



**The Breakers  
Palm Beach, Florida**

**Saturday, July 27, 2019  
9:45 am**

**BRING THIS AGENDA TO THE MEETING**

**NOTE: The Agenda will be posted to the  
meeting APP.**

**Real Property, Probate and Trust Law Section  
Executive Council Meeting  
The Breakers  
Palm Beach, Florida  
Saturday, July 27, 2019**

---

**Agenda**

**Note: Agenda Items May Be Considered on a Random Basis**

- I. **Presiding** — *Robert S. Freedman, Chair*
- II. **Attendance** — *Steven H. Mezer, Secretary*
- III. **Minutes of Previous Meeting** — *Steven H. Mezer, Secretary*
  - 1. Motion to approve the minutes of the June 1, 2019, meeting of the Executive Council held at the Opal Sands Resort, Clearwater Beach, Florida. **p.10-33**
- IV. **Chair's Report** — *Robert S. Freedman, Chair*
  - 1. Recognition of Guests
  - 2. Milestones
  - 3. Introduction and comments from sponsors of Executive Council meeting. **p.34-36**
  - 4. 2019-2020 Executive Council meetings **p.37**
  - 5. Miami and Amsterdam updates
  - 6. Milestones
  - 7. Report of Interim Action by the Executive Committee - Waivers of Attendance Requirement under the By-Laws:

In accordance with the provisions of Article V, Section 4 of the Section's By-Laws, the Executive Committee, having found good cause for absences during the 2018-2019 Bar year, grants waivers of the By-Laws attendance requirements for the following individuals, thereby enabling such individuals to serve on the Executive Council for the 2019-2020 Bar year: Raul P. Ballaga; Kenneth B. Bell; David R. Carlisle; John G. Grimsley; Hon. Hugh Hayes; Reese J. Henderson, Jr.; George D. Karabjanian; Wilhelmina F. Kightlinger; Hon. Norma S. Lindsey; John W. Little, III; Deborah B. Mastin; Charles I. Nash;

Pamela O. Price; Angela K. Santos; Hon. Mark A. Speiser; Hon. Jessica J. Ticktin; Melissa VanSickle; and Julie A.S. Williamson.

8. Section Calendar **p.38-40**
- V. [Liaison with Board of Governors Report](#) — *Michael G. Tanner*
- VI. [Chair-Elect's Report](#) — *William T. Hennessey, III, Chair-Elect*
  1. 2020-2021 Meeting Schedule. **p.41**
- VII. [Treasurer's Report](#) — *Wm. Cary Wright, Treasurer*
  1. Statement of Current Financial Conditions. **p.42-52**
- VIII. [Director of At-Large Members Report](#) — *Lawrence Jay Miller, Director*
- IX. [CLE Seminar Coordination Report](#) — *Wilhelmina F. Kightlinger (Real Property) and John C. Moran (Probate & Trust), Co-Chairs*
  1. Report on pending CLE programs and opportunities **p.53**
- X. [Legislation Committee](#) – *S. Katherine Frazier and Jon Scuderi, Co-Chairs*
- XI. [General Standing Division Report](#) — *William T. Hennessey, III, General Standing Division Director and Chair-Elect*

**Informational Items:**

1. **Liaison with Clerks of the Court** – *Laird A. Lile*
  - a. Update on matters of interest.
2. **Law School Mentoring & Programing** – *Lynwood F. Arnold, Jr., Chair*
  - a. Update on committee activities.
3. **Fellows** – *Benjamin Frank Diamond and Christopher A. Sajdera, Co-Chairs*
  - a. Report on new Fellows for the 2019-2020 Bar year
4. **Information and Technology** – *Neil Barry Shoter, Chair*
  - a. Update on website modifications and changes
5. **Membership and Inclusion** - *Annabella Barboza and Brenda Ezell, Co-Chairs*
  - a. Report on committee activities

6. **Professionalism and Ethics** – *Gwynne A. Young, Chair*
  - a. Ethics vignette with related materials **p.54-56**
7. **Strategic Planning Committee** - *Debra L. Boje and Robert S. Freedman, Co-Chairs*
  - a. Discussion on Draft of 2019 Strategic Plan **p.57-97**
8. **Model and Uniform Acts** - *Bruce M. Stone and Richard W. Taylor, Co-Chairs*
  - a. Written report of the Committee **p.98-100**
  - b. Discussion concerning study of the Uniform Partition of Heirs Property Act. **p.101-134**

**XII. Real Property Law Division Report** — *Robert S. Swaine, Division Director*

**Action Item:**

1. **Real Property Finance and Lending Committee** - *Richard McIver, Chair*

Motion to: (A) adopt as a Section legislative position support to repeal § 83.561, Florida Statutes to: (i) eliminate inconsistencies between it and the more protective federal Protecting Tenants at Foreclosure Act,; and (ii) clarify the rights and obligations of tenants and purchasers of property upon foreclosure sale; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **p.135-140**

**Information Items:**

1. **Real Property Problems Study** - *Lee A. Weintraub, Chair*

Discussion of a third-party proposal to eliminate the need for subscribing witnesses on leases of real property.

2. **Condominium and Planned Development Committee** – *William P. Sklar and Joseph E. Adams, Co-Chairs*

Discussion of legislation that would clarify that a condominium association has the right to represent its unit owner members in a group, pursuant to F.R.C.P. 1.221 and Florida Statutes §718.111(3). **p.141-150**

**XIII. Probate and Trust Law Division Report** — Sarah Butters, Division Director

**Action Items:**

1. **IRA, Insurance, and Employee Benefits** – L. Howard Payne and Alfred J. Stashis, Jr., Co-Chairs

Motion to (A) adopt as a Section legislative position support for proposed legislation to change F.S. 221.21(2)(c) to clarify that an ex-spouse's interest in an IRA which is received in a transfer incident to divorce is exempt from the claims of the transferee ex-spouse's creditors; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **p.151-156**

2. **Probate and Trust Litigation Committee** - J. Richard Caskey, Chair

Motion to (A) adopt as a Section legislative position support for proposed amendments to F.S. 733.212, which governs the contents of a notice of administration, to require additional language to provide adequate notice that a party may be waiving their right to contest a trust if they fail to timely contest the will; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **p.157-161**

**Information Item:**

1. **Trust Law Committee** - Matthew Triggs, Chair

Discussion on potential Section legislative position to support adoption of the "Florida Directed Trust Act", a modified version of the Uniform Directed Trust Act, which clarifies and changes various aspects of the Florida Statutes relating to directed trusts. **p.162-195**

**XIV. Real Property Law Division Committee Reports** — Robert S. Swaine, Division Director

1. **Attorney-Loan Officer Conference** – Robert G. Stern, Chair; Kristopher E. Fernandez, Wilhelmina F. Kightlinger, and Ashley McRae, Co-Vice Chairs
2. **Commercial Real Estate** – Jennifer J. Bloodworth, Chair; E. Burt Bruton, E. Ashley McRae, R. James Robbins, Jr. and Martin A. Schwartz, Co-Vice Chairs
3. **Condominium and Planned Development** – William P. Sklar and Joseph E. Adams, Co-Chairs; Alexander B. Dobrev, Vice Chair
4. **Condominium and Planned Development Law Certification Review Course** – Sandra Krumbein, Chair; Jane L. Cornett and Christene M. Ertl, Co-Vice Chairs
5. **Construction Law** – Reese J. Henderson, Jr., Chair; Sanjay Kurian, Vice Chair

6. **Construction Law Certification Review Course** – Melinda S. Gentile and Elizabeth B. Ferguson Co-Chairs; Gregg E. Hutt and Scott P. Pence, Co-Vice Chairs
7. **Construction Law Institute** – Jason J. Quintero, Chair; Deborah B. Mastin and Brad R. Weiss, Co-Vice Chairs
8. **Development & Land Use Planning** – Julia L. Jennison, Chair; Jin Liu and Colleen C. Sachs, Co-Vice Chairs
9. **Insurance & Surety** – Michael G. Meyer, Chair; Katherine L. Heckert and Mariela M. Malfeld, Co-Vice Chairs
10. **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; Alan B. Fields and James C. Russick, Co-Vice Chairs
11. **Real Estate Certification Review Course** – Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach, Lloyd Granet and Brian W. Hoffman, Co-Vice Chairs
12. **Real Estate Leasing** – Brenda B. Ezell, Chair; Richard D. Eckhard and Christopher A. Sajdera, Co-Vice Chairs
13. **Real Property Finance & Lending** – Richard S. Mclver, Chair; Deborah Boyd and Jason M. Ellison, Co-Vice Chair
14. **Real Property Litigation** – Michael V. Hargett, Chair; Amber E. Ashton, Manuel Farach and Christopher W. Smart, Co-Vice Chairs
15. **Real Property Problems Study** – Lee A. Weintraub, Chair; Stacy O. Kalmanson, Susan K. Spurgeon and Adele Ilene Stone, Co-Vice Chairs
16. **Residential Real Estate and Industry Liaison** – Nicole M. Villarroel and Salome J. Zikakis, Co-Chairs; Raul Ballaga, Louis E. “Trey” Goldman, and James A. Marx, Co-Vice Chairs
17. **Title Insurance and Title Insurance Liaison** – Brian W. Hoffman, Chair; Mark A. Brown, Alan B. Fields, Leonard Prescott and Cynthia A. Riddell, Co-Vice Chairs
18. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Karla J. Staker, and Rebecca Wood, Co-Vice Chairs

**XV. Probate and Trust Law Division Committee Reports** — Sarah Butters, Division Director

1. **Ad Hoc Guardianship Law Revision Committee** — Nicklaus J. Curley, and Sancha Brennan Whynot, Co-Chairs; David C. Brennan and Stacey B. Rubel, Co-Vice Chairs
2. **Ad Hoc Committee on Electronic Wills** — Angela McClendon Adams, Chair; Frederick “Ricky” Hearn and Jenna G. Rubin, Co-Vice Chairs
4. **Ad Hoc Study Committee on Professional Fiduciary Licensing** — Angela McClendon Adams, Chair
5. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** — William T. Hennessey, III, Chair; Paul Edward Roman, Vice-Chair
6. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** — Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs

7. **Asset Protection** — Brian M. Malec, Chair; Richard R. Gans and Michael A. Sneeringer, Co-Vice-Chairs
8. **Attorney/Trust Officer Liaison Conference** — Tattiana Patricia Brenes-Stahl and Cady Huss, Co-Chairs; Tae Kelley Bronner, Stacey L. Cole (Corporate Fiduciary), Patrick C. Emans, Gail G. Fagan and Mitchell A. Hipsman, Co-Vice Chairs
9. **Charitable Planning and Exempt Organizations Committee** — Seth Kaplan, Chair and Jason Havens, Vice-Chair
10. **Elective Share Review Committee** — Lauren Young Detzel, Chair; Cristina Papanikos and Jenna G. Rubin, Co-Vice-Chairs
11. **Estate and Trust Tax Planning** — Robert L. Lancaster, Chair; Richard Sherrill and Yoshimi O. Smith, Co-Vice Chairs
12. **Guardianship, Power of Attorney and Advanced Directives** — Nicklaus Joseph Curley, Chair; Brandon D. Bellew, Stacey Beth Rubel, and Jamie Schwinghammer, Co-Vice Chairs
13. **IRA, Insurance and Employee Benefits** — L. Howard Payne and Alfred J. Stashis, Co-Chairs; Charles W. Callahan, III, Vice Chair
14. **Liaisons with ACTEC** — Elaine M. Bucher, Shane Kelley, Charles I. Nash, Tasha K. Pepper-Dickinson, and Diana S.C. Zeydel
15. **Liaisons with Elder Law Section** — Travis Finchum and Marjorie Ellen Wolasky
16. **Liaisons with Tax Section** — Lauren Young Detzel, William R. Lane, Jr., and Brian C. Sparks
17. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith Braun, Co-Vice Chairs
18. **Probate and Trust Litigation** — John Richard Caskey, Chair; Angela Adams, James R. George and R. Lee McElroy, IV, Co-Vice Chairs
19. **Probate Law and Procedure** — M. Travis Hayes, Chair; Amy B. Beller, Jeffrey S. Goethe and Theodore S. Kypreos, Co-Vice Chairs
20. **Trust Law** — Matthew H. Triggs, Chair; Tami Foley Conetta, Jack A. Falk, Jenna G. Rubin, and Mary E. Karr, Co-Vice Chairs
21. **Wills, Trusts and Estates Certification Review Course** — Jeffrey S. Goethe, Chair; J. Allison Archbold, Rachel A. Lunsford, and Jerome L. Wolf, Co-Vice Chairs

**XVI. General Standing Division Committee Reports** — *William T. Hennessey, III, General Standing Division Director and Chair-Elect*

1. **Ad Hoc Florida Bar Leadership Academy** — Kristopher E. Fernandez and J. Allison Archbold, Co-Chairs; Bridget Friedman, Vice Chair
2. **Ad Hoc Remote Notarization** – E. Burt Bruton, Jr., Chair
3. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
4. **Budget** — Wm. Cary Wright, Chair; Tae Kelley Bronner. Linda S. Griffin, and Pamela O. Price, Co-Vice Chairs
5. **CLE Seminar Coordination** — Wilhelmina F. Kightlinger and John C. Moran, Co-Chairs; Alexander H. Hamrick, Hardy L. Roberts, III, Paul E. Roman (Ethics), Silvia B. Rojas, and Yoshimi O. Smith, Co-Vice Chairs

6. **Convention Coordination** — Sancha Brennan, Chair; Bridget Friedman, Nishad Khan and Alexander H. Hamrick, Co-Vice Chairs
7. **Disaster and Emergency Preparedness and Response** – Brian C. Sparks, Chair; Jerry E. Aron, Benjamin Frank Diamond and Colleen Coffield Sachs, Co-Vice Chairs
8. **Fellows** — Benjamin Frank Diamond and Christopher A. Sajdera, Co-Chairs; Joshua Rosenberg and Angel Santos, Co-Vice Chairs
9. **Florida Electronic Filing & Service** — Rohan Kelley, Chair
10. **Homestead Issues Study** — Jeffrey S. Goethe (Probate & Trust) and J. Michael Swaine (Real Property), Co-Chairs; Michael J. Gelfand, Melissa Murphy and Charles Nash, Co-Vice Chairs
11. **Information Technology & Communication** — Neil Barry Shoter, Chair; Erin H. Christy, Alexander B. Dobrev, Jesse B. Friedman, Keith S. Kromash, Patrick F. Mize, William A. Parady, Hardy L. Roberts, III, and Michael A. Sneeringer, Co-Vice Chairs
12. **Law School Mentoring & Programing** — Lynwood F. Arnold, Jr., Chair; Phillip A. Baumann, Guy Storms Emerich, Elizabeth Hughes and Kymberlee Curry Smith, Co-Vice Chairs
13. **Legislation** — Jon Scuderi (Probate & Trust) and S. Katherine Frazier (Real Property), Co-Chairs; Theodore S. Kypreos and Robert Lee McElroy, IV (Probate & Trust), Manuel Farach and Arthur J. Menor (Real Property), Co-Vice Chairs
14. **Legislative Update (2019-2020)** — Stacy O. Kalmanson and Thomas M. Karr, Co-Chairs; Brenda Ezell, Theodore Stanley Kypreos, Jennifer S. Tobin and Salome J. Zikakis, Co-Vice Chairs
15. **Legislative Update (2020-2021)** — Thomas M. Karr, Chair; Brenda Ezell, Theodore Stanley Kypreos, Gutman Skrande, Jennifer S. Tobin, Kit van Pelt and Salome J. Zikakis, Co-Vice Chairs
16. **Liaison with:**
  - a. **American Bar Association (ABA)** — Robert S. Freedman, Edward F. Koren and Julius J. Zschau
  - b. **Clerks of Circuit Court** — Laird A. Lile
  - c. **FLEA / FLSSI** — David C. Brennan and Roland D. “Chip” Waller
  - d. **Florida Bankers Association** — Mark T. Middlebrook
  - e. **Judiciary** — Judge Catherine Catlan, Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Margaret Hudson, Judge Celeste Hardee Muir, Judge Bryan Rendzio, Judge Janet C. Thorpe and Judge Jessica Jacqueline Ticktin
  - f. **Out of State Members** — Nicole Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford
  - g. **TFB Board of Governors** — Michael G. Tanner
  - h. **TFB Business Law Section** — Gwynne A. Young and Manuel Farach
  - i. **TFB CLE Committee** — John C. Moran (alt: Wilhelmina F. Kightlinger)
  - j. **TFB Council of Sections** — Robert S. Freedman and William T. Hennessey, III
  - k. **TFB Pro Bono Committee** — Melisa Van Sickle
17. **Long-Range Planning** — William T. Hennessey, III, Chair
18. **Meetings Planning** — George J. Meyer, Chair

19. **Membership and Inclusion** — Annabella Barboza and Brenda Ezell, Co-Chairs; S. Dresden Brunner, Vinette Dawn Godelia, and Roger A. Larson, Co-Vice Chairs
20. **Model and Uniform Acts** — Bruce M. Stone and Richard W. Taylor, Co-Chairs; Patrick J. Duffey and Adele Irene Stone, Co-Vice Chairs
21. **Professionalism and Ethics** — Gwynne A. Young, Chair; Alexander B. Dobrev, Andrew B. Sasso, Hon. Mark Alan Speiser and Laura Sundberg, Co-Vice Chairs
22. **Publications (ActionLine)** — Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); Richard D. Eckhard, Jason M. Ellison, George D. Karibjanian, Sean M. Lebowitz, Daniel L. McDermott, Jeanette Moffa and Paul E. Roman, Co-Vice Chairs
23. **Publications (Florida Bar Journal)** — Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; J. Allison Archbold (Editorial Board – Probate & Trust), Homer Duvall, III (Editorial Board — Real Property), Marty J. Solomon (Editorial Board — Real Property), and Brian Sparks (Editorial Board — Probate & Trust), Co-Vice Chairs
24. **Sponsor Coordination** — J. Eric Virgil, Chair; Patrick C. Emans, Marsha G. Madorsky, Jason J. Quintero, J. Michael Swaine, and Arlene C. Udick, Co-Vice Chairs
25. **Strategic Planning** — Robert S. Freedman and William T. Hennessey, III, Co-Chairs
26. **Strategic Planning Implementation** - Michael J. Gelfand, Chair; Michael A. Dribin, Deborah Packer Goodall, Andrew M. O'Malley and Margaret A. "Peggy" Rolando, Co-Vice Chairs

**XVII. Adjourn:** Motion to Adjourn.

**Real Property, Probate and Trust Law Section  
Executive Council Meeting  
Opal Sands  
Clearwater Beach, Florida,  
Saturday, June 1, 2019**

---

**Minutes**

**I. Presiding** — *Debra L. Boje, Chair*

The Meeting was called to order by Debra L. Boje, Chair.

**II. Attendance** — *Sarah Butters, Secretary*

The attendance sheet was passed by Sarah Butters, Secretary.

**III. Minutes of Previous Meeting** — *Sarah Butters, Secretary*

Sarah presented the Minutes of the March 16, 2019 meeting of Executive Council held at the Amelia Island Plantation, Amelia Island, Florida. A motion to approve the minutes passed unanimously.

**IV. Chair's Report** — *Debra L. Boje, Chair*

1. Recognition of Guests – The Chair welcomed Michael Tanner, who will also be the Section's Board of Governor's Liaison next year, and welcomed numerous law school students in attendance as visitors.

2. Milestones - The Chair congratulated the following milestones:

Mike Bedke on his being named the 2019 Medal of Honor Recipient by the Florida Bar Foundation.

Mike Forman on his 50th anniversary of being a member of the FL Bar.

Melissa Vansickle on her recent marriage to John Sawicki.

Jason Havens, Brian Malec and Larry Miller on their acceptance as Fellows to ACTEC.

Sandra Krumbein on her acceptance as a Fellow in ACREL.

Jay Zschau for the recent birth of his grandchild.

Hilary Stephens who is expecting her first child later this year.

Judge Spieser on his recent retirement.

The Chair also thanked the following members for their many years of service to the Executive Council – Dave Brittain, Deborah Russell, Charlie Robinson, Darby Jones, and Gerry Flood.

3. Introduction and comments from sponsors of Executive Council meeting.
4. Presentation of Contribution to The Florida Bar Foundation

The RPPTL Section proudly presented a Florida Bar Foundation check for \$4,803.95. The Chair also announced that the Section's Jail and Bail fundraiser at this Convention has raised over \$33,000 and counting. Thanks to the following who agreed to be prisoners: Laird Lile, Sandra Diamond, Drew O'Malley, Pete Dunbar, Gwynne Young, Rob Freedman, Deb Boje, Adele Stone, Bill Schifino, Mike Tanner, Mike Bedke, Hugh Perry, Bill Winters, and Andy Sasso. A special thanks to Dresden Brunner and Drew O'Malley for helping to organize the event.

5. Acknowledgement of General Sponsors and Friends of the Section.

The Chair recognized the Section's sponsors and friends, and gave a special thanks to Evercore for sponsoring the Friday Night Casino Night.

6. Recognition of Section's 65<sup>th</sup> Anniversary

In recognition of the Section's 65<sup>th</sup> Anniversary, the Chair presented a video look back of prior Section Chairs. The Chair also presented the Section with a 65<sup>th</sup> anniversary cake.

7. Surprise Recognition of Mary Ann Obos' 5 year anniversary with the Section

The Chair also surprised Mary Ann with a video look back of her prior meetings, along with a survival kit for what we hope will be the next 5 years. Finally, the Chair presented Mary Ann with an additional night stay at the Opal Sands for her and her family to relax, along with a professional photographer to capture family pictures.

8. Fellows Graduation

The Chair presented the following Fellows with certificates memorializing their graduation from the Fellows program: Jami Coleman, Jacqueline Peregrin, Daniel McDermott, and Lian Marie de la Riva.

9. Recognition of Award Recipients for 2018-19.

The Chair again recognized this year's Section award recipients:

Rising Stars – Brenda Ezell and Sancha Brennan

ALM of the Year – Susan Seaford

John Arthur Jones Service Award – Burt Bruton and Angela Adams

William Belcher Award – Mike Dribin

Robert C. Scott Award – Tae Bronner

10. Thank you to Convention Coordination Committee (Angela McClendon Adams, Tae Kelley Bronner, and Linda S. Griffin)

The Chair thanked the Convention Planning Committee for their hard work on a successful and fun convention. The Chair also thanked Laura Sundberg for coordinating all the prizes for Casino Night.

11. Report of Interim Actions by the Executive Committee

A. Given the importance of the issue of probate law to our Section and the time sensitivity inherent during the legislative process, on March 22, 2019, the Executive Committee adopted the following as a Section legislative position:

For the 2019 Legislative Session, support a shortened time period, not less than 25 months, for the presumption of unclaimed property for smaller financial accounts if proof of death is established.; find that this position is within the Section's purview; and, authorize the expenditure of funds in support of the position.

B. Given the importance of the issue of Condominium and Planned Development Law to our Section and the time sensitivity inherent during the legislative process, on April 8, 2019, the Executive Committee adopted the following as Section legislative positions:

Oppose requiring any insurance policy issued to an individual condominium unit owner to prohibit the right of subrogation against the condominium association, including a change to Fla. Stat. 627.714(4); find that this position is within the Section's purview; and, authorize the expenditure of funds in support of the position.

Oppose continuing to allow fines in excess of \$1,000.00 in homeowner associations to become liens for non-monetary damages against the parcel that can be foreclosed, including a change to Fla. Stat. 720.305(2); find that this position is within the Section's purview; and, authorize the expenditure of funds in support of the position.

Further, the Executive Committee authorized opposition to HB 1075 in its entirety if it continues, after further negotiation with the stakeholders, to continue provisions for (1) requiring any insurance policy issued to an individual condominium unit owner to prohibit the right of subrogation against the condominium association and (2) which continue to allow fines in excess of \$1,000.00 in homeowner associations to become liens for non-monetary damages against the parcel that can be foreclosed, including changes to Fla. Stat. 627.714(4) and 720.305(2); find that this position is within the Section's purview; and, authorize the expenditure of funds in support of the position.

12. Passing of the Gavel: At the conclusion of the Chair's report, the gavel was passed from Chair Deb Boje to Chair Elect, Rob Freedman.

Immediate Past Chair, Drew O'Malley, welcomed Deb to the back row with a mimosa and a warm hug.

**V. Liaison with Board of Governors Report** — Mike Tanner

Mike Tanner gave a report on the recent Palm Beach meeting of the BOG where the gavel was passed from Bar President, Michelle Suskauer to John Stewart.

The BOG is currently debating formation of a Committee on Cannabis Law. The BOG also decided not to extend CLE credit for service on Bar committees. Mike also noted that the new Rule of Professionalism 4-7.13, which prohibits the purchase of Google ads in another firm's name or diverting Google searches for one lawyer or law firm to another site.

**VI. Chair-Elect's Report** — *Robert S. Freedman, Chair-Elect*

Rob specifically thanked the General Sponsors and the Friends of the Section for their support of the Section:

**General Sponsors:** Attorney's Title Fund Services, LLC, WFG National Title Insurance, Management Planning, Inc., JP Morgan, Old Republic Title, Wells Fargo Private Bank, Westcor Land Title Insurance Company, First American Title Insurance Company, Fidelity National Title Group, Stout Risius Ross, Inc., Guardian Trust, The Florida Bar Foundation, Stewart Title, and Winston Art Group.

**Friends of the Section:** AmTrust Title, Business Valuation Analysts, LLC, CATIC, Jones Lowry, North American Title Insurance Company, Valley National Bank, Valuation Services, Inc. and Wilmington Trust.

Rob announced his 2019-2020 Meeting Schedule and thanked everyone for working through the new meeting registration and hotel reservation process, which has worked well for the Breakers meeting.

Rob asked that Committee Chairs take note of the chart of deadlines for future meetings that will be circulated after the meeting.

Rob also asked that members review and update their directory photos and contact detail so that we can get the new 2019-2020 directory circulated in a timely manner.

Rob reminded members of the RPPTL Facebook pages, including the Section's page, RPPTLs Plus One (for spouses and guests) and RPPTLs in Amsterdam (for Rob's Out-of-State meeting).

Rob also gave everyone the encouraging news that Bill Parady was accepted to a Sloan Kettering clinical program. The Section wishes him luck for a health and quick recovery. The Section had a giant "get well soon" card for Bill that numerous Executive Council members signed.

**VII. Treasurer's Report** — *Wm. Cary Wright, Treasurer*

Cary reported that the Budget is in good shape given Chair Boje's frugal attention to expenses. Seminar income has been phenomenal year. The Section is bracing for Rob's upcoming year, which may prove to be extravagant given the Section's strong financial position.

**VIII. Director of At-Large Members Report** — *Lawrence Jay Miller, Director*

Larry Miller thanked those Section members who were rolling off as ALMs. The ALMs are now working with committees to provide research and staffing support. They also conducted some mock interviews at law schools.

**IX. CLE Seminar Coordination Report** — *Steven H. Mezer (Real Property) and John C. Moran (Probate & Trust), Co-Chairs*

John Moran noted the packed schedule of webcasts and live seminars coming up. Also have Legislative Update in July and ATO in August.

**X. Legislation Committee** – *S. Katherine Frazier and Jon Scuderi, Co-Chairs*

Katherine and Jon thanked their legislative team for their hard work this past session. The Committee met this week to set priorities for the 2020 session and strategize about expected obstacles. Katherine and Jon thanked the Section's legislative team for all the hours they put in for us.

**XI. General Standing Division** — *Robert S. Freedman, General Standing Division Director and Chair-Elect*

**Action Item:**

1. **Sponsorship Coordination** – J. Eric Virgil and Jason J. Quintero, Co-Chairs

Eric Virgil presented a motion to waive exhibitor fees for the FL Bar Foundation for the 2019 Legislative Update and the 2020 Annual Convention. The Motion passed unanimously.

Eric also thanked Deb Russell for her past service to the Committee and wished her well in her upcoming retirement.

**Informational Items:**

1. **Convention Coordination** — *Linda S. Griffin, Chair; Angela McLendon Adams, Tae Kelley Bronner and Darby Jones, Co-Vice Chairs*

No report.

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

Laird reported that the Section has been in touch with the Clerks about becoming qualified custodians for electronic documents. The Section is working with the Clerks on coordinating education and outreach to members of the Bar about the Clerks services.

3. **Liaison with the ABA** – *Robert S. Freedman*

Rob referenced that the ABA RPTE Section's recent National CLE Conference was held in Boston two weeks ago.

4. **Law School Mentoring & Programing** – *Lynwood F. Arnold, Jr., Chair*

Lynwood gave an update on outreach with each university. The Committee recently put on a program at FSU where Rep. Diamond spoke to the RPPTL Student Section at FSU. The Committee hopes to repeat that program at Stetson's Law School. There's active mentoring and mock interviewing going on at each Florida law school.

5. **Fellows** – *Benjamin Frank Diamond and Jennifer J. Bloodworth, Co-Chairs*

Rep. Diamond gave an update on the application process for new fellows. The Section had almost 60 applicants for the 2019-20 year. The selection committee is busy vetting those applicants and hope to complete the process by July so that new Fellows can attend the Breakers meeting.

6. **Information and Technology** – *Neil Barry Shoter, Chair*

Neil Shoter gave a report on the website and efforts to improve the content and layout. The committee is trying to make it easier to find things and navigate the site. They have added a New Member tab to assist with the orientation process. The Section's social media accounts are growing. The Committee is exploring using phone apps to record attendance at committees and section meeting rather than written sign in sheets. The Committee is also assisting with online CLEs.

7. **Membership and Inclusion** - *Annabella Barboza and Brenda Ezell, Co-Chairs*

No report.

8. **Emergency Disaster and Preparedness Committee** – *Brian Sparks, Chair*

Brian reported that the new committee was staffed with members who include Coleen Sachs, Rep. Ben Diamond and Jerry Aron. The Committee handed out paper maps to members to put in their cars to assist with evacuation in the event of a cell tower or power failure.

9. **Professionalism and Ethics** – *Gwynne A. Young, Chair*

An ethics vignette with related materials was presented by Yoshi Smith, Lynwood Arnold, Peggy Rolando and Fred Jones.

10. **Strategic Planning Committee** - *Debra L. Boje and Robert S. Freedman, Co-Chairs*

Michael Gelfand gave a report on the proposed plan. He noted the problems that result from the growth of the Section. Hotels are difficult to find for groups this large. He gave a brief summary on the strategic planning process, including description of task forces, subjects considered, process of arriving at goals and recommendations and discussion of plan timing of submission of final report. He encouraged members to read the report for further detail and to contact him with comments, questions and revisions that need to be made to the plan.

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

Bill thanked the Division's sponsors: BNY Mellon Wealth Management, Coral Gables Trust, Management Planning, Inc., Business Valuation Analysts, LLC, Northern Trust Bank of Florida, Kravit Estate Appraisal, Pluris Valuation Advisors, and Grove Bank and Trust.

### Information Items:

1. **IRA, Insurance, and Employee Benefits** – *L. Howard Payne and Alfred J. Stashis, Jr., Co-Chairs*

Al Stashis explained purpose of the clarifying amendment which would make clear that an ex-spouse's interest in an IRA received in a transfer incident to divorce is exempt from the claims of the transferee ex-spouse's creditors.

2. **Trust Law Committee** - *Angela Adams, Chair*

The Committee pulled its anticipated amendment to F.S. 736.0417(1) to authorize pro rata or non-pro rata funding of separate trusts created by severance.

3. **Probate and Trust Litigation Committee** - *J. Richard Caskey, Chair*

Sean Leibowitz explained a Fourth DCA case that says you can't challenge the validity of a revocable trust if you did not challenge the will timely. The proposed amendments to F.S. 733.212, would add language to provide adequate notice that a party may be waiving their right to contest a trust if they fail to timely contest the will.

4. **Ad Hoc Guardianship Law Revision Committee** - *Nicklaus Curley and Sancha Whynot, Co-Chairs*

Sancha gave an update on the comments process for the new Florida Guardianship Code. The Committee is continuing to meet to review and consider comments. Guardianshipcode@gmail.com continues to be open for comments. It is not anticipated that the new code will be ready for the 2020 legislative session.

### **XIII. Real Property Law Division Report** — *Robert S. Swaine, Division Director*

Bob thanked the Division's sponsors: First American Title, Attorneys Title Fund Services, LLC, Pluris Valuation Advisors, Hopping Green & Sams, AmTrust Financial Services, Steel in the Air, Attorneys' Real Estate Councils of Florida, Inc.

### Action Items:

1. **Title Issues and Title Standards Committee** - *Christopher Smart, Chair*

Chris Smart explained that "Lady Bird" deeds are frequently used but there is no real authority on what they need to include or their legal effect. The proposed legislation clarifies that.

Motion to approve proposed Title Standards 6.10, 6.11, and 6.12 for Enhanced Life Estate Deeds regarding homestead and non-homestead real property

Motion passed unanimously.

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

Chris Smart explained the proposed amendment to Section 95.2311.

Motion to: (A) adopt as a Section legislative position support for proposed legislation to create Section 95.2311, which would establish a method of correcting obvious typographical errors in legal descriptions contained in real property deeds; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.

The motion passed with a few nays.

**3. Real Property Finance and Lending Committee - David R. Brittain and Richard McIver, Co-Chairs**

Kip Thornton presented the motion to approve Statement of Opinion Practices. The Motion passed.

**4. Real Property Finance and Lending Committee: David R. Brittain and Richard McIver, Co-Chairs**

Rich McIver presented a Motion to: (A) adopt as a Section legislative position support for proposed legislation to clarify that the one-year statute of limitations on a mortgage foreclosure; deficiency action begins on the issuance of the certificate of title; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.

The motion passed.

**5. Residential Real Estates and Industry Liaisons Committee: Salome J. Zikakis, Chair**

Fred Jones presented a motion to approve the FR/BAR Comprehensive Rider: "CC. Miami-Dade County Special Taxing District Disclosure". The motion passed.

**Information Items:**

**1. Real Property Finance and Lending Committee: David R. Brittain and Richard McIver, Co-Chairs**

Rich McIver gave some background on the proposed repeal of Florida Statute 83.561 based on conflict with the federal Protecting Tenants at Foreclosure Act of 2009. Pete Dunbar discussed the concern that this might take up a representative's limited bill slots, but in this case, it would be a repealer bill, which does not take up a slot.

**XIV. Adjourn: Motion to Adjourn.**



**ATTENDANCE ROSTER**  
**REAL PROPERTY PROBATE & TRUST LAW SECTION**  
**EXECUTIVE COUNCIL MEETINGS**  
**2018-2019**

Executive Committee	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Boje, Debra Lynn Chair		√	√	√	√	√	√
Freedman, Robert S. Chair-Elect & General Standing Div. Director	√		√	√	√	√	√
Hennessey, William Probate & Trust Law Div. Director		√	√		√	√	√
Swaine, Robert S. Real Property Div. Director	√		√			√	√
Butters, Sarah S. Secretary		√	√		√	√	√
Wright, Wm. Cary Treasurer	√		√	√	√	√	√
Frazier, S. Katherine Legislation Co-Chair Real Property	√		√		√	√	√
Scuderi, Jon Legislation Co-Chair Probate		√	√		√	√	√
Moran, John C. CLE Co-Chair Probate		√	√		√	√	√
Mezer, Steven H. CLE Co-Chair Real Property	√		√		√	√	√
Miller, Lawrence J. Director, At Large Members		√			√	√	√
O'Malley, Andrew <b>Immediate Past Chair</b>	√				√	√	√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Acosta, Jolyon Delphin		√	√		√	√	
Adams, Angela M.		√	√		√	√	√
Akins, David J.		√	√	√	√	√	√
Allan, Hon. Linda R.							
Altman, Stuart H.		√	√		√	√	√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Archbold, J. Allison		√	√		√	√	√
Arnold, Jr., Lynwood	√		√		√	√	√
Aron, Jerry E. <b>Past Chair</b>	√		√				
Ashton, Amber E.	√		√		√	√	√
Awerbach, Martin S.	√		√			√	√
Bald, Kimberly A.		√	√	√		√	√
Ballaga, Raul P.	√				√		
Barboza, Annabella	√		√		√		√
Basham, Cindy		√					
Baskies, Jeffrey		√	√			√	
Battle, Carlos A.		√	√		√	√	
Baumann, Phillip A.		√	√	√	√	√	√
Beales, III, Walter R. <b>Past Chair</b>	√		√				
Bedke, Michael A.	√		√				√
Belcher, William F. <b>Past Chair</b>		√	√		√	√	√
Bell, Kenneth B.	√						
Bell, Rebecca Coulter		√		√	√	√	√
Beller, Amy		√	√		√	√	
Bellew, Brandon D.		√	√		√	√	
Bloodworth, Jennifer J.	√		√			√	√
Bonevac, Judy B.		√	√		√	√	
Bowers, Elizabeth A.		√	√		√	√	√
Boyd, Deborah	√		√		√		
Braun, Keith Brian		√	√		√	√	

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Brenes-Stahl, Tattiana		√	√		√		√
Brennan, David C. <b>Past Chair</b>		√	√				√
Brittain, David R.	√		√		√	√	√
Bronner, Tae K.		√	√		√	√	√
Brown, Mark A.	√		√		√	√	
Brown, Shawn	√		√		√	√	√
Brunner, S. Dresden		√			√	√	
Bruton, Jr., Ed Burt	√		√		√	√	√
Bucher, Elaine M.		√	√		√		
Butler, Johnathan		√	√		√	√	√
Callahan, Chad W. III		√			√	√	√
Carlisle, David R.		√					
Caskey, John R.		√	√		√	√	√
Christiansen, Patrick <b>Past Chair</b>	√		√	√			
Christy, Douglas G. III	√		√		√	√	
Christy, Erin Hope	√		√		√	√	√
Cohen, Howard Allen	√		√		√	√	√
Cole, Stacey L.		√	√			√	√
Conetta, Tami F.		√	√		√	√	√
Cope, Jr., Gerald B.	√		√	√		√	
Cornett, Jane Louise	√					√	√
Costello, T. John, Jr.		√					
Curley, Nick		√	√	√	√	√	
Davis, Steven W.	√		√			√	

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
DeBoest II, Richard Dearborn	√		√		√	√	
Detzel, Lauren Y.		√			√	√	√
Diamond, Benjamin F.		√	√		√		√
Diamond, Sandra F. <b>Past Chair</b>		√			√		√
Direktor, Kenneth S.	√						
Dobrev, Alex	√		√		√	√	
Dollinger, Jeffrey	√				√	√	√
Dribin, Michael <b>Past Chair</b>		√	√		√	√	√
Dudley, Frederick R.	√						
Duffey, Patrick J.		√	√		√	√	√
Duvall, III, Homer	√		√		√	√	√
Duz, Ashley Nichole		√	√		√	√	
Eckhard, Rick	√				√		√
Ellison, Jason M.	√		√		√	√	√
Emans, Patrick C		√	√		√	√	
Emerich, Guy S.		√	√		√	√	√
Ertl, Christene M.	√		√			√	√
Ezell, Brenda B.	√		√	√	√	√	√
Fagan, Gail		√	√	√	√	√	√
Falk, Jr., Jack A.		√	√		√	√	√
Farach, Manuel	√		√		√	√	√
Faulkner, Debra Ann		√			√	√	√
Felcoski, Brian J. <b>Past Chair</b>		√	√		√		√
Ferguson, Elizabeth B.	√		√				√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Fernandez, Kristopher E.	√		√		√	√	√
Fields, Alan B.	√				√		√
Fitzgerald, Jr., John E.		√			√	√	√
Flood, Gerard J.		√	√			√	√
Foreman, Michael L.		√	√		√	√	√
Freeman, Gill				√			
Friedman, Bridget	√		√		√		
Friedman, Jesse B.		√	√		√		√
Galler, Jonathan		√	√		√	√	√
Gans, Richard R.		√	√		√	√	
Gelfand, Michael J <b>Past Chair</b>	√		√	√	√	√	√
Gentile, Melinda S.	√				√		√
George, James		√	√			√	
George, Joseph P.		√	√	√	√	√	√
Godelia, Vinette D.	√					√	√
Goethe, Jeffrey S.		√	√		√	√	√
Goldman, Louis "Trey"	√		√		√	√	√
Goldman, Robert W. <b>Past Chair</b>		√	√			√	√
Goodall, Deborah P. <b>Past Chair</b>		√	√	√	√		
Goodman, Hon. Jaimie Randall							
Graham, Robert M.	√		√		√	√	√
Granet, Lloyd	√		√		√		√
Griffin, Linda S.		√	√	√	√		√
Grimsley, John G. <b>Past Chair</b>		√					

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Grosso, Jennifer		√			√	√	
Gunther, Eamonn W.		√	√		√		√
Gurgold, Eric		√	√		√	√	
Guttmann, III, Louis B <b>Past Chair</b>	√		√			√	
Hamrick, Alexander H		√	√		√	√	√
Hancock, Patricia J.	√						
Hargett, Michael Van	√		√		√	√	√
Harriett-Wartenberg, Stephanie		√					
Hayes, Hon. Hugh D.			√				
Hayes, Michael Travis		√	√		√	√	√
Hearn, Frederick "Ricky"		√	√		√	√	
Hearn, Steven L. <b>Past Chair</b>		√	√	√	√	√	√
Heckert, Katie	√		√		√		
Henderson, Jr., Reese J.	√		√				
Henderson, III, Thomas N.	√				√		√
Heuston, Stephen P.		√	√		√	√	√
Hipsman, Mitchell Alec		√	√		√	√	√
Hoffman, Brian W.	√		√	√	√	√	√
Horstkamp, Julie A.	√		√			√	√
Hudson, Hon. Margaret "Midge"			√			√	√
Hughes, Elizabeth		√	√		√	√	√
Hutt, Gregg Evan	√		√		√		√
Isphording, Roger O. <b>Past Chair</b>		√		√	√	√	
Jennison, Julia Lee	√		√		√		√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Johnson, Amber Jade		√	√		√		
Jones, Darby		√	√		√	√	
Jones, Frederick W.	√		√	√		√	√
Jones, Patricia P.H.	√		√	√		√	√
Judd, Robert B.		√	√		√		
Kalmanson, Stacy O.	√		√		√	√	√
Kangas, Michael R.		√			√	√	√
Karibjanian, George		√					√
Karr, Mary E.		√	√				√
Karr, Thomas M.		√	√		√	√	√
Kayser, Joan B. <b>Past Chair</b>		√				√	
Keane, Cristin C.	√						
Kelley, Rohan <b>Past Chair</b>		√		√	√	√	√
Kelley, Sean W.		√			√	√	
Kelley, Shane		√	√		√	√	
Keyser, Hon. Janis Brustares							
Khan, Nishad	√		√	√	√	√	√
Kibert-Basler, Nicole	√		√		√	√	
Kightlinger, Wilhelmina F.	√						√
Kinsolving, Ruth Barnes, <b>Past Chair</b>	√				√		
Koren, Edward F. <b>Past Chair</b>		√	√				√
Korvick, Hon. Maria			√	√			
Kotler, Alan Stephen		√	√		√		√
Kromash, Keith S.		√				√	√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Krumbein, Sandra Elizabeth	√		√		√		√
Kurian, Sanjay	√		√			√	
Kypreos, Theodore S.		√	√		√		√
LaFemina, Rose M.		√	√		√	√	√
Lancaster, Robert L.		√	√		√	√	√
Lane, Jr., William R.		√	√		√		√
Larson, Roger A.	√		√			√	√
Leathe, Jeremy Paul		√			√	√	√
Lebowitz, Sean M.		√	√		√	√	√
Leebrick, Brian D.	√						
Lile, Laird A. <b>Past Chair</b>		√	√	√	√		√
Lindsey, Hon. Norma							
Little, III, John W.	√		√				
Lopez, Sophia A.		√		√	√		
Lunsford, Rachel Albritton		√		√	√		√
Madorsky, Marsha G.		√		√	√	√	√
Malec, Brian		√	√		√	√	√
Malfeld, Mariela	√		√		√		√
Marger, Bruce <b>Past Chair</b>		√					√
Marshall, III, Stewart		√	√		√	√	√
Marx, James A.		√	√		√		√
Mastin, Deborah Bovarnick	√		√				
McCall, Alan K.	√		√				√
McElroy, IV, Robert Lee		√	√		√		√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
McIver, Richard	√		√		√	√	√
McRae, Ashley E.	√		√		√	√	√
Melanson, Noelle M.		√	√		√	√	
Menor, Arthur J.	√				√	√	√
Meyer, George F. <b>Past Chair</b>	√		√		√	√	√
Meyer, Michael	√		√			√	√
Middlebrook, Mark T.		√	√	√	√	√	√
Mize, Patrick		√				√	√
Moule, Jr., Rex Everet		√					
Muir, Hon. Celeste H.			√		√	√	√
Murphy, Melissa J. <b>Past Chair</b>	√		√	√	√	√	√
Nash, Charles I.		√					
Neukamm, John B. <b>Past Chair</b>	√		√		√		
Nguyen, Hung V.		√	√			√	√
Papanikos, Cristina		√	√		√	√	
Parady, William A.	√		√		√		
Payne, L. Howard		√	√			√	√
Pence, Scott P.	√		√		√	√	
Pepper-Dickinson, Tasha K.		√	√		√		
Perera, Diane	√				√		
Pilotte, Frank		√	√		√	√	√
Pleus, Jr., Hon. Robert							
Pollack, Anne Q.	√		√		√		√
Price, Pamela O.		√					√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Pyle, Michael A.		√					√
Quintero, Jason	√		√		√		√
Redding, John N.	√		√		√	√	√
Renzio, Bryan	√				√		√
Reynolds, Stephen H.		√					
Riddell, Cynthia	√				√		√
Rieman, Alexandra V.		√	√		√	√	
Robbins, Jr., R.J.	√		√		√		√
Roberts, III, Hardy L.	√				√	√	√
Robinson, Charles F.		√			√		
Rodstein, David William	√						
Rojas, Silvia B.	√		√	√	√	√	√
Rolando, Margaret A. <b>Past Chair</b>	√		√	√	√	√	√
Roman, Paul E.		√	√		√		√
Rosenberg, Joshua		√	√			√	√
Rubel, Stacy		√	√		√	√	√
Rubin, Jenna		√	√		√		√
Russell, Deborah L.		√					
Russick, James C.	√		√		√		
Rydberg, Marsha G.	√		√			√	
Sachs, Colleen C.	√		√		√	√	√
Santos, Angela		√	√				
Sajdera, Christopher	√		√		√	√	√
Sasso, Andrew	√		√		√		√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Scaletta, Melissa Sloan	√		√		√	√	√
Schwartz, Martin	√		√		√		√
Schwartz, Robert M.	√		√		√		√
Schwinghamer, Jamie		√	√		√		√
Seaford, Susan	√				√		√
Seigel, Daniel A.	√		√			√	√
Sheets, Sandra G.		√	√		√	√	√
Sherrill, Richard		√	√		√	√	√
Shoter, Neil B.	√		√		√		√
Silberman, Hon. Morris							
Silberstein, David M.		√					
Sivyer, Neal Allen	√		√				
Sklar, William P.	√		√		√	√	√
Smart, Christopher W.	√		√		√	√	√
Smith, Kymberlee C.	√		√		√		√
Smith, G. Thomas <b>Past Chair/Honorary Member</b>	√						√
Smith, Yoshimi O.		√	√		√	√	√
Sneeringer, Michael		√	√		√	√	√
Solomon, Marty	√		√		√	√	√
Sparks, Brian C.		√	√	√	√		√
Speiser, Hon. Mark A.							
Spivey, Barry F.		√	√		√	√	√
Spurgeon, Susan K.	√		√		√	√	√
Stafford, Michael P.		√	√	√	√	√	√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Staker, Karla J.	√		√		√	√	√
Stashis, Alfred Joseph		√	√		√	√	√
Stern, Robert G.	√		√		√	√	
Stone, Adele I.	√		√		√		√
Stone, Bruce M. <b>Past Chair</b>		√	√			√	
Suarez, Hon. Richard							
Sundberg, Laura K.		√	√			√	√
Swaine, Jack Michael <b>Past Chair</b>	√		√				√
Taylor, Richard W.	√		√		√		√
Thomas, Hon. Patricia			√		√	√	√
Thornton, Kenneth E.	√		√		√	√	√
Ticktin, Hon. Jessica J.							
Tobin, Jennifer S.	√		√		√	√	
Triggs, Matthew H.		√	√		√		
Tschida, Joseph John	√		√		√	√	√
Tucker, Kristine L.		√			√	√	√
Udick, Arlene C.	√		√	√		√	√
Van Dien, Lisa Barnett	√		√		√		
Van Lenten, Jason Paul		√	√		√	√	√
Van Pelt, Kit E.		√	√	√	√	√	
VanSickle, Melissa	√		√				
Villarroel, Nicole Marie	√		√		√	√	√
Villavicencio, Stephanie		√					
Virgil, Eric		√	√		√		√

Executive Council Members	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Waller, Roland D. <b>Past Chair</b>	√		√	√	√	√	√
Weintraub, Lee A.	√		√		√	√	√
Wells, Jerry B.		√			√	√	√
White, Jr., Richard M.		√	√		√	√	√
Whynot, Sancha B.	√		√		√	√	√
Wilder, Charles			√		√	√	√
Williams, Margaret A.	√		√		√	√	
Williamson, Julie Ann <b>Past Chair</b>	√						
Wintter, Christopher		√			√	√	√
Wohlust, Gary Charles		√	√		√		√
Wolasky, Marjorie E.		√		√	√	√	
Wolf, Jerome L.		√	√		√		
Young, Gwynne A.		√	√	√	√	√	√
Zeydel, Diana S.C.		√	√		√	√	
Zikakis, Salome J.		√	√	√	√	√	√
Zschau, Julius J. <b>Past Chair</b>	√		√				

RPPTL Fellows	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Abukodeir, Samah		√	√				
Barr, James C.	√				√	√	√
Cazobon, Denise		√	√			√	√
Coleman, Jami		√				√	√
de la Riva, Lian		√	√			√	
Jackson, Gabrielle	√		√		√	√	√

RPPTL Fellows	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
McDermott, Daniel L.		√	√	√	√		
Peregrin, Jacqueline J.	√		√		√		√

Legislative Consultants	Division		July 28 Breakers	Sept. 29 Italy	Dec. 8 Orlando	March 16 Amelia	June 1 Clearwater
	RP	P&T					
Brown, French		√	√		√		√
Dobson, Michael	√		√		√		
Dunbar, Peter M.	√		√	√	√	√	√
Edenfield, Martha Jane	√	√	√	√	√	√	√
Finkbeiner, Brittany		√	√		√		√
Roth, Cari L.			√				

Guest sign in	Division	
	RP	P&T
Alaimo, Marve Ann – Breakers, Orlando		√
Amaro, M. Barbara – Italy		√
Behar, Jacobeli J. – Breakers, Orlando, Clearwater		√
Broadwater, Carolyn – Breakers	√	
Calers, Perla – Italy	√	
Cervo, Lourdes – Breakers, Italy	√	
Davis, Steven BOG Liaison – Breakers	√	
Finchum, Travis – Breakers, Orlando, Clearwater		√
Finler, Erin Farrington – Italy, Orlando, Amelia		√
Foster-Morales, Dori BOG - Breakers	n/a	n/a
Groover, Lea Anne – Breakers, Amelia, Clearwater		√
Hall, Thomas – Breakers		√
Kleinknecht, Robert – Italy		√
Noll, R. Dale – Breakers, Clearwater		√
Zayas, Angelica – Italy		√
Huss, Cady – Orlando, Amelia, Clearwater		√

Pratt, Brandon – Orlando, Amelia		√
McClure, Anthony - Orlando		
Hatcher, Mary P. – Orlando		
Skrande, Gutman - Orlando		
Baker, B. Paige – Orlando, Amelia		
Persante, Robert – Orlando, Amelia, Clearwater	√	√
Stotts, Darren – Orlando, Clearwater		√
Zurowesk, Zach – Orlando, Clearwater		√
Monexil, Jovani – Orlando (Law Student)		
McCall, Alan - Orlando		
Marzan, Jacqueline – Amelia	√	
Oliver, Rachel – Orlando, Amelia		√
Galvani, Lauren – Amelia	√	
Tanner, Mike – Amelia, Clearwater	√	
Shanks, David - Amelia		
Grimaldi, Melinda – Amelia		
Abukhodeir, Samah – Amelia, Clearwater		
Leon, Jose – Amelia, Clearwater		
Bowdish, James - Amelia		
Warner, Richard - Clearwater		√
Powell, Caitlyn – Clearwater		√
Hatcher, Hon. Mary - Clearwater		



## Thank you to Our General Sponsors

Event Name	Sponsor	Contact Name	Email
App Sponsor	WFG National Title Insurance Co.	Joseph J. Tschida	<a href="mailto:jtschida@wfgnationaltitle.com">jtschida@wfgnationaltitle.com</a>
Thursday Grab and Go Lunch	Management Planning, Inc.	Roy Meyers	<a href="mailto:rmeyers@mpival.com">rmeyers@mpival.com</a>
Thursday Night Reception	JP Morgan	Carlos Batlle	<a href="mailto:carlos.a.batlle@jpmorgan.com">carlos.a.batlle@jpmorgan.com</a>
Thursday Night Reception	Old Republic Title	Jim Russick	<a href="mailto:jrussick@oldrepublictitle.com">jrussick@oldrepublictitle.com</a>
Friday Reception	Wells Fargo Private Bank	Johnathan Butler	<a href="mailto:johnathan.l.butler@wellsfargo.com">johnathan.l.butler@wellsfargo.com</a>
Friday Reception	Westcor Land Title Insurance Company	Sabine Seidel	<a href="mailto:sseidel@wltic.com">sseidel@wltic.com</a>
Friday Night Dinner	First American Title Insurance Company	Alan McCall	<a href="mailto:Amccall@firstam.com">Amccall@firstam.com</a>
Spouse Breakfast	Attorneys Title Fund Services, LLC	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>
Real Property Roundtable	Fidelity National Title Group	Karla Staker	<a href="mailto:Karla.Staker@fnf.com">Karla.Staker@fnf.com</a>
Probate Roundtable	Stout Risius Ross Inc.	Kym Kerin	<a href="mailto:kkerin@srr.com">kkerin@srr.com</a>
Probate Roundtable	Guardian Trust	Ashley Gonnelli	<a href="mailto:ashley@guardiantrusts.org">ashley@guardiantrusts.org</a>
Executive Council Meeting Sponsor	The Florida Bar Foundation	Michelle Fonseca	<a href="mailto:mfonseca@flabarfdn.org">mfonseca@flabarfdn.org</a>
Executive Council Meeting Sponsor	Stewart Title	David Shanks	<a href="mailto:laura.licastro@stewart.com">laura.licastro@stewart.com</a>
Friday Night Dinner	Phillips	Jennifer Jones	<a href="mailto:jjones@phillips.com">jjones@phillips.com</a>
Overall Sponsor/Leg. Update	Attorneys Title Fund Services, LLC	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>
Overall Sponsor/Leg. Update	Attorneys Title Fund Services, LLC	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>



## Thank you to Our Friends of the Section

<b>Sponsor</b>	<b>Contact</b>	<b>Email</b>
Amtrust Title	Anuska Amparo	<a href="mailto:Anuska.Amparo@amtrustgroup.com">Anuska.Amparo@amtrustgroup.com</a>
Business Valuation Analysts, LLC	Tim Bronza	<a href="mailto:tbronza@bvanalysts.com">tbronza@bvanalysts.com</a>
CATIC	Christopher J. Condie	<a href="mailto:ccondie@catic.com">ccondie@catic.com</a>
Cumberland Trust	Eleanor Claiborne	<a href="mailto:eclaiborne@cumberlandtrust.com">eclaiborne@cumberlandtrust.com</a>
Fiduciary Trust International of the South	Vaughn Yeager	<a href="mailto:vaughn.yeager@ftci.com">vaughn.yeager@ftci.com</a>
Heirsearch	Carlos Berea	<a href="mailto:carlos.a.berea@heirsearch.com">carlos.a.berea@heirsearch.com</a>
Heritage Investment	Joe Gitto	<a href="mailto:jgitto@heritageinvestment.com">jgitto@heritageinvestment.com</a>
Jones Lowry	Bonnie Barwick	<a href="mailto:planning@joneslowry.com">planning@joneslowry.com</a>
North American Title Insurance Company	Jessica Hew	<a href="mailto:jhew@natic.com">jhew@natic.com</a>
Valuation Services, Inc.	Jeff Bae	<a href="mailto:Jeff@valuationservice.com">Jeff@valuationservice.com</a>
Wilmington Trust	David Fritz	<a href="mailto:dfritz@wilmingtontrust.com">dfritz@wilmingtontrust.com</a>



## Thank you to our Committee Sponsors

Sponsor	Contact	Email	Committee
AmTrust Financial Services	Anuska Amparo	<a href="mailto:Anuska.Amparo@amtrustgroup.com">Anuska.Amparo@amtrustgroup.com</a>	Residential Real Estate and Industry Liaison
Attorneys Title Fund Services, LLC	Melissa Murphy	<a href="mailto:mmurphy@thefund.com">mmurphy@thefund.com</a>	Commercial Real Estate
Attorneys' Real Estate Councils of Florida, Inc	Rene Rutan	<a href="mailto:RRutan@thefund.com">RRutan@thefund.com</a>	Residential Real Estate and Industry Liaison
BNY Mellon Wealth Management	Joan Crain	<a href="mailto:joan.crain@bnymellon.com">joan.crain@bnymellon.com</a>	Estate and Trust Tax Planning
BNY Mellon Wealth Management	Joan Crain	<a href="mailto:joan.crain@bnymellon.com">joan.crain@bnymellon.com</a>	IRA, Insurance and Employee Benefits
Business Valuation Analysts, LLC	Tim Bronza	<a href="mailto:tbronza@bvanalysts.com">tbronza@bvanalysts.com</a>	Trust Law
Coral Gables Trust	John Harris	<a href="mailto:jharris@cgtrust.com">jharris@cgtrust.com</a>	Probate and Trust Litigation
Coral Gables Trust	John Harris	<a href="mailto:jharris@cgtrust.com">jharris@cgtrust.com</a>	Probate Law Committee
First American Title	Alan McCall	<a href="mailto:Amccall@firstam.com">Amccall@firstam.com</a>	Condominium and Planned Development
First American Title	Wayne Sobian	<a href="mailto:wsobien@firstam.com">wsobien@firstam.com</a>	Real Estate Structures and Taxation
Grove Bank and Trust	Marta Goldberg	<a href="mailto:mgoldberg@grovebankandtrust.com">mgoldberg@grovebankandtrust.com</a>	Guardianship and Advanced Directives
Hopping Green & Sams	Vinette D. Godelia	<a href="mailto:vinetteg@hgslaw.com">vinetteg@hgslaw.com</a>	Development and Land Use
Kravit Estate Appraisal	Bianca Morabito	<a href="mailto:bianca@kravitestate.com">bianca@kravitestate.com</a>	Estate and Trust Tax Planning
Management Planning Inc.	Roy Meyers	<a href="mailto:rmeyers@mpival.com">rmeyers@mpival.com</a>	Estate and Trust Tax Planning
Northern Trust	Tami Conetta	<a href="mailto:tfc1@ntrs.com">tfc1@ntrs.com</a>	Trust Law
Pluris Valuation Advisors	Monique Jeffries	<a href="mailto:mjeffries@pluris.com">mjeffries@pluris.com</a>	Asset Protection Committee
Attorneys' Real Estate Councils of Florida, Inc	Rene Rutan	<a href="mailto:RRutan@thefund.com">RRutan@thefund.com</a>	Residential Real Estate and Industry Liaison

**RPPTL 2019-2020**  
**Executive Council Meeting Schedule**  
**Rob Freedman's Year**

Limit 1 reservation per registrant, additional rooms will be approved upon special request.

Date	Location
<b>July 24 – July 28, 2019</b>	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$225 Premium Room Rate: \$280
<b>November 6 – November 10, 2019</b>	<b>Executive Council &amp; Committee Meetings</b> JW Marriott Marquis Miami Miami, FL Standard Guest Room Rate: \$269 (single/double)
<b>January 29 – February 2, 2020</b>	<b>Executive Council &amp; Committee Meetings</b> Grand Hyatt Tampa Bay Tampa, FL Standard Guest Room Rate: \$225 (single/double)
<b>April 1 – April 5, 2020</b>	<b>Out of State Executive Council Meeting</b> <b>Hotel Okura Amsterdam</b> Amsterdam, The Netherlands <u>Room Rates:</u> Superior Guest Room (2 twins/1 king): €295 single, €320 double (inclusive of breakfast) Executive Junior Suite: €385 single, €420 double (inclusive of breakfast)
<b>May 28 – May 31, 2020</b>	<b>Executive Council Meeting &amp; Convention</b> Loews Sapphire Falls Orlando, FL Standard Guest Room Rate (two queens): \$209 (single/double), \$234 (triple), \$259 (quad)

RPPTL CONFLICTS CALENDAR

DATE	ORGANIZATION	EVENT	LOCATION
July 11-12 or 18-19, 2019	FL Land Title Assoc.	Summer Board Meeting	
July 24 - 28, 2019	RPPTL	Legislative and Case Law Update & Executive Council Meeting	Palm Beach, FL
August 8 - 13, 2019	ABA	Annual Meeting	San Francisco, CA
August 22 - 25, 2019	RPPTL	Attorney-Trust Officer Conference	Palm Beach, FL
September 2, 2019		Labor Day (federal holiday)	
September 18 - 22, 2019	The Florida Bar	Board of Governors Meeting	Destin, FL
September 19 - 21, 2019	ABA Tax	Fall CLE Meeting (Joint with RPTE Section) ?	San Francisco, CA
September 29 - 30, 2019		Rosh Hashanah (begins at sunset)	
October 8 - 9, 2019		Yom Kippur (begins at sunset)	
October 14, 2019		Columbus Day (federal holiday)	
October 16 - 19, 2019	The Florida Bar	Fall Meeting	Tampa Airport Marriott
October 17 - 20, 2019	ACTEC	Fall Meeting	Philadelphia, PA
October 17 - 20, 2019	ACREL	Annual Meeting	Montreal, Canada
November 6 - 9, 2019	RPPTL	Executive Council Meeting and Committee Meetings	Miami, FL
November 10-13, 2019	FL Land Title Assoc.	Annual Convention	
November 11, 2019		Veterans' Day (federal holiday )	
November 15, 2019	RPPTL	Probate Law Seminar	Ft. Lauderdale, FL
November 14 - 17, 2019	ABA RPTE	Fall Leadership Meeting	San Juan, PR
December 4 - 8, 2019	The Florida Bar	Board of Governors Meeting	Lake Buena Vista, FL
November 28, 2019		Thanksgiving	
December 22 - 29, 2019		Hanukah (begins at sunset)	
January 20, 2020		Martin Luther King, Jr. Day (federal holiday)	
January 28 - February 2, 2020	RPPTL	Executive Council Meeting and Committee Meetings	Tampa, FL
January 30 - February 1, 2020	ABA Tax	Mid-Year Meeting	Boca Raton, FL
February 5 - 8, 2020	The Florida Bar	Winter Meeting	Hyatt Regency Orlando
February 12 - 18, 2020	ABA	Midyear Meeting	Austin, TX
February 17, 2020		Presidents' Day (federal holiday)	
February 21, 2020	RPPTL	Condominium Law Certification Review	Orlando, FL
March 4 - 8, 2020	ACTEC	Annual Meeting	Boca Raton, FL
March 5, 2020	RPPTL	14th Annual CLI / Construction Law Certification Review	Orlando, FL
March 10 - 14, 2020	The Florida Bar	Board Certification Exams	Tampa, FL
March 19 - 22, 2020	ACREL	Mid-Year Meeting	Savannah, GA
March 27, 2020	RPPTL	Real Property Certification Review	Orlando, FL

RPPTL CONFLICTS CALENDAR

DATE	ORGANIZATION	EVENT	LOCATION
April 1 - 5, 2020	RPPTL	Out of State Meeting	Amsterdam
April 8 -15, 2020		Passover (begins at sunset)	
April 10, 2020		Good Friday	
April 12, 2020		Easter	
April 24, 2020	RPPTL	Guardianship CLE	Tampa, FL
April 30 - May 2, 2020	ABA Tax	May Meeting	Washington, DC
May 5 - 9, 2020	The Florida Bar	Board Certification Exams	Tampa, FL
May 15, 2020	RPPTL	Estate & Wealth Preservation	Tampa, FL
May 13 - 16, 2020	ABA RPTE	Spring Symposium and Leadership Meeting	New Orleans, LA
May 25, 2020		Memorial Day (federal holiday)	
May 26 - 30, 2020	RPPTL	Convention & Executive Council Meeting and Committee Meetings	Orlando, FL
June 11 - 14, 2020	ACTEC	Summer Meeting	Asheville, NC
June 17 - 20, 2020	The Florida Bar	Annual Convention	Orlando, FL
July 3, 2020		Independence Day observed (federal holiday)	
July 21 - 26, 2020	RPPTL	Legislative and Case Law Update & Executive Council Meeting	Palm Beach, FL
July 30 - August 4, 2020	ABA	Annual Meeting	Chicago, IL
August 20 - 22, 2020	RPPTL	Attorney-Trust Officer Conference	Palm Beach, FL
September 18 - 19, 2020		Rosh Hashanah (begins at sunset)	
September 24 - 26, 2020	ABA Tax	Fall Tax Meeting	New York, NY
September 29 - October 4, 2020	RPPTL	Out of State Meeting	Jackson Hole, WY
October 2 - 3, 2020		Yom Kippur (begins at sunset)	
October 3 - 5, 2020	ABA Tax	Fall Tax Meeting	
October 7 - 10, 2020	The Florida Bar	Fall Meeting	Tampa Airport Marriott
October 8 - 11, 2020	ACREL	Annual Meeting	Denver, CO
October 12, 2020		Columbus Day (federal holiday)	
October 20-25, 2020	ACTEC	Fall Meeting	Austin, TX
November 1-4, 2020	FL Land Title Assoc.	Annual Convention	
November 11, 2020		Veterans' Day (federal holiday )	
November 26, 2020		Thanksgiving	
December 2 - 6, 2020	RPPTL	Executive Council Meeting and Committee Meetings	Orlando, FL
December 10 - 17, 2020		Hanukah (begins at sunset)	
February 4 - 7, 2021	RPPTL	Executive Council & Committee Meetings	Palm Coast, FL
February 10 - 16, 2021	ABA	Midyear Meeting	Orlando, FL

RPPTL CONFLICTS CALENDAR

DATE	ORGANIZATION	EVENT	LOCATION
March 3 - 7, 2021	ACTEC	Annual Meeting	Atlantis, Paradise Island, Bahamas
March 18 - 21, 2021	ACREL	Mid-Year Meeting	Ojai, CA
June 3 - 6, 2021	RPPTL	Convention & Executive Council Meeting and Committee Meetings	Marco Island, FL
June 17-20, 2021	ACTEC	Summer Meeting	Toronto, ON
June 23 - 26, 2021	The Florida Bar	Annual Convention	Boca Raton, FL
July 15-16, 2021 (tentative)	FL Land Title Assoc.	Summer Board Meeting	
August 5 - 10, 2021	ABA	Annual Meeting	Toronto, BC, Canada
October 7-10, 2021	ACTEC	Fall Meeting	Denver, CO
October 20 - 23, 2021	The Florida Bar	Fall Meeting	Tampa
October 21-24, 2021	ACREL	Annual Meeting	Nashville, TN
February 9 - 15, 2022	ABA	Midyear Meeting	Seattle, WA
March 9-13, 2022	ACTEC	Annual Meeting	San Diego, CA
June 22 - 25, 2022	The Florida Bar	Annual Convention	Orlando, FL
August 4 - 9, 2022	ABA	Annual Meeting	Chicago, IL
June 19 - 22, 2023	The Florida Bar	Annual Convention	Orlando, FL
August 3 - 8, 2023	ABA	Annual Meeting	Denver, CO
June 19 - 22, 2024	The Florida Bar	Annual Convention	Boca Raton, FL
August 1 - 6, 2024	ABA	Annual Meeting	Chicago, IL
June 25 - 28, 2025	The Florida Bar	Annual Convention	Boca Raton, FL
June 17 - 20, 2026	The Florida Bar	Annual Convention	Orlando, FL

**RPPTL 2020-2021**  
**Executive Council Meeting Schedule**  
**Bill Hennessey's Year**

Limit 1 reservation per registrant, additional rooms will be approved upon special request.

Date	Location
<b>July 23 – July 26, 2020</b>	<b>Executive Council Meeting &amp; Legislative Update</b> The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$239 Premium Room Rate: \$290
<b>September 30 – October 4, 2020</b>	<b>Out of State Executive Council Meeting</b> Four Seasons Resort Jackson Hole, WY Standard Guest Room Rate: \$395 (single/double)
<b>December 3 – December 6, 2020</b>	<b>Executive Council &amp; Committee Meetings</b> Disney's Yacht Club Orlando, FL Standard Guest Room Rate: \$289 (\$25 pp for each person over 18 years old)
<b>February 4 – February 7, 2021</b>	<b>Executive Council &amp; Committee Meetings</b> Hammock Beach Resort Palm Coast, FL Standard Guest Room Rate: \$289 (single/double)
<b>June 3 – June 6, 2021</b>	<b>Executive Council Meeting &amp; Convention</b> JW Marriott Marco Island, FL Standard Guest Room Rate: \$245 (single/double)



**RPPTL Financial Summary from Separate Budgets**  
**2018-2019 [July 1 - May 31] YEAR**  
**TO DATE REPORT**

**General Budget**

**YTD**

Revenue	\$ 1,392,052
Expenses	\$ 1,201,296
<b>Net:</b>	<b>\$ 190,756</b>

**Attorney Loan Officer**

**YTD**

Revenue	\$ 15,125
Expenses	\$ 43,525
<b>Net:</b>	<b>\$ (28,400)</b>

**CLI**

**YTD**

Revenue	\$ 319,509
Expenses	\$ 210,085
<b>Net:</b>	<b>\$ 109,424</b>

**Trust Officer Conference**

Revenue	\$ 279,784
Expenses	\$ 175,569
<b>Net:</b>	<b>\$ 104,215</b>

**Legislative Update**

Revenue	\$ 51,314
Expenses	\$ 79,699
<b>Net:</b>	<b>\$ (28,385)</b>

**Convention**

Revenue	\$ 105,382
Expenses	\$ 49,241
<b>Net:</b>	<b>\$ 56,141</b>

**Roll-up Summary (Total)**

Revenue:	\$ 2,163,166
Expenses	\$ 1,759,415
<b>Net Operations</b>	<b>\$ 403,751</b>

<b>Beginning Fund Balance:</b>	<b>\$ 1,823,263</b>
<b>Current Fund Balance (YTD):</b>	<b>\$ 2,227,014</b>
<b>Projected June 2019 Fund Balance</b>	<b>\$ 1,678,493</b>

*1 This report is based on the tentative unaudited detail statement of operations dated 05/31/19 (prepared 06/24/19)*

THE FLORIDA BAR  
Real Property, Probate and Trust Law General  
For the Eleven Months Ending Friday, May 31, 2019

	May	YTD 2019	FY 18-19 Budget	Budget % Utilized
3001-Annual Fees		\$626,460	\$597,000	104.93%
3002-Affiliate Fees		\$8,680	\$4,400	197.27%
<b>Total Fee Revenue</b>	<b>\$</b>	<b>\$635,140</b>	<b>\$601,400</b>	<b>105.61%</b>
3301-Registration-Live	\$2,849	\$180,903	\$170,000	106.41%
<b>Total Registration Revenue</b>	<b>\$2,849</b>	<b>\$180,903</b>	<b>\$170,000</b>	<b>106.41%</b>
3351-Sponsorships		\$233,226	\$180,000	129.57%
3391 Section Profit Split	(\$41,104)	\$285,179	\$250,000	114.07%
3392-Section Differential	\$2,820	\$22,980	\$27,000	85.11%
<b>Other Event Revenue</b>	<b>(\$38,284)</b>	<b>\$541,384</b>	<b>\$457,000</b>	<b>118.46%</b>
3561-Advertising		\$18,117	\$8,000	226.46%
<b>Advertising &amp; Subscription Revenue</b>	<b>\$</b>	<b>\$18,117</b>	<b>\$8,000</b>	<b>226.46%</b>
3899-Investment Allocation	(\$66,548)	\$16,508	\$101,383	16.28%
<b>Non-Operating Income</b>	<b>(\$66,548)</b>	<b>\$16,508</b>	<b>\$101,383</b>	<b>16.28%</b>
<b>Total Revenue</b>	<b>(\$101,983)</b>	<b>\$1,392,052</b>	<b>\$1,337,783</b>	<b>104.06%</b>
4131-Telephone Expense		\$1,321	\$2,000	66.07%
4134-Web Services	\$3,948	\$36,459	\$75,000	48.61%
4301-Photocopying	\$15	\$65	\$300	21.74%
4311-Office Supplies		\$1,703	\$700	243.29%
<b>Total Staff &amp; Office Expense</b>	<b>\$3,962</b>	<b>\$39,548</b>	<b>\$78,000</b>	<b>50.70%</b>
5051-Credit Card Fees	\$2,604	\$8,345	\$4,000	208.64%
5101-Consultants		\$110,000	\$120,000	91.67%
5121-Printing-Outside		\$92,233	\$118,500	77.83%
5199-Other Contract Services	\$3,975	\$12,913	\$10,000	129.13%
<b>Total Contract Services</b>	<b>\$6,579</b>	<b>\$223,490</b>	<b>\$252,500</b>	<b>88.51%</b>
5501-Employee Travel	\$2,129	\$19,601	\$12,000	163.34%
5531-Board/Off/Memb Travel		\$30,735	\$35,000	87.81%
<b>Total Travel</b>	<b>\$2,129</b>	<b>\$50,336</b>	<b>\$47,000</b>	<b>107.10%</b>
6001-Post 1st Class/Bulk	\$70	\$992	\$2,000	49.60%
6311-Mtgs General Meeting	\$140,433	\$543,863	\$550,000	98.88%

THE FLORIDA BAR  
Real Property, Probate and Trust Law General  
For the Eleven Months Ending Friday, May 31, 2019

	May	YTD 2019	FY 18-19 Budget	Budget % Utilized
6321-Mtgs Meals	\$211	\$211		0.00%
6325-Mtgs Hospitality	\$2,383	\$16,988	\$35,000	48.54%
6399-Mtgs Other		\$10,306	\$19,000	54.24%
6401-Speaker Expense	\$328	\$328	\$7,500	4.37%
6451-Committee Expense	\$23,831	\$66,795	\$100,000	66.79%
6531-Brd/Off Special Project		\$491	\$35,000	1.40%
6599-Brd/Off Other	\$1,356	\$4,906	\$11,000	44.60%
7001-Grant/Award/Donation	\$2,914	\$11,016	\$28,500	38.65%
7011-Scholarship/Fellowship		\$10,140	\$27,000	37.55%
7999-Other Operating Exp		\$4,475	\$5,000	89.49%
<b>Total Other Expense</b>	<b>\$171,526</b>	<b>\$670,510</b>	<b>\$820,000</b>	<b>81.77%</b>
8021-Section Admin Fee		\$217,024	\$207,500	104.59%
8101-Printing In-House	\$70	\$86	\$1,000	8.62%
<b>Total Admin &amp; Internal Expense</b>	<b>\$70</b>	<b>\$217,110</b>	<b>\$208,500</b>	<b>104.13%</b>
9692-Transfer Out-Council of Sections		\$300	\$300	100.00%
<b>Total InterFund Transfers Out</b>	<b>\$</b>	<b>\$300</b>	<b>\$300</b>	<b>100.00%</b>
<b>Total Expense</b>	<b>\$184,266</b>	<b>\$1,201,296</b>	<b>\$1,406,300</b>	<b>85.42%</b>
<b>Net Income</b>	<b>(\$286,249)</b>	<b>\$190,757</b>	<b>(\$68,517)</b>	<b>(278.41%)</b>

THE FLORIDA BAR  
Real Property Construction Law Institute  
For the Eleven Months Ending Friday, May 31, 2019

	May	YTD 2019	FY 18-19 Budget	Budget % Utilized
3301-Registration-Live	\$2,755	\$95,215	\$80,000	119.02%
3331-Registration-Ticket		\$1,097	\$2,000	54.85%
<b>Total Registration Revenue</b>	<b>\$2,755</b>	<b>\$96,312</b>	<b>\$82,000</b>	<b>117.45%</b>
3351-Sponsorships	(\$3,200)	\$209,026	\$170,000	122.96%
<b>Other Event Revenue</b>	<b>(\$3,200)</b>	<b>\$209,026</b>	<b>\$170,000</b>	<b>122.96%</b>
3401-Sales-CD/DVD	\$1,190	\$13,270	\$15,000	88.47%
3411-Sales-Published Materials	\$480	\$900	\$500	180.00%
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>\$1,670</b>	<b>\$14,170</b>	<b>\$15,500</b>	<b>91.42%</b>
3699-Other Operating Revenue			\$800	0.00%
<b>Other Revenue Sources</b>	<b>\$</b>	<b>\$</b>	<b>\$800</b>	<b>0.00%</b>
<b>Total Revenue</b>	<b>\$1,225</b>	<b>\$319,509</b>	<b>\$268,300</b>	<b>119.09%</b>
5051-Credit Card Fees	\$28	\$6,719	\$4,000	167.98%
5181-Speaker Honorarium			\$1,000	0.00%
<b>Total Contract Services</b>	<b>\$28</b>	<b>\$6,719</b>	<b>\$5,000</b>	<b>134.38%</b>
5501-Employee Travel		\$1,859	\$1,500	123.92%
5571-Speaker Travel		\$6,579	\$4,000	164.46%
<b>Total Travel</b>	<b>\$</b>	<b>\$8,437</b>	<b>\$5,500</b>	<b>153.41%</b>
6001-Post 1st Class/Bulk	\$6	\$6	\$25	24.08%
6021-Post Express Mail	\$55	\$160	\$45	356.04%
6319-Mtgs Other Functions	\$19,817	\$20,017	\$18,000	111.20%
6321-Mtgs Meals	\$62,278	\$67,278	\$50,000	134.56%
6325-Mtgs Hospitality	\$45,508	\$45,508	\$30,000	151.69%
6341-Mtgs Equip Rental	\$8,723	\$25,833	\$22,000	117.42%
6399-Mtgs Other		\$163		0.00%
6401-Speaker Expense		\$5,141	\$10,900	47.16%
7999-Other Operating Exp	\$84	\$2,484		0.00%
<b>Total Other Expense</b>	<b>\$136,471</b>	<b>\$166,591</b>	<b>\$130,970</b>	<b>127.20%</b>
8011-Administration CLE		\$25,000	\$25,000	100.00%
8101-Printing In-House		\$11	\$2,000	0.55%
8131-A/V Services	\$140	\$2,752	\$3,250	84.68%

**THE FLORIDA BAR**  
**Real Property Construction Law Institute**  
**For the Eleven Months Ending Friday, May 31, 2019**

	<u>May</u>	<u>YTD 2019</u>	<u>FY 18-19 Budget</u>	<u>Budget % Utilized</u>
8141-Journal/News Service		\$425	\$1,650	25.76%
8171-Course Approval Fee		\$150	\$150	100.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$140</b>	<b>\$28,338</b>	<b>\$32,050</b>	<b>88.42%</b>
<b>Total Expense</b>	<b>\$136,638</b>	<b>\$210,085</b>	<b>\$173,520</b>	<b>121.07%</b>
<b>Net Income</b>	<b>(\$135,413)</b>	<b>\$109,423</b>	<b>\$94,780</b>	<b>115.45%</b>

**THE FLORIDA BAR**  
**Real Property Legislative Update**  
**For the Eleven Months Ending Friday, May 31, 2019**

	<u>May</u>	<u>YTD 2019</u>	<u>FY 18-19 Budget</u>	<u>Budget % Utilized</u>
3321-Registration-Webcast		\$8,509	\$15,000	56.72%
<b>Total Registration Revenue</b>	<b>\$</b>	<b>\$8,509</b>	<b>\$15,000</b>	<b>56.72%</b>
3341-Exhibit Fees		\$18,250	\$14,000	130.36%
<b>Other Event Revenue</b>	<b>\$</b>	<b>\$18,250</b>	<b>\$14,000</b>	<b>130.36%</b>
3401-Sales-CD/DVD	\$1,485	\$23,925	\$34,000	70.37%
3411-Sales-Published Materials	\$60	\$630	\$500	126.00%
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>\$1,545</b>	<b>\$24,555</b>	<b>\$34,500</b>	<b>71.17%</b>
<b>Total Revenue</b>	<b>\$1,545</b>	<b>\$51,314</b>	<b>\$63,500</b>	<b>80.81%</b>
4301-Photocopying		\$127	\$50	253.38%
4311-Office Supplies		\$71	\$150	47.33%
<b>Total Staff &amp; Office Expense</b>	<b>\$</b>	<b>\$198</b>	<b>\$200</b>	<b>98.84%</b>
5031-A/V Services		\$1,495	\$1,500	99.67%
5051-Credit Card Fees	\$74	\$921	\$1,270	72.55%
5121-Printing-Outside		\$281	\$4,500	6.25%
<b>Total Contract Services</b>	<b>\$74</b>	<b>\$2,698</b>	<b>\$7,270</b>	<b>37.11%</b>
5501-Employee Travel		\$1,492	\$2,000	74.59%
5571-Speaker Travel		\$227	\$1,300	17.48%
<b>Total Travel</b>	<b>\$</b>	<b>\$1,719</b>	<b>\$3,300</b>	<b>52.10%</b>
6001-Post 1st Class/Bulk		\$49	\$50	97.80%
6021-Post Express Mail	\$12	\$267	\$500	53.32%
6311-Mtgs General Meeting		\$81		0.00%
6321-Mtgs Meals		\$48,321	\$55,500	87.07%
6325-Mtgs Hospitality		\$707	\$1,500	47.17%
6341-Mtgs Equip Rental		\$19,441	\$13,500	144.01%
6401-Speaker Expense		\$2,095	\$6,600	31.74%
7999-Other Operating Exp		\$84	\$500	16.80%
<b>Total Other Expense</b>	<b>\$12</b>	<b>\$71,046</b>	<b>\$78,150</b>	<b>90.91%</b>
8011-Administration CLE		\$350	\$1,000	35.00%
8101-Printing In-House			\$300	0.00%
8131-A/V Services	\$21	\$3,689	\$6,000	61.48%

THE FLORIDA BAR  
 Real Property Legislative Update  
 For the Eleven Months Ending Friday, May 31, 2019

	May	YTD 2019	FY 18-19 Budget	Budget % Utilized
8141-Journal/News Service			\$1,600	0.00%
8171-Course Approval Fee			\$150	0.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$21</b>	<b>\$4,039</b>	<b>\$9,050</b>	<b>44.62%</b>
<b>Total Expense</b>	<b>\$107</b>	<b>\$79,699</b>	<b>\$97,970</b>	<b>81.35%</b>
<b>Net Income</b>	<b>\$1,438</b>	<b>(\$28,385)</b>	<b>(\$34,470)</b>	<b>82.35%</b>

THE FLORIDA BAR  
Real Property Trust Officer Liaison Conference  
For the Eleven Months Ending Friday, May 31, 2019

	May	YTD 2019	FY 18-19 Budget	Budget % Utilized
3301-Registration-Live		\$161,419	\$150,000	107.61%
3331-Registration-Ticket		\$12,085	\$10,000	120.85%
<b>Total Registration Revenue</b>	<b>\$</b>	<b>\$173,504</b>	<b>\$160,000</b>	<b>108.44%</b>
3341-Exhibit Fees		\$20,700	\$40,000	51.75%
3351-Sponsorships	\$850	\$72,550	\$60,000	120.92%
<b>Other Event Revenue</b>	<b>\$850</b>	<b>\$93,250</b>	<b>\$100,000</b>	<b>93.25%</b>
3401-Sales-CD/DVD	\$490	\$11,290	\$3,000	376.33%
3411-Sales-Published Materials		\$1,740	\$1,000	174.00%
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>\$490</b>	<b>\$13,030</b>	<b>\$4,000</b>	<b>325.75%</b>
<b>Total Revenue</b>	<b>\$1,340</b>	<b>\$279,784</b>	<b>\$264,000</b>	<b>105.98%</b>
5051-Credit Card Fees	\$262	\$2,025	\$8,000	25.31%
5121-Printing-Outside		\$1,076	\$3,500	30.74%
<b>Total Contract Services</b>	<b>\$262</b>	<b>\$3,100</b>	<b>\$11,500</b>	<b>26.96%</b>
5501-Employee Travel		\$1,527	\$3,000	50.91%
5571-Speaker Travel		\$1,056	\$4,000	26.39%
<b>Total Travel</b>	<b>\$</b>	<b>\$2,583</b>	<b>\$7,000</b>	<b>36.90%</b>
6001-Post 1st Class/Bulk		\$173		0.00%
6021-Post Express Mail	\$4	\$166	\$150	110.59%
6319-Mtgs Other Functions		\$7,844	\$8,000	98.05%
6321-Mtgs Meals		\$43,044	\$57,000	75.52%
6325-Mtgs Hospitality		\$62,353	\$85,000	73.36%
6341-Mtgs Equip Rental		\$18,391	\$17,000	108.18%
6399-Mtgs Other		\$750		0.00%
6401-Speaker Expense		\$3,799	\$4,100	92.65%
7999-Other Operating Exp		\$300		0.00%
<b>Total Other Expense</b>	<b>\$4</b>	<b>\$136,820</b>	<b>\$171,250</b>	<b>79.89%</b>
8011-Administration CLE		\$25,000	\$25,000	100.00%
8101-Printing In-House		\$2,563	\$2,000	128.14%
8131-A/V Services		\$5,503	\$6,200	88.76%
8141-Journal/News Service		\$	\$1,600	0.00%
8171-Course Approval Fee			\$750	0.00%

**THE FLORIDA BAR**  
**Real Property Trust Officer Liaison Conference**  
**For the Eleven Months Ending Friday, May 31, 2019**

	May	YTD 2019	FY 18-19 Budget	Budget % Utilized
Total Admin & Internal Expense	\$	\$33,066	\$35,550	93.01%
Total Expense	\$266	\$175,569	\$225,300	77.93%
Net Income	\$1,074	\$104,215	\$38,700	269.29%

THE FLORIDA BAR  
Real Property Convention  
For the Eleven Months Ending Friday, May 31, 2019

	May	YTD 2019	FY 18-19 Budget	Budget % Utilized
3301-Registration-Live	\$31,585	\$59,800	\$45,000	132.89%
<b>Total Registration Revenue</b>	<b>\$31,585</b>	<b>\$59,800</b>	<b>\$45,000</b>	<b>132.89%</b>
3341-Exhibit Fees	\$2,931	\$20,582	\$10,000	205.82%
3351-Sponsorships	(\$2,500)	\$25,000	\$10,000	250.00%
<b>Other Event Revenue</b>	<b>\$431</b>	<b>\$45,582</b>	<b>\$20,000</b>	<b>227.91%</b>
<b>Total Revenue</b>	<b>\$32,016</b>	<b>\$105,382</b>	<b>\$65,000</b>	<b>162.13%</b>
4111-Rent Equipment	\$2,350	\$3,850	\$	0.00%
4311-Office Supplies	\$19	\$19	\$	0.00%
<b>Total Staff &amp; Office Expense</b>	<b>\$2,370</b>	<b>\$3,870</b>	<b>\$</b>	<b>0.00%</b>
5051-Credit Card Fees	\$535	\$1,375	\$1,200	114.56%
<b>Total Contract Services</b>	<b>\$535</b>	<b>\$1,375</b>	<b>\$1,200</b>	<b>114.56%</b>
5501-Employee Travel	\$	\$	\$2,500	0.00%
<b>Total Travel</b>	<b>\$</b>	<b>\$</b>	<b>\$2,500</b>	<b>0.00%</b>
6001-Post 1st Class/Bulk	\$9	\$9	\$500	1.71%
6021-Post Express Mail	\$4	\$4	\$	0.00%
6321-Mtgs Meals	\$37,272	\$37,272	\$175,000	21.30%
6341-Mtgs Equip Rental	\$208	\$1,708	\$21,000	8.13%
6361-Mtgs Entertainment	\$4,106	\$5,005	\$14,000	35.75%
<b>Total Other Expense</b>	<b>\$41,598</b>	<b>\$43,997</b>	<b>\$210,500</b>	<b>20.90%</b>
8101-Printing In-House	\$	\$	\$400	0.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$</b>	<b>\$</b>	<b>\$400</b>	<b>0.00%</b>
<b>Total Expense</b>	<b>\$44,503</b>	<b>\$49,241</b>	<b>\$214,600</b>	<b>22.95%</b>
<b>Net Income</b>	<b>(\$12,487)</b>	<b>\$56,141</b>	<b>(\$149,600)</b>	<b>(37.53%)</b>

THE FLORIDA BAR  
Attorney Loan Officer  
For the Eleven Months Ending Friday, May 31, 2019

	May	YTD 2019	FY 18-19 Budget	Budget % Utilized
3301-Registration-Live	(\$125)	\$5,875	\$12,000	48.96%
<b>Total Registration Revenue</b>	<b>(\$125)</b>	<b>\$5,875</b>	<b>\$12,000</b>	<b>48.96%</b>
3341-Exhibit Fees		\$750	\$5,000	15.00%
3351-Sponsorships		\$8,500	\$5,000	170.00%
Other Event Revenue	\$	\$9,250	\$10,000	92.50%
<b>Total Revenue</b>	<b>(\$125)</b>	<b>\$15,125</b>	<b>\$22,000</b>	<b>68.75%</b>
5051-Credit Card Fees		\$223	\$500	44.55%
<b>Total Contract Services</b>	<b>\$</b>	<b>\$223</b>	<b>\$500</b>	<b>44.55%</b>
5501-Employee Travel			\$2,000	0.00%
5571-Speaker Travel		\$712		0.00%
<b>Total Travel</b>	<b>\$</b>	<b>\$712</b>	<b>\$2,000</b>	<b>35.58%</b>
6321-Mtgs Meals		\$30,443	\$25,000	121.77%
6341-Mtgs Equip Rental			\$5,000	0.00%
6401-Speaker Expense		\$1,563	\$2,000	78.16%
7999-Other Operating Exp		\$5	\$3,725	0.15%
<b>Total Other Expense</b>	<b>\$</b>	<b>\$32,011</b>	<b>\$35,725</b>	<b>89.60%</b>
8011-Administration CLE		\$10,000	\$10,000	100.00%
8101-Printing In-House		\$5		0.00%
8141-Journal/News Service		\$425		0.00%
8171-Course Approval Fee		\$150	\$150	100.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$</b>	<b>\$10,580</b>	<b>\$10,150</b>	<b>104.23%</b>
<b>Total Expense</b>	<b>\$</b>	<b>\$43,525</b>	<b>\$48,375</b>	<b>89.97%</b>
<b>Net Income</b>	<b>(\$125)</b>	<b>(\$28,400)</b>	<b>(\$26,375)</b>	<b>107.68%</b>

<b>Course Date</b>	<b>Course #</b>	<b>Course Title</b>	<b>Location/Venue</b>	<b>Program Chair</b>
7/26/2019	3240	<a href="#"><u>39th Annual Legislative &amp; Case Law Update</u></a>	The Breakers, Palm Beach	Stacy Kalmanson
postponed indefinitely	3392	Audio Webcast #1	Audio Webcast	TBD
8/21/2019	3393	Audio Webcast #2	Audio Webcast	TBD
8/22 - 8/24/19	3241	<a href="#"><u>Attorney Trust Officer Conference</u></a>	The Breakers, Palm Beach	Tattiana Brenes-Stahl
9/18/2019	3394	Audio Webcast #3	Audio Webcast	TBD
10/16/2019	3395	RPPTL Audio Webcast: Electronic Promissory Notes	Audio Webcast	Jason Ellison / Wilhe
11/1/2019	TBD	Joint CLE w/ Georgia	Jacksonville/Webcast	Hardy Roberts/Peter Crofton (Georgia Bar)
11/15/2019	3589	Probate Law Seminar	Fort Lauderdale	Travis Hayes / John
11/20/2019	3396	RPPTL Audio Webcast: Executive Suite Leases	Audio Webcast	Chris Sadjera / Wilhe
12/18/2019	3397	Audio Webcast #6	Audio Webcast	TBD
1/15/2020	3398	Audio Webcast #7	Audio Webcast	TBD
2/19/2020	3399	Audio Webcast #8	Audio Webcast	TBD
2/21/2020	3500	Condominium Law Certification Review	Orlando	Sandra Krumbein
2/7/20 or 2/28/20	3586	Trust & Estate Symposium	Tampa	TBD
2/28/2020	3274	Attorney Loan Officer Conference	Tampa	Rob Stern
3/5/2020	3502	14th Annual Construction Law Institute	Orlando	Jason Quintero
3/5/2020	3501	Construction Law Certification Review	Orlando	Melinda S. Gentile and Elizabeth B. Ferguson
3/18/2020	3400	Audio Webcast #9	Audio Webcast	TBD
3/27-28/20	3588	Wills Trusts and Estates Certification Review	Orlando	Jeff Goethe
3/27-28/20	3590	RP Cert Review (combine w/ WTE?)	Orlando	Manuel Farach
4/15/2020	3401	Audio Webcast #10	Audio Webcast	TBD
4/24/2020	3585	Guardianship CLE	Tampa	Caitlin Powell
5/8/2020		Ins and Outs of Condo Law (is this happening?)	Tampa, Stetson	TBD
5/15/2020	3518	Estate and Wealth Preservation	Tampa	
5/20/2020	3402	Audio Webcast #11	Audio Webcast	TBD
5/28/2020	3587	RPPTL Convention Seminar	Orlando	TBD
6/17/2020	3403	Audio Webcast #12	Audio Webcast	TBD

**Ethics Vignette**  
**July 2019**

**When Does A Current Client Become a Former Client?**

Whether a client is a current client or former client can be a difficult question for estate and trust lawyers. Each stage affects the attorney's ability to represent other clients and imposes different duties and obligations. When a current client becomes a former client is not always clear, especially when interaction with the client may be dormant for long periods of time. Attorneys should seek to avoid the confusion whenever possible.

The status of a client can make a substantial difference in analyzing conflicts of interests. To oversimplify, under the rules governing conflicts of interest for current clients, pursuant to 4-1.7 of the Florida Rules of Professional Conduct, an attorney may not represent another client adverse to a current client even in a wholly unrelated matter. However, under 4-1.9 of the Florida Rules of Professional Conduct relating to former clients, an attorney may represent a client adverse to a former client, unless the two matters are the same or substantially related in which that person's interest are materially adverse to the interest of the former client. Although the conflicts can be cured through informed consent in some circumstances, the difference in the rules will determine whether the attorney may or may not accept new clients.

In addition, the distinction of the client status also impacts the statute of limitations. The "continuing representation doctrine" may toll the statute of limitations for professional malpractice until the representation terminates. See e.g., Wilder v. Meyer, 779 F. Supp. 164 (S.D. Fla. 1991). Finally, an attorney may have a number of continuing duties and associated liabilities to current and dormant clients, even though the client's estate planning documents have long been resting in the attorney's will vault.

There are many reasons why an attorney may wish to terminate the attorney/client relationship once the task at hand is complete and the attorney completes the legal representation. An unambiguous letter terminating the legal relationship is sufficient. On the other hand, an attorney may value the client and wish to continue the representation. Some attorneys do not want to offend a client with an "I don't represent you" letter. Many estate planning attorneys hope the client will consider them when the client has future business or that the attorney will have some role in administering the client's estate.

Where there is no letter terminating the attorney-client relationship, the answer to whether the client is a former client or a current client must be that "it depends." Although this topic is very fact specific, there are a few common themes worth noting. First, the relationship between an attorney and a client is consensual and, under most circumstances, it can be

terminated at any time by any party. That same concept applies to corporate fiduciaries and their customers. There are certain exceptions to this rule as to attorneys in the litigation context where court approval may be required before the attorney and client may sever their relationship. However, in most circumstances, a clear writing should accomplish the task of severing the attorney-client relationship, even if it is not in the form of a formal termination letter.

Under some circumstances, the passage of time has been held to terminate the lawyer-client relationship. See e.g., Yang Enterprises, Inc. v. Georgalis, 2008 Fla. App. LEXIS 11865 (Fla. App. August 7, 2008) and several other cases on point cited in Freivogel on Conflicts ([www.freivogelonconflicts.com](http://www.freivogelonconflicts.com)) and the ACTEC Commentaries on the Model Rules of Professional Conduct relating to Model Rules 1.8 and 1.4. In Yang Enterprises, Inc. v. Georgalis, although the decision was based largely in part on the passage of time in determining whether a client was a current or former client, the court stated that ministerial tasks done by a paralegal to update completed estate planning documents did not represent a continuing legal representation.

Finally, a client's disability may terminate the attorney/client relationship. See Restatement (Third) of the Law Governing Lawyers § 24 (2000) and comments thereto.

In the estate planning area, it is fairly common to see what has been described as a "dormant" relationship. In a "dormant" relationship, the active representation, such as the task of preparing estate planning documents, has been completed but the relationship has not been formally terminated. Concepts of dormant representation can make it difficult to determine whether an estate planning client is "current" or "former" client for purposes of conflict of interest analysis. The ACTEC Commentaries on the Model Rules of Professional Conduct comment to Model Rule 1.4 are very instructional on this issue. The Commentaries state as follows:

"The execution of estate planning documents and the completion of related matters, such as changes in beneficiary designations and the transfer of assets to the trustee of a trust, normally ends the period during which the estate planning lawyer actively represents an estate planning client. At that time, unless the representation is terminated by the lawyer or client, the representation becomes dormant, awaiting activation by the client. At the client's request the lawyer may retain the original documents executed by the client . . . Although the lawyer remains bound to the client by some obligations, including the duty of confidentiality, the lawyer's responsibilities are diminished by the completion of the active phase of the representation. As a service the lawyer may communicate periodically with the client regarding the desirability of reviewing his or her estate planning documents. Similarly, the lawyer may send the client an individual letter or a form letter, pamphlet, or brochure regarding changes in the law that might affect the client. In the absence of an agreement to

the contrary, a lawyer is not obligated to send a reminder to a client whose representation is dormant or to advise the client of the effect that changes in the law or the client's circumstances might have on the client's legal affairs.”

The ACTEC Commentaries suggests that a client whose representation by the attorney is dormant only becomes a former client if the lawyer or the client terminates the representation. “The lawyer may terminate the relationship in most circumstances, although the disability of a client may limit the lawyer's ability to do so. Thus, the lawyer may terminate the representation of a competent client by a letter, sometimes called an “exit” letter, that informs the client that the relationship is terminated. The representation is also terminated if the client informs the lawyer that another lawyer has undertaken to represent the client in trusts and estates matters. Finally, the representation may be terminated by the passage of an extended period of time during which the lawyer is not consulted.” ACTEC Commentary on MRPC 1.4.

There are two good examples included in the ACTEC Commentaries explaining the concept of dormant representation in typical estate planning scenarios.

Example 1.4-1. Lawyer (L) prepared and completed an estate plan for Client (c). At C's request L retained the original documents executed by C. L performed no other legal work for C in the following two years but has no reason to believe that C has engaged other estate planning counsel. L's representation of C is dormant. L may, but is not obligated to, communicate with C regarding changes in the law. If L communicates with C about changes in the law, but is not asked by C to perform any legal services, L's representation remains dormant. C is properly characterized as a client and not a former client for purposes of MRPCs 1.7 and 1.9.

Example 1.4-2. Assume the same facts as in Example 1.4-1 except that L's partner (P) in the two years following the preparation of the estate plan renders legal services to C in matters completely unrelated to estate planning, such as a criminal representation. L's representation of C with respect to estate planning matters remains dormant, subject to activation by C.

**TABLE OF CONTENTS**  
**REPORTS OF THE SUBCOMMITTEES**

**Membership/Communications/Inclusion/Technology**

**Legislative**

**Financial/Budgeting**

**Structure/Administration/Organization/Leadership/Succession/ByLaws**

**Meeting Planning/Facilities/Logistics**

**Committees**

DRAFT

**REPORT OF THE**  
**MEMBERSHIP/COMMUNICATION/INCLUSION/TECHNOLOGY**  
**SUBCOMMITTEE OF THE**  
**RPPTL STRATEGIC PLANNING COMMITTEE**

**General Recommendations:**

- **Improve communication of and compliance with the Strategic Plan.**
- **Increase membership of Section with a focus on targeting underrepresented constituencies.**
- **Improve Section communications with members and enhance the use of technology.**

DRAFT

## Discussion:

- I. Improve communication of and compliance with the Strategic Plan:
  - A. Appoint Strategic Plan Coordinators to monitor the compliance with and adherence to the Strategic Plan once it is adopted. We believe this will increase membership. Though it may require a further financial investment in technology, this is anticipated to enhance member communications.
  - B. The Strategic Plan should be summarized in a one page bullet outline for easy reference by chairs, officers, and other Section leaders.
  - C. Leadership Orientation – the Strategic Plan should be discussed at new leader orientations.
  - D. Align resources - The officers should follow the Strategic Plan to prioritize and align resources for Strategic Plan implementation.
  - E. Committee chairs' annual committee reports should specifically address implementation and compliance with the Strategic Plan.
- II. Increase membership of Section with a focus on targeting underrepresented constituencies.
  - A. Continue the letter campaign to recruit, welcome, remind, and say we want you back to dropped members.
  - B. Membership Chair should create a calendar and following the calendar send the reminders to the appropriate persons (Section Chair/ALMs Director) to remind of dates that letters are sent. Letters must be sent automatically by a specified date.
  - C. A survey should be sent to dropped members inquiring as to why the member dropped, and requesting their reconsideration.
  - D. At Large Members (ALMs) should send letters to welcome new members recognizing that personalized grass roots campaigns best communicate this message.
  - E. Locations of meetings should be studied, including historical attendance records, to determine whether location impedes Section membership generally, Executive Council membership specifically, and the impact of location on increasing diversity in membership.
  - F. Executive Council (EC) members should be made aware of Section membership numbers across the state. Membership and Inclusion Committee (MIC) chair and ALMs Director should work together to create this report.
  - G. Branding of EC meetings should be reinforced, including changing the title to Section Committee Meetings and EC Meeting to inform members that they are welcome to attend, avoiding current labeling which may be

perceived as exclusionary, and doing so in a manner which avoids a significantly adverse impact the committee processes, administration and finances.

- H. Engage in a listening tour with respect to underrepresented areas and improve outreach to voluntary bar associations and young lawyers. We need to engage with attorneys in underrepresented areas and voluntary bar associations and young lawyers on a face to face level.
  - I. Videos on the website should be updated for use by ALMs and other members to introduce young lawyers and law students to the Section's activities.
- III. Improve Section communications with members and enhance the use of technology.
- A. Creating a downloadable form bank for members to use will add value to membership and further competent and professional practices. Existing forms posted on committee pages may be copied or moved to the forms bank page or linked. Committees should discuss how to expand the forms, including from the Probate and Trust Division, while enhancing and ensuring competency and professionalism.
  - B. Encourage committee chairs to ensure use of fair and equitable meeting voting processes, balancing the need to have representative decisions, avoid encouraging members attending just to vote on one issue, and allowing newer members to participate.
  - C. Further develop new members and incorporate their energy and perspectives, generally, and specifically promote inclusion. Committees should encourage member participation, including considering voting and non-voting classes of members.
  - D. Committees that have not done so should develop substantive discussion forum listserves easily accessible to members, allowing any Section member to subscribe. The purging of the listserves should be discouraged, except for those who have dropped Section membership. The annual Committee Chair's report should have the question regarding purging deleted.
  - E. We should personalize and customize communications to members.

**REPORT OF THE**  
**LEGISLATIVE SUB-COMMITTEE OF THE**  
**RPPTL STRATEGIC PLANNING COMMITTEE**

**General Recommendations:**

- **Institute Standards for Legislative Proposals, including the threshold standard of “Is the proposal worthy based upon compelling public policy?”**
- **Reduce the need for Glitch bills.**
- **React to third-party legislative proposals, but do not redraft.**
- **Always respect the Section brand.**
- **Empower the Executive Committee and Legislative Co-Chairs to consult and advise Committee Chairs before legislation is drafted.**
- **Annual mandatory Committee Chair training as to process and standards.**
- **Update, archive and make accessible legislative positions and white papers.**
- **Encourage continuity from year to year on Legislative Committee to assure historical knowledge base.**

## Discussion:

- I. Legislative Role of the Section – Proactive vs. Reactive –
  - A. Institute quality controls vs. quantity of legislative proposals. Resist the impulse to address every issue with a legislative proposal.
  - B. Improve drafting to reduce the number of “Glitch” bills that are proposed to conserve Section resources and avoid overstraining legislative resources.
  - C. Involve the Section more in big picture policy work than case-specific/isolated problem solving, unless the case involves a significant long term broad public policy warranting a Section-sponsored legislative proposal.
  - D. Dispel the notion that Section substantive committees are pressured to produce legislation to justify their existence. The existence of committee-mandated legislative liaisons or legislative vice-chairs does not compel, or imply the need to produce legislative proposals before discussing and debating policy. The focus should be on long term broad policy goals, not on a short term fix to an isolated situation.
  - E. Legislative committee and staff proposals driven by non-Section constituencies require the time and attention of the Legislation Committee, but Section responses should be contained within the scope of long-term public policy necessities consistent with the Section’s legislative positions and referred to appropriate substantive Section committees for rapid review and recommendations. Substantive committees in coordination with their Division Directors should prospectively team with outside trade groups or other stakeholders to preempt legislative proposals inconsistent with good public policy. If the Section fundamentally disagrees with another group’s statement of public policy to advance a proposal, the Section should communicate its position and its rationale, but not redraft the proposal. The Section shall work with other stakeholders to achieve favorable public policy.
- II. Identifying Criteria or Determinants of What is “Worthy” of Legislative Response and the Expenditure of Section Time and Funds –
  - A. Is there a “Compelling Public Policy Reason” to justify the expenditure of Section resources concerning another’s proposal?
  - B. Determine before proposing a position whether the position is worthy of risking the Section’s reputation, the RPPTL brand.
  - C. Should the Section have legislative proposals advocated and adopted as a “tag along” to other Section(s) and trade group policies?

- D. Be reminded that the Section's reputation and importance comes from the fact that we are active participants in the legislative process, any scale-back of participation must not diminish the Section's importance and reputation since that could invite challenges to our positions and reputation; thus, we should seek more collaborative effort with stakeholders to reduce the Section's role as the front-runner. As the Probate and Trust Division continues to pursue policy partnering with bankers, the Elder Law Section, and the Family Law Section, among others, to both preempt opposition and be a co-leader in joint proposals, policy partnering should be developed in the Real Property Division with the bankers, among others.

#### The S

ection must be more flexible. Following The Florida Bar Board of Governors' requirement to affirmatively disclose in our legislative position requests with whom we have consulted, including other stakeholders and Sections of the Bar and their positions, and noting we are one of the few Sections that does actively consults others on a continuing regular basis, the Section and its representatives on the Board of Governors should remind other Sections of their obligation and encourage collaboration and consultation.

More vigorous early consultation with stakeholders should reduce the number of glitch bills and help prioritize proposals. Also, we must continue to be cognizant of the legislative process of "horse trading" bills to assure that our important initiatives are advanced.

- E. Adopt a Legislative Committee Policy Statement and Procedures to Ensure Continuity.

To provide guidance and appropriate expectations to those seeking support for legislative positions, the Section should adopt a policy statement concerning adopting legislative positions. The Section's Amicus Committee's policy may serve as a template:

"The Section's appearance as a friend of the court is the rare exception, not the rule. Indeed, the strength of the Section's appearance as an *amicus* stems in large part from the Section's unwillingness to yield to the siren songs of our members every time they sense an injustice is upon us. Our ability to befriend a court is a privilege. To the extent we abuse it, our words, now carefully considered, will lose their significance. When we draw near, we will *not* be heard. We purposefully address every amicus request with skepticism, as we must in order to protect the Section's credibility with the courts. But, know that every request is carefully considered."

- F. The Legislative Committee should have the authority to make a substantive recommendation to the Executive Committee as well as advise Committee

Chairs as to whether a proposal is needed and consistent with the Section's current policies.

- G. The Section's Executive Committee should evaluate whether legislative proposals are consistent with current Section policies, and recommend to Committee Chairs as to whether a legislative proposal is worthy of Section adoption.
- H. Standardize and make available prior legislative tracking charts, including hyperlinks to the referenced documents to assure continuity of information. The Fellows should complete this project, and update on a regular and timely basis.
- I. Legislative Committee terms should continue with two-year staggered terms to ensure continuity and transfer of historical knowledge. Legislative Committee vice chairs should be selected with greater protocol to reduce the handicap resulting from transitions when significant substantive knowledge is lost with each transition. Actively and continually recruit new legislative committee members from the substantive committee legislative liaisons and legislative vice-chairs because they have some degree of experience, although perhaps limited to their particular committee's area. Selection should be cognizant of the Section's legislative consultants' expression of desire that the Legislation Committee be staffed with individuals having legislative experience and historical knowledge, analogous to the Amicus Committee, noting the Legislation Committee has a much heavier lift on a continuing basis than the sporadic amicus proposal of the Section undertaking an amicus position from time-to-time. Outgoing Legislative Committee chairs should continue for some time as ex-officio members as a resource to their successors.

III. Educating Committees and Their Leadership as to both the Process and Role of the Section –

An annual educational program for all designated legislative liaisons and legislative vice-chairs with mandatory attendance should be provided at a designated EC meeting to address the inconsistency of the level of activities of the legislative liaisons, many not having current experience on how to move an action item/proposal through the process. The program should be led by the Legislation Committee and our legislative consultants. All substantive committee chairs should also be required to attend.

IV. The Role of and Relationship with Legislative Consultants –

- A. Tracking Charts. Tracking Charts should be expanded to include the succeeding week's committee meetings, if the agenda has been posted by the time of publication of the Tracking Charts, noting that Committee agenda notices become abbreviated late in the session. More emphasis on

the review of weekly listed bills following the Tracking Charts should be communicated to committee chairs, legislative liaisons and vice-chairs, with prompt communication if there are bills of interest to be moved to the Tracking Chart.

- B. Positions. No Section legislative position should be stated on any matter unless consistent with the established positions enumerated by the Section. If the Section is neutral on an issue, such neutrality should be expressed by our legislative consultant. The Section's legislative positions should be continually tagged and updated

The Legislative Co-Chairs and the legislative consultants should discuss in advance of any Legislative Committee meeting where a bill containing a Section initiative will be on the agenda for the meeting to avoid any misunderstandings as to the Section's position and plan. The discussion should include a decision as to whether the Section will be in support/opposition or making a statement at the meeting.

Legislative white papers and positions should be categorized and archived to make them easily accessible to the Section.

- C. Succession and Conflict Planning –

The Executive Committee, in conjunction with the Legislative Committee, should consult with our current legislative consultant to obtain a realistic timeline relative to succession planning. It is understood that such timeline may be extended or otherwise modified. As to conflicts, the Legislative Subcommittee of the Strategic Planning Committee recommends that the Executive Committee consider whether it would be worthwhile to engage a second legislative consulting firm for conflict purposes, whom is known to and respected by our current legislative consultants, but available to step in as determined by the Executive Committee when perceived conflicts exist.

- D. Management of Legislative Consultant –

1. The Legislative Subcommittee recommends a discussion among the Executive Committee as to the broader issue of whether, and to what extent, if any, the Section's legislative consultants should be managed vs. trusting the judgment and discretion of the legislative consultants.

If a more managed approach is adopted, procedures for dealing with the legislative consultants should be adopted.

2. Legislative Bill Sponsors – The legislative consultant and the Legislative Co-Chairs should discuss specific bill sponsors with the Real Property and Probate Division Directors before a potential

sponsor is approached, so that all Section efforts can be coordinated and the Section can make an informed decision on its options. Similarly, the sponsor's understanding and support of the substantive positions of the bill for which they are being solicited to sponsor should be confirmed prior to their sponsorship, to avoid confusion or lackluster promotion of a Section position because of lack of understanding or support for such position by the sponsor.

3. Communications - Clear communication of expectations of our legislative consultants from Legislative Co-Chairs and Committee Chairs is necessary to assure timely and effective participation in the legislative process. When legislation bill drafting is requested from our legislative consultant, a clear statement of scope and deadlines must occur. All communications should be conducted with respect and dignity, recognizing the Section's members are volunteering their time and expertise.

DRAFT

**REPORT OF THE FINANCIAL/BUDGETING SUBCOMMITTEE OF THE**  
**RPPTL STRATEGIC PLANNING COMMITTEE**

**General Recommendations:**

- **The Minimum General Fund Balance should be a minimum of 50% of the next budgeted year's operating expenses with consideration of long-term contracts.**
- **Establish an Excess Fund Spending Policy for special projects once the June 30<sup>th</sup> General Fund Balance exceeds 90% of the next budgeted year's operating expenses.**
- **Track ActionLine revenue and expenses.**
- **Treasurer should receive copies of the hotel and meeting event contracts at the time that the invoices are submitted for payment.**
- **The Section Administrator should provide the Treasurer a report listing the Section Sponsors and the sponsorship amounts committed, and track when the amounts are collected and recorded by the Section.**

## Discussion:

- I. Minimum General Fund. A target range should be set for the Section's General Fund, a minimum of 50% of the next budgeted year's operating expenses, taking into consideration the Section's long-term contracts. This requires that the Section's long-term liabilities to be tracked by The Florida Bar, especially because these contract totals will likely increase over time.
- II. Excess Fund Spending Policy. The Section should create an Excess Fund Spending Policy to address the utilization of year end General Fund balances that exceed the upper limit of the target range. The excess funds should be utilized for the benefit the Section members, but also recognizing that those needs may vary over time. The policy might use as a model the ABA Forum on Construction's "Reserve Spending Policy" which funds special projects ideas submitted by its members that its Finance Committee approves.
- III. ActionLine. ActionLine should be budgeted and reported as if ActionLine was a separate operating unit to allow accurate profit & loss calculations which are difficult with commingled line items.
- IV. Hotel and Meeting Event Contracts. The Treasurer should be provided copies of the Executive Council meeting contracts with hotels and event providers to compare the budget for meetings and events before the fact, rather than the current review after the fact.
- V. Treasurer Tracks Sponsorship Commitments and Collections. The Section Administrator should regularly provide to the Section Treasurer a list of each sponsor's commitment, tracking when revenues are collected and recorded by the Section.
- VI. Carry over items from the 2013 Strategic Planning Meeting.
  - A. The Section Administrator should provide to the Section Treasurer monthly copies of The Florida Bar's financial statements showing the comparison of year-to-date versus budget within five (5) days of receipt by the Section Administrator from The Florida Bar's Finance and Accounting Division. A balance sheet should be provided with The Florida Bar's financial statements.
  - B. The Section Administrator should provide to the Section Treasurer in advance of each Executive Council meeting a Section financial summary, including an attachment with the most current roll up budget only with a comparison of year to date versus budget, in the form approved by the

Treasurer, for review and approval by the Treasurer as well as certain other designated officers. Once approved, this financial summary will be incorporated in the agenda as Treasurer's Report for most meetings.

- C. The Section Administrator should provide year-end figures and a draft preliminary budget for the upcoming Bar year by mid-August so that the Budget committee can begin working on the upcoming budget.
- D. Within forty-five (45) days after each Executive Council meeting, the Section Administrator shall deliver to the Section Treasurer a hotel costs summary sheet with defined categories (i.e., room, food, equipment and committees).
- E. The Section Administrator shall update after each meeting a spreadsheet of historical annual meeting expenses and meal/event charges for the past six (6) years, and work with The Florida Bar to prepare an annual estimated meeting budget based upon estimated budgets with defined categories (i.e., room, food and equipment) with suggested estimated totals for a typical in state meeting and reflecting typical attendance at certain events and suggested rates for event charges. This allows the Chair to know costs before charging for an event. This could be accomplished if the Section Administrator and Section Treasurer complete the meeting expense/facility chart designed by Michael Gelfand.
- F. Quarterly, starting July 1, the Section Administrator should deliver to the RPPTL Section CLE Chair/Co-Chairs and the Section Treasurer an accounting of income and expenses for each CLE for all active CLEs.

**REPORT OF THE**  
**STRUCTURE / ADMINISTRATION / ORGANIZATION / LEADERSHIP /**  
**SUCCESSION AND BYLAWS SUBCOMMITTEE**  
**OF THE RPPTL STRATEGIC PLANNING COMMITTEE**

**General Recommendations:**

- **Ensure the section is a resource for other sections of the Bar.**
- **Renewed focus on training of Executive Council members.**
- **Improve training procedures for substantive committee chairs and vice-chairs.**
- **Succession planning and preservation and transmission of institutional knowledge for Committee Chairs and Executive Committee Members.**
- **Encourage a new generation of membership while maintaining the high standards for leadership and participation.**
- **Continued focus on implementation of the Strategic Plan.**
- **Decrease Executive Council size without sacrificing functionality and brain power.**

## **Discussion:**

### **I. Ensure the Section is a resource for other sections of the Bar**

It is in the best interest of the Section for the Section to be a resource for other sections of the Bar, and it furthers the Section's goal of facilitating communication with other sections of the Bar. Furthermore, the Section should hold itself out as a resource so that when issues within, or on the periphery of, the Section's purview are addressed, the Section is in the best possible position to ensure its goals are met and to provide technical input. The Section should be available legislatively as well as in other venues, such as legal education for members of the Bar and the community at large. To further this general goal, the subcommittee has the following recommendations:

Instruct our Section lobbyists to remain vigilant in reviewing legislation for matters relevant to the Section's purview. In addition, lobbyists and leadership need to make themselves available to other sections for questions and to assist when appropriate and consistent with Section goals.

The Section should identify other Bar sections and committees for more active participation by Section members. As to each of these sections, the Section should ensure an appropriate liaison to actively participate during meetings of such other identified section(s) to ensure the Section's presence and availability is noted. These liaisons should also be active in reporting back to the Section so that appropriate Section personnel can assist when appropriate.

The Section should increase recruitment of Section members to serve on Bar committees which most impact the Section's goals. Some examples of potential Bar committees for Section participation include Probate Rules, Rules Governing the Florida Bar, Judicial Nominating Commissions, Continuing Legal Education, Professional Ethics, and Civil Rules.

The Section's website should be updated to give a more pronounced presence for chairs of substantive committees and Executive Council members so that non-members can find contact information when needed. Ease of leader identification on the website will help facilitate communication when a non-member is seeking Section input.

### **II. Renewed focus on training of Executive Council members**

The Section should better define the responsibility of Executive Council members and ensure that Executive Council members understand these responsibilities,

allowing informed Council members to be better able to fully participate in Section business both during and away from meetings. To that end, the following recommendations are being made:

The Executive Council Meeting Agenda should be distributed to Executive Council members at least ten days prior to all meetings.

It should be made clear at each meeting and round table that the expectation is for all Executive Council members to have reviewed and digested the materials in advance of meeting so that Executive Council members can make informed inquiries and decisions on all matters.

It should be made clear with the distribution of agendas and at each meeting and round table that Executive Council members are encouraged to reach out to the proponent of an issue to provide direct feedback prior to the meeting. Discussion during the meeting should NOT be the first option, rather discussions (particularly inquiries and technical or grammatical suggestions) should occur prior to the meeting so that everyone can be better prepared, can make more informed decisions and alterations, and time is put to good use.

### **III. Improve training procedures for substantive committee chairs and vice-chairs**

One of the most important goals for the Section is to maintain its high level of excellence. To that end, the Section cannot lose focus on training the next generation of Section leaders, and ensure smooth leadership transitions among Executive Committee positions and of committee chairs and vice-chairs. Overall, it is imperative to the continued sustainability of the Section that those in leadership positions understand their roles, the general structure of the Section, and the resources available to leadership as well as members at large. The subcommittee recommends the following steps to facilitate these goals:

Annual Training - The Section should hold an annual training meeting for chairs and vice-chairs. During this meeting, points of emphasis will include: (i) the duties and responsibilities of committee leadership, (ii) reporting requirements to the Executive Council, (iii) expectations of responsiveness to Executive Council members such as a legislative chair, (iv) an overview of recommended committee structure including attendance, initiatives, conflicts, and size, and (v) CLE requirements for the committees. In addition, the meeting will double as initial training for incoming chairs and vice-chairs. This meeting should be mandatory and should be led by Executive Committee Members.

The Section should prepare a booklet to be distributed annually to each chair and vice chair laying out duties and requirements of their position, contact information for inquiries, reporting deadlines (annual and otherwise), and any other general information the Executive Committee believes the a chair and a vice-chair should know. This booklet should also be made available on the Section's website.

#### **IV. Succession planning and preservation and transmission of institutional knowledge for Committee Chairs and Executive Committee Members**

Overarching goals of the Section are grooming leadership for the future and ensuring smooth leadership transitions. The Section excellently identifies leadership potential and encourages active involvement, but the following are recommendations for leadership transition:

Members entering into a chair position should be identified and informed at least three months in before advancing to the position. Over the three month period, the incoming chair should maintain close contact with the outgoing chair to allow the incoming member to better understand the role, the current projects, the active members of the committee, the best methods to facilitate committee meetings, and the position as a whole.

Outgoing chairs should be required to prepare an exit memorandum detailing all pertinent information, including projects, subcommittees, contacts, recommended agenda for the upcoming year, and any other information which the Executive Committee feels should be included in these memoranda. The Division Directors should prepare a form memorandum for use by outgoing chairs with questions to facilitate the needed information.

All Executive Committee positions should have a notebook of materials which lay out the duties and responsibilities of the position. Each officeholder is tasked with maintaining and updating the notebook in a fashion that allows immediate transition in case of emergency, as well as the ability to deliver this notebook to a successor. Information should include, among other things, all critical dates and deadlines. Any incoming successor should specifically request this notebook of the outgoing member. These notebooks should be prepared and maintained with an eye towards preserving the Section's institutional knowledge.

The Section Treasurer's term should be reviewed by the Long Range Planning Committee to determine if the position's term should be multiple years in order to allow for better understanding of the position. The subcommittee believes annual turnover of the Treasurer would have a negative impact on the Section as a whole.

Another option may be to create an “assistant treasurer” position and to give specific duties to the assistant treasurer that allows the assistant treasurer to assist the treasurer and advise the Executive Committee.

**V. Encourage a new generation of membership while maintaining the high standards for leadership and participation**

The Section, as do all Bar sections, needs to strive to be as inclusive as possible in order to encourage attendance and active participation. On the other hand, the Section needs to maintain the high-quality standards and expectations for those whom seek to rise into a leadership position with the Section. It is important that the Section be diligent in evaluating the talent pool to identify those whom demonstrate leadership potential. In order to facilitate Section growth and high-quality leadership, the subcommittee makes the following recommendations:

The Section should have open, public methods for those looking to become more involved with the Section’s committees. This should include a uniform method for joining committees, designated individuals in each committee to meet and assist new members, and designated jobs/positions for new members which will ingrain them with the committee and members (i.e. secretary or mandatory subcommittee participation).

The Section should have a more open process for selecting leadership candidates. This needs to include a more conspicuous experience requirement for joining leadership (i.e. subcommittee participation, ALMs, subcommittee chairmanship, legislative involvement, tenure, etc.).

In order to encourage attendance, but also to maintain utility within the committees, each committee should be made up of members and voting members. Voting members should be chosen based on participation and merit. Only voting members should be given the ability to vote on committee matters.

Leadership should be chosen based on merit and should not be influenced by political pressure or because of membership in specific firms. The subcommittee believes that the Section has done an excellent job of choosing leadership based on merit, however the Section should continue to be aware of perception.

Each meeting should include a new member social get together which is either free or very inexpensive. Attendance at this meeting should be mandatory for all committee chairs and Executive Committee members, and other Executive Council members should be encouraged to attend as well to give new members a

forum for questions and socializing. Alternatively, new members could be given access to the Thursday reception free of charge or at a significantly reduced fee.

Executive Council Members' Meeting expense should be maintained. The Section should ensure that Executive Council members can attend without significant cost being a barrier to entry. That being said, the Section should also strive to maintain the overall class of the meetings and locations. While this may seem inapposite, the Section should do its best to meet both goals. As an example, the subcommittee recommends alternative lodging near the meeting hub recommended to members and the inclusion of at least one free or inexpensive social event at each meeting. Additionally, the subcommittee recommends establishing a price point for the Thursday night social event in order to encourage attendance among members of all levels, including Executive Council, new, and ongoing members. Finally, the subcommittee recommends investigating potential Friday night dinners that allow for multiple venues or multiple options that give way to multiple price points (i.e. "dine around town" dinners, separate cocktails and dinner, or a la carte pricing).

## **VI. Continued Focus on Implementation of the Strategic Plan**

The Section must do a better job of implementing its Strategic Plan and maintain focus on the Strategic Plan during the intervening years. In years past, Strategic Planning meetings have been held, a Strategic Plan created, and then it is effectively put on a shelf. The Strategic Plan needs to be consulted more often, and the initiatives should become more of a focus for the Section. In order to push for more focused implementation, the subcommittee recommends:

Executive Committee members should be encouraged to rely upon and even cite to the Strategic Plan regularly as authority for specific actions. This gives the Strategic Plan more of an ongoing presence and will ensure that the Executive Council does not lose sight of its goals.

The Strategic Plan should be presented to the Executive Council in a presentation which highlights the Strategic Plan's important aspects, the reasoning behind the recommendations, the immediate actions being taken, and the importance of this Strategic Plan to the Section. The subcommittee is of the belief that many Executive Council members have little or no understanding of the Strategic Plan and thus it should be presented as an education item to the Executive Council members.

The Strategic Plan should be posted on the Section website in a conspicuous place so that members are reminded of its existence and are encouraged to consider it when appropriate.

The Section should create a new general standing committee with a focus on monitoring implementation of the Strategic Plan and making recommendations to the Executive Committee on how to facilitate implementation on an ongoing basis. All past chairs serving in the previous five years should be asked to participate on the committee as members. The Chair-Elect, current Section Chair, and Division Directors should be required to participate as members on the committee, with the chair-elect acting as chairman with primary responsibility for ensuring implementation of the Strategic Plan. In addition, a past chair should be appointed as the “champion of the Strategic Plan” with a responsibility for reminding and cajoling leadership to implement the Strategic Plan.

Annually, the newly formed Strategic Planning Committee should present a report card in which it examines each of the Strategic Plan recommendations and goals and rates the implementation of that goal.

The newly formed Strategic Planning Committee’s responsibilities should include implementation of the Strategic Plan as well as training of Executive Council members and committee leadership as laid out above. Utilizing former chairs to lead these training exercises will allow for better transfer of institutional knowledge.

The annual chairs’ report should be modified to include additional questions directly relating to the Strategic Plan in order to ensure compliance as well as to provide an additional reminder to chairs of the need to comply with the Strategic Plan.

## **VII. Decrease council size without sacrificing functionality and brain power**

The subcommittee is in general agreement with the other subcommittees that the Executive Council's size needs to continue to be monitored. At this time, the subcommittee does believe that the Executive Council is inflated and may need reduction (currently 286 members). The Executive Council's size should be maintained at a level that ensures on one hand that all of the Section's best minds are given a forum to participate, while on the other hand not growing to a level that the Executive Council's work cannot be performed due to an oversized membership. Furthermore, if the Executive Council continues to grow, the Section may find that venues will be increasingly difficult to locate and costs will be unsustainable. In order to maintain a workable size, the subcommittee recommends the following:

The Executive Council's size should be decreased. This is an aspirational goal that, if not met, the subcommittee believes will have adverse consequences for the Executive Council and Section as a whole. The subcommittee believes that this reduction should take place in order to reduce overall subsidies, to maintain options in venue, to maintain healthy discussion, and to ensure the goals of the Section can efficiently be met.

Members should be reminded that not being on Executive Council is not a bar to active membership or getting significant benefits from attending meetings, including substantive knowledge as well as social interaction with peers outside of the Saturday meeting.

To effect the recommended reduction, the Executive Committee should review the committees annually, consult with the current committee chair, and determine the appropriate number of chairs and vice-chairs for each committee. The subcommittee recommends that Section committees have a limitation of 2 vice-chairs as a default, fluctuating up or down when appropriate. A fluctuation may be appropriate, for instance in cases of large committees. A fluctuation down may be appropriate in cases of committees primarily responsible for a significant event (i.e. ATO or Legislative Update), with emphasis that participating on those committees does not require vice-chair label, rather regular members may have those duties. The goal is to ensure that the vice-chair position is a pipeline for eventual leadership of the committee and slots should be maintained for that purpose, rather than to allow for continued Executive Council attendance.

Further, the number of ALMs members should be decreased. The subcommittee recommends a maximum number of sixty ALMS members. The membership

should have a general goal of diversity in location throughout the state and in background; however, members should primarily be selected based on merit. The subcommittee recommends that the reduction take place over a three year period, with decreases of approximately 1/3 of the needed spots each year. The Strategic Planning Committee should review this reduction on or before December 31<sup>st</sup> each year to determine if further reduction is necessary or if the reduction should be suspended.

Additionally, the review of liaisons called for above should result in a reduction of members. The Executive Committee should review liaison positions annually, confirm their ongoing viability, review the number of members named as a liaison, and confirm that the members serving in that role should continue as a liaison.

The Fellows program should be maintained but the goals and description of the program should be reviewed to highlight participation and involvement.

The Executive Committee should review the membership of the Executive Council on an ongoing basis with an eye on eliminating positions which no longer have usefulness. The position should be reviewed, not the person in the position, as we should seek to eliminate “parking spots”. The Executive Committee is urged to address underperforming and nonperforming Executive Council members.

The Executive Committee should annually review the number of Section committees to ensure that committees that have served their purpose are eliminated or merged, rather than continuing past their usefulness.

The Executive Council may create a select number of “honorary member”<sup>1</sup> positions, which carry the same responsibilities and powers as a voting member of the Executive Council. This position would be awarded to members demonstrating their dedication to the section over a significant period of time, but whom may no longer wish to serve in a committee leadership position. This would have an added benefit of likely opening up additional positions for up and coming members as well as eliminating “parking spot” committee positions. The creation of honorary members’ slots should not slow the progress of the main goal of decreasing the size of the Council as a whole; rather, these slots should be used sparingly.

---

<sup>1</sup> The Subcommittee on Committees references this position as an Emeritus member.

**REPORT OF THE**  
**MEETING PLANNING/ FACILITIES/ LOGISTICS SUBCOMMITTEE OF THE**  
**RPPTL STRATEGIC PLANNING COMMITTEE**

**General Recommendations:**

- **Executive Council meeting space must accommodate committee meetings and attendees.**
- **Executive Council meeting space needs to have sufficient power strips and free Wi-Fi for members as base standard for meeting rooms.**
- **Take into account the overlap of the number of Executive Council meeting attendees and the number of committees meeting.**
- **Re-educating committee chairs at the Annual Convention or the Breakers' meeting on procedures for scheduling committee meetings, realistically estimating meeting time and size requirements, accepting new members, and utilizing alternative meeting arrangements, and emphasizing better follow up by Division Directors to assure compliance by committee chairs.**
- **Updating the suitable Executive Council meeting venue list and limiting chairs to select venues primarily from suitable venue list.**
- **Continue practice of moving Executive Council meeting venues around state with strong focus on conveniently accessible locations with affordable back up hotels near the venue.**
- **Implement new Executive Council meeting booking procedure which require registration for events to obtain link to hotel reservations and implement a 35-day cancellation policy to permit re-allocation of room block. Provide link to committee chairs before providing to other Executive Council members.**
- **For social events at Executive Council meeting meetings, preserve the Thursday night reception, explore alternatives for Friday event, guarantee one affordable social event to encourage inclusion of younger members and re-establish a spousal event at each meeting, particularly Breakers and Convention.**
- **Continue tradition of holding an annual Section Convention; but, require a CLE component to distinguish from other Executive Council meetings.**

- **Seminar venues should be determined by the CLE committee based upon the type and audience of the CLE, including the profitability factor.**

DRAFT

## Discussion:

### I. Executive Council Meeting Planning:

- A. How is our planner doing? The company (located in Orlando) the Section is using is going a fairly good job! The Section appears fairly happy with our new contact, but the Section needs to work with the planner to attune the planner to Section's goals and priorities for meeting arrangements and re-evaluate after this year.
- B. Should planning target be 24 months in advance? Yes, but this should not be a steadfast rule, rather a best practice goal. Because the Section is booking so far in advance sometimes the person selecting locations has not been elected as Chair-Elect. A best practice may be for the Division Director who is selecting locations for their meetings 24 or more months in advance to seek Executive Committee feedback before a contract is finalized, allowing the "would be chair" to select his or her meeting locations, but allowing input from the pool of individuals who are in the leadership track.
- C. When should Section members be permitted to access reservation systems? Booking should tie into meeting registration allowing registration for a meeting which provides a link to the hotel to book your room. Without an overall meeting registration fee, members may not sign up for anything, but they still attend the meeting as an Executive Council member and should have priority to book a room. Registration should open at least 10 weeks in advance, which means committee schedules and all events should aim to be finalized 12 weeks in advance. Currently, the Section releases the link to book rooms in stages based upon priority, but people are sharing the link and therefore thwarting the priority levels. This is an improvement over booking all rooms for the year at the beginning of the Bar calendar year, but still not working perfectly.
- D. Contract template evaluation, updating. George Meyer has created an extensive meeting protocol list to consider when signing contracts, particularly for the Breakers contracts. George also reviews the contracts as the senior member of the Meetings Planning committee. The Section has come a long way since the previous strategic planning meeting and The Florida Bar does allow the Section to become more involved in contract negotiation, so this is working well.
- E. Distribution of Registration to Non-Executive Council members: The Section has developed a separate registration sheet for non-Executive

Council members, but needs to better provide non-Executive Council members with the registration information and directing them to the online registration system so they understand the need to pre-register for events such as lunches during committee meetings and the Thursday cocktail reception.

- F. Cancellation period. A 35-day cancellation policy is recommended where the member is required to lose a one day deposit if they cancel, provided the deposit is credited to the Section's tab, not to the hotel to prevent the hotel profiting from a cancellation and reselling the room while still holding the Section to our attrition terms. A member should not have to forfeit the cost of the entire stay for a cancellation outside the normal hotel policy.
- G. Do we have an ongoing attrition problem? The Section is still having problems with attrition. The cancellation policy will help this, but the Section also needs to include not only cancellations but also changes to reservations in this category. For example, when a member drops a Saturday night or a Wednesday night, they prevented another member from booking that night because the booking member did not bother to confirm plans before booking the room, and then the Section drops below the venue contract guarantee number or the Section must increase our block unnecessarily.
- H. Out of State Meeting: As a best practice the Section Chair should consider the deadline for legislation when scheduling this out of state meeting. The out of state meeting should be, for the most part, self-supporting, minimizing subsidies because the meeting is often out of the country. Events should be priced so that registration fees will mostly, if not completely, cover the event. The cancellation policy should be sufficient to avoid the large attrition problem that we have seen in the past. Perhaps consider a 60 to 90-day cancellation policy for this meeting. The Section can absorb meeting costs of the Executive Council meeting that occurs at the out of state meeting, but within reason.
- I. Alternative/Overflow Hotel Suggestions: The Section should provide a list of alternative/overflow hotels suggestions on the registration sheet, particularly the committee registration forms. There will be no block at the overflow hotel, but the Section should investigate shuttles or other transportation services links to the main hotel.
- J. Meetings Locations and Times: The Legislative Update should remain at the Breakers for the foreseeable future and Convention at another family friendly resort sometime in May. The Section has transitioned to holding

other Executive Council meetings at a business type hotel and related facilities, but it is recognized that to some extent the Section is limited in location of meetings due to the size of the group. Business type hotels are not necessarily feasible for a group our size. But, the best practice is to choose two less expensive, more business focused locations for two meetings.

## II. Annual Convention:

- A. What is its purpose, other than an election? The Section is not required to have a convention pursuant to our Bylaws. The Bylaws just say that the chair designates the “annual meeting” each year, which is the election meeting and must be held prior to July 1<sup>st</sup> (Article VII, Meetings). The Section should have a convention because it is the one time we really reach out to the over 10,000 members and invite them in to join the Executive Council. Not everyone does attend, of course, but we do see some local attorneys who do not come any other time. It is better that the convention has been moved off the Memorial Day weekend so that prices for the rooms are less expensive and most school age children are out of school for the summer. The convention should be a family friendly event so it should be at a time that encourages Section members to bring their families.
- B. Do we need a convention, and if so, then is location an issue? The convention is good for the Section. For location, the Section is limited somewhat by the size of our membership; but, as indicated above, the convention should be more family friendly and the location should lend itself to that. The Chair should be able to choose the location.
- C. Should the convention include a CLE component? The Convention should include a CLE component because that is the only element that makes a meeting a convention rather than just a meeting with an election. CLE should be coordinated by CLE committee, not the convention committee.

## III. Seminar Venues:

- A. Live Seminars: The sub-committee defers to the CLE committee. Decisions are typically made on a case by case basis given the history of the seminar and the target audience.
- B. Still Necessary/Purpose? Limit CLE to those seminars that have a consistent in person audience and the same people attend every year. The seminar is profitable and therefore justifies the in person component. Also, there are special seminars, such as ATO or CLI, for which marketing and networking is a major component of the seminar.

- C. What Venues are Necessary? Again, the sub-committee defers to the CLE committee because this issue must be addressed on a case by case basis.

#### IV. Committees (physical meeting space)

- A. Consider room arrangements, alternative set ups to reduce space: The Section Administrator does a great job of maximizing the space dependent on the committees and the Section is open to the alternative arrangements to reduce space. The large committees keep getting larger and the Section will end up significantly limiting where meetings can be held if the Section cannot use alternative set ups.
- B. Shifting expenses from room revenue to Section expenses. This issue can be explored during contract negotiations, but in the experience of the members of the subcommittee, the actual benefit to the Section member is insignificant. It is recommended using the Breakers as a test case to determine if the Section were willing to pay a fee for meeting room rentals if the hotel would reduce the room rates. In past, the hotel has only been willing to reduce room rates by \$5 or \$10 a night which did not justify the meeting room rental fee.
- C. Do Committees Need To Meet? Whether committees need to meet in person at each in-state Executive Council Meeting should be considered because the large number of committees makes it is difficult to schedule all of them. Smaller committees should consider meeting outside of the formal setting by phone or using a “go to meeting” type internet program. The number of committees should be reduced.
- D. AV Needs: The Section Administrator is doing a great job in negotiating outside vendors to come in and provide services and to purchase items for Section use. The Administrator has then been able to sell used equipment to smaller Sections when the Section upgrades. Power strips should be added to the list of equipment needed as a priority!
1. Projectors.
  2. Speakerphones. The never-ending debate, but when needed the Section should have them! The issues are how many committee members attend by telephone; and for that that attend by telephone, what percentage of the meeting discussion do they actually hear?
  3. Microphones. Important for large committees – some members’ voices do not carry in large rooms and the Section has older members who cannot hear well. At events it is

important to let the sponsor make their announcements to be heard over the crowd, and the Section needs to provide the microphones.

- E. Timing of Roundtables: The Section has tested the concept of Friday roundtables with success on those in-state meetings where no full day seminar program is presented on Thursday or Friday. However, this choice should be left to the discretion of the Chair based upon the meeting, the number of committees that must meet during that time period and other factors.
  - F. Scheduling Committee Meetings for future EC meetings in advance: The Section is still working towards a best practice of having the schedule finalized and provided to members with adequate notice in advance of when registration opens for the meeting so that all members know when they will need to be at the hotel before they make their hotel reservations.
- V. Communicating to Members. Work with the media consultants to refine how the Section communicates with members. Emails work but they can be annoying, though they are the only way that has consistently obtained responses from our members. The Section should prioritize who can send out emails so that emails are not unnecessarily duplicated; and, consider bundling our email messages where possible (e.g., a weekly e-blast with all messages in it for that week?). Communication should be made through the ALMS to the larger membership to convey the good work the Section does on a regular basis and have more consistent communication.
- VI. Social Events:
- A. What is necessary? There should be a Thursday Reception and a Friday Event but with a consistent policy for pricing. One event should always be an affordable event. The Thursday night reception should remain constant, but for Friday event, the chair should consider alternative events at some meetings such as dine around dinners which have worked. Moving from sponsorships of specific events to sponsorship levels will provide more flexibility in pricing and planning events. The formal Friday night cocktail party and sit-down dinner is expensive which some members very much enjoy so that should be kept for some meetings; but, employ the dine-around at others. Perhaps keep the formal reception and dinner at the Breakers; but, have the dine-around at the December meeting.
  - B. Younger member's involvement? The Section needs to encourage young members' involvement. See comments above about Thursday night. Also, by making the convention family friendly, this will be more attractive to

younger members. There should not be an objection to members, younger or otherwise, making alternative arrangements for dinner or receptions among themselves for Friday or Saturday nights.

- C. Role of Saturday Dinner? The Saturday night dinner provides the chair the ability to plan a smaller, more intimate “fun” event. It also provides members a chance to relax and get to know each other in a smaller setting. The chair should have flexibility to eliminate the Saturday night event where appropriate.
- D. Role of Sunday Dinner? This should refer to Sunday Brunch. But the committee felt that a Sunday Brunch is unnecessary and not well attended. The Section typically does not offer a Brunch, and a Brunch does not need to return.
- E. Spouse Events. At least one spouse event should be added on a consistent and regular basis, particularly at the Breakers and the Convention. The spouse event is important to help maintain our members and build relationships among the members’ families. The event should serve as a “kick off” for the weekend and should be held consistently at the same time each meeting.

**REPORT OF THE**  
**SUBCOMMITTEE ON**  
**COMMITTEES OF THE**  
**RPPTL STRATEGIC PLANNING COMMITTEE**

**General Recommendations:**

- **Every 2-3 years, Section leadership should review all committees and liaison positions to determine whether any need to be added, dissolved, subdivided, merged, etc.**
- **Committee meeting times should be rotated.**
- **Identify four to six core committees which cannot be scheduled opposite each other under any circumstances.**
- **Within 30 days of the last meeting, committee chairs should deliver preliminary agendas for their next meeting and inform the Division Director how much time is anticipated to be required for their next committee meeting.**
- **The Section should standardize nomenclature and usage of committee titles (committee, subcommittee, task forces, ad hoc committees, etc.) amongst the different committees and between the two Divisions.**
- **Division Directors should periodically meet or confer with committee chairs to reinforce and educate the chairs about their respective roles and also to get feedback.**
- **Support the Legislative Subcommittee proposals as follows:**
  - **Encourage committees to de-emphasize legislative action in favor of professional enrichment.**
  - **Proposed legislation must first be vetted by the Legislative Committee, the Division Director and the Executive Committee.**
  - **Require a compelling need and a reasonable likelihood of successful passage of the proposed legislation.**
  - **Each committee should have a legislative subcommittee.**
- **To control the size of the Executive Council, to create a path to leadership for Section members, and to allow opportunities for active contributing members, the Section should (recognizing that one size does not fit all):**

- **Limit the number of vice-chairs for each committee to a maximum number of two unless otherwise warranted, e.g., the Amicus Committee.**
- **One person per liaison position except sitting judges.**
- **Guidelines shall be created for the creation of an Emeritus position on the Executive Council.**
- **The Executive Committee should proactively remove inactive Executive Council members.**
- **For substantive committees, an application for voting membership and determination of number of voting members on a committee by committee basis. The maximum number of voting members for each committee should be determined by the Executive Committee in consultation with the Division Directors and committee chairs.**
- **Grandfathering of committee membership shall be based on the committee chair's discretion subject to the additional discretion of the Executive Committee.**
- **Each committee chair should have the discretion to create at least two listserves: a listserve of voting members and a listserve of non-voting members.**

**Discussion:**

**I. GOAL: Establish a procedure to review the efficacy of Section Committees, establishment of new Committees, and dissolution of existing Committees.**

**A. Topic or Issue:** Are there too many Committees, are new Committees too easily formed, and what should be the test to dissolve a Committee?

**B. Discussion:** The Section's Bylaws, Article VI, Section 1, gives the Section Chair broad discretion to establish and dissolve Committees; however, in at least one instance, we would have preferred that a Committee not be dissolved but rather made a General Standing Committee, specifically, the Integrity Awareness and Coordination Committee should not have been dissolved. The mission of this Committee was "to preserve the Section's reputation for integrity by promoting awareness and understanding of applicable conflict of interest principles and bylaw provisions among components of the Section, coordinating the uniform and consistent application of these principles and provisions within components of the Section, and by other appropriate means." This Committee, composed primarily of past Section Chairs, could have remained a General Standing Committee available to the Executive Committee, and possibly Committee chairs, to address conflict of interest questions within the Section and to monitor for possible conflicts.

**C. Conclusion or Proposal:** While the Bylaws provide broad discretion to the Section Chair to establish new Committees and dissolve existing ones (the wording also infers that the Executive Council could vote to reinstate a dissolved Committee), we believe that approximately every 2-3 years, Section leadership should review all Committees and Liaisons to determine whether any need to be added, dissolved, subdivided, merged, or otherwise addressed. A recommendation would then be made to the Section Chair, who could ratify or veto the recommendation and a 2/3'ds vote of the Executive Council would override the Section Chair's decision.

**II. GOAL: Minimize Duplication of Discussions with Same Speaker and Audiences**

**A. Topic or Issue:** How can we avoid or minimize duplicating discussions with the same speaker(s) and audiences?

**B. Discussion:** Most of the chairs interviewed did not consider this a problem and recognized that some duplication is inevitable because many topics overlap the different committees. With respect to proposed legislation, most chairs thought that the vetting process for proposed legislation is important to producing the best product and to being more inclusive. Some chairs also recognized that although the majority of the audiences may be the same, there are some people who only attend one committee meeting.

There was some discussion of using the multiple committees vetting process less and using the Division Roundtables for that purpose. However, Roundtables are typically only attended by Executive Council members and solely using the Roundtable process risks eliminating input from non-Executive Council committee members.

Committee CLE presentations rarely overlap, but proposed legislation is intentionally circulated among various interested committees. This vetting process, used by both Divisions, helps to identify and address issues before the proposed legislation becomes an action item and allows for a large number of individuals to consider and comment on the proposed legislation.

**C. Conclusion or Proposal:**

1. There does not appear to be an issue with respect to “committee CLE”/recent case law presentations.
2. On the Probate and Trust side; probate rules updates should be limited to two committees and the Roundtable: Probate Law & Procedure and either Trust Law or Probate and Trust Litigation. Additionally, any new or proposed rules affecting guardianship should be discussed in the Guardianship committee.
3. For “committee CLE” of interest to multiple committees or proposed legislation which needs to be vetted among multiple committees, the Section should create a 30 minute time-block (perhaps at the beginning or end of one of the interested committee’s meetings) and have all members of all of the interested committees attend the one presentation, ask questions, and provide comments. After the presentation, the committees can separate to allow the host committee to continue its business.

### III. **GOAL: Avoiding Conflicting Meeting Schedules**

**A. Topic or Issue:** How do we schedule committee meetings so they do not conflict with or cannibalize each other's attendance?

**B. Discussion:** Interviews revealed that conflicting meeting schedules is a bigger problem in the Real Property division than the Probate and Trust division.

**C. Conclusion or Proposal:** Committee times should be rotated from Executive Council meeting to meeting so a committee with a bad timeslot in one meeting would be guaranteed a better timeslot on the next meeting. The Division Directors should circulate a proposed committee schedule among committee chairs so the chairs can provide input. Consideration should be given to encouraging joint meetings between committees to reduce conflicts and increase interaction. Some committees also do not need to meet in person at every Executive Council meeting and should be encouraged to meet telephonically, or virtually, at least once a year so as to reduce the number of in-person meeting conflicts. Where conflicts are unavoidable, conflicts should be scheduled between substantive and general standing committees rather than between substantive committees only.

The Section should consider identifying four to six core committees which cannot be scheduled opposite each other under any circumstances. The Section should also avoid simultaneous scheduling opposite each other of meetings that have scheduled speakers, so attendees can attend as many speaker presentations as possible.

**IV. GOAL: Define the Purpose and/or Use of Subcommittees, Ad Hoc Committees, and Task Forces**

**A. Topic or Issue:** What is the difference between subcommittees, ad hoc committees, and task forces? Are these groups currently distinguished in their use, and what is the appropriate use for each?

**B. Discussion:** Subcommittees are smaller working groups assigned to a particular issue or project being addressed by a particular Section committee. They are created by the committee chair, given their assignment by the committee chair, and are dissolved by the committee chair. Some Real Property Division committees have “standing subcommittees” for CLE, legislation, and continuing issues (e.g., the super priority lien subcommittee of the Condo and Planned Development Committee). With respect to General Standing Committees, the chairs interviewed only use subcommittees rather than ad hoc committees or task forces. Interestingly, the two divisions interpret and use ad hoc committees and task forces differently.

At least some of the Real Property substantive committees use sub-groups as follows: Task forces are created for short-term, focused projects dealing with one particular issue. When the issue has been addressed, the task force is dissolved. Ad Hoc subcommittees are created to study, report, and address longer-term projects. When the project is completed, the ad hoc subcommittee is dissolved. Subcommittees are created as “standing” subcommittees to handle recurring events such as an annual CLE seminar/webinar or to follow ongoing issues such as bulk buyer and super priority liens. In other words, within a single substantive Real Property Division committee, all three groups may exist. Other Real Property committees use only subcommittees, and some of those chairs did not know what, if anything, distinguishes ad hoc committees from task forces.

Probate and Trust substantive committees use and appoint only subcommittees. The duration of the subcommittee depends on the complexity of the issue assigned to it. For complex issues that touch multiple substantive committees in the Probate Division or which require immediate attention (such as a quick legislative fix), the Section Chair and/or Probate and Trust Division Director will create a separate substantive ad hoc committee. Those ad hoc committees are under the supervision of the Probate and Trust Division Director, typically address issues that would be of interest to or within the scope of multiple substantive committees, and typically are dissolved when the project is complete. Of the committee chairs interviewed, those in the Probate and Trust Division understand that task forces are created to review and respond to non-Section initiatives. This is an entirely different use and understanding of a task force than how it is used and understood in the Real Property Division.

NOTE: There are some Section committees that are labeled “ad hoc” that are actually continuing committees and should be renamed to delete the “ad hoc” title, e.g. Ad Hoc Leadership Academy, Ad Hoc Committee on Jurisdiction & Service of Process.

### **C. Conclusion or Proposal:**

1. There are no misunderstandings or issues as to the use of subcommittees by Section committees.
2. Section ad hoc committees are created and should continue to be created to study and/or address topics that overlap multiple committees (e.g., Estate Planning Conflict of Interest and Discretionary Spendthrift Trusts); are large and complex in scope (i.e., Guardianship Revision and Elective Share); or are time-sensitive matters (e.g., POLST).
3. There is no clear understanding among Section committee chairs or members as to the distinction between an ad hoc committee and a task force, and there is no need to use two different terms. "Ad Hoc" is used most often and is generally understood; therefore, abandon the use of "task force." However, if within a substantive committee, the committee chair seeks to use different labels for what are in essence subcommittees, that should be their prerogative, with the understanding that those labels and distinctions are not universally used by all Section committees. The nomenclature and usage amongst the different committees should be standardized.

**V. GOAL: Identify the Purposes and Uses of Committees and Maximize their Ability to Fulfill these Purposes and Uses**

**A. Topic or Issue:** What are the purposes of committee operations as part of Executive Council functions, how well have the committees achieved these, and how does the Section maximize the effectiveness of the committee structure?

**B. Discussion:** Committees are used to isolate and focus on issues warranting changes, provide continuing legal education programs (both internally in the Executive Council and externally among our membership), and bring people with different perspectives together to work on common problems (which also creates camaraderie and connections and reinforces professionalism). The Executive Council membership is too large to accomplish these goals without a focused committee structure. Since 1991, committee structure has become tighter and has included less social networking, morphing instead into a more program-oriented regimen. The accountability of committee chairs has also increased. This tighter framework has allowed for the creation of more committees because oversight is more structured and regimented. However, we must guard against creating too many committees or oversight will suffer.

**C. Conclusion or Proposal:** We are likely at the optimal number of committees. We must watch committee activities and not be afraid to sunset or retire committees when they become unnecessary or not as effective as leadership anticipated. If committees cannot draw sufficient attendance on a regular basis, it is a sign of limited interest or lack of a leadership plan for growing the committee. In the meantime, committees should continue their focus on educating members about developments in case law and statutes, pursuing legislative activities, and educating members on substantive issues. We should also identify opportunities to coordinate with other sections of The Florida Bar. The research suggests we have successfully fulfilled these goals, so far.

To maximize relationships among the committees, it is recommended that the Division Directors meet twice per year with committee chairs to reinforce and educate the chairs about their respective roles and to obtain feedback from the chairs.

The Legislative Subcommittee proposals are supported as follows:

1. Encourage committees to de-emphasize legislative action in favor of professional enrichment.
2. Before a committee drafts proposed legislation, the proposed legislation goal must first be vetted by the Legislative Committee, the Division Director and the Executive Committee.
3. Adoption of a standard by which the proponent of the legislative initiatives must demonstrate a compelling need for the legislation and a reasonable likelihood of successful passage.
4. Each substantive committee should have a legislative subcommittee.

**VI. GOAL: Committee Chairs and Vice Chairs should have Limited Roles on Other Committees while Serving as Chair or Vice-Chair of a Committee**

**A. Topic or Issue:** Are too many committee chairs serving multiple roles on other committees and if so, what is the solution?

**B. Discussion:** Overall, interviews indicated there was not a strong feeling that committee chairs and vice chairs have too many concurrent leadership roles. However, there was recognition that many of the same people are tapped to be chairs and vice chairs of different committees from year to year. As a chair's "term" is up, that chair is added to another committee as a chair or vice-chair and so on. As a result, there may be 3 vice-chairs on a committee to accommodate active members who don't want to leave the Executive Council. There are a number of reasons for this process, one of which is that those appointed as chairs or vice-chairs have exhibited leadership skills and a willingness to do the "heavy lifting" and the number of members who are willing to take on these positions are insufficient to cycle out existing chairs/vice chairs. Not incidentally, the other reasons expressed are: (i) the Section should not lose the benefit of the institutional knowledge and expertise of chairs and vice-chairs when their terms are up, and (ii) the chairs and vice chairs, having given of their time and resources, should be rewarded with continuing membership in the Executive Council, if they want to remain active. Fostering leadership has been a challenge as discussed above with respect to committee membership, but once leaders are identified and take on chair and vice-chair positions, these individuals typically want to remain on the Executive Council after their initial committee leadership terms are up. One committee chair who was interviewed appreciated the value of the "veteran" Executive Council members but thought that a system which fostered "cycling off" committee chairs after a period of time is healthy for an organized body, especially one like the Executive Council which maintains institutional knowledge and continuity through the involvement of former Section Chairs.

**C. Conclusion or Proposal:** As leaders among committee members are identified, they will ultimately be offered chair and vice-chair positions, which will result in having to cycle off existing Executive Council members in those positions. This is the "natural order" of any committee system, but compensating for the cycling off by continuing to add vice-chair positions is not ideal. However, there was an acknowledgement that there should be a place for these valued members of the Executive Council and one committee chair suggested that those chairs whose term has expired on the last committee he/she will serve on can serve for a period of time as a chair emeritus. In this manner, each committee can continue to have a chair and vice-chair (or two, if desired), but a committee chair member who has occupied a chair position(s) and no longer wishes to do so or has reached term limits, will still have a place on the Executive Council as a committee chair emeritus and be an emeritus member on a maximum number of committees (to be determined), in appreciation of his/her service. We believe that an Emeritus

member position(s) should be created by the Executive Council, and it is not necessary to identify such a position as a chair emeritus.

## **VII. GOAL: Optimize the Size of Committees with Active Committee Members**

**A. Topic or Issue:** How does the Section optimize the size of committees with active, involved committee members?

**B. Discussion:** This topic was addressed in the 2014-2019 Strategic Planning Report under "Goal II." In its discussion, the prior Report identified certain concerns, including the size of a committee impacting its productivity. The 2014-2019 Report recognized that committees should be as large "as we have people who want to be involved", but rules need to be imposed to allow each committee to accomplish its purpose. The prior Report recommended strict enforcement of an attendance policy, a limitation on voting members and creation of an application for committee membership as a voting member, the latter of which would be a universal application for all committees.

This subcommittee believes that the recommendations of the earlier Strategic Planning Report should be adopted, with some modification. Committee chairs stated that although many committees have large numbers of members, for some of these committees a relatively small percentage of members attend meetings on a regular basis (either personally or telephonically, if permitted) or volunteer for lectures, articles or special task forces. One committee chair described the impressive numbers of committee members as being "a mile wide and an inch deep." In most cases, the large committee roster is nothing more than a listserve for many members, but each participant on the listserve is given the privilege of listing themselves as a committee member.

Even if a committee adopts voting and non-voting member status, the fact remains that a non-voting member will still be entitled to the benefits of being a member without having to contribute. Moreover, recognizing that the chairs and vice-chairs of committees are volunteers with demanding work schedules, it is increasingly difficult and time consuming for them to find committee members who will volunteer for the core needs of the committees. And so the chairs call upon the same members time and time again. While recognizing that "one size does not fit all", there should be some qualifications for admitting members to Section committees and correspondingly, there should be some "investment" by a committee member to earn member status. An application in which a prospective member commits to attend a certain number of meetings either personally or telephonically (recognizing that some members' personal attendance is not financially supported) and commits to lecturing, writing an article, participating in a task force or the like will serve to facilitate the role of the committees within the Section. Such a policy will create a more active and committed core committee membership and may very well foster innovation to give even more value to membership in the Section. In this regard, each committee can still maintain a listserve which serves to stream

out information, CLEs, articles and so forth to those Section members who have an interest in a topic but no time to volunteer as a committee member. It is hoped that within that listserve group, a number of potential committee members will surface as they see the benefits of being a committee member, and that in turn will foster the next “generation” of leadership for the Section.

**C. Conclusion or Proposal.** Committees should be as large as the Executive Council determines is appropriate, given the nature of each committee, with input from the committee chair(s). This number can be reviewed periodically and can vary from committee to committee. But the common goal of each committee can be better served by engaged committee members and so this subcommittee recommends the implementation of an application for membership used for each committee and existing committee members should also complete the application. The application need only be completed one time, but once a member signs on for membership, the committee must review the members’ actual commitment (i.e. attendance, lectures or other volunteer activities) on a periodic basis (we would recommend every two years). Each committee should decide if telephonic attendance “counts” as attendance. The Executive Council should decide if non-paid CLEs to a committee’s listserv members are appropriate, since presently CLEs are provided at no cost to all members of a committee offering same at its meeting, so a member who does nothing more than sign up for a committee can call in for a free CLE. In recommending this application process, this subcommittee recognizes that if those who currently are allowed to be committee members with no commitment, have to now commit to active involvement, what will motivate them to do so? The desire to be a part of a committee whose members are active and produce articles, CLEs, lectures, develop best practices and/or participate in the direction of legislation is in the nature of lawyers and we believe that even with an application process there will still be a number of lawyers who will agree to the terms of committee membership.

Report of the **Model and Uniform Acts** General Standing Committee-  
Bruce M. Stone and Richard W. Taylor, Co-Chairs; Patrick Duffey  
Co-Vice Chair (PT); and Adele Stone, Co-Vice-Chair (RP)

Prepared for the Executive Council Meeting, July 25-27, 2019.

1. The Uniform Law Commission (ULC) is also known as the National Conference of Commissioners on Uniform State Laws. The website is <http://www.uniformlaws.org>. Information on each of its Model Acts is found on the website and for many of the Acts there is an enactment kit which can be downloaded to provide additional information. Apple users may be interested in an Estate and Trust App through the App Store as shown at <http://www.uniformlaws.org>.

2. The Uniform Law Commission (ULC) will hold its 128th Annual Meeting in Anchorage, Alaska, from July 12-18, 2019 and will consider the following matter which may be of interest to RPPTL members:

A. The Uniform Electronic Wills Act will permit testators to execute an electronic will and allow probate courts to give electronic wills legal effect. Most documents that were traditionally printed on paper can now be created, transferred, signed, and recorded in electronic form. Since 2000 the Uniform Electronic Transactions Act (UETA) and a similar federal law, E-SIGN, have provided that a transaction is not invalid solely because the terms of the contract are in an electronic format. But UETA and E-SIGN both contain an express exception for wills, which, because the testator is deceased at the time the document must be interpreted, are subject to special execution requirements to ensure validity and must still be executed on paper in most states. The testator's electronic signature must be witnessed contemporaneously (or notarized in states that allow notarized wills) and the document must be stored in a tamper-evident file. States will have the option to include language that allows remote witnessing. The act will also address recognition of electronic wills executed under the law of another state. For a generation that is used to banking, communicating, and transacting business online, the Uniform Electronic Wills Act will allow online estate planning while maintaining safeguards to help prevent fraud and coercion.

B. The Uniform Registration of Canadian Money Judgments Act will facilitate the enforcement of Canadian money judgments in the United States in a manner comparable to the way U.S. money judgments are enforced in Canada through its Canadian Uniform Enforcement of Foreign Judgments Act. This Act is intended to supplement the Uniform Foreign Country Money Judgments Recognition Act (Recognition Act). If a state has not

enacted the Recognition Act, it may enact this Act at the same time it adopts the Recognition Act as a companion Act.

3. Bruce Stone serves as chair of the Joint Editorial Board and reports the following matters are under consideration.

A. Public Fundraising. A ULC drafting committee has been formed to deal with public fundraising efforts, and the obligations and duties that arise when public appeals for funds are made (such as crowdfunding). The first draft of the act will be read at the ULC annual meeting this month (July 2019).

B. Economic Rights of Unmarried Cohabitants. A ULC drafting committee has been formed to deal with the rights and obligations of unmarried persons who live in arrangements that are equivalent to marriage. The committee has met and has identified a list of issues to be addressed. A first draft of a proposed uniform act will be prepared in time for discussion at the next drafting committee meeting in the fall of 2019.

C. Disposition of Community Property Rights at Death. A ULC drafting committee has been formed to consider updating and supplementing the Uniform Disposition of Community Property Rights at Death Act (which was enacted as part of the Florida Probate Code). Professor David English is the chair of the drafting committee. Professor English is soliciting input from interested groups for the appointment of observers to contribute to the review and drafting process.

D. Uniform Directed Trust Act. The Joint Editorial Board for Uniform Trust and Estate Acts at its November 2019 meeting will discuss possible revisions to the Uniform Direct Trust Act to deal two items. Is it (or should it be) possible under the UDTA to allow someone acting in a non-fiduciary capacity (without having fiduciary responsibilities) to approve the exercise of a power of appointment? Does a provision sometimes found in trust documents which allows the attorney who drafted a trust to correct scrivener's errors make the drafting attorney a trust director under the UDTA?

E. Uniform Probate Code. The Joint Editorial Board serves as the ongoing drafting committee for the Uniform Probate Code. At its April 2019 meeting the JEB completed an eighteen-month project to revise the Uniform Probate Code to make conforming changes in light of the Uniform Parentage Act which was approved by the ULC in 2017. The Uniform Parentage Act recognizes that a person may have more than two parents (for example, children born from assisted reproductive technology, same sex marriages, and so forth). The UPA had a ripple and complicated effort on various provisions of the Uniform Probate Code. The UPC amendments will

be read at the ULC annual meeting in July 2019 for final approval. In addition, the JEB is continuing work on revising the UPC to eliminate gender specific references (such as "he" and "his").

F. Tribal Probate Code. The JEB has reviewed and commented on the proposed final draft of the Tribal Probate Code. The final draft will be finished sometime in 2020.

\\Tnpaserver\tnpa\PDF\Old.TNEA Files\BB\RPPTL\ULCRPPTLREPORTJULY2019

# UNIFORM PARTITION OF HEIRS PROPERTY ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-NINETEENTH YEAR  
IN CHICAGO, ILLINOIS  
JULY 9-16, 2010

*WITH PREFATORY NOTE AND COMMENTS*

COPYRIGHT © 2010

By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

October 19, 2010

## ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 119th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**DRAFTING COMMITTEE ON A UNIFORM PARTITION OF HEIRS PROPERTY ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

ROBERT L. MCCURLEY, P.O. Box 861425, Tuscaloosa, AL 35486, *Chair*

WILLIAM R. BREETZ, Connecticut Urban Legal Initiative, University of Connecticut School of Law, Knight Hall, Room 202, 35 Elizabeth St., Hartford, CT 06105

GEORGE H. BUXTON, 31 E. Tennessee Ave., Oak Ridge, TN 37830

ELLEN DYKE, 2125 Cabots Point Dr., Reston, VA 20191

LANIL EWART, 1099 Alakea St., Suite 1800, Honolulu, HI 96813

PETER F. LANGROCK, P.O. Drawer 351, Middlebury, VT 05753-0351

CARL H. LISMAN, 84 Pine St., P.O. Box 728, Burlington, VT 05402

MARIAN P. OPALA, Supreme Court of Oklahoma, State Capitol, Room 238, 2300 N. Lincoln Blvd., Oklahoma City, OK 73105

RODNEY W. SATTERWHITE, Midland County Courthouse, 441 1<sup>st</sup> District Court, 500 N. Loraine St., Suite 901, Midland, TX 79701

NATHANIEL STERLING, 4180 Oak Hill Ave., Palo Alto, CA 94306

M. GAY TAYLOR-JONES, 18 N. Foxhill Rd., North Salt Lake, UT 84054

THOMAS W. MITCHELL, University of Wisconsin Law School, 975 Bascom Mall, Madison, WI 53706, *Reporter*

**EX OFFICIO**

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455, *President*

BARRY C. HAWKINS, 300 Atlantic St., Stamford, CT 06901, *Division Chair*

**AMERICAN BAR ASSOCIATION ADVISOR**

PHYLISS CRAIG-TAYLOR, Charlotte School of Law, 2145 Suttle Ave., Charlotte, NC 28204, *ABA Advisor*

STEVEN J. EAGLE, George Mason University School of Law, 3301 Fairfax Dr., Arlington, VA 22201-4426, *ABA Section Advisor*

**EXECUTIVE DIRECTOR**

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
[www.nccusl.org](http://www.nccusl.org)

**UNIFORM PARTITION OF HEIRS PROPERTY ACT**

**TABLE OF CONTENTS**

PREFATORY NOTE..... 1  
SECTION 1. SHORT TITLE..... 9  
SECTION 2. DEFINITIONS. .... 9  
SECTION 3. APPLICABILITY; RELATION TO OTHER LAW..... 12  
SECTION 4. SERVICE; NOTICE BY POSTING. .... 12  
SECTION 5. [COMMISSIONERS]. .... 13  
SECTION 6. DETERMINATION OF VALUE. .... 13  
SECTION 7. COTENANT BUYOUT..... 15  
SECTION 8. PARTITION ALTERNATIVES..... 23  
SECTION 9. CONSIDERATIONS FOR PARTITION IN KIND..... 25  
SECTION 10. OPEN-MARKET SALE, SEALED BIDS, OR AUCTION. .... 27  
SECTION 11. REPORT OF OPEN-MARKET SALE..... 29  
SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION ..... 29  
SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
NATIONAL COMMERCE ACT ..... 29  
SECTION 14. EFFECTIVE DATE..... 30

# UNIFORM PARTITION OF HEIRS PROPERTY ACT

## PREFATORY NOTE

### Introduction and Summary

The Uniform Partition of Heirs Property Act is an act of limited scope which addresses a widespread, well-documented problem faced by many low to middle-income families across the country who have been dispossessed of their real property and much of their real property-related wealth over the past several decades as a result of court-ordered partition sales of tenancy-in-common properties. The highly unstable ownership these families experience stands in sharp contrast to the secure property rights wealthier families typically enjoy. Further, the loss of real property-related wealth these low to middle-income families have experienced has been particularly devastating to these families given the fact that real property constitutes by far the single greatest asset that these property owners typically own, unlike the much more diversified asset portfolios that wealthier families normally possess. In addition, the Act may be very helpful to a surprising number of wealthier families who own tenancy-in-common property under the default rules and who also experience great problems with this ownership form.

The law has made the tenancy in common, a common ownership structure under which two or more cotenants own undivided interests in particular property, the default ownership structure for two or more family members who inherit real property. In addition, the law presumes that two or more people who acquire undivided interests in real property by conveyance or devise take ownership to the property as tenants in common and not as joint tenants unless the intention to create a joint tenancy is very clear. But certain key features of tenancy-in-common ownership under the default rules create serious problems for those who seek to maintain ownership of their property for themselves and their relatives, or at least the wealth represented by such real estate holdings.

- Any tenant in common may sell his or her interest or convey it by gift during his or her lifetime without the consent of his or her fellow cotenants, making it easy for non-family members – including real estate speculators in a number of instances – to acquire interests in family real property. At a tenant in common's death, his or her interest in the tenancy in common property may be transferred under a will, or if the will is not probated in time or if there is no will, under the laws of intestacy.
- A significant feature of tenancy-in-common ownership – a feature that this Act does not disturb – is the universal right of any cotenant to file a lawsuit petitioning a court to partition the property, even if that cotenant only recently acquired its interest in property that the other cotenants had owned within their family for a long time and even if that interest is very small (e.g., a five percent or even smaller interest).
- In resolving a partition action, the two principal remedies that a court may order are partition in kind of the property into separate subparcels, with each subparcel proportionate in value to each cotenant's fractional interest or partition by sale, in

which case the property is forcibly sold in its entirety with the proceeds of the sale distributed among the cotenants, again in proportion to their relative interests in the property. In the overwhelming majority of states, statutes governing partition mandate that partition in kind is the much preferred remedy because a forced sale of a person's property has always been viewed as an extraordinary remedy which undermines fundamental property rights.

- Despite the overwhelming statutory preference for partition in kind, courts in a large number of states typically resolve partition actions by ordering partition by sale which usually results in forcing property owners off their land without their consent. This occurs even in cases in which the property could easily have been divided in kind or an overwhelming majority of the cotenants had opposed partition by sale or even in some cases when the only remedy any cotenant petitioned the court to order was partition in kind and not partition by sale.
- A de facto preference for a partition by sale in many states has arisen in part because courts often only consider the theoretical beneficial economic effect of ordering a partition by sale as opposed to a partition in kind. The many courts that utilize this approach do not place much value on upholding basic property rights and do not take account of the noneconomic value which many owners place upon their property. These noneconomic values can be substantial as families often value their family real property for its ancestral and even historical significance or its capacity to provide shelter that in some cases may prevent homelessness.
- Further, courts typically order the property sold at an auction utilizing forced sale procedures that are notorious for yielding sales prices well below market value. A sale under these forced sale conditions normally harms the tenants in common economically by depriving them of the market value of their property but gives the buyer an unjustified windfall because the buyer acquires the property at a significant discount from its market value and often for fire sale prices. The forced sale conditions under which partition sales occur virtually guarantee that wealth will not be maximized for the tenants in common even though judges frequently order partition sales because they claim that a partition sale will be wealth maximizing for the cotenants.
- To make matters worse, in many states cotenants who unsuccessfully resist a request for a court-ordered partition by sale are then required to pay a portion of the attorney's fees and costs incurred by the cotenant who petitioned the court for a partition by sale, forcing them in effect to pay for the deprivation of their property rights and their resulting loss of wealth. These fees and costs are in addition to the attorney's fees they must pay the attorney they hired in their unsuccessful effort to resist the sale and maintain ownership of their property.
- Given these rules and practices which many courts utilize in partition actions, it is often the case that an unscrupulous real estate speculator purchases a very small interest in family-owned tenancy-in-common property with the sole purpose of seeking a court-ordered partition by sale. Often such a speculator submits the winning bid in the subsequent auction sale of the property even though the winning bid represents just a fraction of the property's market value.

For these reasons, estate planners and real estate lawyers believe that tenancy-in-common ownership under the default rules represents one of the most unstable forms of real property ownership. To address the dangers of this form of ownership, these professionals routinely advise their wealthy and legally savvy clients to enter into privately negotiated tenancy-in-common agreements with their fellow cotenants or work with their other cotenants to reorganize their ownership under a different ownership structure altogether such as a limited liability company.<sup>1</sup> However, a substantial percentage of tenancy-in-common property owners are not able to afford the services of these professionals or are not aware of the legal benefits of hiring such professionals because they do not understand the inherent risks of owning property under the default rules of the tenancy in common.

Accordingly, this Act seeks to remedy the serious problems many of those who own family real property have faced in keeping their property and their wealth as a result of the application of the default rules governing tenancy-in-common property by providing a further set of coherent, default rules reforming the worst substantive and procedural abuses that have arisen in connection with the partition of tenancy-in-common property. Specifically, this Act imports certain core property preservation and wealth protection mechanisms already commonly used by wealthy and legally sophisticated family real property owners as well as protections legislatures and courts in other countries now afford cotenants in partition actions as a result of modern reforms, and establishes those mechanisms as the default rules for the partition of real property owned by families under a tenancy in common. On the other hand, this Act does not seek to make wholesale changes to the law of partition. For example, this Act does not apply to any real property which is the subject of a written tenancy-in-common agreement which contains a provision governing the partition of the property (all such agreements typically contain such a provision) or which is owned under any other form of ownership (*e.g.*, a joint tenancy, a limited liability company, a partnership, a limited partnership, a trust or a corporation) other than the tenancy in common.

### **Tenancy-In-Common Property Owners of Modest Means Are Particularly At Risk**

There is a subset of tenancy-in-common property owners who are particularly vulnerable to losing their property and significant wealth as a result of court-ordered partition sales. Scholars and practitioners who have worked with poor and minority property owners have observed that a particularly high percentage of these owners tend to own their real property under the default rules governing tenancy-in-common ownership and not under a private agreement among the cotenants governing the ownership of the property. This phenomenon is explained in large part by the fact that many low to middle-income property owners transfer their real property by intestate succession instead of by will, which is consistent with studies that have documented low will-making rates among Americans of more modest economic means.

The more that property is transferred from one generation to the next by intestate succession, the more likely it is for an increasingly large number of people to acquire an interest in the property, resulting in increasingly unstable ownership given that each cotenant possesses

<sup>1</sup> See Thomas W. Mitchell, Stephen Malpezzi, & Richard K. Green, *Forced Sale Risk: Class, Race, and The "Double Discount,"* 37 FLA. ST. U. L. REV. 589, 616 (2010).

an unfettered right to request a partition by sale of the entire property irrespective of the wishes of the other cotenants. Given the prevalence of this pattern of property transfer, real property transferred from one generation to the next and held in a tenancy in common is referred to colloquially in many communities from those in the Southeast to those in Appalachia to those in Indian Country as “heirs property” or “heirs’ property.” Families who own tenancy-in-common property within these communities refer to their family real property holdings as heirs property whether some or all of the members of these families acquired their interests by intestate succession, by will, or by gift. Consistent with the widespread usage of the term within these communities, this Act utilizes the term “heirs property” and defines it under Section 2 consistent with how many communities throughout the country understand the term; therefore, the definition of heirs property is not limited to property in which one or more cotenants acquire their interests by intestacy as usage of the term “heirs” may suggest in some technical sense.

Many if not most of these heirs property owners have little or no understanding of the legal rules governing partition of tenancy-in-common property as studies have revealed, due to the fact that many of the rules are counterintuitive. For example, many of these owners believe that their property ownership is secure because they pay property taxes, they live on the land, and they make productive use of the land. They also believe that their property may only be sold against their will if a majority or more of their cotenants agree, which gives some of these families with a large number of members with an interest in the property false confidence that their ownership is extremely secure.

These families think it is inconceivable that one cotenant with a very small ownership interest can force a sale against the wishes of all other cotenants. Unfortunately, the first time that many of these owners are informed about the actual legal rules governing partition is after a partition action has been filed, and often after critical, early court rulings have been made against them. In contrast, there have been many well-documented cases in which an outside speculator who acquired a very small interest in a parcel of heirs property that had been owned by a family for decades has been able to convince a court soon after the speculator acquired its interest to order a partition by sale of the property despite the fact that the family opposed the request for a partition by sale and despite the family’s longstanding ownership. In short, the law of partition often functions to give those cotenants who petition a court to force a sale upon their fellow cotenants an eminent domain-like power of condemnation. Unlike eminent domain, however, under a partition by sale, those who end up losing ownership of their property at the conclusion of the forced sale are not entitled to be paid fair market value compensation or any minimum level of compensation for that matter for having their property rights extinguished.

### **Partition Sales and Other Heirs Property Problems in Certain Select Communities**

African-Americans have experienced tremendous land loss over the course of the past century. For example, although African-Americans acquired between sixteen and nineteen million acres of agricultural land between the end of the Civil War and 1920, African-Americans retain ownership of approximately just seven million acres of agricultural land today. Scholars and advocates who have analyzed patterns of landownership within the African-American community agree that partition sales of heirs property have been one of the leading causes of

involuntary land loss within the African-American community. A considerable body of legal scholarship has highlighted the fact that partition sales have been a leading cause of African-American land loss.<sup>2</sup> Many newspapers have published articles documenting the manner in which particular African-American families have lost land that had been in their families for generations after an outsider acquired a small interest from a family member and then in short order was able to convince a court to order the property sold at a partition sale. The Associated Press's 2001 award-winning series on African-American land loss, *Torn from the Land*, brought national attention to the manner in which partition sales have stripped African-American families of large amounts of land and wealth.<sup>3</sup>

As a result of this legal scholarship and media attention, several years ago the American Bar Association's Section on Real Property, Trust and Estate Law established its Property Preservation Task Force. Along with the public interest and civil rights law firms and the community development and community-based organizations that have been working on heirs property issues for decades, the A.B.A.'s task force has been working to decrease the incidence of forced sales of heirs property that has so negatively impacted African-American and other poor and minority property owners.<sup>4</sup> Nevertheless, the organizations that have been working tirelessly with families who wish to maintain their heirs property holdings or at least the wealth associated with such real estate holdings will continue to face nearly insurmountable obstacles in providing meaningful assistance to significant numbers of those with heirs property problems until the default rules governing the partition of tenancy-in-common ownership are reformed to make the law of partition more just and more sensible.

Although the issue of the substantial loss of African-American land due to partition sales has received more national attention than the land loss in other communities resulting from partition sales, it is important to recognize that forced partition sales have negatively impacted other communities as well, especially other low-income and low-wealth communities. For example, Mexican-Americans lost hundreds of thousands of acres of land in New Mexico and

<sup>2</sup> See, e.g., THE EMERGENCY LAND FUND, INC., THE IMPACT OF HEIR PROPERTY ON BLACK RURAL LAND TENURE IN THE SOUTHEASTERN REGION OF THE UNITED STATES (1980). See also Phylliss Craig-Taylor, *Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting*, 78 WASH U. L.Q. 737 (2000); Chris Kelley, *Stemming the Loss of Black Owned Farmland Through Partition Action: A Partial Solution*, 1985 ARK. L. NOTES 35; Harold A. McDougall, *Black Landowners Beware: A Proposal for Statutory Reform*, 9 N.Y.U. REV. L. & SOC. CHANGE 127 (1979-1980); Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505 (2001); Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 1, 58 (2007).

<sup>3</sup> See, e.g., Todd Lewan & Dolores Barclay, *Quirk in Law Strips Blacks of Land*, TENNESSEAN, Dec. 11, 2001, at 8A.

<sup>4</sup> To date, the Property Preservation Task Force has made available to the public some materials that can be helpful to those who want to stabilize their ownership of tenancy-in-common property. These materials include a sample tenancy-in-common agreement and a document addressing some of the ways in which limited liability companies can be used to prevent land loss. See *Section of Real Property, Trust and Estate Law: Property Preservation Task Force*, AMERICAN BAR ASSOCIATION, <http://www.abanet.org/dch/committee.cfm?com=RP018700> (last modified May 11, 2010).

other states after a significant amount of their community-owned property was improperly classified as tenancy-in-common property and was then ordered sold under partition sales in the aftermath of the Mexican-American War. In most instances, the land was sold for a price that was far below the market value of the land.<sup>5</sup> This occurred in part because, like heirs property owners today, the members of the community who had rights to the land prior to the partition sales were not able to bid effectively at the partition sale auctions because they were land rich but cash poor.<sup>6</sup>

Property owners in other communities have been negatively impacted as well. For example, in parts of Appalachia, heirs property has been hypothesized to be correlated with, and a cause of, the persistence of poverty.<sup>7</sup> Case studies suggest that heirs property owners in Appalachia are often concerned that one of their fellow cotenants might sell his or her interest to a wealthy buyer who will request a court to order the property partitioned by sale and then will purchase the property at the auction.<sup>8</sup> Some American Indians also have had their family property sold against their will at partition sales.

Heirs property ownership has presented vexing problems to property owners in cities such as New Orleans. In New Orleans, many poor property owners were not able to draw upon governmental programs such as the “Road Home” program administered by the Department of Housing and Urban Development which were established in the wake of Hurricane Katrina to provide financial assistance to property owners who had been harmed. A significant percentage of these poor property owners owned heirs property, which created merchantable title problems which needed to be resolved before the property owners could qualify for the governmental programs. These problems typically could not be resolved without hiring attorneys whom most of these property owners could not afford in contrast to the surprisingly large number of wealthy heirs property owners who were brought to light in the aftermath of Katrina who were able to hire attorneys to resolve their title problems. As in rural areas, partition sales have also resulted in the deprivation of property rights and the loss of wealth in urban areas undergoing gentrification.

As the post-Katrina New Orleans experience demonstrates, a surprising number of property owners who are not poor or minority also experience significant problems with heirs property ownership. In Maine, for example, heirs property is commonly referred to as “heir-locked property.” Those who own such property in Maine experience many of the same

5 WILLIAM DEBUYS, ENCHANTMENT AND EXPLOITATION: THE LIFE AND HARD TIMES OF A NEW MEXICO MOUNTAIN RANGE 178, 180, 184, 190 (1985).

6 David Benavides & Ryan Golten, *Righting the Record: A Response to the GAO's 2004 Report Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Land Grant Claims in New Mexico*, 48 NAT. RESOURCES J. 857, 886 (2008).

7 B. James Deaton, *Intestate Succession and Heir Property: Implications for Future Research on the Persistence of Poverty in Central Appalachia*, 41 J. OF ECON. ISSUES 927 (2007).

8 B. James Deaton, Jamie Baxter, & Carolyn S. Bratt, *Examining the Consequences and Character of “Heir Property,”* 68 ECOLOGICAL ECON. 2344, 2350 (2009).

problems that those who own heirs property elsewhere experience, including problems with unstable ownership. This has occurred in part because many properties that were not considered economically valuable in Maine fifty or sixty years ago increasingly lie in the path of development and because the ownership of many of these properties has become more fragmented with the passage of time as many interests in such property have been transferred by intestacy. Those who own heirs property in Maine also are often unable to manage their property in a rational way because some passive or uncooperative cotenants either do not contribute their share of the expenses needed to maintain ownership of the property or refuse to give their needed consent to plans that their more active fellow cotenants formulate to improve the management, stability, and utilization of the property. As is the case all across the country, many of those who own heirs property in Maine who are committed to maintaining ownership of the property within their families find themselves locked into a dysfunctional common ownership arrangement because there are no legal mechanisms to consolidate title to such property among family members who have been active and responsible owners.

### **Tenants in Common Often Lose Significant Wealth as a Result of Partition Sales**

Those who own tenancy-in-common property under the default rules are not only at risk of losing their real property at a forced partition sale, but also are in danger of losing a significant portion of their wealth. In many states, a court will order a partition by sale under an “economics-only” test in which the court considers the hypothetical fair market value of the property in its entirety as compared to the fair market value of the subparcels that would result from a partition in kind. If the court finds that the fair market value of the property as a whole is greater than the aggregated fair market value of the subparcels, the court will order a partition by sale. Under this approach, the tenants in common theoretically should receive an economic benefit from the partition by sale.

In fact, most tenants in common are economically harmed when a court orders a partition by sale. First, the courts usually order the property sold at auctions in which the property is sold utilizing the procedures used for forced sales such as a sale under execution. These forced sales are notorious for selling property well below its fair market value which is ironic because judges often order the partition sale in the first instance because they claim that the cotenants will receive an economic benefit based upon an assumption that the sale will yield a fair market value price. When auction sales are challenged for yielding low sales prices, courts rarely overturn such sales as most courts utilize a “shock the conscience” standard to evaluate the sale. Under this standard, sales have been confirmed even though the property sold for twenty percent or less of its market value even though the court ordered a partition sale in the first instance because it indicated that a partition sale would likely provide the cotenants with an economic benefit.

Next, a number of fees and costs must first be paid to others before the remaining proceeds of a sale are distributed to the tenants in common. These fees often include costs incurred in selling the property including the fees of court-appointed commissioners or referees (often five percent or more of the sales price), surveyor fees, and attorney’s fees which usually constitute ten percent of the sales price in the many states that permit such an attorney’s fee award in a partition action. At the time a court orders a partition by sale under an economics-

only test, these fees and costs are not taken into account although they can in fact be quite substantial and undermine any hypothetical economic benefit a cotenant would receive from a partition sale.

Poorer families who own heirs property are particularly at risk of having their property sold for a low sales price at partition sales. This phenomenon can be explained by the fact that these heirs property owners are not able to bid competitively at the partition sale auction because they are unable to secure any financing to make an effective bid and because they are cash poor. Banks and other lending institutions will not accept a partial interest in tenancy-in-common property as collateral to secure a loan and most of these heirs property owners cannot otherwise obtain financing because they often have few other assets to offer as collateral to secure a loan. Given that partition sales in general often attract few bidders, an auction of heirs property in which family members of limited economic means are unable to make any competitive bids is likely to yield a particularly low sales price as the winning bidder often needs only to submit a lowball bid in order to acquire the property as few if any other competitive bids are typically made in such cases.

Partition sales that result in an involuntary loss of property rights and in the loss of wealth may be very harmful, and even devastating to one or more of the cotenants and their relatives, depending on the facts of the particular case. The purpose of this Act is to ameliorate, to the extent feasible, the adverse consequences of a partition action when there are some cotenants who wish, for various reasons, to retain possession of some or all of the land, and other cotenants who would like the property to be sold. At the same time, the Act recognizes the legitimate rights of each cotenant to secure his, her, or its relative share of the current market value of the property and to seek to consolidate ownership of the property. Overall, the Act seeks to improve the law of partition with respect to cases involving family-owned tenancy-in-common property by ensuring that each cotenant in a partition action is treated in a fair and equitable manner.

## UNIFORM PARTITION OF HEIRS PROPERTY ACT

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Partition of Heirs Property Act.

*Legislative Note:* Consider including this Act as a part of the state's existing partition statute.

**SECTION 2. DEFINITIONS.** In this [act]:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heirs property under Section 6 or 10 or adopting the valuation of the property agreed to by all cotenants.

(5) "Heirs property" means real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

(A) there is no agreement in a record binding all the cotenants which governs the partition of the property;

(B) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) Any of the following applies:

(i) 20 percent or more of the interests are held by cotenants who are

relatives;

(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) 20 percent or more of the cotenants are relatives.

(6) “Partition by sale” means a court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open-market sale conducted under Section 10.

(7) “Partition in kind” means the division of heirs property into physically distinct and separately titled parcels.

(8) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) “Relative” means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this [act].

### **Comment**

1. Section 2(1): In common usage, an ancestor is defined as “one from whom a person lineally descended.” *Wills v. Le Munyon*, 107 A. 159, 161 (N.J. Ch. 1919). However, statutes of descent often narrow the term to “any one from whom an estate is inherited.” *Id.* Thus, use of the term ancestor could be interpreted to exclude property acquired from a living person. In contrast, ascendant encompasses anyone who precedes an individual in lineage such as an individual’s parents or grandparents, whether living or deceased. The term ascendant is used in a number of statutes encompassing many different subject matter areas. *See, e.g.*, ARK. CODE ANN. § 28-9-202 (2009); CONN. GEN. STAT. § 45a-755 (2010); IOWA CODE § 428A.2 (2010); FLA. STAT. § 732.403 (2009); LA. CIV. CODE ANN. art. 1301 (2009); MISS. CODE ANN. § 93-13-253; P.R. LAWS ANN. TIT. 31 § 2413 (209); TEX. ESTATES CODE ANN. § 676 (Vernon 2009).

2. Sections 2(1)-2(3): The specific classes of people who may be considered ascendants, descendants, or collaterals shall be defined under state law.

3. Section 2(5): Heirs property is defined in this Act to include only a subset of tenancy-in-common property. At minimum, for tenancy-in-common property to be considered heirs property, title must be acquired by at least one of the cotenants in an intergenerational transfer

from a relative of that cotenant who was either that cotenant's ascendant, descendant, or collateral at the time title was transferred. Further, the Act does not apply to tenancy-in-common property in which all of the cotenants are subject to a binding agreement that governs the partition of the property, including binding agreements that run to successors and assigns. Tenancy-in-common property that is acquired by investors in part to qualify for federal like-kind exchange treatment under Section 1031 of the Internal Revenue Code and that is subject to an agreement governing the partition of the property is excluded from this Act. Furthermore the Act does not apply to "first generation" tenancy-in-common property established under the default rules and still owned exclusively by the original cotenants even if there is no agreement in a record among the cotenants governing the partition of the property. "First generation" tenancy-in-common property, however, may be converted into heirs property if a cotenant with an interest in such "first generation" tenancy-in-common property transfers all or a part of his or her interest to a relative provided that the other criteria for classifying property as heirs property are satisfied.

Joint tenancy property is not covered by this Act. In order for any real property that was initially owned by two or more individuals as joint tenancy property to be covered by this Act, one or more of the joint tenants must sever the joint tenancy in accordance with the requirements of state law. Once a joint tenancy is severed, this Act may apply if the property is determined to be heirs property at the time of the filing of a partition action even if two or more individuals who had formerly been joint tenants prior to severance of the joint tenancy remain joint tenants with each other after severance with respect to a particular interest in the tenancy in common. *See* 7-51 RICHARD R. POWELL, *POWELL ON REAL PROPERTY* § 51.04(1)(a) (Michael Allen Wolf ed., 2009). *See also* *Carmack v. Place*, 535 P.2d 197 (Co. 1975).

4. Section 2(5)(A): If tenants in common acquire their interests through a deed or a will that does not govern the manner in which the tenancy-in-common property may be partitioned, the deed or will alone shall not be construed to be an agreement in a record among all the tenants in common which governs the partition of the property within the meaning of Section 2(5)(A).

5. Section 2(8): Information that constitutes a "record" under this Act need not be recorded.

6. Section 2(9): A relative as that term is defined under this Act does not include a person who is related to another person only by affinity. The definition of relative does encompass individuals who are determined to be relatives under state law even if, for example, it has not been established that these individuals are genetically related. For example, under the Uniform Parentage Act, a man may be determined to be the father of a child even if paternity has not been established by genetic testing.

7. Section 2(9): In a partition action, a state court may apply the state's choice of law rules to determine whether two or more cotenants may be determined to be relatives. Under its choice of law analysis, the court could determine that two or more cotenants are relatives based upon application of the substantive law of another state because the law that applies under a state's choice of law rules would constitute "other law of this state" under Section (2)(9).

### **SECTION 3. APPLICABILITY; RELATION TO OTHER LAW.**

(a) This [act] applies to partition actions filed on or after [the effective date of this [act]].

(b) In an action to partition real property under [insert reference to general partition statute] the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property must be partitioned under this [act] unless all of the cotenants otherwise agree in a record.

(c) This [act] supplements [insert reference to general partition statute] and, if an action is governed by this [act], replaces provisions of [insert reference to general partition statute] that are inconsistent with this [act].

#### **Comment**

1. Section 3(b): A final order of a court in a partition action filed on or after the date this Act becomes effective is subject to challenge if the court failed to determine whether the real property in question is heirs property as that term is defined under this Act.

2. Section 3(b): In a partition action, after a court has determined that the property in question is heirs property, all of the cotenants may agree to partition the property utilizing an agreed upon method or procedure that is different from the procedures required by this Act provided that the agreement is contained in a record.

### **SECTION 4. SERVICE; NOTICE BY POSTING.**

(a) This [act] does not limit or affect the method by which service of a [complaint] in a partition action may be made.

(b) If the plaintiff in a partition action seeks [an order of] notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than 10 days after the court's determination, shall post [and maintain while the action is pending] a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by

which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

### Comment

1. Section 4(b): In some instances, some states require by statute that a sign or notice be posted in a conspicuous place on real property that may be subject to a forced sale. *See, e.g.*, ARIZ. REV. STAT. ANN. § 42-18266 (2010) (in connection with property that is subject to foreclosure for delinquent taxes, requiring in certain circumstances the placing of a sign in a conspicuous place on the property describing the property, indicating that the property is subject to foreclosure, and giving notice about the manner in which the owner may redeem the tax lien); CAL. CIV. CODE § 2924f (West 2010) (in most nonjudicial foreclosures by power of sale, requiring that a copy of the notice of sale be posted in a conspicuous place on the real property in question and that the notice of sale contain relevant information about the power of sale foreclosure action).

**SECTION 5. [COMMISSIONERS].** If the court appoints [commissioners] pursuant to [insert reference to general partition statute], each [commissioner], in addition to the requirements and disqualifications applicable to [commissioners] in [insert reference to general partition statute], must be disinterested and impartial and not a party to or a participant in the action.

*Legislative Note: Nearly every state uses the term “commissioner.” However, there are some exceptions. For example, California uses the term “referee” and Georgia uses the term “partitioner.”*

### **SECTION 6. DETERMINATION OF VALUE.**

(a) Except as otherwise provided in subsections (b) and (c), if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of

valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d), not later than 10 days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal not later than 30 days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d), the court shall conduct a hearing to determine the fair market value of the property not sooner than 30 days after a copy of the notice of the appraisal is sent to each party under subsection (e), whether or not an objection to the appraisal is filed under subsection (e)(3). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

### **Comment**

1. Section 6(a): Some states require that any property that may be subject to partition by sale shall first be appraised before a court decides whether to order partition in kind or partition by sale. *See, e.g.*, N.M. STAT. § 42-5-7 (2009). Other states require that nearly all real property that is to be sold under an order or a judgment of a court must be appraised before the property is sold. *See, e.g.*, KY. REV. STAT. ANN. § 426.520 (West 2010).

2. Section 6(b): The court may not adopt a monetary value for the property that only some of the cotenants but not others have agreed upon or a valuation derived from an alternative method of valuation that only some of the cotenants have agreed upon even if the only cotenants that have not agreed to the value of the property or to another method of valuation are cotenants that are unknown, unlocatable, or otherwise remain unascertained.

3. Section 6(b): The cotenants may agree that the property should be valued utilizing a less expensive method of valuation than an appraisal in situations, for example, in which the cotenants lack the expertise to value the property themselves. For example, the cotenants may agree to authorize two real estate brokers each to submit a broker's opinion of value and further may agree that the two valuation opinions should be averaged to determine the value of the property.

4. Section 6(d): Under certain circumstances, some states require that property that is to be sold by partition by sale be appraised by one or more disinterested persons. *See, e.g.*, MINN. STAT. § 558.17 (2009) (providing that property subject to partition by sale shall be appraised by two or more disinterested persons before the property is sold if the court orders the property sold at a private sale instead of at a public auction). In some instances, states require that certain court-appointed real estate appraisers must be state-certified and in good standing with the state appraisal authorities. *See, e.g.*, OKLA. STAT. tit. 52, § 318.5 (2009).

5. Section 6(d): State statutes and case law typically refer to one person's exclusive ownership of property as "sole ownership." *See, e.g.*, CAL. CIV. CODE § 681 (2010) (designating the ownership of property by a single person as a sole or several ownership); FLA. STAT. § 711.502 (2009) ("Only individuals whose registration of a security shows sole ownership by one individual . . . may obtain registration in beneficiary form"); MONT. CODE ANN. 70-1-305 (2009); S.D. CODIFIED LAWS § 43-2-10 (2009) ("The ownership of property by a single person is designated as a sole or several ownership."). *See also In re Robertson*, 203 F.3d 855, 860 (5th Cir. 2000) ("[T]he assets of which each former spouse acquires sole ownership is reclassified by law as the separate, exclusive property of that former spouse.").

## **SECTION 7. COTENANT BUYOUT.**

(a) If any cotenant requested partition by sale, after the determination of value under Section 6, the court shall send notice to the parties that any cotenant except a cotenant that

requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than 45 days after the notice is sent under subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under Section 6 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b), the following rules apply:

(1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under Section 8(a) and (b).

(e) If the court sends notice to the parties under subsection (d)(1) or (2), the court shall set a date, not sooner than 60 days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following rules apply:

(1) If all electing cotenants timely pay their apportioned price into court, the court

shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Section 8(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court [, on motion,] shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than 20 days after the court gives notice pursuant to subsection (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the 20-day period, the following rules apply:

(1) If only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Section 8(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the

amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

(g) Not later than 45 days after the court sends notice to the parties pursuant to subsection (a), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 6.

### **Comment**

1. This Act includes a mechanism for the buyout of interests as the first preferred alternative to partition by sale to promote judicial economy, to encourage consolidation of ownership, and to accomplish the larger goal of establishing a default, statutory approach to partition of inherited property which mirrors the best practices used for family property owned by those who are wealthy and legally savvy. Private tenancy-in-common agreements, whether for family property or commercial property, virtually always provide that a cotenant that wishes to exit ownership must first offer his or her interest for sale to other cotenants.

Conducting the interest buyout process first may achieve sufficient consolidation of interests or alignment of interests among remaining cotenants that buyout eliminates the need for either partition in kind or partition by sale, and the relatively greater associated time, costs and complexities of the two latter remedies.

2. Although this section is one of the longer sections of the Act, it is streamlined compared to most, if not all, buyout provisions in written private agreements such as limited liability company operating agreements and tenancy-in-common agreements, and compared to buyout statutes in those states which have them. This streamlined buyout mechanism is consistent with the default rule nature of the overall Act.

Most of the detail of the section arises from the need to describe the procedural steps and mathematical proportions applicable at various stages in the buyout process, and to guide courts, that may not be familiar with buyout contracts or their corporate cousins, subscription agreements, including the possible outcomes of each step in a buyout and the next judicial action to assure an orderly process completed efficiently. Again, implementation of a buyout procedure in a given case is likely to be by far the fastest and simplest remedy to implement, both in comparison with partition in kind and partition by sale. Even allowing for motion practice, the expectation is that the mandatory buyout provisions of this Act could be and typically should be completed within a maximum of four to six months after the court establishes the value of the underlying real property (which must be done in any case under the Act).

3. Only those cotenants that seek partition by sale are mandatorily subject to the buyout. A cotenant who seeks partition by sale has already determined that he or she is willing to be divested of any interest in the real property owned in common in exchange for being paid money for any such divested interest. This is not necessarily true of cotenants that seek partition in kind or cotenants that are respondents in the partition proceeding. A principal historical justification for the remedy of a forced sale in many contexts has been to allow owners no longer desiring to participate in ownership to exit. A buyout mechanism such as the one in this section accomplishes this purpose without divesting owners who affirmatively indicate their preference for continuing ownership.

4. The buyout section gives a court, upon prompt motion, the discretion to conduct or not to conduct a second buyout process for the interests of cotenants who are respondents (a.k.a. defendants) in the action but do not file an appearance. In any case the first, mandatory buyout process for cotenants seeking partition by sale must be completed (and must result in a buyout) before the second, discretionary buyout process can begin. This ensures the best chance to consolidate interests in those cotenants who wish to continue to own a parcel of property together, by limiting the amount of money the purchasing cotenants need (just enough to purchase the interests of those who wish to partition the property by sale). Because banks and other institutional lenders virtually never lend on cotenancy interests, purchasers will need to use personal savings or other family capital to fund a buyout. In many cases, however, the interests (and value of interests) of those seeking partition by sale is relatively small and, if shared among several purchasing cotenants, will be within the means of many low to middle-income cotenants.

The section allows, in subsections (g) and (h), for the potential, discretionary buyout of cotenants who fail to appear in the action. This provision is intended to foster consolidation of interests among active cotenants (which makes any division in kind that may ultimately be needed easier for a court to accomplish), and to provide a fund of money based on a court-approved appraisal of land value, rather than a divided portion of land of potentially less certain

value, for the benefit of those cotenants who cannot be located or who fail to appear and participate in the action. Courts should consider, however, that many small interest holders sometimes do not believe the court really has the power to take away their interests or sell property and that others believe that resisting any request for a partition by sale is futile notwithstanding the merits of any particular case. Other cotenants do not appear because they do not have the money to hire counsel or the persistence or capacity to read and respond to pleadings. Therefore, a court should exercise discretion in deciding when to treat non-appearance in an action as an indication of a cotenant's limited resources, true indifference, or free riding on other cotenants. Nonetheless, in the relatively common event where there are dozens or even scores of inactive or unlocatable cotenants, the discretionary buyout may be a valuable tool to consolidate ownership among active, engaged cotenants while still preserving property value for other cotenants.

Although it is always true that cotenants could buy and sell interests outside of a court proceeding, the statutory buyout provision has the benefit of (a) using an appraised, court-set valuation, and (b) outlining a clear process with short timeframes. It thus eliminates two discussion points on which negotiations among cotenants often founder. The framework of the statutory buyout provision also creates a model which cotenants can use (and to which courts can direct the attention of litigants) to structure their own, private deals to value and sell interests in land among themselves without court involvement or as a supplement to judicial process.

5. The buyout section in the Act contemplates that the price for interests available for purchase (mandatorily or with leave of court) will be the simple result of multiplying the court-determined value of the entire real property (usually appraised value, but sometimes a value agreed on by all parties) by the partial interest available for purchase (whether expressed as a fraction or as a percentage).

So, for example, if John Smith owns a 10% cotenant interest in Greenacre, which is heirs property, he brings an action for partition by sale, and the appraised value of Greenacre accepted by the court is \$100,000, then John Smith's cotenancy interest will be priced at \$10,000 for statutory buyout purposes, and each of the other cotenants will have the right to purchase a pro rata share of John Smith's cotenancy interest for a pro rata share of the \$10,000 price.

It is important to note that this likely overvalues John Smith's interest under classic concepts of valuation (because the \$10,000 price disregards the discount for Smith owning only a 10%, minority interest, and disregards the further discount typically applied by valuers to interests in tenancy in common property due to its inherently unstable characteristics). The drafters concluded, however, that the simplicity of the math and the quid pro quo of somewhat enhanced value compensated for making Smith's interest mandatorily subject to the buyout by statute once he sought partition by sale.

6. In overview, the buyout section of this Act contemplates that the court will:

- establish the value of the entire real property;

- allow cotenants other than the petitioner for sale 45 days to express interest in purchasing the interests available for purchase (so the court can then determine pro rata shares and prices for each purchaser, using a simple mathematical ratio);
- give the purchasers who timely expressed interest in buying an additional, brief period to be determined by the court (at least 60 days, but preferably not much longer, due to the fact that property values are a function of market conditions over time) in which to pay the purchase price into court;
- if there is a failure of some purchasers to pay their apportioned price on time, the court will conduct a quick, 20-day, "savings" round in which any purchaser who timely paid can buy the entire remaining interest for which purchase money was not timely paid (and if more than one purchaser "saves" the buyout by paying such entire amount, then the cost and interest in question is split pro rata among those purchasers who act to save the buyout); and
- close the buyout, by paying the purchase price to the former cotenant who has been bought out, and issuing an order stating the new cotenancy interests among the remaining cotenants.

If the buyout fails for any reason or if there is any cotenant remaining at the conclusion of the buyout that has requested partition in kind, the Act contemplates that the court will then proceed to a partition in kind or a partition by sale (with a clear preference for a partition in kind).

7. The pro rata share any given cotenant may purchase is equal to his original share in the tenancy-in-common property divided by the total share of all those cotenants that elected to buy. In addition, the price to be paid by any given purchaser is that same fraction or percentage multiplied by the total value of the interest to be purchased.

So, continuing with the example begun in paragraph 5, above, we have John Smith, a 10% cotenant of Greenacre, who has filed a petition for partition by sale. John Smith's cotenancy interest is mandatorily subject to buyout by the cotenants who did not request partition by sale. The court determines the value of Greenacre pursuant to the Act and notifies the parties that John Smith's 10% interest is available to be bought out by his cotenants (the example assumes no other cotenant has sought partition by sale).

Next, assume Betty Smith Jones who owned 25% of Greenacre, George Smith who owned 20% of Greenacre, and Harriet Long who owned 15% of Greenacre, were the only cotenants of John Smith who timely notify the court of their election to purchase John Smith's 10% interest in Greenacre. The total percentage interest in Greenacre of all potential purchasers who timely gave notice of desire to buy is thus 60%. The owners of the other 30% cotenancy interests in Greenacre either did not wish to purchase or did not timely respond to the buyout notice and so become ineligible to participate in the buyout of John Smith's 10% interest.

In this example, Betty has a right to purchase 25/60ths of John Smith's interest, George has the right to purchase 20/60ths of John Smith's interest, and Harriet has the right to purchase 15/60ths of John Smith's interest. The court would determine these percentages and notify Betty, George, and Harriet of the interests they could purchase, and the related purchase price each of

them would have to pay. Since John Smith's 10% interest in Greenacre was statutorily valued at \$10,000 in the example in paragraph 5, the price to Betty is  $\$10,000 \times (25/60)$ , or \$4,166.67. The price to George is  $\$10,000 \times (20/60)$ , or \$3,333.33. The price to Harriet is  $\$10,000 \times (15/60)$ , or \$2,500. Obviously minor amounts of rounding will be required in some cases, as above with George and Betty.

Now further assume that the court orders that all purchasers pay their respective purchase price into court within 90 days after the court's determination of purchasers' interests and purchase prices is docketed, and that Betty and George timely pay their respective \$4,166.67 and \$3,333.33 into court, but that Harriet fails to do so. Under the buyout section of the Act, the court will then notify Betty and George that 15/60ths (i.e., one-quarter) of John Smith's 10% interest is still available for purchase and that either Betty or George may purchase the entire such interest for \$2,500 by paying that further sum into court within 20 days (absent which the buyout will fail and the court will proceed to determine whether partition in kind is possible or whether only partition by sale is appropriate).

Assume that Betty and George each timely post another \$2,500 with the court in the "savings" round (i.e., a further total of \$5,000, in addition to the aggregate \$7,500 already posted by Betty and George in the initial round). Under these circumstances, the court will allow Betty and George each to purchase a further pro rata share (meaning pro rata as between them) of Harriet's 15/60ths portion of John Smith's 10% interest. In the case of Betty she may purchase a 25/45ths share of the portion Harriet failed timely to buy (the numerator in the fraction is Betty's original percentage interest in Greenacre and the denominator in the fraction is the total original percentage interests of the two cotenants who timely posted money in both the first buyout round and the "savings" round, Betty's original interest of 25% plus George's original 20% interest). George, similarly, may purchase a further 20/45ths share. In this case, where Betty and George each posted the entire \$2,500 needed to "save" the buyout, Betty will ultimately pay \$1,388.89 and George will ultimately pay \$1,111.11; the remaining amounts posted by each of them in the savings round will be returned to them (\$1,111.11 will be returned to Betty and \$1,388.89 will be returned to George).

The court then issues an order in which it reallocates John Smith's original 10% interest in Greenacre as follows: 5.556% to Betty (25/60ths plus  $[25/45ths \times 15/60ths]$ ) and 4.444% to George (20/60ths plus  $[20/45ths \times 15/60ths]$ ), pays to John Smith the \$10,000 the court received for his bought-out interest from Betty and George, and leaves the percentage interests of Harriet (who attempted to participate in the buyout but did not come up with the cash) and the other cotenants who did not participate in the buyout unchanged. To complete the example, as a result of the order the interests of the remaining cotenants (who are satisfied to remain cotenants) are: 30% various cotenants who did not participate in the buyout and whose interests are unchanged by the buyout, 15% Harriet who attempted to participate in the buyout but could not come up with the necessary money, and whose interest therefore remains unchanged by the buyout, 30.556% Betty (her original 25% plus 5.556% formerly owned by John Smith) and 24.444% George (20% plus 4.444%).

## **SECTION 8. PARTITION ALTERNATIVES.**

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 7, or if after conclusion of the buyout under Section 7, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Section 9, finds that partition in kind will result in [great] [manifest] prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

(b) If the court does not order partition in kind under subsection (a), the court shall order partition by sale pursuant to Section 10 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to subsection (a), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default [entry][judgment], if their interests were not bought out pursuant to Section 7, a part of the property representing the combined interests of these cotenants as determined by the court [and this part of the property shall remain undivided].

***Legislative Note:*** *In the overwhelming majority of states that have a strong statutory preference for a partition in kind as opposed to a partition by sale, most state courts within these states apply a statutory “great prejudice” or “manifest prejudice” standard in deciding whether it is appropriate in a given case to order a partition by sale instead of a partition in kind. Under this Act, there is also a strong preference for a partition in kind. In Section 8(a), select either the “great prejudice” or “manifest prejudice” standard.*

## Comment

1. In many states, a court may order a partition in kind of part of the property and a partition by sale of the remainder. *See, e.g.*, CAL. CIV. PROC. CODE § 872.830 (West 2010); NEB. REV. STAT. § 25-21,103 (2009). However, in a limited number of other states a court may only order either a partition in kind or a partition by sale of the whole property. *See, e.g.*, *Fernandes v. Rodriguez*, 761 A.2d 1283, 1289 (Conn. 2000). This Act neither prescribes nor prohibits a partition in kind of part of the heirs property and partition by sale of the remainder. For example, there may be circumstances in which cotenants receiving part of the property in kind would receive substantially less than their pro rata share of the economic value of the whole property without a cash payment from the sale of the part of the property to be sold and might wish the court to retain jurisdiction for purposes of completing the partition by sale of the remaining portion of the property (rather than employing “owelty,” discussed in the next comment). It is in circumstances such as the last-mentioned case that the court should consider exercising its equitable discretion to implement a mixed remedy and to fashion such appropriate procedures as justice may require. These procedures should draw upon the procedures and the property and wealth preservation principles of this Act, including the hierarchy of sales procedures that apply to the manner in which a partition by sale should be conducted under this Act. If a court decides to order such a mixed remedy, the court may consider whether, in such a process, there should or should not be a further right to buy out interests before ordering a partition by sale of part of the property.

2. Section 8(c): This subsection provides for the remedy of “owelty” which is an equitable remedy. *See, e.g.*, CODE OF ALA. § 35-6-24 (2010); CAL. CIV. PROC. CODE § 873.250 (West 2009). Courts have the equitable power to order owelty payments when it is impractical to divide an estate in a just manner but monetary payments can be ordered to adjust for any variance in the value of the parcels from the interests in the property held by the respective cotenants. *Dewrell v. Lawrence*, 58 P.3d 223, 227 (Okla. Civ. App. 2002). In recent decades, courts have tended to underutilize the remedy of owelty which has resulted in more courts ordering partition by sale in instances in which partition in kind could have been ordered with an appropriate accompanying owelty order. *See, e.g.*, Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs’ Property Owners Facing Partition in Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 1, 76 (2007) (noting that heirs property owners could obtain fair and equitable divisions of property if courts stopped taking the easy option by ordering partition sales and utilized tools such as owelty payments). *See also* John G. Casagrande Jr., Note, *Acquiring Property Through Partitioning Sales: Abuses and Remedies*, 27 B.C. L. REV. 755, 778 (1986). A court in a partition action involving heirs property that may be practicably divided among the cotenants in a manner that preserves the fair value of each cotenant’s ownership interest may not order owelty merely because a cotenant is willing to pay for a parcel that is more valuable than the fair economic value of that cotenant’s ownership interest.

3. Section 8(d): Several states have statutory provisions which permit a court to order a partition in kind and to designate a part of the property for cotenants who remain unknown or unlocatable at the conclusion of the action. *See, e.g.*, ALASKA STAT. § 09.45.290 (2010); ARK. CODE ANN. § 18-60-414 (2010); CAL. CIV. PROC. CODE § 873.270 (West 2010); HAW. REV. STAT.

§ 668-9 (2010); MICH. COMP. LAWS § 3.402 (2010); N.D. CENT. CODE § 32-16-12 (2010); OR. REV. STAT. § 105.245 (2010); S.D. CODIFIED LAWS § 21-45-15 (2010); UTAH CODE ANN. § 78B-6-1212 (2010); WASH. REV. CODE § 7.52.080 (2010).

## **SECTION 9. CONSIDERATIONS FOR PARTITION IN KIND.**

(a) In determining under Section 8(a) whether partition in kind would result in [great][manifest] prejudice to the cotenants as a group, the court shall consider the following:

- (1) whether the heirs property practicably can be divided among the cotenants;
- (2) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;
- (3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;
- (4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;
- (5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;
- (6) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) any other relevant factor.

(b) The court may not consider any one factor in subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

### Comment

1. Under this section, a court in a partition action must consider the totality of the circumstances, including a number of economic and noneconomic factors, in deciding whether to order partition in kind or partition by sale. In partition cases, a number of courts have utilized such a totality of the circumstances approach in deciding whether to order partition in kind or partition by sale. *See, e.g.,* *Delfino v. Vealencis*, 436 A.2d 27, 33 (Conn. 1980) (“It is the interests of all of the tenants in common that the court must consider; and not merely the economic gain of one tenant, or a group of tenants.”); *Schnell v. Schnell*, 346 N.W.2d 713, 716 (N.D. 1984) (holding that economic and noneconomic factors, including sentimental value, should be weighed by a court in a partition action); *Eli v. Eli*, 557 N.W.2d 405, 409-411 (S.D. 1997) (citations omitted) (in adopting a totality of the circumstances test, the Supreme Court of South Dakota stated that “[o]ne’s land possesses more than mere economic utility; it ‘means the full range of the benefit the parties may be expected to derive from their ownership of their respective shares.’ Such value must be weighed for its effect upon all parties involved, not just those advocating a sale.”); *Ark Land Co. v. Harper*, 599 S.E.2d. 754, 761 (W. Va. 2004) (“[I]n a partition proceeding in which a party opposes the sale of property, the economic value of the property is not the exclusive test for deciding whether to partition in kind or by sale. Evidence of longstanding ownership, coupled with sentimental or emotional interests in the property, may also be considered in deciding whether the interests of the party opposing the sale will be prejudiced by the property’s sale.”).

2. Section 9(a)(2): Under this subparagraph, among other possible considerations of the condition under which the property may be sold, the court must assess whether the cotenants would receive a greater economic benefit from a sale of the whole property due to possible economies of scale that would result from selling the whole property which could not be captured from partition in kind of the property. In conducting this assessment, a court must take into consideration the type of sales condition under which any court-ordered sale would occur as property that is sold at a forced sale – such as a sale upon execution or a foreclosure sale – typically results in property being sold at prices that are substantially below the fair market value of the property. Such a resulting discount from the fair market value of the property due to the forced sale conditions may render partition in kind to be as, or more, economically beneficial to the cotenants than partition by sale of the whole property even in instances in which economies of scale could be realized if the whole property were to be sold under fair market value conditions. *See generally*, Thomas W. Mitchell, Stephen Malpezzi, & Richard K. Green, *Forced Sale Risk: Class, Race, and The “Double Discount,”* 37 FLA. ST. U. L. REV. 589 (2010).

3. Section 9(a)(3): Under this subparagraph, the court shall consider, among other considerations, longstanding possession of the property by any cotenant or certain predecessors

in possession to that cotenant. Adverse possession, for example, raises this issue. Adverse possession statutes require possession over the course of a number of years before a person may actually take title to the property. *See, e.g.*, 735 ILL. COMP. STAT. 5/13-101 (2009) (requiring twenty years of adverse possession); WIS. STAT. §§ 893.25, 893.26 (2008) (requiring twenty years or ten years if color of title). Thus, because many states allow tacking of possession, it is possible that a cotenant may have acquired possession of the property from a relative who had been in possession of the property for many years despite the fact that the statute of limitations for adverse possession had not run, thereby preventing the relative in prior possession from obtaining valid title to the property.

4. Section 9(a)(4): For many families or communities, real property ownership has important ancestral or historical meaning. *See, e.g.*, *Chuck v. Gomes*, 532 P.2d 657, 662 (Haw. 1975) (Richardson, C.J., dissenting):

“[T]here are interests other than financial expediency which I recognize as essential to our Hawaiian way of life. Foremost is the individual's right to retain ancestral land in order to perpetuate the concept of the family homestead. Such right is derived from our proud cultural heritage. . . . [W]e must not lose sight of the cultural traditions which attach fundamental importance to keeping ancestral land in a particular family line.”

*See also* Phyliss Craig-Taylor, *Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting*, 78 WASH U. L.Q. 737, 766-68, 772-74 (2000); Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505, 523-26 (2001).

5. Section 9(a)(5): If a single cotenant is using the property in an unlawful way, for example by engaging in conduct that amounts to an ouster of one or more other cotenants, the court shall not recognize such unlawful use as a factor weighing in favor of the court's granting a request made by the cotenant in possession for a partition in kind of the property.

6. After considering the factors in this section, a court that decides to order a partition in kind may not divide the heirs property in a manner that modifies the pre-partition, fair economic value of any cotenant's ownership interest in the property unless the court issues an appropriate orderly order pursuant to Section 8(c). This proscription is consistent with the approach that courts utilize in ordering partition in kind under general partition statutes.

## **SECTION 10. OPEN-MARKET SALE, SEALED BIDS, OR AUCTION.**

(a) If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically

advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than 10 days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

- (1) the broker shall comply with the reporting requirements in Section 11; and
- (2) the sale may be completed in accordance with state law other than this [act].

(d) If the broker appointed under subsection (b) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

- (1) approve the highest outstanding offer, if any;
- (2) redetermine the value of the property and order that the property continue to be offered for an additional time; or
- (3) order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under [insert reference to general partition statute or, if there is none, insert reference to foreclosure sale].

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled

to a credit against the price in an amount equal to the purchaser's share of the proceeds.

**SECTION 11. REPORT OF OPEN-MARKET SALE.**

(a) Unless required to do so within a shorter time by [insert reference to general partition statute], a broker appointed under Section 10(b) to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under Section 6 or 10.

(b) The report required by subsection (a) must contain the following information:

- (1) a description of the property to be sold to each buyer;
- (2) the name of each buyer;
- (3) the proposed purchase price;
- (4) the terms and conditions of the proposed sale, including the terms of any owner financing;
- (5) the amounts to be paid to lienholders;
- (6) a statement of contractual or other arrangements or conditions of the broker's commission; and
- (7) other material facts relevant to the sale.

**SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize

electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**SECTION 14. EFFECTIVE DATE.** This [act] takes effect . . . .

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Richard McIver, Co-Chair, Real Property Finance & Lending Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date \_\_\_\_\_, 20\_\_)

**Address** Kass Shuler, P.O. Box 800, Tampa, Florida 33601  
Telephone: 813-405-2750

**Position Type** The Florida Bar, RPPTL Section, and Real Property Finance & Lending Committee

## CONTACTS

### Board & Legislation Committee Appearance

**S. Katherine Frazier**, Hill Ward Henderson, 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602, Telephone: (813) 227-8480, Email: [Katherine.frazier@hwhlaw.com](mailto:Katherine.frazier@hwhlaw.com)  
**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: [pdunbar@deanmead.com](mailto:pdunbar@deanmead.com)  
**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: [medenfield@deanmead.com](mailto:medenfield@deanmead.com)

### Appearances

#### Before Legislators

(SAME)

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

#### Meetings with

#### Legislators/staff

(SAME)

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

## PROPOSED ADVOCACY

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

### If Applicable,

#### List The Following

N/A

\_\_\_\_\_  
(Bill or PCB #)

\_\_\_\_\_  
(Bill or PCB Sponsor)

#### Indicate Position

Support

Oppose

Tech Asst.

Other

### Proposed Wording of Position for Official Publication:

Support a repeal of § 83.561, Florida Statutes to: (i) eliminate inconsistencies between it and the more protective federal Protecting Tenants at Foreclosure Act; and, (ii) clarify the rights and obligations of tenants and purchasers of property upon foreclosure sale.

### Reasons For Proposed Advocacy:

From May 20, 2009 through December 31, 2014, federal Protecting Tenants at Foreclosure Act, ("PTFA"), provided a nationwide standard of conduct concerning the rights and obligations of tenants and purchasers of property at foreclosure sale. On January 1, 2015, the PTFA expired.

In the 2015 session, the Florida legislature passed HB 779, which created § 83.561. Section 83.561 is similar to but less protective than the PTFA. Section 83.561 does not require foreclosure sale purchasers to honor

existing leases (PTFA does) and allows the purchasers to terminate existing tenancies with 30 days' notice (PTFA requires 90 days).

On June 23, 2018, the PTFA was revived. As a result, the conflicting and less protective provisions of § 83.561 have been preempted by the PTFA. However, § 83.561, Florida Statutes remains on the books, which creates confusion for tenants and for purchasers of properties at foreclosure. Repeal of § 83.561 would eliminate confusion resulting from the inconsistent provisions of the two statutes, leaving in place the more tenant protective PTFA and clarifying the obligations of purchasers at foreclosure.

### PRIOR POSITIONS TAKEN ON THIS ISSUE

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

#### Most Recent Position

\_\_\_\_\_  
(Indicate Bar or Name Section) (Support or Oppose) (Date)

#### Others

(May attach list if more than one)

\_\_\_\_\_  
(Indicate Bar or Name Section) (Support or Oppose) (Date)

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

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

#### Referrals

Public Interest Law Section  
\_\_\_\_\_  
(Name of Group or Organization) (Support, Oppose or No Position)

\_\_\_\_\_  
(Name of Group or Organization) (Support, Oppose or No Position)

\_\_\_\_\_  
(Name of Group or Organization) (Support, Oppose or No Position)

\_\_\_\_\_  
(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.**

**REAL PROPERTY, PROBATE & TRUST LAW SECTION  
OF THE FLORIDA BAR**

**White Paper**

**Proposal to Repeal § 83.561, Florida Statutes**

**I. SUMMARY**

This proposal would repeal § 83.561, Florida Statutes, which provides for the termination of rental agreements upon foreclosure. Repeal of this statute would eliminate inconsistencies between it and the federal Protecting Tenants and Foreclosure Act and clarify the rights and obligations of tenants and persons purchasing property upon foreclosure sale.

**II. HISTORICAL BACKGROUND AND CURRENT SITUATION**

The federal legislation known as the Protecting Tenants at Foreclosure Act (the “PTFA”) was initially enacted as part of the Helping Families Save Their Homes Act of 2009. *See* Pub. Law No. 111-22, Div. A, Title VII, §§ 702-704, 123 Stat. 1660 (2009), 12 U.S.C. § 5220, note.<sup>1</sup> The PTFA took effect on May 20, 2009 and was originally scheduled to sunset on December 31, 2012. On July 21, 2010, prior to the expiration of the PTFA, the Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted, extending the sunset provision, by two years, to December 31, 2014. *See* Pub. Law No. 111-203, Title XIV, § 1484, 124 Stat. 2204 (2010). (A copy of the text of the PTFA is attached hereto as Exhibit “A”.)

The PTFA provided a nationwide standard of conduct concerning the rights and obligations of tenants and persons acquiring a property at foreclosure sale. The PTFA was designed to ensure that bona fide tenants facing eviction from a foreclosed property would have adequate time to make other housing arrangements. Primarily, the PTFA required purchasers to honor existing bona fide leases and/or to provide bona fide tenants with ninety (90) days’ notice to vacate. For more than five years, from May 20, 2009 through December 31, 2014, the rights and obligations of tenants and persons purchasing property upon foreclosure sale in Florida, were governed by the PTFA. However, on January 1, 2015, the PTFA expired.

Shortly after the expiration of the PTFA, on June 2, 2015, the Florida legislature passed HB 779 (2015), which created § 83.561, Florida Statutes.<sup>2</sup> (A copy of the text of § 83.561, Florida Statutes is attached hereto as Exhibit “C”.) In some respects, § 83.561, Florida Statutes mirrored the PTFA. Both statutes applied to the same types of

<sup>1</sup> The PTFA is codified as a note to 12 U.S.C. § 5220.

<sup>2</sup> The House of Representatives Final Bill Analysis for HB 779 recognized the void left by expiration of the PTFA as the driving force behind this legislation, noting, “The matter of tenants being forced out of foreclosed home on short notice is not unique to Florida. In the recent economic downturn, Congress passed the Protecting Tenants in [*sic*] Foreclosure Act of 2009, a nationwide law that required the winning bidder at most foreclosure sales to honor an existing bona fide lease or, in the alternative, give the tenant at least 90 days’ notice to vacate. The act expired December 31, 2014.” (A copy of the House of Representatives Final Bill Analysis for HB 779 is attached hereto as Exhibit “B”.)

properties, leases, tenants and tenancies. However, § 83.561 was less protective of tenants than the expired PTFA in significant ways, including without limitation, the following:

***Notice Required to Terminate Tenancy After Foreclosure***

- Thirty (30) days under § 83.561, Florida Statutes. *See* Fla. Stat. § 83.561(1)(a).
- Ninety (90) days under the PTFA. *See* Pub. Law No. 111-22, Div. A, Title VII, § 702(a)(1), 123 Stat. 1660 (2009).

***Whether Purchaser of Foreclosed Property Must Honor the Terms of an Existing Lease***

- Not under § 83.561, Florida Statutes. The purchaser upon foreclosure can apply to the court for a writ of possession at the end of the 30-day notice period if the tenant does not vacate. *See* Fla. Stat. § 83.561(2). Section 83.561(1)(b), Florida Statutes does entitle the tenant to the protections of § 83.67, Florida Statutes during the 30-day notice period and until an eviction occurs, *i.e.*, the purchaser cannot: terminate utilities; prevent access; discriminate against tenants that are service members; prevent the display of a United States flag; or, remove doors, windows, roofs, or the tenant’s personal property.
- Generally, yes under the PTFA. A tenant under a bona fide lease may continue to occupy the property until the end of the remaining term of the lease, unless the property is sold to person who intends to occupy the property as a primary residence. *See* Pub. Law No. 111-22, Div. A, Title VII, § 702(a)(2)(A), 123 Stat. 1660 (2009).<sup>3</sup>

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 was signed into law. Among other amendments to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 restored “the notification requirements and other protections related to eviction of renters in foreclosed properties” as provided in §§ 701 through 703 of the PTFA and repealed § 704 of the PTFA the sunset provision. *See* Pub. Law No. 115-74, Title III, § 304, \_\_ Stat. \_\_ (2018).

The revival of the PTFA was effective June 23, 2018. Since that time, the less protective provisions of § 83.561, Florida Statutes, have for all intents and purposes been preempted. However, § 83.561 remains on the books as Florida law, which creates confusion for tenants and the purchasers of properties at foreclosure alike.

The PTFA expressly provides, “that nothing under this section shall affect . . . any State or local law that provides longer time periods or other additional protections for tenants.”

<sup>3</sup> Note that a residential lease terminable at will under state law, could be terminated on 90 days’ notice under the PTFA. *Id.* at § 702(a)(2)(B). *See also Joel v. HSBC Bank USA*, 420 Fed.Appx. 928, 931 (11th Cir. 2011). In this scenario as well, 90 days’ notice would be more protective than Florida law which would provide between 7- and 60-days’ notice depending on the specific term of the residential lease. *See* Fla. Stat. § 83.57(1)-(4).

See Pub. Law No. 111-22, Div. A, Title VII, § 702(a)(2)(b), 123 Stat. 1660 (2009). “Thus, the PTFA, by its own terms, does not preempt state law that provide greater protections for tenants. However, it does preempt state law that is less protective of tenants, such as the provisions of Kentucky law at issue here.” *Mik v. Federal Home Loan Mortg. Corp.*, 743 F.3d 149 (6th Cir. 2014) citing *PNC Bank, Nat’l Ass’n v. Branch*, No. CV 11-596, 2011 WL 2981806, at \*1 (D. Ariz. July 22, 2011). Upon the revival of the PTFA, there can be little, if any doubt, that the less protective provisions of § 83.561, Florida Statutes governing notice and honoring the existing terms of bona fide leases have been preempted.

### **III. EFFECT OF PROPOSED CHANGES**

Repeal of § 83.561, Florida Statutes, would eliminate confusion for tenants and the purchasers of property at foreclosure regarding the divergent requirements of state and federal law, leaving in place the more protective PTFA. By doing so, repeal of § 83.561 would also reduce the potential for preemption litigation, would ensure the greater protections of the PTFA for tenants, and would encourage third party purchasers to buy at foreclosure sales. It would also avoid the need for the Florida judiciary to rule that § 83.561 is federally preempted—a ruling that courts approach with reluctance owing to the comity due to the Legislature.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

This proposal will lessen the burden on trial and appellate courts arising from disputes over the conflicting provisions of the two (2) statutes involving lenders, tenants, and third-party purchasers at foreclosure sales.

### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

This proposal will have no direct measurable impact on the private sector. However, it will indirectly benefit the private sector by increasing certainty about the rights and obligations that tenants and purchasers of properties have following a foreclosure action and by reducing litigation expenses attendant thereto.

### **VI. CONSTITUTIONAL ISSUES**

Repealing § 83.561 would avoid the constitutional clash of Florida § 83.561 against the federal PTFA.

### **VII. OTHER INTERESTED PARTIES**

1 A bill to be entitled

2 An act relating to rental agreements; repealing s. 83.561, F.S.,  
3 relating to the termination of residential rental agreements  
4 after foreclosure; providing an effective date.

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

6 Section 1. Section 83.561, Florida Statutes, is repealed.

7 Section 2. This act shall take effect July 1, 2019.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** William P. Sklar, Co-Chair, Condominium and Planned Development Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date: \_\_\_\_\_, 2019)

**Address** 525 Okeechobee Blvd., Suite 1200, West Palm Beach, FL 33401  
Telephone: (561)650-0342

**Position Type** RPPTL Section of The Florida Bar

## CONTACTS

### Board & Legislation Committee Appearance

**S. Katherine Frazier**, Hill Ward Henderson, 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602, Telephone: (813) 227-8480, Email: Katherine.frazier@hwlaw.com  
**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: pdunbar@deanmead.com  
**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: medenfield@deanmead.com

### Appearances

#### Before Legislators

(SAME)

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

#### Meetings with

#### Legislators/staff

(SAME)

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

## PROPOSED ADVOCACY

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

### If Applicable,

#### List The Following

\_\_\_\_\_  
(Bill or PCB #)

\_\_\_\_\_  
(Bill or PCB Sponsor)

#### Indicate Position

Support

Oppose

Tech Asst.

Other

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

Support legislation to clarify that a condominium association has the right to represent its unit owner members in a class action defense, including when an association challenges ad valorem assessments on behalf of its unit owner members to the value adjustment board, and the property appraiser subsequently appeals the VAB's decision to increase owners' taxes. In such instance, the association may represent its unit owner members as a group pursuant to F.R.C.P. 1.221 and Florida Statutes §718.111(3).

#### Reasons For Proposed Advocacy:

The ability of a condominium association ("Association") to bring class actions on behalf of its unit owner members for matters of common interest has been recognized for more than 40 years as a result of the *Avila v. Kappa*, 347 So. 2d 599 (Fla. 1977) resulting in the creation of F.R.C.P. 1.220(b), now 1.221, and in Florida's Condominium Act in §718.111(3) recognizing and authorizing an Association to sue and be sued "on behalf of all unit owners concerning matters of common interest." Likewise, Associations are permitted class action standing to file ad valorem real property tax challenges on behalf of its unit owner members, providing the



1                   A bill to be entitled  
2           An act relating to community associations; amending s.  
3           194.011, F.S.; specifying that a condominium,  
4           cooperative, or homeowners' association may represent  
5           unit or parcel owners in certain proceedings;  
6           requiring notice to unit or parcel owners of such  
7           proceedings; amending s. 194.181, F.S.; specifying  
8           that a condominium, cooperative, or homeowners'  
9           association may be a party to an action contesting the  
10          assessment of ad valorem taxes; amending s. 718.111,  
11          F.S.; providing applicability; providing an effective  
12          date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1. Paragraph (e) of subsection (3) of section  
17          194.011, Florida Statutes, is amended to read:

18           194.011 Assessment notice; objections to  
19          assessments.-

20           (3) A petition to the value adjustment board must be  
21          in substantially the form prescribed by the department.  
22          Notwithstanding s. 195.022, a county officer may not refuse  
23          to accept a form provided by the department for this  
24          purpose if the taxpayer chooses to use it. A petition to  
25          the value adjustment board must be signed by the taxpayer  
26          or be accompanied at the time of filing by the taxpayer's  
27          written authorization or power of attorney, unless the  
28          person filing the petition is listed in s. 194.034(1)(a). A  
29          person listed in s. 194.034(1)(a) may file a petition with  
30          a value adjustment board without the taxpayer's signature  
31          or written authorization by certifying under penalty of  
32          perjury that he or she has authorization to file the  
33          petition on behalf of the taxpayer. If a taxpayer notifies

34 the value adjustment board that a petition has been filed  
35 for the taxpayer's property without his or her consent, the  
36 value adjustment board may require the person filing the  
37 petition to provide written authorization from the taxpayer  
38 authorizing the person to proceed with the appeal before a  
39 hearing is held. If the value adjustment board finds that  
40 person listed in s. 194.034(1) (a) willfully and knowingly  
41 filed a petition that was not authorized by the taxpayer,  
42 the value adjustment board shall require such person to  
43 provide the taxpayer's written authorization for  
44 representation to the value adjustment board clerk before  
45 any petition filed by that person is heard, for 1 year  
46 after imposition of such requirement by the value  
47 adjustment board. A power of attorney or written  
48 authorization is valid for 1 assessment year, and a new  
49 power of attorney or written authorization by the taxpayer  
50 is required for each subsequent assessment year. A petition  
51 shall also describe the property by parcel number and shall  
52 be filed as follows:

53 (e)1. A condominium association as defined in s.  
54 718.103, a cooperative association as defined in s.  
55 719.103, or any homeowners' association as defined in s.  
56 723. 075, with approval of its board of administration or  
57 directors, may file with the value adjustment board a  
58 single joint petition on behalf of any association members  
59 who own units or parcels or property which the property  
60 appraiser determines are substantially similar with respect  
61 to location, proximity to amenities, number of rooms,  
62 living area, and condition. The condominium association,  
63 cooperative association, or homeowners'' association ~~as~~  
64 ~~defined in s. 723.075~~ shall provide the unit or parcel  
65 owners with notice of its intent to petition the value  
66 adjustment board and shall provide at least 20 days for a

67 unit or parcel owner to elect, in writing, that his or her  
68 unit or parcel not be included in the petition.

69 2. An association that has filed a single joint  
70 petition may continue to represent, prosecute, and defend  
71 the unit or parcel owners through any related subsequent  
72 proceeding in any tribunal, including judicial review under  
73 part II of this chapter and any appeal thereof. This  
74 subparagraph is intended to clarify existing law and  
75 applies to any pending action. The condominium association,  
76 cooperative association, or homeowners' association shall  
77 provide the unit or parcel owners with notice of the  
78 property appraiser's appeal of a value adjustment board  
79 decision to circuit court and provide the unit or parcel  
80 owner at least 7 days to elect, in writing, that his or her  
81 unit or parcel not be included in the association's  
82 defense.

83 Section 2. Subsection (2) of section 194.181, Florida  
84 Statutes, is amended to read:

85 194.181 Parties to a tax suit.-

86 (2) The defendant in any tax suit shall be:

87 (a) In any case brought by the taxpayer, or brought by  
88 a condominium or cooperative ~~or~~ association on behalf of  
89 some or all owners, contesting the assessment of any  
90 property, the county property appraiser shall be party  
91 defendant.

92 (b) In any case brought by the property appraiser  
93 pursuant to s. 194.036(1) (a) or (b), the taxpayer,  
94 condominium association, or cooperative association, shall  
95 be party defendant.

96 (c) In any case brought by the property appraiser  
97 pursuant to s. 194.036(1) (c), the value adjustment board  
98 shall be the party defendant.

99 Section 3. Subsection (3) of section 718.111, Florida  
100 Statutes, are amended to read:

101 718.111 The association.-

102 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO  
103 CONTRACT, SUE, AND BE SUED; CONFLICT OF INTEREST.-

104 (a) The association may contract, sue, or be sued  
105 with respect to the exercise or nonexercise of its powers.  
106 For these purposes, the powers of the association include,  
107 but are not limited to, the maintenance, management, and  
108 operation of the condominium property.

109 (b) After control of the association is obtained by  
110 unit owners other than the developer, the association may:

111 1. Institute, maintain, settle, or appeal actions or  
112 hearings in its name on behalf of all unit owners  
113 concerning matters of common interest to most or all unit  
114 owners, including but not limited to, the common elements;  
115 the roof and structural components of a building or other  
116 improvements; mechanical, electrical, and plumbing elements  
117 serving an improvement or a building; representations of  
118 the developer pertaining to any existing or proposed  
119 commonly used facilities;

120 2. Protest ~~and protesting~~ ad valorem taxes on  
121 commonly used facilities and on units; ~~and may~~

122 3. Defend actions pertaining to ad valorem taxation  
123 of commonly used facilities or units, or related to in  
124 eminent domain; or

125 4. Bring Inverse condemnation actions.

126 (c) If the Association has the authority to maintain  
127 a class action, the association may be joined in an action  
128 as representative that class with reference to litigation  
129 and disputes involving the matters for which the  
130 association could bring a class action.

131           (d) The association, in its own name, or on behalf of  
132 some or all unit owners, may institute, file, protest,  
133 maintain, or defend any administrative challenge, lawsuit,  
134 appeal, or other challenge to ad valorem taxes assessed on  
135 units or that values commonly used facilities or common  
136 elements. The affected association members are not  
137 necessary or indispensable parties to any such action. This  
138 paragraph is intended to clarify existing law and applies  
139 to any pending action.

140           (e) Nothing herein limits any statutory or common-law  
141 right of any individual unit owner or class of unit owners  
142 to bring any action without participation by the  
143 association which may otherwise be available.

144           (f) An association may not hire an attorney who  
145 represents the management company of the association.

146           Section 4. This act shall take effect July 1, 2020.

147

## WHITE PAPER

### BILL TO AMEND THE AD VALOREM TAX PROCEDURE STATUTES AND CONDOMINIUM CLASS ACTION STANDING STATUTE TO ESTABLISH A CONDOMINIUM ASSOCIATION'S CLASS ACTION STANDING TO DEFEND AD VALOREM TAX LITIGATION ON BEHALF OF THE CONDOMINIUM UNIT OWNER MEMBERS OF THE ASSOCIATION CONSISTENT WITH EXISTING F.R.C.P. 1.221 AND FLORIDA STATUTES §718.111(3) – PROPOSED REVISIONS TO §194.001(3)(e), §194.181(2) and §718.113(3)

#### I. SUMMARY:

##### Issue: Condo Association Right to Defend Lawsuit

The ability of a condominium association (“Association”) to bring class actions on behalf of its unit owner members for matters of common interest has been recognized for more than 40 years as a result of the *Avila v. Kappa* case, 347 So. 2d 599 (Fla. 1977) resulting in the creation of F.R.C.P. 1.220(b), now 1.221, and in Florida’s Condominium Act in §718.111(3) recognizing and authorizing an Association to sue and be sued “on behalf of all unit owners concerning matters of common interest.” Likewise, Associations are permitted class action standing to file ad valorem real property tax challenges on behalf of its unit owner members, providing the efficiency and benefit of working together to reduce all member ad valorem real property taxes.

Most recently, in the case of *Central Carillon Beach Condominium Association, Inc. v. Garcia*, 245 So.3d 869 (Fla. 3d DCA2018), the Third District Court of Appeal held that, while recognizing class action standing for an Association and the aforesaid rule F.R.C.P. 1.221 and §718.111(3), the Association’s ability to defend lawsuits as a class action representative was limited to defense of actions in eminent domain and was inapplicable when a property appraiser appeals an ad valorem decision by a Value Adjustment Board (“VAB”). For the reasons indicated below, this has placed condominium unit owners and Associations in an extremely difficult position to effectively and cost-efficiently defend actions when the county property appraiser (“PA”) appeals or files a new action contesting a decision of a VAB.

#### II. CURRENT SITUATION

Associations can challenge, on behalf of its condominium unit owner members, ad valorem property tax assessments by filing a single challenge to the VAB. Current law for both VAB appeals and class action matters require the Association to provide an “opt-out” to its members, giving Association members an opportunity to withdraw from the Association’s proposed challenge of ad valorem assessments. If members do not “opt-out” they are part of the class represented by the Association in the challenge to the ad valorem assessment.

PAs have taken the position that although an Association may file a VAB challenge or an appeal directly to circuit court on behalf of its members to challenge ad valorem assessments, the same Association is *not authorized to defend* a PA appeal of a VAB decision obtained by the Association on behalf of its members.

Under the current statutes, the PA has argued that even if an Association properly files a single joint petition to the VAB on behalf of its unit owners, and the VAB rules that a reduction in the

assessed value of the units is warranted, the Association is not authorized to defend the PA's appeal of the VAB decision to circuit court. Instead, the PA has argued that each unit owner must individually defend when the PA appeals to increase their taxes. The Third District recently upheld this argument for the first time in the *Central Carrillon* case cited above. Because of *Central Carrillon*, individual Association members are tasked with defending a PA appeal of a VAB decision obtained by the Association on behalf of its members, instead of the Association defending the appeal.

Furthermore, despite the PA's position that the Association is not authorized to represent its members in the defense of a PA appeal, the PA is statutorily permitted to – and does - serve notice of its appeal on the Association as a class representative. *The PA does not serve notice on each unit owner despite the recent decision that the Association cannot represent its members in a PA appeal of a VAB decision.* F.S. 194.011(3)(e)

### III. EFFECT OF SUGGESTED CHANGE:

If an Association challenges ad valorem assessments on behalf of its members to the VAB, and the PA appeals the VAB's decision in circuit court to increase the owners' taxes, the Association can continue to represent its members as a group throughout the PA's appeal of the VAB decision.

### IV. ANALYSIS:

These proposed changes were previously included in CS/CS/CS/HB 841, Engrossed 1, 2018 (relevant sections attached). The following describes the changes being proposed:

- a. Section 194.011(3)(e) is amended to provide that an Association that files a VAB challenge to ad valorem assessments on behalf of its members, the Association may continue to represent its members through any subsequent related proceedings, including any appeal of the VAB decision.
- b. Section 194.011(3)(e) is amended to include an opt-out provision for the appeal, allowing individual Association members to "opt-out" of being included in the Association's defense of any appeal of a VAB decision.
- c. Section 194.181(2) is amended to clarify that the Association is a proper party when a PA appeals a VAB decision obtained by an Association on behalf of its members.
- d. Section 718.111(3) is amended to clarify that the Association is permitted to institute, file, protest, maintain, and defend administrative or legal challenges or appeals of ad valorem taxes on individual units or values of common facilities or common elements, either in its own name or on behalf of its members.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal will recognize savings for both state and local government by increasing judicial efficiency and streamlining local government attorney matters. The proposal will result in a single appeal concerning common arguments, surrounding a single set of facts, and resulting in a single, unified, consistent decision for condominium unit owners. The current state of the law requires multiple individual appeals, before separate judges, with possible conflicting decisions despite the fact that the appeals originated from the single underlying decision obtained by the Association on behalf of its members in a single action.

VI. DIRECT IMPACT ON PRIVATE SECTOR

Costs will be substantially reduced by allowing the Association, which has already successfully represented the unit owners in the VAB challenge and understands the legal arguments and appraisal theory behind the challenge, to represent its members in the appeal. The Association will only need a single law firm for its representation, the costs of which are shared by all members that are part of the challenge and appeal. Individual owners will not need to obtain their own attorney, who would not be familiar with the arguments raised or the appraisal theory used in the VAB challenge. Additionally, associational representation allows pooled resources and a unified defense to assist all Association members in maximizing their ad valorem tax savings, especially when ad valorem reductions could be minimal to individual owners, which would not allow them to cost-effectively defend individually against the government.

VII. CONSTITUTIONAL ISSUES

A potential constitutional issue concerning due process is fixed by this proposal. Currently, if an Association successfully challenges ad valorem assessments on behalf of its members before the VAB, and the PA appeals the assessments, the PA is only required to serve notice of its appeals to the Association, despite the Association being unable to defend the appeal on behalf of its members. This means that the PA is not required to give notice to individual unit owners, who are now individual defendants tasked with their own individual defense, when the PA seeks to raise the owner's ad valorem taxes by appealing the VAB's decision of the Association's challenge.

The proposal remedies this possible due process issue by allowing the Association to defend the appeal of a decision it obtained on behalf of its members in the first instance. Individual notices and appeals for each and every owner would not be at issue.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** L. Howard Payne & Alfred J. Stashis, Jr., Co-Chairs, IRA, Insurance & Employee Benefits Committee of the Real Property Probate & Trust Law Section

**Address** L. Howard Payne, The Payne Law Group PLLC, 766 Hudson Avenue, Suite C, Sarasota, FL 34236, Telephone: (941)487-2800  
Alfred J. Stashis, Jr., Dunwoody White & Landon, PA, 4001 Tamiami Trail North, Suite 200, Naples, FL 34103, Telephone: (239) 263-5885

**Position Type** IRA, Insurance & Employee Benefits Committee, RPPTL Section, The Florida Bar

## CONTACTS

**Board & Legislation Committee Appearance** Jon Scuderi, Goldman Felcoski & Stone, P.A., 850 Park Shore Drive, Suite 203, Naples, Florida 34103, Telephone: (239) 436-1988, Email: [jscuderi@gfsestatelaw.com](mailto:jscuderi@gfsestatelaw.com)  
Peter M. Dunbar, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: [pdunbar@deanmead.com](mailto:pdunbar@deanmead.com)  
Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: [medenfield@deanmead.com](mailto:medenfield@deanmead.com)

**Appearances Before Legislators** (SAME)  
(List name and phone # of those having face to face contact with Legislators)

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

## PROPOSED ADVOCACY

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

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

**Indicate Position** Support  Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

Support legislation to change Fla. Stat. 222.21(2)(c) to clarify that an ex-spouse's interest in an IRA which is received in a transfer incident to divorce is exempt from the claims of the transferee ex-spouse's creditors.

### Reasons For Proposed Advocacy:

Fla. Stat. 222.21(2)(c) provides that interests in IRAs are exempt from the claims of creditors of owners, beneficiaries, and participants. The proposed change would clarify that an ex-spouse's interest in an IRA which is received in a tax-qualified transfer incident to divorce is likewise exempt from the claims of creditors of the transferee ex-spouse.

**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 Florida Bankers Association  
(Name of Group or Organization) (Support, Oppose or No Position)

The Florida Bar Business Law Section  
(Name of Group or Organization) (Support, Oppose or No Position)

The Florida Bar Elder Law Section  
(Name of Group or Organization) (Support, Oppose or No Position)

The Florida Bar Family Law Section  
(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.**

**Real Property, Probate and Trust Law Section of The Florida Bar**  
**White Paper**  
**Proposed Amendments to**  
**Section 222.21 (2)(c), Florida Statutes**

I. SUMMARY

The proposed legislation would amend Section 222.21(2)(c), Florida Statutes, to clarify that interests in an individual retirement account (“IRA”) received in a transfer incident to divorce described in Section 408(d)(6) of the Internal Revenue Code retain their creditor-exempt status after the transfer.

II. CURRENT SITUATION

Section 222.21(2)(c) provides that interests in IRAs are exempt from the claims of creditors of owners, beneficiaries, and participants. The statute provides that the exemption is not lost “by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986....”

In *In re: Lerbakken*, (Bankr. 8<sup>th</sup> Cir, 2018), the United States Bankruptcy Appellate Panel for the Eighth Circuit concluded that the interest in the debtor’s ex-wife’s IRA to be transferred to the debtor pursuant to the couples’ stipulated property settlement was not exempt from the claims of the debtor’s creditors in bankruptcy. The debtor claimed his interest in the IRA was exempt under the federal bankruptcy law exemptions. The court rejected the debtor’s argument, citing the United States Supreme Court’s decision in *Clark v. Rameker*, 134. S. Ct. 2242 (2014) for the proposition that the debtor’s interest in his ex-wife’s IRA were not the debtor’s retirement funds.

Florida is an “opt-out” state; thus, federal bankruptcy exemptions are not available to Florida debtors in bankruptcy. Instead, the exemptions available to a Florida debtor in bankruptcy for IRAs are governed by state law; in particular by Section 222.21, Florida Statutes. Section 222.21(2)(d) clearly exempts interests in a retirement plan subject to ERISA (e.g., a 401(k) plan) received by a non-participant ex-spouse from the claims of the non-participant ex-spouse’s creditors pursuant to a “qualified domestic relations order” described in Section 414(p) of the Internal Revenue Code. However, the Florida exemption statute is less precise about whether the interest received in an IRA received in a transfer incident to divorce is exempt from the claims of the non-participant spouse.

III. EFFECT OF PROPOSED CHANGES GENERALLY

The proposed change would clarify that the interest of an ex-spouse in an IRA received in a tax-qualified transfer incident to divorce is exempt from the claims of the transferee spouse’s creditors.

IV. ANALYSIS

The *Lerbakken* decision does not by itself require attention because it is based on federal bankruptcy law exemptions that are not available to Florida debtors. The decision is notable in Florida for the light it shines on our exemption statute, Section 222.21, Florida Statutes, and how clearly, or unclearly, the exemption for interests in IRAs applies to interests received by a transfer incident to divorce.

The proposed statute would clearly exempt interests in IRAs transferred incident to divorce within the meaning of Section 408(d)(6) of the Internal Revenue Code. That Section provides that a transfer of an interest in an IRA (including an interest in a Roth IRA or in an individual retirement annuity) pursuant to a “divorce or separation instrument” described in another Code Section<sup>1</sup> are not subject to income tax. Section 408(d)(6) continues by noting that, after the transfer, the transferred interest is “to be treated as an individual retirement account” of the transferee ex-spouse, and not of the owner spouse, and that “[t]hereafter, the account or annuity for purposes of this subtitle [i.e., the federal income tax] is to be treated as maintained for the benefit of [the transferee ex-spouse].”

Section 222.21(2)(c) provides that “an interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant...” (e.g., an IRA or an individual retirement annuity) “does not cease to be exempt after the owner’s death by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986...” The subsection does not address divorce. Section 222.21(c) is where practitioners, and citizens, will look to determine whether a debtor’s interest in an IRA originally established by someone else is exempt from the claims of the debtor’s creditors.

Because Code Section 408(d)(6) treats an interest in an IRA received in a transfer incident to divorce described in that Section as the transferee’s IRA, the subcommittee believes that such an interest would be exempt from the claims of the transferee’s creditors under Section 222.21(a), Florida Statutes, which exempts interests of an owner, participant or beneficiary in tax-qualified retirement plans; however, the subcommittee also believes that the clarity added by the proposed changes to subsection (2)(c) of Section 222.21, Florida Statutes, would be beneficial to Florida lawyers and citizens having to apply what is a very technical statute.

The proposed change would be retroactive to all transfers made incident to divorce within the meaning of the statute, whenever made. For the reason stated in the preceding paragraph, the subcommittee believes the proposed change clarifies, but does not modify, existing law.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS - None.

VI. DIRECT IMPACT ON PRIVATE SECTOR - None.

VII. CONSTITUTIONAL ISSUES - None apparent.

VIII. OTHER INTERESTED PARTIES - The Family Law, Elder Law and Business Law Sections of The Florida Bar, and the Florida Bankers Association.

---

<sup>1</sup> Code Section 71(b)(2) for instruments executed before December 31, 2018; clause (i) of Code Section 121(d)(3)(C) for instruments executed after.

1 A bill to be entitled

2 An act clarifying that interests received incident to divorce in certain  
3 retirement accounts are exempt from the claims of the transferee's creditors

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

5 Section 1. Section 222.21(2)(c), Florida Statutes, is revised to read:

6 222.21(2)(c). Any money or other assets or any interest in any fund or  
7 account that is exempt from claims of creditors of the owner, beneficiary, or  
8 participant under paragraph (a) does not cease to be exempt after the owner's  
9 death by reason of a direct transfer or eligible rollover that is excluded from gross  
10 income under the Internal Revenue Code of 1986, including, but not limited to, a  
11 direct transfer or eligible rollover to an inherited individual retirement account as  
12 defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended. Any  
13 interest in any fund or account received in a transfer incident to divorce described  
14 in s. 408(d)(6) of the Internal Revenue Code of 1986, as amended, continues to  
15 be exempt after the transfer. This paragraph is intended to clarify existing law, is  
16 remedial in nature, and shall have retroactive application to all inherited individual  
17 retirement accounts, and to all such transfers incident to divorce, without regard  
18 to the date an account was created or date the transfer was made.

19 Section 2. This act shall take effect upon becoming law.

20 4118013.00012-FL BAR COMM AD

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** J. Richard Caskey, Chair, Probate & Trust Litigation Committee of the Real Property Probate & Trust Law Section (RPPTL Approval)  
Date \_\_\_\_\_, 20\_\_

**Address** J. Richard Caskey, P.A., One Harbour Place, 777 S. Harbour Island, Blvd., Suite 215, Tampa, FL 33602  
Telephone: (813) 443-5709

**Position Type** Probate & Trust Litigation Committee, RPPTL Section, The Florida Bar (Florida Bar, section, division, committee or both)

## CONTACTS

### Board & Legislation Committee Appearance

**Jon Scuderi**, Goldman, Felcoski & Stone, P.A., 850 Park Shore Drive, Suite 203, Naples, FL 34103, Telephone: (239) 436-1988; Email: jscuderi@gfsestatelaw.com  
**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: pdunbar@deanmead.com  
**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: medenfield@deanmead.com

### Appearances

**Before Legislators** (SAME)  
\_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

### Meetings with

**Legislators/staff** (SAME)  
\_\_\_\_\_  
(List name and phone # of those having face to face contact with Legislators)

## PROPOSED ADVOCACY

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

### If Applicable,

**List The Following** N/A  
\_\_\_\_\_  
(Bill or PCB #) (Bill or PCB Sponsor)

**Indicate Position** Support  Oppose \_\_\_\_\_ Tech Asst. \_\_\_\_\_ Other \_\_\_\_\_

### Proposed Wording of Position for Official Publication:

Support amending Section 733.212, Florida Statutes, which governs the contents of a notice of administration, to require additional language to provide adequate notice that a party may be waiving their right to contest a trust if they fail to timely contest the will.

### Reasons For Proposed Advocacy:

When a trust is incorporated by reference in a will, case law provides that the failure to timely contest the will bars a contestant from challenging a trust. Many view this as unfair due to the differing deadlines to contest a will and trust as well as the lack of appropriate notice. Moreover, this creates inconsistency since a party may receive a trust limitations notice (authorized by Florida Statute Section 736.0604) stating there is a 6 month deadline to object to the trust as well as a notice of administration stating there is a 3 month deadline to object to the will (per Florida Statute Section 733.212). Notwithstanding receiving these notices, the party would only have 3 months (not 6 months) to object to the trust if that trust was incorporated by reference into



## WHITE PAPER

### PROPOSED BILL TO AMEND PART II OF CHAPTER 733, FLORIDA STATUTES

#### SECTION 733.212 – NOTICE OF ADMINISTRATION

This White Paper relates to the proposed amendment to Part II of Chapter 733 of the Florida Statutes by amending Section 733.212, which governs the contents of a notice of administration, to require additional language to provide adequate notice that a party may be waiving their right to contest a trust if they fail to timely contest the will.

#### I. SUMMARY

The purpose of amending Section 733.212 is to ensure that parties and attorneys are noticed that they may be required to timely contest a will if they intend to contest that decedent's trust. When a trust is incorporated by reference in a will,<sup>1</sup> case law provides that the failure to timely contest the will bars a contestant from challenging a trust. Many view this as unfair due to the differing deadlines to contest a will and trust as well as the lack of appropriate notice. Moreover, some opine that this is confusing and even misleading since a party may receive a trust limitations notice (authorized by Florida Statute Section 736.0604) stating there is a 6 month deadline to object to the trust as well as a notice of administration stating there is a 3 month deadline to object to the will (per Florida Statute Section 733.212). In fact, notwithstanding receiving these notices, the party would only have 3 months (not 6 months) to object to the trust if that trust was incorporated by reference into the will.

#### II. CURRENT SITUATION

Currently, a timely will contest is required to challenge a trust that is incorporated in a will. A party seeking to contest a will has 20 days to respond to a petition for administration or three months from the date of service of a notice of administration to object to the validity of the will. Yet if a trust is incorporated by reference into the will, and the party seeks to contest the trust, a timely will contest is likely required, even if the contestant does not contest the validity of the will apart from the terms that purport to incorporate the terms of the contested trust into the will by reference. This may cause confusion among unwary beneficiaries and counsel as the deadlines provided under the Florida Trust Code to contest a trust are not connected to the above deadlines to file a will contest under the Florida Probate Code and are generally longer (i.e. the earlier of 6 months, if proper notice is issued, or the time provided in Chapter 95, which is likely 4 years from the decedent's date of death). In addition to confusion, the current situation appears unfair since a party may receive a trust limitations notice stating there is a 6 month deadline to object to the trust as well as a notice of administration stating there is a 3 month deadline to object to the will. Notwithstanding receipt of these notices, the party would have 3 months (not 6 months) to object to the trust if that trust was incorporated by reference into the will.

<sup>1</sup> Which is authorized per Section 732.512, Florida Statutes.

By way of example, in *Pasquale*,<sup>2</sup> a party was served with a notice of administration. The party filed a trust complaint, alleging the trust was invalid, but did not file a Petition to Revoke Probate within the 3 month deadline (after receiving a notice of administration). The terms of the will were incorporated in the trust. The fiduciaries moved to dismiss the trust complaint with prejudice because of the plaintiffs' failure to timely contest the will. The probate court agreed. However, the Fourth District Court of Appeal reversed, finding the trust complaint also constituted a will contest. The appellate court, however, confirmed that when a will incorporates the terms of the trust, a contestant is required to timely contest both documents

### **III. EFFECT OF PROPOSED CHANGES**

Proposed additions to Section 733.212 would simply assist to provide proper notice to parties of the time deadlines to contest a will and trust by adding language to a notice of administration.<sup>3</sup> Now, when a party receives a notice of administration or formal notice to a petition for administration, it will contain the following language: "Under certain circumstances, by failing to contest the will, you may be waiving the right to contest the validity of a trust or other writing incorporated by reference into a will."

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

None.

### **V. DIRECT FISCAL IMPACT ON PRIVATE SECTOR**

None.

### **VI. CONSTITUTIONAL ISSUES**

None.

### **VII. OTHER INTERESTED PARTIES**

None.

<sup>2</sup> **Error! Main Document Only.** *Pasquale v. Loving, et. al.*, 82 So. 3d 1205 (Fla. 4th DCA 2012).

<sup>3</sup> It is also contemplated that a similar change would be made to the formal notice to a petition for administration by the Florida Bar Probate Rules Committee.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

A bill to be entitled

An act relating to the Notice of Administration served in a probate proceeding and the contents of the notice relating to a party's notice that their failure to contest the will, they may be waiving certain rights, amending section 733.212(2) by adding a new subsection(f).

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

Section 1. Section 733.212(2), Florida Statutes, is amended to read:

733.212. Notice of Administration; filing of objections.-

(2) The notice shall state:

(f) Under certain circumstances, by failing to contest the will, you may be waiving the right to contest the validity of a trust or other writing incorporated by reference into a will.

Section 2. This bill shall take effect on October 1, 2020 and shall apply to all notices served after its effective date.

# LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received \_\_\_\_\_

## GENERAL INFORMATION

**Submitted By** Angela M. Adams, Chair, Trust Law Committee of the Real Property, Probate, & Trust Law Section (RPPTL Approval Date \_\_\_\_\_, 20\_\_)

**Address** Angela M. Adams  
Law Office of Wm. Fletcher Belcher  
540 Fourth Street North  
St. Petersburg, Florida 33701  
(727) 821-1249

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

## CONTACTS

### Board & Legislation Committee Appearance

**Jon Scuderi**, Goldman Felcoski & Stone, P.A., 850 Park Shore Drive, Suite 203, Naples, Florida 34103, Telephone: (239) 436-1988  
Email: jscuderi@gfsestatelaw.com

**Angela M. Adams**, Law Office of Wm. Fletcher Belcher, 540 Fourth St. N., St. Petersburg, FL 33701, Telephone: (727) 821-1249  
Email: amemadams@gmail.com

**Peter M. Dunbar**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100  
Email: pdunbar@deanmead.com

**Martha J. Edenfield**, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100  
Email: medenfield@deanmead.com

### Appearances

#### Before Legislators

(SAME)

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

#### Meetings with

#### Legislators/staff

(SAME)

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

## PROPOSED ADVOCACY

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

### If Applicable,

#### List The Following

N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

#### Indicate Position

Support

Oppose

Tech Asst.

Other

### Proposed Wording of Position for Official Publication:

Support proposed legislation creating the "Florida Uniform Directed Trust Act" (a modified version of the Uniform Directed Trust Act), which clarifies and changes various aspects of the Florida Statutes relating to directed trusts.

### Reasons For Proposed Advocacy:

Numerous legal issues arise regarding directed trusts (trusts whose terms grant a person other than a trustee a power over some aspect of the trust's administration). Principal among them are (a) applicable fiduciary



# WHITE PAPER

## Florida Uniform Directed Trust Act

### I. SUMMARY

This legislation adopts the Uniform Directed Trust Act (“UDTA”) into Chapter 736, with modifications. The Act provides statutory provisions relating to directed trusts (trusts whose terms grant a person other than a trustee a power over some aspect of the trust’s administration). The UDTA has extensive comments regarding its provisions, which provide further information on the background and operation of its provisions beyond the provisions of this White Paper.

### II. CURRENT SITUATION & GENERAL NEED FOR ACT

Numerous legal issues arise regarding directed trusts. Principal among them are (a) applicable fiduciary duties that apply to the non-trustee holding power (the “trust director”) and the trustee that is being directed (the “directed trustee”), (b) what trust director powers should be exercised without duty (that is, should not be covered by the Act), (c) the liability of a trust director, including limitations and defenses, (d) how the location of a trust director impacts the principal place of administration of the trust, (e) what powers a trust director has that are not expressed in the trust agreement, (f) required duties of a trust director and a directed trustee to provide information to each other, and to provide information to beneficiaries, (g) duties of the trust director and a directed trustee to monitor, inform or advise the other, (h) how to apply these issues to circumstances when one trustee is directing another trustee (since “directed trusts” are limited to trusts where the directing person is not a trustee, (i) personal jurisdiction over a trust director, and (j) a determination of what other provisions of the Trust Code should apply to trust directors.

Numerous trusts are established under Florida law that include one or more powers granted to non-trustees. Fla.Stats. §736.0808 presently addresses some of the above-described issues, but its coverage is narrow and limited. There is little in the way of case law in Florida on most of these issues, leaving trust directors, trustees, and beneficiaries without direction on these issues and requiring litigation to establish law on a case-by-case basis. Recognizing the importance of having statutory law on these subjects, many other states and common law countries have enacted legislation of varying scope dealing with many of these subjects. The UDTA was promulgated to provide a comprehensive statutory arrangement to address all of these issues and would be of welcome benefit to all parties involved with directed trusts.

### III. MISC. ASPECTS

The statutory provisions are in two segments. The first is changes to existing Florida Trust Code provisions. These are changes needed to coordinate with the separate Act Part, and to include provisions of the Act that are better placed elsewhere in the Trust Code than in a separate Act

part, such as definitions relating to Act provisions. The second segment is a new Part XIV of the Trust Code entitled "Directed Trusts."

It was determined that a separate Part was superior to scattered inclusion of the UDTA provisions throughout the Trust Code. This preserves the UDTA structure to obtain the benefits of close coordination with a uniform act, and the Directed Trust Act provisions are discrete enough to warrant a separate part. This also assists in avoiding undue complexity by excluding provisions throughout the Trust Code that may not be of relevance to trusts without directed trust features.

Like most Trust Code provisions, the provisions of the Act are a set of default rules that can be overridden in the trust instrument (except as otherwise noted).

#### IV. SECTION-BY-SECTION ANALYSIS

##### *A. Section 736.0103 – Definitions (Modification to Existing Statute)*

Current Situation: This provision provides definitions applicable throughout the Trust Code.

Effect of Proposed Changes: Adds new definitions applicable to the directed trusts, principally including:

1. "Directed trust" – a trust which includes a power of direction;
2. "Directed trustee" – a trustee subject to direction by a trust director;
3. "Power of direction" – a power over a trust granted to a person by the trust terms that is exercisable by the person when not serving as a trustee;
4. "Terms of a trust" – expands the current definition to include trust terms established by or amended by a trustee, a trust director, a court order, or a nonjudicial settlement agreement; and
5. "Trust director" – a person who has a power of direction under the trust terms to the extent exercisable while that person is not a trustee.

##### *B. Section 736.0105(2)(b) – Default and Mandatory Rules (Modification to Existing Statute)*

Current Situation: This provision provides that the terms of a trust may not modify the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

Effect of Proposed Changes: This provision would now be subject to the authority regarding such issues as they related to directed trusts otherwise provided in new Sections 736.1409, 736.1411, and 736.1412.

***C. Section 736.0603(3)- Settlor Powers (Modification to Existing Statute)***

Current Situation: While a trust is revocable, the duties of the trustee are owed exclusively to the settlor.

Effect of Proposed Changes: A new provision is added to provide that a trustee may follow a direction of the settlor that is contrary to the trust provisions while a trust is revocable.

***D. Section 736.0703(9) – Cotrustees (Modification to Existing Statute)***

Current Situation: This provision relates to the duties and obligations of trustees when the trust provisions provide a power to direct or prevent action by one trustee vis-à-vis another trustee.

Effect of Proposed Changes: This provision is removed since these provisions are now addressed in the new Part.

***E. Section 736.0808 – Powers to Direct (Modification to Existing Statute)***

Current Situation: This provision is currently the operative provision for duties, powers, and obligations relating to powers of direction granted to non-trustees.

Effect of Proposed Changes: This provision is removed since its subject matter is now entirely addressed in the new Part in numerous provisions thereof.

***F. Section 736.1008 – Limitations on Proceedings Against Trustees (Modification to Existing Statute)***

Current Situation: This provision relates to limitations on proceedings against trustees regarding items disclosed in a trust disclosure document.

Effect of Proposed Changes: Trust directors will now have the same protections as trustees for items disclosed in a trust disclosure document (whether issued by a trustee or a trust director). The definition of a “trust disclosure document” is expanded to include an accounting or other written report prepared by a trust director. A “limitation notice” may now be issued by a trust director, and the notice language regarding an action by a beneficiary for breach of trust is no longer limited to an action against the trustee (so as to have the effect of including an action against either/or a trustee or trust director).

***G. Part XIV – Directed Trusts***

Effect of Proposed Changes: Establishes a new Part under the Trust Code, which will encompass Sections 736.1401 through 736.1418. The last two digits of each section number are in accord with the corresponding or source sections of the UDTA.

***H. Section 736.1403 – Application; Principal Place of Administration (new)***

736.1403(1) - Effect of Proposed Changes: Provides that this Part will apply to a trust, wherever created, if it has its principal place of administration in Florida. It further provides the Part will apply only to decisions or actions occurring after the effective date of enactment of the Part. If

the principal place of administration is moved to Florida, the Part applies only decisions or actions occurring after such a move.

736.1403(2) - Effect of Proposed Changes: Expands the statutory rules on “principal place of administration” to include Florida if the trust terms so provide and a trust director’s principal place of business is located in or a trust director is a resident of Florida. Thus the location of a trust director in Florida is sufficient in itself to allow Florida to be the principal place of administration.

### *I. Section 736.1405 - Exclusions (New)*

Effect of Proposed Changes: Under the Act, a non-trustee holding a power over a trust by its terms is subject to the Act. Nonetheless, certain powers are excluded from the Act. Principal among the effects of such exclusion is that the power holder is not subject to any fiduciary duty unless otherwise imposed by the trust terms. These excluded powers are:

A Power of Appointment. Under current law, a non-trustee holder of a power of appointment holds a mere personal power and does not have any fiduciary duties regarding the exercise of the power (absent contrary trust terms). This exclusion is continued by excepting powers of appointment from the Act provisions. The Act provides that a power to terminate a trust is a power of appointment for this purpose.

A trust may grant a power to create, modify or terminate a power of appointment. The provision does not characterize such a power as a power of appointment for these purposes and subjects such a power to the Act and its concomitant fiduciary duties. That is, a direct power of appointment over property is materially different than a power that does not directly impact property but instead is a power to create, modify, or terminate a power of appointment, and it was determined that the broad authority under the latter warranted the imposition of fiduciary duties on the power holder. Nonetheless, the last clause of 736.1405(3)(b) is intended to clarify that if a holder of a traditional power of appointment with power thereunder to create a new trust or other property interest has with the power the ability to create a new power of appointment (*e.g.*, under the new trust arrangement), such power in the original power holder to create a new power of appointment should nonetheless still be a power of appointment for these purposes. This is because in that instance the power to create, modify or terminate is only an adjunct to the power of appointment and cannot be exercised separate and apart from an appointment otherwise occurring under the power.

A Power to Appoint or Remove a Trustee or Trust Director.

A Power of a Settlor over a Trust While it is Revocable by that Settlor.

A Power of a Beneficiary to the Extent the Exercise or Nonexercise of the Power Affects the Beneficial Interest of the Beneficiary or Another Beneficiary Represented by That Power.

A Power If the Trust Provides it is a Nonfiduciary Power, and it Must be Held in a Nonfiduciary Capacity to Achieve the Settlor's Tax Objectives. This provision is to allow for the availability of grantor trust treatment for federal income tax purposes to a settlor via certain

common planning techniques (which do not function if the power holder has a fiduciary duty regarding that power).

A Power If the Trust Provides it is a Nonfiduciary Power and Allows Reimbursement to Settlor of Income Tax Liabilities Attributable to the Income of the Trust. This allows a trust director to pay the income tax liabilities of a settlor attributable to the grantor trust status free of a conflicting duty to trust beneficiaries.

A Power to Add or Release a Power If Such Power Can Affect the Grantor Trust Status of the Trust. Again relating to grantor trusts, this permits the trust director to toggle such status on or off (to the extent allowed under federal income tax law) free of a duty to trust beneficiaries.

***J. SECTION 736.1406 – Powers of Trust Director (New)***

Effect of Proposed Changes: This provision limits the powers of a trust director to the powers granted in the trust instrument, except it will also establish further powers not expressly granted that are appropriate to the exercise or nonexercise of the power that is granted. It also provides that trust directors with joint powers must act by majority decision.

The draftspersons discussed at length whether the further power language under s. 736.1406(3)(a) included the power in the trust director to hire attorneys and others to assist the trust director in performing its powers of direction. The draftspersons concluded that such a power to hire and direct payment of fees and costs for those engaged was implicit in the statutory language, as noted in the Comments to the UDTA. Thus, explicit statutory language to this effect was not needed nor desirable. The draftspersons also concluded that such powers extended to the hiring of attorneys in defense of a breach of trust action. The draftspersons also noted that the statutory language does not require that such hiring and payment powers will exist in all situations and to the same extent in all situations, but arises and applies only to the extent such powers are “appropriate to the exercise or nonexercise of a granted power of direction” per the statutory language.

***K. On a related matter, the draftspersons added to the UDTA in s. 736.1416(q) a provision that subjects the payment of attorney fees and costs of a trust director to the provisions, procedures, and limitations of. 736.0802(10), since the draftspersons could determine no significant policy reason why s. 736.0802(10) should apply to such payments when incurred by a trustee and not when incurred by a trust director. SECTION 736.1407 – Limitations on Trust Director (New)***

Effect of Proposed Changes: A trust director with powers relating to Medicaid payback or a charitable interest is subject to the same rules as a trustee would be under regarding those items.

**L. SECTION 736.1408 – Duty and Liability of Trust Director (New)**

Effect of Proposed Changes: A trust director is subject to the same fiduciary duty and liability as a trustee would have it had such a power. However, such duty and liability can be reduced under the trust instrument in the same manner as a trust instrument can reduce the duty and liability of a trustee. Thus, for example, since the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries cannot be eliminated by the trust instrument under Section 736.0105(2)(b) for a trustee, the same minimum duty applies to the duty of a trust protector. The terms of the trust may also impose a duty or liability on a trust protector that would not otherwise apply to a similarly acting trustee.

A trust director that is a health care provider that is licensed, certified, or otherwise authorized or permitted by law will not be under any duty or liability under the Act when acting in such capacity.

**M. SECTION 736.1409 – Duty and Liability of Directed Trustee (New)**

Current Law: Under Section 736.0808(2), a directed trustee is obligated to act to follow a trust director's power of direction. However, it shall not act if such action would be "manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust."

Effect of Proposed Changes. A directed trustee again is obligated to act on the direction received, with the modification that the direction to act is to take *reasonable* action to comply.

Under this provision, a directed trust is not permitted to act regarding a power of direction if by so doing the trustee would be engaging in "willful misconduct." The standard is a departure from the standard described above under current law.

Aside from the language of the UDTA itself, the "willful misconduct" limitation on acting is appropriate since it is the same standard applicable under current law when one trustee has power to direct a co-trustee to act. Since that standard is acceptable under current law when one fiduciary is directing another, and since a trust director is now imbued under the Act with the same fiduciary duties as a trustee under Section 736.1408, it is appropriate that the willful misconduct standard is similarly applied to a directed trustee under the Act. That is, no compelling policy reasons could be discerned why a trustee that is being directed should have a different limitation dependent on whether the directing person is a cotrustee with fiduciary duties or a trust director with fiduciary duties.

The Act does not have a definition of "willful misconduct." Nor does the Trust Code. Some states do provide for a definition in their statutory trust provisions, such as Delaware. The draftpersons determined that such a definition was outside of the scope and purpose of implementing this Act, and may have a collateral impact in other areas of Florida law even if the definition was statutorily limited to this the Trust Code or these provisions. Nonetheless, the draftpersons intend that the directed trustee's compliance with the exercise or nonexercise of a power of

direction that itself constitutes a breach of fiduciary duty (such as the duty to diversify) by the trust director does not, in and of itself, constitute willful misconduct by the directed trustee. Willful misconduct should require the directed trustee's own intent to harm the trust or its beneficiaries, not mere negligence, gross negligence, recklessness or indifference as to the consequences of its actions. A broader interpretation of willful misconduct that does not require intent to harm would be contrary to the operation of directed trusts as intended by settlors and contrary to the ability of directed trustees to accept direction without hesitation or obstruction due to liability concerns.

The Act provides limits on the exercise of a power of direction to release a trustee or trust director from liability for breach of trust.

The provision provides that a directed trustee that has reasonable doubt about its duty under this Section can apply to the court for instructions, with attorney fees and costs to be paid from the trust as provided in the Trust Code.

Beyond the foregoing duty imposed on the directed trustee, the Act permits trust terms to impose additional duties and liabilities on a directed trustee.

#### ***N. Section 736.1410 – Information Exchange and Reliance (New)***

Effect of Proposed Changes. Each of a trustee and a trust director has a duty to provide information to the other to the extent the information relates to powers or duties of both of them. They may act in reliance on such information without committing a breach of trust unless their action constitutes willful misconduct. A trust director is also required to provide information to a qualified beneficiary upon a written request to the extent the information is reasonably related to the powers or duties of the trust director.

The draftpersons intend that a trust director has no other direct duty to account or provide information to a beneficiary (although a trust director may in its discretion issue a trust disclosure document to commence the statute of limitations for breach of trust per Section 736.1413(2)). They considered adding an express provision to that effect, but for purposes of not departing from the UDTA language when possible, no such language was included.

#### ***O. Section 736.1411 – No Duty to Monitor, Inform or Advise (New)***

Effect of Proposed Changes. A trustee has no duty to monitor a trust director, nor to advise a settlor, beneficiary, trustee, or trust director as to how the trustee might have acted differently than the trust director. A trust director likewise has no duty to monitor a trustee or another trust director, nor to advise a settlor, beneficiary, trustee or another trust director as to how the trust director might have acted differently than a trustee or another trust director. The provision does not bar a trustee or trust director from doing any of the foregoing, and if done the actor does not assume a duty to continue to do so in the future.

#### ***P. SECTION 736.1412 – Application to Cotrustee (New)***

Effect of Proposed Changes. When trust terms confer a power on one or more trustees to the exclusion of another trustee to direct or prevent actions of the other trustee, the trustee subject

to direction has the same duties and liabilities as imposed under the Act on a directed trustee under Sections 736.1409 through 736.1411. The policy is that the trustee in both circumstances is being directed by another fiduciary and thus there is no justification for imposing different rules or standards on the trustee subject to direction based on whether the person giving direction is a trustee or a trust director. Regarding the required standard of conduct for liability, the willful misconduct standard of current Section 736.0603(9) continues to apply, and thus this aspect of trustee liability remains the same as under current law.

***Q. SECTION 736.1413 – Limitations on Actions Against a Trust Director (New)***

Effect of Proposed Changes: The same limitations period under Section 736.1008 that applies to a breach of trust action against a trustee is applied to breach of trust actions against trust directors. Similarly, a trust director can benefit from the six months shortened limitations period under current law through the issuance of a qualified trust accounting or written report.

***R. SECTION 736.1414 – Defenses in Action Against a Trust Director (New)***

Effect of Proposed Changes: A trust director is provided with the same defenses in a breach of trust action as are available to a trustee.

***S. SECTION 736.1415 – Court Jurisdiction Over a Trust Director (New)***

Effect of Proposed Changes: A trust director is subject to the personal jurisdiction of Florida courts by accepting appointment. Other permissible methods of obtaining jurisdiction continue to apply.

***T. SECTION 736.1416 – Misc. Application of Trust Code Provisions to Trust Directors (New)***

Effect of Proposed Changes: The Trust Code contains numerous provisions that apply to trustees. Without further statutory modifications, these provisions would not apply to a trust director. The draftspersons determined that numerous of the provisions should apply to a trust director, while others should not. Thus, a blanket inclusion or exclusion of Trust Code trustee provisions to trust directors was deemed inappropriate. Instead, the draftspersons reviewed all applicable provisions and determined which should be extended to trust directors. Items in the Trust Code that apply to trustees and are not expressly made applicable to a trust director by this provision or elsewhere in the Act are intended not to apply to a trust director. The list is lengthy, so the reader is directed to Section 736.1414 of the proposed Act for those specific items.

This section applies the rules of Section 736.0701 for acceptance of trusteeship by a trustee to acceptance of the office of trust director by a named trust director. Because of the nature of many trust director powers, limiting acceptance to the means described in Section 736.0701 may leave interested persons (including the trust director) in doubt as to whether a trust director has accepted the office. This is because it is relatively demonstrable when a trustee undertakes its office by accepting trust property or exercising powers or performing duties, all of which constitute acceptance under Section 736.0701(2). So acceptance by a trustee can be

readily ascertained by determining whether a trustee undertook any such items. However, many trust director powers do not involve accepting trust property nor immediately exercising powers or performing duties. An example would be the power to amend a trust, which may not be acted upon for many months or years. Absent compliance with a method of acceptance provided in the trust agreement, it would be difficult to know if a trust director has accepted its office. This section of the Act permits a trustee, settlor, or a qualified beneficiary to make a written demand on a trust director to accept or confirm prior acceptance of the office, and the trust director must respond within 60 days. The draftspersons believed it would be problematic to automatically disqualify the trust director for failing to respond within that 60 day period, but intend that the mandatory obligation to respond can be enforced by an action of an interested person to obtain a determination by a court of competent jurisdiction as to acceptance or non-acceptance.

## **V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

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

## **VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

The proposal should not have any material economic costs or benefits to members of the private sector.

## **VII. CONSTITUTIONAL ISSUES**

The proposal should not raise any constitutional issues.

## **VIII. OTHER INTERESTED PARTIES**

Tax Section

The Florida Bankers Association

1 **FLORIDA UNIFORM DIRECTED TRUST ACT**

2 **736.0103 Definitions.—Unless the context otherwise requires, in this code:**

3 [add following definitions and renumber all subsequent subparagraphs in the  
4 section]

5 ( ) “Directed trust” means a trust for which the terms of the trust grant a  
6 power of direction.

7 ( ) “Directed trustee” means a trustee that is subject to a trust director's  
8 power of direction.

9 ( ) “Power of direction” means a power over a trust granted to a person by  
10 the terms of the trust to the extent the power is exercisable while the person is not  
11 serving as a trustee. The term includes a power over the investment, management,  
12 or distribution of trust property, a power to amend a trust instrument or terminate a  
13 trust, or a power over other matters of trust administration. The term excludes the  
14 powers described in s. 736.1405(2).

15 (21 ) ~~“Terms of a trust” means the manifestation of the settlor’s intent~~  
16 ~~regarding a trust’s provisions as expressed in the trust instrument or as may be~~  
17 ~~established by other evidence that would be admissible in a judicial proceeding;~~

18 (A) except as otherwise provided in subparagraph (B), the  
19 manifestation of the settlor's intent regarding a trust's provisions as:

20 (i) expressed in the trust instrument; or

21                   (ii) established by other evidence that would be admissible in a  
22 judicial proceeding; or

23                   (B) the trust's provisions as established, determined, or amended by:

24                   (i) a trustee or trust director in accordance with applicable law;

25                   (ii) court order; or

26                   (iii) a nonjudicial settlement agreement under s. 736.0111.

27                   ( ) “Trust director” means a person that is granted a power of direction by  
28 the terms of a trust to the extent the power is exercisable while the person is not  
29 serving as a trustee. The person is a trust director whether or not the terms of the  
30 trust refer to the person as a trust director and whether or not the person is a  
31 beneficiary or settlor of the trust.

32

33 **736.0105 Default and mandatory rules.—**

34                   (1) Except as otherwise provided in the terms of the trust, this code governs  
35 the duties and powers of a trustee, relations among trustees, and the rights and  
36 interests of a beneficiary.

37                   (2) The terms of a trust prevail over any provision of this code except:

38                   (a) The requirements for creating a trust.

39                   (b) Subject to ss. 736.1409, 736.1411 and 736.1412, ~~t~~The duty of the

40 trustee to act in good faith and in accordance with the terms and purposes of

41 the trust and the interests of the beneficiaries....

42

43 **736.0603 Settlor's powers; powers of withdrawal.—**

44 (1) While a trust is revocable, the duties of the trustee are owed exclusively  
45 to the settlor.

46 (2) During the period the power may be exercised, the holder of a power of  
47 withdrawal has the rights of a settlor of a revocable trust under this section to the  
48 extent of the property subject to the power.

49 (3) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a  
50 direction of the settlor that is contrary to the terms of the trust while a trust is  
51 revocable.

52

53 **736.0703 Cotrustees.—**

54 (1) Cotrustees who are unable to reach a unanimous decision may act by  
55 majority decision.

56 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees or a  
57 majority of the remaining cotrustees may act for the trust.

58 (3) Subject to s. 736.1412, a cotrustee must participate in the performance  
59 of a trustee's function unless the cotrustee is unavailable to perform the function  
60 because of absence, illness, disqualification under other provision of law, or other

61 temporary incapacity or the cotrustee has properly delegated the performance of  
62 the function to another cotrustee.

63 (4) If a cotrustee is unavailable to perform duties because of absence, illness,  
64 disqualification under other law, or other temporary incapacity, and prompt action  
65 is necessary to achieve the purposes of the trust or to avoid injury to the trust  
66 property, the remaining cotrustee or a majority of the remaining cotrustees may act  
67 for the trust.

68 (5) A cotrustee may not delegate to another cotrustee the performance of a  
69 function the settlor reasonably expected the cotrustees to perform jointly, except  
70 that a cotrustee may delegate investment functions to a cotrustee pursuant to and in  
71 compliance with s. 518.112. A cotrustee may revoke a delegation previously made.

72 (6) Except as otherwise provided in subsection (7), a cotrustee who does not  
73 join in an action of another cotrustee is not liable for the action.

74 (7) Except as otherwise provided in ~~subsection (9)~~ or s. 736.1412, each  
75 cotrustee shall exercise reasonable care to:

76 (a) Prevent a cotrustee from committing a breach of trust.

77 (b) Compel a cotrustee to redress a breach of trust.

78 (8) A dissenting cotrustee who joins in an action at the direction of the  
79 majority of the cotrustees and who notifies any cotrustee of the dissent at or before  
80 the time of the action is not liable for the action.

81           ~~(9) If the terms of a trust provide for the appointment of more than one~~  
82     ~~trustee but confer upon one or more of the trustees, to the exclusion of the others,~~  
83     ~~the power to direct or prevent specified actions of the trustees, the excluded~~  
84     ~~trustees shall act in accordance with the exercise of the power. Except in cases of~~  
85     ~~willful misconduct on the part of the excluded trustee, an excluded trustee is not~~  
86     ~~liable, individually or as a fiduciary, for any consequence that results from~~  
87     ~~compliance with the exercise of the power. An excluded trustee does not have a~~  
88     ~~duty or an obligation to review, inquire, investigate, or make recommendations or~~  
89     ~~evaluations with respect to the exercise of the power. The trustee or trustees having~~  
90     ~~the power to direct or prevent actions of the excluded trustees shall be liable to the~~  
91     ~~beneficiaries with respect to the exercise of the power as if the excluded trustees~~  
92     ~~were not in office and shall have the exclusive obligation to account to and to~~  
93     ~~defend any action brought by the beneficiaries with respect to the exercise of the~~  
94     ~~power. The provisions of s. 736.0808(2) do not apply if the person entrusted with~~  
95     ~~the power to direct the actions of the excluded trustee is also a cotrustee.~~

96  
97     **736.0808 Powers to direct.—**

98           ~~(1) Subject to ss. 736.0403(2) and 736.0602(3)(a), the trustee may follow a~~  
99     ~~direction of the settlor that is contrary to the terms of the trust while a trust is~~  
100    ~~revocable.~~

101           ~~(2) If the terms of a trust confer on a person other than the settlor of a~~  
102           ~~revocable trust the power to direct certain actions of the trustee, the trustee shall act~~  
103           ~~in accordance with an exercise of the power unless the attempted exercise is~~  
104           ~~manifestly contrary to the terms of the trust or the trustee knows the attempted~~  
105           ~~exercise would constitute a serious breach of a fiduciary duty that the person~~  
106           ~~holding the power owes to the beneficiaries of the trust.~~

107           ~~(3) The terms of a trust may confer on a trustee or other person a power to~~  
108           ~~direct the modification or termination of the trust.~~

109           ~~(4) A person, other than a beneficiary, who holds a power to direct is~~  
110           ~~presumptively a fiduciary who, as such, is required to act in good faith with regard~~  
111           ~~to the purposes of the trust and the interests of the beneficiaries. The holder of a~~  
112           ~~power to direct is liable for any loss that results from breach of a fiduciary duty.~~

113

114           **736.1008 Limitations on proceedings against trustees.—**

115           (1) Except as provided in subsection (2), all claims by a beneficiary against a  
116           trustee for breach of trust are barred as provided in chapter 95 as to:

117                   (a) All matters adequately disclosed in a trust disclosure document  
118                   issued by the trustee or a trust director, with the limitations period beginning  
119                   on the date of receipt of adequate disclosure.

120                   (b) All matters not adequately disclosed in a trust disclosure document

121 if the trustee has issued a final trust accounting and has given written notice  
122 to the beneficiary of the availability of the trust records for examination and  
123 that any claims with respect to matters not adequately disclosed may be  
124 barred unless an action is commenced within the applicable limitations  
125 period provided in chapter 95. The limitations period begins on the date of  
126 receipt of the final trust accounting and notice.

127 (2) Unless sooner barred by adjudication, consent, or limitations, a  
128 beneficiary is barred from bringing an action against a trustee for breach of trust  
129 with respect to a matter that was adequately disclosed in a trust disclosure  
130 document unless a proceeding to assert the claim is commenced within 6 months  
131 after receipt from the trustee or a trust director of the trust disclosure document or a  
132 limitation notice that applies to that disclosure document, whichever is received  
133 later.

134 (3) When a trustee has not issued a final trust accounting or has not given  
135 written notice to the beneficiary of the availability of the trust records for  
136 examination and that claims with respect to matters not adequately disclosed may  
137 be barred, a claim against the trustee for breach of trust based on a matter not  
138 adequately disclosed in a trust disclosure document is barred as provided in chapter  
139 95 and accrues when the beneficiary has actual knowledge of:

140 (a) The facts upon which the claim is based, if such actual knowledge

141 is established by clear and convincing evidence; or

142 (b) The trustee's repudiation of the trust or adverse possession of trust  
143 assets.

144 Paragraph (a) applies to claims based upon acts or omissions occurring on or after  
145 July 1, 2008. A beneficiary's actual knowledge that he or she has not received a  
146 trust accounting does not cause a claim to accrue against the trustee for breach of  
147 trust based upon the failure to provide a trust accounting required by s. 736.0813 or  
148 former s. 737.303 and does not commence the running of any period of limitations  
149 or laches for such a claim, and paragraph (a) and chapter 95 do not bar any such  
150 claim.

151 (4) As used in this section, the term:

152 (a) "Trust disclosure document" means a trust accounting or any other  
153 written report of the trustee or a trust director. A trust disclosure document  
154 adequately discloses a matter if the document provides sufficient  
155 information so that a beneficiary knows of a claim or reasonably should  
156 have inquired into the existence of a claim with respect to that matter.

157 (b) "Trust accounting" means an accounting that adequately discloses  
158 the information required by and that substantially complies with the  
159 standards set forth in s. 736.08135.

160 (c) "Limitation notice" means a written statement of the trustee or a

161 trust director that an action by a beneficiary ~~against the trustee~~ for breach of  
162 trust based on any matter adequately disclosed in a trust disclosure document  
163 may be barred unless the action is commenced within 6 months after receipt  
164 of the trust disclosure document or receipt of a limitation notice that applies  
165 to that trust disclosure document, whichever is later. A limitation notice may  
166 but is not required to be in the following form: “An action for breach of trust  
167 based on matters disclosed in a trust accounting or other written report of the  
168 trustee or a trust director may be subject to a 6-month statute of limitations  
169 from the receipt of the trust accounting or other written report. If you have  
170 questions, please consult your attorney.” . . .

171

172

#### **Part XIV: DIRECTED TRUSTS**

173

736.1401 SHORT TITLE

174

736.1402 DEFINITIONS

175

736.1403 APPLICATION; PRINCIPAL PLACE OF ADMINISTRATION

176

736.1405 EXCLUSIONS

177

736.1406 POWERS OF TRUST DIRECTOR

178

736.1407 LIMITATIONS ON TRUST DIRECTOR

179

736.1408 DUTY AND LIABILITY OF TRUST DIRECTOR

180

736.1409 DUTY AND LIABILITY OF DIRECTED TRUSTEE

181

736.1410 DUTY TO PROVIDE INFORMATION

182

736.1411 NO DUTY TO MONITOR, INFORM, OR ADVISE

183                                736.1412 APPLICATION TO COTRUSTEE  
184                                736.1413 LIMITATION OF ACTION AGAINST TRUST DIRECTOR  
185                                736.1414 DEFENSES IN ACTION AGAINST TRUST DIRECTOR  
186                                736.1415 JURISDICTION OVER TRUST DIRECTOR  
187                                736.1416 OFFICE OF TRUST DIRECTOR  
188    EFFECTIVE DATE

189  
190    **736.1401 SHORT TITLE.** — This part may be cited as the Florida Uniform  
191    Directed Trust Act.

192  
193    **736.1403 APPLICATION; PRINCIPAL PLACE OF**  
194    **ADMINISTRATION.—**

195                        (1) This part applies to a trust, whenever created, that has its principal place  
196    of administration in this state, subject to the following rules:

197                        (a) If the trust was created before [the effective date of this part], this  
198    part applies only to a decision or action occurring on or after the effective date of  
199    this part.

200                        (b) If the principal place of administration of the trust is changed to  
201    this state on or after [the effective date of this part], this part applies only to a  
202    decision or action occurring on or after the date of the change.

203                        (2) In addition to the provisions of s. 736.0108, in a directed trust, terms of

204 the trust which designate the principal place of administration of the trust in  
205 Florida are valid and controlling if a trust director’s principal place of business is  
206 located in or a trust director is a resident of Florida.

207

208 **736.1405 EXCLUSIONS. —**

209 (1) In this section, “power of appointment” means a power that enables a  
210 person acting in a nonfiduciary capacity to designate a recipient of an ownership  
211 interest in or another power of appointment over trust property.

212 (2) Unless the terms of a trust expressly provide otherwise by specific  
213 reference to this Part XIV or this s. 736.1405(2), this part does not apply to:

214 (a) a power of appointment;

215 (b) a power to appoint or remove a trustee or trust director;

216 (c) a power of a settlor over a trust while it is revocable by that settlor;

217 (d) a power of a beneficiary over a trust to the extent the exercise or  
218 nonexercise of the power affects the beneficial interest of:

219 1. the beneficiary; or

220 2. another beneficiary represented by the beneficiary under s.

221 736.0301 through s. 736.0305 with respect to the exercise or nonexercise of the  
222 power;

223 (e) a power over a trust if the terms of the trust provide that the power

224 is held in a nonfiduciary capacity, and

225 1. the power must be held in a nonfiduciary capacity to achieve  
226 the settlor's tax objectives under the United States Internal Revenue Code of 1986,  
227 as amended, and regulations issued thereunder, as amended; or

228 2. it is a power to reimburse the settlor for all or a part of the  
229 settlor's income tax liabilities attributable to the income of the trust; or

230 (f) a power to add or to release a power under the trust instrument if  
231 the power subject to addition or release causes the settlor to be treated as the owner  
232 of all or any portion of the trust for federal income tax purposes.

233 (3) Unless the terms of a trust provide otherwise, a power granted to a  
234 person other than a trustee:

235 (a) to designate a recipient of an ownership interest in trust property,  
236 including a power to terminate a trust, is a power of appointment and not a power  
237 of direction; and

238 (b) to create, modify or terminate a power of appointment, is a power  
239 of direction and not a power of appointment, except a power to create a power of  
240 appointment exercisable only as adjunct to and part of the exercise of a power of  
241 appointment.

242

243 **736.1406 POWERS OF TRUST DIRECTOR. —**

244 (1) Subject to s. 736.1407, the terms of a trust may grant a power of  
245 direction to a trust director.

246 (2) A power of direction includes only those powers granted by the terms of  
247 the trust.

248 (3) Unless the terms of a trust provide otherwise:

249 (a) a trust director may exercise any further power appropriate to the  
250 exercise or nonexercise of a power of direction granted to the trust director under  
251 subsection (1); and

252 (b) trust directors with joint powers must act by majority decision.

253  
254 **736.1407 LIMITATIONS ON TRUST DIRECTOR.**— A trust director is  
255 subject to the same rules as a trustee in a like position and under similar  
256 circumstances in the exercise or nonexercise of a power of direction or further  
257 power under s. 736.1406(3)(a) regarding:

258 (1) a payback provision in the terms of a trust necessary to comply with the  
259 reimbursement requirements of Medicaid law in Section 1917 of the Social  
260 Security Act, 42 U.S.C. Section 1396p(d)(4)(A)[, as amended][, and regulations  
261 issued thereunder, as amended]; and

262 (2) a charitable interest in the trust, including notice regarding the interest to  
263 the Attorney General.

264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283

**736.1408 DUTY AND LIABILITY OF TRUST DIRECTOR.—**

(1) Subject to subsection (2), with respect to a power of direction or further power under s. 736.1406(3)(a):

(a) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

1. if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

2. if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(b) the terms of the trust may vary the trust director’s duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(2) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this part to provide health care in the ordinary course of the trust director’s business or practice of a profession, to the extent the trust director acts in that capacity the trust director has no duty or liability under this part.

(3) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

284

285 **736.1409 DUTY AND LIABILITY OF DIRECTED TRUSTEE. —**

286 (1) Subject to subsection (2), a directed trustee shall take reasonable action  
287 to comply with a trust director's exercise or nonexercise of a power of direction or  
288 further power under s. 736.1406(3)(a) and the trustee is not liable for such  
289 reasonable action.

290 (2) A directed trustee must not comply with a trust director's exercise or  
291 nonexercise of a power of direction or further power under s. 736.1406(3)(a) to the  
292 extent that by complying the trustee would engage in willful misconduct.

293 (3) An exercise of a power of direction under which a trust director may  
294 release a trustee or another trust director from liability for breach of trust is not  
295 effective if:

296 (a) the breach involved the trustee's or other director's willful  
297 misconduct;

298 (b) the release was induced by improper conduct of the trustee or  
299 other director in procuring the release; or

300 (c) at the time of the release, the trust director did not know the  
301 material facts relating to the breach.

302 (4) A directed trustee that has reasonable doubt about its duty under this  
303 section may apply to the court for instructions, with attorney fees and costs to be

304 paid from assets of the trust in the manner provided in this code.

305 (5) The terms of a trust may impose a duty or liability on a directed trustee  
306 in addition to the duties and liabilities under this part.

307

308 **736.1410 DUTY TO PROVIDE INFORMATION. —**

309 (1) Subject to s. 736.1411, a trustee shall provide information to a trust  
310 director to the extent the information is reasonably related both to:

311 (a) the powers or duties of the trustee; and

312 (b) the powers or duties of the trust director.

313 (2) Subject to s. 736.1411, a trust director shall provide information to a  
314 trustee or another trust director to the extent the information is reasonably related  
315 both to:

316 (a) the powers or duties of the trust director; and

317 (b) the powers or duties of the trustee or other trust director.

318 (3) A trustee that acts in reliance on information provided by a trust director  
319 is not liable for a breach of trust to the extent the breach resulted from the reliance,  
320 unless by so acting the trustee engages in willful misconduct.

321 (4) A trust director that acts in reliance on information provided by a trustee  
322 or another trust director is not liable for a breach of trust to the extent the breach  
323 resulted from the reliance, unless by so acting the trust director engages in willful

324 misconduct.

325 (5) A trust director shall provide information within the trust director's  
326 knowledge or control to a qualified beneficiary upon a written request of a  
327 qualified beneficiary to the extent the information is reasonably related to the  
328 powers or duties of the trust director.

329

330 **736.1411 NO DUTY TO MONITOR, INFORM, OR ADVISE. —**

331 (1) Notwithstanding s. 736.1409(1), unless the terms of a trust provide  
332 otherwise:

333 (a) a trustee does not have a duty to:

334 1. monitor a trust director; or

335 2. inform or give advice to a settlor, beneficiary, trustee, or trust  
336 director concerning an instance in which the trustee might have acted differently  
337 than the trust director; and

338 (b) by taking an action described in paragraph (a), a trustee does not  
339 assume the duty excluded by paragraph (a).

340 (2) Notwithstanding s. 736.1408(1), unless the terms of a trust provide  
341 otherwise:

342 (a) a trust director does not have a duty to:

343 1. monitor a trustee or another trust director; or

344 2. inform or give advice to a settlor, beneficiary, trustee, or  
345 another trust director concerning an instance in which the trust director might have  
346 acted differently than a trustee or another trust director; and

347 (b) by taking an action described in paragraph (a), a trust director does  
348 not assume the duty excluded by paragraph (a).

349

350 **736.1412 APPLICATION TO COTRUSTEE.—**

351 (1) The terms of a trust may provide for the appointment of more than one  
352 trustee but confer upon one or more of the trustees, to the exclusion of the others,  
353 the power to direct or prevent specified actions of the trustees.

354 (2) The excluded trustees shall act in accordance with the exercise of the  
355 power in the manner, and with the same duty and liability, as a directed trustee  
356 with respect to a trust director's power of direction under s. 736.1409 through s.  
357 736.1411.

358 (3) The trustee or trustees having the power to direct or prevent actions of  
359 the excluded trustees shall be liable to the beneficiaries with respect to the exercise  
360 of the power as if the excluded trustees were not in office and shall have the  
361 exclusive obligation to account to and to defend any action brought by the  
362 beneficiaries with respect to the exercise of the power.

363

364 **736.1413 LIMITATION OF ACTION AGAINST TRUST DIRECTOR. —**

365 (1) An action against a trust director for breach of trust must be commenced  
366 within the same limitation period as under s. 736.1008 an action for breach of trust  
367 against a trustee in a like position and under similar circumstances.

368 (2) A trust accounting or any other written report of a trustee or a trust  
369 director has the same effect on the limitation period for an action against a trust  
370 director for breach of trust that such trust accounting or written report would have  
371 under s. 736.1008 in an action for breach of trust against a trustee in a like position  
372 and under similar circumstances.

373

374 **736.1414 DEFENSES IN ACTION AGAINST TRUST DIRECTOR. —** In an  
375 action against a trust director for breach of trust, the trust director may assert the  
376 same defenses a trustee in a like position and under similar circumstances could  
377 assert in an action for breach of trust against the trustee.

378

379 **736.1415 JURISDICTION OVER TRUST DIRECTOR. —**

380 (1) By accepting appointment as a trust director of a trust subject to this part,  
381 the trust director submits to the personal jurisdiction of the courts of this state  
382 regarding any matter related to a power or duty of the trust director.

383 (2) This section does not preclude other methods of obtaining jurisdiction

384 over a trust director.

385

386 **736.1416 OFFICE OF TRUST DIRECTOR.—**

387 (1) Unless the terms of a trust provide otherwise, the rules applicable to a  
388 trustee apply to a trust director regarding the following matters to the extent of the  
389 powers, duties, and office of the trust director:

390 (a) role of court under s.736.0201;

391 (b) proceedings for review of employment of agents and review of  
392 compensation of trustee and employees of a trust under s. 736.0206;

393 (c) representation by holder of power of appointment under s.  
394 736.0302(4);

395 (d) designated representative under s. 736.0306(2);

396 (e) requirements for creation of a trust under s. 736.0402(3);

397 (f) as to allowing application by the trust director for judicial  
398 modification, termination, combination or division under ss. 736.04113,  
399 736.04114, 736.04115, or 736.0414(2) if the trust director is so authorized by the  
400 terms of the trust;

401 (g) discretionary trusts and the effect of a standard under s. 736.0504;

402 (h) creditors' claims against settlor under s. 736.0505(1)(c);

403 (i) trustee's duty to pay expenses and obligations of settlor's estate

404 under s. 736.05053(4);

405 (j) acceptance under s. 736.0701;

406 (k) giving of bond to secure performance under s. 736.0702;

407 (l) vacancy and appointment of successor under s. 736.704;

408 (m) resignation under s. 736.0705;

409 (n) removal under s. 736.706;

410 (o) reasonable compensation under s. 736.0708;

411 (p) reimbursement of expenses under s. 736.0709;

412 (q) payment of costs or attorney fees under s. 736.0802(10), if the

413 trust director has a power of direction or a further power to direct the payment of

414 such costs or attorney fees pursuant to s. 736.1406(2) or (3)(a), except that

415 references in s. 736.0802(10) to payments made or authorized to be made by a

416 trustee shall instead refer to payments made or authorized to be made at the

417 direction of the trust director;

418 (r) discretionary power and tax savings provisions under s. 736.0814;

419 (s) administration pending outcome of contest or other proceeding

420 under s. 736.08165;

421 (t) applicability of chapter 518 under s. 736.0901;

422 (u) nonapplication of prudent investor rule under s. 736.0902;

423 (v) remedies for breach of trust under s. 736.1001;

- 424 (w) damages for breach of trust under s. 736.1002;  
425 (x) damages in absence of breach under s. 736.1003;  
426 (y) attorney's fees and costs under s. 736.1004;  
427 (z) trustee's attorney fees under ss. 736.1007 (5) through 736.1007(7);  
428 (aa) reliance on trust instrument under s. 736.1009;  
429 (bb) exculpation under s. 736.1011;  
430 (cc) events affecting administration under s. 736.1010;  
431 (dd) beneficiary's consent, release, or ratification under s. 736.1012;  
432 and  
433 (ee) limitations on actions against certain trusts under s. 736.1014.

434 (2) If a person has not accepted a trust directorship under the terms of the  
435 trust or under s. 736.0701 or a trustee, settlor, or a qualified beneficiary of the trust  
436 is uncertain whether such acceptance has occurred, a trustee, settlor, or a qualified  
437 beneficiary of the trust may make a written demand on a person designated to  
438 serve as a trust director, with a written copy to the trustees, to accept or confirm  
439 prior acceptance of the trust directorship in writing. A written acceptance, written  
440 acknowledgment of prior acceptance, or written declination of the trust  
441 directorship, shall be delivered by the designated trust director within 60 days of  
442 receipt of such demand to all trustees, qualified beneficiaries, and the settlor if  
443 living.

444

445 **EFFECTIVE DATE.** The provisions of this Act take effect July 1, 2020.