

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



Executive Council Meeting

AGENDA

**Tampa Waterside Marriott
Tampa, Florida**

**Saturday, February 27, 2016
9:00 a.m.**

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting

**Tampa Waterside Marriott
Tampa, Florida
February 27, 2016**

AGENDA

- I. **Presiding** — *Michael J. Gelfand, Chair*
- II. **Attendance** — *S. Katherine Frazier, Secretary*
- III. **Minutes of Previous Meeting** — *S. Katherine Frazier, Secretary*

Motion to approve the minutes of November 14, 2015 meeting of Executive Council held at The Boca Raton Resort, Boca Raton, Florida. **pp. 14 - 43**

IV. **Chair's Report** — *Michael J. Gelfand*

- 1. Recognition of Guests.
- 2. Recognition of General Sponsors and Friends of the Section. **pp. 44 - 46**
- 3. Upcoming Meetings
 - A. Schedule **pp. 47 - 48**
 - B. Use of Conference Direct.
- 4. Interim Action by the Executive Committee.
 - A. Intra-Bar Matters:
 - 1. Rule 4-4.2: Communication to Governmental Attorney, Proposed Rule Change. Approved following position:

“It remains the position of the RPPTL Section, as previously approved by the Executive Council, that no change is needed to Rule 4-4.2 or the comment to that Rule. As such, the Section opposes any such change. In the spirit of compromise and Bar unity, however, if the Local Government groups will accept the highlighted additional sentence above as the only change to the Rule and comment, the Executive Committee will recommend to the Executive Council at its next meeting that the Section support the addition of that sentence. If the Local Government groups reject this language, the Section’s prior position that no change is needed or appropriate will be presented at the December BOG meeting.”

2. Florida Realtor-Attorney Joint Committee Appointments for the term 2015-2017. Approved motions to recommend to appointments:

First Appellate District, Denise L. Hutson (Gainesville);
Second Appellate District, Julie A. Horstkamp (Venice);
Third Appellate District, James A. Marx (Miami);
Fourth Appellate District, Guy Rabideau (Palm Beach);
Fifth Appellate District, Frederick W. Jones (Winter Park); and
Member At Large, Jamie B. Moses (Orlando)

pp. 49 - 53

3. The Florida Bar Probate Rules Committee. Approved Motion to approve proposed nominees for appointment to the Probate Rules Committee. **pp. 54 - 55**

4. Section Amended By-Laws Approval

B. Section Committees

1. Attorney Trust Officer Liaison Conference (ATO). Approved request for ATO sponsors to appear in 30 second videos.

2. Leadership Academy Scholarship. Approved RPPTL Executive Committee award of a scholarship for Erin JoAnne Tifton to The Florida Bar Leadership Academy.

3. Legislative Update. Approved payment of Legislative Update lunch and when in conjunction with Section meetings, PAC refreshments, subject to approval of legality issue.

4. Condominium and Planned Development Law Board Certification Committee in the Real Property Law Division.

C. Council Attendance: Approved waiver of Executive Council meeting attendance requirements for: the Honorable Melvin B. Grossman; William R. Platt; and, Michael David Simon.

D. Legislative Positions

1. Temporary Care of Minor Children by Safe Families Act – Approved the following Legislative Position proposed by the Guardianship, Power of Attorney and Advanced Directives Committee.

To oppose 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 are included, find that this position is within the Section's purview; and, authorize the expenditure of funds in support of the position.

2. Temporary Care of Minor Children by Safe Families Act – Legislative Position Approved the following Legislative Position proposed by the Guardianship, Power of Attorney, and Advanced Directives Committee:

To oppose 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 are included; to find that the position is within the purview of the Section, and to authorize the expenditure of funds in furtherance of the position.

3. Venerable Adults Approved motion by Probate Litigation Committee:

To oppose 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, including but not limited to amendments to §415.1111; find that this position is within the Section’s purview; and, authorize the expenditure of funds in support of the position.

E. Joint Committee for Drafting FR/BAR Residential Real Estate Contract Forms. Approved motion to approve Joint Committee for Drafting FAR/BAR Residential Real Estate Contract Forms proposed emergency text change to accommodate FIRPTA increase in withholding requirements, and requesting the Committee to consider further text changes to delete text that experience has shown is not necessary, and if reasonably possible, and report proposed changes to the Section at its next convention Council meeting.

5. Interim Action by the Chair:

A. Council of Sections. Proposed: “Motion to request the Bar to retain a marketing expert to study CLE presentations, marketing, pricing, and delivery of programs, reporting to the Board of Governors by September 2016.”

B. Landlord/Tenant: Renamed to Real Estate Leasing

C. Florida Electronic Filing & Service: Dissolved.

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

VI. [Chair-Elect's Report](#) — *Deborah P. Goodall*

VII. [Treasurer's Report](#) — *Robert S. Freedman*

Statement of Current Financial Conditions. **p. 56**

- VIII. [Director of At-Large Members Report](#) — *Shane Kelley*
- IX. [CLE Seminar Coordination Report](#) — *Robert Swaine (Real Property) and William Hennessey, III (Probate & Trust), Co-Chairs p. 57*
- X. [Kids Committee Report](#) — *TBA, Chair; Laura Sundberg, Advisor*
- XI. [General Standing Division](#) — *Deborah P. Goodall, General Standing Division Director and Chair-Elect*

Action Item:

Legislation Committee — *Tae Kelley Bronner (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs.*

Motion to approve the proposed Contract Addendum to the Dean Mead 2015 Agreement for legislative consultant services. **pp. 58 - 59**

Information Items:

1. **Ad Hoc Leadership Academy** — *Brian Sparks and Kris Fernandez, Co-Chairs*
Report on selection of Leadership Academy scholarship recipient. **pp. 60 - 61**
2. **Amicus Coordination** — *Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs*
Report of status of requests for amicus briefs. **pp. 62**
3. **Convention Coordination** — *Laura K. Sundberg, Chair*
Update on Convention activities, Universal Lowe's Portofino Resort, Orlando, June 2 – 5, 2015.
4. **Fellows** — *Ashley McRae, Chair*
Report on current project status of fellows and selection of new fellows for 2016 - 2018.
5. **Legislation** — *Tae Kelley Bronner (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs*
Update on status of legislation for current legislative session.
6. **Liaison with Clerks of Circuit Court** — *Laird A. Lile and William Theodore Conner*
Report on current matters involving clerks of court.

7. **Member Communication and Information Technology** — *William A. Parady, Chair*

Report on status of website and information on committees updating content on committee webpages.

8. **Membership and Inclusion** — *Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs*

Report on status of current projects and initiatives.

9. **Professionalism and Ethics** — *Lawrence J. Miller, Chair*

Final Report on the proposed amendments to Rule 4-4.2 at the January 28, 2016 Board Review Committee on Professional Ethics.

10. **Publications:**

A. **ActionLine** — *Silvia Rojas, Chair*

Update on status of current articles and search feature.

B. **Florida Bar Journal** — *Jeffrey Goethe (Probate & Trust) and Douglas Christy (Real Estate) Co-Chairs.*

Update on upcoming deadlines for articles.

11. **Sponsor coordination** — *Wilhelmina F. Kightlinger, Chair*

Report on current sponsors and existing opportunities.

XII. Real Property Law Division Report — *Andrew M. O'Malley, Director*

Action Items:

1. **Real Property Problems Study Committee** — *Arthur Menor, Chair*

Motion to (A) adopt as a Section position to remove the requirement for cessation of construction as a condition to terminating a Notice of Commencement, including an amendment to F.S. 713.132(3); (B) to find that such legislative position is within the purview of the RPPTL Section; and, (C) to expend Section funds in support of the proposed legislative position **pp. 63 - 79**

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

Motion to approve Uniform Title Standards Concerning: Agency and Powers of Attorney 1.1 (revised), 1.3 (revised), 1.4, and 1.5; and, Conveyances 3.7, 3.8, and 3.9. **pp. 80 - 107**

Information Items:

1. **Real Estate Structures and Taxation Committee** --- *Cristin Keane, Chair*

Proposed support of Marriage Documentary Stamp Tax Act, FS 201.02(7) creating a total exemption for documentary stamp taxes for transfers of real property between spouses. **pp. 108 - 113**

2. **Real Property Litigation Committee** --- *Susan Spurgeon, Chair*

Proposed amendments to FS 90.902, "Self-Authentication of Documents" and request for assistance regarding authentication methods. **pp. 114 - 115**

3. **Real Property Problems Study Committee** --- *Arthur Menor, Chair*

Consideration of whether to clarify minimum duration of notices of commencement by clarifying that a notice of commencement. **pp. 116 - 117**

4. **Residential Real Estate and Industry Liaison Committee** --- *Salome Zikakis, Chair*

- i.) Executive Committee action approving revision to the FR/BAR Residential Contract for Sale to address revisions to the Foreign Investment in Real Property Tax Act ("FIRPTA"). **pp. 118 - 121**
- ii.) U.S. Department of the Treasury "FinCEN" Geographic Targeting Order imposing record keeping and reporting requirements on cash purchases by entities of residential real property located in Miami-Dade County, Florida for a total purchase price in excess of \$1,000,000. **pp. 122 - 125**

5. **Open/Expired Permits Task Force** --- *Lee Weintraub and Michael Tobin, Co-Chairs.*

Proposed legislation regarding the impact of open construction permits and potential remedies. **pp. 126 - 130**

XIII. Probate and Trust Law Division Report— *Debra L. Boje, Director*

Information Items:

1. **Guardianship, Power of Attorney and Advanced Directives Committee** --- *Hung V. Nguyen, Chair*

Report on Proposed Amendments to F.S. 744.441(16) to remove the \$6,000 limit on funeral-related expenses a guardian can expend with court approval. **pp. 131 - 134**

**2. Guardianship, Power of Attorney and Advanced Directives Committee ---
*Hung V. Nguyen, Chair***

Report on Proposed Amendments to F.S. 744.331 to address the decision of Shen v. Parkes by providing a notice procedure requiring parties to a Chapter 744 incapacity proceeding to give notice of an objection to all or parts of the examining committee members' report(s) at least 5 days prior to the adjudicatory hearing or have their objections waived. **pp. 135 - 147**

XIV. Real Property Law Division Reports — *Andrew M. O'Malley, Director*

1. **Commercial Real Estate** – Adele Stone, Chair; Burt Bruton and Martin Schwartz, Co- Vice Chairs.
2. **Condominium and Planned Development** – Bill Sklar, Chair; Alex Dobrev and Steve Daniels, Co-Vice Chairs.
3. **Construction Law** – Hardy Roberts, Chair; Scott Pence and Reese Henderson, Co-Vice Chairs.
4. **Construction Law Certification Review Course** – Deborah Mastin and Bryan Rendzio, Co-Chairs; Melinda Gentile, Vice Chair.
5. **Construction Law Institute** – Reese Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs.
6. **Development & Land Use Planning** – Vinette Godelia, Chair; Mike Bedke, Co-Vice Chair.
7. **Insurance & Surety** – W. Cary Wright and Scott Pence, Co-Chairs; Fred Dudley and Michael Meyer, Co-Vice Chairs.
8. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alexandra Overhoff and James C. Russick, Co-Vice Chairs.
9. **Real Estate Certification Review Course** – Jennifer Tobin, Chair; Manual Farach and Martin Awerbach, Co-Vice Chairs.
10. **Real Estate Leasing** – Rick Eckhard Chair; Brenda Ezell, Vice Chair.
11. **Real Estate Structures and Taxation** – Cristin C. Keane, Chair; Michael Bedke, Lloyd Granet and Deborah Boyd, Co-Vice Chairs.
12. **Real Property Finance & Lending** – David Brittian, Chair; E. Ashley McRae, Richard S. Mclver and Robert Stern, Co-Vice Chairs.
13. **Real Property Litigation** – Susan Spurgeon, Chair; Manny Farach and Martin Solomon, Co-Vice Chairs.

14. **Real Property Problems Study** – Art Menor, Chair; Mark A. Brown, Robert Swaine, Stacy Kalmanson, Lee Weintraub and Patricia J. Hancock, Co-Vice Chairs.
15. **Residential Real Estate and Industry Liaison** – Salome Zikakas, Chair; Trey Goldman and Nishad Khan, Co-Vice Chairs.
16. **Title Insurance and Title Insurance Liaison** – Raul Ballaga, Chair; Alan Fields and Brian Hoffman, Co-Vice Chairs.
17. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian Hoffman and Karla J. Staker, Co-Vice Chairs.

XV. Probate and Trust Law Division Committee Reports — *Debra L. Boje, Director*

1. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Hung Nguyen and Charles F. Robinson, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Roman, Vice Chair
3. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
4. **Ad Hoc Committee on Physicians Orders for Life Sustaining Treatment (POLST)** – Jeffrey Baskies and Thomas Karr, Co- Chairs
5. **Ad Hoc Study Committee on Spendthrift Trust Issues** – Lauren Detzel and Jon Scuderi, Co-Chairs
6. **Asset Protection** – George Karibjanian, Chair; Rick Gans and Brian Malec, Co-Vice-Chairs
7. **Attorney/Trust Officer Liaison Conference** – Laura K. Sundberg, Chair; Stacey Cole, Co-Vice Chair (Corporate Fiduciary), Tattiana Stahl and Patrick Emans, Co-Vice Chair
8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
9. **Elective Share Review Committee** – Lauren Detzel and Charles I. Nash, Co-Chairs; Jenna Rubin, Vice-Chair
10. **Estate and Trust Tax Planning** – David Akins, Chair; Tasha Pepper-Dickinson and Rob Lancaster, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** – Hung Nguyen, Chair, Tattiana Brenes-Stahl, David Brennan, Eric Virgil, and Nicklaus Curley, Co-Vice Chairs

12. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Kristen Lynch, Co-Chairs; Carlos Rodriguez, Vice Chair
13. **Liaisons with ACTEC** – Michael Simon, Bruce Stone, Elaine Bucher, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
15. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., Brian C. Sparks and Donald R. Tescher
16. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
17. **Probate and Trust Litigation** – Jon Scuderi, Chair; James George, John Richard Caskey, and Lee McElroy, Co-Vice Chairs
18. **Probate Law and Procedure** – John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Matt Triggs, Co-Vice Chairs
19. **Trust Law** – Angela M. Adams, Chair; Tami F. Conetta, Jack A. Falk and Mary Karr, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** – Jeffrey Goethe, Chair; Linda S. Griffin, Seth Marmor and Jerome L. Wolf, Co-Vice Chairs

XVI. **General Standing Committee Reports** — *Deborah P. Goodall, Director and Chair-Elect*

1. **Ad Hoc Leadership Academy** – Brian Sparks and Kris Fernandez, Co-Chairs
2. **Ad Hoc Study Committee on Same Sex Marriage Issues**— Jeffrey Ross Dollinger and George Daniel Karibjanian, Co-Chairs
3. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
4. **Budget** – Robert S. Freedman, Chair; S. Kathrine Price, Pamela O. Price, Co-Vice Chairs
5. **CLE Seminar Coordination** – Robert S. Swaine and William T. Hennessey, Co-Chairs; Laura K. Sundberg (Probate & Trust), Sarah S. Butters (Probate & Trust), Lawrence J. Miller (Ethics), Cary Wright (Real Property) and Hardy L. Roberts, III (General E-CLE), Theo Kypreos, Co-Vice Chairs.
6. **Convention Coordination** – Laura K. Sundberg Chair; Alex Hamrick and Alex Dobrev, Co-Vice Chairs
7. **Fellows** – Ashley McRae, Chair; Benjamin Diamond and Joshua Rosenberg,

Co-Vice Chairs

8. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
9. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine, Melissa Murphy and Charles Nash, Co-Vice Chairs
10. **Legislation** – Tae Kelley Bronner (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs; Thomas Karr (Probate & Trust), and Alan B. Fields (Real Property), Co-Vice Chairs
11. **Legislative Update (2015)** – R. James Robbins, Chair; Charles I. Nash, Barry F. Spivey, Stacy O. Kalmanson and Jennifer S. Tobin, Co-Vice Chairs
12. **Legislative Update (2016)** – Barry F. Spivey and Stacy O. Kalmanson, Co-Chairs; Thomas Karr, Joshua Rosenberg, and Kymberlee Curry Smith, Co-Vice Chairs
13. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - b. **Clerks of Circuit Court** – Laird A. Lile and William Theodore Conner
 - c. **FLEA / FLSSI** – David C. Brennan and Roland “Chip” Waller
 - d. **Florida Bankers Association** – Mark T. Middlebrook
 - e. **Judiciary** – Judge Linda R. Allan, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L. Schafer, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J. Suarez,., and Judge Patricia V. Thomas
 - f. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert
 - g. **TFB Board of Governors** – Andrew Sasso
 - h. **TFB Business Law Section** – Gwynne A. Young
 - i. **TFB CLE Committee** – Robert S. Freedman and Tae Kelley Bronner
 - j. **TFB Council of Sections** –Michael J. Gelfand and Deborah P. Goodall
 - k. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
14. **Long-Range Planning** – Deborah P. Goodall, Chair
15. **Meetings Planning** – George J. Meyer, Chair
16. **Member Communications and Information Technology** – William A. Parady, Chair; S. Dresden Brunner, Michael Travis Hayes, and Neil Shoter, Co-Vice Chairs
17. **Membership and Inclusion** –Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs, Phillip A. Baumann, Kathrine S. Lupo, Guy S. Emerich, Theodore S. Kypreos, Tara Rao, and Kymberlee Curry Smith, Co-Vice Chairs

18. **Model and Uniform Acts** – Bruce M. Stone and Richard W. Taylor, Co-Chairs
19. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair
20. **Publications (ActionLine)** – Silvia B. Rojas, Chair (Editor in Chief); Jeffrey Baskies (Vice Chair – Editor Probate & Trust Division), Cary Wright (Vice Chair – Editor Real Property Division), Lawrence J. Miller (Vice Chair – Editor Professionalism & Ethics); George D. Karibjanian (Editor, National Reports), Lee Weintraub (Vice Chair - Reporters Coordinator), Benjamin Diamond (Vice Chair – Features Editor), Kathrine S. Lupo (Vice Chair - Advertising Coordinator), Navin R. Pasem (Vice Chair – Practice Corner Editor), Sean M. Lebowitz (Vice Chair – Probate & Trust Case Summaries), Shari Ben Moussa (Vice Chair – Real Property Case Summaries)
21. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property), Homer Duvall (Editorial Board – Real Property) and Allison Archbold (Editorial Board), Co-Vice Chairs
22. **Sponsor Coordination** – Wilhelmina F. Kightlinger, Chair; J. Michael Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs
23. **Strategic Planning** –Michael J. Gelfand and Deborah P. Goodall, Co-Chairs
24. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair
25. **Publications (ActionLine)** – Silvia B. Rojas, Chair (Editor in Chief); Shari Ben Moussa (Advertising Coordinator), Navin R. Pasem (Real Property Case Review), Jeffrey Baskies (Probate & Trust), Ben Diamond (Probate & Trust), George D. Karibjanian (Editor, National Reports), Lawrence J. Miller (Editor, Professionalism & Ethics), and Lee Weintraub (Real Property), Co-Vice Chairs
26. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust), and Douglas G. Christie (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property) and Homer Duvall (Editorial Board – Real Property) and Alison Archbold (Editorial Board), Co-Vice Chairs
27. **Sponsor Coordination** –Wilhelmena F. Kightlinger, Chair; J. Michael Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs
28. **Strategic Planning** –Michael J. Gelfand and Deborah P. Goodall, Co-Chairs

XVII. Adjourn Motion to Adjourn.

**MINUTES
OF THE
REAL PROPERTY, PROBATE AND TRUST LAW SECTION
EXECUTIVE COUNCIL MEETING¹**

**Saturday, November 14, 2015
Boca Raton Resort & Club, Boca Raton, Florida**

I. Call to Order — Michael J. Gelfand, Chair

The meeting was held at the Boca Raton Resort & Club, Boca Raton, Florida. Prior to calling the meeting to order, Mr. Gelfand requested a moment of silence for those murdered in the attacks in Paris, France the evening before. Mr. Gelfand then called the meeting to order at 9:00 a.m. on Saturday, November 14, 2015.

II. Attendance — S. Katherine Frazier, Secretary

Ms. Frazier reminded members that the attendance roster was circulating to be initialed by Council members in attendance at the meeting.

[Secretary's Note - The roster showing members in attendance is attached as Addendum "A"]

III. Minutes of Previous Meeting — S. Katherine Frazier, Secretary

Ms. Frazier moved:

To approve the Minutes of the October 2, 2015 meeting of the Executive Council held at The Ritz Carlton, Berlin, Germany.

(See Agenda pages 11-34)

The Motion was unanimously **approved**.

IV. Chair's Report — Michael J. Gelfand

1. Recognition of Guests. Mr. Gelfand recognized and welcomed the guests in attendance, including a member of The Florida Board of Governors who would be formally introduced later during the Council meeting.

2. Mr. Gelfand recognized the following Friends of the Section:

¹ References in these minutes to Agenda pages are to the Executive Council meeting Agenda, Supplement No. 1 and Supplement No. 2 to Executive Council Agenda posted at www.RPPTL.org.

Friends of the Section

Business Valuation Analysts, LLC – Tim Bronza

Corporation Services Company – Beth Stryzs

Guardian Trust – Ashley Gonnelli

North American Title Insurance Company – Andres San Jorge

Valuation Services, Inc. – Jeff Bae, JD, CVA

Wilmington Trust – David Fritz

(See Agenda page 35)

3. Mr. Gelfand reminded members of the remaining 2015-2016 Council meeting schedule and encouraged Council members to make their reservations. He announced that a tentative schedule for the upcoming Tampa Council meeting is included in the Agenda. Mr. Gelfand noted that the Council is attempting to rotate conflicting meetings but is open to further suggestions regarding that process. (See Agenda pages 36-38)

4. Mr. Gelfand reported on the following Executive Committee decisions between Council meetings:

- A. **Multi-Jurisdictional Practice.** He appointed a task force to recommend a response to the request from The Florida Bar President comment on the proposal concerning Multi-Jurisdictional Practice (Reciprocity). The Executive Committee endorsed and approved the Task Force's report recommending a denial of the reciprocity recommendation and a copy of the Section's response can be found in the Agenda. Mr. Gelfand thanked Larry Miller and the rest of the Task Force for their efforts. (See Agenda pages 39-45)
- B. **Beauvais Brief.** The Executive Committee approved a position supporting the Section's amicus brief filed in Florida's Third District Court of Appeal in Deutsche Bank Trust Co. v. Beauvais, Case No. 3D14-0575. (See Agenda page 46-83)
- C. **Physician Orders For Life Sustaining Treatment a/k/a POLST.** The Executive Committee approved the legislative position proposal from the Ad Hoc POLST Study Committee as drafted, including the creation of a new statute recognizing and regulating POLST orders in Florida, to be

provided as technical advice for any POLST bill filed this session. (See Agenda Item XII.2)

5. Mr. Gelfand reported that there had been many questions over the years since the Council started roundtables regarding the purpose of the Council's main meeting. Mr. Gelfand emphasized that a Council meeting is not just a "rubber stamp" immediately after a Division's Roundtable discussion. Moving forward, instead of two duplicate discussions of the same issue immediately following each other at Roundtable and the Council meeting the same morning or the day after, because issues have been vetted fully in advance at earlier Roundtables, the Council would experiment dispensing with Roundtable discussion of an issue scheduled for Executive Council discussion that day or next so that the Council has the benefit of each Division members' perspectives on the issue.

6. Mr. Gelfand announced milestones of certain Council members.

Brenda Ezell is the newest member of our Section who has received Board Certification in Real Estate.

David Akins and Eric Virgil were elected as Fellows of ACTEC.

Michael Bedke received the 20/20 Vision Award from the American Bar Association.

Adele Stone, Vivian del las Cuevas-Diaz and Patricia Lebow were honored as the Top 20 Women in Law by the *Daily Business Review*.

Fred Dudley was appointed to the Second Circuit Judicial Nominating Commission and also named to the Hall of Fame from Stetson University – College of Law.

Hung Nguyen, Jessie Friedman, Chair Elect Deborah Goodall, and those who attended the Kozyak Minority Mentoring Picnic were thanked.

Margaret Palmer from Regions Bank was welcomed back.

7. Mr. Gelfand reminded Council members about the conflicts calendar posted on the Section website and that the Executive Committee would be considering recommending appointments to The Florida Bar's substantive committees.

8. Mr. Gelfand reminded Council members to take heed and pay attention to the Constitutional Revision Commission that would be reported on in more detail later in the Council meeting.

9. Mr. Gelfand noted that three of our close friends were not in attendance due to illnesses: Charles Nash, Brian Sparks and Sandra Diamond's husband, Frank Diamond. Ms. Goodall set a table in the rear for everyone to sign get well cards.

10. Mr. Gelfand reported on the out of state Council meeting held in Berlin. He noted that this was not just a trip, but a journey that educated, and that expanded the horizons of those that attended from a legal and historical perspective.

11. Mr. Gelfand announced that there appeared to be a contested election for The Florida Bar presidency, and that Mr. Michael Dribin had nominating petitions for Mr. Michael Higer.

V. Chair-Elect's Report — Deborah P. Goodall, Chair-Elect

Ms. Goodall announced the 2016-2017 Council Meeting schedule and encouraged attendance, noting that the out of state meeting is in being finalized for early 2017. (See Agenda page 84).

VI. Liaison with the Board of Governors - Andrew B. Sasso

In Mr. Sasso's absence, Mr. Gelfand introduced Ms. Michelle Suskauer, a member of The Florida Bar's Board of Governors. Mr. Gelfand noted that Ms. Suskauer specializes in criminal defense in state and federal courts since 1991 and has served as an elected member of the Board of Governors since 2010 for the 15th Judicial Circuit. She is also nationally known as a legal analysis on NBC and Fox because of her valuable and concise analysis of the issues.

Ms. Suskauer thanked Mr. Gelfand and noted that she is the liaison to the much smaller Criminal Law Section. She thanked the Section for its invaluable work and for all the time that the Council members dedicate to serving the Section and to The Florida Bar. Ms. Suskauer also complimented the Section's use of technology, including the website and the new Section app.

Ms. Suskauer reported that The Florida Bar has been studying the future of our profession through Vision 2016. The Florida Bar gave strong consideration to our response against the admission by motion reciprocity recommendation and reciprocity was unanimously rejected. Ms. Suskauer emphasized the significance of our Section. Ms. Suskauer announced that The Florida Bar's legislation committee is looking at bills and will be asking sections to take positions on those bills. The Florida Bar always welcomes our Section's input on any issue that The Florida Bar Board of Governors is evaluating.

VII. Treasurer's Report — Robert S. Freedman

Mr. Freedman reported that the Section's Financial Report shows that the Section's finances had significant gains of approximately \$395,000 in net operations and high reserves of approximately \$1,460,000. Mr. Freedman noted that there were still more expenses to be applied but that he still expects an increase in the overall result in net operations and reserves. Mr. Freedman reported that the significant gains were a result of a very successful Attorney Trust Officer Conference from Laura Sundberg's efforts as well as a result of increased CLE revenue which is continuing a positive trend and efforts of the Chair and Chair-Elect to reduce expenses. (See

Agenda page 85).

After Mr. Freedman concluded his report, Mr. Gelfand welcomed back Mary Ann Obos and her son Sebastian and announced that the Section is delighted to have her back. Mr. Gelfand noted the immense value that Ms. Obos adds to our Section.

VIII. Director of At-Large Members' Report — Shane Kelley

Mr. Kelley reminded Council members that all ALMS applications were due by December 15, 2015, including from any ALMS seeking reapplications.

IX. CLE Seminar Coordination Report — CLE Seminar Coordination – William Hennessey (Probate & Trust), Robert Swaine (Real Property) Co-Chairs

Mr. Hennessey congratulated the success of the Attorney Trust Officer Conference. Mr. Hennessey also reported that the CLE on FR/BAR Changes Resulting from the new CFBP Rules was one of the largest grossing e-CLE programs and thanked the efforts of Mr. Fred Jones, Ms. Melissa Murphy and Mr. Tom Ball. Mr. Hennessey announced upcoming seminars available for signup on the RPPTL website and challenged committee chairs to create CLEs out of late breaking news.

X. General Standing Division – Deborah P. Goodall, General Standing Division Director and Chair-Elect

Action Items:

1. Budget — Robert S. Freedman, Treasurer and Chair

Ms. Goodall thanked Mr. Freedman and the Budget Committee for all of its hard work. Mr. Freedman thanked all the members of the Budget Committee and then reminded the Council that this budget was being prepared under the new Florida Bar budget process for the Section and that this new process became effective with the beginning of this new Florida Bar year. He announced that the Budget was located on Supplement No. 2 since the original version in the Agenda contained typographical errors.

Mr. Freedman reminded Council members of the new budget process with six different classifications of programs. Mr. Freedman explained to the Council through a PowerPoint comparing the budget originally approved for 2015-16, The Florida Bar's modified budget reflecting the new budget process, and a 2015-16 new projected budget. Mr. Freedman pointed out, as reflected in the 2015-16 projected budget, that since the Section had such a positive increase last year in CLE, that the Section ended up with a higher projected starting budget for 2015-16 than was anticipated. Mr. Freedman reported that the Section was able to use that number as a starting point for the 2016-17 budget process.

Mr. Freedman pointed out a \$71,000 reduction from the estimated start to ending balance in 2016-2017 which reflects several anticipated expenditures for special projects such as (1) the cost of the new Section meetings app and any additional related costs and expenses to technology website upgrades, (2) an intellectual property analysis to protect Section intellectual property rights in materials and speeches, and (3) a marketing consultant to advise the Section on advertising improvements for CLE. Mr. Freedman noted that until this year, The Florida Bar required each section to maintain a line item reserve such as the \$100,000 that was on the original 2015-16 budget. The Florida Bar changed its policy and that is no longer mandatory, so the Section budget no longer shows that add-back in light of our existing reserves.

Finally, Mr. Freedman reported that a budget subcommittee is being formed to evaluate the size, purpose and use of the reserve fund.

Mr. Freedman moved on behalf of the Committee:

To approve the proposed Real Property, Probate and Trust Law Section Budget for fiscal year 2016 – 2017.

The Motion was unanimously **approved**. (See Supplement No. 2 to the Agenda).

2. *Daubert* Standard Task Force

Ms. Goodall introduced Mr. Bob Swaine to present the Task Force report. Mr. Swaine thanked his Task Force for all of their hard work and insightful analysis that they did on an expedited basis.

Mr. Swaine moved:

To waive the rules for consideration of the proposed motion regarding Florida Statutes §90.702 and §90.704, as amended, as circulated in the Supplement No. 1 to the Agenda.

The Motion was seconded and unanimously **approved**.

Mr. Swaine introduced Mr. Manuel Farach. Mr. Farach explained the history and background regarding the change being considered and the Daubert standard. Mr. Farach explained that the conclusion of the Task Force's analysis was that the Daubert standard which applies when a person is being considered for expert testimony, would not have a significant impact, although it may involve more steps, and that it would be beneficial to Florida courts and those who testify. Mr. Theo Kypreos then provided further background regarding the Frye standard and the Daubert standard, and further reported the Task Force's conclusion that the Daubert standard would not be a prohibition to experts being qualified and should be adopted uniformly.

Mr. Swaine moved:

To amend the motion made by the Daubert Evidentiary Task Force by adding the following additional italicized language:

To recommend that the Section respond in the affirmative to the following question posed by Florida Bar President Abadin: Should Florida Statutes §90.702 and §90.704, as amended by Chapter 2013-107, adopting the Daubert standard, be adopted as rules of evidentiary procedure, to the extent they are procedural

There was further discussion that the Section should request that The Florida Bar advocate for clarity from the Florida Supreme Court on what standard should be applied in the event the Florida Supreme Court does not adopt the Daubert standard. It was then moved

To amend the main motion to add: , and that the Section further respond by requesting that the Florida Bar advocate for clarity from the Florida Supreme Court on what standard must be applied in the event the Florida Supreme Court refuses to adopt the Daubert standard set forth in current Florida Statutes §90.702 as a court rule.”

The Motion to amend was seconded and failed, 52 votes in the affirmative and 78 in the negative.

Upon a call of the question on the main motion the motion was unanimously approved. (See Agenda page 214 and Supplement No. 1 to the Agenda pages 1-14).

Information Items:

Ms. Goodall reminded Section Committee chairs to complete and return their annual Committee reports.

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

Ms. Goodall introduced Mr. Fernandez who reported on the Leadership Academy program and information on applications for the next class are available at <http://www.floridabar.org/leadershipacademy>. Mr. Fernandez introduced Mr. Jason Ellison who reported on his positive and educational Leadership Academy experience as a Fellow.

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

A. Ms. Goodall introduced Mr. John Little who reported on the status of pending consideration of Section’s *amicus* brief filed in Florida’s

Third District Court of Appeal in Deutsche Bank Trust Co. v. Beauvais, Case No. 3D14-0575. (See Agenda pages 112-135)

B. Ms. Goodall then introduced Mr. Bob Goldman who reported on the Section's *amicus* brief and decision of the Florida Supreme Court in Jones v. Golden Case No. SC13-2536 published October 1, 2015. (See Agenda pages 96-111)

C. Mr. Goldman further reported on the Section's *Amicus Brief* and decision of The Florida Supreme Court in Rogers v The United States of America, No. SC 14-1465 (November 5, 2015) (See Supplement No. 1 to the Agenda Pages 15-41).

3. Fellows — Ashley McRae, Chair

No Report.

4. Legislation — Tae Kelley Bronner (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs

Ms. Goodall introduced Ms. Bronner and Mr. Mezer who provided the update on 2016 Legislative Session – Section Legislative Positions and Interested Matters. Mr. Mezer reminded Council members of the schedule for legislation position approval and that there must be two meetings for consideration before legislation can be submitted for approval to the Council.

Mr. Mezer then reported on the Constitution Revision Commission and that there is one Commission every twenty years consisting of thirty-seven members. The last Commission was in 1978. The Governor appoints fifteen members and one chair. Each of the Speaker of the House, Speaker of the Senate and Chief of the Florida Supreme Court appoint nine, nine and three seats, respectively. The Commission regularly meets and will submit amendments approximately six months before the 2018 ballot. The Commission is completing its issues list which consists of the following: transportation, education, natural resources, crime and justice, representation, health care, youth, term limits and elderly and the underserved.

5. Member Communication and Information Technology — William A. Parady, Chair

Mr. Parady reported on the successful launch of the RPPTL app this past weekend at the Council meeting. Mr. Parady also congratulated Steven Goodall who helped develop the app. Mr. Parady reminded Committee chairs of the importance of maintaining web pages because the app accesses webpage

information. Mr. Parady also reminded Council members to provide information for the RPPTL blog as a great informational tool. Ms. Goodall thanked the Committee for all of its hard work.

6. Membership and Inclusion — *Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs*

Ms. Goodall introduced Jason Ellison who reported on the success of the Kozyak Minority Mentoring Picnic. Mr. Ellison also reported on the upcoming Hillsborough County mentoring picnic and encouraged attendance. Mr. Ellison reported that the Committee is trying to visit all law schools located in the State of Florida and encouraged assistance from Council members in making connections with the law schools.

7. Professionalism and Ethics — *Lawrence J. Miller, Chair*

Ms. Goodall called upon Mr. Larry Miller who introduced Mr. John Little to report on the status of the proposed amendments to Rules Regulating The Florida Bar Rule 4-4.2, regarding communications to governmental counsel. Mr. Little reminded council members that the Section's position to date has been that no change to the rule or to the comments is necessary in order to address the issues raised by the Tobin case. Mr. Little reported that the Committee has been working with the local governmental liaisons who have filed an amendment to Rule 4-4.2 that is under Committee evaluation and that he will report the recommendation to this Section at a later date.

8. Publications:

A. **ActionLine** — *Silvia Rojas, Chair*

B. **Florida Bar Journal** — *Jeffrey Goethe (Probate & Trust) and Douglas Christy (Real Estate) Co-Chairs.*

Ms. Silvia Rojas and Mr. Jeffrey Goethe reported on The Florida Bar Journal and ActionLine, respectively. Mr. Goethe encouraged articles and submissions particularly relating to legislation and reminded Council members to carefully edit their submissions and that The Florida Bar cannot accept more than two submissions from the same author in one year. Ms. Rojas reminded Council members to submit articles as well and consider using The Florida Bar Journal articles and CLE materials for ActionLine submissions.

9. Sponsor coordination — *Wilhelmina F. Kightlinger, Chair*

Ms. Goodall introduced Mr. Cary Wright in Wilhelmina Kightlinger's absence, who reported that there are no new sponsors but that there are several members of the Section who are considering moving up to general sponsorship and thanked all of the sponsors for sponsoring the Section and reminded

Council members to be polite and quiet when sponsors are speaking. Ms. Goodall then recognized our Council meeting sponsor, Attorneys' Title Fund Services, LLC.

XI. Real Property Law Division Report — *Andrew O'Malley, Real Property Law Division Director*

Mr. O'Malley recognized the following Real Property Division Committee Sponsors:

Committee Sponsors

Attorneys' Title Fund Services, LLC - Ted Conner
Commercial Real Estate Committee

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

First American Title Insurance Company - Wayne Sobien
Real Estate Structure and Taxation Committee

Information Item:

Open/Expired Permits Task Force — *Lee Weintraub and Michael Tobin, Co-Chairs.*

Mr. O'Malley introduced Lee Weintraub and thanked his Committee efforts on the complex issue evaluating proposed legislation regarding the impact of open and expired construction permits and potential remedies which involved input from various stakeholders from practitioners to industry groups to governmental officials all with differing opinions on a process to close open and expired permits. Mr. Weintraub reported that there had been a recent conference call and that certain stakeholder liaisons are now going to join the Task Force in order to assist in producing a workable solution to the issue by incorporating certain changes in the statutes and certain changes under the building codes. Mr. Weintraub reported that he should have a more complete update at the next Council meeting. (See Agenda pages 136-139)

XII. Probate and Trust Law Division — *Debra L. Boje, Director*

Ms. Debra Boje recognized the following Probate and Trust Law Division Committee Sponsors:

Committee Sponsors

BNY Mellon Wealth Management – *Joan Crain*
IRA, Insurance & Employee Benefits Committee &
Probate Law and Procedure Committee

Business Valuation Analysts – Tim Bronza
Trust Law Committee

Coral Gables Trust – John Harris
Probate and Trust Litigation Committee

Guardian Trust – Ashley Gonnelli
Guardianship, Power of Attorney & Advance Directives Committee

Kravit Estate Appraisals – Bianco Morabito
Estate & Trust Tax Planning Committee

Life Audit Professionals – Stacy Tacher
IRA, Insurance & Employee Benefits Committee

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

Northern Trust – Brett Rees
Trust Law Committee

Action Item:

Trust Law Committee - Angela Adams, Chair

Ms. Adams provided a brief overview of the proposed amendment to provide that co-trustees are each entitled to reasonable compensation and that the aggregate compensation awarded by all co-trustees may be greater than reasonable compensation for a single trustee.

Ms. Adams moved on behalf of the Committee:

To adopt as a Section position to provide that when multiple trustees are serving together as co-trustees, each co-trustee is entitled to reasonable compensation, even though the aggregate compensation for multiple trustees may exceed what would be reasonable compensation for a single trustee, including an amendment to F. S. 736.0708(1); to find that such legislative position is within the purview of the RPPTL Section; and, to expend Section funds in support of the proposed legislative position.

The Motion was unanimously **approved**. (See Agenda pages 140-145)

Information Items:

1. Digital Assets and Information Study Committee – J. Eric Virgil, Chair

Ms. Boje introduced Mr. Travis Hayes in Mr. Virgil's absence. Mr. Hayes reported that the Florida Fiduciary Access to Digital Assets Act will be introduced at the next legislative session. Mr. Hayes reported that due to the heavy lobbying efforts of the internet service providers the bill did not survive last year's legislative process in Florida or in other states. As a result of those efforts, Uniform Law Commission changes to the Uniform Act have been incorporated into the proposed Florida act to address privacy rights of the owner of the digital assets as well as the internet service providers concern regarding potential conflicts of federal privacy laws. The primary purpose of the Act is still the same which allows fiduciaries, trustees, personal representatives, guardians, and agents under power of attorney to access assets and information of the deceased or incapacitated person. Mr. Hayes thanked the Committee. Ms. Boje commented that Florida will be one of the first or second in the nation to pass this legislation. (See Agenda Pages 146-184)

2. Ad Hoc Study Committee on POLST (Physician Orders For Life Sustaining Treatment) - Jeff Baskies and Thomas Karr, Co-Chairs

Ms. Boje introduced Mr. Jeff Baskies. Mr. Baskies reported that the Committee is working on a response to the proposal relating to POLST documents which are akin to a living will but, unlike a living will, are executed by a physician. The Committee has prepared a position paper in opposition but also added a proposal to help improve the legislation. Mr. Baskies thanked the Committee for all of his hard work. (See Agenda Pages 185-213)

Probate and Trust Law Division Committee Reports — *Debra L. Boje, Director*

1. **Ad Hoc Guardianship Law Revision Committee –**
David Brennan, Chair; Sancha Brennan Whynot, Hung Nguyen and Charles F. Robinson, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest -**
William T. Hennessey III, Chair; Paul Roman, Vice Chair
3. **Ad Hoc Study Committee on Jurisdiction and Service of Process –**
Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
4. **Ad Hoc Committee on Physicians Orders for Life Sustaining Treatment (POLST) – Jeffrey Baskies and Thomas Karr, Co-Chairs**

5. **Ad Hoc Study Committee on Spendthrift Trust Issues** – *Lauren Detzel and Jon Scuderi, Co-Chairs*
6. **Asset Protection** – *George Karibjanian, Chair; Rick Gans and Brian Malec, Co-Vice-Chairs*
7. **Attorney/Trust Officer Liaison Conference** – *Laura K. Sundberg, Chair; Stacey Cole, Co-Vice Chair (Corporate Fiduciary), Tattiana Stahl and Patrick Emans, Co-Vice Chair*
8. **Digital Assets and Information Study Committee** – *Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs*
9. **Elective Share Review Committee** – *Lauren Detzel and Charles I. Nash, Co-Chairs; Jenna Rubin, Vice-Chair*
10. **Estate and Trust Tax Planning** – *David Akins, Chair; Tasha Pepper-Dickinson and Rob Lancaster, Co-Vice Chairs*
11. **Guardianship, Power of Attorney and Advanced Directives** – *Hung Nguyen, Chair, Tattiana Brenes-Stahl, David Brennan, Eric Virgil, and Nicklaus Curley, Co-Vice Chairs*
12. **IRA, Insurance and Employee Benefits** – *L. Howard Payne and Kristen Lynch, Co-Chairs; Carlos Rodriguez, Vice Chair*
13. **Liaisons with ACTEC** – *Michael Simon, Bruce Stone, Elaine Bucher, and Diana S.C. Zeydel*
14. **Liaisons with Elder Law Section** – *Charles F. Robinson and Marjorie Wolasky*
15. **Liaisons with Tax Section** – *Lauren Y. Detzel, William R. Lane, Jr., Brian C. Sparks and Donald R. Tescher*
16. **Principal and Income** – *Edward F. Koren, Chair; Pamela Price, Vice Chair*
17. **Probate and Trust Litigation** – *Jon Scuderi, Chair; James George, John Richard Caskey, and Lee McElroy, Co-Vice Chairs*
18. **Probate Law and Procedure** – *John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Matt Triggs, Co-Vice Chairs*
19. **Trust Law** – *Angela M. Adams, Chair; Tami F. Conetta, Jack A. Falk and*

Mary Karr, Co-Vice Chairs

20. **Wills, Trusts and Estates Certification Review Course** – Jeffrey Goethe, Chair; Linda S. Griffin, Seth Marmor and Jerome L. Wolf, Co-Vice Chairs

XIV. **Real Property Law Division Committee Reports** — Andrew O'Malley,
Director

1. **Commercial Real Estate** – Adele Stone, Chair; Burt Bruton and Martin Schwartz, Co-Vice Chairs
2. **Condominium and Planned Development** – Bill Sklar, Chair; Alex Dobrev and Steve Daniels, Co-Vice Chairs
3. **Construction Law** – Hardy Roberts, Chair; Scott Pence and Reese Henderson, Co-Vice Chairs
4. **Construction Law Certification Review Course** – Deborah Mastin and Bryan Rendzio, Co-Chairs; Melinda Gentile, Vice Chair
5. **Construction Law Institute** – Reese Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs
6. **Development & Land Use Planning** – Vinette Godelia, Chair; Mike Bedke, Co-Vice Chair
7. **Landlord and Tenant** – Rick Eckhard Chair; Brenda Ezell, Vice Chair
8. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alexandra Overhoff and James C. Russick, Co-Vice Chairs
9. **Insurance & Surety** – W. Cary Wright and Scott Pence, Co-Chairs; Fred Dudley and Michael Meyer, Co-Vice Chairs
10. **Real Estate Certification Review Course** – Jennifer Tobin, Chair; Manual Farach and Martin Awerbach, Co-Vice Chairs
11. **Real Estate Structures and Taxation** – Cristin C. Keane, Chair; Michael Bedke, Lloyd Granet and Deborah Boyd, Co-Vice Chairs
12. **Real Property Finance & Lending** – David Brittain, Chair; E. Ashley McRae, Richard S. McIver and Robert Stern, Co-Vice Chairs
13. **Real Property Litigation** – Susan Spurgeon, Chair; Manny Farach and Martin Solomon, Co-Vice Chairs

14. **Real Property Problems Study** – *Art Menor, Chair; Mark A. Brown, Robert Swaine, Stacy Kalmanson, Lee Weintraub and Patricia J. Hancock, Co-Vice Chairs*
 15. **Residential Real Estate and Industry Liaison** – *Salome Zikakas, Chair; Trey Goldman and Nishad Khan, Co-Vice Chairs*
 16. **Title Insurance and Title Insurance Liaison** – *Raul Ballaga, Chair; Alan Fields and Brian Hoffman, Co-Vice Chairs*
 17. **Title Issues and Standards** – *Christopher W. Smart, Chair; Robert M. Graham, Brian Hoffman and Karla J. Staker, Co-Vice Chairs*
- XV. **General Standing Committee Reports** — *Deborah Goodall, Director and Chair-Elect*
1. **Ad Hoc Leadership Academy** – *Brian Sparks and Kris Fernandez, Co-Chairs*
 2. **Ad Hoc Study Committee on Same Sex Marriage Issues**— *Jeffrey Ross Dollinger and George Daniel Karibjanian, Co-Chairs*
 3. **Amicus Coordination** – *Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs*
 4. **Budget** – *Robert S. Freedman, Chair; S. Katherine Frazier, Pamela O. Price, Co-Vice Chairs*
 5. **CLE Seminar Coordination** – *Robert S. Swaine and William T. Hennessey, Co-Chairs; Laura K. Sundberg (Probate & Trust), Sarah S. Butters (Probate & Trust), Lawrence J. Miller (Ethics), Cary Wright (Real Property) and Hardy L. Roberts, III (General E-CLE), Theo Kypreos, Co-Vice Chairs*
 6. **Convention Coordination** – *Laura K. Sundberg Chair; Alex Hamrick and Alex Dobrev, Co-Vice Chairs*
 7. **Fellows** – *Ashley McRae, Chair; Benjamin Diamond and Joshua Rosenberg, Co-Vice Chairs*
 8. **Florida Electronic Filing & Service** – *Rohan Kelley, Chair*
 9. **Homestead Issues Study** – *Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine, Melissa Murphy and Charles Nash, Co-Vice Chairs*

10. **Legislation** – *Tae Kelley Bronner (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs; Thomas Karr (Probate & Trust), and Alan B. Fields (Real Property), Co-Vice Chairs*
11. **Legislative Update (2016)** – *R. James Robbins, Chair, Barry F. Spivey, Stacy O. Kalmanson, Jennifer Tobin, Thomas Karr, Joshua Rosenberg, and Kymberlee Curry Smith, Co-Vice Chairs*
12. **Liaison with:**
 - a. **American Bar Association (ABA)** – *Edward F. Koren and Julius J. Zschau*
 - b. **Clerks of Circuit Court** – *Laird A. Lile and William Theodore Conner*
 - c. **FLEA / FLSSI** – *David C. Brennan and Roland “Chip” Waller*
 - d. **Florida Bankers Association** – *Mark T. Middlebrook*
 - e. **Judiciary** – *Judge Linda R. Allan, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L. Schafer, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J. Suarez,., and Judge Patricia V. Thomas*
 - f. **Out of State Members** – *Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert*
 - g. **TFB Board of Governors** – *Andrew Sasso*
 - h. **TFB Business Law Section** – *Gwynne A. Young*
 - i. **TFB CLE Committee** – *Robert S. Freedman and Tae Kelley Bronner*
 - j. **TFB Council of Sections** – *Michael J. Gelfand and Deborah P. Goodall*
 - k. **TFB Pro Bono Committee** – *Tasha K. Pepper-Dickinson*
13. **Long-Range Planning** – *Deborah P. Goodall, Chair*
14. **Meetings Planning** – *George J. Meyer, Chair*
15. **Member Communications and Information Technology** – *William A. Parady, Chair; S. Dresden Brunner, Michael Travis Hayes, and Neil Shoter, Co-Vice Chairs*
16. **Membership and Inclusion** – *Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs, Phillip A. Baumann, Kathrine S. Lupo, Guy S. Emerich, Theodore S. Kypreos, Tara Rao, and Kymberlee Curry Smith, Co-Vice Chairs*

17. **Model and Uniform Acts** – *Bruce M. Stone and Richard W. Taylor, Co-Chairs*
18. **Professionalism and Ethics--General** – *Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair*
19. **Publications (ActionLine)** – *Silvia B. Rojas, Chair (Editor in Chief); Jeffrey Baskies (Vice Chair – Editor Probate & Trust Division), Cary Wright (Vice Chair – Editor Real Property Division), Lawrence J. Miller (Vice Chair – Editor Professionalism & Ethics); George D. Karibjanian (Editor, National Reports), Lee Weintraub (Vice Chair - Reporters Coordinator), Benjamin Diamond (Vice Chair – Features Editor), Kathrine S. Lupo (Vice Chair - Advertising Coordinator), Navin R. Pasem (Vice Chair – Practice Corner Editor), Sean M. Lebowitz (Vice Chair – Probate & Trust Case Summaries), Shari Ben Moussa (Vice Chair – Real Property Case Summaries)*
20. **Publications (Florida Bar Journal)** – *Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property), Homer Duvall (Editorial Board – Real Property) and Allison Archbold (Editorial Board), Co-Vice Chairs*
21. **Sponsor Coordination** – *Wilhelmina F. Kightlinger, Chair; J. Michael Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs*
22. **Strategic Planning** – *Michael J. Gelfand and Deborah P. Goodall, Co-Chairs*

XIII. Adjourn Motion to Adjourn

There being no further business to come before the Executive Council, Mr. Gelfand thanked those in attendance and a motion to adjourn was unanimously approved and the meeting concluded at approximately 11:30 a.m.

Respectfully submitted,

S. Katherine Frazier, Secretary

ATTACHMENT "A"

ATTENDANCE ROSTER
 REAL PROPERTY PROBATE & TRUST LAW SECTION
 EXECUTIVE COUNCIL MEETINGS
 2015-2016

Executive Committee	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Gelfand, Michael J., Chair	√		√	√	√		
Goodall, Deborah P. Chair-Elect		√	√		√		
Boje, Debra L., Probate & Trust Law Div. Director		√	√		√		
O'Malley, Andrew M., Real Property Law Div. Director	√		√		√		
Kelley, Shane, Director of At-Large Members		√	√		√		
Frazier, S. Katherine, Secretary	√		√		√		
Freedman, Robert S., Treasurer	√		√		√		
Bronner, Tae K., Legislation Co-Chair (P&T)		√	√		√		
Mezer, Steven H., Legislation Co-Chair (RP)	√		√		√		
Hennessey, William M., Legislation CLE Seminar Coordination Co-Chair (P&T)		√	√		√		
Swaine, Robert S., CLE Seminar Coordination Co-Chair (RP)	√		√		√		
Dribin, Michael A., Immediate Past Chair		√	√		√		

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Adams, Angela M.		√	√		√		
Adcock, Jr., Louie N., Past Chair		√					
Akins, David J.		√	√	√	√		
Allan, Honorable Linda		√					
Altman, Stuart H.		√	√		√		
Amari, Richard		√	√		√		

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Archbold, J. Allison		√	√	√	√		
Arnold, Jr., Lynwood F.	√	√			√		
Aron Jerry E. Past Chair	√		√				
Awerbach, Martin S.	√						
Bald, Kimberly A.	√	√	√		√		
Ballaga, Raul P.	√		√				
Basham, Cindy		√			√		
Baskies, Jeffrey		√	√		√		
Battle, Carlos A.		√			√		
Baumann, Honorable Herbert J.		√					
Baumann, Phillip A.		√	√	√	√		
Beales, III, Walter R. Past Chair	√		√				
Bedke, Michael A.	√						
Belcher, William F. Past Chair		√					
Bell, Kenneth B.	√						
Beller, Amy		√	√		√		
Bellew, Brandon D.		√	√		√		
Ben Moussa, Shari D.	√						
Bloodworth, Jennifer	√		√		√		
Bonevac, Judy B.		√	√	√	√		
Boyd, Deborah	√		√				
Brenes-Stahl, Tattiana P.		√	√		√		
Brennan, David C. Past Chair		√	√				
Brittain, David R.	√		√		√		

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Brown, Mark A.	√		√	√	√		
Brown, Shawn	√		√				
Brunner, S. Dresden		√	√		√		
Bruton, Jr., Ed Burt	√		√		√		
Bucher, Elaine M.		√	√				
Butters, Sarah S.		√	√		√		
Callahan, Charles III		√	√		√		
Carlisle, David R.		√	√		√		
Caskey, John R.		√	√		√		
Christiansen, Patrick T. Past Chair	√		√	√			
Christy, Douglas G. III	√		√		√		
Cohen, Howard Allen	√		√		√		
Cole, John P.		√	√		√		
Cole, Stacey L.		√	√				
Comiter, Alyse R.		√	√		√		
Conetta, Tami F.		√	√		√		
Conner, W. Theodore	√				√		
Cope, Jr., Gerald B.	√		√	√	√		
Curley, Nick		√	√		√		
Daniels, Steve	√						
Detzel, Lauren Y.		√	√		√		
Diamond, Benjamin F.		√	√		√		
Diamond, Sandra F. Past Chair		√	√				
Dobrev, Alex	√		√				

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Dollinger, Jeffrey	√		√				
Dudley, Frederick R.	√		√				
Duvall, III, Homer	√		√		√		
Eckhard, Rick	√		√				
Ellison, Jason M.	√		√		√		
Emans, Patrick C		√	√		√		
Emerich, Guy S.		√	√				
Ertl, Christene M.	√		√				
Ezell, Brenda B.	√		√	√	√		
Fagan, Gail		√	√	√	√		
Falk, Jr., Jack A.		√	√		√		
Farach, Manuel	√		√		√		
Felcoski, Brian J., Past Chair		√	√		√		
Fernandez, Kristopher E.	√		√		√		
Fields, Alan B.	√		√		√		
Fitzgerald, Jr., John E.		√	√		√		
Flood, Gerard J.		√	√		√		
Foreman, Michael L.		√	√		√		
Galler, Jonathan		√	√		√		
Gans, Richard R.		√	√				
Gay, III, Robert Norwood	√						
Gentile, Melinda S.	√		√		√		
George, James		√	√		√		
Godelia, Vinette D.	√		√		√		

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Goethe, Jeffrey S.		√	√		√		
Goldman, Louis "Trey"	√		√	√			
Goldman, Robert W. Past Chair		√	√		√		
Graham, Robert M.	√		√		√		
Granet, Lloyd	√		√		√		
Griffin, Linda S.		√	√		√		
Grimsley, John G. Past Chair		√					
Grossman, Honorable Melvin B.		√					
Gunther, Eamonn W.		√	√		√		
Guttman, III, Louis B. Past Chair	√		√	√			
Hamrick, Alexander H.		√	√	√	√		
Hancock, Patricia J.	√						
Hart, W.C.	√		√				
Hayes, Honorable Hugh D.		√					
Hayes, Michael Travis		√	√		√		
Hearn, Steven L. Past Chair		√	√		√		
Henderson, Jr., Reese J.	√						
Henderson, III, Thomas N.	√		√		√		
Heuston, Stephen P.		√	√		√		
Hoffman, Brian W.	√		√		√		
Isphording, Roger O. Past Chair		√	√	√	√		
Johnson, Amber Jade F.		√	√		√		
Jones, Darby		√	√		√		
Jones, Frederick W.	√		√		√		

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Jones, Patricia P.H.	√		√		√		
Judd, Robert B.		√	√		√		
Kalmanson, Stacy O.	√		√				
Karibjanian, George		√	√		√		
Karr, Mary		√	√		√		
Karr, Thomas M.		√	√		√		
Kayser, Joan B. Past Chair		√					
Keane, Cristin C.	√		√				
Kelley, Rohan Past Chair		√	√	√	√		
Kelley, Sean W.		√			√		
Khan, Nishad	√						
Kibert, Nicole C.	√		√	√			
Kightlinger, Wilhelmina F.	√		√	√			
Kinsolving, Ruth Barnes Past Chair	√						
Koren, Edward F. Past Chair		√	√		√		
Korvick, Honorable Maria M.		√	√	√	√		
Kotler, Alan Stephen		√	√		√		
Kromash, Keith S.		√	√		√		
Kurian, Sanjay	√		√				
Kypreos, Theodore S.		√	√		√		
Lancaster, Robert L.		√	√				
Lane, Jr., William R.		√	√				
Lange, George		√	√	√	√		
Larson, Roger A.	√		√		√		

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Lebowitz, Sean M.		√	√		√		
Leebrick, Brian D.	√		√				
Lile, Laird A. Past Chair		√	√	√			
Lindsey, Honorable Norma S.	√						
Little, III, John W.	√		√		√		
Lopez, Sophia A.		√	√		√		
Lupo, Kathrine S.	√		√		√		
Lynch, Kristen M.		√	√				
Madorsky, Marsha G.		√	√		√		
Malec, Brian		√	√		√		
Marger, Bruce Past Chair		√			√		
Marmor, Seth A.		√	√		√		
Marshall, III, Stewart A.		√			√		
Marx, James A.	√		√		√		
Mastin, Deborah Bovarnick	√		√		√		
McCall, Alan K.	√		√				
McElroy, IV, Robert Lee		√	√		√		
McIver, Richard	√		√	√			
McRae, Ashley E.	√		√				
Melanson, Noelle		√	√		√		
Menor, Arthur J.	√		√		√		
Meyer, George F. Past Chair	√		√	√			
Meyer, Michael	√		√				
Middlebrook, Mark T.		√	√				

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Miller, Lawrence J.		√	√		√		
Mize, Patrick		√	√		√		
Moran, John C.		√	√		√		
Moule, Rex E.		√			√		
Muir, Honorable Celeste H.		√	√		√		
Murphy, Melissa J. Past Chair	√		√	√	√		
Nash, Charles I.		√	√				
Neukamm, John B. Past Chair	√		√		√		
Nguyen, Hung V.		√	√	√	√		
Nice, Marina		√	√				
Overhoff, Alex	√		√	√	√		
Palmer, Margaret		√					
Parady, William A.		√	√	√	√		
Pasem, Navin	√						
Payne, L. Howard		√	√		√		
Pence, Scott P.	√		√		√		
Pepper-Dickinson, Tasha K.		√	√		√		
Perera, Diane	√						
Petrino, Bradford	√		√				
Pilotte, Frank		√	√		√		
Platt, William R.		√					
Pleus, Jr., Honorable Robert J.							
Pollack, Anne Q.	√		√		√		
Price, Pamela O.		√	√				

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Pyle, Michael A.		√	√		√		
Quintero, Jason	√		√				
Rao, Tara		√	√				
Redding, John N.	√		√	√	√		
Renzio, Bryan	√				√		
Reynolds, Stephen H.	√		√		√		
Rieman, Alexandra V.		√	√		√		
Robbins, Jr., R.J.	√		√		√		
Roberts, III, Hardy L.	√		√		√		
Robinson, Charles F.		√	√				
Rodriguez, Carlos A.		√	√		√		
Rojas, Silvia B.	√		√		√		
Rolando, Margaret A. Past Chair	√		√	√	√		
Roman, Paul E.		√	√	√	√		
Rosenberg, Joshua		√	√		√		
Rubin, Jenna		√	√		√		
Russell, Deborah L.		√	√				
Russick, James C.	√		√	√	√		
Rydberg, Marsha G.	√		√		√		
Sachs, Colleen C.	√		√		√		
Sasso, Andrew		√	√				
Schafer, Jr., Honorable Walter L.		√					
Schofield, Percy A.	√						
Schwartz, Martin	√						

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Schwartz, Robert M.	√		√		√		
Scuderi, Jon		√	√		√		
Seaford, Susan	√		√				
Sheets, Sandra G.		√	√				
Shoter, Neil B.	√		√		√		
Silberman, Honorable Morris							
Silberstein, David M.		√	√		√		
Simon, Michael		√					
Sklar, William P.	√		√		√		
Smart, Christopher W.	√		√		√		
Smith, G. Thomas Past Chair	√		√	√			
Smith, Kymberlee	√		√				
Smith, Wilson Past Chair		√					
Solomon, Marty James	√		√		√		
Spalding, Ann		√	√		√		
Sparks, Brian C.		√	√				
Speiser, Honorable Mark A.							
Spivey, Barry F.		√	√		√		
Spurgeon, Susan K.	√		√	√			
Stafford, Michael P.		√	√		√		
Staker, Karla J.	√				√		
Stern, Robert G.	√				√		
Stone, Adele I.	√				√		
Stone, Bruce M. Past Chair		√	√				

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Suarez, Honorable Richard J.							
Sundberg, Laura K.		√	√		√		
Swaine, Jack Michael Past Chair	√		√				
Taylor, Richard W.	√		√				
Tescher, Donald R.		√			√		
Thomas, Honorable Patricia V.		√	√	√			
Tobin, Jennifer S.	√		√				
Triggs, Matthew H.		√	√		√		
Udick, Arlene C.	√		√	√	√		
Virgil, Eric		√	√				
Waller, Roland D. Past Chair	√		√	√	√		
Wartenberg, Stephanie Harriet		√	√				
Weintraub, Lee A.	√		√	√	√		
Wells, Jerry B.		√	√		√		
White, Jr., Richard M.		√			√		
Whynot, Sancha B.		√	√		√		
Wilder, Charles D.		√	√		√		
Williamson, Julie Ann S. Past Chair	√		√				
Wintter, Christopher Q.		√	√	√	√		
Wohlust, Gary Charles		√	√	√	√		
Wolasky, Marjorie E.		√	√				
Wolf, Jerome L.		√	√		√		
Wright, William Cary	√		√	√	√		
Young, Gwynne A.		√					

Executive Council Members	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Zeydel, Diana S.C.		√	√				
Zikakis, Salome J.	√		√	√	√		
Zschau, Julius J. Past Chair	√		√	√			

RPPTL Fellows	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Costello, T. John, Jr.		√	√				
Friedman, Bridget	√		√	√			
Grosso, Jennifer Lodge		√	√		√		
Jennison, Julia Lee	√		√	√	√		
Rubel, Stacy Beth		√	√		√		
Sajdera, Christopher Anthony	√		√		√		
Sneeringer, Michael Alan		√	√		√		
VanSickle, Melissa	√		√				

Legislative Consultants	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Dunbar, Peter M.	√		√	√	√		
Edenfield, Martha Jane	√		√	√	√		
Finkbeiner, Brittany	√				√		
Roth, Cari L.	√				√		
Guests	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Butler, Jonathan		√	√		√		
Duz, Ashley		√	√		√		
Fincher, Philip		√			√		
Christman, Emma		√			√		
Nostra, Charles	√				√		
Boisrond, Sandy		√			√		
Friedman, Jesse B.		√	√		√		

Guests	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Rios, Cynthia		√			√		
Barboza, AnnaBella		√			√		
Noll, R. Dale		√			√		
McDermott, Daniel L.		√			√		



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

**Special Thanks to the
GENERAL SPONSORS**

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

Thursday Lunch
Management Planning, Inc. - Roy Meyers

Thursday Night Reception
JP Morgan - Carlos Batlle / Alyssa Feder

Old Republic National Title Insurance Company - Jim Russick

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

Friday Night Dinner
First American Title Insurance Company - Alan McCall
Regions Private Wealth Management - Margaret Palmer

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

Real Property Roundtable
Fidelity National Title Group - Pat Hancock

Saturday Lunch
The Florida Bar Foundation – Bruce Blackwell



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

Special Thanks to the

FRIENDS OF THE SECTION

Business Valuation Analysts, LLC - *Tim Bronza*

Corporation Services Company - *Beth Stryzs*

Corporate Valuation Services, Inc. - *Tony Garvy*

Guardian Trust - *Ashley Gonnelli*

North American Title Insurance Company - *Andres San Jorge*

Valuation Services, Inc. - *Jeff Bae, JD, CVA*

Wilmington Trust - *David Fritz*



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

Special Thanks to the

COMMITTEE SPONSORS

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

Business Valuation Analysts – *Tim Bronza*
Trust Law Committee

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

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

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

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

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

Life Audit Professionals – *Nicole Newman*
IRA, Insurance & Employee Benefits Committee

Life Audit Professionals – *Joe Gitto*
Estate and Tax Planning Committee

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

Northern Trust – *Tami Conetta*
Trust Law Committee

Date/Time	Committee / Event:	Set	# at Table	# perimeter chairs	Equipment
Wednesday	June 1, 2016				
3:00 pm – 6:00 pm	Registration Desk Hours				
7:00 pm – 9:30 pm	Executive Committee Dinner**	20	15		
Thursday	June 2, 2016				
6:30 am	Reptiles Run				
7:30 am – 5:00 pm	Registration Desk Hours				
8:00 am – 9:30 am	Guardianship, Power of Attorney & Advanced Directives	H/S	45	15	microphones podium
8:00 am – 9:30 am	Asset Protection	H/S	60	20	microphones, podium
8:30 am – 11:00 am	Executive Committee **	Conf	12	0	
9:30 am – 11:00 am	Development and Land Use	Conf	14	none	speakerphone
9:30 am – 11:00 am	Residential Real Estate & Industry Liaison Committee	H/S	40	20	microphones, podium, speakerphone
9:30 am – 11:30 am	Trust Law	H/S	80	60	microphones, podium
9:30 am – 11:30 am	Construction Law Institute	Conf	10		speakerphone
11:00 am – 12:30 pm	Sponsorship Committee	Conf	10	none	none
11:00 am – 12:30 pm	Digital Assets and Information Study Committee	H/S	40	10	
11:00 am – 12:30 pm	Construction Law	H/S	20	10	microphones, podium
11:30 am – 1:00 pm	Ad Hoc Same Sex Marriage Implication *	H/S	20	10	
11:30 am – 1:00 pm	Ad Hoc Study on Spendthrift Trust Issues Committee *	H/S	20	10	
11:30 am – 1:30 pm	Working Buffet Lunch	Pre-Registration and Ticket Required			
12:30 pm – 2:00 pm	Real Property Finance & Lending	H/S	40	20	microphones, podium, speaker phone
12:30 pm – 2:00 pm	Condominium and Planned Development	H/S	60	20	microphones, podium
12:30 pm – 2:00 pm	Member Communication and Information Technology	Conf	10	5	
1:00 pm – 2:00 pm	Title Issues & Standards	Conf	10		speakerphone
1:00 pm – 2:30 pm	Homestead Issues Study*	H/S	20	10	
2:00 pm – 4:00 pm	Real Property Problem Study	H/S	20	10	speakerphone
2:30 pm – 3:30 pm	Elective Share Review Committee *	conf	15		
2:30 pm – 4:00 pm	Probate & Trust Litigation	H/S	80	60	microphones, podium
2:30 pm – 4:00 pm	Landlord & Tenant	Conf	10		speakerphone
2:30 pm – 4:00 pm	Attorney Trust Officer	Conf	14	10	speakerphone
2:30 pm – 4:00 pm	Legislative Update	Conf	14	10	
3:00 pm – 4:00 pm	IRA, Insurance & Employee Benefits	H/S	30	15	microphones
3:30 pm – 5:00 pm	Ad Hoc Decanting*	Conf	10		
4:00 pm – 5:00 pm	At Large Members	rounds	80		microphone, podium/beer & wine
4:00 pm – 5:00 pm	ALTA Best Practices Task Force	conf	15		cancelled per A. O'Malley
4:00 pm – 5:00 pm	Fellows and Mentoring	H/S	20	10	
5:00 am – 6:00 pm	General Sponsor Reception **	special	50		beer, wine, light apps
7:00 pm – 9:00 pm	Welcome Reception	Pre-Registration and Ticket Required			

Moved
on 6/22
per H.
Payne

9:30 pm – 11:30 pm	Hospitality Suite				
Friday	June 3, 2016				
6:30 am	Reptiles Run				
7:30 am – 9:00 am	Continental Breakfast (GRAB AND GO)	Pre-Registration and Ticket Required			
8:00 am – 11:20 am	SEMINAR:TBD	class w/ riser	100		microphone at podium
11:30 am – 1:15 pm	Annual Membership Luncheon	Pre-Registration and Ticket Required			
1:30 pm – 2:30 pm	Estate & Trust Tax Planning	H/S	80	60	microphones, podium
1:30 pm – 3:00 pm	Real Estate Structures and Taxation	H/S	30	15	microphones, podium
1:30 pm – 3:00 pm	Real Property Litigation	H/S	30	10	speakerphone, microphones, podium
2:30 pm – 4:00 pm	Membership & Inclusion	H/S	25	5	
2:30 pm – 4:00 pm	Probate Law & Procedure	H/S	80	60	microphones, podium
2:30 pm – 4:00 pm	Commercial Real Estate	H/S	25	15	speakerphone
3:00 pm – 4:00 pm	Insurance & Surety	H/S	40	20	microphones, podium, speakerphone
3:00 pm – 4:00 pm	Ad Hoc Jurisdiction/Service Process*	Conf	15		
3:00 pm – 4:00 pm	Title Insurance & Title Insurance Liaison	H/S	45	15	speakerphone microphones podium
4:00 pm – 5:00 pm	Training Session for Committee Chairs				
5:00 pm – 6:00 pm	PAC	Rounds	100		microphones, podium
7:00 pm – 10:00 pm	Reception and Dinner	Pre-Registration and Ticket Required			
10:00 pm – 12:00 am	Hospitality Suite				
Saturday	June 4, 2016				
6:00 am	Reptiles Run				
8:00 am - 10:00 am	Spouse/Guest Breakfast	Pre-Registration and Ticket Required- Breakfast is			
8:00 am - 10:00 am	Real Property Law Division Roundtable Breakfast	rounds	100		microphones, podium
8:00 am - 10:00 am	Probate and Trust Law Division Roundtable Breakfast	rounds	140		microphones, podium
10:00 am – 1:30 pm	Executive Council Meeting and Lunch	class w/	250	50	two screens, podium,
7:00 pm – 9:30 pm	Dinner	Pre-Registration and Ticket Required			

*Participation in deliberations and voting is limited to committee members only

** Attendance by invitation only

CHAIR

Michael J. Gelfand
Gelfand & Arpe, P.A.
1555 Palm Beach Lakes Blvd., Ste. 1220
West Palm Beach, FL 33401-2329
(561) 655-6224
MJGelfand@gelfandarpe.com

CHAIR-ELECT

Deborah Packer Goodall
Goldman Felcoski & Stone P.A.
327 Plaza Real, Suite 230
Boca Raton, FL 33432-3944
(561) 395-0400
dgoodall@gfsestatelaw.com

DIRECTOR, PROBATE AND TRUST LAW DIVISION

Andrew M. O'Malley
Carey, O'Malley, Whitaker, et al.
712 S. Oregon Avenue
Tampa, FL 33606-2543
(813) 250-0577
aomalley@cowmpa.com

DIRECTOR, REAL PROPERTY LAW DIVISION

Debra L. Boje
Gunster
401 E. Jackson St., Ste. 2500
Tampa, FL 33602-5226
(813) 222-6614
dboje@gunster.com

SECRETARY

S. Katherine Frazier
Hill Ward Henderson
101 E. Kennedy Blvd., Ste. 3700
Tampa, FL 33602-5195
(813) 221-3900
skfrazier@hwhlaw.com

TREASURER

Robert S. Freedman
Carlton Fields Jordan Burt, P.A.
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, FL 33607
(813) 229-4149
rfreedman@cfiblaw.com

LEGISLATION CO-CHAIRS

Tae Kelley Bronner
Tae Kelley Bronner, PL
10006 Cross Creek Blvd., PMB 428
Tampa, FL 33647-2595
(813) 907-6643
tae@estatelaw.com

Steven H. Mezer
Becker & Poliakoff
1511 N. Westshore Blvd., Suite 1000
Tampa, FL 33607
(813) 527-3900
smezer@bplegal.com

DIRECTOR, AT-LARGE MEMBERS

Shane Kelley
The Kelley Law Firm, PL
3365 Galt Ocean Drive
Fort Lauderdale, FL 33308-7002
(954) 563-1400
shane@estatelaw.com

IMMEDIATE PAST CHAIR

Michael A. Dribin
Harper Meyer, et al.
201 S. Biscayne Blvd., Ste. 800
Miami, Florida 33131-4329
(305) 577-5415
mdribin@harpermeyer.com

PROGRAM ADMINISTRATOR

Mary Ann Obos
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5626
mobos@flabar.org

**REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION**



**THE
FLORIDA
BAR**

www.RPPTL.org

November 19, 2015

*UPDATED*¹

VIA EMAIL ONLY President@flabar.org

Ramón A. Abadin, Esq.

Sedgwick, LLP

**Re: Florida Realtor-Attorney Joint Committee
/2015 Appointments**

Dear Mr. Abadin:

On behalf of the Real Property Probate and Trust Law Section of The Florida Bar, thank you for continuing the tradition of relying upon the RPPTL Section's recommendations concerning the Board of Governors' appointments of Florida Bar members to the Florida Realtor-Attorney Joint Committee.

The Joint Committee, and in turn the Bar's appointments to the Joint Committee, are important to practitioners directly involved in residential real estate practice, and to the substantial portion of the Bar whose clients have real property issues, residential and non-residential. The Joint Committee's mission is not only to ensure cordial relations between attorneys and real estate professionals, but also to promulgate and revise the "standard" contract forms which are a vital part of real estate transactions in Florida, and real estate attorneys' practices.

To facilitate this vital effort, the RPPTL Section continues to provide support to the Joint Committee in many ways. The RPPTL Section has made available the Joint Committee's recent revisions to the "standard" contract forms as a service members in PDF writable format. The forms can be accessed at www.RPPTL.com

¹ The Bar provided an additional application yesterday. The RPPTL Section appreciates the opportunity to comment on all applicants and the notification of the addition; thus, this letter is updated to include commentary and recommendations resulting from the additional application.

As reflected in part by the production of the new contract documents, over the years the attorney members of the Joint Committee, including those seeking re-appointment, have dedicated an extraordinary amount of time, energy and effort serving the Bar, the RPPTL Section, and the general public. The RPPTL Section commends the appointees for their dedication.

A significant continuing concern of the RPPTL Section is not just a Bar appointee's residential real estate expertise, hand's on involvement, expertise in drafting, understanding legal nuances, and communicating issues to attorneys, but also the appointee's ability to devote the time, energy, and the expense necessary to attend meetings and actively participate in the business of the Joint Committee. Many exclaimed surprise as to the costs of participation after appointment, and have either resigned, or proverbially "dropped out of sight." This has placed an inordinate burden on the remaining members.

Understanding that the Board of Governors will be appointing only one person from each of Florida's appellate districts and one person at-large, the RPPTL Section's recommendations and counsel are organized by district, as follows.

First Appellate District.

Denise L. Hutson of Gainesville has been a member of the Bar since 1994, is a member of the RPPTL Section, and has an active residential real estate practice. She was a former member of the Joint Committee and participated extensively in past revisions of the FR/BAR contracts, as well as lecturing about the contract to real estate licensees and other attorneys. Ms. Hutson's prior diligent service on the Joint Committee, experience, enthusiasm, willingness to serve the Bar and respect for the time commitment involved merits her selection.

The RPPTL Section recommends Denise L. Hutson for the 1st District seat.

Second Appellate District.

Julie A. Horstkamp of Venice has been a member of the Bar since 1998, has been Board Certified in Real Estate Law for over a decade, and is an active member of the RPPTL Section. Julie is an experienced real estate attorney in the area of residential real estate contracting. She is an incumbent on the Joint Committee seeking re-appointment, a member of the FR/BAR Contract sub-committee.

Julie Horstkamp's extensive real estate practice includes significant residential transactional work, both as an attorney and as a paralegal before earning her Juris Doctor. She has worked diligently on behalf of the Bar and the Section to see that the Contract documents are the best they can be and that the Bar approved forms are used throughout the state. Additionally, she is very involved in local and state Realtor and Bar associations to educate and champion the use of the FR/BAR Contracts. Because of Ms. Horstkamp's experience, enthusiasm and willingness to serve the Bar in this capacity, we believe she is a highly qualified applicant.

The RPPTL Section recommends Julie A. Horstkamp for the 2nd District seat.

Third Appellate District.

James A. Marx of Miami, the Joint Committee's vice-chair, and slated to be chair, has been a member of the Bar since 1989, is Board Certified in Real Estate Law, and is an active member of the RPPTL Section. An experienced residential real estate practitioner, his background reflects unique credentials, including critically important authorship for residential real estate practitioners, a comparison of the 2010 FR/BAR Contracts with the Florida Realtors' independent residential contract with detail and analysis, *ActionLine*, Winter 2012, and a comparison of the 2014 Contract. *ActionLine*, Winter 2014. He has volunteered to lecture, educating those who use the contract, including non-lawyers, understanding what is at the heart of the Joint Committee's purpose.

Mr. Marx understands the time commitment, having served in the past on The Florida Bar CLE Committee and as vice-chair of the Joint Committee. Mr. Marx's experience, enthusiasm and willingness to serve the Bar in this capacity, reinforce our recommendation that he is a highly qualified applicant meriting reappointment.

Sherri R. Heller of North Miami has been a member of the Bar since 1985 and is a member of the RPPTL Section, although not a member of any RPPTL Section committees. Ms. Heller's application indicates that through her wholly-owned title agency she is involved in residential real estate transactions, that in 1991 she was president of the Miami Beach Bar Association, and that she regularly gives seminars to realtors. Especially as Ms. Heller seeks a Bar appointment, not a Realtor appointment, we would encourage her to consider current involvement Bar educational efforts, including through publication and committees, especially with the RPPTL Section when meeting in her area, and also to consider Board Certification in Real Estate Law.

The RPPTL Section recommends James A. Marx for the 3rd District seat.

Fourth Appellate District.

Guy Rabideau of Palm Beach is Board Certified in Real Estate Law and has been an active and well respected member of the RPPTL Section since 1991. A Bar member since 1989, Guy has an active transactional real estate practice, and is highly regarded, handling many of the complex issues that arise with residential contracts in the Town of Palm Beach and the City of West Palm Beach. He is a member of the Attorneys' Real Estate Council of Palm Beach County, involved with local bar and real estate groups and has presented educational programs on the FR/BAR Contract. He has extensive experience with the contract forms and expresses the desire to continue as a member of the Joint Committee to ensure the use of the Bar approved forms as they benefit the buyers and sellers.

Michelle Jaye Gomez of Tamarac has been a member of the Bar since 2000 and is a member of the RPPTL Section. Ms. Gomez is a member of The Florida Bar's Animal Law Committee and her application reflects that she is Chair of The Florida Bar Grievance Committee. She has also has attended some committee Section meetings. We would encourage

Ms. Gomez to extend her efforts to become involved in local and state residential real estate practices and further involved in the RPPTL Section.

The RPPTL Section recommends Guy Rabideau for the 4th District seat.

Fifth Appellate District.

Frederick W. Jones of Winter Park, a member of the Bar since 1974, is Board Certified in Real Estate Law. Mr. Jones's residential real estate practice includes both transactional matters and real estate and contract litigation. Fred, a very active member of the Joint Committee, has served to address the time consuming 2015 FR/BAR Contract revisions, as well as addressing many earlier contract revisions and other Joint Committee projects while educating attorneys about the FR/BAR Contract.

As the former Chair of the RPPTL's Section's Residential Real Estate & Industry Liaison Committee, Fred has worked to facilitate better relations between the professions and was responsible for taking the 2013 and 2015 contract revisions through the approval process with the RPPTL Executive Council. Mr. Jones has also worked diligently with Bar staff over the last several years to publish the FR/BAR Contract documents on the Bar website for use by all attorney members of the Bar. Due to his continued service to the Bar and the Joint Committee over the years, he brings not only a substantial historical perspective but also brings accumulated knowledge and understanding of the workings of the Joint Committee which we feel are necessary to insure continuity and success of the Bar's mission. Mr. Jones's vast experience, enthusiasm and willingness to serve the Bar leads to our conclusion that he is a highly qualified applicant.

The RPPTL Section recommends Frederick W. Jones for the 5th District seat.

Member At Large.

Jamie Billotte Moses of Orlando, has been a member of the Bar since 1994, and is Board Certified in Appellate Practice Law. Ms. Moses' real property practice is understood to be primarily litigation oriented, including appellate work and professional malpractice. Ms. Moses has an impressive resume reflecting and exemplary commitment to the profession and The Florida Bar.

Ms. Moses is a member of the Appellate Practice Section and involved in many other areas of the Bar. Although she is not involved in the RPPTL Section or its residential real property oriented committee, her experience defending real estate professionals brings a beneficial perspective to the Committee. Acknowledging Ms. Moses' knowledge, enthusiasm and expertise, we believe her to be a highly qualified applicant for reappointment.

The RPPTL Section recommends Jamie Billotte Moses for the Member At Large seat.

Conclusion.

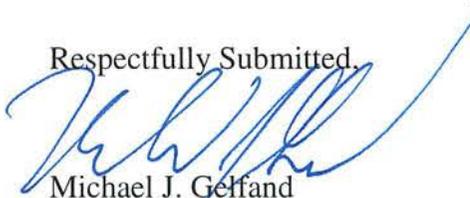
In summary, the RPPTL Section's recommendations to the Board of Governors for appointments of Florida Bar members to the Florida Realtor-Attorney Joint Committee in 2015 are as follows:

First Appellate District, Denise L. Hutson (Gainesville);
Second Appellate District, Julie A. Horstkamp (Venice);
Third Appellate District, James A. Marx (Miami);
Fourth Appellate District, Guy Rabideau (Palm Beach);
Fifth Appellate District, Frederick W. Jones (Winter Park); and,
Member At Large, Jamie B. Moses (Orlando)

These recommendations are not based upon any candidate being the sole applicant. If a District did not have a qualified applicant, the Section would not make a recommendation.

If the RPPTL Section can be of any further assistance to you, please do not hesitate to contact either myself or Real Property Division Director, Andrew M. O'Malley.

Respectfully Submitted,



Michael J. Gelfand
Section Chair

cc: Ramon A. Abadin via email: ramon.abadin@sedgwicklaw.com
Terry Hill, Esq. via email: THill@flabar.org
Ms. Mary Ann Obos via email: mobos@flabar.org
RPPTL Executive Committee
Salome Zikakis via email szikakis@yahoo.com

F:\WP\RPPTL\151117 FR BAR Jt Comm Recomm.docx

CHAIR

Michael J. Gelfand
Gelfand & Arpe, P.A.
1555 Palm Beach Lakes Blvd., Ste. 1220
West Palm Beach, FL 33401-2329
(561) 655-6224
MJGelfand@gelfandarpe.com

CHAIR-ELECT

Deborah Packer Goodall
Goldman Felcoski & Stone P.A.
327 Plaza Real, Suite 230
Boca Raton, FL 33432-3944
(561) 395-0400
dgoodall@gfsestatelaw.com

DIRECTOR, PROBATE AND TRUST LAW DIVISION

Andrew M. O'Malley
Carey, O'Malley, Whitaker, et al.
712 S. Oregon Avenue
Tampa, FL 33606-2543
(813) 250-0577
aomalley@cowmpa.com

DIRECTOR, REAL PROPERTY LAW DIVISION

Debra L. Boje
Gunster
401 E. Jackson St., Ste. 2500
Tampa, FL 33602-5226
(813) 222-6614
dboje@gunster.com

SECRETARY

S. Katherine Frazier
Hill Ward Henderson
101 E. Kennedy Blvd., Ste. 3700
Tampa, FL 33602-5195
(813) 221-3900
skfrazier@hwhlaw.com

TREASURER

Robert S. Freedman
Carlton Fields Jordan Burt, P.A.
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, FL 33607
(813) 229-4149
rfreedman@cfjblaw.com

LEGISLATION CO-CHAIRS

Tae Kelley Bronner
Tae Kelley Bronner, PL
10006 Cross Creek Blvd., PMB 428
Tampa, FL 33647-2595
(813) 907-6643
tae@estatelaw.com

Steven H. Mezer
Becker & Poliakoff
1511 N. Westshore Blvd., Suite 1000
Tampa, FL 33607
(813) 527-3900
smezer@bplegal.com

DIRECTOR, AT-LARGE MEMBERS

Shane Kelley
The Kelley Law Firm, PL
3365 Galt Ocean Drive
Fort Lauderdale, FL 33308-7002
(954) 563-1400
shane@estatelaw.com

IMMEDIATE PAST CHAIR

Michael A. Dribin
Harper Meyer, et al.
201 S. Biscayne Blvd., Ste. 800
Miami, Florida 33131-4329
(305) 577-5415
mdribin@harpermeyer.com

PROGRAM ADMINISTRATOR

Mary Ann Obos
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5626
mobos@flabar.org

**REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION**



**THE
FLORIDA
BAR**

www.RPPTL.org

February 11, 2016

VIA EMAIL ONLY wschifino@burr.com

William J. Schifino, Esq.

Re: Appointments

Dear Mr. Schifino:

On behalf of the Real Property, Probate and Trust Law Section of The Florida Bar, thank you for continuing the tradition of The Florida Bar relying upon the RPPTL Section's recommendations concerning the appointment of members to The Florida Bar Probate Rules Committee. The cooperation between the RPPTL Section and the Bar helps to ensure the protection of individuals rights and property while furthering the efficient operation of the courts in the realm of probate, trust and guardianship law in the State of Florida. The highest and best way to foster this connection is for members of the Probate Rules Committee to be active members of the RPPTL Section, participating in the Section's substantive law committees.

This year there are several members of the Probate Rules Committee whose term expires. Through the encouragement of the leadership of the Section, the following individuals have applied for appointment, or if stated, reappointment, to the Probate Rules Committee:

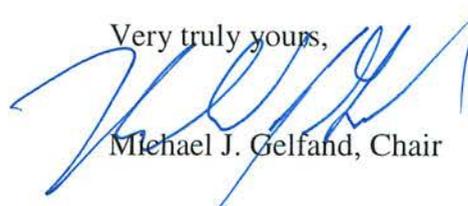
- **Amy B. Beller:** Admitted to the Florida Bar in 1998; graduated from the Hofstra University School of Law in 1992; practices in Palm Beach; Board Certified in Wills, Trusts and Estates; admitted also to the New York Bar. She is Co-Chair of the Palm Beach County Bar's Probate and Guardianship Law Committee.
- **Keith Brian Braun:** Admitted to the Florida Bar 1993; graduated from the University of Pennsylvania Law School in 1984; practices in Palm Beach Gardens; Board Certified in Wills, Trusts and Estates; admitted also to the Michigan Bar. Keith has been published repeatedly in the Section's ActionLine practice publication.
- **Nicklaus J. Curley:** Admitted to the Bar 2010; graduate of the Stetson University College of Law; practices in Palm Beach County.

- **Jamison Everett:** Admitted to the Bar 2010; graduate of the University of Mississippi School of Law; practices in West Palm Beach.
- **Cady L. Huss:** Admitted to the Bar 2011; graduate of The Florida State University College of Law; practices in Hillsborough County.
- **Michael R. Kangas:** Admitted to the Bar 2008; graduate of the Stetson University College of Law; practices in Hillsborough.
- **Theodore Stanley Kypreos:** Admitted to the Bar 2002; graduate of the University of Florida, Fredric G. Levin College of Law; practices in West Palm Beach, and currently the President of the Palm Beach County Bar Association.
- **Robert Logan Lancaster:** Admitted to the Bar 2001; graduate of the University of Florida, Fredric G. Levin College of Law; practices in Naples.
- **Sean M. Lebowitz (reappointment):** Admitted to the Bar 2007; graduate of the Stetson University College of Law; practices in Palm Beach County. Sean is a Fellow of the RPPTL Section.
- **Marsha G. Madorsky (reappointment):** Admitted to the Bar 1975; graduate of the University of Florida, Fredric G. Levin College of Law; practices in Miami-Dade County; Board Certified in Tax Law.
- **Robert Lee McElroy, IV:** Admitted to the Bar 2005; graduate of the University of Tennessee College of Law; practices in Palm Beach Gardens.
- **Holly O'Neil (reappointment):** Admitted to the Bar 1999; graduate of The Catholic University of America, Columbus School of Law; practices in Palm Beach County; Board Certified in Elder Law and Wills, Trusts and Estates.
- **Cristina Papanikos (reappointment):** Admitted to the Bar 2004; graduate of the University of Florida, Fredric G. Levin College of Law; practices in Miami-Dade.
- **Jason VanLenten:** Admitted to the Bar 2009; graduated from Rutgers School of Law in 2002; practices in Jacksonville; admitted also to the New Jersey and New York Bars.

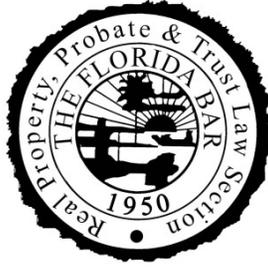
The RPPTL Section respectfully requests that the above individuals be appointed or reappointed, as the case may be, to the Probate Rules Committee. In addition, the RPPTL Section requests that you appoint Michael Travis Hayes, as Chair of the Committee, and Jonathan Galler and Jon Scuderi as Vice Chairs of the Committee.

Thank you in advance for your continued support of the RPPTL Section. We look forward to you serving as President of The Florida Bar. Please do not hesitate to contact me if you have any questions or comments.

Very truly yours,



Michael J. Gelfand, Chair



RPPTL Financial Summary from Separate Budgets
2015 – 2016 [July 1 – December 31¹]
YEAR TO DATE REPORT

General Budget

YTD

Revenue:	\$ 987,638
Expenses:	\$ 852,123
Net:	\$ 135,515

Trust Officer Conference

Revenue:	\$ 332,740
Expenses:	\$ 198,358
Net:	\$ 134,382

Legislative Update

Revenue:	\$ 74,206
Expenses:	\$ 56,780
Net:	\$ 17,426

Convention

Revenue:	\$ 0
Expenses:	\$ 27
Net:	\$ (27)

Roll-up Summary (Total)

Revenue:	\$ 1,394,584
Expenses:	\$ 1,107,288
Net Operations:	\$ 287,296

Beginning Fund Balance:	\$ 1,066,946
Current Fund Balance (YTD):	\$ 1,354,242
Projected June 2016 Fund Balance	\$ 961,141

¹ This report is based on the tentative unaudited detail statement of operations dated 1/31/16 (prepared on 2/10/16).

Date	Course Title	Course No.	Program Chair
February 19-20, 2016	Advanced Real Estate and Certification Review Course 2016	2032	Jennifer Tobin
March 4, 2016	2016 Litigation and Trust Symposium	2036	Angela Adams, Jon Scuderi
March 11, 2016	Guardianships in Florida: Adventures in Wonderland	2109	Darby Jones
March 10-12, 2016	9th Annual Construction Law Institute	2039	Reese Henderson
March 10-12, 2016	2016 Advanced Construction Law Certification Review Course	2040	Deborah Mastin, Bryan Rendzio
March 30, 2016	Show me the Money: A Review of Attorney's Fee - AUDIOCAST	2200	Jonathan Galler, Matthew Triggs
April 8, 2016	2016 Wills, Trusts and Estates Certification Review Course and Advanced Practice Update	2044	Jeffrey Goethe
April 8, 2016	The Ins and Outs of Community Association Law 2016	2048	Bill Sklar
June 4, 2016	Convention CLE	2057	Laura Sundberg
June 23-25, 2016	ATO	2114	Laura Sundberg
July 29, 2016	Legislative Update	TBA	Barry Spivey, Stacy Kalmanson

CONTRACT ADDENDUM

This is an addendum made this _____ day of February 2016 to clarify and confirm the original intent between the REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR, hereinafter referred to as the "SECTION" and Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., hereinafter referred to as "LEGISLATIVE CONSULTANT".

WITNESSTH:

THAT WHEREAS, the LEGISLATIVE CONSULTANT is required to incur expenses for travel and attendance at meetings and other incidental expenses by terms of the AGREEMENT between the parties, and it has been the long-standing policy of the SECTION to reimburse LEGISLATIVE CONSULTANT for said expenses incurred pursuant to the AGREEMENT, and

WHEREAS, the parties agree that the intent of the parties to reimburse said expenses and the parties desire to clarify their original intent with regard thereto by amending the provisions of paragraph 5 of said AGREEMENT.

NOW THEREFORE, the SECTION and the LEGISLATIVE CONSULTANT do hereby agree that the provisions of paragraph 5 of the AGREEMENT be revised and clarified to read as follows to reflect their original intent:

5. The SECTION will pay the LEGISLATIVE CONSULTANT for the provision of services as set forth here in a fee of One Hundred and Twenty Thousand and 00/100 DOLLARS (\$120,000) to paid in the following manner: \$30,000 payable on July 1, 2015, \$30,000 payable on October 1, 2015, \$30,000 payable on January 1, 2016, and \$30,000 payable on March 1, 2016, plus out-of-pocket expenses for attendance at in-state Executive Council meetings and certain incidental expenses approved by the Section. Transportation expenses shall be paid at the minimum rates approved by The Florida Bar for mileage and at the lowest coach class airfare available and lodging at the lowest negotiated group rates when attending Executive Council meetings.

WITNESS our hands and seal to be effective the day and year first written above to clarify the AGREEMENT between the parties dated July 1, 2015.

Witness

Michael J. Gelfand, Section Chair
Real Property, Probate & Trust Law Section
Florida Bar

Witness

Witness

John F. Harkness, Jr.
Executive Director
Florida Bar

Witness

Witness

Peter M. Dunbar
Legislative Consultant
Dean, Mead, et al.

Witness

Witness

Martha J. Edenfield
Legislative Consultant
Dean, Mead, et al.

Witness

Witness

Cari L. Roth
Legislative Consultant
Dean, Mead, et al.

Witness

Witness

Brittany Finkbeiner
Legislative Consultant
Dean, Mead, et al.

Witness

CHAIR

Michael J. Gelfand
Gelfand & Arpe, P.A.
1555 Palm Beach Lakes Blvd., Ste. 1220
West Palm Beach, FL 33401-2329
(561) 655-6224
MJGelfand@gelfandarpe.com

CHAIR-ELECT

Deborah Packer Goodall
Goldman Felcoski & Stone P.A.
327 Plaza Real, Suite 230
Boca Raton, FL 33432-3944
(561) 395-0400
dgoodall@qfsestatelaw.com

DIRECTOR, PROBATE AND TRUST LAW DIVISION

Andrew M. O'Malley
Carey, O'Malley, Whitaker, et al.
712 S. Oregon Avenue
Tampa, FL 33606-2543
(813) 250-0577
aomalley@cowmpa.com

DIRECTOR, REAL PROPERTY LAW DIVISION

Debra L. Boje
Gunster
401 E. Jackson St., Ste. 2500
Tampa, FL 33602-5226
(813) 222-6614
dboje@gunster.com

SECRETARY

S. Katherine Frazier
Hill Ward Henderson
101 E. Kennedy Blvd., Ste. 3700
Tampa, FL 33602-5195
(813) 221-3900
skfrazier@hwhlaw.com

TREASURER

Robert S. Freedman
Carlton Fields Jordan Burt, P.A.
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, FL 33607
(813) 229-4149
rfreedman@cfjblaw.com

LEGISLATION CO-CHAIRS

Tae Kelley Bronner
Tae Kelley Bronner, PL
10006 Cross Creek Blvd., PMB 428
Tampa, FL 33647-2595
(813) 907-6643
tae@estatelaw.com

Steven H. Mezer
Becker & Poliakoff
1511 N. Westshore Blvd., Suite 1000
Tampa, FL 33607
(813) 527-3900
smezer@bplegal.com

DIRECTOR, AT-LARGE MEMBERS

Shane Kelley
The Kelley Law Firm, PL
3365 Galt Ocean Drive
Fort Lauderdale, FL 33308-7002
(954) 563-1400
shane@estatelaw.com

IMMEDIATE PAST CHAIR

Michael A. Dribin
Harper Meyer, et al.
201 S. Biscayne Blvd., Ste. 800
Miami, Florida 33131-4329
(305) 577-5415
mdribin@harpermeyer.com

PROGRAM ADMINISTRATOR

Mary Ann Obos
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5626
mobos@flabar.org

**REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION**



**THE
FLORIDA
BAR**

www.RPPTL.org

January 26, 2016

VIA EMAIL ONLY erinc@hgslaw.com

Erin J. Tilton, Esq.
Hopping Green & Sams, P.A.

**Re: RPPTL Section's Annual Scholarship for The
Florida Bar's Wm Reese Smith Leadership Academy for
2016.**

Dear Ms. Tilton

CONGRATULATIONS!! The Real Property, Probate & Trust Law Section is pleased to inform you that you have been selected to receive the RPPTL Section's Annual Scholarship for The Florida Bar's Wm Reese Smith Leadership Academy for 2016. As the Scholarship nominee, in the event you are chosen as an Academy Fellow by The Florida Bar, the RPPTL Section will reimburse you up to \$3,500.00 for your out-of-pocket travel and hotel expenses incurred in attending required Leadership Academy functions.

As you aware, being selected as the RPPTL Section Scholarship nominee is only the first step in the process! You must have submitted your completed application to The Florida Bar Wm. Reece Smith, Jr. Leadership Academy for consideration by The Florida Bar on or before the deadline of January 15, 2016. Neither the RPPTL Section nor its Leadership Academy Committee has any influence or control over the selection of Leadership Academy Fellows by The Florida Bar. We will, however, notify The Florida Bar of our selection of you as the RPPTL Scholarship nominee!

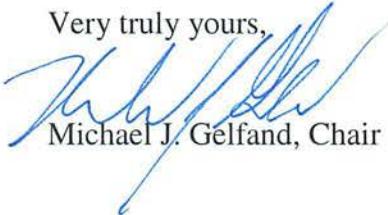
Please remember that if you are chosen as a Leadership Academy Fellow by The Florida Bar, you must agree to remain actively involved in the RPPTL Section after the conclusion of the Leadership Academy in return for the scholarship. In addition, you may be asked to provide a written testimonial regarding your involvement as a Leadership Academy Fellow as well as provide other opportunities to encourage involvement in The Florida Bar, the RPPTL Section and the Leadership Academy itself.

Erin J. Tilton, Esq.
January 26, 2016
Page 2 of 2

The RPPTL Section believes that you have the qualities and ability to be a valuable member and a future leader of our Section. We look forward to your continued involvement in the work of the Section committees.

I look forward to seeing you at our future Section meetings, including in Tampa next month, and in Orlando in June. When there, please be certain to meet the Section's Leadership Academy Chair, Kristopher Fernandez and members of that Committee who worked hard and diligently to suggest RPPTL Scholarship nominees.

Very truly yours,



Michael J. Gelfand, Chair

cc: Ms. Mary Ann Obos via email: mobos@flabar.org
Deborah Packer Goodall, Esq. via email: dgoodall@gfsestatelaw.com
Andrew O'Malley, Esq. via email: aomalley@cowmpa.com
Ramon A. Abadin, Esq. via email: ramon.abadin@sedgwicklaw.com
Mr. Michael Jerome Higer via email: mhiger@bergersingerman.com
Debra Boje, Esq. via email: dboje@gunster.com
Tae Kelley Bronner, Esq. via email: tae@estatelaw.com
Kristopher E. Fernandez, Esq. via email: kfernandez@kfernandezlaw.com
William J Schifino, Esq. via email: wschifino@burr.com

FAWP RPPTL160122tilton.docx

CHAIR

Michael J. Gelfand
Gelfand & Arpe, P.A.
1555 Palm Beach Lakes Blvd., Ste. 1220
West Palm Beach, FL 33401-2329
(561) 655-6224
MJGelfand@gelfandarpe.com

**REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION**



**THE
FLORIDA
BAR**

www.RPPTL.org

January 26, 2016

CHAIR-ELECT

Deborah Packer Goodall
Goldman Felcoski & Stone P.A.
327 Plaza Real, Suite 230
Boca Raton, FL 33432-3944
(561) 395-0400
dgoodall@gfsestatelaw.com

**DIRECTOR, PROBATE AND
TRUST LAW DIVISION**

Andrew M. O'Malley
Carey, O'Malley, Whitaker, et al.
712 S. Oregon Avenue
Tampa, FL 33606-2543
(813) 250-0577
aomalley@cowmpa.com

**DIRECTOR, REAL PROPERTY
LAW DIVISION**

Debra L. Boje
Gunster
401 E. Jackson St., Ste. 2500
Tampa, FL 33602-5226
(813) 222-6614
dboje@gunster.com

SECRETARY

S. Katherine Frazier
Hill Ward Henderson
101 E. Kennedy Blvd., Ste. 3700
Tampa, FL 33602-5195
(813) 221-3900
skfrazier@hwhlaw.com

TREASURER

Robert S. Freedman
Carlton Fields Jordan Burt, P.A.
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, FL 33607
(813) 229-4149
rfreedman@cfjblaw.com

LEGISLATION CO-CHAIRS

Tae Kelley Bronner
Tae Kelley Bronner, PL
10006 Cross Creek Blvd., PMB 428
Tampa, FL 33647-2595
(813) 907-6643
tae@estatelaw.com

Steven H. Mezer
Becker & Poliakoff
1511 N. Westshore Blvd., Suite 1000
Tampa, FL 33607
(813) 527-3900
smezer@bplegal.com

DIRECTOR, AT-LARGE MEMBERS

Shane Kelley
The Kelley Law Firm, PL
3365 Galt Ocean Drive
Fort Lauderdale, FL 33308-7002
(954) 563-1400
shane@estatelaw.com

IMMEDIATE PAST CHAIR

Michael A. Dribin
Harper Meyer, et al.
201 S. Biscayne Blvd., Ste. 800
Miami, Florida 33131-4329
(305) 577-5415
mdribin@harpermeyer.com

PROGRAM ADMINISTRATOR

Mary Ann Obos
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5626
mobos@flabar.org

VIA EMAIL bduke@lawfla.com

Brian Duke, Esq.

**Re: Amicus Request
/Morris v. Morris, Case No.: 1D15-364 & 1D15-365
(Fla. DCA, December 18, 2015)**

Dear Mr. Duke:

Thank you for your e-mail requesting the Real Property Probate and Trust Law Section to file an amicus brief in the Morris v. Morris appeal. You sought the Section's efforts to obtain a rehearing and to argue for affirmance of the trial court's decision.

To effectively evaluate potential Section positions, an amicus request is to be first reviewed and recommended by a substantive committee or a task force created for that purpose. Your request was referred to the committees in both the Section's Real Property Division and in the Section's Probate and Trust Division.

After review and deliberation no Section committee approved a request for amicus consideration. Thus, the Section is not seeking amicus status in the Morris matter.

The Section is honored by your request. A request to join in briefing is among the highest forms of recognition that a legal organization and its members could seek.

As an aside, if your practice regularly involves either real property, probate or trust law issues, you are strongly urged to join the Section. An application is attached and membership information is available at www.rpptl.org.

Very truly yours,

Michael J. Gelfand, Chair

cc: Ms. Mary Ann Obos via email: mobos@flabar.org
Deborah Packer Goodall, Esq. via email: dgoodall@gfsestatelaw.com
Andrew O'Malley, Esq. via email: aomalley@cowmpa.com
Debra Boje, Esq. via email: dboje@gunster.com
Robert Goldman, Esq. via email: rgoldman@gfsestatelaw.com

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Art Menor, Chair, Real Property Problems Study Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date February 27, 2016)

Address Shutts & Bowen, LLP, CityPlace Tower, 525 Okeechobee Blvd., Suite 1100, West Palm Beach, Florida 33401
Telephone: (561) 650-8510

Position Type Chair of the Real Property Problems Study Committee, RPPTL Section, The Florida Bar
(Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

Steven H. Mezer, Esquire, Becker & Polikoff, Tower Place, 1511 N. Westshore Blvd., Suite 1000, Tampa, Florida 33607 Telephone: (813)527-3900

Robert S. Swaine, Swaine & Harris, PA, 425 South Commerce Ave., Sebring, FL 33870, Telephone 863-385-1549

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

Meetings with Legislators/staff _____
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

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

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

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

Proposed Wording of Position for Official Publication:

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

Reasons For Proposed Advocacy:

To provide certainty as to the validity of a termination of a notice of commencement without having to cease or complete work on the entire project as required under current law. Since current law does not define "cessation or completion of work" there is always uncertainty whether a filed notice of termination effective even if a project or job is "shut down." Existing law also fails to provide a time period before construction may be recommenced. Many Florida lawyers think the owner must wait 30 days. Where new financing is desired to pay lienors or to complete an unfinished construction project, making sure that the new mortgage has priority over liens for future work is problematic and discourages, to some extent, the ability to obtain it. The

1 A bill to be entitled

2 An act relating to the safe resetting of priority, in part, between lienors and a mortgage or
3 deed that is given by the owner during the construction of improvements; amending s.
4 713.132(3), F.S.; and providing for an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Subsection (3) of section 713.132, Florida Statutes, is amended to read:

9 713.132. Notice of termination.—

10 (3) An owner may ~~not~~ record a notice of termination at any time except after
11 completion of construction, or after whether or not construction ceases before completion.
12 However, if the notice of termination is recorded before completion of construction, then it may
13 be recorded only if the Contractor and all lienors giving notice have been paid in full or pro rata
14 in accordance with s. 713.06(4) for all labor, services or materials furnished through the effective
15 date of the notice of termination as provided in s.713.132(4). If an owner or a contractor, by
16 fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of
17 termination or any accompanying affidavit, the owner and the contractor, or either of them, as
18 the case may be, is liable to any lienor who suffers damages as a result of the filing of the
19 fraudulent notice of termination; and any such lienor has a right of action for damages
20 occasioned thereby.

21
22 Section 2. This act shall take effect upon becoming a law.

RPPTL White Paper

Amendments to s. 713.132 F.S. – The “Stop-Start” Problem

I. SUMMARY

This proposal is an amendment to section 713.132(3) of the Florida Statutes to allow for the termination of a notice of commencement in cases where construction is ongoing without the requirement that all construction cease before recommencement and eventual completion of the project as under current law. Since liens may relate back to an existing notice of commencement, terminating it is required by most lenders making mortgages securing construction financing, including refinancing or modifying existing loans, and by most buyers taking title to the land during the course of construction. Having to stop work in order to reset the priority of liens is an unnecessary step that entails delay, expense, and uncertainty without any offsetting benefit to the owner or potential lienors.

By eliminating the unnecessary step of shutting down the project, with the attendant factual uncertainty as to whether all work had stopped, the lender can safely secure its loan, and the buyer can purchase the land by making sure the notice of commencement has been terminated. The owner will not have to pay for the delay of shutting down the project. Lienors would benefit from an infusion of new money coming into the project, along with the prospect of ensuring repayment on future work due to the lienor’s ability to offer better loan terms to the owner. Finally, the amendment may decrease transactional costs by streamlining the process of closing the new financing or the conveyance while the project is ongoing.

Under this amendment the owner remains obligated to pay in full or pro rata all contractors and lienors who have given notice to the owner for all work done to the date of the notice of termination in accordance with sec. 713.06(4). Further, nothing in the amendment changes the right of lienors to file liens for unpaid work for a period of up to 30 days after the notice of commencement is terminated.

The redraft of this statute has no fiscal impact on state funds.

II. CURRENT SITUATION

Under current law, an owner may file a notice of commencement in order to give notice to his general contractor’s subcontractors and suppliers. If so, then the owner can ensure the general contractor is making payment to his subcontractors and suppliers. If not, then the unpaid subcontractor may become a lienor by filing a claim of lien against the land. In that case, the lien relates back to the filing of the notice of commencement.

To ensure the original mortgage lender has priority over the liens of contractors, the owner must file the notice of commencement after the filing of the mortgage. The lender furnishing construction financing thus may enjoy legal priority over the lienors.

If the owner finds the amount of financing is not sufficient to complete the work, or is able to find more favorable terms from another lender during the course of construction, a new mortgage or a modification of an existing mortgage may be beneficial to the owner and all the contractors. Assuring priority to the new or modified mortgage, however, is problematic under the current law. In order to reset the priority of liens of the subcontractors and suppliers, current sec. 713.132(3) requires that work must be complete. The statute provides:

(3) An owner may not record a notice of termination except after completion of construction, or after construction ceases before completion and all lienors have been paid in full or pro rata in accordance with s. 713.06(4).

In cases where construction is not complete (“mid-construction”), then the priority of liens cannot be reset until the work ‘ceases.’ This is problematic for a number of reasons. First, it is difficult to determine factually whether ‘work’ has actually stopped, as illustrated by the case of *Florida Wood Services, Inc., v. Osprey Links Joint Venture*, 720 So.2d 591 (Fla. 5th DCA 1998). In *Wood Services*, the concept of stopping work was given an expansive definition beyond the mere cessation of actual physical construction on the project site. The court found that as long as the general contractor continued to look for a replacement for the subcontractor who had left the project, work had not stopped so as to allow the owner to invoke the reset provisions of a similar statute, sec. 713.07(4).

Even if physical work stops on the actual construction site, it is not unusual for contracts to be negotiated, drawings amended, permits pulled, and off-site ‘work’ to continue off the construction site. The *Wood Services* case suggests that if off-site work does not cease, then the termination of the notice of commencement may not be effective. If that is true, then a new buyer or mortgagee whose interest is acquired mid-construction may be liable for all liens that would relate back to the terminated notice of commencement. This result might have a chilling effect on providing projects with new money or better terms of existing financing that might otherwise assure the completion of construction projects and the payment of the lienors themselves.

Second, even if work ceases, one question remains: Why does construction have to cease? Though required by current law, the statute’s legislative history is silent with

respect to its cessation of work requirement. Further, neither the statutory language nor case law indicates a comprehensive reason for such an imposition. In addition, the statute does not provide how long the work must be delayed before it can be recommenced presumably after the filing of a new mortgage, or modification of an existing mortgage, and the filing of a new notice of commencement. Perhaps sec. 713.132 (4) might have been intended to tell us as it provides that:

(4) A notice of termination is effective to terminate a notice of commencement at the later of 30 days after recording the notice of termination or the date state in the notice of termination as the date on which the notice of commencement is terminated.

Often subsection (4) has been thought by some to require that work cease for at least 30 days before it can recommence. A redacted email from a Florida real estate lawyer has been provided as an example of this common view. Notwithstanding the statute's ambiguity, presuming subsection (4) requires a 30 day cessation period for work, all the parties involved in the project are not well served by such a postponement. For instance, the owner may have lessees waiting anxiously for the delivery of tenant space in the new project. Likewise, contractors are anxious to earn their final payments in order to move on to other jobs that must be started or lost to other competitors. Additionally, contractors are often subject to penalties for delays in the completion of the project under their construction contract.

III. EFFECT OF PROPOSED CHANGES

By removing the cessation requirement from the notice of termination statute, the proposed changes eliminate ambiguities as to whether work has actually ceased, and, if so, how long work must be ceased prior to recommencement. In so doing, the problems for the owner and all contractors stemming from extending the time for completion are also eliminated. Finally, the mere filing of the notice of termination and payment in full of all work done up to the date of filing is all that is required to assure that priority may be reset, provided that the deed, new mortgage or modification of the existing mortgage is filed before the new notice of commencement. This simplified procedure will reduce the attendant costs of closing, and will reduce the risk to the closing attorneys who may be tasked with obtaining proof that the project is shut down pursuant to sec. 713.132(3). These cost savings will be passed along to those professionals engaged in the business of contracting, developing, and supplying work or materials to construction projects.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

There is likely no fiscal impact on state and local governments that will result from any of the above proposals.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal may have a substantial, cumulative and beneficial economic impact on home builders, title insurance underwriters, title agencies, construction contractors, tradespeople, construction material suppliers, construction bonding underwriters, construction bond agents, and other real estate practitioners in the state of Florida. By facilitating this interim lending, funds would be readily available, even in troubled projects, which may lessen the amount of liens that will be filed because lienors will be paid.

VI. CONSTITUTIONAL ISSUES

The proposed amendment does not implicate any constitutional issues. The 1988 Florida Constitution allows for the creation of mechanic's lien rights for contractors and subcontractors. Florida's first mechanic's lien statute was enacted in the 1930's and the existing sec. 713.07(4) traces its roots at least as far back as the enactment of Chapter 713 in 1963. The rewrite of this section balances all of the interest and rights that currently exist under Chapter 713, while making it more economically advantageous for the parties involved.

V. OTHER INTERESTED PARTIES

So far, this Amendment has involved various standing committees of the Executive Council of the Florida Bar's Real Property, Probate and Trust Law ("RPPTL") Section. Among these are the members of the Construction Law Committee which has participated in this effort giving valuable guidance and helpful suggestions.

ATTACHMENTS

Exhibit A – The proposed Amendment to existing s. 713.132(3).

Exhibit B – Existing s. 713.132

Exhibit C – *Florida Wood Services, Inc. v Osprey Links Joint Venture, etc. et. al.*, 720 So. 2d 591 (Fla. 5th DCA 1998).

Exhibit 'A'
To White Paper re Amendment to s. 713.132(3)
Proposed Amendment

1 A bill to be entitled

2 An act relating to the safe resetting of priority, in part, between lienors and a mortgage or
3 deed that is given by the owner during the construction of improvements; amending s.
4 713.132(3), F.S.; and providing for an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Subsection (3) of section 713.132, Florida Statutes, is amended to read:

9 713.132. Notice of termination.—

10 (3) An owner may ~~not~~ record a notice of termination at any time except after
11 completion of construction, or after whether or not construction ceases before completion.
12 However, if the notice of termination is recorded before completion of construction, then it may
13 be recorded only if the Contractor and all lienors giving notice have been paid in full or pro rata
14 in accordance with s. 713.06(4) for all labor, services or materials furnished through the effective
15 date of the notice of termination as provided in s.713.132(4). If an owner or a contractor, by
16 fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of
17 termination or any accompanying affidavit, the owner and the contractor, or either of them, as
18 the case may be, is liable to any lienor who suffers damages as a result of the filing of the
19 fraudulent notice of termination; and any such lienor has a right of action for damages
20 occasioned thereby.

21
22 Section 2. This act shall take effect upon becoming a law.

Exhibit ‘B’
To White Paper re Amendment to s. 713.132(3)

2015 Florida Statutes

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

- (a) The same information as the notice of commencement;
- (b) The recording office document book and page reference numbers and date of the notice of commencement;
- (c) A statement of the date as of which the notice of commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded;
- (d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies;
- (e) A statement that all lienors have been paid in full; and
- (f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(2) An owner has the right to rely on a contractor’s affidavit given under s. 713.06(3)(d), except with respect to lienors who have already given notice, in connection with the execution, swearing to, and recording of a notice of termination. However, the notice of termination must be accompanied by the contractor’s affidavit.

(3) An owner may not record a notice of termination except after completion of construction, or after construction ceases before completion and all lienors have been paid in full or pro rata in accordance with s. 713.06(4). If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, as the case may be, is liable to any lienor who suffers damages as a result of the filing of the fraudulent notice of termination; and any such lienor has a right of action for damages occasioned thereby.

(4) A notice of termination is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination or the date stated in the notice of termination as the date on which the notice of commencement is terminated, if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner.

History.—s. 7, ch. 90-109; s. 5, ch. 92-286; s. 3, ch. 97-219; s. 4, ch. 98-135; s. 7, ch. 2012-211.

Exhibit 'C'
To White Paper re Amendment to s. 713.132(3)

Florida Wood Services, Inc., v. Osprey Links Joint Venture

590 So.2d 591 (Fla. 5th DCA 1998)

720 So.2d 591, 23 Fla. L. Weekly D2330
(Cite as: 720 So.2d 591)

H

District Court of Appeal of Florida,
Fifth District.
FLORIDA WOOD SERVICES, INC., a Florida
Corporation, Appellant,
v.
OSPREY LINKS JOINT VENTURE, etc., et al.,
Appellees.

Nos. 97-2480, 97-2503.
Oct. 16, 1998.
Rehearing Denied Nov. 18, 1998.

Materialman, which had provided lumber and hardware used by subcontractor which defaulted on apartment complex project, sought to foreclose its lien. The Circuit Court, Orange County, John H. Adams, Sr., J., granted owner's motion to discharge claim of lien. Materialman appealed. The District Court of Appeal, Peterson, J., held that: (1) owner did not have common identity with general contractor and was not in direct privity with subcontractor; (2) owner could not invoke notice of partial recommencement procedure; and (3) whether materialman's sworn statement of account was invalid depended on whether owner was prejudiced.

Orders partially vacated; remanded.

West Headnotes

[1] Mechanics' Liens 257 ↪99.1

257 Mechanics' Liens
257II Right to Lien
257II(E) Subcontractors, and Contractors'
Workers and Materialmen
257k99.1 k. Contract or Consent of
Owner. Most Cited Cases

Owner of property did not have common identity with general contractor, and thus was not in direct privity with subcontractor for purposes of determining whether owner could be required to

pay materialman's lien, although owner claimed that it could not be required to pay more than contract price with subcontractor.

[2] Mechanics' Liens 257 ↪111(1)

257 Mechanics' Liens
257II Right to Lien
257II(E) Subcontractors, and Contractors'
Workers and Materialmen
257k111 Default in Performance of
Principal Contract
257k111(1) k. In General. Most Cited
Cases

Owner of property could not invoke notice of recommencement procedure to defeat lien of materialman which provided lumber and hardware to subcontractor which failed to complete its portion of project, where general contractor continued with construction by finding replacement for subcontractor; such procedure could be invoked only if entire construction project ceased, not when only portion of project ceased on default of subcontractor not in privity with owner. West's F.S.A. § 713.07(4).

[3] Mechanics' Liens 257 ↪154(2)

257 Mechanics' Liens
257III Proceedings to Perfect
257k154 Verification of Claim or Statement
257k154(2) k. Sufficiency in General.
Most Cited Cases

Whether sworn statement of account given by president of materialman was invalid, such that materialman would be deprived of lien, because president was not formally administered an oath by attending notary depended on whether owner was prejudiced or adversely affected by president's failure to obtain properly administered oath. West's F.S.A. § 713.16(2).

*592 David A. Maney and Lorena L. Kiely of Maney, Damsker, Harris & Jones, P.A., Tampa, for

720 So.2d 591, 23 Fla. L. Weekly D2330
(Cite as: 720 So.2d 591)

Appellant.

Neil H. Butler of Butler & Long, Tallahassee, for Appellees.

PETERSON, Judge.

Florida Wood Services, Inc. (FWS), a materialman who furnished lumber and hardware to JM Construction Co., Inc. (JM), a subcontractor who was to perform framing and rough carpentry on a construction project, appeals the trial court's discharge of its claim of lien. We reverse.

Osprey Links Joint Ventures (Osprey), the appellee and owner of the property against which FWS's claim of lien was filed, contracted with Royal American Construction, Inc. (RAC), a general contractor, to construct an apartment complex. RAC obtained the services of JM who began to perform while obtaining supplies from FWS. FWS timely and correctly served its Notice to Owner pursuant to section 713.06, Florida Statutes (1995). JM failed to complete the framing and rough carpentry, after having been paid \$573,027.50, and failed to pay FWS all that it was owed for lumber and hardware furnished to the project. FWS then recorded its claim of lien for \$467,123.48 as allowed by Section 713.08, Florida Statutes (1995).

Osprey then attempted to invoke the Notice of Re commencement provisions of Section 713.07(4), Florida Statutes (1995), by recording in the public records an "Affidavit of Partial Abandonment and Intent to Re commence Construction" and a "Notice of Partial Commencement" relating only to the framing and rough carpentry portion of the project. The total amount ultimately paid by RAC to JM and others to complete the framing and rough carpentry was \$2,677,435.65. JM's contract with RAC was for \$1,950,000. Osprey claims it should be relieved of FWS's claim of lien because the amount remaining unpaid on the RAC-JM subcontract, \$1,376,972.50 (\$1,950,000-573,027.50), should be offset against

the cost of completion thereby leaving no funds with which to pay FWS's claim.

When FWS sought to foreclose its lien, Osprey's motion to discharge FWS' claim of lien was granted. The trial court found:

1. Osprey and RAC had a "common identity" because they were related entities. Therefore, Osprey was in direct privity with JM and could not be required to pay more than the contract price with JM, to wit: \$1,950,000 to complete the framing and rough carpentry.

2. Osprey complied with section 713.07(4), Florida Statutes (1995), by recording the Affidavit of Partial Abandonment and Intent to Re commence Construction.

3. Because Osprey had to pay more than the original price established in the contract price between RAC and JM to complete the framing and rough carpentry, no further obligation existed to pay lienors for unpaid claims.

4. FWS failed to properly respond to a request for a sworn statement of account pursuant to section 713.16(2), Florida Statutes (1995) and its president failed to observe the formalities of giving the oath in that statement. The deficiency rendered void the earlier claim of lien.

In an imaginative attempt to complicate a simple construction lien dispute, Osprey argued successfully to the trial court that because Osprey and RAC were related, and shared a common identity, Osprey was in privity with JM. This concept formed the foundation for the next step of the argument. *593 Osprey, now in privity with JM, could invoke the re commencement provisions of subsection 713.07(4), Florida Statutes (1995), file its "Notice of Partial Re commencement", and eliminate any obligations to FWS because the cost of completing the framing and rough carpentry after JM defaulted was in excess of the original contract with JM. Osprey relied upon subsection 713.06(1),

720 So.2d 591, 23 Fla. L. Weekly D2330
(Cite as: 720 So.2d 591)

Florida Statutes (1995), in concluding that it could not be responsible to FWS for its \$467,124 claim of lien. We admire the imagination used to formulate this concept but decline the invitation to adopt it, given its total lack of statutory or case law support.

A. COMMON IDENTITY

[1] Osprey argues that it should be treated as having a direct contract with JM because it had a "common identity" with RAC, based on *Aetna Casualty & Surety Co. v. Buck*, 594 So.2d 280 (Fla.1992), *rev. denied*, 639 So.2d 976 (Fla.1994), and accordingly, is in privity with JM and entitled to offset based on the liability limits of the RAC-JM contract price.

In *Aetna*, the president and sole shareholder of both the owner and general contractor were the same individual. A materialman's claim of lien was served only upon the general contractor and not the owner. The court ruled that service of the lien only on the general contractor constructively provided notice to the owner of the claim. *See also C.L. Whiteside & Associates Constr. Co., Inc. v. Landings Joint Venture*, 626 So.2d 1051 (Fla. 4th DCA 1993). The court also concluded that the constructive service rendered the claim effective because the owner and contractor had a common identity, to wit: the same individual is the president and sole shareholder of the two entities. This common identity concept was established in order to allow a lienor, who serves notice to an individual serving in a dual corporate capacity for both the owner and general contractor, to enforce its lien when no prejudice exists for failing to serve the owner. We do not find the concept of common identity applicable where as here, its use by the related parties who chose to make themselves separate entities would defeat the claim of a materialman who diligently and accurately followed the construction lien law. Such an inequitable result would frustrate the rationale behind the concept of common identity, i.e., to prevent the related parties from reaping a windfall.

B. RECOMMENCEMENT

[2] Subsection 713. 07(4), Florida Statutes (1995), provides:

713.07 Priority of Liens.-

(4) If construction ceases before completion and the owner desires to recommence construction, he may pay all lienors in full or pro rata in accordance with s. 713.06(4) prior to recommencement in which event all liens for the recommenced construction shall take priority from such recommencement; or the owner may record an affidavit in the clerk's office stating his intention to recommence construction and that all lienors giving notice have been paid in full except those listed therein as not having been so paid in which event 30 days after such recording, the rights of any person acquiring any interest, lien or encumbrance on said property or of any lienor on the recommenced construction shall be paramount to any lien on the prior construction unless such prior lienor records a claim of lien within said 30-day period. A copy of said affidavit shall be served on each lienor named therein. Before recommencing, the owner shall record and post a notice of commencement for the recommenced construction, as provided in s. 713.13.

Even if we were to find Osprey's common identity/privity argument persuasive, we interpret subsection 713. 07(4) as prescribing a procedure that may be invoked when the owner has contracted with a general contractor and the entire construction project ceases, not when only a portion of the project ceases upon the default of a subcontractor not in privity with an owner. Throughout this "partial recommencement procedure" employed by Osprey, RAC never defaulted but continued to act as general contractor under its original contract with Osprey. The only difference before and after the "recommencement" in this case was that a different *594 framing and rough carpentry subcontractor completed JM's obligation at RAC's request and Osprey declined to satisfy FWS's lien for supplies integrated into the job.

720 So.2d 591, 23 Fla. L. Weekly D2330
(Cite as: 720 So.2d 591)

The notice of recommencement procedure cannot be interpreted in a way that allows the collusion of the owner and general contractor to defeat the claim of a materialman. Here, RAC failed to select a financially responsible subcontractor and may have failed to protect itself from JM's supplier after it received a copy of FWS's notice to owner in accordance with subsection 713.06(2)(a), Florida Statutes (1995). Osprey always had the opportunity to protect itself, after receiving FWS's notice to owner, by following the statutory procedure for making proper payments.

Our conclusion is further supported by the terms of the contract between Osprey and RAC. Those terms provide that costs which would cause the guaranteed maximum price of \$15,212,000 to be exceeded shall be paid by the contractor without reimbursement from the owner. When RAC's subcontractor, JM, failed to complete its portion of the construction project, that failure did not impact the contract between Osprey and RAC; accordingly, RAC honored its obligation and continued with the construction by finding a replacement for JM. Osprey, however, reacted in a way not contemplated by subsection 713. 07(4), Florida Statutes, which allows an owner to recommence construction if construction ceases before completion and further allows an owner to protect itself against liens arising before the cessation. Osprey, obviously desiring to reduce the economic loss for a group of related entities and more particularly RAC, treated JM's default as a cessation of construction. In furtherance of this idea, it recorded the "Affidavit of Partial Abandonment and Intent to Recommence Construction," a procedure not described either in subsection 713. 07(4) or in any reported case. Osprey's financial exposure should not have been affected by JM's default since it was RAC's obligation to deliver a completed project for the guaranteed price of \$15,212,000.

Accordingly, we reject Osprey's attempt to

create a "partial" recommencement provision under subsection 713. 07(4), so as to defeat FWS's claim of lien.

SWORN STATEMENT

[3] Pursuant to subsection 713.16(2), Florida Statutes (1995), an owner may make a written demand upon any lienor for a written statement under oath of his account showing the materials furnished, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the lienor. FWS provided all this information in its sworn statement of account to Osprey. However, the deposition of FWS' president revealed that he was not formally administered an oath by the attending notary when he signed the statement. The trial court found the claim of lien invalid for that reason. Subsection 713.16(2), requires that a statement of account be under oath. The same subsection was amended in 1994 to state:

The negligent inclusion or omission of any information deprives the person of his lien to the extent the owner can demonstrate prejudice from such act or omission by the lienor.

Laws of Fla. Ch.94-119. In light of the legislative amendment in 1994, the question becomes whether the owner, Osprey, was prejudiced or adversely affected from FWS' president's failure to obtain a properly administered oath. See *Stunkel v. Gazebo Landscaping Design, Inc.*, 660 So.2d 623 (Fla.1995) (court construed claim of lien statute, section 713.08, which contained a similar provision that omission of details or errors in the claim of lien shall not "prevent the enforcement of such lien as against one who has not been adversely affected by such omission or error," and held that failure of subcontractor's president to take an oath when he signed lien claim required remand to determine whether faulty claim of lien adversely affected owners). Cf. *Stresscon v. Madiedo*, 581 So.2d 158 (Fla.1991) (court construed a pre-1994 version of § 713.16(2) which contained no language permitting

720 So.2d 591, 23 Fla. L. Weekly D2330
(Cite as: 720 So.2d 591)

lack of prejudice to be considered in determining the validity of a sworn statement of account and held failure to notarize otherwise valid statement of account is fatal to lien claim). Accordingly, upon remand, the trial court is *595 instructed to determine whether, by a preponderance of the evidence, Osprey was prejudiced or adversely affected by FWS's faulty claim of lien. *Stunkel* at 627.^{FN1}

FN1. Some comment is warranted regarding the trial court's misplaced reliance on the strict requirement of an oath in the context of criminal cases where some interest of an individual is at stake. Specifically, the trial court relied on *Youngker v. State*, 215 So.2d 318 (Fla. 4th DCA 1968) (defendant's liberty interest at stake in prosecution for perjury based on his representations made in a waiver of lien; defendant successfully defended on the ground that his waiver of lien was not made under oath); *Collins v. State*, 465 So.2d 1266 (Fla. 2d DCA 1985) (defendant's liberty and privacy interests at stake in prosecution for trafficking in marijuana; defendant successfully defended on grounds that trial court erred in not suppressing the fruits of the search based on an invalid search warrant due to lack of oath by police officer who sought the warrant); and *State v. Johnston*, 553 So.2d 730 (Fla. 2d DCA 1989) (petitioner's privilege to operate a motor vehicle at stake; court held that the arresting police officer's failure to furnish the Department of Highway Safety and Motor Vehicles with a statement of probable cause under oath consequently did not provide the department with jurisdiction upon which it could proceed with any administrative action to suspend the petitioner's privilege to operate a motor vehicle). In these cases, the courts have strictly construed the requirement of an oath against the state

and in favor of the individual whose liberty interests, and in the later case, whose driving privileges, were at stake. Such cases are different from the instant case which is a civil suit and what is at stake is the complete loss of an otherwise valid claim of lien. Indeed, such drastic loss of an otherwise valid claim of lien as has occurred in the past, *see Stresscon*, has been cured by the 1994 Legislative amendment to subsection 713.16(2).

CONCLUSION

We vacate the trial court's orders finding that Osprey and RAC had a "common identity," the conclusion of law set forth in paragraphs 16-18 of the "Findings of Fact and Conclusions of Law" dated August 27, 1997, the "Final Judgment on Counts 1, V and VII of the Amended Complaint" dated August 27, 1997, and the award of attorney's fees to Osprey.

We remand to the trial court to:

- 1) Determine whether, by a preponderance of the evidence, Osprey was prejudiced by the omission of a formal oath in FWS's sworn statement of account.
- 2) If Osprey cannot demonstrate prejudice, treat the claim established by FWS as a valid claim of lien and determine the extent of Osprey's proper payments and whether Osprey has, or should have, retained funds from payments due to RAC in order to satisfy FWS's liens.

ORDERS PARTIALLY VACATED;
REMANDED.

GOSHORN, J., and ROUSE, R.K., Jr., Associate Judge, concur.

Fla.App. 5 Dist., 1998.
Florida Wood Services, Inc. v. Osprey Links Joint Venture
720 So.2d 591, 23 Fla. L. Weekly D2330

720 So.2d 591, 23 Fla. L. Weekly D2330
(Cite as: 720 So.2d 591)

END OF DOCUMENT

CHAPTER 1
AGENCY AND POWERS OF ATTORNEY

STANDARD 1.1
EXECUTION AND RECORDATION OF POWER OF ATTORNEY FOR DEED

STANDARD: WHEN A DEED IS EXECUTED BY VIRTUE OF A POWER OF ATTORNEY, THE POWER OF ATTORNEY MUST BE EXECUTED AND RECORDED IN THE SAME MANNER AS THE DEED, EXCEPT THAT A POWER OF ATTORNEY EXECUTED IN ANOTHER STATE BY AN INDIVIDUAL WHICH IS USED TO CONVEY NON-HOMESTEAD PROPERTY MAY BE EXECUTED IN COMPLIANCE WITH THE LAW OF THE STATE OF EXECUTION.

Problem 1: John Doe executes a power of attorney in Florida authorizing Richard Roe to convey real property but the power of attorney does not contain two subscribing witnesses. Roe, as attorney in fact for Doe, executes a deed of Blackacre from Doe to Simon Grant. The deed and power of attorney are both recorded. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: No.

Problem 2: John Doe executes a power of attorney in New York authorizing Richard Roe to convey non-homestead real property in Florida. Although the power of attorney is acknowledged it does not contain two subscribing witnesses. New York law did not require subscribing witnesses at the time. Roe, as attorney in fact for Doe, executes a deed of Blackacre from Doe to Simon Grant. The deed and power of attorney are both recorded. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: Yes.

Problem 3: John Doe gives Richard Roe a power of attorney, properly executed and acknowledged, authorizing Roe to convey real property, but the power of attorney is not recorded. Roe, as attorney in fact for Doe, executes and records a deed of Blackacre from Doe to Simon Grant. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: No. The power of attorney must be recorded in addition to the deed.

Authorities &

References: F.S. 95.231(1), Fla. Stat. (2015); § 689.111, Fla. Stat. (2015); § 695.01 (2015); § 709.015(2); § 709.2106(3), Fla. Stat. (2015); 2A C.J.S. Agency § 40 (2014); FUND TN 4.02.01.

Comment: The general law is that a power of attorney must be executed with the same formality as the law requires for the instrument to be executed under it. 2A C.J.S. Agency § 40 (2014). Section 709.2105(2), Florida Statutes, which became effective October 1, 2011, requires powers of attorney to be signed by the principal and by two subscribing witnesses. However, a power of attorney executed in another state which does not require two subscribing witnesses is valid in Florida if its execution complied with the law of the state of execution. § 709.2106(3), Fla. Stat. Note that 709.2106(3) only applies to powers of attorney executed by individuals. Note further that “another state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. Last, it should be noted that the requirement of subscribing witnesses does not apply to military powers of attorney.

Special considerations apply to homestead property. Section 689.111, Florida Statutes (2015) authorizes a deed of homestead property to be executed by virtue of a power of attorney if the power of attorney is executed in the same manner as a deed. Therefore, a power of attorney, regardless of where it is executed, must contain two subscribing witnesses if it is to be used to convey homestead property.

A power of attorney must be recorded in the official records of the county in which the real property is situated to be valid against subsequent bona fide purchasers and creditors. F.S. 695.01 (2015). To be entitled to recordation it must contain an acknowledgement. F.S. 695.03 (2015).

Note: Section 95.231(1), Florida Statutes (2015), validates a power of attorney that has been of record for five years or more and that accompanies a deed as if there had been no lack of witnesses or defects in the acknowledgment.

STANDARD 1.3

AUTHORITY TO CONVEY REAL PROPERTY

STANDARD: TO EMPOWER AN AGENT TO CONVEY REAL PROPERTY THE POWER OF ATTORNEY MUST GIVE CLEAR AUTHORITY TO DO SO, ALTHOUGH THE REAL PROPERTY NEED NOT BE SPECIFICALLY DESCRIBED IF THE TERMS OF THE INSTRUMENT SHOW SUCH LAND TO BE WITHIN THE PRINCIPAL'S INTENTION IN THE GRANTING OF THE POWER.

Problem 1: John Doe gives to Richard Roe a power of attorney authorizing Roe "to generally act for me and in my name, place and stead, in any state and in relation to all matters, to do any and all things to execute any and all instruments which I might or could do if personally present." Does Roe have the authority to convey land owned by Doe?

Answer: No.

Problem 2: John Doe gives to Richard Roe a power of attorney authorizing Roe to "sell and convey any and all land owned by me," without specifically describing such land. Does Roe have the authority to convey any part or all of such land?

Answer: Yes.

Authorities & References: F.S. 709.2201(1) (2015); 2A C.J.S., *Agency* §§223, 230 (2007); AmJur 2d., *Agency* §29 (2010); FUND TN 4.02.03; 27 FUND CONCEPT 123 (October 2005); *Bloom v. Weiser*, 348 So. 2d 651 (Fla. 3d DCA 1977)

Comment: With respect to homestead property, see Title Standard 18.4 (Alienation Of Homestead -- Power Of Attorney).

**CHAPTER 1
AGENCY AND POWERS OF ATTORNEY**

STANDARD 1.4

**WITNESSES ON POWER OF ATTORNEY
FOR MORTGAGE OF HOMESTEAD PROPERTY**

STANDARD: WHEN A MORTGAGE OF HOMESTEAD PROPERTY IS EXECUTED BY VIRTUE OF ANY POWER OF ATTORNEY, THE POWER OF ATTORNEY MUST CONTAIN TWO SUBSCRIBING WITNESSES UNLESS IT IS A MILITARY POWER OF ATTORNEY.

Problem 1: John Doe executed a power of attorney in Florida authorizing Richard Roe to mortgage any of John Doe's real property. The power of attorney does not contain two subscribing witnesses. Would a mortgage executed by Roe, as Doe's attorney in fact, constitute a valid mortgage lien on Doe's homestead property in Florida?

Answer: No.

Problem 2: John Doe executed a power of attorney in New York authorizing Richard Roe to mortgage any of Doe's real property. The power of attorney does not contain two subscribing witnesses. New York law did not require subscribing witnesses at the time. Would a mortgage executed by Roe, as Doe's attorney in fact, constitute a valid mortgage lien on Doe's homestead property in Florida?

Answer: No.

Authorities &
References: F.S. 689.111 (2015); F.S. 689.01 (2015).

Comment: Section 689.111, Florida Statutes, provides that a mortgage of homestead may be executed by virtue of a power of attorney, provided the power of attorney is executed in the same manner as a deed. Section 689.01, Florida Statutes, provides that two subscribing witnesses are required for execution of a deed. Therefore, two subscribing witnesses are required for execution of a power of attorney used to mortgage homestead property.

Section 709.2106(3), Florida Statutes, provides that a power of attorney executed in another state which does not require two subscribing witnesses

is valid in Florida if its execution complied with the law of the state of execution. That statute, however, should not be relied upon as to mortgages of homestead property in light of 689.111, which is specific as to homestead property and requires two subscribing witnesses.

Note, however, that witnesses are not required for military powers of attorney. 10 U.S.C. § 1044b. Further, it should be noted that a power of attorney must be recorded in the official records of the county in which the real property is situated to provide constructive notice of the mortgage to subsequent bona fide purchasers and creditors. F.S. 695.01 (2015). To be entitled to recordation it must contain an acknowledgment. See F.S. 695.03 (2015).

For information on the necessity of subscribing witnesses on powers of attorney used to mortgage nonhomestead property, please see Title Standard 1.5.

STANDARD 1.5

WITNESSES ON POWER OF ATTORNEY FOR MORTGAGE OF NONHOMESTEAD PROPERTY

STANDARD: WHEN A MORTGAGE OF NONHOMESTEAD PROPERTY IS EXECUTED BY VIRTUE OF A POWER OF ATTORNEY, THE POWER OF ATTORNEY MUST CONTAIN TWO SUBSCRIBING WITNESSES UNLESS IT: (1) WAS EXECUTED PRIOR TO OCTOBER 1, 1995; (2) IS A NONDURABLE POWER OF ATTORNEY EXECUTED PRIOR TO OCTOBER 1, 2011; (3) WAS EXECUTED IN ANOTHER STATE BY AN INDIVIDUAL IN COMPLIANCE WITH THE LAW OF THE STATE OF EXECUTION; OR (4) IS A MILITARY POWER OF ATTORNEY.

Problem 1: On September 1, 2011, John Doe executed a durable power of attorney authorizing Richard Roe to mortgage real property but the power of attorney does not contain two subscribing witnesses. In 2015, may Roe, as attorney in fact for Doe, execute a mortgage of nonhomestead Florida property?

Answer: No. Any durable power of attorney executed on or after October 1, 1995, but before October 1, 2011, requires two subscribing witnesses if it is used to mortgage or convey Florida real property, regardless of where the power of attorney was executed.

Problem 2: On October 1, 2011, John Doe executed a power of attorney in New York authorizing Richard Roe to mortgage real property but the power of attorney does not contain two subscribing witnesses. New York law did not require subscribing witnesses at the time. In 2015, may Roe, as attorney in fact for Doe, execute a mortgage of nonhomestead Florida property?

Answer: Yes.

Authorities &

References: F.S. 689.111, 689.01, 709.08(1), 709.2105(2), 709.2106(3) (2015).

Comment: All durable and non-durable powers of attorney executed in Florida on or after October 1, 2011, require two subscribing witnesses. F.S. 709.2105(2) and 709.2106(1). This title standard sets forth the general rule that a power of attorney used to execute a mortgage of nonhomestead property must contain two subscribing witnesses, subject to the following four exceptions.

- (1) The power of attorney was executed prior to October 1, 1995. Prior to that date, Florida law did not require a power of attorney used to execute a mortgage on nonhomestead property to contain subscribing witnesses.
- (2) The power of attorney is a nondurable power of attorney executed prior to October 1, 2011. Prior to October 1, 2011, a nondurable power of attorney used to execute a mortgage on nonhomestead property only needed to be executed with the same formalities as the mortgage. Since mortgages do not require witnesses, a nondurable power of attorney used to execute the mortgage did not require witnesses.
- (3) The power of attorney was executed in another state by an individual in compliance with the laws of the state of execution. Section 709.2106(3), Florida Statutes, provides that a power of attorney executed in another state which does not require two subscribing witnesses is valid in Florida if its execution complied with the law of the state of execution. Note that 709.2106(3) only applies to powers of attorney executed by individuals. Note further that “another state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (4) The power of attorney is a military power of attorney. Federal law exempts military powers of attorney from the typical state law requirements for form, substance or formality, including subscribing witnesses. 10 U.S.C. § 1044b.

A power of attorney must be recorded in the official records of the county in which the real property is situated to provide constructive notice of the mortgage to subsequent bona fide purchasers and creditors. F.S. 695.01 (2015). To be entitled to recordation it must contain an acknowledgement. F.S. 695.03 (2015).

For information on the necessity of subscribing witnesses on powers of attorney used to mortgage homestead property, please see Title Standard 1.4.

STANDARD 3.8

CONVEYANCE WITHOUT CONSIDERATION

STANDARD: CONSIDERATION IS NOT NECESSARY FOR A VALID CONVEYANCE OF REAL PROPERTY.

Problem 1: John Doe conveyed Blackacre as a gift to Richard Roe. Is Richard Roe's title marketable?

Answer: Yes, in the absence of evidence of inequitable conduct by Roe.

Problem 2: John Doe conveyed Blackacre as a gift to his local college. Is the college's title marketable?

Answer: Yes.

Authorities &

References: F.S. 689.01; 689.03; 689.09; *Chase Federal Sav. and Loan Ass'n v. Schreiber*, 479 So.2d 90 (Fla. 1985) (consideration unnecessary for a conveyance of land.); FUND TN 10.03.08.

Comment: Chapter 689's requirements for a valid conveyance of real property do not include the receipt of consideration, and thereby significantly limited the prior common law requirements for the receipt of consideration. *Chase v. Schreiber* held that an owner of real property may convey it without consideration to any person the grantor chooses, regardless of family or marital relationship. According to the Court in *Chase v. Schreiber*, the "role of consideration in land conveyancing has been reduced to a mere matter of form except when courts choose to rely on the lack of consideration as a reason to intervene when something fraudulent or inequitable has taken place." *Id.* at 99. With respect to such exception, a court may rescind a deed for failure of consideration where consideration is demonstrably intended by the parties as part of the transaction such as where the grantee obtained the conveyance through fraud, misrepresentation or undue influence. *Id.* at 102

Note, however, that prior to January 7, 1969, homestead property could be alienated only in a bona fide transaction based upon a valuable consideration. *See*, Archived Title Standard 18.2. It should be noted, however, that a recipient of an executed and delivered deed for no consideration is not entitled to protection under section 695.01, Florida Statutes, which protects subsequent purchasers for valuable consideration against unrecorded interests. *Chase v. Schreiber*, at 101, 102.

A conveyance as a gift to a charitable institution is valid. *Montgomery v. Carlton*, 126 So. 135, at 140 (Fla. 1930) (property donated to charity in which the title is vested absolutely and with no conditions vests absolute title into the charity).

STANDARD 3.7

AFTER ACQUIRED TITLE

STANDARD: A WARRANTY DEED AUTOMATICALLY CONVEYS AFTER ACQUIRED TITLE TO THE GRANTEE.

Problem 1: In 2010, before receiving title to Blackacre, John Doe gave a warranty deed to Joe Roe conveying Blackacre. In 2012, Simon Grant conveyed Blackacre to John Doe. Does Joe Roe have marketable title to Blackacre?

Answer: Yes. John Doe's after acquired title automatically passed through to Joe Roe by operation of law. The best practice would be to re-record a copy of the deed from John Doe to Joe Roe after the deed from Simon Grant is of record to ensure that it appears in the chain of title.

Authorities &

References: *Nottingham v. Denison*, 63 So. 2d 269 (Fla. 1953) (warranty deed conveys after acquired title).

Comment: A deed even without warranties of title may convey after acquired title. *See, Tucker v. Cole*, 3 So. 2d 875 (Fla.1941); *Daniell v. Sherrill*, 48 So. 2d 736 (Fla. 1950) (When a person conveys land in which he has no interest at the time, but afterwards acquires title, he is estopped to deny the conveyance).

On the other hand, a quit claim deed does not convey after acquired title as the quit claim deed conveys only whatever title the grantor holds at the time of the conveyance. *Goldtrap v. Bryan*, 77 So. 2d 446 (Fla. 1955); *June Sand Co. v. Devon Corporation*, 23 So. 2d 621 (Fla. 1945).

The practitioner should re-record the prior deed so that it is within the chain of title.

The title of a mortgagor acquired after the execution of a mortgage may inure to the benefit of the mortgagee if the mortgage contains warranties of title. *See, Hillman v. McCutchen*, 166 So. 2d 611 (Fla. 3d DCA), cert. denied, 171 So.2d 391 (Fla. 1964) (“where a mortgage contains a full covenant of warranty of title, then any title acquired by the mortgagor after execution of the mortgage inures to the benefit of the mortgagee”) However, a mortgage executed and recorded before a mortgagor acquires title to the property will not be in its chain of title. Therefore, it may not impart constructive notice to bona fide purchasers and encumbrancers and may not be superior to their subsequently recorded interests.

STANDARD 3.9

CERTAIN DEFECTS IN DEEDS CURED

STANDARD: A DEFECTIVE ACKNOWLEDGEMENT OR A LACK OF A SEAL OR WITNESSES IN A CONVEYANCE OF REAL PROPERTY MAY BE CURED AFTER THE STATUTORY PERIOD HAS RUN.

Problem 1: A deed recorded in 2007 from John Doe to Richard Roe lacked two witnesses. May the deed be treated as an effective conveyance in 2013?

Answer: Yes. The defect was cured after being recorded five years pursuant to F.S. 95.231.

Problem 2: A deed recorded in 2005 from John Doe, as Trustee for the John and Jane Doe Trust, to Richard Roe lacked two witnesses. May the deed be treated as an effective conveyance in 2013?

Answer: Yes. The defect was cured after being recorded seven years pursuant to F.S. 694.08.

Problem 3: A 2007 deed from John Doe to Richard Roe contained an acknowledgment which misspelled the name of the grantor, did not specify whether the grantor was personally known to the notary or produced a driver license or other personal identification, did not have the notary's printed name under the notary's signature, and lacked a notary seal. May the deed be treated as an effective conveyance in 2013?

Answer: Yes. The defect was cured after being recorded five years pursuant to F.S. 95.231.

Problem 4: A 2007 deed from John Doe and Richard Roe to Simon Grant contained an acknowledgement which acknowledged John Doe's signature but not Richard Roe's. May the deed be treated as an effective conveyance by Richard Roe in 2013?

Answer: No. The applicable curative statutes may cure a defective acknowledgement but not a missing acknowledgement.

Problem 5: A 2007 deed from John Doe to Richard Roe lacked two witnesses. In 2011, John Doe conveyed the same property to Thomas Frank in a deed with no defects. Does Richard Roe have marketable title in 2013?

Answer: No. Although in the absence of [fraud](#), [adverse possession](#), or [pending litigation](#), F.S. 95.231 may have cured the earlier deed's technical defect, the statute is not retroactive, taking effect only after the five year

period. The later deed created a competing interest, resulting in a cloud on title as to both interests.

Authorities &

References: F.S. 95.231; F.S. 694.08; ATIF TN 1.03.01

Comment: Where the grantor has conveyed in his individual capacity, F.S. 95.231 cures the lack of a seal or witnesses, or a defective acknowledgement, after five years from date of recording, in the absence of fraud, adverse possession or pending litigation. Where the grantor conveyed in an official or representative capacity, such as an attorney in fact, trustee or corporate officer, F.S. 95.231 may not apply. However, F.S. 694.08 cures the same defects after seven years from date of recording where the defective deed was executed in an official or representative capacity and where the grantee, in a subsequently recorded deed, conveyed with evident intent to do so.

Although F.S. 95.231 and F.S. 694.08 may cure a defective acknowledgement, neither will cure a total lack of acknowledgement of the signature of a grantor. *Sanders v. Pepoon*, 4 Fla. 465, at 471 (1852); FUND TN 1.05.01; FUND TN 1.03.01. However, the title examiner may resort to a review of the whole instrument to determine the sufficiency of the acknowledgement. *Edenfield v. Wingard*, 89 So.2d 776 (Fla. 1956); FUND TN 1.02.06

See Standards 3.4 and 3.5 concerning the necessity that acknowledgements include the seal of the notary or other authorized official.

An instrument signed by one or more persons not named in the granting clause is insufficient. *Heath v. First National Bank in Milton*, 213 So.2d 883 (Fla. 1st DCA 1968); Likewise, a deed which omits the name of a grantee is inoperative as a conveyance. *Myers v. Francis*, 548 So.2d 833 (Fla. 3d DCA 1989); FUND TN 10.04.03.

CHAPTER 1
AGENCY AND POWERS OF ATTORNEY

STANDARD 1.1

EXECUTION AND RECORDATION OF POWER OF ATTORNEY FOR DEED

STANDARD: WHEN A DEED IS EXECUTED BY VIRTUE OF A POWER OF ATTORNEY, THE POWER OF ATTORNEY MUST BE EXECUTED AND RECORDED IN THE SAME MANNER AS THE DEED, EXCEPT THAT A POWER OF ATTORNEY EXECUTED IN ANOTHER STATE BY AN INDIVIDUAL WHICH IS USED TO CONVEY NON-HOMESTEAD PROPERTY MAY BE EXECUTED IN COMPLIANCE WITH THE LAW OF THE STATE OF EXECUTION.

~~Problem 1: A gives B a power of attorney, duly acknowledged and witnessed, specifically authorizing B to convey Blackacre, but the power of attorney is not recorded. B conveys Blackacre to C under such power of attorney. Is the conveyance valid against subsequent bona fide purchasers and creditors?~~

~~Answer: No.~~

~~Problem 2: A gives B a power of attorney specifically authorizing B to convey Blackacre, but the power of attorney either is not witnessed or not acknowledged. B conveys Blackacre to C under such power of attorney. Is the conveyance valid against subsequent bona fide purchasers and creditors?~~

~~Answer: No.~~

~~Authorities & References: F.S. 695.01 (2001); F.S. 709.015(2) (2001); 19 FLA. JUR. 2d *Deeds* § 31 (1998); 2 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 28.06, n.4 (1996); FLORIDA REAL PROPERTY SALES TRANSACTIONS § 6.65 (CLE 3rd ed. 1997); ATIF TN 4.02.01.~~

~~Comment: F.S. 695.01 (2001) requires that the power of attorney be recorded to be valid against subsequent bona fide purchasers and creditors. To be recorded it must conform to the requirements of F.S. 695.03 (2001) (acknowledgment for recording purposes). The general law is that a power of attorney must be executed with the same formality as the law requires for the instrument to be executed under it. 2A C.J.S. Agency § 45(b) (1972).~~

~~With respect to homestead property, see Title Standard 18.4~~

~~(Alienation Of Homestead — Power Of Attorney). Note that F.S. 689.111 (2001) requires that when a mortgage of homestead property is executed by power of attorney, the power of attorney must be executed in the same manner as a deed. All powers of attorney authorizing the execution of a mortgage must be acknowledged to be entitled to be recorded. ATIF TN 4.02.01.~~

Problem 1: John Doe executes a power of attorney in Florida authorizing Richard Roe to convey real property but the power of attorney does not contain two subscribing witnesses. Roe, as attorney in fact for Doe, executes a deed of Blackacre from Doe to Simon Grant. The deed and power of attorney are both recorded. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: No.

Problem 2: John Doe executes a power of attorney in New York authorizing Richard Roe to convey non-homestead real property in Florida. Although the power of attorney is acknowledged it does not contain two subscribing witnesses. New York law did not require subscribing witnesses at the time. Roe, as attorney in fact for Doe, executes a deed of Blackacre from Doe to Simon Grant. The deed and power of attorney are both recorded. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: Yes.

Problem 3: John Doe gives Richard Roe a power of attorney, properly executed and acknowledged, authorizing Roe to convey real property, but the power of attorney is not recorded. Roe, as attorney in fact for Doe, executes and records a deed of Blackacre from Doe to Simon Grant. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: No. The power of attorney must be recorded in addition to the deed.

Authorities &

References: F.S. 95.231(1), Fla. Stat. (2015); § 689.111, Fla. Stat. (2015); § 695.01 (2015); § 709.015(2); § 709.2106(3), Fla. Stat. (2015); 2A C.J.S. Agency § 40 (2014); FUND TN 4.02.01.

Comment: The general law is that a power of attorney must be executed with the same formality as the law requires for the instrument to be executed under it. 2A C.J.S. Agency § 40 (2014). Section 709.2105(2), Florida Statutes, which became effective October 1, 2011, requires powers of attorney to be signed by the principal and by two subscribing witnesses. However, a power of attorney executed in another state which does not require two subscribing witnesses is valid in Florida if its execution complied with the law of the state of execution. § 709.2106(3), Fla. Stat. Note that 709.2106(3) only applies to powers of attorney executed by individuals. Note further that “another state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. Last, it should be noted that the requirement of subscribing witnesses does not apply to military powers of attorney.

Special considerations apply to homestead property. Section 689.111, Florida Statutes (2015) authorizes a deed of homestead property to be executed by virtue of a power of attorney if the power of attorney is executed in the same manner as a deed. Therefore, a power of attorney, regardless of where it is executed, must contain two subscribing witnesses if it is to be used to convey homestead property.

A power of attorney must be recorded in the official records of the county in which the real property is situated to be valid against subsequent bona fide purchasers and creditors. F.S. 695.01 (2015). To be entitled to recordation it must contain an acknowledgement. F.S. 695.03 (2015).

Note: Section 95.231(1), Florida Statutes (2015), validates a power of attorney that has been of record for five years or more and that accompanies a deed as if there had been no lack of witnesses or defects in the acknowledgment.

STANDARD 1.3

AUTHORITY TO CONVEY REAL PROPERTY

STANDARD: TO EMPOWER AN AGENT TO CONVEY REAL PROPERTY THE POWER OF ATTORNEY MUST GIVE CLEAR AUTHORITY TO DO SO, ALTHOUGH THE REAL PROPERTY NEED NOT BE SPECIFICALLY DESCRIBED IF THE TERMS OF THE INSTRUMENT SHOW SUCH LAND TO BE WITHIN THE ~~PRINCIPAL'S~~PRINCIPAL'S INTENTION IN THE GRANTING OF THE POWER.

Problem 1: [AJohn Doe](#) gives to [BRichard Roe](#) a power of attorney authorizing ~~B~~ "[Roe](#) "to generally act for me and in my name, place and stead, in any state and in relation to all matters, to do any and all things ~~and~~ to execute any and all instruments which I might or could do if personally present."[.](#) Does [BRoe](#) have the authority to convey land owned by ~~A~~[Doe](#)?

Answer: No.

Problem 2: [AJohn Doe](#) gives to [BRichard Roe](#) a power of attorney authorizing [BRoe](#) to "~~sell~~ and convey any and all land owned by me,"[.](#)" without specifically describing such land. Does [BRoe](#) have the authority to convey any part or all of such land?

Answer: Yes.

Authorities & References: ~~*Johnson v. Fraaccacreta*, 348 So.2d 651 (Fla. 3d DCA 1977); 2A C.J.S. Agency §§223, 230 (1972); AmJur 2d 570 (Fla. 3d DCA 1977); Agency §29 (2010); FUND TN 4.02.03; 27 FUND CONCEPT 123 (October 2005); Bloom v. Weiser, 348 So. 2d 651 (Fla. 3d DCA 1977); 2 FLA. JUR. 2d Agency & Employment § 32 (1998); 2A C.J.S. Agency §§ 223-227 (1972); ATIF TN 4.02.03;~~ [F.S. 709.2201\(1\) \(2015\); 2A C.J.S., Agency §§223, 230 \(2007\); AmJur 2d 570 \(Fla. 3d DCA 1977\); Agency §29 \(2010\); FUND TN 4.02.03; 27 FUND CONCEPT 123 \(October 2005\); Bloom v. Weiser, 348 So. 2d 651 \(Fla. 3d DCA 1977\); 2 FLA. JUR. 2d Agency & Employment § 32 \(1998\); 2A C.J.S. Agency §§ 223-227 \(1972\); ATIF TN 4.02.03;](#)

Comment: With respect to homestead property, see Title Standard 18.4 (Alienation Of Homestead -- Power Of Attorney).

CHAPTER 1
AGENCY AND POWERS OF ATTORNEY

STANDARD 1.1
EXECUTION AND RECORDATION OF POWER OF ATTORNEY FOR DEED

STANDARD: WHEN A DEED IS EXECUTED BY VIRTUE OF A POWER OF ATTORNEY, THE POWER OF ATTORNEY MUST BE EXECUTED AND RECORDED IN THE SAME MANNER AS THE DEED, EXCEPT THAT A POWER OF ATTORNEY EXECUTED IN ANOTHER STATE BY AN INDIVIDUAL WHICH IS USED TO CONVEY NON-HOMESTEAD PROPERTY MAY BE EXECUTED IN COMPLIANCE WITH THE LAW OF THE STATE OF EXECUTION.

Problem 1: John Doe executes a power of attorney in Florida authorizing Richard Roe to convey real property but the power of attorney does not contain two subscribing witnesses. Roe, as attorney in fact for Doe, executes a deed of Blackacre from Doe to Simon Grant. The deed and power of attorney are both recorded. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: No.

Problem 2: John Doe executes a power of attorney in New York authorizing Richard Roe to convey non-homestead real property in Florida. Although the power of attorney is acknowledged it does not contain two subscribing witnesses. New York law did not require subscribing witnesses at the time. Roe, as attorney in fact for Doe, executes a deed of Blackacre from Doe to Simon Grant. The deed and power of attorney are both recorded. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: Yes.

Problem 3: John Doe gives Richard Roe a power of attorney, properly executed and acknowledged, authorizing Roe to convey real property, but the power of attorney is not recorded. Roe, as attorney in fact for Doe, executes and records a deed of Blackacre from Doe to Simon Grant. Is the conveyance valid against subsequent bona fide purchasers and creditors?

Answer: No. The power of attorney must be recorded in addition to the deed.

Authorities &

References: F.S. 95.231(1), Fla. Stat. (2015); § 689.111, Fla. Stat. (2015); § 695.01 (2015); § 709.015(2); § 709.2106(3), Fla. Stat. (2015); 2A C.J.S. Agency § 40 (2014); FUND TN 4.02.01.

Comment: The general law is that a power of attorney must be executed with the same formality as the law requires for the instrument to be executed under it. 2A C.J.S. Agency § 40 (2014). Section 709.2105(2), Florida Statutes, which became effective October 1, 2011, requires powers of attorney to be signed by the principal and by two subscribing witnesses. However, a power of attorney executed in another state which does not require two subscribing witnesses is valid in Florida if its execution complied with the law of the state of execution. § 709.2106(3), Fla. Stat. Note that 709.2106(3) only applies to powers of attorney executed by individuals. Note further that “another state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. Last, it should be noted that the requirement of subscribing witnesses does not apply to military powers of attorney.

Special considerations apply to homestead property. Section 689.111, Florida Statutes (2015) authorizes a deed of homestead property to be executed by virtue of a power of attorney if the power of attorney is executed in the same manner as a deed. Therefore, a power of attorney, regardless of where it is executed, must contain two subscribing witnesses if it is to be used to convey homestead property.

A power of attorney must be recorded in the official records of the county in which the real property is situated to be valid against subsequent bona fide purchasers and creditors. F.S. 695.01 (2015). To be entitled to recordation it must contain an acknowledgement. F.S. 695.03 (2015).

Note: Section 95.231(1), Florida Statutes (2015), validates a power of attorney that has been of record for five years or more and that accompanies a deed as if there had been no lack of witnesses or defects in the acknowledgment.

STANDARD 1.3

AUTHORITY TO CONVEY REAL PROPERTY

STANDARD: TO EMPOWER AN AGENT TO CONVEY REAL PROPERTY THE POWER OF ATTORNEY MUST GIVE CLEAR AUTHORITY TO DO SO, ALTHOUGH THE REAL PROPERTY NEED NOT BE SPECIFICALLY DESCRIBED IF THE TERMS OF THE INSTRUMENT SHOW SUCH LAND TO BE WITHIN THE PRINCIPAL'S INTENTION IN THE GRANTING OF THE POWER.

Problem 1: John Doe gives to Richard Roe a power of attorney authorizing Roe "to generally act for me and in my name, place and stead, in any state and in relation to all matters, to do any and all things to execute any and all instruments which I might or could do if personally present." Does Roe have the authority to convey land owned by Doe?

Answer: No.

Problem 2: John Doe gives to Richard Roe a power of attorney authorizing Roe to "sell and convey any and all land owned by me," without specifically describing such land. Does Roe have the authority to convey any part or all of such land?

Answer: Yes.

Authorities & References: F.S. 709.2201(1) (2015); 2A C.J.S., *Agency* §§223, 230 (2007); AmJur 2d., *Agency* §29 (2010); FUND TN 4.02.03; 27 FUND CONCEPT 123 (October 2005); *Bloom v. Weiser*, 348 So. 2d 651 (Fla. 3d DCA 1977)

Comment: With respect to homestead property, see Title Standard 18.4 (Alienation Of Homestead -- Power Of Attorney).

**CHAPTER 1
AGENCY AND POWERS OF ATTORNEY**

STANDARD 1.4

**WITNESSES ON POWER OF ATTORNEY
FOR MORTGAGE OF HOMESTEAD PROPERTY**

STANDARD: WHEN A MORTGAGE OF HOMESTEAD PROPERTY IS EXECUTED BY VIRTUE OF ANY POWER OF ATTORNEY, THE POWER OF ATTORNEY MUST CONTAIN TWO SUBSCRIBING WITNESSES UNLESS IT IS A MILITARY POWER OF ATTORNEY.

Problem 1: John Doe executed a power of attorney in Florida authorizing Richard Roe to mortgage any of John Doe's real property. The power of attorney does not contain two subscribing witnesses. Would a mortgage executed by Roe, as Doe's attorney in fact, constitute a valid mortgage lien on Doe's homestead property in Florida?

Answer: No.

Problem 2: John Doe executed a power of attorney in New York authorizing Richard Roe to mortgage any of Doe's real property. The power of attorney does not contain two subscribing witnesses. New York law did not require subscribing witnesses at the time. Would a mortgage executed by Roe, as Doe's attorney in fact, constitute a valid mortgage lien on Doe's homestead property in Florida?

Answer: No.

Authorities &
References: F.S. 689.111 (2015); F.S. 689.01 (2015).

Comment: Section 689.111, Florida Statutes, provides that a mortgage of homestead may be executed by virtue of a power of attorney, provided the power of attorney is executed in the same manner as a deed. Section 689.01, Florida Statutes, provides that two subscribing witnesses are required for execution of a deed. Therefore, two subscribing witnesses are required for execution of a power of attorney used to mortgage homestead property.

Section 709.2106(3), Florida Statutes, provides that a power of attorney executed in another state which does not require two subscribing witnesses

is valid in Florida if its execution complied with the law of the state of execution. That statute, however, should not be relied upon as to mortgages of homestead property in light of 689.111, which is specific as to homestead property and requires two subscribing witnesses.

Note, however, that witnesses are not required for military powers of attorney. 10 U.S.C. § 1044b. Further, it should be noted that a power of attorney must be recorded in the official records of the county in which the real property is situated to provide constructive notice of the mortgage to subsequent bona fide purchasers and creditors. F.S. 695.01 (2015). To be entitled to recordation it must contain an acknowledgment. See F.S. 695.03 (2015).

For information on the necessity of subscribing witnesses on powers of attorney used to mortgage nonhomestead property, please see Title Standard 1.5.

STANDARD 1.5

WITNESSES ON POWER OF ATTORNEY FOR MORTGAGE OF NONHOMESTEAD PROPERTY

STANDARD: WHEN A MORTGAGE OF NONHOMESTEAD PROPERTY IS EXECUTED BY VIRTUE OF A POWER OF ATTORNEY, THE POWER OF ATTORNEY MUST CONTAIN TWO SUBSCRIBING WITNESSES UNLESS IT: (1) WAS EXECUTED PRIOR TO OCTOBER 1, 1995; (2) IS A NONDURABLE POWER OF ATTORNEY EXECUTED PRIOR TO OCTOBER 1, 2011; (3) WAS EXECUTED IN ANOTHER STATE BY AN INDIVIDUAL IN COMPLIANCE WITH THE LAW OF THE STATE OF EXECUTION; OR (4) IS A MILITARY POWER OF ATTORNEY.

Problem 1: On September 1, 2011, John Doe executed a durable power of attorney authorizing Richard Roe to mortgage real property but the power of attorney does not contain two subscribing witnesses. In 2015, may Roe, as attorney in fact for Doe, execute a mortgage of nonhomestead Florida property?

Answer: No. Any durable power of attorney executed on or after October 1, 1995, but before October 1, 2011, requires two subscribing witnesses if it is used to mortgage or convey Florida real property, regardless of where the power of attorney was executed.

Problem 2: On October 1, 2011, John Doe executed a power of attorney in New York authorizing Richard Roe to mortgage real property but the power of attorney does not contain two subscribing witnesses. New York law did not require subscribing witnesses at the time. In 2015, may Roe, as attorney in fact for Doe, execute a mortgage of nonhomestead Florida property?

Answer: Yes.

Authorities &

References: F.S. 689.111, 689.01, 709.08(1), 709.2105(2), 709.2106(3) (2015).

Comment: All durable and non-durable powers of attorney executed in Florida on or after October 1, 2011, require two subscribing witnesses. F.S. 709.2105(2) and 709.2106(1). This title standard sets forth the general rule that a power of attorney used to execute a mortgage of nonhomestead property must contain two subscribing witnesses, subject to the following four exceptions.

- (1) The power of attorney was executed prior to October 1, 1995. Prior to that date, Florida law did not require a power of attorney used to execute a mortgage on nonhomestead property to contain subscribing witnesses.
- (2) The power of attorney is a nondurable power of attorney executed prior to October 1, 2011. Prior to October 1, 2011, a nondurable power of attorney used to execute a mortgage on nonhomestead property only needed to be executed with the same formalities as the mortgage. Since mortgages do not require witnesses, a nondurable power of attorney used to execute the mortgage did not require witnesses.
- (3) The power of attorney was executed in another state by an individual in compliance with the laws of the state of execution. Section 709.2106(3), Florida Statutes, provides that a power of attorney executed in another state which does not require two subscribing witnesses is valid in Florida if its execution complied with the law of the state of execution. Note that 709.2106(3) only applies to powers of attorney executed by individuals. Note further that “another state” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (4) The power of attorney is a military power of attorney. Federal law exempts military powers of attorney from the typical state law requirements for form, substance or formality, including subscribing witnesses. 10 U.S.C. § 1044b.

A power of attorney must be recorded in the official records of the county in which the real property is situated to provide constructive notice of the mortgage to subsequent bona fide purchasers and creditors. F.S. 695.01 (2015). To be entitled to recordation it must contain an acknowledgement. F.S. 695.03 (2015).

For information on the necessity of subscribing witnesses on powers of attorney used to mortgage homestead property, please see Title Standard 1.4.

STANDARD 3.8

CONVEYANCE WITHOUT CONSIDERATION

STANDARD: CONSIDERATION IS NOT NECESSARY FOR A VALID CONVEYANCE OF REAL PROPERTY.

Problem 1: John Doe conveyed Blackacre as a gift to Richard Roe. Is Richard Roe's title marketable?

Answer: Yes, in the absence of evidence of inequitable conduct by Roe.

Problem 2: John Doe conveyed Blackacre as a gift to his local college. Is the college's title marketable?

Answer: Yes.

Authorities &

References: F.S. 689.01; 689.03; 689.09; *Chase Federal Sav. and Loan Ass'n v. Schreiber*, 479 So.2d 90 (Fla. 1985) (consideration unnecessary for a conveyance of land.); FUND TN 10.03.08.

Comment: Chapter 689's requirements for a valid conveyance of real property do not include the receipt of consideration, and thereby significantly limited the prior common law requirements for the receipt of consideration. *Chase v. Schreiber* held that an owner of real property may convey it without consideration to any person the grantor chooses, regardless of family or marital relationship. According to the Court in *Chase v. Schreiber*, the "role of consideration in land conveyancing has been reduced to a mere matter of form except when courts choose to rely on the lack of consideration as a reason to intervene when something fraudulent or inequitable has taken place." *Id.* at 99. With respect to such exception, a court may rescind a deed for failure of consideration where consideration is demonstrably intended by the parties as part of the transaction such as where the grantee obtained the conveyance through fraud, misrepresentation or undue influence. *Id.* at 102

Note, however, that prior to January 7, 1969, homestead property could be alienated only in a bona fide transaction based upon a valuable consideration. *See*, Archived Title Standard 18.2. It should be noted, however, that a recipient of an executed and delivered deed for no consideration is not entitled to protection under section 695.01, Florida Statutes, which protects subsequent purchasers for valuable consideration against unrecorded interests. *Chase v. Schreiber*, at 101, 102.

A conveyance as a gift to a charitable institution is valid. *Montgomery v. Carlton*, 126 So. 135, at 140 (Fla. 1930) (property donated to charity in which the title is vested absolutely and with no conditions vests absolute title into the charity).

STANDARD 3.7

AFTER ACQUIRED TITLE

STANDARD: A WARRANTY DEED AUTOMATICALLY CONVEYS AFTER ACQUIRED TITLE TO THE GRANTEE.

Problem 1: In 2010, before receiving title to Blackacre, John Doe gave a warranty deed to Joe Roe conveying Blackacre. In 2012, Simon Grant conveyed Blackacre to John Doe. Does Joe Roe have marketable title to Blackacre?

Answer: Yes. John Doe's after acquired title automatically passed through to Joe Roe by operation of law. The best practice would be to re-record a copy of the deed from John Doe to Joe Roe after the deed from Simon Grant is of record to ensure that it appears in the chain of title.

Authorities &

References: *Nottingham v. Denison*, 63 So. 2d 269 (Fla. 1953) (warranty deed conveys after acquired title).

Comment: A deed even without warranties of title may convey after acquired title. *See, Tucker v. Cole*, 3 So. 2d 875 (Fla.1941); *Daniell v. Sherrill*, 48 So. 2d 736 (Fla. 1950) (When a person conveys land in which he has no interest at the time, but afterwards acquires title, he is estopped to deny the conveyance).

On the other hand, a quit claim deed does not convey after acquired title as the quit claim deed conveys only whatever title the grantor holds at the time of the conveyance. *Goldtrap v. Bryan*, 77 So. 2d 446 (Fla. 1955); *June Sand Co. v. Devon Corporation*, 23 So. 2d 621 (Fla. 1945).

The practitioner should re-record the prior deed so that it is within the chain of title.

The title of a mortgagor acquired after the execution of a mortgage may inure to the benefit of the mortgagee if the mortgage contains warranties of title. *See, Hillman v. McCutchen*, 166 So. 2d 611 (Fla. 3d DCA), cert. denied, 171 So.2d 391 (Fla. 1964) (“where a mortgage contains a full covenant of warranty of title, then any title acquired by the mortgagor after execution of the mortgage inures to the benefit of the mortgagee”) However, a mortgage executed and recorded before a mortgagor acquires title to the property will not be in its chain of title. Therefore, it may not impart constructive notice to bona fide purchasers and encumbrancers and may not be superior to their subsequently recorded interests.

STANDARD 3.9

CERTAIN DEFECTS IN DEEDS CURED

STANDARD: A DEFECTIVE ACKNOWLEDGEMENT OR A LACK OF A SEAL OR WITNESSES IN A CONVEYANCE OF REAL PROPERTY MAY BE CURED AFTER THE STATUTORY PERIOD HAS RUN.

Problem 1: A deed recorded in 2007 from John Doe to Richard Roe lacked two witnesses. May the deed be treated as an effective conveyance in 2013?

Answer: Yes. The defect was cured after being recorded five years pursuant to F.S. 95.231.

Problem 2: A deed recorded in 2005 from John Doe, as Trustee for the John and Jane Doe Trust, to Richard Roe lacked two witnesses. May the deed be treated as an effective conveyance in 2013?

Answer: Yes. The defect was cured after being recorded seven years pursuant to F.S. 694.08.

Problem 3: A 2007 deed from John Doe to Richard Roe contained an acknowledgment which misspelled the name of the grantor, did not specify whether the grantor was personally known to the notary or produced a driver license or other personal identification, did not have the notary's printed name under the notary's signature, and lacked a notary seal. May the deed be treated as an effective conveyance in 2013?

Answer: Yes. The defect was cured after being recorded five years pursuant to F.S. 95.231.

Problem 4: A 2007 deed from John Doe and Richard Roe to Simon Grant contained an acknowledgement which acknowledged John Doe's signature but not Richard Roe's. May the deed be treated as an effective conveyance by Richard Roe in 2013?

Answer: No. The applicable curative statutes may cure a defective acknowledgement but not a missing acknowledgement.

Problem 5: A 2007 deed from John Doe to Richard Roe lacked two witnesses. In 2011, John Doe conveyed the same property to Thomas Frank in a deed with no defects. Does Richard Roe have marketable title in 2013?

Answer: No. Although in the absence of **fraud, adverse possession, or pending litigation**, F.S. 95.231 may have cured the earlier deed's technical defect, the statute is not retroactive, taking effect only after the five year

period. The later deed created a competing interest, resulting in a cloud on title as to both interests.

Authorities &

References: F.S. 95.231; F.S. 694.08; ATIF TN 1.03.01

Comment: Where the grantor has conveyed in his individual capacity, F.S. 95.231 cures the lack of a seal or witnesses, or a defective acknowledgement, after five years from date of recording, in the absence of fraud, adverse possession or pending litigation. Where the grantor conveyed in an official or representative capacity, such as an attorney in fact, trustee or corporate officer, F.S. 95.231 may not apply. However, F.S. 694.08 cures the same defects after seven years from date of recording where the defective deed was executed in an official or representative capacity and where the grantee, in a subsequently recorded deed, conveyed with evident intent to do so.

Although F.S. 95.231 and F.S. 694.08 may cure a defective acknowledgement, neither will cure a total lack of acknowledgement of the signature of a grantor. *Sanders v. Pepoon*, 4 Fla. 465, at 471 (1852); FUND TN 1.05.01; FUND TN 1.03.01. However, the title examiner may resort to a review of the whole instrument to determine the sufficiency of the acknowledgement. *Edenfield v. Wingard*, 89 So.2d 776 (Fla. 1956); FUND TN 1.02.06

See Standards 3.4 and 3.5 concerning the necessity that acknowledgements include the seal of the notary or other authorized official.

An instrument signed by one or more persons not named in the granting clause is insufficient. *Heath v. First National Bank in Milton*, 213 So.2d 883 (Fla. 1st DCA 1968); Likewise, a deed which omits the name of a grantee is inoperative as a conveyance. *Myers v. Francis*, 548 So.2d 833 (Fla. 3d DCA 1989); FUND TN 10.04.03.

**LEGISLATIVE POSITION
REQUEST FORM**

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By (List name of the section, division, committee, bar group or individual)

Tax Section of The Florida Bar

Address (List street address and phone number)

c/o Russell B. Hale, Esquire, Akerman LLP, 420 S Orange Avenue, Orlando, FL 32801-4904

Position Level (Florida Bar or Section / Division / Committee -- or both, if requested)

State Tax Division Co-Chair

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. Every request should be accompanied by a copy of any existing or proposed legislation, or a detailed presentation of the matter at issue. Contact the Governmental Affairs office with questions.

If Applicable, List The Following:

(Bill or PCB #)

(Sponsor)

Indicate Position: Support Oppose Technical or Other Non-Partisan Assistance

Proposed Wording of Position for Official Publication:

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

Reasons For Proposed Advocacy:

To eliminate documentary stamp tax on deeds and mortgage assumptions between persons who are married.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section/divisions/committee 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

(Bar / Section / Division / Committee)	(Support or Oppose)	(Date)
None		

Others (Attach list if more than one)

(Bar / Section / Division / Committee)	(Support or Oppose)	(Date)

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

A request for action on a legislative position must be circulated to all divisions, sections and committees that might be interested in the issue. The Legislation Committee and Board of Governors may delay final action on a request in the absence for any responses from such groups. Please include all responses with this request form.

Referrals

- | | | |
|----|--|---|
| 1. | (Name of Group or Organization)
The Florida Bar Real Property, Probate & Trust
Law Section | (Support, Oppose or No Position)
Unknown |
| 2. | (Name of Group or Organization)
The Florida Bar Family Law Section | (Support, Oppose or No Position)
Unknown |
| 3. | (Name of Group or Organization) | (Support, Oppose or No Position) |

CONTACTS

Board & Legislation Committee Appearance

(List name, address and phone number)

Cristin C. Keane, Carlton Fields Jordan Burt, P.O. Box 3239, Tampa, FL 33601-3239 813-229-4211
Steven M. Hogan, Ausley & McMullen, 123 S. Calhoun St., Tallahassee, FL 32301-1517 850-224-9115
Russell B. Hale, Akerman LLP, 420 S Orange Ave., Orlando, FL 32801-4904 407-419-8556

Appearances before Legislators

(List name and phone number of those having direct contact before House/Senate Committees)

Cristin C. Keane, Carlton Fields Jordan Burt, P.O. Box 3239, Tampa, FL 33601-3239 813-229-4211
Steven M. Hogan, Ausley & McMullen, 123 S. Calhoun St., Tallahassee, FL 32301-1517 850-224-9115
Russell B. Hale, Akerman LLP, 420 S Orange Ave., Orlando, FL 32801-4904 407-419-8556

Meetings with Legislators/staff

(List name and phone number of those having direct contact with Legislators)

Cristin C. Keane, Carlton Fields Jordan Burt, P.O. Box 3239, Tampa, FL 33601-3239 813-229-4211
Steven M. Hogan, Ausley & McMullen, 123 S. Calhoun St., Tallahassee, FL 32301-1517 850-224-9115
Russell B. Hale, Akerman LLP, 420 S Orange Ave., Orlando, FL 32801-4904 407-419-8556

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 may involve a separate appearance before the Legislation Committee unless otherwise advised.

For information or assistance, please contact the Governmental Affairs Office of The Florida Bar at 850-561-5662 or Toll-Free 800-342-8060, extension 5662.

PROPOSED LEGISLATION

Subsection (7) of Section 201.02 Florida Statutes is amended to read as follows:

(7) Taxes imposed by this Section do not apply to a deed, transfer, or conveyance:

(a) between spouses, or

(b) between former spouses pursuant to an action for dissolution of their marriage wherein the real property is or was their marital home or an interest therein. ~~Taxes paid pursuant to this section shall be refunded in those cases in which a deed, transfer, or conveyance occurred 1 year before a dissolution of marriage. This subsection applies in spite of any consideration as defined in subsection (1). This subsection does not apply to a deed, transfer, or conveyance executed before July 1, 1997.~~

Section 201.02 is amended by creating subsection (12) to read:

(12) For purposes of this Section if a person has the right to revoke a trust and vest property owned by that trust in such person, then any property owned by that trust shall be deemed to be owned by the person who has the right to revoke that trust.

Section 201.08(9) Florida Statutes is created to read:

(9) Taxes imposed by this Section do not apply to an assumption of indebtedness:

(a) by the spouse of an obligor; or

(b) by the former spouse of an obligor pursuant to an action for dissolution of their marriage.

WHITE PAPER REGARDING F.S. 201.02(7)

Submitted by
Skip Straus, Chairman, Agents Section
Alex Overhoff, Executive Director
Florida Land Title Association

Issue: Whether the State discriminates against married couples in the imposition of documentary stamps upon the execution of a deed between spouses ?

Response: F.S. 201.02 (7) provides an exemption from documentary stamps when a deed is executed by a married couple incident to a dissolution of marriage, yet there is no exemption if that same couple attempted to create a tenancy by the entireties.

Discussion: F.S. 201.02 imposes documentary stamps upon the conveyance of real property, based upon a statutory formula (\$.70/\$100 in all counties except Miami-Dade where the stamps on the conveyance of residential property are \$.60/\$100). When the property is encumbered by a mortgage, documentary stamps due are equal to the underlying mortgage balance, divided by the addition or deletion of a party.

Example 1: John Doe buys a house as a single man for \$350,000.00. He obtains a mortgage in the amount of \$280,000.00. He marries Jane Doe and wants to add her on the title, to create a tenancy by the entireties. They will have to pay documentary stamps in the amount of \$980.00 (based upon $\frac{1}{2}$ of the underlying balance and the rate of .007).

Example 2: John Doe buys a house as a married man for \$350,000.00. He obtains a mortgage in the amount of \$280,000.00. He is married to Jane Doe at the time, and she joins in the mortgage, as required under The Florida Constitution, Article X, Section 4. He later wants to add her onto the title, to create a tenancy by the entireties. They will have to pay documentary stamps in the amount of \$980.00 (based upon $\frac{1}{2}$ of the underlying balance and the rate of .007).

Example 3: John Doe and Jane Doe own a house worth \$350,000.00, encumbered by a mortgage with a balance of \$280,000.00. They get divorced, and John conveys the house to Jane. No documentary stamps are due.

The required payment of documentary stamps is an inhibitor to the creation of tenancies by the entireties, because of the large cost. For the couple which chooses divorce, there is no cost factor.

In the first and second examples, the couple would want to put title into husband and wife. The results of not doing so, are often, misunderstood, and unintended. If the

married owner dies, the property will have to be administered through probate, which will cost the heirs thousands of dollars. If the decedent was survived by children, even minors, they may inherit the house, and the wife may only receive a life estate..

Florida Land Title Association asks the Legislature to amend F.S.201.02(7)

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(7) Taxes imposed by this section do not apply to a deed, transfer, or conveyance in which the parties create an estate by the entirety as set forth in F.S. 689.11(b), or between spouses or former spouses pursuant to an action for dissolution of their marriage, wherein the real property is or was their marital home or an interest therein. Taxes paid pursuant to this section shall be refunded in those cases in which a deed, transfer, or conveyance occurred 1 year before a dissolution of marriage. This subsection applies in spite of any consideration as defined in subsection (1). This subsection does not apply to a deed, transfer, or conveyance executed before July 1, 1997.

(underlined words are added)

MEMORANDUM

TO: RPPTL Exec Council

SUBJECT: Information Item from R.P. Litigation
Report on the Legislative Initiative as to Self-Authentication of Documents –
Amendments to F.S. § 90.902

DATE: February 3, 2016

The Real Property Litigation Committee proposed amendments to F.S. § 90.902 "Self-Authentication" for consideration by the 2016 Florida Legislature. What seemed a simple idea that would not get much notice has been met with unexpected resistance, and unexpected support. As a result, our committee will be working with Professor Ehrhardt and the Florida Bar's Code and Rule of Evidence Committee ("CREC") to revise and improve our initiative.

The proposed amendment to § 90.902(4) would permit a litigant to obtain a paper, certified copy of a document and electronically file it, pursuant to Florida Rule of Judicial Administration 2.525. An electronically filed certified copy would be admissible to the same extent as the original. This amendment of the statute would conform present e-filing practices to the language in relevant case law which requires that the certified copies be "in the court file" in order to be admissible. It appears that this portion of the initiative will be adopted by the 2016 Legislature.

The initiative also proposed a new section, which would be numbered § 90.902(5), to permit a litigant to ask the Court to accept as authentic a copy of a document available over the internet from a government maintained web site, without the necessity of obtaining a paper certified copy.

Unexpected Resistance

The proposed new § 90.902(5) met with resistance from the Clerks of the Court, who rely on the income from producing paper certified copies. The Clerks projected a \$700,000 annual loss of revenue if this section were adopted. We deferred our efforts to include this section of the initiative in 2016, promising to find a way to make it revenue neutral for the Clerks. Our initial idea is to impose a filing fee, payable to the Clerk, when the litigant files a motion asking the Court to accept the document as authentic.

We also met with unexpected concern from the Public Defenders, who feared that prosecutors would use the procedures to unfairly prejudice criminal defendants. Their concerns were articulated by Professor Charles Ehrhardt, of FSU Law, a renowned expert on evidence. Professor Ehrhardt did not think that simply making the provisions applicable only to civil actions was a sufficient fix. He had other concerns about the proposed procedure for the

authentication. Professor Ehrhardt has promised to work closely with our committee to revise the proposal so that it can be submitted for the 2017 legislature.

Unexpected Support

When a revision to Chapter 90, the Evidence Code, is adopted by the legislature, the Code and Rule of Evidence Committee ("CREC") of the Florida Bar is required to make a recommendation whether the Florida Supreme Court should adopt the procedural aspects of the legislation as a Rule. The CREC ordinarily does not work on statutory changes until after they have been adopted by the Legislature. However, the CREC is also charged with review of the evidence rules to "advance orderly and inexpensive procedures in the administration of justice". The CREC praised our initiative as one which would streamline litigation and reduce expenses. In the words of the memo to CREC committee members, the proposed legislation "doesn't go far enough". The CREC committee is anxious for us to resolve the concerns of the Clerks and Professor Ehrhardt so that we can pursue the proposed new § 90.902(5). The CREC agreed to work with our committee to ensure that once adopted, the procedural aspects of the new § 90.902(5) would be adopted as a Rule.

Request for Assistance

Members of the Section with experience in authenticating documents for admission into evidence, those with knowledge and experience which would help in crafting a procedure to make the self-authentication revenue neutral for the Clerks of the Court, and those with experience in drafting legislation are asked to provide assistance to the Real Property Litigation Committee as we work to revise our initial proposal for new § 90.902(5).

To: Art Menor, Chair Problem Studies Committee Chair Real Property Probate and Trust
Law Section
From: Lloyd Granet
Date: July 29, 2015
Re: Old/Stale Notices of Commencement

Art,

Notices of commencement are required in virtually every construction transaction. Construction liens are addressed in the Florida Statutes in Section 713 (copy attached).

The Florida Statutory provision on notices of commencement is section 713.13 (copy attached).

As a general statement notices of commencement serve two purposes

1. To provide a vehicle where parties (principally subcontractors and materialman) who are not in privity with the owner to notify the owner that they are working on the property and entitled to the benefits of the mechanic lien statute.
2. To provide a mechanism to protect property owners from double payment for work done if a contractor receives the funds and does not properly remit them to the subcontractor or materialman.

The current statute provides the default term for a notice of commencement is one year but that if the underlying contract term is greater than one year the term of the notice of commencement must state that it is effective for a period of 1 year plus any additional period of time (FSA 713.13(1)(c)). The statutory form of notice of commencement provides the expiration of the notice of commencement shall be one year from the date of recording unless a different date is specified (FSA 713.13(d) paragraph 9). There have been different interpretations of the current statute as to whether it imposes a minimum term of one year.

It is not uncommon when a title agent is attempting to issue title insurance to find open notices of commencement where the work has been completed but the notice of commencement not terminated.

Under the current statute dealing with these "old" notice of commencement requires terminating the existing notice of commencement under Florida Statue 713.132. The 713.132 procedure requires an affidavit from the owner, notice to all known parties in privity, who have served a notice to owner or disclosed under a contractors affidavit.

This procedure is difficult for stale/old notices of commencement where the contractor has been paid in full and moved on.

We need to find a simpler path to deal with or avoid having open notices of commencement on finished and closed work.

Please consider the following:

1. Where the work has been completed (as evidenced by issuance of a final inspection from the municipal authority or a final lien release from the general contractor) and some period of time has passed. For example under the current statute if work has been completed for more than 90 days no one can lien the property.
2. Where the job is simple (a limited number of potential lienors other than contractor, think of the sign installer or air conditioning unit replacement).

One option to consider is to clearly allow for a short time period for notices of commencement. In evaluating this the Problem Studies Committee will need to consider if there should be a minimum term for a notice of commencement and if so what that minimum term should be.

As an additional basis for discuss I have attached the Uniform/Model Construction Lien Act, (kudos to Daniel Naydenov for finding it) which was adopted and approved in the late 1980's.

**REVISIONS TO FR/BAR CONTRACTS, STANDARD V. "FIRPTA",
Effective 02/2016
REQUIRED BY 12/2015 FIRPTA REGULATION CHANGES**

FR/BAR CONTRACT PROVISIONS AFFECTED:

18. STANDARDS:

V. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires the buyer of the real property to withhold 10% up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for \$300,000 or less.

(i) No withholding is required under Section 1445 if the Seller is not a "foreign person," provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification of non-foreign status from Seller, signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold 10% the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, if any required, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold 10% the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

LEGISLATION EXCERPT:

**1 SEC. 324. INCREASE IN RATE OF WITHHOLDING OF TAX ON
2 DISPOSITIONS OF UNITED STATES REAL
3 PROPERTY INTERESTS.**

4 (a) IN GENERAL.—Subsections (a), (e)(3), (e)(4),
5 and (e)(5) of section 1445 are each amended by striking
6 "10 percent" and inserting "15 percent".

7 (b) EXCEPTION FOR CERTAIN RESIDENCES.—Sec-

8 tion 1445(c) is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(4) REDUCED RATE OF WITHHOLDING FOR
11 RESIDENCE WHERE AMOUNT REALIZED DOES NOT
12 EXCEED \$1,000,000.—In the case of a disposition—

13 “(A) of property which is acquired by the
14 transferee for use by the transferee as a resi-
15 dence,

16 “(B) with respect to which the amount re-
17 alized for such property does not exceed
18 \$1,000,000, and

19 “(C) to which subsection (b)(5) does not
20 apply,

21 subsection (a) shall be applied by substituting ‘10
22 percent’ for ‘15 percent.’”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to dispositions after the date which
25 is 60 days after the date of the enactment of this Act.

**Revisions to
FIRPTA Regulations
effective 02/16/15**

1 **SEC. 324. INCREASE IN RATE OF WITHHOLDING OF TAX ON**
2 **DISPOSITIONS OF UNITED STATES REAL**
3 **PROPERTY INTERESTS.**

4 (a) **IN GENERAL.**—Subsections (a), (e)(3), (e)(4),
5 and (e)(5) of section 1445 are each amended by striking
6 “10 percent” and inserting “15 percent”.

7 (b) **EXCEPTION FOR CERTAIN RESIDENCES.**—Sec-
8 tion 1445(c) is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(4) **REDUCED RATE OF WITHHOLDING FOR**
11 **RESIDENCE WHERE AMOUNT REALIZED DOES NOT**
12 **EXCEED \$1,000,000.**—In the case of a disposition—

13 “(A) of property which is acquired by the
14 transferee for use by the transferee as a resi-
15 dence,

16 “(B) with respect to which the amount re-
17 alized for such property does not exceed
18 \$1,000,000, and

19 “(C) to which subsection (b)(5) does not
20 apply,

21 subsection (a) shall be applied by substituting ‘10
22 percent’ for ‘15 percent.’”.

23 (c) **EFFECTIVE DATE.**—The amendments made by
24 this section shall apply to dispositions after the date which
25 is 60 days after the date of the enactment of this Act.



GEOGRAPHIC TARGETING ORDER

The Director of the Financial Crimes Enforcement Network (“FinCEN”), U.S. Department of the Treasury, hereby issues a Geographic Targeting Order (“Order”) requiring Fidelity National Financial, Inc. to collect and report information about the persons involved in certain residential real estate transactions, as further described in this Order.

I. AUTHORITY

The Director of FinCEN may issue an order that imposes certain additional recordkeeping and reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area. *See* 31 U.S.C. § 5326(a); 31 CFR § 1010.370; Treasury Order 130-01. Pursuant to this authority, the Director of FinCEN hereby finds that reasonable grounds exist for concluding that the additional recordkeeping and reporting requirements described below are necessary to carry out the purposes of the Bank Secrecy Act and prevent evasions thereof.¹

II. ADDITIONAL RECORDKEEPING AND REPORTING REQUIREMENTS

A. Business and Transactions Covered by this Order

1. For purposes of this Order, the “Covered Business” means Fidelity National Financial, Inc. and any of its subsidiaries and agents.
2. For purposes of this Order, a “Covered Transaction” means a transaction in which:
 - i. A Legal Entity (as defined in Section III.A of this Order);
 - ii. Purchases residential real property located in Miami-Dade County, Florida.
 - iii. For a total purchase price in excess of \$1,000,000;
 - iv. Such purchase is made without a bank loan or other similar form of external financing; and

¹ The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 CFR Chapter X.

- v. Such purchase is made, at least in part, using a Monetary Instrument (as defined in 31 CFR § 1010.100(dd)).

B. Reports Required to be Filed by the Covered Business

1. If the Covered Business is involved in a Covered Transaction, then the Covered Business shall report the Covered Transaction to FinCEN by filing a FinCEN Form 8300. Each FinCEN Form 8300 filed pursuant to this Order must be: (i) completed in accordance with the terms of this Order and the FinCEN Form 8300 instructions (when such terms conflict, the terms of this Order apply), and (ii) e-filed through the Bank Secrecy Act E-filing system.²
2. A Form 8300 filed pursuant to this Order shall contain the following information about the Covered Transaction:
 - i. Part I shall contain information about the identity of the individual primarily responsible for representing the Purchaser (as defined in Section III.A of this Order). The Covered Business must obtain and record a copy of this individual's driver's license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 14 of the form.
 - ii. Part II shall contain information about the identity of the Purchaser. The Covered Business should select Field 15 on the FinCEN Form 8300, which will enable reporting of multiple parties under Part II of the form.
 - iii. Part II shall also contain information about the identity of the Beneficial Owner(s) (as defined in Section III.A of this Order) of the Purchaser. The Covered Business must obtain and record a copy of the Beneficial Owner's driver's license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 27 of the form.
 - iv. Part III shall contain information about the Covered Transaction as follows:
 1. Field 28: Date of closing of the Covered Transaction
 2. Field 29: Total amount transferred in the form of a Monetary Instrument
 3. Field 31: Total purchase price of the Covered Transaction
 4. Field 34: Address of real property involved in the Covered Transaction
 - v. Part IV shall contain information about the Covered Business.

² For more information on E-filing, go to this Website: <http://bsaeefiling.fincen.treas.gov/main.html> and do the following: (a) review "Getting Started"; (b) fill out a Supervisory User Application Form; (c) assign the supervisory user to represent your business; (d) obtain a digital certificate; and (e) register on the system.

- vi. The Comments section to the Form 8300 shall contain the following information:
 1. The term "REGTOMIA" as a unique identifier for this Order.
 2. If the purchaser involved in the Covered Transaction is a limited liability company, then the Covered Business must provide the name, address, and taxpayer identification number of all its members, to the extent not otherwise provided on the Form 8300.

III. GENERAL PROVISIONS

A. Additional Definitions

1. For purposes of this Order:
 - i. "Beneficial Owner" means each individual who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser.
 - ii. "Legal Entity" means a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state or of the United States or a foreign jurisdiction.
 - iii. "Purchaser" means the Legal Entity that is purchasing residential real property as part of a Covered Transaction.
2. All terms used but not otherwise defined herein have the meaning set forth in Chapter X of Title 31 of the United States Code of Federal Regulations.

B. Order Period

The terms of this Order are effective beginning on February 8, 2016 and ending on August 5, 2016 (except as otherwise provided in Section III.C of this Order).

C. Retention of Records

The Covered Business must: (1) retain all records relating to compliance with this Order for a period of five years from the last day that this Order is effective (including any renewals of this Order); (2) store such records in a manner accessible within a reasonable period of time; and (3) make such records available to FinCEN or any other appropriate law enforcement or regulatory agency, upon request.

D. No Effect on Other Provisions of the Bank Secrecy Act

Nothing in this Order modifies or otherwise affects any provision of the regulations implementing the Bank Secrecy Act to the extent not expressly stated herein.

E. Compliance

The Covered Business must supervise, and is responsible for, compliance by each of its officers, directors, employees, and agents with the terms of this Order. The Covered Business must transmit this order to each of its agents. The Covered Business must also transmit the Order to its Chief Executive Officer or other similarly acting manager.

F. Penalties for Noncompliance

The Covered Business and any of its officers, directors, employees, and agents may be liable, without limitation, for civil or criminal penalties for violating any of the terms of this Order.

G. Validity of Order

Any judicial determination that any provision of this Order is invalid does not affect the validity of any other provision of this Order, and each other provision must thereafter remain in full force and effect. A copy of this Order carries the full force and effect of an original signed Order.

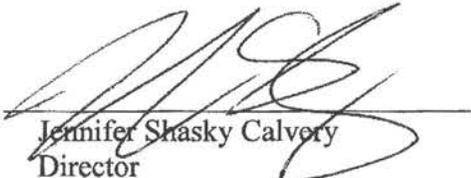
H. Paperwork Reduction Act

The collection of information subject to the Paperwork Reduction Act contained in this Order has been approved by the Office of Management and Budget (“OMB”) and assigned OMB Control Number 1506-0056.

I. Questions

All questions about the Order must be addressed to the FinCEN Resource Center at (800) 767-2825 (Monday through Friday, 8:00 a.m. - 6:00 p.m. EST).

Dated: January 6, 2016


Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury

1
2
3 A Bill To Be Entitled An Act Relating To Open and
4 Expired Permits; directing procedures for closing open
5 and expired building permits; requiring an owner
6 permit applicant to pay a refundable deposit as part
7 of the permit application to be held until the permit
8 is closed; requiring notice to the permit applicant of
9 the importance of closing permits; and directing that
10 a single permit search fee be charged on multi-unit
11 facilities; and providing an effective date.
12

13 (1) Any building permit issued for construction
14 of any commercial or residential project, other than
15 those exempted by this section, that has not been
16 properly closed by passing all necessary final
17 inspections and complying with other permit
18 requirements within one year from the expiration of
19 the notice of commencement or last amendment thereto,
20 or in the absence of a notice of commencement within
21 one year from the last inspection conducted under the
22 permit or, if no inspections have been performed on a
23 project without a notice of commencement, within two
24 years from the date of issuance of the permit, may be
25 closed by or on behalf of the current property owner,
26 regardless of whether the property owner is the same
27 owner who originally applied for the permit or is a
28 subsequent owner, by complying with the following
29 procedures:

30 (a) The property owner may hire a licensed
31 contractor, possessing a current and active Florida
32 license in a field similar to the nature of the work
33 covered by the open or expired permit at issue, to
34 reopen the permit if it is expired, perform any
35 necessary work to fulfill all requirements of the open

36 or expired permit, and call for any necessary
37 inspections and perform any other actions required for
38 a proper closure of the permit. The contractor
39 performing these functions shall not be liable for any
40 defects or work failing to comply with any applicable
41 code, regulation, ordinance, permit requirement or law
42 other than as to work actually performed by the
43 contractor. If any of the permitted work includes
44 construction outside the contractor's license, the
45 owner or contractor may hire licensed subcontractors
46 in the scope of the permitted work who may perform the
47 functions of the contractor as outlined in this
48 subsection to the extent of work covered by their
49 license.

50 (b) As an alternative to the procedure in
51 subsection 1(a) above, the property owner may hire a
52 licensed engineer or architect, possessing a current
53 and active Florida license in a field similar to the
54 nature of the work covered by the open or expired
55 permit at issue and having at least three years
56 experience in performing structural field inspections,
57 to inspect the construction work subject to the open
58 or expired building permit, direct any repairs
59 necessary to comply with all permit requirements, then
60 confirm compliance therewith by submitting a signed
61 and sealed affidavit to the issuing building
62 department. If any of the permitted work includes
63 construction outside the engineer's area of expertise,
64 the owner or engineer may hire licensed engineers in
65 the scope of the permitted work, who may direct any
66 necessary repairs to comply with all permit
67 requirements, then confirm compliance by submitting to
68 the issuing building department a signed and sealed
69 affidavit attesting to same. The building department
70 issuing the permit shall either accept the signed and

71 sealed affidavit or affidavits referenced in this
72 subsection above in lieu of conducting their own final
73 inspections, or shall conduct their own final
74 inspections within five business days of receipt of
75 the affidavit or affidavits, as satisfaction of all
76 permit requirements and shall thereafter properly
77 close the building permit.

78 (c) The building department issuing the
79 permit shall maintain a database listing contractors,
80 architects and engineers who have contacted the
81 building department for the purpose of being included
82 in said database, which shall list names and contact
83 information of contractors, architects and engineers
84 available to perform the services referenced in
85 subsections 1(a) and (b) above. Said database shall
86 be available to any owner seeking a contractor,
87 architect or engineer to perform the referenced
88 services. Nothing herein shall preclude any owner
89 from hiring a contractor, architect or engineer not in
90 the database as long as the contractor, architect or
91 engineer is licensed in a field relevant to the scope
92 of inspection.

93 (d) The procedures in subsections 1(a) and
94 (b) above shall apply regardless of whether the
95 building permit is still open or has expired.

96 (e) Notwithstanding any of the provisions
97 above or elsewhere in this law, all building permits
98 are automatically deemed properly closed without the
99 need for any further action five years after
100 expiration of the notice of commencement or last
101 amendment thereto for the permitted project or, if no
102 notice of commencement was recorded, then seven years
103 after the date of the building permit. This section
104 shall apply retroactively to all previously issued

105 building permits as well as all permits issued after
106 the effective date of this statute.

107 (2) The Florida Building Commission shall adopt
108 rules and amend the applicable Florida Building Code
109 to enact procedures designed to encourage owners to
110 ensure permits are properly closed.

111 (3) When issuing any building permit, the
112 building department shall provide to the property
113 owner a mandatory written notice in the following
114 form:

115 IMPORTANT NOTICE REGARDING PERMIT CLOSE-OUTS

116 "You are receiving with this package a building
117 permit authorizing the construction referenced in the
118 application you submitted to this building department.
119 The permit is issued with conditions, including
120 required building inspections and assurances that the
121 construction complies with the design submitted with
122 the permit application and any other conditions
123 referenced in the permit. It is critical that you
124 ensure that all necessary building inspections are
125 obtained and passed before the expiration of any
126 notice of commencement or amendment thereto, as these
127 inspections are important to ensure construction has
128 been performed in a safe and proper manner. If you
129 have any questions regarding these procedures, please
130 call the building department. Your failure to comply
131 may not only lead to the forfeiture of your deposit,
132 but may also result in unsafe conditions arising from
133 your construction."

134 (4) Municipalities, counties and building
135 departments may not charge separate search fees for
136 open or unexpired building permits for any units or

137 subunits assigned by any municipality or county to a
138 particular tax parcel identification number. Only one
139 search fee per tax parcel identification number may be
140 charged, in an amount not to exceed \$150.00.

141 (5) This act shall take effect July 1, 2017.

142

143

144

145

146 ACTIVE: 7842782_1

WHITE PAPER
PROPOSED AMENDMENT TO SECTION 744.441(16), FLORIDA STATUTES
FUNERAL EXPENSES FOR WARD

I. SUMMARY

The proposed amendment revises Fla. Stat. Section 744.441(16) to remove the current statutory cap of \$6,000.00 on the amount a guardian may expend for funeral expenses for the ward and permits the court to make an appropriate determination on a case-by-case basis.

II. CURRENT SITUATION

The relevant portion of the existing statute reads as follows:

“744.441 Powers of guardian upon court approval.—After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may: . . .

(16) Pay reasonable funeral, interment, and grave marker expenses for the ward from the ward’s estate, up to a maximum of \$6,000.”

The existing statute permits a guardian with court approval to pre-pay funeral expenses for the ward during the ward’s lifetime from the guardianship assets. When the existing law was passed in 1997 under ch. 97-140; s.5, it increased the ceiling on these expenses from \$3,000 to \$6,000. Most practitioners find that funeral, interment and grave marker expenses well exceed the maximum provided in the statute. Instead of raising the ceiling on these court approved expenses, it is more practical to delete the cap and let the court determine what is reasonable under the circumstances.

III. EFFECT OF PROPOSED CHANGES

The proposed amendment provides the court discretion to determine the reasonable cost of funeral, interment and grave marker expenses of the ward on a case- by- case basis.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposed change would have no impact on state and local governments.

V. DIRECT ECONOMIC IMPACT ON THE PRIVATE SECTOR

The proposed change may benefit the funeral services industry if additional funeral, interment and grave marker expenses are permitted to be paid.

VI. CONSTITUTIONAL ISSUES

None.

VII. OTHER INTERESTED PARTIES

The Elder Law Section of The Florida Bar

1
2
3
4
5
6
7
8
9
10
11
12
13

A bill to be entitled

An act relating to the payment of funeral expenses; amending s. 744.441(16) to delete the cap on the amount a guardian can expend on funeral expenses with prior court approval.

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

Section 1. Subsection (16) of Section 744.441 is amended to read as follows:

744.441. Powers of guardian upon court approval --

After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(16) Pay reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Hung V. Nguyen, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section

Address Hung V. Nguyen, Nguyen Law Firm, 306 Alcazar Avenue, Suite 303-A, Coral Gables, Florida 33134
Telephone: (786) 600-2530

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

CONTACTS

Board & Legislation Committee Appearance

Hung V. Nguyen, Nguyen Law Firm, 306 Alcazar Avenue, Suite 303-A, Coral Gables, Florida 33134, Telephone: (786) 600-2530
Tae Kelley Bronner, Tae Kelley Bronner, PL, 10006 Cross Creek Blvd PMB 428, Tampa, FL 33647, Telephone (813) 907-6643
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

Support

Oppose _____

Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support proposed legislation removing the statutory cap on amounts which guardians, with prior court approval, may expend for funeral related expenses, including a change to § 744.441(16), Fla. Stat.

Reasons For Proposed Advocacy:

The proposed change removes the current statutory cap which limits the amount a guardian may expend for funeral expenses of the ward. The proposed change is necessary due to the increase in costs since the prior amendment to the cap in 1997. The present cost of a funeral far exceeds the maximum provided in the statute. Under the proposed change, the court will be permitted to set a reasonable amount based on a cases by case basis for the funeral costs of the ward.

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

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

Others
(May attach list if more than one) [NONE]
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

 N/A
(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.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Hung V. Nguyen, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section

Address Hung V. Nguyen, Nguyen Law Firm, 306 Alcazar Avenue, Suite 303-A, Coral Gables, Florida 33134
Telephone: (786) 600-2530

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

CONTACTS

Board & Legislation Committee Appearance

Hung V. Nguyen, Nguyen Law Firm, 306 Alcazar Avenue, Suite 303-A, Coral Gables, Florida 33134, Telephone: (786) 600-2530
Tae Kelley Bronner, Tae Kelley Bronner, PL, 10006 Cross Creek Blvd PMB 428, Tampa, FL 33647, Telephone (813) 907-6643
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 Support X Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support creation of new statutory procedures for the service of examining committee reports and deadlines for the service and filing of objections to such reports in incapacity proceedings, including revisions to Section 744.331, Fla. Stat.

Reasons For Proposed Advocacy:

Under current law, as held in *Shen v. Parkes*, 100 So. 3d 1189 (Fla. 4th DCA 2012), the reports of the examining committee members are inadmissible hearsay if an objection is made. Because the guardianship code contains no deadline for an interested party to object to the report, the examining committee members must be prepared to attend all incapacity hearings to testify even though in most guardianship cases, incapacity is clear and uncontested. Requiring committee members to attend, or prepare to attend, all incapacity hearings when incapacity is clear is a waste of resources and time. To eliminate this problem, new statutory deadlines are created to require that objections to the reports of the examining committee must be filed a minimum of 5 days prior to the incapacity hearing or the objection is waived, thereby allowing the examining committee members to prepare and attend the incapacity hearing only if incapacity is contested.

PRIOR POSITIONS TAKEN ON THIS ISSUE

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

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

Others
(May attach list if more than one) [NONE]
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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

Referrals

 The Probate and Trust Litigation Committee Yet to be done
(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 the procedures for adjudication of incapacity of adult persons;
3 amending s. 744.331, giving incapacitated persons and minors the same privacy
4 protections available to non-incapacitated adults; and providing for an effective date.

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

6 Section 1. Subsections (3)(h) and 5(a) of section 744.331, Florida Statutes are amended
7 and a new subsection (3)(i) is added to read:

8 744.331 Procedures to determine incapacity.—

9 (1) NOTICE OF PETITION TO DETERMINE INCAPACITY.— Notice of the filing of a petition
10 to determine incapacity and a petition for the appointment of a guardian if any and
11 copies of the petitions must be served on and read to the alleged incapacitated person.
12 The notice and copies of the petitions must also be given to the attorney for the alleged
13 incapacitated person, and served upon all next of kin identified in the petition. The
14 notice must state the time and place of the hearing to inquire into the capacity of the
15 alleged incapacitated person and that an attorney has been appointed to represent the
16 person and that, if she or he is determined to be incapable of exercising certain rights, a
17 guardian will be appointed to exercise those rights on her or his behalf.

18 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.—

19 (a) When a court appoints an attorney for an alleged incapacitated person, the court
20 must appoint the office of criminal conflict and civil regional counsel or a private
21 attorney as prescribed in s. 27.511(6). A private attorney must be one who is included in
22 the attorney registry compiled pursuant to s. 27.40. Appointments of private attorneys
23 must be made on a rotating basis, taking into consideration conflicts arising under this
24 chapter.

25 (b) The court shall appoint an attorney for each person alleged to be incapacitated in all
26 cases involving a petition for adjudication of incapacity. The alleged incapacitated
27 person may substitute her or his own attorney for the attorney appointed by the court.

28 (c) Any attorney representing an alleged incapacitated person may not serve as guardian
29 of the alleged incapacitated person or as counsel for the guardian of the alleged
30 incapacitated person or the petitioner.

31 (d) Effective January 1, 2007, an attorney seeking to be appointed by a court for
32 incapacity and guardianship proceedings must have completed a minimum of 8 hours of
33 education in guardianship. A court may waive the initial training requirement for an
34 attorney who has served as a court-appointed attorney in incapacity proceedings or as

35 an attorney of record for guardians for not less than 3 years. The education requirement
36 of this paragraph does not apply to the office of criminal conflict and civil regional
37 counsel until July 1, 2008.

38 (3) EXAMINING COMMITTEE.—

39 (a) Within 5 days after a petition for determination of incapacity has been filed, the
40 court shall appoint an examining committee consisting of three members. One member
41 must be a psychiatrist or other physician. The remaining members must be either a
42 psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse,
43 nurse practitioner, licensed social worker, a person with an advanced degree in
44 gerontology from an accredited institution of higher education, or other person who by
45 knowledge, skill, experience, training, or education may, in the court's discretion, advise
46 the court in the form of an expert opinion. One of three members of the committee
47 must have knowledge of the type of incapacity alleged in the petition. Unless good
48 cause is shown, the attending or family physician may not be appointed to the
49 committee. If the attending or family physician is available for consultation, the
50 committee must consult with the physician. Members of the examining committee may
51 not be related to or associated with one another, with the petitioner, with counsel for
52 the petitioner or the proposed guardian, or with the person alleged to be totally or
53 partially incapacitated. A member may not be employed by any private or governmental
54 agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to
55 the person or the family of the person alleged to be incapacitated or for whom a
56 guardianship is sought. A petitioner may not serve as a member of the examining
57 committee. Members of the examining committee must be able to communicate, either
58 directly or through an interpreter, in the language that the alleged incapacitated person
59 speaks or to communicate in a medium understandable to the alleged incapacitated
60 person if she or he is able to communicate. The clerk of the court shall send notice of
61 the appointment to each person appointed no later than 3 days after the court's
62 appointment.

63 (b) A person who has been appointed to serve as a member of an examining committee
64 to examine an alleged incapacitated person may not thereafter be appointed as a
65 guardian for the person who was the subject of the examination.

66 (c) Each person appointed to an examining committee must file an affidavit with the
67 court stating that he or she has completed the required courses or will do so no later
68 than 4 months after his or her initial appointment. Each year, the chief judge of the
69 circuit must prepare a list of persons qualified to be members of an examining
70 committee.

71 (d) A member of an examining committee must complete a minimum of 4 hours of
72 initial training. The person must complete 2 hours of continuing education during each
73 2-year period after the initial training. The initial training and continuing education

74 program must be developed under the supervision of the Statewide Public Guardianship
75 Office, in consultation with the Florida Conference of Circuit Court Judges; the Elder Law
76 and the Real Property, Probate and Trust Law sections of The Florida Bar; the Florida
77 State Guardianship Association; and the Florida Guardianship Foundation. The court
78 may waive the initial training requirement for a person who has served for not less than
79 5 years on examining committees. If a person wishes to obtain his or her continuing
80 education on the Internet or by watching a video course, the person must first obtain
81 the approval of the chief judge before taking an Internet or video course.

82 (e) Each member of the examining committee shall examine the person. Each examining
83 committee member must determine the alleged incapacitated person's ability to
84 exercise those rights specified in s. 744.3215. In addition to the examination, each
85 examining committee member must have access to, and may consider, previous
86 examinations of the person, including, but not limited to, habilitation plans, school
87 records, and psychological and psychosocial reports voluntarily offered for use by the
88 alleged incapacitated person. Each member of the examining committee must ~~submit a~~
89 report file their report with the clerk of the court within 15 days after appointment.

90 (f) The examination of the alleged incapacitated person must include a comprehensive
91 examination, a report of which shall be filed by each examining committee member as
92 part of his or her written report. The comprehensive examination report should be an
93 essential element, but not necessarily the only element, used in making a capacity and
94 guardianship decision. The comprehensive examination must include, if indicated:

- 95 1. A physical examination;
- 96 2. A mental health examination; and
- 97 3. A functional assessment.

98 If any of these three aspects of the examination is not indicated or cannot be
99 accomplished for any reason, the written report must explain the reasons for its
100 omission.

101 (g) Each committee member's written report must include:

- 102 1. To the extent possible, a diagnosis, prognosis, and recommended course of
103 treatment.
- 104 2. An evaluation of the alleged incapacitated person's ability to retain her or his rights,
105 including, without limitation, the rights to marry; vote; contract; manage or dispose of
106 property; have a driver license; determine her or his residence; consent to medical
107 treatment; and make decisions affecting her or his social environment.

108 3. The results of the comprehensive examination and the committee member's
109 assessment of information provided by the attending or family physician, if any.

110 4. A description of any matters with respect to which the person lacks the capacity to
111 exercise rights, the extent of that incapacity, and the factual basis for the determination
112 that the person lacks that capacity.

113 5. The names of all persons present during the time the committee member conducted
114 his or her examination. If a person other than the person who is the subject of the
115 examination supplies answers posed to the alleged incapacitated person, the report
116 must include the response and the name of the person supplying the answer.

117 6. The signature of the committee member and the date and time the member
118 conducted his or her examination.

119 ~~(h) A copy of each committee member's report must be served on the petitioner and on~~
120 ~~the attorney for the alleged incapacitated person within 3 days after the report is filed~~
121 ~~and at least 5 days before the hearing on the petition. Within 3 days after the clerk's~~
122 ~~receipt of each of the examining committee member's report, the clerk must serve the~~
123 ~~report on petitioner's counsel and the attorney for the alleged incapacitated person via~~
124 ~~electronic mail delivery or U.S. Mail. Upon service of the report, the clerk shall promptly~~
125 ~~file a certificate of service of the report in the incapacity proceeding. Petitioner's~~
126 ~~counsel and the attorney for the alleged incapacitated person must be served with each~~
127 ~~report at least 10 days prior to the hearing on the petition. If service is not timely~~
128 ~~effectuated in advance of the hearing, the petitioner or the alleged incapacitated person~~
129 ~~may move for continuance of the hearing.~~

130 (i) The petitioner and the alleged incapacitated person may object to the introduction of
131 any of the examining committee member's reports or any part thereof into evidence by
132 filing and serving a written objection on the other party no later than 5 days prior to the
133 adjudicatory hearing. The objection shall state the basis upon which it is made to the
134 admissibility of any report or part thereof into evidence. If an objection is timely filed
135 and served, the admissibility of the report(s) or part thereof in question shall be
136 determined and governed by the rules of evidence for purposes of the incapacity
137 hearing. For good cause, the court may extend the time to file and serve the written
138 objection. The alleged incapacitated person and the petitioner shall be the only
139 individuals entitled to object to the admissibility of the reports, unless otherwise
140 provided by the court.

141 (4) DISMISSAL OF PETITION.—If a majority of the examining committee members
142 conclude that the alleged incapacitated person is not incapacitated in any respect, the
143 court shall dismiss the petition.

144 (5) ADJUDICATORY HEARING.—

145 (a) Upon appointment of the examining committee, the court shall set the date upon
146 which the petition will be heard. The date for the adjudicatory hearing must be set
147 conducted at least 10 days after the filing of the latest report of the examining
148 committee members but must not be conducted no more than 1430 days after the filing
149 of the latest reports of the examining committee members has been filed, unless good
150 cause is shown. The adjudicatory hearing must be conducted at the time and place
151 specified in the notice of hearing and in a manner consistent with due process.

152 (b) The alleged incapacitated person must be present at the adjudicatory hearing, unless
153 waived by the alleged incapacitated person or the person's attorney or unless good
154 cause can be shown for her or his absence. Determination of good cause rests in the
155 sound discretion of the court.

156 (c) In the adjudicatory hearing on a petition alleging incapacity, the partial or total
157 incapacity of the person must be established by clear and convincing evidence.

158 1(6) ORDER DETERMINING INCAPACITY.—If, after making findings of fact on the basis of
159 clear and convincing evidence, the court finds that a person is incapacitated with
160 respect to the exercise of a particular right, or all rights, the court shall enter a written
161 order determining such incapacity. In determining incapacity, the court shall consider
162 the person's unique needs and abilities and may only remove those rights that the court
163 finds the person does not have the capacity to exercise. A person is determined to be
164 incapacitated only with respect to those rights specified in the order.

165 (a) The court shall make the following findings:

166 1. The exact nature and scope of the person's incapacities;

167 2. The exact areas in which the person lacks capacity to make informed decisions about
168 care and treatment services or to meet the essential requirements for her or his physical
169 or mental health or safety;

170 3. The specific legal disabilities to which the person is subject; and

171 4. The specific rights that the person is incapable of exercising.

172 (b) When an order determines that a person is incapable of exercising delegable rights,
173 the court must consider and find whether there is an alternative to guardianship that
174 will sufficiently address the problems of the incapacitated person. A guardian may not
175 be appointed if the court finds there is an alternative to guardianship which will
176 sufficiently address the problems of the incapacitated person. If the court finds there is
177 not an alternative to guardianship that sufficiently addresses the problems of the
178 incapacitated person, a guardian must be appointed to exercise the incapacitated
179 person's delegable rights.

180 (c) In determining that a person is totally incapacitated, the order must contain findings
181 of fact demonstrating that the individual is totally without capacity to care for herself or
182 himself or her or his property.

183 (d) An order adjudicating a person to be incapacitated constitutes proof of such
184 incapacity until further order of the court.

185 (e) After the order determining that the person is incapacitated has been filed with the
186 clerk, it must be served on the incapacitated person. The person is deemed
187 incapacitated only to the extent of the findings of the court. The filing of the order is
188 notice of the incapacity. An incapacitated person retains all rights not specifically
189 removed by the court.

190 (f) Upon the filing of a verified statement by an interested person stating:

191 1. That he or she has a good faith belief that the alleged incapacitated person's trust,
192 trust amendment, or durable power of attorney is invalid; and

193 2. A reasonable factual basis for that belief,

194 the trust, trust amendment, or durable power of attorney shall not be deemed to be an
195 alternative to the appointment of a guardian. The appointment of a guardian does not
196 limit the court's power to determine that certain authority granted by a durable power
197 of attorney is to remain exercisable by the agent.

198 (7) FEES.—

199 (a) The examining committee and any attorney appointed under subsection (2) are
200 entitled to reasonable fees to be determined by the court.

201 (b) The fees awarded under paragraph (a) shall be paid by the guardian from the
202 property of the ward or, if the ward is indigent, by the state. The state shall have a
203 creditor's claim against the guardianship property for any amounts paid under this
204 section. The state may file its claim within 90 days after the entry of an order awarding
205 attorney ad litem fees. If the state does not file its claim within the 90-day period, the
206 state is thereafter barred from asserting the claim. Upon petition by the state for
207 payment of the claim, the court shall enter an order authorizing immediate payment out
208 of the property of the ward. The state shall keep a record of the payments.

209 1(c) If the petition is dismissed or denied:

210 1. The fees of the examining committee shall be paid upon court order as expert witness
211 fees under s. 29.004(6).

212 2. Costs and attorney fees of the proceeding may be assessed against the petitioner if
213 the court finds the petition to have been filed in bad faith. The petitioner shall also
214 reimburse the state courts system for any amounts paid under subparagraph 1. upon
215 such a finding.

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

WHITE PAPER

PROPOSED AMENDMENT OF F.S. SECTION 744.331 IN LIGHT OF *SHEN v. PARKES*

A. SUMMARY

This proposal seeks the creation of a notice-and-demand procedure for hearsay and other objections to the examining committee reports in guardianship/incapacity proceedings. The guardianship process depends on the examination of the alleged incapacitated person (“AIP”) by three court appointed committee members, who each receive a nominal fee and prepare a report to be presented to the court, pursuant to subsection 744.331(3), Florida Statutes. The Fourth District Court of Appeal (“Fourth DCA”) in *Shen v. Parkes*, 100 So. 3d 1189 (Fla. 4th DCA 2012) held that reports of the examining committee members are inadmissible hearsay. While examining committee reports are typically received into evidence without testimony, the *Shen* decision creates an undue burden on the court process by potentially forcing the appearance of all committee members at hearings in order to provide testimony on the information contained in their reports.

The requirement of examining committee member’s attendance at every hearing is time consuming, costly, and places an undue burden on the court system, despite the fact that, in most cases, incapacity may not be disputed. In order to address this issue, there should be a mechanism in place requiring advance notice of an objection by those who seek to challenge the reports so that preparation for a contested hearing, including securing witness appearances, is limited to those cases when it is actually necessary. This solution will reduce undue burden on the guardianship process while preserving a party’s ability to cross examine the committee members when advance notice of an objection is given.

In order to facilitate this procedure and otherwise improve the current legislation on the delivery of the reports to the court and the parties, the current procedure for transmittal of the reports should also be clarified and improved. Despite the importance of the examining committee reports as part of the guardianship process, there is no specific statutory mechanism to effectuate the timely receipt of these reports from the examining committee members to the parties and the court. Without statutory authority, counties have simply enacted their own procedures, which are sometimes ineffective, inconsistent, or they have no procedure at all, which deprives the court and parties of the opportunity to review and receive these reports in advance of the hearing.

The Guardianship, Power of Attorney and Advance Directives Committee of the Real Property, Probate & Trust Law Section of The Florida Bar has studied this issue, believes *Shen* was correctly decided, and recommends that certain amendments to subsection 744.331 be made to eliminate unnecessary burden on the guardianship court process and to improve the law regarding the delivery of reports. This proposal adopts changes to subsection 744.331 to i) institute a new pre-hearing procedure for notice of objections, including hearsay, to examining committee reports, and ii) clarify and amend the existing legislation for the transmittal of the reports to the court and the parties.

B. CURRENT SITUATION: *SHEN V. PARKES*

Subsection 744.331(3), Florida Statutes (2015), provides that upon the filing of a petition for determination of incapacity, a court shall appoint a three member examining committee to meet with the alleged incapacitated person and make determinations as to the person's mental capacity. Once the examining committee members have performed their evaluation, each member submits a report detailing their findings and conclusions as to the person's capacity. *See* §744.331(3)(f), Fla. Stat. (2015). Subsection 744.331(4) provides that if two of the three examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court must dismiss the petition. If two of the three examining committee members conclude the person is incapacitated in some respect, the court proceeds to a hearing on the petition and makes a final determination based on the evidence presented by the parties. *See* § 744.331(5), Fla. Stat. (2015).

In *Shen*, Mr. Shen's family member filed a petition for incapacity alleging that he was incapacitated, which in turn prompted an examination of his mental capacity by the court appointed committee members in accordance with section 744.331(3). An adjudicatory hearing was held, and Mr. Shen's attorney objected to the admission of the examining committee reports on the ground of inadmissible hearsay. None of the committee members testified nor did other witnesses provide testimony regarding the alleged incapacity of Mr. Shen. The trial court accepted the written reports of the examining committee members over Mr. Shen's objection, and the reports were the only evidence of his incapacity. In reversing the trial court, the Fourth DCA found that the proponent of the reports did not assert the reports were admissible under any hearsay exception and the court otherwise found that no hearsay exception existed. The appellate court relied upon Florida Probate Rule 5.170, which provides that "[i]n proceedings under the Florida Probate Code and the Florida Guardianship Law the rules of evidence in civil actions are applicable unless specifically changed by the Florida Probate Code, the Florida Guardianship Law, or these rules." *Shen*, 100 So. 3d at 1191. The court stated that "[e]ven if it could be said that the guardianship statute permits the court to consider the comprehensive examination portion of the reports in the face of a hearsay objection, the statute does not reference the court's consideration of the remainder of the reports, which includes the diagnosis, prognosis, recommended treatment, evaluation of rights, and finding of incapacity and need for limited or plenary guardianship." *Id.* at 1191-92, citing § 744.331(3)(g), Fla. Stat. (2011).

In light of the *Shen* decision, many practitioners feel compelled to require the attendance of examining committee members at every hearing out of concern over a potential hearsay objection relating to the admission of the examining committee report, even when such an objection may never be asserted. In the face of the potential for an objection and the lack of advance notice as to whether such objection will occur, an unnecessary burden is being placed on examining committee members as well as the court system to prepare for these unknown contested guardianship proceedings (and to pay for same).

C. EFFECT OF PROPOSED CHANGES

Under this proposal, a procedure is created which requires that a party seeking to challenge a report provides advance notice of their objection, or if no written objection is made in a timely manner all objections are waived and the reports are admissible without further proof. This type of procedure is known as a "notice-and-demand" procedure and is a statutorily

recognized mechanism in the context of criminal proceedings where one's liberties are at stake.¹ Although guardianship cases are civil proceedings, the potential restraint on an AIP's liberties is similar to that of a criminal defendant, and thus the AIP's right to confront the examining committee members is a significant consideration in the context of addressing the *Shen* issue. While it is unclear if the right to confrontation would even be recognized in a civil guardianship proceeding,² the proposed revisions to subsection 744.331 nonetheless will provide an adequate solution to the *Shen* issue while avoiding any potential infringement on confrontation rights.³ The AIP maintains his or her right to confront, as the notice-and-demand procedure simply governs the time within which the AIP must assert his or her right to do so. Specifically, the proposal requires that any objection to a report must be raised at least five days before the hearing. This is consistent with the legislative intent in guardianship proceedings to place the burden of proof on the party filing the incapacity petition, not the AIP. Also, it will further Florida's policy of deciding matters on the merits by avoiding delays and dismissals on technical grounds.⁴ Finally, in consideration of other alternatives to address the *Shen* decision, a notice-and-demand provision, rather than a creation of a hearsay exception in the Evidence Code, will avoid shifting the burden of proof to the AIP and provide the AIP the opportunity to cross examine his or her examiners through a timely objection.

Additionally, this proposal takes the opportunity to address other issues in the current process in order to improve the procedure in guardianship proceedings. The first such change addresses the arguably ambiguous terminology which required examining committee members to "submit" a report to the clerk rather than "filing" it with the clerk. The second change places the duty on the clerk to serve the examining committee reports on counsel and sets a clear timetable for that service.

Accordingly, the changes being made to Florida Statute § 744.331 are as follows:

1: § 744.331(3)(e) is revised to require the examining committee members to file their reports with the clerk of the court, clearing up an unclear term in the statute which currently requires the members to "submit a report."

2: § 744.331(3)(h) is revised to require the clerk of court to serve each examining committee report on the petitioner's counsel and the attorney for the alleged incapacitated person upon receiving the report from the examining committee member. This change also sets up a requirement that all reports are to be served at least 10 days prior to the hearing on the petition for determination of incapacity.

¹See *Melendez v. Massachusetts*, 557 U.S. 305, 326 (2009).

²See *Walker v. Hadi*, 611 F. 3d 720 (11th Cir. 2010) (affirming the lower court's decision not to widen the scope of *Crawford v. Washington*, 541 U.S. 36 (2004) to civil proceedings).

³See *Melendez v. Massachusetts*, 557 U.S. at 326 (2009); also see *Crawford v. Washington*, 541 U.S.36 (2004).

⁴See, e.g., *Ciffo v. Public Storage Management, Inc.*, 622 So. 2d 1053, 1055 (Fla. 4th DCA 1993); *Tubero v. Chapnich*, 552 So. 2d 932, 935 (Fla. 4th DCA 1989) ("justice prefers decisions based upon the merits over determinations resulting from defaults or dismissals").

3: § 744.331(3)(i) is created to insert the “notice-and-demand” provision which requires objection to the examining committee reports, including hearsay objections, to be made at least 5 days prior to the adjudicatory hearing. The objection is required to be made in writing and served on the other party. This change further confirms that only the alleged incapacitated person and the petitioner shall be entitled to make such an objection, which is consistent with current law.

4: § 744.331(5) is revised to require the adjudicatory hearing to be conducted at least 10 days after, but not more than 30 days after, the last examining committee report has been filed. This extends the current 14 day time frame to allow for the notice-and-demand procedures and was done to allow for the notice and demand mechanism.

D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct economic impact on the private sector.

F. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal per *Melendez v. Massachusetts* which is addressed in Section C above.

G. OTHER INTERESTED PARTIES

None are known at this time.