

BRING TO MEETING

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



Executive Council Meeting

AGENDA

Tampa Marriott Waterside Hotel
700 South Florida Avenue Tampa, Florida 33602
Phone:1-813-221-4900

Saturday, May 29, 2010
10:00 a.m.

BRING TO THE MEETING

Real Property, Probate and Trust Law Section

Executive Council Meeting
Marriott Waterside Hotel – Tampa, FL

AGENDA

- I. [Presiding](#) — *John B. Neukamm, Chair*
- II. [Attendance](#) — *Michael A. Dribin, Secretary*
- III. [Minutes of Previous Meeting](#) — *Michael A. Dribin, Secretary*
 1. Approval of 3/20/2010 Executive Council Meeting Minutes and Roster **pp. 11-24**
- IV. [Chair's Report](#) — *John B. Neukamm*
 1. William E. Shermon Resolution **pp. 25**
- V. [Chair-Elect's Report](#) — *Brian J. Felcoski*
 1. 2010 – 2011 RPPTL Executive Council Schedule **pp. 26**
 2. 2010 – 2011 Committee Chairs and Vice Chairs **pp. 27-35**
- VI. [Liaison with Board of Governors Report](#) — *Daniel L. DeCubellis*
 1. BOG Summary – March 2010 **pp. 36-37**
- VII. [Treasurer's Report](#) — *Margaret A. Rolando*
 1. 2009 – 2010 Monthly Report Summary **pp. 38-44**
- VIII. [Circuit Representative's Report](#) — *Andrew O'Malley, Director*
 1. First Circuit – W. Christopher Hart; Colleen Coffield Sachs
 2. Second Circuit – J. Breck Brannen; Sarah S. Butters; John T. Lajoie
 3. Third Circuit – John J. Kendron; Guy W. Norris; Michael S. Smith
 4. Fourth Circuit – William R. Blackard; Roger W. Cruce
 5. Fifth Circuit – Del G. Potter; Arlene C. Udick
 6. Sixth Circuit – Robert N. Altman; Gary L. Davis; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M. Stinson; Kenneth E. Thornton; Hugh C. Umstead; Richard Williams, Jr.
 7. Seventh Circuit – Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells
 8. Eighth Circuit – John Frederick Roscow, IV; Richard M. White Jr.
 9. Ninth Circuit – David J. Akins; Amber J. Johnson; Stacy A. Prince; Joel H. Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
 10. Tenth Circuit – Sandra Graham Sheets; Robert S. Swaine; Craig A. Mundy
 11. Eleventh Circuit – Carlos A. Battle; Thomas M. Karr; Marsha G. Madorsky; William T. Muir; Adrienne Frischberg Promoff; Raul Ballaga
 12. Twelfth Circuit – Kimberly A. Bald; Michael L. Foreman; P. Allen Schofield
 13. Thirteenth Circuit – Lynwood F. Arnold, Jr.; Michael A. Bedke; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O’Ryan; William R. Platt; R. James Robbins
 14. Fourteenth Circuit – Brian Leebrick
 15. Fifteenth Circuit – Elaine M. Bucher; David M. Garten; Glen M. Mednick; Robert M. Schwartz
 16. Sixteenth Circuit – Julie A. Garber
 17. Seventeenth Circuit – James R. George; Robert B. Judd; Shane Kelley; Alexandra V. Rieman

18. Eighteenth Circuit – Jerry W. Allender; Steven C. Allender; Stephen P. Heuston
19. Nineteenth Circuit – Jane L. Cornett
20. Twentieth Circuit – Sam W. Boone; Michael T. Hayes; Alan S. Kotler; Jon Scuderi; Dennis R. White; D. Keith Wickenden

IX. Real Property Division — *George J. Meyer, Real Property Division Director*

Action Item

1. FAR/BAR Committee – *William J. Haley, Chair*

Requesting approval of the following revised and new Comprehensive Riders to the standard FAR/BAR Residential Contract for Sale and Purchase: (1) Condominium Disclosure (revised); (2) Binding Arbitration (new); (3) Short Sale Contingency Approval (new); (4) Defective Drywall (new); and (5) Appraisal Contingency (new). Copies of the proposed Riders are attached at pages **45-53**

Information Items

1. FAR/BAR Committee – *William J. Haley, Chair*

A. Final version of the approved FAR/BAR Residential Contract for Sale and Purchase is attached at pages **54-64**

B. Final version of the approved FAR/BAR “AS IS” Residential Contract for Sale and Purchase is attached at pages **65-74**

2. Non-Judicial Foreclosure Task Force – *Jerry Aron, Chair*

A. Update from Jerry Aron concerning the Banker’s Non-Judicial Foreclosure Bill, House Bill 1523, which did not pass this session. Web link to HB 1523 is:
http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h1523c2.docx&DocumentType=Bill&BillNumber=1523&Session=2010

B. Update from Jerry Aron concerning the Time Share Industry Non-Judicial Foreclosure Bill, House Bill 1411, which did pass this session. The final version is attached at pages **75-122**

3. OFR - Florida Mortgage Broker & Lending Act – *John Neukamm*

Appointment of Burt Bruton and Bill McCaughan to participate as members of a Florida Bar panel established to make recommendations to The Florida Bar’s Board of Governors with respect to the attorney exception in the Act. Correspondence regarding this issue, from The Florida Bar dated March 31, 2010, is attached at page **123**

X. Probate and Trust Law Division – *Wm. Fletcher Belcher, Probate and Trust Law Division Director*

Information Item:

1. Power of Attorney Committee – *Tami F. Conetta, Chair*

Report on proposed comprehensive revisions to Ch. 709, Fla. Stat., Powers of Attorney.
Current drafts of text of proposed revisions **pp. 124-148**
Scrivener's Summary (Professor David F. Powell) **pp. 149-172**

XI. General Standing Committee — *Brian J. Felcoski, Director and Chair-Elect*

Information Item:

1. Strategic Planning Committee – *Brian J. Felcoski, Chair*

Strategic Plan Report **pp.173**

2. Fellowship Committee – *Tae Kelley Bronner, Chair*

Report on the 2010 – 2011 New Fellows **pp 174-175**

XII. General Standing Committee Reports – *Brian J. Felcoski, Director and Chair-Elect*

1. **Actionline** – Rich Caskey, Chair; Scott Pence and Rose LaFemina, Co-Vice Chairs
2. **Amicus Coordination** – Bob Goldman, John W. Little, and Kenneth Bell Co-Chairs
3. **Budget** – Margaret A. Rolando, Chair; Pamela O. Price, Vice Chair
4. **Bylaws** – W. Fletcher Belcher, Chair
 - A. Drafts of proposed revised RPPTL Section Bylaws.
Clean version **pp. 176-190**
Redline version **pp. 191-213**
5. **CLE Seminar Coordination** – Deborah P. Goodall, Chair; Sancha Whynot, Vice Chair; Laura Sundberg and Sylvia Rojas, Co-Vice Chairs
 - A. 2009 – 2010 CLE Schedule **pp. 214**
 - B. 2010 – 2011 CLE Schedule **pp. 215**
6. **2010 Convention Coordinator** – Marilyn Polson, Chair; Katherine Frazier and R. James Robins, Co-Vice Chairs
7. **Fellowship** – Tae Kelly Bronner and Phillip Baumann, Co-Chairs; Michael Bedke, Vice Chair

8. **Florida Bar Journal** – Richard R. Gans, Chair Probate Division; William Sklar, Chair Real Property Division
9. **Legislative Review** – Michael Gelfand, Chair; Debra Boje and Alan Fields, Co-Vice Chairs
 - A. Legislative Committee Report **pp. 216-223**
10. **Legislative Update Coordinators** – Bob Swaine, Chair; Stuart Altman and Charlie Nash, Co-Vice Chairs
11. **Liaison Committees:**
 - A. **ABA:** Edward Koren; Julius J. Zschau
 - B. **American Resort Development Assoc. (ARDA):** Jerry Aron; Mike Andrew
 - C. **BLSE:** Michael Sasso, Ted Conner, David Silberstein, Anne Buzby
 - D. **Business Law Section:** Marsha Rydberg
 - E. **BOG:** Daniel L. DeCubellis, Board Liaison
 - F. **CLE Committee:** Deborah P. Goodall
 - G. **Clerks of the Circuit Court:** Thomas K. Topor
 - H. **Council of Sections:** John B. Neukamm, Brian J. Felcoski
 - I. **E-filing Agencies:** Judge Mel Grossman; Patricia Jones
 - J. **FLEA / FLSSI:** David Brennan; John Arthur Jones; Roland Chip Waller
 - K. **Florida Bankers:** Stewart Andrew Marshall; Mark T. Middlebrook
 - L. **Judiciary:** Judge Gerald B. Cope, Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Maria M. Korvick; Judge Beth Krier, Judge Lauren Laughlin; Judge Celeste H. Muir; Judge Larry Martin; Judge Robert Pleus; Judge Susan G. Sexton; Judge Richard Suarez; Judge Winifred J. Sharp; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr.
 - M. **Law Schools and Student RPPTL Committee:** Fred Dudley, Stacy Kalmanson, James Jay Brown
 - N. **Liaison to the OCCRC:** Joseph George
 - O. **Out of State:** Michael Stafford; John E. Fitzgerald, Gerard J. Flood
 - P. **Young Lawyers Division:** Leslie Stewart; Alan L. Raines
12. **Long Range Planning Committee** – Brian J. Felcoski, Chair
13. **Member Communications and Information Technology** – Alfred Colby, Chair; Dresden Brunner and Nicole Kibert, Co – Vice Chair
14. **Membership Development & Communication** – Phillip Baumann, Chair; Mary Karr, Vice Chair
 - A. Report on Membership History 2005 – 2010 **pp. 224-226**
15. **Membership Diversity Committee** – Lynwood Arnold and Fabienne Fahnstock, Co-Chairs; Karen Gabbadon, Vice-Chair
16. **Mentoring Program** – Guy Emerich, Chair; Jerry Aron and Keith Kromash, Co-Vice Chairs
17. **Model and Uniform Acts** – Bruce Stone and Katherine Frazier, Co-Chairs

18. **Professionalism & Ethics** – Paul Roman and Larry Miller, Co-Chairs
19. **Pro Bono** – Gwynne Young and Adele I. Stone, Co-Vice Chair
20. **Sponsor Coordinators** – Kristen Lynch, Chair; Wilhelmina Kightlinger, Jon Scuderi and Mike Swaine, Co-Vice Chairs
21. **Strategic Planning** – Brian J. Felcoski, Chair

XIII. Probate and Trust Law Division Committee Reports— *W. Fletcher Belcher, Director*

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela Adams, Chair
2. **Ad Hoc Committee on Homestead Life Estates** – Shane Kelley, Chair
3. **Advance Directives** – Rex E. Moule, Chair; Marjorie Wolasky, Vice Chair
4. **Asset Preservation** – Jerome Wolf, Co-Chair; Brian Sparks, Co-Chair
5. **Charitable Organizations and Planning** – Thomas C. Lee, Jr., Chair, Michael Stafford and Jeffrey Baskies, Co-Vice Chairs
6. **Estate and Trust Tax Planning** – Richard Gans, Chair; Harris L. Bonette Jr. and Elaine M. Bucher, Co-Vice Chairs
7. **Florida Electronic Court Filing** – Rohan Kelley, Chair; Laird Lile, Vice Chair
8. **Guardianship Law and Procedure** – Debra Boje and Alexandra Rieman, Co-Chairs, Andrea L. Kessler and Sherri M. Stinson, Co-Vice Chairs
9. **Insurance for Estate Planning** – L. Howard Payne, Chair
10. **IRA's and Employee Benefits** – Kristen Lynch, Chair; Linda Griffin, Vice Chair
11. **Liaison with Corporate Fiduciaries** – Seth Marmor, Chair; Jack Falk and Robin King, Co-Vice Chairs; Mark Middlebrook, Corporate Fiduciary Chair
12. **Liaisons with Elder Law Section** – Charles F. Robinson, Chair; Marjorie Wolasky, Vice Chair
13. **Liaison with Statewide Public Guardianship Office** - Michelle Hollister, Chair
14. **Liaisons with Tax Section** – David Pratt; Brian C. Sparks; Donald R. Tescher, William R. Lane Jr.
15. **Power of Attorney** – Tami Conetta, Chair; David Carlisle, Vice Chair
16. **Principal and Income** – Edward F. Koren, Chair

17. **Probate and Trust Litigation** – William Hennessey, Chair; Thomas Karr and Jon Scuderi, Co-Vice Chairs
18. **Probate Law and Procedure** – Tae Kelley Bronner, Chair, Dresden Brunner, Anne Buzby and Jeffrey Goethe, Co-Vice Chairs
19. **Trust Law** – Barry Spivey, Chair; John Moran, Shane Kelley and Laura Stephenson, Co-Vice Chairs
20. **Wills, Trusts and Estates Certification Review Course** – Anne Buzby, Chair; Deborah Russell, Vice Chair

XIV. Real Property Division Committee Reports — *George J. Meyer, Director*

1. **Condominium and Planned Development** – Robert S. Freedman, Chair; Steven Mezer, Vice-Chair
2. **Construction Law** – Brian Wolf, Chair; April Atkins and Arnold Tritt, Co Vice-Chairs
3. **Construction Law Institute** – Lee Weintraub, Chair; Wm. Cary Wright and Michelle Reddin, Co-Vice Chairs
4. **Construction Law Certification Review Course** – Kim Ashby, Chair; Bruce Alexander and Melinda Gentile, Co Vice-Chair
5. **Development and Governmental Regulation of Real Estate** – Eleanor Taft, Chair Nicole Kibert, Kristen Brundage and Frank L. Hearne, Co Vice-Chairs
6. **FAR/BAR Committee and Liaison to FAR** – William J. Haley, Chair; Frederick Jones, Vice Chair
7. **Land Trusts and REITS** – S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
8. **Landlord and Tenant** – Neil Shoter, Chair; Scott Frank and Jo Claire Spear, Vice Chair
9. **Legal Opinions** – David R. Brittain and Roger A. Larson, Co Chairs; Burt Brutin, Vice Chair
10. **Liaison with Eminent Domain Committee** – Susan K. Spurgeon
11. **Liaisons with FLTA** – Norwood Gay and Alan McCall Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick, Lee Huzagh, Co-Vice Chairs
12. **Mobiles Home and RV Parks** – Jonathan J. Damonte, Chair; David Eastman, Vice-Chair
13. **Mortgages and Other Encumbrances** – Salome Zikakis, Chair; Robert Stern, Co-Vice Chair
14. **Real Estate Certification Review Course** – Ted Conner, Chair; Arthur Menor and Guy Norris, Co-Vice Chairs
15. **Real Property Forms** – Barry B. Ansbacher, Chair; Jeffrey T. Sauer, Vice Chair

17. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop and Wm. Cary Wright, Co-Vice Chair
18. **Real Property Litigation** – Mark A. Brown, Chair; Eugene E. Shuey and Martin Awerbach, Co-Vice Chairs
19. **Real Property Problems Study** – Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair
20. **Title Insurance & Title Insurance Liaison** – Homer Duvall, Chair; Kristopher Fernandez and Steven Reynolds, Co-Vice Chairs
21. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham, Karla Gray and Christopher Smart, Co-Vice Chairs

XV. Adjourn



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

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

Special Thanks to the

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Condominium & Planned Development Committee

Management Planning, Inc. & Florida Bar Foundation
Estate & Trust Tax Planning Committee

Northern Trust Bank of Florida
Trust Law Committee

Business Valuation Analysts
Probate and Trust Litigation

**Minutes, Real Property, Probate and Trust Law Section
Executive Council Meeting**

Saturday, March 20, 2010

The Ritz Carlton, Kapalua Maui, Hawaii

Reference in these minutes to specified pages of “agenda materials” are to the agenda of the March 20, 2010 meeting of the Executive Council posted at the RPPTL website.

AGENDA

I. **Call to Order** - John B. Neukamm, Chair, called the meeting to order at 9:00 a.m.

II. **Attendance** - Sandra F. Diamond was appointed as Secretary Pro Tem.

The attendance roster was circulated to be initialed by Council members in attendance at the meeting. Attendance is shown cumulatively on circulated attendance rosters.

III. **Minutes of Previous Meeting** -

The Minutes of the Executive Council Meeting held in St. Augustine on January 16, 2010, were approved without change.

IV. **Chair’s Report** - John B. Neukamm

1. John reported that the arrangements for the convention to be held May 27 through May 30, 2010, in Tampa, have been completed. The sign up sheets have been circulated. John thanked convention Co-Chairs Katherine Frazier and Marilyn Polson, as well as Jim Robbins and Marsha Rydberg for their efforts in planning the details of the convention.

2. On Thursday evening of the convention weekend there will be a reception at the Tampa Theatre, followed by a showing of the movie “Body Heat.” John reminded the group that this was an adult only theme featuring the Rule Against Perpetuity.

3. On Friday, a seminar will be held in the morning which will be free to all Section members and which should appeal to both real property and probate and trust practitioners. Committee meetings will be held on Friday afternoon. On Friday evening the group will attend a reception and dinner at the Florida Aquarium. There will be specific children’s activities planned.

4. The round tables will be held on Saturday morning. On Saturday afternoon there will be an optional cruise. Dinner is to be held Saturday evening at the Tampa

Bay History Center. All of the activities will be within walking distance from the Marriott Waterside Hotel.

For those staying on Sunday afternoon, John has planned a canoe and kayak trip on the Hillsborough River.

V. **Chair-Elect's Report** - Brian J. Felcoski

The schedule of Executive Council Meetings for 2010 - 2011 are found at page 60 of the agenda package. Brian indicated that members may book rooms now for most of the venues. The out-of-state meeting will be held at the Four Seasons Hotel in Santa Barbara, California. Brian is anticipating visits to the wine country and encourages early sign up as the room block is limited.

VI. **Liaison with Board of Governors Report** - Daniel L. DeCubellis

No Report

VII. **Treasurer's Report** - Margaret A. Rolando

In Peggy's absence, John reported that the net revenues over expenses were \$200,000.00. The amount of the CLE revenue was \$119,000.00. Since only 6 of 19 CLE's have occurred at this point in the reporting cycle, it is expected that CLE revenues will continue to rise. John also mentioned the addition of a new sponsor.

VIII. **Circuit Representative's Report** - Andrew O'Malley, Director

John reported that the foreclosure rules from each Circuit have been posted on the website.

IX. **Real Property Division** - George J. Meyer, Director

1. George reported that the Executive Committee had taken emergency action in response to proposed legislation that would relieve design professionals from certain liability. There is concern that this proposal has been written in a manner which would abrogate certain common law rights of parties that have been damaged by the actions of such design professionals without providing any appropriate alternative remedies in its place. The Construction Law Committee submitted a white paper detailing the various reasons for the opposition to this provision. George reported that he has been informed the Trial Lawyers also are opposed to the bill.
2. Non Judicial Foreclosures/Banker's Bill - The Section has strenuously opposed House Bill 1523 which was initiated by the Florida Banker's Association. This bill has significant procedural and due process issues, which have consistently been opposed by the Section. We have been unable to engage the bankers in any meaningful dialog regarding their proposal.

3. Non Judicial Foreclosures/Timeshare - The Section, primarily through the considerable efforts of Jerry Aron and Pete Dunbar, has engaged in serious discussions regarding House Bill 1411 relating to the foreclosure of timeshares. The Section continues to seek legislation that will adequately protect property rights and provide appropriate due process protection. George noted that significant improvements have been made so far to the bill based upon the Section's input, and that discussions have been narrowed to just a couple of open material issues. Those issues include (i) the appropriate qualifications of and standards for the foreclosure trustee, (ii) the liability of the trustee, lender and/or association for improper foreclosures and (iii) to what extent, if any, may these procedures be used to foreclose unpaid timeshare assessment liens in addition to foreclosing timeshare mortgages? Prior to the Maui Executive Council meeting, the Executive Committee had authorized Jerry Aron, George Meyer and John Neukamm to move forward to try to negotiate the remaining issues consistent with the Section's position on non-judicial foreclosure, as clarified at the Section's St Augustine Executive Council meeting.

X. **Probate and Trust Law** - Brian Felcoski, Director

1. Brian reported that the Section's Estate Tax Patch is moving forward. This legislation would allow the presentation of extrinsic evidence regarding the interpretation of estate and generation skipping tax provisions in both wills and trusts. This proposed legislation has been amended to the Trust Bill which is moving through the House and Senate. It has also recently been placed on to the Estate Tax Bill amending Section 198 F.S. relating to imposition of taxes on estates of non-resident decedents.
2. Brian reported that the Section is working to provide technical assistance to House Bill 1197 relating to the imposition of taxes on the estate of non-resident decedents. This legislation specifically provides that non-residents who have Florida real property, as well as certain Florida situs intangibles, will share in the tax imposed by other states.

XI. **General Standing Committee** - Brian J. Felcoski, Chair-Elect

Brian reported that the CLE Report is shown in the agenda package and that only 6 of 19 CLE programs have been offered at this time. There were no other written reports.

XII. **Probate and Trust Law Division Committee Reports** - W. Fletcher Belcher, Chair, Director

No Reports.

XIII. **Real Property Division Committee Reports** - George J. Meyer, Director

Wilhelmena Kightlinger reported on behalf of the Title Insurance Committee that Senator Bennett has filed Senate Bill 260, the File and Use Bill, which seeks to eliminate promulgated rates and revises the regulatory procedures governing title insurance agents.

The Section, as well as FLTA, opposes this provision. At this time there is no House companion bill.

XIV. **Adjourn**

There being no further business to come before the Executive Council, the meeting was adjourned.

Respectfully submitted,

Sandra F. Diamond, Secretary Pro Tem

ATTENDANCE ROSTER

REAL PROPERTY PROBATE & TRUST LAW SECTION EXECUTIVE COUNCIL MEETINGS 2009 – 2010

Executive Committee	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Belcher, Wm. Fletcher, Probate & Trust Law Div. Director	X	X	X		
Diamond, Sandra F., Immediate Past Chair	X	X	X	X	
Dribin, Michael A., Secretary	X	X	X		
Felcoski, Brian J., Chair-Elect	X	X	X	X	
Gelfand, Michael J., Legislation Chair	X	X	X		
Goodall, Deborah, Seminar Coordinator	X	X	X		
Meyer, George J., Real Property Law Div. Director	X	X	X	X	
Neukamm, John B., Chair	X	X	X	X	
O'Malley, Andrew M., Director of Circuit Representatives	X	X	X		
Rolando, Margaret A., Treasurer	X	X	X		

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Adams, Angela M.	X		X		
Adcock, Jr., Louie N., Past Chair					
Akins, David James	X	X	X	X	
Alexander, Bruce					
Allender, Jerry W.	X	X			
Allender, Steven C.	X	X			
Altman, Robert N.	X		X		
Altman, Stuart H.	X	X			
Ansbacher, Barry Barnett	X		X		

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Arnold, Jr. , Lynwood F.			X		
Aron, Jerry E., Past Chair	X	X	X		
Ashby, Kimberly	X	X	X		
Atkins, April	X				
Awerbach, Martin		X	X		
Bald, Kimberly		X	X		
Banister, John R. (appointed after P.B.)		X	X		
Baskies, Jeffrey	X	X			
Battle, Carlos Alberto	X		X		
Baumann, Phillip A.	X	X	X		
Beales III, Walter Randolph, Past Chair	X				
Bedke, Michael	X	X	X		
Bell, Honorable Kenneth	X				
Blackard, Jr., William Raymond	X	X	X		
Boje, Debra Lynn	X	X	X		
Bonnette, Jr., Harris L.	X	X	X		
Bookman, Alan Bart					
Boone, Jr., Sam Wood	X	X	X		
Brannen, J. Brecken					
Brennan, David Clark, Past Chair	X		X		
Brittain, David Ross	X				
Bronner, Tae Kelley	X	X	X		
Brown, J.J.					
Brown, Mark A.	X	X	X		
Brundage, Kristy Parker	X		X		
Brunner, S. Dresden	X	X	X		
Bruton, Jr., Burt	X	X			
Bucher, Elaine M.	X	X			
Butters, Sarah		X	X		
Buzby, Anne K.	X		X	X	

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Carlisle, David Russell	X	X			
Carter, David	X				
Caskey, J. Richard	X	X	X		
Christiansen, Pat, Past Chair	X	X			
Colby, Alfred	X	X			
Conetta, Tami Foley	X	X	X		
Conner, William Theodore	X	X	X		
Cope, Honorable Gerald B., Jr.	X				
Cornett, Jane L.	X	X			
Cruce, Roger W.		X	X		
Damonte, Jonathan James	X		X		
Davis, Gary	X				
DeCubellis, Dan L.	X	X	X		
Dudley, Frederick Raymond	X	X	X		
Duvall III, Homer		X	X		
Eastman, David Deane	X		X		
Elzeer, John S.					
Emerich, Guy Storms	X	X	X		
Falk, Jack A.	X	X	X		
Fahnestock, Fabienne E.					
Fernandez, Kristopher	X	X	X		
Fields, Alan Beaumont	X	X	X		
Fisher, Michael	X				
Fitzgerald, Jr., John Edward		X	X		
Fleece III, Joseph W.	X	X			
Flood, Gerard J.	X	X			
Foreman, Michael Loren	X	X	X		
Frank, Scott	X	X	X		
Frazier, Susan Katherine	X	X	X		
Freedman, Robert Scott	X	X	X		

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Gabbadon, Karen					
Gans, Richard Roy	X	X	X		
Garber, Julie Ann	X	X			
Garten, David Michael			X		
Gay III, Robert Norwood	X		X		
Gentile, Melinda					
George, James R.	X				
George, Joseph P.	X	X		X	
Goethe, Jeffrey	X	X	X		
Goldman, Robert W., Past Chair		X	X		
Graham, Robert Manuel		X	X		
Gray, Karla S.	X	X	X		
Greer, Honorable George W.					
Griffin, Linda S.	X	X	X		
Grimsley, John Gall, Past Chair			X		
Grossman, Honorable Melvin B.	X	X	X		
Guttmann III, Louis B., Past Chair		X	X		
Haley, William James	X	X	X		
Hancock, Patricia J.	X	X	X		
Hart, W. Christopher	X				
Hayes, Honorable Hugh D.	X				
Hayes, M. Travis	X		X		
Hearn, Steven Lee, Past Chair	X		X		
Hearne, Frank L.	X		X		
Henderson, Thomas	X	X			
Hennessey III, William Thomas	X	X	X		
Heuston, Stephen Paul	X	X	X		
Hollister, Michelle Rachel	X	X			
Huszagh, Victor Lee					
Isphording, Roger O., Past Chair	X	X	X	X	

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Johnson, Amber Jade F.		X			
Jones, Frederick Wayne	X	X	X		
Jones, John Arthur, Past Chair					
Jones, Patricia P. Hendricks	X	X	X		
Judd, Robert Brian	X	X			
Kalmanson, Stacy O.	X	X	X		
Karr, Mary		X			
Karr, Thomas M.		X	X		
Kayser, Joan Bradbury, Past Chair		X			
Kelley, Rohan, Past Chair	X		X		
Kelley, Sean		X	X		
Kelley, Shane	X	X	X		
Kendon, John	X	X	X		
Kessler, Andrea	X	X	X		
Kibert, Nicole C.	X	X	X		
Kightlinger, Wilhelmina F.	X	X	X	X	
King, Robin	X	X	X		
Kinsolving, Laurence E.					
Kinsolving, Ruth Barnes			X		
Koren, Edward F., Past Chair			X		
Korvick, Honorable Maria Marinello		X			
Kotler, A. Stephen	X	X	X		
Krier, Honorable Beth	X		X		
Kromash, Keith Stuart	X		X		
LaFemina, Rose	X		X	X	
Lajoie, John Thomas					
Lane, William		X	X		
Lange, Jr., George W.	X	X	X		
Larson, Roger Allen	X	X	X		
Laughlin, Honorable Lauren					

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Lee, Thomas C.	X				
Leebrick, Brian	X	X	X		
Lile, Laird, Past Chair	X	X			
Little III, John Wesley	X				
Lynch, Kristen M.	X	X	X		
Madorsky, Marsha G.	X	X	X		
Marger, Bruce, Past Chair	X	X			
Marmor, Seth	X	X	X		
Marshall III, Stewart Andrew	X				
Martin, Honorable Larry					
McCall, Alan K.	X	X			
Mednick, Glenn M.	X	X			
Menor, Arthur James		X			
Mezer, Steven H.	X		X		
Middlebrook, Mark Thomas	X	X	X		
Miller, Lawrence Jay	X	X	X	X	
Moran, John	X	X	X		
Moule, Rex E.	X	X	X		
Muir, Honorable Celeste		X	X		
Muir, William T.	X		X		
Murphy, Melissa, Past Chair	X	X			
Murphy, Jeanne	X		X		
Mussman, Jay D.	X	X	X		
Nash, Charles Ian	X	X	X	X	
Norris, Guy W.		X	X		
Northrop, Andrea		X			
Norris, John E., Past Chair					
O'Ryan, Christian Felix	X		X		
Payne, L. Howard	X	X	X		
Pence, Scott	X		X		

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Platt, William R.	X	X			
Pleus, Jr., Honorable Robert James					
Polson, Marilyn Mewha	X	X	X		
Potter, Del G.	X	X			
Pratt, David		X			
Promoff, Adrienne F.					
Price, Pamela O.	X	X	X		
Prince, Stacy			X		
Pyle, Michael A.	X	X	X		
Reddin, Michelle A.			X		
Reinhardt, Joe					
Reynolds, Stephen H.	X		X		
Rieman, Alexandra V.	X	X	X		
Robbins, James, Jr.	X	X	X		
Robinson, Charles F.	X		X		
Rojas, Silvia B.	X	X	X		
Roman, Paul	X	X	X		
Roscow IV, John Frederick	X	X			
Russell, Deborah L.	X	X			
Russick, James C.	X	X	X		
Rydberg, Marsha G.	X	X	X		
Sachs, Colleen Coffield			X		
Sasso, Michael Cornelius			X		
Sauer, Jeffrey Thomas	X	X	X		
Schaefer, Jr., Honorable Walter L.					
Schnitker, Clay			X		
Schofield, Percy Allen	X	X	X		
Scholnik, Barry	X	X			
Schwartz, Robert M.	X		X		
Scuderi, Jon	X	X			

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Sexton, Honorable Susan G.					
Sharp, Honorable Winifred J.		X			
Sharp, Jr., Joel Herbert		X			
Sheets, Sandra Graham	X	X			
Sherman, William E., Past Chair					
Shoter, Neil	X	X	X		
Shuey, Eugene Earl		X	X		
Silberman, Honorable Morris					
Silberstein, David Mark	X	X	X		
Sklar, William Paul					
Smart, Christopher	X		X		
Smith, G. Thomas, Past Chair	X		X		
Smith, Michael S.	X				
Smith, Wilson, Past Chair	X				
Sobien, Wayne	X	X			
Sparks, Brian Curtis	X	X	X		
Spivey, Barry F.	X	X	X		
Spurgeon, Susan K.	X		X		
St. Arnold, Honorable Jack					
Stafford, Michael P.	X	X	X	X	
Stephenson, Laura P.	X	X	X		
Stern, Robert Gary	X		X		
Stinson, Sherri M.	X	X	X		
Stone, Adele Ilene			X		
Stone, Bruce M., Past Chair			X		
Stroman, Rhonda C. Decambre					
Suarez, Honorable Richard					
Sundberg, Laura K.	X	X	X		
Sutherland, John Holt					
Swaine, Jack Michael, Past Chair	X		X		

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Swaine, Robert S.	X				
Taft, Eleanor W.		X	X		
Taylor, Richard W.	X		X		
Tescher, Donald Robert					
Thomas, Honorable Patricia Vitter	X				
Thornton, Kenneth E.	X	X	X		
Topor, Thomas Karl	X	X		X	
Tritt, Arnold		X	X		
Udick, Arlene	X	X	X	X	
Umsted, Hugh Charles	X		X		
Waller, Roland D., Past Chair	X	X	X		
Walton, Kenneth	X				
Weintraub, Lee A.	X	X	X		
Wells, Jerry	X	X	X		
White, Dennis R.	X	X			
White, Jr.; Richard M.	X	X	X		
Whynot, Sancha Brennan	X		X		
Wickenden, D. Keith	X	X	X		
Wilder, Charles D.	X	X		X	
Williams, Jr., Richard	X	X	X		
Williamson, Julie Ann Stulce, Past Chair	X				
Wohlust, G. Charles	X	X	X		
Wolasky, Marjorie Ellen	X				
Wolf, Brian	X				
Wolf, Jerome Lee			X		
Wright, Wm. Cary		X	X	X	
Young, Gwynne Alice	X	X	X		
Zikakis, Salome	X	X	X		
Zschau, Julius Jay	X	X			

Executive Council Members	Aug. 1 Palm Beach	Sept. 26 Naples	Jan. 16 St. Augustine	March 13 Hawaii	May 29 Tampa
Legislative Consultants					
Adams, Gene	X	X			
Aubuchon, Joshua D.			X		
Dunbar, Peter M.		X	X		
Edenfield, Martha	X		X		
Guests and Fellows					
Stephanie Harriett		X			
Ballaga, Raul (11 th Circuit Rep.)		X	X		
Stuart, Pamela	X	X			
Hale, Russ	X	X			
Mundy, Craig		X			
Stewart, Leslie S.		X		X	
Nguyen, Hung	X	X			
Cardillo, John T.	X	X	X		
Nelson, Barry		X			
Ezel, Brenda B.	X	X	X		
Gonzalez, Aniella	X	X			
Hamrick, Alex		X	X		
Malex, Brian			X		
Rountree, Shannon			X		
Thurlin, Thomas				X	
Zamora, Enrique				X	
DeParry, Astrid				X	
Stuart, Pamela				X	



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

Resolution

RECOGNIZING OUTSTANDING SERVICE AND CONTRIBUTIONS OF

William E. Sherman

Whereas, William E. Sherman, of Deland, Florida, passed away on March 11, 2010, survived by his devoted and loving wife, Vicki Lynn Sherman; and

Whereas, Bill graduated from the University of Florida, College of Law and was admitted to the Florida Bar in 1953 and was a true leader in his profession and his community who devoted a lifetime of service to his fellow Bar members; and

Whereas, Bill achieved leadership at the highest levels of the practice of law, as president of his law firm, outside general counsel of the West Volusia Hospital Authority and service on the Volusia County Charter Study Commission; and,

Whereas, Bill served the Florida Bar at the highest leadership levels, including service on the Board of Governors of the Florida Bar, service on the joint commission that drafted the Florida Probate Code, chairing the Florida Bar committee that established the Wills, Trust and Estates certification program and as a Fellow of the American College of Trust and Estate Counsel; and

Whereas, Bill's career-long dedication to the Real Property, Probate and Trust Law Section of the Bar was unsurpassed and evidenced by his many terms as chair of the Probate Law Committee and other Section activities, his service as Chair of the Section in 1984-85, as president of Florida Legal Education Association and on the board of directors of Florida Lawyers Support Services; and,

Whereas, for these and many other services to the Section, in 1987 Bill was awarded the Robert C. Scott Memorial Award, exemplifying extraordinary service to the Section, and the William S. Belcher Lifetime Professionalism Award in 2004; and

Whereas, Bill Sherman was one of the rocks upon which the Real Property, Probate and Trust Law Section was built, considering his long service, wise counsel in dealing with important Section interests and his well-deserved reputation for being a mentor and example of excellence for Executive Council members and all young attorneys; and

Whereas, The Executive Council of the Real Property, Probate and Trust Law Section of the Florida Bar recognizes with deep gratitude the extraordinary dedication, leadership, professionalism and service which Bill rendered and wishes to acknowledge his place as one of the greatest leaders of the Section and of the Florida Bar.

NOW, THEREFORE, be it resolved by The Executive Council of the Real Property, Probate and Trust Law Section of the Florida Bar, that the distinguished service and rich contributions to the practice of law and to the Section by William E. Sherman are acknowledged with profound gratitude and with the knowledge that his spirit will reside in the hearts of Section members, forever.

Unanimously adopted by The Executive Council of the Real Property, Probate and Trust Law Section of the Florida Bar at Tampa, Florida, on the 29th day of May, 2010.

John B. Neukamm
Chair
13309515.3

Michael A. Dribin
Secretary

RPPTL 2010 - 2011
Executive Council Meeting Schedule
BRIAN FELCOSKI'S YEAR

Date	Location
August 5 – August 8, 2010	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$185.00 Cut-off Date: July 4, 2010
September 23 – September 26, 2010	Executive Council Meeting Ritz-Carlton Orlando, Grand Lakes Orlando, Florida Reservation Phone # 1-800-576-5760 http://www.grandelakes.com Room Rate: \$219.00 Cut-off Date: August 25, 2010
November 4 – November 7, 2010	Executive Council Meeting Sandpearl Resort Clearwater, Florida Reservation Phone #1-877-726-3111 http://www.sandpearl.com Room Rate: \$199.00 Cut-off Date: October 1, 2010
February 24 – February 27, 2011	Executive Council Meeting / Out-of-State Meeting Four Season Resort Santa Barbara, CA Reservation Phone #805-565-8299 www.fourseasons.com/santabarbara Room Rate: \$350.00 Cut-off Date: January 25, 2011
May 26 – May 29, 2011	Executive Council Meeting / RPPTL Convention Eden Roc Hotel Miami Beach, Florida Reservation Phone # 1-800-319-5354 http://boldnewedenroc.com/ Room Rate \$199.00 Cut-off Date: May 3, 2011

July 1, 2010 - June 30, 2011 RPPTL General Standing Committees Chairs & Vice Chairs

Committee	Chair/Vice-Chair	E-Mail	Phone	Ext	Year
Actionline					
	J. Richard Caskey, Chair	jrc@caskeylaw.com	813.443.5709		2008
	Scott P. Pence, Vice Chair (Real Property)	spence@carltonfields.com	813.229.4322		2007
	Rose M. LaFemina, Vice Chair (Probate)	lafeminar@gtlaw.com	954.759.5525		2008
Amicus Coordination					
	Robert W. Goldman, Co-Chair	rgoldman@gfsestatelaw.com	239.436.1988		1998
	John W. Little, III, Co-Chair	jlittle@brighammoore.com	561.832.7862		1999
	Kenneth B. Bell, Co-Chair	kenbell@cphlaw.com	850.434.9200		2009
Budget					
	Michael A. Dribin, Chair	MDribin@broadandcassel.com	305.373.9400		2010
	Pamela O. Price, Vice Chair	Pam.Price@gray-robinson.com	407.843.8880		1999
Bylaws					
	W. Fletch Belcher, Chair	wfbelcher@gmail.com	727.821.1249		2007
CLE Seminar Coordination					
	Debbie P. Goodall, Chair	debbie.goodall@hklaw.com	954.525.1000		2009
	Sancha Brennan Whynot, Vice Chair	sbwhynt@thebrennanlawfirm.com	407.893.7888		2009
	Laura Sundberg, Vice Chair	sundbergj@gtlaw.com	407.420.1000		2007
	Silvia B. Rojas, Vice Chair	srojas@thefund.com	800.432.9594	7713	2006
2011 Convention Coordination					
	S. Katherine Frazier, Co-Chair	skfrazier@hwlaw.com	813.227.8480		2009
	Jon Scuderi, Co-Chair	jon@gfsestatelaw.com	305.446.2800		2009
	Michael A. Dribin, Vice Chair	MDribin@broadandcassel.com	305.373.9400		2010
Fellowships					
	Michael A. Bedke, Chair	michael.bedke@dlapiper.com	813.222.5924		2010
	Tae Kelley Bronner, Vice Chair	tae@estatelaw.com	813.907.6643		2010
	Phillip A. Baumann, Vice Chair	pab@estatelawflorida.com	813.223.2202		2010
Florida Bar Journal					
	Kristen M. Lynch, Co-Chair (Probate)	kristen.lynch@ruden.com	561.368.8800		2010
	William P. Sklar, Co-Chair (Real Property)	wsklar@eapdlaw.com	561.833.7700		1998
Legislative Review					
	Michael J. Gelfand, Chair	mjgelfand@gelfandarpe.com	561.655.6224		2009
	Alan B. Fields, Vice Chair (Real Property)	abfields@mindspring.com	727.773.6664		2009
	Barry F. Spivey, Vice Chair (Probate)	barry.spivey@ruden.com	941.316.7600		2010

Committee	Chair/Vice-Chair	E-Mail	Phone	Ext	Year Appt'd
Legislative Update 2011					
	Robert S. Swaine, Chair	bob@heartlandlaw.com	863.385.1549		2009
	Stuart H. Altmann, Vice Chair	saltman@fowler-white.com	305.789.9200		2008
	Charles I. Nash, Vice Chair	cinashlaw@aol.com	321.984.2440		2009
	R. James Robbins, Vice Chair	rjrobbins@hwlaw.com	813.221.3900		2010
Liaison with:					
	Liaison with ABA				
	Edward F. Koren	ed.koren@hklaw.com	813.227.8500		1998
	Julius James Zschau	jayz@penningtonlaw.com	727.449.9553		2003
	Liaison with Board of Legal Specialization and Education (BLSE)				
	Michael C. Sasso	msasso@sasso-law.com	407.644.7161		2007
	W. Theodore Conner	tconner@thefund.com	407.240.3863		2009
	David M. Silberstein	silberstein@kirkpinkerton.com	914.364.2481		2009
	Anne K. Buzby	abuzby@rtlaw.com	904.389.3911		2009
	Liaison with Business Law Section				
	Marsha G. Rydberg	mrydberg@rydberglaw.com	813.221.2800		2008
	Liaison with The Florida Bar Board of Governors				
	Daniel L. DeCubellis, Chair	ddecubellis@carltonfields.com	407.849.0300		2008
	Liaison with The Florida Bar CLE Committee				
	Deborah P. Goodall	debbie.goodall@hklaw.com	954.525.1000		2009
	Liaison with Clerks of Circuit Court				
	Laird A. Lile	llile@lairdaille.com	239.649.7778		2010
	Liaison with Council of Sections				
	Brian J. Felcoski	bfelcoski@gfsestatelaw.com	305.446.2800		2009
	George J. Meyer	gmeyer@carltonfields.com	813.229.4140		2010
	Liaison with E-Filing Agencies				
	Judge Melvin B. Grossman	mgrossma@17th.flcourts.org	954.831.7759		2005
	Patricia P. Hendricks Jones	pjones@thefund.com	800.432.9594	7237	2008
	Liaison with FLEA/FLSSI				
	David C. Brennan	dbrennan@thebrennanlawfirm.com	407.893.7888		2005
	John Arthur Jones	johnarthur.jones@hklaw.com	813.227.6661		2005
	Roland Chip Waller	roland.waller@rdwaller.com	727.847.2288		2005

Committee	Chair/Vice-Chair	E-Mail	Phone	Ext	Year Appt'd
	Liaison with Florida Bankers Association				
	Stewart Andrew Marshall III	stewart.marshall@akerman.com	407.843.7860		2002
	Mark Thomas Middlebrook	mark.middlebrook@regions.com	727.592.6937		2005
	Liaison with Judiciary				
	Judge Jack St. Arnold	starnold@jud6.org	727.464.3239		2008
	Judge Gerald B. Cope, Jr.	copeg@flcourts.org	305.229.3200		2008
	Judge George W. Greer	ggreer@co.pinellas.fl.us	727.464.3933		2002
	Judge Melvin B. Grossman	mgrossma@17th.flcourts.org	954.831.7759		1998
	Judge Hugh D. Hayes	hhayes@ca.cjis20.org	239.774.8116		2003
	Judge Maria M. Korvick	mkorvick@jud11.flcourts.org	305.349.7086		2003
	Judge Beth Krier	bkrier@ca.cjis20.org	239.252.4260		2009
	Judge Lauren Laughlin	lbaughli@co.pinellas.fl.us	727.582.7871		2005
	Judge Celeste H. Muir	judgeceleste@aol.com	305.349.5735		2005
	Judge Robert Pleus	pleusr@flcourts.org	386.947.1550		2003
	Judge Richard Suarez	suarezr@flcourts.org	305.229.3200		2008
	Judge Morris Silberman	silberma@flcourts.org	813.272.3430		2001
	Judge Patricia V. Thomas	pthomas@circuit5.org	352.341.6701		2000
	Judge Walter L. Schafer, Jr.	schafer@jud6.org	727.815.7075		2008
	Liaison with Law Schools				
	Frederick R. Dudley	fred.dudley@hklaw.com	850.425.5668		2009
	Stacy O. Kalmanson	skalmanson@citlt.com	407.618.2957		2004
	Professor James J. Brown	brownj@law.stetson.edu	727.562.7855		2009
	Liaison with Out of State Members				
	Michael P. Stafford	mstafford@farrellfritz.com	516.227.0616		1998
	John E. Fitzgerald, Jr.	jfitzgerald@mfcollp.com	305.751.8556		2004
	Gerard J. Flood	gfflood@dkattorneys.com	262.792.2410		2009
	Liaison with Young Lawyer's Division				
	TBD				
	Long Range Planning				
	George J. Meyer	gmeyer@carltonfields.com	813.229.4140		2010
	Member Communications and Information Technology				
	Alfred A. Colby, Chair	aac@floridalandlaw.com	813.276.1920		2009
	S. Dresden Brunner, Vice Chair	dresden@comcast.net	239.580.8104		2009
	Nicole C. Kibert, Vice Chair	nkibert@carltonfields.com	813.229.4205		2009

Committee	Chair/Vice-Chair	E-Mail	Phone	Ext	Year Appt'd
Membership Services					
	Phillip A. Baumann, Chair	pab@estatelawflorida.com	813.223.2202		2007
	Mary E. Karr, Vice Chair	karrma@gtlaw.com	305.579.0671		2007
Membership Diversity Committee					
	Lynwood T. Arnold, Jr., Co-Chair	larnold@arnold-law.com	813.254.9005		2009
	Fabienne E. Fahnestock, Co-Chair	ffahnestock@gunster.com	954.468.1333		2008
	Karen Gabbadon, Vice Chair	kgabbadon@stileslawfirm.com	813.251.2880		2009
Mentoring					
	Guy S. Emerich, Chair	gemerich@farr.com	941.639.1158		2009
	Keith Stuart Kromash, Vice Chair	keith@nmk-law.com	321.984.2440		2009
	Jerry E. Aron, Vice Chair	jaron@aronlaw.com	561.478.0511		2007
Meetings Planning Committee					
	Sandra F. Diamond, Chair	sdiamond@wdclaw.com	727.398.3600		2010
Model and Uniform Acts					
	Bruce M. Stone, Co-Chair	brucestone@gfsestatelaw.com	305.446.2800		2007
	S. Katherine Frazier, Co-Chair	skfrazier@hwhlaw.com	813.227.8480		2009
Professionalism and Ethics					
	Lee A. Weintraub, Chair	lweintraub@becker-poliakoff.com	954.985.4147		2010
	Paul E. Roman, Vice Chair (Probate)	paulroman@paulroman.com	561.862.4139		2010
	Lawrence J. Miller, Vice Chair (Real Property)	lmiller@mandolaw.com	561.353.0643		2010
Pro Bono					
	Gwynne A. Young, Co-Chair	gyoung@carltonfields.com	813.229.4333		2009
	Adele Stone, Co-Chair	astone@atkinson-diner.com	954.925.5501		2004
Sponsor Coordinators					
	Kristen M. Lynch, Chair	kristen.lynch@ruden.com	561.368.8800		2006
	Wilhelmena Kightlinger, Vice Chair	wkightlinger@oldrepublictitle.com	813.228.0555		2007
	Jon Scuderi, Vice Chair	jon@gfsestatelaw.com	305.446.2800		2009
	J. Michael Swaine, Vice Chair	mike@heartlandlaw.com	863.385.1549		2009
	Adele I. Stone, Vice Chair	astone@atkinson-diner.com	954.925.5501	1308	2010
	Marilyn M. Polsen, Vice Chair	mpolson@fishersauls.com	727.822.2033		2010
Strategic Planning Meeting 2010					
	George J. Meyer	gmeyer@carltonfields.com	813.229.4140		2010

10- June 30, 2011 RPPTL Section Probate & Trust Law Division Committee Chairs, Vice Chairs &

Committee	Chair/Vice Chair	E-Mail Address	Phone	Appointed
Ad Hoc Creditors' Rights to Non-Exempt, Non-Probate Assets Committee				
	Angela M. Adams, Chair	amemadams@gmail.com	727.821.1249	2008
Ad Hoc Jurisdiction & Service of Process				
	Barry F. Spivey, Chair	barry.spivey@arlaw.com	941.316.7600	2010
	Sean W. Kelley, Vice Chair	sean@kelley-corneal.com	904.819.9706	2010
Asset Preservation				
	Jerome L. Wolf, Co-Chair*	jlwolf@duanemorris.com	561.962.2111	2009
	Brian C. Sparks, Co-Chair*	bsparks@hwlaw.com	813.221.3900	2009
Attorney/Trust Officer Liaison Conference				
	Robin J. King, Chair	robin.king@bicp.com	305.933.5647	2010
	Jack A. Falk, Jr., Vice Chair	jfalk@dwl-law.com	305.529.1500	2009
	Mark T. Middlebrook, Corporate Fiduciary Chair	mark.middlebrook@regions.com	727.592.6937	2009
Estate & Trust Tax Planning				
	Richard R. Gans, Chair	rgans@fsskbt.com	941.957.1900	2007
	Harris L. Bonnette, Jr., Co-Vice Chair	hbonnette@ivancolelaw.com	904.358.3006	2009
	Elaine M. Bucher, Co-Vice Chair	ebucher@proskauer.com	561.995.4768	2009
Florida Electronic Court Filing				
	Rohan Kelley, Chair	rohan@estatelaw.com	954-56301400	2009
	Laird A. Lile, Vice Chair	llile@lairdalile.com	239.649.7778	2009
Guardianship & Advance Directives				
	Sean W. Kelley, Co-Chair	sean@kelley-corneal.com	904.819.9706	2010
	Alexandra V. Riemann, Co-Chair	arieman@17th.flcourts.org	954.831.7560	2007
	Seth A. Marmor, Co-Vice Chair	samarmor@sbwlawfirm.com	561.477.7800	2010
	Sherri M. Stinson, Co-Vice Chair	sms@pearse.net	727.462.9009	2009
IRA, Insurance & Employee Benefits				
	Linda Suzanne Griffin, Co-Chair	lawyergrif@gmail.com	727.449.9800	2010
	L. Howard Payne, Co-Chair	hpayne@lawnav.com	941.487.2800	2010
	Rex E. Moule, Jr., Vice Chair	rmoule@nmk-law.com	321.984.2440	2010
Liaison with:				
Elder Law Section				
	Charles F. Robinson	charlier@charlie-robinson.com	727.441.4516	2002
	Marjorie Wolasky	mwolasky@wolasky.com	305.670.7005	2003

Committee	Chair/Vice Chair	E-Mail Address	Phone	Appointed
Tax Section				
	Lauren Y. Detzel	ldetzel@deanmead.com	407.428.5114	2010
	William R. Lane, Jr.	william.lane@hklaw.com	813.227.8500	2009
	David Pratt	dpratt@proskauer.com	561.241.7400	2004
	Brian C. Sparks	bsparks@hwlaw.com	813.221.3900	2003
	Donald R. Tescher	dtescher@tescherspallina.com	561.997.7008	2003
Power of Attorney				
	Tami F. Conetta, Chair	ffc1@ntrs.com	941.329.2717	2005
	David R. Carlisle, Vice Chair	drcarlisle@duanemorris.com	305.960.2200	2007
Principal and Income				
	Edward F. Koren, Chair	ed.koren@hklaw.com	813.227.8500	2008
Probate & Trust Litigation				
	William T. Hennessey III, Chair	whennessey@gunster.com	561.650.0663	2007
	Thomas M. Karr, Co-Vice Chair	tkarr@gunster.com	305.376-6014	2006
	Jon Scuderi, Co-Vice Chair	jscuderi@gfsestatelaw.com	239.436.1988	2007
Probate Law & Procedure				
	Tae Kelley Bronner, Chair	tae@estatelaw.com	813.907.6643	2009
	S. Dresden Brunner, Co-Vice Chair	dresden@comcast.net	239.580.8104	2009
	Anne K. Buzby, Co-Vice Chair	abuzby@rtlw.com	904.398.3911	2006
	Jeffrey S. Goethe, Co-Vice Chair	jgoethe@barneswalker.com	941.741.8224	2009
Trust Law				
	Shane Kelley, Chair	shane@estatelaw.com	954.563.1400	2010
	Angela M. Adams, Co-Vice Chair	amemadams@gmail.com	727.821.1249	2010
	John C. Moran, Co-Vice Chair	jmoran@gunster.com	561.650.0515	2009
	Laura P. Stephenson, Co-Vice Chair	lps1@ntrs.com	305.789.1161	2003
Wills, Trusts & Estates Certification Review Course				
	Anne K. Buzby, Chair	abuzby@rtlw.com	904.389.3911	2006
	Deborah L. Russell, Vice Chair	drussell@cl-law.com	239.649.3106	2008

*2007-2009 Jerry Chair & Brian Vice Chair

July 1, 2010 – June 30, 2011 RPPTL Real Property Division Chairs & Vice Chairs

Committee Chair/Vice-Chair	E-mail	Phone	Ext.	Year
Condominium & Planned Development				
Robert S. Freedman, Co-Chair	rfreedman@carltonfields.com	813-229-4149		2007
Steven H. Mezer, Co-Chair	smezer@bushross.com	813-204-6492		2003
Jane Cornett, Vice Chair	jlc@cgrelaw.com	772-286-2990		2010
Construction Law				
Brian Wolf, Chair	bawolf@smithcurie.com	954-769-5330		2006
April Atkins, Co-Vice Chair	aaa@kirwinorris.com	407-740-6600		2007
Arnold D. Tritt, Co-Vice Chair	atritt@atritt.com	904-354-5200		2009
Construction Law Institute				
W. Cary Wright, Chair	cwright@carltonfields.com	813-229-4135		2008
TBD, Vice Chair				
Michelle Reddin, Vice Chair	michelle.reddin@traunerconsulting.com	407-345-0366		2008
Construction Law Certification Review Course				
Kim Ashby, Chair	kim.ashby@akerman.com	407-419-8424		2008
Bruce Alexander, Co-Vice Chair	baleander@caseyciklin.com	561-832-5900		2009
Melinda S. "Mindy" Gentile, Co-Vice Chair	mgentile@pecklaw.com	305-358-2600		2009
Government Regulation Committee				
Eleanor Wynn Taft, Chair	ewtnaples@comcast.net	239-434-4022		2006
Nicole Kibert, Co-Vice Chair	nkibert@carltonfields.com	813-229-4205		2006
Kristen Blaine Parker Brundage, Co-Vice Chair	kristy.brundage@pgnmail.com	727-820-5777		2009
Frank L. Hearne, Co-Vice Chair	frank@hqn.com	813-909-7400		2009
Residential Real Estate & Industry Liaison Committee				
Frederick W. Jones, Chair	frederick.jones@burr.com	407-647-4455		2005
William J. Haley, Vice Chair	wjh@bbattorneys.com	386-752-3213		1999
Land Trusts				
S. Katherine Frazier, Chair	skfrazier@hwlaw.com	813-227-8480		2006
Wilhelmena Kightlinger, Vice Chair	wkightlinger@oldrepublictitle.com	813-769-5620		2008
Landlord & Tenant				
Neil Shoter, Chair	nshoter@shutts.com	561-650-8535		2006
Scott Frank, Co-Vice Chair	sfrank@arnstein.com	561-650-8476		2009
Legal Opinions				

David R. Brittain, Co-Chair	drbrittain@trenam.com	813-227-7444	2000
Roger A. Larson, Co-Chair	rogerl@jpfirm.com	727-461-1818	2006
Burt Bruton, Vice Chair	brutonb@gtlaw.com	305-579-0593	2009
Liaison with FLTA			
Norwood Gay, Co-Chair	rngay@thefund.com	407-240-3863	2006
Alan McCall, Co-Chair	amccall@firstam.com	407-691-5295	2002
Barry Scholnick, Co-Vice Chair	bscholni@stewart.com	561-241-0050	2008
John S. Elzeer, Co-Vice Chair	jeelzeer@cifit.com	407-618-2936	2001
Joe Reinhardt, Co-Vice Chair	joe.reinhardt@fnf.com	904-854-8976	2008
James C. Russick, Co-Vice Chair	jrussick@oldrepublictitle.com	800-342-5957	2006
Lee Huszagh, Co-Vice Chair	leeh@flta.org	850-681-6422	2007
Mortgages & Other Encumbrances			
Salome Zikakis, Chair	szikakis@yahoo.com	954-728-9799	2008
Robert Stern, Vice Chair	rstern@trenam.com	813-223-7474	2009
Real Estate Certification Review Course			
Ted Conner, Chair	tconnor@thefund.com	407-240-3863	2006
Guy W. Norris, Co-Vice Chair	gnorris@norrissattorneys.com	386-752-7240	2006
TBA, Co-Vice Chair			
Real Property Forms			
Homer Duvall, III, Chair	hduvalliii@hotmail.com	727-455-0513	2006
Arthur J. Menor, Co-Vice Chair	amenor@shutts.com	561-835-8500	2009
Jeffrey T. Sauer, Vice Chair	jtsauer@bellsouth.net	850-434-2761	2009
Property & Liability Insurance			
Jay D. Mussman, Chair	jmussman@chapin-law.com	561-272-1225	2007
Andrea Northrop, Co-Vice Chair	andreonorthrop@yahoo.com	561-329-6106	2008
W. Cary Wright, Co-Vice Chair	cwright@carltonfields.com	813-229-4135	2009
Real Property Litigation			
Mark A. Brown, Chair	mbrown@carltonfields.com	813-229-4317	2007
Gene Shuey, Co-Vice Chair	shueylaw@earthlink.net	352-333-6908	2007
Marty Awerbach, Co-Vice Chair	msa@awerbachcohn.com	727-725-3227	101
Real Property Problems Study			
Wayne Sobien, Chair	wsobien@firstam.com	407-475-0844	106
Jeanne Murphy, Co-Vice Chair	jmurphy@oldrepublictitle.com	813-228-0555	2006
Patricia J. Hancock, Co-Vice Chair	phancock@fnf.com	800-669-7450	2008

Title Insurance & Title Insurance Liaison			
Melissa Murphy, Chair	melissam@salterlaw.com	352-376-8201	
Homer Duvall, III, Co-Vice Chair	hduvalliii@hotmail.com	727-455-0513	2006
Kristopher Fernandez, Co-Vice Chair	kfernandez@kfernandez.fdn.com	813-832-6340	2007
Title Issues & Standards			
Patricia P. Jones, Chair	pjones@thefund.com	800-432-9594	7237 2002
Robert M. Graham, Co-Vice Chair	rgraham@gunster.com	561-650-0529	2003
Karla Gray, Co-Vice Chair	kagray@fnf.com	407-875-9040	210 2008
Christopher W. Smart, Co-Vice Chair	csmart@carltonfields.com	813-229-4142	2009

BOARD OF GOVERNORS REPORT

Dan DeCubellis, Board Liaison

At its March 26, 2010, meeting in New York City, The Florida Bar Board of Governors:

COURT FUNDING AND LEGISLATIVE CHALLENGES

Heard Bar President Jesse Diner warn that the Bar could face severe challenges in the 2011 Legislature. One challenge may be maintaining court funding when the state could be looking at a \$6.8 billion deficit and no federal stimulus money to offset the deficit. Another difficulty could be a possible attempt to have the Legislature take over court procedural rule-making authority from the Supreme Court.

LAWYERS REQUIRED TO SIGN TRUST ACCOUNT CHECKS

Received on first reading a rule that prohibits lawyers from signing blank trust account checks, using a signature stamp on trust account checks, or allowing nonlawyers to sign trust account checks.

ANNUAL MEMBERSHIP FEE STATEMENT AND TRUST ACCOUNT CERTIFICATION

Approved a revision to the Bar's annual membership fee statement, to clarify the trust account certificate. The change will add a new category for judges, government attorneys, and others to report that they do not handle trust funds and are not required to have a trust account. On a related matter, Bar President Jesse Diner reported that the statement will include an option to make a voluntary donation to FLAME, the Florida Lawyers Association for the Maintenance of Excellence. FLAME has significantly enhanced our efforts to secure funding for our state courts including commissioning studies by Washington Economics Group and TaxWatch to illustrate the consequences of inadequate funding and by conducting a public awareness campaign to gain widespread support. FLAME has also supported the statewide General Election Voter's Guide by the League of Women Voters for many years.

BUDGET

Approved, as recommended by the Budget Committee, the Bar's 2010-11 budget, which calls for expenditures of \$38.2 million. Incoming Budget Committee Chair Dan DeCubellis said the budget is balanced and has a good chance of producing a surplus. He also said the budget is based on the assumption the Bar *Journal* directory issue will no longer be printed and that Clients' Security Fund operations next year will be financed by fund reserves.

ADEQUATE FUNDING FOR CRIMINAL JUSTICE MATTERS

Approved a request from the Criminal Law Section that the board adopt a Bar legislative position opposing any legislation that would reduce pay or benefits for assistant public defenders, assistant state attorneys, and assistant attorney generals. The position also "urges that the Justice Administration Commission (JAC) is adequately funded for all costs and fees associated with criminal justice matters."

CLIENTS' SECURITY FUND PROCEDURES COMMITTEE

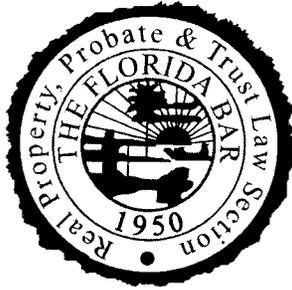
Heard Board member Greg Coleman report that the Clients' Security Fund Procedures Committee will be presenting several recommendations at the board's May meeting. Those include allowing the fund to compensate a client when a partner of the client's lawyer has stolen from the client and the client has no other way to recover the loss. The committee discussed, but has made no recommendation, on compensating third parties in certain cases when a lawyer has stolen from them, such as the lawyer had received money from the third party to be held in trust for a client and then stolen the money. Coleman said the committee has decided not to recommend random audits of trust funds as a way to prevent losses, but is looking at other methods to prevent losses that could lead to claims on the CSF.

INSTALLMENT PAYMENT OF MEMBERSHIP FEES

Received on first reading a rule amendment that would allow lawyers facing financial hardships to pay their annual membership fees in installments.

NEW MEMBER BENEFITS

Approved two new member benefits. One is property insurance coverage for law offices, including offices in low-lying coastal areas. The second offers a 20 percent clothing discount at Ann Taylor.



RPPTL FINANCIAL SUMMARY

2009 – 2010 [July 1, 2009 – March 31, 2010¹]

Revenue: \$972,250*

Expenses: \$731,370

Net: \$240,880

**\$193,970 of this figure represents revenue from corporate sponsors and exhibitors*

Beginning Fund Balance (7-1-09)

\$ 908,659

YTD Fund Balance (3-31-10)

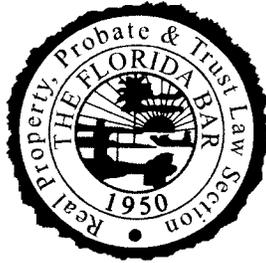
\$1,149,539

RPPTL CLE

RPPTL YTD Actual CLE Revenue
\$175,867

RPPTL Budgeted CLE Revenue
\$200,000

¹ This report is based on the tentative unaudited detail statement of operations dated 3/31/2010.



RPPTL Financial Summary from Separate Budgets

2009 – 2010 [July 1, 2009 – March 31, 2010¹]

YEAR TO DATE REPORT

General Budget

Revenue:	\$ 849,718
Expenses:	\$ 601,737
Net:	\$ 24,981

Attorney / Trust Officer Liaison Conference

Revenue:	\$ 72,767
Expenses:	\$ 8,346
Net:	\$ 64,421

Legislative Update

Revenue:	\$ 46,125
Expenses:	\$ 95,996
Net:	(\$49,871)

Convention

Revenue:	\$ 3,640
Expenses:	\$ 24,813
Net:	(\$21,173)

Roll-up Summary (Total)

Revenue:	\$ 972,250
Expenses:	\$ 731,370
Net Operations:	\$ 240,880

Reserve (Fund Balance):	\$ 908,659
GRAND TOTAL	\$1,149,539

¹ This report is based on the tentative unaudited detail statement of operations dated 3/31/2010

	March 2010 Actuals	YTD 09-10 Actuals	Budget	Percent Budget
Total Real Prop Probate & =====				
31431 Section Dues	1,300	457,950	465,000	98.48
31432 Affiliate Dues	0	2,300	1,750	131.43
31433 Admin Fee to TFB	-438	-161,210	-163,450	98.63

Total Dues Income-Net	862	299,040	303,300	98.60

32001 Registrations	0	11,475	140,000	8.20
32006 Live Web Cast	0	7,000	8,500	82.35
32010 Legal Span On-line	310	4,085	750	544.67
32191 CLE Courses	20,019	156,392	180,000	86.88
32205 Compact Disc	705	14,570	19,200	75.89
32207 DVD	235	5,170	10,000	51.70
32293 Section Differential	2,625	19,475	20,000	97.38
32301 Course Materials	60	2,160	3,500	61.71
34704 Actionline Advertise	0	5,025	12,000	41.88
35003 Ticket Events	0	68,457	0	*
35101 Exhibit Fees	10,000	32,500	33,000	98.48
35201 Sponsorships	5,825	161,470	235,000	68.71
35603 Bd/Council Mtg Regis	38,690	67,634	160,000	42.27
38499 Investment Allocatio	27,282	117,797	17,654	667.25

Other Income	105,751	673,210	839,604	80.18

Total Revenues	106,613	972,250	1,142,904	85.07

36998 Credit Card Fees	376	3,632	5,896	61.60
51101 Employee Travel	0	5,945	14,435	41.18
61201 Equipment Rental	0	6,787	15,000	45.25
62202 Meeting Room Rental	0	-889	0	*
71001 Telephone/Direct	0	900	1,000	90.00
71005 Internet Charges	0	811	0	*
75102 1st Class & Misc Mai	2	45	300	15.00
75401 Express Mail	8	2,080	1,500	138.67
81411 Promotional Printing	552	553	2,000	27.65
81412 Promotional Mailing	2,404	2,404	14,000	17.17
81425 Brochure Insert Fees	0	2,329	0	*
84001 Postage	404	2,169	11,500	18.86
84002 Printing	0	362	4,950	7.31
84006 Newsletter	5,099	32,055	40,000	80.14
84009 Supplies	0	0	500	0.00
84010 Photocopying	26	225	500	45.00
84012 Registration Support	0	2,899	3,000	96.63
84015 Officers Conference	35	35	1,200	2.92
84051 Officers Travel Expe	0	359	3,000	11.97
84054 CLE Speaker Expense	12	1,183	3,000	39.43
84061 Reception	0	1,262	67,500	1.87
84062 Luncheons	0	29,936	60,000	49.89
84064 Golf Tourn Expenses	0	0	11,000	0.00

	March 2010 Actuals	YTD 09-10 Actuals	Budget	Percent Budget
Total Real Prop Probate & =====				
84101 Committee Expenses	9,341	52,657	50,000	105.31
84106 Realtor Relations	0	2,150	5,000	43.00
84107 Diversity Initiative	0	2,025	15,000	13.50
84109 Spouse Program	0	92	0	*
84110 Exhibitor Fees	0	0	250	0.00
84115 Entertainment	21	21	20,000	0.11
84201 Board Or Council Mee	61,914	317,283	400,000	79.32
84216 Strategic Planning M	0	143	0	*
84238 Council Mtg Recreati	20,111	27,964	35,000	79.90
84239 Hospitality Suite	0	7,530	20,000	37.65
84241 Spouse Functions	0	2,785	0	*
84253 Sleeping Rooms	0	0	2,500	0.00
84254 Speaker Gifts	0	1,837	2,000	91.85
84258 Web Services	0	3,538	6,000	58.97
84279 Council Members Hand	0	2,831	3,500	80.89
84310 Law School Liaison	236	279	7,500	3.72
84322 Fellowships-Exc Cou	0	2,976	10,000	29.76
84422 Website	250	34,033	50,000	68.07
84501 Legislative Consulta	0	75,000	100,000	75.00
84503 Legislative Travel	0	9,571	12,000	79.76
84524 Memorial Tributes	0	0	500	0.00
84701 Council Of Sections	0	300	300	100.00
84998 Operating Reserve	0	0	79,684	0.00
84999 Miscellaneous	90	1,639	7,667	21.38
85064 Service Recognition	554	1,860	5,000	37.20
85084 OSCA E-Filing Proj	0	7,667	0	*
86432 Time Taping Editing	0	4,850	4,500	107.78
88211 Steering Committee	0	0	1,500	0.00
88230 Speakers Expense	396	882	7,000	12.60
88233 Speakers Hotel	0	3,722	3,700	100.59
88241 Outline Prt-Inhouse	0	1,413	7,000	20.19
88242 Outline Prt-Contract	0	9,936	13,000	76.43
88252 Course Credit Fee	0	350	150	233.33
88262 Meeting Meals	12,389	25,552	84,800	30.13
88265 Refreshment Breaks	0	9,334	13,000	71.80
88269 Breakfast	0	9,457	38,000	24.89
88281 A/V Ctr Dup/Prod	0	49	1,600	3.06
Total Operating Expenses	114,220	714,808	1,266,432	56.44

83431 Time CLE Courses	0	0	500	0.00
86431 Meetings Administrat	600	5,760	5,988	96.19
86532 Advertising News	0	3,196	4,958	64.46
86543 Graphics & Art	378	7,375	12,686	58.13
86623 Registrars	132	231	2,500	9.24
Total TFB Support Services	1,110	16,562	26,632	62.19

	March 2010 Actuals	YTD 09-10 Actuals	Budget	Percent Budget
Total Real Prop Probate & =====				
Total Expenses	115,330	731,370	1,293,064	56.56
Net Operations	-8,717	240,880	-150,160	-160.42
21001 Fund Balance	0	908,659	882,682	102.94
Total Current Fund Balance	-8,717	1,149,539	732,522	156.93

	March 2010 Actuals	YTD 09-10 Actuals	Budget	Percent Budget
<u>Real Prop Probate & Trust</u>				
31431 Section Dues	1,300	457,950	465,000	98.48
31432 Affiliate Dues	0	2,300	1,750	131.43
31433 Admin Fee to TFB	-438	-161,210	-163,450	98.63
Total Dues Income-Net	862	299,040	303,300	98.60
32191 CLE Courses	20,019	156,392	180,000	86.88
32293 Section Differential	2,625	19,475	20,000	97.38
34704 Actionline Advertise	0	5,025	12,000	41.88
35003 Ticket Events	0	67,710	0	*
35101 Exhibit Fees	0	0	15,000	0.00
35201 Sponsorships	0	116,645	210,000	55.55
35603 Bd/Council Mtg Regis	38,690	67,634	160,000	42.27
38499 Investment Allocatio	27,282	117,797	17,654	667.25
Other Income	88,616	550,678	614,654	89.59
Total Revenues	89,478	849,718	917,954	92.57
36998 Credit Card Fees	21	2,481	3,672	67.57
51101 Employee Travel	0	3,119	6,525	47.80
71001 Telephone/Direct	0	900	1,000	90.00
71005 Internet Charges	0	811	0	*
81411 Promotional Printing	0	1	0	*
84001 Postage	16	1,387	7,000	19.81
84002 Printing	0	62	2,500	2.48
84006 Newsletter	5,099	32,055	40,000	80.14
84009 Supplies	0	0	300	0.00
84010 Photocopying	26	225	500	45.00
84015 Officers Conference	35	35	1,200	2.92
84051 Officers Travel Expe	0	359	3,000	11.97
84054 CLE Speaker Expense	12	1,183	3,000	39.43
84101 Committee Expenses	9,341	52,592	50,000	105.18
84106 Realtor Relations	0	2,150	5,000	43.00
84107 Diversity Initiative	0	2,025	15,000	13.50
84109 Spouse Program	0	92	0	*
84201 Board Or Council Mee	61,914	317,283	400,000	79.32
84216 Strategic Planning M	0	143	0	*
84238 Council Mtg Recreati	20,111	27,964	35,000	79.90
84239 Hospitality Suite	0	7,530	20,000	37.65
84241 Spouse Functions	0	2,785	0	*
84279 Council Members Hand	0	2,831	3,500	80.89
84310 Law School Liaison	236	279	7,500	3.72
84322 Fellowships-Exc Cou	0	2,976	10,000	29.76
84422 Website	250	34,033	50,000	68.07
84501 Legislative Consulta	0	75,000	100,000	75.00
84503 Legislative Travel	0	9,571	12,000	79.76
84524 Memorial Tributes	0	0	500	0.00

	March 2010 Actuals	YTD 09-10 Actuals	Budget	Percent Budget
<u>Real Prop Probate & Trust</u>				
84701 Council Of Sections	0	300	300	100.00
84998 Operating Reserve	0	0	79,684	0.00
84999 Miscellaneous	90	90	7,667	1.17
85064 Service Recognition	554	1,860	5,000	37.20
85084 OSCA E-Filing Proj	0	7,667	0	*
88230 Speakers Expense	396	396	0	*
Total Operating Expenses	98,101	590,185	869,848	67.85
86431 Meetings Administrat	600	5,760	4,456	129.26
86543 Graphics & Art	134	5,792	9,388	61.70
Total TFB Support Services	734	11,552	13,844	83.44
Total Expenses	98,835	601,737	883,692	68.09
Net Operations	-9,357	247,981	34,262	723.78
21001 Fund Balance	0	908,659	882,682	102.94
Total Current Fund Balance	-9,357	1,156,640	916,944	126.14

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

CONDOMINIUM ASSOCIATION DISCLOSURE

Buyer's Initials - Seller's Initials: If to be made a part of this Contract.
() () -- () ()

1. CONDOMINIUM ASSOCIATION APPROVAL:

The Association's approval of Buyer (CHECK ONLY ONE) is is not required. If approval is required, this Contract is contingent upon Buyer being approved by the Association no later than _____ days prior to Closing. Within _____ days after Effective Date Seller shall initiate the approval process with the Association and Buyer shall apply for such approval. Buyer and Seller shall sign and deliver any documents required by the Association in order to complete the transfer of the Property and each shall use diligent effort to obtain such approval, including making personal appearances if required. If Buyer is not approved within the stated time period, this Contract will terminate and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

2. RIGHT OF FIRST REFUSAL:

(a) The Association (CHECK ONLY ONE) has does not have a right of first refusal ("Right"). If the Association has a Right, this Contract is contingent upon the Association, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the Association is not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration of Condominium ("Declaration", which reference includes all amendments thereto).

(b) The members of the Association (CHECK ONLY ONE) have do not have a Right. If the members do have a Right, this Contract is contingent upon the members, within the time permitted for the exercise of such Right, either providing written confirmation to Buyer that the members are not exercising that Right, or failing to timely exercise such Right pursuant to the terms of the Declaration.

(c) Buyer and Seller shall, within _____ days after Effective Date, sign and deliver any documents required as a condition precedent to the exercise of the Right, and shall use diligent effort to submit and process the matter with the Association and members, including personal appearances, if required.

(d) If, within the stated time period, the Association, the members of the Association, or both, fail to provide the written confirmation or the Right has not otherwise expired, then this Contract will terminate and the Deposit will be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

(e) If the Association or a member timely exercises its or their Right, this Contract will terminate and the Deposit will be refunded to Buyer (unless this Contract provides otherwise), thereby releasing Buyer and Seller from all further obligations under this Contract, and Seller will pay to Broker the full commission at Closing in recognition that Broker procured the sale.

3. FEES; ASSESSMENTS; PRORATIONS; LITIGATION:

(a) Maintenance Assessments and Rents: Seller represents that the current maintenance assessment is \$ _____ per month and the current rent on recreation areas is \$ _____ per month. All maintenance assessments levied by the Association and rent on recreational areas, if any, shall be made current by Seller at eClosing, and Buyer shall reimburse Seller for prepayments.

(b) Fees: Seller will pay all fines imposed against the Unit as of Closing Date and any fees the Association charges to provide information about its fees or the Property, and will bring maintenance and similar periodic fees and rents on any recreational areas current as of Closing Date.

(c) Special Assessments and Prorations:

(i) Seller represents that Seller is not aware of any special or other assessment that is now "pending" (as defined below) or has been levied by the Association except as follows:

~~For purposes of this Rider, an assessment shall be considered "pending" if it or that~~ has been an item on the agenda, or reported in the minutes, of the Association within ~~six~~ six ~~twelve~~ (612) months prior to Effective Date. ~~("pending") except as follows:~~

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

(ii) If special assessments levied, or pending ~~or under consideration~~ exist as of the Effective Date and are disclosed above by Seller and may be paid in installments (CHECK ONE): Buyer Seller (if left blank, Buyer) shall pay installments due after Closing Date. **If Seller is checked, Seller will pay the assessment in full prior to or at the time of Closing.**

(iii) If special assessments levied, or pending ~~or under consideration~~ exist as of the Effective Date and have not been disclosed above by Seller, then Seller shall pay such assessments in full at the time of Closing.

(iv) If, after the Effective Date, the Association imposes a special assessment for improvements, work or services, which was not ~~being considered~~ pending as of the Effective Date ~~or known to Seller~~, then Seller will pay all amounts due before Closing Date and Buyer will pay all amounts due after Closing Date.

(v) A special assessment shall be deemed "levied" for purposes of this paragraph on the date when the Association's Board of Administration or the required percentage of unit owners, or both, has voted (as may be required by Florida law and the condominium documents) to approve the special assessment.

(vi) Association assets and liabilities, including Association reserve accounts, shall not be prorated.

(d) Litigation: Seller represents that Seller is not aware of pending or anticipated litigation affecting the Property or the common elements, if any, except as follows: _____

4. SPRINKLER SYSTEM RETROFIT:

If, pursuant to sections 718.112(2)(l), F.S., the Association has voted to forego retrofitting its fire sprinkler system or handrails and guardrails for the condominium units, then prior to Closing Seller shall furnish to Buyer the written notice of Association's vote to forego such retrofitting.

5. NON-DEVELOPER DISCLOSURE:
(CHECK ONLY ONE)

(a) THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

(b) THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAREND FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

6. BUYER'S REQUEST FOR DOCUMENTS:

Buyer is entitled, at Seller's expense, to current copies of the condominium documents specified in Paragraph 5, above. Buyer (CHECK ONLY ONE) requests does not request a current copy of the documents specified in Paragraph 5, above. If this Contract does not close, Buyer shall immediately return the documents to Seller or reimburse Seller for the cost of the documents.

7. BUYER'S RECEIPT OF DOCUMENTS:

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

(COMPLETE AND CHECK ONLY IF CORRECT) Buyer received the documents described in Paragraph 5, above, on _____.

8. COMMON ELEMENTS; PARKING:

The Property includes the unit being purchased and an undivided interest in the common elements and any appurtenant limited common elements of the condominium, as specified in the Declaration. Seller's right and interest in or to the use of the following parking space(s), garage, and other areas are included in the sale of the Property and shall be assigned to Buyer at Closing, subject to the Declaration:

Parking Space(s) # _____ Garage # _____ Other: _____

9. INSPECTIONS AND REPAIRS:

The rights and obligations arising under Paragraphs 11 and 12 ~~and STANDARDS L, M, and N~~ of this Contract to maintain, repair, replace or treat are limited to ~~the~~ Seller's individual condominium unit and do not extend to common elements, limited common elements, or any other part of the ~~Property~~ condominium property.

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

BINDING ARBITRATION

Buyer's Initials - Seller's Initials: If to be made a part of this Contract.
() () -- () ()

If initialed here by both Buyer and Seller, any Dispute not resolved pursuant to mediation as provided in Paragraph 16(b) of this Contract shall be settled by binding arbitration using the Real Estate Industry Arbitration Rules of the American Arbitration Association (www.adr.org) unless the parties mutually agree to use other arbitration rules. The arbitrator may not alter the terms of this Contract nor award any remedy not provided for in this Contract. The parties shall be allowed discovery in accordance with the Florida Rules of Civil Procedure.

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

SHORT SALE APPROVAL CONTINGENCY

Buyer's Initials - Seller's Initials: If to be made a part of this Contract.

() () -- () ()

- 1. **Approval of Seller's Lender(s) and Requirements for Seller's Approval of Short Sale.** This Contract is contingent upon: (a) Seller's lender(s) and/or other lien holder(s) (collectively "Seller's Lender(s)") approving the Purchase Price, terms of this Contract and the HUD-1 settlement statement; (b) Seller's Lender(s)' agreement to accept a payoff which is less than the balance due on the loan or other indebtedness; and (c) Seller's Lender(s)' release and satisfaction of the mortgage(s) and/or other lien(s) encumbering the Property (the "Mortgage(s)") upon receipt of reduced payoff amount(s).

If checked below, this Contract is further contingent upon the following items:

Seller obtaining from Seller's Lender(s) a waiver and complete release of any claim(s) for a deficiency against Seller for any sums due Lender under the Mortgage(s) as of the payoff date.

Seller not being required to pay or deliver any sums or other consideration at Closing.

(Approval of items (a) through (c) and the further items, if any, checked above, is referred to as "Short Sale Approval"). An approval by Seller's Lender(s) requiring additional terms or obligations affecting either party shall not be deemed "Short Sale Approval" unless the party affected accepts such additional terms in writing.

- 2. **Application for Approval of Short Sale.** Seller shall within _____ (if blank, 10) days after Effective Date obtain from Seller's Lender(s) their application forms for a "Short Sale", and Seller will diligently complete and return such forms to Seller's Lender(s) within 5 days thereafter and promptly provide such additional documents as may be requested by Seller's Lender(s).
- 3. **Status of Short Sale Approval Application.** Seller hereby authorizes Seller's Lender(s) to provide Buyer and Buyer's Broker with information stating the status of Seller's application for approval of a Short Sale and notice of the approval(s) or denial(s) of such application(s). Seller shall promptly notify Buyer when Seller obtains Short Sale Approval or denial of such approval from Seller's Lender(s). A copy of the Short Sale Approval shall be delivered by Seller to Buyer and Closing Agent within 3 days of Seller's receipt.
- 4. **Short Sale Approval Deadline; Termination.** If Seller does not deliver written notice to Buyer that Seller has obtained Short Sale Approval within _____ (if blank, then 90) days from Effective Date ("Short Sale Approval Deadline"), (**CHECK ONE - If no option is checked, then "either party" shall be deemed selected**):

Buyer either party may thereafter terminate this Contract by delivering written notice to the other party, and the Deposit will be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

This Contract shall automatically terminate if Seller has not delivered written notice of Short Sale Approval to Buyer within _____ (if blank, then 120) days from Effective Date ("Short Sale Approval Deadline"), in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and _____ Seller from all further obligations under this Contract.

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

(see continuation)

SHORT SALE APPROVAL CONTINGENCY – CONTINUED

5. Time Periods The time for making the Initial Deposit and the Short Sale Approval Deadline shall be computed from the Effective Date. All other time periods and other obligations under this Contract shall commence from the date Buyer receives written notice from Seller that Seller has received Short Sale Approval.

6. Closing Date. The Closing Date shall be _____ (if blank, then 45) days after Buyer receives written notice from Seller that Seller has received Short Sale Approval.

7. Marketing of the Property. (CHECK ONE - If no option is checked, then option (a) shall be deemed selected):

a Seller’s Agreement Not to Continue to Market the Property. During the term of this Contract, Seller shall not market or solicit additional contracts, options or other agreements concerning the sale of the Property.

b Seller’s Right to Continue to Market the Property and Accept Back-up-Contracts. During the term of this Contract, Seller will have the right to continue to market the Property and to accept bona fide “back up” offers to purchase the Property that are conditioned upon a failure of the Closing of the sale contemplated by this Contract.

8. Acknowledgement by Seller.

- (a) If Seller is advised of Seller’s Lender’s refusal to participate in any short sale, Seller agrees to immediately communicate this to Buyer and Broker.
- (b) Seller agrees to consult with professionals for any tax, legal or specialized advice and has been encouraged to discuss other options with legal counsel of Seller’s choosing prior to entering into this short sale transaction.

9. Acknowledgement by Buyer.

- (a) Buyer acknowledges Seller’s Lender(s) is not a party to this Contract and therefore is not obligated to approve this Contract; that Seller’s acceptance of this Contract does not guarantee Seller’s Lender’s acceptance; and Seller’s Lender(s) is under no obligation to consider, respond, approve or advise either Seller or Buyer, or Broker as to any offer submitted to it.
- (b) Buyer further acknowledges that Seller and/or Broker shall not be liable for delays caused by Lender or costs and expenses (such as payments for loan applications, inspections and appraisals) incurred by Buyer under this Contract if Seller’s Lender does not complete the short sale after Seller’s Lender approves this Contract, and that Seller will not be able to pay for any Buyer closing costs, a home warranty, and any repairs or inspections to the Property, to include utilities for Buyer’s inspections.

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

_____ : _____
_____ : _____
_____ :

10. Termination **Upon Foreclosure Sale.** If the Property is sold at foreclosure sale prior to the parties obtaining Short Sale Approval and Closing the transaction contemplated by this Contract, this Contract shall be terminated, Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

If initialed by all parties, the clauses below will be incorporated into the FAR/BAR Contract for Sale and Purchase between _____ (SELLER) and _____ (BUYER) concerning the Property described as _____

DEFECTIVE DRYWALL

During the time Florida was experiencing building material shortages, some homes were built or renovated using drywall imported from or manufactured in China or elsewhere which reportedly emit levels of sulfur, methane and/or other volatile organic compounds that cause corrosion of air conditioner and refrigerator coils, copper tubing, electrical wiring, computer wiring and other household items as well as create noxious odors which may also pose health risks ("Defective Drywall").

1. Seller's Knowledge: Except as indicated below, Seller has no knowledge of the presence of Defective Drywall or the existence of any information, records, reports, or other documents pertaining to Defective Drywall affecting the Property: (describe all known Defective Drywall information and list all available documents pertaining to Defective Drywall and provide documents, if any, to Buyer before accepting Buyer's offer)

2. Defective Drywall Inspection: (Check One)

Buyer waives the opportunity to conduct a risk assessment or inspection for the presence of Defective Drywall and accepts the Drywall in the Property in its existing condition.

Buyer, at Buyer's expense, may have a home inspector, licensed contractor or other licensed professional (if required by law) to conduct an inspection or risk assessment of the Property for the presence of Defective Drywall within _____ (if blank, 15) days from the Effective Date ("Drywall Inspection Period"). If the drywall inspection or risk assessment reveals the presence of Defective Drywall or reveals damage to the Property resulting from the Defective Drywall and the cost to remove/replace the Defective Drywall or damage resulting from the Defective Drywall exceeds \$_____ (if blank, \$500.00), Buyer may cancel this Contract by giving written notice to Seller on **or before expiration of the Inspection Period**. If Buyer timely terminates this Contract, the Deposit shall be refunded to Buyer; thereby releasing Buyer and Seller of all further obligations under this Contract, except as provided in Paragraph 3 below. If Buyer fails to timely cancel or fails to conduct the inspections permitted in this Paragraph, Buyer may not terminate this Contract pursuant to this Addendum.

3. Repair of Inspection Damages to Property. Buyer shall be responsible for prompt payment for such inspections and repair all damages to the Property resulting from the inspections

4. Professional Advice: Buyer acknowledges that Broker has not conducted any independent investigations to verify the accuracy or completeness of any representations about Defective Drywall made by Broker or Seller. Buyer agrees to rely solely on Seller, professional inspectors, governmental agencies or any third parties retained by the Buyer regarding any issue related to Defective Drywall.

APPRAISAL CONTINGENCY

This Contract is contingent upon Buyer or Buyer's lender obtaining, at Buyer's expense a written appraisal from a licensed Florida appraiser, stating that the appraised value of the Property is at least \$ _____ (if blank, the Purchase Price), and delivering a copy of such appraisal to Seller on or before _____.

If the appraisal states that the appraised value of the Property is less than the above value, Buyer may, within 3 days after the above date deliver written notice to Seller, either: a) terminating this Contract in which event the Deposit paid shall be refunded to Buyer; thereby releasing Buyer and Seller from all further obligations under this Contract; or b) waiving and removing this contingency and continuing with this Contract without regard to the appraised value of the Property.

If Buyer fails to timely obtain an appraisal, or having timely obtained such appraisal fails to timely deliver notice of Buyer's exercise of the right to terminate granted above, this contingency shall be waived and removed, and Buyer will continue with this Contract.

~~101764043.5,101764043.11,2010-01-22~~ [4-14-10 \(Changes from 4-8-10\)](#)

SOLICITORS, 009900, 000010, 103389617.1, 4-14-10 Compare NEW COMPREHENSIVE RIDER (FAR-BAR)

4/14/10 2:58 PM

1 PARTIES: _____ ("Seller"),
2 and _____ ("Buyer"),
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively
4 "Property") pursuant to the terms and conditions of this Residential Contract for Sale and Purchase and any riders and
5 addenda ("Contract"):

6 1. PROPERTY DESCRIPTION:

- 7 (a) Street address, city, zip: _____
8 (b) Property is located in: _____ County, Florida. Real Property Tax ID No: _____
9 (c) Legal description of the Real Property: _____

10 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-
11 wall carpeting and flooring ("Real Property") unless specifically excluded below.

12 (d) Personal Property: The following items owned by Seller and existing on the Property as of the date of the initial
13 offer are included in the purchase ("Personal Property"): (i) range(s)/oven(s), dishwasher(s), disposal, ceiling fan(s),
14 intercom, light fixtures, rods, draperies and other window treatments, garage door openers, and security gate and other
15 access devices; and (ii) those additional items checked below. If additional details are necessary, specify below. If left
16 blank, the item below is not included:

- [] Refrigerator(s) [] Microwave Oven [] Washer [] Dryer [] Stand-alone Ice Maker
[] Smoke Detector(s) [] Security System [] Window/Wall A/C [] Generator [] Above Ground Pool
[] Pool Barrier/Fence [] Pool Equipment [] Pool Heater [] Spa or Hot Tub with Heater
[] Storage Shed [] TV Antenna/Satellite Dish [] Water Softener/Purifier [] Storm shutters and panels

18 The only other items of Personal Property included in this purchase, and any additional details regarding Personal Property, if
19 necessary, are: _____

21 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

22 (e) The following items are excluded from the purchase: _____

24 2. PURCHASE PRICE (U.S. currency): \$ _____

25 (a) Initial deposit to be held in escrow in the amount of (checks subject to COLLECTION)..... \$ _____

26 The initial deposit made payable and delivered to "Escrow Agent" named below
27 (CHECK ONE): [] accompanies offer or [] is to be made upon acceptance (Effective Date) or
28 [] is to be made within _____ (if blank, then 3) days after Effective Date

29 Escrow Agent Information: Name _____
30 Address: _____
31 Phone: _____ Fax: _____
32 E-mail: _____

33 (b) Additional deposit to be delivered to Escrow Agent within _____ (if blank, then 3) days after
34 Effective Date..... \$ _____

35 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

36 (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 below _____

37 (d) Other: _____ \$ _____

38 (e) Balance to close (not including Buyer's Closing Costs, prepaids and prorations) by wire
39 transfer or other COLLECTED funds..... \$ _____

40 NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.

41 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

42 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before
43 _____, this offer shall be deemed withdrawn and the Deposit, if any, will be returned to Buyer. Unless
44 otherwise stated, time for acceptance of any counteroffers shall be within 2 days after the day the counteroffer is
45 delivered.

46 (b) The effective date of this Contract will be the date when last one of Buyer and Seller has signed or initialed this
47 offer or final counteroffer ("Effective Date").

48 4. CLOSING DATE: Unless modified by other provisions of this Contract, the closing of this transaction shall occur and
49 the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on
50 _____ ("Closing Date"), at the time established by the Closing Agent.

51 5. EXTENSION OF CLOSING DATE:

52 (a) If Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth In Lending Act (TILA)
53 notice requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements, not to
54 exceed 7 days (not including Sundays and legal holidays).

55 (b) If extreme weather or other condition or event constituting "force majeure" (see STANDARD G) causes:
56 (i) disruption of utilities or other services essential for Closing, or (ii) Hazard, Wind, Flood or Homeowners' Insurance, to
57 become unavailable prior to Closing, Closing will be extended a reasonable time up to 3 days after restoration of utilities
58 and other services essential to Closing, and availability of applicable Hazard, Wind, Flood, or Homeowners' insurance. If
59 restoration of such utilities or services and availability of insurance has not occurred within _____ (if left blank, 14) days
60 after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer
61 shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

62 6. OCCUPANCY AND POSSESSION: Unless otherwise stated herein, Seller shall at Closing have removed all
63 personal items and trash from the Property and shall deliver occupancy and possession, along with all keys, garage door
64 openers, access devices and codes, as applicable, to Buyer. If Property is intended to be rented or occupied beyond
65 Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to STANDARD D. If
66 occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be
67 responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing
68 condition as of time of taking occupancy, except with respect to any items identified by Buyer pursuant to Paragraph 12
69 prior to taking occupancy which require repair, replacement, treatment or remedy.

70 7. ASSIGNABILITY: (CHECK ONLY ONE): Buyer [] may assign and thereby be released from any further liability under
71 this Contract; [] may assign but not be released from liability under this Contract; or [] may not assign this Contract.

FINANCING

72 8. FINANCING: (Check as applicable)

74 [] (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing contingency to
75 Buyer's obligation to close.

76 [] (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a [] conventional [] FHA [] VA
77 loan on the following terms within _____ (if blank, then 30) days after Effective Date ("Loan Commitment Date") for:
78 (CHECK ONLY ONE): [] fixed, [] adjustable, [] fixed or adjustable, rate loan in the principal amount of
79 \$ _____ or _____% of the Purchase Price, at an initial interest rate not to exceed _____%
80 (if blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____ years ("Financing").

81 Buyer will make mortgage loan application for the Financing within _____ (if blank, then 5) days after Effective Date and
82 use good faith and diligent effort to obtain a written loan commitment for the Financing ("Loan Commitment") and close this
83 Contract. Buyer shall keep Seller and Broker fully informed about status of mortgage loan application and Loan Commitment and
84 authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

85 If Buyer does not receive Loan Commitment, then Buyer may terminate this Contract by delivering written notice to Seller,
86 and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

87 If Buyer does not deliver written notice to Seller of receipt of Loan Commitment or Buyer's written waiver of this financing
88 contingency, then after Loan Commitment Date Seller may terminate this Contract by delivering written notice to Buyer and the
89 Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

90 If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, the
91 Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default; (2) Property related conditions of the Loan
92 Commitment have not been met (except when such conditions are waived by other provisions of this Contract); (3) appraisal of the
93 Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the Loan is not funded due to
94 financial failure of Buyer's lender, in which event the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all
95 further obligations under this Contract.

96 [] (c) Assumption of existing mortgage (see rider for terms).

97 [] (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

CLOSING COSTS, FEES AND CHARGES

99 9. CLOSING COSTS; TITLE EVIDENCE AND INSURANCE; SURVEY; PRORATIONS; HOMEOWNER'S
100 WARRANTY; SPECIAL ASSESSMENTS: The following are costs, fees, and charges which the parties may incur:

101 (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax, if any, on deed
• Recording and other fees needed to cure title
• Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
• Title search charges (if Paragraph 9(c)(iii) is checked)
• HOA/Condominium Association estoppel fees
• Seller's attorneys' fees
• Other: _____

102 Seller will pay the following amounts/percentages of the Purchase Price for the following costs and expenses:

103 (i) up to \$ _____ or _____% (1.5% if left blank) for General Repair Items ("General Repair
104 Limit"); and

105 (ii) up to \$ _____ or _____% (1.5% if left blank) for WDO treatment and repairs ("WDO Repair
106 Limit"); and

107 (iii) up to \$ _____ or _____% (1.5% if left blank) for costs associated with closing out open or
108 expired building permits and obtaining required building permits for any existing improvement for which a permit was not
109 obtained ("Permit Limit").

110 If, prior to Closing, Seller is unable to complete the Maintenance Requirement as required by Paragraph 11 or the repairs,
111 replacements, treatments or permitting as required by Paragraph 12, then, sums equal to 125% of estimated costs to
112 complete the applicable item(s) (but, not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth
113 above, if any), shall be escrowed at Closing. If actual cost of required repairs, replacements, treatment or permitting
114 exceed applicable escrowed amounts, Seller shall pay such actual costs (but, not in excess of applicable General Repair,
115 WDO Repair, and Permit Limits set forth above). Any unused portion of escrowed amount(s) shall be returned to Seller.

116 (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
• Recording fees for deed and financing statements
• Loan expenses
• Lender's title policy and endorsements
• Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
• Appraisal fees
• Buyer's Inspections
• Survey (and elevation certification, if required)
• All property related insurance
• HOA/Condominium Association application/ transfer fees
• Buyer's attorneys' fees
• Other: _____

117 (c) TITLE EVIDENCE AND INSURANCE: At least ___ (if blank, then 5) days prior to Closing Date a title insurance
118 commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached
119 thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be
120 obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be
121 furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium and charges for
122 owner's policy endorsements, title search, and closing services (collectively, "Owner's Policy and Charges") shall be paid,
123 as set forth below (CHECK ONLY ONE):

124 [] (i) Seller will designate Closing Agent and pay for Owner's Policy and Charges (but not including charges for
125 closing services related to Buyer's lender's policy and endorsements and Loan closing, which amounts shall be paid by
126 Buyer to Closing Agent or such other provider(s) as Buyer may select); or

127 [] (ii) Buyer will designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services
128 related to Buyer's lender's policy, endorsements, and Loan closing; or

129 [] (iii) [MIAMI-DADE/BROWARD REGIONAL PROVISION]: Seller will furnish a copy of a prior owner's policy of title
130 insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is
131 acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search.
132 Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable,
133 Buyer's lender policy. Seller shall not be obligated to pay more than \$ _____ (if blank, \$200.00) for abstract
134 continuation or title search ordered or performed by Closing Agent.

135 (d) SURVEY: At least 5 days prior to Closing, Buyer may, at Buyer's expense, have the Real Property surveyed and
136 certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished
137 to Buyer and Closing Agent within 5 days after Effective Date.

138 (e) HOME WARRANTY: At Closing [] Buyer [] Seller [] N/A will pay for a home warranty plan issued by
139 _____ at a cost not to exceed \$ _____.

140 A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in
141 appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

142 (f) SPECIAL ASSESSMENTS. At Closing Seller will pay: (i) the full amount of liens imposed by a public body
143 ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified
144 before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is
145 substantially complete as of Effective Date but that has not resulted in a lien being imposed on the Property before
146 Closing. Buyer will pay all other assessments. If special assessments may be paid in installments (CHECK ONE - IF
147 NEITHER BOX IS CHECKED, THEN BUYER SHALL PAY INSTALLMENTS DUE AFTER CLOSING):

- [] Buyer shall pay installments due after Closing.
[] Seller will pay the assessment in full prior to or at the time of Closing.

150 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD)
151 pursuant to Chapter 190 F.S. which lien shall be treated as an ad valorem tax and prorated pursuant to STANDARD K.

152 DISCLOSURES

153 10. DISCLOSURES:

154 (a) RADON GAS: Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in
155 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed
156 federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon
157 testing may be obtained from your county health department.

158 (b) PERMITS DISCLOSURE: Except as may have been disclosed by Seller to Buyer in a written disclosure,
159 Seller does not know of any improvements made to the Property which were made without required permits or
160 made pursuant to permits which have not been properly closed.

161 (c) MOLD: Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or
162 desires additional information regarding mold, Buyer should contact an appropriate professional.

163 (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood
164 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the
165 Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal High Hazard
166 Area" and finished floor elevation is below minimum flood elevation, Buyer may terminate this Contract by delivering
167 written notice to Seller within 20 days after Effective Date, failing which Buyer accepts existing elevation of buildings and
168 flood zone designation of Property.

169 (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure
170 required by Section 553.996, F.S.

171 (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint rider is mandatory.

172 (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS**
173 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY**
174 **DISCLOSURE, IF APPLICABLE.**

175 (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT
176 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN
177 THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS
178 TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU
179 HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE
180 FOR INFORMATION.

181 (i) **TAX WITHHOLDING:** If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax
182 Act ("FIRPTA"), Buyer and Seller will comply with FIRPTA, which may require Seller to provide additional cash at Closing.

183 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not
184 readily observable by Buyer and which have not been disclosed to Buyer.

185 **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

186 **11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, and those repairs, replacements
187 or treatments required to be made by this Contract, Seller shall maintain the Property, including, but not limited to, lawn,
188 shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement").

189 **12. PROPERTY INSPECTION AND REPAIR:**

190 (a) **INSPECTION PERIOD:** By the earlier of 15 days after Effective Date or 5 days prior to Closing Date ("Inspection
191 Period"), Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections described below. If Buyer
192 fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller's
193 continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the
194 matters not inspected and timely reported. If this Contract does not close, Buyer will repair all damage to Property
195 resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for
196 all work done on Property upon its completion.

197 (b) **GENERAL PROPERTY INSPECTION AND REPAIR:**

198 (i) **General Inspection:** Those items specified in Paragraph 12 (b) (ii) below. which Seller is obligated
199 to repair or replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in and
200 holds an occupational license (if required by law) to conduct home inspections or who holds a Florida license to repair and
201 maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection Period, inform Seller of any
202 General Repair Items that are not in the condition required by (b) (ii) below by delivering to Seller either a written notice or
203 a copy of the portion of Professional Inspector's written report dealing with such items.

204 (ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage:
205 ceiling, roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items
206 together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical, security,
207 sprinkler, septic and plumbing systems and machinery, seawalls, and dockage, are, and shall be maintained until Closing,
208 in "Working Condition" (defined below). Torn screens (including pool and patio screens), fogged windows, and missing
209 roof tiles or shingles will be repaired or replaced by Seller prior to Closing. Seller is not required to repair or replace
210 "Cosmetic Conditions" (defined below), unless the Cosmetic Condition resulted from a defect in an item Seller is obligated
211 to repair or replace. "Working Condition" means operating in the manner in which the item was designed to operate.
212 "Cosmetic Conditions" means aesthetic imperfections that do not affect Working Condition of the item, including, but not
213 limited to, pitted marcite; tears, worn spots and discoloration of floor coverings, wallpapers, or window treatments; nail
214 holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, tile, fixtures, or mirrors; and minor cracks in
215 walls, floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio floors. Cracked roof tiles, curling or
216 worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no
217 evidence of actual leaks, leakage or structural damage.

218 (iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary
219 to bring items into the condition specified in Paragraph 12 (b) (ii) above. Seller will, within 5 days after receipt of Buyer's
220 written notice or General Inspection report, either have the reported repairs to General Repair Items estimated by an
221 appropriately licensed person and a copy delivered to Buyer, or have a second inspection made by a Professional
222 Inspector and provide a copy of such report and estimates of repairs to Buyer. If Buyer's and Seller's inspection reports

223 differ and the parties cannot resolve the differences, Buyer and Seller together will choose, and equally split the cost of, a
224 third Professional Inspector, whose written report will be binding on the parties.

225 If costs to repair General Repair Items equals or is less than the General Repair Limit, Seller will have repairs made in
226 accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair Limit, then within 5
227 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess by delivering written notice to
228 Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of General Repair Items Seller shall
229 make (at a total cost to Seller not exceeding the General Repair Limit) and agreeing to accept the balance of General
230 Repair Items in their "as is" condition, subject to Seller's continuing Maintenance Requirement. If neither party delivers
231 such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit,
232 thereby releasing Buyer and Seller from all further obligations under this Contract.

233 (c) **WOOD DESTROYING ORGANISM ('WDO') INSPECTION AND REPAIR:**

234 (i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business
235 ("WDO Inspector") to determine the existence of past or present WDO infestation and damage caused by infestation
236 ("WDO Inspection"). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector's written report to
237 Seller if any evidence of WDO infestation or damage is found. "Wood-Destroying Organism" ("WDO") means arthropod or
238 plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying fungi, that damages or infests
239 seasoned wood in a structure, excluding fences.

240 (ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDOs found by Buyer's WDO
241 Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller's cost,
242 transfers to Buyer at Closing a current full treatment warranty for the type of WDOs found. Seller will, within 5 days after
243 receipt of Buyer's WDO Inspector's report, have reported WDO damage estimated by an appropriately licensed person,
244 necessary corrective treatment, if any, estimated by a licensed pest control business, and a copy delivered to Buyer.
245 Seller will have treatments and repairs made in accordance with Paragraph 12(f) below up to the WDO Repair Limit. If
246 cost to treat and repair the WDO infestations and damage to Property exceeds the WDO Repair Limit, then within 5 days
247 after receipt of Seller's estimate, Buyer may deliver written notice to Seller agreeing to pay the excess, or designating
248 which WDO repairs Seller shall make (at a total cost to Seller not exceeding the WDO Repair Limit), and accepting the
249 balance of the Property in its "as is" condition with regard to WDO infestation and damage, subject to Seller's continuing
250 Maintenance Requirement. If Buyer does not deliver such written notice to Seller, then either party may terminate this
251 Contract by written notice to the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from
252 all further obligations under this Contract.

253 (d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**

254 (i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made
255 to determine whether there exist any open or expired building permits or unpermitted improvements to the Property
256 ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of the existence of any open
257 or expired building permits or unpermitted improvements to the Property.

258 (ii) **Close-Out of Building Permits:** Seller will, within 5 days after receipt of Buyer's Permit Inspection
259 notice, have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and a
260 copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit have open and
261 expired building permits identified by Buyer or known to Seller closed by the applicable governmental entity, and obtain
262 and close any required building permits for improvements to the Property. Prior to Closing Date, Seller will provide Buyer
263 with any written documentation that all open and expired building permits identified by Buyer or known to Seller have been
264 closed out and that Seller has obtained required building permits for improvements to the Property. If final permit
265 inspections cannot be performed due to delays by the governmental entity, Closing Date shall be extended for up to 10
266 days to complete such final inspections, failing which, either party may terminate this Contract, and Buyer shall be
267 refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

268 If cost to close open or expired building permits or to remedy any permit violation of any governmental entity exceeds
269 Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A) Seller may elect to pay the
270 excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller accepting the Property in its
271 "as is" condition with regard to building permit status and agreeing to receive credit from Seller at Closing in the amount of
272 Permit Limit. If neither party delivers such written notice to the other, then either party may terminate this Contract and
273 Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

274 (e) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to
275 time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-
276 through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property
277 and to verify that Seller has maintained the Property as required by the Maintenance Requirement, has made repairs and
278 replacements required by this Contract, and has met all other contractual obligations.

279 (f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** All repairs and
280 replacements shall be completed in a good and workmanlike manner by an appropriately licensed person, in accordance with all
281 requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than,

282 that existing as of the Effective Date. Except as provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing,
283 assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

284 **ESCROW AGENT AND BROKER**

285 **13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and
286 other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the
287 State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract.
288 Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the
289 Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions
290 permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this
291 Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its
292 disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent
293 may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party
294 and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all
295 liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out
296 of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC
297 rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

298 Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in
299 any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees
300 and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to
301 any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of
302 this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

303 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition,
304 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate
305 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the
306 transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside in the Property and that
307 all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER**
308 **AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR**
309 **VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT**
310 **PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.**

311 Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases
312 Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and
313 expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors,
314 agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller
315 based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's
316 misstatement or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of
317 any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral,
318 recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by
319 any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller
320 each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs
321 under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory
322 obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to
323 this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

324 **DEFAULT AND DISPUTE RESOLUTION**

325 **15. DEFAULT:**

326 (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including
327 payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of
328 Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any
329 claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's
330 option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the
331 Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating
332 Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker
333 had agreed to pay to Cooperating Broker.

334 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable
335 diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to
336 receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and,
337 pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.
338 This Paragraph 15 shall survive Closing or termination of this Contract.

339 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller
340 arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

341 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to
342 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

343 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida
344 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The
345 mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first
346 complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting
347 action in the appropriate court having jurisdiction of the matter.

348 This Paragraph 16 shall survive Closing or termination of this Contract.

349 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by
350 this Contract, and each party will pay their own costs, expenses and fees, including attorneys' fees, incurred in conducting
351 the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-
352 prevailing party costs and fees, including reasonable attorneys' fees, incurred in conducting the litigation. This Paragraph
353 17 shall survive Closing or termination of this Contract.

354 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

355 **18. STANDARDS:**

356 **A. TITLE:**

357 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in
358 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be
359 issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before
360 Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of
361 the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the
362 following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and
363 requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common
364 to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility
365 easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines
366 and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages
367 and purchase money mortgages, if any (if additional items, attach addendum); provided, that, unless waived by Paragraph
368 12 (a), there exists at Closing no violation of the foregoing and none prevent use of the Property for **RESIDENTIAL**
369 **PURPOSES.** If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a
370 title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The
371 Florida Bar and in accordance with law.

372 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify
373 Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is
374 delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt
375 to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's
376 notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to
377 have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with
378 proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if
379 Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within
380 Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending
381 Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent
382 effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close
383 this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure
384 Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit,
385 thereby releasing Buyer and Seller from all further obligations under this Contract. If, after reasonable diligent effort, Seller
386 is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall
387 receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

388 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon
389 encroach on setback lines, easements, or lands of others; or violate any restrictions, covenants, or applicable
390 governmental regulations described in STANDARD A (i)(a),(b) or (d) above, Buyer shall deliver written notice of such
391 matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If
392 Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a
393 title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at
394 Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the
395 extent the affirmations therein are true and correct.

396 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to the
397 Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

398 **D. LEASES:** Seller shall, within 5 days after Inspection Period, furnish to Buyer copies of all written leases and
399 estoppel letters from each tenant specifying nature and duration of tenant's occupancy, rental rates, advanced rent and
400 security deposits paid by tenant, and income and expense statements for preceding 12 months ("Lease Information"). If
401 Seller is unable to obtain estoppel letters from tenant(s), the same information shall be furnished by Seller to Buyer within
402 that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant(s) to confirm such information.
403 If terms of the lease(s) differ materially from Seller's representations, Buyer may deliver written notice to Seller within 5

104 days after receipt of Lease Information, but no later than 5 days prior to Closing Date, terminating this Contract and
 105 receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller
 106 shall, at Closing, deliver and assign all original leases to Buyer who shall assume Seller's obligation thereunder.

107 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting; (i) to the absence of any financing statement,
 108 claims of lien or potential lienors known to Seller, and (ii) that there have been no improvements or repairs to the Real
 109 Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that
 110 time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors,
 111 suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors,
 112 subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could
 113 serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

114 **F. TIME:** Calendar days shall be used in computing time periods. Any time periods provided for in this Contract
 115 which shall end on a Saturday, Sunday, or a national legal holiday shall extend to 5:00 p.m. (where the Property is
 116 located) of the next business day. **Time is of the essence in this Contract.**

117 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be liable
 118 to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented
 119 by force majeure. "Force majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation
 120 delays, wars, insurrections, acts of terrorism, and any other cause not reasonably within control of Buyer or Seller, and
 121 which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or
 122 overcome. All time periods, including Closing Date, will be extended for the period that the force majeure prevents
 123 performance under this Contract; provided, however, if such force majeure continues to prevent performance under this
 124 Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written
 125 notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further
 126 obligations under this Contract.

127 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
 128 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in
 129 STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill
 130 of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

131 **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

132 (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the
 133 attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance,
 134 or, if no title insurance, designated by Seller. Closing may be conducted by mail or electronic means.

135 (ii) **CLOSING DOCUMENTS:** At Closing, Seller shall furnish and pay for, as applicable, deed, bill of sale,
 136 certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, and corrective
 137 instruments. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract.
 138 Buyer shall furnish and pay for, as applicable, mortgage, mortgage note, security agreement, financing statements,
 139 survey, base elevation certification, and other documents required by Buyer's lender.

140 (iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title
 141 Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow
 142 closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all**
 143 **closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

144 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for
 145 insurance against adverse matters as permitted under §627.7841, F.S., as amended, the following escrow and closing
 146 procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after
 147 Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of
 148 the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect,
 149 the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously
 150 with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special
 151 warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all
 152 rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of
 153 sale.

154 **K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of
 155 the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including
 156 special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other
 157 expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event
 158 premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be
 159 made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits
 160 held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax with due allowance
 161 made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when current year's
 162 millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and
 163 prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there
 164 are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in
 165 existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable

166 assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser
167 for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at either
168 party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

169 L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall,
170 upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-
171 through (or follow-up walk-through if necessary) prior to Closing.

172 M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty
173 ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not
174 exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to
175 terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete
176 restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds
177 escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of
178 escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to
179 either take Property "as is" together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller
180 from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other
181 natural occurrence shall be cost of pruning or removal.

182 N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with
183 Closing or deferred) under §1031 of Internal Revenue Code ("Exchange"), the other party shall cooperate in all
184 reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party
185 shall incur no liability or expense related to the Exchange and Closing shall not be contingent upon, nor extended or
186 delayed by, such Exchange.

187 O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; COPIES: Neither this Contract nor any notice
188 of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and
189 their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender
190 shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee)
191 representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made
192 by mail, personal delivery or electronic (including "pdf") media. A legible facsimile or electronic (including "pdf") copy of
193 this Contract and any signatures hereon shall be considered for all purposes as an original.

194 P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of
195 Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations
196 shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall
197 be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

198 Q. WAIVER: Failure of Seller or Buyer to insist on compliance with, or strict performance of, any provision of this
199 Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of such provision or right.

200 R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or
201 handwritten provisions shall control all printed provisions of this Contract in conflict with them.

202 S. COLLECTION or COLLECTED. "COLLECTION" or "COLLECTED" means any checks tendered or received,
203 including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing
204 Agent. Closing and disbursement of funds and delivery of Closing documents may be delayed by Closing Agent until
205 such amounts have been Collected in Closing Agent's accounts.

206 T. LOAN COMMITMENT: "Loan Commitment" means a statement by the lender setting forth the terms and
207 conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

208 U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of
209 Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county in
210 which the Real Property is located.

211 ADDENDA AND ADDITIONAL TERMS

212 19. ADDENDA: The following additional terms are included in the attached addenda and incorporated into this Contract (check if
213 applicable):

- 214 A. Condominium Assn. K. "As Is" S. Lease Purchase/Lease- AA. Licensee- Personal
215 B. Homeowners' Assn. L Right to Inspect/Cancel Option Interest in Property
 C. Seller Financing M. Defective Drywall T. Pre-Closing Occupancy BB. Binding Arbitration
 D. Mortgage Assumption N. Coastal Const. Control U. Post-Closing Occupancy CC. Additional Clauses
 E. FHAVA Financing Line V. Sale of Buyer's Property DD.. Other _____
 F. Appraisal Contingency O. Insulation Disclosure W. Back-up Contract _____
 G. Short Sale P. Pre-1978 Housing X. Kick-out Clause _____
 H. Homeowners Insur. Stmt. (LBP) Y. Seller's Attorney Approval _____
 I. FIRPTA Q. Housing Older Persons Z. Buyer's Attorney Approval _____
 J. Interest-Bearing Acct. R. Rezoning

214 20. ADDITIONAL TERMS: _____
215 _____

§16 _____
§17 _____
§18 _____
§19 _____
§20 _____
§21 _____
§22 _____
§23 _____
§24 _____
§25 _____
§26 _____
§27 _____
§28 _____
§29 _____
§30 _____
§31 _____
§32 _____
§33 _____
§34 _____
§35 _____
§36 _____

COUNTER OFFER/REJECTION

- §39 **Seller** counters **Buyer's** offer (to accept the counter offer, **Buyer** must sign or initial the counter-offered terms and deliver a copy of the acceptance to **Seller**).
- §41 **Seller** rejects **Buyer's** offer.

§43 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN**
§44 **ATTORNEY PRIOR TO SIGNING.**

THIS FORM HAS BEEN APPROVED BY FLORIDA REALTORS® AND THE FLORIDA BAR

§46 *Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the*
§47 *parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests,*
§48 *objectives and bargaining positions of all interested persons.*

§49 _____
§50 (Buyer) (Date) (Seller) (Date)

§51 _____
§52 _____
§53 (Buyer) (Date) (Seller) (Date)

§54 _____
§55 Buyers' address for purposes of notice _____ Sellers' address for purposes of notice _____
§56 _____
§57 _____

§58 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to
§59 compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to
§60 disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties
§61 and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed
§62 funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to
§63 Cooperating Brokers.

§64 _____
§65 _____
§66 **Cooperating Sales Associate, if any** **Listing Sales Associate**

§67 _____
§68 _____
§69 **Cooperating Broker, if any** **Listing Broker**
§70 _____

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572 SOLICITORS, 009900, 000010, 102915274.18, NEW FAR BAR 4-14-10 (Chgs from 4-8-10)
573 4/14/10 3:17 PM

DRAFT

1 PARTIES: _____ ("Seller"),
2 and _____ ("Buyer"),
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively
4 "Property") pursuant to the terms and conditions of this AS IS Residential Contract for Sale and Purchase and any riders
5 and addenda ("Contract"):

6 1. PROPERTY DESCRIPTION:

- 7 (a) Street address, city, zip: _____
8 (b) Property is located in: _____ County, Florida. Real Property Tax ID No: _____
9 (c) Legal description of the Real Property: _____

10
11 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-
12 wall carpeting and flooring ("Real Property") unless specifically excluded below.

13 (d) Personal Property: The following items owned by Seller and existing on the Property as of the date of the initial
14 offer are included in the purchase ("Personal Property"): (i) range(s)/oven(s), dishwasher(s), disposal, ceiling fan(s),
15 intercom, light fixtures, rods, draperies and other window treatments, garage door openers, and security gate and other
16 access devices; and (ii) those additional items checked below. If additional details are necessary, specify below. If left
17 blank, the item below is not included:

- [] Refrigerator(s) [] Smoke Detector(s) [] Pool Barrier/Fence [] Storage Shed
[] Microwave Oven [] Security System [] Pool Equipment [] TV Antenna/Satellite Dish
[] Washer [] Window/Wall A/C [] Pool Heater [] Water Softener/Purifier
[] Dryer [] Generator [] Spa or Hot Tub with [] Storm shutters and
[] Stand-alone Ice Maker [] Above Ground Pool Heater panels

18 The only other items of Personal Property included in this purchase, and any additional details regarding Personal Property, if
19 necessary, are: _____

20
21 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

22 (e) The following items are excluded from the purchase: _____

23
24 2. PURCHASE PRICE (U.S. currency): \$ _____

25 (a) Initial deposit to be held in escrow in the amount of (checks subject to COLLECTION)..... \$ _____

26 The initial deposit made payable and delivered to "Escrow Agent" named below
27 (CHECK ONE): [] accompanies offer or [] is to be made upon acceptance (Effective Date) or
28 [] is to be made within ____ (if blank, then 3) days after Effective Date

29 Escrow Agent Information: Name _____
30 Address: _____
31 Phone: _____ Fax: _____
32 E-mail: _____

33 (b) Additional deposit to be delivered to Escrow Agent within ____ (if blank, then 3) days after
34 Effective Date..... \$ _____

35 (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

36 (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 below _____

37 (d) Other: _____ \$ _____

38 (e) Balance to close (not including Buyer's Closing Costs, prepaids and prorations) by wire
39 transfer or other COLLECTED funds..... \$ _____

40
41 NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.

42 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:

43 (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before
44 _____, this offer shall be deemed withdrawn and the Deposit, if any, will be returned to Buyer. Unless
45 otherwise stated, time for acceptance of any counteroffers shall be within 2 days after the day the counteroffer is
46 delivered.

47 (b) The effective date of this Contract will be the date when last one of Buyer and Seller has signed or initialed this
48 offer or final counteroffer ("Effective Date").

49 4. CLOSING DATE: Unless modified by other provisions of this Contract, the closing of this transaction shall occur and
50 the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") on
51 _____ ("Closing Date"), at the time established by the Closing Agent.

52 5. EXTENSION OF CLOSING DATE:

54 (a) If Closing funds from Buyer’s lender(s) are not available at time of Closing due to Truth In Lending Act (TILA)
55 notice requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements, not to
56 exceed 7 days (not including Sundays and legal holidays).

57 (b) If extreme weather or other condition or event constituting “force majeure” (see STANDARD G) causes:
58 (i) disruption of utilities or other services essential for Closing, or (ii) Hazard, Wind, Flood or Homeowners’ Insurance, to
59 become unavailable prior to Closing, Closing will be extended a reasonable time up to 3 days after restoration of utilities
60 and other services essential to Closing, and availability of applicable Hazard, Wind, Flood, or Homeowners' insurance. If
61 restoration of such utilities or services and availability of insurance has not occurred within _____ (if left blank, 14) days
62 after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer
63 shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

64 6. OCCUPANCY AND POSSESSION: Unless otherwise stated herein, Seller shall at Closing have removed all
65 personal items and trash from the Property and shall deliver occupancy and possession, along with all keys, garage door
66 openers, access devices and codes, as applicable, to Buyer. If Property is intended to be rented or occupied beyond
67 Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to STANDARD D. If
68 occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be
69 responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing
70 condition as of time of taking occupancy.

71 7. ASSIGNABILITY: (CHECK ONLY ONE): Buyer may assign and thereby be released from any further liability under
72 this Contract; may assign but not be released from liability under this Contract; or may not assign this Contract.

73 FINANCING

74 8. FINANCING: (Check as applicable)

75 (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing contingency to
76 Buyer’s obligation to close.

77 (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA VA
78 loan on the following terms within _____ (if blank, then 30) days after Effective Date (“Loan Commitment Date”) for:
79 (CHECK ONLY ONE): fixed, adjustable, fixed or adjustable, rate loan in the principal amount of
80 \$_____ or _____% of the Purchase Price, at an initial interest rate not to exceed _____%
81 (if blank, then prevailing rate based upon Buyer’s creditworthiness), and for a term of _____ years (“Financing”).

82 Buyer will make mortgage loan application for the Financing within _____ (if blank, then 5) days after Effective Date and
83 use good faith and diligent effort to obtain a written loan commitment for the Financing (“Loan Commitment”) and close this
84 Contract. Buyer shall keep Seller and Broker fully informed about status of mortgage loan application and Loan Commitment and
85 authorizes Buyer’s mortgage broker and Buyer’s lender to disclose such status and progress to Seller and Broker.

86 If Buyer does not receive Loan Commitment, then Buyer may terminate this Contract by delivering written notice to Seller,
87 and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

88 If Buyer does not deliver written notice to Seller of receipt of Loan Commitment or Buyer’s written waiver of this financing
89 contingency, then after Loan Commitment Date Seller may terminate this Contract by delivering written notice to Buyer and the
90 Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

91 If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, the
92 Deposit shall be paid to Seller unless failure to close is due to: (1) Seller’s default; (2) Property related conditions of the Loan
93 Commitment have not been met (except when such conditions are waived by other provisions of this Contract); (3) appraisal of the
94 Property obtained by Buyer’s lender is insufficient to meet terms of the Loan Commitment; or (4) the Loan is not funded due to
95 financial failure of Buyer’s lender, in which event the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all
96 further obligations under this Contract.

97 (c) Assumption of existing mortgage (see rider for terms).

98 (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

99 CLOSING COSTS, FEES AND CHARGES

100 9. CLOSING COSTS; TITLE EVIDENCE AND INSURANCE; SURVEY; PRORATIONS; HOMEOWNER’S
101 WARRANTY; SPECIAL ASSESSMENTS: The following are costs, fees, and charges which the parties may incur:

102 (a) COSTS TO BE PAID BY SELLER:

- Documentary stamp taxes and surtax, if any, on deed
- Recording and other fees needed to cure title
- Owner’s Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- HOA/Condominium Association estoppel fees
- Seller’s attorneys’ fees
- Other: _____

103 If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum
104 equal to 125% of estimated cost to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual cost
105 to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused
106 portion of escrowed amount shall be returned to Seller.

107 (b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Loan expenses
- Lender's title policy and endorsements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Appraisal fees
- Buyer's Inspections
- Survey (and elevation certification, if required)
- All property related insurance
- HOA/Condominium Association application/ transfer fees
- Buyer's attorneys' fees
- Other: _____

108 (c) **TITLE EVIDENCE AND INSURANCE:** At least ____ (if blank, then 5) days prior to Closing Date a title insurance
 109 commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached
 110 thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be
 111 obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be
 112 furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium and charges for
 113 owner's policy endorsements, title search, and closing services (collectively, "Owner's Policy and Charges") shall be paid,
 114 as set forth below (CHECK ONLY ONE):

115 (i) Seller will designate Closing Agent and pay for Owner's Policy and Charges (but not including charges for
 116 closing services related to Buyer's lender's policy and endorsements and Loan closing, which amounts shall be paid by
 117 Buyer to Closing Agent or such other provider(s) as Buyer may select); or

118 (ii) Buyer will designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services
 119 related to Buyer's lender's policy, endorsements, and Loan closing; or

120 (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller will furnish a copy of a prior owner's policy of title
 121 insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is
 122 acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search.
 123 Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable,
 124 Buyer's lender policy. Seller shall not be obligated to pay more than \$ _____ (if blank, \$200.00) for abstract
 125 continuation or title search ordered or performed by Closing Agent.

126 (d) **SURVEY:** At least 5 days prior to Closing, Buyer may, at Buyer's expense, have the Real Property surveyed and
 127 certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished
 128 to Buyer and Closing Agent within 5 days after Effective Date.

129 (e) **HOME WARRANTY:** At Closing Buyer Seller N/A will pay for a home warranty plan issued by
 130 _____ at a cost not to exceed \$ _____.

131 A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in
 132 appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

133 (f) **SPECIAL ASSESSMENTS.** At Closing Seller will pay: (i) the full amount of liens imposed by a public body
 134 ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified
 135 before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is
 136 substantially complete as of Effective Date but that has not resulted in a lien being imposed on the Property before
 137 Closing. Buyer will pay all other assessments. **If special assessments may be paid in installments (CHECK ONE – IF**
 138 **NEITHER BOX IS CHECKED, THEN BUYER SHALL PAY INSTALLMENTS DUE AFTER CLOSING):**

139 Buyer shall pay installments due after Closing.

140 Seller will pay the assessment in full prior to or at the time of Closing.

141 This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD)
 142 pursuant to Chapter 190 F.S. which lien shall be treated as an ad valorem tax and prorated pursuant to STANDARD K.

143 **DISCLOSURES**

144 **10. DISCLOSURES:**

145 (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in
 146 sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed
 147 federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon
 148 testing may be obtained from your county health department.

149 (b) **PERMITS DISCLOSURE: Except as may have been disclosed by Seller to Buyer in a written disclosure,**
 150 **Seller does not know of any improvements made to the Property which were made without required permits or**
 151 **made pursuant to permits which have not been properly closed.**

152 (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or
 153 desires additional information regarding mold, Buyer should contact an appropriate professional.

154 (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood
 155 zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the
 156 Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal High Hazard
 157 Area" and finished floor elevation is below minimum flood elevation, Buyer may terminate this Contract by delivering
 158 written notice to Seller within 20 days after Effective Date, failing which Buyer accepts existing elevation of buildings and
 159 flood zone designation of Property.

160 (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure
 161 required by Section 553.996, F.S.

162 (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint rider is mandatory.

163 (g) **HOMEOWNERS’ ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS**
164 **CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS’ ASSOCIATION/COMMUNITY**
165 **DISCLOSURE, IF APPLICABLE.**

166 (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER’S CURRENT
167 PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN
168 THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS
169 TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU
170 HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER’S OFFICE
171 FOR INFORMATION.

172 (i) **TAX WITHHOLDING:** If Seller is a “foreign person” as defined by the Foreign Investment in Real Property Tax
173 Act (“FIRPTA”), Buyer and Seller will comply with FIRPTA, which may require Seller to provide additional cash at Closing.

174 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not
175 readily observable by Buyer and which have not been disclosed to Buyer. Except as stated in the preceding sentence or
176 otherwise disclosed in writing: (1) Seller has received no written or verbal notice from any governmental entity or agency
177 as to a currently uncorrected building, environmental or safety code violation; and (2) Seller extends and intends no
178 warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the
179 Property.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

181 **11. PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the
182 Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date (“AS IS
183 Maintenance Requirement”).

12. PROPERTY INSPECTION; RIGHT TO CANCEL:

185 (a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have _____ (if blank, 15) days from
186 Effective Date (“Inspection Period”) within which to have such inspections of the Property performed as Buyer
187 shall desire during the Inspection Period. If Buyer determines, in Buyer’s sole discretion, that the Property is not
188 acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller
189 prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be
190 immediately returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this
191 Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to,
192 and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all
193 work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer
194 exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any
195 violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to
196 Seller’s continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and
197 improvements required by Buyer’s lender.

198 (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to
199 time of Closing, as specified by Buyer, Buyer or Buyer’s representative may perform a walk-through (and follow-up walk-
200 through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property
201 and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all
202 other contractual obligations.

203 (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer’s inspection
204 of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written
205 documentation or other information in Seller’s possession, knowledge, or control relating to improvements to the Property
206 which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer’s efforts to
207 obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller’s obligation to cooperate shall
208 include Seller’s execution of necessary authorizations, consents, or other documents necessary for Buyer to conduct
209 inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be
210 required to expend, or become obligated to expend, any money.

211 (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer’s option and cost,
212 Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

213

ESCROW AGENT AND BROKER

214 **13. ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively “Agent”) receiving the Deposit, other funds and
215 other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the
216 State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract.
217 Failure of funds to become **COLLECTED** shall not excuse Buyer’s performance. When conflicting demands for the
218 Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions
219 permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent’s duties or liabilities under this
220

221 Contract, Agent may, at Agent’s option, continue to hold the subject matter of the escrow until the parties agree to its
222 disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent
223 may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party
224 and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all
225 liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out
226 of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC
227 rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

228 Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder,
229 or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney’s
230 fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be
231 liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent’s willful
232 breach of this Contract or Agent’s gross negligence. This Paragraph 13 shall survive Closing or termination of this
233 Contract.

234 **14. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition,
235 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate
236 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the
237 transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside in the Property and that
238 all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER**
239 **AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR**
240 **VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT**
241 **PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.**

242 Buyer and Seller (individually, the “Indemnifying Party”) each individually indemnifies, holds harmless, and releases
243 Broker and Broker’s officers, directors, agents and employees from all liability for loss or damage, including all costs and
244 expenses, and reasonable attorney’s fees at all levels, suffered or incurred by Broker and Broker’s officers, directors,
245 agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller
246 based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party’s
247 misstatement or failure to perform contractual obligations; (iii) Broker’s performance, at Indemnifying Party’s request, of
248 any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker’s referral,
249 recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by
250 any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller
251 each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs
252 under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory
253 obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to
254 this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

DEFAULT AND DISPUTE RESOLUTION

255
256 **15. DEFAULT:**

257 (a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer’s obligations under this Contract, including
258 payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of
259 Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any
260 claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller’s
261 option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller’s rights under this Contract. The portion of the
262 Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating
263 Broker; provided however, Cooperating Broker’s share shall not be greater than the commission amount Listing Broker
264 had agreed to pay to Cooperating Broker.

265 (b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller’s title marketable after reasonable
266 diligent effort, Seller fails, neglects or refuses to perform Seller’s obligations under this Contract, Buyer may elect to
267 receive return of Buyer’s Deposit without thereby waiving any action for damages resulting from Seller’s breach, and,
268 pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.
269 This Paragraph 15 shall survive Closing or termination of this Contract.

270 **16. DISPUTE RESOLUTION:** Unresolved controversies, claims and other matters in question between Buyer and Seller
271 arising out of, or relating to, this Contract or its breach, enforcement or interpretation (“Dispute”) will be settled as follows:

272 (a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to
273 resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

274 (b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida
275 Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the “Mediation Rules”). The
276 mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first
277 complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting
278 action in the appropriate court having jurisdiction of the matter.

279 This Paragraph 16 shall survive Closing or termination of this Contract.

280 **17. ATTORNEY’S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted by
281 this Contract, and each party will pay their own costs, expenses and fees, including attorneys’ fees, incurred in conducting

the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorneys’ fees, incurred in conducting the litigation. This Paragraph shall survive Closing or termination of this Contract.

STANDARDS FOR REAL ESTATE TRANSACTIONS (“STANDARDS”)

18. STANDARDS:

A. TITLE:

(i) TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS: Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner’s policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer’s marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that none prevent use of the Property for RESIDENTIAL PURPOSES. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) TITLE EXAMINATION: Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days (“Cure Period”) after receipt of Buyer’s notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer’s attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer’s receipt of Seller’s notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects (“Extended Cure Period”); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer’s receipt of Seller’s notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If, after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others; or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a),(b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer’s receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer’s request, execute an affidavit of “no change” to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASES: Seller shall, within 5 days after Inspection Period, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying nature and duration of tenant’s occupancy, rental rates, advanced rent and security deposits paid by tenant, and income and expense statements for preceding 12 months (“Lease Information”). If Seller is unable to obtain estoppel letters from tenant(s), the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller’s affidavit, and Buyer may thereafter contact tenant(s) to confirm such information. If terms of the lease(s) differ materially from Seller’s representations, Buyer may deliver written notice to Seller within 5 days after receipt of Lease Information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all original leases to Buyer who shall assume Seller’s obligation thereunder.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting; (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller, and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller’s lien affidavit setting forth names of all such general

343 contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs
344 which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

345 **F. TIME:** Calendar days shall be used in computing time periods. Any time periods provided for in this Contract
346 which shall end on a Saturday, Sunday, or a national legal holiday shall extend to 5:00 p.m. (where the Property is
347 located) of the next business day. **Time is of the essence in this Contract.**

348 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be
349 liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or
350 prevented by force majeure. "Force majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual
351 transportation delays, wars, insurrections, acts of terrorism, and any other cause not reasonably within control of Buyer or
352 Seller, and which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to
353 prevent or overcome. All time periods, including Closing Date, will be extended for the period that the force majeure
354 prevents performance under this Contract; provided, however, if such force majeure continues to prevent performance
355 under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering
356 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further
357 obligations under this Contract.

358 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
359 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in
360 STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill
361 of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

362 **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

363 (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of
364 the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title
365 insurance, or, if no title insurance, designated by Seller. Closing may be conducted by mail or electronic means.

366 (ii) **CLOSING DOCUMENTS:** At Closing, Seller shall furnish and pay for, as applicable, deed, bill of sale,
367 certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, and corrective
368 instruments. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract.
369 Buyer shall furnish and pay for, as applicable, mortgage, mortgage note, security agreement, financing statements,
370 survey, base elevation certification, and other documents required by Buyer's lender.

371 (iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title
372 Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow
373 closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all**
374 **closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

375 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide for
376 insurance against adverse matters as permitted under §627.7841, F.S., as amended, the following escrow and closing
377 procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10
378 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period,
379 notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if
380 Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written
381 demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property,
382 vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to
383 make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening
384 defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

385 **K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as
386 of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes
387 (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and
388 other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which
389 event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to
390 be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow
391 deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax with due
392 allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when
393 current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such
394 assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior
395 year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which
396 improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's
397 millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to
398 the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration
399 based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This
400 STANDARD K shall survive Closing.

401 **L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller
402 shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a
403 walk-through (or follow-up walk-through if necessary) prior to Closing.

104 **M. RISK OF LOSS:** If, after Effective Date, but before Closing, Property is damaged by fire or other casualty
105 (“Casualty Loss”) and cost of restoration (which shall include cost of pruning or removing damaged trees) does not
106 exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to
107 terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete
108 restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds
109 escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of
110 escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to
111 either take Property “as is” together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller
112 from all further obligations under this Contract. Seller’s sole obligation with respect to tree damage by casualty or other
113 natural occurrence shall be cost of pruning or removal.

114 **N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with
115 Closing or deferred) under §1031 of Internal Revenue Code (“Exchange”), the other party shall cooperate in all
116 reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party
117 shall incur no liability or expense related to the Exchange and Closing shall not be contingent upon, nor extended or
118 delayed by, such Exchange.

119 **O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; COPIES:** Neither this Contract nor any
120 notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the
121 parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and
122 one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker’s real estate
123 licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may
124 be made by mail, personal delivery or electronic (including “pdf”) media. A legible facsimile or electronic (including “pdf”)
125 copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

126 **P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement
127 of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or
128 representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in
129 this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be
130 bound by it.

131 **Q. WAIVER:** Failure of Seller or Buyer to insist on compliance with, or strict performance of, any provision of this
132 Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of such provision or right.

133 **R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Riders, addenda, and typewritten
134 or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

135 **S. COLLECTION or COLLECTED. “COLLECTION” or “COLLECTED” means any checks tendered or**
136 **received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent**
137 **or Closing Agent. Closing and disbursement of funds and delivery of Closing documents may be delayed by Closing**
138 **Agent until such amounts have been Collected in Closing Agent’s accounts.**

139 **T. LOAN COMMITMENT:** “Loan Commitment” means a statement by the lender setting forth the terms and
140 conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

141 **U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State of
142 Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county in
143 which the Real Property is located.

144 **X. BUYER WAIVER OF CLAIMS:** *Buyer waives any claims against Seller and, to the extent permitted by*
145 *law, against any real estate licensee involved in the negotiation of this Contract, for any defects or other damage*
146 *that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by,*
147 *through, under or against the Buyer.*

148 **ADDENDA AND ADDITIONAL TERMS**

149 **19. ADDENDA:** The following additional terms are included in the attached addenda and incorporated into this Contract (check if
150 applicable):

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> A. Condominium Assn. | <input type="checkbox"/> J. Interest-Bearing Acct. | <input type="checkbox"/> Q. Lease Purchase/Lease-Option | <input type="checkbox"/> Y. Licensee- Personal Interest in Property |
| <input type="checkbox"/> B. Homeowners’ Assn. | <input type="checkbox"/> K. Defective Drywall | <input type="checkbox"/> R. Pre-Closing Occupancy | <input type="checkbox"/> Z. Binding Arbitration |
| <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> L. Coastal Const. Control Line | <input type="checkbox"/> S. Post-Closing Occupancy | <input type="checkbox"/> AA. Additional Clauses |
| <input type="checkbox"/> D. Mortgage Assumption | <input type="checkbox"/> M. Insulation Disclosure | <input type="checkbox"/> T. Sale of Buyer’s Property | <input type="checkbox"/> BB. Other _____ |
| <input type="checkbox"/> E. FHA/VA Financing | <input type="checkbox"/> N. Pre-1978 Housing Stmt. (LBP) | <input type="checkbox"/> U. Back-up Contract | _____ |
| <input type="checkbox"/> F. Appraisal Contingency | <input type="checkbox"/> O. Housing Older Persons | <input type="checkbox"/> V. Kick-out Clause | _____ |
| <input type="checkbox"/> G. Short Sale | <input type="checkbox"/> P. Rezoning | <input type="checkbox"/> W. Seller’s Attorney Approval | _____ |
| <input type="checkbox"/> H. Homeowners Insur. | | <input type="checkbox"/> X. Buyer’s Attorney Approval | _____ |
| <input type="checkbox"/> I. FIRPTA | | | |

151 **20. ADDITIONAL TERMS:** _____
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153 _____
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COUNTER OFFER/REJECTION

- 179 **Seller** counters **Buyer’s** offer (to accept the counter offer, **Buyer** must sign or initial the counter-offered terms and
 180 deliver a copy of the acceptance to **Seller**).
 181 **Seller** rejects **Buyer’s** offer.
 182

183 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN**
 184 **ATTORNEY PRIOR TO SIGNING.**

THIS FORM HAS BEEN APPROVED BY FLORIDA REALTORS® AND THE FLORIDA BAR

186 *Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the*
 187 *parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests,*
 188 *objectives and bargaining positions of all interested persons.*

189 _____
 190 (Buyer) (Date) (Seller) (Date)
 191 _____
 192 _____
 193 (Buyer) (Date) (Seller) (Date)
 194 _____
 195 Buyers’ address for purposes of notice _____ Sellers’ address for purposes of notice _____
 196 _____
 197 _____

198 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, “Broker”), are the only Brokers entitled to
 199 compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to
 200 disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties
 201 and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed
 202 funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to
 203 Cooperating Brokers.
 204

205 _____
 206 **Cooperating Sales Associate, if any** **Listing Sales Associate**
 207 _____
 208 _____
 209 **Cooperating Broker, if any** **Listing Broker**

510

511 **FloridaRealtors/FloridaBar-new Rev. 3/2010 © 2010 Florida Realtors® and The Florida Bar. All rights reserved.**
512 SOLICITORS, 009900, 000010, 102777424.13, AS IS Contract for Sale and Purchase 4-8-10 (Changes from 3- 23 -10)
513 4/8/10 1:55 PM

"AS IS" DRAFT

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

1 A bill to be entitled
2 An act relating to foreclosures; amending s. 721.07, F.S.;
3 providing lien disclosure requirements for filed public
4 offering statements for certain timeshare plans; amending
5 s. 721.13, F.S.; requiring officers, directors, and agents
6 of a timeshare owners' association to act in good faith;
7 providing for damages; providing exceptions; amending s.
8 721.16, F.S.; authorizing a managing entity to bring a
9 judicial action or a trustee procedure to foreclose
10 certain liens under specified conditions; revising when a
11 lien is effective; renaming part III of chapter 721, F.S.,
12 to conform to changes made by this act; amending s.
13 721.81, F.S.; revising and providing legislative purposes
14 of the part; amending s. 721.82 F.S.; revising and
15 providing definitions; amending s. 721.83, F.S., relating
16 to consolidation of foreclosure actions; clarifying
17 application to judicial foreclosure actions; amending s.
18 721.85, F.S., relating to service to notice address or on
19 registered agent; conforming provisions to changes made by
20 this act; creating s. 721.855, F.S.; establishing
21 procedure for the trustee foreclosure of assessment liens;
22 providing for the appointment of a trustee; providing
23 recording requirements for such liens; providing
24 procedures for the initiation of a trustee foreclosure
25 procedure against a timeshare interest; providing
26 procedures for an obligor's objection to the trustee
27 foreclosure procedure; providing conditions to a trustee's
28 exercise of power of sale; providing requirements for a

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

29 notice of default and intent to sell; providing
 30 requirements for a notice of sale; providing requirements
 31 for the sale by auction of foreclosed encumbered timeshare
 32 interests; providing requirements for a trustee's
 33 certificate of compliance; providing for the effect of a
 34 trustee's sale; providing requirements for a trustee's
 35 deed; providing for the disposition of proceeds of the
 36 sale; providing that the trustee foreclosure procedure
 37 does not impair or otherwise affect the right to bring
 38 certain actions; providing application; providing for
 39 actions for failure to follow the trustee foreclosure
 40 procedure; providing a criminal penalty; creating s.
 41 721.856, F.S.; establishing procedure for the trustee
 42 foreclosure of mortgage liens; providing for the
 43 appointment of a trustee; providing recording requirements
 44 for such liens; providing procedures for the initiation of
 45 a trustee foreclosure procedure against a timeshare
 46 interest; providing procedures for an obligor's objection
 47 to the trustee foreclosure procedure; providing conditions
 48 to a trustee's exercise of power of sale; providing
 49 requirements for a notice of default and intent to sell;
 50 providing requirements for a notice of sale; providing
 51 requirements for the sale by auction of foreclosed
 52 encumbered timeshare interests; providing requirements for
 53 a trustee's certificate of compliance; providing for the
 54 effect of a trustee's sale; providing requirements for a
 55 trustee's deed; providing for the disposition of proceeds
 56 of the sale; providing that the trustee foreclosure

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CS/CS/HB 1411, Engrossed 3

2010 Legislature

57 | procedure does not impair or otherwise affect the right to
58 | bring certain actions; providing for actions for failure
59 | to follow the trustee foreclosure procedure; providing a
60 | criminal penalty; amending s. 721.86, F.S.; providing for
61 | priority of application in case of conflict; conforming
62 | terminology to changes made by this act; amending s.
63 | 721.20, F.S.; revising exemptions from certain licensing
64 | requirements; imposing an administrative fee on certain
65 | recorded trustee deeds; providing that revenues from such
66 | fees be deposited into the State Courts Revenue Trust
67 | Fund; providing an effective date.

68 |
69 | Be It Enacted by the Legislature of the State of Florida:

70 |
71 | Section 1. Paragraph (jj) is added to subsection (5) of
72 | section 721.07, Florida Statutes, to read:

73 | 721.07 Public offering statement.—Prior to offering any
74 | timeshare plan, the developer must submit a filed public
75 | offering statement to the division for approval as prescribed by
76 | s. 721.03, s. 721.55, or this section. Until the division
77 | approves such filing, any contract regarding the sale of that
78 | timeshare plan is subject to cancellation by the purchaser
79 | pursuant to s. 721.10.

80 | (5) Every filed public offering statement for a timeshare
81 | plan which is not a multisite timeshare plan shall contain the
82 | information required by this subsection. The division is
83 | authorized to provide by rule the method by which a developer
84 | must provide such information to the division.

ENROLLED

CS/CS/HB 1411, Engrossed 3

2010 Legislature

85 (jj) The following statement in conspicuous type:

86
 87 The managing entity has a lien against each timeshare
 88 interest to secure the payment of assessments, ad
 89 valorem assessments, tax assessments, and special
 90 assessments. Your failure to make any required
 91 payments may result in the judicial or trustee
 92 foreclosure of an assessment lien and the loss of your
 93 timeshare interest. If the managing entity initiates a
 94 trustee foreclosure procedure, you shall have the
 95 option to object to the use of the trustee foreclosure
 96 procedure and the managing entity may only proceed by
 97 filing a judicial foreclosure action.

98 Section 2. Subsection (13) is added to section 721.13,
 99 Florida Statutes, to read:

100 721.13 Management.—

101 (13) Notwithstanding any provisions of chapter 607,
 102 chapter 617, or chapter 718, an officer, director, or agent of
 103 an owners' association shall discharge his or her duties in good
 104 faith, with the care an ordinarily prudent person in a like
 105 position would exercise under similar circumstances, and in a
 106 manner he or she reasonably believes to be in the interests of
 107 the owners' association. An officer, director, or agent of an
 108 owners' association shall be exempt from liability for monetary
 109 damages in the same manner as provided in s. 617.0834 unless
 110 such officer, director, or agent breached or failed to perform
 111 his or her duties and the breach of, or failure to perform, his
 112 or her duties constitutes a violation of criminal law as

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113 provided in s. 617.0834; constitutes a transaction from which
 114 the officer or director derived an improper personal benefit,
 115 either directly or indirectly; or constitutes recklessness or an
 116 act or omission that was in bad faith, with malicious purpose,
 117 or in a manner exhibiting wanton and willful disregard of human
 118 rights, safety, or property.

119 Section 3. Subsections (2) and (3) of section 721.16,
 120 Florida Statutes, are amended to read:

121 721.16 Liens for overdue assessments; liens for labor
 122 performed on, or materials furnished to, a timeshare unit.-

123 (2) The managing entity may bring a judicial ~~an~~ action in
 124 its name to foreclose a lien under subsection (1) in the manner
 125 a mortgage of real property is foreclosed and may also bring an
 126 action to recover a money judgment for the unpaid assessments
 127 without waiving any claim of lien. As an alternative to
 128 initiating a judicial action, the managing entity may initiate a
 129 trustee procedure to foreclose an assessment lien under s.
 130 721.855.

131 (3) The lien is effective from the date of recording a
 132 claim of lien in the official ~~public~~ records of the county or
 133 counties in which the timeshare interest is ~~accommodations and~~
 134 ~~facilities constituting the timeshare plan~~ are located. The
 135 claim of lien shall state the name of the timeshare plan and
 136 identify the timeshare interest for which the lien is effective,
 137 state the name of the purchaser, state the assessment amount
 138 due, and state the due dates. Notwithstanding any provision of
 139 s. 718.116(5) ~~(a)~~ or s. 719.108(4) to the contrary, the lien is
 140 effective until satisfied or until 5 years have expired after

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141 the date the claim of lien is recorded unless, within that time,
 142 an action to enforce the lien is commenced pursuant to
 143 subsection (2). A claim of lien for assessments may include only
 144 assessments which are due when the claim is recorded. A claim of
 145 lien shall be signed and acknowledged by an officer or agent of
 146 the managing entity. Upon full payment, the person making the
 147 payment is entitled to receive a satisfaction of the lien.

148 Section 4. Part III of chapter 721, Florida Statutes,
 149 entitled "Foreclosure of Liens on Timeshare Estates," is renamed
 150 "Foreclosure of Liens on Timeshare Interests."

151 Section 5. Section 721.81, Florida Statutes, is amended to
 152 read:

153 721.81 Legislative purpose.—The purposes of this part are
 154 to:

155 (1) Recognize that timeshare interests ~~estates~~ are ~~parcels~~
 156 ~~of real property~~ used for vacation experience rather than for
 157 homestead or investment purposes and that there are numerous
 158 timeshare interests ~~estates~~ in this ~~the~~ state.

159 (2) Recognize that the economic health and efficient
 160 operation of the vacation ownership industry are in part
 161 dependent upon the availability of an efficient and economical
 162 process for all timeshare interest foreclosures ~~foreclosure~~.

163 (3) Recognize the need to assist both owners' associations
 164 and mortgagees by simplifying and expediting the process for the
 165 judicial and trustee ~~of~~ foreclosure of assessment liens and
 166 mortgage liens against timeshare interests ~~estates~~.

167 (4) Improve judicial economy and reduce court congestion
 168 and the cost to taxpayers by establishing streamlined procedures

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169 for the judicial and trustee foreclosure of assessment liens and
 170 mortgage liens against timeshare interests ~~estates~~.

171 (5) Recognize that nearly all timeshare interest
 172 foreclosures are uncontested.

173 (6) Protect the ability of consumers who own timeshare
 174 interests located in this state to choose a judicial proceeding
 175 for the foreclosure of an assessment lien or a mortgage lien
 176 against their timeshare interest.

177 (7) Recognize that the use of the trustee foreclosure
 178 procedure established under ss. 721.855 and 721.856 shall have
 179 the same force and effect as the use of the judicial foreclosure
 180 procedure against a timeshare interest with respect to the
 181 provisions of this chapter or any other applicable law. However,
 182 obligors shall not be subject to a deficiency judgment even if
 183 the proceeds from the sale of the timeshare interest are
 184 insufficient to offset the amounts secured by the lien.

185 Section 6. Section 721.82, Florida Statutes, is amended to
 186 read:

187 721.82 Definitions.—As used in this part, the term:

188 (1) "Amounts secured by the lien" means all amounts
 189 secured by an assessment lien or mortgage lien, including, but
 190 not limited to, all past due amounts, accrued interest, late
 191 fees, taxes, advances for the payment of taxes, insurance and
 192 maintenance of the timeshare interest, and any fees or costs
 193 incurred by the lienholder or trustee, including any reasonable
 194 attorney's fees, trustee's fees, and costs incurred in
 195 connection with the default.

196 (2)-~~1~~) "Assessment lien" means:

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197 (a) A lien for delinquent assessments as provided in ss.
 198 ~~721.16, 718.116, and 719.108, and 721.16 as to timeshare~~
 199 ~~condominiums; or~~

200 (b) A lien for unpaid ad valorem assessments, tax
 201 assessments, ~~taxes~~ and special assessments as provided in s.
 202 192.037(8).

203 (3)~~(2)~~ "Junior interestholder" means any person who has a
 204 lien or interest of record against a timeshare interest estate
 205 in the county or counties in which the timeshare interest estate
 206 is located, which is inferior to the mortgage lien or assessment
 207 lien being foreclosed under this part.

208 (4)~~(3)~~ "Lienholder" means a holder of an assessment lien
 209 or a holder of a mortgage lien, as applicable. A receiver
 210 appointed under s. 721.26 is a lienholder for purposes of
 211 foreclosure of assessment liens under this part.

212 (5)~~(4)~~ "Mortgage" has the same meaning set forth in s.
 213 697.01.

214 (6)~~(5)~~ "Mortgage lien" means a security interest in a
 215 timeshare interest estate created by a mortgage encumbering the
 216 timeshare interest estate.

217 (7)~~(6)~~ "Mortgagee" means a person holding a mortgage lien.

218 (8)~~(7)~~ "Mortgagor" means a person granting a mortgage lien
 219 or a person who has assumed the obligation secured by a mortgage
 220 lien.

221 (9)~~(8)~~ "Notice address" means:

222 (a) As to an assessment lien, the address of the ~~current~~
 223 owner of a timeshare interest estate as reflected by the books
 224 and records of the timeshare plan under ss. 721.13(4) and

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225 721.15(7).

226 (b) As to a mortgage lien:

227 1. The address of the mortgagor as set forth in the
 228 mortgage, the promissory note or a separate document executed by
 229 the mortgagor at the time the mortgage lien was created, or the
 230 most current address of the mortgagor according to the records
 231 of the mortgagee; and

232 2. If the ~~current~~ owner of the timeshare interest ~~estate~~
 233 is different from the mortgagor, the address of the ~~current~~
 234 owner of the timeshare interest ~~estate~~ as reflected by the books
 235 and records of the mortgagee.

236 (c) As to a junior interestholder, the address as set
 237 forth in the recorded instrument creating the junior lien
 238 ~~interest~~ or interest lien, or in any recorded amendment
 239 ~~supplement~~ thereto changing the address, or in any written
 240 notification by the junior interestholder to the foreclosing
 241 lienholder changing the ~~of such change in~~ address.

242 ~~(10)~~⁽⁹⁾ "Obligor" means the mortgagor, the person subject
 243 to an assessment lien, or the record owner of the timeshare
 244 interest estate.

245 (11) "Permitted delivery service" means any nationally
 246 recognized common carrier delivery service or international
 247 airmail service that allows for return receipt service.

248 ~~(12)~~⁽¹⁰⁾ "Registered agent" means an agent duly appointed
 249 by the obligor under s. 721.84 for the purpose of accepting all
 250 notices and service of process under this part. A registered
 251 agent may be an individual resident in this state whose business
 252 office qualifies as a registered office, or a domestic or

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253 foreign corporation or a not-for-profit corporation as defined
 254 in chapter 617 authorized to transact business or to conduct its
 255 affairs in this state, whose business office qualifies as a
 256 registered office. A registered agent for any obligor may not be
 257 the lienholder or the attorney for the lienholder.

258 (13)~~(11)~~ "Registered office" means the street address of
 259 the business office of the registered agent appointed under s.
 260 721.84, located in this state.

261 (14) "Trustee" means an attorney who is a member in good
 262 standing of The Florida Bar and who has been practicing law for
 263 at least 5 years or that attorney's law firm, or a title insurer
 264 authorized to transact business in this state under s. 624.401
 265 and who has been authorized to transact business for at least 5
 266 years, appointed as trustee or as substitute trustee in
 267 accordance with s. 721.855 or s. 721.856. A receiver appointed
 268 under s. 721.26 may act as a trustee under s. 721.855. A trustee
 269 must be independent as defined in s. 721.05(20).

270 Section 7. Section 721.83, Florida Statutes, is amended to
 271 read:

272 721.83 Consolidation of judicial foreclosure actions.—

273 (1) A complaint in a foreclosure proceeding involving
 274 timeshare interests ~~estates~~ may join in the same action multiple
 275 defendant obligors and junior interestholders of separate
 276 timeshare interests ~~estates~~, provided:

277 (a) The foreclosure proceeding involves a single timeshare
 278 property.

279 (b) The foreclosure proceeding is filed by a single
 280 plaintiff.

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281 (c) The default and remedy provisions in the written
 282 instruments on which the foreclosure proceeding is based are
 283 substantially the same for each defendant.

284 (d) The nature of the defaults alleged is the same for
 285 each defendant.

286 (e) No more than 15 timeshare interests ~~estates~~, without
 287 regard to the number of defendants, are joined within the same
 288 consolidated foreclosure action.

289 (2) In any foreclosure proceeding involving multiple
 290 defendants filed under subsection (1), the court shall sever for
 291 separate trial any count of the complaint in which a defense or
 292 counterclaim is timely raised by a defendant.

293 (3) A consolidated timeshare foreclosure action shall be
 294 considered a single action, suit, or proceeding for the payment
 295 of filing fees and service charges pursuant to general law. In
 296 addition to the payment of such filing fees and service charges,
 297 an additional filing fee of up to \$10 for each timeshare
 298 interest ~~estate~~ joined in that action shall be paid to the clerk
 299 of court.

300 Section 8. Section 721.85, Florida Statutes, is amended to
 301 read:

302 721.85 Service to notice address or on registered agent.—

303 (1) Service of process for a foreclosure proceeding
 304 involving a timeshare interest ~~estate~~ may be made by any means
 305 recognized by law. In addition, substituted service on an
 306 obligor ~~a party~~ who has appointed a registered agent under s.
 307 721.84 may be made on such registered agent at the registered
 308 office. Also, when using s. 48.194 where in rem or quasi in rem

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309 relief only is sought, such service of process provisions are
 310 modified in connection with a foreclosure proceeding against a
 311 timeshare interest estate to provide that:

312 (a) Such service of process may be made on any person
 313 whether the person is located inside or outside this state, by
 314 certified mail, or registered mail, or permitted delivery
 315 service, return receipt requested, addressed to the person to be
 316 served at the notice address, or on the person's party's
 317 registered agent duly appointed under s. 721.84, at the
 318 registered office; and

319 (b) Service shall be considered obtained upon the signing
 320 of the return receipt by any person at the notice address, or by
 321 the registered agent.

322 (2) The current owner and the mortgagor of a timeshare
 323 interest estate must promptly notify the owners' association and
 324 the mortgagee of any change of address.

325 (3) Substituted notice under s. 721.855 or s. 721.856 for
 326 any party who has appointed a registered agent under s. 721.84
 327 may be made on such registered agent at the registered office.

328 Section 9. Section 721.855, Florida Statutes, is created
 329 to read:

330 721.855 Procedure for the trustee foreclosure of
 331 assessment liens.—The provisions of this section establish a
 332 trustee foreclosure procedure for assessment liens.

333 (1) APPOINTMENT OF TRUSTEE.—

334 (a) A trustee or a substitute trustee may be appointed by
 335 a lienholder at any time by recording a notice of appointment of
 336 trustee or notice of substitution of trustee in the official

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337 records of the county or counties in which the timeshare
 338 interest is located. A lienholder may appoint multiple trustees
 339 in a single appointment, and any appointed trustee may be used
 340 by the lienholder regarding the trustee foreclosure of any
 341 assessment lien under any timeshare plan for which the trustee
 342 is appointed.

343 (b) A trustee shall use good faith, skill, care, and
 344 diligence in discharging all of the trustee duties under this
 345 section and shall deal honestly and fairly with all parties.

346 (c) The recorded notice of appointment of trustee or
 347 notice of substitution of trustee shall contain the name and
 348 address of the trustee or substitute trustee, the name and
 349 address of the lienholder, and the name and address of the
 350 timeshare plan.

351 (2) INITIATING THE USE OF A TRUSTEE FORECLOSURE
 352 PROCEDURE.—

353 (a) Before initiating the trustee foreclosure procedure
 354 against any timeshare interest in a given timeshare plan:

355 1. If a timeshare instrument contains any provision
 356 specifically prohibiting the use of the trustee foreclosure
 357 procedure, or if the managing entity otherwise determines that
 358 the timeshare instrument should be amended to specifically
 359 provide for the use of the trustee foreclosure procedure, an
 360 amendment to the timeshare instrument permitting the use of the
 361 trustee foreclosure procedure set forth in this section must be
 362 adopted and recorded prior to the use of the trustee foreclosure
 363 procedure. Such amendment to the timeshare instrument shall
 364 contain a statement in substantially the following form and may

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365 be adopted by a majority of those present and voting at a duly
 366 called meeting of the owners' association at which at least 15
 367 percent of the voting interest are present in person or by
 368 proxy:

369
 370 If a timeshare owner fails to make timely payments of
 371 timeshare plan common expenses, ad valorem taxes, or
 372 special assessments, an assessment lien against the
 373 timeshare owner's timeshare interest may be foreclosed
 374 in accordance with a judicial foreclosure procedure or
 375 a trustee foreclosure procedure, either of which may
 376 result in the loss of the timeshare owner's timeshare
 377 interest. If the managing entity initiates a trustee
 378 foreclosure procedure, the timeshare owner shall have
 379 the option to object pursuant to Florida law, and in
 380 such event the managing entity may thereafter proceed
 381 only by filing a judicial foreclosure action.

382
 383 2. The managing entity shall inform owners of timeshare
 384 interests in the timeshare plan in writing that the managing
 385 entity has the right to elect to use the trustee foreclosure
 386 procedure with respect to foreclosure of assessment liens as
 387 established in this section. The managing entity shall be deemed
 388 to have complied with the requirements of this subparagraph if
 389 the owners of timeshare interests in the given timeshare plan
 390 are informed by mail sent to each owner's notice address, in the
 391 notice of an annual or special meeting of the owners, by posting
 392 on the website of the applicable timeshare plan, or by any owner

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393 communication used by the managing entity.

394 (b) Before initiating the trustee foreclosure procedure
 395 against any timeshare interest, a claim of lien against the
 396 timeshare interest shall be recorded under s. 721.16 or, if
 397 applicable, s. 718.116 or s. 719.108, and the notice of the
 398 intent to file a lien shall be given under s. 718.121 for
 399 timeshare condominiums and s. 719.108 for timeshare
 400 cooperatives.

401 (c)1. In order to initiate a trustee foreclosure procedure
 402 against a timeshare interest, the lienholder shall deliver an
 403 affidavit to the trustee that identifies the obligor; the notice
 404 address of the obligor; the timeshare interest; the date that
 405 the notice of the intent to file a lien was given, if
 406 applicable; the official records book and page number where the
 407 claim of lien is recorded; and the name and notice address of
 408 any junior interestholder. The affidavit shall be accompanied by
 409 a title search of the timeshare interest identifying any junior
 410 interestholders of record, and the effective date of the title
 411 search must be a date that is within 60 calendar days before the
 412 date of the affidavit.

413 2. The affidavit shall also state the facts that establish
 414 that the obligor has defaulted in the obligation to make a
 415 payment under a specified provision of the timeshare instrument
 416 or applicable law.

417 3. The affidavit shall also specify the amounts secured by
 418 the lien as of the date of the affidavit and a per diem amount
 419 to account for further accrual of the amounts secured by the
 420 lien.

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421 4. The affidavit shall also state that the assessment lien
 422 was properly created and authorized pursuant to the timeshare
 423 instrument and applicable law.

424 (3) OBLIGOR'S RIGHTS.—

425 (a) The obligor may object to the lienholder's use of the
 426 trustee foreclosure procedure for a specific default any time
 427 before the sale of the timeshare interest under subsection (7)
 428 by delivering a written objection to the trustee using the
 429 objection form provided for in subsection (5). If the trustee
 430 receives the written objection from the obligor, the trustee may
 431 not proceed with the trustee foreclosure procedure as to the
 432 default specified in the notice of default and intent to
 433 foreclose under subsection (5), and the lienholder may proceed
 434 thereafter only with a judicial foreclosure action as to that
 435 specified default.

436 (b) At any time before the trustee issues the certificate
 437 of sale under paragraph (7) (f), the obligor may cure the default
 438 and redeem the timeshare interest by paying the amounts secured
 439 by the lien in cash or certified funds to the trustee. After the
 440 trustee issues the certificate of sale, there is no right of
 441 redemption.

442 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
 443 trustee may sell an encumbered timeshare interest foreclosed
 444 under this section if:

445 (a) The trustee has received the affidavit from the
 446 lienholder under paragraph (2) (c);

447 (b) The trustee has not received a written objection to
 448 the use of the trustee foreclosure procedure under paragraph

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449 (3) (a) and the timeshare interest was not redeemed under
 450 paragraph (3) (b);

451 (c) There is no lis pendens recorded and pending against
 452 the same timeshare interest and the trustee has not been served
 453 notice of the filing of any action to enjoin the trustee
 454 foreclosure sale;

455 (d) The trustee has provided written notice of default and
 456 intent to foreclose as required under subsection (5) and a
 457 period of at least 30 calendar days has elapsed after such
 458 notice is deemed perfected under subsection (5); and

459 (e) The notice of sale required under subsection (6) has
 460 been recorded in the official records of the county or counties
 461 in which the timeshare interest is located.

462 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

463 (a) In any foreclosure proceeding under this section, the
 464 trustee is required to notify the obligor of the proceeding by
 465 sending the obligor a written notice of default and intent to
 466 foreclose to the notice address of the obligor by certified
 467 mail, registered mail, or permitted delivery service, return
 468 receipt requested, and by first-class mail or permitted delivery
 469 service, postage prepaid, as follows:

470 1. The notice of default and intent to foreclose shall
 471 identify the obligor, the notice address of the obligor, the
 472 legal description of the timeshare interest, the nature of the
 473 default, the amounts secured by the lien, and a per diem amount
 474 to account for further accrual of the amounts secured by the
 475 lien and shall state the method by which the obligor may cure
 476 the default, including the period of time after the date of the

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477 notice of default and intent to foreclose within which the
 478 obligor may cure the default.

479 2. The notice of default and intent to foreclose shall
 480 include an objection form with which the obligor can object to
 481 the use of the trustee foreclosure procedure by signing and
 482 returning the objection form to the trustee. The objection form
 483 shall identify the obligor, the notice address of the obligor,
 484 the timeshare interest, and the return address of the trustee
 485 and shall state: "The undersigned obligor exercises the
 486 obligor's right to object to the use of the trustee foreclosure
 487 procedure contained in section 721.855, Florida Statutes."

488 3. The notice of default and intent to foreclose shall
 489 also contain a statement in substantially the following form:

491 If you fail to cure the default as set forth in this
 492 notice or take other appropriate action with regard to
 493 this foreclosure matter, you risk losing ownership of
 494 your timeshare interest through the trustee
 495 foreclosure procedure established in section 721.855,
 496 Florida Statutes. You may choose to sign and send to
 497 the trustee the enclosed objection form, exercising
 498 your right to object to the use of the trustee
 499 foreclosure procedure. Upon the trustee's receipt of
 500 your signed objection form, the foreclosure of the
 501 lien with respect to the default specified in this
 502 notice shall be subject to the judicial foreclosure
 503 procedure only. You have the right to cure your
 504 default in the manner set forth in this notice at any

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505 time before the trustee's sale of your timeshare
 506 interest. If you do not object to the use of the
 507 trustee foreclosure procedure, you will not be subject
 508 to a deficiency judgment even if the proceeds from the
 509 sale of your timeshare interest are insufficient to
 510 offset the amounts secured by the lien.

511
 512 4. The trustee shall also mail a copy of the notice of
 513 default and intent to foreclose, without the objection form, to
 514 the notice address of any junior interestholder by certified
 515 mail, registered mail, or permitted delivery service, return
 516 receipt requested, and by first-class mail or permitted delivery
 517 service, postage prepaid.

518 5. Notice under this paragraph is considered perfected
 519 upon the trustee receiving the return receipt bearing the
 520 signature of the obligor or junior interestholder, as
 521 applicable, within 30 calendar days after the trustee sent the
 522 notice under this paragraph. Notice under this paragraph is not
 523 perfected if the notice is returned as undeliverable within 30
 524 calendar days after the trustee sent the notice, if the trustee
 525 cannot ascertain from the receipt that the obligor or junior
 526 interestholder, as applicable, is the person who signed the
 527 receipt, or if the receipt from the obligor or junior
 528 interestholder, as applicable, is returned or refused within 30
 529 calendar days after the trustee sent the notice.

530 (b) If the notice required by paragraph (a) is returned as
 531 undeliverable within 30 calendar days after the trustee sent the
 532 notice, the trustee shall perform a diligent search and inquiry

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533 to obtain a different address for the obligor or junior
534 interestholder. For purposes of this paragraph, any address
535 known and used by the lienholder for sending regular mailings or
536 other communications from the lienholder to the obligor or
537 junior interestholder, as applicable, shall be included with
538 other addresses produced from the diligent search and inquiry,
539 if any.

540 1. If the trustee's diligent search and inquiry produces
541 an address different from the notice address, the trustee shall
542 mail a copy of the notice by certified mail, registered mail, or
543 permitted delivery service, return receipt requested, and by
544 first-class mail or permitted delivery service, postage prepaid,
545 to the new address. Notice under this subparagraph is considered
546 perfected upon the trustee receiving the return receipt bearing
547 the signature of the obligor or junior interestholder, as
548 applicable, within 30 calendar days after the trustee sent the
549 notice under this subparagraph. Notice under this subparagraph
550 is not perfected if the trustee cannot ascertain from the
551 receipt that the obligor or junior interestholder, as
552 applicable, is the person who signed the receipt or the receipt
553 from the obligor or junior interestholder, as applicable, is
554 returned refused. If the trustee does not perfect notice under
555 this subparagraph, the trustee shall perfect service in the
556 manner set forth in paragraph (c).

557 2. If the trustee's diligent search and inquiry does not
558 locate a different address for the obligor or junior
559 interestholder, as applicable, the trustee may perfect notice
560 against that person under paragraph (c).

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561 (c) If the notice is not perfected under subparagraph
562 (a)5., and such notice was not returned as undeliverable, or if
563 the notice was not perfected under subparagraph (b)1., the
564 trustee may perfect notice by publication in a newspaper of
565 general circulation in the county or counties in which the
566 timeshare interest is located. The notice shall appear at least
567 once a week for 2 consecutive weeks. The trustee may group an
568 unlimited number of notices in the same publication, if all of
569 the notices pertain to the same timeshare plan. Notice under
570 this paragraph is considered perfected upon publication as
571 required in this paragraph.

572 (d) If notice is perfected under subparagraph (a)5., the
573 trustee shall execute an affidavit in recordable form setting
574 forth the manner in which notice was perfected and attach the
575 affidavit to the certificate of compliance set forth in
576 subsection (9). The affidavit shall state the nature of the
577 notice, the date on which the notice was mailed, the name and
578 address on the envelope containing the notice, the manner in
579 which the notice was mailed, and the basis for that knowledge.

580 (e) If notice is perfected under subparagraph (b)1., the
581 trustee shall execute an affidavit in recordable form setting
582 forth the manner in which notice was perfected and attach the
583 affidavit to the certificate of compliance set forth in
584 subsection (9). The affidavit shall state the nature of the
585 notice, the dates on which the notice was mailed, the name and
586 addresses on the envelopes containing the notice, the manner in
587 which the notices were mailed, the fact that a signed receipt
588 from the certified mail, registered mail, or permitted delivery

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589 service was timely received, and the name and address on the
 590 envelopes containing the notice.

591 (f) If notice is perfected by publication under paragraph
 592 (c), the trustee shall execute an affidavit in recordable form
 593 setting forth the manner in which notice was perfected and
 594 attach the affidavit to the certificate of compliance set forth
 595 in subsection (9). The affidavit shall include all the
 596 information contained in either paragraph (d) or paragraph (e),
 597 as applicable, shall state that the notice was perfected by
 598 publication after diligent search and inquiry was made for the
 599 current address for the person, and shall include a statement
 600 that notice was perfected by publication, and shall set forth
 601 the information required by s. 49.041 in the case of a natural
 602 person or s. 49.051 in the case of a corporation, whichever is
 603 applicable. No other action of the trustee is necessary to
 604 perfect notice.

605 (6) NOTICE OF SALE.—

606 (a) The notice of sale shall set forth:

- 607 1. The name and notice addresses of the obligor and any
 608 junior interestholder.
- 609 2. The legal description of the timeshare interest.
- 610 3. The name and address of the trustee.
- 611 4. A description of the default that is the basis for the
 612 foreclosure.
- 613 5. The official records book and page numbers where the
 614 claim of lien is recorded.
- 615 6. The amounts secured by the lien and a per diem amount
 616 to account for further accrual of the amounts secured by the

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617 lien.

618 7. The date, location, and starting time of the trustee's
 619 sale.

620 8. The right of and the method by which the obligor may
 621 cure the default or the right of any junior interestholder to
 622 redeem its interest up to the date the trustee issues the
 623 certificate of sale in accordance with paragraph (7) (f).

624 (b) The trustee shall send a copy of the notice of sale
 625 within 3 business days after the date it is submitted for
 626 recording, by first-class mail or permitted delivery service,
 627 postage prepaid, to the notice addresses of the obligor and any
 628 junior interestholder.

629 (c) After the date of recording of the notice of sale,
 630 notice is not required to be given to any person claiming an
 631 interest in the timeshare interest except as provided in this
 632 section. The recording of the notice of sale has the same force
 633 and effect as the filing of a lis pendens in a judicial
 634 proceeding under s. 48.23.

635 (d)1. The trustee shall publish the notice of sale in a
 636 newspaper of general circulation in the county or counties in
 637 which the timeshare interest is located at least once a week for
 638 2 consecutive weeks before the date of the sale. The last
 639 publication shall occur at least 5 calendar days before the
 640 sale.

641 2. The trustee may group an unlimited number of notices of
 642 sale in the same publication, if all of the notices of sale
 643 pertain to the same timeshare plan.

644 (7) MANNER OF SALE.—

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645 (a) The sale of a timeshare interest by the trustee in a
646 public auction shall be held in the county in which the
647 timeshare interest is located, on the date, location, and
648 starting time designated in the notice of sale, which shall be
649 after 9:00 a.m. but before 4:00 p.m. on a business day not less
650 than 30 calendar days after the recording of the notice of sale.
651 The trustee's sale may occur online at a specific website on the
652 Internet or in any other manner used by the clerk of the court
653 for a judicial foreclosure sales procedure in the county or
654 counties in which the timeshare interest is located.

655 (b) The trustee shall conduct the sale and act as the
656 auctioneer.

657 (c) The lienholder and any person other than the trustee
658 may bid at the sale. In lieu of participating in the sale, the
659 lienholder may send the trustee written bidding instructions
660 that the trustee shall announce as appropriate during the sale.

661 (d) The trustee may postpone the sale from time to time.
662 In such case, notice of postponement must be given by the
663 trustee at the date, time, and location contained in the notice
664 of sale. The notice of sale for the postponed sale shall be
665 mailed under paragraph (6) (b), recorded under paragraph (4) (e),
666 and published under paragraph (6) (d). The effective date of the
667 initial notice of sale under paragraph (6) (b) is not affected by
668 a postponed sale.

669 (e) The highest bidder of the timeshare interest shall pay
670 the price bid to the trustee in cash or certified funds on the
671 day of the sale. If the lienholder is the highest bidder, the
672 lienholder shall receive a credit up to the amount set forth in

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673 the notice of sale as required under subparagraph (6) (a) 6.

674 (f) On the date of the sale and upon receipt of the cash
 675 or certified funds due from the highest bidder, the trustee
 676 shall issue to the highest bidder a certificate of sale stating
 677 that a foreclosure conforming to the requirements of this
 678 section has occurred, including the time, location, and date of
 679 the sale, that the timeshare interest was sold, the amounts
 680 secured by the lien, and the amount of the highest bid. A copy
 681 of the certificate of sale shall be mailed by certified mail,
 682 registered mail, or permitted delivery service, return receipt
 683 requested, to all persons entitled to receive a notice of sale
 684 under subsection (6).

685 (g) Before a sale conducted under this subsection, a
 686 junior interestholder may pursue adjudication by court, by
 687 interpleader, or in any other authorized manner respecting any
 688 matter that is disputed by the junior interestholder.

689 (8) EFFECT OF TRUSTEE'S SALE.—

690 (a) A sale conducted under subsection (7) forecloses and
 691 terminates all interests of any person with notice to whom
 692 notice is given under paragraph (4) (d) and paragraph (6) (b), and
 693 of any other person claiming interests by, through, or under any
 694 such person, in the affected timeshare interest. A failure to
 695 give notice to any person entitled to notice does not affect the
 696 validity of the sale as to the interests of any person properly
 697 notified. A person entitled to notice but not given notice has
 698 the rights of a person not made a defendant in a judicial
 699 foreclosure.

700 (b) On the issuance of a certificate of sale under

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701 paragraph (7) (f), all rights of redemption that have been
 702 foreclosed under this section shall terminate.

703 (c) A sale conducted under subsection (7) releases the
 704 obligor's liability for all amounts secured by the lien. The
 705 lienholder has no right to any deficiency judgment against the
 706 obligor after a sale of the obligor's timeshare interest under
 707 this section.

708 (d) The issuance and recording of the trustee's deed is
 709 presumed valid and may be relied upon by third parties without
 710 actual knowledge of irregularities in the foreclosure
 711 proceedings. If for any reason there is an irregularity in the
 712 foreclosure proceedings, a purchaser becomes subrogated to all
 713 the rights of the lienholder to the indebtedness that it secured
 714 to the extent necessary to reforeclose the assessment lien in
 715 order to correct the irregularity and becomes entitled to an
 716 action de novo for the foreclosure of such assessment lien. Any
 717 subsequent reforeclosure required to correct an irregularity may
 718 be conducted under this section.

719 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

720 (a) Within 10 calendar days after the trustee conducts a
 721 sale, the trustee shall execute and acknowledge a certificate of
 722 compliance that:

723 1. Confirms delivery of the notice of default and intent
 724 to foreclose and attaches the affidavit required under
 725 subsection (5).

726 2. States that the default was not cured, that the trustee
 727 did not receive any written objection under paragraph (3) (a),
 728 and that the timeshare interest was not redeemed under paragraph

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729 (3) (b) .

730 3. Confirms that the notice of sale was published as
 731 required under paragraph (6) (d) and attaches an affidavit of
 732 publication for the notice of sale.

733 4. Confirms that the notice of sale was mailed under
 734 paragraph (6) (b) together with a list of the parties to whom the
 735 notice of sale was mailed.

736 (b) In furtherance of the execution of the certificate of
 737 compliance required under this subsection, the trustee is
 738 entitled to rely upon an affidavit or certification from the
 739 lienholder as to the facts and circumstances of default and
 740 failure to cure the default.

741 (10) TRUSTEE'S DEED.-

742 (a) The trustee's deed shall include the name and address
 743 of the trustee, the name and address of the highest bidder, the
 744 name of the former owner, a legal description of the timeshare
 745 interest, and the name and address of the preparer of the
 746 trustee's deed. The trustee's deed shall contain no warranties
 747 of title from the trustee. The certificate of compliance shall
 748 be attached as an exhibit to the trustee's deed.

749 (b) Ten calendar days after a sale, absent the prior
 750 filing and service on the trustee of a judicial action to enjoin
 751 issuance of the trustee's deed to the timeshare interest, the
 752 trustee shall:

753 1. Issue a trustee's deed to the highest bidder.

754 2. Record the trustee's deed in the official records of
 755 the county or counties in which the timeshare interest is
 756 located.

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757 (c)1. The certificate of compliance and trustee's deed
 758 together are presumptive evidence of the truth of the matters
 759 set forth in them, and an action to set aside the sale and void
 760 the trustee's deed may not be filed or otherwise pursued against
 761 any person acquiring the timeshare interest for value.

762 2. The trustee's deed conveys to the highest bidder all
 763 rights, title, and interest in the timeshare interest that the
 764 former owner had, or had the power to convey, at the time of the
 765 recording of the claim of lien, together with all rights, title,
 766 and interest that the former owner or his or her successors in
 767 interest acquired after the recording of the claim of lien.

768 3. The issuance and recording of a trustee's deed shall
 769 have the same force and effect as the issuance and recording of
 770 a certificate of title by the clerk of the court in a judicial
 771 foreclosure action.

772 (11) DISPOSITION OF PROCEEDS OF SALE.-

773 (a) The trustee shall apply the proceeds of the sale as
 774 follows:

775 1. To the expenses of the sale, including compensation of
 776 the trustee.

777 2. To the amount owed and set forth in the notice as
 778 required in subparagraph (6) (a) 6.

779 3. If there are junior interestholders, the trustee may
 780 file an action in interpleader, pay the surplus to a court of
 781 competent jurisdiction, name the competing junior
 782 interestholders, and ask the court to determine the proper
 783 distribution of the surplus. In any interpleader action, the
 784 trustee shall recover reasonable attorney's fees and costs.

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785 4. If there are no junior interestholders, or if all
 786 junior interestholders have been paid, any surplus shall be paid
 787 to the former owner. If the trustee is unable to locate the
 788 former owner within 1 year after the sale, the surplus, if any,
 789 shall be deposited with the Chief Financial Officer under
 790 chapter 717.

791 (b) In disposing of the proceeds of the sale, the trustee
 792 may rely on the information provided in the affidavit of the
 793 lienholder under paragraph (2) (c) and, in the event of a dispute
 794 or uncertainty over such claims, the trustee has the discretion
 795 to submit the matter to adjudication by court, by interpleader,
 796 or in any other authorized manner and shall recover reasonable
 797 attorney's fees and costs.

798 (12) TRUSTEE FORECLOSURE ACTIONS.—The trustee foreclosure
 799 procedure established in this section does not impair or
 800 otherwise affect the lienholder's continuing right to bring a
 801 judicial foreclosure action, in lieu of using the trustee
 802 foreclosure procedure, with respect to any assessment lien.

803 (13) APPLICATION.—This section applies to any default
 804 giving rise to the imposition of an assessment lien which occurs
 805 after the effective date of this section.

806 (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 807 PROCEDURE.—

808 (a) An action for actual damages for a material violation
 809 of this section may be brought by an obligor against the
 810 lienholder for the failure to follow the trustee foreclosure
 811 procedure contained in this section.

812 (b) Any trustee who intentionally violates the provisions

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813 of this section concerning the trustee foreclosure procedure
 814 commits a felony of the third degree, punishable as provided in
 815 s. 775.082, s. 775.083, or s. 775.084.

816 Section 10. Section 721.856, Florida Statutes, is created
 817 to read:

818 721.856 Procedure for the trustee foreclosure of mortgage
 819 liens.—The provisions of this section establish a trustee
 820 foreclosure procedure for mortgage liens.

821 (1) APPOINTMENT OF TRUSTEE.—

822 (a) A trustee or a substitute trustee may be appointed by
 823 a lienholder at any time by recording a notice of appointment of
 824 trustee or notice of substitution of trustee in the official
 825 records of the county or counties in which the timeshare
 826 interest is located. A lienholder may appoint multiple trustees
 827 in a single appointment, and any appointed trustee may be used
 828 by the lienholder regarding the trustee foreclosure of any
 829 mortgage lien.

830 (b) A trustee shall use good faith, skill, care, and
 831 diligence in discharging all of the trustee duties under this
 832 section and shall deal honestly and fairly with all parties.

833 (c) The recorded notice of appointment of trustee or
 834 notice of substitution of trustee shall contain the name and
 835 address of the trustee or substitute trustee, the name and
 836 address of the lienholder, and the name and address of the
 837 timeshare plan.

838 (2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.—

839 (a) Before initiating the trustee foreclosure against a
 840 timeshare interest, the mortgage, or an amendment to a mortgage

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841 executed by the obligor before the effective date of this
842 section, must contain a statement in substantially the following
843 form:

844
845 If the mortgagor fails to make timely payments under
846 the obligation secured by this mortgage, or is
847 otherwise deemed in uncured default of this mortgage,
848 the lien against the mortgagor's timeshare interest
849 created by this mortgage may be foreclosed in
850 accordance with either a judicial foreclosure
851 procedure or a trustee foreclosure procedure and may
852 result in the loss of your timeshare interest. If the
853 mortgagee initiates a trustee foreclosure procedure,
854 the mortgagor shall have the option to object and the
855 mortgagee may proceed only by filing a judicial
856 foreclosure action.

857
858 (b)1. In order to initiate a trustee foreclosure procedure
859 against a timeshare interest, the lienholder shall deliver an
860 affidavit to the trustee that identifies the obligor, the notice
861 address of the obligor, the timeshare interest, the official
862 records book and page number where the mortgage is recorded, and
863 the name and notice address of any junior interestholder. The
864 affidavit shall be accompanied by a title search of the
865 timeshare interest identifying any junior interestholders of
866 record, and the effective date of the title search must be a
867 date that is within 60 calendar days before the date of the
868 affidavit.

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869 2. The affidavit shall also state the facts that establish
 870 that the obligor has defaulted in the obligation to make a
 871 payment under a specified provision of the mortgage or is
 872 otherwise deemed in uncured default under a specified provision
 873 of the mortgage.

874 3. The affidavit shall also specify the amounts secured by
 875 the lien as of the date of the affidavit and a per diem amount
 876 to account for further accrual of the amounts secured by the
 877 lien.

878 4. The affidavit shall also state that the appropriate
 879 amount of documentary stamp tax and intangible taxes has been
 880 paid upon recording of the mortgage, or otherwise paid to the
 881 state.

882 5. The affidavit shall also state that the lienholder is
 883 the holder of the note and has complied with all preconditions
 884 in the note and mortgage to determine the amounts secured by the
 885 lien and to initiate the use of the trustee foreclosure
 886 procedure.

887 (3) OBLIGOR'S RIGHTS.-

888 (a) The obligor may object to the lienholder's use of the
 889 trustee foreclosure procedure for a specific default any time
 890 before the sale of the timeshare interest under subsection (7)
 891 by delivering a written objection to the trustee using the
 892 objection form provided for in subsection (5). If the trustee
 893 receives the written objection from the obligor, the trustee may
 894 not proceed with the trustee foreclosure procedure as to the
 895 default specified in the notice of default and intent to
 896 foreclose under subsection (5), and the lienholder may proceed

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897 thereafter only with a judicial foreclosure action as to that
 898 specified default.

899 (b) At any time before the trustee issues the certificate
 900 of sale under paragraph (7) (f), the obligor may cure the default
 901 and redeem the timeshare interest by paying the amounts secured
 902 by the lien in cash or certified funds to the trustee. After the
 903 trustee issues the certificate of sale, there is no right of
 904 redemption.

905 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
 906 trustee may sell an encumbered timeshare interest foreclosed
 907 under this section if:

908 (a) The trustee has received the affidavit from the
 909 lienholder under paragraph (2) (b);

910 (b) The trustee has not received a written objection to
 911 the use of the trustee foreclosure procedure under paragraph
 912 (3) (a) and the timeshare interest was not redeemed under
 913 paragraph (3) (b);

914 (c) There is no lis pendens recorded and pending against
 915 the same timeshare interest, and the trustee has not been served
 916 notice of the filing of any action to enjoin the trustee
 917 foreclosure sale;

918 (d) The trustee is in possession of the original
 919 promissory note executed by the mortgagor and secured by the
 920 mortgage lien;

921 (e) The trustee has provided written notice of default and
 922 intent to foreclose as required under subsection (5) and a
 923 period of at least 30 calendar days has elapsed after such
 924 notice is deemed perfected under subsection (5); and

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925 (f) The notice of sale required under subsection (6) has
 926 been recorded in the official records of the county in which the
 927 mortgage was recorded.

928 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

929 (a) In any foreclosure proceeding under this section, the
 930 trustee is required to notify the obligor of the proceeding by
 931 sending the obligor a written notice of default and intent to
 932 foreclose to the notice address of the obligor by certified
 933 mail, registered mail, or permitted delivery service, return
 934 receipt requested, and by first-class mail or permitted delivery
 935 service, postage prepaid, as follows:

936 1. The notice of default and intent to foreclose shall
 937 identify the obligor, the notice address of the obligor, the
 938 legal description of the timeshare interest, the nature of the
 939 default, the amounts secured by the lien, and a per diem amount
 940 to account for further accrual of the amounts secured by the
 941 lien and shall state the method by which the obligor may cure
 942 the default, including the period of time after the date of the
 943 notice of default and intent to foreclose within which the
 944 obligor may cure the default.

945 2. The notice of default and intent to foreclose shall
 946 include an objection form with which the obligor can object to
 947 the use of the trustee foreclosure procedure by signing and
 948 returning the objection form to the trustee. The objection form
 949 shall identify the obligor, the notice address of the obligor,
 950 the timeshare interest, and the return address of the trustee
 951 and shall state: "The undersigned obligor exercises the
 952 obligor's right to object to the use of the trustee foreclosure

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953 procedure contained in section 721.856, Florida Statutes."

954 3. The notice of default and intent to foreclose shall
 955 also contain a statement in substantially the following form:

956

957 If you fail to cure the default as set forth in this
 958 notice or take other appropriate action with regard to
 959 this foreclosure matter, you risk losing ownership of
 960 your timeshare interest through the trustee
 961 foreclosure procedure established in section 721.856,
 962 Florida Statutes. You may choose to sign and send to
 963 the trustee the enclosed objection form, exercising
 964 your right to object to the use of the trustee
 965 foreclosure procedure. Upon the trustee's receipt of
 966 your signed objection form, the foreclosure of the
 967 lien with respect to the default specified in this
 968 notice shall be subject to the judicial foreclosure
 969 procedure only. You have the right to cure your
 970 default in the manner set forth in this notice at any
 971 time before the trustee's sale of your timeshare
 972 interest. If you do not object to the use of the
 973 trustee foreclosure procedure, you will not be subject
 974 to a deficiency judgment even if the proceeds from the
 975 sale of your timeshare interest are insufficient to
 976 offset the amounts secured by the lien.

977

978 4. The trustee shall also mail a copy of the notice of
 979 default and intent to foreclose, without the objection form, to
 980 the notice address of any junior interestholder by certified

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981 mail, registered mail, or permitted delivery service, return
 982 receipt requested, and by first-class mail or permitted delivery
 983 service, postage prepaid.

984 5. Notice under this paragraph is considered perfected
 985 upon the trustee receiving the return receipt bearing the
 986 signature of the obligor or junior interestholder, as
 987 applicable, within 30 calendar days after the trustee sent the
 988 notice under this paragraph. Notice under this paragraph is not
 989 perfected if the notice is returned as undeliverable within 30
 990 calendar days after the trustee sent the notice, if the trustee
 991 cannot ascertain from the receipt that the obligor or junior
 992 interestholder, as applicable, is the person who signed the
 993 receipt, or if the receipt from the obligor or junior
 994 interestholder, as applicable, is returned or refused within 30
 995 calendar days after the trustee sent the notice.

996 (b) If the notice required by paragraph (a) is returned as
 997 undeliverable within 30 calendar days after the trustee sent the
 998 notice, the trustee shall perform a diligent search and inquiry
 999 to obtain a different address for the obligor or junior
 1000 interestholder. For purposes of this paragraph, any address
 1001 known and used by the lienholder for sending regular mailings or
 1002 other communications from the lienholder to the obligor or
 1003 junior interestholder, as applicable, shall be included with
 1004 other addresses produced from the diligent search and inquiry,
 1005 if any.

1006 1. If the trustee's diligent search and inquiry produces
 1007 an address different from the notice address, the trustee shall
 1008 mail a copy of the notice by certified mail, registered mail, or

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1009 permitted delivery service, return receipt requested, and by
1010 first-class mail or permitted delivery service, postage prepaid,
1011 to the new address. Notice under this subparagraph is considered
1012 perfected upon the trustee receiving the return receipt bearing
1013 the signature of the obligor or junior interestholder, as
1014 applicable, within 30 calendar days after the trustee sent the
1015 notice under this subparagraph. Notice under this subparagraph
1016 is not perfected if the trustee cannot ascertain from the
1017 receipt that the obligor or junior interestholder, as
1018 applicable, is the person who signed the receipt or the receipt
1019 from the obligor or junior interestholder, as applicable, is
1020 returned refused. If the trustee does not perfect notice under
1021 this subparagraph, the trustee shall perfect service in the
1022 manner set forth in paragraph (c).

1023 2. If the trustee's diligent search and inquiry does not
1024 locate a different address for the obligor or junior
1025 interestholder, as applicable, the trustee may perfect notice
1026 against that person under paragraph (c).

1027 (c) If the notice is not perfected under subparagraph
1028 (a)5., and such notice was not returned as undeliverable, or if
1029 the notice was not perfected under subparagraph (b)1., the
1030 trustee may perfect notice by publication in a newspaper of
1031 general circulation in the county or counties in which the
1032 timeshare interest is located. The notice shall appear at least
1033 once a week for 2 consecutive weeks. The trustee may group an
1034 unlimited number of notices in the same publication, if all of
1035 the notices pertain to the same timeshare plan. Notice under
1036 this paragraph is considered perfected upon publication as

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1037 required in this paragraph.

1038 (d) If notice is perfected under subparagraph (a)5., the
 1039 trustee shall execute an affidavit in recordable form setting
 1040 forth the manner in which notice was perfected and attach the
 1041 affidavit to the certificate of compliance set forth in
 1042 subsection (9). The affidavit shall state the nature of the
 1043 notice, the date on which the notice was mailed, the name and
 1044 address on the envelope containing the notice, the manner in
 1045 which the notice was mailed, and the basis for that knowledge.

1046 (e) If notice is perfected under subparagraph (b)1., the
 1047 trustee shall execute an affidavit in recordable form setting
 1048 forth the manner in which notice was perfected and attach the
 1049 affidavit to the certificate of compliance set forth in
 1050 subsection (9). The affidavit shall state the nature of the
 1051 notice, the dates on which the notice was mailed, the name and
 1052 addresses on the envelopes containing the notice, the manner in
 1053 which the notice was mailed, the fact that a signed receipt from
 1054 the certified mail, registered mail, or permitted delivery
 1055 service was timely received, and the name and address on the
 1056 envelopes containing the notice.

1057 (f) If notice is perfected under paragraph (c), the
 1058 trustee shall execute an affidavit in recordable form setting
 1059 forth the manner in which notice was perfected and attach the
 1060 affidavit to the certificate of compliance set forth in
 1061 subsection (9). The affidavit shall include all the information
 1062 contained in either paragraph (d) or paragraph (e), as
 1063 applicable, shall state that the notice was perfected by
 1064 publication after diligent search and inquiry was made for the

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1065 current address for the person, shall include a statement that
 1066 notice was perfected by publication, and shall set forth the
 1067 information required by s. 49.041 in the case of a natural
 1068 person or s. 49.051 in the case of a corporation, whichever is
 1069 applicable. No other action of the trustee is necessary to
 1070 perfect notice.

1071 (6) NOTICE OF SALE.—

1072 (a) The notice of sale shall set forth:

- 1073 1. The name and notice addresses of the obligor and any
 1074 junior interestholder.
- 1075 2. The legal description of the timeshare interest.
- 1076 3. The name and address of the trustee.
- 1077 4. A description of the default that is the basis for the
 1078 foreclosure.
- 1079 5. The official records book and page numbers where the
 1080 mortgage is recorded.
- 1081 6. The amounts secured by the lien and a per diem amount
 1082 to account for further accrual of the amounts secured by the
 1083 lien.
- 1084 7. The date, location, and starting time of the trustee's
 1085 sale.
- 1086 8. The right of and the method by which the obligor may
 1087 cure the default or the right of any junior interestholder to
 1088 redeem its interest up to the date the trustee issues the
 1089 certificate of sale in accordance with paragraph (7) (f).
- 1090 (b) The trustee shall send a copy of the notice of sale
 1091 within 3 business days after the date it is submitted for
 1092 recording, by first-class mail or permitted delivery service,

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1093 postage prepaid, to the notice addresses of the obligor and any
 1094 junior interestholder.

1095 (c) After the date of recording of the notice of sale,
 1096 notice is not required to be given to any person claiming an
 1097 interest in the timeshare interest except as provided in this
 1098 section. The recording of the notice of sale has the same force
 1099 and effect as the filing of a lis pendens in a judicial
 1100 proceeding under s. 48.23.

1101 (d)1. The trustee shall publish the notice of sale in a
 1102 newspaper of general circulation in the county or counties in
 1103 which the timeshare interest is located at least once a week for
 1104 2 consecutive weeks before the date of the sale. The last
 1105 publication shall occur at least 5 calendar days before the
 1106 sale.

1107 2. The trustee may group an unlimited number of notices of
 1108 sale in the same publication, if all of the notices of sale
 1109 pertain to the same timeshare plan.

1110 (7) MANNER OF SALE.—

1111 (a) The sale of a timeshare interest by the trustee in a
 1112 public auction shall be held in the county in which the
 1113 timeshare interest is located, on the date, location, and
 1114 starting time designated in the notice of sale, which shall be
 1115 after 9:00 a.m. but before 4:00 p.m. on a business day not less
 1116 than 30 calendar days after the recording of the notice of sale.
 1117 The trustee's sale may occur online at a specific website on the
 1118 Internet or in any other manner used by the clerk of the court
 1119 for a judicial foreclosure sales procedure in the county or
 1120 counties in which the timeshare interest is located.

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1121 (b) The trustee shall conduct the sale and act as the
 1122 auctioneer.

1123 (c) The lienholder and any person other than the trustee
 1124 may bid at the sale. In lieu of participating in the sale, the
 1125 lienholder may send the trustee written bidding instructions
 1126 that the trustee shall announce as appropriate during the sale.

1127 (d) The trustee may postpone the sale from time to time.
 1128 In such case, notice of postponement must be given by the
 1129 trustee at the date, time, and location contained in the notice
 1130 of sale. The notice of sale for the postponed sale shall be
 1131 mailed under paragraph (6) (b), recorded under paragraph (4) (f),
 1132 and published under paragraph (6) (d). The effective date of the
 1133 initial notice of sale under paragraph (6) (b) is not affected by
 1134 a postponed sale.

1135 (e) The highest bidder of the timeshare interest shall pay
 1136 the price bid to the trustee in cash or certified funds on the
 1137 day of the sale. If the lienholder is the highest bidder, the
 1138 lienholder shall receive a credit up to the amount set forth in
 1139 the notice of sale as required under subparagraph (6) (a)6.

1140 (f) On the date of the sale and upon receipt of the cash
 1141 or certified funds due from the highest bidder, the trustee
 1142 shall issue to the highest bidder a certificate of sale stating
 1143 that a foreclosure conforming to the requirements of this
 1144 section has occurred, including the time, location, and date of
 1145 the sale, that the timeshare interest was sold, the amounts
 1146 secured by the lien, and the amount of the highest bid. A copy
 1147 of the certificate of sale shall be mailed by certified mail,
 1148 registered mail, or permitted delivery service, return receipt

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1149 requested, to all persons entitled to receive a notice of sale
 1150 under subsection (6).

1151 (g) Before a sale conducted pursuant to this subsection, a
 1152 junior interestholder may pursue adjudication by court, by
 1153 interpleader, or in any other authorized manner respecting any
 1154 matter that is disputed by the junior interestholder.

1155 (8) EFFECT OF TRUSTEE'S SALE.—

1156 (a) A sale conducted under subsection (7) forecloses and
 1157 terminates all interests of any person with notice to whom
 1158 notice is given under paragraph (4) (e) and paragraph (6) (b), and
 1159 of any other person claiming interests by, through, or under any
 1160 such person, in the affected timeshare interest. A failure to
 1161 give notice to any person entitled to notice does not affect the
 1162 validity of the sale as to the interests of any person properly
 1163 notified. A person entitled to notice but not given notice has
 1164 the rights of a person not made a defendant in a judicial
 1165 foreclosure.

1166 (b) On the issuance of a certificate of sale under
 1167 paragraph (7) (f), all rights of redemption that have been
 1168 foreclosed under this section shall terminate.

1169 (c) A sale conducted under subsection (7) releases the
 1170 obligor's liability for all amounts secured by the lien. The
 1171 lienholder has no right to any deficiency judgment against the
 1172 obligor after a sale of the obligor's timeshare interest under
 1173 this section.

1174 (d) The issuance and recording of the trustee's deed is
 1175 presumed valid and may be relied upon by third parties without
 1176 actual knowledge of any irregularities in the foreclosure

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1177 proceedings. If for any reason there is an irregularity in the
1178 foreclosure proceedings, a purchaser becomes subrogated to all
1179 the rights of the lienholder to the indebtedness that it secured
1180 to the extent necessary to reforeclose the mortgage lien in
1181 order to correct the irregularity and becomes entitled to an
1182 action de novo for the foreclosure of such mortgage lien. Any
1183 subsequent reforeclosure required to correct an irregularity may
1184 be conducted under this section.

1185 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.—

1186 (a) Within 10 calendar days after the trustee conducts a
1187 sale, the trustee shall execute and acknowledge a certificate of
1188 compliance which:

1189 1. Confirms delivery of the notice of default and intent
1190 to foreclose and attaches the affidavit required under
1191 subsection (5).

1192 2. States that the default was not cured, that the trustee
1193 did not receive any written objection under paragraph (3) (a),
1194 and that the timeshare interest was not redeemed under paragraph
1195 (3) (b).

1196 3. States that the trustee is in possession of the
1197 original promissory note executed by the mortgagor and secured
1198 by the mortgage lien.

1199 4. Confirms that the notice of sale was published as
1200 required under paragraph (6) (d) and attaches an affidavit of
1201 publication for the notice of sale.

1202 5. Confirms that the notice of sale was mailed under
1203 paragraph (6) (b) together with a list of the parties to whom the
1204 notice of sale was mailed.

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1205 (b) In furtherance of the execution of the certificate of
 1206 compliance required under this subsection, the trustee is
 1207 entitled to rely upon an affidavit or certification from the
 1208 lienholder as to the facts and circumstances of default and
 1209 failure to cure the default.

1210 (10) TRUSTEE'S DEED.-

1211 (a) The trustee's deed shall include the name and address
 1212 of the trustee, the name and address of the highest bidder, the
 1213 name of the former owner, a legal description of the timeshare
 1214 interest, and the name and address of the preparer of the
 1215 trustee's deed. The trustee's deed shall contain no warranties
 1216 of title from the trustee. The certificate of compliance shall
 1217 be attached as an exhibit to the trustee's deed.

1218 (b) Ten calendar days after a sale, absent the prior
 1219 filing and service on the trustee of a judicial action to enjoin
 1220 issuance of the trustee's deed to the timeshare interest, the
 1221 trustee shall:

1222 1. Cancel the original promissory note executed by the
 1223 mortgagor and secured by the mortgage lien.

1224 2. Issue a trustee's deed to the highest bidder.

1225 3. Record the trustee's deed in the official records of
 1226 the county or counties in which the timeshare interest is
 1227 located.

1228 (c)1. The certificate of compliance and trustee's deed
 1229 together are presumptive evidence of the truth of the matters
 1230 set forth in them, and an action to set aside the sale and void
 1231 the trustee's deed may not be filed or otherwise pursued against
 1232 any person acquiring the timeshare interest for value.

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1233 2. The trustee's deed conveys to the highest bidder all
 1234 rights, title, and interest in the timeshare interest that the
 1235 former owner had, or had the power to convey, together with all
 1236 rights, title, and interest that the former owner or his or her
 1237 successors in interest acquired after the execution of the
 1238 mortgage.

1239 3. The issuance and recording of a trustee's deed shall
 1240 have the same force and effect as the issuance and recording of
 1241 a certificate of title by the clerk of the court in a judicial
 1242 foreclosure action.

1243 (11) DISPOSITION OF PROCEEDS OF SALE.—

1244 (a) The trustee shall apply the proceeds of the sale as
 1245 follows:

1246 1. To the expenses of the sale, including compensation of
 1247 the trustee.

1248 2. To the amount owed and set forth in the notice as
 1249 required under subparagraph (6) (a) 6.

1250 3. If there are junior interestholders, the trustee may
 1251 file an action in interpleader, pay the surplus to a court of
 1252 competent jurisdiction, name the competing junior
 1253 interestholders, and ask the court to determine the proper
 1254 distribution of the surplus. In any interpleader action, the
 1255 trustee shall recover reasonable attorney's fees and costs.

1256 4. If there are no junior interestholders, or if all
 1257 junior interestholders have been paid, any surplus shall be paid
 1258 to the former owner. If the trustee is unable to locate the
 1259 former owner within 1 year after the sale, the surplus, if any,
 1260 shall be deposited with the Chief Financial Officer under

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1261 chapter 717.

1262 (b) In disposing of the proceeds of the sale, the trustee
 1263 may rely on the information provided in the affidavit of the
 1264 lienholder under paragraph (2) (b) and, in the event of a dispute
 1265 or uncertainty over such claims, the trustee has the discretion
 1266 to submit the matter to adjudication by court, by interpleader,
 1267 or in any other authorized manner and shall recover reasonable
 1268 attorney's fees and costs.

1269 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure
 1270 procedure established in this section does not impair or
 1271 otherwise affect the lienholder's continuing right to bring a
 1272 judicial foreclosure action, in lieu of using the trustee
 1273 foreclosure procedure, with respect to any mortgage lien.

1274 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
 1275 PROCEDURE.—

1276 (a) An action for actual damages for a material violation
 1277 of this section may be brought by an obligor against the
 1278 lienholder for the failure to follow the trustee foreclosure
 1279 procedure contained in this section.

1280 (b) Any trustee who intentionally violates the provisions
 1281 of this section concerning the trustee foreclosure procedure
 1282 commits a felony of the third degree, punishable as provided in
 1283 s. 775.082, s. 775.083, or s. 775.084.

1284 Section 11. Subsections (1) and (4) of section 721.86,
 1285 Florida Statutes, are amended to read:

1286 721.86 Miscellaneous provisions.—

1287 (1) In the event of a conflict between the provisions of
 1288 this part and the other provisions of this chapter, chapter 702,

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1289 or other applicable law, the provisions of this part shall
 1290 prevail. The procedures in this part must be given effect in the
 1291 context of any foreclosure proceedings against timeshare
 1292 interests ~~estates~~ governed by this chapter, chapter 702, chapter
 1293 718, or chapter 719.

1294 (4) In addition to assessment liens and mortgage liens
 1295 arising after the effective date of this part, except as
 1296 provided in s. 721.855(13), the provisions of this part apply to
 1297 all assessment liens and mortgage liens existing prior to the
 1298 effective date of this act regarding which a foreclosure
 1299 proceeding has not yet commenced.

1300 Section 12. Subsection (2) of section 721.20, Florida
 1301 Statutes, is amended to read:

1302 721.20 Licensing requirements; suspension or revocation of
 1303 license; exceptions to applicability; collection of advance fees
 1304 for listings unlawful.-

1305 (2) Solicitors who engage only in the solicitation of
 1306 prospective purchasers and any purchaser who refers no more than
 1307 20 people to a developer or managing entity per year or who
 1308 otherwise provides testimonials on behalf of a developer or
 1309 managing entity are exempt from the provisions of chapter 475.

1310 Section 13. An administrative fee of \$50 per trustee deed
 1311 for each deed recorded pursuant to the trustee foreclosure
 1312 procedures set forth in ss. 721.855 and 721.856, Florida
 1313 Statutes, shall be paid and remitted at the same time and in the
 1314 same manner as documentary stamp taxes imposed pursuant to s.
 1315 201.02, Florida Statutes. Revenues from such fees shall be
 1316 remitted to the Department of Revenue in the same manner as

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1317 documentary stamp taxes and deposited in the State Courts
1318 Revenue Trust Fund.
1319 Section 14. This act shall take effect upon becoming a
1320 law.



The Florida Bar



Jesse H. Diner
President

John F. Harkness, Jr.
Executive Director

Mayanne Downs
President-elect

March 31, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FTC "Mortgage Assistance Relief Services" Rulemaking,
Rule No. R911003, 75 Fed. Reg. 10707 (March 9, 2010)

I write on behalf of the 87,000+ members of The Florida Bar to echo the concerns expressed to you by the American Bar Association regarding the lawyer exemption now contained in the Commission's proposed rule for "Mortgage Assistance Relief Services."

We request that you amend this proposed rule to exempt licensed attorneys who are practicing law and those who are acting under an attorney's direction. We otherwise endorse the comments of the ABA, tendered to you by letter of March 29, 2010, which provides a more complete explanation of our concerns.

Like the ABA, The Florida Bar believes this proposed rule would undermine the confidential attorney-client relationship and interfere with traditional state court regulation of lawyers. The proposal subjects lawyers to burdensome recordkeeping and apparently makes such confidential information available to the Commission. Additionally, this proposed rule prohibits lawyers from giving out-of-state clients necessary legal counsel by prohibiting them from advising those consumers not to communicate directly with lenders. Further, this suggested provision creates a questionable incentive for a client to file a bankruptcy petition or lawsuit instead of negotiating an informal resolution of any mortgage dispute. The measure would do so by prohibiting lawyers from charging any advance fee for helping their clients renegotiate their mortgages or avoid foreclosure if a bankruptcy petition or lawsuit is not filed. Such a ban on advance fees seems unnecessary and also increases the risk that clients may not receive appropriate legal representation because lawyers may not get paid for their services.

The Florida Bar urges the FTC to modify this proposal as the ABA suggests, to exempt licensed attorneys engaged in the practice of law, as well as those attorneys' employees and agents – all of whom help consumers to either renegotiate their residential mortgage loans or to otherwise avoid foreclosure.

Sincerely,

Jesse H. Diner

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**PART I
POWERS OF ATTORNEY**

Section 709.101 Short title.—Sections 709.101-709.403 may be cited as the Florida Power of Attorney Act.

Section 709.102 Definitions.—In this act, the term:

- (1) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, co-agent, and successor agent. The agent must be a natural person who is 18 years of age or older, or a financial institution as defined in chapter 655 with trust powers having a place of business in this state and authorized to conduct trust business in this state.
- (2) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.
- (3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (4) "Incapacity" means inability of an individual to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.
- (5) "Knowledge" means a person (a) has actual knowledge of the fact, (b) has received a notice or notification of the fact, or (c) has reason to know the fact from all other facts and circumstances known to the person at the time in question. An organization that conducts activities through employees has notice or knowledge of a fact involving a power of attorney only from the time information was received by an employee having responsibility to act on matters involving the power of attorney, or would have been if brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act on matters involving the power of attorney and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular

duties or the individual knows a matter involving the power of attorney would be materially affected by the information.

- (6) “Power of attorney” means a writing that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.
- (7) “Presently exercisable general power of appointment,” with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors, or the creditors of the principal’s estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.
- (8) “Principal” means an individual who grants authority to an agent in a power of attorney.
- (9) “Property” means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.
- (10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (11) “Sign” means, with present intent to authenticate or adopt a record:
 - (a) To execute or adopt a tangible symbol; or
 - (b) To attach to or logically associate with the record an electronic sound, symbol, or process.
- (12) “Third person” means any person other than the principal or the agent in its capacity as agent.

Section 709.103 Applicability.—This act applies to all powers of attorney except:

- (1) A proxy or other delegation to exercise voting rights or management rights with respect to an entity;

- (2) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;
- (3) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction; and
- (4) A power created by a person other than an individual.

Section 709.104 When power of attorney is durable.—A power of attorney created under this act is durable if it contains the words: “This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes”; or similar words that show the principal’s intent that the authority conferred is exercisable notwithstanding the principal’s subsequent incapacity, except as otherwise provided by this act.

Section 709.105 Execution of power of attorney.—A power of attorney must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public or as otherwise provided in s. 695.03.

Section 709.106 Validity of power of attorney.—

- (1) A power of attorney executed on or after the effective date of this act is valid if its execution complies with s. 709.105.
- (2) A power of attorney executed before the effective date of this act is valid if its execution complied with the law of this state as it existed at the time of execution.
- (3) Except as otherwise provided in the power of attorney or by law other than this act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Section 709.1065 Military powers of attorney.—Notwithstanding anything in this act to the contrary:

- (1) A military power of attorney is valid if it is executed in accordance with the requirements for a military power of attorney pursuant to 10 U.S.C. sec. 1044b, as amended.

- (2) A deployment-contingent power of attorney, which may be signed in advance and go into effect upon the deployment of the principal, shall be afforded full force and effect by the courts of the State of Florida.

Section 709.107 Meaning and effectiveness of power of attorney.— The meaning and effectiveness of a power of attorney is determined by this act if:

- (1) The power of attorney is used in this state; or
- (2) The power of attorney states that it is to be governed by the laws of this state..

Section 709.108 When power of attorney effective.—

- (1) Except as provided in this section, a power of attorney is exercisable when executed.
- (2) If a power of attorney executed before the effective date of this act is conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12)(a), and the power of attorney has not become exercisable prior to the effective date of this act, the power of attorney is exercisable upon the delivery of the affidavit of a physician who has primary responsibility for the treatment and care of the principal and who is licensed to practice medicine pursuant to chapter 458 and 459 as of the date of the affidavit. The affidavit executed by a physician must state where the physician is licensed to practice medicine, that the physician is the primary physician who has responsibility for the treatment and care of the principal, and that the physician believes that the principal lacks the capacity to manage property as defined in s. 744.102(12)(a).
- (3) Except as provided in subsection (2) and section 709.1065, a power of attorney is ineffective in this state if the power of attorney provides that it is to become effective at a future date or upon the occurrence of a future event or contingency.

Section 709.109 Termination or suspension of power of attorney or agent's authority.—

- (1) A power of attorney terminates when:
 - (a) The principal dies;

- (b) The principal becomes incapacitated, if the power of attorney is not durable.
 - (c) The principal is adjudicated totally or partially incapacitated by a court, unless the court determines that certain authority granted by the power of attorney is to be exercisable by the agent;
 - (d) The principal revokes the power of attorney;
 - (e) The power of attorney provides that it terminates;
 - (f) The purpose of the power of attorney is accomplished;
or
 - (g) The agent's authority terminates and the power of attorney does not provide for another agent to act under the power of attorney.
- (2) An agent's authority is exercisable until the authority terminates under this subsection. An agent's authority terminates when:
- (a) The agent dies, becomes incapacitated, resigns or is removed by a court;
 - (b) An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or
 - (c) The power of attorney terminates.
- (3) If any person initiates proceedings in any court of competent jurisdiction to determine the principal's incapacity, the authority granted under the power of attorney is suspended until the petition is dismissed or withdrawn.
- (a) If an emergency arises after initiation of proceedings to determine incapacity and before adjudication regarding the principal's capacity, the agent may petition the court in which the proceeding is pending for authorization to exercise a power granted under the power of attorney. The petition must set forth the nature of the emergency, the property or matter involved, and the power to be exercised by the agent.
 - (b) Notwithstanding the provisions of this section, a proceeding to determine incapacity shall not affect any authority of the agent to make health care decisions for the principal, including, but not limited to, those defined in chapter 765, unless otherwise ordered by the court. If the principal has executed a health care advance directive designating a health care surrogate

pursuant to chapter 765, the terms of the directive will control if the directive and the power of attorney are in conflict unless the power of attorney is later executed and expressly states otherwise.

- (4) Termination or suspension of an agent's authority or of a power of attorney is not effective as to an agent that, without knowledge of the termination or suspension, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

Section 709.110 Revocation of power of attorney.—

- (1) A principal may revoke a power of attorney by expressing the revocation in a subsequently executed power of attorney or other writing signed by the principal. The principal may, but is not required to, give notice of the revocation to any agent that has accepted authority under the revoked power of attorney.
- (2) Except as provided in subsection (1), the execution of a power of attorney does not revoke a power of attorney previously executed by the principal.

Section 709.111 Co-agents and successor agents.—

- (1) A principal may designate two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently.
- (2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. Unless the power of attorney otherwise provides, a successor agent:
 - (a) Has the same authority as that granted to the original agent; and
 - (b) May not act until the predecessor agent (or agents) have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.
- (3) Except as otherwise provided in the power of attorney and subsection (4), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions or omissions of the other agent.

- (4) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent, including a predecessor agent, shall take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. If the agent in good faith believes that the principal is not incapacitated, giving notice to the principal is a sufficient action in the circumstances. An agent that fails to take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had taken such action.
- (5) A successor agent does not have a duty to review the conduct or decisions of a predecessor agent. Except as provided in subsection (4), a successor agent does not have a duty to institute any proceeding against a predecessor agent or to file any claim against any predecessor agent's estate, for any of the predecessor agent's actions or omissions as agent.

Section 709.112 Reimbursement and compensation of agent.—

- (1) Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.
- (2) Unless the power of attorney otherwise provides, a qualified agent is entitled to compensation that is reasonable under the circumstances.
- (3) Notwithstanding any provision in the power of attorney to the contrary, an agent shall not be paid compensation unless the agent is a qualified agent.

For purposes of this section, "qualified agent" means an agent who is the spouse of the principal, an heir of the principal within the meaning of s. 732.103, a financial institution as defined in Chapter 655 with trust powers having a place of business in this state, an attorney or certified public accountant, licensed in this state, or a natural person who is a resident of this state and who has never been an agent for more than three principals at the same time.

Section 709.113 Agent's acceptance.—Except as otherwise provided in the power of attorney, a person accepts appointment as an agent by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. The scope of an agent's acceptance is limited to those aspects of the power of attorney for which the agent's assertions or conduct reasonably manifests acceptance.

Section 709.114 Agent's duties.—

- (1) An agent is a fiduciary. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment:
 - (a) Shall act only within the scope of authority granted in the power of attorney. In exercising that authority, the agent:
 1. Shall not act contrary to the principal's reasonable expectations actually known by the agent;
 2. Shall act in good faith;
 3. Shall not act in a manner that is contrary to the principal's best interest, except as provided in ss. 709.114(2)(d) and 709.202; and
 4. Shall attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:
 - (I) The value and nature of the principal's property;
 - (II) The principal's foreseeable obligations and need for maintenance;
 - (III) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
 - (IV) Eligibility for a benefit, a program, or assistance under a statute or regulation; and
 - (V) The principal's personal history of making or joining in making gifts.
 - (b) Shall not delegate authority to a third person except as provided in s. 518.112.
 - (c) Shall keep a record of all receipts, disbursements, and transactions made on behalf of the principal; and
 - (d) Shall create and then maintain an accurate inventory each time the agent accesses the principal's safe deposit box, if the power of attorney authorizes the agent to access the box.
- (2) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:
 - (a) Act loyally for the sole benefit of the principal;

- (b) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
 - (c) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances; and
 - (d) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.
- (3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.
 - (4) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.
 - (5) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.
 - (6) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, transactions conducted on behalf of the principal, or safe deposit box inventories, unless ordered by a court or requested by the principal, a court-appointed guardian, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 60 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 60 days.

Section 709.1145 Actions involving an alleged conflict of interest.—

- (1) If an agent's exercise of a power is challenged in any judicial proceeding brought by or on behalf of the principal on the grounds that it was affected by a conflict of interest and evidence is presented that the agent or an affiliate of the agent had a personal interest in the exercise of the power, the agent or affiliate shall have the burden of proving, by clear and convincing evidence that:

- (a) The agent acted solely in the interest of the principal, or that:
 - (b)
 - 1. The agent acted in good faith in the principal's best interest; and
 - 2. The conflict of interest was expressly authorized in the power of attorney.
- (2) For purposes of this section:
- (a) A provision authorizing an agent to engage in a transaction affected by conflict of interest that is inserted into a power of attorney as the result of the abuse of a fiduciary or confidential relationship with the principal by the agent or the agent's affiliate is invalid.
 - (b) Affiliates of an agent include:
 - 1. The agent's spouse;
 - 2. The agent's descendants, siblings, parents, or their spouses;
 - 3. A corporation or other entity in which the agent, or a person that owns a significant interest in the agent, has an interest that might affect the agent's best judgment;
 - 4. A person or entity that owns a significant interest in the agent; or
 - 5. The agent when acting in a fiduciary capacity for someone other than the principal.

Section 709.115 Exoneration of agent.—A power of attorney may provide that the agent is not liable for any acts or decisions made by the agent in good faith and under the power of attorney, except to the extent the provision:

- (1) Relieves the agent of liability for breach of a duty committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or
- (2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Section 709.116 Judicial relief.—

- (1) A court may construe or enforce a power of attorney, review the agent's conduct, terminate the agent's authority, remove the agent, and grant other appropriate relief.
- (2) The following persons may petition the court:
 - (a) The principal or the agent, including any nominated successor agent;
 - (b) A guardian, conservator, trustee, or other fiduciary acting for the principal or the principal's estate;
 - (c) A person authorized to make health-care decisions for the principal to the extent that the health care of the principal is affected by the actions of the agent;
 - (d) Any other interested person as long as the person demonstrated to the court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the court's intervention is necessary;
 - (e) A governmental agency having regulatory authority to protect the welfare of the principal; and
 - (f) A person asked to honor the power of attorney.
- (3) In any proceeding commenced by the filing of a petition under this section, including, but not limited to, the unreasonable refusal of a third person to allow an agent to act pursuant to the power, and challenges to the proper exercise of authority by the agent, the court shall award taxable costs as in chancery actions, including reasonable attorneys' fees

Section 709.117 Agent's liability.—An agent that violates this act is liable to the principal or the principal's successors in interest for the amount required to:

- (1) Restore the value of the principal's property to what it would have been had the violation not occurred; and
- (2) Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid from the principal's funds on the agent's behalf in defense of the agent's actions.

Section 709.118 Agent's resignation.—Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal, if the principal is incapacitated to the court-appointed guardian, if one has been

appointed for the principal, and to any co-agent, or if none, the next successor agent.

Section 709.119 Acceptance of and reliance upon power of attorney.—

- (1)(a) A third person that in good faith accepts a power of attorney which appears to be executed in accordance with this act may rely upon the power of attorney and may enforce an authorized transaction against the principal's property, as if
1. The power of attorney were genuine, valid, and still in effect; and
 2. The agent's authority were genuine, valid, and still in effect.
- (b) For purposes of this subsection, and without limiting what constitutes good faith, a third person does not accept a power of attorney in good faith if the third person has notice that
1. The power of attorney is void, invalid, or terminated; or
 2. The purported agent's authority is void, invalid, suspended, or terminated.
- (2) A third person may but need not require the agent to execute an affidavit stating where the principal is domiciled, that the principal is not deceased, and that there has been no revocation, partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the power of attorney, or suspension by initiation of proceedings to determine incapacity or to appoint a guardian of the principal at the time the authority is exercised. A written affidavit executed by the agent under this subsection may, but need not, be in the following form:

STATE OF _____
COUNTY OF _____

Before me, the undersigned authority, personally appeared (agent) ("Affiant"), who swore or affirmed that:

1. Affiant is the agent named in the Power of Attorney executed by (principal) ("Principal") on (date) .
2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled in (insert name of state, territory, or foreign country) .

3. To the best of the Affiant's knowledge after diligent search and inquiry:

- a. The Principal is not deceased;
- b. Affiant's authority has not been suspended by initiation of proceedings to determine incapacity or to appoint a guardian;
- c. There has been no revocation, partial or complete termination of the power of attorney or of the affiant's authority; and
- d. The affiant is acting within the scope of authority granted in the power of attorney.

4. Affiant agrees not to exercise any powers granted by the Power of Attorney if Affiant has knowledge that affiant's authority has been revoked, terminated, suspended, or is no longer valid.

(Affiant)

Sworn to (or affirmed) and subscribed before me this ____ day of (month) , (year) , by (name of person making statement)

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification (Type of Identification Produced);

- (3) A third person that is asked to accept a power of attorney that appears to be executed in accordance with s.709.105 may in good faith request, and rely upon, without further investigation:
 - (a) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English;
 - (b) An opinion of counsel as to any matter of law concerning the power of attorney if the third person making the request provides in a writing or other record the reason for the request; or

- (c) The affidavit described in subsection (2).
- (4) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made after the time specified in s. 709.120(1) for acceptance or rejection of the power of attorney.
- (5) Third persons that act in reliance upon the authority granted to an agent and in accordance with the instructions of the agent, must be held harmless by the principal from any loss suffered or liability incurred as a result of actions taken prior to receipt of written notice as provided in s. 709.121. A third person that acts in good faith upon any representation, direction, decision, or act of the agent is not liable to the principal or the principal's estate, beneficiaries, or joint owners for those acts.

Section 709.120 Liability for refusal to accept power of attorney.—

- (1) Except as otherwise provided in subsection (2):
 - (a) A third person shall either accept or reject a power of attorney within a reasonable time. A third person that rejects a power of attorney must state in writing the reason for the rejection.
 - (b) Five days shall be presumed to be a reasonable time for a financial institution to accept or reject a power of attorney.
 - 1. With respect to banking transactions, if the power of attorney contains authority to conduct banking transactions pursuant to s. 709.208(1); or
 - 2. With respect to security transactions, if the power of attorney contains authority to conduct security transactions pursuant to s. 709.208(2).
 - (c) A third person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.
- (2) A third person is not required to accept a power of attorney if:
 - (a) The third person is not otherwise required to engage in a transaction with the principal in the same circumstances;

- (b) The third person has knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;
 - (c) A timely request by the third person for an affidavit, English translation, or opinion of counsel under s. 709.119(4) is refused by the agent;
 - (d) Except as otherwise provided in paragraph (b), the third person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested; or
 - (e) The third person makes, or has knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.
- (3) A third person that refuses in violation of this section to accept a power of attorney is subject to:
- (a) A court order mandating acceptance of the power of attorney; and
 - (b) Liability for damages, including reasonable attorney's fees and costs, incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

Section 709.121 Notice.—

- (1) A notice, including, but not limited to, a notice of revocation, notice of partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the power of attorney, notice of death of the principal, notice of suspension by initiation of proceedings to determine incapacity or to appoint a guardian, or other notice, is not effective until written notice is served upon the agent or any third persons relying upon a power of attorney.
- (2) Notice must be in writing and must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message.
- (3) Notice to a financial institution shall contain the name, address, and the taxpayer identification number of the

principal and shall be directed to an officer or a manager of the financial institution in Florida.

- (4) Notice shall be effective when it is given, except that notice upon a financial institution, brokerage company, or title insurance company is not effective until five (5) days, excluding Saturdays, Sundays, and legal holidays, after it is given.

Section 709.201 Construction of authority generally.—Except as otherwise limited by this section or other applicable law, the agent has full authority to perform, without prior court approval, every act authorized and specifically enumerated in the power of attorney.

- (1) As a confirmation of the law in effect in this state when this act became effective, such authorization may include, without limitation, the authority to:
 - (a) Execute stock powers or similar documents on behalf of the principal and delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities either into or out of the principal's or nominee's name; or
 - (b) Convey or mortgage homestead property, provided that if the principal is married, the agent may not mortgage or convey homestead property without joinder of the spouse of the principal or the spouse's legal guardian. Joinder by a spouse may be accomplished by the exercise of authority in a power of attorney executed by the joining spouse, and either spouse may appoint the other as his or her agent.
 - (c) If such authority is specifically granted in a durable power of attorney, the agent may make all health care decisions on behalf of the principal, including, but not limited to, those set forth in chapter 765.
- (2) Notwithstanding the provisions of this section, an agent may not:
 - (a) Perform duties under a contract that requires the exercise of personal services of the principal;
 - (b) Make any affidavit as to the personal knowledge of the principal;
 - (c) Vote in any public election on behalf of the principal;
 - (d) Execute or revoke any will or codicil for the principal; or

- (e) Exercise powers and authority granted to the principal as trustee or as court-appointed fiduciary.
- (3) Subject to s. 709.202, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.
- (4) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.
- (5) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

Section 709.202 Authorities that require separate signed enumeration.—

- (1) Notwithstanding s. 709.201, an agent may exercise the following authority only if the principal signed or initialed next to each specific enumeration of the authority and exercise of the authority is consistent with the agent's duties under s. 709.114 and is not otherwise prohibited by another agreement or instrument:
 - (a) Create an inter vivos trust;
 - (b) With respect to a trust created by or on behalf of the principal, amend, modify, revoke or terminate the trust, but only if the trust instrument explicitly provides for amendment, modification, revocation or termination by the settlor's agent;
 - (c) Make a gift, subject to subsection (3);
 - (d) Create or change rights of survivorship;
 - (e) Create or change a beneficiary designation;
 - (f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
 - (g) Disclaim property and powers of appointment.
- (2) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or

descendant of the principal, may not exercise authority to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

- (3) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:
 - (a) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code section 2503(b), 26 U.S.C. §2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code section 2513, 26 U.S.C. 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and
 - (b) Consent, pursuant to Internal Revenue Code section 2513, 26 U.S.C. §2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.
- (4) Notwithstanding anything in subsection (1) to the contrary, if a power of attorney is otherwise sufficient to grant an agent authorization to conduct banking transactions as provided in s. 709.208(1), to conduct investment transactions as provided in s. 709.208(2), or otherwise to make additions to or withdrawals from an account of the principal, then making a deposit to or withdrawal from an insurance policy, retirement account, individual retirement account, benefit plan, bank account or any other account held jointly or otherwise held in survivorship or payable on death form, shall not be considered to be a change to the survivorship feature or beneficiary designation, and no further specific authority is required for the agent to exercise such authorization. A bank or other financial institution has no duty to inquire as to the appropriateness of the agent's exercise of that authority and shall not be liable to the principal or any other person for actions taken in good faith reliance on the appropriateness of the agent's actions. Nothing in this paragraph shall be construed as eliminating the agent's fiduciary duties to the principal with respect to any exercise of the power of attorney.

- (5) This section does not apply to a power of attorney executed prior to the effective date of this act.

Section 709.208 Banks and other financial institutions.—

- (1) A power of attorney that provides the agent with “authority to conduct banking transactions as provided in section 709.208(1), Florida Statutes” grants general authority to the agent to engage in the following transactions with financial institutions without specific enumeration in the power of attorney:
 - (a) Establish, continue, modify, or terminate an account or other banking arrangement with a financial institution;
 - (b) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
 - (c) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
 - (d) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;
 - (e) Purchase cashiers checks, official checks, counter checks, bank drafts, money orders and similar instruments;
 - (f) Endorse and negotiate checks, cashiers checks, official checks, drafts, and other negotiable paper of the principal or payable to the principal or the principal’s order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;
 - (g) Apply for, receive, and use debit cards, electronic transaction authorizations, and traveler’s checks from a financial institution;
 - (h) Use, charge, or draw upon any line of credit, credit card, or other credit established by the principal with a financial institution; and
 - (i) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

- (2) A power of attorney that provides the agent with “authority to conduct investment transactions as provided in section 709.208(2), Florida Statutes” grants general authority to the agent with respect to securities held by financial institutions to take the following actions without specific enumeration in the power of attorney:
- (a) Buy, sell, and exchange investment instruments;
 - (b) Establish, continue, modify, or terminate an account with respect to investment instruments;
 - (c) Pledge investment instruments as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;
 - (d) Receive certificates and other evidences of ownership with respect to investment instruments; and
 - (e) Exercise voting rights with respect to investment instruments in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

For purposes of this subsection, “investment instruments” means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner, including, but not limited to, shares or interests in a private investment fund, including, but not limited to, a private investment fund organized as a limited partnership, a limited liability company, a statutory or common law business trust, a statutory trust, or a real estate investment trust, a joint venture, or any other general or limited partnership; derivatives or other interests of any nature in securities such as options, options on futures, and variable forward contracts; mutual funds; common trust funds; money market funds; hedge funds; private equity or venture capital funds; insurance contracts; and other entities or vehicles investing in securities or interests in securities whether registered or otherwise, except commodity futures contracts and call and put options on stocks and stock indexes.

Section 709.301 Principles of law and equity.— The common law of agency and principles of equity supplement this act, except to the extent modified by this act or another statute of this state.

Section 709.302 Laws applicable to financial institutions and entities.—This act does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this act.

Section 709.303 Remedies under other law.—The remedies under this act are not exclusive and do not abrogate any right or remedy under the law of this state other than this act.

Section 709.401 Relation to electronic signatures in global and national commerce act.—This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. §7003(b).

Section 709.402 Effect on existing powers of attorney.—Except as otherwise provided in this act, on the effective date of this act:

- (1) This act applies to a power of attorney created before, on, or after the effective date of this act;
- (2) This act applies to a judicial proceeding concerning a power of attorney commenced on or after the effective date of this act;
- (3) This act applies to a judicial proceeding concerning a power of attorney commenced before the effective date of this act unless the court finds that application of a provision of this act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and
- (4) An act done before the effective date of this act is not affected by this act.

Section 709.403 Repeal.— Chapter 709, Florida Statutes, as it exists prior to the effective date of this act, is repealed.

Section 709.404 Effective date.—This act takes effect October 1, 2011.

PART II

POWERS OF APPOINTMENT

Section 709.502 Power of appointment; method of release.— Powers of appointment over any property, real, personal, intangible or mixed, may be released, in whole or in part, by a written instrument signed by the donee or donees of such powers. Such written releases shall be signed in the presence of two witnesses but need not be sealed, acknowledged or recorded in order to be valid, nor shall it be necessary to the validity of such releases for spouses of married donees to join such donees in the execution of releases, in whole or part, of powers of appointment.

Section 709.503 Power of appointment; property held in trust.— If property subject to a power of appointment is held in trust by a person, firm or corporation other than the donee or donees of the power, a written release, in whole or in part, of a power to appoint the same shall be delivered to such trustee or trustees before the written release becomes legally effective. In no other instance shall a delivery of a release, in whole or in part, of a power of appointment be necessary to the validity of such release.

Section 709.504 Power of appointment; effect of release.— Any power of appointment wholly released by a written instrument signed by the donee or donees of such power shall be, in legal effect, completely revoked, and shall not, after such release, be subject to being exercised in any manner whatsoever. Any power of appointment partially released by a written instrument signed by the donee or donees of such power shall be, in legal effect, as to such released part, completely revoked, and shall not after such release be subject to being exercised in any manner whatsoever as to such released part.

Section 709.505 Powers of appointment; validation of prior releases.— All releases, in whole or in part, of powers of appointment heretofore executed in a manner that conforms with the provisions of this law be and they are hereby validated and shall be given the same force and effect as if executed subsequently to the effective date of this law.

Section 709.506 Powers of appointment included in law.— Powers of appointment referred to in this law shall include not only those recognized as such by general law but also those designated as such under the tax law of the United States.

Section 709.507 Power of appointment; effect of release on title to property.— No such release, in whole or in part, of a power of appointment shall affect the title to property of any bona

fide purchaser for value who does not have notice or knowledge of such release.

The New Florida Power of Attorney Act Scrivener's Summary*

I. Introduction

The Power of Attorney Committee [the Committee] was created by the Real Property, Probate and Trust Law Section of the Bar. The Committee is comprised of attorneys with practices in several disciplines including estate planning, estate and trust litigation, elder law, and family law, as well as those who work for financial institutions, those who represent the Florida Bankers Association and those whose practice relates to real estate title insurance.

The Committee was charged with the task of evaluating the recently promulgated Uniform Power of Attorney Act¹ for possible enactment in Florida. As with other Uniform Acts in the estates and trusts area, the Committee found merit in many of the Uniform Act provisions but rejected numerous others for reasons that will be explained in this summary. With its work largely completed, the Committee recommendations include significant revisions to Chapter 709 of the Florida Statutes. Part II of the revised Chapter 709 will carry forward without substantive change those provisions of current Chapter 709 that relate to powers of *appointment*.² Part I will contain a new Power of Attorney Act [the Act]. This summary explains the key provisions of the final Committee draft. To avoid confusion, references to sections in Chapter 709 without further qualification (e.g., 709.102) are to sections in the proposed new Act. References to sections in existing Chapter 709 and to sections of the Uniform Act will be identified by a precedent *FS* and Uniform Act, respectively.

A. Some policy perspectives

Before turning to a detailed examination of the proposed Act, it is useful to explore some of the policy concerns that shaped it. It is probably safe to say that all on the Committee view a well crafted power of attorney as a useful alternative to guardianship. Beyond this simple statement, however, views diverge.

1. Estate planning practitioners

Estate planning practitioners, particularly those with high worth clients, view the power of attorney as an important tool for engaging in tax saving estate planning techniques such as the making of annual exclusion gifts and the creation of Grantor Retained Annuity and Qualified Personal Residence Trusts. Each of these techniques, and others as well, are dependent on the ability of an agent to make donative transfers of a principal's property. Some also involve the creation of trusts. And, when a family member serves as agent, these transactions can involve a conflict of interest as well. Hence, estate planning practitioners want the Act to permit an agent to be authorized to engage in all of these transactions.

2. Estate litigators and elder law practitioners

Estate litigators and some elder law practitioners share a different perspective. They focus on the abuses that powers of attorney enable when agents prove to be dishonest or

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¹ The Uniform Act was completed by the Uniform Law Commissioners in 2006. As of the end of 2009, the Uniform Act has been adopted in four states (Colorado, Idaho, Nevada, and New Mexico) and has been introduced in eight more (Illinois, Indiana, Maine, Maryland, Minnesota, Montana, Oregon, and Virginia).

² Part II of revised Chapter 709 consists of sections 709.502 through .507 which are identical to current *FS* sections 709.02 through .07, respectively.

duplicitous. From this perspective, the ability to authorize an agent to make donative transfers is particularly troublesome. Thus, some on the Committee favored prohibiting the use of powers to make gifts or to create trusts or to engage in transactions involving a conflict of interest between the agent and the principal.

3. Real estate practitioners

Committee members involved in the real estate practice voiced yet another concern. They worry that an insured real property transaction would be dismantled by a court where the power of attorney is invalid or the agent acted outside of the scope of the power. Even when a court ordered a return of the consideration, there could be liability for lost increases in value, which in some situations could be significant. Those who shared this concern favored a rule which would allow them to enforce a sale or mortgage transaction against the principal's real property, even if the power of attorney was not valid for some reason and even if the agent was acting outside of the scope of its authority, so long as they relied on the power of attorney in good faith and without actual knowledge.

4. Financial institutions

Then there are the myriad concerns voiced by Committee members involved with banks and other financial institutions. The concerns may be divided into three categories: protection of existing business, efficiency in the handling of powers, and concern for liability (and its attendant costs and potential for loss of goodwill). The first category – protection of existing business – manifested itself in a preference for a rule prohibiting compensation for agents because financial institutions see powers being used as a poor substitute for a living trust. The efficiency concern led to a preference for a central registration or recording of powers. Bankers also favored statutory approaches which promote the uniformity of language in powers such as check-the-box statutory form powers, a detailed set of default powers, and the ability to incorporate others by reference to a statutory list, each of which is an approach embraced by the Uniform Act.

Lastly, the Bankers' concern about liability manifested itself in support for the view that donative transfers by agents should not be allowed, a hostility to contingent powers as well as springing powers, a bias against allowing the designation of successor agents, a strong desire for definitive rules for honoring or not honoring a power of attorney, and an insistence on immunity for acting on a presumptively valid power.

5. The Committee's response

A good part of the work of the Committee was to assess and reconcile these various views and concerns. Briefly tracking back through the list, the Act does not prohibit donative transfers by agents but it does include provisions intended to insure that a principal's decision to authorize them is a knowing and informed one. The Act also clarifies an agent's duty to maintain a principal's estate plan and the liability an agent incurs for not doing so.

Some of the concerns of real estate practitioners were addressed with a provision providing additional protections for third persons who rely on powers of attorney.³ And financial institutions achieved much of what they were looking for as well. Although the Act does not create a central registry for powers, it does offer financial institutions a means to the uniformity of language they desire and more specific and comprehensive protection against liability for relying on powers without notice of any defects that might exist. In addition, the Act prohibits springing and other conditional powers but not successor agents or compensation for qualified agents.

³ See § 709.119.

B. Some important terms

Section 709.102 of the Act includes definitions of terms found in more than a single section of the Act. Consideration of most of these can wait until the terms become relevant. A few terms, however, require clarification at the outset.

Power of attorney: The Act defines a power of attorney to be “a writing that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.”⁴ An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal’s successors in interest as if the principal had performed the act.⁵

Legacy power of attorney: Actually, this term does not appear in the Act. But it is used in this Summary. As used, it refers to a power of attorney that is executed before the effective date of the Act.

Principal and agent: From the definition of power of attorney it may be seen that the Act uses the term “principal” to refer to an individual who creates a power of attorney⁶ and the term “agent” to refer to a person who is granted authority to act for a principal under a power of attorney. Agent is synonymous with attorney-in-fact and includes co-agents and successor agents.⁷

Third person: This term is used in the Act to refer to any person who is neither the principal nor the agent.⁸

Knowledge: Many of the Act’s provisions depend on whether an agent or a third person has knowledge of a fact. The Act’s definition of the term “knowledge” is based on and is substantively identical to the definition of the term in the Florida Trust Code.⁹ In summary, knowledge means that a person has actual knowledge of the fact, has received a notice or notification of the fact, or has reason to know the fact from all other facts and circumstances known to the person at the time in question. With respect to an organization operating through employees, the organization has notice or knowledge of a fact involving a power of attorney only from the earlier of the time the information was received by an employee having responsibility to act on matters involving the power of attorney or the time the information would have been brought to the employee’s attention if the organization had exercised reasonable diligence.¹⁰

Notice: Notice also plays an important role in the Act. Giving an agent or third person notice is critical in some contexts and advisable in numerous others. This includes when a power of attorney is revoked or terminated or suspended. Notice is not a defined term in section 709.102. Instead, it is covered comprehensively in section 709.121. Although this section appears in the middle of the Act, an appreciation of the requirements for an effective notice is useful at the outset.

⁴ § 709.102(6). Except as otherwise provided in the power of attorney, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. § 709.106(4).

⁵ § 709.201(5).

⁶ §709.102(8).

⁷ § 709.102(1).

⁸ § 709.102(12). An agent is excluded from the term “third person” only when the agent acts in its capacity as agent.

⁹ See *FS* § 736.0104.

¹⁰ § 709.102(5). An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act on matters involving the power of attorney and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual’s regular duties or the individual knows a matter involving the power of attorney would be materially affected by the information. *Id.*

Under section 709.102, a notice is legally effective only if it is in writing and is served on the agent or affected third person, as the case may be. In general, notice must be accomplished in a manner that is reasonably suitable under the circumstances and is likely to result in receipt of the document. Permissible methods include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message.

Notice to a financial institution is subject to additional requirements. The notice must contain the name, address, and taxpayer identification number of the principal and it must be directed to an officer or a manager of the financial institution in Florida. As it is not always obvious where notice should be directed, the following web site may be helpful. The site — either directly or by link to other sites — provides the official address for every national bank (not state banks), including the online banks like "Bank of Internet" based in San Diego. The web site is:

<http://www.ffiec.gov/nicpubweb/nicweb/searchform.aspx>

In general, notice is effective when given. Notice on a financial institution, brokerage company, or title insurance company, however, is not effective until five days (excluding Saturdays, Sundays, and legal holidays) after it is given.

II. The Act in Detail

For convenience, the various sections of the Act may be divided to eight categories. In the order they are discussed in this Summary, the categories include sections relating to:

- The scope of the Act;
- The instrument itself (including execution, amendment, revocation, suspension and termination);
- The office of agent (including designation, acceptance, compensation, and resignation);
- The duties of an agent;
- The authority of an agent;
- The liabilities of agents
- Acceptance, rejection, liability and reliance of third persons; and
- Judicial proceedings

A. Scope of the new Act

The Act will apply only to powers of attorney created by an individual.¹¹ With respect to such powers, section 709.107 provides that the meaning and effectiveness of the power will be determined by the Act to the extent the power of attorney is used in Florida or the power states that it is to be governed by the laws of Florida. This includes powers of attorney executed in other jurisdictions.¹² It also includes instruments executed before the Act becomes effective.¹³ That is, except as otherwise provided in a particular section, the Act applies retroactively.

¹¹ This follows indirectly from the definition of principal as being an individual in section 709.102(8) and directly from section 709.103(4) which states that the Act does not apply to a power created by a person other than an individual. This limitation means that the Act does not apply to powers created by corporations or other non-natural persons.

¹² A power executed in another state in a manner that complies with § 709.106 (see "*Execution requirements*", *infra* p. 6) will be construed as provided in the Act when used in Florida. So, for example, if the power contains an impermissible delegation (see § 709.114(1)(b)) or incorporation by reference (see "*General rule: No incorporation by reference*", *infra* p. 18), the delegation provision or the impermissible incorporation will not be given effect.

1. Relationship of the Act to other law

Although it is much more comprehensive than current section 709.08, there will be issues that the Act does not address. As to these, except to the extent modified by the Act or another Florida law, the Act is supplemented by the common law of agency and principles of equity.¹⁴ Likewise, the remedies under the Act are not exclusive and do not abrogate any right or remedy under Florida law.¹⁵ Moreover, in the event of a conflict between the Act and any other law applicable to financial institutions, the other law controls.¹⁶

2. Powers to which the Act does not apply

In addition to powers created by persons other than an individual, section 709.103 provides that the Act does not apply to any of the following:

- A proxy or other delegation to exercise voting or management rights;
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose; or
- Powers coupled with an interest (such as powers given to a creditor to perfect or protect title in or to sell, pledged collateral).

3. Effect on existing powers of attorney

Except as might otherwise be provided in an individual section, the Act applies to all powers of attorney, regardless of the date the powers were created. The Act also applies to judicial proceedings concerning a power of attorney commenced on, after, or before the effective date of the Act unless, in the last case, the court finds that application of a provision of the Act would substantially interfere with the effective conduct of the judicial proceeding or that it would prejudice the rights of a party to the judicial proceeding. The Act has no effect on any act done before the effective date of the Act.

B. The power of attorney instrument

1. Execution requirements

A legacy power of attorney will remain valid under the Act provided its execution complied with the law of Florida at the time of its execution.¹⁷ If the legacy power is a durable (or springing) one, it will remain durable (or springing) under the new Act.

Durable and nondurable powers executed after the effective date of the Act must be signed by the principal¹⁸ and by two subscribing witnesses, and be acknowledged by the principal before a notary public.¹⁹ An exception applies to military powers. A military

¹³ See § 709.402(1).

¹⁴ § 709.301.

¹⁵ § 709.303.

¹⁶ § 709.302.

¹⁷ § 709.106(2). The Act does not change the execution requirements for a durable power. See *FS* § 709.08. So the significance of section 709.106(2) occurs with respect to legacy nondurable powers.

¹⁸ The Act defines the term “sign” to mean the execution or adoption of a tangible symbol or the attachment or logical association of an electronic sound, symbol, or process, in each case with a present intent to authenticate or adopt the record. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. See § 709.102(10) and (11).

¹⁹ See §§ 709.105 and 709.106(1). Florida law does not currently address the acceptance of power of attorney documents executed in accordance with the laws of other jurisdictions. The Uniform Act contains provisions providing for the portability of such documents. See Uniform Act § 106(c). The portability concept was rejected by the Committee.

power is valid if it is executed in accordance with the requirements for a military power pursuant to 10 U.S.C. sec. 1004(b).²⁰

2. Durable powers

The Act embraces both durable and nondurable powers. A durable power of attorney is one which is not terminated by the principal's incapacity.²¹ Unlike the Uniform Act, however, the Act does not make powers durable by default. Consistent with current law,²² a power of attorney is durable only if it contains appropriate language to that effect. The language mentioned in the Act²³ — “[t]his durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes” — is not exclusive. A power may be made durable by any language expressing the principal's intent that the agent's authority is to be exercisable notwithstanding the principal's subsequent incapacity, except as provided in chapter 709.

Example 1: P executes a power of attorney one of the provisions of which states: “This durable power of attorney is not affected by subsequent incapacity of the principal except as provided in s. 709.104, Florida Statutes.” The words used by P are similar to those included in section 709.104 and are sufficient to indicate an intent to create a durable power.

3. No springing or other contingent powers

The Uniform Act permits the creation of contingent powers.²⁴ A contingent power is one which does not become effective until the happening of a condition stated in the power of attorney. The springing power is a common example. A springing power takes effect only when the principal loses capacity.

Springing powers (but probably not other types of contingent powers) are valid under current Florida law.²⁵ And legacy springing powers remain valid (and springing) under the Act.²⁶ But to be effective in Florida, powers created on or after the effective date of the Act, must be exercisable as of the time they are executed.²⁷ Accordingly, post-Act contingent powers, including springing powers, are not effective under the Act.²⁸ Here again, an exception is made for military powers. Under section 709.1065(2), a

²⁰ § 709.1065(1). Military powers must be notarized but need not otherwise have witnesses. See 10 U.S.C § 1044(b).

²¹ § 706.102(3). Section 709.102(4) defines incapacity to be the “inability of an individual to take those actions necessary to obtain, administer, and dispose of real and personal property, tangible property, business property, benefits, and income.” This is similar to the definition found in the Florida Guardianship Law. See FS § 744.102(12)(a).

²² As to which, see FS § 709.08(1).

²³ See § 709.104.

²⁴ See Uniform Act § 109.

²⁵ See FS. § 709.08(1).

²⁶ A legacy springing power becomes exercisable upon delivery of an affidavit by the principal's licensed primary physician stating (among other things) that the physician believes that the principal lacks the capacity to manage property as defined in s. 744.102(12)(a). See § 709.108(2).

²⁷ See § 709.108(1).

²⁸ See § 709.108(3). The Committee rationale for this change rests with its collective experience that springing powers are fine in theory, but bad in practice. In theory, they address the reluctance principals have to an instrument that authorizes an agent to act on the principal's behalf while the principal still has capacity to act for his or her own self. In practice, uncertainty about whether and when principals lose capacity has made springing powers problematic both for agents who seek to exercise them and for financial institutions and other third persons who are asked to honor them. On balance, the Committee believes that the reluctance of principals described above is better addressed by other means. An approach used by many practitioners is to escrow the power of attorney with some trusted third person for release to the agent only upon satisfactory proof that the principal has lost capacity. A similar approach can be used to obviate the need for successor agents.

deployment-contingent power of attorney is to be afforded full force and effect by Florida courts.²⁹

4. Amendment and revocation of powers

a) Amendment

A principal who wishes to amend a power of attorney may do so by revoking the old power and by executing a new one in amended form. As explained below, this can be accomplished in a single document. But direct amendments — codicils for lack of a better term — are not permitted. This restriction helps insulate agents and third persons from concerns that an instrument they are asked to rely on has been amended without their knowledge. Of course, the protection is not perfect. A power of attorney can be revoked without an agent or a third person knowing it (see below). And forgeries are also a possibility. Here, however, other provisions of the Act protect the unknowing agent and third persons who rely on a revoked or forged power without notice of the defect.³⁰

b) Revocation

With respect to revocation, neither the mere lapse of time nor the mere execution of a subsequent power of attorney is sufficient to revoke a prior power. Instead, to revoke a power of attorney the principal must express the revocation in either a new power of attorney or in some other writing signed by the principal.³¹ In this latter case, there is no requirement that the other writing be witnessed or notarized. Hence, the formalities required to revoke a power are less stringent than those required to execute one. This reflects the Committee view that revocations present a smaller potential for fraud than do executions. That said, best practice would suggest that a written revocation be notarized so that it can be recorded in any county where the principal owns real estate. In addition, best practice would suggest that a notice of revocation be sent to the agent. Indeed, as a hint, section 709.110(1) states that the principal “may, but is not required to,” give the agent notice of the revocation. Although not mentioned in the section, notice of the revocation should likewise be given to all financial institutions where the principal has accounts. Otherwise, the financial institutions are not responsible if they honor a revoked power of attorney.³²

5. Suspension and termination of powers

Section 709.109 of the Act specifies the events which result in a suspension or termination of a power of attorney or of an agent’s authority. In all cases, the termination or suspension is not effective as to an agent who acts in good faith and without knowledge of the termination or suspension. Moreover, acts performed by the unknowing agent, unless invalid or unenforceable for other reasons, bind the principal and the principal’s successors in interest.³³

a) Suspension of a power

As with current law,³⁴ section 709.109(4) provides for the suspension of an agent’s authorities upon initiation of a proceeding to determine the principal’s capacity.³⁵

²⁹ Section 709.1065(2) is identical to current *FS* § 709.11.

³⁰ See §§ 709.109(4) and 709.119.

³¹ See § 709.110(1).

³² See § 709.119(1)..

³³ § 709.109(4).

³⁴ See *FS* § 709.08(3)(c).

The suspension takes effect when the agent has knowledge of the filing of the petition and lasts until the petition is dismissed or withdrawn. In the event of an emergency, an agent may petition the court for continued authority.³⁶

b) Termination of a power

If a power specifies when it is to terminate, it will terminate at the specified time.³⁷ In addition, a power terminates:

- When the purposes for the power are accomplished;
- If the principal revokes it or dies;
- If a power is not durable, when the principal loses capacity;
- If a power is durable, upon an adjudication of incapacity (unless the court determines otherwise); or
- When the agent’s authority terminates (see below) and the power of attorney does not provide for an alternate agent.

c) Termination of an agent’s authority

Section 709.109(2) addresses when an agent’s authority terminates. That happens:

- When the agent dies, becomes incapacitated, or is removed by a court of competent jurisdiction;
- Upon the filing of an action for the dissolution, legal separation, or annulment of the marriage of the agent to the principal;
- When the power itself terminates; or
- Except as provided by the court, if the principal is adjudicated totally or partially incapacitated and a guardian of the property is appointed for the principal.

C. The office of agent

1. Qualifications

The qualification requirements to serve as an agent appear in the definition of “agent” in section 709.102(1). Under that definition, only natural persons (i.e., individuals) who are 18 years of age or older and certain financial institutions may be named as an agent. To qualify, a financial institution must have a place of business in Florida and be authorized to conduct trust business in this state.

2. Designation

Subject to the above qualification requirements, a principal may designate a single agent or, if desired, a principal may designate two or more persons to act as co-agents. Unless

³⁵ Unless otherwise ordered by the court, a proceeding to determine the capacity of the principal does not affect any authority of the agent to make health care decisions for the principal, including those defined in chapter 765. If the principal has designated a health care advance directive designating a health care surrogate pursuant to chapter 765, the terms of the directive control any conflicting provisions in the power of attorney, unless the power of attorney is executed after the advance directive and the power expressly states that it is to control in the event of any conflict. § 709.109(3)(b). Accord, *FS* § 709.08(3)(a)3.

³⁶ § 709.109(3)(a).

³⁷ The provisions of the Act covering terminations of a power of attorney appear in section 709.109(1).

the power of attorney provides otherwise, each co-agent may exercise its authority independently.³⁸ This is a change in Florida law.³⁹

Also, in what may be another change in current law,⁴⁰ a principal may designate one or more successor agents to act if the primary agent's authority terminates or the agent declines to serve, dies, or resigns.⁴¹ Unless the power of attorney provides otherwise, a successor agent has the same authority as that given to the primary agent.⁴² The successor agent may not act until the predecessor agent or agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to do so.⁴³

3. Acceptance

It goes without saying that a person may not be made the agent of another against his or her will. Thus, agents must accept the power. According to section 709.113, if a power specifies a method for acceptance, an agent accepts the power by complying with that method. Otherwise, an agent accepts a power by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. This is not an all or nothing thing. The scope of acceptance is limited to those aspects of the power for which the agent's assertions or conduct reasonably manifest acceptance.⁴⁴ This can be a point of considerable significance. As is explained later, an agent can incur liability for a failure to act.⁴⁵ But the duty an agent may have to act is circumscribed by the scope of the agent's acceptance of the power.

4. Compensation

Among the factors to be considered in determining whether to accept a designation as an agent are the duties and liabilities the Act imposes on agents. These matters are discussed at length later.⁴⁶ Another relevant factor is whether the agent is entitled to compensation. For the most part, this is a question that can be addressed in the terms of the power itself. Except as provided in the power of attorney, section 709.112(1) states that an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal. Qualified agents (but not others) are also entitled to compensation that is reasonable under the circumstances.⁴⁷ Qualified agents include financial institutions,⁴⁸ an attorney or

³⁸ § 709.111(1). The liabilities of co-agents are discussed in "*Liability for actions of co-agents and successor agents*", infra p. 22.

³⁹ Compare § 709.08(9) which requires a majority of named agents (or both if there are only two) to concur unless otherwise provided in the document.

⁴⁰ It is unclear whether current law permits designation of successor agents as it is not specifically authorized in FS § 709.08.

⁴¹ The authority to designate co-agents and successor agents is limited to the principal. This authority may not be delegated by the principal to others. Thus, the Act does not allow a principal to authorize an agent to designate his or her own successor or co-agent. Nor may these authorities reside with a committee or protector. Compare Uniform Act § 111(b).

⁴² § 709.111(2)(a). The liabilities of successor agents are discussed in "*Liability for actions of co-agents and successor agents*", infra p. 22.

⁴³ § 709.111(2)(b). Recall that financial institutions dislike powers with designated successor agents because of the uncertainties involved in ascertaining when the successor is authorized to act. Although other provisions of the Act provide protections for agents and third persons, careful consideration should be given to using other approaches such as the escrow approach mentioned previously. See note 28 in "*No springing or other contingent powers*", supra p. 7.

⁴⁴ § 709.113.

⁴⁵ See "*Liability of agents*", beginning infra p. 21.

⁴⁶ As to an agent's duties, see "*Duties of agents*", infra p. 11. Agent liability is discussed in "*Liability of agents*", infra p. 21.

⁴⁷ § 709.112(2) and (3).

certified public accountant licensed in Florida, the principal's spouse, and relatives of either the principal or the principal's spouse.⁴⁹ The term also includes any other natural person provided the person is a resident of Florida and (in effect) the person is not in the business of serving as an agent. More precisely, the person must never have served as an agent for more than three principals at the same time.

Before leaving the topic of compensation, it is informative to consider why the Act distinguishes between qualified and nonqualified agents. The distinction addresses the concern previously mentioned that financial institutions have with a blanket provision permitting the compensation of agents. The concern is that such a provision would encourage and facilitate an industry in which unlicensed and unregulated individuals would serve as agents for profit. By permitting compensation for qualified agents and prohibiting compensation for others, the Act seeks to strike a balance between that concern and the wishes some principals might have with respect to the compensation of their agents.

5. Resignation

An agent may resign as provided in the power. In the absence of a provision covering resignation, an agent may resign by giving notice⁵⁰ to the principal, any court-appointed guardian, and any co-agent, or if none, to the next successor agent.⁵¹

D. Duties of agents

An important feature of the Act is the clarity it provides with respect to the duties of an agent. The relevant provision is section 709.114 which is based in some measure on the corresponding provision of the Uniform Act. Under section 709.114, the duties of an agent are divided into two categories: mandatory and default. Mandatory duties apply notwithstanding a contrary provision in the power. Default duties apply in the absence of a contrary provision. Thus, a principal is free to expand, curtail, or eliminate a default duty.

1. Mandatory duties

An agent's mandatory duties are enumerated in section 709.114(1). The list is an expanded and modified version of Uniform Act section 114(a). The mandatory duties include the duty to act within the scope of the authority granted in the power⁵² and, to the extent actually known, in a manner that is not contrary to the principal's reasonable expectations;⁵³ to act in good faith⁵⁴ and (except as authorized by other statutory provisions), in a manner that is not contrary to the principal's best interest;⁵⁵ to attempt in good faith to preserve the principal's estate plan;⁵⁶ to perform personally,⁵⁷ to keep adequate records;⁵⁸ and, if the power of attorney effectively authorizes the agent to access

⁴⁸ The financial institution must have trust powers and a place of business in Florida.

⁴⁹ Section 709.112(3) speaks of the principal's spouse or "an heir of the principal within the meaning of s. 732.103." Since relatives of the last deceased spouse of the principal can qualify as an heir of the principal under FS § 732.103(5), qualified agents include relatives of both the agent and the agent's spouse.

⁵⁰ On the requirements for an effective notice, see § 709.121.

⁵¹ § 709.118.

⁵² § 709.114(1)(a).

⁵³ § 709.114(1)(a)1.

⁵⁴ § 709.114(1)(a)2.

⁵⁵ § 709.114(1)(a)3.

⁵⁶ § 709.114(1)(a)4.

⁵⁷ § 709.114(1)(b).

⁵⁸ § 709.114(1)(c).

the principal's safe deposit box, to create and maintain an accurate and current inventory of the box.⁵⁹ Some of these duties merit further discussion.

a) The duty not to act in a manner that is contrary to the principal's actually known reasonable expectations

Section 709.114(1)(a)1 provides that an agent has a mandatory duty not to act in a manner that is contrary to the principal's reasonable expectations actually known by the agent. A somewhat similar duty appears in the Uniform Act. But the Uniform Act differs from the Florida formulation. The Uniform Act states that an agent has a duty TO ACT in accordance with the principal's reasonable and actually known expectations. The Florida formulation is phrased as a duty NOT TO ACT in a manner CONTRARY to those expectations.

The Committee believes that the Florida formulation is preferable because it reduces the risk that section 709.114(1)(a)1 could be construed as authorizing an agent to do something. It is important to recognize that it does not. It simply means, that with respect to authorities the agent does have, the agent must not exercise those authorizes in a manner that is contrary to the principal's actually known expectations. "Known" in this context means known by the agent. Stated somewhat differently, section 709.114(1)(a)1 restrains an agent from acting. It does not authorize or require an agent to act.

b) The duty not to act in a manner that is contrary to the principal's best interest

The mandatory duty to refrain from acting in a manner that is contrary to the principal's best interest appears in section 709.114(1)(a)3. Here again, the formulation differs from the corresponding provision of the Uniform Act. The duty under the Uniform Act is phrased as an affirmative duty to act in the principal's best interest. More importantly, the duty under the Uniform Act is explicitly subservient to the agent's duty (discussed above) to act in accordance with the principal's known reasonable expectations.⁶⁰ No such hierarchy appears in the Florida Act. To the contrary, these dual duties are co-equal under the Florida Act. As mandatory duties, this co-equal status may not be modified in the power of attorney. However, the duty not to act in a manner that is contrary to the principal's best interest in section 709.114(1)(a)3 is subject to qualification by other provisions of the Act. That is, section 709.114(1)(a)3 states that the duty applies "except in those circumstances authorized by statute." This is an important qualification. As is discussed later, within limits, section 709.202 allows a principal to authorize an agent to make gifts of the principal's property. Without the qualification, it is arguable that no exercise of a gift making authority would be consistent with the agent's duty to act in the best interest of the principal. With the qualification, gifts are not impermissible, per se. Nor are they appropriate, per se. As is illustrated in the following examples, there is a balancing to be done here.

Example 2: Assume a divorced principal (P) who has three children, C1, C2, and C3. P's will leaves all of his substantial estate per stirpes to his descendants. As part of his estate planning, P executes a power

⁵⁹ § 709.114(1)(d). The Uniform Act does not include this duty. For the requirements for an effective authorization of an agent to enter a principal's safe deposit box, see *F.S.* § 655.933.

⁶⁰ See Uniform Act § 114(a)(1). The comments to the Uniform Act provision explain this approach as follows:

Establishing the principal's reasonable expectations as the primary guideline for agent conduct is consistent with a policy preference for 'substituted judgment' over 'best interest' as the surrogate decision making standard that better protects an incapacitated person's self-determination interests.

of attorney naming his sister S as agent. The power effectively authorizes S to make gifts of P's property to any descendant of P.⁶¹ C1 and C2 each marry at a point when P still has capacity. At the time of C1's marriage, P makes a \$20,000 cash gift to him to facilitate his purchase of a home. A similar gift to C2 is made at the time of her marriage. P and S discuss making a similar gift to C3 upon his marriage. Such a gift would not jeopardize P's own welfare. But P loses capacity shortly before C3 marries. On these facts, an exercise of S's authority to make a gift to C3 would not be contrary to P's known expectations and would not be precluded by S's duty to act in P's best interest. Accordingly, S may (but is not required to) exercise her authority to make a gift to C3.

Example 3: Same as the previous example except that prior to his loss of capacity P suffers a substantial financial setback. Although S reasonably believes that, were P competent, he would still make the gift to C3, P also believes that any gift at this time could potentially jeopardize P's own financial welfare. As an initial matter, even with these additional facts, it is not necessarily the case that a gift to C3 would not be in P's best interest. This is true because the "best interest" standard in the Act is not restricted to "financial interest." The standard permits consideration of other factors, including, for example, a principal's desire to treat children equally and to promote harmony in the family. In any case, even if a gift to C3 in this example is inconsistent with P's best interest, S may, in her discretion, make the gift because the gift is consistent with P's known expectations.

c) The duty to preserve the principal's estate plan

The mandatory duty to preserve the principal's estate plan is new to Florida law. It appears in section 709.114(1)(a)⁶² and is subject to a number of qualifications. First the duty applies only to the extent the principal's estate plan is actually known by the agent. Hence, an agent has no duty to ascertain the principal's plan. And, even if the plan is known to the agent, the agent incurs no liability for failing to preserve it as long as the agent acts in good faith.⁶³ Finally, the duty to preserve the principal's estate plan applies only when preservation of the plan is in the principal's best interest based on all relevant factors, including:

- The value and nature of the principal's property;
- The principal's foreseeable obligations and need for maintenance;
- Minimization of taxes;⁶⁴
- Eligibility for a statutory or regulatory benefit, program, or assistance;
- The principal's personal history of making or joining in the making of gifts.

The following examples have been considered and approved by the Committee.

Example 4: As the designated agent of P, A wants to exercise an otherwise effective authority under P's power of attorney to create and fund a revocable living trust. The objective is to facilitate investment of P's assets and to reduce administration costs at P's death. The distribution terms of the trust at P's death will mirror those in P's current will. On these facts, the creation of the trust by A would be consistent with A's duty to preserve the principal's actually known estate plan.

⁶¹ On what must be done to authorize an agent to make gifts of a principal's property, see the discussion of section 709.202 in "*Authorities that can impact a principal's existing estate plan*", beginning on p. 19, *infra*.

⁶² Section 114(b)(6) of the Uniform Act is similar although the duty detailed there is a default duty, not a mandatory one.

⁶³ See § 709.114(3).

⁶⁴ Including income, estate, inheritance, generation-skipping transfer, and gift taxes.

Example 5: Same as the preceding example except P has no will. The terms of the revocable trust will mirror Florida's intestacy statute with the exception of a share that is to pass to P's oldest child. Because the child is disabled, his share will be held in a continuing trust after P's death. The answer is the same.

Example 6: Same as Example 5 except that in addition to the authority to create a trust, A also has authority to conduct banking transactions on P's behalf. To pay an attorney to draft the trust, A withdraws money from a bank account held jointly by P and one of his children. Because the creation of the trust is in P's best interest, the withdrawal from P's joint account is consistent with A's duty to preserve P's actually known estate plan.

Example 7: After consulting his attorney, P executes a will and a durable power of attorney. The will leaves all of P's stock holdings at Smith Barney to P's adult son, S and the residue of P's estate to his second wife, W. P's brother, B is named agent. The originals of both the will and the power of attorney are left with P's attorney for safe keeping. A year later, P loses capacity and pursuant to an escrow agreement P made with his attorney, the original of the power of attorney is sent via registered mail to B. No mention is made of P's will and B makes no inquiry about whether P had a will. In the exercise of B's authority to conduct banking transactions, B retitles P's brokerage account to "P TOD to S and W." B's intent is to minimize probate at P's death. However, because of B's actions, at P's subsequent death, S does not take all of the securities in the Smith Barney account as P's will directs. Although B's actions in retitling the brokerage account fundamentally alter P's estate plan, B's actions are proper because the terms of P's will were not actually known to B and B has no duty under the Act to ascertain whether P had a will.

Example 8: Same as Example 7 except when P's attorney sent the original of the durable power of attorney to B, the attorney also included a copy of P's will. The copy was contained in a sealed envelope on which was written "Copy of the Will of P." The transmittal letter indicated that the will was being sent to B in accordance with P's instructions. Although B read the transmittal letter, he did not open the envelope and read P's will. On these facts, B acted improperly when he retitled the brokerage account. Although B has no duty to ascertain whether P had a will, when the existence of the will is known to B and B has unrestricted access to the terms of the will, B's duty to act in good faith and in a manner that is not inconsistent with P's actually known reasonable expectations requires him to read the will. Thus, in this example, B will be treated as having actual knowledge of the terms of P's will.

d) The duty to perform personally

Current *FS* section 709.08(3)(a) states as a general principle that a power of attorney is nondelegable. Section 709.114(1)(b) of the Act expresses a similar rule. An exception applies to delegations permitted under Florida's Prudent Investor Rule.⁶⁵

e) The duty to keep adequate records

Under the Uniform Act, an agent's duty to keep adequate records is a default duty. It is elevated to a mandatory one in the Florida Act. As expressed in section 709.114(1)(c), the duty requires an agent to keep a record of all receipts, disbursements, and transactions made on behalf of the principal.

The duty imposed by section 709.114(1)(c) should be considered in conjunction with subsection (6) of the same section. Subsection (6) restricts the persons to whom an

⁶⁵ See § 709.114(1)(b). See also *FS* § 518.112.

agent has an obligation to disclose receipts, disbursements, safe deposit box inventories, and transactions. Except as provided in the power of attorney or by order of the court, disclosure is required only at the request of the principal, a court-appointed guardian, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the principal's death, by the personal representative or successor in interest of the principal's estate. Upon receiving a valid request, the agent has 60 days to comply with the request. Provision is made for an additional 60 day extension if the agent substantiates the need for one in a writing or other record within the initial 60 day period.⁶⁶

2. Default duties

Default duties apply unless the power of attorney provides to the contrary. These duties appear in section 709.114(2) and include, in the order discussed below, the duty of competency, the duties of impartiality and loyalty, and the duty to cooperate with health-care decision makers.

a) The duty to act with care, competence, and diligence

An agent owes fiduciary duties to its principal. Among these duties is the default duty to act with care, competence, and diligence.⁶⁷ The precise requirements of this standard will vary with the circumstances. For an agent who has accepted authority to make investment decisions for the principal,⁶⁸ the standard requires compliance with Florida's Prudent Investor Rule.⁶⁹ As provided there, and more generally in section 709.114(4), if an agent is selected because the agent possesses special skills or expertise, or in reliance on the agent's representations that it has special skills or expertise, the special skills or expertise must be considered in determining compliance with this standard.

b) The duties to act loyally and to avoid conflicts

Section 709.114(2)(a) provides that an agent has a default duty to act loyally for the *sole* benefit of the principal. Closely related section 709.114(2)(b) imposes on agents a default duty to act so as to avoid conflicts of interest that impair the agent's ability to act impartially in the principal's best interest. Both of these duties are in accord with the traditional common law duty of loyalty⁷⁰ and with the similar duty of trustees under the Florida Trust Code.⁷¹ Under these standards, even if an agent acts competently and in the best interest of the principal, the agent can incur liability for actions that also benefit the agent or that otherwise involve a conflict of interest.

⁶⁶ Section 709.114(6) is substantially identical to a section 114(h) of the Uniform Act. The only difference is that the Uniform Act gives an agent 30 days to comply. In its consideration and ultimate adoption of the provision, the Committee unanimously adopted the following resolution as guide to their intent.

We approve in principle subsection (7) with the understanding that we interpret it to not require the appointment of a guardian or conservator, solely for the purpose of receiving or demanding an accounting. The Power of Attorney can expand this list of people who can request disclosure.

⁶⁷ § 709.114(2)(c).

⁶⁸ As to which, see the discussion of § 709.208 in "*Special rules for banks and other financial institutions*," beginning at p. 18, *infra*.

⁶⁹ See FS § 518.11. See also the definition of "fiduciary" in FS § 518.10.

⁷⁰ See Restatement (Second) of Agency § 387 (1958).

⁷¹ See FS § 732.0802(1). The formulation of an agent's duty of loyalty in the Florida Act should be contrasted with the corresponding provision of the Uniform Act. Section 114(b)(1) of the Uniform Act states that an agent has a duty to act for the principal's benefit, rather than the principal's *sole* benefit. Under this standard and as explicitly stated in Uniform Act § 114(d), "an agent that acts with care, competence, and diligence for the principal's best interest incurs no liability solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal."

Because an agent's duties of loyalty and impartiality, as expressed above, are default duties, a principal is free to modify or eliminate them in the terms of the power of attorney. Caution is advised here. Under section 709.1145(2), a provision that authorizes an agent to engage in a conflicted transaction is invalid if it was inserted into the power of attorney as a result of an abuse of a fiduciary or confidential relationship with the principal by the agent or the agent's affiliate.⁷² For this purpose, affiliates of an agent include:

- The agent's spouse, descendants, siblings, parents and the spouses of any of them;
- A corporation or other entity in which the agent or a person that owns a significant interest in the agent, has an interest that might affect the agent's best judgment;
- A person or entity that owns a significant interest in the agent; and
- The agent when acting in a fiduciary capacity for someone other than the principal.⁷³

Even assuming that a provision granting an agent the authority to engage in a conflicted transaction passes muster under section 709.1145(2), an exercise of the authority may prompt a judicial challenge by or on behalf of the principal. If so, upon presentation of evidence that the agent or an affiliate had a personal interest in the exercise of the power, the agent or affiliate will have the burden of proving by clear and convincing evidence either:

- That the agent acted *solely* in the interest of the principal; or
- That the agent acted in good faith in the principal's best interest and that the conflict was expressly authorized in the power of attorney.⁷⁴

c) The duty to cooperate with health-care providers

Under Section 709.114(2)(d), an agent has a default duty to cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations if actually known by the agent. If the expectations are not actually known, the agent must act consistently with the principal's best interest.

E. Authorities of agents

Except as otherwise limited by section 709.201 of the Act or by other applicable law, an agent "has full authority to perform, without prior court approval, every act authorized and specifically enumerated in the power of attorney." These authorities extend to property⁷⁵ acquired both before and after the execution of the power and whether or not the property is located or the power is executed in Florida.⁷⁶

⁷² The Committee emphasizes that section 709.1145(2)(a) relates to judicial actions against the agent by or on behalf of the principal. The section is therefore subject to third person reliance provisions found elsewhere in the Act. See § 709.119.

⁷³ § 709.1145(2)(b)1 - 5.

⁷⁴ § 709.1145(1).

⁷⁵ Property means any right or interest in anything that may be the subject of ownership, whether real or personal, legal or equitable. § 709.102(9).

⁷⁶ § 709.201(4).

1. Prohibited personal authorities

The statement of an agent's authority in section 709.201 – in effect, that agents may perform those acts specifically enumerated in the power of attorney – is subject to a number of qualifications and exceptions. The initial exception is found in section 709.201(2) which includes a list of personal authorities that the Act does not permit a principal to delegate to an agent. These should be familiar territory to many practitioners because similar prohibitions exist under current law.⁷⁷ Whether or not authorized in a power of attorney instrument, an agent may not:

- Perform duties under a contract that requires personal services of the principal;
- Make an affidavit as to the principal's personal knowledge;
- Vote on behalf of the principal in a public election;
- Execute or revoke the principal's will or codicil; or
- Exercise powers or authority held by the principal in a fiduciary capacity.

2. No blanket or default powers

The general statement in section 709.201 has other more subtle implications. One is that a blanket grant of authority (*i.e.*, “to do all acts that the principal could do”), is not sufficient to grant *any* authority to the agent.⁷⁸ Another is that agents have no default authorities under the Act. That is, agents may perform those acts *and only those acts* specifically enumerated in the power of attorney.⁷⁹

In early drafts of the Act, section 709.201 included a laundry list of powers that principals and their advisers could consider in crafting a power of attorney. The list was a somewhat expanded version of section 203 of the Uniform Act and those wanting to see the list should refer to that section.⁸⁰ But most of the list was removed in the final product for reasons explained more fully in the discussion of incorporation by reference (below). There are three exceptions. Section 709.201(1) includes without substantive change three provisions found in current *FS* section 709.08. These are not default authorities. They merely continue current law which authorizes their inclusion in a power of attorney. The Committee's objective was to avoid any negative implication that might have arisen had they been omitted. The provisions referred to here are:

- Section 709.201(1)(a) relating to the execution of stock powers or similar documents and the delegation of authority to register securities into or out of nominee form. This provision is identical to current section 709.08(7)(a)1;
- Section 709.201(1)(b) relating the authority to convey or mortgage homestead property. This provision is identical to current section 709.08(7)(a)2; and
- Section 709.201(1)(c) which permits a principal to empower an agent under a durable power of attorney to make health care decisions on the part of the principal. This provision is substantively identical to current section 709.08(7)(c).

⁷⁷ See *FS* § 709.08(7)(b).

⁷⁸ Contrast Uniform Act § 201(c) which provides that this type of blanket provision gives an agent a broad array of authority as provided in sections 204 through 216 of the Uniform Act.

⁷⁹ If two or more enumerated authorities overlap, the broadest authority controls. § 709.201(3).

⁸⁰ See also the more targeted powers found in Uniform Act sections 204 (real property), 205 (tangible personal property), 209 (operation of an entity or business), 210 (insurance and annuities), 211 (estates, trusts, and other beneficial interests), 212 (claims and litigation), 213 (personal and family maintenance), 214 (benefits from governmental programs or civil or military service), 215 (retirement plans), and 216 (taxes).

3. General rule: No incorporation by reference

As mentioned above, the final version of section 709.201 omits the laundry list of powers that appeared in earlier drafts. The list was removed because of the Committee's concern that its presence would invite attorneys and others to try to incorporate the list by reference. The general statement of an agent's authority in the introductory sentence of section 709.201 refers only to acts "authorized and specifically enumerated in the power of attorney." Thus, with two exceptions discussed below, the Act does not permit incorporation of an agent's powers by reference. Here is why.

Although never strictly necessary, an ability to incorporate by reference the terms authorizing an agent to act can be a useful convenience. The Committee's reason for prohibiting it rests with the competing concern that incorporation creates an undesirable risk that principals will execute instruments containing less than obvious terms which they either do not intend or that they do not fully appreciate and understand. The Act cannot guarantee that all principals will carefully consider the terms of the instruments they execute. It can, however, facilitate awareness and understanding for those who do.

4. Special rules for banks and other financial institutions

Too much of a good thing can be bad. And in this context, a universal prohibition against incorporation could impede a desirable uniformity of language in powers. Uniformity is desirable because it reduces ambiguity and increases efficiency, particularly when third persons are asked to honor an agent's authority. These concerns are greatest when agents deal with financial institutions. For that reason, section 709.208 relaxes the prohibition against incorporation in two areas, both of which apply to financial institutions.

a) Banking transactions

Without the need for individual enumeration in the power, an agent may be authorized to conduct an array of actions with respect to accounts at banks and other financial institutions by stating that the agent has "*authority to conduct banking transactions as provided in section 709.208(1), Florida Statutes.*" (emphasis added)

Among others, the authorized actions include the authority to establish, continue, modify, terminate, or make withdrawals from a principal's account; to contract for financial services, including renting a safe deposit box; to receive statements, vouchers, notices, and similar documents from a financial institution; to apply for and use debit cards, electronic transaction authorizations, and travelers checks; to draw upon any line or credit, credit card, or other credit established by the principal; and to purchase or to endorse and negotiate personal, cashiers, counter, etc. checks.

b) Investment transactions

Without the need for individual enumeration in the power, an agent may be granted general authority to engage in an array of actions with respect to investment instruments⁸¹ held by financial institutions by stating that the agent has "*authority to*

⁸¹ The term "investment instruments" is broadly defined to mean:

[S]tocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner, including, but not limited to, shares or interests in a private investment fund, including, but not limited to, a private investment fund organized as a limited partnership, a limited liability company, a statutory or common law business trust, a statutory trust, or a real estate investment trust, a joint venture, or any other general or limited partnership; derivatives or other interests of any nature in securities such as options, options on futures, and variable forward contracts; mutual funds; common trust funds; money market funds; hedge funds; private equity or venture capital funds; insurance contracts; and other entities or vehicles investing in securities or interests in securities whether registered or otherwise, except commodity futures contracts and call and put options on stocks and stock indexes.

§ 709.208(2).

conduct investment transactions as provided in section 709.208(2), Florida Statutes.”
(emphasis added)

Among others, the authorized actions include the authority to buy, sell or exchange investment instruments; to establish, continue, modify or terminate an investment account; to exercise voting rights and to pledge investment instruments as security to borrow, pay, renew, or extend the time for payment of a principal’s debt; to receive certificates and other evidences of investment instrument ownership; and to exercise voting rights with respect to investment instruments.

5. Authorities that can impact a principal’s existing estate plan

Because of the potential for abuse, section 709.202 singles out certain authorities for special treatment. A common thread to these authorities is that their exercise can impact a principal’s existing estate plan. Section 709.202 applies to an authority to:

- Create an inter vivos trust;
- Amend, modify, revoke or terminate a trust created by or on behalf of the principal;
- Make a gift;
- Create or change rights of survivorship;
- Create or change a beneficiary designation;
- Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
- Disclaim property and powers of appointment.

As to these authorities, section 709.202 provides both additional formalities and limitations on their authorization and exercise. We begin with the additional formalities.

a) Additional formalities

As an initial matter, section 709.202(1) specifies additional formalities that a principal must comply with in order to authorize an agent to do any of the actions listed above. Notwithstanding section 709.201, an agent may not exercise any of the above authorities on behalf of the principal or with the principal’s property unless the principal places his or her signature or initials next to the paragraph containing the enumeration of the agent’s authority in the power of attorney. Note that it is not enough for the principal to sign or initial the page on which these powers appear. The Act requires a separate signing or initialing of each individual authority. To facilitate this and to insure compliance with section 709.202(1), each individual authority should appear in a separate paragraph and a place should be provided for the principal to sign or initial next to each paragraph. Authority specified in a paragraph the principal signs or initials will be authorized; authority specified in a paragraph that the principal declines to sign or initial will not.

b) Other restrictions and limitations

In addition to increased formalities, section 702.202 places new restrictions and limitations on these authorities. Three of these apply across the board. As a somewhat redundant but useful reminder to agents, all of these authorities are explicitly made subject to the agent’s duties under section 709.114, including the duty to preserve the principal’s actually known estate plan.⁸² All are also subject to the

⁸² See § 709.202(1).

proviso that the authorities must not be otherwise prohibited by another agreement or instrument to which the authority or property is subject.⁸³ Less obviously, the authorities listed in section 709.202(1) apply only with respect to an agent's exercise of authority on or after the effective date of the Act. This follows directly from section 709.402(4) which states that an act done before the effective date of the Act is not affected by the Act.⁸⁴ Additional restrictions and limitations are discussed below.

1) Authority to amend, modify, revoke, or terminate the principal's trust

Even assuming full compliance with the additional formalities imposed in section 709.202, an agent may amend, modify, revoke, or terminate a trust for which the principal is the settlor only if the trust instrument explicitly provides for amendment, modification, revocation, or termination by the settlor's agent.⁸⁵

2) Special limitation on general authority to make gifts

Assuming compliance with the formalities required by section 709.202, an agent may be authorized to make gifts of the principal's property by transfer or exercise of a principal's presently exercisable general power of appointment.⁸⁶ The authority may relate to gifts of specific property or it may be phrased as a general authority to make gifts. In this latter case, however, unless the authorization provides otherwise, gifts by the agent may not exceed the annual exclusion amount specified in IRC s. 2503 (or twice that amount in the case of a split gift).⁸⁷ An agent's authority to consent to gift splitting for gifts made by the principal's spouse is similarly limited.⁸⁸

Example 9: P's power of attorney effectively authorizes her agent to create revocable and irrevocable trusts on P's behalf. The power does not, however, specifically authorize the agent to make gifts in excess of the gift tax annual exclusion. Although the agent may create an irrevocable trust, the initial funding of the trust and all subsequent transfers of property to the trust are subject to the restrictions imposed by section 709.202(3)(a). The restrictions do not apply to a revocable trust.

⁸³ See *id.*

⁸⁴ Note that the relevant issue here relates to when an agent exercises authority not to when the instrument itself was executed. Indeed, the Act applies to a power of attorney whether the power was executed before or after the effective date of the Act. See § 709.402(1). However, since the Act has no effect on actions taken prior to the effective date of the Act, the Act has nothing to say with respect to pre-Act actions of agents of legacy powers. To further clarify, the Committee is aware of a difference of opinion on the effectiveness under current law of an authorization in a power of attorney for the agent to create a trust of the principal's property. Because the Act applies only to exercises on or after its effective date, the Act avoids taking a position on the issue as it relates to pre-Act exercises of the agent's purported authority. However, even if Florida courts conclude that an authority to create a trust is not permissible under current law, if the authority is included in a legacy power of attorney, it will become effective for exercises on or after the effective date of the Act.

For additional discussion of how section 709.202 relates to legacy powers of appointment, see "*Inapplicability of section 709.202 to legacy powers*", *infra* p. 21.

⁸⁵ § 709.202(1)(b).

⁸⁶ A presently exercisable general power of appointment is a power of appointment exercisable at the time in question in favor of the principal, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term does not include a power exercisable in a fiduciary capacity or only by will. It includes a power that is not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the contingency associated with the power has occurred. § 709.102(7).

⁸⁷ See § 709.202(3)(a).

⁸⁸ See § 709.202(3)(b).

3) Special restriction for actions that benefit unrelated agents

Notwithstanding an expressed general enumeration of authority to do an act, unless a power expressly provides otherwise, an agent who is not an ancestor, spouse, or descendant of the principal, may not exercise authority to create in the agent or in someone the agent is legally obligated to support, any interest in the principal's property whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.⁸⁹

c) Inapplicability of section 709.202(1) to certain banking and investment transactions

Section 709.202(4) addresses a concern that financial institutions have when an agent makes a deposit to or a withdrawal from accounts held in survivorship or beneficiary form. Without more, the authority to take these actions could be seen as an authority to create or modify rights of survivorship or beneficiary designations to which the more stringent formality provisions of section 709.202(1) apply. Section 709.202(4) provides to the contrary. The section provides that, if a power of attorney is otherwise sufficient to grant an agent authorization to conduct banking or investment transactions, either using the incorporation methodology allowed by section 709.208(1) and (2), or otherwise, then making a deposit to or a withdrawal from an insurance policy, retirement account, IRA, benefit plan, bank account, or any other joint or payable on death account is not a power to create or modify rights of survivorship or beneficiary designations and no further specific authority is required for the agent to exercise such authorization.⁹⁰

d) Inapplicability of section 709.202 to legacy powers

Legacy powers of attorney present a special problem with respect to the additional formalities imposed by section 709.202(1). Because the sign-or-initial requirement is new under the Act, it is unlikely that any legacy power will comply with it. Section 709.202(5) addresses this concern. Under it, notwithstanding anything to the contrary in section 709.202, if a legacy power is otherwise sufficient to authorize an agent to exercise any of the authorities described in section 709.202(1), then the power of attorney is sufficient to the same extent under the Act. As a consequence of this provision, legacy powers are not subject to the sign-or-initial requirement of section 709.202(1). Nor are they subject to the limitations imposed by sections 709.202(2) and (3).

F. Liability of agents

1. In general

An agent is a fiduciary⁹¹ and as such is liable for improper acts or omissions. However, the extent of liability is affected by several other Act sections. For one, an agent's liability assumes that the agent has accepted the power. Since acceptance may be limited, so too may be the agent's liability.

Example 10: Prior to losing capacity, P executed a power of attorney designating A as agent and authorizing A to conduct banking and

⁸⁹ § 709.202(2).

⁹⁰ Section 709.202(4) also provides that banks and other financial institutions have no duty to inquire as to the appropriateness of the agent's actions and no liability to the principal or to other persons for actions taken in good faith reliance on the appropriateness of the agent's actions. The section does not eliminate the agent's duties and liability to the principal.

⁹¹ See § 709.114(1), initial sentence.

investment transactions in conformity with the requirements of section 709.208. The power of attorney had no provision dealing with acceptance of the power. After P lost capacity, A deposited checks in P's savings account and drew checks on P's checking account to pay for P's support and other needs. A received and saved the statements from P's brokerage account, but did not take any other actions with respect to that account. On these facts, A's actions manifest acceptance of the authority to conduct banking transactions but not the authority to conduct investment transactions.

Example 11: Same as Example 10, except A communicated regularly with P's securities broker. He followed the broker's recommendations on some securities purchases and he directed the broker to sell some stock when A needed cash for P's support. On these facts, A's actions manifest acceptance of the authority to conduct investment transactions. Accordingly, A can be held liable if his acts or omissions do not meet his duties under Florida's Prudent Investor Rule.

In addition, many of the duties imposed on an agent apply only when the agent has actual knowledge of some fact or circumstance. This includes the duties to:

- Take action to safeguard the principal's interests when the agent knows of a breach or imminent breach by another agent;⁹²
- Act in an a manner not contrary to the principal's expectations;⁹³
- Preserve the principal's estate plan;⁹⁴ and
- Cooperate with the principal's health care decision-maker.⁹⁵

Obviously, there can be no liability with respect to these duties in the absence of the required actual knowledge. Moreover, an agent that acts in good faith is not liable for any failure to preserve the principal's estate plan even when that plan is actually known by the agent.⁹⁶ Likewise, good faith will insulate an agent from responsibility for actions taken without knowledge that the agent's authority has terminated or been suspended;⁹⁷

2. Liability for actions of co-agents and successor agents

An agent that has actual knowledge of a breach or imminent breach by another agent has a duty to take reasonably appropriate actions to safeguard the principal's best interests. If the agent has a good faith belief that the principal is not incapacitated, this duty is satisfied if the agent gives notice of the breach or pending breach to the principal.⁹⁸

Otherwise:

- Except as provided in the power of attorney, a co-agent or successor agent who neither participates in nor conceals another agent's breach is not liable for the other agent's actions or omissions;⁹⁹
- A successor agent has no duty to review the conduct or decisions of a predecessor agent;¹⁰⁰ and

⁹² See § 709.111(4) discussed in "*Liability for actions of co-agents and successor agents*", infra p. 22.

⁹³ See § 709.114(1)(a)1 discussed in "*The duty not to act in a manner that is contrary to the principal's actually known reasonable expectations*", supra p. 12.

⁹⁴ See § 709.114(1)(a)4 discussed in "*The duty to preserve the principal's estate plan*", supra p. 13.

⁹⁵ See § 709.114(2)(d) discussed in "*The duty to cooperate with health-care providers*", supra p. 16.

⁹⁶ See § 709.114(3).

⁹⁷ See §§ 709.109(4).

⁹⁸ § 709.111(4).

⁹⁹ § 709.111(3).

¹⁰⁰ § 709.111(5).

- A successor agent has no duty to institute any proceeding against a predecessor agent or to file any claim against any predecessor agent’s estate, for any of the predecessor agent’s actions or omissions as agent.¹⁰¹

3. Liability for actions of others

In very limited situations, the Act permits an agent to delegate authority to other persons.¹⁰² In the case of a proper delegation pursuant to the Florida Prudent Investor Rule, the delegating agent is not liable for an act, error of judgment, or default of the delegee, provided the agent exercises reasonable care, judgment, and caution in selecting the delegee, establishing the scope and terms of the delegation, and in periodically reviewing the delegee’s actions.¹⁰³

4. Exoneration

A power of attorney may include a provision exonerating the agent for liability for acts, omissions, or decisions made in good faith. The provision is effective except to the extent it:

- Relieves the agent for liability for breaches committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney or the principal’s best interest; or
- Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.¹⁰⁴

5. Damages and costs

An agent that violates its duties under the Act is liable to the principal or the principal’s successors for the amount required to restore the principal’s property to what it would have been had the violation not occurred and for reimbursement for fees and costs paid from the principals funds on the agent’s behalf in defense of the agent’s actions.¹⁰⁵

G. Acceptance, rejection, liability, and reliance of third persons

1. Acceptance of a power of attorney

Subject to the exceptions discussed here, section 709.120(1)(a) requires a third person to accept or reject a power of attorney within a reasonable time. For financial institutions, five days is presumed to be a reasonable time to accept or reject an agent’s authority to conduct banking or investment transactions pursuant to section 709.208.¹⁰⁶ What constitutes a reasonable time for acceptance or rejection in other situations will depend on the circumstances and the terms of the power of attorney instrument. With respect to that instrument, a third person may not require an additional or different form of the power of attorney; the instrument must be accepted or rejected, as is.¹⁰⁷ A third person may,

¹⁰¹ Id.

¹⁰² On the situations where the Act permits an agent to delegate authority, see § 709.114(1)(b) relating to delegation under the Florida Prudent Investor Rule and § 709.201(1)(a) relating to the delegation of authority to register securities into or out of nominee form.

¹⁰³ See § 518.112(1) and (4)..

¹⁰⁴ § 709.115.

¹⁰⁵ § 709.117.

¹⁰⁶ § 709.120(1)(b). Section 709.208 is discussed in “*Special rules for banks and other financial institutions*”, supra p. 18.

¹⁰⁷ See § 709.120(1)(c).

however, require the agent to execute an affidavit stating where the principal is domiciled, that the principal is not deceased, and that there has been no revocation, partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the power of attorney, or suspension by initiation of proceedings to determine the principal's incapacity or to appoint a guardian of the principal.¹⁰⁸ In addition, if the power appears to be properly executed, a third person may make a good faith request for::

- An English translation, if the power is not wholly in English; or
- An opinion of counsel as to any matter of law, if the third person provides the reason for the request in a writing or other record.¹⁰⁹

2. Rejection of a power of attorney

A third person that rejects a power of attorney must state the reasons for the rejection in writing.¹¹⁰ In this regard, section 709.120(2) states that a third person is not required to accept a power of attorney if:

- The third person is not otherwise required to engage in a transaction with the principal in the same circumstances;
- The third person has knowledge of the termination of the agent's authority or of the power of attorney;
- A timely request by the third person for an affidavit, English translation, or opinion of counsel is refused by the agent;
- The person in good faith believes that the power is invalid or that the agent lacks the authority to perform the act requested; or
- The third person makes, or has knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or by a person acting for or with the agent.

3. Liability for an improper failure to accept a power of attorney

A third person that improperly refuses to accept a power of attorney is subject to a court order mandating acceptance and to liability for damages, including reasonable attorney's fees and costs, incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of it.¹¹¹

4. Protection of third persons that act in reliance on a power of attorney

The Act includes several provisions that afford protection from liability to third persons. These include:

- Section 709.202(4), which applies to financial institutions that honor an agent's authorized authority to conduct banking or investment transactions. The section relieves financial institutions from any duty to inquire as to the appropriateness of an agent's exercise of the authority and protects the institutions from liability to

¹⁰⁸ See §§ 709.119(2) and (3)(c). The Act includes a suggested form for the affidavit. See § 709.119(2)

¹⁰⁹ See § 709.119(3)(a) and (b). The English translation or opinion of counsel must be provided at the principal's expense unless the request is made after the time allowed for acceptance or rejection of the power of attorney. § 709.119(4).

¹¹⁰ § 709.120(1)(a).

¹¹¹ § 709.120(3).

the principal or to any other person for actions the institution takes in good faith reliance on the appropriateness of the agent's actions. The section does not eliminate the agent's duties or potential liability to the principal;

- Section 709.119(5), which applies to third persons who rely in good faith on an English translation; opinion of counsel, or affidavit of an agent; and
- Section 709.119(1)(a), which provides that third persons that accept in good faith a power of attorney that appears to be properly executed may rely upon the power and may enforce an authorized transaction against the principal's property as if the power of attorney and the agent's authority under it were genuine, valid, and still in effect. For purposes of this provision (and without limitation) the requisite good faith does not exist if the third person has notice that the power of attorney or the agent's authority is void, invalid, suspended or terminated.

H. Judicial relief

Section 709.116 deals with judicial relief. Under the section, a court may construe or enforce a power of attorney, review the agent's conduct, terminate the agent's authority, remove the agent, and grant appropriate relief. A petition for judicial relief may be made by the principal or his agent (including any nominated successor agent); a guardian, conservator, trustee or other fiduciary acting for the principal or the principal's estate; a health care decision-maker (with respect to relevant agent authority or conduct); a governmental agency having regulatory authority to protect the principal's welfare; a person who is asked to honor the power of attorney; or any other interested person (such as the principal's spouse, parent or descendant) who demonstrates that they are interested in the principal's welfare and have a good faith belief that intervention by the court is necessary. In all actions for judicial relief under the Act, the court shall award taxable costs (including reasonable attorney's fees) as in chancery actions.¹¹²

¹¹² § 709.116.

REPORT OF THE STRATEGIC PLANNING COMMITTEE

In the 2009 Strategic Plan of the Section approved by the Executive Council, the Executive Committee was assigned the task of exploring (i) the creation of an “At Large Member” category for active Council members who are no longer committee leaders and others who express the desire and demonstrate the willingness to assist with Section issues as the need arises and (ii) the reduction of circuit representatives.

The Executive Committee met on March 5, 2010, in Coral Gables, Florida, to address this issue. After considerable discussion, the Executive Committee approved a proposed plan that would re-designate the Circuit Representatives as Members At Large and redefine their role to more appropriately reflect the Section’s goals of maintaining active, productive members of the Executive Council. To carry out this plan, the Bylaws Committee will prepare and submit to the Executive Council, for its consideration at the August 2010 Legislative Update meeting, proposed, amended bylaws to effectuate this new designation. The proposed Bylaws will (1) replace the current Director of Circuit Representatives with a Director of Members at Large, (2) provide that, for the first year, all current Circuit Representatives shall be considered the initial Members at Large and the Current Director of Circuit Representatives shall serve as the initial Director of the Members at Large, (3) state that, to the extent the officers, committee chairs and liaisons of the Executive Council do not include geographical representation from each judicial circuit and outside of Florida, the Members at Large should, when reasonably practicable, include members from each geographical area not otherwise represented, (4) provide that the Long Range Planning Committee nominate the Members at Large based upon input from the Director of the Members at Large and the Executive Committee, (5) specify that the procedure for electing the nominated Members at Large is the same as currently provided for Section officers, and (6) require the Director of the Members at Large to define the responsibilities of the Members at Large, in consultation with the Executive Committee, and evaluate the performance of the Members at Large on an annual basis.

REPORT FROM FELLOWSHIP COMMITTEE

The fellowship committee began accepting applications for the new 2010 fellowships on January 1, 2010. Applications were accepted through April 1, 2010. The program was widely advertised during the application period. Despite a slow start, we received over 60 applications for the 4 open positions. Before consideration by the committee, each application was vetted to assure the applicant worked for the firm they claimed to be employed by, had no record of bar disciplinary actions, was a current member of the RPPTL section, met the age or practice requirements and was in fact practicing in the areas which they claimed to focus their practice.

In late April, the fellowship committee met to review all applications submitted and select 12 "finalists" for further consideration. Members of the committee personally contacted the references for each of the 12 finalists and, if additional information was needed, contacted the applicant directly. From those 12 finalists, the 4 final fellows were chosen. The committee was extremely impressed by the number of highly qualified applicants. Even though they were not ultimately selected, many applicants will receive personal phone calls from the fellowship committee chairs to encourage them to become more active in the section and will be directed to specific committees to which they demonstrated an interest through their application. Committee chairs will be contacted and made aware of the name of the potential committee members and asked to further encourage their participation. Through this outreach, we hope to encourage a lasting relationship with talented young attorneys practicing in our area.

The four fellows selected for the 2010 fellowship positions are Navin Pasem, Benjamin Bush, Theodore Kypreos and Elisa Luchhi. A brief introduction to each fellow follows:

Navin Pasem has his own firm in Tampa, FL. He received his JD from the University of Miami, School of Law in May of 2005, and received his LLM in Real Property Development and Finance from University of Miami in 2008. He practice includes all aspects of real estate and business law. He is currently an executive committee member and law school liaison for the South Asian Bar Association of Florida and was recently recognized in the May 15, 2009, edition of the Florida Bar News for his pro bono representation in the FLASH program.

Benjamin B. Bush is a shareholder with Gardner, Bist, Wiener, Wadsworth & Bowden, P.A. in Tallahassee, Florida. He received his JD from FSU College of Law in 2003 and has focused his practice in real estate, banking, finance, land use and zoning. Mr. Bush is extremely active in the Tallahassee Bar Association and currently serves as president elect of the Young Lawyers Section and the Young Lawyers Section representative to the Board of Directors for that organization.

Elisa F. Lucchi is an associate with Fowler, Rodriguez, Valdez-Fauli in Coral Gables, FL. She received her JD from University of Florida in 2005, and her LLM from University of Miami in 2007. Her practice primarily focuses on domestic estate and trust planning, probate and estate taxation. Ms. Lucchi is very active in her community, including serving on as a planned giving advisor for Miami Country Day School, and has received numerous awards and leadership position throughout her academic and professional career.

Theodore S. Kypreos is a shareholder with Jones, Foster, Johnston and Stubbs, P.A. in West Palm Beach, FL. He received his JD from University of Florida in 2002 and focuses his practice in probate and trust litigation, trust and estates administration, guardianship law, estate planning and fiduciary litigation. Mr. Kypreos is very active with the Palm Beach County Bar Association and is currently the president of the Young Lawyers Section. He is also an active member of the Trust Law Committee for the RPPTL section and is a member of the Probate Rules Committee.

All of the fellows received extraordinary recommendations from their references and exhibited a high degree of leadership in the organizations in which they are currently involved. We look forward to the new fellow's involvement with our section.

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

Article I NAME AND PURPOSES

Section 1. Name. The name of this organization is “The Real Property, Probate and Trust Law Section of The Florida Bar” (“section”).

Section 2. Purposes. The purposes of the section are:

(a) To provide an organization within The Florida Bar open to persons having an interest in real property, probate, trust, or related fields of law that furthers the knowledge and practices of members in those areas;

(b) To inculcate in its members the principles of duty and service to the public; and

(c) To serve the public and its members by improving the administration of justice and advancing jurisprudence in the fields of real property, probate, trust, and related fields of law through all appropriate means, including the development and implementation of legislative, administrative and judicial positions; continuing legal education programs; standards for ethical and competent practice by lawyers; and professional relationships between real estate, probate, and trust lawyers, and other lawyer and non-lawyer groups.

Article II SECTION MEMBERSHIP

Section 1. Membership Types. The membership of the section shall be the active members (“active section member”), affiliate members (“affiliate section member”), and honorary members (“honorary section member”) hereafter described:

(a) Active section member: Any member of The Florida Bar in good standing may become an active section member by applying for such membership

and paying the section's annual dues. Any person who is an active section member who ceases to be a member of The Florida Bar in good standing also ceases to be a member of the section. Reinstatement as a member of The Florida Bar in good standing shall automatically reinstate the person as an active section member, provided that the member is current in the payment of section dues.

(b) Affiliate section member: The Executive Council of the section ("executive council") may, in its discretion (after review and approval of the applicant's qualifications for membership), enroll as an affiliate section member, any person who has shown the dual capacity of interest in and contribution to the section's activities and who is either a law student enrolled in an accredited Florida law school, a graduate of any law school, or a legal assistant, as defined below. Affiliate section members shall pay the annual dues prescribed by the executive council and shall have all the privileges of active section members, except that they may not vote or hold any office or position in the section. The number of affiliate section members shall not exceed 1/3 of the number of active section members.

For purposes of this Article, a legal assistant is a person who assists a member of The Florida Bar in the delivery of legal services in the area of real property, probate, or trust law and who has satisfied the following minimum requirements:

1. Successful completion of the certified legal assistant (CLA) examination of the National Association of Legal Assistants, Inc.;
2. Graduation from an ABA-approved program of study for legal assistants or graduation from any accredited law school;
3. Graduation from a course of study for legal assistants which is institutionally accredited but not ABA-approved, and which requires not less than the equivalent of 60 semester hours of classroom study;
4. Graduation from a course of study for legal assistants, other than those set forth in 2. and 3. above, plus not less than 6 months of in-house training as a legal assistant;
5. A bachelor degree in any field, plus not less than 1 year of in-house training as a legal assistant; or
6. Five years of in-house training as a legal assistant.

(c) Honorary section member: Any person whom the executive council shall find to have made outstanding contributions in the fields of real property, probate, or trust law may be made an honorary section member by the executive council. An honorary section member shall have no vote at section meetings, shall not be entitled to hold any office or position in the section, and shall not be required to pay dues.

(d) All members of the section shall be required to observe the standards of professionalism and ethical conduct expected of members of The Florida Bar, and legal assistants who are affiliate section members shall also be required to observe and adhere to the Code of Ethics and Professional Responsibility established by the National Association of Legal Assistants, Inc. The executive council, by 2/3 vote of the members present at a meeting, may terminate section membership for misconduct involving moral turpitude or the failure to observe the standards of conduct established by these bylaws.

Section 2. Membership Year. The membership year of the section runs concurrently with the membership year of The Florida Bar.

Section 3. Dues. The executive council shall establish annual dues payable from time to time by the members of the section. The dues so established will be effective when approved by the Board of Governors of The Florida Bar ("board of governors"). There will be no proration of annual dues except for first-year members of The Florida Bar. After becoming a member, dues are payable in advance of each membership year; provided, however, each person who is admitted to The Florida Bar shall be extended an invitation to become a member of the section, and upon acceptance, such member shall be entitled to a waiver of the dues for the first year of membership in the section, according to the following formula:

(a) If a person is admitted to membership in The Florida Bar after June 30, but prior to December 31, of any calendar year, then that member will not be required to pay section dues until the June 30th following such member's admission to The Florida Bar.

(b) If a person is admitted to membership in The Florida Bar after January 1, but prior to June 30, of any calendar year, that member will not be required to pay section dues until June 30 of the calendar year next succeeding the

calendar year of the member's admission to The Florida Bar (e.g. if admitted to The Florida Bar on March 1, no section dues will be payable until the fiscal year beginning July 1.)

The Florida Bar shall bill section dues simultaneously with the billing(s) for regular dues of The Florida Bar.

Article III ORGANIZATION

The section is divided into 2 divisions, "the real property law division" and "the probate and trust law division." The section and its real property law division shall be served by committees and section liaisons that operate under the supervision of the real property law division director. The section and its probate and trust law division shall be served by committees and section liaisons that operate under the supervision of the probate and trust law division director. The section shall also be served by general standing committees and section liaisons that operate under the supervision of the chair-elect.

Article IV OFFICERS, ELECTED POSITIONS, AND EXECUTIVE COMMITTEE

Section 1. Officers. The officers of the section are the section chair, the chair-elect, the secretary, the treasurer, the real property law division director, the probate and trust law division director, the immediate past section chair, and the members-at-large director ("section officers"). The section officers, the representatives for out-of-state members of the section, and the members-at-large, shall be selected in the manner set forth in this Article IV.

Section 2. Qualifications. No person may serve as a section officer, a representative for out-of-state members, or a member-at-large, unless they are an active section member, and the loss of that status shall cause the office or position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements, reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant office or position if it has not been filled.

Section 3. Executive Committee. The section officers, together with the chairs of the section CLE seminar coordination and legislation committees, shall serve as the executive committee of the section (“executive committee”), which shall also be the planning agency for the executive council. The executive committee shall have the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and on any other matter which necessarily must be determined between meetings of the executive council. All action taken by the executive committee on behalf of the executive council shall be reported to the executive council at its next meeting. The executive committee shall not take any action that conflicts with the policies and expressed wishes of the executive council. The executive committee shall also (i) make recommendations for consideration by the chair-elect in appointing chairs and vice chairs of section committees and section liaisons; (ii) make recommendations for consideration by the section’s long-range planning committee (“long-range planning committee”) in submitting nominees for members-at-large; and (iii) perform such other duties as may be directed by the executive council or prescribed in these bylaws.

Section 4. Nominating Procedure.

(a) The long-range planning committee, which consists of all past section chairs who are members of the executive council and is chaired by the chair-elect, shall submit nominees to the section for election to the offices of chair-elect, secretary, real property law division director, probate and trust law division director, treasurer, members-at-large director, and to the positions of representatives for out-of-state members and members-at-large. If the office of chair-elect becomes vacant during the year, the nominations submitted by the long-range planning committee for the following year shall include a nominee for the office of section chair. The long-range planning committee shall notify the members of the section of the names of the nominees no later than 60 days prior to the section’s annual meeting (“election meeting”). In submitting nominations for members-at-large, the long-range planning committee shall consider recommendations from the members-at-large director and the executive committee.

(b) No nominations for any elected position other than those made by the long-range planning committee will be permitted, except that nominations may be made by a written nominating petition signed by 10 or more active section members and submitted to the section chair not less than 30 days prior to the election meeting. If more than one person is nominated for any elected office or position, the section

chair, assisted by such special committees as the section chair may appoint, will announce the procedures to be followed for that election.

(c) Each nominee will be permitted to prepare a statement of no more than 500 words, containing such information about the nominee as the nominee may choose, to be reproduced and distributed by the section to its members, either as an article in the section's publication, Action Line, or separately. Any such statement shall also be distributed at the election meeting.

Section 5. Election and Term of Offices and Positions.

(a) The section officers, the representatives for out-of-state members, and the members-at-large, shall be elected by majority vote of the active section members in physical attendance at the election meeting, which shall be held prior to July 1 of each year. Voting by proxy shall not be permitted. At the election meeting (i) the section chair, chair-elect, and secretary shall determine the number of active section members in physical attendance and entitled to vote; (ii) voting will be by written, secret ballot prepared in advance; (iii) if no nominee receives a majority vote for an office or position, additional balloting will take place between the 2 nominees receiving the greatest number of votes until the required majority is obtained; and (iv) the results of the election will be immediately announced by the section chair.

(b) The nominees so elected shall serve for a period of 1 year, beginning on July 1. The chair-elect shall automatically become section chair 1 year after taking office as chair-elect, or upon the death, resignation, or removal of the section chair.

Section 6. Duties of Officers.

(a) Section Chair: The section chair shall be the chief executive officer and principal representative of the section, and shall preside at all meetings of the section, the executive council, and the executive committee. The section chair shall also be responsible for reports to The Florida Bar or the board of governors and for performing such other duties as may be prescribed in these bylaws or which customarily pertain to the office of section chair. The section chair is an ex-officio member of all section committees.

(b) Chair-elect: The chair-elect shall be responsible (i) for the general standing committees and any projects assigned to them, including the preparation

and submission of any required reports; (ii) for such duties as the section chair, the executive council, or the executive committee may designate; and (iii) for performing such other duties as may be prescribed in these bylaws or customarily pertain to the office of chair-elect. In addition, in the case of the temporary disability or absence of the section chair, the chair-elect shall serve as acting section chair, but only for the duration of the section chair's disability or absence. Any issue concerning the disability or absence of the section chair shall be determined by the executive committee, subject to review by the executive council.

(c) Secretary: The secretary shall record (i) minutes of meetings of the executive council (including record of attendance); (ii) significant actions taken by the executive committee, including all actions which exercise any function of the executive council; and (iii) the election results at the election meeting, and shall file same with the permanent records of the section at The Florida Bar headquarters in Tallahassee. The secretary shall also report and keep a record of all policies adopted by the section as a separate record.

(d) Division Directors: The real property law division director and the probate and trust law division director shall be responsible for the section committees within their respective divisions, and for the projects assigned to them, including the preparation and submission of reports of such section committees as may be required.

(e) Treasurer: The treasurer and the appropriate staff of The Florida Bar shall make certain that the financial affairs of the section are administered in a manner authorized by the section's budget and in accordance with the standing policies of the board of governors. The treasurer shall monitor and review for correctness all accounts, reports, and other documents pertaining to section funds, revenues, and expenditures that are furnished by the staff of The Florida Bar. No reimbursement may be made to any member of the section without approval of the treasurer, and any reimbursement to the treasurer must be approved by the section chair or chair-elect. The treasurer shall (i) work with the chair-elect to prepare and submit a projected budget to the executive council; (ii) report from time to time on the section's present and projected financial condition, advising the executive committee and the executive council as to the financial impact of any proposed action that might have a significant impact on the financial condition of the section; and (iii) prepare such other recommendations and special reports of financial affairs of the section as may be requested by the section chair.

(f) Members-At-Large Director: The members-at-large director shall (i) in consultation with the executive committee, define any responsibilities of the

members-at-large; (ii) be responsible to the section for the members-at-large; (iii) evaluate the performance of the members-at-large on an annual basis; and (iv) provide recommendations for consideration by the long-range planning committee in submitting nominees for members-at-large.

(g) Immediate Past Section Chair: The immediate past section chair shall provide counsel, guidance and advice to the executive committee.

Section 7. Vacancies.

(a) If the office of section chair becomes vacant, the chair-elect shall immediately assume the office of section chair, and shall serve as section chair for the remainder of the unexpired term, as well as for the following term for which the chair-elect was elected to serve as section chair.

(b) If the office of chair-elect becomes vacant, the section chair shall assume the duties of the office of chair-elect for the remainder of the unexpired term. In that event, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(c) If the offices of section chair and chair-elect both become vacant, the long-range planning committee shall convene an emergency meeting and select a qualified person to serve as section chair for the remainder of the unexpired term. In that event, the person selected as section chair shall also assume the duties of the office of chair-elect for the remainder of the unexpired term and, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(d) If any office other than section chair or chair-elect becomes vacant within 6 weeks of the next scheduled in-state meeting of the executive council, the vacancy shall be filled for the remainder of the unexpired term by the executive council at that meeting. If no in-state meeting is scheduled within 6 weeks following the creation of such a vacancy, it shall be filled for the remainder of the unexpired term by the executive committee.

(e) Vacancies in the positions of representative for out-of-state members and member-at-large shall be filled by the section chair.

Article V
EXECUTIVE COUNCIL

Section 1. Powers and Duties. The executive council is the governing body of the section and shall have the power and duty to fully administer these bylaws, including the power to exercise all authority expressed or implied in these bylaws and to employ necessary personnel on behalf of the section.

Section 2. Membership. The executive council shall consist of the section chair, the chair-elect, the real property law division director, the probate and trust law division director, the treasurer, the secretary, the members-at-large director, the chairs and vice chairs of section committees, the section liaisons, the member of the board of governors appointed as its liaison representative to the section, the members-at-large, the past section chairs, and representatives for the out-of-state members of the section.

Section 3. Regional Representation. To the extent that the section officers, chairs and vice chairs of section committees, section liaisons, and representatives for the out-of-state members of the section serving on the executive council do not include geographical representation from each judicial circuit and outside of Florida, the members-at-large should include such representation when reasonably practicable.

Section 4. Attendance. The section recognizes that regular attendance of executive council members at executive council meetings is required to perform the duties and functions of the executive council in a proper manner. Accordingly, if any past section chair fails to attend 10 successive executive council meetings (other than out-of-state meetings), or if any other member of the executive council fails to attend 3 successive executive council meetings in any membership year (other than out-of-state meetings), such member shall be deemed to have resigned from the executive council, and the office or position held by that person shall be deemed vacant. In such event, the resigned member shall not be eligible for election to or membership on the executive council for the next succeeding membership year unless (i) the executive committee, upon a showing of good cause for the absences, waives the attendance requirement for the membership year involved; and (ii) the waiver is announced at a formal meeting of the executive council and duly recorded in the minutes of the meeting. Any vacancy created by the absence of a member as herein provided shall be filled as provided in these bylaws.

Article VI
SECTION COMMITTEES AND LIAISONS

Section 1. Committees. The section chair shall have the authority to establish and dissolve such section committees and liaison positions as the section chair deems necessary or advisable, except that the section chair may not dissolve the section legislation or CLE seminar coordination committees. The section chair shall promptly report such changes to the executive council, and they shall be effective until and unless disapproved by the executive council.

Section 2. Section Committee Chairs and Liaisons. Prior to July 1 of each year, after considering the recommendations of the executive committee, the chair-elect shall make the following appointments for the coming year: (i) chairs of the section's real property law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (ii) chairs of the section's probate and trust law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (iii) chairs of the section's general standing committees, and such vice chairs of those committees and as the chair-elect deems necessary; (iv) and section liaisons to other sections and groups. The section chair shall have the power to remove chairs and vice chairs of section committees and section liaisons if the section chair believes that it is in the best interest of the section to do so, and to fill vacancies in those positions (including vacancies resulting from the section chair's creation of new section committees or liaison positions).

Section 3. Committee Members. The chair of each section committee may appoint and remove members to and from that committee, except that a committee chair may not remove a vice chair of the committee.

Section 4. Section Membership Requirement. No person may serve as a member of any section committee unless they are a member of the section. No person may serve as a (i) chair, vice chair, or voting member of any section committee; or (ii) section liaison, unless they are an active section member, and the loss of that status shall cause the position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements, reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant position if it has not been filled.

Section 5. Committee Reports. The chair of each section committee shall submit a written annual report of the committee's activities during the to the executive committee by the date requested by the section chair. All recommendations contained in such reports are confidential and shall not be disclosed outside the executive committee without the approval of the section chair.

Article VII MEETINGS

Section 1. Annual/Election Meeting of the Section. The section chair shall designate the annual meeting of the section each year, which shall be the election meeting and be held prior to July 1. The executive council may call special meetings of the section provided at least 30 days notice thereof shall be given. The active section members in physical attendance at any meeting of the section shall constitute a quorum for the transaction of business and a majority vote of those in physical attendance will be binding. Voting by proxy shall not be permitted.

Section 2. Executive Council Meetings. There shall be no fewer than 3 in-state meetings of the executive council each year. The executive council may act or transact business herein authorized, without meeting, by written or electronic approval of the majority of the executive council. The section chair may call meetings of the executive council by giving no less than 15 days notice to its members. Those present at a meeting of the executive council duly called will constitute a quorum and a majority vote of those present will be binding unless a greater majority is required by these bylaws for a particular matter. Voting by proxy shall not be permitted.

Section 3. Executive Committee Meetings. The executive committee shall meet as directed by the section chair, and shall hold an organizational meeting prior to each membership year at a time, date, and place selected by the section chair. The section chair shall fix the date and location of each meeting and shall give written, electronic, or oral notice of such date and location to each executive committee member at least 7 days prior to the meeting. A majority of the executive committee may exercise its powers unless a greater majority is required by these bylaws for a particular matter, and it is not necessary that a formal meeting be held for action, action by mail, e-mail, or telephone being sufficient. Voting by proxy shall not be permitted.

Article VIII
LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL POSITIONS

Section 1. Authority. The section may be involved in legislative, administrative, and judicial (including amicus curiae and court rule) activities that are within the purview of the section. Activities are within the purview of the section if they are significant to the judiciary, the administration of justice, the fundamental legal rights of the public, or the interests of the section, provided they are consistent with the purposes of the section and the policies promulgated by ~~The Florida Bar~~ the board of governors, including the requirements that:

(a) the issue involved is within the substantive areas of real property, probate, trust or related fields of law;

(b) the issue is beyond the scope of permissible legislative activity of The Florida Bar, or is within the permissible scope of legislative activity of The Florida Bar, but the proposed section position is not inconsistent with an official position of the Bar on that issue; and

(c) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the Bar.

Section 2. Section Positions. A “section position” is a legislative, administrative, or judicial (including amicus curiae and court rule) position that complies with Section 1 of this Article and has been adopted by the section in accordance with this Article. A section position, which may be expressed as a concept, may either support or oppose a matter. Any advocacy by the section shall be based upon a section position and comply with the requirements of this Article.

Section 3. Legislation Committee. The section legislation committee shall consist of a chair, a vice chair for real property, a vice chair for probate and trust, the section chair, the chair-elect, the director of the real property law division, the director of the probate and trust law division, and such other members of the executive council as are appointed by the chair of the section legislation committee with the approval of the section chair. The section legislation committee shall coordinate the legislative activities of the section and act as a liaison between (i) the executive council (or its executive committee); and (ii) the section lobbyist and legislative and administrative bodies.

Section 4. Procedures for Adopting and Reporting Section Positions.

(a) A proposed section position shall be an agenda item and supporting documentation shall be distributed to the executive council at least one week prior to the executive council meeting unless those requirements are waived by 2/3 of the members of the executive council present at that meeting.

(b) A section position may be proposed by a section committee.

(c) To adopt a section position, the executive council must, by a 2/3 vote of the members present (i) find that the proposal is within the purview of the section, as defined in Section 1 of this Article; and (ii) approve the proposal. Voting by proxy shall not be permitted. Whenever, because of time constraints, the executive council cannot meet to adopt a section position prior to the time when legislative, administrative, or judicial action is required, the executive committee may, by a 2/3 vote of its members, adopt a section position. Any section position adopted by the executive committee must be reported to the executive council at its next meeting.

(d) Written notice of the adoption of a section position shall be promptly given to The Florida Bar, and it shall be circulated for comment to all divisions, sections, and committees of The Florida Bar that are believed to be interested in the matter.

(e) A section position may not be advanced unless it has been submitted to, and not disapproved by, the board of governors. A section position shall remain in force for the current biennial legislative session unless rescinded by the board of governors.

(f) In even-numbered years, the section legislation committee shall recommend those section positions to be renewed at the executive council meeting held in conjunction with the election meeting of the section.

(g) The section shall not participate as an amicus curiae without the consent of the board of governors.

(h) Section positions shall be clearly identified as positions of the section, and not those of The Florida Bar.

Section 5. Expenses Incurred in Advancing Section Positions. If the section lobbyist or section chair requests the appearance of a section member to advance a section position, the member's reasonable expenses shall be paid by the section in accordance with its budgetary policies.

Section 6. Section Lobbyist. Subject to the approval of the board of governors, the section may retain a lobbyist to assist the section in its legislative activities or matters.

Article IX MISCELLANEOUS

Section 1. Integrity of Section Proceedings - Disclosure of Conflict and Recusal. A member of the executive council or any section committee should not participate in a section matter if circumstances exist that may tend to cause that participation to undermine confidence in the integrity of the section, executive council, or section committee. Where any fact or circumstance exists that may reasonably bring into question an accusation of bias, prejudice, or conflict of interest on the part of a member while participating in a section matter, it is the duty and responsibility of any member having knowledge of such fact or circumstance to make full disclosure of such fact or circumstance to the executive council or section committee. A bias, prejudice, or conflict of interest may arise from a member's personal interests, employment, or client relationships. When such an issue arises, the chair or other person presiding over the proceeding may request the member to voluntarily refrain from participation and voting with respect to the matter. In addition, recusal may be ordered by 2/3 of the members of the executive council or section committee present. Upon recusal, the member may not vote or otherwise participate in proceedings concerning the matter. Nevertheless, the integrity of section proceedings or the validity of its actions shall never be brought into question because of the participation of members who should have recused themselves.

Section 2. Action of The Florida Bar. No action of the section shall be represented or construed as the action of The Florida Bar until it has been approved by The Florida Bar.

Section 3. Compensation and Expenses. No salary or other compensation may be paid to any member of the section for performance of services to the section, but members of the section may be reimbursed for such reasonable and necessary telephone expenses, reproduction expenses and other similar out-of-pocket expenses that such member incurs in the performance of services for the section.

Section 4. Policies of the Section. Policies adopted by the executive council, including section policies, shall be maintained in a separate journal at The Florida Bar Headquarters in Tallahassee, Florida together with the other official records of the section.

Section 5. Amendments. These by-laws may be amended only with the consent of the board of governors upon recommendation made by the executive council.

Section 6. Conduct of Meetings. The current edition of Robert's Rules of Order shall govern the conduct of all meetings of the section and its subdivisions. The section chair may appoint a parliamentarian to advise and assist the section chair or any other person presiding over a meeting of the section or any of its subdivisions in connection with any procedural issues that may arise.

Section 7. Notice. Any requirement in these bylaws that notice (whether written or otherwise), information, or materials be furnished may be satisfied by (i) any method of delivery specified in the requirement; (ii) transmitting the notice, information or materials by e-mail to any email address provided by the recipient to The Florida Bar; or (iii) posting the notice, information, or materials to the section's website and notifying the member of the posting by e-mail to any e-mail address provided by the recipient to The Florida Bar.

Section 8. Effective Date. These by-laws shall be effective as of July 1, 2010, or upon their adoption by the executive council, or upon their approval by the board of governors, whichever occurs later. Upon the effective date of these by-laws and for the remainder of the term for which they were elected, each existing circuit representative shall automatically become a member-at-large, and the existing circuit representatives director shall automatically become the members-at-large director.

DRAFT OF PROPOSED REVISED (REDLINE)

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

Article I NAME AND PURPOSES

Section 1. Name. The name of this organization is “The Real Property, Probate and Trust Law Section of The Florida Bar” (the “section”).

Section 2. Purposes. The purposes of the section are:

(a) To provide an organization within The Florida Bar open to persons having an interest in real property, probate, or trust law, or related fields of law that furthers the knowledge and practices of members in those areas of the law;

~~(b) To aid in the development of real property, probate and trust law, and to serve the public generally and The Florida Bar in interpreting and carrying out the public and professional needs and objectives in the fields of real property, probate and trust law;~~

~~(c) To develop standards for ethical and competent practice in real estate, probate and trust law by lawyers;~~

~~(d) To develop and maintain proper professional relationships between real estate, probate and trust lawyers and non-lawyer groups and other lawyer groups; and~~

~~(e) To improve the implementation and application of laws, rules and regulations in the fields of real estate, probate and trust law and to accomplish legitimate legislative objectives and to improve the administration of real estate, probate and trust laws.~~

(b) To inculcate in its members the principles of duty and service to the public; and

(c) To serve the public and its members by improving the administration of justice and advancing jurisprudence in the fields of real property, probate, trust, and related fields of law through all appropriate means, including the development and implementation of legislative, administrative and judicial positions; continuing legal education programs; standards for ethical and competent practice by lawyers; and professional relationships between real estate, probate, and trust lawyers, and other lawyer and non-lawyer groups.

Article II SECTION MEMBERSHIP

Section 1. Classification of Membership Types. The membership of the section shall be the active members (“active section member”), affiliate members (“affiliate section member”), and honorary members (“honorary section member”) hereafter described:

(a) Active section members: Any member of The Florida Bar in good standing may become an active section member of the section by applying for such membership and paying the section’s annual dues as hereafter prescribed. Any person who is an active section member who ceases to be a member of The Florida Bar in good standing also ceases to be a member of the section. Reinstatement as a member of The Florida Bar in good standing shall automatically reinstate the person as an active section member, provided that the member is current in the payment of section dues.

(b) Affiliate section members: The Executive Council of the section (“executive council”) may, at in its discretion (after review and approval of the applicant’s qualifications for membership), enroll as an affiliate section member of the section, any person who has shown the dual capacity of interest in and contribution to the section’s activities and who is either a law student enrolled in a an accredited Florida law school, a graduate of any law school, or a legal assistant, as defined below. Affiliate section members shall pay the annual dues prescribed by the Executive Council of the section and shall have all the privileges of active section members in the section, except that they may not hold office or vote or hold any office or position in the section. The number of affiliate section members shall be limited to 33 1/3% (one third) not exceed 1/3 of the number of the active section members.

For purposes of this Article, a legal assistant is a person who assists a member of The Florida Bar in the delivery of legal services in the area of real property, probate, or trust law and who has satisfied the following minimum requirements:

1. Successful completion of the certified legal assistant (CLA) examination of the National Association of Legal Assistants, Inc.; ~~or;~~
2. Graduation from an ABA-approved program of study for legal assistants or graduation from any accredited law school; ~~or~~
3. Graduation from a course of study for legal assistants which is institutionally accredited but not ABA-approved, and which requires not less than the equivalent of ~~sixty (60)~~ semester hours of classroom study; ~~or~~
4. Graduation from a course of study for legal assistants, other than those set forth in 2. and 3. above, plus not less than ~~six (6)~~ months of in-house training as a legal assistant;
5. A bachelor degree in any field, plus not less than ~~one (1)~~ year of in-house training as a legal assistant; or
6. Five ~~(5)~~ years of in-house training as a legal assistant.

(c) Honorary section ~~M~~members: Any person whom the ~~E~~Executive ~~C~~council shall find to have made outstanding contributions in the fields of real property, probate, or trust law may be made an honorary section member ~~of the section~~ by the ~~E~~Executive ~~C~~council. ~~Such~~ An honorary section members shall have no vote at section meetings, shall not be entitled to hold any office or position in the section, and shall not be required to pay dues.

(d) ~~Any active member who ceases to be a member in good standing of The Florida Bar simultaneously ceases to be a member of the section.~~ All members of the section shall be required to observe the standards of professionalism and ethical conduct expected of members of The Florida Bar, and legal assistants who are affiliate section members shall also be required, ~~as well,~~ to observe and adhere to the Code of Ethics and Professional Responsibility established by the National Association of Legal Assistants, Inc. ~~and such other~~

~~standards as the Executive Council of the section may from time to time prescribe. Any member who fails to observe the standards of conduct established by these bylaws may be removed as a member of the section by vote of (66-2/3%) of the members of the Executive Council. The Executive Council, by 2/3 vote of the members present at a meeting, may terminate section membership for misconduct involving moral turpitude or the failure to observe the standards of conduct established by these bylaws.~~

Section 2. Membership Year. The membership year of the section runs concurrently with the membership year of The Florida Bar.

Section 3. Dues. ~~The Executive Council of the section shall fix~~ establish annual dues payable from time to time by the members of the section. The dues so ~~fixed~~ established will be effective when approved by the Board of Governors of The Florida Bar ("board of governors"). There will be no proration of annual dues except as ~~hereafter expressly noted~~ for first-year members of The Florida Bar. After becoming a member, dues are payable in advance of each membership year; provided, however, each person who is admitted to The Florida Bar ~~after June 1, 1989,~~ shall be extended an invitation to become a member of the section, and upon acceptance, such member shall be entitled to a waiver of the dues for the first year of membership in the section, according to the following formula:

(a) If a person is admitted to membership in The Florida Bar after June 30, but prior to December 31, of any calendar year, then that member will not be required to pay section dues until the June 30th following such member's admission to The Florida Bar.

(b) If a person is admitted to membership in The Florida Bar after January 1, but prior to June 30, of any calendar year, that member will not be required to pay section dues until June 30 of the calendar year next succeeding the calendar year of the member's admission to The Florida Bar (e.g. if admitted to The Florida Bar on March 1, ~~1989,~~ no section dues will be payable until the fiscal year beginning July 1, ~~1990.~~)

The Florida Bar shall bill section dues simultaneously with the billing(s) for regular dues of The Florida Bar. ~~Any member of the section whose dues are not paid by the date that Florida Bar dues become delinquent thereupon ceases to be a member of the section.~~

Article III
ORGANIZATION

~~Divisions and Standing Committees. The section is divided into two (2) divisions, known as “Tthe Rreal Pproperty Llaw Ddivision” and “Tthe Pprobate and Ttrust Llaw Ddivision.” The section is also served by such general standing committees as the chair and chair-elect deem necessary or advisable. Each division is administered by a division director and comprised of such committees as the division director for such division and the chair of the section deem necessary or advisable. The section and its real property law division shall be served by committees and section liaisons that operate under the supervision of the real property law division director. The section and its probate and trust law division shall be served by committees and section liaisons that operate under the supervision of the probate and trust law division director. The section shall also be served by general standing committees and section liaisons that operate under the supervision of the chair-elect.~~

Article IV
OFFICERS, ELECTED POSITIONS, AND EXECUTIVE COMMITTEE

Section 1. Officers. The officers of the section are the section chair, the chair-elect, the secretary, the treasurer, the ~~division directors~~ real property law division director, the probate and trust law division director, the immediate past section chair of the section, and the circuit representatives members-at-large director (“section officers”). The section officers, the representatives for out-of-state members of the section, and the members-at-large, shall be selected in the manner set forth in this Article IV.

Section 2. Selection of Officers:

~~(a) The chair-elect becomes chair of the section one year after taking office as chair-elect or upon the death, resignation or removal of the chair; provided, however, that in the case of temporary disability or absence of the chair, the chair-elect shall serve as acting chair only for the duration of the chair's disability or absence.~~

~~(b) The chair-elect, the secretary, the division directors, the treasurer, the circuit representatives, the director of the circuit representatives and the representative for out of state members of the section shall be selected in the~~

manner set forth in Article IV, Section 3, by the members of the section in physical attendance at the annual meeting of the section ("Election Meeting"). The officers so elected shall take office at the conclusion of the ensuing Annual Convention of The Florida Bar.

In the event any office (other than chair) becomes vacant, the Executive Council shall fill the vacancy for the unexpired term at the next meeting of the Executive Council.

Section 2. Qualifications. No person may serve as a section officer, a representative for out-of-state members, or a member-at-large, unless they are an active section member, and the loss of that status shall cause the office or position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements, reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant office or position if it has not been filled.

Section 73. Officers' Meetings-Executive Committee. The section officers will meet as directed by the chair. They, together with the chairs of the section CLE Seminar Coordinator and the Legislation Chair committees, shall serve as the Executive Committee of the section ("executive committee"), which shall also be and as a the planning agency for the Executive Council and shall have authority to take emergency action on behalf of the Executive Council between regular Executive Council meetings. The executive committee shall have the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and on any other matter which necessarily must be determined between meetings of the executive council. All action taken by the executive committee on behalf of the executive council shall be reported to the executive council at its next meeting. The Executive Committee shall not take any actions that conflicts with the policies and expressed wishes of the Executive Council. A majority of the Executive Committee is sufficient to exercise the powers herein described and it is not necessary that a formal meeting be held for action, action by mail, or telephone being permitted. The executive committee shall also (i) make recommendations for consideration by the chair-elect in appointing chairs and vice chairs of section

committees and section liaisons; (ii) make recommendations for consideration by the section's long-range planning committee ("long-range planning committee") in submitting nominees for members-at-large; and (iii) perform such other duties as may be directed by the executive council or prescribed in these bylaws.

Section 34. Nominating Procedure.

(a) ~~The Long-Range Planning Committee, (chaired by the chair-elect and consisting of which consists of all past section chairs who are members of the Executive Council) and is chaired by the chair-elect, shall submit nominees to the section at the Election Meeting nominees for election to the offices of chair-elect, secretary, the division directors real property law division director, probate and trust law division director, treasurer, ~~the circuit representatives, the circuit representatives~~ members-at-large director and the out-of-state representative to the Executive Council, and the positions of representatives for out-of-state members and members-at-large. If the office of chair-elect becomes vacant during the year, the nominations submitted by the long-range planning committee for the following year shall include a nominee for the office of section chair. In order to be eligible to be a nominee, a person must be an active section member as defined in Section 1(a) of Article II. The Long-Range Planning Committee shall publish notify the members of the section of the names of the nominees to all members of the section no later than sixty (60) days prior to the ~~Election Meeting~~ section's annual meeting ("election meeting"). In submitting nominations for members-at-large, the long-range planning committee shall consider recommendations from the members-at-large director and the executive committee.~~

(b) No nominees nominations for any elected position other than those made by the Long-Range Planning Committee will be permitted, except that nominations for any office may be made by a written nominating petition signed by ten 10 or more active section members of the section and submitted to the incumbent section chair of the section not less than thirty (30) days prior to the Election Meeting. Section 4. Election Procedure for Contest for Officers. If more than one person is nominated for any ~~office~~ elected office or position, the section chair, assisted by such special committees as the section chair may appoint, will announce the procedures to be followed for that election.

(c) Each nominee will be permitted to prepare a statement of no more than 500 words, containing such information about the nominee as the nominee may choose, to be reproduced and mailed distributed by the section at the expense of the

~~section to all its members of the section, either as an article in the section's publication, ("Action Line"), or separately. Any such The statements shall also will be distributed at the Eelection Mmeeting to those in attendance. The statements may contain such information about the nominee as the nominee may choose. At the Election Meeting, voting will be by written, secret ballot. The ballots will be prepared in advance and the chair, the chair-elect, and the secretary will determine the number of members in good standing of the section present at the meeting and eligible to vote. A majority vote of those voting is required for election. Voting by proxy is not permitted. If no nominee receives a majority vote of those voting, additional balloting will take place between the two (2) nominees receiving the greatest number of votes, until the required majority is obtained by one of the nominees. The result will be announced immediately by the chair.~~

~~Section 5. Vacancies. The chair shall fill all vacancies, except vacancies in the office of chair and chair-elect, which shall be filled in the manner provided by these by-laws. If the office of chair becomes vacant, the chair-elect shall immediately assume the office of chair, and shall serve as such for the remainder of that year, as well as the year for which he or she was elected to serve. If the office of chair-elect becomes vacant, the officers of the section shall elect one of the division directors to fill the vacancy for the then unexpired term. At the next Election Meeting of the section, a new chair-elect shall be elected in the manner provided in these bylaws, to serve the term following that of the former division director who has served a term or partial term as chair-elect. In the event that the offices of chair and chair-elect become vacant and cannot be filled as provided above, then the Executive Director of The Florida Bar shall call a meeting of the Executive Council, and the Executive Council shall fill the vacancy from among its members for the unexpired term. At the next Election Meeting of the section, a chair and chair-elect will be elected and take office in the manner provided in these by-laws.~~

Section 5. Election and Term of Offices and Positions.

(a) The section officers, the representatives for out-of-state members, and the members-at-large, shall be elected by majority vote of the active section members in physical attendance at the election meeting, which shall be held prior to July 1 of each year. Voting by proxy shall not be permitted. At the election meeting (i) the section chair, chair-elect, and secretary shall determine the number of active section members in physical attendance and entitled to vote; (ii) voting will be by written, secret ballot prepared in advance; (iii) if no nominee receives a majority vote for an office or position, additional balloting will take place between the 2

nominees receiving the greatest number of votes until the required majority is obtained; and (iv) the results of the election will be immediately announced by the section chair.

(b) The nominees so elected shall serve for a period of 1 year, beginning on July 1. The chair-elect shall automatically become section chair 1 year after taking office as chair-elect, or upon the death, resignation, or removal of the section chair.

Section 6. Duties of Officers:

(a) Section Chair: The section chair shall be the chief executive officer and principal representative of the section, and shall preside at all meetings of the Real Property, Probate and Trust Law Section, section, the executive council, and the executive committee at all meetings of its Executive Council and Executive Committee, and at all meetings of the section. The section chair shall appoint the chairs of all committees of the section and shall also be responsible for reports to be submitted to The Florida Bar or to the Board of Governors of The Florida Bar. The chair shall perform and for performing such other duties as may be prescribed in these bylaws or which customarily pertain to the office of section chair. The section chair is an ex-officio member of all section committees of the section.

(b) Chair-elect: The chair-elect shall preside during the absence of the chair and shall be responsible for such other duties as the chair or the Executive Council, or the Executive Committee of the section may designate. The chair-elect shall be responsible to the chair of the section for the general standing committees and any projects assigned to such committees, including recommendations for the membership of such committees and the preparation and submission of such reports of such committees to the Chair as may be required. The chair-elect shall be responsible (i) for the general standing committees and any projects assigned to them, including the preparation and submission of any required reports; (ii) for such duties as the section chair, the executive council, or the executive committee may designate; and (iii) for performing such other duties as may be prescribed in these bylaws or customarily pertain to the office of chair-elect. In addition, in the case of the temporary disability or absence of the section chair, the chair-elect shall serve as acting section chair, but only for the duration of the section chair's disability or absence. Any issue concerning the disability or absence of the section chair shall be determined by the executive committee, subject to review by the executive council.

(c) Secretary: The secretary shall ~~make and record~~ (i) the minutes of meetings of the section, its, its Executive Council and its Executive Committee (including record of attendance); (ii) significant actions taken by the executive committee, including all actions which exercise any function of the executive council; and (iii) the election results at the election meeting, and shall file same with the permanent records of the section at The Florida Bar headquarters in Tallahassee. ~~He or she~~ The secretary shall also report and keep a record of all policies adopted by the section as a separate record.

(d) ~~Division Directors of Divisions:~~ The real property law division director and the probate and trust law division director of each of the divisions shall be responsible for the section committees within active under and projects assigned to that director's their respective divisions, and for the projects assigned to them, including recommendations for the membership of such committees of that division and the preparation and submission to the chair of reports of such section committees; as may be required.

(e) Treasurer: The treasurer and the appropriate staff of The Florida Bar shall make certain that the financial affairs of the section are administered in a manner authorized by the section's budget and in accordance with the standing policies of the board of governors of The Florida Bar. The treasurer shall monitor and review for correctness all accounts, reports, and other documents prepared as pertaining to section funds, revenues, and expenditures that are furnished by the staff of The Florida Bar and shall seek to make certain that all accounts, reports and other documents are, at all times, accurate and correct. No reimbursements for more than fifty dollars (\$50.00) to section officers or for more than twenty dollars (\$20.00) for other may be made to any members of the section (each on a monthly basis) will be made without the prior approval of the treasurer, except that and any reimbursements to the treasurer must be approved by the section chair or the chair-elect. The treasurer shall (i) work with the chair-elect to prepare and submit a projected budget to the Executive Council; (ii) and will report from time to time on the section's present and projected financial condition, advising the Executive Committee and the Executive Council as to the financial impact of any proposed action that might have a significant impact on the financial condition of the section.; and (iii) The treasurer shall prepare such other recommendations and special reports of financial affairs of the section as may be requested by the section chair.

~~(f) Circuit Representatives Director:~~ The circuit representatives director shall be responsible to the chair of the section for the activities and projects assigned

~~to the circuit representatives and shall preside at all meetings of the circuit representatives. The circuit representatives director shall be responsible for the preparation and submission of such reports of activities and meetings of the circuit representatives to the Executive Council as the chair may require.~~

(f) Members-At-Large Director: The members-at-large director shall (i) in consultation with the executive committee, define any responsibilities of the members-at-large; (ii) be responsible to the section for the members-at-large; (iii) evaluate the performance of the members-at-large on an annual basis; and (iv) provide recommendations for consideration by the long-range planning committee in submitting nominees for members-at-large.

(g) Immediate Past Section Chair: The immediate past section chair shall provide counsel, guidance and advice to the executive committee.

Section 7. Vacancies.

(a) If the office of section chair becomes vacant, the chair-elect shall immediately assume the office of section chair, and shall serve as section chair for the remainder of the unexpired term, as well as for the following term for which the chair-elect was elected to serve as section chair.

(b) If the office of chair-elect becomes vacant, the section chair shall assume the duties of the office of chair-elect for the remainder of the unexpired term. In that event, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(c) If the offices of section chair and chair-elect both become vacant, the long-range planning committee shall convene an emergency meeting and select a qualified person to serve as section chair for the remainder of the unexpired term. In that event, the person selected as section chair shall also assume the duties of the office of chair-elect for the remainder of the unexpired term and, at the next election meeting, a section chair shall be nominated and elected in the manner provided in these bylaws.

(d) If any office other than section chair or chair-elect becomes vacant within 6 weeks of the next scheduled in-state meeting of the executive council, the vacancy shall be filled for the remainder of the unexpired term by the executive council at that meeting. If no in-state meeting is scheduled within 6 weeks following the creation of such a vacancy, it shall be filled for the remainder of the unexpired term by the executive committee.

(e) Vacancies in the positions of representative for out-of-state members and member-at-large shall be filled by the section chair.

Article V EXECUTIVE COUNCIL

Section 51. Powers and Duties. The Executive Council is the governing body of the section and shall have the power and duty to fully administer these bylaws, including the power to exercise all authority expressed or implied in these bylaws and to employ necessary personnel on behalf of the section.

~~Section 2. Membership. The Executive Council is the governing body of the section and shall consist of the current section chair, the chair-elect, the division directors, real property law division director, the probate and trust law division director, the treasurer, the secretary, the circuit representatives members-at-large director, the chairs and vice chairs of the general section committees, the section liaisons of all committees of the divisions, the member of the Board of Governors of The Florida Bar appointed as its liaison representative with this to the section, and one or more members from each judicial circuit (the "Circuit Representatives") the members-at-large, the past section chairs, and one (1) representatives for the out-of-state members of the section. The number of such members elected to represent each judicial circuit will be determined in the discretion of the section's chair. The Chair of the section shall appoint a qualified person to fill any vacancy on the Executive Council (other than the office of Chair-elect) created by reason of death, disability, removal or otherwise of one of its members for the unexpired term of such position.~~

~~Section 13. Regional Representation. To promote interest in the section and insure the widest representation in the management of its affairs the State of Florida shall be considered as being divided into regions conforming in number and location to the judicial circuits with the state. Upon changes of the number and location of judicial circuits the number and location of regions shall be likewise automatically changed. To the extent that the section officers, chairs and vice chairs of section committees, section liaisons, and representatives for the out-of-state members of the section serving on the executive council do not include geographical representation from each judicial circuit and outside of Florida, the members-at-large should include such representation when reasonably practicable.~~

~~Section 4. Appointment or Election of Circuit Representatives. In the event any circuit representative becomes an officer of the section (other than as circuit representatives director), then such member may no longer serve as a circuit~~

~~representative of his or her judicial circuit. Any circuit representative who leaves the circuit from which he or she was elected shall be deemed to have resigned as vacated his or her position as circuit representative of the circuit from which such representative moved.~~

Section 34. Attendance. The section recognizes that regular attendance of its ~~E~~xecutive ~~C~~ouncil members at executive council meetings is required to perform the duties and functions of the ~~E~~xecutive ~~C~~ouncil in a proper manner. Accordingly, if any past section chair of the section fails to attend ~~ten (10)~~ successive executive council meetings (other than any meeting held in conjunction with the annual convention of The Florida Bar and the annual out-of-state meetings of the ~~Executive Council~~), or if any other member of the ~~E~~xecutive ~~C~~ouncil fails to attend ~~three (3)~~ successive ~~E~~xecutive ~~C~~ouncil meetings in any membership year (other than any meeting held in conjunction with the annual convention of The Florida Bar or the annual out-of-state meetings of the ~~Executive Council~~), such member shall be deemed to have resigned from ~~his or her position on the E~~xecutive ~~C~~ouncil, and ~~his or her then current office~~ the office or position held by that person ~~may~~ shall be deemed vacant. In any such event, ~~such the resigned~~ member shall not be eligible for election to or membership on the ~~E~~xecutive ~~C~~ouncil for the next succeeding membership year unless (i) ~~the chair, at his or her sole discretion, executive committee, shall waive the attendance requirement for the membership year(s) involved for such member as a result of good cause shown for such absences. The chair's waiver of the attendance requirement for any member shall be effective when, upon a showing of good cause for the absences, waives the attendance requirement for the membership year involved; and (ii) the waiver is announced at a formal meeting of the E~~xecutive ~~C~~ouncil and duly recorded in the minutes of the meeting. Any vacancy created by the absence of a member as herein provided shall be filled as provided in these ~~by-laws~~ bylaws.

~~Section 5. Power and Duties. The Executive Council shall have the power and duty to fully administer these bylaws, including the power to employ necessary personnel.~~

Article VI SECTION COMMITTEES AND LIAISONS

Section 1. Committees. ~~The section chair of the section~~ shall have the authority to ~~appoint~~ establish and dissolve such section committees and liaison positions as ~~he or she~~ the section chair deems necessary or advisable, except that the section chair may not dissolve the section legislation or CLE seminar coordination

~~committees. and The section chair shall promptly report such appointments or additions immediately changes to the Executive Council of the section. Such appointments or additions, and they shall be effective until and unless disapproved by the Executive Council. Each division director and the chair-elect may, on recommendation by the chair of any committee under his or her supervision, add to or remove members from the committees under such person's supervision. All voting members of each committee must be members of the section.~~

~~Section 2. Committee Chair: The chair, with the concurrence of the chair-elect, shall appoint the chair of each general standing committee of the section on or before the first meeting of the section for each membership year. The chair shall also appoint the chair of each committee under a division director for a two-year term, when each such term expires. The chair of the section may discharge any committee chair who fails to perform his or her duties to supervise such committee or to cause such committee to serve or further the purposes of the section as described in Article I. The Executive Committee or the Executive Council may remove any chair of a committee for any reason.~~

Section 2. Section Committee Chairs and Liaisons. Prior to July 1 of each year, after considering the recommendations of the executive committee, the chair-elect shall make the following appointments for the coming year: (i) chairs of the section's real property law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (ii) chairs of the section's probate and trust law division committees, and such vice chairs of those committees as the chair-elect deems necessary; (iii) chairs of the section's general standing committees, and such vice chairs of those committees and as the chair-elect deems necessary; (iv) and section liaisons to other sections and groups. The section chair shall have the power to remove chairs and vice chairs of section committees and section liaisons if the section chair believes that it is in the best interest of the section to do so, and to fill vacancies in those positions (including vacancies resulting from the section chair's creation of new section committees or liaison positions).

Section 3. Committee Members. The chair of each section committee may appoint and remove members to and from that committee, except that a committee chair may not remove a vice chair of the committee.

Section 4. Section Membership Requirement. No person may serve as a member of any section committee unless they are a member of the section. No person may serve as a (i) chair, vice chair, or voting member of any section committee; or (ii) section liaison, unless they are an active section member, and the

loss of that status shall cause the position to be vacant. If status as an active section member ceases because of a loss of status as a member of The Florida Bar in good standing that is solely attributable to a delinquency in (i) the payment of membership fees or dues; or (ii) completing continuing legal education requirements, reinstatement as a member of The Florida Bar in good standing and as an active section member shall automatically reinstate the member to the vacant position if it has not been filled.

Section 35. Committee Reports:. The chair of each section committee shall submit a written annual report of his or her the committee's activities during the preceding year to the Executive Council executive committee at least one month prior to the annual meeting of the section by the date requested by the section chair. No report or reports of any committees of this section may be made public or otherwise All recommendations contained in such reports are confidential and shall not be disclosed outside the executive committee unless such action is approved by without the approval of the section chair of this section.

Article VII MEETINGS

Section 1. Annual/Election Meeting of the Section. The section chair shall designate the annual meeting of the section each year, which shall be the election meeting and be held prior to July 1. The annual meeting may be held simultaneously with (i) the section's annual convention, or (ii) the annual convention of The Florida Bar. The executive council may call special meetings of the section provided at least 30 days notice thereof shall be given. The active section members of the section attending in physical attendance at any meeting of the section shall constitute a quorum for the transaction of business and a majority vote of those present in physical attendance will be binding. Voting by proxy shall not be permitted.

Section 2. Executive Council Meetings. There shall be no fewer than ~~three~~ (3) regular in-state meetings of the ~~E~~executive ~~C~~council each year. The ~~E~~executive ~~C~~council may act or ~~transmit~~ transact business herein authorized, without meeting, by written or electronic approval of the majority of the ~~entire~~ ~~E~~executive ~~C~~council. The section chair of the section may call meetings of the ~~E~~executive ~~C~~council by giving no less than ~~fifteen~~ (15) days advance written notice to ~~the~~ its members of the ~~Executive Council~~. Those present at a meeting of the ~~E~~executive ~~C~~council duly called will constitute a quorum and a majority vote of those present will be binding unless a greater majority is required by these bylaws for a particular matter. Voting by proxy shall not be permitted.

~~Section 3. Officers' Meetings. The officers shall hold an organizational meeting for each membership year at a date, place and time selected by the chair of the section. The officers may hold such meetings thereafter as the chair of the section may determine. The chair of the section shall fix the date and location of each meeting and shall give written or oral notice of such date and location to each officer at least seven (7) days prior to the date so selected.~~

~~Section 3. Executive Committee Meetings. The executive committee shall meet as directed by the section chair, and shall hold an organizational meeting prior to each membership year at a time, date, and place selected by the section chair. The section chair shall fix the date and location of each meeting and shall give written, electronic, or oral notice of such date and location to each executive committee member at least 7 days prior to the meeting. A majority of the executive committee may exercise its powers unless a greater majority is required by these bylaws for a particular matter, and it is not necessary that a formal meeting be held for action, action by mail, e-mail, or telephone being sufficient. Voting by proxy shall not be permitted.~~

~~Section 4. Special Meetings. The Executive Council may call special meetings of the entire membership of the section provided thirty (30) days notice thereof shall be given to each member of the section. Such notice may be by mail or by notice in any publication of the section or of The Florida Bar.~~

~~Article VIII~~ ~~LEGISLATIVE POLICIES~~

~~Section 1. General Purpose. The Section may be involved in legislative (or judicial or administrative) action that is significant to the judiciary, the administration of justice, the fundamental legal rights of the public or the interests of the section or its programs or functions, so long as that involvement is consistent with the policies outlined under this policy and consistent with the policies promulgated by The Florida Bar Board of Governors.~~

~~Section 2. Legislative Positions. Any legislative, judicial or administrative position of the section ("Legislative Position") must be adopted in accordance with the provisions of this Article. During the course of the Section's activities, and as promptly as possible, the chair or the chair's designee shall notify the Executive Director of The Florida Bar of any new or current section approved legislative positions. In July of each year, prior to the next regularly scheduled meeting of the~~

~~Board of Governors of The Florida Bar, the chair or the chair's designee shall notify the Executive Director of The Florida Bar of any new or current section approved legislative positions then in effect. Such legislative positions will be clearly identified as legislative positions of the section only at all appropriate times before legislative bodies or its members, unless otherwise authorized by the Board of Governors.~~

~~Section 3. Legislation Committee. The section's legislation committee shall be composed of the section officers and a Legislation Review Committee consisting of a section legislation chair, a probate and trust division legislation chair and a real property division legislation chair and such other committee members as may be appointed by the chairs. Whenever because of time constraints the Executive Council cannot meet to adopt a legislative position prior to the time when legislative (or judicial or administrative) action is expected or required, the legislation committee has the authority to adopt the legislative position of the section with respect to pending legislation, except that the (i) probate and trust division legislation chair shall not vote on any matter falling within the real property division and (ii) real property division legislation chair shall not vote on any matter falling within the probate and trust division. Any position that is thus taken must be reported to the Executive Council's next scheduled meeting and may be approved or rescinded in accordance with this policy.~~

~~Section 4. Procedures.~~

~~(a) Legislation Initiated by the Section. Any proposed legislation and the recommendations of the initiating committee of the section will be made agenda items and copies will be affixed to the agenda for distribution to all Executive Council members at least one (1) week prior to the Executive Council Meeting. No proposed legislation will be considered at the Executive Council Meeting unless the section legislation committee or the section chair requests waiver of the rule and such waiver is approved by a vote of two-thirds (2/3) of the members of the Executive Council present and voting. Legislation initiated by a committee of the section will be considered in the same manner as any other matter for which a decision is requested of the Executive Council by a member of the Council.~~

~~(b) Other Legislation. The section's position on legislation not initiated by a committee of the section will be considered under the following procedure:~~

~~(i) The legislation chair in each division will review all proposed legislation falling within the discipline represented by that division. Subject to the~~

~~approval of the section chair, each division legislation chair has the discretion to remove any item of proposed legislation from consideration by the Executive Council if the legislation chair finds that such proposed legislation is not concerned with a matter within the discipline of the division.~~

~~(ii) All proposed legislation which the division legislation Chair decides should be considered by the Council will be forwarded by the division legislation chair to the chair of the section committee, which, in the opinion of the division legislation chair, is most concerned with the subject matter of such proposed legislation. The division legislation chair will request a written report from that committee, reporting the decision which the committee recommends to the Executive Council, and designating a contact person to confer with the section lobbyist, the legislation chair of his or her division and the Executive Council.~~

~~Section 5. Adoption of Legislative Position. The Executive Council of the section, by a two-thirds vote of the members present, must find that any proposed legislative position is within the scope of this policy or as may be otherwise adopted by the Board of Governors. The Executive Council by a two-thirds vote of the members present must also approve the substance of the legislative position presented to the Executive Council. No legislative position may be taken which is contrary to the legislative position of the Board of Governors. Once adopted, the chair or the chair's designee shall immediately notify the Executive Director of The Florida Bar, in writing, of the section's adoption of the legislative position. The legislative position of the section may not be advanced or supported before any public body until the legislative position has been reviewed by the Board of Governors and they have not disapproved the same or, as otherwise may be consistent with the legislative policy of the Board of Governors. When time constraints with respect to legislation of the section require prompt action, the Executive Committee of the section may act in lieu of a vote of the members of the Executive Council. Once approved by the Board of Governors or the Board's Executive Committee, a legislative position of the section shall remain for the full biannual session during which the Board of Governors approved the Position, unless otherwise reversed or rescinded by them, or by a two-thirds vote of the Executive Council of the section.~~

~~In lieu of, or in addition to, giving approval to support or oppose a particular legislative proposal, the Executive Council may, after debate and consideration of the legislative proposal, adopt a concept of the position the section favors, and report this concept to the section lobbyist for distribution to the members of the Florida Legislature.~~

~~Section 6. Expenses Incurred in Legislative Matters. The expenses incurred by members of the section in connection with legislative positions of the section shall generally be borne by the individual member, provided, however, the section's lobbyist may request the appearance of section members to attend legislative functions or to appear before various committees of the Florida Legislature to testify concerning proposed legislation, with the member's expenses to be paid by the section in accordance with its budgetary policies. The expenses of such member's appearance shall be approved in advance by either the section chair, a member of the legislation committee, or the treasurer of the section. Such expenditures shall be consistent with other section policies, and the treasurer shall be promptly notified of the amount of such expenditure.~~

~~Section 7. Section Lobbyist. Pursuant to the requirements of and the approval of the Board of Governors, the section may retain a lobbyist to assist the section in its legislative positions or matters. The section shall submit to the Board of Governors such information as it may require, from time to time, relating to the retention of such lobbyist. No amount shall be budgeted or spent for legislative activities other than the amount budgeted or received as voluntary dues from members of the Section.~~

Article VIII

LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL POSITIONS

Section 1. Authority. The section may be involved in legislative, administrative, and judicial (including amicus curiae and court rule) activities that are within the purview of the section. Activities are within the purview of the section if they are significant to the judiciary, the administration of justice, the fundamental legal rights of the public, or the interests of the section, provided they are consistent with the purposes of the section and the policies promulgated by The Florida Bar the board of governors, including the requirements that:

(a) the issue involved is within the substantive areas of real property, probate, trust or related fields of law;

(b) the issue is beyond the scope of permissible legislative activity of The Florida Bar, or is within the permissible scope of legislative activity of The Florida Bar, but the proposed section position is not inconsistent with an official position of the Bar on that issue; and

(c) the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the Bar.

Section 2. Section Positions. A “section position” is a legislative, administrative, or judicial (including amicus curiae and court rule) position that complies with Section 1 of this Article and has been adopted by the section in accordance with this Article. A section position, which may be expressed as a concept, may either support or oppose a matter. Any advocacy by the section shall be based upon a section position and comply with the requirements of this Article.

Section 3. Legislation Committee. The section legislation committee shall consist of a chair, a vice chair for real property, a vice chair for probate and trust, the section chair, the chair-elect, the director of the real property law division, the director of the probate and trust law division, and such other members of the executive council as are appointed by the chair of the section legislation committee with the approval of the section chair. The section legislation committee shall coordinate the legislative activities of the section and act as a liaison between (i) the executive council (or its executive committee); and (ii) the section lobbyist and legislative and administrative bodies.

Section 4. Procedures for Adopting and Reporting Section Positions.

(a) A proposed section position shall be an agenda item and supporting documentation shall be distributed to the executive council at least one week prior to the executive council meeting unless those requirements are waived by 2/3 of the members of the executive council present at that meeting.

(b) A section position may be proposed by a section committee.

(c) To adopt a section position, the executive council must, by a 2/3 vote of the members present (i) find that the proposal is within the purview of the section, as defined in Section 1 of this Article; and (ii) approve the proposal. Voting by proxy shall not be permitted. Whenever, because of time constraints, the executive council cannot meet to adopt a section position prior to the time when legislative, administrative, or judicial action is required, the executive committee may, by a ~~two-thirds~~ 2/3 vote of its members, adopt a section position. Any section position adopted by the executive committee must be reported to the executive council at its next meeting.

(d) Written notice of the adoption of a section position shall be promptly given to The Florida Bar, and it shall be circulated for comment to all divisions, sections, and committees of The Florida Bar that are believed to be interested in the matter.

(e) A section position may not be advanced unless it has been submitted to, and not disapproved by, the board of governors. A section position shall remain in force for the current biennial legislative session unless rescinded by the board of governors.

(f) In even-numbered years, the section legislation committee shall recommend those section positions to be renewed at the executive council meeting held in conjunction with the election meeting of the section.

(g) The section shall not participate as an amicus curiae without the consent of the board of governors.

(h) Section positions shall be clearly identified as positions of the section, and not those of The Florida Bar.

Section 5. Expenses Incurred in Advancing Section Positions. If the section lobbyist or section chair requests the appearance of a section member to advance a section position, the member's reasonable expenses shall be paid by the section in accordance with its budgetary policies.

Section 6. Section Lobbyist. Subject to the approval of the board of governors, the section may retain a lobbyist to assist the section in its legislative activities or matters.

Article IX MISCELLANEOUS

Section 1. Integrity of Section Proceedings - Disclosure of Conflict and Recusal. A member of the executive council or any section committee should not participate in a section matter if circumstances exist that may tend to cause that participation to undermine confidence in the integrity of the section, executive council, or section committee. Where any fact or circumstance exists that may reasonably bring into question an accusation of bias, prejudice, or conflict of interest on the part of a member while participating in a section matter, it is the duty and

responsibility of any member having knowledge of such fact or circumstance to make full disclosure of such fact or circumstance to the executive council or section committee. A bias, prejudice, or conflict of interest may arise from a member's personal interests, employment, or client relationships. When such an issue arises, the chair or other person presiding over the proceeding may request the member to voluntarily refrain from participation and voting with respect to the matter. In addition, recusal may be ordered by 2/3 of the members of the executive council or section committee present. Upon recusal, the member may not vote or otherwise participate in proceedings concerning the matter. Nevertheless, the integrity of section proceedings or the validity of its actions shall never be brought into question because of the participation of members who should have recused themselves.

Section ~~1~~2. Action of The Florida Bar. No action of the section shall be represented or construed as the action of The Florida Bar until it has been approved by The Florida Bar.

~~Section 2. Financial Obligations. Any and all financial obligations must be first approved in the manner to be specified by the Executive Council before same has been approved by The Florida Bar.~~

Section 3. Compensation and Expenses. No salary or other compensation may be paid to any member of the section for performance of services to the section, but members of the section may be reimbursed for such reasonable and necessary telephone expenses, reproduction expenses and other similar out-of-pocket expenses that such member incurs in the performance of services for the section ~~and that are specifically authorized by the chair and the treasurer of the section or by the Executive Council.~~

Section 4. Policies of the Section. ~~All prior policies adopted by the section shall be rescinded as of the effective date of these bylaws. Policies adopted by the officers or the Executive Council following the effective date of these bylaws, including section policies, shall be maintained in a separate journal at The Florida Bar Headquarters in Tallahassee, Florida together with the other official records of the section.~~

Section 5. Amendments. These by-laws may be amended only with the consent of the ~~B~~oard of ~~G~~overnors of ~~The Florida Bar~~ upon recommendation made by the ~~E~~executive ~~C~~council ~~of the section.~~

Section 6. Conduct of Meetings. The current edition of Robert's Rules of Order shall govern the conduct of all meetings of the section and its subdivisions. The section chair may appoint a parliamentarian to advise and assist the section chair or any other person presiding over a meeting of the section or any of its subdivisions in connection with any procedural issues that may arise.

Section 7. Notice. Any requirement in these bylaws that notice (whether written or otherwise), information, or materials be furnished may be satisfied by (i) any method of delivery specified in the requirement; (ii) transmitting the notice, information or materials by e-mail to any email address provided by the recipient to The Florida Bar; or (iii) posting the notice, information, or materials to the section's website and notifying the member of the posting by e-mail to any e-mail address provided by the recipient to The Florida Bar.

Section 78. Effective Date. These by-laws shall be effective as of July 1, ~~1989~~ 2010, or upon ratification their adoption by the executive council, or upon their approval by the Board of Governors of The Florida Bar, whichever occurs later. Upon the effective date of these by-laws and for the remainder of the term for which they were elected, each existing circuit representative shall automatically become a member-at-large, and the existing circuit representatives director shall automatically become the members-at-large director.

RPPTL 2009-2010 CLE Calendar

DATE	EVENT	Course #	CITY	HOTEL
Oct. 8-9, 2009	RESPA & Regulatory Compliance (Eleanor Taft)	0885	Tampa/Ft. Laud	Airport Marriott/Airport Hilton
Oct. 23, 2009	Guardianship Law (Alexandra Rieman & Debra Boje)	0936	Tampa	Airport Marriott
Nov. 5-6, 2009	Landlord and Tenant (Neil Shoter)	0944	Ft. Laud/Tampa	Airport Hilton/Airport Marriott
Nov. 12-13, 2009	Trust Law (John Moran)	0955	Tampa/Ft. Laud	Airport Marriott/Airport Hilton
Dec.11, 2009	Estate Planning (Rick Gans)	0966	Tampa	Airport Marriott
Jan. 29, 2010	Environmental and Land Use (Jay Mussman & Nancy Stuparich) *	0969	Tampa	Airport Marriott
Feb. 10-11, 2010	Trust and Estate Symposium (Bill Hennessey)	0989	Tampa/Ft. Lauderdale	Airport Marriott/Airport Hilton
Feb. 19, 2009	Real Property Litigation Seminar (Guy Norris and Eugene Shuey)	1063	Tampa	Airport Marriott
March 4-5, 2010	Land Trusts (Katherine Frazier)	1014	Ft. Laud/Tampa	Airport Marriott/Airport Hilton
March 25-26, 2010	Probate Law (Rex Moule)	1003	Tampa/Ft. Laud	Airport Marriott/Airport Hilton
April 8-10, 2010	3rd Annual Construction Law Institute (Lee Weintraub)	1010	Orlando	Omni Resort Champions Gate
April 8-10, 2010	Construction Law Certification Review Course (Kim Ashby)	1011	Orlando	Omni Resort Champions Gate
April 16, 2010	Condo Law (Steve Mezer)	1065	Tampa	Airport Marriott
April 23-24, 2010	Wills, Trusts & Estates Certification Review (Deborah Russell and Anne Buzby)	1039	Orlando	Hyatt Regency Airport
April 23-24, 2010	Advanced Real Estate Law Certification Review (Ted Conner)	1040	Orlando	Hyatt Regency Airport
May 28, 2010	Real Estate, Probate and Trust Law (Katherine Frazier)	1042	Tampa	Marriott Waterside
June 24-27, 2010	RPPTL Attorney/Trust Officer Liaison Conference (Seth Marmor)	1035	Naples	Ritz Carlton Golf Resort

RPPTL 2010-2011 CLE Calendar

DATE	SEMINAR	COURSE #	CITY	HOTEL
August 6, 2010	* 31st Annual Legislative & Case Law Update	1216	Palm Beach	The Breakers
August 27, 2010	* FAR/BAR	1134	Tampa	Airport Marriott
Sept. 30 - Oct. 1, 2010	* Trust & Estate Symposium	1167	Ft. Lauderdale/Tampa	TBD/ Airport Marriott
November 12, 2010	* Mortgage Law & Problem Studies	1159	Tampa	Airport Marriott
November 19, 2010	* Estate Planning & Asset Preservation	1147	Orlando	Hyatt Regency Airport
January 14, 2011	* Real Property Litigation	1155	Tampa	Airport Marriott
Mar. 17 - 18, 2011	* Probate Law	1177	Ft. Lauderdale/Tampa	TBD/ Airport Marriott
Mar. 31 - April 02, 2011	4th Annual Construction Law Institute	1179	Orlando	TBD
Mar. 31 - April 02, 2011	Construction Law Certification Review Course	1180	Orlando	TBD
April 8 - 9, 2011	* Wills, Trusts & Estates Certification Review Course	1186	Orlando	Hyatt Regency Airport
April 8 - 9, 2011	* Real Estate Certification review Course	1185	Orlando	Hyatt Regency Airport
April 15, 2011	* Condominium Law & Condominium Association Law	1191	Tampa	Airport Marriott
May 6, 2011	* Development & Government Regulation	1197	Tampa	Airport Marriott
May 27, 2011	* Real Property, Probate and Trusts Law Convention Seminar	1205	Miami	Eden Roc
June 15 - 19, 2011	30th Annual Attorney Trust Officer Liaison Conference	1210	Palm Beach	The Breakers

* Webcast Program

PRELIMINARY POST SESSION REPORT

NUMERICAL INDEX SUMMARY OF 2010 LEGISLATIVE ISSUES

**Michael J. Gelfand, Legislative Committee Chairman
and
Peter M. Dunbar, Martha J. Edenfield,
Howard "Gene" Adams and Josh Aubuchon
RPPTL Legislative Counsel**

May 1, 2010

The 2010 Regular Session of the Legislature produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were a part of the Section's legislative package. The Section's initiatives and bills where the Section provided technical assistance appear in the first part of the summary. The parts following list other items of interest that passed and items of interest to Section members that did not pass. The listing below is preliminary, and we are still reviewing items that passed during the final hours of the Session yesterday. An update report will follow when the review is complete.

The Governor has not taken final action on most of the measures as of this date, but the appropriate Session Law number follows the summary on each bill where the Governor has acted. The full text of each enrolled bill, as well as applicable legislative staff reports, are available on the legislative web sites (www.flsenate.gov; www.myfloridahouse.com; and www.leg.state.fl.us). A summary of each measure that passed follows below in numerical bill order.

I. SECTION INITIATIVES AND TECHNICAL ASSISTANCE

Doc Stamps—“Short-Sales”: CS/HB 109 by Representative Jenne limits the excise tax due to the sale price in a “short-sale” of real property when the sale price is less than the outstanding mortgage amount. This provision is also contained in CS/HB 7157. (*Chapter 2010-32, Laws of Florida.*)

MRTA Exemptions: CS/CS/HB 435 by Representative Abruzzo provides for exemptions from MRTA for agencies of state and local government, and it permits the notice required under MRTA to be provided by publication in a newspaper of general circulation in the county where the property is located. The bill includes the Section’s language that narrows the MRTA exemption. (*Chapter 2010-___, Laws of Florida.*)

Trusts—Life Insurance Contracts: CS/SB 926 by Senator Richter provides additional delegable investment functions; revises notice requirements and criteria for delegation to an investment agent; specifies activities are under no obligation to undertake; limits liability for trustees; and modifies specified notice requirements. The bill is primarily an initiative by the Florida Bankers Association that is supported by the Section. (*Chapter 2010-___, Laws of Florida.*)

Transfer of Property: CS/CS/HB 927 by Representative Kiar is the Section’s initiative to amend and clarify Subsection 193.155 (3) to permit the transfer of homestead property to a person’s spouse without losing the benefits under Save Our Homes. (*Chapter 2010-___, Laws of Florida.*)

Trust Administration: CS/CS/SB 998 by Senator Thrasher is the bill containing the Section’s trust initiatives. The legislation limits the personal representatives entitlement to payment from the trust for certain expenses; specifies certain estate expense and obligation payments; deletes notice requirements for the employment of specified persons; authorized expert witness fees; establishes criteria for determining trust contributions; requires application of priorities for pro rata abatement of nonresiduary trust dispositions together with nonresiduary devises; and revises fee payment provisions. The bill includes the Section’s recommended “tax patch.” (*Chapter 2010-___, Laws of Florida.*)

Condominium and Community Associations: CS/CS/CS/SB 1196 and 1222 by Senator Fasano and Senator Ring is the major community association package for the Session. It includes the Section’s “Bulk Buyer” initiative, multiple Section initiatives from the Condominium Committee, and it proposes a series of changes to the provisions in Chapters 718 and 720. The legislation would make the following changes: (*Chapter 2010-___, Laws of Florida.*)

1. **Condominium Insurance:** The bill makes technical corrections to s. 718.111 (11) enacted in 2008; it clarifies the meeting notice procedures for setting insurance deductibles; and it eliminates the mandatory requirements for individual unit owner policies.

2. **Board Elections:** The provisions modify the eligibility requirements for board members, and it modifies the certification process for board members, requiring the certification after election.

3. **Elevators:** Authorizes a condominium association to waive, by majority vote of the membership, the retrofit of an elevator to operate at time when power is not available to the building, and it provides for a delay in the retrofit of a special access key for elevators until the elevator is replaced or requires major modification.

4. **Telecommunications Services:** The provisions modify revise the provisions for bulk telecommunication services and expands the language to include new technologies.

5. **Distressed Communities–Bulk Buyer:** The provisions modify contain an initiative to provide for modified regulations of a purchaser of condominium units in bulk in circumstances of financial distress or pending bankruptcy. It provides regulations for the protection of existing unit owners and clarified responsibilities and liabilities for the bulk purchaser.

6. **Assessment Delinquencies–Directors:** The provisions would require a director to vacate the office when delinquent in the payment of any fee, assessment or special assessment due to the association for more than 90 days and would disqualify any unit owner from seeking election to the Board if the owner is more than 90 days delinquent in a financial obligation to the Association.

7. **Rental Units–Assessment Delinquencies:** The provisions provide new statutory procedures to allow a delinquent financial obligation due the association from a delinquent unit owner directly from the rental payments of a tenant occupying the unit. The bill also modifies s. 718.110 (13) to permit amendments allowing the Association to collect delinquent assessments directly from tenants when the unit owner/landlord is delinquent and provide for other sanctions against the delinquent owner.

8. **Assessment Delinquencies–Suspension of Rights:** The provisions would permit the association to suspend the use rights to common elements and recreational amenities of a unit owner or unit occupant when the unit owner is more than 90 days delinquent in a financial obligation due the association. It will also permit the association to suspend the voting rights of a unit owner who is more than 90 days delinquent in financial obligations due the association.

9. **Official Records:** The provisions modify right of unit owners to access records of the association to protect proprietary software, computer passwords and other personal information of unit owners and association employees.

10. **Community Association Boards–Compensation and Elections:** The provisions prohibit compensation for officers and board members of an association

governed by Chapter 720, and the bill clarifies election procedures when Directors are elected by secret ballot.

11. Conforming Changes: The legislation adds conforming changes to Chapter 720 that authorize community associations to enter recreation and use agreements with membership approval in the same manner as condominium associations; it prohibits a developer from levying a special assessment prior to turnover; it provides procedures for the election of board members by secret ballot; and it prohibits compensation for officers and directors of an association unless authorized by the governing documents.

12. Termination: The bill modifies the termination section of the Condominium Act to clarify the criteria for economic distress and the ability to recreate a condominium on the property.

13. Fire Sprinklers and Alarms: The bill extends the deadline for retrofitting fire sprinklers from 2014 to 2019, and it eliminates the restrictions on unit owners to waive the retrofit requirement by a majority vote. It also exempts buildings of less than four (4) stories with exterior corridors from installing a manual alarm system.

14. Escrow Deposits: The legislation clarifies the current policy of the Division of Condominiums requiring a separate accounting for escrow deposits in new condominium projects.

15. Assessment Responsibility: The legislation increases the responsibility of a mortgagee for delinquent assessments from 6 months to 12 months or 1% of the original mortgage balance whichever is less.

16. Limited Common Elements: The legislation provides an amendment option to a declaration of condominium for limited common elements.

Probate: CS/HB 1237 by Representative Hukill is the **Section's probate initiative** and contains provisions relating to the access to safe deposit boxes; provides for inter vivos transfer of homestead property; clarifies the rights of intestate succession; and denies certain rights to a surviving spouse procured by fraud or undue influence. The bill contains the Section's recommended "tax patch." (*Chapter 2010-___, Laws of Florida.*)

Non-Judicial Foreclosure—Timeshares: CS/HB 1411 by Representative Dorworth is the proposal by ARDA to allow for non-judicial foreclosure of timeshare estates by means of a foreclosure trustee. The bill provides for access to the judicial process at anytime during the proceedings by the owner of the timeshare estate, and contains the other due process **protections requested by the Section**. The legislation permit the provisions of the bill to be applied retroactively in assessment foreclosures, and **the Section opposed this element and opposed the bill** because of the provision. (*Chapter 2010-___, Laws of Florida.*)

Design Professionals—Liability Limitation: CS/CS/SB 1964 by Senator Negron is legislation that would limit the liability for malpractice or negligence by design professionals to incidents that resulted in personal injury or property damage. The legislation eliminates tort remedies for property owners, condominium associations, and homeowners association. The **Section opposed** the legislation and is requesting a veto by the Governor. (*Chapter 2010-___, Laws of Florida.*)

II. INITIATIVES OF INTEREST

Real Estate Appraisers: CS/CS/HB 303 by Representative Hudson would provide a regulatory scheme for real estate appraisers, appraisal management companies and appraisal management services at the Department of Business and Professional Regulation. (*Chapter 2010-___, Laws of Florida.*)

Residential Property Disclosures: HB 545 by Representative Patterson repeals s. 689.262 that currently requires disclosures of residential property windstorm mitigation ratings to purchasers in wind-borne debris regions. (*Chapter 2010-___, Laws of Florida.*)

Building Safety—Fire Sprinklers and Condominiums: HB 663 by Representative Aubuchon is a comprehensive building safety bill. Among its provisions are three items of note: (*Chapter 2010-___, Laws of Florida.*)

1. **Fire Sprinklers—Single-Family Homes:** Section 32 of the bill provides that any local amendments to R 313 of the Florida Building Code regarding fire sprinklers in single family homes shall not be included in the Florida Building Code. The provision basically prohibits local governments from requiring the installation of fire sprinklers in single-family homes. The provision is also contained in CS/CS/SB 846.

2. **Condominium Building Reports:** Section 59 repeals subsection 718.113 (6) that required condominium associations to contract for a building report by an architect or engineer every five (5) years for buildings greater than three (3) stories in height.

3. **Fire Alarms—Condominiums:** Section 47 exempts one and two (2) story buildings with exterior corridors from the requirement to install a manual alarm system. The height in this provision conflicts with a similar provision contained in CS/CS/CS/SB 1196 and 1222 that grants the same exemption to buildings of less than four (4) stories.

UCC—Article VII: HB 731 by Representative Carroll updates Article VII of the Uniform Commercial Code in accordance with the recommendations from the National Conference of Commissioners of Uniform State Laws and authorizes negotiable electronic documents of title for goods and tangible personal property. (*Chapter 2010-___, Laws of Florida.*)

Mandatory Fire Sprinklers—Building Code: CS/CS/SB 846 by Senator Bennett provides that any local amendments to R 313 of the Florida Building Code regarding fire sprinklers in single family homes shall not be included in the Florida Building Code. The

legislation basically prohibits local governments from requiring the installation of fire sprinklers in single-family homes. (**Chapter 2010-___, Laws of Florida.**)

Real Property Appraisal—“Chinese Drywall”: CS/CS/HB 965 by Representative McKeel would direct the county property appraiser to reduce the value of real property requiring remediation as a result of “Chinese drywall” during the process of remediation. (**Chapter 2010-___, Laws of Florida.**)

Condominiums—Elevators: CS/HB 1035 by Representative Frishe revises the regulatory provisions for elevator inspections, and includes a provision also found in CS/CS/CS/SB 1196 and 1222 that provides for a 5-year delay from July 1, 2008 in the retrofit of a special access key for elevators or until the elevator is replaced or requires major modification whichever occurs first. (**Chapter 2010-___, Laws of Florida.**)

Single-Family Residential Docks: CS/SB 1118 by Senator Altman revises the provisions of Chapter 403 relating to the regulatory procedures for residential docks and permits docks to be roofed. It authorizes the Department to promulgate rules for docking facilities of 10 slips or less in Class II and Class III waters. (**Chapter 2010-___, Laws of Florida.**)

Planned Residential Communities: SB 1166 by Senator Altman provides a definition for “planned residential community” for purposes of residential housing for persons with disabilities, and the legislation limits the ability of local governments to restrict the placement of such housing facilities. (**Chapter 2010-___, Laws of Florida.**)

Assessment of Back Ad Valorem Taxes: HB 1279 by Representative Rivera amends s. 193.092 to provide that the retroactive assessment of ad valorem taxes does not apply when the owner has complied with all necessary permitting requirements or has voluntarily disclosed the improvements to the property prior to January 1 of the year that the property was first assessed. (**Chapter 2010-66, Laws of Florida.**)

Development Permit Extensions: CS/SB 1752 by Senator Gaetz is the economic development package from the 2010 Session. Sections 30 and 31 of the bill reauthorize the 2-year extension of development permits, water management districts and transportation concurrency exemptions granted during the 2009 legislative session. (**Chapter 2010-___, Laws of Florida.**)

Transportation Projects—Rights of Adjacent Owners: CS/CS/SB 1842 by Senator Bennett creates new section 335.199 in the Florida Transportation Code requiring abutting property owners to be notified when a state highway will be divided, median barriers erected, or existing access to property is being modified. It requires a public hearing to be held on the changes and requires the Department of Transportation to take alternatives presented at the hearing to be taken into consideration in the final project design. (**Chapter 2010-___, Laws of Florida.**)

Property Insurance—Windstorm Claims: CS/CS/SB 2044 by Senator Richter is the property insurance package from the 2010 Session. Section 13 of the bill will require all windstorm or hurricane claims, supplemental claims, or reopened claims by property owners and condominium associations to be filed within 3 years of the storm event instead of 5 years from the event. (*Chapter 2010-___, Laws of Florida.*)

Taxation—Liens and “Short Sales”: CS/HB 7157 by Representative Fresen is the Department of Revenue’s comprehensive tax package for the 2010 Session. Among its provisions, the legislation would make the following changes: (*Chapter 2010-___, Laws of Florida.*)

1. **Unemployment Tax Liens:** The bill provides that liens securing the payment of unemployment tax obligations lapse 10 years after the original filing.

2. **“Short Sales”:** The bill contains the same language found in CS/HB 109 that limits the excise tax to the sale price in a “short-sale” of real property when the sale price is less than the outstanding mortgage amount.

3. **Revocation of Licenses and Permits:** The bill provides that if DOR files a warrant, notice of lien, or judgment lien certificate against the property of a tax payer, it may also revoke any state registration, permit or license.

Real Estate Sales—Non-Ad Valorem Assessments and Contract Disclosure HB 7179 by Representative Precourt authorizes new local government programs to help fund “energy-efficient,” “energy-renewal,” and “wind-resistant” improvements to real property within designated areas and authorizes the levy of non-ad valorem assessments to fund the improvements. The bill contains a new real estate contract disclosure requirement for the sale of properties in area subject to the assessments. (*Chapter 2010-___, Laws of Florida.*)

Community Development Districts: HB 7203 by Representative Bogdanoff would permit CDDs without qualified electors to levy a tax of up to 1% on commercial rental transactions within the district subject to s. 212.031 to promote and support commercial activity, including festivals and special events that enhance the commercial activity. The tax must be approved by a 4/5ths vote of the board of supervisors of the CDD. (*Chapter 2010-___, Laws of Florida.*)

III. **INITIATIVES OF INTEREST THAT FAILED**

Community Associations—“Home Court”: CS/HB 115 by Representative Ambler and SB 398 by Senator Dockery propose a variety of changes to the chapters governing condominiums and mandatory homeowners associations, and included the “Home Court” alternative dispute procedures that the Condominium Committee to the **Section opposed**. The legislation died in the Council when the Legislature adjourned.

Title Insurance–File-and-Use: SB 260 by Senator Bennett proposed to revise the regulatory procedures governing title insurance agents, charges for service by title agents, and title insurance products. The bills provided for file-and-use procedures and approval of rates by the Office of Insurance Regulation. The Office is a proponent of the bill and the **Section opposed** the legislation. The legislation died in committee when the Legislature adjourned.

Adverse Possession: CS/SB 292 by Senator Dockery and HB 887 by Representative Schultz would have required that a person seeking to claim property by adverse possession to send to the property owner of record a copy of the return filed with the property appraiser. The **Section had technical concerns** with the language in the legislation.

Title Insurance: CS/HB 853 by Representative Ambler and SB 1836 by Senator Baker is the implementing legislation for the Task Force recommendations. HB 855, HB 867, SB 1838, and SB 1840 were related bills by Ambler and Baker that create the trust fund and provide public records exemptions for parts of the regulatory scheme. The legislation died in committee when the Legislature adjourned, but it is being considered for interim project by the Senate Banking and Insurance Committee.

Hidden Liens: HB 1069 by Representative Wood and SB 2248 by Senator Negron is the **Section’s hidden lien initiative**. The legislation provided a uniform process for creating and recording liens that are authorized by municipal or county ordinances.

Guardianship: HB 1159 by Representative Hukill and SB 1548 by Senator Joyner was the **Section’s initiative** that revises the definitions of “benefits” and “income” for purposes of the Veterans Guardianship Law.

Electronic Recording: HB 1179 by Representative Grimsley and CS/SB 1288 by Senator Negron was the **Section’s initiative** to make revisions to the UPERA to retroactively and prospectively ratify the validity of electronic documents that have been accepted by the county clerk for recordation.

Estate Tax: CS/HB 1197 by Representative McBurney and SB 2620 by Senator Altman propose to amend s. 198.03 relating to the imposition of taxes on the estates of nonresident decedents.

Guardianship: HB 1431 by Representative Schwartz (HB 1433 and HB 1435) and SB 2626 by Senator Aronberg (SB 2624 and SB 2628) create Part II of Chapter 744 with the intention of providing harmony with guardianship orders from other state jurisdictions. The **Section had technical concerns** with the bill. The primary bills are traveled with two bills that provide public records exemptions to certain records in the guardianship proceedings.
Non-Judicial Foreclosure: HB 1523 by Representative Grady and SB 2270 by Senator Bennett is the non-judicial foreclosure proposal initiated by the Florida Bankers Association. **The Section opposed the bills.**

Committee Report
Mission Statement and Action Plan
RPPTL Membership Development Committee
Phillip A. Baumann, Chair
Mary Clarke, Vice Chair
May, 2010

SECTION MEMBERSHIP IS DOWN THROUGHOUT THE FLORIDA BAR

In summary, section membership is down substantially throughout the Florida Bar, especially this last fiscal year. Our section's membership statistics for the last year match the bar as a whole. However, over the last five years, our membership retention and recruitment is substantially better than every section in the bar other than the Family Law section. Our committee sees some opportunities to do even better this next year.

The Florida Bar's statistics reflect the following:

Section Membership as of January 1, 2010 is 9,507¹
Section Membership as of January 1, 2009 was 9,904
Of the 9,507 members this year, 411 were comps and 9096 are dues paying.
As of January 1, we had 1,634 members that had not renewed

At first blush, that data seems disappointing. However, the membership numbers for all sections of the Florida Bar since 2005 show this:

2009-2010, RPPTL's membership decreased 3%,
Section membership throughout the Bar also down 3%
.
2005-2010 RPPTL membership *increased* 7%,
Section membership throughout the Bar is *down* 1%

Membership statistics as of January are attached. The data reflect that in the last five years some sections have seen their membership shrink as much as 18% and 22% while our section grew 7% since 2005. That shows that our membership development efforts are indeed paying off. Of course, those efforts are not just from the work of your Membership Development Committee. Membership development is a mantle that nearly everyone on the Executive Council has taken on and membership is promoted by everyone. In addition, our work over the years with law schools and our fellowship program are also generating interest in section membership among the bar as a whole, more successfully than most sections.

¹ Section membership as of May 1, 2010 has actually increased to 9,754. However, because the data we have from the other sections is as of January of this year, we have used the January statistics for comparison.

COMPED MEMBERS. Since 2005, the section has had an average of 533 section members whose dues were comped. They are primarily new lawyers who may join the section without a fee. In 2010 there are only 422 comped members, reflecting fewer new lawyers becoming real estate or trust and estate lawyers. We will have to redouble our efforts to interest new lawyers in our fields of practice. However, since 2005, on average 40.5% of comped members became dues paying members the following year. Slightly fewer, 40%, did so in 2010. It appears we are doing an adequate job in keeping those members but must do more to get them into the section in their first year.

RENEWING MEMBERS. On average, since 2005, 87.6% of dues paying members renew their section membership. In 2010, that number was down to 86%. While that is down, as a percentage of total membership, our renewing membership percentage is better than our total membership growth. In other words, the growth of the section should focus harder on recruiting new members, since our member retention is reasonably good (although there is room for improvement).

Only the Family Law Section of the Florida Bar has seen better membership growth than has our section.² Most likely, over the last few years as the real estate business has dried up, many general practitioners and even real estate lawyers have taken on family law as an additional field to take up the slack. To gather the expertise they need, they joined that section. At least, that is what we suspect.

MISSION STATEMENT: The mission of the Membership Development Committee is to grow the total membership of the Real Property, Probate and Trust Law Section, to assist in integrating new members of the Executive Council into the Council.

ACTION PLAN. . For 2010-2011, our Committee will continue its efforts to target non-section members who attend section CLE seminars to encourage them to join the section. A large number of members whose dues are waived are new lawyers. A large proportion of those members do not renew their membership when their waiver period is concluded. This year, we will have mailings targeted to those members to encourage them to continue on. We will continue to contact all non-renewing members by mail to remind them to renew. We will work with the Law School Liaison Committee to assist that committee in bringing in more new lawyers to our section. One of the new section fellows will be assigned to this committee. He will be tasked with researching the production of recorded announcements that can be played during breaks in webinars to encourage on line participants to join the section. In the past, this section has investigated this concept and has not come up with a viable plan for such a production. Our goal in 2010-2011 is to complete a plan for that production.

² The accompanying chart appears to reflect that the General Practice Section has had phenomenal growth over the past five years. However, in 2008, the Practice Management and Development Section was merged into the General Practice Section. If you review the data from both sections as one combined section, the membership in that combined section is down 39% since 2009 and 15% since 2005.

SECTION MEMBERSHIP UPDATE

For the purposes of this report all data is based on January 1st of each year.

Section	2010	2009	2008	2007	2006	2005
Administrative Law	1,248	1,271	1,251	1,195	1,207	1,205
Appellate Practice	1,467	1,554	1,564	1,514	1,497	1,458
Business Law	4,739	4,958	4,832	4,590	4,538	4,476
City, County, Local Government Law	1,679	1,790	1,772	1,659	1,594	1,566
Criminal Law	2,585	2,692	2,827	2,692	2,644	2,538
Elder Law	1,584	1,605	1,648	1,621	1,732	1,735
Entertainment, Arts & Sports Law	936	953	955	904	954	951
Environmental and Land Use Law	1,964	2,098	2,189	2,015	1,943	1,861
Equal Opportunities Law	225	254	277	257	290	287
Family Law	3,777	3,843	3,739	3,505	3,397	3,427
General Practice, Solo and Small Firm	2,341	2,310	2,384	2,030	2,077	1,967
Government Lawyer	1,039	1,045	1,108	1,043	1,106	1,107
Health law	1,394	1,406	1,399	1,317	1,352	1,388
International Law	1,052	1,101	1,073	981	1,032	997
Labor and Employment Law	1,981	2,075	2,109	2,110	2,212	2,190
Out of State Division	1,156	1,229	1,189	1,114	1,148	1,194
Practice Management & Development ¹	0	0	0	733	759	796
Public Interest Law	441	444	431	480	469	468
RPPTL	9,507	9,781	9,904	9,446	9,237	8,879
Tax	2,059	2,108	2,120	1,993	1,998	1,987
Trial Lawyers	6,391	6,601	6,694	6,659	6,884	7,228
Workers Compensation	1,392	1,486	1,484	1,536	1,585	1,704
Total Section Memberships²	48,957	50,604	50,949	49,394	49,655	49,409

Total # of Bar Members in Sections³	30,571	31,237	31,120	29,528	29,590	29,459
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¹ PM&D merged into the General Practice, Solo and Small Firm Section.

² The January 2010 Total Section Memberships # is down 1,647 memberships from January 2009. Some Bar members belong to multiple Sections.

³ The January 2010 Total Members in Sections # is down 666 members from January 2009.

⁴ The 48,957 Section Memberships for 2010 include 45,380 dues paying Section members and 3,577 one-year complimentary Section memberships (new Bar members are permitted to join up to three Sections at no charge their first year).

Prepared 1/7/2010