

ActionLine

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

Amendments To Rules Of Civil Procedure: A Series Part 4 of 4

Here Comes the Judge! Florida Amends its Rules of General Practice and Judicial Administration to Expedite Cases

Abbreviated Forms of Florida Probate and How They Changed in 2026

Addressing Mobile Home Title Transfer Problems Through Statutory Procedures and Declaratory Relief

Vol. XXXXVII, No. 3 www.rpptl.org Spring 2026

Save The Date!

The 44th Annual Attorney / Trust Officer Liaison Conference

July 30 - August 1, 2026
The Breakers, Palm Beach

Registration for conference and hotel is tentatively scheduled to open May 4, 2026

Arm Up the Trusted Advisor Team; Join Us for the Latest Trust and Estate Legal Updates and Perspectives

- **Discharge of the Trustee: Ins, Outs and Other Considerations**
  Alexander S. Douglas II
- **Playing Offense and Defense: Strategies in Litigating Undue Influence, Elder Exploitation, and Tortious Interference Cases**
  Daniel A. Seigel
  Jorja M. Williams
- **Fiduciary Accounting: Aiding Fiduciaries & Beneficiaries**
  Jolyon D. Acosta
- **Love, Wealth, and Prenups (*some conditions may apply)**
  Robert H. "Bo" Trudeau
- **Basis Planning Around OBBBA- Upstream Planning**
  Edwin P. Morrow III
- **Unexpected Implications Of Trust Modification & Decanting**
  Jeffrey M. Gad
- **Navigating Best Outcomes On Life Insurance**
  Jamie L. Mendelsohn
- **Latest in Planning Strategies? Hot Topics and Best Planning Practices for Multi-Generational Families**
  George D. Karibjanian
- **Technology & Financial Exploitation: Protecting the Elderly & Vulnerable**
  Sasha F. Granai
- **Panel: Trust and Estate, Q&A**
  Jeffrey A. Baskies, Michael A. Dribin, Robert W. Goldman
  Sandra F. Diamond, Benetta Y. Park
- **Legislative Update**
  S. Dresden Brunner
- **Case Law Update**
  James R. George

Service Through the Legislative Process

In prior columns, I discussed the many ways in which members of the Section give back, whether through charitable initiatives like "Passing the Bucket" or through pro bono service across the state. Giving back, however, takes many forms.



One of the most significant, though often behind the scenes, ways the Section serves is through its active involvement in the legislative process, where it works to improve the law, provide technical guidance, and address issues that affect property owners, families, and practitioners throughout Florida.

During the most recent legislative session, the Section was involved in a number of meaningful efforts, both in advancing its own initiatives and in working with legislators and other stakeholders on issues of importance to our practice areas.

The Section's two initiatives passed the Legislature.

The first, CS/SB 110, addresses homestead exemptions in the context of certain long-term leasehold interests. The legislation clarifies that Save Our Homes protections depend on the continuity of the homestead claimant's possessory interest, rather than on technical changes in title. In doing so, it provides needed clarity in estate planning scenarios and confirms that existing practices will continue to receive consistent treatment under Florida law. This initiative was approved by the Governor on June 25, 2026.

The second, HB 895, relates to trust administration. This legislation creates a summary process for trustees to settle accounts and obtain discharge in non-adversarial situations. By allowing for a structured notice process and providing for discharge absent timely objection, the legislation reduces unnecessary cost and delay while preserving appropriate safeguards for beneficiaries. This initiative was approved by the Governor on April 29, 2026.

In addition to these initiatives, the Section also provided technical assistance on significant legislation advanced by others. Notably, in connection with the Business Law Section's comprehensive revision to Chapter 617 governing nonprofit corporations, the Section worked to ensure that important provisions affecting community associations under Chapters 718, 719, and 720 were preserved. This type of collaboration reflects the Section's ongoing commitment to maintaining consistency across related areas of Florida law.

Equally important, the Section was actively engaged in reviewing and addressing proposed legislation that raised significant concerns. Two bills would have imposed new restrictions on the ability of individuals to convey property or to enter into contracts based on age. Additional proposals affecting community associations and allowing convicted felons to serve in fiduciary roles, such as guardians or personal representatives, presented a range of practical and legal challenges.

Through its Legislation Committee, legislative consultants, and volunteers, the Section worked with sponsors to provide technical feedback and to highlight potential unintended consequences. While these measures ultimately did not pass, the process underscores the important role the Section plays in helping to shape legislation and protect both the public and the integrity of our legal system.

As with the Section's charitable and pro-bono efforts, its legislative work reflects a broader commitment to service. By engaging in the legislative process, Section members help ensure that Florida law remains clear, practical, and responsive to the needs of those we serve.

For those who have an interest in becoming more involved, the Section's Legislation Committee and its substantive committees provide a meaningful opportunity to contribute to this all-important work.

This magazine is prepared and published by The Real Property, Probate and Trust Law Section of The Florida Bar as a service to the membership.

CHAIR
William Cary Wright

CHAIR-ELECT
Jon Scuderi

DIRECTOR, PROBATE & TRUST LAW DIVISION
Sancha K. Brennan

DIRECTOR, REAL PROPERTY DIVISION
Steven H. Mezer

DIRECTOR, AT LARGE MEMBERS
Brenda B. Ezell

SECRETARY
Wilhelmina F. Kightlinger

TREASURER
Angela McClendon Adams

CO-CHAIR, LEGISLATION COMMITTEE
S. Dresden Brunner

CO-CHAIR, LEGISLATION COMMITTEE
Lee Alan Weintraub

CO-CHAIR, CLE SEMINAR COORDINATION
Michael Van Hargett

CO-CHAIR, CLE SEMINAR COORDINATION
Nicklaus Joseph Curley

IMMEDIATE PAST CHAIR
John Christopher Moran

CO-CHAIR, (PT), CO-EDITOR-IN-CHIEF
Erin Farrington Finlen

CO-CHAIR, (RP), CO-EDITOR-IN-CHIEF
Michelle Hinden

CO-VICE CHAIR, PROBATE AND TRUST
Alexander Douglas

CO-VICE CHAIR, PROBATE AND TRUST CONTENT EDITOR
Seth Kaplan

CO-VICE CHAIR, PROBATE AND TRUST - EDITOR, FELLOWS COORDINATOR
Daniel C. McDermott

CO-VICE CHAIR, PROFESSIONALISM/ETHICS/PROBATE AND TRUST CONTENT EDITOR
Paul Edwards Roman

CO-VICE CHAIR, REAL PROPERTY
Gregg I. Strock

CO-VICE CHAIR, REAL PROPERTY REAL PROPERTY CONTENT EDITOR
Lisa Van Dien

EDITORS-AT-LARGE
Keith Durkin, Orlando
Mitchell A. Hipsman, Miami
Amber Jade F. Johnson, Maitland
Michael G. Rothfeldt, Tampa
Angela K. Santos, Boca Raton

ELECTRONIC EDITOR
Salomé Bascunan

PROGRAM ADMINISTRATOR
Hilary Stephens

ASSISTANT PROGRAM ADMINISTRATOR
Jeremy B. Citron

COPY EDITOR
Janellen Green, Santa Rosa Beach, FL

PUBLICATIONS MANAGER
Laurie H. Rowland, Santa Rosa Beach, FL

DESIGN / LAYOUT
Laura Pichard-Murphy, Tallahassee

COVER PHOTO - SUNSEEKER IN PUNTA GORDA, FL
Silvia Rojas

Statements or expressions of opinion or comments appearing herein are those of the editors or contributors and not The Florida Bar or the Section.

IN THIS ISSUE:

Chair's Column: Service Through Legislative Process 3
Letter From The Co-Editors-In-Chief 5
In Loving Memory of Roland "Chip" D. Waller: A Life of Service, Friendship, Wit and Integrity 6
RPPTL Rolls Out an Innovative Program 9
Amendments To Rules Of Civil Procedure: A Series Part 4 of 4 10
Pre-Closing Considerations When Using DAFs as Tools for Business Owners 13
Allocating Payments From An Individual Retirement Account To A Trust 16
What Estate Planning Attorneys Need To Know (Part I) 24
Assisted Reproduction, Intestacy, and the Legal Status of Donor-Conceived Siblings Under Florida Law 30
Abbreviated Forms of Florida Probate and How They Changed in 2026 33
Addressing Mobile Home Title Transfer Problems Through Statutory Procedures and Declaratory Relief 36
Executive Council Meeting 40
Real Property Case Summaries 42
Probate Case Summaries 44
Florida Land Trusts: An Often Overlooked Statutory Tool 46
Real Property Division Roundtable 48
Probate and Trust Division Roundtable 50
ActionLine Bulletin Board 52

Get Included In ***ActionLine!***

Readers are invited to submit material for publication concerning real estate, probate, estate planning, estate and gift tax, guardianship, and Section members' accomplishments.

ARTICLES: Forward any proposed article or news of note to Erin Farrington Finlen at erin@estatelaw.com. and Michelle Hinden at Mhinden@nishadkhanlaw.com. Deadlines for all submissions are as follows:

VOLUME NO.	ISSUE	DEADLINE
1	Fall	July 15
2	Winter	October 15
3	Spring	January 15
4	Summer	April 15

ADVERTISING: For information on advertising, please contact Erin Farrington Finlen at erin@estatelaw.com, Michelle Hinden at mhinden@nishadkhanlaw.com, or Alexander S. Douglas, II at adouglas@shuffieldlowman.com.

PHOTO SUBMISSIONS: If you have a photo that you'd like to have considered for the cover, please send it to the photo editor, Erin Farrington Finlen at erin@estatelaw.com or Michelle Hinden at mhinden@nishadkhanlaw.com.

GENERAL INQUIRIES: For inquiries about the RPPTL Section, contact Jeremy Citron at The Florida Bar at 850-561-3155, or at jcitron@floridabar.org.

Jeremy can help with most everything, such as membership, the Section's website, committee meeting schedules, and CLE seminars.

Letter From The Co-Editors-In-Chief



E. FINLEN



M. HINDEN

Greetings Readers,

This time around we have a probate and tax heavy issue with some really interesting issues. As always, we have great appreciation for our content contributors and thank them for their time and efforts! We bring to you:

- *Amendments to Rules of Civil Procedure (Part IV)* by Shawn Brown;
- *From Private Equity to Public Good, Pre-Closing Considerations When Using Donor Advised Funds as Tools for Business Owners* by Carla A. DeLoach;
- *Walking the Balance Beam of Fla. Stat. § 738.409: Allocating Payments From An Individual Retirement Account to a Trust* by David S. Sennett, Sasha A. Klein, and Alexander Parthemer;
- *Trump Accounts: What Estate Planning Attorneys Need to Know (Part 1)* by Denise B. Cazobon;
- *Assisted Reproduction, Intestacy, and the Legal Status of Donor-Conceived Siblings Under Florida Law* by Richard Ehrlich;
- *Abbreviated Forms of Florida Probate and how they changed in 2026* by Rohan Kelley; and
- *Addressing Mobile Home Title Transfer Problems Through Statutory Procedures and Declaratory Relief* by Laura M. Licastro and Christian Savio.

Lastly, we would like to recognize the passing of Roland "Chip" Waller, a past chair of the Section, and someone who championed the practice of law for decades. We've included an article honoring Chip's life and sentiments from Section members made upon his passing in this issue. Chip was a gentlemen attorney who tirelessly gave of himself to the legal community and possessed a wit reminiscent of Will Rogers. He will be missed.

ESSENT™
ESSENT TITLE

Experience That Turns
PROBLEMS INTO CLOSINGS.



John Sthreshley
VP, FL Sales Manager
john.sthreshley@essent.us
941.806.7289



Annette Ahlers
Account Manager, FL
annette.ahlers@essent.us
407.256.8050



Liz Shade
Account Manager, FL
liz.shade@essent.us
352.256.5916



Kevin Thomas
Regional Vice President
kevin.thomas@essent.us
407.895.3370



Jimmy Hickman
Account Manager, FL
jimmy.hickman@essent.us
813.205.4472



Rusty Tellone
Account Manager, FL
rusty.tellone@essent.us
732.245.0801

Title Insurance provided by Essent Title Insurance, Inc.
© 2026 Essent Title Insurance, Inc., All rights reserved. | Two Radnor Corporate Center, 100 Matsonford Road, Radnor, PA 19087
essent.us/title



In Loving Memory of Roland "Chip" D. Waller

A Life of Service, Friendship, Wit and Integrity

It is with profound sadness, deep gratitude, and great affection that the members of the Section remember the life and legacy of Roland "Chip" D. Waller.

Following news of Chip's passing, members from the Section shared their memories and sentiments in honor of a man who touched countless lives through his professionalism, generosity, humor, wisdom and unwavering dedication to the practice of law and to the people around him.

REMEMBERING ROLAND D. "CHIP" WALLER
Past Chair, Mentor, Friend
By Melissa Jay Murphy and Michael J. Gelfand

Past Chair, Roland D. "Chip" Waller passed away on April 18, 2026. He was 79 years old. It is with respect and gratitude that we celebrate Chip for his exemplary life. Michael Gelfand and I have been given the honor and the responsibility of providing this tribute. We hope you will find it worthy of Chip.

After graduation from Tennessee Technological University and the law school at Mercer University, Chip became a member of The Florida Bar in 1971 and quickly developed into the type of lawyer we all should strive to be. Chip practiced law in New Port Richey, with both a litigation and an office practice in dirt and death issues. He was highly regarded in both.

He served as Chair of the Section in the 1993-1994 Bar year. Officially, he was a "Past Chair" and enjoyed his spot in the "back row," but his true role was as the Section's Mentor with a capital "M." Regardless of which side of the aisle you sat, Chip was with you, encouraging you and insisting that you do your best to pursue laws that are just and fair for everyone.

We would be remiss if we did not mention Chip's service to our country. While at Mercer, he joined the ROTC and rose to the rank of Second Lieutenant, serving as a finance officer for the U.S. Army at Fort Benjamin Harrison in Indianapolis. He continued his service in the Army Reserves for six years, receiving an honorable discharge as a Captain.

He was quite a presence at Section meetings both physically and substantively. We will miss the sight of his tall, lanky build as he regularly took the microphone to share his perspective. Few were more prepared for our Executive Council meetings than Chip. He was old school and arrived at each meeting with the agendas and supporting materials printed out and bound in a large three ring binder.

If you sat near to him in committee meetings, usually in the second or third row up front on the aisle where he would not miss a comment and he was not distracted by any electronics or otherwise, you could see where he had marked those provisions he wanted to discuss…..there was no question that he had read through everything ahead of time. How many of us can claim that same level of dedication, interest and patience? Past Chair, Jerry Aaron, recalled that as a "newbie," he and his peers strove to be "extra prepared" knowing that Chip would likely participate in any debate and they wanted to live up to his example. Decades later new members have continued to be counseled to follow Chip's example to read the materials, and to run draft legislation by Chip because his edits were valued.

Past Chair, Rohan Kelley, also observed that Chip was "never angry if his position was rejected. He felt it was his obligation to make known a different view and, if it failed, he was OK with that. It is a unique trait to be able to disagree on occasion with your peers and still remain close friends."

Chip's self-deprecating self-introduction - "I'm nothing but a not so smart small-town lawyer" - belied his intellect, skill and substance. He was well known for his sharp legal mind. His willingness to be frank in his comments ("this is a crazy idea") and to urge us to "keep it simple" were received with respect and given consideration. I think he lamented, with many of us, that society and, therefore the law have gotten more and more complicated over the years. His practice was not for the well-heeled and privileged and, he was a champion for those who could not navigate the legal system and would have no voice but for his.

Chip was an advocate for young lawyers that desired to be involved in the Section. ALMs Director, Brenda Ezell, remembered, "I have always admired Chip for his strong advocacy for his clients, his sense of humor and his

continued, page 7

commitment to the Section mission. On top of that, he has always been there to make sure that I was not only surviving but thriving in my various roles in the Section."

Chip was an accomplished athlete, having completed numerous triathlons. Many of us enjoyed the challenge of early morning runs from The Breakers in Palm Beach with Chip in the lead! It was a personal challenge for me that if I could not match him in legal discourse, perhaps I could at least join him for a run.

Past Chair, John Neukamm, spoke with Chip a few days before his death and was inspired by Chip's upbeat attitude about facing the inevitable. John made sure he shared with Chip our collective love and appreciation for his leadership but also the friendships that Chip and his wife Pat built with many of us over the years.

The memorial service held on May 5, 2026, was a fitting tribute to Chip. The sanctuary was full of people whose lives Chip had touched and inspired in some way. The remarks by two close friends described their experiences and friendships with Chip in ways we could all understand. The eulogy given by his son "JJ," eloquently expressed with love, respect and humor, the example Chip set as a father, husband, friend and counselor.

In closing please remember that Chip not only made us better; his example invites all of us to embrace and live the goal of an ethical and competent practice, helping develop just and effective laws and serve the public. May his memory be a blessing and a call for us to walk in his path.

The tributes collected below reflect Chip's extraordinary legal mind and his authenticity, warmth, wit and collegiality that made him so deeply respected and admired in the Section.

As most of you know, Chip was one of a kind. He was passionate about his positions but was never disagreeable. Chip was also very encouraging to young and not so young Section members – he always had the Section's best interest in mind and worked diligently to that end. ~ Cary Wright

When Mike Swaine was Chair and was unable to attend his out-of-state trip to Canada. RPPTL still went, and Chip sent a note to my father that read, "Mike and Mary, Pat and I went dog sledding today. We had a blast and renamed our lead dog Mike. The other lead dog needed to keep Mike in line, so we named her Mary. This was a great place for a meeting. Baby [Pat] and I dammed near killed ourselves skiing yesterday, so it was nice to have Mike and Mary take us for a wonderful ride. They let me drive; however, I only yelled at Mike to hurry up. Yours, Chip and Pat." The other was when Chip asked Mike Swaine to be the Director of Circuit Reps. Chip told Dad that if he did the job well, people would not like him very much. Chip then said it would be OK, since not very many people like you [Dad] anyway. ~ Robert S. Swaine.

Of the innumerable witty, self-deprecating comments I heard Chip make over the decades, my favorite was his introductory statement one year at the RPPTL Real Estate Certification seminar when he had the incredibly dry topic of the latest HUD settlement statement form. Chip said "Folks, I feel like Elizabeth Taylor's fifth husband on their wedding night. I know what I'm supposed to do but I don't know how to make it seem new or interesting." ~ Andrew "Drew" O'Malley, Esq.

Chip was one of the most sincere and authentic friends you could possibly have. His outward appearance as a country lawyer was not fabricated or acted out as a role – Chip was the genuine real thing, and of course, as smart as anyone. He was my equal in anything in which we shared an interest, even if our opinions differed (which was rarely the case). As long as I have life and memory, I shall never forget Chip, and I shall always cherish our friendship. ~ Bruce Stone

As a past chair of the Section, Chip Waller lent an extra layer of gravitas to every meeting. His preparation for, and faithful attendance at, them was legendary. Everyone in the room always leaned in to hear what he had to say. His insights and frankness were warmly appreciated by most of us. He never failed to deliver thoughtful and impassioned argument(s) along with a sense of humor and much humility which I enjoyed and came to admire. His voice will be missed but even more so his collegiality and his friendship. He was the epitome of a "Southern gentleman." Father Time never fails at thinning the herd of mentors, colleagues and friends but he cannot dim the memories of those who have made a difference. For me, Chip Waller certainly did that. I miss him already. ~ Alan McCall

I have lost a hero and friend. Chip Waller epitomized the way a lawyer should be in every way. I will always have fond memories of when he and Pat visited our family in upstate New York in the middle of the winter and he never complained about the ice and snow! A fine human being who will be sorely missed. ~ John Fitzgerald

My first Executive Council meeting was in the panhandle and Chip Waller, who I'd never met, was the Section Chair. There was a lively discussion about escalating costs of attending Executive Council meetings (Oh, for those prices today!), and I'll never forget Chip's position: "Waal, if you want to meet at a Motel 6 and serve Bud Lite only, we can do that but I kinda like going to nice places." ~ Barry Spivey

continued, page 8

Roland "Chip" D. Waller showed all of us what RPPTL stands for: dedicated professionalism embodied in passionate friendly argument and unwavering dedication to a life of service. His legacy will always be a guiding light to us. Chip also had a wonderful sense of humor. At the time, when new cars for a long time, had already eliminated cassette tape players, Chip enthusiastically made the remark that he had kept and treasured his little econo car so long because it had a cassette tape player he used to listen to CLE courses when he drove to RPPTL conferences. He said, "I call it my "CLE car." ~ Amber Jade F. Johnson

Chip camouflaged his formidable intellect behind his "I'm just a country lawyer" demeanor. Chip was generous, down to earth and genuinely committed to his clients, who must have known he was a good guy and a fierce advocate, but may not have realized how well represented they were. I always wanted to hear what Chip had to say at our Executive Council meetings, even when I did not agree with him. We are fortunate to have known him. ~ Margaret "Peggy" A. Rolando

I did not know Chip well, but he nevertheless made a big impression on me as I got more involved with RPPTL over the last few years. His willingness to always show up, always be prepared, and always ask questions that made everyone in the room think (better) about the issues being raised made him a pillar of the RPPTL community. His dedication to the real estate profession and his clients made him a lawyer (and a person) the likes of which we should all be striving to emulate. Godspeed, Chip – we will miss you tremendously. ~ Lori Ellen Ward

Chip was always willing to help a young attorney. Whenever I had a question, or even just wanted his opinion, he would call me back within moments. In the short time I knew Chip, I grew to appreciate his straightforwardness and his sense of humor. Chip's legacy and contributions to New Port Richey and beyond will always be remembered. ~ Spencer Whittaker

Chip was Section Chair when I first became a member of the Executive Council in 1993. Chip and Pat were so welcoming at my first Executive Council meeting in Destin. They were such gracious hosts and made it easy for both Kathy and me to feel like part of a new family. We even had a "family road trip" that year as the Section took over a train car as we headed across and up the State, picking up Section members at various stops along the way, as we headed to his out-of-state meeting in Charleston. Chip always kept us honest during our debates. I made that point in my nomination letter when he was accepted as an ACREL member. I pointed out that every organization needs somebody who is willing to point out the contrary point of view, and Chip always did so with eloquence, grace and "aw shucks" charm. While he may've sounded like a "country boy," we all knew that Chip had an incisive mind and was as well-prepared on virtually any topic that came before the Council as those who actually presented the proposals under consideration. When I spoke with Chip mere hours before his death, his attitude was great considering the circumstances. Quoting Billy Graham, he stated that he wasn't afraid of death, but he didn't like the process of dying. Chip loved his work. His older sister told me that he spent his last day busy dictating and speaking with clients. As noted by one of his eulogists, he was still working on a closing until a few hours before he died. Another eulogist noted that he had many great qualities, but he particularly admired Chip's scrappiness. His son, JJ, noted, in his wonderfully eloquent eulogy, that Chip was a great teacher and that one of his greatest lessons was how to love your wife. While I can't stand drinking Bud Lights, I hope to be able to raise a toast to him with a Bud Light in hand in the "back row" during the presentation of his inevitable honoring resolution. If I may indulge you a bit more, about 35 years ago, I recommended Chip to Debra Johnson, who, at the time, had recently married a client I represented for all but, the first year that I engaged in the practice of law, and he assisted her with a New Port Richey project. When I told her of Chip's passing, she remarked, "He was a great man … one with old world elegance and faith! He was a man of his era! I'm afraid we will not be seeing men of his caliber and demeanor again." ~ John B. Neukamm

I'd like to add that Chip was a great, great person, a fine lawyer and a dear friend. We will miss Chip immeasurably. ~ Roger O. Isphording

A presence was felt approaching from behind while finishing my first legislative proposal to the Executive Committee. This tall guy with a drawl followed, very politely critiqued, such that I quickly withdrew the proposal. That was Chip who then took the time to kindly explain how it could be better. As many members will attest, thereafter I consistently recommended emulating Chip, explaining that he read everything, listened intently to differing perspectives, looked out for unintended consequences upon those without a seat at the table, and did not allow different views to interfere, with a keen focus on the rule of law and collegiality. Chip was a lawyer's lawyer, a valued colleague and a trusted friend. ~ Michael J. Gelfand

Our thoughts and prayers remain with Chip's beloved wife, Pat, his family, friends and all who had the privilege of knowing him. Rest well, Chip. You will be missed immeasurably. ~ Your friends at ActionLine

RPPTL Rolls Out an Innovative Program

FROM FOUNDATION TO PRACTICE:

Fundamental Steps to Becoming an Estate Planning, Guardianship, Probate and Trust Practitioner

The Real Property, Probate and Trust Law (RPPTL) Section of The Florida Bar is excited to announce a new CLE seminar series: **Fundamentals of Florida Estate Planning, Probate, Trust and Guardianship Practice**.

This series has two main objectives: (1) introducing newer attorneys to the core practice areas of estate planning, probate, trust and guardianship law and (2) providing a comprehensive review of foundational principles for experienced practitioners to refresh and update their knowledge.

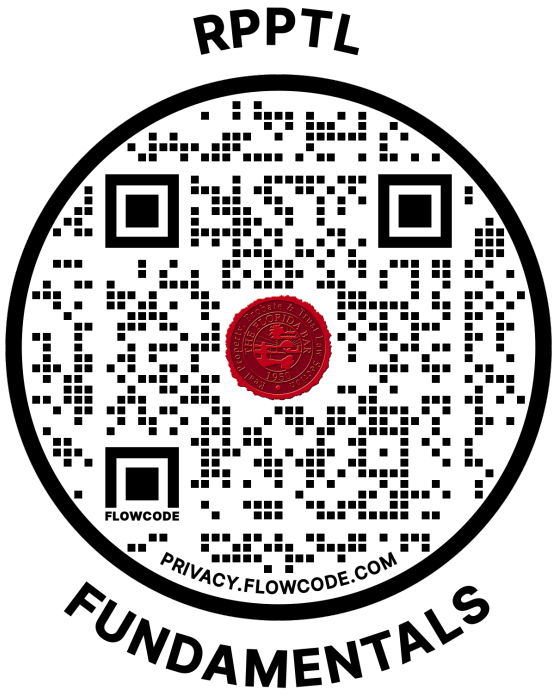
As Florida's population continues to grow and age, the demand for skilled and knowledgeable lawyers in these fields has never been greater. This new Fundamentals series aims to meet this need by equipping both emerging and seasoned attorneys with the fundamental legal and practical framework essential to practice confidently and competently.

Fundamentals of Estate Planning, Probate, Trust and Guardianship Practice focuses on the foundational knowledge every competent estate planning, probate, trust, and guardianship attorney must master. The series will consist of the following **six sessions**:

1. Estate planning fundamentals
2. Spousal rights in connection with estate planning, probate and trust administration
3. Trust creation and administration fundamentals
4. Florida homestead fundamentals
5. Guardianship practice and procedure fundamentals
6. Probate administration fundamentals

The sessions will vary in length from half-day to full-day sessions, with a total of 34 hours of CLE credit for the full series. The first session is already available on-demand, and the next five sessions will be released approximately every two months during 2026. Practitioners may purchase individual sessions or obtain the full series at a discounted rate. This Fundamentals program is offered exclusively as an on-demand series, allowing participants to view each session conveniently through The Florida Bar's online CLE library.

For additional details and registration information, please visit: **www.rpptl.org/fundamentals**.



Amendments To Rules Of Civil Procedure:

A Series Part 4 of 4 – Here Comes the Judge! Florida Amends its Rules of General Practice and Judicial Administration to expedite cases.

By Shawn G. Brown, Co-Chair Ad Hoc Rules Revisions Committee, Shawn G. Brown, P.A., Tampa, Florida

Wait, what? We can make the judge rule on our motion? When is the response due to the motion? What is the time standard for us to complete our case? Simple questions, but ones that are not answered in the amendments to the Florida Rules of Civil Procedure (the "Civil Rules"). To get the answers to these questions, and more, one must turn the page from Chapter 1 and the Civil Rules, to Chapter 2 and Florida's Rules of General Practice and Judicial Administration (the "Judicial Rules").

This final article in the series on the amendments to Florida's Civil Rules goes beyond the Civil Rules, to examine amendments made by the Florida Supreme Court to the Judicial Rules, and to highlight important changes in the Judicial Rules that every attorney who is part of a court proceeding must be aware of, since counsel has an obligation to be informed of the law.[1] It does not matter whether one's practice is on the real estate side of the aisle or the probate side of the aisle. The Judicial Rules will apply to your case.

A lot of ink has been spilled about the major changes made to the Civil Rules and rightfully so. The amendments approved by the Court represent the most substantial overhaul of the Civil Rules in over a generation. The Court spent several years, received thousands of pages of comments from members and sections of the Bar, and even held oral argument on the amendments to the Civil Rules. When making a foundational change to the Civil Rules that some have said made Florida courts more like federal courts, the Court found it important to take the time to thoroughly consider all comments and feedback it received.

After the Court approved the amendments to the Civil Rules, the various sections of the Bar made an effort to educate their members of what was to come and how it would impact their practice. The Section was the first of the sections to put out a comprehensive CLE program on the Civil Rules amendments. It also put out a CLE program on how the Civil Rules amendments would impact foreclosure actions. The Section also highlighted what the ethical obligations of attorneys would be under the new Civil Rules.

While a tremendous amount of time and effort was expended on the Civil Rules amendments, flying under the radar were a series of amendments that would have a similar impact on litigation in Florida, which very few attorneys knew existed. The Civil Rules talk about what a party can and cannot do, how things must be done, and the consequences for failing to meet certain obligations. What the Civil Rules do not address are how long will the court give you to bring your case to conclusion, how long does a judge have to enter an order, can you make a judge issue an order, how do attorneys calculate time deadlines, how a case is put on inactive status, and a host of other operational issues for litigation in Florida. These are found solely in the Judicial Rules.

Below is a summary of the amendments to the Florida Rules of General Practice and Judicial Administration the Florida Supreme Court adopted in 2024 and 2025, each set out in numerical order:

Rule 2.215(f) – This Rule is amended to state that each judge has a duty to enter an order or judgment on every matter submitted "within a reasonable time." The amendment also requires a judge to maintain a log of all matters, and not just cases, that are held under advisement, and to notify the chief judge monthly of all matters that have been held under advisement for more than 60 days.

Rule 2.215(f)(2) – This is a new Rule that allows a party to prompt a judge to rule on a matter that has been pending for more than 60 days, by filing a notice with the clerk of court, and serving a copy on the judge. A sample notice was adopted in Rule 2.604.

continued, page 11

Rule 2.250(a) – This Rule is amended to add a time standard of 30 months for complex cases. The amendment also addresses when the time standards for civil cases begin and end. The commencement date is from the date of service of the initial process or 120 days after commencement of the action under Rule 1.050, whichever occurs first and ends with final disposition. Complex cases are subject to a 30-month time standard, other jury cases are subject to an 18-month standard, and other nonjury cases are subject to a 12-month standard. For small claims, the time standard is 95 days from commencement under Rule 7.050, unless one or more rules of civil procedure are invoked that "eliminate" the deadline for trial under Rule 7.090(d). In those cases, the designation of complex/other jury/other nonjury will apply.

Rule 2.250(b) – Another amended Rule that requires the chief judge of each circuit to serve on the chief justice and state court administrator an annual report listing all cases pending for three or more years.

Rule 2.345 – This is a newly adopted Rule that creates a presumption that a document in the court file, which purports to have been signed by the judge or other court official is presumed to be authentic. The document is to be placed in the court file only after the clerk has authenticated it under the Florida Court Technology Standards.

Rule 2.511 – This is also a newly adopted Rule. It defines the e-Portal as the central electronic court filing facility for all courts. It also explains the registration process for filers, sets guidelines for access, and establishes a governance structure for the e-Portal. The e-Portal is to be used by all unless, the chief judge designates a different e-filing system, or the document is submitted in paper form when permitted by Rule 2.525(c).

Rule 2.514 – This Rule is amended to replace "midnight" with "11:59:59 p.m., eastern time" to clarify filing and service deadlines. In computing time, if the period is seven days or longer, then you count all days that fall in between the first day counted and last day counted, even if they are weekend days or legal holidays. If the last day is a weekend day or legal holiday, then the deadline falls on the next day that is not a weekend day or legal holiday. If the period is less than 7 days, then you do not count weekend days or legal holidays. If service is only made by mail, then you add five days to the time period.

Rule 2.515 – This Rule was amended by the Florida Supreme Court to add that every document filed or served "must be signed" and not only by the attorney, but also by an "unrepresented party, or other person authorized by law to file or serve the document." The Rule clarifies the "act of filing a document constitutes the filer's signature" unless, an exception applies under subdivision (b)(1)(B). The exception provides:

> when an attorney files a document on behalf of an unrepresented party as permitted in subdivision (b)(1)(A)(iii) and when the filing attorney's signature is omitted from the document, the act of filing that document does not constitute the filer's signature.

The Court also revised the signature block requirements and added a new subdivision that details the representations a filer makes to the court when filing a document. An attorney must include with the signature block, his or her mailing address, telephone number, email address for service of court documents, Florida Bar number, and the party represented. Attorneys also make specific representations by filing and signing documents. In filing, the attorney represents that she or he has complied with all rules of procedure regarding filing and service of the document; that each person signing has authorized their signature, with the attorney bearing the burden of proving such authority if it is later disputed; and that no confidential or sensitive information is in the document. By signing a document, each signer represents that she or he has read the document, and to the best of the signer's knowledge, information, and belief, there are good grounds to support the document, and that the document is not interposed for delay.

Rule 2.516 – This Rule is retitled and now requires that documents that are filed through the e-Portal must also be served through the e-Portal's service function. Documents that are served, but not filed, are to be served by attaching the document in PDF format to an email and sent to the recipient's email address. The Rule also sets out that a document must be served on all parties unless one of the five exceptions in the Rule applies. Unrepresented parties must file and serve a designation of email address unless the

continued, page 12



unrepresented party is in custody, or declares in a form under penalty of perjury the party does not have an email account, or does not have regular access to the internet. Subdivision (f) sets out the new Certificate of Service requirements.

Rule 2.520 – The amendment to this Rule addresses formatting requirements for documents that are filed under Rule 2.525 or served under Rule 2.516. Electronic documents must comply with the Florida Court Technology Standards. Documents that are not created by an attorney or an unrepresented party for filing and service, must be appended as exhibits to the document being filed. Documents must also be no less than 12-point font, have a 1-inch margin, and be letter size pages. If the document will be recorded in the official records, there must also be a 3-inch x 3-inch blank space at the top right corner of the first page.

Rule 2.525 – Florida attorneys are now required to file through the e-Portal. Unrepresented parties who are not members of the Florida Bar or attorneys, who are admitted pro hac vice, may elect to file through the e-Portal or other electronic court filing facility. Notably, once an individual makes a filing election, it may not be withdrawn without leave of court. The Rule also requires clerks to make a document that is submitted part of the official court file, and index it in the docket unless there is an issue with the document. Documents that have issues will be placed in the correction queue for 30 days.

Rule 2.546 – This amendment adds a new Rule requiring parties to notify the court of a change in the case status (active/inactive). Subdivision (a) deals with changing a case's status when a stay is required by law, while subdivision (b) deals with when a stay is requested, but not required by law. The example cited for subdivision (a) is a bankruptcy stay. In cases subject to subdivision (a), the obligation of a party is to promptly file a notice to place the case on active/inactive status. Forms are adopted in Rules 2.605 and 2.606 for this notice. The changes in status in subdivision (b) are more substantial. For a requested change in status, a party may file a motion. However, "absent a stipulation that a pending appellate ruling in another matter will be dispositive, or a showing of extraordinary circumstances, a court will not grant a request to place a case on inactive status." The Rule is further amended in subdivision (b)(2), to require a party to promptly move to restore a case to active status when "circumstances make inactive status unnecessary." All deadlines in any case management order issued under Rule 1.200 or 1.201 will be tolled while the case is on inactive status.

Rule 2.550(c) – The Rule was amended to clarify that when a lawyer is scheduled to appear in two courts at the same time, the presiding judges must confer and resolve the conflict.

This concludes the series of articles on the amendments to the Civil Rules, and their counterpart, the Judicial Rules. Practitioners are encouraged to read not just the amendments to the Rules, but the Florida Supreme Court's opinions adopting the amendments. These opinions provide important context as to why certain amendments are adopted.

The Florida Supreme Court has made clear that it wants to expedite litigation in Florida, avoid delays that increase the costs of litigation, and continue refining and adopting additional amendments, if they are needed. It is already examining other proposed amendments to the Rules. In fact, the Florida Supreme Court issued an opinion on May 14, 2026, adopting new Americans with Disabilities Act requirements for all notices of court proceedings, regardless of whether done by the court or an attorney, along with new font requirements in Rule 2.540(c). This change will take effect on July 1, 2026.

The same opinion rejected an amendment to Rule 2.530(f), that would have required any deposition done by audio-video technology to have the deponent, the deponent's attorney, and the attorney visible at all times. The Court instead referred the proposed rule to the Civil Rules Committee for a potential amendment to Rule 1.310. If the Court adopts, this amendment, or any future amendments to the Civil Rules or Judicial Rules, you can turn to the pages of ActionLine to get the latest on any amendments.


S. BROWN

Shawn Brown *is a solo practitioner with the firm of Shawn G. Brown, P.A. in Tampa. Mr. Brown is Board Certified in Condominium & Planned Development Law by The Florida Bar. Mr. Brown's focus is exclusively on representing community associations and individual unit owners in all aspects of community association law, including at the trial and appellate levels of state and federal courts, and state administrative agencies. Mr. Brown previously served on the staff of United States Senator Connie Mack in his Washington D.C. office.*

Endnote

1 *Clayton v. City of Cape Canaveral*, 358 So.2d 147 (Fla. 4th DCA 1978), *Florida Bar v. Bischoff*, 212 So.3d 312 (Fla. 2017).

From Private Equity to Public Good
Pre-Closing Considerations When Using DAFs as Tools for Business Owners

By Carla A. DeLoach, Cypress Row Advisors, PL, Orlando, Florida

Entrepreneurs and business owners can leverage Donor-Advised Funds (DAF(s)) as a strategic instrument to transition private equity and business interests into a public benefit, potentially yielding substantial income tax advantages, and a flexible framework for long-term philanthropic endeavors. Among the advantages of transferring illiquid business interests to a DAF is the potential avoidance of income tax (the appreciated business interest is contributed to the DAF prior to its sale) and the entitlement to an immediate income tax deduction for the full fair market value of the contributed asset in the year of the donation, subject to certain limitations. However, advisors will want to guard against the donation being classified as a "pre-arranged sale" by the Internal Revenue Service (IRS) (which could trigger tax for the donor). The timing of the donation in reference to a business liquidation and the charity's independent discretion is relevant to the analysis, all of which is beyond the scope of this article. DAFs, which are established through a sponsoring charity, enable donors to decouple the timing of their contribution from the timing of the actual charitable grants, affording them the opportunity to develop a deliberate and thoughtful giving strategy. Once contributed, the assets can be invested within the DAF, potentially yielding tax-free growth and increasing the resources available for future charitable giving.

continued, page 14



If a client desires to donate an illiquid business interest to a DAF, it is essential that the client possess a comprehensive understanding of the parties involved and the process from start to finish. In the absence of such knowledge, complications may arise that can thwart charitable donations, undermining the intentions of both the donors and the sponsoring charity. Ongoing communication among all stakeholders helps clarify expectations for both the donors and the sponsoring charity, increasing the likelihood of timely transfers and the subsequent receipt of the illiquid business interest by the DAF. Although there is no universally applicable pre-closing process for such gifts, this article endeavors to provide one author's perspective on the subject, utilizing both narrative and visual formats.

First, it is helpful to understand the mechanics of this process. The parties involved in a gift of illiquid business interests to a DAF include, the donor, the sponsoring charity for the DAF, the donor's advisors, and counsel for the business interest being donated. A DAF functions as a charitable investment account into which the donor may transfer various assets, including illiquid business interests, potentially receiving an immediate income tax deduction. The donor can subsequently recommend grants from this account to qualified charities over time, allowing for flexible future giving. An illiquid business interest is an ownership stake in a company or other business organization that cannot be easily converted into cash without a significant loss in value because there is typically no readily accessible public market (like a stock exchange) where shares are frequently traded. Many clients own such illiquid business interests in family or other closely held enterprises.

Next, it is critical for the client and their advisors to understand the process of gifting an illiquid business interest to a DAF. The process begins with a conversation between the donor and the sponsoring charity's representatives, followed by an initial information request by such representatives, which often leads to the delivery of preliminary illustrations for the donor's review. If continued mutual interest exists, the sponsoring charity's representatives request additional detailed information needed to further analyze the viability of receiving the proposed business interest. Upon confirmation of feasibility, the donor's advisors evaluate the implications of the gift, after which the donor provides approval. This approval triggers the drafting of the gift agreement and other necessary transfer documents to formalize the gift.

When a donor communicates a desire to make a gift of an illiquid business interest to a DAF, this typically prompts a request by the sponsoring charity's representatives for additional critical information. This is the first of, at least two, information requests. The information request includes, but is not limited to, the donor's personal information, details about the illiquid business interest being gifted, and supporting information related to the illiquid business interest. As to personal information, this includes basic factual data, such as donor's contact information, age, and residence. This also includes donor's basic income tax information, including adjusted gross income and marginal income tax rate. Finally, this includes the donor's target gift date. As for the asset, this includes a basic description of the illiquid business interest, the fair market value of that interest (including how that value is derived), the donor's adjusted basis in the business interest, the donor's percentage of ownership in the business, the business' tax election, and title to the donor's business interest. The donor must additionally provide proof of business ownership through documentation such as Schedule K-1s, business tax returns, unit certifications (if applicable), and a cap table summary.

Armed with this information, the sponsoring charity's representatives often prepare illustrations to provide donors with high-level tax and financial takeaways. Such illustrations signal the need for the donor's tax advisors to join the discussion. The sponsoring charity cannot and does not represent the donor. Furthermore, the initial information request often excludes information that can impact the viability of the potential gift transaction. If preliminary transactional proof of concept is confirmed, then additional diligence begins. The diligence includes, but is not limited to, three main categories: financial review, governance review, and review of other salient business realities (including certain tax filings and elections).

As part of the financial review, the sponsoring charity will analyze the broad justification for deductibility sought by the donor. This includes a review of the business' profit and loss statements, analysis of past and future distributions, as well as past and anticipated capital contributions. Additionally, the sponsoring charity will review the business' governance structure, including operating or shareholder agreements, voting agreements, bylaws, and similar documents. Within such governance, the sponsoring charity reviews transfer restrictions, including put rights, call rights, and rights of first refusal. Finally, the sponsoring charity will require clarity on the nature of the business operation represented by the business interest, the existence of hot assets, any QSBS (Qualified Small Business Stock) elections, and any IRS Form 8886 filings. The consequences of such assets, elections, and filings are beyond the scope of this article but should be carefully considered.

If the donor and the sponsoring charity navigate the above successfully, then the donor is positioned to transfer an illiquid business interest to the DAF. This transition is

continued, page 15

memorialized through a gift agreement, typically presented by the sponsoring charity and reviewed by the donor and their advisors. Advisors should be aware that such gift agreements often include put rights, exercisable by the sponsoring charity, within a defined period. Care should be taken to ensure the donor understands all such implications. Without such understanding, the future exercise of a put right (an option to sell stock back to the company) by the charity may surprise the donor and create unexpected funding demands. Often, the sponsoring charity will document the transfer through approved forms that should be reviewed by the donor's advisors. Finally, consents and joinders by other owners are often required in connection with the transfer of an illiquid business interest to the DAF. The donor's advisors, as well as counsel for the business, should be involved in this process to ensure alignment and effective deployment.

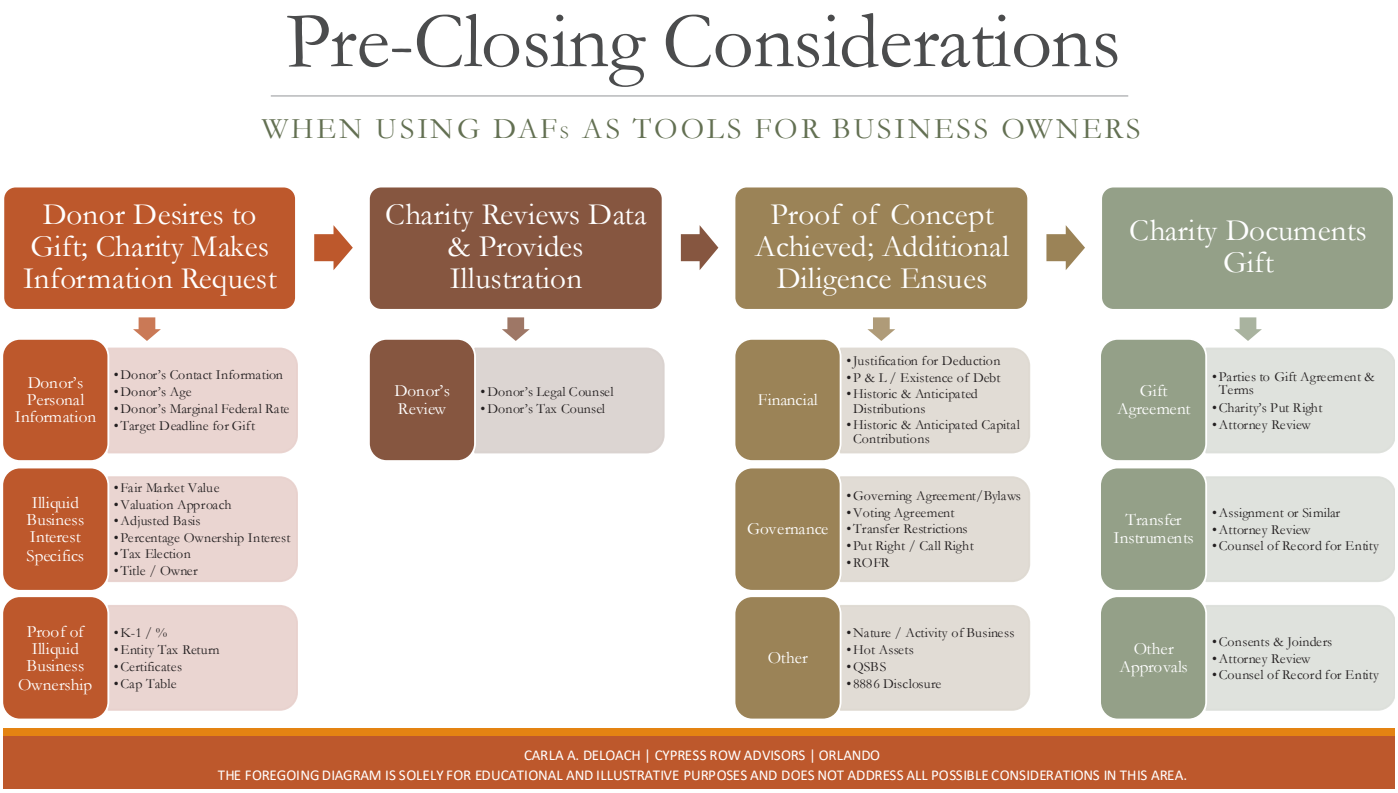
In summary, if a client owns an illiquid business interest and is charitably minded, then a gift of that illiquid business interest to a DAF should be considered. If presented with the potential for such a gift, advisors are wise to garner a clear understanding of the parties and the process (depicted further in the illustration below). Failure to do so might sabotage the prospect of converting private equity to public good.



C. DELOACH

***Carla DeLoach** is a principal in the Orlando firm, Cypress Row Advisors. She graduated from Stetson University College of Law and holds an LL.M. in Taxation from the University of Florida College of Law. Her practice emphasis includes estate planning, charitable planning, succession planning, probate and trust administration. She is the Vice Co-Chair of the Charitable Planning and Exempt Organizations Committee of the RPPTL. She is Co-Chair Elect of the Florida Tax Institute. She co-authored the Charitable Trust chapter of the Floria Bar's Administration of Trusts in Florida. She has served as an Adjunct Professor at Stetson University College of Law, and on the University of Florida College of Law's LCA Board of Trustees. Ms. DeLoach has spoken for the Florda Bar's RPPTL Section, the ABA's RPTE Section, and the Florida Tax Institute.*

Carla wants to thank and acknowledge her colleague, David M. Carrera, for his work on the diagram above.





Walking the Balance Beam of Fla. Stat. § 738.409:

Allocating Payments From An Individual Retirement Account To A Trust

By David S. Sennett, LL.M. (tax), Independent IRA Consultant, Creve Coeur, Missouri, Sasha A. Klein, LL.M. (tax) of PwC US, Palm Beach Gardens, Florida, and Alexander M. Parthemer, LL.M. (tax), Jones Foster P.A., West Palm Beach, Florida

Watching an Olympic gymnast perform the balance beam exercise provides insight into allocating payments from an individual retirement account (IRA) to a postmortem trust. Flawless execution of a planned program leads to a perfect dismount. In the context of trust administration, a perfect dismount translates into accurately allocating (balancing) a payment between income and principal. Unless the governing instrument directs allocation or gives the trustee discretion, Florida law determines the result through its principal and income act.

continued, page 17

As of January 1, 2025, the Florida Uniform Fiduciary Income and Principal Act (FIPA), codified in Chapter 738,[1] rewrites the allocation rule under the newly numbered Fla. Stat. § 738.409, titled *Deferred Compensation, Annuity, or Similar Payment*. Drawing in part from Section 409 of the 2018 Uniform Fiduciary Income and Principal Act, Fla. Stat. § 738.409 (replacing the former rule under Fla. Stat. § 738.602) governs the allocation of payments from a wide range of "separate funds," including pensions, annuities, deferred compensation plans, and retirement accounts. The revised allocation rule requires the trustee to ensure payments to the trust include the total of the separate fund's internal income during an accounting period. If the internal income allocated to the trust is less than the total, special adjustment provisions apply to trusts with beneficiaries entitled to all the trust's income.

For purposes of this article, the discussion is limited to one of the most common and complex scenarios: the receipt of IRA distributions by a trust after the account owner's death. Fla. Stat. § 738.409 carries forward the central principle from prior law that the fiduciary must treat the income of the separate fund as income of the trust, but it does so within a more detailed structure. The section introduces new definitions, refreshes existing ones, and reaffirms calculation methods to determine the IRA's internal income created under the former statute. Combined with the new allocation rule, they significantly impact trustees administering trusts receiving IRA payments. Fla. Stat. § 738.409 concludes with a "safe harbor" provision enabling trustees to continue administering determination of the IRA's internal income and allocation in the manner used prior to FIPA's effective date.

Operative Terms:

Separate Fund. Fla. Stat. § 738.409(1)(f) defines a "separate fund" as an arrangement, including an IRA, that holds assets exclusively for the benefit of a single participant or account owner. A separate fund is distinct from the trust's own assets and accounting structure. This distinction is critical, as Fla. Stat. § 738.409 requires the fiduciary to determine the fund's "internal income" and allocate payments from that fund to the trust.

Internal Income of the Separate Fund. Under Fla. Stat. § 738.409(1)(a), "internal income" refers to the income generated within the separate fund, determined in accordance with Fla. Stat. § 738.409(2). The fiduciary must either calculate this amount using the *traditional fiduciary accounting method (*treating the fund as if it were a trust subject to FIPA), or apply the *percent calculated method*, as described below.

Payment. A "payment" includes any amount a fiduciary receives from a separate fund, whether paid in installments over a fixed term, over one or more lifetimes, or in a lump sum. Distributions from an IRA, including required minimum distributions (RMDs), fall under "payment," and are subject to allocation between income and principal under Fla. Stat. § 738.409(3).[2]

Percent calculated. Fla. Stat. § 738.409(1)(e) defines the "percent calculated" as a percentage between three and five percent, determined either by reference to the § 7520 rate under the Internal Revenue Code or as established by an independent fiduciary as defined in Fla. Stat. § 738.102(9). The percent calculated method functions as a simplified unitrust approach for determining internal income, often providing administrative ease and predictability.

Marital Trust. A trust qualifying for the estate tax marital deduction under the Internal Revenue Code or otherwise qualifying for a marital deduction.[3]

Related Terms Impacting Fla. Stat. § 738.409:

Accounting Period. This "term means a calendar year unless the fiduciary selects another period of 12 calendar months or approximately 12 calendar months." The accounting period is the time frame during which the fiduciary determines the separate fund's internal income and the allocation of any payments from the fund.[4]

Fiduciary. FIPA groups a trustee under the definition of "fiduciary."[5]

Determination of the IRA's Internal Income

For an IRA, Fla. Stat. § 738.409(2) provides two methods for determining "internal income" during the accounting period. Each method aims to identify how much of the IRA's earnings should be treated as income of the trust, but they differ in complexity, flexibility, and the level of detail required.

METHOD ONE:

Traditional Fiduciary Accounting Method (Fla. Stat. § 738.409(2)(a)):

Under the first approach, the trustee determines the IRA's internal income as if the IRA were a trust subject to FIPA. In practice, the trustee relies on the IRA administrator's statements, which should identify receipts and expenses classified under FIPA as income or principal. This method mirrors traditional fiduciary accounting for ordinary trust assets, where income items such as dividends and interest are separated from principal items such as capital gains or unrealized appreciation.

This method tracks the account's actual performance during the accounting period, when the IRA administrator supplies detailed reporting; however, its applicability may be

continued, page 18

cumbersome if the administrator's statements do not readily distinguish income and principal components.

CASE STUDY:

The Josephine Trust.

Josephine, who died in 2023 at age 80, established a trust for the benefit of her surviving spouse and their children. The trust does not qualify for the marital deduction, making it a non-marital trust. Her surviving spouse is entitled to all net income, while the children are the remainder beneficiaries.

Desmond, Josephine's close friend, serves as trustee of the trust. Josephine designated the trust as beneficiary of her Traditional IRA. Since Josephine's death, Desmond has withdrawn the annual required minimum distributions (RMDs) payable to the trust. The RMDs, determined under Internal Revenue Code § 401(a)(9)(H) and the corresponding final Treasury Regulations, must be distributed over a ten-year period, based on the surviving spouse's life expectancy for the first nine years, with the entire remaining balance distributed in year ten.[6]

For the IRA, Desmond receives monthly statements from the plan administrator, which he requested be prepared consistent with fiduciary accounting principles. These statements identify the IRA's internal income using the traditional fiduciary accounting method**.**

Item	Date	Amount	Notes
Beginning IRA Value	12/2024	$750,000	Not relevant to determining income under traditional fiduciary income method
Dividends	3/15/2025	$4,500	Characterized as income
Dividends	9/15/2025	$3,000	Characterized as income
Interest	3/15/2025	$6,000	Characterized as income
Interest	9/15/2025	$9,000	Characterized as income
Realized Long-Term Capital Gain	3/15/2025	$45,000	Characterized as principal
Realized Long-Term Capital Gain	9/15/2025	$15,000	Characterized as principal

These entries allow Desmond to identify the IRA's internal income, which for the accounting period totals $22,500.

METHOD TWO:
Percent Calculated Method
(Fla. Stat. § 738.409(2)(b)):

Alternatively, the trustee may elect to deem the IRA's internal income to equal a fixed percentage, between three percent and five percent, of the IRA's value as of the statement date immediately preceding the start of the accounting period. This approach, called the "unitrust method," in the former statute, simplifies administration by using a consistent rate in place of detailed accounting.

Notice and Flexibility. If the trustee uses the percent calculated method, Fla. Stat. § 738.409(2)(b) requires disclosure to the beneficiaries in a trust accounting or a written notice meeting the standards of Fla. Stat. § 736.1008(4)(c). The statute also allows flexibility under Fla. Stat. § 738.409(2)(d), permitting the trustee to change from one method to the other in future accounting periods to reflect administrative or investment circumstances.

CASE STUDY:

Continuing the *Josephine Trust* Case Study, assume Desmond elects to use the percent calculated method. By selecting a four percent rate, Desmond determines the IRA's deemed internal income for the year is $30,000. This figure is treated as the IRA's internal income, regardless of the fund's actual dividends or capital gains.

By contrast, the traditional fiduciary accounting method tracks the internal income during the accounting period. Its execution, however, depends on the IRA administrator providing detailed reporting. The percent calculated method simplifies the determination of internal income, but will not reflect actual performance during the current accounting period. Trustees should weigh these factors carefully and document their reasoning to preserve FIPA's presumption that their determinations are reasonable and fair to all beneficiaries under Fla. Stat. § 738.201(2).

ALLOCATION:
The Heart of Fla. Stat. § 738.409

The most critical element of Fla. Stat. § 738.409 is found in subsection (3), which governs how a trustee must allocate payments from a separate fund between income and principal. The statutory directive provides:

> (3) A fiduciary [trustee] shall allocate a payment from a separate fund during an accounting period to income to the extent of the internal income of the separate fund during the period and allocate the balance to principal. (emphasis supplied)

continued, page 19

This rule turns on a simple but significant question: Is the amount withdrawn from the IRA *over or under* the IRA's internal income for the trust's accounting period?

Over. If the amount withdrawn from an IRA exceeds the internal income as of the payment date, then the balance is allocated to principal; however, the text in subsection (3) complicates the allocation analysis. Given that the IRA continues to generate income after the withdrawal, the trustee may need to reallocate amounts previously assigned to principal if the IRA earns additional internal income before the end of the accounting period. In other words, what appears balanced at the time of payment may require reallocation once the total internal income is known.

The allocation provision of Fla. Stat. § 738.409(3) marks a clear departure from prior law. The former governing statute allocated to trust income, as of the payment date, the lesser of the IRA's internal income or the payment itself.[7] If the payment occurred before the end of the trust's accounting period, the statute imposed no duty on the trustee to allocate the IRA's internal income earned following the payment date.

CASE STUDY CONTINUES:
The Balancing Act Begins

Using the same facts as above, the following scenario focuses on allocating a required minimum distribution (RMD) between income and principal. The same analysis applies to any IRA payment received by a trust, even if not required under the Internal Revenue Code.

The "Over" – When an IRA payment is greater than the amount of Internal Income earned during Trust's accounting period.

For 2025, the RMD payable to Josephine's trust is $50,000. Desmond withdraws the entire RMD on June 1. On that date, the internal income was only $10,500. With this information, Desmond allocates the RMD on the trust's books as follows: $10,500 to income and the balance, $39,500 to principal. The IRA administrator's statements also show the account will earn an estimated $12,000 of internal income following the RMD payment.

Fla. Stat. § 738.409(3), however, compels a trustee to allocate a payment to trust income to the extent of the IRA's internal income earned during the entire accounting period, not merely as of the payment date. This means if the IRA earns more income later in the year, Desmond must reallocate part of the earlier principal allocation back to income.

Description	Amount ($)	FIPA Treatment	Notes
Beginning IRA Value (Dec. 31, prior year)	750,000	N/A under traditional fiduciary accounting method	Used to determine internal income under percent calculated method
Internal Income (actual earnings)	22,500	Income	Total income earned within IRA
RMD Paid to Trust (June 1)	50,000	Income to the extent of $10,500 at payment date; balance to principal	Initial allocation at withdrawal
Additional Internal Income Earned After Payment	12,000	Requires reallocation from principal to income	Reallocation at year-end to reflect total internal income
Final Allocation	22,500 to income; 27,500 to principal	Income equals total internal income	Reallocation completed under Fla. Stat. § 738.409(3)

How can Desmond mitigate the risk of misallocation posed by the process under Fla. Stat. § 738.409(3)?

- **Delay the withdrawal.** Desmond could postpone the RMD until the end of the trust's accounting period, typically December 31. By that date, he would know the total internal income earned for the year and could allocate it in one step. Using the example above, if the IRA's total internal income is $22,500, Desmond would allocate $22,500 to income and $27,500 to principal.
- **Match withdrawals to the income cycle.** Desmond could divide the annual RMD into equal monthly withdrawals. At the end of each month, he would review the IRA administrator's statement to determine the internal income for that period. If a monthly withdrawal exceeds the internal income, the excess is allocated to principal. This approach smooths income flow and reduces year-end reallocations.
- **Maintain a shadow accounting.** Desmond could establish a parallel record to track internal income and reallocations throughout the year. The accountant would document each reallocation and adjust the trust's books accordingly. For accuracy, Desmond might create a sub-account to hold IRA payments during the year, recording each reallocation between income and principal. In practice, this may require monthly reallocations, since the surviving spouse is entitled to receive all trust net income each month.

continued, page 20

- **Use the safe harbor provision.** Fla. Stat. § 738.409(7) allows a trustee who was administering a fund before January 1, 2025, to continue allocating payments under the prior law, Fla. Stat. § 738.602(4). Desmond began administering Josephine's trust before FIPA's effective date and historically allocated the lesser of the internal income or the payment amount to trust income. Subsection (7) expressly authorizes this approach for trusts established before 2025.

  CAUTIONARY NOTE: Assume Josephine's trust was created on or after FIPA's effective date. Desmond CANNOT rely on Fla. Stat. § 738.409(7) for any trust accounting period beginning on or after January 1, 2025.

The "Under" – When an IRA payment is less than the amount of Internal Income earned: Fla. Stat. § 738.409(5), the "Great Equalizer"

Subsection Fla. Stat. § 738.409(5) addresses the situation where the income earned within the IRA during the accounting period, exceeds the amount distributed to the trust. This rule applies to a specific class of non-marital trusts in which one or more beneficiaries are entitled to receive all current net income each year. Its purpose is to ensure the income beneficiary receives the full measure of income attributable to the IRA, even if the trustee's withdrawals fall short of the account's internal income.

Assume for 2026, Josephine's IRA earns $35,000 of internal income during the trust's accounting period, but the RMD payable to the trust is only $30,000. Desmond withdraws the full RMD in December and allocates the entire payment to trust income. At year-end, the IRA administrator's statements confirm the total internal income of $35,000, revealing that $5,000 of income remains undistributed**.**

Under Fla. Stat. § 738.409(5), Desmond must transfer that $5,000 from principal to income and distribute it to the surviving spouse, who is entitled to all current net income of the trust. This transfer (adjustment) ensures the trust's total reported income equals the IRA's internal income for the year.

Description	Amount ($)	FIPA Treatment	Notes
Beginning IRA Value (Dec. 31, prior year)	$750,000	N/A	Basis for measuring internal income under percent calculated method
Internal Income (actual earnings)	$35,000	Income	Total internal income generated within IRA during accounting period
RMD Paid to Trust	$30,000	Income	Entire payment allocated to income
Income Remaining Undistributed	$5,000	Requires transfer from principal to income	Adjustment Transfer made under Fla. Stat. § 738.409(5)
Total distributed	35,000 to income;	All internal income distributed	Income beneficiary receives full amount of income earned

This "equalizer" provision serves as a corrective mechanism, ensuring the income beneficiary receives the full amount of income generated within the IRA, regardless of whether the distributions from the account match that income. In this example, Desmond's transfer reduces principal by $5,000, but it fulfills the statutory requirement to deliver all current net income to the current beneficiary (surviving spouse).

Had Desmond failed to perform the transfer to the spouse (or any current beneficiary entitled to all the trust's income), they would not have received all the IRA's internal income. The transfer mechanism therefore protects the trustee from potential claims of under-distribution of the fund's internal income, and maintains parity between the IRA's internal accounting and the trust's fiduciary accounting.

Pondering the allocation complexities created by Fla. Stat. § 738.409(3)

After working through the complications of reallocating between income and principal under Fla. Stat. § 738.409(3), Desmond begins to look for a simpler approach. Rather than monitoring the IRA's internal income throughout the year and making periodic reallocations, he considers using the percent calculated method under Fla. Stat. § 738.409(2)(b).

As an independent trustee, Desmond select a four percent rate and multiplies it by the IRA's market value as of the prior year-end. The IRA was valued at $750,000, producing deemed internal income of $30,000 for the 2025 accounting period. Reliance on the percent calculated method

continued, page 21

eliminates the need to monitor the fund's characterization of receipts and expenses as income or principal during the trust's accounting period.

Applying Fla. Stat. § 738.409(3), Desmond allocates the $50,000 RMD as follows: $30,000 to income (representing the IRA's internal income) and the remaining $20,000 to principal. The allocation process is straightforward and final, without the need for later rebalancing.

While the percent calculated method simplifies administration, Desmond recognizes its impact on beneficiaries. This method often increases the amount allocated to income, benefiting the current income beneficiary but reducing the remaindermen's share. In Josephine's trust, the surviving spouse's current income increases by $7,500 compared to the traditional fiduciary accounting method, as shown below.

Methods to Determine IRA's Internal Income-Fla. Stat. § 738.409(2)	Internal Income during Trust's Accounting Period	Allocation of $50,000 RMD (Income/ Principal)
Traditional Fiduciary Accounting-Fla. Stat. § 738.409(2)(a)	$22,500	$22,500 to trust income; $27,500 to trust principal
Percent Calculated-Fla. Stat. § 738.409(2)(b)	$30,000	$30,000 to trust income; $20,000 to trust principal

However, the trustee must weigh this outcome against other circumstances. In this case, surviving spouse's" sole entitlement is to the trust's net income. The terms of the trust do not authorize discretionary distributions of principal under any standard. The trustee could lower the percentage to calculate the internal income, reducing the difference produced by the two methods.

Regardless of which approach the trustee selects, FIPA provides statutory protection. Fla. Stat. § 738.201(2) presumes a trustee's determinations under FIPA are "fair and reasonable to all beneficiaries." In practical terms, this presumption places the burden of proving an abuse of discretion on any beneficiary who challenges the trustee's decision.

Marital Trusts

Fla. Stat. § 738.409(4) serves as the default mechanism to preserve the federal estate tax deduction, if the terms of the trust do not require withdrawal of all the IRA's internal income and distribution to the surviving spouse. By granting the surviving spouse an election to receive this amount, Fla. Stat. § 738.409(4) ensures a marital trust remains compliant with Internal Revenue Code § 2056(b)(7) and Internal Revenue Service Revenue Ruling 2006-26.[8] Together, they direct that the spouse be entitled to all trust income and to the separate fund's internal income

Application of Fla. Stat. § 738.409(4) is conditional, and operates only when the amounts allocated to income following payment/withdrawal from the separate fund are less than the fund's total internal income, and the terms of the trust do not require the trustee to withdraw the IRA's internal income and distribute it to the surviving spouse. The subsection then imposes three corresponding fiduciary duties:

- **Withdrawal Obligation (Fla. Stat. § 738.409(4)(a)).** The fiduciary must withdraw from the separate fund (such as an IRA) the amount requested by the surviving spouse, up to the amount by which the fund's internal income for the accounting period exceeds the amount otherwise received by the trust during that period. In other words, if the IRA earns more than the trustee has withdrawn, the spouse may compel the trustee to withdraw the difference as additional income. Conversely, if the trustee withdraws amounts equal to or exceeding the IRA's internal income allocated under Fla. Stat. § 738.409(3), the surviving spouse loses the election to compel further distributions.
- **Transfer Obligation (Fla. Stat. § 738.409(4)(b)).** If, after all the payments from the IRA, including those made pursuant to the *withdrawal obligation*, the surviving spouse still has not received the full amount of the IRA's internal income for the accounting period, the spouse may require the trustee transfer an additional amount from principal to income. The amount transferred may not exceed the difference between the IRA's total internal income for the period and the payments already received after applying paragraph (a). Upon such a request, the trustee must make the transfer and treat the amount as income distributable to the surviving spouse.
- **Distribution Obligation (Fla. Stat. § 738.409(4)(c)).** Finally, the trustee must distribute to the surviving spouse, as income, both: (1) the internal income of the separate fund received or withdrawn during the accounting period, and (2) any principal transferred to income under paragraph (b).

Together, these provisions guarantee the surviving spouse receives all income attributable to the IRA, either through actual payments or through transfers from principal.

CASE STUDY:
The Arthur Trust

Arthur, Josephine's surviving spouse, continues to receive income from Josephine's Trust for several years. When Arthur later dies, his estate plan provides for a marital trust benefiting his surviving spouse, Margaret, bringing the provisions of Fla. Stat. § 738.409(4) into focus.

continued, page 22

Assume under Arthur's estate plan, his IRA is payable to a Qualified Terminable Interest Property (QTIP) Trust for Margaret's benefit. During 2027, the IRA generates $40,000 of internal income under the traditional fiduciary accounting income method, but the IRA administrator only distributes $30,000 to the trust.

Margaret elects to receive the full amount of internal income for the accounting period. Under Fla. Stat. § 738.409(4)(a), the trustee must, upon her request, withdraw from the IRA an amount not greater than the excess of the IRA's internal income over the payments already received. Accordingly, the trustee withdraws the additional $10,000 directly from the IRA and distributes the entire $40,000 to Margaret.

Alternatively, instead of withdrawing the internal income, Margaret requests that the trustee transfer the shortfall from principal to income to satisfy her income entitlement. Upon such a request, the trustee transfers principal to income.

Under Fla. Stat. § 738.409(4)(c), the trustee must then distribute to Margaret, as income, both: (1) the $30,000 of internal income received or withdrawn during the year and (2) any principal transferred to income. This results in a total income distribution of $40,000, as illustrated below.

Description	Amount ($)	FIPA Treatment	Notes
Beginning IRA Value (Dec. 31, prior year)	800,000	N/A	Used to determine internal income under percent calculated method
Internal Income (actual earnings)	40,000	Income	Total income generated within IRA under traditional fiduciary accounting method
Payments Received by Trust	30,000	Income	Allocated to income at withdrawal
Spouse's Request for Additional Income	10,000	Withdrawal or transfer from principal to income	Spouse's right to compel full distribution of internal income
Final Distribution	40,000 from income	All income distributed to spouse	Ensures compliance with Fla. Stat. § 738.409(4) and marital deduction rules

From an administrative standpoint, trustees should anticipate potential spousal elections and coordinate early with IRA administrators to confirm whether additional withdrawals are permissible. If the account restricts further distributions, for example, amounts exceeding the RMD, the trustee must honor the spouse's election by transferring the appropriate amount from trust principal to income and documenting the adjustment in the trust's accounting records.

For estate planners, Fla. Stat. § 738.409(4) underscores the importance of drafting marital trusts integrating both federal and Florida requirements.

If practitioners intend to rely on Fla. Stat. § 738.409(4), they should consider these points in drafting marital trusts:

- Instruct the trustee to notify the surviving spouse if the amounts received from the IRA during the accounting period do not include all the internal income.
- Clarify the scope of the trustee's authority whether it must withdraw all the IRA's internal income or only upon the spouse's request.
- Define "income" to include both actual and deemed internal income (principal transferred to income if the actual internal income is less than the amounts received from any IRA or similar account payable to the trust).
- Grant the trustee explicit authority to make withdrawals or transfer principal to income to satisfy the spouse's entitlement.
- Ensure the income distribution provisions align with the marital deduction requirements under Internal Revenue Code (IRC) § 2056(b)(7) and Revenue Ruling 2006-26.
- Require the trustee to document any withdrawals or transfers relying on Fla. Stat. § 738.409(4).

In practice, Fla. Stat. § 738.409(4) functions as a statutory safeguard. It ensures a marital trust receiving IRA distributions remains compliant with both state allocation rules and federal tax law when the payments from the IRA are less than the account's internal income.

Safe Harbor Provision for Administrations Begun Prior to January 1, 2025

Fla. Stat. § 738.409(7) allows trustees to continue determining the IRA's internal income and allocation of amounts received, if administration began prior to FIPA's effective date, January 1, 2025. Trustees may choose "to determine a separate fund's internal income, allocate payments and account for unwithdrawn internal income" under Fla. Stat. § 738.409(5), or, alternatively, to continue administering the fund in the same manner used before FIPA took effect. Subsection (7) expressly emphasizes the trustee "is not required to consider the [transfer provision] in Fla. Stat. § 738.409(5)" if the separate fund's internal income exceeds the amount(s) withdrawn from the fund. In practical terms, this means a trustee who has historically allocated IRA payments under prior law (former Fla. Stat. § 738.602) may continue doing so, even after 2025, provided the administration of the fund began before FIPA's effective date. This transitional rule offers administrative continuity

continued, page 23

and minimizes disruption for trustees already managing existing trusts tied to IRAs or other separate funds.

Conclusion

Fla. Stat. § 738.409 serves two purposes. First, it provides a detailed statutory framework for determining and allocating income and principal when the governing instrument is silent. Second, and equally important, the potential challenges created under the allocation rule embodied in Fla. Stat. § 738.409(3) invite the trust drafter to contemplate custom-tailored language to determine internal income and also its allocation between principal and income. Fla. Stat. § 738.201(1)(d) makes it clear that the statute's allocation rules yield to the express terms of the governing instrument. Therefore, thoughtful drafting remains the best protection against administrative uncertainty or beneficiary disputes.[9]

On a related note, the trust drafter's duties do not end with producing a governing instrument. After consulting with the client, the drafter should ensure the IRA administrator's statements disclose sufficient information to determine the IRA's income and its allocation. Among the questions to be considered:

- Can the IRA administrator correctly allocate receipts and expenses between income and principal?
- Can the trustee readily identify the IRA's internal income earned during the trust's accounting period?
- Is the trustee comfortable using the traditional fiduciary accounting method to determine the IRA's internal income and its allocation following payment?
- If the answer to the last question is "NO," does the trustee know how to apply the percent calculated method to determine and then allocate the IRA's internal income earned during the trust's accounting period?
- If a bank's trust department is administering the IRA, does it split administration between a centralized IRA team and a trust officer overseeing the beneficiary trust? Does the team coordinate payments and their allocation?

Mastering the intricacies (or knowing the hidden traps) of Fla. Stat. § 738.409 poses challenges to trust administration. Access to competent counsel and an informed IRA administrator will keep the trustee's balancing act under control. For further assistance, members of the Section can use the Principal and Income Committee's hypotheticals located on its website home page to examine multiple scenarios.[10]



S.KLEIN

Sasha Klein *is a Tax Partner in PwC's Private practice and Co-Chair of the PwC Trust & Estate Academy, advising ultra-high-net-worth individuals and business-owning families on sophisticated wealth, transfer tax, and legacy planning. Her practice includes QSBS planning, family offices, private trust companies, and multigenerational governance. Before joining PwC, Sasha was a law firm partner and Chair of its Estate and Tax Planning group, where she built a nationally recognized practice. She also served as fiduciary counsel to a prominent multi-family office. Sasha holds a J.D. from Vanderbilt and an LL.M. in Taxation from the University of Florida.*



A. PARTHEMER

Alexander M. Parthemer*, LL.M., a member of Jones Foster's Private Wealth, Wills, Trusts & Estates and Corporate & Tax teams, focuses his practice in the areas of estate planning, probate and trust administration, tax planning, business planning, and transactional corporate law. Alex is an active member of the Real Property, Probate & Trust Law Section of the Florida Bar and the Tax Section of the Florida Bar. He holds a Master of Laws degree (LL.M.) in Taxation from the Graduate Tax Program at the University of Florida.*



D. SENNETT

David Sennett *holds an L.L.M from DePaul University. After spending two decades managing risk for bank IRA units, he now serves as an independent risk consultant.*

Endnotes

1 Ch. 2024-216, Fla. Laws § 28 at 38 available at http://laws.flrules.org/. (last visited Sept. 7, 2025)

2 Fla. Stat. § 738.409(1)(d) (2025).

3 Fla. Stat. § 738.409(1)(b) (2025).

4 Fla. Stat. § 738.102(1) (2025).

5 Fla. Stat. § 738.102(9) (2025).

6 Treas. Regs. § 1.401(a)(9)-5(e)(2) (annual RMDs for years one through nine, full distribution in year 10); Treas. Regs. § 1.401(a)(9)-5(d)(1)(ii), (f)(1)(i) (the RMD is payable over the longer of the oldest trust beneficiary's life expectancy or deceased IRA owner's hypothetical single life expectancy remaining at death); for a more detailed explanation of the treasury regulations minimum distribution rules, see David Sennett, The Twin Pillars of Required IRA Distributions to a Trust, Trusts and Estates (June 2025) at 38, available at trustsandestates.com.

7 Fla. Stat. § 738.602(4) (2025).

8 006-22, Internal Revenue Bulletin 939.

9 The second portion of the article cited in endnote 6 deals with issues arising from applying § 409 of the uniform act (UFIPA), including determination of the separate fund's internal income and the allocation "over/under" analysis. The article does not address Florida's version of § 409.

10 Available at rpptl.org (last visited Sept. 10, 2025).

TRUMP ACCOUNTS:
What Estate Planning Attorneys Need To Know (Part I)

By Denise B. Cazobon, Esq., Dunwody White & Landon, P.A., Naples, Florida

Included as part of the One Big Beautiful Bill Act (OBBBA) that was signed into law on July 4, 2025 was the enactment of new Internal Revenue Code ("Code") § 530A, allowing for the establishment of a new investment vehicle for children known as a "Trump account." A Trump account is essentially a Traditional IRA that is established for the benefit of a child and operates under different rules until the calendar year the child attains age 18. On December 2, 2025, the Department of Treasury issued Notice 2025-68, providing notice of the intent to issue regulations with respect to Trump accounts.[1] The Notice provides additional information and guidance relating to the establishment and administration of Trump accounts.

This article will summarize some of the key aspects of Trump accounts that estate planning attorneys should be aware of when discussing these accounts with clients and determining how a Trump account may factor into the client's overall estate plan.

Overview

A Trump account must initially be created or organized by the Secretary of the Treasury (the "Secretary") for the exclusive benefit of an eligible individual or such eligible individual's beneficiaries.[2] An "eligible individual" is an individual: (1) for whom an election is made to establish a Trump account; (2) who has not attained age 18 before the close of the calendar year in which the election is made; and (3) for whom a social security number has been issued before the election is made.[3]

The account must be designated as a Trump account at the time of creation and must be titled to clearly identify that the account is a Trump account for the benefit of the eligible individual, who is referred to as the account beneficiary. Given that the written governing instrument establishing the Trump account must clearly designate the account as a Trump account, an existing account cannot be amended to become a Trump account.[4]

The trustee of a Trump account must be a bank or a person who is approved by the IRS to be a nonbank trustee of a Trump account.[5] The Treasury Department will select one or more financial institutions as financial agents to serve as trustees of the initial Trump accounts.[6]

How to Establish a Trump Account

The election for the establishment of a Trump account can be made by an authorized individual for the eligible beneficiary.[7] The authorized individual must be (listed in the order of priority) a legal guardian, parent, adult sibling, or grandparent of the eligible individual.[8] If multiple individuals have the same highest level of priority, and no prior election has been made for the child, then any individual with that level of priority may make the election. For example, if there is no legal guardian, then either parent may make the election.[9] The election to establish a Trump account may also be made by the Secretary if it determines, based on information available from tax returns or otherwise, that the beneficiary has met the requirements to be an eligible individual and no prior election has been made for that individual.[10]

A Trump account may be established at any time before January 1 of the calendar year in which the child attains the age of 18, or at the same time as filing an election to receive a pilot program contribution for an eligible child under Code § 6434 (pilot program contributions are discussed below in greater detail).[11]

In 2026, the authorized individual can make the election to establish a Trump account for an eligible individual by filing IRS Form 4547, Trump Account Election(s), at any time, including when filing the 2025 income tax return. The election can also be made online at trumpaccounts.gov.[12] By making the election, the authorized individual is

continued, page 25

representing, under penalties of perjury, that the individual is authorized to elect to have the Trump account opened for the benefit of the eligible individual.

After the election is made, and after the Treasury Department coordinates with the trustee of the initial Trump account, the Treasury Department will send information to the individual who made the election to activate the account through an authentication process and to complete the opening of the initial Trump account.[13] The Treasury Department will send this information starting in May 2026. Additional information on how to activate the initial Trump account can be found on trumpaccounts.gov.

The individual who made the election for the eligible individual will be the responsible party for the initial Trump account. To the extent provided under applicable law and the account agreement, the responsible party generally will have the authority to select among eligible investments, to request a transfer for a qualified rollover contribution, to request a transfer for a qualified Achieving a Better Life Experience (ABLE) rollover contribution, or to select a successor responsible party for the account.[14]

Contributions to a Trump Account

Contributions to a Trump account cannot be made before July 4, 2026, and are limited during the growth period.[15] The "growth period" refers to the time between when the Trump account is established and December 31 of the calendar year before the account beneficiary attains age 18 years. For example, if the account beneficiary was born on October 1, 2025 and turns 18 on October 1, 2043, then the growth period will end on December 31, 2042.

During the growth period, five types of contributions can be made to a Trump account:

- ***A pilot program contribution from the Secretary to a Trump account for an eligible child;***
- ***Qualifying general contributions for members of a qualified class of account beneficiaries;***
- ***Section 128 employer contributions;***
- ***Qualified rollover contributions; and***
- ***Contributions from other sources, such as the account beneficiary, parents or any other person.***

Pilot Program Contributions

New Code § 6434 provides for a $1,000 contribution pilot program for a child that qualifies as an eligible child. To qualify as an "eligible child," the child must be: (1) a "qualifying child" as defined in Code § 152(c) (which defines "dependents" for income tax purposes); (2) born after December 31, 2024 and before January 1, 2029; and (3) a U.S. citizen.[16] A prior pilot program election cannot have been made for the child. If the election is made, a one-time payment of $1,000 will be made by the Secretary to the eligible child's Trump account.[17]

The Treasury Department will make the pilot program contribution as soon as practicable after the election is made, and the Treasury Department can confirm with the initial Trump account trustee that the account has been opened.[18] If the election for the pilot program contribution is made at the same time as the election to open an initial Trump account, then the pilot program contribution will be made to the initial Trump account.[19]

In 2026, the election to receive a pilot program contribution can be made on IRS Form 4547 at any time, including the same time that the 2025 income tax return is filed, or online at trumpaccounts.gov. The pilot program contribution will be deposited into the Trump account of an eligible child no earlier than July 4, 2026.

The election to receive a pilot program contribution, with respect to an eligible child must, be made by an individual who anticipates that the eligible child will be a qualifying child (determined under Code § 152(c)) for the tax year in which the election is made. Any individual making an improper election under the pilot program is subject to penalties.[20] If an individual makes an election in anticipation that the eligible child will be the individual's qualifying child and complies with all other rules promulgated by the Secretary, the election will not be rendered ineffective solely on the basis that it is later determined that the eligible child does not meet the definition of a qualifying child of the individual for the tax year in which the election is made.[21]

Qualifying General Contributions

A qualified general contribution is any contribution, made by the Treasury Department to the trustee of a Trump account, pursuant to a general funding contribution.[22] A "general funding contribution" is a contribution made by states, political subdivisions, the United States, the District of Columbia, Indian tribal governments, or § 501(c)(3) tax-exempt organizations that specify a qualified class of account beneficiaries to whom such contribution is to be distributed.[23]

The "qualified class" can be any of the following three classes of account beneficiaries: (1) all account beneficiaries

continued, page 26

who are in the growth period when the contribution is made; (2) all account beneficiaries who are in the growth period when the contribution is made and who live in one or more states, including the District of Columbia or other qualified geographic areas specified by the general funding contribution; or (3) all account beneficiaries who are in the growth period when the contribution is made and who were born in one or more calendar years specified by the general funding contribution.[24] No additional eligibility criteria may be imposed on the qualified class.[25]

The Treasury Department will identify all account beneficiaries within the qualified class specified by the general funding contribution, and will distribute the qualified general contribution equally among the Trump accounts of the account beneficiaries in the qualified class.[26]

Section 128 Employer Contributions

A Section 128 employer contribution is an amount paid by an employer to the Trump account of an employee, or of any dependent of an employee, pursuant to a Trump account contribution program adopted by the employer.[27] Such contributions are excludible from the employee's income.[28]

Section 128 employer contributions are capped at $2,500 per employee per calendar year, subject to cost of living adjustments after 2027.[29] If an employee has two or more children with Trump accounts, an employer with a Trump account contribution program may only contribute up to $2,500 in the aggregate for 2026.[30]

Qualified Rollover Contributions

After the initial Trump account is created by the Treasury Department, a rollover Trump account for the account beneficiary may be established, at any time, during the growth period.[31] Given that there can only be one funded Trump account for an individual at any time, when a rollover Trump account is established, a qualified rollover contribution (i.e., a trustee-to-trustee transfer of the entire account balance) must be initiated to fund the account, and the receiving trustee will be required to have procedures in place to confirm that the first contribution to the rollover Trump account is a qualified rollover contribution.[32]

Annual Contribution Limits

Pilot program contributions, qualified general contributions, and qualified rollover contributions are not subject to an annual contribution limit.[33]

All other contributions during the growth period (i.e., section 128 employer contributions and contributions from all other sources) are subject to an aggregate annual limit of $5,000 for 2026 and 2027, and are subject to cost-of-living adjustments after 2027.[34]

Unlike contributions to IRAs, which require an IRA owner to have includible compensation, contributions may be made to a Trump account during the growth period, even if the account beneficiary does not have includible compensation.[35] Contributions may also be made to an individual retirement arrangement that is not a Trump account (e.g., a traditional IRA or an individual retirement annuity) for the benefit of the account beneficiary, if the account beneficiary has includible compensation.[36] During the growth period, a contribution to a Trump account is not taken into account in applying contribution limits to individual retirement arrangements that are not Trump accounts.[37]

Gift Tax Considerations

While parents, grandparents, other relatives, and friends can contribute to a Trump account, it is important to note that, under current law, such contributions are not considered gifts of a present interest, and thus, would not qualify for the annual exclusion for gift and generation-skipping transfer tax purposes. Without additional legislative action or guidance from the Treasury Department, any contributions to the Trump account by a family member or friend of the account beneficiary would be a taxable gift that requires the filing of a federal gift tax return for the year of the contribution and utilizes the donor's lifetime exemption amount or results in a gift tax.

Income Tax Considerations

Contributions during the growth period are not includible in the account beneficiary's income when made. Pilot program contributions, qualified general contributions, and section 128 employer contributions do not create basis in a Trump account. Given that qualified rollover contributions are transfers from prior Trump accounts, such contributions carry over any basis attributable to the funds being transferred. Contributions from other sources during the growth period also create basis in the Trump account.

Eligible Investments

To protect from investment risks, during the growth period, the funds in a Trump account can be invested only in eligible investments, which are defined to mean mutual funds or exchange traded funds (ETFs) that: (1) track the returns of a qualified index; (2) do not use leverage; (3) do not have annual fees and expenses of more than 0.1% of the balance of the investment in the fund; and (4) meet other criteria that the Secretary determines to be appropriate.[38] A trustee of a Trump account must have procedures in place to prevent any part of the account funds from being invested in any asset, other than an eligible investment during the growth period.[39]

continued, page 27

Permitted Distributions from a Trump Account

During the growth period, no distributions may be made from a Trump account, except: (1) qualified rollover contributions; (2) a qualified ABLE rollover contribution, which is a trustee-to-trustee transfer of the entire balance of a Trump account to an ABLE account of that account beneficiary, made during the calendar year in which an account beneficiary attains age 17;[40] (3) distributions of excess contributions; and (4) distributions upon the death of the account beneficiary.[41] A trustee is not permitted to make a hardship distribution from a Trump account, or to close the Trump account and distribute the account funds to the account beneficiary, during the growth period.[42] A trustee must have procedures in place to prohibit distributions during the growth period other than permitted distributions.[43]

After the growth period (i.e., starting January 1 of the calendar year in which the account beneficiary attains age 18), distributions generally are subject to the same rules that apply to distributions from a Traditional IRA, including the 10% additional tax on early distributions, unless an exception applies.

Death of the Account Beneficiary

If the account beneficiary dies during the growth period, the account ceases to be a Trump account and an IRA as of the beneficiary's date of death. The account is treated as if all the assets of the account were distributed on the date of death, and the fair market value of the account (reduced by basis) is includable in the gross income of the person who acquires the account beneficiary's interest in the account. If the inheriting beneficiary is the estate of the account beneficiary, the amount will be included in the gross income of the account beneficiary for the beneficiary's last taxable year.[44]

If the account beneficiary dies after the growth period, the same rules apply that apply to other individual retirement arrangements after the death of the account owner.[45] For example, if the inheriting beneficiary is a parent of the account beneficiary, the account would become an inherited IRA for the benefit of the parent and would be subject to the required minimum distribution rules that apply to IRAs pursuant to § 408(a)(6).[46]

Administration after Growth Period

A Trump account does not automatically cease to be a Trump account after the growth period ends.[47] However, nearly all of the special rules for Trump accounts (including those relating to contributions, investments, distributions, and trustee reporting) will cease to apply, and the Trump account would then be subject to the rules in Code § 408 that apply to other Traditional IRAs, including the rules related to contributions, distributions, and required minimum distributions, with some exceptions.[48]

After the growth period, the Trump account may be rolled over or transferred by a trustee-to-trustee transfer to an individual retirement arrangement or other eligible retirement plan for the benefit of the account beneficiary (e.g., a Traditional IRA).[49] An account initially established as a Trump account must continue to be identified as a Trump account, and can never: (1) receive contributions under a § 408(k) SEP arrangement or § 408(p) SIMPLE IRA plan; or (2) be aggregated with other individual retirement arrangements under § 408(d)(2) when allocating basis related to a distribution from either the Trump account or another individual retirement arrangement.[50]

Conclusion

While there may be advantages to establishing a Trump account for a client's child, whether a Trump account would be the best alternative for achieving a client's estate and tax planning objectives will depend on the client's specific circumstances. The second part of this article will examine how Trump accounts compare to other planning vehicles for minor beneficiaries.


D. CAZABON

Denise Cazobon *is shareholder of Dunwody White & Landon, P.A. and is board certified by The Florida Bar in Wills, Trusts and Estates. She focuses her practice on estate and tax planning, estate settlement, and probate and trust administration. Denise earned her LL.M. in Taxation and her J.D., cum laude, from the University of Florida, and a B.A. in Psychology from the University of Miami. A former Fellow of the Real Property, Probate and Trust Law Section, Denise currently serves as a Member on the RPPTL Executive Council and Co-Vice Chair of the Estate and Trust Tax Planning Committee.*

Endnotes

1 I.R.S. Notice 2025-68, 2025-52 I.R.B. 856 (Dec. 22,2025).
2 I.R.C. § 530A(b)(1)(A)(i).
3 I.R.C. § 530A(b)(2).
4 Notice 2025-68, Q&A A-8.
5 Notice 2025-68, Q&A A-3.
6 I.R.C. § 530A(g).
7 I.R.C. § 530A(b)(2)(C). *See also* Notice 2025-68, Q&A A-1.
8 Notice 2025-68, Q&A A-1.
9 *Id*. This ordering rule was developed based on the ordering rules applicable to 529 plans.
10 I.R.C. § 530A(b)(2)(C).
11 Notice 2025-68, Q&A A-1.
12 *Id*.

continued, page 28

13 *Id.*
14 *Id.*
15 I.R.C. § 530A(b)(1)(C)(i).
16 I.R.C. § 6434(c).
17 I.R.C. § 6434(b).
18 Notice 2025-68, Q&A B-2.
19 Notice 2025-68, Q&A B-1.
20 I.R.C. § 6659.
21 Notice 2025-68, Q&A B-1.
22 I.R.C. § 530A(f)(1).
23 I.R.C. § 530A(f)(2).
24 I.R.C. § 530A(f)(3).
25 Notice 2025-68, Q&A H-3.
26 Notice 2025-68, Q&A H-1.
27 I.R.C. § 128(a) and (c).
28 I.R.C. § 128(a).
29 I.R.C. § 128(b).
30 Notice 2025-68, Q&A I-1.
31 Notice 2025-68, Q&A A-4 and A-7.
32 Notice 2025-68, Q&A A-5.
33 I.R.C. § 530A(c)(2)(B).
34 I.R.C. § 530A(c)(2)(A) and (C).
35 Notice 2025-68, Q&A C-3.
36 *Id.*
37 I.R.C. § 530A(h)(3)
38 I.R.C. §§ 530A(b)(1)(C)(iii) and (b)(3). *See also* Notice 2025-68, Q&A D-1 through D-10 for further guidance on eligible investments.
39 Notice 2025-68, Q&A D-7.
40 I.R.C. § 530A(d)(4)(B). A Trump account cannot be rolled over to an ABLE account after the growth period. See Notice 2025-68, Q&A E-3.
41 I.R.C. § 530A(d).
42 Notice 2025-68, Q&A E-2.
43 Notice 2025-68, Q&A E-1.
44 I.R.C. § 530A(d)(6). *See also* Notice 2025-68, Q&A E-4.
45 Notice 2025-68, Q&A E-4.
46 *Id.*
47 Notice 2025-68, Q&A G-2.
48 I.R.C. § 530A(a).
49 Notice 2025-68, Q&A A-7. The written governing instrument of a Trump account may provide that, immediately after the growth period of the account beneficiary, all of the assets of the account will be transferred automatically to a Traditional IRA for the account beneficiary that is not a Trump account and that is maintained by the same trustee as that of the transferring Trump account. *See* Notice 2025-68, Q&A A-10.
50 I.R.C. § 530A(h)(1) and (4).

HEUSTON LEGAL PLLC
Strategic. Reliable. Innovative.
The Firm Other Attorneys Call for Estate & Trust litigation
THE FLORIDA BAR BOARD CERTIFIED
WILLS, TRUSTS AND ESTATES
HeustonLegal.com | 321.428.2820
1333 Gateway Dr. Ste 1024, Melbourne, FL 32901



RPPTL SPONSORS

The Florida Bar's Real Property, Probate and Trust Law Section is grateful to all of its sponsors who faithfully support the good work of the Section. In addition to recognizing them in each issue of ActionLine as we do, we want to offer information to you in the event you wish to speak with a sponsor about the services it provides. Below are the names of the sponsors and their contact information. Again, thank you, sponsors, for supporting RPPTL!

COMPANY	CONTACT NAME	EMAIL
PLATINUM SPONSORS		
Old Republic Title	Jim Russick	JRussick@OldRepublictitle.com
RealAdvice	Todd Jones	todd.jones@realadvice.com
APP SPONSOR		
WFG National Title Insurance	Joseph J. Tschida	jtschida@wfgtitle.com
GOLD SPONSORS		
Coral Gables Trust Company	John Harris	Jharris@cgtrust.com
First American Title Insurance Company	Len Prescott	LPrescott@firstam.com
FNF Family of Companies – Florida	Cynthia Manfredi	Cynthia.Manfredi@FNF.com
Guardian Trust	Travis Finchum	travis@specialneedslawyers.com
J.P. Morgan Private Bank	Carlos Batlle	Carlos.A.Batlle@jpmorgan.com
LEAP	John Celmer	john.celmer@leap.us
Stewart Title Guaranty Company	Ashley McRae	Ashley.McRae@Stewart.com
Stout	Garry Marshall	GMarshall@stout.com
Title Resources Group	Lee Offir	lee.offir@trguw.com
Westcor Land Title Insurance Company	Laura LiCastro	Laura.LiCastro@wltic.com
SILVER SPONSORS		
Athanassie Capital Partners	Steve Athanassie	steve@teamacpartners.com
CATIC	Stacey Morey	smorey@catic.com
Florida Asscociation of Professional Process Servers	Lance Randall	lance110205@gmail.com
Management Planning, Inc.	Roy Meyers	RMeyers@MPIVAL.com
Valuation Services Inc.	Jeff Bae	Jeff@Valuationservice.com
WealthCounsel	Rachel Gifford	rachel.gifford@wealthcounsel.com
BRONZE SPONSORS		
BNY Wealth	Rafaela Vianna	rafaela.vianna@bny.com
Cumberland Trust	Haley Barba	hbarba@cumberlandtrust.com
Grove Bank & Trust	Marta Goldberg	MGoldberg@grovebankandtrust.com
Mercer Capital Management, Inc. (fka Business Valuation Analysts)	Nikki McNeel	mcneeln@mercercapital.com

Assisted Reproduction, Intestacy, and the Legal Status of Donor-Conceived Siblings Under Florida Law

By Richard Ehrlich, Esq., Law Office of Richard Ehrlich and Associates, Boynton Beach, Florida

This article examines the legal status of donor-conceived individuals and their siblings under Florida law, focusing on intestacy, spousal rights, beneficiary designations, and comparative state approaches. The area is of particular interest to me, since I am one of such individuals.

This past November, my father died in Florida. After his funeral, I petitioned to open a probate estate because he was the plaintiff in pending litigation. As a trusts and estates attorney for 35 years, I approached the task with professional familiarity. What I did not anticipate was that the administration of my father's estate would intersect with the unexpected discovery of my seventy donor-conceived siblings and a set of legal questions implicating Florida's parentage, inheritance, and intestacy statutes.

continued, page 31



Shortly after my father's death, I had traveled to New York to visit YIVO Institute for Jewish Research in the hope that archivists might locate my great-grandfather's lost commentary on Ecclesiastes — a biblical meditation on the seeming meaninglessness of life. While there, I obtained a DNA testing kit offered free of charge to Holocaust survivors and their children by AncestryDNA. I received the results several weeks later, surprised by both the number and the implications of the results: I have at least seventy half-siblings.

Although I knew my mother had difficulty conceiving, I had not known that artificial insemination was used. Reviewing my birth certificate, I noted the physician's name and researched him. He was a well-known fertility specialist affiliated with the Margaret Sanger Clinic and Lenox Hill Hospital, where I was born. While my biological father is deceased (from exhaustion, no doubt), I have learned much about him through contact with my newly discovered half-siblings (many of whom have participated in a Facebook group that has existed for more than a decade).

Over the past year, some siblings declined involvement in group communications, citing concerns (either their own or their families') about potential inheritance implications. As a Florida practitioner, I was struck by how decisively Florida law addresses these concerns. The clarity of the law surprised me. It may surprise others.

I. Parentage and Donor Status Under Florida Law

Florida's assisted reproduction statute provides:

> The donor of any egg, sperm, or preembryo, other than the commissioning couple or a father who has executed a preplanned adoption agreement under s. 63.213, shall relinquish all maternal or paternal rights and obligations with respect to the donation or the resulting children.[1]

This statutory relinquishment is categorical. A sperm donor, unless he is the commissioning father under a compliance agreement, has no parental rights and no parental obligations.

Given that Florida's intestacy statutes distribute property to "descendants" and "heirs," as defined through legally recognized familial relationships,[2] a donor-conceived individual generally has no inheritance rights from the sperm donor or through the donor's bloodline, absent adoption, legitimation, or other legally cognizable parentage.

Thus, even if biological paternity is established through modern DNA testing, statutory relinquishment controls. Biology alone is insufficient.

II. Intestate Succession and the Absence of Sibling Rights

Under Florida's intestacy scheme, if a decedent leaves no surviving spouse, property passes first, to descendants, then to parents, and then to siblings and the descendants of deceased siblings.[3] The term "descendants" refers to those in the decedent's lineal line, children, grandchildren, and further issue.[4]

If a donor has relinquished all parental rights under Fla. Stat. § 742.14, donor-conceived individuals are not legally recognized descendants. Accordingly, they have no standing in intestacy to inherit from the donor or through the donor's collateral line.

Critically, half-siblings, whether donor-conceived or not, have no intestate rights in relation to one another, unless there is a common legally recognized parent through whom inheritance flows. Florida's intestacy statute does not create a direct right of inheritance between siblings independent of the decedent's parentage.[5] If the donor is not a legally recognized parent, the donor-conceived half-siblings do not share a legally cognizable ancestor for intestacy purposes. Accordingly, they would not inherit from each other via the donor line.

In short, absent legal parentage, there is no intestate chain of succession.

III. Spousal Inheritance Rights

Donor-conceived individuals have no impact on a surviving spouse's intestate inheritance rights or homestead rights, unless they are legally recognized descendants of the decedent. If donor status precludes legal parentage, donor-conceived individuals do not dilute the surviving spouse's homestead rights under the Florida Constitution or Fla. Stat. § 732.401, and do not affect the spouse's intestate rights under Fla. Stat. § 732.102.[8]

For siblings concerned that contact with newly discovered half-siblings might expose a parent's estate to additional claimants, Florida law provides clarity: absent legally recognized parentage, no such claims exist.

IV. Beneficiary Designations and Nonprobate Transfers

Even where intestacy provides no rights, beneficiary designations can alter outcomes. Life insurance policies, retirement accounts, payable on death (POD) and transfer on death (TOD) accounts, and revocable trusts pass outside probate.[9]

A donor could affirmatively designate a donor-conceived individual as a beneficiary. In that circumstance, contract or

continued, page 32

trust principles—not intestacy—govern. However, absent designation or express testamentary inclusion, Florida's statutory framework forecloses inheritance rights.

V. Comparative State Approaches

States vary in their treatment of assisted reproduction and posthumous parentage. The Uniform Parentage Act (2017) recognizes donor status but includes detailed provisions governing consent and intent-based parentage. Some jurisdictions permit broader recognition of genetic parentage in limited contexts, particularly where intent to parent is demonstrated.

Florida's approach draws a bright line. The relinquishment language in Fla. Stat. § 742.14 reduces litigation risk by foreclosing equitable claims, based solely on genetic connection.

As assisted reproductive technologies evolve, divergence among jurisdictions may produce conflict-of-laws issues in multi-jurisdictional estates. Practitioners should consider domicile, situs of assets, and governing law provisions in estate planning instruments.

VI. Forward-Looking Considerations

The proliferation of direct-to-consumer DNA testing has rendered donor anonymity largely obsolete. Legislatures enacted many assisted reproduction statutes in an era when biological parentage could remain undiscovered. That premise no longer holds.

Florida may eventually confront questions not squarely addressed by current statutes:

1. ***Should donor-conceived individuals have limited informational or medical rights distinct from inheritance rights?***
2. ***Should statutory relinquishment be revisited where donors exceeded regulatory limits or engaged in undisclosed practices?***
3. ***How should estates address known, but legally unrecognized, genetic offspring in drafting instruments?***

For practitioners, the lesson is practical: clarity in drafting remains paramount. Expressing definitions of "descendants," "issue," and "heirs" in testamentary instruments can avoid ambiguity. Inclusion or exclusion clauses may be advisable in certain contexts involving assisted reproduction.

Conclusion

In Ecclesiastes, the Preacher reflects on the fleeting and sometimes perplexing nature of human endeavor. Discovering seventy half-siblings while administering my father's Florida estate felt, at moments, similarly surreal.

Yet, Florida law in this domain is not existentially ambiguous. Fla. Stat. § 742.14, read in conjunction with Fla. Stat. § 732, produces a clear result: donor-conceived relatives, absent legal parentage, have no intestate rights in Florida through the donor or through one another.

The emotional and ethical dimensions may be complex. The statutory answer is not.



R. EHRLICH

Richard Ehrlich *is a Florida attorney with 35 years of experience concentrating in estate planning, probate, and trust administration. He represents fiduciaries and beneficiaries in complex estate and trust matters and writes on issues at the intersection of parentage law and succession.*

Endnotes

1 Fla. Stat. § 742.14 (2024).
2 Fla. Stat. §§ 732.101–.111 (2024).
3 Fla. Stat. § 732.103 (2024).
4 Fla. Stat. § 731.201(9) (2024).
5 See Fla. Stat. § 732.103(3) (2024).
6 Fla. Stat. § 732.2065(1) (2024).
7 Fla. Stat. § 732.2035 (2024).
8 Fla. Stat. § 732.102 (2024).
9 *See*, e.g., Fla. Stat. §§ 732.4015, 736.0101 *et seq.* (2024).

Abbreviated Forms of Florida Probate and How They Changed in 2026

By Rohan Kelley, The Kelley Law Firm, PL, Fort Lauderdale, Florida

Short forms of Florida probate are under-utilized but are in the spotlight to become more popular and useful.

On April 30, 2024, in Administrative Order of the Supreme Court 24-20, the Workgroup on Uncontested Probate Proceedings was constituted and charged to, "make recommendations to redesign and improve the efficiency and effectiveness of this state's processes and procedures for uncontested probate proceedings." The Workgroup was composed of nine members appointed by the Court: one clerk of the circuit court, two circuit judges, one appellate judge, and five practicing lawyers each of whom are also Section Executive Council members: Ben Diamond, Saint Petersburg; Darby Jones, Saint Petersburg; Theo Kypreos, West Palm Beach; Laird Lile, Naples; and Zackary Zuroweste, Clearwater. Approximately 15 months later on July 15, 2025, the Workgroup produced their Final Report and Recommendations.[2]

> The Workgroup Final Report begins its Executive Summary with the statement of fact and purpose that:
>
> Uncontested matters, which constitute over 94% of Florida's probate caseload, often experience delays, despite their non-adversarial nature, due to inconsistent local practices, extralegal procedural requirements, and underutilized case-management tools.[3]

That Final Report goes on to make recommendations for: (1) statutory changes, (2) probate rules changes, (3) significant expansion of Part V Forms of the Florida Probate Rules, and numerous other changes intended to expedite the modifications to uncontested probate, contemplated as the purpose of the Workgroup. A selected few of the changes recommended by the Workgroup and approved by the Court are:

Creation of Administrative Probate: Establish a new streamlined procedure—administrative probate—in which routine functions (such as admitting wills, appointing personal representatives, issuing letters of administration, and entering uncontested orders) are performed by a "probate magistrate" rather than a circuit judge. This process provides an automatic referral of eligible cases, requires each circuit to appoint at least one experienced probate magistrate, and preserves judicial oversight through court review and final discharge.

Referral to Magistrates: Amend Florida Probate Rule 5.095 to adopt an implied consent model, allowing routine uncontested matters to be efficiently referred to magistrates unless a timely objection is filed. The Workgroup envisions a system in which most uncontested probate proceedings are handled by magistrates.

Standardized Filing Practices: Adopt Supreme Court–approved checklists, mandatory forms for common probate proceedings, and template proposed orders to promote uniform application of procedural requirements statewide.

Updated Monetary Thresholds: Amend statutes[4] and rules to raise monetary thresholds for small estate affidavit procedures and summary administration to keep pace with inflation and expand access to simplified processes.[5]

During the 2026 legislative session, the first session after release of the Final Report, Committee Substitute for House Bill 1377 incorporated the changes proposed in the Workgroup Final Report, passed both houses of the legislature without a single dissenting vote, was signed by the Governor and became Chapter 2026-57 Laws of Florida. It will become effective July 1, 2026.[6]

continued, page 34



Currently in Fla. Stat., ch. 735, there are five different forms of abbreviated probate procedures, and all are touched by this bill as explained below. One or more of them are infrequently used, but this is likely to change. The five different forms are:

1. Summary administration. Fla. Stat. §§ 735.201 – 735.2063
2. Disposition without administration. Fla. Stat. § 735.301
3. Income tax refunds in certain cases. Fla. Stat. § 735.302
4. Payment to successor without court proceedings. Fla. Stat. § 735.303
5. Disposition without administration of intestate property in small estates. Fla. Stat. § 735.304

The following is a summary of the amended portions of law:

Fla. Stat. § 655.933[7] related to access to a safe deposit box by fiduciaries has been amended to provide:

> Subject to provisions in the lease, a lessor of a safe-deposit box *must* allow access to a box by all persons acting as a fiduciary (e.g. a personal representative) who present the lessor with a copy of document(s) under which they act (e.g. letters of administration) and *may* allow access to the safe-deposit box by any one or more of the persons otherwise acting as fiduciaries if authorized in writing, which writing is signed by all other persons so acting. The lessor shall allow the personal representative or the personal representative's attorney to pay the accumulated charges and terminate the lease. (Emphasis added).

Fla. Stat. § 733.603 allows the personal representative, without court order, to enforce the authority of a personal representative conferred by the Florida Probate Code, and Fla. Stat. § 733.612(28) is amended to allow the personal representative, without court order, to institute a proceeding to enforce his or her authority as personal representative as conferred by the Code.

Fla. Stat. § 733.6125 Proceedings to enforce authority is created to provide, in any enforcement proceeding, the court must award to a prevailing personal representative, taxable costs as in chancery actions, including attorney fees. When awarding taxable costs and attorney fees under this section, the court may direct payment from any person whose action or inaction necessitated the enforcement proceeding or from any person having an interest in the estate, and may enter a judgment that may be satisfied from the person's other property.

Fla. Stat. § 733.6171 Compensation of attorney for the personal representative is amended to add as an additional extraordinary service in subparagraph (4) of that section, involvement in any proceeding to enforce the authority of a personal representative as conferred by this Code. The addition to the definition of extraordinary service in this statute is carried into Fla. Stat. § 733.106(4) by reference, allowing the court to regulate fees awarded for the new extraordinary service.

Fla. Stat. § 735.201 Is of substantial consequence to smaller firms, the cap on the maximum value of summary administration has been increased from $75,000 to $150,000. The same provision that entirely removes the cap on the value of the summary administration after two years from death is unchanged.

Fla. Stat. § 735.302 Income tax refunds in certain cases has been amended to increase the maximum refund amount from $2,500 to $5,000 that may be paid directly to the surviving spouse, if any, and if none, to one of the decedent's children if the application is signed by all of the children over the age of 14 years. A joint income tax return is not a requirement for this refund.

Fla. Stat. § 735.303 Payment to successor without court proceedings is amended to double, from $1,000 to $2,000, the amount of decedent's funds on deposit that may be paid to a family member of the decedent from a financial institution six months after the date of decedent's death. This procedure continues to require a form affidavit set forth in the statute signed by the family member.

Fla. Stat. § 735.304 Distribution without administration of intestate property in small estates where the decedent's estate consists only of personal property exempt under Fla. Stat. § 732.402, and the amount of homestead personal property up to the amount of $1,000 in Art. X § 4(a)(2) Fla. Const. The amount of nonexempt personal property has been increased from a maximum of $10,000 to $20,000, plus the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness, provided the decedent has been deceased for more than one year, and no administration of the decedent's estate is pending in this state. The affidavit and other procedures required under this section are set forth in the existing statute.

The increase in the dollar limits in several instances will make these abbreviated procedures more useful to lawyers and to the public. The most useful of the group is the increase in the maximum estate value that qualifies for summary administration from $75,000 to $150,000.

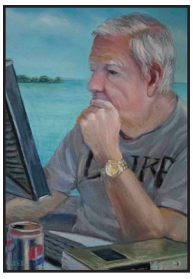
The chart that follows compares the four abbreviated procedures that are less often used than Summary Administration.

continued, page 35

Abbreviated probate procedures from Part II of Chapter 735 Fla.Stat. Small Estates

	Fla. Stat. § 735.301	Fla. Stat. § 735.302	Fla. Stat. § 735.303	Fla. Stat. § 735.304
Recipient	Persons entitled to decedent's estate	Surviving spouse or, if none, one of decedent's children designated by children over age 14.	Family member in order of priority, surviving spouse, adult child, adult descendant parent.	Heir(s) at law § 733.102, 733.103.
Petitioner	Any interested person. If exempt property is included, persons entitled thereto must join.	Any interested person.	A family member as defined in the statute	Affidavit by surviving spouse or other heir(s) at law except an heir who will receive a full intestate share under the proposed distribution of the personal property is not required to join.
Type of Property	Personal property	Decedent's income tax refund. Joint return not required	Decedent's funds on deposit with a financial institution in the sole name of the decedent without a pay-on-death or any other survivor designation.	Personal property
Value Limit	§ 732.402 exempt property, $1,000 Art. X § (a)(2) Fla.Const, amount of preferred funeral expenses $6,000 § 733.707(1)(b) and the amount of reasonable and necessary medical and hospital expenses of the last 60 days of the last illness. § 733.707(d)	$5,000*	$2,000*	$20,000* plus amount of § 732.402 exempt property, $1,000 Art. X § (a)(2) Fla.Const, amount of preferred funeral expenses $6,000 § 733.707(1)(b) and the amount of reasonable and necessary medical and hospital expenses of the last 60 days of the last illness. § 733.707(d)
Testate or Intestate	Either	Not specified.	In the absence of a will devising this property	Intestate
Requirements	Informal application by affidavit, letter, or otherwise. Attach statements for funeral expenses and included medical expenses. Rule 5.420(a)(4). Committee note indicates that exempt property is subject to waiver for time limits in 732.402(6) and rule implies that designated classes of creditors must be paid. Court issues letter or other writing under seal of the court.	Verified application must show that decedent was not indebted, that provision has been made for the payment of the decedent's debts, or that the entire estate is exempt from the claims of creditors under the constitution and statutes of the state, and that no administration of the estate, including summary administration, has been initiated and that none is planned, to the knowledge of the applicant. IRS Form 1310 is used for this purpose.	Can't be paid earlier than 6 months after date of death. No court order or other proceedings required. Death certificate and statutory form affidavit. 733.303(4). A knowingly false statement is theft punishable as provided in § 812.041	Decedent deceased for more than 1 year and no administration pending in this state. Petitioner makes a diligent search and reasonable inquiry for known or reasonable ascertainable creditors and the proposed distribution must make provision for creditor payment. Affidavit must be served in the manner of formal notice on all non-joining heirs and all creditors including AHCA if decedent was over 55 years. Court issues letter or other writing under seal of the court.

* Until July 1, 2026, the amount is one-half of the amount shown. *See* CS/HB 1337ER 2026 legislature.



R. KELLEY

Rohan Kelley *has worked 60+ years in Trusts and Estates practice in South Florida. He has been recognized by Best Lawyers in America® 1987 to present. He is a Florida Bar Board Certified Specialist in Wills, Trusts and Estates. He is a Florida Supreme Court Circuit Civil Certified Mediator. He has worked in trust and estate mediation and has given trust and estate expert testimony.*

Endnotes

1 Workgroup on Uncontested Probate Proceedings, Final Report and Recommendations, July 15, 2025. https://www.flcourts.gov/Services/innovations-outreach/workgroups/workgroup-on-uncontested-probate-proceedings2/the-workgroup-on-uncontested-probate-proceedings-report

2 *Id.*

3 Chapter 2026-57 Laws of Florida

4 Workgroup Report at page 10.

5 This article does not discuss additional statutory and rules changes proposed by the Workgroup and now in the pipeline as well as additional mandatory forms to be included with the rules changes.

6 This statutory amendment does not relate to abbreviated probate procedures but solves another problem related to fiduciary access to safe-deposit boxes.

Addressing Mobile Home Title Transfer Problems Through Statutory Procedures and Declaratory Relief

By Laura M. Licastro, Westcor Land Title Insurance Company, Maitland, Florida, and Christian Savio, Manganelli, Leider & Savio, P.A., Boca Raton, Florida

Dealing with a mobile home in a real estate transaction can sometimes be a complicated matter. While many times all the paperwork is correct and in the possession of the seller or mortgagor, there are situations where information or titles are lost, destroyed, or just outdated due to someone's misunderstanding regarding the transfer of the title. Abandoned mobile homes represent a recurring and complex problem for Florida landlords. By navigating the intersection of landlord-tenant law and motor vehicle titling, practitioners can efficiently resolve property abandonment while shielding clients from liability. This article will explore some of the ways to address these problems with mobile home titles in Florida.

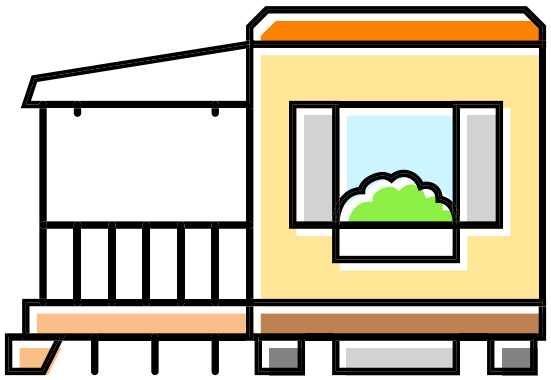
Birth of a Mobile Home Title

It is important to understand that, most of the time, a mobile home starts out as an item of personal property similar to an automobile, RV, or a boat in terms of ownership and documentation. When first constructed, mobile homes must be issued a document called a Manufacturer's Statement of Origin, sometimes called a Manufacturer's Certificate of Origin ("MCO") in order for the manufacturer to sell the home to a distributor, a dealer, or any other person.[1] The MCO is analogous to a birth certificate. It contains all the vital statistics of the mobile home, like the name of the manufacturer, the year, make, and the model of the home, and the vehicle identification number ("VIN") assigned by the National Highway Transportation and Safety Administration.

Certificates of title are normally first issued once the mobile home is purchased from the distributor or dealer.[2] Florida law states that a person cannot purchase, acquire or bring into the State of Florida, a mobile home for permanent use unless they obtain a certificate of title (except for a surviving spouse who became the owner by operation of law).[3] It is with the issuance of the first certificate of title that the chain of ownership of the mobile home really begins for the consumer and that allows the mobile home to be registered.[4]

Transformation into Real Property

The owner of a mobile home may choose to have that mobile home treated as real property instead of personal property. There are two basic requirements for that to happen. First, the owner of the mobile home must be the owner of the land on which the mobile home sits.[5] Second, the mobile home must be affixed to the real property, meaning it has to be tied down and be connected to the normal household utilities.[6] Once the mobile home is classified as real property, the certificate of title can be retired, so that there is no need for the extra paperwork upon the sale or other transfer of the land and the mobile home.[7] The retirement requirements and procedure are set out in Fla. Stat. § 319.261.



continued, page 37

Mechanics for Basic Title Transfer

If the title is not retired, each time the owner of a mobile home changes, a new certificate of title should be issued to ensure the new owner has marketable title to the home.[8] This usually involves the seller or transferor of the mobile home signing over the certificate of title to the buyer or transferee. In order to transfer the mobile certificate of title, the transferee then completes and submits a Form HSMV 82040, along with the original endorsed certificate of title and, if desired, a mobile home power of attorney Form HSMV 82053, to the Department of Motor Vehicles office in the county where the mobile home is located.[9] A title insurance agent or a specialized mobile home title transfer company can assist with filling out and filing the paperwork.

Once all the paperwork has been received, checked, and processed, a new certificate of title will be issued to the transferee. If there are liens on title from prior to the transfer, the owner may not have the original certificates of title and will have to get them from the lien holder.[10] Similarly, if there will be a lien placed on the title in connection with the transfer, the newly-issued certificate of title may be delivered to the lien holder instead of the transferee.[11]

Title Certificate Transfer Problems: Death of an Owner in the Chain of Title

Sometimes, the transfer process does not go smoothly or breaks down when information is missing or the transferee does not actually get a new certificate of title issued in the transferee's name. Curative work to get a certificate of title in the name of a current owner can be time consuming and costly when one or more previous owners fail to properly sign over the title to a transferee, or when one or more transferees fail to file the necessary application and paperwork to get a new certificate of title in their name, particularly if it is difficult or impossible to get the required information about the home (like the year, make, model, and VIN number) because it has been lost over time and/or it is not easily located on or in the home itself.

Fortunately, there are ways to clear up these problems, especially for certain transfers made by operation of law. For example, there is a streamlined procedure for someone who obtains ownership of the mobile home upon the death of a previous owner. This streamlined procedure is detailed in Fla. Stat. § 319.28. It involves filing the application for the issuance of a certificate of title and providing some information about the prior owner and their estate beneficiaries.

Prior to 2024, the streamlined procedure for getting a certificate of title issued in the name of the person who inherited it upon the death of the owner was only available if the owner died intestate. However, chapter 2024-272, Laws of Florida extended the option of a streamlined procedure for issuance of a certificate of title upon the death of the owner to include testate estates in addition to intestate estates.

The streamlined procedure involves the filing of an application by either an heir of a previous owner who died intestate or a Florida-licensed attorney in good standing who is representing a testate estate.[12] When the application is made by an attorney on behalf of a testate estate, the application must be accompanied by an affidavit attested to by the attorney, which includes facts sufficient to, "establish a presumption of ownership, absent received to the contrary, and right of possession to the…mobile home."[13] In the case of either a testate or intestate estate, it is not necessary to present any probate documents or orders or even a copy of the decedent's will.[14]

The procedure sets out in Fla. Stat. § 319.28(b) and (c), only works when the prior owner is deceased and there is sufficient information to prove who inherited the home from that deceased person. Where that information is not available or the transfer did not happen by operation of law and the previously-titled owner cannot be located, other methods must be used to clean up the title. Note also, that this procedure will only transfer title to the mobile home, but not the land. If the mobile home is affixed to land and the title to the land is to be transferred, a probate or a similar process may be required to transfer marketable title to both the mobile home and the land on which it sits.

Title Certificate Transfer Problems: Abandoned Mobile Homes

Abandoned mobile homes present recurring challenges for landlords and mobile home park owners across Florida. Unlike ordinary personal property, mobile homes involve substantial financial value, potential lien interests, and title requirements administered by the Florida Department of Highway Safety and Motor Vehicles. Florida law addresses these issues through a coordinated statutory framework governing possession, abandonment, notice, disposition, and, where necessary, judicial clarification of ownership. Central to this framework are the procedures established for the disposition of abandoned personal property. This statutory scheme applies when personal property remains on leased premises after a tenancy ends through eviction, surrender, or abandonment. Notably, when a mobile home remains on leased land and is titled personal property, these procedures govern the disposition of the home itself, not merely its contents.[15]

Establishing Legal Abandonment and Possession

The process typically begins with the formal termination of the tenancy. Under Florida law, a landlord may recover

continued, page 38

possession of premises other than a dwelling unit through an action for possession, surrender, or abandonment when rent is unpaid.[16] A legal presumption of abandonment arises when the landlord reasonably believes the tenant has been absent for at least 30 consecutive days, rent is not current, and a specific statutory notice has been served with 10 days having elapsed. However, this presumption does not apply where rent is current, or the tenant has provided written notice of an intended absence.

In the mobile home park context, the removal of a home following a judgment for possession is a critical step. After entry of judgment, the clerk issues a writ of possession directing the sheriff to place the park owner in possession of the lot. At the time of execution, the landlord or the landlord's agent may remove the mobile home to or near the property line or into storage. A vital protection for landlords is that neither the sheriff nor the landlord bears responsibility for loss or damage after removal.[17] Once possession is restored and the lot is vacated, the formal disposition process begins.

Navigating the Notice Requirements

The statutory framework operates as an optional but protective procedure. A landlord who complies with its requirements benefits from significant limitations on liability, while failure to comply may expose the landlord to claims for conversion or wrongful disposition. The notice provisions are at the heart of this protection. When a mobile home remains after termination of a tenancy, the landlord must provide written notice to the former tenant and to any other person reasonably believed to be the owner.[18]

The notice must reasonably describe the property in a manner adequate to permit the owner to identify it. For example, while a landlord may describe the home itself, any locked or fastened containers within the home may be described as such without listing the individual contents.[19] Furthermore, the notice must advise that storage costs may be charged, state where the property may be claimed, and specify a deadline for reclaiming it. This deadline must be at least 10 days after personal delivery or 15 days after mailing. Notice must be sent by first-class mail to the recipient's last known address and to any additional address where the person may reasonably be expected to receive it.[20] The statutes provide specific notice forms that satisfy these requirements, including mandatory language warning of potential sale or disposal if the property is not timely reclaimed. Use of these forms is strongly recommended, as the liability protections do not extend to property disposed of without proper notice.

Valuation and the Public Sale Process

After notice is served, the landlord must store the property or leave it on the premises until it is reclaimed or lawfully disposed of. The landlord is required to release the property upon a timely claim and payment of reasonable storage and advertising costs.[21] Where the notice provides for a public sale, the former tenant may reclaim the property at any time before the sale by paying these accrued costs.

The method of disposition depends entirely on valuation. If the landlord reasonably believes the total resale value of the mobile home is less than $500, the statute permits retention for personal use or disposal without a public sale.[22] However, if the value is reasonably believed to exceed $500, the statute requires a public sale by competitive bidding. This process includes a requirement that notice of the sale be published once a week for two consecutive weeks in a newspaper of general circulation. The advertisement must include a description of the goods, the name of the former tenant, and the specific time and place of the sale.[23] The sale must occur at least 10 days after the first publication. Any surplus proceeds, after deduction of permitted costs, must be paid into the county treasury and remain claimable for one year.[24] Lawful disposition limits the landlord's liability, such that landlord is not liable with respect to property released to persons who received notice or to persons whose interest the landlord knew or reasonably should have known prior to the disposition.[25]

Complex Title Issues and Declaratory Relief

Despite this framework, disputes often arise where ownership is unclear; no certificate of title exists, or competing claims are asserted by lienholders. In such cases, the standard disposition process may be insufficient to provide a clean title for a future purchaser. Declaratory relief may be used to determine ownership and authorize a title transfer.

The recommended approach for practitioners involves conducting a diligent search for the former owner and filing a complaint for declaratory judgment. This complaint should detail the situation and provide all available evidence of ownership, such as a deed, bill of sale, or purchase agreement. It is essential to serve all interested parties and the Department of Highway Safety and Motor Vehicles to ensure the court has full jurisdiction over the matter.[26] Once a judicial determination of ownership is obtained, a certified copy of the resulting order may be presented to the Department or a local tag agency to obtain a new certificate of title.[27] If a public auction was previously held, proof of those results must also be delivered to the Department for the title to be issued. By following these possession procedures, complying with notice requirements, and utilizing declaratory relief when necessary, practitioners

continued, page 39

can resolve mobile home abandonment efficiently while minimizing exposure to liability.


L. LICASTRO

Laura M. Licastro *is a Board-Certified Real Estate Attorney and a Florida Underwriting Counsel for Westcor Land Title Insurance Company. She has over 20 years of experience in the Florida title insurance industry. Laura received a Bachelor of Science in Aeronautics and Astronautics from the MIT and a Juris Doctor, magna cum laude, along with a certificate in Environmental Law from Pace University School of Law in White Plains, NY. She is a member of the Executive Council of the Real Property, Probate, and Trust Law Section and is active with the Florida Land Title Association.*


C. SAVIO

Christian Savio *is a partner concentrating in real estate, title, and bankruptcy law. A former in-house litigation counsel to Fidelity National Title. Christian is a recognized authority in mobile home law and authored a book on abandoned mobile home titles. He is also a licensed title agent handling all firm closings and is admitted to practice in all Florida State, Federal, and Bankruptcy Courts.*

Endnotes

1 Fla. Stat. § 319.21(1) (2025)
2 Fla. Stat. § 319.21(3) (2025)
3 *Id.*
4 Fla. Stat. § 319.21(4) (2025)
5 Fla. Stat. § 193.075(1) (2025)
6 Id.; Fla. Stat. § 319.261(1) (2025); See Also Fla. Stat. § 320.0815 (2025)
7 Fla. Stat. § 319.261 (2025)
8 Fla. Stat. § 319.22(1) (2025)
9 Fla. Stat. §§ 319.22, 319.23 (2025)
10 Fla. Stat. § 319.24 (2025)
11 *Id.*
12 Fla. Stat. § 319.28(B) And (C) (2025)
13 Fla. Stat. § 319.28(C) (2025)
14 Fla. Stat. § 319.28(B) And (C) (2025)
15 Fla. Stat. §§ 715.101, 715.102 (2025)
16 Fla. Stat. § 83.05 (2025)
17 Fla. Stat. § 723.062 (2025)
18 Fla. Stat. § 715.104(1) (2025)
19 Fla. Stat. § 715.104(2) –(3) (2025)
20 Fla. Stat. §§ 715.105, 715.106 (2025)
21 Fla. Stat. § 715.108 (2025)
22 Fla. Stat. § 715.109(1) (2025)
23 Fla. Stat. § 715.109(2)-(3) (2025)
24 Fla. Stat. § 715.109(4) (2025)
25 Fla. Stat. § 715.11 (2025)
26 Fla. Stat. §§ 86.011, 86.021, 86.081, 48.151 (2025)
27 Fla. Stat. § 319.28 (2025)

Join the growing number of Florida Bar members who have dedicated themselves to a heightened level of excellence!



Elevate Your Legal Career with Board Certification
The best time to pursue board certification in NOW.
www.floridabar.org/certification



Executive Council Meeting

SUNSEEKER RESORT | CHARLOTTE HARBOR, FLORIDA

JANUARY 29-31 2026





















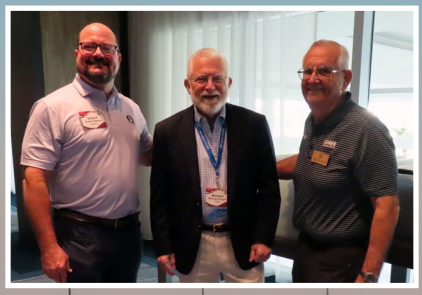

















Photos by John Neukamm and Silvia Rojas

Real Property Case Summaries

By Camille T. Bailey, Esq., Sajdera, P.A., Boca Raton, Florida

The court reversed the trial court's order denying summary judgment on a fraudulent misrepresentation and conspiracy count.

*Puleo v. Cohen, No. 3D24-0586, 2026 WL 681785, at *1 (Fla. Dist. Ct. App. Mar. 11, 2026)*

The Appellant, Marc Puleo, entered into a contract to sell his Miami Beach residence for $13 million to Spanish Rose, LLC. Puleo alleged that he agreed to reduce the price from the original $18 million listing based on representations made by the Appellees—Stephan L. Cohen, Old Florida Title Company (the closing and escrow agents), and Edmund Irvine (the buyer)—that the true purchaser was Maria Drummond, who intended to reside at the property. In reality, Ms. Drummond was allegedly a straw buyer and the domestic partner of Mr. Irvine, who forged her signature on the purchase contract and on the assignment documents to Spanish Rose, LLC. Following the sale, Mr. Irvine resold ("flipped") the property approximately one year later for $15,977,700.

Puleo filed suit, asserting claims for fraudulent misrepresentation and civil conspiracy, against all parties involved in the transaction, including the real estate professionals. The claims were based on allegations that the defendants materially misrepresented the identity of the true buyer and the intended use of the property. All defendants moved for summary judgment. The trial court granted partial summary judgment, in favor of the real estate brokers, on the fraud and conspiracy claims, finding that although there was evidence of misrepresentation, the plaintiff failed to establish essential elements of fraud, including justifiable reliance, materiality, and damages. Given that the fraud claim failed, the trial court also concluded that the conspiracy claim necessarily failed.

The Appellant subsequently settled the remaining claims against the real estate brokers and voluntarily dismissed those counts. Relying on its prior reasoning, the trial court then granted summary judgment on the remaining conspiracy claims against the other defendants. The Appellant moved for rehearing, which was denied, and this appeal followed.

On appeal, the court emphasized that summary judgment is rarely appropriate in fraud cases, as such claims often depend on the totality of the circumstances, including circumstantial evidence of intent and knowledge. *See Cohen v. Kravit Estate Buyers, Inc.*, 843 So. 2d 989, 991 (Fla. 4th DCA 2003). The court rejected the Appellant's assertion that the trial court erred by requiring him to adduce evidence of justifiable reliance, rather than just mere reliance, to overcome the summary judgment as to his misrepresentation claim.

The court reiterated the elements of fraudulent misrepresentation as set forth by the Florida Supreme Court in *Butler v. Yusem*, 44 So. 3d 102 (Fla. 2010): "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation." *Id.* (quoting *Johnson v. Davis*, 480 So. 2d 625, 627 (Fla. 1985)). Applying these principles, the appellate court found that the record contained evidence that the defendants engaged in an ongoing and intentional scheme to misrepresent the true identity of the buyer and the nature of the transaction. Under these circumstances, a reasonable jury could find that Puleo justifiably relied on those representations to his detriment.

Given that the fraud claim was supported by sufficient record evidence to survive summary judgment, the appellate court further held that the related conspiracy claim was likewise viable.

Accordingly, the appellate court reversed the trial court's entry of summary judgment on the fraudulent misrepresentation and conspiracy claims and remanded for further proceedings.

continued, page 43



The court found the Trial Court's order granting temporary injunction facially insufficient.

*River Landings Phase One Homeowners Ass'n, Inc. v. River Carlton Taylor, Inc., No. 4D2025-1146, 2026 WL 758190, at *1 (Fla. Dist. Ct. App. Mar. 18, 2026)*

The Appellants appealed the trial courts' nonfinal order granting temporary injunction in favor of the Appellee for the purpose of maintaining the status quo regarding some proposed changes to real property.

The appellate court cited to the Second District's Court of Appeals holding in *Morgan v. Herff Jones, Inc.,* which states that a temporary injunction, "should be granted only sparingly and only after the moving party has alleged and proved facts entitling it to relief." 883 So. 2d 309, 313 (Fla. 2d DCA 2004).

The appellate court further noted that Florida Rule of Civil Procedure, Rule 1.610(c) requires every injunction to specify the reasons for entry and to describe in reasonable detail the act or acts restrained without referencing a pleading or another document.

In reviewing the trial court's order, the appellate court found it legally insufficient. Although the trial court included specific factual findings, those findings addressed only one element of the required showing for temporary injunctive relief. The trial court's order failed to address how the other elements of the temporary injunction were met and only stated that the other requirements "have been proven," without providing supporting factual findings.

The appellate court held that such conclusory statements, without supporting factual findings, do not satisfy the requirements of Rule 1.610(c) and preclude meaningful appellate review.

Accordingly, the Fourth District Court of Appeals reversed the trial court's order, and remanded the case with instructions for further proceedings consistent with its opinion, including entry of an order that complies with the procedural and substantive requirements for temporary injunctive relief.

The trial did not err in declaring the plaintiff a vexatious litigant

*Steinberg on behalf of Fiesta Homeowners Ass'n, Inc. v. Cudak, No. 4D2025-3061, 2026 WL 376071, at *2 (Fla. Dist. Ct. App. Feb. 11, 2026)*

The Plaintiff filed an action in the underlying case, alleging breach of fiduciary duty, and seeking declaratory relief in connection with assessments charged by his homeowners' association. The Plaintiff had previously filed similar actions seeking the same relief, which were dismissed and affirmed on appeal. The Defendants, the homeowners' association, moved to have the Plaintiff declared a vexatious litigant, pursuant to Fla. Stat. § 68.093(3)(a). The trial court orally granted the Defendants' motion, and the Plaintiff thereafter filed a notice of voluntary dismissal.

On appeal, the court reiterated that a trial court has the inherent authority to restrict a litigant's ability to proceed pro se, where the litigant's, "frivolous or excessive filings interfere with the timely administration of justice." *Clark v. Baney*, 355 So. 3d 976, 978 (Fla. 1st DCA 2023) (quoting *Ardis v. Pensacola State College*, 128 So. 3d 260, 264 (Fla. 1st DCA 2013)).

The appellate court affirmed the trial court's determination that the Plaintiff qualified as a vexatious litigant under Fla. Stat. § 68.093(2)(c)(3) and (4), finding that the record demonstrated the Plaintiff repeatedly relitigated issues after prior dismissals and engaged in frivolous litigation tactics.

However, the appellate court reversed the portion of the order prohibiting the Plaintiff from filing future pro se pleadings, because the trial court failed to first issue an order to show cause, and to provide the Plaintiff with notice and an opportunity to be heard, as required by due process.

Additionally, the appellate court found that the requirement that the Plaintiff post $50,000 in security was rendered moot by the Plaintiff's voluntary dismissal of the action.

Accordingly, the appellate court affirmed in part and reversed in part, remanding the case to allow the trial court to reconsider the imposition of a pro se filing restriction, only after complying with the required procedural safeguards.



C. BAILEY

Camille Bailey *practices with the law firm of Sajdera, P.A. in Boca Raton, Florida, where she focuses on condominium and homeowners' association law, as well as business litigation. Ms. Bailey represents associations and individual owners in property disputes, enforcement actions, and trial matters. She completed her undergraduate studies at the University of South Florida and earned her Juris Doctor from Florida Coastal School of Law.*

Probate Case Summaries

By Emily K. Crain Evans, the Law Offices of GrayRobinson, P.A., Lakeland, Florida

When an interested party knowingly does not participate in the probate administration, they cannot later object to the petition for discharge. The trial court did not abuse its discretion in overruling Appellant's objection to the petition for discharge of the personal representative.

Gilbert v. Est. of Riley, No. 3D25-659, 50 Fla. L. Weekly D274a (Fla. 3rd DCA, March 18, 2026)

Annie P. Riley (the "Decedent") died on June 12, 2016, survived by her adult children. On February 14, 2024, one of the Decedent's children, Willie Riley ("Willie"), filed a Petition for Administration, with a copy of the decedent's last will dated September 16, 2000 (the "2000 Will"). The next day, he filed a petition for establishment and probate of a lost or destroyed will and appointment of personal representative. Willie was the sole beneficiary under the 2000 Will.

A week later, a will dated May 28, 2014 (the "2014 Will") was filed in the probate court and uploaded to the docket. The 2014 Will named the Decedent's children as equal beneficiaries. Willie was named personal representative in both wills. Between February 14 and May 17, 2024, Willie continued to probate the 2000 Will, and no objections were filed. A default against the siblings was entered on April 29, 2024 and an Order of Discharge was granted on May 7, 2024.

On May 17, Appellant filed a single pleading titled Objection to the Petition for Discharge and Petition for Subsequent Administration, claiming the 2014 Will was on deposit with the Court and that all petitions related to the probate of the 2000 Will should be vacated. No hearing was set on the petition. Seven months later, on December 10, 2024, the Appellant filed a Petition to Reopen the Estate for Further Administration. The court issued an Order to Progress the case on January 9, 2025, requiring action by January 29, 2025. A notice of hearing was filed on February 8, 2025, setting a hearing for February 25, 2025.

At the hearing, the trial court denied the motion to reopen the estate, denied the petition for subsequent administration, overruled the Appellant's objection to the Petition for Discharge, and granted Willie's objection to reopening the estate.

The Appellant moved for rehearing, arguing that the 2014 Will was on deposit with the court and that, even if a default was entered, the Personal Representative had a duty to administer the correct will when competent evidence showed the prior will was revoked. The trial court denied the motion, and an appeal followed.

On appeal, Appellant argued that: (1) she was denied due process because the trial court ignored her May 17th objection, and (2) the trial court erred in probating the 2000 Will when the more recent 2014 Will had been deposited with the court.

The Third District Court of Appeal affirmed. It found the Appellant's arguments lacked merit because her filings were untimely, she failed to meet deadlines, and she generally did not participate in the proceedings, despite receiving service. As to the second argument, the court noted that while fraud can justify reopening an estate, the Appellant failed to expressly allege fraud.

Florida recognizes a presumption of capacity; the burden of invalidating a will because of lack of testamentary capacity is a heavy one.

Reeves v. Gross, 403 So.3d 362 (Fla. 3rd DCA 2026)

Garth C. Reeves ("Garth Sr.") executed a will on October 4, 2019 (the "2019 Will") at the age of 100. He died less than two months later. During his lifetime, Garth Sr. made sizeable gifts to his only daughter and his only grandson, Garth Basil Reeves ("Basil"). After Basil's mother's death, Garth Sr. executed the 2019 will disinheriting Basil. As Garth Sr.'s only lineal heir, Basil filed a petition against the personal representative to revoke the 2019 Will.

After substantial discovery, the personal representative moved for summary judgment because there was no issue of fact about Garth Sr.'s testamentary capacity, and in support, filed three witness affidavits. The first witness was H.T. Smith ("Smith"), who stated that he represented Garth Sr. in his business matters and that Garth Sr. and Smith met for two hours and reviewed the 2019 Will in which Garth Sr. was, "alert, fully understood the nature of his assets, familial relations, and the practical effects of his will," directing substantial changes that Smith conveyed to the drafting attorney, Louis Nostro ("Nostro"), in writing. Nostro presided over the signing that Smith witnessed. Both Nostro and another attorney present for the signing also testified that Garth Sr. was alert, attentive, and engaged when he signed the 2019 Will.

continued, page 45

In opposition, Basil submitted the testimony of Dr. Marc Agronin ("Dr. Agronin"), board certified in Adult and Geriatric Psychiatry, who never treated or examined Garth Sr.; the testimony was based on the review of medical records bracketing the date of the will execution. Garth Sr.'s medical records indicated that he suffered from strokes as far back as 2002, and had been hospitalized in September from a fall, but was not diagnosed with dementia. On November 11, 2019, Garth Sr. suffered a stroke and was again hospitalized. Dr. Agronin opined that, based on the medical records, Garth Sr. did not have the required capacity to execute the 2019 Will. The trial court granted the plaintiff's motion for summary judgment.

On appeal, the appellate court found that, "the burden of invalidating a will because of lack of testamentary capacity is a heavy one…," and that Florida recognizes a presumption of testamentary capacity (citing *Hendershaw v. Est. of Hendershaw*, 763 So.2d 482, 483 (Fla. 4th DCA 2000)). Florida also recognizes that individuals with issues of mental capacity often experience lucid moments. The court noted that although Dr. Agronin may have established a possibility that Garth Sr. lacked capacity, the mere possibility is not enough to satisfy the "heavy" burden of overcoming the presumption of testamentary capacity. Affirmed.

Even if a presumption of revocation did not arise because there was no evidence the decedent was in possession of the will prior to his death, a proponent of a lost will still must meet the statutory requirements of Fla. Stat. § 733.207.

Pilak v. Reigel, 5D2025-0269, 51 Fla. L. Weekly D228b (Fla. 5th DCA, Feb. 6, 2026)

Robert G. Sas died June 7, 2015. In February 2016, Gary Fores signed a Petition for Establishment of Lost or Destroyed Will and Appointment of Personal Representative (the "2016 Petition"). The 2016 Petition asserted that on May 10, 2002, the decedent executed a will, and subsequently executed codicils to that will on September 26, 2005, and December 18, 2006. The 2016 Petition had attached copies of the will and codicils and alleged that the will and codicils were lost or destroyed without the decedent's knowledge or consent. The beneficiaries under the will all signed a "Consent and Waiver of Notice" to the 2016 Petition. The 2016 Petition was never filed.

On March 21, 2022, Kenneth Pilak ("Pilak") filed a Petition for Administration of Intestate Estate, which acknowledged that the decedent had a will, but alleged that an original could never be located, and the decedent died without a spouse or children. On September 9, 2022, Timothy Reigel ("Appellee"), filed an answer to the Petition for Intestate Administration, stating that they had previously executed waivers and consents to the 2016 Petition. Appellants, who were the children of the Decedent's pre-deceased sister ("Appellants") withdrew their Petition, and an evidentiary hearing was held on January 17, 2025. The testimony presented was that there was knowledge there was a will after the decedent's death, that they were named beneficiaries, but that no evidence was presented as to the execution or the contents of the will. The trial court entered an order granting the Petition to Establish the Lost or Destroyed Will, noting that, while the will had not been established under Fla. Stat. § 733.207 of the Florida Probate Code, the consents and waivers signed by the Appellants bound them and authorized the court to enter the Order granting the relief requested by Appellees.

On appeal, Appellants argued: (1) the court erred in admitting the copy of the lost will and codicils because it did not apply the presumption of revocation where the original will was known to exist, but could not be found after the testator's death; (2) the trial court incorrectly required Appellants to prove the original will was in the possession of the decedent before his death before the presumption could be applied; and (3) the trial court erred by admitting the will and codicils without the evidence required by Fla. Stat. § 733.207.

The appellate court reversed and remanded on all counts, noting that, "it is well-settled under Florida law that when an original will that is known to have existed cannot be located after the death of the decedent, the presumption is that the testator destroyed the will with the intent to revoke it." (citing to *Brennan v. Honsberger*, 101 So.3d 415, 416 (Fla. 5th DCA 2012)).

The consents and waivers provided no testimony about the specific contents of the will, noting that in *Brennan v. Est. of Brennan*, 40 So.3d 894, 897 (Fla. 5th DCA 2010), the appellate court found that the trial court could not admit a lost will upon submission of witness affidavits alone, which merely stated witnesses saw decedent execute will and they signed as witnesses right after that. Appellants were not disinterested witnesses, as they have an interest in the outcome of the proceeding to establish the lost will.

Trial court erred by dismissing an adversary proceeding for lack of prosecution, without following Rule 1.420(e), Florida Rules of Civil Procedure, which applies in probate proceedings; undue delay is not a reason to bypass the rule.

Rivas v. Behar, Gutt & Glazer, P.A., 3D24-1937, 50 Fla. L. Weekly, D2616a (Fla. 3rd DCA, Dec. 10, 2025)

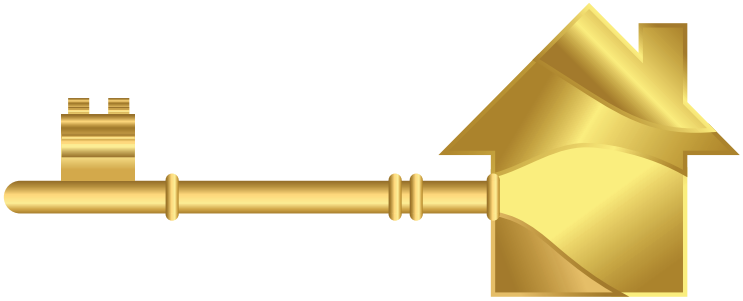
Appellants, claimed beneficiaries residing in the Dominican Republic, filed suit against their former counsel, Behar, Gutt & Glazer, P.A., arising out of representation in a

continued, page 47

Florida Land Trusts:
An Often Overlooked Statutory Tool

By Lisa M. Super, Esq., Zimmerman Kiser & Sutcliffe, P.A., Orlando, Florida

In Florida, land trusts are an often underutilized option for property owners looking to maintain privacy and simplify estate planning. This article explores the benefits that Florida land trusts may provide to clients of real estate practitioners.



What Is a Land Trust?

Land trusts in Florida are governed by the Florida Land Trust Act (the "Act"), codified in Fla. Stat. § 689.071. A land trust is a trust agreement in which the legal title to real property is conveyed to a trustee, who holds the title for the benefit of one or more beneficiaries.

A Florida land trust differs from a revocable trust in that the trustee of a revocable trust has legal title to the trust property, and the beneficiary has equitable title, where the trustee of a land trust has legal and equitable title, and the beneficiary has a separate and distinct beneficial interest in the trust property. Additionally, except for Florida land trusts created before June 28, 2013, the duties of a trustee under a Florida land trust are expressly limited to the following:

1. The duty to convey, sell, lease, mortgage, or deal with the trust property, or to exercise such other powers concerning the trust property as may be provided in the recorded instrument, in each case as directed by the beneficiaries or by the holder of the power of direction;

2. The duty to sell or dispose of the trust property at the termination of the trust;

3. The duty to perform ministerial and administrative functions delegated to the trustee in the trust agreement or by the beneficiaries or the holder of the power of direction; or

4. The duties required of a trustee under Fla. Stat., ch. 721, if the trust is a timeshare estate trust complying with Fla. Stat. § 721.08(2)(c)4. or a vacation club trust complying with Fla. Stat. § 721.53(1)(e).[1]

Key Benefits of Florida Land Trusts

Privacy Protection: The most significant advantage of a Florida land trust is privacy. Given that title to the property is held by the trustee of the trust, a public records search only shows the trust or trustee's name. This is especially useful for high-net-worth individuals, celebrities, or anyone who wishes to keep their ownership interest in real property private. There is no requirement that a copy of the land trust agreement be recorded in the public records.

continued, page 47

Avoiding Probate: Florida land trusts can help beneficiaries avoid the lengthy and costly probate process. A properly structured Florida Land Trust allows a beneficial ownership interest to be owned as joint tenants with rights of survivorship, which permits a beneficiary's beneficial interest to pass to surviving beneficiaries without court action or probate.

Ease of Transfer: Florida land lrusts make transferring ownership of property easier. Instead of a formal sale, the beneficiary can simply transfer the beneficial interest to a third party.

Homestead Protection: Beneficiaries can still qualify for Florida's homestead exemption on their primary residence, even if it is held in a Florida land trust.

Trustee as Beneficiaries: Regardless of whether the trustee is the sole beneficiary of the land trust, the doctrine of merger does not extinguish a Florida land trust or vest the trust property in the beneficiary or beneficiaries of the Florida land trust.[2]

Limitation of Beneficiary Liability: In certain circumstances, the beneficiaries of a Florida land trust may not be liable, solely by being beneficiaries, under a judgment, decree, or order of court or in any other manner for a debt, obligation, or liability of the land trust.[3]

Conclusion

Florida land trusts offer an array of benefits, including privacy, asset protection, and a streamlined transfer process. The ability to avoid probate and maintain tax benefits makes land trusts a versatile tool for property owners.


L. SUPER

Lisa M. Super *practices with the law firm of Zimmerman, Kiser & Sutcliffe, P.A. in Orlando, Florida, and focuses primarily on residential and commercial real estate transactions, and lender representation. Ms. Super completed her undergraduate studies at Eastern Michigan University and earned her juris doctor from Ave Maria School of Law. She is currently serving as the President of the Central Florida Real Estate Attorney's Council.*

Endnotes

1 Fla. Stat. § 689.071(2)(c)(1)-(4).
2 Fla. Stat. § 689.071(5).
3 Fla. Stat. § 689.071(8).

Due to submission deadlines, last issue's Probate Practice Corner article on Summary Administration vs. Formal Administration did not mention the increased Summary Administration threshold of $150,000, which became effective for decedents dying on or after July 1, 2026. Several practitioners also noted that although there is no formal procedure to object to a claim filed in a summary administration, an objection can be made if the administration is converted to a formal administration or it can be litigated in a separate civil proceeding.

probate matter. The action was transferred to the probate division and proceeded as an adversary proceeding.

The case experienced extended periods of inactivity, which appellants attributed to logistical challenges, including visa issues and difficulty securing a deposition. The trial court issued multiple "Orders to Progress the Case," requiring action within 20 days.

After the final order, appellants filed a deposition notice two days late and completed the deposition shortly thereafter. Following another period of inactivity, the trial court dismissed the case with prejudice for failure to comply with the prior order.

The appellate court reversed, holding that Rule 1.420(e) governs dismissals for inactivity in probate proceedings and requires notice, an opportunity to act, and a hearing. The trial court's failure to follow these procedures required reversal.


E. EVANS

Emily Crain Evans *is an attorney with GrayRobinson, P.A. in Lakelan, Florida and focuses her practice on estate planning, probate, and trust administration. She is passionate about helping individuals and families plan for the future and navigate the legal complexities that arise after a loved one's death. Her practice focuses on creating thoughtful estate plans, guiding personal representatives and trustees through administration, and resolving probate matters efficiently and compassionately. A community advocate, she serves on several boards, including the Lakeland Bar Association and is the current Chair of EMERGE Lakeland, a young professional's group of the Lakeland Chamber of Commerce.*



Roundtable

SATURDAY, JANUARY 31, 2026

Sunseeker Resort | Charlotte Harbor, Florida

Prepared by Colleen Coffield Sachs, Esq., Santa Rosa Beach, Florida and Michelle Gomez Hinden, Esq., Orlando, Florida

REAL PROPERTY LAW DIVISION ROUNDTABLE

Thank you to the Roundtable Sponsor - The FNF Family of Companies

The Director of the Real Property Law Division, Steven H. Mezer, called the meeting to order at 8 a.m.

Sponsor Announcement. The FNF Family of Companies was recognized and thanked as the sponsor of the Real Property Roundtable.

Information Items.

Construction Law – Brett Henson and Bruce Partington. Brett Henson spoke about the legislative position of the committee on the revisions to the Florida Public Recruitment framework. There was an article on this topic in the November/December issue of the Florida Bar Journal about inconsistencies between the Consultants Competitive Negotiation Act (CCNA) and Public-Private Partnership (P3). This prompted the creation of a working group to address these inconsistencies. The CCNA regulates public procurement for design-type services such as architecture and engineering, as well as design-build projects. It is based on qualifications. Whereas in a P3, unsolicited proposals are authorized, so that they are not subject to public solicitation.

The proposed changes include: public notice for P3 consultants; clarifying language dealing with continuing services contracts, whether the CCNA applies to situations where the developer has an unsolicited proposal, and phased design-build; and terminating the application of Sunshine Laws to unsolicited proposals and addressing payment bonds.

Condominium and Planned Development Committee – Joel McTague. Joel McTague spoke on proposed changes to Department of Commerce procedures relating to revitalization. It will address publication of personal addresses and phone numbers, as well as MRTA revitalization. There will be no changes to Fla. Stat., ch. 712, only to Fla. Stat., ch. 720.

Task Force Reports. Jim Russick discussed the Section supporting amicus in the *Crist v. Manhattan Palms Association One, LLC*. The court addressed sovereign immunity and whether a county clerk can be sued for incorrectly indexing recorded mortgages. Jim said that, as a Section, we must stand for the protection of the accuracy of the public records. This is the type of public purpose we are about. He asked that the Executive Committee support amicus. Len Prescott said that it is very important that we have clear duties of the clerks. We are not taking a position on behalf of either party. Ellie Taft asked those with business clients to work with the title underwriters to avoid unintended consequences that could chill business in Florida.

Manny Farach reported on derivatives. The committee discussed a special injury test. They are inclined to keep the language of the statute, but may prepare a white paper that would guide the courts.

Action Items.

Florida Realtors – Florida Bar Joint Committee – Colleen Sachs and Lori Ellen Ward. There was a proposal to change paragraph 18 of the FR/Bar standard I (iii) of the contracts relating to the adoption of the Residential Real Estate Rule, and to change Rider EE to remove references to PACE and replace them with Qualifying Improvements to reflect statutory changes. The motion did not need a second. It passed unanimously.

Mike Hargett announce that the CLE Committee has prepared a free CLE that focuses on the Residential Real Estate Rule.

Committee Reports

Real Property Board Certification Review Course – Lloyd Granet, and Laura Licastro Co-Chairs; Martin S.

continued, page 49

Real Property Law Division Roundtable, from page 48

Awerbach, and Melissa Scaletta, Co-Vice Chairs. Laura Licastro talked about expanding the course to provide real practitioner value with advanced level material, while having the academy to focus on exam preparation.

Real Property Problems Study – Susan K. Spurgeon, and Brian W. Hoffman Co-Chairs; Leonard "Len" F. Prescott, and Scott Pence, Co-Vice Chairs. Susan Spurgeon introduced a three-part CLE series on MRTA, beginning with Melissa Scaletta presenting on MRTA Myth Busters, Lori Ellen Ward presenting on notices, and Jeff Dollinger presenting on mineral rights.

Lori Ward spoke about 99-year land leases. She asked for information from anyone who is dealing with them.

Title Issues and Standards – Amanda K. Hersem and Lee Offir Co-Chairs; Robert M. Graham, Cynthia Manfredi, and Melissa Scaletta, Co-Vice Chairs. Melissa Scaletta spoke about the Conveyances chapter. In May, there will be an overview of the chapter, and changes will be an information item on the May Executive Council agenda.

Construction Law Institute – Trevor B. Arnold, Chair; Nikki Bhavsar, and Haley R. Maple, Co-Vice Chairs. Trevor Arnold spoke about the CLI event on March 5th. It will include a golf tournament, two days of programming, and receptions.

Adjournment. Meeting was adjourned at 9:10 a.m.

Are Your Forms Current?

We can help! Florida Lawyers Support Services, Inc. is a non-profit organization created by past chairs of the Real Property Section to market the forms needed by Real Property, Probate and Trust Law attorneys.

Our forms are prepared by the Forms Committee of the RPPTL Section of The Florida Bar and approved by both The Florida Bar and Florida Realtors.

FLSSI
FLORIDA LAWYERS SUPPORT SERVICES, INC
FLSSI
Florida Lawyers Support Services, Inc.

Order the most up-to-date forms today at **FLSSI.org**

Probate and Guardianship Forms

- Forms carry the Supreme Court required 3" x 3" blank square for Court Clerk's use.
- Probate Judges prefer the use of current FLSSI forms.

Florida Real Estate Residential Contracts and Riders

Florida Lawyers Support Services, Inc.
Post Office Box 195909
Winter Springs, Florida 32719
407.515.1501 • FLSSI.org

Probate and Trust Division Roundtable

Highlights of the Meeting of the Section

PROBATE AND TRUST DIVISION

SATURDAY, JANUARY 31, 2026

Sunseeker Resort Florida GUlf Coast • Port Charlotte, Florida



Prepared by Lyudmyla Kolyesnik, Esq., Jacksonville, Florida

Thank you to the Probate Roundtable Sponsors: Stout Risius Ross, Inc. and Guardianship Trust.

The Director of the Probate and Trust Law Division, Sancha K. Brennan, called the meeting to order at 8:02 am.

Sponsor Announcement. The Division Director thanked the sponsors, Stout Risius Ross, Inc. and Guardian Trust. Garry Marshall was present on behalf of Stout, Travis Finchum was present on behalf of Guardian Trust.

General Announcements. The Division Director encouraged committee chairs to timely post agendas prior to meetings to ensure that the members have access to the materials. The Section congratulated Darby Jones on becoming a first time grandmother. The Division Director also recognized Travis Hayes for being the first committee chair to submit his agenda for the meeting.

Announcement from FLSSI. Sarah Butters announced that the updated FLSSI forms are now available. The FLSSI team is working with the Probate Rules Committee and the Supreme Court workgroup on additional revisions, which will likely yield a supplemental issue this year. Sarah acknowledged and thanked members of the Committee for completing this difficult project and for their hard work.

Information Items.

Legislation Committee – S. Dresden Brunner, Probate & Trust Co-Chair. Dresden Brunner provided a legislative status update on the Section initiated bills concerning Trustee Discharge (SB 786 / HB 895), Homestead Exemption and the 98 Year Lease Provision (SB 110 / HB 227).

Action Items.

Charitable Planning and Exempt Organizations Committee – Denise Cazobon, Member. Denise Cazobon presented an update on the Charitable Giving bill (HB 1475 / SB 1338), which addresses circumstances under which a donor may seek a refund of a charitable contribution. The Committee discussed several concerns with the proposed legislation. Members noted that the bill could restrict a Charitable Organization's ability to voluntarily refund a donation, and that the limitations imposed may significantly affect Community Foundations and their administration of donor-advised and restricted funds.

The Committee also expressed concern regarding the bill's requirement that a Charitable Organization provide notice to the donor within 30 days. A review of other states' laws identified only one comparable statute, which allowed a 90-day notice period. Members viewed the proposed 30-day requirement as unrealistic and unduly burdensome. Additional discussion focused on the bill's creation of a six-year window for filing a complaint, which exceeds the current four-year statute of limitations applicable to written instruments, and would effectively impose an additional limitations period. The bill is not limited to endowed funds, raising further questions about its scope and impact.

The bill would authorize a donor, or the donor's representative, to file an action against a Charitable Organization if the organization is unable to comply with the restrictions set forth in the giving agreement.

The Committee proposes to move to oppose proposed legislation HB 1475/SB 1338, unless safeguards are put in place, such as to: protect existing contract rights of donors and Charitable Organizations; protect the Charitable Organizations' ability voluntarily to provide a refund of donated funds; allow the donor to waive application of the law, in whole or in part; protect the variance rights of Florida community foundations; provide charitable organizations with at least 90 days, or such time as may be reasonable under the relevant circumstances, to notify donors if the charitable organization determines, as evidenced by the date of the board of directors meeting minutes, that it is unable to fulfill the terms of a written gift agreement, and to offer a solution to the donor; and address other potential conflicts with other existing Florida Statutes. This action item was passed at the Executive Council meeting on January 31, 2026.

Probate Law Committee – Theo S. Kypreos, Chair. Theo Kypreos reported on the Supreme Court Workgroup's

continued, page 51

recommendations on uncontested probate. The Florida Supreme Court has approved the recommendations in full. The accompanying legislation, SB 1500 / HB 1337, raises the summary administration threshold to $150,000, increases the amount distributable to minors without guardianship to $25,000, and raises the value of intestate personal-property-only estates eligible for disposition without administration to $20,000. The goal is to improve efficiency in uncontested probate matters. The Committee noted that the Section's recommendations were fully adopted and that a CLE program is being developed to support implementation. The Committee voted to support SB 1500 / HB 1337. This action item passed at the Executive Council meeting on January 31, 2026.

Theo next addressed proposed legislation, HB 1459 / SB 1606, allowing individuals with felony convictions to serve as personal representative. Although the House sponsor narrowed the scope of constituents impacted by the bill to immediate family members and added judicial discretion, the Committee expressed concern regarding the lack of safeguards. The Committee recommended opposing the legislation, unless protections are added, including notice to interested persons and judicial consideration of factors, such as the nature of the felony, restoration of rights, time elapsed, family relationship, nomination in the will, and whether the decedent was the victim. This action item passed at the Executive Council meeting on January 31, 2026.

Guardianship, Power of Attorney and Advanced Directives Committee – Elizabeth M. Hughes, Chair. Elizabeth Hughes reported on proposed legislation addressing the eligibility of individuals with felony convictions to serve as guardians. Current law prohibits felons from serving. The proposed bill HB 737 / SB 960 would allow certain family members to be appointed if the felony conviction occurred more than 10 years before the appointment, and would grant the court discretion to consider additional factors. The Committee discussed balancing protection of vulnerable Wards, with expanding opportunities for family members to serve. Members reviewed and refined the language of a proposed standing position; no policy-level objections were raised.

The Committee motioned to oppose any legislation that allows a person convicted of a felony to serve as a court-appointed guardian, unless the person has a significant family relationship with the Ward and adequate restrictions and safeguards are included to ensure the safety of the Ward and the protection of the Ward's assets. This action item was passed at the Executive Council meeting on January 31, 2026.

Committee Reports.

Estate and Trust Tax Planning – Andrew H. Thompson, Chair: Andrew Thompson provided an update on recent FinCEN reporting requirements. Effective March 1, 2026, nonfinanced transfers of residential real property to a transferee entity or transferee trust must be reported to FinCEN. Nicklaus Curley announced that the Section will be offering CLE programs on this topic. As of March 16, 2026, in light of a federal U.S. district court decision out of the eastern district of Texas, *Flowers Title Companies, LLC v. Bessent*, reporting persons are not currently required to file real estate reports with FinCEN and are not subject to liability if they fail to do so while the order remains in force.

Trust Law Committee – Spendthrift Trust Subcommittee, Travis Hayes: Travis Hayes reported that the Subcommittee continues to review issues arising when a beneficiary serves as trustee of his or her own trust, which may result in the loss of spendthrift protections. The Subcommittee has identified an additional refinement to the proposed statutory language. The revised proposal is expected to be presented as an action item at the next meeting.

Wills, Trusts, and Estates Certification Review Course Committee – J. Allison Archbold, Chair: Allison Archbold announced that the next in person preparation course will be held at the Hyatt Orlando on March 20–21, 2026. A CLE program covering Trust Administration and Estate Administration will be released in connection with the meeting. In addition, a free Zoom examination information session will be offered on February 28, 2026, during the lunch hour.

ActionLine – Erin F. Finlen, Co-Chair: Erin Finlen encouraged members to submit articles for upcoming issues, particularly on spendthrift trust topics. She also invited presenters from the Probate & Trust Litigation Symposium to consider converting their presentations into written articles for publication.

CLE Committee – Nicklaus Curley, Co-Chair: Nicklaus Curley reported on upcoming CLE programming, including the *Essentials of Probate and Estate Planning* seminar series, which will cover core fundamentals for practitioners. He also announced a half-day seminar on artificial intelligence to be presented at the Annual Convention. Representatives from Lexis and Westlaw will participate to demonstrate research tools and provide instruction on their platforms.

IRA, Insurance & Employee Benefits Committee – Rachael N. Barlow, Co-Vice Chair: Rachael Barlow announced that the Committee will present a CLE program on April 8th at noon addressing Trust Accounts for Minors, including how such accounts are funded, how they are established, and recent IRS guidance on the topic.

Adjournment. Meeting was adjourned at 9:20 am.

The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

PRSRT-STD
U.S. POSTAGE
PAID
TALLAHASSEE, FL
Permit No. 43

Scan here for instant access to the Section website.

ACTIONLINE BULLETIN BOARD

UPCOMING CLE OPPORTUNITIES

Check our website at ***RPPTL.org*** for a list of OnDemand products available at a discount to Section members.

44th Annual Attorney/Trust Officer Liaison Conference Thursday, July 30, 2026 - Saturday, August 1, 2026	**IN-PERSON** The Breakers Palm Beach, FL 33480 and available via Zoom
Estate Planning (Part of the RPPTL: One Step at a Time 101's Series)	**ON DEMAND**
FinCEN Residential Real Property Rule DO NOT PASS GO - DO NOT COLLECT $200	**ON DEMAND**
What Every Estate Planner Needs to Know About FinCEN's Residential Real Estate Reporting Rule	**ON DEMAND**