# LEGISLATIVE POSITION REQUEST FORM

**GOVERNMENTAL AFFAIRS OFFICE** 

**Date Form Received** 

#### **GENERAL INFORMATION**

Submitted By Shane Kelley, Chair, Ad Hoc Study Committee on Homestead Life

Estates of the Real Property Probate & Trust Law Section (September

26, 2009)

Address 3365 Galt Ocean Drive, Ft. Lauderdale, FL 33308

Telephone: (954) 563-1400

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

Bar

#### **CONTACTS**

**Board & Legislation Committee Appearance** 

**Shane Kelley**, The Kelley Law Firm, PL,3365 Galt Ocean Drive, Ft.

Lauderdale, FL 33308, Telephone (954) 563-1400.

Michael J. Gelfand, Gelfand & Arpe, 1555 Palm Beach Lakes

Blvd., Ste. 1220, West Palm Beach, Florida 33401

**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 N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position X Support Oppose Technical Other

Assistance

# **Proposed Wording of Position for Official Publication:**

Supports legislation to clarify post-death disclaimers of homestead interests and provide for a defined result upon such a disclaimers, including amendments to F.S. §§ 732.401 and 732.4015.

# **Reasons For Proposed Advocacy:**

The resulting ownership upon disclaimers of homestead interests under Chapter 739, Florida Statutes, has not been addressed consistently by the courts. See *In re: Estate of Frances N.* Janien, 12 Fla. L. Weekly Supp. 221 (February 28, 2005), Case No. 502004CP000973 (Fla. 15th Cir. Ct., (December 6, 2004); In *Re: Estate of Joseph T. Ryerson, Jr.*, No. 93-307 (Fla. 15<sup>th</sup> Cir. Ct., June 17, 1993), aff'd, per curiam, No. 93-2074 (Fla. 4<sup>th</sup> DCA July 20, 1994), and *In Re: Estate of Harry Sudakoff*, No. 91-87 (Fla. 12<sup>th</sup> Cir. Ct. March 25, 1994), aff'd, per curiam, No. 94-02102 (Fla. 2d DCA, March 10, 1995) which held to the contrary. The proposed legislation clarifies the impact of a spouse's disclaimer in homestead real property to provide certainty in tax planning.

# PRIOR POSITIONS TAKEN ON THIS ISSUE

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

Most Recent Position	NONE		
(Indicate Bar or Name Section)		(Support or Oppose)	(Date)
Others			
(May attach list if			
more than one ) N	IONE		
(Indicate Ba	ar 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

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