



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

**Tradewinds Island Resort on St. Pete Beach**

**Saturday, June 2, 2018**  
**9:30 a.m.**

**BRING THIS AGENDA TO THE MEETING**

Real Property, Probate and Trust Law Section  
Executive Council Meeting  
Tradewinds Island Resorts on St. Pete Beach  
Saturday, June 2, 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 February meeting of Executive Council held at The Casa Monica Resort St. Augustine, Florida. **pp. 11- 41**

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

1. Recognition of Guests

2. Presentation of Executive Council Resolution to Family and Friends of Louie N. Adcock, Jr., **p. 42**

3. Recognition of General Sponsors and Friends of the Section, **pp. 43 - 45**

4. Milestones

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

6. Report of Interim Actions by the Executive Committee

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., **p. 47**

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. 48*

**X. [General Standing Division Report](#)** — *Debra L. Boje, General Standing Division Director and Chair-Elect*

**Action Items:**

Sponsorship Coordination - Wilhelmina F. Kightlinger, Chair

Motion to approve, in accordance with past Section practice, the waiver of general sponsorship fees for The Florida Bar Foundation for fiscal year 2017-2018, and allowing The Florida Bar Foundation to have exhibitor space at the 2018 Legislative Update and 2019 Convention without paying an exhibitor fee if space is available after registration of paying exhibitors.

**Informational Items:**

1. **Fellows** – Benjamin Frank Diamond, Chair

Update on selection of 2018-20 Fellows Class

Graduation of 2016-18 Fellows Class: Amber Elizabeth Ashton; Angela Klemack Santos; Scott M. Work and Stephanie Marie Villavicencio.

2. **Information Technology and Communications** – Neil Barry Shoter, Chair

Report on New App

3. **Legislation** – Sarah Swaim Butters and W. Cary Wright, Co-Chairs

Final report on 2018 legislation. **pp. 49 - 54**

Renewal of existing Section legislative positions. **pp. 55 -67**

4. **Legislative Update** - Stacy Ossin Kalmanson, Chair

Update on upcoming Legislative Update. **p. 68**

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

Update on matters of interest.

6. **Strategic Planning Meeting** – Debra L. Boje and Andrew Marvel O'Malley, Co-Chair

Announcement of 5 year review and updating of strategic plan

7. **Remote Notarization Committee** – E. Burt Bruton, Chair

Update on current status of remote notarization proposed legislation. **pp. 69 -161**

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

## Information Items:

1. **Real Property Problems Study Committee – Art Menor, Chair**

Consideration of proposed legislation to amend Section 712.03, which would clarify the operation of the statute in light of a common real estate practice that may inadvertently re-inscribe restrictions and Section 712.04, which would address the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals. **pp. 162 - 168**

2. **Real Property Problems Study Committee – Art Menor, Chair**

Consideration of proposed legislation pertaining to the automatic release of the right of entry for local government, water management districts and other agencies of the state consistent with the automatic release provisions applicable to the Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education. **pp. 169 - 173**

3. **Title Issues and Title Standards Committee — Christopher Smart, Chair**

Consideration of proposed legislation to create Section 95.2311, F.S., which would establish a method of correcting obvious typographical errors in legal descriptions contained in deeds of real property. **pp. 174 - 183**

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

## Action Items:

1. **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 a joint tenancy with right of survivorship and a tenancy by the entirety in personal property through direct transfers by abolishing the common law unities of time and title required for the creation of a joint tenancy with right of survivorship or a tenancy by the entirety in personal property, (ii) create evidentiary presumptions favoring the creation of a joint tenancy with right of survivorship and a tenancy by the entirety in personal property, and (iii) permit the creation of unequal shares in a joint tenancy with right of survivorship in personal property by abolishing the common law unity of interest required for the creation or continuation of a joint tenancy with right of survivorship in personal property; (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. 184 - 204**

2. **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. 205 - 209**

**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 amendment to Florida Statutes, including Florida Statutes § 744.331, creating a new statutory procedure which would allow for the presentation of additional evidence before a petition to determine incapacity is dismissed in the event that there is a unanimous finding of the examining committee that a person is not incapacitated; (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. 210 - 226**

**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 § 744.1097, to specifically address venue for the appointment of a guardian in minor guardianships proceedings; (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. 227 – 233**

**3. Ad Hoc Electronic Wills Study Committee- Sarah Butters, Chair**

Report from the Ad Hoc Electronic Wills Study Committee and consideration of proposed electronic wills legislation. **pp. 234 - 243**

**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, February 24, 2018  
Casa Monica Resort and Spa  
St. Augustine, Florida**

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

The meeting was called to order at approximately 9:05 a.m. by Chair Andrew M. O’Malley who acknowledged the spirited and helpful debates and discussions which had occurred at two prior days of Committee meetings and Real Property and Probate and Trust Roundtables. Mr. O’Malley then welcomed all to scenic and historic St. Augustine, the oldest continuously inhabited city in the Western Hemisphere and called on Section Secretary, Lawrence J. Miller.

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

Mr. Miller announced that the attendance sheet/roster would be circulating in its usual salmon color. No penalty was announced at this meeting for the unfortunate Executive Council member who might misplace the roster, but same appeared to be well understood. The attendance roster for the meeting is attached as Addendum A.

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

Mr. Miller called to the attention of all assembled to the minutes of the December 9, 2017 meeting held in Naples, Florida and indicated that one correction involving the time for commencement of the meeting was to be made to those Minutes. Specifically, the meeting in Naples started at 9:06 a.m. rather than 10:06 a.m. Upon motion duly made and seconded, the Minutes of the December 9, 2017 meeting of the Executive Council were approved.

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

**1. Recognition of Guests:**

Mr. O’Malley recognized Section and Executive Council Member, John R. Stewart (Liaison with Florida Bar Board of Governors) and asked Mr. Stewart to stand and be recognized as the designated President Elect of The Florida Bar. Mr. O’Malley indicated that Mr. Stewart’s remarks were eagerly anticipated and would be part of the “Liaison with the Florida Bar Board of Governors” report coming up as a later Agenda item.

Mr. O’Malley also indicated that several additional guests would be arriving at the Executive Council shortly, but their appearance and their identity was a surprise.

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

The Chair then recognized and profusely thanked the following General Sponsors and Friends of the Section:

### 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

### 3. **Milestones.**

Mr. O'Malley announced that Executive Council Member Steve Reynolds would be retiring from the Executive Council after many years of service, dedication and participation in Section and Executive Council matters. His input has been highly valued and his contributions sincerely appreciated. Mr. Reynolds received a resounding thanks from the members of the Executive Council.

Mr. O'Malley also recognized Executive Council Member, Travis Hayes and his wife, Kevyn for the arrival of their new baby, Lily. After the announcement that all seems to be going well with the family, Mr. Hayes was asked to stand and received a resounding ovation from the Members of the Executive Council.

Mr. O'Malley next reminded the Members that the Memorial Resolution for Louie N. Adcock, Former Chair of the Section, which resolution was passed at the December 9, 2017, Naples Executive Council meeting, would again be read and presented to the Adcock family by former Section Chair, Sandra Diamond and Fisher Saul's partners, "Kip" Thornton and Marilyn Polson. That meeting will take place at the Trade Winds Resort at St. Petersburg Beach on May 31 through June 2, 2018.

At the request of the Chair, the proceedings were briefly interrupted for the introduction of the invited surprise guests to which the Chair had previously referred. Three appropriately dressed pirates, including the "Commodore" arrived in full pirate regalia to introduce the Executive Council to the Saturday evening events to take place at the Fountain of Youth in Saint Augustine. The live introduction had been preceded by a specially produced introductory film including the same three pirates and the recognition that the "Reptilians" would be visiting Saint Augustine and were in for a rare "treat." After making the appropriate threats, as only pirates can do, and ensuring that much damage would be done to members if they did not attend the evening's festivities along with these pirates, the three summarily left the proceedings anticipating a raucous and adventurous crowd for the evening. The Commodore reminded all of the Executive Council members attending the evening's festivities to "mind their manners." [The cabin boy was also on hand].

After the calm was restored, Mr. O'Malley continued with the Chair's report.

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

Mr. Gelfand indicated that the Section’s input had been sought and received on varied matters for the review and use of the CRC. Some of this input was used during public hearings throughout the State.

The first item which Mr. Gelfand covered was CRC Proposal 3, involving an Amendment to the Constitution permitting the Legislature to deny certain aliens and immigrants the right to own property in Florida. The Section had urged withdrawal/deletion of this proposal, and same was subsequently deleted in line with the Section’s request.

Mr. Gelfand next discussed CRC Proposal 17, which involved the ability to pierce the “homestead veil” of creditor protection in what Mr. Gelfand has referred to as the “bad boy clause amendment” to constitutional homestead protection from creditors. Specifically, the ability to attack homestead for bad acts or crimes was removed from the proposal with the input of the Section. Mr. Gelfand specifically thanked Executive Council members Stacey Rubel and Daniel Siegel for assistance with both of these proposals.

Finally, Mr. Gelfand pointed out that a Constitutional proposal which would have made persons with mental and physical disabilities a protected class under the Florida Constitution was defeated and removed from the Constitutional proposal list. The Section was concerned about the impact of such a constitutional change on our guardianship and mental health statutes.

Mr. O’Malley thanked Mr. Gelfand for his continuing efforts.

5. **Report of Interim Actions of the Executive Committee of the Executive Council, Andrew M. O’Malley, Chair.**

Mr. O’Malley first reported that pursuant to Article V, Section 4 of the Section’s By-laws, absences for the following individuals were excused and attendance requirements waived for the 17-18 Bar year:

Hon. Jessica Ticktin, Nicole Kibert; Andrew Sasso; Willie Kightlinger; Kenneth Bell; John Little; Fred Dudley; Arthur Menor; Jeff Dollinger.

Mr. O’Malley then reported that the Executive Committee had voted to support the proposed online/remote notarization statutory proposal which was read into the record and which appears immediately below. Additional information on this vote and the proposed statutory provision was to be included in the Legislation Committee Report by Online and Remote Notarization Committee Chair, Burt Bruton.

Mr. O’Malley also reported that the Executive Committee had voted to oppose a bill addressing distribution of a decedent’s funds in the absence of probate as set forth in proposed House Bill 1241 and Senate Bill 892. In doing so, the Executive Committee

noted that probate of assets in whatever form could not and should not be summarily dispensed with by virtue of these proposed statutory provisions.

**6. Upcoming Meetings.** Mr. O'Malley recognized Executive Council Member Tae Kelly Bronner, who, with Dresden Brunner, will be co-chairing this year's Section convention, which is to be held in conjunction with the next Executive Council meeting at St. Petersburg Beach on May 31 through June 3, 2018. Ms. Bronner's presentation included a slide show and description of the facilities and events, all of which were described as "au natural" and "family friendly." After some debate regarding her terminology, she reviewed with the Executive Council available activities and amenities at the resort and the inclusion of a photography contest, as well as other events which would soon be available for review on the Section website. Registration for the Tradewinds opens during the week of February 26, 2018.

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

Mr. Stewart indicated that he greatly appreciated the Section's support and thanked his many friends in the Executive Council as well as recognized the Section's commitment to many of the values and programs of The Florida Bar. He specifically indicated the Board of Governor's appreciation of the Section's emphasis on mindfulness and related programs. He thanked the Section for its past work and the tireless and focused work of our lobbyists. He indicated that present attention and focus of the Board of Governors included its trust accounting pilot project for solo and small firm lawyers whose inexperience and lack of understanding have yielded problems in the propriety of certain trust accounting procedures. As a result, the Bar was pursuing the establishment of certain safe harbors for conduct based on inexperience rather than bad faith or inappropriate action. In addition, the Board of Governors was considering the approval of a method for insuring recoupment of costs incurred in contingency fee cases when such cases are unsuccessful. He finalized his comments by stating that what the RPPTL Section does and its financial commitment to the values and projects of Florida's lawyers, helps The Florida Bar family and those its serves - for which the Bar thanks us.

Chairman O'Malley again congratulated Mr. Stewart on his selection as President Elect-Designee of The Florida Bar, that our Section and its Executive Council look forward to working with him, and that it was great to have a "dues paying member of the Real Property and Probate and Trust Law Section as the incoming leader of our Bar."

Mr. O'Malley also recognized law students Tatiana Henao, Lorenzi Lora and Judith Thomas, each from the University of Florida, who had the opportunity to more personally introduce themselves. They were welcomed with resounding applause.

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

The Chair-Elect confirmed the upcoming Section Convention occurring from May 30 through June 1 and also called attention to the upcoming Executive Council meeting in Italy. She confirmed that there are already four sponsors for the out of state/out of

country/"out of this world" meeting and thanked each of them. Ms. Boje also indicated that the Breakers reservations link would soon be available and that the Executive Council meeting schedule for her term as Chair was available in the materials at page 46 of the Agenda.

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

Treasurer Swaine indicated that the budget and related information appeared on pages 47 through 60 of the Agenda materials and explained that the expenses for the Legislative update program reflected in the materials were artificially high based upon listed expenses for the Section's Political Action Committee ("PAC") which receives funding from the proceeds of the Legislative Update. The Chair reconfirmed that all is well with the Section's finances and that the budget and financial statement would be updated in line with the note that appears in the Agenda materials and his corresponding statements during this report.

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

Director Frazier indicated that the Section's No Place Like Home project, undertaken in conjunction with the Legal Services Corporation and Legal Aid Services of Florida, was rolling out across the state after introduction in its five pilot circuits. Materials regarding the NPLH program had been placed on each chair in the Executive Committee meeting room and were available for review and follow up. The Section's next focus, through ALMs, was to obtain teachers and other volunteers for the project. Director Frazier also indicated that the project matrix reflecting the status of the program in the various circuits would be appearing on the ALM's webpage on the Section website.

Ms. Frazier also indicated that the Section (through the ALMs) was expanding lawyer inclusion programs with an additional focus on law students. She recognized Executive Council member Lynnwood Arnold and several others for their untiring work in reaching out to Florida's law schools, including the effort to secure additional participation in the Section and related activities by students at The University of Florida.

ALMs Director Frazier then reported that a reception for new members of the Executive Council had been rolled out and would be part of a regular program to introduce and orient new Executive Council members to the Executive Council process, its Committees and programs.

The Chair then thanked Ms. Frazier and urged the members of the Executive Council and the Section to participate in each of the programs that had been discussed and mentioned by Director Frazier.

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

Mr. Kelley provided the Committee's Report on Probate and Trust CLE programs, including the upcoming Litigation and Trust Symposium being held at the Marriott Westshore in Tampa on March 2, 2018. He also indicated that a helpful one-hour lunchtime webinar would be presented by Probate and Trust Division Director, William Hennessey covering the Florida Bar's new ethics rules on lawyers serving as fiduciaries in documents they draft for clients.

In addition, Mr. Kelley announced that the Wills, Trusts and Estates Certification Review Course would be presented on April 6 and 7 at the Orlando Hyatt.

CLE Co-Chair Steven Mezer reported that the Real Property Board Certification course was presented on February 8 and 9, 2019. He also recognized Construction Law Institute Chair, Sanjay Kurian. Mr. Kurian reported on the progress of the Section's Construction Law Institute ("CLI") to be held on March 9 and 10, 2018 in Orlando. Mr. Kurian reported that presently there are four hundred registrants for the CLI and with more registrants expected before presentation of the program.

Mr. Mezer thanked Mr. Kurian and reported that the annual Condominium Ins & Outs seminar will be held on April 27, 2018 in Tampa and that a mindfulness seminar is being prepared and will be presented to Section members.

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

Before turning to the General Standing Committee's Information Items, Chair-Elect Boje recognized past Section Chairs in attendance at the Executive Council meeting to select future Section leadership following today's Executive Council meeting. She thanked them for their past, current and future dedication and service to the Section.

**Information Items:**

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

Committee Co-Chair Kris Fernandez recognized Executive Council member, Dale Noll and confirmed that Mr. Noll had been chosen to participate as the Section's representative in the William Reece Smith, Jr. Leadership Academy. Mr. Noll was enthusiastically recognized by the Executive Council for being chosen to the Academy.

**2. Fellows – Benjamin Frank Diamond, Chair**

Mr. Diamond was unable to attend the meeting, but the Chair-Elect requested applications and the identification of candidates for selection as Section Fellows. The Chair-Elect asked each of the attending Fellows to stand to be recognized and thanked

them all for their continuing efforts in assisting all aspects of the Executive Council and the Section.

### 3. **Legislation** – *Sarah Butters and Cary Wright, Co-Chairs*

Ms. Butters delivered the report on Probate and Trust initiatives in the Florida Legislature. She indicated that the starting date for the 2019 legislative session will be later in the year (March, 2019) and in light of that, proposed legislation needs to be ready to be finalized at the Executive Council meeting being held at the Breakers at the end of July, 2018 in order to be included in our 2019 legislative initiatives. She then reported that the Trust Law Bill had continued through its third reading and that it was on schedule for possible passage.

Ms. Butters also indicated that although the POLST initiative appeared to be off track for any serious consideration this year, POLST legislation would probably be proposed again next year by one or more interested stakeholders.

Ms. Butters next reported on the legislative initiative to have small bank accounts pass outside of probate. She stated that the Section would be formally reacting to the proposal and working with stakeholders to resolved differences with the legislation.

In addition, she stated that the Committee is studying one new proposal involving life insurance agents accepting positions as Trustees (as well as other fiduciary positions) for irrevocable life insurance trusts and similar fiduciary positions.

Mr. Wright was then recognized and presented the Committee's report of pending Real Property legislative initiatives.

He indicated that the Section's ejectment and unlawful detainer statutory proposals (which have been connected with the MRTA bill) remained on track and that if the MRTA bill proposal passed, so too would the ejectment and unlawful detainer revisions.

Mr. Wright next confirmed that the Section's lis pendens statutory clarifications proposal was on track as well and that interspousal transfers and proposed legislation regarding same were on track as part of the tax bill being considered by both houses of the legislature.

He further reported on the status of proposed changes to the Marketable Record Title Act (Chapter 712) and stated that the House Bill (617) has passed all committees and is pending on the House Calendar, while the Senate version (SB 266) is pending review in its final committee.

Mr. Wright stated that the Section's open and expired permits legislative proposal was not having much success and we would be seeing if such proposal could be

pushed, though it did not look like it would be able to be considered and actually voted on during this legislative session.

Chair-Elect Boje then recognized online and remote notarization Committee Chair/Ad Hoc Task Force Chair, Burt Bruton who delivered the report of his Committee. Mr. Bruton confirmed that there were two large issues that came to the attention of his Committee and the Section's Executive Committee regarding the proposed online remote notarization Bill. The first involved the fact that the proposed language of the bill would permit the remote notarization of Wills, Trusts and other testamentary instruments and this was detrimental and objectionable from the Section's standpoint. The second had to do with "reciprocity" and the notarization of documents by notaries in other states and their viability and validity in Florida. Mr. Bruton reported that based upon the recommendation of Section's lobbyists, and in keeping with the Section's objections as previously stated and voted upon by the Executive Council, the Executive Committee had approved the inclusion of a delay in the application of the remote notary bill until July 1, 2020. It was also agreed by the Section's lobbyists that the Section's position on out-of-state online notarization would remain as is and that the Section's position on out-of-state notarization by out-of-state notaries (non-Florida) would also remain. Mr. Bruton indicated that if the statute, as proposed and if modified in line with the Section's approved language, would be one of the most secure e-notarization bills adopted by a legislature in the country. He further indicated that it appears that "the train is coming" regarding electronic wills and that it is necessary to accelerate the Section's attention to proposals regarding electronic Wills.

Mr. Bruton then answered questions concerning the status of the remote/online notarization bill. Thereafter, he thanked Executive Council Members Raul Ballaga, Alan Fields, Travis Hayes, Melissa Murphy and Jen Bloodworth for their tireless work. He believed that their ongoing work was so extensive that it would have required normal folks to have closed their law practice. Mr. Bruton also thanked Section Lobbyist Peter Dunbar for his obtaining a seat at the table for this legislation and pushing the Section's legislative position forward.

Chair-Elect Boje then moved to item 4 in her General Standing Division Committee's Report.

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

Ms. Boje recognized Laird Lile, Liaison with the Clerks of Court, for his report. Mr. Lile confirmed that the new Executive Director of the Court Clerk's & Controllers Association is Chris Hart IV and that Mr. Hart will be working with The Florida Bar Executive Director to move forward on areas of mutual benefit and cooperation between both organizations. In addition, Mr. Lile reported that the CCIS (Comprehensive Case Information System) is moving along quite well. Ms. Boje thanked Mr. Lile for all of his efforts.

**5. Membership and Inclusion – Jason Ellison and Brenda B. Ezell, Co-Chairs**

i) Mr. Ellison reported that the minority and inclusion picnic in South Florida took place with wonderful attendance. He also indicated that the Tampa and Orlando picnics are upcoming.

Ms. Boje then recognized and requested a report from Lynwood Arnold on his outreach to Florida law schools. Mr. Arnold reported that he is in the process of connecting the Section with various law school programs in each of Florida's law schools and he was thanked for his efforts in that regard.

He also reported that Executive Council member Fred Jones prepared an RPPTL Section outreach program for use in reaching out to and connecting with law students in Florida's law schools. He also thanked Executive Council member Melissa Vansickle for her instrumental involvement in FSU's RPPTL program which plugged that law school into the Section on a constructive and exemplary basis. He described the programs and their content and what was hoped for throughout the rest of the state.

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

The Division director referred members to the written report attached to the Agenda at pages 63 - 66.

**7. Professionalism and Ethics. Gwynne A. Young, Chair**

Gwynne Young delivered the report of the Committee stating that the previously drafted and submitted Will depository statute was one favorably looked upon by the Florida Bar and based upon present concerns with respect to such Wills and the ethical considerations in locating and probating such Wills, the Will Deposit Statute would again be reviewed and made a part of the Committee's review and possible proposals made for use and assistance to "inventory attorneys". Attending the last meeting of her committee was Bar staff member Cathy Bible, who will be providing the Professionalism and Ethics Committee with a present status report on the status of both the inventory attorney and Will depository matters at The Florida Bar and further providing the Committee with a copy of the relevant Texas statute. In addition, Ms. Young also reported her Committee's discussion of funding of the costs and fees necessary to find and deposit wills with the Clerk and to pay the filing fees for same. She stated that this would be a solid pro bono project for the Section to pursue. Also mentioned was the Committee's investigation of the Will education program made available by the Miami Dade legal services office for possible roll out across the State as well as possible combination with the No Place Like Home project. Ms. Young also asked Council Members to submit ethical issues that might confound members so that matters of continuing concern can be considered and processed through her Committee.

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

Due to a family illness, Mr. Freedman was not able to attend the Executive Council meeting. Section Chair O'Malley delivered the Division Report. First, Mr. O'Malley reported that Mr. Freedman's wife, Sheri, was on the mend and that her recovery from medical issues was expected. He next recognized Division/Section sponsors and thanked them for their continuing support.

**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. **Title Issues and Title Standards** – *Christopher Smart, Chair*

Mr. Smart delivered the report of the Committee reporting on additions to Florida's Uniform Title Standards as appear in the Agenda materials pp 67 to 115. After discussion, his motion to approve changes and additions to Chapter Four of the Uniform Title Standards was moved and approved.

**XII. Probate and Trust Law Division Report – *William T. Hennessey, Director***

Before moving to the Division's action items, Mr. Hennessey introduced and thanked the following Division Sponsors:

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

Division Director, Hennessey indicated that based upon input and information provided by Executive Council members at the Probate and Trust law roundtable meeting of Friday, February 23, 2018, Action Item #1 in the Agenda and its consideration would be postponed, hopefully until the upcoming meeting at St. Petersburg Beach. As a result, attention was turned to Item #2 below.

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.**

After brief discussion, the Motion to approve the proposed amendment to Florida Statutes set forth above, was passed and the proposed legislation found to be within the

purview of the RPPTL Section with the Section authorized to expend funds in support of the proposed legislative position.

**Information Items:**

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

Mr. Moran reported on a motion to be considered by the Executive Council at its next regularly scheduled meeting to wit:

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.**

Mr. Moran indicated that materials regarding the proposed legislation began on page 128 of the Agenda. He explained that the proposed legislation is intended to clarify the nature of conflicts of interest that might be relevant in determining whether a personal representative is in a conflict position in certain circumstances. In short, the proposed legislation is intended to expand the categories for application of the statute involving a personal representative's conflict of interest and a possible removal or a disqualification of that personal representative.

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

Mr. Akins delivered the motion of his Committee with its proposed final statutory approach for the elimination of the need to use a "strawman" when transferring or creating a tenancy by the entireties in tangible personal property. The proposed motion was as follows:

Motion to (A) adopt as a Section legislative position support for proposed legislation creating Florida Statutes § 689.151 to (i) permit the creation of a joint tenancy with right of survivorship and a tenancy by the entirety in personal property through direct transfers by abolishing the common law unities of time and title required for the creation of a joint tenancy with right of survivorship or a tenancy by the entirety in personal property, (ii) create evidentiary presumptions favoring the creation of a joint tenancy with right of survivorship and a tenancy by the entirety in personal property, and (iii) permit the creation of unequal shares in a joint tenancy with right of survivorship in personal property by abolishing the common law unity of

interest required for the creation or continuation of a joint tenancy with right of survivorship in personal property; (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.**

After reading the proposal, Mr. Hennessey opened the floor to questions concerning the motion and the proposed legislation which it addresses.

Considerable debate ensued concerning the breathe and scope of the Motions' proposed statutory provisions and whether same were overly broad, too inclusive or addressed more than the actual solution demanded. After lively debate, Division Director Hennessey indicated that the debate had been informative and instructive and that those who had comments concerning the motion and the proposed legislation should bring forward their comments so that they could be considered prior to the next regularly scheduled Executive Council meeting in St. Petersburg Beach at the end of May. A request was made that that the proposal and any responses to the comments made at today's meeting be first vetted with and in the Real Property Roundtable. Mr. Hennessey indicated his agreement with same.

**XII. Adjourn:**

Mr. O'Malley then indicated that the regular agenda for the Executive Council meeting had been concluded and that the Long Range Planning Committee would convene its meeting directly after the end of the Executive Committee.

On motion duly made, the meeting was adjourned at 11:16 a.m.

Respectfully submitted,

Lawrence J. Miller, Secretary

**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.		√	√		√	√	

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					
Allan, Honorable Linda Ruth		√					
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.		√	√		√	√	
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, Stacey L.		√				√	
Conetta, Tami F.		√	√		√	√	
Cope, Jr., Gerald B.	√		√	√	√		
Cornett, Jane Louise	√		√		√	√	

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					
Costello, T. John, Jr.		√			√		
Curley, Nick		√	√		√	√	
DeBoest II, Richard Dearborn			√				
Detzel, Lauren Y.		√	√		√	√	
Diamond, Benjamin F.		√	√		√		
Diamond, Sandra F. <b>Past Chair</b>		√	√			√	
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.		√	√		√	√	
Farach, Manuel	√		√		√	√	
Faulkner, Debra Ann		√			√	√	
Felcoski, Brian J. <b>Past Chair</b>		√	√		√	√	
Ferguson, Elizabeth 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					
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	√		√			√	
Griffin, Linda S.		√	√		√	√	
Grimsley, John G. <b>Past Chair</b>		√				√	
Grosso, Jennifer		√			√		
Gunther, Eamonn 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					
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.	√		√	√	√		
Jones, Patricia P.H.	√		√	√	√		
Judd, Robert B.		√	√		√		
Kalmanson, Stacy O.	√					√	
Kangas, Michael Ryan		√	√		√	√	

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					
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.		√	√			√	
Lane, Jr., William R.		√			√	√	
Larson, Roger A.	√		√		√	√	
Leathe, Jeremy Paul		√	√		√		
Lebowitz, Sean M.		√	√		√	√	

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					
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>		√					
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>	√			√	√		
Meyer, Michael	√		√			√	
Middlebrook, Mark T.		√	√	√	√	√	
Mize, Patrick		√	√		√	√	
Moran, John C.		√	√		√	√	
Muir, Honorable Celeste H.		√	√		√	√	

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					
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	√				√		
Pilotte, Frank		√	√	√	√	√	
Pleus, Jr., Honorable Robert J.		√					
Pollack, Anne Q.	√		√		√		
Price, Pamela O.		√	√		√	√	
Pyle, Michael A.		√					
Quintero, Jason	√		√		√	√	
Redding, John N.	√		√	√	√	√	
Renzio, Bryan	√				√	√	
Reynolds, Stephen H.		√			√	√	
Riddell, Cynthia	√		√			√	
Rieman, Alexandra V.		√	√		√	√	
Robbins, Jr., R.J.	√		√		√	√	
Roberts, III, Hardy L.	√		√	√			
Robinson, Charles F.		√	√		√		

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					
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		√	√		√		
Scriven, Lansing Charles	√		√				
Scuderi, Jon		√	√		√	√	
Seaford, Susan	√		√		√		
Sheets, Sandra G.		√	√	√	√	√	
Sherrill, Richard Norton		√	√		√		
Shoter, Neil 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					
Silberman, Honorable Morris	√				√		
Silberstein, David M.		√			√		
Sivyer, Neal Allen	√		√				
Sklar, William P.	√		√			√	
Smart, Christopher W.	√		√	√	√	√	
Smith, G. Thomas <b>Past Chair</b>	√						
<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			√		√		
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>	√		√	√	√	√	

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					
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>	√		√			√	
Wartenberg, Stephanie Harriet		√	√		√		
Weintraub, Lee A.	√		√	√	√		
Wells, Jerry B.		√	√		√		
White, Jr., Richard M.		√	√		√	√	
Whynot, Sancha B.	√		√			√	
Wilder, Charles D.		√	√				
Williams, Margaret 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					
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.		√	√		√	√	
Peregrin, 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	√		√		√		

<b>Guests</b>	<b>RP</b>	<b>P&amp;T</b>	<b>July 29 Breakers</b>	<b>Oct 14 Boston</b>	<b>Dec 9 Naples</b>	<b>Feb 24 St. Augustine</b>	<b>June 2 St. Pete Beach</b>
Travis Finchum		√	√		√	√	
Thomas Treece					√		
Andrea Stone		√			√		
Dale Noll					√	√	
Jim Kearn					√		
Daniel Siegel					√		
Celia Deifik	√		√		√		
Danielle Clark					√		
John Parady					√		
Sandy Boisrond		√	√			√	
David Shanks	√		√		√	√	
Jim Kearn			√		√	√	
Gutman Skrande						√	
Kymberlee Smith	√		√			√	



## RESOLUTION

### **The Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar Recognizing the Service and Contributions of**

#### **LOUIE N. ADCOCK, JR.**

Whereas, Louie N. Adcock, Jr. of St. Petersburg, Florida, was a respected and deeply loved member of the Real Property, Probate and Trust Law Section of The Florida Bar who passed away at the age of 86 on October 11, 2017, predeceased by his wife, Mary, in 2016, and is survived by his three children, David, Margaret and Joseph, and seven grandchildren; and

Whereas, Louie received his undergraduate degree in 1952 and law degree in 1956, both from the University of Florida; and

Whereas Louie began his legal career in St. Petersburg, Florida after he was admitted to The Florida Bar in 1956. He practiced with the law firm of Fisher & Sauls, P.A. for 61 years, until his death this year; and

Whereas, Louie had a long and distinguished legal career in St. Petersburg developing expertise in title work and representing lending institutions and later specializing in estate and trust law, the area of practice in which he was ultimately Board Certified by The Florida Bar. Louie was also a Fellow in the American College of Trusts and Estates Counsel; and

Whereas, in his legal practice as a whole, Louie insisted on the highest degree of professionalism in court, with clients, with staff, and with opposing or consulting lawyers. He was a generous mentor to an unending number of lawyers, sharing knowledge, time and his exacting professionalism; and

Whereas, Louie consistently and without fanfare would aid people who had no or little resources, frequently without any interest in remuneration, was a leader in encouraging and engaging in pro bono activities. He was the primary driver of establishing a pro bono clinic through the St. Petersburg Community Law program at a neighborhood community center originally staffed solely by his firm and for which the firm received the Chief Justice's Law Firm Commendation from the Florida Supreme Court in 2000. Louie stood out as an excellent example of what it meant to serve the community and to give back and encouraged all lawyers, within his firm and in the community and state, to follow his lead; and

Whereas, Louie provided enormous benefit to his country through his active and reserve duty in the United States Army retiring after 21 years of service as a Lt. Colonel of the JAG Corps; and

Whereas, Louie gave tremendous amounts of personal time to activities that benefited the legal profession in general and not him personally, including serving as an adjunct professor at Stetson University, College of Law, serving on the Board of Governors of The Florida Bar, as President of the St. Petersburg Bar Association, as a member of the Florida Supreme Court Commission on Professionalism, as a member of The Florida Bar Board of Legal Specialization and Education, as Trustee of the Florida Bar Foundation Endowment Trust, and as President of The Florida Bar Foundation. He also served as Chairman of the Florida Bar Committee on Professionalism and as Chairman of the Real Property Probate and Trust Law Section of The Florida Bar (1992-1993); and

Whereas, Louie contributed endlessly to his community through his work with Boy Scouts of America as a troop and Council leader, and as President of Sertoma Club, Family Service Centers, Visiting Nurses Association, the University of Florida Alumni Association and all Children's Hospital Foundation. He also served as Chairman of the Committee of 100 of Pinellas County and the University of South Florida Campus Advisory Committee, and was a member of the Board of Pinellas County Community Foundation. Louie was a member of the vestry and served as Junior Warden of St. Thomas Episcopal Church; and

Whereas, Louie was a member of the vestry and served as Junior Warden of St. Thomas Episcopal Church; and

Whereas, Louie's long-standing and dedicated service to the Real Property, Probate and Trust Law Section of The Florida Bar is appreciated and missed; our aspirations always will be to seek the level of respect he accomplished through his knowledge, expertise, professionalism and humility as a lawyer; and those of us who had the pleasure and honor to serve and socialize with him will warmly remember his extensive and dedicated participation on the Section's Executive Council, his tireless efforts and good humor as chair, and his service as mentor, educator and leader for lawyers in his community and throughout the State of Florida; and

Whereas, the Executive Council of the Real Property Probate and Trust Law Section of The Florida Bar recognizes the extraordinary dedication and service that Louie provided during his lifetime to his community, his family and friends, and The Florida Bar, particularly the Real Property, Probate and Trust Law Section, and acknowledges that he will be sorely missed and fondly remembered.

Now, Therefore, be it resolved by the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar that the loss of Louie N. Adcock, Jr. is mourned and that his distinguished service and rich contributions to the practice of law, particularly to the practice of Probate and Trust Law, is respected, appreciated, acknowledged and will be remembered forever.

Unanimously Adopted by the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar in Naples, Florida this 9th day of December, 2017.

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Andrew M. O'Malley, Chair  
Real Property, Probate and Trust Law Section  
The Florida Bar

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Lawrence J. Miller, Secretary  
Real Property, Probate and Trust Law Section  
The Florida Bar



Special Thanks to the  
**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 Zebrowsky**

&

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

Friday Night Reception

**Wells Fargo Private Bank - Mark Middlebrook / Johnathan/ Alex Hamrick**

&

**Westcor Land Title Insurance Company - 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**

&

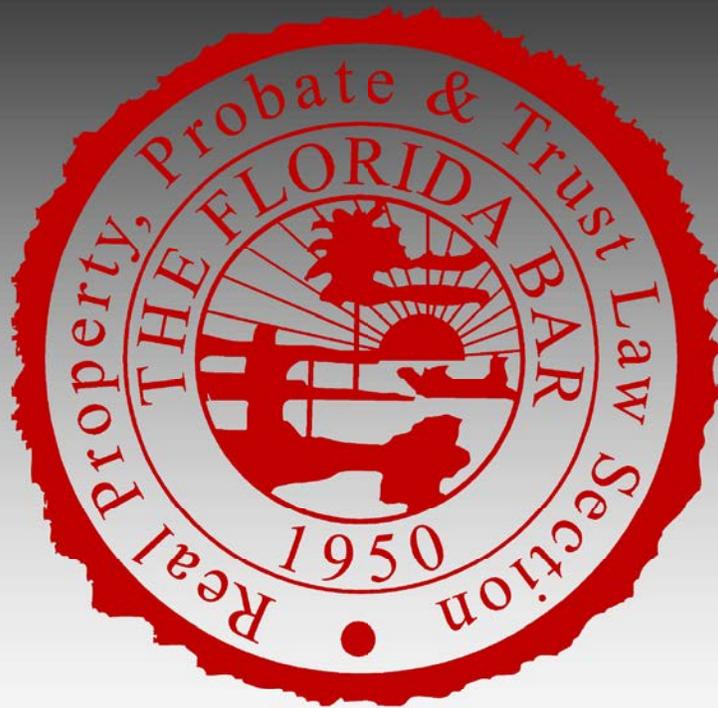
**Stewart Title – Laura Licastro**

Saturday Night Dinner Sponsor

**Phillips– Jennifer Jones**

RPPTL Meeting App

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



Special Thanks to the  
**FRIENDS OF THE SECTION**

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**Corporate Valuation Services, Inc.**

**Fiduciary Trust International**

**Jones Lawry**

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**Valley National Bank**

**Valuation Services, Inc.**

**Wilmington Trust, N.A.**



Special Thanks to the  
**COMMITTEE SPONSORS**

**Attorneys' Title Fund Services, LLC – Melissa Murphy**  
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**BNY Mellon Wealth Management – Joan Crain**  
*Estate and Trust Tax Planning Committee*  
&  
*IRA, Insurance and Employee Benefits Committee*

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

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

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

**Life Audit Professionals – Richard Newman**  
*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*

# 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 - SOLD OUT, visit <a href="http://www.RPPTL.org">www.RPPTL.org</a> for details Palm Beach, Florida Room Rate: \$225/ Deluxe King
<i>September 26-30, 2018</i>	<b>Out of State Executive Council Meeting</b> The Westin Excelsior - visit <a href="http://www.RPPTL.org">www.RPPTL.org</a> for details Rome, Italy (with pre-event in Florence, Italy-TBA) Standard Room: Euro 325.00 Euro (single) Euro 335.00 (double) - includes Breakfast
<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)
<i>May 30 - June 1, 2019</i>	<b>Executive Council Meeting &amp; Convention</b> Opal Sands Resort Clearwater Beach, Florida Room Rate: \$239 Deluxe Gulf Front (single/double occupancy)

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 - April 30] YEAR  
TO DATE REPORT

**General Budget**

**YTD**

Revenue	\$ 1,391,673
Expenses	\$ 1,221,249
<b>Net:</b>	<b>\$ 170,424</b>

**Attorney Loan Officer**

**YTD**

Revenue	\$ 14,200
Expenses	\$ 29,260
<b>Net:</b>	<b>\$ (15,060)</b>

**CLI**

**YTD**

Revenue	\$ 299,193
Expenses	\$ 48,783
<b>Net:</b>	<b>\$ 250,410</b>

**Trust Officer Conference**

Revenue	\$ 306,910
Expenses	\$ 182,684
<b>Net:</b>	<b>\$ 124,226</b>

**Legislative Update**

Revenue	\$ 55,435
Expenses	\$ 81,085
<b>Net:</b>	<b>\$ (25,650)</b>

**Convention**

Revenue	\$ 26,303
Expenses	\$ 7,849
<b>Net:</b>	<b>\$ 18,454</b>

**Roll-up Summary (Total)**

Revenue:	\$ 2,093,714
Expenses	\$ 1,570,905
<b>Net Operations</b>	<b>\$ 522,809</b>

<b>Beginning Fund Balance:</b>	<b>\$ 1,684,323</b>
<b>Current Fund Balance (YTD):</b>	<b>\$ 2,207,133</b>
<b>Projected June 2018 Fund Balance</b>	<b>\$ 1,694,737</b>

**CLE Schedule 18-19 (DRAFT)**

<i>Course Date</i>	<i>Course Title</i>	<i>Location/Venue</i>	<i>Course #</i>	<i>Program Chair</i>
TBD	RPPTL Video Webcast - Land Use Technology	Video Webcast	3059	Vinette Godelia
6/27/2018	RPPTL Audio Webcast - Condo Series (3)	Audio Webcast	3060	Bill Sklar
7/18/2018	RPPTL Audio Webcast - Condo Series (4)	Audio Webcast	3061	Bill Sklar
7/27/2018	38th Annual Legislative & Case Law Update	The Breakers	2849	Stacy Kalmanson
7/11/2018	RPPTL Audio Webcast - Mindfulness	Audio Webcast	2994	Adele Stone
8/23-25/18	Attorney Trust Officer Conference	The Breakers	2776	Tatianna Brennas-Stahl
9/17/2018	RPPTL Video Webcast - Construction Law	Video Webcast	2993	Neal Sivyer
10/12/2018	Attorney Loan Officer Conference	Loews Royal Pacific	2812	Rob Stern
10/17/2018	RPPTL Section Audio Webcast #3	Audio Webcast	2992	TBD
11/2/2018	Probate Law 2018	Tampa	2979	Travis Hayes
11/15/2018	RPPTL Section Audio Webcast #4	Audio Webcast	2991	TBD
2/22/2019	Estate and Trust Planning and Wealth Preservation	Fort Lauderdale	2982	Rob Lancaster
1/16/2019	RPPTL Section Audio Webcast #5	Audio Webcast	2990	TBD
2/20/2019	RPPTL Section Audio Webcast #6	Audio Webcast	2989	TBD
4/5-6/19	Real Property Certification Review	Orlando	2978	Manny Farach
2/22-23/2019	Advanced Condominium Law Certification Review	Orlando	2985	Sandra Krumbein
3/7-9/2019	13th Annual Construction Law Institute	JW Marriott, Orlando	2984	Sanjay Kurian
3/7-9/2019	Construction Law Certification Review	JW Marriott, Orlando	2950	Deb Mastin/Mindy Gentile
3/8/2019	Trust and Estate Symposium	Fort Lauderdale	2977	Rich Caskey/Angela Adams/Tami Conetta
3/20/2019	RPPTL Section Audio Webcast #7	Audio Webcast	2988	TBD
4/5-6/19	Wills Trusts and Estates Certification Review	Orlando (HYATT AIRPORT)	2976	Jeff Goethe
4/12/2019	Ins and Outs of Condo Law	Tampa	2980	TBD
4/17/2019	RPPTL Section Audio Webcast #8	Audio Webcast	2987	TBD
4/26/2019	Guardianship CLE	Tampa	2981	Darby Jones/Nick Curley
5/15/2019	RPPTL Section Audio Webcast #9	Audio Webcast	2986	TBD
6/1/2019	2019 RPPTL Convention CLE	Clearwater	2983	TBD

*Possible Audio Webcasts:*

LLC

Title Endorcements

Legal Writing

Restaurant Mock Lease Negotiation

Cell Tower Leasing

Medical Marijuana

Probate Practice Series (3 or 4 part)



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croth@deanmead.com  
bfinkbeiner@deanmead.com

**FINAL 2018 POST SESSION REPORT**

**NUMERICAL INDEX SUMMARY OF 2018 LEGISLATIVE ISSUES**

**Sarah Butters and Cary Wright, Legislative Co-Committee Chairmen  
and  
Peter Dunbar, Martha Edenfield, Brittany Finkbeiner,  
Michael Dobson and Cari Roth  
RPPTL Legislative Counsel**

**April 9, 2018**

The *final* post-Session report follows below. The Section’s initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The part of the report following the list of Section initiatives includes other items of interest that passed, as well as the items of interest that did not pass.

The Governor has taken final action on all the measures, and the appropriate Session Law number follows the summary of the bill in **bold type**. The full texts of each enrolled bill, as well as applicable legislative staff reports, are available on the legislative web sites ([www.flsenate.gov](http://www.flsenate.gov); [www.myfloridahouse.com](http://www.myfloridahouse.com); and [www.leg.state.fl.us](http://www.leg.state.fl.us)). A summary of each measure that passed appears below by category in numerical bill order.

**I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE**

Trusts: HB 413 by Representative Moraitis and Senator Hukill contains the Section’s trust initiatives that include a provision to resolve the inconsistency in the modernization of the statutory authority for decanting trusts; a provision to clarify that the settlor’s intent is paramount when interpreting the terms of the trust; and a provision to clarify the duty

of a trustee concerning accounting during any period. HB 413 passed the Legislature and was approved by the Governor. **(Chapter 2018-35, Laws of Florida.)**

Homestead Waiver: CS/SB 512 by Senator Young and Representative Berman provides language for the waiver of devise restriction of spousal homestead rights under Article X of Section 4 (c) of the state constitution. CS/SB 512 passed the Legislature and was approved by the Governor. **(Chapter 2018-22, Laws of Florida.)**

MRTA—Covenant Exemptions: HB 617 by Representative Edwards and Senator Passidomo amends Chapter 712 to permit covenants of all mandatory property owners association to be extended in the same manner as residential property owners associations are currently permitted to extend; it authorizes the revitalization of covenants to all mandatory property owners association; and it provides for procedures to revitalize covenants in communities without a mandatory association. HB 617 passed the Legislature and was approved by the Governor. **(Chapter 2018-55, Laws of Florida.)**

Ejectment and Unlawful Detainer: CS/HB 631 by Representative Edwards and Senator Passidomo combines the ejectment and unlawful detainer initiatives of the RPPTL Section. It also includes language relating to customary usage of private property that codifies the common doctrine. CS/HB 631 passed the Legislature and was approved by the Governor. **(Chapter 2018-94, Laws of Florida.)**

Community Associations: CS/CS/CS/HB 841 by Representative Moriatis and Senator Passidomo contains revisions to Florida's housing chapters. The legislation revises the requirements for condominium association websites; eliminates inconsistent provisions in the Condominium Act relating to conflicts of interests; eliminates the repeal of the bulk buyer sunset provision; revises association record-keeping requirements; and makes conforming changes in the Cooperative Act and the Homeowners Association Act. CS/CS/CS/HB 841 passed the Legislature and was approved by the Governor. **(Chapter 2018-96, Laws of Florida.)**

Elder Abuse: CS/CS/CS/HB 1059 by Representative Burton was an Elder Law Section initiative creating a cause of action for an injunction for protection against exploitation of a vulnerable adult. The Section had technical concerns with the legislation and those have been resolved through negotiations with the bill sponsors and the Elder Law Section. CS/CS/CS/HB 1059 passed the Legislature and was approved by the Governor. **(Chapter 2018-100, Laws of Florida.)**

Guardianship: CS/HB 1187 by Representative Spano and Senator Passidomo expands the rights of the Clerk to conduct audits of annual guardianship reports; it will permit ex parte communications with a judge; and it will permit the Clerk to disclose information to the Department of Family Services or law enforcement agencies as provided in an order of the court. The Section's technical concerns have been resolved by amendment. CS/HB 1187 passed the Legislature and was approved by the Governor. **(Chapter 2018-68, Laws of Florida.)**

Tax Deeds: CS/HB 1383 by Representative Latvala and Senator Rouson is an initiative from the Florida Clerk's Association that modifies the tax deed process. The Section offered technical assistance with the language. The legislation contains provisions concerning the disposition of excess funds, noticing the pendency of tax deed applications, and providing notice to tax deed applications and sales at public auction. CS/HB 1383 passed the Legislature and was approved by the Governor. **(Chapter 2018-160, Laws of Florida.)**

Inter-spousal Transfers: CS/HB 7087 by the House Ways and Means Committee contains a provision that exempts the transfer of homestead property between spouses from documentary stamp tax charges. The provision is a more limited version of the joint initiative of the RPPTL Section and the Tax Section. CS/HB 7087 passed the Legislature and was approved by the Governor. **(Chapter 2018-118, Laws of Florida.)**

Multi-Parcel Ad Valorem Taxation: CS/HB 7087 by the House Ways and Means Committee is in the comprehensive tax package for the Session. Among its provisions is the Section's multi-parcel ad valorem tax initiative permitting the vertical subdivision of real property, and it also includes an abatement of taxes for residential improvements rendered uninhabitable by hurricanes during the 2017 season. CS/HB 7087 passed the Legislature and was approved by the Governor. **(Chapter 2018-118, Laws of Florida.)**

## **II. INITIATIVES OF INTEREST**

Mortgage Brokering: HB 193 by Representative Stark creates a limited exemption for a securities dealer to engage in mortgage brokering activities on behalf of securities clients provided that any such solicitation or referral activities otherwise comply with state and federal law. HB 193 passed the Legislature and was approved by the Governor. **(Chapter 2018-44, Laws of Florida.)**

Foreclosure—Bankruptcy Matters: SB 220 by Senator Passidomo authorizes lienholders to use documents filed in bankruptcy court by the debtor in a foreclosure proceeding. The legislation provides for judicial notice of the bankruptcy proceedings, and it permits the debtor to raise defense filed in the bankruptcy proceedings. SB 220 passed the Legislature and was approved by the Governor. **(Chapter 2018-15, Laws of Florida.)**

Development—Utilities: HB 405 by Representative Payne revises section 163.3221 to exempt the creation of utility distribution corridors and the installation of electrical transmission lines from the definition of "development." It provides for a conforming exemption for rights-of-way and distribution corridors in Chapter 380. HB 405 passed the Legislature and was approved by the Governor. **(Chapter 2018-34, Laws of Florida.)**

Title Insurance Agents: HB 483 by Representative Yarborough amends section 626.9541 to revise the restriction on gifts by insurance agents, and it permits a title insurance agent or a title insurance agency to provide merchandise or gifts to

customers or potential customers that do not exceed \$25 in value for advertising purposes. HB 483 passed the Legislature and was approved by the Governor. **(Chapter 2018-149, Laws of Florida.)**

Apartments—Recycling Containers: CS/HB 529 by Representative Diaz revise the Florida Fire Protection Code to specify the size and location of recycling containers that are permitted in rental apartment complexes. CS/HB 529 passed the Legislature and was approved by the Governor. **(Chapter 2018-152, Laws of Florida.)**

Unlawful Detention—Transient Occupancy: CS/SB 566 by Senator Young revises the criteria in Chapter 82 for determining transient occupancy of residential real property and provides for recovery of personal belongings by a transient occupant. CS/SB 566 passed the Legislature and was approved by the Governor. **(Chapter 2018-83, Laws of Florida.)**

Business Filings: CS/HB 661 by Representative Miller permits the correction of filings that contain false, misleading or fraudulent information for corporations, corporations not-for-profit, and limited liability partnerships. It provides for notice of changes to the mailing addresses for corporations, corporations not-for-profit, and limited liability partnerships to be provided to the most recent prior address; and it permits the corrections to be filed without charges. CS/HB 661 passed the Legislature and was approved by the Governor. **(Chapter 2018-58, Laws of Florida.)**

Sale of Surplus Lands: CS/HB 703 by Representative Burgess provides the procedures for the sale of surplus lands to an adjacent property owner by water management districts. If not purchased by the adjacent property owner, the surplus lands are made available for sale to the general public. CS/HB 703 passed the Legislature and was approved by the Governor. **(Chapter 2018-155, Laws of Florida.)**

Statute of Limitations—Construction Improvements: CS/CS/HB 875 by Representative Leek amends Subsection 95.11 (3) to clarify the timing for the completion of the contract and to further provide that counterclaims, cross-claims and third party claims may be brought within 45 days after service of process of a party asserting a claim. The legislation also provides that once a CO has been issued for the property, the correction of defects or punch list work will not extend the time within which an action must be commenced. CS/CS/HB 875 passed the Legislature and was approved by the Governor. **(Chapter 2018-97, Laws of Florida.)**

Fiduciary Relationship—Life Insurance Agents: CS/CS/CS/HB 1073 by Representative Hager is the comprehensive legislative package for the Department of Financial Services, and Section 31 of the bill clarifies the limited circumstances in which a life insurance agent may be a beneficiary and serve in a fiduciary capacity. CS/CS/CS/HB 1073 passed the Legislature and was approved by the Governor. **(Chapter 2018-102, Laws of Florida.)**

Growth Management: CS/CS/HB 1151 by Representative La Rosa makes comprehensive revisions to Florida's growth management laws. Among its provisions, it eliminates state and regional review of existing DRIs; it ends DRI appeals to FLWAC except when a local government abandons an approved DRI; it clarifies and permits a binding letter of vested rights to be issued by a local government; it provides the procedures by which a local government may approve changes to a DRI; it provides conditions for abandonment of a DRI; it provides an extensive list of exemptions for developments otherwise governed by Section 380.06, F.S; and it creates a statutory foundation for "master development plans." CS/CS/HB 1151 passed the Legislature and was approved by the Governor. **(Chapter 2018-158, Laws of Florida.)**

Acquisition of State Lands: CS/CS/HB 1173 by Representative Raschein provides for the acquisition of state lands to provide a buffer for military installations; it provides for the acquisition of lands to satisfy private property rights claims in an area of critical state concern; and it authorizes the use of Florida Forever funds to acquire property to mitigate natural disasters and flooding, to provide for temporary water storage areas, and to create greenways for public recreation. CS/CS/HB 1173 passed the Legislature and was approved by the Governor. **(Chapter 2018-159, Laws of Florida.)**

Corporations: HB 1285 by Representative Albritton permits confidential information of a corporate filing to be omitted in the filing of the annual benefit report. HB 1285 has passed the Legislature and was approved by the Governor. **(Chapter 2018-139, Laws of Florida.)**

Firearm Safety: CS/SB 7026 by The Senate Appropriations and Rules Committees makes a variety of policy changes related to firearms in response to the Parkland shooting. Of interest to the Section are new restrictions on the possession of firearms by persons with mental health issues. Specifically, Section 8 of the bill permits law enforcement officers to seize and hold firearms and ammunition belonging to Baker-acted persons who pose a danger to themselves or others. Section 10 of the bill prohibits persons who have been adjudicated mentally defective or committed to a mental institution from owning or possessing a firearm until court allows them to do so. Sections 15-16 of the bill create a new "petition for risk protection" action that allows law enforcement officers to seek a court order prohibiting persons from purchasing or possessing firearms. CS/SB 7026 passed the Legislature and was approved by the Governor. **(Chapter 2018-3, Laws of Florida.)**

Dredge and Fill Permits: HB 7043 by Representative Raschein authorizes the Department of Environmental Protection to assume the permitting process for the discharge of dredge and fill materials under section 404 of the federal Clean Water Act. HB 7043 passed the Legislature and was approved by the Governor. **(Chapter 2018-88, Laws of Florida.)**

### III. INITIATIVES OF INTEREST THAT FAILED

POLST: SB 474 by Senator Brandes would authorize a doctor to withhold life sustaining treatment to a patient (POLST). The Section has a standing position against this version of the POLST legislation without sufficient procedural safeguards that currently are not included in SB 474. HB 1339 by Representative Pigman was an alternative version of the POLST legislation that includes the procedural safeguards. SB 474 received 3 committee references and was approved by the first committee. HB 1339 received 3 references and was not heard in any committee. This initiative died in committee upon adjournment of the 2018 Session.

Lis Pendens: HB 599 by Representative Altman and Senator Powell contains the Section initiative amending s. 48.23 to clarify that valid recorded notice of lis pendens remains in effect through the recording of an instrument transferring title unless it has expired, withdrawn or discharged. HB 599 died in returning messages upon adjournment of the 2018 Session.

Notaries Public: CS/CS/HB 771 by Representative Grant and SB 1042 by Senator Brandes are companion bills that will permit notaries to acknowledge signatures remotely. The Section has provided technical assistance to the sponsors of the initiative, and with acceptable amendments that have been adopted to the CS/CS/HB 771, the Section supports the initiative. CS/CS/HB 771 has passed all committees and was pending on the House Calendar. SB 1042 passed the Senate and was pending in House Messages. Both measures died upon adjournment of the 2018 Session.

UVTA: HB 979 by Representative Moraitis and CS/SB 1316 by Senator Simmons are companion bills adopting the Uniform Voidable Transfers Act proposed by the Business Law Section, and the RPPTL and Tax Law Sections were opposed to the original version of the legislation without further clarifying changes and negotiations continue with BLS in an effort to resolve the issues. HB 979 received 2 references and has passed its first committee, but was not heard again. CS/SB 1316 died on the Senate Special Order Calendar upon adjournment of the 2018 Session.

Open and Expired Permits: HB 1077 by Representative Diamond and SB 1322 by Senator Powell are companion bills containing the Section's initiative to permit the closing of open permits and satisfying of any applicable permit requirements of said permits. HB 1077 received 3 references and was not heard in any committee. SB 1322 received 3 references and was not heard in any committee. This initiative died in committee upon adjournment of the 2018 Session.

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**Real Property, Probate and Trust Law Section**  
***Probate, Trust & Guardianship / Estate Planning***

July 29, 2016

1. Supports limitation of creditor remedies against partner interest in general and limited liability partnerships and member interests in limited liability companies to charging liens and to prohibit foreclosure against such interests.
2. Opposes the expansion of classes that are to serve as agents under a power of attorney beyond the current class of individuals and financial institutions with trust powers.
3. Supports legislation to provide for alienation of plan benefits under the Florida Retirement System (§121.131 and §121.091 Florida Statutes) Municipal Police Pensions (§185.25 Florida Statutes) and Firefighter Pensions (§175.241 Florida Statutes) in a dissolution proceeding and authorizing such alienation of benefits in a dissolution of marriage under §61.076 Florida Statutes.
4. Supports legislation to (1) change the titles of §222.11 Florida Statutes to clearly reflect that this statute applies to earnings and is not limited to “wages” (2) provide an expanded definition of “earnings” because the term “wages” is not the exclusive method of compensation and (3) add deferred compensation to the exemption statute.
5. Supports legislation which provides that a lawyer, or certain people related to, or affiliated with, the lawyer will not be entitled to receive compensation for serving as a fiduciary if the lawyer prepared the instrument making the appointment unless: (a) the lawyer or person appointed is related to the client; or (b) certain disclosures are made to the client before the instrument is signed and confirmed in a writing signed by the client.

***Probate, Trust & Guardianship / Guardianship & Advance Directives***

July 29, 2016

1. Supports legislation to amend the Baker Act to include a provision under which a guardian may request that the court grant the guardian the authority to involuntarily hospitalize a ward pursuant to the Baker Act.
2. Supports legislation to amend F.S. §394.467 to add as criteria for involuntary placement the substantial and imminent likelihood of inflicting serious emotional or psychological harm on another person, and the causation of significant damage to property in the recent past with substantial and imminent likelihood of doing so again.
3. Supports amending 29.007 F. S. to provide authority to appoint and compensate attorneys and professional guardians to serve as guardian advocates and guardian ad litem for indigents in civil commitment and treatment proceedings in proceedings under the mental retardation statutes (ch. 393), Baker Act (ch. 394) and Marchman Act (ch. 397).
4. Supports legislation to amend Chapter 765, Florida Statutes, to improve the law concerning advance directives and to integrate federal HIPPA privacy laws with Florida law.

5. Opposes the adoption of summary guardianship proceedings outside the protections of Chapter 744, Florida Statutes.
6. Opposes amendments to F.S. §393.12 that would (i) remove the existing requirement that a guardian advocate for a developmentally disabled adult must be represented by an attorney if the guardian advocate is delegated authority to manage property, (ii) remove the existing requirement that the petition to appoint a guardian advocate must disclose the identity of the proposed guardian advocate, and (iii) expand the list of individuals entitled to receive notice of the guardian advocate proceedings.
7. Supports clarification of the definition of “income” for calculating Veterans guardianship fees, including an amendment to §744.604, Fla. Stat.
8. Opposes the adoption of the Uniform Adult Guardianship and Protective Proceedings Act.
9. Supports amendments to the Florida Guardianship Law to protect the interest of incapacitated persons, especially minor wards, by making settlements on their behalf confidential.
10. Supports adoption of clarifications to F.S. Ch. 709, the Florida Power of Attorney Act.
11. Opposes amendments to guardianship statutes that (a) would change the criteria and limit the discretion of the court in awarding fees in guardianship proceedings for services that benefit the ward, (b) seek to significantly change established guardianship laws and procedures concerning the qualification of examining committee members and the content and requirements of their reports, and (c) would criminalize certain conduct in guardianship proceedings, including proposed amendments to F.S. §§744.108, 744.331, and 744.4461.
12. Opposes efforts to adopt POLST (Physician Ordered Life Sustaining Treatment) in Florida without appropriate procedural safeguards to protect the wishes of patients and prior advance directives made by the patient, including current Senate Bill 1052.
13. Opposes the expansion of chapter 709 to include the authority of a parent to assign the custody and control of a minor child through a power of attorney unless proper procedural safeguards are included to assure the proper care and welfare of the minor children.

December 9, 2016

14. Supports changes to Florida law to permit a court to approve a guardian’s request to initiate a petition for dissolution of marriage of a ward without the requirement that the ward’s spouse consent to the dissolution, including amendments to s. 744.3725, F.S.
15. Supports proposed legislation removing the statutory cap on amounts which guardians, with prior court approval, may expend for funeral related expenses, including a change to s. 744.441(16), F.S.
16. Supports creation of new statutory procedures for the service of examining committee reports and deadlines for the service and filing of objections to such reports in incapacity proceedings, including revision to s. 744.331, F.S.

17. Supports proposed legislation to recognize Physician Orders for Life Sustaining Treatment (POLST) under Florida law with appropriate protections to prevent violations of due process for the benefit of the citizens of Florida and the protection of medical professionals and emergency responders who withhold or withdraw treatment based upon POLST, including the amendment of ss. 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, 765.205, 456.072, and the creation of s. 401.46, F.S.

February 5, 2018

18. Opposes amendment to the Florida Constitution, including Commission Proposal 30, which would prevent removal of rights of a person based upon mental disability or mental incapacity unless appropriate safeguards to protect existing guardianship and mental health statutes and which would allow the legislature to establish laws which are intended to protect the welfare of the person and which comply with due process.

Pending before the FL BoG for Approval:

19. Supports 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.

### ***Probate, Trust & Guardianship / Probate***

July 29, 2016

1. Opposes any efforts to enact a statutory will.
2. Supports legislation to repeal §734.1025, Florida Statutes, because the dollar amount for summary administrations found in § 735.201-2063, Florida Statutes, has been increased thus, making §734.102, Florida Statutes, duplicative.
3. Opposes amendment to §733.302, F. S., to expand the class of non-residents which may serve as personal representative because of a concern that any addition to the class may subject the entire statute to a renewed constitutional challenge.
4. Opposes changes to Florida Statute 732.103 that would extend the intestate distribution scheme to the level of the decedent's great-grandparents.
5. Supports clarification of a person's rights to direct disposition of his or her remains, providing guidance to courts and family members, especially when disputes arise, and absent specific directions, clarifying who is authorized to decide the place and manner of the disposition of a decedent's remains, including an amendment replacing F.S. § 732.804.
6. Supports proposed legislation to remove barriers to a fiduciary's access to electronic records, including the Florida Fiduciary Access to Digital Assets Act, F.S. Ch. 740.

7. Supports proposed legislation confirming that Florida law governs the validity and effect of the disposition of Florida real property, whether owned by a resident or a nonresident, including a change to F.S. §731.106(2).

8. Opposes legislation to expand the potential plaintiffs who can file an action on behalf of a vulnerable adult who has been abused, neglected, or exploited as specified in Chapter 415 without the consent of the vulnerable adult and without clear requirements that any recovery from successful litigation be paid to the vulnerable adult or their estate.

#### December 9, 2016

9. Supports proposed legislation allowing a testator to deposit their original will with the clerk's office for safekeeping during their lifetime, and for other custodians to deposit original wills with the clerk for safekeeping when the testator cannot be located.

10. Supports revisions to Florida Elective Share Statute, s.732.201 – 732.2155, F.S., that after careful review are believed to be warranted, including changes to the manner in which protected homestead is included in the elective estate and how it is valued for purposes of satisfying the elective share; quantify the amount of the elective share which the surviving spouse is entitled with reference to the length of the marriage; enlarge the time for filing the election; add a provision to assess interest on persons who are very delinquent in fulfilling their statutory obligations to pay or contribute towards satisfaction of the elective share; add a new section that specifically addresses awards of attorney's fees and costs from elective share proceedings; and make changes to Ch. 738, F.S., to assure qualification for certain elective share trusts that contain so called unproductive property.

#### January 20, 2017

11. Opposes legislation, including 2017 Florida Senate Bill 206, regarding electronic wills, powers of attorney and living wills unless such legislation:

(a) eliminates references to powers of attorney and living will;

(b) is amended to safeguard the citizens of Florida from fraud and exploitation,

(c) includes protections to ensure the integrity, security, and authenticity of an electronically signed will;

(d) provides sufficient evidence to authenticate execution by the testator, and

(e) retains the requirements that two subscribing witnesses sign in the physical presence of the testator.

#### January 26, 2018

12. Opposes proposed legislation that would allow banks or other financial institutions in Florida to distribute funds from any account in the name of the decedent (with no pay-on-death or survivor designation) in the absence of an appropriate probate proceeding or other court proceeding, specifically including HB 1241/SB 892.

Pending before the FL BoG for Approval:

13. Supports 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.

14. Supports 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.

***Probate, Trust & Guardianship / Trust***

July 29, 2016

1. Opposes legislation abrogating a trustee's duties of loyalty and duties of full and fair disclosure in connection with affiliated investments by a corporate trustee.
2. Supports amendment of F.S. §736.0813 to clarify the meaning of the requirement that a trustee furnish qualified beneficiaries with a “complete copy” of a trust document.
3. Supports legislation that would create legislation that authorizes families to form and operate licensed and unlicensed family trust companies and to authorize out of state licensed family trust companies to operate in Florida, including the creation of proposed F.S. Ch. 659, Family Trust Companies.
4. Supports proposed legislation that would amend F.S. §§736.0412(4) and 736.0105(2)(k), so that all irrevocable trusts are treated the same with regard to whether non-judicial modification is available during the first 90 years after the trust is created – more specifically, all irrevocable trusts will be restricted to judicial modification during the first 90 years after creation, unless the trust expressly permits non-judicial modification within the first 90 years.
5. Supports proposed amendments to F.S. Chapter 736, which provide much needed clarification and guidance regarding the applicability of constitutional devise restrictions and exemption from creditors’ claims provisions, as well as the timing and method of passage of title to homestead real property, when that homestead real property is devised through a revocable trust at the time of a settlor’s death, including amendment to F.S. §736.0103, amendment to F.S. §736.0201, the creation of F.S. §736.0508, and the creation of F.S. §736.08115.

December 9, 2016

6. Supports proposed legislation to revise Florida law to provide that the Attorney General is the proper party to receive notice for matters concerning charitable trusts and further define the manner in which the Attorney General will receive such notices, including changes to ss. 736.0110(3), 736.1201, 736.10205, 736.1206(2), 736.1207, 736.1208(4)(b), and 736.1209, F.S.
7. Supports proposed legislation to expand and modernize the statutory authority for trustees to “decant” by distributing trust principal from one trust into a second trust and expand the notice requirements for the transaction including changes to s. 736.04117, F.S.

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

9. Supports proposed legislation to reaffirm Florida's well-established jurisprudence in favor of donative freedom so that the settlor's intent is paramount when applying and interpreting both Florida trust law and the terms of a trust, including changes to ss. 736.0103(11), 736.0105(2)(c), and 736.0404, F.S.

January 20, 2017

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

### **Probate, Trust & Guardianship / Miscellaneous**

January 20, 2017

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

### ***Real Property / Condominiums and Planned Developments***

July 29, 2016

1. Supports amendments to Chapter 718, Florida Statutes, Condominiums, and Chapter 719 Florida Statutes, Cooperatives, to require that engineers, architects and other design professionals and manufacturers warrant the fitness of the work they perform on condominiums or cooperatives.

2. Opposes amendments to §718.1255, Florida Statutes, or targeted budget reductions or other governmental action having the purpose or effect of diminishing or eliminating the jurisdiction of the Arbitration Division of the Department of Business and Professional Regulation's Division of Land Sales.

3. Supports condominium unit owner's ability to exercise self-government and undertake fair and efficient community administration, including the exercise of basic contract and investment decisions.

4. Supports legislation to permit condominium unit owners to further subdivide or partition their interest in the condominium and common elements appurtenant thereto pursuant to a sub-declaration of condominium, which subdivided units shall remain subject and subordinate to the existing declaration of condominium, provided such existing declaration of condominium allows for the subdivision.

5. Opposes amendments to Chapter 720, F.S., that would require both pre-suit mediation and pre-suit arbitration before filing a civil action over homeowners' association disputes.
6. Supports legislation providing for electrical elements to three-year warranty, extend subcontractor and supplier warranties to the contractor and to clarify start date for five-year warranty deadline set forth in F.S. §718.203(1)(e).
7. Supports amendment of F.S. §718.403 to permit the addition of proposed phases to a condominium beyond 7 years from the recording of the declaration of condominium upon association membership approval and recorded amendment to the declaration of condominium.
8. Supports additional guidance and regulation respecting the creation of a condominium within a condominium unit, through creation of Section 718.406, F.S.; to provide an effective date.
9. Supports clarification of Ch 718, F.S.: to confirm that certain operational provisions do not apply to nonresidential condominium associations; to define "nonresidential condominiums;" to clarify that the Division's arbitration program only pertains to residential condominiums; to provide an effective date.
10. Supports amendments to F.S. Chapter 718: to replace the date triggering certain obligations; to clarify when a condominium unit is created; to permit extending the period for adding phases to a condominium; and, to provide an effective date.
11. Supports legislation to standardize procedures and to clarify the timing, content and preparation fees relating to estoppel letters issued by condominium and homeowners' associations, including amendments to F.S. §§718.116 & 720.30851.
12. Supports legislation to remove the requirement that statutory late fees must be set forth in a condominium or homeowners' association declaration or bylaws in order for those charges to be imposed, to allow for the collection of such fees by all condominium and homeowner associations, including amendments to F.S. §§718.116 & 718.3085.
13. Supports legislation to differentiate the administration of nonresidential condominiums from residential condominiums and to eliminate for nonresidential condominium associations certain provisions not appropriate in a commercial setting, including amendments to F.S. Ch. 718.
14. Supports an amendment to F.S. §712.05 of the Marketable Record Title Action to correct an error created by an inadvertent requirement imposed by the 2010 amendment to F.S. §712.06, clarifying existing law, removing the costly, time consuming, and unnecessary requirement to mail a copy of the notice of preservation to each owner in a homeowners' association, who would have already been notified of the preservation.
15. Supports an amendment to the Florida Condominium Act for a one-year extension of the expiration date to July 1, 2016, for Part VII of the Act and F.S. §718.707, dealing with distressed condominiums.
16. Supports amendments to the Florida Condominium Act which set forth the rights and obligations of purchasers and lenders that acquire multiple units, but who are not creating developers of the

condominium, including creating a Part VIII, and eliminating application of Part VII, of the Condominium Act to transactions recorded after the effective date July 1, 2016.

17. Opposes legislation that changes the definition of the practice of law to exclude from the definition a community association manager's interpretation of documents or statutes that govern a community association, determination of title to real property, or completion of documents that require interpretation of statutes or the documents that govern a community association, including opposition to SB1466, SB1496, HB7037 and CS/HB7039 (2014).

18. Supports amending Florida Condominium law pertaining to the termination of condominiums to protect unit owners and provide certainty and predictability to the process.

March 19, 2017

19. Opposes creation of criminal penalties for violations of statutes pertaining to condominium association official records and condominium association elections, as well as any change to create criminal penalties for any violation of the Florida Condominium Act for which a criminal penalty does not already exist, including changes to §718.111(12) F.S., and creation of new statutory provisions within Ch. 718 F.S., or otherwise.

### ***Real Property / Contracts and Disclosures***

July 29, 2016

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

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

### ***Real Property / Corporations and LLCs***

July 29, 2016

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

### ***Real Property / Courts***

July 29, 2016

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

2. Supports procedures to preserve due process by providing courts with authority to appoint attorney, administrator and guardian ad litem to serve on behalf of known persons, or unknown persons, having

claims by, though, under or against a person who is deceased or whose status is unknown, and confirming the sufficiency of prior proceedings in which ad litem have been appointed, including amendment of F.S. §49.021.

***Real Property / Environmental***

July 29, 2016

1. Supports continuation and improvement of the Florida brownfield redevelopment program, including the voluntary cleanup tax credit (VCTC) program pursuant to F.S. §376.30781.

***Real Property / Foreclosures and Judicial Sales***

July 29, 2016

1. Oppose legislation which would require a foreclosing creditor to notify the debtor that filing a bankruptcy petition before the foreclosure sale may permit the debtor to retain the property and reorganize the indebtedness.
2. Opposes any amendment to existing Florida law governing real property foreclosures unless those amendments carefully preserve and protect the property rights and due process rights of the holders of interests in or affecting Florida real property.
3. Supports expanded publication of notices of judicial sales, permitting notices to be posted on the Internet, including amendments to F.S. Chapters 45, 50 and 702.
4. Supports foreclosure reform which expedites and streamlines the judicial foreclosure process while preserving and protecting fundamental fairness and the property rights and due process rights of the holders of interests in or affecting Florida real property. [Revised 4/18/13]
5. Supports requirements for electronic publication of legal notices that address due process concerns, including amendments to F.S. §50.0211, 50.041, and 50.061.
6. Supports correction of procedural issues relating to trustee foreclosures of timeshares, including amendments to sections 721.82, 721.855, and 721.856 of the Florida Statutes.
7. Supports legislation to permit the electronic filing of certified copies of documents and permit the self-authentication of documents other than by obtaining a certified copy, including an amendment of F.S. §90.902.
8. Supports a clarification and simplification of the statute of repose applicable to mortgage liens and restoration of subrogation rights for property tax advances through changes to F.S. §95.281.

## ***Real Property / Liens and Encumbrances***

July 29, 2016

1. Supports amendment to §162.09(3), Florida Statutes, to clarify the relative priority of recorded municipal code enforcement liens created pursuant to the Local Government Code Enforcement Boards Act.
2. Opposes efforts to create a lien on real property for work that does not add value to the property, and would permit liens against the property of a person other than the party owing a debt.
3. Supports amendment to F.S. §695.01 and ch 162 to reduce problems regarding hidden liens by: (i) requiring all governmental liens (other than taxes, special assessments and those for utility services) to be recorded in the official records and to state their priority; (ii) clarifying the priority of liens asserted by local governments; and (iii) expanding the homestead determination mechanisms of F.S. §222.01 to apply to other types of lien.
4. Supports amendments: to s. 95.11(2) and (5), F.S., as to the statute of limitations for actions on payment bonds; to s. 713.08(3) (the statutory form for a claim of lien) to include the separate statement required by F.S. 713.08(1)(c); to s. s. 713.13, F.S. to delete the requirement that the notice of commencement be verified and to clarify the timing of the expiration date of the notice of commencement; to s. 713.18, F.S. as to electronic confirmation of delivery through the U.S. Postal Service.
5. Supports amendment of: F.S. §713.10(2)(b) to provide that a blanket notice recorded by a landlord remains valid and the landlord's property interest will not be liable for liens arising from tenant improvements even if the leases contain different versions of the lien prohibition language or no lien prohibition language at all, under certain circumstances; and F.S. §713.10(3) to require inclusion of specific language in any claim of lien premised on a landlord's failure to comply so as to provide record notice of the basis of such a claim by a lienor, and to provide that any lien will not take effect as to third parties without notice until 30 days after the recording of the claim of lien.
6. Opposes selective increase of recording expense to only construction claims of lien, adding additional filing requirements, and concluding that filing a lien beyond the statutory 90-day period is an act of fraud, including opposing amendments to F.S. §§28.24 & 713.08.

December 9, 2016

7. Supports the passage of an amendment to existing s. 713.132(3), F.S. to allow termination of a notice of commencement, provided for under s. 713.135, F.S., at any time whether or not construction has ceased as required under existing law.

August 31, 2017

8. Supports proposed legislation to: (1) clarify that the interest of a lessor is not subject to improvements made by the lessee of a mobile home lot in s. 713.10, F.S.; and (2) eliminate ambiguity regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording, including an amendment to s.713.13, F.S.

9. Supports legislation which will clarify s.48.23(1)(d) F.S. to preserve the widely understood interpretation of the lis pendens statute that, in proceedings involving a judicial sale, a valid recorded notice lis pendens remains in effect through the recording of an instrument transferring title pursuant to the judicial sale, in order to eliminate intervening subordinate interests or liens; and will incorporate the revision to s.48.23(1)(b)2 F.S. previously approved by the RPPTL Section, which extends certain protections to lienholders (as well as those having an interest in the real property).

### ***Real Property / Mobile Homes***

July 29, 2016

1. Supports amendment to Chapter 723, Florida Statutes, specifying that each mobile home owner/owners shall have only one vote at elections or meetings, and to allow association bylaws to specify less than a majority for a quorum.

### ***Real Property / Miscellaneous***

July 29, 2016

1. Supports amendment to §673.3121, Florida Statutes, to provide a cross reference in it to §673.4111, Florida Statutes, stating that if an official check is not paid, then the person entitled to enforce the official check is entitled to compensation from the obligated bank for refusing to pay.

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

3. Supports execution curative provisions to cover instruments, other than deeds or wills that convey a fee simple interest in real estate, including an amendment to F.S. §95.231.

~~4. Supports issuance of separate property tax folio numbers for separately described portions of a multiple parcel building and providing for allocation of underlying land value among the separate building parcels, including amendment of F.S. Chapter 193.~~

January 20, 2017

~~5. Opposes the amendment of Ch. 726, F.S., by replacing the Uniform Fraudulent Transfer Act with the Uniform Voidable Transactions Act (the "UVTA") unless changes are made to protect the rights of Florida citizens to engage in certain sound and legitimate business, estate, and tax planning techniques and transactions which are currently permitted under Florida law; which do not hinder, delay or defraud creditors; and which do not enhance or diminish the utilization of self-settled spendthrift trusts or single-member limited liability companies by Florida citizens.~~

February 28, 2017

~~46. Supports legislation eliminating documentary stamp tax on deeds and mortgage assumptions between persons who are married.~~

August 31, 2017

57. Supports the establishment of a procedure by which property owners may close open or expired permits, the protection from liability of bona fide purchasers of property with open or expired permits, and the establishment of procedures to reduce the number of future open or expired permits.

***Real Property / Notary***

July 29, 2016

1. Opposes Section 2 of Senate Bill 298 creating §117.055, which requires that notaries keep a detailed journal of all notarial acts including: the date, time and type of notarial act; the date, type and description of each document; the name of the signer; and description of the evidence of identity.

February 19, 2018

2. Supports proposed legislation in the 2018 Legislative session pertaining to the creation of online remote notary statutes, provided that the legislation contains a delayed effective date (July 1, 2020) for the use of an online notary in connection with the execution of wills, codicils and revocable trusts to the extent subject to the execution formalities of s. 736.0403(2).

***Real Property / Property Rights***

July 29, 2016

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

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

3. Supports amendment to F.S. § 48.23(1) re lis pendens to include those receiving a mortgage or other lien on property in the protections provided by this statute.

August 31, 2017

~~4. Supports proposed legislation to provide a cause of action for unlawful detainer, clarify the applicability of actions for forcible entry and unlawful detainer, clarify that no pre-suit notice is required in such actions, remove procedural jury verdict forms, and modernize archaic language.~~

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

January 26, 2018

~~6. Supports proposed amendment to Chapter 732, Florida Statutes, to provide much needed clarification and guidance regarding the waiver of constitutional homestead protections for surviving spouses. The statute would provide 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. This would supplement existing procedures in section 732.702, Fla. Stat., which provide for the waiver of spousal rights by written agreement.~~

***Real Property / Recording***

July 29, 2016

1. Supports legislation to maintain the integrity of the recording system in the State of Florida.

***Real Property / Title Insurance***

July 29, 2016

1. Opposes any portion of the National Association of Insurance Commissioners Title Insurers Model Act and Title Insurance Agent Model Act that may adversely affect Florida attorneys' ability to participate in real estate closing and the issuance of title insurance.
2. Supports the regulatory approval of a proposed ALTA Junior Loan Policy Form, but opposes legislation that would exclude from the statutory definition of title insurance the insuring of mortgage liens covering second mortgages and home equity line mortgages.
3. Opposes adoption of a "file and use" system for the determination of title insurance rates in the State of Florida, supplanting a promulgated rate system in which the state regulatory agency determines rates based on actuarial analysis of statutorily determined criteria.
4. Supports recommendations to the Title Insurance Study Advisory Council concerning the providing and regulation of title insurance.
5. Opposes elimination of the requirement that title insurance agencies deposit securities having a value of \$35,000 or a bond in that amount for the benefit of any title insurer damaged by an agency's violation of its contract with the insurer.

***Real Property, Probate and Trust / Judiciary***

February 7, 2017

1. Opposes term limits for judges at any level of Florida's state court system.



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**VERSION SHOWING CHANGES TO MULTIPLE STATUTES – WORK  
PRODUCT OF REMOTE NOTARY COMMITTEE**

1 A bill to be entitled

2 An act relating to notaries public; providing  
3 directives to the Division of Law Revision and  
4 Information; amending s. 117.01, F.S.; revising  
5 provisions relating to use of the office of notary  
6 public; amending s. 117.021, F.S.; requiring  
7 electronic signatures to include access protection;  
8 prohibiting a person from requiring a notary public to  
9 perform a notarial act with certain technology;  
10 requiring the Department of State, in collaboration  
11 with the Agency for State Technology, to adopt rules  
12 for certain purposes; amending s. 117.05, F.S.;  
13 revising limitations on notary fees to conform to  
14 changes made by the act; providing for inclusion of  
15 certain information in a jurat or notarial  
16 certificate; providing for compliance with online  
17 notarization requirements; providing for notarial  
18 certification of a printed electronic record; revising  
19 statutory forms for jurats and notarial certificates;  
20 amending s. 117.107, F.S.; providing applicability;  
21 revising prohibited acts; creating s. 117.201, F.S.;  
22 providing definitions; creating s. 117.209, F.S.;  
23 authorizing online notarizations; providing  
24 exceptions; creating s. 117.215, F.S.; specifying the  
25 application of other laws in relation to online  
26 notarizations and witnessing, providing exceptions;  
27 creating s. 117.225, F.S.; specifying registration and  
28 qualification requirements for online notaries public;  
29 creating s. 117.235, F.S.; authorizing the performance  
30 of certain notarial acts; creating s. 117.245, F.S.;  
31 requiring a notary public to keep an electronic  
32 journal of online notarizations and certain audio-

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33 video communication recordings; specifying the  
34 information that must be included for each online  
35 notarization; requiring an online notary public to  
36 take certain steps regarding the maintenance and  
37 security of the electronic journal; specifying that  
38 the Executive Office of the Governor maintains  
39 jurisdiction for a specified period of time for  
40 purposes of investigating notarial misconduct;  
41 providing for construction; creating s. 117.255, F.S.;  
42 specifying requirements for the use of electronic  
43 journals, signatures, and seals; requiring an online  
44 notary public to provide notification of the theft,  
45 vandalism, or loss of an electronic journal,  
46 signature, or seal; authorizing an online notary  
47 public to make copies of electronic journal entries  
48 and to provide access to related recordings under  
49 certain circumstances; authorizing an online notary  
50 public to charge a fee for making and delivering such  
51 copies; providing an exception; creating s. 117.265,  
52 F.S.; prescribing online notarization procedures;  
53 specifying the manner by which an online notary public  
54 must verify the identity of a principal or a witness;  
55 requiring an online notary public to take certain  
56 measures as to the security of technology used;  
57 specifying that an electronic notarial certificate  
58 must identify the performance of an online  
59 notarization; specifying that noncompliance does not  
60 impair the validity of a notarial act or the notarized  
61 electronic record; providing for construction;  
62 creating s. 117.275, F.S.; providing fees for online  
63 notarizations; creating s. 117.285, F.S.; specifying  
64 the manner by which an online notary public may

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65 supervise the witnessing of electronic records of  
66 online notarizations, providing exceptions; creating  
67 s. 117.295, F.S.; providing standards for electronic  
68 and online notarizations; authorizing the Department  
69 of State to approve and periodically review companies  
70 that offer online notarization services; authorizing  
71 the department to adopt certain rules; prescribing  
72 minimum standards for companies that offer online  
73 notarization services; creating s. 117.305, F.S.;  
74 superseding certain provisions of federal law  
75 regulating electronic signatures; amending s. 28.222,  
76 F.S.; requiring the clerk of the circuit court to  
77 record certain instruments; amending s. 92.50, F.S.;  
78 clarifying acceptability of remote online  
79 notarizations; amending s. 95.231, F.S.; providing a  
80 limitation period for certain recorded instruments;  
81 amending s. 689.01, F.S.; providing for witnessing of  
82 documents in connection with real estate conveyances;  
83 providing for validation of certain recorded  
84 documents; amending s. 694.08, F.S.; providing for  
85 validation of certain recorded documents; amending s.  
86 695.03, F.S.; providing and revising requirements for  
87 making acknowledgments, proofs, and other documents,  
88 limiting recordability of instruments acknowledged  
89 before a foreign remote online notary public; amending  
90 s. 695.04, F.S.; conforming provisions to changes made  
91 by the act; amending s. 695.28, F.S.; providing for  
92 validity of recorded documents; conforming provisions  
93 to changes made by the act; amending s. 709.2202,  
94 F.S.; specifying that certain authority granted  
95 through a power of attorney requiring separate signed  
96 enumeration may not be exercised if executed by online

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97           notarization or witnessed remotely; providing  
98           effective dates.

99  
100       Be It Enacted by the Legislature of the State of Florida:

101           Section 1. The Division of Law Revision and Information is  
102 directed to:

103           (1) Create part I of chapter 117, Florida Statutes,  
104 consisting of ss. 117.01-117.108, Florida Statutes, to be  
105 entitled "General Provisions."

106           (2) Create part II of chapter 117, Florida Statutes,  
107 consisting of ss. 117.201-117.305, Florida Statutes, to be  
108 entitled "Online Notarizations."

109           Section 2. Subsection (1) of section 117.01, Florida  
110 Statutes, is amended to read:

111           117.01 Appointment, application, suspension, revocation,  
112 application fee, bond, and oath.

113           (1) The Governor may appoint as many notaries public as he  
114 or she deems necessary, each of whom must ~~shall~~ be at least 18  
115 years of age and a legal resident of this ~~the~~ state. A permanent  
116 resident alien may apply and be appointed and shall file with his  
117 or her application a recorded Declaration of Domicile. The  
118 residence required for appointment must be maintained throughout  
119 the term of appointment. A notary public ~~Notaries public~~ shall be  
120 appointed for 4 years and may only ~~shall~~ use and exercise the  
121 office of notary public if he or she is within the boundaries of  
122 this state. An applicant must be able to read, write, and  
123 understand the English language.

124           Section 3. Present subsections (4) and (5) of section  
125 117.021, Florida Statutes, are renumbered as subsections (5) and  
126 (6), respectively, a new subsection (4) and subsection (7) are  
127 added to that section, and subsection (2) of that section is  
128 amended, to read:

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129 117.021 Electronic notarization.—

130 (2) In performing an electronic notarial act, a notary  
131 public shall use an electronic signature that is:

132 (a) Unique to the notary public;

133 (b) Capable of independent verification;

134 (c) Retained under the notary public's sole control and  
135 includes access protection through the use of passwords or codes  
136 under control of the notary public; and

137 (d) Attached to or logically associated with the electronic  
138 document in a manner that any subsequent alteration to the  
139 electronic document displays evidence of the alteration.

140 (4) A person may not require a notary public to perform a  
141 notarial act with respect to an electronic record with a form of  
142 technology that the notary public has not selected to use.

143 (7) The Department of State, in collaboration with the  
144 Agency for State Technology, shall adopt rules establishing  
145 standards for tamper-evident technologies that will indicate any  
146 alteration or change to an electronic record after completion of  
147 an electronic notarial act and shall publish a list of  
148 technologies that satisfy those standards and are approved for  
149 use in electronic notarizations, effective January 1, 2020. All  
150 electronic notarizations performed on or after January 1, 2020  
151 must comply with the adopted standards and use an approved  
152 technology.

153 Section 4. Subsection (1), paragraph (a) of subsection (2),  
154 subsections (4) and (5), paragraph (a) of subsection (12), and  
155 subsections (13) and (14) of section 117.05, Florida Statutes,  
156 are amended, and paragraph (c) is added to subsection (12) of  
157 that section, to read:

158 117.05 Use of notary commission; unlawful use; notary fee;  
159 seal; duties; employer liability; name change; advertising;  
160 photocopies; penalties.—

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161 (1) A ~~Ne~~ person may not ~~shall~~ obtain or use a notary public  
162 commission in other than his or her legal name, and it is  
163 unlawful for a notary public to notarize his or her own  
164 signature. Any person applying for a notary public commission  
165 must submit proof of identity to the Department of State ~~if so~~  
166 ~~requested~~. Any person who violates ~~the provisions of this~~  
167 subsection commits ~~is guilty of~~ a felony of the third degree,  
168 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

169 (2)(a) The fee of a notary public may not ~~exceed~~ \$10 for  
170 any one notarial act, except as provided in s. 117.045 or s.  
171 117.275.

172 (4) When notarizing a signature, a notary public shall  
173 complete a jurat or notarial certificate ~~in substantially the~~  
174 same form as those found in subsection (13). The jurat or  
175 certificate of acknowledgment shall contain the following  
176 elements:

177 (a) The venue stating the location of the notary public at  
178 the time of the notarization in the format, "State of Florida,  
179 County of ....."

180 (b) The type of notarial act performed, an oath or an  
181 acknowledgment, evidenced by the words "sworn" or "acknowledged."

182 (c) ~~Whether the signer personally appeared before the~~  
183 notary public at the time of the notarization by physical  
184 presence or by means of audio-video communication technology as  
185 authorized under part II of this chapter.

186 (d) The exact date of the notarial act.

187 (e) The name of the person whose signature is being  
188 notarized. It is presumed, absent such specific notation by the  
189 notary public, that notarization is to all signatures.

190 (f) The specific type of identification the notary public  
191 is relying upon in identifying the signer, either based on

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192 personal knowledge or satisfactory evidence specified in  
193 subsection (5).

194 (g) The notary public's ~~notary's~~ official signature.

195 (h) The notary public's ~~notary's~~ name, typed, printed, or  
196 stamped below the signature.

197 (i) The notary public's ~~notary's~~ official seal affixed  
198 below or to either side of the notary public's ~~notary's~~  
199 signature.

200 (5) A notary public may not notarize a signature on a  
201 document unless he or she personally knows, or has satisfactory  
202 evidence, that the person whose signature is to be notarized is  
203 the individual who is described in and who is executing the  
204 instrument. A notary public shall certify in the certificate of  
205 acknowledgment or jurat the type of identification, either based  
206 on personal knowledge or other form of identification, upon which  
207 the notary public is relying. In the case of an online  
208 notarization, the online notary public shall comply with the  
209 requirements set forth in part II of this chapter.

210 (a) For purposes of this chapter, the term "personally  
211 knows" means having an acquaintance, derived from association  
212 with the individual, which establishes the individual's identity  
213 with at least a reasonable certainty.

214 (b) For the purposes of this chapter, the term  
215 "satisfactory evidence" means the absence of any information,  
216 evidence, or other circumstances which would lead a reasonable  
217 person to believe that the person whose signature is to be  
218 notarized is not the person he or she claims to be and any one of  
219 the following:

220 1. The sworn written statement of one credible witness  
221 personally known to the notary public or the sworn written  
222 statement of two credible witnesses whose identities are proven

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223 to the notary public upon the presentation of satisfactory  
224 evidence that each of the following is true:

225 a. That the person whose signature is to be notarized is  
226 the person named in the document;

227 b. That the person whose signature is to be notarized is  
228 personally known to the witnesses;

229 c. That it is the reasonable belief of the witnesses that  
230 the circumstances of the person whose signature is to be  
231 notarized are such that it would be very difficult or impossible  
232 for that person to obtain another acceptable form of  
233 identification;

234 d. That it is the reasonable belief of the witnesses that  
235 the person whose signature is to be notarized does not possess  
236 any of the identification documents specified in subparagraph 2.;  
237 and

238 e. That the witnesses do not have a financial interest in  
239 nor are parties to the underlying transaction; or

240 2. Reasonable reliance on the presentation to the notary  
241 public of any one of the following forms of identification, if  
242 the document is current or has been issued within the past 5  
243 years and bears a serial or other identifying number:

244 a. A Florida identification card or driver license issued  
245 by the public agency authorized to issue driver licenses;

246 b. A passport issued by the Department of State of the  
247 United States;

248 c. A passport issued by a foreign government if the  
249 document is stamped by the United States Bureau of Citizenship  
250 and Immigration Services;

251 d. A driver license or an identification card issued by a  
252 public agency authorized to issue driver licenses in a state  
253 other than Florida, or by a territory of the United States, or  
254 Canada or Mexico;

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255 e. An identification card issued by any branch of the armed  
256 forces of the United States;

257 f. A veteran health identification card issued by the  
258 United States Department of Veterans Affairs;

259 g. An inmate identification card issued on or after January  
260 1, 1991, by the Florida Department of Corrections for an inmate  
261 who is in the custody of the department;

262 h. An inmate identification card issued by the United  
263 States Department of Justice, Bureau of Prisons, for an inmate  
264 who is in the custody of the department;

265 i. A sworn, written statement from a sworn law enforcement  
266 officer that the forms of identification for an inmate in an  
267 institution of confinement were confiscated upon confinement and  
268 that the person named in the document is the person whose  
269 signature is to be notarized; or

270 j. An identification card issued by the United States  
271 Bureau of Citizenship and Immigration Services.

272 (12)(a) A notary public may supervise the making of a copy  
273 of a tangible or an electronic record or the printing of an  
274 electronic record, photocopy of an original document and attest  
275 to the trueness of the copy or of the printout, provided the  
276 document is neither a vital record in this state, another state,  
277 a territory of the United States, or another country, nor a  
278 public record, if a copy can be made by the custodian of the  
279 public record.

280 (c) A notary public must use a certificate in substantially  
281 the following form in notarizing a copy of a tangible or an  
282 electronic record or a printout of an electronic record:

283  
284 STATE OF FLORIDA  
285 COUNTY OF .....  
286

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287 On this .... day of ....., ...(year)..., I attest that the  
288 preceding or attached document is a true, exact, complete, and  
289 unaltered ...(copy of a tangible or an electronic record  
290 presented to me by the document’s custodian)... or a ...(printout  
291 made by me from such record).... If a printout, I further attest  
292 that at the time of printing, no security features, if any,  
293 present on the electronic record, indicated that the record had  
294 been altered since execution.

295  
296 ...(Signature of Notary Public – State of Florida)...  
297 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

298  
299 (13) The following notarial certificates are sufficient for  
300 the purposes indicated, if completed with the information  
301 required by this chapter. The specification of forms under this  
302 subsection does not preclude the use of other forms.

303 (a) For an oath or affirmation:

304  
305 STATE OF FLORIDA  
306 COUNTY OF .....

307  
308 Sworn to (or affirmed) and subscribed before me by means of []  
309 physical presence or [] online notarization, this .... day of  
310 .....(year)...., by ...(name of person making  
311 statement)....

312  
313 ...(Signature of Notary Public – State of Florida)...  
314 ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
315 ... Personally Known ..... OR Produced Identification .....  
316 ... Type of Identification Produced.....

317  
318 (b) For an acknowledgment in an individual capacity:

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319  
320 STATE OF FLORIDA  
321 COUNTY OF .....

322  
323 The foregoing instrument was acknowledged before me by means of  
324 [] physical presence or [] online notarization, this .... day of  
325 ....., ...(year)..., by ...(name of person acknowledging)..  
326  
327 ...(Signature of Notary Public - State of Florida)...  
328 ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
329 ... Personally Known ..... OR Produced Identification .....  
330 ... Type of Identification Produced.....

331  
332 (c) For an acknowledgment in a representative capacity:  
333

334 STATE OF FLORIDA  
335 COUNTY OF .....

336  
337 The foregoing instrument was acknowledged before me by means of  
338 [] physical presence or [] online notarization, this .... day of  
339 ....., ...(year)..., by ...(name of person)... as ...(type of  
340 authority, ... e.g. officer, trustee, attorney in fact)... for  
341 ...(name of party on behalf of whom instrument was executed)....  
342  
343 ...(Signature of Notary Public - State of Florida)...  
344 ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
345 ... Personally Known ..... OR Produced Identification .....  
346 ... Type of Identification Produced.....

347  
348 (14) A notary public must make reasonable accommodations to  
349 provide notarial services to persons with disabilities.

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350 (a) A notary public may notarize the signature of a person  
351 who is blind after the notary public has read the entire  
352 instrument to that person.

353 (b) A notary public may notarize the signature of a person  
354 who signs with a mark if:

355 1. The document signing is witnessed by two disinterested  
356 persons;

357 2. The notary public prints the person's first name at the  
358 beginning of the designated signature line and the person's last  
359 name at the end of the designated signature line; and

360 3. The notary public prints the words "his (or her) mark"  
361 below the person's signature mark.

362 (c) The following notarial certificates are sufficient for the  
363 purpose of notarizing for a person who signs with a mark:

364 1. For an oath or affirmation:

365 ... (First Name) ... (Last Name) ...

366 ... His (or Her) Mark ...

367  
368  
369 STATE OF FLORIDA

370 COUNTY OF .....

371  
372 Sworn to and subscribed before me by means of [] physical  
373 presence or [] online notarization, this .... day of .....,  
374 ...(year) ..., by ...(name of person making statement) ..., who  
375 signed with a mark in the presence of these witnesses:

376  
377 ... (Signature of Notary Public - State of Florida) ...

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

379 ... Personally Known ..... OR Produced Identification .....

380 ... Type of Identification Produced .....

381

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382 2. For an acknowledgment in an individual capacity:

383  
384 ... (First Name)... ... (Last Name)...

385 ... His (or Her) Mark...

386  
387 STATE OF FLORIDA

388 COUNTY OF .....

389  
390 The foregoing instrument was acknowledged before me by means of  
391 [] physical presence or [] online notarization, this .... day of  
392 ....., ... (year)..., by ... (name of person acknowledging)...,  
393 who signed with a mark in the presence of these witnesses:

394 ... (Signature of Notary Public - State of Florida)...

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

396 ... Personally Known ..... OR Produced Identification .....

397 ... Type of Identification Produced.....

398  
399

400 (d) A notary public may sign the name of a person whose  
401 signature is to be notarized when that person is physically  
402 unable to sign or make a signature mark on a document if:

403 1. The person with a disability directs the notary public  
404 to sign in his or her presence, either by verbal, written, or  
405 other means;

406 2. The document signing is witnessed by two disinterested  
407 persons; and

408 3. The notary public writes below the signature the  
409 following statement: "Signature affixed by notary, pursuant to s.  
410 117.05(14), Florida Statutes," and states the circumstances and  
411 the means by which the notary public was directed to sign of the  
412 signing in the notarial certificate.

413

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414 The notary public must maintain the proof of direction and  
415 authorization to sign on behalf of the person with a disability  
416 for 10 years from the date of the notarial act.

417 (e) The following notarial certificates are sufficient for  
418 the purpose of notarizing for a person with a disability who  
419 directs the notary public to sign his or her name:

420 1. For an oath or affirmation:

421  
422 STATE OF FLORIDA  
423 COUNTY OF .....

424  
425 Sworn to (or affirmed) before me by means of [] physical presence  
426 or [] online notarization, this .... day of .....,  
427 ...(year)..., by ...(name of person making statement)..., and  
428 subscribed by ...(name of notary)... at the direction of ~~and in~~  
429 ~~the presence of~~ ...(name of person making statement)... by  
430 ...(written, verbal, or other means)..., and in the presence of  
431 these witnesses:

432 ...(Signature of Notary Public - State of Florida)...  
433 ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
434 ... Personally Known ..... OR Produced Identification .....  
435 ... Type of Identification Produced.....

436  
437 2. For an acknowledgment in an individual capacity:

438  
439 STATE OF FLORIDA  
440 COUNTY OF .....

441  
442 The foregoing instrument was acknowledged before me by means of  
443 [] physical presence or [] online notarization, this .... day of  
444 ....., ...(year)..., by ...(name of person acknowledging)...  
445 and subscribed by ...(name of notary)... at the direction of ~~and~~

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446 ~~in the presence of~~ ...(name of person acknowledging)..., and in  
447 the presence of these witnesses:

448  
449 ... (Signature of Notary Public - State of Florida)  
450 ... (Print, Type, or Stamp Commissioned Name of Notary Public)  
451 ... Personally Known ..... OR Produced Identification .....  
452 ... Type of Identification Produced.....

453  
454 Section 5. Subsections (2) and (9) of section 117.107,  
455 Florida Statutes, are amended to read:

456 117.107 Prohibited acts.—

457 (2) A notary public may not sign notarial certificates  
458 using a facsimile signature stamp unless the notary public has a  
459 physical disability that limits or prohibits his or her ability  
460 to make a written signature and unless the notary public has  
461 first submitted written notice to the Department of State with an  
462 exemplar of the facsimile signature stamp. This subsection does  
463 not apply to or prohibit the use of an electronic signature and  
464 seal by a notary public who is registered as an online notary  
465 public to perform an electronic or online notarization in  
466 accordance with this chapter.

467 (9) A notary public may not notarize a signature on a  
468 document if the person whose signature is being notarized does  
469 not appear before the notary public either by means of physical  
470 presence or by means of audio-video communication technology as  
471 authorized under part II of this chapter ~~is not in the presence~~  
472 ~~of the notary public~~ at the time the signature is notarized. Any  
473 notary public who violates this subsection is guilty of a civil  
474 infraction, punishable by penalty not exceeding \$5,000, and such  
475 violation constitutes malfeasance and misfeasance in the conduct  
476 of official duties. It is no defense to the civil infraction  
477 specified in this subsection that the notary public acted without

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478 intent to defraud. A notary public who violates this subsection  
479 with the intent to defraud is guilty of violating s. 117.105.

480 Section 6. Section 117.201, Florida Statutes, is created to  
481 read:

482 117.201 Definitions.—As used in this chapter, the term:

483 (1) "Appear before," "before," "appear personally before,"  
484 or "in the presence of" mean:

485 (a) In the physical presence of another person; or

486 (b) Outside of the physical presence of another person, but  
487 able to see, hear, and communicate with the person by means of  
488 audio-video communication technology.

489 (2) "Audio-video communication technology" means technology  
490 in compliance with this chapter which enables real-time, two-way  
491 communication using electronic means in which participants are  
492 able to see, hear, and communicate with one another.

493 (3) "Credential analysis" means a process or service, in  
494 compliance with this chapter, in which a third party affirms the  
495 validity of a government-issued identification credential and  
496 data thereon through review of public or proprietary data  
497 sources.

498 (4) "Errors and omissions insurance" means a type of  
499 insurance that provides coverage for potential errors or  
500 omissions in or relating to the notarial act and is maintained,  
501 as applicable, by the online notary public, their employer, or a  
502 provider of software services used to directly facilitate the  
503 performance of the online notarial act.

504 (5) "Government-issued identification credential" means any  
505 approved credential for verifying identity under s.

506 117.05(5)(b)2.

507 (6) "Identity proofing" means a process or service in  
508 compliance with this chapter in which a third party affirms the  
509 identity of an individual through use of public or proprietary

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510 data sources, which may include by means of knowledge-based  
511 authentication or biometric verification.

512 (7) "Knowledge-based authentication" means a form of  
513 identity proofing based on a set of questions which pertain to an  
514 individual and are formulated from public or proprietary data  
515 sources.

516 (8) "Online notarization" means the performance of an  
517 electronic notarization by means of audio-video communication  
518 technology in compliance with this chapter.

519 (9) "Online notary public" means a notary public  
520 commissioned under part I of this chapter, a civil-law notary  
521 appointed under chapter 118, or a commissioner of deeds appointed  
522 under part IV of chapter 721, who has registered with the  
523 Executive Office of the Governor and the Department of State to  
524 perform online notarizations under this part.

525 (10) "Physical presence" means being in the same physical  
526 location as another person and close enough to see, hear,  
527 communicate with, and exchange credentials with that person.

528 (11) "Principal" means an individual whose electronic  
529 signature is acknowledged, witnessed, or attested to in an online  
530 notarization or who gives an oath or affirmation to the online  
531 notary public.

532 (12) "Remote presentation" means transmission of an image  
533 of a government-issued identification credential through audio-  
534 video communication technology that is of sufficient quality to  
535 enable the online notary public to identify the individual  
536 seeking the notary's services and to perform credential analysis.

537  
538 Except where the context otherwise requires, any term defined in  
539 s. 668.50 has the same meaning when used in this part.

540 Section 7. Section 117.209, Florida Statutes, is created to  
541 read:

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542 117.209 Authority to perform online notarizations.–

543 (1) An online notary public may perform any of the  
544 functions authorized under part I of this chapter as an online  
545 notarization, other than solemnizing the rites of matrimony, or a  
546 notarial act in connection with the creation and execution of:

547 (a) wills and codicils, except as otherwise provided in  
548 chapter 732;

549 (b) revocable trusts, except as otherwise provided in  
550 chapter 736;

551 (c) advance directives except as otherwise provided in  
552 chapter 765; or

553 (d) contracts, agreements or waivers subject to s. 732.701-  
554 .702, except as otherwise provided in chapter 732.

555 (2) A power of attorney executed with an online  
556 notarization may not be used to exercise certain powers as set  
557 forth in s. 709.2202(7).

558 (3) If a notarial act requires a principal to appear before  
559 or in the presence of the online notary public, the principal may  
560 appear before the online notary public by means of audio-video  
561 communication technology that meets the requirements of this  
562 chapter and any rules adopted by the Department of State under s.  
563 117.295.

564 (4) An online notary public physically located in this  
565 state may perform an online notarization as authorized under this  
566 part, regardless of whether the principal or any witnesses are  
567 physically located in this state at the time of the online  
568 notarization. A civil-law notary or a commissioner of deeds  
569 registered as an online notary public may perform an online  
570 notarization while physically located outside of this state.

571 (5) The validity of an online notarization performed by an  
572 online notary public registered in this state shall be determined

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573 by applicable laws of this state regardless of the physical  
574 location of the principal at the time of the notarial act.

575 Section 8. Section 117.215, Florida Statutes, is created to  
576 read:

577 117.215 Relation to other laws.—

578 (1) If a provision of law requires a notary public or other  
579 authorized official of this state to notarize a signature or a  
580 statement, to take an acknowledgment of an instrument, or to  
581 administer an oath or affirmation so that a document may be  
582 sworn, affirmed, made under oath, or subject to penalty of  
583 perjury, an online notarization performed in accordance with the  
584 provisions of this part satisfies such requirement.

585 (2) If a provision of law requires a signature or an act to  
586 be witnessed, compliance with the online electronic witnessing  
587 standards prescribed in s. 117.285 satisfies that requirement.

588 (3) This section does not apply to laws governing the  
589 creation and execution of:

590 (a) wills and codicils, except as otherwise provided in  
591 chapter 732;

592 (b) revocable trusts, except as otherwise provided in  
593 chapter 736;

594 (c) advance directives except as otherwise provided in  
595 chapter 765; or

596 (d) contracts, agreements or waivers subject to s. 732.701-  
597 .702, except as otherwise provided in chapter 732.

598 (4) A power of attorney executed with an online  
599 notarization may not be used to exercise certain powers as set  
600 forth in s. 709.2202(7).

601 Section 9. Section 117.225, Florida Statutes, is created to  
602 read:

603 117.225 Registration; qualifications.--A notary public, a  
604 civil-law notary appointed under chapter 118, or a commissioner

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605 of deeds appointed under part IV of chapter 721 may complete  
606 registration as an online notary public with the Executive Office  
607 of the Governor and the Department of State by:

608 (1) Holding a current commission as a notary public under  
609 part I of this chapter, an appointment as a civil-law notary  
610 under chapter 118, or an appointment as a commissioner of deeds  
611 under part IV of chapter 721, and submitting a copy of such  
612 commission or proof of such appointment with his or her  
613 registration.

614 (2) Certifying that the notary public, civil-law notary, or  
615 commissioner of deeds registering as an online notary public has  
616 completed a classroom or online course covering the duties,  
617 obligations, and technology requirements for serving as an online  
618 notary public.

619 (3) Paying an online notary public commission fee in the  
620 amount of \$10, as required by s. 113.01.

621 (4) Submitting a registration as an online notary public to  
622 the Executive Office of the Governor and the Department of State,  
623 signed and sworn to by the registrant.

624 (5) Confirming in a statement that the audio-video  
625 communication and identity proofing technologies the registrant  
626 intends to use in performing online notarizations satisfy the  
627 requirements of this chapter.

628 (6) Providing evidence satisfactory to the Executive Office  
629 of the Governor and the Department of State that the registrant  
630 has obtained a bond, payable to any individual harmed as a result  
631 of a breach of duty by the registrant acting in his or her  
632 official capacity as an online notary public, conditioned for the  
633 due discharge of the office, in the minimum amount of \$25,000 or  
634 such greater amounts and on such terms as are specified by rule  
635 by the Department of State as reasonably necessary to protect the  
636 public. The bond shall be approved and filed with the Department

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637 of State and executed by a surety company duly authorized to  
638 transact business in this state. Compliance by an online notary  
639 public with this requirement shall satisfy the requirement of  
640 obtaining a bond under s. 117.01(7).

641 (7) Providing evidence satisfactory to the Executive Office  
642 of the Governor and the Department of State that the registrant  
643 acting in his or her capacity as an online notary public is  
644 covered by an errors and omissions insurance policy from an  
645 insurer authorized to transact business in this state, in the  
646 minimum amount of \$100,000 per claim, and on such terms as are  
647 specified by rule by the Department of State as reasonably  
648 necessary to protect the public.

649 Section 10. Section 117.235, Florida Statutes, is created  
650 to read:

651 117.235 Performance of notarial acts.–

652 (1) An online notary public is subject to part I of this  
653 chapter to the same extent as a notary public appointed and  
654 commissioned only under that part, including the provisions of s.  
655 117.021 relating to electronic notarizations.

656 (2) An online notary public may perform in person notarial  
657 acts as provided by part I of this chapter in addition to  
658 performing online notarizations as authorized and pursuant to the  
659 provisions of this part.

660 Section 11. Section 117.245, Florida Statutes, is created  
661 to read:

662 117.245 Electronic journal of online notarizations.–

663 (1) An online notary public shall keep a secure electronic  
664 journal of electronic records notarized by the online notary  
665 public. For each online notarization, the electronic journal  
666 entry must contain all of the following:

667 (a) The date and time of the notarization.

668 (b) The type of notarial act.

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669 (c) The type, the title, or a description of the electronic  
670 record or proceeding.

671 (d) The typed name and address of each principal involved  
672 in the transaction or proceeding.

673 (e) Evidence of identity of each principal involved in the  
674 transaction or proceeding in any of the following forms:

675 1. A statement that the person is personally known to the  
676 online notary public.

677 2. A notation of the type of government-issued  
678 identification credential provided to the online notary public.

679 3. A copy of the government-issued identification  
680 credential provided.

681 4. A copy of any other identification credential or  
682 information provided.

683 (f) An indication that the principal satisfactorily passed  
684 the identity proofing.

685 (g) An indication that the government-issued identification  
686 credential satisfied the credential analysis.

687 (h) The fee, if any, charged for the notarization.

688 (2) The online notary public shall retain a copy of the  
689 recording of the audio-video communication in which:

690 (a) The principal and any witnesses appeared before the  
691 notary public.

692 (b) The identity of each was confirmed.

693 (c) Electronic records were signed by the principal and any  
694 witnesses.

695 (d) The notarial act was performed.

696 (3) The online notary public shall take reasonable steps  
697 to:

698 (a) Ensure the integrity, security, and authenticity of  
699 online notarizations.

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700           (b) Maintain a backup record of the electronic journal  
701 required by subsection (1).

702           (c) Protect the electronic journal, the backup record, and  
703 any other records received by the online notary public from  
704 unauthorized access or use.

705           (4) The electronic journal required under subsection (1)  
706 and the recordings of audio-video communications required under  
707 subsection (2) shall be maintained for at least 10 years after  
708 the date of the notarial act. The Executive Office of the  
709 Governor maintains jurisdiction over the electronic journal and  
710 audio-video communication recordings to investigate notarial  
711 misconduct for a period of 10 years after the date of the  
712 notarial act. The online notary public, a guardian of an  
713 incapacitated online notary public, or the personal  
714 representative of a deceased online notary public, may, by  
715 contract with a secure repository in accordance with any rules  
716 established under this chapter, delegate to the repository the  
717 online notary public's duty to retain the electronic journal and  
718 the required recordings of audio-video communications.

719           (5) An omitted or incomplete entry in the electronic  
720 journal does not impair the validity of the notarial act or of  
721 the electronic record which was notarized, but may be introduced  
722 as evidence to establish violations of this chapter or as  
723 evidence of possible fraud, forgery, impersonation, duress,  
724 incapacity, undue influence, minority, illegality,  
725 unconscionability or for other evidentiary purposes.

726           Section 12. Section 117.255, Florida Statutes, is created  
727 to read:

728           117.255 Use of electronic journal, signature, and seal.— An  
729 online notary public shall:

730           (1) Take reasonable steps to ensure that any registered  
731 device used to create an electronic signature is current and has

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732 not been revoked or terminated by the issuing or registering  
733 authority of the device.

734 (2) Keep the electronic journal, electronic signature, and  
735 electronic seal secure and under his or her sole control, which  
736 includes access protection using passwords or codes under control  
737 of the online notary public. The online notary public may not  
738 allow another person to use the online notary public's electronic  
739 journal, electronic signature, or electronic seal.

740 (3) Attach or logically associate the electronic signature  
741 and seal to the electronic notarial certificate of an electronic  
742 record in a manner that is capable of independent verification  
743 using tamper-evident technology that renders any subsequent  
744 change or modification to the electronic record evident.

745 (4) Notify an appropriate law enforcement agency and the  
746 Department of State of any unauthorized use of or compromise to  
747 the security of the electronic journal, official electronic  
748 signature, or electronic seal within 7 days after discovery of  
749 the same.

750 (5) Make electronic copies, upon request, of the pertinent  
751 entries in the electronic journal and provide access to the  
752 related audio-video communication recordings to the parties to  
753 the electronic records notarized, and to the title agent,  
754 settlement agent, or title insurer who engaged the online notary  
755 with regard to a real estate transaction. The online notary  
756 public may charge a fee not to exceed \$20 per transaction record  
757 for making and delivering electronic copies of a given series of  
758 related electronic records, except if required by the Executive  
759 Office of the Governor or the Department of State to submit  
760 copies pursuant to a notary misconduct investigation. If the  
761 online notary public does charge a fee, the online notary public  
762 shall disclose the amount of such fee to the requester before  
763 making the electronic copies.

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764 Section 13. Section 117.265, Florida Statutes, is created  
765 to read:

766 117.265 Online notarization procedures.–

767 (1) An online notary public physically located in this  
768 state may perform an online notarization that meets the  
769 requirements of this part regardless of whether the principal or  
770 any witnesses are physically located in this state at the time of  
771 the online notarization. A civil-law notary or a commissioner of  
772 deeds registered as an online notary public may perform an online  
773 notarization while physically located outside of this state. An  
774 online notarial act performed in accordance with this chapter is  
775 deemed to have been performed within this state and is governed  
776 by the applicable laws of this state.

777 (2) In performing an online notarization, an online notary  
778 public shall confirm the identity of a principal and any witness  
779 appearing online, at the time that the signature is taken, by  
780 using audio-video communication technology and processes that  
781 meet the requirements of this part and of any rules adopted  
782 hereunder and record the two-way audio-video conference session  
783 between the notary public and the principal and any subscribing  
784 witnesses. A principal may not act in the capacity of a witness  
785 for his or her own signature in an online notarization.

786 (3) In performing an online notarization of a principal not  
787 located within this state, an online notary public must confirm  
788 that the principal desires for the notarial act to be performed  
789 by a Florida notary public and under the general law of this  
790 state.

791 (4) An online notary public shall confirm the identity of  
792 the principal or any witness by:

793 (a) Personal knowledge of each such individual; or

794 (b) All of the following, as the same may be modified or  
795 supplemented in rules adopted pursuant to s. 117.295:

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796 1. Remote presentation of a government-issued  
797 identification credential by each individual;

798 2. Credential analysis of each government-issued  
799 identification credential; and

800 3. Identity proofing of each individual in the form of  
801 knowledge-based authentication or another method of identity  
802 proofing that conforms to the standards of this chapter.

803  
804 If the online notary public is unable to satisfy subparagraphs  
805 (b)1.-3., or if the databases consulted for identity proofing do  
806 not contain sufficient information to permit authentication, the  
807 online notary public may not perform the online notarization.

808 (5) The online notary public and the company providing  
809 online notarization services or technologies to facilitate online  
810 notarization services shall take reasonable steps to ensure that  
811 the audio-video communication technology used in an online  
812 notarization is secure from unauthorized interception.

813 (6) The electronic notarial certificate for an online  
814 notarization must include a notation that the notarization is an  
815 online notarization.

816 (7) Except where otherwise expressly provided in this  
817 part, the provisions of part I of this chapter apply to an online  
818 notarization and an online notary public.

819 (8) Any failure to comply with the online notarization  
820 procedures set forth in this section does not impair the validity  
821 of the notarial act or the electronic record that was notarized,  
822 but may be introduced as evidence to establish violations of this  
823 chapter or as evidence of possible fraud, forgery, impersonation,  
824 duress, incapacity, undue influence, minority, illegality,  
825 unconscionability or for other evidentiary purposes. This  
826 subsection may not be construed to alter the duty of an online

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827 notary public to comply with this chapter and any rules adopted  
828 hereunder.

829 Section 14. Section 117.275, Florida Statutes, is created  
830 to read:

831 117.275 Fees for online notarization.—An online notary  
832 public or the employer of such online notary public may charge a  
833 fee, not to exceed \$25, for performing an online notarization in  
834 addition to any other fees authorized under part I of this  
835 chapter. Fees for services other than notarial acts are not  
836 governed by this section.

837 Section 15. Section 117.285, Florida Statutes, is created  
838 to read:

839 117.285 Supervising the witnessing of electronic records.  
840 An online notary public may supervise the witnessing of  
841 electronic records by the same audio-video communication  
842 technology used for online notarization, as follows:

843 (1) The identity of the witness must be verified in the  
844 same manner as the identity of the principal.

845 (2) The witness may be in the physical presence of the  
846 principal or remote from the principal provided the witness and  
847 principal are using audio-video communication technology.

848 (3) The act of witnessing an electronic signature means the  
849 witness is either in the physical presence of the principal or  
850 present through audio-video communication technology at the time  
851 the principal affixes the electronic signature and hears the  
852 principal make a statement to the effect that the principal has  
853 signed the electronic record.

854 (4) This section does not apply to the creation and  
855 execution of:

856 (a) wills and codicils, except as otherwise provided in  
857 chapter 732;

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858 (b) revocable trusts, except as otherwise provided in  
859 chapter 736;

860 (c) advance directives except as otherwise provided in  
861 chapter 765; or

862 (d) contracts, agreements or waivers subject to s. 732.701-  
863 .702, except as otherwise provided in chapter 732.

864 (5) A power of attorney witnessed through audio-video  
865 communication technology as provided in this section may not be  
866 used to exercise certain powers as set forth in s. 709.2202(7).

867 Section 16. Section 117.295, Florida Statutes, is created  
868 to read:

869 117.295 Standards for electronic and online notarization;  
870 rulemaking authority.–

871 (1) The Legislature intends that online notarization may  
872 begin on the effective date of this act without the need for  
873 enabling rules, but that thereafter rules setting the standards  
874 applicable to electronic notarization under s. 117.021 and for  
875 online notarization under this part shall be adopted by the  
876 Department of State reflecting future improvements in technology  
877 and in methods of assuring the identity of principals and the  
878 security of an electronic record.

879 (a) The Department of State may approve companies that meet  
880 the minimum standards for online notarizations as described in  
881 subsection (2) or subsequent rules adopted pursuant to this  
882 chapter, and may publish lists of technologies that satisfy the  
883 standards and are approved for use in online notarizations. . The  
884 Department of State may periodically review approved companies to  
885 ensure ongoing compliance with the minimum standards for online  
886 notarization.

887 (b) The Department of State shall adopt rules and standards  
888 necessary to implement the requirements of this chapter,  
889 including education requirements for online notaries public; the

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890 required terms of bonds and errors and omissions insurance, but  
891 not including the amounts of such bonds or policies.

892 (c) The Department of State may adopt rules and standards  
893 regarding identity proofing, credential analysis, unauthorized  
894 interception, remote presentation, tamper-evident technology,  
895 audio-video communication technology, and retention of the  
896 electronic journal and copies of audio-video communications  
897 recordings in a secure repository; which provide levels of  
898 integrity, security and reliability for online notarizations not  
899 lower than the initial standards set forth in subsection (2). At  
900 the time of adopting rules regarding the standards of subsection  
901 (2), the Department shall make and publish a finding of the  
902 manner(s) in which the rules protect or enhance the integrity,  
903 security and reliability of online notarizations.

904 (d) The Department of State shall adopt forms, processes  
905 and interim or emergency rules necessary to accept applications  
906 from and register online notaries public pursuant to s. 117.225  
907 no later than October 1, 2019. This paragraph shall take effect  
908 upon this act becoming law.

909 (2) Until such time as the Department of State adopts rules  
910 setting standards that are equally or more protective, the  
911 following standards shall apply and companies that offer online  
912 notarization services must meet the following minimum standards:

913 (a) Use of identity proofing by means of knowledge-based  
914 authentication which must have, at a minimum, the following  
915 security characteristics:

916 1. The principal must be presented with five or more  
917 questions with a minimum of five possible answer choices per  
918 question.

919 2. Each question must be drawn from a third-party provider  
920 of public and proprietary data sources and be identifiable to the  
921 principal's social security number or other identification

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922 information, or the principal's identity and historical events  
923 records.

924 3. Responses to all questions must be made within a 2  
925 minute time constraint.

926 4. The principal must answer a minimum of 80 percent of the  
927 questions correctly.

928 5. The principal may be offered one additional attempt in  
929 the event of a failed attempt.

930 6. During the second attempt, the principal may not be  
931 presented with more than three questions from the prior attempt.

932 (b) Use of credential analysis using one or more automated  
933 software or hardware processes that confirm that the credential  
934 matches the signer's claimed identity, contains data, format and  
935 security elements consistent with a credential of the type  
936 presented, and appears to be genuine.

937 (c) A company is deemed to have satisfied tamper-evident  
938 technology requirements by use of technology that renders any  
939 subsequent change or modification to the electronic record  
940 evident.

941 (d) Use of audio-video communication technology in  
942 completing online notarizations which must meet the following  
943 requirements:

944 1. The signal transmission must be reasonably secure from  
945 interception, access, or viewing by anyone other than the  
946 participants communicating.

947 2. The technology must provide sufficient audio clarity and  
948 video resolution to enable the notary to communicate with the  
949 principal and to confirm the identity of the principal using  
950 identification methods described in s. 117.265.

951 (e) In addition to any errors and omissions coverage it  
952 elects to provide for individual online notaries public, a  
953 company which provides software services that facilitate

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954 performance of online notarial acts by online notaries public as  
955 provided for in this part shall maintain errors and omissions  
956 insurance coverage providing no less than \$100,000 coverage per  
957 claim, with respect to potential errors or omissions in or  
958 relating to such software services. An online notary public is  
959 not responsible for the security of the systems used by the  
960 principal or others to access the online notarization session.

961 (f) Until required curricula and other providers have been  
962 approved by the Department of State, a two hour classroom or  
963 online course covering the duties, obligations, and technology  
964 requirements for serving as an online notary public offered by  
965 the Florida Land Title Association or the Real Property, Probate  
966 and Trust Law Section of the Florida Bar shall be deemed to  
967 satisfy the education requirements of s. 117.225(2)

968 Section 17. Section 117.305, Florida Statutes, is created  
969 to read:

970 117.305 Relation to federal law.—This part supersedes the  
971 Electronic Signatures in Global and National Commerce Act as  
972 authorized under 15 U.S.C. s. 7001 et seq., but does not modify,  
973 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),  
974 or authorize the electronic delivery of the notices described in  
975 15 U.S.C. s. 7003(b).

976 Section 18. Present paragraph (h) of subsection (3) of  
977 section 28.222, Florida Statutes, is redesignated as paragraph  
978 (i), and a new paragraph (h) is added to that subsection, to  
979 read:

980 28.222 Clerk to be county recorder.—

981 (3) The clerk of the circuit court shall record the  
982 following kinds of instruments presented to him or her for  
983 recording, upon payment of the service charges prescribed by law:

984 (h) Copies of any instruments originally created and  
985 executed using an electronic signature, as defined in s. 695.27,

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986 and certified to be a true and correct paper printout by a notary  
987 public in accordance with chapter 117, if the county recorder is  
988 not prepared to accept electronic documents for recording  
989 electronically.

990 Section 19. Section 92.50, Florida Statutes, is amended to  
991 read:

992 92.50 Oaths, affidavits, and acknowledgments; who may take  
993 or administer; requirements.—

994 (1) IN THIS STATE.—Oaths, affidavits, and acknowledgments  
995 required or authorized under the laws of this state (except oaths  
996 to jurors and witnesses in court and such other oaths, affidavits  
997 and acknowledgments as are required by law to be taken or  
998 administered by or before particular officers) may be taken or  
999 administered by or before any judge, clerk, or deputy clerk of  
1000 any court of record within this state, including federal courts,  
1001 or by or before any United States commissioner or any notary  
1002 public within this state. The jurat, or certificate of proof or  
1003 acknowledgment, shall be authenticated by the signature and  
1004 official seal of such officer or person taking or administering  
1005 the same; however, when taken or administered by or before any  
1006 judge, clerk, or deputy clerk of a court of record, the seal of  
1007 such court may be affixed as the seal of such officer or person.

1008 (2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE  
1009 UNITED STATES.—Oaths, affidavits, and acknowledgments required or  
1010 authorized under the laws of this state, may be taken or  
1011 administered in any other state, territory, or district of the  
1012 United States, by or before any judge, clerk or deputy clerk of  
1013 any court of record, within such state, territory, or district,  
1014 having a seal, or by or before any notary public or justice of  
1015 the peace, having a seal, in such state, territory, or district;  
1016 provided, however, such officer or person is authorized under the  
1017 laws of such state, territory, or district to take or administer

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1018 oaths, affidavits and acknowledgments. The jurat, or certificate  
1019 of proof or acknowledgment, shall be authenticated by the  
1020 signature and official seal of such officer or person taking or  
1021 administering the same; provided, however, when taken or  
1022 administered by or before any judge, clerk, or deputy clerk of a  
1023 court of record, the seal of such court may be affixed as the  
1024 seal of such officer or person.

1025 (3) IN FOREIGN COUNTRIES.—Oaths, affidavits, and  
1026 acknowledgments, required or authorized by the laws of this  
1027 state, may be taken or administered in any foreign country, by or  
1028 before any judge or justice of a court of last resort, any notary  
1029 public of such foreign country, any minister, consul general,  
1030 charge d'affaires, or consul of the United States resident in  
1031 such country. The jurat, or certificate of proof or  
1032 acknowledgment, shall be authenticated by the signature and  
1033 official seal of the officer or person taking or administering  
1034 the same; provided, however, when taken or administered by or  
1035 before any judge or justice of a court of last resort, the seal  
1036 of such court may be affixed as the seal of such judge or  
1037 justice.

1038 Section 20. Subsection (1) of section 95.231, Florida  
1039 Statutes, is amended to read:

1040 95.231 Limitations where deed or will on record.—

1041 (1) Five years after the recording of an instrument  
1042 required to be executed in accordance with s. 689.01; 5 years  
1043 after the recording of a power of attorney accompanying and used  
1044 for an instrument required to be executed in accordance with s.  
1045 689.01; or 5 years after the probate of a will purporting to  
1046 convey real property, from which it appears that the person  
1047 owning the property attempted to convey, affect, or devise it,  
1048 the instrument, power of attorney, or will shall be held to have  
1049 its purported effect to convey, affect, or devise, the title to

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1050 the real property of the person signing the instrument, as if  
1051 there had been no lack of seal or seals, witness or witnesses,  
1052 defect in, failure of, or absence of acknowledgment or  
1053 relinquishment of dower, in the absence of fraud, adverse  
1054 possession, or pending litigation. The instrument is admissible  
1055 in evidence. A power of attorney validated under this subsection  
1056 shall be valid only for the purpose of effectuating the  
1057 instrument with which it was recorded.

1058 Section 21. Section 689.01, Florida Statutes, is amended to  
1059 read:

1060 689.01 How real estate conveyed.–

1061 (1) No estate or interest of freehold, or for a term of  
1062 more than 1 year, or any uncertain interest of, in or out of any  
1063 messuages, lands, tenements or hereditaments shall be created,  
1064 made, granted, transferred or released in any other manner than  
1065 by instrument in writing, signed in the presence of two  
1066 subscribing witnesses by the party creating, making, granting,  
1067 conveying, transferring or releasing such estate, interest, or  
1068 term of more than 1 year, or by the party's lawfully authorized  
1069 agent, unless by will and testament, or other testamentary  
1070 appointment, duly made according to law; and no estate or  
1071 interest, either of freehold, or of term of more than 1 year, or  
1072 any uncertain interest of, in, to, or out of any messuages,  
1073 lands, tenements or hereditaments, shall be assigned or  
1074 surrendered unless it be by instrument signed in the presence of  
1075 two subscribing witnesses by the party so assigning or  
1076 surrendering, or by the party's lawfully authorized agent, or by  
1077 the act and operation of law. No seal shall be necessary to give  
1078 validity to any instrument executed in conformity with this  
1079 section. Corporations may execute any and all conveyances in  
1080 accordance with the provisions of this section or ss. 692.01 and  
1081 692.02.

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1082 (2) For purposes of this chapter:

1083 (a) Any requirement that an instrument be signed in the  
1084 presence of two subscribing witnesses may be satisfied by  
1085 witnesses being present and electronically signing by means of  
1086 audio-video communication technology that meets the requirements  
1087 of part II of chapter 117.

1088 (b) The act of witnessing an electronic signature is  
1089 satisfied if a witness is either in the physical presence of the  
1090 principal or present through audio-video communication technology  
1091 at the time the principal affixes his or her electronic signature  
1092 and hears the principal make a statement acknowledging that the  
1093 principal has signed the electronic record.

1094 (3) All acts of witnessing heretofore made or taken  
1095 pursuant to subsection (2) are validated and, upon recording, may  
1096 not be denied to have provided constructive notice based on any  
1097 alleged failure to have strictly complied with this section, as  
1098 currently or previously in effect, or the laws governing  
1099 notarization of instruments, including online notarization, in  
1100 this state. This subsection does not preclude a challenge to the  
1101 validity or enforceability of an instrument or electronic record  
1102 based upon fraud, forgery, impersonation, duress, incapacity,  
1103 undue influence, minority, illegality, unconscionability, or any  
1104 other basis not related to the act of witnessing.

1105 ~~Section 22.~~ Section 694.08, Florida Statutes, is amended to  
1106 read:

1107 694.08 Certain instruments validated, notwithstanding lack  
1108 of seals or witnesses, or defect in acknowledgment, etc.—

1109 (1) Whenever any power of attorney has been executed and  
1110 delivered, or any conveyance has been executed and delivered to  
1111 any grantee by the person owning the land therein described, or  
1112 conveying the same in an official or representative capacity, and  
1113 has, for a period of 7 years or more been spread upon the records

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1114 of the county wherein the land therein described has been or was  
1115 at the time situated, and one or more subsequent conveyances of  
1116 said land or parts thereof have been made, executed, delivered  
1117 and recorded by parties claiming under such instrument or  
1118 instruments, and such power of attorney or conveyance, or the  
1119 public record thereof, shows upon its face a clear purpose and  
1120 intent of the person executing the same to authorize the  
1121 conveyance of said land or to convey the said land, ~~the same~~  
1122 shall be taken and held by all the courts of this state, in the  
1123 absence of any showing of fraud, adverse possession, or pending  
1124 litigation, to have authorized the conveyance of, or to have  
1125 conveyed, the fee simple title, or any interest therein, of the  
1126 person signing such instruments, or the person in behalf of whom  
1127 the same was conveyed by a person in an official or  
1128 representative capacity, to the land therein described as  
1129 effectively as if there had been no defect in, failure of, or  
1130 absence of the acknowledgment or the certificate of  
1131 acknowledgment, if acknowledged, or the relinquishment of dower,  
1132 and as if there had been no lack of the word "as" preceding the  
1133 title of the person conveying in an official or representative  
1134 capacity, of any seal or seals, or of any witness or witnesses,  
1135 and shall likewise be taken and held by all the courts of this  
1136 state to have been duly recorded so as to be admissible in  
1137 evidence.

1138 (2) Provided, however, that this section shall not apply to  
1139 any conveyance the validity of which shall be contested or have  
1140 been contested by suit commenced heretofore or within 1 year of  
1141 the effective date of this law.

1142 Section 23. Section 695.03, Florida Statutes, is amended to  
1143 read:

1144 695.03 Acknowledgment and proof; validation of certain  
1145 acknowledgments; legalization or authentication before foreign

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1146 officials.—To entitle any instrument concerning real property to  
1147 be recorded, the execution must be acknowledged by the party  
1148 executing it, proved by a subscribing witness to it, or legalized  
1149 or authenticated ~~by a civil law notary or notary public who~~  
1150 ~~affixes her or his official seal, before the officers and in one~~  
1151 of the following forms and manners: following:

1152 (1) WITHIN THIS STATE.—An acknowledgment or a proof made  
1153 ~~within this state~~ may be taken or administered within this state  
1154 by or before ~~made before~~ a judge, clerk, or deputy clerk of any  
1155 court; a United States commissioner or magistrate; or any a  
1156 notary public or civil-law notary of this state, and the  
1157 certificate of acknowledgment or proof must be under the seal of  
1158 the court or officer, as the case may be. If the acknowledgment  
1159 or proof is taken or administered by or before a notary public  
1160 who does not affix a seal, it is sufficient for the notary public  
1161 to type, print, or write by hand on the instrument, "I am a  
1162 Notary Public of the State of ... (state)...., and my commission  
1163 expires ...(date)..." All affidavits and acknowledgments  
1164 ~~heretofore made or taken in this manner are hereby validated.~~ An  
1165 acknowledgment or proof, including of a person who is not  
1166 physically located within this state, may be made by a person  
1167 outside the physical presence of a notary public of this state or  
1168 a civil-law notary of this state in accordance with the  
1169 provisions of part II, ch. 117 regarding the online notarization  
1170 of instruments.

1171 (2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED  
1172 STATES.—An acknowledgment or a proof made may be taken or  
1173 administered outside ~~out~~ of this state but within the United  
1174 States ~~may be made~~ by or before a civil law notary of this state  
1175 or a commissioner of deeds appointed by the Governor of this  
1176 state; by or before a judge or clerk of any court of the United  
1177 States or of any state, territory, or district; by or before a

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1178 United States commissioner or magistrate; or by or before any a  
1179 notary public, justice of the peace, master in chancery, or  
1180 registrar or recorder of deeds of any state, territory, or  
1181 district having a seal, and the certificate of acknowledgment or  
1182 proof must be under the seal of the court or officer, as the case  
1183 may be. If the acknowledgment or proof is taken or administered  
1184 by or made before a notary public who does not affix a seal, it  
1185 is sufficient for the notary public to type, print, or write by  
1186 hand on the instrument, "I am a Notary Public of the State of  
1187 ...(state)..., and my commission expires on ...(date)..." An  
1188 acknowledgment or proof made outside of the physical presence of  
1189 such officer, other than a civil-law notary of this state or a  
1190 commissioner of deeds appointed by the Governor of this state,  
1191 even if taken or administered in accordance with the laws of  
1192 another state regarding the remote online notarization of  
1193 instruments, shall not be entitled to recordation under this  
1194 subsection.

1195 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN  
1196 COUNTRIES. ~~An~~ ~~if the~~ acknowledgment, an affidavit, an oath, a  
1197 legalization, an authentication, or a proof may be taken or  
1198 administered outside the United States or is made in a foreign  
1199 country, ~~it may be made~~ by or before a commissioner of deeds  
1200 appointed by the Governor of this state to act in such country;  
1201 by or before any a notary public of such foreign country or a  
1202 civil-law notary of this state or of such foreign country who has  
1203 an official seal; by or before an ambassador, envoy  
1204 extraordinary, minister plenipotentiary, minister, commissioner,  
1205 charge d'affaires, consul general, consul, vice consul, consular  
1206 agent, or other diplomatic or consular officer of the United  
1207 States appointed to reside in such country; or by or before a  
1208 military or naval officer authorized by 10 U.S.C. s. 1044a ~~the~~  
1209 ~~Laws or Articles of War of the United States~~ to perform the

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1210 duties of notary public, and the certificate of acknowledgment,  
1211 legalization, authentication, or proof must be under the seal of  
1212 the officer. A certificate legalizing or authenticating the  
1213 signature of a person executing an instrument concerning real  
1214 property and to which a civil-law notary or notary public of that  
1215 country has affixed her or his official seal is sufficient as an  
1216 acknowledgment. For the purposes of this section, the term  
1217 "civil-law notary" means a civil-law notary as defined in chapter  
1218 118 or an official of a foreign country who has an official seal  
1219 and who is authorized to make legal or lawful the execution of  
1220 any document in that jurisdiction, in which jurisdiction the  
1221 affixing of her or his official seal is deemed proof of the  
1222 execution of the document or deed in full compliance with the  
1223 laws of that jurisdiction.

1224 An acknowledgment or proof made outside of the physical presence  
1225 of such officer, other than a civil-law notary of this state or  
1226 a commissioner of deeds appointed by the Governor of this state,  
1227 even if taken or administered in accordance with the laws of the  
1228 appointing jurisdiction regarding the remote online notarization  
1229 of instruments, shall not be entitled to recordation under this  
1230 subsection.

1231 (4) COMPLIANCE AND VALIDATION.—The affixing of the official  
1232 seal or the electronic equivalent thereof under s. 117.021 or  
1233 other applicable law, including part II of chapter 117,  
1234 conclusively establishes that the acknowledgment or proof was  
1235 taken or administered in full compliance with the laws of this  
1236 state or, as applicable, the laws of the other state, or of the  
1237 foreign country governing notarial acts. All affidavits, oaths,  
1238 acknowledgments, legalizations, authentications, or proofs taken  
1239 or administered in any manner as set forth in subsections (1),  
1240 (2), and (3) are validated and upon recording may not be denied  
1241 to have provided constructive notice based on any alleged failure

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1242 to have strictly complied with this section, as currently or  
1243 previously in effect, or the laws governing notarization of  
1244 instruments. This subsection does not preclude a challenge to the  
1245 validity or enforceability of an instrument or electronic record  
1246 based upon fraud, forgery, impersonation, duress, incapacity,  
1247 undue influence, minority, illegality, unconscionability, or any  
1248 other basis not related to the notarial act or constructive  
1249 notice provided by recording.

1250  
1251 ~~All affidavits, legalizations, authentications, and~~  
1252 ~~acknowledgments heretofore made or taken in the manner set forth~~  
1253 ~~above are hereby validated.~~

1254 Section 24. Section 695.04, Florida Statutes, is amended to  
1255 read:

1256 695.04 Requirements of certificate. ~~The certificate of the~~  
1257 ~~officer before whom the acknowledgment or proof is taken, except~~  
1258 ~~for a certificate legalizing or authenticating the signature of a~~  
1259 ~~person executing an instrument concerning real property pursuant~~  
1260 ~~to s. 695.03(3), shall contain and set forth substantially the~~  
1261 ~~matter required to be done or proved to make such acknowledgment~~  
1262 ~~or proof effectual as set forth in s. 117.05.~~

1263 Section 25. Section 695.28, Florida Statutes, is amended to  
1264 read:

1265 695.28 Validity of recorded electronic documents.–

1266 (1) A document that is otherwise entitled to be recorded  
1267 under s. 28.222 and that was or is submitted to the clerk of the  
1268 court or county recorder by electronic or other means and  
1269 accepted for recordation is deemed validly recorded and provides  
1270 notice to all persons notwithstanding:

1271 (a) That the document was received and accepted for  
1272 recordation before the Department of State adopted standards  
1273 implementing s. 695.27; ~~or~~

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1274 (b) Any defects in, deviations from, or the inability to  
1275 demonstrate strict compliance with any statute, rule, or  
1276 procedure relating to electronic signatures, electronic  
1277 witnesses, electronic notarization, or online notarization, or  
1278 for submitting or recording to submit or record an electronic  
1279 document in effect at the time the electronic document was  
1280 executed or was submitted for recording;

1281 (c) That the document was signed, witnessed, or notarized  
1282 electronically, that the document was notarized by an online  
1283 notary public outside the physical presence of the signer, or  
1284 that witnessing may have been done outside the physical presence  
1285 of the notary public or principal; or

1286 (d) That the document recorded was a certified printout of  
1287 a document to which one or more electronic signatures have been  
1288 affixed.

1289 (2) This section does not alter the duty of the clerk or  
1290 recorder to comply with s. 28.222, s. 695.27, or any rules  
1291 adopted pursuant to those sections that section.

1292 (3) This section does not preclude a challenge to the  
1293 validity or enforceability of an instrument or electronic record  
1294 based upon fraud, forgery, impersonation, duress, incapacity,  
1295 undue influence, minority, illegality, unconscionability, or any  
1296 other basis not in the nature of those matters described in  
1297 subsection (1).

1298 Section 26. Subsection (7) of section 709.2202, Florida  
1299 Statutes, is created to read:

1300 709.2202 Authority that requires separate signed  
1301 enumeration.—

1302 (7) Notwithstanding subsection (1), a power of attorney  
1303 that is witnessed remotely pursuant to s. 117.285 or other  
1304 applicable law by a witness who is not in the physical presence  
1305 of the principal, or that is notarized remotely through the use

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1306 of online notarization under part II of chapter 117 or other  
1307 applicable law, is not effective to grant any authority to an  
1308 agent to:

1309 (a) take any of the actions enumerated in subsection (1);  
1310 or

1311 (b) conduct any of the banking transactions or investment  
1312 transactions as enumerated in s. 709.2208(1) and (2), provided  
1313 however that a power of attorney that is witnessed remotely or  
1314 notarized remotely may be effective to authorize an agent to  
1315 execute and deliver a promissory note, loan agreement, line of  
1316 credit agreement, mortgage, security agreement, guaranty,  
1317 indemnity, or other loan document obligating the principal.

1318 Section 27. Except as otherwise expressly provided in this  
1319 act, this act shall take effect October 1, 2019.

**COMPARISON OF REMOTE NOTARY COMMITTEE WORK PRODUCT  
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1 A bill to be entitled

2 An act relating to notaries public; providing  
3 directives to the Division of Law Revision and  
4 Information; amending s. 117.01, F.S.; revising  
5 provisions relating to use of the office of notary public;  
6 amending s. 117.021, F.S.; requiring electronic  
7 signatures to include access protection; prohibiting a  
8 person from requiring a notary public to perform a notarial  
9 act with certain technology; requiring the Department of  
10 State, in collaboration with the Agency for State  
11 Technology, to adopt rules for certain purposes; amending  
12 s. 117.05, F.S.; revising limitations on notary fees to  
13 conform to changes made by the act; providing for inclusion  
14 of certain information in a jurat or notarial certificate;  
15 providing for compliance with online notarization  
16 requirements; providing for notarial certification of a  
17 printed electronic record; revising statutory forms for  
18 jurats and notarial certificates; amending s. 117.107,  
19 F.S.; providing applicability; revising prohibited acts;  
20 creating s. 117.201, F.S.; providing definitions;  
21 creating s. 117.209, F.S.; authorizing online  
22 notarizations; providing ~~an exception~~exceptions;  
23 creating s. 117.215, F.S.; specifying the application of  
24 other laws in relation to online notarizations and  
25 witnessing, providing exceptions; creating s. 117.225,  
26 F.S.; specifying registration and qualification  
27 requirements for online notaries public; creating s.  
28 117.235, F.S.; authorizing the performance of certain  
29 notarial acts; creating s. 117.245, F.S.; requiring a  
30 notary public to keep an electronic journal of online

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31 notarizations and certain audio-video communication  
32 recordings; specifying the information that must be  
33 included for each online notarization; requiring an online  
34 notary public to take certain steps regarding the  
35 maintenance and security of the electronic journal;  
36 specifying that the Executive Office of the Governor  
37 maintains jurisdiction for a specified period of time for  
38 purposes of investigating notarial misconduct; providing  
39 for construction; creating s. 117.255, F.S.; specifying  
40 requirements for the use of electronic journals,  
41 signatures, and seals; requiring an online notary public  
42 to provide notification of the theft, vandalism, or loss  
43 of an electronic journal, signature, or seal; authorizing  
44 an online notary public to make copies of electronic  
45 journal entries and to provide access to related  
46 recordings under certain circumstances; authorizing an  
47 online notary public to charge a fee for making and  
48 delivering such copies; providing an exception; creating  
49 s. 117.265, F.S.; prescribing online notarization  
50 procedures; specifying the manner by which an online  
51 notary public must verify the identity of a principal or  
52 a witness; requiring an online notary public to take  
53 certain measures as to the security of technology used;  
54 specifying that an electronic notarial certificate must  
55 identify the performance of an online notarization;  
56 specifying that noncompliance does not impair the validity  
57 of a notarial act or the notarized electronic record;  
58 providing for construction; creating s. 117.275, F.S.;  
59 providing fees for online notarizations; creating s.  
60 117.285, F.S.; specifying the manner by which an online

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61 notary public may supervise the witnessing of electronic  
62 records of online notarizations, providing exceptions;  
63 creating s. 117.295, F.S.; providing standards for  
64 electronic and online notarizations; authorizing the  
65 Department of State to approve and periodically review  
66 companies that offer online notarization services;  
67 authorizing the department to adopt certain rules;  
68 prescribing minimum standards for companies that offer  
69 online notarization services; creating s. 117.305, F.S.;  
70 superseding certain provisions of federal law regulating  
71 electronic signatures; amending s. 28.222, F.S.;  
72 requiring the clerk of the circuit court to record certain  
73 instruments; amending s. 92.50, F.S.; clarifying  
74 acceptability of remote online notarizations; amending s.  
75 95.231, F.S.; providing a limitation period for certain  
76 recorded instruments; amending s. 689.01, F.S.; providing  
77 for witnessing of documents in connection with real estate  
78 conveyances; providing for validation of certain recorded  
79 documents; amending s. 694.08, F.S.; providing for  
80 validation of certain recorded documents; amending s.  
81 695.03, F.S.; providing and revising requirements for  
82 making acknowledgments, proofs, and other documents,   
83 limiting recordability of instruments acknowledged before  
84 a foreign remote online notary public; amending ~~ss. 695.04~~  
85 ~~and 695.05~~, s. 695.04, F.S.; conforming provisions to  
86 changes made by the act; amending s. 695.28, F.S.;  
87 providing for validity of recorded documents; conforming  
88 provisions to changes made by the act; amending s.  
89 709.2202, F.S.; specifying that certain authority granted  
90 through a power of attorney requiring separate signed

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91 enumeration may not be exercised if executed by online  
 92 notarization or witnessed ~~electronically; amending s.~~  
 93 ~~731.201, F.S.; redefining the term "will" to conform to~~  
 94 ~~changes made by the act; amending s. 732.506, F.S.;~~  
 95 ~~exempting electronic wills from provisions governing the~~  
 96 ~~revocation of wills and codicils; prescribing the manner~~  
 97 ~~by which an electronic will or codicil may be revoked;~~  
 98 ~~creating s. 740.10, F.S.; specifying that any act taken~~  
 99 ~~pursuant to ch. 740, F.S., does not affect the requirement~~  
 100 ~~that a will be deposited within a certain timeframe;~~  
 101 ~~creating s. 732.521, F.S.; providing definitions;~~  
 102 ~~creating s. 732.522, F.S.; prescribing the manner by which~~  
 103 ~~an electronic will must be executed; creating s. 732.524,~~  
 104 ~~F.S.; specifying requirements for the self-proof of an~~  
 105 ~~electronic will; creating s. 732.525, F.S.; specifying~~  
 106 ~~conditions by which an electronic will is deemed to be an~~  
 107 ~~original will~~remotely; providing effective dates.

108  
 109 Be It Enacted by the Legislature of the State of Florida:

110 Section 1. The Division of Law Revision and Information is  
 111 directed to:

112 (1) Create part I of chapter 117, Florida Statutes, consisting  
 113 of ss. 117.01-117.108, Florida Statutes, to be entitled "General  
 114 Provisions."

115 (2) Create part II of chapter 117, Florida Statutes, consisting  
 116 of ss. 117.201-117.305, Florida Statutes, to be entitled "Online  
 117 Notarizations."

118 Section 2. Subsection (1) of section 117.01, Florida Statutes,  
 119 is amended to read:

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120 117.01 Appointment, application, suspension, revocation,  
121 application fee, bond, and oath.—

122 (1) The Governor may appoint as many notaries public as he or  
123 she deems necessary, each of whom must ~~shall~~ be at least 18 years of  
124 age and a legal resident of this ~~the~~ state. A permanent resident alien  
125 may apply and be appointed and shall file with his or her application  
126 a recorded Declaration of Domicile. The residence required for  
127 appointment must be maintained throughout the term of appointment.  
128 A notary public ~~Notaries public~~ shall be appointed for 4 years and  
129 may only ~~shall~~ use and exercise the office of notary public if he or  
130 she is within the boundaries of this state. An applicant must be able  
131 to read, write, and understand the English language.

132 Section 3. Present subsections (4) and (5) of section 117.021,  
133 Florida Statutes, are renumbered as subsections (5) and  
134 (6), respectively, a new subsection (4) and subsection (7) are added  
135 to that section, and subsection (2) of that section is amended, to  
136 read:

137 117.021 Electronic notarization.—

138 (2) In performing an electronic notarial act, a notary public  
139 shall use an electronic signature that is:

- 140 (a) Unique to the notary public;
- 141 (b) Capable of independent verification;
- 142 (c) Retained under the notary public's sole control and  
143 includes access protection through the use of passwords or codes under  
144 control of the notary public; and
- 145 (d) Attached to or logically associated with the electronic  
146 document in a manner that any subsequent alteration to the electronic  
147 document displays evidence of the alteration.

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148           (4) A person may not require a notary public to perform a  
149 notarial act with respect to an electronic record with a form of  
150 technology that the notary public has not selected to use.

151           (7) The Department of State, in collaboration with the Agency  
152 for State Technology, shall adopt rules establishing standards for  
153 tamper-evident technologies that will indicate any alteration or  
154 change to an electronic record after completion of an electronic  
155 notarial act and shall publish a list of technologies that satisfy  
156 those standards and are approved for use in electronic notarizations,  
157 effective January 1, ~~2019~~2020. All electronic notarizations  
158 performed on or after January 1, ~~2019~~2020 must comply with the  
159 adopted standards and use an approved technology.

160           Section 4. Subsection (1), paragraph (a) of subsection (2),  
161 subsections (4) and (5), paragraph (a) of subsection (12), and  
162 subsections (13) and (14) of section 117.05, Florida Statutes, are  
163 amended, and paragraph (c) is added to subsection (12) of that  
164 section, to read:

165           117.05 Use of notary commission; unlawful use; notary fee;  
166 seal; duties; employer liability; name change; advertising;  
167 photocopies; penalties.

168           (1) A person may not ~~shall~~ obtain or use a notary public  
169 commission in other than his or her legal name, and it is unlawful  
170 for a notary public to notarize his or her own signature. Any person  
171 applying for a notary public commission must submit proof of identity  
172 to the Department of State if ~~so requested~~. Any person who violates  
173 the provisions of this subsection ~~commits~~ is guilty of a felony of  
174 the third degree, punishable as provided in s. 775.082, s. 775.083,  
175 or s. 775.084.

176           (2)(a) The fee of a notary public may not exceed \$10 for any  
177 one notarial act, except as provided in s. 117.045 or s. 117.275.

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178 (4) When notarizing a signature, a notary public shall complete  
179 a jurat or notarial certificate in substantially the same form as  
180 those found in subsection (13). The jurat or certificate of  
181 acknowledgment shall contain the following elements:

182 (a) The venue stating the location of the notary public at the  
183 time of the notarization in the format, "State of Florida, County of  
184 ....."

185 (b) The type of notarial act performed, an oath or an  
186 acknowledgment, evidenced by the words "sworn" or "acknowledged."

187 (c) ~~That~~ Whether the signer personally appeared before the  
188 notary public at the time of the notarization ~~either~~ by physical  
189 presence or by means of audio-video communication technology as  
190 authorized under part II of this chapter.

191 (d) The exact date of the notarial act.

192 (e) The name of the person whose signature is being notarized.  
193 It is presumed, absent such specific notation by the notary public,  
194 that notarization is to all signatures.

195 (f) The ~~specific type of~~ identification the notary public is  
196 relying upon in identifying the signer, either based on personal  
197 knowledge or ~~satisfactory~~ evidence specified in subsection (5).

198 (g) The notary public's notary's official signature.

199 (h) The notary public's notary's name, typed, printed, or  
200 stamped below the signature.

201 (i) The notary public's notary's official seal affixed below  
202 or to either side of the notary public's notary's signature.

203 (5) A notary public may not notarize a signature on a document  
204 unless he or she personally knows, or has satisfactory evidence, that  
205 the person whose signature is to be notarized is the individual who  
206 is described in and who is executing the instrument. A notary public  
207 shall certify in the certificate of acknowledgment or jurat the type

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208 of identification, either based on personal knowledge or other form  
209 of identification, upon which the notary public is relying. In the  
210 case of an online notarization, the online notary public shall comply  
211 with the requirements set forth in part II of this chapter.

212 (a) For purposes of this ~~subsection~~chapter, the term  
213 "personally knows" means having an acquaintance, derived from  
214 association with the individual, which establishes the individual's  
215 identity with at least a reasonable certainty.

216 (b) For the purposes of this ~~subsection~~chapter, the term  
217 "satisfactory evidence" means the absence of any information,  
218 evidence, or other circumstances which would lead a reasonable person  
219 to believe that the person whose signature is to be notarized is not  
220 the person he or she claims to be and any one of the following:

221 1. The sworn written statement of one credible witness  
222 personally known to the notary public or the sworn written statement  
223 of two credible witnesses whose identities are proven to the notary  
224 public upon the presentation of satisfactory evidence that each of  
225 the following is true;

226 a. That the person whose signature is to be notarized is the  
227 person named in the document;

228 b. That the person whose signature is to be notarized is  
229 personally known to the witnesses;

230 c. That it is the reasonable belief of the witnesses that the  
231 circumstances of the person whose signature is to be notarized are  
232 such that it would be very difficult or impossible for that person  
233 to obtain another acceptable form of identification;

234 d. That it is the reasonable belief of the witnesses that the  
235 person whose signature is to be notarized does not possess any of the  
236 identification documents specified in subparagraph 2.; and

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237 e. That the witnesses do not have a financial interest in nor  
238 are parties to the underlying transaction; or

239 2. Reasonable reliance on the presentation to the notary public  
240 of any one of the following forms of identification, if the document  
241 is current or has been issued within the past 5 years and bears a serial  
242 or other identifying number:

243 a. A Florida identification card or driver license issued by  
244 the public agency authorized to issue driver licenses;

245 b. A passport issued by the Department of State of the United  
246 States;

247 c. A passport issued by a foreign government if the document  
248 is stamped by the United States Bureau of Citizenship and Immigration  
249 Services;

250 d. A driver license or an identification card issued by a public  
251 agency authorized to issue driver licenses in a state other than  
252 Florida, or by a territory of the United States, or Canada or Mexico;

253 e. An identification card issued by any branch of the armed  
254 forces of the United States;

255 f. A veteran health identification card issued by the United  
256 States Department of Veterans Affairs;

257 g. An inmate identification card issued on or after January 1,  
258 1991, by the Florida Department of Corrections for an inmate who is  
259 in the custody of the department;

260 h. An inmate identification card issued by the United States  
261 Department of Justice, Bureau of Prisons, for an inmate who is in the  
262 custody of the department;

263 i. A sworn, written statement from a sworn law enforcement  
264 officer that the forms of identification for an inmate in an  
265 institution of confinement were confiscated upon confinement and that

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266 the person named in the document is the person whose signature is to  
267 be notarized; or

268 j. An identification card issued by the United States Bureau  
269 of Citizenship and Immigration Services.

270 (12)(a) A notary public may supervise the making of a copy of  
271 a tangible or an electronic record or the printing of an electronic  
272 record, ~~photocopy of an original document~~ and attest to the truthness  
273 of the copy or of the printout, provided the document is neither a  
274 vital record in this state, another state, a territory of the United  
275 States, or another country, nor a public record, if a copy can be made  
276 by the custodian of the public record.

277 (c) A notary public must use a certificate in substantially the  
278 following form in notarizing a copy of a tangible or an electronic  
279 record or a printout of an electronic record:

280  
281 STATE OF FLORIDA  
282 COUNTY OF .....

283  
284 On this .... day of ....., ...(year)..., I attest that the  
285 preceding or attached document is a true, exact, complete, and  
286 unaltered ...(copy of a tangible or an electronic record presented  
287 to me by the document's custodian)... or a ...(printout made by me  
288 from such record)... If a printout, I further attest that at the time  
289 of printing, no security features, if any, present on the electronic  
290 record, indicated that the record had been altered since execution.

291  
292 ...(Signature of Notary Public – State of Florida)...  
293 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

294

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295 (13) The following notarial certificates are sufficient for the  
296 purposes indicated, if completed with the information required by  
297 this chapter. The specification of forms under this subsection does  
298 not preclude the use of other forms.

299 (a) For an oath or affirmation:

301 STATE OF FLORIDA  
302 COUNTY OF .....

304 Sworn to (or affirmed) and subscribed before me by means of   
305 physical presence or  online notarization, this .... day of  
306 ....., ...(year)..., by ...(name of person making statement)....

308 ...(Signature of Notary Public - State of Florida)...  
309 ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
310 ... Personally Known ..... OR Produced Identification .....  
311 ... Type of Identification Produced.....

313 (b) For an acknowledgment in an individual capacity:

314 STATE OF FLORIDA  
315 COUNTY OF .....

318 The foregoing instrument was acknowledged before me by means of   
319 physical presence or  online notarization, this .... day of  
320 ....., ...(year)..., by ...(name of person acknowledging)....

322 ...(Signature of Notary Public - State of Florida)...  
323 ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
324 ... Personally Known ..... OR Produced Identification .....

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325 ... Type of Identification Produced.....

326  
327 (c) For an acknowledgment in a representative capacity:

328  
329 STATE OF FLORIDA  
330 COUNTY OF .....

331  
332 The foregoing instrument was acknowledged before me by means of []  
333 physical presence or [] online notarization, this ... day of  
334 ....., ...(year)..., by ...(name of person)... as ...(type of  
335 authority, . . . e.g. officer, trustee, attorney in fact)... for  
336 ...(name of party on behalf of whom instrument was executed)....

337  
338 ...(Signature of Notary Public - State of Florida)...  
339 ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
340 ... Personally Known ..... OR Produced Identification .....  
341 ... Type of Identification Produced.....

342  
343 (14) A notary public must make reasonable accommodations to  
344 provide notarial services to persons with disabilities.

345 (a) A notary public may notarize the signature of a person who  
346 is blind after the notary public has read the entire instrument to  
347 that person.

348 (b) A notary public may notarize the signature of a person who  
349 signs with a mark if:

350 1. The document signing is witnessed by two disinterested  
351 persons;

352 2. The notary public prints the person's first name at the  
353 beginning of the designated signature line and the person's last name  
354 at the end of the designated signature line; and

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355 3. The notary public prints the words "his (or her) mark"  
356 below the person's signature mark.

357 (c) The following notarial certificates are sufficient for the  
358 purpose of notarizing for a person who signs with a mark:

359 1. For an oath or affirmation:

361 ... (First Name) ... (Last Name) ...  
362 ... His (or Her) Mark ...

364 STATE OF FLORIDA  
365 COUNTY OF .....

367 Sworn to and subscribed before me by means of [] physical presence  
368 or [] online notarization, this ... day of ....., ... (year) ... ,  
369 by ... (name of person making statement) ... , who signed with a mark  
370 in the presence of these witnesses:

372 ... (Signature of Notary Public - State of Florida) ...  
373 ... (Print, Type, or Stamp Commissioned Name of Notary Public)  
374 ... Personally Known ..... OR Produced Identification .....  
375 ... Type of Identification Produced .....

377 2. For an acknowledgment in an individual capacity:

379 ... (First Name) ... (Last Name) ...  
380 ... His (or Her) Mark ...

382 STATE OF FLORIDA  
383 COUNTY OF .....

384

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385 The foregoing instrument was acknowledged before me by means of []  
386 physical ~~appearance~~presence or [] online notarization, this .... day  
387 of ....., ...(year)..., by ...(name of person acknowledging)...,  
388 who signed with a mark in the presence of these witnesses:

389  
390 ... (Signature of Notary Public - State of Florida) ...  
391 ... (Print, Type, or Stamp Commissioned Name of Notary Public)  
392 ... Personally Known ..... OR Produced Identification .....  
393 ... Type of Identification Produced.....

394  
395 (d) A notary public may sign the name of a person whose signature  
396 is to be notarized when that person is physically unable to sign or  
397 make a signature mark on a document if:

398 1. The person with a disability directs the notary public to  
399 sign in his or her presence, either by verbal, written, or other means;

400 2. The document signing is witnessed by two disinterested  
401 persons; and

402 3. The notary public writes below the signature the following  
403 statement: "Signature affixed by notary, pursuant to s. 117.05(14),  
404 Florida Statutes," and states the circumstances and the means by which  
405 the notary public was directed to sign of the signing in the notarial  
406 certificate.

407  
408 The notary public must maintain the proof of direction and  
409 authorization to sign on behalf of the person with a disability for  
410 10 years from the date of the notarial act.

411 (e) The following notarial certificates are sufficient for the  
412 purpose of notarizing for a person with a disability who directs the  
413 notary public to sign his or her name:

414 1. For an oath or affirmation:

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415  
416 STATE OF FLORIDA  
417 COUNTY OF .....

418  
419 Sworn to (or affirmed) before me by means of [] physical presence  
420 or [] online notarization, this .... day of ....., ...(year)...,  
421 by ...(name of person making statement)..., and subscribed by  
422 ...(name of notary)... at the direction of ~~and in the presence of~~  
423 ...(name of person making statement)... by ...(written, verbal, or  
424 other means)..., and in the presence of these witnesses:

425           ...(Signature of Notary Public - State of Florida)...  
426           ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
427           ... Personally Known ..... OR Produced Identification .....  
428           ... Type of Identification Produced.....

429  
430 2. For an acknowledgment in an individual capacity:

431  
432 STATE OF FLORIDA  
433 COUNTY OF .....

434  
435 The foregoing instrument was acknowledged before me by means of []  
436 physical presence or [] online notarization, this .... day of  
437 .....(year)..., by ...(name of person acknowledging)... and  
438 subscribed by ...(name of notary)... at the direction of ~~and in the~~  
439 ~~presence of~~ ...(name of person acknowledging)..., and in the presence  
440 of these witnesses:

441           ...(Signature of Notary Public - State of Florida)...  
442           ...(Print, Type, or Stamp Commissioned Name of Notary Public)  
443           ... Personally Known ..... OR Produced Identification .....  
444

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445 ... Type of Identification Produced.....

446  
447 Section 5. Subsections (2) and (9) of section 117.107, Florida  
448 Statutes, are amended to read:

449 117.107 Prohibited acts.—

450 (2) A notary public may not sign notarial certificates using  
451 a facsimile signature stamp unless the notary public has a physical  
452 disability that limits or prohibits his or her ability to make a  
453 written signature and unless the notary public has first submitted  
454 written notice to the Department of State with an exemplar of the  
455 facsimile signature stamp. This subsection does not apply to or  
456 prohibit the use of an electronic signature and seal by a notary public  
457 who is registered as an online notary public to perform an electronic  
458 or online notarization in accordance with this chapter.

459 (9) A notary public may not notarize a signature on a document  
460 if the person whose signature is being notarized does not appear  
461 before the notary public either by means of physical presence or by  
462 means of audio-video communication technology as authorized under  
463 part II of this chapter is not in the presence of the notary public  
464 at the time the signature is notarized. Any notary public who violates  
465 this subsection is guilty of a civil infraction, punishable by penalty  
466 not exceeding \$5,000, and such violation constitutes malfeasance and  
467 misfeasance in the conduct of official duties. It is no defense to  
468 the civil infraction specified in this subsection that the notary  
469 public acted without intent to defraud. A notary public who violates  
470 this subsection with the intent to defraud is guilty of violating s.  
471 117.105.

472 Section 6. Section 117.201, Florida Statutes, is created to  
473 read:

474 117.201 Definitions.—As used in this ~~part~~chapter, the term:

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475 (1) "Appear before," "before," "appear personally before," or  
476 "in the presence of" mean:

477 (a) In the ~~same physical location as another person and close~~  
478 ~~enough to see, hear, communicate with, and exchange credentials with~~  
479 ~~that physical presence of another~~ person; or

480 (b) ~~In a different~~ Outside of the physical location from presence  
481 of another person, but able to see, hear, and communicate with the  
482 person by means of audio-video communication technology.

483 (2) "Audio-video communication technology" means technology in  
484 compliance with this chapter which enables real-time, two-way  
485 communication using electronic means in which participants are able  
486 to see, hear, and communicate with one another.

487 (3) "Credential analysis" means a process or service, in  
488 compliance with this chapter, in which a third party affirms the  
489 validity of a government-issued identification credential and data  
490 thereon through review of public or proprietary data sources.

491 (4) "Errors and omissions insurance" means a type of insurance  
492 that provides coverage for potential errors or omissions in or  
493 relating to the notarial act and is maintained, as applicable, by the  
494 online notary public, their employer, or a provider of software  
495 services used to directly facilitate the performance of the online  
496 notarial act.

497 (5) "Government-issued identification credential" means any  
498 approved credential for verifying identity under s. 117.05(5)(b)2.

499 (6) "Identity proofing" means a process or service in compliance  
500 with this chapter in which a third party affirms the identity of an  
501 individual through use of public or proprietary data sources, which  
502 may include by means of knowledge-based authentication or biometric  
503 verification.

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504           (7) "Knowledge-based authentication" means a form of identity  
505 proofing based on a set of questions which pertain to an individual  
506 and are formulated from public or proprietary data sources.

507           (8) "Online notarization" means the performance of an  
508 electronic notarization by means of audio-video communication  
509 technology in compliance with this chapter.

510           (9) "Online notary public" means a notary public commissioned  
511 under part I of this chapter, a civil-law notary appointed under  
512 chapter 118, or a commissioner of deeds appointed under part IV of  
513 chapter 721, who has registered with the Executive Office of the  
514 Governor and the Department of State to perform online notarizations  
515 under this part.

516           (10) "Physical presence" means being in the same physical  
517 location as another person and close enough to see, hear, communicate  
518 with, and exchange credentials with that person.

519           (11) "Principal" means an individual whose electronic signature  
520 is acknowledged, witnessed, or attested to in an online notarization  
521 or who ~~takes~~gives an oath or affirmation ~~from~~to the online notary  
522 public.

523           ~~(11)~~(12) "Remote presentation" means transmission of an image of  
524 a government-issued identification credential through audio-video  
525 communication technology that is of sufficient quality to enable the  
526 online notary public to identify the individual seeking the notary's  
527 services and to perform credential analysis ~~through audio-video~~  
528 ~~communication technology.~~

529  
530           Except where the context otherwise requires, any term defined in s.  
531 668.50 has the same meaning when used in this part.

532           Section 7. Section 117.209, Florida Statutes, is created to  
533           read:

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117.209 Authority to perform online notarizations.—

(1) An online notary public may perform any of the functions authorized under part I of this chapter as an online notarization, ~~excluding other than~~ solemnizing the rites of matrimony, or a notarial act in connection with the creation and execution of:

~~(2)~~ (a) wills and codicils, except as otherwise provided in chapter 732;

(b) revocable trusts, except as otherwise provided in chapter 736;

(c) advance directives except as otherwise provided in chapter 765; or

(d) contracts, agreements or waivers subject to s. 732.701-.702, except as otherwise provided in chapter 732.

(2) A power of attorney executed with an online notarization may not be used to exercise certain powers as set forth in s. 709.2202(7).

(3) If a notarial act requires a principal to appear before or in the presence of the online notary public, the principal may appear before the online notary public by means of audio-video communication technology that meets the requirements of this chapter and any rules adopted by the Department of State under s. 117.295.

~~(3)~~ (4) An online notary public physically located in this state may perform an online notarization as authorized under this part, regardless of ~~the physical location of~~ whether the principal or any witnesses are physically located in this state at the time of the notarial act, provided the notary public, other than an online notarization. A civil-law notary or a commissioner of deeds, is registered as an online notary public may perform an online notarization while physically located in outside of this state while performing the online notarization.

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564 (45) The validity of an online notarization performed by an  
565 online notary public registered in this state shall be determined  
566 by applicable laws of this state regardless of the physical location  
567 of the principal at the time of the notarial act.

568 Section 8. Section 117.215, Florida Statutes, is created to  
569 read:

570 117.215 Relation to other laws.—

571 (1) If a provision of law requires a notary public or other  
572 authorized official of this state to notarize a signature or a  
573 statement, to take an ~~acknowledgement~~acknowledgment of an  
574 instrument, or to administer an oath or affirmation so that a document  
575 may be sworn, affirmed, made under oath, or subject to penalty of  
576 perjury, an online notarization performed in accordance with the  
577 provisions of this part ~~and any rules adopted hereunder~~ satisfies such  
578 requirement.

579 (2) If a provision of law requires a signature or an act to be  
580 witnessed, compliance with the online electronic witnessing  
581 standards prescribed in s. 117.285 ~~and any rules adopted thereunder~~  
582 satisfies that requirement.

583 (3) This section does not apply to laws governing the creation  
584 and execution of:

585 (a) wills and codicils, except as otherwise provided in chapter  
586 732;

587 (b) revocable trusts, except as otherwise provided in chapter  
588 736;

589 (c) advance directives except as otherwise provided in chapter  
590 765; or

591 (d) contracts, agreements or waivers subject to s.  
592 732.701-.702, except as otherwise provided in chapter 732.

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593 (4) A power of attorney executed with an online notarization may  
594 not be used to exercise certain powers as set forth in s. 709.2202(7).

595 Section 9. Section 117.225, Florida Statutes, is created to  
596 read:

597 117.225 Registration; qualifications.--A notary public, a  
598 civil-law notary appointed under chapter 118, or a commissioner of  
599 deeds appointed under part IV of chapter 721 may complete registration  
600 as an online notary public with the Executive Office of the Governor  
601 and the Department of State by:

602 (1) Holding a current commission as a notary public under part  
603 I of this chapter, an appointment as a civil-law notary under chapter  
604 118, or an appointment as a commissioner of deeds under part IV of  
605 chapter 721, and submitting a copy of such commission or proof of such  
606 appointment with his or her registration.

607 (2) Certifying that the notary public, civil-law notary, or  
608 commissioner of deeds registering as an online notary public has  
609 completed a classroom or online course covering the duties,  
610 obligations, and technology requirements for serving as an online  
611 notary public.

612 (3) Paying an online notary public commission fee in the amount  
613 of \$10, as required by s. 113.01.

614 (4) Submitting a registration as an online notary public to the  
615 Executive Office of the Governor and the Department of State, signed  
616 and sworn to by the registrant.

617 (5) Confirming in a statement that the audio-video  
618 communication and identity proofing technologies the registrant  
619 intends to use in performing online notarizations satisfy the  
620 requirements of this chapter.

621 (6) Providing evidence satisfactory to the Executive Office of  
622 the Governor and the Department of State that the registrant has

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623 | obtained a bond, payable to any individual harmed as a result of a  
624 | breach of duty by the registrant acting in his or her official capacity  
625 | as an online notary public, conditioned for the due discharge of the  
626 | office, in the minimum amount of \$25,000 ~~or such greater amounts~~ and  
627 | on such terms as are specified by rule by the Department of State as  
628 | reasonably necessary to protect the public. The bond shall be approved  
629 | and filed with the Department of State and executed by a surety company  
630 | duly authorized to transact business in this state. Compliance by an  
631 | online notary public with this requirement shall satisfy the  
632 | requirement of obtaining a bond under s. 117.01(7).

633 | (7) Providing evidence satisfactory to the Executive Office of  
634 | the Governor and the Department of State that the registrant acting  
635 | in his or her capacity as an online notary public is covered by an  
636 | errors and omissions insurance policy from an insurer authorized to  
637 | transact business in this state, in the minimum amount of  
638 | ~~\$25,000~~100,000 per claim, and on such terms as are specified by rule  
639 | by the Department of State as reasonably necessary to protect the  
640 | public.

641 | Section 10. Section 117.235, Florida Statutes, is created to  
642 | read:

643 | 117.235 Performance of notarial acts.-

644 | (1) An online notary public is subject to part I of this chapter  
645 | to the same extent as a notary public appointed and commissioned only  
646 | under that part, including the provisions of s. 117.021 relating to  
647 | electronic notarizations.

648 | (2) An online notary public may perform ~~in person~~ notarial acts  
649 | as provided by part I of this chapter in addition to performing online  
650 | notarizations as authorized and pursuant to the provisions of this  
651 | part.

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652 Section 11. Section 117.245, Florida Statutes, is created to  
653 read:

654 117.245 Electronic journal of online notarizations.—

655 (1) An online notary public shall keep a secure electronic  
656 journal of electronic records notarized by the online notary public.  
657 For each online notarization, the electronic journal entry must  
658 contain all of the following:

659 (a) The date and time of the notarization.

660 (b) The type of notarial act.

661 (c) The type, the title, or a description of the electronic  
662 record or proceeding.

663 (d) The ~~printed~~typed name and address of each principal  
664 involved in the transaction or proceeding.

665 (e) Evidence of identity of each principal involved in the  
666 transaction or proceeding in any of the following forms:

667 1. A statement that the person is personally known to the online  
668 notary public.

669 2. A notation of the type of government-issued identification  
670 credential provided to the online notary public.

671 3. A copy of the government-issued identification credential  
672 provided.

673 4. A copy of any other identification credential or information  
674 provided.

675 (f) An indication that the principal satisfactorily passed the  
676 identity proofing.

677 (g) An indication that the government-issued identification  
678 credential satisfied the credential analysis.

679 (h) The fee, if any, charged for the notarization.

680 (2) The online notary public shall retain a copy of the  
681 recording of the audio-video communication in which:

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682 (a) The principal and any witnesses appeared before the notary  
683 public.

684 (b) The identity of each was confirmed.

685 (c) Electronic records were signed by the principal and any  
686 witnesses.

687 (d) The notarial act was performed.

688 (3) The online notary public shall take reasonable steps to:

689 (a) Ensure the integrity, security, and authenticity of online  
690 notarizations.

691 (b) Maintain a backup record of the electronic journal required  
692 by subsection (1).

693 (c) Protect the electronic journal, the backup record, and any  
694 other records received by the online notary public from unauthorized  
695 access or use.

696 (4) The electronic journal required under subsection (1) and  
697 the recordings of audio-video communications required under  
698 subsection (2) shall be maintained for at least 10 years after the  
699 date of the notarial act. The Executive Office of the Governor  
700 maintains jurisdiction over the electronic journal and audio-video  
701 communication recordings to investigate notarial misconduct for a  
702 period of 10 years after the date of the notarial act. The online  
703 notary public, a guardian of an incapacitated online notary public,  
704 or the personal representative of a deceased online notary public,  
705 may, by contract with a secure repository in accordance with any rules  
706 established under this chapter, delegate to the repository the online  
707 notary public's duty to retain the electronic journal and the required  
708 recordings of audio-video communications.

709 (5) An omitted or incomplete entry in the electronic journal  
710 does not impair the validity of the notarial act or of the electronic  
711 record which was notarized, but may be introduced as evidence to

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712 establish violations of this chapter or as an indication evidence of  
713 possible fraud, forgery, ~~or~~ impersonation, duress, incapacity, undue  
714 influence, minority, illegality, unconscionability or for other  
715 evidentiary purposes.

716 Section 12. Section 117.255, Florida Statutes, is created to  
717 read:

718 117.255 Use of electronic journal, signature, and seal. An  
719 online notary public shall:

720 (1) Take reasonable steps to ensure that any registered device  
721 used to create an electronic signature is current and has not been  
722 revoked or terminated by the issuing or registering authority of the  
723 device.

724 (2) Keep the electronic journal, electronic signature, and  
725 electronic seal secure and under his or her sole control, which  
726 includes access protection using passwords or codes under control of  
727 the online notary public. The online notary public may not allow  
728 another person to use the online notary public's electronic journal,  
729 electronic signature, or electronic seal.

730 ~~(3) Only use an electronic signature for performing online~~  
731 ~~notarization.~~ ~~(4)~~ Attach or logically associate the electronic  
732 signature and seal to the electronic notarial certificate of an  
733 electronic record in a manner that is capable of independent  
734 verification using tamper-evident technology that renders any  
735 subsequent change or modification to the electronic record evident.

736 ~~(5) Within 7 days, notify~~ 4) Notify an appropriate law  
737 enforcement agency and the Department of State of ~~theft or~~  
738 ~~vandalism~~ any unauthorized use of or compromise to the security of the  
739 electronic journal, official electronic signature, or electronic  
740 seal. ~~An online notary public shall within 7 days notify the~~  
741 ~~Department of State of the loss or use by another person of the online~~

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~~notary public's electronic journal, electronic signature, or  
electronic seal, within 7 days after discovery of the same.~~

(65) Make electronic copies, upon request, of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings to the parties to the electronic records notarized, and to the title agent, settlement agent, or title insurer who engaged the online notary with regard to a real estate transaction. The online notary public may charge a fee not to exceed \$20 per transaction record for making and delivering electronic copies of a given series of related electronic records, except if required by the Executive Office of the Governor or the Department of State to submit copies pursuant to a notary misconduct investigation. If the online notary public does charge a fee, the online notary public shall disclose the amount of such fee to the requester before making the electronic copies.

Section 13. Section 117.265, Florida Statutes, is created to read:

117.265 Online notarization procedures.—

(1) An online notary public physically located in this state may perform an online notarization that meets the requirements of this part regardless of whether the principal or any witnesses are physically located in this state at the time of the online notarization. A civil-law notary or a commissioner of deeds registered as an online notary public may perform an online notarization while physically located outside of this state. An online notarial act performed in accordance with this chapter is deemed to have been performed within this state and is governed by the applicable laws of this state.

(2) In performing an online notarization, an online notary public shall confirm the identity of a principal and any witness

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772 appearing online, at the time that the signature is taken, by using  
773 audio-video communication technology and processes that meet the  
774 requirements of this part and of any rules adopted hereunder and  
775 record the ~~entire~~ two-way audio-video conference session between the  
776 notary public and the principal and any subscribing witnesses. A  
777 principal may not act in the capacity of a witness for his or her own  
778 signature in an online notarization.

779 (3) In performing an online notarization of a principal not  
780 located within this state, an online notary public must confirm that  
781 the principal desires for the notarial act to be performed by a Florida  
782 notary public and under the general law of this state.

783 (4) An online notary public shall confirm the identity of the  
784 principal or any witness by:

785 (a) Personal knowledge of each such individual; or

786 (b) All of the following, as the same may be ~~refined~~ modified  
787 or supplemented in rules adopted pursuant to s. 117.295:

788 1. Remote presentation of a government-issued identification  
789 credential by each individual;

790 2. Credential analysis of each government-issued  
791 identification credential; and

792 3. Identity proofing of each individual in the form of  
793 knowledge-based authentication or another method of identity  
794 proofing that conforms to the standards of this chapter.

795  
796 If the online notary public is unable to satisfy subparagraphs  
797 (b)1.-3., or if the databases consulted for identity proofing do not  
798 contain sufficient information to permit authentication, the online  
799 notary public may not perform the online notarization.

800 (5) The online notary public and the company providing online  
801 notarization services or technologies to facilitate online

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802 notarization services shall take reasonable steps to ensure that the  
803 audio-video communication technology used in an online notarization  
804 is secure from unauthorized interception.

805 (6) The electronic notarial certificate for an online  
806 notarization must include a notation that the notarization is an  
807 online notarization.

808 (7) Except where otherwise expressly provided in this part,  
809 the provisions of part I of this chapter apply to an online  
810 notarization and an online notary public.

811 (8) Any failure to comply with the online notarization  
812 procedures set forth in this section does not impair the validity  
813 of the notarial act or the electronic record that was notarized, but  
814 may be introduced as evidence to establish violations of this chapter  
815 or as ~~an indication~~ evidence of possible fraud, forgery, ~~or~~  
816 impersonation, duress, incapacity, undue influence, minority,  
817 illegality, unconscionability or for other evidentiary purposes.  
818 This subsection may not be construed to alter the duty of an online  
819 notary public to comply with this chapter and any rules adopted  
820 hereunder.

821 Section 14. Section 117.275, Florida Statutes, is created to  
822 read:

823 117.275 Fees for online notarization.—An online notary public  
824 or the employer of such online notary public may charge a fee, not  
825 to exceed \$25, for performing an online notarization in addition to  
826 any other fees authorized under part I of this chapter. Fees for  
827 services other than notarial acts are not governed by this section.

828 Section 15. Section 117.285, Florida Statutes, is created to  
829 read:

830 117.285 Supervising the witnessing of electronic records. An  
831 online notary public may supervise the witnessing of electronic

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832 records by the same audio-video communication technology used for  
833 online notarization, as follows:

834 (1) The identity of the witness must be verified in the same  
835 manner as the identity of the principal.

836 (2) The witness may ~~physically be present with~~ be in the  
837 physical presence of the principal or remote from the principal  
838 provided the witness and principal are using audio-video  
839 communication technology.

840 (3) The act of witnessing an electronic signature means the  
841 witness is ~~present in~~ either in the physical ~~proximity to~~ presence of  
842 the principal or present through audio-video communication  
843 technology at the time the principal affixes the electronic signature  
844 and hears the principal make a statement to the effect that the  
845 principal has signed the electronic record.

846 (4) This section does not apply to the creation and execution  
847 of:

848 (a) wills and codicils, except as otherwise provided in chapter  
849 732;

850 (b) revocable trusts, except as otherwise provided in chapter  
851 736;

852 (c) advance directives except as otherwise provided in chapter  
853 765; or

854 (d) contracts, agreements or waivers subject to s.  
855 732.701-.702, except as otherwise provided in chapter 732.

856 (5) A power of attorney witnessed through audio-video  
857 communication technology as provided in this section may not be used  
858 to exercise certain powers as set forth in s. 709.2202(7).

859 Section 16. Section 117.295, Florida Statutes, is created to  
860 read:

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861 117.295 Standards for electronic and online notarization;  
862 rulemaking authority.-

863 (1) The Legislature intends that ~~online notarization may begin~~  
864 ~~on the effective date of this act without the need for enabling rules,~~  
865 ~~but that thereafter rules setting~~ the standards applicable to  
866 electronic notarization under s. 117.021 and for online notarization  
867 under this part ~~reflect~~ shall be adopted by the Department of State  
868 ~~reflecting~~ future improvements in technology and in methods of  
869 assuring the identity of principals and the security of an electronic  
870 record.

871 (a) The Department of State may approve companies that meet the  
872 minimum standards for online notarizations as described in subsection  
873 (2) ~~or subsequent rules adopted pursuant to this chapter, and may~~  
874 ~~publish lists of technologies that satisfy the standards and are~~  
875 ~~approved for use in online notarizations.~~ . The Department of State  
876 may, ~~at its discretion,~~ periodically review approved companies to  
877 ensure ongoing compliance with the minimum standards for online  
878 notarization.

879 (b) The Department of State ~~may~~ shall adopt rules and standards  
880 necessary to implement the requirements of this chapter ~~and such other~~  
881 ~~rules and standards as may be required to facilitate the integrity,~~  
882 ~~security, and reliability of online notarization,~~ including  
883 education requirements for online notaries public; the required terms  
884 of bonds and errors and omissions insurance, but not including the  
885 amounts of such ~~bonds or policies~~.

886 (c) The Department of State may adopt rules and standards  
887 regarding identity proofing, credential analysis, unauthorized  
888 interception, remote presentation, tamper-evident technology,  
889 audio-video communication technology, and retention of the  
890 electronic journal and copies of audio-video communications

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891 recordings in a secure repository; ~~and may publish lists of~~  
892 ~~technologies that satisfy the standards and are approved for use~~  
893 in which provide levels of integrity, security and reliability for  
894 online notarizations not lower than the initial standards set forth  
895 in subsection (2). At the time of adopting rules regarding the  
896 standards of subsection (2), the Department shall make and publish  
897 a finding of the manner(s) in which the rules protect or enhance the  
898 integrity, security and reliability of online notarizations.

899 (d) The Department of State shall adopt forms, processes and  
900 interim or emergency rules necessary to accept applications from and  
901 register online notaries public pursuant to s. 117.225 no later than  
902 October 1, 2019. This paragraph shall take effect upon this act  
903 becoming law.

904 (2) ~~Companies~~ Until such time as the Department of State adopts  
905 rules setting standards that are equally or more protective, the  
906 following standards shall apply and companies that offer online  
907 notarization services must meet the following minimum standards:

908 (a) Use of identity proofing by means of knowledge-based  
909 authentication which must have, at a minimum, the following security  
910 characteristics:

911 1. The principal must be presented with five or more questions  
912 with a minimum of five possible answer choices per question.

913 2. Each question must be drawn from a third-party provider of  
914 public and proprietary data sources and be identifiable to the  
915 principal's social security number or other identification  
916 information, or the principal's identity and historical events  
917 records.

918 3. Responses to all questions must be made within a 2 minute  
919 time constraint.

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920           4. The principal must answer a minimum of 80 percent of the  
921 questions correctly.

922           5. The principal may be offered one additional attempt in the  
923 event of a failed attempt.

924           6. During the second attempt, the principal may not be presented  
925 with more than three questions from the prior attempt.

926           (b) Use of credential analysis using one or more automated  
927 software or hardware processes that ~~must~~ confirm that the credential  
928 ~~is valid and~~ matches the signer's claimed identity ~~using one or more~~  
929 ~~automated software or hardware processes which scan the credential,~~  
930 ~~including its,~~ contains data, format features, data, barcodes, or  
931 ~~other~~ and security elements consistent with a credential of the type  
932 presented, and appears to be genuine.

933           (c) A company is deemed to have satisfied tamper-evident  
934 technology requirements by use of technology that renders any  
935 subsequent change or modification to the electronic record evident.

936           (d) Use of audio-video communication technology in completing  
937 online notarizations which must meet the following requirements:

938           1. The signal transmission must be reasonably secure from  
939 interception, access, or viewing by anyone other than the  
940 participants communicating.

941           2. The technology must provide sufficient audio clarity and  
942 video resolution to enable the notary to communicate with the  
943 principal and to confirm the identity of the principal using  
944 identification methods described in s. 117.265.

945           (e) In addition to any errors and omissions coverage it elects  
946 to provide for individual online notaries public, a company which  
947 provides software services that facilitate performance of online  
948 notarial acts by online notaries public as provided for in this part  
949 shall maintain errors and omissions insurance coverage ~~in a total~~

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950 ~~amount of at least \$250,000 in the annual aggregate~~ providing no less  
951 than \$100,000 coverage per claim, with respect to potential errors  
952 or omissions in or relating to such software services. An online  
953 notary public is not responsible for the security of the systems used  
954 by the principal or others to access the online notarization session.

955 (f) Until required curricula and other providers have been  
956 approved by the Department of State, a two hour classroom or online  
957 course covering the duties, obligations, and technology requirements  
958 for serving as an online notary public offered by the Florida Land  
959 Title Association or the Real Property, Probate and Trust Law Section  
960 of the Florida Bar shall be deemed to satisfy the education  
961 requirements of s. 117.225(2)

962 Section 17. Section 117.305, Florida Statutes, is created to  
963 read:

964 117.305 Relation to federal law.—This part supersedes the  
965 Electronic Signatures in Global and National Commerce Act as  
966 authorized under 15 U.S.C. s. 7001 et seq., but does not modify, limit,  
967 or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize  
968 the electronic delivery of the notices described in 15 U.S.C. s.  
969 7003(b).

970 Section 18. Present paragraph (h) of subsection (3) of section  
971 28.222, Florida Statutes, is redesignated as paragraph (i), and a new  
972 paragraph (h) is added to that subsection, to read:

973 28.222 Clerk to be county recorder.—

974 (3) The clerk of the circuit court shall record the following  
975 kinds of instruments presented to him or her for recording, upon  
976 payment of the service charges prescribed by law:

977 (h) Copies of any instruments originally created and executed  
978 using an electronic signature, as defined in s. 695.27, and certified  
979 to be a true and correct paper printout by a notary public in

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980 accordance with chapter 117, if the county recorder is not prepared  
981 to accept electronic documents for recording electronically.

982 Section 19. Section 92.50, Florida Statutes, is amended to  
983 read:

984 92.50 Oaths, affidavits, and acknowledgments; who may take or  
985 administer; requirements.-

986 (1) IN THIS STATE.-Oaths, affidavits, and acknowledgments  
987 required or authorized under the laws of this state (except oaths to  
988 jurors and witnesses in court and such other oaths, affidavits and  
989 acknowledgments as are required by law to be taken or administered  
990 by or before particular officers) may be taken or administered by or  
991 before any judge, clerk, or deputy clerk of any court of record within  
992 this state, including federal courts, or by or before any United  
993 States commissioner or any notary public within this state. The jurat,  
994 or certificate of proof or acknowledgment, shall be authenticated by  
995 the signature and official seal of such officer or person taking or  
996 administering the same; however, when taken or administered by or  
997 before any judge, clerk, or deputy clerk of a court of record, the  
998 seal of such court may be affixed as the seal of such officer or person.

999 (2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE UNITED  
1000 STATES.-Oaths, affidavits, and acknowledgments required or  
1001 authorized under the laws of this state, may be taken or administered  
1002 in any other state, territory, or district of the United States, by  
1003 or before any judge, clerk or deputy clerk of any court of record,  
1004 within such state, territory, or district, having a seal, or by or  
1005 before any notary public or justice of the peace, having a seal, in  
1006 such state, territory, or district; provided, however, such officer  
1007 or person is authorized under the laws of such state, territory, or  
1008 district to take or administer oaths, affidavits and acknowledgments.  
1009 The jurat, or certificate of proof or acknowledgment, shall be

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1010 authenticated by the signature and official seal of such officer or  
1011 person taking or administering the same; provided, however, when  
1012 taken or administered by or before any judge, clerk, or deputy clerk  
1013 of a court of record, the seal of such court may be affixed as the  
1014 seal of such officer or person.

1015 (3) IN FOREIGN COUNTRIES.—Oaths, affidavits, and  
1016 acknowledgments, required or authorized by the laws of this state,  
1017 may be taken or administered in any foreign country, by or before any  
1018 judge or justice of a court of last resort, any notary public of such  
1019 foreign country, any minister, consul general, chargé d'affaires, or  
1020 consul of the United States resident in such country. The jurat, or  
1021 certificate of proof or acknowledgment, shall be authenticated by the  
1022 signature and official seal of the officer or person taking or  
1023 administering the same; provided, however, when taken or administered  
1024 by or before any judge or justice of a court of last resort, the seal  
1025 of such court may be affixed as the seal of such judge or justice.

1026 Section 20. Subsection (1) of section 95.231, Florida Statutes,  
1027 is amended to read:

1028 95.231 Limitations where deed or will on record.—

1029 (1) Five years after the recording of an instrument required  
1030 to be executed in accordance with s. 689.01; 5 years after the  
1031 recording of a power of attorney accompanying and used for an  
1032 instrument required to be executed in accordance with s. 689.01; or  
1033 5 years after the probate of a will purporting to convey real property,  
1034 from which it appears that the person owning the property attempted  
1035 to convey, affect, or devise it, the instrument, power of attorney,  
1036 or will shall be held to have its purported effect to convey, affect,  
1037 or devise, the title to the real property of the person signing the  
1038 instrument, as if there had been no lack of seal or seals, witness  
1039 or witnesses, defect in, failure of, or absence of acknowledgment or

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1040 relinquishment of dower, in the absence of fraud, adverse possession,  
1041 or pending litigation. The instrument is admissible in evidence. A  
1042 power of attorney validated under this subsection shall be valid only  
1043 for the purpose of effectuating the instrument with which it was  
1044 recorded.

1045 Section ~~20-~~21. Section 689.01, Florida Statutes, is amended to  
1046 read:

1047 689.01 How real estate conveyed.—

1048 (1) No estate or interest of freehold, or for a term of more  
1049 than 1 year, or any uncertain interest of, in or out of any messuages,  
1050 lands, tenements or hereditaments shall be created, made, granted,  
1051 transferred or released in any other manner than by instrument in  
1052 writing, signed in the presence of two subscribing witnesses by the  
1053 party creating, making, granting, conveying, transferring or  
1054 releasing such estate, interest, or term of more than 1 year, or by  
1055 the party's lawfully authorized agent, unless by will and testament,  
1056 or other testamentary appointment, duly made according to law; and  
1057 no estate or interest, either of freehold, or of term of more than  
1058 1 year, or any uncertain interest of, in, to, or out of any messuages,  
1059 lands, tenements or hereditaments, shall be assigned or surrendered  
1060 unless it be by instrument signed in the presence of two subscribing  
1061 witnesses by the party so assigning or surrendering, or by the party's  
1062 lawfully authorized agent, or by the act and operation of law. No seal  
1063 shall be necessary to give validity to any instrument executed in  
1064 conformity with this section. Corporations may execute any and all  
1065 conveyances in accordance with the provisions of this section or ss.  
1066 692.01 and 692.02.

1067 (2) For purposes of this chapter:

1068 (a) Any requirement that an instrument be signed in the presence  
1069 of two subscribing witnesses may be satisfied by witnesses being

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1070 present and electronically signing by means of audio-video  
1071 communication technology that meets the requirements of part II of  
1072 chapter ~~117 and any rules adopted thereunder.~~117.

1073 (b) The act of witnessing an electronic signature is satisfied  
1074 if a witness is ~~present~~ either in the physical proximity to presence  
1075 of the principal or by present through audio-video communication  
1076 technology at the time the principal affixes his or her electronic  
1077 signature and hears the principal make a statement acknowledging that  
1078 the principal has signed the electronic record.

1079 (3) All acts of witnessing heretofore made or taken pursuant  
1080 to subsection (2) are validated and, upon recording, may not be denied  
1081 to have provided constructive notice based on any alleged failure to  
1082 have strictly complied with this section, as currently or previously  
1083 in effect, or the laws governing notarization of instruments,  
1084 including online notarization, in this state. This subsection does  
1085 not preclude a challenge to the validity or enforceability of an  
1086 instrument or electronic record based upon fraud, forgery,  
1087 impersonation, duress, incapacity, undue influence, minority,  
1088 illegality, unconscionability, or any other basis not related to the  
1089 act of witnessing.

1090 Section ~~21-22.~~ Section 694.08, Florida Statutes, is amended to  
1091 read:

1092 694.08 Certain instruments validated, notwithstanding lack of  
1093 seals or witnesses, or defect in acknowledgment, ~~etc.-~~

1094 (1) Whenever any power of attorney has been executed and  
1095 delivered, or any conveyance has been executed and delivered to any  
1096 grantee by the person owning the land therein described, or conveying  
1097 the same in an official or representative capacity, and has, for a  
1098 period of 7 years or more been spread upon the records of the county  
1099 wherein the land therein described has been or was at the time

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1100 situated, and one or more subsequent conveyances of said land or parts  
1101 thereof have been made, executed, delivered and recorded by parties  
1102 claiming under such instrument or instruments, and such power of  
1103 attorney or conveyance, or the public record thereof, shows upon its  
1104 face a clear purpose and intent of the person executing the same to  
1105 authorize the conveyance of said land or to convey the said land, the  
1106 same shall be taken and held by all the courts of this state, in the  
1107 absence of any showing of fraud, adverse possession, or pending  
1108 litigation, to have authorized the conveyance of, or to have conveyed,  
1109 the fee simple title, or any interest therein, of the person signing  
1110 such instruments, or the person in behalf of whom the same was conveyed  
1111 by a person in an official or representative capacity, to the land  
1112 therein described as effectively as if there had been no defect in,  
1113 failure of, or absence of the acknowledgment or the certificate of  
1114 acknowledgment, if acknowledged, or the relinquishment of dower, and  
1115 as if there had been no lack of the word "as" preceding the title of  
1116 the person conveying in an official or representative capacity, of  
1117 any seal or seals, or of any witness or witnesses, and shall likewise  
1118 be taken and held by all the courts of this state to have been duly  
1119 recorded so as to be admissible in evidence;

1120 (2) Provided, however, that this section shall not apply to any  
1121 conveyance the validity of which shall be contested or have been  
1122 contested by suit commenced heretofore or within 1 year of the  
1123 effective date of this law.

1124 Section ~~22.~~23. Section 695.03, Florida Statutes, is amended to  
1125 read:

1126 695.03 Acknowledgment and proof; validation of certain  
1127 acknowledgments; legalization or authentication before foreign  
1128 officials.—To entitle any instrument concerning real property to be  
1129 recorded, the execution must be acknowledged by the party executing

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1130 it, proved by a subscribing witness to it, or legalized or  
1131 authenticated by a civil law notary or notary public who affixes her  
1132 or his official seal, before the officers and in one of the following  
1133 ~~form~~forms and ~~manner~~manners: following:

1134 (1) WITHIN THIS STATE.—An acknowledgment or a proof made within  
1135 this state may be taken or administered within this state by or before  
1136 ~~made before~~ a judge, clerk, or deputy clerk of any court; a United  
1137 States commissioner or magistrate; or any a notary public or civil-law  
1138 notary of this state, and the certificate of acknowledgment or proof  
1139 must be under the seal of the court or officer, as the case may be.  
1140 If the acknowledgment or proof is ~~made~~taken or administered by or  
1141 before a notary public who does not affix a seal, it is sufficient  
1142 for the notary public to type, print, or write by hand on the  
1143 instrument, "I am a Notary Public of the State of ...(state)..., and  
1144 my commission expires ...(date)..." All affidavits and  
1145 acknowledgments heretofore made or taken in this manner are hereby  
1146 validated. An acknowledgment or proof, including of a person who is  
1147 not physically located within this state, may be made by a person  
1148 outside the physical presence of a notary public of this state or a  
1149 civil-law notary of this state in accordance with the provisions of  
1150 part II, ch. 117 regarding the online notarization of instruments.

1151 (2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.—An  
1152 acknowledgment or a proof made may be taken or administered outside  
1153 out of this state but within the United States ~~may be made~~ by or before  
1154 a civil law notary of this state or a commissioner of deeds appointed  
1155 by the Governor of this state; by or before a judge or clerk of any  
1156 court of the United States or of any state, territory, or district;  
1157 by or before a United States commissioner or magistrate; or by or  
1158 before any a notary public, justice of the peace, master in chancery,  
1159 or registrar or recorder of deeds of any state, territory, or district

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1160 having a seal, and the certificate of acknowledgment or proof must  
 1161 be under the seal of the court or officer, as the case may be. If the  
 1162 acknowledgment or proof is taken or administered by or made before  
 1163 a notary public who does not affix a seal, it is sufficient for the  
 1164 notary public to type, print, or write by hand on the instrument, "I  
 1165 am a Notary Public of the State of ...(state)..., and my commission  
 1166 expires on ...(date)...." An acknowledgment or proof made outside  
 1167 of the physical presence of such officer, other than a civil-law  
 1168 notary of this state or a commissioner of deeds appointed by the  
 1169 Governor of this state, even if taken or administered in accordance  
 1170 with the laws of another state regarding the remote online  
 1171 notarization of instruments, shall not be entitled to recordation  
 1172 under this subsection.

1173 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN COUNTRIES. An  
 1174 if the acknowledgment, an affidavit, an oath, a legalization, an  
 1175 authentication, or a proof ~~made~~ may be taken or administered outside  
 1176 the United States or is made in a foreign country, it may be made by  
 1177 or before a commissioner of deeds appointed by the Governor of this  
 1178 state to act in such country; by or before any a notary public of such  
 1179 foreign country or a civil-law notary of this state or of such foreign  
 1180 country who has an official seal; by or before an ambassador, envoy  
 1181 extraordinary, minister plenipotentiary, minister, commissioner,  
 1182 charge d'affaires, consul general, consul, vice consul, consular  
 1183 agent, or other diplomatic or consular officer of the United States  
 1184 appointed to reside in such country; or by or before a military or  
 1185 naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or Articles~~  
 1186 ~~of War of the United States~~ to perform the duties of notary public,  
 1187 and the certificate of acknowledgment, legalization, authentication,  
 1188 or proof must be under the seal of the officer. A certificate  
 1189 legalizing or authenticating the signature of a person executing an

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1190 instrument concerning real property and to which a civil-law notary  
1191 or notary public of that country has affixed her or his official seal  
1192 is sufficient as an acknowledgment. For the purposes of this section,  
1193 the term "civil-law notary" means a civil-law notary as defined in  
1194 chapter 118 or an official of a foreign country who has an official  
1195 seal and who is authorized to make legal or lawful the execution of  
1196 any document in that jurisdiction, in which jurisdiction the affixing  
1197 of her or his official seal is deemed proof of the execution of the  
1198 document or deed in full compliance with the laws of that  
1199 jurisdiction.

1200 An acknowledgment or proof made outside of the physical presence of  
1201 such officer, other than a civil-law notary of this state or a  
1202 commissioner of deeds appointed by the Governor of this state, even  
1203 if taken or administered in accordance with the laws of the appointing  
1204 jurisdiction regarding the remote online notarization of  
1205 instruments, shall not be entitled to recordation under this  
1206 subsection.

1207 (4) COMPLIANCE AND VALIDATION.—The affixing of the official  
1208 seal or the electronic equivalent thereof under s. 117.021 or other  
1209 applicable law, including part II of chapter 117, conclusively  
1210 establishes that the ~~acknowledgement~~ acknowledgment or proof was  
1211 ~~made~~ taken or administered in full compliance with the laws of this  
1212 state or, as applicable, the laws of the other state, or of the foreign  
1213 country governing notarial acts. All affidavits, oaths,  
1214 acknowledgments, legalizations, authentications, or proofs ~~made or~~  
1215 taken or administered in any manner as set forth in subsections (1),  
1216 (2), and (3) are validated and upon recording may not be denied to  
1217 have provided constructive notice based on any alleged failure to  
1218 have strictly complied with this section, as currently or previously  
1219 in effect, or the laws governing notarization of instruments. This

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1220 subsection does not preclude a challenge to the validity or  
1221 enforceability of an instrument or electronic record based upon  
1222 fraud, forgery, impersonation, duress, incapacity, undue influence,  
1223 minority, illegality, unconscionability, or any other basis not  
1224 related to the notarial act or constructive notice provided by  
1225 recording.

1226  
1227 All affidavits, legalizations, authentications, and acknowledgments  
1228 heretofore made or taken in the manner set forth above are hereby  
1229 validated.

1230 Section ~~23-~~24. Section 695.04, Florida Statutes, is amended to  
1231 read:

1232 695.04 Requirements of certificate. The certificate of the  
1233 officer before whom the acknowledgment or proof is taken, except for  
1234 a certificate legalizing or authenticating the signature of a person  
1235 executing an instrument concerning real property pursuant to s.  
1236 695.03(3), shall contain and set forth substantially the matter  
1237 required to be done or proved to make such acknowledgment or proof  
1238 effectual as set forth in s. 117.05.

1239 ~~Section 24. Section 695.05, Florida Statutes, is amended to~~  
1240 ~~read:~~

1241 ~~695.05 Certain defects cured as to acknowledgments and~~  
1242 ~~witnesses. All deeds, conveyances, bills of sale, mortgages or other~~  
1243 ~~transfers of real or personal property within the limits of this~~  
1244 ~~state, heretofore or hereafter made and received bona fide and upon~~  
1245 ~~good consideration by any corporation, and acknowledged for record~~  
1246 ~~by before some officer, stockholder or other person interested in the~~  
1247 ~~corporation, grantee, or mortgagee as a notary public or other~~  
1248 ~~officer authorized to take acknowledgments of instruments for record~~  
1249 ~~within this state, shall be held, deemed and taken as valid as if~~

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1250 ~~acknowledged by the proper notary public or other officer authorized~~  
1251 ~~to take acknowledgments of instruments for record in this state not~~  
1252 ~~so interested in said corporation, grantee or mortgagee, and said~~  
1253 ~~instrument whenever recorded shall be deemed notice to all persons;~~  
1254 ~~provided, however, that this section shall not apply to any instrument~~  
1255 ~~heretofore made, the validity of which shall be contested by suit~~  
1256 ~~commenced within 1 year of the effective date of this law.~~ Section

1257 25. Section 695.28, Florida Statutes, is amended to read:

1258 695.28 Validity of recorded electronic documents. —

1259 (1) A document that is otherwise entitled to be recorded under  
1260 s. 28.222 and that was or is submitted to the clerk of the court or  
1261 county recorder by electronic or other means and accepted for  
1262 recordation is deemed validly recorded and provides notice to all  
1263 persons notwithstanding:

1264 (a) That the document was received and accepted for recordation  
1265 before the Department of State adopted standards implementing s.  
1266 695.27; ~~or~~

1267 (b) Any defects in, deviations from, or the inability to  
1268 demonstrate strict compliance with any statute, rule, or procedure  
1269 relating to electronic signatures, electronic witnesses, electronic  
1270 notarization, or online notarization, or for submitting or recording  
1271 to submit or record an electronic document in effect at the time the  
1272 electronic document was executed or was submitted for recording;~~;~~

1273 (c) That the document was signed, witnessed, or notarized  
1274 electronically, that the document was notarized by an online notary  
1275 public outside the physical presence of the signer, or that witnessing  
1276 ~~or notarization~~ may have been done outside the physical presence of  
1277 the notary public or principal; or

1278 (d) That the document recorded was a certified printout of a  
1279 document to which one or more electronic signatures have been affixed.

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1280 (2) This section does not alter the duty of the clerk or recorder  
1281 to comply with s. 28.222, s. 695.27, or any rules adopted pursuant  
1282 to those sections ~~that section~~.

1283 (3) This section does not preclude a challenge to the validity  
1284 or enforceability of an instrument or electronic record based upon  
1285 fraud, forgery, impersonation, duress, incapacity, undue influence,  
1286 minority, illegality, unconscionability, or any other basis not in  
1287 the nature of those matters described in subsection (1).

1288 Section 26.Subsection (17) of section 709.2202, Florida  
1289 Statutes, is ~~amended~~created to read:

1290 709.2202 Authority that requires separate signed enumeration.—

1291 (17)Notwithstanding ~~s. 709.2201~~, ~~an agent may exercise the~~  
1292 ~~following authority in this subsection only if the principal signed~~  
1293 ~~or initialed next to each specific enumeration of the authority, the~~  
1294 ~~exercise of the authority is consistent with the agent's duties under~~  
1295 ~~s. 709.2114, the power of attorney was witnessed and notarized in~~  
1296 ~~person without the use of online witnessing of electronic records~~  
1297 ~~pursuant to s. 117.285 or online notarization under part II of chapter~~  
1298 ~~117, and the exercise is not otherwise prohibited by another agreement~~  
1299 ~~or instrument, a power of attorney or any authority granted therein~~  
1300 ~~to an agent, including where such authority is witnessed and notarized~~  
1301 ~~online~~subsection (1), a power of attorney that is witnessed remotely  
1302 pursuant to s. 117.285 or other applicable law by a witness who is  
1303 not in the physical presence of the principal, or that is notarized  
1304 remotely through the use of online ~~witnessing of electronic records~~  
1305 ~~pursuant to s. 117.285 or online~~notarization under part II of chapter  
1306 ~~117, is not affected by this section except that a power of attorney~~  
1307 ~~or other authority notarized and witnessed~~117 or other applicable  
1308 law, is not effective to grant ~~powers pursuant to the following~~any  
1309 authority to an agent to:

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1310 (a) ~~Create an inter vivos trust;~~ take any of the actions  
1311 enumerated in subsection (1); or

1312 (b) ~~With respect to a trust created by or on behalf of the~~  
1313 ~~principal, amend, modify, revoke, or terminate the trust, but only~~  
1314 ~~if the trust instrument explicitly provides for amendment,~~  
1315 ~~modification, revocation, or termination by the settlor's agent;~~

1316 ~~(c) Make a gift, subject to subsection (4);~~  
1317 ~~(d) Create or change rights of survivorship;~~  
1318 ~~(e) Create or change a beneficiary designation;~~ (f) ~~Waive~~  
1319 ~~the principal's right to be a beneficiary of a joint and survivor~~  
1320 ~~annuity, including a survivor benefit under a retirement plan; or~~  
1321 (g) ~~Disclaim property and powers of appointment.~~ conduct any of the  
1322 banking transactions or investment transactions as enumerated in s.  
1323 709.2208(1) and (2), provided however that a power of attorney that  
1324 is witnessed remotely or notarized remotely may be effective to  
1325 authorize an agent to execute and deliver a promissory note, loan  
1326 agreement, line of credit agreement, mortgage, security agreement,  
1327 guaranty, indemnity, or other loan document obligating the principal.

1328 Section 27. ~~Effective July 1, 2019, subsection (40) of section~~  
1329 ~~731.201, Florida Statutes, is amended to read:~~ Except as otherwise  
1330 expressly provided in this act, this act shall take effect October  
1331 1, 2019.

1332 ~~731.201 General definitions. Subject to additional~~  
1333 ~~definitions in subsequent chapters that are applicable to specific~~  
1334 ~~chapters or parts, and unless the context otherwise requires, in this~~  
1335 ~~code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:~~

1336 (40) ~~"Will" means an instrument, including a codicil, executed~~  
1337 ~~by a person in the manner prescribed by this code, which disposes~~  
1338 ~~of the person's property on or after his or her death and includes~~  
1339 ~~an instrument which merely appoints a personal representative or~~

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1340 ~~revokes or revises another will. The term includes an electronic will~~  
 1341 ~~as defined in s. 732.521.~~

1342 ~~Section 28. Effective July 1, 2019, section 732.506, Florida~~  
 1343 ~~Statutes, is amended to read:~~

1344 ~~732.506 Revocation by act. A will or codicil, other than an~~  
 1345 ~~electronic will, is revoked by the testator, or some other person~~  
 1346 ~~in the testator's presence and at the testator's direction, by~~  
 1347 ~~burning, tearing, canceling, defacing, obliterating, or destroying~~  
 1348 ~~it with the intent, and for the purpose, of revocation. An electronic~~  
 1349 ~~will or codicil is revoked by the testator, or some other person in~~  
 1350 ~~the testator's presence and at the testator's direction, by deleting,~~  
 1351 ~~canceling, rendering unreadable, or obliterating the electronic will~~  
 1352 ~~or codicil, with the intent, and for the purpose, of revocation, as~~  
 1353 ~~proved by clear and convincing evidence.~~

1354 ~~Section 29. Effective July 1, 2019, section 740.10, Florida~~  
 1355 ~~Statutes, is created to read:~~

1356 ~~740.10 Relation to wills. No act taken pursuant to this chapter~~  
 1357 ~~is valid to affect the obligation of a person to deposit a will of~~  
 1358 ~~a decedent as required under s. 732.901.~~

1359 ~~Section 30. Effective July 1, 2019, section 732.521, Florida~~  
 1360 ~~Statutes, is created to read:~~

1361 ~~732.521 Definitions. As used in ss. 732.521-732.525, the term:~~  
 1362 ~~(1) "audio-video communication technology" has the same meaning~~  
 1363 ~~as provided in s. 117.201.~~

1364 ~~(2) "Electronic signature" means an electronic mark visibly~~  
 1365 ~~manifested in a record as a signature and executed or adopted by a~~  
 1366 ~~person with the intent to sign the record.~~

1367 ~~(3) "Electronic will" means an instrument, including a codicil,~~  
 1368 ~~executed with an electronic signature by a person in the manner~~  
 1369 ~~prescribed by this code, which disposes of the person's property on~~  
 1370 ~~or after his or her death and includes an instrument which merely~~

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1371 ~~appoints a personal representative or revokes or revises another~~  
 1372 ~~will.~~  
 1373 ~~\_\_\_\_\_ (4) "Online notarization" has the same meaning as provided in~~  
 1374 ~~s. 117.201.~~  
 1375 ~~\_\_\_\_\_ (5) "Online notary public" has the same meaning as provided in~~  
 1376 ~~s. 117.201.~~  
 1377 ~~\_\_\_\_\_ Section 31. Effective July 1, 2019, section 732.522, Florida~~  
 1378 ~~Statutes, is created to read:~~  
 1379 ~~\_\_\_\_\_ 732.522 Method and place of execution. For purposes of the~~  
 1380 ~~execution or filing of an electronic will, the acknowledgment of an~~  
 1381 ~~electronic will by the testator and the affidavits of witnesses under~~  
 1382 ~~s. 732.503, or any other instrument under the Florida Probate Code:~~  
 1383 ~~\_\_\_\_\_ (1) Any requirement that an instrument be signed may be~~  
 1384 ~~satisfied by an electronic signature.~~  
 1385 ~~\_\_\_\_\_ (2) Any requirement that individuals sign an instrument in the~~  
 1386 ~~presence of one another may be satisfied by witnesses being present~~  
 1387 ~~and electronically signing by means of audio-video communication~~  
 1388 ~~technology that meets the requirements of part II of chapter 117 and~~  
 1389 ~~any rules adopted thereunder.~~  
 1390 ~~\_\_\_\_\_ (3) The act of witnessing an electronic signature is satisfied~~  
 1391 ~~if:~~  
 1392 ~~\_\_\_\_\_ (a) An individual is present either in physical proximity to the~~  
 1393 ~~signer or by audio-video communication technology at the time the~~  
 1394 ~~signer affixes his or her electronic signature and hears the signer~~  
 1395 ~~make a statement acknowledging that the signer has signed the~~  
 1396 ~~electronic record; and~~  
 1397 ~~\_\_\_\_\_ (b) The individuals are supervised in accordance with s. 117.285~~  
 1398 ~~and, in the case of an electronic will, the testator provides, to the~~  
 1399 ~~satisfaction of the online notary public during the online~~  
 1400 ~~notarization, verbal answers to all of the following questions:~~  
 1401 ~~\_\_\_\_\_ 1. Are you over the age of 18?~~

**COMPARISON OF REMOTE NOTARY COMMITTEE WORK PRODUCT  
TO LAST VERSION OF SB 1042 (2018 SESSION)**

20181042e1

1402 ~~2.Are you of sound mind?~~

1403 ~~3.Are you signing this will voluntarily?~~

1404 ~~4.Are you under the influence of any drugs or alcohol that~~

1405 ~~impairs your ability to make decisions?~~

1406 ~~5.Has anyone forced or influenced you to include anything in~~

1407 ~~this will which you do not wish to include?~~

1408 ~~6.Did anyone assist you in accessing this video conference? If~~

1409 ~~so, who?~~

1410 ~~7.Where are you? Name everyone you know in the room with you.~~

1411 ~~(c)The execution of an electronic will of a testator who is a~~

1412 ~~vulnerable adult, as defined in s. 415.102, may not be witnessed by~~

1413 ~~means of audio-video communication technology. The contestant of the~~

1414 ~~electronic will has the burden of proving that the testator was a~~

1415 ~~vulnerable adult at the time of executing the electronic will.~~

1416 ~~(4)An instrument that is signed electronically is deemed to be~~

1417 ~~executed in this state if the instrument states that the person~~

1418 ~~creating the instrument intends to execute and understands that he~~

1419 ~~or she is executing the instrument in, and pursuant to the laws of,~~

1420 ~~this state.~~

1421 ~~Section 32.Effective July 1, 2019, section 732.524, Florida~~

1422 ~~Statutes, is created to read:~~

1423 ~~732.524 Self proof of electronic will. An electronic will is~~

1424 ~~self-proved if the acknowledgment of the electronic will by the~~

1425 ~~testator and the affidavits of the witnesses are made in accordance~~

1426 ~~with s. 732.503 and are part of the electronic record containing the~~

1427 ~~electronic will, or are attached to, or are logically associated with,~~

1428 ~~the electronic will.~~

1429 ~~Section 33.Effective July 1, 2019, section 732.525, Florida~~

1430 ~~Statutes, is created to read:~~

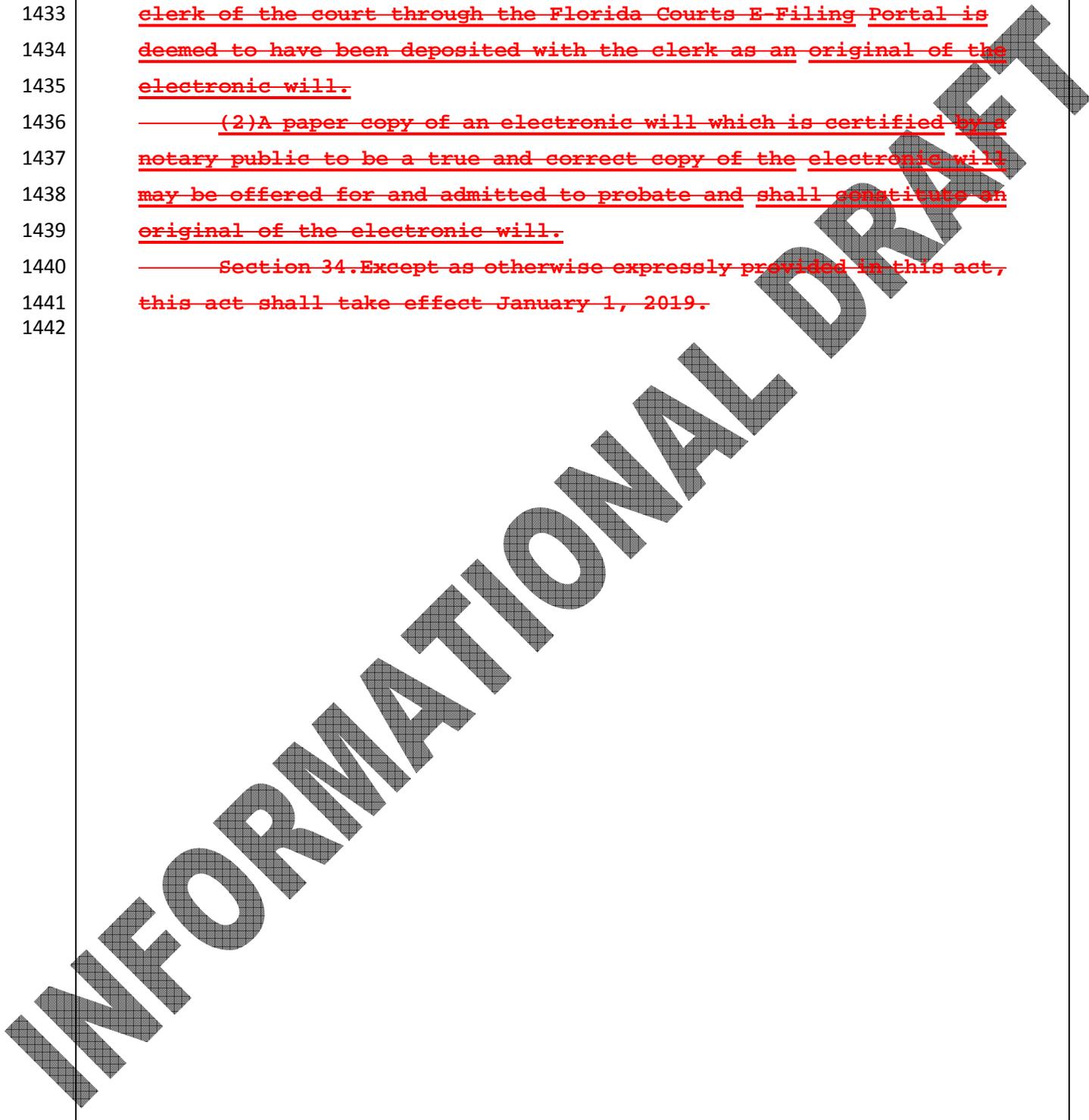
1431 ~~732.525 Probate.~~

1432 ~~(1)An electronic will that is filed electronically with the~~

**COMPARISON OF REMOTE NOTARY COMMITTEE WORK PRODUCT  
TO LAST VERSION OF SB 1042 (2018 SESSION)**

20181042e1

1433 ~~clerk of the court through the Florida Courts E-Filing Portal is~~  
 1434 ~~deemed to have been deposited with the clerk as an original of the~~  
 1435 ~~electronic will.~~  
 1436 ~~—— (2)A paper copy of an electronic will which is certified by a~~  
 1437 ~~notary public to be a true and correct copy of the electronic will~~  
 1438 ~~may be offered for and admitted to probate and shall constitute an~~  
 1439 ~~original of the electronic will.~~  
 1440 ~~—— Section 34. Except as otherwise expressly provided in this act,~~  
 1441 ~~this act shall take effect January 1, 2019.~~  
 1442



Document comparison by Workshare 9.5 on Wednesday, May 23, 2018 2:52:44 PM

Input:	
Document 1 ID	file://C:\Users\brutonb\Documents\FlaBar\Remote Notary\2019 Remote Notary\CS for SB 1042 First Engrossed-continuous line numbers.docx
Description	CS for SB 1042 First Engrossed-continuous line numbers
Document 2 ID	file://C:\Users\brutonb\Documents\FlaBar\Remote Notary\2019 Remote Notary\Draft Bill Clean 5-23-18.docx
Description	Draft Bill Clean 5-23-18
Rendering set	GT-1

Legend:	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	148
Deletions	134
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	282



1 A bill to be entitled

2 An act relating to Chapter 712; clarifying that specific references to estates, interests,  
3 easements, or restrictions, in the muniments of title do not prevent the operation of the act;  
4 providing a constitutional savings clause; amending s. 712.03, F.S.; clarifying that the act can  
5 extinguish covenants and restrictions the existence of which depend upon zoning requirements or  
6 building or development permits but, by doing so, will not serve to invalidate zoning ordinance,  
7 land development regulation, building code, or other law independent of what is recorded in the  
8 Official Records; providing a constitutional savings clause; amending s. 712.04, F.S.; providing  
9 for an effective date.

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

11 Section 1. Section 712.03, Florida Statutes, is amended to read:

12 **712.03 Exceptions to marketability.** -- ~~Such m~~Marketable record title shall not affect or  
13 extinguish the following rights:

14 (1) Estates, ~~or~~ interests, easements, ~~or~~ ~~and use~~ restrictions disclosed by and defects  
15 inherent in the muniments of title on which said estate is based beginning with the root of title;  
16 provided, ~~however,~~ that in the muniments of title those estates, interests, easements, or  
17 restrictions created prior to the root of title are preserved by identification within the legal  
18 description of the property by specific reference to Official Records instrument number or plat  
19 name; a general reference in any of such muniments to easements, use restrictions or other  
20 interests created prior to the root of title shall not be sufficient to preserve them unless specific  
21 identification by reference to book and page of record or by name of recorded plat be made  
22 therein to a recorded title transaction which imposed, transferred or continued such easement,  
23 use restrictions or other interests or there is otherwise an affirmative statement in the muniments  
24 of title to reimpose such estates, interests, easements, or restrictions created prior to the root of  
25 title as identified by Official Records instrument number; subject, however, to the provisions of  
26 subsection ~~(4)~~5).

27 (2) Estates, interests, ~~claims~~ easements, or restrictions ~~charges, or any covenant or~~  
28 ~~restriction~~, preserved by the filing of a proper notice in accordance ~~with the provisions~~  
29 ~~hereofs.~~ 712.06.

30 (3) Rights of any person in possession of the lands, ~~so long as such person is in such~~  
31 ~~possession~~.

32 ~~(4) Estates, interests, claims, or charges arising out of a title transaction which has been~~  
33 ~~recorded subsequent to the effective date of the root of title.~~

34 ~~(4)~~5) Recorded or unrecorded easements or rights, interest or servitude in the nature of  
35 easements, rights-of-way and terminal facilities, including those of a public utility or of a

36 governmental agency, so long as the same are used and the use of any part thereof shall except  
37 from the operation hereof the right to the entire use thereof. No notice need be filed in order to  
38 preserve the lien of any mortgage or deed of trust or any supplement thereto encumbering any  
39 such recorded or unrecorded easements, or rights, interest, or servitude in the nature of  
40 easements, rights-of-way, and terminal facilities. However, nothing herein shall be construed as  
41 preserving to the mortgagee or grantee of any such mortgage or deed of trust or any supplement  
42 thereto any greater rights than the rights of the mortgagor or grantor.

43 (56) Rights of any person in whose name the land is assessed on the county tax rolls for  
44 such period of time as the land is so assessed and which rights are preserved for a period of 3  
45 years after the land is last assessed in such person's name.

46 (67) State title to lands beneath navigable waters acquired by virtue of sovereignty.

47 (78) A restriction or covenant recorded pursuant to chapter 376 or chapter 403.

48 (89) Any right, title, or interest held by the Board of Trustees of the Internal  
49 Improvement Trust Fund, any water management district created under chapter 373, or the  
50 United States.

51 Section 2. The amendment to s. 712.03 is intended to clarify existing law. Any  
52 person having an interest in land potentially extinguished by this act, and whose interest has not  
53 been extinguished prior to July 1, 2019, will have until July 1, 2020, to file a notice in  
54 accordance with s. 712.06 to preserve the interest.

55 Section 3. Section 712.04, Florida Statutes, is amended to read as follows:

56 **712.04 Interests extinguished by marketable record title.**- Subject to s. 712.03, a  
57 marketable record title is free and clear of all estates, interests, claims, covenants, restrictions, or  
58 charges, the existence of which depends upon any act, title transaction, event, zoning  
59 requirement, building or development permit, or omission that occurred before the effective date  
60 of the root of title. Except as provided in s. 712.03, all such estates, interests, claims, or charges,  
61 however denominated, whether they are or appear to be held or asserted by a person sui juris or  
62 under a disability, whether such person is within or without the state, natural or corporate, or  
63 private or governmental, are declared to be null and void. However, this chapter does not affect  
64 any right, title, or interest of the United States, Florida, or any of its officers, boards,  
65 commissions, or other agencies reserved in the patent or deed by which the United States,  
66 Florida, or any of its agencies parted with title. The foregoing shall not be construed to alter or  
67 invalidate a zoning ordinance, land development regulation, building code or other law or  
68 regulation to the extent such operate independently of matters recorded in the Official Records.

69           Section 4.     The amendment to s. 712.04 is intended to clarify existing law, is remedial  
70 in nature and applies to all restrictions and covenants whether imposed or accepted before, on or  
71 after the effective date of this section.

72           Section 5.     This act shall take effect upon becoming a law.

73

**WHITE PAPER**  
**REVISIONS TO CHAPTER 712**  
(Commonly known as Florida’s Marketable Record Title Act)

**I. SUMMARY**

This legislation is designed to (i) clarify the operation of the statute in light of a common real estate practice that may inadvertently reinscribe restrictions and (ii) address the judicial exception created by *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016) for restrictions imposed in connection with governmental zoning, development, or building approvals.

The bill does not have a fiscal impact on state funds.

**II. SECTION-BY-SECTION ANALYSIS**

**A. Section 712.03**

**Current Situation:** A common practice among real estate practitioners in Florida is to except from the seller’s warranties of title in a deed the matters identified as outstanding encumbrances or restrictions. This is frequently done by making the deed “subject to,” not just all matters of record, but to instruments specifically identified by official record book and page. In these situations, it is rarely the intent of the parties to reinscribe the encumbrance or restriction against the title by virtue of these “subject to” conveyances. Nevertheless, it could be argued that by reciting by official records book and page a prior, existing restriction in a muniment of title such as a deed, it excepts that restriction from the operation of the statute pursuant to s. 712.03(1). It is the intention of the statute to help clear title of ancient defects and not to inadvertently preserve them. This revisions is thus designed to clarify the existing statute so that these “subject to” conveyances do not inadvertently reinscribe the encumbrance or restriction.

Additional revisions are to make uniform and clarify the language of the statute, to eliminate subsection (4) as superfluous because the exception for estates, interests, easements, or restrictions arising *after* the root of title are not within the operation of the act in the first place and thus do not require a separate exception in s. 712.03.

**Effect of Proposed Changes:** The proposed revision is designed to clarify the existing statute so that conveyances “subject to” matters specifically identified by official records book and page are not inadvertently reinscribed unless the parties to the instrument include an affirmative statement of the intent to reimpose the restriction.

The revision is designed to eliminate subsection (4) as superfluous because the exception for estates, interests, easements, or restrictions arising *after* the root of title are not within the operation of the act in the first place and thus do not require a separate exception in s. 712.03.

**B. Section 712.04**

**Current Situation:** In *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910 (Fla. 3d DCA 2016), the court found that a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is not a title interest subject to extinguishment by section 712.04.

The problem with this judicial exception to the operation of the statute is that, in many cases, there is no way to discern from the restrictive covenant recorded in the official records that it was “recorded in compliance with a government-imposed condition of a land use approval,” or not. The result is there is no way to discern from the face of the official records whether a restrictive covenant has been cut off by the operation of the statute or preserved from operation of the statute by this exception. This is contrary to the intent of the statute which is to clear of ancient defects, and threatens to undermine operation of the statute on such restrictions.

**Effect of Proposed Changes:** The proposed revision is designed to make clear that the intent of the statute is to cut off all “estates, interests, claims, covenants, restrictions, or charges,” even if they depend on any “zoning requirement, building or development permit,” but not to alter or invalidate any local government regulation operating independently of matters recorded in the official records.

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

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

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

The proposal does not have a direct negative economic impact on the private sector, but will more readily allow for the free and less expensive alienation of title to real property.

### **V. CONSTITUTIONAL ISSUES**

Because the proposed revisions to s. 712.03(1) are intended to clarify existing law and thus to be retroactive in effect, the proposed revision would give any person having an interest in land potentially extinguished by the act, and whose interest has not been extinguished prior to July 1, 2019, until July 1, 2020, to file a notice in accordance with s. 712.06 to preserve that interest.

### **VI. OTHER INTERESTED PARTIES**

None.



instruments of record does not re-inscribe the restriction or other interest in the instrument. Proposed section 712.04 would allow the act to continue to extinguish restrictions of record even if recorded in connection with governmental zoning, development, or other approvals.

**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 as to section 712.03

Real Property Probate  
and Trust Law Section,  
The Florida Bar Section 712.04      Support      2016-2017

\_\_\_\_\_  
(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)

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

\_\_\_\_\_  
(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 (904) 561-5662 or 800-342-8060, extension 5662.**

1 | A bill to be entitled

2 | An act relating to automatic release of phosphate, minerals, metals and  
3 | any interest in petroleum by any local government, water management  
4 | district, or other agency of the state for parcels of contiguous property less  
5 | than 20 acres in the aggregate under the same ownership; amending Section  
6 | 270.11(2)(b), F.S.; and providing for an effective date.

7 |  
8 | Be it Enacted by the Legislature of the State of Florida:

9 |  
10 | Section 1. Subsection (2)(b) of Section 270.11, Florida Statutes, is amended to read:

11 |  
12 | (b) The right of entry in respect to any interest in phosphate, minerals, and metals or any interest  
13 | in petroleum heretofore or hereafter reserved in favor of the Board of Trustees of the Internal  
14 | Improvement Trust Fund, ~~or~~ the State Board of Education, or by any local government, water  
15 | management district, or other agency of the state, is hereby released as to any parcel of property that  
16 | is, or ever has been, a contiguous tract of less than 20 acres in the aggregate under the same  
17 | ownership.

18 |  
19 | Section 2. This act shall take effect July 1, 2019.  
20 |  
21 |

## WHITE PAPER

### PROPOSED AMENDMENT OF F.S. SECTION 270.11(2)(b)

#### I. SUMMARY

The proposed amendment adds “any local government, water management district, or other agency of the state” to the automatic release provisions of F.S. Section 270.11(2)(b) for a parcel of property that is, or ever has been a contiguous tract of less than 20 acres in the aggregate under the same ownership.

#### II. CURRENT SITUATION

F.S. Section 270.11(1) currently provides, along with the Board of Trustees of the Internal Improvement Trust Fund (“TIIF”), that all contracts and deeds for the sale of land by any local government, water management district or other agency of the state shall include, except if the agency chooses not to reserve such interest and except as otherwise provided by law, fractional reservations for phosphate, minerals, metals and petroleum in, on or under the land.

Sec. F.S. 270.11(2)(a) authorizes a sale or release by both TIIF and The State Board of Education of any reservations held by them and Sec. F.S. 270.11(3) authorizes a sale or release of any reserved interest by a local government, water management district or agency of the state.

The provisions regarding reservations by local government, water management districts and other agencies of the state were added by amendment in 1986.

Sec. F.S. 270.11(2)(b), as amended in 1986, provides that the right of entry is automatically released by TIIF or the State Board of Education for a parcel of property that is, or ever has been a contiguous tract of less than 20 acres in the aggregate under the same ownership. However, even though contracts and deeds from any local government, water management district, or other agency of the state usually include the reservations, the provision for the automatic release of the right of entry as to reservations held by any local government, water management district, or other agency of the state was not also carried forward to F.S. Section 270.11(2)(b) by the 1986 amendment.

#### III. EFFECT OF PROPOSED CHANGES

This amendment will provide consistent treatment of reservations held by local government, water management districts or other agencies of the state with those reservations held by TIIF and the State Board of Education with regards to the automatic release of the right of entry.

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

This amendment will benefit state and local governments by eliminating the expenditures by local governments, water management districts and other state agencies in providing government employees to research and issue individual releases of the right of entry of properties less than 20 acres. This would provide savings to local governments by freeing up

staff to address other tasks and workloads without giving up the right to collect monies on, lease or sell the retained interests.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This amendment will benefit the private sector by eliminating the time and expense of owners and purchasers of land encumbered by these reservations in applying, directly or through counsel, for individual releases of the right of entry of properties less than 20 acres.

VI. CONSTITUTIONAL ISSUES

NONE

VII. OTHER INTERESTED PARTIES

Other groups that may have an interest in the legislative proposal are the City, County and Local Government Law Section, Government Lawyer Section, Association of Counties, League of Cities and Water Management Districts.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

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

## GENERAL INFORMATION

**Submitted By** Arthur J. Menor, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date: May\_\_\_\_, 2018)

**Address** Shutts & Bowen LLC, CityPlace Tower, 52 Okeechobee Blvd., Suite 1100 West Palm Beach, FL 33401  
Telephone: (561)650-8510

**Position Type** Real Property Problems Study Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**William Cary Wright**, Carlton Fields Jordan Burt, P.A., P.O. Box 3239, Tampa, FL 33601, Telephone (813)223-7000,

Email: [cwright@carltonfields.com](mailto:cwright@carltonfields.com)

**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: pdunbar@deanmead.com

**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: 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:

Support legislation adding "or by any local government, water management district, or other agency of the state" to Section F.S. 270.11(2)(b).

### Reasons For Proposed Advocacy:

The legislation will provide for an automatic release of the right of entry for local government, water management districts and other agencies of the state consistent with the automatic release provisions applicable to the Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education.

## 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**

[List here other Bar sections, committees or attorney organizations]  
(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

(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.**

1 A bill to be entitled

2 An act relating to Chapter 95; providing for curative procedures to correct certain errors  
3 in legal descriptions in deeds; amending Chapter 95, F.S.; and providing for an effective  
4 date.

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

6 Section 1. Section 95.2311, Florida Statutes, is created to read:

7 **95.2311 – Description Errors in Deeds; Curative Procedures**

8 (1) The following defined terms shall apply to this section:

9 (a) “Erroneous deed” means any deed containing a scrivener’s error except one prepared by the  
10 grantee and in which it appears by the documentary stamps paid on the deed that consideration in  
11 the amount of the fair market value of the property was not paid.

12 (b) “Intended real property” means the real property vested in the grantor and intended to be  
13 conveyed by the grantor in the erroneous deed.

14 (c) “Scrivener’s error” means not more than one of the following errors or omissions in the legal  
15 description of the intended real property:

16 1. An error or omission in no more than one of the lot or block identification of a recorded  
17 platted lot, or two errors if the lot and block identifications are transposed; or

18 2. An error or omission in no more than one of a unit, building, or phase identification of a  
19 condominium or cooperative unit; or

20 3. An error or omission in no more than one of the name or recording information of the plat,  
21 condominium declaration, or cooperative covenants; or

22 4. An erroneous identification of the county in which the intended real property is located; or

23 5. An error or omission in no more than one of a directional designation or numerical fraction of  
24 a tract of land that is described as a fractional portion of a Section, Township or Range. An error  
25 or omission in the directional description and numerical fraction of the same call shall be  
26 considered one error.

27 (2) Subject to subsections (3) and (4) of this section, the erroneous deed will be held to convey  
28 title to the intended real property as if there had been no scrivener’s error; and each subsequent  
29 deed containing the identical scrivener’s error will be held to convey title to the intended real  
30 property as if there had been no such identical scrivener’s error.

31 (3) Subsection (2) only applies if:

32 (a) The intended real property was owned by the grantor of the first erroneous deed at the time  
33 the first erroneous deed was executed.

34 (b) A curative notice in substantially the same form as set forth in subsection (6) is recorded in  
35 the Official Records of the county in which the intended real property is located, evidencing the  
36 intended real property to be conveyed by the grantor.

37 (4) Subsection (2) does not apply if:

38 (a) Such grantor owned any property other than the intended real property in the subdivision,  
39 condominium or cooperative described in the erroneous deed at any time within five (5) years  
40 prior to the date that the erroneous deed was executed; or

41 (b) The intended real property is identified by a metes and bounds legal description.

42 (5) Curative Notice. A curative notice must be in substantially the following form:

43 Curative Notice, Per Sec. 95.2311, F.S.

44 Scrivener's Error in Legal Description

45 The undersigned does hereby swear and affirm:

46 1. The deed which transferred title from \_\_\_\_\_, to \_\_\_\_\_,  
47 dated \_\_\_\_\_, and recorded \_\_\_\_\_ in O.R. \_\_\_\_, Page  
48 \_\_\_\_\_, and/or Instrument No. \_\_\_\_\_, Official Records of \_\_\_\_\_  
49 County, Florida (herein after referred to as "erroneous deed"), and contained the following  
50 erroneous legal description:

51 [insert incorrect legal description]

52 [if required]

53 2. The deed transferring title from \_\_\_\_\_ to \_\_\_\_\_ and  
54 recorded \_\_\_\_\_ in O.R. \_\_\_\_, Page \_\_\_\_\_, and/or Instrument No.  
55 \_\_\_\_\_, Official Records of \_\_\_\_\_ County, Florida, contained the same  
56 erroneous legal description described in the erroneous deed described herein.

57 [insert the erroneous legal description]

58 3. This notice is made to establish that the real property described as:

59 [insert legal description of the intended real property]

60 (hereinafter referred to as the "intended real property") was the real property that was to have  
61 been conveyed in the erroneous deed.

62 4. I have examined the Official Records of the county in which the intended real  
63 property is located and have determined the following:

64 (a) The Deed dated \_\_\_\_\_, and recorded on  
65 \_\_\_\_\_ in O.R. Book \_\_\_\_\_, Page \_\_\_\_\_ and/or  
66 Instrument Number \_\_\_\_\_, Official Records of  
67 \_\_\_\_\_ County, Florida, establishes that the intended real property  
68 was owned by the grantor of the first erroneous deed at the time the first  
69 erroneous deed was executed.

70 (b) The property described in the erroneous deed was not owned by the grantor  
71 named in the erroneous deed on the date of the erroneous deed nor within the five  
72 (5) years immediately preceding the date when the erroneous deed was executed,  
73 and accordingly, grantor named in the erroneous deed did not have the authority  
74 to convey the property described in the erroneous deed.

75 5. Pursuant to the provisions of Sec. 95.2311, it shall be deemed the erroneous deed  
76 conveyed the intended real property to the grantee named in the erroneous deed.  
77

78 Signature: \_\_\_\_\_

79 Printed Name: \_\_\_\_\_

80 STATE OF \_\_\_\_\_

81 COUNTY OF \_\_\_\_\_

82 Sworn to under oath, subscribed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
83 20 \_\_\_\_ by \_\_\_\_\_, who is/are personally known to me or who has/have  
84 produced \_\_\_\_\_ as identification.

85  
86 [affix seal with Notary name and  
87 Commission number/expiration date] Notary Signature: \_\_\_\_\_

88 (6) The Recording Office of the County where the intended real property is located will record  
89 the corrective notice evidencing the intent of the grantor in the erroneous deed to convey the  
90 intended real property to the grantee in the erroneous deed.

91 (7) The corrective notice recorded pursuant to this section operates as a correction of the  
92 erroneous deed, and the correction relates back to the date of recordation of the erroneous deed

93 as if the erroneous deed and any intervening deed containing the identical scrivener's error  
94 contained the legal description for the intended real property when recorded.

95 (8) The remedies under this section are not exclusive and do not abrogate any right or remedy  
96 under the laws of Florida other than this section.

97 Section 2. This act shall take effect July 1, 2019.

## WHITE PAPER

### PROPOSED CREATION OF SECTION 95.2311 FLORIDA STATUTES

Prepared by the Real Property, Probate and Trust Law Section of the Florida Bar

Title Issues and Standards Committee

#### I. SUMMARY

This bill would create a new section in the Florida Statutes, Section 95.2311. It is intended to cure defects and thereby eliminate the necessity to bring law suits to quiet title when there is an obvious typographical error in the legal description of a recorded deed. The theory being that the grantor in a deed intended to convey title to real property in which they held an interest and did not intend to convey title to real property in which they did not hold an interest within the four years immediately prior to executing the deed containing the erroneous legal description. This period of time will safe guard against the statute being misapplied.

The bill provides that a curative notice which identifies the intended (correct) legal description must be recorded.

The proposed bill has a narrow focus in that it applies only to erroneous deeds and not to transfers of title by judicial order or to quit claim deeds. It also does not apply to deeds that contain a metes and bounds legal description. Finally, the fact that the bill states that the deed containing the legal description may have only one error or omission within identified errors will ensure that the bill only addresses the most obvious typographical errors.

It should be noted that there are already several laws on the books in Florida which provide curative periods for errors in recorded instruments and that at least five states (Georgia, North Carolina, Ohio, Texas and Virginia) have similar laws which in some cases are significantly more forgiving than our proposal. Florida already has an adverse possession law. This bill would make such titles marketable without the requirement to bring a suit to quiet title if they fell within the parameters of the bill. It will expedite the real estate transfer process and benefit all parties involved in the transaction.

#### II. SECTION-BY-SECTION ANALYSIS

A. Sub-Section 95.2311 (1) states the definitions that are used in the proposed statute. The three terms defined are erroneous deed, intended real property, and scrivener's error. Quit claim deeds are excluded from the definition of erroneous deed and are therefore not covered by this bill. The definition of scrivener's error contains the of errors or omissions in the legal description that are covered by the proposed statute.

*(1) Definitions:*

*(a) "Erroneous deed" means any deed containing a scrivener's error except one prepared by the grantee and in which it appears by the documentary stamps paid*

*on the deed that consideration in the amount of the fair market value of the property was not paid.*

*(b) "Intended real property" means the real property vested in the grantor and intended to be conveyed by the grantor in the erroneous deed.*

*(c) "Scrivener's error" means not more than one of the following errors or omissions in the legal description of the intended real property:*

*(1) An error or omission in no more than one of the lot or block identification of a recorded platted lot, or two errors if the lot and block identifications are transposed; or*

*(2) An error or omission in no more than one of a unit, building, or phase identification of a condominium or cooperative unit; or*

*(3) An error or omission in no more than one of the name or recording information of the plat, condominium declaration, or cooperative covenants; or*

*(4) An erroneous identification of the county in which the intended real property is located; or*

*(5) An error or omission in no more than one of a directional designation or numerical fraction of a tract of land that is described as a fractional portion of a Section, Township or Range. An error or omission in the directional description and numerical fraction of the same call shall be considered one error.*

B. Sub-Section 95.2311 (2) establishes that an erroneous deed will be held to convey title to the intended real property as if there had been no scrivener's error.

*(2) Subject to subsections (3) and (4) of this section, the erroneous deed will be held to convey title to the intended real property as if there had been no scrivener's error; and each subsequent deed containing the identical scrivener's error will be held to convey title to the intended real property as if there had been no such identical scrivener's error.*

C. Sub-Section 95.2311 (3) states the criteria for the statute to have effect.

*(3) Subsection (2) only applies if:*

*(a) The intended real property was owned by the grantor of the first erroneous deed at the time the first erroneous deed was executed.*

*(b) A curative notice in substantially the same form as set forth in subsection (6) is recorded in the Official Records of the county in which the intended real property is located, evidencing the intended real property to be conveyed by the grantor.*

D. Sub-Section 95.2311 (4) states the specific instances in which the statute does not apply. These qualifications will insure that the statute is not misapplied and that deed containing metes and bounds descriptions are not covered.

*(4) Subsection (2) does not apply if:*

(a) Such grantor owned any property other than the intended real property in the subdivision, condominium or cooperative described in the erroneous deed at any time within five (5) years prior to the date that the erroneous deed was executed; or

(b) The intended real property is identified by a metes and bounds legal description.

E. Sub-Section 95.2311 (5) establishes the form of the Curative Notice. The scrivener's affidavit identifies the recording information, and legal description of both the erroneous described property and the intended real property to be conveyed. It also includes an assertion by the scrivener as to the legal description of the real property that was intended to be conveyed.

(5) *Curative Notice. The Curative Notice must be in substantially the following form:*

*Curative Notice, Per Sec. 95.2311, F.S.  
Scrivener's Error in Legal Description*

*The undersigned does hereby swear and affirm:*

1. *The deed which transferred title from \_\_\_\_\_, to \_\_\_\_\_, dated \_\_\_\_\_, and recorded \_\_\_\_\_ in O.R. \_\_\_\_, Page \_\_\_\_\_, and/or Instrument No. \_\_\_\_\_, Official Records of \_\_\_\_\_ County, Florida (herein after referred to as "erroneous deed"), and contained the following erroneous legal description:*

*[insert incorrect legal description]  
[if required]*

2. *The deed transferring title from \_\_\_\_\_ to \_\_\_\_\_ and recorded \_\_\_\_\_ in O.R. \_\_\_\_, Page \_\_\_\_\_, and/or Instrument No. \_\_\_\_\_, Official Records of \_\_\_\_\_ County, Florida, contained the same erroneous legal description described in the erroneous deed described herein.  
[insert the erroneous legal description]*

3. *This notice is made to establish that the real property described as: [insert legal description of the intended real property] (hereinafter referred to as the "intended real property") was the real property that was to have been conveyed in the erroneous deed.*

4. *I have examined the Official Records of the county in which the intended real property is located and have determined the following:*

(a) *The Deed dated \_\_\_\_\_, and recorded on \_\_\_\_\_ in O.R. Book \_\_\_\_\_, Page \_\_\_\_\_ and/or Instrument Number \_\_\_\_\_, Official Records of \_\_\_\_\_ County, Florida, establishes that the intended real property was owned by the grantor of the first erroneous deed at the time the first erroneous deed was executed.*

*(b) The property described in the erroneous deed was not owned by the grantor named in the erroneous deed on the date of the erroneous deed nor within the five (5) years immediately preceding the date when the erroneous deed was executed, and accordingly, grantor named in the erroneous deed did not have the authority to convey the property described in the erroneous deed.*

5. Pursuant to the provisions of Sec. 95.2311, it shall be deemed the erroneous deed conveyed the intended real property to the grantee named in the erroneous deed.

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Sworn to under oath, subscribed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by \_\_\_\_\_, who is/are personally known to me or who has/have produced \_\_\_\_\_ as identification.

[affix seal with Notary name and  
Commission number/expiration date]

Notary Signature: \_\_\_\_\_

F. Sub-Section 95.2311(6) states that the corrective notice shall be recorded in the county in which the intended real property is located.

*(6) The Recording Office of the County where the intended real property is located will record the corrective notice evidencing the intent of the grantor in the erroneous deed to convey the intended real property to the grantee in the erroneous deed.*

G. Sub-Section 95.2311 (7) states that the corrective notice operate as the correction of the erroneous deed and relates back to the date of the recordation of the erroneous deed.

*(7) The corrective notice recorded pursuant to this section operates as a correction of the erroneous deed, and the correction relates back to the date of recordation of the erroneous deed as if the erroneous deed and any intervening deed containing the identical scrivener's error contained the legal description for the intended real property when recorded.*

H. Sub-Section 95.2311 (8) states that the remedies under this section are not exclusive.

*(8) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of Florida other than this section.*

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

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

## GENERAL INFORMATION

**Submitted By** Christopher Smart, Esq., Chair, Title Issues and Standards Committee of the Real Property Probate and Trust Law Section (RPPTL Approval Date \_\_\_\_\_, 20\_\_)

**Address** 4221 W. Boy Scout Blvd., Tampa, Florida 33607  
Telephone: (813) 229-4142

**Position Type** Title Issues and Standards Committee of the Real Property Probate and Trust Law Section, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

## CONTACTS

**Board & Legislation Committee Appearance** Christopher Smart, Esq., Carlton Fields Jorden Burt, P.A., 4221 W. Boy Scout Blvd., Tampa, Florida 33607, Telephone: (813) 229-4142, Email: csmart@carltonfields.com

Barry Scholnik, Esq., Stewart Title Guaranty Company, 6400 N. Congress Avenue, Suite 2250, Boca Raton, Florida 33487, (561) 962-6752, barry.scholnick@stewart.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 legislation to create Section 95.2311, which would establish a method of correcting obvious typographical errors in legal descriptions contained in deeds of real property.

### Reasons For Proposed Advocacy:

Real estate transactions are delayed because of obvious typographical error in legal descriptions. This statute when applicable would make it unnecessary to obtain a corrective deed or to bring a judicial action to reform the erroneous deed.

## 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**

[List here other Bar sections, committees or attorney organizations]  
(Name of Group or Organization) (Support, Oppose or No Position)

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

\_\_\_\_\_  
(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.**

# 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** 800 North Magnolia Avenue, Suite 1500 Orlando, FL 32803  
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 32801 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 enactment of new Section 689.151 to the Florida Statutes to: (1) permit an owner of personal property to create a tenancy by the entireties by a direct transfer to the owner and the owner's spouse, or a joint tenancy with right of survivorship by a direct transfer to the owner and another person or

persons, without requiring an intermediate transfer through a strawman, (2) permit joint tenants to hold unequal shares or interests in personal property in a joint tenancy with right of survivorship while retaining the right of survivorship, (3) and facilitate proving the existence of tenancies by the entirety and joint tenancies with right of survivorship in personal property by codifying and clarifying existing common law evidentiary presumptions.

**Reasons For Proposed Advocacy:**

To: (1) eliminate the archaic need for an intermediate transfer through a strawman when an owner of personal property wishes to create a tenancy by the entirety with the owner and the owner's spouse or a joint tenancy with right of survivorship with the owner and another person or persons; (2) permit joint tenants to hold unequal shares or interests in personal property in a joint tenancy with right of survivorship without severing the joint tenancy and terminating the right of survivorship; and (3) facilitate proving the existence of tenancies by the entirety and joint tenancies with right of survivorship in personal property by codifying and clarifying existing common law evidentiary presumptions.

**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)

Elder Law Section, TFB

Tax Section. TFB

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

### **White Paper on Proposed New Section 689.151, Florida Statutes**

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#### **I. SUMMARY**

The proposed legislation (“§ 689.151”) originates from The Estate and Trust Tax Planning Committee (the “Committee”) of the Real Property, Probate and Trust Law Section of The Florida Bar (the “RPPTL Section”). The scope of § 689.151 is limited to principles of law concerning interests in personal property held in tenancies by the entirety (“TBE”) or joint tenancies with right of survivorship (“JTWROS”). The proposal has no application to any interests in real property.

The goals of § 689.151 are threefold:

1. To permit an owner of personal property to create a TBE or JTWROS by a direct transfer to the owner and another person or persons without requiring an intermediate transfer through a strawman. This goal is attained by modifying the common law unities applicable to TBE and JTWROS in personal property.
2. To permit joint tenants owning personal property in a JTWROS to hold unequal shares that are not equal while retaining the right of survivorship when both unequal shares and survivorship are intended. This goal is attained by modifying the common law unities applicable ax to JTWROS in personal property.
3. To facilitate proving the existence of TBE and JTWROS in personal property by codifying and clarifying existing common law evidentiary presumptions.

The general thrust of § 689.151 is to firmly move toward a transparent, workable framework that more fully implements the intent of co-owners of interests in personal property in the context of a more modern, common-sense, statutory-based environment for the creation of TBE and JTWROS relationships involving personal property. Enactment of the proposed legislation will bring needed clarity and certainty to an area of the law in which there is now considerable apprehension, confusion and misconception.

#### **II. SUBSECTION-BY-SUBSECTION ANALYSIS**

##### **A. Subsection (1)**

##### **Current Situation:**

At common law, four unities must be present to create a JTWRORS 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 TBE relationship.

Under Florida case law, subject to § 689.11, Fla. Stat. (discussed below), the required common law unities of *time* and *title* prevent the creation of a TBE or JTWRORS unless the tenants acquire their interests at the same time and from the same source. 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 the 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. 4<sup>th</sup> DCA 1969).

Because of the required unities of *time* and *title*, an existing owner of property cannot create a JTWRORS in personal property with another person or create a TBE in personal property with his or her spouse by a direct transfer. See, *In re Aranda*, 2011 WL 87237 (Bankr. S.D. Fla. 2011) (account not held as TBE because the common law unity of time was not present).

This archaic restriction has caused practitioners to resort to the use of an indirect two-step “strawman” process to insure the effective creation of a TBE or JTWRORS in personal property. In those instances, the existing owner transfers the property to a 3<sup>rd</sup> party strawman, who then transfers the property back to the owner and the other intended tenant or tenants, thereby satisfying the unities of *time* and *title*. Several states have enacted legislation modifying the common law unities to permit an existing owner to create a valid TBE or JTWRORS by direct transfer. See, Minn. Stat. Ann. § 500.19; Wis. Stat. Ann. § 700.19; and Mich. Comp. Laws Ann. § 565.49.

Many years ago, the strawman problem was resolved with respect to TBE’s in real property by the enactment of § 689.11, Fla. Stat. That statute validates (even retrospectively) the creation of TBE’s in real property by direct transfer from the existing owner to the existing owner and his or her spouse. However, that solution was only partial because it did not validate the creation of TBE’s or JTWRORS’s in personal property or JTWRORS’s in real property by direct transfers.

After struggling with the existing, muddled state of the law on creation of TBE’s, the Bankruptcy Court in *In re Shahegh*, 2013 WL 364821 (Bankr. S.D. Fla 2013), 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.” Good public policy should disfavor a rule that makes it more difficult for spouses to create a TBE in personal property than in real property.

### **Effect of Proposed Changes:**

Subsection (1) of § 689.151 validates the creation of TBE’s and JTWROS’s in personal property by direct transfer from an existing owner to the owner and another tenant or tenants and eliminates the need to resort to the use of a strawman in such instances. For example, Wife, who is the 100% owner of personal property Asset X, can effectively transfer Asset X to Wife and Husband, as TBE, notwithstanding the absence of the common law unities of *time* and *title*. It will no longer be necessary for Wife to first transfer Asset X to a strawman, who would then transfer Asset X to the Wife and Husband. The same will be true for an owner who wishes to create a JTWROS with one or more persons. This result is achieved by abolishing the common law unities of *time* and *title* insofar as they apply to the creation of TBE’s and JTWROS’s in personal property.

Good policy suggests that what currently can be accomplished only through an indirect two-step process with a strawman should be achievable directly. Legislation that accomplishes for personal property what Florida Statutes § 689.11(1) does for real property will better effectuate the parties’ intent, provide greater uniformity and predictability, and reduce confusion and litigation.

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

## **B. Subsection (2)**

### **Current Situation:**

*Beal Bank, SSB v. Almand & Associates*, 780 So.2d 45, 53 (Fla. 2001); *LaPierre v. Kalergis*, 257 So.2d 33 (Fla. 1972); *First National Bank of Leesburg v. Hector Supply Company*, 254 So.2d 277 (Fla. 1971); and *Kozacik v. Kozacik*, 26 So.2d 659 (Fla. 1946), clearly establish that the common law unities applicable to JTWROS’s, including the unity of *interest*, are part of Florida law. The unity of *interest* requires equal shares and will not permit the creation or continuation of a JTWROS if that the shares are not equal. “If the shares of the cotenants were not equal, the unity of interest would be lacking and the estate could not be a joint tenancy.” Orth, John V., “Presumed Equal: Shares of Cotenants,” *ACTEC Law Journal*, Vol. 37, No. 3, Winter 2011, p. 463. Unequal shares may result from unequal contributions by tenants or from gifting between tenants. Even if shares that were equal at the creation of the JTWROS later become unequal, the JTWROS will be severed and converted to a tenancy in common, resulting in the loss of the incident of survivorship. Accordingly, current Florida law does not accommodate cotenants who want both survivorship and unequal shares.

On a closely related matter, it should be noted that the multiple-party bank account statute, § 655.79, currently permits survivorship to operate on a such accounts without respect to what interests or shares, if any, are owned by the persons named in the account documentation prior to the death of any of them.

**Effect of Proposed Changes:**

Subsection (2) of § 689.151 permits joint tenants to hold unequal shares in personal property and still enjoy the advantages of survivorship from a JTWROS when both unequal shares and survivorship are intended. This result is achieved by abolishing the common law unity of *interest* insofar as it applies to the creation or continuation of JTWROS's in personal property. By statute, other states have exempted JTWROS 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. See, Colo. Rev. Stat. Ann. § 38-31-101 and Minn. Stat. Ann. § 500.19. Subsection (2) of § 689.151 is similar to Florida's multiple-party bank account statute, § 655.79, insofar as it permits survivorship to operate on such accounts without respect to what interests or shares, if any, are owned by the persons named in the account documentation prior to the death of any of them.

While subsection (2) of § 689.151 allows tenants to hold unequal shares in a JTWROS, it is recognized that the shares held in most JTWROS's will be equal. In those states where JTWROS have been exempted by statute from the required unity of interest so as to permit unequal shares, "the presumption of equal shares that once applied only to tenancies in common now extends to joint tenancies as well, focusing additional attention on the evidence necessary to rebut it." Orth, John V., "Presumed Equal: Shares of Cotenants," *ACTEC Law Journal*, Vol. 37, No. 3, Winter 2011, p. 463. Accordingly, subsection (3)(c) of § 689.151 creates a rebuttable evidentiary presumption that such shares are equal. This presumption of equal shares, which is in line with the presumption of equal shares currently applicable to tenancies in common under Florida law, may be rebutted or overcome by evidence that the shares are not equal.

**C. Subsection (3)(a)**

**Current Situation:**

A presumption is an assumption of fact which the law makes from the existence of another fact or group of facts. § 90.301, Fla. Stat.

The 2001 landmark case of Beal Bank, SSB v. Almand & Associates, 780 So. 2d 45 (Fla. 2001), recognized that "stronger policy considerations favor allowing the presumption in favor of a tenancy by the entireties when a married couple jointly owns personal property" and adopted that presumption. *Beal Bank* at 57. The Court then proceeded to establish a specific rebuttable presumption that an account titled in the name of both spouses is held as a TBE unless the account documentation *expressly* disclaims that form of ownership. *Beal Bank* at 58-61.

A statement that a TBE is not intended or that a tenancy in common is intended constitutes an express indication that a TBE is not intended. However, a statement in the

ownership documentation that the account is held as a JTWRROS does not alone constitute an express disclaimer of TBE is because a TBE is “essentially a joint tenancy, modified by the common-law doctrine that the husband and wife are one person.” *Beal Bank* at 60.

The presumption of intent that *Beal Bank* applied to a bank account applies to all personal property. *Cacciatore v. Fisherman’s Wharf Realty Limited Partnership*, 821 So.2d 1251 (Fla. 4th DCA 2002). However, the rebuttable presumptions established by *Beal Bank* for personal property are not applicable to the creation of a tenancy by the entireties in real property. *Bridgeview Bank Group v. Callaghan*, 84 So.3d 1154 (Fla. 4th DCA 2012).

**Effect of Proposed Changes:**

Consistent with the policies adopted by *Beal Bank*, Subsection (3)(a) of § 689.151 essentially codifies the *Beal Bank* rebuttable presumption that personal property owned by both spouses is held as a TBE unless the ownership documentation expressly indicates that a TBE is not intended, subject to the proviso that a designation of JTWRROS alone is not an express indication that a TBE is not intended.

Subsection (3)(a) provides that it is rebuttably presumed that:

- (a) Personal property owned by both spouses is owned by them as tenants by the entirety when:
  - (i) An ownership document neither specifies a form of ownership nor expressly indicates that a tenancy by the entirety is not intended; or
  - (ii) There is a designation of joint tenancy with right of survivorship in an ownership document and no express indication that a tenancy by the entirety is not intended.

Subsection (3)(a) also provides that the stated presumption also applies when a spouse owning personal property adds the name of his or her spouse to an ownership document for that property that does not expressly indicate that a TBE is not intended. Thus, the spouses would be entitled to the rebuttable presumption of a TBE without first having to offer other evidence of a completed transfer or gift of an interest in the property.

Subsection (4) of § 689.151, discussed below, specifies how this rebuttable presumption may be rebutted or overcome.

**D. Subsection (3)(b)**

**Current Situation:**

In the case of personal property co-owned by non-spouses, if the ownership documentation indicates that the property is held as JTWRROS, Florida case law currently recognizes that it is rebuttably presumed to be owned by them as JTWRROS. 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).

As to personal property co-owned by spouses, *Beal Bank* held that a designation of JTWR0S establishes a rebuttable presumption that it is held in a TBE *unless* the ownership documentation also contains an express indication that a TBE is not intended. *Beal Bank* at 57-61. This is because a TBE is “essentially a joint tenancy, modified by the common-law doctrine that the husband and wife are one person.” *Beal Bank* at 60.

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 JTWR0S may be created in either real or personal property when there is an express provision for the right of survivorship.

### **Effect of Proposed Changes:**

Consistent with *Beal Bank* and other existing Florida case law such as *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), subsection (3)(b) of § 689.151 codifies a rebuttable presumption that personal property is owned as JTWR0S:

. . . when the owner or owners designate or add the name of one or more persons in an ownership document indicating that they own or hold the property as joint tenants with right of survivorship.

In cases where the owners are spouses, subsection (3)(b) expressly provides that this presumption of JTWR0S ownership is subject to the presumption of TBE codified in subsection (3)(a).

Subsection (4) of § 689.151, discussed below, specifies how this rebuttable presumption may be rebutted or overcome.

### **E. Subsection (3)(c)**

#### **Current Situation:**

As noted in the above comments regarding subsection (2), due to the required common law unity of *interest*, the creation or continuation of a JTWR0S under current law is dependent upon the existence of equal shares. If the shares of the tenants are not equal at the inception, a JTWR0S may not be created and if they subsequently become unequal, the JTWR0S will be severed and converted to a tenancy in common. Consistent with this requirement, Florida law appears to rebuttably presume that the shares of joint tenants are equal. *Beal Bank* at 53; *Joseph v. Chanin*, 940 So. 2d 483, 486 (Fla. 4th DCA 2006). Because of the unity of *interest* currently required for JTWR0S, evidence that would rebut the presumption that shares are equal would also be evidence that the tenancy is a tenancy in common, not a JTWR0S. Under Florida law, the presumption of

equal shares is clearly applicable to tenancies in common. *Julia v. Russo*, 984 So. 2d 1283, 1285 (Fla. 4th DCA 2008).

**Effect of Proposed Changes:**

Consistent with existing Florida case law, subsection (3)(c) of § 689.151 codifies a rebuttable presumption that the shares or interests held by joint tenants with right of survivorship or tenants in common in personal property are equal.

Subsection (3)(c) further provides that this presumption of equal shares may be rebutted or overcome by proof, by a preponderance of the evidence, of fraud, undue influence, lack of capacity, or contrary intent. This provision is also consistent with existing Florida law.

**F. Subsection (4)**

**Current Situation:**

The Florida Evidence Code recognizes two types of rebuttable presumptions. The category into which a particular presumption falls depends on the purpose for which it is created:

- Presumptions that are established to implement public policy (i.e., created to favor some desired policy). These presumptions affect the burden of proof and place the burden of disproving the presumed fact on the party against whom the presumption operates. These presumptions can only be rebutted or overcome by evidence that persuades the finder of fact that the presumed fact is not true. § 90.302-304, Fla. Stat.
- Presumptions that are established to simply facilitate the determination of the proceeding in which it is applied. These presumptions only affect the burden of *producing* evidence (i.e., they do not affect the burden of proof or persuasion) and can be rebutted or overcome by merely introducing credible evidence which, if believed, would be sufficient to disprove the presumed fact, regardless of whether the finder of fact is persuaded by that evidence. § 90.302-303, Fla. Stat.

The existing rebuttable presumptions codified in subsection (3) favor policies that facilitate the creation and proof of TBE and JTWRORS in personal property and provide clarity with respect to the magnitude of the relative shares or interests in personal property held by the respective tenants, and are therefore presumptions that place a burden of disproving the presumed facts on the parties against whom the presumptions operate. *Beal Bank* at 58-59 (“The presumption we adopt is a presumption affecting the burden of proof pursuant to section 90.304, Florida Statutes (2000), thus shifting the burden to the creditor to prove by a preponderance of evidence<sup>19</sup> that a tenancy by the entirety was not created.”).

Under existing law, the quantum or weight of the evidence required to rebut or overcome these “burden-shifting” presumptions (i.e., the required degree of persuasion) is generally a preponderance of the evidence, although “clear and convincing proof of contrary intent” is required in order to overcome the presumption applicable to multiple-party financial accounts that survivorship is intended. § 655.79(2), Fla. Stat.

**Effect of Proposed Changes:**

Subject to the provisions in subsection (3)(c) of § 689.151, subsection (4) generally specifies how the rebuttable presumptions codified in subsection (3) may be rebutted or overcome, including both the subject matter and persuasiveness of the evidence required. Under subsections (3)(c) and (4):

- *All of the presumptions stated in subsection (3) may be rebutted or overcome by proof of fraud, undue influence, or lack of capacity, by a preponderance of the evidence.*
- The presumption of ownership as a TBE stated in subparagraph (3)(a) may be rebutted or overcome by *clear and convincing proof* that a TBE was not intended or created.
- The presumption of ownership as a JTWRROS stated in subparagraph (3)(b) may be rebutted or overcome by *clear and convincing proof* that a JTWRROS was not intended or created.
- The presumption of unequal shares stated in subparagraph (3)(c) may be rebutted or overcome by proof of contrary intent by a *preponderance of the evidence*.

Paragraphs (1) through (4), above, are consistent with existing Florida law except for the elevated burden of proof from “a preponderance of the evidence” to “clear and convincing proof” in paragraphs (2) and (3). The elevated “clear and convincing proof” standard required to rebut or overcome the presumptions of TBE and JTWRROS codified in subsections (3)(a) and (3)(b) of § 689.151 is consistent with the elevated burden of proof required by the multiple-party financial account statute (§ 655.79(2), Fla. Stat.) in order to rebut the statutory presumption that survivorship is intended for those accounts.

**G. Subsection (5)**

**Current Situation:**

Existing Florida law provides that an express designation of TBE by spouses creates a conclusive or irrebutable presumption that the form of ownership is TBE. *Beal Bank* at 60. Once the facts giving rise to a conclusive presumption are proven, the presumed fact is conclusively established and the matter is removed from the fact finding process. In other words, the opposing party has no opportunity to disprove the predicate fact or the ultimate fact presumed. *Chandler v. Department of Health and Rehabilitative Services*,

593 So. 2d 1183 (Fla. 1st DCA 1992); Law Revision Council Note to § 90.301, Fla. Stat. (“Conclusive presumptions preclude the opposing party from showing by evidence that the presumed fact does not exist.”).

In accordance with these principles, the *Beal Bank* court concluded that:

[We] agree with the statement in *Hector Supply Co.* that an express designation on the signature card that the account is held as a tenancy by the entireties ends the inquiry as to the form of ownership. *Hector Supply Co.*, 254 So.2d at 781. Following *Hector Supply Co.*, other courts have excluded extrinsic evidence where the account documents clearly indicated the legal form of ownership. *See Morse v. Kohl, Metzger, Spotts, P.A.*, 725 So.2d 436, 437 (Fla. 4th DCA 1999) (holding that extrinsic evidence is inappropriate when both husband and wife signed the signature card, which specifically and clearly designated the account as one held as tenants by the entireties); *Sheeler v. United States Bank of Seminole*, 283 So.2d 566, 566 (Fla. 4th DCA 1973) (holding no further inquiry necessary where clear from the terms of the bank signature card that an estate by the entireties was expressly created).

*Beal Bank* at 60.

#### **Effect of Proposed Changes:**

Consistent with *Beal Bank* and the numerous Florida cases cited in *Beal*, subsection (5) of § 689.151 essentially codifies the *Beal Bank* presumption that an express designation of TBE by spouses creates a conclusive presumption that the form of ownership is TBE. Subsection (5) provides that:

The intent to create a tenancy by the entirety is conclusively presumed when such a tenancy is designated by spouses in an ownership document for personal property, or when an owner of personal property adds the name of his or her spouse to an ownership document with a designation of tenancy by the entirety, provided that the designation or addition was not the product of fraud, undue influence, or a lack of capacity.

It should also be noted that the presumption codified in subsection (5) is narrower than the presumption stated in *Beal Bank* in multiple respects. For example, the presumed fact in *Beal Bank* is TBE ownership, whereas the fact presumed in subsection (5) from the spouses’ express designation of TBE is only the *intent* to create a TBE. Moreover, subsection (5) provides that its presumption may be rebutted or overcome by proof that the TBE designation was the product of fraud, undue influence, or a lack of capacity.

Although some court decisions and legal commentators have expressed Due Process concerns regarding the constitutionality of conclusive presumptions, part VII, below, explains why subsection (5) does not present any problematic Constitutional issues.

## **H. Subsection (6)**

### **Current Situation:**

There is no “Current Situation” for subsection (6) of § 689.151 because it merely addresses the interrelationship between the proposed legislation and other existing statutes that deal with co-ownership or survivorship of interests in personal property.

### **Effect of Proposed Changes:**

Subsection (6) explains the interrelationship between § 689.151 and several existing statutes dealing with co-ownership or survivorship of interests in personal property. Subsection (6) provides that proposed § 689.151 is not intended to change or affect the application of the following existing statutes: § 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). The intent of subsection (6) is to give priority to the existing listed statutes over § 689.151 in any situation where it and one or more of the listed existing statutes would both apply to the same matter and give a different result.

## **I. Subsection (7)**

### **Current Situation:**

There is no “Current Situation” for subsection (7) of § 689.151 because it is merely the definitional part of proposed § 689.151.

### **Effect of Proposed Changes:**

Subsection (7) contains self-explanatory and straight-forward definitions of basic terms used in proposed § 689.151. The importance of this subsection is to emphasize that § 689.15 is intended to apply to all types of personal property other than beneficial interests in trusts to which the Florida Trust Code, Ch. 736, apply.

## **J. Subsection (8)**

### **Current Situation:**

There is no “Current Situation” for subsection (7) of § 689.151 because it is merely a rule of construction applicable to proposed § 689.151.

### **Effect of Proposed Changes:**

Subsection (8) is a rule of construction for § 689.151 that preserves all common law rules and principles applicable to JTWRORS and TBE *except* to the extent those rules or principles are modified by the provisions of the proposed section. Accordingly, in the absence of conflict, the proposed statute does not replace or supersede any existing common law.

Only the following subsections of § 689.151 are intended to change the common law:

- Subsection (1): By permitting an owner of personal property to create a TBE or JTWR0S by a direct transfer to another person or persons without requiring an intermediate transfer through a strawman. This is accomplished by modifying the common law unities of time and title as they apply to TBE and JTWR0S in personal property.
- Subsection (2): By permitting joint tenants owning personal property in a JTWR0S to hold interests that are not equal to each other so that the doctrine of survivorship may operate on unequal shares. This is accomplished by modifying the common law unities as they apply to JTWR0S in personal property.
- Subsection (4): By elevating the burden of proof required to rebut or overcome the presumptions of TBE and JTWR0S codified in subsections (3)(a) and (3)(b) of § 689.151 from “a preponderance of the evidence” to “clear and convincing proof.”

#### **K. Subsection (9)**

##### **Current Situation:**

Insofar as the presumptions stated in § 689.151 and discussed above essentially codify and clarify existing Florida law, those presumptions are already applicable to proceedings pending on or before the effective date of § 689.151.

##### **Effect of Proposed Changes:**

The presumptions stated in § 689.151 and discussed above do not change existing law because they essentially codify and clarify current Florida law.

#### **L. Subsections (10 and 11)**

##### **Current Situation:**

There is no “Current Situation” for subsections (10) and (11) of § 689.151 because it is merely a rule of construction applicable to proposed subsections (1) and (2).

##### **Effect of Proposed Changes:**

As discussed in the earlier comments regarding subsections (1) and (2) of § 689.151, they change existing law: (i) to permit an owner of personal property to create a TBE or JTWR0S by a direct transfer to another person or persons without requiring an intermediate transfer through a strawman; and (ii) to permit joint tenants owning personal property in a JTWR0S to hold shares that are not equal so that the doctrine of survivorship may operate on unequal shares when both unequal shares and survivorship are intended.

After finding that subsections (1) and (2) are remedial in nature, subsections (10) and (11) of provide curative rules of construction which permit parties having pre-existing ownership arrangements to also benefit from the changes implemented by subsections (1) and (2), subject to reasonable safeguards to protect from impairment of existing rights. For example, the curative aspects of subsections (1) and (2) would address the following problems that could arise with respect to transactions or ownership arrangements created prior to the effective date of § 689.151:

- Both spouses are still alive and one spouse claims there was no TBE because their joint ownership was created by a direct transfer of one of the spouses without going through a strawman.
- Joint tenant (JTWROS) or a spouse (TBE) dies and, contrary to the parties' actual intent, the decedent's estate claims that there was no TBE/JTWROS because the joint ownership was created by a direct transfer by one of the tenants without going through a strawman and that the decedent's former interest is an estate asset.
- Joint tenant (JTWROS) dies and, contrary to the parties' actual intent, the decedent's estate claims that there was no JTWROS because the shares were not equal and that decedent's share is therefore an estate asset.

The reasonableness of the curative aspects of subsection (10) of § 689.151 is strongly supported by the fact that application of the changes made by subsections (1) and (2) will be consistent with the intent and best interests of persons who may claim an ownership interest in the property.

In order to insure that the application of subsections (1) and (2) to pre-existing arrangements does not unreasonably impair rights acquired prior to the effective date of § 689.151, subsections (10) and (11) contain two very important limitations. First, subsection (11) provides that nothing in § 689.151 shall impair the rights of any lienholder or creditor acquired prior to its effective date. This provides very broad protection to creditors and lienholders against any retroactive application that would in any way impair their pre-existing rights.

Second, subsection (10) provides that its application shall not impair any right acquired prior to the effective date of § 689.151 if that right is confirmed in a judicial proceeding commenced within 2 years after the effective date. This limiting safeguard is patterned after several curative real property statutes that validate defective transactions or instruments made prior to the effective date of the curative statute, provided that no action to contest the validity of the transaction or instrument is commenced within one year of the effective date of the curative statute. For example, see § 689.11, Fla. Stat. (validating both future and *past* direct transfers of real property from an owner-spouse to the owner and his/her spouse without going through a strawman notwithstanding the required unities of time and title) and §§ 694.08 and 695.05, Fla. Stat. (validating certain instruments notwithstanding lack of proper acknowledgment, seal, or witnesses). Subsection (10) of § 689.151 provides greater protection to pre-existing rights than these

real property statutes because subsection (10) permits an action to confirm the validity of that right to be brought at any time within two years of the effective date of § 689.151.

### III. 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.

### IV. DIRECT IMPACT ON PRIVATE SECTOR

The proposed legislation will have a direct positive impact on the private sector by: (1) making rights in co-owned personal property more reflective of the owners' intent; and (2) providing greater certainty, clarity, and predictability concerning rights and liabilities associated with co-owned personal property. The codification, clarification, and consolidation of evidentiary presumptions concerning the form of ownership and extent of interests in co-owned personal property will be extremely beneficial to members of the Bar advising clients on those issues.

### V. CONSTITUTIONAL ISSUES

Subsection (5) of § 689.151 essentially codifies the *Beal Bank* presumption that an express designation of TBE by spouses creates a conclusive presumption that the form of ownership is TBE. Although some court decisions and legal commentators have expressed Due Process concerns regarding the constitutionality of conclusive presumptions, the Florida Supreme Court has expressly approved this conclusive presumption as recently as 2001 in *Beal Bank*, which held that:

[We] agree with the statement in *Hector Supply Co.* that an express designation on the signature card that the account is held as a tenancy by the entireties ends the inquiry as to the form of ownership. *Hector Supply Co.*, 254 So.2d at 781. Following *Hector Supply Co.*, other courts have excluded extrinsic evidence where the account documents clearly indicated the legal form of ownership. *See Morse v. Kohl, Metzger, Spotts, P.A.*, 725 So.2d 436, 437 (Fla. 4th DCA 1999) (holding that extrinsic evidence is inappropriate when both husband and wife signed the signature card, which specifically and clearly designated the account as one held as tenants by the entireties); *Sheeler v. United States Bank of Seminole*, 283 So.2d 566, 566 (Fla. 4th DCA 1973) (holding no further inquiry necessary where clear from the terms of the bank signature card that an estate by the entireties was expressly created).

*Beal Bank* at 60.

It should also be noted that the presumption codified in subsection (5) is narrower than the presumption stated in *Beal Bank* in multiple respects. For example, the presumed fact in *Beal Bank* is TBE ownership, whereas the fact presumed in subsection (5) from the spouses' express designation of TBE is only the *intent* to create a TBE. Moreover,

subsection (5) provides that its presumption may be rebutted or overcome by proof that the TBE designation was the product of fraud, undue influence, or a lack of capacity.

For the foregoing reasons, it is concluded that the proposal does not present any problematic Constitutional issues.

## **VI. OTHER INTERESTED PARTIES**

Other groups that may have an interest in the legislative proposal include the Family, Business Law, Elder Law, and Tax Sections of The Florida Bar and the Florida Bankers Association.

6083680.00012-FL BAR COMM AD

**5-20-18 REVISION**

1  
2  
3 An act relating to tenancies by the entirety, joint tenancies with right of  
4 survivorship and tenancies in common in personal property; creating s. 689.151,  
5 F.S.; abolishing the common law requirements of unity of time and title with  
6 respect to joint tenancies with right of survivorship and tenancies by the entirety  
7 in personal property; abolishing the common law requirement of unity of interest  
8 with respect to joint tenancies with right of survivorship in personal property;  
9 codifying or establishing presumptions concerning tenancies by the entirety, joint  
10 tenancies with right of survivorship and tenancies in common in personal  
11 property; providing exclusions; providing for supplementation by common law;  
12 providing for applicability to certain transactions occurring prior to the effective  
13 date; providing an effective date.

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

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

16 **689.151. Tenancies by the entirety, joint tenancies with right of**  
17 **survivorship, and tenancies in common in personal property.**

18 (1) With respect to joint tenancies with right of survivorship and  
19 tenancies by the entirety in personal property, the common law requirements of  
20 unity of time and title are abolished.

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

24 (b) 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) With respect to joint tenancies with right of survivorship in personal  
27 property, the common law requirement of unity of interest is abolished and the  
28 shares or interests of joint tenants may be equal or unequal.

29 (3) It is rebuttably presumed that:

30 (a) Personal property owned by both spouses is owned by them  
31 as tenants by the entirety when:

32 (i) An ownership document neither specifies a form of  
33 ownership nor expressly indicates that a tenancy by the entirety is not intended;  
34 or

35 (ii) There is a designation of joint tenancy with right of  
36 survivorship in an ownership document and no express indication that a tenancy  
37 by the entirety is not intended.

38 The presumption stated in subsection (3)(a) also apply when an owner of  
39 personal property adds the name of his or her spouse to such an ownership  
40 document.

41 (b) Except as provided in subsection (3)(a), personal property is  
42 owned as joint tenants with right of survivorship when the owner or owners  
43 designate or add the name of one or more persons in an ownership document  
44 indicating that they own or hold the property as joint tenants with right of  
45 survivorship.

46 (c) The shares or interests held by joint tenants with right of  
47 survivorship or tenants in common in personal property are equal. This  
48 presumption may be overcome by proof of fraud, undue influence, lack of  
49 capacity, or contrary intent, by a preponderance of the evidence.

50 (4) Unless otherwise stated, the rebuttable presumptions in subsection  
51 (3) may be overcome by proof of fraud, undue influence, or lack of capacity, by a  
52 preponderance of the evidence, or by clear and convincing proof that the  
53 presumed tenancy was not intended or created.

54 (5) The intent to create a tenancy by the entirety is conclusively  
55 presumed when such a tenancy is designated by spouses in an ownership  
56 document for personal property, or when an owner of personal property adds the  
57 name of his or her spouse to an ownership document with a designation of  
58 tenancy by the entirety, provided that the designation or addition was not the  
59 product of fraud, undue influence, or a lack of capacity.

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

62 (7) As used in this section:

63 (a) "Ownership document" means an instrument or record of  
64 transfer or instrument or record evidencing ownership.

65 (b) "Personal property" means all property except "real  
66 property," as that latter term is defined in s. 192.001, and except an interest in a  
67 trust to which ch. 736 applies.

68 (c) "Record" has the meaning given in s. 605.0102.

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

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

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

82 (11) Nothing in this section shall impair the rights of any lienholder or  
83 creditor acquired prior to the effective date of this section.

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

# 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 Executive Council 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

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### 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, 2019.

LEGISLATIVE POSITION GOVERNMENTAL AFFAIRS OFFICE  
REQUEST FORM

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** Guardianship, Power of Attorney, and Advanced Directives Committee, RPPTL Section, The Florida Bar

**CONTACTS**

**Board & Legislation Committee Appearance** **Nicklaus Curley**, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401, Telephone: (561) 650-0609  
**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  X  Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

**Proposed Wording of Position for Official Publication:**

Support amendment to Florida Statutes, including Florida Statutes § 744.331, creating a new statutory procedure which would allow for the presentation of additional evidence before a petition to determine incapacity is dismissed in the event that there is a unanimous finding of the examining committee that a person is not incapacitated.

**Reasons For Proposed Advocacy:**

Under current law, the Court is left without any discretion to hear evidence when a majority of the examining committee makes a finding that a person is not incapacitated. When such unanimity is found, the Court must dismiss the petition in its entirety. It is believed that the status of the current law violates the separation of powers by forcing the judiciary to dismiss petitions due to the wording of the statute created by our legislature. In the case of *Rothman v. Rothman* (93 So 3d 1052), the 4<sup>th</sup> district affirmed that the statute provides no discretion to the Court. While examining committees undertake an important role in our system, often they do not have the resources to undertake an exhaustive research of the alleged incapacitated person's condition. The current statute ignores important information that should be heard from long time physicians, family, and friends regarding the true condition of a person. The Court must be allowed to consider such evidence to properly protect vulnerable adults and to make well-



## WHITE PAPER

### PROPOSED AMENDMENT OF F.S. SECTION 744.331(4) IN LIGHT OF *ROTHMAN v. ROTHMAN*

#### A. SUMMARY

This proposal seeks the creation of a process which would allow the Court to hear extrinsic evidence relating to capacity after a unanimous finding by the Court appointed examining committee that the alleged incapacitated person (“AIP”) is not incapacitated. The guardianship process depends on the examination of the AIP by three court appointed committee members, who each receive a nominal fee and prepare a report to be presented to the court, pursuant to subsection 744.331(3), Florida Statutes. Subsection 744.331(4), Florida Statutes (2015), currently states “If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.”

In *Rothman v. Rothman*, 93 So 3d 1052 (4<sup>th</sup> DCA 2012), the lower Court failed to dismiss a Petition to Determine Incapacity even though there was a majority of the examining committee reports which found the AIP to have capacity. A motion to dismiss was filed by the AIP in accordance with Florida Statutes Section 744.331(4). This Motion was denied on the basis that the statute was unconstitutional. Stating that the dismissal of the Petition under these facts was “ministerial,” the 4<sup>th</sup> DCA overturned the lower court. The holding was especially troubling in this case, because the AIP had already been found incapacitated in another jurisdiction, had a long history of mental illness, and had been fleeced for millions of dollars. Despite such knowledge by the trial court, the holding of *Rothman* took away any discretion that could have been used to allow for extrinsic evidence about the AIP’s condition.

The rights of an AIP to a speedy trial and exit from the guardianship system must be balanced against the public policy of protecting vulnerable adults from exploitation. Under the current system, the pendulum has swung completely in favor of a swift exit from the system by taking away any discretion that the Court has to hear from long time medical professionals, friends, colleagues, or others who can give a more holistic picture of a person’s mental condition and vulnerability. As a result, interested persons can be left without a remedy to protect those who need assistance.

*Rothman’s* holding supports the legislature’s imposition of its authority on the judiciary by taking away any discretion. Courts generally need to have appropriate discretion to determine whether the particular facts and circumstances of a case should support dismissal of an action. The current law does not allow for that. The infringement by the legislature also creates a conflict between other portions of Chapter 744. On one hand, subsection 744.331(3)(f) states that “the comprehensive examination report shall be an essential element, ***but not necessarily the only element***, used in making a capacity and guardianship decision.” *Rothman* ignored this portion of the statute and made the examining committee reports the ONLY dispositive evidence if a majority concluded that the AIP is not incapacitated.

In order to address these issues, there should be a procedure in place that allows AIP's to quickly exit the system when improperly placed into it, but that also allows interested persons to bring forward extrinsic evidence in cases where the examining reports are believed to be incorrect. Allowing for a quick dismissal but providing the Court with discretion to deviate from this process in the event that there is compelling evidence to do so better tracks public policy and the other portions of Chapter 744. The proposed solution will reduce undue burden on the persons finding themselves in inappropriate guardianship proceedings, while preserving a party's ability to bring forward evidence when a timely motion not to dismiss is filed.

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, believes *Rothman* was correctly decided, but that the applicable statute should be changed. The Committee further recommend that certain amendments to subsection 744.331 be made to allow for interested persons to bring forth evidence of incapacity, while providing AIP's with the ability to quickly end proceedings. This proposal adopts changes to subsection 744.331 to i) change the standard for dismissal from a "majority" standard to "unanimous," ii) institute a new procedure that will allow an interested person to file a verified motion challenging the examining committee's conclusion no later than 10 days after service of the last examining committee report in the event of unanimous reports finding that a person is not incapacitated, and iii) clarifies and amends the existing legislation for the process of dealing with dismissal of a Petition to Determine Incapacity.

#### **B. CURRENT SITUATION: *ROTHMAN V. ROTHMAN***

The holding in *Rothman* is problematic in that it does not allow the Court any discretion even when there is extrinsic evidence that the examining committee reports are inaccurate. In cases, like *Rothman*, where there are clear indications that the AIP is incapacitated despite the examining committee reports, the Court should have discretion to consider extrinsic evidence. Unfortunately, the current form of 744.331(4) has no procedure to allow this to happen. The appellate court interpreted the statute such that the word "shall" requires dismissal without the ability of the lower tribunal to consider:

- a. The opinion of the third examining committee member;
- b. The opinion(s) of long term treating medical or mental health professionals;
- c. The opinion(s) of informed family members;
- d. The interview of the Alleged Incapacitated Person—who may have made seemingly plausible statements that contained untruths or delusions that were not able to be verified or refuted;
- e. That the Alleged Incapacitated Person was properly medicated at the time of the examining committee's examination, but is currently and usually medication non-compliant;
- f. The fact that there may be inexperienced or untrained members of the examining committee; and
- g. The effects of denying the Petitioner's right to examine or cross-examine the examining committee members as to the contents of the examining committee reports that may contain discrepancies.

### **C. EFFECT OF PROPOSED CHANGES**

Under this proposal, a procedure is created which allows the Court to dismiss a Petition to Determine Incapacity if there is a unanimous finding by the Court appointed examining committee that the AIP is not incapacitated. There are new provisions that provide the Court with discretion to hear extrinsic evidence regarding incapacity if a timely motion challenging the examining committee's conclusion is filed by an interested person.

The proposed process respects the rights of those who may find themselves involved in an incapacity case improperly, while also providing support for the public policy of protecting vulnerable adults. The proposed changes provide a dismissal process to those who are being subjected to an unnecessary determination of incapacity, while protecting against erroneous reports. Since there is a requirement under 744.331(3)(a) that "at least one member be psychiatrist or other physician," the use of a unanimity of the examining committee reports, as opposed to "majority," would further protect against the practical concerns of members who obtain bad information or lack the necessary training for a difficult case. The proposed changes also provide clear direction for the Court to determine if the request for further study of a AIP's level of capacity is warranted. This is accomplished through the use of a "good faith" standard, coupled with the requirement of a proffer of "a reasonable showing."

Accordingly, the changes being made to Florida Statute § 744.331 are as follows:

§ 744.331(4) is revised to change the standard for dismissal of a Petition to Determine Incapacity from a "majority" of the examining committee to a "unanimous" finding that a person is not incapacitated. In addition, the proposed change allows for the timely filing of a motion challenging the examining committee's conclusion and a possible hearing by the Court to consider whether extrinsic evidence should be presented before summary dismissal of the Petition to Determine Incapacity occurs.

The effective date of this act is upon becoming law.

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

The proposal may increase the costs because it decreases the likelihood for automatic dismissal of the Petition to Determine incapacity. However, such increased costs should be limited since it is rare that examining committee reports make findings of capacity and/or that there is a dispute regarding such findings.

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

The proposal will could increase the fees incurred by persons involved in incapacity proceedings because the proposed change raises the standard for dismissal of a Petition to Determine Incapacity. At the same time, individuals who could otherwise be taken advantage of if they are found to not be incapacitated as a result of improper reports are likely to be protected

by these changes. Such protections will have the likely result of saving assets of vulnerable adults.

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

The holding of *Rothman* is viewed by some as an unconstitutional infringement of the legislature's power on the judiciary by removing any discretion from the Court. The proposed change remedies this situation by giving the Court greater discretion depending on the facts and circumstances.

#### **G. OTHER INTERESTED PARTIES**

None are known at this time.

A bill to be entitled

An act relating to guardianships; amending s. 744.331(4), F.S. addressing certain holdings in *Rothman v. Rothman*, 93 So 3d, 1052 (4<sup>th</sup> DCA 2012); clarifying the purposes and applicability of s. 744.331(4), F.S.; providing applicability; providing an effective date.

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

Section 1. Subsection 744.331, Florida Statutes is amended to read:

744.331 Procedures to determine incapacity.—

(1) Notice of petition to determine incapacity.— Notice of the filing of a petition to determine incapacity and a petition for the appointment of a guardian if any and copies of the petitions must be served on and read to the alleged incapacitated person. The notice and copies of the petitions must also be given to the attorney for the alleged incapacitated person, and served upon all next of kin identified in the petition. The notice must state the time and place of the hearing to inquire into the capacity of the alleged incapacitated person and that an attorney has been appointed to represent the person and that, if she or he is determined to be incapable of exercising certain rights, a guardian will be appointed to exercise those rights on her or his behalf.

(2) Attorney for the alleged incapacitated person.--

(a) When a court appoints an attorney for an alleged incapacitated person, the court must appoint the office of criminal conflict and civil regional counsel or a private

attorney as prescribed in s. 27.511(6). A private attorney must be one who is included in the attorney registry compiled pursuant to s. 27.40. Appointments of private attorneys must be made on a rotating basis, taking into consideration conflicts arising under this chapter.

(b) The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court.

(c) Any attorney representing an alleged incapacitated person may not serve as guardian of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated person or the petitioner.

(d) Effective January 1, 2007, an attorney seeking to be appointed by a court for incapacity and guardianship proceedings must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement for an attorney who has served as a court-appointed attorney in incapacity proceedings or as an attorney of record for guardians for not less than 3 years. The education requirement of this paragraph does not apply to the office of criminal conflict and civil regional counsel until July 1, 2008.

(3) Examining committee.--

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner,

licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee must consult with the physician. Members of the examining committee may not be related to or associated with one another, with the petitioner, with counsel for the petitioner or the proposed guardian, or with the person alleged to be totally or partially incapacitated. A member may not be employed by any private or governmental agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee. Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if she or he is able to communicate. The clerk of the court shall send notice of the appointment to each person appointed no later than 3 days after the court's appointment.

(b) A person who has been appointed to serve as a member of an examining committee to examine an alleged incapacitated person may not thereafter be appointed as a guardian for the person who was the subject of the examination.

(c) Each person appointed to an examining committee must file an affidavit with the court stating that he or she has completed the required courses or will do so no later than 4 months after his or her initial appointment. Each year, the chief judge of the circuit must prepare a list of persons qualified to be members of an examining committee.

(d) A member of an examining committee must complete a minimum of 4 hours of initial training. The person must complete 2 hours of continuing education during each 2-year period after the initial training. The initial training and continuing education program must be developed under the supervision of the Office of Public and Professional Guardians, in consultation with the Florida Conference of Circuit Court Judges; the Elder Law and the Real Property, Probate and Trust Law sections of The Florida Bar; and the Florida State Guardianship Association. The court may waive the initial training requirement for a person who has served for not less than 5 years on examining committees. If a person wishes to obtain his or her continuing education on the Internet or by watching a video course, the person must first obtain the approval of the chief judge before taking an Internet or video course.

(e) Each member of the examining committee shall examine the person. Each examining committee member must determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, each examining committee member must have access to, and may consider, previous examinations of the person, including, but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. Each member of the

examining committee must file his or her report with the clerk of the court within 15 days after appointment.

(f) The examination of the alleged incapacitated person must include a comprehensive examination, a report of which shall be filed by each examining committee member as part of his or her written report. The comprehensive examination report should be an essential element, but not necessarily the only element, used in making a capacity and guardianship decision. The comprehensive examination must include, if indicated:

1. A physical examination;
2. A mental health examination; and
3. A functional assessment.

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

(g) Each committee member's written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.
2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.
3. The results of the comprehensive examination and the committee member's assessment of information provided by the attending or family physician, if any.
4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the

person lacks that capacity.

5. The names of all persons present during the time the committee member conducted his or her examination. If a person other than the person who is the subject of the examination supplies answers posed to the alleged incapacitated person, the report must include the response and the name of the person supplying the answer.

6. The signature of the committee member and the date and time the member conducted his or her examination.

(h) Within 3 days after receipt of each examining committee member's report, the clerk shall serve the report on the petitioner and the attorney for the alleged incapacitated person by electronic mail delivery or United States mail, and, upon service, shall file a certificate of service in the incapacity proceeding. The petitioner and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition, unless the reports are not complete, in which case the petitioner and attorney for the alleged incapacitated person may waive the 10 day requirement and consent to the consideration of the report by the court at the adjudicatory hearing. If such service is not timely effectuated, the petitioner or the alleged incapacitated person may move for a continuance of the hearing.

(i) The petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. The objection must state the basis upon which the challenge to admissibility is made. If an objection is timely filed and served, the court shall apply

the rules of evidence in determining the reports' admissibility. For good cause shown, the court may extend the time to file and serve the written objection.

(4) DISMISSAL OF PETITION.- If all three examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition unless a verified motion challenging the examining committee's conclusion is filed no later than 10 days after service of the last examining committee report. The verified motion must make a reasonable showing, by evidence in the record or proffered, that a hearing on the Petition is necessary. The court shall rule on the verified motion as soon as is practicable. If the court finds that the verified motion is filed in bad faith, the court may impose sanctions under s. 744.331(7)(c)(2). If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.

(5) Adjudicatory hearing.--

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The adjudicatory hearing must be conducted at least 10 days, which time period may be waived, but no more than 30 days, after the filing of the last filed report of the examining committee members, unless good cause is shown. The adjudicatory hearing must be conducted at the time and place specified in the notice of hearing and in a manner consistent with due process.

(b) The alleged incapacitated person must be present at the adjudicatory hearing, unless waived by the alleged incapacitated

person or the person's attorney or unless good cause can be shown for her or his absence. Determination of good cause rests in the sound discretion of the court.

(c) In the adjudicatory hearing on a petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.

(6) Order determining incapacity.--If, after making findings of fact on the basis of clear and convincing evidence, the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity. In determining incapacity, the court shall consider the person's unique needs and abilities and may only remove those rights that the court finds the person does not have the capacity to exercise. A person is determined to be incapacitated only with respect to those rights specified in the order.

(a) The court shall make the following findings:

1. The exact nature and scope of the person's incapacities;
2. The exact areas in which the person lacks capacity to make informed decisions about care and treatment services or to meet the essential requirements for her or his physical or mental health or safety;
3. The specific legal disabilities to which the person is subject; and
4. The specific rights that the person is incapable of exercising.

(b) When an order determines that a person is incapable of exercising delegable rights, the court must consider and find

whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person. A guardian may not be appointed if the court finds there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If the court finds there is not an alternative to guardianship that sufficiently addresses the problems of the incapacitated person, a guardian must be appointed to exercise the incapacitated person's delegable rights.

(c) In determining that a person is totally incapacitated, the order must contain findings of fact demonstrating that the individual is totally without capacity to care for herself or himself or her or his property.

(d) An order adjudicating a person to be incapacitated constitutes proof of such incapacity until further order of the court.

(e) After the order determining that the person is incapacitated has been filed with the clerk, it must be served on the incapacitated person. The person is deemed incapacitated only to the extent of the findings of the court. The filing of the order is notice of the incapacity. An incapacitated person retains all rights not specifically removed by the court.

(f) Upon the filing of a verified statement by an interested person stating:

1. That he or she has a good faith belief that the alleged incapacitated person's trust, trust amendment, or durable power of attorney is invalid; and

2. A reasonable factual basis for that belief, the trust, trust

amendment, or durable power of attorney shall not be deemed to be an alternative to the appointment of a guardian. The appointment of a guardian does not limit the court's power to determine that certain authority granted by a durable power of attorney is to remain exercisable by the agent.

(7) Fees.--

(a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.

(b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the guardianship property for any amounts paid under this section. The state may file its claim within 90 days after the entry of an order awarding attorney ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of the payments.

(c) If the petition is dismissed or denied:

1. The fees of the examining committee shall be paid upon court order as expert witness fees under s. 29.004(6).

2. Costs and attorney fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith. The petitioner shall also reimburse the state courts system for any amounts paid under subparagraph 1. upon such a finding.

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** 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**

**Nicklaus Curley**, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401, Telephone: (561) 650-0609  
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**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  Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

Support for amendment to Florida Statutes, including Florida Statutes § 744.1097, to specifically address venue for the appointment of a guardian in minor guardianships proceedings.

### Reasons For Proposed Advocacy:

Florida Statutes § 744.1097 currently addresses venue in proceedings for the appointment of a guardian for an incapacitated adult but does not address venue in proceedings for the appointment of guardian for a minor. This gap in the statutes has led to confusion regarding appropriate venue in proceedings relating to minor guardianships. The proposed bill amends existing law to add language which defines the circumstances which would allow for venue in proceedings for the appointment of guardian of a minor.



## WHITE PAPER

### PROPOSED AMENDMENT OF F.S. SECTION 744.1097(2) and (3) TO SPECIFY VENUE IN MINOR GUARDIANSHIP ACTIONS

#### A. SUMMARY

The proposed amendment adds language to Florida Statute § 744.1097 (2) and (3) to specifically address venue for the appointment of a guardian in minor guardianship proceedings in order to define the circumstances which would allow for venue in Florida for these proceedings.

Florida Statute § 744.1097 currently makes no reference to venue for the appointment of a guardian of a minor. The amendment would allow for venue in proceedings for the appointment of guardian for a minor when: (a) the minor is a resident of this state; (b) when the minor is not a resident of this state but has property located in a Florida county; and (c) when the minor is not a resident of this state and owns no property in this state, but has a debtor who resides in a Florida county.

By inserting language specifically addressing minor guardianships into 744.1097 it would bring clarity and specificity to the law to delineate when venue is appropriate for these proceedings in Florida. The proposed changes would align the law, with respect to minor guardianships, with the existing venue laws in 744.1097 for incapacitated adult guardianship proceedings.

#### B. CURRENT SITUATION

The relevant portion of Florida Statute § 744.1097 reads as follows:

- “(2) The venue in proceedings for the appointment of a guardian shall be:
- (a) If the incapacitated person is a resident of this state, in the county where the incapacitated person resides.
  - (b) If the incapacitated person is not a resident of this state, in any county in this state where property of the incapacitated person is located.
  - (c) If the incapacitated person is not a resident of this state and owns no property in this state, in the county where any debtor of the incapacitated person resides.
- (3) When the residence of an incapacitated person is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided in s. 744.1098.”

The existing statute fails to address venue in proceedings for the appointment of a guardian of a minor and instead only outlines circumstances that allow for venue in incapacitated adult guardianship proceedings. By failing to specifically define appropriate venue in cases involving minor guardianships, the omission has led to confusion as to the ability to file such guardianships and the appropriate location for filing.

There is currently inconsistency in the law for venue of minor guardianships versus venue for incapacitated adult guardianships. The Third District Court of Appeals (“Third DCA”) in *Junco v. Suarez-Solis*, 294 So. 2d 334 (Fla. 3d DCA 1974) held that where a minor was not domiciled in or a resident of the state, the court lacked jurisdiction to appoint the minor’s maternal grandfather as guardian where the minor’s parents died in a plane crash. The *Junco* case highlights the incongruity in the law; had these facts been the same but the subject was an incapacitated adult guardianship instead of a minor, the law would have specifically provided for venue in Florida. The law on venue should be consistent for both minor and incapacitated adult guardianships. In this instance, the gap in the law addressing proper venue for minor guardianships (where the minor was not a resident of the state) prohibited a guardianship proceeding from being opened in Florida where one was needed.

Further, the Third DCA in *Burden v. Dickman*, 547 So. 2d 170 (Fla. 3d DCA 1989) reached to the statute on non-resident incompetent adult guardianships to support their holding that the probate court had personal jurisdiction over a non-resident minor where the minor had substantial assets located within the state. The *Burden* decision is consistent with the proposed amendments to 744.1097 and demonstrates the need to add language to specifically include reference to minor guardianships. The proposed amendments to 744.1097 delineate and allow for guardianship venue in Florida of a non-resident minor with substantial assets in the state.

### **C. EFFECT OF PROPOSED CHANGES**

The proposed amendment adds language to subsections (2)(a)-(c) to define and clarify circumstances which would allow for venue in Florida for the proceedings for appointment of guardian for a minor. The proposed additional language to (2)(a) – (c) would allow for venue in proceedings for the appointment of guardian for a minor when: (a) the minor is a resident of this state; (b) when the minor is not a resident of this state but has property located in a Florida county; and (c) when the minor is not a resident of this state and owns no property in this state, but has a debtor who resides in a Florida county.

The proposed amendment to (3) adds language explaining that when the residence of a minor ward is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided for in s. 744.1098.

Florida Statute § 744.1097 currently makes no reference to venue for the appointment of a guardian of a minor. By adding language specifically addressing minor guardianships to 744.1097 it would bring clarity and specificity to the law on when venue is appropriate for these proceedings in Florida. The proposed changes would serve to bring consistent results across Florida on questions of venue in minor and adult guardianships.

### **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.

1                   A bill to be entitled

2           An act relating to venue in proceedings for the  
3           appointment of a guardian; amending s. 744.1097,  
4           F.S.; adding language to specifically address venue  
5           for proceedings for the appointment of a guardian  
6           for minors

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

8  
9           Section 1. Section 744.1097, Florida Statutes, is amended to  
10   read:

11           744.1097. Venue

12   (1) The venue in proceedings for declaration of incapacity shall be  
13   where the alleged incapacitated person resides or is found. The  
14   provisions of this section do not apply to veterans.

15   (2) The venue in proceedings for the appointment of a guardian  
16   shall be:

17   (a) If the incapacitated person or minor is a resident of this  
18   state, in the county where the incapacitated person or minor  
19   resides.

20   (b) If the incapacitated person or minor is not a resident of this  
21   state, in any county in this state where property of the  
22   incapacitated person or minor is located.

23   (c) If the incapacitated person or minor is not a resident of this  
24   state and owns no property in this state, in the county where any  
25   debtor of the incapacitated person or minor resides.

26   (3) When the residence of an incapacitated person or minor is  
27   changed to another county, the guardian shall petition to have the  
28   venue of the guardianship changed to the county of the acquired  
29   residence, except as provided in s. 744.1098.

30   (4) If an incapacitated person is a resident of this state and is  
31   found in a county other than the county of residence, the venue for

32 declaration of incapacity and for the appointment of a guardian may  
33 be the county where the incapacitated person is found. Upon  
34 transfer of the incapacitated person to the county of residence,  
35 the guardian may have the venue of the guardianship changed to the  
36 county of residence and a successor guardian may be appointed.

37 Section 2. This act shall take effect upon becoming law and  
38 shall apply to all proceedings filed on or after such date.  
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1                                   A bill to be entitled  
2           An act relating to wills, trusts, and powers of attorney;  
3           amending s. 731.201, F.S.; revising the definition of the  
4           term "will" to include electronic wills and adding  
5           definition for physical presence; amending s. 732.502;  
6           providing that physical presence is required when  
7           executing a will; amending s. 732.506; providing that  
8           revocation of electronic wills must be in accordance with  
9           s. 732.505; creating s. 732.521, F.S.; providing a short  
10          title; creating s. 732.522, F.S.; defining terms; creating  
11          s. 732.523, F.S.; specifying requirements that must be  
12          satisfied in the execution of electronic wills; creating  
13          s. 732.524, F.S.; providing that electronic wills may be  
14          made self-proved at the time of execution; providing  
15          requirements for self-proof of electronic wills; amending  
16          732.901; providing for production of electronic wills;  
17          creating 732.902; providing for the deposit of electronic  
18          wills with the clerk during the lifetime of the testator;  
19          providing an effective date.

20  
21           Be It Enacted by the Legislature of the State of Florida:

22  
23           Section 1. Present subsections (30) through (40) of section  
24           731.201, Florida Statutes, are redesignated as subsections (31)  
25           through (41), respectively, a new subsection (30) is added to that  
26           section, and present subsection (40) is amended to read:

27           731.201 General definitions.—Subject to additional definitions  
28           in subsequent chapters that are applicable to specific chapters or  
29           parts, and unless the context otherwise requires, in this code, in  
30           s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

31           (30) "Physical presence" means that individuals are in the same  
32 physical location such that such that they are able to observe the  
33 act required. Online electronic witnessing using audio-video  
34 technology does not satisfy the requirement of physical presence.

35           (41) "Will" means an instrument, including a codicil, executed  
36 by a person in the manner prescribed by this code, which disposes  
37 of the person's property on or after his or her death, and includes  
38 an instrument which merely appoints a personal representative or  
39 revokes or revises another will. The term "will" includes an  
40 electronic will as defined in s. 732.522.

41           Section 2. Section 732.502, Florida Statutes, is amended to  
42 read:

43           732.502. Execution of wills.—Every will must be in writing and  
44 executed as follows:

45           (1) (a) Testator's signature.—

46           1. The testator must sign the will at the end; or

47           2. The testator's name must be subscribed at the end of the will  
48 by some other person in the testator's physical presence and by the  
49 testator's direction.

50           (b) Witnesses.—The testator's:

51           1. Signing, or

52           2. Acknowledgment:

53           a. That he or she has previously signed the will, or

54           b. That another person has subscribed the testator's name to  
55 it,

56           must be in the physical presence of at least two attesting  
57 witnesses.

58           (c) Witnesses' signatures.—The attesting witnesses must sign  
59 the will in the physical presence of the testator and in the physical  
60 presence of each other.

61 (2) Any will, other than a holographic or nuncupative will,  
62 executed by a nonresident of Florida, either before or after this  
63 law takes effect, is valid as a will in this state if valid under  
64 the laws of the state or country where the testator was domiciled  
65 or where the testator was physically located at the time of the  
66 execution of the will. ~~where the will was executed.~~ A will in the  
67 testator's handwriting that has been executed in accordance with  
68 subsection (1) shall not be considered a holographic will.

69 (3) Any will executed as a military testamentary instrument in  
70 accordance with 10 U.S.C. s. 1044d, Chapter 53, by a person who is  
71 eligible for military legal assistance is valid as a will in this  
72 state.

73 (4) No particular form of words is necessary to the validity  
74 of a will if it is executed with the formalities required by law.

75 (5) A codicil shall be executed with the same formalities as  
76 a will.

77 (6) An electronic will must also meet the requirements of s.  
78 732.523.

79 Section 3. Section 732.506, Florida Statutes, is amended to  
80 read:

81 732.506 Revocation by act.—A will or codicil, other than an  
82 electronic will, is revoked by the testator, or some other person  
83 in the testator's presence and at the testator's direction, by  
84 burning, tearing, canceling, defacing, obliterating, or destroying  
85 it with the intent, and for the purpose, of revocation. An electronic  
86 will may only be revoked by complying with s. 732.505.

87 Section 4. Section 732.521, Florida Statutes, is created to  
88 read:

89 732.521 Short title.—Sections 732.521-732.525 may be cited as  
90 the "Florida Electronic Wills Act."

91 Section 5. Section 732.522, Florida Statutes, is created to  
92 read:

93 732.522 Definitions.—As used in ss. 732.521-732.524, the term:

94 (1) "Electronic record" means a record created, generated,  
95 sent, communicated, received, or stored by electronic means.

96 (2) "Electronic signature" means a signature of a person using  
97 an electronic mark, symbol, or process which is:

98 (a) visibly perceptible when the electronic record is displayed  
99 or printed;

100 (b) attached to or logically associated with the electronic  
101 will; and

102 (c) executed or adopted by the person with the intent to sign  
103 a will.

104 Section 6. Section 732.523, Florida Statutes, is created to  
105 read:

106 732.523 Electronic wills.—

107 (1) To be valid as a will or codicil, an electronic will must  
108 be:

109 (a) in writing and executed in compliance with s. 732.502 using  
110 electronic signatures for all persons required to sign the will; and

111 (b) created and at all times maintained as an electronic record.

112 (2) A notary public who performs a notarization of the  
113 electronic will, or the self-proof affidavit of an electronic will,  
114 by online notarization is not a witness for purposes of meeting the  
115 witness execution requirements of this section.

116 (3) Except as otherwise provided in this act, all questions as  
117 to the force, effect, validity, and interpretation of an electronic  
118 will that complies with this section must be determined in the same  
119 manner as in the case of a will executed in accordance with s. 732.502.

120 Section 7. Section 732.524, Florida Statutes, is created to

121 read:

122 732.524 Self-proof of electronic will.—An electronic will is  
123 self-proved if all of the following requirements are met:

124 (1) The electronic will is executed in conformity with this act  
125 and stored in an electronic record which is tamper -evident;

126 (2) The acknowledgment of the electronic will by the testator  
127 and the affidavits of the witnesses are made in accordance with s.  
128 732.503 and are stored in the electronic record containing the  
129 electronic will; and

130 (3) (a) The electronic record is deposited with the clerk of  
131 court by the testator or by another person at the testator's direction  
132 before the death of the testator in accordance with s. 732.901 with  
133 an acknowledgment signed by the testator confirming that the  
134 electronic record contains the electronic will of the testator; or

135 (b) (i) The electronic record is maintained by an attorney  
136 licensed in Florida who was present when the electronic will was  
137 executed; and

138 (ii) a records custodian of the attorney acknowledges under  
139 oath that, to the best of its knowledge, the electronic record  
140 containing the electronic will was at all times under the control  
141 of the attorney before being deposited with the court and that the  
142 electronic record has not be altered in any way since its execution.

143 (4) An online notary public may administer oaths and perform  
144 an electronic notarization of the self-proof acknowledgment  
145 affidavit by online notarization in accordance with Chapter 117.

146 (5) The acknowledgement signed by the testator for an electronic  
147 will deposited with the clerk must be in substantially the following  
148 form:

149 I hereby certify on this        day of (insert month and year) that  
150 the attached electronic record is a true, correct, and complete

151 electronic record containing my electronic will.

152  
153 \_\_\_\_\_  
154 Testator

155 (6) For purposes of this section, "tamper-evident" means the  
156 electronic record contains technology that renders any change or  
157 modification to the electronic record after the electronic will is  
158 executed, including any changes to the electronic will, the  
159 acknowledgment and affidavits under s. 732.503, and the electronic  
160 signatures, evident.

161 Section 8. Section 732.901, F.S. is amended to read as follows:

162 732.901 Production of wills.

163 (1) The custodian of a will must deposit the will with the clerk  
164 of the court having venue of the estate of the decedent within 10  
165 days after receiving information that the testator is dead. If the  
166 will is an electronic will, the electronic record containing the  
167 electronic will shall be deposited in its original format. The  
168 custodian must supply the testator's date of death or the last four  
169 digits of the testator's social security number to the clerk upon  
170 deposit.

171 (2) Upon petition and notice, the custodian of any will of a  
172 deceased testator may be compelled to produce and deposit the will.  
173 All costs, damages, and a reasonable attorney's fee shall be adjudged  
174 to petitioner against the delinquent custodian if the court finds  
175 that the custodian had no just or reasonable cause for failing to  
176 deposit the will.

177 (3) An original will submitted to the clerk with a petition or  
178 other pleading is deemed to have been deposited with the clerk.

179 (4) Upon receipt, the clerk shall retain and preserve a will,  
180 other than an electronic will, in its original form for at least 20

181 years. If the probate of a will is initiated, the original will may  
182 be maintained by the clerk with the other pleadings during the  
183 pendency of the proceedings, but the will must at all times be  
184 retained in its original form for the remainder of the 20-year period  
185 whether or not the will is admitted to probate or the proceedings  
186 are terminated. Transforming and storing a will on film, microfilm,  
187 magnetic, electronic, optical, or other substitute media or  
188 recording a will onto an electronic recordkeeping system, whether  
189 or not in accordance with the standards adopted by the Supreme Court  
190 of Florida, or permanently recording a will does not eliminate the  
191 requirement to preserve the original will.

192 (5) Upon receipt of an electronic record containing an  
193 electronic will, the clerk shall retain and preserve the electronic  
194 record in its original format permanently. If the probate of an  
195 electronic will is initiated, the electronic record containing the  
196 electronic will may be maintained by the clerk with the other  
197 pleadings during the pendency of the proceedings, but the electronic  
198 record containing the electronic will must at all times be retained  
199 in its original format whether or not the will is admitted to probate  
200 or proceedings are terminated.

201 (6) For purposes of this section, the term "will" includes a  
202 separate writing as described in s. [732.515](#).

203 Section 9. Section 732.902, F.S. is created to read as follows:  
204 732.902 Deposit of Electronic Wills.

205 (1) An electronic record containing an electronic will may be  
206 deposited with the clerk of court in the county where the testator  
207 resides by the testator or by another person at the testator's  
208 direction during the testator's lifetime. The electronic record may  
209 be accompanied by an acknowledgment of the testator in accordance  
210 with s. 732.524(3)(a). The acknowledgment shall be retained and

211 preserved by the clerk and attached to or logically associated with  
212 the electronic record containing the electronic will.

213 (2) An electronic record containing an electronic will  
214 deposited under this section shall not be deemed a public record as  
215 that term is defined in s. 119.011(12) and is confidential and exempt  
216 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
217 during the testator's lifetime.

218 (3) While the testator is alive, the only individuals to whom  
219 the clerk may deliver the electronic record containing an electronic  
220 will are:

221 (a) the testator;

222 (b) persons authorized by the testator in the will or in  
223 written instructions signed by the testator in accordance with  
224 s. 732.502; or

225 (c) a person authorized to receive the electronic record  
226 by an order of a court.

227 (4) If venue of the probate administration of the testator's  
228 estate is in a state or county outside of the county where the  
229 electronic record containing an electronic will is deposited, then  
230 any interested person may seek an order of the court directing the  
231 clerk as to where, or as to whom, to deliver the electronic record  
232 containing the electronic will.

233 Section 9. Paragraph (b) of subsection (2) of section 736.0403,  
234 Florida Statutes, is amended to read:

235 736.0403 Trusts created in other jurisdictions; formalities  
236 required for revocable trusts.—

237 (2) Notwithstanding subsection (1):

238 (b) The testamentary aspects of a revocable trust, executed by  
239 a settlor who is a domiciliary of this state at the time of execution,  
240 are invalid unless the trust instrument is executed by the settlor

241 with the formalities required for the execution of a will under s.  
242 732.502 or an electronic will under s. 732.523. For purposes of this  
243 subsection, the term "testamentary aspects" means those provisions  
244 of the trust instrument that dispose of the trust property on or after  
245 the death of the settlor other than to the settlor's estate.

246 Section 12. Subsection (1) of 709.2202, Florida Statutes, is  
247 amended to read:

248 709.2202 Authority that requires separate signed enumeration;  
249 in person witnessing and notarization.—

250 (1) Notwithstanding s. 709.2201, an agent may exercise the  
251 following authority only if the principal signed or initialed next  
252 to each specific enumeration of the authority, the exercise of the  
253 authority is consistent with the agent's duties under s. 709.2114,  
254 the power of attorney was witnessed and notarized in person without  
255 the use of online witnessing of electronic records pursuant to s.  
256 117.285 or online notarization under part II of chapter 117, and the  
257 exercise is not otherwise prohibited by another agreement or  
258 instrument:

- 259 (a) Create an inter vivos trust;  
260 (b) With respect to a trust created by or on behalf of the principal,  
261 amend, modify, revoke, or terminate the trust, but only if the trust  
262 instrument explicitly provides for amendment, modification,  
263 revocation, or termination by the settlor's agent;  
264 (c) Make a gift, subject to subsection (4);  
265 (d) Create or change rights of survivorship;  
266 (e) Create or change a beneficiary designation;  
267 (f) Waive the principal's right to be a beneficiary of a joint and  
268 survivor annuity, including a survivor benefit under a  
269 retirement plan; ~~or~~  
270 (g) Disclaim property and powers of appointment; or  
271 (h) Conduct banking or investment transactions under s. 709.2208.

272           Section 12. This Act shall take effect July 1, 2019 and shall  
273 apply to documents executed on or after that date.

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