

**Real Property, Probate and Trust Law (“RPPTL”) Section  
Executive Council Meeting  
Hyatt Regency Coconut Point Resort and Spa  
Bonita Springs, Florida  
June 1, 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 February 24, 2024, meeting of the Executive Council held at The Ritz-Carlton Orlando, Grande Lakes. **p. 10**
2. Meeting Attendance. **p. 16**
3. Mentimeter Demo (Voting App).

**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 Letter from RPPTL Section to Financial Crimes Enforcement Network dated April 1, 2024 offering objective and technical comments about proposed legislative and regulatory matters. **p. 33**
  - (B) Approval of Letter from RPPTL Section to Michele A. Gavagni, Executive Director, Florida Board of Bar Examiners dated April 17, 2024 regarding NextGen Bar Exam and urging Florida Board of Bar Examiners to continue to include Wills, Trusts, and Estates as tested subjects on the Florida bar exam. **p. 47**
  - (C) Approval of Proclamation Honoring Florida Realtor-Attorney Joint Committee for 50 years of service. **p. 52**
4. Milestones.
5. General Comments of Chair.

- IV. [Board of Governors Report](#) – *Rosalyn Sia (“Sia”) Baker-Barnes, Liaison*
- V. [Chair-Elect’s Report](#) – *John C. Moran, Chair-Elect*
  - 1. 2024-2025 Executive Council meetings. **p. 54**
- VI. [Treasurer’s Report](#) – *S. Dresden Brunner, Treasurer*
  - 1. Statement of Current Financial Conditions. **p. 55**
- 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. 70**
- IX. [Legislation Committee](#) – *Steven H. Mezer (Real Property) and Sancha K. Brennan (Probate & Trust), Co-Chairs*
- X. [Probate and Trust Law Division Report](#) – *Jon Scuderi, Division Director*

**Action Items:**

- 1. [Trust Law Committee](#) – *David J. Akins, Chair*

Motion to:

- A. Support legislation providing the circumstances under which ademption by satisfaction applies to revocable trusts;
- 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. 72**

- 2. [Trust Law Committee](#) – *David J. Akins, Chair*

Motion to:

- A. Support legislation adding a definition of “willful misconduct” to the Florida Uniform Directed Trust Act;
- 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. 81**

3. **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. 90**

**Information Items:**

1. **Ad Hoc Study Committee on Jurisdiction and Due Process** – *Barry F. Spivey, Chair*

Support revision of Part III of Chapter 736 to clarify procedure for acceptance by a Designated Representative and the authority and fiduciary status of such representatives. **p. 103**

2. **Probate and Trust Litigation Committee** – *R. Lee McElroy, IV, Chair*

Support of legislation creating a summary process allowing trustee discharge in non-adversarial trust administrations without the need for judicial process. **p. 113**

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

Support revision of Section 736.04117 to clarify that the authorized trustee of the first (original) trust will not be treated as the settlor of the second (new) trust when applying 736.04117 to the second trust; to expressly state that the trustee's power under 736.04117 can be exercised by modifying the terms of the first (original) trust; to make it clear that the notice of a proposed decanting is not a trust disclosure document; to make it clear that 736.04117 applies to any trust governed by Florida law or that has its principal place of administration in Florida. **p. 122**

4. **Estate and Trust Tax Planning Committee** – *Richard N. Sherrill, Chair*

Support revisions to the Florida Community Property Trust Act (Sections 736.1501, et al., of the Florida Statutes) to fix language in the definitional section of the Act which was inadvertently included during the bill drafting process for the original Act (Section 736.1502(1)); to clarify that the Act applies to express trusts created, amended, restated or modified after July 1, 2021 (Section 736.1502(2)); and to clarify that the transfer of homestead

property to a Florida Community Property Trust is not a change in ownership for purposes of Chapter 193 and does not trigger a reassessment of the value of the property (new Section 736.151(3)). **p. 135**

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

**Action Items:**

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

Motion to:

- A. Support 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 Florida Division of Condominiums;
- 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. 143**

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

Motion to:

- A. Support 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;
- 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. 151**

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

Motion to:

- A. Support legislation permitting unit owners to “finance” special assessments in the form of a payment plan with interest;



- 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. 161**

**Information Item:**

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

Proposed Revisions to Parts I – III of Chapter 718 Regarding Nonresidential Condominiums. **p. 171**

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

**Action Items:**

- 1. **Legislation Committee** – *Steven H. Mezer and Sancha K. Brennan, Co-Chairs*

Committee Motion to Approve RPPTL Section Standing Positions. **p. 233**

- 2. **Professionalism and Ethics Committee** – *Andrew B. Sasso, Chair*

Committee proposal for Credit for Paralegal Time in Supervising Lawyer’s Pro Bono Service Hours. **p. 251**

**Information Items:**

- 1. **Strategic Planning Committee** – *Robert S. Freedman and William T. Hennessey, III, Co-Chairs*

Proposed Strategic Plan for the Real Property Probate and Trust Law Section of the Florida Bar (2024). **p. 253**

- 2. **History Committee** – *David C. Brennan, Chair*

History presentation by Mr. Brennan.

- 3. **Information Technology Committee** – *Hardy L. Roberts, III, Chair*

Report on Florida Bar Survey’s AI Responses and April 22, 2024 FBJ Article.

**II. 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

III. 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

#### **IV. 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. **History 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 K. 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

**V. Adjourn:** Motion to Adjourn.

**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.
  2. Meeting Attendance.
- III. **Chair's Report** — *S. Katherine Frazier, Chair*
  1. Recognition of Special Guests. Anisha Patel, Chair of the Florida Bar’s Young Lawyers Division, was welcomed.
  2. Thank you to our Sponsors!
  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.
    - B. Approval of Recommendation of appointees to the Florida Realtor Attorney Joint Committee.
    - C. Approval of ActionLine Editor 2024 Contract with Colleen Schuster for the term beginning on February 1, 2024 and ending on August 30, 2024.
  4. 2023-2024 Executive Council Meetings.
  5. Milestones. Kit Van Pelt received the Florida Bar President’s Pro Bono Service Award. Judge Hugh Hayes was featured as an Icon in Florida Trend magazine.
  6. General Comments of the Chair.

- IV. Board of Governors Report** – *F. Scott Westheimer, The Florida Bar President; Rosalyn Sia (“Sia”) Baker-Barnes, Liaison* Scott updated us on the latest initiatives from the last Board of Governors meeting. Diversity initiatives have been removed from the Bar’s budget. State Bars around the country are being sued for violations of **JANUS**, so the Board of Governors is watching this closely.
- V. Chair-Elect’s Report** – *John C. Moran, Chair-Elect*
1. 2024-2025 Executive Council meetings. John updated us on the meeting schedule for his Bar year.
- VI. Treasurer’s Report** – *S. Dresden Brunner, Treasurer*
1. Statement of Current Financial Conditions. Dresden advised that the cost of Zoom attendance for this meeting is \$5,168.27. Dresden then directed everyone to the financial statement attached to the agenda.
- VII. Director of At-Large Members Report** – *Wilhelmina F. Kightlinger, Director* Willie advised that ALMS are still participating in the No Place Like Home and Heirs Property projects. The ALMS have been responding quickly to pro bono requests. Arlene Udick is participating in a community outreach program letting people know about various available programs for them. Sixth Circuit had a Bench and Bar Conference, that was so successful that will become a quarterly event. The Ninth Circuit had a successful happy hour. The ALMS are getting the word out about the good work of the Section.
- VIII. CLE Seminar Coordination Report** – *Angela M. Adams (Probate & Trust) and Brenda Ezell (Real Property), Co-Chairs*
1. Upcoming CLE programs and opportunities. Angela Adams gave the report. She referred to the scheduled programs for the remainder of the year attached to the agenda. Eighteen programs have been presented so far this year. Angela asked program chairs to be timely with their submissions for their programs. The CLE Committee will be presenting a live leadership training session at the Convention and possibly a second session at the September meeting. The Supreme Court changed the professionalism requirement. Lawyers must take a free two-hour professionalism course that is now available.
- IX. Legislation Committee** – *Steven H. Mezer (Real Property) and Sancha Brennan (Probate & Trust), Co-Chairs* Steve Mezer presented on the status of the legislative session. Pete Dunbar gave a report on specific statuses of various Section initiatives. He advised the voice of the Section has never been more prominent in the legislative arena than ever before. All Section initiatives are moving nicely and appear primed to pass. Sancha Brennan discussed how committees need to be prepared to respond to bill drafting requests. Committees have been very responsive and Sancha recognized those who



were involved. Sancha discussed upcoming mandatory legislative training.

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

**Action Item:** Jon advised this is being deferred to a future meeting.

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.

**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. Grier Presley presented. Family law is being added back into the bar exam, so the Probate Law and Procedure Committee would like trusts and estates and future interests to be added as well. Grier suggested people send letters to Florida Board of Bar Examiners leadership. If this is taken off the bar exam, it may no longer be a required course in law schools or maybe be removed from curriculums altogether. Laird Lile suggested people apply for membership on the Board of Bar Examiners to influence the testable topics.

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

Proposed legislation providing the circumstances under which ademption by satisfaction applies to revocable trusts. David advised that the Trust Law Committee reviewed differences between the Probate Code and Trust Code and is proposing changes in the Trust Code to correspond to provisions in the Probate Code.

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

Proposed legislation adding a definition of "willful misconduct" to the Florida Uniform Directed Trust Act. David discussed the background and application



of this initiative. Angela Adams mentioned the old version of the Florida statute and the uniform model act left “willful misconduct” undefined and she is concerned that the second sentence of the proposed definition raises the bar from willfulness to maliciousness. She is concerned this erodes fiduciary duties. Discussion ensued. Rohan Kelley inquired about whether bankers in the room would have to be excused from the room when we vote on this due to conflicts of interest. Discussion ensued on this point as well, but we don’t need to figure this out today because we are not voting yet.

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

1. [The following motion was added to the agenda during the Executive Council meeting as both an informational and action item and requires a 2/3 vote of Executive Council members present and voting]. Melissa Murphy and Michael Gelfand presented.

Motion to waive the rule under Article VIII, Section 4(a) of the RPPTL Bylaws, to allow consideration of a motion to request the RPPTL Executive Committee to approve as interim action between Executive Council meetings a request from the Residential Real Estate Industry Liaison Committee for the Section to submit comments on or before the comment period deadline to the Financial Crimes Enforcement Network related to the proposed Anti-Money Laundering Regulations for Residential Real Estate Transfers to make compliance with the Regulations commercially reasonable and allowing compliance to provide FinCEN the information needed to combat money laundering in residential real estate transfers. Motion passed unanimously.

2. Motion to request the RPPTL Executive Committee to approve as interim action between Executive Council meetings a request from the Residential Real Estate Industry Liaison Committee for the Section to submit comments on or before the comment period deadline to the Financial Crimes Enforcement Network related to the proposed Anti-Money Laundering Regulations for Residential Real Estate Transfers to make compliance with the Regulations commercially reasonable and allowing compliance to provide FinCEN the information needed to combat money laundering in residential real estate transfers, and finding that the submission of such comments is within the purview of the section. Motion passed unanimously.

[NOTE: This motion does not request the expenditure of funds.]

Melissa solicited assistance in drafting language for the comment letter to be submitted.

## 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. Allison Hertz presented. All three informational items are the results of the legislative response to the Surfside tragedy. This initiative currently applies to associations managing at least 25 condominiums, but would be expanded to be available to all condominium associations.

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. Allison advised about this item related to item 1 above. This would codify the ability of associations to borrow funds for the health, safety or welfare of residents.

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. Allison advised on this final related initiative.

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

### Information Items:

1. **Ad Hoc Protocols Committee** – *Stacy O. Kalmanson, Chair*

Stacy gave an update on the Committee’s activity to create institutional knowledge on a committee-by-committee basis to assist in transition between outgoing and incoming committee chairs.

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. John Moran referred to the comment the Section provided to the Board of Governors, which is attached to the agenda. John thanked the Board of Governors for the manner in which they handled this matter.

3. **Information Technology Committee** – *Hardy L. Roberts, III, Chair*

Update on Florida Bar Ethics Opinion 24-1, January 19, 2024. Hardy Roberts presented on the Florida Bar Ethics Opinion on AI. The opinion addresses client confidentiality, competence, proper billing, lawyer advertising, and technical competence.

4. **Strategic Planning Committee** – *Robert S. Freedman and William T. Hennessey, III, Co-Chairs*

Rob Freedman gave an update on the activities of the process. The Committee met for 1 ½ days two weeks ago in Orlando. The Committee is currently reviewing a draft of the strategic plan, that will be disclosed to the Council at the Convention.

5. **Historian Committee** – *David C. Brennan, Chair*

History presentation by Dave Brennan. The Committee is creating a memory wall to be updated on historical information. The Committee is also doing investigative reporting into the Section's past. Dave then presented a biography about Sam Smith.

6. **Liaison with ABA** – *Robert S. Freedman*

Rob Freedman gave a report about the upcoming conference in Washington DC.

7. **Convention Coordination Committee** – *Tae K. Bronner and Stacy O. Kalmanson, Co-Chairs*

Tae Bronner and Stacy Kalmanson presented ideas for the upcoming Convention. The theme is a weekend in France. It will be at Coconut Point in Bonita Springs.

**XIII. Adjourn:** Motion to Adjourn at 11:40 am.

**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 <b>Chair</b>	RP		√	√	√	√	
Moran, John C., <b>Chair-Elect</b>		PT	√	√	√	√	
Wright, Wm. Cary <b>Division Director Real Property</b>	RP		√	√	√	√	
Jon Scuderi, <b>Division Director, Probate &amp; Trust</b>		PT	√		√	√	
Lee Weintraub <b>Secretary</b>	RP		√	√	√		
Dresden Brunner, <b>Treasurer</b>		PT	√		√	√	
Kightlinger, Wilhelmina <b>Director, At-Large Members</b>	RP		√		√	Z	
Sancha Brennan, <b>Legislation Co-Chair Probate &amp; Trust</b>		PT	√		√	√	
Steven H. Mezer, <b>Legislation Co-Chair, Real Property</b>	RP		√		√	√	
Adams, Angela M. <b>CLE Co-Chair Probate &amp; Trust</b>		PT	√	√	√	√	
Brenda Ezell, <b>CLE Co-Chair Real Property</b>	RP		√	√	√	√	
Sarah Butters, <b>Immediate Past Chair</b>		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			√	Z	
Archbold, J. Allison		PT	Z	√	√	√	
Arnold, Casey		PT	√			√	
Arnold, Trevor	RP		√		√	√	
Aron, Jerry E. <b>Past Chair</b>	RP						
Ashton, Amber E.	RP		√		Z	√	
Awerbach, Martin S.	RP		√		Z	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	√			√	
Battle, Carlos A.		PT	√		Z	√	
Baumann, Phillip A.		PT	√				
Beales, III, Walter R. <b>Past Chair</b>	RP		√				
Bedke, Michael A.	RP		√		√		
Behar, Jacobeli J.		PT	√		√	Z	
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 <b>Past Chair</b>		PT	√	√	√	√	
Bouchard, Eve		PT	√		Z	√	
Bowers-Stoops, Elizabeth A.		PT					
Boyd, Deborah	RP		√		Z	Z	
Braun, Keith Brian		PT	√		√	√	
Brenes-Stahl, Tattiana		PT	√		Z	√	
Brennan, David C. <b>Past Chair</b>		PT			√	√	
Bronner, Tae K.		PT	√		Z	√	
Brown, Shawn	RP		√		√	√	
Brown-Burton, Lorna	RP		√		Z	Z	
Bruton, Jr., Ed Burt	RP		√		Z	Z	
Bucher, Elaine M.		PT	√				
Callahan, Chad W. III		PT	√		Z	√	
Caskey, John Richard "Rich"		PT				√	
Cazobon, Denise		PT			√	√	
Christiansen, Patrick <b>Past Chair</b>	RP			√		√	
Cole, Stacey L.		PT	√		√	Z	
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	Z	
Cornett, Jane Louise	RP		√		Z	√	
Cranford, Jeremy	RP		√		Z	√	
Crockett, Debbie	RP		√		Z	√	
Cummins, Amanda		PT	√		√	√	
Curley, Nick		PT	√		√	√	
DeNapoli, Richard		PT	√		√	√	
Detzel, Lauren Y.		PT	√		√		
Diamond, Benjamin F.		PT	√	√	√	√	
Diamond, Sandra F. <b>Past Chair</b>		PT	√	√	√	√	
Dobrev, Alex	RP		√		Z	Z	
Dollinger, Jeffrey	RP		Z		√	√	
Douglas, Alexander		PT	√		√	√	
Dribin, Michael <b>Past Chair</b>		PT	√		√	Z	
Duffey, Patrick J.		PT	√				
Duvall, III, Homer	RP		√		√	√	
Eisel, Jeffrey		PT	√		√	√	
Ellison, Jason M.	RP		√		√	Z	
Emerich, Guy S.		PT	√		Z		
Ertl, Christene M.	RP		√		Z	Excused in-person attendance Z	

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
Evert, Jamison C.		PT	√		Z	√	
Fagan, Gail		PT	√	√	√	√	
Falk, Jr., Jack A.		PT	√		Z	Z	
Farach, Manuel	RP		√	√		√	
Felcoski, Brian J. <b>Past Chair</b>		PT	√		Z	Z	
Ferguson, Elizabeth B.	RP		Z		Z	Excused in-person attendance 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) <b>Past Chair</b>	RP		Z	√	√	√	
Friedman, Bridget		PT	√	√	√	√	
Friedman, Jesse B.		PT	√			Z	
Fugate, Norm	RP		√		√	√	
Gabel, Alexandra	RP		√		Z	√	
Galler, Jonathan		PT					
Gans, Richard R.		PT	√		√	√	
Gelfand, Michael J <b>Past Chair</b>	RP		√	√	√	√	
George, Joseph P.		PT	√	√	√	√	
Getzan, Roberta							



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
Goethe, Jeffrey S.		PT	√		√	√	
Goldman, Louis “Trey”	RP		√		√	√	
Goldman, Robert W. <b>Past Chair</b>		PT	√		√		
Goodall, Deborah P. <b>Past Chair</b>		PT	√		√	√	
Graham, Robert M.	RP		√		√	√	
Granet, Lloyd	RP		√			Z	
Griffin, Linda S.		PT	Z		√		
Grimsley, John G. <b>Past Chair</b>		PT					
Gunther, Eamonn W.		PT	√		√	√	
Guttmann, III, Louis B <b>Past Chair</b>	RP		√				
Hargett, Michael V.	RP		√	√	√	√	
Harris, Shelly W.		PT	Z			√	
Harvey, Terrance	RP		√		√	Z	
Hatcher, Hon. Mary							
Hayes, Hon. Hugh D.			√				
Hayes, Michael Travis		PT	√		√	√	
Haynes, Jourdan	RP		√		√	Z	
Hearn, Frederick “Ricky”		PT	√		√	√	
Hearn, Steven L. <b>Past Chair</b>		PT	√			√	
Hellmuth, Kelly		PT			Z	Z	
Henderson, III, Thomas N.	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
Hennessey, William (“Bill”) <b>Past Chair</b>		PT		√	√	√	
Hersem, Amanda	RP		√		√	√	
Hertz, Allison	RP		√		√	√	
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. <b>Past Chair</b>		PT					
Jaiven, Kristen King	RP		√	√	√	Z	
Jarrett, Sharifa K.		PT	Z		Z		
Johnson, Amber Jade		PT	√		√	√	
Jones, Darby		PT			√	Z	
Jones, Frederick W.	RP		Z		√	√	
Kalmanson, Stacy O.	RP		√	√	√	√	
Kangas, Michael R.		PT	√		√	Z	
Kaplan, Seth		PT	Z		√	√	
Karr, Thomas M.		PT	Z		√		
Kayser, Joan B. <b>Past Chair</b>		PT					
Kelley, Rohan <b>Past Chair</b>		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
Kelley, Sean W.		PT			√	√	
Kelley, Shane		PT				√	
Kibert-Basler, Nicole	RP				Z	Z	
Kinsolving, Ruth Barnes <b>Past Chair</b>	RP				√		
Kison, Amanda	RP		√			√	
Koren, Edward F. <b>Past Chair</b>		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. <b>Past Chair</b>		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		√		√	Z	
Marger, Bruce <b>Past Chair</b>		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
Marx, James A.	RP		Z		Z	√	
McCall, Alan K.	RP		√			√	
McConnell, Eryn	RP		Z		√	√	
McConnell, Ryan	RP		√	√	√	√	
McDermott, Daniel		PT	√		Z	Z	
McElroy, IV, Robert Lee		PT	√		√	√	
McIver, Richard	RP		√		√	√	
McRae, Ashley E.	RP		√		√	√	
Menor, Arthur J.	RP				√		
Meyer, George F. <b>Past Chair</b>	RP		√		√	√	
Meyer, Michael	RP		√				
Middlebrook, Mark	RP		√		√	Z	
Miller, Erin			√		Z	√	
Miller, Lawrence ("Larry")		PT	√		√	√	
Mount, Shayla	RP				√	√	
Muir, Hon. Celeste H.		PT			√	√	
Murphy, Melissa J. <b>Past Chair</b>	RP		√			√	
Nash, Charles I.		PT	Z		Z	√	
Neukamm, John B. <b>Past Chair</b>	RP			√	√	Z	
Nguyen, Hung V.		PT	Z		√	√	
O'Malley, Andrew M.	RP				√		
Papanikos, Cristina		PT	√		√	√	
Partington, Bruce	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
Payne, L. Howard		PT					
Pence, Scott P.	RP		√		Z	√	
Percopo, Joe		PT	√		√	√	
Pilotte, Frank		PT	√	√	√	√	
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.	RP		√	√	√	√	
<b>Past Chair</b>							
Roman, Paul E.		PT	√	√	Z	√	
Romano, Antonio		PT	Z		Z	√	
Rubel, Stacy		PT	√		√	√	
Rubenstein, Michael		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
Rubin, Jenna		PT	√			√	
Rudisill, Hon. Michael	RP		√		√	√	
Russick, James C.	RP		√	√	√	√	
Sachs, Colleen C.	RP		√		√	√	
Sajdera, Christopher	RP		Z		√		
Sanchez-Medina, Roland							
Sasso, Andrew		PT	√		√	Z	
Savioli, Justin		PT			Z	√	
Scaletta, Melissa	RP		√		Z	√	
Schwartz, Martin	RP		Z		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		√		√	Z	
Smith, G. Thomas <b>Past Chair/Hon. Member</b>	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	√		√	√	

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
Spurgeon, Susan K.	RP				√	√	
Stafford, Michael P.		PT	√		√	√	
Staker, Karla J.	RP		√	√	√	√	
Stashis, Alfred Joseph		PT	Z		√	√	
Stern, Robert G.	RP		√	√	Z		
Stivelman, Alessandra			√		Z	Z	
Stoops, Elizabeth			√				
Stone, Adele I.	RP		Z		√	√	
Stone, Bruce M. <b>Past Chair</b>		PT			√		Excused Absence
Stotts, Darren		PT	√		√	√	
Strock, Gregg	RP		√		√	√	
Sundberg, Laura K.		PT	√	√	√	√	
Swaine, Jack Michael <b>Past Chair</b>	RP			√	√	√	
Swaine, Robert S. <b>Past Chair</b>	RP				√	√	
Taft, Ellie	RP		√			√	
Taylor, Richard W.	RP					√	
Thomas, Hon. Patricia		PT	√	√		Z	
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		√	√	

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
Van Lenten, Jason Paul		PT	√		Z	√	
Van Pelt, Kit E.		PT	√	√	√	√	
Villarroel, Nicole Marie	RP		√			√	
Virgil, Eric		PT			√	√	
Waller, Roland D. <b>Past Chair</b>	RP		√		√	√	
Wan, Alyssa Razook		PT	√		√		
Warner, Richard		PT	√		√	Z	
Weiss, Brad R.	RP		√		√	√	
Williams, Margaret A.	RP					√	
Williams, Jorja		PT	√		√	√	
Williamson, Julie Ann <b>Past Chair</b>	RP						
Wolasky, Marjorie E.		PT	√	√	Z	√	
Wolf, Jerome L.		PT				Z	
Wood, Rebecca	RP		√		√	√	
Young, Gwynne A.		PT			Absence excused		
Zeydel, Diana S.C.		PT	√		√	Z	
Zikakis, Salome J.	RP		√		√	√	
Zimmer, Greg		PT			√	√	
Zschau, Julius J. <b>Past Chair</b>	RP						
Zuroweste, Zack		PT	√		√	√	

**Affiliate Members**

Fellows	Division	7/22/2023	9/23/2023	11/11/2023	2/24/2024	6/1/2024
---------	----------	-----------	-----------	------------	-----------	----------



			Beakers	Quebec City, Canada	Tampa	Orlando	Bonita Springs
	R	P					
Boisrond, Sandy		PT	√		√	√	
Cherneski, John		PT	√		√		
Curtis, Wade							
Clark, Danielle		PT	√		√	√	
Davis, Jade							
Harmon, Sara Ashley		PT	√	√	√	√	
Mora, Jeanette		PT	√		Z	√	
Pieczynski, Janaye			√		Z	Z	
Selvaraj, Natasha			√		√	Z	

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	R	P	√	√	√	√	
Jones, Todd				√			
Jenkins, Joryn				√			
Seigel, Daniel				√			

	<b>R</b>	<b>P</b>					



## Thank you to Our General Sponsors

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

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



# 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) Residential Real Estate and Industry Liaison Committee*

**Contact:** *(Name of Committee Chair(s), address and phone number:  
Kristen King Jaiven, Co-Chair, 418 SW 11<sup>th</sup> Street Ft. Lauderdale, FL 33301 407-590-9686  
Nicole M. Villarroel, Co-Chair, 2426 East Las Olas Boulevard, Ft. Lauderdale, FL 33301 954-334-2250*

*Additional contacts:*

*Melissa Jay Murphy, 6545 Corporate Centre Blvd., Orlando FL 32822 407-240-3863 ext 7237*

*Wm. Cary Wright, 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607-5780 813-229-4135 (direct)*

*(Name of Sub-committee Chair, if any, address and phone number, if any) NONE*

**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**

To provide objective comments, information and constructive feedback to a proposed rule issued by the Financial Crimes Enforcement Network of the Department of Treasury that will require the reporting of all non-financed residential real property transfers. The purpose of our comments will be to make FinCEN aware of possible technical impacts of the proposed rule, make compliance with the proposed rule more commercially feasible and less burdensome for those persons required to report when possible, but still provide FinCEN with the information needed to combat money laundering through residential real estate transfers.

**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: We will not be advocating for or against this rule but merely providing comments about the requirements of the rule based on the Section’s collective experience and expertise in the areas of real property transfers. \_\_\_\_\_

---



---



---

**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.

NA

**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)*

NA

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

NA

RPPTL Letterhead

[Date}

Financial Crimes Enforcement Network

Policy Division

P. O. Box 39

Vienna, VA 22183

RE: Docket Number FINCEN 2024-0005 and RIN 1506-AB54

Submitted electronically at [www.regulations.gov](http://www.regulations.gov)

Ladies and Gentlemen,

The Real Property, Probate and Trust Law Section (“RPPTL”) of The Florida Bar is a professional organization of approximately 11,500 members of The Florida Bar. Section members are involved on a day-to-day basis with real property matters and with the creation and administration of trusts. RPPTL frequently offers objective and technical comments about proposed legislative and regulatory matters and appreciates the opportunity to do so in this situation.

We applaud FinCEN’s efforts to combat illegal money laundering through residential real estate transactions and offer the following comments in order to ensure that the requirements of the proposed rule “match up” with the realities of the marketplace. The terms “closing agent,” “settlement agent,” “settlement/closing agent” and “Reporting Person” are used interchangeably as are the terms “transferee,” “transferee entity” and “transferee trust.”

**FinCEN is requiring information to which the Reporting Person does not have ready access. Here are two examples of the impact of that requirement.**

- Vacant land; proof of zoning or building permit.

The proposed rule requires reporting of transfers of “[v]acant or unimproved land located in the United States zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families...” See §1031.320(b)(1)ii). Emphasis added.

Settlement/Closing Agents do not routinely obtain zoning information or examine building permits for closing transactions.

Informal zoning information can likely be obtained by viewing a local jurisdiction’s GIS mapping system, but that information can be ambiguous and may not be 100% accurate.



Complete, detailed, accurate zoning information is only available by obtaining a zoning certificate or zoning verification letter from the county or municipality where the property is located. These documents can be obtained at an additional cost, and with additional time constraints. At times, this will include the completion of an application, which increases the time a closing agent will spend on closing preparation, thereby increasing the closing agents costs to complete a transaction.<sup>1</sup> Additionally, this could cause delays of up to two or three weeks in closing a transaction and additional costs to the transferee.

Similarly, closing/settlement agents do not typically review building permits during pre-closing preparation. While a permit search can be ordered at an additional cost, the closing/settlement agent would then be required to review and examine the permit to verify whether the vacant land being transferred is subject to the reporting rule, a knowledge and skill for which they are not trained. Compliance with the rule would result in additional cost and time burdens on the transferee.

An option for FinCEN to consider would be to allow the settlement agent to rely on representations of the transferee or transferor, which representations could be included in the Real Estate Report.

- Payment information for certain wires.

The proposed rule requires information about payments received from the transferee entity, transferee trust and others, including the amount of the payment, the method of payment, the name of the institution and the account number the payment was made from, and the name of the payor if not the transferee entity or transferee trust. See §1031.320(h)(1). Emphasis added.

Typically, the information received by the settlement/closing agent from their bank for incoming wire transfers does not include all the requested information. For example, the incoming wire transaction report does not include the account number the payment came from or the name of the payor. The “notes” field of the wire report will typically include the name of the transferee and/or the property address as a reference but there is no way to determine if the account holder is the same as the transferee. To obtain this information would require the Reporting Person to make additional inquiry with its bank, which could have the following effect:

---

<sup>1</sup> A few examples:

1. Nassau County, Florida – a zoning certification may be obtained for \$42 and can take up to 14 days to receive.
2. Collier County, Florida – a zoning verification letter may be obtained for \$100 and can take up to 20 business days.
3. Pinellas County, Florida – a zoning certification letter may be obtained for \$149

- The sending bank may refuse to provide the information to the Reporting Person, based on privacy concerns. The payor/transferee may similarly refuse to provide the information.
- Closing delays could result, especially when the funds are received shortly before the closing is scheduled to occur.
- Settlement/closing agents may require the transferee and other parties to send their wire transfers several days in advance of the scheduled closing date, allowing more time to make additional inquiry as needed. However, the final number required for the wire may not be available several days in advance.
- Funds are often sent by the payor/transferee from multiple accounts thereby compounding the aforementioned obstacles.

The meaning of an “escrow or trust account held by a transferee entity or transferee trust” is not clear. See § 1031.320(h). Because payments from these accounts are not required to be included on the Real Estate Report, clarification from FinCEN would be helpful.

**FinCEN may wish to consider avoiding the unnecessary collection of duplicative data.**

- FinCEN, through the Corporate Transparency Act (“CTA”), has already established a reporting process to obtain beneficial ownership information (“BOI”) for certain entities. CTA requires this information to be reported to FinCEN in a timely manner and allows for individual beneficial owners or company applicants to apply for FinCEN IDs to avoid having to enter duplicative and sensitive data on multiple BOI reports, saving time and reducing contact with sensitive data and personal documents. The proposed rule indicates FinCEN intends to follow the exemptions established under CTA for the purpose of establishing regulated entities (and exempt entities) under the new rule, meaning the entities subject to BOI will also have reporting requirements under the new rule. As a result, the proposed new rule would require duplicative data entry to FinCEN for regulated entities. This is unnecessary and creates additional risk connected with collecting, maintaining, and reporting this duplicative information. Therefore, FinCEN may want to consider requiring the use of any FinCEN ID assigned to a transferee entity or a beneficial owner to be submitted under the proposed rule. By doing so the detailed information would not need to be gathered and stored by the closing agent.

**FinCEN should recognize that parties to the transaction may refuse to provide the required information and therefore limit the Reporting Person’s responsibility to report only the information provided after a reasonable effort to collect.**

- The proposed rule obligates the Reporting Person to collect the information but there is no corresponding obligation on the part of the beneficial owners of the transferee and transferor to provide the required information. FinCEN should establish the obligation on the part of the transferor/transferee/beneficial owners to provide requested information but also allow for those situations in which the information is requested but still not

provided. We recommend allowing for fields on the Real Estate Report to indicate “not provided.”

- The authorization for the Reporting Persons to rely on the certification provided by the transferor and transferee should be clarified.

**Requiring information for certain transfers to trusts may increase the costs of the transfers without providing FinCEN with any useful information. Accordingly, FinCEN may wish to exclude the requirement to report transfers to and from trustees as described below.**

The proposed rule will require reporting transfers to Trustees of trusts which are made for legitimate estate planning purposes. For example, many transferors convey their residences to themselves, or to family members, as trustees of trusts to eliminate the costs associated with guardianship and probate. These trusts are typically revocable by the transferor. The deeds typically recite only nominal consideration and no transfer of money is involved.

The proposed rule will also require reporting transfers from trustees to further trusts for beneficiaries in accordance with trust terms. For example, upon the death of the settlor, the trust often terminates with the direction to the trustee to distribute property to trusts for the benefit of individuals, often family members of the settlor. The deeds typically recite nominal consideration and do not involve any transfer of money.

The above-described transfers do not present any opportunity for money laundering. Accordingly, FinCEN may wish to consider exempting from the rule as finally adopted such transfers to trusts where there is no monetary consideration.

The proposed rule will also require reporting of transfers to Trustees of irrevocable trusts made for tax planning purposes, which involve no monetary consideration or consideration only in the form of a promissory note or other non-monetary form. For example, a property owner may convey real property to the trustee of an irrevocable trust as a completed gift for tax purposes. In that situation, typically no consideration, monetary or otherwise, is received in exchange for the real estate. As another example, a property owner may convey real property to the trustee of an irrevocable trust and receive in exchange a promise to pay over time the value of the real property in the form of cash or an annuity. As with the earlier examples, these transactions do not present the opportunity for money laundering but rather are consistent with typical estate planning transactions. Accordingly, FinCEN may wish to consider exempting transfers entered into for estate planning purposes that involve no monetary consideration.

**FinCEN may wish to clarify the exemptions for transfers incident to death.**

The Notice regarding the proposed rule acknowledges that transfers made incident to death should not be reportable. However, reference is only made in the Notice to transfers pursuant to a Will. Often, at the death of a settlor or beneficiary a trust will terminate and direct transfers to further trusts benefitting successor beneficiaries. The document directing the transfer at death, whether a Will or a trust instrument, should not impact the reporting requirements; instead, the focus should be upon the event giving rise to the transfer (a death) and the lack of monetary consideration.

We look forward to continuing to work with FinCEN on the finalization of this rule. Please contact Melissa Jay Murphy at [mmurphy@thefund.com](mailto:mmurphy@thefund.com) with any questions.

Sincerely,

SKF, Chair

Etc.

DRAFT

**CHAIR**  
S. Katherine Frazier  
Hill Ward Henderson  
101 E. Kennedy Blvd., Ste. 3700  
Tampa, FL 33602-5195  
(813) 221-3900  
katherine.frazier@hvwlaw.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@gfsstatelaw.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 4<sup>th</sup> 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**

April 1, 2024

Financial Crimes Enforcement Network  
Policy Division  
P. O. Box 39  
Vienna, VA 22183

RE: Docket Number FINCEN 2024-0005 and RIN 1506-AB54  
Submitted electronically at [www.regulations.gov](http://www.regulations.gov)

Ladies and Gentlemen:

The Real Property, Probate and Trust Law Section (“RPPTL”) of The Florida Bar is a professional organization of approximately 11,500 members of The Florida Bar. Section members are involved on a day-to-day basis with real property matters, with the creation and administration of trusts, and with the administration of decedent’s estates. RPPTL frequently offers objective and technical comments about proposed legislative and regulatory matters and appreciates the opportunity to do so in this situation.

We applaud FinCEN’s efforts to combat illegal money laundering through residential real estate transactions and offer the following comments in order to ensure that the requirements of the proposed rule “match up” with the realities of the marketplace. The terms “closing agent,” “settlement agent,” “settlement/closing agent” and “Reporting Person” are used interchangeably as are the terms “transferee,” “transferee entity” and “transferee trust.”

**FinCEN is requiring information to which the Reporting Person does not have ready access. Here are two examples of the impact of that requirement.**

- Vacant land; proof of zoning or building permit.

The proposed rule requires reporting of transfers of “[v]acant or unimproved land located in the United States zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families....” See §1031.320(b)(1)ii). Emphasis added.

Settlement/Closing Agents do not routinely obtain zoning information or examine building permits for closing transactions.

Informal zoning information can likely be obtained by viewing a local jurisdiction's GIS mapping system, but that information can be ambiguous and may not be 100% accurate.

Complete, detailed, accurate zoning information is only available by obtaining a zoning certificate or zoning verification letter from the county or municipality where the property is located. These documents can be obtained at an additional cost, and with additional time constraints. At times, this will include the completion of an application, which increases the time a closing agent will spend on closing preparation, thereby increasing the closing agent's costs to complete a transaction.<sup>1</sup> Additionally, this could cause delays of up to two or three weeks in closing a transaction and additional costs to the transferee.

Similarly, closing/settlement agents do not typically review building permits during pre-closing preparation. While a permit search can be ordered at an additional cost, the closing/settlement agent would then be required to review and examine the permit to verify whether the vacant land being transferred is subject to the reporting rule, a knowledge and skill for which they are not trained. Compliance with the rule would result in additional cost and time burdens on the transferee.

An option for FinCEN to consider would be to allow the settlement agent to rely on representations of the transferee or transferor, which representations could be included in the Real Estate Report.

- Payment information for certain wires.

The proposed rule requires information about payments received from the transferee entity, transferee trust and others, including the amount of the payment, the method of payment, the name of the institution and the account number the payment was made from, and the name of the payor if not the transferee entity or transferee trust. See §1031.320(h)(1). Emphasis added.

Typically, the information received by the settlement/closing agent from their bank for incoming wire transfers does not include all the information required to be reported. For example, the

---

<sup>1</sup> A few examples:

1. Nassau County, Florida – a zoning certification may be obtained for \$42 and can take up to 14 days to receive.
2. Collier County, Florida – a zoning verification letter may be obtained for \$100 and can take up to 20 business days.
3. Pinellas County, Florida – a zoning certification letter may be obtained for \$149.

incoming wire transaction report does not include the account number the payment came from or the name of the payor. The “notes” field of the wire report will typically include the name of the transferee and/or the property address as a reference but there is no way to determine if the account holder is the same as the transferee. To obtain this information would require the Reporting Person to make additional inquiry with its bank, which could have the following effect:

- The sending bank may refuse to provide the information to the Reporting Person, based on privacy concerns. The payor/transferee may similarly refuse to provide the information.
- Closing delays could result, especially when the funds are received shortly before the closing is scheduled to occur.
- Settlement/closing agents may require the transferee and other parties to send their wire transfers several days in advance of the scheduled closing date, allowing more time to make additional inquiry as needed. However, the final number required for the wire may not be available several days in advance.
- Funds are often sent by the payor/transferee from multiple accounts thereby compounding the aforementioned obstacles.

The meaning of an “escrow or trust account held by a transferee entity or transferee trust” is not clear. See § 1031.320(h). Because payments from these accounts are not required to be included on the Real Estate Report, clarification from FinCEN would be helpful.

**FinCEN may wish to consider avoiding the unnecessary collection of duplicative data.**

- FinCEN, through the Corporate Transparency Act (“CTA”), has already established a reporting process to obtain beneficial ownership information (“BOI”) for certain entities. CTA requires this information to be reported to FinCEN in a timely manner and allows for individual beneficial owners or company applicants to apply for FinCEN IDs to avoid having to enter duplicative and sensitive data on multiple BOI reports, saving time and reducing contact with sensitive data and personal documents. The proposed rule indicates FinCEN intends to follow the exemptions established under CTA for the purpose of establishing regulated entities (and exempt entities) under the new rule, meaning the entities subject to BOI will also have reporting requirements under the new rule. As a result, the proposed new rule would require duplicative data entry to FinCEN for regulated entities. This is unnecessary and creates additional risk connected with collecting, maintaining, and reporting this duplicative information. Therefore, FinCEN may want to consider requiring the use of any FinCEN ID assigned to a transferee entity or a beneficial owner to be submitted under the proposed rule. By doing so the detailed information would not need to be gathered and stored by the closing agent.

**FinCEN should recognize that parties to the transaction may refuse to provide the required information and therefore limit the Reporting Person’s responsibility to report only the information provided after a reasonable effort to collect.**

- The proposed rule obligates the Reporting Person to collect the information but there is no corresponding obligation on the part of the beneficial owners of the transferee and transferor to provide the required information. FinCEN should establish the obligation on the part of the transferor/transferee/beneficial owners to provide requested information but also allow for those situations in which the information is requested but still not provided. We recommend allowing for fields on the Real Estate Report to indicate “not provided.”
- The authorization for the Reporting Persons to rely on the certification provided by the transferor and transferee should be clarified.

**Requiring information for certain transfers to trusts may increase the costs of the transfers without providing FinCEN with any useful information. Accordingly, FinCEN may wish to exclude the requirement to report transfers to and from trustees as described below.**

The proposed rule requires reporting transfers to Trustees of trusts which are made for legitimate estate planning purposes. For example, many transferors convey their residences to themselves, or to family members, as trustees of trusts to eliminate the costs associated with guardianship and probate. These trusts are typically revocable by the transferor. The deeds typically recite only nominal consideration and no transfer of money is involved.

The proposed rule also requires reporting transfers from trustees to further trusts for beneficiaries in accordance with trust terms. For example, upon the death of the settlor, the trust often terminates with the direction to the trustee to distribute property to trusts for the benefit of individuals, often family members of the settlor. The deeds typically recite nominal consideration and do not involve any transfer of money.

The above-described transfers do not present any opportunity for money laundering since the laundering would occur at the time the real property is initially purchased and not upon the subsequent transfer to a trustee. Accordingly, FinCEN may wish to consider exempting from the rule as finally adopted such transfers to trusts where there is no monetary consideration.

The proposed rule also requires reporting of transfers to Trustees of irrevocable trusts made for tax planning purposes, which involve no monetary consideration or consideration only in the form of a promissory note or other non-monetary form. For example, a property owner may convey real property to the trustee of an irrevocable trust as a completed gift for tax purposes. In that situation, typically no consideration, monetary or otherwise, is received in exchange for the real estate. As another example, a property owner may convey real property to the trustee of an irrevocable trust and receive in exchange a promise to pay over time the value of the real property in the form of cash or an annuity. As with the earlier examples, these transactions do



not present the opportunity for money laundering but rather are consistent with typical estate planning transactions. Accordingly, FinCEN may wish to consider exempting transfers entered into for estate planning purposes that involve no monetary consideration.

**FinCEN may wish to exempt additional transfers with little or no risk of money laundering.**

Exempted transactions should be amended to include:

- A transfer where the transferor is the sole owner/member/managing member of a Transferee Entity.
- A transfer to an entity or trust (generally a deed) is filed of public record to correct or cure a mistake in an existing public record.
- A transfer to an entity or trust made in connection with a court-supervised legal settlement other than divorce or probate.

**FinCEN may wish to clarify the exemptions for transfers incident to death.**

The Notice regarding the proposed rule acknowledges that transfers made incident to death should not be reportable. However, reference is only made in the Notice to transfers pursuant to a Will. Often, at the death of a settlor or beneficiary, a trust will terminate and direct transfers to further trusts benefitting successor beneficiaries. The document directing the transfer of real property at death, whether a Will or a trust instrument, should not trigger the reporting requirements; instead, the focus should be upon the event giving rise to the transfer (a death) and the lack of monetary consideration.

**Implementation date.**

Compliance with the proposed rule will require intensive education, awareness and training for the persons impacted by this rule. To optimize effective compliance, an effective date of one year after finalization of the rule is recommended.

We look forward to continuing to work with FinCEN on the finalization of this rule. Please contact Melissa Jay Murphy at [mmurphy@thefund.com](mailto:mmurphy@thefund.com) with any questions.

Real Property, Probate & Trust  
Law Section

By: /s/ *S. Katherine Frazier*  
S. Katherine Frazier, Chair

Financial Crimes Enforcement Network  
Policy Division  
April 1, 2024  
Page 6

**THE FLORIDA BAR**

cc: Melissa Jay Murphy  
John Christopher Moran  
Wm. Cary Wright  
Jon Scuderi  
Sancha K. Brennan  
Steven H. Mezer

**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 32257-9238  
(904) 432-3200  
brenda@ezellfirm.com

Angela McClendon Adams  
Law Office of Wm. Fletcher Belcher  
540 4<sup>th</sup> 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) 519-8956  
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**

April 17, 2024

Michele A. Gavagni  
Executive Director  
Florida Board of Bar Examiners  
1891 Eider Court  
Tallahassee, FL 32399-1750

Re: NextGen Bar Exam

Dear Ms. Gavagni:

We write to you as the Chair of the Real Property, Probate and Trust Law Section (“RPPTL Section”) and as the Director of the Probate & Trust Law Division of the RPPTL Section, respectively, to urge the Florida Board of Bar Examiners to continue to include Wills, Trusts and Estates as tested subjects on the Florida bar exam.

The RPPTL Section is a group of Florida lawyers who practice in the areas of real estate, guardianship, trust, and estate law. The RPPTL Section is dedicated to serving all Florida lawyers and the public in these fields of practice. The RPPTL Section produces educational materials and seminars, assists the public *pro bono*, drafts legislation, drafts rules of procedure, and occasionally serves as a friend of the Court to assist on issues related to its fields of practice. With over 11,500 members, the RPPTL Section is the largest section of The Florida Bar.

The Florida Board of Bar Examiners is considering the adoption of the National Conference of Bar Examiners’ NextGen bar exam (“NextGen Bar Exam”), an exam that currently omits Wills, Trusts and Estates as tested subjects. We believe that the omission of Wills, Trusts and Estates as tested subjects on Florida’s bar exam would be a grave disservice to the citizens of Florida and to the future lawyers of our state.

Several data points may be helpful in understanding the continuing importance of Wills, Trusts and Estates, from a *national* perspective:

- 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.
- Practitioners in Wills, Trusts and Estates regularly represent the average person – so much so that advice on trust and estate law may be the only legal services that millions of consumers obtain in their lifetimes.
- 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.
- Growing 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) requires knowledgeable attorneys who can assist clients in navigating complex rules.
- Desirability of promoting efficient and effective means of charitable giving.

From a *Florida* perspective, there are a number of additional factors that dictate the particular importance of including Wills, Trusts and Estates on Florida’s bar exam:

- Florida is the third most populous state in the United States, and is one of the two fastest-growing states by population in the country according to the U.S. Census Bureau. In time, these new Florida residents will need new wills, and new estate plans, prepared by Florida-licensed lawyers. And as Florida residents die, their estates (and trusts) will require administration by Florida-licensed lawyers.
- Florida has the nation’s second highest percentage of people aged 65 and older (approximately 20% of the state’s population). An elderly population means an enhanced demand for legal services in the Wills, Trusts and Estates area.
- According to the Florida Chamber of Commerce, the State of Florida continues to lead the nation in income migration annually. As new wealth continues to pour into Florida, there will be a growing need for legal advice in Wills, Trusts and Estates. Furthermore, Florida is a popular destination for residents (new and old) who seek a tax-friendly situs, and there is an obvious interplay between tax planning and the practice of Wills, Trusts and Estates.

- The practice of Wills, Trusts and Estates is largely a statute-driven practice with its own “Florida Probate Code” (Chapters 731-735, Florida Statutes) and “Florida Trust Code” (Chapter 736, Florida Statutes), and Thomson Reuters annually publishes its *West’s Florida Probate Code with Related Laws and Court Rules*, a manual in excess of 1,100 pages.
- Florida’s homestead laws (explained in part in the Florida Probate Code) are very unique and nuanced relative to most other states and can arise in almost any area of law. There could be serious repercussions (improper devises, title problems, etc.) involving enormous economic costs if Florida does not have a lawyer population that is sufficiently familiar with Florida’s homestead laws.
- In Florida in particular, given the abundant elderly population in the state that needs servicing, brand new lawyers commonly include Wills, Trusts and Estates as one of their practice areas when they “hang their shingle” as a solo practitioner.
- All lawyers, not just Wills, Trusts and Estate lawyers, must have some general familiarity with this subject area. Every lawyer, whether a transactional lawyer or a litigation lawyer, will at some point in his or her career be exposed to a client or opposing party who passes away, yet the transaction or the litigation will continue. Lawyers will be required to be involved with estates or trusts in their everyday practice even if they are not Wills, Trusts and Estates lawyers. Further, a lawyer that does not practice in this area will have to possess sufficient information to know when a Wills, Trusts and Estates lawyer will need to be brought in to consult with the client.
- If Wills, Trusts and Estates are not tested subjects on Florida’s bar exam, fewer students will enroll in those courses in law school, and there will be fewer full-time faculty dedicated to teaching those courses. The result will be future generations of Florida lawyers with an insufficient understanding of subjects that are of critical importance to Florida’s residents.
- It is noteworthy that The Florida Bar’s Lawyer Referral Service practice areas include “Estate Planning”, “Trusts and Estates”, “Wills, Living Wills”, and “Taxation.”

Knowledge of Wills, Trusts and Estates is important, and can arise in any practice area. It is as important for Florida lawyers to have a background in these areas as it is to have a basic understanding of contract law, constitutional law, and real property law. The factors included above, and others, support the need for lawyers to possess sufficient knowledge in this area.

We note that the primary purpose of the bar examination is to ensure that all who are ultimately admitted have demonstrated minimum technical competence to protect both the public and the judicial system. Continuing to test examinees in the areas of Wills, Trusts and Estates

implicitly assures the citizens of Florida 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 and a high concentration of elderly Florida residents, it is difficult to imagine 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 may discourage law students from enrolling in these courses. To the extent Wills, Trusts, and Estates is currently a required course in our law schools, removing the subject from the bar exam may mean that the course will no longer be required, further exacerbating the lack of foundational knowledge in these critical legal matters.

On behalf of the RPPTL Section, and its more than 11,500 members, we respectfully request that the Florida bar exam continue to require testing of examinees on the subjects of Wills, Trusts and Estates. If the National Conference of Bar Examiners does not reverse its decision to exclude these topics from the NextGen Bar Exam, then the Florida Board of Bar Examiners should act now to ensure that the Florida exam incorporates consistent and comprehensive testing questions to guarantee an adequate level of competence to protect the citizens of Florida.

If it would be helpful, we would welcome the opportunity to make a further presentation on why we believe this issue is so critical to the public and to the future of the practice of law in Florida, and we appreciate your consideration of the RPPTL Section's request for your involvement in this important effort.

Sincerely,

*/s/ S. Katherine Frazier*

*/s/ Jon Scuderi*

S. Katherine Frazier  
Chair, Real Property, Probate & Trust Law Section

Jon Scuderi  
Director, Probate & Trust Law Division



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

**The Real Property, Probate and Trust Law (“RPPTL”) Section of The Florida Bar joins with the Florida Realtors® to honor the Florida Realtor®-Attorney Joint Committee, and its many volunteer Attorney and Realtor® members, for 50 years of service.**

**Whereas,** The Florida Realtor®- Attorney Joint Committee was formed in the early 1970's by the Joint Accord entered into between The Florida Bar and the Florida Association of Realtors®, which was amended and replaced by their Memorandum of Cooperation, dated June 19, 1982, as amended by that certain Memorandum of Cooperation Amendment effective as of January 1, 2023 (collectively, the “Memorandum of Cooperation”); and

**Whereas,** Pursuant to the Memorandum Of Cooperation, the Florida Realtor®- Attorney Joint Committee, among other things: Encourages the enactment or modification of legislation and regulations in Florida relative to matters affecting real estate transactions that would effectively benefit or protect the public and those persons involved; Promotes and encourages cordial relations between Realtors®/licensed brokers and Attorneys; Cooperates with local joint Attorney-Realtor committees; and Plans, organizes and presents educational seminars or programs jointly for real estate professionals and Attorneys; and

**Whereas,** The Florida Realtor®- Attorney Joint Committee enhances the relationship between the professions and public and encourages clients, buyers, sellers and others involved in real estate transactions to seek qualified representation and advice, as necessary; and

**Whereas,** The Florida Realtor®- Attorney Joint Committee consists of 26 members: 13 Attorneys appointed by The Florida Bar and 13 Realtors® appointed by Florida Realtors®, with staggered 2-year terms; and

**Whereas,** The Florida Realtor®-Attorney Joint Committee is responsible for promulgating and revising the Florida Realtors®/Florida Bar Contract documents, essential tools used by tens of thousands of Attorneys, Realtors® and consumers to facilitate most Florida residential sales transactions, since the first release of the FAR/BAR Contract in 1973, and continuing with numerous revisions and editions of the FR/BAR Contracts and Comprehensive Riders, through and including the current version 6 of the Contracts and Riders, “Rev. 10/21”.



**NOW, THEREFORE,** The RPPTL Section of The Florida Bar recognizes and applauds the dedication of Attorneys and Realtors® who have volunteered and contributed their time and talent to support our profession and the residents of the State of Florida for over fifty years.

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

By:   
S. Katherine Frazier, Chair

Dated this 21<sup>st</sup> day of May, 2024

**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.**

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

**THE FLORIDA BAR**  
**Real Property Probate and Trust Law Section Rollup**  
**For the Ten Months Ending April 30, 2024**

	April	YTD 2024	YTD 23-24 Budget	YTD/YTD Budget Variance (\$)	FY 23-24 Budget	YTD 2023	YTD/Prior YTD Variance (\$)	FYE Actual 2023
3001-Annual Fees	1,080	678,670	550,000	128,670	660,000	679,270	(600)	679,210
3002-Affiliate Fees	140	12,260	4,200	8,060	5,000	12,540	(280)	12,540
<b>Total Fee Revenue</b>	<b>1,220</b>	<b>690,930</b>	<b>554,200</b>	<b>136,730</b>	<b>665,000</b>	<b>691,810</b>	<b>(880)</b>	<b>691,750</b>
3301-Registration-Live	85,875	818,634	473,300	345,334	579,300	668,782	149,852	676,879
3321-Registration-Webcast	-	-	15,000	(15,000)	15,000	-	-	-
3331-Registration-Ticket	-	15,420	32,000	(16,580)	32,000	12,300	3,120	12,300
<b>Total Registration Revenue</b>	<b>85,875</b>	<b>834,054</b>	<b>520,300</b>	<b>313,754</b>	<b>626,300</b>	<b>681,082</b>	<b>152,972</b>	<b>689,179</b>
3341-Exhibit Fees	3,000	136,500	63,500	73,000	78,500	99,900	36,600	99,900
3351-Sponsorships	(1,500)	747,750	475,000	272,750	495,000	579,600	168,150	578,950
3391 Section Profit Split	42,675	519,396	355,000	164,396	425,000	539,363	(19,966)	627,155
3392-Section Differential	1,680	18,240	12,500	5,740	15,000	17,640	600	21,300
<b>Other Event Revenue</b>	<b>45,855</b>	<b>1,421,886</b>	<b>906,000</b>	<b>515,886</b>	<b>1,013,500</b>	<b>1,236,503</b>	<b>185,384</b>	<b>1,327,305</b>
3401-Sales-CD/DVD	2,860	39,110	12,500	26,610	20,000	51,757	(12,647)	68,427
3411-Sales-Published Materials	-	-	1,500	(1,500)	1,500	-	-	-
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>2,860</b>	<b>39,110</b>	<b>14,000</b>	<b>25,110</b>	<b>21,500</b>	<b>51,757</b>	<b>(12,647)</b>	<b>68,427</b>
3561-Advertising	-	-	18,000	(18,000)	18,000	2,000	(2,000)	8,840
<b>Other Revenue Sources</b>	<b>-</b>	<b>-</b>	<b>18,000</b>	<b>(18,000)</b>	<b>18,000</b>	<b>2,000</b>	<b>(2,000)</b>	<b>8,840</b>
3699-Other Operating Revenue	-	-	800	(800)	800	-	-	-
3901-Eliminated InterFund Revenue	-	-	-	-	-	350	(350)	350
<b>Other Revenue Sources</b>	<b>-</b>	<b>-</b>	<b>800</b>	<b>(800)</b>	<b>800</b>	<b>350</b>	<b>(350)</b>	<b>350</b>
<b>Total Revenue</b>	<b>135,810</b>	<b>2,985,980</b>	<b>2,013,300</b>	<b>972,680</b>	<b>2,345,100</b>	<b>2,663,502</b>	<b>322,478</b>	<b>2,785,852</b>
4131-Telephone Expense	-	145	-	145	-	-	145	-
4133-Internet Service	-	823	-	823	-	-	823	-
4134-Web Services	429	29,739	62,500	(32,761)	75,000	39,301	(9,562)	48,648
4301-Photocopying	-	-	100	(100)	100	-	-	-
4311-Office Supplies	125	4,257	4,350	(93)	5,150	1,180	3,077	2,301
<b>Total Staff &amp; Office Expense</b>	<b>554</b>	<b>34,964</b>	<b>66,950</b>	<b>(31,986)</b>	<b>80,250</b>	<b>40,481</b>	<b>(5,517)</b>	<b>50,949</b>

5031-AV Services	-	-	-	-	-	79	(79)	79
5051-Credit Card Fees	1,434	23,506	31,110	(7,604)	31,110	28,661	(5,156)	45,115
5101-Consultants	-	70,400	90,000	(19,600)	120,000	120,600	(50,200)	150,600
5121-Printing-Outside	19,415	73,613	127,500	(53,887)	127,500	61,508	12,105	80,712
5181-Speaker Honorarium	-	-	5,000	(5,000)	5,000	-	-	-
5199-Other Contract Services	(140)	24,801	100,000	(75,199)	125,000	53,955	(29,154)	55,703
<b>Total Contract Services</b>	<b>20,709</b>	<b>192,320</b>	<b>353,610</b>	<b>(161,290)</b>	<b>408,610</b>	<b>264,804</b>	<b>(72,484)</b>	<b>332,208</b>
5501-Employee Travel	1,486	33,230	36,966	(3,736)	41,966	18,424	14,806	21,632
5531-Board/Off/Memb Travel	-	-	19,998	(19,998)	19,998	3,061	(3,061)	3,755
5571-Speaker Travel	6,157	18,367	27,100	(8,733)	27,100	23,672	(5,304)	24,734
5581-Consultant Travel	-	3,200	15,000	(11,800)	15,000	10,888	(7,688)	15,344
5599-Other Travel	-	-	-	-	-	636	(636)	636
<b>Total Travel</b>	<b>7,643</b>	<b>54,797</b>	<b>99,064</b>	<b>(44,267)</b>	<b>104,064</b>	<b>56,681</b>	<b>(1,884)</b>	<b>66,102</b>
6001-Post 1st Class/Bulk	18,039	30,043	-	30,043	-	25,337	4,705	37,036
6021-Post Express Mail	34	34	-	34	-	165	(131)	165
6311-Mtgs General Meeting	110,399	604,510	750,000	(145,490)	750,000	764,091	(159,582)	791,312
6319-Mtgs Other Functions	-	6,724	42,000	(35,276)	42,000	45,575	(38,851)	45,575
6321-Mtgs Meals	738	116,580	204,000	(87,420)	389,000	216,865	(100,284)	313,601
6325-Mtgs Hospitality	14,311	133,553	194,100	(60,547)	194,100	256,264	(122,711)	256,264
6341-Mtgs Equip Rental	419	30,601	81,000	(50,399)	101,000	78,282	(47,681)	78,517
6361-Mtgs Entertainment	1,088	6,182	-	6,182	40,000	25,784	(19,603)	35,800
6399-Mtgs Other	4,056	47,099	25,000	22,099	25,000	3,320	43,779	3,320
6401-Speaker Expense	-	-	4,660	(4,660)	7,500	-	-	-
6451-Committee Expense	46,148	120,334	100,000	20,334	100,000	136,381	(16,047)	161,842
6531-Brd/Off Special Project	-	-	50,000	(50,000)	50,000	265	(265)	265
6599-Brd/Off Other	2,985	8,574	13,000	(4,426)	15,000	1,000	7,574	1,000
7001-Grant/Award/Donation	-	4,010	5,000	(990)	13,000	6,638	(2,628)	9,373
7003-Div Int Grants	750	5,250	10,000	(4,750)	12,000	2,584	2,666	3,084
7004-Law School Prog.	438	1,412	5,300	(3,888)	5,500	1,859	(447)	1,859
7006-Professional Outreach	-	-	2,500	(2,500)	3,000	500	(500)	500
7011-Scholarship/Fellowship	-	16,280	21,000	(4,720)	27,000	13,361	2,919	19,097
7999-Other Operating Exp	-	4,766	5,800	(1,034)	6,300	2,080	2,686	3,607
<b>Total Other Expense</b>	<b>199,405</b>	<b>1,135,951</b>	<b>1,513,360</b>	<b>(377,409)</b>	<b>1,780,400</b>	<b>1,580,352</b>	<b>(444,401)</b>	<b>1,762,217</b>
8011-Administration CLE	7,200	39,250	33,250	6,000	33,250	37,850	1,400	37,850
8021-Section Admin Fee	19,800	269,816	229,354	40,462	229,354	251,865	17,951	251,865
8101-Printing In-House	45	3,342	7,350	(4,008)	7,350	894	2,448	1,349
8131-A/V Services	5,300	11,356	-	11,356	-	5,617	5,739	5,827

8141-Journal/News Service	-	850	500	350	500	1,275	(425)	1,275
8171-Course Approval Fee	-	150	450	(300)	450	450	(300)	750
8901-Eliminated IntEnt Exp	-	1,500	3,000	(1,500)	3,000	6,500	(5,000)	7,500
<b>Total Admin &amp; Internal Expense</b>	<b>32,345</b>	<b>326,264</b>	<b>273,904</b>	<b>52,360</b>	<b>273,904</b>	<b>304,451</b>	<b>21,813</b>	<b>306,417</b>
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	-	500
<b>Total InterFund Transfers Out</b>	<b>-</b>	<b>500</b>	<b>500</b>	<b>-</b>	<b>500</b>	<b>500</b>	<b>-</b>	<b>500</b>
<b>Total Expense</b>	<b>260,655</b>	<b>1,744,797</b>	<b>2,307,388</b>	<b>(562,591)</b>	<b>2,647,728</b>	<b>2,247,270</b>	<b>(502,472)</b>	<b>2,518,393</b>
<b>Operating Income</b>	<b>(124,845)</b>	<b>1,241,183</b>	<b>(294,088)</b>	<b>1,535,271</b>	<b>(302,628)</b>	<b>416,233</b>	<b>824,950</b>	<b>267,459</b>
3899-Investment Income (loss)	(58,804)	186,775	124,090	62,685	148,906	186,199	576	228,505
<b>Total Nonoperating Revenue (Expenses)</b>	<b>(58,804)</b>	<b>186,775</b>	<b>124,090</b>	<b>62,685</b>	<b>148,906</b>	<b>186,199</b>	<b>576</b>	<b>228,505</b>
<b>Change in Net Position</b>	<b>(183,649)</b>	<b>1,427,958</b>	<b>(169,998)</b>	<b>1,597,956</b>	<b>(153,722)</b>	<b>602,431</b>	<b>825,527</b>	<b>495,964</b>
<b>Net Position</b>								
2001-Beginning of the year, restated (Fund Balance)	-	3,103,715				2,607,751		2,607,751
<b>End of the Year (Current Month)</b>	<b>-</b>	<b>4,531,673</b>				<b>3,210,182</b>		<b>3,103,715</b>

**THE FLORIDA BAR**  
**Real Property, Probate and Trust Law General**  
**For the Ten Months Ending April 30, 2024**

	April	YTD 2024	YTD 23-24 Budget	YTD/YTD Budget Variance (\$)	FY 23-24 Budget	YTD 2023	YTD/Prior YTD Variance (\$)	FYE Actual 2023
3001-Annual Fees	1,080	678,670	550,000	128,670	660,000	679,270	(600)	679,210
3002-Affiliate Fees	140	12,260	4,200	8,060	5,000	12,540	(280)	12,540
<b>Total Fee Revenue</b>	<b>1,220</b>	<b>690,930</b>	<b>554,200</b>	<b>136,730</b>	<b>665,000</b>	<b>691,810</b>	<b>(880)</b>	<b>691,750</b>
3301-Registration-Live	-	308,043	144,000	164,043	180,000	248,575	59,468	249,176
<b>Total Registration Revenue</b>	<b>-</b>	<b>308,043</b>	<b>144,000</b>	<b>164,043</b>	<b>180,000</b>	<b>248,575</b>	<b>59,468</b>	<b>249,176</b>
3351-Sponsorships	-	325,150	190,000	135,150	200,000	181,875	143,275	181,875
3391 Section Profit Split	42,675	519,396	355,000	164,396	425,000	539,363	(19,966)	627,155
3392-Section Differential	1,680	18,240	12,500	5,740	15,000	17,640	600	21,300
<b>Other Event Revenue</b>	<b>44,355</b>	<b>862,786</b>	<b>557,500</b>	<b>305,286</b>	<b>640,000</b>	<b>738,878</b>	<b>123,909</b>	<b>830,330</b>
3561-Advertising	-	-	18,000	(18,000)	18,000	2,000	(2,000)	8,840
<b>Other Revenue Sources</b>	<b>-</b>	<b>-</b>	<b>18,000</b>	<b>(18,000)</b>	<b>18,000</b>	<b>2,000</b>	<b>(2,000)</b>	<b>8,840</b>
3901-Eliminated InterFund Revenue	-	-	-	-	-	350	(350)	350
<b>Other Revenue Sources</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>350</b>	<b>(350)</b>	<b>350</b>
<b>Total Revenue</b>	<b>45,575</b>	<b>1,861,759</b>	<b>1,273,700</b>	<b>588,059</b>	<b>1,503,000</b>	<b>1,681,613</b>	<b>180,147</b>	<b>1,780,446</b>
4131-Telephone Expense	-	145	-	145	-	-	145	-
4133-Internet Service	-	823	-	823	-	-	823	-
4134-Web Services	429	29,739	62,500	(32,761)	75,000	39,301	(9,562)	48,648
4311-Office Supplies	125	4,257	4,200	57	5,000	1,180	3,077	2,301
<b>Total Staff &amp; Office Expense</b>	<b>554</b>	<b>34,964</b>	<b>66,700</b>	<b>(31,736)</b>	<b>80,000</b>	<b>40,481</b>	<b>(5,517)</b>	<b>50,949</b>
5051-Credit Card Fees	492	7,206	17,500	(10,294)	17,500	5,898	1,308	16,084
5101-Consultants	-	70,400	90,000	(19,600)	120,000	120,600	(50,200)	150,600
5121-Printing-Outside	19,415	73,613	120,000	(46,387)	120,000	58,738	14,875	77,942

5199-Other Contract Services	(140)	24,801	100,000	(75,199)	125,000	53,280	(28,479)	55,028
<b>Total Contract Services</b>	<b>19,766</b>	<b>176,021</b>	<b>327,500</b>	<b>(151,479)</b>	<b>382,500</b>	<b>238,517</b>	<b>(62,496)</b>	<b>299,654</b>
5501-Employee Travel	544	24,832	28,000	(3,168)	28,000	14,191	10,642	14,078
5531-Board/Off/Memb Travel	-	-	19,998	(19,998)	19,998	3,061	(3,061)	3,755
5581-Consultant Travel	-	3,200	15,000	(11,800)	15,000	10,888	(7,688)	15,344
5599-Other Travel	-	-	-	-	-	636	(636)	636
<b>Total Travel</b>	<b>544</b>	<b>28,032</b>	<b>62,998</b>	<b>(34,966)</b>	<b>62,998</b>	<b>28,776</b>	<b>(743)</b>	<b>33,813</b>
6001-Post 1st Class/Bulk	17,936	28,283	-	28,283	-	24,509	3,773	35,445
6311-Mtgs General Meeting	110,399	604,510	750,000	(145,490)	750,000	753,022	(148,512)	780,243
6319-Mtgs Other Functions	-	-	-	-	-	818	(818)	818
6325-Mtgs Hospitality	14,311	36,911	35,000	1,911	35,000	33,654	3,257	33,654
6399-Mtgs Other	4,056	47,099	25,000	22,099	25,000	-	47,099	-
6401-Speaker Expense	-	-	4,660	(4,660)	7,500	-	-	-
6451-Committee Expense	46,148	120,334	100,000	20,334	100,000	136,381	(16,047)	161,842
6531-Brd/Off Special Project	-	-	50,000	(50,000)	50,000	265	(265)	265
6599-Brd/Off Other	2,985	8,574	13,000	(4,426)	15,000	1,000	7,574	1,000
7001-Grant/Award/Donation	-	608	-	608	8,000	4,679	(4,072)	7,344
7003-Div Int Grants	750	5,250	10,000	(4,750)	12,000	2,584	2,666	3,084
7004-Law School Prog.	438	1,412	5,300	(3,888)	5,500	1,859	(447)	1,859
7006-Professional Outreach	-	-	2,500	(2,500)	3,000	500	(500)	500
7011-Scholarship/Fellowship	-	16,280	21,000	(4,720)	27,000	13,361	2,919	19,097
7999-Other Operating Exp	-	-	2,500	(2,500)	3,000	-	-	-
<b>Total Other Expense</b>	<b>197,023</b>	<b>869,261</b>	<b>1,018,960</b>	<b>(149,699)</b>	<b>1,041,000</b>	<b>972,634</b>	<b>(103,373)</b>	<b>1,045,152</b>
8021-Section Admin Fee	19,800	269,816	229,354	40,462	229,354	251,865	17,951	251,865
8101-Printing In-House	-	928	3,000	(2,072)	3,000	473	456	928
8901-Eliminated IntEnt Exp	-	1,500	3,000	(1,500)	3,000	6,500	(5,000)	7,500
<b>Total Admin &amp; Internal Expense</b>	<b>19,800</b>	<b>272,245</b>	<b>235,354</b>	<b>36,891</b>	<b>235,354</b>	<b>258,838</b>	<b>13,407</b>	<b>260,293</b>
9692-Transfer Out-Council of Sections	-	500	500	-	500	500	-	500
<b>Total InterFund Transfers Out</b>	<b>-</b>	<b>500</b>	<b>500</b>	<b>-</b>	<b>500</b>	<b>500</b>	<b>-</b>	<b>500</b>
<b>Total Expense</b>	<b>237,687</b>	<b>1,381,023</b>	<b>1,712,012</b>	<b>(330,989)</b>	<b>1,802,352</b>	<b>1,539,745</b>	<b>(158,723)</b>	<b>1,690,361</b>

<b>Operating Income</b>	<b>(192,112)</b>	<b>480,737</b>	<b>(438,312)</b>	<b>919,049</b>	<b>(299,352)</b>	<b>141,868</b>	<b>338,869</b>	<b>90,085</b>
3899-Investment Income (loss)	(58,804)	186,775	124,090	62,685	148,906	186,199	576	228,505
<b>Total Nonoperating Revenue (Expenses)</b>	<b>(58,804)</b>	<b>186,775</b>	<b>124,090</b>	<b>62,685</b>	<b>148,906</b>	<b>186,199</b>	<b>576</b>	<b>228,505</b>
<b>Change in Net Position</b>	<b>(250,916)</b>	<b>667,512</b>	<b>(314,222)</b>	<b>981,734</b>	<b>(150,446)</b>	<b>328,066</b>	<b>339,446</b>	<b>318,591</b>



**THE FLORIDA BAR**  
**Real Property Convention**  
**For the Ten Months Ending April 30, 2024**

	April	YTD 2024	YTD 23-24 Budget	YTD/YTD Budget Variance (\$)	FY 23-24 Budget	YTD 2023	YTD/Prior YTD Variance (\$)	FYE Actual 2023
3301-Registration-Live	73,270	72,151	-	72,151	70,000	62,804	9,347	70,300
<b>Total Registration Revenue</b>	<b>73,270</b>	<b>72,151</b>	<b>-</b>	<b>72,151</b>	<b>70,000</b>	<b>62,804</b>	<b>9,347</b>	<b>70,300</b>
3341-Exhibit Fees	3,000	18,000	-	18,000	15,000	26,500	(8,500)	26,500
3351-Sponsorships	3,000	32,250	-	32,250	10,000	31,500	750	34,000
<b>Other Event Revenue</b>	<b>6,000</b>	<b>50,250</b>	<b>-</b>	<b>50,250</b>	<b>25,000</b>	<b>58,000</b>	<b>(7,750)</b>	<b>60,500</b>
<b>Total Revenue</b>	<b>79,270</b>	<b>122,401</b>	<b>-</b>	<b>122,401</b>	<b>95,000</b>	<b>120,804</b>	<b>1,597</b>	<b>130,800</b>
5051-Credit Card Fees	527	946	1,000	(54)	1,000	2,178	(1,232)	2,341
<b>Total Contract Services</b>	<b>527</b>	<b>946</b>	<b>1,000</b>	<b>(54)</b>	<b>1,000</b>	<b>2,178</b>	<b>(1,232)</b>	<b>2,341</b>
5501-Employee Travel	-	-	-	-	5,000	-	-	1,484
5571-Speaker Travel	-	-	-	-	-	1,738	(1,738)	2,483
<b>Total Travel</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5,000</b>	<b>1,738</b>	<b>(1,738)</b>	<b>3,967</b>
6311-Mtgs General Meeting	-	-	-	-	-	10,000	(10,000)	10,000
6321-Mtgs Meals	738	2,406	-	2,406	185,000	17,387	(14,981)	114,123
6341-Mtgs Equip Rental	419	709	-	709	20,000	-	709	235
6361-Mtgs Entertainment	1,088	6,182	-	6,182	40,000	25,784	(19,603)	35,800
<b>Total Other Expense</b>	<b>2,244</b>	<b>9,296</b>	<b>-</b>	<b>9,296</b>	<b>245,000</b>	<b>53,171</b>	<b>(43,875)</b>	<b>160,158</b>
8101-Printing In-House	-	-	200	(200)	200	-	-	-
<b>Total Admin &amp; Internal Expense</b>	<b>-</b>	<b>-</b>	<b>200</b>	<b>(200)</b>	<b>200</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Expense</b>	<b>2,771</b>	<b>10,242</b>	<b>1,200</b>	<b>9,042</b>	<b>251,200</b>	<b>57,087</b>	<b>(46,845)</b>	<b>166,466</b>
<b>Operating Income</b>	<b>76,499</b>	<b>112,159</b>	<b>(1,200)</b>	<b>113,359</b>	<b>(156,200)</b>	<b>63,717</b>	<b>48,442</b>	<b>(35,665)</b>

**THE FLORIDA BAR**  
**Real Property Legislative Update**  
**For the Ten Months Ending April 30, 2024**

	April	YTD 2024	YTD 23-24 Budget	YTD/YTD Budget Variance (\$)	FY 23-24 Budget	YTD 2023	YTD/Prior YTD Variance (\$)	FYE Actual 2023
3321-Registration-Webcast	-	-	15,000	(15,000)	15,000	-	-	-
3331-Registration-Ticket	-	-	20,000	(20,000)	20,000	-	-	-
<b>Total Registration Revenue</b>	-	-	<b>35,000</b>	<b>(35,000)</b>	<b>35,000</b>	-	-	-
3341-Exhibit Fees	-	37,500	14,000	23,500	14,000	-	37,500	-
3351-Sponsorships	-	6,000	-	6,000	-	20,400	(14,400)	20,400
<b>Other Event Revenue</b>	-	<b>43,500</b>	<b>14,000</b>	<b>29,500</b>	<b>14,000</b>	<b>20,400</b>	<b>23,100</b>	<b>20,400</b>
3401-Sales-CD/DVD	-	1,800	-	1,800	-	9,125	(7,325)	10,925
<b>Sales, Rents &amp; Royalties Revenue</b>	-	<b>1,800</b>	-	<b>1,800</b>	-	<b>9,125</b>	<b>(7,325)</b>	<b>10,925</b>
<b>Total Revenue</b>	-	<b>45,300</b>	<b>49,000</b>	<b>(3,700)</b>	<b>49,000</b>	<b>29,525</b>	<b>15,775</b>	<b>31,325</b>
5031-AV Services	-	-	-	-	-	79	(79)	79
5051-Credit Card Fees	105	329	360	(31)	360	823	(494)	1,240
5121-Printing-Outside	-	-	5,000	(5,000)	5,000	2,663	(2,663)	2,663
<b>Total Contract Services</b>	<b>105</b>	<b>329</b>	<b>5,360</b>	<b>(5,031)</b>	<b>5,360</b>	<b>3,566</b>	<b>(3,237)</b>	<b>3,982</b>
5501-Employee Travel	-	-	3,000	(3,000)	3,000	1,106	(1,106)	1,106
5571-Speaker Travel	-	4,697	6,000	(1,303)	6,000	5,165	(469)	5,165
<b>Total Travel</b>	-	<b>4,697</b>	<b>9,000</b>	<b>(4,303)</b>	<b>9,000</b>	<b>6,271</b>	<b>(1,574)</b>	<b>6,271</b>
6001-Post 1st Class/Bulk	-	69	-	69	-	364	(295)	458
6311-Mtgs General Meeting	-	-	-	-	-	1,069	(1,069)	1,069
6321-Mtgs Meals	-	24,045	45,000	(20,955)	45,000	44,878	(20,833)	44,878
6325-Mtgs Hospitality	-	588	1,500	(912)	1,500	-	588	-
6341-Mtgs Equip Rental	-	10,691	15,000	(4,309)	15,000	9,359	1,332	9,359
7001-Grant/Award/Donation	-	3,402	5,000	(1,598)	5,000	1,958	1,444	2,028
7999-Other Operating Exp	-	607	500	107	500	-	607	157

<b>Total Other Expense</b>	-	<b>39,402</b>	<b>67,000</b>	<b>(27,598)</b>	<b>67,000</b>	<b>57,628</b>	<b>(18,226)</b>	<b>57,949</b>
8011-Administration CLE	-	700	750	(50)	750	1,000	(300)	1,000
8101-Printing In-House	-	311	1,150	(839)	1,150	200	111	200
8131-A/V Services	-	-	-	-	-	105	(105)	175
8171-Course Approval Fee	-	-	-	-	-	150	(150)	300
<b>Total Admin &amp; Internal Expense</b>	-	<b>1,011</b>	<b>1,900</b>	<b>(889)</b>	<b>1,900</b>	<b>1,455</b>	<b>(444)</b>	<b>1,675</b>
<b>Total Expense</b>	<b>105</b>	<b>45,438</b>	<b>83,260</b>	<b>(37,822)</b>	<b>83,260</b>	<b>68,919</b>	<b>(23,481)</b>	<b>69,877</b>
<b>Operating Income</b>	<b>(105)</b>	<b>(138)</b>	<b>(34,260)</b>	<b>34,122</b>	<b>(34,260)</b>	<b>(39,394)</b>	<b>39,256</b>	<b>(38,552)</b>

**THE FLORIDA BAR**  
**Real Property Trust Attorney Bankers Conference**  
**For the Ten Months Ending April 30, 2024**

	April	YTD 2024	YTD 23-24 Budget	YTD/YTD Budget Variance (\$)	FY 23-24 Budget	YTD 2023	YTD/Prior YTD Variance (\$)	FYE Actual 2023
3301-Registration-Live	3,585	14,480	12,500	1,980	12,500	8,400	6,080	8,400
<b>Total Registration Revenue</b>	<b>3,585</b>	<b>14,480</b>	<b>12,500</b>	<b>1,980</b>	<b>12,500</b>	<b>8,400</b>	<b>6,080</b>	<b>8,400</b>
3341-Exhibit Fees	-	-	1,500	(1,500)	1,500	-	-	-
3351-Sponsorships	500	12,500	15,000	(2,500)	15,000	8,650	3,850	8,500
<b>Other Event Revenue</b>	<b>500</b>	<b>12,500</b>	<b>16,500</b>	<b>(4,000)</b>	<b>16,500</b>	<b>8,650</b>	<b>3,850</b>	<b>8,500</b>
<b>Total Revenue</b>	<b>4,085</b>	<b>26,980</b>	<b>29,000</b>	<b>(2,020)</b>	<b>29,000</b>	<b>17,050</b>	<b>9,930</b>	<b>16,900</b>
5051-Credit Card Fees	36	565	-	565	-	412	153	409
<b>Total Contract Services</b>	<b>36</b>	<b>565</b>	<b>-</b>	<b>565</b>	<b>-</b>	<b>412</b>	<b>153</b>	<b>409</b>
5501-Employee Travel	933	933	1,250	(317)	1,250	1,100	(167)	1,100
5571-Speaker Travel	-	-	4,000	(4,000)	4,000	-	-	318
<b>Total Travel</b>	<b>933</b>	<b>933</b>	<b>5,250</b>	<b>(4,317)</b>	<b>5,250</b>	<b>1,100</b>	<b>(167)</b>	<b>1,418</b>
6321-Mtgs Meals	-	-	6,000	(6,000)	6,000	2,500	(2,500)	2,500
6325-Mtgs Hospitality	-	-	5,000	(5,000)	5,000	4,077	(4,077)	4,077
6341-Mtgs Equip Rental	-	-	1,000	(1,000)	1,000	-	-	-
7999-Other Operating Exp	-	70	300	(230)	300	-	70	-
<b>Total Other Expense</b>	<b>-</b>	<b>70</b>	<b>12,300</b>	<b>(12,230)</b>	<b>12,300</b>	<b>6,577</b>	<b>(6,507)</b>	<b>6,577</b>
8011-Administration CLE	7,200	7,200	6,000	1,200	6,000	7,150	50	7,150
8101-Printing In-House	45	45	-	45	-	137	(92)	137
8141-Journal/News Service	-	425	-	425	-	-	425	-
8171-Course Approval Fee	-	-	150	(150)	150	150	(150)	150
<b>Total Admin &amp; Internal Expense</b>	<b>7,245</b>	<b>7,671</b>	<b>6,150</b>	<b>1,521</b>	<b>6,150</b>	<b>7,437</b>	<b>233</b>	<b>7,437</b>
<b>Total Expense</b>	<b>8,214</b>	<b>9,239</b>	<b>23,700</b>	<b>(14,461)</b>	<b>23,700</b>	<b>15,526</b>	<b>(6,287)</b>	<b>15,841</b>

Operating Income

<u>(4,129)</u>	<u>17,741</u>	<u>5,300</u>	<u>12,441</u>	<u>5,300</u>	<u>1,524</u>	<u>16,217</u>	<u>1,059</u>
----------------	---------------	--------------	---------------	--------------	--------------	---------------	--------------

**THE FLORIDA BAR**  
**Real Property Trust Officer Liaison Conference**  
**For the Ten Months Ending April 30, 2024**

	April	YTD 2024	YTD 23-24 Budget	YTD/YTD Budget Variance (\$)	FY 23-24 Budget	YTD 2023	YTD/Prior YTD Variance (\$)	FYE Actual 2023
3301-Registration-Live	-	270,950	176,800	94,150	176,800	219,443	51,507	219,443
3331-Registration-Ticket	-	8,930	10,000	(1,070)	10,000	8,550	380	8,550
<b>Total Registration Revenue</b>	<b>-</b>	<b>279,880</b>	<b>186,800</b>	<b>93,080</b>	<b>186,800</b>	<b>227,993</b>	<b>51,887</b>	<b>227,993</b>
3341-Exhibit Fees	-	81,000	48,000	33,000	48,000	73,400	7,600	73,400
3351-Sponsorships	(5,000)	103,900	80,000	23,900	80,000	92,875	11,025	89,875
<b>Other Event Revenue</b>	<b>(5,000)</b>	<b>184,900</b>	<b>128,000</b>	<b>56,900</b>	<b>128,000</b>	<b>166,275</b>	<b>18,625</b>	<b>163,275</b>
3401-Sales-CD/DVD	1,300	7,270	5,000	2,270	5,000	13,712	(6,442)	16,992
3411-Sales-Published Materials	-	-	1,000	(1,000)	1,000	-	-	-
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>1,300</b>	<b>7,270</b>	<b>6,000</b>	<b>1,270</b>	<b>6,000</b>	<b>13,712</b>	<b>(6,442)</b>	<b>16,992</b>
<b>Total Revenue</b>	<b>(3,700)</b>	<b>472,050</b>	<b>320,800</b>	<b>151,250</b>	<b>320,800</b>	<b>407,980</b>	<b>64,070</b>	<b>408,260</b>
5051-Credit Card Fees	201	4,390	7,000	(2,610)	7,000	9,250	(4,860)	14,683
5121-Printing-Outside	-	-	2,500	(2,500)	2,500	107	(107)	107
<b>Total Contract Services</b>	<b>201</b>	<b>4,390</b>	<b>9,500</b>	<b>(5,110)</b>	<b>9,500</b>	<b>9,356</b>	<b>(4,966)</b>	<b>14,790</b>
5501-Employee Travel	-	3,711	2,716	995	2,716	1,303	2,408	1,746
5571-Speaker Travel	-	7,514	8,100	(586)	8,100	5,098	2,416	5,098
<b>Total Travel</b>	<b>-</b>	<b>11,226</b>	<b>10,816</b>	<b>410</b>	<b>10,816</b>	<b>6,401</b>	<b>4,825</b>	<b>6,844</b>
6001-Post 1st Class/Bulk	32	1,138	-	1,138	-	195	943	267
6021-Post Express Mail	-	-	-	-	-	98	(98)	98
6319-Mtgs Other Functions	-	6,489	10,000	(3,511)	10,000	5,198	1,291	5,198
6321-Mtgs Meals	-	90,130	57,000	33,130	57,000	63,970	26,160	63,970
6325-Mtgs Hospitality	-	96,053	95,000	1,053	95,000	135,613	(39,559)	135,613
6341-Mtgs Equip Rental	-	19,201	30,000	(10,799)	30,000	19,683	(482)	19,683
6399-Mtgs Other	-	-	-	-	-	3,320	(3,320)	3,320

7999-Other Operating Exp	-	1,470	1,000	470	1,000	4	1,466	1,374
<b>Total Other Expense</b>	<b>32</b>	<b>214,481</b>	<b>193,000</b>	<b>21,481</b>	<b>193,000</b>	<b>228,080</b>	<b>(13,599)</b>	<b>229,522</b>
8011-Administration CLE	-	15,950	25,000	(9,050)	25,000	14,850	1,100	14,850
8101-Printing In-House	-	1,338	3,000	(1,662)	3,000	6	1,332	6
8131-A/V Services	-	5,846	-	5,846	-	5,120	726	5,155
8141-Journal/News Service	-	425	-	425	-	850	(425)	850
8171-Course Approval Fee	-	-	150	(150)	150	-	-	150
<b>Total Admin &amp; Internal Expense</b>	<b>-</b>	<b>23,559</b>	<b>28,150</b>	<b>(4,591)</b>	<b>28,150</b>	<b>20,826</b>	<b>2,732</b>	<b>21,011</b>
<b>Total Expense</b>	<b>234</b>	<b>253,656</b>	<b>241,466</b>	<b>12,190</b>	<b>241,466</b>	<b>264,664</b>	<b>(11,008)</b>	<b>272,167</b>
<b>Operating Income</b>	<b>(3,934)</b>	<b>218,394</b>	<b>79,334</b>	<b>139,060</b>	<b>79,334</b>	<b>143,317</b>	<b>75,078</b>	<b>136,093</b>

**THE FLORIDA BAR**  
**Real Property Construction Law Institute**  
**For the Ten Months Ending April 30, 2024**

	April	YTD 2024	YTD 23-24 Budget	YTD/YTD Budget Variance (\$)	FY 23-24 Budget	YTD 2023	YTD/Prior YTD Variance (\$)	FYE Actual 2023
3301-Registration-Live	9,020	153,010	140,000	13,010	140,000	129,560	23,450	129,560
3331-Registration-Ticket	-	6,490	2,000	4,490	2,000	3,750	2,740	3,750
<b>Total Registration Revenue</b>	<b>9,020</b>	<b>159,500</b>	<b>142,000</b>	<b>17,500</b>	<b>142,000</b>	<b>133,310</b>	<b>26,190</b>	<b>133,310</b>
3351-Sponsorships	-	267,950	190,000	77,950	190,000	244,300	23,650	244,300
<b>Other Event Revenue</b>	<b>-</b>	<b>267,950</b>	<b>190,000</b>	<b>77,950</b>	<b>190,000</b>	<b>244,300</b>	<b>23,650</b>	<b>244,300</b>
3401-Sales-CD/DVD	1,560	30,040	7,500	22,540	15,000	28,920	1,120	40,510
3411-Sales-Published Materials	-	-	500	(500)	500	-	-	-
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>1,560</b>	<b>30,040</b>	<b>8,000</b>	<b>22,040</b>	<b>15,500</b>	<b>28,920</b>	<b>1,120</b>	<b>40,510</b>
3699-Other Operating Revenue	-	-	800	(800)	800	-	-	-
<b>Other Revenue Sources</b>	<b>-</b>	<b>-</b>	<b>800</b>	<b>(800)</b>	<b>800</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total Revenue</b>	<b>10,580</b>	<b>457,490</b>	<b>340,800</b>	<b>116,690</b>	<b>348,300</b>	<b>406,530</b>	<b>50,960</b>	<b>418,120</b>
5051-Credit Card Fees	74	10,069	5,250	4,819	5,250	10,100	(31)	10,357
5181-Speaker Honorarium	-	-	5,000	(5,000)	5,000	-	-	-
5199-Other Contract Services	-	-	-	-	-	675	(675)	675
<b>Total Contract Services</b>	<b>74</b>	<b>10,069</b>	<b>10,250</b>	<b>(181)</b>	<b>10,250</b>	<b>10,775</b>	<b>(706)</b>	<b>11,032</b>
5501-Employee Travel	9	3,753	2,000	1,753	2,000	725	3,028	2,119
5571-Speaker Travel	6,157	6,157	9,000	(2,843)	9,000	11,671	(5,514)	11,671
<b>Total Travel</b>	<b>6,165</b>	<b>9,910</b>	<b>11,000</b>	<b>(1,090)</b>	<b>11,000</b>	<b>12,396</b>	<b>(2,486)</b>	<b>13,790</b>
6001-Post 1st Class/Bulk	71	554	-	554	-	270	284	867
6021-Post Express Mail	34	34	-	34	-	67	(33)	67
6319-Mtgs Other Functions	-	235	32,000	(31,765)	32,000	39,559	(39,324)	39,559
6321-Mtgs Meals	-	-	96,000	(96,000)	96,000	88,130	(88,130)	88,130



6325-Mtgs Hospitality	-	-	57,600	(57,600)	57,600	82,920	(82,920)	82,920
6341-Mtgs Equip Rental	-	-	35,000	(35,000)	35,000	49,240	(49,240)	49,240
7999-Other Operating Exp	-	2,618	1,500	1,118	1,500	2,076	543	2,076
<b>Total Other Expense</b>	<b>105</b>	<b>3,441</b>	<b>222,100</b>	<b>(218,659)</b>	<b>222,100</b>	<b>262,262</b>	<b>(258,821)</b>	<b>262,859</b>
8011-Administration CLE	-	15,400	1,500	13,900	1,500	14,850	550	14,850
8101-Printing In-House	-	719	-	719	-	78	641	78
8131-A/V Services	5,300	5,510	-	5,510	-	392	5,118	497
8141-Journal/News Service	-	-	500	(500)	500	425	(425)	425
8171-Course Approval Fee	-	150	150	-	150	150	-	150
<b>Total Admin &amp; Internal Expense</b>	<b>5,300</b>	<b>21,779</b>	<b>2,150</b>	<b>19,629</b>	<b>2,150</b>	<b>15,895</b>	<b>5,884</b>	<b>16,000</b>
<b>Total Expense</b>	<b>11,644</b>	<b>45,200</b>	<b>245,500</b>	<b>(200,300)</b>	<b>245,500</b>	<b>301,328</b>	<b>(256,129)</b>	<b>303,681</b>
<b>Operating Income</b>	<b>(1,064)</b>	<b>412,290</b>	<b>95,300</b>	<b>316,990</b>	<b>102,800</b>	<b>105,202</b>	<b>307,089</b>	<b>114,439</b>

<b>Date of Presentation</b>	<b>Crs. #</b>	<b>Title</b>	<b>Location</b>
5/31/24	8425	I am more than just a tower!! Unique Issues Facing Florida's Condominiums	Bonita Springs, Florida
6/12/24	8269	Securing Your Knowledge of SECURE: IRA Beneficiary Designations under SECURE 2.0. Part 4 of 4: Disabled and Chronically Ill Beneficiaries	Webcast
6/26/24		NAR Lawsuit: What Real Estate Practitioners Need to Know NOW	Webcast
7/26/24	8287	Legislative Update	The Breakers
8/15/24 – 8/17/24	8239	ATO	The Breakers
8/22/24	8286	Mobile Homes	Webcast
10/29/24		Charitable Planning and Exempt Organizations	Webcast
11/1/24	8496	Real Property Litigation Symposium	The Boca Resort
11/15/24	8497	Probate Law CLE	TBD
3/5/25 – 3/9/25		Construction Law Institute	JW Marriott Grande Lakes, Orlando
3/5/25 – 3/9/25		Advanced Construction Law Certification Review	JW Marriott Grande Lakes, Orlando

**Thank you** to everyone who contributed to another  
very successful year of CLE:

PROGRAM CHAIRS who organized a program or programs!

SPEAKERS who so generously share their time and knowledge!

COMMITTEE CHAIRS who answer our call for programs!

TRACEY ELLER for our many marketing blasts and social media posts!

Our wonderful, hardworking CLE COMMITTEE!

And of course, HILARY and JEREMY!

Your grateful CLE Coordination Committee Co-Chairs,

Angela Adams and Brenda Ezell



# 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 estates<sup>1</sup> 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

---

<sup>1</sup> 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[<sup>2</sup>].

## 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

---

<sup>2</sup> The proposed legislation would become effective on July 1<sup>st</sup> 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 1<sup>st</sup> 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[<sup>1</sup>].

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

---

<sup>1</sup>This 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)  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 #)*

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)*

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.<sup>1</sup> However, the standard of care to which a directed trustee is subject may not fall below the minimum standard of willful misconduct.<sup>2</sup>

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.

---

<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup>

**Use of the Delaware Standard.** Rather than craft its own definition of willful misconduct, the draftspersons determined to adopt the standard used in Delaware.<sup>4</sup> 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.

---

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup> 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**

---

<sup>5</sup> 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



# 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. 5<sup>th</sup> 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.”<sup>1</sup> *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. 4<sup>th</sup> DCA 2004), upheld the TBE status of property that was transferred to an attorney’s trust account.<sup>2</sup> 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.

---

<sup>1</sup> 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.

<sup>2</sup> 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.



1 Section 736.05057, Florida Statutes, is created to read:

2 **736.05057 Transfer of tenants by the entirety property to**  
3 **trust**

4 (1) As used in this section:

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

8 (b) "TBE trust" means a trust which satisfies the  
9 requirements of this subsection (2).

10 (c) "Proceeds" means:

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

13 2. Income attributable to TBE trust property;

14 3. Claims arising out of loss or damage to TBE trust  
15 property, and proceeds of insurance payable on any such claims.

16 (2) TBE trust property shall have the same exemption from the  
17 claims of a settlor's separate creditors as it would have if legal  
18 title were held by the settlors as tenants by the entirety if the  
19 instrument creating the TBE trust satisfies each of the following  
20 requirements:

21 (a) The trustee must hold the TBE trust property for the  
22 exclusive benefit of both settlors during their marriage and the  
23 trustee may distribute TBE trust property and proceeds only to or  
24 for the benefit of the settlors or otherwise as both settlors  
25 direct;

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

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

39 (d) The exemption of TBE trust property from the claims of a  
40 settlor's separate creditors shall terminate if the settlers: (i)  
41 are no longer married; (ii) cease being the exclusive  
42 beneficiaries of the TBE trust property; or (iii) take any action  
43 with respect to their beneficial interests in the TBE trust  
44 property that would terminate a tenants by the entirety in the  
45 property if they held legal title individually.

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

48 (4) If property that is not TBE trust property is transferred to  
49 the trustee of a TBE trust any such property, and all income,  
50 increases, receipts, and claims attributable to such property

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



51 retain, as assets of the trust or as distributed from the trust,  
52 is not entitled to the protection of this section.

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

59 (6) Upon the death of the first settlor to die:

60 (a) TBE trust property shall have the same exemption from  
61 such claims after his or her death as would have applied if the  
62 settlers held the TBE trust property outside the trust as tenants  
63 by the entirety.

64 (b) TBE trust property is subject to the claims of the  
65 surviving settlor's separate creditors to the same extent that  
66 such property would be so subject if owned by the surviving  
67 settlor individually.

68 (c) For purposes of Ch. 739, the surviving settlor may  
69 disclaim an interest in TBE trust property, as if such TBE trust  
70 property were owned by the settlers as tenants by the entirety as  
71 of the death of the deceased settlor.

72 (7) If the settlers' marriage terminates by other than by the  
73 death of a settlor, the exemption from the claims of settlor's  
74 separate creditors provided for in this section terminates.

75 (8) For purposes of ss. 732.401 and 732.4015, during the settlors'  
76 marriage TBE trust property occupied by either or both settlors as  
77 their homestead shall be treated as property owned by them  
78 individually as tenants by the entirety; and for purposes of s.  
79 731.201 is not protected homestead. If the settlors' marriage  
80 terminates as a result of the death of a settlor, there is no  
81 devise of the homestead within the meaning of s. 732.4015. Upon  
82 the surviving settlor's death homestead titled in the name of the  
83 TBE trust is property to which ss. 732.401 and 732.4015 apply.

84 (9) In any proceeding relating to the exemption of TBE trust  
85 property from the claims of a separate creditor of either or both  
86 settlors, the burden to prove such exemption is the same as if the  
87 TBE trust property were owned by the settlors or settlor  
88 individually.

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

93 (11) This section shall take effect upon becoming law, and it  
94 applies to all TBE trust property transferred by settlors to the  
95 trustee of a TBE trust on or after the effective date of the  
96 statute.

97 4853-6694-8995, v. 1



# 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) Ad Hoc Committee on Jurisdiction & Service of Process

**Contact:** (Name of Committee Chair(s), address and phone number Barry Spivey, Williams Parker, 50 Central Ave., 8<sup>th</sup> Floor, Sarasota, FL 34236 (941-539-3657)

(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 revision of Part III of Chapter 736 to clarify procedure for acceptance by a Designated Representative and the authority and fiduciary status of such representatives. \_\_\_\_\_

**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.

\_\_\_\_\_ Trial Lawyers Section (submitted April 22, 2024. Comment is pending)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**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)*

---

---

---

---

---

---

8448801.v1

## WHITE PAPER

### PROPOSED REVISIONS TO §736.0306 (& §§ 736.0301, 736.0302, 736.0813) TO CLARIFY SCOPE OF REPRESENTATION, COMPENSATION, AND ACCEPTANCE PROCEDURE FOR DESIGNATED REPRESENTATIVES OF TRUST BENEFICIARIES

#### I. SUMMARY

This proposed legislation provides that a Designated Representative for trust beneficiaries can represent those beneficiaries in judicial proceedings and alternate dispute resolution proceedings, as well as receiving notices, information, accountings and reports on behalf of represented beneficiaries during the course of trust administration. It provides clarity on how a designated representative accepts or is deemed to accept the responsibilities of a designated representative. It also provides that, after its effective date, a designated representative is a fiduciary unless specified otherwise in a trust instrument. The bill will not have a fiscal impact on state funds.

#### II. CURRENT SITUATION

The present section 736.0306 is not clear that a designated representative can bind a represented beneficiary with respect to anything other than matters contained in notices, information, accountings, or reports from the trustee. A representative's action, nonaction, or waiver with respect to a trustee's accountings or notices of proposed actions can clearly impact a beneficiary's rights, including waiver of those rights. Although currently unstated, it seems consistent to extend the representative's authority to represent and bind a beneficiary in judicial and other dispute resolution proceedings that also impact the beneficiary's rights.

Procedurally, the present statute allows a settlor to authorize any person or persons to appoint someone other than a trustee to act as a designated representative. It does not require that a person authorized to appoint a designated representative must do so in writing. In addition, the statute currently does not provide a way to determine whether a designated representative has accepted the appointment, although acceptance is critical in determining whether a notice or other information given to the representative is binding on a beneficiary. Furthermore, the Trust Code does not currently define the term "designated representative."

An initial concern was whether representation in judicial proceedings implicates the due process rights of a represented beneficiary. A related issue is whether a judicial decision has preclusive effect with respect to the represented beneficiary. The "Overview of Uniform Trust Code" introduction to the UTC states with respect to Article 3 that "[t]he representation principles of the article apply to settlement of disputes, whether by a court or nonjudicially." The General Comment to Part III of the Uniform Trust Code states that "[t]he provisions of this article are subject to modification in the terms of the trust. *Settlors are free to specify their own methods for providing substituted notice and obtaining substituted consent.*" Section 736.0301(2), Florida Trust Code, provides that actions taken by a representative bind the person represented to the same

extent as if the actions were taken by the person represented. This suggests that due process and the preclusive effect of a court decision are moot points with respect to represented beneficiaries.

The Committee also considered case law under the Fourteenth Amendment and Section 21 of Article I of the Florida Constitution. Both the U.S. Supreme Court and the Florida courts have emphasized that state creation of a legal framework or procedure is not “state action” and does not violate due process as long as the state is not intimately involved in the execution of the procedure. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149 (1978); *Lloyd v. Brendemuehl*, 714 So.2d 1154 (Fla. 5<sup>th</sup> DCA 1998). The Committee concluded that statutory authorization for a trust settlor to appoint a representative for a trust beneficiary seems innocuous when a trust settlor can appoint a trust protector and grant the protector the power to add or delete beneficiaries, change the identity of permissible beneficiaries under a power of appointment, decant the trust, or even terminate the trust.

In addition, the current statute does not address the status of a designated representative as a fiduciary. Because of decisions of the U.S. Supreme Court on due process for represented persons the Committee deemed it prudent to provide as a default rule that, as of the effective date of the proposed amendments, designated representatives are fiduciaries unless specified otherwise in the trust instrument. See *Taylor v. Sturgell*, 553 U.S. 880 (2008). As an added feature, the proposed statute allows a trust settlor to provide that a designated representative is a fiduciary with respect to certain duties and a non-fiduciary with respect to others.

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

**A.** Section 1 of the proposal amends §736.0301 by adding a new subsection (5) that establishes the preclusive effect of court orders on beneficiaries represented under any provision of Part III of the Trust Code, including representation by a designated representative.

**B.** Section 2 of the proposal amends subsection (2) of section 736.0302 to clarify that the authority of takers in default of the exercise of a power of appointment to represent permissible appointees is subject to the power holder’s primary authority to do so.

**C.** Section 3 of the proposal also substantially rewords section 736.0306. The first sentence of subsection (1) both defines a designated representative and clarifies that representation in judicial proceedings, mediations, and arbitrations, is included. The balance of the subsection restates current statutory provisions. Subsection (2) provides methods of determining whether a designated representative has accepted the appointment, and provides that acceptance means acceptance on behalf of all beneficiaries for whom the designation applies, unless the trust instrument provides otherwise.

**D.** Section 4 of the proposal adds paragraph (f) to subsection (1) of section 736.0813 to impose a duty on a trustee to furnish a copy of the trust instrument to a nominated designated representative upon reasonable request.

**E.** Section 5 provides an effective date of July 1, 2025.



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

None.

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

None.

**VI. CONSTITUTIONAL ISSUES**

The Committee has considered and determined, as discussed in Section II, that Due Process issues are not implicated by the proposed statutory changes.

**VII. OTHER INTERESTED PARTIES**

Trial Lawyers Section of the Florida Bar

Florida Bankers Association

## 1 A bill to be entitled

2 An act relating to representation of persons by others under the Florida  
3 Trust Code; amending s. 736.0301, F.S.; providing that court orders  
4 binding representatives bind the person represented; amending s.  
5 736.0302, F.S.; clarifying that the holder of a power of appointment has  
6 priority over takers in default in representing permissible appointees;  
7 amending s. 736.0306, F.S.; defining a designated representative;  
8 providing for the scope of representation; providing for methods of  
9 accepting the role of designated representative; providing that a  
10 designated representative is a fiduciary if designated in a trust instrument  
11 executed after September 30, 2025 unless otherwise specifically directed  
12 in the trust terms; amending s. 736.0813, F.S.; requiring a trustee to notify  
13 a person nominated as a designated beneficiary of the person's  
14 nomination; requiring a trustee to furnish a nominated designated  
15 beneficiary with a copy of the trust instrument; providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Subsection (5) is added to section 736.0301, Florida Statutes, to  
20 read:

21 736.0301. Representation; basic effect.--

22 (5) Orders binding a person who is authorized to represent the interests of  
23 another person under this part are binding on the person whose interests are  
24 represented.

25 Section 2. Subsection (2) of section 736.0302, Florida Statutes, is amended to  
26 read:

27 736.0302. Representation by holder of power of appointment. --

28 (2) Subject to Subsection (1), ~~the~~ takers in default of the exercise of a power of  
29 appointment may represent and bind persons whose interests, as permissible  
30 appointees, are subject to the power.

31 Section 3. Section 736.0306, Florida Statutes, is amended to read:

32 (Substantial rewording of section. See s. 736.0306 for present text.)

33 736.0306. Designated representative. –

34 (1) A designated representative is a person nominated in or pursuant to a trust instrument  
35 to represent and bind a beneficiary with respect to any matter arising under this code,  
36 including but not limited to representation as provided in s. 736.0301 and, if serving in a  
37 fiduciary capacity, representation in judicial proceedings, mediations, and arbitrations, and  
38 who has accepted the designation. If specifically nominated in the trust instrument, one or  
39 more persons may be designated to serve as a designated representative. The trust  
40 instrument may also authorize any person or persons, other than a trustee of the trust, to  
41 designate one or more persons to serve as designated representative.

42 (2) A nominated person accepts the designation:

43 (a) By substantially complying with a method of acceptance provided in the terms of the  
44 trust; or

45 (b) If the terms of the trust do not provide a method or the method provided in the terms  
46 of the trust is not expressly made exclusive, by delivering to the trustee a written instrument  
47 accepting the designation, or by acting as a designated representative. The receipt or  
48 review of any notice, information, accounting, or report, alone, shall not constitute  
49 acceptance. By accepting the designation, a person accepts for all beneficiaries for whom  
50 the designation applies, unless otherwise provided in the terms of the trust. A person who  
51 does not accept the designation within a reasonable time after knowing of the designation is  
52 deemed to have declined the designation.

53 (3) Except as otherwise provided in this code, a designated representative may not  
54 represent and bind a beneficiary while the representative is serving as trustee.

55 (4) Except as otherwise provided in this code, a designated representative may not  
56 represent and bind another beneficiary if the designated representative is also a  
57 beneficiary, unless:

58 (a) The designated representative was named by the settlor; or

59 (b) The designated representative is the beneficiary's spouse or a grandparent or  
60 descendant of a grandparent of the beneficiary or the beneficiary's spouse.

61 (5) When acting in a non-fiduciary capacity, no designated representative is liable to the  
62 beneficiary whose interests are represented, or to anyone claiming through that  
63 beneficiary, for any actions or omissions to act made in good faith.

64 (6) A designated representative is entitled to payment out of the trust property for  
65 reasonable compensation and reimbursement for reasonable expenses that were  
66 properly incurred, with interest as appropriate. Any such compensation or  
67 reimbursement for expenses shall be paid from the trust as an administration expense  
68 unless the trust provides otherwise. Compensation and expenses paid for services in  
69 connection with adversary proceedings or litigation may be assessed by the court  
70 against one or more persons' part of the trust in the same manner as the assessment of  
71 attorney fees provided in s. 736.1005(2).

72 (7) Unless otherwise expressly provided in the trust instrument, a designated  
73 representative appointed in a trust instrument executed after September 30, 2025, is a  
74 fiduciary. A trust instrument may provide that specified duties of a designated  
75 representative are exercisable only in a fiduciary capacity and others are not.

76 Section 4. A new paragraph (f) is added to subsection (1) of 736.0813, Florida  
77 Statutes, to read:

78 736.0813. Duty to Inform and Account. --

79 (1)(f) Within a reasonable time after acceptance of the office of trustee, the trustee shall  
80 give notice to a person nominated as a designated representative of a qualified  
81 beneficiary of that person's nomination and shall provide such person a complete copy  
82 of the trust instrument upon reasonable request.

83 Section 6. Except as otherwise specifically provided in this act, this act shall take  
84 effect July 1, 2025.



# 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:** The Probate & Trust Litigation Committee

**Contact:** R. Lee McElroy, 3501 PGA Boulevard, Suite 201, Palm Beach Gardens, FL 33410, (561) 291-2043

Alexander S. Douglas, II, 1000 Legion Place, Suite 1700, Orlando, FL 32801 (407) 581-9800

## 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 of legislation creating a summary process allowing trustee discharge in non-adversarial trust administrations without the need for judicial process.

---

---

---

### 2. Political Proposal

\_\_\_\_\_ N/A \_\_\_\_\_

---

---

---

---

---

### 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.

Not at this point.

---

---

---

---

**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

---

---

---

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

c/o Dean, Mead & Dunbar, PA, 215 South Monroe Street, Ste. 815, Tallahassee, FL 32301, Telephone 850-999-4100

---

---

---

---

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

---

---

---

---

---

## WHITE PAPER

### Statutory Settlement of Accounts and Discharge of Trustee

#### I. SUMMARY

This bill reinforces the longstanding Florida public policy for the efficient administration of trusts in Florida by adopting a summary process allowing trustee discharge in non-adversarial trust administrations without the need for judicial process. Trustees currently face difficulty obtaining a discharge from liability at the conclusion of the trustee's administration. Because current law requires unanimous affirmative consent from all qualified beneficiaries or the filing of a costly lawsuit to obtain judicial discharge, even in situations where there is no objection or question regarding the right to end the administration the trust is forced to bear significant costs. This bill creates a statutory framework to settle trust accounts and obtain trustee discharge without these additional costs.

#### II. CURRENT SITUATION

Under the Florida Trust Code (the "Trust Code"), the trustee has duties to report and account to the beneficiaries of the trust, this includes an obligation to keep beneficiaries reasonably informed regarding the administration. The trustee is required to keep beneficiaries reasonably informed and to provide the beneficiaries with a statement of the trust account annually. The law places the burden on the trustee, holding the trustee liable if he or she fails to keep clear, distinct, and accurate accounts, or even if the trustee loses his or her accounts. *Traub v. Traub*, 135 So.2d 243 (Fla. 3d DCA 1961) (holding liable a trustee whose accounting information was destroyed by flooding during a hurricane). In addition to the Trust Code's requirements to inform and account to beneficiaries, current law provides standards for the form and content of the accounting.

Section 736.1008, F.S., specifies limitation periods for claims by a beneficiary against a trustee for failing to comply with their duties. Generally, the limitations period on a trustee's actions is four-years. This time can be shortened to six-months if the trustee sends the beneficiary a statutory notice and adequately discloses the matters in writing to the beneficiary. Fla. Stat. § 736.1008(2). Within the four year period, or if shortened to six months, a beneficiary who seeks to challenge actions by the trustee must file a civil lawsuit for breach of trust. If applicable limitations period expires without the filing of a lawsuit, the disclosed actions of the trustee are considered accepted by the beneficiary and no longer available for challenge.

At the conclusion of a trustee's tenure, whether it be due to the resignation or removal of the trustee or because the trust may be terminating all together, the trustee is required to provide an account of their actions to the beneficiaries. Fla. Stat. § 736.0813(1)(d). There are currently three ways that this can be done: (1) all of the beneficiaries to the trust waive a final accounting and provide the trustee with a release relating to the administration, (2) the trustee produces a final accounting and either waits the applicable limitations period or receives a written approval of the accounts from all of the beneficiaries, or (3) the trustee files a civil lawsuit, attaching the final accounting to a complaint which is served on the beneficiaries, and asks the Court to approve the accounting.

Each of these methods have pros and cons, but most glaringly is the interplay between significant cost associated with the production of a final accounting and/or lawsuit versus the



beneficiaries' need for this information. The beneficiaries of the trust are put into a difficult position of bearing a large expense to have the accounting produced and reviewed, even when there is no fight, or having to waive the accounting all together to avoid that cost. On the other hand, the trustee also has a right to produce and provide the accounting in order to have as full and complete a release from liability as possible, and often it is the trustee that insists upon this process.

Accordingly, under current law, trusts do not have an efficient way to discharge a trustee in non-adversarial situations. This bill seeks to rectify this by installing a summary proceeding which has been similarly adopted in other states which (a) provides the beneficiaries of the trust with the necessary information, (b) provides the trustee with the necessary discharge of liability, (c) expedites the process for all interested parties, and (d) greatly reduces the cost without sacrificing due process.

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

This bill creates a statutory, summary process to settle trust accounts when the trustee has complied with their fiduciary duties during the administration. To ensure application to only non-adversarial situations, the process is limited only to trustees who have substantially complied with their duties of informing and accounting to beneficiaries. This bill adopts what is known as a negative consent process, a process in which a person is served with a document and considered to have approved the document unless they speak up within a set timeframe, for obtaining a discharge consistent with the Trust Code's use of trust disclosure statements sent to beneficiaries. This structure is similar to processes adopted in multiple other states in addressing trust accountings and is not dissimilar from negative consent processes already included in Florida law, such as in cases of Florida Chapter 727 assignments, and under Federal bankruptcy laws.

The bill creates a new section in the Trust Code, § 736.10085, which contains this newly adopted process. Subsection (1) governs the trustees who have standing to pursue a statutory discharge and prevent any potential misapplication. A trustee may only utilize this summary process if the trustee has provided trust accountings in substantial compliance with the Trust Code's accounting requirement. The framework is limited to only three scenarios in which the trustee's administration is ending—termination of the trust, resignation of the trustee, or removal of the trustee.

§ 736.10085(2) delineates the written information that must be sent to the qualified beneficiaries of the trust to provide the required statutory notice. Consistent with trust disclosure documents in 736.1008, the trustee seeking discharge must provide comprehensive information about the trust. The trust disclosure statement must include a) the name and contact information of the trustee seeking discharge, b) the proposed plan of distribution of trust assets controlled by the trustee, c) a trust accounting meeting all of the requirements itemized in Section 736.08135 unless previously waived, and d) a specific negative consent notice notifying beneficiaries that they do not object in writing to the discharge within 60 days, they have consented to the discharge. In addition, § 736.10085(3) gives the trustee discretion to provide the same information to any person the trustee reasonably believes may have an interest in the trust. This ensures that the trustee is not acting improperly by giving interested persons needed information.

§ 736.10085(4), gives the recipient of the information 60 days to object and details the simple process for objection. The beneficiary is not required to make the objection in a particular form, nor does it need to explicitly state the objectionable material; instead, the statute merely requires that the beneficiary make a written objection which is then sent to the trustee in a manner reasonably suitable under the circumstances and likely to result in receipt. An example of a sufficient objection would be putting a letter in the mail to the trustee that states “I object to your disclosure document.” The goal of such a minimal response by the beneficiary is to ensure that there is little burden to avoiding the summary process should the beneficiary desire.

If a written objection is made by a beneficiary, the trustee *may not* utilize the summary procedure and must instead proceed under Florida’s already existing laws which were described above. See, § 736.10085(4)(a). On the other hand, if no objection is made or if there is a waiver of the 60-day period by the beneficiary, the trustee may proceed with the distributions laid out in the disclosure document and effectively wrap up the trustee’s administration. Fla. Stat. § 736.10085(4)(c).

The bill also provides that this is an additional process under the Trust Code and is not intended to replace the other processes for discharge already included in Florida law.

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

The proposal will reduce the number of civil proceedings related to discharge of a trustee and approval of accountings which will provide a reduction in judicial court administration costs.

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

The proposal will reduce the number of civil proceedings related to discharge of a trustee and approval of accountings. Further, the proposed summary process will reduce fees and costs associated with trust administrations, including among other things accounting fees associated with accounting preparation and legal fees associated with notice and court proceedings. These savings pass to the trust beneficiaries as the trust funds are currently required to bear the weight of these expenses in most instances.

#### **VI. CONSTITUTIONAL ISSUES**

None.

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

None.

1 A bill to be entitled

2  
3 An act allowing trustee to obtain a discharge without a release  
4 agreement or judicial action.

5  
6 Be it enacted by the Legislature of the State of Florida:

7  
8 **Section 1.** Section 736.10085 is created to read:

9  
10 736.10085. Statutory settlement of accounts and discharge of trustee.

11  
12 (1) A trustee of a trust who has been in substantial compliance with the  
13 duty to inform and account under s. 736.0813 may obtain a settlement of  
14 its accounts and be discharged in accordance with this section when any  
15 of the following occur more than 6 months after the trustee's acceptance:

16  
17 (a) A trust terminates; or

18  
19 (b) A trustee resigns or is removed.

20  
21 (2) A trustee proceeding under this section must send to the qualified  
22 beneficiaries of the trust (or their legal representative under Part III of  
23 the Florida Trust Code) and any cotrustee or the immediate successor  
24 trustee (if the trust is not terminating) a trust disclosure document which  
25 shall contain the following:

26  
27  
28 (a) The name, mailing address, telephone number and e-mail address of  
29 the trustee seeking discharge pursuant to this section, and any cotrustee  
30 or the immediate successor trustee.

31  
32 (b) A plan of distribution, which shall include, a schedule of the assets  
33 reasonably anticipated to be disbursed or distributed by the trustee, the

34 amount of debts, expenses, and taxes to be paid by the trustee, any  
35 reasonable reserve to be held by the trustee.

36

37 (c) A trust accounting complying with s. 736.08135 for the period for  
38 which an accounting has not been previously provided to the qualified  
39 beneficiaries of the trust, unless the accounting was waived.

40

41 (d) A statement that the trust has terminated or that the trustee has  
42 resigned or been removed, and a notice which includes substantially the  
43 following language: “NOTICE: Any claim or cause of action you might  
44 have against the trustee arising from any matter adequately disclosed, in  
45 a trust disclosure document, ~~;~~ may be barred unless a written statement  
46 objecting to the proposed discharge is received by the trustee from you  
47 within 60 days of your receipt of this trust disclosure document and  
48 notice. If you have questions, please consult your attorney.”

49

50 (3) The trustee may also send the trust disclosure document and notice  
51 described in this section to any other person whom the trustee  
52 reasonably believes would be affected by this trust disclosure document.  
53 The trust disclosure document, the notice, and objection, if any,  
54 described in this section shall be sent as provided by s. 736.0109, except  
55 736.0109(3) shall not apply.

56

57 4(a) If, after receiving the trust disclosure document and notice  
58 described in subsection (2), an interested person who received the trust  
59 disclosure document and notice wishes to object, such interested person  
60 shall send a written objection to the trustee pursuant to s. 736.0109, so  
61 that such written objection is received by the trustee not later than 60  
62 days after the trust disclosure document and notice was received. The  
63 objection need not be in a particular form, but must be in writing. If an  
64 objection is timely made, the provisions of this section shall no longer be  
65 applicable and the trustee may proceed with any other course of action  
66 permitted under law in accordance with the trustee’s duties. If no written  
67 objection is received by the trustee within the 60-day time period, the

68 information provided under subsection (2) shall be considered approved  
69 by the interested person(s), and all claims arising from the information  
70 adequately disclosed, including any objection or claim that the trustee is  
71 not in compliance with this section, shall be barred. The trustee shall  
72 distribute the assets as provided in the plan of distribution, or if  
73 applicable, transfer the assets to a successor trustee, within a reasonable  
74 period of time following the expiration of the 60-day time period  
75 without objection.

76  
77 (b) A waiver of the right to object pursuant to this section shall be  
78 treated as the expiration of the 60 day period without objection.

79  
80 (c) If no written objection is received by the trustee within the 60-day  
81 time period after a trustee complies with subsection (2), upon  
82 completion of all distributions or transfers in accordance with the  
83 trustee's proposed plan of distribution, the trustee is discharged from all  
84 liability and claims arising from any act or omission adequately  
85 disclosed, as defined in s. 736.1008(4), including any objection or claim  
86 that the trustee is not in compliance with this section, and with the same  
87 preclusive effect as if the court had entered a final order approving the  
88 trustee's trust disclosure document and accounting.

89  
90 (4) The provisions in this section are in addition to, and not a  
91 replacement of rights of a trustee to otherwise settle the trustee's  
92 accounts.

93  
94 **Section 2.** This statute shall apply to all trusts that are irrevocable or  
95 become irrevocable on or after the date this statute becomes law.

96



# 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 (407-428-5169)

(Name of Sub-committee Chair, if any, address and phone number, if any) Mary Karr, c/o Gunster, 600 Brickell Avenue, Suite 3500, Miami, FL 33131 (305) 376-6045

**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 revision of Section 736.04117 to clarify that the authorized trustee of the first (original) trust will not be treated as the settlor of the second (new) trust when applying 736.04117 to the second trust; to expressly state that the trustee’s power under 736.04117 can be exercised by modifying the terms of the first (original) trust; to make it clear that the notice of a proposed decanting is not a trust disclosure document; to make it clear that 736.04117 applies to any trust governed by Florida law or that has its principal place of administration in Florida.

**2. Political Proposal**

N/A.

**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: N/A

**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 (February 2024); pending review by the Florida Bankers Association and the Tax Section of The Florida Bar.

**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)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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

**WHITE PAPER ON THE REVISIONS TO  
SUBSECTIONS (1)(b), (2)(a), (3), (4)(a), (8)(d), (11) AND (12) OF 736.04117 OF THE  
FLORIDA STATUTES**

**I. SUMMARY**

**A. Section 736.04117(1)(b).** The proposed legislation clarifies that an authorized trustee is not treated as a settlor of a trust for purposes of Section 736.04117, even if the authorized trustee created the trust instrument or made a distribution of assets to it. The proposal also clarifies that for purposes of determining settlor intent with respect to a second (new) trust or modifications to the first (original) trust, the intent of the settlor of the first trust, the intent of a settlor of the second trust, and intent of the authorized trustee may be considered.

**B. Section 736.04117(2)(a), (3) and (4)(a).** The proposed legislation clarifies that a trustee's power to invade principal in trust pursuant to Section 736.04117(2)(a), (3) and (4)(a) can be exercised to modify the terms of the first (original) trust or to distribute to a second (new) trust.

**C. Section 736.04117(8)(d).** The proposed legislation clarifies that the notice required by Section 736.04117(8)(d) is not a trust disclosure document within the meaning of Section 736.1008(4)(a), and that a trust disclosure document cannot be provided to a beneficiary before the distribution in further trust occurs.

**D. Section 736.04117(11).** The proposed legislation clarifies that the decanting statute applies to any trust that is governed by Florida law or has its principal place of administration in the State of Florida. Current Section 736.04117(11) is renumbered (12).

**II. SECTION-BY-SECTION ANALYSIS**

**A. Section 736.04117(1)(b)**

1. Current Situation: Under current law, an authorized trustee who executes the trust instrument creating the second (new) trust or appoints assets to the second trust may meet the definition of "settlor" in Section 736.0103(21), which would preclude that trustee from acting as an authorized trustee for the second trust.

2. Effect of Proposed Changes: The proposal will add language to Section 736.04117(1)(b) to clarify that the authorized trustee of the first (original) trust will not be treated as the settlor of the second (new) trust for purposes of Section 736.04117. The proposal also includes language to confirm that when determining the intent of the settlor, the intent of the settlor of the first trust, the intent of the settlor of the second trust, and the authorized trustee's intent may be considered. This language concerning intent is adopted from Section 25 of the Uniform Trust Decanting Act. The goal is to have the language operate as envisioned by that act, including the commentary to that act.

**B. Section 736.04117(2)(a), (3), and (4)(a)**

1. Current Situation: With respect to the identical revisions to paragraphs (2)(a), (3) and (4)(a) of Section 736.04117 the statute does not currently expressly state that the trustee has the power to modify the first (original) trust in the exercise of discretion pursuant to Section 736.04117. Structuring a decanting as a modification avoids the need to retitle assets, obtain a new EIN, and redo Subchapter S elections. Making the authority to modify express in the statute may be necessary to avoid a termination for purposes of special needs trusts pursuant to the rules of the Social Security Administration.

2. Effect of Proposed Changes: As to paragraphs (2)(a), (3) and (4)(a) of Section 736.04117, the proposal will revise the statute to include express authority that the trustee's power under Section 736.04117 can be exercised by modifying the terms of the first (original) trust. The revisions to each paragraph are identical.

**C. Section 736.04117(8)(d)**

1. Current Situation: With respect to the revisions to paragraph (8)(d) of Section 736.04117 some trustees include on the decanting notice a six-month limitation notice that states that actions for breach of trust "may be subject to a 6-month statute of limitations from the receipt of the trust accounting or other written report." See the form of limitations notice in Section 736.1008(4)(c). This is misleading (to beneficiaries and trustees) because the soonest the statute of limitations could begin to run is when the decanting occurs, which is no sooner than the earlier of 60 days after the delivery of the notice or when notice is waived.

2. Effect of Proposed Changes: As to paragraph (8)(d) of Section 736.04117 the proposal will clarify that the notice required under paragraph (8)(d) is not a trust disclosure document. The revisions to paragraph (8)(d) further clarify that a trust disclosure document which starts the limitations period cannot be provided to a beneficiary prior to the time that the distribution in further trust actually occurs.

**D. Section 736.04117(11)**

1. Current Situation: Under common law, administrative matters of a trust are governed by the law of the jurisdiction designated in the terms of the trust, provided there is a sufficient nexus to the designated jurisdiction at the time of the creation of the trust or during the trust administration, or the law of the principal place of administration. The exercise of discretion by a trustee is considered an administrative matter.

2. Effect of Proposed Changes: The proposal clarifies that the decanting statute applies to any trust that is governed by Florida law.

**III. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

This proposal will not have a fiscal impact on state or local governments.

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

This proposal will not have a direct economic impact on the private sector.

#### **V. CONSTITUTIONAL ISSUES**

The proposed legislation is clarifying in nature. There are no known constitutional issues.

#### **VI. OTHER INTERESTED PARTIES**

The proposal has been shared with the Estate & Trust Tax Planning Committee and the Probate & Trust Litigation Committee of the Real Property, Probate and Trust Law Section of the Florida Bar. The proposal will be shared with the Tax Law Section of the Florida Bar and the Florida Bankers Association.

1 An act relating to a trustee's power to  
2 invade principal in trust; revising s.  
3 736.04117, F.S. to clarify that the  
4 authorized trustee of the first (original)  
5 trust will not be treated as the settlor of  
6 the second (new) trust when applying s.  
7 736.04117, F.S. to the second trust;  
8 revising s. 736.04117, F.S. to expressly  
9 state that the trustee's power under the  
10 statute can be exercised by modifying the  
11 terms of the first (original) trust;  
12 revising s. 736.04117, F.S. to make it clear  
13 that the notice of a proposed decanting is  
14 not a trust disclosure document; revising s.  
15 736.04117, F.S. to make it clear that the  
16 statute applies to any trust governed by  
17 Florida law or that has its principal place  
18 of business in Florida.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Subsections (1), (2), (3), (4) and (8) of  
23 Section 736.04117, Florida Statutes, are revised to read:

24 736.04117. Trustee's power to invade principal in trust

25 (1) Definitions.— As used in this section, the term:

26 (b) "Authorized trustee" means a trustee, other than the  
27 settlor or a beneficiary, who has the power to invade the  
28 principal of a trust. An authorized trustee shall not be  
29 considered a settlor of a second trust for purposes of this  
30 section even if the authorized trustee created the trust

RM:6724080:1

31 instrument governing the second trust or made a  
32 distribution of assets from the first trust to the second  
33 trust, but in determining settlor intent with respect to a  
34 second trust or the modifications to the first trust, the  
35 intent of a settlor of the first trust, a settlor of the  
36 second trust, and the authorized trustee may be considered.

37 (2) Distribution from first trust to second trust when  
38 authorized trustee has absolute power to invade.-

39 (a) Unless a trust instrument expressly provides  
40 otherwise, an authorized trustee who has absolute power  
41 under the terms of the trust to invade its principal,  
42 referred to in this section as the "first trust," to make  
43 current distributions to or for the benefit of one or more  
44 beneficiaries may instead exercise such power by modifying  
45 the terms of the first trust or by appointing all or part  
46 of the principal of the trust subject to such power in  
47 favor of a trustee of one or more other trusts, whether  
48 created under the same trust instrument as the first trust  
49 or a different trust instrument, including a trust  
50 instrument created for the purposes of exercising the power  
51 granted by this section, each referred to in this section  
52 as the "second trust," for the current benefit of one or  
53 more of such beneficiaries only if:

54 1. The beneficiaries of the second trust  
55 include only beneficiaries of the first trust;  
56 and

57 2. The second trust does not reduce any  
58 vested interest.

59 (b) In an exercise of absolute power, the second trust  
60 may:

RM:6724080:1

61           1. Retain a power of appointment granted in  
62 the first trust;

63           2. Omit a power of appointment granted in  
64 the first trust, other than a presently  
65 exercisable general power of appointment;

66           3. Create or modify a power of appointment  
67 if the power holder is a current beneficiary of  
68 the first trust;

69           4. Create or modify a power of appointment  
70 if the power holder is a beneficiary of the first  
71 trust who is not a current beneficiary, but the  
72 exercise of the power of appointment may take  
73 effect only after the power holder becomes, or  
74 would have become if then living, a current  
75 beneficiary of the first trust; and

76           5. Extend the term of the second trust  
77 beyond the term of the first trust.

78       (c) The class of permissible appointees in favor of which  
79 a created or modified power of appointment may be exercised  
80 may differ from the class identified in the first trust.

81       (3) Distribution from first trust to second trust when  
82 authorized trustee does not have absolute power to invade.-  
83 -Unless the trust instrument expressly provides otherwise,  
84 an authorized trustee who has a power, other than an  
85 absolute power, under the terms of a first trust to invade  
86 principal to make current distributions to or for the  
87 benefit of one or more beneficiaries may instead exercise  
88 such power by modifying the terms of the first trust or by  
89 appointing all or part of the principal of the first trust  
90 subject to such power in favor of a trustee of one or more

RM:6724080:1

91 second trusts. If the authorized trustee exercises such  
92 power:

93 (a) The second trusts, in the aggregate, shall grant each  
94 beneficiary of the first trust beneficial interests in the  
95 second trusts which are substantially similar to the  
96 beneficial interests of the beneficiary in the first trust.

97 (b) If the first trust grants a power of appointment to a  
98 beneficiary of the first trust, the second trust shall  
99 grant such power of appointment in the second trust to such  
100 beneficiary, and the class of permissible appointees shall  
101 be the same as in the first trust.

102 (c) If the first trust does not grant a power of  
103 appointment to a beneficiary of the first trust, the second  
104 trust may not grant a power of appointment in the second  
105 trust to such beneficiary.

106 (d) Notwithstanding paragraphs (a), (b), and (c), the  
107 term of the second trust may extend beyond the term of the  
108 first trust, and, for any period after the first trust  
109 would have otherwise terminated, in whole or in part, under  
110 the provisions of the first trust, the trust instrument of  
111 the second trust may, with respect to property subject to  
112 such extended term:

113 1. Include language providing the trustee  
114 with the absolute power to invade the principal  
115 of the second trust during such extended term;  
116 and

117 2. Create a power of appointment, if the  
118 power holder is a current beneficiary of the  
119 first trust, or expand the class of permissible

RM:6724080:1

120 appointees in favor of which a power of  
121 appointment may be exercised.

122 (4) Distribution from first trust to supplemental needs  
123 trust.--

124 (a) Notwithstanding subsections (2) and (3), unless the  
125 trust instrument expressly provides otherwise, an  
126 authorized trustee who has the power under the terms of a  
127 first trust to invade the principal of the first trust to  
128 make current distributions to or for the benefit of a  
129 beneficiary with a disability may instead exercise such  
130 power by modifying the terms of the first trust or by  
131 appointing all or part of the principal of the first trust  
132 in favor of a trustee of a second trust that is a  
133 supplemental needs trust if:

134 1. The supplemental needs trust benefits the  
135 beneficiary with a disability;

136 2. The beneficiaries of the second trust  
137 include only beneficiaries of the first trust;  
138 and

139 3. The authorized trustee determines that  
140 the exercise of such power will further the  
141 purposes of the first trust.

142 (b) Except as affected by any change to the interests of  
143 the beneficiary with a disability, the second trusts, in  
144 the aggregate, shall grant each other beneficiary of the  
145 first trust beneficial interests in the second trusts which  
146 are substantially similar to such other beneficiary's  
147 beneficial interests in the first trust.

148 (8) Notice.--

RM:6724080:1



149 (a) The authorized trustee shall provide written  
150 notification of the manner in which he or she intends to  
151 exercise his or her power to invade principal to all of the  
152 following parties at least 60 days before the effective  
153 date of the authorized trustee's exercise of such power  
154 pursuant to subsection (2), subsection (3), or subsection  
155 (4):

156 1. All qualified beneficiaries of the first  
157 trust.

158 2. If paragraph (5)(c) applies, the settlor  
159 of the first trust.

160 3. All trustees of the first trust.

161 4. Any person who has the power to remove or  
162 replace the authorized trustee of the first  
163 trust.

164 (b) The authorized trustee's obligation to provide notice  
165 under this subsection is satisfied when he or she provides  
166 copies of the proposed instrument exercising the power, the  
167 trust instrument of the first trust, and the proposed trust  
168 instrument of the second trust.

169 (c) If all of those required to be notified waive the  
170 notice period by signed written instrument delivered to the  
171 authorized trustee, the authorized trustee's power to  
172 invade principal shall be exercisable immediately.

173 (d) The authorized trustee's notice under this subsection  
174 cannot be used as a trust disclosure document as defined in  
175 s. 736.1008(4)(a) and does not limit the right of any  
176 beneficiary to object to the exercise of the authorized  
177 trustee's power to invade principal except as otherwise  
178 provided in other applicable provisions of this code. The

RM:6724080:1

179 authorized trustee may not provide a trust disclosure  
180 document as defined in s. 736.1008(4)(a) with respect to  
181 the exercise of his or her power to invade principal until  
182 the effective date of the authorized trustee's exercise of  
183 such power.

184 Section 2. A new subsection (11) is added to Section  
185 736.04117, Florida Statutes, to read:

186 (11) Application.-- This section applies to all trusts  
187 that are governed by the laws of this state or that have a  
188 principal place of administration within this state.

189 Section 3. Subsection (11) of Section 736.04117, Florida  
190 Statutes, is renumbered as subsection (12):

191 (12) No abridgement of common law rights.-- This section  
192 may not be construed to abridge the right of any trustee  
193 who has a power of invasion to appoint property in further  
194 trust that arises under the terms of the first trust or  
195 under any other section of this code or under another  
196 provision of law or under common law.

197 Section 4. Effective date. This act shall take effect  
198 upon becoming a law and shall apply to all trusts created  
199 on, before, or after the effective date.



# 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): RPPTL Estate and Trust Tax Planning Committee

**Contact:** (Name of Committee Chair(s), address and phone number): Richard N. Sherrill c/o Clark Partington, 125 East Intendencia Street, Pensacola, Florida 32502 (850-434-3276)

---

---

(Name of Sub-committee Chair, if any, address and phone number): M. Travis Hayes, c/o Gunster, 5551 Ridgewood Drive, Suite 501, Naples, Florida (239-514-1000)

---

---

## 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 revisions to the Florida Community Property Trust Act (Sections 736.1501, *et al.*, of the Florida Statutes) to fix language in the definitional section of the Act which was inadvertently included during the bill drafting process for the original Act (Section 736.1502(1)); to clarify that the Act applies to express trusts created, amended, restated or modified after July 1, 2021 (Section 736.1502(2)); and to clarify that the transfer of homestead property to a Florida Community Property Trust is not a change in ownership for purposes of Chapter 193 and does not trigger a reassessment of the value of the property (new Section 736.151(3)).

### 2. Political Proposal

N/A.

### 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: N/A

## 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. The subcommittee has not identified any Bar committees, divisions, sections or voluntary bar groups which would be interested in this proposal.

### 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)*

---

---

---

---

---

---

**ESTATE & TRUST TAX PLANNING COMMITTEE OF THE  
REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR**

**WHITE PAPER ON MINOR CLARIFICATIONS  
TO THE FLORIDA COMMUNITY PROPERTY TRUST ACT**

**I. SUMMARY**

The Florida Community Property Trust Act (Part XV of the Florida Trust Code, Section 736.1501, *et. al.*) was signed into law by Governor Ron DeSantis on June 29, 2021, after being unanimously approved by both houses of the Florida Legislature. The bill had an effective date of July 1, 2021 and is now law in the State of Florida.

The Florida Community Property Trust Act (the “Act”) permits married couples to create a certain type of Florida trust to hold community property. Historically, Florida has been a common law jurisdiction and did not allow for married couples who reside in the state to create or own community property. The Act changed the law in Florida so that married couples can own community property as long as it is held in a Florida community property trust (“FCPT”) which meets the requirements contained in the statutes. Allowing married couples to own community property can have significant tax benefits for the settlor spouses.

FCPTs are now frequently recommended and used by Florida attorneys as part of the estate planning process for married couples. Due to the increased usage of FCPTs, several practitioners approached the original drafting committee for the Real Property, Probate and Trust Law (“RPPTL”) Section of The Florida Bar with suggestions for minor clarifications to the language of the Florida Community Property Trust Act. The proposed legislation includes those requested clarifications which the original RPPTL Section drafting committee determined would improve the statutory framework and operation of the Act.

**II. SECTION-BY-SECTION ANALYSIS**

**A. Section 736.1502(1)**

1. Current Situation: Section 736.1502 is the definitional section of the Act and contains seven definitions which are specific to it - “community property”, “community property trust”, “decree,” “dissolution”, “during marriage”, “qualified trustee”, and “settlor spouses”. In particular, Section 736.1502(1) defines “community property” as “the property and the appreciation of and income from the property owned by a qualified trustee of a community property trust during the marriage of the settlor spouses. The property owned by a community property trust pursuant to this part and the appreciation of and income from such property shall be deemed to be community property for purposes of general law.” The “shall be *deemed to be* community property” language was inadvertently added to the Act during the bill drafting process. This is not consistent with the Act which provides that the assets held in a FCPT are community

property and not “deemed to be” community property for all purposes of Florida law. In particular, this language conflicts with other statutory provisions contained in the Act<sup>1</sup>.

2. Effect of Proposed Changes: The proposal will strike the “deemed to be” language which was inadvertently included in the Act. This will clarify that any assets held in a FCPT *shall be* community property under the laws of the State of Florida. This will also bring Section 736.1502(1) in line with other statutory provisions contained in the Act.

## **B. Section 736.1502(2)**

1. Current Situation: Again, Section 736.1502 is the definitional section of the Act. Section 736.1502(2) defines “community property trust” as an “express trust that complies with s. 736.1503 and is created on or after July 1, 2021.” The language which provides that a FCPT has to be “created on or after” the effective date of the Act has caused some confusion for practitioners. Many married couples move to the State of Florida and already have community property trusts or joint revocable trusts in existence at the time that they become residents. Those married couples typically want to amend or restate the existing trust in order to qualify it as FCPT. The drafting committee reviewed this issue during the original legislative process and determined that an amendment or restatement of an existing joint trust would meet the requirement of Section 1502(2) since the FCPT aspect of the trust would be created on the date of the amendment or restatement, even though the original trust was established at an earlier date. There are other examples of this interpretation of “create” or “created” throughout the Florida Trust Code. However, there is no harm in clarifying the language to make it abundantly clear that an existing trust which is amended, restated, or modified after the effective date of the Act will qualify as a FCPT

2. Effect of Proposed Changes: The proposal will clarify that a FCPT can be created through the amendment, restatement or modification of an existing trust, as long as it meets the other requirements found in the Act.

## **C. Section 736.151(3)**

1. Current Situation: Many married couples in Florida are transferring their Florida homestead property to FCPTs. Section 736.151 specifically addresses the transfer of homestead property to a FCPT. The Act includes provisions which provide that homestead property transferred to a FCPT retains its homestead character (i.e., the property tax exemption including the Save Our Homes cap, the protection from creditors, and the restrictions on devise). The section also specifically provides that property acquired in the name of the trustee of the FCPT may initially qualify as the settlor spouses’ homestead, provided that the property would qualify as the settlor spouses’ homestead if title was held outside of the trust in one or both of the spouses’ individual names. This is a vast improvement over existing Florida law. Some practitioners have, however, inquired as to whether county property appraisers will take the position that the transfer of homestead property to a FCPT is a change of ownership for purposes of reassessing the value of the homestead for property tax purposes. While this issue is specifically addressed in an existing

---

<sup>1</sup> Section 736.1505(3) - “(3) All property owned by a community property trust is community property under the laws of the state during the marriage of the settlor spouses.”

statute, Section 193.155(3)(a)2<sup>2</sup>, it would be helpful to practitioners to reiterate the statutory exception to the reassessment of homestead property in the Act.

2. Effect of Proposed Changes: The proposal adds a new subsection (3) to Section 736.151, which will clarify and confirm that a transfer of homestead property to a FCPT is not a change of ownership for purposes of reassessing the value for purposes of property taxes and shall be treated as a qualified transfer between spouses, as set forth in Section 193.155(3)(a)2.

#### **D. Effective Date**

Since the proposed revisions to the Act are intended to clarify existing Florida law and are remedial in nature, the legislation will apply to all FCPTs created on, before, or after the effective date. The legislation will take effect upon becoming law.

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

This proposal will not have a fiscal impact on state or local governments.

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

This proposal will not have a direct economic impact on the private sector.

### **V. CONSTITUTIONAL ISSUES**

The proposed legislation is clarifying in nature. There are no known constitutional issues.

### **VI. OTHER INTERESTED PARTIES**

The proponents of the legislation have not identified any other interested parties.

---

<sup>2</sup> Section 193.155(3)(a)2 (in pertinent part) – “For the purpose of this section, a change of ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except if any of the following apply: 2. Legal or equitable title is changed or transferred between husband and wife, including a change or transfer to a surviving spouse or a transfer due to a dissolution of marriage.”



1 An act relating to minor clarifications to  
2 the Florida Community Property Trust Act;  
3 revising s. 736.1502(1), F.S. to fix  
4 language in the definitional section of the  
5 Florida Community Property Trust Act which  
6 was inadvertently included as part of the  
7 original Act; revising s. 736.1502(2), F.S.  
8 to clarify that the Florida Community  
9 Property Trust Act applies to express trusts  
10 created, amended, restated or modified after  
11 July 1, 2021; and amending s. 736.151, F.S.,  
12 to add a new subsection (3) which clarifies  
13 that the transfer of homestead property to a  
14 Florida Community Property Trust is not a  
15 change in ownership and does not trigger a  
16 reassessment of the value of the property.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Subsections (1) and (2) of Section 736.1502,  
21 Florida Statutes, are revised to read:

22 736.1502. Definitions.—Unless the context otherwise  
23 requires, as used in this part:

24 (1) “Community property” means the property and the  
25 appreciation of and income from the property owned by a  
26 qualified trustee of a community property trust during the  
27 marriage of the settlor spouses. The property owned by a  
28 community property trust pursuant to this part and the  
29 appreciation of and income from such property shall be

30 ~~deemed to be~~ community property for purposes of general  
31 law.

32 (2) "Community property trust" means an express trust  
33 that complies with s. 736.1503 and is created, amended,  
34 restated or modified on or after July 1, 2021.

35  
36 Section 2. A new subsection (3) is added to Section  
37 736.151, Florida Statutes, to read:

38 (3) A transfer of homestead property by one or both of  
39 the settlor spouses to a community property trust shall not  
40 be treated as a change of ownership for purposes of  
41 reassessing the property and shall instead qualify as a  
42 change or transfer of legal or equitable title between  
43 spouses within the meaning of s. 193.155(3)(a)(2).

44  
45 Section 3. Effective date. This act is intended to  
46 clarify existing law and shall apply to all community  
47 property trusts created on, before, or after the effective  
48 date. This act shall take effect upon becoming a law.

# ATTACHMENT 1



# 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) Condominium & Planned Development Committee

Contact: (Name of Committee Chair(s), address and phone number) Allison L. Hertz, 625 North Flagler Drive, 7<sup>th</sup> Floor, West Palm Beach, FL 33401; 561-820-2883  
Alex Dobrev, 215 North Eola Drive, Orlando, FL 32801; 407-618-6445

(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**

Adopt the following position as official Real Property, Probate and Trust Law Section Legislative Positions

Supports legislation allowing any association that must obtain a 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.

**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: 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 s. 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

**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.

Business Law Section  
Public Interest 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 c/o Jones Walker, 106 East College Avenue, Ste. 1200, Tallahassee, FL 32301, Telephone 850-214-5100

---

---

---

---

---

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

Pete Dunbar 850-999-4100

Steve Mezer 813-5273900

Allison Hertz 561-820-2883

Alex Dobrev 407-618-6445

---

---

---

---

---

---

# ATTACHMENT 2



## 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.

# ATTACHMENT 3



# 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) Condominium & Planned Development Committee

Contact: (Name of Committee Chair(s), address and phone number) Allison L. Hertz, 625 North Flagler Drive, 7<sup>th</sup> Floor, West Palm Beach, FL 33401; 561-820-2883

Alex Dobrev, 215 North Eola Drive, Orlando, FL 32801; 407-618-6445

(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**

Adopt the following position as official Real Property, Probate and Trust Law Section Legislative Positions

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.

**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: 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, 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. This limitation on the community association’s ability to borrow funds 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 or special assessments. 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.

**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.

Business Law Section  
Public Interest 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 c/o Jones Walker, 106 East College Avenue, Ste. 1200, Tallahassee, FL 32301, Telephone 850-214-5100

---

---

---

---

---

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

Pete Dunbar 850-999-4100

Steve Mezer 813-5273900

Allison Hertz 561-820-2883

Alex Dobrev 407-618-6445

---

---

---

---

---

---

# ATTACHMENT 4



## 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 associations<sup>1</sup>. 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,

---

<sup>1</sup> 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.

# ATTACHMENT 5



# 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) Condominium & Planned Development Committee

**Contact:** (Name of Committee Chair(s), address and phone number) Allison L. Hertz, 625 North Flagler Drive, 7<sup>th</sup> Floor, West Palm Beach, FL 33401; 561-820-2883  
Alex Dobrev, 215 North Eola Drive, Orlando, FL 32801; 407-618-6445

(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**

Adopt the following position as official Real Property, Probate and Trust Law Section Legislative Positions

Supports legislation permitting unit owners to “finance” special assessments in the form of a payment plan with interest.

**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: 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."

Given that the type of payment plan option opined on in *Grover* is now frequently utilized by condominium associations to fund their payment of (pass through) interest charged by a lender, the language presents an issue of whether interest charged by a lender is a common expense that must be paid by all owners proportionately. Moreover, a 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*.

### **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.



Business Law Section  
Public Interest 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 c/o Jones Walker, 106 East College Avenue, Ste. 1200, Tallahassee, FL 32301, Telephone 850-214-5100

---

---

---

---

---

---

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

Pete Dunbar 850-999-4100

Steve Mezer 813-5273900

Allison Hertz 561-820-2883

Alex Dobrev 407-618-6445

---

---

---

---

---

---

# ATTACHMENT 6

## 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.

# ATTACHMENT 7



# 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) Condominium & Planned Development Committee

Contact: (Name of Committee Chair(s), address and phone number) Allison L. Hertz, 625 North Flagler Drive, 7<sup>th</sup> Floor, West Palm Beach, FL 33401; 561-820-2883

Alex Dobrev, 215 North Eola Drive, Orlando, FL 32801; 407-618-6445

(Name of Sub-committee Chair, if any, address and phone number, if any) Martin A. Schwartz, 1450 Brickell, Suite 2300, Miami Florida 33131 305-350-2367

**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**

Adopt the following position as official Real Property, Probate and Trust Law Section Legislative Positions

Modify certain provisions of Chapter 718 to provide more flexibility for nonresidential condominiums.

**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: The Condominium Act, Chapter 718 adopted in 1976 made little or no distinction between residential and nonresidential condominiums even though certain consumer protection aspects of Chapter 718 were unnecessary in a commercial context. Chapter 718 was amended in 2014 to clarify distinctions between residential and nonresidential condominiums. Experience after 2014 indicated that further distinctions were necessary.

**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.

Business Law Section  
Public Interest 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 c/o Jones Walker, 106 East College Avenue, Ste. 1200, Tallahassee, FL 32301, Telephone 850-214-5100

---

---

---

---

---

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

Pete Dunbar 850-999-4100

Steve Mezer 813-5273900

Allison Hertz 561-820-2883

Alex Dobrev 407-618-6445

---

---

---

---

---

---

# ATTACHMENT 8

## Condominium & Planned Development Committee Information Item

Nonresidential Condominium Issues Task Force Proposal (chaired by Martin Schwartz)

### Brief Summary

- **Context & Need for Change:** Chapter 718 of the Condominium Act, established in 1976, has traditionally not differentiated significantly between residential and nonresidential condominiums. However, as nonresidential condominiums have grown in use, it's become clear that existing regulations are too restrictive in some aspects and need revision.
- **Current Challenges:** The Condominium Act's provisions, while comprehensive for the creation and operation of condominium regimes, do not adequately distinguish between residential and nonresidential condominiums. This lack of distinction leads to operational challenges for nonresidential condominiums, with residential-oriented requirements acting as constraints.
- **Proposed Revisions:** The white paper proposes legislative changes to various sections of the Act. These include amendments to declaration amendments, communication with unit owners, voting and election procedures, monitoring exemptions, use of sales deposits, insured warranty programs, transfer of association control in small nonresidential condominiums, and termination of developer-controlled association agreements. The aim is to provide more operational flexibility and benefits to nonresidential condominiums, similar to those available to residential condominiums.
- **Fiscal Impact and Economic Impact:** The proposal is not expected to impact state or local governments financially. However, it's anticipated to positively affect the operation of nonresidential condominium associations, facilitating the expansion and use of nonresidential condominiums in commercial and industrial property development.
- **Constitutional and Other Concerns:** There are no known constitutional issues with the proposal, and no other parties are known to have an interest in this proposal.

The proposal was approved by the Condominium & Planned Development Committee on November 9, 2023.

# ATTACHMENT 9

**Proposed Changes to Ch. 718 for Nonresidential Condominiums**

Table of Contents

0  
1  
2  
3  
4718.110 – Amendment of declaration; correction of error or omission in declaration  
5 by circuit court ..... 2  
6 • 718.110(4)(a)-(b) ..... 2-3  
7 • 718.110(10) ..... 4  
8  
9718.112 – Bylaws ..... 7  
10 • 718.112(2)(d)10. .... 14  
11  
12718.117 – Termination of condominium ..... 24  
13 • 718.117(3) ..... 26-28  
14  
15718.202 – Sales or reservation deposits prior to closing ..... 38  
16 • 718.202(1), (3) ..... 38  
17  
18718.203 – Warranties ..... 41  
19 • 718.203(7) ..... 42  
20  
21718.301 – Transfer of association control; claims of defect by association ..... 43  
22 • 718.301(1) ..... 44  
23  
24718.302 – Agreements entered into by the association ..... 48  
25 • 718.302(1)(a)-(b) ..... 48  
26  
27

28 **718.110 Amendment of declaration; correction of error or omission in declaration by**  
29 **circuit court.—**

30

31 (1)(a) If the declaration fails to provide a method of amendment, the declaration may be  
32 amended as to all matters except those described in subsection (4) or subsection (8) if the  
33 amendment is approved by the owners of not less than two-thirds of the units. Except as to those  
34 matters described in subsection (4) or subsection (8), no declaration recorded after April 1, 1992,  
35 shall require that amendments be approved by more than four-fifths of the voting interests.

36

37 (b) No provision of the declaration shall be revised or amended by reference to its title or  
38 number only. Proposals to amend existing provisions of the declaration shall contain the full text  
39 of the provision to be amended; new words shall be inserted in the text and underlined; and  
40 words to be deleted shall be lined through with hyphens. However, if the proposed change is so  
41 extensive that this procedure would hinder, rather than assist, the understanding of the proposed  
42 amendment, it is not necessary to use underlining and hyphens as indicators of words added or  
43 deleted, but, instead, a notation must be inserted immediately preceding the proposed  
44 amendment in substantially the following language: "Substantial rewording of declaration. See  
45 provision for present text."

46

47 (c) Nonmaterial errors or omissions in the amendment process will not invalidate an otherwise  
48 properly promulgated amendment.

49

50 (2) An amendment, other than amendments made by the developer pursuant to ss. 718.104,  
51 718.403, and 718.504(6), (7), and (9) without a vote of the unit owners and any rights the  
52 developer may have in the declaration to amend without consent of the unit owners which shall  
53 be limited to matters other than those under subsections (4) and (8), shall be evidenced by a  
54 certificate of the association which shall include the recording data identifying the declaration  
55 and shall be executed in the form required for the execution of a deed. An amendment by the  
56 developer must be evidenced in writing, but a certificate of the association is not required. The  
57 developer of a timeshare condominium may reserve specific rights in the declaration to amend  
58 the declaration without the consent of the unit owners.

59

60 (3) An amendment of a declaration is effective when properly recorded in the public records of  
61 the county where the declaration is recorded.

62

63 (4)(a) Unless Subject to the provisions of paragraph (b) of this subsection, unless otherwise  
64 provided in the declaration as originally recorded, no amendment may change the configuration  
65 or size of any unit in any material fashion, materially alter or modify the appurtenances to the  
66 unit, or change the proportion or percentage by which the unit owner shares the common  
67 expenses of the condominium and owns the common surplus of the condominium unless the  
68 record owner of the unit and all record owners of liens on the unit join in the execution of the  
69 amendment and unless all the record owners of all other units in the same condominium approve  
70 the amendment. The acquisition of property by the association and material alterations or  
71 substantial additions to such property or the common elements by the association in accordance  
72 with s. 718.111(7) or s. 718.113, and amendments providing for the transfer of use rights in  
73 limited common elements pursuant to s. 718.106(2)(b) shall not be deemed to constitute a



74 material alteration or modification of the appurtenances to the units. Except as otherwise  
75 provided in paragraph (b) in this subsection, a declaration recorded after April 1, 1992, may not  
76 require the approval of less than a majority of total voting interests of the condominium for  
77 amendments under this subsection, unless otherwise required by a governmental entity.

78

79 (b) Notwithstanding s. 718.110(14), with respect to nonresidential condominiums formed  
80 after July 1, 2025, the declaration, as same may be amended from time to time, may change the  
81 configuration or size of any unit in any material fashion, materially alter or modify the  
82 appurtenances to the unit, or change the proportion or percentage by which the unit owner shares  
83 the common expenses of the condominium and owns the common surplus of the condominium,  
84 as long as the record owners of all affected units and all record owners of liens on the affected  
85 units join in the execution of the amendment, in which event, the approval of the record owners  
86 of the non-affected units in such condominium, if any, shall not be required.

87

88 (5) If it appears that through a scrivener's error a unit has not been designated as owning an  
89 appropriate undivided share of the common elements or does not bear an appropriate share of the  
90 common expenses or that all the common expenses or interest in the common surplus or all of  
91 the common elements in the condominium have not been distributed in the declaration, so that  
92 the sum total of the shares of common elements which have been distributed or the sum total of  
93 the shares of the common expenses or ownership of common surplus fails to equal 100 percent,  
94 or if it appears that more than 100 percent of common elements or common expenses or  
95 ownership of the common surplus have been distributed, the error may be corrected by filing an  
96 amendment to the declaration approved by the board of administration or a majority of the unit  
97 owners.

98

99 (6) The common elements designated by the declaration may be enlarged by an amendment to  
100 the declaration. The amendment must describe the interest in the property and must submit the  
101 property to the terms of the declaration. The amendment must be approved and executed as  
102 provided in this section. The amendment divests the association of title to the land and vests title  
103 in the unit owners as part of the common elements, without naming them and without further  
104 conveyance, in the same proportion as the undivided shares in the common elements that are  
105 appurtenant to the unit owned by them.

106

107 (7) The declarations, bylaws, and common elements of two or more independent  
108 condominiums of a single complex may be merged to form a single condominium, upon the  
109 approval of such voting interest of each condominium as is required by the declaration for  
110 modifying the appurtenances to the units or changing the proportion or percentages by which the  
111 owners of the parcel share the common expenses and own the common surplus; upon the  
112 approval of all record owners of liens; and upon the recording of new or amended articles of  
113 incorporation, declarations, and bylaws.

114

115 (8) Unless otherwise provided in the declaration as originally recorded, no amendment to the  
116 declaration may permit timeshare estates to be created in any unit of the condominium, unless  
117 the record owner of each unit of the condominium and the record owners of liens on each unit of  
118 the condominium join in the execution of the amendment.

119

120 (9) If there is an omission or error in a declaration, or in any other document required by law  
121to establish the condominium, the association may correct the error or omission by an  
122amendment to the declaration or to the other document required to create a condominium in the  
123manner provided in the declaration to amend the declaration or, if none is provided, by vote of a  
124majority of the voting interests of the condominium. The amendment is effective when passed  
125and approved and a certificate of amendment is executed and recorded as provided in  
126subsections (2) and (3). This procedure for amendment cannot be used if such an amendment  
127would materially or adversely affect property rights of unit owners, unless the affected unit  
128owners consent in writing. This subsection does not restrict the powers of the association to  
129otherwise amend the declaration, or other documentation, but authorizes a simple process of  
130amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when  
131the property rights of unit owners are not materially or adversely affected.

132  
133 (10) If there is an omission or error in a declaration of condominium, or any other document  
134required to establish the condominium, and the omission or error would affect the valid existence  
135of the condominium, the circuit court may entertain a petition of one or more of the unit owners  
136in the condominium, or of the association, to correct the error or omission, and the action may be  
137a class action. The court may require that one or more methods of correcting the error or  
138omission be submitted to the unit owners to determine the most acceptable correction. All unit  
139owners, the association, and the mortgagees of a first mortgage of record must be joined as  
140parties to the action. Service of process on unit owners may be by publication, but the plaintiff  
141must furnish every unit owner not personally served with process with a copy of the petition and  
142final decree of the court by certified mail, return receipt requested, at the unit owner's last ~~known~~  
143residence address as reflected in the association's records. If an action to determine whether the  
144declaration or another condominium document complies with the mandatory requirements for  
145the formation of a condominium is not brought within 3 years of the recording of the certificate  
146of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that  
147transfers title to a unit in the condominium which is not accompanied by a recorded assignment  
148of developer rights in favor of the grantee of such unit, whichever occurs first, the declaration  
149and other documents will effectively create a condominium, as of the date the declaration was  
150recorded, regardless of whether the documents substantially comply with the mandatory  
151requirements of law. However, both before and after the expiration of this 3-year period, the  
152circuit court has jurisdiction to entertain a petition permitted under this subsection for the  
153correction of the documentation, and other methods of amendment may be utilized to correct the  
154errors or omissions at any time.

155  
156 (11) The Legislature finds that the procurement of mortgagee consent to amendments that do  
157not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and  
158financial burden on the unit owners and that there is a compelling state interest in enabling the  
159members of a condominium association to approve amendments to the condominium documents  
160through legal means. Accordingly, and notwithstanding any provision to the contrary contained  
161in this section:

162  
163 (a) As to any mortgage recorded on or after October 1, 2007, any provision in the declaration,  
164articles of incorporation, or bylaws that requires the consent or joinder of some or all mortgagees  
165of units or any other portion of the condominium property to or in amendments to the

166 declaration, articles of incorporation, or bylaws or for any other matter shall be enforceable only  
167 as to the following matters:

168

169 1. Those matters described in subsections (4) and (8).

170

171 2. Amendments to the declaration, articles of incorporation, or bylaws that adversely affect the  
172 priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise  
173 materially affect the rights and interests of the mortgagees.

174

175 (b) As to mortgages recorded before October 1, 2007, any existing provisions in the  
176 declaration, articles of incorporation, or bylaws requiring mortgagee consent shall be  
177 enforceable.

178

179 (c) In securing consent or joinder, the association shall be entitled to rely upon the public  
180 records to identify the holders of outstanding mortgages. The association may use the address  
181 provided in the original recorded mortgage document, unless there is a different address for the  
182 holder of the mortgage in a recorded assignment or modification of the mortgage, which  
183 recorded assignment or modification must reference the official records book and page on which  
184 the original mortgage was recorded. Once the association has identified the recorded mortgages  
185 of record, the association shall, in writing, request of each unit owner whose unit is encumbered  
186 by a mortgage of record any information the owner has in his or her possession regarding the  
187 name and address of the person to whom mortgage payments are currently being made. Notice  
188 shall be sent to such person if the address provided in the original recorded mortgage document  
189 is different from the name and address of the mortgagee or assignee of the mortgage as shown by  
190 the public record. The association shall be deemed to have complied with this requirement by  
191 making the written request of the unit owners required under this paragraph. Any notices  
192 required to be sent to the mortgagees under this paragraph shall be sent to all available addresses  
193 provided to the association.

194

195 (d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that  
196 establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the  
197 date of mailing shall be deemed to have consented to the amendment.

198

199 (e) For those amendments requiring mortgagee consent on or after October 1, 2007, in the  
200 event mortgagee consent is provided other than by properly recorded joinder, such consent shall  
201 be evidenced by affidavit of the association recorded in the public records of the county where  
202 the declaration is recorded. Any amendment adopted without the required consent of a  
203 mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity  
204 to consent. An action to void an amendment shall be subject to the statute of limitations  
205 beginning 5 years after the date of discovery as to the amendments described in subparagraphs  
206 (a) 1. and 2. and 5 years after the date of recordation of the certificate of amendment for all other  
207 amendments. This provision shall apply to all mortgages, regardless of the date of recordation of  
208 the mortgage.

209



210 (f) Notwithstanding the provisions of this section, any amendment or amendments to conform  
211a declaration of condominium to the insurance coverage provisions in s. 718.111(11) may be  
212made as provided in that section.

213

214 (12)(a) With respect to an existing multicondominium association, any amendment to change  
215the fractional or percentage share of liability for the common expenses of the association and  
216ownership of the common surplus of the association must be approved by at least a majority of  
217the total voting interests of each condominium operated by the association unless the  
218declarations of all condominiums operated by the association uniformly require approval by a  
219greater percentage of the voting interests of each condominium.

220

221 (b) Unless approval by a greater percentage of the voting interests of an existing  
222multicondominium association is expressly required in the declaration of an existing  
223condominium, the declaration may be amended upon approval of at least a majority of the total  
224voting interests of each condominium operated by the multicondominium association for the  
225purpose of:

226

227 1. Setting forth in the declaration the formula currently utilized, but not previously stated in  
228the declaration, for determining the percentage or fractional shares of liability for the common  
229expenses of the multicondominium association and ownership of the common surplus of the  
230multicondominium association.

231

232 2. Providing for the creation or enlargement of a multicondominium association by the merger  
233or consolidation of two or more associations and changing the name of the association, as  
234appropriate.

235

236 (13) An amendment prohibiting unit owners from renting their units or altering the duration of  
237the rental term or specifying or limiting the number of times unit owners are entitled to rent their  
238units during a specified period applies only to unit owners who consent to the amendment and  
239unit owners who acquire title to their units after the effective date of that amendment.

240

241 (14) Except for those portions of the common elements designed and intended to be used by  
242all unit owners, a portion of the common elements serving only one unit or a group of units may  
243be reclassified as a limited common element upon the vote required to amend the declaration as  
244provided therein or as required under paragraph (1)(a), and shall not be considered an  
245amendment pursuant to subsection (4). This is a clarification of existing law.

247 **718.112 Bylaws.—**

248

249 (1) **GENERALLY.—**

250

251 (a) The operation of the association shall be governed by the articles of incorporation if the  
252 association is incorporated, and the bylaws of the association, which shall be included as exhibits  
253 to the recorded declaration. If one association operates more than one condominium, it shall not  
254 be necessary to rerecord the same articles of incorporation and bylaws as exhibits to each  
255 declaration after the first, provided that in each case where the articles and bylaws are not so  
256 recorded, the declaration expressly incorporates them by reference as exhibits and identifies the  
257 book and page of the public records where the first declaration to which they were attached is  
258 recorded.

259

260 (b) No amendment to the articles of incorporation or bylaws is valid unless recorded with  
261 identification on the first page thereof of the book and page of the public records where the  
262 declaration of each condominium operated by the association is recorded.

263

264 (c) The association may extinguish a discriminatory restriction as provided under s. 712.065.

265

266 (2) **REQUIRED PROVISIONS.—**The bylaws shall provide for the following and, if they do  
267 not do so, shall be deemed to include the following:

268

269 (a) *Administration.—*

270

271 1. The form of administration of the association shall be described indicating the title of the  
272 officers and board of administration and specifying the powers, duties, manner of selection and  
273 removal, and compensation, if any, of officers and boards. In the absence of such a provision, the  
274 board of administration shall be composed of five members, unless the condominium has five or  
275 fewer units. The board shall consist of not fewer than three members in condominiums with five  
276 or fewer units that are not-for-profit corporations. In the absence of provisions to the contrary in  
277 the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who  
278 shall perform the duties of such officers customarily performed by officers of corporations.  
279 Unless prohibited in the bylaws, the board of administration may appoint other officers and grant  
280 them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall  
281 serve without compensation and at the pleasure of the board of administration. Unless otherwise  
282 provided in the bylaws, the members of the board shall serve without compensation.

283

284 2. When a unit owner of a residential condominium files a written inquiry by certified mail  
285 with the board of administration, the board shall respond in writing to the unit owner within 30  
286 days after receipt of the inquiry. The board's response shall either give a substantive response to  
287 the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that  
288 advice has been requested from the division. If the board requests advice from the division, the  
289 board shall, within 10 days after its receipt of the advice, provide in writing a substantive  
290 response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the  
291 receipt of the inquiry, provide in writing a substantive response to the inquiry. The failure to  
292 provide a substantive response to the inquiry as provided herein precludes the board from

293recovering attorney fees and costs in any subsequent litigation, administrative proceeding, or  
294arbitration arising out of the inquiry. The association may through its board of administration  
295adopt reasonable rules and regulations regarding the frequency and manner of responding to unit  
296owner inquiries, one of which may be that the association is only obligated to respond to one  
297written inquiry per unit in any given 30-day period. In such a case, any additional inquiry or  
298inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

299

300 (b) *Quorum; voting requirements; proxies.*—

301

302 1. Unless a lower number is provided in the bylaws, the percentage of voting interests required  
303to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless  
304otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and  
305except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting  
306interests represented at a meeting at which a quorum is present.

307

308 2. Except as specifically otherwise provided herein, unit owners in a residential condominium  
309may not vote by general proxy, but may vote by limited proxies substantially conforming to a  
310limited proxy form adopted by the division. A voting interest or consent right allocated to a unit  
311owned by the association may not be exercised or considered for any purpose, whether for a  
312quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish  
313a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in  
314accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements  
315of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes  
316taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other  
317matter for which this chapter requires or permits a vote of the unit owners. Except as provided in  
318paragraph (d), a proxy, limited or general, may not be used in the election of board members in a  
319residential condominium. General proxies may be used for other matters for which limited  
320proxies are not required, and may be used in voting for nonsubstantive changes to items for  
321which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners  
322may vote in person at unit owner meetings. This subparagraph does not limit the use of general  
323proxies or require the use of limited proxies for any agenda item or election at any meeting of a  
324timeshare condominium association or a nonresidential condominium association.

325

326 3. A proxy given is effective only for the specific meeting for which originally given and any  
327lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of  
328the first meeting for which it was given. Each proxy is revocable at any time at the pleasure of  
329the unit owner executing it.

330

331 4. A member of the board of administration or a committee may submit in writing his or her  
332agreement or disagreement with any action taken at a meeting that the member did not attend.  
333This agreement or disagreement may not be used as a vote for or against the action taken or to  
334create a quorum.

335

336 5. A board or committee member's participation in a meeting via telephone, real-time  
337videoconferencing, or similar real-time electronic or video communication counts toward a  
338quorum, and such member may vote as if physically present. A speaker must be used so that the



339 conversation of such members may be heard by the board or committee members attending in  
340 person as well as by any unit owners present at a meeting.

341

342 (c) *Board of administration meetings.*—Meetings of the board of administration at which a  
343 quorum of the members is present are open to all unit owners. Members of the board of  
344 administration may use e-mail as a means of communication but may not cast a vote on an  
345 association matter via e-mail. A unit owner may tape record or videotape the meetings. The right  
346 to attend such meetings includes the right to speak at such meetings with reference to all  
347 designated agenda items. The division shall adopt reasonable rules governing the tape recording  
348 and videotaping of the meeting. The association may adopt written reasonable rules governing  
349 the frequency, duration, and manner of unit owner statements.

350

351 1. Adequate notice of all board meetings, which must specifically identify all agenda items,  
352 must be posted conspicuously on the condominium property at least 48 continuous hours before  
353 the meeting except in an emergency. If 20 percent of the voting interests petition the board to  
354 address an item of business, the board, within 60 days after receipt of the petition, shall place the  
355 item on the agenda at its next regular board meeting or at a special meeting called for that  
356 purpose. An item not included on the notice may be taken up on an emergency basis by a vote of  
357 at least a majority plus one of the board members. Such emergency action must be noticed and  
358 ratified at the next regular board meeting. Written notice of a meeting at which a nonemergency  
359 special assessment or an amendment to rules regarding unit use will be considered must be  
360 mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on  
361 the condominium property at least 14 days before the meeting. Evidence of compliance with this  
362 14-day notice requirement must be made by an affidavit executed by the person providing the  
363 notice and filed with the official records of the association. Notice of any meeting in which  
364 regular or special assessments against unit owners are to be considered must specifically state  
365 that assessments will be considered and provide the estimated cost and description of the  
366 purposes for such assessments. Upon notice to the unit owners, the board shall, by duly adopted  
367 rule, designate a specific location on the condominium property where all notices of board  
368 meetings must be posted. If there is no condominium property where notices can be posted,  
369 notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14  
370 days before the meeting. In lieu of or in addition to the physical posting of the notice on the  
371 condominium property, the association may, by reasonable rule, adopt a procedure for  
372 conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit  
373 cable television system serving the condominium association. However, if broadcast notice is  
374 used in lieu of a notice physically posted on condominium property, the notice and agenda must  
375 be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise  
376 required under this section. If broadcast notice is provided, the notice and agenda must be  
377 broadcast in a manner and for a sufficient continuous length of time so as to allow an average  
378 reader to observe the notice and read and comprehend the entire content of the notice and the  
379 agenda. In addition to any of the authorized means of providing notice of a meeting of the board,  
380 the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and  
381 the agenda on a website serving the condominium association for at least the minimum period of  
382 time for which a notice of a meeting is also required to be physically posted on the condominium  
383 property. Any rule adopted shall, in addition to other matters, include a requirement that the  
384 association send an electronic notice in the same manner as a notice for a meeting of the

385members, which must include a hyperlink to the website where the notice is posted, to unit  
386owners whose e-mail addresses are included in the association’s official records.

387

388 2. Meetings of a committee to take final action on behalf of the board or make  
389recommendations to the board regarding the association budget are subject to this paragraph.

390Meetings of a committee that does not take final action on behalf of the board or make  
391recommendations to the board regarding the association budget are subject to this section, unless  
392those meetings are exempted from this section by the bylaws of the association.

393

394 3. Notwithstanding any other law, the requirement that board meetings and committee  
395meetings be open to the unit owners does not apply to:

396

397 a. Meetings between the board or a committee and the association’s attorney, with respect to  
398proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering  
399legal advice; or

400

401 b. Board meetings held for the purpose of discussing personnel matters.

402

403 (d)*Unit owner meetings.*—

404

405 1. An annual meeting of the unit owners must be held at the location provided in the  
406association bylaws and, if the bylaws are silent as to the location, the meeting must be held  
407within 45 miles of the condominium property. However, such distance requirement does not  
408apply to an association governing a timeshare condominium.

409

410 2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a  
411director’s term must be filled by electing a new board member, and the election must be by  
412secret ballot. An election is not required if the number of vacancies equals or exceeds the  
413number of candidates. For purposes of this paragraph, the term “candidate” means an eligible  
414person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his  
415or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or  
416if the staggered term of a board member does not expire until a later annual meeting, or if all  
417members’ terms would otherwise expire but there are no candidates, the terms of all board  
418members expire at the annual meeting, and such members may stand for reelection unless  
419prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the  
420bylaws or articles of incorporation. A board member may not serve more than 8 consecutive  
421years unless approved by an affirmative vote of unit owners representing two-thirds of all votes  
422cast in the election or unless there are not enough eligible candidates to fill the vacancies on the  
423board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be  
424used when calculating a board member’s term limit. If the number of board members whose  
425terms expire at the annual meeting equals or exceeds the number of candidates, the candidates  
426become members of the board effective upon the adjournment of the annual meeting. Unless the  
427bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the  
428majority of the directors making up the newly constituted board even if the directors constitute  
429less than a quorum or there is only one director. In a residential condominium association of  
430more than 10 units or in a residential condominium association that does not include timeshare



431units or timeshare interests, co-owners of a unit may not serve as members of the board of  
432directors at the same time unless they own more than one unit or unless there are not enough  
433eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a  
434residential condominium desiring to be a candidate for board membership must comply with  
435sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at  
436the time of the deadline for submitting a notice of intent to run in order to have his or her name  
437listed as a proper candidate on the ballot or to serve on the board. A person who has been  
438suspended or removed by the division under this chapter, or who is delinquent in the payment of  
439any assessment due to the association, is not eligible to be a candidate for board membership and  
440may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a  
441payment is not made by the due date as specifically identified in the declaration of condominium,  
442bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration  
443of condominium, bylaws, or articles of incorporation, the due date is the first day of the  
444assessment period. A person who has been convicted of any felony in this state or in a United  
445States District or Territorial Court, or who has been convicted of any offense in another  
446jurisdiction which would be considered a felony if committed in this state, is not eligible for  
447board membership unless such felon's civil rights have been restored for at least 5 years as of the  
448date such person seeks election to the board. The validity of an action by the board is not affected  
449if it is later determined that a board member is ineligible for board membership due to having  
450been convicted of a felony. This subparagraph does not limit the term of a member of the board  
451of a nonresidential or timeshare condominium.

452

453 3. The bylaws must provide the method of calling meetings of unit owners, including annual  
454meetings. Written notice of an annual meeting must include an agenda; be mailed, hand  
455delivered, or electronically transmitted to each unit owner at least 14 days before the annual  
456meeting; and be posted in a conspicuous place on the condominium property or association  
457property at least 14 continuous days before the annual meeting. Written notice of a meeting other  
458than an annual meeting must include an agenda; be mailed, hand delivered, or electronically  
459transmitted to each unit owner; and be posted in a conspicuous place on the condominium  
460property or association property within the timeframe specified in the bylaws. If the bylaws do  
461not specify a timeframe for written notice of a meeting other than an annual meeting, notice must  
462be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the  
463board shall, by duly adopted rule, designate a specific location on the condominium property or  
464association property where all notices of unit owner meetings must be posted. This requirement  
465does not apply if there is no condominium property for posting notices. In lieu of, or in addition  
466to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a  
467procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a  
468closed-circuit cable television system serving the condominium association. However, if  
469broadcast notice is used in lieu of a notice posted physically on the condominium property, the  
470notice and agenda must be broadcast at least four times every broadcast hour of each day that a  
471posted notice is otherwise required under this section. If broadcast notice is provided, the notice  
472and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to  
473allow an average reader to observe the notice and read and comprehend the entire content of the  
474notice and the agenda. In addition to any of the authorized means of providing notice of a  
475meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting  
476the meeting notice and the agenda on a website serving the condominium association for at least

477the minimum period of time for which a notice of a meeting is also required to be physically  
478posted on the condominium property. Any rule adopted shall, in addition to other matters,  
479include a requirement that the association send an electronic notice in the same manner as a  
480notice for a meeting of the members, which must include a hyperlink to the website where the  
481notice is posted, to unit owners whose e-mail addresses are included in the association's official  
482records. Unless a unit owner waives in writing the right to receive notice of the annual meeting,  
483such notice must be hand delivered, mailed, or electronically transmitted to each unit owner.  
484Notice for meetings and notice for all other purposes must be mailed to each unit owner at the  
485address last furnished to the association by the unit owner, or hand delivered to each unit owner.  
486However, if a unit is owned by more than one person, the association must provide notice to the  
487address that the developer identifies for that purpose and thereafter as one or more of the owners  
488of the unit advise the association in writing, or if no address is given or the owners of the unit do  
489not agree, to the address provided on the deed of record. An officer of the association, or the  
490manager or other person providing notice of the association meeting, must provide an affidavit or  
491United States Postal Service certificate of mailing, to be included in the official records of the  
492association affirming that the notice was mailed or hand delivered in accordance with this  
493provision.

494

495 4. The members of the board of a residential condominium shall be elected by written ballot or  
496voting machine. Proxies may not be used in electing the board in general elections or elections to  
497fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this  
498chapter. This subparagraph does not apply to an association governing a timeshare  
499condominium.

500

501 a. At least 60 days before a scheduled election, the association shall mail, deliver, or  
502electronically transmit, by separate association mailing or included in another association  
503mailing, delivery, or transmission, including regularly published newsletters, to each unit owner  
504entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person  
505desiring to be a candidate for the board must give written notice of his or her intent to be a  
506candidate to the association at least 40 days before a scheduled election. Together with the  
507written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or  
508electronically transmit a second notice of the election to all unit owners entitled to vote, together  
509with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of  
510the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11  
511inches, which must be furnished by the candidate at least 35 days before the election, must be  
512included with the mailing, delivery, or transmission of the ballot, with the costs of mailing,  
513delivery, or electronic transmission and copying to be borne by the association. The association  
514is not liable for the contents of the information sheets prepared by the candidates. In order to  
515reduce costs, the association may print or duplicate the information sheets on both sides of the  
516paper. The division shall by rule establish voting procedures consistent with this  
517sub-subparagraph, including rules establishing procedures for giving notice by electronic  
518transmission and rules providing for the secrecy of ballots. Elections shall be decided by a  
519plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the  
520eligible voters must cast a ballot in order to have a valid election. A unit owner may not  
521authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A  
522unit owner who violates this provision may be fined by the association in accordance with s.

523718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s.  
524101.051 may obtain such assistance. The regular election must occur on the date of the annual  
525meeting. Notwithstanding this sub-subparagraph, an election is not required unless more  
526candidates file notices of intent to run or are nominated than board vacancies exist.

527

528 b. Within 90 days after being elected or appointed to the board of an association of a  
529residential condominium, each newly elected or appointed director shall certify in writing to the  
530secretary of the association that he or she has read the association's declaration of condominium,  
531articles of incorporation, bylaws, and current written policies; that he or she will work to uphold  
532such documents and policies to the best of his or her ability; and that he or she will faithfully  
533discharge his or her fiduciary responsibility to the association's members. In lieu of this written  
534certification, within 90 days after being elected or appointed to the board, the newly elected or  
535appointed director may submit a certificate of having satisfactorily completed the educational  
536curriculum administered by a division-approved condominium education provider within 1 year  
537before or 90 days after the date of election or appointment. The written certification or  
538educational certificate is valid and does not have to be resubmitted as long as the director serves  
539on the board without interruption. A director of an association of a residential condominium who  
540fails to timely file the written certification or educational certificate is suspended from service on  
541the board until he or she complies with this sub-subparagraph. The board may temporarily fill the  
542vacancy during the period of suspension. The secretary shall cause the association to retain a  
543director's written certification or educational certificate for inspection by the members for 5  
544years after a director's election or the duration of the director's uninterrupted tenure, whichever  
545is longer. Failure to have such written certification or educational certificate on file does not  
546affect the validity of any board action.

547

548 c. Any challenge to the election process must be commenced within 60 days after the election  
549results are announced.

550

551 5. Any approval by unit owners called for by this chapter or the applicable declaration or  
552bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at  
553a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the  
554applicable condominium documents relating to unit owner decisionmaking, except that unit  
555owners may take action by written agreement, without meetings, on matters for which action by  
556written agreement without meetings is expressly allowed by the applicable bylaws or declaration  
557or any law that provides for such action.

558

559 6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or  
560declaration or any law. Notice of meetings of the board of administration; unit owner meetings,  
561except unit owner meetings called to recall board members under paragraph (1); and committee  
562meetings may be given by electronic transmission to unit owners who consent to receive notice  
563by electronic transmission. A unit owner who consents to receiving notices by electronic  
564transmission is solely responsible for removing or bypassing filters that block receipt of mass  
565e-mails sent to members on behalf of the association in the course of giving electronic notices.  
566



567 7. Unit owners have the right to participate in meetings of unit owners with reference to all  
568designated agenda items. However, the association may adopt reasonable rules governing the  
569frequency, duration, and manner of unit owner participation.

570

571 8. A unit owner may tape record or videotape a meeting of the unit owners subject to  
572reasonable rules adopted by the division.

573

574 9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the  
575expiration of a term may be filled by the affirmative vote of the majority of the remaining  
576directors, even if the remaining directors constitute less than a quorum, or by the sole remaining  
577director. In the alternative, a board may hold an election to fill the vacancy, in which case the  
578election procedures must conform to sub-subparagraph 4.a. unless the association governs 10  
579units or fewer and has opted out of the statutory election process, in which case the bylaws of the  
580association control. Unless otherwise provided in the bylaws, a board member appointed or  
581elected under this section shall fill the vacancy for the unexpired term of the seat being filled.  
582Filling vacancies created by recall is governed by paragraph (l) and rules adopted by the division.

583

584 10. This chapter does not limit the use of general or limited proxies, require the use of general  
585or limited proxies, or require the use of a written ballot or voting machine for any agenda item or  
586election at any meeting of a timeshare condominium association or nonresidential condominium  
587association.

588

589Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer  
590units may, by affirmative vote of a majority of the total voting interests, provide for different  
591voting and election procedures in its bylaws, which may be by a proxy specifically delineating  
592the different voting and election procedures. The different voting and election procedures may  
593provide for elections to be conducted by limited or general proxy. Additionally, notwithstanding  
594sub-subparagraph 4.a., an association operating a nonresidential condominium may provide for  
595different voting and election procedures in its bylaws or an amendment to its bylaws, which may  
596include alternative notice requirements and voting by limited or general proxy.

597

598 (e) *Budget meeting.*—

599

600 1. Any meeting at which a proposed annual budget of an association will be considered by the  
601board or unit owners shall be open to all unit owners. At least 14 days prior to such a meeting,  
602the board shall hand deliver to each unit owner, mail to each unit owner at the address last  
603furnished to the association by the unit owner, or electronically transmit to the location furnished  
604by the unit owner for that purpose a notice of such meeting and a copy of the proposed annual  
605budget. An officer or manager of the association, or other person providing notice of such  
606meeting, shall execute an affidavit evidencing compliance with such notice requirement, and  
607such affidavit shall be filed among the official records of the association.

608

609 2.a. If a board adopts in any fiscal year an annual budget which requires assessments against  
610unit owners which exceed 115 percent of assessments for the preceding fiscal year, the board  
611shall conduct a special meeting of the unit owners to consider a substitute budget if the board  
612receives, within 21 days after adoption of the annual budget, a written request for a special

613meeting from at least 10 percent of all voting interests. The special meeting shall be conducted  
614within 60 days after adoption of the annual budget. At least 14 days prior to such special  
615meeting, the board shall hand deliver to each unit owner, or mail to each unit owner at the  
616address last furnished to the association, a notice of the meeting. An officer or manager of the  
617association, or other person providing notice of such meeting shall execute an affidavit  
618evidencing compliance with this notice requirement, and such affidavit shall be filed among the  
619official records of the association. Unit owners may consider and adopt a substitute budget at the  
620special meeting. A substitute budget is adopted if approved by a majority of all voting interests  
621unless the bylaws require adoption by a greater percentage of voting interests. If there is not a  
622quorum at the special meeting or a substitute budget is not adopted, the annual budget previously  
623adopted by the board shall take effect as scheduled.

624

625 b. Any determination of whether assessments exceed 115 percent of assessments for the prior  
626fiscal year shall exclude any authorized provision for reasonable reserves for repair or  
627replacement of the condominium property, anticipated expenses of the association which the  
628board does not expect to be incurred on a regular or annual basis, insurance premiums, or  
629assessments for betterments to the condominium property.

630

631 c. If the developer controls the board, assessments shall not exceed 115 percent of assessments  
632for the prior fiscal year unless approved by a majority of all voting interests.

633

634 (f) *Annual budget.*—

635

636 1. The proposed annual budget of estimated revenues and expenses must be detailed and must  
637show the amounts budgeted by accounts and expense classifications, including, at a minimum,  
638any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least  
63914 days before the start of the association's fiscal year. In the event that the board fails to timely  
640adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget  
641shall continue in effect until a new budget is adopted. A multicondominium association must  
642adopt a separate budget of common expenses for each condominium the association operates and  
643must adopt a separate budget of common expenses for the association. In addition, if the  
644association maintains limited common elements with the cost to be shared only by those entitled  
645to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule  
646attached to it must show the amount budgeted for this maintenance. If, after turnover of control  
647of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not  
648applicable, they do not need to be listed.

649

650 2.a. In addition to annual operating expenses, the budget must include reserve accounts for  
651capital expenditures and deferred maintenance. These accounts must include, but are not limited  
652to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of  
653deferred maintenance expense or replacement cost, and any other item that has a deferred  
654maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved must  
655be computed using a formula based upon estimated remaining useful life and estimated  
656replacement cost or deferred maintenance expense of the reserve item. In a budget adopted by an  
657association that is required to obtain a structural integrity reserve study, reserves must be  
658maintained for the items identified in paragraph (g) for which the association is responsible

659pursuant to the declaration of condominium, and the reserve amount for such items must be  
660based on the findings and recommendations of the association's most recent structural integrity  
661reserve study. With respect to items for which an estimate of useful life is not readily  
662ascertainable or with an estimated useful life of greater than 25 years, an association is not  
663required to reserve replacement costs for such items, but an association must reserve the amount  
664of deferred maintenance expense, if any, which is recommended by the structural integrity  
665reserve study for such items. The association may adjust replacement reserve assessments  
666annually to take into account an inflation adjustment and any changes in estimates or extension  
667of the useful life of a reserve item caused by deferred maintenance. The members of a  
668unit-owner-controlled association may determine, by a majority vote of the total voting interests  
669of the association, to provide no reserves or less reserves than required by this subsection. For a  
670budget adopted on or after December 31, 2024, the members of a unit-owner-controlled  
671association that must obtain a structural integrity reserve study may not determine to provide no  
672reserves or less reserves than required by this subsection for items listed in paragraph (g), except  
673that members of an association operating a multicondominium may determine to provide no  
674reserves or less reserves than required by this subsection if an alternative funding method has  
675been approved by the division.

676

677 b. Before turnover of control of an association by a developer to unit owners other than a  
678developer under s. 718.301, the developer-controlled association may not vote to waive the  
679reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to  
680determine whether to waive or reduce the funding of reserves and no such result is achieved or a  
681quorum is not attained, the reserves included in the budget shall go into effect. After the  
682turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

683

684 3. Reserve funds and any interest accruing thereon shall remain in the reserve account or  
685accounts, and may be used only for authorized reserve expenditures unless their use for other  
686purposes is approved in advance by a majority vote of all the total voting interests of the  
687association. Before turnover of control of an association by a developer to unit owners other than  
688the developer pursuant to s. 718.301, the developer-controlled association may not vote to use  
689reserves for purposes other than those for which they were intended. For a budget adopted on or  
690after December 31, 2024, members of a unit-owner-controlled association that must obtain a  
691structural integrity reserve study may not vote to use reserve funds, or any interest accruing  
692thereon, for any other purpose other than the replacement or deferred maintenance costs of the  
693components listed in paragraph (g).

694

695 4. The only voting interests that are eligible to vote on questions that involve waiving or  
696reducing the funding of reserves, or using existing reserve funds for purposes other than  
697purposes for which the reserves were intended, are the voting interests of the units subject to  
698assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the  
699funding of reserves or using existing reserve funds for purposes other than purposes for which  
700the reserves were intended must contain the following statement in capitalized, bold letters in a  
701font size larger than any other used on the face of the proxy ballot: **WAIVING OF RESERVES,  
702IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING  
703RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF  
704UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.**



705

706 (g) *Structural integrity reserve study.*—

707

708 1. A residential condominium association must have a structural integrity reserve study  
709 completed at least every 10 years after the condominium's creation for each building on the  
710 condominium property that is three stories or higher in height as determined by the Florida  
711 Building Code which includes, at a minimum, a study of the following items as related to the  
712 structural integrity and safety of the building:

713

714 a. Roof.

715 b. Structure, including load-bearing walls and other primary structural members and primary  
716 structural systems as those terms are defined in s. 627.706.

717 c. Fireproofing and fire protection systems.

718 d. Plumbing.

719 e. Electrical systems.

720 f. Waterproofing and exterior painting.

721 g. Windows and exterior doors.

722 h. Any other item that has a deferred maintenance expense or replacement cost that exceeds  
723 \$10,000 and the failure to replace or maintain such item negatively affects the items listed in  
724 sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity  
725 reserve study.

726

727 2. A structural integrity reserve study is based on a visual inspection of the condominium  
728 property. A structural integrity reserve study may be performed by any person qualified to  
729 perform such study. However, the visual inspection portion of the structural integrity reserve  
730 study must be performed or verified by an engineer licensed under chapter 471, an architect  
731 licensed under chapter 481, or a person certified as a reserve specialist or professional reserve  
732 analyst by the Community Associations Institute or the Association of Professional Reserve  
733 Analysts.

734

735 3. At a minimum, a structural integrity reserve study must identify each item of the  
736 condominium property being visually inspected, stated the estimated remaining useful life and  
737 the estimated replacement cost or deferred maintenance expense of each item of the  
738 condominium property being visually inspected, and provide a reserve funding schedule with a  
739 recommended annual reserve amount that achieves the estimated replacement cost or deferred  
740 maintenance expense of each item of condominium property being visually inspected by the end  
741 of the estimated remaining useful life of the item. The structural integrity reserve study may  
742 recommend that reserves do not need to be maintained for any item for which an estimate of  
743 useful life and an estimate of replacement cost cannot be determined, or the study may  
744 recommend a deferred maintenance expense amount for such item. The structural integrity  
745 reserve study may recommend that reserves for replacement costs do not need to be maintained  
746 for any item with an estimated remaining useful life of greater than 25 years, but the study may  
747 recommend a deferred maintenance expense amount for such item.

748

749 4. This paragraph does not apply to buildings less than three stories in height; single-family,  
750 two-family, or three-family dwellings with three or fewer habitable stories above ground; any

751portion or component of a building that has not been submitted to the condominium form of  
752ownership; or any portion or component of a building that is maintained by a party other than the  
753association.

754

755 5. Before a developer turns over control of an association to unit owners other than the  
756developer, the developer must have a turnover inspection report in compliance with s.  
75718.301(4)(p) and (q) for each building on the condominium property that is three stories or  
758higher in height.

759

760 6. Associations existing on or before July 1, 2022, which are controlled by unit owners other  
761than the developer, must have a structural integrity reserve study completed by December 31,  
7622024, for each building on the condominium property that is three stories or higher in height. An  
763association that is required to complete a milestone inspection in accordance with s. 553.899 on  
764or before December 31, 2026, may complete the structural integrity reserve study simultaneously  
765with the milestone inspection. In no event may the structural integrity reserve study be completed  
766after December 31, 2026.

767

768 7. If the milestone inspection required by s. 553.899, or an inspection completed for a  
769similar local requirement, was performed within the past 5 years and meets the requirements of  
770this paragraph, such inspection may be used in place of the visual inspection portion of the  
771structural integrity reserve study.

772

773 8. If the officers or directors of an association willfully and knowingly fail to complete a  
774structural integrity reserve study pursuant to this paragraph, such failure is a breach of an  
775officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

776

777 (h)*Mandatory milestone inspections.*—If an association is required to have a milestone  
778inspection performed pursuant to s. 553.899, the association must arrange for the milestone  
779inspection to be performed and is responsible for ensuring compliance with the requirements of  
780s. 553.899. The association is responsible for all costs associated with the inspection attributable  
781to the portions of the building which the association is responsible for maintaining under the  
782governing documents of the association. If the officers or directors of an association willfully and  
783knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a  
784breach of the officers' and directors' fiduciary relationship to the unit owners under s.  
785718.111(1)(a). Within 14 days after receipt of a written notice from the local enforcement agency  
786that a milestone inspection is required, the association must notify the unit owners of the  
787required milestone inspection and provide the date by which the milestone inspection must be  
788completed. Such notice may be given by electronic submission to unit owners who consent to  
789receive notice by electronic submission or by posting on the association's website. Within 45  
790days after receiving a phase one or phase two milestone inspection report from the architect or  
791engineer who performed the inspection, the association must distribute a copy of the  
792inspector-prepared summary of the inspection report to each unit owner, regardless of the  
793findings or recommendations in the report, by United States mail or personal delivery at the  
794mailing address, property address, or any other address of the owner provided to fulfill the  
795association's notice requirements under this chapter and by electronic transmission to the e-mail  
796address or facsimile number provided to fulfill the association's notice requirements to unit



797 owners who previously consented to receive notice by electronic transmission; must post a copy  
798 of the inspector-prepared summary in a conspicuous place on the condominium property; and  
799 must publish the full report and inspector-prepared summary on the association's website, if the  
800 association is required to have a website.

801

802 (i) *Assessments.*—The manner of collecting from the unit owners their shares of the common  
803 expenses shall be stated in the bylaws. Assessments shall be made against units not less  
804 frequently than quarterly in an amount which is not less than that required to provide funds in  
805 advance for payment of all of the anticipated current operating expenses and for all of the unpaid  
806 operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an  
807 association to accelerate assessments of an owner delinquent in payment of common expenses.  
808 Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such  
809 accelerated assessments shall include the amounts due for the remainder of the budget year in  
810 which the claim of lien was filed.

811

812 (j) *Amendment of bylaws.*—

813

814 1. The method by which the bylaws may be amended consistent with the provisions of this  
815 chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be  
816 amended if the amendment is approved by the owners of not less than two-thirds of the voting  
817 interests.

818

819 2. No bylaw shall be revised or amended by reference to its title or number only. Proposals to  
820 amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall  
821 be inserted in the text underlined, and words to be deleted shall be lined through with hyphens.  
822 However, if the proposed change is so extensive that this procedure would hinder, rather than  
823 assist, the understanding of the proposed amendment, it is not necessary to use underlining and  
824 hyphens as indicators of words added or deleted, but, instead, a notation must be inserted  
825 immediately preceding the proposed amendment in substantially the following language:  
826 “Substantial rewording of bylaw. See bylaw for present text.”

827

828 3. Nonmaterial errors or omissions in the bylaw process will not invalidate an otherwise  
829 properly promulgated amendment.

830

831 (k) *Transfer fees.*—An association may not charge a fee in connection with the sale, mortgage,  
832 lease, sublease, or other transfer of a unit unless the association is required to approve such  
833 transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any  
834 such fee may be preset but may not exceed \$150 per applicant. For the purpose of calculating the  
835 fee, spouses or a parent or parents and any dependent children are considered one applicant.  
836 However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or  
837 sublessee, a charge may not be made. Such fees must be adjusted every 5 years in an amount  
838 equal to the total of the annual increases occurring in the Consumer Price Index for All Urban  
839 Consumers, U.S. City Average, All Items during that 5-year period. The Department of Business  
840 and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar,  
841 and publish the amounts, as adjusted, on its website. The foregoing notwithstanding, if the  
842 authority to do so appears in the declaration, articles, or bylaws, an association may require that a

843 prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1  
844 month's rent, into an escrow account maintained by the association. The security deposit shall  
845 protect against damages to the common elements or association property. Payment of interest,  
846 claims against the deposit, refunds, and disputes under this paragraph shall be handled in the  
847 same fashion as provided in part II of chapter 83.

848

849 (1) *Recall of board members.*—Subject to s. 718.301, any member of the board of  
850 administration may be recalled and removed from office with or without cause by the vote or  
851 agreement in writing by a majority of all the voting interests. A special meeting of the unit  
852 owners to recall a member or members of the board of administration may be called by 10  
853 percent of the voting interests giving notice of the meeting as required for a meeting of unit  
854 owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be  
855 used as a method of giving notice of a meeting called in whole or in part for this purpose.

856

857 1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall  
858 will be effective as provided in this paragraph. The board shall duly notice and hold a board  
859 meeting within 5 full business days after the adjournment of the unit owner meeting to recall one  
860 or more board members. Such member or members shall be recalled effective immediately upon  
861 conclusion of the board meeting, provided that the recall is facially valid. A recalled member  
862 must turn over to the board, within 10 full business days after the vote, any and all records and  
863 property of the association in their possession.

864

865 2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the  
866 agreement in writing or a copy thereof shall be served on the association by certified mail or by  
867 personal service in the manner authorized by chapter 48 and the Florida Rules of Civil  
868 Procedure. The board of administration shall duly notice and hold a meeting of the board within  
869 5 full business days after receipt of the agreement in writing. Such member or members shall be  
870 recalled effective immediately upon the conclusion of the board meeting, provided that the recall  
871 is facially valid. A recalled member must turn over to the board, within 10 full business days,  
872 any and all records and property of the association in their possession.

873

874 3. If the board fails to duly notice and hold a board meeting within 5 full business days after  
875 service of an agreement in writing or within 5 full business days after the adjournment of the unit  
876 owner recall meeting, the recall is deemed effective and the board members so recalled shall turn  
877 over to the board within 10 full business days after the vote any and all records and property of  
878 the association.

879

880 4. If the board fails to duly notice and hold the required meeting or at the conclusion of the  
881 meeting determines that the recall is not facially valid, the unit owner representative may file a  
882 petition or court action under s. 718.1255 challenging the board's failure to act or challenging the  
883 board's determination on facial validity. The petition or action must be filed within 60 days after  
884 the expiration of the applicable 5-full-business-day period. The review of a petition or action  
885 under this subparagraph is limited to the sufficiency of service on the board and the facial  
886 validity of the written agreement or ballots filed.

887

888 5. If a vacancy occurs on the board as a result of a recall or removal and less than a majority of  
889the board members are removed, the vacancy may be filled by the affirmative vote of a majority  
890of the remaining directors, notwithstanding any provision to the contrary contained in this  
891subsection. If vacancies occur on the board as a result of a recall and a majority or more of the  
892board members are removed, the vacancies shall be filled in accordance with procedural rules to  
893be adopted by the division, which rules need not be consistent with this subsection. The rules  
894must provide procedures governing the conduct of the recall election as well as the operation of  
895the association during the period after a recall but before the recall election.

896

897 6. A board member who has been recalled may file a petition or court action under s. 718.1255  
898challenging the validity of the recall. The petition or action must be filed within 60 days after the  
899recall. The association and the unit owner representative shall be named as the respondents. The  
900petition or action may challenge the facial validity of the written agreement or ballots filed or the  
901substantial compliance with the procedural requirements for the recall. If the arbitrator or court  
902determines the recall was invalid, the petitioning board member shall immediately be reinstated  
903and the recall is null and void. A board member who is successful in challenging a recall is  
904entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator or  
905court may award reasonable attorney fees and costs to the respondents if they prevail, if the  
906arbitrator or court makes a finding that the petitioner's claim is frivolous.

907

908 7. The division or a court of competent jurisdiction may not accept for filing a recall petition  
909or court action, whether filed under subparagraph 1., subparagraph 2., subparagraph 4., or  
910subparagraph 6., when there are 60 or fewer days until the scheduled reelection of the board  
911member sought to be recalled or when 60 or fewer days have elapsed since the election of the  
912board member sought to be recalled.

913

914 (m)*Alternative dispute resolution.*—There must be a provision for alternative dispute  
915resolution as provided for in s. 718.1255 for any residential condominium.

916

917 (n)*Firesafety.*—An association must ensure compliance with the Florida Fire Prevention  
918Code. As to a residential condominium building that is a high-rise building as defined under the  
919Florida Fire Prevention Code, the association must retrofit either a fire sprinkler system or an  
920engineered life safety system as specified in the Florida Fire Prevention Code. Notwithstanding  
921chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any  
922interpretation of the foregoing, an association, residential condominium, or unit owner is not  
923obligated to retrofit the common elements, association property, or units of a residential  
924condominium with a fire sprinkler system in a building that has been certified for occupancy by  
925the applicable governmental entity if the unit owners have voted to forego such retrofitting by the  
926affirmative vote of a majority of all voting interests in the affected condominium. The local  
927authority having jurisdiction may not require completion of retrofitting with a fire sprinkler  
928system or an engineered life safety system before January 1, 2024.

929

930 1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast  
931at a duly called membership meeting, or by execution of a written consent by the member, and is  
932effective upon recording a certificate attesting to such vote in the public records of the county  
933where the condominium is located. The association shall mail or hand deliver to each unit owner



934 written notice at least 14 days before the membership meeting in which the vote to forego  
935 retrofitting of the required fire sprinkler system is to take place. Within 30 days after the  
936 association's opt-out vote, notice of the results of the opt-out vote must be mailed or hand  
937 delivered to all unit owners. Evidence of compliance with this notice requirement must be made  
938 by affidavit executed by the person providing the notice and filed among the official records of  
939 the association. After notice is provided to each owner, a copy must be provided by the current  
940 owner to a new owner before closing and by a unit owner to a renter before signing a lease.

941

942 2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be  
943 obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the  
944 voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as  
945 required for any regularly called meeting of the unit owners, and must state the purpose of the  
946 meeting. Electronic transmission may not be used to provide notice of a meeting called in whole  
947 or in part for this purpose.

948

949 3. As part of the information collected annually from condominiums, the division shall require  
950 condominium associations to report the membership vote and recording of a certificate under this  
951 subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division  
952 shall annually report to the Division of State Fire Marshal of the Department of Financial  
953 Services the number of condominiums that have elected to forego retrofitting.

954

955 4. Notwithstanding s. 553.509, a residential association may not be obligated to, and may  
956 forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote  
957 of a majority of the voting interests in the affected condominium.

958

959 5. This paragraph does not apply to timeshare condominium associations, which shall be  
960 governed by s. 721.24.

961

962 (o) *Common elements; limited power to convey.*—

963

964 1. With respect to condominiums created on or after October 1, 1994, the bylaws shall include  
965 a provision granting the association a limited power to convey a portion of the common elements  
966 to a condemning authority for the purpose of providing utility easements, right-of-way  
967 expansion, or other public purposes, whether negotiated or as a result of eminent domain  
968 proceedings.

969

970 2. In any case where the bylaws are silent as to the association's power to convey common  
971 elements as described in subparagraph 1., the bylaws shall be deemed to include the provision  
972 described in subparagraph 1.

973

974 (p) *Director or officer delinquencies.*—A director or officer more than 90 days delinquent in  
975 the payment of any monetary obligation due the association shall be deemed to have abandoned  
976 the office, creating a vacancy in the office to be filled according to law.

977

978 (q) *Director or officer offenses.*—A director or officer charged by information or indictment  
979 with a felony theft or embezzlement offense involving the association's funds or property must

980be removed from office, creating a vacancy in the office to be filled according to law until the  
981end of the period of the suspension or the end of the director's term of office, whichever occurs  
982first. While such director or officer has such criminal charge pending, he or she may not be  
983appointed or elected to a position as a director or officer. However, if the charges are resolved  
984without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her  
985term of office, if any.

986

987 (3) OPTIONAL PROVISIONS.—The bylaws as originally recorded or as amended under the  
988procedures provided therein may provide for the following:

989

990 (a) A method of adopting and amending administrative rules and regulations governing the  
991details of the operation and use of the common elements.

992

993 (b) Restrictions on and requirements for the use, maintenance, and appearance of the units and  
994the use of the common elements.

995

996 (c) Provisions for giving notice by electronic transmission in a manner authorized by law of  
997meetings of the board of directors and committees and of annual and special meetings of the  
998members.

999

1000 (d) Other provisions which are not inconsistent with this chapter or with the declaration, as  
1002may be desired.

1003 **718.117 Termination of condominium.—**

1004

1005 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:

1006

1007 (a) Condominiums are created as authorized by statute and are subject to covenants that  
1008encumber the land and restrict the use of real property.

1009

1010 (b) In some circumstances, the continued enforcement of those covenants may create  
1011economic waste and areas of disrepair which threaten the safety and welfare of the public or  
1012cause obsolescence of the property for its intended use and thereby lower property tax values,  
1013and it is the public policy of this state to provide by statute a method to preserve the value of the  
1014property interests and the rights of alienation thereof that owners have in the condominium  
1015property before and after termination.

1016

1017 (c) It is contrary to the public policy of this state to require the continued operation of a  
1018condominium when to do so constitutes economic waste or when the ability to do so is made  
1019impossible by law or regulation.

1020

1021 (d) It is in the best interest of the state to provide for termination of the covenants of a  
1022declaration of condominium in certain circumstances in order to:

1023

1024 1. Ensure the continued maintenance, management, and repair of stormwater management  
1025systems, conservation areas, and conservation easements.

1026

1027 2. Avoid transferring the expense of maintaining infrastructure serving the condominium  
1028property, including, but not limited to, stormwater systems and conservation areas, to the general  
1029tax bases of the state and local governments.

1030

1031 3. Prevent covenants from impairing the continued productive use of the property.

1032

1033 4. Protect state residents from health and safety hazards created by derelict, damaged,  
1034obsolete, or abandoned condominium properties.

1035

1036 5. Provide fair treatment and just compensation for individuals and preserve property values  
1037and the local property tax base.

1038

1039 6. Preserve the state's long history of protecting homestead property and homestead property  
1040rights by ensuring that such protection is extended to homestead property owners in the context  
1041of a termination of the covenants of a declaration of condominium.

1042

1043 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR IMPOSSIBILITY.—

1044

1045 (a) Notwithstanding any provision in the declaration, the condominium form of ownership of a  
1046property may be terminated by a plan of termination approved by the lesser of the lowest  
1047percentage of voting interests necessary to amend the declaration or as otherwise provided in the  
1048declaration for approval of termination if:

1049

1050 1. The total estimated cost of construction or repairs necessary to construct the intended  
1051improvements or restore the improvements to their former condition or bring them into  
1052compliance with applicable laws or regulations exceeds the combined fair market value of the  
1053units in the condominium after completion of the construction or repairs; or

1054

1055 2. It becomes impossible to operate or reconstruct a condominium to its prior physical  
1056configuration because of land use laws or regulations.

1057

1058 (b) Notwithstanding paragraph (a), a condominium in which 75 percent or more of the units  
1059are timeshare units may be terminated only pursuant to a plan of termination approved by 80  
1060percent of the total voting interests of the association and the holders of 80 percent of the original  
1061principal amount of outstanding recorded mortgage liens of timeshare estates in the  
1062condominium, unless the declaration provides for a lower voting percentage.

1063

1064 (c) Notwithstanding paragraph (a), a condominium that includes units and timeshare estates  
1065where the improvements have been totally destroyed or demolished may be terminated pursuant  
1066to a plan of termination proposed by a unit owner upon the filing of a petition in court seeking  
1067equitable relief. Within 10 days after the filing of a petition as provided in this paragraph and in  
1068lieu of the requirements of paragraph (15)(a), the petitioner shall record the proposed plan of  
1069termination and mail a copy of the proposed plan and a copy of the petition to:

1070

1071 1. If the association has not been dissolved as a matter of law, each member of the board of  
1072directors of the association identified in the most recent annual report filed with the Department  
1073of State and the registered agent of the association;

1074

1075 2. The managing entity as defined in s. 721.05(22);

1076

1077 3. Each unit owner and each timeshare estate owner at the address reflected in the official  
1078records of the association, or, if the association records cannot be obtained by the petitioner, each  
1079unit owner and each timeshare estate owner at the address listed in the office of the tax collector  
1080for tax notices; and

1081

1082 4. Each holder of a recorded mortgage lien affecting a unit or timeshare estate at the address  
1083appearing on the recorded mortgage or any recorded assignment thereof.

1084

1085The association, if it has not been dissolved as a matter of law, acting as class representative, or  
1086the managing entity as defined in s. 721.05(22), any unit owner, any timeshare estate owner, or  
1087any holder of a recorded mortgage lien affecting a unit or timeshare estate may intervene in the  
1088proceedings to contest the proposed plan of termination brought pursuant to this paragraph. The  
1089provisions of subsection (9), to the extent inconsistent with this paragraph, and subsection (16)  
1090are not applicable to a party contesting a plan of termination under this paragraph. If no party  
1091intervenes to contest the proposed plan within 45 days after the filing of the petition, the  
1092petitioner may move the court to enter a final judgment to authorize implementation of the plan  
1093of termination. If a party timely intervenes to contest the proposed plan, the plan may not be



1094 implemented until a final judgment has been entered by the court finding that the proposed plan  
1095 of termination is fair and reasonable and authorizing implementation of the plan.

1096

1097 (3) OPTIONAL TERMINATION.— The condominium form of ownership may be terminated  
1098 for all or a portion of the condominium property pursuant to a plan of termination ~~meeting~~ subject  
1099 to the requirements, provisions of this section and approved by the division. Before a residential  
1100 ~~association submits a plan to the division, the plan must be~~ subsection approved by at least 80  
1101 percent of the total voting interests of the condominium. ~~However, if 5 percent or more of the~~  
1102 ~~total voting interests of the condominium have rejected the plan of termination by negative vote~~  
1103 ~~or by providing written objections, the plan of termination may not proceed.~~

1104

1105 (a) The termination of the condominium form of ownership is subject to the following  
1106 conditions:

1107

1108 1. 1. ~~1.~~ The total voting interests of the condominium must include all voting interests for the  
1109 purpose of considering a plan of termination. A voting interest of the condominium may not be  
1110 suspended for any reason when voting on termination pursuant to this subsection.

1111

1112 2. 2. ~~2.~~ If 5 percent or more of the total voting interests of the condominium ~~reject~~ have  
1113 rejected the plan of termination by negative vote or by providing written objections, the plan of  
1114 termination may not proceed, and a subsequent plan of termination pursuant to this subsection  
1115 may not be considered for 24 months after the date of the rejection.

1116

1117 (b) For a residential condominium, the provisions of this paragraph shall apply.

1118

1119 1. This subsection does not apply to any condominium created pursuant to ~~p~~ Part VI of this  
1120 chapter until 5 years after the recording of the declaration of condominium, unless there is no  
1121 objection to the plan of termination.

1122 ~~(c)~~ For purposes of this subsection, the paragraph.

1123

1124 2. The term “bulk owner” means the single holder of such voting interests or an owner  
1125 together with a related entity or entities that would be considered an insider, as defined in s.  
1126 726.102, holding such voting interests. If the condominium association is a residential  
1127 association proposed for termination pursuant to this section and, at the time of recording the  
1128 plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner,  
1129 the plan of termination is subject to the following conditions and limitations:

1130

1131 3. Termination must be approved by the division after the plan of termination has received  
1132 the requisite approval by the unit owners, and shall be subject to the following provisions:

1133

1134 4. 1. ~~1.~~ If the former condominium units are offered for lease to the public after the  
1135 termination, each unit owner in occupancy immediately before the date of recording of the plan  
1136 of termination may lease his or her former unit and remain in possession of the unit for 12  
1137 months after the effective date of the termination on the same terms as similar unit types within  
1138 the property are being offered to the public. In order to obtain a lease and exercise the right to  
1139 retain exclusive possession of the unit owner’s former unit, the unit owner must make a written



1140 request to the termination trustee to rent the former unit within 90 days after the date the plan of  
1141 termination is recorded. Any unit owner who fails to timely make such written request and sign a  
1142 lease within 15 days after being presented with a lease is deemed to have waived his or her right  
1143 to retain possession of his or her former unit and shall be required to vacate the former unit upon  
1144 the effective date of the termination, unless otherwise provided in the plan of termination.

1145

1146 5. ~~2.~~ Any former unit owner whose unit was granted homestead exemption status by the  
1147 applicable county property appraiser as of the date of the recording of the plan of termination  
1148 shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds  
1149 allocated to the owner's former unit. Any relocation payment payable under this subparagraph  
1150 shall be paid by the single entity or related entities owning at least 80 percent of the total voting  
1151 interests. Such relocation payment shall be in addition to the termination proceeds for such  
1152 owner's former unit and shall be paid no later than 10 days after the former unit owner vacates  
1153 his or her former unit.

1154

1155 6. ~~3.~~ For their respective units, all unit owners other than the bulk owner must be  
1156 compensated at least 100 percent of the fair market value of their units. The fair market value  
1157 shall be determined as of a date that is no earlier than 90 days before the date that the plan of  
1158 termination is recorded and shall be determined by an independent appraiser selected by the  
1159 termination trustee. For a person whose unit was granted homestead exemption status by the  
1160 applicable county property appraiser, or was an owner-occupied operating business, as of the  
1161 date that the plan of termination is recorded and who is current in payment of both assessments  
1162 and other monetary obligations to the association as of the date the plan of termination is  
1163 recorded, the fair market value shall be at least the original purchase price paid for the unit. For  
1164 purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller  
1165 is willing to accept and a buyer is willing to pay on the open market in an arms-length  
1166 transaction based on similar units sold in other condominiums, including units sold in bulk  
1167 purchases but excluding units sold at wholesale or distressed prices. The purchase price of units  
1168 acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of  
1169 determining fair market value.

1170

1171 7. ~~4.~~ The plan of termination must provide for payment of a first mortgage encumbering a  
1172 unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of  
1173 the proceeds of termination under the plan. If the unit owner is current in payment of both  
1174 assessments and other monetary obligations to the association and any mortgage encumbering  
1175 the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit's  
1176 share of the proceeds of termination under the plan or the outstanding balance of the mortgage,  
1177 whichever is less, shall be deemed to have satisfied the first mortgage in full.

1178

1179 8. ~~5.~~ Before a plan of termination is presented to the unit owners for consideration pursuant  
1180 to this paragraph, the plan must include the following written disclosures in a sworn statement:  
1181

1182 a. The identity of any person or entity that owns or controls 25 percent or more of the units in  
1183 the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the  
1184 natural person or persons who, directly or indirectly, manage or control the entity or entities and

1185the natural person or persons who, directly or indirectly, own or control 10 percent or more of the  
1186artificial entity or entities that constitute the bulk owner.

1187

1188 b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount  
1189of compensation paid to each prior unit owner by the bulk owner, regardless of whether  
1190attributed to the purchase price of the unit.

1191

1192 c. The relationship of any board member to the bulk owner or any person or entity affiliated  
1193with the bulk owner subject to disclosure pursuant to this subparagraph.

1194

1195 d. The factual circumstances that show that the plan complies with the requirements of this  
1196section and that the plan supports the expressed public policies of this section.

1197

1198

1199 ~~(d)~~e. If the members of the board of administration are elected by the bulk owner, unit owners  
1200other than the bulk owner may elect at least one-third of the members of the board of  
1201administration before the approval of any plan of termination.

1202 ~~(e)~~g. The division shall examine the plan of termination to determine its procedural sufficiency  
1203and, within 45 days after receipt of the initial filing, the division shall notify the association by  
1204mail of any procedural deficiencies or that the filing is accepted. If the notice is not given within  
120545 days after the receipt of the filing, the plan of termination is presumed to be accepted. If the  
1206division determines that the conditions required by this section have been met and that the plan  
1207complies with the procedural requirements of this section, the division shall authorize the  
1208termination, and the termination may proceed pursuant to this section.

1209

1210 ~~(f)~~h. Subsection (2) does not apply to optional termination pursuant to this subsection.

1211

1212 (4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a  
1213partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the  
1214ownership share of the common elements of a surviving unit in the condominium remains in the  
1215same proportion to the surviving units as it was before the partial termination.

1216

1217 (5) MORTGAGE LIENHOLDERS.—Notwithstanding any provision to the contrary in the  
1218declaration or this chapter, approval of a plan of termination by the holder of a recorded  
1219mortgage lien affecting a condominium parcel in which fewer than 75 percent of the units are  
1220timeshare units is not required unless the plan of termination will result in less than the full  
1221satisfaction of the mortgage lien affecting the condominium parcel. If such approval is required  
1222and not given, a holder of a recorded mortgage lien who objects to the plan of termination may  
1223contest the plan as provided in subsection (16). At the time of sale, the lien shall be transferred to  
1224the proportionate share of the proceeds assigned to the condominium parcel in the plan of  
1225termination or as subsequently modified by the court.

1226

1227 (6) POWERS IN CONNECTION WITH TERMINATION.—The approval of the plan of  
1228termination does not terminate the association. It shall continue in existence following approval  
1229of the plan of termination with all powers and duties it had before approval of the plan.

1230 Notwithstanding any provision to the contrary in the declaration or bylaws, after approval of the  
1231 plan the board shall:

1232

1233 (a) Employ directors, agents, attorneys, and other professionals to liquidate or conclude its  
1234 affairs.

1235

1236 (b) Conduct the affairs of the association as necessary for the liquidation or termination.

1237

1238 (c) Carry out contracts and collect, pay, and settle debts and claims for and against the  
1239 association.

1240

1241 (d) Defend suits brought against the association.

1242

1243 (e) Sue in the name of the association for all sums due or owed to the association or to recover  
1244 any of its property.

1245

1246 (f) Perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable  
1247 improvements or other condominium property in compliance with applicable codes.

1248

1249 (g) Sell at public or private sale or exchange, convey, or otherwise dispose of assets of the  
1250 association for an amount deemed to be in the best interests of the association, and execute bills  
1251 of sale and deeds of conveyance in the name of the association.

1252

1253 (h) Collect and receive rents, profits, accounts receivable, income, maintenance fees, special  
1254 assessments, or insurance proceeds for the association.

1255

1256 (i) Contract and do anything in the name of the association which is proper or convenient to  
1257 terminate the affairs of the association.

1258

1259 (7) NATURAL DISASTERS.—

1260

1261 (a) If, after a natural disaster, the identity of the directors or their right to hold office is in  
1262 doubt, if they are deceased or unable to act, if they fail or refuse to act, or if they cannot be  
1263 located, any interested person may petition the circuit court to determine the identity of the  
1264 directors or, if found to be in the best interests of the unit owners, to appoint a receiver to  
1265 conclude the affairs of the association after a hearing following notice to such persons as the  
1266 court directs. Lienholders shall be given notice of the petition and have the right to propose  
1267 persons for the consideration by the court as receiver. If a receiver is appointed, the court shall  
1268 direct the receiver to provide to all unit owners written notice of his or her appointment as  
1269 receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice  
1270 by mail to a unit owner shall be sent to the address used by the county property appraiser for  
1271 notice to the unit owner.

1272

1273 (b) The receiver shall have all powers given to the board pursuant to the declaration, bylaws,  
1274 and subsection (6), and any other powers that are necessary to conclude the affairs of the  
1275 association and are set forth in the order of appointment. The appointment of the receiver is



1276subject to the bonding requirements of such order. The order shall also provide for the payment  
1277of a reasonable fee to the receiver from the sources identified in the order, which may include  
1278rents, profits, incomes, maintenance fees, or special assessments collected from the  
1279condominium property.

1280

1281 (8) REPORTS AND REPLACEMENT OF RECEIVER.—

1282

1283 (a) The association, receiver, or termination trustee shall prepare reports each quarter  
1284following the approval of the plan of termination setting forth the status and progress of the  
1285termination, costs and fees incurred, the date the termination is expected to be completed, and  
1286the current financial condition of the association, receivership, or trusteeship and provide copies  
1287of the report by regular mail to the unit owners and lienors at the mailing address provided to the  
1288association by the unit owners and the lienors.

1289

1290 (b) The unit owners of an association in termination may recall or remove members of the  
1291board of administration with or without cause at any time as provided in s. 718.112(2)(l).

1292

1293 (c) The lienors of an association in termination representing at least 50 percent of the  
1294outstanding amount of liens may petition the court for the appointment of a termination trustee,  
1295which shall be granted upon good cause shown.

1296

1297 (9) PLAN OF TERMINATION.—The plan of termination must be a written document  
1298executed in the same manner as a deed by unit owners having the requisite percentage of voting  
1299interests to approve the plan and by the termination trustee. A copy of the proposed plan of  
1300termination shall be given to all unit owners, in the same manner as for notice of an annual  
1301meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon  
1302or prior to or simultaneously with the distribution of the solicitation seeking execution of the  
1303plan of termination or written consent to or joinder in the plan. A unit owner may document  
1304assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a  
1305deed. A plan of termination and the consents or joinders of unit owners must be recorded in the  
1306public records of each county in which any portion of the condominium is located. The plan is  
1307effective only upon recordation or at a later date specified in the plan. If the plan of termination  
1308fails to receive the required approval, the plan shall not be recorded and a new attempt to  
1309terminate the condominium may not be proposed at a meeting or by solicitation for joinder and  
1310consent for 18 months after the date that such failed plan of termination was first given to all unit  
1311owners in the manner as provided in this subsection.

1312

1313 (a) If the plan of termination is voted on at a meeting of the unit owners called in accordance  
1314with this subsection, any unit owner desiring to reject the plan must do so by either voting to  
1315reject the plan in person or by proxy, or by delivering a written rejection to the association before  
1316or at the meeting.

1317

1318 (b) If the plan of termination is approved by written consent or joinder without a meeting of  
1319the unit owners, any unit owner desiring to object to the plan must deliver a written objection to  
1320the association within 20 days after the date that the association notifies the nonconsenting

1321owners, in the manner provided in paragraph (15)(a), that the plan of termination has been  
1322approved by written action in lieu of a unit owner meeting.

1323

1324 (10) PLAN OF TERMINATION; REQUIRED PROVISIONS.—The plan of termination must  
1325specify:

1326

1327 (a) The name, address, and powers of the termination trustee.

1328

1329 (b) A date after which the plan of termination is void if it has not been recorded.

1330

1331 (c) The interests of the respective unit owners in the association property, common surplus,  
1332and other assets of the association, which shall be the same as the respective interests of the unit  
1333owners in the common elements immediately before the termination, unless otherwise provided  
1334in the declaration.

1335

1336 (d) The interests of the respective unit owners in any proceeds from the sale of the  
1337condominium property. The plan of termination may apportion those proceeds pursuant to any  
1338method prescribed in subsection (12). If, pursuant to the plan of termination, condominium  
1339property or real property owned by the association is to be sold following termination, the plan  
1340must provide for the sale and may establish any minimum sale terms.

1341

1342 (e) Any interests of the respective unit owners in insurance proceeds or condemnation  
1343proceeds that are not used for repair or reconstruction at the time of termination. Unless the  
1344declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds,  
1345the plan of termination may apportion those proceeds pursuant to any method prescribed in  
1346subsection (12).

1347

1348 (11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL  
1349TERMINATION; WITHDRAWAL; ERRORS.—

1350

1351 (a) Unless the plan of termination expressly authorizes a unit owner or other person to retain  
1352the exclusive right to possess that portion of the real estate which formerly constituted the unit  
1353after termination or to use the common elements of the condominium after termination, all such  
1354rights in the unit and common elements automatically terminate on the effective date of  
1355termination. Unless the plan expressly provides otherwise, all leases, occupancy agreements,  
1356subleases, licenses, or other agreements for the use or occupancy of any unit or common  
1357elements of the condominium automatically terminate on the effective date of termination. If the  
1358plan expressly authorizes a unit owner or other person to retain exclusive right of possession for  
1359that portion of the real estate that formerly constituted the unit or to use the common elements of  
1360the condominium after termination, the plan must specify the terms and conditions of possession.  
1361In a partial termination, the plan of termination as specified in subsection (10) must also identify  
1362the units that survive the partial termination and provide that such units remain in the  
1363condominium form of ownership pursuant to an amendment to the declaration of condominium  
1364or an amended and restated declaration. In a partial termination, title to the surviving units and  
1365common elements that remain part of the condominium property specified in the plan of

1366 termination remain vested in the ownership shown in the public records and do not vest in the  
1367 termination trustee.

1368

1369 (b) In a conditional termination, the plan must specify the conditions for termination. A  
1370 conditional plan does not vest title in the termination trustee until the plan and a certificate  
1371 executed by the association with the formalities of a deed, confirming that the conditions in the  
1372 conditional plan have been satisfied or waived by the requisite percentage of the voting interests,  
1373 have been recorded. In a partial termination, the plan does not vest title to the surviving units or  
1374 common elements that remain part of the condominium property in the termination trustee.

1375

1376 (c) Unless otherwise provided in the plan of termination, at any time before the sale of the  
1377 condominium property, a plan may be withdrawn or modified by the affirmative vote or written  
1378 agreement of at least the same percentage of voting interests in the condominium as that which  
1379 was required for the initial approval of the plan.

1380

1381 (d) Upon the discovery of a scrivener's error in the plan of termination, the termination trustee  
1382 may record an amended plan or an amendment to the plan for the purpose of correcting the error,  
1383 and the amended plan or amendment to the plan must be executed by the termination trustee in  
1384 the same manner as required for the execution of a deed.

1385

1386 (12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—

1387

1388 (a) Unless the declaration expressly provides for the allocation of the proceeds of sale of  
1389 condominium property, the plan of termination may require separate valuations for the common  
1390 elements. However, in the absence of such provision, it is presumed that the common elements  
1391 have no independent value but rather that their value is incorporated into the valuation of the  
1392 units. In a partial termination, the aggregate values of the units and common elements that are  
1393 being terminated must be separately determined, and the plan of termination must specify the  
1394 allocation of the proceeds of sale for the units and common elements being terminated.

1395

1396 (b) The portion of proceeds allocated to the units shall be apportioned among the individual  
1397 units. The apportionment is deemed fair and reasonable if it is determined by any of the  
1398 following methods:

1399

1400 1. The respective values of the units based on the fair market values of the units immediately  
1401 before the termination, as determined by one or more independent appraisers selected by the  
1402 association or termination trustee;

1403

1404 2. The respective values of the units based on the most recent market value of the units before  
1405 the termination, as provided in the county property appraiser's records; or

1406

1407 3. The respective interests of the units in the common elements specified in the declaration  
1408 immediately before the termination.

1409

1410 (c) The methods of apportionment in paragraph (b) do not prohibit any other method of  
1411 apportioning the proceeds of sale allocated to the units or any other method of valuing the units



1412agreed upon in the plan of termination. Any portion of the proceeds separately allocated to the  
1413common elements shall be apportioned among the units based upon their respective interests in  
1414the common elements as provided in the declaration.

1415

1416 (d) Liens that encumber a unit shall, unless otherwise provided in the plan of termination, be  
1417transferred to the proceeds of sale of the condominium property and the proceeds of sale or other  
1418distribution of association property, common surplus, or other association assets attributable to  
1419such unit in their same priority. In a partial termination, liens that encumber a unit being  
1420terminated must be transferred to the proceeds of sale of that portion of the condominium  
1421property being terminated which are attributable to such unit. The proceeds of any sale of  
1422condominium property pursuant to a plan of termination may not be deemed to be common  
1423surplus or association property. The holder of a lien that encumbers a unit at the time of  
1424recording a plan must, within 30 days after the written request from the termination trustee,  
1425deliver a statement to the termination trustee confirming the outstanding amount of any  
1426obligations of the unit owner secured by the lien.

1427

1428 (e) The termination trustee may setoff against, and reduce the share of, the termination  
1429proceeds allocated to a unit by the following amounts, which may include attorney fees and  
1430costs:

1431

1432 1. All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and  
1433owing to the association associated with the unit, its owner, or the owner's family members,  
1434guests, tenants, occupants, licensees, invitees, or other persons.

1435

1436 2. All costs of clearing title to the owner's unit, including, but not limited to, locating lienors,  
1437obtaining statements from such lienors confirming the outstanding amount of any obligations of  
1438the unit owner, and paying all mortgages and other liens, judgments, and encumbrances and  
1439filing suit to quiet title or remove title defects.

1440

1441 3. All costs of removing the owner or the owner's family members, guests, tenants, occupants,  
1442licensees, invitees, or other persons from the unit in the event such persons fail to vacate a unit as  
1443required by the plan.

1444

1445 4. All costs arising from, or related to, any breach of the plan by the owner or the owner's  
1446family members, guests, tenants, occupants, licensees, invitees, or other persons.

1447

1448 5. All costs arising out of, or related to, the removal and storage of all personal property  
1449remaining in a unit, other than personal property owned by the association, so that the unit may  
1450be delivered vacant and clear of the owner or the owner's family members, guests, tenants,  
1451occupants, licensees, invitees, or other persons as required by the plan.

1452

1453 6. All costs arising out of, or related to, the appointment and activities of a receiver or attorney  
1454ad litem acting for the owner in the event that the owner is unable to be located.

1455

1456 (13) TERMINATION TRUSTEE.—The association shall serve as termination trustee unless  
1457another person is appointed in the plan of termination. If the association is unable, unwilling, or

1458 fails to act as trustee, any unit owner may petition the court to appoint a trustee. Upon the date of  
1459 the recording or at a later date specified in the plan, title to the condominium property vests in  
1460 the trustee. Unless prohibited by the plan, the termination trustee shall be vested with the powers  
1461 given to the board pursuant to the declaration, bylaws, and subsection (6). If the association is  
1462 not the termination trustee, the trustee's powers shall be coextensive with those of the  
1463 association to the extent not prohibited in the plan of termination or the order of appointment. If  
1464 the association is not the termination trustee, the association shall transfer any association  
1465 property to the trustee. If the association is dissolved, the trustee shall also have such other  
1466 powers necessary to conclude the affairs of the association.

1467

1468 (14) TITLE VESTED IN TERMINATION TRUSTEE.—If termination is pursuant to a plan of  
1469 termination under subsection (2) or subsection (3), title to the condominium property being  
1470 terminated vests in the termination trustee when the plan is recorded or at a later date specified in  
1471 the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the  
1472 plan of termination as set forth in the plan. The termination trustee may deal with the  
1473 condominium property being terminated or any interest therein if the plan confers on the trustee  
1474 the authority to protect, conserve, manage, sell, or dispose of the condominium property. The  
1475 trustee, on behalf of the unit owners, may contract for the sale of real property being terminated,  
1476 but the contract is not binding on the unit owners until the plan is approved pursuant to  
1477 subsection (2) or subsection (3).

1478

1479 (15) NOTICE.—

1480

1481 (a) Within 30 days after a plan of termination has been recorded, the termination trustee shall  
1482 deliver by certified mail, return receipt requested, notice to all unit owners, lienors of the  
1483 condominium property, and lienors of all units at their last known addresses that a plan of  
1484 termination has been recorded. The notice must include the book and page number of the public  
1485 records in which the plan was recorded, notice that a copy of the plan shall be furnished upon  
1486 written request, and notice that the unit owner or lienor has the right to contest the fairness of the  
1487 plan.

1488

1489 (b) The trustee, within 90 days after the effective date of the plan, shall provide to the division  
1490 a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and  
1491 page number of the public records in which the plan is recorded.

1492

1493 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by  
1494 initiating a petition in accordance with s. 718.1255 within 90 days after the date the plan is  
1495 recorded. A unit owner or lienor may only contest the fairness and reasonableness of the  
1496 apportionment of the proceeds from the sale among the unit owners, that the liens of the first  
1497 mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent  
1498 required by subsection (3), or that the required vote to approve the plan was not obtained. A unit  
1499 owner or lienor who does not contest the plan within the 90-day period is barred from asserting  
1500 or prosecuting a claim against the association, the termination trustee, any unit owner, or any  
1501 successor in interest to the condominium property. In an action contesting a plan of termination,  
1502 the person contesting the plan has the burden of pleading and proving that the apportionment of  
1503 the proceeds from the sale among the unit owners was not fair and reasonable or that the required



1504 vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it  
1505 was determined pursuant to the methods prescribed in subsection (12). If the petition is filed with  
1506 the division for arbitration, the arbitrator shall determine the rights and interests of the parties in  
1507 the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of  
1508 sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan  
1509 to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the  
1510 proceedings and order the modified plan of termination to be implemented. If the arbitrator  
1511 determines that the plan was not properly approved, or that the procedures to adopt the plan were  
1512 not properly followed, the arbitrator may void the plan or grant other relief it deems just and  
1513 proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures  
1514 required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. Any  
1515 challenge to a plan, other than a challenge that the required vote was not obtained, does not  
1516 affect title to the condominium property or the vesting of the condominium property in the  
1517 trustee, but shall only be a claim against the proceeds of the plan. In any such action, the  
1518 prevailing party shall recover reasonable attorney fees and costs.

1519

1520 (17) DISTRIBUTION.—

1521

1522 (a) Following termination of the condominium, the condominium property, association  
1523 property, common surplus, and other assets of the association shall be held by the termination  
1524 trustee pursuant to the plan of termination, as trustee for unit owners and holders of liens on the  
1525 units, in their order of priority unless otherwise set forth in the plan of termination.

1526

1527 (b) Not less than 30 days before the first distribution, the termination trustee shall deliver by  
1528 certified mail, return receipt requested, a notice of the estimated distribution to all unit owners,  
1529 lienors of the condominium property, and lienors of each unit at their last known addresses  
1530 stating a good faith estimate of the amount of the distributions to each class and the procedures  
1531 and deadline for notifying the termination trustee of any objections to the amount. The deadline  
1532 must be at least 15 days after the date the notice was mailed. The notice may be sent with or after  
1533 the notice required by subsection (15). If a unit owner or lienor files a timely objection with the  
1534 termination trustee, the trustee need not distribute the funds and property allocated to the  
1535 respective unit owner or lienor until the trustee has had a reasonable time to determine the  
1536 validity of the adverse claim. In the alternative, the trustee may interplead the unit owner, lienor,  
1537 and any other person claiming an interest in the unit and deposit the funds allocated to the unit in  
1538 the court registry, at which time the condominium property, association property, common  
1539 surplus, and other assets of the association are free of all claims and liens of the parties to the  
1540 suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney's  
1541 fees and costs.

1542

1543 (c) The proceeds from any sale of condominium property or association property and any  
1544 remaining condominium property or association property, common surplus, and other assets  
1545 shall be distributed in the following priority:

1546

1547 1. To pay the reasonable termination trustee's fees and costs and accounting fees and costs.

1548

1549 2. To lienholders of liens recorded prior to the recording of the declaration.

1550

1551 3. To purchase-money lienholders on units to the extent necessary to satisfy their liens;  
1552 however, the distribution may not exceed a unit owner's share of the proceeds.

1553

1554 4. To lienholders of liens of the association which have been consented to under s. 718.121(1).

1555

1556 5. To creditors of the association, as their interests appear.

1557

1558 6. To unit owners, the proceeds of any sale of condominium property subject to satisfaction of  
1559 liens on each unit in their order of priority, in shares specified in the plan of termination, unless  
1560 objected to by a unit owner or lienor as provided in paragraph (b).

1561

1562 7. To unit owners, the remaining condominium property, subject to satisfaction of liens on  
1563 each unit in their order of priority, in shares specified in the plan of termination, unless objected  
1564 to by a unit owner or a lienor as provided in paragraph (b).

1565

1566 8. To unit owners, the proceeds of any sale of association property, the remaining association  
1567 property, common surplus, and other assets of the association, subject to satisfaction of liens on  
1568 each unit in their order of priority, in shares specified in the plan of termination, unless objected  
1569 to by a unit owner or a lienor as provided in paragraph (b).

1570

1571 (d) After determining that all known debts and liabilities of an association in the process of  
1572 termination have been paid or adequately provided for, the termination trustee shall distribute the  
1573 remaining assets pursuant to the plan of termination. If the termination is by court proceeding or  
1574 subject to court supervision, the distribution may not be made until any period for the  
1575 presentation of claims ordered by the court has elapsed.

1576

1577 (e) Assets held by an association upon a valid condition requiring return, transfer, or  
1578 conveyance, which condition has occurred or will occur, shall be returned, transferred, or  
1579 conveyed in accordance with the condition. The remaining association assets shall be distributed  
1580 pursuant to paragraph (c).

1581

1582 (f) Distribution may be made in money, property, or securities and in installments or as a lump  
1583 sum, if it can be done fairly and ratably and in conformity with the plan of termination.

1584 Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of  
1585 the assets.

1586

1587 (18) ASSOCIATION STATUS.—The termination of a condominium does not change the  
1588 corporate status of the association that operated the condominium property. The association  
1589 continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect  
1590 and discharge obligations, dispose of and convey its property, and collect and divide its assets,  
1591 but not to act except as necessary to conclude its affairs. In a partial termination, the association  
1592 may continue as the condominium association for the property that remains subject to the  
1593 declaration of condominium.

1594

1595 (19) CREATION OF ANOTHER CONDOMINIUM.—The termination or partial termination  
1596of a condominium does not bar the filing of a new declaration of condominium by the  
1597termination trustee, or the trustee’s successor in interest, for the terminated property or any  
1598portion thereof. The partial termination of a condominium may provide for the simultaneous  
1599filing of an amendment to the declaration of condominium or an amended and restated  
1600declaration of condominium by the condominium association for any portion of the property not  
1601terminated from the condominium form of ownership.

1602

1603 (20) EXCLUSION.—This section does not apply to the termination of a condominium  
1604incident to a merger of that condominium with one or more other condominiums under s.  
160518.110(7).

1606

1607 (21) APPLICABILITY.—~~This~~Except as otherwise provided, this section applies to all  
1609condominiums in this state in existence on or after July 1, 2007.

1610 **718.202 Sales or reservation deposits prior to closing.—**

1611

1612 (1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and  
1613landscaping of the property submitted or proposed to be submitted to condominium ownership  
1614has not been substantially completed in accordance with the plans and specifications and  
1615representations made by the developer in the disclosures required by this chapter, the developer  
1616shall pay into an escrow account all payments up to 10 percent of the sale price received by the  
1617developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a  
1618receipt for the deposit, upon request. In lieu of the foregoing concerning residential  
1619condominiums, the division director has the discretion to accept other assurances, including, but  
1620not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow  
1621requirements of this section. From and after July 1, 2025, with respect to nonresidential  
1622condominiums, the developer shall have the option of delivering to escrow agent a surety bond  
1623or irrevocable letter of credit in a form otherwise acceptable to the division for residential  
1624projects and in an amount equivalent to the aggregate of some or all of all payments up to 10  
1625percent of the sale price received by the developer from all buyers towards the sale price, in all  
1626cases the aggregate of some or all of the initial 10 percent deposits monies being released  
1627secured by a surety bond or irrevocable letter of credit in an equivalent amount. Default  
1628determinations and refund of deposits shall be governed by the escrow release provision of this  
1629subsection. Funds shall be released from escrow as follows:

1630

1631 (a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter,  
1632the funds shall be paid to the buyer together with any interest earned.

1633

1634 (b) If the buyer defaults in the performance of his or her obligations under the contract of  
1635purchase and sale, the funds shall be paid to the developer together with any interest earned.

1636

1637 (c) If the contract does not provide for the payment of any interest earned on the escrowed  
1638funds, interest shall be paid to the developer at the closing of the transaction.

1639

1640 (d) If the funds of a buyer have not been previously disbursed in accordance with the  
1641provisions of this subsection, they may be disbursed to the developer by the escrow agent at the  
1642closing of the transaction, unless prior to the disbursement the escrow agent receives from the  
1643buyer written notice of a dispute between the buyer and developer.

1644

1645 (2) All payments which are in excess of the 10 percent of the sale price described in  
1646subsection (1) and which have been received prior to completion of construction by the  
1647developer from the buyer on a contract for purchase of a condominium parcel shall be held in a  
1648special escrow account established as provided in subsection (1) and controlled by an escrow  
1649agent and may not be used by the developer prior to closing the transaction, except as provided  
1650in subsection (3) or except for refund to the buyer. If the money remains in this special account  
1651for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

1652

1653 (3) If the contract for sale of the condominium unit so provides, the developer may withdraw  
1654escrow funds in excess of 10 percent of the purchase price from the special account required by  
1655subsection (2) when the construction of improvements has begun. He or she may use the funds



1656for the actual costs incurred by the developer in the construction and development of the  
1657condominium property in which the unit to be sold is located. For purposes of this subsection,  
1658the term “actual costs” includes, but is not limited to, expenditures for demolition, site clearing,  
1659permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and  
1660surveying fees that directly relate to construction and development of the condominium property.  
1661However, no part of these funds may be used for salaries, commissions, or expenses of  
1662salespersons; for advertising, marketing, or promotional purposes; or for loan fees and costs,  
1663principal and interest on loans, attorney fees, accounting fees, or insurance costs. A contract  
1664which permits use of the advance payments for these purposes shall include the following legend  
1665conspicuously printed or stamped in boldfaced type on the first page of the contract and  
1666immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF  
166710 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING  
1668PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY  
1669THE DEVELOPER.

1670

1671 (4) The term “completion of construction” means issuance of a certificate of occupancy for the  
1672entire building or improvement, or the equivalent authorization issued by the governmental body  
1673having jurisdiction, and, in a jurisdiction where no certificate of occupancy or equivalent  
1674authorization is issued, it means substantial completion of construction, finishing, and equipping  
1675of the building or improvements according to the plans and specifications.

1676

1677 (5) The failure to comply with the provisions of this section renders the contract voidable by  
1678the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded  
1679with interest at the highest rate then being paid on savings accounts, excluding certificates of  
1680deposit, by savings and loan associations in the area in which the condominium property is  
1681located.

1682

1683 (6) If a developer enters into a reservation agreement, the developer shall pay into an escrow  
1684account all reservation deposit payments. Reservation deposits shall be payable to the escrow  
1685agent, who shall give to the prospective purchaser a receipt for the deposit, acknowledging that  
1686the deposit is being held pursuant to the requirements of this subsection. The funds may be  
1687placed in either interest-bearing or non-interest-bearing accounts, provided that the funds shall at  
1688all reasonable times be available for withdrawal in full by the escrow agent. The developer shall  
1689maintain separate records for each condominium or proposed condominium for which deposits  
1690are being accepted. Upon written request to the escrow agent by the prospective purchaser or  
1691developer, the funds shall be immediately and without qualification refunded in full to the  
1692prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser,  
1693unless otherwise provided in the reservation agreement. A reservation deposit shall not be  
1694released directly to the developer except as a down payment on the purchase price  
1695simultaneously with or subsequent to the execution of a contract. Upon the execution of a  
1696purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit  
1697pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the  
1698provisions of this subsection and shall instead be subject to the provisions of subsections (1)-(5).  
1699

1700 (7) Any developer who willfully fails to comply with the provisions of this section concerning  
1701establishment of an escrow account, deposits of funds into escrow, and withdrawal of funds from

1702escrow is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083,  
1703or s. 775.084, or the successor thereof. The failure to establish an escrow account or to place  
1704funds in an escrow account is prima facie evidence of an intentional and purposeful violation of  
1705this section.

1706

1707 (8) Every escrow account required by this section shall be established with a bank; a savings  
1708and loan association; an attorney who is a member of The Florida Bar; a real estate broker  
1709registered under chapter 475; a title insurer authorized to do business in this state, acting through  
1710either its employees or a title insurance agent licensed under chapter 626; or any financial  
1711lending institution having a net worth in excess of \$5 million. The escrow agent shall not be  
1712located outside the state unless, pursuant to the escrow agreement, the escrow agent submits to  
1713the jurisdiction of the division and the courts of this state for any cause of action arising from the  
1714escrow. Every escrow agent shall be independent of the developer, and no developer or any  
1715officer, director, affiliate, subsidiary, or employee of a developer may serve as escrow agent.  
1716Escrow funds may be invested only in securities of the United States or an agency thereof or in  
1717accounts in institutions the deposits of which are insured by an agency of the United States.

1718

1719 (9) Any developer who is subject to the provisions of this section is not subject to the  
1720provisions of s. 501.1375.

1721

1722 (10) Nothing in this section shall be construed to require any filing with the division in the  
1723case of condominiums other than residential condominiums.

1724

1725 (11) All funds deposited into escrow pursuant to subsection (1) or subsection (2) may be held  
1726in one or more escrow accounts by the escrow agent. If only one escrow account is used, the  
1727escrow agent must maintain separate accounting records for each purchaser and for amounts  
1728separately covered under subsections (1) and (2) and, if applicable, released to the developer  
1729pursuant to subsection (3). Separate accounting by the escrow agent of the escrow funds  
1730constitutes compliance with this section even if the funds are held by the escrow agent in a single  
1731escrow account. It is the intent of this subsection to clarify existing law.

1733

1734 **718.203 Warranties.—**

1735

1736 (1)The developer shall be deemed to have granted to the purchaser of each unit an implied  
1737warranty of fitness and merchantability for the purposes or uses intended as follows:

1738

1739 (a) As to each unit, a warranty for 3 years commencing with the completion of the building  
1740containing the unit.

1741

1742 (b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty  
1743which is for the same period as that provided by the manufacturer of the personal property,  
1744commencing with the date of closing of the purchase or the date of possession of the unit,  
1745whichever is earlier.

1746

1747 (c) As to all other improvements for the use of unit owners, a 3-year warranty commencing  
1748with the date of completion of the improvements.

1749

1750 (d) As to all other personal property for the use of unit owners, a warranty which shall be the  
1751same as that provided by the manufacturer of the personal property.

1752

1753 (e) As to the roof and structural components of a building or other improvements and as to  
1754mechanical, electrical, and plumbing elements serving improvements or a building, except  
1755mechanical elements serving only one unit, a warranty for a period beginning with the  
1756completion of construction of each building or improvement and continuing for 3 years thereafter  
1757or 1 year after owners other than the developer obtain control of the association, whichever  
1758occurs last, but in no event more than 5 years.

1759

1760 (f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of  
1761each unit for a period of 1 year from the date of closing of the purchase or the date of possession,  
1762whichever occurs first.

1763

1764 (2)The contractor, and all subcontractors and suppliers, grant to the developer and to the  
1765purchaser of each unit implied warranties of fitness as to the work performed or materials  
1766supplied by them as follows:

1767

1768 (a) For a period of 3 years from the date of completion of construction of a building or  
1769improvement, a warranty as to the roof and structural components of the building or  
1770improvement and mechanical and plumbing elements serving a building or an improvement,  
1771except mechanical elements serving only one unit.

1772

1773 (b) For a period of 1 year after completion of all construction, a warranty as to all other  
1774improvements and materials.

1775

1776 (3)“Completion of a building or improvement” means issuance of a certificate of occupancy,  
1777whether temporary or otherwise, that allows for occupancy or use of the entire building or  
1778improvement, or an equivalent authorization issued by the governmental body having  
1779jurisdiction. In jurisdictions where no certificate of occupancy or equivalent authorization is

1780issued, the term means substantial completion of construction, finishing, and equipping of the  
1781building or improvement according to the plans and specifications.

1782

1783 (4) These warranties are conditioned upon routine maintenance being performed, unless the  
1784maintenance is an obligation of the developer or a developer-controlled association.

1785

1786 (5) The warranties provided by this section shall inure to the benefit of each owner and his or  
1787her successor owners and to the benefit of the developer.

1788

1789 (6) Nothing in this section affects a condominium as to which rights are established by  
1790contracts for sale of 10 percent or more of the units in the condominium by the developer to  
1791prospective unit owners prior to July 1, 1974, or as to condominium buildings on which  
1792construction has been commenced prior to July 1, 1974.

1793

1794 (7) ~~Residential condominiums~~ Condominiums may be covered by an insured warranty program  
1795underwritten by a licensed insurance company registered in this state, provided that such  
1796warranty program meets the minimum requirements of this chapter; to the degree that such  
1797warranty program does not meet the minimum requirements of this chapter, such requirements  
1799shall apply.



1800 **718.301 Transfer of association control; claims of defect by association.—**

1801

1802 (1) If unit owners other than the developer own 15 percent or more of the units in a  
1803condominium that will be operated ultimately by an association, the unit owners other than the  
1804developer are entitled to elect at least one-third of the members of the board of administration of  
1805the association. Unit owners other than the developer are entitled to elect at least a majority of  
1806the members of the board of administration of an association, upon the first to occur of any of the  
1807following events:

1808

1809 (a) Three years after 50 percent of the units that will be operated ultimately by the association  
1810have been conveyed to purchasers;

1811

1812 (b) Three months after 90 percent of the units that will be operated ultimately by the  
1813association have been conveyed to purchasers;

1814

1815 (c) When all the units that will be operated ultimately by the association have been completed,  
1816some of them have been conveyed to purchasers, and none of the others are being offered for  
1817sale by the developer in the ordinary course of business;

1818

1819 (d) When some of the units have been conveyed to purchasers and none of the others are being  
1820constructed or offered for sale by the developer in the ordinary course of business;

1821

1822 (e) When the developer files a petition seeking protection in bankruptcy;

1823

1824 (f) When a receiver for the developer is appointed by a circuit court and is not discharged  
1825within 30 days after such appointment, unless the court determines within 30 days after  
1826appointment of the receiver that transfer of control would be detrimental to the association or its  
1827members; or

1828

1829 (g) Seven years after the date of the recording of the certificate of a surveyor and mapper  
1830pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the  
1831condominium which is not accompanied by a recorded assignment of developer rights in favor of  
1832the grantee of such unit, whichever occurs first; or, in the case of an association that may  
1833ultimately operate more than one condominium, 7 years after the date of the recording of the  
1834certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an  
1835instrument that transfers title to a unit which is not accompanied by a recorded assignment of  
1836developer rights in favor of the grantee of such unit, whichever occurs first, for the first  
1837condominium it operates; or, in the case of an association operating a phase condominium  
1838created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a  
1839surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers  
1840title to a unit which is not accompanied by a recorded assignment of developer rights in favor of  
1841the grantee of such unit, whichever occurs first.

1842

1843The developer is entitled to elect at least one member of the board of administration of an  
1844association as long as the developer holds for sale in the ordinary course of business at least 5  
1845percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more

1846than 500 units, of the units in a condominium operated by the association. After the developer  
1847relinquishes control of the association, the developer may exercise the right to vote any  
1848developer-owned units in the same manner as any other unit owner except for purposes of  
1849reacquiring control of the association or selecting the majority members of the board of  
1850administration.

1851

1852From and after July 1, 2025, paragraphs (a), (c), (d) and (g) shall not apply to nonresidential  
1853condominiums comprised of 10 or fewer units declared from and after such date.

1854

1855 (2) Within 75 days after the unit owners other than the developer are entitled to elect a  
1856member or members of the board of administration of an association, the association shall call,  
1857and give not less than 60 days' notice of an election for the members of the board of  
1858administration. The election shall proceed as provided in s. 718.112(2)(d). The notice may be  
1859given by any unit owner if the association fails to do so. Upon election of the first unit owner  
1860other than the developer to the board of administration, the developer shall forward to the  
1861division the name and mailing address of the unit owner board member.

1862

1863 (3) If a developer holds units for sale in the ordinary course of business, none of the following  
1864actions may be taken without approval in writing by the developer:

1865

1866 (a) Assessment of the developer as a unit owner for capital improvements.

1867

1868 (b) Any action by the association that would be detrimental to the sales of units by the  
1869developer. However, an increase in assessments for common expenses without discrimination  
1870against the developer shall not be deemed to be detrimental to the sales of units.

1871

1872 (4) At the time that unit owners other than the developer elect a majority of the members of  
1873the board of administration of an association, the developer shall relinquish control of the  
1874association, and the unit owners shall accept control. Simultaneously, or for the purposes of  
1875paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at  
1876the developer's expense, all property of the unit owners and of the association which is held or  
1877controlled by the developer, including, but not limited to, the following items, if applicable, as to  
1878each condominium operated by the association:

1879

1880 (a)1. The original or a photocopy of the recorded declaration of condominium and all  
1881amendments thereto. If a photocopy is provided, it must be certified by affidavit of the developer  
1882or an officer or agent of the developer as being a complete copy of the actual recorded  
1883declaration.

1884

1885 2. A certified copy of the articles of incorporation of the association or, if the association was  
1886created prior to the effective date of this act and it is not incorporated, copies of the documents  
1887creating the association.

1888

1889 3. A copy of the bylaws.

1890

1891 4. The minute books, including all minutes, and other books and records of the association, if  
1892any.

1893

1894 5. Any house rules and regulations that have been promulgated.

1895

1896 (b) Resignations of officers and members of the board of administration who are required to  
1897resign because the developer is required to relinquish control of the association.

1898

1899 (c) The financial records, including financial statements of the association, and source  
1900documents from the incorporation of the association through the date of turnover. The records  
1901must be audited for the period from the incorporation of the association or from the period  
1902covered by the last audit, if an audit has been performed for each fiscal year since incorporation,  
1903by an independent certified public accountant. All financial statements must be prepared in  
1904accordance with generally accepted accounting principles and must be audited in accordance  
1905with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy,  
1906pursuant to chapter 473. The accountant performing the audit shall examine to the extent  
1907necessary supporting documents and records, including the cash disbursements and related paid  
1908invoices to determine if expenditures were for association purposes and the billings, cash  
1909receipts, and related records to determine that the developer was charged and paid the proper  
1910amounts of assessments.

1911

1912 (d) Association funds or control thereof.

1913

1914 (e) All tangible personal property that is property of the association, which is represented by  
1915the developer to be part of the common elements or which is ostensibly part of the common  
1916elements, and an inventory of that property.

1917

1918 (f) A copy of the plans and specifications utilized in the construction or remodeling of  
1919improvements and the supplying of equipment to the condominium and in the construction and  
1920installation of all mechanical components serving the improvements and the site with a  
1921certificate in affidavit form of the developer or the developer's agent or an architect or engineer  
1922authorized to practice in this state that such plans and specifications represent, to the best of his  
1923or her knowledge and belief, the actual plans and specifications utilized in the construction and  
1924improvement of the condominium property and for the construction and installation of the  
1925mechanical components serving the improvements. If the condominium property has been  
1926declared a condominium more than 3 years after the completion of construction or remodeling of  
1927the improvements, the requirements of this paragraph do not apply.

1928

1929 (g) A list of the names and addresses of all contractors, subcontractors, and suppliers utilized  
1930in the construction or remodeling of the improvements and in the landscaping of the  
1931condominium or association property which the developer had knowledge of at any time in the  
1932development of the condominium.

1933

1934 (h) Insurance policies.

1935

1936 (i) Copies of any certificates of occupancy that may have been issued for the condominium  
1937property.

1938

1939 (j) Any other permits applicable to the condominium property which have been issued by  
1940governmental bodies and are in force or were issued within 1 year prior to the date the unit  
1941owners other than the developer took control of the association.

1942

1943 (k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if  
1944any, that are still effective.

1945

1946 (l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on  
1947the developer's records.

1948

1949 (m) Leases of the common elements and other leases to which the association is a party.

1950

1951 (n) Employment contracts or service contracts in which the association is one of the  
1952contracting parties or service contracts in which the association or the unit owners have an  
1953obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the  
1954person or persons performing the service.

1955

1956 (o) All other contracts to which the association is a party.

1957

1958 (p) Notwithstanding when the certificate of occupancy was issued or the height of the  
1959building, a turnover inspection report included in the official records, under seal of an architect  
1960or engineer authorized to practice in this state or a person certified as a reserve specialist or  
1961professional reserve analyst by the Community Associations Institute or the Association of  
1962Professional Reserve Analysts, and attesting to required maintenance, condition, useful life, and  
1963replacement costs of the following applicable condominium property:

1964

1965 1. Roof.

1966

1967 2. Structure, including load-bearing walls and primary structural members and primary  
1968structural systems as those terms are defined in s. 627.706.

1969

1970 3. Fireproofing and fire protection systems.

1971

1972 4.Plumbing.

1973

1974 5.Electrical systems.

1975

1976 6.Waterproofing and exterior painting.

1977

1978 7.Windows and exterior doors.

1979

1980 (q)Notwithstanding when the certificate of occupancy was issued or the height of the building,  
1981a turnover inspection report including in the official records, under seal of an architect or



1982engineer authorized to practice in this state or a person certified as a reserve specialist or  
1983professional reserve analyst by the Community Associations Institute or the Association of  
1984Professional Reserve Analysts, and attesting to required maintenance, condition, useful life, and  
1985replacement costs of the following applicable condominium property comprising a turnover  
1986inspection report:

1987

1988 1. Elevators.

1989

1990 2. Heating and cooling systems.

1991

1992 3. Swimming pool or spa and equipment.

1993

1994 4. Seawalls.

1995

1996 5. Pavement and parking areas.

1997

1998 6. Drainage systems.

1999

2000 7. Irrigation systems.

2001

2002 (r) A copy of the certificate of a surveyor and mapper recorded pursuant to s. 718.104(4)(e)  
2003or the recorded instrument that transfers title to a unit in the condominium which is not  
2004accompanied by a recorded assignment of developer rights in favor of the grantee of such unit,  
2005whichever occurred first.

2006

2007 (s) A copy of the association's most recent structural integrity reserve study.

2008

2009 (5) If, during the period prior to the time that the developer relinquishes control of the  
2010association pursuant to subsection (4), any provision of the Condominium Act or any rule  
2011promulgated thereunder is violated by the association, the developer is responsible for such  
2012violation and is subject to the administrative action provided in this chapter for such violation or  
2013violations and is liable for such violation or violations to third parties. This subsection is  
2014intended to clarify existing law.

2015

2016 (6) Prior to the developer relinquishing control of the association pursuant to subsection (4),  
2017actions taken by members of the board of administration designated by the developer are  
2018considered actions taken by the developer, and the developer is responsible to the association and  
2019its members for all such actions.

2020

2021 (7) In any claim against a developer by an association alleging a defect in design, structural  
2022elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element  
2023that requires a licensed professional for design or installation under chapter 455, chapter 471,  
2024chapter 481, chapter 489, or chapter 633, such defect must be examined and certified by an  
2025appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed  
2026Florida individual or entity.

2027

2028 (8) The division has authority to adopt rules pursuant to the Administrative Procedure Act to  
2029ensure the efficient and effective transition from developer control of a condominium to the  
2030establishment of a unit-owner-controlled association.  
2032

2033 **718.302** Agreements entered into by the association.—

2034

2035 (1) Any grant or reservation made by a declaration, lease, or other document, and any contract  
2036made by an association prior to assumption of control of the association by unit owners other  
2037than the developer, that provides for operation, maintenance, or management of a condominium  
2038association or property serving the unit owners of a condominium shall be fair and reasonable,  
2039and such grant, reservation, or contract may be canceled by unit owners other than the developer:  
2040

2041 (a) If the association operates only one condominium and the unit owners other than the  
2042developer have assumed control of the association, or if unit owners other than the developer  
2043own not less than 75 percent of the voting interests in the condominium (or 90 percent of the  
2044voting interests if the condominium is a nonresidential condominium consisting of 10 or fewer  
2045units), the cancellation shall be by concurrence of the owners of not less than 75 percent of the  
2046voting interests other than the voting interests owned by the developer. If a grant, reservation, or  
2047contract is so canceled and the unit owners other than the developer have not assumed control of  
2048the association, the association shall make a new contract or otherwise provide for maintenance,  
2049management, or operation in lieu of the canceled obligation, at the direction of the owners of not  
2050less than a majority of the voting interests in the condominium other than the voting interests  
2051owned by the developer.

2052

2053 (b) If the association operates more than one condominium and the unit owners other than the  
2054developer have not assumed control of the association, and if unit owners other than the  
2055developer own at least 75 percent of the voting interests in ~~a condominium~~ condominiums  
2056operated by the association (or from and after July 1, 2025, 90 percent of the voting interests if  
2057the condominium is a nonresidential condominium consisting of 10 or fewer units), any grant,  
2058reservation, or contract for maintenance, management, or operation of buildings containing the  
2059units in that condominium or of improvements used only by unit owners of that condominium  
2060may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the  
2061condominium (or 90 percent of the voting interests if the condominium is a nonresidential  
2062condominium consisting of 10 or fewer units) other than the voting interests owned by the  
2063developer. No grant, reservation, or contract for maintenance, management, or operation of  
2064recreational areas or any other property serving more than one condominium, and operated by  
2065more than one association, may be canceled except pursuant to paragraph (d).

2066

2067 (c) If the association operates more than one condominium and the unit owners other than the  
2068developer have assumed control of the association, the cancellation shall be by concurrence of  
2069the owners of not less than 75 percent of the total number of voting interests in all  
2070condominiums operated by the association other than the voting interests owned by the  
2071developer.

2072

2073 (d) If the owners of units in a condominium have the right to use property in common with  
2074owners of units in other condominiums and those condominiums are operated by more than one  
2075association, no grant, reservation, or contract for maintenance, management, or operation of the  
2076property serving more than one condominium may be canceled until unit owners other than the  
2077developer have assumed control of all of the associations operating the condominiums that are to  
2078be served by the recreational area or other property, after which cancellation may be effected by



2079 concurrence of the owners of not less than 75 percent of the total number of voting interests in  
2080 those condominiums other than voting interests owned by the developer.

2081

2082 (2) Any grant or reservation made by a declaration, lease, or other document, or any contract  
2083 made by the developer or association prior to the time when unit owners other than the developer  
2084 elect a majority of the board of administration, which grant, reservation, or contract requires the  
2085 association to purchase condominium property or to lease condominium property to another  
2086 party, shall be deemed ratified unless rejected by a majority of the voting interests of unit owners  
2087 other than the developer within 18 months after unit owners other than the developer elect a  
2088 majority of the board of administration. This subsection does not apply to any grant or  
2089 reservation made by a declaration whereby persons other than the developer or the developer's  
2090 heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the  
2091 condominium property, so long as such persons are obligated to pay, at a minimum, a  
2092 proportionate share of the cost associated with such property.

2093

2094 (3) Any grant or reservation made by a declaration, lease, or other document, and any contract  
2095 made by an association, whether before or after assumption of control of the association by unit  
2096 owners other than the developer, that provides for operation, maintenance, or management of a  
2097 condominium association or property serving the unit owners of a condominium shall not be in  
2098 conflict with the powers and duties of the association or the rights of the unit owners as provided  
2099 in this chapter. This subsection is intended only as a clarification of existing law.

2100

2101 (4) Any grant or reservation made by a declaration, lease, or other document, and any contract  
2102 made by an association prior to assumption of control of the association by unit owners other  
2103 than the developer, shall be fair and reasonable.

2104

2105 (5) It is declared that the public policy of this state prohibits the inclusion or enforcement of  
2106 escalation clauses in management contracts for condominiums, and such clauses are hereby  
2107 declared void for public policy. For the purposes of this section, an escalation clause is any  
2108 clause in a condominium management contract which provides that the fee under the contract  
2109 shall increase at the same percentage rate as any nationally recognized and conveniently  
2110 available commodity or consumer price index.

2111

2112 (6) Any action to compel compliance with the provisions of this section or of s. 718.301 may  
2113 be brought pursuant to the summary procedure provided for in s. 51.011. In any such action  
2114 brought to compel compliance with the provisions of s. 718.301, the prevailing party is entitled  
2115 to recover reasonable attorney's fees.

Document comparison by Workshare Compare on Thursday, November 9, 2023  
11:07:32 AM

Input:	
Document 1 ID	iManage://dms.bilzin.com/miami/11018388/1
Description	#11018388v1<dms.bilzin.com> - Proposed Changes to Ch 718 - Nonresidential Condominiums (Clean SB 154 version)
Document 2 ID	iManage://dms.bilzin.com/miami/11018089/1
Description	#11018089v1<dms.bilzin.com> - Proposed Changes to Ch 718 - Nonresidential Condominiums(10345663.9)
Rendering set	Bilzin

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	47
Deletions	36
Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	87

# ATTACHMENT 10

## WHITE PAPER

### PROPOSED REVISIONS TO PARTS I – III OF CHAPTER 718 REGARDING NONRESIDENTIAL CONDOMINIUMS

#### I. SUMMARY

Chapter 718 of the Condominium Act (“Act”) enacted in 1976 made little or no distinction between residential and nonresidential condominiums, nonresidential condominiums appearing more or less as an afterthought.

The Act did recognize that Part V, dealing with the sale of condominium units, should not apply to nonresidential condominiums in limiting it to residential condominiums. Subsequent legislation on conversions, the Roth Act, added as Part VI, dealing with conversions of residential rental projects to condominium ownership, also recognized the distinction. Additional legislation adopted in 2014 limited some of the regulatory constraints imposed by the statute to residential condominiums.

As the use of nonresidential condominiums has broadened, however it has become evident to practitioners in the field that existing regulation of nonresidential condominiums is still too restrictive in some instances so that further constraints should be lifted and, in certain cases, provisions benefitting residential condominiums should also be extended to nonresidential condominiums.

#### II. CURRENT SITUATION

Most provisions of the Condominium Act establish, for both residential and nonresidential condominiums, the manner of creation and operation of a condominium regime. In most cases, the Act does not distinguish between residential and nonresidential condominiums but certain operating procedures do not fit well with the operation of nonresidential condominiums. Rather, these procedures, designed to insure appropriate operation of residential condominiums, serve merely as an unwarranted straightjacket impeding potential flexibility for the operation of a commercial venture.

The proposed legislation would eliminate certain residentially-oriented operational requirements that needlessly and adversely affect the operation of nonresidential condominiums while offering nonresidential condominiums some of the benefits available only to residential condominiums.

#### III. SECTION-BY-SECTION ANALYSIS

1. Section 718.110(4) is amended to permit declaration amendments that materially change the configuration or size of any unit, alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium in nonresidential condominiums to provide them with flexibility in rearranging their interior building spaces.

2. Section 718.110(10) has been modified for communication to unit owners replacing “last known residence” with the address in the association’s records to accommodate nonresidential condominiums.
3. Section 718.112(2)(d)10 has been modified for all associations operating nonresidential condominiums to provide for different voting and election procedures in their bylaws.
4. Section 718.117(3) has been modified to clarify that nonresidential condominiums are not subject to monitoring by the Division.
5. Section 718.202 is modified to permit in subsection (1) the first 10% of sales deposits in a nonresidential condominium to be used in construction if the developer delivers to an escrow agent a surety bond or irrevocable letter of credit in a comparable amount consistent with the standard set for developers of residential condominiums.
6. Section 718.203(7) has been modified to clarify that all condominiums may be covered by an insured warranty program, not only residential condominiums.
7. Section 718.301(1), relating to mandatory transfers of association control, has been modified so that the trigger events listed in subparagraphs (a), (c), (d) and (g) relating to changes in unit owner control do not apply to nonresidential condominiums comprised of 10 or fewer units.
8. Section 718.302(1), relating to termination of agreements entered into by a developer controlled association, has been modified to increase the percentage of owners to 90 percent of the voting interests if the condominium is a nonresidential condominium comprised of 10 or fewer units.

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

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

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

The passage of these proposals will improve operation of nonresidential condominium associations, thereby facilitating the expansion and use of nonresidential condominiums for development of commercial and industrial properties.

#### **VI. CONSTITUTIONAL ISSUES**

There are no known constitutional issues resulting from this proposal.

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

There are no other parties that are known to have an interest in this proposal.

**Real Property, Probate and Trust Law Section**  
Standing Legislative Positions for Executive Council Renewal  
@ June 1, 2024 Meeting

[CLEAN COPY]

**1. Probate, Trust & Guardianship / Estate Planning**

- a. Opposes the expansion of classes that are to serve as agents under a power of attorney beyond the current class of individuals and financial institutions with trust powers.
- b. Supports legislation to provide for alienation of plan benefits under the Florida Retirement System (§121.131 and §121.091 Florida Statutes) Municipal Police Pensions (§185.25 Florida Statutes) and Firefighter Pensions (§175.241 Florida Statutes) in a dissolution proceeding and authorizing such alienation of benefits in a dissolution of marriage under §61.076 Florida Statutes.
- c. Supports legislation to (1) change the titles of §222.11 Florida Statutes to clearly reflect that this statute applies to earnings and is not limited to “wages” (2) provide an expanded definition of “earnings” because the term “wages” is not the exclusive method of compensation and (3) add deferred compensation to the exemption statute.
- d. Supports enactment of new Section 689.151 to the Florida Statutes to: (1) permit an owner of personal property to create a tenancy by the entireties by a direct transfer to the owner and owner's spouse, or a joint tenancy with right of survivorship by a direct transfer to the owner and another person or persons, without requiring an intermediate transfer through a strawman, (2) permit joint tenants to hold unequal shares or interests in personal property in a joint tenancy with right of survivorship while retaining the right of survivorship, (3) and facilitate proving the existence of tenancies by the entireties and joint tenancies with right of survivorship in personal property by codifying and clarifying existing common law evidentiary presumptions.
- e. Supports legislation to amend Fla. Stat. Sec 198.41 to render Chapter 198 (which imposes the Florida estate tax) ineffective for as long as there is no federal state death tax credit or no federal generation-skipping transfer tax credit allowable under the Internal Revenue Code of 1986, as amended.
- f. Supports proposed legislation which would amend Section 117.201, Florida Statutes, to create a definition of "witness" (when used as a noun) for purposes of remote online notarization and witnessing of electronic documents.

**2. Probate, Trust & Guardianship / Guardianship & Advance Directives**

- a. Supports legislation to amend the Baker Act to include a provision under which a guardian may request that the court grant the guardian the authority to involuntarily hospitalize a ward pursuant to the Baker Act.
- b. Opposes the adoption of summary guardianship proceedings outside the protections of



Chapter 744, Florida Statutes.

- c. Opposes amendments to F.S. §393.12 that would (i) remove the existing requirement that a guardian advocate for a developmentally disabled adult must be represented by an attorney if the guardian advocate is delegated authority to manage property, (ii) remove the existing requirement that the petition to appoint a guardian advocate must disclose the identity of the proposed guardian advocate, and (iii) expand the list of individuals entitled to receive notice of the guardian advocate proceedings.
- d. Supports clarification of the definition of “income” for calculating Veterans guardianship fees, including an amendment to §744.604, Fla. Stat.
- e. Supports amendments to the Florida Guardianship Law to protect the interest of incapacitated persons, especially minor wards, by making settlements on their behalf confidential.
- f. Opposes the expansion of chapter 709 to include the authority of a parent to assign the custody and control of a minor child through a power of attorney unless proper procedural safeguards are included to assure the proper care and welfare of the minor children are included.
- g. Supports creation of new statutory procedures for the service of examining committee reports and deadlines for the service and filing of objections to such reports in incapacity proceedings, including revision to s. 744.331, F.S.
- h. Supports proposed legislation to recognize Physician Orders for Life Sustaining Treatment (POLST) or Patient Directed Doctor’s Orders (PDDO’s) under Florida law with appropriate protections to prevent violations of due process for the benefit of the citizens of Florida and the protection of medical professionals and emergency responders who withhold or withdraw treatment based upon POLST, including the amendment of ss. 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, 765.205, 456.072, and the creation of s.401.46, F.S.; and opposes efforts to adopt POLST (Physician Ordered Life Sustaining Treatment) or Patient Directed Doctor’s Orders (PDDO’s) in Florida without appropriate procedural safeguards to protect the wishes of patients and prior advance directives made by the patient.
- i. Opposes amendment to the Florida Constitution which would prevent removal of rights of a person based upon mental disability or mental incapacity unless appropriate safeguards to protect existing guardianship and mental health statutes are included and which would allow the legislature to establish laws which are intended to protect the welfare of the person and which comply with due process.
- j. Supports amendment to Florida Statutes §744.3701 to clarify existing law on the standard for court’s ordering the production of confidential documents in guardianship proceedings and the parties who have the right to access confidential documents without court order.
- k. Supports amendment to Florida Statutes, including Florida Statutes § 744.331, amending the current statutory procedure for dismissal of a petition to determine incapacity to require



a unanimous finding by the examining committee that a person is not incapacitated and creating a new statutory procedure which would allow for the presentation of additional evidence before a petition to determine incapacity is dismissed in the event that there is a unanimous finding of the examining committee that a person is not incapacitated.

- l. Supports amendment to Florida Statutes, including Florida Statutes § 744.1097, to specifically address venue for the appointment of a guardian in minor guardianships proceedings.
- m. Opposes Florida's adoption of the Uniform Guardianship and Protective Proceedings Jurisdiction Act (including the Florida Guardianship and Protective Proceedings Jurisdiction Act) unless the act is substantially revised to provide for better due process protections for incapacitated individuals more consistent with Florida's laws and rewritten with vocabulary consistent with Florida's guardianship laws.
- n. Supports a revision to Florida's Guardianship Law through the proposed Florida Guardianship Code to modernize Florida's current guardianship laws in order to increase the protections for incapacitated individuals in Florida, to reduce the cost and expense associated with guardianship proceedings, to increase review and oversight of private and professional guardians, and to install procedural components to allow for remote proceedings in light of the recent pandemic.
- o. Supports 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 and oppose legislation that would:
  - a. allow for jury trials in proceedings initiated under Chapter 744,
  - b. allow for trials in proceedings related to contesting the validity of wills or revocable trusts prior to the death of the testator/settlor, except as otherwise provided by law,
  - c. require the re-evaluation of wards without the filing of a suggestion of capacity or the exercise of the court's discretion,
  - d. require a guardianship proceeding to be transferred to a new judge after the establishment of a guardianship without a substantive basis, or
  - e. 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. (Added 12/1/2023)

### **3. Probate, Trust & Guardianship / Probate**

- a. Opposes any efforts to enact a statutory will.
- b. Opposes amendment to §733.302, F. S., to expand the class of non-residents which may serve as personal representative because of a concern that any addition to the class may subject the entire statute to a renewed constitutional challenge.
- c. Supports clarification of a person's rights to direct disposition of his or her remains, providing guidance to courts and family members, especially when disputes arise, and absent specific directions, clarifying who is authorized to decide the place and manner of the disposition of a decedent's remains, including an amendment replacing F.S. § 732.804.

- d. Supports proposed legislation allowing a testator to deposit their original will with the clerk's office for safekeeping during their lifetime, and for other custodians to deposit original wills with the clerk for safekeeping when the testator cannot be located.
- e. Opposes legislation that would permit remote notarization or remote witnessing of all estate and incapacity planning instruments and related spousal waivers (including electronic wills, powers of attorney, living wills, advance directives, and trust instruments having testamentary aspects), unless such legislation is amended: (a) to safeguard the citizens of Florida from fraud and exploitation; (b) to include protections to ensure the integrity, security, and authenticity of a remotely notarized or remotely witnessed instrument; and (c) to require witnesses be physically present when such documents are executed or other procedures to protect the citizens of Florida, particularly vulnerable adults and the elderly who may have diminished mental capacity or be susceptible to fraud, undue influence, coercion, or duress.
- f. Opposes proposed legislation that would allow banks or other financial institutions in Florida to distribute funds from any account in the name of the decedent (with no pay-on-death or survivor designation) in the absence of an appropriate probate proceeding or other court proceeding, unless safeguards are put in place to protect the rights and interests of persons rightfully entitled to the proceeds, the constitutional rights of the decedent to direct the disposition of his or her property, and the rights of creditors to recover debts through a probate proceeding.
- g. Supports proposed legislation amending Section 733.610, Florida Statutes, by expanding the categories of entities and persons related to the personal representative for purposes of determining whether the personal representative, or someone sufficiently related to the personal representative for conflict purposes, hold a substantial beneficial or ownership interest that could create a conflict of interest when engaging in a sale, encumbrance, or other transaction.
- h. Supports proposed legislation relating to electronic wills and to the testamentary aspects of electronic revocable trusts, that retains the requirement that two subscribing witnesses sign in the physical presence of the testator and provides for protections to ensure the integrity, security, and authenticity of an electronically signed will or trust.
- i. Opposes amendments to the personal representative and trustee attorney fee compensation statutes contained in the Florida Probate Code and the Florida Trust Code unless the amendments preserve the policies currently reflected in each of those codes.
- j. Supports legislation clarifying existing Florida law by statutorily exempting title disputes arising under the Florida Uniform Disposition of Community Property Rights at Death Act ("Act") from Florida's probate creditor claims procedure; creating a new dispute resolution mechanism and 2-year statute of repose.
- k. specifically designed for title disputes arising under the Act, and making narrowly focused modifications to the Act and other related provisions of the Florida Probate Code to reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

#### **4. Probate, Trust & Guardianship / Trust**

- a. Opposes legislation abrogating a trustee's duties of loyalty and duties of full and fair disclosure in connection with affiliated investments by a corporate trustee.
- b. Supports proposed amendments to F.S. Chapter 736, which provide much needed clarification and guidance regarding the applicability of constitutional devise restrictions and exemption from creditors' claims provisions, as well as the timing and method of passage of title to homestead real property, when that homestead real property is devised through a revocable trust at the time of a settlor's death, including amendment to F.S. §736.0103, the creation of F.S. §736.0508, and the creation of F.S. §736.08115.
- c. Supports proposed legislation which would amend s. 736.0708(1), F.S., to provide that when multiple trustees serve together as cotrustees, each cotrustee is entitled to reasonable compensation and that the aggregate compensation charged by all the trustees may be greater than reasonable compensation for a single trustee.
- d. Supports proposed amendments to ss. 736.08135(3) and 736.1008(3), F.S., to clarify the duty of a Trustee to account to the qualified beneficiaries of a trust and the form and content of a trust accounting prepared on or after July 1, 2017, and to clarify that the period for which qualified beneficiaries can seek trust accountings.
- e. Supports proposed legislation to update Florida's Uniform Principal and Income Act, which generally follows the new Uniform Fiduciary Income and Principal Act, in order to achieve greater consistency among state laws, but including certain modifications that reflect Florida public policy choices.

#### **5. Probate, Trust & Guardianship / Miscellaneous**

- a. Opposes the amendment of Ch. 726, F.S., by replacing the Uniform Fraudulent Transfer Act with the Uniform Voidable Transactions Act (the "UVTA") unless changes are made to protect the rights of Florida citizens to engage in certain sound and legitimate business, estate, and tax planning techniques and transactions which are currently permitted under Florida law; which do not hinder, delay or defraud creditors; and which do not enhance or diminish the utilization of self-settled spendthrift trusts or single- member limited liability companies by Florida citizens.

## **6. Real Property / Condominiums and Planned Developments**

a. Supports amendments to Chapter 718, Florida Statutes, Condominiums, and Chapter 719 Florida Statutes, Cooperatives, to require that engineers, architects and other design professionals and manufacturers warrant the fitness of the work they perform on condominiums or cooperatives.

b. Opposes amendments to Chapter 720, F.S., that would require both pre-suit mediation and pre-suit arbitration before filing a civil action over homeowners' association disputes.

c. Supports legislation providing for electrical elements to three-year warranty, extend subcontractor and supplier warranties to the contractor and to clarify start date for five-year warranty deadline set forth in F.S. §718.203(1)(e).

d. Supports clarification of Ch 718, F.S.: to confirm that certain operational provisions do not apply to nonresidential condominium associations; to define "nonresidential condominiums;" to clarify that the Division's arbitration program only pertains to residential condominiums; to provide an effective date.

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

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

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

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

i. Opposes creation of criminal penalties for violations of statutes pertaining to condominium association official records and condominium association elections, as well as any change to create criminal penalties for any violation of the Florida Condominium Act for which a criminal penalty does not already exist, including changes to §718.111(12) F.S., and creation of new statutory provisions within Ch. 718 F.S., or otherwise.

j. Supports replacing mandatory presuit arbitration with the Division of Condominiums for certain disputes between a condominium association and unit owner with mandatory presuit private mediation, including a change to Fla. Stat. 34.01, 718.013, 718.112, 718.117, 718.1255, 718.303, 720.303, 720.306 and 720.311.

k. Opposes continuing to allow fines in excess of \$1,000 in homeowner associations to become liens for non-monetary damages against the parcel that can be foreclosed, including a change to Fla. Stat. 720.305(2).

l. Supports legislation to clarify that a condominium association has the right to represent its unit

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

m. Supports legislation amending Section 718.113 and Section 718.115 to clarify and enhance the ability of condominium associations and condominium unit owners to use hurricane shutters and other types of hurricane protection to protect condominium property, association property and the personal property of unit owners, and reduce insurance costs for condominium associations and unit owners

n. Supports legislation resolving technical inconsistencies and errors within Chapters 718 and 720, Florida Statutes, that have arisen due to multiple revisions of the Chapters and to provide additional clarification as to how Chapters 718 and 720 are to be applied.

## **7. Real Property / Contracts and Disclosures**

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

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

## **8. Real Property / Corporations and LLCs**

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

## **9. Real Property / Courts**

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

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

## **10. Real Property / Foreclosures and Judicial Sales**

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

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

c. Supports legislation that will expand the finality of foreclosure judgments provided by §702.036 Fla. Stat. (2021) to include liens other than mortgage foreclosures, such as community association liens and construction liens. (Added 10/24/2022)

## **11. Real Property / Liens and Encumbrances**

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

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

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

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

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

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

g. Supports proposed legislation to: (1) clarify that the interest of a lessor is not subject to improvements made by the lessee of a mobile home lot in s. 713.10, F.S.; and (2) eliminate ambiguity regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording, including an amendment to s.713.13, F.S.

h. Supports legislative changes to construction lien law in the state of Florida, including changes to Fla. Stat. Ch. 255 and 713.

## **12. Real Property / Miscellaneous**

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



b. Opposes legislation authorizing the use of security deposit replacement products (aka fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices. (Added 10/24/2022)

**13. Real Property / Property Rights**

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

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

c. Supports legislation to provide a statutory definition for Ejectment actions, provide for jurisdiction in the circuit courts for such actions, eliminate any ambiguity over whether pre-suit notice is required in such actions, and update the language in the existing Ejectment statute.

d. Supports proposed legislation expanding applicability of §697.07 (Assignment of Rents) and §702.10 (Order to Make Payments During Foreclosure) to third parties who acquire properties subject to a mortgage.

**14. Real Property / Recording**

a. Opposes legislation that impairs the integrity of the recording system in the State of Florida.

**15. Real Property / Title Insurance**

a. Opposes any portion of the National Association of Insurance Commissioners Title Insurers Model Act and Title Insurance Agent Model Act that may adversely affect Florida attorneys' ability to participate in real estate closing and the issuance of title insurance.

b. Opposes adoption of a "file and use" system for the determination of title insurance rates in the State of Florida, supplanting a promulgated rate system in which the state regulatory agency determines rates based on actuarial analysis of statutorily determined criteria.

c. Opposes elimination of the requirement that title insurance agencies deposit securities having a value of \$35,000 or a bond in that amount for the benefit of any title insurer damaged by an agency's violation of its contract with the insurer.



**Real Property, Probate and Trust Law Section**  
Standing Legislative Positions for Executive Council Renewal  
@ June 1, 2024 Meeting  
**[REDLINE]**

**1. Probate, Trust & Guardianship / Estate Planning**

- a. Opposes the expansion of classes that are to serve as agents under a power of attorney beyond the current class of individuals and financial institutions with trust powers.
- b. Supports legislation to provide for alienation of plan benefits under the Florida Retirement System (§121.131 and §121.091 Florida Statutes) Municipal Police Pensions (§185.25 Florida Statutes) and Firefighter Pensions (§175.241 Florida Statutes) in a dissolution proceeding and authorizing such alienation of benefits in a dissolution of marriage under §61.076 Florida Statutes.
- c. Supports legislation to (1) change the titles of §222.11 Florida Statutes to clearly reflect that this statute applies to earnings and is not limited to “wages” (2) provide an expanded definition of “earnings” because the term “wages” is not the exclusive method of compensation and (3) add deferred compensation to the exemption statute.
- d. Supports enactment of new Section 689.151 to the Florida Statutes to: (1) permit an owner of personal property to create a tenancy by the entireties by a direct transfer to the owner and owner's spouse, or a joint tenancy with right of survivorship by a direct transfer to the owner and another person or persons, without requiring an intermediate ~~transfer~~ through a strawman, (2) permit joint tenants to hold unequal shares or interests in personal property in a joint tenancy with right of survivorship while retaining the right of survivorship, (3) and facilitate proving the existence of tenancies by the entireties and joint tenancies with right of survivorship in personal property by codifying and clarifying existing common law evidentiary presumptions.
- e. Supports legislation to amend Fla. Stat. Sec 198.41 to render Chapter 198 (which imposes the Florida estate tax) ineffective for as long as there is no federal state death tax credit or no federal generation-skipping transfer tax credit allowable under the Internal Revenue Code of 1986, as amended.
- f. Supports proposed legislation which would amend Section 117.201, Florida Statutes, to create a definition of "witness" (when used as a noun) for purposes of remote online notarization and witnessing of electronic documents.

**2. Probate, Trust & Guardianship / Guardianship & Advance Directives**

- a. Supports legislation to amend the Baker Act to include a provision under which a guardian may request that the court grant the guardian the authority to involuntarily hospitalize a ward pursuant to the Baker Act.
- b. Opposes the adoption of summary guardianship proceedings outside the protections of Chapter 744, Florida Statutes.
- c. Opposes amendments to F.S. §393.12 that would (i) remove the existing requirement that a guardian advocate for a developmentally disabled adult must be represented by <sup>242</sup>an

attorney if the guardian advocate is delegated authority to manage property, (ii) remove the existing requirement that the petition to appoint a guardian advocate must disclose the identity of the proposed guardian advocate, and (iii) expand the list of individuals entitled to receive notice of the guardian advocate proceedings.

- d. Supports clarification of the definition of “income” for calculating Veterans guardianship fees, including an amendment to §744.604, Fla. Stat.
- e. Supports amendments to the Florida Guardianship Law to protect the interest of incapacitated persons, especially minor wards, by making settlements on their behalf confidential.
- f. Opposes the expansion of chapter 709 to include the authority of a parent to assign the custody and control of a minor child through a power of attorney unless proper procedural safeguards are included to assure the proper care and welfare of the minor children are included.
- g. Supports creation of new statutory procedures for the service of examining committee reports and deadlines for the service and filing of objections to such reports in incapacity proceedings, including revision to s. 744.331, F.S.
- h. Supports proposed legislation to recognize Physician Orders for Life Sustaining Treatment (POLST) or Patient Directed Doctor's Orders (PDDO's) under Florida law with appropriate protections to prevent violations of due process for the benefit of the citizens of Florida and the protection of medical professionals and emergency responders who withhold or withdraw treatment based upon POLST, including the amendment of ss. 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, 765.205, 456.072, and the creation of s.401.46, F.S.; and opposes efforts to adopt POLST (Physician Ordered Life Sustaining Treatment) or Patient Directed Doctor's Orders (PDDO's) in Florida without appropriate procedural safeguards to protect the wishes of patients and prior advance directives made by the patient.
- i. Opposes amendment to the Florida Constitution, ~~including Commission Proposal 30~~, which would prevent removal of rights of a person based upon mental disability or mental incapacity unless appropriate safeguards to protect existing guardianship and mental health statutes are included and which would allow the legislature to establish laws which are intended to protect the welfare of the person and which comply with due process.
- j. Supports amendment to Florida Statutes §744.3701 to clarify existing law on the standard for court's ordering the production of confidential documents in guardianship proceedings and the parties who have the right to access confidential documents without court order.
- k. Supports amendment to Florida Statutes, including Florida Statutes § 744.331, amending the current statutory procedure for dismissal of a petition to determine incapacity to require a unanimous finding by the examining committee that a person is not incapacitated and creating a new statutory procedure which would allow for the presentation of additional evidence before a petition to determine incapacity is dismissed in the event that there is a unanimous finding of the examining committee that a person is not incapacitated.
- l. Supports amendment to Florida Statutes, including Florida Statutes § 744.1097,<sup>248</sup>

specifically address venue for the appointment of a guardian in minor guardianship proceedings.

- m. Opposes Florida's adoption of the Uniform Guardianship and Protective Proceedings Jurisdiction Act (including the Florida Guardianship and Protective Proceedings Jurisdiction Act) unless the act is substantially revised to provide for better due process protections for incapacitated individuals more consistent with Florida's laws and rewritten with vocabulary consistent with Florida's guardianship laws.
- n. Supports a revision to Florida's Guardianship Law through the proposed Florida Guardianship Code to modernize Florida's current guardianship laws in order to increase the protections for incapacitated individuals in Florida, to reduce the cost and expense associated with guardianship proceedings, to increase review and oversight of private and professional guardians, and to install procedural components to allow for remote proceedings in light of the recent pandemic.
- o. Supports 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 and oppose legislation that would:
  - a. allow for jury trials in proceedings initiated under Chapter 744,
  - b. allow for trials in proceedings related to contesting the validity of wills or revocable trusts prior to the death of the testator/settlor, except as otherwise provided by law,
  - c. require the re-evaluation of wards without the filing of a suggestion of capacity or the exercise of the court's discretion,
  - d. require a guardianship proceeding to be transferred to a new judge after the establishment of a guardianship without a substantive basis, or
  - e. 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. (Added 12/1/2023)

### **3. Probate, Trust & Guardianship / Probate**

- a. Opposes any efforts to enact a statutory will.
- b. Opposes amendment to §733.302, F. S., to expand the class of non-residents which may serve as personal representative because of a concern that any addition to the class may subject the entire statute to a renewed constitutional challenge.
- c. Supports clarification of a person's rights to direct disposition of his or her remains, providing guidance to courts and family members, especially when disputes arise, and absent specific directions, clarifying who is authorized to decide the place and manner of the disposition of a decedent's remains, including an amendment replacing F.S. § 732.804.

- d. Supports proposed legislation allowing a testator to deposit their original will with the clerk's office for safekeeping during their lifetime, and for other custodians to deposit original wills with the clerk for safekeeping when the testator cannot be located.
- e. Opposes legislation, ~~including 2019 Florida Senate Bill 548 and House Bill 409~~, that would permit remote notarization or remote witnessing of all estate and incapacity planning instruments and related spousal waivers (including electronic wills, powers of attorney, living wills, advance directives, and trust instruments having testamentary aspects), unless such legislation is amended:—: (a) to safeguard the citizens of Florida from fraud and exploitation; (b) to include protections to ensure the integrity, security, and authenticity of a remotely notarized or remotely witnessed instrument; and (c) to require witnesses be physically present when such documents are executed or other procedures to protect the citizens of Florida, particularly vulnerable adults and the elderly who may have diminished mental capacity or be susceptible to fraud, undue influence, coercion, or duress.
- f. Opposes proposed legislation that would allow banks or other financial institutions in Florida to distribute funds from any account in the name of the decedent (with no pay-on-death or survivor designation) in the absence of an appropriate probate proceeding or other court proceeding, unless safeguards are put in place to protect the rights and interests of persons rightfully entitled to the proceeds, the constitutional rights of the decedent to direct the disposition of his or her property, and the rights of creditors to recover debts through a probate proceeding.
- g. Supports proposed legislation amending Section 733.610, Florida Statutes, by expanding the categories of entities and persons related to the personal representative for purposes of determining whether the personal representative, or someone sufficiently related to the personal representative for conflict purposes, hold a substantial beneficial or ownership interest that could create a conflict of interest when engaging in a sale, encumbrance, or other transaction.
- h. Supports proposed legislation relating to electronic wills and to the testamentary aspects of electronic revocable trusts, that retains the requirement that two subscribing witnesses sign in the physical presence of the testator and provides for protections to ensure the integrity, security, and authenticity of an electronically signed will or trust.
- i. Opposes amendments to the personal representative and trustee attorney fee compensation statutes contained in the Florida Probate Code and the Florida Trust Code unless the amendments preserve the policies currently reflected in each of those codes.
- j. Supports legislation clarifying existing Florida law by statutorily exempting title disputes arising under the Florida Uniform Disposition of Community Property Rights at Death Act ("Act") from Florida's probate creditor claims procedure; creating a new dispute resolution mechanism and 2-year statute of repose.

- k. specifically designed for title disputes arising under the Act, and making narrowly focused modifications to the Act and other related provisions of the Florida Probate Code to reduce the risk of unintended forfeitures of the property rights the Act is intended to preserve.

#### **4. Probate, Trust & Guardianship / Trust**

- a. Opposes legislation abrogating a trustee's duties of loyalty and duties of full and fair disclosure in connection with affiliated investments by a corporate trustee.
- b. Supports proposed amendments to F.S. Chapter 736, which provide much needed clarification and guidance regarding the applicability of constitutional devise restrictions and exemption from creditors' claims provisions, as well as the timing and method of passage of title to homestead real property, when that homestead real property is devised through a revocable trust at the time of a settlor's death, including amendment to F.S. §736.0103, the creation of F.S. §736.0508, and the creation of F.S. §736.08115.
- c. Supports proposed legislation which would amend s. 736.0708(1), F.S., to provide that when multiple trustees serve together as cotrustees, each cotrustee is entitled to reasonable compensation and that the aggregate compensation charged by all the trustees may be greater than reasonable compensation for a single trustee.
- d. Supports proposed amendments to ss. 736.08135(3) and 736.1008(3), F.S., to clarify the ~~dutty~~duty of a Trustee to account to the qualified beneficiaries of a trust and the form and content of a trust accounting prepared on or after July 1, 2017, and to clarify that the period for which qualified beneficiaries can seek trust accountings.
- e. Supports proposed legislation to update Florida's Uniform Principal and Income Act, which generally follows the new Uniform Fiduciary Income and Principal Act, in order to achieve greater consistency among state laws, but including certain modifications that reflect Florida public policy choices.

#### **5. Probate, Trust & Guardianship / Miscellaneous**

- a. Opposes the amendment of Ch. 726, F.S., by replacing the Uniform Fraudulent Transfer Act with the Uniform Voidable Transactions Act (the "UVTA") unless changes are made to protect the rights of Florida citizens to engage in certain sound and legitimate business, estate, and tax planning techniques and transactions which are currently permitted under Florida law; which do not hinder, delay or defraud creditors; and which do not enhance or diminish the utilization of self-settled spendthrift trusts or single-member limited liability companies by Florida citizens.
- ~~b. Supports proposed legislation protecting Florida residents from unintentionally assigning, pledging or waiving rights to assets that otherwise are exempt from legal process under Chapter 222 of the Florida Statutes by implementing clearly defined requirements for~~

~~waiving the protection of such exemptions.~~

## **6. Real Property / Condominiums and Planned Developments**

- a. Supports amendments to Chapter 718, Florida Statutes, Condominiums, and Chapter 719 Florida Statutes, Cooperatives, to require that engineers, architects and other design professionals and manufacturers warrant the fitness of the work they perform on condominiums or cooperatives.
- b. Opposes amendments to Chapter 720, F.S., that would require both pre-suit mediation and pre-suit arbitration before filing a civil action over homeowners' association disputes.
- c. Supports legislation providing for electrical elements to three-year warranty, extend subcontractor and supplier warranties to the contractor and to clarify start date for five-year warranty deadline set forth in F.S. §718.203(1)(e).
- d. Supports clarification of Ch 718, F.S.: to confirm that certain operational provisions do not apply to nonresidential condominium associations; to define "nonresidential condominiums;" to clarify that the Division's arbitration program only pertains to residential condominiums; to provide an effective date.
- e. Supports legislation to remove the requirement that statutory late fees must be set forth in a condominium or homeowners' association declaration or bylaws in order for those charges to be imposed, to allow for the collection of such fees by all condominium and homeowner associations, including amendments to F.S. §§718.116 & 718.3085.
- f. Supports legislation to differentiate the administration of nonresidential condominiums from residential condominiums and to eliminate for nonresidential condominium associations certain provisions not appropriate in a commercial setting, including amendments to F.S. Ch. 718.
- g. Opposes legislation that changes the definition of the practice of law to exclude from the definition a community association manager's interpretation of documents or statutes that govern a community association, determination of title to real property, or completion of documents that require interpretation of statutes or the documents that govern a community association, including opposition to SB1466, SB1496, HB7037 and CS/HB7039 (2014).
- h. Supports amending Florida Condominium law pertaining to the termination of condominiums to protect unit owners and provide certainty and predictability to the process.
- i. Opposes creation of criminal penalties for violations of statutes pertaining to condominium association official records and condominium association elections, as well as any change to create criminal penalties for any violation of the Florida Condominium Act for which a criminal penalty does not already exist, including changes to §718.111(12) F.S., and creation of new statutory provisions within Ch. 718 F.S., or otherwise.
- j. Supports replacing mandatory presuit arbitration with the Division of Condominiums for certain disputes between a condominium association and unit owner with mandatory presuit private mediation, including a change to Fla. Stat. 34.01, 718.013, 718.112, 718.117, 718.1255, 718.303, 720.303, 720.306 and 720.311.
- k. Opposes continuing to allow fines in excess of \$1,000 in homeowner associations to become liens for non-monetary damages against the parcel that can be foreclosed, including a change to Fla. Stat. 720.305(2).



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

m. Supports legislation amending Section 718.113 and Section 718.115 to clarify and enhance the ability of condominium associations and condominium unit owners to use hurricane shutters and other types of hurricane protection to protect condominium property, association property and the personal property of unit owners, and reduce insurance costs for condominium associations and unit owners

n. Supports legislation resolving technical inconsistencies and errors within Chapters 718 and 720, Florida Statutes, that have arisen due to multiple revisions of the Chapters and to provide additional clarification as to how Chapters 718 and 720 are to be applied.

## **7. Real Property / Contracts and Disclosures**

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

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

## **8. Real Property / Corporations and LLCs**

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

## **9. Real Property / Courts**

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

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

## **10. Real Property / Foreclosures and Judicial Sales**

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

b. Opposes any amendment to existing Florida law governing real property foreclosures unless



those amendments carefully preserve and protect the property rights and due process rights of the holders of interests in or affecting Florida real property.

c. Supports legislation that will expand the finality of foreclosure judgments provided by §702.036 Fla. Stat. (2021) to include liens other than mortgage foreclosures, such as community association liens and construction liens. (Added 10/24/2022)

## **11. Real Property / Liens and Encumbrances**

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

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

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

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

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

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

g. Supports proposed legislation to: (1) clarify that the interest of a lessor is not subject to improvements made by the lessee of a mobile home lot in s. 713.10, F.S.; and (2) eliminate ambiguity regarding whether the expiration date on a notice of commencement may be less than one year from the date of recording, including an amendment to s.713.13, F.S.

h. Supports legislative changes to construction lien law in the state of Florida, including changes to Fla. Stat. Ch. 255 and 713.

## **12. Real Property / Miscellaneous**

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

b. Opposes legislation authorizing the use of security deposit replacement products (aka fees in lieu of security deposits) unless such legislation includes consumer protection provisions that safeguard tenants from predatory practices. (Added 10/24/2022)

### **13. Real Property / Property Rights**

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

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

c. Supports legislation to provide a statutory definition for Ejectment actions, provide for jurisdiction in the circuit courts for such actions, eliminate any ambiguity over whether pre-suit notice is required in such actions, and update the language in the existing Ejectment statute.

d. Supports proposed legislation expanding applicability of §697.07 (Assignment of Rents) and §702.10 (Order to Make Payments During Foreclosure) to third parties who acquire properties subject to a mortgage.

### **14. Real Property / Recording**

a. Opposes legislation that impairs the integrity of the recording system in the State of Florida.

### **15. Real Property / Title Insurance**

a. Opposes any portion of the National Association of Insurance Commissioners Title Insurers Model Act and Title Insurance Agent Model Act that may adversely affect Florida attorneys' ability to participate in real estate closing and the issuance of title insurance.

b. Opposes adoption of a "file and use" system for the determination of title insurance rates in the State of Florida, supplanting a promulgated rate system in which the state regulatory agency determines rates based on actuarial analysis of statutorily determined criteria.

c. Opposes elimination of the requirement that title insurance agencies deposit securities having a value of \$35,000 or a bond in that amount for the benefit of any title insurer damaged by an agency's violation of its contract with the insurer.

## Proposal for Credit for Paralegal Time in Supervising Lawyer's Pro Bono Service Hours

Rule 4-6.1, Rules Regulating The Florida Bar, addresses a lawyer's responsibility for rendering pro bono legal services to the poor<sup>1</sup>. Each member of The Florida Bar is encouraged to strive to provide annually at least 20 hours of pro bono legal services to the poor; or make an annual contribution of at least \$350 to a legal aid organization. Each member of The Florida Bar must annually report whether the member has satisfied the member's professional responsibility to provide pro bono legal services to the poor through the member's annual membership fees statement as developed by The Florida Bar.

While the lawyer's personal contribution of time may be preferable, the overall goal is to increase access of legal services to the poor. Paralegals play an important role in assisting lawyers in providing legal services. Many legal services can be effectively performed by a paralegal under the direct supervision of a lawyer. For example, in a guardianship proceeding, a paralegal will generally work directly with the guardian to prepare the annual report and the lawyer will review the final product before filing with the court. If the guardian or ward qualify for pro bono services under the current reporting guidelines, the lawyer is only able to report the lawyer's time relating to the matter. Time spent by the paralegal, which the lawyer or law firm must nonetheless compensate the paralegal for, is disregarded in the annual reporting process. This inability to credit the lawyer for the contribution of time of the paralegal discourages lawyers and law firms from taking on certain pro bono matters in which paralegal time can be effectively used for the benefit of the poor. We propose that lawyers be allowed to include in their annual report of pro bono time, the time of a paralegal whose work they directly supervise on a matter. Accordingly, we recommend a new paragraph (g) be added to Rule 4-6.1 that provides as follows:

**(g) Credit For Paralegal Time Directly Supervised by a Member.** In determining the hours of pro bono legal services to the poor a member may include the hours spent by a paralegal for whose work the member directly supervised on a matter provided the paralegal's time on the matter is substantive in nature and the paralegal's time was not billed. A paralegal's hours may only be credited to one member.

---

<sup>1</sup> To be consistent with the current wording of Rule 4-6.1(d) we used the word "poor." However, we encourage a globe change to the Rule to substitute "low-income" for "poor."

Support a change to Rule 4-6.1, Rules Regulating The Florida Bar that would allow a member of The Florida Bar in determining the hours of pro bono legal services to the poor to include the hours spent by a paralegal for whose work the member directly supervised on a matter provided the paralegal's time on the matter is substantive in nature and the paralegal's time was not billed.



# RPPTL

The Real Property, Probate & Trust Law  
Section of the Florida Bar

## Strategic Plan for the Real Property Probate and Trust Law Section of The Florida Bar (2024)

**Mission Statement:** To serve as Florida's preeminent and trusted resource and authority on real property, probate, trust, and related fields of law for the benefit of the public and legal community.

### Objectives:

#### 1. Connect and Engage:

- **Objective:** Foster an environment where lawyers practicing in real property, probate, trust, and related fields of law are encouraged to collaborate, build relationships, and develop as professionals
  - **Action Items/Strategies:**
    - Enhance member access to meetings of substantive committees and provide opportunities for active participation
    - Engage Section members at circuit and regional levels through regular communication and local meetings
    - Provide transparency and improve communication regarding the paths to leadership opportunities
    - Provide opportunities to Section members for professional development
    - Use ALMs and other Section resources to expand engagement of Section members from all backgrounds throughout Florida
    - Support Section members through mentorship programs and new member resources

## 2. Advocacy and Law Development:

- **Objective:** Advance the law in real property, probate, trust, and related fields

- **Action Items/Strategies:**

- Educate committee chairs, vice chairs, and members as to the timing, nuance, and restraint of the legislative process, giving technical advice, and the amicus process
- Fully vet legislation and amicus issues with the Section's subject matter experts to protect public policy and the Section's well-earned stature and reputation
- Advance policies and positions within the Section's purview for the benefit of the public
- Strengthen the Section's political and legislative relationships
- Monitor, anticipate, and address changes which could impact the ability of the Section to advance positions
- Conduct annual review of the Section's legislative consultants
- Annually review the Section's positions

## 3. Educate:

- **Objective:** Be the Florida leader in education on real property, probate, trust, and related fields of law

- **Action Items/Strategies:**

- Produce high quality, trustworthy, and authoritative content
- Provide easy access to content
- Deliver cutting edge and timely content on new developments in the law as appropriate
- Investigate, evaluate, and invest in existing and emerging technologies to produce, organize, and disseminate content
- Identify and cultivate subject matter speakers and contributors

- Implement and communicate clear and concise procedures for the production of each type of program
- Expand and improve marketing of the Section’s CLEs
- Provide training for program and committee leaders

#### 4. Trusted Resource:

- **Objective:** Serve as Florida’s preeminent authority and trusted resource on all aspects of real property, probate, trust, and related fields of law.

- **Action Items/Strategies:**

- Consider adopting a tagline such as “Trusted Resource”
- Provide a public facing web presence that would include a “newsroom” with supporting reference materials.
- Implement protocols to require plain language summaries of Section positions
- Consider retaining a PR firm for limited purposes, including to draft and disseminate press releases, support the Section’s leadership with media interaction and advise on selected special projects.
- Release and publish information to showcase the Section’s activities
- Identify subject matter speakers and legislative subject matter experts to support the Section with media inquiries
- Hold a Section-wide competition for creation of an additional “reptile” based trademark to supplement the Section’s existing red seal.

#### 5. Service:

- **Objective:** Serve the public and the courts by improving the quality, scope, and reach of legal services, including to underserved populations

- **Action Items/Strategies:**

- Build Section membership from all backgrounds and experiences



- Facilitate access to substantive committees for judges, lawyers, and law students who may not have the necessary resources
- Encourage Section participation and provide education and support for lawyers working with underserved populations
- Encourage Section member engagement in pro bono and community service projects to address legal needs
- Encourage and facilitate Section connections with legal aid providers

## 6. Technology Integration and Innovation:

- **Objective:** Thoughtfully embrace technology to enhance the efficiency and effectiveness of Section operations and member services.
  - **Action Items/Strategies:**
    - Explore the use of technology solutions for organizing and providing access to information.
    - Invest in technology infrastructure and platforms to streamline communication, collaboration, and knowledge sharing among members.
    - Offer training and support to members on utilizing technology tools and platforms for Section business.

## 7. Communication:

- **Objective:** Organize and disseminate timely, accurate, and relevant information internally and externally through multiple forms of communication and platforms
  - **Action Items/Strategies:**
    - Evaluate the scope and type of information being communicated with Section members and implement strategies to encourage participation and involvement
    - Improve functionality and usability of online and digital tools

- Promote collaboration within the Section to disseminate content to Section members
- Utilize multiple forms of media to transmit content
- Organize and preserve Section information, content, knowledge, and history so that it is accessible
- Require committees to keep information on website up-to-date
- Provide training and support on communication tools and options

ACTIVE:21337384.3