

BRING TO MEETING

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



Executive Council Meeting

AGENDA

The Ritz Carlton - Berlin

Potsdamer Platz 3, 10785 Berlin Germany

Friday, October 2, 2015
7:45 a.m. - 10:00 a.m.

BRING THIS AGENDA TO THE MEETING

Note: Copies will NOT be available at the meeting

Real Property, Probate and Trust Law Section
Executive Council Meeting
October 2, 2015
The Ritz Carlton
Berlin, Germany

AGENDA

- I. [Presiding](#) — *Michael J. Gelfand, Chair*
- II. [Attendance](#) — *S. Katherine Frazier, Secretary*
- III. [Minutes of Previous Meeting](#) — *S. Katherine Frazier, Secretary*
Motion to approve the Minutes of August 1, 2015, Meeting at The Breakers, Palm Beach, Florida **[pp. 10]**
- IV. [Chair's Report](#) — *Michael J. Gelfand*
1. Recognition of guests
 2. Recognition of Sponsors **[pp. 42]**
 3. Executive Committee decisions between Council meetings:
 - a. Multi-Jurisdictional Practice (Reciprocity)
 - b. Deutsch Bank v. Beauvais Amicus Request
 4. 2015 – 2016 RPPTL Section Executive Council Meeting Schedule **[pp. 43]**
 5. Boca Raton Committee Meeting Schedule **[pp. 44]**
- V. [Chair-Elect's Report](#) — *Debbie Goodall*
2016 – 2017 RPPTL Section Executive Council Meeting Schedule **[pp. 47]**
- VI. [Liaison with Board of Governors' Report](#) — *Andrew B. Sasso*
- VII. [Treasurer's Report](#) — *Rob S. Freedman*
- VIII. [Director of At-Large Member's Report](#) — *Shane Kelley*
- IX. [CLE Seminar Coordination Report](#) — *Bob Swaine (Real Property) and Bill Hennessey (Probate & Trust), Co-Chairs*

X. [Probate and Trust Law Division Report](#) — *Debra Boje, Director*

Committee Sponsors

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

Business Valuation Analysts – Tim Bronza
Trust Law Committee

Coral Gables Trust - John Harris
Probate and Trust Litigation Committee

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

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

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

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

Northern Trust - Brett Rees
Trust Law Committee

XI. [Real Property Law Division Report](#) — *Andrew O'Malley, Real Property Law Division Director*

Committee Sponsors

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

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

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

XII. [General Standing Division Report](#) — *Deborah Goodall, Director and Chair-Elect*

Information Items:

1. **Amicus Coordination** – *Robert W. Goldman, John W. Little, III, Kenneth B. Bell*

and Gerald B. Cope, Jr., Co-Chairs

Report on the decision of the Third District Court of Appeal in Deutsche Bank Trust Company Americas v. Harry Beauvais, Case No. 30-14-575 dated December 17, 2014; Order Granting Motion for Rehearing dated August 3, 2015 inviting RPPTL Section and others to file Amicus Briefs by October 1, 2015. [pp. 48]

2. **Professionalism and Ethics** --- *Lawrence J. Miller, Chair*

Report on the request for comment from the Multijurisdictional Practice State Focus Committee of the Vision 2016 Bar Admissions Subgroup and the formation of a task force to assist with comments requested by October 1, 2015. The report of the Vision 2016 Bar Admissions Subgroup and additional information concerning Vision 2016 can be found at www.floridabar.org/Vision2016.; email to Michael Gelfand attached. [pp. 61]

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

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** –Angela M. Adams, Chair
2. **Ad Hoc Guardianship Law Revision Committee** – David Brennan, Chair; Sancha Brennan Whynot, Sean W. Kelley and Charles F. Robinson, Co-Vice Chairs
2. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co- Vice Chairs
3. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** – William T. Hennessey III, Chair; Paul Roman, Vice Chair
4. **Ad Hoc Committee on Personal Representative Issues** – Jack A. Falk, Jr., Chair
5. **Ad Hoc Committee on Treatment of Life Insurance Payable to Revocable Trust** –Richard R. Gans, Chair
6. **Asset Protection** – Brian C. Sparks, Chair; George Karibjanian, Vice-Chair
7. **Attorney/Trust Officer Liaison Conference** – Jack A. Falk, Jr., Chair; Sharon DaBrusco, Corporate Fiduciary Chair; Patrick Lannon, Deborah Russell and Laura Sundberg, Co-Vice Chairs
8. **Digital Assets and Information Study Committee** – Eric Virgil, Chair; Travis Hayes and S. Dresden Brunner, Co-Vice Chairs

9. **Elective Share Review Committee** – Lauren Detzel, Chair; Charles I. Nash and Robert Lee McElroy IV, Co-Vice Chairs
10. **Estate and Trust Tax Planning** – Elaine M. Bucher, Chair; David Akins, Tasha Pepper-Dickinson and William Lane, Co-Vice Chairs
11. **Guardianship, Power of Attorney and Advanced Directives** – Sean W. Kelley, Chair; Seth A. Marmor, Tattiana Brenes-Stahl, Cynthia Fallon and David Brennan, Co-Vice Chairs
12. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Lester Law, Co-Chairs
13. **Liaisons with ACTEC** – Michael Simon, Bruce Stone, and Diana S.C. Zeydel
14. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
15. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt, Brain C. Sparks, Donald R. Tescher and Harris L. Bonnette, Jr.
16. **Principal and Income** – Edward F. Koren, Chair; Pamela Price, Vice Chair
17. **Probate and Trust Litigation** – Thomas M. Karr, Chair; Jon Scuderi, James George, J. Richard Caskey and Jerry Wells, Co-Vice Chairs
18. **Probate Law and Procedure** – John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Marsha G. Madorsky, Co-Vice Chairs
19. **Trust Law** – Shane Kelley, Chair; Angela M. Adams, Deborah L. Russell, and Tami F. Conetta, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** – Richard R. Gans, Chair; Jeffrey S. Goethe, Linda S. Griffin, Laura Sundberg and Jerome L. Wolf, Co-Vice Chairs

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

1. **Commercial Real Estate** – Adele Stone, Chair; Burt Bruton and Martin Schwartz, Co-Vice Chairs.
2. **Condominium and Planned Development** – Bill Sklar, Chair; Alex Dobrev and Steve Daniels, Co-Vice Chairs.

3. **Construction Law** – Hardy Roberts, Chair; Scott Pence and Reese Henderson, Co-Vice Chairs.
4. **Construction Law Certification Review Course** – Deborah Mastin and Bryan Rendzio, Co-Chairs; Melinda Gentile, Vice Chair.
5. **Construction Law Institute** – Reese Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs.
6. **Development & Land Use Planning** – Vinette Godelia, Chair; Mike Bedke, Co-Vice Chair.
7. **Landlord and Tenant** –Rick Eckhard Chair; Brenda Ezell, Vice Chair.
8. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alexandra Overhoff and James C. Russick, Co-Vice Chairs.
9. **Insurance & Surety** – W. Cary Wright and Scott Pence, Co-Chairs; Fred Dudley and Michael Meyer, Co-Vice Chairs.
10. **Real Estate Certification Review Course** – Jennifer Tobin, Chair; Manual Farach and Martin Awerbach, Co-Vice Chairs.
11. **Real Estate Structures and Taxation** – Cristin C. Keane, Chair; Michael Bedke, Lloyd Granet and Deborah Boyd, Co-Vice Chairs.
12. **Real Property Finance & Lending** – David Brittan, Chair; E. Ashley McRae, Richard S. McIver and Robert Stern, Co-Vice Chairs.
13. **Real Property Litigation** – Susan Spurgeon, Chair; Manny Farach and Martin Solomon, Co-Vice Chairs.
14. **Real Property Problems Study** – Art Menor, Chair; Mark A. Brown, Robert Swaine, Stacy Kalmanson, Lee Weintraub and Patricia J. Hancock, Co-Vice Chairs.
15. **Residential Real Estate and Industry Liaison** – Salome Zikakas, Chair; Trey Goldman and Nishad Khan, Co-Vice Chairs.
16. **Title Insurance and Title Insurance Liaison** – Raul Ballaga, Chair; Alan Fields and Brian Hoffman, Co-Vice Chairs.
17. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian Hoffman and Karla J. Staker, Co-Vice Chairs.

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

1. **Ad Hoc Leadership Academy** – Brian Sparks and Kris Fernandez, Co-Chairs
2. **Ad Hoc Study Committee on Same Sex Marriage Issues**— Jeffrey Ross Dollinger and George Daniel Karibjanian, Co-Chairs

3. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
4. **Budget** – Robert S. Freedman, Chair; S. Kathrine Price, Pamela O. Price, Co-Vice Chairs
5. **CLE Seminar Coordination** – Robert S. Swaine and William T. Hennessey, Co-Chairs; Laura K. Sundberg (Probate & Trust), Sarah S. Butters (Probate & Trust), Lawrence J. Miller (Ethics), Cary Wright (Real Property) and Hardy L. Roberts, III (General E-CLE), Theo Kypreos, Co-Vice Chairs.
6. **Convention Coordination** – Laura K. Sundberg Chair; Alex Hamrick and Alex Dobrev, Co-Vice Chairs
7. **Fellows** – Ashley McRae, Chair; Benjamin Diamond and Joshua Rosenberg, Co-Vice Chairs
8. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
9. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine, Melissa Murphy and Charles Nash, Co-Vice Chairs
10. **Legislation** – Tae Kelley Bronner (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs; Thomas Karr (Probate & Trust), and Alan B. Fields (Real Property), Co-Vice Chairs
11. **Legislative Update (2016)** – R. James Robbins, Chair, Barry F. Spivey, Stacy O. Kalmanson, Jennifer Tobin, Thomas Karr, Joshua Rosenberg, and Kymberlee Curry Smith, Co-Vice Chairs
12. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - b. **Clerks of Circuit Court** – Laird A. Lile and William Theodore Conner
 - c. **FLEA / FLSSI** – David C. Brennan and Roland “Chip” Waller
 - d. **Florida Bankers Association** – Mark T. Middlebrook
 - e. **Judiciary** – Judge Linda R. Allan, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L. Schafer, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J. Suarez,., and Judge Patricia V. Thomas
 - f. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert
 - g. **TFB Board of Governors** – Andrew Sasso
 - h. **TFB Business Law Section** – Gwynne A. Young

- i. **TFB CLE Committee** – Robert S. Freedman and Tae Kelley Bronner
 - j. **TFB Council of Sections** –Michael J. Gelfand and Deborah P. Goodall
 - k. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
13. **Long-Range Planning** – Deborah P. Goodall, Chair
 14. **Meetings Planning** – George J. Meyer, Chair
 15. **Member Communications and Information Technology** – William A. Parady, Chair; S. Dresden Brunner, Michael Travis Hayes, and Neil Shoter, Co-Vice Chairs
 16. **Membership and Inclusion** –Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs, Phillip A. Baumann, Kathrine S. Lupo, Guy S. Emerich, Theodore S. Kypreos, Tara Rao, and Kymberlee Curry Smith, Co-Vice Chairs
 17. **Model and Uniform Acts** – Bruce M. Stone and Richard W. Taylor, Co-Chairs
 18. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair
 19. **Publications (ActionLine)** – Silvia B. Rojas, Chair (Editor in Chief); Jeffrey Baskies (Vice Chair – Editor Probate & Trust Division), Cary Wright (Vice Chair – Editor Real Property Division), Lawrence J. Miller (Vice Chair – Editor Professionalism & Ethics); George D. Karibjanian (Editor, National Reports), Lee Weintraub (Vice Chair - Reporters Coordinator), Benjamin Diamond (Vice Chair – Features Editor), Kathrine S. Lupo (Vice Chair - Advertising Coordinator), Navin R. Pasem (Vice Chair – Practice Corner Editor), Sean M. Lebowitz (Vice Chair – Probate & Trust Case Summaries), Shari Ben Moussa (Vice Chair – Real Property Case Summaries)
 20. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property), Homer Duvall (Editorial Board – Real Property) and Allison Archbold (Editorial Board), Co-Vice Chairs
 21. **Sponsor Coordination** – Wilhelmina F. Kightlinger, Chair; J. Michael Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs
 22. **Strategic Planning** –Michael J. Gelfand and Deborah P. Goodall, Co-Chairs

XVI. [CLE Presentation I](#) — Irene Schmid, DLA Piper, Berlin [pp. 62]

1. ***Title Insurance or Notary and Land Register Fees? - The Role of German Notaries and the German Land Register in Real Estate Transactions.***

The German notarial system and the operation of the German land register with a special focus on real estate transactions in Germany, the qualification and duties of German notaries as compared to U.S. notaries, and the public faith of the German land register and its role compared to U.S. title insurance.

2. *Restitution, Compensation or Total Loss – the Impacts of the German Unification for the German Real Estate Market.*

The German restitution legislation and procedure after the German unification and the actual challenges and effects connected therewith, and the persistence of restitution issues in current real estate transactions.

CLE Presentation II — *Judge Rosemary Barkett, Iran – United States Claims Tribunal at The Hague; Former Florida Supreme Court Justice; and, Judge of the U.S. Court of Appeals for the Eleventh Circuit, Retired.* [pp. 102]

American Lawyers Abroad: Working on International Tribunals, in International Arbitration, and in Global Efforts to Expand the Rule of Law.

The Role of the Iran- United States Claims Tribunal and Service on the Tribunal in The Hague.

CLE Credit Information

Course #: 1506951N

General Credits: 2.5

Real Estate Certification Credits: 2.5

XVII. Adjourn

**Minutes of the
Real Property, Probate and Trust Law Section
Executive Council Meeting¹
August 1, 2015
The Breakers, Palm Beach, Florida**

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

The meeting was held at The Breakers Resort, Venetian Ballroom, Palm Beach, Florida. Michael J. Gelfand, Chair, called the meeting to order at 10:00 a.m. on Saturday, August 1, 2015.

II. Attendance — S. Katherine Frazier, Secretary

S. Katherine Frazier reminded members that the attendance roster was circulating to be initialed by Council members in attendance at the meeting and to please verify their listing and note any corrections that should be made to the roster.

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

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

S. Katherine Frazier moved:

To approve the Minutes of the June 6, 2015 meeting of the Executive Council held at the Fountainebleau, Miami Beach, Florida.

(See Agenda pages 11-43). The Motion was unanimously **approved**.

IV. Chair's Report — Michael J. Gelfand

1. Welcome. Mr. Gelfand welcomed Council members and Section members in attendance.

2. Mr. Gelfand recognized David C. Brennan. Mr. Brennan acknowledged the passing of Mandell Glicksberg and honored of all of Professor Glicksberg's contributions to the Section.

3. Mr. Gelfand reminded Council members to be appreciative of the sponsors when announcements are made recognizing the sponsors.

¹ References in these minutes to Agenda pages are to the Executive Council meeting Agenda and the Supplement to Executive Council Agenda posted at www.RPPTL.org.

4. Mr. Gelfand recognized Wilhelmina Kightlinger. Ms. Kightlinger reminded Council members that she is still soliciting for Berlin sponsors and is looking for new Section sponsors. While two sponsors did not renew, we have gained an additional sponsor in Corporate Services Company. Mr. Gelfand thanked Ms. Kightlinger for all of her sponsorship efforts.

5. Mr. Gelfand welcomed the members of the Florida Bar Board of Governors in attendance: Laird Lile, Sandra Diamond, Andrew Sasso, and Michael Higer. Mr. Higer is former Chair of the Business Law Section and is exploring the Florida Bar presidency for 2016. Mr. Higer spoke to the Council and encouraged everyone to reach out to him with any concerns.

6. Mr. Gelfand introduced additional guests, his mother, Shirley Gelfand and daughters of two Council members Steven Mezer's daughter, Amanda Mezer, and Michael's daughter, Sarah Gelfand, whom are both current law school students.

7. Mr. Gelfand reminded members of the Council meeting schedule and encouraged everyone to be on the lookout for The Breakers' Council meeting sign up for next year. He provided an update of the schedule of cultural and educational activities at the Berlin Council meeting and announced that the Berlin schedule will be distributed soon.

8. Mr. Gelfand reported on the creation of two following committees by the Section Chair:

Ad Hoc Condominium Estoppel Letter Committee, Chair: Melissa Murphy;
Co-Vice-Chairs: Leonard Prescott and Steven Mezer.

Ad Hoc Study Committee on POLST (Physician Orders for Life Sustaining Treatment), Co Chairs: Jeff Baskie and Tom Karr.

9. Mr. Gelfand reported that our current Section Administrator, Mary Ann Obos, was not in attendance due to her impending maternity leave and he introduced Chase Early as the interim on-site administrator and Willie Mae Shepard as the CLE administrator. Dixey Teel, who was not present, will be the primary administrator while Mary Ann Obos is on maternity leave.

10. Mr. Gelfand thanked the wonderful staff at The Breakers for their assistance to ensure a very successful set of meetings and events.

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

Mr. Gelfand introduced Mr. Sasso. Mr. Sasso congratulated Larry Miller and John Little on all of their efforts in negotiating revisions to The Florida Bar Rule 4.4.2 regarding communications with persons represented by counsel and governmental officials. Mr. Sasso indicated that the Section and the proponents of the rule changes will work together to address the concerns. Mr. Sasso reminded everyone that he closely works with the Chair and the Chair-Elect of the Section and speaks with them at

least one week before each Florida Bar Board of Governors' meeting to update them and address concerns. Mr. Sasso indicated that he was looking forward to continuing to serve the Section.

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

Ms. Goodall began by announcing that she was in attendance at the Real Property Law Division roundtable and congratulated Drew O'Malley and the camaraderie of the Division in evaluating difficult issues. Ms. Goodall announced that her schedule was not ready to be published yet but that she was working on the contracts and that she was considering two business meetings in Fall 2016 with her out of town meeting in late January/February 2017. Ms. Goodall indicated that she would keep us all posted.

VII. Treasurer's Report — Robert S. Freedman

Robert Freedman announced that the interim Financial Summary was located on page 47 of our materials and he was pleased to report that our net operations were \$183,278 for 2014-15 and our ending fund balance for 2014-15 was \$1,075,557. Mr. Freedman thanked Michael Dribin for his financial stewardship of the Section and also thanked Katherine Frazier and the CLE committee for their hard work and monitoring of our Section finances.

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

Mr. Gelfand introduced Shane Kelley and congratulated Shane on his recent marriage. Mr. Kelley thanked prior ALMS for their service and congratulated new ALMs on their appointments and welcomed them and announced that he was looking forward to working with them.

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

Ms. Gelfand introduced Bill Hennessey. Mr. Hennessey announced that the key to the success of the Section's CLE is quality speakers and asked everyone who has spoken throughout the past year to please stand. Mr. Gelfand emphasized that our role is to educate members. Mr. Hennessey reminded everyone that the Attorney Trust Officer Conference is coming in August, that great speakers are signed up, and that there is still availability for the conference. (See Agenda page 48)

X. Kids Committee Report – TBA, Chair; Laura Sundberg, Advisor

Mr. Gelfand welcomed back Laura Sundberg and thanked her for agreeing to chair the 2016 convention.

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

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

Committee Sponsors

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

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

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

Action Items:

1. Real Property Litigation Committee — *Susan K. Spurgeon, Chair*

Mr. O'Malley called upon Susan Spurgeon to present the Committee report on the three proposed legislative action items:

Ms. Spurgeon provided a brief overview of the changes to F.S. 90.902 and explained that these changes are the result of unintended consequences of e-filing. In certain situations, the rules or statutes require that certified copies be filed in the court file. Rather than getting a certified copy that can otherwise be authenticated by looking on the internet, the proposed legislation would allow the Judge to take judicial notice.

Ms. Spurgeon moved on behalf of the Committee:

To adopt as a Section legislative position to support an amendment to F.S. 90.902 regarding authentication of electronic records; to find that the legislative position is within the purview of the Section; and, to expend Section funds in support of the position. (See Agenda pages 49-54)

The Motion was unanimously **approved**.

Mr. O'Malley moved:

To waive the rules to allow consideration of the proposed motion regarding an amendment to F.S. 95.281, circulated in the Supplement to the Agenda.

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

Ms. Spurgeon then provided a brief overview of the changes to F.S. 95.281 and explained that the changes are primarily amendments clarifying that F.S. 95.281 is a statute of repose, not a statute of limitations.

Ms. Spurgeon moved on behalf of the Committee:

To adopt as a Section legislative position to support an amendment to F.S. 95.281, clarifying that F.S. 95.281 is a statute of repose, not a statute of limitation, clarifying the formula for determining the repose period for a lien arising from advances by a mortgagee, and to restore to a mortgage holder the common law subrogation right it had for tax advances before enactment of this section; to find that the legislative position is within the purview of the Section; and, to expend Section funds in support of the position. (See Supplemental Agenda)

The Motion was unanimously **approved**.

Mr. O'Malley moved:

To waive the rules to allow consideration of the proposed motion regarding an amendment to F.S. 57.011 and F.S. 559.715, circulated in the Supplement to the Agenda.

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

Ms. Spurgeon then provided a brief overview of the changes to F.S. 57.011 and F.S. 559.715 and explained that these changes deleted the nonresident cost bond requirement and amended the assignment of consumer debt notice.

Ms. Spurgeon moved on behalf of the Committee:

To adopt as a Section legislative position to support amendments to F.S. 57.011, to repeal the non-resident cost bond requirement, and to F.S. 559.715 to amend the assignment of consumer debt notice; to find that the legislative position is within the purview of the Section; and, to expend Section funds in support of the position. (See Supplemental Agenda)

The Motion was unanimously **approved**.

2. **Ad Hoc Condominium Estoppel Letter Committee** — Chair: Melissa Murphy; Co-Vice-Chairs, Leonard Prescott and Steven Mezer.

Mr. O'Malley moved:

To waive the rules for consideration of the proposed motion regarding estoppel letters, contained in the Supplement to Agenda.

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

Mr. O'Malley called upon Melissa Murphy to present the Committee report. Ms. Murphy provided a brief overview of the proposed motion. Ms. Murphy reported that there was a prior Senate Bill 736 proposal that the Section was not involved with but that the Section began working with the Florida Land Title Association to discuss proposed changes. Ms. Murphy explained that the purpose of the Committee motion was to seek approval and to reach an agreement on the concepts to pursue legislation.

Ms. Murphy moved on behalf of the Committee:

To request the Section Executive Committee to consider proposals from the Ad Hoc Community Association Estoppel Committee, to approve a Section legislative position amend F.S718.116, 719.108 and 720.30851, that would:

1. **Clarify and specify the process and content for both the requesting and issuing of the estoppels certificate in a statutory form template;**
2. **Provide a limitation on charges for obtaining the estoppels information;**
3. **Provide a time frame for payment of fees for preparation and delivery of the estoppels certificate;**
4. **Exclude from any fee caps those accounts that involve delinquencies or disputed amounts; and**
5. **Identify the person or entity responsible for providing the estoppels information, deadlines for delivery and create an opportunity for updated information to be provided;**

to consider the position within the purview of the Section; and, to authorize the expenditure of Section funds in support of the position. (See Supplemental Agenda)

The Motion was unanimously **approved**.

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

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

Committee Sponsors

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

Business Valuation Analysts – *Tim Bronza*
Trust Law Committee

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

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

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

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

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

Northern Trust – *Brett Rees*
Trust Law Committee

Action Items:

1. **Estate & Trust Tax Planning Committee** — David J. Akins, Chair

Ms. Boje called upon David Akins to present the Committee report. Mr. Akins provided a brief overview of the changes which recommended creating a new statute that would provide that joint tenancies with rights of survivorship, and tenancies by the entireties may be created in personal property without regard to the unities of time and title required under common law. Mr. Akins suggested that the proposed legislation would make the requirements for the valid creation of joint tenancies with rights of survivorship and tenancies by the entireties in personal property broadly consistent with those applicable real property. There was a significant discussion over the language of the proposal. (See Agenda pages 70-77) After discussion, Mr. Akins requested that the vote be postponed until the next Council meeting in Boca Raton, Florida.

Mr. Akins moved on behalf of the Committee:

To postpone the Committee's proposed motion until the next in state Executive Council meeting.

The Motion was unanimously **approved**.

2. **Probate and Trust Litigation Committee** — *Jon Scuderi, Chair*

Ms. Boje called upon Jon Scuderi to present the Committee report. Mr. Scuderi provided a brief overview of the changes regarding a trustee's ability to pay attorneys' fees and costs from assets of the trust in connection with a claim or defense of breach of trust.

Mr. Scuderi moved on behalf of the Committee:

To adopt as a Section legislative position to support the amendment of F.S. 736.0802(10), 736.0816(20) and 736.1007(1), to clarify intent and application of 736.0802(10) when a trustee is sued for breach of trust; to find that the legislative position is within the purview of the Section; and, to expend Section funds in support of the position. (See Agenda pages 78-88)

The Motion was unanimously **approved**.

3. **Probate Law & Procedure Committee** — *John C. Moran, Chair*

Ms. Boje called upon John Moran to present the Committee Report. Mr. Moran provided a brief overview of the changes which confirm that Florida law governs the validity and effect of the disposition of Florida real property.

Mr. Moran moved on behalf of the Committee:

To adopt as a Section legislative position: to support the amendment of F.S. 731.106(2), to confirm that Florida law governs the validity and effect of the disposition of Florida real property, whether owned by a resident or a nonresident; to find that such legislative positions is within the purview of the Section; and to expend Section funds in support of the position. (See Agenda pages 89-93)

The Motion was unanimously **approved**.

Informational Items:

1. **Trust Law** — *Angela M. Adams, Chair*

Ms. Boje called upon Ms. Adams. Ms. Adams discussed a proposed Section legislative position to amend F.S. 736.0708(1), to provide that co-trustees are each entitled to reasonable compensation, and that the aggregate compensation awarded by all co-trustees may be greater than reasonable compensation for a single trustee. (See Agenda pages 94-99)

2. **Digital Assets and Information Study Committee** – J. Eric Virgil, Chair; Michael Travis Hayes and S. Dresden Brunner, Co-Vice Chairs.

Mr. Virgil reported on the comparison of the Uniform Fiduciary Access To Digital Access Act to Section's earlier proposed bill text. The outstanding issue is whether fiduciaries would have unfettered access to the contents of a person's e-mail. The most recent key change is that a person must affirmatively provide that a fiduciary has permission to access such accounts as a result of concerns of technology companies, Mr. Virgil indicated that there would need to be CLEs and education to educate practitioners on these proposed changes and that he would continue to keep us updated. (See Supplemental Agenda)

At approximately noon, Mr. Gelfand stated that boxed lunches sponsored by The Florida Bar Foundation had been prepared for those registered for the meeting and called for a brief recess. The meeting reconvened at 12:12 p.m.

1. Mr. Gelfand congratulated Nancy and Gerry Ford for 50 years of marriage.
2. Mr. Gelfand congratulated Silvia Rojas on the Action Line cover photo.
3. Mr. Gelfand recognized and thanked the following General Sponsors and Friends of the Section for their continued support to the Section:

General Sponsors

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

Thursday Lunch
Management Planning, Inc., - *Roy Meyers*

Thursday Night Reception
JP Morgan – *Carlos Batlle / Alyssa Feder*
Old Republic National Title Insurance Company – *Jim Russick*

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

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

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

Real Property Roundtable
Fidelity National Title Group – *Pat Hancock*

Saturday Lunch
The Florida Bar Foundation – *Bruce Blackwell*

Friends of the Section

Business Valuation Analysts, LLC – *Tim Bronza*
Corporation Services Company – *Beth Stryzs*
Guardian Trust – *Ashley Gonnelli*
North American Title Insurance Company – *Andres San Jorge*
Valuation Services, Inc. – *Jeff Bae, JD, CVA*
Wilmington Trust – *David Fritz*

4. Mr. Gelfand reminded the Council how important the support of our Sponsors is to the Section.

5. Mr. Gelfand then called upon Ms. Goodall to introduce the General Standing Committee reports.

XIII. General Standing Committees — Deborah P. Goodall, General Standing Division Chair and Chair-Elect.

1. **Ad Hoc Homestead Study Committee** — Shane Kelley (Probate & Trust) and Patricia Jones (Real Property), Co-Chairs.

Ms. Goodall congratulated and thanked the Committee for its extraordinary efforts in evaluating and addressing the legal issues thoroughly and the concerns of both divisions.

Mr. Shane Kelley then provided a brief PowerPoint overview of the changes to F.S. 736.0103, and 736.0201, to clarify the law regarding homestead property held in revocable trusts and that homestead should be treated consistently in both probate and trust administrative forums.

Mr. Kelley moved on behalf of the Committee:

To adopt as a Section legislative position amendments to F.S. 736.0103, 736.0201 to clarify the law regarding homestead property held in revocable trusts, to add a definition of homestead heirs, to clarify that the exemption from forced sale under Article X, Section 4 of the Florida Constitution inures to homestead heirs who receive the homestead property either outright or as beneficiaries of ongoing or continuing trusts created under the decedent's revocable trust, and to provide for specific rules regarding the expenses during the initial trust administration and passage of title to homestead property devised by the terms of a revocable trust; to find that the legislative position is within the purview of the Section; and, to expend Section funds in support of the position. (See Agenda pages 100-127)

The Motion was unanimously approved.

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

Mr. Mezer moved:

To waive the rules to allow consideration of the proposed motion regarding the Dean Mead Agreement.

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

Mr. Mezer asked any current Dean Mead representatives to please step outside of the room. *[Secretary's Note - Attorneys from Dean Mead absented the meeting room.]* Mr. Mezer explained that the current Dean Mead agreement had expired. Mr. Mezer moved on behalf of the Committee:

to approve the Dean Mead Agreement for legislative consultant services for a 2 year term relating back to July 1, 2015 and to expend Section funds. (See Agenda page 128)

Mr. Mezer indicated that the new legislative consultants would be the following:

Peter M. Dunbar
Martha Jane Edenfield
Brittany Finkbeiner
Cari L. Roth

The Motion was unanimously **approved**.

Information Items:

1. **Ad Hoc Study Committee on Same Sex Marriage Issues** — *George Karibjanian (Probate & Trust) and Jeffrey Dollinger (Real Property), Co-Chairs*

Ms. Goodall introduced Mr. Karibjanian, who indicated that our Section was ahead of the curve in evaluating the same sex marriage issues. Mr. Karibjanian reported that bottom-line is that it has been ruled that same sex marriages should be treated as other marriages. Mr. Karibjanian reported that there are technical changes that have been approved by the Committee but that the Committee would continue its evaluation of the retroactive application of the statute proposed. Mr. Dunbar was recognized and reported that there were both technical issues and social issues being considered in Tallahassee and that we should evaluate all proposed technical changes in light of the current climate in Tallahassee.

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

Ms. Goodall called upon Robert Goldman who reported on the decision of the Fourth District Court of Appeal in *Saadeh v. Connors*. [Saadeh v. Connors decision dated June 24, 2015] and [Amicus Brief filed April 9, 2015] and congratulated the Section in its role in that decision and noted that there are still two cases before the Florida Supreme Court. Ms. Goodall thanked the Amicus Committee for all of their hard work. (See Agenda pages 129-152)

3. **Budget Committee** — *Robert S. Freedman, Chair*

No Report.

4. **Fellows Committee** — *Ashley McRae, Chair*

Ms. Goodall introduced Ashley McRae who introduced all of the new fellows for 2015 through 2017. The following fellows are being added for the 2015-2016 fiscal year. (See Agenda pages 153-154)

Jennifer Lodge Grosso (P&T)
Bridget Friedman (RP)
Stacy Beth Rubel (P&T)
Christopher Anthony Sajdera (RP)

The following remaining fellows are serving their second year in 2015-2016:

Truman John Costello, Jr. (P&T)
Julia Lee Jennison (RP)
Michael Alan Sneeringer (P&T)
Melissa VanSickle (RP)

Ms. McRae reported on all of the current committee assignments for all of the Fellows evidencing their increasing involvement in the Section.

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

Ms. Goodall introduced Ms. Bronner and Ms. Bronner reminded everyone to follow the legislation approval and education process and to seek Legislative Committee input early. Ms. Bronner reminded everyone that new legislation must be a prior informational item before introduced as a legislation action item, and reminded everyone of the extended lead time under the 2016 legislative session timetable. (See Agenda pages 155-163)

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

Ms. Goodall called upon Bill Parady and Mr. Parady reported that there are improvements to the website in process to address and remedy prior security issues. Ms. Goodall thanked the Committee and encouraged Council members to check the website for information and to update their committee webpages.

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

Ms. Goodall called upon Mr. John Little who reported on the status of the changes to the Florida Bar Rule 4-4.2. As a result of the Tobin case, the City, County and Local Government Section and the Government Law Section proposed changes that were of concern to our Section or other Florida Bar sections and could have unintended consequences. At the most recent Board of Governors meeting, the most recently proposed changes were actually pulled and changed and only eliminated one sentence. There were discussions that such changes still need clarifying language. The appropriate representatives will be discussing this issue in October and proposed changes will be proposed later for Council approval. Mr. Aron complimented the white paper that had been done by the Professionalism and Ethics Committee. (See Agenda pages 164-175)

8. **Publications:**

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

Ms. Goodall called upon Ms. Rojas. Ms. Rojas thanked the Fellows for the case reviews and practice corner/practice tips. Ms. Rojas indicated that these tips may be both technical and substantive and encouraged Council members to be a resource to the Fellows. (See Agenda pages 176-178)

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

Ms. Goodall called upon Jeff Goethe and Doug Christy. Mr. Goethe asked for articles from Council members and advised that ten (10) were needed this year, five (5) from each division of the Section and that currently there were two (2) real estate articles and one (1) probate article in the works and that seven (7) more articles were needed. (See Agenda pages 179-180)

9. **Sponsor Coordination Committee** — *Wilhelmina F. Kightlinger, Chair*

[No further report, see above.]

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

1. **Commercial Real Estate** – Adele Stone, Chair; Burt Bruton and Martin Schwartz, Co- Vice Chairs.
2. **Condominium and Planned Development** – Bill Sklar, Chair; Alex Dobrev and Steve Daniels, Co-Vice Chairs.
3. **Construction Law** – Hardy Roberts, Chair; Scott Pence and Reese Henderson, Co-Vice Chairs.
4. **Construction Law Certification Review Course** – Deborah Mastin and Bryan Rendzio, Co-Chairs; Melinda Gentile, Vice Chair.
5. **Construction Law Institute** – Reese Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs.
6. **Development & Land Use Planning** – Vinette Godelia, Chair; Mike Bedke, Co-Vice Chair.
7. **Insurance & Surety** – W. Cary Wright and Scott Pence, Co-Chairs; Fred Dudley and Michael Meyer, Co-Vice Chairs.
8. **Landlord and Tenant** –Rick Eckhard Chair; Brenda Ezell, Vice Chair.
9. **Liaisons with FLTA** – Norwood Gay and Alan McCall, Co-Chairs; Alexandra Overhoff and James C. Russick, Co-Vice Chairs.
10. **Real Estate Certification Review Course** – Jennifer Tobin, Chair; Manual Farach and Martin Awerbach, Co-Vice Chairs.
11. **Real Estate Structures and Taxation** – Cristin C. Keane, Chair; Michael Bedke, Lloyd Granet and Deborah Boyd, Co-Vice Chairs.
12. **Real Property Finance & Lending** – David Brittan, Chair; E. Ashley McRae, Richard S. McIver and Robert Stern, Co-Vice Chairs.
13. **Real Property Litigation** – Susan Spurgeon, Chair; Manny Farach and Martin Solomon, Co-Vice Chairs.
14. **Real Property Problems Study** – Art Menor, Chair; Mark A. Brown, Robert Swaine, Stacy Kalmanson, Lee Weintraub and Patricia J. Hancock, Co-Vice Chairs.
15. **Residential Real Estate and Industry Liaison** – Salome Zikakas, Chair; Trey Goldman and Nishad Khan, Co-Vice Chairs.
16. **Title Insurance and Title Insurance Liaison** – Raul Ballaga, Chair; Alan Fields and Brian Hoffman, Co-Vice Chairs.

17. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian Hoffman and Karla J. Staker, Co-Vice Chairs.

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

1. **Ad Hoc Guardianship Law Revision Committee** – David C. Brennan, Chair; Sancha Brennan Whynot, Hung V. Nguyen and Charles F. Robinson, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** - William T. Hennessey III, Chair; Paul Edward Roman, Vice Chair
3. **Ad Hoc Study Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley and Christopher Q. Wintter, Co-Vice Chairs
4. **Ad Hoc Study Committee on Spendthrift Trust Issues** – Lauren Young Detzel and Jon Scuderi, Co-Chairs
5. **Asset Protection** – George Daniel Karibjanian, Chair; Rick Roy Gans and Brian Michael Malec, Co-Vice-Chair
6. **Attorney/Trust Officer Liaison Conference** – Laura K. Sundberg, Chair; Stacey L. Cole, (Corporate Fiduciary), Tattiana Brenes-Stahl and Patrick C. Emans, Co-Vice Chairs
7. **Digital Assets and Information Study Committee** – J. Eric Virgil, Chair; Michael Travis Hayes and S. Dresden Brunner, Co-Vice Chairs
8. **Elective Share Review Committee** – Lauren Young Detzel and Charles I. Nash, Co-Chairs; Jenna Rubin, Vice-Chair
9. **Estate and Trust Tax Planning** – David James Akins, Chair; Tasha Pepper-Dickinson and Robert Logan Lancaster, Co-Vice Chairs
10. **Guardianship, Power of Attorney and Advanced Directives** – Hung V. Nguyen, Chair, Tattiana Brenes-Stahl, David C. Brennan, J. Eric Virgil, and Nicklaus Joseph Curley, Co-Vice Chairs
11. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Kristen M. Lynch, Co-Chairs; Carlos A. Rodriguez, Vice Chair
12. **Liaisons with ACTEC** – Michael David Simon, Bruce Michael Stone, Elaine M. Bucher, and Diana S.C. Zeydel
13. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie

Ellen Wolasky

14. **Liaisons with Tax Section** – Lauren Young Detzel, William R. Lane, Jr., Brian C. Sparks and Donald R. Tescher
15. **Principal and Income** – Edward F. Koren, Chair; Pamela O. Price, Vice Chair
16. **Probate and Trust Litigation** – Jon Scuderi, Chair; James Raymond George, John Richard Caskey, and Robert Lee McElroy, IV, Co-Vice Chairs
17. **Probate Law and Procedure** – John C. Moran, Chair; Sarah S. Butters, Michael Travis Hayes and Mathew Henry Triggs, Co-Vice Chairs
18. **Trust Law** – Angela M. Adams, Chair; Tami F. Conetta, Jack A. Falk and Mary E. Karr, Co-Vice Chairs
19. **Wills, Trusts and Estates Certification Review Course** – Jeffrey Goethe, Chair; Linda S. Griffin, Seth Andrew Marmor and Jerome L. Wolf, Co-Vice Chairs

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

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

Rosenberg, Co-Vice Chairs

8. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
9. **Homestead Issues Study** – Shane Kelley (Probate & Trust) and Patricia P. Jones (Real Property), Co-Chairs; J. Michael Swaine, Melissa Murphy and Charles Nash, Co-Vice Chairs
10. **Legislation** – Tae Kelley Bronner (Probate & Trust) and Steven Mezer (Real Property), Co-Chairs; Thomas Karr (Probate & Trust), and Alan B. Fields (Real Property), Co-Vice Chairs
11. **Legislative Update (2015)** – R. James Robbins, Chair; Charles I. Nash, Barry F. Spivey, Stacy O. Kalmanson and Jennifer S. Tobin, Co-Vice Chairs
12. **Legislative Update (2016)** – Barry F. Spivey and Stacy O. Kalmanson, Co-Chairs; Thomas Karr, Joshua Rosenberg, and Kymberlee Curry Smith, Co-Vice Chairs
13. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren and Julius J. Zschau
 - b. **Clerks of Circuit Court** – Laird A. Lile and William Theodore Conner
 - c. **FLEA / FLSSI** – David C. Brennan and Roland “Chip” Waller
 - d. **Florida Bankers Association** – Mark T. Middlebrook
 - e. **Judiciary** – Judge Linda R. Allan, Judge Herbert J. Baumann, Judge Melvin B. Grossman, Judge Hugh D. Hayes, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Walter L. Schafer, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J. Suarez,., and Judge Patricia V. Thomas
 - f. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert
 - g. **TFB Board of Governors** – Andrew Sasso
 - h. **TFB Business Law Section** – Gwynne A. Young

- i. **TFB CLE Committee** – Robert S. Freedman and Tae Kelley Bronner
 - j. **TFB Council of Sections** –Michael J. Gelfand and Deborah P. Goodall
 - k. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
14. **Long-Range Planning** – Deborah P. Goodall, Chair
 15. **Meetings Planning** – George J. Meyer, Chair
 16. **Member Communications and Information Technology** – William A. Parady, Chair; S. Dresden Brunner, Michael Travis Hayes, and Neil Shoter, Co-Vice Chairs
 17. **Membership and Inclusion** –Lynwood F. Arnold, Jr. and Jason M. Ellison, Co-Chairs, Phillip A. Baumann, Kathrine S. Lupo, Guy S. Emerich, Theodore S. Kypreos, Tara Rao, and Kymberlee Curry Smith, Co-Vice Chairs
 18. **Model and Uniform Acts** – Bruce M. Stone and Richard W. Taylor, Co-Chairs
 19. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair
 20. **Publications (ActionLine)** – Silvia B. Rojas, Chair (Editor in Chief); Jeffrey Baskies (Vice Chair – Editor Probate & Trust Division), Cary Wright (Vice Chair – Editor Real Property Division), Lawrence J. Miller (Vice Chair – Editor Professionalism & Ethics); George D. Karibjanian (Editor, National Reports), Lee Weintraub (Vice Chair - Reporters Coordinator), Benjamin Diamond (Vice Chair – Features Editor), Kathrine S. Lupo (Vice Chair - Advertising Coordinator), Navin R. Pasem (Vice Chair – Practice Corner Editor), Sean M. Lebowitz (Vice Chair – Probate & Trust Case Summaries), Shari Ben Moussa (Vice Chair – Real Property Case Summaries)
 21. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property), Homer Duvall (Editorial Board – Real Property) and Allison Archbold (Editorial Board), Co-Vice Chairs
 22. **Sponsor Coordination** – Wilhelmina F. Kightlinger, Chair; J. Michael

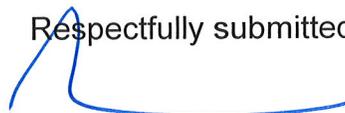
Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs

23. **Strategic Planning** –Michael J. Gelfand and Deborah P. Goodall, Co-Chairs
24. **Professionalism and Ethics--General** – Lawrence J. Miller, Chair; Tasha K. Pepper-Dickinson, Vice Chair
25. **Publications (ActionLine)** – Silvia B. Rojas, Chair (Editor in Chief); Shari Ben Moussa (Advertising Coordinator), Navin R. Pasem (Real Property Case Review), Jeffrey Baskies (Probate & Trust), Ben Diamond (Probate & Trust), George D. Karibjanian (Editor, National Reports), Lawrence J. Miller (Editor, Professionalism & Ethics), and Lee Weintraub (Real Property), Co-Vice Chairs
26. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust), and Douglas G. Christie (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property) and Homer Duvall (Editorial Board – Real Property) and Alison Archbold (Editorial Board), Co-Vice Chairs
27. **Sponsor Coordination** –Wilhelmena F. Kightlinger, Chair; J. Michael Swaine, Deborah L. Russell, W. Cary Wright, Benjamin F. Diamond, John Cole, Co-Vice Chairs
28. **Strategic Planning** –Michael J. Gelfand and Deborah P. Goodall, Co-Chairs

XVII. Adjourn Motion to Adjourn

There being no further business to come before the Executive Council, Mr. Gelfand thanked those in attendance and a motion to adjourn was unanimously approved and the meeting concluded at approximately 1:10 p.m.

Respectfully submitted,



S. Katherine Frazier, Secretary

ADDENDUM "A"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legislative Consultants	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Dunbar, Peter M.	√		√				
Edenfield, Martha Jane	√		√				
Finkbeiner, Brittany	√						
Roth, Cari L.	√						
Guests	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Barboza, Annabella	√		√				
Cortvriend, Sarah	√		√				
Friedman, Jesse		√	√				
Hernandez, Carlos Luis	√		√				
Cribben, Tamara			√				
Christy, Erin	√		√				
Leathe, Jeremy P.		√	√				

Guests	Division		Aug. 1 Palm Beach	Oct. 3 Berlin, Germany	Nov. 14 Boca Raton	Feb. 27 Tampa	June 4 Orlando
	RP	P&T					
Barrow, Clyde B.			√				
Mezer, Amanda			√				
Abreu, Vanessa	√		√				
Duz, Ashley		√	√				



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

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

Wilmington Trust – *David Fritz*

RPPTL 2015 - 2016
 Executive Council Meeting Schedule
 Michael J. Gelfand's Year

Date	Location
July 30, 2015 - August 1, 2015	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Link: https://resweb.passkey.com/go/FLBAR15 Room Rate: \$218 Note: The group rate is no longer available for the nights of 7/30, 7/31 and 8/01. Email meeting.reservations@thebreakers.com to be added to a waitlist for this event.
September 30, 2015 - October 4, 2015	Executive Council Meeting/Out of State The Ritz Carlton Berlin, Germany Reservation Phone # +49 (0)30-33 777- 5555 Reservation Link: http://www.ritzcarlton.com/en/Properties/Berlin/Reservations/Default.htm?nr-1%26ng=1%26gc=tfbtfba Room Rate: €210 Conference Code: tfbtfba Please note: This room block is full. To be added to the waitlist, please email dteel@flabar.org
November 11 - 15, 2015	Executive Council Meeting Boca Raton Resort and Club Boca Raton, FL Room Rates ¹ : Cloister Estate Room: \$220.00 Cloister Suite: \$475.00 Yacht Club Waterway Room: \$275.00 Tower Room: \$220.00 Tower Junior Suite: \$260.00 Cut-off Date: October 21, 2015 Reservation Phone: 1-888-557-6375 Reservation Ref Code: Florida Bar Real Property, Probate & Trust Section
February 25, 2016 - February 28, 2016	Executive Council Meeting Marriott Tampa Waterside Tampa, Florida Room Rate: \$224 Cut-off Date: January 13, 2016 Reservation Phone: 1-813-221-4900 Reservation Ref. Code: The Florida Bar Real Property Executive Council Meeting
June 1 - 5, 2016	Executive Council Meeting / RPPTL Convention Loews Portofino Bay Hotel Orlando, Florida Room Rate \$219 Cut-off Date: May 2, 2016 Reservation Phone: Reservation Ref. Code: Reservation Link: http://uo.loewshotels.com/en/Portofino-Bay-Hotel/GroupPages/FLBar2016

Date/Time	Committee / Event:	Set	# at Table	# perimeter chairs	Equipment
Wednesday	November 11, 2015				
2:00 pm – 6:00 pm	Registration Desk Hours				
Thursday	November 12, 2015				
8:00 am – 5:00 pm	Registration Desk Hours				
8:30 am – 11:00 am	Executive Committee **	Conf	12	0	
12:00 pm – 1:30 pm	Digital Assets and Information Study Committee	H/S	40	10	
12:00 pm – 1:30 pm	Homestead Issues Study*	H/S	20	10	
1:00 pm – 2:30 pm	Title Issues & Standards	Conf	10		speakerphone
1:00 pm – 3:00 pm	Real Property Finance & Lending	H/S	40	20	microphones, podium, speaker phone
1:00 pm – 3:30 pm	Condominium and Planned Development	H/S	60	60	microphones, podium
1:30 pm – 3:30 pm	Trust Law	H/S	80	60	microphones, podium
3:30 pm – 5:00 pm	Fiduciary Practice Group	H/S	20		speakerphone
3:30 pm – 5:00 pm	Construction Law Institute	Conf	10		speakerphone
3:30 pm – 5:00 pm	Landlord & Tenant	Conf	10		speakerphone
3:30 pm – 5:00 pm	Title Insurance & Title Insurance Liaison	H/S	45	15	speakerphone microphones podium
3:30 pm - 5:00 pm	Guardianship & Advanced Directives	H/S	40	20	microphone
3:30 pm – 5:00 pm	Asset Protection	H/S	60	20	microphones, podium
5:00 pm – 6:00 pm	At Large Members	Rounds	80		microphones, podium/beer & wine
5:00 pm – 6:00 pm	Elective Share Review Committee *	Conf	15		
5:00 pm – 6:00 pm	ALTA Best Practices Task Force	Conf	15		
6:15 pm – 9:30 pm	Welcome Reception	<i>Pre-Registration and Ticket Required</i>			
9:30 pm – 11:30 pm	Hospitality Suite				
Friday	November 13, 2015				

6:30 AM	Reptiles Run				
7:30 am – 9:00 am	Continental Breakfast (GRAB AND GO)	<i>Pre-Registration and Ticket Required</i>			
8:00 am – 9:30 am	Estate & Trust Tax Planning	H/S	60	20	microphones, podium
8:00 am – 9:00 am	Insurance & Surety	H/S	20	10	speakerphone
8:30 am – 9:30 am	Attorney Trust Officer	Conf	14	10	speakerphone
9:00 am – 11:00 am	Residential Real Estate & Industry Liaison Committee	H/S	40	20	microphones, podium, speakerphone
9:00 am – 11:00 am	Membership & Inclusion	H/S	25	5	
9:00 am – 11:00 am	Real Estate Structures and Taxation	H/S	30	15	microphones, podium
9:30 am – 11:30 am	Probate Law & Procedure	H/S	80	40	microphones, podium
9:30 am – 11:00 am	Development and Land Use	Conf	14	none	speakerphone
9:30 am – 11:00 am	Sponsorship Committee	Conf	10	none	none
11:00 am – 12:30 pm	Construction Law	H/S	20	10	microphones, podium
11:00 am – 12:30 pm	Real Property Litigation	H/S	30	10	speakerphone, microphones, podium
11:30 am – 1:00 pm	Member Communication and Information Technology	Conf	10	5	
11:30 pm – 1:30 pm	Buffet Lunch (GRAB AND GO)	<i>Pre-Registration and Ticket Required</i>			
11:30 pm – 1:00 pm	Ad Hoc Decanting				
11:30 pm – 1:00 pm	Ad Hoc Study on Spendthrift Trust Issues Committee	H/S	20	10	
11:30 pm – 1:00 pm	Ad Hoc Same Sex Marriage Implication *	H/S	20	10	
11:30 pm – 1:00 pm	IRA, Insurance & Employee Benefits	H/S	30	15	microphones
1:00 pm – 3:00 pm	Probate & Trust Litigation	H/S	80	40	microphones, podium
1:30 pm – 3:00 pm	Commercial Real Estate	H/S	25	15	speakerphone
1:30 pm – 3:00 pm	Real Property Problem Study	H/S	20	25	speakerphone
1:30 pm – 3:00 pm	Fellows and Mentoring	H/S	20	25	
3:00 pm – 5:00 pm	Real Property Law Division Roundtable	Rounds	100		microphones, podium

3:00 pm – 5:00 pm	Probate and Trust Law Division Roundtable	Rounds	140		microphones, podium
5:00 pm – 6:00 pm	PAC	Rounds	100		microphones, podium
5:00 pm – 6:00 pm	Ad Hoc Jurisdiction/Service Process	Conf	15		
6:30 pm – 9:30 pm	Reception and Dinner	<i>Pre-Registration and Ticket Required</i>			
9:30 pm – 11:30 pm	Hospitality Suite				
Saturday	November 14, 2015				
6:00 AM	Reptiles Run				
7:30 am - 9:00 am	Executive Council Breakfast	<i>Pre-Registration and Ticket Required- Breakfast is</i>			
9:00 am – 12:00 pm	Executive Council Meeting	class w/ riser	250	50	two screens,podium, microphones, two standing microphones down each aisle
2:00 pm – 4:00 pm	Career Coaching Session				
7:00 pm – 9:30 pm	Dinner	<i>Pre-Registration and Ticket Required</i>			

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

**** Attendance by invitation only**

RPPTL 2016 - 2017
Executive Council Meeting Schedule
Deborah P Goodall's Year

Date	Location
July 28, 2016 – July 30, 2016	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Link: Room Rate: \$218 https://resweb.passkey.com/go/FLABR16

SAVE THE DATES:

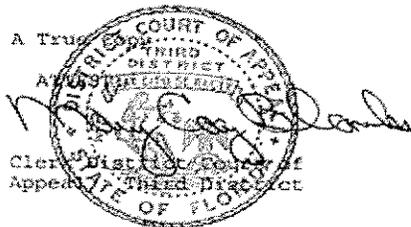
October 6 – October 9, 2016	Executive Council Meeting The Walt Disney World BoardWalk Inn Lake Buena Vista, FL Reservation Information: (**Contract Pending**) Room Rate: \$249 (single/double occupancy)
December 8 – December 10, 2016	Executive Council Meeting The Westin Resort and Marina Key West, FL Reservation Information: (**Contract Pending**) Room Rate: \$279 (single/double occupancy) \$319 Partial Ocean View

WATCH THIS SPACE:

Hope to have news soon regarding out of state meeting (likely February 2017)
and Convention (likely early June 2017)

and Federal Home Loan Mortgage Corporation are each invited to file an amicus curiae brief within sixty (60) days from the date of this order addressing the following issues:

1. Where a foreclosure action has been dismissed with the note and mortgage still in default:
 - a. Does the dismissal of the action, by itself, revoke the acceleration of the debt balance thereby reinstating the installments terms?
 - b. Absent additional action by the mortgagee can a subsequent claim of acceleration for a new and different time period be made?
 - c. Does it matter if the prior foreclosure action was voluntarily or involuntarily dismissed, or whether the dismissal was with or without prejudice?
 - d. What is the customary practice?
2. If an affirmative act is necessary by the mortgagor to accelerate a mortgage, is an affirmative act necessary to decelerate?
3. In light of Singleton v. Greymar Assocs., 882 So. 2d 1004 (Fla. 2004), is deceleration an issue or is deceleration inapplicable if a different and subsequent default is alleged?



cc: Todd L. Wallen
Harry Beauvais
Business Law Section
Of The Florida Bar

William P. McCaughan
Federal Home Loan
Mortgage Corporation
Florida Alliance For
Consumer Protection

Nicholas D. Siegfried
Federal National
Mortgage Association
Mortgage Bankers
Association Of South
Florida
Real Property Probate &
Trust Law Section Of
The Florida Bar

2014 WL 7156961

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

District Court of Appeal of Florida,
Third District.

DEUTSCHE BANK TRUST COMPANY

AMERICAS, etc., Appellant,

v.

Harry BEAUVAIS, et al., Appellees.

No. 3D14-575. | Dec. 17, 2014.

Synopsis

Background: Mortgagee brought second foreclosure action after first foreclosure action was dismissed without prejudice. The Circuit Court, Miami-Dade County, Peter R. Lopez, J., granted summary judgment in favor of mortgagor. Mortgagee appealed.

Holdings: The District Court of Appeal, Emas, J., held that:

[1] filing of second foreclosure action was barred by statute of limitations, and

[2] order declaring the mortgage null and void and canceling the same, based on the statute of limitations, required remand.

Affirmed in part and reversed in part; question certified.

West Headnotes (8)

[1] **Limitation of Actions**
⚡ Causes of Action in General

The statute of limitations begins to run when a cause of action accrues, and a cause of action accrues when the last element constituting the cause of action occurs. West's F.S.A. § 95.11(2)(e).

| Cases that cite this headnote

[2] **Mortgages**
⚡ Stipulations for Maturity of Debt on Default

An acceleration clause contained in a note which by its terms requires payment in installments confers a contract right upon the mortgagee which he may elect to enforce, upon a default. West's F.S.A. § 95.11(2)(c).

Cases that cite this headnote

[3] **Limitation of Actions**
⚡ Installments in General

When a mortgage contains an optional acceleration clause, the statute of limitations commences when the lender exercises this option and invokes the acceleration clause.

| Cases that cite this headnote

[4] **Limitation of Actions**
⚡ Installments in General

Involuntary dismissal without prejudice of initial foreclosure action did not by itself negate, invalidate or otherwise decelerate lender's acceleration of the debt in the initial action, and thus, filing of subsequent foreclosure action, after expiration of the statute of limitations, was barred; lender's acceleration of the debt triggered the commencement of the statute of limitations, and because the installment nature of the loan payments was never reinstated following the acceleration, there were no "new" payments due and thus there could be no "new" default following the dismissal without prejudice of the initial action. West's F.S.A. § 95.11(2)(c).

4 Cases that cite this headnote

[5] **Limitation of Actions**
⚡ Nature of Statutory Limitation

Limitation of Actions
⚡ Operation as to Rights or Remedies in General

A "statute of limitations" is a shield that may be used as an affirmative defense; a "statute of repose" is a sword that may terminate a lien. West's F.S.A. § 95.11(2)(c), 95.281.

Cases that cite this headnote

[6] **Limitation of Actions**

⇒ Operation as to Rights or Remedies in General

Statute of repose establishes an ultimate date when the lien of the mortgage terminates and is no longer enforceable.

1 Cases that cite this headnote

[7] **Limitation of Actions**

⇒ Operation as to Rights or Remedies in General

A statute of repose serves to establish a definitive time limitation on a valid cause of action, which not only bars enforcement of an accrued cause of action but may also prevent the accrual of a cause of action where the final element necessary for its creation occurs beyond the time period established by the statute.

Cases that cite this headnote

[8] **Limitation of Actions**

⇒ Operation as to Rights or Remedies in General

Five year limitations period, which applied to mortgagee's foreclosure action, did not affect the life of the lien or extinguish the debt, rather it merely precluded an action to collect the debt after five years, and thus, trial court order declaring the mortgage null and void and canceling the same, based on the statute of limitations, required remand. West's F.S.A. sec. 95.281(1)(a).; West's F.S.A. § 95.11(2)(c).

3 Cases that cite this headnote

Attorneys and Law Firms

K & L Gates LLP, William P. McCaughan, Steven R. Weinstein and Stephanie N. Moot, Miami, for appellant.

Siegfried, Rivera, Hyman, De La Torre, Mass & Sobel, Steven M. Siegfried, and Nicholas Siegfried, Coral Gables;

The Wallen Law Firm and Todd L. Wallen, Coral Gables, for appellees.

Before SHEPHERD, C.J., and EMAS and SCALES, JJ.

EMAS, J.

I. INTRODUCTION

*1 Deutsche Bank Trust Company Americas, as Indenture Trustee for American Home Mortgage Investment Trust 2006-2 ("Deutsche Bank"), appeals from the trial court's order of final summary judgment in favor of Aqua Master Association, Inc. ("the Association"). Deutsche Bank asserts the trial court erred in concluding that the expiration of the statute of limitations barred the cause of action and rendered the lien of mortgage on the property null and void. The following issue is squarely raised in this case:

Where a lender files a foreclosure action upon a borrower's default, and expressly exercises its contractual right to accelerate all payments, does an involuntary dismissal of that action without prejudice in and of itself negate, invalidate or otherwise "decelerate" the lender's acceleration of the payments, thereby permitting a new cause of action to be filed based upon a new and subsequent default?

We answer that question in the negative, and hold that the involuntary dismissal without prejudice of the foreclosure action did not by itself negate, invalidate or otherwise decelerate the lender's acceleration of the debt in the initial action. The lender's acceleration of the debt triggered the commencement of the statute of limitations, and because the installment nature of the loan payments was never reinstated following the acceleration, there were no "new" payments due and thus there could be no "new" default following the dismissal without prejudice of the initial action. The filing of the subsequent action, after expiration of the statute of limitations, was therefore barred. We reverse, however, that portion of the order which canceled the note and mortgage and quieted title in favor of the Association.

II. BACKGROUND AND FACTS

The mortgage at issue ("the Mortgage") encumbered a condominium on Aqua Avenue in Miami Beach ("the Property"), which is currently owned by the Association.

Harry Beauvais, the mortgagor and original borrower, lost title to the Property as a result of an unrelated foreclosure proceeding initiated by the Association, as will be described below. The Association has owned the property since February 22, 2011.

The note and mortgage were executed on February 10, 2006 in the principal amount of \$1,440,000. Beauvais defaulted on his payments to the original mortgagee in September 2006. There are three actions regarding the Property that provide context for this appeal:

- *American Home Mortgage Servicing, Inc. (“AHMS”) v. Beauvais, et al.* (“the Initial Action”): This Initial Action was commenced on January 23, 2007, after Beauvais defaulted on his payments in September 2006. AHMS sought to foreclose on the mortgage on the full amount of the debt. In paragraph four of its complaint, AHMS alleged: “Defendant, Harry Beauvais, failed to pay the payment due on the Note on September 1, 2006, and Plaintiff elected to accelerate payment of the balance.” (Emphasis added.) In its complaint, AHMS sought payment of the full, accelerated amount of the remaining principal due —\$1,439,926.80. On December 6, 2010, the trial court dismissed the Initial Action without prejudice because AHMS failed to appear at a case management conference. AHMS did not appeal this dismissal order, and took no further action with regard to its acceleration of the payments.

*2 • *Aqua Master Association, Inc. v. Beauvais, et al.* (“the Condominium Action”): In the Condominium Action, Association foreclosed its lien on the Property based on Beauvais’ failure to pay condominium assessments. The Association obtained title to the Property in 2011, by issuance of a certificate of title, and obtained title subject to the AHMS mortgage.

- *Deutsche Bank Trust Company Americas v. Beauvais, et al.* (“the Current Action”): The Current Action was filed on December 18, 2012, in which Deutsche Bank¹ sought to foreclose on the Property due to a default by Beauvais. In its complaint, Deutsche Bank alleges that Beauvais defaulted by failing to make the payment due October 1, 2006² as well as all subsequent payments. Similar to the complaint in the Initial Action, Deutsche Bank’s complaint in the Current Action declared that it was exercising its contractual right to accelerate all payments, and alleged the full amount of the principal payable under the note and mortgage to be immediately due, in the amount of

\$1,439,926.80, the same principal amount sought in the complaint filed in the Initial Action. The Association answered, raising as an affirmative defense the expiration of the statute of limitations.

The Association moved for summary judgment in the Current Action, arguing that:

- In the Initial Action, Deutsche Bank exercised its contractual right to accelerate the payments, which triggered the running of the five-year statute of limitations for the entire debt;
- The trial court’s dismissal without prejudice of the Initial Action did not negate or otherwise invalidate the acceleration of the debt or otherwise reinstate the installment nature of the payments due;
- Deutsche Bank took no action to withdraw its acceleration of the debt or otherwise reinstate the installment nature of the payments due;
- The Current Action (filed December 18, 2012) was filed more than five years after the statute of limitations commenced with Deutsche Bank’s acceleration of the debt in the Initial Action (filed January 23, 2007); and
- Therefore, Deutsche Bank is barred by the statute of limitations from pursuing the Current Action.

Deutsche Bank responded, contending that:

- The Initial Action was based on a default date (September 1, 2006) different from the Current Action (October 1, 2006);
- The trial court’s dismissal of the Initial Action served to “decelerate” the payments, in effect negating the acceleration exercised by Deutsche Bank in the Initial Action and reinstating the installment nature of the loan repayment; and
- Pursuant to *Singleton v. Greymar Assocs.*, 882 So.2d 1004 (Fla.2004), and its progeny, the statute of limitations did not bar the Current Action, because the failure to make a subsequent payment following dismissal of the Initial Action constituted a new default, creating a new and distinct cause of action and the commencement of a new statute of limitations period.

*3 The trial court granted the Association’s motion, and entered judgment in its favor, determining that: (i) the Current Action was barred by the statute of limitations because it was

filed on December 18, 2012, more than five years after the filing of the complaint in the Initial Action in January 2007; and (ii) the expiration of the statute of limitations rendered the mortgage null and void. In its order, the court quieted title to the Property in favor of the Association against the claims of Deutsche Bank. The trial court denied Deutsche Bank's motion for rehearing, and this appeal followed. We review these issues *de novo*. *S. Fla. Coastal Elec., Inc. v. Treasures on Bay II Condo Ass'n*, 89 So.3d 264, 266 (Fla. 3d DCA 2012).

III. ANALYSIS

Deutsche Bank's primary argument in this appeal is that when the Initial Action was involuntarily dismissed without prejudice in December 2010, this dismissal effectively "decelerated" the loan (which had been expressly accelerated by the complaint in the Initial Action), thus returning Deutsche Bank and Beauvais to their original positions before the lawsuit was filed, meaning that the installment nature of the loan repayment was again in effect. Therefore, Deutsche Bank's argument goes, Beauvais' failure to make a payment on October 1, 2006 (one month after the default date in the Initial Action) constituted a "new" default, creating a new and distinct cause of action with a new limitations period, allowing Deutsche Bank to foreclose (and to again exercise its contractual right to accelerate the loan payments), by filing the Current Action in December 2012.

The Association contends that Deutsche Bank's exercise of its contractual right to accelerate the debt in the Initial Action triggered the commencement of the five-year statute of limitations, and neither Deutsche Bank nor Beauvais took any action to reinstate the installment nature of the payments under the mortgage. The Association posits that the trial court's involuntary dismissal without prejudice could not, by operation of law, serve to "decelerate" the loan, to negate the acceleration of the payments, or to otherwise reinstate the installment nature of the payments, because such a conclusion would in effect permit the trial court to rewrite the terms of the contract between the lender and the borrower. Therefore, the statute of limitations continued to run on the accelerated debt, and expired before Deutsche Bank filed the Current Action in December 2012.

A. The Statute of Limitations and a Contractual Acceleration Clause

[1] [2] Under the relevant statute of limitations, section 95.11(2)(c), Florida Statutes, "[a]n action to foreclose a

mortgage" "shall be commenced ... within five years." The statute of limitations begins to run when a cause of action accrues, and "[a] cause of action accrues when the last element constituting the cause of action occurs." *City of Riviera Beach v. Reed*, 987 So.2d 168, 170 (Fla. 4th DCA 2008). An acceleration clause contained in a note which by its terms requires payment in installments "confers a contract right upon the mortgagee which he may elect to enforce, upon a default." *Campbell v. Werner*, 232 So.2d 252, 255 (Fla. 3d DCA 1970).

*4 In *Campbell*, this court further noted that

a contract for acceleration of a mortgage indebtedness should not be abrogated or impaired, or the remedy applicable thereto denied, except upon defensive pleading and proof of facts or circumstances which are regarded in law as sufficient grounds to prompt or support such action by the court.

Id. at 256.

[3] When a mortgage contains an optional acceleration clause, the statute of limitations commences when the lender exercises this option and invokes the acceleration clause. *See Greene v. Bursey*, 733 So.2d 1111, 1115 (Fla. 4th DCA 1999) (noting that in an installment contract with an optional acceleration clause, "the entire debt does not become due on the mere default of payment; rather, it become[s] due when the creditor takes affirmative action to alert the debtor that he has exercised his option to accelerate."); *Monte v. Tipton*, 612 So.2d 714 (Fla. 2d DCA 1993); *Smith v. F.D.I.C.*, 61 F.3d 1552, 1561 (11th Cir.1995) (holding, "when the promissory note secured by a mortgage contains an optional acceleration clause, the foreclosure cause of action accrues, and the statute of limitations begins to run, on the date the acceleration clause is invoked.").

The parties agree that the statute of limitations commenced, at the latest, when the Initial Action was filed on January 23, 2007, in a complaint which by its terms exercised the option to accelerate all payments due under the mortgage, rendering those payments (and the entire principal balance) immediately due and payable.

The relevant portion of the note provides:

6. BORROWER'S FAILURE TO PAY AS REQUIRED

...

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

The relevant portion of the mortgage provides:

22. Acceleration; Remedies. Lender shall give notice³ to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument.... The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, but which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by the Security Instrument, foreclosure by judicial proceeding and sale of the Property. *The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding.*

*5 (Emphasis added.)

In this case, Deutsche Bank exercised its right of acceleration, and did "require immediate payment in full of all sums secured by this Security Instrument without further demand" and did seek to "foreclose this Security Instrument by judicial proceeding." Neither the note nor the mortgage provides that

dismissal without prejudice of the foreclosure action would negate the acceleration of the debt or otherwise reinstate the installment nature of the loan. Indeed, the mortgage provides only that the notice of default shall "inform Borrower of the right to reinstate after acceleration...." The only other provision regarding reinstatement after acceleration is also framed in terms of the rights of the Borrower:

18. Borrower's Right to Reinstate After Acceleration.

If Borrower meets certain conditions, *Borrower shall have the right to have enforcement of this Security Instrument discontinued* at any time prior to the earliest of: (a) five days before the sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. *These conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. ... Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred.*

(Emphasis added.)

There is no evidence that Beauvais sought to have the acceleration of the debt (or other enforcement of the mortgage) discontinued or modified, nor is there any evidence that he sought reinstatement of the installment nature of the payments or met any of the conditions necessary for reinstatement.

And so what remains in dispute is whether the involuntary dismissal without prejudice of the Initial Action had any legal effect on the acceleration of the debt: in other words, did the involuntary dismissal without prejudice of the Initial Action reinstate the installment terms of the mortgage and note (i.e., effectuate a "deceleration" of the acceleration option

exercised by Deutsche Bank in its complaint) such that a failure to make a subsequent payment could be considered a “new” default, causing the accrual of a new cause of action and commencing the running of a new statute of limitations period?

B. *Singleton and its Progeny*

*6 In support of its position Deutsche Bank relies heavily on *Singleton v. Greymar Associates*, 882 So.2d 1004 (Fla.2004), and several cases applying *Singleton*. In *Singleton*, the lender brought a foreclosure action based on borrowers' failure to make payments from September 1, 1999 to February 1, 2000. *Id.* at 1005. This first action was dismissed *with prejudice* when the lender failed to appear at a case management conference. *Id.* Thereafter, a second foreclosure action was filed, alleging borrowers failed to make payments from April 1, 2000 onward. *Id.* The trial court eventually entered final judgment for the lender, against borrowers' contention that res judicata barred relief in the second action, which borrowers contended was identical to the first action. *Id.* On appeal, the Fourth District affirmed the trial court, finding that “[e]ven though an earlier foreclosure action filed by [lender] was dismissed with prejudice, the application of res judicata does not bar this lawsuit.... The second action involved a new and different breach.” *Id.*

The Florida Supreme Court accepted jurisdiction upon express and direct conflict with the Second District's decision in *Stadler v. Cherry Hill Developers, Inc.*, 150 So.2d 468 (Fla. 2d DCA 1963). In *Stadler*, an initial foreclosure action was filed, alleging a default date of May 1960. *Id.* at 469. That action was later dismissed by the trial court *with prejudice* for failure to comply with a rule of court. *Id.* A second foreclosure action was thereafter filed, alleging a subsequent default date of August 1960. *Id.* The trial court entered a final judgment of foreclosure, and the Second District reversed, holding that res judicata barred the second action. *Id.*

The supreme court disapproved of the holding in *Stadler* and approved the Fourth District's holding in *Singleton*:

We agree with the reasoning of the Fourth District that when a second and separate action for foreclosure is sought for a default that involves a separate period of default from the one alleged in the first action, the case is not necessarily barred by res judicata.

Singleton, 882 So.2d at 1006–07.

We conclude that the doctrine of res judicata does not necessarily bar successive foreclosure suits, regardless of whether or not the mortgagee sought to accelerate payments on the note in the first suit. In this case the subsequent and separate alleged default created a new and independent right in the mortgagee to accelerate payment on the note in a subsequent foreclosure action.

Id. at 1008.

Deutsche Bank argues that the *Singleton* analysis is equally applicable to a claim of a statute of limitations bar, as opposed to a claim of res judicata. The Association argues that *Singleton* was decided strictly on res judicata principles and its rationale does not extend to a case involving application of the statute of limitations. We conclude that both arguments miss the dispositive distinction between *Singleton* and the instant case: *Singleton* involved an involuntary dismissal *with prejudice* of the initial action, whereas the instant case involved an involuntary dismissal *without prejudice*. The dismissal with prejudice in *Singleton* operated as an adjudication on the merits. By contrast, the trial court's dismissal in the instant case was expressly entered without prejudice, which did not operate as an adjudication on the merits. See Fla. R. Civ. P. 1.420(b) (“[u]nless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision ... operates as an adjudication on the merits”) (emphasis added); *CPI Mfg. Co. v. Industrias St. Jack's, S.A. De C.V.*, 870 So.2d 89 (Fla. 3d DCA 2003); *National Carloading Corp. v. Gemini Transp., Inc.*, 364 So.2d 504 (Fla. 3d DCA 1978); *Millsaps v. Orlando Wrecker, Inc.*, 634 So.2d 680 (Fla. 5th DCA 1994).

*7 In *Singleton*, the dismissal with prejudice disposed not only of every issue actually adjudicated, but every justiciable issue as well. *Hinchee v. Fisher*, 93 So.2d 351, 353 (Fla.1957), *overruled in part on other grounds*, *May v. State ex rel. Ervin*, 96 So.2d 126 (Fla.1957). In *Hinchee*, as in *Singleton* and *Stadler*, the trial court dismissed an initial action with prejudice. *Hinchee*, 93 So.2d at 353. This operated as an adjudication on the merits and, as a general proposition for purposes of res judicata, “puts at rest and entombs in eternal quiescence every justiciable, as well as every actually

adjudicated, issue.” *Id.* (quoting *Gordon v. Gordon*, 59 So.2d 40, 43 (Fla.1952)). As the Court observed in *Hinchee*:

A judgment on the merits does not require a determination of the controversy after a trial or hearing on controverted facts. It is sufficient if the record shows that the parties might have had their controversies determined according to their respective rights if they had presented all their evidence and the court applied the law.

Id. (quoting *Olsen v. Muskegon Piston Ring Co.*, 117 F.2d 163, 165 (6th Cir.1941)).

Thus, in *Singleton* (and *Stadler*), the order of dismissal with prejudice served to adjudicate, in favor of the borrower, the merits of the lender's claim and the borrower's defenses, thus determining there was no valid default (and, by extension, no valid or effective acceleration of the debt). It is this merits determination that the Supreme Court addressed in *Singleton*, and is the issue which renders the *Singleton* analysis inapplicable to the instant case:

While it is true that a foreclosure action and an acceleration of the balance due based upon the same default may bar a subsequent action on that default, an acceleration and foreclosure predicated upon subsequent and different defaults present a separate and distinct issue. *See Olympia Mortgage Corp. [v. Pugh]*, 774 So.2d [863] at 866 (Fla. 4th DCA 2000) (“We disagree that the election to accelerate placed future installments at issue.”); *see also Greene v. Boyette*, 587 So.2d 629, 630 (Fla. 1st DCA 1991) (holding that a mortgagee can successfully recover twice on one mortgage for multiple periods of default because the payments were different “installments”). *For example, a mortgagor may prevail in a foreclosure action by demonstrating that she was not in default on the payments alleged to be in default, or that the mortgagee had waived reliance on the defaults. In those instances, the mortgagor and mortgagee are simply placed back in the same contractual relationship with the same continuing obligations. Hence, an adjudication denying acceleration and foreclosure under those circumstances should not bar a subsequent action a year later if the mortgagor ignores her obligations on the mortgage and a valid default can be proven.*

Singleton, 882 So.2d at 1007 (emphasis added.)

*8 [4] Res judicata is not the issue in the instant case because the dismissal of the Initial Action was without prejudice, and therefore the borrower here (unlike the borrower in *Singleton*) did not “prevail in the foreclosure action by demonstrating that she was not in default” nor was there “an adjudication denying acceleration and foreclosure” such that the parties “are simply placed back in the same contractual relationship with the same continuing obligations.” *Id.* This is significant because, where, as here, there has been no adjudication on the merits, nor a determination that the acceleration was invalid or ineffectual, the lender's exercise of its option to accelerate the debt survives a dismissal without prejudice.⁴ And because the accelerated nature of the debt was unaffected by the order of dismissal without prejudice, and the parties never reinstated the installment terms of the repayment of the debt, it necessarily follows that the statute of limitations on the accelerated debt continued to run. Therefore, the only subsequent cause of action which Deutsche Bank could file under the circumstances was an action on the accelerated debt—it could not thereafter sue upon an alleged “new” default because, without reinstating the installment terms of the repayment of the debt, there were no “new” payments due, only the single accelerated payment that was due at the time of the Initial Action, which continued to remain due after the dismissal without prejudice. Without a new payment due, there could be no new default, and therefore no new cause of action. Because the Current Action was based upon the very same accelerated debt as the Initial Action, and because that Current Action was filed after the expiration of the five-year statute of limitations, it was barred.⁵

We acknowledge that *Singleton* has been applied to permit, as against an asserted statute of limitations bar, the filing of a subsequent action following dismissal *with prejudice* (i.e., an adjudication on the merits) of an earlier action. *See 2010–3 SFR Venture, LLC v. Garcia*, 149 So.3d 123 (Fla. 4th DCA 2014); *Star Funding Solutions, LLC v. Kronides*, 101 So.3d 403 (Fla. 4th DCA 2012); *U.S. Bank Nat. Ass'n v. Bartram*, 140 So.3d 1007 (Fla. 5th DCA 2014) review granted, *Bartram v. U.S. Bank Nat. Ass'n*, Nos. SC14–1265, SC14–1266, SC14–1305, 2014 WL 4662078 (Fla. Sept. 11, 2014); *PNC Bank, N.A. v. Neal*, 147 So.3d 32 (Fla. 1st DCA 2013). We believe our holding is not necessarily inconsistent with the strict holdings of these cited cases, as each of them involved a dismissal of the earlier action with prejudice, representing

an adjudication on the merits and, at least implicitly, a determination that there was no default and therefore no valid or effectual acceleration. For example, in *Bartram*, 140 So.3d at 1014, the Fifth District held that the bank's acceleration of a note in its initial lawsuit (which was subsequently dismissed with prejudice pursuant to rule 1.420(b)) did not prevent a subsequent foreclosure action by the mortgagee (filed more than five years after the acceleration) based on payment defaults occurring subsequent to dismissal with prejudice of the first action. The *Bartram* court concluded that the res judicata analysis of *Singleton* applies with equal force to a statute of limitations analysis because, given the Supreme Court's "conclusion that each new default creates a new cause of action, the statute of limitations would only begin to run when the new cause of action accrued." *Id.* at 1012. The *Bartram* court further held:

*9 Based on *Singleton*, a default occurring after a failed foreclosure attempt creates a new cause of action for statute of limitations purposes, even where acceleration had been triggered and the first case was dismissed on its merits. Therefore, we conclude that a foreclosure action for default in payments occurring after the order of dismissal in the first foreclosure action is not barred by the statute of limitations found in section 95.11(2)(c), Florida Statutes, provided the subsequent foreclosure action on the subsequent defaults is brought within the limitations period [of the new default]. We therefore reverse the judgment under review and remand this case to the trial court for further proceedings consistent with this opinion.

Id. at 1014. The Fifth District certified the following question to the Florida Supreme Court:

Does acceleration of payments due under a note and mortgage in a foreclosure action that was dismissed pursuant to rule 1.420(b), Florida Rules of Civil Procedure, trigger application of the statute of limitations to prevent a subsequent foreclosure action by the mortgagee based

on all payment defaults occurring subsequent to dismissal of the first foreclosure suit?

Id.

A foundational element for the decision in *Bartram* was *Singleton*'s observation "that each new default creates a new cause of action" and the accrual of a new cause of action commences a new statute of limitations period. *Id.* at 1012. In *Bartram* (as in *Singleton*), a new default (and therefore a new cause of action) existed only because the dismissal of the first action was with prejudice, constituting an adjudication on the merits and a determination that there was no valid acceleration. Here, by contrast, because the dismissal was without prejudice, there was no adjudication on the merits, and thus no determination regarding Deutsche Bank's acceleration of the debt in the Initial Action. Without an adjudication on the merits, the acceleration of the debt remained in place, meaning that the entire balance of the debt was and remained immediately due. Under those circumstances, there are no new payments due. Without any new payment due there could be no new default, and without a new default there could be no new cause of action.

Although the dismissal without prejudice distinguishes the instant case from *Singleton* and *Bartram* (and other cases applying *Singleton* to dismissals with prejudice), we recognize that several courts have applied *Singleton* to hold that a subsequent foreclosure action was not barred by the statute of limitations following a dismissal *without prejudice* of the first foreclosure action. See *Evergrene Partners, Inc. v. Citibank, N.A.*, 143 So.3d 954, 956 (Fla. 4th DCA 2014) (applying *Singleton* and *Bartram* and holding statute of limitations did not bar a subsequent foreclosure action following a voluntary dismissal without prejudice of prior foreclosure action); *Dorta v. Wilmington Trust Nat. Ass'n*, No. 5:13-cv-185-Oc-10PRL, 2014 WL 1152917 (M.D.Fla. March 24, 2014); *Kaan v. Wells Fargo Bank, N.A.*, 981 F.Supp.2d 1271 (S.D.Fla.2013); *Ros v. Lasalle Bank Nat. Ass'n*, No. 14-22112-CIV-Bloom, 2014 WL 3974558 (S.D.Fla. July 18, 2014); *Matos v. Bank of New York*, No. 14-21954-CIV-Moreno, 2014 WL 3734578 (S.D.Fla. July 28, 2014).

*10 None of these cases, however, appears to address the distinction between dismissals with and without prejudice, the resulting res judicata effect (or absence thereof), and our conclusion that, in the absence of an adjudication on the merits, the lender's prior acceleration of the debt remains in

effect. There is a dearth of decisions from other jurisdictions on the precise issue before us. However, at least one reported decision has held, as we do, that a voluntary dismissal without prejudice of an action on an accelerated debt does not, by itself, constitute a deceleration:

Because an affirmative act is necessary to accelerate a mortgage, the same is needed to decelerate. Accordingly, a deceleration, when appropriate, must be clearly communicated by the lender/holder of the note to the obligor. Here, if [lender] intended to revoke the acceleration of the debt due under the note, it should have done so in a writing documenting the changed status. The voluntary dismissal [without prejudice] did not decelerate the mortgage because it was not accompanied by a clear and unequivocal act memorializing that deceleration.

Cudde Co. II, Inc. v. Fountain, 281 P.3d 1158 (Nev.2009).

We hold that, under the facts of this case, once Deutsche Bank accelerated the debt under the terms of the mortgage and note, and in the absence of a contractual reinstatement, modification by the parties, or an adjudication on the merits, the accelerated debt was not “decelerated” by an involuntary dismissal without prejudice. The accelerated payment of the debt continued to be due and the statute of limitations on the action on the accelerated debt continued to run. Because there were no “new” payments due, there could be no “new” default upon which a “new” cause of action (and newly-commenced statute of limitations) could be based. The statute of limitations expired before the filing of the subsequent action and was thus barred. We certify conflict with *Evergrene Partners, Inc. v. Citibank, N.A.*, 143 So.3d 954, 956 (Fla. 4th DCA 2014).

C. The Duration of the Mortgage Lien

[5] The remaining question is whether, given our holding on the statute of limitations, the lien of mortgage is null and void and must be canceled. We conclude that the trial court erred in determining that the mortgage was null and void. The trial court's determination on the first issue (and our affirmance of same) does not compel a conclusion that the mortgage itself is null and void. The issues are subject

to separate statutory consideration and analysis. “[A] ‘statute of limitations’ is a shield that may be used as an affirmative defense; a ‘statute of repose’ is a sword that may terminate a lien.” *Matos*, 2014 WL 3734578, at *3. Section 95.11(2)(c) is a statute of limitations; section 95.281 is a statute of repose, and determines the duration of a mortgage lien. That statute provides in relevant part:

(1) The lien of a mortgage ... shall terminate after the expiration of the following periods of time:

*11 (a) If the final maturity of an obligation secured by a mortgage is ascertainable from the record of it, 5 years after the date of maturity.

(b) If the final maturity of an obligation secured by a mortgage is not ascertainable from the record of it, 20 years after the date of the mortgage, unless prior to such time the holder of the mortgage:

1. Rerecords the mortgage and includes a copy of the obligation secured by the mortgage so that the final maturity is ascertainable; or

2. Records a copy of the obligation secured by the mortgage from which copy the final maturity is ascertainable and by affidavit identifies the mortgage by its official recording data and certifies that the obligation is the obligation described in the mortgage;

in which case the lien shall terminate 5 years after the date of maturity.

(Emphasis added.)

[6] [7] The foregoing section “establishes an ultimate date when the lien of the mortgage terminates and is no longer enforceable.” *Houck Corp. v. New River, Ltd.*, 900 So.2d 601, 603 (Fla. 2d DCA 2005). See also, *Am. Bankers Life Assur. Co. of Florida v. 2275 West Corp.*, 905 So.2d 189 (Fla. 3d DCA 2005). A statute of repose serves to establish a “definitive time limitation on a valid cause of action”, *Houck*, 900 So.2d at 603, which “not only bars enforcement of an accrued cause of action but may also prevent the accrual of a cause of action where the final element necessary for its creation occurs beyond the time period established by the statute.” *American Bankers*, 905 So.2d at 191 (quoting *WRH Mortgage, Inc. v. Butler*, 684 So.2d 325, 327 (Fla. 5th DCA 1996)).

[8] Both parties agree that the applicable subsection is 95.281(1)(a). However, the parties disagree on the construction of that provision and its application to the instant case. The Association contends that Deutsche Bank's acceleration of the note accomplishes an acceleration of the maturity date of the note itself. The language of section 95.281(1)(a) provides that the duration of the lien is "5 years after the date of maturity." Under the facts of this case, the Association argues, the date of maturity became the date of acceleration when the Initial Action was filed on January 23, 2007, and therefore the mortgage lien terminated January 23, 2012, five years after that date of acceleration, and is extinguished.⁶

Deutsche Bank contends, and we agree, that the definitive time limitation established by section 95.281(1)(a) is based upon the fact that the final maturity "is ascertainable from the record" of an obligation secured by a mortgage. The Legislature, by its express language, provided that the mortgage lien under section 95.281(1)(a) would terminate five years after a maturity date that can be determined from the face of a recorded document.⁷ The Association's proposed date of maturity (i.e., January 23, 2007, the date of acceleration) cannot be determined from the face of the

recorded mortgage. Rather, the face of the recorded mortgage in the instant case reveals a maturity date of March 1, 2036. Therefore, and pursuant to section 95.281(1)(a), the mortgage lien remains valid until March 1, 2041, five years from the date of maturity as reflected in the recorded mortgage securing the obligation. A statute of limitations and a statute of repose serve two distinct purposes and the "limitations period provided in section 95.11(2)(c) does not affect the life of the lien or extinguish the debt; it merely precludes an action to collect the debt after five years." *Am. Bankers*, 905 So.2d at 192.

IV. CONCLUSION

*12 We affirm that portion of the trial court's order which determined that the Current Action was barred by the statute of limitations. We reverse that portion of the trial court's order which declared that the mortgage was null and void, canceled same, and quieted title to the Property in favor of the Association. We remand this cause to the trial court for further proceedings consistent with this opinion.

All Citations

--- So.3d ----, 2014 WL 7156961, 40 Fla. L. Weekly D1

Footnotes

- 1 Prior to the filing of the Current Action, the mortgage was assigned by AHMS to Deutsche Bank. For ease of reference, all references hereafter will be to Deutsche Bank, including actions and events involving its predecessor in interest, AHMS.
- 2 The alleged default date in the Initial Action was September 1, 2006 payment.
- 3 Although the record does not include the notice of default sent to Beauvais before institution of the Initial Action in January 2007, no issue has been raised on appeal regarding the timing, adequacy or propriety of the notice of default prior to acceleration.
- 4 Deutsche Bank's act of acceleration was set forth in the body of the complaint filed in the Initial Action:
 Defendant, Harry Beauvais, failed to pay the payment due on the Note on September 1, 2006, and Plaintiff elected to accelerate payment of the balance.
 The inclusion of this language in the complaint carried independent legal significance beyond that of a mere factual allegation. It constituted the exercise of the optional acceleration clause, and served under the facts of this case as the last act necessary to the accrual of a cause of action (and the commencement of the statute of limitations), converting what was an installment loan into a single payment of all principal due and owing immediately. See *Campbell*, 232 So.2d at 256 n. 1 and cases cited therein (noting "the filing of suit for foreclosure amounts to exercise of the option of the mortgagee to declare the whole of the principal sum and interest secured by the mortgage due and payable"). See also *Liles v. Savage*, 121 Fla. 83, 163 So. 399 (1935); *Locke v. State Farm Fire and Cas. Co.*, 509 So.2d 1375 (Fla. 1st DCA 1987).
- 5 The *Singleton* Court cited to *Olympia Mortg. Corp. v. Pugh*, 774 So.2d 863 (Fla. 4th DCA 2000), in which the Fourth District held that "[b]y voluntarily dismissing the suit, Olympia in effect decided not to accelerate payment on the note and mortgage at that time." *Id.* at 866. In so holding, however, the Fourth District equated this voluntary dismissal with an adjudication on the merits:
[I]f we treat Olympia's voluntary dismissal of the first foreclosure action as an adjudication on the merits against Olympia, then the payment on the note and mortgage could not have been accelerated. Although Olympia sought

to accelerate, had Olympia gone through with the suit and lost on the merits, then the court would have necessarily found that the Pughs had not defaulted on the payments due to date. If the Pughs had not defaulted, then Olympia would not be entitled to accelerate payment on the note and mortgage. *Id.* (emphasis added).

The Fourth District did not offer a rationale for its conclusion that a plaintiff's first voluntary dismissal should be treated as an adjudication on the merits, since such a voluntary dismissal is ordinarily without prejudice and does not constitute an adjudication on the merits, absent a prior dismissal of the same claim by plaintiff. See Fla. R. Civ. P. 1.420(a)(1) (providing that "[u]nless otherwise stated in the notice ... a [notice of voluntary] dismissal is without prejudice, except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim."). To the extent that *Olympia* holds that a voluntary dismissal without prejudice of a foreclosure action on an accelerated debt is to be treated as an adjudication on the merits and an adjudication that the debt could not be accelerated, we must respectfully disagree.

6 For this proposition, the Association cites to *Casino Espanol de Habana, Inc. v. Busset*, 566 So.2d 1313 (Fla. 3d DCA 1990). However, we find *Casino* inapposite, as it did not involve the construction or application of section 95.281 or a determination of the duration of a mortgage lien.

7 The determination of final maturity based upon a fixed date contained within a recorded instrument, rather than a date that is neither recorded in the public records nor easily ascertainable, certainly enhances reliability and avoids the uncertainty and other difficulties inherent in the Association's proposed construction of the statute.

From: "Vision Bar Admissions" <VisionBarAdmissions@flabar.org>

To: "Section Chairs 2015-2016" <Section_Chairs_2015-2016@flabar.org>, "Committee Chairs 2015-2016" <Committee_Chairs_2015-2016@flabar.org>

Subject: Request for Comment MJP-State Report of Vision 2016 Bar Admissions Subgroup

On July 24, 2015, the Multijurisdictional Practice -State Focus Committee ("Committee") of the Vision 2016 Bar Admissions Subgroup presented its preliminary report ("Report") to the Board of Governors for informational purposes only. A copy of the Report is attached. You may also find the Report and other information concerning Vision 2016 at www.floridabar.org/Vision2016. The Report makes two preliminary recommendations:

1. The Florida Board of Bar Examiners should recommend, and the Supreme Court of Florida should adopt, an Admission by Motion Rule based on reciprocity that would allow a lawyer in good standing from another jurisdiction who has practiced 5 out of the last 7 years to apply for membership in The Florida Bar without examination if all other requirements are met, including a character and fitness review.
2. The Supreme Court of Florida should amend Rule 1-3.12 of the Rules Regulating The Florida Bar to approve a Provision of Legal Services Following A Major Disaster Rule (Katrina Rule) allowing lawyers from a state experiencing a major disaster to service their clients on a temporary basis from an office in Florida and permitting out-of-state lawyers, on a pro bono basis or through a non-profit legal service organization, to service residents in Florida who have unmet needs as a result of a disaster in Florida that has disrupted the practices of Florida lawyers.

These recommendations are preliminary only. The Committee has not presented a final report to the Board of Governors. No rules have been adopted by the Board of Governors pertaining to the Report, and no action has been taken on the Report.

The Committee is now soliciting comments regarding the recommendations in the Report. You are being sent this e-mail in your capacity as chair of a Florida Bar Section or Standing Committee. Should the Section or Standing Committee you chair wish to comment, please provide any comments by October 1, 2015. After all comments have been considered, the Committee will present a final report to the Board of Governors. Again, no action has been taken on the Committee's recommendations at this time.

You may provide the comments of your Section or Standing Committee by: (i) replying to this e-mail; (ii) e-mailing

VisionBarAdmissions@flabar.org<<mailto:VisionBarAdmissions@flabar.org>>; or (iii) mailing comments to Vision 2016 Bar Admissions Subgroup, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

Thank you for your input.

Vision 2016
Bar Admissions Subgroup
MJP-State Focus Committee



Irene Schmid, LL. M.
Continental Law Notary

EDUCATION

Freie Universität Berlin
First and Second State
Examination (1984/1988);
University of Cambridge,
LL.M. (1985);

LANGUAGES

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SUMMARY PROFILE

Irene Schmid is a member of the German Real Estate group of DLA Piper. After her studies in Berlin and Cambridge, England, Irene Schmid worked as a lawyer with several international law firms before she joined DLA Piper UK LLP in 2012. She advises national and international clients in commercial and residential real estate transactions and financing as well as cross boarder estate planning. In 1996 she was admitted as a continental law notary. In this capacity she is mainly dealing with real estate asset and share deals, but also with corporate matters and the recording of wills.

Irene was the president of the Berlin Bar Association from 2009 to 2012.

In the aftermath of the German unification Irene advised numerous national and international clients in pursuing their restitution or compensation claims regarding properties unjustly deprived by the Nazi regime. Her current practice focusses on the advice to investors in real estate transactions of residential portfolios and office buildings as well as real estate finance.



Florida Bar Association Meeting Berlin 2015

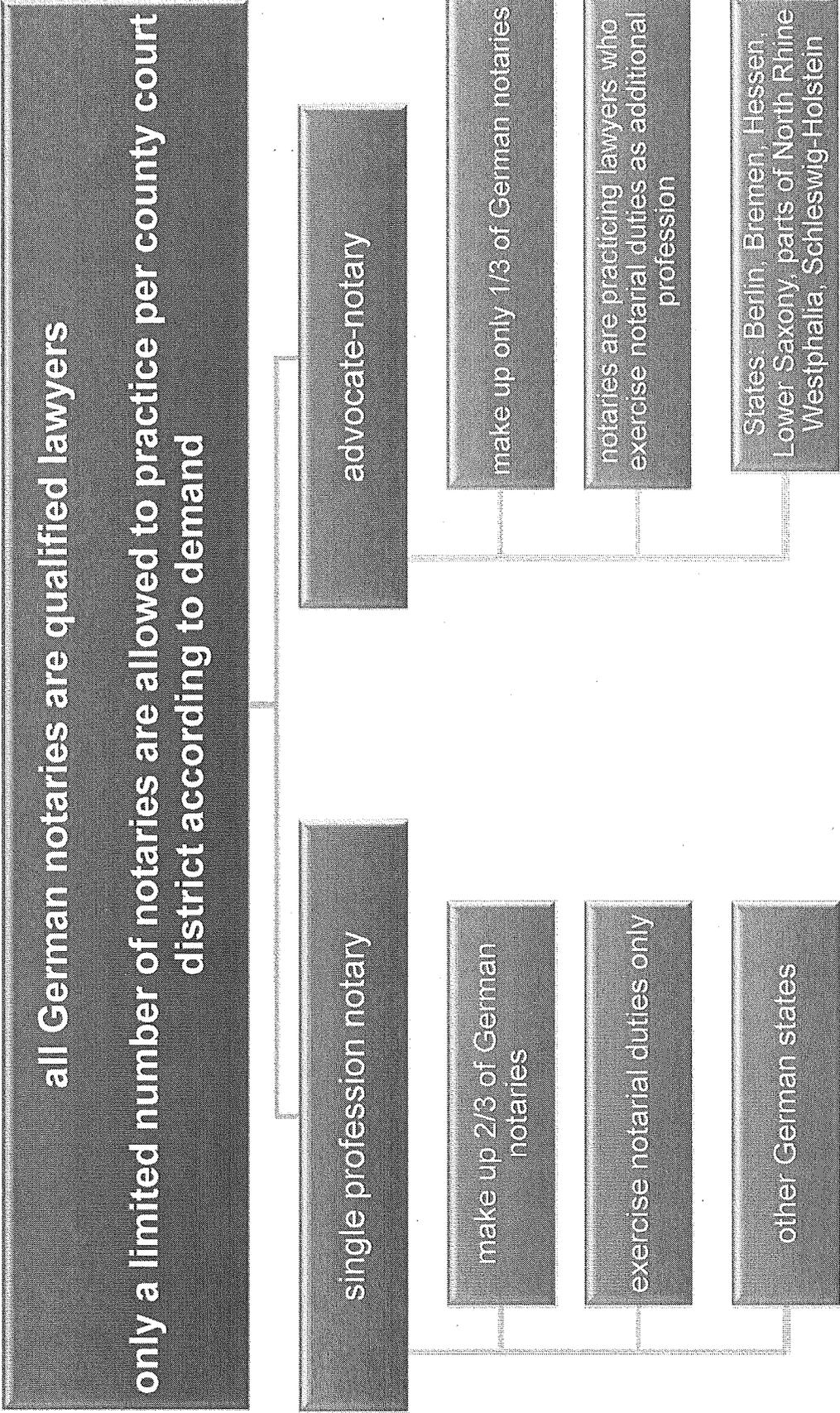
Irene Schmid, LL.M.

Berlin

02 October 2015

Title Insurance or Notary and Land Register Fees? - The Role of German Notaries and the German Land Register in Real Estate Transactions.

German Civil Law Notary



Framework of operation

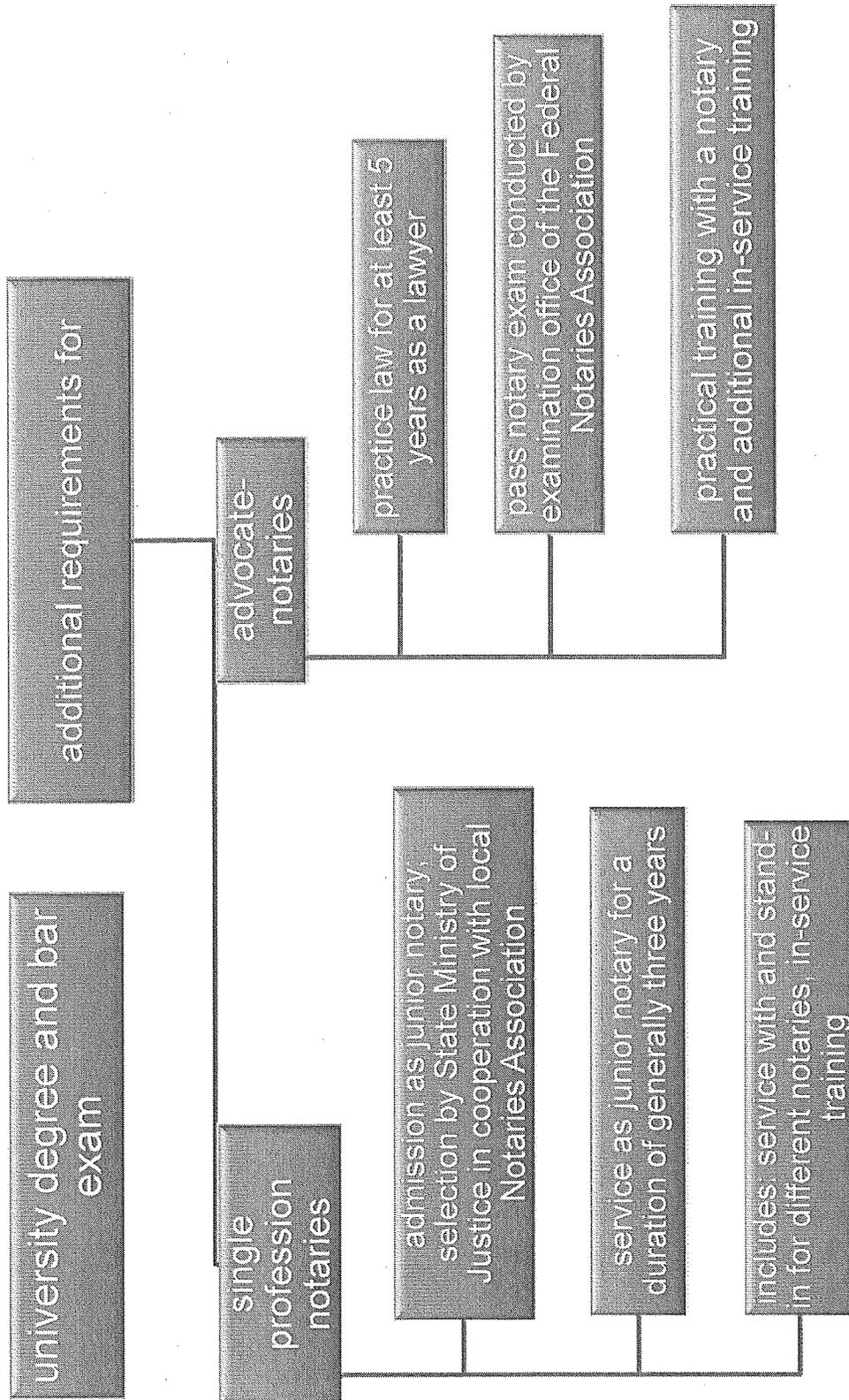


regulated by
Federal
Notaries Act
and Fee Act

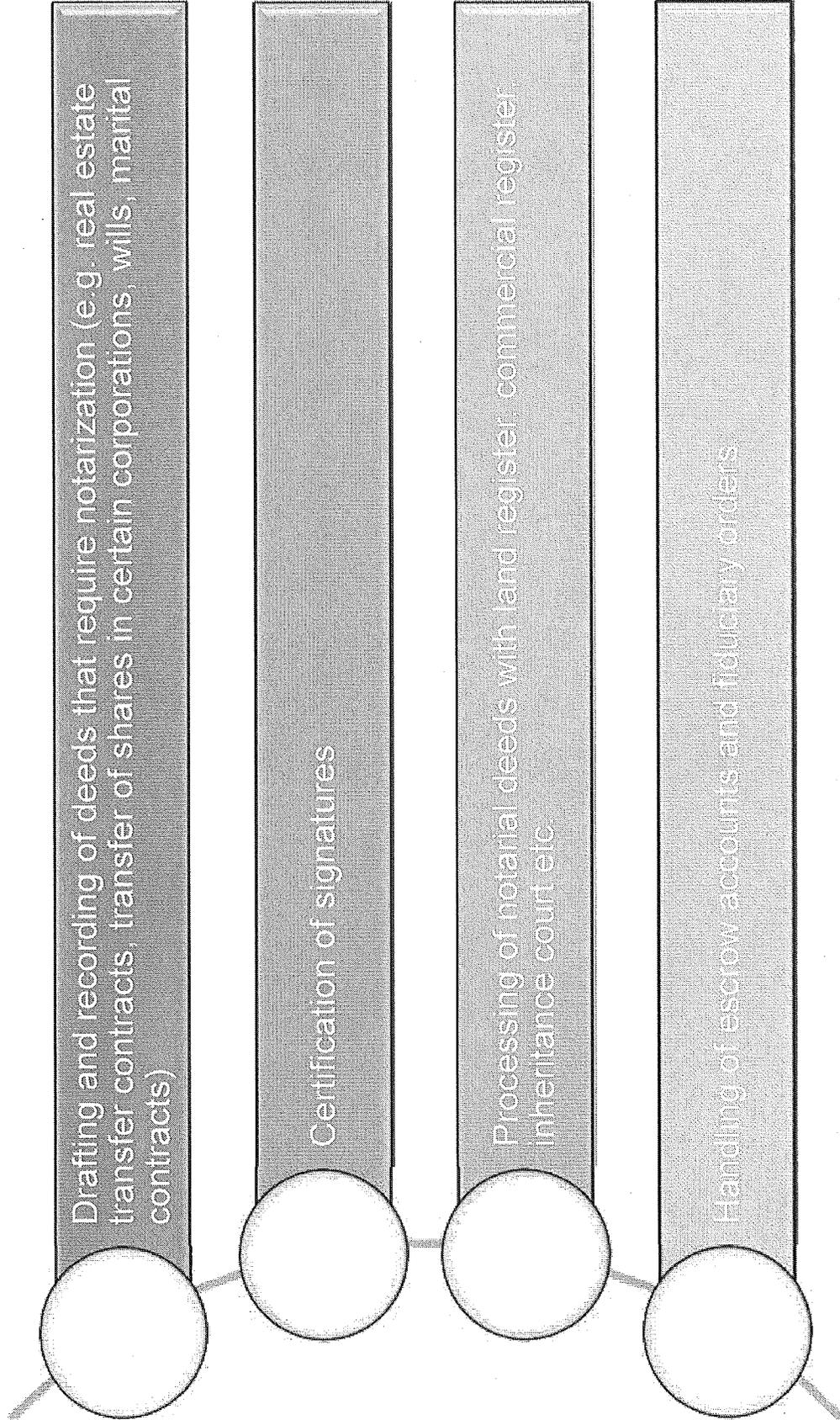
services mostly
provided in:
real estate,
corporate,
succession

German civil law
notary is
**independent and
impartial**, i.e. not
acting in the
interest of one
party

Qualifications



Notarial Duties



Comparison German – Florida notaries



difference in duties
responsible for difference in
qualification requirements

German notaries not only
have an administrative
function, but also fulfill
content-related duties that
require the same legal
background as an attorney.

Florida: more of an
administrative function,
appointed by the
government to act as an
impartial witness in form of
a civil body.

Procedure - General



All parties must appear before the notary in person or by proxy

Notary verifies the identity and competence of the parties.

Notary reads out loud the entire deed before all parties involved.

Notary explains the content of the deed and resulting obligations.

When signing a document, notary must affix his/her signature and official seal on the document.

Notary processes notarial deed, e.g. registrations in land register / commercial register etc.

land register v. title insurance



**two different approaches to
a common goal**

notarization
& land
register

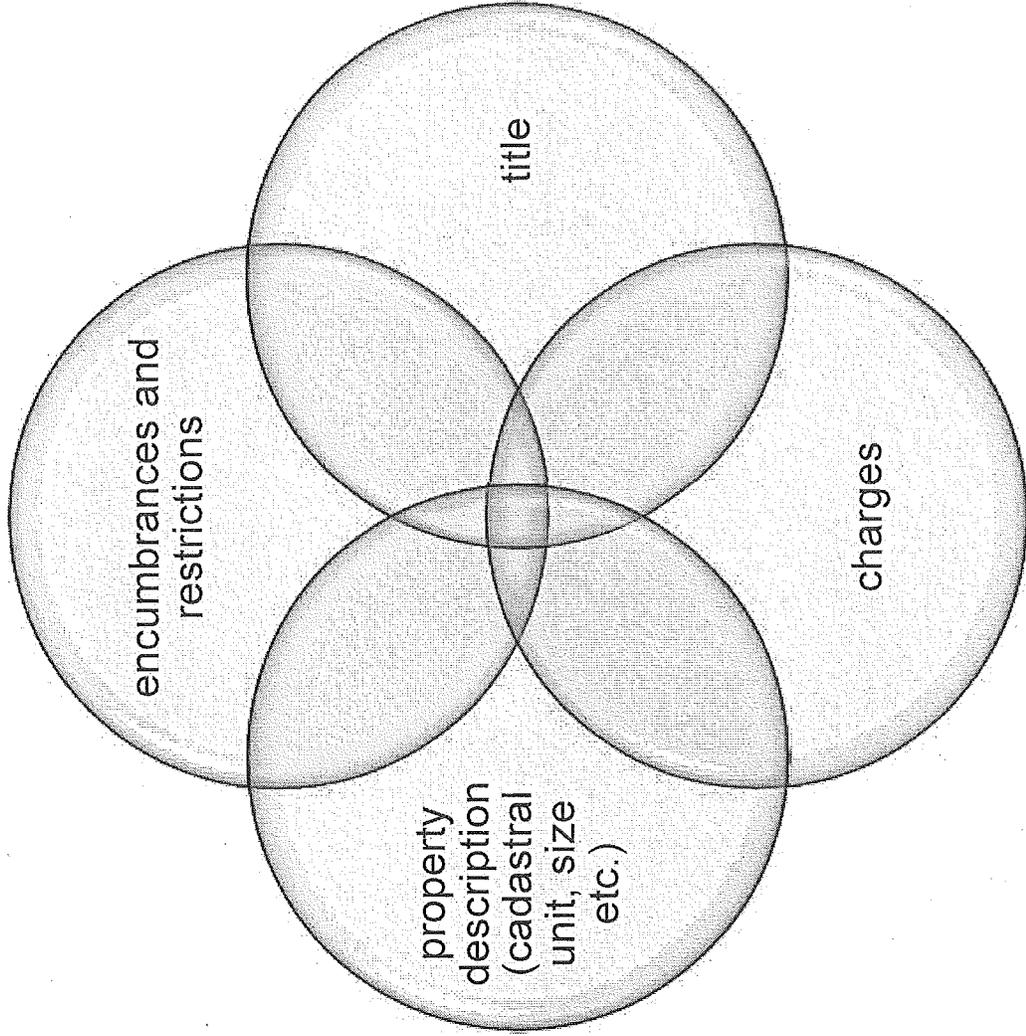
title
insurance

securing buyer's
interests in a real
estate transaction
regarding validity
and content of
the land title held
by seller

German land register speaks to:



Administered
by land register
authority
located at civil
courts



Land registry v. title insurance cont. - Germany



Title to property can only be acquired via **registration** in the land register;
factual/actual possession of the land is not sufficient.

Bona fide acquisition:
buyer may rely on accuracy of the content of the land register, unless he has positive knowledge about a specific inaccuracy.

public faith in accuracy of the land register

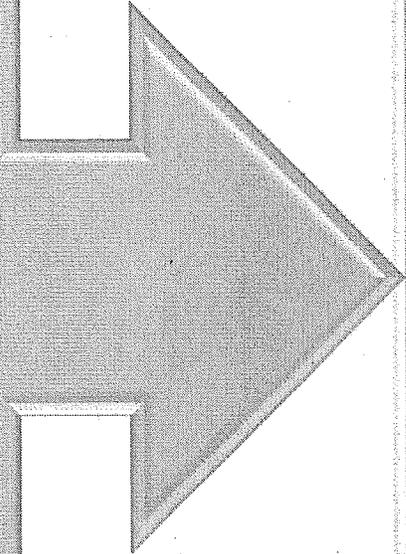
no title insurance in Germany

protection from prior rights or claims of third parties that are not registered (and not known), but require registration.

Real Estate Transfer



Once sale and purchase agreement is concluded in a notarial deed



Procedure - General



All parties must appear before the notary in person or by proxy.

Notary verifies the identity and competence of the parties.

Notary reads out loud the entire deed before all parties involved.

Notary explains the content of the deed and resulting obligations.

When signing a document, notary must affix his/her signature and official seal on the document.

Notary processes notarial deed, e.g. registrations in land register / commercial register etc.

Real Estate Transfer



Notary applies for registration of a priority notice of conveyance in buyer's favor to protect buyer's interests against third parties.

Notary collects deletion permit for registered charges not assumed by buyer from creditors with fiduciary order.

Payment of purchase price and open claims of creditors in full.
Notary is given notice of payment to continue process of registration.

Notary applies for the change in title and deletion of charges to be registered in land register.

Registration of title in land register required for transfer of title.

Notary Fees



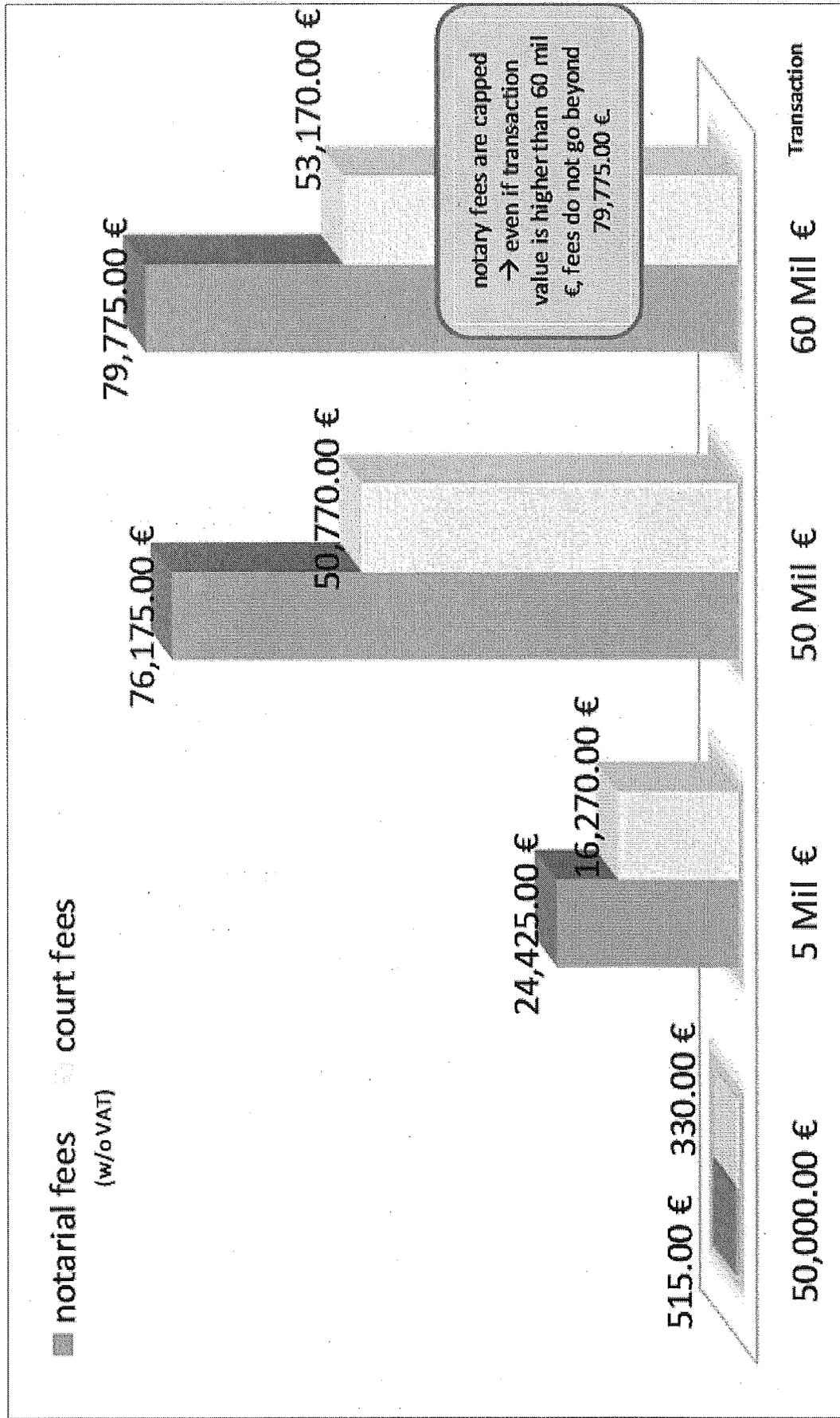
fees are **statutory** and **nonnegotiable**

no
remuneration
agreements
possible, no
deviation
allowed

fees are
determined by
value of
transaction, not
the amount of
work required

free choice of
notary and
orderly
execution of
duties is not to
be undermined
by competition
fees

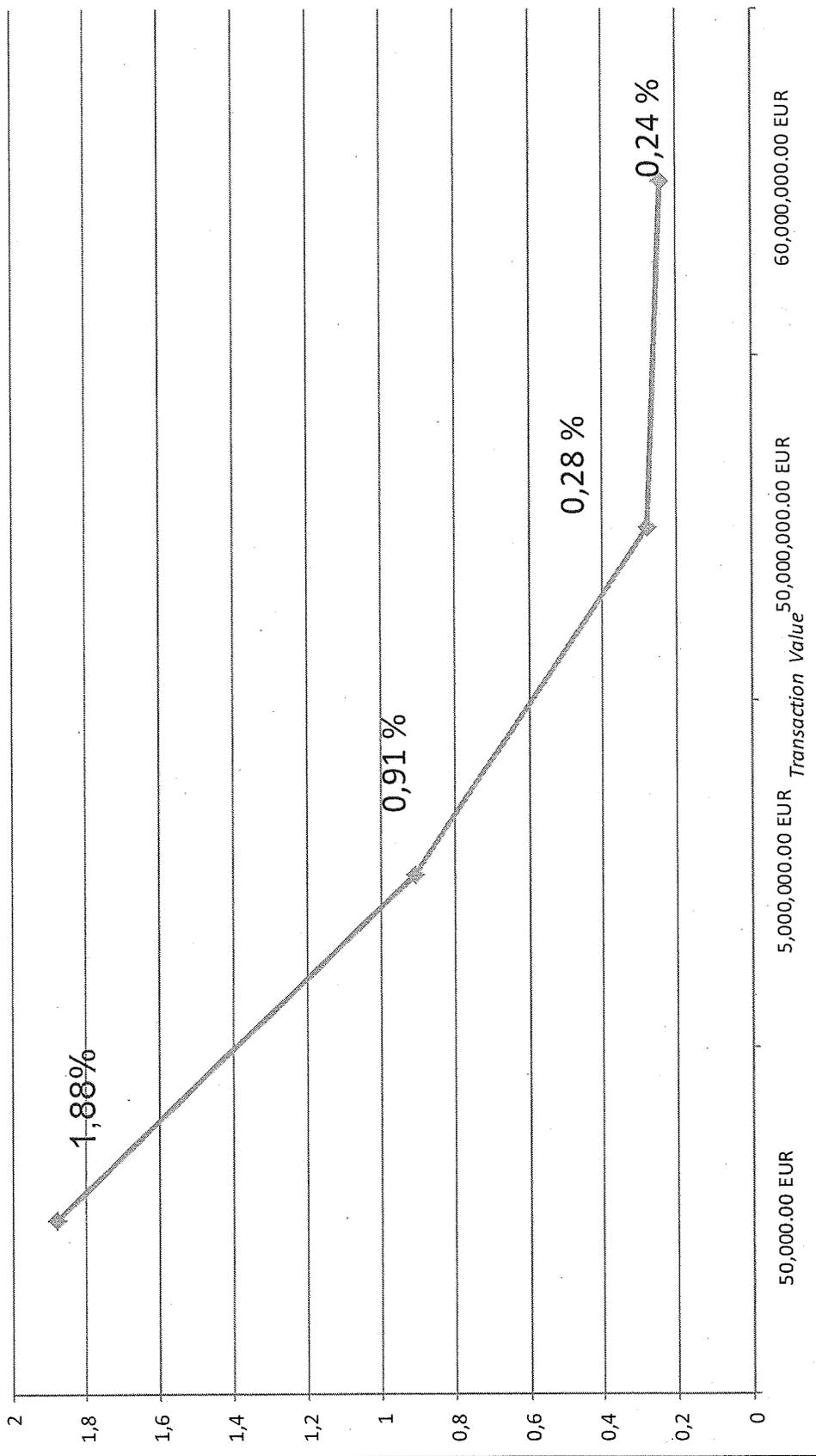
Examples: Notarial and Court Fees



Degression of Notary Fees



Costs in ratio to purchase price



Incurring Transaction Costs



Restitution, Compensation or Total Loss - the Impacts of the German Unification for the German Real Estate Market.

System of Restitution & Compensation



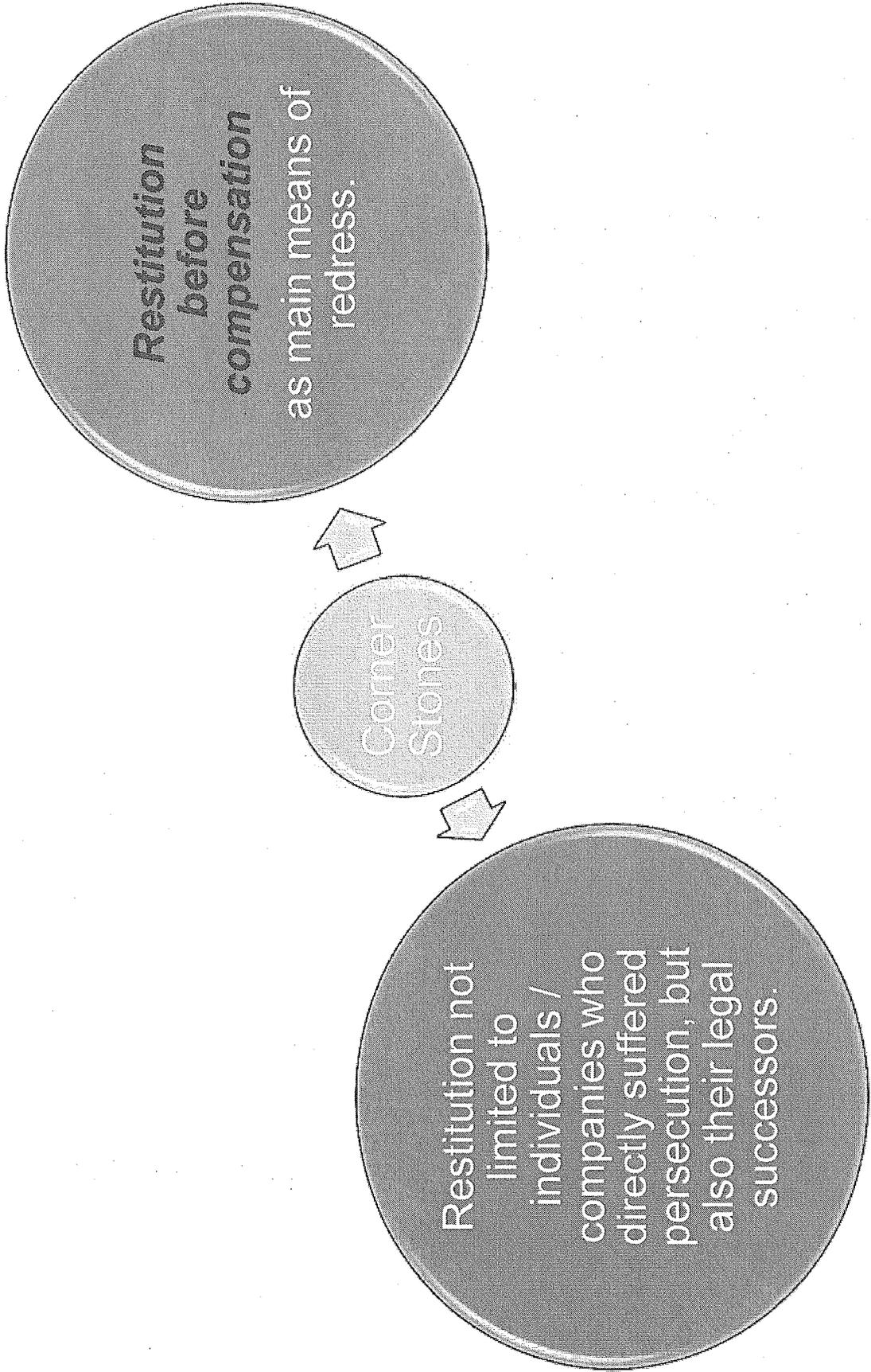
Three Expropriation Time Frames:

1933 – 1945: Nazi regime
("aryanization" and confiscation of Jewish
property and property of others persecuted)

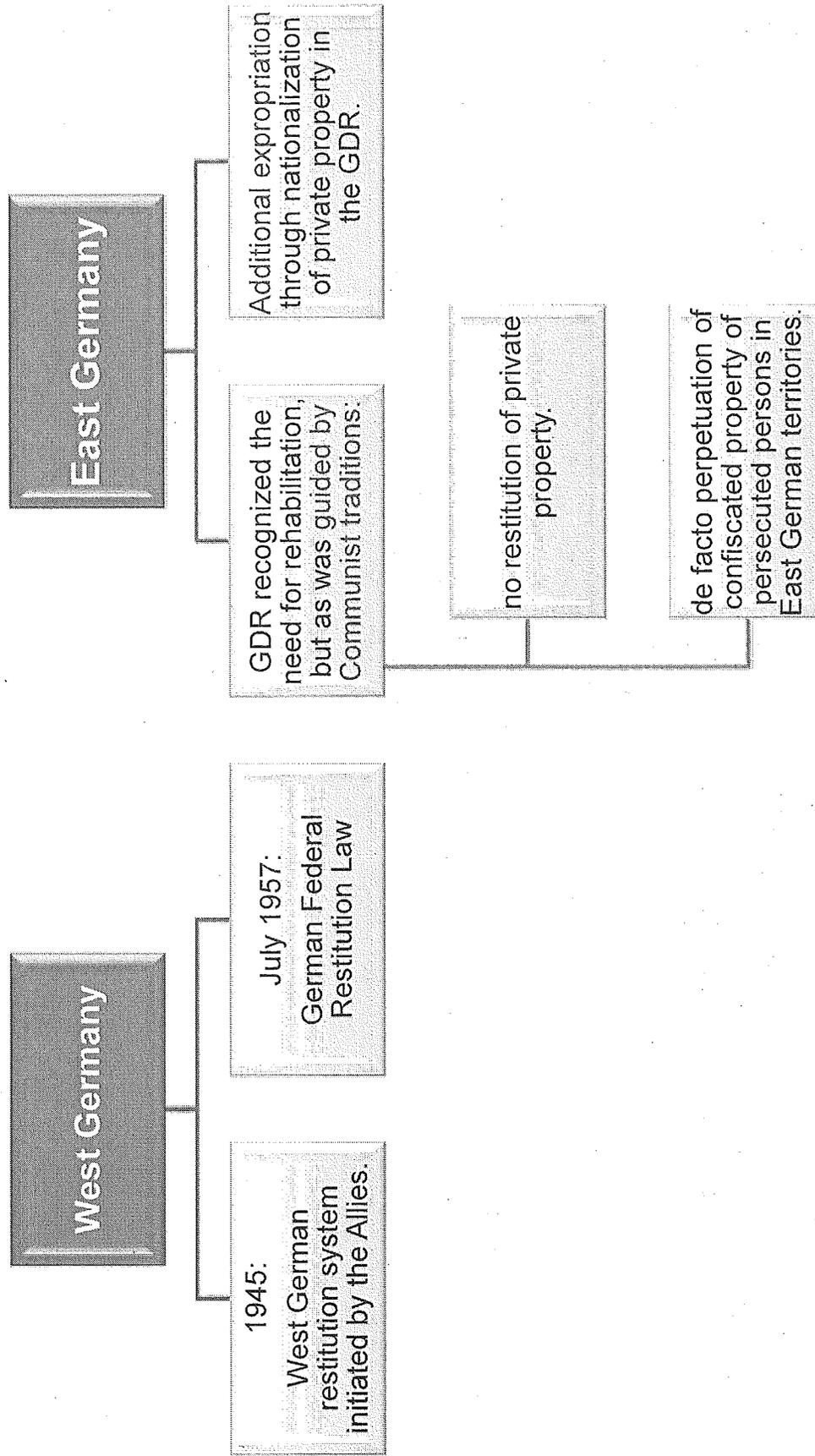
1945 – 1949: Land Reform during
Soviet occupation of East German
territories

1949 – 1990: Nationalization activities
of German Democratic Republic (GDR)

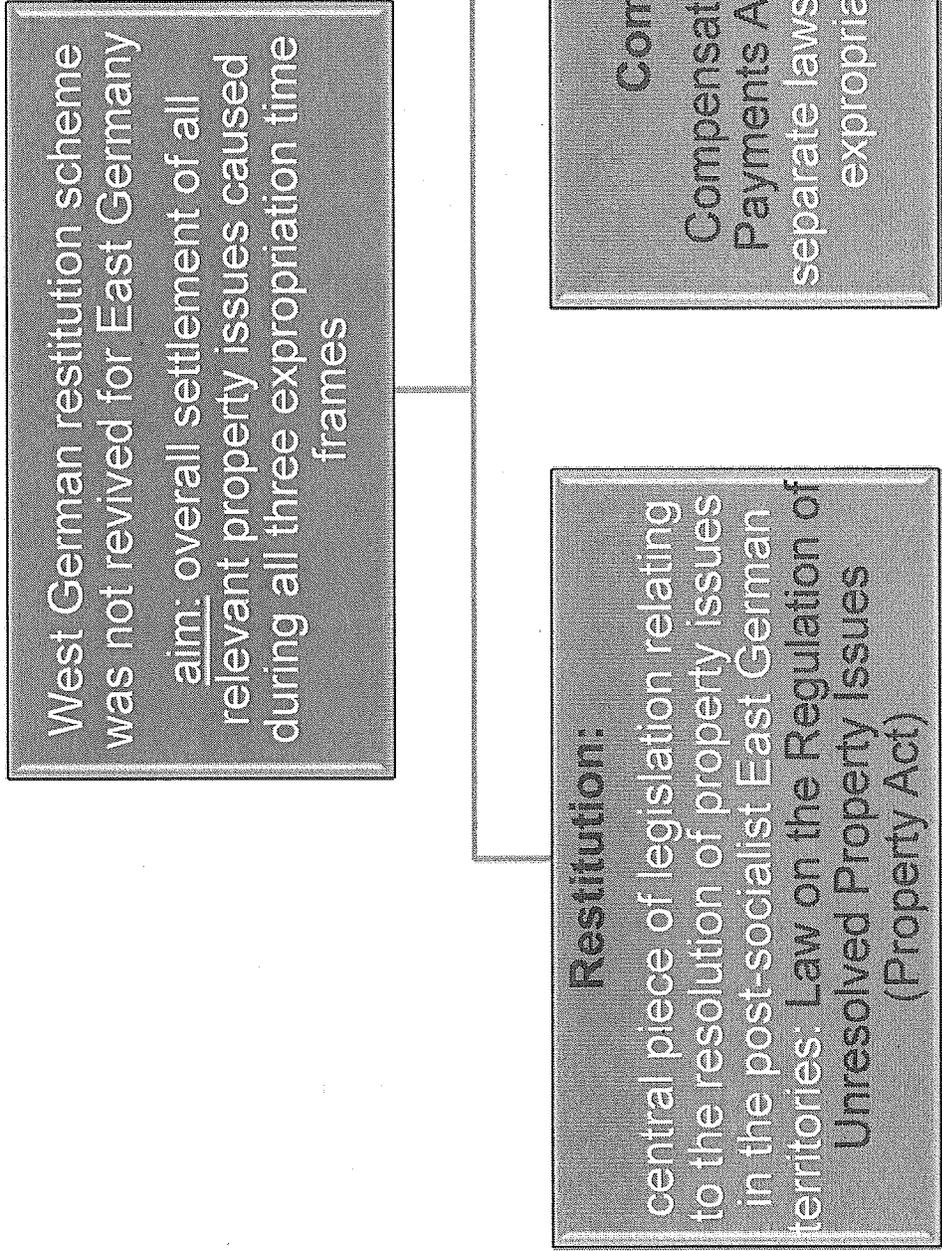
System of Restitution & Compensation



Post-WW-II Restitution & Compensation (before 1990)



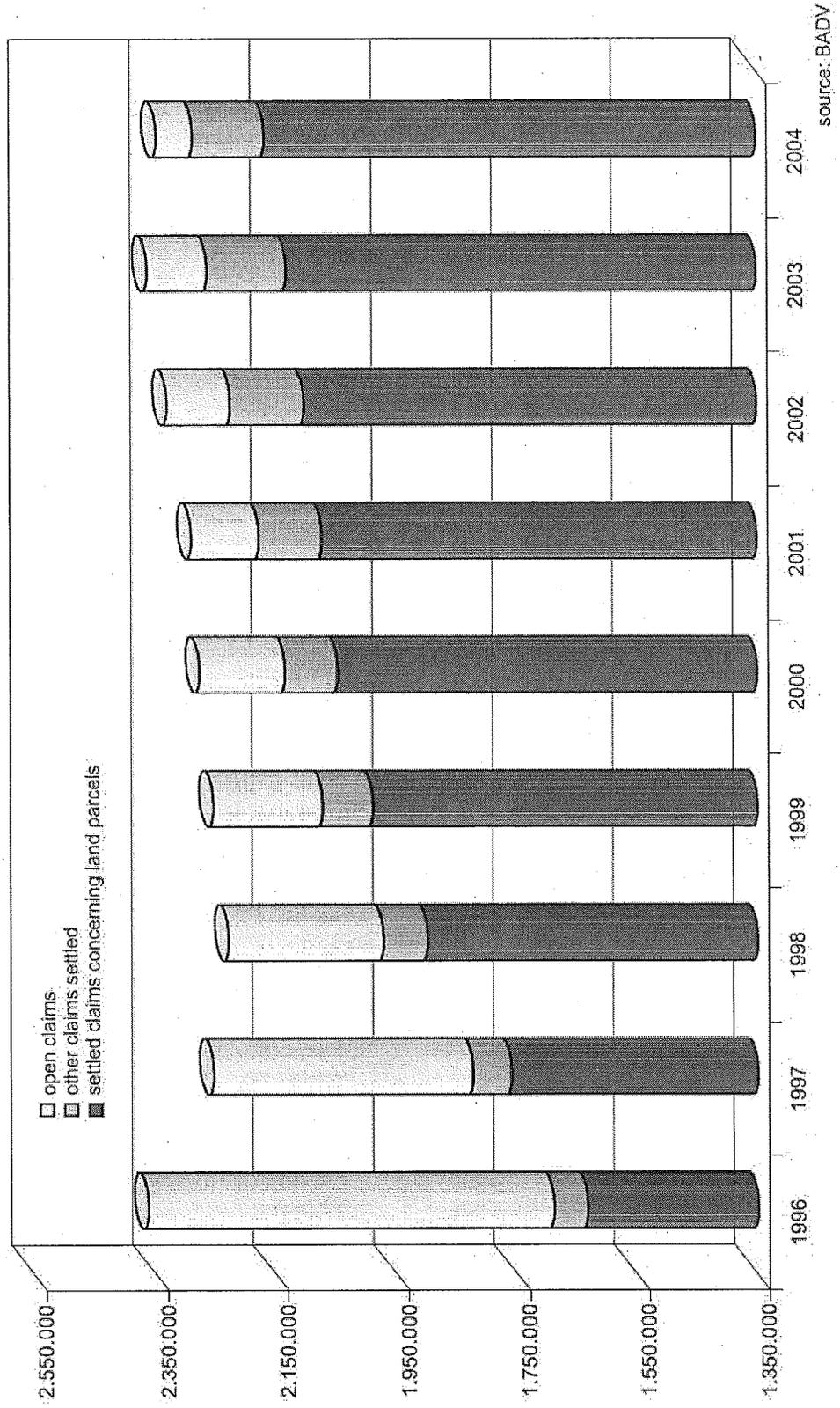
Post-Unification Restitution & Compensation



Restitution on former GDR territory arising from expropriation time frames 1933 – 1990



Processing Status of Assets (without claims to companies)



Restitution on former GDR territory arising from expropriation time frames 1945 – 1990

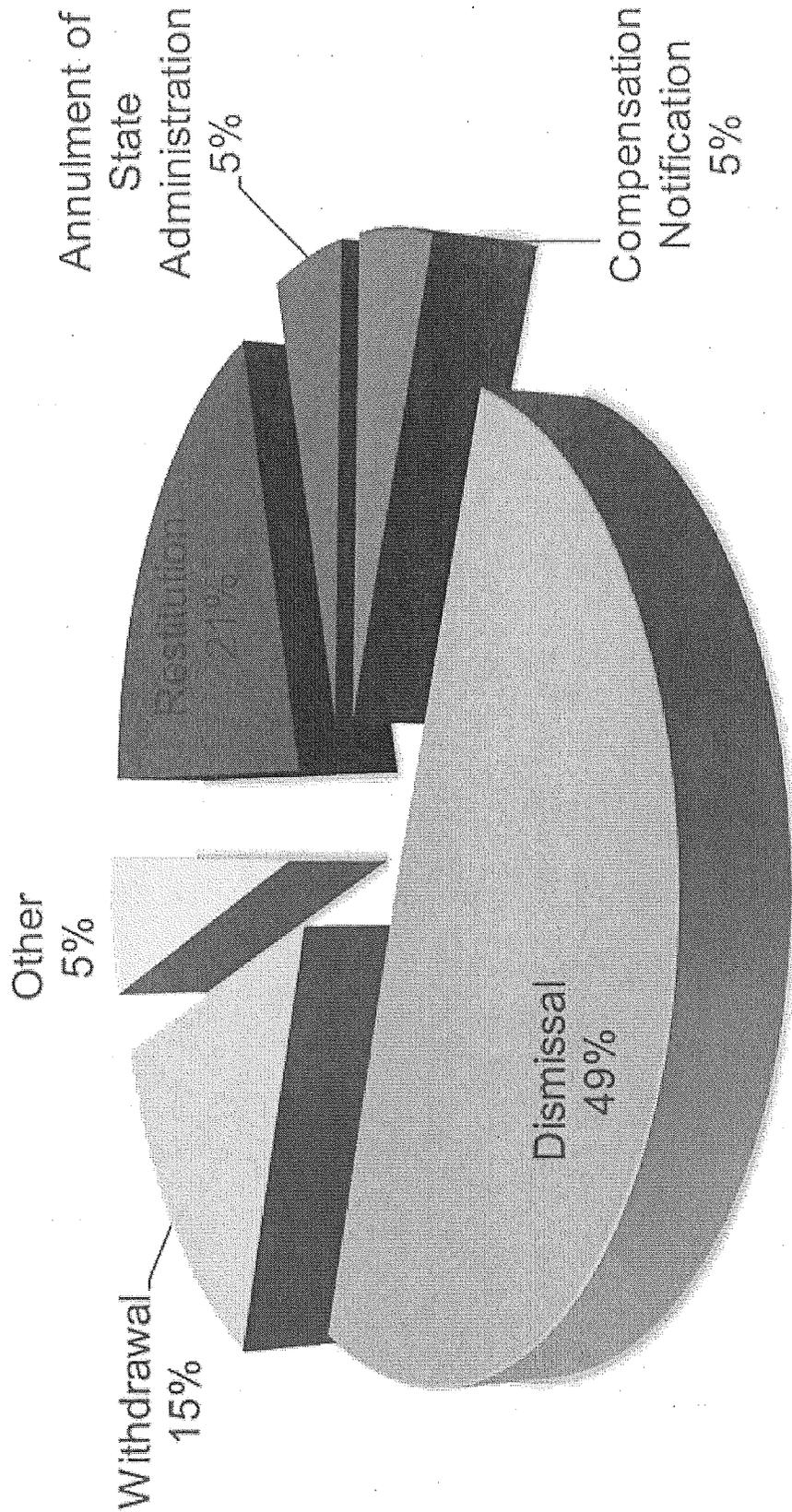


	all East-German States (as of 31 Dec 2014)	Berlin
assets claimed in total (in singular restitution)	2,374,205	198,864
settled	2,371,509	198,591
	= 99.89 %	= 99.86 %
thereof claims concerning land parcels	2,228,082	182,035
settled	2,226,342	181,940
	= 99.92 %	= 99.95 %

Restitution on former GDR territory arising from expropriation time frames 1945 – 1990



Settled Land Parcel Claims (all East German States)



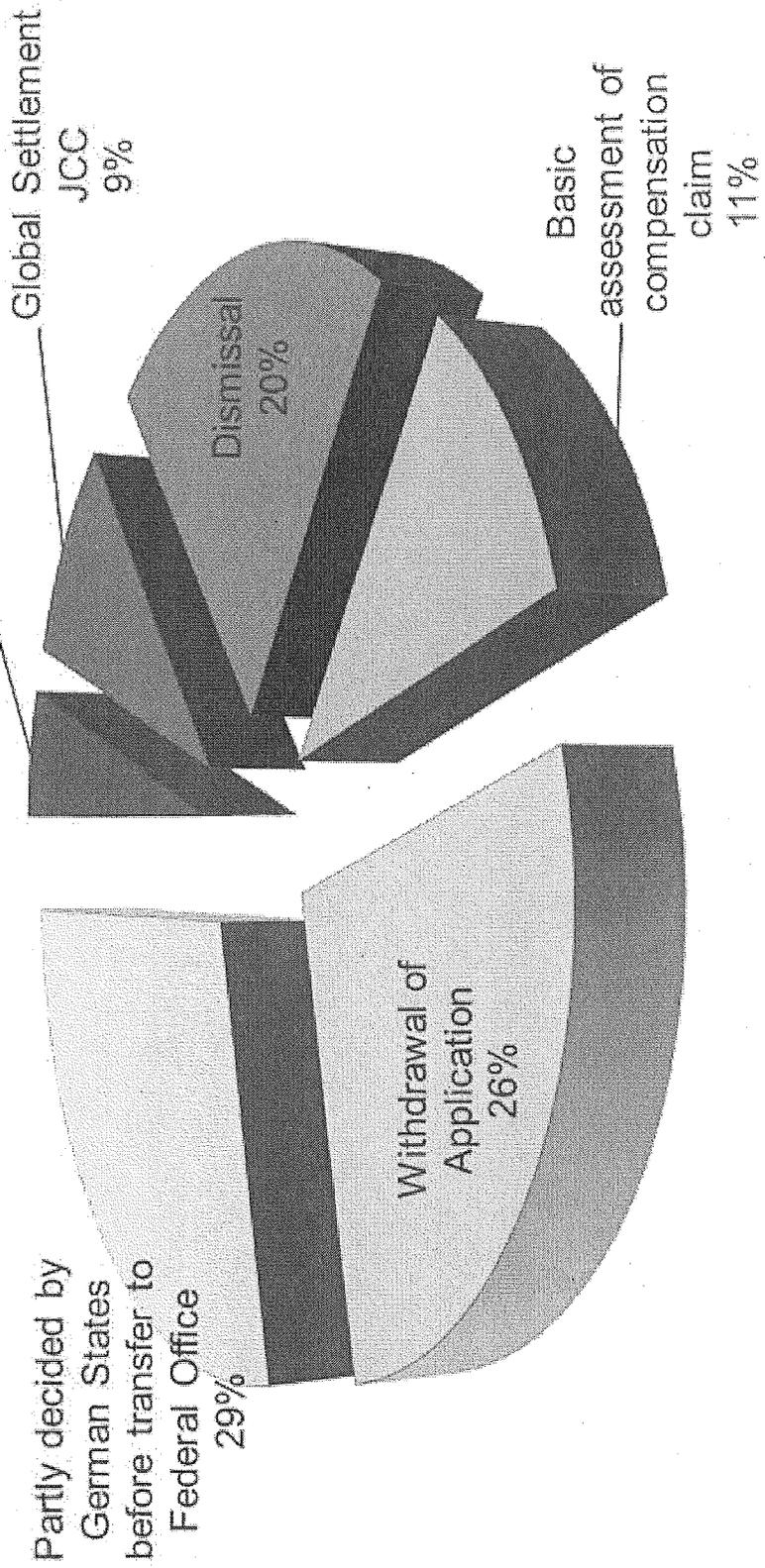
Restitution on former GDR territory arising from expropriation time frame 1933 – 1945



total of assets handled by Federal Authority BADV as of 2006: 202,760

settled by Federal Authority: 171,615 = 84.64 %

Restitution 5%



Compensation claims arising from expropriation time frames 1945 – 1990

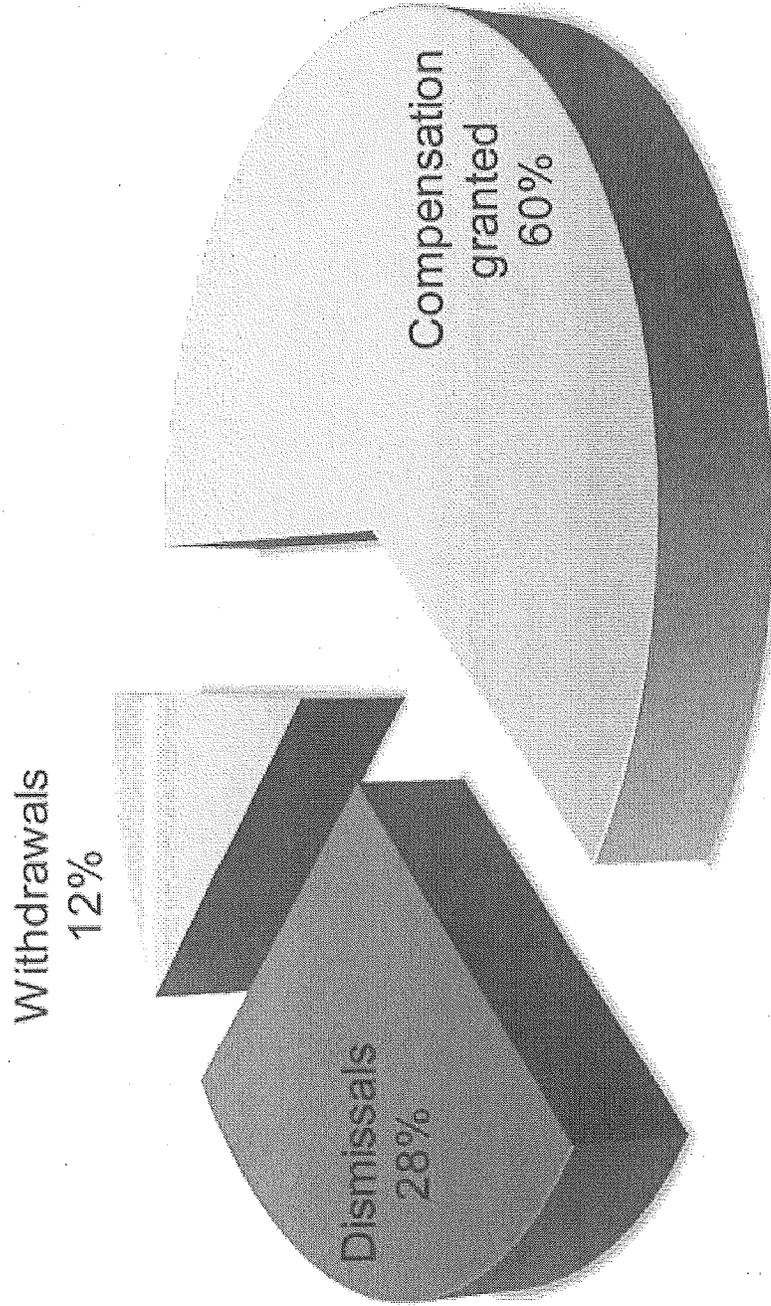


	all East-German States (as of 31 Dec 2014)	Berlin
compensation claims in total	548,609	74,281
thereof claims concerning real property	149,354	14,446
settled	529,595	72,120
	= 96.54 %	= 97.09 %

Compensation claims arising from expropriation time frames 1945 - 1990



Settled Cases: decisions in total 529,595



Differences post-WW-II and post-unification schemes



Time-Element:

Proceedings after 1990 were more complicated factually and legally, but went smoother; competent authorities and courts in general adopted a reconciliatory approach.

Opposing Party:

Post-1945: most claims directed against private individuals
compensation in post-war Germany more difficult
Post-1990: many claims directed against the State (→ GDR state property)

Businesses:

Post-1945: many businesses still operating
Post-1990: most businesses closed down

Lawyered up:

Complexity of post-1990 scheme: new and lucrative area of work for lawyers

Claimant-friendly standards of proof



Claimant-friendly statutory presumptions

losses by persons directly persecuted or belonging to a group persecuted as a whole by the Nazi regime are deemed wrongful, unless there is evidence to the contrary

as of 30 January 1933, all persons of Jewish descent are deemed to be collectively persecuted.

claimant had to show:

1. Jewish descent at the time of property loss; and
2. title to property before loss

evidence to exclude restitution / compensation

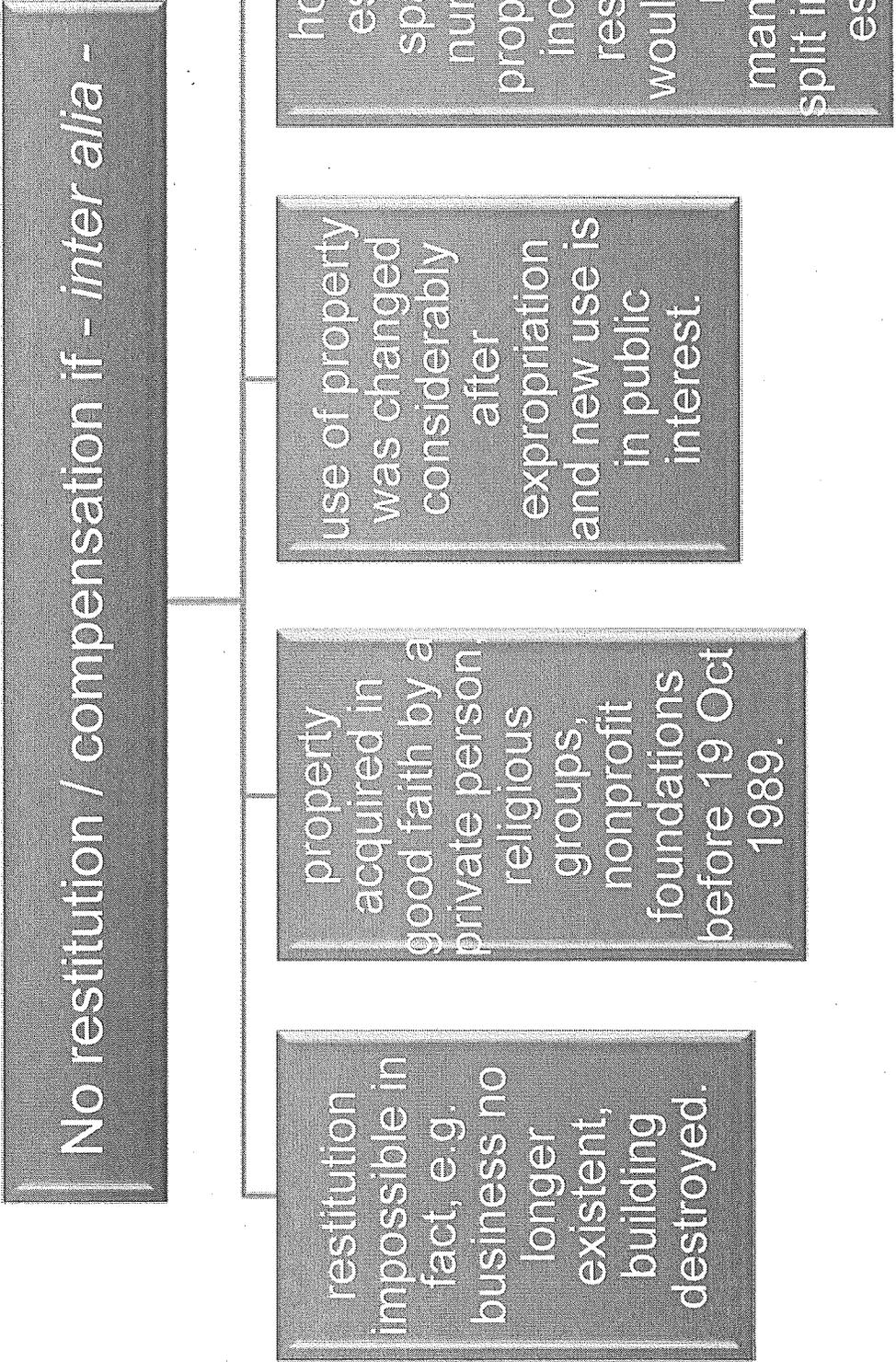
loss before 15 Sept 1935:

payment of adequate purchase price that persecuted person could freely dispose of

loss after 15 Sept 1935:

additional proof that transaction / loss was voluntary

Exclusion of Restitution & Compensation



Procedural aspects



Post-WWII:
civil law proceedings (i.e. burden of proof with claimant)

Post-1990:
administrative law proceedings characterized by the state's ex officio obligation to investigate all relevant facts of the case

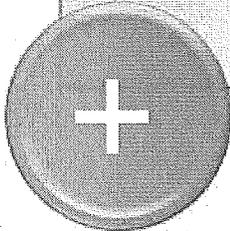
tripartite relationship:
restitution claim is directed to the current right holder, the claimant had to assert his right vis-a-vis the competent Open Property Office.

Deadline for claims of restitution of immovable property:
31 December 1992.
Exception: general claim made by JCC.

Originally designed as mass claims process, but turned out to be a case-by-case procedure.

Legal remedy / judicial review, administrative or court proceedings or out-of-court settlement.

Challenges of restitution

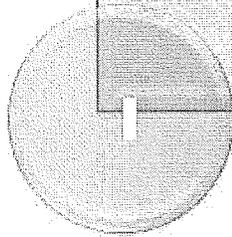


Public recognition of past injustice.

Purpose of property restitution: reconciliatory offer to persecuted parties to be reintegrated into German society.

Helped in establishing good relations with Israel.

Change in what constitutes socially acceptable balance of interests between the persecuted and present occupants.
Allied legislation: no bona fide acquisition by third parties,
Post-1990 scheme: recognized additional time and occupation of property → allows for bona fide acquisition.



Problems on an individual level: Two victims - former owners, current owners who have to give up their property.

Purpose of returning property generally: improve victims' living conditions → not a factor in post 1990. Many restituted properties are sold, not lived in.

Resurfacing anti-Semitism.

Overwhelming and complex administrative process:
mistrust & lawyers that portray Germany as the opponent.

Wertheim Case – Lenné-Triangle

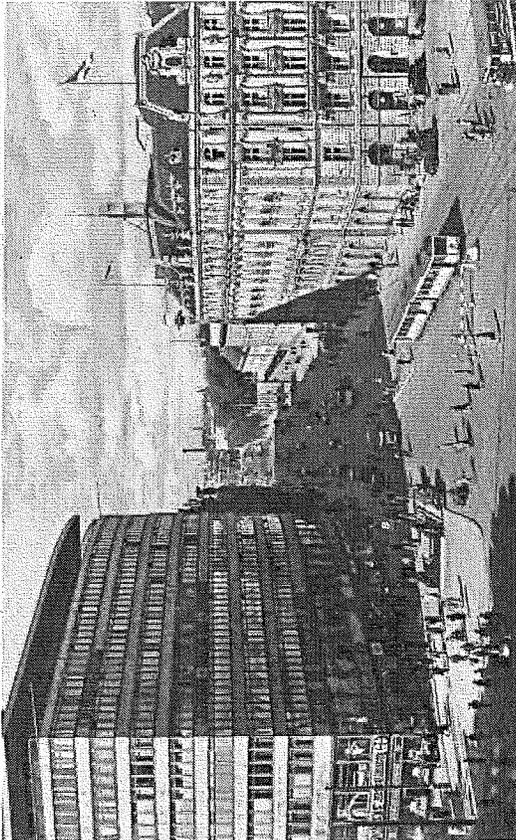
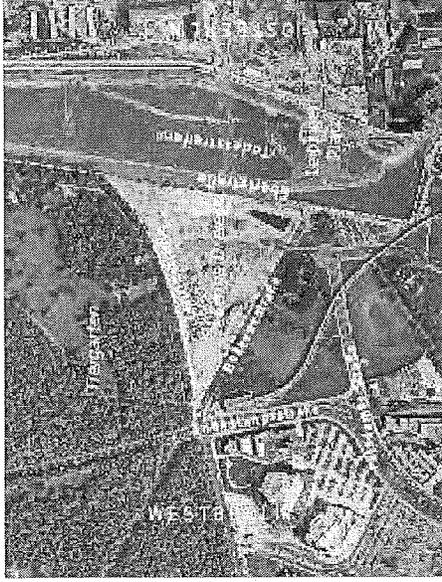
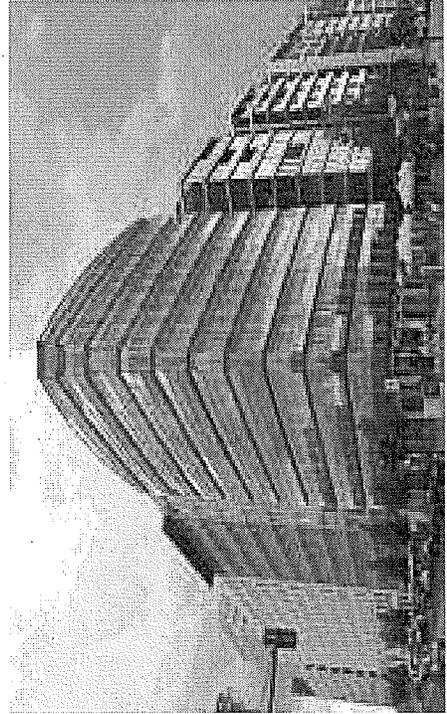


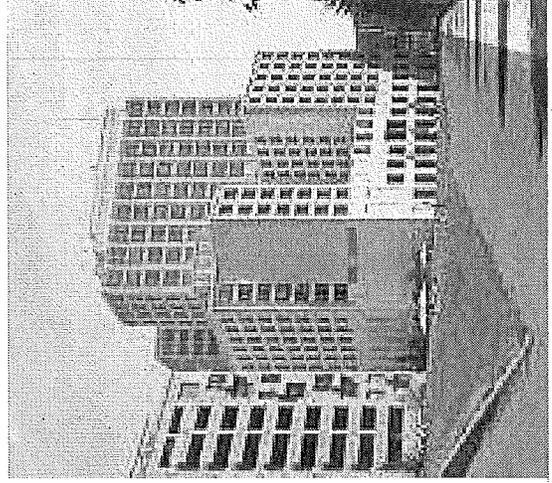
Foto: 590192 www.bilderbuch-berlin.net (1936)



source: Hellerick;
https://commons.wikimedia.org/wiki/File:Aerial_view_of_Lenn%C3%A9-Dreieck_-_RU.svg

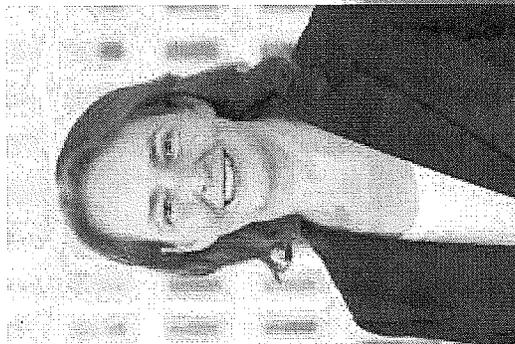


source: https://de.wikipedia.org/wiki/Lenn%C3%A9-Dreieck#/media/File:Berlin_Beiseim-Center.jpg





Thank you for your attention!



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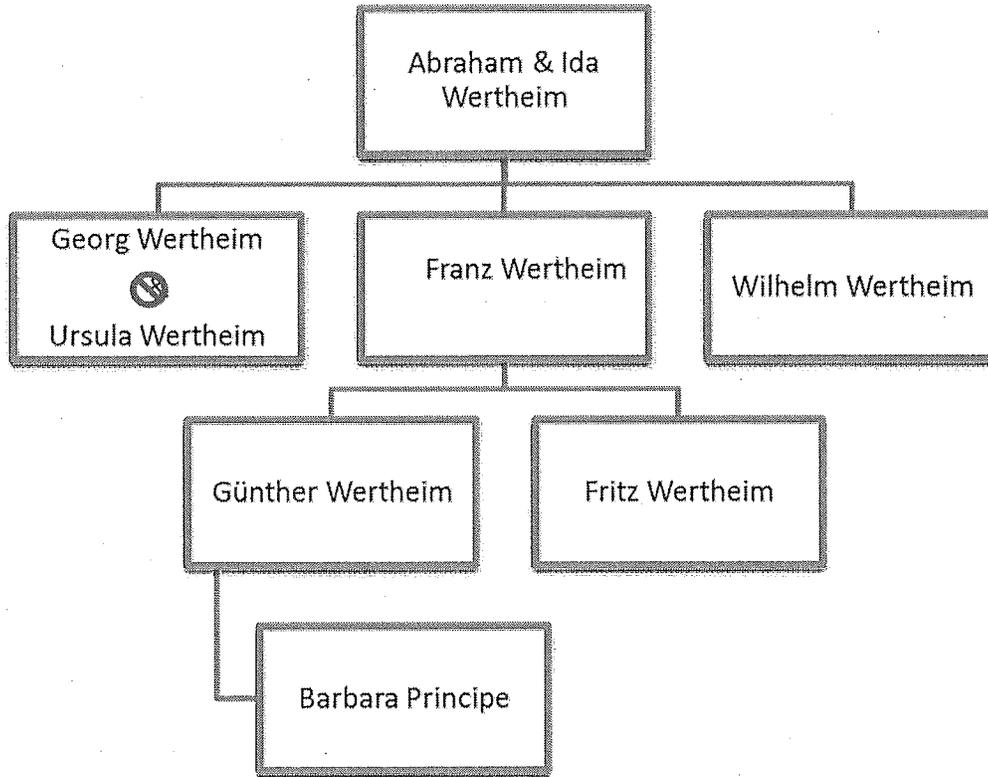
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Wertheim Case

Wertheim family tree:



Chronology:

1875 - 1930s: Abraham Wertheim builds a department store empire, mostly in Berlin; the name "Wertheim" becomes one of the first name brands in Germany; Wertheim flagship store at Leipziger Platz, Berlin (today: Mall of Berlin).

1937: family shareholders are forced to sell or transfer their company stock to so-called "aryan" stockholders; Georg Wertheim transfers his stocks to his "aryan" wife Ursula; "non-aryan" employees are dismissed and company is renamed ("AWAG").

1937 to 1950s: company is controlled by Arthur Lindgens, its former counsel and his new wife, the former Mrs Wertheim, who divorces her husband Georg Wertheim under the Nazi regime's Nuremberg laws after 32 years of marriage.

1945 - 1949: Wertheim company's assets in East and West Berlin; in 1949, the Soviet Union confiscates the company's land in East Germany (amongst those the property Lenné-Triangle close to Potsdamer Platz).

1950: Günther and Fritz Wertheim file a claim in Berlin for their "aryanized" shares in the company.

1951: Arthur Lindgens travels to New York City and informs the brothers Wertheim that their shares are practically worthless, because of the prior Soviet seizure; the brothers agree to drop their claim in return for a one-time payment of somewhere between \$ 5,000 and \$ 10,000 each. Lindgens (then chairman of Wertheim company) merges the - far from worthless - Wertheim company with Hermann Tietz ("Hertie") Kaufstätten GmbH, also a formerly Jewish-owned company.

1988: land swap: Lenné-Triangle becomes part of West Berlin. Legal uncertainty ensues as Lenné-Triangle is neither governed by West-German restitution and compensation scheme (deadline to file claims already expired) and will not be included in post-unification scheme either as that only covers real property that was still part of the GDR in 1990.

1989: after the Berlin wall falls, Hertie petitions authorities seeking to take possession of the former Wertheim properties in East Berlin (grounds: acquisition of Wertheim company 1951, including the East German assets confiscated by Soviets); JCC also files a claim, but Berlin Senate gives Lenné-Triangle to Hertie for the symbolic price of 1 DM.

1993: Hertie is acquired by Karstadt, another German retail giant; KarstadtQuelle sells property Lenné-Triangle for \$ 183 million to Otto Beisheim Foundation that builds hotels, the Beisheim Center and sells parts to Canada for a new embassy.

1998: Heirs of Wertheim family are made aware of their family history and possible claims by a German PhD student.

2001: Barbara Principe (daughter of Günther Wertheim) files suit against KarstadtQuelle in Federal District Court in Manhattan on grounds of fraudulent behavior of Lindgens in 1951.

2002: Berlin Restitution Authority issues final judgment on Wertheim properties, concluding that KarstadtQuelle lacked any valid claim to the properties, amongst those the Lenné-Triangle, whereas the legitimate original owners were the Wertheim family who were forced to sell their shares at an unfair price. The German Finance Ministry is very outspoken to dismiss all claims of the Wertheim family, stating that "the German Reich was not involved" in the 1937 transaction, as it was concluded between private individuals. Court proceedings in Germany ensue.

2004: German Federal Administrative Court issues ruling on Lenné-Triangle that includes the property in post-unification restitution and compensation scheme.

2005: Berlin administrative court ruling upheld ruling of Restitution Authority from 2002, KarstadtQuelle's appeal is rejected; KarstadtQuelle announces intention to withdraw most of its claims to Wertheim properties.

2007: 88 mio EUR settlement with KarstadtQuelle on property Lenné-Triangle after one year of negotiations and seven years in court – one of the highest settlements ever made; Principe's goal never was restitution of the properties, but a fair settlement of her family's losses.

Lesson learned:

- fact-finding as the main obstacle of restitution and compensation: linking survivors, heirs, real property as the main challenge, even in cases involving prominent persons and assets.
- complicated East-West history of the property Lenné-Triangle lead to legal and administrative uncertainties.
- symbolic character of settlement.

ROSEMARY BARKETT



Rosemary Barkett joined the Iran-United States Claims Tribunal in The Hague in October 2013. Immediately prior to joining this Tribunal, Judge Barkett served as one of twelve active judges on the United States Court of Appeals for the Eleventh Circuit to which she was nominated by President William J. Clinton and received her appointment in 1994. While serving on the 11th Circuit, she authored several landmark opinions in the areas of constitutional law, sexual harassment, disability rights, labor rights, privacy rights, rights of speech and association, and immigration. Judge Barkett's service on the judiciary began in 1979 when Florida's governor appointed her as a state trial court judge, later in 1984 elevated her to serve as a state appellate court judge, and then in 1985 appointed her to the Florida Supreme Court, making her the first woman Justice in the Florida Supreme Court's history. On July 1, 1992, her colleagues chose her to become Florida's first woman Chief Justice.

Judge Barkett has pursued her interest in education as well as in jurisprudence off the bench as well, serving on the faculty of Florida's Judicial College, the National Judicial College, The Institute of Judicial Administration's New Appellate Judge Seminar, the Aspen Institute's Justice and Society Seminars, and various other Appellate Judges Seminars and law courses. She has taught seminars on Constitutionalism and Human Rights and Comparative Constitutions at Columbia Law School with Professor Louis Henkin. In addition, she has lectured in Kuwait, Dubai, Qatar, Damascus, Turkey, Algeria, China, Haiti, Khyrgystan, Mexico, Russia, Egypt, Tunisia and Morocco on various substantive and procedural topics as well as on matters pertaining to court administration. She presently serves on the Board of the ABA's Rule of Law Initiative and chairs its Committee on the Middle East and North Africa Division.

Judge Barkett has received dozens of honors and awards for her work as a judge and as an individual committed to improving justice. The recipient of

seven honorary degrees from institutions of higher learning, Judge Barkett has also earned dozens of prestigious honors and awards from national and state professional, civic, and charitable groups, including being named by Florida's Eleventh Judicial Circuit Historical Society as a 2008 Legal Legend. She has also received The Margaret Brent Women Lawyers of Achievement Award, presented by the ABA Commission on Women in the Profession, and the Latin Business and Professional Women Lifetime Achievement Award, in addition to being inducted into the Florida Women's Hall of Fame. She is a member of the International Women's Forum, and the American Society of International Law, where she serves on the Judicial Outreach Program Advisory Board. She was also the National Association of Women Judges Honoree of the Year in 1999. Two awards are given in Judge Barkett's name annually- the Rosemary Barkett Outstanding Achievement Award given to an outstanding lawyer by the Florida Association of Women Lawyers and The Rosemary Barkett Award presented by the Academy of Florida Trial Lawyers to a person who has demonstrated outstanding commitment to equal justice under law. She has also been honored by the naming of the "Rosemary Barkett Inn of Appellate Law" in Miami, Florida.

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND
POPULAR REPUBLIC OF ALGERIA

CONCERNING THE SETTLEMENT OF CLAIMS BY THE GOVERNMENT
OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

(Claims Settlement Declaration), 19 January 1981

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Claims Settlement Declaration**19 January 1981**

The Government of the Democratic and Popular Republic of Algeria, on the basis of formal notice of adherence received from the Government of the Islamic Republic of Iran and the Government of the United States of America, now declares that Iran and the United States have agreed as follows:

Article I

Iran and the United States will promote the settlement of the claims described in Article II by the parties directly concerned. Any such claims not settled within six months from the date of entry into force of this Agreement shall be submitted to binding third-party arbitration in accordance with the terms of this Agreement. The aforementioned six months' period may be extended once by three months at the request of either party.

Article II

1. An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States, and any counterclaim which arises out of the same contract, transaction or occurrence that constitutes the subject matter of that national's claim, if such claims and counterclaims are outstanding on the date of this Agreement, whether or not filed with any court, and arise out of debts, contracts (including transactions which are the subject of letters of credit or bank guarantees), expropriations or other measures affecting property rights, excluding claims described in Paragraph 11 of the Declaration of the Government of Algeria of January 19, 1981, and claims arising out of the actions of the United States in response to the conduct described in such paragraph, and excluding claims arising under a binding contract between the parties specifically providing that any disputes

The Registry

دبیرخانه دیوان

thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.

2. The Tribunal shall also have jurisdiction over official claims of the United States and Iran against each other arising out of contractual arrangements between them for the purchase and sale of goods and services.

3. The Tribunal shall have jurisdiction, as specified in Paragraphs 16-17 of the Declaration of the Government of Algeria of January 19, 1981, over any dispute as to the interpretation or performance of any provision of that Declaration.

Article III

1. The Tribunal shall consist of nine members or such larger multiple of three as Iran and the United States may agree are necessary to conduct its business expeditiously. Within ninety days after the entry into force of this Agreement, each government shall appoint one-third of the members. Within thirty days after their appointment, the members so appointed shall by mutual agreement select the remaining third of the members and appoint one of the remaining third President of the Tribunal. Claims may be decided by the full Tribunal or by a panel of three members of the Tribunal as the President shall determine. Each such panel shall be composed by the President and shall consist of one member appointed by each of the three methods set forth above.

2. Members of the Tribunal shall be appointed and the Tribunal shall conduct its business in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) except to the extent modified by the Parties or by the Tribunal to ensure that this Agreement can be carried out. The UNCITRAL rules for appointing members of three-member tribunals shall apply *mutatis mutandis* to the appointment of the Tribunal.

3. Claims of nationals of the United States and Iran that are within the scope of this Agreement shall be presented to the Tribunal either by claimants themselves or, in the case of claims of less than \$250,000, by the government of such national.

4. No claim may be filed with the Tribunal more than one year after the entry into force of this Agreement or six months after the date the President is appointed, whichever is later. These deadlines do not apply to the

procedures contemplated by Paragraphs 16 and 17 of the Declaration of the Government of Algeria of January 19, 1981.

Article IV

1. All decisions and awards of the Tribunal shall be final and binding.
2. The President of the Tribunal shall certify, as prescribed in Paragraph 7 of the Declaration of the Government of Algeria of January 19, 1981, when all arbitral awards under this Agreement have been satisfied.
3. Any award which the Tribunal may render against either government shall be enforceable against such government in the courts of any nation in accordance with its laws.

Article V

The Tribunal shall decide all cases on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances.

Article VI

1. The seat of the Tribunal shall be The Hague, The Netherlands, or any other place agreed by Iran and the United States.
2. Each government shall designate an Agent at the seat of the Tribunal to represent it to the Tribunal and to receive notices or other communications directed to it or to its nationals, agencies, instrumentalities, or entities in connection with proceedings before the Tribunal.
3. The expenses of the Tribunal shall be borne equally by the two governments.
4. Any question concerning the interpretation or application of this Agreement shall be decided by the Tribunal upon the request of either Iran of the United States.

Article VII

For the purpose of this Agreement:

1. A "national" of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States; and (b) a corporation or other legal entity which is organized under the laws of Iran or the United States or any of its states or territories, the District of Columbia or the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty per cent or more of its capital stock.
2. "Claims of nationals" of Iran or the United States, as the case may be, means claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that state, including claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity, and provided, further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this Agreement. Claims referred to the arbitration Tribunal shall, as of the date of filing of such claims with the Tribunal, be considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court.
3. "Iran" means the Government of Iran, any political subdivision of Iran, and any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.
4. The "United States" means the Government of the United States, any political subdivision of the United States, and any agency, instrumentality or entity controlled by the Government of the United States or any political subdivision thereof.

Article VIII

This Agreement shall enter into force when the Government of Algeria has received from both Iran and the United States a notification of adherence to the Agreement.

DECLARATION OF THE GOVERNMENT OF THE DEMOCRATIC AND
POPULAR REPUBLIC OF ALGERIA

General Declaration

19 January 1981

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General Declaration

19 January 1981

The Government of the Democratic and Popular Republic of Algeria, having been requested by the Governments of the Islamic Republic of Iran and the United States of America to serve as an intermediary in seeking a mutually acceptable resolution of the crisis in their relations arising out of the detention of the 52 United States nationals in Iran, has consulted extensively with the two governments as to the commitments which each is willing to make in order to resolve the crisis with the framework of the four points stated in the Resolution of November 2, 1980, of the Islamic Consultative Assembly of Iran. On the basis of formal adherences received from Iran and the United States, the Government of Algeria now declares that the following interdependent commitments have been made by the two governments:

GENERAL PRINCIPLES

The undertakings reflected in this Declaration are based on the following general principles:

A. Within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979. In this context, the United States commits itself to ensure the mobility and free transfer of all Iranian assets within its jurisdiction, as set forth in Paragraphs 4-9.

B. It is the purpose of both parties, within the framework of and pursuant to the provisions of the two Declarations of the Government of the Democratic and Popular Republic of Algeria, to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration.

Through the procedures provided in the Declarations relating to the Claims Settlement Agreement, the United States agrees to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

POINT I: NON-INTERVENTION IN IRANIAN AFFAIRS

1. The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs.

POINTS II AND II: RETURN OF IRANIAN ASSETS AND SETTLEMENT OF U.S. CLAIMS

2. Iran and the United States (hereinafter "the parties") will immediately select a mutually agreeable Central Bank hereinafter "the Central Bank") to act, under the instructions of the Government of Algeria and the Central Bank of Algeria (hereinafter "the Algerian Central Bank") as depositary of the escrow and security funds hereinafter prescribed and will promptly enter into depositary arrangements with the Central Bank in accordance with the terms of this Declaration. All funds placed in escrow with the Central Bank pursuant to this Declaration shall be held in an account in the name of the Algerian Central Bank. Certain procedures for implementing the obligations set forth in this Declaration and in the Declaration of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States and the Government of the Islamic Republic of Iran (hereinafter "the Claims Settlement Agreement") are separately set forth in certain Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with Respect to the Declaration of the Democratic and Popular Republic of Algeria.

3. The depositary arrangements shall provide that, in the event that the Government of Algeria certifies to the Algerian Central Bank that the 52 U.S. nationals have safely departed from Iran, the Algerian Central Bank will thereupon instruct the Central Bank to transfer immediately all monies or other assets in escrow with the Central Bank pursuant to this Declaration, provided that at any time prior to the making of such certification by the Government of Algeria, each of the two parties, Iran and the United States, shall the right on seventy-two hours notice to terminate its commitments under this Declaration. If such notice is given by the United States and the foregoing certification is made by the Government of Algeria within the seventy-two hour period of notice, the Algerian Central Bank will thereupon instruct the Central Bank to transfer such monies and assets. If the seventy-two hour period of notice by the United States expires without such a certification having been made, or if the notice of termination is delivered by Iran, the Algerian Central Bank will thereupon instruct the Central Bank to return all such monies and assets to the United States, and thereafter the commitments reflected in this Declaration shall be of no further force and effect.

• *Assets in the Federal Reserve Bank*

4. Commencing upon completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank of all gold bullion which is owned by Iran and which is in the custody of the Federal Reserve Bank of New York, together with all other Iranian assets (or the cash equivalent thereof) in the custody of the Federal Reserve Bank of New York, to be held by the Central Bank in escrow until such time as their transfer or return is required by Paragraph 3 above.

• *Assets in Foreign Branches of U.S. Banks*

5. Commencing upon completion of the requisite escrow arrangements with the Central Bank, the United States will bring about the transfer to the Central Bank, to the account of the Algerian Central Bank, of all Iranian deposits and securities which on or after November 14, 1979, stood upon the books of overseas banking offices of U.S. banks, together with interest thereon through December 31, 1980, to be held by the Central Bank, to the account of the Algerian Central Bank, in escrow until such time as their transfer or return is required in accordance with Paragraph 3 of this Declaration.

- *Assets in U.S. Branches of U.S. Banks*

6. Commencing with the adherence by Iran and the United States to this Declaration and the Claims Settlement Agreement attached hereto, and following the conclusion of arrangements with the Central Bank for the establishment of the interest-bearing Security Account specified in that Agreement and Paragraph 7 below, which arrangements will be concluded within 30 days from the date of this Declaration, the United States will act to bring about the transfer to the Central Bank, within six months from such date, of all Iranian deposits and securities in U.S. banking institutions in the United States, together with interest thereon, to be held by the Central Bank in escrow until such time as their transfer for return is required by Paragraph 3.

7. As funds are received by the Central Bank pursuant to Paragraph 6 above, the Algerian Central Bank shall direct the Central Bank to (1) transfer one-half of each such receipt to Iran and (2) place the other half in a special interest-bearing Security Account in the Central Bank, until the balance in the Security Account has reached the level of U.S.\$1 billion. After the U.S.\$1 billion balance has been achieved, the Algerian Central Bank shall direct all funds received pursuant to Paragraph 6 to be transferred to Iran. All funds in the Security Account are to be used for the sole purpose of securing the payment of, and paying, claims against Iran in accordance with the Claims Settlement Agreement. Whenever the Central Bank shall thereafter notify Iran that the balance in the Security Account has fallen below U.S.\$500 million, Iran shall promptly make new deposits sufficient to maintain a minimum balance of U.S.\$500 million in the Account. The Account shall be so maintained until the President of the arbitral tribunal established pursuant to the Claims Settlement Agreement has certified to the Central Bank of Algeria that all arbitral awards against Iran have been satisfied in accordance with the Claims Settlement Agreement, at which point any amount remaining in the Security Account shall be transferred to Iran.

- *Other Assets in the U.S. and Abroad*

8. Commencing with the adherence of Iran and the United States to this Declaration and the attached Claims Settlement Agreement and the conclusion of arrangements for the establishment of the Security Account, with arrangements will be concluded with 30 days from the date of this

Declaration, the United States will act to bring about the transfer to the Central Bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad, apart from those assets referred to in Paragraphs 5 and 6 above, to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

9. Commencing with the adherence by Iran and the United States to this Declaration and the attached Claims Settlement Agreement and the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs.

• *Nullification of Sanctions and Claims*

10. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date.

11. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will promptly withdraw all claims now pending against Iran before the International Court of Justice and will thereafter bar and preclude the prosecution against Iran of any pending or future claim of the United States or a United States national arising out of events occurring before the date of this Declaration related to (A) the seizure of the 52 United States nationals on November 4, 1979, (B) their subsequent detention, (C) injury to the United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979, and (D) injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran. The United States will also bar and preclude the prosecution against Iran in the courts of the United States of any pending or

future claim asserted by persons other than the United States nationals arising out of the events specified in the preceding sentence.

• POINT IV: RETURN OF THE ASSETS OF THE FAMILY OF THE FORMER SHAH

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminate. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

13. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist with the United States.

16. If any dispute arises between the parties as to whether the United States has fulfilled any obligation imposed upon it by Paragraphs 12-15, inclusive, Iran may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the Claims Settlement Agreement. If the tribunal determines that Iran has suffered a loss as a result of a failure by the United States to fulfill such obligation, it shall make an appropriate award in favor of Iran which may be enforced by Iran in the courts of any nation in accordance with its laws.

• SETTLEMENT OF DISPUTES

17. If any other dispute arises between the parties as to the interpretation or performance of any provision of this Declaration, either party may submit the dispute to binding arbitration by the tribunal established by, and in accordance with the provisions of, the Claims Settlement Agreement. Any decision of the tribunal with respect to such dispute, including any award of damages to compensate for a loss resulting from a breach of this Declaration or the Claims Settlement Agreement, may be enforced by the prevailing party in the courts of any nation in accordance with its laws.