 314 whose written report shall be binding on the parties. 315
- If cost to repair General Repair Items equals or is less than the General Repair Limit, Seller shall have repairs 316 made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair 317 Limit, then within 5 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess by 318 delivering written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of 319 General Repair Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and 320 agreeing to accept the balance of General Repair Items in their "as is" condition, subject to Seller's continuing 321 Maintenance Requirement. If neither party delivers such written notice to the other, then either party may 322 terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all 323 further obligations under this Contract. 324

### (c) WOOD DESTROYING ORGANISM ("WDO") INSPECTION AND REPAIR:

(i) WDO Inspection: The Property may be inspected by a Florida-licensed pest control business ("WDO
 Inspector") to determine the existence of past or present WDO infestation and damage caused by infestation
 ("WDO Inspection"). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector's written
 report to Seller if any evidence of WDO infestation or damage is found. "Wood Destroying Organism" ("WDO")
 means arthropod or plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying
 fungi, that damages or infests seasoned wood in a structure, excluding fences.

(ii) WDO Repairs: If Seller previously treated the Property for the type of WDO found by Buyer's WDO 332 Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller's 333 cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller shall within 334 10 days after receipt of Buyer's WDO Inspector's report, have reported WDO damage estimated by an 335 appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a 336 copy delivered to Buyer. Seller shall have treatments and repairs made in accordance with Paragraph 12(f) 337 below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property 338 exceeds the WDO Repair Limit, then within 5 days after receipt of Seller's estimate, Buyer may deliver written 339 notice to Seller agreeing to pay the excess, or designating which WDO repairs Seller shall make (at a total cost 340 to Seller not exceeding the WDO Repair Limit), and accepting the balance of the Property in its "as is" condition 341 with regard to WDO infestation and damage, subject to Seller's continuing Maintenance Requirement. If Buyer 342 does not deliver such written notice to Seller, then either party may terminate this Contract by written notice to 343 the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further 344 obligations under this Contract. 345

### (d) INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:

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(i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to determine whether there exist any open or expired building permits or unpermitted improvements to the Property ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of the existence of any open or expired building permits or unpermitted improvements to the Property. If Buyer's inspection of the Property identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

- (ii) Close-Out of Building Permits: Seller shall, within 10 days after receipt of Buyer's Permit Inspection notice, 355 have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and 356 a copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit, have 357 open and expired building permits identified by Buyer or known to Seller closed by the applicable governmental 358 entity, and obtain and close any required building permits for improvements to the Property. Prior to Closing 359 Date, Seller will provide Buyer with any written documentation that all open and expired building permits 360 identified by Buyer or known to Seller have been closed out and that Seller has obtained and closed required 361 building permits for improvements to the Property. If final permit inspections cannot be performed due to delays 362 by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections, 363 failing which, either party may terminate this Contract, and Buyer shall be refunded the Deposit, thereby 364 releasing Buyer and Seller from all further obligations under this Contract. 365
- If cost to close open or expired building permits or to remedy any permit violation of any governmental entity exceeds Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A) Seller may elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller accepting the Property in its "as is" condition with regard to building permit status and agreeing to receive credit from Seller at Closing in the amount of Permit Limit. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.
  - (e) WALK-THROUGH INSPECTION/RE-INSPECTION: On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all other contractual obligations.
  - (f) REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES: All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except as provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

### ESCROW AGENT AND BROKER

**13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds
 and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow
 within the State of Florida and, subject to Collection, disburse them in accordance with terms and conditions of this

Contract. Failure of funds to become Collected shall not excuse Buyer's performance. When conflicting demands 389 for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such 390 actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities 391 under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties 392 agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of 393 the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An 394 attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all 395 parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of 396 accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with 397 provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, 398 arbitration, interpleader or an escrow disbursement order. 399

- In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.
- 14. PROFESSIONAL ADVICE; BROKER LIABILITY: Broker advises Buyer and Seller to verify Property condition, 406 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate 407 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property 408 and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the 409 Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or 410 public records. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND 411 **GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND** 412 FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, 413 WRITTEN OR OTHERWISE) OF BROKER. Buyer and Seller (individually, the "Indemnifying Party") each 414 individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and 415 employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at 416 all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with 417 or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of 418 information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or 419 failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task 420 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, 421 recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services 422 provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. 423 Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and 424 paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve 425 Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker 426 will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract. 427

### 428 429 **15. DEFAULT:**

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### DEFAULT AND DISPUTE RESOLUTION

- (a) BUYER DEFAULT: If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.
- (b) SELLER DEFAULT: If for any reason other than failure of Seller to make Seller's title marketable after
   reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,
   Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting
   from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific
   performance.
- 443 This Paragraph 15 shall survive Closing or termination of this Contract.

- **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and
   Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled
   as follows:
- (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to
   resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph
   16(b).
- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").
  The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.
- **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.
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### 462 **18. STANDARDS:**

### 463 **A. TITLE:**

- (i) TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS: Within the time period provided in 464 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall 465 be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at 466 or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance 467 in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, 468 subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, 469 prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the 470 Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of 471 entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 472 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and 473 subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach 474 addendum); provided, that, unless waived by Paragraph 12 (a), there exists at Closing no violation of the foregoing 475 and none prevent use of the Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of 476 items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined 477 according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. 478
- (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller 479 in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is 480 delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of 481 receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after 482 receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer 483 shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver 484 written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this 485 Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If 486 Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, 487 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which 488 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or 489 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has 490 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) 491 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all 492 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and 493 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, 494 thereby releasing Buyer and Seller from all further obligations under this Contract. 495
- **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later

than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and
 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a
 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the
 preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to 504 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access. 505 D. LEASE INFORMATION: Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from 506 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security 507 deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) 508 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, 509 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or 510 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 511 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller 512 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this 513 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under 514 this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations 515 thereunder. 516

- E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing 517 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or 518 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been 519 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all 520 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth 521 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges 522 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been 523 paid or will be paid at Closing. 524
- **F. TIME: Time is of the essence in this Contract.** Calendar days, based on where the Property is located, shall be used in computing time periods. Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, national legal public holiday (as defined in 5 U.S.C. Sec. 6103(a)), or a day on which a national legal public holiday is observed because it fell on a Saturday or Sunday, shall extend to the next calendar day which is not a Saturday, Sunday, national legal public holiday, or a day on which a national legal public holiday is observed.
- G. FORCE MAJEURE: Buyer or Seller shall not be required to exercise or perform any right or obligation under 532 this Contract or be liable to each other for damages so long as performance or non-performance of the right or 533 obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed, 534 caused or prevented by a Force Majeure event. "Force Majeure" means: hurricanes, floods, extreme weather, 535 earthquakes, fires, or other acts of God, unusual transportation delays, wars, insurrections, civil unrest, or acts of 536 terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by 537 exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. 538 The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents 539 performance, non-performance, or the availability of services, insurance or required approvals essential to Closing. 540 All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time 541 up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however, 542 if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond 543 Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit 544 shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract. 545
- H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
   personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters
   described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be
   transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this
   Contract.

### 551 I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

(i) LOCATION: Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by
 the party paying for the owner's policy of title insurance and will take place in the county where the Real Property
 is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title
 insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic
 means.

(ii) CLOSING DOCUMENTS: Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of
 sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s),
 owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid
 receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable,
 the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) FinCEN GTO REPORTING OBLIGATION. If Closing Agent is required to comply with a U.S. Treasury
 Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Order ("GTO"), then Buyer
 shall provide Closing Agent with essential information and documentation related to Buyer and its Beneficial
 Owners, including photo identification, and related to the transaction contemplated by this Contract which are
 required to complete mandatory reporting including the Currency Transaction Report; and Buyer consents to
 Closing Agent's collection and report of said information to IRS.

(iv) **PROCEDURE:** The deed shall be recorded upon Collection of all closing funds. If the Title Commitment provides
 insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure
 required by STANDARD J shall be waived, and Closing Agent shall, **subject to Collection of all closing funds**,
 disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

- J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide 572 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following 573 escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent 574 for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of 575 Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from 576 577 date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, 578 simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-579 convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand 580 for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect 581 except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale. 582
- K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of 583 the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes 584 (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments 585 imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents 586 and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, 587 in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required 588 by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited 589 to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on 590 current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment 591 is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's 592 assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements 593 on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1<sup>st</sup> 594 of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be 595 agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an 596 informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the 597 maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an 598 estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K 599 shall survive Closing. 600
- 601 **L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller 602 shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, 603 including a walk-through (or follow-up walk-through if necessary) prior to Closing.
- M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty 604 ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not 605 exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed 606 pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated 607 cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of 608 restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase 609 Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of 610 Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the 611 Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation 612 with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal. 613

- **N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.
- O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT 619 **EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public or official records. This 620 Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in 621 interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and 622 delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party 623 shall be as effective as if given by or to that party. All notices must be in writing and may only be made by mail, 624 facsimile transmission, personal delivery or email. A facsimile or electronic copy of this Contract and any signatures 625 hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic 626 signatures, as determined by Florida's Electronic Signature Act and other applicable laws. 627
- **P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.
- **Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.
  - **R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.
- or handwritten provisions shall control all printed provisions of this Contract in conflict with them.
   S. COLLECTION or COLLECTED: "Collection" or "Collected" means any checks tendered or received, including
   Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing
   Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent
   until such amounts have been Collected in Closing Agent's accounts.

### T. RESERVED.

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- 643 **U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State 644 of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the 645 county where the Real Property is located.
- V. FIRPTA TAX WITHHOLDING: If a seller of U.S. real property is a "foreign person" as defined by FIRPTA,
   Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15%
   of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service
   (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate
   from the IRS authorizing a reduced amount of withholding.
- (i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can
   provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury,
   stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and
   home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer
   shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds
   to the IRS.
- (ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced
   or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the
   reduced sum required, if any, and timely remit said funds to the IRS.
- (iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has
   provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been
   received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller
   on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in
   escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the
   parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted
   directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.
- (iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this
   transaction, Seller shall deliver to Buyer, at Closing, the additional Collected funds necessary to satisfy the
   applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for
   disbursement in accordance with the final determination of the IRS, as applicable.

- (v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms
   8288 and 8288-A, as filed.
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### ADDENDA AND ADDITIONAL TERMS

- **19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (**Check if applicable**):
  - A. Condominium Rider M. Defective Drywall □ X. Kick-out Clause B. Homeowners' Assn. □ N. Coastal Construction Control Y. Seller's Attorney Approval C. Seller Financing Z. Buyer's Attorney Approval Line AA. Licensee Property Interest D. Mortgage Assumption □ O. Insulation Disclosure E. FHA/VA Financing P. Lead Paint Disclosure (Pre-1978) BB. Binding Arbitration F. Appraisal Contingency Q. Housing for Older Persons CC. Miami-Dade County G. Short Sale R. Rezoning Special Taxing District S. Lease Purchase/ Lease Option □ H. Homeowners'/Flood Ins Disclosure □ DD. Seasonal/Vacation Rentals □ I. Mold Inspection T. Pre-Closing Occupancy □ J. Interest-Bearing Acct. U. Post-Closing Occupancy □ EE. PACE Disclosure □ K. "As Is" □ V. Sale of Buyer's Property Other: L. Right to Inspect/ Cancel □ W. Back-up Contract

### 676\* 20. ADDITIONAL TERMS:

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COUNTER-OFFER

 $_{695} \star$  Seller counters Buyer's offer.

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## THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

### <sup>699</sup> THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

### AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

### **ATTENTION: SELLER AND BUYER**

CONVEYANCES TO FOREIGN BUYERS: Part III of Chapter 692, Sections 692.201 - 692.205, Florida Statutes, 2023 (the "Act"), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers who are associated with a "foreign country of concern", namely: People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. It is a crime to buy or knowingly sell property in violation of the Act.
 At time of purchase. Buyer must provide a signed affidavit which complies with the requirements of the Act.

At time of purchase, Buyer must provide a signed affidavit which complies with the requirements of the Act. Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under the Act.

714 *	Buyer:	Date:
715 <b>*</b>	Buyer:	Date:
716*	Seller:	Date:
717 <b>*</b>	Seller:	Date:
718 719 <b>*</b> 720 <b>*</b>	Buyer's address for purposes of notice	Seller's address for purposes of notice
720 721 <b>*</b>		

**BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

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729 Cooperating Sales Associate, if any
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 731 Cooperating Broker, if any

**Listing Sales Associate** 

**Listing Broker** 

# "AS IS" Residential Contract For Sale And Purchase THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



("Seller ("Buyer	ES:	
ersonal Proper	that Seller shall sell and Buyer shall buy the following described Real Property and F tively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For S y riders and addenda ("Contract"): COPERTY DESCRIPTION:	collecti nd any
	Street address, city, zip: Located in: County, Florida. Property Tax ID #:	(d) (b)
(c) Real Property: The legal description is		
	together with all existing improvements and fixtures, including built-in appliances, built-i attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in by other terms of this Contract.	
re included in th e(s), drapery roo tat(s), doorbell(s	Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, t which are owned by Seller and existing on the Property as of the date of the initial offer a purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixtur and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermos television wall mount(s) and television mounting hardware, security gate and other access keys, and storm shutters/storm protection items and hardware ("Personal Property"). Other Personal Property items included in this purchase are:	(d)
	Personal Property is included in the Purchase Price, has no contributory value, and shall be The following items are excluded from the purchase:	
	PURCHASE PRICE AND CLOSING	
\$	RCHASE PRICE (U.S. currency):	. PUF
	Initial deposit to be held in escrow in the amount of <b>(checks subject to Collection)</b>	
	Address:Phone:	
	Email:Fax:	
\$	Email:	(b)
	days after Effective Date (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit") Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8	
\$	Other:	(d)
• <u> </u>	Other:	(e)
\$	transfer or other Collected funds (See STANDARD S)	
	IE FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:	. ТIМ
es on or befor nall be returned days after the da	If not signed by Buyer and Seller, and an executed copy delivered to all partie , this offer shall be deemed withdrawn and the Deposit, if any, s Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 the counter-offer is delivered. The effective date of this Contract shall be the date when the last one of the Buyer and Se	(a) (b)
ad far alaaina a	initialed and delivered this offer or final counter-offer ("Effective Date").	
	<b>OSING; CLOSING DATE:</b> The closing of this transaction shall occur when all funds requir evived by Closing Agent and Collected pursuant to STANDARD S and all closing document	

53\* this Contract, the Closing shall occur on

established by the Closing Agent.

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### 55 5. EXTENSION OF CLOSING DATE:

- (a) In the event Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), if Paragraph 8(b) is checked, Loan Approval has been obtained, and lender's underwriting is complete, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 7 days.
- (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in STANDARD G.

### 64 6. OCCUPANCY AND POSSESSION:

- (a) Unless Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property
   buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all
   personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and
   codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss
   to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and
   shall have accepted the Property in its existing condition as of time of taking occupancy, see Rider T PRE CLOSING OCCUPANCY BY BUYER.
- (b) CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING. If Property is 72 subject to a lease(s) or any occupancy agreements (including seasonal and short-term vacation rentals) after 73 Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof 74 shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all 75 within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of 76 occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such 77 election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the 78 Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) 79 and Seller's affidavit shall be provided pursuant to STANDARD D, except that tenant Estoppel Letters shall not 80 be required on seasonal or short-term vacation rentals. If Property is intended to be occupied by Seller after 81 Closing, see Rider U POST-CLOSING OCCUPANCY BY SELLER. 82
- ASSIGNABILITY: (CHECK ONE): Buyer 
   may assign and thereby be released from any further liability under this Contract; 
   may assign but not be released from liability under this Contract; or 
   may not assign this Contract.
   IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT.

### FINANCING

### 87 8. FINANCING:

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- 188\* (a) This is a cash transaction with no financing contingency.
- 89\* (b) This Contract is contingent upon, within \_\_\_\_\_ (if left blank, then 30) days after Effective Date ("Loan 90\* Approval Period"): (1) Buyer obtaining approval of a Conventional C FHA VA or O other \_\_\_\_\_

(describe) mortgage loan for purchase of the Property for a (CHECK ONE): \_\_\_\_\_\_\_\_ fixed, \_\_\_\_\_\_\_\_ adjustable, \_\_\_\_\_\_\_\_ fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed \_\_\_\_\_\_\_\_\_ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of \_\_\_\_\_\_\_\_ (if left blank, then 30) years ("Financing"); and (2) Buyer's mortgage broker or lender having received an appraisal or alternative valuation of the Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required for lender to provide Financing for Buyer and proceed to Closing ("Appraisal").

(i) Buyer shall make application for Financing within \_\_\_\_\_\_ (if left blank, then 5) days after Effective Date
 and use good faith and diligent effort to obtain approval of a loan meeting the Financing and Appraisal terms of
 Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period and, thereafter, to close this
 Contract. Loan Approval which requires Buyer to sell other real property shall not be considered Loan Approval
 unless Rider V is attached.

Buyer's failure to use good faith and diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to, timely furnishing all documents and information required by Buyer's mortgage broker and lender and paying for Appraisal and other fees and charges in connection with Buyer's application for Financing.

(ii) Buyer shall, upon written request, keep Seller and Broker fully informed about the status of Buyer's
 mortgage loan application, loan processing, appraisal, and Loan Approval, including any Property related conditions
 of Loan Approval. Buyer authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status

and progress and release preliminary and finally executed closing disclosures and settlement statements, as
 appropriate and allowed, to Seller and Broker.

(iii) If within the Loan Approval Period, Buyer obtains Loan Approval, Buyer shall notify Seller of same in writing
 prior to expiration of the Loan Approval Period; or, if Buyer is unable to obtain Loan Approval within Loan Approval
 Period but Buyer is satisfied with Buyer's ability to obtain Loan Approval and proceed to Closing, Buyer shall deliver
 written notice to Seller confirming same, prior to the expiration of the Loan Approval Period.

(iv) If Buyer is unable to obtain Loan Approval within the Loan Approval Period, or cannot timely meet the
 terms of Loan Approval, all after the exercise of good faith and diligent effort, Buyer may terminate this Contract by
 delivering written notice of termination to Seller prior to expiration of the Loan Approval Period; whereupon, provided
 Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer
 and Seller from all further obligations under this Contract.

(v) If Buyer fails to timely deliver any written notice provided for in Paragraph 8(b)(iii) or (iv), above, to Seller
 prior to expiration of the Loan Approval Period, then Buyer shall proceed forward with this Contract as though
 Paragraph 8(a), above, had been checked as of the Effective Date; provided, however, Seller may elect to terminate
 this Contract by delivering written notice of termination to Buyer within 3 days after expiration of the Loan Approval
 Period and, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit
 thereby releasing Buyer and Seller from all further obligations under this Contract.

(vi) If Buyer has timely provided either written notice provided for in Paragraph 8b(iii), above, and Buyer
 thereafter fails to close this Contract, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's
 default or inability to satisfy other contingencies of this Contract; or (2) Property related conditions of the Loan
 Approval (specifically excluding the Appraisal valuation) have not been met unless such conditions are waived by
 other provisions of this Contract; in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer
 and Seller from all further obligations under this Contract.

- $132^{\circ}_{132}$  (c) Assumption of existing mortgage (see Rider D for terms).
- $\square$  (d) Purchase money note and mortgage to Seller (see Rider C for terms).

### **CLOSING COSTS, FEES AND CHARGES**

## CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS: (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax on deed, if any
   Owner's Deligy and Charges (if Decagraph Q(c)(i) is shocked
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
   Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
  - Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
    Charges for FIRPTA withholding and reporting
    - If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11, a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

### (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other:

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- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9(c)(iii) is checked)
- (c) TITLE EVIDENCE AND INSURANCE: At least (if left blank, then 15, or if Paragraph 8(a) is checked, 155 ¥ then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida 156 licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title 157 Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be 158 obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, 159 Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy 160 premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set 161 forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated 162 and allocated in accordance with Florida law, but may be reported differently on certain federally mandated 163 closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a 164

- HOA/Condominium Association estoppel fees
   Recording and other fees needed to cure title
  - Seller's attorneys' fees
- Other:

- search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded
   liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency.
   (CHECK ONE):
- (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the
   premium for Buyer's lender's policy and charges for closing services related to the lender's policy,
   endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other
   provider(s) as Buyer may select; or
- 172\* (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing 173 services related to Buyer's lender's policy, endorsements and loan closing; or
- 174\* [(iii) [MIAMI-DADE/BROWARD REGIONAL PROVISION]: Buyer shall designate Closing Agent. Seller shall
   175\* furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a
   176 continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for
   177 reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing
   178 continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not
   179\* be obligated to pay more than \$\_\_\_\_\_\_ (if left blank, then \$200.00) for abstract continuation or title
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  - (d) SURVEY: At least 5 days prior to Closing Date, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
- (e) HOME WARRANTY: At Closing, Buyer Seller N/A shall pay for a home warranty plan issued by at a cost not to exceed \$\_\_\_\_\_\_. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.
  - (f) SPECIAL ASSESSMENTS: At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments (CHECK ONE):
- 194\* (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing.
   195 Installments prepaid or due for the year of Closing shall be prorated.
- (b) Seller shall pay, in full, prior to or at the time of Closing, any assessment(s) allowed by the public body
   to be prepaid. For any assessment(s) which the public body does not allow prepayment, OPTION (a) shall be
   deemed selected for such assessment(s).
  - IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.
- This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., or special assessment(s) imposed by a special district pursuant to Chapter 189, F.S., which lien(s) or assessment(s) shall be prorated pursuant to STANDARD K.
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### DISCLOSURES

### 10. DISCLOSURES:

- (a) RADON GAS: Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79,
   F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
- (c) MOLD: Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) FLOOD ZONE; ELEVATION CERTIFICATION: Buyer is advised to verify by elevation certificate which flood
   zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to
   improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"

or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and 221 Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or 222 flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage 223 through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer 224 may terminate this Contract by delivering written notice to Seller within (if left blank, then 20) days after 225 Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further 226 obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone 227 designation of Property. 228

- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.
- (h) PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.
  - (j) SELLER DISCLOSURE: Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

### PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

**11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the
 Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS
 IS Maintenance Requirement"). See Paragraph 9(a) for escrow procedures, if applicable.

### 12. PROPERTY INSPECTION; RIGHT TO CANCEL:

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(a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have (if left blank, then 15) 261\* days after Effective Date ("Inspection Period") within which to have such inspections of the Property 262 performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole 263 discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering 264 written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely 265 terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall 266 be released of all further obligations under this Contract; however, Buyer shall be responsible for 267 prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting 268 from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the 269 preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to 270 terminate granted herein, Buyer accepts the physical condition of the Property and any violation of 271 272 governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all 273 repairs and improvements required by Buyer's lender. 274

(b) WALK-THROUGH INSPECTION/RE-INSPECTION: On the day prior to Closing Date, or on Closing Date prior
 to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and
 follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal
 Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS
 Maintenance Requirement and has met all other contractual obligations.

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- (c) SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS: If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.
  - (d) ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES: At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

### ESCROW AGENT AND BROKER

- 13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds 293 and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow 294 within the State of Florida and, subject to Collection, disburse them in accordance with terms and conditions of this 295 Contract. Failure of funds to become Collected shall not excuse Buyer's performance. When conflicting demands 296 for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such 297 actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities 298 under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties 299 agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of 300 the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An 301 attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all 302 parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of 303 accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with 304 provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, 305 arbitration, interpleader or an escrow disbursement order. 306
- In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.
- 14. PROFESSIONAL ADVICE; BROKER LIABILITY: Broker advises Buyer and Seller to verify Property condition, 313 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate 314 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property 315 and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the 316 Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or 317 public records. BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND 318 GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND 319 FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, 320 WRITTEN OR OTHERWISE) OF BROKER. Buyer and Seller (individually, the "Indemnifying Party") each 321 individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and 322 employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at 323 all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with 324 or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of 325 information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or 326 failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task 327 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, 328 recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services 329 provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. 330

- Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.
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### DEFAULT AND DISPUTE RESOLUTION

### **15. DEFAULT:**

- (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, 337 338 including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and 339 in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under 340 this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's 341 rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall 342 be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share 343 shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker. 344
- (b) SELLER DEFAULT: If for any reason other than failure of Seller to make Seller's title marketable after
   reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract,
   Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting
   from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific
   performance.
  - This Paragraph 15 shall survive Closing or termination of this Contract.
- 16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and
   Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled
   as follows:
  - (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).
- (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules").
   The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.
- **17. ATTORNEY'S FEES; COŠTS:** The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover
   from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

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### STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

### 369 **18. STANDARDS:**

### 370 **A. TITLE:**

(i) TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS: Within the time period provided in 371 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall 372 be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at 373 or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance 374 in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, 375 subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, 376 prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the 377 Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of 378 379 entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and 380 subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach 381 addendum); provided, that, none prevent use of Property for RESIDENTIAL PURPOSES. If there exists at Closing 382 any violation of items identified in (b) - (f) above, then the same shall be deemed a title defect. Marketable title shall 383 be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance 384 with law. 385

(ii) TITLE EXAMINATION: Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller 386 in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is 387 delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of 388 receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after 389 receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer 390 shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver 391 written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this 392 Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If 393 Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, 394 deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which 395 Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or 396 (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has 397 passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) 398 electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all 399 further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and 400 Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, 401 thereby releasing Buyer and Seller from all further obligations under this Contract. 402

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon 403 encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable 404 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of 405 such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later 406 than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and 407 Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a 408 prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the 409 preparation of such prior survey, to the extent the affirmations therein are true and correct. 410

411 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to 412 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASE INFORMATION: Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from 413 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security 414 deposits paid by tenant(s) or occupant(s)("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) 415 the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit 416 and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or 417 Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 418 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller 419 within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this 420 Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under 421 this Contract, Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations 422 thereunder. 423

- E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing 424 statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or 425 repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been 426 improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all 427 general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth 428 names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges 429 for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been 430 paid or will be paid at Closing. 431
- **F. TIME: Time is of the essence in this Contract.** Calendar days, based on where the Property is located, shall be used in computing time periods. Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, national legal public holiday (as defined in 5 U.S.C. Sec. 6103(a)), or a day on which a national legal public holiday is observed because it fell on a Saturday or Sunday, shall extend to the next calendar day which is not a Saturday, Sunday, national legal public holiday, or a day on which a national legal public holiday is observed.

**G. FORCE MAJEURE:** Buyer or Seller shall not be required to exercise or perform any right or obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the right or obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed,

caused or prevented by a Force Majeure event. "Force Majeure" means: hurricanes, floods, extreme weather, 442 earthquakes, fires, or other acts of God, unusual transportation delays, wars, insurrections, civil unrest, or acts of 443 terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by 444 exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. 445 The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents 446 performance, non-performance, or the availability of services, insurance or required approvals essential to Closing. 447 All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time 448 up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however, 449 if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond 450 Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit 451 shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract. 452

**H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

### I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

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(i) LOCATION: Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by
 the party paying for the owner's policy of title insurance and will take place in the county where the Real Property
 is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title
 insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic
 means.

- (ii) CLOSING DOCUMENTS: Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of
   sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s),
   owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid
   receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable,
   the survey, flood elevation certification, and documents required by Buyer's lender.
- (iii) FinCEN GTO REPORTING OBLIGATION. If Closing Agent is required to comply with a U.S. Treasury
   Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Order ("GTO"), then Buyer
   shall provide Closing Agent with essential information and documentation related to Buyer and its Beneficial
   Owners, including photo identification, and related to the transaction contemplated by this Contract which are
   required to complete mandatory reporting, including the Currency Transaction Report; and Buyer consents to
   Closing Agent's collection and report of said information to IRS.
- (iv) PROCEDURE: The deed shall be recorded upon Collection of all closing funds. If the Title Commitment
   provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing
   procedure required by STANDARD J shall be waived, and Closing Agent shall, subject to Collection of all closing
   funds, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.
- J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide 479 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following 480 481 escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of 482 Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from 483 date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all 484 Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, 485 simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-486 convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand 487 for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect 488 except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale. 489
- K. PRORATIONS: CREDITS: The following recurring items will be made current (if applicable) and prorated as of 490 the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes 491 (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments 492 imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents 493 and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, 494 in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required 495 by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited 496 to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on 497 current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment 498

is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's 499 assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements 500 on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1<sup>st</sup> 501 of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be 502 agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an 503 informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the 504 maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an 505 estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K 506 507 shall survive Closing.

508 **L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller 509 shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, 510 including a walk-through (or follow-up walk-through if necessary) prior to Closing.

- M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty 511 ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not 512 exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed 513 pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated 514 cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of 515 restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase 516 Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of 517 Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5% or receive a refund of the 518 Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation 519 with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal. 520
- **N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.
- O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT 526 **EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public or official records. This 527 Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in 528 interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and 529 delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party 530 shall be as effective as if given by or to that party. All notices must be in writing and may only be made by mail, 531 facsimile transmission, personal delivery or email. A facsimile or electronic copy of this Contract and any signatures 532 hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic 533 signatures, as determined by Florida's Electronic Signature Act and other applicable laws. 534
- **P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.
- 540 **Q. WAIVER:** Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this 541 Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or 542 rights.

**R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

545 **S. COLLECTION or COLLECTED:** "Collection" or "Collected" means any checks tendered or received, including 546 Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing 547 Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent 548 until such amounts have been Collected in Closing Agent's accounts.

### T. RESERVED.

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**U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

553 **V. FIRPTA TAX WITHHOLDING:** If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, 554 Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% 555 of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service

- (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate
   from the IRS authorizing a reduced amount of withholding.
- (i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can
   provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury,
   stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and
   home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer
   shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds
   to the IRS.
- (ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced
   or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the
   reduced sum required, if any, and timely remit said funds to the IRS.
- (iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has
   provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been
   received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller
   on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in
   escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the
   parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted
   directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.
- (iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this
   transaction, Seller shall deliver to Buyer, at Closing, the additional Collected funds necessary to satisfy the
   applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for
   disbursement in accordance with the final determination of the IRS, as applicable.
- 578 (v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 579 8288 and 8288-A, as filed.

### W. RESERVED

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581X. BUYER WAIVER OF CLAIMS: To the extent permitted by law, Buyer waives any claims against Seller582and against any real estate licensee involved in the negotiation of this Contract for any damage or defects583pertaining to the physical condition of the Property that may exist at Closing of this Contract and be584subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This585provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive586Closing.

### ADDENDA AND ADDITIONAL TERMS

- 19. ADDENDA: The following additional terms are included in the attached addenda or riders and incorporated into this
   Contract (Check if applicable):
  - ☐ A. Condominium Rider ☐ B. Homeowners' Assn.

□ C. Seller Financing

G. Short Sale

□ I. RESERVED

K. RESERVED

□ L. RESERVED

D. Mortgage Assumption

F. Appraisal Contingency

☐ H. Homeowners/Flood Ins.

□ J. Interest-Bearing Acct

E. FHA/VA Financing

- M. Defective Drywall
- N. Coastal Construction Control Line
- O. Insulation Disclosure
- P. Lead Paint Disclosure (Pre-1978)
- $\square$  Q. Housing for Older Persons
- R. Rezoning
- S. Lease Purchase/ Lease Option
- T. Pre-Closing Occupancy
- U. Post-Closing Occupancy
- $\Box$  V. Sale of Buyer's Property
- W. Back-up Contract

- X. Kick-out Clause
- Y. Seller's Attorney Approval
- Z. Buyer's Attorney Approval
- AA. Licensee Property Interest
- BB. Binding Arbitration
- CC. Miami-Dade County Special Taxing District
  - Disclosure
- DD. Seasonal/Vacation Rentals
- EE. PACE Disclosure
- Other:\_\_\_\_

590 <b>*</b>	20.	ADDITIONAL TERMS:		
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608		COUNTER-OFFER		
609 <b>*</b>		Seller counters Buyer's offer.		
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610		[The remainder of this page is intentionally left blank.		
611		This Contract continues with Line 612 on Page 13 of 13.]		

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612 613	THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.		
614	THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.		
615 616 617 618	Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.		
619 620	AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.		
621	ATTENTION: SELLI	ER AND BUYER	
622 623 624 625 626 627	<b>CONVEYANCES TO FOREIGN BUYERS:</b> Part III of Chap 2023 (the "Act"), in part, limits and regulates the sale, pur certain buyers who are associated with a "foreign country Russian Federation, the Islamic Republic of Iran, the Der Cuba, the Venezuelan regime of Nicol'ás Maduro, or the Sy sell property in violation of the Act.	rchase and ownership of certain Florida properties by of concern", namely: People's Republic of China, the mocratic People's Republic of Korea, the Republic of	
628 629 630	At time of purchase, Buyer must provide a signed Affi Act. Seller and Buyer are advised to seek legal counsel register the Act.		
631* 632* 633 <sup>*</sup>	Buyer: Buyer: Seller:	Date:	
634 <b>*</b>	Seller:	Date:	
635 636 * 637 * 638 *	Buyer's address for purposes of notice S	eller's address for purposes of notice	
639 640 641 642 643 644	<b>BROKER:</b> Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.		
645 <b>*</b> 646	Cooperating Sales Associate, if any	Listing Sales Associate	
647 <b>*</b> 648	Cooperating Broker, if any	Listing Broker	

### July 1, 2023

Ms. Tracey Eller Email:<u>tceller@bellsouth.net</u> Phone: 561.744.5322 Fax: 561.744.9230

> RE: One Year Extension Regarding the Website/Social Media Accounts of the Real Property, Probate and Trust Law Section of The Florida Bar (www.RPPTL.org)

Dear Tracey:

The purpose of this letter is to confirm the terms on which you will continue to act as the web administrator for the Real Property, Probate and Trust Law Section of The Florida Bar (**''us''** or **''Customer'')** for an additional year beginning July 1, 2023, on an as needed basis. The Florida Bar's Standard Contract Terms & Conditions attached as Exhibit A shall apply and are incorporated herein by reference. You will also comply with the Florida Bar's 4/27/22 Social Media Policy, attached as Exhibit B, as it may be updated from time to time.

A "Scope of Work" to be conducted on a monthly basis is attached. From time to time, we may change the "Scope of Work", with notice to you and input from you. We have budgeted a monthly expense of 14 hours of your time. Please do not exceed this amount per month without prior written approval of the Section administrator and Hardy Roberts, or such other folks as we may later designate.

Your hourly fee for work performed for us will be \$80. In addition, you may be asked to assist with social media posts that we anticipate will originate from members of the Section which you will consider and post on the Customer's behalf to its social media accounts and based on Customer's suggestions. At this time, we do not anticipate that you will need to attend Executive Council meetings. Should this be requested, the following fees would occur:

EC Meeting/Thursdays (9 hours): flat fee of \$700

EC Meeting/Fridays (4.5 hours): flat fee of \$350 Travel time to/from

EC meetings: \$40 per hour

You will send an invoice each month to The Florida Bar for payment in accordance with their guidelines, together with a copy to the Chair of the Information Technology Committee. At this time, the appropriate chair is Hardy Roberts. Payment terms for an invoice are net 30 days. All fees invoiced include, and you shall pay, all sales, use, excise and other taxes which may be levied upon either you or the Real Property, Probate and Trust Law Section, except for taxes based on Customer's net income.

In addition, Customer will reimburse you for all reasonable out-of-pocket expenses which have been approved in advance by Customer and which are incurred by you in the performance of services hereunder, including but not limited to travel and lodging expenses.

#### Page 2

As between you and Customer, the Domain Name or URL address, any Content given to you by Customer or on behalf of Customer (from a user of the Website or otherwise) under this Agreement or otherwise, and all User Content, shall at all times remain the property of Customer or its licensor. You shall have no rights in such Domain Name or URL address, Content or User Content, other than the limited right to use such Domain Name or URL address, Content or User Content for the purposes expressly set forth in this Agreement.

If you employ any other persons, independent contractors or subcontractor contractors to work under your direction, you shall cause each individual or company employed by you in connection with the Website to execute a contract regarding confidentiality and assignment of rights prior to each such individual or company's commencement of services thereunder. Such contracts shall: (a) include a full assignment of all rights to Customer and an obligation to execute future assignments and other documents as reasonably requested by Customer, (b) include a waiver of any moral or similar rights, (c) be freely assignable, and (d) contain restrictions on use and disclosure. You further warrant that, with respect to any subcontractors which you employs, (a) you shall obtain the written consent of Customer, (b) you shall be responsible for the direction and coordination of the services of such subcontractors, and (c) Customer shall have no obligation to pay such subcontractor(s).

This Agreement will be governed and construed in accordance with the laws of the State of Florida without giving effect to principles of conflict of laws.

This Agreement and your rights, duties and obligations hereunder are personal to you and you may not assign such rights, delegate such duties or subcontract any rights without Customer's prior written consent in Customer's sole discretion.

If this Agreement accurately sets forth the terms of the relationship between you and the Customer, please sign the acknowledgement and agreement below. Please note however that this Agreement is not binding on the Customer until it has been approved by The Florida Bar.

Sincerely yours,

/s/ Hardy Roberts

Hardy Roberts, as Chair, Information Technology Committee, Real Property, Probate and Trust Law Section of The Florida Bar Page 3

# ACKNOWLEDGED AND AGREED:

By signing below, I, Tracey Eller, hereby agree to the terms and conditions set forth above.

Tracey Eller

Tracy Eller

Dated: 7/11/2023

# ACCEPTED:

On behalf of the Florida Bar

By:

(signature)

(printed name and title)

\_\_\_\_\_

Dated:

Page 4

# Scope of Work

Work with RPPTL Section members and the RPPTL Webmaster as may be requested by the Section to help RPPTL members, RPPTL Committee Chairs and their website designates log-in and utilize the RPPTL Website and Committee pages.

Working with our Webmaster as may be requested by the Section in determining what changes are needed to RPPTL's website and website security. Examples of tasks includes updating the front page of the RPPTL website's Events Calendar (with emphasis on CLE postings) and News section.

Working on preparing and maintaining the Meetings App both prior to and during RPPTL Section meetings as may be requested by the Section.

Coordination of technology at RPPTL Section meetings as may be requested by the Section.

Assist the RPPTL Section in effectively communicating the section's activities and CLE programs as may be requested by the Section.

Assist in photographing RPPTL Section events as may be requested by the Section and assist in postings to the RPPTL Website, Facebook and Twitter pages.

Assist members of the Membership & Inclusion Committee on their projects to promote the RPPTL Section's membership advertising promotions as may be requested by the Section.

Assist with meeting brochure development and design as may be requested; work with section administrator for additional brochure edits that may be needed.



Joshua E. Doyle Executive Director (850) 561-5600 www.FLORIDABAR.org

# **STANDARD CONTRACT TERMS & CONDITIONS**

In addition to the terms and conditions referenced in the primary document (RFP, contract, agreement, purchase order, MOU, etc.), any final agreement between The Florida Bar (TFB) and the Contractor will also include the following provisions, which will be incorporated by reference into the signed, final version of the primary document.

I. Accessibility. The Contractor warrants that its product, service, program, platform, or facilities are currently in compliance with the Americans with Disabilities Act (ADA) and all amendments. The Contractor agrees that during the term of this Agreement the product, service, program, platform, or facilities will remain in compliance with all applicable federal and state disabilities laws and regulations.

If the contract is for facilities:

- A. TFB agrees that one week in advance of the event, TFB will furnish to a list of any auxiliary aids needed by TFB attendees in meeting and function spaces. TFB agrees that TFB will be responsible for the procurement and payment of all charges for all auxiliary aids.
- B. The Contractor will furnish TFB, upon TFB request, with the names of businesses TFB can contact to obtain these aids.
- C. TFB agrees to be responsible for compliance with the ADA in the setup and conduct of meetings.

TFB may request a timely response, resolution, or remediation to accessibility concerns at no cost to TFB. The Contractor agrees to promptly respond to TFB requests and resolve complaints within 3 business days. Where the Contractor is unable to resolve a TFB accessibility request or complaint within 3 business days, and where TFB provides the Contractor with 60 days' notice, TFB and the Contractor agree to cancel the contract and discharge all claims, actions, and costs subsequent to the cancellation date.

- II. **Assignment**. The Contractor may not assign or transfer the Agreement without the prior written consent of TFB.
- III. <u>Attorney Fees & Costs</u>. If a dispute arises under this Agreement, regardless of whether a lawsuit or other proceeding is filed, the prevailing party will be entitled to recover its reasonable attorney fees and costs, including attorney fees and costs incurred in litigating entitlement to attorney fees and costs, as well as in determining or quantifying the amount of recoverable attorney fees and costs.

The reasonable costs to which the prevailing party is entitled includes costs that are taxable under any applicable statute, rule, or guideline, as well as nontaxable costs, including but not limited to costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

IV. <u>Budget Authorization</u>. The Contractor acknowledges that TFB, on an annual basis, must obtain final budget authorization from the Supreme Court of Florida for all expenses associated with this Agreement. TFB agrees to seek such authorization in good faith but, in the absence of such appropriation, TFB will have the right to immediately terminate this Agreement consistent with the provisions of this Agreement.

### V. Dispute Resolution

- A. <u>Exclusive Dispute Resolution Mechanism</u>. The parties will resolve any dispute, controversy, or claim arising out of or relating to this Agreement under this section.
- B. <u>Negotiation</u>. First, a party will send written notice to the other party of any dispute. The parties will attempt in good faith to resolve any dispute set forth in the dispute notice by negotiation and consultation between themselves.
- C. Mediation.
  - Next, if the parties have not resolved the dispute through negotiation within 2 weeks from the date of the dispute notice, the parties will submit the dispute to any mutually agreed-upon mediation service for mediation, by providing to the mediation service a joint written request for mediation, setting forth the subject of the dispute and the relief requested.
  - 2. The parties will cooperate with one another in selecting a mediation service and will cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings.
  - 3. The parties will use commercially reasonable efforts in participating in the mediation.
  - 4. The parties will equally share the mediator's fees and expenses and the costs incidental to the mediation.
  - 5. The parties agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by the parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation involving the parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

- D. <u>Litigation as a Final Resort</u>. Finally, if the parties cannot resolve a dispute for any reason, including but not limited to, the failure of either party to agree to enter into mediation or agree to any settlement proposed by the mediator, within 2 weeks of the date of mediation, either party may file suit in accordance with the venue clause below.
- VI. <u>Equal Employment</u>: By entering into this Agreement with TFB, the Contractor agrees that it does not, and will not, unlawfully discriminate against any person because of age, sex, race, creed, religion, national origin or disability and that it will take positive steps to assure equal opportunity.

### VII. Force Majeure, Notice of Delay, and No Damages for Delay

#### A. Definitions

- 1. "Affected party" means a party to this Agreement that is affected by a force majeure event. Because the affected party cannot prevent the force majeure event, the affected party is without liability.
- 2. "Force majeure event" means an event or circumstance that is beyond the control of the affected party. Such events include but are not limited to:
  - Acts of God
  - Flood, fire, earthquake, hurricane or explosion
  - Disease, epidemic, pandemic such as COVID-19, any variants, or quarantine
  - War, invasion, or hostilities, whether war is declared or not
  - Terrorist threats or acts, riots, protest, civil unrest, civil strife, or political unrest
  - Local, state, federal or foreign government recommendation, regulation, mandate, order, law, statute, or advisory
  - Actions, embargoes or blockades in effect on or after the date of this Agreement
  - Action by any governmental authority
  - National or regional emergency
  - Unseasonable extreme inclement weather
  - Strikes, labor stoppages or slowdowns or other industrial disturbances
  - Shortage of adequate power or transportation
  - Any other cause reasonably beyond the affected party's control
- 3. "Without liability" means that there will be no liquidated damages, attrition fees, cancellation fees, rental charges, service charges, or any direct, consequential, compensatory, special incidental damages, or any other damages. The Contractor has no entitlement to, and TFB has no liability for: any costs, losses, expenses, damages or the payment of any part of

the contract price during a force majeure event; or any delay costs incurred by the Contractor due to a force majeure event.

- B. When and to the extent such failure or delay is caused by or results from a force majeure event, the affected party will give 10 days' written notice of the force majeure event to the other party, stating how long the occurrence is expected to continue. The affected party will use diligent efforts to end the failure or delay and ensure the effects of the force majeure event are minimized.
- C. The affected party will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the affected party's failure or delay remains uncured for 180 days following written notice, either party may terminate this Agreement upon 10 days' written notice.
- D. A force majeure event does not relieve an affected party from liability for an obligation that arose before the occurrence of the event and does not affect the affected party's obligation to make payments that matured before the force majeure event occurred.
- VIII. Independent Contractor. The Contractor and TFB represent that they are acting in their individual capacities and not as agents, employees, partners, or associates of one another. Nothing in this Agreement will confer upon the Contractor the right to be engaged as an employee by TFB. TFB and the Contractor acknowledge and agree that as an independent contractor, the Contractor will not be considered or permitted to be a partner, associate, employee, or agent of TFB. The Contractor will not have any claim under this Agreement as a third-party beneficiary, employee, or otherwise against TFB for vacation pay, sick leave, health insurance, retirement benefits, life insurance, disability, or other employee benefits of any kind.

As an independent contractor, the Contractor will be solely responsible for selfemployment, social security, and federal and state income taxes applicable to compensation paid to the Contractor by TFB under this Agreement and TFB will not be responsible for withholding or paying any income, payroll, social security, or other federal, state, or local taxes. The Contractor will indemnify, defend and hold harmless TFB against any and all such taxes. The Contractor is not an employee of TFB and is therefore expressly excluded from receiving workers' compensation under TFB's worker's compensation insurance program.

### IX. Indemnification.

- A. TFB will indemnify and defend the Contractor, its officers, directors, employees and agents, from and against any claims, actions, demands, judgments, liabilities, losses, fines, penalties, and expenses, including attorneys' fees and expenses resulting from, or alleged to result from, the TFB's breach of this Agreement.
- B. The Contractor will indemnify and defend TFB, its officers, directors, employees and agents, from and against any claims, actions, demands, judgments, liabilities, losses, fines, penalties, and expenses, including

attorneys' fees and expenses resulting from, or alleged to result from, the Contractor's breach of this Agreement.

C. To receive the foregoing indemnities, the party seeking indemnification must notify the indemnifying party in writing of a claim or suit promptly and provide reasonable cooperation (at the indemnifying party's expense) and full authority to defend or settle the claim or suit. Neither party will have any obligation to indemnify the other under any settlement made without its written consent.

#### X. Insurance. The Contractor agrees to:

- A. Obtain, carry, maintain and provide evidence of liability and other insurance in sufficient amounts to provide coverage against any claims arising out of or resulting from Contractor's obligations pursuant to this Agreement;
- B. Provide proof of workers' compensation insurance for any of the Contractor's employees on TFB premises upon request;
- C. Require any outside subcontractor to provide proof of workers' compensation insurance and proof of adequate general liability coverage for any activities on TFB premises;
- D. To name TFB as an additional insured to all applicable insurance policies obtained or maintained by the Contractor, relative to the requirements of this Agreement; and
- E. Seek written TFB approval of amounts and terms of insurance coverages provided by the Contractor.
- XI. <u>Integration</u>. The Agreement contains the entire agreement and understanding by and between the parties, and no representations, promises, agreements, or understandings, written or oral, not contained in the Agreement will be of any force or effect.

#### XII. Invoices

- A. Invoices must contain sufficient information to adequately describe the period, quantity and type of services or purchases being invoiced for required preand post-audits, and should be emailed to <u>Accounting@floridabar.org</u> or mailed to Accounts Payable, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.
- B. Charges are considered due 30 days from the invoice date unless specified otherwise in the Agreement. The Contractor is responsible for providing accurate billing and contact information and notifying TFB of any changes.
- XIII. <u>Modification</u>. Any alteration, variation, change, modification or waiver of provisions of the Agreement will be valid only when it has been reduced to writing, signed by each of the parties, and attached to the original Agreement.
- XIV. <u>Non-Discrimination</u>. TFB is committed to the principle that all persons will have equal access to programs, facilities, services, and employment without regard to personal characteristics not related to ability, performance, or qualifications as

determined by TFB policy and/or applicable laws. TFB prohibits discrimination, harassment or bullying against any person because of age, ancestry, color, disability or handicap, national origin, race, religion, gender, sexual or affectional orientation, gender identity, appearance, matriculation, political affiliation, marital status, veteran status or any other characteristic protected by law. TFB expects its contractors to maintain an environment free of discrimination, including harassment, bullying, or retaliation, whenever and wherever those individuals are conducting TFB business or participating in TFB events or activities.

- XV. <u>Non-Exclusive Rights.</u> The right to provide services under the Agreement is not exclusive. TFB reserves the right to contract for and purchase these services from as many firms as it deems necessary without infringing upon or terminating the Agreement.
- XVI. <u>Notice</u>. Any notice or communication required or permitted under the Agreement will be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses set forth at in the Agreement, or to such other addresses as the parties may furnish to each other in writing.

# XVII. Promotion.

- A. The Contractor will not use its relationship with TFB in any social media, commercial advertising, sales promotion, press releases or other publicity matter without the express written consent of TFB. Further, the Contractor acknowledges, covenants and agrees that it is prohibited from in any way using, reproducing, promoting, associating, or in any way publishing the name, trade name, service mark, trademark, likeness or image of TFB without the prior written consent of TFB.
- B. Social media includes the internet, multi-media and social networking sites, blogs, microblogs, podcasts, forums, content communities, and wikis. When using social media, the Contractor must comply with TFB's Social Media Policy.

### XVIII. Records

- A. The Contractor acknowledges that its performance of services under this Agreement may involve access to confidential information, and agrees at all times during the term of the Agreement and thereafter to hold in strictest confidence, and not to use, except for the benefit of TFB to fulfill the Contractor's obligations under this Agreement, or to disclose to any person, firm or corporation without written authorization of TFB, any confidential information of TFB.
- B. "Confidential information" means any TFB-proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, plans, products, services, member information, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed by TFB either directly or indirectly in writing, orally, electronically or otherwise. Further, confidential information includes "trade secrets" within the meaning of the Florida Uniform Trade Secrets Act, Section 688.001 *et seq.*,

Florida Statutes. Confidential information does not include any of the foregoing items that have become publicly known and made generally available through no wrongful act of the Contractor or of others.

- C. The Contractor will not access, use or disclose confidential information except as permitted, required by this Agreement or as otherwise authorized by TFB in writing, or required by applicable laws. If required by a court of competent jurisdiction or administrative body to disclose confidential information, the Contractor will notify TFB in writing immediately upon receiving notice of such requirement and prior to such disclosure.
- D. The Contractor will not disclose any confidential information to any third party, *except* to its employees, subcontractors or agents that need to have access to such information and solely for the purpose of providing services to TFB under this Agreement, provided that such recipients are bound by confidentiality provisions no less restrictive than those in this Agreement.
- E. The Contractor agrees to protect the privacy and security of TFB data designated as confidential according to all applicable laws and regulations, by commercially acceptable standards, and no less rigorously than it protects its own confidential information.
  - If confidential information is accessed by unauthorized parties, that is considered a breach, and the Contractor will report the breach to TFB contract manager, orally and in writing, within 2 business days after the Contractor knows or reasonably suspects that a breach may have occurred. In the event of a suspected breach, the Contractor will keep TFB contract manager informed regularly of the progress of its investigation until the issue is resolved.
  - 2. "Breach" means the unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.
  - 3. The Contractor's report to TFB contract manager will identify:
    - a. The nature of the unauthorized access, use or disclosure;
    - b. The confidential information accessed, used or disclosed;
    - c. The persons who accessed, used, disclosed or received the confidential information;
    - d. The steps taken, or to be taken, to mitigate any deleterious effect of the unauthorized access, use or disclosure;
    - e. The corrective action taken, or to be taken, to prevent future unauthorized access, use or disclosure; and
    - f. Any other information as reasonably requested by TFB.

- 4. In the event of a breach by the Contractor, the Contractor agrees to promptly reimburse all costs arising from the breach to TFB, including but not limited to costs of notification of individuals, credit monitoring/identity restoration services, penalties levied against TFB, attorney fees, and court costs. Further, any breach may be grounds for immediate termination of this Agreement.
- 5. In the event of a breach by the Contractor that results in litigation involving TFB, the Contractor will make itself and employees, subcontractors and agents available to TFB at no cost to testify as witnesses.
- F. All documents, papers, letters, or other materials relating to the Agreement that do not meet the above definition of "confidential information" and that are made or received by the Contractor in conjunction with the Agreement are required to be available for public access and copying in the manner specified by applicable Florida law. TFB may unilaterally cancel the Agreement for the Contractor's refusal to allow access to public records.
- G. The Contractor agrees that, as required by applicable state and federal law, auditors designated by TFB will have the option to audit the outsourced service. The Contractor will make records pertaining to this Agreement available to auditors and TFB during normal working hours for this purpose.
- H. The Contractor will maintain records for 3 years after the expiration of the Agreement.
- XIX. <u>Severability</u>. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- XX. <u>Subcontracting</u>. The Contractor may enter into written subcontracts for performance of work under the Agreement only with prior written approval of TFB. TFB will have the continuing right throughout the term of the Agreement to disapprove subcontractors if such disapproval would be in the best interest of TFB. Any subcontract entered into by the Contractor with respect to performance under the Agreement will not in any way relieve the Contractor of any responsibility for performance of duties stipulated in the Agreement.

### XXI. <u>Termination & Remedies</u>

- A. <u>For Cause</u>. TFB reserves the right to immediately terminate the Agreement by providing written notice to the Contractor if TFB determines any of the following have occurred:
  - 1. The Contractor knowingly furnished any statement, representation, warranty or certification in connection with the solicitation or Agreement, which representation is materially false, deceptive, incorrect, or incomplete;
  - 2. The Contractor fails to perform to TFB's satisfaction any material requirement of the Agreement or defaults in performance of the Agreement;

- 3. The performance of the Agreement is substantially endangered by the action or inaction of the Contractor; or
- 4. The Contractor or its assets are acquired by or combined with another company during the Agreement period.

The Contractor retains the ultimate responsibility to ensure and guarantee the quality of work to be provided under this Agreement and for performing and completing the services specified to the satisfaction of TFB.

Consequently, TFB reserves the right in its sole discretion to terminate the Agreement if it determines that the actions or inactions of the Contractor's employees have posed a threat to the security and integrity of TFB. If such an event occurs, TFB may terminate the Agreement immediately by telephonic notification followed by written notice. If the Agreement is terminated for cause by TFB. TFB will be obligated only for the services performed prior to the date of notice of termination, less any liquidated damages or other damages that may be assessed for non-performance.

B. <u>For Convenience</u>. TFB may terminate this Agreement in whole or in part by giving the Contractor written notice at least 30 days before the effective date of the termination. Upon receipt of notice of termination from TFB, the Contractor will only provide those services specially approved or directed by TFB. All other rights and duties of the parties under this Agreement will continue during such notice period, TFB will be responsible to the Contractor for the payment of any obligations incurred by the Contractor with approval of TFB.

Upon termination of this Agreement, the Contractor will not be entitled to any fee nor to expenses for any work commenced or expensed after the notice of termination was received by the Contractor, unless specifically approved or requested by TFB. However, the Contractor will be entitled to payment for services commenced and approved by TFB prior to the receipt of notice or with the express written consent of TFB.

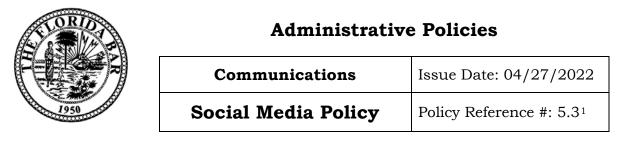
The Contractor will take such action as may be necessary, or as the Executive Director of TFB may specify, to protect and preserve any property related to this Agreement that is in the possession of the Contractor and in which TFB has or may have acquired an interest.

- C. <u>Remedies</u>. In any action brought to enforce the terms of the Agreement or for a breach, the prevailing party, in addition to and exclusive of any other right, claim, remedy or relief, will be entitled to recover its reasonable fees and costs, including reasonable attorney fees and costs incurred.
- XXII. <u>Venue</u>. The Agreement is governed by the laws of the State of Florida and the intellectual property laws of the United States of America, irrespective of choice of law rules. Any action, suit, or other proceeding arising out of or related to the Agreement will be instituted in the United States District Court for the district encompassing Leon County, Florida, or the circuit or county court of the State of Florida in the circuit encompassing Leon County, Florida, or the circuit, Florida. Each party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding.

XXIII. <u>Waiver</u>. The failure of either party to the Agreement to object to or take affirmative action with respect to any conduct of the other that is in violation of the terms of the Agreement will not be construed as a waiver of the violation or breach, or of any future violations or breach.

#### XXIV. Warranties

- A. <u>Authority</u>. Each person signing the Agreement represents that he/she is duly authorized to do so and to bind the respective party to the Agreement.
- B. <u>Ability to Perform</u>. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish its ability to satisfy its Agreement obligations. The Contractor will immediately notify TFB in writing if its ability to perform is compromised in any manner during the term of the Agreement.



Approved By: Joshua E. Doyle	Revision No.: 1
Title: Executive Director	Revision Date:

# I. Purpose

The role of technology in the 21st century workplace is constantly expanding and now includes social media communication tools that facilitate interactive information sharing, interoperability, and collaboration. Commonly used social media platforms, like Facebook, Twitter, YouTube, LinkedIn, and Instagram have large user bases and provide increasingly important outreach and communication tools for TFB.

A social networking presence has become a hallmark of vibrant and transparent communications. Social networking improves interactivity between TFB, its members, and the public, and it reaches populations that do not use traditional media as frequently as others do. For these reasons, TFB supports social media to enhance its communications strategies.

All TFB social media platforms should be used in ways that maximize transparency; promote and are consistent with the mission and strategic plan of TFB; maintain the security of the network; and are appropriately professional. Therefore, social media must be used thoughtfully, in a manner that minimize risks and accounts for retention as required by law and TFB policy as public records.

### II. Scope

- Applies to designated TFB staff as administrators and all staff as covered in the Personal Use section below
- Applies to TFB social media platforms (this includes committees, the YLD, and sections)

### III. Maintenance

This policy will be reviewed every 3 years or as appropriate based on changes in applicable laws, the organization, and social media.

<sup>&</sup>lt;sup>1</sup> This policy supersedes Personnel Policy 2.16.

# IV. References

- Personnel Policy 1.2, "Employee Conduct and Ethics"
- Personnel Policy 1.5, "Discrimination, Harassment, Retaliation and Accommodation"
- Personnel Policy 2.11, "Corrective Action"
- Communications Policy 5.1, "Media Inquiries Procedures", Section V, "Expressing Personal Views"

# V. Definitions

<u>Social media platforms</u>: Blogs, micro-blogs, wikis, social networks, social bookmarking services, user rating services, and any other online collaboration, sharing, or publishing platform, whether accessed through the web, a mobile device, text messaging, email, or any other existing or emerging communications platform.

<u>Copyrights</u>: Copyrights protect the right of an author to control the reproduction and use of any creative expression that has been fixed in tangible form, such as literary works, graphical works, photographic works, audiovisual works, electronic works, and musical works.

# VI. Acceptable Use

# A. Personal Use

- 1. TFB employees may have personal social media accounts, which should remain personal in nature and be used to share personal opinions or non-work related information. Additionally:
  - a. Whether TFB employees post on their own social media accounts or TFB's, they may not share bar business or confidential information about bar members.
  - b. In posting on their personal social media accounts, TFB employees should consider whether to list their TFB employment in the "About Me" sections. See <u>Procedures</u> under Acceptable Use.
  - c. TFB employees may not use a TFB email account in conjunction with a personal social media platform.
- 2. If TFB employees decide to comment on posts about official TFB business, they should:
  - State their names and roles when discussing TFB business;
  - Use a disclaimer such as: "The postings on this site are my own and do not reflect or represent the opinions of my employer."

- 3. Though TFB employees may use personal social media accounts to speak for themselves individually or to exercise their legal rights under applicable laws, any harassing or threatening conduct on their personal accounts may be subject them to the prohibitions of Personnel Policy 1.5, "Discrimination, Harassment, Retaliation and Accommodation" if such conduct affects the work environment of coworkers. *See also* Communications Policy 5.1, "Media Inquiries Procedures", Section V, "Expressing Personal Views".
- B. Professional Use
  - 1. Only the Executive Director may designate the employees to represent TFB on social media platforms. The position description for the designated individuals will include that designation.
  - 2. All TFB social media platforms must be approved by the Communications Department; published using approved social platforms and tools; and administered by the designated persons approved by the Communication Department.
  - 3. Continued use of social media is subject to the approval and ongoing direction of the Communications Department and may be discontinued at any time.
  - 4. Employees assigned contract or vendor relationship responsibilities should ensure that contractors, vendors, and strategic partners with which TFB has a formal relationship have received and agreed to abide by these guidelines.
  - 5. All TFB social media platforms will display approved logos for consistency and authenticity.
  - 6. TFB social media posts may not reproduce or use copyrighted material without the permission of the copyright owner.
  - 7. *Terms of* Use.
    - a. All TFB social media platforms except for Twitter will include the following "terms of use" statement:

This site is created by The Florida Bar and is intended to serve as a communication tool for the bar, members, and the public on topics relevant to the bar. However, no substantive official bar business will be conducted on or via social media. For official bar inquiries or comments, email <u>pubinfo@floridabar.org</u>.

*The Florida Bar reserves the right to remove comments and postings that violate any applicable laws. Postings to*  this site are public record and may be subject to disclosure under public records law.

The Florida Bar does not endorse or sponsor any advertising posted by the social media host, and does not promise that the site is private or that the privacy terms of the site apply. The Florida Bar also does not guarantee reliability and accuracy of any third-party links.

- b. Twitter has insufficient character space for the above statement and will display on all TFB accounts: "Retweets are not endorsements."
- C. Procedures
  - 1. Designated TFB employees must acknowledge they have read and understand this policy and their responsibilities under it, as noted at the bottom of this policy.
  - 2. Designated TFB employees must provide current logins and passwords to the Communications Department and must update the Communications Department when logins or passwords change.
  - 3. Designated TFB employees must maintain a high level of ethical conduct and professional decorum. *See* Personnel Policy 1.2, "Employee Conduct and Ethics". Failure to do so is grounds for revoking the privilege to participate in TFB social media platforms and features. It also may be grounds for disciplinary action under Personnel Policy 2.11, "Corrective Action".
  - 4. TFB social media platforms may not be used to circumvent other TFB communication policies, including news media policy requirements. *See* Communications Policy 5.1, "Media Inquiries Procedures".
  - 5. Designated TFB employees must use professional standards for good grammar, spelling, brevity, clarity and accuracy, and avoid jargon, obscure terminology, and acronyms in posting on TFB social media platforms.
  - 6. Designated TFB employees may not publish on TFB social media platforms any materials that:
    - a. Are off-subject or out of context;
    - b. Are profane, obscene, or vulgar;
    - c. Promote, foster, or perpetuate discrimination on the basis of race, color, gender, gender identity, national origin, religion, ancestry, age, sexual orientation, disability, maternity leave, genetic information, or active military status;

- d. Are threatening or harassing;
- e. Constitute sexual comments or content, or link to sexual content;
- f. Encourage or engage in illegal activity;
- g. May compromise the safety or security of the public or public systems;
- h. Violate a legal ownership interest of any other party, like protected health information; personnel information; copyrighted material; and information that is not public record or is otherwise privileged from public disclosure;
- i. Advertise or promote a commercial product or service, or any entity or individual;
- j. Promote or endorse political campaigns or candidates;
- k. Constitute partisan political views; or
- 1. May be identified by the Communications Department as falling within these parameters.
- 7. The Communications Department will remove administrative access on TFB social media platforms and, if necessary, change passwords, when a designated employee ends TFB employment, changes jobs to a position that is not designated for access, or has access privileges revoked.
- 8. The Communications Department and designated employees will monitor TFB social media platforms, using the same standards applied to original content as noted above. Monitoring will be conducted regularly, consistently, and fairly.
- 9. All accounts who wish to "friend," "follow," "retweet," etc. will be allowed to do so, except as noted below.
- 10. Under the terms of use on TFB's social media platforms:
  - a. Content that violates the terms of use will be deleted after the Communications Department saves the content for record retention purposes. TFB staff should not respond to such content.
  - b. Persistent and egregious violators of this policy will be blocked from interactive access to TFB's social media after reasonable efforts to mediate and halt policy violations. Blocking users will be a last resort.
- D. Public Records Law & Record Retention

Social media platforms contain communications sent to or received by TFB and its employees and thus are public records governed by TFB's

Public Records & Records Information Management Policy 7.2. The social media accounts maintained by designated TFB staff will be used for the retention of social media records.

Divisions and departments that maintain social media accounts are responsible for coordinating public records requests with the Communications Department and Office of General Counsel.

E. Enforcement

The Communications Department.



Laura Pichard-Murphy 4515 Maylor Road Tallahassee, FL 32308 850.566.2671 paisleydesign@gmail.com

Date: June 27, 2023

### 2023 Quote for layout and design the RPPTL ActionLine magazine

The following are specifications and pricing for design/layout services of the ActionLine magazine, a quarterly publication of the RPPTL Section of the Florida Bar by graphic designer Laura Pichard-Murphy, dba Paisley Design:

**Per page rate of \$58/page:** Layout & design; revisions; and, finalizing for electronic distribution/ print distribution runs for 5 of the 8 week production timeline. Each issue of *ActionLine* varies in total number of pages depending on the number and length of articles submitted to the editor(s), as well as the total number of paid and in-house ads.

Upon completion of initial design/layout, editorial staff make a minimum of 3 rounds of edits before final proofing. If content pages are deleted at this stage of production, invoice will reflect the total number of initial pages in publication. If content pages are added at this stage of production, invoice will reflect total number of final pages.

**Stock images:** Photographs and/or illustrations maybe be acquired for inclusion with an article or to enhance the publication. Images will be approved by editor(s) prior to purchase and billed at cost. Stock images range in price from \$18-\$25 depending on source.

**Electronic distribution:** *ActionLine* is prepared for electronic distributions with a bookmarked Table of Contents and hyper-linked URLs.

**Print distribution:** Once the electronic version of *ActionLine* is finalized, the files and graphics are converted to CMYK and preflighted for press production. Press files are provided to Diana Kellogg or to a selected printer per Diana Kellogg.

I agree to the The Florida Bar Standard Contract Terms and Conditions , an exhibit included in the following pages.

6/27/23

Laura Pichard-Murphy Graphic Designer, Paisley Design

Terry Hill Division Director, The Florida Bar

\*\*Addendum - Contract term runs from July 1, 2023 through June 30, 2024.

Laura Pichard-Murphy

July 4, 2023

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Joshua E. Doyle Executive Director (850) 561-5600 www.FLORIDABAR.org

# **STANDARD CONTRACT TERMS & CONDITIONS**

In addition to the terms and conditions referenced in the primary document (RFP, contract, agreement, purchase order, MOU, etc.), any final agreement between The Florida Bar (TFB) and the Contractor will also include the following provisions, which will be incorporated by reference into the signed, final version of the primary document.

I. Accessibility. The Contractor warrants that its product, service, program, platform, or facilities are currently in compliance with the Americans with Disabilities Act (ADA) and all amendments. The Contractor agrees that during the term of this Agreement the product, service, program, platform, or facilities will remain in compliance with all applicable federal and state disabilities laws and regulations.

If the contract is for facilities:

- A. TFB agrees that one week in advance of the event, TFB will furnish to a list of any auxiliary aids needed by TFB attendees in meeting and function spaces. TFB agrees that TFB will be responsible for the procurement and payment of all charges for all auxiliary aids.
- B. The Contractor will furnish TFB, upon TFB request, with the names of businesses TFB can contact to obtain these aids.
- C. TFB agrees to be responsible for compliance with the ADA in the setup and conduct of meetings.

TFB may request a timely response, resolution, or remediation to accessibility concerns at no cost to TFB. The Contractor agrees to promptly respond to TFB requests and resolve complaints within 3 business days. Where the Contractor is unable to resolve a TFB accessibility request or complaint within 3 business days, and where TFB provides the Contractor with 60 days' notice, TFB and the Contractor agree to cancel the contract and discharge all claims, actions, and costs subsequent to the cancellation date.

- II. **Assignment**. The Contractor may not assign or transfer the Agreement without the prior written consent of TFB.
- III. <u>Attorney Fees & Costs</u>. If a dispute arises under this Agreement, regardless of whether a lawsuit or other proceeding is filed, the prevailing party will be entitled to recover its reasonable attorney fees and costs, including attorney fees and costs incurred in litigating entitlement to attorney fees and costs, as well as in determining or quantifying the amount of recoverable attorney fees and costs.

The reasonable costs to which the prevailing party is entitled includes costs that are taxable under any applicable statute, rule, or guideline, as well as nontaxable costs, including but not limited to costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

IV. <u>Budget Authorization</u>. The Contractor acknowledges that TFB, on an annual basis, must obtain final budget authorization from the Supreme Court of Florida for all expenses associated with this Agreement. TFB agrees to seek such authorization in good faith but, in the absence of such appropriation, TFB will have the right to immediately terminate this Agreement consistent with the provisions of this Agreement.

### V. Dispute Resolution

- A. <u>Exclusive Dispute Resolution Mechanism</u>. The parties will resolve any dispute, controversy, or claim arising out of or relating to this Agreement under this section.
- B. <u>Negotiation</u>. First, a party will send written notice to the other party of any dispute. The parties will attempt in good faith to resolve any dispute set forth in the dispute notice by negotiation and consultation between themselves.
- C. Mediation.
  - Next, if the parties have not resolved the dispute through negotiation within 2 weeks from the date of the dispute notice, the parties will submit the dispute to any mutually agreed-upon mediation service for mediation, by providing to the mediation service a joint written request for mediation, setting forth the subject of the dispute and the relief requested.
  - 2. The parties will cooperate with one another in selecting a mediation service and will cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings.
  - 3. The parties will use commercially reasonable efforts in participating in the mediation.
  - 4. The parties will equally share the mediator's fees and expenses and the costs incidental to the mediation.
  - 5. The parties agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by the parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation involving the parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

- D. <u>Litigation as a Final Resort</u>. Finally, if the parties cannot resolve a dispute for any reason, including but not limited to, the failure of either party to agree to enter into mediation or agree to any settlement proposed by the mediator, within 2 weeks of the date of mediation, either party may file suit in accordance with the venue clause below.
- VI. <u>Equal Employment</u>: By entering into this Agreement with TFB, the Contractor agrees that it does not, and will not, unlawfully discriminate against any person because of age, sex, race, creed, religion, national origin or disability and that it will take positive steps to assure equal opportunity.

### VII. Force Majeure, Notice of Delay, and No Damages for Delay

#### A. Definitions

- 1. "Affected party" means a party to this Agreement that is affected by a force majeure event. Because the affected party cannot prevent the force majeure event, the affected party is without liability.
- 2. "Force majeure event" means an event or circumstance that is beyond the control of the affected party. Such events include but are not limited to:
  - Acts of God
  - Flood, fire, earthquake, hurricane or explosion
  - Disease, epidemic, pandemic such as COVID-19, any variants, or quarantine
  - War, invasion, or hostilities, whether war is declared or not
  - Terrorist threats or acts, riots, protest, civil unrest, civil strife, or political unrest
  - Local, state, federal or foreign government recommendation, regulation, mandate, order, law, statute, or advisory
  - Actions, embargoes or blockades in effect on or after the date of this Agreement
  - Action by any governmental authority
  - National or regional emergency
  - Unseasonable extreme inclement weather
  - Strikes, labor stoppages or slowdowns or other industrial disturbances
  - Shortage of adequate power or transportation
  - Any other cause reasonably beyond the affected party's control
- 3. "Without liability" means that there will be no liquidated damages, attrition fees, cancellation fees, rental charges, service charges, or any direct, consequential, compensatory, special incidental damages, or any other damages. The Contractor has no entitlement to, and TFB has no liability for: any costs, losses, expenses, damages or the payment of any part of

the contract price during a force majeure event; or any delay costs incurred by the Contractor due to a force majeure event.

- B. When and to the extent such failure or delay is caused by or results from a force majeure event, the affected party will give 10 days' written notice of the force majeure event to the other party, stating how long the occurrence is expected to continue. The affected party will use diligent efforts to end the failure or delay and ensure the effects of the force majeure event are minimized.
- C. The affected party will resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If the affected party's failure or delay remains uncured for 180 days following written notice, either party may terminate this Agreement upon 10 days' written notice.
- D. A force majeure event does not relieve an affected party from liability for an obligation that arose before the occurrence of the event and does not affect the affected party's obligation to make payments that matured before the force majeure event occurred.
- VIII. Independent Contractor. The Contractor and TFB represent that they are acting in their individual capacities and not as agents, employees, partners, or associates of one another. Nothing in this Agreement will confer upon the Contractor the right to be engaged as an employee by TFB. TFB and the Contractor acknowledge and agree that as an independent contractor, the Contractor will not be considered or permitted to be a partner, associate, employee, or agent of TFB. The Contractor will not have any claim under this Agreement as a third-party beneficiary, employee, or otherwise against TFB for vacation pay, sick leave, health insurance, retirement benefits, life insurance, disability, or other employee benefits of any kind.

As an independent contractor, the Contractor will be solely responsible for selfemployment, social security, and federal and state income taxes applicable to compensation paid to the Contractor by TFB under this Agreement and TFB will not be responsible for withholding or paying any income, payroll, social security, or other federal, state, or local taxes. The Contractor will indemnify, defend and hold harmless TFB against any and all such taxes. The Contractor is not an employee of TFB and is therefore expressly excluded from receiving workers' compensation under TFB's worker's compensation insurance program.

### IX. Indemnification.

- A. TFB will indemnify and defend the Contractor, its officers, directors, employees and agents, from and against any claims, actions, demands, judgments, liabilities, losses, fines, penalties, and expenses, including attorneys' fees and expenses resulting from, or alleged to result from, the TFB's breach of this Agreement.
- B. The Contractor will indemnify and defend TFB, its officers, directors, employees and agents, from and against any claims, actions, demands, judgments, liabilities, losses, fines, penalties, and expenses, including

attorneys' fees and expenses resulting from, or alleged to result from, the Contractor's breach of this Agreement.

- C. To receive the foregoing indemnities, the party seeking indemnification must notify the indemnifying party in writing of a claim or suit promptly and provide reasonable cooperation (at the indemnifying party's expense) and full authority to defend or settle the claim or suit. Neither party will have any obligation to indemnify the other under any settlement made without its written consent.
- X. Insurance. The Contractor agrees to:
  - A. Obtain, carry, maintain and provide evidence of liability and other insurance in sufficient amounts to provide coverage against any claims arising out of or resulting from Contractor's obligations pursuant to this Agreement;
  - B. Provide proof of workers' compensation insurance for any of the Contractor's employees on TFB premises upon request;
  - C. Require any outside subcontractor to provide proof of workers' compensation insurance and proof of adequate general liability coverage for any activities on TFB premises;
  - D. To name TFB as an additional insured to all applicable insurance policies obtained or maintained by the Contractor, relative to the requirements of this Agreement; and
  - E. Seek written TFB approval of amounts and terms of insurance coverages provided by the Contractor.
- XI. <u>Integration</u>. The Agreement contains the entire agreement and understanding by and between the parties, and no representations, promises, agreements, or understandings, written or oral, not contained in the Agreement will be of any force or effect.

# XII. Invoices

- A. Invoices must contain sufficient information to adequately describe the period, quantity and type of services or purchases being invoiced for required preand post-audits, and should be emailed to <u>Accounting@floridabar.org</u> or mailed to Accounts Payable, The Florida Bar, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300.
- B. Charges are considered due 30 days from the invoice date unless specified otherwise in the Agreement. The Contractor is responsible for providing accurate billing and contact information and notifying TFB of any changes.
- XIII. <u>Modification</u>. Any alteration, variation, change, modification or waiver of provisions of the Agreement will be valid only when it has been reduced to writing, signed by each of the parties, and attached to the original Agreement.
- XIV. <u>Non-Discrimination</u>. TFB is committed to the principle that all persons will have equal access to programs, facilities, services, and employment without regard to personal characteristics not related to ability, performance, or qualifications as

determined by TFB policy and/or applicable laws. TFB prohibits discrimination, harassment or bullying against any person because of age, ancestry, color, disability or handicap, national origin, race, religion, gender, sexual or affectional orientation, gender identity, appearance, matriculation, political affiliation, marital status, veteran status or any other characteristic protected by law. TFB expects its contractors to maintain an environment free of discrimination, including harassment, bullying, or retaliation, whenever and wherever those individuals are conducting TFB business or participating in TFB events or activities.

- XV. <u>Non-Exclusive Rights.</u> The right to provide services under the Agreement is not exclusive. TFB reserves the right to contract for and purchase these services from as many firms as it deems necessary without infringing upon or terminating the Agreement.
- XVI. <u>Notice</u>. Any notice or communication required or permitted under the Agreement will be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses set forth at in the Agreement, or to such other addresses as the parties may furnish to each other in writing.

# XVII. Promotion.

- A. The Contractor will not use its relationship with TFB in any social media, commercial advertising, sales promotion, press releases or other publicity matter without the express written consent of TFB. Further, the Contractor acknowledges, covenants and agrees that it is prohibited from in any way using, reproducing, promoting, associating, or in any way publishing the name, trade name, service mark, trademark, likeness or image of TFB without the prior written consent of TFB.
- B. Social media includes the internet, multi-media and social networking sites, blogs, microblogs, podcasts, forums, content communities, and wikis. When using social media, the Contractor must comply with TFB's Social Media Policy.

### XVIII. Records

- A. The Contractor acknowledges that its performance of services under this Agreement may involve access to confidential information, and agrees at all times during the term of the Agreement and thereafter to hold in strictest confidence, and not to use, except for the benefit of TFB to fulfill the Contractor's obligations under this Agreement, or to disclose to any person, firm or corporation without written authorization of TFB, any confidential information of TFB.
- B. "Confidential information" means any TFB-proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, plans, products, services, member information, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed by TFB either directly or indirectly in writing, orally, electronically or otherwise. Further, confidential information includes "trade secrets" within the meaning of the Florida Uniform Trade Secrets Act, Section 688.001 *et seq.*,

Florida Statutes. Confidential information does not include any of the foregoing items that have become publicly known and made generally available through no wrongful act of the Contractor or of others.

- C. The Contractor will not access, use or disclose confidential information except as permitted, required by this Agreement or as otherwise authorized by TFB in writing, or required by applicable laws. If required by a court of competent jurisdiction or administrative body to disclose confidential information, the Contractor will notify TFB in writing immediately upon receiving notice of such requirement and prior to such disclosure.
- D. The Contractor will not disclose any confidential information to any third party, *except* to its employees, subcontractors or agents that need to have access to such information and solely for the purpose of providing services to TFB under this Agreement, provided that such recipients are bound by confidentiality provisions no less restrictive than those in this Agreement.
- E. The Contractor agrees to protect the privacy and security of TFB data designated as confidential according to all applicable laws and regulations, by commercially acceptable standards, and no less rigorously than it protects its own confidential information.
  - If confidential information is accessed by unauthorized parties, that is considered a breach, and the Contractor will report the breach to TFB contract manager, orally and in writing, within 2 business days after the Contractor knows or reasonably suspects that a breach may have occurred. In the event of a suspected breach, the Contractor will keep TFB contract manager informed regularly of the progress of its investigation until the issue is resolved.
  - 2. "Breach" means the unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.
  - 3. The Contractor's report to TFB contract manager will identify:
    - a. The nature of the unauthorized access, use or disclosure;
    - b. The confidential information accessed, used or disclosed;
    - c. The persons who accessed, used, disclosed or received the confidential information;
    - d. The steps taken, or to be taken, to mitigate any deleterious effect of the unauthorized access, use or disclosure;
    - e. The corrective action taken, or to be taken, to prevent future unauthorized access, use or disclosure; and
    - f. Any other information as reasonably requested by TFB.

- 4. In the event of a breach by the Contractor, the Contractor agrees to promptly reimburse all costs arising from the breach to TFB, including but not limited to costs of notification of individuals, credit monitoring/identity restoration services, penalties levied against TFB, attorney fees, and court costs. Further, any breach may be grounds for immediate termination of this Agreement.
- 5. In the event of a breach by the Contractor that results in litigation involving TFB, the Contractor will make itself and employees, subcontractors and agents available to TFB at no cost to testify as witnesses.
- F. All documents, papers, letters, or other materials relating to the Agreement that do not meet the above definition of "confidential information" and that are made or received by the Contractor in conjunction with the Agreement are required to be available for public access and copying in the manner specified by applicable Florida law. TFB may unilaterally cancel the Agreement for the Contractor's refusal to allow access to public records.
- G. The Contractor agrees that, as required by applicable state and federal law, auditors designated by TFB will have the option to audit the outsourced service. The Contractor will make records pertaining to this Agreement available to auditors and TFB during normal working hours for this purpose.
- H. The Contractor will maintain records for 3 years after the expiration of the Agreement.
- XIX. <u>Severability</u>. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- XX. <u>Subcontracting</u>. The Contractor may enter into written subcontracts for performance of work under the Agreement only with prior written approval of TFB. TFB will have the continuing right throughout the term of the Agreement to disapprove subcontractors if such disapproval would be in the best interest of TFB. Any subcontract entered into by the Contractor with respect to performance under the Agreement will not in any way relieve the Contractor of any responsibility for performance of duties stipulated in the Agreement.

### XXI. <u>Termination & Remedies</u>

- A. <u>For Cause</u>. TFB reserves the right to immediately terminate the Agreement by providing written notice to the Contractor if TFB determines any of the following have occurred:
  - 1. The Contractor knowingly furnished any statement, representation, warranty or certification in connection with the solicitation or Agreement, which representation is materially false, deceptive, incorrect, or incomplete;
  - 2. The Contractor fails to perform to TFB's satisfaction any material requirement of the Agreement or defaults in performance of the Agreement;

- 3. The performance of the Agreement is substantially endangered by the action or inaction of the Contractor; or
- 4. The Contractor or its assets are acquired by or combined with another company during the Agreement period.

The Contractor retains the ultimate responsibility to ensure and guarantee the quality of work to be provided under this Agreement and for performing and completing the services specified to the satisfaction of TFB.

Consequently, TFB reserves the right in its sole discretion to terminate the Agreement if it determines that the actions or inactions of the Contractor's employees have posed a threat to the security and integrity of TFB. If such an event occurs, TFB may terminate the Agreement immediately by telephonic notification followed by written notice. If the Agreement is terminated for cause by TFB. TFB will be obligated only for the services performed prior to the date of notice of termination, less any liquidated damages or other damages that may be assessed for non-performance.

B. <u>For Convenience</u>. TFB may terminate this Agreement in whole or in part by giving the Contractor written notice at least 30 days before the effective date of the termination. Upon receipt of notice of termination from TFB, the Contractor will only provide those services specially approved or directed by TFB. All other rights and duties of the parties under this Agreement will continue during such notice period, TFB will be responsible to the Contractor for the payment of any obligations incurred by the Contractor with approval of TFB.

Upon termination of this Agreement, the Contractor will not be entitled to any fee nor to expenses for any work commenced or expensed after the notice of termination was received by the Contractor, unless specifically approved or requested by TFB. However, the Contractor will be entitled to payment for services commenced and approved by TFB prior to the receipt of notice or with the express written consent of TFB.

The Contractor will take such action as may be necessary, or as the Executive Director of TFB may specify, to protect and preserve any property related to this Agreement that is in the possession of the Contractor and in which TFB has or may have acquired an interest.

- C. <u>Remedies</u>. In any action brought to enforce the terms of the Agreement or for a breach, the prevailing party, in addition to and exclusive of any other right, claim, remedy or relief, will be entitled to recover its reasonable fees and costs, including reasonable attorney fees and costs incurred.
- XXII. <u>Venue</u>. The Agreement is governed by the laws of the State of Florida and the intellectual property laws of the United States of America, irrespective of choice of law rules. Any action, suit, or other proceeding arising out of or related to the Agreement will be instituted in the United States District Court for the district encompassing Leon County, Florida, or the circuit or county court of the State of Florida in the circuit encompassing Leon County, Florida, or the circuit, Florida. Each party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding.

XXIII. <u>Waiver</u>. The failure of either party to the Agreement to object to or take affirmative action with respect to any conduct of the other that is in violation of the terms of the Agreement will not be construed as a waiver of the violation or breach, or of any future violations or breach.

#### XXIV. Warranties

- A. <u>Authority</u>. Each person signing the Agreement represents that he/she is duly authorized to do so and to bind the respective party to the Agreement.
- B. <u>Ability to Perform</u>. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish its ability to satisfy its Agreement obligations. The Contractor will immediately notify TFB in writing if its ability to perform is compromised in any manner during the term of the Agreement.

CHAIR

Sarah Butters Ausley McMullen 123 S. Calhoun St. Tallahassee, FL 32301-1517 (850) 425-5447 sbutters@ausley.com

CHAIR-ELECT, GENERAL STANDING DIV. DIRECTOR

S. Katherine Frazier Hill Ward Henderson 101 E. Kennedy Blvd., Ste. 3700 Tampa, FL 33602-5195 (813) 221-3900 skfrazier@hvhlaw.com

REAL PROPERTY DIVISION DIRECTOR Wm. Cary Wright Cariton Fields 4221 W. Boyscout Bivd., Ste. 1000 Tampa, FL 33607-5780 (813) 223-7000, ext. 4135 cwright@caritonfields.com

#### PROBATE AND TRUST LAW DIVISION DIRECTOR John C. Moran

Gunster Yoakley & Stewart, P.A. 777 S. Flagler Dr., Ste. 500E West Palm Beach, FL 33401-6121 (561) 650-0515 jmoran@gunster.com

#### SECRETARY

Sancha K. Brennan The Brennan Law Firm PA P.O. Box 2706 Orlando, FL 32802-2706 (407) 893-9396 Sbrennan@thebrennanlawfirm.com

#### TREASURER

Jon Scuderi Goldman Felcoski & Stone, P.A. 850 Park Shore Dr., Ste. 203 Naples, FL 34103-3587 (239) 436-1988 jscuderi@gfsestatelaw.com

#### LEGISLATION CO-CHAIRS

Wilhelmina Kightlinger Stewart Title Guaranty Company 3402 West Cypress Street Tampa, FL 33607 (813) 371-6678 wkightlinger@stewart.com

Lawrence Jay Miller Gutter Chaves Josepher, et al. 2101 N.W. Corporate Bivd., Ste. 107 Boca Raton, FL 33431-7343 (561) 998-7847 Imiller@floridatax.com

CLE COORDINATION CO-CHAIR Angela McClendon Adams Law Office of Wm. Fletcher Belcher 540 4<sup>41</sup> St. North St. Petersburg, FL 33701-2302 (727) 821-1249 amemadams@gmail.com

Lee Weintraub Becker & Poliakoff, P.A. 1 East Broward Blvd., Ste. 1800 Fort Lauderdale, FL 33301-1876 (954) 985-4147 Iweintraub@beckerlawyers.com

#### DIRECTOR, AT-LARGE MEMBERS Steven H. Mezer

Becker & Poliakoff, P.A. 1511 N. West Shore Bivd., Ste. 1000 Tampa, FL 33607-4591 (813) 527-3906 smezer@bplegal.com

#### IMMEDIATE PAST CHAIR

Robert S. Swaine Swaine, Harris & Wohl, P.A 425 S. Commerce Ave. Sebring, FL 33870-3702 (863) 385-1549 bob@heartlandlaw.com

PROGRAM ADMINISTRATOR Diana Kellogg The Florida Bar 651 E. Jefferson Street Tallahassee, FL 32399-2300 (850) 561-5626 dkellogg@loridabar.org REAL PROPERTY, PROBATE & TRUST LAW SECTION



June 30, 2023

Carolyn Timmann, CFCC Clerk of the Circuit Court & Comptroller 100 SE Ocean Boulevard Stuart, Florida 34994

RE: House Bill 1419

Dear Clerk:

We are writing to you on behalf of the Real Property, Probate and Trust Law Section ("RPPTL") of The Florida Bar. You have requested assistance with regard to forms to be used by the Florida Court Clerks & Comptrollers ("FCCC") to satisfy the requirements of House Bill 1419. In that regard, in an effort to assist the FCCC with providing such forms, attached to this correspondence are sample forms that comply with House Bill 1419 to be used by FCCC as FCCC deems necessary. Thank you for reaching out to RPPTL.

Sincerely,

nII

Sarah Butters Chair Real Property, Probate and Trust Law Section

#### INSTRUCTIONS FOR COMPLETING

#### COMPLAINT TO QUIET TITLE (Forged Deed)

#### Disclaimer

This form is being provided pursuant to Section 65.091, Florida Statutes. The Clerk's Office cannot render legal advice, and is not rendering legal advice by the provision of this form and these instructions. Quiet title actions are complicated legal matters best handled by an attorney. You are urged to seek legal counsel for any assistance necessary in filing any legal action, including a quiet title action. Deputy clerks are not authorized to provide any legal advice beyond providing this form and these instructions. The Clerk's Office makes no representation that this form is adequate for your specific needs.

#### **Filing Fees**

Sub-subparagraph 28.241(1)(a)2.a. requires persons to pay a graduated filing fee based upon the value of the claim. You must pay the fee which you believe represents the value of your claim.

50,000 or less	\$400.00
More than \$50,000 but less than \$250,000	\$905.00
\$250,000 or more in value	\$1,905.00
Summons Issuance Fee	\$10.00 Per Summons

**IN ADDITION TO THE FILING FEE AND SUMMONS ISSUANCE FEE**, you must contact a private process server, or persons allowed to do service in the county where the service to be done, to obtain their service fees. You can get a list of local process servers from the Sheriff by accessing a link through the Clerk's website at \_\_\_\_\_

• If service is outside of \_\_\_\_\_ County, you must contact the Sheriff of that county to obtain applicable service fees.

#### General

Prior to filling out the complaint, you should get copies of the following:

- a. The deed(s) you are claiming are fraudulent;
- b. The deed which conveyed the property in question to you;

c. The deed or deeds from prior owners of the property in question necessary to show the chain of title for at least seven years prior to the recording of deed you are claiming is fraudulent; and,

d. The tax records showing the payment of taxes on the property for at least years prior to the recording of the deed you are claiming is fraudulent.

# Caption

The heading on the form is called the caption.

In the first blank, above the word "Plaintiff(s)," you should fill in the names of all persons which you claim own the property in question.

The case number will be completed by the Clerk's Office.

In the second blank, above the word "Defendant(s)," you should fill in the names of all persons which you believe are fraudulently claiming ownership of the property in question.

# **Introductory Paragraph**

In the first blank, you should again fill in the names of all persons which you claim own the property in question.

In the second blank, you should again fill in the names of all persons which you believe are fraudulently claiming ownership of the property in question.

# Paragraph 1

In the first blank, you should fill in the name of the county where the property is located.

In the second blank, you should fill in the value of the property.

# Paragraph 2

In the first blank, you should again fill in the names of county where the property is located.

In the second blank, you should again fill in the exact legal description of the property in question.

# Paragraph 3

In this paragraph, you should list the deeds which show you and, if necessary, the previous owners before you, have owned the property in question for more than seven years. If you have not owned the property in question for more than seven years, you should provide information concerning the deed that transferred the property in question to the person(s) who sold it to you. You should continue providing deed information for each deed necessary to show continuous ownership for a total of more than seven years.

# Paragraph 4

In the first blank, you should fill in the name of the grantor(s) on the fraudulent deed.

In the second blank, you should fill in the name of the grantee(s) on the fraudulent deed.

In the third blank, you should fill in the date the deed was executed/signed

In the fourth blank, you should fill in the date the fraudulent deed was recorded.

In the fifth blank, you should fill in the Official Record Book book number and page number OR fill in the Instrument Number shown on the fraudulent deed.

In the sixth blank, you should fill in the name of the county where the fraudulent deed is recorded.

#### **Signature Block**

Each person claiming ownership of the property in question should complete the signature block. Including providing their mailing address, telephone number, and email address.

READ ALL OF THE INFORMATION AND INSTRUCTIONS BEFORE COMPLETING THE FORMS AND SUBMITTING THEM FOR FILING. DO NOT SIGN ANY DOCUMENTS THAT REQUIRE A NOTARY OR DEPUTY CLERK SIGNATURE UNTIL YOU ARE IN FRONT OF THE NOTARY OR DEPUTY CLERK. RETAIN COPIES OF ALL FORMS FILED FOR YOU YOUR OWN RECORDS. DOCUMENTS MUST BE LEGIBLE, TYPE WRITTEN OR LEGIBLY HANDWRITTEN IN BLACK OR BLUE INK. IT IS IMPORTANT TO REMEMBER THAT A DELAY CAN OCCUR AS A RESULT OF ANY ERRORS ON YOUR PAPERWORK.

THIS DOES NOT CONSTITUTE LEGAL ADVICE. CIVIL COURT INFORMATION AND FORMS PROVIDED BY THE \_\_\_\_\_\_ COUNTY CLERK OF THE CIRCUIT COURT SHOULD BE CONSIDERED INFORMATIONAL ONLY, AND MAY NOT BE APPLICABLE IN EVERY SITUATION. THE INFORMATION IS NOT INTENDED TO BE USED AS LEGAL ADVICE. SPECIFIC GUIDANCE AS TO HOW TO PROCEED WITH FILING OR ANSWERING A LAWSUIT AND QUESTIONS ABOUT YOUR PARTICULAR SITUATION SHOULD BE DIRECTED TO A QUALIFIED ATTORNEY.

IN THE CIRCUIT C IN AND FO	OURT OF THE _ R	JUDIC COUNTY, FLC	CIAL CIRCUIT DRIDA
NAME(S) OF PLAINTIFF(S),	)		
Plaintiff(s),	)		
VS.	) ) Case	e No20CA	A
NAME(S) OF DEFENDANT(S	), )		
Defendant(s).	) ) )		
(	COMPLAINT TO (Forged	-	
Plaintiff (s) sues Defendant(s)			
		, and alleges as follo	ows:
1. This is an action to q	uiet title to real p	roperty pursuant to Cl	napter 65, Florida Statutes
in0	County, Florida t	hat exceeds	in value.
2. Plaintiff(s) owns (ow	n) the following	described real propert	y (the "Property") in
	County, Flor	rida:	
[LEG	AL DESCRIPTI	ON OF PROPERTY]	
3. Plaintiff(s) derai	gns (deraign) title	e as follows:	
NOTE: A STATEMEN	T OF PLAINTI	FF'S CHAIN OF TI	TLE FOR AT LEAST
THE PAST 7 YEARS MUST	BE ATTACHED	).	
4	purpo	orted to have been sig	ned by the Plaintiff(s) and
purporting to convey the Propert			
, and reco			
Book at			
Instrument Number of the public			

5. Plaintiff(s) did not execute the deed for the Property set forth in Paragraph 4.

6. Upon delivery of the deed described in Paragraph 2, Plaintiff(s) immediately went into possession of the Property and continuously maintained possession of the Property adverse to Defendant(s). Possession by the Plaintiff(s) and the Plaintiff's(s') predecessors in title has lasted for more than seven years, and Plaintiff(s) or Plaintiff's(s') predecessors in title have paid all of the taxes accruing on the Property for more than seven years.

7. Plaintiff(s) has/have not conveyed the Property to any person since obtaining the conveyance described in Paragraph 2.

8. The deed described in Paragraph 4 did not convey title to defendant(s) because Defendant's(s')/ fraudulent Grantor(s) had no title, but the recording of the deed casts a cloud on Plaintiff's(s') title.

WHEREFORE, Plaintiff(s) demands (demand) judgment against Defendant(s) quieting title to the Property in Plaintiff by removing the cloud from the title to the Property and adjudging Plaintiff to have good fee simple title to the Property.

[NAME OF PLAINTIFF]	[NAME OF PLAINTIFF]
[MAILING ADDRESS OF PLAINTIFF]	[MAILING ADDRESS OF PLAINTIFF]
[TELEPHONE NUMBER OF PLAINTIFF]	[TELEPHONE NUMBER OF PLAINTIFF]
[E-MAIL ADDRESS OF PLAINTIFF]	[E-MAIL ADDRESS OF PLAINTIFF]

# INSTRUCTIONS FOR COMPLETING

# COMPLAINT TO QUIET TITLE (Wild Deed)

## Disclaimer

This form is being provided pursuant to Section 65.091, Florida Statutes. The Clerk's Office cannot render legal advice, and is not rendering legal advice by the provision of this form and these instructions. Quiet title actions are complicated legal matters best handled by an attorney. You are urged to seek legal counsel for any assistance necessary in filing any legal action, including a quiet title action. Deputy clerks are not authorized to provide any legal advice beyond providing this form and these instructions. The Clerk's Office makes no representation that this form is adequate for your specific needs.

## **Filing Fees**

Sub-subparagraph 28.241(1)(a)2.a. requires persons to pay a graduated filing fee based upon the value of the claim. You must pay the fee which you believe represents the value of your claim.

50,000 or less	\$400.00
More than \$50,000 but less than \$250,000	\$905.00
\$250,000 or more in value	\$1,905.00
Summons Issuance Fee	\$10.00 Per Summons

**IN ADDITION TO THE FILING FEE AND SUMMONS ISSUANCE FEE**, you must contact a private process server, or persons allowed to do service in the county where the service to be done, to obtain their service fees. You can get a list of local process servers from the Sheriff by accessing a link through the Clerk's website at \_\_\_\_\_

• If service is outside of \_\_\_\_\_ County, you must contact the Sheriff of that county to obtain applicable service fees.

## General

Prior to filling out the complaint, you should get copies of the following:

- a. The deed(s) you are claiming are fraudulent;
- b. The deed which conveyed the property in question to you;

c. The deed or deeds from prior owners of the property in question necessary to show the chain of title for at least seven years prior to the recording of deed you are claiming is fraudulent; and,

d. The tax records showing the payment of taxes on the property for at least years prior to the recording of the deed you are claiming is fraudulent.

# Caption

The heading on the form is called the caption.

In the first blank, above the word "Plaintiff(s)," you should fill in the names of all persons which you claim own the property in question.

The case number will be completed by the Clerk's Office.

In the second blank, above the word "Defendant(s)," you should fill in the names of all persons which you believe are fraudulently claiming ownership of the property in question.

# **Introductory Paragraph**

In the first blank, you should again fill in the names of all persons which you claim own the property in question.

In the second blank, you should again fill in the names of all persons which you believe are fraudulently claiming ownership of the property in question.

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# Paragraph 2

In the first blank, you should again fill in the names of county where the property is located.

In the second blank, you should again fill in the exact legal description of the property in question.

# Paragraph 3

In this paragraph, you should list the deeds which show you and, if necessary, the previous owners before you, have owned the property in question for more than seven years. If you have not owned the property in question for more than seven years, you should provide information concerning the deed that transferred the property in question to the person(s) who sold it to you. You should continue providing deed information for each deed necessary to show continuous ownership for a total of more than seven years.

# Paragraph 4

In the first blank, you should fill in the name of the grantor(s) on the fraudulent deed.

In the second blank, you should fill in the name of the grantee(s) on the fraudulent deed.

In the third blank, you should fill in the date the fraudulent deed was executed/signed

In the fourth blank, you should fill in the date the fraudulent deed was recorded.

In the fifth blank, you should fill in the Official Record Book book number and page number OR fill in the Instrument Number shown on the fraudulent deed.

In the sixth blank, you should fill in the name of the county where the fraudulent deed is recorded.

# **Signature Block**

Each person claiming ownership of the property in question should complete the signature block. Including providing their mailing address, telephone number, and email address.

READ ALL OF THE INFORMATION AND INSTRUCTIONS BEFORE COMPLETING THE FORMS AND SUBMITTING THEM FOR FILING. DO NOT SIGN ANY DOCUMENTS THAT REQUIRE A NOTARY OR DEPUTY CLERK SIGNATURE UNTIL YOU ARE IN FRONT OF THE NOTARY OR DEPUTY CLERK. RETAIN COPIES OF ALL FORMS FILED FOR YOU YOUR OWN RECORDS. DOCUMENTS MUST BE LEGIBLE, TYPE WRITTEN OR LEGIBLY HANDWRITTEN IN BLACK OR BLUE INK. IT IS IMPORTANT TO REMEMBER THAT A DELAY CAN OCCUR AS A RESULT OF ANY ERRORS ON YOUR PAPERWORK.

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IN THE CIRCUIT COU	RT OF THE JUDICIAL CIRCUIT COUNTY, FLORIDA
NAME(S) OF PLAINTIFF(S),	
Plaintiff(s),	)
VS.	) ) Case No20CAA
	) Cuse no 20 Crr rr
NAME(S) OF DEFENDANT(S),	
Defendant(s).	
	)
СО	MPLAINT TO QUIET TITLE (Wild Deed)
Plaintiff (s)	sues Defendant(s)
	, and alleges as follows:
1. This is an action to quie	t title to real property pursuant to Chapter 65, Florida Statutes
in Co	anty, Florida that exceeds in value.
2. Plaintiff(s) owns (own)	the following described real property (the "Property") in
	_County, Florida:
[LEGAI	DESCRIPTION OF PROPERTY]
3. Plaintiff(s) deraigns or o	leraign (sets forth) title to the Property as attached to this
Complaint.	
<u>NOTE: A STATEMENT LIS</u>	TING ALL OWNERS OF THE PROPERTY FOR AT
LEAST THE PAST 7 YEA	RS MUST BE ATTACHED TO THIS COMPLAINT
4. Upon receiving the	leed described in Paragraph 2, Plaintiff(s) immediately went
into possession of the Property and	continuously maintained possession of the Property adverse
to Defendant(s). Possession by the	Plaintiff(s) and the Plaintiff's(s') predecessors in title has

lasted for more than seven years.

5. Plaintiff(s) has/have not conveyed the Property to any person since obtaining the conveyance described in Paragraph 2.

6.	purported to convey the property to						
	by tl	hat certain deed dated	, and recorded				
on		in Official Records Book	at page				
	/OR	Instrument N	Number of the public				
records of		_ County, Florida.					

7. The deed described in Paragraph 6 did not convey title to defendant(s) because Defendant's(s')/ Grantor(s) had no title (ownership interest) to convey to Defendant.

8. The recording of the deed to Defendant casts a claim (cloud) on Plaintiff's(s') title to the Property which should be removed by the Court.

WHEREFORE, Plaintiff(s) demands (demand) judgment against Defendant(s) quieting title to the Property in Plaintiff by removing the cloud from the title to the Property and adjudging Plaintiff to have good fee simple title to the Property.

[NAME OF PLAINTIFF]	[NAME OF PLAINTIFF]
[MAILING ADDRESS OF PLAINTIFF]	[MAILING ADDRESS OF PLAINTIFF]
[TELEPHONE NUMBER OF PLAINTIFF]	[TELEPHONE NUMBER OF PLAINTIFF]

[E-MAIL ADDRESS OF PLAINTIFF] [E-MAIL ADDRESS OF PLAINTIFF]

# RPPTL <u>2023-2024</u> Executive Council Meeting Schedule Katherine Frazier's Year

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

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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	<b>Executive Council Meeting</b> 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	<b>Executive Council Meeting</b> JW Marriott Tampa Water Street Tampa, Florida Standard Guest Room Rate: \$259 King Suite Room Rate: \$289
February 21 – February 25, 2024	<b>Executive Council Meeting</b> Ritz Carlton Grande Lakes Orlando, Florida Standard Room Rate: \$359 JW Marriott Standard Room Rate: \$329
May 29 – June 2, 2024	<b>Executive Council Meeting &amp; Annual Convention</b> Hyatt Regency Coconut Point Bonita Springs, Florida Standard Guest Room Rate: \$209

# RPPTL <u>2024-2025</u> Executive Council Meeting Schedule John Moran'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 24 – July 27, 2024	Executive Council Meeting & Legislative Update
	The Breakers
	Palm Beach, Florida
	Room Rate (Deluxe Room – King): \$295
	Premium Room Rate: \$365
September 4 – September 8, 2024	Executive Council Meeting
	Loews Coral Gables
	Coral Gables, Florida
	Room Rate (Run of house): \$229
	Executive Council Meeting
December 4 – December 08, 2024	The Broadmoor
,,	Colorado Springs, Colorado
	Room Rate (Run of West): \$265
February 5 – February 9, 2025	Executive Council Meeting
residary 5 – residary 5, 2025	The Ritz Carlton Amelia Island
	Amelia Island, Florida
	Room Rate (Coastal View): \$399
May 28 – June 1, 2025	Executive Council Meeting & Annual Convention
	Four Seasons Orlando
	Orlando, Florida
	Room Rate (Run of house): \$399

# THE FLORIDA BAR Real Property Probate and Trust Law Section Rollup For the Eleven Months Ending May 31, 2023

		YTD	YTD 22-23	YTD/YTD	FY 22-23	YTD	YTD/Prior YTD	FYE Actual
2004 4 15	May	2023	Budget	Variance (\$)	Budget	2022	Variance (\$)	2022
3001-Annual Fees	-	679,270	625,200	54,070	625,200	666,280	12,990	666,280
3002-Affiliate Fees Total Fee Revenue		12,540 <b>691,810</b>	5,000 <b>630,200</b>	7,540 <b>61,610</b>	5,000 <b>630,200</b>	10,780 <b>677,060</b>	1,760 <b>14,750</b>	10,780 <b>677,060</b>
Total ree Revenue	-	091,810	030,200	01,010	030,200	077,000	14,750	077,000
3301-Registration-Live	8,209	676,991	512,500	164,491	512,500	550,784	126,207	545,073
3331-Registration-Ticket	-	12,300	12,000	300	12,000	-	12,300	-
Total Registration Revenue	8,209	689,291	524,500	164,791	524,500	550,784	138,507	545,073
3341-Exhibit Fees	(2,600)	97,300	65,500	31,800	65,500	9,400	87,900	9,400
3351-Sponsorships	(650)	578,950	468,000	110,950	468,000	531,675	47,275	523,675
3391 Section Profit Split	78,382	617,745	260,000	357,745	260,000	437,028	180,717	451,920
3392-Section Differential	1,920	19,560	15,000	4,560	15,000	15,420	4,140	18,300
Other Event Revenue	77,052	1,313,555	808,500	505,055	808,500	993,523	320,032	1,003,295
3401-Sales-CD/DVD	7,575	59,332	22,000	37,332	22,000	48,170	11,162	56,340
3411-Sales-Published Materials	-	-	1,500	(1,500)	1,500	-	-	-
Sales, Rents & Royalties Revenue	7,575	59,332	23,500	35,832	23,500	48,170	11,162	56,340
3561-Advertising	6,840	8,840	18,000	(9,160)	18,000	8,969	(129)	8,969
Other Revenue Sources	6,840	8,840	18,000	(9,160)	18,000	8,969	(129)	8,969
			~~~	(000)	000			
3699-Other Operating Revenue 3901-Eliminated InterFund Revenue	-	- 350	800	(800) 350	800	-	- 350	-
Other Revenue Sources		<u> </u>	800	(450)	800	-	<u> </u>	
other nevenue sources		550		(450)			550	
Total Revenue	99,676	2,763,179	2,005,500	757,679	2,005,500	2,278,506	484,673	2,290,737
4134-Web Services	1,359	40,660	75,000	(34,340)	75,000	54,700	(14,040)	58,168
4301-Photocopying	-	-	100	(100)	100	-	-	-
4311-Office Supplies	1,089	2,269	5,150	(2,881)	5,150	1,334	935	1,672
Total Staff & Office Expense	2,448	42,929	80,250	(37,321)	80,250	56,034	(13,105)	59,841
5031-AV Services	-	79	_	79	_	_	79	_
5051-Credit Card Fees	4,852	33,513	29,200	4,313	29,200	26,996	6,518	29,152
5101-Consultants	-	120,600	120,000	600	120,000	30,000	90,600	108,634
5121-Printing-Outside	19,203	80,712	127,500	(46,788)	127,500	73,480	7,232	79,460
5181-Speaker Honorarium	-	-	5,000	(5,000)	5,000	-	-	-
5199-Other Contract Services	-	53,955	125,000	(71,045)	125,000	2,579	51,376	3,769
Total Contract Services	24,055	288,859	406,700	(117,841)	406,700	133,055	155,804	221,015
		10.101	22.250		22.252	40.070	(450)	05 444
5501-Employee Travel	-	18,424	33,250	(14,826)	33,250	18,878	(453)	25,411
5531-Board/Off/Memb Travel	- 318	3,061 23,990	20,000 27,600	(16,940) (3,610)	20,000 27,600	9,895	(6,835) 2,127	9,895 21,863
5571-Speaker Travel 5581-Consultant Travel	- 510	10,888	15,000	(4,112)	15,000	21,863 5,543	5,346	5,543
5599-Other Travel	-	636	-	636	-	-	636	-
Total Travel	318	56,999	95,850	(38,851)	95,850	56,179	820	62,712
		,			·			
6001-Post 1st Class/Bulk	1,539	26,876	11,575	15,301	11,575	24,333	2,543	35,477
6021-Post Express Mail	-	165	850	(685)	850	544	(379)	633
6211-Promot Exhibit Exp	-	-	-	-	-	535	(535)	535
6251-Promotion Sponsorship	-	-	-	-	-	500	(500)	500
6311-Mtgs General Meeting	809	764,901	750,000	14,901	750,000	676,726	88,175	656,515
6319-Mtgs Other Functions	-	45,575	35,000	10,575	35,000	26,378	19,197	27,579
6321-Mtgs Meals	59,143	276,008	357,000	(80,992)	357,000	177,820	98,189	540,786
6325-Mtgs Hospitality	- 235	256,264 78,517	156,500 103,000	99,764 (24,483)	156,500 103,000	140,081 80,769	116,184 (2,252)	140,081 114,534
6341-Mtgs Equip Rental 6361-Mtgs Entertainment	235 8,863	78,517 34,647	40,000	(24,483) (5,353)	40,000	- 80,769	(2,252) 34,647	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	-	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	1,436	8,073	13,000	(4,927)	13,000	6,551	1,522	6,551
7003-Div Int Grants		2 5 4	40.000	(0.44.0)	12 000	1 500	1 00 4	2 000
	-	2,584	12,000	(9,416)	12,000	1,500	1,084	2,000
7004-Law School Prog. 7006-Professional Outreach	-	2,584 1,859 500	12,000 5,500 3,000	(9,416) (3,641) (2,500)	5,500 3,000	412	1,084 1,448 500	2,000 412

7011-Scholarship/Fellowship	-	13,361	27,000	(13,639)	27,000	11,564	1,797	18,667
7999-Other Operating Exp	-	2,080	8,300	(6,220)	8,300	(12,471)	14,551	(12,471)
Total Other Expense	72,025	1,652,377	1,710,225	(57 <i>,</i> 848)	1,710,225	1,246,691	405,686	1,703,847
8011-Administration CLE	-	37,850	56,500	(18,650)	56,500	51,000	(13,150)	51,000
8021-Section Admin Fee	-	251,865	229,354	22,511	229,354	245,819	6,047	245,819
8101-Printing In-House	336	1,230	8,600	(7,370)	8,600	1,719	(488)	3,507
8131-A/V Services	70	5,687	10,800	(5,113)	10,800	11,064	(5,377)	11,099
8141-Journal/News Service	-	1,275	5,850	(4,575)	5,850	425	850	425
8171-Course Approval Fee	-	450	450	-	450	300	150	300
8901-Eliminated IntEnt Exp	-	6,500	3,000	3,500	3,000	6,000	500	6,000
Total Admin & Internal Expense	406	304,857	314,554	(9,697)	314,554	316,326	(11,469)	318,149
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	-	500
Total InterFund Transfers Out	-	500	500	-	500	500	-	500
=								
Total Expense	99,252	2,346,521	2,608,079	(261,558)	2,608,079	1,808,785	537,736	2,366,064
Operating Income	424	416,657	(602,579)	1,019,236	(602,579)	469,720	(53,063)	(75,327)
=			(00-)010)		(00_/010/	,	(00)000	(10)0-17
3899-Investment Income (loss)	(44,409)	141,790	148,906	(7,116)	148,906	(191,134)	332,924	(347,542)
Total Nonoperating Revenue (Expenses)	(44,409)	141,790	148,906	(7,116)	148,906	(191,134)	332,924	(347,542)
Change in Net Position	(43,984)	558,447	(453,673)	1,012,120	(453,673)	278,586	279,861	(422,869)
Net Desition								
Net Position								
2001-Beginning of the year, restated (Fund								
Balance)	_	2,607,751				3,030,620		3,030,620
Datatice		2,007,731				3,030,020		3,030,020
End of the Year (Current Month)	-	3,166,198				3,309,206		2,607,751

# THE FLORIDA BAR Real Property, Probate and Trust Law General For the Eleven Months Ending May 31, 2023

		YTD	YTD 22-23	YTD/YTD	FY 22-23	YTD	YTD/Prior	FYE Actual
3001-Annual Fees	May	<b>2023</b> 679,270	Budget 625,200	Variance (\$) 54,070	Budget 625,200	<b>2022</b> 666,280	Variance (\$) 12,990	<b>2022</b> 666,280
3002-Affiliate Fees	_	12,540	5,000	7,540	5,000	10,780	1,760	10,780
Total Fee Revenue	-	691,810	630,200	61,610	630,200	677,060	14,750	677,060
3301-Registration-Live	-	248,575	180,000	68,575	180,000	148,347	100,228	148,347
Total Registration Revenue	-	248,575	180,000	68,575	180,000	148,347	100,228	148,347
3351-Sponsorships	-	181,875	180,000	1,875	180,000	198,750	(16,875)	198,750
3391 Section Profit Split	78,382	617,745	260,000	357,745	260,000	437,028	180,717	451,920
3392-Section Differential	1,920	19,560	15,000	4,560	15,000	15,420	4,140	18,300
Other Event Revenue	80,302	819,180	455,000	364,180	455,000	651,198	167,982	668,970
3561-Advertising	6,840	8,840	18,000	(9,160)	18,000	8,969	(129)	8,969
Other Revenue Sources	6,840	8,840	18,000	(9,160)	18,000	8,969	(129)	8,969
3901-Eliminated InterFund Revenue		350	-	350	-	-	350	-
Other Revenue Sources	-	350	-	350	-	-	350	-
Total Revenue	87,142	1,768,755	1,283,200	485,555	1,283,200	1,485,574	283,181	1,503,346
4134-Web Services	1,359	40,660	75,000	(34,340)	75,000	54,700	(14,040)	58,168
4311-Office Supplies	1,089	2,269	5,000	(2,731)	5,000	1,334	935	1,672
Total Staff & Office Expense	2,448	42,929	80,000	(37,071)	80,000	56,034	(13,105)	59,841
5051-Credit Card Fees	3,882	9,780	13,000	(3,220)	13,000	11,551	(1,771)	17,063
5101-Consultants	-	120,600	120,000	600	120,000	30,000	90,600	108,634
5121-Printing-Outside	19,203	77,942	120,000	(42,058)	120,000	73,190	4,752	79,170
5199-Other Contract Services	-	53,280	125,000	(71,720)	125,000	2,500	50,780	2,500
Total Contract Services	23,085	261,602	378,000	(116,398)	378,000	117,241	144,361	207,367
5501-Employee Travel	-	14,191	20,000	(5,809)	20,000	14,746	(556)	15,585
5531-Board/Off/Memb Travel	-	3,061	20,000	(16,940)	20,000	9 <i>,</i> 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 Total Travel		636 <b>28,776</b>	- 55,000	636 (26,224)	- 55,000	- 30,185	636 (1,409)	31,023
6001-Post 1st Class/Bulk	1,053	25,562	10,000	15,562	10,000	24,060	1,503	34,883
6211-Promot Exhibit Exp	-	-	-	-	-	535 500	(535)	535 500
6251-Promotion Sponsorship 6311-Mtgs General Meeting	- 809	- 753,831	- 750,000	- 3,831	- 750,000	625,253	(500) 128,578	651,612
6319-Mtgs Other Functions	-	818	-	818	-	938	(120)	2,139
6325-Mtgs Hospitality	-	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	-	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	21,133 727	(20,868)	21,133 727
6599-Brd/Off Other 7001-Grant/Award/Donation	- 1,436	1,000 6,115	15,000 8,000	(14,000) (1,885)	15,000 8,000	4,950	273 1,165	4,950
7003-Div Int Grants	-	2,584	12,000	(9,416)	12,000	1,500	1,084	2,000
7004-Law School Prog.	-	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	-	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	3,298	975,932	1,043,000	(67,068)	1,043,000	807,629	168,304	863,567
8021-Section Admin Fee	-	251,865	229,354	22,511	229,354	245,819	6,047	245,819
8101-Printing In-House	336	809	2,000	(1,191)	2,000	981	(172)	2,769
8901-Eliminated IntEnt Exp	- 336	6,500 <b>259,174</b>	3,000 <b>234,354</b>	3,500 <b>24,820</b>	3,000 <b>234,354</b>	6,000 <b>252,800</b>	500 <b>6,374</b>	6,000 <b>254,588</b>
Total Admin & Internal Expense	330	239,1/4	234,354	24,ö2U	234,354	232,8UU	0,374	2 <b>34,</b> 368
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	-	500
Total InterFund Transfers Out	-	500	500	-	500	500	-	500
Total Expense	29,167	1,568,912	1,790,854	(221,942)	1,790,854	1,264,388	304,524	1,416,886

Operating Income	57,975	199,843	(507,654)	707,497	(507,654)	221,186	(21,343)	86,460
3899-Investment Income (loss)	(44,409)	141,790	148,906	(7,116)	148,906	(191,134)	332,924	(347,542)
Total Nonoperating Revenue (Expenses)	(44,409)	141,790	148,906	(7,116)	148,906	(191,134)	332,924	(347,542)
Change in Net Position	13,566	341,633	(358,748)	700,381	(358,748)	30,052	311,581	(261,082)

# THE FLORIDA BAR Real Property Construction Law Institute For the Eleven Months Ending May 31, 2023

	May	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	6,050	34,970	15,000	19,970	15,000	28,770	6,200	33,870
3411-Sales-Published Materials	-	-	500	(500)	500	-	-	-
Sales, Rents & Royalties Revenue	6,050	34,970	15,500	19,470	15,500	28,770	6,200	33,870
3699-Other Operating Revenue	-	-	800	(800)	800	-	-	-
Other Revenue Sources	-	-	800	(800)	800	-	-	-
Total Revenue	6,050	412,580	308,300	104,280	308,300	368,505	44,075	373,605
5051-Credit Card Fees	125	10,225	4,000	6,225	4,000	5,061	5,165	5,179
5181-Speaker Honorarium	-	-	5,000	(5,000)	5,000	-	-	-
5199-Other Contract Services	-	675	-	675	-	79	596	1,269
Total Contract Services	125	10,900	9,000	1,900	9,000	5,140	5,761	6,448
5501-Employee Travel	-	725	2,000	(1,275)	2,000	534	191	534
5571-Speaker Travel	-	11,671	9,000	2,671	9,000	10,581	1,090	10,581
Total Travel	-	12,396	11,000	1,396	11,000	11,115	1,281	11,115
6001-Post 1st Class/Bulk	425	695	25	670	25	185	510	261
6021-Post Express Mail	-	67	200	(133)	200	281	(213)	325
6319-Mtgs Other Functions	-	39,559	25,000	14,559	25,000	19,541	20,018	19,541
6321-Mtgs Meals	-	88,130	75,000	13,130	75,000	102,477	(14,347)	102,477
6325-Mtgs Hospitality	-	82,920	45,000	37,920	45,000	59,272	23,648	59,272
6341-Mtgs Equip Rental	-	49,240	35,000	14,240	35,000	50,747	(1,507)	50,747
7999-Other Operating Exp	-	2,076	1,500	576	1,500	(15,623)	17,699	(15,623)
Total Other Expense	425	262,688	181,725	80,963	181,725	216,880	45,807	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	-	392	3,250	(2,858)	3,250	5,672	(5,280)	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	-	15,895	32,050	(16,155)	32,050	31,984	(16,090)	31,984
Total Expense	550	301,878	233,775	68,103	233,775	265,119	36,759	266,548
Operating Income	5,500	110,702	74,525	36,177	74,525	103,386	7,316	107,057

#### THE FLORIDA BAR 04447 Construction Law Institute 2021 For the Eleven Months Ending May 31, 2023

		YTD	Prior Year	YTD	FYE Actual
	May	2023	May	2022	2022
3401-Sales-CD/DVD	-	3,080	640	16,500	18,420
Sales, Rents & Royalties Revenue	-	3,080	640	16,500	18,420
Total Revenue	-	3,080	640	16,500	18,420
5051-Credit Card Fees	-	115	17	336	404
Total Contract Services	-	115	17	336	404
6001-Post 1st Class/Bulk	-	-	-	6	6
6021-Post Express Mail	-	67	43	277	322
Total Other Expense	-	67	43	283	328
8131-A/V Services	-	35	-	378	378
Total Admin & Internal Expense	-	35	-	378	378
Total Expense		217	59	997	1,110
Net Operations		2,863	581	15,503	17,310

#### THE FLORIDA BAR 05560 Construction Law Institute 2022 For the Eleven Months Ending May 31, 2023

		YTD	Prior Year	YTD	FYE Actual
	May	2023	May	2022	2022
3301-Registration-Live	-	-	-	122,760	122,760
Total Registration Revenue	-	-	-	122,760	122,760
3351-Sponsorships		-	-	216,975	216,975
Other Event Revenue	-	-	-	216,975	216,975
3401-Sales-CD/DVD	590	13,170	1,240	11,630	14,810
Sales, Rents & Royalties Revenue	590	13,170	1,240	11,630	14,810
Total Revenue	590	13,170	1,240	351,365	354,545
5051-Credit Card Fees	12	407	32	4,709	4,759
5199-Other Contract Services	-	675	-	79	1,269
Total Contract Services	12	1,082	32	4,788	6,028
5501-Employee Travel	-	-	-	534	534
5571-Speaker Travel	-	-	1,352	10,581	10,581
Total Travel	-	-	1,352	11,115	11,115
6001-Post 1st Class/Bulk	36	299	179	179	255
6319-Mtgs Other Functions	-	5,000	-	19,541	19,541
6321-Mtgs Meals	-	-	-	102,477	102,477
6325-Mtgs Hospitality	-	-	-	59,272	59,272
6341-Mtgs Equip Rental	-	-	-	50,747	50,747
7999-Other Operating Exp	-	-	-	(15,623)	(15,623)
Total Other Expense	36	5,299	179	216,593	216,669
8011-Administration CLE	-	-	-	25,000	25,000
8101-Printing In-House	-	-	-	735	735
8131-A/V Services	-	147	28	5,273	5,273
8141-Journal/News Service	-	-	-	425	425
8171-Course Approval Fee	-	-	-	150	150
Total Admin & Internal Expense	-	147	28	31,583	31,583
Total Expense	48	6,527	1,592	264,079	265,395
Net Operations	542	6,643	(352)	87,286	89,150
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#### THE FLORIDA BAR 05988 Construction Law Institute For the Eleven Months Ending May 31, 2023

		YTD	Prior Year	YTD	FYE Actual
	May	2023	May	2022	2022
3301-Registration-Live	-	129,560	-	-	-
3331-Registration-Ticket	-	3,750	-	-	-
Total Registration Revenue	-	133,310	-	-	-
3351-Sponsorships	-	244,300	-	-	-
Other Event Revenue	-	244,300	-	-	-
3401-Sales-CD/DVD	5,460	18,720	-	-	-
Sales, Rents & Royalties Revenue	5,460	18,720	-	-	-
Total Revenue	5,460	396,330	-	-	-
5051-Credit Card Fees	113	9,704	-	-	-
Total Contract Services	113	9,704	-	-	-
5501-Employee Travel	-	725	-	-	-
5571-Speaker Travel	-	11,671	-	-	-
Total Travel	-	12,396	-	-	-
6001-Post 1st Class/Bulk	389	396	-	-	-
6319-Mtgs Other Functions	-	34,559	-	-	-
6321-Mtgs Meals	-	88,130	-	-	-
6325-Mtgs Hospitality	-	82,920	-	-	-
6341-Mtgs Equip Rental	-	49,240	-	-	-
7999-Other Operating Exp	-	2,076	-	-	-
Total Other Expense	389	257,322	-	-	-
8011-Administration CLE	-	14,850	-	-	-
8101-Printing In-House	-	78	-	-	-
8131-A/V Services	-	210	-	-	-
8141-Journal/News Service	-	425	-	-	-
8171-Course Approval Fee	-	150	-	-	-
Total Admin & Internal Expense	-	15,713	-	-	-
Total Expense	502	295,134	-	-	-
Net Operations	4,958	101,196			

# THE FLORIDA BAR Real Property Legislative Update For the Eleven Months Ending May 31, 2023

Mini         Code         Didget         Didget <thdidget< th=""> <thdidget< th=""></thdidget<></thdidget<>		May	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
-         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,400         -         20,600         -         10,650         -         -         10,650         -         -         10,650         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -	3341-Exhibit Fees	-		-		-			
Other Event Revenue         -         20,400         14,000         6,400         14,000         9,400         11,000         9,400           3401-Sales-CD/DVD         1,525         10,650         -         -         10,650         -         -         10,650         -           Total Revenue         1,525         31,050         14,000         17,050         14,000         9,400         21,650         9,400           4301-Photocopying         -         -         100         100         -         -         -         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -         -         10,650         -		-	20,400	,= .			-		-
Sales, Rents & Royalties Revenue         1,525         10,650         -         10,650         -           Total Revenue         1,525         31,050         14,000         17,050         14,000         9,400         21,650         9,400           4301-Photocopying         -         -         100         100         -         -         -           4311-Office Supplies         -         -         150         (150)         150         -         -         -           5031-AV Services         -         -         79         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         700         233         3,120         551         5501         5105         6,500         (1,235		-		14,000		14,000	9,400		9,400
Total Revenue         1,525         31,050         14,000         17,050         14,000         9,400         21,650         9,400           4301-Photocopying         -         -         100         (100)         100         -         -         -           4311-Office Supplies         -         -         150         (150)         150         -         -         -           5031-AV Services         -         -         79         -         -         79         -         -         79         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         - <td>3401-Sales-CD/DVD</td> <td>1,525</td> <td>10,650</td> <td>-</td> <td>10,650</td> <td>-</td> <td>-</td> <td>10,650</td> <td>-</td>	3401-Sales-CD/DVD	1,525	10,650	-	10,650	-	-	10,650	-
4301-Photocopying 4311-Office Supplies Total Staff & Office Expense         -         -         100         100         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -	Sales, Rents & Royalties Revenue	1,525	10,650	-	10,650	-	-	10,650	-
4311-Office Supplies         -         -         150         (150)         150         -         -         -           Total Staff & Office Expense         -         -         250         (250)         250         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         -         - <th>Total Revenue</th> <th>1,525</th> <th>31,050</th> <th>14,000</th> <th>17,050</th> <th>14,000</th> <th>9,400</th> <th>21,650</th> <th>9,400</th>	Total Revenue	1,525	31,050	14,000	17,050	14,000	9,400	21,650	9,400
Total Staff & Office Expense         -         -         250         (250)         250         -         -         -           5031-AV Services         -         79         -         79         -         79         -         79         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         79         -         -         700         2337         290         2373         290         2373         290         2373         290         2373	4301-Photocopying	-	-	100	(100)	100	-	-	-
5031-AV Services         -         79         -         79         -         79         -         79         -         79         -         79         -         79         -         79         -         79         -         79         -         79         -         79         -         79         -         79         243         668         261           511-Printing-Outside         -         2,663         5,000         (2,337)         5,000         290         2,373         290           Total Contract Services         88         3,653         5,700         (2,047)         5,700         533         3,120         551           5501-Employee Travel         -         1,106         3,000         (1,895)         3,000         1,457         (352)         1,457           5571-Speaker Travel         -         6,271         9,500         (3,229)         9,500         6,083         188         6,083           6001-Post 1st Class/Bulk         34         397         50         347         50         3         394         3           6021-Post Express Mail         -         -         1,069         -         -         1,069         -         -	4311-Office Supplies	-	-	150	(150)	150	-	-	-
S051-Credit Card Fees         88         911         700         211         700         243         668         261           5121-Printing-Outside         -         2,663         5,000         (2,337)         5,000         290         2,373         290           Total Contract Services         88         3,653         5,700         (2,047)         5,700         533         3,120         5511           S501-Employee Travel         -         1,106         3,000         (1,895)         3,000         1,457         (352)         1,457           Total Travel         -         6,271         9,500         (3,229)         9,500         6,083         188         6,083           6001-Post 1st Class/Bulk         34         397         50         347         50         3         394         3           6021-Post Express Mail         -         -         500         (500)         500         10         (10)         10           6321-Mtgs Meals         -         44,878         45,000         (122)         45,000         26,998         17,880         26,998           6321-Mtgs Meals         -         44,878         45,000         (5,641)         15,000         1,667 <t< th=""><th>Total Staff &amp; Office Expense</th><th>-</th><th>-</th><th>250</th><th>(250)</th><th>250</th><th>-</th><th>-</th><th>-</th></t<>	Total Staff & Office Expense	-	-	250	(250)	250	-	-	-
5121-Printing-Outside Total Contract Services         -         2,663         5,000         (2,337)         5,000         290         2,373         290           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         34         397         50         347         50         3         394         3           6021-Post Express Mail         -         -         500         (500)         500         10         (10)         10           6311-Mtgs General Meeting         -         4,878         45,000         (1,22)         45,000         26,998         17,880         26,998           6325-Mtgs Hospitality         -         -         1,069         -         -         1,069         -         -         1,069         -         -         1,081         7,880         26,998         1,7880         26,998	5031-AV Services	-	79	-	79	-	-	79	-
Total Contract Services         88         3,653         5,700         (2,047)         5,700         533         3,120         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         34         397         50         347         50         3         394         3           6021-Post Express Mail         -         -         500         (500)         500         10         (10)         10           6321-Mtgs General Meeting         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         5,000         1,611 <td< td=""><td>5051-Credit Card Fees</td><td>88</td><td>911</td><td>700</td><td>211</td><td>700</td><td>243</td><td>668</td><td>261</td></td<>	5051-Credit Card Fees	88	911	700	211	700	243	668	261
5501-Employee Travel       -       1,106       3,000       (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       34       397       50       347       50       3       394       3         6021-Post Express Mail       -       -       500       (500)       500       10       (10)       10         6311-Mtgs General Meeting       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,069       -       1,061       357       1,601       377       1,601       377       1,601       377       1,601       377       1,601       357       1,601       357       1,601       357       1,601       357       1,601       357       1,601       357       1,601       357       1,601       357	-	-			1 2 1			-	
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       34       397       50       347       50       3       394       3         6021-Post Express Mail       -       -       500       (500)       500       10       (10)       10         6321-Mtgs General Meeting       -       1,069       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       1,069       -       -       0,05       079       679       679       679       679       679       679       679       679       679       679       679       679       679       679       679       679       679       679       679       679       6	Total Contract Services	88	3,653	5,700	(2,047)	5,700	533	3,120	551
Total Travel         -         6,271         9,500         (3,229)         9,500         6,083         188         6,083           6001-Post 1st Class/Bulk         34         397         50         347         50         3         394         3           6021-Post Express Mail         -         -         500         (500)         500         10         (10)         10           6311-Mtgs General Meeting         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,069         -         1,067         500         500         1,0871         1,512         10,871         1,512	5501-Employee Travel	-	1,106	3,000	(1,895)	3,000	1,457	(352)	1,457
6001-Post 1st Class/Bulk       34       397       50       347       50       3       394       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         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       34       57,661       67,550       (9,889)       67,550       40,443       17,218       40,443         8011-Administration CLE       -       1,000 <td< td=""><td>5571-Speaker Travel</td><td>-</td><td>5,165</td><td>6,500</td><td>(1,335)</td><td>6,500</td><td>4,626</td><td>539</td><td></td></td<>	5571-Speaker Travel	-	5,165	6,500	(1,335)	6,500	4,626	539	
6021-Post Express Mail500(500)50010(10)106311-Mtgs General Meeting-1,0691,0691,069-6321-Mtgs Meals-44,87845,000(122)45,00026,99817,88026,9986325-Mtgs Hospitality1,500(1,500)1,500679(679)6796341-Mtgs Equip Rental-9,35915,000(5,641)15,00010,871(1,512)10,8717001-Grant/Award/Donation-1,9585,000(3,042)5,0001,6013571,6017999-Other Operating Exp500(500)500280(280)280Total Other Expense3457,66167,550(9,889)67,55040,44317,21840,4438011-Administration CLE-1,0005005005001,000-1,0008101-Printing In-House-2001,000(800)1,000-1,0008131-A/V Services70175-1758141-Journal/News Service150-150-150Total Admin & Internal Expense701,5253,100(1,575)3,1001,0005251,000Total Expense19169,11086,100(16,990)86,10048,05921,05148,077	Total Travel	-	6,271	9,500	(3,229)	9,500	6,083	188	6,083
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       34       57,661       67,550       (9,889)       67,550       40,443       17,218       40,443         8011-Administration CLE       -       1,000       500       500       1,000       -       1,000         8101-Printing In-House       -       200       1,000       (800)       1,000       -       -       1,000         811-A/V Services       70       175       -       175	6001-Post 1st Class/Bulk	34	397	50	347	50	3	394	3
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       34       57,661       67,550       (9,889)       67,550       40,443       17,218       40,443         8011-Administration CLE       -       1,000       500       500       1,000       -       1,000         8101-Printing In-House       -       200       1,000       (800)       1,000       -       200       -         811-A/V Services       70       175       -       175       -       175       -       175       -       175       -       -       175       -       - <td>6021-Post Express Mail</td> <td>-</td> <td>-</td> <td>500</td> <td>• •</td> <td>500</td> <td>10</td> <td></td> <td>10</td>	6021-Post Express Mail	-	-	500	• •	500	10		10
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       34       57,661       67,550       (9,889)       67,550       40,443       17,218       40,443         8011-Administration CLE       -       1,000       500       500       1,000       -       1,000         8101-Printing In-House       -       200       1,000       (800)       1,000       -       200       -         8131-A/V Services       70       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       150       -	6311-Mtgs General Meeting	-		-		-	-	1,069	-
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       34       57,661       67,550       (9,889)       67,550       40,443       17,218       40,443         8011-Administration CLE       -       1,000       500       500       1,000       -       1,000         8101-Printing In-House       -       200       1,000       (800)       1,000       -       1,000         8131-A/V Services       70       175       -       175       -       -       175       -       -         8141-Journal/News Service       -       1,600       (1,600)       1,600       -       -       -       -         8171-Course Approval Fee       -       150       -       150       -       -       150       -       -       -         Total Admin & Internal Expense       191       69,110	-	-	44,878		• •	-			
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       34       57,661       67,550       (9,889)       67,550       40,443       17,218       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       70       175       -       175       -       -       175       -       -       1,000       -       -       -       -       -       1,000       -       -       -       1,000       -       -       -       1,000       -       -       1,000       -       200       -       -       1,000       -       -       -       1,000       -       -       -       1,000       -       -       -       -       -       -       -       -       -       -       -		-	-						
7999-Other Operating Exp500(500)500280(280)280Total Other Expense3457,66167,550(9,889)67,55040,44317,21840,4438011-Administration CLE-1,0005005005001,000-1,0008101-Printing In-House-2001,000(800)1,000-200-8131-A/V Services70175-175175-8141-Journal/News Service1,600(1,600)1,6008171-Course Approval Fee-150-150-150Total Admin & Internal Expense701,5253,100(1,575)3,1001,0005251,000Total Expense19169,11086,100(16,990)86,10048,05921,05148,077		-	-			-	-		
Total Other Expense3457,66167,550(9,889)67,55040,44317,21840,4438011-Administration CLE-1,0005005005001,000-1,0008101-Printing In-House-2001,000(800)1,000-200-8131-A/V Services70175-175175-8141-Journal/News Service1,600(1,600)1,6008171-Course Approval Fee-150-150-150Total Admin & Internal Expense701,5253,100(16,990)86,10048,05921,05148,077		-	1,958						
8011-Administration CLE       -       1,000       500       500       1,000       -       1,000         8101-Printing In-House       -       200       1,000       (800)       1,000       -       200       -         8131-A/V Services       70       175       -       175       -       200       -         8141-Journal/News Service       -       -       1,600       (1,600)       1,600       -       -       -         8171-Course Approval Fee       -       150       -       150       -       -       150       -       -         Total Admin & Internal Expense       70       1,525       3,100       (16,990)       86,100       48,059       21,051       48,077		-	-					1 1	
8101-Printing In-House       -       200       1,000       (800)       1,000       -       200       -         8131-A/V Services       70       175       -       175       -       -       175       -         8141-Journal/News Service       -       -       1,600       (1,600)       1,600       -       -       -         8171-Course Approval Fee       -       150       -       150       -       -       150       -         Total Admin & Internal Expense       70       1,525       3,100       (16,990)       86,100       48,059       21,051       48,077	Total Other Expense	34	57,661	67,550	(9,889)	67,550	40,443	17,218	40,443
8131-A/V Services       70       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       175       -       -       175       -       -       175       -       -       175       -       -       175       -       -       175       -       -       -       175       -       -       175       -       -       175       -       175       -       175       -       150       -       -       150       -       -       150       -       150       -       175       17000       175       17000       1700       175       1700       1700       1700       1700       1700       1700       1700       1700       1700       17		-	-				1,000	-	1,000
8141-Journal/News Service       -       -       1,600       1,600       1,600       -       -       -       -         8171-Course Approval Fee       -       150       -       150       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       150       -       -       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000       1000	-	-		1,000		1,000	-		-
8171-Course Approval Fee       -       150       -       150       -       150       -         Total Admin & Internal Expense       70       1,525       3,100       (1,575)       3,100       1,000       525       1,000         Total Expense       191       69,110       86,100       (16,990)       86,100       48,059       21,051       48,077		70	175	-		-	-	175	-
Total Admin & Internal Expense701,5253,100(1,575)3,1001,0005251,000Total Expense19169,11086,100(16,990)86,10048,05921,05148,077	•	-		1,600		1,600	-	-	-
Total Expense 191 69,110 86,100 (16,990) 86,100 48,059 21,051 48,077		-		-		-	-		-
	Total Admin & Internal Expense	70	1,525	3,100	(1,575)	3,100	1,000	525	1,000
Operating Income1,334 (38,060) (72,100) 34,040 (72,100) (38,659) 599 (38,677)	Total Expense	191	69,110	86,100	(16,990)	86,100	48,059	21,051	48,077
	Operating Income	1,334	(38,060)	(72,100)	34,040	(72,100)	(38,659)	<u>5</u> 99	(38,677)

### THE FLORIDA BAR 05774 42nd Annual Legislative Update For the Eleven Months Ending May 31, 2023

		YTD	Prior Year	YTD	FYE Actual
	May	2023	May	2022	2022
3351-Sponsorships	-	14,400	-	-	-
Other Event Revenue	-	14,400	-	-	-
Total Revenue	-	14,400	-	-	-
5031-AV Services	-	79	-	-	-
5051-Credit Card Fees	-	189	88	195	213
5121-Printing-Outside	-	2,663	-	-	-
Total Contract Services	-	2,853	88	195	213
5501-Employee Travel	-	1,106	-	-	-
5571-Speaker Travel	-	5,165	-	-	-
Total Travel	-	6,271	-	-	-
6311-Mtgs General Meeting	-	1,069	-	-	-
6321-Mtgs Meals	-	44,878	-	-	-
6341-Mtgs Equip Rental	-	9,359	-	-	-
7001-Grant/Award/Donation	-	1,958	-	-	-
Total Other Expense	-	57,264	-	-	-
8011-Administration CLE	-	1,000	-	-	-
8101-Printing In-House	-	200	-	-	-
8171-Course Approval Fee	-	150	-	-	-
Total Admin & Internal Expense	-	1,350	-	-	-
Total Expense		67,816	88	195	213
Net Operations	<u> </u>	(53,416)	(88)	(195)	(213)

### THE FLORIDA BAR 06317 42nd Annual Leg & Case Law Update Media For the Eleven Months Ending May 31, 2023

		YTD	Prior Year	YTD	FYE Actual
	May	2023	May	2022	2022
3401-Sales-CD/DVD	1,525	10,650	-	-	-
Sales, Rents & Royalties Revenue	1,525	10,650	-	-	-
Total Revenue	1,525	10,650	-	-	-
5051-Credit Card Fees	26	323	-	-	-
Total Contract Services	26	323	-	-	-
6001-Post 1st Class/Bulk	34	397	-	-	-
Total Other Expense	34	397	-	-	-
8131-A/V Services	70	175	-	-	-
Total Admin & Internal Expense	70	175	-	-	-
Total Expense	129	896	-	-	-
Net Operations	1,396	9,754	_	-	-

# THE FLORIDA BAR Real Property Trust Officer Liaison Conference For the Eleven Months Ending May 31, 2023

	May	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	-	219,443	160,000	59,443	160,000	176,453	42,990	176,610
3331-Registration-Ticket	-	8,550	10,000	(1,450)	10,000	-	8,550	-
Total Registration Revenue	-	227,993	170,000	57,993	170,000	176,453	51,540	176,610
3341-Exhibit Fees	-	73,400	40,000	33,400	40,000	-	73,400	-
3351-Sponsorships	(3,000)	89,875	80,000	9,875	80,000	115,950	(26,075)	107,950
Other Event Revenue	(3,000)	163,275	120,000	43,275	120,000	115,950	47,325	107,950
3401-Sales-CD/DVD	-	13,712	5,000	8,712	5,000	19,250	(5,538)	22,320
3411-Sales-Published Materials	-	-	1,000	(1,000)	1,000	-	-	-
Sales, Rents & Royalties Revenue	-	13,712	6,000	7,712	6,000	19,250	(5,538)	22,320
Total Revenue	(3,000)	404,980	296,000	108,980	296,000	311,653	93,327	306,880
5051-Credit Card Fees	579	9,829	8,000	1,829	8,000	10,012	(183)	6,648
5121-Printing-Outside	-	107	2,500	(2,393)	2,500	-	107	-
Total Contract Services	579	9,936	10,500	(564)	10,500	10,012	(77)	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	27	221	1,000	(779)	1,000	85	137	85
6021-Post Express Mail	-	98	150	(52)	150	253	(155)	297
6319-Mtgs Other Functions	-	5,198	10,000	(4,802)	10,000	5,899	(702)	5 <i>,</i> 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	27	228,107	169,150	58,957	169,150	130,266	97,841	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	(150)	150
Total Admin & Internal Expense	-	20,826	36,750	(15,924)	36,750	30,542	(9,716)	30,577
Total Expense	606	265,270	226,500	38,770	226,500	179,538	85,732	176,252
Operating Income	(3,606)	139,711	69,500	70,211	69,500	132,115	7,595	130,628

#### THE FLORIDA BAR 03526 39th Annual RPTOLC For the Eleven Months Ending May 31, 2023

		YTD	Prior Year	YTD	FYE Actual
	May	2023	Мау	2022	2022
3301-Registration-Live	-	-	-	176,610	176,610
Total Registration Revenue	-	-	-	176,610	176,610
3351-Sponsorships	-	-	-	107,950	107,950
Other Event Revenue	-	-	-	107,950	107,950
3401-Sales-CD/DVD	-	5,020	650	19,250	22,320
Sales, Rents & Royalties Revenue	-	5,020	650	19,250	22,320
Total Revenue	-	5,020	650	303,810	306,880
5051-Credit Card Fees	-	150	17	4,272	4,353
Total Contract Services	-	150	17	4,272	4,353
5501-Employee Travel	-	-	-	2,061	2,061
5571-Speaker Travel	-	-	-	6,656	6,656
Total Travel	-	-	-	8,717	8,717
6001-Post 1st Class/Bulk	-	-	-	85	85
6021-Post Express Mail	-	98	37	253	297
6319-Mtgs Other Functions	-	-	-	5,899	5,899
6321-Mtgs Meals	-	-	-	48,345	48,345
6325-Mtgs Hospitality	-	-	-	52,218	52,218
6341-Mtgs Equip Rental	-	-	-	19,151	19,151
6399-Mtgs Other	-	-	-	1,447	1,447
7999-Other Operating Exp	-	-	-	2,869	2,869
Total Other Expense	-	98	37	130,266	130,310
8011-Administration CLE	-	-	-	25,000	25,000
8131-A/V Services	-	70	-	5,392	5,427
Total Admin & Internal Expense	-	70	-	30,392	30,427
Total Expense	-	318	54	173,647	173,807
Net Operations	-	4,702	596	130,163	133,073

#### THE FLORIDA BAR 05704 40th Annual RPTOLC For the Eleven Months Ending May 31, 2023

	Мау	YTD 2023	Prior Year May	YTD 2022	FYE Actual 2022
3301-Registration-Live	-	219,443	(157)	(157)	
3331-Registration-Ticket	-	8,550	-	-	-
Total Registration Revenue	-	227,993	(157)	(157)	-
3341-Exhibit Fees	-	73,400	-	-	-
3351-Sponsorships	(3,000)	89,875	-	8,000	-
Other Event Revenue	(3,000)	163,275	-	8,000	-
3401-Sales-CD/DVD		8,692	-	-	-
Sales, Rents & Royalties Revenue	-	8,692	-	-	-
Total Revenue	(3,000)	399,960	(157)	7,843	-
5051-Credit Card Fees	-	8,726	2,500	5,741	2,295
5121-Printing-Outside	-	107	-	-	-
Total Contract Services	-	8,833	2,500	5,741	2,295
5501-Employee Travel	-	1,303	-	-	-
5571-Speaker Travel	-	5,098	-	-	-
Total Travel	-	6,401	-	-	-
6001-Post 1st Class/Bulk	27	221	-	-	-
6319-Mtgs Other Functions	-	5,198	-	-	-
6321-Mtgs Meals	-	63,970	-	-	-
6325-Mtgs Hospitality	-	135,613	-	-	-
6341-Mtgs Equip Rental	-	19,683	-	-	-
6399-Mtgs Other	-	3,320	-	-	-
7999-Other Operating Exp		4	-	-	
Total Other Expense	27	228,009	-	-	-
8011-Administration CLE	-	14,850	-	-	-
8101-Printing In-House	-	6	-	-	-
8131-A/V Services	-	5,050	-	-	-
8141-Journal/News Service	-	850	-	-	-
8171-Course Approval Fee	-	-	150	150	150
Total Admin & Internal Expense	-	20,756	150	150	150
Total Expense	27	263,999	2,650	5,891	2,445
Net Operations	(3,027)	135,962	(2,807)	1,952	(2,445)

# THE FLORIDA BAR Real Property Convention For the Eleven Months Ending May 31, 2023

	May	YTD 2023	YTD 22-23 Budget	YTD/YTD Variance (\$)	FY 22-23 Budget	YTD 2022	YTD/Prior Variance (\$)	FYE Actual 2022
3301-Registration-Live	8,209	71,013	60,000	11,013	60,000	103,224	(32,211)	97,357
Total Registration Revenue	8,209	71,013	60,000	11,013	60,000	103,224	(32,211)	97,357
3341-Exhibit Fees	(2,600)	23,900	10,000	13,900	10,000	-	23,900	-
3351-Sponsorships	2,500	34,000	10,000	24,000	10,000	-	34,000	-
Other Event Revenue	(100)	57,900	20,000	37,900	20,000	-	57,900	-
Total Revenue	8,109	128,913	80,000	48,913	80,000	103,224	25,689	97,357
5051-Credit Card Fees	182	2,359	3,000	(641)	3,000	125	2,234	(2)
Total Contract Services	182	2,359	3,000	(641)	3,000	125	2,234	(2)
5501-Employee Travel	-	-	5,000	(5,000)	5,000	79	(79)	5,774
5571-Speaker Travel	-	1,738	-	1,738	-	-	1,738	-
Total Travel	-	1,738	5,000	(3,262)	5,000	79	1,659	5,774
6001-Post 1st Class/Bulk	-	-	500	(500)	500	-	-	246
6311-Mtgs General Meeting	-	10,000	-	10,000	-	51,473	(41,473)	4,903
6321-Mtgs Meals	59,143	76,530	175,000	(98,470)	175,000	-	76,530	362,967
6341-Mtgs Equip Rental	235	235	20,000	(19,765)	20,000	-	235	33,765
6361-Mtgs Entertainment	8,863	34,647	40,000	(5,353)	40,000	-	34,647	50,646
Total Other Expense	68,241	121,412	235,500	(114,088)	235,500	51,473	69,940	452,526
8101-Printing In-House		-	400	(400)	400	-	-	-
Total Admin & Internal Expense	-	-	400	(400)	400	-	-	-
Total Expense	68,423	125,510	243,900	(118,390)	243,900	51,677	73,833	458,297
Operating Income	(60,314)	3,403	(163,900)	167,303	(163,900)	51,547	(48,144)	(360,941)

# THE FLORIDA BAR Real Property Trust Attorney Loan Officer For the Eleven Months Ending May 31, 2023

		YTD	YTD 22-23	YTD/YTD	FY 22-23	YTD	YTD/Prior	FYE Actual
- 3301-Registration-Live	May	<b>2023</b> 8,400	Budget 12,500	Variance (\$) (4,100)	Budget 12,500	2022	Variance (\$) 8,400	2022
Total Registration Revenue	-	8,400 8,400	<b>12,500</b>	(4,100)	12,500 12,500	-	8,400 8,400	-
3341-Exhibit Fees	_	_	1,500	(1,500)	1,500	_	_	_
3351-Sponsorships	(150)	8,500	8,000	500	8,000	_	8,500	_
Other Event Revenue	(150)	8,500 8,500	<u>9,500</u>	(1,000)	<u>9,500</u>		8,500 <b>8,500</b>	
Other Event Revenue	(150)	8,500	5,500	(1,000)	5,500		8,500	
3401-Sales-CD/DVD	-	-	2,000	(2,000)	2,000	150	(150)	150
Sales, Rents & Royalties Revenue	-	-	2,000	(2,000)	2,000	150	(150)	150
Total Revenue	(150)	16,900	24,000	(7,100)	24,000	150	16,750	150
5051-Credit Card Fees	(3)	409	500	(91)	500	4	405	4
Total Contract Services	(3)	409	500	(91)	500	4	405	4
5501-Employee Travel	-	1,100	1,250	(150)	1,250	-	1,100	-
5571-Speaker Travel	318	318	4,000	(3,682)	4,000	-	318	-
Total Travel	318	1,418	5,250	(3,832)	5,250	-	1,418	-
6021-Post Express Mail	-	-	-	-	-	1	(1)	1
6321-Mtgs Meals	-	2,500	5,000	(2 <i>,</i> 500)	5,000	-	2,500	-
6325-Mtgs Hospitality	-	4,077	5,000	(923)	5,000	-	4,077	-
6341-Mtgs Equip Rental	-	-	3,000	(3,000)	3,000	-	-	-
7999-Other Operating Exp	-	-	300	(300)	300	-	-	-
Total Other Expense	-	6,577	13,300	(6,723)	13,300	1	6,576	1
8011-Administration CLE	-	7,150	6,000	1,150	6,000	-	7,150	-
8101-Printing In-House	-	137	200	(63)	200	-	137	-
8131-A/V Services	-	-	550	(550)	550	-	-	-
8141-Journal/News Service	-	-	1,000	(1,000)	1,000	-	-	-
8171-Course Approval Fee	-	150	150	-	150	-	150	-
Total Admin & Internal Expense	-	7,437	7,900	(463)	7,900	-	7,437	-
Total Expense	315	15,841	26,950	(11,109)	26,950	5	15,836	5
Operating Income	(465)	1,059	(2,950)	4,009	(2,950)	145	914	145

#### THE FLORIDA BAR 03859 ABC 2020 Aftermarket For the Eleven Months Ending May 31, 2023

		YTD	Prior Year	YTD	FYE Actual
	May	2023	May	2022	2022
3401-Sales-CD/DVD	-	-	-	150	150
Sales, Rents & Royalties Revenue	-	-	-	150	150
Total Revenue	-	-	-	150	150
5051-Credit Card Fees		-	-	4	4
Total Contract Services	-	-	-	4	4
6021-Post Express Mail		-	-	1	1
Total Other Expense	-	-	-	1	1
Total Expense	-	-	-	5	5
Net Operations		-	-	145	145

#### THE FLORIDA BAR 05992 Attorney Bankers Conf 2023 For the Eleven Months Ending May 31, 2023

		YTD	Prior Year	YTD	FYE Actual
	May	2023	May	2022	2022
3301-Registration-Live	-	8,400	-	-	-
Total Registration Revenue	-	8,400	-	-	-
3351-Sponsorships	(150)	8,500	-	-	-
Other Event Revenue	(150)	8,500	-	-	-
Total Revenue	(150)	16,900	-	-	-
5051-Credit Card Fees	(3)	409	-	-	-
Total Contract Services	(3)	409	-	-	-
5501-Employee Travel	-	1,100	-	_	-
5571-Speaker Travel	318	318	-	-	-
Total Travel	318	1,418	-	-	-
6321-Mtgs Meals	-	2,500	-	-	-
6325-Mtgs Hospitality	-	4,077	-	-	-
Total Other Expense	-	6,577	-	-	-
8011-Administration CLE	-	7,150	-	-	-
8101-Printing In-House	-	, 137	-	-	-
8171-Course Approval Fee	-	150	-	-	-
Total Admin & Internal Expense	-	7,437	-	-	-
Total Expense	315	15,841	-	-	-
Net Operations	(465)	1,059	-	-	<u> </u>

# CLE Calendar (as of 7/13/23)

Date of Presentation	Crs. #	Title	Location
7/21/23	6985	43 <sup>rd</sup> 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
10/4/23		A Primer on the Live Local Act	Webcast
Week of Oct. 16		RP Litigation Webinar	Webcast
10/20/23		Charitable Planning Symposium	Webcast
11/17/23		Probate Law	ТВО
January 2025		Litigation & Trust Law Symposium	Hybrid, TBD
TBD, Spring		Advanced Condominium and Planned Development Certification Review	TBD
2/2/24 - 2/3/24		Advanced Real Property Certification Review	Tampa
TBD, Spring		Advanced Wills, Trusts and Estates Certification Review	Tampa
3/20/24 - 3/24/24		Advanced Construction Law Certification Review Course	Orlando
3/20/24 - 3/24/24		Construction Law Institute	Orlando
TBD		Attorney-Bankers Conference	ТВО
TBD		Guardianship CLE	TBD



Joshua E. Doyle Executive Director (850) 561-5600 www.FLORIDABAR.org

# REAL PROPERTY, PROBATE AND TRUST LAW SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for Section Committees to seek approval for Section legislative or political activities.
- Legislative or political activity is defined in the Standing Board Policies of The Florida Bar (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."
- Requests for legislative and political activity must be made on this form and submitted to the RPPTL Legislation Committee, with your Committee's white paper.
- Pursuant to SBP 9.50(d), the Section must advise The Florida Bar of proposed legislative or political activity AND circulate the proposal to all Bar divisions, sections and committees that might be interested in the issue.
  - Committees must check with other interested Bar divisions, sections and committees to see if there are comments or issues.
  - If comments have been received from another interested group, the comments must be included.
  - If comments have not yet been received, the proposal may still be submitted to the Legislation Committee, with a list of the interested groups that have been notified and the dates and methods of notification.
  - If a decision needs to be expedited, the proposal must explain the need for an expedited decision and request a specific deadline for a decision by the Bar.
- The Legislation Committee will review the proposal.
  - The proposal will then need to be presented at the Division Round Table.
  - Then, published as an Information Item to the Executive Council.
  - Then, published as an Action Item to the Executive Council.

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

# **General Information**

Submitted by: (name of Section Committee) Principal and Income

**Contact:** (Name of Committee Chair(s), address and phone number <u>Edward F. Koren, c/o</u> Holland & Knight LLP, 100 North Tampa Street, Suite 4100, Tampa, FL 33602 (813-227-6655); Pamela O. Price, c/o Gray Robinson, 301 East Pine Street, Suite 1400, Orlando, FL 32801 (407-843-8880); Keith B. Braun, c/o Comiter, Singer, Baseman & Braun, LLP, 3825 PGA Boulevard, Suite 701, Palm Beach Gardens, FL 33410 (561-626-2101); Jolyon D. Acosta, c/o Bush Ross, P.A., 1801 N. Highland Avenue, Tampa, FL 33602 (813-204-6462)

(Name of Sub-committee Chair, if any, address and phone number, if any)\_\_\_\_\_

# Proposed Advocacy

Complete #1 below if the issue is legislative OR #2 if the issue is political; AND #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 meet all three of the following requirements? *(select one)* \_\_\_\_\_\_ Yes \_\_\_\_\_ No
  - It is within the group's subject matter jurisdiction as described in the Section's Bylaws;
  - It is beyond the scope of the Section/Bar's permissible legislative or political activity, <u>or</u> within the Section/Bar's permissible scope of legislative or political activity <u>and</u> consistent with an official Section/Bar position on that issue; <u>and</u>
  - 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 Committees, Divisions & Sections/Voluntary Bar Groups

Pursuant to SBP 9.50(d), the Section must provide copies of its proposed legislative or political actions to all Bar committees, divisions, sections and voluntary bar groups that may be interested in the issue. List all Bar committees, divisions, sections and voluntary bar groups that this proposal has been shared with pursuant to this requirement, the date the proposal was shared, and provide all comments received from such groups as part of your submission. The Section may submit its proposal before receiving comments, but only after the proposal has been provided to other bar divisions, sections or committees. A form for sharing proposals is available for this purpose.

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

Legislation Committee Appearance (list name, address and phone #) Sancha K. Brennan, Legislation Committee Co-Chair, 545 Delaney Avenue, Hovey Court, Bldg. 1, Orlando, FL 32801, Telephone: 407-893-7888

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

<u>c/o Dean, Mead & Dunbar, PA, 215 South Monroe Street, Ste. 815, Tallahassee, FL 32301, Telephone 850-999-4100</u>

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

# 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.<sup>1</sup> 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,

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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).

B. Section 738.104 Governing Law.

<u>Current Law</u>: No provision currently.

<u>Effect of Proposed Changes</u>: 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.

C. Section 738.201 Fiduciary Duties; General Principles

<u>Current Law:</u> 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.

D. 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 nonexercise 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 <sup>3738.202(3)(a)-(f)</sup> retains the express ordering rules of Current Statute <sup>3738.105(3)(a)-(c)</sup>, including the express authorization for the court to order disgorgement by the fiduciary (a remedy which is omitted in UFIPA).

## E. Section 738.203 Fiduciary's Power to Adjust

<u>Current Law:</u> 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).

F. Overview of Proposed Statute §§738.301-738.310

<u>Current Law:</u> 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.

G. Section 738.301 Definitions

<u>Current Law:</u> Current Statute §738.1041(a) includes definitions relevant to a unitrust.

<u>Effect of Proposed Changes</u>: 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.

H. Section 738.302 Application; Duties and Remedies

<u>Current Law:</u> 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.

I. 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.

<u>Effect of Proposed Changes</u>: 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).

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

K. Section 738.305 Unitrust Policy

<u>Current Law:</u> 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.

L. Section 738.306 Unitrust Rate

<u>Current Law:</u> 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%.

<u>Effect of Proposed Changes:</u> 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.

M. Section 738.307 Applicable Value

<u>Current Law:</u> 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.

N. 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).

O. Section 738.309 Express Unitrust

<u>Current Law:</u> 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.

<u>Effect of Proposed Changes:</u> 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.

P. Section 738.310 Other Rules

<u>Current Law:</u> 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.)

<u>Effect of Proposed Changes:</u> 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.

Q. Section 738.401 Character of Receipts from Entity

<u>Current Law:</u> 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.

<u>Effect of Proposed Changes:</u> 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.

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

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

<u>Current Law</u>: 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.

<u>Effect of Proposed Changes</u>: 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.

- T. Proposed Statute §738.410 is substantially similar to Current Statute §738.603.
- U. Section 738.411 Minerals, Water, and Other Natural Resources

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

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

- V. Proposed Statute §738.412 is substantially similar to Current Statute §738.605.
- W. Section 738.413 Marital Deduction Property Not Productive of Income.

<u>Current Law</u>: 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.

<u>Effect of Proposed Changes</u>: 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.

X. Section 738.414 Derivative or Option

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

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

Y. Section 738.415 Asset Backed Security

<u>Current Law</u>: 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.

Z. 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.

## AA. Section 738.501 Disbursement from Income

<u>Current Law</u>: 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.

<u>Effect of Proposed Changes</u>: 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.

## BB. Section 738.502 Disbursements from Principal

<u>Current Law</u>: 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.

<u>Effect of Proposed Changes</u>: 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)(g). 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)(g) 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)(g) as this section does not limit the taxes to be included as those derived from the death of a decedent.

CC. Section 738.503 Transfer from Income to Principal for Depreciation

<u>Current Law</u>: 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.

## DD. Section 738.504 Reimbursement of Income from Principal

<u>Current Law</u>: 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.

<u>Effect of Proposed Changes</u>: 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).

## EE. Section 738.505 Reimbursement of Principal from Income

<u>Current Law</u>: 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.

FF. Section 738.506 Income Taxes

<u>Current Law</u>: 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 §736.08145(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.

## GG. Section 738.507 Adjustment between Principal and Income because of Taxes

<u>Current Law</u>: 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.

<u>Effects of Proposed Changes</u>: 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.

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

<u>Current Law</u>: 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.

<u>Effect of Proposed Changes</u>: 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.

- II. Proposed Statute §738.601 is substantially similar to Current Statute §738.201.
- JJ. Section 738.602 Distribution to successor beneficiary --

<u>Current Law</u>: 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.

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

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

LL. Section 738.703 Apportionment when income interest ends –

<u>Current Law</u>: 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.

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

MM. 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.

NN. Section 738.804 Application -

<u>Current Law</u>: 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.

<u>Effect of Proposed Change</u>: 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.

202\_\_\_Legislature

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 titleThis 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

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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

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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.

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

(8) "Estate" means a decedent's estate. The term includes the property of the decedent as the estate is originally constituted and the property of the estate as it 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.

(10) "Income" means money or other property a
fiduciary receives as current return from principal. The
term includes a part of receipts from a sale, exchange, or
liquidation of a principal asset, to the extent provided in
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;

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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

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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.

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

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

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

(19) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other 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,

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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

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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.

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

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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

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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

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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;

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

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

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

274 provide otherwise or authorize the fiduciary to determine275 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:

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

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

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

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

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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;

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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	(1) 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
	·

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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;

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

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

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

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

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

(f) To the extent the court is unable, after applying paragraphs (a)-(e), to restore the beneficiaries or the trust, or both, to the positions they would have occupied if the fiduciary had not abused its discretion, the court may require the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the 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 defending420 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.

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

441 (5) A fiduciary may not exercise the power under442 subsection (1) to make an adjustment or under s. 738.408 to

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

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

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

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

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

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

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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-

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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;

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

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

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

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

(11) A description of the exercise of the power toadjust under subsection (1) must be:

(a) included in a report, if any, sent tobeneficiaries under s. 736.0813; or

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

539 (12) With respect to a trust in existence on January540 1, 2003:

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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

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

(b) A fiduciary shall not have the power to adjust
under this section until the statement required in
subsection (14) is provided and either no objection is made
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).

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

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

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

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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.

(e) If no timely objection is made or if the fiduciary
is vested with the power to adjust by court order, the
fiduciary may thereafter exercise the power to adjust
without providing notice of its intent to do so unless, in
vesting the fiduciary with the power to adjust, the court
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

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shall have all of the powers and protections granted a 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.

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

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

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

(b) The statement may contain information regarding a
fiduciary's obligation with respect to the power to adjust
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

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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 DefinitionsFor 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
I	

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689 trustee to distribute the principal of the trust to one or690 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 a695 unitrust amount. The term includes an express unitrust.

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

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

(8) "Unitrust rate" means the rate used to compute the
unitrust amount under subsection (6) for a unitrust
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:

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

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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

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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

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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

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

(e) the fiduciary does not receive, by the date
specified in the notice under s. 738.304(4)(e) an objection
in a record to the action proposed under paragraph (b) from
a person to which the notice under paragraph (b) is sent.
(3) If a fiduciary receives, not later than the date

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

803 804 (a) consented under s. 738.304(3); or

(b) objected under s. 738.304(4)(d).

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

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

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

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

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

738.304 Notice.-

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

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

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

838 1. including a:

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	ion of trust property or other matters of trust ation; and ower to appoint or remove a trustee or person in this paragraph; and
841 administra	ower to appoint or remove a trustee or person
842 b. p	in this paragraph; and
843 described	
844 2. e	xcluding a:
845 a. p	ower of appointment;
846 b. p	ower of a beneficiary over the trust, to the
847 extent the	e exercise or nonexercise of the power affects the
848 beneficial	l interest of the beneficiary or another
849 beneficia:	ry represented by the beneficiary under ss.
850 736.0301-	736.0306 with respect to the exercise or
851 nonexercis	se of the power; and
852 c. p	ower over the trust if the terms of the trust
853 provide th	nat the power is held in a nonfiduciary capacity
854 and the po	ower 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 tru	ust to appoint or remove a trustee or person
859 described	in paragraph (b), to the extent the power is
860 exercisab	le when the person that exercises the power is not
861 then serv:	ing 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;

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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.

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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.

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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:

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

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

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

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

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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 treatment980 of specific assets or groups or types of assets.

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

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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 in990 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;

(b) Any asset specifically given to a beneficiary and the return on investment on such property, which return on investment shall be distributable to the beneficiary; and (c) Any asset while held in an estate; 738.308 Period.-

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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.

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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;

- (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

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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":

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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

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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

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

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

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

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

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

(7) In the case of a capital distribution, the amount received in an entity distribution allocated to principal 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.

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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.

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

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

1225distributions received in the current accounting period1226must 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, is1239 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

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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

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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 other1298 activity conducted by a fiduciary if the fiduciary

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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

determines that it is in the interests of the beneficiaries

1299

1322

general accounting records for the trust;

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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

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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.
I	

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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.

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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

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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

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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:

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1471a. an election to qualify for a marital deduction1472under s. 2056(b)(7) of the Internal Revenue Code has been1473made;

b. the trust qualifies for a marital deduction unders. 2056(b)(5) of the Internal Revenue Code; or

1476 c. the trust otherwise qualifies for a marital1477 deduction.

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

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

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

1507 (2) For each accounting period, the following rules1508 apply to a separate fund:

(a) The fiduciary may determine the internal income of
the separate fund as if the separate fund were a trust
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

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1521 document that satisfies the requirements of s.1522 736.1008(4)(a).

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

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

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

1538

(4) The fiduciary of a marital trust shall:

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

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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.

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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

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.

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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:

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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

16243. from a working interest or any other interest not1625provided for in paragraph (a) or (b) or subparagraph 1. or16262.

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 from the interest as provided in this section. 1644 1645 738.412 Timber.-

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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;

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

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

(d) to principal, to the extent advance payments,
bonuses, and other payments are not allocated under
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.

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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

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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								
-									

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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:

(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 to1739 sell property to the trust; or

17403. acquires an option to buy property for the trust or1741an option to sell an asset owned by the trust; and

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

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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

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1769	addressed by this chapter. The allocation must be
1770	consistent with ss. 738.414 and 738.415.
1771	738.501 Disbursement from incomeSubject 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

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nonjudicial proceeding, or other matter that involves
primarily an income interest, to the extent income is
sufficient; and
(4) a premium on insurance covering loss of a
principal asset or income from or use of the asset.
738.502 Disbursement from principal
(1) Subject to s. 738.505, and except as otherwise
provided in s. 738.601(3)(b), a fiduciary shall disburse
from principal:
(a) the balance of the disbursements described in s.
738.501(1) and (3), after application of s. 738.501(2);
(b) the fiduciary's compensation calculated on
principal as a fee for acceptance, distribution, or
termination;
(c) a payment of an expense to prepare for or execute
a sale or other disposition of property;
(d) a payment on the principal of a trust debt;
(e) a payment of an expense of an accounting, judicial
or nonjudicial proceeding, or other matter that involves
primarily principal, including a proceeding to construe the
terms of the trust or protect property;
(f) a payment of a premium for insurance, including
title insurance, not described in s. 738.501(4), of which
the fiduciary is the owner and beneficiary;

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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;								
1836 1837	9. statutory or common law claims by third parties; and								
1837	and								
1837 1838	and 10. defending claims based on environmental matters;								

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(2) If a principal asset is encumbered with an
obligation that requires income from the asset to be paid
directly to a creditor, the fiduciary shall transfer from
principal to income an amount equal to the income paid to
the creditor in reduction of the principal balance of the
obligation.

1848738.503 Transfer from income to principal for1849depreciation.-

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:

(a) of the part of real property used or available foruse by a beneficiary as a residence;

(b) of tangible personal property held or made
available for the personal use or enjoyment of a
beneficiary; or

1863(c) under this section, to the extent the fiduciary1864accounts:

1. under s. 738.410 for the asset; or

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CODING: Words stricken are deletions; words underlined are additions.

1865

1866		2.	under	s.	738.40	)3 for	the	business	or	other	activity
1867	in	which	the a	lsset	: is u	sed.					

1868 (3) An amount transferred to principal under this1869 section need not be separately held.

1870

1882

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 from1879 income because principal is illiquid;

(b) a disbursement made to prepare property for sale,including improvements and commissions; and

(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

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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:

(a) an amount chargeable to income but paid fromprincipal because income is not sufficient;

(b) the cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment;

(c) a disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions;

(d) a periodic payment on an obligation secured by a principal asset, to the extent the amount transferred from income to principal for depreciation is less than the periodic payment; and

(e) a disbursement described in s. 738.502(1).
(3) If an asset whose ownership gives rise to a
principal disbursement becomes subject to a successive
interest after an income interest ends, the fiduciary may
continue to make transfers under subsection (1).
738.506 Income taxes.-

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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.

(3) Subject to subsection (4) and ss. 738.504,
738.505, and 738.507, a tax required to be paid by a
fiduciary on a share of an entity's taxable income in an
accounting period must be paid from:

(a) income and principal proportionately to the
allocation between income and principal of receipts from
the entity in the period; and

(b) principal to the extent the tax exceeds thereceipts from the entity in the period.

(4) After applying subsections (1)-(3), a fiduciary
shall adjust income or principal receipts, to the extent
the taxes the fiduciary pays are reduced because of a
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).

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1940738.507 Adjustment between principal and income1941because of taxes.-

(1) A fiduciary may make an adjustment between income
and principal to offset the shifting of economic interests
or tax benefits between current income beneficiaries and
successor beneficiaries which arises from:

(a) an election or decision the fiduciary makes
regarding a tax matter, other than a decision to claim an
income tax deduction to which subsection (2) applies;

(b) an income tax or other tax imposed on the fiduciary or a beneficiary as a result of a transaction involving the fiduciary or a distribution by the fiduciary;

(c) ownership by the fiduciary of an interest in an entity a part of whose taxable income, whether or not distributed, is includable in the taxable income of the fiduciary or a beneficiary; or

(d) an election or decision a fiduciary makes toreimburse any tax under s. 736.08145.

(2) If the amount of an estate tax marital or
charitable deduction is reduced because a fiduciary deducts
an amount paid from principal for income tax purposes
instead of deducting it for estate tax purposes and, as a
result, estate taxes paid from principal are increased and
income taxes paid by the fiduciary or a beneficiary are
decreased, the fiduciary shall charge each beneficiary that

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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:

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(a) The following expenses are allocated to and shallbe 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.

19982. Recurring premiums on insurance covering the loss1999of the property or the loss of income from or use of the2000property.

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 shall2005 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

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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.

(c) If the tenant or remainderman incurred an expense
for the benefit of his or her own estate without consent or
agreement of the other, he or she must pay such expense in
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

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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, whether2061 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

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2065of net income and net principal receipts received from2066property specifically given to a beneficiary. The fiduciary2067shall distribute the net income and net principal receipts2068to the beneficiary that is to receive the specific2069property.

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

20871. the payment of the expenses from income will not2088cause the reduction or loss of the deduction; or

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20892. the fiduciary makes an adjustment under s.2090738.507(2); and

(c) paying from principal other disbursements made or incurred in connection with the settlement of the estate or the winding up of an income interest that terminates, 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.

(4) If a decedent's will or the terms of a trust provides for the payment of interest or the equivalent of interest to a beneficiary that receives a pecuniary amount outright, the fiduciary shall make the payment from net income determined under subsection (3) or from principal to the extent net income is insufficient.

(5) A fiduciary shall distribute net income remaining after payments required by subsection (4) in the manner described in s. 738.602 to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power

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to withdraw assets from the trust or other presently 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 2130to 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

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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 If a disproportionate distribution of principal (C) 2162 is made to any beneficiary, the respective fractional

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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.

(d) The distribution date under paragraph (a) may be
the date as of which the fiduciary calculates the value of
the assets if that date is reasonably near the date on
which the assets are distributed. All distributions to a
beneficiary shall be valued based on their fair market
value on the date of distribution.

(3) To the extent a fiduciary does not distribute under this section all the collected but undistributed net income to each beneficiary as of a distribution date, the fiduciary shall maintain records showing the interest of each beneficiary in the net income.

(4) If this section applies to income from an asset, a fiduciary may apply the rules in this section to net gain or loss realized from the disposition of the asset after

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the decedent's death, an income interest's terminating 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.-

(1) An income beneficiary is entitled to net income in accordance with the terms of the trust from the date an income interest begins. The income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to:

(a) the trust for the current income beneficiary; or
(b) a successive interest for a successor beneficiary.
(2) An asset becomes subject to a trust under
paragraph (1)(a):

(a) for an asset that is transferred to the trust during the settlor's life, on the date the asset is transferred;

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(b) for an asset that becomes subject to the trust because of a decedent's death, on the date of the decedent's death, even if there is an intervening period of administration of the decedent's estate; or

(c) for an asset that is transferred to a fiduciary by a third party because of a decedent's death, on the date of the decedent's death.

(3) An asset becomes subject to a successive interest
under paragraph (1) (b) on the day after the preceding
income interest ends, as determined under subsection (4),
even if there is an intervening period of administration to
wind up the preceding income interest.

(4) An income interest ends on the day before an
income beneficiary dies or another terminating event occurs
or on the last day of a period during which there is no
beneficiary to which a fiduciary may or must distribute
income.

2230 738.702 Apportionment of receipts and disbursements
2231 when decedent dies or income interest begins.-

(1) A fiduciary shall allocate an income receipt or disbursement, other than a receipt to which s 738.601(2) applies, to principal if its due date occurs before the date on which:

(a) for an estate, the decedent died; or

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2236

(b) for a trust or successive interest, an incomeinterest begins.

(2) If the due date of a periodic income receipt or
disbursement occurs on or after the date on which a
decedent died or an income interest begins, a fiduciary
shall allocate the receipt or disbursement to income.

(3) If an income receipt or disbursement is not
periodic or has no due date, a fiduciary shall treat the
receipt or disbursement under this section as accruing from
day to day. The fiduciary shall allocate to principal the
portion of the receipt or disbursement accruing before the
date on which a decedent died or an income interest begins,
and to income the balance.

(4) A receipt or disbursement is periodic under subsections (2) and (3) if:

(a) the receipt or disbursement must be paid at
 regular intervals under an obligation to make payments; or

(b) the payor customarily makes payments at regularintervals.

(5) An item of income or obligation is due under this section on the date the payor is required to make a payment. If a payment date is not stated, there is no due date.

(6) Distributions to shareholders or other owners froman entity to which s. 738.401 applies are due:

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(a) on the date fixed by or on behalf of the entity for determining the persons entitled to receive the distribution;

(b) if no date is fixed, on the date of the decisionby or on behalf of the entity to make the distribution; or

(c) if no date is fixed and the fiduciary does not know the date of the decision by or on behalf of the entity to make the distribution, on the date the fiduciary learns of the decision.

(7) S. 733.817 controls over any provision of thischapter 738 to the contrary.

2273

738.703 Apportionment when income interest ends.-

(1) As used in this section, the term "undistributed income" means net income received on or before the date on which an income interest ends. The term does not include an item of income or expense which is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) Except as otherwise provided in subsection (3),
when a mandatory income interest of a beneficiary ends, the
fiduciary shall pay the beneficiary's share of the
undistributed income that is not disposed of under the
terms of the trust to the beneficiary or, if the
beneficiary does not survive the date the interest ends, to
the beneficiary's estate.

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(3) If a beneficiary has an unqualified power to withdraw more than five percent of the value of a trust immediately before an income interest ends:

(a) the fiduciary shall allocate to principal the
undistributed income from the portion of the trust which
may be withdrawn; and

(b) subsection (2) applies only to the balance of theundistributed income.

(4) When a fiduciary's obligation to pay a fixed annuity or a fixed fraction of the value of assets ends, the fiduciary shall prorate the final payment as required to preserve an income tax, gift tax, estate tax, or other 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.

738.802 Relation to electronic signatures in global
and national commerce act. – This chapter modifies, limits,
or supersedes the Electronic Signatures in Global and
National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does
not modify, limit, or supersede Section 101(c) of that act,
U.S.C. s. 7001(c), or authorize electronic delivery of
any of the notices described in s. 103(b) of that act, 15

U.S.C. s. 7003(b). This chapter also does not modify,
limit, or supersede s. 117.285.

738.803 Severability.-If any provision of this chapter
or its application to any person or circumstance is held
invalid, the invalidity does not affect other provisions or
applications of this chapter which can be given effect
without the invalid provision or application, and to this
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

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	The Johnson v. Townsend Fix Florida Uniform Disposition of Community Property Rights at Death Act (Sections 732.216-732.228, Florida Statutes)
To:	Theodore S. Kypreos, Chair, Probate Law & Procedure Committee
From:	Juan C. Antúnez, Chair, Drafting Subcommittee
CC:	John M. Moran, Director, Probate & Trust Law Division Jon Scuderi, Treasurer Drafting Subcommittee Members:
	<ol> <li>Stacey Prince-Troutman</li> <li>Richard Warner</li> <li>Patrick J. Lannon</li> <li>Anthony P. Guettler</li> <li>Edward Downey</li> <li>George L. Metcalfe Jr.</li> </ol>
Subject:	Legislative package for Probate Roundtable and Executive Council meeting at the Breakers on July 22, 2023; the <i>Johnson v. Townsend</i> fix
Date:	June 28, 2023

## Dear Theo -

Attached please find our subcommittee's legislative package for submission in anticipation of the Probate Roundtable and Executive Council meetings at the Breakers on July 22, 2023. The attached reflects changes made to address comments and suggestions received at the Delray Executive Council meeting. For ease of reference, I have attached a redline version of the Bill. I will present in person at both meetings.

Sincerely, Juan

#### Attachments:

- 1. White Paper
- 2. Bill
- 3. Worksheet
- 4. Bill redline

#### 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.,<sup>1</sup> the largest recipient of domestic state-to-state migration within the U.S.,<sup>2</sup> and the largest recipient of international migration to the U.S.<sup>3</sup> Puerto Rico is the most populous U.S. territory,<sup>4</sup> and Florida is the largest recipient of migrants to the mainland from Puerto Rico.<sup>5</sup>

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."<sup>6</sup>

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

<sup>3</sup> 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.

<sup>4</sup> See World Population Review, United States Territories 2023, https://worldpopulationreview.com/country-rankings/united-states-territories.

<sup>&</sup>lt;sup>1</sup> See Andy Markowitz, AARP, *Top 5 States Where Retirees Are Moving* (January 06, 2023), <u>https://www.aarp.org/retirement/planning-for-retirement/info-2023/most-popular-relocation-states.html</u>.

<sup>&</sup>lt;sup>2</sup> 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), <u>https://www.census.gov/library/stories/2019/04/moves-from-south-west-dominate-recent-migration-flows.html</u>.

<sup>&</sup>lt;sup>5</sup> 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), <u>https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html</u>.

<sup>&</sup>lt;sup>6</sup> 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").<sup>7</sup> 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.<sup>8</sup>

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.

<sup>&</sup>lt;sup>7</sup> Florida's Act, with some modifications, is based upon the Uniform Disposition of Community Property Rights at Death Act ("UDCPRDA"), <u>https://www.uniformlaws.org/viewdocument/act-1971</u>. The UDCPRDA was promulgated in 1971. The UDCPRDA was replaced in 2021 by the Uniform Community Property Disposition at Death Act ("UCPDDA"), <u>https://www.uniformlaws.org/committees/community-home?communitykey=425b0732-</u><u>7ff0-4b28-ada1-fc2b4638f29e</u>. Florida has not adopted the UCPDDA.

<sup>&</sup>lt;sup>8</sup> 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.<sup>9</sup>

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."<sup>10</sup> 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).<sup>11</sup> 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."<sup>12</sup>

Under long-established common law spouses relocating to Florida from a communityproperty jurisdiction retain their rights in property that was community property prior to their change of domicile (as well as in property substituted therefor).<sup>13</sup> In 1992, Florida's

<sup>9</sup> Commissioner v. Chase Manhattan Bank, 259 F.2d 231, 239 (5th Cir. 1958) (footnotes omitted).

<sup>10</sup> See IRS, Internal Revenue Manuals (IRM) § 25.18.1.2.2 (03-04-2011), <u>https://www.irs.gov/irm/part25/irm\_25-018-001#idm140332604209888</u>.

<sup>11</sup> See World Population Review, US States - Ranked by Population 2020, http://worldpopulationreview.com/states.

Community property states		2023 Population
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 ÷ 339,172,809 = **30.63%**.

<sup>12</sup> See Michael W. Galligan, International Estate Planning for U.S. Citizens: An Integrated Approach, Estate Planning, a Thomson Reuters publication (October 2009), <u>https://www.phillipsnizer.com/siteFiles/24533/International-Estate-Planning-for-U-S-Citizens-An-Integrated-Approach.pdf</u>.

<sup>13</sup> 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."<sup>14</sup>

## **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*.

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. Ordono*, 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.)

<sup>&</sup>lt;sup>14</sup> See Uniform Disposition of Community Property Rights at Death Act (UDCPRDA), *Prefatory Note*, <u>https://www.uniformlaws.org/viewdocument/act-1971</u>. 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

<u>Current Situation</u>: Property held as tenants by the entirety and homestead property is not property to which the Act applies.

<u>Effect of Proposed Changes</u>: 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 <u>entirety</u>, 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 <u>homestead and</u> 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

<u>Current Situation</u>: The text of section 732.218, *Florida Statutes*, currently contains a double negative.

<u>Effect of Proposed Changes</u>: 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

<u>Current Situation</u>: 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.

<u>Effect of Proposed Changes</u>: 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) If not previously waived pursuant to s. 732.702, subsequent to the decedent's death 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 at any time waive the surviving spouse's right to assert a claim to any right, title or interest in any property held by the decedent at the time of the decedent's death arising under ss. 732.216-732.228, 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:

<u>"By executing this contract, agreement, or waiver, I intend to waive my</u> right as a surviving spouse to assert a claim to any right, title or interest in property held by the decedent at the time of the decedent's death arising under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228), wholly or partly, as provided herein."

# D. Section 732.221

<u>Current Situation</u>: 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.

<u>Effect of Proposed Changes</u>: 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,<sup>15</sup> 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."<sup>16</sup> Finally, in new subsection (b) below, the legislation preserves the existing protections for personal representatives under the Act.

<sup>&</sup>lt;sup>15</sup> 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).

<sup>&</sup>lt;sup>16</sup> In re Estate of Gay, 294 So.2d 668, 670 (Fla. 4th DCA 1974).

#### 732.221 Demands or disputes; 2-year statute of repose.—

(1) Demands or disputes regarding any right, title or interest in any property held by the decedent or the decedent's surviving spouse at the time of the decedent's death arising under ss. 732.216-732.228, wholly or partly, shall be determined in a declaratory action commenced within 2 years after the decedent's death, or be forever barred. A declaratory action instituted pursuant to this section shall be commenced by filing a complaint and shall be governed by the rules of civil procedure. A declaratory 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 action pursuant to this section. Section 733.710 shall not apply to a declaratory action instituted pursuant to this section.

(2) 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.

(3) The declaratory 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 (1). The rights of any person interested as or through a party that fails to commence a timely declaratory 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.

(4) Nothing in this section shall restrict the bringing of a quiet title or declaratory action regarding any right, title or interest in any property held by the decedent or the decedent's surviving spouse at the time of the decedent's death not arising under ss. 732.216-732.228, wholly or partly.

## E. Section 732.223

<u>Current Situation</u>: The Act is silent regarding protections for third parties transferring property subject to the Act.

<u>Effect of Proposed Changes</u>: 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) <u>Although a property interest is subject to property rights under ss.</u> 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) <u>As used in this section the term:</u>

(a) <u>"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.</u>

(b) <u>"Payor" means the decedent's personal representative, a trustee of a trust created by the decedent, an insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.</u>

(c) <u>"Person" includes an individual, trust, estate, partnership, association, company, or corporation.</u>

# F. Section 732.225

<u>Current Situation</u>: Property held as tenants by the entirety is not property to which the Act applies.

<u>Effect of Proposed Changes</u>: 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 <u>or real or personal property held as tenants by the entirety</u> creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

# G. Section 732.702

<u>Current Situation</u>: 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.

<u>Effect of Proposed Changes</u>: 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.—

The rights of a surviving spouse to an elective share, intestate share, (1)pretermitted share, homestead, to assert a claim under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228), 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, to assert a claim under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228), 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

<u>Current Situation</u>: A notice of administration currently provides no notice of the deadlines triggered under the Act upon receipt of service of a notice of administration.

<u>Effect of Proposed Changes</u>: 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

<u>Current Situation</u>: A notice to creditors currently provides no notice of the deadlines triggered under the Act upon receipt of service of a notice to creditors.

<u>Effect of Proposed Changes</u>: 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. <u>733.710</u>, 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, the name and address of the personal representative, the name and address of the personal representative is 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

<u>Current Situation</u>: 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.<sup>17</sup>

<u>Effect of Proposed Changes</u>: The legislation clarifies existing Florida law by amending the text of section 733.607(1), *Florida Statutes*, by adding the new underlined text below:

## 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 knowingly 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."<sup>18</sup> To that end this legislation creates a new dispute resolution

<sup>&</sup>lt;sup>17</sup> See § 732.219, Fla. Stat. (2023) ("**Disposition upon death**.—Upon the death of a married person, onehalf 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.)

<sup>&</sup>lt;sup>18</sup> In re Estate of Gay, 294 So.2d 668, 670 (Fla. 4th DCA 1974).

mechanism and 2-year statute of repose specifically designed for title disputes arising under the Act.<sup>19</sup>

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 legitimate and reasonably related public policy favoring the speedy and final determination of estate proceedings.<sup>20</sup>

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.

<sup>&</sup>lt;sup>19</sup> 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).

<sup>&</sup>lt;sup>20</sup> 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.)

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, 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.

<sup>&</sup>lt;sup>21</sup> 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 spouse
10	to waive rights to property subject to ss. 732.216-732.228,
11	Florida Statutes; replacement of Section 732.221, Florida
12	Statutes establishing procedures and deadlines for
13	determining title to property subject to ss. 732.216-732.228,
14	Florida Statutes; replacement of Section 732.223, Florida
15	Statutes establishing protections for third parties
16	transferring property subject to ss. 732.216-732.228, Florida
17	Statutes; an amendment to Section 732.225 Florida Statutes
18	clarifying existing law; an amendment to Section 732.702 (1),
19	Florida Statutes establishing procedures for a spouse, during
20	a spouse's lifetime, to waive rights under ss. 732.216-
21	732.228, Florida Statutes; an amendment to Section 733.212,
22	Florida Statutes adding language to the notice of
23	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 733.2121,
26	Florida Statutes adding language to the notice to creditors
27	regarding the duty of the personal representative to discover
28	property subject to ss. 732.216-732.228, Florida Statutes; an
29	amendment to Section 733.607, Florida Statutes confirming
30	that the surviving spouse's interest in property subject to
31	ss. 732.216-732.228, Florida Statutes is not subject to
32	administration in the deceased spouse's probate estate.
33	Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Section 732.217 (1) and (2), Florida 35 Statutes, are revised to read:

(1) Personal property, <u>except personal property held</u>
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.

43 (2) Real property, except <u>homestead and</u> real property
44 held as tenants by the entirety, which is located in this
45 state, and which: (a) Was acquired with the rents, issues,
46 or income of, the proceeds from, or in exchange for, property
47 acquired as, or which became and remained, community property
48 under the laws of another jurisdiction; or (b) Is traceable
49 to that community property.

50 Section 2. Section 732.218(2), Florida Statutes, is 51 revised to read:

52 (2) Real property located in this state, other than 53 homestead and real property held as tenants by the entirety, 54 and personal property wherever located acquired by a married 55 person while domiciled in a jurisdiction under whose laws 56 property could not then be acquired as community property and 57 title to which was taken in a form which created rights of 58 survivorship are presumed to be property to which these 59 sections do not apply.

60 Section 3. Section 732.219, Florida Statutes, is revised61 to read:

62

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

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67 disposition by the decedent or distribution under the laws of 68 succession of this state. One-half of that property is the 69 property of the decedent's probate estate and is subject to 70 testamentary disposition or distribution under the laws of 71 succession of this state. The decedent's one-half of that 72 property is not in the elective estate. For purposes of this 73 section, the term "probate estate" means all property 74 wherever located that is subject to estate administration in 75 any state of the United States or in the District of Columbia.

76 (2) If not previously waived pursuant to s. 732.702, 77 subsequent to the decedent's death a surviving spouse or any 78 person acting on behalf of a surviving spouse, including, but 79 not limited to, an attorney in fact, agent, guardian of the 80 property, or personal representative of the surviving spouse, 81 may at any time waive the surviving spouse's right to assert 82 a claim to any right, title or interest in any property held 83 by the decedent at the time of the decedent's death arising 84 under ss. 732.216-732.228, 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 right as a surviving spouse to assert a 90 claim to any right, title or interest in property held by the 91 decedent at the time of the decedent's death arising under 92 the Florida Uniform Disposition of Community Property Rights 93 at Death Act (ss. 732.216-732.228), wholly or partly, as 94 provided herein." 95 Section 4. Section 732.221, Florida Statutes, is

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repealed and replaced with the following:

97732.221Demands or disputes; 2-year statute of98repose.-

99 Demands or disputes regarding any right, title or (1)100 interest in any property held by the decedent or the 101 decedent's surviving spouse at the time of the decedent's death arising under ss. 732.216-732.228, wholly or partly, 102 103 shall be determined in a declaratory action commenced within 104 2 years after the decedent's death, or be forever barred. A 105 declaratory action instituted pursuant to this section shall 106 be commenced by filing a complaint and shall be governed by 107 the rules of civil procedure. A declaratory action instituted 108 pursuant to this section is not a claim, as such term is 109 defined in s. 731.201. Nothing in s. 733.702 shall require 110 the filing of a statement of claim in the estate of the 111 decedent as a condition precedent to instituting a 112 declaratory action pursuant to this section. Section 733.710 113 shall not apply to a declaratory action instituted pursuant 114 to this section.

115 (2) The personal representative or curator has no duty 116 to discover whether any property held by the decedent or the 117 decedent's surviving spouse at the time of the decedent's 118 death is property to which ss. 732.216-732.228 apply, or may 119 apply, unless a written demand is made by the surviving spouse 120 or a beneficiary within 6 months after service of a copy of 121 the notice of administration on the surviving spouse or 122 beneficiary, or by a creditor on or before the later of the 123 date that is 3 months after the time of the first publication 124 of the notice to creditors or, as to any creditor required to 125 be served with a copy of the notice to creditors, 30 days 126 after the date of service on the creditor.

127(3)The declaratory action authorized by this section128is extinguished if not commenced prior to expiration of the1292-year statute of repose period set forth in subsection (1).

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130 The rights of any person interested as or through a party 131 that fails to commence a timely declaratory action pursuant 132 to this section are forfeit, and the decedent's surviving 133 spouse, personal representative or curator and any other 134 person or entity that at any time is in possession of any 135 property to which ss. 732.216-732.228 apply, or may apply, 136 shall not be subject to liability for any such forfeit rights, 137 and the decedent's personal representative or curator may 138 distribute the assets of the decedent's estate without 139 liability for any such forfeit rights. 140 (4) Nothing in this section shall restrict the 141 bringing of a quiet title or declaratory action regarding any 142 right, title or interest in any property held by the decedent 143 or the decedent's surviving spouse at the time of the 144 decedent's death not arising under ss. 732.216-732.228, 145 wholly or partly. 146 Section 5. Section 732.223, Florida Statutes, is 147 repealed and replaced with the following: 148 732.223 Protection of payors and other third parties.-149 (1)Although a property interest is subject to 150 property rights under ss. 732.216-732.228, a payor or other 151 third party is not liable for paying, distributing, or 152 transferring the property to a beneficiary designated in a 153 governing instrument, or for taking any other action in good 154 faith reliance on the validity of a governing instrument. 155 As used in this section the term: (2) 156 (a) "Governing instrument" means a deed; will; trust; 157 insurance or annuity policy; account with payable-on-death 158 designation; security registered in beneficiary form (TOD); 159 pension, profit-sharing, retirement, or similar benefit plan; 160 an instrument creating or exercising a power of appointment

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161	or a power of attorney; or a dispositive, appointive, or
162	nominative instrument of any similar type.
163	(b) "Payor" means the decedent's personal
164	representative, a trustee of a trust created by the decedent,
165	an insurer, business entity, employer, government,
166	governmental agency or subdivision, or any other person
167	authorized or obligated by law or a governing instrument to
168	make payments.
169	(c) "Person" includes an individual, trust, estate,
170	partnership, association, company, or corporation.
171	Section 6. Section 732.225, Florida Statutes, is revised
172	to read:
173	732.225 Acts of married personsSections 732.216-
174	732.228 do not prevent married persons from severing or
175	altering their interests in property to which these sections
176	apply. The reinvestment of any property to which these
177	sections apply in real property located in this state which
178	is or becomes homestead property <u>or real or personal property</u>
179	held as tenants by the entirety creates a conclusive
180	presumption that the spouses have agreed to terminate the
181	community property attribute of the property reinvested.
182	Section 7. Section 732.702 (1), Florida Statutes, is
183	revised to read:
184	732.702 Waiver of spousal rights
185	(1) The rights of a surviving spouse to an elective
186	share, intestate share, pretermitted share, homestead, <u>to</u>
187	assert a claim under the Florida Uniform Disposition of
188	Community Property Rights at Death Act (ss. 732.216-732.228),
189	exempt property, family allowance, and preference in
190	appointment as personal representative of an intestate estate
191	or any of those rights, may be waived, wholly or partly, before
192	or after marriage, by a written contract, agreement, or
193	waiver, signed by the waiving party in the presence of two
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194 subscribing witnesses. The requirement of witnesses shall be 195 applicable only to contracts, agreements, or waivers signed 196 by Florida residents after the effective date of this law. Any 197 contract, agreement, or waiver executed by a nonresident of 198 Florida, either before or after this law takes effect, is 199 valid in this state if valid when executed under the laws of 200 the state or country where it was executed, whether or not he 201 or she is a Florida resident at the time of death. Unless the 202 waiver provides to the contrary, a waiver of "all rights," or 203 equivalent language, in the property or estate of a present 204 or prospective spouse, or a complete property settlement 205 entered into after, or in anticipation of, separation, 206 dissolution of marriage, or divorce, is a waiver of all rights 207 to elective share, intestate share, pretermitted share, 208 homestead, to assert a claim under the Florida Uniform 209 Disposition of Community Property Rights at Death Act (ss. 210 732.216-732.228), exempt property, family allowance, and 211 preference in appointment as personal representative of an 212 intestate estate, by the waiving party in the property of the 213 other and a renunciation by the waiving party of all benefits 214 that would otherwise pass to the waiving party from the other 215 by intestate succession or by the provisions of any will 216 executed before the written contract, agreement, or waiver.

217Section 8. Section 733.212(2), Florida Statutes, is218revised to add a new subsection (g):

219 (g) That, the personal representative or curator has 220 no duty to discover whether any property held by the decedent 221 or the decedent's surviving spouse at the time of the 222 decedent's death is property to which the Florida Uniform 223 Disposition of Community Property Rights at Death Act (ss. 224 732.216-732.228) applies, or may apply, unless a written 225 demand is made by the surviving spouse or a beneficiary during 226 the time period set forth in s. 732.221.

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227 228 Section 9. Section 733.2121(1), Florida Statutes, is revised to read:

229 (1) Unless creditors' claims are otherwise barred by 230733.710, the personal representative shall promptly s. 231 publish a notice to creditors. The notice shall contain the 232 name of the decedent, the file number of the estate, the 233 designation and address of the court in which the proceedings 234 pending, the name and address of the personal are 235 representative, the name and address of the personal 236 representative's attorney, and the date of first publication. 237 The notice shall state that creditors must file claims against 238 the estate with the court during the time periods set forth 239 in s. 733.702, or be forever barred. The notice shall state 240that a personal representative or curator has no duty to 241 discover whether any property held by the decedent or the 242 decedent's surviving spouse at the time of the decedent's 243 death is property to which the Florida Uniform Disposition of 244 Community Property Rights at Death Act (ss. 732.216-732.228) 245applies, or may apply, unless a written demand is made by a 246 creditor during the time period set forth in s. 732.221.

247 Section 10. Section 733.607(1), Florida Statutes, is 248 revised to read:

249 Except as otherwise provided by a decedent's will, (1) 250 every personal representative has a right to, and shall take 251 possession or control of, the decedent's property, except the 252 protected homestead, but any real property or tangible 253 personal property may be left with, or surrendered to, the 254 person presumptively entitled to it unless possession of the 255 property by the personal representative will be necessary for 256 purposes of administration. The request by a personal 257 representative for delivery of any property possessed by a 258 beneficiary is conclusive evidence that the possession of the 259 property by the personal representative is necessary for the [7367.0000034/4167247/4]

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260	purposes of administration, in any action against the
261	beneficiary for possession of it. The personal representative
262	shall take all steps reasonably necessary for the management,
263	protection, and preservation of the estate until distribution
264	and may maintain an action to recover possession of property
265	or to determine the title to it. Notwithstanding anything in
266	this section to the contrary, the personal representative has
266 267	this section to the contrary, the personal representative has no right to, and shall not knowingly take possession or
267	no right to, and shall not knowingly take possession or
267 268	no right to, and shall not knowingly take possession or control of, a surviving spouse's one-half share of property

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Joshua E. Doyle Executive Director (850) 561-5600 www.FLORIDABAR.org

# REAL PROPERTY, PROBATE AND TRUST LAW SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for Section Committees to seek approval for Section legislative or political activities.
- Legislative or political activity is defined in the Standing Board Policies of The Florida Bar (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."
- Requests for legislative and political activity must be made on this form and submitted to the RPPTL Legislation Committee, with your Committee's white paper.
- Pursuant to SBP 9.50(d), the Section must advise The Florida Bar of proposed legislative or political activity AND circulate the proposal to all Bar divisions, sections and committees that might be interested in the issue.
  - Committees must check with other interested Bar divisions, sections and committees to see if there are comments or issues.
  - If comments have been received from another interested group, the comments must be included.
  - If comments have not yet been received, the proposal may still be submitted to the Legislation Committee, with a list of the interested groups that have been notified and the dates and methods of notification.
  - If a decision needs to be expedited, the proposal must explain the need for an expedited decision and request a specific deadline for a decision by the Bar.
- The Legislation Committee will review the proposal.
  - $\circ$  The proposal will then need to be presented at the Division Round Table.
  - Then, published as an Information Item to the Executive Council.
  - Then, published as an Action Item to the Executive Council.

# **General Information**

#### **Submitted by:** (name of Section Committee):

Probate Law & Procedure Committee of the Real Property Probate and Trust Law Section of The Florida Bar.

#### Contact:

Name of Committee Chair(s), address and phone number.

Theodore S. Kypreos, Chair, Probate Law & Procedure Committee Jones Foster P.A. 505 South Flagler Drive, Suite 1100 West Palm Beach, FL 33401 Tele: (561) 650-0429, Cell: (561) 650-0429 Email: TKypreos@jonesfoster.com

#### Name of Sub-committee Chair, if any, address and phone number, if any:

Juan C. Antúnez, Sub-committee Chair, Probate Law & Procedure Committee Stokes McMillan Antúnez Martinez-Lejarza P.A. Two Datran Center, Suite 1901 9130 South Dadeland Boulevard Miami, Florida 33156 Tele: (305) 379-4008 Email: jantunez@smpalaw.com

## Proposed Advocacy

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

#### 1. Proposed Wording of Legislative Position for Official Publication

Supports legislation to (1) clarify existing Florida law by statutorily exempting title disputes arising under the Florida Uniform Disposition of Community Property Rights at Death Act (ss. 732.216-732.228) ("Act") from Florida's probate creditor claim procedures, (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.

#### 2. Political Proposal

Not applicable.

#### 3. Reasons For Proposed Advocacy

- a. Per SBP 9.50(a), does the proposal meet all three of the following requirements? *(select one)* <u>X</u> Yes <u>No</u>
  - It is within the group's subject matter jurisdiction as described in the Section's Bylaws;
  - It is beyond the scope of the Section/Bar's permissible legislative or political activity, <u>or</u> within the Section/Bar's permissible scope of legislative or political activity <u>and</u> consistent with an official Section/Bar position on that issue; <u>and</u>
  - 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 Committees, Divisions & Sections/Voluntary Bar Groups

Pursuant to SBP 9.50(d), the Section must provide copies of its proposed legislative or political actions to all Bar committees, divisions, sections and voluntary bar groups that may be interested in the issue. List all Bar committees, divisions, sections and voluntary bar groups that this proposal has been shared with pursuant to this requirement, the date the proposal was shared, and provide all comments received from such groups as part of your submission. The Section may submit its proposal before receiving comments, but only after the proposal has been provided to other bar divisions, sections or committees. A form for sharing proposals is available for this purpose.

## Contacts

Legislation Committee Appearance (list name, address and phone #) Sancha K. Brennan, Legislation Committee Co-Chair, 545 Delaney Avenue, Hovey Court, Bldg. 1, Orlando, FL 32801, Telephone: 407-893-7888

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

<u>c/o Dean, Mead & Dunbar, PA, 215 South Monroe Street, Ste. 815, Tallahassee, FL 32301, Telephone 850-999-4100</u>

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

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 spouse
10	to waive rights to property subject to ss. 732.216-732.228,
11	Florida Statutes; replacement of Section 732.221, Florida
12	Statutes establishing procedures and deadlines for
13	determining title to property subject to ss. 732.216-732.228,
14	Florida Statutes; replacement of Section 732.223, Florida
15	Statutes establishing protections for third parties
16	transferring property subject to ss. 732.216-732.228, Florida
17	Statutes; an amendment to Section 732.225 Florida Statutes
18	clarifying existing law; an amendment to Section 732.702 (1),
19	Florida Statutes establishing procedures for a spouse, during
20	a spouse's lifetime, to waive rights under ss. 732.216-
21	732.228, Florida Statutes; an amendment to Section 733.212,
22	Florida Statutes adding language to the notice of
23	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 733.2121,
26	Florida Statutes adding language to the notice to creditors
27	regarding the duty of the personal representative to discover
28	property subject to ss. 732.216-732.228, Florida Statutes; an
29	amendment to Section 733.607, Florida Statutes confirming
30	that the surviving spouse's interest in property subject to
31	ss. 732.216-732.228, Florida Statutes is not subject to
32	administration in the deceased spouse's probate estate.
33	Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Section 732.217 (1) and (2), Florida 35 Statutes, are revised to read:

(1) (1) Personal property, <u>except personal property</u> <u>held as tenants by the entirety</u>, 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) (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.

50 Section 2. Section 732.218(2), Florida Statutes, is 51 revised to read:

(2) (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.

60Section 3. Section 732.219, Florida Statutes, is revised61to read:

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732.219 — Disposition upon death; waiver.-

(1) (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

[7367.0000034/4167247/4]

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67 testamentary disposition by the decedent or distribution 68 under the laws of succession of this state. One-half of that 69 property is the property of the decedent's probate estate and 70 is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent's one-half 72 of that property is not in the elective estate. For purposes 73 of this section, the term "probate estate" means all property 74 wherever located that is subject to estate administration in 75 any state of the United States or in the District of Columbia.

(2) -----If not previously waived pursuant to s. (2)732.702, subsequent to the filing of -petition for a administration, decedent's death 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 at any time waive the surviving spouse's rights to assert a claim to any right, title or interest in any property to whichheld by the decedent at the time of the decedent's death arising under 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 assert a claim to any right, title or interest in property to whichheld by the decedent at the time of the decedent's death arising under 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."

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Section 732.221, Florida Statutes, Section 4. is repealed and replaced with the following:

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98	732.221—— Demands or disputes; 2-year statute of
99	repose
100	Demands or disputes regarding any right, title <del>; 2-year</del>
101	statute of repose
102	
103	(1) Demands or disputes regarding title to or interest
104	in any property held by the decedent or the decedent's
105	surviving spouse at the time of the decedent's death <del>to</del>
106	whicharising under ss. 732.216-732.228 apply,, wholly or may
107	<del>apply</del> partly, shall be determined in a declaratory <del>judgment</del>
108	action governed by ch. 86. action commenced within 2 years
109	after the decedent's death, or be forever barred. A
110	declaratory <del>judgment</del> action instituted pursuant to this
111	section shall be commenced within 2 years after the decedent's
112	death, or be forever barred. by filing a complaint and shall
113	be governed by the rules of civil procedure. A declaratory
114	<del>judgment</del> action instituted pursuant to this section is not a
115	claim, as such term is defined in s. 731.201. Nothing in s.
116	733.702 shall require the filing of a statement of claim in
117	the estate of the decedent as a condition precedent to
118	instituting a declaratory <del>judgment</del> action pursuant to this
119	section. Section 733.710 shall not apply to a declaratory
120	judgment action instituted pursuant to this section.
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122	(2) <del>(b) </del> The personal representative or curator has no
123	duty to discover whether any property held by the decedent or
124	the decedent's surviving spouse at the time of the decedent's
125	death is property to which ss. 732.216-732.228 apply, or may
126	apply, unless a written demand is made by the surviving spouse
127	or a beneficiary within 6 months after service of a copy of
128	the notice of administration on the surviving spouse or
129	beneficiary, or by a creditor on or before the later of the
130	date that is 3 months after the time of the first publication

[7367.0000034/4167247/4]

131 of the notice to creditors or, as to any creditor required to 132 be served with a copy of the notice to creditors, 30 days 133 after the date of service on the creditor.

135 (c) The declaratory judgment cause of action (3) 136 authorized by this section is extinguished if not commenced 137 prior to expiration of the 2-year statute of repose period set forth in subsection (<del>a</del>1). The rights of any person 138 139 interested as or through a party that fails to commence a 140 timely declaratory judgment action pursuant to this section 141 are forfeit, and the decedent's surviving spouse, personal 142 representative or curator and any other person or entity that 143 at any time is in possession of any property to which ss. 144 732.216-732.228 apply, or may apply, shall not be subject to 145 liability for any such forfeit rights, and the decedent's 146 personal representative or curator may distribute the assets 147 of the decedent's estate without liability for any such 148 forfeit rights.

(4) Nothing in this section shall restrict the bringing of a quiet title or declaratory action regarding any right, title or interest in any property held by the decedent or the decedent's surviving spouse at the time of the decedent's death not arising under ss. 732.216-732.228, wholly or partly.

155 Section 5. Section 732.223, Florida Statutes, is 156 repealed and replaced with the following:

157 <u>732.223 Protection of payors and other third parties.</u>
 158 (1) Although a property interest is subject to
 159 property rights under ss. 732.216-732.228, a payor or other
 160 third party is not liable for paying, distributing, or
 161 transferring the property to a beneficiary designated in a
 162 governing instrument, or for taking any other action in good
 163 faith reliance on the validity of a governing instrument.

[7367.0000034/4167247/4]

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164 (2) As used in this section the term: 165 (a) (a) "Governing instrument" means a deed; will; 166 trust; insurance or annuity policy; account with payable-on-167 death designation; security registered in beneficiary form 168 (TOD); pension, profit-sharing, retirement, or similar 169 benefit plan; an instrument creating or exercising a power of 170 appointment or a power of attorney; or a dispositive, 171 appointive, or nominative instrument of any similar type. 172 "Payor" means "Payor" means the decedent's (b) <del>(b)</del> 173 personal representative, a trustee of a trust created by the 174 decedent, an insurer, business entity, employer, government, 175 governmental agency or subdivision, or any other person $\tau$ 176 other than the decedent's personal representative or 177 trustee of a trust created by the decedent, authorized or 178 obligated by law or a governing instrument to make payments. 179 (c) "Person" includes an individual, trust, (C) 180 estate, partnership, association, company, or corporation. 181 Section 6. Section 732.225, Florida Statutes, is revised 182 to read: 183 732.225 Acts of married persons.-Sections 732.216-184 732.228 do not prevent married persons from severing or 185 altering their interests in property to which these sections

183 732.225 Acts of married persons.-Sections 732.216-184 732.228 do not prevent married persons from severing or 185 altering their interests in property to which these sections 186 apply. The reinvestment of any property to which these 187 sections apply in real property located in this state which 188 is or becomes homestead property <u>or real or personal property</u> 189 <u>held as tenants by the entirety</u> creates a conclusive 190 presumption that the spouses have agreed to terminate the 191 community property attribute of the property reinvested.

192 Section 7. Section 732.702 (1), Florida Statutes, is 193 revised to read:

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732.702 —Waiver of spousal rights.-

195 (1) (1) The rights of a surviving spouse to an 196 elective share, intestate share, pretermitted share, [7367.0000034/4167247/4]

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197 homestead, property to whichassert a claim under the Florida 198 Uniform Disposition of Community Property Rights at Death Act 199 (ss. 732.216-732.228) applies, exempt property, family 200preference in appointment allowance, and as personal 201 representative of an intestate estate or any of those rights, 202 may be waived, wholly or partly, before or after marriage, by 203 a written contract, agreement, or waiver, signed by the 204 waiving party in the presence of two subscribing witnesses. 205 The requirement of witnesses shall be applicable only to 206 contracts, agreements, or waivers signed by Florida residents 207 after the effective date of this law. Any contract, agreement, 208 or waiver executed by a nonresident of Florida, either before 209 or after this law takes effect, is valid in this state if 210 valid when executed under the laws of the state or country 211 where it was executed, whether or not he or she is a Florida 212 resident at the time of death. Unless the waiver provides to 213 the contrary, a waiver of "all rights," or equivalent 214 language, in the property or estate of a present or prospective 215spouse, or a complete property settlement entered into after, 216 or in anticipation of, separation, dissolution of marriage, 217 or divorce, is a waiver of all rights to elective share, 218 intestate share, pretermitted share, homestead, property to 219 whichassert a claim under the Florida Uniform Disposition of 220 Community Property Rights at Death Act (ss. 732.216-732.228) 221 applies,), exempt property, family allowance, and preference 222 in appointment as personal representative of an intestate 223 estate, by the waiving party in the property of the other and 224 a renunciation by the waiving party of all benefits that would 225 otherwise pass to the waiving party from the other by intestate 226 succession or by the provisions of any will executed before 227 the written contract, agreement, or waiver. 228

228Section 8. Section 733.212(2), Florida Statutes, is229revised to add a new subsection (g):

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230 That, the personal representative or curator has (q) 231 no duty to discover whether any property held by the decedent 232 or the decedent's surviving spouse at the time of the 233 decedent's death is property to which the Florida Uniform 234 Disposition of Community Property Rights at Death Act (ss. 235 732.216-732.228) applies, or may apply, unless a written 236 demand is made by the surviving spouse or a beneficiary during 237 the time period set forth in s. 732.221.

238 Section 9. Section 733.2121(1), Florida Statutes, is 239 revised to read:

240 (1) Unless creditors' claims are otherwise barred by 241 s. 733.710, the personal representative shall promptly 242 publish a notice to creditors. The notice shall contain the 243 name of the decedent, the file number of the estate, the 244 designation and address of the court in which the proceedings 245 are pending, the name and address of the personal 246 representative, the name and address of the personal 247 representative's attorney, and the date of first publication. 248 The notice shall state that creditors must file claims against 249 the estate with the court during the time periods set forth 250 in s. 733.702, or be forever barred. The notice shall state 251 that a personal representative or curator has no duty to 252 discover whether any property held by the decedent or the 253 decedent's surviving spouse at the time of the decedent's 254 death is property to which the Florida Uniform Disposition of 255 Community Property Rights at Death Act (ss. 732.216-732.228) 256 applies, or may apply, unless a written demand is made by a 257 creditor during the time period set forth in s. 732.221.

258 Section 10. Section 733.607(1), Florida Statutes, is 259 revised to read:

(1) (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, [7367.0000034/4167247/4]

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263 except the protected homestead, but any real property or 264 tangible personal property may be left with, or surrendered 265 to, the person presumptively entitled to it unless possession 266 of the property by the personal representative will be 267 necessary for purposes of administration. The request by a 268 personal representative for delivery of any property 269 possessed by a beneficiary is conclusive evidence that the 270 possession of the property by the personal representative is 271 necessary for the purposes of administration, in any action 272 against the beneficiary for possession of it. The personal 273 representative shall take all steps reasonably necessary for 274 the management, protection, and preservation of the estate 275 until distribution and may maintain an action to recover 276 possession of property or to determine the title to it. 277 Notwithstanding anything in this section to the contrary, the 278 personal representative has no right to, and shall not 279 knowingly take possession or control of, a surviving spouse's 280 one-half share of property to which the Florida Uniform 281 Disposition of Community Property Rights at Death Act (ss. 282 732.216-732.228) applies.

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Section 11. The act shall take effect upon becoming law.

[7367.0000034/4167247/4]

# RP 1

То:	RPPTL Executive Council
From:	Debbie Crockett, Chair of RPPTL Insurance and Surety Committee
Date:	July 12, 2023
Re:	RPPTL Executive Council's endorsement for the Establishment of the Florida Bar Board Certification in " <b>Insurance Coverage Law</b> "

**Executive Summary**: The Insurance and Surety Committee ("ISC") is seeking endorsement from the RPPTL Executive Council in ISC's efforts to establish a new area of Board Certification called "Insurance Coverage Law". The ISC recognizes that this is a significant undertaking, and with RPPTL's approval and support, ISC will submit the application/packet to begin the rest of this process with the Board of Legal Specialization & Education (BLSE), Board of Governors (BOG), and the Supreme Court of Florida.

This memorandum will provide an update on 1) the background to these efforts, 2) steps taken to date, 3) steps that remain outstanding, and 4) the requirements to establish a new area of board certification.

**Requested RPPTL Executive Council Meeting Action Item**: Motion for the Section to endorse the Insurance and Surety Committee's application to the BLSE and Florida bar for the creation of a new board certification called "**Insurance Coverage Law**."

## Anticipated Schedule:

July 22, 2023:	Action Item - RPPTL Executive Council Meeting
Aug-Dec 2023:	(as needed) Continuing obtaining additional letters of support from Florida Bar committees, sections, other organizations including voluntary bar associations, etc.
Jan 2024:	Submission of the completed application/proposal packet

## 1. INSURANCE AND SURETY COMMITTEE BACKGROUND

In 2022, RPPTL Executive Committee charged ISC and its chairs with reinvigorating and expanding the committee beyond its status as a "sister committee" to the Construction Law Committee ("CLC").

As a key part of the strategy to achieve the goal of expansion and reinvigoration, the ISC determined that it should focus on seeking to establish a new area of board certification by the Florida Bar focused on insurance coverage law. This strategy was driven in part by the tremendous success the CLC has had post establishment of Construction as an area of board certification.

As part of the application to establish a new area for board certification, the ISC would like to list RPPTL as a supporting organization. The ISC has already presented during the Real Property Roundtable as an information item and as an action item, and is now seeking RPPTL Executive Committee as an information item, then as an action item to be voted upon.

While the ISC is very focused on the Board Certification effort, we have also been working toward expanding ISC membership to include attorneys who represent carriers and policyholders in first-party property insurance claims, working on reviving the "Insurance Matters" newsletter, providing up-to-date information on ISC's webpage, and working on reestablish regular monthly zoom meetings, and the like.

While having monthly CLE programs for members is important, currently, with the other efforts moving forward, we have yet to fill the CLE subcommittee chair position. But, in 2022 and in 2023, ISC has held joint meetings with the CLC where insurance law topics were presented and will do so again during the joint ISC and CLC meeting July 2023.

# 2. ISC STEPS TAKEN TO DATE & STEPS OUTSTANDING (BEFORE APPLICATION SUBMISSION)

## ISC's Board Certification Subcommittee

Debbie Crockett has spearheaded the effort to establish the board certification. To that end, she has successfully assembled an excellent subcommittee to assist with the application drafting process, including Scott Pence; Mark Boyle; Chip Merlin; Steve Sellers; Michael Cassel; Mark Nation; Matt Weaver; Hugh Lumpkin; Matthew Danahy; Reed Grimm; Meghan Moore; David Zulian; Clint Moore; and Rob Friedman. The subcommittee has put together an application draft and board certification minimum standards, which are attached hereto. **[Tab 1 and Tab 2]**.

## Support from Others

Additionally, the ISC has reached out to a variety of other groups, some within the Florida Bar and some outside. To date, we have received four letters of support - from the Trial Lawyers Section, United Policyholders, Florida Justice Association, and Florida Defense Lawyers Association, and they attached hereto. **[Tab 3]**. We continue to reach out to other groups including some Florida Bar standing committees (many on the BOG) and sections to obtain letters of support.

## Ohio – "Insurance Coverage Law" Board Certification

We have found that Ohio has a board certification called "Insurance Coverage Law," with only 22 lawyers. The Ohio Exam Study Guide and board certification standards have been a good starting point for the ISC. They are attached hereto. **[Tab 4]**.

## Texas – "Insurance Law" Board Certification

Just recently in 2023, the Texas Bar now has a board certification called "Insurance Law," though no lawyers are listed on the Texas Bar's website as having yet obtained board certification. The Texas standards and exam specifications are attached hereto as **[Tab 5]**. Of course, when ISC was putting together it initial application/proposal, Texas did not have this board certification in place.

To our knowledge, there are no other states that have any similar board certifications. Certainly, ISC may 'borrow' a few things from these materials. After the submission of the application, the BLSE staff will likely be directed to contact the Ohio Bar and Texas Bar about their respective board certifications.

## <u>197 Signed E-Petitions<sup>1</sup> – As of 7/7/2023</u>

To date, ISC has 197 signed e-petitions. The petitions are necessary to show the BSLE that there is not only interest in the establishment of this board certification, but also those who sign the petition indicate that they would, themselves, seek to obtain the board certification. A sample of the petition is attached hereto. **[Tab 6]**.

Current Ongoing & Remaining Task Items:

- 1. Continuing to obtain signed e-petitions;
- 2. Continuing to obtain letters of support from other groups and organizations; and
- 3. Finalizing the application/proposal packet for submission.

## 3. STEPS OUTSTANDING (AFTER APPLICATION SUBMISSION)

Once we have submitted the application packet, the following steps will need to take place:

- 1. Approval of Proposed Standards by Board of Legal Specialization & Education (BLSE) Rules Committee
- 2. Approval of Proposed Standards by BLSE
- 3. Approval of Proposed Standards by:
  - a. Program Evaluation Committee (PEC) of the Board of Governors (BOG)
  - b. Budget Committee of the BOG
  - c. Rules Committee of the BOG
  - d. BOG (two readings)
- 4. Notice to the Bar membership must occur prior to final action by the BOG and prior to filing with the FLSC
- 5. Submission to the FLSC as an amendment to the Rules Regulating The Florida Bar.

<sup>&</sup>lt;sup>1</sup>Maritza McGill of the Florida Bar confirmed that ISC may gather signed petitions online using software like google forms or a specific online petition website/service.

6. Upon approval by the FLSC, a notice will be placed on the Bar's website and in the Bar News to advise the membership and to elicit members to apply for service on the inaugural nine-member certification committee. Pursuant to Rule 6-3.2, initial appointees shall be "eminent attorneys" in the field and shall be members in good standing of The Florida Bar admitted no less than 10 years. Appointments are made by the President of The Florida Bar. The three-year terms are staggered and each member is certified by virtue of assignment of staff and "application cycle" (July 1-August 31 or September 1-October 30). Committee orientation, application development, test development, acceptance of applications, processing of applications, administration of exam, grading and presentation of qualified candidates to the BLSE for certification of first class.

The ISC recognizes that this is a long process. We look forward to receiving RPPTL's endorsement.

## 4. Overview of the Requirements to Establish a New Area of Board Certification

The Board of Legal Specialization and Education Rules & Policies ("BLSE") oversees the award of board certification in accordance with the Florida Supreme Court's Rules Regulating the Florida Bar ("RRTFB"). RRTFB Chapter 6 establishes the rules related to "Legal Specialization and Education Programs."

Chapter 6-3 "Florida Certification Plan" sets forth that the board of legal specialization and education "shall have the authority and responsibility to administer the program for regulation of certification including: a) recommending to the board of governors areas in which certificates may be granted ....." RRTFB 6-3.1(a).

This chapter also sets forth the Standards for Certification. Those include setting forth "Minimum Requirements for Qualifying for Certification With Examination. RRTFB 6-3.5(c).

Once approved as an area for certification, the standards for each area are also included in Chapter 6 RRTFB, for which there are currently 26, as follows:

- 1. Civil Trial Law (6-4);
- 2. Tax Law (6-5);
- 3. Marital and Family Law (6-6);
- 4. Wills, Trusts, and Estates Law (6-7);
- 5. Criminal Law (6-8);
- 6. Real Estate Law (6-9);
- 7. Workers' Compensation Law (6-11);
- 8. Appellate Practice (6-13);
- 9. Health Law (6-14);
- 10. Immigration and Nationality Law (6-15);
- 11. Business Litigation (6-16);
- 12. Admiralty and Maritime Law (6-17);
- 13. City, County, and Local Government Law (6-18);
- 14. Aviation Law (6-19);
- 15. Elder Law (6-20);
- 16. International Law (6-21);
- 17. Antitrust and Trade (6-22);
- 18. Labor and Employment (6-23);
- 19. Construction (6-24);
- 20. State and Federal Government and Administrative Practice (6-25);

- 21. Intellectual Property (6-26);
- 22. Education Law (6-27);
- 23. Adoption Law (6-28);
- 24. Juvenile Law (6-29);
- 25. Condominium and Planned Development Law (6-30); and
- 26. International Litigation and Arbitration (6-31).

Following these rules established by the Florida Supreme Court, the BLSE has also published "Standing Policies of the Board of Legal Specialization and Education." Under the Standing Policies, Chapter 200 addresses the "Florida Certification Plan." It outlines the fact that BLSE "bears ultimate responsibility in the certification of applicants," but acknowledges that "Each area of certification must be approved by the Supreme Court of Florida." Standing Policy 2.02(a).

Of most importance to our efforts, 2.03 sets forth the requirements for a "New Certification Area Request." The Standing Policies establish that "any request for a new certification area will be presented to the BLSE. As the BLSE directs, staff will:

- a. Poll the appropriate section(s), division(s), and substantive law committee(s) of the Florida Bar for input;
- b. Contact other state bars or national certification organizations offering the same or similar specialization area; and
- c. Notify the membership of the request by publication on the Florida Bar's web site for a minimum of 30 days to allow interested parties to respond." Standing Policy 2.03(a).

Additionally, new area proposals will be considered on a showing that the area is:

a. An established and recognized area of legal practice in which certification would be of benefit to both the public and The Florida Bar; and

b. Projected to attain a 75 member threshold within the first 3 years of implementation. Standing Policy 2.03(b).

The BLSE will review all information received. If there are sufficient facts to support establishment of the area, the BLSE will direct staff to assist the requestor in the preparation of proposed standards. On review and approval by the BLSE, the proposed standards must be approved by the board of governors. On approval by the board of governors, the standards must be approved by the Supreme Court of Florida before implementation. Standing Policy 2.03(d).

## DRAFT 7/12/2023

## Proposed Area: Insurance Coverage Law

Lawyer(s) and/or Organization seeking new certification area: <u>RPPTL's Insurance & Surety</u> <u>Committee ("ISC") – Chair Debbie Sines Crockett and the following ISC members: Scott Pence, Rob H.</u> <u>Friedman, Mark Boyle, Chip Merlin, Hugh Lumpkin, Reed Grimm, Mark Nation, Steve Sellers, Michael</u> <u>Cassel, Matt Weaver, David Zulian, Clint Moore, Meghan Moore, and Matthew Danahy</u>.

## Please respond to the following by separate attachment(s):

- 1. Define the proposed specialty area and any relevant subspecialties it may encompass.
- 2. Does the proposed specialty area conflict or overlap with any existing certification area(s)? If no, please skip to Question 5.
- 3. If yes, please provide a statement identifying the area(s) of conflict or overlap and explain why the proposed specialty should be established as a separate area.
- 4. If yes, could the proposed specialty, in your opinion, be incorporated within an existing certification area as a subspecialty, and if so, how would you propose that be accomplished?
- 5. How will certification standards for the proposed specialty benefit consumers of legal services?
- 6. How will certification standards for the proposed specialty benefit lawyers who practice in the area and the Bar overall?

## Please check all that you have provided to support this proposal:

☑ Letters of endorsement or Petitions from a minimum of 100 members of The Florida Bar, who support the establishment of the area, would qualify under the proposed standards, and who agree to seek certification when the area is available for certification. [See Exhibit XX].

☑ Petition of recognized Section of The Florida Bar [See Exhibit XX].

☑ Petition of substantive law standing committee of The Florida Bar. [See Exhibit XX].

☑Demonstration that the proposed specialty is an established practice area by providing documentation or information as to:

☑ (Ohio – Insurance Coverage Law) Other states or accredited national organizations that offer certification in this area <u>https://www.ohiobar.org/cle-certification/certification/Attorney-Certification/insurance-coverage-law/</u>. [See Exhibit XX].

☑ (Texas – Insurance Law) Other states or accredited national organizations that offer certification in this area <u>TBLS - Insurance Law Specialty Area</u>. [See Exhibit XX].

☑ (Insurance Bad Faith) Listing as a practice area in *Martindale-Hubbell* <u>https://www.martindale.com/areas-of-law/</u>

☑ (Insurance – with a subset list of types of insurance) Referral service listings (The Florida Bar or other services) <u>https://lrs.floridabar.org/practice-areas/insurance</u>

☑ CLE availability options in proposed area. [See Exhibit XX].

☑ Proposed Draft of Certification Standards. [See Exhibit XX].

☑ Other: Letters of Support from United Policyholders, Florida Justice Association, Florida Defense Lawyers Association. [See Exhibits XX, XX, and XX].

## Supplement in Support of Insurance Coverage Law Board Certification Application

## 1. Define the proposed specialty area and any relevant subspecialties it may encompass.

The proposed specialty area is Insurance Coverage Law, which is the practice of law that involves issues, disputes, and matters among or between insurers, policyholders, or third-party insurance policy beneficiaries concerning the rights, duties, responsibilities, and coverages that arise out of insurance policies. Included subspecialties are first party, third-party, bad faith/extracontractual claims, and state regulatory procedures and practices, which would be part of (not separate or in addition to) the Insurance Coverage Law board certification. Knowledge and skills required include the areas of insurance contract formation and cancellation, insurance policy construction, insurance policy interpretation, property insurance, liability insurance, insurance coverage litigation, reinsurance, bad faith/extra contractual litigation, recurring issues in insurance coverage, professional responsibility, and other types of insurance such as life and disability, professional liability, directors and officers, employment practices, commercial crime and fidelity, excess, umbrella, environmental, workers' compensation, builder's risk, and OCIPs/CCIPs. Policyholders include any insureds, including named insureds and additional insureds under any type of insurance policy. Beneficiaries include individuals and entities who may have rights to recover from insurers even though they are not insured under a policy, including those who hold judgments or assignments entitling them to recovery from an insurer by operation of law. Insurers include any type of insurance company including primary and excess insurers, and reinsurers, whether admitted or surplus lines insurers.

# 2. Does the proposed specialty area conflict or overlap with any existing certification area(s)? If no, please skip to Question 5.

Yes, there is possible overlap, but no conflict.

# 3. If yes, please provide a statement identifying the area(s) of conflict or overlap and explain why the proposed specialty should be established as a separate area.

Frankly, insurance is, or should be, a part of all areas of life and business. As such, there may be some overlap in the certification areas of Elder Law, Health Law, Marital & Family Law, Real Estate, Will Trusts & Estates, and Workers' Compensation; however, the largest potential overlap regarding litigation falls in the areas of Business Litigation, Civil Trial, and Construction Law.

Some Civil Trial law involves aspects of insurance coverage as such matters are inherently civil disputes; however, most insurance disputes do not reach the trial stage. This is because the Civil Trial specialty deals extensively with factual disputes which are proper for determination by a jury while Insurance Coverage deals more extensively with the application of existing facts to extremely nuanced law. Similarly, Business Litigation may involve disputes related to insurance issues; however, the law related to insurance coverage, and specifically insurance policies, is subject to separate rules of construction as a result of area specific case law that does not translate to standard contractual disputes found in Business Litigation. Finally, Construction Law may involve aspects of Insurance Coverage, specifically as it relates to liability insurance and the duties to defend and indemnity, but Insurance Coverage relates to a far more diverse practice area than solely Construction Law.

Insurance Coverage is a much more specialized and highly nuanced area of law which goes beyond the herein referenced existing specialty areas. Specifically, Insurance Coverage includes personal liability, professional liability, directors & officers coverage, first party property, builder's risk, cyber liability, errors & omissions coverage, and insurance bad faith/extra-contractual litigation.

## DRAFT 7/12/2023

Particularly in Florida right now, where insurance is a hotbed political issue and numerous attorneys and legislators alike are involved in a complex area of law in which they do not have any expertise, a separate specialty area in Insurance Coverage would be highly useful to not only attorneys and legislators, but more importantly, to consumers.

## 4. If yes, could the proposed specialty, in your opinion, be incorporated within an existing certification area as a subspecialty, and if so, how would you propose that be accomplished?

No. Insurance Coverage could not and should not be incorporated within existing certification areas as a subspecialty as it is its own area of expertise with significant law from both the Florida Statutes and existing case law. The Florida Insurance Code is comprised of Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, Florida Statutes. There is no current Bar program that provides something similar, as there is no current specialty in Insurance Law. This new Board Certification in Insurance Coverage Law will serve to supplement the already excellent work of other board certification areas whilst expanding certification to a highly specialized area of law for which expertise is required in practice and will further the Bar's goals of expanding Board Certification.

# 5. How will certification standards for the proposed specialty benefit consumers of legal services?

Specifically, in two areas, consumers would directly benefit. First, as to first-party property insurance (i.e., claims for perils such as hurricane and sinkholes), consumers are seeking out attorneys who have specialized knowledge and experience in handling insurance coverage matters, yet many attorneys who do not specialize in this industry claim to possess specialized knowledge. Certification will enable consumers to easily identify competent counsel after severe weather events. Without certification, inexperienced and unknowledgeable attorneys who are financially motivated may be retained to handle insurance coverage disputes, leading to an increase in litigation to the detriment of both policyholders and insurers alike. Having a speciality practice area will allow consumers to weed out inexperienced, opportunistic attorneys and serve to assist in rectifying issues within the insurance industry as a whole.

Second, as to liability claims arising out of construction defect actions or other complex liability claims, policyholders include contractors and other sophisticated insureds, but there are times when owners or others (consumers) are entitled to coverage as additional insureds and times when consumers such as claimants will directly benefit from a determination of whether and to what extent coverage is available. Those consumers are in need of expert guidance and advice. Currently, Insurance, Insurance Defense, and Insurance Bad Faith are each listed as specific practice areas by Martindale-Hubbell. Allowing consumers to search through a database of attorneys by practice area but to then narrow such database with certified expertise related to insurance coverage, as opposed to simply general knowledge regarding insurance or contract law, will provide invaluable resources to consumers when selecting counsel.

## 6. How will certification standards for the proposed specialty benefit lawyers who practice in the area and the Bar overall?

This certification will benefit lawyers who may not have specialized coverage expertise by identifying a pool of persons with such specialized insurance coverage experience who may serve as resources when such insurance coverage issues arise. The Bar will benefit from the positive public perception of the Bar's designation of this area of practice as a speciality, through direct consumer knowledge of and outreach to such attorneys specializing in providing legal advice on insurance coverage matters and through the anticipated reduction of claims volumes and/or adverse outcomes tied to members' insufficient familiarity with insurance coverage practice. Interestingly, Ohio is the only state that has the Insurance Coverage Law board certification speciality, and thus, if Florida did as well, it would help put board certified Florida lawyers in the forefront of the legal community, particularly in a state in which

## DRAFT 7/12/2023

insurance litigation is prevalent.

Furthermore, there are currently a number of conventions/conferences related to insurance coverage that will assist lawyers in staying up to date with the ever-changing landscape of insurance law. The Florida Bar RPPTL Section, ABA Tort-Trial & Insurance Practice Section, Windstorm Insurance Network (WIND), Florida Insurance Fraud Education Committee (FIFEC), Florida Association of Public Insurance Adjusters (FAPIA), Florida Defense Lawyers Association (FLDA), Florida Justice Association (FJA), Stafford, The Seminar Group, and many other organizations currently offer continuing education credits related to courses dealing solely with insurance coverage law and generate thousands of attendees each year. If insurance coverage becomes a stand-alone specialty, existing members, whether through a stand-alone RPPTL program committee, a subcommittee to the RPPTL Insurance and Surety Committee, or through other such mediums, it would be able to expand the availability of insurance related continuing education courses thereby providing funding to the specialty area, minimizing the fiscal impact on the program at the onset. Once more attorneys begin applying to the specialty area, something that, as described below, will likely garner tremendous interest, the program will eventually generate revenue for the Florida Bar. The attendance for such CLE programs/events would be used to measure effectiveness and efficiency of the program in perpetuity.

A Florida Bar Board Certification in Insurance Coverage Law fits into the strategic plan of the Florida Bar by including attorneys who have demonstrated specialized knowledge and skill in the field. The standards and requirements developed will not only ensure that an attorney so certified possesses an enhanced level of expertise and substantial involvement in Insurance Coverage Law, but that the attorney also possesses the requisite credentials and professional qualifications. Like all other Florida Bar board certifications, the Board Certification in Insurance Coverage Law will be designed to foster professional development and to facilitate public access to attorneys with this expertise. It is anticipated that well over 100 Florida Bar members would seek to obtain Florida Bar Board Certification in Insurance Coverage Law in the initial three years. In fact, there are \_\_\_\_\_\_ petitions included in this application submission. Moreover, having additional an area of board certification certainly meets the Florida Bar objective of enhancing not only the legal profession, but also the public's trust and confidence in those Florida lawyers who are board certified in a specialty.

Once implemented, the members of the RPPTL Insurance and Surety Committee spearheading this current project would like the opportunity, in conjunction with the BLSE, to create the Insurance Coverage Law Board Certification Committee (of at least 9 members, though the ISC would prefer 10, each of whom must meet the qualifications under the proposed standards) with minimum of 2 members who represent Policyholders and 2 members who represent Insurers in the practice of Insurance Coverage Law). Then, this Board Certification Committee which will work with the BSLE on, *inter alia*, exam drafting & grading. Those on the ISC who are not appointed to serve on the Board Certification Committee, would then create a separate subcommittee to focus on creating and organizing an exam preparation CLE program/event. It is anticipated that upon approval, the CLE program/event could take place within 12 months or less, and the exam could be ready to administer within 18 months or less. Challenges could include initial starting funding needed for the CLE Program/Event; however, based on the interest generated thus far and outlined herein, funding should not be a problem.

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## RULE 6-XX MINIMUM STANDARDS 6 LEGAL SPECIALIZATION AND EDUCATION PROGRAMS

## 6-XX STANDARDS FOR BOARD CERTIFICATION IN INSURANCE COVERAGE LAW

## GENERALLY

A lawyer who is a member in good standing of The Florida Bar and meets the standards prescribed below may be issued an appropriate certificate identifying the lawyer as "Board Certified in Insurance Coverage Law." The purpose of the standards is to identify those lawyers who practice insurance coverage law and have the special knowledge, skills, and proficiency, as well as the character, ethics, and reputation for professionalism, to be properly identified to the public as board certified in insurance coverage law.

## DEFINITIONS

- (a) "Policyholders" means any insureds, including but not limited to named insureds, omnibus insureds, and additional insureds under any type of insurance policy.
- (b) "Insurers" means any type of insurance company including but not limited to primary and excess insurers, reinsurers, and sureties, whether admitted, surplus lines insurers, and/or enterprise.
- (c) "Insurance Coverage Law" is the practice of law that involves issues, disputes, and matters among and/or between Insurers, Policyholders, and/or insurance policy beneficiaries concerning the rights and responsibilities that arise out of insurance policies, including extra-contractual claims.
- (d) "Practice of Law" for this area is set out in rule 6-XX(c).
- (e) "Insurance Coverage Law Board Certification Committee." The insurance coverage law board certification committee shall be a total of at least 9 members, must include a minimum of 2 members who represent Policyholders and 2 members who represent Insurers in the practice of Insurance Coverage Law, and all of whom must be board certified in Insurance Coverage Law.

## RULE 6-XX MINIMUM STANDARDS

- (a) Minimum Period of Practice. The applicant must have been engaged in the practice of law for at least 7 years immediately preceding the date of application.
- (b) Substantial involvement. The applicant must demonstrate continuous and substantial involvement in the practice of law, of which at least 40 percent has been spent in active participation in Insurance Coverage Law during at least 5 of the 7 years immediately preceding the date of application.
- (c) **Practical Experience.** The applicant must demonstrate substantial practical experience in insurance coverage law by providing examples of at least 20 substantive tasks or services performed on behalf of, or in connection with Insurance Coverage Law, such as:
  - i. drafting and revising insurance provisions in contracts;
  - ii. drafting and revising statutory, regulatory, or administrative laws, rules, or provisions concerning Insurance Coverage Law matters;
  - iii. drafting or revising insurance policies including but not limited to endorsements and other insurance policy related documents;
  - iv. serving as an arbitrator or mediator in cases involving Policyholders, Insurers, and/or insurance policy beneficiaries as adverse parties involving Insurance Coverage Law;

## <u>7/7/2023 DRAFT</u>

- v. drafting and/or presenting legal opinions including but not limited to coverage opinion letters and coverage determination letters on Insurance Coverage Law matters;
- vi. representing Policyholders and serving as Policyholders' legal counsel in proceedings (trial, appeal, administrative or regulatory proceedings, arbitration, or mediation) concerning Insurance Coverage Law matters;
- vii. representing Insurers and serving as Insurers' legal counsel in proceedings (trial, appeal, administrative or regulatory proceedings, arbitration, or mediation) concerning Insurance Coverage Law matters;
- viii. representing insurance policy beneficiaries and serving as insurance policy beneficiaries' legal counsel in proceedings (trial, appeal, administrative proceedings, arbitration, or mediation) concerning Insurance Coverage Law matters;
- ix. preparing for and presenting continued legal education programs and preparing scholarly articles on Insurance Coverage Law topics and matters;
- x. providing insurance coverage counseling or risk management advice to Policyholders concerning Insurance Coverage Law matters; or
- xi. any other activities deemed appropriate by the Insurance Coverage Law Board Certification Committee.

The applicant must also describe, through examples or narrative, the applicant's law practice of representing Policyholders or Insurers in matters involving Insurance Coverage Law matters during the 5-year period preceding the date of application. The examples or narrative must include the approximate number and type of clients the applicant has represented during the 5-year period. Consideration will be given to applicants who have served as in-house counsel or who have been employed by governmental agencies.

- (d) Peer Review. The applicant must submit the names and addresses of 5 individuals who are neither relatives nor current associates or partners as references to attest to the applicant's substantial involvement, practical experience, and competence in insurance law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. At least 4 of the 5 references must be lawyers or judges and at least 3 of the lawyer references must be members of The Florida Bar. The Insurance Coverage Law Board Certification Committee may, at its option, send reference forms to other lawyers and judges.
- (e) Education. The applicant must demonstrate completion of 50 credit hours of approved continuing legal education in Insurance Coverage Law during the 5-year period immediately preceding the date of application. Such hours may include time spent preparing for, presenting, and/or teaching formal training programs including educational programs that are internal to either an employer or to clients, accredited programs, and continuing legal education programs concerning Insurance Coverage Law topics as well as preparing and drafting scholarly articles. Accreditation of hours is subject to policies established by the Insurance Coverage Law Board Certification Committee or the Florida Bar BSLE.
- (f) Examination. The applicant must pass an examination administered uniformly to all applicants to demonstrate sufficient knowledge, skills, proficiency, and experience in insurance law to justify the representation of special competence to the legal profession and the public.

## 7/7/2023 DRAFT

(g) Exemption. An applicant who has been substantially involved in Insurance Coverage Law (at least 40 percent has been spent in active participation in Insurance Coverage Law) for a minimum of 20 years, and who otherwise fulfills the standards under rule 6-XX(c), (d), and (e), will be exempt from the examination. This exemption is only applicable to those applicants who apply within the first 2 application filing periods from the effective date of these standards.

## RULE 6-XX RECERTIFICATION

During the 5-year period immediately preceding the date of application, the applicant must satisfy the following requirements for recertification:

- (a) **Substantial Involvement.** The applicant must demonstrate continuous and substantial involvement in Insurance Coverage Law throughout the period since the last date of certification or recertification. The demonstration of substantial involvement must show that insurance law comprises at least 40 percent of the applicant's practice.
- (b) **Practical Experience.** The applicant must demonstrate continued compliance with the requirements of rule 6-XX(c).
- (c) Education. The applicant must demonstrate completion of at least 75 credit hours of approved continuing legal education in insurance law, in accordance with the standards set forth in rule 6-XX(e).
- (d) Peer Review. The applicant must submit the names and addresses of at least 3 individuals who are neither relatives nor current associates or partners as references to attest to the applicant's substantial involvement, practical experience, and competence in Insurance Coverage Law, as well as the applicant's character, ethics, and reputation for professionalism in the practice of law. At least 2 of the 3 references must be lawyers or judges, and at least 1 must be a member of The Florida Bar. The Insurance Coverage Law Certification Committee may, at its option, send reference forms to other lawyers and judges.



September 12, 2022

Debbie S. Crockett, Esq. Cheffy Passidomo, P.A. 4100 W. Kennedy Blvd., Suite 335 Tampa, FL 33609 dscrockett@napleslaw.com

## VIA EMAIL ONLY

Re: RPPTL Insurance and Surety Committee, Insurance Coverage Board Cert.

Ms. Crockett,

As you and I recently discussed, I thank you for providing me with the information concerning the proposed addition of a Board Certification in Insurance Coverage Law.

I provided the information to the Executive Council of the Trial Lawyers Section and it was reviewed and discussed at our recent meeting on September 10, 2022. The Trial Lawyers Section has no concerns or objection and wishes you the best of luck with instituting the new Board Certification. Please feel free to contact me if I can be of any further assistance.

Very Truly Yours

Weston F. Smith, Esq.

CHAIR: Weston F. Smith 100 2<sup>nd</sup> Ave. N., Ste. 311 St. Petersburg, FL 33701-3338 (727) 408-6100

wes@westonsmithlaw.com

CHAIR-ELECT: Paul J. Scheck 300 S. Orange Ave., Ste. 1600 Orlando, FL 32801-3382 (407) 835-6730 pscheck@shutts.com

SECRETARY/TREASURER: Geddes D. Anderson, Jr. 1501 San Marco Blvd. Jacksonville, FL 32207-2926 (904)598-9282 ganderson@murphyandersonlaw.com

> IMMEDIATE PAST CHAIR: Lewis W. "Wil" Murphy, Jr. Murphy & Walker, P.L. 2001 US Highway 1 Vero Beach, FL 32960-5493 (772) 231-1900 wmurphy@murphywalker.com

> > EXECUTIVE COUNCIL:

#### Terms Expiring 2023: Jeremy C. Branning, Pensacola J. Charles Ingram, Maitland Dennis O'Connor, Winter Park Andrew Reiss, Naples Michele McCaul Ricca, Fort Lauderdale Whitney M. Untiedt, Miami Shirin M. Vesely, St. Petersburg

Terms Expiring 2024:

Kurt E. Alexander, Merritt Island Kimberly A. Ashby, Orlando Michelle Bedoya-Barnett, Orlando Mitchell J. Burnstein, Fort Lauderdale Kimberly A. Kohn, Tampa Yohance A. Pettis, Tampa Wayde Seidensticker, Jr., Naples

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> SPECIAL ADVISORS: Thomas E. Bishop, Jacksonville Thomas Dart, Sarasota James W. Hicks, Miami Clifford W. Sanborn, Panama City

#### BOARD LIAISON:

Clifford Higb P.O. Box 860 Panama City, FL 32402-0860 (850) 763-1787 chigby@bryanthigby.com

JUDICIAL LIAISON:

Hon. Christine Marlewski 800 E. Twiggs St. Annex Room 615 Fampa, FL 33602-3500

Hon. Nicholas P. Mizell U.S. District Court 2110 First Street Fort Myers, FL 33901-3000

#### SECTION ADMINISTRATOR:

Jennifer Dorminy The Florida Bar 651 E. Jefferson St. Tallahassee, FL 32399-2300 (850) 561-5619 jdorminy@floridabar.org

Tab 3

THE FLORIDA BAR / 651 E. JEFFERSON ST. / TALLAHASSEE, FLORIDA 32399-2300 / (850)561-5619 / FAX: (850)561-9427



917 Irving Street San Francisco, CA 94122 415.393.9990 www.uphelp.org

November 9, 2022

Katherine L. Heckert, Chair [kheckert@carltonfields.com] Debbie Crockett, Vice-Chair [dscrockett@napleslaw.com] Florida Bar Insurance & Surety Committee The Real Property Probate and Trust Law Section of the Florida Bar 651 East Jefferson Street, Tallahassee, FL 32399-2300 Sent Via Email

#### **Regarding: Board Certification in Insurance Coverage Law**

Dear Chair Heckert and Vice-Chair Crockett:

I write on behalf of the non-profit United Policyholders in strong support of the proposed Board Certification in Insurance Coverage law. Given the nuances and high financial stakes involved in insurance legal matters, we believe it is appropriate that the Bar establish a process for distinguishing practitioners that have expertise in insurance coverage law from the bar at large.

United Policyholders is a non-profit organization funded by grants and donations that has been informing, helping, and speaking for insurance consumers in the United States since 1991. Through its Roadmap to Preparedness and Roadmap to Recovery programs, United Policyholders helps Americans be financially strong by fortifying their homes to withstand extreme weather events, buying insurance, and navigating the claim process successfully after a loss. The organization was founded to provide consumers with an advocate and information resource focused solely on the important but complex business of insurance. We address all lines of insurance with a special focus on property insurance and disasters.

In Florida, United Policyholders educates and assists residents with insurance matters and coordinates with the Office of Insurance Regulation, insurance and claim professionals, attorneys and other non-profit organizations. Since Hurricane Andrew in 1992, we have been helping address insurance marketplace and claim problems in Florida and supporting policyholders in recovering from catastrophes, including most recently Hurricane Ian. United Policyholders' services include in-person and online education and problem-solving clinics and seminar, survivor to survivor mental/emotional health support forums, and extensive consumer help and disaster-specific online libraries. *See, e.g.*, https://uphelp.org/disaster-recovery-help/hurricane-ian-2022/.

United Policyholders strongly supports the proposal before the Florida Bar to add Board Certification in Insurance Coverage Law and believes that insurance consumers, both individual and corporate, throughout Florida will benefit from a certification process that identifies lawyers that have earned the proposed distinction. In the wake of natural disasters, it is challenging for Florida residents to identify qualified counsel on matters of insurance coverage. The proposed Board Certification will help qualified attorneys accurately market their skillset to potential clients.

**Tab 3** 1 304

November 9, 2022 Page 2 of 2

Thank you in advance for your consideration of our input and your work on this important matter.

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Sincerely,

ang Bal

Amy Bach, Esq. Executive Director United Policyholders

2



President Curry G. Pajcic Executive Director

Paul D. Jess

October 26, 2022

[kheckert@carltonfields.com] [dscrockett@napleslaw.com]

Katherine L. Heckert, Chair[kheckert@Debbie Crockett, Vice-Chair[dscrockettFlorida Bar Insurance & Surety Committee[dscrockettThe Real Property Probate and Trust Law Section of the Florida Bar651 East Jefferson Street,Tallahassee, FL 32399-2300[dscrockett]

Re: Insurance Coverage Board Certification

Dear Chair Heckert and Vice-Chair Crockett:

Thank you for your efforts leading the Insurance and Surety Committee (ISC) of the Real Property, Probate and Trust Litigation (RPPTL) section of The Florida Bar. The Florida Justice Association (FJA) is aware that you are applying for a proposed Board Certification in Insurance Coverage Law on behalf of Florida lawyers.

218 South Monroe Street Tallahassee, Florida 32301

Phone

Facsimile

(850) 224-9403

(850) 224-4254

The FJA Property Insurance Section has discussed the information provided about the proposal. We are glad to support this addition to The Florida Bar's Board Certification categories. The FJA tirelessly advocates for consumer-friendly laws. The Insurance Coverage board certification will add value for Florida consumers by identifying the most competent lawyers in a growing and nuanced area of practice. Business owners in Florida will benefit from the counsel from Insurance Coverage board certified attorneys for risk management activities. Florida attorneys will be able to accurately market their skillset to a wide array of potential clients who transact in insurance for personal or commercial pursuits. In sum, this proposed board certification category will improve The Florida Bar, attorneys, and the clients they serve.

We appreciate your dedication to helping consumers identify specialists in the area of Insurance Coverage Law.

Please let me know if you have any questions.

Sincerely,

Isl Amy Boggs

Amy Boggs, Esq. Chair, FJA Property Insurance Section

Website

MyFJA.org

5727 NW 7 Street, Suite 66, Miami, Florida 33126

786-447-8469 / aramos@fdla.org / www.fdla.org



November 3, 2022

Debbie S. Crockett, Esq. Cheffy Passidomo, P.A. 4100 W. Kennedy Blvd., Suite 335 Tampa, FL 33609 dscrockett@napleslaw.com

Re: Insurance Coverage Law Board Certification

Dear Ms. Crockett:

The Florida Defense Lawyers Association ("FDLA") is a statewide organization of civil defense attorneys and insurance professionals formed in 1967. It has over 1200 members and continues to grow each year. We understand that the Florida Bar is considering adding Board Certification in Insurance Coverage Law. The FDLA supports this proposal. The FDLA has several substantive committees that focus on insurance coverage and bad faith. Many FDLA members practice almost exclusively in these areas and would benefit from having their expertise recognized with Board Certification.

We did have one comment. The name of the certification is Insurance Coverage Law. It is our view that the certification should also encompass bad faith law and perhaps should be renamed "Insurance Coverage and Bad Faith."

Sincerely,

<u>/s/ Francis E. Pierce, IV</u> Francis E. Pierce, IV FDLA President <u>/s/ Matthew Lavisky</u> Matthew Lavisky FDLA President Elect <u>/s/ Elaine Walter</u> Elaine Walter FDLA Sec/Treasurer

## OSBA Insurance Coverage Law Exam Study Guide For Certification <u>As a Specialist</u>

Exam Date:	Friday, November (check OSBA website for specific date)
Place:	Ohio State Bar Association
Time:	1:00 p.m. – 5:00 p.m.
Format:	Exam will be approximately 100 multiple-choice questions.
Content:	The exam may cover any of the following areas.

## **Insurance Coverage Specialization Examination Topics**

	Percentage
Insurance Contract Formation and Cancellation <ul> <li>Policy Applications</li> <li>The Pole of Insurance A cents and Prokers</li> </ul>	10%
<ul><li>The Role of Insurance Agents and Brokers</li><li>Cancellation and Rescission</li><li>Reformation</li></ul>	
Insurance Policy Construction <ul> <li>Contract Ambiguity</li> <li>Construing Exclusions</li> </ul>	5%
<ul> <li>Property Insurance</li> <li>Causes of Loss</li> <li>Conditions and Exclusions</li> <li>Claim Adjustment</li> <li>Examinations Under Oath</li> <li>Business Income and Extra Expense</li> </ul>	20%
<ul> <li>Liability Insurance</li> <li>Occurrence and Claims Made Policies</li> <li>Business Risk Exclusions</li> <li>Automobile Insurance and Uninsured Motorists</li> <li>Duty to Defend</li> <li>Assignments</li> <li>Bodily Injury, Property Damage, and Personal Injury</li> <li>Successor Liability Coverage</li> </ul>	20%

Other Types of Insurance	10%
• Life and Disability	
Professional Liability/E&O Coverage	
<ul> <li>Directors and Officers</li> </ul>	
Employment Practices	
Crime Insurance	
• Excess and Umbrella	
<ul> <li>Environmental</li> </ul>	
Insurance Coverage Litigation	10%
Claim File Discovery	
Work Product Privilege and Attorney-Client Privilege	
Declaratory Judgments	
Bad Faith	
Reoccurring Issues in Insurance Coverage	20%
Reservation of Rights	
Late Notice	
Intentional Acts Exclusion	
• Duty to Cooperate	
Trigger of Coverage	
• Waiver & Estoppel	
Allocation of Loss	
Subrogation	
Professional Responsibility	5%
Conflicts of Interest	
• The Tri-Partite Relationship	
TOTAL	100%

Ohio State Bar Association

# Insurance Coverage Law

Attorney Information and Standards



Accredited by the Supreme Court Commission on Certification of Attorneys as Specialists

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Insurance Coverage Law
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## ATTORNEY INFORMATION & STANDARDS Ohio State Bar Association Specialty Certification Insurance Coverage Law

## SECTION 1: INTRODUCTION & POLICY STATEMENTS

## 1.1 Introduction

The Ohio State Bar Association Insurance Coverage Law Specialty Certification Program is accredited by the Ohio Supreme Court Commission on Certification of Attorneys as Specialists (CCAS).

This document outlines the Standards by which the OSBA will certify attorneys as specialists in the field of Insurance Coverage law. These Standards will ensure that an attorney Certified under this program possesses an enhanced level of skill and expertise as well as substantial involvement in Insurance Coverage Law. These Standards are further designed to foster professional development and expertise and to enable the Association to thoroughly evaluate the credentials of attorneys seeking Certification.

Finally, the ultimate function and most important goal of these standards is to facilitate public access to appropriate legal services.

### 1.2 Nondiscrimination Statement

The OSBA Insurance Coverage Law Specialty Board Certification Program does not discriminate against lawyers seeking Certification on the basis of race, color, national origin, religion, gender, sexual orientation, disability or age. Experience requirements for lawyers seeking Certification that may have an effect on a particular age group are reasonable.

## 1.3 Organization Statement

The OSBA, founded in 1880, is a voluntary professional association open to any person who has been admitted to the practice of law, law school students and legal assistants sponsored by an OSBA member.

From the date of its founding until today, the Association's working goals have been to:

- advance the science of jurisprudence;
- promote improvements of the law and administration of justice;
- uphold integrity, honor and courtesy in the legal profession and encourage and enforce adherence to high standards of professional conduct;
- take positions on matters of public interest as deemed advisable;
- encourage thorough legal education;
- cultivate cordial relations among members of the Bar; and
- perpetuate the history of the profession and the Association.

## **SECTION 2: DEFINITIONS**

2.1 As used in these Standards:

(A) "Applicant" -- An attorney applying to be certified as a specialist under these Standards.

(B) "Application form" -- The form created and/or approved by the Association, the Specialization Committee and/or the Specialty Board, as may be applicable, that is used to apply for certification under these Standards.

(C) "Association or OSBA" -- The Ohio State Bar Association.

(D) "Certified/Certification" -- The result of an applicant successfully completing the application or re-application process under these Standards.

(E) "Commission" -- The Supreme Court Commission created by Section 2 of Rule XIV of the Supreme Court Rules of the Government of the Bar of Ohio.

(F) "Insurance Coverage Law" -- Insurance Coverage Law is the area of law involving issues between insurers and policyholders concerning the rights and responsibilities that arise under insurance policies.

(G) "Recommendation form" -- The form created and/or approved by the Association, the Specialization Committee, and/or the Specialty Board, as may be applicable, that is to be provided to designated third parties to recommend an applicant for certification.

(H) "Specialty Board" -- The Board appointed by the Association's president upon the recommendation of the chair of the Insurance Law Committee pursuant to Section 4 of the Standards.

(I) "Standards" -- The criteria that determines whether an applicant will or will not be certified as a specialist in the field of Insurance Coverage Law.

(J) "The Insurance Law Committee" -- The Insurance Law Committee of the Ohio State Bar Association.

## **SECTION 3: AUTHORITY**

- 3.1 The authority to grant, revoke, or re-grant certification in the field of Insurance Coverage Law is vested in the Association and as also may be delegated to the Specialization Committee, and to the Insurance Law Committee and its Specialty Board.
- 3.2 No provision contained herein shall in any way limit the right of an attorney certified as specializing in the field of Insurance Coverage Law to practice law in any other field or to act as counsel in any other type of legal matter. Any attorney, alone or in association with any other attorney(s), shall have the right to practice in all fields of law, even though he or she is certified as specializing in the field of Insurance Coverage Law.
- 3.3 Further, no attorney shall be required to be certified as specializing in the field of Insurance Coverage Law before he or she can practice law in such field of law or act as counsel in any particular type of Insurance Coverage Law matter. Any attorney, alone or in association with any other attorney(s), shall have the right to practice in the field of Insurance Coverage Law and to act as counsel in every type of Insurance Coverage Law matter, even if he or she is not certified as being specialized under the Standards.

## SECTION 4: CREATION OF THE SPECIALTY BOARD

4.1 There is created an Insurance Coverage Law Specialty Board attached to the Insurance Law Committee. The purpose of the Specialty Board is, with the staff and financial assistance of the Association, to oversee the administration of the Standards.

4.2 The Specialty Board is to be composed of between eight (8) and twelve (12) individuals, the majority of whom will be attorneys generally recognized as experts in the field of Insurance Coverage Law. The initial composition of the Specialty Board is to be of four (4) members chosen to serve a two (2) year term, four (4) members chosen to serve a three (3) year term, and with any remaining members chosen to serve a six (6) year term. Thereafter, each member will serve a term of six (6) years and must be an OSBA Certified Specialist in Insurance Coverage Law or an academic. Board members will be appointed by the OSBA president upon the recommendation of the chair of the OSBA Insurance Law Committee and the Chair of the Insurance Coverage Law Specialty Board. The chair of the OSBA Insurance Law Committee shall be an ex-officio member of the Specialty Board.

4.3 All Specialty Board members serve on a volunteer basis, without pay, and are not considered to be employees of the Association, or the Specialty Board.

4.4 A member of the Specialty Board does not have to be a member of the Insurance Law Committee or of any other committee or section, but must be an OSBA member.

4.5 No member of the Specialty Board may be initially certified under the Standards unless they have been off the Specialty Board for a period of one testing cycle.

4.6 A member of the Specialty Board may be removed during his or her term by a two-thirds affirmative vote of the other members of the Specialty Board for just cause, such as neglect of duty. A Specialty Board member is entitled to a hearing before the Specialty Board prior to his or her removal, and an appeal may be taken within sixty (60) days after any such removal to an Independent Review Panel.

4.7 The Specialty Board shall determine its own meeting and related schedules and its own internal procedures.

## SECTION 5: CERTIFICATION REQUIREMENTS

An applicant for certification as a specialist in the field of Insurance Coverage Law must be an attorney licensed to practice law in the State of Ohio and in good standing and, in addition, must meet the following mandatory requirements as of the date of the filing of the application:

5.1 <u>Substantial Involvement.</u> The Applicant seeking certification shall be required to make a satisfactory showing of experience through substantial involvement in the specialty area during the five-year period immediately preceding the application. Substantial involvement includes, but is not limited to, the type and number of cases or matters handled and the amount of time spent practicing in the specialty area. It may also include other appropriate criteria such as time spent teaching or publishing in the specialty field. The applicant must make a satisfactory showing that he or she has engaged in a <u>minimum</u> of 520 hours per year (25% of a normal full-time practice) practicing in the specialty field in each of the most recent five (5) year calendar periods preceding the application.

5.2 **Specialists Who Become Judges:** No sitting, full-time judge or magistrate may represent or hold the judge's or magistrate's self out as a certified specialist nor may any Accrediting Organization represent or hold out a sitting, full-time judge or magistrate as a specialist. When a certified specialist assumes a position of sitting, full-time judge or magistrate, the date on which the specialist's certification would otherwise expire shall be noted by the Accrediting Organization. If the specialist's tenure as a sitting, full-time judge or magistrate concludes before that expiration date, and provided the specialist has in the interim continued to satisfy the continuing legal education requirements of Gov. Bar R. XIV, the judge's or magistrate's certification may resume upon request, subject to any reasonable requirements of the Accrediting Organization, and continue until the next expiration date.

5.3 <u>Peer Review/Recommendations:</u> The applicant must submit with his or her application for certification, the names of seven (7) separate individual references, none of which may be related to or associated with the applicant in the practice of law by way of partnership or any other professional association. The OSBA will forward the appropriate recommendation forms to the seven (7) references. A minimum of five (5) completed reference forms must be returned to the OSBA for the application to be considered complete. If more than five (5) references are returned to the OSBA, the board may consider all of the references completed and returned. Persons recommending applicants for specialty certification must themselves demonstrate a familiarity with the competence of the applicant in the field of Insurance Coverage Law. References must come from attorneys already certified in Insurance Coverage Law, sitting judges, magistrates or from an attorney who meets the "substantial involvement" requirement and who are familiar with the applicant's competency in the specialty. The Specialty Board reserves the right to reject recommendations and request additional recommendations. The recommendations in regard to thereto shall be forms created by the Association, or Specialty Board for such purposes.

5.4 <u>Written Examination</u>: The applicant must pass a written examination of suitable length and complexity. The examination shall test the knowledge and skills of the substantive and procedural law in the specialty area and include professional responsibility and ethics as it relates to the particular specialty area. The areas of inquiry will include, but are not necessarily limited to: Insurance Contract Formation and Cancellation, Insurance Policy Construction, Property Insurance, Liability Insurance, Insurance Coverage Litigation, Recurring Issues in Insurance Coverage, Professional Responsibility, and Other Types of Insurance such as Life and Disability, Professional Liability, Directors and Officers, Employment Practices, Excess and Umbrella, Environmental.

The examination will be prepared, administered, and graded by the Specialty Board under the guidance of an independent testing service retained by the Association in order to ensure the reliability and validity of the examination. Matters related to the time, place, pass/fail rate and related examination issues are to be determined by the Specialty Board.

5.5 <u>Certificates of Good Standing & Liability Coverage</u>: The applicant seeking certification shall furnish satisfactory evidence that:

- a. The lawyer is active and in good standing pursuant to Gov. R. VI of the Supreme Court of Ohio, and the lawyer's fitness to practice is not in question by virtue of disciplinary action in Ohio or in another state;
- b. Coverage by professional liability insurance continually maintained through a reputable company that is admitted in Ohio, in an amount not less than Five Hundred Thousand Dollars (\$500,000) per loss;
- c. The lawyer has demonstrated the ability to pay all claims that fall within the deductible amount selected by the attorney under the insurance policy.

Professional liability insurance will <u>not</u> be required of those lawyers who

- (i) can demonstrate to the OSBA's satisfaction that the lawyer's practice relationship with the lawyer's clients will fully cover any professional liability claim made against the lawyer in an amount not less than five hundred thousand dollars (\$500,000) per loss.
- (ii) are employed by an entity, other than a law firm, whose sole professional practice is for that entity;
- (iii) are employed by a governmental entity which would be immune from liability claims.

The lawyer shall notify the OSBA immediately of any cancellation or change in coverage.

## 5.6 **Disciplinary Action:**

- a. Applicants for certification or recertification shall furnish satisfactory evidence of their fitness to practice and good standing with the Ohio Supreme Court.
- b. When filing an initial application or application for recertification, the applicant shall disclose to the appropriate Ohio State Bar Association Specialty Board any disciplinary action taken against the applicant by the Supreme Court of Ohio; any federal or state administrative agency, or other agencies of competent jurisdiction.
  - The applicant shall disclose to the Ohio State Bar Association Specialty Board any pending or prior malpractice complaint, judgment, settlement or admission of malpractice. Each matter involving a civil suit must contain a copy of the complaint, answer and final judgment entry. Each settlement or admission of malpractice must contain a description of the underlying claim of malpractice and how the claim was resolved.
  - The applicant shall disclose to the Ohio State Bar Association Specialty Board any felony conviction that arose after the date the attorney was admitted to the practice of law. Applicant must provide a copy of the indictment or bill of information, order of conviction and sentence.

Failure to disclose such information is a material misrepresentation and may cause rejection or decertification.

- c. Applicant need <u>not</u> disclose pending disciplinary complaints or matters that were closed or dismissed without discipline.
- d. If an attorney is disciplined by the Supreme Court of Ohio; any federal or state administrative agency, other agencies of competent jurisdiction or is deemed no longer in "good standing" with the Supreme Court of Ohio during any time during which they are certified, the certified specialist has a period of sixty (60) days from the date the action is taken by the Supreme Court of Ohio to disclose this information to the OSBA Specialty Board.
- e. Failure to maintain good standing with the Supreme Court of Ohio shall result in immediate decertification as a specialist.

5.7 <u>Continuing Legal Education</u>: The Applicant seeking certification shall be required to complete a minimum of thirty-six (36) hours of participation in continuing legal education in the specialty area in the three-year period preceding the lawyer's application for certification. Continuing Legal Education (CLE) must meet the requirements of Rule X Section 4, of the Supreme Court Rules of the Government of the Bar of Ohio. Applicants must include a copy of their CLE transcript with their application for certification and must include proof of attendance of all courses not listed on the transcript. CLE must be of "intermediate" or "advanced" level. CLE hours in the field do not include credit for attendance at seminars promoted as "basic" or "introductory" in nature but may include speaking at such seminars.

## SECTION 6: DUTY TO SUBMIT ANNUAL REPORT, ANNUAL FEE

6.1 <u>Certification</u>: An applicant for certification will be deemed certified as a specialist in the field of Insurance Coverage Law upon the successful completion of the requirements herein and the affirmative decision of the majority of the members of the Specialty Board. The certification will be effective on the January 1st following the Specialty Board's decision approving an applicant's certification. Any applicant denied certification at any stage of the process may appeal the denial under the procedures set forth in these Standards under Section 10: Appeals Procedure. Notwithstanding such procedures, an applicant may also bring a clerical or related error to the Specialty Board's attention within thirty (30) days of the issuance of notice to the applicant of the complained of action allegedly caused by a clerical or like error.

6.2 <u>Annual Report</u>: Any attorney certified under the Standards must, in order to maintain his or her certification, annually report by way of affidavit, or upon a form that may later be created for such purpose, that there have been no material changes in the information submitted in the attorney's application for certification. If there have been material changes, then such changes must be detailed on a form to the Insurance Coverage Law Specialty Board. Further, the certified attorney must show that, <u>in addition</u> to the requirements of Rule X, he or she has completed twelve (12) hours of continuing legal education every two years of certification, with the continuing education hours meeting the criteria set forth in Section 5.7 herein.

Said affidavit or form is due to be filed with the Specialty Board, or the Association, as may be determined, between October1st and December 1st of each year that an attorney is certified under these Standards. Annual reports must be accompanied by annual fees as established by the fee schedule of the OSBA, section 9 hereof. The Specialty Board, by an affirmative vote of the majority of its members, may de-certify an attorney previously certified under the Standards if material changes reported on the affidavit or form, or that may otherwise come to the Specialty Board's attention, are such that the attorney involved would no longer be qualified for certification or re-certification under the Standards. Any attorney so de-certified may request reconsideration and, if denied, appeal such de-certification pursuant to the procedures outlined by these Standards under Section 10: Appeals Procedure. or any such subcommittee thereof convened for such purposes.

Any attorney certified under the Standards who has his or her license to practice law in the State of Ohio revoked or suspended shall automatically be deemed de-certified as of the date of said revocation or suspension without regard for the procedures listed in the foregoing paragraph. Upon any later reinstatement of the license to practice law in the State of Ohio, such reinstated attorney would be eligible to reapply for certification under the Standards.

## SECTION 7: CERTIFICATION PERIOD AND RE-CERTIFICATION

7.1 The certification period under these Standards is a period of six years.

7.2 In the calendar year preceding the expiration date of an attorney's certification under these standards, hereinafter referred to as "the calendar year", an attorney certified under the standards must apply for recertification under the same criteria as set forth in Section 5 hereof, with the exception of subsection 5.4 (written examination) and provided that the CLE criteria shall be as set forth in Section 6.2 hereof. Applications for recertification shall be available between October 1<sup>st</sup> and December 1<sup>st</sup> of the calendar year. If a full and complete application is not completed by December 31 of the calendar year, the applicant <u>shall</u> be decertified, and must apply for recertification under the same criteria as set forth in Section 5 hereof including the written examination.

(a) A certified specialist may exempt from the requirements of Section 6.2 & Section 7 of these standards in the event of a severe, prolonged illness or disability that prevents the specialist from participating in accredited continuing legal education programs and activities and in the requirements for certification renewal established by the Commission and the OSBA as follows:

(1) Before the deadline for recertification, the lawyer shows, by a preponderance of the evidence and to the satisfaction of the certifying organization, that completing the requirements for recertification presents an extreme hardship and that recertification is significantly more difficult as a result of the severe, prolonged illness or disability;

(2) After the deadline for recertification, the lawyer shows, by a preponderance of the evidence and to the satisfaction of the certifying organization, that completing the requirements for recertification presented an extreme hardship, that recertification was significantly more difficult as a result of the severe, prolonged illness or disability, and that there exists an adequate explanation as to why the lawyer did not seek exemption prior to the end of the lawyer's certification period.

(3) The duration of an exemption granted pursuant to Section 7.2 (a) of this section shall be dependent upon the severity of the lawyer's illness or disability and may be limited, as determined by the OSBA and the specialty board.

## SECTION 8: ADOPTION AND AMENDMENT

8.1 These Standards were effective upon the approval thereof by the Association's Board of Governors and the Supreme Court Commission.

8.2 The power to amend these Standards is vested in the Insurance Coverage Law Specialty Board, subject only to review and approval by the OSBA the Association's Board of Governors, and/or the Commission.

8.3 The Standards further incorporate any further rules or regulations that the Commission may later issue as to the creation of a specialty plan or a specialty board. Any language in these Standards that is contrary to any provisions of any Commission future rules or regulations is deemed to be null and void and is to be replaced by such contrary language, subject only to the Insurance Law Committee's decision to withdraw its Plan of Specialization.

## **SECTION 9: FEES**

- 9.1 <u>Application fee</u>: Applicants must submit a one-time non-refundable application fee: OSBA member: \$250 Non-members: \$300
- 9.2 <u>Exam fee</u>: Applicants must pay a non-refundable exam fee each time the exam is administered: OSBA members: \$225 Non-members: \$275
- 9.3 <u>Annual reporting fee</u>: Applicants must pay a non-refundable annual reporting fee each year after certification of: OSBA member: \$125

Non-member: \$175

 9.4
 Re-certification fee:
 Applicant must pay a non-refundable recertification fee of:

 OSBA members
 \$200

 Non-member:
 \$250

## **SECTION 10: APPEALS PROCEDURE**

10.1 **Notice of Action.** An applicant who is denied certification, or a specialist who is denied recertification, will be notified by registered or certified mail sent to the lawyer's last known address of the OSBA Specialty Board's ("Board") decision ("Notice"). The reasons for the Board's action shall be set forth in that Notice. The Notice shall advise the lawyer that he or she may file, within 30 days of the receipt of the Notice, a Request for Reconsideration of the Board's decision.

10.2 **Reconsideration.** The Request for Reconsideration shall include any additional information or supporting material that the lawyer believes will help the Board in its reconsideration of the initial decision. The Board's decision shall be reconsidered by the entire Board or a committee of the Board appointed by the chairperson.

The Board shall send the reconsideration decision in writing to the applicant or specialist by registered or certified mail within 45 days of the receipt of the Request for Reconsideration setting forth the reasons for the decision. The Board shall notify the applicant or specialist that he or she may, within 30 days of the receipt of the decision on Reconsideration, appeal in writing to an Independent Review Panel.

10.3 **Independent Review Panel.** If a request by an applicant or a specialist is made for an appeal to an Independent Review Panel, the chair of the OSBA Specialization Committee shall appoint a threeperson Independent Review Panel. The Independent Review Panel shall include at least two persons whose practice is primarily in the same specialty area. When the subject of the appeals relates to a matter of substantive law, the entire Independent Review Panel shall be comprised of persons whose practice is primarily area. No member of the Review Panel shall have had previous involvement in considering the applicant's or specialist's applications. 10.4 **Hearing**. The hearing before the Independent Review Panel will be *de novo*. The Board may send a representative to the Independent Review Panel hearing. The Independent Review Panel may consider any relevant evidence, including hearsay, if it is the type of evidence upon which reasonable persons rely, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are recognized in civil actions. The Independent Review Panel may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

The Independent Review Panel shall report its findings, and decision to the Board. The Board shall notify the applicant or specialist of that decision by registered or certified mail sent to the lawyer's last known address.

The decision of the Independent Review Panel shall be final.

Adopted by the Board of Governors 2011 Amended by the Board of Governors – February 2018

## TEXAS BOARD OF LEGAL SPECIALIZATION STANDARDS FOR ATTORNEY CERTIFICATION

These Standards for Attorney Certification are established by the Texas Board of Legal Specialization after approval of the Supreme Court of Texas.

## The Standards for Attorney Certification are divided into two parts.

PART I, <u>GENERAL REQUIREMENTS</u>: These requirements apply to all specialty areas.

**PART II, <u>SPECIFIC AREA REQUIREMENTS</u>:** These are specific requirements that apply to the individual specialty areas. Included are the definitions, substantial involvement, and other requirements for certification and recertification. For example, "Specific Area Requirements for Criminal Law" refers to the specific requirements for certification and recertification in criminal law.

## **Definitions as used in these Standards:**

"TBLS" refers to the Texas Board of Legal Specialization.

"SBOT" refers to the State Bar of Texas.

"CLE" refers to continuing legal education.

"Plan" refers to the Texas Plan for Recognition and Regulation of Specialization in the Law.

"Rules" refers to the Attorney Rules and Regulations of TBLS.

"Applicant" refers to either a certification or recertification applicant unless otherwise specifically stated.

"**Standards**" refers to the Standards for Attorney Certification. The Standards are composed of both the General Requirements and the Specific Area Requirements.

## PART I GENERAL REQUIREMENTS

## SECTION I PREFACE

The Supreme Court of Texas has prescribed the following requirements for board certification pursuant to the recommendation of TBLS.

- A. The purpose of these Standards is to recognize those attorneys having special competence in one or more of the specialty areas included in these Standards. In making the determination of special competence, TBLS will consider the following:
  - 1. The substance and complexity of the tasks submitted to show the required substantial involvement in the specialty area;
  - 2. The professional accomplishments of the attorney in the specialty area;
  - 3. The skill and ability of an attorney in the specialty area;
  - 4. The knowledge of the attorney as shown on the specialty area examination; and
  - 5. The character and fitness of the attorney.

- **B.** No standard shall in any way limit the right of a board certified attorney to practice in all areas of law. Any attorney, alone or in association with any other attorney, shall have the right to practice in all areas of law, even though board certified in a specific area of law.
- **C.** No attorney shall be required to obtain board certification before practicing in any area of law. Any attorney, alone or in association with any other attorney, shall have the right to practice in any area of law, even though not board certified in that area.
- **D.** Board certification is individual and voluntary. Requirements for and benefits derived from certification may not be fulfilled by or attributed to a law firm of which a board certified attorney is a member.

## SECTION II GENERAL REQUIREMENTS

## A. <u>MEMBERSHIP AND PRACTICE.</u>

- 1. <u>SBOT Membership.</u> An applicant and board certified attorney must be an active member in good standing of the SBOT.
- 2. <u>Texas Office and Practice.</u>
  - a. <u>Certification Applicant.</u> For the 3 years immediately preceding application, a certification applicant must have maintained a Texas office from which he or she personally conducts business an average of at least 3 days per week, until certification is achieved. Failure to meet this requirement will result in denial of application. TBLS may waive this requirement upon a showing of good cause.
    - b. <u>Board Certified Attorney and Recertification Applicant</u>. A board certified attorney and recertification applicant must continue to meet the substantial involvement requirements pertinent to the specialty area whether or not an office is maintained in Texas. For other recertification qualifications, refer to the applicable Specific Area Requirements.
- **B.** <u>FORMS.</u> Documents, applications, questionnaires, and examinations involved in the certification and recertification process shall be prescribed and approved by TBLS.
- C. <u>FEES.</u> An applicant and board certified attorney shall timely pay the required fees established by TBLS.
- **D. EXPIRATION OF CERTIFICATION.** Certification shall be for a period of 5 years at the end of which time recertification shall be permitted upon the terms and conditions established by TBLS.
- **E.** <u>**REVOCATION OF CERTIFICATION.</u>** A certificate of special competence issued by TBLS may be revoked for good cause as determined by TBLS.</u>
- F. <u>FAILURE TO FURNISH INFORMATION AND MISREPRESENTATION.</u> Certification or recertification may be denied, revoked, or other appropriate action taken because of an applicant's or board certified attorney's failure to furnish the information requested by TBLS or because of his or her misrepresentation of any material fact to TBLS.
- **G.** <u>**REQUIRED PERIOD OF LAW PRACTICE.</u>** An applicant for certification shall have been engaged in the practice of law for a period of at least 5 years on a full-time basis. Years of practice need not be consecutive.</u>

**H. DEFINITION OF THE PRACTICE OF LAW.** "Practice of law" means full-time legal work done primarily for the purpose of providing legal advice or representation. After admission to the bar of any state of the District of Columbia, service as a judge or associate judge of any court of record shall be considered practice of law. Corporate or government service, including military service, after admission to the bar of any state or the District of Columbia, shall be considered practice of law if the work done was legal in nature and primarily for the purpose of providing legal advice to, or representation of, the corporation or government agency or individuals connected therewith. TBLS may allow other legal work, such as teaching law or writing legal publications, to be combined with the part-time practice of law to satisfy this requirement.

## SECTION III DISCLOSURE OF CONDUCT

## A. <u>DISCIPLINARY SANCTIONS.</u>

- 1. At the time of filing an application, a certification applicant shall disclose whether he or she has ever been sanctioned for professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct by any authorized disciplinary authority, including a court, and shall also disclose whether he or she has a pending investigation for professional misconduct. During the application process, the applicant has a continuing duty to promptly report to TBLS the institution of a disciplinary investigation and the receipt of a disciplinary sanction as described above and to provide additional information TBLS may request on such matters.
- 2. A board certified attorney has a continuing duty to report any sanction for professional misconduct as defined in Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct, by any authorized disciplinary authority, including a court, and shall provide additional information TBLS may request on such matters.
- 3. TBLS may deny certification or recertification, revoke certification, or take other appropriate action upon a finding that an applicant or board certified attorney has engaged in professional misconduct as defined above or upon notice of a pending disciplinary investigation concerning the applicant or board certified attorney. In deciding what action is appropriate, TBLS will consider the seriousness of the underlying facts included in the findings, the passage of time since the sanction, and the conduct of an applicant or board certified attorney since the findings were made.
- 4. Failure to disclose an investigation or sanction or the failure to respond to a request for information from TBLS on such matters will be considered a material misrepresentation and may be cause for denial, revocation, or other appropriate action by TBLS.

## B. <u>CRIMINAL CONVICTION.</u>

- 1. An applicant or board certified attorney shall disclose whether he or she has ever been convicted of, or given probation or fined for, a serious crime as hereinafter defined, whether the above resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise and regardless of the pendency of an appeal. The term "serious crime" includes barratry; any felony; any lesser offense involving dishonesty, misappropriation of money or other property or conduct that adversely affects the administration of justice; and any attempt, conspiracy or solicitation of another to commit any of the foregoing crimes.
- 2. TBLS may deny certification or recertification, revoke certification, or take other appropriate action if an applicant or board certified attorney has been convicted, given probation or fined for a serious crime as defined in this Section.

## SECTION IV PEER REVIEW

## A. <u>REFERENCE REQUIREMENTS.</u>

- 1. An applicant shall submit a minimum of 5 names and addresses of persons to be contacted as references to attest to his or her competence in the specialty area. For the types of references required for each specialty area, refer to the appropriate Specific Area Requirements. These persons shall be:
  - a. Substantially involved in the specialty area in which the applicant is seeking certification or recertification.
  - b. Individuals who are not partners or associates of the applicant.
  - c. With respect to a certification applicant, peers with whom the applicant has had dealings in the 3 years immediately preceding application.
  - d. With respect to a recertification applicant, peers with whom the applicant has had dealings since certification or the most recent recertification.
- 2. TBLS may, at its option, request references from other attorneys and/or judges.
- 3. A Confidential Statement of Reference Form approved by TBLS will be submitted by TBLS directly to the selected peer and shall be returned directly to TBLS.
- **B.** <u>EVALUATION OF PEER REVIEW INFORMATION.</u> In evaluating peer review information on an applicant, TBLS shall consider the knowledge and experience of the references in the applicant's specialty area and the nature of the dealings between the references and the applicant.
- C. <u>CONFIDENTIALITY.</u> All Statements of Reference received by TBLS shall be confidential.
- **D.** <u>**DENIAL.</u>** TBLS may deny certification or recertification based on information received through the peer review process. General information concerning the denial shall be provided to the applicant subject to the confidentiality rule.</u>

## SECTION V CONTINUING LEGAL EDUCATION

## A. <u>CLE REQUIREMENT.</u>

- 1. <u>Certification</u>. A certification applicant must complete 60 hours of CLE in the specialty area within the 3 years immediately preceding application, through December 31 of the year of application.
- 2. <u>Recertification</u>. A recertification applicant must complete 100 hours of CLE in the specialty area by December 31 of each 5th year of certification.
- **B.** <u>**QUALIFYING CLE.**</u> An applicant or board certified attorney must obtain CLE credit in the specialty area in which certification or recertification is sought by the following methods:
  - 1. Attendance at a live CLE program, including live video conferences;
  - 2. Viewing or listening to an on-line CLE program;
  - 3. Participating in a CLE teleconference;
  - 4. Attendance at a showing of a CLE video;
  - 5. Self-study such as reading cases or legal periodicals, subject to the limitation of 5 hours credit each calendar year; and

- 6. Other activity in the specialty area, to be determined on an individual basis, such as:
  - a. Teaching a CLE course for attorneys or paralegals;
  - b. Participation as a panelist or speaking on a symposium or similar program;
  - c. Attendance at a lecture series or similar program sponsored by a qualified education institution or bar group;
  - d. Authorship of a book or article published in a professional publication or journal; and
  - e. Active participation in the work of a professional committee dealing with a specific problem in the specialty area.

## SECTION VI SUBSTANTIAL INVOLVEMENT

- A. <u>PERCENTAGE OF PRACTICE REQUIREMENT IN THE SPECIALTY AREA.</u> An applicant or board certified attorney must devote a minimum required percentage of time practicing in a specialty area each year as set forth in the Specific Area Requirements unique to each specialty area.
  - 1. A certification applicant must devote the required percentage during each year of the 3 years immediately preceding application.
  - 2. A board certified attorney must devote the required percentage during each year of certification. Refer to the Recertification Requirements in the Specific Area Requirements.
  - 3. Failure to meet the required percentage of practice may be grounds for denial or revocation.
- **B.** <u>SPECIFIC TASKS REQUIREMENTS</u>. An applicant must provide information as required by TBLS concerning specific tasks he or she has performed in the applicable specialty area. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by an applicant in the specialty area.
- C. <u>EXCEPTIONS.</u> A certification applicant is expected to meet the tasks requirements listed in the Specific Area Requirements in the specialty area. TBLS may permit exceptions for an applicant who does not meet the task requirements specified in an individual specialty area. For the substantial involvement required for each specialty area, please refer to the appropriate Specific Area Requirements.
  - 1. <u>Judicial Experience.</u>
    - a. <u>Certification Applicant.</u> TBLS may permit a certification applicant to substitute judicial experience appropriate to each specialty area. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters the certification applicant has handled in the specialty area. The judicial experience shall be at least equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency shall be in the sole discretion of TBLS.
    - b. <u>Board Certified Attorney and Recertification Applicant.</u> TBLS may permit a board certified attorney or recertification applicant who is serving as a full-time county, state or federal trial, appellate, probate, family, or bankruptcy judge (including a U.S. magistrate judge or Texas associate judge) to remain certified during his or her judicial service subject to the following conditions:
      - (1) A board certified attorney or recertification applicant who is affected by this provision shall continue to pay the annual fee.

- (2) If a board certified attorney desires to continue certification after December 31 of the calendar year which he or she ceases to serve as a full-time judge, he or she shall timely complete the recertification process with TBLS and shall comply with the TBLS Rules. A board certified attorney whose certification was extended by reason of service as a full-time judge must satisfy all the requirements for recertification except that, for purposes of the initial recertification only, the substantial involvement requirement shall be waived and the CLE requirement shall be prorated based on the year in which the board certified attorney ceased judicial service.
- 2. <u>Unusual or Exceptional Experience.</u> TBLS may permit a certification applicant to substitute unusual or exceptional experience for one or more of the specific area requirements in the specialty area. In making this determination, TBLS may take into consideration the nature, complexity, and duration of the matters that the certification applicant has handled in the specialty area. The unusual or exceptional experience shall at least be equivalent to the Specific Area Requirements of the specialty area, and the determination of equivalency shall be in the sole discretion of TBLS.

## SECTION VII EXAMINATION

- A. <u>PASSING OF AN EXAMINATION</u>. A certification applicant must pass a written examination applied uniformly to all certification applicants to demonstrate sufficient knowledge, proficiency, and expertise in the specialty area to justify the representation of special competence to the legal profession and to the public.
- **B.** <u>FAILURE OF AN EXAMINATION</u>. After a certification applicant has taken and failed an examination 3 times in a specialty area, the applicant is ineligible to apply for the next 3 years' examination in that specialty area.

## SECTION VIII SENIOR STATUS DESIGNATION

- A. <u>WHO MAY QUALIFY.</u> A board certified attorney may apply for senior status designation in a particular specialty area if the attorney is no longer practicing law on a full-time basis, is **at least 70 years old**, and has been a **board certified attorney in that specialty area for at least 20 consecutive years.**
- **B.** <u>APPLICATION.</u> A board certified attorney shall apply for senior status designation on a form prescribed and approved by TBLS.
- C. <u>TERM.</u> The senior status designation, if granted by TBLS, shall expire upon retirement of the board certified attorney or expiration, resignation, or revocation of his or her certificate of special competence.

## D. <u>REQUIREMENTS.</u>

1. <u>TBLS Standards for Attorney Certification Apply.</u> Except as modified by Section VIII.D.2 below, a board certified attorney who is granted senior status is subject to both the general and area-specific requirements unique to the board certified attorney's specialty area that are set forth in TBLS Standards for Attorney Certification, including the requirement that the board certified attorney remain an active member in good standing with the SBOT.

- 2. <u>Modifications.</u> A board certified attorney who is granted senior status must:
  - a. <u>Required Law Practice.</u> Maintain at least a part-time practice of law with a minimum average of 20 hours per week of legal work done primarily for the purpose of providing legal advice or representation. Legal work may be pro bono or volunteer work.
  - b. <u>CLE.</u> For recertification, complete 75 hours of CLE in the specialty area by December 31 of each 5th year of certification.
  - c. <u>Substantial Involvement.</u> Devote a minimum of 25% of his or her time practicing law in the specialty area during each year of the 5-year period of certification.
  - d. <u>References.</u> For recertification, submit a minimum of 5 names and addresses of attorneys, judges, or both to be contacted as references with whom he or she has had dealings involving matters in the attorney's specialty area since the most recent recertification.
  - e. <u>Fees.</u> Pay the required fees except the recertification fee.
- **E. DISCLOSURE PROHIBITED.** The senior status designation is an internal designation TBLS utilizes to categorize certifications. A board certified attorney granted senior status designation shall not use the senior status designation on any professional or advertisement materials, including letterhead, business cards, signs, brochures, websites, or social media.

## TEXAS BOARD OF LEGAL SPECIALIZATION STANDARDS FOR ATTORNEY CERTIFICATION

## PART II SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply the specialty area listed below. The specific requirements include the definitions, substantial involvement, reference, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

## SECTION XXIII INSURANCE LAW

(Area ID: IL / Year Started: 2023)

- A. <u>DEFINITION.</u> Insurance law is the practice of law dealing with the determination and regulation of issues arising in respect to various policies of insurance, including commercial general liability (CGL); casualty; directors and officers liability; excess/umbrella; extra-contractual liability; employment practices; advertising injury; life, health, and disability; professional liability; environmental impairment liability; property; personal lines; title; marine; cyber; and reinsurance. Potential issues include coverage, regulatory, oversight, public policy, the sale of policies of insurance, what qualifies as an insurance indemnity agreement, and consumer protection. The practice can include dispute resolution, transactional work, counseling and advice, and regulatory work, among other areas.
- **B.** <u>SUBSTANTIAL INVOLVEMENT.</u> To demonstrate substantial involvement and special competence in Texas insurance law, Applicant must meet the following minimum requirements.

## 1. Certification.

- a. <u>Percentage of Practice Requirement.</u> Applicant must have devoted a minimum of 30% of Applicant's time practicing Texas insurance law during each year of the three years immediately preceding application.
- b. <u>Task Requirements.</u> Applicant must provide information as required by TBLS concerning specific tasks Applicant has performed in practicing Texas insurance law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by Applicant. Applicant must show that Applicant has engaged directly and substantially in a broad practice of Texas insurance law within the three years immediately preceding application. Applicant must show specific and substantial involvement in at least two of the areas below during each year of the three years immediately preceding application:
  - (1) counseling clients regarding insurance law claims;
  - (2) representing clients in the preparation, prosecution, and defense of insurance claims or insurance-related claims (e.g., broker licensing) in litigation, appellate, and alternative dispute resolution procedures;

- (3) negotiating, preparing, and applying policies, insurance programs, risk transfer provisions of contracts, and other documents related to insurance law;
- (4) counseling and representing clients regarding establishing, revising, or maintaining procedures, practices, forms, or programs to comply with insurance laws, including regulatory, administrative, and lobbying activities.
- 2. <u>Recertification.</u> Applicant must have devoted a minimum of 30% of Applicant's time practicing Texas insurance law during each year of the five-year period of certification unless Applicant meets the exception in Part I–General Requirements, Section VI, C,1 (b).
- C. <u>REFERENCE REQUIREMENTS.</u> Applicant must submit a minimum of five names and addresses of persons to be contacted as references to attest to Applicant's competence in Texas insurance law. These persons must be substantially involved in Texas insurance law and be familiar with Applicant's insurance law practice.
  - 1. <u>Certification</u>. Applicant must submit names of persons with whom Applicant has had dealings involving insurance law matters within the three years immediately preceding application.
  - 2. <u>**Recertification.**</u> Applicant must submit names of persons with whom Applicant has had dealings involving insurance law matters since certification or the most recent recertification.
  - 3. <u>**Reference Types.**</u> Applicant must submit five Texas attorneys who are substantially involved in Texas insurance law.

## EXAM SPECIFICATIONS FOR INSURANCE LAW

**PURPOSE OF THE EXAM.** The purpose of the certification exam is to require an examinee to demonstrate substantial knowledge of significant legal concepts and corresponding skills in the specialty area.

**EXAM FORMAT.** The exam consists of a three-hour morning session with three essay questions each worth 100 points and a three-hour afternoon session with 100 multiple-choice questions (10 of which involve professional ethics) each worth 2 points. The exam (essay and multiple-choice) must be taken by laptop (supplied by the examinee).

**ESSAY QUESTIONS.** Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an examinee to answer. Essays are designed to require an examinee to recognize and analyze issues in the fact pattern and explain how those issues should be resolved. The fact patterns will involve situations you would likely encounter in your practice. Essays typically involve the most common lawsuits and coverage issues that arise, including first-party claims made directly by the insured for benefits under the insurance policy, and third-party claims for defense and indemnity in connection with suits by third parties against an insured. Questions could involve questions of policy coverages, exclusions, and conditions as well as common law and statutory extra-contractual duties such as the standards for assessing coverage, reserving rights, and responding to settlement demands. Essay questions may also involve other aspects of the insured-insurer relationship, including the formation, reformation, and termination of insurance contracts and duties of agents, brokers, and adjusters, and mechanisms for resolving disputes. Examinees should ensure they provide the specific information each question requests and communicate their response as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a higher score than a choppy, disorganized one. To pass the exam, examinees must be able to clearly express answers in a manner that would be persuasive to the decision-maker in a case.

**MULTIPLE-CHOICE QUESTIONS.** These questions are designed to test a breadth of issues in the specialty area and require an examinee to select the option that represents the <u>best</u> available answer.

**EXAM GRADING.** The required passing score is 350. All exam materials are confidential and not available for review. Essay answers are graded anonymously and identified only by an assigned examinee number. Multiplechoice answers are computer graded. Successful examinees are notified that they passed but are not provided with their specific score. Unsuccessful examinees are notified of their exam score. Exams that score 10 points below the passing grade are automatically regraded. Exam results are final.

**REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES.** An examinee is expected to understand all substantive and procedural law in the specialty area including professional responsibility and ethics. The areas of inquiry will include but are not necessarily limited to: Insurance Contract Formation and Cancellation, Insurance Policy Construction, Insurance Regulation, Property Insurance, Liability Insurance, Insurance Litigation, Recurring Issues in Insurance Coverage, Professional Responsibility, and Other Types of Insurance such as Life and Disability, Professional Liability, Directors and Officers, Employment Practices, Excess and Umbrella, and Environmental. An examinee must also demonstrate the ability to:

- Communicate effectively and persuasively to clients, counsel, and courts;
- Develop and evaluate strategies for solving a problem or accomplishing an objective;
- Analyze and apply legal rules and principles;

Insurance Law TBLS Exam Specifications (2023)

- Analyze, sort, and use facts, plan, and direct factual investigations;
- Organize and manage a legal task efficiently within time constraints;
- Represent a client consistent with applicable ethical standards; and
- Invoke and utilize the procedures normally required in the specialty area, including pleadings and filings.

**EXAM TOPICS.** Following is a listing of topics on which essays and multiple-choice questions in the specialty area exam may be based on.

## NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. <u>EXAMINEES WILL BE TESTED</u> ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM, UNLESS OTHERWISE SPECIFIED.

## 1. Insurance Contract Formation and Cancellation

- A. The Role of Insurance Agents and Brokers
- B. Policy Applications
- C. Policy Binding and Issuance
- D. Cancellation

## 2. General Insurance Principles

- A. Rules of Construction
- B. Ambiguity
- C. Burdens of Proof
- D. Deductibles, Retentions and Limits
- E. Endorsements
- F. Additional Insureds / Other Insurance
- G. The Claim Process
- H. Waiver, Estoppel, and Quasi-Estoppel

## 3. First Party Insurance

- A. Types of Policies
- B. Coverages
- C. Causes of Loss
- D. Exclusions
- E. Conditions
- F. Appraisal

## 4. Third Party Insurance

- A. Occurrence vs Claims Made Policies
- B. Defense and Indemnity
- C. Coverages and Exclusions
- D. Conditions
- E. Successor Liability Coverage
- F. Professional Liability/Errors and Omissions/Directors and Officers
- G. Employment Practices
- H. Workers' Compensation / Employers' Liability

## 5. Other Types of Insurance

- A. Life and Disability
- B. Crime Insurance
- C. Excess and Umbrella
- D. Pollution and Environmental Insurance
- E. Builders Risk Insurance
- F. Cyber Insurance
- G. Energy Insurance
- H. Owner / Contractor Controlled Insurance Programs (OCIP/CCIP)
- I. Flood/Earthquake Protection
- J. Automobile Insurance

## 6. Insurance Litigation

- A. Choice of Law
- B. Forum Selection
- C. Pleadings
- D. Causes of Action
- E. Affirmative Defenses
- F. Rescission
- G. Reformation
- H. Declaratory Judgments
- I. Discovery
- J. Duty of Good Faith and Fair Dealing
- K. Texas Insurance Code / Texas Administrative Code
- L. Public Policy
- M. Remedies

## 7. Regulatory Issues

Licensing and regulation of:

- A. Insurance Carriers (both admitted and non-admitted, i.e., surplus lines carriers)
- B. Agents
- C. Adjusters

## 8. Recurring Issues in Insurance Coverage

- A. Reservation of Rights
- B. Notice
- C. Duty to Cooperate
- D. Trigger of Coverage
- E. Allocation of Loss
- F. Subrogation
- G. Stowers
- H. Sweetheart Deals / Fully Adversarial Trial / Anti-Assignment Issues
- I. Bad Faith
- J. Choice of Law

## 9. Professional Responsibility

- A. The Texas Disciplinary Rules of Professional Conduct
- B. The Tri-Partite Relationship (*Tilley / Traver*)
- C. Independent Counsel
- D. Unauthorized Practice of Law

## **SUGGESTED STUDY MATERIALS:**

- 1. Right Off the Press Emails
- 2. Texas Journal of Insurance Law
- 3. Papers and Presentations from Advanced Insurance Law Conference
- 4. Pattern Jury Charge
- 5. Main ISO Forms (CGL, Commercial Property, etc.)
- 6. Texas Insurance Code
- 7. Insurance Provisions in Restatement (Second) of Conflicts of Law

## Petition in Support of Insurance Coverage Law Florida Bar Board Certification

As you may know, the Florida Bar RPPTL Insurance and Surety Committee is working on the application packet for the creation of a new board certification in **Insurance Coverage Law**. Your completed and signed Petition will be included in the application packet, so please be sure to fully respond, otherwise, your electronic signature may not count. Our goal is to obtain 250+ signed Petitions. Thank you! PLEASE DON'T USE AUTO-FILL TO COMPLETE THIS PETITION!

\* Indicates required question

- 1. Full Name (as on file with the Florida Bar) \*
- 2. Email Address (as on file with the Florida Bar) \*
- 3. Company / Firm Name \*
- 4. Office Phone (as on file with the Florida Bar) \*
- 5. Cell Phone \*

 I understand that the Insurance and Surety Law Committee of the Florida Bar RPPTL Section proposes to establish board certification standards in <u>Insurance</u> <u>Coverage Law</u> as an amendment to Chapter 6, Rules Regulating The Florida Bar.

Mark only one oval.

Yes, I have read and acknowledge this statement.

7. Board certification recognizes attorneys' special knowledge, skills and proficiency \* in specific areas of law and professionalism and ethics in practice. Board certified attorneys are allowed to identify or advertise themselves as "Florida Bar Board Certified," board certified experts or board-certified specialists, and use the letters B.C.S for Board Certified Specialist. Established as a voluntary program by the Supreme Court of Florida, board certification helps consumers identify legal specialists. Certification is the highest level of evaluation by The Florida Bar of the competency, experience, and professionalism of attorneys in the areas of law approved for certification.

Mark only one oval.

Yes, I read this statement.

\*

- A lawyer who is a member in good standing of The Florida Bar and who meets standards prescribed by the Florida Supreme Court may become board certified. The minimum requirements for certification will be:
  - <u>7</u> years in the practice of law;

• Substantial involvement in the field of Insurance Coverage Law, meaning <u>40</u> <u>percent</u> has been spent in active participation in Insurance Coverage Law during at least <u>5 of the 7 years</u> immediately preceding the date of application;

• Passage of an examination;

• Satisfactory peer review as to competence in the specialty field as well as character, ethics, and reputation for professionalism in the practice of law; and

• Satisfaction of a minimum of <u>50</u> CLE hours in the area of Insurance Coverage Law during the <u>5-year</u> period immediately preceding the date of application.

Mark only one oval.

Yes, I have read this statement.

\*

9. Using the minimum standards above as a guide, board certification in Insurance Coverage Law will encompass the practice of law that involves issues, disputes, and matters among or between insurers, policyholders, or third-party insurance policy beneficiaries concerning the rights, duties, responsibilities, and coverages that arise out of insurance policies. Included subspecialties are first party, thirdparty, bad faith/extracontractual claims, and state regulatory procedures and practices, which would be part of (not separate or in addition to) the Insurance Coverage Law board certification. Knowledge and skills required include the areas of insurance contract formation and cancellation, insurance policy construction, insurance policy interpretation, property insurance, liability insurance, insurance coverage litigation, reinsurance, bad faith/extra contractual litigation, recurring issues in insurance coverage, professional responsibility, and other types of insurance such as life and disability, professional liability, directors and officers, employment practices, commercial crime and fidelity, excess, umbrella, environmental, workers' compensation, builder's risk, and OCIPs/CCIPs. Policyholders include any insureds, including named insureds and additional insureds under any type of insurance policy. Beneficiaries include individuals and entities who may have rights to recover from insurers even though they are not insured under a policy, including those who hold judgments or assignments entitling them to recovery from an insurer by operation of law. Insurers include any type of insurance company including primary and excess insurers, and reinsurers, whether admitted or surplus lines insurers.

## Mark only one oval.

Yes, I have read this statement.

Preliminary recommendations as to the other requirements will include, for \* recertification, a minimum of <u>75</u> CLE hours in the area of Insurance Coverage Law during the <u>5-year</u> period immediately preceding the date of application for recertification.

Mark only one oval.

Yes, I have read this statement.

- 1. Though subject to change, I understand that the current fees for participation are \* set at:
  - \$250 Application
  - \$150 Exam (Laptop testing optional for \$60 surcharge)
  - \$150 Annual Fee (for each year except the 5th year when renewal occurs)
  - \$250 Renewal Fee (every 5th year)

Mark only one oval.

Yes, I have read this statement.

12. PLEASE DON'T USE AUTO-FILL TO COMPLETE THIS PETITION! **{Type your FULL** \* NAME (as on file with the Florida Bar) to acknowledge this statement and as your electronic signature on this on-line Petition form.} I have read all of the information contained in this online Petition form, and <u>by my electronic signature</u> that I have typed out below, I affirm that I endorse the efforts of the Insurance and Surety Law Committee of the Florida Bar RPPTL Section to establish Insurance Coverage Law as an area of board certification. I am now or expect to be qualified by the projected implementation date (late 2024), and it is my intent to apply for certification in this area if approved by the Supreme Court of Florida.

## 13. Florida Bar Number \*

 Select the date on which you are completing and affixing your electronic signature \* to this on-line Petition form.

Example: January 7, 2019

# RP 2



Joshua E. Doyle Executive Director (850) 561-5600 www.FLORIDABAR.org

## REAL PROPERTY, PROBATE AND TRUST LAW SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for Section Committees to seek approval for Section legislative or political activities.
- Legislative or political activity is defined in the Standing Board Policies of The Florida Bar (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."
- Requests for legislative and political activity must be made on this form and submitted to the RPPTL Legislation Committee, with your Committee's white paper.
- Pursuant to SBP 9.50(d), the Section must advise The Florida Bar of proposed legislative or political activity AND circulate the proposal to all Bar divisions, sections and committees that might be interested in the issue.
  - Committees must check with other interested Bar divisions, sections and committees to see if there are comments or issues.
  - If comments have been received from another interested group, the comments must be included.
  - If comments have not yet been received, the proposal may still be submitted to the Legislation Committee, with a list of the interested groups that have been notified and the dates and methods of notification.
  - If a decision needs to be expedited, the proposal must explain the need for an expedited decision and request a specific deadline for a decision by the Bar.
- The Legislation Committee will review the proposal.
  - The proposal will then need to be presented at the Division Round Table.
  - o Then, published as an Information Item to the Executive Council.
  - o Then, published as an Action Item to the Executive Council.

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## **General Information**

Submitted by: (name of Section Committee) <u>Christopher W. Smart, Chair of the Title Insurance</u> and Title Insurance Liaison Committee of the Real Property, Probate and Trust Law Section of the Florida Bar

Contact: (Name of Committee Chair(s), address and phone number <u>Christopher W. Smart 4221</u> West Boy Scout Blvd., Tampa FL 33607 (813) 229-4142

(Name of Sub-committee Chair, if any, address and phone number, if any) <u>Len Prescott, 2121</u> Ponce de Leon Blvd Ste 710, Coral Gables, FL 33134-5222 (305) 900-8427

## Proposed Advocacy

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

## 1. Proposed Wording of Legislative Position for Official Publication

Proposed amendment to §28.223 "Probate records; recordation," governing Clerks of the Circuit Courts, is intended to ensure the availability of necessary information about deceased individuals is 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.

## 2. Political Proposal

#### 3. Reasons For Proposed Advocacy

- a. Per SBP 9.50(a), does the proposal meet all three of the following requirements? *(select one)* <u>X</u> Yes <u>No</u>
  - It is within the group's subject matter jurisdiction as described in the Section's Bylaws;
  - It is beyond the scope of the Section/Bar's permissible legislative or political activity, <u>or</u> within the Section/Bar's permissible scope of legislative or political activity <u>and</u> consistent with an official Section/Bar position on that issue; <u>and</u>
  - 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 Committees, Divisions & Sections/Voluntary Bar Groups

Pursuant to SBP 9.50(d), the Section must provide copies of its proposed legislative or political actions to all Bar committees, divisions, sections and voluntary bar groups that may be interested in the issue. List all Bar committees, divisions, sections and voluntary bar groups that this proposal has been shared with pursuant to this requirement, the date the proposal was shared, and provide all comments received from such groups as part of your submission. The Section may submit its proposal before receiving comments, but only after the proposal has been provided to other bar divisions, sections or committees. A form for sharing proposals is available for this purpose.

The Court Clerks & Comptrollers

## Contacts

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

Steven H. Mezer, Legislative Co-Chair of the RPPTL Section, 1511 N. West Shore Blvd. Ste 1000, Tampa, FL 33607 813-527-4591

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

Peter M. Dunbar and Martha Edenfield, Dean, Mead & Dunbar, PA, 215 South Monroe Street, Ste. 815, Tallahassee, FL 32301, Telephone 850-999-4100

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

Same

### **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 Statutes, 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 required to be recorded in the Official Records, most of which do not list the heirs in an estate. In a testate estate, the will and any codicils are recorded, thereby evidencing the heirs to an estate, but there are situations where the beneficiaries named in the will differ from the heirs or beneficiaries indicated in the petition due, for example, to (1) the death of a beneficiary, (2) an invalid devise of homestead property (3) disclaimers, or (4) a non-existent beneficiary (e.g., an 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 after only 10 years, thereby eliminating ready, public access to the pleadings that may include vital 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 would avoid this problem going forward.

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 be forever preserved in the Official Records, where documents are not destroyed and should be easily and publically accessible to anyone searching title as to the real property.

## II. CURRENT SITUATION

Only the following documents are currently required to be recorded by statute:

- 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

#### 1 | Page

• Orders of guardianship

## III. EFFECT OF PROPOSED CHANGES

The proposed legislation would require the following additional documents to be recorded:

- Orders admitting the will to probate
- Orders determining beneficiaries
- Petitions for administration affecting or describing real property
- Petitions for summary administration affecting or describing real property

## 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 would, on a going forward basis, lower or eliminate the cost of determining heirs after the probate documents have been 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 Court Clerks and Comptrollers.

## 2 | Page

23 28.223 Probate records: recordation.-24 (1) The clerk of the circuit shall record all wills and codicils admitted to probate, petition for 25 commencing proceedings in probate court, orders admitting the will to probate, orders determining 26 beneficiaries, orders revoking the probate of any wills and codicils, letters of administration, petitions 27 and orders affecting or describing real property, final orders, orders of final discharge, and orders of 28 guardianship filed in the clerk's office. No other petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except at on-the written direction of the court. The direction may 29 30 be in the order by incorporation in the order of the words "To be recorded," or words to that effect. Failure to record an order or a judgment shall not affect its validity. 31 32 (2) The clerk shall record all instruments under this section in Official Records and index them in 33 the same manner as prescribed in s. 28.222. (3) All records of a court of this state heretofore exercising probate jurisdiction shall be placed, 34 35 and remain, in the custody of the clerk and shall be the records of the circuit court. The circuit court may exercise judicial cognizance and power over them as it may over its own records. 36 37 (4) Certified transcripts of the whole or any part of probate or administration proceedings in any court of this state or of any foreign state or country may be recorded. If the certified copy is not a part 38 39 of a pending probate proceeding in the court, the person causing it to be recorded shall pay the costs 40 of recordation. 41 (5) The recording of any instrument required or permitted to be recorded under this section in a 42 pending probate or administration proceeding in the county shall be included in the fees prescribed in s. 28.2401. 43 44

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# RP 3



## The Florida Bar 651 East Jefferson Street

Tallahassee, FL 32399-2300

Joshua E. Doyle Executive Director (850) 561-5600 www.FLORIDABAR.org

## VOLUNTARY BAR GROUP LEGISLATIVE OR POLITICAL ACTIVITY WORKSHEET

- This worksheet is for voluntary bar groups (VBGs) to gather and share information before submitting an <u>official request</u> 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.
  - o 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

Rev. 12/05/2020

Page 1 of 3

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

## 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.

#### 2. Political Proposal

3. Reasons For Proposed Advocacy

- a. Is the proposal consistent with Keller v. State Bar of California, 496 US 1 (1990), and The Florida Bar v. Schwarz, 552 So. 2d 1094 (Fla. 1989)? yes
- b. Which goal or objective of the Bar's strategic plan is advanced by the proposal? III. Strive for Equal Access to and Availability of Legal Services.
- c. The proposal: (see SBP 9.50(a) check all that apply)
  - × is within the group's subject matter jurisdiction as described in the group's bylaws;
  - × is beyond the scope of the bar's permissible legislative or political activity, or within the bar's permissible scope of legislative or political activity and consistent with an official bar position on that issue; and
  - does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

d. Additional Information:

## THE FLORIDA BAR

## **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.

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RUSINASS		Section	OT THE	FIORIDA	Har- N	o 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)

Dean, Mead &	Dunbar P.A.			
215 South Mc	nroe Street, Su	te 815	 	
Tallahassee,			 	
850-999-4100				

## Florida Senate/House - 2024

SB/HB ###

By Senator Click or tap here to enter text.

2024###\_\_\_

1	A bill to be entitled
2 3 4	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.
5	
6	Be It Enacted by the Legislature of the State of Florida:
7	
8 9	Section 1. Section 1.101, Florida Statutes, is amended to read:
10 11	(11) The words "registered mail" includes certified mail with return receipt requested electronic signature confirmation.
12 13 14	(20) Return receipt requested shall include any electronic signature confirmation process adopted by the United State Postal Service or national overnight courier.
15 16	Section 2. The amendment made by this act to s.1.101, F.S., is remedial in nature and applies retroactively.
15	Section 2. The amendment made by this act to s.1.101, F.S.,
15 16	Section 2. The amendment made by this act to s.1.101, F.S.,
15 16 17	Section 2. The amendment made by this act to s.1.101, F.S., is remedial in nature and applies retroactively.
15 16 17 18	Section 2. The amendment made by this act to s.1.101, F.S., is remedial in nature and applies retroactively.
15 16 17 18 19	Section 2. The amendment made by this act to s.1.101, F.S., is remedial in nature and applies retroactively.
15 16 17 18 19 20	Section 2. The amendment made by this act to s.1.101, F.S., is remedial in nature and applies retroactively.
15 16 17 18 19 20 21	Section 2. The amendment made by this act to s.1.101, F.S., is remedial in nature and applies retroactively.

Page 1 of 1 CODING: Words stricken are deletions; words <u>underlined</u> are additions.

#### WHITE PAPER

An Act amending ss. 1.01, F.S., to revise the definition of "registered mail."

## I. SUMMARY

The Florida States 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 require 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.

# RP 4

## **Executive Summary**

## **Revisions to Uniform Title Standards Chapter 0.0 Construction of Title Problems**

The Title Issues and Standards Committee is proposing a minor change to Standard 0.0 to make the Standard gender neutral. Thank you to Peggy Williams and Lauren Danilchenko for proposing this change.

**Redlined Version:** 

#### STANDARD 00

### CONSTRUCTION OF TITLE PROBLEMS

## STANDARD: THE ATTORNEY, UPON EXAMINING AN ABSTRACT OF TITLE TO LAND, SHOULD CONSTRUE QUESTIONS IN FAVOR OF MARKETABILITY WHENEVER POSSIBLE.

Problem: What questions and objections should be raised by the examining attorney?

Answer: Objections and requirements should be made only when the irregularities or defects appearing in the abstract of title actually impair the title or may be expected to expose the purchaser or lender to the hazards of adverse claims or litigation. When such a situation arises the attorney should consult, when possible, with the prior examiner and endeavor to resolve the question in favor of marketability. He The Attorney should communicate, when possible, with the prior examining attorney before delivering his an opinion of title to his the client.

Clean Version:

#### STANDARD 00

## CONSTRUCTION OF TITLE PROBLEMS

## STANDARD: THE ATTORNEY, UPON EXAMINING AN ABSTRACT OF TITLE TO LAND, SHOULD CONSTRUE QUESTIONS IN FAVOR OF MARKETABILITY WHENEVER POSSIBLE.

Problem: What questions and objections should be raised by the examining attorney?

Answer: Objections and requirements should be made only when the irregularities or defects appearing in the abstract of title actually impair the title or may be expected to expose the purchaser or lender to the hazards of adverse claims or litigation. When such a situation arises the attorney should consult, when possible, with the prior examiner and endeavor to resolve the question in favor of marketability. The Attorney should communicate, when possible, with the prior examining attorney before delivering an opinion of title to the client.

## PROPOSED AMENDMENTS TO THE BYLAWS OF THE REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF <u>THE FLORIDA BAR</u>

It is resolved that the By-Laws of the Real Property, Probate and Trust Law Section of The Florida Bar, Article IV, V, and Article VII, be amended as follows (additions are <u>underlined</u>; deletions are <del>struck out</del>):

## 1) Article IV, entitled "Officers, Elected Positions, And Executive Committee" Section 4. entitled "Nominating Procedure":

The long-range planning committee consists of all past (a) section chairs who are members of the executive council, is chaired by the chair-elect, and submits nominees to the section for election to the offices of chair-elect, secretary, real property law division director, probate and trust law division director, treasurer, at-large members director, and the positions of representatives for out-ofstate members and at-large members. If the office of chair-elect becomes vacant during the year, the nominations submitted by the long-range planning committee for the following year must include a nominee for the office of section chair. The chair-elect long-range planning committee must notify the members of the section of the names of the nominees no later than 60 45 days prior to the section's annual meeting ("election meeting"). In submitting nominations for at-large members, the long-range planning committee considers recommendations from the at-large members' director and the executive committee.

(b) No nominations for any elected office or position other than those made by the long-range planning committee will be permitted, except that nominations may be made by a written nominating petition signed by 25 or more active section members and submitted to the section chair not less than 30 days prior to the election meeting. If more than one person is nominated for any elected office or position, the section chair, assisted by any special committees appointed by the section chair, will determine the procedures to be followed for that election.

(c) Each nominee will be permitted to prepare a statement of no more than 500 words, to be reproduced and distributed by the section to its members, either as an article in the section's publication, Action Line, or separately. Any statement will also be distributed at the election meeting.

\* \* \*

## 2) Article IV, entitled "Officers, Elected Positions, And Executive Committee" Section 5. entitled "Election and Term of Offices and Positions":

(a) The offices of chair-elect, secretary, real property law division director, probate and trust law division director, treasurer, at-large members director, and the positions of representatives for out-of-state members and at-large membersare elected by majority vote of the active section members in attendance and voting at the election meeting held prior to July 1 of each year. Voting is by written, secret ballot prepared in advance, except when a governmental state of emergency has been declared for that meeting's location or declared for any location that significantly impacts a substantial number of section members' ability to attend the meeting in person, or if the meeting's venue is no longer reasonably available.

(b) The nominees elected serve for a period of 1 year, beginning on July 1. The chair-elect automatically becomes section chair on expiration of the term as chair-elect or on the death, resignation, or removal of the section chair.

#### \* \* \*

## 3) Article V, entitled "Executive Council" Section 4. entitled "Attendance":

Section 4. Attendance. Regular in-person attendance by executive council members at executive council meetings is requisite to the performance of their duties and responsibilities. proper Accordingly, if any past section chair is absent from 10 consecutive in-state executive council meetings, or if any other member of the executive council fails to attend at least two in-state executive council meetings in-person is absent from 3 consecutive in-state executive council meetings in any membership year, the member is deemed to have resigned from the executive council, and any section office or position held by that person is deemed vacant. Virtual attendance, if otherwise permitted by the section chair at an in-state executive council meeting, will not satisfy the requirements of inperson attendance. The resigned member is not be eligible for election to or membership on the executive council for the next succeeding membership year unless: (i) the executive committee, on a showing of good cause for the absences, waives the attendance requirement for the membership year or period involved; and (ii) the waiver is announced at a formal meeting of the executive council and duly recorded in the minutes of the meeting. Any vacancy created by the absence of a member as provided here is filled as provided in these bylaws.

\* \* \*

## 4) Article VII, entitled "Meetings": Section 1. entitled "Annual/Election Meeting of the Section":

Section 1. Annual/Election Meeting of the Section. The section chair designates the time, date and location in Florida of the annual meeting of the section at which the elections provided by Article IV will occur before July 1 each year. The meeting will be in-person unless the chair determines that due to an unforeseen emergency the meeting location is not reasonably available or there is anticipated to be an unreasonable risk to the safety of the members if physical attendance is required. In the event virtual attendance is permitted, the chair shall disclose to the Section members, in writing, the justification for permitting virtual attendance at the meeting. The chair shall also issue protocols permitting members to attend and vote electronically. At the election meeting, a majority of the chair, secretary, and chair-elect determine the number of section members in attendance entitled to vote. Voting by proxy is not permitted. Any challenge to voting will be determined by the Executive Committee. If no nominee receives a majority vote for an office or position, additional balloting will take place between the 2 nominees receiving the greatest number of votes until the required majority is obtained. Results of the election will be immediately announced by the section chair.

\* \* \*

## 5) Article VII, entitled "Meetings": Section 3. entitled "Quorum and Voting by the Section":

Section 3. Quorum and Voting by the Section. The active section members in physical attendance at any meeting of the section constitutes a quorum for the transaction of business and a majority vote of those in attendance and voting is binding. Voting by proxy is not permitted. However, if a governmental state of emergency has been declared for the section meeting's location or declared for any location that significantly impacts a substantial number of section members' ability to attend the meeting in person, or if the meeting's venue is no longer reasonably available, then the chair in the chairs' full and

complete discretion may issue protocols permitting section members to be present and vote electronically.

\* \* \*

## 6) Article VII, entitled "Meetings": Section 4. entitled "Executive Council Meetings":

**Section 4. Executive Council Meetings.** There shall be no fewer than 3 in-state meetings of the executive council each year.

(a) The executive council may act or transact business authorized by these bylaws, without meeting, by written or electronic approval of the majority of its members.

(b) The section chair must give at least 15 days- notice to all executive council members to call executive council meetings. The executive council meetings will be in-person unless the section chair, in the chair's full and complete discretion, specifies in the notice that virtual attendance and voting will be permitted. If the chair permits virtual attendance and voting at an executive council meeting, the chair shall disclose the approximate technology cost associated with such virtual attendance and that estimate shall be included in the minutes of the meeting.

(c) Those present at a meeting of the executive council duly called will constitute a quorum and a majority vote of those present and voting is binding, unless a greater majority is required by these bylaws for a particular matter. Voting by proxy is not permitted.

(d) However, if a governmental state of emergency has been declared for an executive council meeting location or declared for any location that significantly impacts a substantial number of executive council members' ability to attend the meeting in person, or if the meeting's venue is no longer reasonably available, then the chair in the chairs' full and complete discretion may issue protocols permitting executive council members to be present and vote electronically.

## 7) Article VII, entitled "Meetings": Section 5. entitled "Executive Committee Meetings":

**Section 5. Executive Committee Meetings**. The executive committee meets as directed by the section chair, and holds an organizational meeting prior to each membership year at a time, date, and place selected by the section chair. The section chair fixes

the date and location of each meeting and must give written, electronic, or oral notice of its date and location to each executive committee member at least 48 hours before the meeting, except that notice may be truncated in the case of exigent circumstances<del>at least 7 days prior to the meeting</del>. A majority of the executive committee may exercise its powers unless a greater majority is required by these bylaws for a particular matter. The executive committee may take action by mail, e-mail, telephone or other means without a formal meeting. Voting by proxy will is not be permitted.

ACTIVE:18790483.1

## IN THE SUPREME COURT OF FLORIDA

CASE NO.:SC23-

## IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE—CIVIL WORKGROUP REFERRAL TO THE CIVIL PROCEDURE RULES COMMITTEE (RULES 1.200, 1.201, 1.280, 1.440, AND 1.460)

## FAST-TRACK REPORT OF THE CIVIL PROCEDURE RULES COMMITTEE

Landis V. Curry III, 2022–2023 Chair of the Civil Procedure Rules Committee, and Joshua E. Doyle, Executive Director of The Florida Bar, file this report under Florida Rule of General Practice and Judicial Administration 2.140(b) and in response to this Court's January 12, 2023, referral, attached as Appendix G. The Committee recommends that the Court adopt the proposed amendments to rules 1.200, 1.201, 1.280, 1.440, and 1.460 of the Florida Rules of Civil Procedure that are set forth in the attached "Track A." *See* App. B. The Committee has also provided an alternative track of proposed amendments, which are set forth in the attached "Track B." *See* App. D. The Committee does not recommend that the Court adopt Track B, but nevertheless provides it as an alternative approach to implementing case management requirements into the civil rules. The proposals have not been published for comment.

## BACKGROUND

This Court asked the Committee to propose amendments to Florida Rules of Civil Procedure 1.200 (Pretrial Procedure), 1.201 (Complex Litigation), 1.280 (General Provisions Governing Discovery), 1.440 (Setting Action for Trial), and 1.460 (Motions to Continue Trial). *See* App. G. It also asked the Committee to review the proposals submitted by the Workgroup on Improved Resolution of Civil Cases and to make the necessary refinements. It gave the Committee specific guidance regarding the proposed amendments and asked that the Committee file its report by Monday, July 3, 2023. Chair Curry appointed Maegen Peek Luka to chair the Committee's response to the Court's referral. The Committee formed the necessary subcommittees and invited several judges and prominent attorneys to participate as ad hoc members. The Committee thanks the following individuals for the assistance and participation:

- Hon. Lisa Ann Allen (13th Judicial Circuit);
- Bruce Berman (Carlton Fields);
- Hon. Kimberly Sharpe Byrd (6th Judicial Circuit);
- Hon. Robert M. Dees (4th Judicial Circuit);
- Steven Joseph Brotman (Locke Lord);
- Hon. Hunter Wyman Carroll (12th Judicial Circuit)
- Gregory Carter Harrell (Clerk of the Court and Comptroller for Marion County);
- Hon. Paul L. Huey (13th Judicial Circuit);
- Hon. Michael McHugh (20th Judicial Circuit Chief Judge);
- Charles Richard Allen Morse (Jones Day)
- Hon. Mark W. Moseley (8th Judicial Circuit)
- Hon. Lisa Munyon (9th Judicial Circuit)
- Hon. Frances Perrone (13th Judicial Circuit)
- Hon. Jessica Recksiedler (18th Judicial Circuit Chief Judge);
- Allison M. Stevenson (Hill Ward Henderson);
- Hon. Jonathan E. Sjostrom (2nd Judicial Circuit Chief Judge);
- Scott Owen Stigall (Gunster);
- Hon. Miriam Valkenburg (13th Judicial Circuit); and
- Peter D. Webster (Carlton Fields).

The subcommittees began meeting virtually on a weekly basis to study the issues and develop proposed amendments. The minutes of the subcommittee meetings are available as Appendices L-O.

The subcommittee tasked with amending rules 1.200 and 1.201 realized that there were two substantially different views regarding how the rules should be amended to provide for differentiated case management. Several subcommittee members

(including ad hoc members) believed that the Workgroup's proposal for rule 1.200 is overly complicated and inflexible and requires too much judicial involvement at the outset of all general cases. Those subcommittee members believed that a better approach would be to implement into the rules the civil case management requirements that initially went into effect in *In re Comprehensive COVID-19 Emergency Measures for Florida Trial Courts*, Florida Administrative Order No. AOSC20-23, Amendment 10 (March 9, 2021).<sup>1</sup> Among the reasons given in support of this approach is that Florida's 20 judicial circuits and 67 county clerks of the courts have already successfully adopted those requirements, which are based on some—but not all—of the fundamental elements of the Workgroup's proposals regarding case management.

Chair Curry and Ms. Peek Luka discussed the issue with Chief Justice Muñiz and proposed that the Committee provide the Court with two options for amending the rules. The first option (Track A) would essentially implement into the rules the existing case management requirements established by the Court's administrative orders. The second option (Track B) would refine the approach proposed by the Workgroup. Chief Justice Muñiz approved the Committee's proposal to provide both options.

The subcommittees began developing proposals for each track and provided working drafts to the Committee in late April. On April 27, 2023, the Committee met to discuss the proposals in concept. After receiving input from Committee members and ad hoc members, the subcommittees continued their work to develop the tracks.

The Committee met again on June 1 and 5, 2023, to finalize the proposals and discuss which track (if any) the Committee members favored. Chair Curry informed the Committee that both tracks propose identical amendments for rules 1.440 and 1.460 and

<sup>&</sup>lt;sup>1</sup>The requirements are now found in *In re COVID-19 Health and Safety Protocols and Emergency Operational Measures for Florida Appellate and Trial Courts*, Florida Administrative Order No. AOSC21-17, Amendment 3, at 18-23 (Fla. Jan. 8, 2022) (attached as App. H).

propose substantially similar amendments for 1.280. He noted that the tracks differ significantly in their approaches to case management under rules 1.200 and 1.201. In short, Track A requires the chief judge of each judicial circuit to enter an administrative order addressing certain case management requirements in general and streamlined cases, while Track B requires the parties in each general case to meet and confer and prepare a proposed case management order, which must then be submitted to the court for review and approval.

On June 5, 2023, 15 committee members voted in favor of recommending Track A to the Court. One member voted in favor of recommending Track B. And 1 member voted to recommend not amending the rules at all. That member said that, if pressed, he would favor Track A. Several members who either could not attend or had to leave the meeting early also indicated a preference for Track A. And several ad hoc (nonvoting) members also spoke in support of Track A.

The Board of Governors voted to recommend acceptance of the proposed amendments with 1 member of the Board of Governors recommending amendment of the Committee's proposals. Appendix A details the vote count. The proposed amendments have not been published for comment because publishing is not required for this submission under Florida Rules of General Practice and Judicial Administration 2.140(f)(1) and 2.140(e).

On June 22, 2023, at the Committee's Annual Meeting, the Committee discussed this report and certain minority positions that are addressed below.

#### **DISCUSSION OF TRACK A**

Appendix B is the Track A proposal in legislative format against the current civil rules. Appendix D is the Track A proposal in legislative format against the Workgroup's final proposals to these rules. Appendix C is the 2-column chart against the Workgroup's final proposals. Track A proposes amendments to rule 1.200 that are based on this Court's existing case management requirements, which went into effect during the COVID pandemic. Those requirements incorporate several of the fundamental elements of the Workgroup's proposal for differentiated case management, including assignment of a case to one of three specific tracks and the issuance of a case management order setting a timetable for pretrial proceedings and a proposed trial date.

Track A also proposes amendments to rule 1.280 requiring parties in civil cases to make certain initial discovery disclosures and to timely supplement any discovery that is made in the case. Track A eliminates the "at issue" requirement of rule 1.440 and narrows the grounds on which cases can be continued under rule 1.460.

Below, each rule is addressed individually.

**Rule 1.200 under Track A:** Track A proposes substantial revisions to rule 1.200. Much of the language in the proposed amendments comes directly from AOSC21-17, which this Court issued to require case management during the COVID pandemic. *See* App. H at 18-23. The Track A subcommittee wanted to respect the work done by the judicial circuits and clerks in responding to this Court's administrative orders. The subcommittee also wanted to avoid imposing a one-size-fits-all system for case management on all 20 judicial circuits and 67 counties. And given the Florida judiciary's success in managing cases during and after the pandemic, the subcommittee believed that the amendment should implement the flexible approach to case management created by this Court's administrative orders.

The exemptions to case management under Track A and B are the same and are based on the exemptions proposed by the Workgroup. Because this Court's referral letter instructed the Committee to also exempt matters involving trusts, the Committee included actions or proceedings initiated under chapter 736 of the Florida Statutes (titled "Florida Trust Code"). The Committee consulted with The Florida Bar's Florida Probate Rules Committee who reached out to the Real Property Probate and Trust Law Section—both the leadership of the Florida Probate Rules Committee and the Real Property Probate and Trust Law Section are in favor of the addition of that exemption. And after consulting with The Florida Bar's Business Law Section, the Committee also added an exemption for all proceedings under chapter 56 of the Florida Statutes (titled "Final Process").

Track A continues the current practice of requiring courts to assign each civil case to 1 of 3 case management tracks (Complex, Streamlined, or General). Cases assigned complex must proceed under rule 1.201. Cases assigned streamlined or general must proceed under rule 1.200.

Track A's rule 1.200 requires courts in streamlined and general cases to "issue a case management order that specifies the projected trial period based on the case track assignment or the actual trial period, consistent with administrative orders entered by the chief judge of the circuit." Both this Court's administrative orders and the Workgroup's revised proposal require case management orders that specify a projected or proposed trial date. The Committee decided to require either a projected or actual trial period because some circuits utilize projected trial periods at the outset, while other circuits require the parties to attend a case management conference where an initial case management order sets an actual trial period. The Committee wanted the rule to be sufficiently flexible so that different circuits and counties can continue to manage cases in the way that works best for them while meeting certain uniform requirements.<sup>2</sup>

A minority of subcommittee members objected to the continued use of "projected trial periods," arguing that the continued use of an uncertain trial date in case management orders will simply add "a largely unnecessary procedural step somewhere after the start of the case and well before a scheduled trial." *See* 

<sup>&</sup>lt;sup>2</sup> This Court recently recognized that it is in the public's best interest for the circuits to have flexibility in addressing issues that affect case management. *In re: Civil Case Management*, Fla. Admin. Order No. AOSC23-29, at 2 (Fla. June 14, 2023). *See* App. K.

App. I. The majority voted to retain the "projected" and "actual" trial period language for several reasons, including the following:

- This Court's referral letter specifically instructed the Committee to "incorporate the fundamental elements of the Workgroup's revised proposal for differentiated case management" including "the issuance of a case management order setting a timetable for pretrial proceedings and a *proposed* trial date." (Emphasis added.)
- The Track A subcommittee began with the goal of implementing the case management procedures established by this Court during the Coronavirus Disease 2019 pandemic. Those case management procedures did not include specifying a specific trial period at the outset of the case.
- Requiring the CMO to include a specific trial period could force the judicial circuits to substantially revise their current practices and administrative orders. The Track A subcommittee's goal was to implement the existing case management system; not substantially alter it or cause extensive additional work for the circuits or clerks.
- Setting a trial period at the outset would force parties to seek continuances in nearly every case, which could create significant problems given the restrictions imposed under the proposed continuance rule.
- Setting large numbers of cases for the same trial period creates the impression that the cases are not really set for trial even though the CMO says that they are. Thus, the desired effects of pushing cases to resolution may not materialize.

Track A allows the parties to file a motion if they seek to change the track assignment or amend the deadlines set forth in the case management order. Alternatively, the parties can address changes during a case management conference. Track A requires parties to notify the court if they are unable to meet case management deadlines for any reason, including due to the unavailability of hearing time. It also requires that an order resetting the trial period when a case is not reached during the trial period for which it was set must be set as soon as practicable and the order must indicate what further activity will or will not be permitted.

Track A's rule 1.200(e)–(f) incorporates the fundamental elements of the Workgroup's revised proposal regarding case management conferences and the pretrial conference.

**Rule 1.201 under Track A:** Track A does not propose significant changes to rule 1.201. The Track A subcommittee believes that rule 1.201 is working effectively as it is and that there were very few necessary corresponding amendments.

**Rule 1.280 under Track A:** Proposed rule 1.280 is largely identical under both Track A and Track B except that Track A requires a discovery conference of the parties similar to Federal Rule 26(f). The proposed rule includes substantial revisions to model certain provisions of Federal Rule 26.

The proposed amendments to rule 1.280(a) require parties in civil cases to make certain initial discovery disclosures without awaiting a discovery request. The proposal is modeled after Federal Rule of Civil Procedure 26(a), but also adopts certain changes proposed by the Workgroup. The Committee rejected the Workgroup's proposal that initial disclosures also include the identity of experts and answers to all questions on any applicable standard interrogatory forms. Those requirements are not in in Federal Rule 26(a), and a majority of the Committee believed that those additions were unnecessary or inappropriate for initial disclosures. A small minority of the Committee would have included those additional requirements.

The proposal also requires parties to timely supplement discovery responses. The proposal is modeled after Federal Rule 26(e)(1).

Because Track A does not require a meeting of the parties under rule 1.200 for case management, Track A proposes requiring a conference of the parties under rule 1.280 so that they can discuss discovery and initial disclosures. Although the Track A proposal is based in part on Federal Rule 26(f), it does not require the parties to submit a "discovery plan" as is required under the Federal Rule. A majority of the Committee felt that requiring the discovery plan was an unnecessary burden on the parties. A minority of the Committee would have included the filing of a discovery plan similar to that required under Federal Rule 26(f)(3). *See* App. J. At the June 22, 2023, Committee meeting, 8 of the 42 Committee members indicated that they favored requiring the discovery plan.

The Committee also decided to propose adopting a requirement similar to Federal Rule 26(g), which requires attorneys and self-represented litigants to sign disclosures, requests, responses, and objections. By signing, the attorney or party certifies certain information about the disclosures, requests, responses, or objections. The Committee concluded that the proposed language would be helpful and would not conflict with Florida Rule of General Practice and Judicial Administration 2.515 (titled "Signature and Certificates of Attorneys and Parties"). A minority of the Committee would have adopted all of Federal Rule 26(g), including the provision requiring sanctions if a certification violates the rule without substantial justification. A majority of the Committee concluded that the issue of sanctions is best left to the sound discretion of the courts.

An initial version of Track A's 1.280 also included proposed amendments modeled after Federal Rule 26(d), which preclude parties from seeking discovery before the parties have conferred. The Committee decided to remove those proposals because they would unnecessarily restrict and delay discovery. A minority of the Committee (9 of the 42 members at the June 22, 2023, Committee meeting) would have retained that proposed language based on Federal Rule 26(d). *See* App. J. A minority of the Committee (9 of the 42 members at the June 22, 2023, Committee meeting) also favored adopting the proportionality language included in Federal Rule 26(b)(1). *See* App. J. The majority decided not to include proportionality in rule 1.280. Among the reasons given were that the Workgroup did not recommend adding proportionality, this Court's referral letter did not request it, and proportionality is already addressed in other parts of the civil rules.

**Rule 1.440 under Track A:** Proposed rule 1.440 is identical under both Track A and Track B. Pursuant to this Court's referral letter, the Committee eliminated the "at issue" rule. However, the Committee's proposed change dramatically simplifies the Workgroup's proposal by making it clear, in section (a), that the "failure of the pleadings to be closed will not preclude the court from setting a case for trial." The Committee notes that current rule 1.140(c) (rule 1.140 is entitled "Defenses:") uses similar language about the pleadings being "closed."

The Committee's proposal allows a party to serve a motion (as opposed to a notice) if the party wants to set a case for trial—either because the case is not subject to case management and has no projected trial date under a case management order or because the party wants a trial date earlier than the projected date in the case management order. The motion must include specific details that will aid the court in determining when to set the trial date. The Committee's proposal retains the due process requirement that no case can be set for trial less than 30 days from the date of the trial order, unless all parties agree otherwise.

**Rule 1.460 under Track A:** Proposed rule 1.460 is identical under both Track A and Track B. Pursuant to this Court's referral letter, the Committee's proposed revisions state that lack of diligent preparation is not a basis for a continuance, that continuances should rarely be granted and only on good cause shown, and that successive continuances are highly disfavored. The Committee also created a provision that, if a continuance is granted based on dilatory conduct of an attorney or party, the court may issue a sanction to the attorney, the party, or both. The Committee eliminated subdivision (a) of the Workgroup's proposal, which called for detailed written motions to continue dates in a case management order, because the Committee agreed it was confusing and unnecessary. The Committee kept the Workgroup's requirement that a motion for continuance be in writing and signed by the party requesting it; however, the Committee created a "safety valve" that the requirement could be waived where good cause is shown. The Committee created a requirement of a conference with opposing counsel or unrepresented parties regarding the need for a continuance and the requirement of cooperation in setting the conference. The Committee then detailed 4 requirements for the content of the motion to continue. Those requirements are based on, but not identical to, the Workgroup's proposed suggestions.

The Committee eliminated the Workgroup's list of items that would not constitute a permissible basis for a continuance as well as a Workgroup subdivision describing circumstances where the complaint is amended close to trial. The Committee felt both were unnecessary and likely to work more mischief than resolve problems.

The Committee kept the Workgroup's requirement that judges should use all methods available to help avoid a continuance. When ruling on a continuance motion, the court must state, either on the record or in a written order, the basis for its ruling and the order must either set a new trial date or set a case management conference where a date will be selected. The Committee also created a requirement that, when a continuance motion is granted, the new trial date should be decided in collaboration with the parties rather than unilaterally set by the court and set for the earliest date possible. Finally, the Committee included a requirement that an order granting a continuance must reflect what further activity in the case will or will not be permitted.

#### **DISCUSSION OF TRACK B**

Appendix E is the Track B proposal in legislative format against the current civil rules. Appendix F is the Track B proposal in legislative format against the Workgroup's final proposals to these rules.

Track B is a refinement of the Workgroup's proposal for differentiated case management. It requires the assignment of a case to 1 of 3 specific tracks and the issuance of a case management order setting a timetable for pretrial proceedings and a proposed trial date. It also requires the parties in all general cases to meet and confer and then submit to the court a proposed case management order for review and approval.

Like Track A, Track B also proposes amendments to rule 1.280 requiring parties in civil cases to make certain initial discovery disclosures and to timely supplement any discovery that is made in the case. It also eliminates the "at issue" requirement of rule 1.440, and narrows the grounds on which cases can be continued under rule 1.460. Again, Track B's proposals for rules 1.440 and 1.460 are identical to Track A's proposals.

Rule 1.200 under Track B: Track B proposes substantial revisions to rule 1.200. The most significant difference between Track A and Track B is that Track B requires much more detail than Track A. While both tracks require the court to assign each case to a track by initial case management order, unlike Track A, in jurisdictions where there is not an automatic case management order, Track B requires the parties to meet and confer and create a proposed case management order. (Jurisdictions that issue case management orders automatically can continue to do so as long as the case management order contains all of the deadlines specified in the rule.) Where Track A contain 7 specific deadlines the parties must include in the proposed case management order, Track B contains 25 specific deadlines. Track B has a very detailed subdivision regarding the process for amending a deadline in the case management order and that requires specific information be included in a motion to amend. (The requirements are similar to those the Workgroup included in subdivision 1.460(a); the Committee essentially relocated the concept of the Workgroup's 1.460(a) to Track B's rule 1.200.)

Like Track A, Track B requires parties to notify the court if they are unable to meet case management deadlines for any reason, including due to the unavailability of hearing time. It also requires that an order resetting the trial period when a case is not reached during the trial period for which it was set must be set as soon as practicable and the order must indicate what further activity will or will not be permitted.

Track B deletes the Workgroup's subdivision titled "Cases Pending as of the Effective Date of this Rule" (because the subdivision can be effectuated through an administrative order).

As it relates to case management conferences, Track B kept the Workgroup's concept that counsel should come to case management conferences with the calendars for all attorneys in the case and be prepared to schedule events. Track B expanded/clarified the Workgroup's proposal that a court can address any pending motion during a case management conference. Track B requires the parties to provide to the court a list of pending motions and requires the court to notify the parties of any motions the court would like to hear during the case management conference (to ensure due process). The Committee specifically excluded summary judgment and evidentiary hearings as matters that could be heard during a case management conference.

Track B kept the Workgroup's concept of a pre-trial conference, but the Track B proposal calls it a "Trial Conference" and states that it can take place no more than 60 days before trial. Track B also creates a "Trial Statement" requirement. This is a document jointly filed by the parties at a deadline set by the court, which requires what the Track B subcommittee agrees most courts require in a pretrial statement: a statement of the issues, a statement of disputed facts, witness lists, and exhibit lists. The Track B proposal also requires the parties to list all pending motions and to indicate all objections to deposition designations.

Track B empowers judges to issue sanctions for failure to comply with the trial statement requirements, including but not limited to striking witnesses or exhibits not properly listed. The "trial statement" idea was born out of the observation of judges on the subcommittee that cases tend to resolve when the parties are forced to finalize their cases with an exercise similar to the "trial statement" requirements.

**Rule 1.201 under Track B:** Track B largely adopts the Workgroup's proposed changes to rule 1.201, with a few minor revisions to keep rule 1.201 consistent with the changes proposed in rule 1.200.

**Rule 1.280 under Track B:** As noted above, Track B's proposal regarding this rule is identical to Track A's proposal, except for Track A's requirement of a discovery meeting between the parties. Under Track B, the parties are required to address discovery issues as part of the case management meeting under rule 1.200. Thus, there is no need to include a separate discovery meeting in Track B's rule 1.280.

**Rules 1.440 and 1.460 under Track B:** Track B proposes the same amendments that are identified in Track A. The discussion of these rules under Track A applies equally here.

#### CONCLUSION

The Committee recommends that this Court adopt the proposed amendments to Florida Rules of Civil Procedure 1.200, 1.201, 1.280, 1.440, and 1.460 detailed in Track A. The Committee thanks the Court for the opportunity to assist with these important issues. To further assist this Court with any questions it may have, the Committee will separately request oral argument.

Respectfully submitted July 3, 2023.

<u>/s/ Landis V. Curry III</u> Landis V. Curry III 2022–2023 Chair, Civil Procedure Rules Committee 511 W. Bay Street, Suite 450 Tampa, FL 33606-2770 813/609-2993 lance@pkblawfirm.com Florida Bar No. 469246 <u>/s/ Joshua E. Doyle</u> Joshua E. Doyle Executive Director The Florida Bar 651 E. Jefferson Street Tallahassee, FL 32399-6584 850/561-5600 jdoyle@floridabar.org Florida Bar No. 25902

#### **CERTIFICATE OF COMPLIANCE**

I certify that these rules were read against *Thomson Reuters' Florida Rules of Court—State* (2023 Edition). I certify that this report was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.045 and the requirements within *Guidelines for Rules Submissions*, AOSC22-78 (Fla. 2022).

> <u>/s/Heather Savage Telfer</u> Heather Savage Telfer Senior Attorney, Rules Program Civil Procedure Rules Committee The Florida Bar 651 East Jefferson Street Tallahassee, FL 32399-2300 850/561-5833 htelfer@floridabar.org Florida Bar No. 139149

## Supreme Court of Florida

No. SC2023-0884

#### IN RE: CODE FOR RESOLVING PROFESSIONALISM REFERRALS AND AMENDMENTS TO RULE REGULATING THE FLORIDA BAR 6-10.3.

July 6, 2023

PER CURIAM.

In May 2021, The Florida Bar created the Special Committee for the Review of Professionalism in Florida. The Special Committee's charge was to consider the state of professionalism among Florida lawyers and to develop recommendations for this Court and The Florida Bar on: the teaching of professionalism throughout a lawyer's career; the content of Florida's professionalism standards; and the enforcement of those standards. The Court is grateful for the Special Committee's hard work and its thorough and thoughtful report and recommendations.

A key focus of the Special Committee's study was the Code for Resolving Professionalism Complaints, which this Court adopted in

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2013 and later amended twice. See In re Code for Resolving Professionalism Complaints, 116 So. 3d 280 (Fla. 2013); In re Amend. Code for Resolving Professionalism Complaints, 156 So. 3d 1034 (Fla. 2015); In re Amends. Code for Resolving Professionalism Complaints, 174 So. 3d 995 (Fla. 2015). The Special Committee has proposed that the Court replace the 2013 Code with a new code, the Code for Resolving Professionalism Referrals. The Special Committee also asks the Court to amend Florida's Professionalism Expectations and Rule Regulating The Florida Bar 6-10.3 (Minimum Continuing Legal Education Standards). We grant the Special Committee's requests with modifications.<sup>1</sup>

First, the Court replaces the 2013 Code with the Code for Resolving Professionalism Referrals. This new code will clarify and enhance the important role of local professionalism panels, entities that are independent of The Florida Bar and established in each circuit for the purpose of informally resolving referrals of claimed

<sup>1.</sup> We have jurisdiction. Art. V, § 15, Fla. Const. ("The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.").

unprofessional conduct by lawyers practicing in that circuit. Importantly, the code we adopt today clarifies the distinction between the informal local professionalism panel process and the formal grievance process for investigating and adjudicating possible violations of the Florida Rules of Professional Conduct. The Court agrees with the Special Committee that the informal, peer-to-peer mentoring approach offered by local professionalism panels can materially improve professionalism among Florida lawyers.

Second, we amend the Professionalism Expectations as recommended by the Special Committee. The Professionalism Expectations are one of four sources that make up the standards of professionalism in Florida; the other sources are the Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, and the Rules Regulating The Florida Bar. The revised Professionalism Expectations that we adopt today emphasize that Florida's professionalism standards apply to all forms of communication, including online communication, and to both in-person and remote (video or audio) interactions with others.

Third, we amend Bar Rule 6-10.3(b) (Minimum Hourly Continuing Legal Education Requirements). The existing CLE rule

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generally requires Bar members to complete a minimum of 33 credit hours of approved continuing legal education activity every three years. The existing rule further mandates that at least one of the 33 hours consists of an approved professionalism program. Adopting in part a recommendation of the Special Committee, today we amend the CLE rule to require Bar members to complete, during each reporting cycle, a two-hour legal professionalism course produced by The Florida Bar and approved by this Court. This twohour course, which the Bar will offer free of charge, replaces the existing one-hour professionalism program requirement.

Finally, the Court on its own motion today makes two additional changes to the existing CLE rule. First, the overall CLE requirement is reduced to 30 hours per reporting cycle. This change restores the required hourly total in place when the Court first imposed mandatory CLE in 1987, and it aligns the total CLE hours requirement for lawyers with the corresponding continuing education requirement for judges. *See Fla. Bar re Amend. to R. Regulating Fla. Bar (Continuing Legal Educ.)*, 510 So. 2d 585 (Fla. 1987); Fla. R. Gen. Prac. & Jud. Admin. 2.320(b)(2).

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Second, the current CLE rule says in part that "[a]t least 5 of the 33 credit hours must be in approved legal ethics, professionalism, bias elimination, substance abuse, or mental health and wellness programs." Today the Court amends the rule by removing "bias elimination" from that list. The Court believes that non-discrimination principles and civility can and should be addressed in the context of legal ethics and professionalism. Courses in "bias elimination" that meet The Florida Bar's general course approval requirements will continue to count toward the fulfillment of Bar members' overall 30-hour CLE requirement; but such courses will no longer count toward fulfillment of the five-hour sub-requirement specified in the rule.

We hereby adopt the Code for Resolving Professionalism Referrals as reflected in Appendix A, which replaces the 2013 Code for Resolving Professionalism Complaints. We also hereby amend the Professionalism Expectations as reflected in Appendix B and Rule Regulating The Florida Bar 6-10.3 as reflected in Appendix C. In Appendices B and C, new language is indicated by underscoring, while deletions are indicated by struck-through type.

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The Code for Resolving Professionalism Referrals and the amendments to the Professionalism Expectations are effective immediately. The amendments to Bar Rule 6-10.3 shall be effective January 8, 2024. Any "bias elimination" courses taken prior to the effective date of the amendments to Bar Rule 6-10.3 will count toward a member's fulfillment of the five-hour sub-requirement for the member's applicable reporting cycle. For any member who has less than three months remaining in his or her CLE reporting cycle on the effective date of the Bar Rule 6-10.3 amendments, the requirement to take the two-hour Bar-produced course on professionalism will not apply until the member's subsequent reporting cycle.

Because the amendments were not published for comment previously, interested persons shall have 75 days from the date of this opinion in which to file comments with the Court.<sup>2</sup>

<sup>2.</sup> All comments must be filed with the Court on or before September 19, 2023, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, and FRANCIS, JJ., concur. SASSO, J., did not participate.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Code for Resolving Professionalism Referrals and Florida Rules Regulating The Florida Bar

Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927.

#### Appendix A

#### The Code for Resolving Professionalism Referrals

**Purpose:** This code describes an informal peer-to-peer mentoring process for addressing instances of unprofessional conduct separate and apart from instances of misconduct that require the formal grievance process. This process does not replace the Florida Rules of Professional Conduct or the formal disciplinary process for a violation of those rules as set out in Chapter 3 of the Rules Regulating The Florida Bar. Rather, this code establishes local professionalism panels (LPPs) in each judicial circuit that will receive, screen, and act on referrals of unprofessional conduct; and address those referrals informally, if possible; or refer those referrals to The Florida Bar for investigation.

## 1.0 Unprofessional Conduct and the Standards of Professionalism

**1.1 Definition of Unprofessional Conduct.** Members of The Florida Bar must not engage in unprofessional conduct. "Unprofessional Conduct" means a violation of the Standards of Professionalism. The Standards of Professionalism are found in the Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, the Professionalism Expectations, and the Rules Regulating The Florida Bar.

**1.2 Referrals to The Florida Bar.** Minor or isolated instances of unprofessional conduct may be addressed through the informal process described in this code. However, when unprofessional conduct is substantial or repeated, that conduct may be referred to The Florida Bar for a disciplinary investigation into whether the formal disciplinary process should be initiated. In particular, Rule 4-8.4(d) of the Rules Regulating the Florida Bar has been the basis for imposing discipline in these Instances. *See e.g., The Florida Bar v. Norkin,* 132 So. 3d 77 (Fla. 2013) (holding that lawyer's unprofessional behavior at numerous hearings violated Rule Reg. Fla. Bar 4- 3.5(c) and inappropriate emails and outbursts violated Rule Reg. Fla. Bar 4-8.4(d); *The Florida Bar v. Ratiner,* 46 So. 3d 35

(Fla. 2010) (holding that lawyer's unprofessional deposition conduct violated Rules Reg. Fla. Bar 3-4.3, 3-4.4, 4-3.5, 4-4.4(a), 4-8.4(b), and 4-8.4(d)); *The Florida Bar v. Abramson*, 3 So. 3d 964 (Fla. 2009) (holding that lawyer's disrespectful and confrontational conduct toward a judge and jury violated Rules Reg. Fla. Bar 4-3.5(a), 4-3.5(c), 4-8.2(a), 4-8.4(d)); and *The Florida Bar v. Martocci*, 791 So. 2d 1074 (Fla. 2001) (holding that lawyer's disparaging and profane remarks to opposing party and counsel violated Rule Reg. Fla. Bar 4-8.4(d)). The bar must refer conduct that an LLP referred to the bar, but for which the bar determines prosecution through the disciplinary process is not warranted, to the LPP for the appropriate circuit for handling through the informal process described in this code.

## 2.0 Process for Addressing Unprofessional Conduct Referrals

**2.1 Initiating Referrals.** Any person may initiate an unprofessional conduct referral against a member of The Florida Bar through the appropriate judicial circuit's local professionalism panel as described in Section 3.0.

# 3.0 Processing Referrals of Unprofessional Conduct through a Local Professionalism Panel

**3.1 Formation.** The chief judge of each judicial circuit will create and maintain in continuous operation a local professionalism panel ("LPP" or "panel") to receive, screen, and act on any referrals of claimed unprofessional conduct and to resolve those referrals informally, if possible, or refer them to The Florida Bar, if necessary. The LPPs are entities independent of The Florida Bar, established in each circuit for the purpose of informally resolving referrals of claimed unprofessional conduct by lawyers practicing in that circuit, including appellate practice and transactional practice.

The chief judge appoints the panel, which must include judges (current or senior, trial or appellate) and local attorneys that are in good standing with The Florida Bar and eligible to practice law from diverse areas of practice with varying levels of experience, but must have practiced law at least 5 years. The chief judge appoints the LPP Chair. The chief judge or the chief judge's designee also appoints members as necessary to fill LPP vacancies. The chief judge determines the number of members to serve on the LPP.

**3.2 Terms.** LPP members serve staggered 3-year terms. A member may be reappointed to serve 1 additional 3-year term, not to exceed 6 consecutive years. Each term begins on July 1 and runs through June 30 of the third year.

**3.3 Immunity.** The members of the LPP, staff assisting those panels, members of the circuit committees on professionalism, and staff assisting those committees, have absolute immunity from civil liability for all acts in the course and scope of their duties under this code.

**3.4 Education.** The chief judges must facilitate the promotion and education of the lawyers in their respective circuits about the LPPs through local, circuit-wide, CLE program about the role of the LPPs. The members of the LPPs must undergo training by experienced lawyers involved in the The Florida Bar disciplinary process prior to serving on the panels.

**3.5 Required Meetings.** Every other year, beginning in 2023, the chairs, or the member of the panel designated by the chair of each LPP, must meet in person or through the use of remote conferencing to review this code and make any recommendations for change to the Florida Supreme Court, review the forms used by the circuits to maintain uniformity of the forms (allowing for each circuit to modify the forms to meet the needs of the individual circuits), and review the procedures used by the circuit to modify procedures to meet the needs of the individual circuits). The LPPs also must discuss the policies and procedures of the circuits to facilitate continued enhancement of the program. The Florida Bar will organize the biannual conferences.

**3.6 Confidentiality.** Documents and records provided to, and proceedings before, each LPP are confidential. LPP referrals to the

bar do not remain confidential under Rule Regulating The Florida Bar 3-7.1.

## 3.7 Reporting.

(a) Each LPP must file a written report with the chief judge of its circuit, the Florida Supreme Court, and The Florida Bar identifying all professionalism referrals received against a member of The Florida Bar in June and December of each calendar year.

(b) The biannual reports must include the following information for each referral for the six calendar months preceding the month in which the report is due:

(1) the date of the referral;

(2) the circuit in which the issue arose;

(3) a short summary detailing the substance of the referral;

(4) the relationship of the respondent to the person submitting the referral;

(5) whether or not the respondent voluntarily participated in the process;

(6) the resolution, if any, of the referral; and

(7) whether there were previous referrals against the respondent.

(c) The reports must not include identifying information for the respondent or the party who submitted the referral.

**3.8 Publishing Reports.** The Florida Bar will publish on its website the LPP biannual reports. The chief judge, or the chief judge's designee, will publish on the judicial circuit's website the LPP biannual reports from that circuit.

#### Appendix B

#### **Professionalism Expectations**

"Professionalism is the pursuit and practice of the highest ideals and tenets of the legal profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, commitment, and civility."

-The Florida Bar Standing Committee on Professionalism

#### **Preamble:**

The professionalism standards in Florida are set forth in (1) these Professionalism Expectations; (2) the Rules Regulating The Florida Bar; (3) The Florida Bar Creed of Professionalism; and (4) the Oath of Admission to The Florida Bar. The Florida Supreme Court adopted this integrated standard of professionalism to identify the professional behavior expected of lawyers practicing law in Florida. As The Florida Bar grows, it becomes more important to articulate the Bar's professionalism expectations and for Florida lawyers to demonstrate these expectations in practice. The guidance provided in these Professionalism Expectations originates both from (1) the ethical duties established by the Florida Supreme Court in the Rules Regulating The Florida Bar and (2) the long-standing customs of fair, civil, and honorable legal practice in Florida. Where a Professionalism Expectation is coextensive with a lawyer's ethical duty, the expectation is stated as an imperative, cast in the terms of "must" or "must not." Where a Professionalism Expectation is drawn from a professional custom that is not directly provided for in the Rules Regulating The Florida Bar, the expectation is stated as a recommendation of correct action, cast in terms of "should" or "should not." To the Florida Supreme Court and The Florida Bar, lawyer professionalism is:

1. embracing a commitment to serve others;

2. dedicating to properly using knowledge and skills to promote a fair and just result;

3. endeavoring to enhance knowledge, skills, and competence;

4. ensuring that concern for a client's desired result does not subvert the lawyer's fairness, honesty, civility, respect, and courtesy during interactions with fellow professionals, clients, opponents, public officials, members of the judiciary, or the public;

5. contributing skill, knowledge, and influence to further the profession's commitment to service and the public good, including efforts to provide all persons, regardless of their means or popularity of their causes, with access to the law and the judicial system;

6. enhancing the legal system's reputation by educating the public about the profession's capabilities and limits, specifically about what the legal system can achieve and the appropriate methods of obtaining those results; and

7. accepting responsibility for one's own professional conduct and the conduct of others in the profession, including encouraging other lawyers to meet these civility and Professionalism Expectations and fostering peer regulation to ensure that each lawyer is competent and public-spirited.

To reinforce and communicate its expectations of lawyer professionalism among our members, <u>the Florida Supreme Court</u> <u>and The Florida Bar adopt the following Professionalism</u> Expectations:

# 1. Commitment to Equal Justice Under the Law and to the Public Good

A license to practice law is a privilege that gives the lawyer a special position of trust, power, and influence in our society. This privilege requires a lawyer to use that position to promote the public good and to foster the reputation of the legal profession while protecting our system of equal justice under the law.

#### **Expectations:**

1.1 A lawyer should avoid the appearance of impropriety.

1.2 A lawyer should counsel and encourage other lawyers to abide by these Professionalism Expectations.

1.3 A lawyer should promote the public's understanding of the lawyer's role in the legal profession and protect public confidence in a just and fair legal system founded on the rule of law.

1.4 A lawyer should not enter into a lawyer-client relationship when the lawyer cannot provide competent and diligent service to the client throughout the course of the representation.

1.5 A lawyer must not seek clients through the use of misleading or manipulative oral and written representations or advertisements. (*See* R. Regulating Fla. Bar 4-7.13 and 4-7.14). Contingency fee arrangements must be in writing and follow R. Regulating Fla. Bar 4-1.5(f).

1.6 When employed by a new client, a lawyer should discuss fee and cost arrangements at the outset of the representation and promptly confirm those arrangements in writing.

1.7 A lawyer must place a client's best interest ahead of the lawyer's or another party's interests. (*See* R. Regulating Fla. Bar 4-1.7(a)(2)).

1.8 A lawyer must maintain and preserve the confidence and private information of clients. (*See* R. Regulating Fla. Bar 4-1.6).

1.9 In any representation where the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flat-sum fee or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular, frequent interim basis, and avoid charging unnecessary expenses to the client.

1.10 When a fee dispute arises that cannot be amicably resolved, a lawyer should endeavor to utilize an alternative dispute resolution mechanism such as fee arbitration.

1.11 A lawyer must routinely keep clients informed and attempt to resolve client concerns. (*See* R. Regulating Fla. Bar 4-1.4). In the case of irreconcilable disagreements with a client, the lawyer must provide diligent representation until the lawyer-client relationship is formally dissolved in compliance with the law and the client's best interests. (*See* R. Regulating Fla. Bar 4-1.16).

1.12 A lawyer must devote professional time and resources and use civic influence to ensure equal access to our system of justice. (*See* R. Regulating Fla. Bar 4-6.1).

1.13 A lawyer must avoid discriminatory conduct prejudicial to the administration of justice in connection with the practice of law. (*See* R. Regulating Fla. Bar 4-8.4(d)).

### 2. Honest and Effective Communication

A lawyer's word is his or her bond. Effective communication requires lawyers to be honest, diligent, civil, and respectful in their interactions with others, including interactions in person and by video conferencing, telephone, text messaging, social media, email, online communications, and all other oral and written communications.

### **Expectations:**

2.1 A lawyer should inform every client what the lawyer expects from the client and what the client can expect from the lawyer during the term of the legal representation.

2.2 Candor and civility must be used in all oral and written communications, including online communications. (*See* R. Regulating Fla. Bar 4-8.4(c)).

2.3 A lawyer must avoid disparaging personal remarks or acrimony toward opposing parties, opposing counsel, third parties or the court. (*See* R. Regulating Fla. Bar 4-8.4(d)).

2.4 A lawyer must timely serve all pleadings to prevent prejudice or delay to the opposing party. (*See* R. Regulating Fla. Bar 4-3.2).

2.5 A lawyer's communications in connection with the practice of law, including communications on social media <u>or other online</u> <u>communications</u>, must not disparage another's character or competence or be used to inappropriately influence or contact others. (*See* R. Regulating Fla. Bar 4-8.4(d)).

2.6 A lawyer should use formal letters or emails for legal correspondence and should not use text messages to correspond with a client or opposing counsel unless mutually agreed.

2.7 In drafting a proposed letter of intent, the memorialization of an oral agreement, or a written contract reflecting an agreement reached in concept, a lawyer should draft a document that fairly reflects the agreement of the parties.

2.8 In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

2.9 A lawyer should not withhold information from a client to serve the lawyer's own interest or convenience.

2.10 A lawyer must not knowingly misstate, misrepresent, or distort any fact or legal authority to the court or to opposing counsel and must not mislead by inaction or silence. Further, the discovery of additional evidence or unintentional misrepresentations must immediately be disclosed or otherwise corrected. (*See* R. Regulating Fla. Bar 4-3.3 and 4-8.4).

2.11 A lawyer must not inappropriately communicate with a party represented by a lawyer (*See* R. Regulating Fla. Bar 4-4.2), including not responding "reply all" to emails.

2.12 A lawyer should diligently prepare legal forms and documents to avoid future harm or litigation for the client while ensuring compliance with the requirements of the law.

2.13 Social media must not be used to disparage opposing parties, lawyers, judges, and members of the public. (*See* R. Regulating Fla. Bar 4-8.2(a) and 4-8.4(d)).

2.14 Social media should not be used to avoid the ethical rules regulating lawyer advertising.

2.15 Social media must not be used to inappropriately contact judges, mediators, jurors, witnesses, or represented parties. (*See* R. Regulating Fla. Bar 4-3.5 and 4-4.2).

2.16 Social media must not be used for the purpose of influencing adjudicative proceedings. (*See* R. Regulating Fla. Bar 4-3.6).

2.17 A lawyer must ensure that the use of electronic devices does not impair the attorney-client privilege or confidentiality. (*See* R. Regulating Fla. Bar 4-1.6).

2.18 A lawyer must diligently respond to calls, correspondences, complaints, and investigations by The Florida Bar. (*See* R. Regulating Fla. Bar 4-8.4(g)).

## 3. Adherence to a Fundamental Sense of Honor, Integrity, and Fair Play

Courtesy, cooperation, integrity, fair play, and abiding by a sense of honor are paramount for preserving the integrity of the profession and to ensuring fair, efficient, and effective administration of justice for the public.

#### **Expectations:**

3.1 A lawyer must not engage in dilatory or delay tactics. (*See* R. Regulating Fla. Bar 4-3.2).

3.2 A lawyer should not make scheduling decisions that limit opposing counsel's opportunity to prepare or respond.

3.3 A lawyer should not unreasonably oppose an adversary's motion.

3.4 A lawyer must not permit non-lawyer personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters. (*See* R. Regulating Fla Bar 4-3.5(b) and 4-8.4(a)).

3.5 A lawyer must avoid substantive ex parte communications in a pending case with a presiding judge. The lawyer must notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling or clerical matters. (*See* R. Regulating Fla. Bar 4-3.5).

3.6 When submitting a written communication to a court or other tribunal, a lawyer should provide opposing counsel with a copy of the document contemporaneously or sufficiently in advance of any related hearing.

3.7 A lawyer must promptly prepare a proposed order, ensure that the order fairly and adequately represents the court's ruling before submitting the order to the court, and advise the court whether opposing counsel has approved the order. (*See* R. Regulating Fla. Bar 4-3.4(c)).

3.8 A lawyer should only schedule depositions to ascertain relevant facts and not to generate income or harass deponents or opposing counsel.

3.9 A lawyer must not ask a deponent irrelevant personal questions or questions designed to embarrass a deponent. (*See* R. Regulating Fla. Bar 4-4.4(a)).

3.10 A lawyer should not make improper objections in depositions.

3.11 A lawyer must not prevent a deponent from answering questions unless a legal privilege applies. (*See* R. Regulating Fla. Bar 4-3.4(c)).

3.12 When scheduling depositions, hearings, and other court proceedings, a lawyer should request an amount of time that permits all parties in the case the opportunity to be fully and fairly heard on the matter.

3.13 A lawyer should immediately provide a scheduling notice for a hearing, deposition, or trial to all opposing parties.

3.14 A lawyer should notify opposing parties and subpoenaed witnesses of a cancelled or rescheduled hearing, deposition, or trial.

3.15 During pre-trial disclosure, a lawyer should make a reasonable, good-faith effort to identify witnesses likely to be called to testify.

3.16 During pre-trial disclosure, a lawyer should make a reasonable, good-faith effort to identify exhibits to be proffered into evidence.

3.17 A lawyer should not mark on or alter exhibits, charts, graphs, or diagrams without opposing counsel's permission or leave of court.

3.18 A lawyer must not threaten opposing parties with sanctions, disciplinary complaints, criminal charges, or additional litigation to gain a tactical advantage. (*See* R. Regulating Fla. Bar 4-3.4(g) and (h)).

#### 4. Fair and Efficient Administration of Justice

The just, speedy, and inexpensive determination of every controversy is necessary to preserve our system of justice.

#### **Expectations:**

4.1 A lawyer should be familiar with the court's administrative orders, local rules, and each judge's published standing orders, practices, and procedures.

4.2 A lawyer should endeavor to achieve the client's lawful objectives as economically and expeditiously as possible.

4.3 A lawyer should counsel the client concerning the benefits of mediation, arbitration, and other alternative methods of resolving disputes.

4.4 A lawyer should counsel the client to consider settlement in good faith.

4.5 A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

4.6 A lawyer must not invoke a rule for the purpose of creating undue delay, or propose frivolous oral or written arguments which do not have an adequate basis in law nor fact. (*See* R. Regulating Fla. Bar 4-3.1).

4.7 A lawyer must not use discovery to harass or improperly burden an adversary or cause the adversary to incur unnecessary expense. (*See* R. Regulating Fla. Bar 4-4.4).

4.8 A lawyer should frame reasonable discovery requests tailored to the matter at hand.

4.9 A lawyer should assure that responses to proper discovery requests are timely, complete, and consistent with the obvious intent of the request. A lawyer should not avoid disclosure unless a legal privilege prevents disclosure.

4.10 A lawyer should not respond to discovery requests in a disorganized, unintelligible, or inappropriate manner, in an attempt to conceal evidence.

4.11 A lawyer should stipulate to all facts and principles of law that are not in dispute and should promptly respond to request for stipulations of fact or law.

4.12 After consulting with the client, a lawyer should voluntarily withdraw claims and defenses that are without merit, superfluous, or cumulative.

4.13 A lawyer should be fully prepared when appearing in court or at hearings.

4.14 A lawyer should not use voir dire to extract promises from or to suggest desired verdicts to jurors.

4.15 A lawyer should abstain from all acts, comments, and attitudes calculated to curry favor with jurors.

4.16 A lawyer should not express bias or personal opinion concerning any matter at issue in opening statements and in arguments to the jury.

4.17 A lawyer should not make offers or requests for a stipulation in front of the jury.

4.18 A lawyer should not use the post-hearing submission of proposed orders as an opportunity to argue or reargue a matter's merits.

4.19 A lawyer must not request rescheduling, cancellations, extensions, and postponements without legitimate reasons or solely for the purpose of delay or obtaining unfair advantage. (*See* R. Regulating Fla. Bar 4-4.4).

4.20 A lawyer must not criticize or denigrate opposing parties, witnesses, or the court to clients, media, or members of the public. (*See* R. Regulating Fla. Bar 4-8.2(a) and 4-8.4(d)).

### 5. Decorum and Courtesy

When lawyers display reverence for the law, the judicial system, and the legal profession by acting with respect, decorum, and courtesy, <u>including interactions in person and by video</u> <u>conferencing</u>, they earn trust of the public and help to preserve faith in the operation of a fair judicial system.

5.1 A lawyer should abstain from rude, disruptive, and disrespectful behavior. The lawyer should encourage clients and support personnel to do the same.

5.2 A lawyer should be civil and courteous in all situations, both professional and personal, and avoid conduct that is degrading to the legal profession. (*See* R. Regulating Fla. Bar 3-4.3).

5.3 A lawyer must always behave in a courteous and formal manner in hearings, depositions, and trials and should refrain from seeking special consideration from a judge or juror.

5.4 A lawyer should refer to all parties, witnesses, and other counsel by their last names during legal proceedings.

5.5 A lawyer should request permission from the court before approaching the bench or submitting any document.

5.6 A lawyer should state only the legal grounds for an objection unless the court requests further argument or elaboration.

5.7 A lawyer should inform clients and witnesses that approving and disapproving gestures, facial expressions, or audible comments are absolutely prohibited in legal proceedings. 5.8 A lawyer should abstain from conduct that diverts the factfinder's attention from the relevant facts or causes a fact-finder to make a legally impermissible decision.

5.9 A lawyer should address objections, requests, and observations to the judge.

5.10 A lawyer should attempt to resolve disagreements before requesting a court hearing or filing a motion to compel or for sanctions.

## 6. Respect for the Time and Commitments of Others

Respecting the time and commitments of others is essential to the efficient and fair resolution of legal matters.

#### **Expectations:**

6.1 A lawyer should not impose arbitrary or unreasonable deadlines on others.

6.2 A lawyer should schedule a deposition during a time period sufficient to allow all parties to examine the deponent.

6.3 Unless circumstances compel more expedited scheduling, a lawyer should provide litigants, witnesses, and other affected persons with ample advance notice of hearings, depositions, meetings, and other proceedings, and whenever practical, schedule these events at times convenient for all interested persons.

6.4 A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions, and postponements that do not prejudice the client's opportunity for full, fair, and prompt adjudication.

6.5 A lawyer should promptly agree to a proposed time for a hearing, deposition, meeting or other proceeding or make his or her own counter proposal of time.

6.6 A lawyer should promptly call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal.

6.7 A lawyer should avoid last-minute cancellations of hearings, depositions, meetings, and other proceedings.

6.8 A lawyer should promptly notify the court or tribunal when a scheduled court appearance becomes unnecessary.

6.9 A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences, and other proceedings.

6.10 A lawyer must respond promptly to inquiries and communications from clients and others. (*See* R. Regulating Fla. Bar 4-1.4.)

#### 7. Independence of Judgment

An enduring value of a lawyer's service is grounded in the lawyer's willingness to exercise independent judgment in practice and while giving the client advice and counsel.

7.1 A lawyer should exercise independent judgment and should not be governed by the client's ulterior motives, ill will, or deceit.

7.2 A lawyer should counsel a client or prospective client, even with respect to a meritorious claim or defense, about the public and private burdens of pursuing the claim as compared with the benefits to be achieved.

7.3 In advising a client, a lawyer should not understate or overstate achievable results or otherwise create unrealistic expectations.

7.4 A lawyer should not permit a client's ill will toward an adversary, witness, or tribunal to become that of the lawyer.

7.5 A lawyer must counsel a client against using tactics designed:(a) to hinder or improperly delay a legal process; or (b) to

embarrass, harass, intimidate, improperly burden, or oppress an adversary, party or any other person and should withdraw from representation if the client insists on such tactics. (*See* R. Regulating Fla. Bar 4-1.16, 4-3.2, and 4-4.4).

7.6 In contractual and business negotiations, a lawyer client concerning what is reasonable and customary under the circumstances.

### Appendix C

### Rules Regulating The Florida Bar, Chapter 6

#### Rule 6-10.3. Minimum Continuing Legal Education Standards

(a) [No Change]

(b) Minimum Hourly Continuing Legal Education Requirements. Every member must complete a minimum of 33<u>0</u> credit hours of approved continuing legal education activity every 3 years. At least 3 of the 30 credit hours must be in approved technology programs. At least 5 of the 3<u>30</u> credit hours must be in approved legal ethics, professionalism, bias elimination, substance abuse, or mental health and wellness programs, with at least 1of the 5 hours in an approved professionalism program and at least 3 of the 33 credit hours in approved technology programs.; as part of the 5 credit hours, each member must complete, during each reporting cycle, the 2-credit hour Florida Legal Professionalism course produced by The Florida Bar and approved by the Supreme <u>Court of Florida.</u> If a member completes more than 3<u>30</u> credit hours during any reporting cycle, the excess credits cannot be carried over to the next reporting cycle.

(c)-(g) [No Change]