

BRING TO MEETING

REAL PROPERTY, PROBATE & TRUST LAW SECTION
www.rpptl.org



Executive Council Meeting

AGENDA

First District Court of Appeal – Tallahassee, FL

Saturday, February 9, 2013
10:00 a.m.

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting
February 9, 2013
First District Court of Appeal - Tallahassee, FL

AGENDA

- I. [Presiding](#) — *Wm. Fletcher Belcher, Chair*
- II. [Attendance](#) — *Deborah Packer Goodall, Secretary*
- III. [Minutes of Previous Meeting](#) — *Deborah Packer Goodall, Secretary*

Motion to Approve Minutes of November 17, 2012, Executive Council Meeting in Asheville, N.C. **p. 1-26**

- IV. [Chair's Report](#) — *Wm. Fletcher Belcher*

- 1. 2012–13 RPPTL Section Executive Council Meeting Schedule. **p. 27**
- 2. Introduction and comments from sponsors of the Executive Council lunch: The Florida Bar Foundation and U.S. Trust
- 3. Acknowledgement of Section sponsors. **p. xiii-xv**
- 4. Presentation of Memorial Resolution honoring William J. Haley
- 5. Creation of RPPTL Section Ad Hoc Leadership Academy Study Committee to review and analyze the details that have been proposed for the creation and operation of The Florida Bar Leadership Academy and, in the event that The Florida Bar implements such a program, to make recommendations concerning any form of Section involvement or participation as soon as practicable. Overview summary of proposal and complete proposed Guidelines for The Florida Bar Leadership Academy are attached. **p. 31-71**

Related motion:

Motion of Peggy Rolando, Chair of Ad Hoc Leadership Academy Study Committee, to: (1) support The Florida Bar's goal of training its future leaders through the creation and implementation of the Leadership Academy; and (2) delegate to the Section's Ad Hoc Leadership Academy Study Committee the

tasks of analyzing the Guidelines for The Florida Bar Leadership Academy and other materials relating to it and recommending the nature and extent of the Section's involvement in the Leadership Academy. **p. 31-71**

V. Executive Committee's Report — *Wm. Fletcher Belcher, Chair*

1. Pursuant to authority previously conferred by the Executive Council, the Executive Committee took the following actions on January 9, 2013:
 - a. Approved (by vote of more than two-thirds of its members) the proposal of the Condominium & Planned Development Committee (Steven H. Mezer, Chair) to adopt a legislative position supporting technical corrections to the Florida Vacation Plan and Timesharing Act by amending §§ 721.81, 721.84, 721.855, and 721.856 to change the existing process for non-judicial foreclosure of timeshare interests and to find that the position is within the purview of the Section. **p. 72-91**
 - b. Approved proposal of Membership, Diversity and Law School Liaison Committee (Michael A. Bedke, Chair) to establish non-proratable annual dues of \$20.00 for affiliate Section members who are law students enrolled in an accredited Florida law school.
2. On January 9, 2013, after determining that the matter required action before the next meeting of the Executive Council, the Executive Committee approved (by vote of more than two-thirds of its members) the proposals of the Power of Attorney Committee (Tami Conetta, Chair) to adopt a legislative position supporting technical corrections to the Florida Power of Attorney Act by amending §§ 709.2102, 709.2103, 709.2105, 709.2106, 709.2114, 709.2116, 709.2119, 709.2120, 709.2121, 709.2202, 709.2207, and 709.2208; find that the position is within the purview of the Section; and approve the expenditure of Section funds to advocate for the position. **p. 92-110**
3. On January 27, 2013, after determining that the matter required action before the next meeting of the Executive Council, the Executive Committee approved (by vote of more than two-thirds of its members) the proposals of Elaine Bucher, Chair of the Estate and Trust Tax Planning Committee, to support the amendment of ss. 198.13(4), Fla. Stat., by deleting the last sentence of that subsection which currently provides that "The provisions of this subsection do not apply to estates of decedent's dying after December 31, 2012." so that the filing of Florida estate tax returns will not be unnecessarily required; find that the position is within the purview of the Section; and approve the expenditure of Section funds to advocate for the position. **p. 111-113**

VI. Chair-Elect's Report — *Margaret Ann Rolando*

2013 – 2014 RPPTL Section Executive Council Meeting Schedule. **p. 28**

VII. [Liaison with Board of Governors' Report](#) — *Andrew B. Sasso*

VIII. [President of The Florida Bar's Report](#) — *Gwynne A. Young*

IX. [Treasurer's Report](#) — *Andrew M. O'Malley*

2012-13 Monthly (December) Report Summary. **p. 29**

X. [Director of At-Large Member's Report](#) — *Debra L. Boje*

XI. [Real Property Law Division](#) — *Michael J. Gelfand, Director*

Action Items:

1. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

To adopt as a proposed legislative position supporting amendments concerning estoppel letters issued by condominium and homeowners' associations, including amendments to s. 718.116 and 720.30851, F.S.; to find that the position is in the Section's purview; and to expend funds in support of the position. **p. 114-121**

2. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

To adopt as a proposed legislative position supporting removal of statutory requirements that existing statutory late fees be stated in a condominium or a homeowners' association declaration or bylaws, including amendments to 718.116 and 720.3085 F.S.; to find that the position is in the Section's purview; and to expend funds in support of the position. **p. 122-126**

3. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

To adopt as a proposed legislative position supporting the differentiation of statutory regulations for non-residential condominiums, including amendments to Chapter 718, F.S.; to find that the position is in the Section's purview; and to expend funds in support of the position. **p. 127-152**

Information Items:

1. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

Pursuant to delegation from Executive Council to Executive Committee with authority to act, the Executive Committee's approval of: Condominium & Planned Development Committee's (Steven H. Mezer, Chair) proposal to adopt a legislative position supporting technical corrections to the Florida Vacation

Plan and Timesharing Act by amending §§ 721.81, 721.84, 721.855, and 721.856 to change the existing process for non-judicial foreclosure of timeshare interests, and to find that the position is within the purview of the Section.

p. 72-91

2. Landlord and Tenant Committee — *Neil Shoter, Chair*

Inquiry to Section concerning enforcement of early termination fee, questioning interplay between Supreme Court of Florida approved Residential Lease Form with Early Termination Addendum (SC 09-250) and §83.595. **p. 153-162**

3. Residential Real Estate and Industry Liaison — *Frederick W. Jones, Chair*

The Florida Bar's appointments to the Florida Realtor-Attorney Joint Committee. **p. 163-167**

XII. Probate and Trust Law Division — *Michael A. Dribin, Director*

Information Items:

1. Former Power of Attorney Committee (acting as *ad hoc* POA “glitch” committee) — *Tami Conetta, Chair*

Report on behalf of Committee describing Section legislative position approved by Executive Committee to amend Chapter 709, the Florida Power of Attorney Act, which was enacted effective October 1, 2011, in order to facilitate the proper functioning of the Act, by: amending the definitional sections; clarifying certain exceptions to the powers granted to agents; adding a new section 709.2105(3) to deal with the execution of a Power of Attorney by a principal who is physically disabled; clarifying the authority of agents to delegate authority to third persons; modifying the form of affidavit requested by third parties to include language confirming that the agent's authority has not be terminated as a result of action being commenced to terminate the principal's marriage; and making certain other technical changes. **p. 92-110**

2. Wills, Trusts and Estates Certification Review Course Committee — *Richard R. Gans, Chair*

Report on dates, topics and speakers for 2013 Course. **p. 168**

XIII. General Standing Committees — *Margaret “Peggy” Rolando, Director and Chair-Elect*

Action Items:

1. Budget Committee — *Andrew M. O'Malley, Chair*

Motion to approve an increase in Section annual dues from \$50.00 to \$60.00, effective July 1, 2013.

2. Member Communications and Information Technology Committee — *Nicole Kibert, Chair*

A. Motion to approve: (1) Website Development Agreement with Blueflame Consulting, Inc. for the design and development of a new website for RPPTL.org; and (2) expenditure of Section funds for the purposes set forth in the Agreement. **p. 169-191**

Disclosure regarding the above item pursuant to RPPTL Section bylaws: Nicole Kibert, who is Chair of the Committee proposing the agreement with Blueflame Consulting, Inc., and George Meyer, are members of the same firm. George has recused himself from participation in this matter due to personal friendship with a principal of that company

B. Motion to approve: (1) interim Website Hosting and Maintenance Agreement for RPPTL.org with First Step Internet, L.L.C. for the hosting and maintenance of the existing website for RPPTL.org and the Section's listserves; and (2) expenditure of Section funds for the purposes set forth in the Agreement. **p. 192-194**

Information Items:

1. Ad Hoc Trust Account Committee — *Roland "Chip" Waller, Chair; Jerry Aron, Alan Fields, Michael Gelfand and Bill Sklar, Subcommittee members; and Professionalism and Ethics Committee — Lee Weintraub, Chair*

The subcommittee of the Professional Ethics Committee (PEC) studying proposed Ethics Opinion 2012-4 on special trust accounts has approved the attached revised draft for submission to the full PEC at its meeting on January 25, 2013. The draft of Ethics Opinion 2012-4 addresses the requirements of Section 626.8473(8), Florida Statutes, for a separate trust account for transactions when an attorney serves as a title or real estate settlement agent and the circumstances under which such an account can be audited by a title insurer. The subcommittee's recent change added the following language at lines 174-176: "With respect to number 2 in the preceding sentence, the lawyer may obtain the client's informed consent in the sales contract or in a separate document executed by the client prior to or at the closing." **p. 195-199**

2. Ad Hoc Trust Account Committee — *Roland "Chip" Waller, Chair*

See the attached copy of the letter from the Section to The Florida Bar recommending the adoption of Model ABA Rules for client trust account records including safeguards when non-lawyers sign trust account checks. **p. 200-215**

3. Amicus Coordination — *Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs*

A. The Florida Supreme Court has scheduled oral arguments in the case of *North Carillon, LLC v. CRC 603, LLC, et al.* (SC12-75) for Monday, February 4, 2013. The Committee has notified the court that a representative of the Section will attend oral argument to respond to any questions from the court. The Section's position in the amicus brief is that the Legislature should not be stopped from clarifying a law it enacted simply because time has passed between its enactment and the clarification of it by statutory amendment.

B. The Florida Supreme Court has scheduled oral arguments in the case of *James Michael Aldrich v. Laurie Basile, et al.* (SC11-2147) for Thursday, February 7, 2013. The Committee has notified the court that a representative of the Section will attend oral argument to respond to any questions from the court. The Section position in the amicus brief is that if there is no clause in a will generally disposing of assets that are not specifically referenced in the will, a court should not construe the will and the testator's intent in a manner that disposes of those assets other than in accordance with the laws of intestacy.

4. Membership, Diversity and Law School Liaison Committee — *Michael A. Bedke, Chair*

A. Pursuant to delegation from the Executive Council, the Executive Committee has approved the Membership, Diversity and Law School Liaison Committee's proposal to establish an affiliate category of Section membership for law students who are enrolled in an accredited Florida law school. Annual dues are \$20.00 and are not prorated. The Committee is preparing an application form for law student affiliate membership.

B. The infomercial developed under the supervision of the Committee to promote the Section and its benefits, mentoring program and fellowship program, is ready to "go live" and will be previewed before the Executive Council at the Convention in St. Petersburg, May 23-26, 2013.

5. Pro Bono Committee — *Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs*

The Section received a request from Florida's Children First, Inc. asking our members to register on the organization's new website to volunteer for pro bono legal work for children and families. Florida's Children First has created an online community for attorneys and judges who work with children and families. The new site, www.f4cf.org, allows any Florida lawyer to offer their pro bono services and to specify the areas of law they want to help with, what level of assistance they want to offer and who they are will to accept. Interested lawyers can sign up at <http://www.f4cf.org/bono/volunteer.jsp>

6. Sponsor Coordination — *Kristen Lynch, Chair*

A. iBERIA Wealth Advisors has become a Friend of the Section.

B. Attorneys' Title Fund Services, LLC, an existing General Sponsor of the Section, has also become a committee sponsor for the Commercial Real Estate Committee.

C. BMO Private Bank (f/k/a Harris Bank), an existing General Sponsor, has upgraded its sponsorship from the Thursday lunch to co-sponsoring the Probate and Trust Law Division Roundtable.

D. Wright Private Asset Management, LLC has become the General Sponsor of the Hospitality Suite.

XIV. General Standing Committee Reports — *Margaret "Peggy" Rolando, Director and Chair-Elect*

1. **Ad Hoc LLC Monitoring** – Lauren Y. Detzel and Ed Burt Bruton, Co-Chairs
2. **Ad Hoc Trust Account** – Roland "Chip" Waller, Chair
3. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs
4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
5. **Budget** – Andrew M. O'Malley, Chair; Pamela O. Price and Daniel L. DeCubellis, Co-Vice Chairs
6. **CLE Seminar Coordination** – Robert Freedman, Chair; Laura Sundberg and Sarah Butters, Co-Vice Chairs (Probate & Trust); Brian Leebrick and Jennifer Tobin, Co-Vice Chairs (Real Property) **p. 216-217**
7. **Convention Coordination (2013)** – S. Katherine Frazier, Chair; Angela Adams, Tae Bronner and Debra Boje, Co-Vice Chairs
8. **Fellows and Mentoring** – Marsha G. Madorsky, Co-Chair (Fellowship), Guy Emerich, Co-Chair (Mentoring); Brenda Ezell and Sharaine Sibblies, Co-Vice Chairs.
9. **Florida Electronic Filing & Service** – Patricia P. Jones, Rohan Kelley and Laird A. Lile, Co-Chairs
10. **Homestead Issues Study** – Shane Kelley, Co-Chair (Probate & Trust); Deborah Boyd, Co-Chair (Real Property)
11. **Legislation** – Barry F. Spivey, Co-Chair (Probate & Trust), Robert Swaine, Co-Chair (Real Property); William T. Hennessey, III, Co-Vice Chair (Probate & Trust), Alan Fields, Co-Vice Chair (Real Property); Susan K. Spurgeon and Michael A. Bedke, Legislative Reporters

12. **Legislative Update (2013)** –Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Sharaine Sibbles and Stacy Kalmanson, Co-Vice Chairs
13. **Liaison with:**
 - A. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - B. **Board of Legal Specialization and Education (BLSE)** – Michael C. Sasso, W. Theodore Conner, David M. Silberstein and Deborah L. Russell
 - C. **Clerks of Circuit Court** – Laird A. Lile
 - D. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland Chip Waller
 - E. **Florida Bankers Association** – Stewart Andrew Marshall, III, and Mark Thomas Middlebrook
 - F. **Judiciary** – Judge Jack St. Arnold, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Celeste H. Muir, Judge Robert Pleus, Judge Lawrence A. Schwartz, Judge Richard Suarez, Judge Morris Silberman, Judge Patricia V. Thomas and Judge Walter L. Schafer, Jr.
 - G. **Out of State Members** – Michael P. Stafford and John E. Fitzgerald, Jr.
 - H. **The Florida Bar** – Gwynne A. Young
 - I. **TFB Board of Governors** – Andrew Sasso
 - J. **TFB Business Law Section** – Marsha G. Rydberg
 - K. **TFB CLE Committee** – Robert Freedman
 - L. **TFB Council of Sections** –Wm. Fletcher Belcher and Margaret A. Rolando
14. **Long-Range Planning** – Margaret A. Rolando, Chair
15. **Meetings Planning** – George Meyer, Chair
16. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner and William Parady, Co-Vice Chairs
17. **Membership, Diversity and Law School Liaison** – Michael A. Bedke, Chair; Lynwood T. Arnold, Jr., Co-Vice Chair (Diversity); Stacy Kalmanson, Co-Vice Chair (Law Schools), Phillip A. Baumann, Co-Vice Chair (Special Projects), Navin Pasem, Co-Vice Chair (Diversity); Benjamin B. Bush, Frederick R. Dudley, Jason M. Ellison, Brenda B. Ezell, Jennifer Jones and Mary Karr, Law School Liaisons.
18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
19. **Pro Bono** – Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs
20. **Professionalism and Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miller, Co-Vice Chairs
21. **Publications:**

- A. **ActionLine** – Silvia Rojas, Chair; Scott P. Pence, Shari Ben Moussa and Navin Pasem, Co-Vice Chairs (Real Property); Amber Jade Johnson, George Karibjanian and Hung V. Nguyen, Co-Vice Chairs (Probate & Trust)
 - B. **Florida Bar Journal** - Kristen M. Lynch, Co-Chair (Probate & Trust); David Brittain, Co-Chair (Real Property)
22. **Sponsor Coordination** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Aniella Gonzalez, J. Michael Swaine, Adele I. Stone, Marilyn M. Polson, and W. Cary Wright, Co-Vice Chairs
23. **Strategic Planning** – Margaret A. Rolando, Chair

XV. Real Property Law Division Reports — *Michael J. Gelfand, Director*

- 1. **Ad Hoc Foreclosure Reform** – Jerry Aron, Chair; Mark Brown, Burt Bruton, Alan Fields, and Jeffrey Sauer, Co-Vice Chairs.
- 2. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Jim Robbins, Co-Vice Chairs.
- 3. **Condominium and Planned Development** – Steven H. Mezer, Chair; Jane Cornett and Christopher Davies, Co-Vice-Chairs.
- 4. **Construction Law** – Arnold D. Tritt, Chair; Lisa Colon Heron, Scott Pence and Hardy Roberts, Co-Vice Chairs.
- 5. **Construction Law Certification Review Course** – Lee Weintraub, Chair; Bruce Alexander, Deborah Mastin and Bryan Rendzio, and Co-Vice Chairs.
- 6. **Construction Law Institute** – W. Cary Wright, Chair; Reese Henderson and Sanjay Kurian, Co-Vice Chairs.
- 7. **Governmental Regulation** – Anne Pollack, Chair; Arlene Udick and Vinette Godelia, Co-Vice Chairs.
- 8. **Landlord and Tenant** – Neil Shoter, Chair; Rick Eckhard and Lloyd Granet, Co-Vice Chairs.
- 9. **Legal Opinions** – Kip Thornton, Chair; Dan DeCubellis, Vice-Chair.
- 10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields, James C. Russick and Barry Scholnick, Co-Vice Chairs.
- 11. **Property & Liability Insurance/Suretyship** – W. Cary Wright and Fred Dudley, Co-Chairs.

12. **Real Estate Certification Review Course** – Ted Conner, Chair; Raul Ballaga and Jennifer Tobin, Co-Vice Chairs.
13. **Real Estate Entities and Land Trusts** – Wilhelmina Kightlinger, Chair; Burt Bruton, Vice-Chair.
14. **Real Property Finance & Lending** – Dave R. Brittain, Chair; Deborah Boyd, Brenda Ezell and Bill Sklar, Co-Vice Chairs.
15. **Real Property Forms** – Homer Duval, III, Chair; Arthur J. Menor and Silvia Rojas, Co-Vice Chairs.
16. **Real Property Litigation** – Marty Awerbach, Chair; Manny Farach and Susan Spurgeon, Co-Vice Chairs.
17. **Real Property Problems Study** – S. Katherine Frazier, Chair; Mark A. Brown, Patricia J. Hancock and Salome Zikakis, Co-Vice Chairs.
18. **Residential Real Estate and Industry Liaison** – Frederick W. Jones, Chair; Denise Hutson, Vice Chair.
19. **Title Insurance and Title Insurance Liaison** – Kristopher Fernandez, Chair; Raul Ballaga and Dan DeCubellis, Co-Vice Chairs.
20. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Patricia P. Jones and Karla J. Staker, Co-Vice Chairs.

XVI. Probate and Trust Law Division Committee Reports — *Michael A. Dribin, Director*

1. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
2. **Ad Hoc Committee on Treatment of Life Insurance Payable to Revocable Trust** – Richard R. Gans, Chair
3. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Sean W. Kelley and Charles F. Robinson, Co-Vice Chairs
4. **Ad Hoc Study Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
5. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** – William T. Hennessey III, Chair
6. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair

7. **Asset Protection** – Brian C. Sparks, Chair; Marsha G. Madorsky, Vice-Chair
8. **Attorney/Trust Officer Liaison Conference** – Jack A. Falk, Jr., Chair; Mary Biggs Knauer, Corporate Fiduciary Chair; Patrick Lannon, Deborah Russell and Laura Sundberg, Co-Vice Chairs
9. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
10. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
11. **Guardianship and Power of Attorney** – Sean W. Kelley, Chair; Seth A. Marmor, Tattiana Brenes-Stahl, Cynthia Fallon and David Brennan, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** – Linda Suzzanne Griffin and L. Howard Payne, Co-Chairs; Anne Buzby-Walt and Lester Law, Co-Vice Chairs
13. **Liaisons with Elder Law Section** – Charles F. Robinson, Marjorie Wolasky and Sam W. Boone, Jr.
14. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks, Donald R. Tescher and Harris L. Bonnette, Jr.
15. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
16. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi, J. Richard Caskey and Jerry Wells, Co-Vice Chairs
17. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; John C. Moran, Paul Roman and James George, Co-Vice Chairs
18. **Trust Law** – Shane Kelley, Chair; Angela M. Adams and Tami F. Conetta, Co-Vice Chairs
19. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Laura Sundberg and Jerome L. Wolf, Co-Vice Chairs

XVII. [Adjourn](#)



**The Florida Bar
Real Property, Probate & Trust Law Section**

Special Thanks to the

GENERAL SPONSORS

Attorneys' Title Fund Services, LLC - Ted Conner
Overall Sponsors - Legislative Update & Convention & Spouse Breakfast

BMO Private Bank - Joan Kayser
Probate Roundtable

Fidelity National Title Group - Pat Hancock
Real Property Roundtable

First American Title Insurance Company - Alan McCall
Friday Night Dinner

JP Morgan - Carlos Batlle / Alyssa Feder
Thursday Night Reception

Management Planning, Inc. - Roy Meyers / Joe Gitto
Thursday Lunch

Old Republic National Title Insurance Company - Jim Russick
Thursday Night Reception

Regions Private Wealth Management - Margaret Palmer
Friday Night Dinner

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

The Florida Bar Foundation - Jane Curran
Saturday Lunch

U.S. Trust - Stacey Cole
Saturday Lunch

Wells Fargo Private Bank - Mark Middlebrook / George Lange / Alex Hamrick
Friday Night Reception

Wright Private Asset Management, LLC - Diane Timpany
Hospitality Suite



**The Florida Bar
Real Property, Probate & Trust Law Section**

Special Thanks to the

FRIENDS OF THE SECTION

Business Valuation Analysts, LLC - *Tim Bronza*

Guardian Trust - *Ashley Gonnelli*

iBERIA Wealth Advisors - *Hector Sikes*

Simplifile - *Pat Sponem*



**The Florida Bar
Real Property, Probate & Trust Law Section**

Special Thanks to the

COMMITTEE SPONSORS

Attorneys' Title Fund Services, LLC – *Ted Conner*
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IRA, Insurance & Employee Benefits Committee
&
Probate Law & Procedure 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

Guardian Trust – *Ashley Gonnelli*
Guardianship & Power of Attorney Committee

Key Private Bank – *Kathleen A. Saigh*
Asset Protection Committee

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

Northern Trust – *Brett Rees*
Trust Law Committee

Sabal Trust Company – *Susan Mittermayr / Ron Koepsel*
Estate & Trust Tax Planning Committee

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

EXECUTIVE COUNCIL MEETING

**Saturday, November 17, 2012
The Biltmore Estate, Asheville, North Carolina**

I. Call to Order – *William Fletcher Belcher, Chair.*

The meeting was held at the Lioncrest Veranda at the Biltmore Estate. At 10:30 am, before the Executive Council meeting began, Mr. William Fletcher Belcher introduced two special guest speakers, Dini Cecil Pickering, Vice Chairman of the Board of the Biltmore Company, President of the Family Office, and George W. Vanderbilt's great granddaughter, and Jack Stevens, the Biltmore Company's General Counsel, former North Carolina State General Assembly member and former president of the North Carolina State Bar.

After a fascinating and entertaining presentation by Dini and Jack, there was a brief recess. The Chair called the Executive Council meeting to order at 12:10 pm.

II. Attendance – *Deborah Packer Goodall, Secretary.*

Deborah Goodall reminded members that the attendance roster was circulating to be initialed by Council members in attendance at the meeting. Ms. Goodall introduced Mr. Laird Lile who announced that current Board of Governors member Greg Coleman has expressed interest in becoming the next President of the Florida Bar after Gene Pettis' term. Mr. Lile announced that for anyone wishing to support Mr. Coleman, Nomination Forms are available to be signed at this meeting.

[*Secretary's Note:* The roster showing members in attendance is attached as Addendum A.]

III. Minutes of Previous Meeting – *Deborah Packer Goodall, Secretary.*

Ms. Goodall moved:

To approve the Minutes of the Executive Council Meeting occurring on Saturday September 15, 2012, in Salons 1 and 2 of The Ritz Carlton Hotel, Key Biscayne, Florida appearing at page 1 of the Agenda Materials with the deletion of the Secretary's note that appeared on page 6 of the Agenda Materials¹.

The Motion was approved unanimously.

¹ References in these minutes to Agenda pages are to the Executive Council Meeting Agenda posted at www.RPPTL.org.

IV. Chair's Report – *William Fletcher Belcher, Chair*

Mr. Belcher introduced Michael Stafford, Liaison for the Out of State Members, who announced that we are, in fact, out of state. Mr. Stafford introduced and welcomed several lawyers from North Carolina who are also members of the Florida Bar.

Mr. Belcher thanked Judge Korvick and Judge Thomas for their attendance at the meeting.

Mr. Belcher announced the upcoming meetings and events for the February Executive Council meeting at the Hotel Duval in Tallahassee and our annual Convention over Memorial Day at the Vinoy in St. Pete. Mr. Belcher announced that the Saturday night event will include the Yankees/Rays game on Saturday night.

Mr. Belcher thanked Dresden Brunner for the wonderful new directory.

Mr. Belcher thanked the General Sponsors and the Friends of the Section for their support of our Section.

V. Chair-Elect's Report – *Margaret Rolando, Chair-Elect*

Ms. Rolando announced that the next out of state meeting will be in Lisbon, Portugal. She asked everyone to pay attention to the unusual cancellation period. The other Executive Council meetings for 2013 – 2014 are listed in the Agenda, page 36.

Ms. Rolando also thanked Dresden Brunner for the fabulous job on the new directory.

VI. Liaison with Board of Governors Report – *Andy Sasso, Board of Governors Liaison*

Ms. Rolando introduced Andy Sasso, our Liaison from the Board of Governors. Mr. Sasso thanked the members of our Section for “The Vote’s in Your Court” with special thanks and congratulations to Sandra Diamond for spearheading the program.

Mr. Sasso reported that the Board of Governors would be looking at certain Rules of Judicial Administration on an out of cycle review at the next Board of Governors meeting. The rules to be reviewed include those dealing with electronic signatures, service by methods other than email (including services using the cloud or by flash drive) if all parties agree, deadlines for time for filing responses when more than one method is used for service, and clarification of the rule regarding no separate pleading required for designation of email addresses for e-service.

Mr. Sasso also voiced his support of Greg Coleman.

VII. President's Report – *Gwynne Young, President of the Florida Bar*

President Gwynne Young echoed Mr. Sasso's thanks to Sandra Diamond for her efforts on "The Vote's in Your Court" program to promote education and to encourage voting. Ms. Young reported on the increase in the number of voters who actually cast votes in the category of merit retention for judges.

VIII. Treasurer's Report – *Andrew O'Malley, Treasurer.*

Mr. Belcher reported that Mr. Andrew O'Malley had to leave the meeting but noted that the Treasurer's financial summary is set forth in the Agenda, starting at page 37.

IX. At Large Members' Report - *Debra Boje, At Large Members' Director.*

No report.

X. Probate and Trust Law Division – *Michael A. Dribin, Probate and Trust Law Division Director.*

Mr. Michael A. Dribin reported that our colleague Pam Price is battling some serious health concerns and will be unable to attend our meetings for several months. Mr. Dribin suggested that well wishes could be sent and would be welcomed by Ms. Price and that e-mail may be the best way to do so. Mr. Dribin introduced several information items.

Information Item:

1. Ad Hoc Study Committee on Estate Planning Conflict of Interest - *William T. Hennessey III, Chair*

Mr. Dribin reported that the proposed legislation on gifts to lawyers (proposed F.S. §736.0103) has been reviewed by the Professional Ethics Committee ("PEC") of the Florida Bar and the PEC voted to take no provision on the bill. Mr. Dribin also reported that the Board of Governors passed the legislation and it is now part of our Legislative package.

2. Guardianship and Power of Attorney Committee - *Sean W. Kelley, Chair*

Tami F. Conetta reported on the status of proposed legislative changes and revisions to Florida Power of Attorney Act and indicated that she anticipates that a final product will be ready for consideration at the Tallahassee Executive Council meeting. (Ch. 709, Florida Statutes).

3. Florida Court Technology Commission and Liaison with the Clerks of Circuit Court - *Laird A. Lile*

Mr. Laird A. Lile reported on the issues being considered by the Florida Court Technology Commission committee regarding web access to probate and guardianship court records. Mr. Lile briefly discussed the issues regarding standards and protocols currently being considered by the Florida Court Technology Commission regarding what information will be accessible on the internet. There was concern that there was not anyone with probate and guardianship experience involved in the process. Mr. Lile and Mr. Rohan Kelley have been asked and have agreed to participate in the discussions to ensure that those familiar with probate and guardianship filings will be included.

Mr. Lile also provided an update on e-service. Mr. Lile reported on the progress toward automatic e-service through the centralized e-portal when documents are e-filed through the e-portal. It is not yet certain when this process will be done automatically. By April 1, e-filing through the central e-portal is expected to be mandatory. Mr. Lile asked that if anyone has used the central e-portal and has any comments on the interface of the e-portal, please share them with Mr. Lile so he can report at the next meeting of those working on the e-portal.

Mr. Lile congratulated Mr. Robert Freedman, Seminar Coordinator, for planning a seminar on e-filing in mid March, 2013.

4. Estate and Trust Tax Planning Committee - *Elaine M. Bucher, Chair*

Ms. Lauren Detzel, Liaison to the Tax Section, reported on the continued uncertainty in the world of taxes including estate, gift and income taxes. Ms. Detzel gave a post-election report and advised everyone to stay diligent and pay attention to possible legislation that may be proposed and to carefully review the effective dates of proposed legislation.

XI. Real Property Law Division – *Michael J. Gelfand, Real Property Law Division*

Mr. Gelfand commented that several committees chairs including Cary Wright on the Property & Liability Insurance and Surety Committee, David Brittain on Real Property Finance & Lending, and Art Menor on Commercial Real Estate have been holding an extraordinary telephone conference system for meetings including speakers Mr. Gelfand urged people to dial in to these calls. Mr. Gelfand and introduced the following:

Action Items.

1. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

Mr. Steven Mezer and Mr. Jerry Aron discussed the history of the non judicial foreclosure for timeshares and the attempt to fix some of the many issues with the bill that was passed by the Florida Legislature in 2010. The materials in the Agenda include twelve points in a white paper beginning at page 41. Based upon concerns voiced by those on the probate side, the portion of the statute dealing

with comment 2 on page 42 dealing with deceased obligors will be withdrawn at this time. Mr. Aron noted that the provisions in the materials have passed the Condominium Law committee unanimously. After discussion, Mr. Aron moved:

To refer to Executive Committee for consideration and action after comment and discussion by Executive Council, the adoption as a legislative position, amendments to the Florida Vacation Plan and Timesharing Act, §§ 721.81, 721.84, 721.855, 721.856, amending the existing process for Trustee Foreclosure of time-share interests and to find that the position is in the purview of the Section.

The motion passed unanimously.

Information Item:

1. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

Mr. Mezer reported on the issue of the Unlicensed Practice of Law (UPL) with regard to Licensed Community Association Managers. He referred to the letter that our section sent to the UPL Committee of the Florida Bar that is included in the Agenda package beginning at page 59. Four of the issues that our section raised have been recognized by the UPL committee as areas needing further consideration. Two of those issues, modification of limited proxy forms promulgated by the state and preparation of documents concerning the right of the association to approve new prospective owners, will be clarified by example. Two other issues, drafting of pre-arbitration demand letters and identifying, through review of title instruments, the owners to receive pre-lien letters, will be clarified using the 1996 Advisory Opinion as guidance. The UPL Committee did not rule out the possibility of seeking court clarification.

2. Condominium & Planned Development Committee — *Steven H. Mezer, Chair*

Mr. Mezer reported that the decision has been made to proceed with Board Certification as a stand alone category rather than as a subspecialty of the Real Estate Certification.

3. Residential Real Estate and Industry Liaison — *Frederick W. Jones, Chair*

On behalf of the Committee, Mr. Gelfand reported on a reminder about the new residential contract addendum for residential condominium resale. See page iv of the Agenda.

XII. General Standing Division – *Margaret "Peggy" Rolando, Director and Chair-Elect.*

Ms. Rolando introduced the following:

Action Items:

1. Membership, Diversity and Law School Liaison Committee -
Michael A. Bedke, Chair

On behalf of the Committee, Ms. Rolando reported on the proposal of the Law School Liaison Committee to create a category of section membership for law school students. Ms. Rolando moved:

To refer to Executive Committee for consideration and action after comment and discussion by Executive Council, a proposal to establish annual dues of \$20.00 for affiliate Section members who are law students enrolled in an accredited Florida law school.

The motion passed unanimously.

Information Item:

1. Ad Hoc Trust Accounting Committee – *Roland “Chip” Waller, Chair*

On behalf of the committee, Mr. Michael Gelfand reported on the Bar’s Professional Ethics Committee (PEC) meeting in September regarding new statutory requirement that attorneys and law firms have separate trust account for each title insurer for real estate transactions and the issue of whether and when it is permissible for a title insurer to audit any accounts or transactions other than those relating to the title insurance policy that it underwrote given a lawyer’s duty of confidentiality. See Letter dated September 19, 2012 to the PEC in the Agenda at page 67. Mr. Gelfand reported that the PEC will be meeting again in January, 2013 to further explore this issue.

Ms. Conetta reminded the section that at the end of the year, the FDIC insurance limits will revert back to the pre-recession levels of \$250,000 on accounts including Trust Accounts.

XIII. General Standing Committee Reports – *Margaret “Peggy” Rolando, Director and Chair-Elect*

1. **Ad Hoc LLC Monitoring** – Lauren Y. Detzel and Ed Burt Bruton, Co-Chairs

No report.

2. **Ad Hoc Trust Account** – Roland “Chip” Waller, Chair

No further report.

3. **Alternative Dispute Resolution (ADR)** – Deborah Bovarnick Mastin and David R. Carlisle, Co-Chairs

No report.

4. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs

No report.

5. **Budget** – Andrew M. O'Malley, Chair; Pamela O. Price and Daniel L. DeCubellis, Co-Vice Chairs

No report.

6. **CLE Seminar Coordination** – Robert Freedman, Chair; Laura Sundberg and Sarah Butters, Co-Vice Chairs (Probate & Trust); Brian Leebrick and Jennifer Tobin, Co-Vice Chairs (Real Property).

Mr. Freedman reported that the CLE Schedule is in the Agenda, page 72 and he noted that two programs coming up in the next three weeks including the November 30th all-day CLE in Tampa on Year End Estate Planning and Asset Protection and the December 5th one hour lunchtime CLE on Corporate Entities Selection and Utilization. Mr. Freedman asked the committee chairs to please review emails regarding CLE programs and forward them to your committee members. Mr. Freedman announced that March 20th 2013 is the date for the e-filing lunchtime CLE program.

7. **Convention Coordination (2013)** – S. Katherine Frazier, Chair; Angela Adams, Tae Bronner and Debra Boje, Co-Vice Chairs

No report.

8. **Fellows and Mentoring** – Marsha G. Madorsky, Co-Chair (Fellowship), Guy Emerich, Co-Chair (Mentoring); Brenda Ezell and Sharaine Sibblies, Co-Vice Chairs.

No report.

9. **Florida Electronic Filing & Service** – Patricia P. Jones, Rohan Kelley and Laird A. Lile, Co-Chairs

No further report.

10. **Homestead Issues Study** – Shane Kelley, Co-Chair (Probate & Trust); Deborah Boyd, Co-Chair (Real Property)

No report.

11. **Legislation** – Barry F. Spivey, Co-Chair (Probate & Trust), Robert Swaine, Co-Chair (Real Property); William T. Hennessey, III, Co-Vice Chair (Probate & Trust), Alan Fields, Co-Vice Chair (Real Property); Susan K. Spurgeon and Michael A. Bedke, Legislative Reporters

No report.

12. **Legislative Update (2013)** –Stuart H. Altman, Chair; Charles I. Nash, R. James Robbins, Sharaine Sibblies and Stacy Kalmanson, Co-Vice Chairs

No report.

13. **Liaison with:**

- A. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau

No report.

- B. **Board of Legal Specialization and Education (BLSE)** – Michael C. Sasso, W. Theodore Conner, David M. Silberstein and Deborah L. Russell

No report.

- C. **Clerks of Circuit Court** – Laird A. Lile

No further report.

- D. **FLEA / FLSSI** – David C. Brennan, John Arthur Jones and Roland Chip Waller

FLSSI – No report.

FLEA – No report.

- E. **Florida Bankers Association** – Stewart Andrew Marshall, III, and Mark Thomas Middlebrook

No report.

- F. **Judiciary** – Judge Jack St. Arnold, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Claudia Rickert Isom, Judge Maria M. Korvick, Judge Lauren Laughlin, Judge Celeste H. Muir, Judge Robert Pleus, Judge Lawrence A. Schwartz, Judge Richard Suarez, Judge Morris Silberman, Judge Patricia V. Thomas and Judge Walter L. Schafer, Jr.

No report.

- G. **Out of State Members** – Michael P. Stafford and John E. Fitzgerald, Jr.

No further report.

- H. **The Florida Bar** – Gwynne A. Young

No further report.

- I. **TFB Board of Governors** – Andrew Sasso

No further report.

- J. **TFB Business Law Section** – Marsha G. Rydberg

No report.

- K. **TFB CLE Committee** – Robert Freedman

No further report.

- L. **TFB Council of Sections** – Wm. Fletcher Belcher and Margaret A. Rolando

No report.

14. **Long-Range Planning** – Margaret A. Rolando, Chair

No report.

15. **Meetings Planning** – George Meyer, Chair

No report.

16. **Member Communications and Information Technology** – Nicole C. Kibert, Chair; S. Dresden Brunner and William Parady, Co-Vice Chairs

No report.

17. **Membership, Diversity and Law School Liaison** – Michael A. Bedke, Chair; Lynwood T. Arnold, Jr., Co-Vice Chair (Diversity); Stacy Kalmanson, Co-Vice Chair (Law Schools), Phillip A. Baumann, Co-Vice Chair (Special Projects), Navin Pasem, Co-Vice Chair (Diversity); Benjamin B. Bush, Frederick R.

Dudley, Jason M. Ellison, Brenda B. Ezell, Jennifer Jones and Mary Karr, Law School Liaisons.

No further report.

18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs

No report.

19. **Pro Bono** – Adele Stone and Tasha K. Pepper-Dickinson, Co-Chairs.

No report.

20. **Professionalism and Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miller, Co-Vice Chairs.

No report.

21. **Publications:**

A. **ActionLine** – Silvia Rojas, Chair; Scott P. Pence, Shari Ben Moussa and Navin Pasem, Co-Vice Chairs (Real Property); Amber Jade Johnson, George Karibjanian and Hung V. Nguyen, Co-Vice Chairs (Probate & Trust)

No report.

B. **Florida Bar Journal** - Kristen M. Lynch, Co-Chair (Probate & Trust); David Brittain, Co-Chair (Real Property)

No report.

22. **Sponsor Coordination** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Aniella Gonzalez, J. Michael Swaine, Adele I. Stone, Marilyn M. Polson, and W. Cary Wright, Co-Vice Chairs

No report.

23. **Strategic Planning** – Margaret A. Rolando, Chair

No report.

XIV. Probate and Trust Law Division Committee Reports– *Michael A. Dribin – Director*

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets**

- Angela M. Adams, Chair
2. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
 3. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Sean W. Kelley and Charles F. Robinson, Co-Vice Chairs
 4. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair
 5. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair
 6. **Asset Protection** – Brian C. Sparks, Chair; Marsha G. Madorsky, Vice-Chair
 7. **Attorney/Trust Officer Liaison Conference** – Jack A. Falk, Jr., Chair; Mary Biggs Knauer, Corporate Fiduciary Chair; Patrick Lannon, Deborah Russell and Laura Sundberg, Co-Vice Chairs
 8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
 9. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
 10. **Guardianship and Power of Attorney** – Sean W. Kelley, Chair; Seth A. Marmor, Tattiana Brenes-Stahl, Cynthia Fallon and David Brennan, Co-Vice Chairs
 11. **IRA, Insurance and Employee Benefits** – Linda Suzzanne Griffin and L. Howard Payne, Co-Chairs; Anne Buzby-Walt and Lester Law, Co-Vice Chairs
 12. **Liaisons with Elder Law Section** – Charles F. Robinson, Marjorie Wolasky and Sam W. Boone, Jr.
 13. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brian C. Sparks, Donald R. Tescher and Harris L. Bonnette, Jr.
 14. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
 15. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi, J. Richard Caskey and Jerry Wells, Co-Vice Chairs
 16. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; John C. Moran, Paul

Roman and James George, Co-Vice Chairs

17. **Trust Law** – Shane Kelley, Chair; Angela M. Adams and Tami F. Conetta, Co-Vice Chairs
18. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Laura Sundberg and Jerome L. Wolf, Co-Vice Chairs

XV. Real Property Division Committee Reports - *Michael J. Gelfand, Director.*

1. **Ad Hoc Foreclosure Reform** – Jerry Aron, Chair; Mark Brown, Burt Bruton, Alan Fields, and Jeffrey Sauer, Co-Vice Chairs.
2. **Commercial Real Estate** – Art Menor, Chair; Burt Bruton and Jim Robbins, Co-Vice Chairs.
3. **Condominium and Planned Development** – Steven H. Mezer, Chair; Jane Cornett and Christopher Davies, Co-Vice-Chairs.
4. **Construction Law** – Arnold D. Tritt, Chair; Lisa Colon Heron, Scott Pence and Hardy Roberts, Co-Vice Chairs.
5. **Construction Law Certification Review Course** – Lee Weintraub, Chair; Bruce Alexander, Deborah Mastin and Bryan Rendzio, and Co-Vice Chairs.
6. **Construction Law Institute** – W. Cary Wright, Chair; Reese Henderson, Sanjay Kurian and Rachel Peterkin, Co-Vice Chairs.
7. **Governmental Regulation** – Anne Pollack, Chair; Arlene Udick and Vinette Godelia, Co-Vice Chairs.
8. **Landlord and Tenant** – Neil Shoter, Chair; Rick Eckhard and Lloyd Granet, Co-Vice Chairs.
9. **Legal Opinions** – Kip Thornton, Chair; Dan DeCubellis, Vice-Chair.
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alan Fields, James C. Russick and Barry Scholnick, Co-Vice Chairs.
11. **Property & Liability Insurance/Suretyship** – W. Cary Wright and Fred Dudley, Co-Chairs.
12. **Real Estate Certification Review Course** – Ted Conner, Chair; Raul Ballaga and Jennifer Tobin, Co-Vice Chairs.

13. **Real Estate Entities and Land Trusts** – Wilhelmina Kightlinger, Chair; Burt Bruton, Vice-Chair.
14. **Real Property Finance & Lending** – Dave R. Brittain, Chair; Deborah Boyd, Brenda Ezell and Bill Sklar, Co-Vice Chairs.
15. **Real Property Forms** – Homer Duval, III, Chair; Arthur J. Menor and Silvia Rojas, Co-Vice Chairs.
16. **Real Property Litigation** – Marty Awerbach, Chair; Manny Farach and Susan Spurgeon, Co-Vice Chairs.
17. **Real Property Problems Study** – S. Katherine Frazier, Chair; Mark A. Brown, Patricia J. Hancock and Salome Zikakis, Co-Vice Chairs.
18. **Residential Real Estate and Industry Liaison** – Frederick W. Jones, Chair; William J. Haley and Denise Hutson, Co-Vice Chairs.
19. **Title Insurance and Title Insurance Liaison** – Kristopher Fernandez, Chair; Raul Ballaga and Dan DeCubellis, Co-Vice Chairs.
20. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Patricia P. Jones and Karla J. Staker, Co-Vice Chairs.

XVI. Adjournment -- Mr. Belcher thanked those in attendance and especially thanked our sponsors. Mr. Belcher recognized our newest General Sponsor, Wright Private Asset Management, and noted that all of our sponsors and the names of the sponsor representatives are listed in the Agenda beginning on page x. Mr. Belcher reviewed the plans for tonight's dinner. He reported that if any council member did not receive a directory, he or she should e-mail Yvonne Sherron to request one. There being no further business to come before the Executive Council, the meeting was unanimously adjourned at 1:25pm.

Respectfully submitted,

Deborah P. Goodall, Secretary

ADDENDUM A

ATTENDANCE ROSTER NOVEMBER 17, 2012

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2012-2013

Executive Committee	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Belcher, William F., Chair		√	X	X	X		
Rolando, Margaret A., Chair-Elect	√		X	X	X		
Gelfand, Michael J., Real Property Law Div. Director	√		X	X	X		
Dribin, Michael A., Probate and Trust Law Div. Director		√	X	X	X		
Goodall, Deborah P., Secretary		√	X	X	X		
O'Malley, Andrew M., Treasurer	√		X	X			
Spivey, Barry F., Legislation Co-Chair		√	X	X	X		
Swaine, Robert S., Legislation Co-Chair	√		X	X			
Freedman, Robert S., Seminar Coordinator	√		X	X	X		
Boje, Debra L., Director of At-Large Members		√	X	X	X		
Meyer, George F., Immediate Past Chair	√		X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Adams, Angela M.		√	X	X	X		
Adcock, Jr., Louie N., Past Chair		√					
Akins, David J.		√	X	X			
Alexander, Bruce G.	√						
Altman, Robert N.		√					
Altman, Stuart H.		√	X	X	X		

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Arnold, Jr., Lynwood F.	√			X			
Aron Jerry E. Past Chair	√		X	X	X		
Awerbach, Martin S.	√		X	X			
Bald, Kimberly A.	√		X				
Ballaga, Raul P.	√		X				
Banister, John R.	√						
Battle, Carlos A.		√	X	X			
Baumann, Phillip A.		√		X	X		
Beales, III, Walter R. Past Chair	√						
Bedke, Michael A.	√		X				
Bell, Kenneth B.	√						
Ben Moussa, Shari D.	√		X	X			
Bonnette, Jr., Harris L.		√	X		X		
Boone, Jr., Sam W.		√					
Boyd, Deborah	√		X				
Brenes-Stahl, Tattiana P.		√	X	X			
Brennan, David C. Past Chair		√	X				
Brittain, David R.	√		X	X			
Bronner, Tae K.		√	X	X			
Brown, Mark A.	√		X	X	X		
Brunner, S. Dresden		√	X	X	X		
Bruton, Jr., Ed Burt	√		X	X	X		

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Bucher, Elaine M.		√	X				
Bush, Benjamin B.	√						
Butters, Sarah S.		√	X	X			
Buzby-Walt, Anne		√	X				
Carlisle, David R.		√	X	X			
Caskey, John R.		√	X	X			
Christiansen, Patrick T. Past Chair	√		X				
Conetta, Tami F.		√		X	X		
Conner, W. Theodore	√		X	X			
Cope, Jr., Gerald B.	√		X	X			
Cornett, Jane L.	√		X	X			
Davies, Christopher	√		X	X			
DeCubellis, Daniel L.	√		X	X	X		
Detzel, Lauren Y.		√	X	X	X		
Diamond, Benjamin F.		√	X		X		
Diamond, Sandra F. Past Chair		√	X	X	X		
Dollinger, Jeffrey	√		X				
Dudley, Frederick R.	√		X				
Duvall, III, Homer	√		X	X			
Eckhard, Rick	√		X				
Ellison, Jason M.	√		X	X	X		
Emerich, Guy S.		√	X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Ezell, Brenda B.	√		X	X			
Falk, Jr., Jack A.		√	X	X			
Fallon, Cynthia		√	X	X	X		
Farach, Manuel	√						
Felcoski, Brian J., Past Chair		√	X	X			
Fernandez, Kristopher E.	√		X	X			
Fields, Alan B.	√		X				
Fitzgerald, Jr., John E.		√		X			
Fleece, III, Joseph W.		√	X	X			
Flood, Gerard J.		√	X	X	X		
Foreman, Michael L.		√	X	X			
Frazier, S. Katherine	√		X	X	X		
Gans, Richard R.		√	X	X			
Gay, III, Robert Norwood	√		X	X			
George, James		√	X	X			
Godelia, Vinette D.	√		X				
Goethe, Jeffrey S.		√	X	X	X		
Goldman, Robert W. Past Chair		√	X				
Gonzalez, Aniella	√		X	X			
Graham, Robert M.	√		X	X	X		
Granet, Lloyd	√		X	X			
Griffin, Linda S.		√	X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Grimsley, John G. Past Chair		√			X		
Grossman, Honorable Melvin B.		√	X				
Guttmann, III, Louis B. Past Chair	√		X		X		
Hamrick, Alexander H.		√	X	X	X		
Hancock, Patricia J.	√			X			
Hart, W.C.	√		X				
Hayes, Honorable Hugh D.		√	X	X			
Hayes, Michael Travis		√	X	X			
Hearn, Steven L. Past Chair		√	X				
Hearne, Frank L.	√						
Henderson, Jr., Reese J.	√			X			
Henderson, III, Thomas N.	√		X	X	X		
Hennessey, III, William T.		√	X	X			
Heron, Lisa Colon	√		X	X			
Heuston, Stephen P.		√	X	X			
Hutson, Denise L.	√		X	X			
Isom, Honorable Claudia R.		√					
Isphording, Roger O. Past Chair		√	X	X	X		
Johnson, Amber Jade F.		√	X	X	X		
Jones, Darby		√	X				
Jones, Frederick W.	√		X	X			
Jones, Jennifer W.		√	X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Jones, John Arthur Past Chair		√	X				
Jones, Patricia P.H.	√		X	X			
Judd, Robert B.		√	X	X			
Kalmanson, Stacy O.	√		X	X			
Karibjanian, George		√	X				
Karr, Mary		√	X	X			
Karr, Thomas M.		√	X	X			
Kayser, Joan B. Past Chair		√		X	X		
Kelley, Rohan Past Chair		√	X	X	X		
Kelley, Sean W.		√	X	X	X		
Kelley, Shane		√	X	X	X		
Kibert, Nicole C.	√		X				
Kightlinger, Wilhelmina F.	√		X	X			
King, Robin J.		√	X	X	X		
Kinsolving, Ruth Barnes Past Chair	√						
Koren, Edward F. Past Chair		√	X				
Korvick, Honorable Maria M.		√	X	X	X		
Kotler, Alan Stephen		√	X	X			
Kromash, Keith S.		√	X	X			
Kurian, Sanjay	√			X			
Kypreos, Theodore S.		√	X	X			
LaFemina, Rose		√					

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Lane, Jr., William R.		√	X	X			
Lange, George		√	X	X	X		
Lannon, Patrick J.		√	X	X			
Larson, Roger A.	√		X	X	X		
Laughlin, Honorable Lauren C.		√					
Law, Lester		√	X				
Leebrick, Brian D.	√		X		X		
Lile, Laird A. Past Chair		√		X	X		
Little, III, John W.	√		X				
Lucchi, Elisa F.		√					
Lynch, Kristen M.		√	X	X			
Madorsky, Marsha G.		√	X	X	X		
Marger, Bruce Past Chair		√		X			
Marmor, Seth A.		√		X			
Marshall, III, Stewart A.		√		X			
Mastin, Deborah Bovarnick	√		X	X			
McCall, Alan K.	√			X	X		
McElroy, IV, Robert Lee		√	X	X			
Menor, Arthur J.	√		X	X			
Mezer, Steven H.	√		X	X	X		
Middlebrook, Mark T.		√	X	X	X		
Miller, Lawrence J.		√	X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Moran, John C.		√	X	X	X		
Moule, Jr., Rex E.		√	X	X			
Muir, Honorable Celeste H.		√	X	X			
Murphy, Melissa J. Past Chair	√		X	X			
Nash, Charles I.		√	X	X			
Neukamm, John B. Past Chair	√		X	X			
Nguyen, Hung V.		√	X	X			
Norris, John E.	√						
Parady, William A.		√	X	X			
Pasem, Navin	√						
Payne, L. Howard		√	X		X		
Pence, Scott P.	√		X	X			
Pepper-Dickinson, Tasha K.		√	X				
Peterkin, Rachel	√						
Platt, William R.		√	X	X			
Pleus, Jr., Honorable Robert J.							
Pollack, Anne Q.	√		X	X	X		
Polson, Marilyn M.		√	X				
Pratt, David		√					
Price, Pamela O.		√	X	X			
Prince-Troutman, Stacey A.		√		X			
Pyle, Michael A.		√	X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Reddin, Michelle A.	√						
Renzio, Bryan	√			X			
Reynolds, Stephen H.	√		X				
Rieman, Alexandra V.		√	X	X			
Robbins, Jr., R.J.	√		X	X	X		
Roberts, III, Hardy L.	√		X		X		
Robinson, Charles F.		√	X	X	X		
Rojas, Silvia B.	√		X	X			
Roman, Paul E.		√		X			
Russell, Deborah L.		√	X	X	X		
Russick, James C.	√		X	X	X		
Rydberg, Marsha G.	√		X	X			
Sachs, Colleen C.	√						
Sasso, Andrew		√	X	X	X		
Sasso, Michael C.	√						
Sauer, Jeffrey T.	√		X				
Schafer, Jr., Honorable Walter L.		√					
Schnitker, Clay A.	√		X		X		
Schofield, Percy A.	√		X				
Scholnik, Barry A.	√						
Schwartz, Honorable Lawrence A.		√					
Schwartz, Robert M.	√		X	X			

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Scuderi, Jon		√	X	X			
Sheets, Sandra G.		√	X				
Shoter, Neil B.	√		X	X			
Sibblies, Sharaine A.		√		X	X		
Silberman, Honorable Morris							
Silberstein, David M.		√	X	X			
Sklar, William P.	√						
Smart, Christopher W.	√		X	X			
Smith, G. Thomas Past Chair	√		X		X		
Smith, Wilson Past Chair		√					
Sobien, Wayne J.	√		X	X			
Sparks, Brian C.		√	X	X			
Spurgeon, Susan K.	√		X	X			
St. Arnold, Honorable Jack R.		√					
Stafford, Michael P.		√	X	X	X		
Staker, Karla J.	√		X				
Stern, Robert G.	√		X	X			
Stone, Adele I.	√		X	X			
Stone, Bruce M. Past Chair		√					
Suarez, Honorable Richard J.							
Sundberg, Laura K.		√	X		X		
Swaine, Jack Michael Past Chair	√		X		X		

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Taft, Eleanor W.	√		X	X			
Taylor, Richard W.	√		X	X			
Tescher, Donald R.		√	X	X			
Thomas, Honorable Patricia V.		√	X		X		
Thornton, Kenneth E.	√		X	X	X		
Tobin, Jennifer S.	√		X	X	X		
Tritt, Jr., Arnold D.	√		X				
Udick, Arlene C.	√		X	X			
Virgil, Eric		√					
Waller, Roland D. Past Chair	√		X	X	X		
Weintraub, Lee A.	√		X	X	X		
Wells, Jerry B.		√	X	X	X		
White, Jr., Richard M.		√	X	X			
Whynot, Sancha B.		√	X	X			
Wilder, Charles D.		√	X	X	X		
Williamson, Julie Ann S. Past Chair	√			X			
Wohlust, Gary Charles		√	X		X		
Wolasky, Marjorie E.		√	X	X			
Wolf, Jerome L.		√	X				
Wright, William Cary	√		X		X		
Wright, Thomas D.	√			X			
Young, Gwynne A.			X		X		

Executive Council Members	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Zikakis, Salome J.	√		X	X			
Zschau, Julius J. Past Chair	√				X		

RPPTL Fellows	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Hoffman, Brian W.	√		X	X	X		
Khan, Nishad	√		X	X			
Melanson, Noelle M.		√	X	X			
Rao, Tara		√	X	X			

Legislative Consultants	Division		Jul. 28 Palm Beach	Sept. 15 Key Biscayne	Nov. 17 Ashville, NC	Feb. 9 Tallahassee	May 25 St. Petersburg
	RP	P&T					
Adams, Howard Eugene			X				
Aubuchon, Josh	√		X	X			
Dunbar, Peter M.			X	X	X		
Edenfield, Martha			X		X		

RPPTL 2012 - 2013
Executive Council Meeting Schedule
W. Fletcher Belcher's YEAR

Date	Location
July 25 – July 28, 2012	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$199.00 Cut-off Date: June 25, 2012
September 13 – September 15, 2012	Executive Council Meeting Ritz Carlton Key Biscayne Key Biscayne, Florida Reservation Phone # 1-800-241-3333 http://www.ritzcarlton.com/keybiscayne Room Rate: \$169.00 Cut-off Date: August 22, 2012
November 15 – November 18, 2012	Executive Council Meeting/Out of State The Inn on Biltmore Estates Asheville, North Carolina Reservation Phone #1-866-779-6277 www.biltmore.com/stay/rates Room Rate: \$219.00 Cut-off Date: October 15, 2012
February 7 – February 10, 2013	Executive Council Meeting Hotel Duval Tallahassee, Florida Reservation Phone #1-888-236-2427 http://www.hotelduval.com Room Rate: \$149.00 Cut-off Date: January 16, 2013
May 23 – May 26, 2013	Executive Council Meeting / RPPTL Convention The Vinoy St. Petersburg, Florida http://www.marriott.com/hotels/travel/tpasr-renaissance-vinoy-resort-and-golf-club Reservation Phone # 1-888-303-4430 Room Rate \$149.00 Cut-off Date: May 5, 2013

RPPTL 2013 - 2014
Executive Council Meeting Schedule

Peggy Rolando's YEAR

Date	Location
July 24 – 28, 2013	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 888-211-1669 www.thebreakers.com Room Rate: \$206.00 Cut-off Date: June 24, 2013
September 18 – 22, 2013	Executive Council Meeting/Out of State Four Seasons Hotel Ritz Lisbon Lisbon, Portugal Phone # 351 (21)381-1400 www.fourseasons.com/lisbon/ Room Rate: 245 Euros Cut-off Date: August 28, 2013
November 20 – 24, 2013	Executive Council Meeting Ritz Carlton Sarasota Sarasota, Florida Reservation Phone # 800-241-3333 http://www.ritzcarlton.com/sarasota Room Rate: \$205.00 Cut-off Date: October 21, 2013
February 6 – 9, 2014	Executive Council Meeting Ritz Carlton Amelia Island Amelia Island, Florida Reservation Phone # 800-241-3333 http://www.ritzcalton.com/amelia Room Rate: \$199.00 Cut-off Date: January 6, 2014
May 29 – June 1, 2014	Executive Council Meeting / RPPTL Convention South Seas Island Resort Captive, Florida http://www.southseas.com Reservation Phone # 877-597-9696 Room Rate \$165.00 Cut-off Date: May 7, 2014



RPPTL FINANCIAL SUMMARY

2012 – 2013 (July 1 - June 30¹)

Revenue: \$645,540

Expenses: \$ 573,545

Net:	\$ 71,995
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<u>Beginning Fund Balance (7-1-12)</u>
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\$ 843,909

<u>YTD Fund Balance (12-31-12)</u>

\$ 863,985

<u>RPPTL CLE</u>

RPPTL YTD Actual CLE Revenue
\$96,564

RPPTL Budgeted CLE Revenue
\$244,500

¹ This report is based on the **tentative unaudited** detail statement of operations dated 12/31/2012.



RPPTL Financial Summary from Separate Budgets
2012 – 2013 [July 1 - June 30¹]
YEAR TO DATE REPORT

General Budget

Revenue:	\$ 645,540
Expenses:	\$ 573,545
Net:	\$ 71,995

Legislative Update

Revenue:	\$ 46,692
Expenses:	\$ 94,605
Net:	(\$47,913)

Convention

Revenue:	\$ 190
Expenses:	\$4,138
Net:	(\$3,948)

Miscellaneous Section Service Courses

Revenue:	\$ 0
Expenses:	\$ 115
Net:	(\$115)

Roll-up Summary (Total)

Revenue:	\$ 692,367
Expenses:	\$ 672,291
Net Operations:	\$ 20,076

Reserve (Fund Balance):	\$ 843,909
GRAND TOTAL	\$ 863,985

¹ This report is based on the tentative unaudited detail statement of operations dated 12/31/2012.

OVERVIEW SUMMARY

PROPOSAL TO ESTABLISH THE FLORIDA BAR LEADERSHIP ACADEMY

Prepared by Fletch Belcher

1. The Academy would consist of approximately 60 Fellows (with 3 to 15 years of practice experience) each year who would participate in approximately six meetings (Friday afternoon, networking dinner, overnight stay, and Saturday morning) during the year.
2. Among the stated goals of the Academy are to identify, nurture and inspire effective leadership; enhance the leadership skills of a diverse and inclusive group of lawyers; and enhance the diversity of leaders within the Bar.
3. The curriculum for the Academy would include attending Bar events; attending educational programs on Bar structure, developing and sustaining programs, devotion to public service, public speaking, and conducting an effective meeting; developing and implementing a public service project; opportunities to establish relationships with Bar leaders; and networking.
4. Staff support to develop curriculum would come from the Bar's Center for Professionalism and the day-to-day coordinator for the Academy would be the Bar's Manager of Diversity Initiatives.
5. Estimated annual cost per Fellow would be \$3,500 (including \$3,000 for travel, hotel and meals), which would come from: participation fee/tuition of \$500 from the estimated one-half of the Fellows who could afford to pay it; corporate sponsors (\$30,000-\$50,000); The Florida Bar; Bar Sections and Divisions (\$40,000-\$50,000); and law firms and attorneys (\$40,000-\$50,000). Scholarships would be provided to the estimated 30 Fellows who could not pay the \$500 tuition/participation fee.
6. In return for financial participation, Sections of the Bar, Divisions of the Bar, law firms, and attorneys would be able to submit candidates for appointment as Fellows. The final appointments of Fellows would be made by the President-elect of The Florida Bar.
7. Upon graduation from the Academy, Fellows would designate a preference as to where they would like to get involved and an effort would be made to assign mentors who will assist graduate Fellows with a smooth transition into their preferred committee, section or division.
8. It appears that the total estimated expense of the proposal (including Bar support services) would be \$111,895 for 2012-13 and \$276,350 for 2013-14.

The Council of Sections has approved a motion to provide President-elect Pettis with a letter supporting the creation of the Academy. Most of the Sections who voted in favor of that motion requested that it be noted that the motion made no mention of any mandatory financial contributions by sections to the Academy.

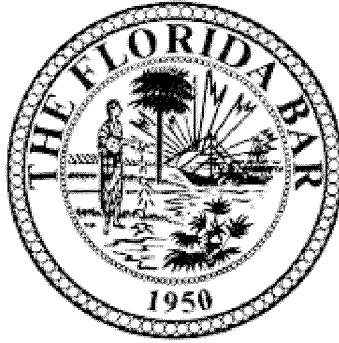
PEC Materials for:

Proposal for a Florida Bar Leadership Academy and Standing Committee

A.	Proposal for a Florida Bar Leadership Academy.....	1
B.	Historical Perspective/Mission Statement	2
C.	Program Design	4
D.	Funding and Expenditures	6
E.	Program Implementation	7
F.	Draft of Curriculum	10
G.	Request for a Florida Bar Leadership Academy Standing Committee.....	15
H.	Synopsis of Other State Bar Association Leadership Academies	25
I.	Proposed Budget.....	35

**December 6, 2012
9:00 a.m. to 12 Noon
Amelia Island, FL**

AGENDA ITEM: VI



THE FLORIDA BAR LEADERSHIP ACADEMY

Training Today • Leading Tomorrow

LEADERSHIP ACADEMY PLANNING COMMITTEE

NEW PROGRAM GUIDELINES

I. HISTORICAL PERSPECTIVE

A Florida Bar Leadership Academy (hereinafter the “Academy”) was envisioned by Florida Bar President-Elect Eugene Pettis, after evaluating the Bar’s Strategic Plan and analyzing the landscape of Bar members available to meet the Bar’s long term articulated goals. Initially, President-Elect Pettis worked closely with Florida Bar Executive Director Jack Harkness, the Diversity Initiatives Manager Arnell Bryant-Willis, and Attorney Renee Thompson, to explore how other Bars across the country were developing new leaders to meet the challenges of tomorrow. In considering the best format for this program, an overview and analysis was conducted of other Bar Association Leadership Academy programs to consider alternative versions and components. The list of Leadership Academy programs reviewed included, but was not limited to, the Maryland Bar, the New Hampshire Bar, the Nebraska Bar, the South Carolina Bar, the Missouri Bar, the Ohio Bar, the North Carolina Bar, the Colorado Bar, the Washington State Bar and the Georgia Bar. Those programs were reviewed with an eye toward identifying which components would best meet the needs of The Florida Bar. Thereafter, a larger planning team, the Leadership Academy Planning Committee, was assembled to develop the program more fully and create a proposal for the program. This planning team also included: Florida Bar President Gwynne Young, Attorney Michael Faehner, Attorney Michelle Suskauer, The Honorable Pauline Drake, Attorney Sean Desmond, Attorney Cynthia Everett, Bar Assistant Director of Finance and Accounting Beth Brenneis, Florida Bar Director for the Center of Professionalism Linda Calvert Hanson, Florida Bar Assistant Director for the Center of Professionalism Jacina Parson, and Florida Bar Director of Meetings and Conventions Kathy Tucker.

II. STATEMENT OF PURPOSE AND GOALS

The Florida Bar Leadership Academy is a multi-session training program designed to assist a diverse and inclusive group of lawyers in becoming better leaders, while assisting them in identifying opportunities for future leadership roles within The Florida Bar and the legal profession. Each year a select group of participants, chosen from attorneys who have practiced 3 to 15 years, are selected from applications submitted to the Bar. These participants will be referred to as “Fellows.” In an effort to achieve diversity and wide range inclusion among participants, qualified individuals will be sought from different backgrounds, large and small law firms, the private and public sectors, different practice areas, bar sections and divisions, voluntary and specialty bars, and different geographical areas of the state. At the heart of this program is the Bar’s belief that inclusion is the pathway to unity.

During their term of one year, Fellows will follow a curriculum tailored to enhance their knowledge base and experience, including attending Bar events, special educational programs on topics

such as Bar structure, developing and sustaining programs, devotion to public service, public speaking and the Speakers Bureau, conducting an effective meeting, and developing and implementing a public service project, and many other related areas. *See Proposed Draft Curriculum, Appendix A.* Fellows will have the opportunity to establish relationships with Bar leaders, including former Bar Presidents, Board of Governors members, alumni of the Academy, as well as current Bar leadership, to learn more about the inner workings of the Bar and their role within the legal profession, while enhancing their personal leadership skills. Networking is a significant part of the Academy, wherein the Fellows develop relationships that will last long after the Academy. The skills the Fellows learn will benefit the Bar, their local voluntary or specialty bar associations, their firms, and the public as a whole.

The Mission of the Academy is to enhance the skills of a diverse and inclusive group of lawyers selected from across the state that will enable them to become effective leaders throughout the Bar, our profession, and the greater community. Thus, the goals of the Academy include:

- ★ To enhance leadership skills of a diverse and inclusive group of lawyers;
- ★ To identify, nurture and inspire effective leadership within the Bar and the legal community;
- ★ To enhance the diversity of leaders within the Bar;
- ★ To build relationships among Bar leaders across disciplines within the profession; and
- ★ To raise the level of awareness and engagement among lawyers regarding issues facing the legal profession through the study of ethical, professional and public service issues.

The goals and objectives of the Academy articulated above conform to existing Standing Board Policies, the Integration Rule and the Bar's strategic plan, and they are compatible and achievable. It will take approximately one year for the first class of Fellows to complete the program curriculum, with consecutive classes of Fellows graduating from the program each year thereafter.

During its inaugural year, this program seeks to reach approximately 60 attorneys statewide to serve as Fellows. Ultimately, the size of the Fellowship Class will be driven, in part by the applications of interested members. In reviewing other states, the number of Fellows has been approximately 25. However, it should be noted that most of these states Bar membership is significantly smaller than the Florida Bar with state geographical areas nowhere near the dimensions of the State of Florida. Therefore, the proposed 60 member class is thought to be well within the percentage of other state models.

Beyond the learned skills these Fellows will benefit from personally, this program seeks to instill an in-depth understanding of The Florida Bar and how it's various component parts can best function together. A part of the vision for the Academy is for it to nurture the spirit of inclusion across all of the Bar's boundaries.

With approximately 60 Bar members being selected as Fellows on an annual basis, the benefits, directly and indirectly, of the leadership skills which each Fellow will develop will be returned to their individual organizations and communities with the hope that they will assist those entities to greater heights. Additionally, these Fellows will become ambassadors for the Bar and the greater good of the legal profession.

III. PROGRAM DESIGN

In developing this program, the Planning Committee reviewed various leadership academies around the country. While there is great variation among each program, the Planning Committee pulled the components that best suited the needs of The Florida Bar and is not aware of any programs within Florida dedicated to the profession of law which meet the vision of the Academy.

The concept of a Leadership Academy has been tested on a number of levels. Not only has the Planning Committee studied closely and spoke with participants of other state Bar Academies, but also has reviewed a couple of examples of leadership programs within County Bars in Florida. One in particular, is the Orange County Bar Association (OCBA). Past President, Mayanne Downs was instrumental in the development of that Program and has also reviewed this proposal concept. She believes the Academy addresses a much needed subject matter and curriculum, which will only supplement efforts such as those of the OCBA.

It is believed that the effect of the Academy on the Bar will be a unifying force. It is designed to create involvement of every sector of The Bar, including voluntary bars, sections, divisions, law firms, large and small, as well as the judiciary. Moreover, as a part of the curriculum, each Fellow will designate a preference of where they would like to get involved after graduating from the Academy. Efforts will be made to establish a mentorship for Fellows to facilitate a smooth transition into their preferred committee, section or division.

The curriculum of the Academy is designed to address each of the objectives of the Bar's strategic plan. During the course of the year, there will be specific lessons designed to highlight the various goals and issues addressed by the plan and to create a fresh dialogue regarding solutions. Additionally, the curriculum will enhance the skills of the Fellows and hopefully ignite a passion in the participants to become a part of the solution.

The Planning Committee sought to formulate the proposed program with three criteria in mind: Will it work? Is it sustainable? And will it make a significant difference over time in its articulated goals? The Planning Committee believes this proposal meets these criteria and proposed the following program design:

Due to the size of our state and the hope that regional leaders would become more connected on a local level, the structure of the Academy was determined to include three regional branches:

1. South Florida (Dade, Broward, Palm Beach, and Naples areas)
2. Central Florida (Orlando, Tampa, Sarasota and Gainesville areas)
3. North Florida (Tallahassee, Jacksonville, and Pensacola areas)

The program will allow each branch to have one meeting in each of its main designated areas, rotating locations throughout its regional branch territory in order to maximize speakers/guest lecturers. The goal will be for each region to meet approximately once every other month, on the same designated date, for a total of six meetings and graduation. These group meetings will include three full group meetings of all of the branches at the Bar's Annual Convention, Fall meeting, and January Tallahassee meeting and three regional branch meetings. At the conclusion of the program the Fellows will participate in graduation at the Bar's Annual Convention.

Over the past five years, the Bar has observed a clear trend of decline with members willing or able to travel for Bar meetings. This is believed to be a function of cost and time. In order to minimize the pressures of travel, the Planning Committee hopes that the regional branches format will facilitate greater participation. A secondary benefit to three branches is that by dividing into regions, it will enhance the networking opportunities of Fellows among those individuals that they will spend most of their professional time with on the local level.

Each Fellow will receive a mentor who will be assigned by the Leadership Academy Committee (LAC). *See Request for Standing Committee, Appendix B.* The LAC will be charged with overseeing the activities of the Academy, the Fellows, and their activities. The President-elect of the Bar will appoint the Chairperson of the LAC and its members. The President-elect will also appoint two co-chairs for each regional branch who will work under the chairperson in the coordination and administration of the program. The members of the LAC should be reflective of the State, our profession, and the Bar's goal of inclusion. The Immediate Past-President of the Bar will also be invited to serve a year on the LAC. It is believed that this will bring a wealth of knowledge and continuity to the LAC and the Academy.

Further, the Academy will fit into the existing Bar organization structure as a leadership skills program. The Center for Professionalism will act as the curriculum program coordinator, and in cooperation with the LAC members, will be responsible for the curriculum for the annual Academy in an effort to maintain uniformity across its regional branches. Members of the LAC, along with assigned Bar staff, will be responsible for coordination of all of the activities therein on both the State and regional level. In addition, the Manager of Diversity Initiatives for the Bar will be assigned to the Academy as a Staff Liaison and day to day coordinator of the Academy.

IV. PROGRAM FUNDING AND EXPENDITURES

Funding for the program will be primarily generated from scholarships, sections, divisions, law firms and attorneys. A secondary source of funding will come from general Bar revenue. Additionally, Fellows will each be asked to pay an Academy Participation fee of \$500.00 to help offset their program costs.

The Planning Committee has already had very promising preliminary discussions with a few of the larger Sections regarding their financial contribution of scholarships to the Academy. They have stated a clear interest in participating and can expect there will be similar interest among other Sections and the two Divisions of the Bar. In return for scholarship participation, each of these entities will be able to submit candidates for consideration for Fellowship into the Academy.

Similarly, law firms and attorneys will be encouraged to make scholarship contributions to the Academy in return for submitting an applicant for consideration for Fellowship.

Another source of financial support for the Academy will come from corporate sponsorships. The Planning Committee has worked with Terry Hill who is most familiar with corporate sponsorships for bar activities on this issue. Terry Hill has identified several corporate organizations that he believes are prime candidates for support, including but not limited to, FLMIC, LexisNexis, West, and InReach for example. Terry Hill recently communicated with a representative from FLMIC and he learned that they have already set aside \$10,000.00 for sponsorship of the Academy. Apparently, many corporate sponsors are very interested in an activity such as this due to the substance of the Leadership Academy, as well as the length of the program. In fact, it is perceived that a program such as the Leadership Academy gives these corporate sponsors a higher profile for a significantly longer period than some of the Bar events which are a single day event.

The Planning Committee has worked with an assumption of 60 Fellows in the inaugural class and has also assumed that 30 of those individuals will need scholarship support. At a rate of \$3,500.00, inclusive of Academy Participate Fee of \$500.00 and \$3,000.00 for travel and hotel reimbursement, that requires revenues of \$105,000.00. Additionally, the other 30 Fellows who are able to pay their own expenses, will generate an additional \$15,000.00, from the required \$500.00 as an Academy Participation fee.

A conservative estimate for first year corporate sponsorships is \$30,000.00 to \$50,000.00. Scholarships from Sections and Divisions are estimated at \$40,000.00 to \$50,000.00 and scholarships from law firms/attorneys are \$40,000.00 to \$50,000.00. *See Memorandum of Terry Hill dated Nov. 30, 2012, Appendix C*

Based on all reasonable estimates, the impact on the Bar's General Revenue Fund will be

minimized by the above-referenced revenue sources. It is expected that the LAC will have a designated sub-committee that will be responsible for funding raising efforts year round. This way, it is believed the LAC can maximize our opportunities for contributions from all sources and generate the funding for the Leadership Academy. Neither Bar leadership or Board of Governors will be expected to take on fund raising responsibilities. The LAC will coordinate its efforts of fund raising to be in line with the Bar's budget process, so that any consideration of Bar funding will be considered during the Bar's normal budget development and review process.

A more detailed plan of the budget projections for the program has been compiled by the Bar's Budget Office. *See Proposed Budget Appendix D.*¹ It is expected that after the first year, some of the projected line items will be reduced to account for first year costs, such as curriculum development and website development.

V. PROGRAM IMPLEMENTATION

Implementing and administering the Academy will require more than a casual or ad hoc effort. While the Bar already has in place all necessary personnel, it will be required to allocate their staff time to develop and finalize the curriculum materials for the program and finalize meeting space for the full group meetings, attend full group and regional meetings, organize speakers, etc. A checklist for the anticipated time line for implementation of the program has been compiled. *See Implementation Checklist, Appendix E.*

There are three components to participation in the Leadership Academy:

1. Fellows will be required to attend meetings approximately every other month consisting of programs on topics to develop leadership skills and knowledge of the Bar. Generally, the program format will consist of a half-day session lasting 4 hours in duration, followed by a networking dinner and an overnight stay. The following day will consist of another 3-4 hour half-day program. This will provide for a 24 hour program format which will increase opportunities for comradery and networking. CLE credit for certain sessions will be sought and materials for these programs will be printed from the Academy website.

2. During the mid-point of a Fellow's Academy year, Fellows will be asked for two preferences of a Bar division, section, or committee they would like to participate in upon graduation from the Academy. The LAC will notify the Bar division, section, or the Bar President-elect designate of a Fellows desired request to participate so that the Fellow can be considered. The LAC will only facilitate introductions. The appointments will be at the sole discretion of the individual section, division

¹ Projections were originally based on a larger inaugural class than included in this proposal, 90 rather 60 Fellows.

or President-Elect.

3. Fellows, as a group, will be asked to create and implement a public service project to serve Florida. The project is to be developed by the Fellows. They will present their ideas to the Bar President and the LAC at the Fall joint meeting in September, and upon approval, the implementation of the project is the sole responsibility of the Fellows. Fellows will be responsible for assigning duties for the project to ensure that all necessary tasks are completed prior to the conclusion of the Academy program.

Attendance at meetings will be mandatory. While emergencies will always happen, attendance is expected at all events, as ample notice for meeting dates will be given. Fellows may be dropped from the program by the LAC for non-attendance. Excused absences by a Fellow must be sought in advance from the LAC Chair.

Meetings will be held on Fridays at the various locations throughout the state. In addition, Fellows will be required to attend the Annual Bar Convention in June from Friday-Saturday, the Fall Joint Meeting in September on Thursday, and the January Tallahassee Meeting on Friday.

Fellows will be responsible for their travel and accommodations to each meeting. A block of hotel rooms will be offered for reservations for the full group meetings. Meals will be provided during official meetings by the Academy.

A Leadership Academy Participation Fee of \$500.00 will be due upon acceptance into the Academy. Limited financial aid and partial scholarships may be available, depending on resources. Law offices, Sections and Divisions of the Bar, and Bar leaders will be encouraged to sponsor Fellows of the Academy for \$2,500 each, which includes the Fellow's participation fee and reimbursement for travel to the joint meetings.

Starting in March of each year, individuals may submit an application online. It is highly encouraged that Bar Sections and Divisions, Voluntary and Specialty Bar Associations, and other members encourage individuals to submit applications for the Academy. Candidates may also be nominated by other Bar members, their firms, or any member of the Judiciary. It is also expected that members of the Bar's Board of Governors will encourage individuals from their circuit to seek application for Fellowship in the program. All Voluntary and Specialty Bar Associations will be sent information about the Leadership Academy and asked to inform their members about the program.

The deadline for the inaugural 2013-2014 Leadership Academy Class will be April 1, 2013. Applications received after April 1, 2013 will not be considered. Applications should be emailed to Arnell Bryant-Willis and will be reviewed by the LAC for inclusion recommendations for the program. The ultimate roster of Fellows accepted into the Academy will be decided by the President-elect of the

Bar in cooperation with the LAC, before the Academy year. Fellows can contact the office of Diversity Initiatives of The Florida Bar with questions regarding the application process.

There will be a number of challenges and uncertainties which the Planning Committee will need to address. One such challenge is to make sure that in order to select a diverse and inclusive class, there must be provisions in place for financial assistance for those that cannot afford the tuition so that money will not prohibit full inclusion. Through various scholarships and sponsorships, the Planning Committee believes this challenge can and will be addressed.

Another challenge will be to maintain uniformity of the curriculum across all branches. It is important that each Fellow receive a similar experience, no matter where they are participating. With the help of the Center of Professionalism, a strong curriculum is being designed which will make it easy for duplication and implementation across the state.

Each branch will utilize the wealth of leadership in the various communities to assist with the curriculum. Current and former Bar leaders, including past Presidents, BOG members and judicial members, will be asked to participate in the programming.

Thirdly, it will be important to work closely with law firms, sections and divisions to encourage and support their members to participate in the Academy. The Academy must be relevant even to those that may have already been involved in leadership at some point, but believe that their skills can be enhanced, and there is value to a statewide network.

VI. PROGRAM EVALUATION

The Academy should be reviewed in detail annually by the LAC and by the Board of Governors overall at the three year mark to determine if its continuation is desirable. It is the hope of the planning committee to graduate 180 Fellows from the Academy within a three year period. The effectiveness and efficiency of the program can be measured annually through satisfaction surveys of the Fellows, the LAC, and other stakeholders who have participated in some manner.

Additionally, the LAC will work with sections and divisions to track whether there are demonstrative increases in their diversity and inclusion efforts which can be attributed to the Academy.

APPENDIX A

PROPOSED DRAFT CURRICULUM

Sample Academy Curriculum (CLE hours TBD)
working draft as of 11/13/12 by Center for Professionalism²

June, 2013

Kick-off Retreat at 2013 Annual Bar Convention (Boca Raton)

Full Group Meeting**Fri., June 28th** (5.30)*Theme: "Lawyers as Leaders"*

10:30 a.m.

General Assembly (optional)

2:00 - 2:15 p.m.

Welcome: President Eugene Pettis

2:15 - 3:00 p.m.

Keynote: Lucas Boyce

3:00 – 3:15 p.m.

Program Overview: Goals, Process, How the Program Year will Unfold, Renee Thompson

3:15 - 3:30 p.m.

Break

3:30 - 3:50 p.m.

"Lawyers as Leaders" Steve Zack

3:50 - 4:20 p.m.

Overview of The Florida Bar: Its History and Structure, Mayanne Downs

4:20 - 5:00 p.m.

Harnessing the Power of Relationships: Mentors and Your Network, Jacina Parson

5:30 - 7:30 p.m.

President's Reception: Meet and mingle with Leadership Academy Fellows, LAC members and mentors

Saturday, June 29th (3:00)

8:40 - 10:00 a.m

Breakfast with Council of Sections Leaders

10:00 – 12:00 p.m.

Using Your DISC Analysis for Self-Awareness and to Lead a Team Collaboratively with those Who Possess Different Work Style Preferences and Personalities, Role Playing Exercise and Team Building Activity, Nora Bergman,

July, 2013 (4:00),*Theme: "Your Leadership Journey Begins"*

Regional Meetings: Educational Session

30 mn

FL Bar 101: Focus on BOG & 3 sections (Public Interest Law Section, Environmental and Land Use Law Section, Elder Law Section)

30 mn

Balancing Personal, Volunteer and Work Life as a Leader

30 mn

Achieving Workable Unity: The Art of Motivating Others & Delegating

30 mn

Public Service Concept and Brainstorming Session

20 mn

Break

² Modifications made by the Planning Committee for proposal purposes.

50 mn	Resolving Conflict Professionally (dealing with difficult people.)
50 mn	The Legacy of a Leader: Footprints on our Legal Community (Panel discussion of lawyer accounts and the impact that they have had on legal community)
<u>Continued (4:00)</u>	<i>Theme: "Leading by Design: Project Management from A-Z"</i>
	Regional Meetings: Educational Session
30 mn	FL Bar 101: Focus on Divisions (YLD & Out of State) & 3 sections (Business Law, Appellate Practice, ADR Sections)
20 mn	TFB's Current Strategic Plan (2012-2015) and Annual Revision Process for Next Strategic Plan
40 mn	Strategic Planning: Identifying a Common Vision, Building Consensus and Synergy
40 mn	Measuring Outcomes, Assessing Resources, Work Flow Analysis, and Assessing Fiscal Impact
20 mn	Break
45 mn	Obtaining Stakeholders, Creating & Launching an Action Plan for Community Service Project
45 mn	Finalize Community Service Project for submission to LAC
<u>September, 2013 (4.5)</u>	<i>Theme: "Leading for Tomorrow"</i>
	Full Group Meeting:
30 mn	FL Bar 101: Focus on Committees, GPSSF, Equal Opportunity Law Section & Henry Latimer Center for Professionalism
50 mn	Leading Lawyers in a Diverse Society: Cultural Competency and Beyond, Wilhelmina Tribble
50 mn	Effective Facilitative Leadership Styles and Essentials of Leading a Team, Alexa Sherr Hartley
20 mn	Break
30 mn	Understanding Generational Expectations, Linda Calvert Hanson
60 mn	Future of the Legal Profession: Issues for New Leaders, Harrison Coerver
30 mn	Oral Presentation of three Regional Service Projects for Bar Leaders' Approval

November, 2013 (4.00) *Theme: “Effective Interaction and Communication as Leaders”*

	Group Meeting: Educational Session
30 mn	FL Bar 101: Focus on Programs (LOMAS, LALP, Board Certification, Lawyer Referral) and 3 sections (Administrative Law Section, Government Lawyer Section, City, County and Local Government Law Section)
30 mn	Communicating for Leaders, Honing Your Active Listening & Non-Verbal Communication Skills (Speakers Bureau)
30 mn	Agenda Setting, Leading and Conducting a Productive Meeting
60 mn	360 Constructive Feedback: Asking for, Receiving and Providing Feedback with role playing exercises
20 mn	Break
60 mn	E-filing, Social Media, and Technology for Today’s Leader
30 mn	Service Project Planning Time

Continued (4:15) *Theme: “Finding your Role in the Legal Profession”*

	Group Meeting: Educational Session
30 mn	FL Bar 101: Focus on Specialty Bars & 3 sections (Real Property, Probate & Trust Law Section, Tax Law Section, International Law Section)
75 mn	Professionalism & Civility Matters with Value Cards Group Exercise
30 mn	Service Project Planning Time
20 mn	Break
60 mn	Panel: Exploring New Roles: Running for Public Office, Getting on the Bench, Serving on Committees, Seeking Endorsements & Appointments
40 mn	Process 360-Constructive Feedback Received from Peers with Group Discussion

January, 2014 Tallahassee (7:30)**Full Group Meeting: Theme: “Laws for Leaders”**

8:15 – 9:00 a.m.	Breakfast with the Chief Justice
9:00 – 9:50 a.m.	Overview on The Florida Bar’s policy on legislative positions: interacting with legislators, legislative protocol, making presentations to legislative committees. Roles as committee members and as witnesses, taking positions in support and opposition to a house bill studied in advance, TFB white papers. Paul Hill and Bar Lobbyists

9:50-10:10 a.m. Break
 10:10-10:40 a.m. Tour of The Florida Bar
 10:40 – 11:00 a.m. Florida Supreme Court Historical Society
 11:00 – 12:00 a.m. Observe BOG Meeting & hear Chief Justice’s talk
 12:00- 1:00 p.m. Lunch with the Board of Governors;
 1:15 – 1:45 p.m. Maximizing Your Media and Public Relations Efforts – Francine Walker
 1:45 – 2:30 p.m. Tour of Florida Supreme Court

March, 2014 (4.0)

Theme: “Guardians of the Legal Profession”

Regional Group Meeting: Educational Session
 30 mn FL Bar 101: Focus on Voluntary Bars & 3 sections (Labor & Employment Law Section, Trial Lawyers Section & Workers’ Compensation Law Section)
 50 mn Avoiding Malpractice Claims (FLMIC Risk Manager & Directors)
 25 mn Overview of TFB Discipline System and Grievance Process
 20 mn Break
 45 mn Service Project Planning Time
 70 mn Grievance Committee Service: Perspectives from a Grievance Committee Chair and Members

Continued (4.0)

Theme: “Leading by Example: Community Lawyering and Servant Leadership”

Regional Group Meeting:
 30 mn FL Bar 101: Focus on Pro Bono & 4 sections (Criminal Law Section, Entertainment, Arts & Sports Law Section, Family Law Section and Health Law Section)
 15 mn Servant Leadership: One Campaign Video and Florida Bar Foundation
 50 mn Panel of Local Community Service Providers: Benefits of Pro Bono Service
 150 mn Community Service Project

June, 2014

Full Group Meeting: Fellows graduation at the Annual Bar Convention (in Orlando).

APPENDIX B
REQUEST FOR STANDING COMMITTEE

Request for a Standing Committee for the Leadership Academy

Name of Committee: Leadership Academy Committee

Type of Committee: Standing Committee

Mission: The mission of the Leadership Academy Committee will be to set up and implement The Florida Bar Leadership Academy. The committee will also handle other related tasks as assigned by The Florida Bar President.

Composition: The committee shall be composed of 12 to 15 members, as determined by the President-elect. The members of the committee should be reflective of the State, our profession, and the Bar's goal of inclusion. The President-elect of the Bar will appoint the Chairperson of the LAC and its members. The President-elect will also appoint two co-chairs for each regional branch who will work under the chairperson in the coordination and administration of the program.

Meetings: The committee will meet twice during the 2013-2014 Bar Year (during the 2013 Fall Meeting and the 2014 Bar's Annual Convention), and will meet by conference call as needed. This schedule will continue for consecutive years thereafter. Due to the planning required for the kickoff of the Academy program, the committee will also meet at the Bar's Annual Convention in 2013 and participate in conference calls as needed.

Rationale: The Florida Bar Leadership Academy is a multi-session training program designed to assist a diverse and inclusive group of lawyers in becoming better leaders, while assisting them in identifying opportunities for future leadership roles within The Florida Bar and the legal profession. Each year a select group of participants, chosen from attorneys who have practiced 3 to 15 years, are selected from applications submitted to the Bar. These participants will be referred to as "Fellows."

The Leadership Academy Committee (LAC) will be charged with overseeing the activities of the Academy, the Fellows, and their activities. Applications to the program will be reviewed by the LAC for inclusion recommendations for the program. The ultimate roster of Fellows accepted into the Academy will be decided by the President-elect of the Bar in cooperation with the LAC, before the Academy year.

The Center for Professionalism will act as the curriculum program coordinator, and in cooperation with the LAC members, will be responsible for the curriculum for the annual Academy in an effort to maintain uniformity across its regional branches. Members of the LAC, along with assigned Bar staff, will be responsible for coordination of all of the activities therein on both the State and regional level. Also, the LAC will work with sections and divisions to track whether there are demonstrative increases in their diversity and inclusion efforts which can be attributed to the Academy.

Budget: The committee will be staffed by the Manager of Diversity Initiatives for the Bar who will be assigned to the Academy as a Staff Liaison and day to day coordinator of the Academy, working with the LAC. The Manager of Diversity Initiatives for the Bar regularly attends The Florida Bar's Annual Convention and Fall Meeting. It is anticipated that the following expenses will be required for the committee:

Proposed Funding and Expenditures

Postage	\$ 632
Printing	\$ 1,200
Supplies	\$ 150
Photocopying	\$ 225
Conference Calls	\$ 400
Committee Expenses	\$1,000
Employee Travel	\$5,600
Central Support Staff	<u>\$27,098.80</u> (allocation of staff time at a rate which includes an overhead factor to account for use of office space and office equipment.)

Total	\$36,305.80

Information Systems Usage

Minimal.

APPENDIX C

MEMORANDUM OF TERRY HILL DATED NOV. 30, 2012



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

John F. Harkness, Jr.
Executive Director

850/561-5600
www.FLORIDABAR.org

MEMORANDUM

To: Eugene Pettis
From: Terry Hill
cc: Mr. Harkness
Date: November 30, 2012
Re: Leadership Academy Potential Funding Sources

It was a pleasure to be included in the Leadership Academy discussion this morning. During and immediately following the meeting, I began to think of potential funding sources for the proposed Leadership Academy.

My initial thoughts are that potential funding (in addition to potential tuition from candidates) would come from three primary sources consisting of the various Bar Sections and Divisions that may have an interest in contributing and possibly submitting nominees as potential candidates to the Academy; corporate sponsors such as FLMIC, LexisNexis, West, InReach, etc; and law firms or individual attorneys.

Ideally, there would be sponsorship levels across the three groups of potential sponsors so that each of the Bar Sections or Divisions will be able to financially contribute at a level that works for them. Some Sections have more financial resources than others, but all Sections should have the opportunity to be included in the contribution mix at a level that is affordable for that particular Section. The same is true for corporate sponsors and law firms/attorneys. One Section or law firm may be willing and able to come in at a \$10,000 sponsorship level while others may be more comfortable with \$5,000 or \$2,000.

My understanding is that there is a need for initial funding of the inaugural program as well as a level of ongoing funding to sustain the program. I recommend annual bronze, silver, and gold sponsorship levels across the different potential sponsorship groups.

THE FLORIDA BAR

Bar Section and Divisions

Gold	\$10,000
Silver	\$ 5,000
Bronze	\$ 2,000

Corporate Sponsors

Gold	\$10,000
Silver	\$ 5,000
Bronze	\$ 2,000

Law Firms / Attorneys

Gold	\$10,000
Silver	\$ 5,000
Bronze	\$ 2,000

The initial revenue projections may look something like the below estimates.

Inaugural Contributions/Funding

Sections/Divisions	\$30,000 - \$50,000
Corporate	\$30,000 - \$50,000
Law Firms/Attorneys	<u>\$60,000 - \$80,000</u>
Combined Estimate	\$120,000 - \$180,000

As a general rule the sponsorships would be annual sponsorships with the opportunity (and encouragement) to renew each year similar to Bar Annual Convention sponsorships, but multi-year sponsorships could be made available. New sponsors would need to be recruited/attracted each year so as to replace non-renewing annual sponsors who are unable to renew for continuing years for whatever reason.

You could include additional funding options such as a Past Presidents Academy Roundtable (or some other title) for contributions from past Bar presidents or offer the funding of endowed Academy scholarships to fund a named scholarship for a particular law firm or attorney who has demonstrated leadership in the legal profession such as the “John Doe Leadership Academy Scholarship”, “ABC Law Firm Leadership Scholarship”, or “John Doe Memorial Leadership Academy Scholarship”.

The sponsorship efforts could be spearheaded by a subcommittee of the Leadership Academy similar to the sponsorship efforts of the Annual Convention Committee. Based on a few preliminary conversations I have had with potential sponsors, I know for fact there is an interest in sponsoring this type of substantive program. FLMIC indicated that they have set aside \$10,000. If I can be of further assistance, please contact me.

APPENDIX D
PROPOSED BUDGET

APPENDIX E

IMPLEMENTATION CHECKLIST

The Florida Bar Leadership Academy Monthly Checklist

December 2012

- Begin website concept development (Renee, Arnell and LAC Co-Chairs)
- Prepare draft letters to Voluntary and Specialty Bar Leaders regarding program and sponsorship opportunities (Gene and Renee)
- Begin logo and branding development (Gene, Michelle and Renee)
- Begin curriculum material development (Linda, Jacina, Renee, LAC Co-Chairs)
- Give LAC member recommendations to Gene (LAC Co-Chairs)
- _____

January 2013

- Appoint LAC members (Gene)
- Attend Budget Process for inclusion of Academy in 2013-2014 budget (Gene)
- Send Letters to Voluntary and Specialty Bar Leaders regarding the program and sponsorship opportunities (Gene and Renee)
- Begin application for Fellows and scholarship application to post by March 1st (Arnell and Renee)
- Continue website development (Renee, Arnell, and LAC Co-Chairs)
- Coordinate Bar News Article for February 15th publication
- Continue curriculum materials development (Linda, Jacina, LAC)
- _____

February 2013

- Finalize website (Renee, Arnell and LAC Co-Chairs) before Feb. 15th Article.
- Finalize application and scholarship application for Fellows to post by March 1st (Arnell and Renee)
- Publishing of Bar News article highlighting the program- Feb. 15th Edition
- Give schedule to Kathy Tucker for Annual Convention spaces needed. (Arnell)
- Continue curriculum materials development (Linda, Jacina, LAC)

March 2013

- Post Fellows application and scholarship application to website on March 1st
- Run application deadline ad in The Florida Bar News
- Continue curriculum materials development (Linda, Jacina, LAC)
- _____

April 2013

- Fellows application deadline- April 1st
- Select Fellows (Arnell and LAC, Gene)
- Continue curriculum materials development (Linda, Jacina, LAC)
- _____

May 2013

- Send letters to Fellows regarding selection, DISC, and Annual convention info by May 1st
- Order nametags and portfolios for Fellows
- Update website to include Fellows selected for inaugural year.
- Finalize curriculum materials development (Linda, Jacina, LAC)
- _____

Nebraska State Bar Association Leadership Academy

Mission/Goals:

The mission of the NSBA Leadership Academy is to develop the leadership skills of the participants to allow them to make greater contributions to the legal profession and their community.

Goals: To nurture effective leadership with respect to ethical, professional and community service issues; to build relationships among legal leaders from across the state and from across disciplines within the profession; to raise the level of awareness among lawyers regarding the broad range of issues facing the legal profession; to enhance the diversity of leaders within the legal profession and the community as a whole

Key Topics:

Effective Leadership
Legislative Issues
Balancing Work and Life
Public Trust and Confidence in the Judicial System

Locations/Times:

Most sessions will be held at the Roman L. Hruska Law Center in Lincoln. Sessions are scheduled from 8:30 a.m. until 5:00 p.m. and lunch will be provided. Participants are required to attend a retreat and are not to miss more than two sessions.

Number of Participants:

25.

Eligibility:

Members need to be in their third to fifteenth year of practice to apply.

Diversity & Inclusion:

Participants will be selected to ensure diversity in geography, practice type, employment setting, gender and ethnicity.

Tuition

Tuition is \$300, which covers the cost of all programs, meals, receptions, graduation dinner and printed materials. Individual participants are responsible for their own travel and personal expenses. However, mileage and hotel reimbursement will be provided if you are required to travel more than 150 miles to attend a program session. A limited number of scholarships are available.

Maryland State Bar Association Leadership Academy

Mission/Goals:

The mission of the NSBA Leadership Academy is to develop the leadership skills of the participants to allow them to make greater contributions to the legal profession and their community.

Fellows will spend time attending MSBA events, developing and implementing a public service project, as well as attending a special program on public speaking, media relations, interviewing skills, conducting effective meetings, budgeting and many other related areas. Fellows establish a relationship with past Bar Presidents and current bar leaders to learn more about the MSBA and to enhance leadership skills.

Locations/Times:

Six meetings are held throughout the year at various locations (several at headquarters) and three social events (dinner, holiday party, Spring social) are held. Must attend Bar Presidents Conference (Thu-Sat) and Annual Convention (Thu-Sat).

Number of Participants:

Up to 15.

Diversity & Inclusion:

All Local and Specialty Bar Associations are sent information about the Leadership Academy and asked to inform their members about the program.

Tuition:

All expenses are paid except for travel to and from the meetings.

Ohio State Bar Association Leadership Academy

Mission/Goals:

To identify and train lawyers for future opportunities for leadership in the Association, the profession and in the community; to nurture effective leadership with respect to ethical, professional and community service issue; to raise the level of awareness among lawyers regarding the broad range of issues facing the legal profession and to build relationships among legal leaders across state and experience levels and create a cadre of lawyers upon which the OSBA, state and local government entities, local bar associations and community organizations can call upon for leadership and service

Key Topics:

Sessions will cover issues such as leadership, ethics and professionalism; state and local government; access to justice; community service, economic development; etc. Participants will become problem solvers and effective lawyer leaders. Speakers and mentors will include leaders from the bench and bar, state and local government and the community. At least 12 credit hours of CLE should be available for the program.

Locations/Times:

There will be six sessions that will include two one and one-half day sessions (requiring overnight stay) and four day-long sessions. The academy will be from January to July.

Number of Participants:

24.

Eligibility:

Candidates must be in practice at least five years but less than 12 years.

Diversity & Inclusion:

Selection will be based on many factors, including:

- Stated commitment to the goals of the Academy;
- Demonstrated interaction with the legal and civic communities; and
- Diversity (geographic, gender, ethnic, racial, age, disability, etc.).

Tuition

\$950 (includes all meals, material and overnight accommodations). A limited number of full and partial scholarships are available.

Indiana State Bar Association Leadership Academy

Mission/Goals:

To empower and develop lawyers to be informed, committed and involved so that they may fill significant leadership roles in local and state bar associations, in Indiana communities and organizations and to serve as role models in matters of ethics and professionalism.

Key Topics:

Professional facilitators and prominent speakers from various disciplines will inform participants about leadership principles and techniques, the importance of effective leaders in organizations to maximize efficiency and effectiveness, and the challenges and rewards of leadership in action.

Locations/Times:

There will be 5 total sessions: Jan. 19-21, Feb. 13-14, March 8-9, April 12-13 and May 17-18. Meetings are in Indianapolis, Gary, Butlerville and Fort Wayne.

Number of Participants:

25.

Eligibility:

It is limited to ISBA members with less than 15 years of practice.

Tuition:

\$950 covers meals and lodging. Scholarships are available for those demonstrating need.

State Bar of Texas Leadership Academy

Mission/Goals:

This diversity initiative is designed to recruit, train, and retain Texas lawyers for leadership positions in the legal community and the State Bar of Texas.

Key Topics:

Programs are run through the Young Lawyers Association. Topics include understanding leadership style and learning about opportunities for service as bar leaders.

Locations/Times:

The yearlong program consists of two training sessions and concludes with the presentation of group projects during the State Bar Annual Meeting.

Number of Participants:

20.

Eligibility:

Current state bar members. Participants must commit in advance to serving on a State Bar/TYLA/or related-entity committee/board the year following the academy.

Diversity & Inclusion:

Central to the program's mission is ensuring that participant demographics represent the diversity of the State of Texas — culturally, ethnically, geographically, and in practice area.

Arkansas Bar Association Leadership Academy

Mission/Goals:

To create a diverse network of lawyers with the knowledge, skills, and values to provide dynamic leadership to the profession, their communities, and the state.

Goals: To build a statewide network of lawyer/leaders; to provide advanced training to proven community and bar leaders; to foster integrity and public service among lawyers; to encourage lawyers to more effectively discharge their responsibilities in the public interest; to enhance the diversity of lawyer/leaders; to advance the administration of justice by involving more lawyers in bar and community leadership positions.

Key Topics:

The Leadership Academy kicks off with a two and a half day leadership weekend, during which participants learn about their personalities and aptitudes for leadership by taking a Myers Briggs test, meet and learn about each other, learn from outstanding and inspirational leaders, and have some fun as well as serious learning experiences. Topics include: Leadership for Life, The Cost of Leadership, Leadership in a Time of Crisis, Time Management for Lawyers, and An Introduction to Association Leadership.

Legislature & Judiciary: This session of two days will include meetings with various members of the Supreme Court, Court of Appeals, Circuit and District Courts. Participants will also have the opportunity to visit with current legislators and a political campaign advisor to discuss different campaign strategies, and “How to Run for Office”.

Community & Bar involvement: Retreat topics include various ways to take leadership to the next level in your community, including work with Pro Bono, non-profits, and civic organizations.

Pro bono & graduation: The program closes with a graduation ceremony at the Annual Meeting and participation in a Pro Bono project that will serve the local community.

Locations/Times:

Opening Retreat: January 10-12, 2013 at Degray State Park

Legislature and the Judiciary: March 4-5, 2013 in Little Rock

Community and Bar Leadership Retreat: April 19-20, 2013 at Mt. Magazine

Pro Bono and Graduation: During the Arkansas Bar Association Annual Meeting in Hot Springs - June 13, 2013

Number of Participants:

Up to 20. It is currently 18.

Eligibility:

Selection is expected to be competitive. This group of intelligent and curious leaders will have already shown themselves to be actively committed and personally responsible. Most will have from 5 to 15 years of experience in practice, though some may be more seasoned.

Diversity & Inclusion: A diverse network of lawyers will be selected.

Tuition:

\$1,750. In addition to addressing the cost of each program, the fee includes shared lodging during the opening retreat in January (DeGray Lake Resort) and the April program (Mt. Magazine State Park), all program materials, group meals during each session, receptions, registration fee for the Arkansas Bar Association Annual Meeting in Hot Springs and graduation. Individual participants are responsible for their own travel, personal expenses, and lodging (separate or additional), if any, for sessions not included.

Missouri State Bar Association Leadership Academy

Mission/Goals:

To recruit, train, and retain Missouri attorneys who have been admitted for ten years or less for leadership positions in the Missouri Bar.

Key Topics:

The participants complete a leadership training portion of the program that includes an in-depth tour of The Missouri Bar Center in Jefferson City; meeting with various members of The Missouri Bar staff; meeting with Bar Committee Chairs; and meeting with and attending meetings of the Board of Governors. Between September and July, the participants attend workshops focusing on leadership development and completion of a group service project.

Locations/Times:

Members of each year's Leadership Academy class participate in the Missouri Bar Annual Meeting, Board of Governors meetings, committee meetings, and workshops specifically designed for the Leadership Academy.

Number of Participants:

Up to 14.

Eligibility:

State bar members who are under age 40 or have less than 10 years of practice. Upon completion of the group service project, each member of the Academy commits to two additional years of active service in The Missouri Bar. Past Leadership Academy members have served on the Board of Governors, as committee leaders, as YLS Council members, as MoBarCLE volunteer speakers and authors, and as active Missouri Bar committee members.

Diversity & Inclusion:

The Leadership Academy seeks diversity in gender, race, area of practice, and locality of practice. The Academy program anticipates that bringing in attorneys from under-represented arenas will broaden and strengthen The Missouri Bar.

Tuition:

All expenses are paid by The Missouri Bar.

North Carolina Bar Association Leadership Academy

Mission/Goals:

The mission of the Leadership Academy is to help young lawyers become more effective leaders in their communities, whether their communities be the legal profession, their firms, legal departments or other workplaces, other organizations with which they are associated, or their local, state, national or even international communities, or any other environments where lawyers regularly have calls or opportunities for leadership.

Key Topics:

The Leadership Academy utilizes the tools and techniques that have been developed by the Center for Creative Leadership. The 16-lawyer class size is designed to facilitate interaction and an intimate learning environment. Unlike some other bar-sponsored leadership programs, this program will not emphasize substantive information about the profession or the justice system. Instead, the goals of the program are to help young lawyers to: increase personal self-awareness, including strengths and areas for development; develop and refine leadership skills, including inspiring confidence, creating a clear and compelling vision, building trust, communicating effectively, and enhancing team performance; improve their ability to influence others; and use the leadership skills they learn in order to “make a difference.”

Locations/Times:

The first two sessions of the Leadership Academy will be held March 2-3 at the N.C. Bar Center in Cary. Session 3 (March 30) and Session 4 (May 4) will also take place at the Bar Center.

Session 5 on June 1 will be held at the Center for Creative Leadership campus in Greensboro. The final session will be held on Friday, June 22, at the NCBA Annual Meeting in Wilmington, followed by a graduation presentation during the Saturday morning, June 23, General Session of the NCBA Annual Meeting.

Number of Participants:

16.

Eligibility:

Members of the NCBA Young Lawyers Division who have been in practice for two to ten years are eligible to apply.

Diversity & Inclusion:

Participants will be selected from the eligible applicants, taking into account degree of interest and commitment, aptitude for leadership, and diversity of the class (including diversity in geography, practice environments, personal backgrounds, and experience). Because of the small class size and the anticipated large volume of applications, many well-qualified applicants will

not be selected for a given class, but it is hoped that many of them will reapply for subsequent classes in future years.

Tuition:

Tuition is \$450, which is payable prior to the first session and is nonrefundable. Tuition includes all program materials, meals during program sessions, dinner and overnight accommodations after the first and sixth sessions, and registration fees for the NCBA Annual Meeting. Participants are responsible for their own transportation to and from sessions and any meals and overnight accommodations other than those specifically covered.

Assumptions used to Prepare the Budget for The Leadership Academy:

1. Budget is based on 60 total participants, 20 from each of 3 regions.
2. 30 Participants or 50% are assumed to be on Scholarship.
3. There will be 6 total meetings. 3 of these will be group meetings.
The Annual and Midyear Meetings are assumed to be 1 night with 2 days of B/L/D.
The Tallahassee Meeting is assumed to be 1 night with a B/L/D.
The 3 Regional meetings assume an overnight stay with a group Dinner and Breakfast.
4. The Annual Meeting after the program gets started will include 2 classes, the graduating class and the new incoming class.
5. Scholarship recipients will receive a fixed \$2,000 stipend to assist with their hotel, transportation, in-transit meals, and incidentals.
6. The Bar will provide a page on its website for the Leadership Academy.

Leadership Academy Budget Worksheet -----DRAFT 12/3/12

Line Item	Name	12-13 Projected Actual	13-14 Proposed Budget	Description
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REVENUE

35201	Sponsorships		\$120,000	Provides Scholarships for 30 participants at \$4,000 each.
39400	Academy Participation Fee		30,000	\$1,000 per participant for 30 non-scholarship participants.
TOTAL REVENUE		\$0	150,000	

EXPENSES

51101	Employee Travel	1,120	2,800	Fla Bar staff travel to meetings/events - 5 trips
56121	Other Speaker Expense	6,250	8,000	Other Speaker expenses - for 13/14 includes honorarium, travel, and curriculum
52109	Participants Travel - Class of 13/14	11,650	60,000	Transportation allowance and hotel for scholarship participants only
52109	Participants Travel - Class of 14/15		11,650	Transportation allowance and hotel for scholarship participants only
56111	Meals	18,000	68,100	Meeting/event Meals
56113	Coffee		1,000	Meeting/event refreshments
56114	Hospitality	1,000	3,500	Meeting/event Receptions
56178	Supply-materials	4,000	13,450	Materials needed for Meetings/events including diagnostics and certificates
56194	AV Charges	200	1,100	AV charges for meetings
56308	Training Costs		350	Costs to train the "trainers" - could be curriculum costs or supplies
42202	Consultants		2,500	Costs of outside consultants
56999	Other Meeting Expenses		4,300	Other meeting expenses including room rentals
84323	Service Project Expenses		3,000	Costs paid for the service project - 1,000 to each region
84101	Committee Expenses	200	1,000	Any committee expenses such as telephone or equipment rental or refreshments
88252	Course Credit Fee		150	CLE application fee for CLE credit (\$150 each course)
71001	Telephone Direct	100	400	Conference calls - projected at 12 calls for LAC and Trainers
72201	Print Distribution	100	1,000	Printing done through TFB Print Shop - Budgeted by Finance
72401	Photocopying	100	200	Photocopying by TFB staff - Budgeted by Finance
73101	Office Supply	100	150	Office supplies needed for Academy - Budgeted by Finance
75102	1st Class and Misc Mail	500	500	Regular Mail costs - Budgeted by Finance
75401	Express Mail	75	100	Express mail costs - Budgeted by Finance
TOTAL OPERATING EXPENSES		\$43,395	183,250	
NET OUT OF POCKET (EXPENSE)			(33,250)	
83639	Leadership Academy Staff Time	54,450	62,700	Allocation of staff's time at a rate which includes an overhead factor to account for use of office space and office equipment.
86001	Administrative Expense	11,100	27,400	Allocation of TFB administrative overhead. - Budgeted by Finance
86431	Meetings Administration	1,850	1,850	Utilization of TFB Meetings Department staff time - Budgeted by Finance
86532	Advertising News	900	900	Expense for advertising in Bar News. - Budgeted by Finance 2 1/4 ads
86543	Graphics & Art	200	250	Utilization of Graphics and Art staff time - Budgeted by Finance
TOTAL SUPPORT SERVICES		68,500	93,100	
TOTAL EXPENSES		\$111,895	276,350	

Net Profit/(Loss)	(\$111,895)	(\$126,350)	Revenue minus Expenses
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Scholarship Sponsors

	Per Person Costs	# of Scholarship Recipients	Total Cost
Transportation Costs			
Mileage for 3 Regional meetings	403	30	12,096
Mileage for Annual and Midyear N Florida and S. Florida Regions	627.2	20	12,544
Central Florida Region	201.6	10	2,016
Mileage for January Mtg in Tally N Florida Region	100.8	10	1,008
Central Florida Region	313.6	10	3,136
Airfare for S Florida Region	475	10	4,750
Parking for 12 days of meetings	120	30	3,600
Tolls for 6 trips	30	30	900
Hotel			
Annual Meeting - 1 night	194	30	5,820
Midyear Meeting - 1 night	175	30	5,250
Tallahassee - 1 night	160	30	4,800
3 Regional Meetings	525	30	15,750
In Transit Meals			
3 Regional Meeting	90	30	2,700
3 Group meetings	90	30	2,700

Costs paid by participants from stipend
say 1,835 based on S Florida travel
2,000

ESTIMATED ACTUAL COST TO THE BAR OF THE SCHOLARSHIP

Travel Stipend	2,000
Group Meals	1,135
Other program costs per person	725
Total Scholarship participant actual cost	<u>3,860</u>
say	4,000

Group Meals Calculation - Draft 12/3/12

	Per Day Cost	# of days	Per Person	2013 Total based on 60 participants	2014 Total based on 60 participants
Annual Meeting - Class 2013 B/L/D \$150 per day based on Kathy Tucker's averages	150	2	300	18,000.00	18,000.00
Annual Meeting - Class of 2014 B/L/D \$150 per day based on Kathy Tucker's averages	150	2	300		18,000.00
Midyear Meeting B/L/D \$105 per day based on Kathy Tucker's averages	105	2	210		12,600.00
Tallahassee January Meeting B/L/D \$100 per day	100	1	100		6,000.00
Regional Meetings D/B \$75 per day	75	3	225		13,500.00
			<u>1,135.00</u>	<u>18,000.00</u>	<u>68,100.00</u>

Draft 12/3/12
 Staff Time Distribution

	FY13 Hours	FY14 Hours	rate	FY13 total	FY14 total
DIVERSITY					
Arnell Bryant-Willis	375	425	59.38	22,267.50	25,236.50
PROFESS					
Linda Calvert-Hanson	225	262	79.35	17,853.75	20,789.70
Jacina Parson	225	262	63.72	14,337.00	16,694.64
				54,458.25	62,720.84

Staff time will involve some additional work in the next fiscal year as some parts of curriculum will not be completed until after June.

Meetings Admin

Kathy Tucker		10	49.61		496.10
Brroke Smith		36	37.95		1,366.20
					1,862.30

Meetings should be approximately same each year as meetings are booked in advance.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee
Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602

Position Type The Florida Bar, RPPTL Section and Committee

CONTACTS

Jerry E. Aron. Jerry E. Aron, P.A., 2505 Metrocentre Blvd., Suite 301, West Palm Beach, Fl. 33407; 561-478-0511

Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602 (813) 204-6492

Peter Dunbar, Pennington, Moore, et al, P.O. Box 10095

Tallahassee, Florida, 32302-2095 (850) 222-3533

Martha J. Edenfield, Pennington, Moore, et al, P.O. Box 10095

Board & Legislation Tallahassee, Florida, 32302-2095 (850) 222-3533

Committee Appearance Contacts Above

(List name, address and phone number)

Appearances

before Legislators Contacts Above

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

Meetings with

Legislators/staff Contacts Above

(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 _____

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position _____ Support

Oppose

Technical

Other _____

Assistance

Proposed Wording of Position for Official Publication: Support 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

Reasons For Proposed Advocacy:

The timeshare trustee foreclosure laws adopted in 2010 have been found to have procedures that are impractical and contrary to the legislature's intent.

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: The RPPTL opposed nonjudicial foreclosure of timeshares, however, the RPPTL worked with ARDA to improve their bill in 2010.

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

1. _____ (Name of Group or Organization) (Support, Oppose or No Position)

2. _____ (Name of Group or Organization) (Support, Oppose or No Position)

3. _____ (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

**ARDA FLORIDA PROPOSED 2013 AMENDMENTS TO
CHAPTER 721, FLORIDA STATUTES, RELATED TO TRUSTEE FORECLOSURES**

721.82 Definitions.—As used in this part, the term:

(9) “Notice address” means:

(a) As to an assessment lien, the address of the owner of a timeshare interest as reflected by the books and records of the timeshare plan under ss. 721.13(4) and 721.15(7).

(b) As to a mortgage lien:

1. The address of the mortgagor as set forth in the mortgage, the promissory note or a separate document executed by the mortgagor at the time the mortgage lien was created, or the most current address of the mortgagor according to the records of the mortgagee; and

2. If the owner of the timeshare interest is different from the mortgagor, the address of the owner of the timeshare interest as reflected by the books and records of the mortgagee.

(c) As to a junior interestholder, the address as set forth in the recorded instrument creating the junior lien or interest, or in any recorded amendment thereto changing the address, or in any written notification by the junior interestholder to the foreclosing lienholder changing the address.

(d) As to an owner of a timeshare interest, mortgagor or junior interestholder whose current address is not the address as determined by either paragraphs (9)(a), (9)(b) or (9)(c), such address as is known to be the current address.

(10) “Obligor” means the mortgagor, the person subject to an assessment lien, or the record owner of the timeshare interest.

(11) “Permitted delivery service” means any nationally recognized common carrier delivery service, ~~or international airmail service that allows for return receipt service,~~ or such service as recognized by an international jurisdiction to be the equivalent of certified, registered mail for such jurisdiction.

* * *

721.84 Appointment of a registered agent; duties.—

(6) Unless otherwise provided in this section, a registered agent in receipt of any notice or other document addressed from the lienholder to the obligor in care of the registered agent at the registered office must mail, by ~~first class~~ first-class mail if the obligor’s address is within the United States, and by international air mail if the obligor’s address is outside the United States,

with postage fees prepaid, such notice or documents to the obligor at the obligor's last designated address within 5 days after receipt.

* * *

721.855 Procedure for the trustee foreclosure of assessment liens.—The provisions of this section establish a trustee foreclosure procedure for assessment liens.

(2) INITIATING THE USE OF A TRUSTEE FORECLOSURE PROCEDURE.—

(c)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor; the notice address of the obligor; the timeshare interest; the date that the notice of the intent to file a lien was given, if applicable; the official records book and page number where the claim of lien is recorded; and the name and notice address of any junior interestholder. ~~The affidavit shall be accompanied by a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days before the date of the affidavit.~~

* * *

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A trustee may sell an encumbered timeshare interest foreclosed under this section if:

- (a) The trustee has received the affidavit from the lienholder under paragraph (2)(c);
- (b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);
- (c) There is no lis pendens recorded and pending against the same timeshare interest prior to the recording of the notice of lis pendens pursuant to paragraph (5)(h), and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;
- (d) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); ~~and~~
- (e) The notice of sale required under subsection (6) has been recorded in the official records of the county or counties in which the timeshare interest is located; and
- (f) The lienholder has delivered to the trustee a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days of the date that it is delivered to the trustee. If it is determined from the title search that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed

until the notices required pursuant to this s. 721.855 have been served on such correct or additional obligors or junior interestholders and all applicable time periods have expired.

* * *

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: “The undersigned obligor exercises the obligor’s right to object to the use of the trustee foreclosure procedure contained in section 721.855, Florida Statutes.”

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.855, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee’s receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee’s sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected:

I. If ~~if~~ the notice is returned as undeliverable within 30 calendar days after the trustee sent the notice,

II. If ~~if~~ the trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt either because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt, or

III. If ~~if~~ the receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, to the new address. Notice under this subparagraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this subparagraph. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder, as applicable, is returned refused, or the trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt either because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt ~~or the receipt from the obligor or junior interestholder, as applicable, is returned refused.~~ If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in

which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, and the manner in which the notices were mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received; ~~and the name and address on the envelopes containing the notice.~~

(f) If notice is perfected by publication under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that after diligent search and inquiry was made for the current address for the person, unless such diligent search was not required because service was refused, returned as undeliverable or the trustee has ascertained that that the obligor or junior interestholder, as applicable, is the person who signed the receipt. The affidavit shall ~~also include a statement that notice was perfected by publication, and shall set forth the information required by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation, whichever is applicable. No other action of the trustee is necessary to perfect notice.~~

(g) Notice under subparagraph (a) or subparagraph (b) of this subsection shall be deemed perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 only if a notice of lis pendens is recorded in the official records of the county in which the deed conveying the timeshare interest to the obligor was recorded and such notice has not expired pursuant to subsection (2) of s. 48.23 or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.
2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.
3. The name and contact information of the trustee.
4. The legal description of the timeshare interest.
5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this s. 721.855.

* * *

(6) NOTICE OF SALE.—

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. The ~~If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h) which has not expired or otherwise been discharged, the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.~~

* * *

(7) MANNER OF SALE.—

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee; provided, however, that the trustee shall remain liable for the conduct of the sale and the actions of such third party with respect to the conduct of the sale.

* * *

(14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It shall not be a violation of this section for a trustee to incorrectly ascertain that it is the obligor who signed the return receipt as required in s. 721.855(5); provided, however, that the trustee makes a good faith effort to properly ascertain that it is the obligor who signed the return receipt in accordance with s. 721.855(5).

* * *

721.856 Procedure for the trustee foreclosure of mortgage liens.—The provisions of this section establish a trustee foreclosure procedure for mortgage liens.

(2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

(b)1. In order to initiate a trustee foreclosure procedure against a timeshare interest, the lienholder shall deliver an affidavit to the trustee that identifies the obligor, the notice address of the obligor, the timeshare interest, the official records book and page number where the mortgage is recorded, and the name and notice address of any junior interestholder. ~~The affidavit shall be accompanied by a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days before the date of the affidavit.~~

* * *

(4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A trustee may sell an encumbered timeshare interest foreclosed under this section if:

- (a) The trustee has received the affidavit from the lienholder under paragraph (2)(b);
- (b) The trustee has not received a written objection to the use of the trustee foreclosure procedure under paragraph (3)(a) and the timeshare interest was not redeemed under paragraph (3)(b);
- (c) There is no lis pendens recorded and pending against the same timeshare interest prior to the initiation of the trustee foreclosure action and provided a notice of lis pendens has been recorded pursuant to paragraph (5)(h), and the trustee has not been served notice of the filing of any action to enjoin the trustee foreclosure sale;
- (d) The trustee is in possession of the original promissory note executed by the mortgagor and secured by the mortgage lien;
- (e) The trustee has provided written notice of default and intent to foreclose as required under subsection (5) and a period of at least 30 calendar days has elapsed after such notice is deemed perfected under subsection (5); ~~and~~
- (f) The notice of sale required under subsection (6) has been recorded in the official records of the county in which the mortgage was recorded; and
- (g) The lienholder has delivered to the trustee a title search of the timeshare interest identifying any junior interestholders of record, and the effective date of the title search must be a date that is within 60 calendar days of the date that it is delivered to the trustee. If it is determined from the title search that incorrect obligors or junior interestholders have been served or additional obligors or junior interestholders have not been served, the foreclosure action may not proceed until the notices required pursuant to this s. 721.855 have been served on such correct or additional obligors or junior interestholders and all applicable time periods have expired.

* * *

(5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

(a) In any foreclosure proceeding under this section, the trustee is required to notify the obligor of the proceeding by sending the obligor a written notice of default and intent to foreclose to the notice address of the obligor by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, as follows:

1. The notice of default and intent to foreclose shall identify the obligor, the notice address of the obligor, the legal description of the timeshare interest, the nature of the default, the amounts secured by the lien, and a per diem amount to account for further accrual of the amounts secured by the lien and shall state the method by which the obligor may cure the default, including the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default.

2. The notice of default and intent to foreclose shall include an objection form with which the obligor can object to the use of the trustee foreclosure procedure by signing and returning the objection form to the trustee. The objection form shall identify the obligor, the notice address of the obligor, the timeshare interest, and the return address of the trustee and shall state: “The undersigned obligor exercises the obligor’s right to object to the use of the trustee foreclosure procedure contained in section 721.856, Florida Statutes.”

3. The notice of default and intent to foreclose shall also contain a statement in substantially the following form:

If you fail to cure the default as set forth in this notice or take other appropriate action with regard to this foreclosure matter, you risk losing ownership of your timeshare interest through the trustee foreclosure procedure established in section 721.856, Florida Statutes. You may choose to sign and send to the trustee the enclosed objection form, exercising your right to object to the use of the trustee foreclosure procedure. Upon the trustee’s receipt of your signed objection form, the foreclosure of the lien with respect to the default specified in this notice shall be subject to the judicial foreclosure procedure only. You have the right to cure your default in the manner set forth in this notice at any time before the trustee’s sale of your timeshare interest. If you do not object to the use of the trustee foreclosure procedure, you will not be subject to a deficiency judgment even if the proceeds from the sale of your timeshare interest are insufficient to offset the amounts secured by the lien.

4. The trustee shall also mail a copy of the notice of default and intent to foreclose, without the objection form, to the notice address of any junior interestholder by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid.

5. Notice under this paragraph is considered perfected upon the trustee receiving the return receipt bearing the signature of the obligor or junior interestholder, as applicable, within 30 calendar days after the trustee sent the notice under this paragraph. Notice under this paragraph is not perfected:

I. If ~~if~~ the notice is returned as undeliverable within 30 calendar days after the trustee sent the notice,

II. If ~~if~~ the trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt either because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt, or

III. If ~~if~~ the receipt from the obligor or junior interestholder, as applicable, is returned or refused within 30 calendar days after the trustee sent the notice.

(b) If the notice required by paragraph (a) is returned as undeliverable within 30 calendar days after the trustee sent the notice, the trustee shall perform a diligent search and inquiry to obtain a different address for the obligor or junior interestholder. For purposes of this paragraph, any address known and used by the lienholder for sending regular mailings or other communications from the lienholder to the obligor or junior interestholder, as applicable, shall be included with other addresses produced from the diligent search and inquiry, if any.

1. If the trustee's diligent search and inquiry produces an address different from the notice address, the trustee shall mail a copy of the notice by certified mail, registered mail, or permitted delivery service, return receipt requested, and by first-class mail ~~or permitted delivery service~~, postage prepaid, to the new address. Notice under this subparagraph is not perfected if the receipt from the obligor or junior interestholder, as applicable, is returned refused, or the trustee cannot, in good faith, ascertain ~~from the receipt~~ that the obligor or junior interestholder, as applicable, is the person who signed the receipt either because all or a portion of the obligor's or junior interestholder's name is not on the signed receipt or the trustee cannot otherwise determine that the obligor or junior interestholder signed the receipt ~~or the receipt from the obligor or junior interestholder, as applicable, is returned refused.~~ If the trustee does not perfect notice under this subparagraph, the trustee shall perfect service in the manner set forth in paragraph (c).

2. If the trustee's diligent search and inquiry does not locate a different address for the obligor or junior interestholder, as applicable, the trustee may perfect notice against that person under paragraph (c).

(c) If the notice is not perfected under subparagraph (a)5., and such notice was not returned as undeliverable, or if the notice was not perfected under subparagraph (b)1., the trustee may perfect notice by publication in a newspaper of general circulation in the county or counties in which the timeshare interest is located. The notice shall appear at least once a week for 2 consecutive weeks. The notice of default and intent to foreclose perfected by publication shall identify the obligor, the notice address of the obligor, the legal description of the timeshare

interest, the nature of the action in short and simple terms, the name and contact information of the trustee, and the period of time after the date of the notice of default and intent to foreclose within which the obligor may cure the default. The trustee may group an unlimited number of notices in the same publication, if all of the notices pertain to the same timeshare plan. Notice under this paragraph is considered perfected upon publication as required in this paragraph.

(d) If notice is perfected under subparagraph (a)5., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the date on which the notice was mailed, the name and address on the envelope containing the notice, the manner in which the notice was mailed, and the basis for that knowledge.

(e) If notice is perfected under subparagraph (b)1., the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall state the nature of the notice, the dates on which the notice was mailed, the name and addresses on the envelopes containing the notice, the manner in which the notice was mailed, and the fact that a signed receipt from the certified mail, registered mail, or permitted delivery service was timely received; ~~and the name and address on the envelopes containing the notice.~~

(f) If notice is perfected under paragraph (c), the trustee shall execute an affidavit in recordable form setting forth the manner in which notice was perfected and attach the affidavit to the certificate of compliance set forth in subsection (9). The affidavit shall include all the information contained in either paragraph (d) or paragraph (e), as applicable, shall state that the notice was perfected by publication and shall state that after diligent search and inquiry was made for the current address for the person, unless such diligent search was not required because service was refused, returned as undeliverable or the trustee has ascertained that the obligor or junior interestholder, as applicable, is the person who signed the receipt. The affidavit shall also include ~~a statement that notice was perfected by publication, and shall set forth the information~~ required by s. 49.041 in the case of a natural person or s. 49.051 in the case of a corporation, whichever is applicable. No other action of the trustee is necessary to perfect notice.

(g) Notice under subparagraph (a) or subparagraph (b) of this subsection shall be deemed perfected as to all obligors who have the same address if notice is perfected as to at least one obligor at that address pursuant to the provisions of this subsection.

(h) The initiation of a trustee foreclosure action operates as a lis pendens on the timeshare interest pursuant to s. 48.23 only if a notice of lis pendens is recorded in the official records of the county or counties in which the mortgage is recorded and such notice has not expired pursuant to subsection (2) of s. 48.23 or been withdrawn or discharged. The notice of lis pendens must contain the following:

1. The name of the obligor.

2. The date of the initiation of the trustee foreclosure action, which date shall be the date of the sending of the notice of default and intent to foreclose to the obligor.

3. The name and contact information of the trustee.

4. The legal description of the timeshare interest.

5. A statement that a trustee foreclosure action has been initiated against the timeshare interest pursuant to this s. 721.856.

* * *

(6) NOTICE OF SALE.—

(c) After the date of recording of the notice of sale, notice is not required to be given to any person claiming an interest in the timeshare interest except as provided in this section. The If a notice of lis pendens has not previously been recorded pursuant to paragraph (5)(h), which has not expired or otherwise been discharged, the recording of the notice of sale has the same force and effect as the filing of a lis pendens in a judicial proceeding under s. 48.23.

(d)1. The trustee shall publish the notice of sale in a newspaper of general circulation in the county or counties in which the timeshare interest is located at least once a week for 2 consecutive weeks before the date of the sale. The last publication shall occur at least 5 calendar days before the sale.

2. The trustee may group an unlimited number of notices of sale in the same publication, if all of the notices of sale pertain to the same timeshare plan.

* * *

(7) MANNER OF SALE.—

(b) The trustee shall conduct the sale and act as the auctioneer. The trustee may use a third party to conduct the sale on behalf of the trustee; provided, however, that the trustee shall remain liable for the conduct of the sale and the actions of such third party with respect to the conduct of the sale.

* * *

(13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE PROCEDURE.—

(b) Any trustee who intentionally violates the provisions of this section concerning the trustee foreclosure procedure commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. It shall not be a violation of this section for a trustee to incorrectly ascertain that it is the obligor who signed the return receipt as required in s. 721.855(6);

provided, however, that the trustee makes a good faith effort to properly ascertain that it is the obligor who signed the return receipt in accordance with s. 721.855(6).

WHITE PAPER
Trustee Foreclosure

I. SUMMARY

In 2010 the Florida legislature passed CS/CS/HB No. 1411 which amends and adds certain sections to Chapter 721 of the Florida Statutes regarding timeshares. These amendments effectively adopted a nonjudicial foreclosure process for timeshare mortgage and assessment foreclosures. Rather than title the process nonjudicial foreclosure it is titled trustee foreclosure as the trustee handles the foreclosure process rather than the judiciary. This bill was proposed by and pushed by American Resort Development Association (“ARDA”), the timeshare industry trade group. The Real Property, Probate and Trust Law Section of the Florida Bar (“RPPTL”) has a long standing position which opposes nonjudicial foreclosures, however, at the request of the RPPTL’s lobbyist the RPPTL worked with ARDA to reach a number of compromises that would satisfy due process and other concerns of the RPPTL. Many, but not all, of the RPPTL’s proposals were adopted in the final bill.

After 2 years of trustee foreclosures it is apparent, like with any new procedure, that there are glitches. ARDA and trustees that are utilizing the current statute have raised various technical concerns and those concerns are addressed in a glitch bill proposed by ARDA.

ARDA has requested RPPTL’s review and approval of their proposed modifications to the existing statute. Although the RPPTL continues to oppose nonjudicial foreclosure, the RPPTL believes it is prudent to work with ARDA and resolve glitches provided they are consistent with the original bill.

II. CURRENT SITUATION

The proposed legislation attempts to resolve various glitches relating to the current trustee foreclosure process. Without resolution of these glitches the process is substantially undermined and ineffective. Further, the problems have caused unnecessary delays and expenses.

III. SECTION-BY-SECTION ANALYSIS

1. *Provide That The Trustee May Use Known Or Determined Address*

Statutory Provision: Section 721.82(9), Florida Statutes (definition of notice address).

Proposal: Provide that if the trustee knows or locates a correct address that is not the notice address, trustee can use the known or determined address even if obligor has not updated the official notice address.

Explanation: Eliminates unnecessary expenses and facilitates delivery to obligors at correct address.

2. ***Permit International Service By Country's Equivalent to Certified, Registered Mail***

Statutory Provision: Section 721.82(11), Florida Statutes (definition of permitted delivery service).

Proposal: Amend definition of permitted delivery service to permit the trustee to use another country's equivalent of certified, registered mail.

Explanation: By using the type of delivery service recognized by a country for obligors in residing in such country, it reduces expenses and increases the likelihood that delivery will occur.

3. ***Allow Title Search To Be Provided Any Time Prior To Notice Of Sale***

Statutory Provision: Section 721.855(2)(c)(1) and Section 721.856(2)(b)(1), Florida Statutes.

Proposal: Allow the title search to be performed at any point in the process prior to the sending and publication of the notice of sale instead of requiring the title search to be obtained prior to commencement of the trustee foreclosure procedure; provided, however, that the action cannot proceed if additional or incorrect obligors or junior interest-holders are determined from the title search until such obligors and junior interest-holders are served.

Explanation: By allowing the title search to be obtained at a later date, the trustee can remove or reduce the chance that the sale will take place without knowledge of a lis pendens filed after the action has commenced and avoids the expense of additional title searches.

4. ***Provide For Recording Of Lis Pendens***

Statutory Provision: Section 721.855(4)(c) and Section 721.856(4)(c)721.855(5)(c), Florida Statutes

Proposal: Provide for the recording of a lis pendens for the purpose of notifying potential claimants and interested parties of the action and to establish a priority right against future claims.

Explanation: Under the current version of the law, it is unclear that the initiated trustee foreclosure action has priority over future claimants, which is compounded by the provision that the trustee may not proceed with a sale if a lis pendens has been filed.

5. ***Correct Reference to “Permitted Delivery Service” As An Alternative To Permitted Delivery Service***

Statutory Provision: Section 721.855(5)(a) and Section 721.856(5)(a) 721.82(9), Florida Statutes.

Proposal: Amend the cited provisions to remove the reference of “permitted delivery service” as an alternative to permitted delivery service and simply provide that the notice be sent by “certified mail, registered mail or permitted delivery and by first class mail.”

Explanation: The inclusion of “permitted delivery service” as an alternative to permitted deliver service was unintended and circular.

6. ***Clarify Standard For Trustee Ascertaining of Signature***

Statutory Provision: Section 721.855(5), Section 721.856(5), Section 721.855(14) and Section 721.856(13), Florida Statutes.

Proposal: Include a good faith standard in connection with the requirement that the trustee ascertain that it is the obligor who signed the return receipt either because all or a portion of the name is on the receipt or the trustee can determine otherwise that it is the obligor. Provide that if the trustee in good faith makes such a determination, than it will not be a violation of the section.

Explanation: The current requirement to ascertain the obligor's signature together with the potential third degree felony liability for intentional trustee violations means that trustees are resorting to publication in most actions even though obligors may have received delivery of notices.

7. ***Provide That Service May Be Perfected By Delivery To Any Of The Obligors At Same Address***

Statutory Provision: Section 721.855(5) and Section 721.856(5), Florida Statutes

Proposal: Amend the statute to provide that service may be perfected as to all obligors at the same address if at least one obligor is served at that address instead of the current requirement that each obligor be served even if at the same address.

Explanation: The current version adds unnecessary expense and time delays and is not effective since often obligors at the same address will not accept certified, registered mail after the first obligor is served at that address.

8. ***Clarify That Trustee Affidavit Does Not Need To State Diligent Search Conducted If Not Required***

Statutory Provision: Section 721.855(5)(f) and Section 721.856(5)(f), Florida Statutes

Proposal: Amend the provision requiring the trustee to attest in the trustee affidavit of compliance that a diligent search for a new address was conducted if service is refused, returned, returned as undeliverable or the identity of the signatory cannot be ascertained.

Explanation: If service is perfected in a manner that does not require a diligent search, then the trustee should not be required to attest that a diligent search was conducted.

9. ***Clarify Information Required To Be Included In Published Notice Of Default***

Statutory Provision: Section 721.855(5)(c) and Section 721.856(5)(c), Florida Statutes

Proposal: Reduce the list of information required to be included in the published Notice of Default.

Explanation: The type and amount of information required is more than is necessary to provide adequate notice of the default. A more streamlined version will still put the obligor on notice of the default without adding unnecessary expense or confusion.

10. ***Correct Typographical Error Of Repeating Phrase***

Statutory Provision: Section 721.855(5)(e) and Section 721.856(5)(e), Florida Statutes.

Proposal: The phrase “name and address on the envelopes containing the service” is repeated in the cited provision.

Explanation: Clean-up of unintentional typographical error.

11. ***Enable Trustee To Use Third Party To Provide Auction Services***

Statutory Provision: Section 721.855(7)(b) and §721.856(7)(b), Florida Statutes.

Proposal: Permit the trustee to use a third party to conduct the trustee foreclosure auction; provided, however, that the trustee remains liable for the conduct of the sale.

Explanation: It is not economically feasible for a trustee to conduct sales in multiple counties throughout the state.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposed bill is a glitch bill resolving various technical problems. As a result the bill does not have any fiscal impact on state and local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Resolving the glitches in the existing trustee foreclosure process will assist lenders, timeshare associations and managers in foreclosing mortgages on timeshare interest and timeshare estates. The changes will have a direct positive financial effect by resolving various confusing provisions which required additional efforts by the trustee.

VI. CONSTITUTIONAL ISSUES

Although the original timeshare bill contained constitutional issues, most of which – through the RPPTL’s efforts – were resolved, it is believed that this proposed bill contains no additional constitutional issues. Although there are some revisions in the proposed bill dealing with service of process it is not believed that these proposed changes adversely impact any constitutional issues that may have already existed in the existing legislation.

VII. OTHER INTERESTED PARTIES.

This bill is being proposed by ARDA. They are seeking the RPPTL’s support without the need to spend RPPTL’s funds.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Tami F. Conetta, Chair, Power of Attorney Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date _____, 2012)

Address The Northern Trust Company, 1515 Ringling Blvd, Third Floor, Sarasota FL 34236
Telephone: (941) 329-2717

Position Type RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation

Committee Appearance **Tami F. Conetta**, The Northern Trust Company, 1515 Ringling Blvd, Third Floor, Sarasota FL 34236 Telephone: (941) 329-2717
Barry F. Spivey, Spivey & Fallon, PA, 1515 Ringling Blvd., Suite 885, Sarasota, FL 34236 Telephone 941-840-1991
Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533
(List name, address and phone number)

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 Power of Attorney Glitch Bill Florida Bankers Association
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support XX Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support adoption of clarifications to chapter 709, the Florida Power of Attorney Act.

Reasons For Proposed Advocacy:

Chapter 709, the Florida Power of Attorney Act, was enacted effective October 1, 2011 and substantially revised chapter 709 to conform to the Uniform Power of Attorney Act. Several clarifications are proposed to facilitate the proper functioning of the Act.

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 RPPTL Section - Supported adoption of chapter 709 revision in 2011.
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others

(May attach list if more than one)

Elder Law Section - Supported adoption of chapter 709 revision in 2011.
(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

Elder Law Section
(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 powers of attorney; technical corrections to
3 Ch. 709.

4
5 Be it enacted by the Legislature of the State of Florida:

6 Section 1. Section 709.2102 is amended to include new subsections
7 (2)and (14) and re-number the remaining subsections, as follows:

8 (2) "Broker-dealer" means a broker-dealer registered with the
9 United States Securities and Exchange Commission or the Commodity
10 Futures Trading Commission if the broker-dealer is acting in that
11 capacity.

12 (~~23~~) "Durable" means, with respect to a power of attorney, not
13 terminated by the principal's incapacity.

14 (~~34~~) "Electronic" means technology having electrical, digital,
15 magnetic,
16 wireless, optical, electromagnetic, or similar capabilities.

17 (~~45~~) "Financial institution" has the same meaning as in s.
18 655.005.

19 (~~56~~) "Incapacity" means the inability of an individual to take
20 those actions necessary to obtain, administer, and dispose of real and
21 personal property, intangible property, business property, benefits,
22 and income.

23 (~~67~~) "Knowledge" means a person has actual knowledge of the fact,
24 has received a notice or notification of the fact, or has reason to
25 know the fact from all other facts and circumstances known to the
26 person at the time in question. An organization that conducts
27 activities through employees has notice or knowledge of a fact
28 involving a power of attorney only from the time information was
29 received by an employee having responsibility to act on matters
30 involving the power of attorney, or would have had if brought to the
31 employee's attention if the organization had exercised reasonable
32 diligence. An organization exercises reasonable diligence if the
33 organization maintains reasonable routines for communicating
34 significant information to the employee having responsibility to act
35 on matters involving the power of attorney and there is reasonable

36 compliance with the routines. Reasonable diligence does not require an
37 employee to communicate information unless the communication is part
38 of the individual's regular duties or the individual knows that a
39 matter involving the power of attorney would be materially
40 affected by the information.

41 (78) "Power of attorney" means a writing that grants authority to
42 an agent
43 to act in the place of the principal, whether or not the term is used
44 in that
45 writing.

46 (89) "Presently exercisable general power of appointment" means,
47 with respect to property or a property interest subject to a power of
48 appointment, power exercisable at the time in question to vest
49 absolute ownership in the principal individually, the principal's
50 estate, the principal's creditors, or the creditors of the principal's
51 estate. The term includes a power of appointment not exercisable until
52 the occurrence of a specified event, the satisfaction of an
53 ascertainable standard, or the passage of a specified period only
54 after the occurrence of the specified event, the satisfaction of the
55 ascertainable standard, or the passage of the specified period. The
56 term does not include a power exercisable in a fiduciary capacity or
57 only by will.

58 (910) "Principal" means an individual who grants authority to an
59 agent in a power of attorney.

60 (1011) "Property" means anything that may be the subject of
61 ownership, whether real or personal, legal or equitable, or any
62 interest or right therein.

63 (1112) "Record" means information that is inscribed on a tangible
64 medium or that is stored in an electronic or other medium and is
65 retrievable in perceivable form.

66 (1213) "Sign" means having present intent to authenticate or
67 adopt a record to:

68 (a) Execute by signature or mark ~~or adopt a tangible symbol~~; or

69 (b) Attach to, or logically associate with the record an
70 electronic sound, symbol, or process.

71 (14) "State" means a state of the United States, the District of
72 Columbia, Puerto Rico, the United States Virgin Islands, or any
73 territory or insular possession subject to the jurisdiction of the
74 United States.

75 (13~~15~~) "Third person" means any person other than the principal,
76 or the agent in the agent's capacity as agent.

77 Section 2. Section 709.2103 is amended to read:

78 709.2103 Applicability.—This part applies to all powers of
79 attorney except:

80 (1) A proxy or other delegation to exercise voting rights or
81 management rights with respect to an entity;

82 (2) A power created on a form prescribed by a government or
83 governmental subdivision, agency, or instrumentality for a
84 governmental purpose;

85 (3) A power to the extent it is coupled with an interest in the
86 subject of the power, including a power given to or for the benefit of
87 a creditor in connection with a credit transaction; ~~and~~

88 (4) A power created by a person other than an individual;

89 (5) A power given to a transfer agent to facilitate a specific
90 transfer or disposition of one or more identified stocks, bonds or
91 other financial instruments;

92 (6) A power authorizing a financial institution or broker-dealer, or
93 an employee of the financial institution or broker-dealer, to act as
94 agent for the account owner in executing trades or transfers of cash,
95 securities, commodities, or other financial assets on behalf of the
96 account owner in the regular course of business; and

97 (7) A delegation of powers by a trustee in accordance with s.
98 736.0807.

99 Section 3. Section 709.2105 is amended to include a new subsection
100 (3), as follows:

101 (3) If the principal is physically unable to sign the power of
102 attorney, the notary public before whom the principal's oath or
103 acknowledgment is made may sign the principal's name on the power of
104 attorney in accordance with chapter 117.

106 Section 4. Section 709.2106(3) is amended as follows:

107 709.2106 Validity of power of attorney.--

108 (3) A power of attorney executed in another state which does not
109 comply with the execution requirements of this part is valid in this
110 state if, when the power of attorney was executed, the power of
111 attorney and its execution complied with the law of the state of
112 execution. A third person who is requested to accept a power of
113 attorney that is valid in this state solely because of this subsection
114 may in good faith request, and rely upon, without further
115 investigation, an opinion of counsel as to any matter of law
116 concerning the power of attorney, including the due execution and
117 validity of the power of attorney. An opinion of counsel requested
118 under this subsection must be provided at the principal's expense. A
119 third person may refuse to accept a power of attorney that is valid in
120 this state solely because of this subsection if the agent does not
121 provide the requested opinion of counsel, and in such case, a third
122 person has no liability for refusing to accept the power of attorney.
123 This subsection does not affect any other rights of a third person who
124 is requested to accept the power of attorney under this part, or any
125 other provisions of applicable law.

126 Section 5. Section 709.2106(5) is amended as follows:

127 (5) Except as otherwise provided in the power of attorney, a
128 photocopy or electronically transmitted copy of an original power of
129 attorney has the same effect as the original. Notwithstanding the
130 provisions of this subsection, an original of a power of attorney that
131 is relied upon to affect the title to real property may be required
132 for recording in the official records.

133 Section 6. Section 709.2106 is amended to include a new subsection
134 (6), as follows:

135 (6) The original of a properly executed power of attorney may be
136 presented for recording in the official records as provided for in s.
137 28.222 upon payment of the service charge as provided by law for the
138 recording of documents in the public records.

139 Section 7. Section 709.2114(1)(b) is amended as follows:

140 709.2114 Agent's duties.--

141 (1) An agent is a fiduciary. Notwithstanding the provisions in
142 the power of attorney, an agent who has accepted appointment:

143 (a) [No change]

144 (b) May not delegate authority to a third person except: ~~as~~
145 ~~provided in s. 518.112.~~

146 1. As permitted by s.518.112;

147 2. As permitted by this act; or

148 3. By execution of a power of attorney on a form prescribed by
149 a government or governmental subdivision, agency, or instrumentality
150 for a governmental purpose.

151 Section 8. Section 709.2116(3) is amended as follows:

152 709.2116 Judicial relief; conflicts of interest.--

153 (3) In any proceeding commenced by the filing of a petition
154 under this section, including, but not limited to, the unreasonable
155 refusal of a third person to allow an agent to act pursuant to the
156 power, and challenges to the proper exercise of authority by the
157 agent, the court shall award reasonable attorney's fees and costs as
158 in chancery actions.

159 Section 9. Section 709.2119(2) is amended as follows:

160 709.2119 Acceptance of and reliance upon power of attorney.--

161 (2) A third person may require:

162 (a) An agent to execute an affidavit stating where the principal
163 is domiciled; that the principal is not deceased; that there has been
164 no revocation, partial or complete termination by adjudication of
165 incapacity or by the occurrence of an event referenced in the power of
166 attorney; that there has been no suspension by initiation of
167 proceedings to determine incapacity, or to appoint a guardian, of the
168 principal; the agent's authority has not been terminated by the filing
169 of an action for dissolution or annulment of marriage, or legal
170 separation of the agent and principal; and, if the affiant is a
171 successor agent, the reasons for the unavailability of the predecessor
172 agents, if any, at the time the authority is exercised.

173 (b) An officer of a financial institution acting as agent to
174 execute a separate affidavit, or include in the form of the affidavit,
175 the officer's title and a statement that the officer has full

176 authority to perform all acts and enter into all transactions
177 authorized by the power of attorney for and on behalf of the financial
178 institution in its capacity as agent. ~~A written affidavit executed by~~
179 ~~the agent under this subsection may, but need not, be in the following~~
180 ~~form:~~

181 (c) A written affidavit executed by the agent under this
182 subsection may, but need not, be in the following form:

183 STATE OF _____

184 COUNTY OF _____

185 Before me, the undersigned authority, personally appeared
186 ~~(attorney in fact)~~ (agent) ("Affiant"), who swore or affirmed that:

187 1. Affiant is the ~~attorney in fact~~ agent named in the Power of
188 Attorney executed by (principal) ("Principal") on (date).

189 2. This Power of Attorney is currently exercisable by Affiant.
190 The principal is domiciled in (insert name of state, territory, or
191 foreign country).

192 3. To the best of ~~the~~ Affiant's knowledge after diligent search
193 and inquiry:

194 a. The Principal is not deceased;

195 b. Affiant's authority has not been suspended by initiation of
196 proceedings to determine incapacity or to appoint a guardian or a
197 guardian advocate; ~~and~~

198 c. Affiant's authority has not been terminated by the filing of
199 an action for dissolution or annulment of Affiant's marriage to the
200 principal, or their legal separation; and

201 e.d. There has been no revocation, partial or complete
202 termination of the power of attorney or of ~~the~~ Affiant's authority.

203 4. ~~The~~ Affiant is acting within the scope of authority granted in
204 the power of attorney.

205 5. ~~The~~ Affiant is the successor to (insert name of predecessor
206 agent), who has resigned, died, become incapacitated, is no longer
207 qualified to serve, has declined to serve as agent, or is otherwise
208 unable to act, if applicable.

209 6. Affiant agrees not to exercise any powers granted by the Power
210 of Attorney if Affiant has knowledge that affiant's authority has been
211 revoked, terminated, suspended, or is no longer valid.

212 _____
213 (Affiant)

214 Sworn to (or affirmed) and subscribed before me this ____ day of
215 (month) , (year) , by (name of person making statement)

216 (Signature of Notary Public-State of Florida)

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

218 Personally Known OR Produced Identification (Type of
219 Identification Produced);

220 Section 10. Section 709.2119(3) is amended as follows:

221 (3) A third person that is asked to accept a power of attorney
222 that appears to be executed in accordance with ~~s.709.2103~~ s.709.2105
223 may in good faith request, and rely upon, without further
224 investigation:

225 (a) A ~~verified~~ certified English translation of the power of
226 attorney if the power of attorney contains, in whole or in part,
227 language other than English;

228 (b) An opinion of counsel as to any matter of law concerning the
229 power of attorney if the third person making the request provides in a
230 writing or other record the reason for the request; or

231 (c) The affidavit described in subsection (2).

232 Section 11. Section 709.2120 is amended as follows:

233 709.2120 Liability for refusal to accept power of attorney.—

234 ~~(1) Except as otherwise provided in subsection (2):~~

235 (1a) A third person must accept or reject a power of attorney
236 within a reasonable time.

237 ~~(2b)~~ Four days, excluding Saturdays, Sundays, and legal holidays,
238 shall be presumed to be a reasonable time for a financial institution
239 or broker-dealer to accept or reject a power of attorney with respect
240 to:

241 (a)1. A banking transaction, if the power of attorney expressly
242 contains authority to conduct banking transactions pursuant to s.
243 709.2208(1), Florida Statutes; or

244 ~~(b)2. security~~ An investment transaction, if the power of attorney
245 expressly contains authority to conduct ~~security~~ investment
246 transactions pursuant to s. 709.2208(2), Florida Statutes.

247 (3e) A third person may not require an additional or different
248 form of power of attorney for authority granted in the power of
249 attorney presented.

250 (4) A third person who rejects a power of attorney for any
251 reason other than as provided in subsection (5)(a) must state in
252 writing the reason for the rejection.

253 (52) A third person is not required to accept a power of attorney
254 if:

255 (a) The third person is not otherwise required to engage in a
256 transaction with the principal in the same circumstances;

257 (b) The third person has knowledge of the termination or
258 suspension of the agent's authority or of the power of attorney before
259 exercise of the power;

260 (c) A timely request by the third person for an affidavit,
261 English translation, or opinion of counsel under s. 709.119(4),
262 Florida Statutes, is refused by the agent;

263 (d) Except as otherwise provided in paragraph (b), the third
264 person in good faith believes that the power is not valid or that the
265 agent does not have the authority to perform the act requested; or

266 (e) The third person makes, or has knowledge that another person
267 has made, a report to the local adult protective services office
268 stating a good faith belief that the principal may be subject to
269 physical or financial abuse, neglect, exploitation, or abandonment by
270 the agent or a person acting for or with the agent.

271 (63) A third person that refuses in violation of this section to
272 accept a power of attorney is subject to:

273 (a) A court order mandating acceptance of the power of attorney;
274 and

275 (b) Liability for damages, including reasonable attorney's fees
276 and costs, incurred in any action or proceeding that confirms for the
277 purpose tendered the validity of the power of attorney or mandates
278 acceptance of the power of attorney.

279 Section 12. Subsection 709.2121(3) is amended as follows:

280 (3) Notice to a financial institution or broker-dealer must
281 contain the name, address, and the last four digits of the principal's
282 taxpayer identification number and be directed to an officer or a
283 manager of the financial institution or broker-dealer in this state.

284 Section 13. Subsection 709.2207(4) is amended as follows:

285 (4) Notwithstanding subsection (1), if a power of attorney is
286 otherwise sufficient to grant an agent authority to conduct banking
287 transactions, as provided in s. 709.2208(1), conduct investment
288 transactions as provided in s. 709.2208(2), or otherwise make
289 additions to or withdrawals from an account of the principal, making a
290 deposit to or withdrawal from an insurance policy, retirement account,
291 individual retirement account, benefit plan, bank account, or any
292 other account held jointly or otherwise held in survivorship or
293 payable on death, is not considered to be a change to the survivorship
294 feature or beneficiary designation, and no further specific authority
295 is required for the agent to exercise such authority. A ~~bank or other~~
296 financial institution or broker-dealer does not have a duty to inquire
297 as to the appropriateness of the agent's exercise of that authority
298 and is not liable to the principal or any other person for actions
299 taken in good faith reliance on the appropriateness of the agent's
300 actions. This subsection does not eliminate the agent's fiduciary
301 duties to the principal with respect to any exercise of the power of
302 attorney.

303 Section 14. Subsection 709.2202 is amended as follows:

304 709.2202 Authority that requires separate signed enumeration.

305 (1) Notwithstanding s. 709.2201, an agent may exercise the following
306 authority only if the principal signed or initialed next to each
307 specific enumeration of the authority, the exercise of the authority
308 is consistent with the agent's duties under s. 709.2114, and the
309 exercise is not otherwise prohibited by another agreement or
310 instrument:

311 (a) Create an inter vivos trust;

312 (b) With respect to a trust created by or on behalf of the
313 principal, amend, modify, revoke, or terminate the trust, but only if

314 the trust instrument explicitly provides for amendment, modification,
315 revocation, or termination by the settlor's agent;

316 (c) Make a gift, subject to subsection (34);

317 (d) Create or change rights of survivorship;

318 (e) Create or change a beneficiary designation;

319 (f) Waive the principal's right to be a beneficiary of a joint
320 and survivor annuity, including a survivor benefit under a retirement
321 plan; or

322 (g) Disclaim property and powers of appointment.

323 (2) In addition to signing the power of attorney on behalf of the
324 principal pursuant to s. 709.2105(3) and chapter 117, if the principal
325 is physically unable to sign or initial next to any enumerated
326 authority for which subsection (1) requires the principal to sign or
327 initial, the notary public before whom the principal's oath or
328 acknowledgment is made may sign the principal's name or initials on
329 the power of attorney if:

330 (a) The principal directs the notary public to sign the
331 principal's name or write the principal's initials on the power of
332 attorney next to any enumerated authority for which subsection (1)
333 requires the principal to sign or initial;

334 (b) The signing or initialing of the power of attorney by the
335 notary public is done in the presence of the principal and witnessed
336 by two disinterested subscribing witnesses; and

337 (c) The notary public writes the statement "Signature or initials
338 affixed by the notary pursuant to s.117.05(14), Florida Statutes"
339 below each and every signature or initial the notary writes.

340 Only one notarial certificate in substantially the same form as those
341 described in s. 117.05(14), which states the circumstances of all
342 signatures and initials written by the notary public, is required to
343 be completed by the notary public.

344 (23) Notwithstanding a grant of authority to do an act described in
345 subsection (1), unless the power of attorney otherwise provides, an
346 agent who is not an ancestor, spouse, or descendant of the principal
347 may not exercise authority to create in the agent, or in an individual
348 to whom the agent owes a legal obligation of support, an interest in

349 the principals property, whether by gift, right of survivorship,
350 beneficiary designation, disclaimer, or otherwise.

351 (34) Unless the power of attorney otherwise provides, a provision in a
352 power of attorney granting general authority with respect to gifts
353 authorizes the agent to only:

354 (a) Make outright to, or for the benefit of, a person a gift of
355 any of the principal's property, including by the exercise of a
356 presently exercisable general power of appointment held by the
357 principal, in an amount per donee, per calendar year, not to exceed
358 the annual dollar limits of the federal gift tax exclusion under 26
359 U.S.C. s. 2503(b), as amended, without regard to whether the federal
360 gift tax exclusion applies to the gift, or if the principal's spouse
361 agrees to consent to a split gift pursuant to 26 U.S.C. s. 2513, as
362 amended, in an amount per donee, per calendar year, not to exceed
363 twice the annual federal gift tax exclusion limit; and

364 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to the
365 splitting of a gift made by the principal's spouse in an amount per
366 donee, per calendar year, not to exceed the aggregate annual gift tax
367 exclusions for both spouses.

368 (45) Notwithstanding subsection (1), if a power of attorney is
369 otherwise sufficient to grant an agent authority to conduct banking
370 transactions, as provided in s. 709.2208(1), conduct investment
371 transactions as provided in s.709.2208(2), or otherwise make additions
372 to or withdrawals from an account of the principal, making a deposit
373 to or withdrawal from an insurance policy, retirement account,
374 individual retirement account, benefit plan, bank account, or any
375 other account held jointly or otherwise held in survivorship or
376 payable on death, is not considered to be a change to the survivorship
377 feature or beneficiary designation, and no further specific authority
378 is required for the agent to exercise such authority. A bank or other
379 financial institution does not have a duty to inquire as to the
380 appropriateness of the agent's exercise of that authority and is not
381 liable to the principal or any other person for actions taken in good
382 faith reliance on the appropriateness of the agent's actions. This

383 subsection does not eliminate the agent's fiduciary duties to the
384 principal with respect to any exercise of the power of attorney.
385 (56) This section does not apply to a power of attorney executed
386 before October 1, 2011.

387 Section 15. Subsection 709.2208(2) is amended as follows:

388 (2) A power of attorney that specifically includes the statement that
389 the agent has "authority to conduct investment transactions as
390 provided in section 709.2208(2), Florida Statutes" grants general
391 authority to the agent with respect to securities held by financial
392 institutions or broker-dealers to take the following actions without
393 additional specific enumeration in the power of attorney:

394 (a) Buy, sell, and exchange investment instruments.

395 (b) Establish, continue, modify, or terminate an account with respect
396 to investment instruments.

397 (c) Pledge investment instruments as security to borrow, pay, renew,
398 or extend the time of payment of a debt of the principal.

399 (d) Receive certificates and other evidences of ownership with respect
400 to investment instruments.

401 (e) Exercise voting rights with respect to investment instruments in
402 person or by proxy, enter into voting trusts, and consent to
403 limitations on the right to vote.

404 (f) Sell commodity futures contracts and call and put options on
405 stocks and stock indexes.

406 For purposes of this subsection, the term "investment instruments"
407 means stocks, bonds, mutual funds, and all other types of securities
408 and financial instruments, whether held directly, indirectly, or in
409 any other manner, including shares or interests in a private
410 investment fund, including, but not limited to, a private investment
411 fund organized as a limited partnership, a limited liability company,
412 a statutory or common law business trust, a statutory trust, or a real
413 estate investment trust, joint venture, or any other general or
414 limited partnership; derivatives or other interests of any nature in
415 securities such as options, options on futures, and variable forward
416 contracts; mutual funds; common trust funds; money market funds; hedge
417 funds; private equity or venture capital funds; insurance contracts;

418 and other entities or vehicles investing in securities or interests in
419 securities whether registered or otherwise, except commodity futures
420 contracts and call and put options on stocks and stock indexes.
421 Section 16. These corrections shall take effect upon becoming law.

Chapter 709 “Glitch” Bill White Paper

I. SUMMARY

The proposal seeks to clarify certain provisions of chapter 709, which was substantially re-written in 2011.

II. CURRENT SITUATION

Chapter 709, the Florida Power of Attorney Act (the “Act”), was enacted effective October 1, 2011, and substantially re-wrote chapter 709 to conform to the Uniform Power of Attorney Act. Several clarifications are proposed to facilitate the proper functioning of the Act.

III. EFFECT OF PROPOSED CHANGES

The proposed changes add definitions to clarify terms used in the Act, identify additional exceptions to the application of the Act, authorize a notary to sign a power of attorney on behalf of a disabled principal, clarify when a third party may reject an out-of-state power of attorney, address concerns raised by title agents as to the acceptance of copies of powers of attorney and the corresponding requirement to record only original documents, broadens the agent’s ability to delegate certain ministerial tasks, clarifies the court’s authority to award fees and costs in a judicial proceeding, clarifies the content and form of the affidavit to be provided by an agent, corrects a statutory reference, clarifies that an English translation must be certified rather than verified, clarifies when written notice of a third party’s rejection of a power of attorney is required, and clarifies the application of numerous sections to financial institutions and broker-dealers.

IV. SECTION BY SECTION ANALYSIS

1. Definitions – Section 709.2102

The proposal adds a definition for “broker-dealer” as a new subsection 2. The purpose of the addition is to clarify that broker-dealers should be treated similar to financial institutions in the application of the Act. The proposal also makes conforming amendments to sections 709.2120, 709.2121, 709.2207 and 709.2208 to clarify that the Act applies to both broker-dealers and financial institutions in almost all instances.

The definition of “sign” is modified in renumbered (13) to clarify that the principal may use either a signature or a simple mark as evidence of execution.

A definition of “state” has also been included as new (14) as it relates to acceptance of powers of attorney executed in compliance with the laws of another state of the United States.

2. Powers to which the Act does not apply – 709.2103

Section 709.2103 provides that the Act does not apply to powers of attorney frequently encountered in common agency relationships and commercial contexts. The Act currently excludes:

- A power created by an entity, such as a corporation;
- A proxy or other delegation to exercise voting or management rights;

- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose; or
- Powers coupled with an interest (such as powers given to a creditor to perfect or protect title in or to sell, pledged collateral).

The proposal adds the following exceptions to transactions covered by the Act:

- Stock transfer powers. The Depository Trust Company and other transfer agents rely on these stock powers to facilitate transfers of certificates. They frequently are provided on pre-printed forms and do not meet the execution requirements of the Act. The provisions of the Act are not applicable to this type of agency appointment.
- Agent for trades and transfers. Most investment management agreements authorize the broker-dealer or financial institution to execute trades and transfers on the client's behalf by appointing the broker-dealer or financial institution (or their employee) as an agent of the client. This appointment is necessary to facilitate the sale and purchase of investments and transfers in a timely manner in response to market changes. The provisions of the Act are not applicable to this type of agency appointment.
- Agent for a trustee to whom authority is delegated under s. 736.0807. A trustee is authorized in Chapter 736 to appoint agents to assist the trustee in fulfilling its responsibilities. The provisions of the Act are not applicable to this type of agency appointment as the fulfillment of a trustee's responsibilities and those of his agent are adequately governed by Chapter 736.

3. Execution requirements – Sections 709.2105 and 709.2202

A power of attorney must be signed by the principal. A reasonable accommodation is needed to facilitate the “signing” of a power of attorney by a principal who is physically unable to sign his or her name but otherwise has the capacity to enter into a power of attorney. The proposal adopts the procedure in Chapter 117 to authorize a notary to sign the name of the disabled principal. The notary is authorized to execute the power of attorney at the direction of the principal by the amendment of 709.2105. In addition, the principal may also direct the notary to provide the required the separate powers that require additional signatures or initials under s. 709.2202. The separate powers in this provision relate to special authority to affect the disposition of the principal's assets by trust, gift or beneficiary designation. Due to the nature of this authority, the Act requires a separate acknowledgment by the principal that such authority has been granted to the agent. The amendment of 709.2202 adds a new subsection (2) to provide the requirements for the notary to provide the acknowledgment on behalf of the principal. These include:

- (1) The principal must direct the notary to sign or initial the specifically enumerated authority;
- (2) The notary must do so in the presence of the principal and two disinterested witnesses, and
- (3) The notary must include a reference to s. 117.05(14) in each instance where the acknowledgment is made by the notary.

The following subsections in 709.2202 have also been renumbered as (3) through (6).

4. Validity of Power of Attorney – Section 709.2106

One of the key provisions of the Act was to provide a mechanism for a power of attorney executed pursuant to the laws of another state to be recognized in Florida, even if its execution did not comply with the requirements of the Act. The mechanism allows third parties to request an opinion of counsel that the power of attorney was properly executed under the laws of the other state. The proposal modifies subsection 3 to clarify that if a third person requests such an opinion of counsel and it is not provided, that is sufficient grounds for the third person to refuse to accept the power of attorney. The current language is unclear regarding the third person's right to refuse to accept the power of attorney.

Another key provision of the Act was to allow third parties to accept a copy of a power of attorney rather than requiring the agent to produce an original each time. Title insurance agents expressed concern that an original must be recorded in the public records for purposes of real estate title transfers using a power of attorney. The proposal amends subsection 5 to clarify that a third party, such as a title agent, may require an original power of attorney if the original must be recorded in the public records as part of the transaction. Additionally, a new (6) is included to authorize the recording of an original power of attorney in the public records upon payment of the prescribed fee.

5. Agent's duties – Section 709.2114

A principal delegates authority to an agent to act for the principal by execution of the power of attorney. There are limited circumstances in which the agent is allowed to further delegate his or her authority to another person. The Act currently limits this to delegation of investment authority pursuant to section 518.112, Florida Statutes, to enable an agent to obtain qualified investment management on the principal's behalf. The proposal would allow the agent to also delegate his or her authority in situations using a prescribed governmental form, such as a power of attorney to a car dealer to facilitate the transfer of title for the sale of a vehicle, or the appointment of an agent for communication with the Internal Revenue Service using an IRS Form 2848.

6. Judicial relief; conflicts of interest – Section 709.2116

The Act allows a court to award attorney's fees and costs in any proceeding involving a power of attorney but it does not provide a standard for the court to apply in making the award. The proposal includes the standard "as in chancery actions" to allow the court full discretion in whether or not to make an award and against whom.

7. Acceptance of and reliance upon power of attorney – section 709.2119

An important component of the Act is the ability of a third party to request that the agent provide an affidavit as to the validity of the power of attorney. The proposal clarifies the contents of the affidavit and a suggested form, specifically including statements regarding the marital status of the principal and agent, if appropriate.

A statutory reference in subsection 3 is corrected from 709.2103 to 709.2105.

The proposal also changes the requirement that an English translation be verified, to simply certified. Verification of a translation requires the certification by the translator that it is an accurate translation as well as a certification by a court that the translator has been approved to provide translation services. This additional requirement places too great of a burden on the agent. A certification by the translator is sufficient to ensure accuracy of the translation.

8. Liability for refusal to accept power of attorney - section 709.2120

Section 709.2120 of the Act identifies situations where it is appropriate for a third party to reject a power of attorney. It also includes a requirement that the third party notify the agent in writing of the reason for the rejection. The proposal clarifies that the written notice of rejection is not required when the third person is not otherwise required to engage in the same transaction with the principal. Conversely, notice is required in all other situations.

References to financial institutions in this section are amended to include broker-dealers and “security transactions” is changed to “investment transactions” to conform to the terminology in section 709.2208 of the Act.

The subsections have also been renumbered for clarity.

9. Notice – section 709.2121

References to financial institutions in subsections (3) and (4) are amended to specifically include broker-dealers.

10. Authority to make gifts – section 709.2202

The agent’s ability to make a gift of the principal’s property is limited by a default “cap” equal to the annual exclusion amount for federal gift tax purposes. This amount is \$14,000 per donee in 2013. The correction clarifies that this cap is measured on a calendar year basis, the same as it is measured for federal gift tax purposes.

11. Banks and other financial institutions – section 709.2208

A reference to banks and other financial institutions in subsection (2) is amended to specifically include broker-dealers.

12. Effective Date.

The proposal has an immediate effective date as it is remedial in nature.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will provide economic benefit to the private sector by enhancing the usefulness of powers of attorney, while at the same time protecting the principal, the agent, and those who deal with the agent, and providing Florida citizens with an economical method to plan for the management of their person and finances, particularly in the event of incapacity.

VII. CONSTITUTIONAL ISSUES

There are no Constitutional issues.

VIII. OTHER INTERESTED PARTIES

The Florida Bar

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Elaine Bucher, Chairman, Chair, Estate and Trust Tax Planning Committee, Real Property, Probate and Trust Law Section

Address Elaine Bucher, Gunster, 777 S. Flagler Drive, Suite 500 East, West Palm Beach, FL 33401 Telephone: (561) 655-1980

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

CONTACTS

Board & Legislation Committee Appearance

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Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533

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 amendment of F.S. Section 198.13 to strike the last sentence of Subsection 198.13(4) that currently states: "The provisions of this subsection do not apply to estates of decedents dying after December 31, 2012."

Reasons For Proposed Advocacy:

Subsection 198.13(4) of the Florida Statutes currently provides that with respect to the estate of a decedent who dies after December 31, 2004, if, upon the death of the decedent, a state death tax credit or generation-skipping transfer credit is not allowable pursuant to the Internal Revenue Code, (a) the personal representative of the estate is not required to file a Florida estate tax return in connection with the estate, and (b) the person who would otherwise be required to file a return reporting a generation-skipping transfer is not required to file such a return in connection with the estate. However, Subsection 198.13(4) of the Florida Statutes further provides that the foregoing provision does not apply to estates of decedents dying after December 31, 2012.

1 A bill to be entitled

2 An act relating to tax administration; amending s. 198.13.

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

5
6 Section 1. Subsection (4) of section 198.13, Florida Statutes, is amended to read:

7 (4) Notwithstanding any other provisions of this section and applicable to the
8 estate of a decedent who dies after December 31, 2004, if, upon the death of the
9 decedent, a state death tax credit or a generation-skipping transfer credit is not
10 allowable pursuant to the Internal Revenue Code of 1986, as amended:

11 (a) The personal representative of the estate is not required to file a return under
12 subsection (1) in connection with the estate.

13 (b) The person who would otherwise be required to file a return reporting a
14 generation-skipping transfer under subsection (3) is not required to file such a
15 return in connection with the estate.

16 ~~The provisions of this subsection do not apply to estates of decedents dying after~~
17 ~~December 31, 2012.~~

LEGISLATIVE POSITION
REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee
Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602

Position Level The Florida Bar, RPPTL Section and Committee

CONTACTS

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Peter Dunbar and Martha J. Edenfield, Pennington, Moore, et al, P. O. Box 10095, Tallahassee, FL 32302 (850) 222-3533

Board & Legislation

Committee Appearance _____ Contacts Above
(List name, address and phone number)

Appearances

Before Legislators _____ Contacts Above
(List name and phone # of those appearing before House/Senate Committees)

Meetings with

Legislators/staff _____ Contacts Above
(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 _____
(Bill or PCB#)

Indicate Position _____ Support _____ Oppose _____ Technical Other _____ **Assistance**

Proposed Wording of Position for Official Publication: Supporting amendments concerning estoppel letters issued by condominium and homeowners' associations, including amendments to s.718.116 and 720.30851 F.S.

Reasons for Proposed Advocacy: To resolve problems that have arisen regarding time and expense required to obtain documentation of monies due from an owner to the owner's homeowners' or condominium association, To resolve confusion and to standardize the procedure relating to the process for owners and their agents to obtain information concerning monies due to a associations governed by Chapters 718 and 720, Florida Statutes, facilitating the resale and refinancing of real property, including the creation of a statutory form for estoppel certificates.

1 **Amendment to Section 718.116(8):**

2
3 Within 15 days after receiving a written request therefore from a unit owner or his or her designee, or a
4 unit mortgagee or his or her designee, the association shall provide a certificate signed by an officer or
5 agent of the association stating all assessments and other moneys owed to the association by the unit
6 owner with respect to the condominium ~~unit~~ parcel. The certificate shall be in substantially the following
7 form:
8

9 Date: _____
10 Unit Number: _____
11 Address: _____
12 Fee for Preparation of Certificate: \$ _____
13

14 (i) The annual assessment levied against the Unit is \$ _____ and is
15 paid in installments of \$ _____ per _____.

16
17 (ii) The annual assessment is paid through [insert date paid through] _____.

18
19 (iii) The next installment of the annual assessment is due [insert date due] _____ in the
20 amount of \$ _____.

21
22 (iv) There are no unpaid special assessments levied against this unit, or pending special
23 assessments except: \$ _____ due on [insert date due].
24

25 (v) The association charges a transfer fee in the amount of \$ _____.

26
27 (vi) The association does not collect assessments on behalf of a master or other
28 association, except _____. If the association does collect
29 assessment on behalf of another association, please complete the following:

- 30 (a) Name of Association: _____
31 (b) Amount of Assessment: _____
32 (c) Date Assessment Paid Through: _____
33 (d) Next Installment Due: _____
34

35 (vii) This estoppel certificate is valid for thirty (30) days from the date of issuance stated
36 above.
37

38 The association, at its option, may include additional information with this Certificate.
39

40 If there are past due regular or special assessments or any other monetary obligations due and owing from
41 the unit owner to the association pursuant to statute, the declaration, articles of incorporation or bylaws
42 of the association, including, but not limited to any amounts set forth in section (3) as to the collection of
43 delinquent assessments, the certificate shall specify for each installment the date due and the amounts,
44 and shall include the amount of any past due special assessments, unpaid late fees, any amounts due and
45 owing incident to a new owner / high bidder at a first mortgage foreclosure or other superior lien holder
46 sale (if applicable), interest (including a per diem charge through the expiration date of the certificate),

47 attorneys fees as permitted by this chapter or the Declaration, and a statement as to whether there is or is
48 not a lien recorded against the Unit.

49 (a) Any person other than the owner who relies upon such certificate shall be protected thereby.

50 (b) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this
51 subsection, and in any such action the prevailing party is entitled to recover reasonable attorney's fees.

52 ~~Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i),~~ The association or its
53 authorized agent may charge a reasonable fee for the preparation of the certificate. If no monetary
54 obligations to the association are past due, the fee shall not exceed \$100. If a unit owner or its agent
55 requests the certificate within less than 15 days, the association may charge an additional \$100 fee. The
56 total amount of the fees charged for the preparation of the certificate must be included on the certificate.
57 The certificate provided by the association shall include all of the information required by this section,
58 and a unit owner shall not be required to obtain more than one certificate with the required information.
59 Any additional information requested by a prospective purchaser or lienholder shall be governed by s.
60 718.111(12)(e)1. If any monetary obligations due from the unit owner to the association are past due, the
61 association shall have the right to require prepayment of the fee as a condition of preparation of the
62 certificate and, if the association's attorney prepares the certificate, the attorney shall have the right to
63 charge a reasonable fee for the preparation thereof.

64 (d) If certificates for multiple units owned by the same unit owner are simultaneously requested, and there
65 are no past due monetary obligations owed to the association by the unit owner, then the total fee that the
66 association may charge for the preparation of the certificates for all such units shall not exceed, in the
67 aggregate: (i) \$100 per unit up to a maximum amount of \$750 for units owing the same amount to the
68 association, and (ii) for units not owing the same amount to the association, \$100 per unit up to a
69 maximum amount of \$750 for certificates for 25 units or less; \$100 per unit up to a maximum amount of
70 \$1,000 for certificates for more than 25 units but less than 50 units; \$100 per unit up to a maximum
71 amount of \$1,500 for certificates for 50 or more units but less than 100 units; and \$100 per unit up to a
72 maximum amount of \$2,500 for certificates for 100 units or more.

73 ~~The authority to charge a fee for the certificate shall be established by a written resolution adopted~~
74 ~~by the board or provided by a written management, bookkeeping, or maintenance contract and is payable~~
75 ~~upon the preparation of the certificate.~~ If the certificate is requested in conjunction with the sale or
76 mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for
77 which the certificate was sought the preparer receives a written request, accompanied by reasonable
78 documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be
79 refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit
80 owner, and the association may collect it from that owner in the same manner as an assessment as
81 provided in this section.

82 (f) If a unit owner or his or her designee, or a unit mortgagee or his or her designee requests an
83 updated certificate, the association shall provide an updated certificate within 10 days after receiving the
84 written request. The association may charge a fee for the updated certificate not to exceed \$75.00.

85

86 **Amendment to Section 720.30851:**

87 Estoppel certificates.—Within 15 days after the date on which a request for an estoppel certificate is
88 received from a parcel owner or mortgagee, or his or her designee, the association shall provide a
89 certificate signed by an officer or authorized agent of the association stating all assessments and other

90 moneys owed to the association by the parcel owner or mortgagee with respect to the parcel. An
91 association may charge a fee for the preparation of such certificate, and the amount of such fee must be
92 stated on the certificate. The certificate shall be in substantially the following form:

93
94 Date: _____

95 Address: _____

96 Fee for Preparation of Certificate: \$ _____

97
98 (i) The annual assessment levied against the parcel is \$ _____ and is paid
99 in installments of \$ _____ per _____.

100
101 (ii) The annual assessment is paid through [insert date paid through] _____.

102
103 (iii) The next installment of the annual assessment is due [insert date due] _____ in the
104 amount of \$ _____.

105
106 (iv) There are no unpaid special assessments levied against this parcel, or pending special
107 assessments except: \$ _____ due on [insert date due].

108
109 (v) The association charges a transfer fee in the amount of \$ _____.

110
111 (vi) The association does not collect assessments on behalf of a master or other
112 association, except _____ . If the association does collect
113 assessment on behalf of another association, please complete the following:

114 _____
115 (a) Name of Association:

116 _____
117 (b) Amount of assessment:

118 _____
119 (c) Date assessment paid through:

120 _____
121 (d) Next installment due:

122 (vii) This estoppel certificate is valid for thirty (30) days from the date of issuance stated
123 above.

124 _____ The association, at its option, may include additional information with this Certificate.

125 (1) If there are past due regular or special assessments or any other monetary obligations due and
126 owing from the parcel owner to the association pursuant to statute or the governing documents of the
127 association, including but not limited to any amounts authorized by this chapter as to the collection of
128 delinquent assessments, the certificate shall specify for each installment the date due and the amounts,
129 and shall include the amount of any past due special assessments, unpaid late fees, any amounts due and
130 owing incident to a new owner / high bidder at a first mortgage foreclosure or other superior lien holder
131 sale (if applicable), interest (including a per diem charge through the expiration date of the certificate),
132 attorneys fees as permitted by this chapter or the governing documents, and a statement as to whether
133 there is or is not a lien recorded against the parcel.

134 ~~(1)-(2)~~ Any person other than a parcel owner who relies upon a certificate shall be protected
135 thereby receives the benefits and protection thereof.

136 ~~(2)~~ (3) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance
137 with this section, and the prevailing party is entitled to recover reasonable attorney's fees.
138

139 (4) The association or its authorized agent may charge a reasonable fee for the preparation of
140 the certificate. If no monetary obligations to the association are past due, the fee shall not exceed \$100. If
141 a parcel owner or its agent requests the certificate within less than 15 days, the association may charge an
142 additional \$100 fee. The total amount of the fees charged for the preparation of the certificate must be
143 included on the certificate. The certificate provided by the association shall include all of the information
144 required by this section, and a parcel owner shall not be required to obtain more than one certificate with
145 the required information. If any monetary obligations due from the parcel owner to the association are
146 past due, the association shall have the right to require prepayment of the fee as a condition of preparation
147 of the certificate and, if the association's attorney prepares the certificate, the attorney shall have the right
148 to charge a reasonable fee for the preparation thereof.

149 (5) If certificates for multiple parcels owned by the same parcel owner are simultaneously
150 requested, and there are no past due monetary obligations owed to the association by the parcel owner,
151 then the total fee that the association may charge for the preparation of the certificates for all such parcels
152 shall not exceed, in the aggregate: (i) \$100 per parcel up to a maximum amount of \$750 for parcels owing
153 the same amount to the association, and (ii) for parcels not owing the same amount to the association,
154 \$100 per parcel up to a maximum amount of \$750 for certificates for 25 parcels or less; \$100 per parcel
155 up to a maximum amount of \$1,000 for certificates for more than 25 parcels but less than 50 parcels; \$100
156 per parcel up to a maximum amount of \$1,500 for certificates for 50 or more parcels but less than 100
157 parcels; and \$100 per parcel up to a maximum amount of \$2,500 for certificates for 100 parcels or more.

158 ~~(6) The authority to charge a fee for the certificate shall be established by a written resolution~~
159 ~~adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is~~
160 ~~payable upon the preparation of the certificate. The total amount of the fees charged for the preparation of~~
161 ~~the certificate must be included on the certificate. The certificate provided by the association shall include~~
162 ~~all of the information required by this section, and a parcel owner shall not be required to obtain more~~
163 ~~than one estoppel certificate with the required information. ~~(3)~~ If the certificate is requested in~~
164 ~~conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days~~
165 ~~after the closing date for which the certificate was sought the preparer receives a written request,~~
166 ~~accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel~~
167 ~~owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the~~
168 ~~obligation of the parcel owner, and the association may collect it from that owner in the same manner as~~
169 ~~an assessment as provided in this section.~~

170 (7) If a parcel owner or mortgagee, or his or her designee, requests an updated certificate, the
171 association shall provide an updated certificate within 10 days after receiving the written request. The
172 association may charge a fee for the updated certificate not to exceed \$75.00.

173

WHITE PAPER

Estoppels for Condominium Associations and Homeowner Associations

I. SUMMARY

When condominium units governed by Chapter 718, Florida Statutes, or parcels subject to a homeowners association governed by Chapter 720, Florida Statutes, are sold or refinanced, the closing agent typically requires that the condominium association or the homeowners association provide an estoppel certificate delineating monies due the condominium association or homeowners associations (hereinafter referred to as “Community Associations”) which could become a lien upon the property. Over the past several years, problems have arisen regarding (i) the time required to provide an estoppel; (ii) the content of the estoppel; and (iii) the fee to be charged for the estoppel certificate. This bill is proposed by the Real Property, Probate and Trust Law section of The Florida Bar in an effort to resolve the confusion and to standardize the procedure relating to estoppels for condominiums and properties subject to a homeowners association governed by Chapter 720, Florida Statutes.

II. CURRENT SITUATION

There is no current legislation governing estoppels in Chapter 720, Florida Statutes, which has led to abuses as inconsistent requests for information are made and inconsistent responses are tendered. Currently, Section 720.30851, Florida Statutes, provides that within 15 days after receipt of a request for an estoppel certificate, the Association shall provide a certificate stating all assessments and other monies owed to the Association by the parcel owner and the Association may charge a fee for the preparation of such certificate, which fee must be stated on the certificate.

Section 718.116(a), Florida Statutes, currently provides that within 15 days after receiving a written request from a unit owner or his or her designee, or a mortgagee or his or her designee, the association shall provide a certificate signed by an officer or agent of the association stating all assessments and other monies owed to the association by the unit owner with respect to the condominium parcel.

III. SECTION BY SECTION ANALYSIS

1. The proposed legislation provides a form for the estoppel certificate and delineates the content of the statutory estoppel certificate.
2. Establishes a fee not to exceed \$100.00 if no monetary obligations to the Association are past due. If a parcel owner, or its agent, requests the certificate within less than 15 days, the Association may charge an additional \$100.00 fee.
3. Provides that if certificates for multiple units or parcels owned by the same owner are simultaneously requested and there are no past due monetary obligations owed to the Association by the parcel owner, statutory maximum fees are established.

4. Section (f) provides that if the unit or parcel owner, or his designee, requests an updated certificate, the Association shall provide it within 10 days after receiving the request and may charge a fee not to exceed \$75.00.

5. Provides that the estoppel certificate is valid for 30 days from date of issuance.

6. Allows for additional information to be included with the certificate at the option of the association.

7. In the situation where monetary obligations are past due, the association may require prepayment of the fee and the attorney preparing the certificate has the right to charge a reasonable fee for the preparation of the certificate.

8. Requires itemized and detailed information regarding amounts due and a statement as to whether a lien is recorded against the unit or parcel.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Resolving the issues relating to the timing, cost and content of estoppels will reduce the cost of some real estate transactions, thereby saving costs and time to the private sector.

VI. CONSTITUTIONAL ISSUES

None.

VII. OTHER INTERESTED PARTIES

Title insurance companies, title insurance agents, real estate brokers and real estate agents, community associations and association management companies.

LEGISLATIVE POSITION
REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee
Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602

Position Level The Florida Bar, RPPTL Section and Committee

CONTACTS

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Peter Dunbar, Pennington, Moore, et al, P. O. Box 10095,
Tallahassee, FL 32302-2095 (850) 222-3533
Martha J. Edenfield, Pennington, Moore, et al., P. O. Box 10095,
Board & Legislation Tallahassee, FL 32302-2095 (850) 222-3533
Committee Appearance _____ Contacts Above
(List name, address and phone number)

Appearances Before Legislators _____ Contacts Above
(List name and phone # of those appearing before House/Senate Committees)

Meetings with Legislators/staff _____ Contacts Above
(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 _____

Indicate Position _____ Support _____ Oppose _____ (Bill or PCB Sponsor) _____
Technical Assistance _____ Other _____

Proposed Wording of Position for Official Publication: Support removal of statutory requirements that existing statutory late fees be stated in a condominium or a homeowners' association declaration or bylaws, including amendments to 718.116 and 720.3085 F.S.

Reasons for Proposed Advocacy: Removal of the statutory requirement that the declaration or bylaws provide for the imposition of existing statutory late fee for Condominium and Homeowners' Associations, thereby allowing all condominium and homeowners' associations to collect the existing statutory late fees.

1 Section 1.

2

3 718.116(3) Assessments; liability; lien and priority; interest; collection.

4

5 Assessments and installments on assessments which are not paid when due bear interest at the
6 rate provided in the declaration, from the due date until paid. The rate may not exceed the rate
7 allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18
8 percent per year. ~~If provided by the declaration or bylaws,~~ The association may, in addition to
9 such interest, charge an administrative late fee of up to the greater of \$25 or 5 percent of each
10 delinquent installment for which the payment is late. Any payment received by an association
11 must be applied first to any interest accrued by the association, then to any administrative late
12 fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the
13 delinquent assessment. The foregoing is applicable notwithstanding any restrictive endorsement,
14 designation, or instruction placed on or accompanying a payment. A late fee is not subject to
15 chapter 687 or s. 718.304(4).

16

17 Section 2.

18

19 720.3085(3)(a) Payment for assessment; lien claims. -

20

21 a) ~~If the declaration or bylaws so provide,~~ The association may also charge an administrative
22 late fee not to exceed the greater of \$25 or 5 percent of the amount of each installment that is
23 paid past the due date.

24

WHITE PAPER

Late Fees for Condominium Association and Homeowner Association Assessments

I. SUMMARY

This proposal seeks to allow condominium and homeowners' associations the ability to collect late fees for delinquent assessments regardless of whether an association's declaration of condominium/covenants or bylaws contain an express grant of this authority.

II. CURRENT SITUATION

When a parcel/unit owner fails to timely pay an assessment installment, then the burden of a community's common expenses, such as insurance, utilities and maintenance, are forced to be borne by the owners in the community. This burden is especially significant while there are large numbers of non-paying owners whose mortgages are being foreclosed. The Condominium Association Act, in s. 718.116(3) F.S., and the Florida Homeowners' Association Act, in s. 720.3085(3)(a) F.S., permits in the case of the failure to timely pay an assessment installment, the imposition of an administrative late fee not to exceed the greater of \$25.00 or 5 percent; but, the fee is permitted to be levied only if provided by the community's declaration of condominium or covenants, or the Association's bylaws. While some declarations or bylaws do provide for a late, others do not creating confusion and the loss of potential revenue associations.

III. SECTION-BY-SECTION ANALYSIS

Remove the requirement that late fees be provided by the declaration or bylaws.

Section 1.

Statutory Provision: Section 718.116(3), Florida Statutes (Assessments; liabilities; lien and priority; interest; collection.)

Proposal: *Remove the requirement that existing statutory late fees be provided by the declaration or bylaws.*

Explanation: Eliminates the need to amend a declaration of condominium or bylaws of a condominium association to allow the condominium association to collect statutory late fees.

Section 2.

Statutory Provision: Section 720.3085(3)(a), Florida Statutes (Payment for assessment; lien claims. -)

Proposal: *Remove the requirement that existing statutory late fees be provided by the declaration or bylaws.*

Explanation: Eliminates the need to amend a declaration or bylaws of a homeowners association to allow the homeowners association to collect statutory late fees.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The bill does not have any fiscal impact on state and local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

Removing the requirement that the imposition of late fees must be provided by the declaration or bylaws of the condominium or homeowner association removes the cost of amending declarations or the condominium or homeowner association bylaws, which may not always be feasible and it is a cost which could be avoided. This change will have a direct positive financial effect by encouraging timely payments of community association assessments and reducing the impact of the cost of collection upon the individual community associations and their constituent unit owners.

VI. CONSTITUTIONAL ISSUES

The proposed legislative changes present no constitutional issues.

VII. OTHER INTERESTED PARTIES

Community Associations Institute (CAI) , and community association managers.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section, Condominium and Planned Development Committee
Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602

Position Type The Florida Bar, RPPTL Section and Committee

CONTACTS

Steven H. Mezer, 1801 N. Highland Avenue, Tampa, FL 33602 (813) 204-6492

Michael J. Gelfand, Gelfand & Arpe, P.A, Regions Financial Tower, Suite 1220, 1555 Palm Beach Lakes Blvd., West Palm Beach, FL 33401; (561) 655-6224

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Tallahassee, Florida, 32302-2095 (850) 222-3533

Martha J. Edenfield, Pennington, Moore, et al, P.O. Box 10095

Board & Legislation Tallahassee, Florida, 32302-2095 (850) 222-3533

Committee Appearance Contacts Above

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(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 _____

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position _____ Support

Oppose

Technical

Other _____

Assistance

Proposed Wording of Position for Official Publication: Support differentiation of administration of nonresidential condominiums from the residential condominiums, eliminating for non-residential condominium associations certain provisions not appropriate in a commercial setting, including amendments to the Condominium Act, Chap. 718, F.S.

Reasons For Proposed Advocacy:

In most situations the Condominium Act does not distinguish between traditional residential condominiums and those newer concepts of a commercial nature. The failure to distinguish creates administrative inefficiencies for nonresidential condominiums, increasing expenses.

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.

No prior Bar or Section position on this issue.

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

1. _____ (Name of Group or Organization) (Support, Oppose or No Position)

2. _____ (Name of Group or Organization) (Support, Oppose or No Position)

3. _____ (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

1 Section 1. Section 718.103, Florida Statutes, is amended to read as follows:

2 As used in this chapter, the term:

3 (1) "Assessment" means a share of the funds which are required for the
4 payment of common expenses, which from time to time is assessed against the unit
5 owner.

6 (2) "Association" means, in addition to any entity responsible for the operation
7 of common elements owned in undivided shares by unit owners, any entity which
8 operates or maintains other real property in which unit owners have use rights, where
9 membership in the entity is composed exclusively of unit owners or their elected or
10 appointed representatives and is a required condition of unit ownership.

11 (3) "Association property" means that property, real and personal, which is
12 owned or leased by, or is dedicated by a recorded plat to, the association for the use
13 and benefit of its members.

14 (4) "Board of administration" or "board" means the board of directors or other
15 representative body which is responsible for administration of the association.

16 (5) "Buyer" means a person who purchases a condominium unit. The term
17 "purchaser" may be used interchangeably with the term "buyer."

18 (6) "Bylaws" means the bylaws of the association as they are amended from
19 time to time.

20 (7) "Committee" means a group of board members, unit owners, or board
21 members and unit owners appointed by the board or a member of the board to make
22 recommendations to the board regarding the proposed annual budget or to take action
23 on behalf of the board.

24 (8) "Common elements" means the portions of the condominium property not
25 included in the units.

26 (9) "Common expenses" means all expenses properly incurred by the
27 association in the performance of its duties, including expenses specified in s. 718.115.

28 (10) "Common surplus" means the amount of all receipts or revenues,
29 including assessments, rents, or profits, collected by a condominium association which
30 exceeds common expenses.

31 (11) "Condominium" means that form of ownership of real property created
32 pursuant to this chapter, which is comprised entirely of units that may be owned by one
33 or more persons, and in which there is, appurtenant to each unit, an undivided share in
34 common elements.

35 (12) "Condominium parcel" means a unit, together with the undivided share in
36 the common elements appurtenant to the unit.

37 (13) "Condominium property" means the lands, leaseholds, and personal
38 property that are subjected to condominium ownership, whether or not contiguous, and
39 all improvements thereon and all easements and rights appurtenant thereto intended for
40 use in connection with the condominium.

41 (14) "Conspicuous type" means bold type in capital letters no smaller than the
42 largest type, exclusive of headings, on the page on which it appears and, in all cases, at
43 least 10-point type. Where conspicuous type is required, it must be separated on all
44 sides from other type and print. Conspicuous type may be used in a contract for
45 purchase and sale of a unit, a lease of a unit for more than 5 years, or a prospectus or
46 offering circular only where required by law.

47 (15) "Declaration" or "declaration of condominium" means the instrument or
48 instruments by which a condominium is created, as they are from time to time amended.

49 (16) "Developer" means a person who creates a condominium or offers
50 condominium parcels for sale or lease in the ordinary course of business, but does not
51 include:

52 (a) An owner or lessee of a condominium or cooperative unit who has
53 acquired the unit for his or her own occupancy;

54 (b) A cooperative association that creates a condominium by conversion of an
55 existing residential cooperative after control of the association has been transferred to
56 the unit owners if, following the conversion, the unit owners are the same persons who
57 were unit owners of the cooperative and no units are offered for sale or lease to the
58 public as part of the plan of conversion;

59 (c) A bulk assignee or bulk buyer as defined in s. 718.703; or

60 (d) A state, county, or municipal entity acting as a lessor and not otherwise
61 named as a developer in the declaration of condominium.

62 (17) "Division" means the Division of Florida Condominiums, Timeshares, and
63 Mobile Homes of the Department of Business and Professional Regulation.

64 (18) "Land" means the surface of a legally described parcel of real property
65 and includes, unless otherwise specified in the declaration and whether separate from
66 or including such surface, airspace lying above and subterranean space lying below
67 such surface. However, if so defined in the declaration, the term "land" may mean all or
68 any portion of the airspace or subterranean space between two legally identifiable
69 elevations and may exclude the surface of a parcel of real property and may mean any

70 combination of the foregoing, whether or not contiguous, or may mean a condominium
71 unit.

72 (19) "Limited common elements" means those common elements which are
73 reserved for the use of a certain unit or units to the exclusion of all other units, as
74 specified in the declaration.

75 (20) "Multicondominium" means a real estate development containing two or
76 more condominiums, all of which are operated by the same association.

77 (21) "Nonresidential condominium" means any condominium, other than a
78 residential condominium, including those containing commercial, industrial or other uses
79 which other uses include operation solely for transient occupancy.

80 ~~(2122)~~ "Operation" or "operation of the condominium" includes the
81 administration and management of the condominium property.

82 ~~(2223)~~ "Rental agreement" means any written agreement, or oral agreement if for
83 less duration than 1 year, providing for use and occupancy of premises.

84 ~~(2324)~~ "Residential condominium" means a condominium consisting of two or
85 more units, any of which are intended for use as a private temporary or permanent
86 residence, except that a condominium is not a residential condominium if the use for
87 which the units are intended is primarily commercial or industrial and not more than
88 three units are intended to be used for private residence, and are intended to be used
89 as housing for maintenance, managerial, janitorial, or other operational staff of the
90 condominium. With respect to a condominium that is not a timeshare condominium, a
91 residential unit includes a unit intended as a private temporary or permanent residence
92 as well as a unit not intended for commercial or industrial use. With respect to a

93 timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall
94 govern the intended use of each unit in the condominium. If a condominium is a
95 residential condominium but contains units intended to be used for commercial or
96 industrial purposes, then, with respect to those units which are not intended for or used
97 as private residences, the condominium is not a residential condominium. A
98 condominium which contains both commercial and residential units is a mixed-use
99 condominium and is subject to the requirements of s. 718.404.

100 (~~24~~25) "Special assessment" means any assessment levied against a unit owner
101 other than the assessment required by a budget adopted annually.

102 (~~25~~26) "Timeshare estate" means any interest in a unit under which the exclusive
103 right of use, possession, or occupancy of the unit circulates among the various
104 purchasers of a timeshare plan pursuant to chapter 721 on a recurring basis for a period
105 of time.

106 (~~26~~27) "Timeshare unit" means a unit in which timeshare estates have been
107 created.

108 (~~27~~28) "Unit" means a part of the condominium property which is subject to
109 exclusive ownership. A unit may be in improvements, land, or land and improvements
110 together, as specified in the declaration.

111 (~~28~~29) "Unit owner" or "owner of a unit" means a record owner of legal title to a
112 condominium parcel.

113 (~~29~~30) "Voting certificate" means a document which designates one of the record
114 title owners, or the corporate, partnership, or entity representative, who is authorized to

115 vote on behalf of a condominium unit that is owned by more than one owner or by any
116 entity.

117 ~~(3031)~~ "Voting interests" means the voting rights distributed to the association
118 members pursuant to s. 718.104(4)(j). In a multicondominium association, the voting
119 interests of the association are the voting rights distributed to the unit owners in all
120 condominiums operated by the association. On matters related to a specific
121 condominium in a multicondominium association, the voting interests of the
122 condominium are the voting rights distributed to the unit owners in that condominium.

123 Section 2. Paragraphs (a), (b), (d), (k) and (l) of subsection (2) of Section
124 718.112, Florida Statutes, are amended to read as follows:

125 (2) REQUIRED PROVISIONS.--The bylaws shall provide for the following
126 and, if they do not do so, shall be deemed to include the following:

127 (a) Administration.—

128 1. The form of administration of the association shall be described indicating
129 the title of the officers and board of administration and specifying the powers, duties,
130 manner of selection and removal, and compensation, if any, of officers and boards. In
131 the absence of such a provision, the board of administration shall be composed of five
132 members, except in the case of a condominium which has five or fewer units, in which
133 case in a not-for-profit corporation the board shall consist of not fewer than three
134 members. In the absence of provisions to the contrary in the bylaws, the board of
135 administration shall have a president, a secretary, and a treasurer, who shall perform
136 the duties of such officers customarily performed by officers of corporations. Unless
137 prohibited in the bylaws, the board of administration may appoint other officers and

138 grant them the duties it deems appropriate. Unless otherwise provided in the bylaws,
139 the officers shall serve without compensation and at the pleasure of the board of
140 administration. Unless otherwise provided in the bylaws, the members of the board shall
141 serve without compensation.

142 2. When a unit owner files a written inquiry by certified mail with the board of
143 administration, the board shall respond in writing to the unit owner within 30 days of
144 receipt of the inquiry. If the condominium is a residential condominium, the board's
145 response shall either give a substantive response to the inquirer, notify the inquirer that
146 a legal opinion has been requested, or notify the inquirer that advice has been
147 requested from the division. If the board in a residential condominium requests advice
148 from the division, the board shall, within 10 days of its receipt of the advice, provide in
149 writing a substantive response to the inquirer. If a legal opinion is requested, the board
150 shall, within 60 days after the receipt of the inquiry, provide in writing a substantive
151 response to the inquiry. The failure to provide a substantive response to the inquiry as
152 provided herein precludes the board from recovering attorney's fees and costs in any
153 subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry.
154 The association may through its board of administration adopt reasonable rules and
155 regulations regarding the frequency and manner of responding to unit owner inquiries,
156 one of which may be that the association is only obligated to respond to one written
157 inquiry per unit in any given 30-day period. In such a case, any additional inquiry or
158 inquiries must be responded to in the subsequent 30-day period, or periods, as
159 applicable.

160 (b) Quorum; voting requirements; proxies.—

161 1. Unless a lower number is provided in the bylaws, the percentage of voting
162 interests required to constitute a quorum at a meeting of the members is a majority of
163 the voting interests. Unless otherwise provided in this chapter or in the declaration,
164 articles of incorporation, or bylaws, and except as provided in subparagraph (d)4,
165 decisions shall be made by a majority of the voting interests represented at a meeting at
166 which a quorum is present.

167 2. Except as specifically otherwise provided herein, unit owners in a
168 residential condominium may not vote by general proxy, but may vote by limited proxies
169 substantially conforming to a limited proxy form adopted by the division. A voting
170 interest or consent right allocated to a unit owned by the association may not be
171 exercised or considered for any purpose, whether for a quorum, an election, or
172 otherwise. Limited proxies and general proxies may be used to establish a quorum.
173 Limited proxies shall be used for votes taken to waive or reduce reserves in accordance
174 with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of
175 s. [718.111](#)(13); for votes taken to amend the declaration pursuant to s. [718.110](#); for
176 votes taken to amend the articles of incorporation or bylaws pursuant to this section;
177 and for any other matter for which this chapter requires or permits a vote of the unit
178 owners. Except as provided in paragraph (d), a proxy, limited or general, may not be
179 used in the election of board members in a residential condominium. General proxies
180 may be used for other matters for which limited proxies are not required, and may be
181 used in voting for nonsubstantive changes to items for which a limited proxy is required
182 and given. Notwithstanding this subparagraph, unit owners may vote in person at unit
183 owner meetings. This subparagraph does not limit the use of general proxies or require

184 the use of limited proxies for any agenda item or election at any meeting of a timeshare
185 condominium association or a nonresidential condominium association.

186 3. Any proxy given is effective only for the specific meeting for which
187 originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer
188 than 90 days after the date of the first meeting for which it was given. Every proxy is
189 revocable at any time at the pleasure of the unit owner executing it.

190 4. A member of the board of administration or a committee may submit in
191 writing his or her agreement or disagreement with any action taken at a meeting that the
192 member did not attend. This agreement or disagreement may not be used as a vote for
193 or against the action taken or to create a quorum.

194 5. If any of the board or committee members meet by telephone conference,
195 those board or committee members may be counted toward obtaining a quorum and
196 may vote by telephone. A telephone speaker must be used so that the conversation of
197 those members may be heard by the board or committee members attending in person
198 as well as by any unit owners present at a meeting.

199 (d) Unit owner meetings.—

200 1. An annual meeting of the unit owners shall be held at the location
201 provided in the association bylaws and, if the bylaws are silent as to the location, the
202 meeting shall be held within 45 miles of the condominium property. However, such
203 distance requirement does not apply to an association governing a timeshare
204 condominium.

205 2. Unless the bylaws provide otherwise, a vacancy on the board caused by
206 the expiration of a director's term shall be filled by electing a new board member, and

207 the election must be by secret ballot. An election is not required if the number of
208 vacancies equals or exceeds the number of candidates. For purposes of this paragraph,
209 the term "candidate" means an eligible person who has timely submitted the written
210 notice, as described in sub-subparagraph 4.a., of his or her intention to become a
211 candidate. Except in a timeshare or nonresidential condominium, or if the staggered
212 term of a board member does not expire until a later annual meeting, or if all members
213 terms would otherwise expire but there are no candidates, the terms of all board
214 members expire at the annual meeting and such members may stand for reelection
215 unless prohibited by the bylaws. If the bylaws permit staggered terms of no more than 2
216 years and upon approval of a majority of the total voting interests, the association board
217 members may serve 2-year staggered terms. If the number of board members whose
218 terms expire at the annual meeting exceeds the number of candidates, the candidates
219 become members of the board effective upon the adjournment of the annual meeting.
220 Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the
221 affirmative vote of the majority of the directors making up the newly constituted board
222 even if the directors constitute less than a quorum or there is only one director. In a
223 residential condominium association of more than 10 units or in a residential
224 condominium association that does not include timeshare units or timeshare interests,
225 coowners of a unit may not serve as members of the board of directors at the same time
226 unless they own more than one unit or unless there are not enough eligible candidates
227 to fill the vacancies on the board at the time of the vacancy. Any unit owner in a
228 residential condominium desiring to be a candidate for board membership must comply
229 with sub-subparagraph 4.a. and must be eligible to serve on the board of directors at

230 the time of the deadline for submitting a notice of intent to run in order to have his or her
231 name listed as a proper candidate on the ballot or to serve on the board. A person who
232 has been suspended or removed by the division under this chapter, or who is delinquent
233 in the payment of any fee, fine, or special or regular assessment as provided in
234 paragraph (n), is not eligible for board membership. A person who has been convicted
235 of any felony in this state or in a United States District or Territorial Court, or who has
236 been convicted of any offense in another jurisdiction which would be considered a
237 felony if committed in this state, is not eligible for board membership unless such felon's
238 civil rights have been restored for at least 5 years as of the date such person seeks
239 election to the board. The validity of an action by the board is not affected if it is later
240 determined that a board member is ineligible for board membership due to having been
241 convicted of a felony. The provision of this subparagraph shall not limit the term of the
242 members of the board in a nonresidential condominium.

243 3. The bylaws must provide the method of calling meetings of unit owners,
244 including annual meetings. Written notice, which must include an agenda, shall be
245 mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days
246 before the annual meeting and must be posted in a conspicuous place on the
247 condominium property at least 14 continuous days preceding the annual meeting. Upon
248 notice to the unit owners, the board shall, by duly adopted rule, designate a specific
249 location on the condominium property or association property upon which all notices of
250 unit owner meetings shall be posted. This requirement does not apply if there is no
251 condominium property or association property for posting notices. In lieu of or in
252 addition to the physical posting of meeting notices, the association may, by reasonable

253 rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the
254 notice and the agenda on a closed-circuit cable television system serving the
255 condominium association. However, if broadcast notice is used, the notice and agenda
256 must be broadcast at least four times every broadcast hour of each day that a posted
257 notice is otherwise required under this section. If broadcast notice is provided, the
258 notice and agenda must be broadcast in a manner and for a sufficient continuous length
259 of time so as to allow an average reader to observe the notice and read and
260 comprehend the entire content of the notice and the agenda. Unless a unit owner
261 waives in writing the right to receive notice of the annual meeting, such notice must be
262 hand delivered, mailed, or electronically transmitted to each unit owner. Notice for
263 meetings and notice for all other purposes must be mailed to each unit owner at the
264 address last furnished to the association by the unit owner, or hand delivered to each
265 unit owner. However, if a unit is owned by more than one person, the association must
266 provide notice to that one address that the developer identifies for that purpose and
267 thereafter as one or more of the owners of the unit advise the association in writing, or if
268 no address is given or the owners of the unit do not agree, to the address provided on
269 the deed of record. An officer of the association, or the manager or other person
270 providing notice of the association meeting, must provide an affidavit or United States
271 Postal Service certificate of mailing, to be included in the official records of the
272 association affirming that the notice was mailed or hand delivered, in accordance with
273 this provision.

274 4. The members of the board in a residential condominium shall be elected
275 by written ballot or voting machine. Proxies may not be used in electing the board in

276 general elections or elections to fill vacancies caused by recall, resignation, or
277 otherwise, unless otherwise provided in this chapter.

278 a. At least 60 days before a scheduled election, the association shall mail,
279 deliver, or electronically transmit, by separate association mailing or included in another
280 association mailing, delivery, or transmission, including regularly published newsletters,
281 to each unit owner entitled to a vote, a first notice of the date of the election. Any unit
282 owner or other eligible person desiring to be a candidate for the board must give written
283 notice of his or her intent to be a candidate to the association at least 40 days before a
284 scheduled election. Together with the written notice and agenda as set forth in
285 subparagraph 3, the association shall mail, deliver, or electronically transmit a second
286 notice of the election to all unit owners entitled to vote, together with a ballot that lists all
287 candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2
288 inches by 11 inches, which must be furnished by the candidate at least 35 days before
289 the election, must be included with the mailing, delivery, or transmission of the ballot,
290 with the costs of mailing, delivery, or electronic transmission and copying to be borne by
291 the association. The association is not liable for the contents of the information sheets
292 prepared by the candidates. In order to reduce costs, the association may print or
293 duplicate the information sheets on both sides of the paper. The division shall by rule
294 establish voting procedures consistent with this sub-subparagraph, including rules
295 establishing procedures for giving notice by electronic transmission and rules providing
296 for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There
297 is no quorum requirement; however, at least 20 percent of the eligible voters must cast
298 a ballot in order to have a valid election. A unit owner may not permit any other person

299 to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who
300 violates this provision may be fined by the association in accordance with s. [718.303](#). A
301 unit owner who needs assistance in casting the ballot for the reasons stated in s.
302 [101.051](#) may obtain such assistance. The regular election must occur on the date of the
303 annual meeting. Notwithstanding this sub-subparagraph, an election is not required
304 unless more candidates file notices of intent to run or are nominated than board
305 vacancies exist. This sub-subparagraph does not apply to associations for
306 nonresidential condominiums.

307 b. Within 90 days after being elected or appointed to the board of an
308 association for a residential condominium, each newly elected or appointed director
309 shall certify in writing to the secretary of the association that he or she has read the
310 association's declaration of condominium, articles of incorporation, bylaws, and current
311 written policies; that he or she will work to uphold such documents and policies to the
312 best of his or her ability; and that he or she will faithfully discharge his or her fiduciary
313 responsibility to the association's members. In lieu of this written certification, within 90
314 days after being elected or appointed to the board, the newly elected or appointed
315 director may submit a certificate of having satisfactorily completed the educational
316 curriculum administered by a division-approved condominium education provider within
317 1 year before or 90 days after the date of election or appointment. The written
318 certification or educational certificate is valid and does not have to be resubmitted as
319 long as the director serves on the board without interruption. A director of an association
320 for a residential condominium who fails to timely file the written certification or
321 educational certificate is suspended from service on the board until he or she complies

322 with this sub-subparagraph. The board may temporarily fill the vacancy during the
323 period of suspension. The secretary shall cause the association to retain a director's
324 written certification or educational certificate for inspection by the members for 5 years
325 after a director's election. Failure to have such written certification or educational
326 certificate on file does not affect the validity of any board action.

327 5. Any approval by unit owners called for by this chapter or the applicable
328 declaration or bylaws, including, but not limited to, the approval requirement in s.
329 [718.111\(8\)](#), must be made at a duly noticed meeting of unit owners and is subject to all
330 requirements of this chapter or the applicable condominium documents relating to unit
331 owner ~~decisionmaking~~ decision making except that unit owners may take action by
332 written agreement, without meetings, on matters for which action by written agreement
333 without meetings is expressly allowed by the applicable bylaws or declaration or any law
334 that provides for such action.

335 6. Unit owners may waive notice of specific meetings if allowed by the
336 applicable bylaws or declaration or any law. If authorized by the bylaws, notice of
337 meetings of the board of administration, unit owner meetings, except unit owner
338 meetings called to recall board members under paragraph (j), and committee meetings
339 may be given by electronic transmission to unit owners who consent to receive notice
340 by electronic transmission.

341 7. Unit owners have the right to participate in meetings of unit owners with
342 reference to all designated agenda items. However, the association may adopt
343 reasonable rules governing the frequency, duration, and manner of unit owner
344 participation.

345 8. A unit owner may tape record or videotape a meeting of the unit owners
346 subject to reasonable rules adopted by the division.

347 9. Unless otherwise provided in the bylaws, any vacancy occurring on the
348 board before the expiration of a term may be filled by the affirmative vote of the majority
349 of the remaining directors, even if the remaining directors constitute less than a quorum,
350 or by the sole remaining director. In the alternative, a board may hold an election to fill
351 the vacancy, in which case the election procedures must conform to sub-subparagraph
352 4.a. unless the association governs 10 units or fewer and has opted out of the statutory
353 election process, in which case the bylaws of the association control. Unless otherwise
354 provided in the bylaws, a board member appointed or elected under this section shall fill
355 the vacancy for the unexpired term of the seat being filled. Filling vacancies created by
356 recall is governed by paragraph (j) and rules adopted by the division.

357 10. This chapter may not limit the use of general or limited proxies, require the
358 use of general or limited proxies, or require the use of a written ballot or voting machine
359 for any agenda item or election at any meeting of an association for any timeshare or
360 nonresidential condominium. Notwithstanding subparagraph (b)2. and sub-
361 subparagraph 4.a., an association responsible for the operation of a residential
362 condominium containing of 10 or fewer units may, by affirmative vote of a majority of the
363 total voting interests, provide for different voting and election procedures. The different
364 voting and election procedures may provide for elections to be conducted by limited or
365 general proxy. The declaration of a nonresidential condominium or the bylaws of the
366 association responsible for the operation of any condominium thereunder may contain
367 different voting and election procedures.

368 (k) Arbitration.—There shall be a provision for mandatory nonbinding
369 arbitration as provided for in s. 718.1255 for any residential condominium.

370 (l) Certificate of compliance.-- A provision that a certificate of compliance
371 from a licensed electrical contractor or electrician may be accepted by the association's
372 board as evidence of compliance of the condominium units with the applicable fire and
373 life safety code must be included. Notwithstanding chapter 633 or of any other code,
374 statute, ordinance, administrative rule, or regulation, or any interpretation of the
375 foregoing, an association, condominium, or unit owner is not obligated to retrofit the
376 common elements, association property, or units of a residential condominium with a
377 fire sprinkler system in a building that has been certified for occupancy by the applicable
378 governmental entity if the unit owners have voted to forego such retrofitting by the
379 affirmative vote of a majority of all voting interests in the affected condominium. The
380 local authority having jurisdiction may not require completion of retrofitting with a fire
381 sprinkler system before the end of 2019. By December 31, 2016, ~~an~~ any residential
382 condominium association that is not in compliance with the requirements for a fire
383 sprinkler system and has not voted to forego retrofitting of such a system must initiate
384 an application for a building permit for the required installation with the local government
385 having jurisdiction demonstrating that the association will become compliant by
386 December 31, 2019.

387 1. A vote to forego retrofitting in a residential condominium may be obtained
388 by limited proxy or by a ballot personally cast at a duly called membership meeting, or
389 by execution of a written consent by the member, and is effective upon recording a
390 certificate attesting to such vote in the public records of the county where the

391 condominium is located. The association shall mail or hand deliver to each unit owner
392 written notice at least 14 days before the membership meeting in which the vote to
393 forego retrofitting of the required fire sprinkler system is to take place. Within 30 days
394 after the association's opt-out vote, notice of the results of the opt-out vote must be
395 mailed or hand delivered to all unit owners. Evidence of compliance with this notice
396 requirement must be made by affidavit executed by the person providing the notice and
397 filed among the official records of the association. After notice is provided to each
398 owner, a copy must be provided by the current owner to a new owner before closing
399 and by a unit owner to a renter before signing a lease.

400 2. If there has been a previous vote to forego retrofitting, a vote to require
401 retrofitting may be obtained at a special meeting of the unit owners called by a petition
402 of at least 10 percent of the voting interests. Such a vote may only be called once every
403 3 years. Notice shall be provided as required for any regularly called meeting of the unit
404 owners, and must state the purpose of the meeting. Electronic transmission may not be
405 used to provide notice of a meeting called in whole or in part for this purpose.

406 3. As part of the information collected annually from condominiums, the
407 division shall require residential condominium associations to report the membership
408 vote and recording of a certificate under this subsection and, if retrofitting has been
409 undertaken, the per-unit cost of such work. The division shall annually report to the
410 Division of State Fire Marshal of the Department of Financial Services the number of
411 residential condominiums that have elected to forego retrofitting.

412 4. Notwithstanding s. [553.509](#), an association may not be obligated to, and
413 may forego the retrofitting of, any improvements required by s. [553.509](#)(2) upon an
414 affirmative vote of a majority of the voting interests in the affected condominium.

415 Section 3. Subsection (5) of Section 718.113, Florida Statutes, is hereby
416 amended to read as follows:

417 (5) Each board of administration of a residential condominium shall adopt
418 hurricane shutter specifications for each building within each condominium operated by
419 the association which shall include color, style, and other factors deemed relevant by
420 the board. All specifications adopted by the board must comply with the applicable
421 building code.

422 (a) The board may, subject to the provisions of s. [718.3026](#), and the approval
423 of a majority of voting interests of the residential condominium, install hurricane
424 shutters, impact glass or other code-compliant windows, or hurricane protection that
425 complies with or exceeds the applicable building code. However, a vote of the owners is
426 not required if the maintenance, repair, and replacement of hurricane shutters, impact
427 glass or other code compliant windows are the responsibility of the association pursuant
428 to the declaration of condominium. If hurricane protection or laminated glass or window
429 film architecturally designed to function as hurricane protection which complies with or
430 exceeds the current applicable building code has been previously installed, the board
431 may not install hurricane shutters, hurricane protection impact glass or other code-
432 compliant windows except upon approval by a majority vote of the voting interests.

433 (b) The association is responsible for the maintenance, repair, and
434 replacement of the hurricane shutters or other hurricane protection authorized by this

435 subsection if such hurricane shutters or other hurricane protection is the responsibility of
436 the association pursuant to the declaration of condominium. If the hurricane shutters or
437 other hurricane protection authorized by this subsection are the responsibility of the unit
438 owners pursuant to the declaration of condominium, the maintenance, repair, and
439 replacement of such items are the responsibility of the unit owner.

440 (c) The board may operate shutters installed pursuant to this subsection
441 without permission of the unit owners only if such operation is necessary to preserve
442 and protect the condominium property and association property. The installation,
443 replacement, operation, repair, and maintenance of such shutters in accordance with
444 the procedures set forth in this paragraph are not a material alteration to the common
445 elements or association property within the meaning of this section.

446 (d) Notwithstanding any other provision in the residential condominium
447 documents, if approval is required by the documents, a board may not refuse to
448 approve the installation or replacement of hurricane shutters by a unit owner conforming
449 to the specifications adopted by the board.

450 Section 4. Subsection (6) of Section 718.1255, Florida Statutes, is hereby
451 created to read as follows:

452 (6) APPLICABILITY.--This section does not apply to any nonresidential
453 condominium unless otherwise specifically provided for in the declaration of a
454 nonresidential condominium.

455 Section 5. Paragraph (a) of subsection (2) of Section 718.403, Florida
456 Statutes, is hereby amended to read as follows and subsection (9) is hereby created to
457 read as follows:

458 (2) The original declaration of condominium, or an amendment to the
459 declaration, which amendment has been approved by all unit owners and unit
460 mortgagees and the developer, shall describe:

461 (a) The land which may become part of the condominium and the land on
462 which each phase is to be built. The descriptions shall include metes and bounds or
463 other legal descriptions of the land for each phase, plot plans, and surveys. Plot plans,
464 attached as an exhibit, must show the approximate location of all existing and proposed
465 buildings and improvements that may ultimately be contained within the condominium.
466 The plot plan may be modified by the developer as to unit or building types ~~to the extent~~
467 ~~that~~ but, in a residential condominium, such changes are must be described in the
468 declaration. If provided in the declaration, the developer may make nonmaterial
469 changes in the legal description of a phase.

470 (9) The provisions of subsections (2)(b)-(f) and (8) of this section shall not
471 apply to nonresidential condominiums.

472 Section 6. Section 718.1256, Florida Statutes is amended to read:
473 Condominiums as residential property.—

474 For the purpose of property and casualty insurance risk classification, residential
475 condominiums shall be classed as residential property.

476 Section 7. This act shall take effect upon becoming a law.

477

WHITE PAPER

PROPOSED REVISIONS TO PART I AND 718.403 OF CHAPTER 718 REGARDING NONRESIDENTIAL CONDOMINIUMS

I. SUMMARY

Chapter 718 of the Condominium Act serves two main functions, creating a form of condominium ownership and protecting purchasers of residential condominium units.

Certain parts of the Condominium Act are clearly limited to residential condominiums: Part V dealing with developer disclosure in the sale of residential condominium units and Part VI dealing with conversions of residential rental projects to condominium ownership.

II. CURRENT SITUATION

Part I of the Condominium Act establishes, for both residential and nonresidential condominiums, the manner of creation and operation of a condominium regime. In almost all cases, this Part does not distinguish between residential and nonresidential condominiums but its consumer protection aspects do not fit well with the operation of nonresidential condominiums. Rather, these consumer aspects serve merely as an unwarranted straightjacket impeding the operation of a commercial venture. In addition, certain provisions involving the Division of Florida Condominiums, Timeshares and Mobile Homes ("Division") are inconsistent with the Division's jurisdiction limited to residential condominiums.

The proposed legislation would eliminate the inconsistencies involved in applying Division jurisdiction to nonresidential condominiums and eliminate certain consumer-oriented operational requirements that adversely affect the operation of non-residential condominiums.

III. SECTION BY SECTION ANALYSIS

1. Section 718.103 is amended to add a definition of a nonresidential condominium. The definition is based on the types of condominiums excluded from the definition of residential condominiums and is therefore consistent in capturing all condominiums that are not included in those defined as "residential condominiums."
2. Section 718.112(2), relating to governance of the condominium association, contains many requirements designed to protect residential owners. This section has been modified in the proposed legislation to exclude nonresidential condominiums from its operation on voting, the election process and association meetings, similar in many instances to the exclusion for timeshare regimes.

- (a) Section 718.112(2)(a)(2) has been modified to clarify that the board of directors of the condominium association can only obtain advice from the Division if the condominium is a residential condominium.
- (b) Section 718.112(2)(b)(2) eliminates the prohibition for use of general proxies for voting in a nonresidential condominium.
- (c) Section 718.112(2)(d)(2) eliminates restrictions on directors of the association in a nonresidential condominium as to term and ability of co-owners to serve on the board.
- (d) Section 718.112(2)(d)(4) has been modified to indicate that the requirements for written ballots or voting machines for voting do not apply to nonresidential condominiums.
- (e) Section 718.112(2)(d)(4)(a) has been modified to remove the complex and detailed method of noticing election meetings for nonresidential condominiums.
- (f) Section 718.112(2)(d)(4)(b) has been modified to eliminate the requirement for association directors to submit a certification of knowledge of the governing documents and condominium law in nonresidential condominiums.
- (g) Section 718.112(2)(d)(5) has been modified to correct a typographical error.
- (h) Section 718.112(2)(d)(10) has been modified to specifically allow the use of general proxies and more extensive use of limited proxies in association meetings in a nonresidential condominium.
- (i) The last paragraph of Section 718.112(d) has been modified to permit the declaration of condominium in a nonresidential condominium to allow alternative forms of voting and election procedures in order to provide flexibility in structuring nonresidential condominium projects with a mix of different commercial uses.
- (j) Section 718.112(2)(k) has been clarified to limit the mandatory nonbinding arbitration provided by the Division to residential condominiums only.
- (k) Section 718.112(l) has been modified to indicate that its fire sprinkler requirements apply only to residential condominiums. Nonresidential condominiums would still be subject to sprinkler requirements of local government. The filing with the Division for association votes for any opt out of retrofitting has been clarified to limit filings to residential condominiums.

- (l) Section 718.113(5) has been modified to indicate that the association process of adopting hurricane shutter requirements applies only to residential condominiums.
 - (m) Section 718.1255(6) has been inserted to clarify that the dispute resolution procedure operated by the Division does not apply to nonresidential condominiums.
- 3. Section 718.403 has been revised to indicate that its phasing requirements, in most instances, only apply to nonresidential condominiums.
 - 4. Section 718.1256 dealing with insurance has been clarified so that only residential condominiums are classified as residential property. As presently existing, this Section could be interpreted to require classification of residential property for nonresidential condominiums.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The passage of these proposals will improve operation of nonresidential condominium associations, thereby facilitating the expansion of use of nonresidential condominiums for development of commercial properties.

VI. CONSTITUTIONAL ISSUES

There are no known constitutional issues resulting from this proposal.

VII. OTHER INTERESTED PARTIES

There are no other parties that are known to have an interest in this proposal.

**Residential Lease for Single Family Home or Duplex
(FOR A TERM NOT TO EXCEED ONE YEAR)**

A BOX () OR A BLANK SPACE (_____) INDICATES A PROVISION WHERE A CHOICE OR DECISION MUST BE MADE BY THE PARTIES.

THE LEASE IMPOSES IMPORTANT LEGAL OBLIGATIONS. MANY RIGHTS AND RESPONSIBILITIES OF THE PARTIES ARE GOVERNED BY CHAPTER 83, PART II, RESIDENTIAL LANDLORD AND TENANT ACT, FLORIDA STATUTES. A COPY OF THE RESIDENTIAL LANDLORD AND TENANT ACT IS ATTACHED TO THIS LEASE.

1. PARTIES. This is a lease ("the Lease") between _____ (name & address of owner of the property) _____ ("Landlord") and _____ (name(s) of person(s) to whom the property is leased) _____ ("Tenant.")

Landlord's E-mail address: _____
Landlord's Telephone Number: _____
Tenant's E-mail address: _____
Tenant's Telephone Number: _____

2. PROPERTY RENTED. Landlord leases to Tenant the land and buildings located at _____ (street address) , Florida _____ (zip code)

together with the following furniture and appliances [List all furniture and appliances. If none, write "none."] (In the Lease, the property leased, including furniture and appliances, if any, is called "the Premises"):

The Premises shall be occupied only by the Tenant and the following persons:

_____.

3. TERM. This is a lease for a term, not to exceed twelve months, beginning on _____ (month, day, year) and ending _____ (month, day, year) (the "Lease Term").

4. RENT PAYMENTS, TAXES AND CHARGES.

Tenant shall pay total rent in the amount of \$ _____ (excluding taxes) for the Lease Term. The rent shall be payable by Tenant in advance in installments or in full as provided in the options below:

in installments. If in installments, rent shall be payable

monthly, on the _____ day of each month (if left blank, on the first day of each month) in the amount of \$ _____ per installment.

OR

weekly, on the _____ day of each week. (If left blank, on Monday of each week.) in the amount of \$ _____ per installment.

in full on _____ (date) in the amount of \$ _____.

Tenant shall also be obligated to pay taxes on the rent when applicable in the amount of \$ _____
 with each rent installment with the rent for the full term of the Lease. Landlord will notify Tenant if the amount of the tax changes.

Payment Summary

If rent is paid in installments, the total payment per installment including taxes shall be in the amount of \$_____.

If rent is paid in full, the total payment including taxes shall be in the amount of \$_____.

All rent payments shall be payable to _____ (name) at _____(address). (If left blank, to Landlord at Landlord's address).

If the tenancy starts on a day other than the first day of the month or week as designated above, the rent shall be prorated from _____ (date) through _____(date)in the amount of \$_____ and shall be due on_____ (date) (If rent paid monthly, prorate on a 30 day month.)

Tenant shall make rent payments required under the Lease by (choose all applicable) cash, personal check, money order, cashier's check, or other _____(specify). If payment is accepted by any means other than cash, payment is not considered made until the other instrument is collected.

If Tenant makes a rent payment with a worthless check, Landlord can require Tenant to pay all future payments by money order, cashier's check or official bank check or cash or other (specify), and to pay bad check fees in the amount of \$_____ (not to exceed the amount prescribed by Section 68.065, Florida Statutes.)

5. MONEY DUE PRIOR TO OCCUPANCY. Tenant shall pay the sum of \$_____ in accordance with this paragraph prior to occupying the Premises. Tenant shall not be entitled to move in or to keys to the Premises until all money due prior to occupancy has been paid. If no date is specified below, then funds shall be due prior to Tenant occupancy. Any funds designated in this paragraph due after occupancy, shall be paid accordingly. Any funds due under this paragraph shall be payable to Landlord at Landlord's address or to

_____ (name)

at

_____ (address)

First <input type="checkbox"/> month's <input type="checkbox"/> week's rent plus applicable taxes	\$ _____	due	_____
Prorated rent plus applicable taxes	\$ _____	due	_____
Advance rent for <input type="checkbox"/> month <input type="checkbox"/> week of _____ plus applicable taxes	\$ _____	due	_____
Last <input type="checkbox"/> month's <input type="checkbox"/> week's rent plus applicable taxes	\$ _____	due	_____
Security deposit	\$ _____	due	_____
Additional security deposit	\$ _____	due	_____
Security deposit for homeowner's association	\$ _____	due	_____
Pet Deposit	\$ _____	due	_____
Other _____	\$ _____	due	_____
Other _____	\$ _____	due	_____

6. LATE FEES. (Complete if applicable) In addition to rent, Tenant shall pay a late charge in the amount of \$ _____ (If left blank, 4% of the rent payment) for each rent payment made _____ days after the day it is due (if left blank, 5 days if rent is paid monthly, 1 day if rent is paid weekly).

7. PETS AND SMOKING. Unless this box is checked or a pet deposit is paid, Tenant may not keep pets or animals on the Premises. If Tenant may keep pets, the pets described in this paragraph are permitted on _____ the _____ Premises.

(Specify number of pets, type(s), breed, maximum adult weight of pets.)

Unless this box is checked, no smoking is permitted in the Premises.

8. NOTICES.

_____ is Landlord's Agent. All notices must be sent to

Landlord _____ at _____
 Landlord's Agent _____ at _____

unless Landlord gives Tenant written notice of a change. All notices of such names and addresses or changes thereto shall be delivered to the Tenant's residence or, if specified in writing by the Tenant, to any other address. All notices to the Landlord or the Landlord's Agent (whichever is specified above) shall be given by U.S. mail or by hand delivery.

Any notice to Tenant shall be given by U.S. mail or delivered to Tenant at the Premises. If Tenant is absent from the Premises, a notice to Tenant may be given by leaving a copy of the notice at Premises.

9. UTILITIES. Tenant shall pay for all utilities services during the Lease Term and connection charges and deposits for activating existing utility connections to the Premises except for _____, that Landlord agrees to provide at Landlord's expense (If blank, then "NONE").

10. MAINTENANCE.

Landlord shall be responsible for compliance with Section 83.51, Florida Statutes, and shall be responsible for maintenance and repair of the Premises, unless otherwise stated below: (Fill in each blank space with "Landlord" for Landlord or "Tenant" for Tenant, if left blank, Landlord will be responsible for the item):

_____ roofs	_____ windows	_____ screens	_____ steps
_____ doors	_____ floors	_____ porches	_____ exterior walls
_____ foundations	_____ plumbing	_____ structural components	
_____ heating	_____ hot water	_____ running water	_____ locks and keys
_____ electrical system		_____ cooling	_____ smoke detection devices
_____ garbage removal/ outside receptacles			
_____ extermination of rats, mice, roaches, ants and bedbugs			
_____ extermination of wood-destroying organisms			
_____ lawn/shrubbery	_____ pool/spa/hot tub		
_____ water treatment	_____ filters (specify) _____		
_____ ceilings	_____ interior walls		
_____ Other (specify) _____			

Tenant shall notify _____ (name) at _____ (address) (if left blank, Landlord at Landlord's address) and _____ (telephone number) of maintenance and repair requests.

11. ASSIGNMENT. Unless this box is checked, Tenant may not assign the Lease or sublease all or any part of the Premises without first obtaining the Landlord's written approval and consent to the assignment or sublease.

12. KEYS AND LOCKS. Landlord shall furnish Tenant

_____ # of sets of keys to the dwelling
_____ # of mail box keys
_____ # of garage door openers

If there is a homeowner's association, Tenant will be provided with the following to access the association's common areas/facilities:

_____ # of keys to _____
_____ # of remote controls to _____
_____ # of electronic cards to _____
_____ other (specify) to _____

At end of Lease Term, all items specified in this paragraph shall be returned to _____ (name) at _____ (address) (If left blank, Landlord at Landlord's address).

13. LEAD-BASED PAINT. Check and complete if the dwelling was built before January 1, 1978. **Lead Warning Statement** (when used in this article, the term Lessor refers to Landlord and the term Lessee refers to Tenant).

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, Lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure (initial)

_____ Presence of lead-based paint or lead-based paint hazards (check (i) or (ii) below):
_____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing

_____ Records and reports available to the Lessor (check (i) or (ii) below):
_____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

_____ Lessee has received copies of all information listed above.
_____ Lessee has received the pamphlet Protect Your Family From Lead in Your Home.

Agent's Acknowledgment (initial)

_____ Agent has informed the Lessor of the Lessor's obligations under 42 U.S.C. 4852d and is aware of
_____ his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

_____	_____	_____	_____
Lessor's signature	Date	Lessor's signature	Date
<hr/>			
_____	_____	_____	_____
Lessee's signature	Date	Lessee's signature	Date
<hr/>			
_____	_____	_____	_____
Agent's signature	Date	Agent's signature	Date

14. SERVICEMEMBER. If Tenant is a member of the United States Armed Forces on active duty or state active duty or a member of the Florida National Guard or United States Reserve Forces, the Tenant has rights to terminate the Lease as provided in Section 83.682, Florida Statutes, the provisions of which can be found in the attachment to this Lease.

15. LANDLORD'S ACCESS TO THE PREMISES. Landlord's Agent may enter the Premises in the following circumstances:

At any time for the protection or preservation of the Premises.

After reasonable notice to Tenant at reasonable times for the purpose of repairing the Premises.

To inspect the Premises; make necessary or agreed-upon repairs, decorations, alterations, or improvements; supply agreed services; or exhibit the Premises to prospective or actual purchasers, mortgagees, tenants, workers, or contractors under any of the following circumstances:

with Tenant's consent;

in case of emergency;

when Tenant unreasonably withholds consent; or

if Tenant is absent from the Premises for a period of at least one-half a rental installment period. (If the rent is current and Tenant notifies Landlord of an intended absence, then Landlord may enter only with Tenant's consent or for the protection or preservation of the Premises.)

16. HOMEOWNER'S ASSOCIATION. IF TENANT MUST BE APPROVED BY A HOMEOWNER'S ASSOCIATION ("ASSOCIATION"), LANDLORD AND TENANT AGREE THAT THE LEASE IS CONTINGENT UPON RECEIVING APPROVAL FROM THE ASSOCIATION. ANY APPLICATION FEE REQUIRED BY AN ASSOCIATION SHALL BE PAID BY LANDLORD TENANT. IF SUCH APPROVAL IS NOT OBTAINED PRIOR TO COMMENCEMENT OF LEASE TERM, EITHER PARTY MAY TERMINATE THE LEASE BY WRITTEN NOTICE TO THE OTHER GIVEN AT ANY TIME PRIOR TO APPROVAL BY THE ASSOCIATION, AND IF THE LEASE IS TERMINATED, TENANT SHALL RECEIVE RETURN

OF DEPOSITS SPECIFIED IN ARTICLE 5, IF MADE. If the Lease is not terminated, rent shall abate until the approval is obtained from the association. Tenant agrees to use due diligence in applying for association approval and to comply with the requirements for obtaining approval Landlord Tenant shall pay the security deposit required by the association, if applicable.

17. USE OF THE PREMISES. Tenant shall use the Premises for residential purposes. Tenant shall have exclusive use and right of possession to the dwelling. The Premises shall be used so as to comply with all state, county, municipal laws and ordinances, and all covenants and restrictions affecting the Premises and all rules and regulations of homeowners' associations affecting the Premises. Tenant may not paint or make any alterations or improvements to the Premises without first obtaining the Landlord's written consent to the alteration or improvement. However, unless this box is checked, Tenant may hang pictures and install window treatments in the Premises without Landlord's consent, provided Tenant removes all such items before the end of the Lease Term and repairs all damage resulting from the removal. Any improvements or alterations to the Premises made by the Tenant shall become Landlord's property. Tenant agrees not to use, keep, or store on the Premises any dangerous, explosive, toxic material which would increase the probability of fire or which would increase the cost of insuring the Premises.

18. RISK OF LOSS/INSURANCE.

Landlord and Tenant shall each be responsible for loss, damage, or injury caused by its own negligence or willful conduct.

Tenant should carry insurance covering Tenant's personal property and Tenant's liability insurance.

19. PROHIBITED ACTS BY LANDLORD. Landlord is prohibited from taking certain actions as described in Section 83.67, Florida Statutes, the provisions of which can be found in the attachment to this Lease.

20. CASUALTY DAMAGE. If the Premises are damaged or destroyed other than by wrongful or negligent acts of Tenant or persons on the Premises with Tenant's consent, so that the use of the Premises is substantially impaired, Tenant may terminate the Lease within 30 days after the damage or destruction and Tenant will immediately vacate the Premises. If Tenant vacates, Tenant is not liable for rent that would have been due after the date of termination. Tenant may vacate the part of the Premises rendered unusable by the damage or destruction, in which case Tenant's liability for rent shall be reduced by the fair rental value of the part of the Premises that was damaged or destroyed.

21. DEFAULTS/REMEDIES. Should a party to the Lease fail to fulfill their responsibilities under the Lease or need to determine whether there has been a default of the Lease, refer to Part II, Chapter 83, entitled Florida Residential Landlord and Tenant Act which contains information on defaults and remedies. A copy of the current version of this Act is attached to the Lease.

22. SUBORDINATION. The Lease is automatically subordinate to the lien of any mortgage encumbering the fee title to the Premises from time to time.

23. LIENS. THE INTEREST OF THE LANDLORD SHALL NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS MADE BY THE TENANT AS PROVIDED IN SECTION 713.10, FLORIDA STATUTES. Tenant shall notify all parties performing work on the Premises at Tenant's request that the Lease does not allow any liens to attach to Landlord's interest.

24. RENEWAL/EXTENSION. The Lease can be renewed or extended only by a written agreement signed by both Landlord and Tenant, but the term of a renewal or extension together with the original Lease Term may not exceed one year. A new lease is required for each year.

25. TENANT'S TELEPHONE NUMBER. Tenant shall, within 5 business days of obtaining telephone services at the Premises, send written notice to Landlord of Tenant's telephone numbers at the Premises.

26. ATTORNEYS' FEES. In any lawsuit brought to enforce the Lease or under applicable law, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorneys' fees, from the non-prevailing party.

27. MISCELLANEOUS.

Time is of the essence of the performance of each party's obligations under the Lease.

The Lease shall be binding upon and for the benefit of the heirs, personal representatives, successors, and permitted assigns of Landlord and Tenant, subject to the requirements specifically mentioned in the Lease. Whenever used, the singular number shall include the plural or singular and the use of any gender shall include all appropriate genders.

The agreements contained in the Lease set forth the complete understanding of the parties and may not be changed or terminated orally.

No agreement to accept surrender of the Premises from Tenant will be valid unless in writing and signed by Landlord.

All questions concerning the meaning, execution, construction, effect, validity, and enforcement of the Lease shall be determined pursuant to the laws of Florida.

A facsimile copy of the Lease and any signatures hereon shall be considered for all purposes originals.

As required by law, Landlord makes the following disclosure: "RADON GAS." Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

28. BROKERS' COMMISSION. Check and complete if applicable. The brokerage companies named below will be paid the commission set forth in this paragraph by Landlord Tenant for procuring a tenant for this transaction.

Real Estate Licensee

Real Estate Licensee

Real Estate Brokerage Company

Real Estate Brokerage Company

Commission

Commission

29. TENANT'S PERSONAL PROPERTY. TENANT MUST INITIAL IN THIS BOX FOR THE FOLLOWING PROVISION TO APPLY. BY SIGNING THIS RENTAL AGREEMENT, THE TENANT AGREES THAT UPON SURRENDER, ABANDONMENT, OR RECOVERY OF POSSESSION OF THE DWELLING UNIT DUE TO THE DEATH OF THE LAST REMAINING TENANT, AS PROVIDED BY CHAPTER 83, FLORIDA STATUTES, THE LANDLORD SHALL NOT BE LIABLE OR RESPONSIBLE FOR STORAGE OR DISPOSITION OF THE TENANT'S PERSONAL PROPERTY.

**Copy of Current Version of Florida Residential Landlord and Tenant Act,
Part II, Chapter 83, Florida Statutes to Be Attached**

EARLY TERMINATION FEE/LIQUIDATED DAMAGES ADDENDUM

[] I agree, as provided in the rental agreement, to pay \$_____ (an amount that does not exceed 2 months' rent) as liquidated damages or an early termination fee if I elect to terminate the rental agreement and the landlord waives the right to seek additional rent beyond the month in which the landlord retakes possession.

[] I do not agree to liquidated damages or an early termination fee, and I acknowledge that the landlord may seek damages as provided by law.

Landlord's Signature

Date

Landlord's Signature

Date

Landlord's Signature

Date

Tenant's Signature

Date

Tenant's Signature

Date



The Florida Bar



Gwynne A. Young
President

John F. Harkness, Jr.
Executive Director

Eugene K. Pettis
President-Elect

December 11, 2012

Ms. Kerry Anne Schultz
Fountain, Schultz & Associates, P.L.
2045 Fountain Professional Ct., Ste. A
Navarre, FL 32566

Re: Florida Realtor-Attorney Joint Committee

Dear Ms. Schultz:

At its December 7, 2012 meeting, the Board of Governors appointed you to the Florida Realtor-Attorney Joint Committee representing the 1st Appellate District. Your two-year term will commence January 1, 2013.

We congratulate you on your appointment and appreciate your interest in serving the public and your profession in this important manner. Please let us know if we may be of any assistance.

Sincerely,

Gwynne A. Young

cc: Mr. Eugene K. Pettis
Mr. John F. Harkness, Jr.
Mr. John Fridlington
Ms. Janet Valentine
Ms. Rosalyn Scott
Mr. Terry Hill
Ms. Yvonne Sherron



The Florida Bar



Gwynne A. Young
President

John F. Harkness, Jr.
Executive Director

Eugene K. Pettis
President-Elect

December 11, 2012

Ms. Mercedes Gonzalez Hale
Law Offices of Mercedes Gonzalez Hale, P.A.
26907 Foggy Creek Rd., Ste. 101
Wesley Chapel, FL 33544

Re: Florida Realtor-Attorney Joint Committee

Dear Ms. Hale:

At its December 7, 2012 meeting, the Board of Governors appointed you to the Florida Realtor-Attorney Joint Committee representing the 2nd Appellate District. Your two-year term will commence January 1, 2013.

We congratulate you on your appointment and appreciate your interest in serving the public and your profession in this important manner. Please let us know if we may be of any assistance.

Sincerely,



Gwynne A. Young

cc: Mr. Eugene K. Pettis
Mr. John F. Harkness, Jr.
Mr. John Fridlington
Ms. Janet Valentine
Ms. Rosalyn Scott
Mr. Terry Hill
Ms. Yvonne Sherron



The Florida Bar



Gwynne A. Young
President

John F. Harkness, Jr.
Executive Director

Eugene K. Pettis
President-Elect

December 11, 2012

Mr. Thomas D. Wright
Law Office of Thomas D. Wright, Chartered
9711 Overseas Hwy.
Marathon, FL 33050

Re: Florida Realtor-Attorney Joint Committee

Dear Mr. Wright:

At its December 7, 2012 meeting, the Board of Governors reappointed you to the Florida Realtor-Attorney Joint Committee representing the 3rd Appellate District. Your two-year term will commence January 1, 2013.

We congratulate you on your reappointment and appreciate your continued interest in serving the public and your profession in this important manner. Please let us know if we may be of any assistance.

Sincerely,

Gwynne A. Young

cc: Mr. Eugene K. Pettis
Mr. John F. Harkness, Jr.
Mr. John Fridlington
Ms. Janet Valentine
Ms. Rosalyn Scott
Mr. Terry Hill
Ms. Yvonne Sherron



The Florida Bar



Gwynne A. Young
President

John F. Harkness, Jr.
Executive Director

Eugene K. Pettis
President-Elect

December 11, 2012

Mr. Gary J. Nagle
Law Office of Gary J. Nagle
14255 U.S. Hwy One, Ste. 203
Juno Beach, FL 33408

Re: Florida Realtor-Attorney Joint Committee

Dear Mr. Nagle:

At its December 7, 2012 meeting, the Board of Governors reappointed you to the Florida Realtor-Attorney Joint Committee representing the 4th Appellate District. Your two-year term will commence January 1, 2013.

We congratulate you on your reappointment and appreciate your continued interest in serving the public and your profession in this important manner. Please let us know if we may be of any assistance.

Sincerely,

Gwynne A. Young

cc: Mr. Eugene K. Pettis
Mr. John F. Harkness, Jr.
Mr. John Fridlington
Ms. Janet Valentine
Ms. Rosalyn Scott
Mr. Terry Hill
Ms. Yvonne Sherron



The Florida Bar



Gwynne A. Young
President

John F. Harkness, Jr.
Executive Director

Eugene K. Pettis
President-Elect

December 11, 2012

Mr. G. Thomas Ball
BakerHostetler
P.O. Box 112
Orlando, FL 32802

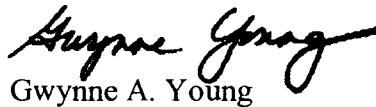
Re: Florida Realtor-Attorney Joint Committee

Dear Mr. Ball:

At its December 7, 2012 meeting, the Board of Governors appointed you to the Florida Realtor-Attorney Joint Committee representing the 5th Appellate District. Your two-year term will commence January 1, 2013.

We congratulate you on your appointment and appreciate your interest in serving the public and your profession in this important manner. Please let us know if we may be of any assistance.

Sincerely,



Gwynne A. Young

cc: Mr. Eugene K. Pettis
Mr. John F. Harkness, Jr.
Mr. John Fridlington
Ms. Janet Valentine
Ms. Rosalyn Scott
Mr. Terry Hill
Ms. Yvonne Sherron

FRIDAY, APRIL 5

7:30 a.m. – 8:00 a.m.
Late Registration

8:00 a.m. – 8:05 a.m.
Introduction & Welcome
Richard R. Gans, Sarasota – Chair

8:05 a.m. – 9:15 a.m.
Case Law Update
Thomas M. Karr, Miami

9:15 a.m. – 10:30 a.m.
Estate Administration and Probate
Richard E. Warner, Marathon

10:35 a.m. – 10:45 a.m.
Break

10:45 a.m. – 12:00 p.m.
Elective Share and Homestead
Jeffrey A. Baskies, Boca Raton

12:00 p.m. – 1:05 p.m.
Lunch (on your own)

1:05 p.m. – 3:05 p.m.
Taxes I
Professor David Powell, Tallahassee

3:05 p.m. – 3:20 p.m.
Break

3:20 p.m. – 5:00 p.m.
Taxes II
Professor David Powell

SATURDAY, APRIL 6

8:30 a.m. – 10: a.m.
Taxes III
Professor David Powell

10:00 a.m. – 10:15 a.m.
Break

10:15 a.m. – 11:45 a.m.
Taxes IV
Professor David Powell

11:45 a.m. – 1:00 p.m.
Lunch (included in registration fee)
Ethics
Guy S. Emerich, Punta Gorda

1:00 p.m. – 2:00 p.m.
**Tenants by the Entireties and
Jointly-Held Assets**
Rex E. Moule, Melbourne

2:00 p.m. – 3:00 p.m.
**Trust Accounting, Florida Principal
and Income Act**
Linda Suzanne Griffin, Clearwater

3:00 p.m. – 4:15 p.m.
Probate & Trust Litigation
Kimberly A. Bald, Bradenton

4:15 p.m. – 4:45 p.m.
Discussion of Board Certified Exam
[to be determined]

WEB SITE DEVELOPMENT AGREEMENT

THIS AGREEMENT (“Agreement”) is made this ____ day of _____, 2013, by and between BLUEFLAME CONSULTING INC., a Florida corporation with offices at 2451 McMullen Booth Road, Suite 208, Clearwater, FL 33759 (the “Developer”), and THE FLORIDA BAR, an unincorporated association, with offices at 65 East Jefferson Street, Tallahassee, FL 32399 (the “Company”).

W I T N E S S E T H:

WHEREAS, Company desires to engage Developer to develop, create, test, and deliver a web site to be known as RPPTL.org as a work made for hire; and

WHEREAS, Developer is interested in undertaking such work; and

WHEREAS, Company and Developer mutually desire to set forth the terms applicable to such work;

NOW, THEREFORE, for the mutual consideration set forth herein, the adequacy of which is hereby acknowledged, Company and Developer, intending to be legally bound, hereby agree as follows:

1. TERM AND TERMINATION

A. *Term of Agreement.* This Agreement shall be effective as of the Effective Date and shall remain in force for a period of one (1) year after the “Go Live Date,” which is the date on which the Company accepts the final Website and the Website is posted, unless the Agreement is otherwise terminated as provided herein.

B. *Termination of Work.* Company may, at its sole option, terminate any or all work outstanding, or any portion thereof, immediately upon written notice. Upon receipt of notice of such termination, Developer shall inform Company of the extent to which performance has been completed through such date and collect and deliver to Company whatever work product and deliverables, including all code, documentation, reports and other materials developed by Developer in the course of its performance under this Agreement and any other items reasonably necessary for the operation of Company’s Website (other than third-party operating system software, third-party networking software, and hardware) (such work product and deliverables collectively referred to herein as the “Deliverables”) then existing in a manner prescribed by Company. Developer shall be paid for all work properly performed through the date of receipt of notice of termination as specified herein. Upon such payment, Company shall have no further liability to Developer. Developer may not terminate any work under this Agreement without the prior written consent of Company.

C. *Survival.* In the event of any termination of this Agreement, all obligations and responsibilities of Developer shall survive and continue in effect and shall inure to the benefit of and be binding upon the parties and their legal representatives, heirs, successors, and assigns. The termination of any provision of this Agreement shall not excuse a prior breach of that provision.

D. *Termination for Cause.* This Agreement may be terminated by either party upon thirty (30) days written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, provided that, during the thirty (30) day period, the breaching party fails to cure such breach. In the event Company terminates this Agreement for cause pursuant to this provision and it is thereafter determined for any reason that Developer was not in default, or that its default was excusable, then in such event the termination shall be deemed a termination by Company pursuant to paragraph 1(B) above and Developer's sole and exclusive remedies against Company shall be the same as and limited to those afforded Developer under paragraph 1(B) above.

E. *Delivery of Documents Upon Termination.* Upon completion or any termination of this Agreement, as directed by Company, Developer shall deliver to Company all papers, records, documents, electronic files, drawings, calculations, models, and other materials in Developer's possessions or control arising out of or relating to this Agreement.

2. DEVELOPER'S RESPONSIBILITIES

A. *Scope of Services.* Developer shall design, develop and test a Web Site and Intranet (collectively the "Web Site") for Company in accordance with the terms and conditions set forth in the Scope of Services, attached hereto and made a part hereof as Exhibit A.

B. *Schedule.* Developer shall perform the services required for the design and development of the Web Site in accordance with the "Schedule" attached hereto and made a part hereof as Exhibit B.

C. *Changes.* Changes to this Agreement or to any of the specifications of the Web Site in any of the specifications thereof shall become effective only when a written change request is executed by the Executive Director of Company and Developer. Developer agrees to notify Company promptly of any factor, occurrence, or event coming to its attention that may affect Developer's ability to meet the requirements of this Agreement, or that is likely to occasion any material delay in the Schedule. Any services beyond the Scope of the Services set forth in attached Exhibit A must be expressly authorized and directed by Company in writing ("Additional Services") and shall entitle Developer to be reimbursed by Company for the sum of (i) the hourly rates for the Additional Services as set forth in Exhibit C, attached hereto and made a part hereof by this reference, plus (ii) reimbursable expenses as set forth in Exhibit D, attached hereto and made a part hereof by this reference. Notwithstanding anything in this Agreement to the contrary, Developer shall not commence any Additional Services unless and to the extent such Additional Services are expressly approved in advance and in writing by Company. If Developer proceeds with any Additional Service prior to receiving such written authorization from Company, such act will be deemed an admission by Developer that the subject services are not a change and are a part of the original Scope of Services to be provided by Developer hereunder, with Developer waiving any claim it otherwise may have had for any schedule or compensation adjustment.

D. *Standard of Care/Warranty.* Services performed by Developer will be conducted in a manner consistent with that level of care and skill ordinarily exercised by other competent consultants with an expertise in the type of services required hereunder. Developer shall review and comply with all laws, rules, codes, and regulations applicable to the services

imposed by governmental authorities having jurisdiction over the services. Developer warrants to Customer that, for a period of ninety (90) days following the Go Live Date, the Web Site will operate in accordance with the terms and conditions of this Agreement. Within a reasonable period of time of becoming aware of any breach of Developer's warranty, Customer shall notify Developer in writing and, within twenty-four (24) hours of its receipt of such notice, Developer shall commence and diligently continue to correct such breach. If Developer fails to commence and/or diligently continue to correct any breach as required hereunder, Customer may take whatever measures it reasonably deems appropriate to correct the breach. In such event, Developer shall be responsible for any and all costs and expenses incurred by Customer as a result thereof and shall immediately reimburse Customer for such costs and expenses upon receipt of written demand therefor from Customer.

E. Developer's Insurance. Developer shall procure and maintain insurance in accordance with the minimum coverage types and limits identified and set forth in the Developer's Insurance Requirements, attached hereto and made a part of this Agreement as Exhibit F.

3. COMPENSATION

A. Price for Web Site Creation. The total price for all of the work set forth in the Agreement is identified and set forth in the Compensation Schedule, attached hereto and made a part of this Agreement as Exhibit H (the "Development Fee"). This Development Fee covers all services of whatever nature on the Web Site contemplated in this Agreement. Subject to the terms and conditions of this Agreement, in consideration of Developer's proper and timely performance of the services required hereunder, Company shall pay, or cause or be paid, Company in accordance with the amounts and milestones identified and set forth in attached Exhibit H.

B. Expenses. The prices set forth above are inclusive of expenses. Except as expressly agreed otherwise in writing by Company, Developer shall bear all of its own expenses arising from its performance of its obligations under this Agreement, including (without limitation) expenses for facilities, work spaces, utilities, management, clerical and reproduction services, supplies, and the like. Company shall have no obligation to provide office space, work facilities, equipment, clerical services, programming services, or the like. The prices set forth above are also all inclusive of any current or future taxes that may be imposed by state, federal or country and that the liability for such payments is the responsibility of Developer. The hourly rates and reimbursable expenses for Additional Services are set forth on Exhibits "C" and "D" respectively.

4. CONFIDENTIALITY

A. Confidential Information. Developer recognizes that Company has and will have confidential information including without limitation passwords, costs, future plans, business affairs, member lists, software systems, prices, technical data, trade secret, know-how or other confidential or proprietary information (collectively, "Confidential Information") which are valuable, special and unique assets of Company and need to be protected from improper disclosure.

B. Exclusions. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is known to the Developer at the time of disclosure or becomes

known to the Developer without breach of this Agreement; (ii) is or becomes publicly known through no wrongful act of the Developer; (iii) is rightfully received from a third party without restriction on disclosure; (iv) is independently developed by the Developer; (v) is furnished to any third party by the Company without restriction on its disclosure; (vi) is approved for release upon a prior written consent of the Company; or (vii) is disclosed pursuant to judicial order, requirement of a governmental agency or by operation of law.

C. Nondisclosure. Developer agrees that it will not disclose any Confidential Information to any third party and will not use the Company's Confidential Information for any purpose other than for the performance of the rights and obligations hereunder during the term of this Agreement and for a period of two (2) years thereafter, without the prior written consent of the Company, which may be withheld for any reason or for no reason. Developer further agrees that Confidential Information shall remain the sole property of the Company and that it will take all reasonable precautions to prevent any unauthorized disclosure of Confidential Information by its employees. No license shall be granted by the Company to Developer with respect to Confidential Information disclosed hereunder unless otherwise expressly provided herein.

D. No Confidential Information of Developer. It is understood and agreed that Company does not wish to receive from Developer any confidential information of Developer or of any third party. Developer represents and warrants that any information provided to Company in the course of entering into this Agreement or performing any work hereunder shall not be confidential or proprietary to Developer.

E. Sanctioned Public Disclosure. After Company has approved its final Web Site, Developer may list Company as a client of Developer and may include a link to the Web Site on Developer's Web Site. Developer may not issue any press release that refers to Developer's work for Company without Company's prior written approval, which may be withheld for any reason or for no reason at all.

F. Return of Confidential Information. Upon the request of the Company, Developer will promptly return all Confidential Information furnished hereunder and all copies thereof.

G. Remedy for Breach of Confidentiality. If it appears that Developer has disclosed (or has threatened to disclose) Confidential Information in violation of this Agreement or otherwise breaches any of its obligations with respect to confidentiality and unauthorized use of Confidential Information hereunder, the Company shall be entitled to equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages notwithstanding anything to the contrary contained herein.

5. OWNERSHIP AND RIGHTS

A. Ownership of Work Product by Company. Except as set forth below, all elements of all Deliverables shall be exclusively owned by Company and shall be considered as "Works Made for Hire," (as such are defined under the U.S. copyright laws) by Developer for Company. Except as set forth below, Company shall exclusively own all United States and international copyrights and all other intellectual property rights in the Deliverables. To the extent it is later determined that any Deliverables are not a "Work Made for Hire," the parties agree to treat any Deliverables as if they are a "Work Made

for Hire.” Developer agrees to take any action necessary to transfer any and all intellectual property rights it may have with respect to any Deliverables to Company. Developer further represents and warrants that the use of any such Deliverables does not infringe upon the intellectual property rights of any third party and Developer agrees to indemnify, defend and hold harmless the Company and its members, officers, agents and employees from any and all liabilities, claims, damages, penalties, demands, judgments, actions, proceedings, losses or costs, including but not limited to reasonable attorneys’ fees and paralegals’ fees, arising out of or resulting from the use of any Deliverables.

B. *Vesting of Rights.* With the sole exception of any Preexisting Works identified in Section 5(C) below, Developer agrees to assign, and upon creation of each element of each Deliverable automatically assigns, to Company, its successors and assigns, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ownership of all United States and international copyrights and all other intellectual property rights in each element of each Deliverable. This assignment is undertaken in part as a contingency against the possibility that any such element, by operation of law, may not be considered a work made for hire by Developer for Company. From time to time, upon Company's request, Developer and/or its personnel shall confirm such assignments by execution and delivery of such assignments, confirmations of assignments, or other written instruments as Company may request. Company and its successors and assigns shall have the right to obtain and hold in its own name all copyright registrations and other evidence of rights that may be available for the Deliverables and any portion(s) thereof.

C. *Preexisting Works.* In the event that any portion of any Deliverable (including the entirety thereof) constitutes a preexisting work for which Developer cannot grant to Company the rights set forth in paragraphs 7(A) and 7(B) above, Developer shall specify below: (1) the nature of such preexisting work; (2) its owner; (3) any restrictions or royalty terms applicable to Developer's or Company's use of such preexisting work or Company's exploitation of the Deliverable as a Derivative Work thereof; and (4) the source of Developer's authority to employ the preexisting work in the preparation of the Deliverable.

The works set forth above will be referred to as “Preexisting Works.” The only preexisting works that may be used in the construction of any Deliverable are the Preexisting Works specified above and any Preexisting Works that may be approved in writing by Company prior to their use.

D. *Indemnification/No Infringement.* In performing services under this Agreement, Developer agrees not to design, develop, or provide to Company any items that infringe one or more patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy, or other rights of any person or entity. If Developer becomes aware of any such possible infringement in the course of performing any work hereunder, Developer shall immediately so notify Company in writing. Developer agrees

to indemnify, defend, and hold Company, its officers, directors, members, employees, representatives, agents, and the like harmless for any such alleged or actual infringement and for any liability, debt, or other obligation arising out of or as a result of or relating to (a) the Agreement, (b) the performance of the Agreement, or (c) the Deliverables. This indemnification shall include attorney fees and expenses, unless Developer defends against the allegations using counsel reasonably acceptable to Company. The duty to defend, whether under this paragraph or any other paragraph in this Agreement imposing on Developer a duty to defend, is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Developer or Company. The duty to defend arises immediately upon presentation of a claim by Company and written notice of such claim being provided to Developer. Developer's obligation to indemnify and defend, whether under this paragraph or any other paragraph in this Agreement imposing on Developer a duty to indemnify or defend, will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the Company for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

6. AGREEMENTS WITH EMPLOYEES

No individuals or entities other than Developer and Developer's employees and independent contractors retained by Developer in writing shall undertake any work in connection with this Agreement. Developer shall obtain and maintain in effect written agreements with each of its employees who participate in any of Developer's work hereunder. Such agreements shall contain terms sufficient for Developer to comply with all provisions of the Agreement and to support all grants and assignments of rights and ownership hereunder. Such agreements also shall impose an obligation of confidence on such employees with respect to Company's confidential information. It shall be sufficient compliance with this provision of the Agreement if each such employee reads this Agreement and indicates their consent to abide by its terms by signing and dating this Agreement or by initialing and dating this paragraph of this Agreement. Nothing contained herein shall limit Developer's ability or right to use independent contractors provided that such independent contractors agree to be bound by the terms of this Agreement. Attached hereto and made a part hereof as Exhibit E is a list of independent contractors pre-approved by Company.

7. REPRESENTATIONS AND WARRANTIES

Developer makes the following representations and warranties for the benefit of Company:

A. *No Conflict.* Developer represents and warrants that it is under no obligation or restriction that would in any way interfere or conflict with the work to be performed by Developer under this Agreement. Company understands that Developer is currently working on one or more similar projects for other clients. Provided that those projects do not interfere or conflict with Developer's obligations under this Agreement, those projects shall not constitute a violation of this provision of the Agreement.

B. *Ownership Rights.* Developer represents and warrants that (1) it is and will be the sole author of all works employed by Developer in preparing any and all Deliverables other

than Preexisting Works; (2) it has and will have full and sufficient right to assign or grant the rights and/or licenses granted in the Deliverables pursuant to this Agreement; (3) all Deliverables other than Preexisting Works have not been and will not be published under circumstances that would cause a loss of copyright therein; and (4) all Deliverables, including all Preexisting Works, do not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy, or similar rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against Developer or, insofar as Developer is aware, against any entity from which Developer has obtained such rights.

C. Conformity, Performance, and Compliance. Developer represents and warrants that (1) all Deliverables shall be prepared in a workmanlike manner and with professional diligence and skill; (2) all Deliverables will function under standard HTML conventions; (3) all Deliverables will conform to the specifications and functions set forth in this Agreement, including without limitation the Survey Results, attached hereto and made a part hereof as Exhibit F; and (4) Developer will perform all work called for by this Agreement in compliance with applicable laws. Developer will repair any Deliverable that does not meet this warranty within a reasonable period of time if the defect affects the usability of Company's Web Site, and otherwise will repair the defect within 24 hours, said repairs to be free of charge to Company. This warranty shall extend for the life of this Agreement. This warranty does not cover links that change over time, pages that become obsolete over time, content that becomes outdated over time, or other changes that do not result from any error on the part of Developer.

8. FORCE MAJEURE

Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimize the impact of the event.

9. RELATIONSHIP OF PARTIES

A. Independent Contractor. Developer, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. Developer shall be solely responsible for and shall hold Company harmless for any and all claims for taxes, fees, or costs, including but not limited to withholding, income tax, FICA, and workers' compensation.

B. No Agency. Company does not undertake by this Agreement or otherwise to perform any obligation of Developer, whether by regulation or contract. In no way is Developer to be construed as the agent or to be acting as the agent of Company in any respect, any other provisions of this Agreement notwithstanding.

10. NOTICE AND PAYMENT

A. Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the above stated address or mailed by certified, registered or Express mail, return receipt requested or by Federal Express.

B. Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

11. JURISDICTION/DISPUTES

This Agreement shall be governed in accordance with the laws of the State of Florida. All disputes under this Agreement shall be resolved by litigation in the appropriate courts in and for Hillsborough County, Florida including the federal courts therein and the Parties all consent to the venue and exclusive jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it. In the event of any litigation between the parties arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' and paralegals' fees and costs through all trial and appellate levels of litigation, and in any settlement, mediation, bankruptcy or administrative proceedings.

12. AGREEMENT BINDING ON SUCCESSORS

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

13. ASSIGNABILITY

Neither party may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of the other party which shall not be unreasonably withheld.

14. WAIVER

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

15. SEVERABILITY

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

16. INTEGRATION

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior Agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

17. TIME OF THE ESSENCE

Time is of the essence in this Agreement. Developer recognizes that Company may sustain financial loss if Developer fails to perform any or all of its services in accordance with this Agreement.

18. RIGHT TO SET-OFF

Notwithstanding anything in this Agreement to the contrary, Company shall be entitled to withhold from any amount due Developer hereunder any sums which may be owed Company by Developer under this Agreement.

19. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument; and any party or signatory hereto may execute this Agreement by signing any such counterpart.

20. CONSTRUCTION

The parties hereto acknowledge that they have carefully reviewed this Agreement and have had the opportunity to be advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

BLUEFLAME CONSULTING, INC.

THE FLORIDA BAR

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

SCOPE OF SERVICES

PROJECT / DESIGN GOALS

Creating an immediately engaging and entertaining, contemporary design for the site

- Implementing a user friendly and effective Content Management System that will allow for members to easily and intuitively interact with the site
- Creating unique databases and a database management system and other programming requests efficiently and within a functional, friendly CMS environment.
- Including a Maintenance Service Level Agreement for the first year in the price of this quotation
- Facilitating full integration of the RPPTL Member Magazine into the site, and, where needed, content creation for the RPPTL organization newsletter/magazine to include custom video, design, and information content with an unmatched Emmy Award winning Post & Production Team.
- Creating a RPPTL Character, where appropriate, that will guide the user through using the site in a fun and engaging manner
- Implementing the redesign in an efficiently advanced and aggressive time frame

DEVELOPMENT DETAILS

Functionality Front End

1. Sign-In

- **User Sign In** – This header navigation will be used for existing users to sign in to access the members' only area.
- **Forgot Password Function** – The site will contain a forgot password function for the users when they login to their account. They will be required to enter their Email address, at which time, the system will Email them their username and password.

2. Contact Us - Selecting this navigation element returns a form. The form includes requests for first name, last name, phone, email, and comments. The contents of this form are emailed to a designated email address. When a user completes and submits a Contact Us form, an email containing the contents of the form is automatically sent to a designated individual at the client organization.

3. Sign-Up

- **Registration Process** – Existing members will be pre-registered into the new content management system to give them access to the member's only area of the website. The account will consist of the users name, Email address, username and password. Once they have registered, they will have the opportunity to create an "About Me" page that will be accessible to all other registered members.

The form fields will be as follows: Name, Law Firm or Business Name, Address including City, State and Zip, Phone Number, Email Address, URL, Certification, Upload a Picture, identification as member of the Executive Council, Real Property Division and/or Probate Division, as well as any other committee memberships. A page will populate within the site and the user will be listed in the directory. The directory will function as the existing directory located here: <http://rpptl.org/Private/DrawMembers.aspx>.

- **Editing** – Users will have the ability to modify or edit their contact information at any time. Addition of committees must be approved by an administrator.

- **Administrator Approval** – The system will allow for registration of new members by an administrator.

4. Front End Site Search - The site header contains a site search text box allowing users to perform a keyword search of all site content. Site content is indexed and returned in list format. The list contains the page title and content in which the search phrase was used. Selecting the page title returns the page in question. The user may also use the advanced search function which will allow them to search for content within a particular section of the website. Those sections being either Blogs, Press Releases, ActionLine, Legislation or Committees.

5. YouTube – A YouTube Video Player will be displayed on the site. This player displays a selection of videos as uploaded into the administration area via YouTube URL.

6. Press Releases – This area displays press release items as entered into the administration area. The items are listed by title and date, with the most recent at the top. The user can view an item by clicking on a title, taking the user to a “detail” page. The detail page provides the user with a full-text display of the entire press release item. The module supports the capability to provide Press Release updates via RSS.

7. Blogs - This area displays blog entries as entered into the administration area. The entries are categorized and listed by title and date, with the most recent at the top. The administrator has the option to categorize the entries. The user can view an entry by clicking on a title, taking the user to a “detail” page. The detail page provides the user with a full-text display of the entire blog entry. Each entry will allow for a user to email to a friend, post to facebook or tweet. Email to a friend prompts the user to enter their name, their email address, and their friend’s email address. After submitting the information, the URL the user is currently on and a site specific message is sent to the recipient (friend). The module supports the capability to provide entry updates via RSS.

Developer will custom develop the Blog into a tiered level Blog allowing Blogs to be published in multiple areas of the website based upon an administrator approval. Developer will also add a specific advance search for the Blog.

Developer will create functionality allowing a Committee chair to request the Blog, they publish in their own section, to also be published on the front facing website.

Developer will create functionality that will notify the administrator of the request, at which time, the administrator will have the ability to approve or deny the request. Upon approval, the Blog will publish to the front end, public facing Blog of the website.

Blogs posted to the front, public facing portion of the website, will be able to be searched by keywords or tags associated with the Blog at the time it was published. This will allow advanced search filtering for the user.

8. Content Population

Developer will create the ability for the same content to be populated in multiple areas within the website.

Developer will create functionality that will allow an administrator to publish the same content into multiple places on the website without having to reenter the content.

9. Event Calendar – This is a full Calendar displaying items uploaded by the administrator. The items are displayed on the date indicated by the administrator. Upon a user selecting an item, either a link to a separate website or page, or an internal page containing information about the particular, item will be displayed. The user can progress through the calendar from one month to the next. **This calendar may be used for both Non-member and Member sections.**

10. Content Managed Pages - These are single content managed pages containing information as entered by the Content Manager. Additional pages may be added to the primary navigation via Content Manager. Content includes PDF's, YouTube videos, text, webinars, images, excel and word docs. Unlimited pages may be used on the website.

Footer Navigation

11. Privacy Policy – This is a single content managed page containing information as entered by the Content Manager. Additional pages may be added to the sub-navigation via Content Manager.

12. Disclaimer – This is a single content managed page containing information as entered by the Content Manager. Additional pages may be added to the sub-navigation via Content Manager.

13. Site Map – The site map functions in two different ways to help Members and non-Member visitors. The first is the front side view of Company's site map. This is where visitors can see all the links with in the site. This site map is managed via a component in the admin. Company can add or remove menu links to it. The second is a Google formatted sitemap for submitting to Google. This specially formatted sitemap is in the format required by Google to help with e-marketing efforts.

Functionality Back End

1. General Area – Once logged in, a registered user will access a separate backend area of the website containing navigation tabs allowing them to access information only available to registered members of the website. Those areas are:

- **Information** – A content managed section containing information uploaded to the backend area by the administrator.
- **Search** – This feature will allow the user to search for either members of the site or committee's they are interested in. The search is done through keyword.
- **Webinars** – The system administrator will have the ability to upload webinars and categorize them by name, date or category.
- **Committees** – A List of committees will be available for a user to see and upon clicking on them, the site will automatically return an information page about the committee along with a request more information contact form.

- **Members Directory** – Each member will have his or her own page within the website where they may display information about themselves including a photo similar to the existing directory located here <http://rpptl.org/Private/DrawMembers.aspx> but adding committees.

2. Databases – There will be two unique databases.

- **Database Main members** – This database will contain all members on the website. Developer will coordinate with the Florida Bar to obtain an initial database.

- **Database Section/Committee Members** – This database will contain only members who have joined a committee and the name of the committee they have joined in addition to Executive Council and Section members.

4. Database Management – An administrator interface will be created to import Data from a CSV. File into a Database where an administrator can review the names of the users prior to submitting them to the main Database. Once the list is confirmed, by the administrator, the list may be mass imported into the Database.

- **Import** – The system administrator will be able to import members from a CSV. File directly into the main database or committee database, or manually input members into either databases.

5. Committees – Each Committee will have its own section in the website which will be managed by the committee chair. The section will contain information as uploaded by the committee chair through the content management system.

- **Committee Members** – Members who access the backend may select their committee and proceed to the committee page.

- **Non Committee Members** – Members who are not part of a committee may click on any committee and view a brief informational summary of that particular Committee. If the Non Member wishes to join that particular committee, they may access the committee registration form and complete the appropriate information to request becoming a member. The form will consist of the user's Name, email address and phone number and a comments section. The contents of the form will be mailed to the committee chair for review and acceptance.

- **Committee Chair** – Will have access through the backend content management system to a page within the website containing their particular committee. The committee chair will be able to add, delete and approve committee members. They will also be able to post articles, PDF's, Excel and Word Doc's, text, and images.

6. Webinars – Committee chairs may upload and delete webinars to their committee chair page

7. Backend Search – Users will be able to search for either Users or Committees. The user may click on an individual user or a Committee which will in turn take the user to the individual's internal webpage or to the committee information page.

8. Actionline Magazine Digital E-publishing

- Subscription service through Epublish4me (www.epublish4me.com)

- Features include:

- o Works across all platforms and Ereaders (Kindle Fire, Google Nexus, etc.)

- HTML 5 not Flash, so works on all mobile devices, including Apple products
 - Private (and Public) accounts ranging from \$29 - \$49 per month, depending on functionality (\$328 Yearly package available)
 - \$49 per month includes Integrating digitization all magazines from PDF's back to 2008 by them / \$29 per month would include the option for Company's team or Developer's to digitize the existing PDF's ourselves
- COST: \$29 - \$49 monthly, depending on functionality
\$328 per year option available

Optional Services - Associated Content Creation:

- Written copy, Live action video shoot + Edit, Animation, Motion Design, Illustration, Magazine or other design services, etc. and/or facilitation/construction of the e-magazine by Developer to be determined based on complexity and billed at our standard rate for those disciplines.
- COST: TBD

Assumptions and Allowances

- The Design and Development of this Scope of Services includes porting all existing content on Rpptl.org to the new website. All new Content Population is the responsibility of the Company. Once the website is live, an internal SLA container within does provide content population services on a monthly basis.
- Design is included pursuant to the sub-consultant Riley Animation. If additional design work is needed for this project after the Go Live Date, it will be handled through Developer's standard change order process.
- Throughout the construction of the prototype and the final Web Site, the Web Site shall be accessible to Company. Until Company has approved the final Web Site, none of the Web Pages for Company's Web Site will be accessible to end users unless the end users have entered the correct user ID and password.

Third Party Products

Third party products may be required throughout the project. Examples would be stock photography, clip art, or licenses. If any third party products are needed, the Company will be notified, and written approval will be needed prior to purchasing any third party products. Company will reimburse Developer for all third party product costs.

**Developer does not foresee a cost, at this time, for any third party products

Analytics

Google Analytics – Developer will set up a Google Analytics account for Company and enable the tracking on Company's site. If Company has an account, Company can provide Developer the code and Developer will enable the tracking for Company.

Administration

The Content Management System (CMS) tool used by Developer and provided to the user for use in Administrative functions is Joomla. This administration tool is used for multiple functions in managing the website. Some of those functions are:

- Unlimited creation of New Subpages beneath the primary navigation
- Text and Content editing. i.e. Bold, Underline, Highlight, Font Color, etc.
- Uploading Images and Video (If Applicable) to pages within the site
- Upload .doc and .pdf files to pages within the site
- Adding and deleting modules to individual pages

- Multiple Permission Levels and multiple access levels within the Admin area
- Password Protected

MSLA – MAINTENANCE SERVICE LEVEL AGREEMENT

Maintenance

- Developer will address maintenance issues during normal business hours. Developer's normal business hours are 8:00 am to 5:00 pm Eastern Time, Monday through Friday (excluding holidays).
- Developer will provide the client up to four (4) hours per month of maintenance for Maintenance Items covered under the MSLA, including the following:
 - Content Population including Text, Images, YouTube Videos, Press Releases Calendar Updates, Committee Updates, Legislative Updates and Blogs. Content is to be provided to Developer by the Company for population.
 - New Subpage Creation under primary navigation elements.
 - Training – Online Webinars and Go-To-Meetings can be provided to any individuals the Company requests who need first time or additional training. This includes providing answers or instruction to any general questions the client may have.
- Company will be assigned an account manager to handle all client inquiries.
- Developer will dictate corresponding response times. Most responses times will be handled within 18 business hours from the client's request.
- This MSLA, included in this Statement of Work, will remain in effect for one year from Site Go-Live Date
- Developer will keep an accurate, and up-to-date, electronic record of hours used and will provide that to the Company upon request. This record will provide the date of service, the service provided, and the amount of time used to complete the service.
- Service time will be calculated in fifteen minute increments.

Terms and Conditions of the MSLA

- This MSLA does not cover any additional design or development work not contained within this Scope of Services. Any additional Design or Development work will be handled by Developer's standard change order process.
- This MSLA does not cover any problems (bugs) with the website including programming, code and database structure, outside of Developer's standard warranty.
- This MSLA does not include content creation. Company must provide the content to Developer for website population.
- Maintenance hours do not roll over from month-to-month. A new set of four (4) hours will begin each month.
- The Company will be notified when they are approaching the four (4) hour limit. If the Company requires more than four (4) hours, in any given month, that can be handled through Developer's standard change order process. Company will have the option to purchase additional blocks of hours in any given month. Blocks of time may be purchased in four hour increments at a discounted rate of \$200 for four hours. Blocks of time must be prepaid prior to being used. All policies, assumptions, and allowances contained in the original Scope of Services, pertaining to monthly maintenance, will apply to additional blocks of hours that are purchased.

PROJECT SPECIFICATIONS

Development Language

The site will be developed in PHP with MySQL as the database backend.

Browser Requirements

The public facing web pages will be developed to run on Microsoft Internet Explorer 8.0, Google Chrome, Mozilla Firefox and Safari. The SOW will be developed to comply with a screen resolution of 1024 x 768. Additional browsers can be supported for additional fees not included within this SOW.

Third-Party Products

Developer will need to incorporate third-party products, if necessary, to design, develop, and/or host the project. Such third-party products may include, but are not limited to: server-side applications, clip art, music, stock images, or any other copyrighted work. The Company shall be responsible for purchasing (or reimbursing Developer) and maintaining all such third-party licenses.

Content Requirements

The Company is responsible for entering any new content after site Go-Live Date. During the design and development phase Developer may use test data to work out layout issues. Developer will transfer all existing content from Company's old website to the new website prior to the Go Live Date. The Company is responsible for maintaining the content once the site is live, subject to the terms of the MSLA.

Hosting Requirements

The server platform will be a linux variant supporting apache mod_rewrite for the SEF and SEO needs

The supported hosting environment for Website would need to meet the following:

- PHP 5.2+
- MySQL 4.1.x +
- Apache* 1.3+
- IIS 6**

* To enable Search Engine Friendly URL's Company will need mod rewrite

** Company will need to have PHP installed in IIS and will need a rewrite module installed that supports the apache htaccess standard for rewrites

Developer will verify that Company's existing server provider, First Step Internet, meets all technical requirements within five (5) business days of the effective date of the Agreement.

Development Time Frame

Developer estimates that the identified services above (excluding content population) can be completed within eighty (80) business days from Design Signoff. Delays may occur if key milestone approvals are missed such as design signoff. Delays may also occur based on Company's timeframe to populate content for the site, if third party consultants are needed, testing of the site by Company is needed etc.... These delays may impact the estimated development time frame.

CMS Training

Training, up to eight (8) hours, will be provided by Developer. Training will be scheduled towards the end of the development time frame. This training will go over the adding/editing/deleting of content and other relevant components and modules related to your project. Additional training sessions can be supported but are not part of the scope of this project. If Company would like to inquire about additional training please let Developer know.

- Company will be allowed to Video the Training to use for future training needs within their organization
- Company will be provided with an online guide, that will have step by step visual and text how-to instruction that can be used as a resource for future training questions or needs.

Exhibit B

SCHEDULE FOR DEVELOPMENT OF COMPANY WEB SITE

Task	Target Date
Initial files downloaded by Developer	As soon as possible
URL registration complete	3 days* after execution of Agreement
URL assigned	As soon as possible after URL Registration
Initial meeting with Company staff to discuss initial design of Web Site	3 days from receipt of design fee and execution of Agreement
Creation of initial design and posting on private area on Developer server	5 days from initial meeting with staff
Passwords and User ID's created by Developer	5 days after receipt of Membership Database
Review and approval of initial design by Company	5 days from posting of initial design**
Posting of Beta Test Site for Web Site	2 days from approval by Company
Posting of final Web Site	5 days from approval by Company of Beta Test Site

* All references to "days" shall mean "business days"

**Any changes requested by Company shall be implemented within 5 days or less by Developer.

Exhibit C

HOURLY RATES FOR ADDITIONAL SERVICES

Exhibit D

REIMBURSABLE EXPENSES FOR ADDITIONAL SERVICES

Exhibit E

LIST OF PRE-APPROVED INDEPENDENT CONTRACTORS

The following persons or entities have been pre-approved by Company:

- RILEY ANIMATION STUDIOS, LLC

Exhibit F
SURVEY RESULTS

Exhibit G

DEVELOPER'S INSURANCE REQUIREMENTS

[NEED TO BE PROVIDED BLUEFLAME'S CURRENT COVERAGES AND LIMITS.]

Exhibit H

PAYMENT SCHEDULE

SITE PRICING OVERVIEW

SITE GRAPHIC ART REDESIGN + CHARACTER

(To include contemporary design overhaul, RPPTL Character Integration, etc.) \$12,500

(Does not include potential custom video, design, etc content creation for magazine other than the conversion of existing Actionline publications into E-Reader and indexing)

SITE PROGRAMMING

(To include all items detailed in comprehensive Scope of Work) \$25,200

SITE PROJECT MANAGEMENT

(Project Management by Chris Egan/John Utsch) \$2,500

Developer acknowledges and agrees that Chris Egan and John Utsch are considered key personnel and, so long as such persons remain employed by Developer, they shall remain assigned to the Services associated with this Agreement and Developer also agrees that such persons shall not be changed nor any other person assigned to perform the Services associated with this Agreement unless approved in advance and in writing by Customer.

PROJECT PRICE: \$40,200

METHOD OF PAYMENT

Company will pay the Project Price in installments based upon Developer meeting project milestones as follows:

- \$5,000 due at contract execution
- \$10,000 payable within 5 days of design approval
- \$5,000 payable within 5 days of demo site unveiling for client review and approval
- \$10,000 payable within 5 days of successful database population and conversion of content
- \$12,200 payable within 5 days after website Go-Live Date



RPPTL.org Website Hosting and Maintenance Agreement

Prepared For

**Nicole C. Kibert, Chair,
Website Committee,
Florida RPPTL Section of the State Bar
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Tampa, Florida 33607-5780
813.229.4205
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nkibert@carltonfields.com
<http://www.RPPTL.org>**

**Yvonne D. Sherron
Program Administrator
Professional Development
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300**

Wednesday, January 23, 2013

Website Hosting

First Step Internet will continue to host the www.RPPTL.org website for the Real Property, Probate and Trust Law (RPPTL) section. The website will continue to be hosted on its own dedicated server platform running Microsoft Windows 2003SP2 operating system using a Microsoft SQL Server 2008R2 database backend. The server will be firewalled from external access for security and will be connected to the Internet via a 1GB Ethernet connection.

Site Ownership

FSI will provide all programming and scripting required to support the Florida RPPTL web site. All text, copy, reports, graphics, documents, database content or other written or visual material developed by FSI in the performance of this document shall be and remain the property of Florida RPPTL without restriction or limitation upon its use or dissemination by Florida RPPTL. Such material shall be a work for hire and shall not be the subject of a copyright application by FSI.

Website Maintenance Work

First Step Internet agrees to provide up to ten hours per month of website design and maintenance work. Change requests should be sent via email to WebDev@fsr.com and they will be acted upon in a professional and timely manner. The ten hours per month will be billed at a recurring rate of \$750 per month on a use it or lose it basis. Any unused time at the end of the month will not carry over to the next month. Any work in excess of the normal ten hours per month will be billed out at our regular rate of \$75 per hour and will accrue in fifteen minute increments. RPPTL may cancel the recurring website maintenance contract with thirty (30) days notice. Following termination, any activities will be billed at the regular First Step Internet hourly rate of \$75 per hour.

Billing and Invoices

Invoices for all development work and recurring hosting fees will be electronically submitted to the following addresses:

- aomalley@cowmpa.com
- ysherron@flabar.org
- nkibert@carltonfields.com

General First Step Internet Fees

Description	Fee
Architecture and Systems Design	\$125.00 / hour
Technical Staff	\$ 75.00 / hour
Graphic Design & HTML Documentation	\$ 75.00 / hour

Recurring Hosting and Website Maintenance Fees

Approved	Description	Cost
	Dedicated Server and listserv Hosting (recurring fee)	\$250/month
	Website Maintenance (recurring fee)	\$750/month
	Total Monthly Recurring Fees	\$1,000/month

Confidential and Proprietary First Step Internet, L.L.C.

First Step Internet
 PO Box 9587
 Moscow, ID 83843

888-676-6377 Phone
 208-883-3733 Fax
bmoore@fsr.com
www.fsr.com

Terms and Conditions

If you have any questions, please contact Bill Moore at (208) 882-8869, ext. 465 or bmoore@fsr.com. Florida RPPTL will be billed monthly for services specified above. Invoices will be sent electronically to the email addresses specified in the Billing and Invoices section on page 2.

Agreement


Sign and return this proposal to First Step Internet via the address or fax number indicated at the bottom of the page.

I, _____, agree to the above proposal and terms.

By: _____
(signature)

Florida RPPTL Section,

Date: _____

By: 
(signature)

Bill Moore
Director of Technology
First Step Internet

Date: January 23, 2013

1 **PROFESSIONAL ETHICS OF THE FLORIDA BAR**
2 **DRAFT Proposed Advisory Opinion 12-4 (Revised January 8, 2013)**
3 **(XXXX, 2013)**
4

5 A member of The Florida Bar has requested an advisory ethics opinion. The legislature
6 adopted section 626.8473 (8), Florida Statutes, effective July 1, 2012, which states:
7

8 An attorney shall deposit and maintain all funds received in connection with
9 transactions in which the attorney is serving as a title or real estate
10 settlement agent into a separate trust account that is maintained exclusively
11 for funds received in connection with such transactions and permit the
12 account to be audited by its title insurers, unless maintaining funds in the
13 separate account for a particular client would violate applicable rules of The
14 Florida Bar.
15

16 The inquirer asks for guidance regarding compliance with both the statute and the
17 applicable Rules Regulating The Florida Bar. The inquirer’s firm employs numerous attorneys
18 who handle real estate transactions and work with multiple title insurers. Some real estate
19 transactions involve no title insurance. The inquirer asks two questions which will be addressed
20 in turn:
21

22 **Question 1: Is an attorney permitted to allow a title insurance company to audit**
23 **the firm’s special trust account used exclusively for real estate and title**
24 **transactions without the informed consent of the clients who have no**
25 **involvement with that particular title insurance company?**
26

27 The answer is no. As explained below, an attorney is not permitted to allow a title
28 insurance company to audit the special trust account used exclusively for real estate and title
29 transactions if the special trust account holds funds for client transactions that are unrelated to the
30 title insurer requesting the audit, unless the affected clients give informed consent.
31

32 Rule 4-1.6 (a), Rules Regulating The Florida Bar, prohibits a lawyer from voluntarily
33 disclosing any information regarding a representation without a client’s informed consent, unless
34 one of the exceptions to the rule applies, and states:
35

36 ***Rule 4-1.6 Confidentiality of Information***
37

38 **(a) Consent Required to Reveal Information.** A lawyer shall not reveal
39 information relating to representation of a client except as stated in subdivisions
40 (b), (c), and (d), unless the client gives *informed consent*.
41

42 Emphasis added.
43

44 The Preamble of the Rules of Professional Conduct defines *informed consent* as follows:
45

46 "Informed consent" denotes the agreement by a person to a proposed course of
47 conduct after the lawyer has communicated adequate information and explanation
48 about the material risks of and reasonably available alternatives to the proposed
49 course of conduct.

50
51 The comment to Rule 4-1.6 further explains that confidentiality is fundamental to the
52 trust that is the hallmark of the attorney-client relationship and emphasizes the broad scope of the
53 rule:

54
55 The confidentiality rule applies not merely to matters communicated in confidence
56 by the client but also to *all information relating to the representation, whatever its*
57 *source.*

58
59 Emphasis added.

60
61 The lawyer's ethical obligations under Rules 4-1.6 (a) and 4-1.4 to obtain informed
62 consent to disclose information and to explain matters dictate the lawyer's affirmative duty to
63 provide the client with information relevant to the client's interests. Failure to comply with a
64 lawyer's obligations to adequately inform and explain prior to obtaining consent may constitute a
65 conflict of interest if it serves the lawyer or a third party more than the client's interest. *See* Rule
66 4-1.7 (a) (2).

67
68 The confidentiality rule is limited by several exceptions that would permit a lawyer to
69 voluntarily disclose a client's information without informed consent. The only exception
70 relevant to the present inquiry is Rule 4-1.6 (c) (1), which permits a lawyer to disclose
71 information without a client's informed consent to serve the client's interest, unless the client has
72 specifically instructed otherwise.

73
74 Florida Ethics Opinion 93-5 acknowledges that a lawyer must obtain a client's consent¹ to
75 permit a title insurer to audit the lawyer's general trust account, but advises that if the lawyer
76 uses a special trust account exclusively for transactions in which the lawyer acts as the title or
77 real estate settlement agent on behalf of that insurer, the exception under Rule 4-1.6 (c) (1) may
78 permit the audit without a client's informed consent. The committee recognized that a client's
79 interest is served if the title insurer's audit ensures the safety of the funds held in the special trust
80 account and facilitates a satisfactory conclusion for clients whose funds are held in the account:

81
82 An attorney who is an agent for a title insurance company may not permit the title
83 insurer to audit the attorney's general trust account without consent of the affected
84 clients. *The attorney, however, need not obtain client consent before permitting the*
85 *insurer to audit a special trust account used exclusively for transactions in which the*

¹Rule 4-1.6 (a), Rules Regulating The Florida Bar (1994), did not require *informed* consent, as is required by the current applicable rule, and states: "A lawyer shall not reveal information relating to a representation of a client except as stated in subdivisions (b), (c), and (d), *unless the client consents after disclosure* to the client." Emphasis added. The term "disclosure" was not defined in the 1994 Preamble.

86 *attorney acts as the title or real estate settlement agent.*

87

88
89 . . . Subdivision (c)(1) authorizes an attorney to disclose confidential information "to
90 serve the client's interest unless it is information the client specifically requires not to
91 be disclosed." *The committee recognizes that audits by title insurance underwriters*
92 *are necessary to ensure the safety of the funds deposited in the special trust account*
93 *and thus facilitate a satisfactory conclusion for those whose funds are placed in the*
94 *account.* Consequently, if a special trust account is used exclusively for transactions
95 in which the attorney is acting as the title or real estate settlement agent, the attorney
96 ethically may permit the proposed audits unless the attorney has been specifically
97 directed otherwise by the client.

98
99 Florida Ethics Opinion 93-5 (emphasis added).

100
101 The facts of the present inquiry are distinguishable from those addressed in Florida Ethics
102 Opinion 93-5. The inquiry addressed in Opinion 93-5 was presented by a lawyer from the
103 general counsel of a title insurance company asking on behalf of the company wanting to audit,²
104 and therefore the opinion was written under the assumption that only transactions insured by that
105 one title insurer would be included in the special trust account discussed in the opinion.

106
107 The inquirer's firm employs many lawyers who serve as title agents for different title
108 insurers and who represent many different clients in unrelated transactions. Some clients'
109 transactions involve no title insurer. The inquiry states that each title insurer wants to audit the
110 trust account used by its own title agents. Even if the firm maintains a separate trust account
111 exclusively for real estate and title transactions, the account will hold funds for different clients
112 who are represented by different lawyers who are title agents for different title insurers, and some
113 client funds will be held for transactions that involve no title insurer.

114
115 If the firm permits each title insurer to audit the separate trust account without clients'
116 informed consent, each insurer will obtain information relating to the firm's representation of
117 clients who are not involved in any transaction with that particular title insurer. That would not
118 serve those clients' interests and would be tantamount to permitting the insurer to audit a general
119 trust account in violation of the prohibition expressed in Opinion 93-5. The inquirer's
120 affirmative duties to inform and explain under Rules 4-1.4 and 4-1.6 (a) would be triggered under
121 such circumstances. Disclosure to title insurers without a client's informed consent would be
122 prohibited by Rule 4-1.6 (a) and the exception under Rule 4-1.6 (c) (1) would be inapplicable.

123 Based on the foregoing, the answer to the inquirer's first question is no, an attorney is not
124 permitted to allow a title insurance company to audit the special trust account used exclusively
125 for real estate and title transactions if the special trust account holds funds for client transactions
126 unrelated to the title insurer requesting the audit, unless the attorney obtains the affected clients'
127 informed consent.

128
² Florida Ethics Opinion 93-5 was outside the scope of ethics opinions customarily issued by the Professional Ethics Committee.

129 If, however, consistent with Florida Ethics Opinion 93-5, the special trust account is used
130 exclusively for real estate and title transactions insured by a single title insurer, the inquirer may
131 allow that one title insurer to audit the special trust account without a client's informed consent,
132 unless the client specifically instructed otherwise.
133

134 **Question 2: If an attorney is not ethically permitted to allow a title insurer to**
135 **audit the special trust account without the clients' informed consent because the**
136 **special trust account involves unrelated transactions, but new section 626.8473**
137 **(8), Florida Statutes, requires that attorney to allow the audit, does the attorney**
138 **abide by the ethics rules or the statute?**
139

140 The inquirer's second question arises from concerns regarding the interpretation of
141 section 626.8473 (8), Florida Statutes, which became effective July 1, 2012, and states:
142

143 (8) An attorney shall deposit and maintain all funds received in connection with
144 transactions in which the attorney is serving as a title or real estate settlement agent
145 into a separate trust account that is maintained exclusively for funds received in
146 connection with such transactions and permit the account to be audited by its title
147 insurers, unless maintaining funds in the separate account for a particular client
148 would violate applicable rules of The Florida Bar.
149

150 Although questions of statutory interpretation are beyond the scope of an ethics opinion,
151 pursuant to Procedure 2 (a) (1)(D), Florida Bar Procedures for Ruling on Questions of Ethics
152 (2012), the committee offers the following general discussion to provide guidance to bar
153 members.
154

155 The statute appears to mandate that lawyers maintain a separate trust account devoted
156 exclusively to funds held in connection with transactions in which the lawyer serves as a title or
157 real estate settlement agent. The statute appears to further require that the lawyer permit the
158 separate trust account to be audited by multiple title insurers.
159

160 As discussed in the answer to the inquirer's first question, Rule 4-1.6 (a), Rules
161 Regulating The Florida Bar would require that a lawyer obtain each client's informed consent
162 before permitting multiple title insurers to audit a single trust account, even if that separate trust
163 account was devoted exclusively to holding funds for clients' real estate and title transactions.
164 Consistent with Florida Ethics Opinion 93-5, a lawyer would not be required to obtain clients'
165 informed consent to permit one title insurer to audit a separate trust account that is devoted
166 exclusively to funds for clients' transactions that are insured by the one title insurer requesting
167 the audit, because the audit would serve the clients' interests under Rule 4-1.6 (c) (1).
168

169 Lawyers thus should consider maintaining: 1) a separate trust account for each different
170 title insurer used by that lawyer or law firm, or 2) one separate trust account and obtain each
171 client's informed consent to disclose information regarding their transactions to multiple title
172 insurers for their audits, or 3) one separate trust account and obtain consent from the various title
173 insurers to audit only the information related to transactions that the title insurer is underwriting.

174 With respect to number 2 in the preceding sentence, the lawyer may obtain the client's informed
175 consent in the sales contract or in a separate document executed by the client prior to or at the
176 closing.

177

178 In sum, the answer to the inquirer's first question is no. The inquirer may not permit
179 multiple title insurance companies to audit a single trust account used exclusively for real estate
180 and title transactions, because that would be tantamount to permitting a prohibited audit of a
181 general trust account. The inquirer may permit a title insurer to audit a single trust account used
182 exclusively for client transactions insured by the title insurer requesting the audit. The answer to
183 the inquirer's second question offers three alternatives that may harmonize the inquirer's
184 obligations under the applicable Rules Regulating The Florida Bar and the statute.

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**REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION**



**THE
FLORIDA
BAR**

www.RPPTL.org

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January 22, 2013

VIA U.S. MAIL & E-MAIL AT gyoung@carltonfields.com

Gwynne A. Young, Esquire
President, The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300

Re: Recommendations of the Real Property, Probate and Trust Law Section to the Board of Governors of The Florida Bar for Modifications to Rule 5-1.2 of the Rules Regulating The Florida Bar

Dear Gwynne:

The Real Property Probate and Trust Law Section recommends that the Board of Governors of The Florida Bar give favorable consideration to the adoption of the ABA Model Rules on client trust account records (adopted by the ABA on August 9, 2010), including Rule 2 dealing with client trust account safeguards. I am enclosing a copy of the Model Rules on Client Trust Account Records.

The RPPTL Section Committee that studied this issue and initiated this recommendation to the Section's Executive Council also had two additional recommendations to allow non-lawyers to sign on trust accounts which were not approved by the Executive Council. The first recommendation would require non-lawyers to be bonded and the second would require lawyers and non-lawyers to pass a test on the applicable rules regulating client trust accounting and attorney trust records in order to be authorized to sign trust account checks.

Gwynne A. Young, Esquire
January 22, 2013
Page 2

Thank you and the Board of Governors for your consideration of our recommendation.

Very truly yours,

Fletch

Wm. Fletcher Belcher, Chair
Real Property, Probate & Trust Law Section
of The Florida Bar

Enclosure

cc: Margaret A. Rolando, Esquire, with enclosure, at mrolando@shutts.com
Roland "Chip" D. Waller, Esquire, with enclosure, at roland.waller@rdwaller.com
Michael J. Gelfand, Esquire, with enclosure, at mjgelfand@gelfandarpe.com
Michael Dribin, Esquire, with enclosure, at mdribin@harpermeyer.com
Yvonne D. Sherron, with enclosure, at ysherron@flabar.org

MODEL RULES FOR CLIENT TRUST ACCOUNT RECORDS

*Adopted by the American Bar Association
House of Delegates on August 9, 2010*

RULE 1: RECORDKEEPING GENERALLY

A lawyer who practices in this jurisdiction shall maintain current financial records as provided in these Rules and required by [Rule 1.15 of the Model Rules of Professional Conduct], and shall retain the following records for a period of [five years] after termination of the representation:

- (a) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;**
- (b) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;**
- (c) copies of retainer and compensation agreements with clients [as required by Rule 1.5 of the Model Rules of Professional Conduct];**
- (d) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;**
- (e) copies of bills for legal fees and expenses rendered to clients;**
- (f) copies of records showing disbursements on behalf of clients;**
- (g) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;**
- (h) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;**

- (i) copies of [monthly] trial balances and [quarterly] reconciliations of the client trust accounts maintained by the lawyer; and
- (j) copies of those portions of client files that are reasonably related to client trust account transactions.

Comment

[1] Rule 1 enumerates the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by Rule 1.15 of the Model Rules of Professional Conduct or its equivalent. Consistent with Rule 1.15, this Rule proposes that lawyers maintain client trust account records for a period of five years after termination of each particular legal engagement or representation. Although these Model Rules address the accepted use of a client trust account by a lawyer when holding client or third person funds, some jurisdictions may permit a lawyer to deposit certain advance fees for legal services into the lawyer's business or operating account. In those situations, the lawyer should still be guided by the standards contained in these Model Rules.

[2] Rule 1(g) requires that the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks be maintained for a period of five years after termination of each legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act", codified at 12 U.S.C. §5001 *et. seq.*, recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. §5002(16) as "paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. §5002(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number of years.

[3] The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds.) In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of Rule 1(h).

[4] There are five types of check conversions where a lawyer should be careful to comply with the requirements of Rule 1(h). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in an "account-receivable conversion," a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment. Rule 1(h) applies to each of the type of electronic funds transfers described. All electronic funds transfers shall be recorded and a lawyer should not re-use a check number which has been previously used in an electronic transfer transaction.

[5] The potential of these records to serve as safeguards is realized only if the procedures set forth in Rule 1(i) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

[6] In some situations, documentation in addition to that listed in paragraphs (a) through (i) of Rule 1 is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under paragraph (j) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this paragraph include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

RULE 2: CLIENT TRUST ACCOUNT SAFEGUARDS

With respect to client trust accounts required by [Rule 1.15 of the Model Rules of Professional Conduct]:

- (a) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;**

- (b) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and
- (c) withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized electronic transfer.

Comment

[1] Rule 2 enumerates minimal accounting controls for client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in the jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorize electronic transfers from a client trust account. While it is permissible to grant limited nonlawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a non-delegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See, Rules 5.1 and 5.3 of the Model Rules of Professional Conduct.

[2] Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

[3] The requirements in paragraph (b) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

RULE 3: AVAILABILITY OF RECORDS

Records required by Rule 1 may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

Comment

[1] Rule 3 allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential. If a lawyer uses third-party electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See, ABA Formal Ethics Opinion 398 (1995). Records required by Rule 1 shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Model Rule 1.15, or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personally identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule.

[2] Rule 28 of the Model Rules for Lawyer Disciplinary Enforcement provides for the preservation of a lawyer's client trust account records in the event that the lawyer is transferred to disability inactive status, suspended, disbarred, disappears, or dies.

RULE 4: DISSOLUTION OF LAW FIRM

Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in Rule 1.

Comment

[1] Rules 4 and 5 provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with Rules 1.0(c),(g), and (h) of the Model Rules of Professional Conduct

RULE 5: SALE OF LAW PRACTICE

Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in Rule 1.

REPORT

Overview

The Model Rule on Financial Recordkeeping, adopted in February 1993, delineates the types of records that lawyers must maintain to satisfy the requirements in Rule 1.15 of the Model Rules of Professional Conduct. Specifically, Model Rule 1.15 requires a lawyer to preserve “complete records” with respect to a lawyer’s client trust accounts and to “render a full accounting” for the receipt and distribution of trust property, but it does not include practical guidance to the lawyer on the maintenance of these records. The Model Rule on Financial Recordkeeping provided uniform and minimal standards for compliance with these fiduciary obligations and for establishing basic accounting control systems. See, Appendix A, attached.

Every United States jurisdiction has adopted the requirement of Model Rule 1.15 that a lawyer maintain “complete records.” Twenty-eight jurisdictions have additional rules or comments outlining the types of records that must be maintained; an additional five jurisdictions direct lawyers to the ABA Model Rule on Financial Recordkeeping as a guide for recordkeeping requirements.

There have been many changes in banking laws and practices since the adoption of the Model Rule on Financial Recordkeeping. The Check Clearing for the 21st Century Act (“Check 21”), 12 U.S.C. §5001 et. seq., was adopted in 2003 and allows banks to use electronic images of checks as a substitute for canceled checks. In addition, many merchants now convert paper checks into electronic images and the original checks are often destroyed. Most jurisdictional rules, and the current ABA Model Rule on Financial Recordkeeping, require lawyers to maintain the original canceled checks. Accordingly, lawyers are inadvertently running afoul of their jurisdiction’s rules of professional conduct. This resolution eliminates this danger for lawyers by defining what records a lawyer must maintain to satisfy the “complete records” requirement of Rule 1.15 and how those records must be maintained.

Along with changes to banking practices through “Check 21,” methods of banking have changed for lawyers and their clients. Electronic banking, and specifically, wire transfers or electronic transfers of funds have become more prevalent. This form of banking presents a special set of problems for lawyers with trust accounts because there is often no discernable paper trail to the transaction. Records of these transactions can be found as part of the lawyer’s monthly statement or through the lawyer’s online banking system, but banks do not provide specific confirmation of electronic transactions as a matter of course. Lawyers must be proactive in securing the necessary records for these transactions.

This resolution addresses a lawyer’s recordkeeping requirements following the electronic transfer of funds from client trust accounts and clarifies who can authorize transactions from client trust accounts. The resolution also addresses issues related to record maintenance and outlines necessary safeguards that a lawyer must have in place when

using electronic record storage systems. Finally, the scope of the Model Rules for Client Trust Account Records has been clearly defined and the structure simplified.

Title and Structure

A goal of any ABA Model Rule is to serve as a guide to individual jurisdictions in attaining the highest standards in the practice of law. Model Rules should be clearly structured, focused, and provide easy to follow instructions to lawyers. The Model Rules are now organized into five separate Rules. This new organization increases the readability of the Model Rules and the associated comments.

The Model Rule on Financial Recordkeeping was adopted as a guideline for lawyers to follow in satisfying the “complete records” requirement of Model Rule 1.15 when the lawyer is handling the “property of clients or third persons.” The requirements contained within the Model Rule were meant to primarily address the lawyer’s handling of client trust accounts or money held in trust by the lawyer. The new Model Rules for Client Trust Account Records more accurately reflect the intended scope.

Rule 1: Recordkeeping Generally

New Rule 1 and its supporting comments address general recordkeeping requirements for all lawyers holding client funds. Many of the provisions remain unchanged from what was formerly Section A of the Model Rule on Financial Recordkeeping. The substantive changes to this section focus on advances in banking practices that have occurred since the Model Rule on Financial Recordkeeping was adopted.

“Check 21” was adopted to enable banks to process more checks electronically by allowing them to capture a picture of the front and back of a check along with the associated payment information and transmit that information electronically. This process eliminates the need for banks to move the actual paper check from bank to bank for processing because the captured image of the check becomes a “substitute check” and can be processed electronically. As a result of these electronic images, banks are now allowed to provide either the original canceled check or the “substitute check” to the account holder. Accordingly, the lawyer will either receive a canceled check, a “substitute check,” or have access to an electronic image of the check through the bank’s on-line system.

New Rule 1 specifically includes substitute checks as an alternative to pre-numbered canceled checks. The current Model Rule requires a lawyer to maintain the canceled check or its equivalent. Although a substitute check is legally the same as a canceled check, the addition of specific language eliminates the risk of disciplinary agencies finding a lawyer maintaining substitute checks in violation of the jurisdiction’s rules.

The current Model Rule lacks any specific provisions for the maintenance of records following the electronic transfer of funds. While many individual jurisdictions have adopted provisions to cover the increase in electronic banking mechanisms, most

jurisdictions still mirror the ABA Model Rule. New Rule 1 and its supporting comments seek to provide specific guidelines for securing the authorization for electronic transfers and for maintaining the necessary accounting information to satisfy the requirements of Model Rule 1.15.

New Rule 1 outlines the specific recordkeeping requirements for any electronic transfer of funds from a client trust account. Comments 3 and 4 delineate the many environments in which an electronic funds transfer or electronic check conversion can occur (e.g. wire transfers, electronic transfers of funds, and automatic clearing house (ACH) transactions). Electronic fund transfers are assumed to carry a greater risk of abuse than paper check withdrawals. Therefore, lawyers should maintain detailed information regarding each electronic transfer and be especially vigilant in complying with Rule 1(h).

Rule 2: Client Trust Account Safeguards

Rule 2 (formerly Section B) and its supporting comments address the minimum safeguards that must be in place with respect to client trust accounts. The vast majority of jurisdictions allow a nonlawyer employee to have access to and authorize transactions from a client trust account. While a lawyer should limit client trust account access and authorization, new Rule 2(a) allows an employee under the direct supervision of a lawyer to authorize transactions on a client trust account. Such authorization should be limited and the lawyer should closely monitor all transactions from client trust accounts. If a lawyer grants authorization privileges to nonlawyer employees, the lawyer remains personally and professionally liable for all transactions. See, Rule 5.1 (Responsibility of Partners, Managers, and Supervisory Lawyers) and Rule 5.3 (Responsibilities Regarding Non-lawyer Assistants) of the Model Rules of Professional Conduct.

Rule 3: Availability of Records

The lawyer's client trust account records may be maintained by electronic, photographic, computer or other media or in paper format at the lawyer's office or at an off-site storage facility. Regardless of which record storage option is chosen, the records must be readily accessible to the lawyer and the lawyer must be able to produce and print them upon request.

Many lawyers are now using third-party storage systems to store their files. Prior to using third-party or internet based file storage, the lawyer must ensure that the company has established reasonable procedures to protect client confidentiality and ensure that the files can be accessed by a disciplinary authority, client, or interested third-party, following issuance of a subpoena or other demand for production by a court.

Rule 28 of the Model Rules for Lawyer Disciplinary Enforcement provides for the preservation of a lawyer's client trust account records in the event that the lawyer is transferred to disability inactive status, suspended, disbarred, disappears, or dies.

Rule 4: Dissolution of Partnership and Rule 5: Sale of a Law Practice

It is the responsibility of all partners in a law firm to ensure the proper storage and accessibility of client trust account records. If a proper system is not established prior to the dissolution or sale of a law firm, each partner may be held personally and professionally responsible.

Conclusion

The Model Rules for Client Trust Account Records provide guidelines to lawyers for compliance with the “complete records” requirement of Rule 1.15 of the Model Rules of Professional Conduct by establishing minimum standards for maintaining a lawyer’s financial records. The new Model Rules do not increase the regulatory obligation for lawyers. They seek to eliminate the risk of noncompliance by lawyers with client trust accounts in banks using “substitute checks” or electronic imaging of checks; to clarify the recordkeeping requirements for lawyers making electronic fund transfers; and to clarify record storage requirements. The new Model Rules accommodate current standards of practice while continuing to protect the interests of clients.

Respectfully submitted,
Hon. Daniel J. Crothers, Chair
Standing Committee on Client Protection
August 2010

APPENDIX A

~~ABA MODEL RULE ON FINANCIAL RECORDKEEPING~~

ABA MODEL RULES FOR CLIENT TRUST ACCOUNT RECORDS

A. RULE 1. RECORDKEEPING GENERALLY

A lawyer who practices in this jurisdiction shall maintain current financial records as provided in ~~this~~ these Rules, and required by [Rule 1.15 of the Model Rules of Professional Conduct], and shall retain the following records for a period of [five years] after termination of the representation:

- ~~(1)~~ (a). receipt and disbursement journals containing a record of deposits to and withdrawals from ~~bank accounts which concern or affect the lawyer's practice of law,~~ client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
- ~~(2)~~ (b). ledger records for all client trust accounts ~~required by [Rule 1.15 of the ABA Model Rules of Professional Conduct]~~ showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
- ~~(3)~~ (c). copies of retainer and compensation agreements with clients [as required by Rule 1.5 of the Model Rules of Professional Conduct];
- ~~(4)~~ (d). copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
- ~~(5)~~ (e). copies of bills for legal fees and expenses rendered to clients;
- ~~(6)~~ (f). copies of records showing disbursements on behalf of clients;
- ~~(7)~~ (g). the physical or electronic equivalents of all checkbook registers, check stubs bank statements, records of deposit, pre-numbered canceled checks, and or their equivalent substitute checks provided by a financial institution;
- (h). records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

- ~~(8) (i).~~ copies of [monthly] trial balances and [quarterly] reconciliations of the lawyer's client trust accounts maintained by the lawyer; and
- ~~(9) (i).~~ copies of those portions of client files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them related to client trust account transactions.

Comment

[1] ~~Paragraph A Rule 1~~ enumerates the basic financial records that a lawyer ~~should~~ must maintain with regard to ~~the business and~~ all trust accounts of a law firm. These include the standard books of account, and the supporting records which are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by Rule 1.15 of the ABA Model Rules of Professional Conduct or its equivalent. Consistent with Rule 1.15, this rule proposes that lawyers maintain ~~financial~~ client trust account records and safekeeping records for a period of five years after termination of each particular legal engagement or representation. Although these Model Rules address the accepted use of a client trust account by a lawyer when holding client or third person funds, some jurisdictions may permit a lawyer to deposit certain advance fees for legal services into the lawyer's business or operating account. In those situations, the lawyer should still be guided by the standards contained in these Model Rules.

[2] Rule 1(G) requires that the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks be maintained for a period of five years after termination of each legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act", codified at 12 U.S.C. §5001 et. seq., recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. §5002(16) as "paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. §5002(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number of years.

[3] The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the interbank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds.) In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization

given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of Rule 1 (H).

[4] There are five types of check conversions where a lawyer should be careful to comply with the requirements of Rule 1(H). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion," a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in an "account-receivable conversion," a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment. Rule 1(H) applies to each of the type of electronic funds transfers described. All electronic funds transfers shall be recorded and a lawyer should be careful not to re-use a check number which has been previously used in an electronic transfer transaction.

[2][5] The potential of these records to serve as safeguards is realized only if the procedures set forth in ~~Paragraph A(8)~~ Rule 1(i) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the computerized equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

[6] In some situations, documentation in addition to that listed in paragraphs (a) through (i) of Rule 1 is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under paragraph (i) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this paragraph include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

B. RULE 2. CLIENT TRUST ACCOUNT SAFEGUARDS

With respect to client trust accounts required by [Rule 1.15 of the ABA Model Rules of Professional Conduct]:

- (1) A. only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory ~~on the account~~ or authorize transfers from a client trust account;
- (2) B. receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and
- (3) C. withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized ~~bank~~ electronic transfer.

Comment

~~[3]~~^[1] ~~Paragraph B~~ Rule 2 enumerates minimal accounting controls for ~~lawyer~~ client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in the jurisdiction or a person who is under the direct supervision of the lawyer shall be an authorized signatory ~~on a lawyer trust account~~ or authorize electronic transfers from a client trust account. While it is permissible to grant limited non-lawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a non-delegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See, Rule 5.1 and 5.3 of the Model Rules of Professional Conduct.

[2] Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees which are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

[3] The requirements in paragraph (b) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

C. RULE 3. AVAILABILITY OF RECORDS

Records required by ~~this rule~~ Rule 1 may be maintained by electronic, photographic, ~~computer~~ or other media provided that they otherwise comply with ~~this rule~~ these Rules and ~~provided further~~ that printed copies can be produced. These Records shall be ~~located at the lawyer's principal office in the jurisdiction or in a readily accessible location~~ readily accessible to the lawyer.

Comment

~~[4]~~^[1] ~~Paragraph C~~ Rule 3 allows the use of alternative media for the maintenance of ~~bookkeeping~~ client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential. If a lawyer uses third-party electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish,

reasonable procedures to protect the confidentiality of client information. See, ABA Formal Ethics Opinion 398 (1995). Records required by Rule 1 shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Model Rule 1.15, or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personally identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule."

[2] Rule 28 of the Model Rules for Lawyer Disciplinary Enforcement provides for the preservation of a lawyer's client trust account records in the event that the lawyer is transferred to disability inactive status, suspended, disbarred, disappears, or dies.

D. RULE 4. DISSOLUTION OF LAW FIRM

Upon dissolution of ~~any partnership of lawyers~~ a law firm or of any legal professional corporation, the partners ~~or shareholders~~ shall make ~~appropriate~~ reasonable arrangements for the maintenance of the client trust account records specified in ~~Paragraph A of this Rule~~ Rule 1 of these rules.

Comment

~~5][1] Paragraph D and E~~ Rules 4 and 5 provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm", "partner", and "reasonable" are defined in accordance with Rules 1.0 (c), (g), (h) of the Model Rules of Professional Conduct.

E. RULE 5. SALE OF LAW PRACTICE

Upon the sale of a law practice, the seller shall make ~~appropriate~~ reasonable arrangements for the maintenance of the records specified in ~~Paragraph A of this Rule~~ Rule 1 of these rules.

RPPTL 2012-2013 CLE Calendar

Date	Title of Seminar	Committee	#	Location	Program Chair	Speakers	CLE Committee Liaison
July 25, 2012	Drafting Powers of Attorney – What Works? It's All in the Eye of the Beholder!		1536	Breakers*	Deborah Russell and Michael Foreman	See Note 1 below	
July 26-28, 2012	Legislative Update		1425	Breakers*			
August 28, 2012	What RPPTL Lawyers Need to Know About E-Service and E-Filing			12:00-1:00 webinar	Rohan Kelley and Laird Lile	Rohan Kelley and Laird Lile	Rob Freedman
September 13-16, 2012	EC Meeting			Key Biscayne			
October 4, 2012	Power, Trust, (e)Service and Privilege: What an Out of State (and In-State, too!) Florida Practitioner Needs to Know (CANCELLED!)	Joint Program – RPPTL and Out of State Division	1508	Atlanta		Laird Lile, Sandy Diamond, Barry Spivey	Rob Freedman
October 5-6, 2012	FLEA Probate			Orlando			
October 30, 2012	E-Ethics for E-Discovery: Considerations and Solutions for the E-Practitioner	Professionalism and Ethics		1 hour e-CLE	Lee Weintraub	Perry M. Adair and Daniel DeSouza	Rob Freedman
November 15 - 18, 2012	EC Meeting			Asheville, NC			
November 30, 2012	It's Not Too Late – Year-End Estate and Asset Protection Planning Techniques – Views from Washington DC ... And More	Joint Estate Tax and Asset Protection	1509	Tampa*	Elaine Bucher and Brian Sparks	See Note 2 below	Sarah Butters
December 5, 2012	What RPPTL Lawyers Need to Know About Corporate Entities: Selection, Function and Utilization			1 hour e-CLE	Rob Freedman	David Burke and Cristin Keane	Rob Freedman
January 23, 2013	What RPPTL Lawyers Need to Know About The Fight Against Money Laundering and Terrorist Financing			1 hour e-CLE	Rob Freedman	Kevin Shepherd and Duncan Osborne	Rob Freedman
January 25, 2013	Secrets of CDDs: Unveiling the Mysteries and Unlocking the Possibilities	Joint RPPTL/Environmental Land Use	1455	Tampa*	Anne Pollack		Brian Leebrick
February 7-10, 2013	EC Meeting			Tallahassee			
February 15-16, 2013	Real Property Certification Review Course	Real Property Certification Review Course	1450	Orlando*	Ted Connor		Jennifer Tobin
February 21, 2013	Probate Law 2013	Probate Law	1510	Tampa*	Tae Kelley Bronner		Sarah Butters
February 26, 2013	Till Divorce Do Us Part.... The New Beneficiary Designation Legislation	IRA, Insurance and Employee Benefits		1 hour e-CLE	Linda Griffin	Linda Griffin and Kristin Lynch	Rob Freedman
February 28, 2013	Alternate Dispute Resolution Considerations for Real Property, Construction, Probate and Trust Law Practices	Alternate Dispute Resolution	1507	Ft. Lauderdale*	Deborah Mastin		Laura Sundberg
March 7-9, 2013	Construction Law Certification Review Course	Construction Law Certification Review Course	1452	Orlando	Lee Weintraub		Brian Leebrick
March 7-9, 2013	6th Annual Construction Law Institute	Construction Law Institute	1453	Orlando	Cary Wright		Brian Leebrick
March 20, 2013	The New E-Filing Requirements – What Every Practitioner Needs to Know			1 hour e-CLE	Rohan Kelley and Laird Lile	Rohan Kelley and Laird Lile	Rob Freedman
April 5, 2013	Community Association Law – The New Normal	Condominium and Planned Development Committee	1456	Orlando*	Jane Cornett		Rob Freedman
April 5, 2013	Who Is Going to Pay You? Attorney's Fees: Statutes, Contracts, Rules, Ethical Considerations and Fatal Mistakes	Condominium and Planned Development Committee		Orlando*	Steve Mezer	See Note 3 below	Rob Freedman

RPPTL 2012-2013 CLE Calendar

Date	Title of Seminar	Committee	#	Location	Program Chair	Speakers	CLE Committee Liaison
April 5-6, 2013	Wills, Trust & Estate Certification Review Course	Wills, Trust & Estate Certification Review Course	1451	Orlando*	Richard Gans		Laura Sundberg
April 12, 2013	Title TBD	Real Property Litigation	1506	Tampa*	Marty Awerbach		Jennifer Tobin
April 26, 2013	Commercial Real Estate Finance – Lessons Learned and A Brave New World!	Real Property Finance and Lending		Tampa*	Bill Sklar		Brian Leebrick
May 1, 2013	Title TBD	Property & Liability Insurance/Suretyship		1 hour e-CLE	Cary Wright or Fred Dudley		
May 9-11, 2013	Fund Assembly						
May 10, 2013	Trust & Estate Symposium		1460	Ft. Lauderdale	Shane Kelley		Sarah Butters
May 10, 2013	Trust & Estate Symposium		1460	Tampa*	Shane Kelley		Sarah Butters
May 15, 2012	Ethical Issues Inherent in the New Computer Age	Professionalism and Ethics		1 hour e-CLE	Rich Caskey		
May 23-26, 2013	EC Meeting			St. Petersburg			
May 24, 2013	Convention Seminar	Seminar Coordination	1511	St. Pete	Katherine Frazier		Jennifer Tobin
June 14-15, 2013	Title TBD	Attorney/Trust Officer Liaison Conference	1462	Breakers	Jack Falk		Sarah Butters

- non-RPPTL program
- Executive Council meeting
- 1 hour lunchtime RPPTL e-CLE program
- full day RPPTL program
- 1/2 day RPPTL program

Note 1: Jennifer Robinson, Charlie Robinson, Michael Foreman, James Russick, Angela Adams, Laird Lile, Richard Stockton

Note 2: Ronald Acutt, James Carlisle, Gideon Rothschild, Barry Nelson, Chris Riser, Rob Lancaster, Richard Franklin, Charlie Nash, Lester Law, Lou Nostro, George Karibjanian

Note 3: This program is included as part of the Condo CLE, but can also be purchased as a separate stand-alone CLE program.