

Real Property, Probate and Trust Law Section
Probate, Trust & Guardianship / Estate Planning
July 25, 2014

1. Supports limitation of creditor remedies against partner interest in general and limited liability partnerships and member interests in limited liability companies to charging liens and to prohibit foreclosure against such interests.
2. Opposes the expansion of classes that are to serve as agents under a power of attorney beyond the current class of individuals and financial institutions with trust powers.
3. Supports legislation to provide for alienation of plan benefits under the Florida Retirement System (§121.131 and §121.091 Florida Statutes) Municipal Police Pensions (§185.25 Florida Statutes) and Firefighter Pensions (§175.241 Florida Statutes) in a dissolution proceeding and authorizing such alienation of benefits in a dissolution of marriage under §61.076 Florida Statutes.
4. Supports legislation to (1) change the titles of §222.11 Florida Statutes to clearly reflect that this statute applies to earnings and is not limited to "wages" (2) provide an expanded definition of "earnings" because the term "wages" is not the exclusive method of compensation and (3) add deferred compensation to the exemption statute.

~~5. Supports legislation which provides that a waiver of the statutory exemption from creditors' claims afforded to certain death benefits payable to trusts must be clear and specific, including amendments to F.S. §§733.808(4) and F.S. 736.05053(1)~~

Delete

December 12, 2014

6. Supports legislation which provides that a lawyer, or certain people related to, or affiliated with, the lawyer will not be entitled to receive compensation for serving as a fiduciary if the lawyer prepared the instrument making the appointment unless: (a) the lawyer or person appointed is related to the client; or (b) certain disclosures are made to the client before the instrument is signed and confirmed in a writing signed by the client.

~~7. Supports amending the Florida Uniform Transfer to Minors Act, F.S. Ch. 710, to allow for certain custodianships to terminate when the minor attains age 25, and to provide for a procedure to qualify transfers to certain custodianships that terminate when the minor attains age 25 for the federal gift tax annual exclusion.~~

Delete

Probate, Trust & Guardianship / Guardianship & Advance Directives
July 25, 2014

1. Supports legislation to amend the Baker Act to include a provision under which a guardian may request that the court grant the guardian the authority to involuntarily hospitalize a ward pursuant to the Baker Act.
2. Supports legislation to amend F.S. §394.467 to add as criteria for involuntary placement the substantial and imminent likelihood of inflicting serious emotional or psychological harm on another person, and the causation of significant damage to property in the recent past with substantial and imminent likelihood of doing so again.

3. Supports amending 29.007 F. S. to provide authority to appoint and compensate attorneys and professional guardians to serve as guardian advocates and guardian ad litem for indigents in civil commitment and treatment proceedings in proceedings under the mental retardation statutes (ch. 393), Baker Act (ch. 394) and Marchman Act (ch. 397).

4. Supports legislation to amend Chapter 765, Florida Statutes, to improve the law concerning advance directives and to integrate federal HIPPA privacy laws with Florida law.

5. Opposes the adoption of summary guardianship proceedings outside the protections of Chapter 744, Florida Statutes.

6. Opposes amendments to F.S. §393.12 that would (i) remove the existing requirement that a guardian advocate for a developmentally disabled adult must be represented by an attorney if the guardian advocate is delegated authority to manage property, (ii) remove the existing requirement that the petition to appoint a guardian advocate must disclose the identity of the proposed guardian advocate, and (iii) expand the list of individuals entitled to receive notice of the guardian advocate proceedings.

7. Supports clarification of the definition of "income" for calculating Veterans guardianship fees, including an amendment to §744.604, Fla. Stat.

8. Opposes the adoption of the Uniform Adult Guardianship and Protective Proceedings Act.

~~9. Supports legislation to allow a parent, legal guardian or legal custodian of a minor child to designate a health care surrogate to make health care decisions for the minor if the parent, legal guardian or legal custodian is not reasonably available.~~

Delete!

~~10. Supports proposed amendment to Florida Guardianship Law to clarify payment of attorney's fees from the ward's assets and to provide that the court may determine the reasonableness of compensation to the guardian, the guardian's attorney, any person employed by the guardian, any attorney rendering services to the ward and any court appointed attorney without the necessity of receiving expert testimony.~~

Delete

~~11. Supports proposed amendment to the Florida Guardianship Law to allow members of the guardianship examining committee to be paid by the state as court appointed experts pursuant to F.S. §29.004(3) in those circumstances in which the petition for incapacity is dismissed by the court and no guardian is appointed.~~

Delete

12. Supports amendments to the Florida Guardianship Law to protect the interest of incapacitated persons, especially minor wards, by making settlements on their behalf confidential.

13. Supports adoption of clarifications to F.S. Ch. 709, the Florida Power of Attorney Act.

14. Opposes amendments to guardianship statutes that (a) would change the criteria and limit the discretion of the court in awarding fees in guardianship proceedings for services that benefit the ward, (b) seek to significantly change established guardianship laws and procedures concerning the qualification of examining committee members and the content and requirements of their reports, and (c) would criminalize certain conduct in guardianship proceedings, including proposed amendments to F.S. §§744.108, 744.331, and 744.4461.

April 6, 2015

15. Opposes efforts to adopt POLST (Physician Ordered Life Sustaining Treatment) in Florida without appropriate procedural safeguards to protect the wishes of patients and prior advance directives made by the patient, including current Senate Bill 1052.

January 29, 2016

16. Opposes the expansion of chapter 709 to include the authority of a parent to assign the custody and control of a minor child through a power of attorney unless proper procedural safeguards are included to assure the proper care and welfare of the minor children.

Probate, Trust & Guardianship / Probate

July 25, 2014

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

December 12, 2014

~~6. Supports legislation to provide a non-exclusive list of factors for trial courts to use when exercising their discretion whether and to what extent attorneys' fees and costs should be assessed against a part of an estate or trust, including amendments to F.S. §§ 733.106, 736.1005, 736.1006.~~

Delete

~~7. Supports amendments to the estate tax apportionment statutes, including F.S. § 735.817, to update and clarify existing law.~~

Delete!

8. Supports proposed legislation to remove barriers to a fiduciary's access to electronic records, including the Florida Fiduciary Access to Digital Assets Act, F.S. Ch. 740.

~~9. Supports legislation to ensure prompt objections to various aspects of probate administration and to clarify the rights and duties of parties when a personal representative of an estate is unqualified to act or is no longer qualified to act in that capacity.~~

Delete!

October 16, 2015

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

January 29, 2016

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

Probate, Trust & Guardianship / Trust

July 25, 2014

1. Opposes legislation abrogating a trustee's duties of loyalty and duties of full and fair disclosure in connection with affiliated investments by a corporate trustee.

2. Supports amendment of F.S. §736.0813 to clarify the meaning of the requirement that a trustee furnish qualified beneficiaries with a "complete copy" of a trust document.

~~3. Supports legislation that would (i) amend F.S. §736.0207 to clarify that in an action to contest the validity or revocation of all or part of a trust, the contestant has the burden of proof to establish grounds for invalidity, and (ii) amend F.S. §733.107(2) to clarify and confirm its applicability in all circumstances in which the presumption of undue influence is established, including trust contests as well as challenges to inter vivos gifts.~~

Delete!

4. Supports legislation that would create legislation that authorizes families to form and operate licensed and unlicensed family trust companies and to authorize out of state licensed family trust companies to operate in Florida, including the creation of proposed F.S. Ch. 659, Family Trust Companies.

October 16, 2015

5. Supports proposed legislation that would amend F.S. §§736.0412(4) and 736.0105(2)(k), so that all irrevocable trusts are treated the same with regard to whether non-judicial modification is available during the first 90 years after the trust is created – more specifically, all irrevocable trusts will be restricted to judicial modification during the first 90 years after creation, unless the trust expressly permits non-judicial modification within the first 90 years.

~~6. Supports legislation to (i) clarify when trust assets may be used to pay a trustee's legal fees and (ii) provide further guidance to practitioners and courts as to the procedure to be employed when a trustee seeks to use trust assets to pay the trustee's legal fees when defending a breach of trust claim, including amendment to F.S. §§ 736.0802(10), 736.0816(20) and 736.1007(1).~~

Delete!

7. Supports proposed amendments to F.S. Chapter 736, which provide much needed clarification and guidance regarding the applicability of constitutional devise restrictions and exemption from creditors' claims provisions, as well as the timing and method of passage of title to homestead real property, when that homestead real property is devised through a

revocable trust at the time of a settlor's death, including amendment to F.S. §736.0103, amendment to F.S. §736.0201, the creation of F.S. §736.0508, and the creation of F.S. §736.08115.

Real Property / Condominiums and Planned Developments

July 25, 2014

1. Supports amendments to Chapter 718, Florida Statutes, Condominiums, and Chapter 719 Florida Statutes, Cooperatives, to require that engineers, architects and other design professionals and manufacturers warrant the fitness of the work they perform on condominiums or cooperatives.
2. Opposes amendments to §718.1255, Florida Statutes, or targeted budget reductions or other governmental action having the purpose or effect of diminishing or eliminating the jurisdiction of the Arbitration Division of the Department of Business and Professional Regulation's Division of Land Sales.
3. Supports condominium unit owner's ability to exercise self-government and undertake fair and efficient community administration, including the exercise of basic contract and investment decisions.
4. Supports legislation to permit condominium unit owners to further subdivide or partition their interest in the condominium and common elements appurtenant thereto pursuant to a sub-declaration of condominium, which subdivided units shall remain subject and subordinate to the existing declaration of condominium, provided such existing declaration of condominium allows for the subdivision.
5. Opposes amendments to Chapter 720, F.S., that would require both pre-suit mediation and pre-suit arbitration before filing a civil action over homeowners' association disputes.
6. Supports legislation providing for electrical elements to three-year warranty, extend subcontractor and supplier warranties to the contractor and to clarify start date for five-year warranty deadline set forth in F.S. §718.203(1)(e).
7. Supports amendment of F.S. §718.403 to permit the addition of proposed phases to a condominium beyond 7 years from the recording of the declaration of condominium upon association membership approval and recorded amendment to the declaration of condominium.
8. Supports additional guidance and regulation respecting the creation of a condominium within a condominium unit, through creation of Section 718.406, F.S.; to provide an effective date.
9. Supports clarification of Ch 718, F.S.: to confirm that certain operational provisions do not apply to nonresidential condominium associations; to define "nonresidential condominiums;" to clarify that the Division's arbitration program only pertains to residential condominiums; to provide an effective date.
10. Supports amendments to F.S. Chapter 718: to replace the date triggering certain obligations; to clarify when a condominium unit is created; to permit extending the period for adding phases to a condominium; and, to provide an effective date.

11. Supports legislation to standardize procedures and to clarify the timing, content and preparation fees relating to estoppel letters issued by condominium and homeowners' associations, including amendments to F.S. §§718.116 & 720.30851.

12. Supports legislation to remove the requirement that statutory late fees must be set forth in a condominium or homeowners' association declaration or bylaws in order for those charges to be imposed, to allow for the collection of such fees by all condominium and homeowner associations, including amendments to F.S. §§718.116 & 718.3085.

13. Supports legislation to differentiate the administration of nonresidential condominiums from residential condominiums and to eliminate for nonresidential condominium associations certain provisions not appropriate in a commercial setting, including amendments to F.S. Ch. 718.

14. Supports an amendment to F.S. §712.05 of the Marketable Record Title Action to correct an error created by an inadvertent requirement imposed by the 2010 amendment to F.S. §712.06, clarifying existing law, removing the costly, time consuming, and unnecessary requirement to mail a copy of the notice of preservation to each owner in a homeowners' association, who would have already been notified of the preservation.

15. Supports an amendment to the Florida Condominium Act for a one-year extension of the expiration date to July 1, 2016, for Part VII of the Act and F.S. §718.707, dealing with distressed condominiums.

16. Supports amendments to the Florida Condominium Act which set forth the rights and obligations of purchasers and lenders that acquire multiple units, but who are not creating developers of the condominium, including creating a Part VIII, and eliminating application of Part VII, of the Condominium Act to transactions recorded after the effective date July 1, 2016.

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

December 12, 2014

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

Real Property / Contracts and Disclosures

July 25, 2014

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

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

Real Property / Corporations and LLCs

July 25, 2014

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

Real Property / Courts

July 25, 2014

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

2. Supports procedures to preserve due process by providing courts with authority to appoint attorney, administrator and guardian ad litem to serve on behalf of known persons, or unknown persons, having claims by, though, under or against a person who is deceased or whose status is unknown, and confirming the sufficiency of prior proceedings in which ad litem have been appointed, including amendment of F.S. §49.021.

Real Property / Environmental

July 25, 2014

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

Real Property / Foreclosures and Judicial Sales

July 25, 2014

1. Oppose legislation which would require a foreclosing creditor to notify the debtor that filing a bankruptcy petition before the foreclosure sale may permit the debtor to retain the property and reorganize the indebtedness.

2. Opposes any amendment to existing Florida law governing real property foreclosures unless those amendments carefully preserve and protect the property rights and due process rights of the holders of interests in or affecting Florida real property.

3. Supports expanded publication of notices of judicial sales, permitting notices to be posted on the Internet, including amendments to F.S. Chapters 45, 50 and 702.

4. Supports foreclosure reform which expedites and streamlines the judicial foreclosure process while preserving and protecting fundamental fairness and the property rights and due process rights of the holders of interests in or affecting Florida real property. [Revised 4/18/13]

5. Supports requirements for electronic publication of legal notices that address due process concerns, including amendments to F.S. §50.0211, 50.041, and 50.061.

6. Supports correction of procedural issues relating to trustee foreclosures of timeshares, including amendments to sections 721.82, 721.855, and 721.856 of the Florida Statutes.

October 16, 2015

7. Supports legislation to permit the electronic filing of certified copies of documents and permit the self-authentication of documents other than by obtaining a certified copy, including an amendment of F.S. §90.902.

8. Supports a clarification and simplification of the statute of repose applicable to mortgage liens and restoration of subrogation rights for property tax advances through changes to F.S. §95.281.

~~9. Supports legislation to delete the requirement that out-of-state plaintiffs file a \$100 cost bond as set out in F.S. §57.011, and which would clarify and codify existing law by providing that a condition precedent to filing a petition or complaint to collect a debt is not created by F.S. §59.715.~~

Delete!

Real Property / Liens and Encumbrances

July 25, 2014

1. Supports amendment to §162.09(3), Florida Statutes, to clarify the relative priority of recorded municipal code enforcement liens created pursuant to the Local Government Code Enforcement Boards Act.

2. Opposes efforts to create a lien on real property for work that does not add value to the property, and would permit liens against the property of a person other than the party owing a debt.

3. Supports amendment to F.S. §695.01 and ch 162 to reduce problems regarding hidden liens by: (i) requiring all governmental liens (other than taxes, special assessments and those for utility services) to be recorded in the official records and to state their priority; (ii) clarifying the priority of liens asserted by local governments; and (iii) expanding the homestead determination mechanisms of F.S. §222.01 to apply to other types of lien.

4. Supports amendments: to s. 95.11(2) and (5), F.S., as to the statute of limitations for actions on payment bonds; to s. 713.08(3) (the statutory form for a claim of lien) to include the separate statement required by F.S. 713.08(1)(c); to s. s. 713.13, F.S. to delete the requirement that the notice of commencement be verified and to clarify the timing of the expiration date of the notice of commencement; to s. 713.18, F.S. as to electronic confirmation of delivery through the U.S. Postal Service.

5. Supports amendment of: F.S. §713.10(2)(b) to provide that a blanket notice recorded by a landlord remains valid and the landlord's property interest will not be liable for liens arising from tenant improvements even if the leases contain different versions of the lien prohibition language or no lien prohibition language at all, under certain circumstances; and F.S. §713.10(3) to require inclusion of specific language in any claim of lien premised on a landlord's failure to comply so as to provide record notice of the basis of such a claim by a lienor, and to provide that any lien will not take effect as to third parties without notice until 30 days after the recording of the claim of lien.

6. Opposes selective increase of recording expense to only construction claims of lien, adding additional filing requirements, and concluding that filing a lien beyond the statutory 90-day period is an act of fraud, including opposing amendments to F.S. §§28.24 & 713.08.

Real Property / Mobile Homes

July 25, 2014

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

Real Property / Miscellaneous

July 25, 2014

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

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

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

4. ~~Supports clarification that an otherwise valid power of attorney executed in compliance with the laws of the state of execution to convey or encumber Florida real property, applies to all Florida real property including homestead property, including amended F.S. §709.2106.~~ Delete'

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

Real Property / Notary

July 25, 2014

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

Real Property / Property Rights

July 25, 2014

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

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

December 12, 2014

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

Real Property / Recording

July 25, 2014

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

Real Property / Title Insurance

July 25, 2014

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