

**Real Property, Probate and Trust Law Section  
Executive Council Meeting  
JW Marriott Marco Island**

Pursuant to Article VII, Section 4 of the Bylaws of the Section, Executive Council members may participate electronically and vote using polling feature on Zoom.

**June 5, 2021  
10:00 am**

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**Agenda**

- I. **Presiding** — *William T. Hennessey, III, Chair*
- II. **Secretary's Report** — *Jon Scuderi, Secretary*
  1. Motion to approve the minutes of the April 25, 2021 meeting of the Executive Council held at the Hammock Beach Golf Resort & Spa in Palm Coast **pp. 8-12**
  2. Meeting Attendance **pp. 13-25**
- IV. **Chair's Report** — *William T. Hennessey, III, Chair*
  1. Thank you to our Sponsors **pp. 26-28**
  2. Introduction and comments from Sponsors
  3. Milestones
  4. General Comments of the Chair
- V. **Liaison with Board of Governors Report** — *Steven W. Davis*
- VI. **Chair-Elect's Report** — *Robert S. Swaine, Chair-Elect*
  1. 2021-2022 Executive Council meetings **p. 29**
  2. 2021-2022 Committee Leadership for the Real Property Division, Probate and Trust Law Division and General Standing Committees **pp. 30-40**
- VII. **Treasurer's Report** — *Steven H. Mezer, Treasurer*
  1. Statement of Current Financial Conditions **p. 41**
- VIII. **Director of At-Large Members Report** — *Lawrence Jay Miller, Director*

**IX. CLE Seminar Coordination Report** — *Wilhelmina F. Kightlinger (Real Property) and Sancha Brennan (Probate & Trust), Co-Chairs*

1. Upcoming CLE programs and opportunities **p. 42**

**X. Legislation Committee** – *Wm. Cary Wright and John C. Moran, Co-Chairs*

**XI. General Standing Division Report** — *Robert S. Swaine, General Standing Division Director and Chair-Elect*

**Information Items:**

1. **Liaison with Clerks of the Court** – *Laird A. Lile*

Updates on matters of interest

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

**Action Items:**

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

Motion to: (A) adopt as a Section legislative position support for legislation expanding the applicability of Section 697.07 (Assignment of Rents) and Section 702.10 (Order to Make Payments During Foreclosure) to third parties who acquire properties subject to a mortgage; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 43-64**

2. **Condominium and Planned Development Committee** – *William P. Sklar and Joseph E. Adams, Co-Chairs*

Motion to (A) adopt as a Section legislative position support for legislation amending Section 718.113 and Section 718.115 to clarify and enhance the ability of condominium associations and condominium unit owners to use hurricane shutters and other types of hurricane protection to protect condominium property, association property and the personal property of unit owners, and to reduce insurance costs for condominium association and unit owners; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 65-85**

**XIII. Probate and Trust Law Division Report** — Sarah Butters, Division Director

**Information Item:**

**1. Probate Law Committee** – Travis Hayes, Chair

Motion to (A) support proposed amendments to section 733.705(5) (Payment of and objection to claims) to codify existing case law such that the requirement to bring an independent action is satisfied if, within 30 days of the filing of an objection to the claim: a motion to substitute the fiduciary is filed in the pending action; an order substituting the fiduciary is entered in the pending action; such other procedure as may exist is initiated to substitute the fiduciary in the pending action; or the timely filing of an arbitration is made when the decedent has entered into an agreement during lifetime which provides for mandatory arbitration relating to the claim, or arbitration is required by the decedent's will or trust; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 86-93**

**XIV. Probate and Trust Law Division Committee Reports** — Sarah Butters, Division Director

- 1. Ad Hoc ART Committee** — Alyse Reiser Comiter, Chair; Jack A. Falk and Sean M. Lebowitz, Co- Vice Chairs
- 1. Ad Hoc Committee on Electronic Wills** — Angela McClendon Adams, Chair; Frederick "Ricky" Hearn and Jenna G. Rubin, Co-Vice Chairs
- 2. Ad Hoc Florida Business Corporation Act Task Force** — Travis Hayes and Brian C. Sparks, Co-Chairs
- 3. Ad Hoc Guardianship Law Revision Committee** — Nicklaus J. Curley, Stacey B. Rubel and David C. Brennan, Co-Chairs; Sancha Brennan, Vice Chair
- 4. Ad Hoc Study Committee on Estate Planning Conflict of Interest** — William T. Hennessey, III, Chair; Paul Edward Roman, Vice-Chair
- 5. Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** — Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
- 6. Ad Hoc Study Committee on Professional Fiduciary Licensing** — Angela McClendon Adams, Chair; Yoshimi Smith, Vice Chair
- 8. Asset Protection** — Brian M. Malec, Chair; Richard R. Gans and Michael A. Sneeringer, Co-Vice-Chairs
- 9. Attorney/Trust Officer Liaison Conference** — Tattiana Patricia Brenes-Stahl and Cady L. Huss, Co-Chairs; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Patrick C. Emans, Gail G. Fagan, Mitchell A. Hipsman and Eammon W. Gunther, Co-Vice Chairs
- 10. Charitable Planning and Exempt Organizations Committee** — Seth Kaplan, Chair and Jason E. Havens and Denise S. Cazobon, Co-Vice-Chairs

11. **Elective Share Review Committee** — Jenna G. Rubin, Chair; Cristina Papanikos and Lauren Y. Detzel, Co-Vice-Chairs
12. **Estate and Trust Tax Planning** — Robert L. Lancaster, Chair; Richard N. Sherrill and Yoshimi O. Smith, Co-Vice Chairs
13. **Guardianship, Power of Attorney and Advanced Directives** — Nicklaus Joseph Curley, Chair; Brandon D. Bellew, Elizabeth M. Hughes, and Stacy B. Rubel, Co-Vice Chairs
14. **IRA, Insurance and Employee Benefits** — L. Howard Payne and Alfred J. Stashis, Co-Chairs; Charles W. Callahan, III and Rachel B. Oliver, Co-Vice-Chairs
15. **Liaisons with ACTEC** — Elaine M. Bucher, Tami F. Conetta, Thomas M. Karr, Shane Kelley, Charles I. Nash, Bruce M. Stone, and Diana S.C. Zeydel
16. **Liaisons with Elder Law Section** — Travis Finchum and Marjorie E. Wolasky
17. **Liaisons with Tax Section** — Lauren Y. Detzel, William R. Lane, Jr., and Brian C. Sparks
18. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith B. Braun, Co-Vice Chairs
19. **Probate and Trust Litigation** — J. Richard Caskey, Chair; Angela M. Adams, James R. George and R. Lee McElroy, IV, Co-Vice Chairs
20. **Probate Law and Procedure** — M. Travis Hayes, Chair; Benjamin F. Diamond, Robert Lee McElroy IV, Christina Papanikos and Theodore S. Kypreos, Co-Vice Chairs
21. **Trust Law** — Matthew H. Triggs, Chair; Jennifer J. Robinson, David J. Akins, Jenna G. Rubin, and Mary E. Karr, Co-Vice Chairs
22. **Wills, Trusts and Estates Certification Review Course** — Jeffrey S. Goethe, Chair; J. Allison Archbold, Rachel A. Lunsford, and Jerome L. Wolf, Co-Vice Chairs

**XV. Real Property Law Division Committee Reports** — *S. Katherine Frazier, Division Director*

1. **Attorney Banker Conference** – E. Ashley McRae, Chair; Kristopher E. Fernandez, Salome J. Zikakis, and R. James Robbins, Jr., Co-Vice Chairs
2. **Commercial Real Estate** – Jennifer J. Bloodworth, Chair; Eleanor W. Taft, E. Ashley McRae, and Martin A. Schwartz, Co-Vice Chairs
3. **Condominium and Planned Development** – William P. Sklar and Joseph E. Adams, Co-Chairs; Shawn G. Brown and Sandra E. Krumbein, Co-Vice Chairs
4. **Condominium and Planned Development Law Certification Review Course** – Jane L. Cornett, Chair; Christene M. Ertl, Vice Chair
5. **Construction Law** – Reese J. Henderson, Jr., Chair; Sanjay Kurian and Bruce B. Partington, Co-Vice Chairs
6. **Construction Law Certification Review Course** – Melinda S. Gentile and Elizabeth B. Ferguson Co-Chairs; Gregg E. Hutt and Scott P. Pence, Co-Vice Chairs

7. **Construction Law Institute** – Jason J. Quintero, Chair; Deborah B. Mastin and Brad R. Weiss, Co-Vice Chairs
8. **Development & Land Use Planning** – Julia L. Jennison and Colleen C. Sachs, Co-Chairs; Jin Liu and Lisa B. Van Dien, Co-Vice Chairs
9. **Insurance & Surety** – Michael G. Meyer, Chair; Katherine L. Heckert and Mariela M. Malfeld, Co-Vice Chairs
10. **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; Alan B. Fields and James C. Russick, Co-Vice Chairs
11. **Real Estate Certification Review Course** – Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach, Lloyd Granet, Brian W. Hoffman and Laura M. Licastro, Co-Vice Chairs
12. **Real Estate Leasing** – Brenda B. Ezell, Chair; Kristen K. Jaiven and Christopher A. Sajdera, Co-Vice Chairs
13. **Real Property Finance & Lending** – Richard S. McIver, Chair; Deborah B. Boyd and Jason M. Ellison, Co-Vice Chairs
14. **Real Property Litigation** – Michael V. Hargett, Chair; Amber E. Ashton, Manuel Farach and Christopher W. Smart, Co-Vice Chairs
15. **Real Property Problems Study** – Lee A. Weintraub, Chair; Anne Q. Pollack Susan K. Spurgeon and Adele I. Stone, Co-Vice Chairs
16. **Residential Real Estate and Industry Liaison** – Nicole M. Villarroel, Chair; Louis E. “Trey” Goldman, and James A. Marx, Co-Vice Chairs
17. **Title Insurance and Title Insurance Liaison** – Brian W. Hoffman, Chair; Mark A. Brown, Jeremy T. Cranford, Leonard F. Prescott, IV and Cynthia A. Riddell, Co-Vice Chairs
18. **Title Issues and Standards** – Rebecca L.A. Wood, Chair; Robert M. Graham, Brian W. Hoffman and Karla J. Staker, Co-Vice Chairs

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

1. **Ad Hoc Florida Bar Leadership Academy** — Kristopher E. Fernandez and J. Allison Archbold, Co-Chairs; Bridget Friedman, Vice Chair
2. **Ad Hoc Remote Notarization** – E. Burt Bruton, Jr., Chair
3. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
4. **Budget** — Steven H. Mezer, Chair; Tae Kelley Bronner. Linda S. Griffin, and Pamela O. Price, Co-Vice Chairs
5. **CLE Seminar Coordination** — Wilhelmina F. Kightlinger and Sancha Brennan, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Paul E. Roman (Ethics), Silvia B. Rojas, and Stacy O. Kalmanson, Co-Vice Chairs
6. **Convention Coordination** — Laura K. Sundberg, Chair; S. Dresden Brunner, Marsha G. Madorsky, and Alexander H. Hamrick, Co-Vice Chairs
7. **Disaster and Emergency Preparedness and Response** – Brian C. Sparks, Chair; Jerry E. Aron, Benjamin Frank Diamond and Colleen Coffield Sachs, Co-Vice Chairs
8. **Fellows** — Christopher A. Sajdera, Chair; J. Christopher Barr, Joshua Rosenberg and Angela K. Santos, Co-Vice Chairs

9. **Florida Electronic Filing & Service** — Rohan Kelley, Chair
10. **Homestead Issues Study** — Jeffrey S. Goethe, Chair; Amy B. Beller, Michael J. Gelfand, Melissa Murphy and Charles Nash, Co-Vice Chairs
11. **Information Technology & Communication** — Neil Barry Shoter, Chair; Erin H. Christy, Alexander B. Dobrev, Jesse B. Friedman, Hardy L. Roberts, III, and Michael A. Sneeringer, Co-Vice Chairs
12. **Law School Mentoring & Programing** —Johnathan Butler, Chair; Phillip A. Baumann, Guy Storms Emerich, Kymberlee Curry Smith and Kristine L. Tucker, Co-Vice Chairs
13. **Legislation** — John C. Moran (Probate & Trust) and Wm. Cary Wright (Real Property), Co-Chairs; Theodore S. Kypreos and Robert Lee McElroy, IV (Probate & Trust), Manuel Farach and Arthur J. Menor (Real Property), Co-Vice Chairs
14. **Legislative Update (2020-2021)** — Brenda Ezell, Chair; Theodore Stanley Kypreos, Gutman Skrande, Jennifer S. Tobin, Kit van Pelt and Salome J. Zikakis, Co-Vice Chairs
15. **Legislative Update (2021-2022)** — Brenda Ezell, Chair; Theodore Stanley Kypreos, Gutman Skrande, Jennifer S. Tobin, Kit van Pelt and Salome J. Zikakis, Co-Vice Chairs
16. **Liaison with:**
  - a. **American Bar Association (ABA)** — Robert S. Freedman, Edward F. Koren, George J. Meyer and Julius J. Zschau
  - b. **Clerks of Circuit Court** — Laird A. Lile
  - c. **FLEA / FLSSI** — David C. Brennan and Roland D. “Chip” Waller
  - d. **Florida Bankers Association** — Mark T. Middlebrook and Robert Stern
  - e. **Judiciary** —Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Celeste Hardee Muir, Judge Bryan Rendzio, Judge Mark A. Speiser, Judge Jessica Jacqueline Ticktin; and Judge Michael Rudisill
  - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
  - g. **TFB Board of Governors** — Steven W. Davis
  - h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
  - i. **TFB CLE Committee** — Wilhelmina F. Kightlinger
  - j. **TFB Council of Sections** — William T. Hennessey, III and Robert S. Swaine
  - k. **TFB Diversity & Inclusion** – Erin H. Christy
  - l. **TFB Pro Bono Legal Services-** Lorna E. Brown-Burton
17. **Long-Range Planning** — Robert S. Swaine, Chair
18. **Meetings Planning** — George J. Meyer, Chair
19. **Membership and Inclusion** — Annabella Barboza and S. Dresden Brunner, Co-Chairs; Erin H. Christy, Vinette D. Godelia, Jennifer L. Grosso and Roger A. Larson, Co-Vice Chairs

20. **Model and Uniform Acts** — Patrick J. Duffey and Richard W. Taylor, Co-Chairs; Adele I. Stone and Benjamin Diamond, Co-Vice Chair
21. **Professionalism and Ethics** — Andrew B. Sasso, Chair; Elizabeth A. Bowers, Alexander B. Dobrev, and Laura Sundberg, Co-Vice Chairs
22. **Publications (ActionLine)** — Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); Richard D. Eckhard, Jason M. Ellison, George D. Karibjanian, Keith S. Kromash, Daniel L. McDermott, Jeanette Moffa, Paul E. Roman, Daniel Siegel, Lee Weintraub, Co-Vice Chairs
23. **Publications (Florida Bar Journal)** — Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; J. Allison Archbold (Editorial Board – Probate & Trust), Homer Duvall, III (Editorial Board — Real Property), Marty J. Solomon (Editorial Board — Real Property), and Brian Sparks (Editorial Board – Probate & Trust), Co-Vice Chairs
24. **Sponsor Coordination** — J. Eric Virgil, Chair; Patrick C. Emans, Marsha G. Madorsky, Jason J. Quintero, J. Michael Swaine, and Arlene C. Udick, Co-Vice Chairs
25. **Strategic Planning** — William T. Hennessey, III and Robert Swaine, Co-Chairs
26. **Strategic Planning Implementation** - Michael J. Gelfand, Chair; Michael A. Dribin, Deborah Packer Goodall, Andrew M. O'Malley and Margaret A. "Peggy" Rolando, Co-Vice Chairs

**XVII. Adjourn:** Motion to Adjourn.

ACTIVE:13325737.1

**Real Property, Probate and Trust Law Section**  
**Executive Council Meeting**  
**Hammock Beach Golf Resort and Spa**  
Minutes  
April 24, 2021  
10:00 am

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Agenda

**I. Presiding** — *William T. Hennessey, III, Chair*

The Chair convened the meeting at 10:02 a.m.

**II. Secretary's Report** — *Jon Scuderi, Secretary*

Motion was made to approve the minutes of the December 5, 2020 meeting of the Executive Council held at the Yacht and Beach Club Resort in Orlando. The motion passed.

**III. Chair's Report** — *William T. Hennessey, III, Chair*

1. The Chair recognized and thanked our sponsors.
2. The Chair walked the attendees through the meeting app, including the tools available to sponsors.
3. The Chair introduced Stewart Title. Lindsey spoke on behalf of Stewart Title.
4. Recognition of Guests: The Chair introduced guests Scott Westheimer and Lorna Brown Burton who both spoke. They are running for President-Elect of the Florida Bar.
5. The Chair announced the Executive Council milestones.
6. The Chair reported on the interim actions taken by the Executive Committee.
  - a. The Executive Committee approved the final draft of the *Hayslip v. U.S. Home Corp.* Amicus brief, including the addition of a footnote that the certified question and the DCA opinion do not address equitable servitudes and the Section was limiting its legal analysis to controlling Florida law on real covenants versus personal covenants.



- b. The Executive Committee approved a response to The Florida Bar’s Professionalism & Ethics Committee concerning an inquiry involving the obligations of a court-appointed attorney that is unable to communicate with the client. The response included a proposed letter from the Section, the Section’s Professionalism and Ethics Committee report, and comments from the Section Guardianship Committee and the Elder Law Section.
  - c. The Executive Committee approved providing a scholarship to Michael Matthew Rubenstein to attend the Florida Bar Leadership Academy in the event Michael is accepted to the Academy.
  - d. The Executive Committee approved a one-time general donation of \$1,000.00 to sponsor the Professional Fiduciary Council of Florida’s educational program.
  - e. The Executive Committee determined there was no conflict between the current Section position prohibiting a waiver of subrogation and the current language in SB630 and HB867 (“condo bill”) and determined that our legislative consultants could indicate that the Section supports the condo bill.
  - f. The Executive Committee approved a new Section position that would allow the Section to support the proposed amendment to HB 625, concerning personal representative and trustee attorney fees, by retaining the presumed reasonable sliding scale fee for attorneys representing personal representatives and trustees.
- 6. 2020-2021 Executive Council meetings – The Chair discussed the upcoming Marco Island hybrid meeting.
  - 7. General Comments of the Chair – The Chair thanked everyone for their patience and hard work.

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

Steve Davis gave his report. The BOG is hard at work adjusting to COVID. He discussed the annual convention (hybrid) in June. Important items concern the delivery of legal services, including ownership of law firms and streamlining the advertising rules. The SC amended the rules and will not allow CLE credit for programs that require quotas.

**V. Chair-Elect's Report — *Robert S. Swaine, Chair-Elect***

2021-2022 Executive Council meetings – The Chair-Elect discussed the meetings for the next year and thanked Mary Ann for her help.

**VI. Treasurer's Report — *Steven H. Mezer, Treasurer***

Statement of Current Financial Condition – The Section is tracking to budget. Timing (later meeting – delayed expenses) and CLE success have impacted bottom line.

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

Larry Miller updated the EC on the new lead ALMs for some of the circuits. He recognized and thanked those new lead ALMs. The ALMs have been working with the voluntary bar associations and participating in our own Section projects (FACE and No Place Like Home). The Chair recognized Larry for his hard work.

**VIII. CLE Seminar Coordination Report** — *Wilhelmina F. Kightlinger (Real Property) and Sancha Brennan (Probate & Trust), Co-Chairs*

Sancha Brennan thanked those who have supported CLE and discussed what the committee will be trying to improve going forward. Sancha referenced the list of upcoming CLE programs located in the Agenda, including the upcoming CLI program. The Chair recognized the exceptional work of the Co-Chairs.

The Chair recognized Melissa Murphy of The Fund, a long-time sponsor. Melissa discussed their relationship with the Section and discussed their upcoming program, Fund Assembly Online. A short video was played.

**IX. Legislation Committee** – *Wm. Cary Wright and John C. Moran, Co-Chairs*

John Moran and Cary Wright gave the committee’s report and discussed the status of bills. They thanked those who have helped the legislation committee.

The Chair recognized sponsor Management Planning, Inc.

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

**Action Items:**

**1. Fellows** – *Christopher A. Sajdera, Chair*

The RPPTL Fellows is a two-year program that encourages the involvement of attorneys from diverse backgrounds that are traditionally underrepresented in the law and the Section. One of the main benefits of the Fellows program is the dialogue and professional relationship development that occurs during the activities of the in-person meetings. Fellows are each allocated \$2,500 per year to defray the costs of attendance at the in-state meetings. The threat of COVID has obviously hampered the Fellows’ in-person attendance and the Fellows Committee believes that the already allocated but unused portions of each Fellow’s allotted stipend for the bar year of 2020-2021 should be allowed to “roll over” so the funds for the four second year Fellows would “roll over” to 2021-2022 and the funds for the four first year Fellows would “roll over” to 2022-2023.

This allows the Fellows the ability to use these funds that have already been earmarked for that use and on the same reimbursement format currently in place.

The committee made a motion to approve the “roll over” of any unused funds from the Fellows allocations in the 2020-2021 Bar year to 2021-2022 for the current second year Fellows and to 2022-2023 for the current first year Fellows.

The motion passed.

The Chair introduced the in-person Fellows and Chris recognized the virtual Fellows. The Fellows in attendance introduced and talked about themselves, including their involvement with the Section.

### **Information Items:**

#### **1. Liaison with Clerks of the Court – Laird A. Lile**

Laird Lile provided an updates on matters of interest, including ALMs’ work on homestead proceedings, probate checklists, changes to the affidavits.

Laird also discussed the interface (Florida Virtual Courtroom) to allow one to log into any court in Florida and observe the proceedings. The Judicial Management Council is sending a survey. Laird encouraged people to respond. Laird also discussed the SC’s CLE changes, which should not affect the Section.

#### **2. Membership and Inclusion - S. Dresden Brunner and Annabella Barboza, Co-Chairs**

Dresden Brunner gave the committee’s report. The Membership and Inclusion committee has drafted a proposed RPPTL Code of Conduct that would be applicable to all participants of any Section activity. Dresden discussed the proposed code and how missteps would be handled. The Chair, Chair-Elect, and others made comments/asked questions. Members were requested to provide comments to Dresden for further discussion.

#### **3. Professionalism and Ethics – Andrew B. Sasso, Chair**

Andrew Sasso recognized the good work items the Section has done on remote work and representing a ward. Andrew discussed the concept of Ethics Podcasts on “Overlooked and Misunderstood Ethical Issues”. Yoshimi Smith introduced and played the first podcast by Elizabeth Tarbert (Ethics Counsel of the Florida Bar) on differences between retainer, flat fee, and advanced fees for trust accounting purposes.

The Chair recognized general sponsor JP Morgan. Carlos Batlle spoke and thanked the Section.

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

Katherine Frazier recognized the RP division's sponsors.

**Action Item:**

**1. Real Estate Leasing Committee - Brenda B. Ezell, Chair**

Michelle Hinden and Kristin Javien presented the committee's action item. The committee moved to approve the proposed updates to the following Supreme Court of Florida approved forms: (A) Residential Lease for Apartment or Unit in Multi-Family Rental Housing (Other than a Duplex) including a Mobile Home, Condominium, or Cooperative; and (B) Residential Lease for Single Family Home or Duplex.

The motion passed.

**Information Item:**

**2. Condominium and Planned Development Committee – William P. Sklar and Joseph E. Adams, Co-Chairs**

Joe Adams discussed the committee's information item that concerns the consideration of legislation amending Section 718.113 and Section 718.115 to clarify and enhance the ability of condominium associations and condominium unit owners to use hurricane shutters and other types of hurricane protection to protect condominium property, association property and the person property of unit owners, and to reduce insurance costs for condominium association and unit owners.

The Chair recognized Jim Russick of Old Republic Title.

**XII. Probate and Trust Law Division Report — Sarah Butters, Division Director**

Sarah Butters gave general comments and recognized the division sponsors.

The Chair called the Liaison with Florida Bar Pro Bono Legal Services, Lorna E. Brown-Burton, who provided on update on the FL Bar Pro Bono Legal Service's work.

The Chair recognized Mary Ann for her service, thanked her and wished her a Happy Birthday.

**XIII. Adjourn:** The Chair adjourned the meeting at 12:18 p.m.

Submitted by

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Jon Scuderi, Secretary  
ACTIVE:13315648.1

**ATTENDANCE ROSTER**  
**REAL PROPERTY PROBATE & TRUST LAW SECTION**  
**EXECUTIVE COUNCIL MEETINGS**  
**2020-2021**

Executive Committee	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole, WY	December 5 Orlando	April Palm Coast	June 5 Marco Island
	RP	P&T					
Freedman, Robert S. Immediate Past Chair	√		√		√	√	
Hennessey, William Chair		√	√	√	√	√	
Kightlinger, Wilhelmina F. CLE Co-Chair Real Property	√		√		√	√	
Swaine, Robert S. Chair-Elect & General Standing Div. Director	√		√	√	√	√	
Butters, Sarah S. Probate & Trust Law Div. Director		√	√	√	√	√	
Wright, Wm. Cary Legislative Co-Chair Real Property	√		√	√	√	√	
Frazier, S. Katherine Real Property Law Div. Director	√		√		√	√	
Scuderi, Jon Secretary		√	√		√	√	
Moran, John C. Legislative Co-Chair Probate & Trust		√	√		√	√	
Mezer, Steven H. Treasurer	√		√		√	√	
Miller, Lawrence J. Director, At Large Members		√	√		√	√	
Whynot, Sancha B. CLE Co-Chair Probate		√	√	√	√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Acosta, Jolyon Delphin		√	√		√	√	
Adams, Angela M.		√	√		√	√	
Adams, Joseph	√		√			√	
Akins, David J.		√			√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Alaimo, Marve Ann M.		√	√		√	√	
Altman, Stuart H.		√	√		√	√	
Archbold, J. Allison		√	√		√	√	
Arnold, Jr., Lynwood	√						
Aron, Jerry E. <b>Past Chair</b>	√		√				
Ashton, Amber E.	√		√		√	√	
Awerbach, Martin S.	√		√	√	√	√	
Bald, Kimberly A.		√	√		√	√	
Barboza, Annabella	√		√		√		
Barr, J. Christopher	√						
Baskies, Jeffrey		√	√		√	√	
Battle, Carlos A.		√	√			√	
Baumann, Phillip A.		√	√			√	
Beales, III, Walter R. <b>Past Chair</b>	√						
Bedke, Michael A.	√						
Behar, Jacobeli J.		√	√		√	√	
Belcher, William F. <b>Past Chair</b>		√			√	√	
Bell, Kenneth B.	√						
Bell, Rebecca Coulter		√	√		√	√	
Beller, Amy		√	√	√	√	√	
Bellew, Brandon D.		√	√				
Bloodworth, Jennifer J.	√		√		√	√	
Boje, Debra Lynn <b>Past Chair</b>		√	√		√	√	
Bowers, Elizabeth A.		√	√		√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Boyd, Deborah	√		√		√	√	
Braun, Keith Brian		√	√		√	√	
Brenes-Stahl, Tattiana		√				√	
Brennan, David C. <b>Past Chair</b>		√	√			√	
Bronner, Tae K.		√	√		√	√	
Brown, Mark A.	√		√		√	√	
Brown, Shawn	√		√		√	√	
Brunner, S. Dresden		√	√	√	√	√	
Bruton, Jr., Ed Burt	√		√		√	√	
Bucher, Elaine M.		√	√		√	√	
Butler, Johnathan		√	√		√	√	
Callahan, Chad W. III		√			√	√	
Carlisle, David R.		√	√				
Caskey, John R.		√	√	√	√	√	
Cazobon, Denise		√	√		√	√	
Christiansen, Patrick <b>Past Chair</b>	√		√		√	√	
Christy, Douglas G. III	√		√		√	√	
Christy, Erin Hope	√		√		√	√	
Cole, Stacey L.		√	√		√	√	
Coleman, Jami A.		√			√	√	
Comiter, Alyse Reiser		√	√		√	√	
Conetta, Tami F.		√	√				
Cope, Jr., Gerald B.	√		√		√		
Cornett, Jane Louise	√		√	√	√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Cranford, Jeremy	√				√	√	
Curley, Nick		√	√		√	√	
Davis, Steven			√		√	√	
Detzel, Lauren Y.		√	√		√	√	
Diamond, Benjamin F.		√	√		√		
Diamond, Sandra F. <b>Past Chair</b>		√	√		√	√	
Dobrev, Alex	√		√		√	√	
Dollinger, Jeffrey	√		√		√	√	
Dribin, Michael <b>Past Chair</b>		√	√		√	√	
Duffey, Patrick J.		√	√		√	√	
Duvall, III, Homer	√		√			√	
Eckhard, Rick	√						
Ellison, Jason M.	√		√		√	√	
Emans, Patrick C		√	√		√		
Emerich, Guy S.		√	√		√		
Ertl, Christene M.	√		√		√		
Evert, Jamison C.		√	√		√	√	
Ezell, Brenda B.	√		√		√	√	
Fagan, Gail		√	√		√	√	
Falk, Jr., Jack A.		√	√		√	√	
Farach, Manuel	√		√		√	√	
Felcoski, Brian J. <b>Past Chair</b>		√	√		√	√	
Ferguson, Elizabeth B.	√				√	√	
Fernandez, Kristopher E.	√		√		√	√	



Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Fields, Alan B.	√		√		√	√	
Finchum, Travis		√	√	√	√	√	
Finlen, Erin F.		√	√		√	√	
Fitzgerald, Jr., John E.		√	√		√	√	
Foreman, Michael L.		√	√			√	
Friedman, Bridget	√			√	√	√	
Friedman, Jesse B.		√	√				
Galler, Jonathan		√					
Gans, Richard R.		√	√			√	
Gelfand, Michael J <b>Past Chair</b>	√		√		√	√	
Gentile, Melinda S.	√		√		√	√	
George, James		√	√		√	√	
George, Joseph P.		√	√	√	√	√	
Godelia, Vinette D.	√						
Goethe, Jeffrey S.		√	√		√	√	
Goldman, Louis "Trey"	√		√		√	√	
Goldman, Robert W. <b>Past Chair</b>		√	√		√		
Goodall, Deborah P. <b>Past Chair</b>		√	√	√	√	√	
Graham, Robert M.	√		√		√	√	
Granet, Lloyd	√		√				
Griffin, Linda S.		√	√	√	√		
Grimsley, John G. <b>Past Chair</b>		√					
Grosso, Jennifer		√				√	
Gunther, Eamonn W.		√	√		√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Guttmann, III, Louis B <b>Past Chair</b>	√					√	
Hamrick, Alexander H		√	√		√	√	
Hargett, Michael Van	√		√	√	√	√	
Hatcher, Hon. Mary P.			√				
Havens, Jason		√					
Hayes, Hon. Hugh D.							
Hayes, Michael Travis		√	√		√	√	
Hearn, Frederick "Ricky"		√	√		√	√	
Hearn, Steven L. <b>Past Chair</b>		√	√	√	√		
Heckert, Katie	√		√		√	√	
Henderson, Jr., Reese J.	√						
Henderson, III, Thomas N.	√		√		√	√	
Heuston, Stephen P.		√	√		√	√	
Hipsman, Mitchell Alec		√		√	√	√	
Hoffman, Brian W.	√		√	√	√	√	
Hudson, Hon. Margaret "Midge"		√					
Hughes, Elizabeth		√	√		√	√	
Huss, Cady L.		√	√		√	√	
Hutt, Gregg Evan	√						
Isphording, Roger O. <b>Past Chair</b>		√			√		
Jaiven, Kristen	√		√	√	√	√	
Jarrett, Sharifa K.		√	√				
Jennison, Julia Lee	√				√	√	
Johnson, Amber Jade		√	√	√	√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Jones, Darby					√	√	
Jones, Frederick W.	√		√		√	√	
Jones, Patricia P.H.	√				√		
Kalmanson, Stacy O.	√		√		√	√	
Kangas, Michael R.		√	√				
Kaplan, Seth		√	√		√	√	
Karibjanian, George		√					
Karr, Mary E.		√	√				
Karr, Thomas M.		√			√	√	
Kayser, Joan B. <b>Past Chair</b>		√	√	√			
Kelley, Rohan <b>Past Chair</b>		√					
Kelley, Sean W.		√					
Kelley, Shane		√		√		√	
Khan, Nishad	√		√		√	√	
Kibert-Basler, Nicole	√		√				
Kinsolving, Ruth Barnes, <b>Past Chair</b>	√						
Koren, Edward F. <b>Past Chair</b>		√	√		√	√	
Kotler, Alan Stephen		√	√		√	√	
Kromash, Keith S.		√					
Krumbein, Sandra Elizabeth	√		√			√	
Kurian, Sanjay	√		√		√	√	
Kypreos, Theodore S.		√	√	√	√		
Lancaster, Robert L.		√	√		√	√	
Lane, Jr., William R.		√	√		√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Larson, Roger A.	√		√		√	√	
Lebowitz, Sean	√		√		√	√	
Licastro, Laura			√		√	√	
Lile, Laird A. <b>Past Chair</b>		√	√	√	√	√	
Little, III, John W.	√						
Liu, Jin	√		√		√	√	
Lunsford, Rachel Albritton		√	√			√	
Madorsky, Marsha G.		√	√		√	√	
Malec, Brian		√	√		√	√	
Malfeld, Mariela	√				√	√	
Marger, Bruce <b>Past Chair</b>		√					
Marshall, III, Stewart		√	√		√	√	
Marx, James A.		√	√		√		
Mastin, Deborah Bovarnick	√		√			√	
McCall, Alan K.	√		√		√	√	
McDermott, Daniel		√	√			√	
McElroy, IV, Robert Lee		√	√		√	√	
McIver, Richard	√		√		√	√	
McRae, Ashley E.	√		√		√		
Menor, Arthur J.	√		√		√		
Meyer, George F. <b>Past Chair</b>	√		√		√	√	
Meyer, Michael	√		√		√	√	
Middlebrook, Mark	√		√	√	√	√	
Moffa, Jeanette	√						

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Muir, Hon. Celeste H.		√	√		√	√	
Murphy, Melissa J. <b>Past Chair</b>	√		√		√	√	
Nash, Charles I.		√	√	√	√	√	
Neukamm, John B. <b>Past Chair</b>	√		√		√	√	
Nguyen, Hung V.		√	√		√	√	
Oliver, Rachel			√		√	√	
O'Malley, Andrew M.	√		√		√	√	
Papanikos, Cristina		√	√		√	√	
Partington, Bruce	√				√		
Payne, L. Howard		√					
Pence, Scott P.	√		√		√	√	
Pilotte, Frank		√	√		√	√	
Pinnock, Duane L.		√	√		√		
Pollack, Anne Q.	√		√		√	√	
Prescott, Leonard	√		√		√	√	
Pressly, Grier James			√		√	√	
Price, Pamela O.		√	√			√	
Quintero, Jason	√		√		√	√	
Redding, John N.	√		√		√	√	
Riddell, Cynthia	√						
Rieman, Alexandra V.		√	√		√	√	
Robbins, Jr., R.J.	√		√		√	√	
Roberts, III, Hardy L.	√		√			√	
Robinson, Jennifer		√	√			√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Rojas, Silvia B.	√		√		√	√	
Rolando, Margaret A. <b>Past Chair</b>	√		√	√	√	√	
Roman, Paul E.		√	√		√	√	
Rosenberg, Joshua		√					
Rubel, Stacy		√	√		√	√	
Rubin, Jenna		√	√		√	√	
Russick, James C.	√		√		√	√	
Sachs, Colleen C.	√		√		√	√	
Sajdera, Christopher	√		√		√	√	
Santos, Angela		√	√		√		
Sasso, Andrew	√		√		√	√	
Schwartz, Martin	√		√		√	√	
Schwartz, Robert M.	√		√		√	√	
Seigel, Daniel A.	√			√	√	√	
Sheets, Sandra G.		√	√		√	√	
Sherrill, Richard		√	√		√	√	
Shoter, Neil B.	√		√		√	√	
Sklar, William P.	√		√			√	
Skrande, Gutman		√			√	√	
Smart, Christopher W.	√		√	√	√	√	
Smith, Kymberlee C.	√		√	√	√	√	
Smith, G. Thomas <b>Past Chair/Honorary Member</b>	√						
Smith, Yoshimi O.		√	√		√	√	
Sneeringer, Michael		√	√		√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Solomon, Marty	√		√				
Sparks, Brian C.		√	√		√	√	
Speiser, Hon. Mark A.					√	√	
Spivey, Barry F.		√	√		√		
Spurgeon, Susan K.	√		√		√	√	
Stafford, Michael P.		√		√		√	
Staker, Karla J.	√		√		√	√	
Stashis, Alfred Joseph		√	√		√	√	
Stern, Robert G.	√		√		√	√	
Stone, Adele I.	√		√		√	√	
Stone, Bruce M. <b>Past Chair</b>		√					
Sundberg, Laura K.		√	√	√	√	√	
Swaine, Jack Michael <b>Past Chair</b>	√		√	√		√	
Taft, Ellie	√		√		√	√	
Taylor, Richard W.	√		√		√	√	
Thomas, Hon. Patricia			√		√		
Thornton, Kenneth E.	√		√		√	√	
Thorpe, Hon Janet C.			√		√	√	
Ticktin, Hon. Jessica J.							
Tobin, Jennifer S.	√		√		√	√	
Triggs, Matthew H.		√				√	
Tschida, Joseph John	√		√		√		
Tucker, Kristine L.		√	√		√	√	
Udick, Arlene C.	√		√	√	√	√	

Executive Council Members	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Van Dien, Lisa Barnett	√				√	√	
Van Lenten, Jason Paul		√	√		√	√	
Van Pelt, Kit E.		√	√	√		√	
Villarroel, Nicole Marie	√		√		√	√	
Virgil, Eric		√	√			√	
Waller, Roland D. <b>Past Chair</b>	√		√		√	√	
Warner, Richard	√			√		√	
Weintraub, Lee A.	√			√	√	√	
Weiss, Brad R.	√		√		√		
Wells, Jerry B.		√				√	
White, Jr., Richard M.		√	√		√	√	
Williams, Margaret A.	√		√		√	√	
Williamson, Julie Ann <b>Past Chair</b>	√						
Wintter, Christopher		√	√		√	√	
Wohlust, Gary Charles		√	√		√	√	
Wolasky, Marjorie E.		√	√		√	√	
Wolf, Jerome L.		√	√			√	
Wood, Rebecca	√		√		√	√	
Young, Gwynne A.		√	√		√		
Zeydel, Diana S.C.		√	√		√	√	
Zikakis, Salome J.		√	√	√	√	√	
Zschau, Julius J. <b>Past Chair</b>	√						



RPPTL Fellows	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole, WY	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Bailey, Lilleth		√	√		√	√	
Cleland, Nicole Bell		√	√		√	√	
Harvey, Terrence L.	√		√		√	√	
Hinden, Michelle Gomez	√		√		√	√	
Jaiven, Kristen King	√		√		√	√	
Miller – Myers, Erin	√		√		√	√	
Percopo, Joseph		√	√		√	√	
Romano, Antonio		√			√	√	

Legislative Consultants	Division		August 22 Breakers (Virtual)	October 3 Jackson Hole, WY	December 5 Orlando	February 6 Palm Coast	June 5 Marco Island
	RP	P&T					
Brown, French		√	√		√		
Dunbar, Marc							
Dunbar, Peter M.	√		√		√		
Edenfield, Martha Jane	√	√	√		√	√	



## Thank you to Our General Sponsors

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Thursday Night Reception	JP Morgan	Carlos Batlle	<a href="mailto:carlos.a.batlle@jpmorgan.com">carlos.a.batlle@jpmorgan.com</a>
Thursday Night Reception	Old Republic Title	Jim Russick	<a href="mailto:jussick@oldrepublictitle.com">jussick@oldrepublictitle.com</a>
Friday Reception	Westcor Land Title Insurance Company	Sabine Seidel	<a href="mailto:sseidel@wltic.com">sseidel@wltic.com</a>
Friday Night Dinner	First American Title Insurance Company	Alan McCall	<a href="mailto:Amccall@firstam.com">Amccall@firstam.com</a>
Spouse Breakfast	Attorneys Title Fund Services, LLC	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>
Real Property Roundtable	Fidelity National Title Group	Karla Staker	<a href="mailto:Karla.Staker@fnf.com">Karla.Staker@fnf.com</a>
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Probate Roundtable	Guardian Trust	Ashley Gonnelli	<a href="mailto:ashley@guardiantrusts.org">ashley@guardiantrusts.org</a>
Executive Council Meeting Sponsor	The Florida Bar Foundation	Michelle Fonseca	<a href="mailto:mfonseca@flabarfdn.org">mfonseca@flabarfdn.org</a>
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Smart Marketing	Lesley Blaine	<a href="mailto:lesley@smartmarketingnow.com">lesley@smartmarketingnow.com</a>
Valuation Services, Inc.	Jeff Bae	<a href="mailto:Jeff@valuationservice.com">Jeff@valuationservice.com</a>
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Attorneys Title Fund Services, LLC	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>	Real Estate Leasing
Attorneys' Real Estate Councils of Florida, Inc	Rene Rutan	<a href="mailto:RRutan@thefund.com">RRutan@thefund.com</a>	Residential Real Estate and Industry Liaison
CATIC	Deborah Boyd	<a href="mailto:dboyd@catic.com">dboyd@catic.com</a>	Real Property Finance and Lending
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First American Title	Wayne Sobian	<a href="mailto:wsobien@firstam.com">wsobien@firstam.com</a>	Real Property Problems Study
<b>Probate Law Division</b>			
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BNY Mellon Wealth Management	Joan Crain	<a href="mailto:joan.crain@bnymellon.com">joan.crain@bnymellon.com</a>	IRA, Insurance and Employee Benefits
Business Valuation Analysts, LLC	Tim Bronza	<a href="mailto:tbronza@bvanalysts.com">tbronza@bvanalysts.com</a>	Trust Law
Coral Gables Trust	John Harris	<a href="mailto:jharris@cgtrust.com">jharris@cgtrust.com</a>	Probate and Trust Litigation
Coral Gables Trust	John Harris	<a href="mailto:jharris@cgtrust.com">jharris@cgtrust.com</a>	Probate Law Committee
Grove Bank and Trust	Marta Goldberg	<a href="mailto:mgoldberg@grovebankandtrust.com">mgoldberg@grovebankandtrust.com</a>	Guardianship and Advanced Directives
Kravit Estate Appraisal	Bianca Morabito	<a href="mailto:bianca@kravitestate.com">bianca@kravitestate.com</a>	Estate and Trust Tax Planning
Management Planning Inc.	Roy Meyers	<a href="mailto:rmeyers@mpival.com">rmeyers@mpival.com</a>	Estate and Trust Tax Planning
Northern Trust	Tami Conetta	<a href="mailto:tfc1@ntrs.com">tfc1@ntrs.com</a>	Trust Law

**RPPTL 2021-2022**  
**Executive Council Meeting Schedule**  
**Robert Swaine'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.**

<b>Date</b>	<b>Location</b>
<b>July 21 – July 25, 2021</b>	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$245 Premium Room Rate: \$299
<b>November 3 – November 7, 2021</b>	<b>Executive Council Meeting</b> Luminary Hotel & Co. Fort Myers, FL Standard Guest Room Rate (King): \$209 Standard Guest Room Rate (Two Queen): \$234
<b>March 2 – March 6, 2022**</b>	<b>Out of State Executive Council Meeting</b> Hotel Bennett Charleston, South Carolina Standard Guest Room Rate: \$429
<b>March 30 – April 2, 2022</b>	<b>Executive Council Meeting</b> AC Hotel by Marriott Tallahassee (Contract Pending) Tallahassee, Florida Standard Guest Room Rate: \$179
<b>June 1 – June 5, 2022</b>	<b>Executive Council Meeting &amp; Annual Convention</b> Hawks Cay Resort Duck Key, Florida Standard Guest Room Rate: \$249 Two Bedroom Villa Rate: \$299

\*\* Note change of date from previous Executive Council agendas

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\*Subject to availability

## 2021-2022 RPPTL COMMITTEE LEADERSHIP

### 2021-2022 PROBATE DIVISION

<u>PT Division Substantive Committee</u>	<u>Name</u>	<u>2021-2022 Position</u>
<b>Ad Hoc Guardianship Law Revision Committee</b>	David Brennan	Co-Chair
	Nicklaus Curley	Co-Chair
	Stacy Rubel	Co-Chair
	Sancha Brennan	VC
<b>Ad Hoc Committee on Electronic Wills</b>	Angela Adams	Chair
	Jenna Rubin	VC
	Ricky Hearn	VC
<b>Ad Hoc Study Committee on Professional Fiduciary Licensing</b>	Angela McClendon Adams	Chair
	Yoshi Smith	VC
<b>Ad Hoc Study Committee on Jurisdiction and Due Process</b>	Barry F. Spivey	Chair
	Sean William Kelley	Co-VC
	Shelly Wald Harris	Co-VC
<b>Ad Hoc ART Committee</b>	Alyse Reiser Comiter	Chair
	Sean Lebowitz	Co-VC
	Jack Falk	Co-VC
<b>Asset Protection</b>	Michael Sneeringer	Chair
	Richard Gans	Co-VC
	Justin Savioli	Co-VC
<b>Attorney/Trust Officer Liaison Conference</b>	Cady Huss	Chair
	Stacey L. Cole	Co-VC
	Tae Kelley Bronner	Co-VC
	Gail Fagan	Co-VC
	Mitchell Hipsman	Co-VC
	Eammon Gunther	Co-VC
	Michael Rubenstein	Co-VC

<b><u>PT Division Substantive Committee</u></b>	<b><u>Name</u></b>	<b><u>2021-2022 Position</u></b>
<b>Charitable Planning and Exempt Organizations Committee</b>	Seth Kaplan	Chair
	Denise Cazobon	Co-VC
	Kelly Hellmuth	Co-VC
<b>Elective Share Review Committee</b>	Jenna Rubin	Chair
	Lauren Detzel	Co-VC
	Cristina Papanikos	Co-VC
<b>Estate &amp; Trust Tax Planning</b>	Robert Lancaster	Chair
	Richard Sherrill	Co-VC
	Sasha Klein	Co-VC
<b>Guardianship, Power of Attorney &amp; Advance Directives</b>	Stacy Rubel	Chair
	Elizabeth Hughes	Co-VC
	Caitlin Powell	Co-VC
	Jacob Behar	Co-VC
<b>IRA, Insurance &amp; Employee Benefits</b>	Al Stashis	Chair
	Chad Callahan	Co-VC
	Rachel Oliver	Co-VC
<b>Liaisons with ACTEC</b>	Elaine M. Bucher	
	Diana S.C. Zeydel	
	Shane Kelley	
	Charlie Nash	
	Tami Conetta	
	Tom Karr	
	L. Howard Payne	
<b>Liaisons with Elder Law Section</b>	Travis Finchum	
	Marjorie Ellen Wolasky	
<b>Liaisons with Tax Law Section</b>	William Lane, Jr.	
	Brian Sparks	
	Brian Malec	
<b>Liaisons with Prof Fiduciary Council</b>	Darby Jones	

<b><u>PT Division Substantive Committee</u></b>	<b><u>Name</u></b>	<b><u>2021-2022 Position</u></b>
<b>OPPG Delegate</b>	Nicklaus Curley	
<b>Principal and Income</b>	Edward F. Koren	Co-Chair
	Pamela O. Price	Co-Chair
	Keith Braun	Co-VC
	Jolyon Acosta	Co-VC
<b>Probate and Trust Litigation</b>	John Richard Caskey	Chair
	James Raymond George	Co-VC
	Lee McElroy	Co-VC
	Angela Adams	Co-VC
<b>Probate Law &amp; Procedure</b>		Chair
	Travis Hayes	
	Ben Diamond	Co-VC
	Cristina Papanikos	Co-VC
	Theodore Kypreos	Co-VC
	Cady Huss/Probate Rules Liaison	Co-VC
<b>Trust Law</b>	Matthew Triggs	Chair
	David Akins	Co-VC
	Jennifer Robinson/Trust Officer Liaison	Co-VC
	Mary E. Karr	Co-VC
	Jenna Rubin	Co-VC
<b>Wills, Trusts &amp; Estates Certification Review Course</b>	Rachel Lunsford	Chair
	Jerome Wolf	Co-VC
	Allison Archbold	Co-VC
	Eric Virgil	Co-VC



**2021-2022 GENERAL STANDING COMMITTEES**

<b><u>GS Committee</u></b>	<b><u>Name</u></b>	<b><u>2021-2022 Position</u></b>
<b>Ad Hoc Remote Notarization</b>	E. Burt Bruton	Chair
<b>Ad Hoc RTOD</b>	Steve Kotler (PT)	Co-Chair
	Chris Smart (RP)	Co-Chair
<b>Amicus Coordination</b>	Kenneth Bradley Bell	Co-Chair
	Gerald Barnette Cope, Jr.	Co-Chair
	Robert W. Goldman	Co-Chair
	John Wesley Little, III	Co-Chair
<b>Budget</b>	Jon Scuderi	Chair
	Linda S. Griffin	Co-VC
	Tae Kelley Bronner	Co-VC
	Pamela O. Price	Co-VC
<b>CLE Seminar Coordination</b>	Sancha Brennan	Co-Chair (PT)
	Lee Weintraub	Co-Chair (RP)
	Alexander Hamilton Hamrick	Co-VC (PT)
	Paul Edward Roman	Co-VC (Ethics Professionalism)
	Hardy L. Roberts, III	Co-VC (General E- CLE)
	Silvia B. Rojas	Co-VC (RP)
	Stacy O. Kalmanson	Co-VC (RP)
<b>Convention Coordination</b>	Tae Kelley Bronner	Co-Chair
	Stacy O. Kalmanson	Co-Chair
<b>Disaster and Emergency Preparedness and Response Committee</b>	Brian Sparks	Chair
	Colleen Sachs	Co-VC
	Mike Bedke	Co-VC
<b>Fellows</b>	Chris Sajdera	Chair

<u>GS Committee</u>	<u>Name</u>	<u>2021-2022 Position</u>
	Chris Barr	Co-VC
	Bridget Friedman	Co-VC
	Angela Kelmasch Santos	Co-VC
<b>Florida Electronic Filing &amp; Service</b>	Rohan Kelley	Chair
<b>Homestead Issues Study</b>	Jeffrey Scott Goethe	Chair
	Amy Beller	Co-VC
	Melissa Joy Murphy	Co-VC
	Michael J. Gelfand	Co-VC
	Jeff Baskies	Co-VC
<b>Information Technology and Communication</b>	Hardy L. Roberts, III	Chair
	Erin Hope Christy	Co-VC
	Alexander Branimirov Dobrev	Co-VC
	Jesse B. Friedman	Co-VC
	Michael Sneeringer	Co-VC
	Sean Lebowitz	Co-VC
	Terrance Harvey	Co-VC
	Jordan Haines	Co-VC
<b>Law School Mentoring &amp; Programming</b>	Jonathan Butler	Chair
	Phillip A. Baumann	Co-VC
	Guy Storms Emerich	Co-VC
	Kristine Tucker	Co-VC
	Kymerlee Curry Smith	Co-VC
<b>Legislation</b>	Wilhelmina Kightlinger	Co-Chair (RP)
	Larry Miller	Co-Chair (PT)
	Manuel Farach	Co-VC
	Art Menor	Co-VC
	Grier Pressly	Co-VC
	Nicklaus Curley	Co-VC
	Chris Smart	Co-VC

<u>GS Committee</u>	<u>Name</u>	<u>2021-2022 Position</u>
<b>Legislative Update</b>	Brenda B. Ezell	Chair
	Theodore Stanley Kypreos	Co-VC
	Salome J. Zikakis	Co-VC
	Jennifer Slone Tobin	Co-VC
	Kit van Pelt	Co-VC
	Gutman Skrande	Co-VC
<b>Liaison with ABA</b>	Edward F. Koren	
	Robert Scott Freedman	
	George Joseph Meyer	
	Julius James Zschau	
<b>Liaison with Business Law Section</b>	Manuel Farach	
	Gwynne Alice Young	
<b>Liaison with Clerks of Circuit Court</b>	Laird Andrew Lile	
<b>Liaison with FLEA/FLSSI</b>	David Clark Brennan	
	Roland D. Waller	
<b>Liaison with Florida Bankers Assn.</b>	Mark Thomas Middlebrook	
	Robert Stern	
<b>Liaison with Judiciary</b>	Judge Mary Hatcher	
	Judge Hugh D. Hayes	
	Judge Margaret Hudson	
	Judge Bryan Rendzio	
	Judge Mark Alan Speiser	
	Judge Michael Rudisill	
<b>Liaison with Out-of-State Members</b>	John Edward Fitzgerald, Jr.	
	Nicole Courtney Kibert Basler	
	Michael P. Stafford	

<u>GS Committee</u>	<u>Name</u>	<u>2021-2022 Position</u>
<b>Liaison with TFB Board of Governors</b>		
<b>Liaison with TFB CLE Committee</b>	Sancha Brennan	
<b>Liaison with TFB Council of Sections</b>	Robert S. Swaine	
	Sarah Butters	
<b>Liaison with TFB Pro Bono Committee</b>	Lorna Brown-Burton	
<b>Long-Range Planning</b>	Sarah Butters	Chair
<b>Meetings Planning</b>	George Joseph Meyer	Chair
<b>Membership and Inclusion</b>	S. Dresden Brunner	Co-Chair
	Annabella Barboza	Co-Chair
	Erin Christy	Co-VC
	Vinette Dawn Godelia	Co-VC
	Roger Larson	Co-VC
	Jennifer Grosso	Co-VC
	Tattiana B. Stahl	Co-VC
<b>Model and Uniform Acts</b>	Richard Walter Taylor	Co-Chair
	Patrick Duffy	Co-Chair
	Adele Stone	Co-VC
	Ben Diamond	Co-VC
	Chris Wintter	Co-VC
<b>Professionalism and Ethics</b>	Andrew Blaise Sasso	Chair
	Alexander Branimirov Dobrev	Co-VC
	Elizabeth Bowers	Co-VC
	Laura Sundberg	Co-VC
	Judge Celeste Hardee Muir	Co-VC

<u>GS Committee</u>	<u>Name</u>	<u>2021-2022 Position</u>
<b>Publications ActionLine</b>	Jeffrey Alan Baskies	Co-Chair (PT)
	Michael Alan Bedke	Co-Chair (RP)
	George Daniel Karibjanian	Co-VC (PT)
	Paul Edward Roman	Co-VC (Ethics/Professionalism)
	Danny McDermott	Co-VC (PT)
	Rick Eckhard	Co-VC (RP)
	Keith Kromash	Co-VC (PT)
	Daniel Seigel	Co-VC (RP)
	Jeanette Moffa Wagener	Co-VC (RP)
<b>Publications Florida Bar Journal</b>	Homer Duvall, III	Co-Chair
	J. Allison Archbold	Co-Chair
	Marty Solomon	Co-VC
	Brian Curtis Sparks	Co-VC
	Brandon Bellew	Co-VC
	Jonathan Galler	Co-VC
	Mark Brown	Co-VC
<b>Sponsor Coordination</b>	Bill Sklar	Chair
	Jason Jude Quintero	Co-VC
	Patrick Eman	Co-VC
	Marsha Gerre Madorsky	Co-VC
	J. Michael Swaine	Co-VC
	Arlene Catherine Udick	Co-VC
	Alex Hamrick	Co-VC
	Rebecca Bell	Co-VC
<b>Strategic Planning</b>	Robert S. Swaine	Co-Chair
	Sarah Butters	Co-Chair
<b>Strategic Planning Implementation</b>	Robert Scott Freedman	Co-Chair
	Michael J. Gelfand	Co-Chair
	Deborah Goodall	Co-Chair
	Andrew O'Malley	Co-Chair
	Mike Dribin	Co-Chair
	Peggy Rolando	Co-Chair

**2021-2022 REAL PROPERTY DIVISION**

<b><u>RP Division Substantive Committee</u></b>	<b><u>Name</u></b>	<b><u>2021-2022 Position</u></b>
<b>Attorney Banker Conference</b>	Ashley McRae	Chair
	Kris Fernandez	Co-VC
	Jim Robbins	Co-VC
	Salome Zikakis	Co-VC
<b>Commercial Real Estate</b>	Jennifer Bloodworth	Chair
	Ashley McRae	Co-VC
	Ellie Taft	Co-VC
	Alex Gabel	Co-VC
<b>Condominium and Planned Development Law Certification Review Course</b>	Jane Cornett	Co-Chair
	Christine Ertl	Co-Chair
	Allison Hertz	VC
<b>Condominium and Planned Development</b>	Joe Adams	Co-Chair
	Peggy Rolando	Co-Chair
	Sandra Krumbein	Co-VC
	Alex Dobrev	Co-VC
<b>Construction Law</b>	Reese Henderson	Chair
	Bruce Partington	Co-VC
	Sanjay Kurian	Co-VC
	Elizabeth Ferguson	Co-VC
<b>Construction Law Certification Review Course</b>	Elizabeth Ferguson	Chair
	Scott Pence	Co-VC
	Gregg Hutt	Co-VC
<b>Construction Law Institute</b>	Jason Quintero	Chair
	Deb Mastin	Co-VC
	Brad Weiss	Co-VC

<b><u>RP Division Substantive Committee</u></b>	<b><u>Name</u></b>	<b><u>2021-2022 Position</u></b>
<b>Development and Land Use</b>	Colleen Sachs	Chair
	Lisa Van Dien	Co-VC
	Jin Liu	Co-VC
<b>Liaison with FLTA</b>	Melissa Murphy	Co-Chair
	Alan McCall	Co-Chair
	Alan Fields	Co-VC
	Jim Russick	Co-VC
<b>Insurance and Surety</b>	Michael Meyer	Co-Chair
	Katie Heckert	Co-Chair
	Mariela Malfeld	VC
<b>Real Estate Certification Review Course</b>	Manny Farach	Chair
	Lloyd Granet	Co-VC
	Marty Awerbach	Co-VC
	Laura Licastro	Co-VC
	Jason Ellison	Co-VC
<b>Real Estate Leasing</b>	Brenda Ezell	Co-Chair
	Chris Sajdera	Co-Chair
	Kristen Jaiven	VC
<b>Real Property Finance and Lending</b>	Rich McIver	Chair
	Jason Ellison	Co-VC
	Deb Boyd	Co-VC
<b>Real Property Litigation</b>	Mike Hargett	Chair
	Manny Farach	Co-VC
	Amber Ashton	Co-VC
	Shawn Brown	Co-VC
<b>Real Property Problems Study</b>	Anne Pollack	Chair
	Adele Stone	Co-VC
	Susan Spurgeon	Co-VC
	Brian Hoffman	Co-VC

<b><u>RP Division Substantive Committee</u></b>	<b><u>Name</u></b>	<b><u>2021-2022 Position</u></b>
<b>Residential Real Estate and Industry Liaison</b>	Nicole Villarroel	Chair
	Trey Goldman	Co-VC
	Jamie Marx	Co-VC
	Kristen Jaiven	Co-VC
<b>Title Insurance and Title Industry Liaison</b>	Brian Hoffman	Chair
	Jeremy Cranford	Co-VC
	Len Prescott	Co-VC
	Chris Smart	Co-VC
	Michelle Hinden	Co-VC
<b>Title Issues and Title Standards</b>	Rebecca Wood	Chair
	Karla Staker	Co-VC
	Bob Graham	Co-VC
	Amanda Hersem	Co-VC
<b>American College of Real Estate Lawyers (ACREL) Liaison</b>	Martin Schwartz	Co-Chair
	Bill Sklar	Co-Chair
<b>American College of Construction Lawyers (ACCL) Liaison</b>	George Meyer	Chair





## RPPTL Budget Summary

### TO DATE REPORT

#### General Budget

YTD

Revenue	\$ 2,098,158
Expenses	\$ 1,061,893
<b>Net:</b>	<b>\$ 1,036,265</b>

#### Attorney Bankers Conf.

YTD

Revenue	\$ (300)
Expenses	\$ 120
<b>Net:</b>	<b>\$ (420)</b>

#### CLI

YTD

Revenue	\$ 253,710
Expenses	\$ 7,612
<b>Net:</b>	<b>\$ 246,098</b>

#### Trust Officer Conference

Revenue	\$ 26,000
Expenses	\$ 363
<b>Net:</b>	<b>\$ 25,637</b>

#### Legislative Update

Revenue	\$ 13,646
Expenses	\$ 4,563
<b>Net:</b>	<b>\$ 9,083</b>

#### Convention

Revenue	\$ (2,714)
Expenses	\$ (178)
<b>Net:</b>	<b>\$ (2,536)</b>

#### Roll-up Summary (Total)

Revenue:	\$ 2,388,500
Expenses	\$ 1,074,373
<b>Net Operations</b>	<b>\$ 1,314,127</b>

<b>Beginning Fund Balance:</b>	<b>\$ 2,339,334</b>
<b>Current Fund Balance (YTD):</b>	<b>\$ 3,653,461</b>
<b>Projected June 2021 Fund Balance</b>	<b>\$ 2,123,769</b>

*1 This report is based on the tentative unaudited detail statement of operations dated 04/30/21 (prepared 5/19/21)*

## CLE Calendar (as of 05/19/21)

<b>Date of Presentation</b>	<b>Crs. #</b>	<b>Title</b>	<b>Location</b>
05/20/2021	4025	<i>RPPTL Audio Webcast – Condo Webcast Series (3)</i>	Audio Webcast
06/04/2021	4707	<i>Convention CLE: The Virtual Law Office</i>	JW Marriott, Marco Island
06/17/2021	4026	<i>RPPTL Audio Webcast - The Final Results 2021 Legislative Session for Community Associations – Leasing Prohibitions, Collection Practices, Election and Recall Disputes, and the end of DBPR Division Arbitration?</i>	Audio Webcast
06/30/2021	4031	<i>RPPTL Audio Webcast - Florida's New Summary Judgment Standard and Rule 1.510</i>	Audio Webcast
07/07/2021	4025	<i>RPPTL Audio Webcast - Beyond Chapters 718, 719, and 720 for Community Associations – Now you Know!</i>	Audio Webcast
7/13/2021	TBD	<i>RPPTL Audio Webcast: Is Your Judgment in My Best Interest - Decision Making in Guardianships</i>	Audio Webcast
7/14/2021	TBD	<i>RPPTL Audio Webcast: Flood Insurance and Risk Rating 2.0 (do seminar change notice, change name from Audio Webcast 1)</i>	Audio Webcast
7/23/2021	TBD	<i>41st Annual Legislative and Case Law Update</i>	The Breakers, Palm Beach
10/1/2021	4941	<i>Guardianship CLE</i>	Virtual Broadcast



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

(850) 561-5600  
www.FLORIDABAR.org

## SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for committees, divisions and sections to seek approval for section legislative or political activities.
- Requests for legislative and political activity must be made on this form.
- Political activity is defined in SBP 9.11(c) 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.”
- Voluntary bar groups must advise TFB of proposed legislative or political activity and must identify all groups the proposal has been submitted to; if comments have been received, they should be attached. SBP 9.50(d).
  - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
  - If expedited review is requested, the Executive Committee may review the proposal.
  - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

(RPPTL Approval Date \_\_\_\_\_)

### General Information

**Submitted by:** *(list name of section, division, committee, TFB group, or individual name)*

Finance and Lending Committee, Real Property, Probate and Trust Law Section

**Address:** *(address and phone #)* c/o Chair, Richard S. McIver - 813-405-2750

1505 N. Florida Avenue, Tampa, FL 33602

**Position Level:** *(TFB section / division / committee)* RPPTL Section, Finance and Lending Committee

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

**Proposed Advocacy**

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

**1. Proposed Wording of Legislative Position for Official Publication**

Proposal to expand the applicability of §697.07 (Assignment of Rents) and §702.10 (Order to Make Payments During Foreclosure) to third parties who acquire properties subject to a mortgage.

\_\_\_\_\_

**2. Political Proposal**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3. Reasons For Proposed Advocacy**

a. Is the proposal consistent with Keller v. State Bar of California, 496 US 1 (1990), and The Florida Bar v. Schwarz, 552 So. 2d 1094 (Fla. 1989)? Yes

b. Which goal or objective of the Bar's strategic plan is advanced by the proposal?  
Objective I - Ensure the Judicial System, a Coequal Branch of Government, is Fair, Impartial, Adequately Funded and Open to All

- c. Does the proposal relate to: (*check all that apply*)
- Regulation and discipline of attorneys
- Improvement of the functioning of the courts, judicial efficacy, and efficiency
- Increasing the availability of legal services to the public
- Regulation of lawyer client trust accounts
- Education, ethics, competency, integrity and regulation of the legal profession

d. Additional Information: \_\_\_\_\_

# THE FLORIDA BAR

## Referrals to Other Committees, Divisions & Sections

The section must provide copies of its proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Please include with your submission any comments received. **The section may submit its proposal before receiving comments but only after the proposal has been provided to the bar divisions, sections, or committees.** Please feel free to use this [form](#) for circulation among the other sections, divisions and committees.

Business Law Section  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Contacts

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

Wilhemina Kightlinger, Co-Chair of the Legislative Committee  
\_\_\_\_\_  
1408 N West Shore Blvd Ste 900, Tampa, FL 33607-4535; 813-514-6130  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Peter M. Dunbar & 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)*

Peter M. Dunbar & Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815  
Tallahassee, FL 32301 (850) -999-4100  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Submit this form and attachments to the OGC, [jhooks@floridabar.org](mailto:jhooks@floridabar.org), (850) 561-5662.*



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

850/561-5600  
www.FLORIDABAR.org

To: Leadership of the \_\_\_\_\_  
Section/Division/Committee

From: \_\_\_\_\_

Re: Proposed Legislative Position re: \_\_\_\_\_

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

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

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

BILL

ORIGINAL

YEAR

1                                   A bill to be entitled  
 2           An act relating to the amendment of Sections 697.07 and  
 3           702.10, Florida Statutes; providing an effective date.

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

6  
 7           **Section 1. 697.07 Assignment of rents.-**

8           (1) A mortgage or separate instrument may provide for an  
 9           assignment of rents of real property or any interest therein as  
 10          security for repayment of an indebtedness.

11          (2) If such an assignment is made, the mortgagee shall hold a lien  
 12          on the rents, and the lien created by the assignment shall be  
 13          perfected and effective against the mortgagor and third parties  
 14          upon recordation of the mortgage or separate instrument in the  
 15          public records of the county in which the real property is located,  
 16          according to law. For purposes of this section, the term  
 17          "mortgagor" is defined as the original mortgagor and all parties  
 18          who have subsequently acquired title to the property subject to the  
 19          assignment. The term "mortgagee" includes any party entitled to  
 20          enforce the mortgage or assignment of rents under applicable law.

21          (3) Unless otherwise agreed to in writing by the mortgagee and  
 22          mortgagor, the lien created by the assignment of rents shall be  
 23          enforceable upon the mortgagor's default and written demand for the  
 24          rents made by the mortgagee to the mortgagor, whereupon the  
 25          mortgagor shall turn over all rents in the possession or control of  
 26          the mortgagor at the time of the written demand or collected  
 27          thereafter (the "collected rents") to the mortgagee less payment of  
 28          any expenses authorized by the mortgagee in writing.

BILL ORIGINAL YEAR

29 (4) Upon application by the mortgagee or mortgagor, in a  
 30 foreclosure action, and notwithstanding any asserted defenses or  
 31 counterclaims of the mortgagor, a court of competent jurisdiction,  
 32 pending final adjudication of any action, may require the mortgagor  
 33 to deposit the collected rents into the registry of the court, or  
 34 in such other depository as the court may designate. However, the  
 35 court may authorize the use of the collected rents, before deposit  
 36 into the registry of the court or other depository, to:

37 (a) Pay the reasonable expenses solely to protect, preserve, and  
 38 operate the real property, including, without limitation, real  
 39 estate taxes, ~~and insurance~~ and assessments which come due after  
 40 entry of the court's order to a community association as defined in  
 41 s. 720.301, or a corporation regulated under chapter 718 or chapter  
 42 719;

43 (b) Escrow sums required by the mortgagee or separate assignment  
 44 of rents instrument; and

45 (c) Make payments to the mortgagee.

46 The court shall require the mortgagor to account to the court and  
 47 the mortgagee for the receipt and use of the collected rents and  
 48 may also impose other conditions on the mortgagor's use of the  
 49 collected rents.

50 (5) Nothing herein shall preclude the court from granting any  
 51 other appropriate relief regarding the collected rents pending  
 52 final adjudication of the action. The undisbursed collected rents  
 53 remaining in the possession of the mortgagor or in the registry of  
 54 the court, or in such other depository as ordered by the court,  
 55 shall be disbursed at the conclusion of the action in accordance  
 56 with the court's final judgment or decree.



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57 (6) The court shall expedite the hearing on the application by the  
 58 mortgagee or mortgagor to enforce the assignment of rents. The  
 59 procedures authorized by this statute are in addition to any other  
 60 rights or remedies of the mortgagee or mortgagor under the  
 61 mortgage, separate assignment of rents instrument, promissory note,  
 62 at law, or in equity.

63 (7) Nothing herein shall alter the lien priorities, rights, or  
 64 interests among mortgagees or other lienholders or alter the rights  
 65 of the mortgagee under the mortgage, separate assignment of rents  
 66 instrument, at law or in equity, concerning rents collected before  
 67 the written demand by the mortgagee. A mortgagee's enforcement of  
 68 its assignment of rents under this statute shall not operate to  
 69 transfer title to any rents not received by the mortgagee.

70 (8) Any moneys received by the mortgagee pursuant to this statute  
 71 shall be applied by the mortgagee in accordance with the mortgage,  
 72 separate assignment of rents instrument, or promissory note, and  
 73 the mortgagee shall account to the mortgagor for such application.

74 (9) This section does not apply to any corporation that is an  
 75 association, as defined in s.720.301, or a corporation regulated  
 76 under chapter 718 or chapter 719 that (a) acquires title to a  
 77 parcel or unit through the foreclosure of its claim of lien, or a  
 78 deed in lieu of foreclosure, provided title remains vested in the  
 79 association and any rents collected are applied to assessments that  
 80 are then due, or (b) is collecting rents from the tenants in the  
 81 parcel or unit pursuant to s. 718.116(11), s. 719.108(10) or s.  
 82 720.3085(8).

83 **Section 2. 702.10 Order to show cause; entry of final**  
 84 **judgment of foreclosure; payment during foreclosure.—**

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85 (1) A lienholder may request an order to show cause for the  
 86 entry of final judgment in a foreclosure action. For purposes of  
 87 this section, the term "lienholder" includes the plaintiff and a  
 88 defendant to the action who holds a lien encumbering the property  
 89 or a defendant who, by virtue of its status as a condominium  
 90 association, cooperative association, or property owners'  
 91 association, may file a lien against the real property subject to  
 92 foreclosure. Upon filing, the court shall immediately review the  
 93 request and the court file in chambers and without a hearing. If,  
 94 upon examination of the court file, the court finds that the  
 95 complaint is verified, complies with s.702.015, and alleges a cause  
 96 of action to foreclose on real property, the court shall promptly  
 97 issue an order directed to the other parties named in the action to  
 98 show cause why a final judgment of foreclosure should not be  
 99 entered.

100 (a) The order shall:

101 1. Set the date and time for a hearing to show cause. The  
 102 date for the hearing may not occur sooner than the later of 20 days  
 103 after service of the order to show cause or 45 days after service  
 104 of the initial complaint. When service is obtained by publication,  
 105 the date for the hearing may not be set sooner than 30 days after

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106 the first publication.

107 2. Direct the time within which service of the order to show  
108 cause and the complaint must be made upon the defendant.

109 3. State that the filing of defenses by a motion, a  
110 responsive pleading, an affidavit, or other papers before the  
111 hearing to show cause that raise a genuine issue of material fact  
112 which would preclude the entry of summary judgment or otherwise  
113 constitute a legal defense to foreclosure shall constitute cause  
114 for the court not to enter final judgment.

115 4. State that a defendant has the right to file affidavits or  
116 other papers before the time of the hearing to show cause and may  
117 appear personally or by way of an attorney at the hearing.

118 5. State that, if a defendant files defenses by a motion, a  
119 verified or sworn answer, affidavits, or other papers or appears  
120 personally or by way of an attorney at the time of the hearing, the  
121 hearing time will be used to hear and consider whether the  
122 defendant's motion, answer, affidavits, other papers, and other  
123 evidence and argument as may be presented by the defendant or the  
124 defendant's attorney raise a genuine issue of material fact which  
125 would preclude the entry of summary judgment or otherwise  
126 constitute a legal defense to foreclosure. The order shall also

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127 state that the court may enter an order of final judgment of  
 128 foreclosure at the hearing and order the clerk of the court to  
 129 conduct a foreclosure sale.

130 6. State that, if a defendant fails to appear at the hearing  
 131 to show cause or fails to file defenses by a motion or by a  
 132 verified or sworn answer or files an answer not contesting the  
 133 foreclosure, such defendant may be considered to have waived the  
 134 right to a hearing, and in such case, the court may enter a default  
 135 against such defendant and, if appropriate, a final judgment of  
 136 foreclosure ordering the clerk of the court to conduct a  
 137 foreclosure sale.

138 7. State that if the mortgage provides for reasonable  
 139 attorney fees and the requested attorney fees do not exceed 3  
 140 percent of the principal amount owed at the time of filing the  
 141 complaint, it is unnecessary for the court to hold a hearing or  
 142 adjudge the requested attorney fees to be reasonable.

143 8. Attach the form of the proposed final judgment of  
 144 foreclosure which the movant requests the court to enter at the  
 145 hearing on the order to show cause.

146 9. Require the party seeking final judgment to serve a copy  
 147 of the order to show cause on the other parties in the following

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148 manner:

149 a. If a party has been served pursuant to chapter 48 with the  
 150 complaint and original process, or the other party is the plaintiff  
 151 in the action, service of the order to show cause on that party may  
 152 be made in the manner provided in the Florida Rules of Civil  
 153 Procedure.

154 b. If a defendant has not been served pursuant to chapter 48  
 155 with the complaint and original process, the order to show cause,  
 156 together with the summons and a copy of the complaint, shall be  
 157 served on the party in the same manner as provided by law for  
 158 original process.

159 Any final judgment of foreclosure entered under this  
 160 subsection is for in rem relief only. This subsection does not  
 161 preclude the entry of a deficiency judgment where otherwise allowed  
 162 by law. The Legislature intends that this alternative procedure may  
 163 run simultaneously with other court procedures.

164 (b) The right to be heard at the hearing to show cause is  
 165 waived if a defendant, after being served as provided by law with  
 166 an order to show cause, engages in conduct that clearly shows that  
 167 the defendant has relinquished the right to be heard on that order.  
 168 The defendant's failure to file defenses by a motion or by a sworn

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169 or verified answer, affidavits, or other papers or to appear  
 170 personally or by way of an attorney at the hearing duly scheduled  
 171 on the order to show cause presumptively constitutes conduct that  
 172 clearly shows that the defendant has relinquished the right to be  
 173 heard. If a defendant files defenses by a motion, a verified  
 174 answer, affidavits, or other papers or presents evidence at or  
 175 before the hearing which raise a genuine issue of material fact  
 176 which would preclude entry of summary judgment or otherwise  
 177 constitute a legal defense to foreclosure, such action constitutes  
 178 cause and precludes the entry of a final judgment at the hearing to  
 179 show cause.

180 (c) In a mortgage foreclosure proceeding, when a final  
 181 judgment of foreclosure has been entered against the mortgagor and  
 182 the note or mortgage provides for the award of reasonable attorney  
 183 fees, it is unnecessary for the court to hold a hearing or adjudge  
 184 the requested attorney fees to be reasonable if the fees do not  
 185 exceed 3 percent of the principal amount owed on the note or  
 186 mortgage at the time of filing, even if the note or mortgage does  
 187 not specify the percentage of the original amount that would be  
 188 paid as liquidated damages.

189 (d) If the court finds that all defendants have waived the

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190 right to be heard as provided in paragraph (b), the court shall  
 191 promptly enter a final judgment of foreclosure without the need for  
 192 further hearing if the plaintiff has shown entitlement to a final  
 193 judgment and upon the filing with the court of the original note,  
 194 satisfaction of the conditions for establishment of a lost note, or  
 195 upon a showing to the court that the obligation to be foreclosed is  
 196 not evidenced by a promissory note or other negotiable instrument.  
 197 If the court finds that a defendant has not waived the right to be  
 198 heard on the order to show cause, the court shall determine whether  
 199 there is cause not to enter a final judgment of foreclosure. If the  
 200 court finds that the defendant has not shown cause, the court shall  
 201 promptly enter a judgment of foreclosure. If the time allotted for  
 202 the hearing is insufficient, the court may announce at the hearing  
 203 a date and time for the continued hearing. Only the parties who  
 204 appear, individually or through an attorney, at the initial hearing  
 205 must be notified of the date and time of the continued hearing.

206 (2) Except as provided in paragraph (i) below, in any action  
 207 for foreclosure, other than owner-occupied residential real estate,  
 208 in addition to any other relief that the court may award, the  
 209 plaintiff may request that the court enter an order directing the  
 210 mortgagor defendant to show cause why an order to make payments

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211 during the pendency of the foreclosure proceedings or an order to  
 212 vacate the premises should not be entered. For purposes of this  
 213 subsection, "mortgagor" is defined as the original mortgagor, or  
 214 any subsequent owner or party in possession of the property. This  
 215 subsection shall not apply to an association as defined in  
 216 s.720.301 or a corporation regulated under chapter 718 or chapter  
 217 719, that (a) acquires title to a parcel or unit through the  
 218 foreclosure of its claim of lien, or a deed in lieu of foreclosure,  
 219 provided title remains vested in the association and any rents  
 220 collected are applied to assessments that are then due, or (b) is  
 221 collecting rents from the tenants in the parcel or unit pursuant to  
 222 s. 718.116(11), s. 719.108(10) or s. 720.3085(8).

223 (a) The order shall:

224 1. Set the date and time for hearing on the order to show  
 225 cause. However, the date for the hearing may not be set sooner than  
 226 20 days after the service of the order. If service is obtained by  
 227 publication, the date for the hearing may not be set sooner than 30  
 228 days after the first publication.

229 2. Direct the time within which service of the order to show  
 230 cause and the complaint shall be made upon each defendant.

231 3. State that a defendant has the right to file affidavits or



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232 other papers at the time of the hearing and may appear personally  
 233 or by way of an attorney at the hearing.

234 4. State that, if a defendant fails to appear at the hearing  
 235 to show cause and fails to file defenses by a motion or by a  
 236 verified or sworn answer, the defendant is deemed to have waived  
 237 the right to a hearing and in such case the court may enter an  
 238 order to make payment or vacate the premises.

239 5. Require the movant to serve a copy of the order to show  
 240 cause on the defendant in the following manner:

241 a. If a defendant has been served with the complaint and  
 242 original process, service of the order may be made in the manner  
 243 provided in the Florida Rules of Civil Procedure.

244 b. If a defendant has not been served with the complaint and  
 245 original process, the order to show cause, together with the  
 246 summons and a copy of the complaint, shall be served on the  
 247 defendant in the same manner as provided by law for original  
 248 process.

249 (b) The right of a defendant to be heard at the hearing to  
 250 show cause is waived if the defendant, after being served as  
 251 provided by law with an order to show cause, engages in conduct  
 252 that clearly shows that the defendant has relinquished the right to

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253 be heard on that order. A defendant's failure to file defenses by a  
 254 motion or by a sworn or verified answer or to appear at the hearing  
 255 duly scheduled on the order to show cause presumptively constitutes  
 256 conduct that clearly shows that the defendant has relinquished the  
 257 right to be heard.

258 (c) If the court finds that a defendant has waived the right  
 259 to be heard as provided in paragraph (b), the court may promptly  
 260 enter an order requiring payment in the amount provided in  
 261 paragraph (f) or an order to vacate.

262 (d) If the court finds that the mortgagor has not waived the  
 263 right to be heard on the order to show cause, the court shall, at  
 264 the hearing on the order to show cause, consider the affidavits and  
 265 other showings made by the parties appearing and make a  
 266 determination of the probable validity of the underlying claim  
 267 alleged against the mortgagor and the mortgagor's defenses. If the  
 268 court determines that the plaintiff is likely to prevail in the  
 269 foreclosure action, the court shall enter an order requiring the  
 270 mortgagor to make the payment described in paragraph (e) to the  
 271 plaintiff and provide for a remedy as described in paragraph (f).  
 272 However, the order shall be stayed pending final adjudication of  
 273 the claims of the parties if the mortgagor files with the court a

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274 written undertaking executed by a surety approved by the court in  
 275 an amount equal to the unpaid balance of the lien being foreclosed,  
 276 including all principal, interest, unpaid taxes, and insurance  
 277 premiums paid by the plaintiff.

278 (e) If the court enters an order requiring the mortgagor to  
 279 make payments to the plaintiff, payments shall be payable at such  
 280 intervals and in such amounts provided for in the mortgage  
 281 instrument before acceleration or maturity. The obligation to make  
 282 payments pursuant to any order entered under this subsection shall  
 283 commence from the date of the motion filed under this section. The  
 284 order shall be served upon the person ordered to make payments no  
 285 later than 20 days before the date specified for the first payment.  
 286 The order may permit, but may not require, the plaintiff to take  
 287 all appropriate steps to secure the premises during the pendency of  
 288 the foreclosure action.

289 (f) If the court enters an order requiring payments, the  
 290 order shall also provide that the plaintiff is entitled to  
 291 possession of the premises upon the failure of the mortgagor to  
 292 make the payment required in the order unless at the hearing on the  
 293 order to show cause the court finds good cause to order some other  
 294 method of enforcement of its order.

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295 (g) All amounts paid pursuant to this section shall be  
 296 credited against the mortgage obligation in accordance with the  
 297 terms of the loan documents; however, payments made under this  
 298 section do not constitute a cure of any default or a waiver or any  
 299 other defense to the mortgage foreclosure action.

300 (h) Upon the filing of an affidavit with the clerk that the  
 301 premises have not been vacated pursuant to the court order, the  
 302 clerk shall issue to the sheriff a writ for possession which shall  
 303 be governed by s. 83.62.

304 (i) This subsection does not apply to foreclosure of an  
 305 owner-occupied residence. For purposes of this paragraph, there is  
 306 a rebuttable presumption that a residential property for which a  
 307 homestead exemption for taxation was granted according to the  
 308 certified rolls of the latest assessment by the county property  
 309 appraiser, before the filing of the foreclosure action, is an  
 310 owner-occupied residential property.

311 Section 3. This act shall take effect upon becoming law.

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

**WHITE PAPER**

**PROPOSAL TO EXPAND APPLICABILITY OF § 697.07 AND  
§ 702.10 TO THIRD PARTIES WHO ACQUIRE PROPERTIES  
SUBJECT TO A MORTGAGE**

**I. SUMMARY**

Florida Statute §697.07 was enacted in 1987 to provide that a borrower's assignment of rents as collateral for a loan becomes effective upon default of the borrower. §702.10 was enacted in 1993 and provides that the court may order the borrower to make payments during the pendency of the foreclosure for non-owner occupied properties. Both statutes have been amended several times, but each statute has been held by various courts to be unenforceable against third parties who acquire such properties without assuming the obligations under an existing mortgage loan.

It is typical for borrowers who are not paying their mortgages to also default in payment of their homeowners' association or condominium association assessments, resulting in a foreclosure by the association. Some delinquent borrowers also file bankruptcy, resulting in a sale of the property by the bankruptcy trustee. Investors may buy such properties from the association's foreclosure sale or the bankruptcy trustee for "pennies on the dollar", subject to the delinquent mortgage loan. However, many of those investors have no intention of paying off the superior mortgage, and vigorously fight the foreclosure for the sole purpose of delaying the transfer of title, in order to maximize any rental income that may be received during the foreclosure. Meanwhile, unpaid interest continues to accrue on the debt, and lenders continue to advance money to pay taxes and insurance for the property, but receive no payments from the new property owner to offset those expenditures.

The proposal would expand a foreclosing lender's ability to obtain rental income derived from the mortgaged property during the foreclosure action from third parties who acquire the property but don't assume the mortgage. It would also provide a limited exception for community associations that own units in their communities by reason of their own lien foreclosure actions and rent them out but do not oppose the mortgage foreclosure action. There is also a carve-out for associations that are collecting rents pursuant to the statutes governing associations. The change is necessary to avoid the intentional delays caused by third parties using the judicial system as part of their business model to increase profits. The legislation does not have a fiscal impact on state funds.

## **II. CURRENT SITUATION**

Since the financial crisis, investors have been purchasing condo and HOA properties at the associations' foreclosure sales for just a few thousand dollars, renting out the units, and opposing the mortgage foreclosure actions to prolong the lucrative flow of rental income. Since the investor is not a party to the mortgage, it has no obligation to make the monthly mortgage payments and almost never does. In some cases, community associations have pursued a similar course, including opposing the mortgage foreclosure.

Remedies for the foreclosing lender are found in section 697.07 and section 702.10. These sections provide foreclosing mortgagees the ability in some cases to obtain the income derived from rental of the mortgaged properties. However, language in both sections restricts the lenders' ability to do so where the property owner is a third-party investor, not the original mortgagor.

Appellate decisions such as Green Emerald Homes, LLC v. Residential Credit Opportunities Trust, 256 So.3d 211 (Fla. 2d DCA 2018) and Green Emerald Homes, LLC v. 21<sup>st</sup> Century Mtg. Corp., 2019 WL 2398015 (Fla. 2d DCA 2019) have limited the ability of foreclosing lenders to utilize the existing statutes to address the inequitable conduct of third parties in the mortgage foreclosure action. This has enabled investors to continue to collect rental income and delay foreclosure cases for their own benefit with impunity. As the courts have made clear, the only way to address the inequitable conduct of investors using the court system as part of their business model to generate additional rental revenue is through a change to the applicable statutes.

## **III. EFFECT OF PROPOSED CHANGE**

The proposed changes serve to recognize the inequitable conduct of investors using the court system as part of their business model to maximize the amount of rental revenue they receive of a property. The draft proposal expands the application of Section 697.07 and 702.10 to cover all instances where the mortgaged property is acquired by any person or entity that is not the mortgagor, with a limited exception for community associations. This will allow foreclosing lenders and the trial courts to address the intentional efforts of third parties to delay mortgage foreclosure actions so that they can receive additional rental income.

Community associations that take title through a lien foreclosure or a deed in lieu of foreclosure, would be able to rent the property and keep the rents as long as they apply the rents to the assessments that are due. This limited exception recognizes the unique nature of community association foreclosure actions and that such associations are not set up to own property within its community. The limited exception allows for those instances where the community association does take title to rent the property and apply the rental income to the delinquent balance owed to the community association so that the common expenses of the community association, such as taxes and insurance and maintenance, are fully funded.

The draft proposal also expands the court's authority under Section 697.07(4)(a)-(c). Presently, this section permits a court, pending final adjudication, to require the payment of rent into the court registry or other appropriate depository. However, the court may, in its discretion, authorize use

of collected rents, before deposit, to pay taxes, insurance, escrow sums required by the mortgagee or separate assignment of rents instrument and make payments to the mortgagee. As amended, in addition to the foregoing items, the court may also consider authorizing the use of collected rents, before deposit, to reimburse community associations for regular periodic assessments coming due after the date of the order and through the final adjudication of the action.

#### **IV. ANALYSIS**

The following describes the changes being proposed:

A. Section 697.07(2) is amended to clarify that the statute is enforceable against the mortgagor and all third parties who may have acquired title to the property. The definition of “mortgagor” is added to include such parties. The definition of “mortgagee” is added to clarify that the assignment of rents is enforceable by any party entitled to enforce the mortgage. There is a large body of case law on who is entitled to enforce a mortgage under Section 673.3011 and related statutes.

B. Section 697.07(3) provides that that the statutory lien created by the assignment of rents is enforceable against the mortgagor, as now defined in subsection (2).

C. Section 697.07(4) is amended to provide that a court has discretion to order the mortgagor or third party to deposit rental revenue into the court registry pending the resolution of the foreclosure, and also allows for the payment of regular assessments to a community association that come due after the court’s order to be paid out of the rental revenue.

D. Section 697.07(9) is created to exempt community associations from the provisions of Section 697.07, provided the community association holds title to the property that is the subject of the foreclosure action and applies the rents towards the assessments that are then due, or is collecting rent pursuant to the provisions of Section 718.116(11), Section 719.108(10) or Section 720.3085(8).

E. Section 702.10(2) is amended to specify this subsection applies to the mortgagor and subsequent owners by adding a definition of “mortgagor”, and that this subsection does not apply to a community association provided it holds title and any rents collected are applied to assessments that are then due.

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

The proposal does not have a direct fiscal impact on local governments. There may be a potential impact on the judicial system as mortgage foreclosure cases move quicker due to the disincentive for investors to delay the mortgage foreclosure to increase the amount of rental revenue received. The proposal will also allow for the judiciary to focus its resources on contested foreclosure actions that involve homestead properties as third parties will be less likely to litigate foreclosure actions due to the inability to receive rental income during the pendency of the foreclosure.

## **VI. DIRECT IMPACT ON PRIVATE SECTOR**

This proposal will likely reduce the bidding at community association foreclosures since third parties will no longer be able to rent the property and collect the rental revenue without having to worry about the foreclosing lender obtaining the funds. This will likely increase the amount of properties that community associations acquire in their foreclosure actions. The carve-out for associations to keep rental income from units they own through foreclosure balances the anticipated chilling effect on association foreclosure sales. This proposal will also allow for properties that are in foreclosure to be moved quickly through the system and returned to the market faster by reducing the frivolous and unmeritorious filings by third parties that are filed for the primary purpose of delaying the mortgage foreclosure action for the sole purpose of generating additional rental revenue .

## **VII. CONSTITUTIONAL ISSUES**

There are no constitutional issues.

## **VIII. OTHER INTERESTED PARTIES**

The Condominium and Planned Development Committee, the Real Property Litigation Committee, the Florida Banker's Association and the Florida judiciary.





# The Florida Bar

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Tallahassee, FL 32399-2300

Joshua E. Doyle  
Executive Director

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## SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for committees, divisions and sections to seek approval for section legislative or political activities.
- Requests for legislative and political activity must be made on this form.
- Political activity is defined in SBP 9.11(c) 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.”
- Voluntary bar groups must advise TFB of proposed legislative or political activity and must identify all groups the proposal has been submitted to; if comments have been received, they should be attached. SBP 9.50(d).
  - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
  - If expedited review is requested, the Executive Committee may review the proposal.
  - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

### General Information

(RPPTL Approval Date \_\_\_\_\_)

**Submitted by:** *(list name of section, division, committee, TFB group, or individual name)*

Condominium & Planned Development Committee, RPPTL

**Address:** *(address and phone #)* 12140 Carissa Commerce Court, Suite 200, Ft. Myers, FL 33966

(239)-433-7707

**Position Level:** *(TFB section / division / committee)* Committee

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

**Proposed Advocacy**

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

**1. Proposed Wording of Legislative Position for Official Publication**

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

**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?  
Enhance the legal profession and the public's trust and confidence in attorneys & the justice system; Enhance and improve the value of Florida Bar membership
- c. Does the proposal relate to: (*check all that apply*)
  - Regulation and discipline of attorneys
  - Improvement of the functioning of the courts, judicial efficacy, and efficiency
  - Increasing the availability of legal services to the public
  - Regulation of lawyer client trust accounts
  - Education, ethics, competency, integrity and regulation of the legal profession
- d. Additional Information: \_\_\_\_\_  
\_\_\_\_\_

# THE FLORIDA BAR

## Referrals to Other Committees, Divisions & Sections

The section must provide copies of its proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Please include with your submission any comments received. **The section may submit its proposal before receiving comments but only after the proposal has been provided to the bar divisions, sections, or committees.** Please feel free to use this [form](#) for circulation among the other sections, divisions and committees.

Business Law Section of The Florida Bar  
Public Interest Law Section of The Florida Bar  
\_\_\_\_\_  
\_\_\_\_\_

## Contacts

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

Cary Wright, Legislative Co-Chair of the RPPTL Section, 4221 West Boy Scout Boulevard,  
Suite 1000, Tampa, FL 33607, (813)-229-4135  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Peter M. Dunbar & 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)*

Peter M. Dunbar & Martha Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street,  
Suite 815, Tallahassee, FL 32301, (850)-999-4100  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Submit this form and attachments to the OGC, [jhooks@floridabar.org](mailto:jhooks@floridabar.org), (850) 561-5662.*



# The Florida Bar

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Tallahassee, FL 32399-2300

Joshua E. Doyle  
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To: Leadership of the Business Law Section  
Section/Division/Committee

From: Condo. & Planned Development Committee

Re: Proposed Legislative Position re: Condominium Hurricane Protection

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

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

Legislation amending Sects. 718.113; 718.115 regarding hurricane protection

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



# The Florida Bar

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Executive Director

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[www.FLORIDABAR.org](http://www.FLORIDABAR.org)

To: Leadership of the Public Interest Law Section  
Section/Division/Committee

From: Condo. & Planned Development Committee

Re: Proposed Legislative Position re: Condominium Hurricane Protection

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

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

Legislation amending Sects. 718.113; 718.115 regarding hurricane protection

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

1 A bill to be entitled  
2 An act relating to \_\_\_\_; providing an effective date.

3  
4 Be It Enacted by the Legislature of the State of Florida:

5  
6 **Section 1.** Section 718.104(4)(p) is amended to add as follows:

7 718.104 **Creation of condominiums; contents of declaration.**—Every  
8 condominium created in this state shall be created pursuant to this  
9 chapter.—

10 (4) The declaration must contain or provide for the following  
11 matters:

12 (p) For residential and mixed-use condominiums, whether the unit  
13 owner or the association is responsible for the maintenance,  
14 repair, or replacement of any exterior windows, doors, glass  
15 apertures, code-compliant hurricane shutters or other code-  
16 compliant hurricane protection that is installed on a building in  
17 the condominium.

18 **Section 2.** Section 718.113(5) is amended to read as follows:

19 718.113 **Maintenance; limitation upon improvement; display of flag;**  
20 **hurricane shutters and protection; display of religious**  
21 **decorations.**—

22 (5) In order to protect the health, safety, and welfare of the  
23 people of the State of Florida and to ensure uniformity and  
24 consistency in the hurricane protection installed by condominium  
25 associations and unit owners, this subsection applies to every  
26 residential and mixed-use condominium in the state, regardless of  
27 the date of its declaration of condominium. For the purposes of  
28 this subsection and s. 718.115, hurricane protection shall mean  
29 hurricane shutters, impact glass, code-compliant windows or  
30 doors, or other types of code-compliant hurricane protection.  
31 Each board of administration of a residential or mixed-use  
32 condominium shall adopt hurricane ~~shutter~~ protection  
33 specifications for each building within each condominium operated  
34 by the association which ~~shall~~ may include color, style, and  
35 other factors deemed relevant by the board. All specifications  
36 adopted by the board must comply with the applicable building  
37 code. The installation, maintenance, repair, replacement, and  
38 operation of hurricane protection in accordance with this  
39 subsection is not a material alteration to the common elements or  
40 association property within the meaning of this section.

41 (a) The board may, subject to s. 718.3026 and the approval of a

42 majority of voting interests of the residential or mixed-use  
43 condominium, install or require that unit owners install  
44 hurricane ~~shutters, impact glass, code-compliant windows or~~  
45 ~~doors, or other types of code-compliant hurricane~~ protection that  
46 ~~comply~~ complies with or exceeds the applicable building code. A  
47 vote of the owners to require the installation of hurricane  
48 protection under this paragraph shall be set forth in a  
49 certificate attesting to such vote and the date the hurricane  
50 protection must be installed by unit owners, as applicable, and  
51 recorded in the public records of the county where the  
52 condominium is located. The certificate shall include the  
53 recording data identifying the declaration and shall be executed  
54 in the form required for the execution of a deed. Upon recording  
55 the certificate it must be mailed to the unit owners or  
56 electronically transmitted to the unit owners who have consented  
57 to receive electronic notice. The failure to record or send the  
58 certificate to unit owners in accordance with this paragraph does  
59 not affect the validity or enforceability of the vote of the unit  
60 owners. ~~However, a~~ A vote of the owners under this paragraph is  
61 not required if the maintenance, repair, and replacement of the



62 hurricane ~~shutters, impact glass, code-compliant windows or~~  
63 ~~doors, or other types of code-compliant hurricane~~ protection or  
64 any exterior window, door or other aperture to be protected by  
65 the hurricane protection is are the responsibility of the  
66 association pursuant to the declaration of condominium as  
67 originally recorded, or amendments to the declaration adopted  
68 pursuant to the provisions contained therein or if unit owners  
69 are required to install hurricane protection pursuant to the  
70 declaration of condominium as originally recorded, or amendments  
71 to the declaration adopted pursuant to the provisions contained  
72 therein. If hurricane protection ~~or laminated glass or window film~~  
73 ~~architecturally designed to function as hurricane protection~~ that  
74 complies with or exceeds the current applicable building code has  
75 been previously installed, the board may not install ~~hurricane~~  
76 ~~shutters, impact glass, code-compliant windows or doors, or other~~  
77 ~~types of code-compliant~~ the same type of hurricane protection or  
78 require that unit owners install the same type of hurricane  
79 protection unless the installed hurricane protection has reached  
80 the end of its useful life or as necessary to prevent damage to  
81 the common elements or to a unit.

82 ~~(b) The association is responsible for the maintenance,~~  
83 ~~repair, and replacement of the hurricane shutters, impact glass,~~  
84 ~~code-compliant windows or doors, or other types of code-compliant~~  
85 ~~hurricane protection authorized by this subsection if such~~  
86 ~~property is the responsibility of the association pursuant to the~~  
87 ~~declaration of condominium. If the hurricane shutters, impact~~  
88 ~~glass, code-compliant windows or doors, or other types of code-~~  
89 ~~compliant hurricane protection are the responsibility of the unit~~  
90 ~~owners pursuant to the declaration of condominium, the~~  
91 ~~maintenance, repair, and replacement of such items are the~~  
92 ~~responsibility of the unit owner.~~

93 ~~(e)~~ (b) The board may operate ~~shutters, impact glass, code-~~  
94 ~~compliant windows or doors, or other types of code-compliant~~  
95 ~~hurricane protection installed pursuant to this subsection~~  
96 without permission of the unit owners only if such operation is  
97 necessary to preserve and protect the condominium property ~~and~~ or  
98 association property. ~~The installation, replacement, operation,~~  
99 ~~repair, and maintenance of such shutters, impact glass, code-~~  
100 ~~compliant windows or doors, or other types of code-compliant~~  
101 ~~hurricane protection in accordance with the procedures set forth~~

102 ~~in this paragraph are not a material alteration to the common~~  
103 ~~elements or association property within the meaning of this~~  
104 ~~section.~~

105 ~~(d)~~ (c) Notwithstanding any other provision in the residential or  
106 mixed-use condominium documents, if approval is required by the  
107 documents, a board may not refuse to approve the installation ~~or~~  
108 ~~replacement~~ of ~~hurricane shutters, impact glass, code-compliant~~  
109 ~~windows or doors, or other~~ any types of code-compliant hurricane  
110 protection by a unit owner conforming to ~~the~~ specifications  
111 adopted by the board, but may require the unit owner to adhere to  
112 any existing unified building scheme regarding external  
113 appearance.

114 (d) Unit owners may be responsible for the cost of any removal or  
115 reinstallation of hurricane protection where an owner of the unit  
116 installed the hurricane protection and the removal is necessary  
117 for the maintenance, repair or replacement of the condominium  
118 property for which the association is responsible. The board  
119 shall determine whether removal or reinstallation shall be  
120 performed by the unit owner or the association. If performed by  
121 the association, the cost may be charged to the unit owner and may

122 be enforceable as an assessment and may be collected in the manner  
123 provided for the collection of assessments pursuant to s. 718.116.

124 **Section 3.** Paragraph (e) of subsection (1) is amended and restated  
125 to read as follows:

126 718.115 **Common expenses and common surplus.**—

127 ~~(e) The expense of installation, replacement, operation, repair,~~  
128 ~~and maintenance of hurricane shutters, impact glass, code-compliant~~  
129 ~~windows or doors, or other types of code-compliant hurricane~~  
130 ~~protection by the board pursuant to s. 718.113(5) constitutes a~~  
131 ~~common expense and shall be collected as provided in this section~~  
132 ~~if the association is responsible for the maintenance, repair, and~~  
133 ~~replacement of the hurricane shutters, impact glass, code-compliant~~  
134 ~~windows or doors, or other types of code-compliant hurricane~~  
135 ~~protection pursuant to the declaration of condominium. However, if~~  
136 If the installation ~~maintenance, repair, and replacement of the~~  
137 ~~hurricane shutters, impact glass, code-compliant windows or doors,~~  
138 ~~or other types of code-compliant~~ hurricane protection is ~~are~~ the  
139 responsibility of the unit owners pursuant to the declaration of  
140 condominium, ~~the cost of the installation of the hurricane~~  
141 ~~shutters, impact glass, code-compliant windows or doors, or other~~

142 ~~types of code-compliant hurricane protection~~ or if the installation  
143 of hurricane protection is pursuant to a vote of the unit owners  
144 under s. 718.113(5), the cost of any installation by the  
145 association is not a common expense and shall be charged  
146 individually to the unit owners based on the cost of installation  
147 of the ~~hurricane shutters, impact glass, code-compliant windows or~~  
148 ~~doors, or other types of~~ code-compliant hurricane protection  
149 appurtenant to the unit, and shall be enforceable as an assessment  
150 pursuant to s. 718.116 and the association may use its lien  
151 authority pursuant to s. 718.116 to enforce collection of the  
152 expense.

153 1. Notwithstanding s. 718.116(9), and regardless of whether or  
154 not the declaration requires the association or unit owners to  
155 install, maintain, repair, or replace ~~hurricane shutters, impact~~  
156 ~~glass, code-compliant windows or doors, or other types of code-~~  
157 ~~compliant~~ hurricane protection, the owner of a unit where ~~owner who~~  
158 ~~has previously installed hurricane shutters in accordance with s.~~  
159 ~~718.113(5) that comply with the current applicable building code~~  
160 ~~shall receive a credit when the shutters are installed; a unit~~  
161 ~~owner who has previously installed impact glass or code-compliant~~

162 ~~windows or doors that comply with the current applicable building~~  
163 ~~code shall receive a credit when the impact glass or code-compliant~~  
164 ~~windows or doors are installed; and a unit owner who has installed~~  
165 ~~other types of~~ code-compliant hurricane protection that ~~comply~~  
166 complies with the current applicable building code has been  
167 installed shall either be excused from any assessment levied by the  
168 association or shall receive a credit when the same type of ~~other~~  
169 code-compliant hurricane protection is installed by the association  
170 ~~, and the credit shall be equal to the pro rata portion of the~~  
171 ~~assessed installation cost assigned to each unit.~~ The credit shall  
172 be applicable if the installation is for all other units that do  
173 not have such hurricane protection and the expense is funded by the  
174 budget, including reserves. The credit shall be equal to the  
175 amount the unit would have been assessed had a code-compliant  
176 installation not been made at the expense of an owner of the unit.  
177 However, such unit owner remains responsible for the pro rata share  
178 of expenses for ~~hurricane shutters, impact glass, code-compliant~~  
179 ~~windows or doors, or other types of code-compliant~~ hurricane  
180 protection installed on common elements and association property by  
181 the board pursuant to s. 718.113(5) and remains responsible for a

182 pro rata share of the expense of the replacement, operation,  
183 repair, and maintenance of such ~~shutters, impact glass, code-~~  
184 ~~compliant windows or doors, or other types of code-compliant~~  
185 hurricane protection, which shall be a common expense.

186 **Section 4.** This act shall take effect July 1, 2022.

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

**WHITE PAPER**

**PROPOSAL TO CLARIFY AND EXPAND USAGE OF  
HURRICANE PROTECTION IN CONDOMINIUMS –  
REVISING § 718.104(4), 718.113(5) AND § 718.115(1)(E)**

**I. SUMMARY**

The proposal would clarify the law governing the installation and maintenance of hurricane protection and expand the law to encourage the usage of hurricane protection, such as hurricane shutters and impact glass, in condominiums. It would allow for associations to adopt specific requirements for the adoption and installation of hurricane protection. The proposal also clarifies the maintenance obligations for the installation of hurricane protection and allows associations to operate the installed type of hurricane protection to protect the condominium property and units from damage due to a hurricane. The proposal also provides financial incentives to unit owners to install their own hurricane protection. These changes are necessary due to the increasing insurance costs in condominium associations for property, casualty and windstorm coverage since insurance increases will be mitigated by the installation of hurricane protection and that the damage caused by hurricanes to condominiums is minimized by the installation and utilization of hurricane protection, substantially lessening the impact of a hurricane to a condominium and its unit owners. The legislation does not have a fiscal impact on state funds.

**II. CURRENT SITUATION**

Hurricanes in Florida are an unfortunate fact of life. Beginning every June 1<sup>st</sup>, Floridians face the uncertain future of another Atlantic hurricane season. 40% of all hurricanes that make landfall on the eastern coast of the United States make landfall in Florida. Between 2000 and 2017, 79 subtropical and tropical systems have impacted Florida causing over 120 billion dollars in damage and killing almost 200 people. 11 tropical cyclones affected Florida in 2019. Currently, there have been 23 named tropical systems during the 2020 hurricane season. Of the 10 most costly hurricanes to impact the United States, 6 of those hurricanes have impacted Florida.

In response to the omnipresent threat of hurricanes, Florida has continually looked for ways to limit the impact of hurricanes on the State, both in terms of limiting property damage and protecting the lives of Floridians. A substantial concern of the Florida Legislature has been the impacts of hurricanes on the cost of insurance and the affordability of housing. To combat the increasing costs of insurance in condominiums, the Florida Legislature has adopted Section 718.113(5) and Section 718.115(1)(e) to provide condominium associations with the ability to require the installation of types of hurricane protection that are building code compliant in effort to provide condominium associations and unit owners with a means to protect the condominium property and their condominium units.

However, despite providing a framework for how the installation and operation of hurricane protection should function in condominium associations, the current statutory framework creates confusion as how when hurricane protection can be required by a condominium



association, who is responsible for the maintenance of hurricane protection when it is installed and how the costs of hurricane protection should be allocated. This confusion has led to a lower adoption of hurricane protection measures in Florida condominiums and as a result, the vast majority of condominiums in Florida remain vulnerable to damage from a hurricane that could be limited or mitigated by the available types of hurricane protection.

Further compounding the potential impact of the suboptimal adoption of hurricane protection is the unprecedented COVID-19 pandemic. The emergency services of Florida have been stretched thin responding to the COVID-19 pandemic, impacting the ability of all levels of emergency services in Florida to respond to the damage that would be caused by a hurricane making landfall. Without further clarification and expansion of how condominium associations and unit owners can utilize hurricane protection, the risk remains unnecessarily high that Florida's emergency services will be pushed to the limit upon a hurricane making landfall and causing substantial property damage and increased risk of loss of life.

### **III. EFFECT OF PROPOSED CHANGE**

The proposed changes serve to address the shortfalls in Sections 718.113(5) and 718.115(1)(e) that have limited a more widespread adoption of hurricane protection by expanding the ability of condominium associations to require the installation of hurricane protection, clarifying the process that condominium associations must follow to require the installation of hurricane protection, clarifying the maintenance obligations for hurricane protection that has been installed and addressing how the costs of the installation of hurricane protection are to be allocated. It also amends Section 718.104(4) to require that any residential or mixed-use condominium that is created in Florida specify whether the association to unit owner is responsible for maintenance, repair and replacement of exterior doors, windows, glass apertures any code-compliant hurricane protection.

The amendment to Section 718.104(4)(p) addresses a consistent shortfall in the declarations for residential and mixed-use condominiums, the party that is obligated to maintain exterior doors, windows, glass apertures and hurricane protection. Currently, many declarations do not adequately address whether the association or unit owner is obligated to maintain, repair and replace these items. This change ensures that as condominiums are created in Florida, the obligation for the maintenance, repair and replacement of exterior doors, windows, glass apertures and hurricane protection is clearly delineated.

Section 718.113(5) is amended to provide a definition for the term "hurricane protection", which includes shutters, impact glass, code compliant windows and doors and any other code compliant form of hurricane protection. The proposal also establishes that Section 718.115 applies to every residential and mixed-use condominium in Florida to ensure uniformity and consistency in the installation of hurricane protection and to protect the health, safety and welfare of the people of Florida. The installation, maintenance, repair, replacement and operation of hurricane protection is not a material alteration of the common elements or association property.

Section 718.113(5)(a) is amended to provide that a majority votes of the owner of a residential or mixed-use condominium is required for an association to install hurricane protection or require the unit owners to install hurricane protection. Many older condominiums struggle to obtain the vote

needed to install hurricane protection due to the threshold vote required under their declaration. The amendment lowers the voting threshold to allow all condominiums in Florida to have to install hurricane protection that will save lives and reduce the fiscal impact of damage caused by tropical systems.

The amendment to Section 718.113(5)(a) also provides for the recording of a notice in the public records to place parties on notice of the decision of an association to require hurricane protection. This ensures notice to parties such as prospective purchasers of units of the vote to install hurricane protection so the purchasers are on notice prior to closing. The amendment specifies what must be contained in the notice and that the failure to record the notice does not affect the validity of the vote to install hurricane protection. The amendment also clarifies that a vote of the owners is not required if hurricane protection or any exterior window, door or other glass aperture to be protected by the hurricane protection is the obligation of the association or unit owners are required to install hurricane protection pursuant to the declaration. The amendment further provides that if hurricane protection that meets the building code has been installed, the association cannot require the owner to install the same hurricane protection unless it has reached the end of its useful life or is necessary to prevent damage to the common elements or a unit.

Section 718.113(5)(b) was deleted as this Section was duplicative of other sections of Section 718.113(5). Section 718.113(5)(c) is renumbered to Section 718.113(5)(b) and is amended to clarify that associations have the right, but not the obligation, to operate hurricane protection without the permission of the unit owner when it is necessary to preserve and protect the condominium property or association property. The amendment ensures that if an association elects to operate any type of hurricane protection that has been installed on a unit or by a unit owner, that the association does not need the owner's consent since the operation is necessary to preserve and protect the condominium property and association property.

Section 718.113(5)(d) is renumbered to Section 718.113(5)(c) and is amended to clarify that associations may not prohibit an owner from installing code complaint hurricane protection, but may require the owner to follow an existing unified building scheme regarding external appearance. This allows for associations to adopt specifications regarding the installation of hurricane protection to ensure the uniform appearance of the exterior of the condominium building.

The proposal amends Section 718.113(5) to add Section 718.113(5)(d) to provide that unit owners may be responsible for the costs of removal and reinstallation of any hurricane protection where the association is required to remove the hurricane protection for maintenance, repair or replacement of condominium property for which the association is obligated to maintain. The board shall determine whether the removal or reinstallation shall be performed by the association or unit owner. The cost of removal and reinstallation is chargeable to the owner and may be enforced as an assessment. This change avoids associations from being delayed in the performance of necessary maintenance of the condominium property while waiting for the unit owner to remove their hurricane protection and ensures the prompt reinstallation of hurricane protection to ensure the amount of time a condominium unit is without hurricane protection is minimized.

Section 718.115(1)(e) is amended to provide that if hurricane protection is the obligation of the unit owners pursuant to the declaration or pursuant to a vote of the owners, then the cost of

installation by the association is not a common expense, but shall be charged to the owners based on the cost of installation. The cost of installation shall be enforceable against the unit owner as an assessment.

Section 718.115(1)(e) is further amended by the addition of subparagraph 1 to address expenses that are not common expenses. If an owner has already installed code compliant hurricane protection, then the owner shall either be excused from the assessment levied by the association to fund the installation of hurricane protection or shall receive credit equal to the amount the owner would have been charged for the installation. The credit shall only be applicable if the installation of hurricane protection is for all other units lacking code-compliant hurricane protection and the expense of the installation is funded by the budget, including the usage of reserve funds.

#### **IV. ANALYSIS**

The following describes the changes being proposed:

1. Section 718.104(4)(p) is created to require that any residential or mixed-use condominium created in Florida must specify in the declaration whether the association or the unit owner is responsible for the maintenance, repair and replacement of exterior doors, windows, glass apertures and code compliant hurricane protection.

2. Section 718.113(5) to provide for uniformity and consistency in the adoption of hurricane protection in residential and mixed-use condominiums in Florida. The Section defines the term “hurricane protection”. The amendment further provides the installation, maintenance, repair, replacement and operation of hurricane protection is not a material alteration of the common elements or association property.

3. Section 718.113(5)(a) is amended to provide that a majority votes of the owner of a residential or mixed-use condominium is required for an association to install hurricane protection or require the unit owners to install hurricane protection. The amendment also provides for the recording of a notice in the public records to place parties on notice of the decision of an association to require hurricane protection. The amendment clarifies that a vote of the owners is not required if hurricane protection or any exterior window, door or other glass aperture to be protected by the hurricane protection is the obligation of the association or unit owners are required to install hurricane protection pursuant to the declaration. The amendment further provides that if hurricane protection that meets the building code has been installed, the association cannot require the owner to install the same hurricane protection unless it has reached the end of its useful life or is necessary to prevent damage.

4. Section 718.113(5)(b) is deleted as being duplicative of other sections in 718.113(5).

5. Section 718.113(5)(c) is renumbered to Section 718.113(5)(b) and is amended to clarify that associations have the right, but not the obligation, to operate hurricane protection without the permission of the unit owner when it is necessary to preserve and protect the condominium property or association property.

6. Section 718.113(5)(d) is renumbered to Section 718.113(5)(c) and is amended to clarify that associations may not prohibit an owner from installing code complaint hurricane protection, but may require the owner to follow an existing unified building scheme regarding external appearance.

7. Section 718.113(5)(d) is added to provide that unit owners may be responsible for the costs of removal and reinstallation of any hurricane protection where the association is required to remove the hurricane protection for maintenance, repair or replacement of condominium property for which the association is obligated to maintain. The board shall determine whether the removal or reinstallation shall be done by the association or unit owner. The cost of removal and reinstallation is chargeable to the owner and may be enforced as an assessment.

8. Section 718.115(1)(e) is amended to provide that if hurricane protection is the obligation of the unit owners pursuant to the declaration or pursuant to a vote of the owners, then the cost of installation by the association is not a common expense, but shall be charged to the owners based on the cost of installation. The cost shall be enforceable against the unit owner as an assessment.

9. Section 718.115(1)(e) is amended to create subparagraph 1 to address expenses that are not common expenses of an association. If an owner has already installed code compliant hurricane protection, then the owner shall receive credit equal to the amount the owner would have been charged for the installation. The credit shall only be applicable if the installation of hurricane protection is for all other units lacking hurricane protection and the expense of the installation is funded by the budget, including the usage of reserve funds.

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

The proposal does not have a direct fiscal impact on local governments. The proposal may have an indirect impact on state and local governments by limiting the resources state and local governments have to utilize to address property damage to condominiums as the result of a tropical or subtropical cyclone impacting the State.

## **VI. DIRECT IMPACT ON PRIVATE SECTOR**

The proposal may reduce the costs of property, casualty and windstorm insurance for condominium associations and unit owners due to requirements for the utilization of certain types of hurricane protection. There are no other fiscal impacts on the private sector.

## **VII. CONSTITUTIONAL ISSUES**

**Impairment of contract-** To the extent that a court may find that a covenant or restriction may be considered a contract between the parties, the changes made by this bill may affect such current contract rights and obligations. Article I, s. 10 of the United States Constitution, and art. I, s. 10 of the Florida Constitution both prohibit the Legislature from enacting any law impairing the obligation of contracts. Although written in terms of an absolute prohibition, the courts have long interpreted the constitutional provisions to prohibit enactment of any unreasonable impairment of contractual rights existing at the time that the law is enacted. The Florida Supreme Court in *Pomponio v. Claridge of Pompano Condominium, Inc.* set forth the following test:

- Was the law enacted to deal with a broad, generalized economic or social problem?
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?

#### **VIII. OTHER INTERESTED PARTIES**

Florida Department of Business and Professional Regulation, The Business Law Section of The Florida Bar, the Public Interest Law Section of The Florida Bar, Cyber Citizens for Justice, the Community Associations Institute, Florida Insurance Council, American Property Casualty Insurance Association and the Florida Property & Casualty Association.



# The Florida Bar

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Executive Director

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## SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for committees, divisions and sections to seek approval for section legislative or political activities.
- Requests for legislative and political activity must be made on this form.
- Political activity is defined in SBP 9.11(c) 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.”
- Voluntary bar groups must advise TFB of proposed legislative or political activity and must identify all groups the proposal has been submitted to; if comments have been received, they should be attached. SBP 9.50(d).
  - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
  - If expedited review is requested, the Executive Committee may review the proposal.
  - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

### General Information

**Submitted by:** *(list name of section, division, committee, TFB group, or individual name)*

Probate Law & Procedure Committee of the Real Property, Probate and Trust Law Section

**Address:** *(address and phone #)* c/o M. Travis Hayes, (239) 514-1000, 5551 Ridgewood Drive, Suite 501, Naples, FL 34108

**Position Level:** *(TFB section / division / committee)* RPPTL Section, Probate Law & Procedure Committee

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

**Proposed Advocacy**

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

**1. Proposed Wording of Legislative Position for Official Publication**

Proposed amendments to section 733.705(5) (Payment of and objection to claims) to codify existing case law such that the requirement to bring an independent action is satisfied if, within 30 days of the filing of an objection to the claim: a motion to substitute the fiduciary is filed in the pending action; an order substituting the fiduciary is entered in the pending action; such other procedure as may exist is initiated to substitute the fiduciary in the pending action; or the timely filing of an arbitration is made when the decedent has entered into an agreement during lifetime which provides for mandatory arbitration relating to the claim, or arbitration is required by the decedent’s will or trust.

**2. Political Proposal**

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**3. Reasons For Proposed Advocacy**

- a. Is the proposal consistent with *Keller v. State Bar of California*, 496 US 1 (1990), and *The Florida Bar v. Schwarz*, 552 So. 2d 1094 (Fla. 1989)? Yes
- b. Which goal or objective of the Bar’s strategic plan is advanced by the proposal?  
Objective II - Enhance the Legal Profession and the Public's Trust and Confidence in Attorneys and the Justice System
- c. Does the proposal relate to: (*check all that apply*)
  - Regulation and discipline of attorneys
  - Improvement of the functioning of the courts, judicial efficacy, and efficiency
  - Increasing the availability of legal services to the public
  - Regulation of lawyer client trust accounts
  - Education, ethics, competency, integrity and regulation of the legal profession
- d. Additional Information:

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# THE FLORIDA BAR

## Referrals to Other Committees, Divisions & Sections

The section must provide copies of its proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Please include with your submission any comments received. **The section may submit its proposal before receiving comments but only after the proposal has been provided to the bar divisions, sections, or committees.** Please feel free to use this [form](#) for circulation among the other sections, divisions and committees.

Civil Procedure Rules Committee

## Contacts

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

John C. Moran, Legislative Co-Chair of the RPPTL Section  
Gunster Yoakley & Stewart, P.A.  
777 South Flagler Drive, Ste 500 East  
West Palm Beach, FL 33401  
T: (561) 650-0515

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

Peter M. Dunbar and Martha J. Edenfield  
Dean, Mead & Dunbar, P.A.  
215 South Monroe Street, Ste 815  
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### **Meetings with Legislators/staff** *(list name and phone # of those having direct contact with legislators)*

Same

*Submit this form and attachments to the OGC, [jhooks@floridabar.org](mailto:jhooks@floridabar.org), (850) 561-5662.*



**REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR  
WHITE PAPER ON PROPOSED AMENDMENTS TO  
F.S. SECTION 733.705(5)**

*(updated 5/14/2021)*

**I. SUMMARY**

Section 733.705(5) of the Florida Probate Code provides that when an objection is served to a creditor's Statement of Claim, the creditor has 30 days within which to bring an independent action in furtherance of the claim. However, neither the statute nor the Probate Rules currently provides a mechanism for when there is already a pending action on the creditor's claim pending at the decedent's death.

By way of example, John Doe is sued for breach of contract in Circuit Civil court. John Doe dies during the pendency of the action. The plaintiff in the lawsuit files a statement of claim in John Doe's estate, and the personal representative of John Doe's estate serves and files an objection. Under such a circumstance, the creditor/plaintiff believes that the pending action is an "independent action" on the statement of claim, and indeed would be precluded from bringing a new, duplicative lawsuit.

Under the present Code and Rules, there is no clear mechanism by which the creditor can obtain confirmation that the pending lawsuit or legal proceeding shall be deemed the "independent action" such that it satisfies the creditor's requirement to bring an independent action within 30 days of an objection to a statement of claim.

A number of Florida cases seem to establish that a pending action against a decedent at the time of death is deemed an "independent action," under section 733.705(5), when a motion for substitution (or a voluntary substitution) of the Personal Representative or other fiduciary of the decedent's estate is filed in the pending lawsuit. *See, e.g., Lewsadder v. Estate of Lewsadder*, 755 So. 2d 1221 (Fla. 4th DCA 2000); *Shessel v. Estate of Calhoun*, 573 So. 2d 962 (Fla. 3d DCA 1991); *In re Estate of Brown*, 421 So. 2d 752 (Fla. 4th DCA 1982); *Cloer v. Shawver*, 177 So. 2d 691 (Fla. 1st DCA 1965).

These proposed changes intend to codify this existing procedure.

**II. CURRENT STATUS OF FLORIDA LAW**

When an objection is served to a creditor's Statement of Claim, the creditor has 30 days within which to bring an independent action in furtherance of the claim under section 733.705(5). However, neither the statute nor the Probate Rules currently provides a mechanism for establishing whether or how an action already pending at the time of death is or will become the contemplated "independent action." That said, a number of Florida cases seem to establish that a pending action against a decedent at the time of death is deemed an "independent action," under section 733.705(5), when a motion for substitution (or a voluntary substitution) of the Personal Representative or other fiduciary of the decedent's estate is filed in the pending lawsuit.

### **III. EFFECT OF PROPOSED CHANGES GENERALLY**

The proposed legislation codifies existing case law such that the requirement to bring an independent action is satisfied if, within 30 days of the filing of an objection to the claim: a motion to substitute the fiduciary is filed in the pending action; an order substituting the fiduciary is entered in the pending action; such other procedure as may exist is initiated to substitute the fiduciary in the pending action; or the timely filing of an arbitration is made when the decedent has entered into an agreement during lifetime which provides for mandatory arbitration relating to the claim, or arbitration is required by the decedent's will or trust.

The proposed legislation would be effective upon becoming law.

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

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

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

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

### **VI. CONSTITUTIONAL ISSUES**

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

### **VIII. OTHER INTERESTED PARTIES**

The Florida Civil Procedure Rules Committee may have an interest in this proposal.

1 A bill to be entitled

2 An act relating the requirement to bring an  
3 independent action on a creditor claim in a probate  
4 proceeding; allowing a motion and order to substitute  
5 the fiduciary in a pending action; and establishing an  
6 effective date.

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

9 Section 1. Section 733.705(5), Florida Statutes, is  
10 amended to read:

11 **733.705 Payment of and objection to claims.-**

12 (5) The claimant is limited to a period of 30 days  
13 from the date of service of an objection within which  
14 to bring an independent action upon the claim, or a  
15 declaratory action to establish the validity and  
16 amount of an unmatured claim which is not yet due but  
17 which is certain to become due in the future, or a  
18 declaratory action to establish the validity of a  
19 contingent claim upon which no cause of action has  
20 accrued on the date of service of an objection and  
21 that may or may not become due in the future, unless  
22 an extension of this  
23 time is agreed to by the personal representative in  
24 writing before it expires.

25           (a) For good cause, the court may extend the time  
26           for filing an action or proceeding after objection is  
27           filed. No action or proceeding on the claim may be  
28           brought against the personal representative after the  
29           time limited above, and the claim is barred without  
30           court order.

31           (b) If an action or proceeding by the claimant is  
32           pending against the decedent at the time of the  
33           decedent's death, and a timely statement of claim  
34           based on the pending action or proceeding is filed by  
35           the claimant, the requirement to bring an independent  
36           action is satisfied if, within 30 days of the filing  
37           of an objection to the claim, (1) a motion to  
38           substitute the fiduciary is filed in the pending  
39           action; or (2) an order substituting the fiduciary is  
40           entered in the pending action; or (3) such other  
41           procedure as may exist is initiated to substitute the  
42           fiduciary in the pending action. The filing of a  
43           motion for substitution must also comply with any  
44           applicable rule of procedure requiring substitution  
45           within a certain time from the filing of a suggestion  
46           of death.

47           (c) If the decedent entered into an agreement  
48           during lifetime which provides for mandatory

49 arbitration relating to the claim, or arbitration is  
50 required by the decedent's will or trust, the timely  
51 filing of an arbitration satisfies the requirement for  
52 commencement of an independent action under this  
53 section. If the arbitration has already been commenced  
54 against the decedent at the time of the decedent's  
55 death, and a timely statement of the claim is filed by  
56 the claimant, the claimant's requirement for  
57 commencement of an independent action shall be  
58 satisfied by a motion for substitution of the personal  
59 representative or other fiduciary for the estate, the  
60 fiduciary's voluntary substitution in the arbitration,  
61 or compliance with such other procedure necessary to  
62 substitute the fiduciary of the estate in the  
63 proceeding as may be required, within 30 days of the  
64 filing of an objection to the claim.

65 (d) If an objection is filed to the claim of any  
66 ~~creditor~~ claimant and the ~~creditor~~ claimant brings an  
67 action to establish the claim, a judgment establishing  
68 the claim shall give it no priority over claims of the  
69 same class to which it belongs.

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