

**Real Property, Probate and Trust Law (“RPPTL”) Section
Executive Council Meeting
The Ritz-Carlton Orlando, Grande Lakes
Orlando, Florida
February 24, 2024
9:45 a.m. (E.T.)**

Agenda

- I. Presiding** — *S. Katherine Frazier, Chair*
- II. Secretary’s Report** — *Lee A. Weintraub, Secretary*
 1. Motion to approve the minutes of the November 11, 2023, meeting of the Executive Council held at the JW Marriott Tampa Water Street. **p. 9**
 2. Meeting Attendance. **p. 16**
- III. Chair's Report** — *S. Katherine Frazier, Chair*
 1. Recognition of Special Guests.
 2. Thank you to our Sponsors! **p. 31**
 3. Interim Actions Approved by the Executive Committee.
 - A. Approval of the termination of the RPPTL Section’s Legislative Advising Services Agreement with Dean Mead effective as of December 31, 2023 and the execution of a substitute Legislative Advising Services Agreement with Jones Walker, LLP effective as of January 1, 2024 and related Contract Addendum between the RPPTL Section and Jones Walker, LLP. **p. 33**
 - B. Approval of Recommendation of appointees to the Florida Realtor Attorney Joint Committee. **p. 43**
 - C. Approval of ActionLine Editor 2024 Contract with Colleen Schuster for the term beginning on February 1, 2024 and ending on August 30, 2024. **p. 46**
 4. 2023-2024 Executive Council Meetings. **p. 48**
 5. Milestones.
 6. General Comments of the Chair.
- IV. Board of Governors Report** – *F. Scott Westheimer, The Florida Bar President; Rosalyn Sia (“Sia”) Baker-Barnes, Liaison*

- V. [Chair-Elect's Report](#) – *John C. Moran, Chair-Elect*
 - 1. 2024-2025 Executive Council meetings. **p. 49**
- VI. [Treasurer's Report](#) – *S. Dresden Brunner, Treasurer*
 - 1. Statement of Current Financial Conditions. **p. 50**
- VII. [Director of At-Large Members Report](#) – *Wilhelmina F. Kightlinger, Director*
- VIII. [CLE Seminar Coordination Report](#) – *Angela M. Adams (Probate & Trust) and Brenda Ezell (Real Property), Co-Chairs*
 - 1. Upcoming CLE programs and opportunities. **p. 59**
- IX. [Legislation Committee](#) – *Steven H. Mezer (Real Property) and Sancha Brennan (Probate & Trust), Co-Chairs*
- X. [Probate and Trust Law Division Report](#) – *Jon Scuderi, Division Director*

Action Item:

- 1. **Asset Protection Committee** – Michael A. Sneeringer, Chair

Motion to:

- A. Support the creation of a new statute within the Florida Trust Code which clarifies ambiguity in the current law as to the continuation of the protected status of tenancy by the entirety property when the property is transferred to a joint trust held by a married couple;
- B. find that the legislative position is within the purview of the RPPTL Section; and
- C. expend funds in support of the proposed legislative position. **p. 61**

Information Items:

- 1. **Probate Law and Procedure Committee** – Theodore S. Kypreos, Chair

Proposed action seeking authorization to advocate for maintaining Trusts and Estates and Future Interests as tested topics on Florida's bar exam.
p. 75

2. **Trust Law Committee** – David J. Akins, Chair

Proposed legislation providing the circumstances under which ademption by satisfaction applies to revocable trusts. **p. 82**

3. **Trust Law Committee** – David J. Akins, Chair

Proposed legislation adding a definition of “willful misconduct” to the Florida Uniform Directed Trust Act. **p. 91**

XI. Real Property Law Division Report – *Wm. Cary Wright, Division Director*

Information Items:

1. **Condominium and Planned Development Committee** – Alexander B. Dobrev and Allison L. Hertz, Co-Chairs

Expansion of “Alternative Funding Method” – Supports legislation allowing any association that must obtain SIRS to utilize an alternative funding method which (i) may reasonably be expected to fully satisfy the association’s reserve funding obligations and (ii) is approved by the Division. **p. 100**

2. **Condominium and Planned Development Committee** – Alexander B. Dobrev and Allison L. Hertz, Co-Chairs

Code of Borrowing Authority – Supports legislation authorizing associations to borrow money or levy special assessments notwithstanding any requirement for membership approval in furtherance of the association’s performance of necessary maintenance, repairs and replacements, including capital replacements. **p. 102**

3. **Condominium and Planned Development Committee** – Alexander B. Dobrev and Allison L. Hertz, Co-Chairs

Codification of In re Petition for Declaratory Statement, Walter Grover, Unit Owner, Portofino Condominium Apartments and the Financing of Special Assessments – Supports legislation permitting unit owners to “finance” special assessments in the form of a payment plan with interest. **p. 106**

XII. General Standing Committees Report – John C. Moran, Chair-Elect

Information Items:

1. **Ad Hoc Protocols Committee** – Stacy O. Kalmanson, Chair
Update.
2. **Professionalism and Ethics Committee** – Andrew B. Sasso, Chair
Update on RPPTL Section’s proposed Comment in response to the Florida Supreme Court’s July 7, 2023 Opinion in *In Re: Code for Resolving Professionalism Referrals and Amendments to Rule Regulating The Florida Bar 6-10.3*, Case No. SC2023-0884. **p. 110**
3. **Information Technology Committee** – Hardy L. Roberts, III, Chair
Update on Florida Bar Ethics Opinion 24-1, January 19, 2024. **p.117**
4. **Strategic Planning Committee** – Robert S. Freedman and William T. Hennessey, III, Co-Chairs
Update.
5. **Historian Committee** – David C. Brennan, Chair
History presentation by Mr. Brennan.
6. **Liaison with ABA** – Robert S. Freedman
Report.
7. **Convention Coordination Committee** – Tae K. Bronner and Stacy O. Kalmanson, Co-Chairs
Report.

XIII. Probate and Trust Law Division Committee Reports – Jon Scuderi, Division Director

1. **Ad Hoc Guardianship Law Revision** – Nicklaus (“Nick”) J. Curley, Stacy B. Rubel, and David C. Brennan, Co-Chairs; Sancha K. Brennan, Vice Chair
2. **Ad Hoc Committee on Electronic Wills** — Frederick (“Ricky”) L. Hearn, Chair; Jenna G. Rubin, Vice Chair
3. **Ad Hoc Study Committee on Jurisdiction and Due Process** — Barry F. Spivey, Chair; Sean W. Kelley and Shelly Wald Harris, Co-Vice Chairs
4. **Ad Hoc ART** — Alyse Reiser Comiter, Chair; Jack A. Falk, Jr. and Sean M.

- Lebowitz, Co-Vice Chairs
5. **Asset Protection** — Michael A. Sneeringer, Chair; Richard (“Rick”) R. Gans, Patrick J. Lannon, and Justin M. Savioli, Co-Vice-Chairs
 6. **Attorney/Trust Officer Liaison Conference** — Mitchell A. Hipsman, Chair; Stacey L. Cole, Michael M. Rubenstein, Gail G. Fagan, and Eammon W. Gunther, Co-Vice Chairs
 7. **Charitable Planning and Exempt Organizations** — Denise S. Cazobon, Chair; Kelly L. Hellmuth and Alyssa R. Wan, Co-Vice-Chairs
 8. **Elective Share Review** — Jenna G. Rubin, Chair; Cristina Papanikos, Jason P. Van Lenten and Lauren Y. Detzel, Co-Vice-Chairs
 9. **Estate and Trust Tax Planning** — Richard N. Sherrill, Chair; Alfred (“Al”) J. Stashis, Jr., Andrew H. Thompson and Jolyon D. Acosta, Co-Vice Chairs
 10. **Guardianship, Power of Attorney and Advanced Directives** — Stacy B. Rubel, Chair; Elizabeth (“Liz”) M. Hughes, Stephanie L. Cook, Caitlin M. Powell and Jacobeli J. Behar, Co-Vice Chairs
 11. **IRA, Insurance and Employee Benefits** — Charles (“Chad”) W. Callahan, III, Chair; Rebecca C. Bell and Rachel N. Barlow, Co-Vice-Chairs
 12. **Liaisons with ACTEC** — Elaine M. Bucher, Tami F. Conetta, Jerome L. Wolf, Charles I. Nash, L. Howard Payne and Diana S.C. Zeydel
 13. **Liaisons with Elder Law Section** — Travis D. Finchum and Marjorie E. Wolasky
 14. **Liaison with the FSGA** – Stephanie Cook
 15. **Liaisons with Tax Section** — William R. Lane, Jr., Brian M. Malec and Brian C. Sparks
 16. **Liaison with Professional Fiduciary Council** — Darby Jones
 17. **OPPG Delegate** — Nicklaus (“Nick”) J. Curley
 18. **Principal and Income** — Edward F. Koren and Pamela O. Price, Co-Chairs, Jolyon D. Acosta and Keith B. Braun, Co-Vice Chairs
 19. **Probate and Trust Litigation** — R. Lee McElroy, IV, Chair; Cady L. Huss and Darren M. Stotts, Co-Vice Chairs
 20. **Probate Law and Procedure** — Theodore S. Kypreos, Chair; Benjamin F. Diamond, Stacey Prince-Troutman, and J. Grier Pressley, III, Co-Vice Chairs
 21. **Trust Law** — David J. Akins, Chair; Jennifer J. Robinson, Jenna G. Rubin, and M. Travis Hayes, Co-Vice Chairs
 22. **Wills, Trusts and Estates Certification Review Course** — Rachel A. Lunsford, Chair; J. Allison Archbold and J. Eric Virgil, Co-Vice Chairs

XIV. Real Property Law Division Committee Reports – *Wm. Cary Wright, Division Director*

1. **Ad Hoc Hayslip** – Brian W. Hoffman, Chair; James (“Jim”) C. Russick and Russell M. Robbins, Co-Vice Chairs
2. **Ad Hoc UCRERA** - Manuel (“Manny”) Farach, Chair; Jason M. Ellison and James (“Jim”) C. Russick, Co-Vice Chairs
3. **Attorney Banker Conference** — Kristopher E. Fernandez and Salome J. Zikakis, Co-Chairs; R. James (“Jim”) Robbins, Jr., Vice Chair
4. **Commercial Real Estate** — E. Ashley McRae, Chair; Annabella Barboza,

- Erin M. Miller, and Alexandra D. Gabel, Co-Vice Chairs
5. **Condominium and Planned Development** — Alexander B. Dobrev and Allison L. Hertz, Co-Chairs; Russell M. Robbins, Vice Chair
 6. **Condominium and Planned Development Law Certification Review Course** — Christine M. Ertl, Chair; Alessandra Stivelman, Vice Chair
 7. **Construction Law** — Sanjay Kurian, Chair; Bruce D. Partington and Elizabeth B. Ferguson, Co-Vice Chairs
 8. **Construction Law Certification Review Course** — Gregg E. Hutt, Chair; Jason J. Quintero and Scott P. Pence, Co-Vice Chairs
 9. **Construction Law Institute** — Bradley R. Weiss, Chair; Haley R. Maple and Trevor B. Arnold, Co-Vice Chairs
 10. **Development & Land Use** — Lisa B. Van Dien, Chair; Jin Liu, Vice Chair
 11. **Insurance & Surety** — Adele I. Stone and Debbie S. Crockett, Co-Chairs; Anne Q. Pollack, Vice Chair
 12. **Liaisons with FLTA** — Alan K. McCall, Melissa J. Murphy, Alan B. Fields and James (“Jim”) C. Russick
 13. **Liaison with American College of Real Estate Lawyers (ACREL)** — Martin A. Schwartz and William (“Bill”) P. Sklar
 14. **Liaison with American College of Construction Lawyers (ACCL)** — George J. Meyer
 15. **Liaison with Florida Realtors** – Louis (“Trey”) E. Goldman, III
 16. **Real Estate Certification Review Course** — Lloyd Granet, Chair; Martin (“Marty”) S. Awerbach, Laura M. Licastro and Jason M. Ellison, Co-Vice Chairs
 17. **Real Estate Leasing** — Christopher (“Chris”) A. Sajdera, Chair; Kristen K. Jaiven and Ryan J. McConnell, Co-Vice Chairs
 18. **Real Property Finance & Lending** — Jason M. Ellison, Chair; Deborah B. Boyd and Jin Liu, Co-Vice Chairs
 19. **Real Property Litigation** — Manuel (“Manny”) Farach and Shawn G. Brown, Co-Chairs; Amanda R. Kison and Terrence L. Harvey, Co-Vice Chairs
 20. **Real Property Problems Study** — Susan K. Spurgeon, Chair; Amber E. Ashton and Brian W. Hoffman, Co-Vice Chairs
 21. **Residential Real Estate and Industry Liaison** — Nicole M. Villarroel and Kristen K. Jaiven, Co-Chairs; James (“Jamie”) A. Marx and Richard (“Rich”) S. McIver, Co-Vice Chairs
 22. **Title Insurance and Title Insurance Industry Liaison** — Christopher W. Smart, Chair; Leonard F. Prescott, IV, Jeremy T. Cranford, and Michelle G. Hinden, Co-Vice Chairs
 23. **Title Issues and Standards** — Rebecca L.A. Wood and Amanda K. Hersem, Co-Chairs; Robert (“Bob”) M. Graham, Karla J. Staker and Melissa Scaletta, Co-Vice Chairs

XV. General Standing Committee Reports — John C. Moran, Chair-Elect

1. **Ad Hoc Bylaws** - Robert (“Bob”) S. Swaine and William (“Bill”) T. Hennessey, III, Co-Chairs
2. **Ad Hoc Protocols** – Stacy O. Kalmanson, Chair; Colleen C. Sachs, Vice

- Chair
3. **Ad Hoc Rules Revisions** – Michael V. Hargett, Thomas M. Karr, and J. Richard Caskey, Co-Chairs
 4. **Ad Hoc RTODD** — Alan (“Steve”) S. Kotler and Christopher (“Chris”) W. Smart, Co-Chairs; Jeffrey (“Jeff”) S. Goethe, Vice Chair
 5. **Ad Hoc Series LLC** - James A. Marx, James C. Russick and Michael A. Sneeringer, Co-Chairs
 6. **Amicus Coordination** — Kenneth B. Bell, Gerald B. Cope, Jr., Robert W. Goldman and John W. Little, III, Co-Chairs
 7. **Budget** — S. Dresden Brunner, Chair; Tae K. Bronner, Linda S. Griffin, Alfred (“Al”) J. Stashis, Jr. and Pamela O. Price, Co-Vice Chairs
 8. **Communications** – Michael V. Hargett, Chair; Laura K. Sundberg, Vice Chair
 9. **CLE Coordination** — Brenda B. Ezell and Angela M. Adams, Co-Chairs; Tatianna Brenes-Stahl, Silvia B. Rojas, Robert (“Rob”) Lancaster, Amanda R. Kison, Yoshimi O. Smith, and Stacy O. Kalmanson, Co-Vice Chairs
 10. **Convention Coordination** —Tae K. Bronner and Stacy O. Kalmanson, Co-Chairs
 11. **Disaster and Emergency Preparedness and Response** — Colleen C. Sachs, Chair; Amy B. Beller and Michael A. Bedke, Co-Vice Chairs
 12. **Fellows** — Bridget M. Friedman and Terrence L. Harvey, Co-Chairs; Taniquea C. Reid and Amanda C. Cummins, Co-Vice Chairs
 13. **Historian Committee** – David C. Brennan, Chair
 14. **Homestead Issues Study** — Jeffrey (“Jeff”) A. Baskies, Chair; Shane Kelley, Jeremy T. Cranford and E. Burt Bruton, Co-Vice Chairs
 15. **Information Technology** — Hardy L. Roberts III, Chair; Alexander (“Alex”) B. Dobrev, Jesse B. Friedman and Jourdan Haynes, Co-Vice Chairs
 16. **Law School Outreach** — Kymberlee C. Smith, Chair; Amanda C. Cummins, Lilleth Bailey and Kristine L. Tucker, Co-Vice Chairs
 17. **Legislation** — Sancha C. Brennan (PT) and Steven H. Mezer (RP), Co-Chairs; M. Travis Hayes, Benjamin (“Ben”) F. Diamond and Nicklaus (“Nick”) J. Curley (PT), Christopher (“Chris”) W. Smart, Michael V. Hargett and Arthur J. Menor (RP), Co-Vice Chairs
 18. **Legislative Update** — Salome J. Zikakis (RP) and Kit van Pelt (PT), Co-Chairs; Terrence L. Harvey (RP), Gutman Skrande (PT) and Jennifer S. Tobin (RP), Co-Vice Chairs
 19. **Liaison with:**
 - a. **American Bar Association (ABA)** — Robert (“Rob”) S. Freedman, Edward F. Koren, George J. Meyer and Julius J. Zschau
 - b. **Business Law Section** – Manuel (“Manny”) Farach and Gwynne A. Young
 - c. **Clerks of Circuit Courts** — Laird A. Lile
 - d. **FLEA / FLSSI** — David C. Brennan and Roland D. (“Chip”) Waller
 - e. **Florida Bankers Association** — Mark T. Middlebrook and Robert G. Stern
 - f. **Judiciary** —Judge Mary Hatcher, Judge Hugh D. Hayes, Judge Mark A. Speiser, and Judge Michael Rudisill
 - g. **Out of State Members** — Nicole C. Kibert Basler, John E. Fitzgerald, Jr., and Michael P. Stafford

- h. **TFB Board of Governors** — Rosalyn Sia Baker-Barnes
- i. **TFB CLE Committee** — Angela M. Adams and Brenda B. Ezell
- j. **TFB Council of Sections** — S. Katherine Frazier and John C. Moran
- k. **TFB Pro Bono Legal Services** — Lorna E. Brown-Burton
- 20. **Long-Range Planning** — S. Katherine Frazier, Chair
- 21. **Meetings Planning** — George J. Meyer, Chair
- 22. **Membership and Inclusion** — Lawrence (“Larry”) J. Miller, Chair; Annabella Barboza, Shayla M. Johnson-Mount, Eryn E. Riconda, and Joseph M. Percopo, Co-Vice Chairs
- 23. **Model and Uniform Acts** — Patrick J. Duffey and Amber E. Ashton, Co-Chairs; Michael A. Bedke and Cullen I. Boggus, Co-Vice Chairs
- 24. **Professionalism and Ethics** — Andrew B. Sasso, Chair; Elizabeth A. Bowers Stoops, Alexander (“Alex”) B. Dobrev, Former Judge Celeste H. Muir, and Laura K. Sundberg, Co-Vice Chairs
- 25. **Publications ActionLine** — Erin F. Finlen and Michelle G. Hinden, Co-Chairs; Alexander S. Douglas, II, Daniel (“Danny”) L. McDermott, Gregg I. Strock, Paul E. Roman, and Seth R. Kaplan, Co-Vice Chairs
- 26. **Publications Florida Bar Journal** — J. Allison Archbold (PT) and Homer Duvall, III (RP), Co-Chairs; Marty J. Solomon, Brian C. Sparks, and Jonathan A. Galler, Co-Vice Chairs
- 27. **Sponsor Coordination** — Arlene C. Udick and Rebecca C. Bell, Co-Chairs; Marsha G. Madorsky, Jason J. Quintero, and J. Michael Swaine, Co-Vice Chairs
- 28. **Strategic Planning** — Robert (“Rob”) S. Freedman and William (“Bill”) T. Hennessey, III, Co-Chairs
- 29. **Strategic Planning Implementation** — Robert (“Rob”) S. Freedman, Robert (“Bob”) S. Swaine, William (“Bill”) T. Hennessey, III, Debra L. Boje, and Sarah S. Butters, Co-Chairs

XVI. Adjourn: Motion to Adjourn.

**Real Property, Probate and Trust Law (“RPPTL”) Section
Executive Council Meeting
JW Marriott Water Street
Tampa, Florida
November 11, 2023
9:30 a.m. (E.T.)**

Meeting Minutes

- I. **Presiding** — *S. Katherine Frazier, Chair* Meeting called to order at 9:32 a.m.
II. **Secretary’s Report** — *Lee A. Weintraub, Secretary*

1. Motion to approve the minutes of the September 23, 2023 meeting of the Executive Council held at The Fairmont Le Chateau Frontenac in Quebec City, Quebec.
2. Meeting Attendance.
3. Lee Weintraub announced the newly approved revisions to the Section bylaws have been posted on the Section website. He then discussed the procedures for in-person and remote voting for the various action items for today’s meeting. As required by the bylaws, Lee announced that the cost of the technology to permit remote voting at this meeting was \$617.

III. **Chair's Report** — *S. Katherine Frazier, Chair*

1. Recognition of Special Guests. Katherine recognized veterans in the room for Veterans Day. The Plant High School Color Guard presented the National Anthem. Katherine recognized Phil Baumann who passed away from leukemia. Nancy Baumann and Taylor Baumann Clifton, Phil’s wife and daughter, were recognized. Took a moment of silence.
2. Thank you to our Sponsors!
3. 2023-2024 Executive Council Meetings.
4. Milestones. Arlene Udick received the Guardian of Justice Award. Mike Bedke received the Distinguished Eagle Scout Award, the highest Eagle Scout award. Amanda Kison is Sarasota County Bar Association President. Kymberlee Curry Smith was appointed to the Florida Elections Commission.
5. General Comments of the Chair. Katherine congratulated Hilary Stephens as our new program administrator and welcomed Jeremy Citron as our new assistant program administrator. Katherine thanked Willie Mae Shepherd and others for their assistance this weekend. Katherine recognized law students in attendance.

IV. **Board of Governors Report** – *Rosalyn Sia (“Sia”) Baker-Barnes, Liaison*. Sia was unavailable for our meeting.

V. **Chair-Elect’s Report** – *John C. Moran, Chair-Elect*

1. 2024-2025 Executive Council meetings. John referred everyone to his calendar attached to the agenda.

VI. **Treasurer’s Report** – *S. Dresden Brunner, Treasurer*

1. Statement of Current Financial Conditions. Dresden referred everyone to the financial statements attached to the agenda.

VII. **Director of At-Large Members Report** – *Wilhelmina F. Kightlinger, Director* Legal Aid Societies from around the state presented to the ALMS on heirs’ property issues. Willie solicited participation in this and thanked members for donations to homeless veterans. Applications for nominations and re-nominations for ALMS are due now.

VIII. **CLE Seminar Coordination Report** – *Angela M. Adams (Probate & Trust) and Brenda Ezell (Real Property), Co-Chairs*

1. Upcoming CLE programs and opportunities. Brenda thanked chairs and speakers and showed the list of upcoming CLEs. Two subcommittees were created to begin offering basic level courses.

IX. **Legislation Committee** – *Steven H. Mezer (Real Property) and Sancha Brennan (Probate & Trust), Co-Chairs*. Sancha reported the legislative session starts January 9, 2024. The volume of filed bills will be high. If anyone is contacted directly by a legislator or their aide, please let Sancha or Steve know so we can track how often this happens. The Section’s bills approved by the Board of Governors are in bill drafting.

Steve discussed the status of real property division bills.

X. **Probate and Trust Law Division Report** – *Jon Scuderi, Division Director*

Action Item:

1. **Ad Hoc Guardianship Law Revision Committee** – Nicklaus J. Curley, Stacy B. Rubel, David C. Brennan, Co-Chairs

Proposed positions in response to SB48 (Karilyn’s Law).

Motion to:

(A) support legislation that provides for the continued rights of a ward to receive visitors and communicate with others when such contact would not be potentially harmful to the ward;

(B) oppose legislation that would:

- allow for jury trials in proceedings initiated under Chapter 744,
- allow for jury trials in proceedings related to contesting the validity of wills or trusts prior to the death of the testator/settlor,
- require the re-evaluation of wards without the filing of a suggestion of capacity or the exercise of the court's discretion,
- require a guardianship proceeding to be transferred to a new judge after the establishment of a guardianship without a substantive basis, or
- provide for a blanket requirement that any and all family members of the ward related by blood, marriage or adoption have access to guardianship inventories, accountings, or other financial information of the ward;

(C) find that the legislative positions are within the purview of the RPPTL Section; and

(D) expend funds in support of the proposed legislative positions.

The Guardianship Committee offered a friendly amendment revising the second bullet point to state: "allow for trials [jury or nonjury] in proceedings related to contesting the validity of wills or revocable trusts prior to the death of the testator/settlor, except as provided by current law."

The Motion to amend passed unanimously, both in person and remotely.

The amended proposal passed unanimously, both in person and remotely.

Information Item:

1. Asset Protection Committee – Michael A. Sneeringer, Chair

Proposed legislation to enact new Florida Statutes Section 736.05057 to provide that spouses may validly maintain the creditor protection characteristics of tenancies by the entirety ("TBE") property within the context of a joint revocable trust that meets the requirement of the proposed statute. Rick Gans discussed this. TBE assets have to be TBE going into the trust for protection. They cannot be made TBE once transferred into the trust.

XI. Real Property Law Division Report – Wm. Cary Wright, Division Director

Action Item:

1. Title Issues and Standards – Rebecca Wood and Amanda K. Hersem,

Co-Chairs

Motion to approve amendment to Standard 00 of the Uniform Title Standards to remove the masculine pronoun in the recognition of the diversity in the legal community and in the spirit of inclusivity. Amanda Hersem presented this motion. Passed unanimously in person & remotely.

XII. General Standing Committees Report – John C. Moran, Chair-Elect.

The report of the TFB Pro Bono Legal Services Liaison, Lorna Brown Burton, is attached hereto as Exhibit “A.”

John Moran reported as follows: (a) the strategic planning process is underway and the two-day meeting of the entire Strategic Planning Committee is scheduled to occur on February 9 and 10, 2024 in Orlando; (b) the Communications Committee has taken possession of the microsite and is working to integrate it with the RPPTL Section’s existing website; (c) the Disaster and Emergency Preparedness Committee has posted its “No Place Like Home” training CLE program on its Committee webpage, which provides for 2.5 hours of credit free of charge.

Action Items:

1. Budget Committee – S. Dresden Brunner, Chair

Motion to: (A) approve the proposed RPPTL Section Budget for the fiscal year 2024-2025; and (B) authorize transmittal to The Florida Bar Board of Governors with a request for the Board’s approval. Dresden discussed the budget. Passed unanimously in person and remotely.

2. Historian Committee – David C. Brennan, Chair

Report on creation of the newly established Historian Committee. Dave discussed this. Burt Bruton will be vice-chair. The Committee will conduct interviews with old-timers and new-timers and gather details of past activities. They will seek out chairs’ scrapbooks.

3. Legislation Committee – Steven H. Mezer (Real Property) and Sancha Brennan (Probate & Trust), Co-Chairs

Katherine Frazier announced our legislative consultants are leaving Dean Mead and joining Jones Walker. We will be working with the Florida Bar to execute the appropriate documents on the transition to their new firm under the same terms as the existing contract as Executive Committee interim action effective January 1, 2024.

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

Proposed amicus curiae action in response to opinion issued in AFP 103 Corp. v. Common Wealth Trust Services, LLC, Case No. 3D21-2117, Lower Tribunal No. 20-8291 (Fla. 3d DCA October 25, 2023), a copy of which is attached to this Supplemental Agenda.

Motion from the Real Property Problems Study Committee to:

- (A) waive the rule set forth in Article VIII, Section 4(a) of the Bylaws of the Real Property, Probate and Trust law, which provides:
Section 4. Procedures for Adopting and Reporting Section Positions.
 - (a) A proposed section position must be placed on the agenda and supporting documentation distributed to the executive council at least one week prior to the executive council meeting unless those requirements are waived by 2/3 of the members of the executive council present and voting at that meeting.
- (B) file a notice with the Florida Supreme Court indicating the RPPTL Section's intent to seek leave to file an amicus brief in AFP 103 Corp. v. Common Wealth Trust Services, LLC as soon as is authorized under the Florida Rules of Appellate Procedure;
- (C) seek leave of court, and if such leave is granted, file an amicus brief with the Florida Supreme Court on behalf of the RPPTL Section in support of the position that an easement over one's own land is deemed legal and validly created;
- (D) find that such action is within the purview of the RPPTL Section;
- (E) authorize transmittal of the proposed notice of intent and amicus brief to The Florida Bar Board of Governors with a request for the Board's approval; and
- (D) expend funds in support of the proposed positions, as may be necessary.

Susan Spurgeon presented this as Chair of the Real Property Problems Studies Committee. There is curative legislation already approved by the Section. Bob Goldman explained on behalf of the Amicus Committee the difference between the Notice of Intent to file an Amicus and the subsequent request to The Florida Bar for permission to submit the brief. Passed unanimously in person and remotely. Five members abstained due to involvement in the AFP case.

4. Ad Hoc Rules Revisions Committee – Michael V. Hargett, Thomas M. Karr, J. Richard Caskey, Co-Chairs

Motion to: (A) authorize and approve filing of Comment by the RPPTL Section

in response to the Florida Supreme Court's August 9, 2023 request for publication of proposed rules in *In Re: Amendments to Florida Rules of Civil Procedure*, Case No. SC2023-0962; (B) find that such Comment is within the purview of the RPPTL Section; and (C) authorize transmittal of the proposed Comment to The Florida Bar Board of Governors with a request for the Board's approval. Mike Hargett presented, explaining the history of this initiative. The Florida Supreme Court wants comment by December 1 on either track A (case management procedures in place since COVID) or Track B (the Supreme Court's workgroup recommendation to go to new procedures). Discussion was had on the Motion. Bob Goldman moved to amend the comment to change the 180 days before implementation of the rules changes to one year. Discussion was had on the motion to amend. Motion passed in person 94 yes, and 32 no. Remote vote was 25 in favor and 14 opposed. Motion to amend passed. The vote on the amended Motion asking for one year before implementation of rules changes passed unanimously in person and remotely.

5. Professionalism and Ethics Committee – Andrew B. Sasso, Chair

Motion to: (A) authorize and approve filing of Comment by the RPPTL Section in response to the Florida Supreme Court's July 7, 2023 Opinion in *In Re: Code for Resolving Professionalism Referrals and Amendments to Rule Regulating The Florida Bar 6-10.3*, Case No. SC2023-0884; (B) find that such Comment is within the purview of the RPPTL Section; and (C) authorize transmittal of the proposed Comment to the Florida Bar Board of Governors with a request for the Board's approval.

Dale Noll presented a PowerPoint outlining the proposed comment. The comment raises concerns about the deletion of bias elimination as a category of approved specialized mandatory CLE courses.

Lengthy discussion was had on the proposed comment.

Dresden Brunner moved to remove the last sentence in the proposed comment in paragraph 17 asking the Court to either rephrase the bias awareness or, if not, leave the current language including bias awareness. The motion was seconded. The motion failed.

Bob Goldman moved to appoint a drafting committee to redraft the comment if the concept of the comment has been approved. Bob withdrew this motion to restate it. Bob then moved to amend the Professionalism and Ethics Committee's motion to authorize the Section to file a comment capturing the policy of opposition to the change in the rule, but to send the comment to a drafting committee to work on the persuasiveness of the comment. Motion was seconded.

A motion from the floor was taken to call the question on Bob's motion. Motion was seconded. This motion passed with one vote in opposition. Bob's motion to amend failed with a vote of 40 in favor and 67 against in person, remotely

19 in favor and 21 against.

The original committee motion passed 89 in favor and 23 against in person and remotely 26 in favor and 14 against.

Meeting adjourned at 12:48 pm.

ATTENDANCE ROSTER

REAL PROPERTY PROBATE & TRUST LAW SECTION

EXECUTIVE COUNCIL MEETINGS

2023-2024

Executive Committee	Division		7/22/23 Breakers	9/23/23 Quebec City, Canada	11/11/23 Tampa	2/24/24 Orlando	6/1/24 Bonita Springs
	R	P					
Frazier, S. Katherine Chair	RP		√	√	√		
Moran, John C., Chair-Elect		PT	√	√	√		
Wright, Wm. Cary Division Director Real Property	RP		√	√	√		
Jon Scuderi, Division Director, Probate & Trust		PT	√		√		
Lee Weintraub Secretary	RP		√	√	√		
Dresden Brunner, Treasurer		PT	√		√		
Kightlinger, Wilhelmina Director, At-Large Members	RP		√		√		
Sancha Brennan, Legislation Co-Chair Probate & Trust		PT	√		√		
Steven H. Mezer, Legislation Co-Chair, Real Property	RP		√		√		
Adams, Angela M. CLE Co-Chair Probate & Trust		PT	√	√	√		
Brenda Ezell, CLE Co-Chair Real Property	RP		√	√	√		
Sarah Butters, Immediate Past Chair		PT	√	√	√		

Executive Council Members	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Acosta, Jolyon Delphin		PT	√		√		
Akins, David J.		PT	√	√	√		
Alaimo, Marve Ann M.		PT	√		√		
Altman, Stuart H.		PT			√		
Archbold, J. Allison		PT	Z	√	√		
Arnold, Casey		PT	√				
Arnold, Trevor	RP		√		√		
Aron, Jerry E. Past Chair	RP						
Ashton, Amber E.	RP		√		Z		
Awerbach, Martin S.	RP		√		Z		
Bald, Kimberly A.		PT	Z		√		
Bailey, Lilleth		PT	√		Z		
Baker-Barnes, Rosalyn Sia				√			
Ballaga, Raul	RP		√				
Barboza, Annabella	RP		Z		Z		
Barlow, Rachel N.		PT	√		√		
Baskies, Jeffrey		PT	√				
Batlle, Carlos A.		PT	√				
Baumann, Phillip A.		PT	√				
Beales, III, Walter R. Past Chair	RP		√				
Bedke, Michael A.	RP		√		√		
Behar, Jacobeli J.		PT	√		√		
Belcher, William F.		PT	√		√		
Bell, Kenneth B.	RP						

Executive Council Members	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Bell, Rebecca Coulter		PT	√	√	√		
Beller, Amy		PT			√		
Bloodworth, Jennifer J.	RP		√		√		
Boggus, Cullen			√		√		
Boje, Debra Lynn Past Chair		PT	√	√	√		
Bouchard, Eve		PT	√		Z		
Bowers-Stoops, Elizabeth A.		PT					
Boyd, Deborah	RP		√		Z		
Braun, Keith Brian		PT	√		√		
Brenes-Stahl, Tattiana		PT	√		Z		
Brennan, David C. Past Chair		PT			√		
Bronner, Tae K.		PT	√		Z		
Brown, Shawn	RP		√		√		
Brown-Burton, Lorna	RP		√		Z		
Bruton, Jr., Ed Burt	RP		√		Z		
Bucher, Elaine M.		PT	√				
Callahan, Chad W. III		PT	√		Z		
Caskey, John Richard “Rich”		PT					
Cazobon, Denise		PT			√		
Christiansen, Patrick Past Chair	RP			√			
Cole, Stacey L.		PT	√		√		
Coleman, Jami A.		PT			Z		
Comiter, Alyse Reiser		PT	√				

Executive Council Members	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Conetta, Tami F.		PT	√		√		
Cook, Stephanie		PT	√		√		
Cope, Jr., Gerald B.	RP		Z	√	Z		
Cornett, Jane Louise	RP		√		Z		
Cranford, Jeremy	RP		√		Z		
Crockett, Debbie	RP		√		Z		
Cummins, Amanda		PT	√		√		
Curley, Nick		PT	√		√		
DeNapoli, Richard			√		√		
Detzel, Lauren Y.		PT	√		√		
Diamond, Benjamin F.		PT	√	√	√		
Diamond, Sandra F.		PT	√	√	√		
Past Chair							
Dobrev, Alex	RP		√		Z		
Dollinger, Jeffrey	RP		Z		√		
Douglas, Alexander		PT	√		√		
Dribin, Michael		PT	√		√		
Past Chair							
Duffey, Patrick J.		PT	√				
Duvall, III, Homer	RP		√		√		
Eisel, Jeffrey		PT	√		√		
Ellison, Jason M.	RP		√		√		
Emerich, Guy S.		PT	√		Z		
Ertl, Christene M.	RP		√		Z		
Evert, Jamison C.		PT	√		Z		
Fagan, Gail		PT	√	√	√		

Executive Council Members	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Falk, Jr., Jack A.		PT	√		Z		
Farach, Manuel	RP		√	√			
Felcoski, Brian J. Past Chair		PT	√		Z		
Ferguson, Elizabeth B.	RP		Z		Z		
Fernandez, Kristopher E.	RP		√	√	Z		
Fields, Alan B.	RP		√		√		
Finchum, Travis		PT	√		√		
Finlen, Erin F.		PT	√	√	√		
Fitzgerald, Jr., John E.		PT			√		
Freedman, Robert (Rob) Past Chair	RP		Z	√	√		
Friedman, Bridget		PT	√	√	√		
Friedman, Jesse B.		PT	√				
Fugate, Norm	RP		√		√		
Gabel, Alexandra	RP		√		Z		
Galler, Jonathan		PT					
Gans, Richard R.		PT	√		√		
Gelfand, Michael J Past Chair	RP		√	√	√		
George, Joseph P.		PT	√	√	√		
Getzan, Roberta							
Goethe, Jeffrey S.		PT			√		
Goldman, Louis “Trey”	RP		√		√		
Goldman, Robert W. Past Chair		PT	√		√		

Executive Council Members	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Goodall, Deborah P. Past Chair		PT	√		√		
Graham, Robert M.	RP		√		√		
Granet, Lloyd	RP		√				
Griffin, Linda S.		PT	Z		√		
Grimsley, John G. Past Chair		PT					
Gunther, Eamonn W.		PT	√		√		
Guttmann, III, Louis B Past Chair	RP		√				
Hargett, Michael V.	RP		√	√	√		
Harris, Shelly W.		PT	Z				
Harvey, Terrance	RP		√		√		
Hatcher, Hon. Mary							
Hayes, Hon. Hugh D.			√				
Hayes, Michael Travis		PT	√		√		
Haynes, Jourdan	RP		√		√		
Hearn, Frederick “Ricky”		PT	√		√		
Hearn, Steven L. Past Chair		PT	√				
Hellmuth, Kelly		PT			Z		
Henderson, III, Thomas N.	RP		√		√		
Hennessey, William (“Bill”) Past Chair		PT		√	√		
Hersem, Amanda	RP		√		√		
Hertz, Allison	RP		√		√		

Executive Council Members	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Heuston, Stephen P.		PT	√		√		
Hinden, Michelle	RP				√		
Hipsman, Mitchell Alec		PT	√		√		
Hoffman, Brian W.	RP		√		√		
Hughes, Elizabeth		PT	√		√		
Huss, Cady L.		PT	√		√		
Hutt, Gregg Evan	RP		Z		√		
Isphording, Roger O. Past Chair		PT					
Jaiven, Kristen King	RP		√	√	√		
Jarrett, Sharifa K.		PT	Z		Z		
Johnson, Amber Jade		PT	√		√		
Jones, Darby		PT			√		
Jones, Frederick W.	RP		Z		√		
Kalmanson, Stacy O.	RP		√	√	√		
Kangas, Michael R.		PT	√		√		
Kaplan, Seth		PT	Z		√		
Karr, Thomas M.		PT	Z		√		
Kayser, Joan B. Past Chair		PT					
Kelley, Rohan Past Chair		PT	√				
Kelley, Sean W.		PT			√		
Kelley, Shane		PT					
Kibert-Basler, Nicole	RP				Z		
Kinsolving, Ruth Barnes	RP				√		

Executive Council Members	Division		7/22/2023 Breakers	9/23/2023 Quebec City, Canada	11/11/2023 Tampa	2/24/2024 Orlando	6/1/2024 Bonita Springs
	R	P					
Past Chair							
Kison, Amanda	RP		√				
Koren, Edward F. Past Chair		PT	√		Z		
Kotler, Alan Stephen		PT	√		√		
Kurian, Sanjay	RP		√		√		
Kypreos, Theodore S.		PT	√		√		
Lancaster, Rob		PT	√		√		
Lane, Jr., William R.		PT			√		
Lannon, Patrick		PT	√		√		
Lebowitz, Sean		PT	Z		Z		
Licastro, Laura	RP		√		√		
Lile, Laird A. Past Chair		PT	√		√		
Little, III, John W.	RP		√		Z		
Liu, Jin	RP		√		Z		
Lunsford, Rachel Albritton		PT	√	√	√		
Madorsky, Marsha G.		PT	√				
Malec, Brian		PT	√		√		
Maple, Hayley	RP		√		√		
Marger, Bruce Past Chair		PT			√		
Marx, James A.	RP		Z		Z		
McCall, Alan K.	RP		√				
McConnell, Eryn	RP		Z		√		
McConnell, Ryan	RP		√	√	√		

Executive Council Members	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
McDermott, Daniel		PT	√		Z		
McElroy, IV, Robert Lee		PT	√		√		
McIver, Richard	RP		√		√		
McRae, Ashley E.	RP		√		√		
Menor, Arthur J.	RP				√		
Meyer, George F. Past Chair	RP		√		√		
Meyer, Michael	RP		√				
Middlebrook, Mark	RP		√		√		
Miller, Erin			√		Z		
Miller, Lawrence ("Larry")		PT	√		√		
Mount, Shayla	RP				√		
Muir, Hon. Celeste H.		PT			√		
Murphy, Melissa J. Past Chair	RP		√				
Nash, Charles I.		PT	Z		Z		
Neukamm, John B. Past Chair	RP			√	√		
Nguyen, Hung V.		PT	Z		√		
O'Malley, Andrew M.	RP				√		
Papanikos, Cristina		PT	√		√		
Partington, Bruce	RP		√	√	√		
Payne, L. Howard		PT					
Pence, Scott P.	RP		√		Z		
Percopo, Joe		PT	√		√		
Pilotte, Frank		PT	√	√	√		

	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Pollack, Anne Q.	RP		√	√	√		
Powell, Caitlin		PT	√				
Prescott, Leonard	RP		√		√		
Pressley, Grier James		PT	Z				
Price, Pamela O.		PT			Z		
Prince-Troutman, Stacy		PT	√		√		
Quintero, Jason	RP		√		√		
Reid, Taniquea		PT	√		√		
Redding, John N.	RP		√	√	√		
Riconda, Eryn		PT	√		√		
Robbins, Jr., R. James	RP		√	√	√		
Robbins, Russell	RP		√		Z		
Roberts, III, Hardy L.	RP		√		√		
Roberts, Tance		PT	√		Z		
Robinson, Jennifer		PT	Z		Z		
Rojas, Silvia B.	RP		√	√	√		
Rolando, Margaret A. Past Chair	RP		√	√	√		
Roman, Paul E.		PT	√	√	Z		
Romano, Antonio		PT					
Rubel, Stacy		PT	√		√		
Rubenstein, Michael		PT	√		√		
Rubin, Jenna		PT	√				
Rudisill, Hon. Michael	RP		√		√		
Russick, James C.	RP		√	√	√		
Sachs, Colleen C.	RP		√		√		

	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Sajdera, Christopher	RP		Z		√		
Sanchez-Medina, Roland							
Sasso, Andrew		PT	√		√		
Savioli, Justin		PT			Z		
Scaletta, Melissa	RP		√		Z		
Schwartz, Martin	RP		Z		Z		
Schwartz, Robert M.	RP		√		√		
Shanks, David	RP		√				
Sheets, Sandra G.		PT	√	√	√		
Sherrill, Richard		PT	√				
Sklar, William P.	RP						
Skrande, Gutman		PT	√		√		
Smart, Christopher W.		PT	√		√		
Smith, Kymberlee C.	RP		√		√		
Smith, G. Thomas Past Chair/Hon. Member	RP						
Smith, Yoshimi O.		PT					
Sneeringer, Michael A.		PT	√				
Solomon, Marty	RP		√				
Sparks, Brian C.		PT	√		√		
Speiser, Hon. Mark A.		PT	√				
Spivey, Barry F.		PT	√		√		
Spurgeon, Susan K.	RP				√		
Stafford, Michael P.		PT	√		√		
Staker, Karla J.	RP		√	√	√		
Stashis, Alfred Joseph		PT	Z		√		

	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Stern, Robert G.	RP		√	√	Z		
Stivelman, Alessandra			√		Z		
Stoops, Elizabeth			√				
Stone, Adele I.	RP		Z		√		
Stone, Bruce M. Past Chair		PT			√		
Stotts, Darren		PT	√		√		
Strock, Gregg			√		√		
Sundberg, Laura K.		PT	√	√	√		
Swaine, Jack Michael Past Chair	RP			√	√		
Swaine, Robert S. Past Chair	RP				√		
Taft, Ellie	RP		√				
Taylor, Richard W.	RP						
Thomas, Hon. Patricia		PT	√	√			
Thompson, Andrew		PT	√		Z		
Thornton, Kenneth E. "Kip"	RP		√		√		
Tobin, Jennifer S.	RP		√		Z		
Tschida, Joseph John	RP		√				
Tucker, Kristine L.		PT			√		
Udick, Arlene C.	RP		√	√	Z		
Van Dien, Lisa Barnett	RP		Z		√		
Van Lenten, Jason Paul		PT	√		Z		
Van Pelt, Kit E.		PT	√	√	√		
Villarroel, Nicole Marie	RP		√				
Virgil, Eric		PT			√		

Executive Council Members	Division		7/22/2023	9/23/2023		2/24/2024	6/1/2024
	R	P	Breakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Waller, Roland D. Past Chair	RP		√		√		
Wan, Alyssa Razook		PT	√		√		
Warner, Richard		PT	√		√		
Weiss, Brad R.	RP		√		√		
Williams, Margaret A.	RP						
Williams, Jorja		PT	√		√		
Williamson, Julie Ann Past Chair	RP						
Wolasky, Marjorie E.		PT	√	√	Z		
Wolf, Jerome L.		PT					
Wood, Rebecca	RP		√		√		
Young, Gwynne A.		PT			Absence excused		
Zeydel, Diana S.C.		PT	√		√		
Zikakis, Salome J.	RP		√		√		
Zimmer, Greg		PT			√		
Zschau, Julius J. Past Chair	RP						
Zuroweste, Zack		PT	√		√		

Affiliate Members

Fellows	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Beakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Boisrond, Sandy		PT	√		√		

Cherneski, John		PT	√		√		
Curtis, Wade							
Clark, Danielle		PT	√		√		
Davis, Jade							
Harmon, Sara Ashley		PT	√	√	√		
Mora, Jeanette		PT	√		Z		
Pieczynski, Janaye			√		Z		
Selvaraj, Natasha			√		√		

Legislative Consultants	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Beakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Brown, French	RP		√		√		
Dunbar, Marc							
Dunbar, Peter M.	RP		√	√	√		
Edenfield, Martha Jane		PT	√	√	√		

Sponsors	Division		7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
	R	P	Beakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
Vianna, Rafaela			√	√	√		
Jones, Todd				√			
Jenkins, Joryn				√			
Seigel, Daniel				√			

	R	P					



Thank you to Our General Sponsors

<u>Level</u>	<u>Sponsor</u>	<u>Contact Name</u>	<u>Email</u>
Platinum	Old Republic Title	Jim Russick	jrussick@oldrepublictitle.com
Platinum	The Fund	Melissa Murphy	mmurphy@thefund.com
Platinum	RealAdvice	Todd Jones	Todd.Jones@realadvice.com
APP	WFG National Title Insurance	Joseph J. Tschida	Jtschida@wfgnationaltitle.com
Gold	CATIC	Deb Boyd	dboyd@catic.com
Gold	Coral Gables Trust Company	John Harris	jharris@cgtrust.com
Gold	First American Title Insurance Company	Len Prescott	lprescott@firstam.com
Gold	FNF Family of Companies – Florida	Karla Staker	Karla.staker@fnf.com
Gold	Guardian Trust	Travis Finchum	travis@specialneedslawyers.com
Gold	JP Morgan Private Bank	Carlos Batlle	Carlos.a.batlle@jpmorgan.com
Gold	Stewart Title Guaranty Company	David Shanks	David.shanks@stewart.com
Gold	Stout	Garry Marshall	gmarshall@stout.com
Gold	Westcor Land Title Insurance Company	Laura Licastro	Laura.licastro@wltic.com
Silver	LEAP	John Celmer	John.celmer@leap.us
Silver	Management Planning, Inc.	Roy Meyers	rmeyers@mpival.com
Silver	Athanassie Capital Partners	Steve Athanassie	steve@teamacpartners.com
Silver	Title Resources Group	Lee Offir	Lee.offir@titleresources.com

Silver	Valuation Services Inc.	Jeff Bae	jeff@valuationservice.com
Silver	WealthCounsel	Rachel Gifford	rachel.gifford@wealthcounsel.com
Bronze	Amerant Bank	Madelayne Cordero	mcordero@amerantbank.com
Bronze	BNY Mellon Wealth Management	Rafaela Vianna	Rafaela.vianna@bnymellon.com
	Business Valuation Analysts	Tim Bronza	tbronza@bvanalysts.com
Bronze	Cumberland Trust	Bob Carville	bcarville@cumberlandtrust.com
Bronze	Grove Bank & Trust	Marta Goldberg	mgoldberg@grovetbankandtrust.com
Legislative Update	The Fund	Melissa Murphy	mmurphy@thefund.com

DEAN|MEAD

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 South Orange Avenue, Suite 700
P.O. Box 2346
Orlando, FL 32801

(407) 841-1200
(407) 423-1831 Fax
www.deanmead.com

Attorneys and Counselors at
Law

Orlando
Fort Pierce
Naples
Tallahassee
Viera/Melbourne
Vero Beach

PETE DUNBAR
(850) 270-5512
pdunbar@deanmead.com

November 22, 2023

VIA E-Mail

Katherine Frazier
Chair, RPPTL Section of the Florida Bar
651 E Jefferson St.
Tallahassee, FL 32399

Re: Notice of Termination of Section Legislative Advising Services Agreement

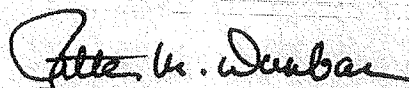
Dear Katherine,

Effective December 31, 2023, Dean Mead will be terminating the Section Legislative Advising Services Agreement with the Real Property, Probate and Trust Law Section of the Florida Bar ("RPPTL Section") executed July 26, 2022.

Pursuant to the paragraph 4 of the agreement, we ask that the RPPTL Section waive the sixty (60) day written notice requirement by acknowledgment below. The agreement provides in the event of a termination that any fees will be prorated; therefore, Dean Mead will be entitled to fees through December 31, 2023.

Please let us know if you have any questions or concerns.

Sincerely,


Pete Dunbar
Shareholder

.....
A Member of ALFA International - The Global Legal Network

Error! Unknown document property name.

November 22, 2023

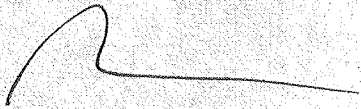
Page 2

CC: Joshua Doyle

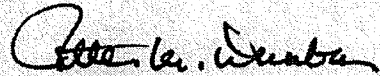
WAIVER OF TERMINATION NOTICE AND PRORATION OF FEES

The RPPTL Section of the Florida Bar hereby recognizes that the Section Legislative Advising Services Agreement with Dean Mead will terminate December 31, 2023, and thereby waives the sixty-day written notice requirement.

Pursuant to the proration provided in the agreement, Dean Mead and the RPPTL Section agree that Dean Mead will be entitled to compensation for this representation through December 31, 2023. Therefore, the December 1, 2023 quarterly payment will be reduced from \$30,000 to \$10,000 paid to Dean Mead.



Katherine Frazier
Chair, RPPTL Section



Pete Dunbar
Dean Mead

DEAN|MEAD

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 South Orange Avenue, Suite 700
P.O. Box 2346
Orlando, FL 32801

(407) 841-1200
(407) 423-1831 Fax
www.deanmead.com

Attorneys and Counselors at Law

Orlando
Fort Pierce
Naples
Tallahassee
Viera/Melbourne
Vero Beach

PETER M. DUNBAR
(850) 999-4100
pdunbar@deanmead.com

December 7, 2023

Real Property, Probate & Trust Law Section
c/o S. Katherine Frazier, Chair
Hill, Ward & Henderson
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
katherine.frazier@hwhlaw.com

Re: Real Property Probate & Trust Law Section of the Florida Bar
Legislative and Executive Counsel Services #032798-059246
Departure of Peter Dunbar

Dear Ms. Frazier:

We jointly wanted to inform you that Peter Dunbar is leaving Dean Mead effective December 31, 2023. Dean Mead and Mr. Dunbar want to ensure that there is no disadvantage to you, as the client, by virtue of this departure. Upon Mr. Dunbar's departure, Dean Mead will no longer be able to serve as your counsel.

According to the Rules Regulating the Florida Bar, we are informing you that you have the right to choose to have Mr. Dunbar continue to represent you in this matter at Jones Walker, LLP. Alternatively, you may choose to retain a new lawyer or firm.

We will need to make arrangements to settle your outstanding account, if any, with Dean Mead on or before Mr. Dunbar's departure, after which we will make arrangements to transfer your file to Mr. Dunbar or the new lawyer you designate.

Please advise us, as quickly as possible, of your decision so that continuity in your representation is assured. You may do so by indicating your choice below and returning a signed and dated copy via email to our Office Administrator, Soledad Hasan at shasan@deanmead.com. Please also retain a copy of this designation for your records.

Very truly yours,



Peter M. Dunbar



Nicky Mooney
For the Firm

Instructions:

☒ I wish my file and trust account balance, if any, to be transferred to Peter Dunbar at Jones Walker, LLP and will contact Dean Mead to arrange the file transfer.

☐ I wish to retain new counsel and will have new counsel contact Soledad Hasan at shasan@deanmead.com.

I acknowledge that regardless of my choice, I remain responsible for any fees and costs already incurred. Any fees or costs may be deducted from any trust fund balance held by the firm.

Real Property, Probate and Trust Law Section of
The Florida Bar

Client Printed Name

/s/ S. Katherine Frazier, Chair

Client Signature

Date: 12/14/2023

MUTUAL TERMINATION OF THE FLORIDA BAR SECTION LEGISLATIVE ADVISING SERVICES AGREEMENT

In consideration of the agreements set forth herein and other good and valuable consideration, the sufficiency of which the parties acknowledge, it is

Agreed that the document captioned: "The Florida Bar Section Legislative Advising Services Agreement" dated July 26, 2022, between the Real Property, Probate and Trust Law Section of The Florida Bar ("Section") and Dean Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. ("Dean Mead" or "Legislative Advisor"), and the Contract Addendum thereto of same date be and are hereby terminated by mutual agreement between the parties and shall be null and void as of December 31, 2023, at midnight.

The parties further agree that any and all balances and outstanding accounts between the parties shall be mutually reconciled in a timely manner at the earliest convenience of the parties and that this right and obligation of reconciliation shall survive termination of the Agreement.

This Agreement may be executed in counterparts manually or by electronic means, all of which together will constitute one instrument that will be the Agreement.

WITNESS our signatures below.

DEAN MEAD, EGERTON, BLOODWORTH,
CAPOUANO & BOZARTH, P.A.

By: 
Peter M. Dunbar, on behalf of
Dean Mead, Legislative Advisor

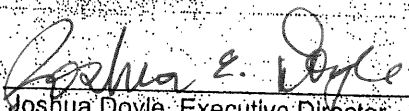
Dated: December _____, 2023

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

By: 
S. Katherine Frazier, Chair

Dated: December 31, 2023

THE FLORIDA BAR

By: 
Joshua Doyle, Executive Director

Dated: December _____, 2023

January 16, 2024

THE FLORIDA BAR SECTION LEGISLATIVE ADVISING SERVICES AGREEMENT

THIS AGREEMENT is entered into pursuant to Standing Board Policy 9.51, by and between the REAL PROPERTY, PROBATE, AND TRUST LAW SECTION of THE FLORIDA BAR ("SECTION"), and JONES WALKER, LLP ("LEGISLATIVE ADVISOR"), who, in consideration as stated below, agree as follows:

1. **Term.** The LEGISLATIVE ADVISOR will serve from January 1, 2024 to August 31, 2024, as a legislative advisor for the SECTION. The LEGISLATIVE ADVISOR agrees to comply with all policies adopted by The Florida Bar (TFB) Board of Governors and by the SECTION.
2. **Services.**
 - a. The LEGISLATIVE ADVISOR will serve as the advisor regarding legislative, administrative and regulatory matters that affect the SECTION. Peter M. Dunbar will be the lead contact and will be primarily responsible for performing the services to the SECTION under this Agreement. Other professional staff at the firm that will assist are: Martha Edenfield, French Brown, Marc Dunbar, Chris Moya and Jennifer Ungru.
 - b. Other Clients
 - 1) The LEGISLATIVE ADVISOR agrees that, if the LEGISLATIVE ADVISOR individually or his/her firm are to represent any client before the Florida Legislature other than set forth in the attached list, the LEGISLATIVE ADVISOR will notify in writing the Executive Director of TFB, the chair of the Bar's Legislation Committee, and the chair of the SECTION in writing at least 2 days before initiation of any such representation by the LEGISLATIVE ADVISOR.
 - 2) The LEGISLATIVE ADVISOR further agrees not to advance on behalf of other clients any legislative position contrary to an official legislative position of TFB or the SECTION.
 - a) Potential or actual conflicts of interest will be communicated within 24 hours to the Executive Director of TFB and the chair of the SECTION to facilitate immediate resolution.
 - b) If the conflict cannot be resolved to the satisfaction of TFB and the SECTION, this agreement will be terminated.
 - 3) The LEGISLATIVE ADVISOR and the SECTION acknowledge that the services to be provided under this Agreement are governed by TFB's Rules of Professional Conduct, including those provisions relating to conflict of interest between clients.
 - c. The LEGISLATIVE ADVISOR will work on TFB legislative matters only as directed by the Executive Director of TFB, when the Executive Director believes that such participation is necessary and in the best interest of the membership of TFB, unless conflict exists or it is inappropriate for the LEGISLATIVE ADVISOR to work on TFB legislative matters.

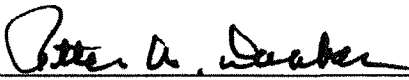
- 1) In this event, the cost of the LEGISLATIVE ADVISOR's time will be assessed against the SECTION.
 - 2) In this event, the LEGISLATIVE ADVISOR will advise the SECTION and track and report to the SECTION the costs incurred by the LEGISLATIVE ADVISOR.
- d. The LEGISLATIVE ADVISOR will coordinate all activities regarding the Florida Legislature that might affect the SECTION, which includes but is not limited to:
- 1) Identifying legislative issues likely to come before the Legislature during the term of the Agreement that will require services under the Agreement;
 - 2) Notifying the SECTION of any committee hearings of the Legislature that deal with issues that concern any area within the purview of the SECTION;
 - 3) Preparing presentations, when requested, to be made to legislators and their committee staff;
 - 4) Providing to the SECTION summaries of pre-filed and filed bills that deal with areas within the purview of the SECTION and copies of the actual bills when appropriate;
 - 5) Providing weekly reports during the legislative session on the status of legislative matters on which the SECTION has taken a position or has a pending legislative proposal, and providing reports on any new matters filed that are within the purview of the SECTION;
 - 6) Providing all services necessary to promote and support the SECTION's legislative proposals and other matters affecting the SECTION's areas of practice, and work with SECTION-designated contacts to obtain legislative sponsors for the SECTION's proposals;
 - 7) Using best efforts, while working with SECTION representatives, to ensure there is a diversity of legislators that sponsor SECTION legislation from year to year;
 - 8) Alerting the SECTION to the activities of other interested groups relating to legislative proposals promoted by, supported, or opposed by the SECTION; and
 - 9) Reporting on other matters that might affect, or be of interest to, the SECTION and its legislative program, including but not limited to regulation, rulemaking, and the provisions of technical assistance to the Executive Branch, executive branch agencies, and the Florida Legislature.
3. **Payment.** The SECTION will pay the LEGISLATIVE ADVISOR a fee of \$80,000, inclusive of all reasonable costs and expenses, to be paid in the following manner: \$20,000 payable on January 1, 2024, \$30,000 payable on March 1, 2024, and \$30,000 payable on June 1, 2024 plus out-of-pocket expenses in an aggregate amount not to exceed \$20,500 per year, inclusive of expenses paid to Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. per that Legislative Advising Services Agreement between the parties dated July 26, 2022, for attendance at in-state Executive Council meetings and certain incidental expenses approved by the Section.

4. **Termination.** This Agreement may be terminated by either party upon sixty (60) days' written notice being given or may be immediately terminated by TFB if it decides that the LEGISLATIVE ADVISOR or a member of the LEGISLATIVE ADVISOR's firm does not act within the best interest of TFB. In the event of such termination, the LEGISLATIVE ADVISOR will be entitled to payment of outstanding fees. Monthly fees will be determined on a *pro rata* basis based on the number of days remaining in the applicable month.
5. **Disclosure Requirements.**
 - a. Florida law requires lobbying firms to make certain public disclosures regarding their legislative and executive branch lobbying activity, including registering to represent a client and reporting compensation related to all lobbying activity for each client on a quarterly basis, with such compensation reports being subject to random audits. See Fla. Stat. § 11.045 & 112.3215. The SECTION and LEGISLATIVE ADVISOR agree and consent to the disclosure of any information in this Agreement by either party or by TFB as required by law.
 - b. The Florida House of Representatives requires lobbying firms to publicly disclose each issue they are engaged to lobby on behalf of a lobbying client, including specific bill numbers. The Florida House of Representatives also requires lobbying firms representing public sector clients to post lobbying contracts on this [website](#).
 - c. Florida lawyers who engage in lobbying activity for a client are bound by the Rules Regulating the Florida Bar that provide that information relating to a client's representation is confidential unless certain limited exceptions apply. Some of the information required to be disclosed by Florida law and the Florida House of Representatives above is considered confidential by TFB. By entering into this Agreement, the SECTION consents to the disclosure of the required information.
6. **Standing Board Policies.**
 - a. The LEGISLATIVE ADVISOR agrees to advocate for the SECTION only those positions that have been submitted understanding board policy 9.50.
 - b. As required by standing board policy 9.51:
 - 1) The LEGISLATIVE ADVISOR agrees to attach to this agreement a list of current legislative clients of the LEGISLATIVE ADVISOR and the LEGISLATIVE ADVISOR's firm, and update that list at least annually; and
 - 2) The LEGISLATIVE ADVISOR agrees to communicate legislative or political developments that affect the judicial branch and bar to the Executive Director of The Florida Bar and its legislative affairs office.
7. **Miscellaneous.**
 - a. The LEGISLATIVE ADVISOR agrees to identify him/herself always as a representative of the SECTION and not as a representative of TFB when working on SECTION matters.
 - b. This Agreement will be governed by the laws of the State of Florida.
 - c. This Agreement is not assignable by either party.

- d. All notices provided under this Agreement will be in writing and addressed to the undersigned persons and their designees at their email and mailing addresses as set forth in the membership records of TFB.
- e. This Agreement represents the entire agreement of the parties and may be amended only by a written instrument signed by all parties, unless a document is referenced in this Agreement and attached; then it is part of this Agreement as if fully incorporated herein.
- f. This Agreement may be executed in counterparts manually or by electronic means, all of which together will constitute one instrument that will be the Agreement.

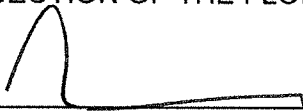
WITNESS our signatures below.

JONES WALKER, LLP

By: 
Peter M. Dunbar, on behalf of
Jones Walker, LLP, Legislative Advisor

Dated: Effective as of January 1, 2024

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

By: 
S. Katherine Frazier, Chair

Dated: Effective as of January 1, 2024

THE FLORIDA BAR

By: 
Joshua Doyle, Executive Director

Dated: Effective as of January 1, 2024

Attachment 1: List of Clients

CONTRACT ADDENDUM

By mutual consent of the parties hereto and consistent with the enactment of revisions to Sections 11.045 and 112.3215 and related provisions of the Florida Statutes during the 2005-B Special Session of the Legislature, the contract with Jones Walker, LLP is revised to identify the services and the compensation for said services in the following categories effective January 1, 2024:


1. **Lobbying before the Legislature:** The client and Firm agree that the portion of time and services under the Agreement that is to be devoted to influencing or attempting to influence legislative action or non-action through oral or written communication or attempting to obtain the goodwill of members of the Legislature and employees of the Legislature shall be equal to forty percent (40%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$48,000.00, less payments to Dean Mead for services through December 31, 2023 per the July 2022 The Florida Bar Section Legislative Advising Services Agreement between Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. ("Dean Mead") and the Real Property, Probate & Trust Law Section of The Florida Bar ("the July 2022 Agreement").

2. **Lobbying before the Executive Branch:** The client and Firm agree that the portion of time and services under the Agreement that is to be devoted to influencing or attempting to influence an agency with respect to a decision of the agency in the area of policy through oral or written communication or attempting to obtain the goodwill of an agency official or employee shall be equal to twenty percent (20%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$24,000.00, less payments to Dean Mead for services through December 31, 2023 per the July 2022 Agreement.

3. **Other Non-Lobbying Services:** The client and Firm agree that the portion of time and services under the Agreement to be devoted to non-lobbying services for the client, its members and employees, including, but not limited to, preparation of CLE educational written and oral offerings and briefings, legal research, attendance at meetings of the client and related travel, communications with judicial and court administration officials and the preparation of written articles, opinions and reports for the client, shall be equal to forty percent (40%) of the total time and services to be provided under this Agreement. The annual compensation to be paid for these services shall be \$48,000.00, less payments to Dean Mead for services through December 31, 2023 per the July 2022 Agreement.

Except as modified hereby, the terms and conditions of the contract with Firm are ratified and confirmed to be effective as of January 1, 2024.

JONES WALKER, LLP

By: 
Peter M. Dunbar, on behalf of
Jones Walker, LLP, Legislative Advisor

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

By: 
S. Katherine Frazier, Chair

THE FLORIDA BAR

By: _____
Joshua Doyle, Executive Director

CHAIR

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

CHAIR-ELECT

John C. Moran
 Gunster Yoakley & Stewart P.A.
 777 S. Flagler Drive, Ste. 500E
 West Palm Beach, FL 33401-6121
 (561) 650-0515
 jmoran@gunster.com

REAL PROPERTY LAW DIVISION DIRECTOR

Wm. Cary Wright
 Carlton Fields
 4221 W. Boy Scout Blvd., Ste. 1000
 Tampa, FL 33607-5780
 (813) 223-7000, ext. 4135
 cwright@carltonfields.com

PROBATE AND TRUST LAW DIVISION DIRECTOR

Jon Scuderi
 Goldman Felcoski & Stone, P.A.
 850 Park Shore Dr., Ste. 203
 Naples, FL 34103-3587
 (239) 436-1988
 jscuderi@gfsestatelaw.com

SECRETARY

Lee Weintraub
 Becker & Poliakoff, P.A.
 1 East Broward Blvd., Ste. 1800
 Fort Lauderdale, FL 33301-1876
 (954) 985-4147
 lweintraub@beckerlawyers.com

TREASURER

S. Dresden Brunner
 S. Dresden Brunner, P.A.
 P.O. Box 111575
 Naples, FL 34108
 (239) 580-8104
 Dbrunner@dresdenbrunnerlaw.com

LEGISLATION CO-CHAIRS

Sancha K. Brennan
 The Brennan Law Firm
 545 Delaney Avenue
 Hovey Court, Building One
 Orlando, FL 32801
 (407) 893-7888
 sbrennan@thebrennanlawfirm.com

Steven H. Mezer
 Becker & Poliakoff, P.A.
 1511 N. West Shore Blvd., Ste. 1000
 Tampa, FL 33607-4591
 (813) 527-3906
 smezer@bplegal.com

CLE COORDINATION CO-CHAIRS

Brenda B. Ezell
 Ezell Law Firm, P.A.
 3560 Cardinal Point Drive, Ste. 202
 Jacksonville, FL 32557-9238
 (904) 432-3200
 brenda@ezellfirm.com

Angela McClendon Adams
 Law Office of Wm. Fletcher Belcher
 540 4th St. North
 St. Petersburg, FL 33701-2302
 (727) 821-1249
 amemadams@gmail.com

DIRECTOR, AT-LARGE MEMBERS

Wilhelmina F. Kightlinger
 Stewart Title Guaranty Company
 3402 W. Cypress St.
 Tampa, FL 33607-5008
 (813) 519-9956
 Wilhelmina.kightlinger@stewart.com

IMMEDIATE PAST CHAIR

Sarah Butters
 Ausley McMullen
 123 S. Calhoun St.
 Tallahassee, FL 32301-1517
 (850) 224-9115
 sbutters@ausley.com

PROGRAM ADMINISTRATOR

Hilary Stephens
 The Florida Bar
 651 E. Jefferson Street
 Tallahassee, FL 32399-2300
 (850) 561-5626
 hstephens@floridabar.org

ASSISTANT PROGRAM ADMINISTRATOR/**CLE LEAD**

Jeremy Citron
 The Florida Bar
 651 E. Jefferson Street
 Tallahassee, FL 32399-2300
 (850) 561-3155
 jcitron@floridabar.org

REAL PROPERTY, PROBATE & TRUST LAW SECTION



THE FLORIDA BAR

November 21, 2023

Via E-Mail thill@floridabar.org

Terry L. Hill
 Division Director, Programs
 The Florida Bar
 651 East Jefferson Street
 Tallahassee, Florida 32399-2300

Re: Florida Realtor Attorney Joint Committee

Dear Terry:

Thank you for allowing the RPPTL Section to review the applications for the Florida Realtor Attorney Joint Committee ("Joint Committee") and provide recommendations for the Board of Governors' consideration. The RPPTL Executive Committee's recommendations are as follows:

1st DCA

Lori Ward. Ms. Ward is in-house General Counsel for a real estate development company which includes a real estate brokerage. She also maintains a small outside practice focusing solely on real estate-related transactional matters. She is the President of Priority Title, a corporate title agency which she co-owns with the principals of Legendary. Also, she is a licensed real estate sales associate.

2nd DCA

Julie Horstkamp. Ms. Horstkamp got her start in real estate closings back in 1976 working as a receptionist/processor at a local title company in Bethesda, Maryland. In 1980, Ms. Horstkamp moved to Sussex County, Delaware where she worked as a real estate paralegal for a law firm in Georgetown, Delaware. To further her education, Ms. Horstkamp moved to Sarasota, Florida in 1990 where she continued to work as a full-time real estate paralegal while attending college in the evening. In 1995, Ms. Horstkamp received a Bachelor of Science degree in Accounting from the University of South Florida. She earned her Juris Doctorate degree from Stetson University College of Law in 1998. Ms. Horstkamp has been member of the Florida Bar since 1998 and has been designated by the Florida Bar as a Board Certified Real Estate Attorney since 2004.

Ms. Horstkamp is active in both the state and local legal community. She is a member of the Real Property Section of the Real Property Probate and Trust Law (“RPPTL”) Section of the Florida Bar. She serves on both the Real Estate Industry Liaison Committee and the Title Insurance Committee of the RPPTL Section. Since January 2008, she serves as a Representative of the 2nd DCA on the Florida Realtor-Attorney Joint Committee (“FR/BAR”) of the Florida Bar.

3rd DCA

Gregory S. Oropeza. Mr. Oropeza, native to Key West, began his real estate and business law career working with a long-time Key West real estate boutique law firm, handling all aspects of residential and commercial real estate transactional work. In 2012, Mr. Oropeza became a partner of what grew to be the largest law firm in Monroe County until April of 2017 when he along with Ginny Stones and Susan Cardenas formed Oropeza, Stones & Cardenas, focusing primarily on real property related matters. His areas of practice includes real estate transactions, land use, business law, landlord/tenant law, structured finance, land use and real estate litigation. Mr. Oropeza is an agent for Chicago Title National Insurance Company and Attorney's Title Fund Services.

4th DCA

Kara L. Stachel. Ms. Stachel has experience both as a transactional attorney and as a title underwriter. Ms. Stachel is currently an attorney and title underwriter at First American Title Insurance Company. Previously, Ms. Stachel was the founding member of Stachel Law Planning, PLLC - a firm handling both real estate closing and probate matters.

Ms. Stachel is a member of RPPTL and received board certification in Real Estate in 2022. Ms. Stachel has been a member of the Florida Bar since 2011.

5th DCA

Terrence L. Harvey. Mr. Harvey is experienced in the areas of civil litigation, real property, contract disputes and bankruptcy. Immediately prior to joining the Ezell Law Firm, Mr. Harvey was sole shareholder of a general civil litigation law firm specializing in real estate transactions, bankruptcy and insurance law. A FINRA-certified arbitrator, he has also arbitrated cases for the Financial Industry Regulatory Authority since 2015.

Mr. Harvey is a member of RPPTL, has served on the section’s Title Issues & Standards Committee, Real Estate Leasing Committee and Commercial Real Estate Committee, and is a 2020-2022 Real Property Section Fellow. Mr. Harvey is currently participating in the Bar’s Leadership Academy.

6th DCA

Erin M. Miller. Ms. Miller has focused her practice on assisting Buyers and Sellers with real estate transactions for the last nine years. She is dedicated to educating clients and industry partners to ensure that their sale or purchase proceeds according to the terms of their agreements.

THE FLORIDA BAR

Ms. Miller enjoys presenting and serving as a panelist for Real Estate Agent and Broker educational events. Some of her recent presentations on the NABOR and FRBAR Contracts include: Keeping the Deal together, Real Estate Inspections, Financing Contingencies, FIRPTA, Contract Updates/Comparisons, Seller's Disclosures, HOA Disclosures, Avoiding Deal Breakers, Death and Real Estate Closings, Personal Property, and Hurricane Preparedness for Realtors.

Ms. Miller has been a member of The Florida Bar for over ten years. She has specialized exclusively in real estate transactions since 2014 and is an active member of RPPTL's Residential Real Estate and Industry Liaison Committee.

At Large

Samuel J Saad, III. Mr. Saad is widely known in Southwest Florida as a Naples real estate law attorney and business law authority, especially for small business formation and dispute resolution.

Mr. Saad is a member of the Florida Bar Association where he serves on the RPPTL's Residential Real Estate and Industry Liaison Committee, and the Collier County Bar Association. He is also a member of the Naples Area Board of Realtors (NABOR) and the Greater Naples Chamber of Commerce, where he also graduated from the Leadership Collier program in 2013.

We thank you and the Board of Governors for allowing the RPPTL Section the opportunity to provide these recommendations.

Sincerely,

Katherine Frazier

Katherine Frazier
Chair, Real Property Probate & Trust Law Section

Date: January 31, 2024

This agreement is made and entered into, as the date below, by and between Colleen Schuster ("Schuster") and the Real Property, Probate and Trust Law Section of The Florida Bar ("Client").

Schuster agrees to provide the following services:

Scope of Work:

- Proofread and Edit Actionline articles for layout;
- Organize and follow-up with the writers, article's editors, ALMS, fellows, and others who are all responsible for developing content for Actionline;
- Work with staff and layout personnel through the layout process;
- Shepherd writing, editing and publishing processes between authors and layout teams;
- Follow up and solicit articles from the standing committees;
- Manage the Actionline progress chart and follow up on authors and editors while managing the work flow;
- Manage the photos for Actionline publication including collecting them effectively, including posting to the RPPTL website;
- Help manage advertising aspects and coordinate efforts to get more sponsors and advertisers;
- Manage Actionline's page on the RPPTL website, including Actionline staff guidelines; and
- Review, test, and learn what other sections and bars are doing and share some best practices so Client can give suggestions for going forward with respect to electronic newsletters etc.
- Provide monthly updates to the committee chair(s) concerning the status of the respective Actionline issue, including all content received, the status of review, and content intended for future Actionline issues.

Timeframe:

Actionline is quarterly publication and workload will be dictated by the deadlines for submission of articles by authors listed below.

- Spring Issue: January 15
- Summer Issue: April 15
- Fall Issue: July 15
- Winter Issue: October 15

The deadlines for publishing the electronic version of Actionline are listed below:

- Spring Issue: March 15

- Summer Issue: June 15
- Fall Issue: September 15
- Winter Issue: December 15

Fee Schedule:

Schuster will submit detailed invoices to Client each month. Invoices should include an itemized list of time associated with each task. An agreed upon rate of \$50/hour with an estimated time required of 40 hours/month. If Schuster exceeds 40 hours/month, notice will be given to bar staff in advance of overage. In addition, any travel requested and required by Schuster, will be reimbursable by the Client. The start date for this contract will be February 1, 2024. The end date for this contract will be August 30, 2024. Checks are to be made payable to: Colleen Schuster

Independent Contractor Provision:

Contractor shall be and at all times act as an independent contractor with respect to Client and agrees to comply with all applicable state and federal tax and other laws imposed upon Contractor as a result of Contractor's status as an independent contractor, specifically including without limitation, Contractor acknowledges that Contractor shall be responsible for the payment of federal income, Social Security, Medicare or other taxes and withholdings. This Agreement shall not be deemed to create any agency, employment, partnership or joint venture relationship between Client and Contractor. Neither party shall have the power or authority to bind, commit or obligate the other in any manner whatsoever without the other's prior written consent. No representations of either party shall be binding upon the other party without the other party's prior written consent.

Termination for Cause:

Client shall be entitled to terminate Schuster for cause for failure to satisfactorily perform the items listed in the Scope of Work above or missing the deadlines for publishing the electronic version of Actionline. Client shall give Schuster seven (7) days' written notice of the deficiencies in Schuster's performance and an opportunity to cure the items listed in such written notice. If Schuster fails to cure the noticed deficiencies, Client shall then provide a seven (7) days' written notice of termination.

Termination for Convenience:

Client has the right to terminate this contract for convenience and without cause. In such event, Client shall give Schuster seven (7) days' written notice.

<hr/> <div style="display: flex; justify-content: space-between;"> Colleen Schuster Date </div>	<hr/> <div style="display: flex; justify-content: space-between;"> Terry Hill, Director Programs Division of The Florida Bar Date </div>
---	--

RPPTL 2023-2024
Executive Council Meeting Schedule
Katherine Frazier's Year

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

NOTE- Committee meetings may be conducted virtually via Zoom prior to the in-state Executive Council meeting weekend. Both virtual attendance and voting will be permitted at the in-state Executive Council meeting unless notice is otherwise provided.

Date	Location
July 19 – July 23, 2023	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$257 Premium Room Rate: \$314
September 20 – September 24, 2023	Executive Council Meeting Fairmont Le Chateau Frontenac Quebec City, Quebec, Canada Standard Guest Room Rate (King): \$359 CAD (Canadian Dollars) *Reminder – You will need your passport!
November 8 – November 12, 2023	Executive Council Meeting JW Marriott Tampa Water Street Tampa, Florida Standard Guest Room Rate: \$259 King Suite Room Rate: \$289
February 21 – February 25, 2024	Executive Council Meeting Ritz Carlton Grande Lakes Orlando, Florida Standard Room Rate: \$359 JW Marriott Standard Room Rate: \$329
May 29 – June 2, 2024	Executive Council Meeting & Annual Convention Hyatt Regency Coconut Point Bonita Springs, Florida Standard Guest Room Rate: \$209

RPPTL 2024-2025
Executive Council Meeting Schedule
John Moran's Year

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

NOTE- Committee meetings may be conducted virtually via Zoom prior to the in-state Executive Council meeting weekend. Both virtual attendance and voting will be permitted at the in-state Executive Council meeting unless notice is otherwise provided.

Date	Location
July 24 – July 27, 2024	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate (Deluxe Room – King): \$295 Premium Room Rate: \$365
September 4 – September 8, 2024	Executive Council Meeting Loews Coral Gables Coral Gables, Florida Room Rate (Run of house): \$229
December 4 – December 08, 2024	Executive Council Meeting The Broadmoor Colorado Springs, Colorado Room Rate (Run of West): \$265
February 5 – February 9, 2025	Executive Council Meeting The Ritz Carlton Amelia Island Amelia Island, Florida Room Rate (Coastal View): \$399
May 28 – June 1, 2025	Executive Council Meeting & Annual Convention Four Seasons Orlando Orlando, Florida Room Rate (Run of house): \$399

THE FLORIDA BAR
Real Property Probate and Trust Law Section
For the Seven Months Ending January 31, 2024

	January	YTD 2024	FY 23-24 Budget	Prior Year January	YTD 2023	FYE Actual 2023	CY Budget % Utilized
3001-Annual Fees	2,160	674,040	660,000	2,100	674,580	679,210	102.13%
3002-Affiliate Fees	-	11,900	5,000	240	12,460	12,540	238.00%
Total Fee Revenue	2,160	685,940	665,000	2,340	687,040	691,750	103.15%
3301-Registration-Live	53,015	602,514	579,300	75,175	507,562	676,879	104.01%
3321-Registration-Webcast	-	-	15,000	-	-	-	0.00%
3331-Registration-Ticket	-	8,930	32,000	2,750	11,300	12,300	27.91%
Total Registration Revenue	53,015	611,444	626,300	77,925	518,862	689,179	97.63%
3341-Exhibit Fees	4,500	123,000	78,500	9,750	83,150	99,900	156.69%
3351-Sponsorships	127,850	640,450	495,000	61,450	539,675	578,950	129.38%
3391 Section Profit Split	75,468	437,906	425,000	112,028	486,375	627,155	103.04%
3392-Section Differential	1,740	12,300	15,000	2,580	11,940	21,300	82.00%
Other Event Revenue	209,558	1,213,656	1,013,500	185,808	1,121,140	1,327,305	119.75%
3401-Sales-CD/DVD	3,900	31,570	20,000	865	32,572	68,427	157.85%
3411-Sales-Published Materials	-	-	1,500	-	-	-	0.00%
Sales, Rents & Royalties Revenue	3,900	31,570	21,500	865	32,572	68,427	146.84%
3561-Advertising	-	-	18,000	-	2,000	8,840	0.00%
Advertising & Subscription Revenue	-	-	18,000	-	2,000	8,840	0.00%
3699-Other Operating Revenue	-	-	800	-	-	-	0.00%
3901-Eliminated InterFund Revenue	-	-	-	175	175	350	0.00%
Other Revenue Sources	-	-	800	175	175	350	0.00%
3899-Investment Allocation	(8,987)	129,991	148,906	40,278	163,774	228,505	87.30%
Non-Operating Income	(8,987)	129,991	148,906	40,278	163,774	228,505	87.30%
Total Revenue	259,647	2,672,601	2,494,006	307,390	2,525,563	3,014,357	107.16%
4131-Telephone Expense	73	73	-	-	-	-	0.00%
4133-Internet Service	-	823	-	-	-	-	0.00%
4134-Web Services	3,001	20,811	75,000	2,190	26,618	48,648	27.75%
4301-Photocopying	-	-	100	-	-	-	0.00%
4311-Office Supplies	68	2,518	5,150	150	261	2,301	48.90%
Total Staff & Office Expense	3,142	24,226	80,250	2,340	26,878	50,949	30.19%
5031-A/V Services	-	-	-	-	79	79	0.00%
5051-Credit Card Fees	3,944	14,726	31,110	3,844	21,643	45,115	47.34%
5101-Consultants	-	40,400	120,000	19,234	90,600	150,600	33.67%
5121-Printing-Outside	16,050	39,825	127,500	383	36,127	80,712	31.24%
5181-Speaker Honorarium	-	-	5,000	-	-	-	0.00%
5199-Other Contract Services	715	21,667	125,000	26,640	53,955	55,703	
Total Contract Services	20,709	116,618	408,610	50,100	202,404	332,208	28.54%
5501-Employee Travel	1,625	20,391	41,966	2,307	15,196	21,632	48.59%
5531-Board/Off/Memb Travel	-	-	19,998	-	3,061	3,755	0.00%
5571-Speaker Travel	-	12,211	27,100	-	10,263	24,734	45.06%
5581-Consultant Travel	-	-	15,000	(8,634)	5,959	15,344	0.00%
5599-Other Travel	-	-	-	(1,410)	-	636	0.00%
Total Travel	1,625	32,602	104,064	(7,737)	34,478	66,102	31.33%
6001-Post 1st Class/Bulk	8,847	11,043	-	131	2,382	37,036	0.00%
6021-Post Express Mail	-	-	-	-	165	165	0.00%
6311-Mtgs General Meeting	28,548	464,881	750,000	57,889	665,495	791,312	61.98%
6319-Mtgs Other Functions	-	6,489	42,000	-	10,198	45,575	15.45%
6321-Mtgs Meals	-	114,174	389,000	15,387	126,735	313,601	29.35%
6325-Mtgs Hospitality	-	119,242	194,100	3,508	170,926	256,264	61.43%
6341-Mtgs Equip Rental	-	30,182	101,000	2,400	31,442	78,517	29.88%
6361-Mtgs Entertainment	-	3,357	40,000	-	-	35,800	8.39%
6399-Mtgs Other	10,371	13,200	25,000	-	3,320	3,320	52.80%
6401-Speaker Expense	-	-	7,500	-	-	-	0.00%

6451-Committee Expense	1,007	73,688	100,000	25,621	87,477	161,842	73.69%
6531-Brd/Off Special Project	-	-	50,000	-	265	265	0.00%
6599-Brd/Off Other	1,829	5,589	15,000	500	500	1,000	37.26%
7001-Grant/Award/Donation	166	4,010	13,000	94	2,381	9,373	30.84%
7003-Div Int Grants	-	4,500	12,000	1,500	3,084	3,084	37.50%
7004-Law School Prog	176	729	5,500	-	1,072	1,859	13.25%
7006-Professional Outreach	-	-	3,000	500	500	500	0.00%
7011-Scholarship/Fellowship	1,679	11,114	27,000	2,232	11,290	19,097	41.16%
7999-Other Operating Exp	-	2,077	6,300	81	85	3,607	32.97%
Total Other Expense	52,623	864,275	1,780,400	109,842	1,117,315	1,762,217	48.54%
8011-Administration CLE	-	16,650	33,250	-	15,850	37,850	50.08%
8021-Section Admin Fee	783	248,472	229,354	914	249,581	251,865	108.34%
8101-Printing In-House	-	2,409	7,350	-	656	1,349	32.78%
8131-A/V Services	35	-	-	-	5,337	5,827	0.00%
8141-Journal/News Service	-	425	500	-	850	1,275	85.02%
8171-Course Approval Fee	150	150	450	150	300	750	33.33%
8901-Eliminated IntEnt Exp	-	1,500	3,000	-	3,500	7,500	50.00%
Total Admin & Internal Expense	968	275,627	273,904	1,064	276,075	306,417	100.63%
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	100.00%
Total InterFund Transfers Out	-	500	500	-	500	500	100.00%
Total Expense	79,066	1,313,848	2,647,728	155,610	1,657,651	2,518,393	49.62%
Net Operations	180,580	1,358,753	(153,722)	151,781	867,913	495,964	
2001-Fund Balance, Beginning	-	3,103,715			2,607,751	2,607,751	
Fund Balance, Ending	-	4,462,468			3,475,664	3,103,715	

THE FLORIDA BAR
Real Property, Probate and Trust Law General
For the Seven Months Ending January 31, 2024

	January	YTD 2024	FY 23-24 Budget	Prior Year January	YTD 2023	FYE Actual 2023	CY Budget % Utilized
3001-Annual Fees	2,160	674,040	660,000		674,580	679,210	102.13%
3002-Affiliate Fees	-	11,900	5,000	240	12,460	12,540	238.00%
Total Fee Revenue	2,160	685,940	665,000	2,340	687,040	691,750	103.15%
3301-Registration-Live	7,515	286,993	180,000	33,205	246,480	249,176	159.44%
Total Registration Revenue	7,515	286,993	180,000	33,205	246,480	249,176	159.44%
3351-Sponsorships	5,250	324,500	200,000	-	207,000	181,875	162.25%
3391 Section Profit Split	75,468	437,906	425,000	112,028	486,375	627,155	103.04%
3392-Section Differential	1,740	12,300	15,000	2,580	11,940	21,300	82.00%
Other Event Revenue	82,458	774,706	640,000	114,608	705,315	830,330	121.05%
3561-Advertising	-	-	18,000	-	2,000	8,840	0.00%
Advertising & Subscription Revenue	-	-	18,000	-	2,000	8,840	0.00%
3901-Eliminated InterFund Revenue	-	-	-	175	175	350	0.00%
Other Revenue Sources	-	-	-	175	175	350	0.00%
3899-Investment Allocation	(8,987)	129,991	148,906	40,278	163,774	228,505	87.30%
Non-Operating Income	(8,987)	129,991	148,906	40,278	163,774	228,505	87.30%
Total Revenue	83,147	1,877,630	1,651,906	190,605	1,804,784	2,008,952	113.66%
4131-Telephone Expense	73	73	-	-	-	-	0.00%
4133-Internet Service	-	823	-	-	-	-	0.00%
4134-Web Services	3,001	20,811	75,000	2,190	26,618	48,648	27.75%
4311-Office Supplies	68	2,518	5,000	150	261	2,301	50.36%
Total Staff & Office Expense	3,142	24,226	80,000	2,340	26,878	50,949	30.28%
5051-Credit Card Fees	201	6,485	17,500	664	5,689	16,084	37.06%
5101-Consultants	-	40,400	120,000	19,234	90,600	150,600	33.67%
5121-Printing-Outside	16,050	39,825	120,000	383	33,357	77,942	33.19%
5199-Other Contract Services	715	21,667	125,000	26,640	53,280	55,028	17.33%
Total Contract Services	16,966	108,377	382,500	46,920	182,926	299,654	28.33%
5501-Employee Travel	1,625	16,680	28,000	2,307	12,787	14,078	59.57%
5531-Board/Off/Memb Travel	-	-	19,998	-	3,061	3,755	0.00%
5581-Consultant Travel	-	-	15,000	(8,634)	5,959	15,344	0.00%
5599-Other Travel	-	-	-	(1,410)	-	636	0.00%
Total Travel	1,625	16,680	62,998	(7,737)	21,807	33,813	26.48%
6001-Post 1st Class/Bulk	8,747	9,507	-	21	1,709	35,445	0.00%
6311-Mtgs General Meeting	28,548	464,881	750,000	73,276	664,425	780,243	61.98%
6319-Mtgs Other Functions	-	-	-	-	-	818	0.00%
6325-Mtgs Hospitality	-	22,600	35,000	3,508	32,313	33,654	64.57%
6399-Mtgs Other	10,371	13,200	25,000	-	-	-	52.80%
6401-Speaker Expense	-	-	7,500	-	-	-	0.00%
6451-Committee Expense	1,007	73,688	100,000	25,621	87,477	161,842	73.69%
6531-Brd/Off Special Project	-	-	50,000	-	265	265	0.00%
6599-Brd/Off Other	1,829	5,589	15,000	500	500	1,000	37.26%
7001-Grant/Award/Donation	166	608	8,000	94	422	7,344	7.60%
7003-Div Int Grants	-	-	12,000	-	-	-	0.00%
7004-Law School Prog	-	-	5,500	-	-	-	0.00%
7006-Professional Outreach	-	-	3,000	-	-	-	0.00%
7011-Scholarship/Fellowship	1,679	11,114	27,000	2,232	11,290	19,097	41.16%
7999-Other Operating Exp	-	-	3,000	-	-	-	0.00%
Total Other Expense	52,347	601,187	1,041,000	105,251	798,402	1,039,709	57.75%
8021-Section Admin Fee	783	248,472	229,354	914	249,581	251,865	108.34%
8101-Printing In-House	-	761	3,000	-	450	928	25.35%
8901-Eliminated IntEnt Exp	-	1,500	3,000	-	3,500	7,500	50.00%
Total Admin & Internal Expense	783	250,733	235,354	914	253,531	260,293	106.53%

9692-Transfer Out-Council of Sections	-	500	500	-	500	500	100.00%
Total InterFund Transfers Out	-	500	500	-	500	500	100.00%
Total Expense	74,862	1,001,701	1,802,352	147,688	1,284,044	1,684,918	55.58%
Net Operations	8,285	875,928	(150,446)	42,917	520,740	324,034	

THE FLORIDA BAR
Real Property Legislative Update
For the Seven Months Ending January 31, 2024

	January	YTD 2024	FY 23-24 Budget	Prior Year January	YTD 2023	FYE Actual 2023	CY Budget % Utilized
3321-Registration-Webcast	-	-	15,000	-	-	-	0.00%
3331-Registration-Ticket	-	-	20,000	-	-	-	0.00%
Total Registration Revenue	-	-	35,000	-	-	-	
3341-Exhibit Fees	-	37,500	14,000	-	-	-	267.86%
3351-Sponsorships	-	6,000	-	-	16,400	20,400	0.00%
Other Event Revenue	-	43,500	14,000	-	16,400	20,400	310.71%
3401-Sales-CD/DVD	-	1,800	-	275	7,600	10,925	0.00%
Sales, Rents & Royalties Revenue	-	1,800	-	275	7,600	10,925	0.00%
Total Revenue	-	45,300	49,000	275	24,000	31,325	92.45%
4301-Photocopying	-	-	100	-	-	-	0.00%
4311-Office Supplies	-	-	150	-	-	-	0.00%
Total Staff & Office Expense	-	-	250	-	-	-	0.00%
5031-A/V Services	-	-	-	-	79	79	0.00%
5051-Credit Card Fees	-	40	360	7	474	1,240	11.04%
5121-Printing-Outside	-	-	5,000	-	2,663	2,663	0.00%
Total Contract Services	-	40	5,360	7	3,217	3,982	0.74%
5501-Employee Travel	-	-	3,000	-	1,106	1,106	0.00%
5571-Speaker Travel	-	4,697	6,000	-	5,165	5,165	78.28%
Total Travel	-	4,697	9,000	-	6,271	6,271	52.18%
6001-Post 1st Class/Bulk	-	69	-	57	319	458	0.00%
6311-Mtgs General Meeting	-	-	-	-	1,069	1,069	0.00%
6321-Mtgs Meals	-	24,045	45,000	-	44,878	44,878	53.43%
6325-Mtgs Hospitality	-	588	1,500	-	-	-	39.23%
6341-Mtgs Equip Rental	-	10,691	15,000	-	9,359	9,359	71.27%
7001-Grant/Award/Donation	-	3,402	5,000	-	1,958	2,028	68.03%
7999-Other Operating Exp	-	607	500	-	-	157	121.40%
Total Other Expense	-	39,402	67,000	57	57,583	57,949	58.81%
8011-Administration CLE	-	700	750	-	1,000	1,000	93.33%
8101-Printing In-House	-	311	1,150	-	200	200	27.04%
8131-A/V Services	-	-	-	-	70	175	0.00%
8171-Course Approval Fee	-	-	-	-	150	300	0.00%
Total Admin & Internal Expense	-	1,011	1,900	-	1,420	1,675	53.21%
Total Expense	-	45,149	83,510	64	68,490	69,877	54.06%
Net Operations	-	151	(34,510)	211	(44,490)	(38,552)	

THE FLORIDA BAR
Real Property Convention
For the Seven Months Ending January 31, 2024

	January	YTD 2024	FY 23-24 Budget	Prior Year January	YTD 2023	FYE Actual 2023	CY Budget % Utilized
3301-Registration-Live	-	(929)	70,000	-	(1,011)		-1.33%
Total Registration Revenue	-	(929)	70,000	-	(1,011)	70,300	-1.33%
3341-Exhibit Fees	4,500	4,500	15,000	9,750	9,750	26,500	30.00%
3351-Sponsorships	9,000	9,000	10,000	6,000	6,000	34,000	90.00%
Other Event Revenue	13,500	13,500	25,000	15,750	15,750	60,500	54.00%
Total Revenue	13,500	12,571	95,000	15,750	14,739	130,800	13.23%
5051-Credit Card Fees	96	87	1,000	374	372	2,341	8.66%
Total Contract Services	96	87	1,000	374	372	2,341	8.66%
5501-Employee Travel	-	-	5,000	-	-	1,484	0.00%
5571-Speaker Travel	-	-	-	-	-	2,483	0.00%
Total Travel	-	-	5,000	-	-	3,967	0.00%
6311-Mtgs General Meeting	-	-	-	(15,387)	-	10,000	0.00%
6321-Mtgs Meals	-	-	185,000	15,387	15,387	114,123	0.00%
6341-Mtgs Equip Rental	-	290	20,000	-	-	235	1.45%
6361-Mtgs Entertainment	-	3,357	40,000	-	-	35,800	8.39%
Total Other Expense	-	3,647	245,000	-	15,387	160,158	1.49%
8101-Printing In-House	-	-	200	-	-	-	0.00%
Total Admin & Internal Expense	-	-	200	-	-	-	0.00%
Total Expense	96	3,733	251,200	374	15,759	166,466	1.49%
Net Operations	13,404	8,838	(156,200)	15,376	(1,020)	(35,665)	

THE FLORIDA BAR
Real Property Construction Law Institute
For the Seven Months Ending January 31, 2024

	January	YTD 2024	FY 23-24 Budget	Prior Year January	YTD 2023	FYE Actual 2023	CY Budget % Utilized
3301-Registration-Live	45,500	45,500	140,000	41,970	41,970	129,560	32.50%
3331-Registration-Ticket	-	-		2,750	2,750	3,750	0.00%
Total Registration Revenue	45,500	45,500	142,000	44,720	44,720	133,310	32.04%
3351-Sponsorships	107,100	184,050	190,000	54,450	216,500	244,300	96.87%
Other Event Revenue	107,100	184,050	190,000	54,450	216,500	244,300	96.87%
3401-Sales-CD/DVD	3,900	23,800	15,000	590	13,120	40,510	158.67%
3411-Sales-Published Materials	-	-	500	-	-	-	0.00%
Sales, Rents & Royalties Revenue	3,900	23,800	15,500	590	13,120	40,510	153.55%
3699-Other Operating Revenue	-	-	800	-	-	-	0.00%
Other Revenue Sources	-	-	800	-	-	-	0.00%
Total Revenue	156,500	253,350	348,300	99,760	274,340	418,120	72.74%
5051-Credit Card Fees	2,463	4,651	5,250	1,945	6,779	10,357	88.59%
5181-Speaker Honorarium	-	-	5,000	-	-	-	0.00%
5199-Other Contract Services	-	-	-	-	675	675	0.00%
Total Contract Services	2,463	4,651	10,250	1,945	7,454	11,032	45.38%
5501-Employee Travel	-	-	2,000	-	-	2,119	0.00%
5571-Speaker Travel	-	-	9,000	-	-	11,671	0.00%
Total Travel	-	-	11,000	-	-	13,790	0.00%
6001-Post 1st Class/Bulk	87	362	-	20	220	867	0.00%
6021-Post Express Mail	-	-	-	-	67	67	0.00%
6319-Mtgs Other Functions	-	-	32,000	-	5,000	39,559	0.00%
6321-Mtgs Meals	-	-	96,000	-	-	88,130	0.00%
6325-Mtgs Hospitality	-	-	57,600	-	-	82,920	0.00%
6341-Mtgs Equip Rental	-	-	35,000	2,400	2,400	49,240	0.00%
7999-Other Operating Exp	-	-	1,500	81	81	2,076	0.00%
Total Other Expense	87	362	222,100	2,501	7,768	262,859	0.16%
8011-Administration CLE	-	-	1,500	-	-	14,850	0.00%
8101-Printing In-House	-	-	-	-	-	78	0.00%
8131-A/V Services	35	175	-	-	147	497	0.00%
8141-Journal/News Service	-	-	500	-	-	425	0.00%
8171-Course Approval Fee	150	150	150	150	150	150	100.00%
Total Admin & Internal Expense	185	325	2,150	150	297	16,000	15.12%
Total Expense	2,736	5,338	245,500	4,595	15,519	303,681	2.17%
Net Operations	153,764	248,012	102,800	95,165	258,821	114,439	

THE FLORIDA BAR
Real Property Trust Attorney Loan Officer
For the Seven Months Ending January 31, 2024

	January	YTD 2024	FY 23-24 Budget	Prior Year January	YTD 2023	FYE Actual 2023	CY Budget
3301-Registration-Live	-	-	12,500	-	-	8,400	0.00%
Total Registration Revenue	-	-	12,500	-	-	8,400	0.00%
3341-Exhibit Fees	-	-	1,500	-	-	-	0.00%
3351-Sponsorships	6,500	8,000	15,000	1,000	3,500	8,500	53.33%
Other Event Revenue	6,500	8,000	16,500	1,000	3,500	8,500	48.48%
Total Revenue	6,500	8,000	29,000	1,000	3,500	16,900	27.59%
5051-Credit Card Fees	139	176	-	-	86	409	0.00%
Total Contract Services	139	176	-	-	86	409	0.00%
5501-Employee Travel	-	-	1,250	-	-	1,100	0.00%
5571-Speaker Travel	-	-	4,000	-	-	318	0.00%
Total Travel	-	-	5,250	-	-	1,418	0.00%
6321-Mtgs Meals	-	-	6,000	-	2,500	2,500	0.00%
6325-Mtgs Hospitality	-	-	5,000	-	3,000	4,077	0.00%
6341-Mtgs Equip Rental	-	-	1,000	-	-	-	0.00%
7999-Other Operating Exp	-	-	300	-	-	-	0.00%
Total Other Expense	-	-	12,300	-	5,500	6,577	0.00%
8011-Administration CLE	-	-	6,000	-	-	7,150	0.00%
8101-Printing In-House	-	-	-	-	-	137	0.00%
8171-Course Approval Fee	-	-	150	-	-	150	0.00%
Total Admin & Internal Expense	-	-	6,150	-	-	7,437	0.00%
Total Expense	139	176	23,700	-	5,586	15,841	0.74%
Net Operations	6,361	7,824	5,300	1,000	(2,086)	1,059	

THE FLORIDA BAR
Real Property Trust Officer Liaison Conference
For the Seven Months Ending January 31, 2024

	January	YTD 2024	FY 23-24 Budget	Prior Year January	YTD	FYE Actual 2023	CY Budget % Utilized
3301-Registration-Live	-	270,950	176,800	-	220,123	219,443	153.25%
3331-Registration-Ticket	-	8,930	10,000	-	8,550	8,550	89.30%
Total Registration Revenue	-	279,880	186,800	-	228,673	227,993	149.83%
3341-Exhibit Fees	-	81,000	48,000	-	73,400	73,400	168.75%
3351-Sponsorships	-	108,900	80,000	-	90,275	89,875	136.13%
Other Event Revenue	-	189,900	128,000	-	163,675	163,275	148.36%
3401-Sales-CD/DVD	-	5,970	5,000	-	11,852	16,992	119.40%
3411-Sales-Published Materials	-	-	1,000	-	-	-	0.00%
Sales, Rents & Royalties Revenue	-	5,970	6,000	-	11,852	16,992	99.50%
Total Revenue	-	475,750	320,800	-	404,200	408,260	148.30%
5051-Credit Card Fees	1,046	3,287	7,000	855	8,244	14,683	46.96%
5121-Printing-Outside	-	-	2,500	-	107	107	0.00%
Total Contract Services	1,046	3,287	9,500	855	8,350	14,790	34.61%
5501-Employee Travel	-	3,711	2,716	-	1,303	1,746	136.65%
5571-Speaker Travel	-	7,514	8,100	-	5,098	5,098	92.77%
Total Travel	-	11,226	10,816	-	6,401	6,844	103.79%
6001-Post 1st Class/Bulk	12	1,105	-	33	135	267	0.00%
6021-Post Express Mail	-	-	-	-	98	98	0.00%
6319-Mtgs Other Functions	-	6,489	10,000	-	5,198	5,198	64.89%
6321-Mtgs Meals	-	90,130	57,000	-	63,970	63,970	158.12%
6325-Mtgs Hospitality	-	96,053	95,000	-	135,613	135,613	101.11%
6341-Mtgs Equip Rental	-	19,201	30,000	-	19,683	19,683	64.00%
6399-Mtgs Other	-	-	-	-	3,320	3,320	0.00%
7999-Other Operating Exp	-	1,470	1,000	-	4	1,374	147.02%
Total Other Expense	12	214,449	193,000	33	228,020	229,522	111.11%
8011-Administration CLE	-	15,950	25,000	-	14,850	14,850	63.80%
8101-Printing In-House	-	1,338	3,000	-	6	6	44.59%
8131-A/V Services	-	5,846	-	-	5,120	5,155	0.00%
8141-Journal/News Service	-	425	-	-	850	850	0.00%
8171-Course Approval Fee	-	-	150	-	-	150	0.00%
Total Admin & Internal Expense	-	23,559	28,150	-	20,826	21,011	83.69%
Total Expense	1,058	252,521	241,466	888	263,598	272,167	104.58%
Net Operations	(1,058)	223,229	79,334	(888)	140,603	136,093	

Date of Presentation	Crs. #	Title	Location
3/6/24	8625	Derivative Actions (joint with Condo Committee)	Webcast
3/13/24	8236	Real Estate Certification Review Academy	Webcast
3/13/24	8266	Securing Your Knowledge of SECURE: IRA Beneficiary Designations under SECURE 2.0. Part 1 of 4: Spousal Beneficiaries	Webcast
3/15/24	8148	Transitioning from Residential to Commercial Real Estate Practice	Webcast
3/20/24 – 3/24/24	8008		Orlando
3/20/24 – 3/24/24	8009	Construction Law Institute	Orlando
3/27/24	8261	Income Taxation of Estates and Trusts, Selected Topics	Webcast
4/3/24	8263	Justice Meets AI: Reshaping the Legal Frontier	Webcast
4/8/24	8333	Judicial Panel on Professionalism in the Digital Courtroom - Please Remain Muted Until Your Case is Called	Webcast
4/11/24	8010	Litigation & Trust Law Symposium	Tampa
4/12/24	8011	Guardianship	Tampa
4/12/24	8076	Attorney-Bankers Conference	Tampa
4/17/24	8267	Securing Your Knowledge of SECURE: IRA Beneficiary Designations under SECURE 2.0. Part 2 of 4: Minor Child Beneficiaries	Webcast
4/18/24	8286	Mobile Homes	Webcast
4/25/24	8026	Technology in Disaster CLE	Webcast
5/1/24	8335	Formula Gifts	Webcast
5/2/24	8336	Asset Protection	Webcast
5/4/24	8337	Nuts & Bolts of Guardianship	Webcast
5/8/24	8268	Securing Your Knowledge of SECURE: IRA Beneficiary Designations under SECURE 2.0. Part 3 of 4: Non-eligible Designated Beneficiaries	
5/15/24		Title Claims (joint with Title Insurance)	Webcast

5/31/24		Convention CLE	
6/12/24	8269	Securing Your Knowledge of SECURE: IRA Beneficiary Designations under SECURE 2.0. Part 3 of 4: Disabled and Chronically Ill Beneficiaries	
6/19/24		Charging and Retaining Liens	Webcast



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

(850) 561-5600
www.FLORIDABAR.org

REAL PROPERTY, PROBATE AND TRUST LAW SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for Section Committees to seek approval for Section legislative or political activities.
- Legislative or political activity is defined in the Standing Board Policies of The Florida Bar (SBP 9.11) as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- Requests for legislative and political activity must be made on this form and submitted to the RPPTL Legislation Committee, with your Committee’s white paper.
- Pursuant to SBP 9.50(d), the Section must advise The Florida Bar of proposed legislative or political activity AND circulate the proposal to all Bar divisions, sections and committees that might be interested in the issue.
 - Committees must check with other interested Bar divisions, sections and committees to see if there are comments or issues.
 - If comments have been received from another interested group, the comments must be included.
 - If comments have not yet been received, the proposal may still be submitted to the Legislation Committee, with a list of the interested groups that have been notified and the dates and methods of notification.
 - If a decision needs to be expedited, the proposal must explain the need for an expedited decision and request a specific deadline for a decision by the Bar.
- The Legislation Committee will review the proposal.
 - The proposal will then need to be presented at the Division Round Table.
 - Then, published as an Information Item to the Executive Council.
 - Then, published as an Action Item to the Executive Council.

651 East Jefferson Street • Tallahassee, FL 32399-2300 • FAX: (850) 561-9405

General Information

Submitted by: (name of Section Committee) Asset Protection Committee

Contact: (Name of Committee Chair(s), address and phone number Michael A. Sneeringer, Chair. Porter Wright Morris & Arthur LLP, 9132 Strada PI Fl 3, Naples, FL 34108-2942. Telephone 239-593-2967

(Name of Sub-committee Chair, if any, address and phone number, if any) _____

Proposed Advocacy

Complete #1 below if the issue is legislative OR #2 if the issue is political; AND #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Support the creation of a new statute within the Florida Trust Code which clarifies ambiguity in the current law as to the continuation of the protected status of tenancy by the entireties property when the property is transferred to a joint trust held by a married couple.

2. Political Proposal

3. Reasons For Proposed Advocacy

a. Per SBP 9.50(a), does the proposal meet all three of the following requirements?
(select one) ☒ Yes ☐ No

- It is within the group's subject matter jurisdiction as described in the Section's Bylaws;
- It is beyond the scope of the Section/Bar's permissible legislative or political activity, or within the Section/Bar's permissible scope of legislative or political activity and consistent with an official Section/Bar position on that issue; and
- It does not have the potential for deep philosophical or emotional division among a substantial segment of the Bar's membership.

b. Additional Information: _____

Referrals to Other Committees, Divisions & Sections/Voluntary Bar Groups

Pursuant to SBP 9.50(d), the Section must provide copies of its proposed legislative or political actions to all Bar committees, divisions, sections and voluntary bar groups that may be interested in the issue. **List** all Bar committees, divisions, sections and voluntary bar **groups that this proposal has been shared with** pursuant to this requirement, **the date the proposal was shared**, and **provide all comments** received from such groups as part of your submission. The Section may submit its proposal before receiving comments, but only after the proposal has been provided to other bar divisions, sections or committees. A form for sharing proposals is available for this purpose.

Elder Law Section

Family Law Section

Tax Section

Business Law Section

Contacts

Legislation Committee Appearance *(list name, address and phone #)*

Sancha K. Brennan, Legislation Committee Co-Chair, 545 Delaney Avenue, Hovey Court, Bldg. 1, Orlando, FL 32801, Telephone: 407-893-7888

Steven H. Mezer, Legislation Committee Co-Chair, 1511 Westshore Boulevard, Suite 1000, Tampa, FL 33607, Telephone 813-527-3900

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Pete Dunbar, French Brown, and Martha Edenfield c/o Jones Walker, LLP, 106 East College Ave., Suite 1200, Tallahassee, FL 32301 215 South Monroe Street, Ste. 815, Tallahassee, FL, 32301, Telephone 850-214-5085

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

**ASSET PROTECTION COMMITTEE OF
THE REAL PROPERTY, PROBATE AND TRUST LAW
SECTION OF THE FLORIDA BAR**

**WHITE PAPER ON PROPOSED
ENACTMENT OF FLORIDA STATUTES SECTION 736.05057**

I. SUMMARY

The proposed legislation originates from The Asset Protection Committee (the “Committee”) of the Real Property, Probate and Trust Law Section of The Florida Bar (the “RPPTL Section”).

The proposed legislation would enact new Florida Statutes Section 736.05057 to provide that spouses may validly maintain the creditor protection characteristics of tenancies by the entirety (“TBE”) property within the context of a joint revocable trust that meets the requirement of the proposed statute.

Joint trusts are often the primary estate planning vehicle for married Florida residents of modest means. Many middle class Floridians rely on joint trusts to simplify asset titling, provide for consolidated care during incapacity, minimize administration expenses, and avoid probate. These same Florida residents seek the protection of Florida’s TBE laws, and the Committee believes that the same public policy goals of protecting such residents exist regardless of whether that ownership is vested in the spouses, individually, or in a joint trust that meets the specifications set forth in the proposed legislation.

The proposed legislation is necessary because there is currently disagreement among practitioners, and unclear legal precedent, as to whether the creditor-protected status of TBE property continues inside a properly structured trust.

The statute is not intended to extend TBE protection to a new or previously unprotected class of assets. A transfer of assets to a trust that meets the requirements of the proposed statute does not convert property that was not TBE property before the transfer into property to which the TBE exemption applies. Enactment of the proposed legislation will merely provide that existing TBE property transferred to a joint trust described in the proposed statute will not operate to disrupt the exemption that the TBE property enjoyed before the transfer. The proposed legislation does not expand or alter any presumptions regarding what is or is not TBE property, and it does not shift the burden of proving whether a particular asset is subject to the protections of TBE.

II. CURRENT SITUATION

At common law, six unities must coincide to qualify property as TBE: (1) unity of possession (joint ownership and control); (2) unity of interest (the interest in the property must be identical); (3) unity of title (the interest must have originated in the same instrument); (4) unity of time (the interest must have commenced simultaneously); (5) survivorship (on the death of one spouse, the survivor must become the sole owner); and (6) unity of marriage (the parties must be married at

the time the property became titled in their joint names). See *Beal Bank, SSB v. Almand & Assoc.*, 780 So. 2d 45, 52 (Fla. 2001).

Subsequent cases have touched on the issue of preserving the above unities within the context of trust ownership. However, each case was based on a unique and limited set of facts, and collectively such cases do not provide certainty as to the TBE status of property held in a standard joint revocable trust that meets the parameters set forth in the proposed legislation. This leaves many Florida residents “in the dark” as to one of the State’s most compelling protections for its married residents.

In 2001, the Fifth District Court of Appeals in *Rollins v. Alvarez*, 792 So.2d 695 (Fla. 5th DCA 2001), denied TBE protection to property that had been transferred to a trust over which only one spouse had control based upon a disruption of the unity of possession and unity of interest. In that case, husband and wife created an *inter vivos* trust and transferred TBE property to that trust. Husband was named as the sole trustee with the power to distribute income and principal to both husband and wife during their joint lifetimes. Husband was also granted the sole power to amend, modify or revoke the trust during his lifetime. Due to husband’s unilateral control over the trust, the transfer was deemed tantamount to TBE property being conveyed to a single spouse with unqualified fee simple title. The court noted, “[t]here is no dispute that the effect of this transfer to the trustee destroyed any tenancy by the entireties that may have existed in the property pre-transfer.”¹ *Id.* at 696 n. 2.

In 2004, the Fourth District Court of Appeals in *Passalino v. Protective Group Securities, Inc.*, 866 So.2d 295 (Fla. 4th DCA 2004), upheld the TBE status of property that was transferred to an attorney’s trust account.² Husband and wife deposited the sale proceeds from their TBE residence into their attorney’s trust account. The creditor argued that the transfer disrupted the unity of title and possession as the attorney was the only person in possession of and with authority over the funds; thus, the TBE character of the property had been severed. The court rejected the creditor’s argument, noting that the TBE character is retained “where the parties clearly intended their property to be held as a tenancy by the entireties by exercising beneficial ownership of the property and controlling the property’s disposition.” *Id.* at 297.

¹ The most recent case to discuss the severance of TBE upon transfer to trust was decided in December of 2020. *In re Hughes*, 2020 WL 7388075 (N.D. Ill.). The court upheld the protected status of Illinois TBE homestead property against husband’s creditors. The property was transferred from husband and wife, as tenants by the entirety, to a trust of which the wife was the grantor with “the sole right to revoke or terminate the trust.” *Id.* at 1. Wife was also the sole trustee with the power to distribute income and principal for the benefit of herself, her husband, and her children. The trust contained valid spendthrift clauses with respect to the husband and children. The court concluded that husband’s beneficial interest in the trust did not enter into the bankruptcy estate as the wife was the sole grantor and trustee and there was a valid spendthrift clause under Illinois law. The creditors attempted to argue that the trust property was not protected as it proceeded from the husband as the initial owner of the property with his wife as tenants by the entirety. The court rejected this argument, noting that when husband and wife conveyed the property to the trust “they did so as a single legal entity. Title ‘proceeded from’ that entity, not from [the husband] himself.” *Id.* at 6. While not at issue in the case, the court noted that “courts differ on whether the conveyance of entireties property to a spendthrift trust severs the tenancy or renders the trust’s spendthrift provision unenforceable.” *Id.* at 6 n. 6.

² The Florida Trust Code does not apply to attorney trust accounts.

In 2011, the Federal District Court for the Middle District of Florida in *Quaid v. Baybrook Home of Polk Cnty., LLC*, 2011 WL 5572605 (M.D. Fla.), denied TBE protection to TBE property transferred to a trust over which only one spouse had control. Wife established a revocable trust, which named her husband and son as successor trustees and her husband as the sole beneficiary upon her death. During her lifetime, only wife had the ability to control trust assets and to revoke or amend the trust. Husband transferred TBE assets to the trust during wife's lifetime. Upon wife's death, husband's creditors sought collection against such assets on the grounds that they were no longer TBE assets and husband was a settlor with respect to the trust assets in question. The court held that "when assets are transferred to a trust in which only one party maintains control, the terms of the trust eliminate any TBE protection." *Id* at 2. However, the court ultimately found that the assets were not subject to husband's creditors as he was not a settlor of the trust as only his wife had the power to revoke the transfer or withdraw the assets. Upon wife's death the spendthrift provisions of the trust protected the assets from husband's creditors.

In September of 2020, the Bankruptcy Court in *In re Givans*, 623 B.R. 635 (Bankr. M.D. Fla. 2020), denied TBE protection to a residence that was initially TBE and was subsequently transferred to a trust. Husband and wife transferred the TBE residence to a joint trust. The court noted that "they held bare legal title as Trustee of the Trust. Because a trust is not a married individual, the Trust cannot own the Property as tenants by the entirety. The unity of marriage does not exist as to the Trust." The court also placed considerable emphasis on the fact that the children of the settlors were also beneficiaries of the trust and thereby received an equitable interest in the trust property, which disrupted the unity of interest necessary for TBE property.

In direct contrast to *In re Givans*, the court in *In re Romagnoli*, 321 B.R. 807 (Bankr. S.D. Fla. 2021) upheld the preservation of TBE protection to assets transferred to a joint trust. In *In re Romagnoli* the debtor and his wife were the grantors and co-trustees of the trust. The debtor, his wife, and their minor child were beneficiaries. Debtor and his wife transferred TBE property to the trust. The court noted that if TBE property was contributed to the trust then the debtor and his wife could only jointly remove the TBE property from the trust and if the property were removed from the trust it would continue to retain its TBE status. In short, the creditor had no remedy even if substituted in for debtor as a trustee of the trust.

The above cases that decide against TBE protection ultimately hinge on the absence of one of the six unities required for TBE. For example, *Rollins* and *Quaid* both focus on the disruption of the unity of possession as only one spouse was granted the ability to revoke or amend the trust in question. The proposed legislation seeks to narrowly define the requirements of a joint trust that allows continuation of TBE status for TBE property transferred to such a trust. Those requirements are aimed at preserving the status quo of all parties (spouses and spouses' creditors).

No Florida court or federal court has provided a conclusive precedent as to the retention of TBE-protected status within a carefully structured joint trust that meets the characteristics of the proposed legislation, and the varying outcomes under the above cases continues to leave Florida residents "in the dark" as to the status of TBE property in the context of joint trusts. There is no compelling policy reason to bar the protection of TBE status within a joint trust that meets the requirements of the proposed legislation and does not otherwise create a new protected category of property nor deny creditors satisfaction that would otherwise be available. Married couples have a legitimate expectation that TBE property is protected from the creditors of either spouse,

and ownership via a trust structure that preserves the exemptions that would (or would not) be available if the settlor spouses had held the property individually should not disrupt that expectation.

III. EFFECT OF PROPOSED LEGISLATION (DETAILED ANALYSIS OF PROPOSED STATUTE)

A. Effect of Proposed Legislation.

The proposed statute would offer a clear path as to the continuation of the protected status of TBE property transferred to a joint trust meeting the requirements set forth in the statute. The essential characteristics of the six unities required at common law would be maintained provided such structure is followed. The proposed legislation does not otherwise shift the burden of proving that a TBE exemption applies to specific property or proceeds. That analysis remains the same whether owned by spouses individually or within a joint trust that satisfies the requirements of the proposed legislation.

B. Specific Statutory Provisions

1. Subsection (1)

Subsection (1) defines “TBE trust property” and “proceeds” for purposes of the proposed legislation. Property is limited to property that is already TBE property before its transfer to a trust, to which the statute applies. “Proceeds” are assets attributable to the sale, lease, exchange or other disposition of property transferred to the trust, income from the property, and claims and insurance proceeds attributable to the property.

The proposed statute does not allow for the transmutation of non-TBE property into TBE property via a conveyance to a trust. The proposed legislation is focused on the preservation of prior TBE status when the structure of the trust to which the TBE assets are transferred does not otherwise alter the relationship between the spouses and the TBE property in question.

2. Subsection (2)

Subsection (2) sets forth the provisions in the trust agreement and the factual circumstances that are required to maintain the TBE exemption of property transferred to such a trust. It is the heart of the proposed legislation.

The trust must: (i) be revocable by either or both of the settlors during their joint lifetimes; (ii) if the trust is revoked during the joint lifetimes of the settlors then the trustee must distribute any property and proceeds to the settlors as tenants by the entirety; (iii) the settlors must both be living and remain married to each other; (iv) the property and proceeds must be held for the settlors benefit during the course of their marriage, but the terms of the TBE trust agreement allow the settlors to permit the trustee to make distributions to other persons; and (v) upon the death of the first settlor the surviving settlor has the power to revoke the trust as to the property and proceeds and vest full title in the surviving settlor, individually.

If a trust meets the requirements of subsection (2), then property that was TBE property prior to its transfer to the trust, and the proceeds of such property, will obtain the benefit of TBE protection from the settlors' separate creditors. Creditors stand in the same relationship to the TBE property of the settlors titled to the trust as they would with respect to TBE property titled to the Settlers, individually. Upon termination of the marriage or the death of the first settlor, the same avenues are available for creditors that would otherwise have been available to individually-owned TBE property.

3. Subsection (3)

Subsection (3) clarifies that the protections afforded by this statute apply regardless of who is serving as trustee.

4. Subsection (4)

Subsection (4) allows one or both of the settlors to transfer non-TBE property to the trust, and any property so transferred retains its character as non-TBE property inside the TBE trust.

5. Subsection (5)

Subsection (5) addresses the treatment of property and proceeds with respect to dissolution of marriage and related provisions under Chapter 61, Florida Statutes and elective share rights and related provisions under Part II of Chapter 732, Florida Statutes. For purposes of those statutory regimes property and proceeds held in trust under the proposed legislation are treated the same as TBE property titled to the settlors, individually.

6. Subsection (6)

Subsection (6) provides that upon the death of the first settlor the exemption from the first settlor's individual creditors with respect to the property and/or proceeds continues for the benefit of the surviving settlor. This subsection maintains the status quo of TBE property following the death of one settlor with respect to the separate creditors of the first settlor to die. The same exemption to claims of the deceased settlor's creditors apply as if the settlors had owned the property and/or proceeds as TBE property, individually.

7. Subsection (7)

Subsection (7) provides that upon the death of the first settlor the property and/or proceeds are subject to the claims of the surviving settlor's creditors. This subsection maintains the status quo of TBE property following the death of one settlor with respect to the separate creditors of the surviving settlor. The creditors of the surviving settlor have the same claims against the property and/or proceeds as they would have if the property and/or proceeds were owned by the surviving settlor individually.

Subsection (7) also provides that the surviving settlor is granted the same rights to disclaim a portion of the property and/or proceeds under Chapter 739, Florida Statutes, subject to the same

restrictions thereunder, as the surviving settlor would have had upon the death of the first settlor if the property and/or proceeds were titled as TBE in the settlors' individual names.

8. Subsection (8)

The termination of the settlors' marriage by dissolution, invalidity or annulment operates to terminate the TBE protection granted to property and/or proceeds under subsection (2) above, just as such protection would be terminated if the property and/or proceeds were titled as TBE in the settlor's individual names prior to the termination of the settlors' marriage.

9. Subsection (9)

For purposes of Sections 732.401 and 732.4015, Florida Statutes, a residence owned by a trust described in subsection (2) that meets the definition of property in subsection (1) and that is used by the settlors as their homestead is treated as property owned by the settlors as TBE under those sections and not as protected homestead for purposes of Constitutional restrictions on devise of homestead. After the death of the first settlor these sections would apply to the homestead property in question. Once again, the proposed legislation is seeking the same result as if the property were owned by the settlors, individually, as tenants by the entirety.

10. Subsection (10)

Subsection (10) maintains the status quo with respect to the burden to prove the TBE exemption. The burden of proof for property and/or proceeds held within a trust described in subsection (2) is the same as if the settlors owned such property, individually, as tenants by the entirety. Nothing in the proposed legislation is intended to diminish the rights of creditors that would otherwise be available with respect to the settlors' assets, TBE or otherwise.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Adoption of this legislative proposal by the Florida Legislature should not have a fiscal impact on state and local governments. It should be revenue neutral.

V. DIRECT IMPACT ON PRIVATE SECTOR

The certainty and predictability that the proposed legislation will lend to rights and liabilities in TBE property titled to a joint trust that meets the requirements set forth in the statute will benefit the private sector.

VI. CONSTITUTIONAL ISSUES

The proposed legislation is prospective in application. There are no known Constitutional issues.

VII. OTHER INTERESTED PARTIES

Other groups that may have an interest in the legislative proposal include the Family and Business Law Sections of The Florida Bar and the Florida Bankers Association.

Section 736.05057, Florida Statutes, is created to read:

736.05057 Transfer of tenants by the entirety property to trust

(1) As used in this section:

(a) "TBE trust property " means any property owned by married persons as tenants by the entirety at the time of its transfer to the trustee of a TBE Trust, and includes proceeds.

(b) "TBE trust" means a trust which satisfies the requirements of this section.

(c) "Proceeds" means:

1. Assets attributable to the sale, lease, exchange or other disposition of TBE trust property;

2. Income attributable to TBE trust property;

3. Claims arising out of a loss or damage to TBE trust property, and proceeds of insurance payable to the trustee on account thereof.

(2) TBE trust property shall have the same exemption from the claims of the settlors' respective separate creditors as it would have if legal title were still held by the settlors as tenants by the entirety if the instrument creating the TBE trust provides that:

(a) The trustee shall hold the TBE trust property for the sole benefit of both settlors during their marriage and the trustee may distribute TBE trust property and income only to or for the benefit of the settlors or otherwise as both settlors direct;

RM:6724080:1
4853-6694-8995.00012-FFI

26 (b) The TBE trust is revocable by either or both of the
27 settlers during their marriage to each other, and if the TBE trust
28 is revoked during that time the trustee shall immediately
29 distribute the TBE trust property to the settlers as tenants by
30 the entirety, or as otherwise directed by both settlers;

31 (c) If the settlers' marriage ends at the death of the first
32 settlor, the trustee shall hold the TBE trust property for the
33 sole benefit of the surviving settlor during his or her lifetime,
34 during which time the surviving settlor can revoke the trust as to
35 the TBE trust property in its entirety and, in that event, the
36 trustee shall immediately distribute all TBE trust property to the
37 surviving settlor or otherwise as the surviving settlor shall
38 direct; and

39 (d) The exemption of TBE trust property from the claims of
40 the settlers' respective separate creditors shall immediately
41 terminate if the settlers: (i) are no longer married to each
42 other; (ii) cease being the sole beneficiaries of the TBE trust
43 property; or (iii) take any action with respect to their equitable
44 and beneficial interest in the TBE trust property that would
45 effectively sever or terminate a TBE in the property if they held
46 legal title individually.

47 (3) This section applies if one, both, or neither of the settlers
48 serves as trustee of the trust.

49 (4) If one or both of the settlers or another person transfers
50 property that is not TBE trust property to the trustee of a TBE

RM:6724080:1
4853-6694-8995.00012-FFI

51 trust any such property, and all income, increases, receipts, and
52 claims attributable to such property retain, as assets of the
53 trust or as distributed from the trust, its character as property
54 that is not TBE trust property.

55 (5) Unless provided to the contrary in a writing signed by both
56 settlers, and subject to the requirements of s. 732.702, TBE trust
57 property held in a TBE trust shall be treated as being owned by
58 the settlers as tenants by the entirety for purposes of
59 determining a settlor's marital property rights under Ch. 61 and
60 for purposes of part II of ch. 732.

61 (6) Upon the death of the first settlor:

62 (a) All TBE trust property that was exempt from the claims of
63 the first deceased spouse's separate creditors immediately prior
64 to his or her death shall have the same exemption from such claims
65 after his or her death as would have applied if the settlers held
66 the TBE trust property outside the trust as tenants by the
67 entirety.

68 (b) All TBE property is subject to the claims of the
69 surviving settlor's separate creditors to the same extent that
70 such property would be so subject if solely owned by the surviving
71 settlor.

72 (c) For purposes of Ch. 739, the surviving settlor may
73 disclaim an interest in TBE trust property, as if such TBE trust
74 property were owned by the settlers as tenants by the entirety
75 immediately before the death of the first settlor.

RM:6724080:1
4853-6694-8995.00012-FFI

76 (7) If the settlors' marriage terminates by dissolution,
77 invalidity or annulment, upon the court's order dissolving or
78 annulling the marriage or the court's determination that the
79 marriage was invalid, the exemption from the claims of the
80 settlors' separate creditors provided for in this section
81 immediately terminates.

82 (8) For purposes of ss. 732.401 and 732.4015, during the settlors'
83 marriage TBE trust property used by either or both settlors as
84 their homestead shall be treated as property owned by them as
85 tenants by the entirety outside of the trust, and for purposes of
86 s. 731.201 is not protected homestead. If the settlors' marriage
87 terminates by the death of the first settlor to die, there is no
88 devise of the homestead within the meaning of s. 732.4015. Upon
89 the surviving settlor's death the homestead is property to which
90 ss. 732.401 and 732.4015 apply.

91 (9) In any proceeding relating to the exemption of TBE trust
92 property from the claims of a separate creditor of either or both
93 settlors, the burden to prove such exemption is the same as if the
94 TBE trust property were owned by the settlors or settlor
95 individually.

96 (10) The provisions of this section are in addition to, and not in
97 derogation of, any common law allowing property titled in the name
98 of the trustee of a trust to be, or to be treated as, tenants by
99 the entirety property.

100 (11) This section shall take effect upon becoming law, and it
101 applies to all TBE trust property transferred by settlors to the
102 trustee of a trust that satisfies the requirements of Subsection
103 (2) on or after the effective date of the statute.

REPORT AND PROPOSED ACTION RE: NEXTGEN BAR EXAM

(submitted by Stacey Prince-Troutman and Grier Pressly)

In January 2018, the National Conference of Bar Examiners (“NCBE”) assembled a Testing Task Force to study whether the Uniform Bar Examination (“UBE”) adequately assesses the knowledge and skill required of new lawyers. In 2020, the Testing Task Force completed its study and provided recommendations to the NCBE resulting in the development of a new exam (the “NextGen Bar Exam”) which will launch in July 2026 and will test:

- A. Eight subject matters (civil procedure, contract law, evidence, torts, business associations, constitutional law, criminal law, and real property). Family law will be added on the July 2028 exam; and
- B. Seven foundational lawyering skills (legal research, legal writing, issue spotting and analysis, investigation and evaluation, client counseling and advising, negotiation and dispute resolution, client relationship and management).

The NextGen Bar Exam will be conducted over nine hours, and will include two integrated question sets, one performance task, and approximately forty multiple-choice questions.

The important differences between the NextGen Bar Exam and the UBE are as follows:

- A. Trusts and estates, conflict of laws, and secured transactions are included in the UBE, but are excluded from the NextGen Bar Exam.
- B. The NextGen Bar Exam will be shorter than the current UBE by three hours.

Jurisdictions may elect to adopt the NextGen Bar Exam starting in July 2026. During the two-year transition period beginning with the July 2026 exam, the current UBE exam and the NextGen exam will be offered concurrently. Accordingly, the current UBE and its components—the Multistate Bar Exam (MBE), Multistate Essay Exam (MEE), and Multistate Performance Test (MPT)—will be available through February 2028.

The Florida Board of Bar Examiners (the “Board”) announced it will retain the MBE for the July 2026 exam. *See July 2026 Florida Bar Exam Will Retain The Multistate Bar Examination* (June 27, 2023 Florida Bar News). The Board has also appointed a committee to monitor the NCBE’s progress on the NextGen Bar Exam and determine whether Florida should adopt the NextGen Bar Exam. *See Id.*

Richard Gans submitted the attached letter to Scott Westheimer, the current President of the Florida Bar, listing the following compelling reasons why the Florida Bar should support the current inclusion of Trust and Estates and Future Interests as subjects on the Florida Bar Exam:

- Over the next decade, with the passing of the Baby Boomer generation, over \$68 trillion of property will pass from that generation to the next generations. This transfer represents the greatest generational wealth transfer in history.

- The increasing complexity of American society results in estate planning being an essential tool for most individuals, regardless of their net worth or socio-economic background.
- Changing demographics, with the proliferation of new forms of "family" and the use of non-traditional methods of reproduction, create complexity and expand the need for proper planning.
- Increasing numbers of individuals who have special needs and increasing lifespans heighten the need of planning for incapacity.
- Thoughtful estate planning provides for the orderly transmission of property, including real estate, in order to transmit valid title.
- The development of non-traditional forms of property (such as cryptocurrency and other forms of digital assets) require knowledgeable attorneys who can assist clients in navigating complex rules.
- Desirability of promoting efficient and effective means of charitable giving.

Proposed Action: The Section seeks the Executive Council's vote to authorize Section leadership to advocate for maintaining Trusts and Estates and Future Interests as tested topics on Florida's bar exam.

FERGESON SKIPPER

ATTORNEYS AT LAW

Serving Our Community For Over 45 Years

RICHARD R. GANS, ESQ.

rgans@fergesonskipper.com

Board Certified Wills, Trusts and Estates Lawyer

Fellow, American College of Trust and Estate Counsel

December 4, 2023

The Florida Bar
651 E Jefferson St
Tallahassee, FL 32399

Dear President Westheimer:

I am a member of the Florida Bar and currently serve as member of the Executive Council of the Real Property, Probate and Trust Law Section. I am writing to request that The Florida Bar support the continued inclusion of Trusts and Estates and Future Interests as subjects on the Florida Bar Exam. The National Conference of Bar Examiners has elected to remove Trusts and Estates and Future Interests as subjects on the NextGen Multistate Bar Exam (MBE) beginning in 2026. The Florida Board of Bar Examiners recently announced its decision to adopt the NextGen exam for use in Florida.

Several data points may be helpful in understanding the continuing importance of Trusts and Estate and Future Interests:

- Over the next decade, with the passing of the Baby Boomer generation, over \$68 trillion dollars of property will pass from that generation to the next generations. This transfer represents the greatest generational wealth transfer in history. This fact alone is significant enough to make this subject matter most important to our society.
- Equally as important is the fact that the increasing complexity of American society results in estate planning being an essential tool for most individuals, regardless of their net worth or socio-economic background.
- Changing demographics, with the proliferation of new forms of "family" and the use of non-traditional methods of reproduction, create complexity and expand the need for proper planning.
- Increasing numbers of individuals who have special needs and increasing lifespans heighten the need of planning for incapacity.
- Thoughtful estate planning provides for the orderly transmission of property, including real estate, in order to transmit valid title.

- The development of non-traditional forms of property (such as cryptocurrency and other forms of digital assets) require knowledgeable attorneys who can assist clients in navigating complex rules.
- Desirability of promoting efficient and effective means of charitable giving.

These and many other factors contribute to the need for lawyers who are competent to assist individuals from every type of ethnic, cultural, and economic background as they navigate through all phases of their personal lives.

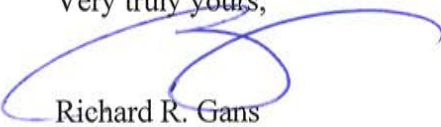
I note that the vision of the Florida Bar is to promote professionalism and protect the public. One objective of the bar exam must therefore be to ensure that lawyers are competent in these important areas of law. Examinees' competency should be tested in the subjects of Wills, Trusts and Future Interests. Testing examinees in these areas implicitly assures the public that lawyers who pass the bar are competent to handle the most basic legal matters that are significant to most people's personal lives.

With a 100% death rate, there cannot be a more important law school class or subject matter. If these areas are not tested, the public may be silently misled into believing that all lawyers have some level of competency in these areas. Lack of testing will also discourage law students from enrolling in these courses, further exacerbating the lack of foundational knowledge in these critical legal matters.

I respectfully request that the Florida Bar advocate for comprehensive testing of examinees on the subjects of Wills, Trusts, and Future Interests.

Thank you for your consideration of this request.

Very truly yours,



Richard R. Gans
RRG/sle

4855-3632-2453

Research Notes: Background Information on Why the Subject of Trusts and Estates and Future Interests Was Excluded from the 2026 MBE (NextGen Multistate Bar Exam).

The National Conference of Bar Examiners announced that a new Next Generation (NextGen) Bar exam will replace the current Bar exam in July of 2026. The NCBE has content scope outlines detailing topics tested on the new Bar exam and will release more NextGen specifics in 2024. The NextGen Bar exam is a new version of the Uniform Bar Exam (UBE). The updated version of the exam is a response to years of NCBE research, including examinee feedback.

NextGen's goal is to provide a practical exam that focuses more on testing examinees' skills and abilities than the UBE does. While testing legal knowledge is still a focus, the recalibration is a direct response to concerns and research that showed the UBE focused too heavily on pure memorization.

It is believed that many law schools relied on a heavy memorization-based doctrine to align with what was being tested on the UBE. The current thought process is that law schools will favor a more skills-based curriculum in the future to better prepare students for the NextGen Multistate Bar exam.

The NextGen Multistate Bar exam will start being administered in July of 2026. The final administration of the current Uniform Bar Exam will be in July 2028. The NCBE has announced the following rollout timeline:

2024: Publish exam's content and design specifics. Administer and analyze prototype NextGen Bar exam.

2025: Perform standard-setting exercise. Release recommended passing scores.

2026: First Administration of the NextGen Bar exam in July

2028: Final Administration of the current UBE, and Family Law becomes a testable subject on the exam.

The NCBE believes that examinees will find the NextGen Bar exam more modern than the UBE due to changes to delivery, format, content, and duration as the NextGen Bar Exam will reduce the length of the bar exam from 12 hours to 9 hours. The exam will be divided into 3 sessions of 3 hours each, administered over a day and a half. Each of the 3 exam sessions will consist of approximately 40 multiple-choice questions, 1 performance task, and 2 integrated question sets.

Currently, there are three separate components tested on the Uniform Bar Exam (the MBE, MEE, and MPT). NextGen will shift away from test components, electing to feature an integrated testing format and the exam will consist of three broad categories of question types.

NextGen's goal is to focus more on skills and less on memorization and that is most apparent through the topics and principles that the new item types will test. While the Uniform Bar Exam tests 14 separate subjects, the new exam will test just 8 subjects. The difference is that the new exam will also test 7 foundational skills.

The 8 subjects are Business Associations, Civil Procedure, Constitutional Law, Contract Law, Criminal Law, Evidence, Real Property, Torts. Family Law will be added in 2028 as a 9th subject.

The responsibility for the subjects in the NextGen Multistate Bar Exam (MBE) is a collaborative effort across several entities: the National Conference of Bar Examiners, the Content Scope Committee, subject matter experts, and psychometricians.

National Conference of Bar Examiners (NCBE)

The NCBE has the primary role in the content development of the NextGen MBE. The NCBE created a Testing Task Force in 2018 to conduct a three-year study on the skills and abilities needed for modern legal practice. This later led to the creation of the Content Scope Outlines, which specify the areas of legal knowledge and practical skills assessed on the exam. The NCBE also develops and administers the Multistate Essay Exam (MEE) and Multistate Performance Test (MPT), which are part of the NextGen MBE alongside the traditional multiple-choice questions.

Content Scope Committee

This committee, appointed by the NCBE, conducted the aforementioned three-year study and drafted the Content Scope Outlines. The committee included legal educators, law school deans, practicing attorneys, bar examiners, and other experts who analyzed data and consulted with stakeholders to determine the essential knowledge and skills for new lawyers.

Subject Matter Experts

Once the Content Scope Outlines were finalized, the NCBE worked with subject matter experts to draft and review exam questions. These experts have deep knowledge of specific legal areas and help to ensure that questions accurately reflect the outlined content.

Psychometric Review Committee

The Psychometric Review Committee analyzed the fairness and accuracy of the exam questions. They utilized statistical methods to ensure the questions are unbiased and effectively assess the intended skills and knowledge.

Note that individual jurisdictions adopting the NextGen MBE may have a say in the specific subjects tested. They can choose whether to administer the MEE and MPT and may supplement the national exam with additional components specific to their state's laws and practices.

This is the official press release from by the National Conference of Bar Examiners:

*Effective with the July 2026 bar exam, the following subjects will no longer be tested on the Multistate Essay Exam (MEE): **Conflict of Laws, Family Law, Trusts and Estates, and Secured***

Transactions. *This change will align MEE subjects with the subject matter for the NextGen bar exam, which will be administered by some jurisdictions beginning in July 2026. The alignment of subject matter will enable students to make informed course selections even before they know whether they will be taking the current or the NextGen bar exam. The subject matter outline for the MEE is available on the Preparing for the MEE page of NCBE's website. An outline of the content to be tested on the NextGen bar exam is available on the NextGen website.*

While the NCBE does not provide its concise reasoning for excluding these areas, research shows that these are possibilities:

Prioritization of Skills and Practical Ability

The NCBE conducted a comprehensive study to define the essential skills and knowledge new lawyers need to succeed in today's legal landscape. This study revealed that while Trusts and Estates remains relevant in some practice areas, other skills, like legal analysis, problem-solving, and communication, are being deemed as more critical for general practice.

Efficiency and Testing Time

The addition of new skills and subject areas to the NextGen MBE necessitated streamlining the content. Removing less frequently tested subjects allowed for a more focused exam that could adequately assess the prioritized skills within the allotted testing time.

The bottom line is that it appears the removal of Trusts and Estates from the NextGen MBE reflects a broader shift in legal education and bar exam design towards prioritizing practical skills and adaptability over comprehensive knowledge of niche areas.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

(850) 561-5600
www.FLORIDABAR.org

REAL PROPERTY, PROBATE AND TRUST LAW SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for Section Committees to seek approval for Section legislative or political activities.
- Legislative or political activity is defined in the Standing Board Policies of The Florida Bar (SBP 9.11) as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- Requests for legislative and political activity must be made on this form and submitted to the RPPTL Legislation Committee, with your Committee’s white paper.
- Pursuant to SBP 9.50(d), the Section must advise The Florida Bar of proposed legislative or political activity AND circulate the proposal to all Bar divisions, sections and committees that might be interested in the issue.
 - Committees must check with other interested Bar divisions, sections and committees to see if there are comments or issues.
 - If comments have been received from another interested group, the comments must be included.
 - If comments have not yet been received, the proposal may still be submitted to the Legislation Committee, with a list of the interested groups that have been notified and the dates and methods of notification.
 - If a decision needs to be expedited, the proposal must explain the need for an expedited decision and request a specific deadline for a decision by the Bar.
- The Legislation Committee will review the proposal.
 - The proposal will then need to be presented at the Division Round Table.
 - Then, published as an Information Item to the Executive Council.
 - Then, published as an Action Item to the Executive Council.

651 East Jefferson Street • Tallahassee, FL 32399-2300 • FAX: (850) 561-9405

General Information

Submitted by: (name of Section Committee) Trust Law Committee

Contact: (Name of Committee Chair(s), address and phone number _____)

David J. Akins c/o Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.,
420 S. Orange Avenue, Suite 700, Orlando, FL 32801 (407-841-1200)

(Name of Sub-committee Chair, if any, address and phone number, if any) _____

Jonathan A. Galler c/o Gutter Chaves Josepher Rubin Forman Fleisher Miller P.A.,
2101 NW Corporate Blvd., Suite 107, Boca Raton, FL 33431 (561-998-7847)

Jamison C. Evert c/o Gunster, Yoakley & Stewart, P.A. 777 South Flagler Drive,
Suite 500 East, West Palm Beach, Florida 33401 (561-650-0579)

Proposed Advocacy

Complete #1 below if the issue is legislative OR #2 if the issue is political; AND #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Providing the circumstances under which ademption by satisfaction applies to revocable trusts

2. Political Proposal

3. Reasons For Proposed Advocacy

- a. Per SBP 9.50(a), does the proposal meet all three of the following requirements? (select one) ☒ Yes ☐ No
- It is within the group's subject matter jurisdiction as described in the Section's Bylaws;
 - It is beyond the scope of the Section/Bar's permissible legislative or political activity, or within the Section/Bar's permissible scope of legislative or political activity and consistent with an official Section/Bar position on that issue; and

- It does not have the potential for deep philosophical or emotional division among a substantial segment of the Bar's membership.

b. Additional Information: _____

Referrals to Other Committees, Divisions & Sections/Voluntary Bar Groups

Pursuant to SBP 9.50(d), the Section must provide copies of its proposed legislative or political actions to all Bar committees, divisions, sections and voluntary bar groups that may be interested in the issue. **List** all Bar committees, divisions, sections and voluntary bar **groups that this proposal has been shared with** pursuant to this requirement, **the date the proposal was shared**, and **provide all comments** received from such groups as part of your submission. The Section may submit its proposal before receiving comments, but only after the proposal has been provided to other bar divisions, sections or committees. A form for sharing proposals is available for this purpose.

Shared with Probate Law & Procedure Committee and Probate & Trust Litigation Committee of the Section on November 10, 2023, and minor edits made in response to comments.

Shared with the Florida Bankers Association, Kenneth Pratt, Senior Vice President of Governmental Affairs on February __, 2024 [after discussion as an Information Item].

Contacts

Legislation Committee Appearance *(list name, address and phone #)*

Sancha K. Brennan, Legislation Committee Co-Chair, 545 Delaney Avenue, Hovey Court, Bldg. 1, Orlando, FL 32801, Telephone: 407-893-7888

Steven H. Mezer, Legislation Committee Co-Chair, 1511 Westshore Boulevard, Suite 1000, Tampa, FL 33607, Telephone 813-527-3900

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter M. Dunbar, Martha J. Edenfield, and H. French Brown, IV
c/o Jones Walker, 106 E. College Avenue, Suite 1200, Tallahassee, FL 32301-7741
Telephone 850-214-5100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR

WHITE PAPER

PROPOSED LEGISLATION TO CREATE F.S. SECTION 736.____ TO PROVIDE THE CIRCUMSTANCES UNDER WHICH ADEMPMENT BY SATISFACTION APPLIES TO REVOCABLE TRUSTS

I. SUMMARY

The proposed legislation was born out of the Real Property Probate and Trust Law Section of the Florida Bar's efforts to reconcile differences between the Florida Probate Code and the Florida Trust Code. Section 732.609, Florida Statutes, addresses ademption by satisfaction under the Florida Probate Code, but there is no similar provision in the Florida Trust Code that addresses the circumstances under which ademption by satisfaction applies to revocable trusts, which are widely used will substitute devices.

"Ademption" generally describes what happens when property that is to be devised under a testator's estate plan is no longer in the testator's estate at the time of death. Section 732.609 of the Florida Probate Code addresses ademption by satisfaction for testate estates¹ and provides as follows:

732.609 Ademption by satisfaction. – Property that a testator gave to a person in the testator's lifetime is treated as a satisfaction of a devise to that person, in whole or in part, only if the will provides for deduction of the lifetime gift, the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purposes of part satisfaction, property given during the testator's lifetime is valued at the time the devisee came into possession or enjoyment of the property or at the time of the death of the testator, whichever occurs first.

In other words, property given to a person during a testator's lifetime satisfies a testamentary devise to that person only when the testator's will so provides or when the testator or devisee declare it so in a writing.

The proposed legislation creates a comparable statute in the Florida Trust Code governing ademption by satisfaction with respect to property that is devised to or from a revocable trust that either a settlor gives to a person during the settlor's lifetime or that is distributed to a person from

¹ The Florida Probate Code addresses the related concept of advancements for intestate estates in a similar manner. See § 733.806, Fla. Stat. (2023) ("If a person dies intestate, property that the decedent gave during lifetime to an heir is treated as an advancement against the heir's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir. The property advanced shall be valued at the time the heir came into possession or enjoyment of the property or at the time of the death of the decedent, whichever first occurs. If the recipient of the property does not survive the decedent, the property shall not be taken into account in computing the intestate share to be received by the recipient's descendants unless the declaration or acknowledgment provides otherwise.").

a revocable trust during the settlor's lifetime. The proposed legislation is worded similarly to Section 732.609 and provides as follows:

Section 736.____ Ademption by satisfaction. –

(1) Property devised to or from a revocable trust that a settlor gave to a person during the settlor's lifetime or that is distributed from a revocable trust to a person during the settlor's lifetime is treated as a satisfaction of a devise to that person, in whole or in part, upon the settlor's death, only if one or more of the following circumstances apply:

(a) The trust instrument provides for the deduction of the lifetime gift;

(b) The settlor or trustee of the revocable trust declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise; or

(c) The devisee acknowledges in writing that the distribution or gift is in satisfaction of the devise.

(2) For purposes of part satisfaction, property distributed or given during the settlor's lifetime is valued at the time the devisee came into possession or enjoyment of the property or at the time of the death of the settlor, whichever occurs first.

(3) This section applies to revocable trusts that become irrevocable on or after July 1, 202[²].

II. CURRENT STATUS OF FLORIDA LAW

While ademption by satisfaction is addressed in the Florida Probate Code, there is currently no statute in the Florida Trust Code governing ademption by satisfaction with respect to property that is devised to or from a revocable trust that either a settlor gives to a person during the settlor's lifetime or that is distributed to a person from a revocable trust during the settlor's lifetime.

III. EFFECT OF PROPOSED CHANGES GENERALLY

The proposed legislation creates a statute in the Florida Trust Code governing ademption by satisfaction with respect to property that is devised to or from a revocable trust that a settlor either gives to a person during the settlor's lifetime or that is distributed to a person from a revocable trust during the settlor's lifetime. The proposed legislation is modeled on Section 732.609 of the Florida Probate Code and seeks to carry out the same legislative intent in the Florida Trust Code by providing that lifetime gifts to a devisee of a revocable trust are treated as a

² The proposed legislation would become effective on July 1st of the year of its enactment and apply to revocable trusts that become irrevocable on or after the effective date.

satisfaction of a devise to that person under the settlor's revocable trust only when the terms of the settlor's revocable trust so provide or when the settlor, settlor's trustee, or the devisee so declare it in a writing.

The proposed legislation would become effective on July 1st of the year of its enactment and apply to revocable trusts that become irrevocable on or after the effective date.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT IMPACT ON PRIVATE SECTOR

The proposal does not have a direct economic impact on the private sector.

VI. CONSTITUTIONAL ISSUES

It is not anticipated that this legislation will raise constitutional issues.

VII. OTHER INTERESTED PARTIES

None.

1 A bill to be entitled

2 An act relating to trusts; creating s. 736.[____] of the
3 Florida Trust Code to provide the circumstances under which
4 address ademption by satisfaction applies to revocable
5 trusts; providing an effective date.

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

7 Section 1. Section 736.[____] of chapter 736, Florida Statutes,
8 is created to read as follows:

9 736. ____ . Ademption by satisfaction

10 (1) Property devised to or from a revocable trust that a settlor
11 gave to a person during the settlor's lifetime or that is distributed
12 from a revocable trust to a person during the settlor's lifetime is
13 treated as a satisfaction of a devise to that person, in whole or in
14 part, upon the settlor's death, only if one or more of the following
15 circumstances apply:

16 (a) The trust instrument provides for the deduction of the
17 lifetime gift;

18 (b) The settlor or trustee of the revocable trust declares in a
19 contemporaneous writing that the gift is to be deducted from the devise
20 or is in satisfaction of the devise; or

21 (c) The devisee acknowledges in writing that the distribution or
22 gift is in satisfaction of the devise.

25 (2) For purposes of part satisfaction, property distributed or
26 given during the settlor's lifetime is valued at the time the devisee
27 came into possession or enjoyment of the property or at the time of the
28 death of the settlor, whichever occurs first.

29 (3) This section applies to revocable trusts that become
30 irrevocable on or after July 1, 202[¹].

31 Section 2. This act shall take effect July 1, 202[_].

¹This act will become effective on July 1st of the year of its enactment.



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

(850) 561-5600
www.FLORIDABAR.org

REAL PROPERTY, PROBATE AND TRUST LAW SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for Section Committees to seek approval for Section legislative or political activities.
- Legislative or political activity is defined in the Standing Board Policies of The Florida Bar (SBP 9.11) as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- Requests for legislative and political activity must be made on this form and submitted to the RPPTL Legislation Committee, with your Committee’s white paper.
- Pursuant to SBP 9.50(d), the Section must advise The Florida Bar of proposed legislative or political activity AND circulate the proposal to all Bar divisions, sections and committees that might be interested in the issue.
 - Committees must check with other interested Bar divisions, sections and committees to see if there are comments or issues.
 - If comments have been received from another interested group, the comments must be included.
 - If comments have not yet been received, the proposal may still be submitted to the Legislation Committee, with a list of the interested groups that have been notified and the dates and methods of notification.
 - If a decision needs to be expedited, the proposal must explain the need for an expedited decision and request a specific deadline for a decision by the Bar.
- The Legislation Committee will review the proposal.
 - The proposal will then need to be presented at the Division Round Table.
 - Then, published as an Information Item to the Executive Council.
 - Then, published as an Action Item to the Executive Council.

651 East Jefferson Street • Tallahassee, FL 32399-2300 • FAX: (850) 561-9405

General Information

Submitted by: (name of Section Committee) Trust Law Committee

Contact: (Name of Committee Chair(s), address and phone number David J. Akins
c/o, Dean Mead, 420 S. Orange Avenue, Suite 700, Orlando, FL 32801,
Telephone: (407) 428-5169
(Name of Sub-committee Chair, if any, address and phone number, if any) _____
Jennifer Robinson, Northern Trust, 1100 E. Las Olas Boulevard, 2nd Floor,
Fort Lauderdale, FL 33301, Telephone: (305) 789-6300; Charles Rubin, Gutter Chaves
Josepher Rubin Forman Fleisher Miller P.A., 2101 NW Corporate Boulevard, Suite 107,
Boca Raton, FL 33431, Telephone: (561) 988-7847

Proposed Advocacy

Complete #1 below if the issue is legislative OR #2 if the issue is political; AND #3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Legislation relating to the Florida Uniform Directed Trust Act adding a definition of "willful misconduct" for purposes of the Florida Uniform Directed Trust Act.

2. Political Proposal

3. Reasons For Proposed Advocacy

- a. Per SBP 9.50(a), does the proposal meet all three of the following requirements?
(select one) X Yes No

- It is within the group's subject matter jurisdiction as described in the Section's Bylaws;
- It is beyond the scope of the Section/Bar's permissible legislative or political activity, or within the Section/Bar's permissible scope of legislative or political activity and consistent with an official Section/Bar position on that issue; and
- It does not have the potential for deep philosophical or emotional division among a substantial segment of the Bar's membership.

- b. Additional Information: _____

Referrals to Other Committees, Divisions & Sections/Voluntary Bar Groups

Pursuant to SBP 9.50(d), the Section must provide copies of its proposed legislative or political actions to all Bar committees, divisions, sections and voluntary bar groups that may be interested in the issue. **List** all Bar committees, divisions, sections and voluntary bar **groups that this proposal has been shared with** pursuant to this requirement, **the date the proposal was shared**, and **provide all comments** received from such groups as part of your submission. The Section may submit its proposal before receiving comments, but only after the proposal has been provided to other bar divisions, sections or committees. A form for sharing proposals is available for this purpose.

Estate & Trust Tax Planning and Probate & Trust Litigation Committees of the RPPTL
Section; and Florida Bankers Association

Contacts

Legislation Committee Appearance *(list name, address and phone #)*

Santha K. Brennan, Legislation Committee Co-Chair, 545 Delaney Avenue, Hovey Court,
Bldg. 1, Orlando, FL 32801, Telephone: 407-893-7888

Steven H. Mezer, Legislation Committee Co-Chair, 1511 Westshore Boulevard, Suite
1000, Tampa, FL 33607, Telephone: 813-527-3900

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Martha J. Edenfield, Esq.

c/o Jones Walker LLP, 106 East College Ave., Suite 1200, Tallahassee, FL 32301,
Telephone: 850-999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Real Property, Probate and Trust Law Section of The Florida Bar
White Paper on Modification of Florida Uniform Directed Trust Act

I. SUMMARY

This legislation modifies the Florida Uniform Directed Trust Act (FUDTA). The legislation provides a definition of “willful misconduct”, which is the standard of care a trust director and a directed trustee are subject to under FUDTA. The addition of a definition of the applicable standard of care achieves greater clarity for fiduciaries acting pursuant to FUDTA. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

The Florida Legislature adopted FUDTA as Part XIV of the Florida Trust Code. FUDTA became effective on July 1, 2021. FUDTA established a comprehensive statutory framework for directed trusts in Florida. A directed trust is one in which there is a bifurcation of fiduciary duties among different persons and entities. For example, investment responsibilities for the assets of a trust may be allocated to an individual while the distribution responsibilities and administration of a trust may be allocated to an entity with trust powers. The division of fiduciary authority within a trust affords greater flexibility in trust management.

FUDTA establishes a division of authority and responsibility between the ‘trust director’, who is a person holding a power of direction, and the ‘directed trustee’ who is subject to the direction of a trust director. The standard of liability used throughout FUDTA is willful misconduct as stated in four provisions: Section 736.1409(2), Section 736.1409(4)(a), Section 736.141(3) and Section 736.141(4).

- A. Use of “Willful Misconduct” in Section 736.1409(2). Under Section 736.1409, a directed trustee is obligated to take reasonable action to comply with the direction received from the trust director. Generally, a directed trustee is to act upon the instructions of the trust director once the directed trustee (i) per FS 736.1409(3), has determined that the direction given by the trust director is within scope of the trust director’s duties and (ii) per FS 736.1409(2), has determined that by complying with the direction of the trust director, the directed trustee would not be engaging in willful misconduct. In other words, a directed trustee is not permitted to act upon a direction received by a trust director if by doing so the directed trustee would be engaging in willful misconduct.
- B. Use of “Willful Misconduct” in Section 736.141(3) and Section 736.141(4). FUDTA establishes a safe harbor for trust directors and directed trustees who rely on information provided by the other, with an exception to the safe harbor for conduct which is considered willful misconduct. Per FS 736.141(3), a directed trustee is excused from a breach of trust where the directed trustee relied on information provided by the trust director, unless the directed trustee engages in willful misconduct. Similarly, per FS 736.141(4), a trust director who relies on information provided by a directed trustee or another trust director is not liable for action unless the trust director engages in willful misconduct.
- C. Use of “Willful Misconduct” in Section 736.1409(4)(a). FUDTA establishes guidelines under which a trust director may release a directed trustee or another trust director for a breach of trust. Per

FS 736.1409(4)(a), such a release is ineffective if the breach involved willful misconduct by the trust director or the directed trustee.

III. DISCUSSION OF PROPOSED CHANGES

Policy Reasons for the Standard of Liability. An important policy of FUDTA is that the statute requires a directed trustee to follow the directions of a trust director except in *very limited circumstances*. As noted, the FUDTA bifurcates fiduciary authority over the administration of a trust. Such a bifurcation is effective only when instructions from a trust director to a directed trustee must be followed except in *very limited circumstances*. The proposed change clarifies the standard for a directed trustee to comply or not comply with an exercise or nonexercise of a power of direction by a trust director.

The circumstances in which a directed trustee is not required to follow instructions of a trust director are limited to those which would constitute willful misconduct. However, because the standard is not defined in the statute or elsewhere, trustees who would be directed under FUDTA may be reluctant to rely on the statute, because different courts may interpret the standard differently, including perhaps some courts adopting expansive interpretations if not constrained by a definition.

Meaning of “Willful Misconduct” in FUDTA. As established by FUDTA, willful misconduct is a minimum standard of care applicable to a directed trustee. The terms of a trust agreement may impose additional duties and liabilities, including establishing a standard of care for a directed trustee which is greater than willful misconduct.¹ However, the standard of care to which a directed trustee is subject may not fall below the minimum standard of willful misconduct.²

As explained in Section N. of the 2021 White Paper on the Florida Uniform Directed Trust Act, the draftspersons of FUDTA intended that willful misconduct mean a serious breach of fiduciary duty. The 2021 White Paper explains that “the willful misconduct limitation on acting” is derived from the repealed statute on excluded trustees, Florida Statute 736.0703(9), which similarly utilized the willful misconduct standard. The prior statute did not define the term nor did the draftspersons of FUDTA define the term.

The absence of a definition concerns Florida attorneys and trustees since it exposes directed trustees to more uncertainty as to when they must follow direction from the trust director and greater risk in making those determinations. These problems also limit the pool of trustees willing to act as directed trustees for Florida trusts.

Other State Statutes. Delaware and Nevada have permitted directed trusts for many years. Recently other states, including Illinois, Texas, Ohio, West Virginia, Tennessee, Connecticut, New Jersey, Colorado and Florida have enacted statutes permitting directed trusts. The state statutes vary widely, particularly as to the applicable standards of liability for a directed trustee.

¹ Florida Statute 736.0105(2)(b) provides that the terms of a trust prevail over any provision except those specified. Among the specified provisions is Florida Statute 736.1409 relating to the duties and liabilities of a directed trustee.

² An example of a standard of care less than “willful misconduct” is that a directed trustee has no liability. As noted, several state statutes exclude a directed trustee from liability altogether.

Delaware and Colorado utilize willful misconduct as the standard to which a directed trustee is subject. Each of these states incorporate a definition of willful misconduct into their directed trust statutes as follows:

- A. Delaware. 12 DE Code § 3301(g) provides “The term “willful misconduct” shall mean intentional wrongdoing, not mere negligence, gross negligence or recklessness and “wrongdoing” means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.
- B. Colorado. C.R.S. 15-16-802(11) “Willful misconduct” means intentional wrongdoing and not mere negligence, gross negligence, or recklessness. C.R.S. 15-16-802(12) “Wrongdoing” means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.

Connecticut, Illinois, New Jersey, Texas and Washington also utilize the standard of willful misconduct or a combination of willful misconduct and gross negligence. However, these states do not define willful misconduct within their statutes.

Nevada, Ohio and Tennessee exclude a directed trustee from liability altogether. These states do not utilize the standard of willful misconduct.

Use of “Willful Misconduct” Elsewhere in Florida law. Willful misconduct is defined in Florida statutes related to vessels, Florida Statutes 823.11, 327.44 and 376.15. The defined term establishes a standard of care to which a quasi-state officer is subject when removing or disposing of derelict vessels from Florida waterways.

Use of the defined term within the context of statutes relating to vessels demonstrates a statutory definition that is limited to a specific application. This subcommittee similarly seeks to limit the application of the definition of willful misconduct only to FUDTA by including language to restrict its application to Part XIV of the Florida Trust Code.³

Use of the Delaware Standard. Rather than craft its own definition of willful misconduct, the draftspersons determined to adopt the standard used in Delaware.⁴ The principal reasons for this include (a) general acceptance of the Delaware standard as being a fair and reasonable standard among trustees, commentators and practitioners, (b) existing case law that will assist Florida courts, fiduciaries and practitioners in interpreting and applying the standard in Florida and (c) greater incentive for settlors and practitioners to utilize Florida law rather than the law of another jurisdiction.

³ The authors of this White Paper disagree with a statement in the 2021 White Paper. Regarding the absence of a definition of “willful misconduct”, the 2021 White Paper, Section N. stated:

The draftspersons 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 statutory law that employ the term ‘willful misconduct’ without statutory definition, even if the definition was statutorily limited to the Trust Code or the Act provisions.

⁴ The Delaware statute spells “wilful” with one “l”. The draftspersons have determined that it is appropriate to spell ‘willful’ with two ‘l’s.

Effective Date. FUDTA applies to trusts created before July 1, 2021, but only applies to a decision or action occurring on or after July 1, 2021.⁵ The definition of “willful misconduct” will apply only to decisions and actions occurring on or after its effective date. This legislation is not retroactive.

Conclusion. The term “willful misconduct” is not defined in FUDTA and to date there is no applicable case law on point in Florida. Due to the absence of a defined term and applicable case law, some individuals and entities are reluctant to serve as directed trustees in Florida. Other states, particularly Delaware, provide certainty as to the standard of care to which a directed trustee is subject. Such certainty provides clarity to the directed trustee role and thereby encourages settlors and practitioners to avail themselves of the benefits of directed trusts in those jurisdictions. By adopting a definition of willful misconduct applicable to FUDTA, these benefits and results can similarly apply to Florida directed trusts.

IV. EFFECT OF PROPOSED LEGISLATION **(DETAILED ANALYSIS OF PROPOSED STATUTE)**

Proposed Change: A definition of “willful misconduct” will be added to Florida Statute 736.0103 as paragraph (28) as follows:

(28) “Willful misconduct,” for purposes of Part XIV of this chapter, means intentional wrongdoing, not mere negligence, gross negligence, or recklessness, and “wrongdoing” means malicious conduct or conduct designed to defraud or seek an unconscionable advantage. This definition shall apply only to decisions and actions of the trustee or trust director occurring on or after July 1, 20__.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Adoption of this legislative proposal by the Florida Legislature should not have a fiscal impact on state and local governments. It should be revenue neutral.

VI. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The certainty and predictability that the proposed legislation will lend to trust directors and directed trustees may benefit the private sector by fulfilling the intent of Florida residents to create directed trusts. It will clearly identify the duties and responsibilities of trust directors and directed trustees which may encourage directed trustees to serve in Florida rather than in competing states.

VII. CONSTITUTIONAL ISSUES

The proposed legislation is prospective in application. There are no known Constitutional issues.

VIII. OTHER INTERESTED PARTIES

⁵ Section 736.1403(1)(a).

Other groups that may have an interest in the legislative proposal include the Tax Section of The Florida Bar and the Florida Bankers Association.

1 A bill to be entitled

2 An act relating to the Florida Uniform Directed
3 Trust Act; adding a definition of 'willful misconduct' for
4 purposes of the Florida Uniform Directed Trust Act;
5 providing an effective date.

6
7 Be it enacted by the Legislature of the State of Florida:

8
9 **Section 1.** Paragraph (28) is added to section 736.0103,
10 Florida Statutes to read:

11 Section 736.0103. Definitions

12 (28) "Willful misconduct," for purposes of Part XIV of this
13 chapter, means intentional wrongdoing, but not mere negligence,
14 gross negligence, or recklessness. For purposes of this
15 definition, "wrongdoing" means malicious conduct or conduct
16 designed to defraud or seek an unconscionable advantage. This
17 definition shall apply only to decisions and actions of the
18 trustee or trust director occurring on or after July 1, 20__."

19 **Section 2.** This act shall take effect July 1, 20__.

RM:6724080:1

WHITE PAPER

LEGISLATIVE POSITION TO SUPPORT THE EXPANSION OF THE ABILITY OF CONDOMINIUM ASSOCIATIONS TO USE ALTERNATIVE FUNDING METHODS – SECTION 718.103(1) AND SECTION 718.112(2)(f)2.a

DRAFT OF OCTOBER 1, 2023

1. SUMMARY

The position will serve to expand the ability of condominium associations to use alternative funding methods to satisfy reserve funding obligations with oversight and approval of some of the alternative funding methods being handled by the Florida Department of Business and Professional Regulation and other approved methods being referenced in the amended legislative provisions. In response to the Surfside tragedy, the Florida Legislature adopted Senate Bill 4-D on May 26, 2022. One of the obligations placed on condominium associations was the requirement to fully fund certain reserve obligations and preventing the members of the condominium association from approving a waiver or reduction in the amount of reserve funding obligations. One of the main concerns raised about the enhanced reserve funding obligations was the financial impact to the members of the condominium association through higher monthly assessments or substantial special assessments to ensure the condominium association's reserves were fully funds. During the 2023 legislative session, the Florida Legislature adopted SB 154. One of the provisions in SB 154 authorized the Florida Division of Condominiums to approve the use alternative funding methods by condominium associations to meet their reserve funding obligations, but limited the ability of condominium associations to use this tool by severely restricting what condominium associations qualified.

2. CURRENT SITUATION

The ability of condominium associations to use alternative funding methods is currently limited to a muticondominium association that operates at least 25 condominiums. A multicondominium is defined in Section 718.103(21)(2023) as "real property containing two or more condominiums, all of which are operated by the same association". Due to the very specific limitations for the use of alternative funding methods, only a handful of condominium associations in the State of Florida will be able to utilize alternative funding methods to meeting their reserve funding obligations.

3. EFFECT OF POSITION

The position would expand the open the ability to use alternative funding methods to all condominium associations in the State of Florida to meeting their reserve funding obligations, subject to some of the alternative funding methods being approved by the

Florida Department of Business and Professional Regulation and other approved methods being referenced in the amended statutory language.

4. ANALYSIS

The following describes suggested changes:

a. Section 718.103(1) should be amended to provide that any condominium association may use alternative funding methods without approval by the division.

b. Section 718.112(2)(f)2.a. should be amended to conform to the revised definition of alternative funding methods.

5. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The position does not have a direct fiscal impact on state and local governments.

6. DIRECT IMPACT ON PRIVATE SECTOR

The position will allow condominium associations to reduce the financial impact to the members that were imposed with the enhanced reserve funding obligations by avoiding substantial increases in monthly assessments or having to levy large special assessments. The position may also reduce the amount of condominium units that fall into foreclosure due to the owner being unable to pay increased monthly assessments or large special assessment that condominium associations use to meet their enhanced reserve funding obligations.

7. CONSTITUTIONAL ISSUES

There are no constitutional issues.

8. OTHER INTERESTED PARTIES

Community Associations Institute, CEOMC, The Florida Association of Realtors, Florida Banker's Association, Public Interest Law Section, Fannie Mae, Institutional Lenders, Florida Department of Business and Professional Regulation.

WHITE PAPER

LEGISLATIVE POSITION TO SUPPORT THE CODIFICATION OF THE BORROWING AUTHORITY OF UNIT OWNER CONTROLLED COMMUNITY ASSOCIATIONS AND CODIFY SPECIAL ASSESSMENT AUTHORITY FOR MAINTENANCE, REPAIR AND REPLACEMENT - SECTION 718.111, SECTION 718.116, SECTION 719.104, SECTION 719.108, SECTION 720.303 AND SECTION 720.308

DRAFT OF OCTOBER 1, 2023

1. SUMMARY

The position is to support legislation codifying the authority of a unit owner controlled community association to borrow money or levy special assessments when the borrowing or special assessments are for the purpose of performance of the community associations duty to maintain, repair, and replace the common elements and common areas, including capital replacements. It would allow for associations to borrow funds or levy special assessments without the necessity of obtaining membership approval when the funds are to be used for the limited purposes of performing maintenance, repair, and replacement of common elements and common areas where the declaration, cooperative documents, or governing documents or Florida Condominium Act, Florida Cooperative Act, or Florida Homeowners' Association Act place the obligation on the association. The position would also support legislation to supersede any requirement in the governing documents of a unit owner controlled community association that restricts the ability to borrow funds or levy special assessments by requiring approval by the membership and applies retroactively to existing associations¹. These changes are necessary due to the increasing need for community associations to carry out maintenance, repair, and replacement of common elements, common areas and association property for which it is legally obligated to perform, but where the membership can prevent the community association from borrowing funds or levying special assessments to perform these legal obligations. The legislation does not have a fiscal impact on state funds.

2. CURRENT SITUATION

Currently, community associations are legally obligated to maintain, repair, and replace the common elements, common areas, and other association property either under the declaration or governing documents of the association or Florida Condominium Act, Florida Cooperative Act, or Florida Homeowners' Association Act. While community associations have this legal obligation, their ability to fund the required maintenance,

¹ Report of The Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 11-13, available at <https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf> (last visited October 20, 2023).

repair and, replacement is often limited by the governing documents of the association. Many associations governing documents require the approval of the membership if the association is going to borrow funds or borrow funds over a certain dollar amount or levy special assessments or levy special assessments over a certain dollar amount. This limitation on the community association's ability to borrow funds or levy special assessments delays the ability to perform necessary maintenance, repair, and replacement of common elements, common areas, and association property as community associations must then raise funds directly from the membership through increased monthly assessments, which is potentially subject to membership approval if the increase in the annual budget exceeds a certain threshold. Due to the cost of many of the projects and the length of time it takes to raise funds from the membership, community associations are often forced to delay necessary maintenance, repair, and replacement until the necessary amount of funds are raised.

3. EFFECT OF POSITION

The position would support legislation to provide statutory authority for unit owner controlled community associations to borrow money or levy special assessments without membership approval when the borrowing is for the purpose of performance of the community association's duty to maintain, repair, and replace the common elements or common areas, including capital replacements and deferred maintenance where the governing documents of the association require membership approval for the borrowing of funds or the levying of special assessments.

4. ANALYSIS

The following describes suggested changes:

a. Section 718.111 should be amended to provide that any unit owner controlled condominium association may borrow money without membership approval when the borrowing is for the purpose of performance of the condominium association's duty to maintain, repair, and replace the common elements, including capital replacements and deferred maintenance.

b. Section 718.16 should be amended to provide that any unit owner controlled condominium association may levy special assessments without membership approval when the special assessments are for the purpose of performance of the condominium association's duty to maintain, repair, and replace the common elements, including capital replacements and deferred maintenance.

c. Section 719.104 should be amended to provide that any unit owner controlled cooperative association may borrow money without membership approval when the borrowing is for the purpose of performance of the cooperative association's

duty to maintain, repair, and replace the common elements, including capital replacements and deferred maintenance.

d. Section 719.108 should be amended to provide that any unit owner controlled cooperative association may levy special assessments without membership approval when the special assessments are for the purpose of performance of the cooperative association's duty to maintain, repair, and replace the common elements, including capital replacements and deferred maintenance.

e. Section 720.303 should be amended to provide that any lot owner controlled homeowners' association may borrow money without membership approval when the borrowing is for the purpose of performance of the homeowners' association's duty to maintain, repair, and replace the common areas, including capital replacements and deferred maintenance.

f. Section 720.308 should be amended to provide that any lot owner controlled homeowners' association may levy special assessments without membership approval when the special assessments are for the purpose of performance of the homeowners' association's duty to maintain, repair, and replace the common areas, including capital replacements and deferred maintenance.

5. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The position does not have a direct fiscal impact on state and local governments.

6. DIRECT IMPACT ON PRIVATE SECTOR

This position will allow unit owner controlled community associations to reduce the financial impact to the members by being able to borrow funds or levy special assessments for necessary maintenance, repair, and replacement of common elements, common areas, and association property and avoiding large increases in monthly assessments and substantial delays in the performance of critical maintenance, repairs, and replacement within the community. Community associations will also be able to immediately address maintenance, repair, and replacement obligations without delaying while funds are raised from the membership, allowing for the work to be performed sooner and before issues become more substantial and costlier. There may also be a reduced cost to community associations in their insurance premiums as insurance carriers reevaluate coverage due to the improved condition of the property within the community.

7. CONSTITUTIONAL ISSUES

Impairment of contract- To the extent that a court may find that a covenant or restriction may be considered a contract between the parties, the changes made by this bill may affect such current contract rights and obligations. Article I, s. 10 of the United States Constitution, and art. I, s. 10 of the Florida Constitution both prohibit the Legislature

from enacting any law impairing the obligation of contracts. Although written in terms of an absolute prohibition, the courts have long interpreted the constitutional provisions to prohibit enactment of any unreasonable impairment of contractual rights existing at the time that the law is enacted. The Florida Supreme Court in *Pomponio v. Claridge of Pompano Condominium, Inc.* set forth the following test:

- Was the law enacted to deal with a broad, generalized economic or social problem?
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?.

8. OTHER INTERESTED PARTIES

Community Associations Institute, CEOMC, The Florida Association of Realtors, Florida Banker's Association, Public Interest Law Section, Fannie Mae, Institutional Lenders, Florida Insurance Council, American Property Casualty Insurance Association and the Florida Property & Casualty Association.

WHITE PAPER

LEGISLATIVE POSITION TO SUPPORT THE CODIFICATION OF THE AUTHORITY OF COMMUNITY ASSOCIATION UNIT OWNERS TO FINANCE SPECIAL ASSESSMENTS - SECTION 718.116, SECTION 719.108, AND SECTION 720.3085

DRAFT OF OCTOBER 1, 2023

1. SUMMARY

The position is to support legislation clarifying that the common community association practice of permitting unit owners to “finance” their special assessment shares in the form of a payment plan with interest is permissible for all community association special assessments. It would allow for associations to pass through interest charged on a loan to owners who elect to pay a special assessment in installments rather than a lump sum. The position also clarifies the ability of a community association to secure the payment of the interest incurred due to owners financing their special assessment by allowing the interest to be included in a claim of lien.

2. CURRENT SITUATION

The Division of Florida Condominiums, Timeshares, and Mobile Homes addressed and approved a form of the practice of financing special assessments in the Declaratory Statement of *In re Petition for Declaratory Statement Walter Grover, Unit Owner, Portofino Condominium Apartments*, DS 2003-032. The *Grover* Declaratory Statement found that providing unit owners with a choice to either pay their special assessment in a lump sum or to pay in extended installments with interest was permissible, reasonable, and specifically did not violate Section 718.116 (9), Fla. Stat. Section 718.116(9), Fla. Stat., prohibits a condominium association from excusing a unit owner’s payment of their share of a common expense unless all other unit owners are likewise proportionately excluded from payment. The *Grover* declaratory statement did not address the circumstance in which such a payment plan option is presented in tandem with the procurement of a loan by the association and is used as a mechanism to fund interest on the loan. *Grover* also did not address any possible issues arising from Section 718.115 (2), Fla. Stat., which states as follows:

“Except as otherwise provided by this chapter, funds for payment of the common expenses of a condominium shall be collected by assessments against the units in that condominium in the proportions or percentages provided in that condominium’s declaration. In a residential condominium, or mixed-use condominium created after January 1, 1996, each unit’s share of the common expenses of the condominium and common surplus of the

condominium shall be the same as the unit's appurtenant ownership interest in the common elements."

The types of payment plan options opined on in *Grover* are now frequently utilized by condominium associations to fund their payment of (pass through) interest charged by a lender even though the current statutory language presents an issue of whether interest charged by a lender is a common expense that must be paid by all owners proportionately. The typical practice of associations is to treat the interest charged to owners financing their special assessment as secured by the association's claim of lien.

While the holding in *Grover* has not been expanded or applied to community associations that are subject to Chapter 719 or Chapter 720, there is no reason why a court interpreting the issue would reach a different result than the holding in *Grover*. Section 719.107(2), Florida Statutes and Section 720.308(1)(a), Florida Statutes both contain similar language to Section 718.115(2), Florida Statutes and would likely result in any court final judgment or appellate opinion reaching the same conclusion as *Grover*.

3. EFFECT OF POSITION

The position would support legislation to clarify that community associations are permitted to allow unit owners to "finance" their proportionate share of a special assessment in the form of a payment plan with interest and that a community association could secure the interest on the share of the special assessment in any claim of lien filed against the property.

4. ANALYSIS

The following describes suggested changes:

a. Section 718.116 should be amended to provide condominium associations are permitted to allow unit owners to "finance" their special assessment shares in the form of a payment plan with interest and the interest can be secured by the association's claim of lien.

b. Section 719.107 should be amended to provide cooperative associations are permitted to allow unit owners to "finance" their special assessment shares in the form of a payment plan with interest and the interest can be secured by the association's claim of lien.

c. Section 720.308 should be amended to provide homeowner associations are permitted to allow unit owners to "finance" their special assessment shares in the form of a payment plan with interest and the interest can be secured by the association's claim of lien.

5. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The position does not have a direct fiscal impact on state and local governments.

6. DIRECT IMPACT ON PRIVATE SECTOR

The *Grover* election incentivizes unit owners to pay special assessments in a lump sum, securing advance funding for associations, while enabling owners who cannot afford to pay in a lump sum much needed flexibility to pay their proportionate share of the special assessment without defaulting. In community association loan transactions, association attorneys are required to issue legal opinions to lenders opining on the legality of their clients' special assessment authority. The attorneys must either highlight the issue, potentially preventing the association from obtaining a loan, or rely on *Grover* as support for a special assessment financing alternative, despite the fact that *Grover* is merely an administration declaratory statement, and not binding legal precedent. Codifying *Grover* can be adopted as a clarification of existing law relying on the Division's *Grover* interpretation, customary practice of the community association bar applying and interpreting existing statutes, and arguably Section 718.116 (3) and (5), Florida Statutes, Section 719.108(3)(a) and (4), Florida Statutes, and Section 720.3085(1)(a) and (3), Florida Statutes, permitting interest on unpaid special assessments at a rate provided in the Declaration, cooperative documents, or governing documents and providing a lien upon the special assessments.

7. CONSTITUTIONAL ISSUES

Impairment of contract- To the extent that a court may find that a covenant or restriction may be considered a contract between the parties, the changes made by this bill may affect such current contract rights and obligations. Article I, s. 10 of the United States Constitution, and art. I, s. 10 of the Florida Constitution both prohibit the Legislature from enacting any law impairing the obligation of contracts. Although written in terms of an absolute prohibition, the courts have long interpreted the constitutional provisions to prohibit enactment of any unreasonable impairment of contractual rights existing at the time that the law is enacted. The Florida Supreme Court in *Pomponio v. Claridge of Pompano Condominium, Inc.* set forth the following test:

- Was the law enacted to deal with a broad, generalized economic or social problem?
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?

- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?.

8. OTHER INTERESTED PARTIES

Community Associations Institute, CEOMC, The Florida Association of Realtors, Florida Banker's Association, Public Interest Law Section, Fannie Mae, Institutional Lenders.

**DRAFT SUBMITTED BY RPPTL SECTION TO
FLORIDA BAR BOARD OF GOVERNORS**

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC2023-0962

IN RE: AMENDMENTS TO FLORIDA
RULES OF CIVIL PROCEDURE

**COMMENT BY THE REAL PROPERTY, PROBATE,
AND TRUST LAW SECTION OF THE FLORIDA BAR**

The Real Property Probate and Trust Law Section (“RPPTL” or the “Section”) of the Florida Bar¹ respectfully provides these comments in response to the Court’s August 9, 2023, request for publication of proposed Rules in the above case in the September 1, 2023, Bar News. In the publication request, the Court invited interested persons to comment on the proposals. Additionally, the Court requested that all interested persons state a preference for either Track A or Track B.

¹ These comments are provided solely on behalf of the Real Property, Probate and Trust Law Section of the Florida Bar and not on behalf of the Florida Bar itself.

I - Introduction

The RPPTL Section is a group of Florida lawyers who practice in the areas of real estate, trust and estate law. The RPPTL Section is dedicated to serving all Florida lawyers and the public in these fields of practice. We produce educational materials and seminars, assist the public *pro bono*, draft legislation, draft rules of procedure, and occasionally serve as a friend of the court to assist on issues related to our fields of practice. Our RPPTL Section has over 11,000 members.

The RPPTL Section of the Florida Bar appreciates and acknowledges the efforts of Landis V. Curry III, 2022-2023 Chair of the Civil Procedure Rules Committee and Joshua E. Doyle, Executive Director of the Florida Bar, (the “Civil Rules Committee”) and their report filed on July 3, 2023 (the “Report”), in response to this Courts January 12, 2023, referral (the “Referral”). In the Report, the Civil Rules Committee recommended that the Court adopt the proposed amendment to rules 1.200, 1.201, 1.280, 1.440, and 1.460 of the Florida Rules of Civil Procedure set forth in “Track A.” RPPTL supports the Civil Rules Committee recommendation of “Track A.” However, RPPTL is concerned about the pace of implementation and

desires to fulfill its mission to educate the Section's more than 11,000 members on the changes to the rules of civil procedure when they are implemented.

II – Pace of Implementation

RPPTL acknowledged the extensive nature of the Judicial Management Council Workgroup (the "Workgroup") on Improved Resolution of Civil Cases and, in response, commissioned an Ad Hoc committee comprised of members of its real property litigation committee, probate litigation committee and construction law committee to study the Final Report, dated November 15, 2021 (the "Report"). As stated in the Report, the Workgroup "recommends extensive amendment to the Florida Rules of Civil Procedure and Florida Rules of General Practice and Judicial Administration, along with several amendments to other rules chapters" (collectively, the "Rule Revisions"). RPPTL is appreciative of the Courts limited scope and selection of specific rules to implement, as demonstrated in the Referral. While the adoption of the proposed amendment to rules 1.200, 1.201, 1.280, 1.440, and 1.460 of the Florida Rules of Civil Procedure set forth in "Track A" (the "Amendment") is far less extensive than the Rule Revisions, they include provisions from the

Federal Rules of Civil Procedure and other significant changes, that will be new to many of our members. Therefore, in the event the Amendment is adopted, all or in part, the Section respectfully requests a one (1) year delay in their implementation to allow the Section to fulfill its mission and educate its more than 11,000 Section members.

VI - Conclusion

The Real Property, Probate and Trust Law Section supports the goals of this Court and the efforts of the Civil Rules Committee and their recommendation that the Court adopt the proposed amendment to rules 1.200, 1.201, 1.280, 1.440, and 1.460 of the Florida Rules of Civil Procedure set forth in “Track A.” RPPTL supports the Civil Rules Committee recommendation of “Track A.” However, RPPTL is concerned about the pace of implementation and desires to fulfill its mission to educate the Section’s more than 11,000 members on the changes to the rules of civil procedure when they are implemented.

Therefore, in the event the Amendment is adopted, all or in part, the Section respectfully requests a one (1) year delay in its implementation.

Respectfully submitted on _____, 2023.

S. Katherine Frazier
Chair - RPPTL
Florida Bar Number 962457
Hill Ward Henderson
101 E Kennedy Blvd, Ste 3700
Tampa, FL 33602-5195
katherine.frazier@hwhlaw.com

CERTIFICATE OF TYPE SIZE AND STYLE

I hereby certify that this motion was prepared in Bookman Old Style, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure.

S. Katherine Frazier
Chair - RPPTL
Florida Bar Number 962457

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been sent by e-mail to the following individuals on this ____ day of _____, 2023.

Committee Chair
Judson Lee Cohen
100 Biscayne Boulevard, Suite 2802
Miami, Florida 33132
jcohen@weinsteincohen.com,

Bar Staff Liaison to the Committee
Heather Telfer
615 E. Jefferson Street
Tallahassee, Florida 32399
htelfer@floridabar.org

S. Katherine Frazier
Chair - RPPTL
Florida Bar Number 962457



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

January 19, 2024

S Katherine Frazier
Chair, Real Property, Probate and Trust Law Section
Hill Ward Henderson
101 E Kennedy Blvd Ste 3700
Tampa, FL 33602-5195

Re: Report of Action –The Florida Bar Board of Governors

VIA E-MAIL ONLY

Dear Chair Frazier:

On January 19, 2024, the Board of Governors of The Florida Bar considered a request by the Real Property, Probate and Trust Law Section to file comments in SC2023-0884 concerning the cessation of bias elimination in CLE courses. After consideration, the Board of Governors voted to prohibit this request.

Please let us know if you have any questions.

Thank you,

Joni Hooks
Administrative Assistant
Office of the General Counsel / Legislative Affairs

FLORIDA BAR ETHICS OPINION
OPINION 24-1
January 19, 2024

Advisory ethics opinions are not binding.

Lawyers may use generative artificial intelligence (“AI”) in the practice of law but must protect the confidentiality of client information, provide accurate and competent services, avoid improper billing practices, and comply with applicable restrictions on lawyer advertising. Lawyers must ensure that the confidentiality of client information is protected when using generative AI by researching the program’s policies on data retention, data sharing, and self-learning. Lawyers remain responsible for their work product and professional judgment and must develop policies and practices to verify that the use of generative AI is consistent with the lawyer’s ethical obligations. Use of generative AI does not permit a lawyer to engage in improper billing practices such as double-billing. Generative AI chatbots that communicate with clients or third parties must comply with restrictions on lawyer advertising and must include a disclaimer indicating that the chatbot is an AI program and not a lawyer or employee of the law firm. Lawyers should be mindful of the duty to maintain technological competence and educate themselves regarding the risks and benefits of new technology.

- RPC:** 4-1.1; 4-1.1 Comment; 4-1.5(a); 4-1.5(e); 4-1.5(f)(2); 4-1.5(h); 4-1.6; 4-1.6 Comment; 4-1.6(c)(1); 4-1.6(e); 4-1.18 Comment; 4-3.1; 4-3.3; 4-4.1; 4-4.4(b); Subchapter 4-7; 4-7.13; 4-7.13(b)(3); 4-7.13(b)(5); 4-5.3(a)
- OPINIONS:** 76-33 & 76-38, Consolidated; 88-6; 06-2; 07-2; 10-2; 12-3; ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 498 (2021); ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 93-379 (1993); Iowa Ethics Opinion 11-01; New York State Bar Ethics Opinion 842
- CASES:** *Mata v. Avianca*, 22-cv-1461, 2023 WL 4114965, at 17 (S.D.N.Y. June 22, 2023); *Bartholomew v. Bartholomew*, 611 So. 2d 85, 86 (Fla. 2d DCA 1992); *The Florida Bar v. Carlon*, 820 So. 2d 891, 899 (Fla. 2002); *Att’y Grievance Comm’n of Maryland v. Manger*, 913 A.2d 1 (Md. 2006)

The Florida Bar Board of Governors has directed the Board Review Committee on Professional Ethics to issue an opinion regarding lawyers’ use of generative artificial intelligence (“AI”). The release of ChatGPT-3 in November 2022 prompted wide-ranging debates regarding lawyers’ use of generative AI in the practice of law. While it is impossible to determine the impact generative AI will have on the legal profession, this opinion is intended to provide guidance to Florida Bar members regarding some of the ethical implications of these new programs.

Generative AI are “deep-learning models” that compile data “to generate statistically probable outputs when prompted.” IBM, *What is generative AI?*, (April 20, 2023), <https://research.ibm.com/blog/what-is-generative-AI> (last visited 11/09/2023). Generative AI can create original images, analyze documents, and draft briefs based on written prompts. Often, these programs rely on large language models. The datasets utilized by generative AI large language models can include billions of parameters making it virtually impossible to determine

how a program came to a specific result. Tsedel Neeley, 8 Questions About Using AI Responsibly, Answered, Harv. Bus. Rev. (May 9, 2023).

While generative AI may have the potential to dramatically improve the efficiency of a lawyer's practice, it can also pose a variety of ethical concerns. Among other pitfalls, lawyers are quickly learning that generative AI can "hallucinate" or create "inaccurate answers that sound convincing." Matt Reynolds, vLex releases new generative AI legal assistant, A.B.A. J. (Oct. 17, 2023), <https://www.abajournal.com/web/article/vlex-releases-new-generative-ai-legal-assistant> (last visited 11/09/2023). In one particular incident, a federal judge sanctioned two unwary lawyers and their law firm following their use of false citations created by generative AI. *Mata v. Avianca*, 22-cv-1461, 2023 WL 4114965, at 17 (S.D.N.Y. June 22, 2023).

Even so, the judge's opinion explicitly acknowledges that "[t]echnological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance." *Id.* at 1.

Due to these concerns, lawyers using generative AI must take reasonable precautions to protect the confidentiality of client information, develop policies for the reasonable oversight of generative AI use, ensure fees and costs are reasonable, and comply with applicable ethics and advertising regulations.

Confidentiality

When using generative AI, a lawyer must protect the confidentiality of the client's information as required by Rule 4-1.6 of the Rules Regulating The Florida Bar. The ethical duty of confidentiality is broad in its scope and applies to all information learned during a client's representation, regardless of its source. Rule 4-1.6, Comment. Absent the client's informed consent or an exception permitting disclosure, a lawyer may not reveal the information. In practice, the most common exception is found in subdivision (c)(1), which permits disclosure to the extent reasonably necessary to "serve the client's interest unless it is information the client specifically requires not to be disclosed[.]" Rule 4-1.6(c)(1). Nonetheless, it is recommended that a lawyer obtain the affected client's informed consent prior to utilizing a third-party generative AI program if the utilization would involve the disclosure of any confidential information.

Rule 4-1.6(e) also requires a lawyer to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the client's representation." Further, a lawyer's duty of competence requires "an understanding of the benefits and risks associated with the use of technology[.]" Rule 4-1.1, Comment.

When using a third-party generative AI program, lawyers must sufficiently understand the technology to satisfy their ethical obligations. For generative AI, this specifically includes knowledge of whether the program is "self-learning." A generative AI that is "self-learning" continues to develop its responses as it receives additional inputs and adds those inputs to its existing parameters. Neeley, *supra* n. 2. Use of a "self-learning" generative AI raises the possibility that a client's information may be stored within the program and revealed in response to future inquiries by third parties.

Existing ethics opinions relating to cloud computing, electronic storage disposal, remote paralegal services, and metadata have addressed the duties of confidentiality and competence to prior technological innovations and are particularly instructive. In its discussion of cloud computing resources, Florida Ethics Opinion 12-3 cites to New York State Bar Ethics Opinion 842 and Iowa Ethics Opinion 11-01 to conclude that a lawyer should:

- Ensure that the provider has an obligation to preserve the confidentiality and security of information, that the obligation is enforceable, and that the provider will notify the lawyer in the event of a breach or service of process requiring the production of client information;
- Investigate the provider's reputation, security measures, and policies, including any limitations on the provider's liability; and
- Determine whether the provider retains information submitted by the lawyer before and after the discontinuation of services or asserts proprietary rights to the information.

While the opinions were developed to address cloud computing, these recommendations are equally applicable to a lawyer's use of third-party generative AI when dealing with confidential information.

Florida Ethics Opinion 10-2 discusses the maintenance and disposition of electronic devices that contain storage media and provides that a lawyer's duties extend from the lawyer's initial receipt of the device through the device's disposition, "including after it leaves the control of the lawyer." Opinion 10-2 goes on to reference a lawyer's duty of supervision and to express that this duty "extends not only to the lawyer's own employees but over entities outside the lawyer's firm with whom the lawyer contracts[.]" Id.

Florida Ethics Opinion 07-2 notes that a lawyer should only allow an overseas paralegal provider access to "information necessary to complete the work for the particular client" and "should provide no access to information about other clients of the firm." Additionally, while "[t]he requirement for informed consent from a client should be generally commensurate with the degree of risk involved[.]" including "whether a client would reasonably expect the lawyer or law firm to personally handle the matter and whether the non-lawyers will have more than a limited role in the provision of the services." Id. Again, this guidance seems equally applicable to a lawyer's use of generative AI.

Finally, Florida Ethics Opinion 06-2 provides that a lawyer should take reasonable steps to safeguard the confidentiality of electronic communications, including the metadata attached to those communications, and that the recipient should not attempt to obtain metadata information that they know or reasonably should know is not intended for the recipient. In the event that the recipient inadvertently receives metadata information, the recipient must "promptly notify the sender," as is required by Rule 4-4.4(b). Similarly, a lawyer using generative AI should take reasonable precautions to avoid the inadvertent disclosure of confidential information and should not attempt to access information previously provided to the generative AI by other lawyers.

It should be noted that confidentiality concerns may be mitigated by use of an inhouse generative AI rather than an outside generative AI where the data is hosted and stored by a third-party. If the use of a generative AI program does not involve the disclosure of confidential

information to a third-party, a lawyer is not required to obtain a client's informed consent pursuant to Rule 4-1.6.

Oversight of Generative AI

While Rule 4-5.3(a) defines a nonlawyer assistant as a "a person," many of the standards applicable to nonlawyer assistants provide useful guidance for a lawyer's use of generative AI.

First, just as a lawyer must make reasonable efforts to ensure that a law firm has policies to reasonably assure that the conduct of a nonlawyer assistant is compatible with the lawyer's own professional obligations, a lawyer must do the same for generative AI. Lawyers who rely on generative AI for research, drafting, communication, and client intake risk many of the same perils as those who have relied on inexperienced or overconfident nonlawyer assistants.

Second, a lawyer must review the work product of a generative AI in situations similar to those requiring review of the work of nonlawyer assistants such as paralegals. Lawyers are ultimately responsible for the work product that they create regardless of whether that work product was originally drafted or researched by a nonlawyer or generative AI.

Functionally, this means a lawyer must verify the accuracy and sufficiency of all research performed by generative AI. The failure to do so can lead to violations of the lawyer's duties of competence (Rule 4-1.1), avoidance of frivolous claims and contentions (Rule 4-3.1), candor to the tribunal (Rule 4-3.3), and truthfulness to others (Rule 4-4.1), in addition to sanctions that may be imposed by a tribunal against the lawyer and the lawyer's client.

Third, these duties apply to nonlawyers "both within and outside of the law firm." ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 498 (2021); see Fla. Ethics Op. 07-2. The fact that a generative AI is managed and operated by a third-party does not obviate the need to ensure that its actions are consistent with the lawyer's own professional and ethical obligations.

Further, a lawyer should carefully consider what functions may ethically be delegated to generative AI. Existing ethics opinions have identified tasks that a lawyer may or may not delegate to nonlawyer assistants and are instructive. First and foremost, a lawyer may not delegate to generative AI any act that could constitute the practice of law such as the negotiation of claims or any other function that requires a lawyer's personal judgment and participation.

Florida Ethics Opinion 88-6 notes that, while nonlawyers may conduct the initial interview with a prospective client, they must:

- Clearly identify their nonlawyer status to the prospective client;
- Limit questions to the purpose of obtaining factual information from the prospective client; and
- Not offer any legal advice concerning the prospective client's matter or the representation agreement and refer any legal questions back to the lawyer.

This guidance is especially useful as law firms increasingly utilize website chatbots for client intake. While generative AI may make these interactions seem more personable, it presents additional risks, including that a prospective client relationship or even a lawyer-client relationship has been created without the lawyer's knowledge.

The Comment to Rule 4-1.18 (Duties to Prospective Client) explains what constitutes a consultation:

A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of subdivision (a).

Similarly, the existence of a lawyer-client relationship traditionally depends on the subjective reasonable belief of the client regardless of the lawyer's intent. *Bartholomew v. Bartholomew*, 611 So. 2d 85, 86 (Fla. 2d DCA 1992).

For these reasons, a lawyer should be wary of utilizing an overly welcoming generative AI chatbot that may provide legal advice, fail to immediately identify itself as a chatbot, or fail to include clear and reasonably understandable disclaimers limiting the lawyer's obligations.

Just as with nonlawyer staff, a lawyer should not instruct or encourage a client to rely solely on the "work product" of generative AI, such as due diligence reports, without the lawyer's own personal review of that work product.

Legal Fees and Costs

Rule 4-1.5(a) prohibits lawyers from charging, collecting, or agreeing to fees or costs that are illegal or clearly excessive while subdivision (b) provides a list of factors to consider when determining whether a fee or cost is reasonable. A lawyer must communicate the basis for fees and costs to a client and it is preferable that the lawyer do so in writing. Rule 4-1.5(e). Contingent fees and fees that are nonrefundable in any part must be explained in writing. Rule 4-1.5(f)(2).

Regarding costs, a lawyer may only ethically charge a client for the actual costs incurred on the individual client's behalf and must not duplicate charges that are already accounted for in

the lawyer's overhead. *See, The Florida Bar v. Carlon*, 820 So. 2d 891, 899 (Fla. 2002) (lawyer sanctioned for violations including a \$500.00 flat administrative charge to each client's file); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-379 (1993) (lawyer should only charge clients for costs that reasonably reflect the lawyer's actual costs); Rule 4-1.5(h) (lawyers accepting payment via a credit plan may only charge the actual cost imposed on the transaction by the credit plan).

Regarding fees, a lawyer may not ethically engage in any billing practices that duplicate charges or that falsely inflate the lawyer's billable hours. Though generative AI programs may make a lawyer's work more efficient, this increase in efficiency must not result in falsely inflated claims of time. In the alternative, lawyers may want to consider adopting contingent fee arrangements or flat billing rates for specific services so that the benefits of increased efficiency accrue to the lawyer and client alike.

While a lawyer may separately itemize activities like paralegal research performed by nonlawyer personnel, the lawyer should not do so if those charges are already accounted for in the lawyer's overhead. Fla. Ethics Op. 76-33 & 76-38, Consolidated. In the alternative, the lawyer may need to consider crediting the nonlawyer time against the lawyer's own fees. *Id.* Florida Ethics Opinion 07-2 discusses the outsourcing of paralegal services in contingent fee matters and explains:

The law firm may charge a client the actual cost of the overseas provider [of paralegal services], unless the charge would normally be covered as overhead. However, in a contingent fee case, it would be improper to charge separately for work that is usually otherwise accomplished by a client's own attorney and incorporated into the standard fee paid to the attorney, even if that cost is paid to a third-party provider.

Additionally, a lawyer should have sufficient general knowledge to be capable of providing competent representation. *See, e.g., Att'y Grievance Comm'n of Maryland v. Manger*, 913 A.2d 1 (Md. 2006). "While it may be appropriate to charge a client for case-specific research or familiarization with a unique issue involved in a case, general education or background research should not be charged to the client." *Id.* at 5.

In the context of generative AI, these standards require a lawyer to inform a client, preferably in writing, of the lawyer's intent to charge a client the actual cost of using generative AI. In all instances, the lawyer must ensure that the charges are reasonable and are not duplicative. If a lawyer is unable to determine the actual cost associated with a particular client's matter, the lawyer may not ethically prorate the periodic charges of the generative AI and instead should account for those charges as overhead. Finally, while a lawyer may charge a client for the reasonable time spent for case-specific research and drafting when using generative AI, the lawyer should be careful not to charge for the time spent developing minimal competence in the use of generative AI.

Lawyer Advertising

The advertising rules in Subchapter 4-7 of the Rules Regulating The Florida Bar include prohibitions on misleading content and unduly manipulative or intrusive advertisements.

Rule 4-7.13 prohibits a lawyer from engaging in advertising that is deceptive or inherently misleading. More specifically, subdivision (b) includes prohibitions on:

(3) comparisons of lawyers or statements, words, or phrases that characterize a lawyer's or law firm's skills, experience, reputation, or record, unless the characterization is objectively verifiable; [and]

* * *

(5) [use of] a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm unless the advertisement contains a clear and conspicuous disclaimer that the person is not an employee or member of the law firm[.]

As noted above, a lawyer should be careful when using generative AI chatbot for advertising and intake purposes as the lawyer will be ultimately responsible in the event the chatbot provides misleading information to prospective clients or communicates in a manner that is inappropriately intrusive or coercive. To avoid confusion or deception, a lawyer must inform prospective clients that they are communicating with an AI program and not with a lawyer or law firm employee. Additionally, while many visitors to a lawyer's website voluntarily seek information regarding the lawyer's services, a lawyer should consider including screening questions that limit the chatbot's communications if a person is already represented by another lawyer.

Lawyers may advertise their use of generative AI but cannot claim their generative AI is superior to those used by other lawyers or law firms unless the lawyer's claims are objectively verifiable. Whether a particular claim is capable of objective verification is a factual question that must be made on a case-by-case basis.

Conclusion

In sum, a lawyer may ethically utilize generative AI technologies but only to the extent that the lawyer can reasonably guarantee compliance with the lawyer's ethical obligations. These obligations include the duties of confidentiality, avoidance of frivolous claims and contentions, candor to the tribunal, truthfulness in statements to others, avoidance of clearly excessive fees and costs, and compliance with restrictions on advertising for legal services. Lawyers should be cognizant that generative AI is still in its infancy and that these ethical concerns should not be treated as an exhaustive list. Rather, lawyers should continue to develop competency in their use of new technologies and the risks and benefits inherent in those technologies.