



***EXECUTIVE COUNCIL MEETING***  
**AGENDA**

**Casa Monica Resort and Spa**

**Saturday, February 24, 2018**  
**9:00 a.m.**

**BRING THIS AGENDA TO THE MEETING**

Real Property, Probate and Trust Law Section  
Executive Council Meeting  
Casa Monica Resort and Spa  
St. Augustine, FL  
February 24, 2018

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**Agenda**

**Note: Agenda Items May Be Considered on a Random Basis**

I. **Presiding** — *Andrew M. O'Malley, Chair*

II. **Attendance** — *Lawrence J. Miller, Secretary*

III. **Minutes of Previous Meeting** — *Lawrence J. Miller, Secretary*

Motion to approve the minutes of December meeting of Executive Council held at The Ritz Carlton Naples, Florida. **pp. 10 - 41**

IV. **Chair's Report** — *Andrew M. O'Malley, Chair*

1. Recognition of Guests

2. Recognition of General Sponsors and Friends of the Section, **pp. 42 - 44**

3. Milestones

4. Constitution Revision Commission – *Michael Gelfand, Liaison*

5. Report of Interim Action by the Executive Committee

6. Upcoming Executive Council Meetings, **p. 45**

V. **Liaison with Board of Governors Report** — *John Stewart*

VI. **Chair-Elect's Report** — *Debra L. Boje, Chair-Elect*

2018 -19 Meeting Schedule, **p. 46**

VII. **Treasurer's Report** — *Robert S. Swaine*

Statement of Current Financial Conditions., **pp. 47 - 60**

VIII. **Director of At-Large Members Report** — *S. Katherine Frazier, Director*

IX. **CLE Seminar Coordination Report** — *Steven H. Mezer (Real Property) and Shane Kelley (Probate & Trust), Co-Chairs, p. 61*

**X. General Standing Division** — *Debra L. Boje, General Standing Division Director and Chair-Elect*

**Information Items:**

1. **Ad Hoc Leadership Academy** - *Kris Fernandez and Brian Sparks, Co-Chairs*  
Update on William Reece Smith Jr. Leadership Academy
2. **Fellows**, *Benjamin Frank Diamond, Chair*  
Update. Applications now available for 2018-19. **p. 62**
3. **Legislation** – *Sarah Butters and Cary Wright, Co-Chairs*  
Report on current Section legislative initiatives and legislation of interest to the Section.
4. **Liaison with Clerks of Court** – *Laird Lile, Liaison*  
Report from Liaison.
5. **Membership and Inclusion** – *Jason Ellison and Brenda B. Ezell, Co-Chairs*
  - i) Report on attendance at recent events.
  - ii) Report on FSU Advanced Real Estate course.
6. **Model and Uniform Acts** – *Bruce Stone and Richard Taylor, Co-Chairs*  
Report on actions of the Uniform Law Commission. **pp. 63 - 66**
7. **Professionalism and Ethics** – *Gwynne A. Young, Chair*  
Update on current committee projects

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

**Information Item:**

1. **Title Issues and Title Standards** — *Christopher Smart, Chair*  
Motion to approve changes and additions to Chapter 4 of Uniform Title Standards Concerning Corporations and Limited Liability Companies:
  - 4.1 Acknowledgment of Corporate Instruments (revised)
  - 4.2 Prior Conveyance of all or Substantially All Property and Assets of a Corporation (revised)

- 4.2-1 Current Conveyance of all or Substantially all Property and Assets of a Corporation (revised)
- 4.3 Conveyance by Corporations (revised)
- 4.3-1 Conveyance by Corporations: Authority to Convey; Fraud (revised)
- 4.4 Foreign Corporations (revised)
- 4.4-1 Dissolved Foreign Corporation (revised)
- 4.5 Administratively Dissolved Corporations (new)
- 4.5-1 Voluntarily Dissolved Corporations (new)
- 4.6 Corporation Name Omitted From Signature (revised)
- 4.7 Use of Scroll Seal by Corporation (revised)
- 4.8 Conveyance by a Limited Liability Company (new)
- 4.9 Statutory Apparent Authority of a Manager of a Manager-Managed Limited Liability Company (new)
- 4.10 Limited Liability Company Statement of Authority (new)
- 4.11 Single Member Limited Liability Company (new)
- 4.12 Foreign Limited Liability Company (new)
- 4.13 Foreign Limited Liability Companies (new)

**pp. 67 - 115**

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

**Action Items:**

1. **Guardianship, Power of Attorney, and Advance Directives Committee, Nicklaus J. Curley, Chair**

Motion to (A) adopt as a Section legislative position support for the creation of a new statutory procedure to allow a guardian to access a bank or brokerage account held as tenants by the entirety for a ward's necessary guardianship expenses, including necessary living expenses, when the spouse of the ward does not agree; (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. 116 - 123**.

2. **Guardianship, Power of Attorney, and Advance Directives Committee- Nicklaus J. Curley, Chair**

Motion to (A) adopt as a Section legislative position support for amendment to Florida Statutes, including Florida Statutes § 744.3701, to clarify existing law on the standard for the court's ordering the production of confidential documents in

guardianship proceedings and the parties who have the right to access confidential documents without court order; (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. 124 - 127**.

#### **Information Items:**

**1. Probate Law and Procedure Committee, *John C. Moran, Chair***

Motion to (A) adopt as a Section legislative position support for Support proposed amendment to Section 733.610, Florida Statutes, by expanding the categories of entities and persons related to the personal representative for purposes of determining whether the personal representative, or someone sufficiently related to the personal representative for conflict purposes, holds a substantial beneficial or ownership interest that could create a conflict of interest when engaging in a sale, encumbrance, or other transaction; (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. 128 - 132**.

**2. Estate and Trust Tax Planning Committee- *David J. Akins, Chair***

Motion to (A) adopt as a Section legislative position support for proposed legislation creating Florida Statutes §689.151 to: (i) permit the creation of JTWROS and TBE in personal property through direct transfers by abolishing the common law unities of time and title required for the creation of a JTWROS or TBE in personal property (eliminating the need to make indirect transfers through a straw man), (ii) create evidentiary presumptions favoring the creation of JTWROS and TBE in personal property, and (iii) permit the creation of unequal shares in a JTWROS in personal property by abolishing the common law unity of interest required for the creation or continuation of a JTWROS in personal property (permitting survivorship to operate on unequal shares); (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. 133 - 147**.

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

- 1. Attorney-Loan Officer Conference** – Robert G. Stern, Chair; Kristopher E. Fernandez and Wilhelmina F. Kightlinger, Co-Vice Chairs
- 2. Commercial Real Estate** – Adele Ilene Stone, Chair; E. Burt Bruton, R. James Robbins, Jr. and Martin D. Schwartz, Co-Vice Chairs
- 3. Community Association Law Certification Review Course** – Richard D. DeBoest, II and Sandra Krumbein, Co-Chairs
- 4. Condominium and Planned Development** – William P. Sklar, Chair; Kenneth S. Direktor and Alexander B. Dobrev, Co-Vice Chairs
- 5. Construction Law** – Scott P. Pence, Chair; Reese J. Henderson, Jr. and Neal A. Sivyer, Co-Vice Chairs

6. **Construction Law Certification Review Course** – Melinda S. Gentile and Deborah B. Mastin, Co-Chairs; Elizabeth B. Ferguson and Gregg E. Hutt, Co-Vice Chairs
7. **Construction Law Institute** – Sanjay Kurian, Chair; Diane S. Perera, Jason J. Quintero and Bryan R. Rendzio, Co-Vice Chairs.
8. **Development & Land Use Planning** – Vinette D. Godelia and Julia L. Jennison, Co-Chairs; Colleen C. Sachs, Vice Chair
9. **Insurance & Surety** – Scott P. Pence and W. Cary Wright, Co-Chairs; Frederick R. Dudley and Michael G. Meyer, Co-Vice Chairs
10. **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; James C. Russick, Vice Chair
11. **Real Estate Certification Review Course** – Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach and Brian W. Hoffman, Co-Vice Chairs
12. **Real Estate Leasing** – Richard D. Eckhard, Chair; Brenda B. Ezell and Christopher A. Sadjera, Co-Vice Chairs
13. **Real Estate Structures and Taxation** – Michael A. Bedke, Chair; Deborah Boyd, Lloyd Granet and Cristin C. Keane, Co-Vice Chairs
14. **Real Property Finance & Lending** – David R. Brittain, Chair; Bridget Friedman, Richard S. McIver and Robert G. Stern, Co-Vice Chairs
15. **Real Property Litigation** – Marty J. Solomon and Susan K. Spurgeon, Co-Chairs; Manuel Farach, and Michael V. Hargett, Co-Vice Chairs
16. **Real Property Problems Study** – Arthur J. Menor, Chair; Mark A. Brown, Stacy O. Kalmanson, Robert S. Swaine and Lee A. Weintraub, Co-Vice Chairs
17. **Residential Real Estate and Industry Liaison** – Salome J. Zikakas, Chair; Louis E. “Trey” Goldman, James Marx and Nicole M. Villarroel, Co-Vice Chairs
18. **Title Insurance and Title Insurance Liaison** – Raul P. Ballaga and Brian W. Hoffman, Co-Chairs; Alan B. Fields, Cynthia A. Riddell and Melissa N. VanSickle, Co-Vice Chairs
19. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Melissa Sloan Scaletta and Karla J. Staker, Co-Vice Chairs

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

1. **Ad Hoc Guardianship Law Revision Committee** – David Clark Brennan, Chair; Sancha Brennan Whynot, Tattiana Patricia Brenes-Stahl, Nicklaus Joseph Curley and Stacey Beth Rubel, Co-Vice Chairs

2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** – William Thomas Hennessey III, Chair; Paul Edward Roman, Vice Chair
3. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** – Barry F. Spivey, Chair; Sean William Kelley and Christopher Quinn Wintter, Co-Vice Chairs
4. **Asset Protection** – George Daniel Karibjanian, Chair; Rick Roy Gans and Brian Michael Malec, Co-Vice-Chairs
5. **Attorney/Trust Officer Liaison Conference** – Tattiana Patricia Brenes-Stahl, Chair; Stacey L. Cole, Co-Vice Chair (Corporate Fiduciary), Laura Kristen Sundberg, Patrick Christopher Emans, Tae K. Bronner, and Gail G. Fagan, Co-Vice Chair
6. **Elective Share Review Committee** – Lauren Young Detzel and Charles Ian Nash, Co-Chairs; Jenna Rubin, Vice-Chair
7. **Estate and Trust Tax Planning** – David James Akins, Chair; Tasha K. Pepper-Dickinson and Robert Logan Lancaster, Co-Vice Chairs
8. **Guardianship, Power of Attorney and Advanced Directives** – Nicklaus Joseph Curley, Chair; Brandon D. Bellew and Darby Jones, Co-Vice Chairs
9. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Richard Amari, Co-Chairs; Charles W. Callahan, III and Alfred J. Stashis, Co-Vice Chairs
10. **Liaisons with ACTEC** – Elaine M. Bucher, Michael David Simon, Bruce Michael Stone, and Diana S.C. Zeydel
11. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Ellen Wolasky
12. **Liaisons with Tax Section** – Lauren Young Detzel, Cristin Keane, William Roy Lane, Jr., Brian Curtis Sparks and Donald Robert Tescher
13. **Principal and Income** – Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith Braun, Vice Chair
14. **Probate and Trust Litigation** – Jon Scuderi, Chair; John Richard Caskey, Robert Lee McElroy, IV and James Raymond George Co-Vice Chairs
15. **Probate Law and Procedure** – John Christopher Moran, Chair; Amy Beller, Michael Travis Hayes and Matthew Henry Triggs, Co-Vice Chairs
16. **Trust Law** – Angela McClendon Adams, Chair; Tami Foley Conetta, Jack A. Falk and Mary E. Karr, Co-Vice Chairs
17. **Wills, Trusts and Estates Certification Review Course** – Linda S. Griffin, Chair; Jeffrey Goethe, Rachel Lunsford, and Jerome L. Wolf, Co-Vice Chairs

**XV. General Standing Committee Reports** — *Debra L. Boje, General Standing Division Director and Chair-Elect*

1. **Florida Bar Leadership Academy** – Brian Sparks and Kris Fernandez, Co-Chairs, J. Allison Archbold, Vice Chair
2. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
3. **Budget** – Robert Swaine, Chair; Linda Griffin, Tae Kelley Bronner, Robert S. Freedman and Pamela O. Price, Co-Vice Chairs
4. **CLE Seminar Coordination** – Steven Mezer and Shane Kelley, Co-Chairs; Thomas Karr, Silvia Rojas, Alex Hamrick, Theo Kypreos, Hardy L. Roberts, III, (General E-CLE) and Paul Roman (Ethics), Yoshimi O. Smith, Co-Vice Chairs
5. **Convention Coordination** – Dresden Brunner, Chair; Sancha Brennan Whynot and Jon Scuderi, Co-Vice Chairs
6. **Fellows** – Benjamin Diamond, Chair; Joshua Rosenberg, John Costello and Jennifer Bloodworth, Co-Vice Chairs
7. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
8. **Homestead Issues Study** – Jeffrey S. Goethe (Probate & Trust) and J. Michael Swaine (Real Property), Co-Chairs; Melissa Murphy and Charles Nash, Co-Vice Chairs
9. **Legislation** – Sarah Butters (Probate & Trust) and Wm. Cary Wright (Real Property), Co-Chairs; Travis Hayes and Robert Lancaster (Probate & Trust), and Alan B. Fields and Art Menor (Real Property), Co-Vice Chairs
10. **Legislative Update (2017)** – Stacy O. Kalmanson, Chair; Brenda Ezell, Travis Hayes, Thomas Karr, Joshua Rosenberg, Kymberlee Curry Smith, Jennifer S. Tobin and Salome Zikakis, Co-Vice Chairs
11. **Legislative Update (2018)** – Stacy O. Kalmanson, Chair; Brenda Ezell, Travis Hayes, Thomas Karr, Joshua Rosenberg, Kymberlee Curry Smith, Jennifer S. Tobin and Salome Zikakis, Co-Vice Chairs
12. **Liaison with:**
  - a. **American Bar Association (ABA)** – Edward F. Koren, Julius J. Zschau, George Meyer and Robert S. Freedman
  - b. **Clerks of Circuit Court** – Laird A. Lile
  - c. **FLEA / FLSSI** – David C. Brennan and Roland “Chip” Waller
  - d. **Florida Bankers Association** – Mark T. Middlebrook
  - e. **Judiciary** – Judge Linda R. Allan, Judge Jaimie R. Goodman, Judge Hugh D. Hayes, Judge Janis B. Keyser, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Morris



- Silberman, Judge Mark Speiser, Judge Richard J. Suarez, Judge Patricia V. Thomas, and Judge Jessica J. Ticktin
- f. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert Basler
  - g. **TFB Board of Governors** – John Stewart
  - h. **TFB Business Law Section** – Gwynne A. Young and Manuel Farach
  - i. **TFB CLE Committee** – Robert Swaine
  - j. **TFB Council of Sections** – Debra L. Boje and Andrew M. O'Malley
  - k. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
  - l. **TFB Tax Law Section** – Cristin Keane and Brian Malec
13. **Long-Range Planning** – Debra L. Boje, Chair
  14. **Meetings Planning** – George J. Meyer, Chair
  15. **Information Technology** – Neil Barry Shoter, Chair; William A. Parady, Alexander B. Dobrev, Michael Travis Hayes, Hardy Roberts, Jesse Friedman, Keith S. Kromash, Michael Sneeringer, and Erin Christy, Co-Vice Chairs
  16. **Membership and Inclusion** – Brenda Ezell and Jason M. Ellison, Co-Chairs, Annabella Barboza, Phillip A. Baumann, Guy S. Emerich, and Kymberlee Curry Smith, Co-Vice Chairs
  17. **Model and Uniform Acts** – Bruce M. Stone and Richard W. Taylor, Co-Chairs
  18. **Professionalism and Ethics** – Gwynne A. Young, Chair; Tasha K. Pepper-Dickinson, Alexander B. Dobrev, and Andrew B. Sasso, Vice Chairs
  19. **Publications (ActionLine)** – Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); W. Cary Wright, Shari Ben Moussa, George D. Karibjanian, Sean M. Lebowitz, Paul Roman and Lee Weintraub, Co-Vice Chairs.
  20. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property), Homer Duvall (Editorial Board – Real Property) and Allison Archbold (Editorial Board), Co-Vice Chairs
  21. **Sponsor Coordination** – Wilhelmina F. Kightlinger, Chair; Marsha G. Madorsky, Arlene C. Udick, J. Eric Virgil, J. Michael Swaine, Deborah L. Russell, and Jason Quintero, Co-Vice Chairs
  22. **Strategic Planning** – Debra L. Boje and Andrew M. O'Malley, Co-Chairs

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

**MINUTES  
OF THE  
REAL PROPERTY, PROBATE AND TRUST LAW SECTION  
Executive Council  
Saturday, December 9, 2017  
The Ritz Carlton  
Naples, Florida**

**I. Call to Order – Andrew M. O’Malley, Chair**

Chair O’Malley called the meeting to order at 10:06 a.m. on Saturday, December 9, 2017. The meeting followed several days of informative, constructive and important Committee meetings, as well as a wonderful Havana/Cuba themed dinner (including burro) and a “spectacular”, informative and thorough preliminary information session provided by Chair-Elect Boje regarding her out-of-state meeting in Italy which is scheduled for September, 2018. In his introductory comments, the Chair also mentioned that the game preserve event for the evening required some warmer than usual attire. All understood and “were game.”

**II. Attendance – Lawrence J. Miller, Secretary**

Mr. Miller pointed out that the attendance sheet was being circulated and that the penalty for its misplacement would be dire. The attendance roster for the meeting is attached as Addendum A.

**III. Minutes of Previous Meeting – Lawrence J. Miller, Secretary**

Mr. Miller moved:

**To approve the Minutes of the meeting of the Executive Council held at the Fairmont Copley Plaza, Boston, MA on October 14, 2017 (See Agenda pages 10-13).**

**The Motion was unanimously approved.**

**IV. Chair's Report – Andrew M. O’Malley, Chair**

**1. Recognition of Guests:**

The Chair requested that law students attending the meeting be recognized. Ms. Danielle Clark (a third year law student at Ave Maria Law School, Naples, FL) introduced herself.

The Chair also recognized Judge Morris Silberman of the Second DCA, one of the Section’s distinguished judicial liaisons.

2. **Recognition of General Sponsors and Friends of the Section**

The Chair thanked each of our General Sponsors and Friends of the Section listed on pages 31 - 33 of the Agenda:

**General Sponsors**

**Overall Sponsors – Legislative Update & Convention & Spouse Breakfast**  
**Attorneys' Title Fund Services, LLC – Melissa Murphy.**

**Thursday Lunch**

**Management Planning, Inc. – Roy Meyers**

**Thursday Night Reception**

**JP Morgan – Carlos Battle/Alyssa Feder/Phil Reagan**  
**&**

**Old Republic National Title Insurance Company – Jim Russick**

**Friday Night Reception**

**Wells Fargo Private Bank – Mark Middlebrook/Jonathan/Alex Hamrick**  
**&**

**Westcor Land Title – Renee Bourbeau/Sabine Seidel**

**Friday Night Dinner**

**First American Title Insurance Company – Alan McCall/Leonard Prescott IV**

**Probate Roundtable**

**SRR (Stout Risius Ross Inc.) – Garry Marshall**

**Real Property Roundtable**

**Fidelity National Title Group – Karla Staker**

**Saturday Lunch**

**The Florida Bar Foundation – Bruce Blackwell**  
**&**

**Stewart Title- Laura Licastro**

**Hospitality Room**

**Wright Investors' Service – Stephen Soper**

**RPPTL Meeting App**

**WFG National Title Insurance Company – Joseph Tschida**

### Friends of the Section

**American Heart Association Charitable Estate Planning** – Arzie C. Stephens  
**Business Valuation Analysts, LLC** – Tim Bronza  
**Corporate Valuation Services, Inc.** – Tony Garvy  
**Fiduciary Trust International** – Claudia Reithauser  
**Jones Lowry** – Marshall Jones  
**North American Title Insurance Company** – Andrew A. Nadal  
**Valley National Bank** - Jacquelyn McIntosh  
**Valuation Services, Inc.** – Jeff Bae, JD, CVA  
**Wilmington Trust, N.A.** – David Fritz

The Chair recognized Laura Licastro of Stewart Title and asked if she would like to address the Executive Council. She thanked the Section for its work and for the opportunity to work with Section members.

### 3. **Milestones.**

The Chair announced that among the “milestones” since the last meeting, two longstanding members of the Executive Council have retired. First, the Chair noted that Pat Hancock, will retire from her job at Fidelity Title, will be increasing her hiking, biking and gardening, and is retiring from the Executive Council. The other, Brian Leebrick, Vice Chair of the Real Property Litigation Committee, will be taking a job with the Bay County Attorney’s Office and will not be able to continue his participation in the Executive Council.

Other milestones included the elevation of one of the Executive Council’s judicial liaisons, Honorable Norma Lindsey, from the 11<sup>th</sup> Circuit to the 3d District Court of Appeal.

The Chair also reported that former Section member Bill Platt’s wife, Jan, a long-term Hillsborough County Commissioner, has passed away. And, the Chair also pointed out that Bill himself is quite ill and asked that Section members keep him in their thoughts and prayers.

The Chair then recognized Executive Council Member Salome Zikakis to report on the progress and condition of her husband, Bill Parady who has been diagnosed with esophageal cancer. Salome’s report was a tribute to her husband, and the Chair confirmed that all Section Members stand with her, Bill and their family. She expects that we will see him at the February 2018 meeting. The Chair stated that all of our thoughts are with her and Bill. A card was made available for everyone to sign.

The Chair then announced that it’s the 4<sup>th</sup> year of service to the Section and Executive Council for Mary Ann Obos and “we’ve yet to scare her away.” The Chair called Ms. Obos to the dais to receive recognition and a holiday gift recognizing her contributions to the Section and the Executive Council. Ms. Obos responded to the standing ovation, accolades and gift with a heartfelt “thank you” and confirmed that “this

is a great job.” She also mentioned that she enjoyed being made a part of the family. She wished all well for the holidays.

**4. Constitution Revision Commission (“CRC”), Michael Gelfand, Liaison**

Mr. Gelfand reported that in recognition of the Section’s clarity and helpful guidance, the CRC requested that three constitutional questions be reviewed by the Section. First was a change to Florida’s Declaration of Rights proposing deletion of the word “physical” from the type of individual disabilities that were protected. Based in part on the Section’s review and recommendation, this change has been withdrawn. Second, the Section was asked to review and provide input on a proposal to delete from the constitution a provision empowering the legislature to prohibit aliens who are not citizens from owning real property. Mr. Gelfand indicated that if this be pursued and passed, it would probably be unconstitutional under the 14<sup>th</sup> Amendment. Third was a proposal regarding homestead adding two provisions, one to deal with a fraudulent effort to avoid creditors by moving money to the homestead and the other proposing that the Homestead could be “breached” if the claim brought against a party was based on intentionally tortious conduct. The Chair stated there is no better person to represent the Section at the CRC and thanked Mr. Gelfand for his time and effort.

**5. Action Item – Consideration of RPPTL Resolution in Memory of Past Chair and Louie N. Adcock, Jr (Presented by Lawrence J. Miller, Secretary) (Item 6 in the agenda for this meeting but changed to Item 5). PP. 35-37.**

With introduction by the Chair, the Section’s Secretary recognized long time Executive Council member Kip Thornton to present the beautiful memorial resolution for his Fisher Sauls law partner of 40 years, former Section Chair Louie N. Adcock, Jr., who passed away on October 11, 2017. Mr. Thornton, along with former Section Chair Sandra Diamond and Executive Council member and Fisher Sauls partner, Marilyn Polson, co-authored the resolution, which was read by Mr. Thornton. Upon completion, the Secretary called for a vote by the Executive Council on the memorial resolution, which was passed by the Executive Council unanimously. The resolution will be formally presented to Louie’s family at the Executive Council meeting in St. Petersburg Beach in early June, 2018.

**6. Upcoming Meetings.** The Chair announced that some “great stuff” is planned and the details will be forthcoming.

**V. Liason with Board of Governors – John Stewart**

Laird Lile gave the report, as John Stewart could not timely attend due to his attendance at the Florida Bar Board of Governor’s meeting in Amelia Island. Based on the status of matters as they stand at the time of Laird’s report, Mr. Stewart is presently in line to be President Elect of The Florida Bar. Laird stated that a newly adopted policy of the Board of Governors indicated that AVVO Advisors is a lawyer referral service and has to comply with those rules. Laird also commented that the Naples weather is always beautiful and that any observation or sense to the contrary is a figment of the

observer's imagination. With the Chair's permission, Mr. Lile then provided his Liaison with Clerks of the Court report and stated that the Clerk's Association has hired a new Executive Director, Chris Hart, IV (former legislator). Ken Burke is the Clerk's Liaison from Pinellas County and is a member of our Section. Laird also pointed out that at the Judicial Management Council Meeting, Chief Justice La Barga started a guardianship work group, with a survey to be completed and distributed to staff, judiciary and lawyers. The first of two statewide meetings for that work group will be held in Broward County.

The Chair next thanked Laird Lile, who was instrumental in working with the Bar to secure an employee to assist Mary Ann Obos in the Section's work.

**VI. Chair Elect's Report – *Debra L. Boje, Chair-Elect***

Ms. Boje announced that there has been a change in dates for the Section Convention during her tenure as Chair; the meeting has been moved from May 15-18 to May 29-June 2. She also announced that Linda Griffin will be chair of the Convention, "so change your calendar." She also pointed out that room reservations are not yet open for the Breakers meeting in August, 2018.

**VII. Treasurer's Report – *Robert S. Swaine***

Treasurer Swaine indicated that the statement of financial condition included in the Agenda is a statement, but not the most current and that we are still doing very well.

**VIII. Director at Large Members Report – *S. Katherine Frazier, Director***

Ms. Frazier stated that applications for ALMS membership are due December 15, 2017. She also announced that the Section's No Place Like Home ("NPLH") program is up and running in pilot circuits. A full time attorney coordinator has been hired by Bay Area Legal Services, the Section's partner in the NPLH program, to assist in the pilot circuits and we are close to rolling out the program for the rest of the circuits. The Section's Hurricane Irma seminar received kudos from Chief Justice La Barga. The Chair recognized the work done on NPLH by ALMS Director Katherine Frazier, Larry Miller, Mike Bedke and Gwynne Young. The program will assist the most vulnerable communities in Florida.

**IX. CLE Seminar Coordination Report – *Steven H. Mezer (Real Property) and Shane Kelley (Probate & Trust) Co-Chairs.***

Shane thanked all the speakers for all of their work and reviewed the upcoming programs. He asked that all read page 40 of the Agenda materials to review CLE programs through 2018.

**X. General Standing Committees - Debra L. Boje, General Standing Division Director and Chair-Elect**

**Action Item:**

**1. Budget Committee - Robert S. Swaine – Chair.**

Treasurer Swaine called for a vote to approve the Section's budget, which appears at pages 41-54 of the Agenda. A motion was made to approve the budget and the budget was unanimously approved. Ms. Boje thanked Mr. Swaine and his Committee and especially thanked Pam Price, longstanding budget committee member, for her continuing and tireless work on and for that Committee.

**2. Homestead Issues Study Committee – Jeffrey Gothe, Chair**

**Motion to (A) support a proposed amendment to Chapter 732, Florida Statutes, which would provide much needed clarification and guidance regarding the waiver of constitutional homestead protections for surviving spouses; providing language which, when used within a deed, would create a presumption that the spouse signing the deed waived the constitutional restrictions on the devise of homestead; and supplementing existing provisions in Section 732.702, Florida Statutes, which provide for the waiver of spousal rights by written agreement; (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. 55 – 66**

Jeffrey Gothe provided background for his Committee's Motion and an update on the Committee's continuing work, pp. 55-66. Jeff thanked Craig Harrison for his proofreading assistance, and he then described the Committee's discussion of waiver of rights in a deed involving homestead, and added the Committee's proposed language change on line 5 on page 66 of the Agenda. The Committee had voted to add "for the property described in the deed" on that line. For purposes of making full financial disclosure, the waiver is limited to a specific piece of real estate and is not a full waiver as to all rights, and therefore does not require full financial disclosure. Jeff moved to approve the motion, including the language on page 66 with amended line 5 on that page. The Motion passed without objection, including finding the Motion within the purview of the Section and approving the expending of funds for its support and passage into law.

**Information Items**

**1. Ad Hoc Leadership Academy – Kris Fernandez and Brian Sparks, Co-Chairs**

Brian Sparks recognized Allison Archibald to give the committee report. Allison reported that to date there have been no applications for the monies available for two

\$3,500.00 scholarships for the Florida Bar Leadership Academy. Applications are due by December 15 as outlined on pages 67-78. She encouraged all to report/encourage applicants to apply.

**2. Amicus Coordination** – *Kenneth Bell, Gerald Cope, Robert Goldman and John Little, Co-Chairs.*

Committee Chair Goldman gave an update on the Rigby case. Mr. Goldman reported that in Rigby, the 1<sup>st</sup> DCA had asked the Section to weigh in on whether the Court should consider getting rid of their cases on standing at the commencement of a foreclosure case, en banc. After the Section weighed in on the en banc question, the Court decided to not go en banc and went with a PCA instead. A series of motions for rehearing and re-review, followed by denials by the court were the result. Mr. Goldman observed that there may very well be a try by the Rigby Appellants to appeal to the United States Supreme Court and suggested that we “stay tuned.”

**3. Legislation** – *Cary Wright and Sarah Butters, Co-Chairs.* [Secretary’s Note:

Chair-Elect Boje indicated that based upon the number of matters to be discussed, the Legislation Committee Report would be placed at the end of the General Standing Committee Reports. (See Item 7 below).

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

Mr. Lile was recognized, but indicated that his report had previously been given, though if the Chair-Elect wished for him to repeat it, he would have been happy to do so. Using her best Italian, the Chair Elect bade Mr. Lile a hearty “arrivaderci.”

**5. Model and Uniform Acts** – *Bruce Stone and Richard Taylor, Co-Chairs*

The Chair Elect reported on behalf of the Model and Uniform Acts Committee that the Section is still working with the Business Law Section regarding the Voidable Transfers Act with some friction among Bar Sections with respect to that Act.

**6. Professionalism & Ethics** – *Gwynne A. Young, Chair*

Ms. Young reported that the Chair of the Disciplinary Procedures Committee of The Florida Bar Board of Governors has raised questions relating to issues involving inventory attorneys appointed by the Florida Bar upon the death, disbarment, suspension or incapacity of estate planning attorneys. Though interested and concerned about such issues in a general sense, based upon the number of original documents in the hands of such attorneys, the Bar appeared more particularly focused on estate planning attorneys including the review of rules and standards regarding the retention of original documents and files as well as the compensation of inventory attorneys. Some investigation was done and a letter prepared for Chair O’Malley’s review and execution. The conclusion of the Committee’s study is to work with the Bar’s



disciplinary Committee in studying the handling and disposition of original documents in the hands of estate planning attorneys. This includes re-review of the Probate Law and Procedure Committee's previous study and review of the Will Deposit Statute. That proposal proceeded approximately one-half through the legislative process but not beyond that. There appears to be some interest in a will depository statute, perhaps with broadened provisions and scope. Discussion with the Clerks would also be necessary in that original documents might have to be deposited with the Circuit Court Clerk in varied Circuits.

**7. (Agenda Item 3) Legislation – Sarah Butters (Probate & Trust) and Wm. Cary Wright (Real Property), Co-Chairs; Travis Hayes and Robert Lancaster (Probate & Trust), and Alan B. Fields and Art Menor (Real Property), Co-Vice Chairs**

Mr. Wright and Ms. Butters delivered the Report of the Committee.

Ms. Butters proceeded first with Report on Probate and Trust Law initiatives. Starting first with POLST, Ms. Butters confirmed that the Section has opposed POLST legislation in the past unless it was to include certain safeguards. POLST legislation has come up year after year. The Section, through its POLST Committee, had drafted modifications to the proposed statute which the Section could possibly get behind. Such changes were proposed to the bill's sponsors but what had been proposed to the Senate was not our proposal. It was a different proposal with which we have concerns. No comparable bill or corresponding bill has been proposed in the House, as yet. We will continue to seek to modify the proposed POLST Legislation in a way which addresses the Section's concerns.

UVTA (Uniform Voidable Transfers Act). The Section has a standing position opposing proposed UVTA legislation unless certain modifications and revisions are made to the proposed statutes. Opposition is shared with the Tax Section and our Section's concerns are fairly closely aligned with those of the Tax Section. The bill's sponsors have asked that both the Tax Section and RPPTL Section review and determine if they can provide a unified set of concerns and suggested revisions before a bill is actually filed. Lauren Detzel, Rob Lancaster, Brian Malec and George Karabjanian have been working along with Jerry Wolf to try and get Business and Tax Sections as well as ours on the same page with respect to the proposed statutes.

Trust Law. Revisions have been resubmitted in that they are no longer part of the electronic will proposed statutory regime. The provisions include trust decanting, the corya case fix as well, as the benefit the beneficiary fix, along with other provisions which are not directly the result of RPPTL proposals. The proposed legislation has passed several Committees in both the Senate and House. At the time of this report, there is apparently no real opposition to the proposed Trust law revisions.

Homestead Waiver Bill (which the Executive Council had just voted on) (per Jeffrey Goethe's report) is well along the way and certain tweaks are being proposed for

the sponsors to consider. Bob Goldman and Bruce Stone requested information on how proposed legislation which had not yet been reviewed and voted on by the Executive Council ended up in the hands of Homestead statutory sponsors. Mr. Stone specifically requested that until the Executive Council has actually voted on a given proposal that any working draft or proposal never be permitted to be given or provided to the Legislature, legislative sponsors or to otherwise “get out there” before the Section has had a chance to vote on the matter through the Executive Council.

Mr. Wright then delivered the Legislation Committee’s report on proposed real property legislation. Three of the Section’s bills are actively moving through the Legislative process.

The first is the Lis Pendens bill. The bill is sponsored by Senator Powell and Representative Altman, Susan Spurgeon and her Committee, had been heavily involved in tweaking and revising language to answer questions and concerns regarding the proposed Lis Pendens bill.

Ejectment and Unlawful Detainer with Senator Passidomo and Representative Edwards seems to be moving along well.

Open Permits is also moving along nicely with the assistance of Lee Weintraub, who has been working tirelessly on this matter. Lee has been very responsive during the bill drafting phase of this legislation.

Mr. Wright stated that we have also given technical assistance to proposed legislation regarding interspousal transfers.

Susan Spurgeon then thanked the members of the Real Property Litigation Committee for their continual and quick responses to the inquiries that both she and Mr. Wright have made when legislation is proposed and revisions are necessary.

Real Property Division Director Robert Freedman then delivered the legislative report related to the Ad Hoc Remote Notary Task Force and the proposed legislation regarding remote notarization. Members of the Gunster law firm in attendance at the Executive Council meeting were asked to leave the meeting based upon their firm’s representation of clients involved in the remote notarization statutory proposals. Mr. Freedman then recognized Burt Bruton, Chair of the Ad Hoc Remote Notarization Task Force, to report.

After discussion, led by Mr. Bruton, Mr. Freedman called on the Executive Council to provide direction in a straw ballot on two points. First, he sought a vote on whether the Executive Council is in favor of continuing the process of giving technical advice along the lines we’ve already been pursuing. The assembled Council membership voted overwhelmingly in favor. Second, and based upon the fact that the remote notarization legislation will probably be pushed by others through the legislative process before the next Executive Council meeting (i.e., since we don’t have enough

time for the Executive Council to receive formal information and to prepare and actually vote on such proposed legislation before its next meeting), do the members of the Executive Council approve of the Section's Executive Committee taking a position on the proposed remote notarization bill on an interim basis (which it is permitted to do between Executive Council meetings) and seeking the best legislative result it can, in line with the comments, outline and bullet points presented to the Council by Mr. Bruton and others? The direction of the Council was sought verbally by Mr. Freedman and the membership without a nay vote, indicated it was in favor of having the Executive Committee proceed.

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

**Sponsors**

**Attorneys' Title Fund Services, LLC** – Melissa Murphy  
Commercial Real Estate Committee

**First American Title Insurance Company** – Alan McCall  
Condominium & Planned Development Committee

**First American Title Insurance Company** – Wayne Sobien  
Real Estate Structures and Taxation Committee

**Hopping Green & Sams** – Vinette Godelia  
Development and Land Use

**Seaside National Bank and Trust-** H. Wayne Geist  
Commercial Real Estate

**Information Item:**

**1. Report on RPPTL Section Recommendations to the Joint Attorney-Realtor Committee of The Florida Bar**

The Section submitted a recommendation letter to Florida Bar President Higer for appointment of Section members to the Joint Realtor Attorney Committee. Thirty-six applications were submitted for review and approval was received for six seats each for a two year term. Mr. Freedman thanked Salome Zikakis for processing and reviewing all of the applications with due haste and for duty above and beyond the call. Appreciation was extended by Mr. Freedman to all who applied.

Upon completion of the above, Mr. Freedman indicated that there were no further Real Property Division Reports.

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

The Chair then recognized Probate and Trust Law Division Director Bill Hennessey, for his Division's report, but also pointed out that Mr. Hennessey was sporting a neck tattoo with a logo of Florida State University. Mr. Hennessey took the podium and explained that the tattoo was the result of the University of Florida's loss to Florida State.

Mr. Hennessey recognized the Probate and Trust Law Division committee sponsors, listed below and thanked them all for their continuing support of the Division's Committees and of the Section. He reminded the members that it is important to support our sponsors and provides us the chance to return the favor by using their services.

### **Sponsors**

**BNY Mellon Wealth Management** – Joan Crain  
Estate and Trust Tax Planning Committee  
&  
IRA, Insurance and Employee Benefits Committee

**Business Valuation Analysts** – Tim Bronze  
Trust Law Committee

**Coral Gables Trust** – John Harris  
Probate and Trust Litigation Committee

**Kravit Estate Appraisal** – Bianca Morabito  
Estate and Trust Law Tax Planning Committee

**Life Audit Professionals** – Joe Gitto and Andrea Obey  
IRA, Insurance & Employee Benefits Committee  
&  
Estate and Trust Tax Planning Committee

**Management Planning, Inc.** – Roy Meyers  
Estate & Trust Tax Planning Committee

**Northern Trust** – Tami Conetta  
Trust Law Committee

### **Action Items:**

1. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process-** *Barry F. Spivey, Chair*

Motion to (A) adopt as a Section legislative position support for a proposed amendment to F.S. Chapter 731 to provide that formal notice as provided in the Florida Probate Rules does not confer *in personam* jurisdiction over persons receiving formal notice; (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 – 91**

Chris Wintter reported for the Committee on a proposed amendment to Florida Statutes 731.301(2) to clarify that service by formal notice pursuant to that statutory subsection does NOT confer in personam jurisdiction. The Committee submits that formal notice was never intended to provide the basis for a damage judgment against an individual to be paid from personal assets. Personal jurisdiction in the Probate Code is neither contemplated or required in that only distribution rights are generally in question in the probate setting. The Committee's proposed amendment is intended to address decisions of the 2nd and 4<sup>th</sup> District Courts of Appeal which have held that interested persons may be subjected to personal jurisdiction merely by the service of formal notice. Mr. Wintter pointed out that the proposed amendment would not change jurisdiction over the personal representative ("PR") of an estate because the PR for all matters has submitted to the jurisdiction of the court. The proposed amendment would add a sentence stating that Formal Notice is NOT sufficient to invoke personal jurisdiction over the person receiving notice regardless of the manner in which it is served. Mr. Wintter asked if there were any questions. He was asked why the last phrase of the proposed revision was necessary. Mr. Wintter responded by indicating that no matter how "formal notice" is served, even personally, it is still not sufficient to confer personal jurisdiction. Judge Coke inquired/observed as to whether there should be a direction in the proposed amendment as to how one does serve process sufficiently to acquire personal jurisdiction in the probate setting (using Chapter 48, it would need to be a Summons served in the matter set forth in that Chapter). Mr. Wintter responded by indicating that proper service to invoke personal jurisdiction was fully spelled out in Chapter 48. The Motion being a Committee motion was called. Mr. Hennessey then read the Motion as stated in the agenda and asked that all portions of the Motion regarding approval of the proposed amendment to the statute be voted on by the Executive Council as one motion. The motion carried without qualification or a nay vote.

2. **Probate Law and Procedure Committee ("PLPC")- John C. Moran, Chair**

Motion to (A) adopt as a Section legislative position support for proposed legislation defining "tangible personal property" in the Florida Probate Code to make it clear that tangible personal property, includes, but is not limited to, precious metals in any tangible form, such as bullion and coins; (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. 92 – 99**

Division Director Hennessey next recognized John Moran for consideration and vote on a statutory clarification proposed by his Committee. Mr Moran stated that some practitioners have expressed confusion regarding a decedent's disposition of precious metals, including coins and bullion, at death. After subcommittee study the PLPC felt it appropriate to provide guidance in this area by clarifying the definition of tangible personal property ("TPP") to include precious metals (including coins and bullion) and that such be subject to disposition as TPP under a TPP clause in a testamentary instrument or by the appropriate separate writing. Mr. Moran reported that his committee had also considered and rejected the possibility of such items being deemed intangible personal property (rather than TPP), which would thereby pass by a residuary clause, in the absence of some other specific direction. In summary, the Committee ultimately found and voted to propose the clarifying language explained by Mr. Moran, which is intended to provide direction and a bright line as to a definition which includes precious metals as TPP.

Mr. Hennessey called for questions or discussion on the Motion and suggested that the language of the Motion be changed to delete reference to the proposed provision being remedial and instead leave the Motion as one which only seeks clarification. There being no other comment, Mr. Hennessey called for a vote on the Motion, as amended, which carried.

Before moving to the agenda's formal Probate and Trust Law Division Information Items, Bill took the opportunity to express his and the Section's congratulations to Executive Council member R. Lee ("Lee") McElroy, IV for his being selected as a Fellow of the American College of Trust and Estate Counsel ("ACTEC"). The news was given a rousing reception.

Information Items:

1. **Guardianship, Power of Attorney, and Advance Directives**  
**Committee-** *Nicklaus J. Curley, Chair*

Motion to (A) adopt as a Section legislative position support for the creation of a new statutory procedure to allow a guardian to access a bank or brokerage account held as tenants by the entirety for a ward's necessary guardianship expenses, including necessary living expenses, when the spouse of the ward does not agree; (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. 100 – 106**

Mr. Hennessey next introduced Committee Chair Nick Curley. Nick introduced a legislative proposal (for information purposes only and not for vote) addressing the

issues arising in the 4<sup>th</sup> DCA case of *Romano v. Olshen*. The proposed statutory revisions amend F.S. 744.457(1) to provide a method for an incapacitated spouse (through a Guardian) to access tenants by the entirety accounts over the objection of the non-incapacitated spouse through an evidentiary hearing before the guardianship court. Six factors are set out in the statute as the basis on which the court is to determine if access is appropriate. Comments gathered at the Division Roundtable have led to a revision to the introductory language in sub-section (c) of the proposed amendment. Specifically, the revision deletes the words “. . . the best interest of the incapacitated person. Among the factors the court shall consider are: .” Mr. Curley looks forward to delivering the matter for vote by the Executive Council.

**2. Guardianship, Power of Attorney, and Advance Directives  
Committee- Nicklaus J. Curley, Chair**

Motion to (A) adopt as a Section legislative position support for amendment to Florida Statutes, including Florida Statutes § 744.3701, to clarify existing law on the standard for the court’s ordering the production of confidential documents in guardianship proceedings and the parties who have the right to access confidential documents without court order; (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. 107 - 110**

Here, Mr. Curley explained that to avoid the negative impact on guardianship proceedings of a misplaced comma, clarification of the subject statute was necessary. The proposed change clarifies that good cause must exist to release confidential information and confusion is avoided by attending to the misplaced comma as well as one more grammatical item.

**3. Guardianship, Power of Attorney, and Advance Directives  
Committee-Nicklaus J. Curley, Chair**

Motion to (A) adopt as a Section legislative position support for amendment to the Florida Statutes to allow dismissal of a Petition to Determine Incapacity only when the three examining committee members unanimously find that a person is not incapacitated and the creation of a new statutory procedure to oppose dismissal in such circumstances; (B) find that such legislative position is within the purview of the RPPTL; and (c) expend Section funds in support of the proposed legislative position. **pp. 111 - 126**

Mr. Curley next explained the Committee’s review of F.S. 744.331, dismissal based on examining committee reports. The Committee has considered the issues created by *Rothman v. Rothman* and the compulsory dismissal of guardianship

proceedings when 2 of 3 examining committee reports show the alleged incapacitated person has no need for a guardian of any type (majority of examiners determine there is no incapacity). After substantial study and review, the Committee is suggesting that the standard for dismissal be changed to one requiring unanimity in order for the proceedings to be dismissed without a determination by the Court. The Committee feels that such an approach will permit the Court to make the appropriate determination and exercise its discretion rather than the present statutory approach which in essence takes the case from the Court on a report of two of three examining committee members.

4. **Ad Hoc Estate Planning Conflict of Interest Committee-** *William T. Hennessey, Chair*

Report on Florida Supreme Court amendments to Florida Bar Rule 4-1.8, *effective February 1, 2018*, relating to client gifts to lawyers and lawyers serving as fiduciaries in documents which they draft. **pp. 127 - 138**

Mr. Hennessey provided the historical background for this matter, including previously proposed statutory approaches to the issues, as well as Florida Bar rules changes. He first reviewed the statutory suggestions and then reviewed the proposed rule changes. Suggested statutory and rule approaches to the conflicts of interest which are related to gifts to lawyers and the appointment of lawyers as fiduciaries have remained as Section positions and legislative and rule making proposals, but previously have not come to a vote in either the legislature or at The Florida Bar. Included in his review of the rule change proposals, Bill distinguished between a lawyer soliciting a gift and not doing so. He stated that the Florida Bar had now adopted the Section's position that a lawyer should never solicit (rather than merely accept) a third party non family member's gift or prepare a document making a gift from a non-family member client to the lawyer or the lawyer's family (unless the lawyer was doing so from his own family members). The second item is the Section's proposed changes to 4-1.8 regarding a lawyer appointing himself/herself as fiduciary in testamentary documents that the lawyer is drafting. The language of the new Bar Rule states that the lawyer cannot solicit appointment, and if appointed by a client without solicitation, counsel must inform the client in writing the available options and the consequences of appointing the client's counsel (including the additional fee counsel will receive as a fiduciary). Effective February 1, 2018, an attorney must confirm with the client, in writing, the required disclosure that has been made regarding the attorney's appointment as a fiduciary. Stewart Marshall commented that there is no family member exception regarding the appointment of fiduciary provisions in the Rule and its commentary.

**XII. [Adjourn:](#)**

On motion duly made and seconded, the meeting was adjourned at approximately 11:56 a.m.



**ATTENDANCE ROSTER**  
**REAL PROPERTY PROBATE & TRUST LAW SECTION**  
**EXECUTIVE COUNCIL MEETINGS**  
**2017-2018**

Executive Committee	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
O'Malley, Andrew Marvel Chair	√		√	√	√		
Boje, Debra Lynn Chair-Elect		√	√		√		
Hennessey, William Thomas III Probate & Trust Law Div. Director		√	√	√	√		
Freedman, Robert S., Real Property Law Div. Director	√		√		√		
Frazier, S. Katherine, Director of At-Large Members	√		√	√	√		
Miller, Lawrence J. Secretary		√	√		√		
Swaine, Robert S. Treasurer	√		√	√	√		
Butters, Sarah S., Legislation Co-Chair (P&T)		√	√		√		
Cary Wright, Wm. Legislation Co-Chair (RP)	√		√	√	√		
Kelley, Shane, Legislation CLE Seminar Coordination Co-Chair (P&T)		√	√		√		
Mezer, Steven H., CLE Seminar Coordination Co-Chair (RP)	√		√		√		
Goodall, Deborah Packer <b>Immediate Past Chair</b>		√	√	√	√		

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Acosta, Jolyon Delphin		√	√		√		
Adams, Angela M.		√	√		√		
Adcock, Jr., Louie N., <b>Past Chair</b>		√					
Akins, David J.		√	√		√		
Allan, Honorable Linda Ruth		√					

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Altman, Stuart H.		√	√	√			
Amari, Richard		√	√				
Archbold, J. Allison		√	√		√		
Arnold, Jr., Lynwood F.		√					
Aron Jerry E. <b>Past Chair</b>	√		√				
Awerbach, Martin S.	√		√				
Bald, Kimberly A.		√	√				
Ballaga, Raul P.	√		√		√		
Barboza, Annabella	√		√		√		
Basham, Cindy		√					
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.		√	√		√		
Ben Moussa, Shari D.	√						
Bloodworth, Jennifer J.	√		√		√		
Bonevac, Judy B.		√	√		√		

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Bowers, Elizabeth Anne		√	√		√		
Boyd, Deborah	√						
Braun, Keith Brian		√	√		√		
Brenes-Stahl, Tattiana P.		√	√		√		
Brennan, David C. <b>Past Chair</b>		√	√				
Brittain, David R.	√		√		√		
Bronner, Tae K.,		√			√		
Brown, Mark A.	√		√		√		
Brown, Shawn	√		√		√		
Brunner, S. Dresden		√	√		√		
Bruton, Jr., Ed Burt	√		√		√		
Bucher, Elaine M.		√	√				
Butler, Johnathan		√	√		√		
Callahan, Charles III		√	√				
Carlisle, David R.		√			√		
Caskey, John R.		√	√		√		
Christiansen, Patrick T. <b>Past Chair</b>	√		√	√			
Christy, Douglas G. III	√		√		√		
Christy, Erin Hope	√		√		√		
Cohen, Howard Allen	√		√	√	√		
Cole, John P.		√					
Cole, Stacey L.		√					
Conetta, Tami F.		√	√		√		
Cope, Jr., Gerald B.	√		√	√	√		

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Cornett, Jane Louise	√		√		√		
Costello, T. John, Jr.		√			√		
Curley, Nick		√	√		√		
DeBoest II, Richard Dearborn			√				
Detzel, Lauren Y.		√	√		√		
Diamond, Benjamin F.		√	√		√		
Diamond, Sandra F. <b>Past Chair</b>		√	√				
Direktor, Kenneth Steven	√						
Dobrev, Alex	√		√		√		
Dollinger, Jeffrey	√						
Dribin, Michael <b>Past Chair</b>		√	√	√			
Dudley, Frederick R.	√						
Duvall, III, Homer	√		√		√		
Duz, Ashley Nichole		√	√				
Eckhard, Rick	√				√		
Ellison, Jason M.	√		√	√	√		
Emans, Patrick C		√	√				
Emerich, Guy S.		√	√		√		
Ertl, Christene M.	√		√				
Ezell, Brenda B.	√		√		√		
Fagan, Gail		√	√	√	√		
Falk, Jr., Jack A.		√	√		√		

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Farach, Manuel	√		√		√		
Faulkner, Debra Ann		√			√		
Felcoski, Brian J. <b>Past Chair</b>		√	√		√		
Ferguson, Elizabeth B.	√				√		
Fernandez, Kristopher E.	√		√	√			
Fields, Alan B.	√		√		√		
Fitzgerald, Jr., John E.		√	√		√		
Flood, Gerard J.		√	√				
Foreman, Michael L.		√	√		√		
Frazier, Nathan	√		√				
Friedman, Briget	√		√	√	√		
Friedman, Jesse B.		√	√		√		
Galler, Jonathan		√	√		√		
Gans, Richard R.		√	√		√		
Gelfand, Michael J <b>Past Chair</b>	√		√	√	√		
Gentile, Melinda S.	√		√		√		
George, James		√	√		√		
Godelia, Vinette D.	√		√				
Goethe, Jeffrey S.		√	√		√		
Goldman, Louis "Trey"	√		√	√	√		
Goldman, Robert W. <b>Past Chair</b>		√	√	√	√		
Goodman, Hon. Jaimie Randall							
Graham, Robert M.	√		√		√		
Granet, Lloyd	√		√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Griffin, Linda S.		√	√		√		
Grimsley, John G. <b>Past Chair</b>		√					
Grosso, Jennifer		√			√		
Gunther, Eamonn W.		√	√		√		
Gurgold, Eric		√	√		√		
Guttmann, III, Louis B <b>Past Chair</b>	√				√		
Hamrick, Alexander H		√	√		√		
Hancock, Patricia J.	√		√				
Hargett, Michael Van	√		√		√		
Hayes, Honorable Hugh D.		√					
Hayes, Michael Travis		√	√		√		
Hearn, Steven L. <b>Past Chair</b>		√	√		√		
Henderson, Jr., Reese J.	√		√				
Henderson, III, Thomas N.	√		√				
Heuston, Stephen P.		√	√		√		
Hipsman, Mitchell Alec		√	√		√		
Hoffman, Brian W.	√		√		√		
Hughes, Elizabeth Marie MacDonald		√	√		√		
Hutt, Gregg Evan	√		√	√			
Isphording, Roger O. <b>Past Chair</b>		√					
Jennison, Julia Lee	√		√	√	√		
Johnson, Amber Jade F.		√	√				
Jones, Darby		√			√		
Jones, Frederick W.	√		√	√	√		

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Jones, Patricia P.H.	√		√	√	√		
Judd, Robert B.		√	√		√		
Kalmanson, Stacy O.	√						
Kangas, Michael Ryan		√	√		√		
Karibjanian, George		√	√				
Karr, Mary		√	√		√		
Karr, Thomas M.		√	√		√		
Kayser, Joan B. <b>Past Chair</b>		√			√		
Keane, Cristin C.	√						
Kelley, Rohan <b>Past Chair</b>		√	√		√		
Kelley, Sean W.		√			√		
Keyser, Hon. Janis Brustares							
Khan, Nishad	√		√		√		
Kibert, Nicole C.	√						
Kightlinger, Wilhelmina F.	√						
Kinsolving, Ruth Barnes, <b>Past Chair</b>	√						
Koren, Edward F. <b>Past Chair</b>		√					
Korvick, Honorable Maria M.		√	√				
Kotler, Alan Stephen		√	√		√		
Kromash, Keith S.		√	√		√		
Krumbein, Sandra Elizabeth	√		√		√		
Kurian, Sanjay	√		√		√		
Kypreos, Theodore S.		√	√		√		
Lancaster, Robert L.		√	√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Lane, Jr., William R.		√			√		
Larson, Roger A.	√		√		√		
Leathe, Jeremy Paul		√	√		√		
Lebowitz, Sean M.		√	√		√		
Leebrick, Brian D.	√		√				
Lile, Laird A. <b>Past Chair</b>		√	√	√	√		
Lindsey, Honorable Norma S.	√						
Little, III, John W.	√						
Lopez, Sophia A.		√	√		√		
Lunsford, Rachel Albritton			√		√		
Madorsky, Marsha G.		√	√		√		
Malec, Brian		√	√		√		
Marger, Bruce <b>Past Chair</b>		√					
Marmor, Seth A.		√					
Marshall, III, Stewart A.		√	√		√		
Marx, James A.		√	√	√	√		
Mastin, Deborah Bovarnick	√		√		√		
McCall, Alan K.	√		√				
McElroy, IV, Robert Lee		√			√		
McIver, Richard	√		√	√	√		
McRae, Ashley E.	√		√				
Melanson, Noelle		√	√		√		
Menor, Arthur J.		√	√				
Meyer, George F. <b>Past Chair</b>	√			√	√		



Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Meyer, Michael	√		√				
Middlebrook, Mark T.		√	√	√	√		
Mize, Patrick		√	√				
Moran, John C.		√	√		√		
Moule, Rex E.		√					
Muir, Honorable Celeste H.		√	√		√		
Murphy, Melissa J. <b>Past Chair</b>	√		√		√		
Nash, Charles I.		√	√		√		
Neukamm, John B. <b>Past Chair</b>	√			√	√		
Nguyen, Hung V.		√	√		√		
Overhoff, Alex	√						
Parady, William A.	√		√				
Payne, L. Howard		√	√				
Pence, Scott P.	√		√	√	√		
Pepper-Dickinson, Tasha K.		√	√				
Perera, Diane	√				√		
Pilote, Frank		√	√	√	√		
Pleus, Jr., Honorable Robert J.		√					
Pollack, Anne Q.	√		√		√		
Price, Pamela O.		√	√		√		
Pyle, Michael A.		√					
Quintero, Jason	√		√		√		
Redding, John N.	√		√	√	√		
Renzio, Bryan	√				√		

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Reynolds, Stephen H.		√			√		
Riddell, Cynthia	√		√				
Rieman, Alexandra V.		√	√		√		
Robbins, Jr., R.J.	√		√		√		
Roberts, III, Hardy L.	√		√	√			
Robinson, Charles F.		√	√		√		
Rodstein, David William							
Rojas, Silvia B.	√		√		√		
Rolando, Margaret A. <b>Past Chair</b>	√		√		√		
Roman, Paul E.		√	√		√		
Rosenberg, Joshua		√	√		√		
Rubel, Stacy		√	√		√		
Rubin, Jenna		√					
Russell, Deborah L.		√	√				
Russick, James C.	√			√	√		
Rydberg, Marsha G.	√			√	√		
Sachs, Colleen C.	√		√		√		
Sajdera, Christopher	√		√		√		
Sasso, Andrew	√						
Scaletta, Melissa Sloan							
Schafer, Jr., Honorable Walter L.		√					
Schwartz, Martin	√		√		√		
Schwartz, Robert M.	√		√		√		
Schwinghamer, Jamie Beth		√	√		√		

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Scriven, Lansing Charles	√		√				
Scuderi, Jon		√	√		√		
Seaford, Susan	√		√		√		
Sheets, Sandra G.		√	√	√	√		
Sherrill, Richard Norton		√	√		√		
Shoter, Neil B.	√		√		√		
Silberman, Honorable Morris	√				√		
Silberstein, David M.		√			√		
Sivyer, Neal Allen	√		√				
Sklar, William P.	√		√				
Smart, Christopher W.	√		√	√	√		
Smith, G. Thomas <b>Past Chair</b>	√						
Smith, Kymberlee	√						
<del>Smith, Wilson <b>Past Chair</b></del>		√					
Smith, Yoshimi O.		√	√		√		
Sneeringer, Michael Alan		√			√		
Solomon, Marty James	√		√	√	√		
Sparks, Brian C.		√	√		√		
Speiser, Honorable Mark A.		√			√		
Spivey, Barry F.		√	√				
Spurgeon, Susan K.	√		√		√		
Stafford, Michael P.		√	√	√	√		
Staker, Karla J.	√		√		√		
Stashis, Alfred Joseph			√		√		

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Stern, Robert G.	√		√		√		
Stewart, John Mitchel			√				
Stone, Adele I.	√		√	√	√		
Stone, Bruce M. <b>Past Chair</b>		√			√		
Suarez, Honorable Richard J.		√					
Sundberg, Laura K.		√	√				
Swaine, Jack Michael <b>Past Chair</b>	√		√	√	√		
Taylor, Richard W.	√		√				
Tescher, Donald R.		√	√		√		
Thomas, Honorable Patricia V.		√	√				
Thornton, Kenneth E.			√		√		
Ticktin, Hon. Jessica Jacqueline							
Tobin, Jennifer S.	√		√				
Triggs, Matthew H.		√	√		√		
Tschida, Joseph John			√				
Tucker, Kristine L.			√		√		
Udick, Arlene C.	√		√		√		
Van Dien, Lisa Barnett			√		√		
Van Lenten, Jason Paul		√	√		√		
Van Pelt, Kit E.					√		
VanSickle, Melissa	√						
Villarroel, Nicole Marie	√		√				
Virgil, Eric		√			√		
Waller, Roland D. <b>Past Chair</b>	√		√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Wartenberg, Stephanie Harriet		√	√		√		
Weintraub, Lee A.	√		√	√	√		
Wells, Jerry B.		√	√		√		
White, Jr., Richard M.		√	√		√		
Whynot, Sancha B.	√		√				
Wilder, Charles D.		√	√				
Williams, Margaret A.	√		√				
Williamson, Julie Ann <b>Past Chair</b>	√		√				
Wintter, Christopher Q.		√	√		√		
Wohlust, Gary Charles		√	√	√	√		
Wolasky, Marjorie E.		√	√		√		
Wolf, Jerome L.		√	√		√		
Young, Gwynne A.	√		√		√		
Zeydel, Diana S.C.		√	√		√		
Zikakis, Salome J.		√	√		√		
Zschau, Julius J. <b>Past Chair</b>	√		√				

RPPTL Fellows	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Ashton, Amber	√		√				
Coleman, Jami		√	√		√		
de la Riva, Lian		√	√		√		
McDermott, Daniel L.		√	√		√		
Peregrine, Jacqueline J.	√		√		√		
Santos, Angela		√					
Villavicencio, Stephanie		√			√		
Work, Scott	√		√				

Legislative Consultants	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Dunbar, Peter M.	√		√	√	√		
Edenfield, Martha Jane	√		√	√	√		
Finkbeiner, Brittany	√		√		√		
Roth, Cari L.	√						
Michael Dobson					√		

Guests	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Laura Licastro	√		√		√		
Greg Morler		√	√				
Brad Trushsa		√	√				
Matt Ahearn		√	√				
Stacey Price Trontman		√	√				
Krisuer		√	√				
Sanjiv Patel	√		√				
Travis Finchum		√	√				
Rose LaFermina		√	√	√	√		
Bonnie Polk		√	√				
David Shende	√				√		
Carolyn Broadwater	√		√		√		
Caitlein Jammo		√			√		
Cynthia Riddell	√		√		√		

Guests	RP	P&T	July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
Travis Finchum		√	√		√		
Thomas Treece					√		
Andrea Stone		√			√		
Dale Noll					√		
Jim Kearn					√		
Daniel Siegel					√		
Celia Deifik	√		√		√		
Danielle Clark					√		
John Parady					√		



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Special Thanks to the  
**GENERAL SPONSORS**

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**Attorneys' Title Fund Services, LLC – Melissa Murphy**

*Thursday Lunch*  
**Management Planning, Inc. - Roy Meyers**

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**JP Morgan - Carlos Batlle / Alyssa Zebrowsky**  
&  
**Old Republic National Title Insurance Company - Jim Russick**

*Friday Night Reception*  
**Wells Fargo Private Bank - Mark Middlebrook / Johnathan/ Alex Hamrick**  
&  
**Westcor Land Title - Renee Bourbeau / Sabine Seidel**

*Friday Night Dinner*  
**First American Title Insurance Company - Alan McCall / Leonard Prescott IV**

*Probate Roundtable*  
**SRR (Stout Risius Ross Inc.) - Garry Marshall**

*Real Property Roundtable*  
**Fidelity National Title Group - Karla Staker**

*Saturday Lunch*  
**The Florida Bar Foundation – Bruce Blackwell**  
&  
**Stewart Title – Laura Licastro**

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**Phillips– Jennifer Jones**

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**Wright Investors' Service – Stephen Soper**

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**WFG National Title Insurance Company – Joseph Tschida**



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**Jones Lawry** – *Marshall Jones*

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**First American Title Insurance Company – Wayne Sobien**  
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**Management Planning, Inc. – Roy Meyers**  
*Estate & Trust Tax Planning Committee*

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*Trust Law Committee*

**Seaside National Bank and Trust – H. Wayne Griest**  
*Commercial Real Estate Committee*

RPPTL 2017 - 2018  
Executive Council Meeting Schedule  
Andrew O'Malley's Year

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

Date	Location
<b>May 31 – June 3, 2018</b>	<b>Executive Council Meeting &amp; Convention</b> Tradewinds Island Resort on St. Pete Beach St. Pete Beach, FL Room Rate: \$249 Tropical View Hotel Room Rate: \$269* Tropical View One Bedroom Suite: \$319* Reservation Link: Posted on <a href="http://www.RPPTL.org">www.RPPTL.org</a> on upcoming meetings page on 3/1/18.

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\*Subject to availability

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

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DATES	LOCATIONS
<i>July 25-28, 2018</i>	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Room Rate: \$225/ Deluxe King <span style="color: red;">Room Link to be posted to <a href="http://www.RPPTL.org">www.RPPTL.org</a> on March 1, 2018</span>
<i>September 26-30, 2018</i>	<b>Out of State Executive Council Meeting</b> The Westin Excelsior Rome, Italy (with pre-event in Florence, Italy-TBA) Standard Room: Euro 325.00 Euro (single) Euro 335.00 (double) - includes Breakfast - see <span style="color: red;">www.RPPTL.org for complete trip details</span>
<i>December 5-9, 2018</i>	<b>Executive Council Meeting</b> Four Seasons Hotel Orlando, Florida Room Rates: Standard Guest Rooms: \$285 (single/double occupancy) Park View Rooms: \$399 (single/double occupancy)
<i>March 13-17, 2019</i>	<b>Executive Council Meeting</b> Omni Resorts Amelia Island Plantation Room Rates: Hotel/Villa Guestrooms \$259 (single/double occupancy) One Bedroom Oceanfront Villa: \$299 (single/double occupancy) Two Bedroom Oceanfront Villa: \$399.00 (single/double occupancy) Three Bedroom Oceanfront Villa: \$459 (single/double occupancy)
<span style="color: red;"><i>May 30 - June 1, 2019</i></span>	<b>Executive Council Meeting &amp; Convention</b> Opal Sands Resort Clearwater Beach, Florida Room Rate: \$239 Deluxe Gulf Front (single/double occupancy)

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



**RPPTL Financial Summary from Separate Budgets**  
2017-2018 [July 1 - January 31] YEAR  
TO DATE REPORT

**General Budget**

**YTD**

Revenue	\$ 1,309,908
Expenses	\$ 661,960
<b>Net:</b>	<b>\$ 647,948</b>

**Attorney Loan Officer**

**YTD**

Revenue	\$ 11,700
Expenses	\$ 29,259
<b>Net:</b>	<b>\$ (17,559)</b>

**CLI**

**YTD**

Revenue	\$ 168,363
Expenses	\$ 1,393
<b>Net:</b>	<b>\$ 166,970</b>

**Trust Officer Conference**

Revenue	\$ 286,330
Expenses	\$ 181,395
<b>Net:</b>	<b>\$ 104,935</b>

**Legislative Update**

Revenue	\$ 50,510
Expenses	\$ 273,603 <small>*ERROR - \$149,000 exp. to be moved to General Budget in Feb. 2018 report</small>
<b>Net:</b>	<b>\$ (223,093)</b>

**Convention**

Revenue	\$ (110)
Expenses	\$ 1,752
<b>Net:</b>	<b>\$ (1,862)</b>

**Roll-up Summary (Total)**

Revenue:	\$ 1,826,701
Expenses	\$ 1,149,361
<b>Net Operations</b>	<b>\$ 677,340</b>

<b>Beginning Fund Balance:</b>	<b>\$ 1,684,323</b>
<b>Current Fund Balance (YTD):</b>	<b>\$ 2,361,662</b>
<b>Projected June 2018 Fund Balance</b>	<b>\$ 1,582,237</b>

THE FLORIDA BAR  
Real Property, Probate and Trust Law Section  
For the Seven Months Ending Wednesday, January 31, 2018

	<u>This Month</u> January	<u>YTD</u> 2018	<u>FY 17-18</u> Budget	<u>Budget</u> % Utilized
3001-Annual Fees	\$1,320	\$611,600	\$597,000	102.45%
3002-Affiliate Fees	\$60	\$7,360	\$4,400	167.27%
<b>Total Fee Revenue</b>	<b>\$1,380</b>	<b>\$618,960</b>	<b>\$601,400</b>	<b>102.92%</b>
3301-Registration-Live	\$23,505	\$319,168	\$458,200	69.66%
3321-Registration-Webcast		\$7,007	\$20,000	35.04%
3331-Registration-Ticket	\$94	\$3,154	\$11,300	27.92%
<b>Total Registration Revenue</b>	<b>\$23,599</b>	<b>\$329,330</b>	<b>\$489,500</b>	<b>67.28%</b>
3341-Exhibit Fees	(\$7,475)	\$58,925	\$86,500	68.12%
3351-Sponsorships	\$42,250	\$360,450	\$425,000	84.81%
3391 Section Profit Split	\$70,342	\$195,457	\$210,000	93.07%
3392-Section Differential	\$5,640	\$14,520	\$25,000	58.08%
<b>Other Event Revenue</b>	<b>\$110,757</b>	<b>\$629,352</b>	<b>\$746,500</b>	<b>84.31%</b>
3401-Sales-CD/DVD	\$4,070	\$41,016	\$27,500	149.15%
3411-Sales-Published Materials		\$1,690	\$2,500	67.60%
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>\$4,070</b>	<b>\$42,706</b>	<b>\$30,000</b>	<b>142.35%</b>
3561-Advertising	\$3,420	\$13,176	\$20,000	65.88%
<b>Advertising &amp; Subscription Revenue</b>	<b>\$3,420</b>	<b>\$13,176</b>	<b>\$20,000</b>	<b>65.88%</b>
3699-Other Operating Revenue			\$800	0.00%
<b>Other Revenue Sources</b>	<b>\$</b>	<b>\$</b>	<b>\$800</b>	<b>0.00%</b>
3899-Investment Allocation	\$78,565	\$193,178	\$38,419	502.82%
<b>Non-Operating Income</b>	<b>\$78,565</b>	<b>\$193,178</b>	<b>\$38,419</b>	<b>502.82%</b>
<b>Total Revenue</b>	<b>\$221,792</b>	<b>\$1,826,701</b>	<b>\$1,926,619</b>	<b>94.81%</b>
4111-Rent Equipment		\$27,067	\$59,000	45.88%
4131-Telephone Expense		\$535	\$1,400	38.21%
4134-Web Services		\$18,715	\$52,500	35.65%
4301-Photocopying			\$350	0.00%
4311-Office Supplies	\$91	\$309	\$850	36.32%
<b>Total Staff &amp; Office Expense</b>	<b>\$91</b>	<b>\$46,625</b>	<b>\$114,100</b>	<b>40.86%</b>
5031-A/V Services			\$1,495	0.00%
5051-Credit Card Fees	\$328	\$14,017	\$10,850	129.19%
5101-Consultants		\$80,000	\$120,000	66.67%
5121-Printing-Outside	\$10,328	\$46,490	\$92,200	50.42%
5181-Speaker Honorarium	48		\$1,500	0.00%
5199-Other Contract Services	\$2,112	\$24,121	\$20,000	90.40%



THE FLORIDA BAR  
Real Property, Probate and Trust Law Section  
For the Seven Months Ending Wednesday, January 31, 2018

	<u>This Month</u> January	<u>YTD</u> 2018	<u>FY 17-18</u> Budget	<u>Budget</u> % Utilized
5501-Employee Travel	\$2,582	\$12,500	\$20,750	60.24%
5531-Board/Off/Memb Travel	\$196	\$6,284	\$25,000	25.13%
5571-Speaker Travel	\$	\$2,302	\$8,500	27.08%
<b>Total Travel</b>	<b>\$2,778</b>	<b>\$21,085</b>	<b>\$54,250</b>	<b>38.87%</b>
6001-Post 1st Class/Bulk	\$27	\$448	\$3,125	14.34%
6021-Post Express Mail	\$28	\$357	\$695	51.37%
6311-Mtgs General Meeting	\$440	\$367,974	\$510,000	72.15%
6319-Mtgs Other Functions		\$9,881	\$20,400	48.44%
6321-Mtgs Meals	\$	\$51,687	\$267,000	19.36%
6325-Mtgs Hospitality	\$	\$103,681	\$199,500	51.97%
6341-Mtgs Equip Rental	\$	\$60,946	\$18,200	334.87%
6361-Mtgs Entertainment		\$1,717	\$8,000	21.46%
6399-Mtgs Other			\$19,000	0.00%
6401-Speaker Expense	\$	\$6,048	\$19,600	30.86%
6451-Committee Expense	\$2,213	\$29,478	\$100,000	29.48%
6531-Brd/Off Special Project	\$2,213	\$2,213	\$85,300	2.59%
6599-Brd/Off Other		\$1,942	\$10,000	19.42%
7001-Grant/Award/Donation	\$1,500	\$4,559	\$22,200	20.53%
7011-Scholarship/Fellowship	\$802	\$9,559	\$32,500	29.41%
7999-Other Operating Exp		(\$525)	\$6,325	(8.30%)
8901-Eliminated IntFund Exp	\$3,000	\$3,250		0.00%
<b>Total Other Expense</b>	<b>\$10,222</b>	<b>\$653,213</b>	<b>\$1,321,845</b>	<b>49.42%</b>
8001-Administration General			\$26,000	0.00%
8011-Administration CLE	(\$3,800)	\$32,000	\$30,000	106.67%
8021-Section Admin Fee	\$446	\$208,069	\$203,715	102.14%
8101-Printing In-House	\$5,996	\$14,163	\$4,600	307.89%
8131-A/V Services	\$14	\$8,853	\$11,800	75.03%
8141-Journal/News Service		\$425	\$4,850	8.77%
8171-Course Approval Fee	\$300	\$300	\$1,200	25.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$2,955</b>	<b>\$263,810</b>	<b>\$282,165</b>	<b>93.49%</b>
9692-Transfer Out-Council of Sections			\$300	0.00%
<b>Total InterFund Transfers Out</b>	<b>\$</b>	<b>\$</b>	<b>\$300</b>	<b>0.00%</b>
<b>Total Expense</b>	<b>\$29,815</b>	<b>\$1,149,362</b>	<b>\$2,028,705</b>	<b>56.65%</b>
<b>Net Income</b>	<b>\$191,977</b>	<b>\$677,340</b>	<b>(\$102,086)</b>	<b>(663.50%)</b>
2001-Fund Balance, Beginning	49	\$1,684,323	\$1,684,323	100.00%

**THE FLORIDA BAR**  
**Real Property, Probate and Trust Law Section**  
**For the Seven Months Ending Wednesday, January 31, 2018**

	<u>This Month</u>	<u>YTD</u>	<u>FY 17-18</u>	<u>Budget</u>
	<u>January</u>	<u>2018</u>	<u>Budget</u>	<u>% Utilized</u>
<b>Fund Balance, Ending</b>	<b>\$</b>	<b>\$2,361,662</b>	<b>\$1,582,237</b>	<b>149.26%</b>

THE FLORIDA BAR  
Real Property, Probate and Trust Law General  
For the Seven Months Ending Wednesday, January 31, 2018

	This Month <u>January</u>	YTD <u>2018</u>	FY 17-18 <u>Budget</u>	Budget <u>% Utilized</u>
3001-Annual Fees	\$1,320	\$611,600	\$597,000	102.45%
3002-Affiliate Fees	\$60	\$7,360	\$4,400	167.27%
<b>Total Fee Revenue</b>	<b>\$1,380</b>	<b>\$618,960</b>	<b>\$601,400</b>	<b>102.92%</b>
3301-Registration-Live	\$15,980	\$147,868	\$170,000	86.98%
<b>Total Registration Revenue</b>	<b>\$15,980</b>	<b>\$147,868</b>	<b>\$170,000</b>	<b>86.98%</b>
3351-Sponsorships	\$3,750	\$126,750	\$180,000	70.42%
3391 Section Profit Split	\$70,342	\$195,457	\$210,000	93.07%
3392-Section Differential	\$5,640	\$14,520	\$25,000	58.08%
<b>Other Event Revenue</b>	<b>\$79,732</b>	<b>\$336,727</b>	<b>\$415,000</b>	<b>81.14%</b>
3561-Advertising	\$3,420	\$13,176	\$20,000	65.88%
<b>Advertising &amp; Subscription Revenue</b>	<b>\$3,420</b>	<b>\$13,176</b>	<b>\$20,000</b>	<b>65.88%</b>
3899-Investment Allocation	\$78,565	\$193,178	\$38,419	502.82%
<b>Non-Operating Income</b>	<b>\$78,565</b>	<b>\$193,178</b>	<b>\$38,419</b>	<b>502.82%</b>
<b>Total Revenue</b>	<b>\$179,077</b>	<b>\$1,309,908</b>	<b>\$1,244,819</b>	<b>105.23%</b>
4131-Telephone Expense		\$535	\$1,400	38.21%
4134-Web Services		\$18,715	\$52,500	35.65%
4301-Photocopying			\$300	0.00%
4311-Office Supplies	\$91	\$309	\$700	44.10%
<b>Total Staff &amp; Office Expense</b>	<b>\$91</b>	<b>\$19,558</b>	<b>\$54,900</b>	<b>35.63%</b>
5051-Credit Card Fees	\$138	\$8,047	\$3,500	229.90%
5101-Consultants		\$80,000	\$120,000	66.67%
5121-Printing-Outside	\$10,328	\$42,869	\$73,500	58.33%
5199-Other Contract Services	\$11,394	\$21,803	\$30,000	72.68%
<b>Total Contract Services</b>	<b>\$21,859</b>	<b>\$152,719</b>	<b>\$227,000</b>	<b>67.28%</b>
5501-Employee Travel	\$2,582	\$7,985	\$12,000	66.55%
5531-Board/Off/Memb Travel	\$196	\$6,284	\$25,000	25.13%
<b>Total Travel</b>	<b>\$2,778</b>	<b>\$14,269</b>	<b>\$37,000</b>	<b>38.56%</b>
6001-Post 1st Class/Bulk	\$27	\$423	\$2,000	21.16%
6311-Mtgs General Meeting	\$440	\$218,627	\$510,000	42.87%
6325-Mtgs Hospitality		\$11,277	\$30,000	37.59%
6399-Mtgs Other			\$19,000	0.00%
6401-Speaker Expense			\$1,000	0.00%
6451-Committee Expense	\$2,213	\$6,088	\$100,000	6.09%
6521-Board/Off Special Project	\$2,213	\$2,213	\$95,200	2.50%

THE FLORIDA BAR  
Real Property, Probate and Trust Law General  
For the Seven Months Ending Wednesday, January 31, 2018

	<u>This Month</u> <u>January</u>	<u>YTD</u> <u>2018</u>	<u>FY 17-18</u> <u>Budget</u>	<u>Budget</u> <u>% Utilized</u>
7001-Grant/Award/Donation	\$1,500	\$4,339	\$22,200	19.54%
7011-Scholarship/Fellowship	\$802	\$9,559	\$32,500	29.41%
7999-Other Operating Exp		(\$1,000)		0.00%
8901-Eliminated IntFund Exp	\$3,000	\$3,250		0.00%
<b>Total Other Expense</b>	<b>\$10,194</b>	<b>\$254,776</b>	<b>\$812,000</b>	<b>31.38%</b>
8021-Section Admin Fee	\$446	\$208,069	\$203,715	102.14%
8101-Printing In-House	\$5,996	\$12,569	\$1,000	1256.90%
<b>Total Admin &amp; Internal Expense</b>	<b>\$6,441</b>	<b>\$220,638</b>	<b>\$204,715</b>	<b>107.78%</b>
9692-Transfer Out-Council of Sections			\$300	0.00%
<b>Total InterFund Transfers Out</b>	<b>\$</b>	<b>\$</b>	<b>\$300</b>	<b>0.00%</b>
<b>Total Expense</b>	<b>\$41,364</b>	<b>\$661,960</b>	<b>\$1,335,915</b>	<b>49.55%</b>
<b>Net Income</b>	<b>\$137,713</b>	<b>\$647,948</b>	<b>(\$91,096)</b>	<b>(711.28%)</b>

THE FLORIDA BAR  
Real Property Construction Law Institute  
For the Seven Months Ending Wednesday, January 31, 2018

	This Month January	YTD 2018	FY 17-18 Budget	Budget % Utilized
3301-Registration-Live			\$70,000	0.00%
3331-Registration-Ticket			\$1,300	0.00%
<b>Total Registration Revenue</b>	<b>\$</b>	<b>\$</b>	<b>\$71,300</b>	<b>0.00%</b>
3351-Sponsorships	\$34,500	\$159,000	\$170,000	93.53%
<b>Other Event Revenue</b>	<b>\$34,500</b>	<b>\$159,000</b>	<b>\$170,000</b>	<b>93.53%</b>
3401-Sales-CD/DVD	\$1,845	\$9,003	\$4,000	225.09%
3411-Sales-Published Materials		\$360	\$500	72.00%
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>\$1,845</b>	<b>\$9,363</b>	<b>\$4,500</b>	<b>208.08%</b>
3699-Other Operating Revenue			\$800	0.00%
<b>Other Revenue Sources</b>	<b>\$</b>	<b>\$</b>	<b>\$800</b>	<b>0.00%</b>
<b>Total Revenue</b>	<b>\$36,345</b>	<b>\$168,363</b>	<b>\$246,600</b>	<b>68.27%</b>
4111-Rent Equipment		\$500	\$7,500	6.67%
<b>Total Staff &amp; Office Expense</b>	<b>\$</b>	<b>\$500</b>	<b>\$7,500</b>	<b>6.67%</b>
5051-Credit Card Fees	\$95	\$552	\$2,500	22.07%
5181-Speaker Honorarium			\$1,500	0.00%
<b>Total Contract Services</b>	<b>\$95</b>	<b>\$552</b>	<b>\$4,000</b>	<b>13.79%</b>
5501-Employee Travel			\$1,350	0.00%
5571-Speaker Travel			\$4,000	0.00%
<b>Total Travel</b>	<b>\$</b>	<b>\$</b>	<b>\$5,350</b>	<b>0.00%</b>
6001-Post 1st Class/Bulk			\$25	0.00%
6021-Post Express Mail	\$2	\$59	\$45	130.64%
6319-Mtgs Other Functions			\$12,400	0.00%
6321-Mtgs Meals			\$35,000	0.00%
6325-Mtgs Hospitality			\$55,000	0.00%
6341-Mtgs Equip Rental			\$16,200	0.00%
6401-Speaker Expense			\$7,900	0.00%
7999-Other Operating Exp			\$2,600	0.00%
<b>Total Other Expense</b>	<b>\$2</b>	<b>\$59</b>	<b>\$129,170</b>	<b>0.05%</b>
8011-Administration CLE			\$25,000	0.00%
8101-Printing In-House		\$192	\$850	22.54%
8131-A/V Services		\$91	\$2,600	3.50%
8141-Journal/News Service			\$1,650	0.00%
8171-Course Approval Fee	53		\$150	0.00%
<b>Total Admin &amp; Internal Expenses</b>	<b>\$</b>	<b>\$292</b>	<b>\$20,250</b>	<b>0.02%</b>

**THE FLORIDA BAR**  
**Real Property Construction Law Institute**  
**For the Seven Months Ending Wednesday, January 31, 2018**

	<u>This Month</u>	<u>YTD</u>	<u>FY 17-18</u>	<u>Budget</u>
	<u>January</u>	<u>2018</u>	<u>Budget</u>	<u>% Utilized</u>
<b>Total Expense</b>	<u>\$97</u>	<u>\$1,393</u>	<u>\$176,270</u>	<u>0.79%</u>
<b>Net Income</b>	<u>\$36,248</u>	<u>\$166,970</u>	<u>\$70,330</u>	<u>237.41%</u>

THE FLORIDA BAR  
Real Property Legislative Update  
For the Seven Months Ending Wednesday, January 31, 2018

	<u>This Month</u> <u>January</u>	<u>YTD</u> <u>2018</u>	<u>FY 17-18</u> <u>Budget</u>	<u>Budget</u> <u>% Utilized</u>
3321-Registration-Webcast		\$7,007	\$20,000	35.04%
<b>Total Registration Revenue</b>	<b>\$</b>	<b>\$7,007</b>	<b>\$20,000</b>	<b>35.04%</b>
3341-Exhibit Fees		\$15,000	\$12,500	120.00%
3351-Sponsorships		\$700		0.00%
<b>Other Event Revenue</b>	<b>\$</b>	<b>\$15,700</b>	<b>\$12,500</b>	<b>125.60%</b>
3401-Sales-CD/DVD	\$2,225	\$26,953	\$20,500	131.48%
3411-Sales-Published Materials		\$850	\$1,000	85.00%
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>\$2,225</b>	<b>\$27,803</b>	<b>\$21,500</b>	<b>129.31%</b>
<b>Total Revenue</b>	<b>\$2,225</b>	<b>\$50,510</b>	<b>\$54,000</b>	<b>93.54%</b>
4111-Rent Equipment		\$10,103	\$13,500	74.83%
4301-Photocopying			\$50	0.00%
4311-Office Supplies			\$150	0.00%
<b>Total Staff &amp; Office Expense</b>	<b>\$</b>	<b>\$10,103</b>	<b>\$13,700</b>	<b>73.74%</b>
5031-A/V Services			\$1,495	0.00%
5051-Credit Card Fees	\$96	\$767	\$700	109.55%
5121-Printing-Outside		\$3,341	\$16,200	20.62%
5199-Other Contract Services		\$2,318		0.00%
<b>Total Contract Services</b>	<b>\$96</b>	<b>\$6,425</b>	<b>\$18,395</b>	<b>34.93%</b>
5501-Employee Travel		\$1,204	\$2,200	54.72%
5571-Speaker Travel		\$342	\$500	68.48%
<b>Total Travel</b>	<b>\$</b>	<b>\$1,546</b>	<b>\$2,700</b>	<b>57.27%</b>
6001-Post 1st Class/Bulk		\$21	\$50	41.30%
6021-Post Express Mail	\$20	\$228	\$500	45.58%
6311-Mtgs General Meeting		\$149,347		0.00%
6321-Mtgs Meals			\$42,000	0.00%
6325-Mtgs Hospitality		\$19,872	\$14,500	137.05%
6341-Mtgs Equip Rental		\$52,556		0.00%
6401-Speaker Expense		\$2,651	\$4,600	57.63%
6451-Committee Expense		\$23,389		0.00%
6599-Brd/Off Other		\$1,942		0.00%
7001-Grant/Award/Donation		\$220		0.00%
<b>Total Other Expense</b>	<b>\$20</b>	<b>\$250,225</b>	<b>\$61,650</b>	<b>405.88%</b>
8001-Administration General			\$1,000	0.00%
8011-Administration CLE	55	\$2,000		0.00%
8101-Printing In House		\$2	\$250	0.12%

THE FLORIDA BAR  
 Real Property Legislative Update  
 For the Seven Months Ending Wednesday, January 31, 2018

	<u>This Month</u> <u>January</u>	<u>YTD</u> <u>2018</u>	<u>FY 17-18</u> <u>Budget</u>	<u>Budget</u> <u>% Utilized</u>
8141-Journal/News Service			\$1,600	0.00%
8171-Course Approval Fee			\$150	0.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$14</b>	<b>\$5,304</b>	<b>\$7,100</b>	<b>74.70%</b>
<b>Total Expense</b>	<b>\$130</b>	<b>\$273,603</b>	<b>\$103,545</b>	<b>264.24%</b>
<b>Net Income</b>	<b>\$2,096</b>	<b>(\$223,093)</b>	<b>(\$49,545)</b>	<b>450.28%</b>



THE FLORIDA BAR  
Real Property Trust Officer Liaison Conference  
For the Seven Months Ending Wednesday, January 31, 2018

	<u>This Month</u> <u>January</u>	<u>YTD</u> <u>2018</u>	<u>FY 17-18</u> <u>Budget</u>	<u>Budget</u> <u>% Utilized</u>
3301-Registration-Live		\$163,336	\$160,700	101.64%
3331-Registration-Ticket	\$94	\$3,154	\$10,000	31.54%
<b>Total Registration Revenue</b>	<b>\$94</b>	<b>\$166,490</b>	<b>\$170,700</b>	<b>97.53%</b>
3341-Exhibit Fees		\$45,300	\$60,000	75.50%
3351-Sponsorships	\$4,000	\$69,000	\$60,000	115.00%
<b>Other Event Revenue</b>	<b>\$4,000</b>	<b>\$114,300</b>	<b>\$120,000</b>	<b>95.25%</b>
3401-Sales-CD/DVD		\$5,060	\$3,000	168.67%
3411-Sales-Published Materials		\$480	\$1,000	48.00%
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>\$</b>	<b>\$5,540</b>	<b>\$4,000</b>	<b>138.50%</b>
<b>Total Revenue</b>	<b>\$4,094</b>	<b>\$286,330</b>	<b>\$294,700</b>	<b>97.16%</b>
4111-Rent Equipment		\$16,465	\$17,000	96.85%
<b>Total Staff &amp; Office Expense</b>	<b>\$</b>	<b>\$16,465</b>	<b>\$17,000</b>	<b>96.85%</b>
5051-Credit Card Fees		\$4,241	\$2,750	154.22%
5121-Printing-Outside		\$280	\$2,500	11.21%
<b>Total Contract Services</b>	<b>\$</b>	<b>\$4,521</b>	<b>\$5,250</b>	<b>86.12%</b>
5501-Employee Travel		\$2,108	\$2,000	105.38%
5571-Speaker Travel		\$1,248	\$4,000	31.19%
<b>Total Travel</b>	<b>\$</b>	<b>\$3,355</b>	<b>\$6,000</b>	<b>55.92%</b>
6001-Post 1st Class/Bulk		\$4	\$1,000	0.42%
6021-Post Express Mail	\$5	\$70	\$150	46.87%
6319-Mtgs Other Functions		\$9,881	\$8,000	123.51%
6321-Mtgs Meals		\$43,182	\$42,000	102.81%
6325-Mtgs Hospitality		\$64,445	\$100,000	64.44%
6341-Mtgs Equip Rental		\$3,563		0.00%
6401-Speaker Expense		\$2,862	\$4,100	69.81%
7999-Other Operating Exp		\$475		0.00%
<b>Total Other Expense</b>	<b>\$5</b>	<b>\$124,483</b>	<b>\$155,250</b>	<b>80.18%</b>
8001-Administration General			\$25,000	0.00%
8011-Administration CLE		\$25,000		0.00%
8101-Printing In-House		\$1,386	\$2,000	69.31%
8131-A/V Services		\$5,460	\$5,200	105.00%
8141-Journal/News Service		\$425	\$1,600	26.57%
8171-Course Approval Fee	\$300	\$300	\$750	40.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$300</b>	<b>\$32,571</b>	<b>\$34,550</b>	<b>94.27%</b>

**THE FLORIDA BAR**  
**Real Property Trust Officer Liaison Conference**  
**For the Seven Months Ending Wednesday, January 31, 2018**

	<u>This Month</u> <u>January</u>	<u>YTD</u> <u>2018</u>	<u>FY 17-18</u> <u>Budget</u>	<u>Budget</u> <u>% Utilized</u>
<b>Net Income</b>	<b>\$3,789</b>	<b>\$104,935</b>	<b>\$76,650</b>	<b>136.90%</b>

THE FLORIDA BAR  
Attorney Loan Officer  
For the Seven Months Ending Wednesday, January 31, 2018

	This Month January	YTD 2018	FY 17-18 Budget	Budget % Utilized
3301-Registration-Live	\$7,475	\$8,075	\$17,500	46.14%
<b>Total Registration Revenue</b>	<b>\$7,475</b>	<b>\$8,075</b>	<b>\$17,500</b>	<b>46.14%</b>
3341-Exhibit Fees	(\$7,475)	(\$1,375)	\$4,000	(34.38%)
3351-Sponsorships	\$	\$5,000	\$5,000	100.00%
Other Event Revenue	(\$7,475)	\$3,625	\$9,000	40.28%
<b>Total Revenue</b>	<b>\$</b>	<b>\$11,700</b>	<b>\$26,500</b>	<b>44.15%</b>
5051-Credit Card Fees	\$	\$377	\$500	75.33%
<b>Total Contract Services</b>	<b>\$</b>	<b>\$377</b>	<b>\$500</b>	<b>75.33%</b>
5501-Employee Travel	\$	\$1,203	\$700	171.85%
5571-Speaker Travel	\$	\$712		0.00%
<b>Total Travel</b>	<b>\$</b>	<b>\$1,915</b>	<b>\$700</b>	<b>273.51%</b>
6321-Mtgs Meals	\$	\$8,505	\$23,000	36.98%
6325-Mtgs Hospitality	\$	\$8,087		0.00%
6341-Mtgs Equip Rental	\$	\$4,826	\$2,000	241.32%
6401-Speaker Expense	\$	\$535	\$2,000	26.73%
7999-Other Operating Exp			\$3,725	0.00%
<b>Total Other Expense</b>	<b>\$</b>	<b>\$21,953</b>	<b>\$30,725</b>	<b>71.45%</b>
8011-Administration CLE	(\$3,800)	\$5,000	\$5,000	100.00%
8101-Printing In-House	\$	\$15		0.00%
8171-Course Approval Fee			\$150	0.00%
<b>Total Admin &amp; Internal Expense</b>	<b>(\$3,800)</b>	<b>\$5,015</b>	<b>\$5,150</b>	<b>97.37%</b>
<b>Total Expense</b>	<b>(\$3,800)</b>	<b>\$29,259</b>	<b>\$37,075</b>	<b>78.92%</b>
<b>Net Income</b>	<b>\$3,800</b>	<b>(\$17,559)</b>	<b>(\$10,575)</b>	<b>166.04%</b>

THE FLORIDA BAR  
Real Property Convention  
For the Seven Months Ending Wednesday, January 31, 2018

	<u>This Month</u> <u>January</u>	<u>YTD</u> <u>2018</u>	<u>FY 17-18</u> <u>Budget</u>	<u>Budget</u> <u>% Utilized</u>
3301-Registration-Live	\$50	(\$110)	\$40,000	(0.28%)
<b>Total Registration Revenue</b>	<b>\$50</b>	<b>(\$110)</b>	<b>\$40,000</b>	<b>(0.28%)</b>
3341-Exhibit Fees			\$10,000	0.00%
3351-Sponsorships			\$10,000	0.00%
Other Event Revenue	\$	\$	\$20,000	0.00%
<b>Total Revenue</b>	<b>\$50</b>	<b>(\$110)</b>	<b>\$60,000</b>	<b>(0.18%)</b>
4111-Rent Equipment			\$21,000	0.00%
<b>Total Staff &amp; Office Expense</b>	<b>\$</b>	<b>\$</b>	<b>\$21,000</b>	<b>0.00%</b>
5051-Credit Card Fees		\$35	\$900	3.84%
<b>Total Contract Services</b>	<b>\$</b>	<b>\$35</b>	<b>\$900</b>	<b>3.84%</b>
5501-Employee Travel			\$2,500	0.00%
<b>Total Travel</b>	<b>\$</b>	<b>\$</b>	<b>\$2,500</b>	<b>0.00%</b>
6001-Post 1st Class/Bulk			\$50	0.00%
6321-Mtgs Meals			\$125,000	0.00%
6361-Mtgs Entertainment		\$1,717	\$8,000	21.46%
<b>Total Other Expense</b>	<b>\$</b>	<b>\$1,717</b>	<b>\$133,050</b>	<b>1.29%</b>
8101-Printing In-House			\$400	0.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$</b>	<b>\$</b>	<b>\$400</b>	<b>0.00%</b>
<b>Total Expense</b>	<b>\$</b>	<b>\$1,752</b>	<b>\$157,850</b>	<b>1.11%</b>
<b>Net Income</b>	<b>\$50</b>	<b>(\$1,862)</b>	<b>(\$97,850)</b>	<b>1.90%</b>

RPPTL CALENDAR OF EVENTS

DATE	TITLE	LOCATION	PROGRAM CHAIR
March 2, 2018	2018 Litigation and Trust Law Symposium (2607)	Tampa	Jon Scuderi/Angela Adams/Tami Conetta/Rich Caskeys
March 8-11, 2018	Construction Law Certification Review Course (2608)	JW Marriott, Orlando	Deborah Mastin
March 9-11, 2018	11th Annual Construction Law Institute (2609)	JW Marriott, Orlando	Sanjay Kurian
March 14, 2018	AUDIO WEBCAST - (2610) It Better Be In Writing: Florida Supreme Court Now Requires Lawyers to Make Written Disclosures to Clients for Fiduciary Appointments.	Audio Webcast	William Hennessey
April 6-7, 2018	Wills, Trusts and Estate Certification (2621)	Hyatt Orlando Airport	Linda Griffin
April 11, 2018	AUDIO WEBCAST - PENDING (2622)	Audio Webcast	TBA
April 20, 2018	Guardianship Law CLE	Stetson University, Tampa	Darby Jones
April 28, 2018	Ins and Outs of Condo Law	Stetson University, Tampa	Bill Sklar
May 9, 2018	AUDIO WEBCAST - PENDING (2635)	Audio Webcast	TBA
June 1, 2018	RPPTL Convention Seminar(2638)	Tradewinds Island Resort, St. Pete Beach, FL	TBA
July 27, 2018	RPPTL Legislative and Case Law Update 2018	The Breakers, Palm Beach, FL	Stacy Kalmanson
August 23-26, 2018	RPPTL Attorney/Trust Officer Liaison Conference	The Breakers, Palm Beach, FL	Tattiana Stahl
August 22, 2018	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
September 19, 2018	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
October 17, 2018	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
November 2, 2018	Probate Law 2018	TBA	TBA
November 15, 2018	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
November 30, 2018	Estate and Trust Planning/Asset Protection	TBA	TBA
January 16, 2019	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
February 8-9, 2019	Real Property Certification Review Course	TBA	TBA
February 8-9, 2019	Condo Law Certification Review Course	TBA	TBA
February 20, 2019	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
March 8, 2019	2019 Litigation and Trust Law Symposium	TBA	TBA
March 8-10, 2019	Construction Law Certification Review Course	TBA	TBA
March 20, 2019	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
April 5-6, 2019	Wills, Trusts and Estate Certification	TBA	TBA
April 12, 2019	Ins and Outs of Condo Law	TBA	TBA
April 17, 2019	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
April 26, 2019	Guardianship Law CLE	Audio Webcast	TBA
May 15, 2019	AUDIO WEBCAST - PENDING	Audio Webcast	TBA
June 1, 2019	Convention CLE	Opal Sands, Clearwater	TBA
August 22-25, 2019	RPPTL Attorney/Trust Officer Liaison Conference	The Breakers, Palm Beach, FL	TBA

**(DEADLINE TO SUBMIT FEBRUARY 28, 2017)**

**APPLICATION FOR FELLOWSHIP PROGRAM**

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

Name:		Age:	
Firm Name:		Position:	
Street Address:			
	City:	State:	Zip Code:
Telephone Number:		Email Address:	
Law School and Date of Graduation:			LLM: Yes <input type="checkbox"/> No <input type="checkbox"/>
Year admitted to the Florida Bar:			Years of Practice:
Board Certified: Yes <input type="checkbox"/> No <input type="checkbox"/> If so, what in what area?			
Other State Bar Admissions:			

Race or Ethnic Heritage or Disability<sup>1</sup>: \_\_\_\_\_

Please describe the area(s) of the law in which you focus your practice: \_\_\_\_\_  
\_\_\_\_\_

Please list your employment history for the past 5 years: \_\_\_\_\_  
\_\_\_\_\_

How long have you been a member of the RPPTL Section of the Florida Bar? \_\_\_\_\_

Do you have any prior experience with any RPPTL Section Committee? If so, please list: \_\_\_\_\_  
\_\_\_\_\_

Have you ever been the subject of any disciplinary action by any Bar association? If yes, please describe in detail the nature of the disciplinary action and the outcome. Attach additional sheets if necessary. \_\_\_\_\_  
\_\_\_\_\_

Please state why you are interested in being chosen as a Fellow for the RPPTL Section. (Attached additional sheets if necessary)  
\_\_\_\_\_  
\_\_\_\_\_

Have you previously applied for this fellowship, if so when? \_\_\_\_\_

Please describe your involvement in any local, state, voluntary and national level bar association, including any leadership positions you currently hold or have held in the past. Attach additional sheets if necessary. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please describe any funding or support (including allowing time to fulfill your obligations as described in the Fellowship Information Sheet) that you may receive from your firm or employer, or other organization(s) that would support your activities as a Fellow. Attach additional sheets if necessary. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please identify at least two substantive committees that you would be interested in joining as a Fellow: \_\_\_\_\_  
\_\_\_\_\_

Are you able to participate in a video interview? If so, with what program? \_\_\_\_\_ (exp. Skype, Face-Time)

PLEASE NOTE: Fellows are required to attend a minimum of 3 RPPTL executive council meetings during the Fellowship year.

Please list the name, email address and phone number for two members of the Florida Bar (other than members of your own firm) who can provide information regarding your professional qualifications and experience:

Name	Email	Phone
Name	Email	Phone

<sup>1</sup> Information requested is optional  
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Report of the **Model and Uniform Acts** General Standing Committee-  
Bruce M. Stone and Richard W. Taylor, Co-Chairs

Prepared for the Executive Council Meeting, February 22 - 25,  
2018

1. The Uniform Law Commission (ULC) is also known as the National Conference of Commissioners on Uniform State Laws. The website is <http://www.uniformlaws.org>. Information on each of its Model Acts is found on the website and for many of the Acts there is an enactment kit which can be downloaded to provide additional information.

2. At its 2017 Annual Meeting, the Uniform Law Commission (ULC) approved six new acts, including a new act regulating virtual currency businesses:

A. The Uniform Regulation of Virtual Currency Businesses Act creates a statutory framework for regulating virtual currency business activity, which includes businesses engaged in the exchange of virtual currencies for cash, bank deposits, or other virtual currencies; the transfers of virtual currency between customers; and certain custodial or fiduciary services. The act includes provisions on licensing requirements; reciprocity; consumer protection; cybersecurity; anti-money laundering; and supervision of licensees.

B. An increasingly common practice in contemporary estate planning and asset management is the naming of a trustee that is given custody of the trust property, but with one or more of the investment, distribution or administration functions of the trusteeship being given to a person or persons who are not formally designated as trustees. This is the problem of divided trusteeship. Much uncertainty exists about the fiduciary status of nontrustees who have control or potential control over a function of trusteeship and about the fiduciary responsibility of trustees with regard to actions taken by such nontrustees. The Uniform Directed Trust Act addresses the division of a trustee's traditional responsibilities among several specialists. The Act clarifies the duties and responsibilities of both directed trustees and those who have the power to direct them.

C. The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act is an updated version of the Uniform Guardianship and Protective Proceedings Act, originally promulgated in 1969 as part of the Uniform Probate Code, and

revised in 1982 and 1997. This new version is a modern guardianship statute that better protects the individual rights of both minors and adults subject to a guardianship or conservatorship order. The act encourages courts to use the least-restrictive means possible and includes a set of optional forms to help courts implement its provisions effectively.

D. The Uniform Parentage Act (2017) is a revision of the Uniform Parentage Act (UPA) of 2000, which had been adopted in 11 states. The UPA covered several topics, including: the parent-child relationship; voluntary acknowledgments of paternity; registry of paternity; genetic testing; proceedings to adjudicate parentage of children of assisted reproduction. As a result of the Supreme Court decision in *Obergefell v. Hodges*, as well as other developments in the states, a revision to the Act became necessary. The revised Act addresses issues related to same-sex couples, surrogacy, the right of a child to genetic information, de facto parentage, and parentage of children conceived through sexual assault.

E. The Uniform Protected Series Act provides a comprehensive framework for the formation and operation of a protected series limited liability company. A protected series LLC has both "horizontal" liability shields, as well as the standard "vertical" liability shield. About 15 jurisdictions have some kind of series statute, but they vary widely. The Act integrates into any existing LLC Act, whether it is the Uniform Limited Liability Company Act or not.

F. Veterans' courts have been created in many judicial districts around the United States to ensure that veterans in the criminal justice system receive the treatment and support necessary to rehabilitate them into being productive members of society. Very few states have legislation on veterans' courts, but many local judicial districts have effectively created veterans' courts by rule or practice. The Model Veterans Treatment Court Act provides guidelines for the establishment of veterans' courts while permitting substantial local discretion necessary to accommodate circumstances in different communities. The Act provides that participation in the veterans' treatment program requires approval of the prosecutor, but expressly reserves to the court all power regarding punishment including probation, conditions of probation, and consequences of violation of terms of participation in the treatment program. This Act can also be implemented as a set of court rules.



3. Other drafts which were debated at the ULC annual meeting include the Criminal Records Accuracy Act, the Non-Parental Child Custody and Visitation Act, the Uniform Fiduciary Principal and Income Act, Amendments to Uniform Commercial Code Articles 1, 3, and 9, and the Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

4. At its 2017 Annual Meeting, the Uniform Law Commission (ULC) authorized the appointment of four new drafting committees and three new study committees:

A. Drafting Committee on UCC Article 8 Companion Act to the Uniform Regulation of Virtual Currency Businesses Act. This committee will draft a UCC Article 8 related statute as a companion act to the Uniform Regulation of Virtual Currency Businesses Act based on the current Section 502 of the Act.

B. Drafting Committee to Amend the Revised Uniform Law on Notarial Acts. This committee will draft amendments to the Revised Uniform Law on Notarial Acts to authorize remote notarization without geographic limits on the location of the signer and to address interstate recognition of notarial acts.

C. Drafting Committee to Regulate the Management of Funds Raised Through Crowdfunding Efforts. This committee will draft a uniform or model act to regulate the management of funds raised through crowdfunding efforts to require transparency, and to provide civil sanctions and remedies for non-compliance.

D. Drafting Committee on Anti-SLAPP (Strategic Lawsuit Against Public Participation) Legislation. This committee will draft an Anti-SLAPP Act. The drafting committee will address the breadth of the act; limitations, if any, to be imposed after a motion to strike is made; the standard of review relating to the motion to strike; appeal rights from the grant or denial or a motion to strike; and whether the court should award attorney's fees and costs.

E. Study Committee on Garnishment of Wages in Bank Accounts. This committee will study the need for and feasibility of state legislation specifically on garnishment of wages in bank accounts or more generally on exemption of asset classes from claims of creditors.

F. Study Committee on Adverse Possession. This committee will study the need for and feasibility of state legislation on modifications to the law of adverse possession in

light of modern technology affecting boundary disputes, changing public perceptions, and recent developments in the law.

G. Study Committee on Data Breach Notification. This committee will study the need for and feasibility of state legislation on data breach notification. The committee will consider the personal information that should be protected and the methods and manner of notice.

5. Drafting committees, composed of commissioners, with participation from observers, advisors and reporter-drafters, meet throughout the year. Tentative drafts are not submitted to the entire Commission until they have received extensive committee consideration.

## CHAPTER 4

### CORPORATIONS AND LIMITED LIABILITY COMPANIES

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#### STANDARD 4.1

#### ACKNOWLEDGMENT OF CORPORATE INSTRUMENTS

**STANDARD: AN INSTRUMENT OF A CORPORATION IS ENTITLED TO BE RECORDED WHEN EXECUTED BY THE PROPER OFFICER(S) WHOSE CAPACITY IS RECITED IN THE INSTRUMENT, BUT NOT IN THE ACKNOWLEDGMENT.**

**Problem:** A corporate deed is executed by John Doe as President. His office is set out under his signature, but the acknowledgment merely recites:

“The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_, (year), by John Doe.”

(Signature of Notary Public—State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_OR Produced Identification \_\_\_.

Type of Identification Produced \_\_\_\_\_.

Is the acknowledgment sufficient for the instrument to be recorded?

**Answer:** Yes.

**Authorities & References:** F.S. 695.03 (2017); *House of Lyons, Inc. v. Marcus*, 72 So. 2d 34 (Fla. 1954); *see also Edenfield v. Wingard*, 89 So. 2d 776 (Fla. 1956); *Florida Nat'l Bank & Trust Co. v. Hickey*, 263 So. 2d 269 (Fla. 3d DCA 1972); *Mills v. Barker*, 664 So. 2d 1054 (Fla. 2d DCA 1995); F.S. 117.05 (2017); FUND TN 1.02.06.

**Comment:** Florida favors a liberal policy of upholding certificates of acknowledgment. As long as substantial compliance with the recording requirements is available from the instrument as a whole, obvious clerical errors and technical omissions will be disregarded and not allowed to defeat the acknowledgment.

STANDARD 4.2

PRIOR CONVEYANCE OF ALL OR SUBSTANTIALLY ALL  
PROPERTY AND ASSETS OF A CORPORATION

**STANDARD: UNLESS THE OFFICIAL RECORDS SHOW THAT A CORPORATE DEED IN THE CHAIN OF TITLE CONSTITUTED A CONVEYANCE OF ALL OR SUBSTANTIALLY ALL OF THE PROPERTY AND ASSETS OF THE CORPORATION, A PRACTITIONER MAY ASSUME THAT THE TRANSACTION DID NOT REQUIRE AUTHORIZATION BY A MAJORITY OF THE SHAREHOLDERS FOR A SALE OF ALL OR SUBSTANTIALLY ALL OF THE CORPORATE PROPERTY AND ASSETS.**

Problem 1:            Appearing in the chain of title is a properly executed deed of a corporation conveying one or more parcels of land. Nothing in the official records shows that the property conveyed constituted all or substantially all of the property and assets of the corporation. Must a practitioner make independent inquiry as to whether the conveyance was a conveyance of all or substantially all of the property and assets of the corporation and whether the corporation had the authorization of a majority of the shareholders to make the sale?

Answer:                No.

Problem 2:            The deed of the corporation recites, or the official records show, that the deed was a conveyance of all or substantially all of the property and assets of the corporation. Must the practitioner make an independent inquiry as to whether the corporation had the authorization of a majority of the shareholders?

Answer:                Yes. However, if the conveyance was made on or after July 1, 1990, the effective date of F.S. 607.1201, shareholder approval is not necessary for conveyances of all or substantially all of the property and assets of the corporation, when such conveyances are made in the usual and regular course of business, unless the corporation's articles of incorporation require otherwise.

Authorities  
& References:        F.S. 607.1201 (2017); F.S. 607.1202 (2017); FUND TN 11.01.01.

Comment:             In 1990, the Florida Legislature repealed F.S. 607.241 (1989), which required shareholder authorization for a conveyance of all, or substantially all, of the property and assets of a corporation. The Florida Business Corporation Act now provides that a corporation may dispose of all, or substantially all, of its property in the usual and regular course of business without shareholder authorization unless the articles of incorporation provide otherwise. F.S. 607.1201 (2017). However, if the disposition of property is not in the usual and regular course of business, the corporation's board of directors must obtain shareholder authorization for the disposition. F.S. 607.1202 (2017).

A disposition of corporate assets may be considered a sale of "substantially all" of those assets if the sale substantially limits the corporation's business or serves to destroy the fundamental purpose for which the corporation was organized. *Schwadel v. Uchitel*, 455 So. 2d 401 (Fla. 3d DCA 1984); *see also South End Improvement Group, Inc. v. Mulliken*, 602 So. 2d 1327 (Fla. 4th DCA 1992) (the test is whether the disposition's quantitative or qualitative impact, or both, would fundamentally change the nature of the corporation); *BSF Co. v. Philadelphia Nat'l Bank*, 204 A.2d 746 (Del.

1964); *National Bank of Commerce v. United States*, 158 F. Supp. 887 (E.D. Va. 1958); *Union-May-Stern Co. v. Industrial Commission of Missouri*, 273 S.W.2d 766 (Mo. Ct. App. 1954); FLORIDA CORPORATE PRACTICE §10.46 (Fla. Bar CLE 8th ed. 2015).

Effective July 1, 1991, as to corporations not for profit, the applicable statutes are F.S. 617.1201 and .1202; *see also Lensa Corp.v. Poinciana Gardens Ass'n*, 765 So. 2d 296 (Fla. 4th DCA 2000).

When taking a deed or other instrument transferring title to real property, consideration must be given to Title Standard 4.2-1.

STANDARD 4.2-1

CURRENT CONVEYANCE OF ALL OR SUBSTANTIALLY ALL  
PROPERTY AND ASSETS OF A CORPORATION

**STANDARD: A CURRENT CONVEYANCE OF ALL OR SUBSTANTIALLY ALL OF THE PROPERTY AND ASSETS OF A CORPORATION, WITHOUT SHAREHOLDER APPROVAL, CONVEYS MARKETABLE TITLE IF (I) IT IS IN THE USUAL AND REGULAR COURSE OF BUSINESS AND (II) THE CORPORATION'S ARTICLES OF INCORPORATION DO NOT REQUIRE SUCH APPROVAL.**

Problem 1: ABC Real Estate Corporation, in the business of selling real estate, is conveying Blackacre to John Doe. Blackacre constitutes all or substantially all of the property and assets of the corporation. Should the practitioner review the articles of incorporation to determine if shareholder approval is required?

Answer: Yes.

Problem 2: Same facts as above, but ABC Corporation is in the business of manufacturing. Should the practitioner require evidence of shareholder approval?

Answer: Yes.

Problem 3: Same facts as Problem 2, except that Blackacre does not constitute all or substantially all of the property and assets of the corporation. Should the practitioner require evidence of shareholder approval?

Answer: No.

Authorities & References: F.S. 607.1201 (2017); F.S. 607.1202 (2017); F.S. 692.01 (2017); FLORIDA CORPORATE PRACTICE §10.46 (Fla. Bar CLE 8th ed. 2017); FUND TN 11.01.01.

Comment: This standard applies only to what a practitioner should do in connection with a corporate conveyance being made in a current transaction. Reference should be made to Title Standard 4.2 to determine what a practitioner may justifiably infer when the corporate conveyance has already become a part of the chain of title.

F.S. 607.1201 (2017) does not require majority shareholder authorization of a disposition of all, or substantially all, of the property and assets of a corporation which is in the usual and regular course of business unless authorization is required by the corporation's articles of incorporation. The requirement of majority shareholder authorization does not apply in the case of a mortgage on any or all of the corporate property and assets, whether or not in the usual and regular course of business, unless the articles of incorporation provide otherwise. F.S. 607.1201 (2017).

A conveyance that is in the usual and regular course of business does not require majority shareholder authorization. However, majority shareholder authorization is required for any disposition of all, or substantially all, of the property and assets of a corporation not in the usual and regular course of business. F.S. 607.1202 (2017). The articles of incorporation or the board of directors may require a greater vote than a majority of shareholders, or authorization by a particular voting group. Evidence of shareholder authorization may, among other possibilities, take the form of minutes of the shareholders' meeting at which authorization was given.

As a precautionary note, “usual and regular course of business” could be interpreted differently by various courts, and a conveyance of all or substantially all of the corporation’s assets may or may not be considered in the ordinary course of business. In situations where there is doubt, always seek a corporate resolution from the corporation indicating that a majority of the shareholders have authorized the conveyance.

The practitioner should bear in mind that additional limitations on corporate conveyances may exist in the articles of incorporation or bylaws. A careful practitioner should consider asking the corporation for a copy of the articles of incorporation and bylaws if the practitioner is unsure whether the conveyance will require the authorization of more than a majority of the shareholders.

Effective July 1, 1991, as to corporations not for profit, the applicable statutes are F.S. 617.1201 and .1202; *see also Lensa Corp.v. Poinciana Gardens Ass’n*, 765 So. 2d 296 (Fla. 4th DCA 2000).

In situations where the facts are not readily discernible from an examination of the land records, the prudent practitioner may want to document on the face of the deed, in affidavits, resolutions or other documents filed in the land records, whether the transaction is a sale of all or substantially all of the assets of the corporation, and if so whether it was authorized by the majority of the shareholders or a sale within the ordinary course of business.

STANDARD 4.3

CONVEYANCE BY CORPORATIONS

**STANDARD: A CORPORATION MAY CONVEY ITS LAND EITHER BY AN INSTRUMENT IN WRITING SIGNED IN ITS NAME BY AN AUTHORIZED AGENT IN THE PRESENCE OF TWO SUBSCRIBING WITNESSES, OR BY AN INSTRUMENT SEALED WITH THE COMMON OR CORPORATE SEAL AND SIGNED IN ITS NAME BY ITS PRESIDENT OR ANY VICE-PRESIDENT OR CHIEF EXECUTIVE OFFICER.**

Problem 1: ABC Corporation conveyed Blackacre by deed executed by its President in the presence of two subscribing witnesses. The deed contained no corporate seal. Is the conveyance valid?

Answer: Yes.

Problem 2: ABC Corporation conveyed Blackacre by deed executed by its Secretary in the presence of two subscribing witnesses. There was no authorizing resolution from the board of directors. Is the conveyance valid?

Answer: No.

Problem 3: ABC Corporation conveyed Blackacre by deed sealed with the corporate seal and executed by its president. There were no subscribing witnesses. Is the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 689.01 (2017); F.S. 692.01 (2017); F.S. 692.02 (2017); *Ocean Bank v. Inv-Uni Inv. Corp.*, 599 So. 2d 694 (Fla. 3d DCA 1992); *Adams v. Whittle*, 135 So. 152 (Fla. 1931); *Douglass v. State Bank of Orlando*, 82 So. 593 (Fla. 1919); *Campbell v. McLaurin Inv. Co.*, 77 So. 277 (Fla. 1917); *Norman v. Beekman*, 50 So. 876 (Fla. 1909); *Snead v. U.S. Trucking Corp.*, 380 So. 2d 1075 (Fla. 1st DCA 1980) *rev. denied* 389 So. 2d 1116 (Fla. 1980); *Prezioso v. Cameron*, 559 So. 2d 423 (Fla. 4th DCA 1990); *Skyline Outdoor Commc'ns, Inc. v. James*, 903 So. 2d 997 (Fla. 1st DCA 2009); *See Pan-American Const. Co. v. Searcy*, 84 So. 2d 540 (Fla. 1956); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §10.07 (Bender 2015); FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.43 (Fla. Bar CLE 7th ed. 2013); FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.44 (Fla. Bar CLE 7th ed. 2013); FUND TN 11.05.02, 11.05.03.

Comment: If the corporate conveyance is made by an instrument in writing signed by an authorized agent in the presence of two subscribing witnesses, the conveyance is valid. F.S. 689.01 (2017).

If the corporate conveyance is made by an instrument sealed with the corporate seal and signed by the president, vice-president, or chief executive officer, no corporate resolution need be recorded to evidence the authority of the party executing the conveyance, and the instrument will be valid. F.S. 692.01 (2017).

If a corporate conveyance is made by an instrument in writing signed by any person other than the president or chief executive officer of the corporation in the presence of two subscribing witnesses (in accordance with F.S. 689.01), and without a corporate seal, an authorizing resolution should be recorded which evidences the authority of the



person signing the deed.

A vice president may execute a deed on behalf of a corporation without an authorizing resolution from the corporation's board of directors if the deed contains the corporate seal. F.S. 692.01. However, contrary to dicta in *DGG Dev. Corp. v. Estate of Capponi*, 983 So. 2d 1232 (Fla. 5th DCA 2008), when a vice president signs a deed on behalf of a corporation in the presence of two subscribing witnesses, and such deed does not contain a corporate seal, an authorizing resolution should be obtained.

In *DGG Dev. Corp. v. Estate of Capponi*, the court, citing F.S. 692.01, correctly included vice presidents as officers who could convey the corporation's property by a deed containing the corporate seal, without the need for an authorizing resolution. However, the court apparently incorrectly cited the previous version of this title standard, as well as Fund TN 11.05.03, and FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.43 (Fla. Bar CLE 7th ed. 2013) (formerly §6.43), as support for including a vice president as an officer, together with presidents and chief executive officers, who may convey corporate property by a deed executed in accordance with F.S. 689.01 (i.e., without a common or corporate seal) without an authorizing resolution from the corporation's board of directors. A careful practitioner should always obtain an authorizing resolution from the corporation when a vice president will be signing on behalf of the corporation, and the deed does not contain a corporate seal.

There is uncertainty as to whether a corporation can make a valid conveyance in trust without having two subscribing witnesses to the deed. F.S. 689.06 requires two witnesses and does not make an exception for corporations. Therefore, caution dictates having two subscribing witnesses on corporate conveyances under seal. *See* FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.45 (Fla. Bar CLE 7th ed. 2013).

The attesting signature of a secretary or assistant secretary is not necessary to the validity of a corporate conveyance, but it serves to identify the seal used and the officers making the conveyance. *See* FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.48 (Fla. Bar CLE 7th ed. 2013).

STANDARD 4.3-1

CONVEYANCE BY CORPORATIONS:  
AUTHORITY TO CONVEY; FRAUD

**STANDARD: ON OR AFTER JANUARY 1, 1972, AN INSTRUMENT CONVEYING LAND OF A CORPORATION, SEALED WITH THE COMMON OR CORPORATE SEAL AND SIGNED IN THE CORPORATE NAME BY ITS PRESIDENT, VICE-PRESIDENT, OR CHIEF EXECUTIVE OFFICER IS, ABSENT FRAUD IN THE TRANSACTION BY THE PERSON RECEIVING THE INSTRUMENT, VALID WHETHER OR NOT THE OFFICER SIGNING FOR THE CORPORATION WAS AUTHORIZED BY THE BOARD OF DIRECTORS TO DO SO.**

**Problem:** On January 1, 2002, John Doe gives valuable consideration in exchange for an instrument conveying Blackacre, owned by ABC Corporation. The instrument is sealed with the common or corporate seal and signed in the corporate name by Richard Roe, the chief executive officer of ABC Corporation. Roe does not have authority from the board of directors to execute such an instrument. Is the deed valid?

**Answer:** Yes, absent fraud in the transaction by Doe.

**Authorities & References:** F.S. 692.01 (2017); F.S. 607.0304 (2017); *Jackson v. Citizens' Bank & Trust Co.*, 44 So. 516 (Fla. 1907); *Snead v. U.S. Trucking Corp.*, 380 So. 2d 1075 (Fla. 1st DCA 1980) *rev. denied* 389 So. 2d 1116 (Fla. 1980); *Prezioso v. Cameron*, 559 So. 2d 423 (Fla. 4th DCA 1990); *Ocean Bank of Miami v. Inv-Uni Inv. Corp.*, 599 So. 2d 694 (Fla. 3d DCA 1992); *Radison Props., Inc. v. Flamingo Groves, Inc.*, 767 So. 2d 587 (Fla. 4th DCA 2000); FUND TN 11.05.03.

**Comment:** When there is doubt as to the authority of the corporate officer to sign for the corporation, such questions should be resolved by requiring evidence of the authority of the corporate officer to convey. *Rothfleisch v. Cantor*, 534 So. 2d 823 (Fla. 4th DCA 1988). In the case of fraud, subsequent good faith purchasers for value and without notice of the fraud take free of any defect arising from the fraud. F.S. 692.01 (2017).

STANDARD 4.4

FOREIGN CORPORATIONS

**STANDARD: THE FAILURE OF A FOREIGN CORPORATION TO OBTAIN A CERTIFICATE OF AUTHORITY PRIOR TO TRANSACTING BUSINESS IN FLORIDA DOES NOT PRECLUDE IT FROM ACQUIRING, HOLDING, ENCUMBERING, OR DISPOSING OF TITLE TO REAL PROPERTY IN THIS STATE.**

Problem 1: ABC Company, a New York corporation, is the record owner of a tract of land in Florida. It has never obtained a certificate of authority to transact business in Florida. The corporation conveyed the property. Is the conveyance valid?

Answer: Yes.

Problem 2: Same facts as above, except that ABC Company did obtain a certificate of authority from the Florida Department of State to transact business in Florida which has since been withdrawn or revoked. Is the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 607.1501(1) (2017); F.S. 607.1501(2)(g) (2017); F.S. 607.1501(2)(m) (2017); F.S. 607.1502(5) (2017); *see Hogue v. D.N. Morrison Const. Co.*, 156 So. 377 (Fla. 1934); *Herbert H. Pape, Inc. v. Finch*, 136 So. 496 (Fla. 1931); *Rubin v. Kapell*, 105 So. 2d 28 (Fla. 3d DCA 1958); *Batavia, Ltd. v. United States*, 393 So. 2d 1207 (Fla. 1st DCA 1980)

Comment: Upon the issuance of a certificate of revocation, or upon the filing of an application for withdrawal, the authority of a foreign corporation which had previously obtained a certificate of authority to transact business in Florida will cease. F.S. 607.1531(3) (2017); F.S. 607.1520(1) (2017). Under the facts of Problem 2, because the foreign corporation conveyed the property without having a valid certificate of authority to transact business in Florida, the corporation is in the same position as under the facts of Problem 1. *See* F.S. 607.1502(5) (2017). The practitioner should note that a foreign corporation may also own or create a security interest in real property without obtaining a certificate of authority to transact business. F.S. 607.1501(2)(g) (2017); F.S. 607.1501(2)(m) (2017); FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.54 (Fla. Bar CLE 7th ed. 2013).

If a foreign corporation conveys property in connection with activities which require a certificate of authority from the Florida Department of State to transact business and it does not have the certificate, the corporation will be subject to statutory penalties. F.S. 607.1502 (2017). However, the conveyance of title will be valid. F.S. 607.1502(5) (2017).

As to foreign corporations not for profit, the applicable statutes are F.S. 617.1501(2) and 617.1502(5) (2017).

STANDARD 4.4-1

DISSOLVED FOREIGN CORPORATION

**STANDARD: TITLE TO FLORIDA REAL PROPERTY HELD BY A DISSOLVED FOREIGN CORPORATION MUST BE CONVEYED BY A PERSON OR PERSONS AUTHORIZED UNDER THE LAWS OF THE FOREIGN STATE OR COUNTRY TO CONVEY PROPERTY OF THE DISSOLVED FOREIGN CORPORATION.**

Problem 1: XYZ Corporation, incorporated under the laws of Foreign State, secured a certificate of authority to transact business in Florida and was subsequently dissolved. After dissolution, XYZ Corporation's board of directors conveyed to John Doe land located in Florida which was owned by the Corporation. The directors had the power to convey property of the dissolved corporation under Foreign State's laws. Does Doe have marketable title?

Answer: Yes.

Problem 2: Same as Problem 1, except that under Foreign State's laws the directors did not have the power to convey the property of the corporation after dissolution. Does Doe have marketable title?

Answer: No.

Problem 3: Same as in Problem 1, except that XYZ Corporation's certificate of authority to transact business in Florida was withdrawn or revoked, or was never obtained, prior to the conveyance. Does Doe have marketable title?

Answer: Yes.

Authorities & References: F.S. 607.01401(5) (2017); F.S. 607.1405 (2017); F.S. 607.1501 (2017); F.S. 607.1502(5) (2017); F.S. 607.1505(3) (2017); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §299 (1971); 36 Am. Jur. 2d *Foreign Corporations* §396 (2015); see *Order of United Commercial Travelers v. Wolfe*, 331 U.S. 586 (1947); *Oklahoma Natural Gas Co. v. Oklahoma*, 273 U.S. 257, 260 (1927).

Comment: Foreign corporations are excluded from the requirements of Florida law pertaining to transfer of property after dissolution because foreign corporations are excluded from the definition of a corporation under the statute. F.S. 607.01401 (2017); F.S. 607.1405 (2017); F.S. 607.1505(3) (2017). Dissolved foreign corporations are thus governed by the laws of the state or country of incorporation. Failure to obtain a valid certificate of authority to transact business before making the conveyance is of no consequence to the marketability of title. F.S. 607.1502(5) (2017); see F.S. 607.1501 (2017); Title Standard 4.4 (Foreign Corporations).

F.S. 692.03 purports to validate a conveyance executed by the surviving directors or trustees of a dissolved foreign corporation if the conveyance has been of record for at least seven years.

STANDARD 4.5

ADMINISTRATIVELY DISSOLVED CORPORATIONS

**STANDARD: A CORPORATION WHICH HAS BEEN ADMINISTRATIVELY DISSOLVED MAY CONVEY REAL PROPERTY ONLY AS NECESSARY TO WIND UP AND LIQUIDATE ITS BUSINESS AND AFFAIRS.**

Problem 1: ABC Corporation conveyed a portion of its land after June 30, 1990. At the time of the conveyance, it was administratively dissolved for failure to file its annual report and pay certain corporate fees and taxes that were required at the time. Was the conveyance valid?

Answer: Yes but only if the conveyance was appropriate to wind up and liquidate the corporation's business and affairs. F.S. 607.1405 (2017).

Problem 2: ABC Corporation conveyed a portion of its land after June 30, 1990. At the time of the conveyance, the officers of the corporation did not know that the corporation had been administratively dissolved, and did not convey the property with the intent of winding up and liquidating the corporation's business and affairs. The officers of the corporation reinstated the corporation shortly thereafter. Following the reinstatement, was the conveyance valid?

Answer: Yes. F.S. 607.1422 (3) (2017)

Problem 3: ABC Corporation conveyed a portion of its land. It was not yet administratively dissolved, but at that time it had not filed its annual report or paid certain corporate fees and taxes that were required at the time. Was the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 607.1422 (3) (2017); F.S. 607.1622 (2017); *see Webb v. Scott*, 176 So. 442 (Fla. 1937); *330 Michigan Ave., Inc. v. Cambridge Hotel, Inc.*, 183 So. 2d 725 (Fla. 3d DCA 1966); FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.51 (Fla. Bar CLE 7th ed. 2013); FUND TN 11.01.06.; FUND TN 11.04.07; FUND TN 11.04.02; FUND TN 11.04.12.

Comment: The prescribed penalties for failure to file the required annual report include dissolution or cancellation of the corporation's certificate of authority to do business. F.S. 607.1622(8) (2017). If the corporation has not yet been administratively dissolved, the validity of a conveyance by a corporation is not affected by the fact that the corporation at the time of the conveyance was delinquent in the filing of its annual report and the payment of fees and taxes due under Chapter 607, F.S. If the corporation was administratively dissolved, its reinstatement will relate back to the effective date of the dissolution and validate a conveyance that occurred while dissolved that was not for the purpose of winding up the affairs of the corporation. F.S. 607.1422 (3) (2017).

STANDARD 4.5-1

VOLUNTARILY DISSOLVED CORPORATIONS

**STANDARD: A CORPORATION WHICH HAS BEEN VOLUNTARILY DISSOLVED MAY CONVEY PROPERTY ONLY IF IT IS IN THE COURSE OF WINDING UP AND LIQUIDATING THE CORPORATION'S BUSINESS AND AFFAIRS.**

**Problem:** ABC Corporation conveyed a portion of its land in 2010. In 2009, the corporation had been voluntarily dissolved by its directors and shareholders. Was the conveyance valid?

**Answer:** Yes. F.S. 607.1405 (2017)

**Authorities & References:** F.S. 607.1405 (2017); FUND TN 11.04.02

**Comment:** A corporation dissolved after June 30, 1990 continues in existence for the purpose of winding up its affairs. The corporation may only carry on business that is appropriate to wind up and liquidate its business and affairs. Because the dissolved corporation continues in existence for the purpose of winding up affairs, it may convey real property in its own name, and the agents who were authorized for the active corporation are the agents of the dissolved corporation. In a current transaction, an affidavit should be recorded establishing that the conveyance is consistent with winding up the affairs of the corporation. F.S. 607.1405 (2017); FUND TN 11.04.02(D)

Reference should be made to Title Standard 4.3 (Conveyances by Corporations), which sets forth who can sign as an authorized agent on behalf of a corporation, and what procedures must be followed based on the agent's relationship to the corporation.

A corporation that dissolved between June 20, 1976 and June 30, 1990, is not an entity in being for the purpose of conveying real property, but the directors serving at the time of dissolution may convey the corporation's property as trustees. A majority of trustees surviving at the time of the conveyance are required to convey. In a current transaction, an affidavit should be recorded identifying the trustees, and establishing that a majority of the surviving trustees signed the deed. F.S. 607.301 (1987); FUND TN 11.04.02(C)

A corporation that dissolved between January 1, 1976, and June 19, 1976, is not an entity in being for the purpose of conveying real property, but the directors serving at the time of dissolution may convey the corporation's property as trustees. All of the trustees surviving at the time of the conveyance are required to convey. In a current transaction, an affidavit should be recorded identifying the trustees, and establishing that all of the surviving trustees signed the deed. F.S. 607.301 (1987); FUND TN 11.04.02(B)

A corporation that dissolved prior to January 1, 1976, is not an entity in being for the purpose of conveying real property, but the directors serving at the time of dissolution may convey the corporation's property as trustees. A majority of trustees surviving at the time of the conveyance are required to convey. In a current transaction, an affidavit should be recorded identifying the trustees, and establishing that a majority of the surviving trustees signed the deed. F.S. 608.301 (1987); FUND

TN 11.04.02(A)

Note: A court may dissolve a corporation if it is established that there are grounds for judicial dissolution as set forth in F.S. 607.1430 (2017). If the court enters a judgment of dissolution, the court will direct the corporation to wind up and liquidate its business and affairs.

STANDARD 4.6

CORPORATION NAME OMITTED FROM SIGNATURE

**STANDARD: THE VALIDITY OF A CONVEYANCE BY A CORPORATION IS NOT AFFECTED BY THE OMISSION OF THE CORPORATE NAME OVER THE SIGNATURE OF THE OFFICER EXECUTING THE CONVEYANCE WHERE THE CORPORATION NAME APPEARS IN THE BODY OF THE INSTRUMENT AS THE GRANTOR AND THE INSTRUMENT IS OTHERWISE PROPERLY EXECUTED AND ACKNOWLEDGED.**

**Problem:** ABC Corporation is named in the body of a deed as the grantor. The deed is signed by “John Doe, President,” or “John Doe, President of A.B.C. Corporation,” but the name of the corporation does not appear immediately above the signature of the president. Is the deed valid?

**Answer:** Yes.

**Authorities & References:** *See Ballas v. Lake Weir Light & Water Co.*, 130 So. 421 (Fla. 1930); *Steele v. Hallandale, Inc.*, 125 So. 2d 587 (Fla. 2d DCA 1960); FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.50 (Fla. Bar CLE 7th ed. 2013); 18B Am. Jur. 2d *Corporations* §1708 (2015); FUND TN 11.07.02.

**Comment:** In *Ballas*, an executory contract and not a conveyance was involved, but the principles stated appear to apply with equal weight to a conveyance.



STANDARD 4.7

USE OF SCROLL SEAL BY CORPORATION

**STANDARD: A CORPORATION MAY USE A HAND DRAWN SCRAWL OR SCROLL SEAL IN LIEU OF AN IMPRESSION SEAL OR STAMP SEAL WHEREVER A CORPORATE SEAL IS REQUIRED.**

**Problem:** A deed of ABC Corporation was executed by its president, vice president, or chief executive officer. The officer hand drew a seal instead of using an impression seal or stamp seal. There were no witnesses. Is the deed valid?

**Answer:** Yes.

**Authorities & References:** F.S. 692.01 (2017); F.S. 695.07 (2017); F.S. 695.08 (2017); F.S. 607.0302(2) (2017); *Jacksonville, M., P. R. & N. Co. v. Hooper*, 160 U.S. 514 (1896); *Sarasota Kennel Club, Inc. v. Shea*, 56 So. 2d 505 (Fla. 1952); *Campbell v. McLaurin Inv. Co.*, 77 So. 277 (Fla. 1917); *Cross v. Robinson Point Lumber Co.*, 46 So. 6 (Fla. 1908); *Langley v. Owens*, 42 So. 457 (Fla. 1906); *Comerford v. Cobb*, 2 Fla. 418 (Fla. 1859); *Epstein v. Deerfield Beach Bank & Trust Co.*, 280 So. 2d 690 (Fla. 4th DCA 1973); *See also* FUND TN 11.03.02.

**Comment:** As to Florida corporations not for profit, the seal must contain the words “corporation not for profit.” F.S. 617.0302(3) (2017). “Scrawl” and “scroll” simply mean “hand drawn.”

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STANDARD 4.8

CONVEYANCE BY A LIMITED LIABILITY COMPANY

**STANDARD: A LIMITED LIABILITY COMPANY MAY CONVEY ITS LAND BY AN INSTRUMENT IN WRITING SIGNED IN ITS NAME BY AN AUTHORIZED SIGNATORY IN THE PRESENCE OF TWO SUBSCRIBING WITNESSES.**

Problem 1: Jane Doe is the sole manager of 123 LLC, a manager-managed limited liability company. 123 LLC conveyed Blackacre by deed executed by Jane Doe, Manager, in the presence of two subscribing witnesses. The deed was properly acknowledged. Is the conveyance valid?

Answer: Yes.

Problem 2: Jane Doe is the sole manager of 123 LLC, a manager-managed limited liability company. 123 LLC conveyed Blackacre by deed executed by Jane Doe, Manager. The deed was not witnessed but a seal bearing the limited liability company name and document number is affixed. The deed was properly acknowledged. Is the conveyance valid?

Answer: No.

Authorities & References: F.S. 689.01 (2017); F.S. 605.04074 (2017); F.S. 605.0302 (2017); FUND TN 11.10.01.

Comment: Deeds executed by a limited liability company must satisfy the requirements of F.S. 689.01; *see Skylake Ins. Agency, Inc. v. NMB Plaza, LLC*, 23 So. 3d 175 (Fla. 3d DCA 2009); *see also* FUND TN 11.10.01. A limited liability company is not a corporation. F.S. 692.01 (2017) does not apply and there is no similar statute applicable to a limited liability company. Two subscribing witnesses are required to comply with F.S. 689.01 (2017).

This Standard, and the scenarios described in the problems above, are applicable to member-managed limited liability companies as well.

Though the sole manager of a dissolved manager-managed limited liability company may transfer title to the limited liability company's real property, confirmation that the transfer is for winding up the entity's affairs is required. By contrast, a mortgage from a dissolved limited liability company creates doubt regarding the act being consistent with winding up affairs. See FUND TN 11.10.01. If the company was dissolved by judicial decree, compliance with the terms thereof is required.

STANDARD 4.9

STATUTORY APPARENT AUTHORITY OF A MANAGER OF A  
MANAGER-MANAGED LIMITED LIABILITY COMPANY

**STANDARD: ANY MANAGER OF A MANAGER-MANAGED LIMITED LIABILITY COMPANY HAS STATUTORY APPARENT AUTHORITY TO SIGN AND DELIVER AN INSTRUMENT TRANSFERRING OR AFFECTING THE LIMITED LIABILITY COMPANY'S INTEREST IN REAL PROPERTY. THE INSTRUMENT IS CONCLUSIVE IN FAVOR OF A PERSON WHO GIVES VALUE WITHOUT KNOWLEDGE OF THE LACK OF THE AUTHORITY OF THE PERSON SIGNING AND DELIVERING THE INSTRUMENT.**

Problem 1: Blackacre is owned by 123 LLC, a Florida limited liability company. Richard Roe gives valuable consideration in exchange for an instrument conveying Blackacre. The Florida Department of State filings evidence that 123 LLC is a manager-managed limited liability company, and that John Doe, Sue Smith, and James Mann are managers. The instrument conveying Blackacre is executed by John Doe as manager of 123 LLC in the presence of two subscribing witnesses. No operating agreement has been produced and no statement of authority has been filed or recorded. Is the conveyance valid?

Answer: Yes.

Problem 2: Same facts as Problem 1, except that three weeks after closing an operating agreement was produced and demonstrated that John Doe did not have the actual authority to execute the instrument. Is the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 689.01 (2017); F.S. 605.04074 (2017); F.S. 605.0302 (2017); F.S. 605.0103(4)(b)(5) (2017); FUND TN 11.10.01

Comment: In a manager-managed limited liability company, each manager is an agent of the company for the purpose of its activities and affairs, and the act of a manager, including signing an instrument of transfer in the name of the company, for apparently carrying on in the ordinary course of the company's activities and affairs, binds the company unless the manager had no authority to act on behalf of the company in a particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority. F.S. 605.04074(2)(b) (2017). However, as it pertains to real property conveyances, the standard is that the conveyance is valid unless the third party purchaser had actual knowledge that the manager lacked authority to convey title on behalf of the company. F.S. 605.04074(3) (2017).

A member is not an agent of a manager-managed limited liability company for purpose of conducting the limited liability company's business, solely by reason of being a member. *See* F.S. 605.04074 (2)(a) (2017).

Absent actual knowledge or a limitation of authority recorded in the Official

Records of the County in which the real property is located, a third party purchaser, who is not a member or a manager of the limited liability company, does not have knowledge of a limitation on the authority of a manager of the limited liability company to convey title on behalf of the limited liability company. F.S. 605.0103(4)(b)(5) (2017).

If the practitioner has any question about the authority of a manager to convey the real property of the LLC, the practitioner may want to consider reviewing the operating agreement and, if it requires consent of all or a majority of the members, requiring reasonable evidence that such consent has been obtained. F.S. 605.04073 (2017).

The principles set forth in this standard also apply to members of member-managed limited liability companies. See F.S. 605.04074(1)(a)(2017); F.S. 605.04074(1)(b) (2017).

STANDARD 4.10

LIMITED LIABILITY COMPANY STATEMENT OF AUTHORITY

**STANDARD: A STATEMENT GRANTING AUTHORITY TO TRANSFER OR AFFECT A LIMITED LIABILITY COMPANY'S INTEREST IN REAL PROPERTY FILED IN THE FLORIDA SECRETARY OF STATE'S OFFICE AND RECORDED IN THE OFFICIAL RECORDS OF THE COUNTY WHERE THE PROPERTY IS LOCATED, IS CONCLUSIVE IN FAVOR OF A PERSON WHO GIVES VALUE IN RELIANCE ON THE GRANT OF AUTHORITY WITHOUT ACTUAL KNOWLEDGE TO THE CONTRARY.**

Problem 1: 123 LLC conveyed Blackacre by deed executed by John Doe as a member of 123 LLC, a manager-managed limited liability company, in the presence of two subscribing witnesses. A statement of authority, which evidences the authority of John Doe to convey 123 LLC's real property, is filed with the Florida Department of State and a certified copy is recorded in the office for recording transfers of Blackacre. Is the conveyance valid?

Answer: Yes.

Problem 2: 123 LLC conveyed Blackacre by deed executed by Richard Roe as the authorized agent of 123 LLC, a manager-managed limited liability company, in the presence of two subscribing witnesses. Richard Roe is the personal assistant of the sole manager of 123 LLC. A statement of authority, which evidences the authority of Richard Roe to convey 123 LLC's real property, is filed with the Florida Department of State and a certified copy is recorded in the office for recording transfers of Blackacre. Is the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 689.01 (2017); F.S. 605.04074 (2017); F.S. 605.0302 (2017); FUND TN 11.10.01;

Comment: A member is not an agent of a manager-managed limited liability company for purpose of conducting the limited liability company's business, solely by reason of being a member. See F.S. 605.04074(2)(a) (2017).

A statement of authority may state the authority of a specific person to execute an instrument transferring or affecting the limited liability company's interest in real property held in the name of the company. F.S. 605.0302(7) (2017).

When a statement of authority is filed with the Florida Department of State, and a certified copy is recorded in the office for recording transfers of that real property, the statement of authority will be conclusive in favor of a person who gives value in reliance on the statement of authority. F.S. 605.0302(6) (2017).

A statement of authority affects only the power of a person to bind a limited liability company to persons who are not members. F.S. 605.0302(3) (2017).

The recorded statement of authority may be relied upon by third party purchasers for value without knowledge, except to the extent that it has been cancelled or amended and evidence thereof is recorded in the office for recording transfers of the real property; or a more recent statement of authority

conflicts F.S. 605.0302(6) (2017).

A statement of authority may also limit the authority of a person to convey the limited liability company's real property. F.S. 605.0302(7) (2017).

The filing of articles of dissolution cancels the statement of authority. F.S. 605.0302(9) (2017). A statement of authority is canceled by operation of law five years after the statement, or most recent amendment, becomes effective. F.S. 605.0302(10) (2017).

Foreign limited liability companies may not avail themselves of the statement of authority pursuant to this Florida statute because they are not within the definition of Florida limited liability companies. F.S. 605.0302 (2017); F.S. 605.0102 (26) & (36) (2017). Foreign limited liability companies are controlled by the laws of their governing jurisdiction.

STANDARD 4.11

SINGLE MEMBER LIMITED LIABILITY COMPANY

**STANDARD: IF THE SELLER IS A SINGLE MEMBER LIMITED LIABILITY COMPANY, A PURCHASER FOR VALUABLE CONSIDERATION SHOULD DETERMINE WHETHER THE MEMBER OR THE LIMITED LIABILITY COMPANY ARE SUBJECT TO ANY CREDITOR CLAIMS.**

Problem 1: Jane Doe is the sole member of 123 LLC. Richard Roe gives valuable consideration in exchange for an instrument conveying Blackacre, owned by 123 LLC. Should Roe obtain an affidavit from Doe stating that Doe, in her personal capacity, and 123 LLC are not subject to a bankruptcy action or creditor claims?

Answer: Yes.

Authorities & References: F.S. 605.05030 (2017); FUND TN 11.10.01;

Comment: If a member of a limited liability company is subject to a creditor claim, a charging order can be entered against that member's limited liability company interest. For a limited liability company with more than one member, this is the sole and exclusive remedy by which a creditor of a member can satisfy its judgment. F.S. 605.05030(3). However, in the case of a single member limited liability company, a court can potentially order a foreclosure sale of that member's limited liability company membership interest. F.S. 605.0503(4) and (5) (2017); *see also Olmstead v. FTC*, 44 So. 3d 76 (Fla. 2010); *Abukasis v. MTM Finest, Ltd.*, 199 So. 3d 421 (Fla. 3d DCA 2016). A careful practitioner should search for and contemplate the risk associated with any judgment against a member of a limited liability company.

A prudent practitioner may want to obtain an affidavit from the limited liability company, at or prior to closing, stating that neither the limited liability company, any managers, or any members are in bankruptcy.

STANDARD 4.12  
FOREIGN LIMITED LIABILITY COMPANY

**STANDARD: THE FAILURE OF A FOREIGN LIMITED LIABILITY COMPANY TO OBTAIN A CERTIFICATE OF AUTHORITY PRIOR TO TRANSACTING BUSINESS IN FLORIDA DOES NOT PRECLUDE IT FROM ACQUIRING, HOLDING, ENCUMBERING OR DISPOSING OF TITLE TO REAL PROPERTY IN THIS STATE.**

Problem 1: ABC LLC, an Ohio limited liability company, was the record owner of a tract of land in Florida. It never obtained a certificate of authority to transact business in Florida. ABC LLC conveyed the land. Was the conveyance valid?

Answer: Yes.

Problem 2: Same facts as above, except that ABC LLC did obtain a certificate of authority to transact business from the Florida Department of State. However, before the conveyance, the certificate was revoked or withdrawn. Was the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 605.0904 (2017); F.S. 605.0905 (2017); F.S. 605.0908 (2017).

Comment: Under the facts of Problem 2, even though the limited liability company conveyed without having a valid certificate of authority, the limited liability company is in the same position as under the facts of Problem 1. F.S. 605.0904(4) (2017). Also, a foreign limited liability company may acquire or create indebtedness, mortgages and security interests in real property without obtaining a certificate of authority to transact business. F.S. 605.0905(1)(g) (2017). If a foreign limited liability company conveys property in connection with activities which require a certificate of authority to transact business from the Florida Department of State when the company does not have a certificate of authority, the limited liability company will be subject to statutory penalties, but the conveyance will be valid. F.S. 605.0904(7) and 605.0904(4) (2017).



STANDARD 4.13  
FOREIGN LIMITED LIABILITY COMPANIES

**STANDARD: TITLE TO FLORIDA REAL PROPERTY HELD BY A FOREIGN LIMITED LIABILITY COMPANY MUST BE CONVEYED BY A PERSON OR PERSONS AUTHORIZED UNDER THE LAWS OF THE FOREIGN STATE OR COUNTRY TO CONVEY PROPERTY OF THE FOREIGN LIMITED LIABILITY COMPANY.**

Problem 1: ABC LLC, a Foreign State limited liability company, is the record owner of a tract of land in Florida. The limited liability company conveyed the land to John Doe by a deed signed by two of its three managers. The two managers had the power to convey the property of the limited liability company under Foreign State's laws. Does Doe have marketable title?

Answer: Yes.

Problem 2: Same as Problem 1, except that under Foreign State's laws all managers must sign conveyances of real property. Does Doe have marketable title?

Answer: No.

Problem 3: Same as Problem 1, except that ABC LLC was dissolved at the time of the conveyance to John Doe. The two managers had the power to convey the property of the dissolved limited liability company under Foreign State's laws. Does Doe have marketable title?

Answer: Yes.

Problem 4: Same as Problem 1, except that ABC LLC was dissolved at the time of the conveyance to John Doe. The two managers did not have the power to convey the property of the dissolved limited liability company under Foreign State's laws. Does Doe have marketable title?

Answer: No.

Authorities & References: F.S. 605.0102(26) (2017); F.S. 605.0102(36) (2017); F.S. 605.0901 (2017); F.S. 605.0908 (2017); FUND TN 11.10.02.

Comment: Foreign limited liability companies are excluded from the requirements of Florida law pertaining to the transfer of property before and after dissolution because foreign limited liability companies are excluded from the definition of a limited liability company under the statute. F.S. 605.0102(26) (2017); F.S. 605.0102(36) (2017). Foreign limited liability companies whether active or dissolved are thus governed by the law of the state or other jurisdiction under which the foreign limited liability company exists. F.S. 605.0901 (2017).

CHAPTER 4

CORPORATIONS AND LIMITED LIABILITY COMPANIES

STANDARD 4.1

ACKNOWLEDGMENT OF CORPORATE INSTRUMENTS

**STANDARD:** ~~WHERE~~ AN INSTRUMENT OF A CORPORATION IS ENTITLED TO BE RECORDED WHEN EXECUTED BY THE PROPER OFFICER OR OFFICERS WHO ARE DESIGNATED IN THE INSTRUMENT AS SUCH, BUT WHOSE CAPACITIES ARE NOT(S) WHOSE CAPACITY IS RECITED IN THE ACKNOWLEDGMENT, SUCH INSTRUMENT, BUT NOT IN THE ACKNOWLEDGMENT ~~IS VALID~~.

Problem: A corporate ~~instrument~~deed is executed by John Doe as President. His office is set out under his signature. ~~The~~ but the acknowledgment merely recites:

“The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_, (year), by John Doe.”

(Signature of Notary Public—State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_ OR Produced Identification \_\_\_.

Type of Identification Produced \_\_\_\_\_.

Is the acknowledgment sufficient ~~to entitle~~for the instrument to be recorded?

Answer: Yes.

Authorities & References: F.S. 695.03 (2017); *House of Lyons, Inc. v. Marcus*, 72 So. 2d 34 (Fla. 1954); ~~See~~; see also *Edenfield v. Wingard*, 89 So. 2d 776 (Fla. 1956); *Florida Nat'l Bank & Trust Co. v. Hickey*, 263 So. 2d 269 (Fla. 3d DCA 1972); *Mills v. Barker*, 664 So. 2d 1054 (Fla. 2d DCA 1995); F.S. 117.05 (~~2002~~2017); ~~ATIFUND~~ TN 1.02.06.

Comment: Florida favors a liberal policy of upholding certificates of acknowledgment. As long as substantial compliance with the recording requirements is available from the instrument as a whole, obvious clerical errors and technical omissions will be disregarded and not allowed to defeat the acknowledgment.

STANDARD 4.2

PRIOR CONVEYANCE OF ALL OR SUBSTANTIALLY ALL  
PROPERTY AND ASSETS OF A CORPORATION

**STANDARD: UNLESS THE ~~RECORD AFFIRMATIVELY SHOWS~~ OFFICIAL RECORDS SHOW THAT A CORPORATE DEED IN THE CHAIN OF TITLE CONSTITUTED A CONVEYANCE OF ALL OR SUBSTANTIALLY ALL OF THE PROPERTY AND ASSETS OF THE CORPORATION, ~~AN EXAMINER A PRACTITIONER~~ MAY ASSUME THAT THE TRANSACTION DID NOT REQUIRE AUTHORIZATION BY A MAJORITY OF THE ~~STOCKHOLDERS~~ SHAREHOLDERS FOR A SALE OF ALL OR SUBSTANTIALLY ALL OF THE CORPORATE PROPERTY AND ASSETS.**

Problem 1:            Appearing in the chain of title is a properly executed deed of a corporation conveying one or more parcels of land. Nothing ~~on~~ in the ~~record~~ official records shows that the property conveyed constituted all or substantially all of the property and assets of the corporation. Must ~~an examiner a practitioner~~ make independent inquiry as to whether the conveyance was a conveyance of all or substantially all of the property and assets of the corporation and whether the corporation had the authorization of a majority of the ~~stockholders~~ shareholders to make the sale?

Answer:                No.

Problem 2:            The deed of the corporation recites, or the ~~record shows~~ official records show, that the deed was a conveyance of all or substantially all of the property and assets of the corporation. Must the ~~examiner practitioner~~ make an independent inquiry as to whether the corporation had ~~shareholder~~ the authorization of a majority of the shareholders?

Answer:                Yes. However, if the conveyance was made on or after July 1, 1990, the effective date of F.S. 607.1201, shareholder approval is not necessary for conveyances of all or substantially all of the property and assets of the corporation, when such conveyances are made in the usual and regular course of business, unless the corporation's articles of incorporation require otherwise.

Authorities & References:    F.S. 607.1201 (~~2002~~ 2017); F.S. 607.1202 (~~2002~~ 2017); ~~ATIF~~ FUND TN 11.01.01.

Comment:             In 1990, the Florida Legislature repealed F.S. 607.241 (1989), which required shareholder authorization for a conveyance of all, or substantially all, of the property and assets of a corporation. The Florida Business Corporation Act now provides that a corporation may dispose of all, or substantially all, of its property in the usual and regular course of business without shareholder authorization unless the articles of incorporation provide otherwise. F.S. 607.1201 (~~2002~~ 2017). However, if the disposition of property is not in the usual and regular course of business, the corporation's board of directors must obtain shareholder authorization ~~of~~ for the disposition. F.S. 607.1202 (~~2002~~ 2017).

A disposition of corporate assets may be considered a sale of "substantially all" of those assets if the sale substantially limits the corporation's business or serves to destroy the fundamental purpose for which the corporation was organized. *Schwadel v. Uchitel*, 455 So. 2d 401 (Fla. 3d DCA 1984); *see also South End Improvement Group, Inc. v. Mulliken*, 602 So. 2d 1327 (Fla. 4th DCA 1992) (the test is whether the

disposition's quantitative or qualitative impact, or both, would fundamentally change the nature of the corporation); *BSF Co. v. Philadelphia Nat'l Bank*, 204 A.2d 746 (Del. 1964); *National Bank of Commerce v. United States*, 158 F. Supp. 887 (E.D. Va. 1958); *Union-May Stern Co. v. Industrial Commission of Missouri*, 273 S.W.2d 766 (Mo. Ct. App. 1954); FLORIDA CORPORATE PRACTICE §10.46 ([Fla. Bar](#) CLE ~~48~~<sup>49</sup>th ed. ~~2002~~<sup>2015</sup>).

Effective July 1, 1991, as to corporations not for profit, the applicable statutes are F.S. 617.1201 and ~~1202~~. [See 1202](#); [see also](#) *Lensa Corp. v. Poinciana Gardens Ass'n*, 765 So. 2d 296 (Fla. 4th DCA 2000).

When taking a deed or other instrument transferring title to ~~realty~~<sup>real property</sup>, consideration must be given to Title Standard 4.2-1.

STANDARD 4.2-1

CURRENT CONVEYANCE OF ALL OR SUBSTANTIALLY ALL  
PROPERTY AND ASSETS OF A CORPORATION

**STANDARD: ~~THE~~ A CURRENT CONVEYANCE OF ALL OR SUBSTANTIALLY ALL OF THE PROPERTY AND ASSETS OF A CORPORATION, WITHOUT SHAREHOLDER APPROVAL, CONVEYS MARKETABLE TITLE IF (i) IT IS IN THE USUAL AND REGULAR COURSE OF BUSINESS AND (ii) THE CORPORATION'S ARTICLES OF INCORPORATION DO NOT REQUIRE SHAREHOLDER AUTHORIZATION SUCH APPROVAL.**

Problem 1: ABC Real Estate Corporation ~~conveyed Blackacre to John Doe by deed signed in the corporate name, executed by its president, and sealed with the corporate seal (or by deed executed in the corporate name by its president in the presence of two subscribing witnesses). Blackacre constituted, in the business of selling real estate, is conveying Blackacre to John Doe. Blackacre constitutes~~ all or substantially all of the property and assets of the corporation, ~~but this fact does not appear on the face of the deed. The deed does not recite that a majority of shareholders authorized the corporation to convey Blackacre. Should Doe require evidence of this fact before accepting the deed. Should the practitioner review the articles of incorporation to determine if shareholder approval is required?~~

Answer: Yes.

~~Answer~~ Problem 2: ~~Yes, unless the conveyance~~ Same facts as above, but ABC Corporation is in the usual and regular course of business and the articles of incorporation do not business of manufacturing. Should the practitioner require evidence of shareholder authorization. approval?

Answer: Yes.

Problem ~~23:~~ Same facts as ~~above,~~ Problem 2, except that Blackacre does not constitute all or substantially all of the property and assets of the corporation. Should ~~Doe~~ the practitioner require evidence of ~~this fact before accepting the deed~~ shareholder approval?

Answer: ~~Yes~~ No.

Authorities & References: F.S. 607.1201 (~~2002~~ 2017); F.S. 607.1202 (~~2002~~ 2017); F.S. 692.01 (~~2002~~ 2017); FLORIDA CORPORATE PRACTICE §10.46 (Fla. Bar CLE ~~48~~ th ed. ~~2002~~ 2017); ~~ATTF~~ FUND TN 11.01.01.

Comment: ~~The~~ This standard applies only to what a ~~title examiner~~ practitioner should do in connection with a corporate conveyance being made in a current transaction. Reference should be made to Title Standard 4.2 to determine what a ~~title examiner~~ practitioner may justifiably infer when the corporate conveyance has already become a part of the chain of title.

F.S. 607.1201 (~~2002~~ 2017) does not require majority shareholder authorization of a disposition of all, or substantially all, of the property and assets of a corporation which is in the usual and regular course of business unless authorization is required by the corporation's articles of incorporation. The requirement of majority shareholder authorization does not apply in the case of a mortgage on any or all of the corporate property and assets, whether or not in the usual and regular course of business, unless the

articles of incorporation provide otherwise. F.S. 607.1201 (~~2002~~2017).

A conveyance that is in the usual and regular course of business does not require majority shareholder authorization. However, majority shareholder authorization is required for any disposition of all, or substantially all, of the property and assets of a corporation not in the usual and regular course of business. F.S. 607.1202 (~~2002~~2017). The articles of incorporation or the board of directors may require a greater vote than a majority of shareholders, or authorization by a particular voting group. ~~There is not a statutory exception for innocent purchasers who purchase property from a corporation when the shareholders did not authorize the sale.~~ Evidence of shareholder authorization may, among other possibilities, take the form of minutes of the ~~stockholders~~shareholders' meeting at which authorization was given.

As a precautionary note, "usual and regular course of business" could be interpreted differently by various courts, and a conveyance of all of substantially all of the corporation's assets may or may not be considered in the ordinary course of business. In situations where there is doubt, always seek a corporate resolution from the corporation indicating that a majority of the shareholders have authorized the conveyance.

~~Finally, the examiner of title~~The practitioner should bear in mind that additional limitations on corporate conveyances may exist in the ~~corporate charter or bylaws. articles of incorporation or bylaws.~~ A careful practitioner should consider asking the corporation for a copy of the articles of incorporation and bylaws if the practitioner is unsure whether the conveyance will require the authorization of more than a majority of the shareholders.

Effective July 1, 1991, as to corporations not for profit, the applicable statutes are F.S. 617.1201 and ~~.1202.~~ See 1202; see also *Lensa Corp.v. Poinciana Gardens Ass'n*, 765 So. 2d 296 (Fla. 4th DCA 2000).

In situations where the facts are not readily discernible from an examination of the land records, the prudent practitioner may want to document on the face of the deed, in affidavits, resolutions or other documents filed in the land records, whether the transaction is a sale of all or substantially all of the assets of the corporation, and if so whether it was authorized by the majority of the shareholders or a sale within the ordinary course of business.

STANDARD 4.3

CONVEYANCE BY CORPORATIONS

**STANDARD: A CORPORATION MAY CONVEY ITS LAND EITHER BY AN INSTRUMENT IN WRITING SIGNED IN ITS NAME BY AN AUTHORIZED AGENT IN THE PRESENCE OF TWO SUBSCRIBING WITNESSES, OR BY AN INSTRUMENT SEALED WITH THE COMMON OR CORPORATE SEAL AND SIGNED IN ITS NAME BY ITS PRESIDENT OR ANY VICE-PRESIDENT OR CHIEF EXECUTIVE OFFICER.**

Problem 1: ABC Corporation conveyed Blackacre by deed executed by its President in the presence of two subscribing witnesses. The deed contained no corporate seal. Is the conveyance valid?

Answer: Yes. ~~This assumes the person executing the deed was properly authorized. The authority of the president to bind the corporation may generally be assumed. See *Ocean Bank v. Inv-Uni Inv. Corp.*, 599 So.2d 694 (Fla. 3d DCA 1992). Evidence of authorization should be obtained when someone other than the president executes the instrument, in cases where the execution is under F.S. 689.01. See *Pan-American Const. Co. v. Searcy*, 84 So.2d 540 (Fla. 1956); FLORIDA REAL PROPERTY SALES TRANSACTIONS §6.43 (CLE 3d ed. 1997); ATIF TN 11.05.03.~~

Problem 2: ABC Corporation conveyed Blackacre by deed executed by its Secretary in the presence of two subscribing witnesses. There was no authorizing resolution from the board of directors. Is the conveyance valid?

Answer: No.

Problem ~~2~~3: ABC Corporation conveyed Blackacre by deed sealed with the corporate seal and executed by its president. There were no subscribing witnesses. Is the conveyance valid?

Answer: Yes. ~~Affixing the corporate seal gives the president, vice president, and chief executive officer prima facie record authority to convey the real property of the corporation. FLORIDA REAL PROPERTY SALES TRANSACTIONS §6.44 (CLE 3d ed. 1997).~~

Authorities & References: F.S. 689.01 (~~2002~~2017); F.S. 692.01 (~~2002~~2017); F.S. 692.02 (~~2002~~2017); *Ocean Bank v. Inv-Uni Inv. Corp.*, 599 So. 2d 694 (Fla. 3d DCA 1992); *Adams v. Whittle*, ~~101 Fla. 705~~, 135 So. 152 (Fla. 1931); *Douglass v. State Bank of Orlando*, ~~77 Fla. 830~~, 82 So. 593 (Fla. 1919); *Campbell v. McLaurin Inv. Co.*, ~~74 Fla. 501~~, 77 So. 277 (Fla. 1917); *Norman v. Beckman*, ~~58 Fla. 325~~, *Beckman*, 50 So. 876 (Fla. 1909); *Snead v. U.S. Trucking Corp.*, 380 So. 2d 1075 (Fla. 1st DCA 1980) *rev. denied* 389 So. 2d 1116 (Fla. 1980); *Prezioso v. Cameron*, 559 So. 2d 423 (Fla. 4th DCA 1990); *Skyline Outdoor Commc'ns, Inc. v. James*, 903 So. 2d 997 (Fla. 1st DCA 2009); *See Pan-American Const. Co. v. Searcy*, 84 So. 2d 540 (Fla. 1956); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §~~10.06~~ (~~1997~~); ~~ATIF~~10.07 (Bender 2015); FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.43 (Fla. Bar CLE 7th ed. 2013); FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.44 (Fla. Bar CLE 7th ed. 2013); FUND TN 11.05.02, 11.05.03.

Comment: If the corporate conveyance is made by an instrument in writing signed by an authorized agent in the presence of two subscribing witnesses, the conveyance is valid. F.S. 689.01 (~~2002~~2017).

If the corporate conveyance is ~~executed~~made by an instrument sealed with the corporate seal and signed by the president, vice-president, or chief executive officer, no corporate resolution need be recorded to evidence the authority of the party executing the conveyance, and the instrument ~~shall~~will be valid. F.S. 692.01 (~~2002~~2017).

If a corporate conveyance is made by an instrument in writing signed by any person other than the president or chief executive officer of the corporation in the presence of two subscribing witnesses (in accordance with F.S. 689.01), and without a corporate seal, an authorizing resolution should be recorded which evidences the authority of the person signing the deed.

A vice president may execute a deed on behalf of a corporation without an authorizing resolution from the corporation's board of directors if the deed contains the corporate seal. F.S. 692.01. However, contrary to dicta in *DGG Dev. Corp. v. Estate of Capponi*, 983 So. 2d 1232 (Fla. 5th DCA 2008), when a vice president signs a deed on behalf of a corporation in the presence of two subscribing witnesses, and such deed does not contain a corporate seal, an authorizing resolution should be obtained.

In *DGG Dev. Corp. v. Estate of Capponi*, the court, citing F.S. 692.01, correctly included vice presidents as officers who could convey the corporation's property by a deed containing the corporate seal, without the need for an authorizing resolution. However, the court apparently incorrectly cited the previous version of this title standard, as well as Fund TN 11.05.03, and FLORIDA REAL PROPERTY SALES TRANSACTIONS §7.43 (Fla. Bar CLE 7th ed. 2013) (formerly §6.43), as support for including a vice president as an officer, together with presidents and chief executive officers, who may convey corporate property by a deed executed in accordance with F.S. 689.01 (i.e., without a common or corporate seal) without an authorizing resolution from the corporation's board of directors. A careful practitioner should always obtain an authorizing resolution from the corporation when a vice president will be signing on behalf of the corporation, and the deed does not contain a corporate seal.

There is uncertainty as to whether a corporation can make a valid conveyance in trust without having two subscribing witnesses to the deed. F.S. 689.06 requires two witnesses and does not make an exception for corporations. Therefore, caution dictates having two subscribing witnesses on corporate conveyances under seal. *See*; FLORIDA REAL PROPERTY SALES TRANSACTIONS §~~6.45~~7.45 (Fla. Bar CLE ~~3d~~7th ed. ~~1997~~2013).

The attesting signature of a secretary or assistant secretary is not necessary to the validity of a corporate conveyance, but it serves to identify the seal used and the officers making the conveyance. *See*; FLORIDA REAL PROPERTY SALES TRANSACTIONS §~~6.48~~7.48 (Fla. Bar CLE ~~3d~~7th ed. ~~1997~~2013).



STANDARD 4.3-1

CONVEYANCE BY CORPORATIONS:  
AUTHORITY TO CONVEY; FRAUD

**STANDARD: ON OR AFTER JANUARY 1, 1972, AN INSTRUMENT CONVEYING LAND OF A CORPORATION, SEALED WITH THE COMMON OR CORPORATE SEAL AND SIGNED IN THE CORPORATE NAME BY ITS PRESIDENT, VICE-PRESIDENT, OR CHIEF EXECUTIVE OFFICER IS, ABSENT FRAUD IN THE TRANSACTION BY THE PERSON RECEIVING THE INSTRUMENT, VALID WHETHER OR NOT THE OFFICER SIGNING FOR THE CORPORATION WAS AUTHORIZED BY THE BOARD OF DIRECTORS TO DO SO.**

Problem: On January 1, 2002, John Doe gives valuable consideration in exchange for an instrument conveying Blackacre, owned by ABC Corporation. The instrument is sealed with the common or corporate seal and signed in the corporate name by Richard Roe, the chief executive officer of ABC Corporation. Roe does not have authority from the board of directors to execute such an instrument. Is the deed valid?

Answer: Yes, ~~the deed is valid if Doe does not know that Roe is without authority to execute the instrument, or is not aware of any facts that would put Doe on inquiry as to the extent of Roe's authority~~ absent fraud in the transaction by Doe.

Authorities & References: F.S. 692.01 (~~2002~~2017); F.S. 607.0304 (~~2002~~2017); *Jackson v. ~~Citizen's~~Citizens' Bank & Trust Co.*, ~~53 Fla. 265~~, 44 So. 516 (Fla. 1907); *Snead v. U.S. Trucking Corp.*, 380 So. 2d 1075 (Fla. 1st DCA 1980) *rev. denied* 389 So. 2d 1116 (Fla. 1980); *Prezioso v. Cameron*, 559 So. 2d 423 (Fla. 4th DCA 1990); *Ocean Bank of Miami v. Inv-Uni Investment~~Inv.~~Corp.*, 599 So. 2d 694 (Fla. 3d DCA 1992); *Radison ~~Properties~~Props., Inc. v. Flamingo Groves, Inc.*, 767 So. 2d 587 (Fla. 4th DCA 2000); ~~ATIF~~FUND TN 11.05.03.

Comment: ~~Whether the person receiving the instrument should inquire~~ When there is doubt as to the authority of the corporate officer to sign for the corporation ~~is necessarily a question of fact in each case. Attorneys for such persons should resolve such questions of doubt~~ should be resolved by requiring evidence of the authority of the corporate officer to convey. *Rothfleisch v. Cantor*, 534 So. 2d 823 (Fla. 4th DCA 1988). In the case of fraud, subsequent good faith purchasers for value and without notice of the fraud take free of any defect arising from the fraud. F.S. 692.01 (~~2002~~); and see, FLORIDA REAL PROPERTY COMPLEX TRANSACTIONS §§ 9.7—9.10 (CLE 3d ed. 20002017).

STANDARD 4.4

FOREIGN CORPORATIONS

**STANDARD: THE FAILURE OF A FOREIGN CORPORATION TO OBTAIN A PERMIT CERTIFICATE OF AUTHORITY PRIOR TO TRANSACTING BUSINESS IN FLORIDA DOES NOT PRECLUDE IT FROM ACQUIRING, HOLDING, ENCUMBERING, OR DISPOSING OF TITLE TO REAL PROPERTY IN THIS STATE.**

Problem 1: ABC Company, a New York corporation, is the record owner of a tract of land in Florida. It has never obtained a permit certificate of authority to transact business in Florida. The corporation conveyed the property. Is the conveyance valid?

Answer: Yes.

Problem 2: Same facts as above, except that ABC Company did obtain a permit certificate of authority from the Florida Department of State to transact business in Florida which has since been withdrawn or revoked. Is the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 607.1501(1) (2017); F.S. 607.1501(2)(g) (~~2002~~2017); F.S. 607.1501(2)(m) (~~2002~~2017); F.S. 607.1502(5) ~~2002~~(2017); see *Hogue v. D.N. Morrison Const. Co.*, ~~115 Fla. 293~~, 156 So. 377 (Fla. 1934); *Herbert H. Pape, Inc. v. Finch*, ~~102 Fla. 425~~, 136 So. 496 (Fla. 1931); *Rubin v. Kapell*, 105 So. 2d 28 (Fla. 3d DCA 1958); *Batavia, Ltd. v. U.S. By and Through Dept. of Treasury, Internal Revenue Service United States*, 393 So. 2d 1207 (Fla. 1st DCA 1980); ~~ATIF TN 11.06.01, 11.06.03.~~

Comment: Upon the issuance of a certificate of revocation, or upon the filing of an application for withdrawal, the authority of a foreign corporation which had previously obtained a permit certificate of authority to transact business in Florida ~~shall~~will cease. F.S. 607.1531(3) (~~2002~~2017); F.S. 607.1520(1) (~~2002~~2017). Under the facts of Problem 2, because the foreign corporation conveyed the property without having a valid permit certificate of authority to transact business in Florida, the corporation is in the same position as under the facts of Problem 1. See F.S. 607.1502(5) (~~2002~~2017). The ~~examiner of title~~practitioner should note that a foreign corporation may also own or create a security interest in real property without obtaining a permit certificate of authority to transact business. F.S. 607.1501(2)(g) (~~2002~~2017); F.S. 607.1501 (2)(m) (~~2002~~2017); FLORIDA REAL PROPERTY SALES TRANSACTIONS §~~6.58~~7.54 (Fla. Bar CLE 2d7th ed. 19942013).

If a foreign corporation conveys property in connection with activities which require a permit certificate of authority from the Florida Department of State to transact business and it does not have the permit certificate, the corporation will be subject to statutory penalties. F.S. 607.1502 (~~2002~~2017). However, the conveyance of title will be valid. F.S. 607.1502(5) (~~2002~~); ~~FLORIDA REAL PROPERTY COMPLEX TRANSACTIONS §9.6 (CLE 3d ed. 2000~~2017).

As to foreign corporations not for profit, the applicable statutes are F.S. 617.1501(2) and 617.1502(5) (~~2002~~2017). See ~~ATIF TN 11.08.02.~~

STANDARD 4.4-1

DISSOLVED FOREIGN CORPORATION

**STANDARD: TITLE TO FLORIDA REAL PROPERTY HELD BY A DISSOLVED FOREIGN CORPORATION MUST BE CONVEYED BY A PERSON OR PERSONS AUTHORIZED UNDER THE LAWS OF THE FOREIGN STATE OR COUNTRY TO CONVEY PROPERTY OF THE DISSOLVED FOREIGN CORPORATION.**

Problem 1: XYZ Corporation, incorporated under the laws of Foreign State, secured a ~~permit~~certificate of authority to transact business in Florida and was subsequently dissolved. After dissolution, XYZ Corporation's board of directors conveyed to John Doe land located in Florida which was owned by the Corporation. The directors had the power to convey property of the dissolved corporation under Foreign State's laws. Does Doe have marketable title?

Answer: Yes.

Problem 2: Same as Problem 1, except that under Foreign State's laws the directors did not have the power to convey the property of the corporation after dissolution. Does Doe have marketable title?

Answer: No.

Problem 3: Same as in Problem 1, except that XYZ Corporation's ~~permit's~~ certificate of authority to transact business in Florida was withdrawn or revoked, or was never obtained, prior to the conveyance. Does Doe have marketable title?

Answer: Yes.

Authorities & References: F.S. 607.01401(5) (~~2002~~2017); F.S. 607.1405 (~~2002~~2017); F.S. 607.1501 (~~2002~~2017); F.S. 607.1502(5) (~~2002~~2017); F.S. 607.1505(3) (~~2002~~2017); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §299 (~~2002~~1971); 36 ~~AM JUR~~Am. Jur. 2d; *Foreign Corporations*, §396 (~~2002~~2015); *see Order of United Commercial Travelers v. Wolfe*, 331 U.S. 586 (1947); *Oklahoma Natural Gas Co. v. Oklahoma*, ~~273~~273 U.S. 257, 260 (1927).

Comment: Foreign corporations are excluded from the requirements of Florida law pertaining to transfer of property after dissolution because foreign corporations are excluded from the definition of a corporation under the statute. F.S. 607.01401 (~~2002~~2017); F.S. 607.1405 (~~2002~~2017); F.S. 607.1505(3) (~~2002~~2017). Dissolved foreign corporations are thus governed by the laws of the state or country of incorporation. Failure to obtain a valid ~~permit~~certificate of authority to transact business before making the conveyance is of no consequence to the marketability of title. F.S. 607.1502(5) (~~2002~~2017); *see* F.S. 607.1501 (~~2002~~2017); Title Standard 4.4 (Foreign Corporations).

F.S. 692.03 purports to validate a conveyance executed by the surviving directors or trustees of a dissolved foreign corporation if the conveyance has been of record for at least seven years. ~~FLORIDA REAL PROPERTY COMPLEX TRANSACTIONS §9.6 (CLE 3d ed. 2000); but see ATIF TN 11.04.05 (declaring that F.S. 692.03 should not be considered as applicable to foreign corporations.)~~

STANDARD 4.5

~~CORPORATION DELINQUENT IN FILING ANNUAL~~ ADMINISTRATIVELY DISSOLVED CORPORATIONS  
~~REPORT OR PAYMENT OF TAXES OR FEES~~

~~STANDARD: THE VALIDITY OF A CONVEYANCE BY A CORPORATION IS NOT AFFECTED BY THE FACT THAT THE CORPORATION AT THE TIME OF THE CONVEYANCE WAS DELINQUENT IN THE FILING OF ITS ANNUAL REPORT AND THE PAYMENT OF FEES AND TAXES DUE UNDER CHAPTER 607, F.S..~~

STANDARD: A CORPORATION WHICH HAS BEEN ADMINISTRATIVELY DISSOLVED MAY CONVEY REAL PROPERTY ONLY AS NECESSARY TO WIND UP AND LIQUIDATE ITS BUSINESS AND AFFAIRS.

Problem 1: ABC Corporation conveyed a portion of its land after June 30, 1990. At the time of the conveyance, it was administratively dissolved for failure to file its annual report and pay certain corporate fees and taxes that were required at the time. Was the conveyance valid?

Answer: Yes but only if the conveyance was appropriate to wind up and liquidate the corporation's business and affairs. F.S. 607.1405 (2017).

Problem 2: ABC Corporation conveyed a portion of its land after June 30, 1990. At the time of the conveyance, the officers of the corporation did not know that the corporation had been administratively dissolved, and did not convey the property with the intent of winding up and liquidating the corporation's business and affairs. The officers of the corporation reinstated the corporation shortly thereafter. Following the reinstatement, was the conveyance valid?

Answer: Yes. F.S. 607.1422 (3) (2017)

Problem 3: ABC Corporation conveyed a portion of its land. ~~At~~ It was not yet administratively dissolved, but at that time it had not filed its annual report or paid certain corporate fees and taxes that were required at the time. ~~The corporation had not been dissolved and was an existing corporate entity.~~ Was the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 607.1422 (3) (2017); F.S. 607.1622 (~~2002~~2017); see Webb v. Scott, ~~129 Fla. 111,~~ 176 So. 442 (Fla. 1937); 330 Michigan ~~Avenue~~ Ave., Inc. v. Cambridge Hotel, Inc., 183 So. 2d 725 (Fla. 3d DCA 1966); FLORIDA REAL PROPERTY SALES TRANSACTIONS §6.55 (CLE 2d ed. 1994); ~~FLORIDA REAL PROPERTY COMPLEX TRANSACTIONS §9.4 (CLE 3d ed. 2000); ATIF 7.51 (Fla. Bar CLE 7th ed. 2013); FUND TN 11.01.06.; FUND TN 11.04.07; FUND TN 11.04.02; FUND TN 11.04.12.~~

Comment: ~~F.S. 607.1622(8) (2002) prescribes the penalties for failure to file an annual report conforming to the requirements of F.S. 607.1622(1) (2002).~~

Caution should be exercised, for among the The prescribed penalties for failure to file the required annual report ~~is~~ include dissolution or cancellation of the corporation's certificate of authority to do business. F.S. 607.1622(8) (~~2002~~2017). If the corporation has not yet been administratively dissolved, the validity of a conveyance by a

corporation is not affected by the fact that the corporation at the time of the conveyance was delinquent in the filing of its annual report and the payment of fees and taxes due under Chapter 607, F.S. If the corporation was administratively dissolved, its reinstatement will relate back to the effective date of the dissolution and validate a conveyance that occurred while dissolved that was not for the purpose of winding up the affairs of the corporation. F.S. 607.1422 (3) (2017).

~~Part of the requirement of filing an annual report is payment of all fees and taxes due. F.S. 607.1622(8) (2002).~~

STANDARD 4.5-1

VOLUNTARILY DISSOLVED CORPORATIONS

**STANDARD: A CORPORATION WHICH HAS BEEN VOLUNTARILY DISSOLVED MAY CONVEY PROPERTY ONLY IF IT IS IN THE COURSE OF WINDING UP AND LIQUIDATING THE CORPORATION'S BUSINESS AND AFFAIRS.**

Problem: ABC Corporation conveyed a portion of its land in 2010. In 2009, the corporation had been voluntarily dissolved by its directors and shareholders. Was the conveyance valid?

Answer: Yes. F.S. 607.1405 (2017)

Authorities & References: F.S. 607.1405 (2017); FUND TN 11.04.02

Comment: A corporation dissolved after June 30, 1990 continues in existence for the purpose of winding up its affairs. The corporation may only carry on business that is appropriate to wind up and liquidate its business and affairs. Because the dissolved corporation continues in existence for the purpose of winding up affairs, it may convey real property in its own name, and the agents who were authorized for the active corporation are the agents of the dissolved corporation. In a current transaction, an affidavit should be recorded establishing that the conveyance is consistent with winding up the affairs of the corporation. F.S. 607.1405 (2017); FUND TN 11.04.02(D)

Reference should be made to Title Standard 4.3 (Conveyances by Corporations), which sets forth who can sign as an authorized agent on behalf of a corporation, and what procedures must be followed based on the agent's relationship to the corporation.

A corporation that dissolved between June 20, 1976 and June 30, 1990, is not an entity in being for the purpose of conveying real property, but the directors serving at the time of dissolution may convey the corporation's property as trustees. A majority of trustees surviving at the time of the conveyance are required to convey. In a current transaction, an affidavit should be recorded identifying the trustees, and establishing that a majority of the surviving trustees signed the deed. F.S. 607.301 (1987); FUND TN 11.04.02(C)

A corporation that dissolved between January 1, 1976, and June 19, 1976, is not an entity in being for the purpose of conveying real property, but the directors serving at the time of dissolution may convey the corporation's property as trustees. All of the trustees surviving at the time of the conveyance are required to convey. In a current transaction, an affidavit should be recorded identifying the trustees, and establishing that all of the surviving trustees signed the deed. F.S. 607.301 (1987); FUND TN 11.04.02(B)

A corporation that dissolved prior to January 1, 1976, is not an entity in being for the purpose of conveying real property, but the directors serving at the time of dissolution may convey the corporation's property as trustees. A majority of trustees surviving at the time of the conveyance are required to convey. In a current transaction, an affidavit should be recorded identifying the trustees, and establishing that a majority of the

surviving trustees signed the deed. F.S. 608.301 (1987); FUND TN 11.04.02(A)

Note: A court may dissolve a corporation if it is established that there are grounds for judicial dissolution as set forth in F.S. 607.1430 (2017). If the court enters a judgment of dissolution, the court will direct the corporation to wind up and liquidate its business and affairs.

STANDARD 4.6

CORPORATION NAME OMITTED FROM SIGNATURE

**STANDARD: THE VALIDITY OF A CONVEYANCE BY A CORPORATION IS NOT AFFECTED BY THE OMISSION OF THE CORPORATE NAME OVER THE SIGNATURE OF THE OFFICER EXECUTING THE CONVEYANCE WHERE THE CORPORATION NAME APPEARS IN THE BODY OF THE INSTRUMENT AS THE GRANTOR AND THE INSTRUMENT IS OTHERWISE PROPERLY EXECUTED AND ACKNOWLEDGED.**

Problem: ABC Corporation is named in the body of a deed as the grantor. The deed is signed by “John Doe, President,” or “John Doe, President of A.B.C. Corporation,” but the name of the corporation does not appear immediately above the signature of the president. Is the deed valid?

Answer: Yes.

Authorities & References: *See Ballas v. Lake Weir Light and Water Co.*, ~~100 Fla. 913~~, 130 So. 421 ([Fla.](#) 1930); *Steele v. Hallandale, Inc.*, 125 So. 2d 587 (Fla. 2d DCA 1960); FLORIDA REAL PROPERTY SALES TRANSACTIONS §~~6.50~~[7.50](#) ([Fla. Bar](#) CLE ~~3d~~[7th](#) ed. ~~1997~~[2013](#)); 18B ~~AM. JUR.~~[Am. Jur.](#) 2d *Corporations* §~~166~~[1708](#) (~~2002~~[2015](#)); ~~ATIFUND~~ TN 11.07.02.

Comment: In *Ballas*, an executory contract and not a conveyance was involved, but the principles stated appear to apply with equal weight to a conveyance.



STANDARD 4.7

USE OF SCROLL SEAL BY CORPORATION

**STANDARD: A CORPORATION MAY USE A HAND DRAWN SCRAWL OR SCROLL SEAL IN LIEU OF AN IMPRESSION SEAL OR STAMP SEAL WHEREVER A CORPORATE SEAL IS REQUIRED.**

**Problem:** A deed of ABC Corporation was executed by its president, vice president, or chief executive officer. ~~A scroll~~The officer hand drew a seal ~~was used~~ instead of using an impression seal or stamp seal. There were no witnesses. Is the deed valid?

**Answer:** Yes.

**Authorities & References:** F.S. 692.01 (~~2002~~2017); F.S. 695.07 (~~2002~~2017); F.S. 695.08 (~~2002~~2017); F.S. 607.0302(2) (~~2002~~2017); *Jacksonville, M., P. RyR, & NwN. Co. v. Hooper*, 160 U.S. ~~514, 16 S. Ct. 379~~514 (1896); *Sarasota Kennel Club, Inc. v. Shea*, 56 So. 2d 505 (Fla. 1952); *Campbell v. McLaurin Inv. Co.*, ~~74 Fla. 501~~, 77 So. 277 (Fla. 1917); *Cross v. Robinson Point Lumber Co.*, ~~55 Fla. 374~~, 46 So. 6 (Fla. 1908); *Langley v. Owens*, ~~53 Fla. 302~~, 42 So. 457 (Fla. 1906); ~~Commerford~~Comerford v. Cobb, 2 Fla. 418 (Fla. 1859); *Epstein v. Deerfield Beach Bank & Trust Co.*, 280 So. 2d 690 (Fla. 4th DCA 1973); See ~~ATF~~also FUND TN 11.03.02.

**Comment:** As to Florida corporations not for profit, the seal must contain the words “corporation not for profit.” F.S. 617.0302(3)- (2017). “Scrawl” and “scroll” simply mean “hand drawn.”

=

STANDARD 4.8

CONVEYANCE BY A LIMITED LIABILITY COMPANY

STANDARD: A LIMITED LIABILITY COMPANY MAY CONVEY ITS LAND BY AN INSTRUMENT IN WRITING SIGNED IN ITS NAME BY AN AUTHORIZED SIGNATORY IN THE PRESENCE OF TWO SUBSCRIBING WITNESSES.

Problem 1: Jane Doe is the sole manager of 123 LLC, a manager-managed limited liability company. 123 LLC conveyed Blackacre by deed executed by Jane Doe, Manager, in the presence of two subscribing witnesses. The deed was properly acknowledged. Is the conveyance valid?

Answer: Yes.

Problem 2: Jane Doe is the sole manager of 123 LLC, a manager-managed limited liability company. 123 LLC conveyed Blackacre by deed executed by Jane Doe, Manager. The deed was not witnessed but a seal bearing the limited liability company name and document number is affixed. The deed was properly acknowledged. Is the conveyance valid?

Answer: No.

Authorities & References: F.S. 689.01 (2017); F.S. 605.04074 (2017); F.S. 605.0302 (2017); FUND TN 11.10.01.

Comment: Deeds executed by a limited liability company must satisfy the requirements of F.S. 689.01; see *Skylake Ins. Agency, Inc. v. NMB Plaza, LLC*, 23 So. 3d 175 (Fla. 3d DCA 2009); see also FUND TN 11.10.01. A limited liability company is not a corporation. F.S. 692.01 (2017) does not apply and there is no similar statute applicable to a limited liability company. Two subscribing witnesses are required to comply with F.S. 689.01 (2017).

This Standard, and the scenarios described in the problems above, are applicable to member-managed limited liability companies as well.

Though the sole manager of a dissolved manager-managed limited liability company may transfer title to the limited liability company's real property, confirmation that the transfer is for winding up the entity's affairs is required. By contrast, a mortgage from a dissolved limited liability company creates doubt regarding the act being consistent with winding up affairs. See FUND TN 11.10.01. If the company was dissolved by judicial decree, compliance with the terms thereof is required.

STANDARD 4.9

STATUTORY APPARENT AUTHORITY OF A MANAGER OF A  
MANAGER-MANAGED LIMITED LIABILITY COMPANY

STANDARD: ANY MANAGER OF A MANAGER-MANAGED LIMITED LIABILITY COMPANY HAS STATUTORY APPARENT AUTHORITY TO SIGN AND DELIVER AN INSTRUMENT TRANSFERRING OR AFFECTING THE LIMITED LIABILITY COMPANY'S INTEREST IN REAL PROPERTY. THE INSTRUMENT IS CONCLUSIVE IN FAVOR OF A PERSON WHO GIVES VALUE WITHOUT KNOWLEDGE OF THE LACK OF THE AUTHORITY OF THE PERSON SIGNING AND DELIVERING THE INSTRUMENT.

Problem 1: Blackacre is owned by 123 LLC, a Florida limited liability company. Richard Roe gives valuable consideration in exchange for an instrument conveying Blackacre. The Florida Department of State filings evidence that 123 LLC is a manager-managed limited liability company, and that John Doe, Sue Smith, and James Mann are managers. The instrument conveying Blackacre is executed by John Doe as manager of 123 LLC in the presence of two subscribing witnesses. No operating agreement has been produced and no statement of authority has been filed or recorded. Is the conveyance valid?

Answer: Yes.

Problem 2: Same facts as Problem 1, except that three weeks after closing an operating agreement was produced and demonstrated that John Doe did not have the actual authority to execute the instrument. Is the conveyance valid?

Answer: Yes.

Authorities &

References: F.S. 689.01 (2017); F.S. 605.04074 (2017); F.S. 605.0302 (2017); F.S. 605.0103(4)(b)(5) (2017); FUND TN 11.10.01

Comment: In a manager-managed limited liability company, each manager is an agent of the company for the purpose of its activities and affairs, and the act of a manager, including signing an instrument of transfer in the name of the company, for apparently carrying on in the ordinary course of the company's activities and affairs, binds the company unless the manager had no authority to act on behalf of the company in a particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority. F.S. 605.04074(2)(b) (2017). However, as it pertains to real property conveyances, the standard is that the conveyance is valid unless the third party purchaser had actual knowledge that the manager lacked authority to convey title on behalf of the company. F.S. 605.04074(3) (2017).

A member is not an agent of a manager-managed limited liability company for purpose of conducting the limited liability company's business, solely by reason of

being a member. See F.S. 605.04074 (2)(a) (2017).

Absent actual knowledge or a limitation of authority recorded in the Official Records of the County in which the real property is located, a third party purchaser, who is not a member or a manager of the limited liability company, does not have knowledge of a limitation on the authority of a manager of the limited liability company to convey title on behalf of the limited liability company. F.S. 605.0103(4)(b)(5) (2017).

If the practitioner has any question about the authority of a manager to convey the real property of the LLC, the practitioner may want to consider reviewing the operating agreement and, if it requires consent of all or a majority of the members, requiring reasonable evidence that such consent has been obtained. F.S. 605.04073 (2017).

The principles set forth in this standard also apply to members of member-managed limited liability companies. See F.S. 605.04074(1)(a)(2017); F.S. 605.04074(1)(b) (2017).

STANDARD 4.10

LIMITED LIABILITY COMPANY STATEMENT OF AUTHORITY

**STANDARD: A STATEMENT GRANTING AUTHORITY TO TRANSFER OR AFFECT A LIMITED LIABILITY COMPANY'S INTEREST IN REAL PROPERTY FILED IN THE FLORIDA SECRETARY OF STATE'S OFFICE AND RECORDED IN THE OFFICIAL RECORDS OF THE COUNTY WHERE THE PROPERTY IS LOCATED, IS CONCLUSIVE IN FAVOR OF A PERSON WHO GIVES VALUE IN RELIANCE ON THE GRANT OF AUTHORITY WITHOUT ACTUAL KNOWLEDGE TO THE CONTRARY.**

Problem 1:                    123 LLC conveyed Blackacre by deed executed by John Doe as a member of 123 LLC, a manager-managed limited liability company, in the presence of two subscribing witnesses. A statement of authority, which evidences the authority of John Doe to convey 123 LLC's real property, is filed with the Florida Department of State and a certified copy is recorded in the office for recording transfers of Blackacre. Is the conveyance valid?

Answer:                    Yes.

Problem 2:                    123 LLC conveyed Blackacre by deed executed by Richard Roe as the authorized agent of 123 LLC, a manager-managed limited liability company, in the presence of two subscribing witnesses. Richard Roe is the personal assistant of the sole manager of 123 LLC. A statement of authority, which evidences the authority of Richard Roe to convey 123 LLC's real property, is filed with the Florida Department of State and a certified copy is recorded in the office for recording transfers of Blackacre. Is the conveyance valid?

Answer:                    Yes.

Authorities & References:                    F.S. 689.01 (2017); F.S. 605.04074 (2017); F.S. 605.0302 (2017); FUND TN 11.10.01;

Comment:                    A member is not an agent of a manager-managed limited liability company for purpose of conducting the limited liability company's business, solely by reason of being a member. See F.S. 605.04074(2)(a) (2017).

A statement of authority may state the authority of a specific person to execute an instrument transferring or affecting the limited liability company's interest in real property held in the name of the company. F.S. 605.0302(7) (2017).

When a statement of authority is filed with the Florida Department of State, and a certified copy is recorded in the office for recording transfers of that real property, the statement of authority will be conclusive in favor of a person who gives value in reliance on the statement of authority. F.S. 605.0302(6) (2017).

A statement of authority affects only the power of a person to bind a limited liability company to persons who are not members. F.S. 605.0302(3) (2017).

The recorded statement of authority may be relied upon by third party

purchasers for value without knowledge, except to the extent that it has been cancelled or amended and evidence thereof is recorded in the office for recording transfers of the real property; or a more recent statement of authority conflicts F.S. 605.0302(6) (2017).

A statement of authority may also limit the authority of a person to convey the limited liability company's real property. F.S. 605.0302(7) (2017).

The filing of articles of dissolution cancels the statement of authority. F.S. 605.0302(9) (2017). A statement of authority is canceled by operation of law five years after the statement, or most recent amendment, becomes effective. F.S. 605.0302(10) (2017).

Foreign limited liability companies may not avail themselves of the statement of authority pursuant to this Florida statute because they are not within the definition of Florida limited liability companies. F.S. 605.0302 (2017); F.S. 605.0102 (26) & (36) (2017). Foreign limited liability companies are controlled by the laws of their governing jurisdiction.

STANDARD 4.11

SINGLE MEMBER LIMITED LIABILITY COMPANY

STANDARD: IF THE SELLER IS A SINGLE MEMBER LIMITED LIABILITY COMPANY, A PURCHASER FOR VALUABLE CONSIDERATION SHOULD DETERMINE WHETHER THE MEMBER OR THE LIMITED LIABILITY COMPANY ARE SUBJECT TO ANY CREDITOR CLAIMS.

Problem 1: Jane Doe is the sole member of 123 LLC. Richard Roe gives valuable consideration in exchange for an instrument conveying Blackacre, owned by 123 LLC. Should Roe obtain an affidavit from Doe stating that Doe, in her personal capacity, and 123 LLC are not subject to a bankruptcy action or creditor claims?

Answer: Yes.

Authorities & References: F.S. 605.05030 (2017); FUND TN 11.10.01;

Comment: If a member of a limited liability company is subject to a creditor claim, a charging order can be entered against that member's limited liability company interest. For a limited liability company with more than one member, this is the sole and exclusive remedy by which a creditor of a member can satisfy its judgment. F.S. 605.05030(3). However, in the case of a single member limited liability company, a court can potentially order a foreclosure sale of that member's limited liability company membership interest. F.S. 605.0503(4) and (5) (2017); see also *Olmstead v. FTC*, 44 So. 3d 76 (Fla. 2010); *Abukasis v. MTM Finest, Ltd.*, 199 So. 3d 421 (Fla. 3d DCA 2016). A careful practitioner should search for and contemplate the risk associated with any judgment against a member of a limited liability company.

A prudent practitioner may want to obtain an affidavit from the limited liability company, at or prior to closing, stating that neither the limited liability company, any managers, or any members are in bankruptcy.

STANDARD 4.12  
FOREIGN LIMITED LIABILITY COMPANY

**STANDARD: THE FAILURE OF A FOREIGN LIMITED LIABILITY COMPANY TO OBTAIN A CERTIFICATE OF AUTHORITY PRIOR TO TRANSACTING BUSINESS IN FLORIDA DOES NOT PRECLUDE IT FROM ACQUIRING, HOLDING, ENCUMBERING OR DISPOSING OF TITLE TO REAL PROPERTY IN THIS STATE.**

Problem 1: ABC LLC, an Ohio limited liability company, was the record owner of a tract of land in Florida. It never obtained a certificate of authority to transact business in Florida. ABC LLC conveyed the land. Was the conveyance valid?

Answer: Yes.

Problem 2: Same facts as above, except that ABC LLC did obtain a certificate of authority to transact business from the Florida Department of State. However, before the conveyance, the certificate was revoked or withdrawn. Was the conveyance valid?

Answer: Yes.

Authorities & References: F.S. 605.0904 (2017); F.S. 605.0905 (2017); F.S. 605.0908 (2017).

Comment: Under the facts of Problem 2, even though the limited liability company conveyed without having a valid certificate of authority, the limited liability company is in the same position as under the facts of Problem 1. F.S. 605.0904(4) (2017). Also, a foreign limited liability company may acquire or create indebtedness, mortgages and security interests in real property without obtaining a certificate of authority to transact business. F.S. 605.0905(1)(g) (2017). If a foreign limited liability company conveys property in connection with activities which require a certificate of authority to transact business from the Florida Department of State when the company does not have a certificate of authority, the limited liability company will be subject to statutory penalties, but the conveyance will be valid. F.S. 605.0904(7) and 605.0904(4) (2017).



STANDARD 4.13  
FOREIGN LIMITED LIABILITY COMPANIES

**STANDARD: TITLE TO FLORIDA REAL PROPERTY HELD BY A FOREIGN LIMITED LIABILITY COMPANY MUST BE CONVEYED BY A PERSON OR PERSONS AUTHORIZED UNDER THE LAWS OF THE FOREIGN STATE OR COUNTRY TO CONVEY PROPERTY OF THE FOREIGN LIMITED LIABILITY COMPANY.**

Problem 1: ABC LLC, a Foreign State limited liability company, is the record owner of a tract of land in Florida. The limited liability company conveyed the land to John Doe by a deed signed by two of its three managers. The two managers had the power to convey the property of the limited liability company under Foreign State's laws. Does Doe have marketable title?

Answer: Yes.

Problem 2: Same as Problem 1, except that under Foreign State's laws all managers must sign conveyances of real property. Does Doe have marketable title?

Answer: No.

Problem 3: Same as Problem 1, except that ABC LLC was dissolved at the time of the conveyance to John Doe. The two managers had the power to convey the property of the dissolved limited liability company under Foreign State's laws. Does Doe have marketable title?

Answer: Yes.

Problem 4: Same as Problem 1, except that ABC LLC was dissolved at the time of the conveyance to John Doe. The two managers did not have the power to convey the property of the dissolved limited liability company under Foreign State's laws. Does Doe have marketable title?

Answer: No.

Authorities

& References: F.S. 605.0102(26) (2017); F.S. 605.0102(36) (2017); F.S. 605.0901 (2017); F.S. 605.0908 (2017); FUND TN 11.10.02.

Comment: Foreign limited liability companies are excluded from the requirements of Florida law pertaining to the transfer of property before and after dissolution because foreign limited liability companies are excluded from the definition of a limited liability company under the statute. F.S. 605.0102(26) (2017); F.S. 605.0102(36) (2017). Foreign limited liability companies whether active or dissolved are thus governed by the law of the state or other jurisdiction under which the foreign limited liability company exists. F.S. 605.0901 (2017).

Document comparison by Workshare Compare on Tuesday, January 30, 2018  
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Document 2 ID	file://C:\Users\csmar\Desktop\Compare Chapter 4\UTS Chapter 4 Revisions (7) - After 1-19-18 Meeting (clean).docx
Description	UTS Chapter 4 Revisions (7) - After 1-19-18 Meeting (clean)
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Deletions	248
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Moved to	4
Style change	0
Format changed	0

Total changes	623
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# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Nicklaus Curley, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section

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Phone: (561) 650-0609

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

## CONTACTS

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**Sarah Butters**, Ausley McMullen, 123 S. Calhoun St., Tallahassee FL 32301, Telephone (850) 425-5447  
**Peter M. Dunbar**, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100  
**Martha J. Edenfield**, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100

### Appearances

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

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

## PROPOSED ADVOCACY

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

### If Applicable,

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

**Indicate Position** Support  Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

Support creation of a new statutory procedure to allow a guardian to access a bank or brokerage account held as tenants by the entirety for a ward's necessary guardianship expenses, including necessary living expenses, where the spouse of the ward does not agree.

### Reasons For Proposed Advocacy:

Under current law, a guardian of the ward cannot access a financial institution account that is held by the ward and the ward's spouse as tenants by the entirety if the spouse does not consent. The non-incapacitated spouse can block the guardian's access to the entireties account. The proposed revision to Florida Statute § 744.457 will allow the guardian of a ward to request an evidentiary hearing to determine whether access to tenancy by the entirety funds is warranted when the ward's spouse objects to the guardian's request to access the funds. A court could allow access in appropriate circumstances based on the court's determination of the ward's best interests. The guardian could then use these funds to pay necessary guardianship expenses, including the ward's necessary living expenses. Essentially, this is to allow the guardian of an incapacitated ward to do what the ward would be able to do if the ward were not incapacitated.



**WHITE PAPER**

**PROPOSED AMENDMENT OF  
F.S. SECTION 744.457 CONSIDERING  
*Romano v. Olshen***

**A. SUMMARY**

This proposal seeks to amend Florida Statute §744.457(1)(a) to allow access to a tenancy by the entirety bank or brokerage account for the necessary expenses of the ward where the spouse of the ward does not agree. The Fourth District Court of Appeal (“Fourth DCA”) in *Romano v. Olshen*, 153 So. 3d 912 (Fla. 4<sup>th</sup> DCA) pointed out that Florida Statute § 744.457(1)(a) could be used by the non-incapacitated spouse to block the guardian’s access to an entirety (“TBE”) bank or brokerage account for the ward’s necessities. This situation could result in Chapter 744 being used to the ward’s detriment rather than to protect the ward. The Fourth DCA stated that the Legislature should authorize a court to allow access to an entirety bank or brokerage account for necessary guardianship expenses, even if the spouse of the ward does not agree.

The Guardianship, Power of Attorney and Advance Directives Committee of the Real Property, Probate & Trust Law Section of The Florida Bar has studied this issue and recommends that certain amendments to subsection 744.457 be made to provide the ability for the guardian to petition the court for authority to invade a TBE account over the non-incapacitated spouse’s objection (or lack of consent) for the benefit of the ward. The amendment would provide for an evidentiary hearing, after notice to the non-incapacitated spouse. The court could weigh the interests of the ward against the interests of the ward’s spouse to determine whether invasion into the account is necessary and beneficial to the ward after consideration of all relevant factors, and if invasion is permitted, to determine the nature of the invasion. The proposed statutory changes are set out below.

**B. CURRENT VERSION OF § 744.457**

Florida Statutes § 744.457(1)(a) states, in pertinent part:

*All legal or equitable interests in property owned as an estate by the entirety by an incapacitated person for whom a guardian of the property has been appointed may be sold, transferred, conveyed, or mortgaged in accordance with § 744.447, if the spouse who is not incapacitated joins in the sale, transfer, conveyance or mortgage of the property.*

The statute, as it is currently written, allows the non-incapacitated spouse to deprive the ward of access to the funds in a TBE account that could be used to cover their necessary living expenses. As the *Romano* Court notes, this situation “seems stunningly unfair to deprive a ward of funds of which he or she is clearly an owner.” *Romano*, 153 So.3d at 921. The current statute

allows the non-incapacitated spouse to use Chapter 744 entirely to the ward's detriment. This violates the public policy to protect the incapacitated ward.

Florida Statutes § 744.457 does not provide a mechanism by which the guardian of a ward may challenge the non-incapacitated spouse's refusal to give consent to the sale, transfer, conveyance or mortgage of any property owned as an estate by the entirety. Nor does Florida Statutes § 744.457 provide for any repercussions to the non-incapacitated spouse for unreasonably withholding his or her consent to the detriment of the ward.

### **C. EFFECT OF PROPOSED CHANGES TO § 744.457**

To permit a more flexible approach and address the issues raised in *Romano*, the Guardianship & Power of Attorney Committee recommends revisions to (1)(a) as follows:

All legal or equitable interests in property owned as an estate by the entirety by an incapacitated person for whom a guardian of the property has been appointed may be sold, transferred, conveyed, or mortgaged in accordance with § 744.447, if the spouse who is not incapacitated joins in the sale, transfer, conveyance or mortgage of the property, *except as provided in (1)(b) and (c) herein.*

This change will allow the guardian of a ward to request an evidentiary hearing to determine whether access to tenancy by the entirety funds is warranted.

#### **SECTION 744.457(1)(b) and (c)**

The Guardianship & Power of Attorney Committee recommends the addition of new sections (1)(b) and (1)(c) as follows:

*(1)(b) If the spouse who is not incapacitated refuses to join in the transfer of funds from a bank, brokerage, or other financial institution account held as a tenancy by the entireties, then the guardian may seek access to such account by filing a petition for authorization to act. After notice to interested persons, the court shall hold an evidentiary hearing to consider the petition. Upon approval of the court pursuant to subsection (1)(c), a guardian may transfer some portion of a bank or brokerage account, owned as an estate by the entirety by an incapacitated person and their spouse, to a separate bank or brokerage account for the benefit of the incapacitated person.*

*(1)(c) The court, in exercising, directing or approving a guardian's exercise of the powers listed in subsection (1)(b), shall consider the best interests of the incapacitated person. Among the factors the court shall consider are:*

- (i) *the financial needs of the incapacitated person and the spouse;*
- (ii) *the financial needs of individuals who are dependent on the incapacitated person or the spouse for support;*
- (iii) *the availability of other sources of funds or income to the incapacitated person and the spouse;*
- (iv) *the incapacitated person's and the spouse's eligibility for governmental assistance;*
- (v) *the incapacitated person's and the spouse's life expectancy;*
- (vi) *any other factors the court considers relevant.*

The purpose of the amendments to § 744.457(1) is to allow the incapacitated spouse, through a guardian, to reach funds held in a tenancy by the entirety account to pay for the ward's care and for the administrative expenses of the guardianship. Funds removed by a guardian acting on behalf of an incapacitated spouse would lose tenancy by the entirety creditor protection. The Committee believes that the factors set forth in the proposed version of § 744.457(1)(c), which the Court is required to consider, will thwart unnecessary transfers in amounts exceeding what is actually needed by the ward.

Further, inserting language into the statute that provides for an evidentiary hearing will bring stability to guardianship proceedings, and hopefully reduce potential costs and attorneys' fees that would result from protracted litigation and appeals. Without a statutory mechanism to allow for such a hearing, these issues will be left to the equitable conscience of the court. The likelihood of inconsistent results across Florida would be high, and could cause confusion among practitioners and the courts alike.

Section 2 of the bill sets an effective date at the time it is signed into law. The bill is a clarification of current law, is remedial in nature, and is consistent with the Florida appellate court ruling in *Romano*. For that reason, the bill is to apply retroactively to all cases pending on the effective date.

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

The proposal will not have a fiscal impact on state or local governments. To the extent that any impact may be realized, the recommended statutory approach improves judicial economy and efficiency in the Guardianship administration area, thereby reducing the cost and expense incurred by state and local government.

#### **E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The proposal will not have any direct economic impacts on the private sector.

#### **F. CONSTITUTIONAL ISSUES**



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

**G. OTHER INTERESTED PARTIES**

None are known at this time.

1 A bill to be entitled

2 An act relating to guardianship; amending s. 744.457, F.S.; to provide a method whereby  
3 the guardian of a ward could access a tenancy by the entireties bank or brokerage account for the  
4 necessary expenses of the ward where the spouse does not consent, and providing for an  
5 effective date.

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

8  
9 Section 1. Paragraph (a) of subsection (1) of section 744.457, Florida Statutes, is  
10 amended, paragraphs (b), (c), and (d) of subsection (1) are redesignated as paragraphs (d), (e),  
11 and (f), respectively, and new paragraphs (b) and (c) are added to that subsection to read:

12 744.457 Conveyance of various property rights by guardians of the property.

13 (1)(a) All legal or equitable interests in property owned as an estate by the entirety by an  
14 incapacitated person for whom a guardian of the property has been appointed may be sold,  
15 transferred, conveyed, or mortgaged in accordance with § 744.447, if the spouse who is not  
16 incapacitated joins in the sale, transfer, conveyance or mortgage of the property, except as  
17 provided in (1)(b) and (c) herein. When both spouses are incapacitated, the sale, transfer,  
18 conveyance, or mortgage shall be by the guardians only. The sale, transfer, conveyance, or  
19 mortgage may be accomplished by one instrument or by separate instruments.

20 (b) If the spouse who is not incapacitated refuses to join in the transfer of funds from  
21 a bank, brokerage, or other financial institution account held as a tenancy by the entireties, then  
22 the guardian may seek access to such account by filing a petition for authorization to act. After  
23 notice to interested persons, the court shall hold an evidentiary hearing to consider the petition.  
24 Upon approval of the court pursuant to subsection (1)(c), a guardian may transfer some portion

25 of a bank or brokerage account, owned as an estate by the entirety by an incapacitated person and  
26 their spouse, to a separate bank or brokerage account for the benefit of the incapacitated person.

27 (c) The court, in exercising, directing or approving a guardian's exercise of the  
28 powers listed in subsection (1)(b), shall consider the best interests of the incapacitated person.

29 Among the factors the court shall consider are:

30 1. the financial needs of the incapacitated person and the spouse;

31 2. the financial needs of individuals who are dependent on the incapacitated  
32 person or the spouse for support;

33 3. the availability of other sources of funds or income to the incapacitated  
34 person and the spouse;

35 4. the incapacitated person's and the spouse's eligibility for governmental  
36 assistance;

37 5. the incapacitated person's and the spouse's life expectancy;

38 6. any other factors the court considers relevant.

39 Section 2. This act shall take effect upon becoming law and shall apply to all proceedings  
40 pending before such date and all proceedings commenced on or after the effective date.

41

42

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Nicklaus Curley, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section

**Address** Nicklaus Curley, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401  
Phone: (561) 650-0609

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

## CONTACTS

**Board & Legislation Committee Appearance**

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**Sarah Butters**, Ausley McMullen, 123 S. Calhoun St., Tallahassee FL 32301, Telephone (850) 425-5447  
**Peter M. Dunbar**, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100  
**Martha J. Edenfield**, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100

### Appearances

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

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

## PROPOSED ADVOCACY

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

**If Applicable, List The Following** [NONE] \_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support X Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

Support amendment to Florida Statutes § 744.3701 to clarify existing law on the standard for the court's ordering the production of confidential documents in guardianship proceedings and the parties who have the right to access confidential documents without court order.

### Reasons For Proposed Advocacy:

Florida Statutes § 744.3701(1) currently has a misplaced comma and a misplaced conjunction which may incorrectly be interpreted to mean the Court may order production of confidential documents without a showing of good cause. The proposed bill clarifies existing law by correcting these grammatical errors. The proposal further clarifies the parties who have right to access confidential documents without a prior court order by reformatting the statute to include a sub-section list of the parties.

**PRIOR POSITIONS TAKEN ON THIS ISSUE**

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

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

**Others**

(May attach list if more than one )

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

**REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS**

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

**Referrals**

[NONE]  
(Name of Group or Organization) (Support, Oppose or No Position)

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

## WHITE PAPER

### PROPOSED AMENDMENT OF F.S. SECTION 744.3701(1)

#### A. SUMMARY

The proposed amendment eliminates a misplaced comma and conjunction from the language of Florida Statutes § 744.3701(1) in order to address a grammatical error and to avoid misinterpretation of the statute.

#### B. CURRENT SITUATION

The relevant portion of Florida Statute § 744.3701 reads as follows:

“(1) Unless otherwise ordered by the court, upon a showing of good cause, an initial annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by the court, the clerk or the clerk’s representative, the guardian and the guardian’s attorney, the guardian ad litem with regard to the settlement of the claim, the ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated, the ward’s attorney, the minor if he or she is at least 14 years of age, or the attorney representing the minor with regard to the minor’s claim, or as otherwise provided by this chapter.”

The existing statute improperly places a comma prior to the phrase “upon a showing of good cause” which could incorrectly lend itself to an interpretation that the court may order documents be provided without a showing of good cause.

Additionally, the existing statute reads “or the attorney representing the minor with regard to the minor’s claim, or...”. This is grammatically incorrect as a conjunction should only be used prior to the last item in a list.

#### C. EFFECT OF PROPOSED CHANGES

The proposed amendment deletes the comma prior to the phrase “upon a showing of good cause” and deletes the word “or” prior to the phrase “attorney representing the minor.” Additionally, the proposed amendment reformats the list into subsections (a)-(i) to improve the readability and clarity of the statute.

#### D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None

#### E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None

#### F. CONSTITUTIONAL ISSUES

None

#### G. OTHER INTERESTED PARTIES

None are known at this time.

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A bill to be entitled

An act relating to confidentiality of guardianship materials; amending s. 744.3701, F.S.; correcting a grammatical error in the statute and separating list into subsections

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

Section 1. Section 744.3701(1), Florida Statutes, is amended to read:

744.3701. Confidentiality

(1) Unless otherwise ordered by the court~~;~~ upon a showing of good cause, an initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by:

(a) The court~~;~~

(b) The clerk or the clerk's representative~~;~~

(c) The guardian and the guardian's attorney~~;~~

(d) The guardian ad litem with regard to the settlement of the claim~~;~~

(e) The ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated~~;~~

(f) The ward's attorney~~;~~

(g) The minor if he or she is at least 14 years of age~~;~~

(h) The attorney representing the minor with regard to the minor's claim~~;~~ or

(i) As otherwise provided by this chapter.

Section 2. This act shall take effect upon becoming law and shall apply to all proceedings pending before such date and all proceedings commenced on or after the effective date.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** John C. Moran, Chair, Probate Law and Procedure Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date \_\_\_\_\_, 2018)

**Address** Gunster, Yoakley & Stewart, P.A., 777 S. Flagler Drive, Suite 500 East, West Palm Beach, FL 33401  
Telephone: (561) 650-0515; Email: [jmoran@gunster.com](mailto:jmoran@gunster.com)

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

## CONTACTS

**Board & Legislation Committee Appearance**

**John C. Moran**, Gunster, Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401-6194, Telephone: (561) 650-0515, Email: [jmoran@gunster.com](mailto:jmoran@gunster.com)

**Sarah Butters**, Ausley McMullen, 123 S. Calhoun St., Tallahassee, FL 32301, Telephone (850) 425-5447, Email: [sbutters@ausley.com](mailto:sbutters@ausley.com)

**Peter M. Dunbar**, Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100, Email: [pdunbar@deanmead.com](mailto:pdunbar@deanmead.com)

**Martha J. Edenfield**, Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-4100, Email: [medenfield@deanmead.com](mailto:medenfield@deanmead.com)

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

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

## PROPOSED ADVOCACY

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

**If Applicable, List The Following** N/A  
\_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support  Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

"Supports proposed amendment to Section 733.610, Florida Statutes, by expanding the categories of entities and persons related to the personal representative for purposes of determining whether the personal representative, or someone sufficiently related to the personal representative for conflict purposes, holds a substantial beneficial or ownership interest that could create a conflict of interest when engaging in a sale, encumbrance, or other transaction."

### Reasons For Proposed Advocacy:

Currently Section 733.610 renders voidable "any sale or encumbrance to the personal representative or the personal representative's spouse, agent, or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest . . ." In this current construction, two types of potential conflicts have been omitted: (1) conflicts posed if the personal representative has a substantial beneficial or





## WHITE PAPER

### PROPOSED ADDITION TO PART XLII OF CHAPTER 733, FLORIDA STATUTES

#### SECTION 733.610 – Sale, encumbrance, or transaction involving conflict of interest.

##### I. SUMMARY

Currently, Section 733.610, Florida Statutes renders voidable “any sale or encumbrance to the personal representative or the personal representative’s spouse, agent, or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest . . .” The statute is intended to address potential conflicts of interest for a personal representative engaging in a sale, encumbrance, or other transaction in his fiduciary capacity. However, the existing statute fails to accomplish its purpose because has omitted certain categories of parties whose transactions could also create a conflict of interest for the personal representative.

The statute has omitted two types of potential conflicts: (1) conflicts posed if the personal representative has a substantial beneficial or ownership interest in an entity other than a corporation or trust, such as a partnership or limited liability company; and (2) conflicts posed by substantial beneficial or ownership interests in entities held by the personal representative’s spouse, agent, or attorney. The proposed changes add these additional categories to complete the listed interests and persons who might hold the interests that could create a conflict of interest for the personal representative engaging in such transactions.

This change is recommended to ensure consistency in the treatment of potential conflicts of interest that could arise under the statutory circumstances.

##### II. CURRENT SITUATION

Under the current version of Section 733.610, Florida Statutes, there is a statutory gap that creates an inconsistency by rendering voidable some types of transactions that create a conflict of interest for the personal representative but not others. This situation is contrary to the intent of the statute, which attempts to give equal treatment to an array of situations in which a potential conflict of interest could arise for the personal representative. It makes little sense to omit other situations that could also lead to the same conflict.

##### III. EFFECT OF PROPOSED CHANGES

The effect of proposed Section 733.610, Florida Statutes is to provide consistent treatment across situations that could give rise to a conflict of interest for a personal representative engaging in a sale, encumbrance, or other transaction. The proposed changes add additional entities owned by the personal representative and additional categories of persons related to the personal representative whose interests could create a conflict of interest for the personal representative.

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

None.

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

None.

**VI. CONSTITUTIONAL ISSUES**

None.

**VII. OTHER INTERESTED PARTIES**

None.

1 A bill to be entitled

2 An act to achieve consistency in the treatment of  
3 conflicts of interest for the personal representative;  
4 amending ss. 733.610 F.S.

5  
6 Be it enacted by the Legislature of the State of Florida:

7  
8 **Section 1.** Section 733.610 is amended to read:

9 733.610 Sale, encumbrance, or transaction involving conflict  
10 of interest.--Any sale or encumbrance to the personal  
11 representative or the personal representative's spouse, agent, or  
12 attorney, or any corporation, other entity, or trust in which the  
13 personal representative, or the personal representative's spouse,  
14 agent or attorney has a substantial beneficial or ownership  
15 interest, or any transaction that is affected by a conflict of  
16 interest on the part of the personal representative, is voidable  
17 by any interested person except one who has consented after fair  
18 disclosure, unless:

19 (1) The will or a contract entered into by the decedent expressly  
20 authorized the transaction; or

21 (2) The transaction is approved by the court after notice to  
22 interested persons

23 **Section 2.** This act shall take effect July 1, 2018.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** David J. Akins, Chair, Estate and Trust Tax Planning Committee of the Real Property Probate and Trust Section  
(List name of the section, division, committee, bar group or individual)

**Address** 420 South Orange Avenue, Suite 700 Orlando, FL 32806  
Telephone: (407) 841-1200

**Position Type** The Estate and Trust Tax Planning Committee of the Real Property, Probate and Trust Law Section of The Florida Bar  
(Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation

#### Committee Appearance

**David J. Akins**, Dean Mead, 420 South Orange Avenue, Suite 700 Orlando, FL 32806 Telephone: (407) 841-1200

**Sarah Butters**, Ausley McMullen, 123 South Calhoun Street, Tallahassee, FL 32301

Telephone: (813) 907-6643

**Peter M. Dunbar**, Dean Mead, 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301 Telephone 850-999-4100

**Martha J. Edenfield**, Dean Mead, 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301 Telephone 850-999-4100

### Appearances

#### before Legislators

\_\_\_\_\_  
(List name and phone # of those appearing before House/Senate Committees)

### Meetings with

#### Legislators/staff

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

## PROPOSED ADVOCACY

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

### If Applicable,

#### List The Following

N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

### Indicate Position

Support

Oppose

Technical

Other

Assistance

### Proposed Wording of Position for Official Publication:

Support proposed legislation creating Florida Statutes §689.151 to (i) permit the creation of JTWR0S and TBE in personal property through direct transfers by abolishing the common law unities of time and title required for the creation of a JTWR0S or TBE in personal property (eliminating the need to make indirect transfers through a straw man), (ii) create evidentiary presumptions favoring the creation of

JTWROS and TBE in personal property, and (iii) permit the creation of unequal shares in a JTWROS in personal property by abolishing the common law unity of interest required for the creation or continuation of a JTWROS in personal property (permitting survivorship to operate on unequal shares).

**Reasons For Proposed Advocacy:**

The proposed legislation will bring clarity and certainty to an area of Florida law in which there is now considerable confusion and misconception. New § 689.151 does for personal property within the scope of the statute what s. 689.11 now does for real property. There is no compelling policy reason to make it more difficult for a husband and wife to create a TBE in personal property than it is for real property. Married couples have a legitimate expectation that personal property that they hold jointly should be treated no differently from their jointly-owned real property. After the enactment of the new statute, an owner, by direct transfer, may validly create a JTWROS with another person, or create a TBE with an owner's spouse without the use of a straw man. What can be achieved currently through a straw man should be achievable directly. Through its use of evidentiary presumptions, the new statute balances the interests of property owners for certainty in the creation of JTWROS and TBE in personal property and the need to protect creditors and third parties. Lastly, the proposal will permit unequal interests in JTWROS, thereby permitting survivorship to operate on unequal shares.

**PRIOR POSITIONS TAKEN ON THIS ISSUE**

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

**Most Recent Position**

\_\_\_\_\_  
(Indicate Bar or Name Section) (Support or Oppose) (Date)

**Others**

(May attach list if more than one)

\_\_\_\_\_  
(Indicate Bar or Name Section) (Support or Oppose) (Date)

**REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS**

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

**Referrals**

Family Law Section, TFB  
\_\_\_\_\_  
(Name of Group or Organization) (Support, Oppose or No Position)

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

Business Law Section, TFB  
\_\_\_\_\_  
(Name of Group or Organization) (Support, Oppose or No Position)

**Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the**

**scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (850) 561-5662 or 800-342-8060, extension 5662.**

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An act relating to tenancies by the entirety, joint tenancies with right of survivorship and tenancies in common in personal property; creating s. 689.151, F.S.; abolishing the common law requirements of unity of time and title with respect to joint tenancies with right of survivorship and tenancies by the entirety in personal property; abolishing the common law requirement of unity of interest with respect to joint tenancies with right of survivorship in personal property; codifying or establishing presumptions concerning tenancies by the entirety, joint tenancies with right of survivorship and tenancies in common in personal property; providing exclusions; providing for supplementation by common law; providing applicability; providing an effective date.

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

Section 1. Section 689.151, Florida Statutes, is created to read:

**689.151. Tenancies by the entirety, joint tenancies with right of survivorship, and tenancies in common in personal property.**

(1) With respect to joint tenancies with right of survivorship and tenancies by the entirety in personal property:

(a) The common law requirements of unity of time and title are abolished.

(b) A joint tenancy with right of survivorship in personal property may be created in the existing owner or owners and another person or persons through a direct transfer by the existing owner or owners.



24 (c) A tenancy by the entirety may be created in personal  
25 property owned by one spouse through a direct transfer to both spouses.

26 (2) Except as provided in subsection (3), when the owner or owners of  
27 personal property designate or add the name of one or more persons in an  
28 instrument or record of transfer or instrument or record evidencing ownership  
29 indicating that they own or hold the property as joint tenants with right of  
30 survivorship, a rebuttable presumption arises that the property is owned by them  
31 as joint tenants with right of survivorship, and that presumption may only be  
32 overcome by clear and convincing evidence that a joint tenancy with right of  
33 survivorship was not intended or created.

34 (3) Unless there is an express indication in an instrument or record of  
35 transfer or instrument or record evidencing the ownership of personal property  
36 that a tenancy by the entirety is not intended, a rebuttable presumption that  
37 personal property owned by both spouses is owned by them as tenants by the  
38 entirety arises when:

39 (a) No other form of ownership is specified; or

40 (b) There is a designation of joint tenancy with right of  
41 survivorship in an instrument or record of transfer or instrument or record  
42 evidencing the ownership of personal property.

43 That presumption may only be overcome by clear and convincing evidence that a  
44 tenancy by the entirety was not intended or created. This subsection also  
45 applies when the owner of personal property designates or adds the name of his

46 or her spouse in an instrument or record of transfer or instrument or record  
47 evidencing the ownership of that property.

48 (4) When a tenancy by the entirety is designated in an instrument or  
49 record of transfer or instrument or record evidencing the ownership of personal  
50 property, or when an owner of personal property adds the name of his or her  
51 spouse to such instrument or record with a designation of tenancy by the entirety,  
52 the intent to create such a tenancy is conclusively presumed.

53 (5) With respect to joint tenancies with right of survivorship in personal  
54 property, the common law requirement of unity of interest is abolished and the  
55 shares or interests of joint tenants may be equal or unequal. It is rebuttably  
56 presumed that the shares or interests held by joint tenants with right of  
57 survivorship or tenants in common are equal, although that presumption may be  
58 overcome by a preponderance of the evidence of a contrary intention.

59 (6) The rebuttable presumptions stated in subsections (2) and (3) implement  
60 public policies which favor survivorship and provide married couples with security during  
61 their marriage and guaranteed succession at death, and are therefore presumptions  
62 which affect the burden of proof pursuant to s. 90.304 and impose the burden of proof  
63 upon the party asserting that the presumed tenancy was not intended or created.

64 (7) This section shall not affect the application of s. 319.22, s. 655.78,  
65 s. 655.79, s. 655.80, s. 655.82, s. 689.115, or ss. 711.50 - 711.512.

66 (8) As used in this section:

67 (a) "Personal property" means all property other than "real  
68 property," as that latter term is defined in s. 192.001, and other than an interest in  
69 a trust to which ch. 736 applies.

70 (a) "Record" has the meaning given in s. 605.0102.

71 (9) The common law of joint tenancies with right of survivorship and  
72 tenancies by the entirety supplements this section except to the extent modified  
73 by it.

74 (10) The presumptions stated in this section shall apply to all  
75 proceedings pending on or before its effective date and to all proceedings  
76 commenced on or after the effective date.

77 (11) Subsections (1) and (5) are remedial in nature and, except as  
78 provided below, shall apply to transactions occurring prior to the effective date of  
79 this section to the extent that those transactions relate to the existence of a joint  
80 tenancy with right of survivorship or a tenancy by the entirety on the effective  
81 date of this section, provided that such application shall not impair any right  
82 acquired prior to the effective date of this section if that right is confirmed in a  
83 judicial proceeding commenced within 2 years after that effective date.

84 (12) Nothing in this section shall impair the rights of any lienholder or  
85 creditor acquired prior to the effective date of this section.

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

## Real Property, Probate and Trust Law Section of The Florida Bar

### White Paper on Proposed Enactment of Florida Statutes Section 689.151

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#### I. SUMMARY

The proposed legislation originates from The Estate and Trust Tax Planning Committee (the “Committee”) of the Real Property, Probate and Trust Section of The Florida Bar (the “RPPTL Section”).

The proposed legislation would enact new Florida Statutes § 689.151 to (i) make it easier to create, and prove the existence of, joint tenancies with right of survivorship (“JTWROS”) and tenancies by the entirety (“TBE”) in personal property, and (ii) permit the creation of unequal shares in a JTWROS in personal property. The proposed statute is expressly limited to personal property and has no application to any interest in real property.

The proposed legislation abolishes the unities of time and title that are required under the common law to validly create JTWROS and TBE in personal property. In the case of JTWROS, the unity of the owners’ interests—also necessary at common law to create a valid JTWROS relationship—would also be abolished. These changes will apply to transactions intended to create JTWROS and TBE relationships before the effective date of the statute, unless they impair interests in such property that already exist.

The proposed legislation creates several rebuttable presumptions as to the existence or not of a valid JTWROS or TBE relationship. These presumptions apply to all proceedings pending on or before, or commenced after, the effective date of the statute. The presumptions can, in most cases, be overcome only by clear and convincing evidence. The proposed statute’s rebuttable presumptions in favor of the creation of JTWROS and TBE relationships are stated to implement public policy and, as such, under the Florida Evidence Code, shift the burden of proof to the party disputing the existence of the JTWROS or TBE relationship. Presumptions that implement public policy are burden shifting presumptions under the Florida Evidence Code, rather than so-called “bursting bubble” presumptions. Where there is a writing or record of transfer or ownership that designates the personal property as being owned by spouses as TBE, the *intent* to create that relationship (but not the TBE relationship) is conclusively, and not rebuttably, presumed.

The proposed legislation also includes a provision pursuant to which the interests of owners in personal property held as JTWROS or tenants in common are rebuttably presumed to be equal.

A general thrust of the proposed statute is to move firmly away from the common law requirements for the creation of JTWROS and TBE in personal property, and firmly towards a statutory framework that fosters a common-sense, modern and statutory-based creation of such relationships. Enactment of the proposed legislation will bring clarity and certainty to an area of the law in which there is now considerable apprehension, confusion and misconception.

## II. CURRENT SITUATION

At common law, four unities must be present to create a joint tenancies with right of survivorship (“JTWROS”) relationship: (1) unity of possession (joint ownership and control); (2) unity of interest (the interest in the property must be identical); (3) unity of title (the interests must have originated in the same instrument); and (4) unity of time (the interests must have commenced simultaneously). A fifth unity, unity of person, is also required to establish a tenancies by the entirety (“TBE”) relationship.

Under present law, derived from the common law, there is an impediment to an owner of personal property, by direct transfer, validly creating a JTWROS with another person, or creating a TBE with an owner’s spouse. The impediment, which has necessitated the utilization of an indirect, two-step transfer through a straw man, comes from the common law rule that neither a JTWROS nor a TBE may be created unless there is both unity of time and unity of title. What can be done currently with a straw man should be achievable directly.

The enactment of Florida Statutes § 689.11(1) partially resolved the antiquated straw man problem by eliminating the requirement for the unities of time and title in the case of direct conveyances of real property between spouses, allowing, for example, either spouse to create a TBE by conveying the property to both spouses. Similarly, under Florida Statutes § 655.79(1), deposits in Florida banks and credit unions held in the name of married persons are considered to be a tenancy by the entirety (unless otherwise specified in writing), without regard to the common law unities.

In *Beal Bank, SSB v. Almand & Associates*, 780 So. 2d 45 (Fla. 2001), the Florida Supreme Court addressed whether certain accounts held in the names of both spouses were held as TBE. The Supreme Court reasoned that there was a rebuttable presumption of an intent to create a TBE in an account held by husband and wife where the account documentation was silent with respect to type of ownership intended.

*Beal Bank* is significant chiefly because the Court concluded that the fact that the spouses intended to hold the account as TBE—in other words, the fifth unity of person—could be presumed and did not have to be proved by the account owner. Instead, the fact that the account was *not* intended to be held as TBE had to be proved by a preponderance of the evidence by the party arguing that the account was not so owned.

*Beal Bank* does *not* stand for the proposition that the other four common law unities are not necessary for the creation of a TBE. That this is so has been demonstrated by the decision of United States Bankruptcy Court for the Southern District of Florida in *In re Aranda*, 2011 WL 87237 (Bankr. S.D. Fla. 2011), where the court held that an account was not held as TBE because the common law unity of time was not present.

There is no compelling policy reason to make it more difficult for a husband and wife to create a TBE in personal property than it is for real property. Married couples have a legitimate expectation that personal property that they hold jointly should be treated no differently from their jointly-owned home. A statute that does for personal property what Florida Statutes § 689.11(1) does for real property would provide greater uniformity and predictability, and would reduce confusion and litigation.

The Bankruptcy Court in *In re Shahegh*, 2013 WL 364821 (Bankr. S.D. Fla 2013), after struggling with the existing, muddled state of the law on creation TBE, in a sense of exasperation asked “[s]hould the concept of TBE ownership in personal property be changed and modified? Florida Statutes Section 689.11 suggests that changes may also be warranted when it comes to TBE interests in personalty.”

The proposed legislation does not go so far as to import the bright-line clarity to personal property that Florida Statutes § 689.11 does for real property. However, it clarifies and modernizes the law regarding the creation of JTWR0S and TBE relationships in personal property yet takes into account the valid need to protect creditors and third parties from fraud and deceit. Through its use of evidentiary rebuttable presumptions, the statute intentionally strikes the balance in favor of the valid creation and existence of these relationships. The proposed legislation departs from the common law dogma that has sown unnecessary confusion in Florida residents (and judges) and thwarted the reasonable expectations of Floridians who want to co-own personal property.

### **III. EFFECT OF PROPOSED LEGISLATION (DETAILED ANALYSIS BY SUBSECTION)**

#### **A. SUBSECTION (1).**

##### **(1) Current Situation.**

Decisions of the Florida Supreme Court have continued to uphold the necessity of compliance with the common law unities. See *Beal Bank, SSB v. Almand & Associates*, 780 So.2d 45, 53 (Fla. 2001) (“For joint tenancies, “ the owners’ interests in the property must be identical, the interests must have originated in the identical conveyance, and the interests must have commenced simultaneously”); *LaPierre v. Kalergis*, 257 So.2d 33 (Fla. 1972); *First National Bank of Leesburg v. Hector Supply Company*, 254 So.2d 277 (Fla. 1971); *Kozacik v. Kozacik*, 26 So.2d 659 (Fla. 1946). However, several district court decisions have not adhered to that requirement and are in conflict with those Supreme Court decisions. See *Simon v. Koplín*, 159 So.3d 281 (Fla. 2d DCA 2015), which misconstrued F.S. 689.15 as abolishing the common law unities requirement if the instrument of transfer satisfies the statute by expressly providing for survivorship; *Ratsinka v. Estate of Denesuk*, 447 So.2d 241 (Fla. 2d DCA 1983); *D.A.D., Inc. v. Moring*, 218 So.2d 451 (Fla. 4th DCA 1969).

##### **(2) Effect of Proposed Changes.**

Subsection (1) abolishes the common law requirements of unities of time and title to validly create a JTWR0S or TBE in personal property so that those tenancies can be created through an owner’s direct transfer to: (i) another person; or (ii) the owner and his or her spouse. The effect of the change is to authorize and validate such direct transfers and eliminate the need to utilize an indirect transfer through a straw man. In many states, JTWR0S have been exempted by statute from the required unity of interest. Orth, John V., “Presumed Equal: Shares of Cotenants,” *ACTEC Law Journal*, Vol. 37, No. 3, Winter 2011, p. 463.

Thus, for example, Wife, who is the 100% owner of Asset X, can transfer Asset X to Wife and Husband as TBE notwithstanding the lack of the common law unities of time and title. It will no longer be necessary for one spouse to first transfer Asset X to a straw man, who would then transfer Asset X to the spouses as TBE. The same is true for an owner who wishes to create a JTWRORS with one or more persons.

Subsection (1) is consistent with and furthers a public policy against placing unnecessary restrictions upon the free alienation of property and property interests, including transfers to create a JTWRORS or TBE in personal property. The elimination of the unities of title and time with respect to personal property will facilitate the creation of those tenancies through direct transfers.

The proposed change will not alter the existing exempt status of assets held in a TBE from the creditors of only one spouse because that exemption of derived from the separate and distinct unity of person, which is not abolished or affected in any way by the proposed change.

## **B. SUBSECTIONS (2), (3), (6) AND (10)**

### **(1) Current Situation.**

The landmark case of *Beal Bank, SSB v. Almand & Associates*, 780 So. 2d 45, 60 (Fla. 2001), held that the presumption of intent that favors TBE in real property is also applicable to personal property (i.e., that the intent of spouses to hold jointly-owned property as TBE is presumed unless they expressly specify a contrary intention). *Beal Bank* further held that the titling of an asset by spouses in their names as JTWRORS does not alone constitute an express disclaimer of a TBE because a TBE is “essentially a joint tenancy, modified by the common-law doctrine that the husband and wife are one person.” *Beal Bank, SSB v. Almand & Associates*, 780 So. 2d 45, 60 (Fla. 2001). Accordingly, absent an expression of contrary intent, property that is jointly owned by spouses is rebuttably presumed to be held as TBE.

In the case of property jointly owned by non-spouses, if the ownership documentation indicates that the property is held as JTWRORS, Florida case law currently recognizes that it is rebuttably presumed to be owned by them as JTWRORS. See *Branch Banking & Trust Co, v. Ark Development/Oceanview, LLC*; 150 So.3d 817 (Fla. 4th DCA 2014); *Escudero v. Hasbun*, 689 So.2d 1144 (Fla. 3d DCA 1997); *Hagopian v. Zimmer*, 653 So.2d 474 (Fla. 3d DCA 1995); and *Barlow v. Department of Health & Rehabilitative Services*, 512 So.2d 1069 (Fla. 1st DCA 1987).

Although Florida Statutes § 689.15 provides that the common law doctrine of the right of survivorship does not prevail in Florida, it recognizes that a JTWRORS may be created in real or personal property when there is an express provision for the right of survivorship.

### **(2) Effect of Proposed Changes.**

Subsection (3) creates a statutory evidentiary rebuttable presumption that personal property jointly-owned by spouses is held by them as TBE unless the ownership documentation specifies another form of ownership or otherwise indicates that TBE is not intended. However, the TBE presumption will still be created even if the documentation designates JTWRORS, unless that designation is accompanied by an express indication that TBE is not intended, in which event a

JTWROS presumption will be created pursuant to subsection (2). Subsection (3) is consistent with and codifies one of the presumptions recognized in *Beal Bank, SSB v. Almand & Associates*, 780 So. 2d 45, 60 (Fla. 2001). Many financial institutions will not, or prefer not to, offer a TBE account option, but all financial institutions offer JTWROS accounts. The rebuttable presumption that a financial account owned by spouses, and titled or styled by the financial institution as JTWROS, is presumed to be owned by the spouses as TBE broadens the availability of the TBE option and comports with the reasonable expectations of married investors in Florida.

Subsection (2) creates a statutory rebuttable presumption that, except as otherwise provided as to spouses under subsection (3), jointly-owned personal property is held as JTWROS if the ownership documentation indicates that form of ownership. This presumption, which is consistent with current Florida case law cited in the preceding “Current Situation” section, enables the proponent of a JTWROS to use the designation to easily prove, subject to rebuttal, the existence of a JTWROS without having to also prove that a property transfer has occurred or that the requirements of a common law gift have been satisfied.

As stated in subsection (6), the rebuttable presumptions contained in subsections (2) and (3) implement public policies which favor survivorship and provide married couples with security during their marriage and guaranteed succession at death, and are therefore presumptions which affect the burden of proof pursuant to Florida Statutes § 90.304 and impose the burden of proof upon the party asserting that the presumed tenancy was not intended or created. If the Legislature intends for a statutory presumption to be a policy-based presumption that shifts the burden of proof to the party against whom the presumption operates, the statute must contain clear language to that effect. *Universal Insurance Company of North America v. Warfel*, 82 So. 3d 47, 58 (Fla. 2012).

These burden-shifting presumptions may be rebutted by clear and convincing evidence that the presumed tenancy was not created. Matters that may prove that the presumed tenancy was not created would include survivorship not being intended, or the absence of any valid transfer due to: (i) fraud; (ii) undue influence; (iii) incapacity; or (iv) in the case of a purported gift, that the common law gift requirements of present donative intent, delivery, and acceptance were not satisfied.

There is a distinction between the presumptions stated in subsections (2) and (3) and existing law with respect to the burden of proof or persuasion required to rebut them. It appears that existing Florida law would only require “a preponderance” or “the greater weight” of the evidence to rebut them, whereas subsections (2) and (3) would require “clear and convincing” evidence. This would make the statutory presumptions somewhat stronger than those existing under existing Florida law.

### **C. SUBSECTION (4)**

#### **(1) Current Situation.**

*Beal Bank, SSB v. Almand & Associates*, 780 So. 2d 45, 60 (Fla. 2001), citing *First National Bank of Leesburg v. Hector Supply Co.*, 254 So.2d at 777, 781 (Fla. 1971); *Morse v. Kohl, Metzger, Spotts, P.A.*, 725 So.2d 436, 437 (Fla. 4th DCA 1999); and *Sheeler v. United States*



*Bank of Seminole*, 283 So.2d 566, 566 (Fla. 4th DCA 1973), held that an express designation on the signature card that the account is held as a TBE ends the inquiry as to the form of ownership. That is tantamount to a conclusive presumption that a TBE was intended.

**(2) Effect of Proposed Changes.**

Subsection (4) creates a statutory evidentiary conclusive presumption that a TBE in personal property was intended if such a designation was expressly stated in the ownership documentation. This conclusive presumption is consistent with and codifies one of the presumptions established by *Beal Bank, SSB v. Almand & Associates*, 780 So.2d 45, 60 (Fla. 2001) (Extrinsic evidence of lack of intent to establish a TBE will not be considered when the documentation contains an express designation of TBE).

Even when the documentation expressly designates a TBE and the intention to create a TBE is conclusively presumed, challenges to the creation of a TBE are permitted based upon the absence of a valid transfer due to: (i) fraud; (ii) undue influence; (iii) incapacity; or (iv) in the case of a purported gift, that the common law gift requirements of present donative intent, delivery, and acceptance were not satisfied.

**D. SUBSECTION (5)**

Subsection (5) abolishes the unity of interest required at common law to create a valid JTWRORS relationship. Thus, multiple owners can co-own personal property JTWRORS in unequal proportions. That said, the statute provides for a rebuttable presumption that personal property owned as JTWRORS or tenants in common is owned by multiple owners in equal shares or interests. This presumption is not one that implements public policy, and as such is a bursting bubble presumption.

**E. SUBSECTION (7)**

Subsection (7) clarifies that the proposed legislation is not intended to change or affect the application of several existing statutes that deal with co-ownership or survivorship of interests in personal property. Those statutes are: § 319.22 (joint motor vehicle titles), § 655.78 (bank protection for multiple-party accounts), § 655.79 (multiple-party accounts/survivorship), § 655.80 (convenience accounts), § 655.82 (pay-on-death accounts), § 689.115 (mortgages and notes they secure), and § 711.50 – 711.512 (transfer-on-death registrations).

**F. SUBSECTION (8)**

Subsection (8) contains self-explanatory and straightforward definitions of basic terms used in the proposed statute. The importance of this subsection is to emphasize that the proposed statute is intended to apply to all types of personal property other than beneficial interests in trusts to which the Florida Trust Code, Chapter 736, apply.

**G. SUBSECTION (9)**

Subsection (9) preserves all common law rules and principles applicable to JTWRORS and TBE except to the extent those rules or principles are expressly modified by the provisions of the

proposed statute. Accordingly, in the absence of conflict, the proposed statute does not replace or supersede any existing common law.

#### **H. SUBSECTION (10)**

Subsection (10) provides that the statutory presumptions stated in the proposed statute will be applicable to all proceedings pending on or before the effective date of the statute and all proceedings commenced thereafter.

#### **I. SUBSECTIONS (11) AND (12)**

Subsection (11) states, as a general rule, that the provisions of subsection (1), which eliminates the need for an owner to use a straw man to create a JTWROS with another person or a TBE with the owner's spouse, and subsection (5), which permits joint tenants to hold unequal shares in a JTWROS, are remedial in nature and shall apply to transactions occurring prior to the effective date of the proposed statute. The purpose of subsection (11) is to preclude claims or assertions that: (i) pre-existing attempts to create JTWROS or TBE in personal property were invalid because they were created by direct transfers by an owner without using an intermediary straw man (i.e., failure to satisfy unities of time and/or title); and (ii) pre-existing attempts to create JTWROS in personal property were invalid because the interests of the joint tenants were not equal (i.e., failure to satisfy unity of interest). For example:

1. Both spouses are still alive and one spouse claims there was no TBE because unity of time and/or title was missing and that he/she can therefore unilaterally take his/her share.
2. Joint tenant (JTWROS) or a spouse (TBE) dies and decedent's estate claims that there was no TBE/JTWROS because unities of time and title were missing and that decedent's share is therefore an estate asset.
3. Joint tenant (JTWROS) dies and decedent's estate claims that there was no unity of interest or right of survivorship because the shares were not equal and that decedent's share is therefore an estate asset.

The proposed statute contains two very important exceptions to its general rule that subsections (1) and (5) shall apply retroactively to transactions occurring prior to the effective date:

1. Subsection (12) provides that nothing in the proposed statute shall impair the rights of any lienholder or creditor acquired prior to its effective date.
2. Subsection (11) provides that its application shall not impair any right acquired prior to its effective date if that right is confirmed in a judicial proceeding commenced within 2 years after the effective date.

The potential classes of persons whose rights would be affected by the proposed statute are: (i) persons who may claim an ownership interest in the property; and (ii) their potential creditors. Subsection (12) provides very broad protection to creditors and lienholders against retroactive application. Subsection (11), which could be invoked by persons who may claim an ownership

interest, provides a more limited protection against retroactive application and requires the commencement of a legal proceeding within 2 years of the effective date of the proposed statute. It is believed that the retroactive application of the statute will, in most cases, be consistent with the intent and best interests of persons who may claim an ownership interest in the property. This curative/limitations provision is similar to the one found in § 689.11, which validated both future and *past* direct transfers of real property from an owner-spouse to the owner and his/her spouse. Subsection (4) of that statute provides that it shall not apply to any conveyance made before the effective date of the statute if the validity of the conveyance is contested by suit commenced within 1 year of the effective date.

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

Adoption of this legislative proposal by the Florida Legislature should not have a fiscal impact on state and local governments. It should instead be revenue neutral.

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

The certainty and predictability that the proposed legislation will lend to rights and liabilities in personal property intended to be owned JTWRORS or TBE will benefit the private sector.

#### **VI. CONSTITUTIONAL ISSUES**

The retroactive aspects of the proposed legislation do not impair any property interests that exist prior to the effective date of the statute. There are no known Constitutional issues.

#### **VII. OTHER INTERESTED PARTIES**

Other groups that may have an interest in the legislative proposal include the Family and Business Law Sections of The Florida Bar and the Florida Bankers Association.

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