ActionLine

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



Did You Know that the U.S. Has an Inheritance Tax?

Winning The War, Not Just The Battle: Unraveling The "Significant Issues" Test

FinCEN's Residential Real Estate Rule and The Settlement Agent

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Passing the Bucket and RPPTL Section Pro Bono Initiatives

If you read my earlier article introducing the "Passing the Bucket" initiative for the Real Property, Probate and Trust Law Section, you will recall that the concept was simple: at our Executive Council meetings, those in attendance could voluntarily contribute $20 (or whatever amount they wished) that would then be donated to a local food bank or community organization in the city where our meeting was held. The idea was that small individual contributions, when combined across our Section, could make a meaningful impact for those in need.



I am pleased to report that the initiative is already producing results.

At our December Executive Council meeting in Orlando, Section members collectively donated $1,136, which was donated to Second Harvest Food Bank of Central Florida, to support its mission of combating hunger in the region.

More recently, at our February Executive Council meeting held at the Sunseeker Resort in Charlotte Harbor, Section members, again, stepped forward and contributed $1,077, which was donated to the Charlotte Care Center, an organization that provides shelter, support, and services to individuals and families in need within the Charlotte County community.

Together, these two meetings alone, resulted in $2,213 in charitable contributions from Section members. To put this in perspective, charitable food organizations estimate that each dollar donated can help provide four meals, meaning these contributions could help provide over 8,800 meals for individuals and families in need.

While these amounts may seem modest in isolation, they represent the collective generosity of colleagues who understand the importance of giving back to the communities in which we live and practice. Just as importantly, these donations represent only the beginning. As the Section continues to meet across the state throughout the years, we will continue passing the bucket and directing those contributions to organizations that provide food, shelter, and essential assistance to people in need in each host community.

In addition to "Passing the Bucket," the Construction Law Committee (CLC) and At Large Members Committee (ALMs) have active pro bono subcommittees. The ALMs have representatives in each circuit in Florida, who actively solicit pro bono opportunities for members in their respective circuits.

The CLC's Pro Bono Subcommittee has three primary goals:

1. **Build Connections**. It is establishing relationships with legal aid organizations statewide that serve clients needing pro bono construction law services. It aims to identify committee members willing to serve as liaisons with their local legal service providers.
2. **Provide Educational Resources**. It offers educational content to legal aid societies and attorneys handling pro bono construction law matters, helping them better serve low-income clients.
3. **Foster Local Networks**. It encourages and facilities the creation of local networks of attorneys who are ready to provide or assist with construction-related pro bono services in their communities.

To further its goals in 2025, the CLC Pro Bono Subcommittee participated in a two-part webinar series titled "Expanding Pro Bono Partnerships in Florida." This webinar series was presented by Florida Legal Services and the Section.

Part 1: *Expanding Pro Bono Partnerships in Florida – Connecting with Civil Legal Aid:*

In this CLE Webinar, Aaron Irving, Esq. of Jacksonville Area Legal Aid (JALA) gave an overview of the pro bono landscape in Florida, and how lawyers can connect with their local legal aid clinics.

Part 2: *RPPTL's Pro Bono Initiatives and the Certified Lawyers on Call (CLOC) Service:*

In this CLE Webinar, RPPTL Section members, including Pam Holcombe, gave an overview of the RPPTL Section's pro bono initiatives.

Both CLE Webinars are available on YouTube.

Both the CLC and ALMs Pro Bono Subcommittees are actively pursuing and partnering with Funding Florida Legal Aid (formerly known as the Florida Bar Foundation) to use its Paladin platform to connect the Section's 11,000+ members with relevant pro bono opportunities. Should this come to fruition, it will provide opportunities for both litigation and transactional members to assist those individuals and non-profit organizations in need of our services.

As lawyers and members of the Section, we are blessed to practice in a profession that allows us to serve others every day. Through Passing the Bucket and the Section's Pro Bono Initiatives, we also have the opportunity to better extend our generosity and services to those in need.

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.

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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
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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 All,

We have another great issue with a variety of articles for your information this time around, including:

- The third installment of our series on the new civil procedure changes by J. Richard Caskey, Esq.;
- A discussion of Internal Revenue Code §2801 and taxation with respect to US Beneficiaries by Shawn Wolf, Esq., Nellie Barcia, Esq., and Jennifer Wioncek, Esq., and Thomas Treece, Esq.;
- An article discussing attorney fees in relation to construction litigation by Brian T. Allen. Esq. and Connor O. Smedberg, Esq.;
- A thorough discussion on FinCEN and its effect on the RPPTL world by Shannon L. Widman, Esq. – note that just prior to publication there is yet another stay in place; however, we thought it best to start providing more in-depth information about a law that has been lurking in the background for the past several years; and
- An article highlighting the pervasive issue of Heirs' Properties and what Florida legal aid programs have been doing to assist the citizens of Florida by LaTonya Lipscomb Smith, Esq.

Lastly the Co-Editors-in-Chief would like to mention Mr. Shawn Wolf who sadly passed away during the editorial process. We have included an in memoriam for Mr. Wolf in this issue to honor someone who spent their career giving back to the practice of law.

In closing, we mention that we are always looking for content, so if you have an idea on a topic or you wish to write an article, please contact our team and we can help you navigate the process.

Warmest Regards,
Erin and Michelle

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Amendments To Rules Of Civil Procedure:

A Series Part 3 of 4 – A Procedural Hodgepodge

By J. Richard Caskey, Esq., Co-Chair Ad Hoc Rules Revisions Committee, J. Richard Caskey, P.A., Tampa



As of the time of writing this article, the Florida Supreme Court's significant amendments to the Florida Rules of Civil Procedure (the "Civil Rules") have been in effect for more than a year. Although some amendments became effective in 2024, most had a January 1, 2025, effective date (and still others came thereafter). The ad hoc Rules Revisions Committee of the Section, while initially formed to review and comment in response to proposed Rule changes, now monitors and educates Section members and other interested practitioners regarding the amended Civil Rules. In furtherance of its educational goals, the committee submitted a series of ActionLine articles, beginning in the Spring/Summer 2025 issue, to summarize the amendments. The first article explored the amended Rule 1.200 case management procedures, Rule 1.280(a) initial discovery disclosure requirements, and exemptions to those amendments for most probate, guardianship, and trust-related cases. The second article in the series, which appeared in the Fall 2025 issue of ActionLine, examined additional discovery-related amendments, including Florida's adoption of the federal proportionality standard, parties' duties to supplement discovery, and enhanced sanctions for discovery violations.

Having previously covered two voluminous areas of overhaul (case management and discovery), this third article now turns to remaining miscellaneous revisions throughout the Civil Rules. Although this article does not include a comprehensive list of every single amendment, it serves to highlight substantive changes and assist practitioners in their review of the Civil Rules. Without prioritizing the importance of any particular rule, below is a summary of selected amendments addressed in numerical order:

Rule 1.090 – Extensions of Time. Amended Rule 1.090(b) states that a court may "extend" time periods "for good cause" (rather than "enlarge" them "for cause shown" under the prior Rule). Further amendments to Rule 1.090(b) clarified (consistent with the prior Rule) that the court may grant an extension with or without a motion or notice if the court acts or if a request is made before the original time or extension expires,[1] but only on motion made and based upon excusable neglect if the time to act has already passed.[2] The amended rule also now explicitly provides that extensions of deadlines in case management orders are governed by Rule 1.200 (regarding case management) or Rule 1.201 (regarding complex cases).[3]

Rule 1.110 – Affirmative Defenses. Effective July 1, 2024, Rule 1.110(d) was amended to address pleading requirements for affirmative defenses and now requires a pleading that sets out an affirmative defense, which, "must contain a short and plain statement of the ultimate facts supporting the avoidance or affirmative defense."

Rule 1.202 – Conferral. Rule 1.202 requires a party to confer in good faith with the opposing party before filing a non-dispositive motion. If the motion is ultimately filed, the movant must include in the motion a signed certificate describing the efforts made to confer and resolve the issue and stating whether the opposing party agrees or disagrees with resolution of all or part of the motion (or stating that conferral is not required). Rule 1.202(b) contains a form for the certificate (including certification language to use if conferral is not required). Rule 1.202(c) removes the conferral requirement if either party is *pro se* and further lists specific exemptions for which conferral is not required. Purposeful

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evasion of communication with the opposing party, failure to confer, or omission of a proper certificate allow the court to impose sanctions under Rule 1.202(d), including denial of the motion without prejudice.

Rule 1.440 – Setting Trial. Under prior Rule 1.440, a case could not be set for trial until it was "at issue" – i.e., only after any motions directed to the last pleading had been resolved (or 20 days after service of the last pleading if there were no motions directed to it). The amended Rule eliminates that restriction and now states, "The failure of the pleadings to be closed will not preclude the court from setting a case for trial."[4]

Rule 1.460 – Continuances. Consistent with the Florida Supreme Court's stated intention to promote timely resolution of cases, amended Rule 1.460(a) states that motions to continue trial are "disfavored" and successive continuances are "highly disfavored." Moreover, the Rule expressly states continuances "should rarely be granted and then only upon good cause shown." The longstanding requirement that the party requesting continuance must sign a written motion remains in the amended rule.

Rule 1.500 – Defaults. Several revisions to Rule 1.500, governing entry of defaults, became effective January 1, 2026. The Florida Supreme Court amended the rule to clarify that a party must *file and serve* a motion for default before the clerk[5] or the court[6] can enter a default. Rule 1.500(c) also now clarifies that until a clerk or judicial officer enters a default against a party, that party's status in the case does not change, and the party still has a right to receive notice and service of all filings.

Rule 1.510 – Summary Judgment. The Florida Supreme Court undertook several amendments of the summary judgment rule over the past few years. After revising the Rule to conform with the federal summary judgment standard, it made multiple adjustments to the deadlines contained in Rule 1.510. As of the date of writing this article, the deadline to respond to a motion for summary judgment is 40 days after service of the motion.[7] A hearing on the motion must be set for a date at least 10 days after the response deadline.[8] As a result, a motion for summary judgment cannot be heard until at least 50 days after service of the motion, unless otherwise stipulated or ordered.

Rule 1.730 – Mediated Settlement Agreements. Prior Rule 1.730(b) required that mediated settlement agreements "must" be signed by both "the parties and their counsel, if any." Effective April 1, 2025, the Florida Supreme Court amended the rule to remove the requirement that counsel for each party must sign the agreement and to allow a party's representative having full settlement authority to sign in place of the party.

Rule 1.820 – Non-Binding Arbitration. Revisions to Rule 1.820 regarding non-binding arbitration became effective July 1, 2024. New subsection (g)(4) requires a party who uses transcripts or exhibits at a non-binding arbitration to retain those documents until the conclusion of the case (unless otherwise agreed or ordered). While subsection (h) previously provided that a non-binding arbitration decision became binding unless a party filed a motion for trial, amended Rule 1.820(h) now requires a party to file a notice of rejection of the decision and a request for trial in the same document, and specifies that, "No action or inaction by any party, other than the filing of the notice, will be deemed a rejection of the arbitration decision." The deadline for rejecting the arbitration decision and seeking trial remains 20 days after service of the decision.

With the conclusion of this third article in the series, we wrap up the significant substantive amendments to the Civil Rules implemented since 2024. The next issue of ActionLine will include a final, fourth article, concluding this series with a summary of amendments to the Florida Rules of General Practice and Judicial Administration, and an explanation of their interaction with the Civil Rules.

As a gentle reminder, because the amendments addressed in this series are not comprehensive and additional amendments may be implemented, practitioners should consult these articles only as a guide and should review the full text of each of the rules periodically for updates.


R. CASKEY

J. Richard Caskey ("Rich") *practices at J. Richard Caskey, P.A., in Tampa, in the areas of estate and trust litigation. As a Florida Supreme Court Certified Circuit Mediator and Appellate Mediator, Rich also focuses upon mediation of guardianship, estate, and trust disputes. Rich is a fellow of the American College of Trust and Estate Counsel ("ACTEC") and is current Co-Chair of the Section's Rules Revisions Committee. He most recently served for five years as Chair of the Section's Probate and Trust Litigation Committee. Rich attended the University of Florida and is a "Triple Gator" having earned his B.S. in Accounting, M.B.A., and J.D. degrees from UF.*

Endnotes

1 Fla. R. Civ. P. 1.090(b)(1)(A).
2 Fla. R. Civ. P. 1.090(b)(1)(B).
3 Fla. R. Civ. P. 1.090(b)(2).
4 Fla. R. Civ. P. 1.440(a).
5 Fla. R. Civ. P. 1.500(a).
6 Fla. R. Civ. P. 1.500(b).
7 Fla. R. Civ. P. 1.510(c)(5).
8 Fla. R. Civ. P. 1.510(c)(6).

Did You Know that the U.S. Has an Inheritance Tax?

By Shawn P. Wolf, Esq., Jennifer J. Wioncek, Esq., Nellie Barcia, Esq., and Thomas Treece, Esq., Bilzin Sumberg Baena Price & Axelrod LLP, Miami, Florida

While we were editing this article, the editorial staff received the sad news that Shawn P. Wolf died suddenly and unexpectedly on February 1, 2026. Shawn was a preeminent practitioner, speaker, and author in the field of international taxation. He was a long-time contributor to the Tax and Real Property, Probate and Trust Law Sections of The Florida Bar, and recent chair of the Tax Section. We send our deepest condolences to Shawn's family, friends, and colleagues. Please see the "In Memoriam" page immediately following this article.

Internal Revenue Code ("Code") Section ("§") 2801 was enacted in 2008. On January 10, 2025, almost a decade after the issuance of the proposed regulations, final regulations were issued by the Internal Revenue Service ("IRS") implementing §2801 (the "Final Regulations"). Understanding that the Final Regulations had to implement a new paradigm (i.e. the taxation of the recipient of a gift or bequest, rather than the donor) utilizing the existing parameters of the Code, the Final Regulations undoubtedly clarified some aspects of §2801, while also creating some confusion. The aim of this article is to provide commentary on particular aspects of §2801 and the Final Regulations that would be relevant to estate and gift tax practitioners.

On January 16, 2026, the IRS issued a final Form 708 (the "Form 708") and provided draft instructions on December 31, 2025. [1] Now that the final Form 708 has been posted, it is important for U.S. Beneficiaries and trustees to become acclimated with these new reporting rules.

The Basics of the Law

Pursuant to §2801, if you are a "U.S. Beneficiary"[2] who is the recipient of a gift or bequest from, or a distribution from a trust established by, a former U.S. citizen or former Green Card holder (i.e., an expatriate), then you may be subject to a 40% tax upon receipt of that gift or bequest or distribution from a trust (the "§2801 Tax").[3] More specifically, the §2801 Tax imposes a tax on a U.S. Beneficiary who receives a "covered gift or bequest" from a "covered expatriate" at the highest estate or gift tax rate in effect at the time of the transfer (i.e., 40%, in 2026). [4] These covered gifts, bequests, and distributions are to be reported by such U.S. Beneficiaries on Form 708.

The §2801 Tax attempts to create some parity between gifts and bequests from a covered expatriate and gifts and bequests from a U.S. citizen to another U.S. citizen or U.S. domiciliary or trust (to avoid "expatriated money" from coming back into the U.S. without a U.S. estate or gift tax); however, discrepancies abound. For example, by linking the net worth threshold to be considered a covered expatriate to a fixed dollar amount ($2,000,000), the effect of the §2801 Tax is an increase in the base subject to transfer taxation under §2801, as a U.S. person donor would not be subject to U.S. gift or estate tax unless such gift is in excess of the unified credit amount ($15,000,000 in 2026).

Consider this scenario: A covered expatriate leaves the U.S. with $5,000,000. If that individual dies with the same $5,000,000, leaving it all to a U.S. Beneficiary, such U.S. Beneficiary would be subject to §2801 Tax, owing $2,000,000 to the IRS. This would not be true if the decedent was still a U.S. person and had any amount of applicable exclusion left.

How Does the §2801 Tax Apply to Annual Exclusion Gifts?

The §2801 Tax applies to the total value of covered gifts and bequests received by an individual during the calendar year, less the annual gift tax exclusion amount in effect for such calendar year ($19,000 in 2026), regardless of the

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number of covered expatriates making covered gifts and bequests to such individual in that year. For example, if a covered expatriate father and mother each gifted $50,000 to their U.S. citizen daughter in 2026, the result would be that $81,000 is subject to the §2801 Tax. Whereas, if father and mother were U.S. persons, assuming they have more than $100,000 of applicable exclusion amount available, the same amount of gifts would result in no gift tax due.

How Does the §2801 Tax Apply to Gifts and Bequests from a Covered Expatriate to a U.S. Beneficiary Spouse?

In general, a gift or bequest will not be a covered gift or bequest if such gift or bequest qualifies for the marital deduction.[5] In the trust context, the §2801 Tax does not apply to gifts made by a covered expatriate to a marital trust for the benefit of the U.S. Beneficiary spouse when a valid Qualified Terminable Interest Property Trust ("QTIP") or Qualified Domestic Trust ("QDOT") election has been made for purposes of qualifying for the marital deduction.[6] The Final Regulations, however, state that such election to treat the trust as a QTIP or a QDOT can be made only as to U.S. situs property.[7] This means that the bequest of non-U.S. situs assets from a covered expatriate to his or her U.S. Beneficiary spouse through a QTIP or QDOT is immediately subject to the §2801 Tax. The preamble to the Final Regulations suggests that one way to plan around this would be to give a U.S. Beneficiary spouse an outright gift.[8]

It appears that that this interpretation relates to the specific language of the §2801(e)(3) exception (which hypothecates that the covered expatriate remained a U.S. person) and the requirement that a deduction is allowed with respect to a QTIP or QDOT under §2044.[9] Clearly, if the decedent were a U.S. person, a deduction would have been allowed for all assets, including foreign situs assets, under §2056; however, as a covered expatriate would not be taxed on foreign situs assets, no deduction is technically required. At best this is a trap for the unwary, and one can query the extent to which the Final Regulations track the statute.[10]

How Does the §2801 Tax Apply to Distributions from Trusts Settled by a Covered Expatriate to U.S. Beneficiaries?

Distributions from Foreign Trusts

The distribution to a U.S. Beneficiary from a foreign trust ("FT") established by a covered expatriate is treated as a covered gift or bequest. The U.S. Beneficiary is responsible for paying the §2801 Tax in the calendar year of the distribution. The amount of the distribution attributable to a covered gift or bequest is determined by multiplying the distribution by a ratio (the "§2801 Ratio") that is redetermined after each contribution to the FT. The §2801 Ratio tracks the percentage of contributions from covered expatriates to the FT in relation to the entire amount of contributions to the FT. Form 708 shows how to calculate the §2801 Ratio for FT's in Section 1 of Part VI.

The Final Regulations clarify that if the trustee of the FT does not have sufficient books and records to calculate the §2801 Ratio, and if the U.S. Beneficiary is unable to obtain the necessary information with regard to the FT, the U.S. Beneficiary must assume that the entire distribution is attributable to a covered gift or bequest and must remit with Form 708, the §2801 Tax on the full amount less the $19,000 annual exclusion amount. Additionally, the Final Regulations clarify that the assumption that a distribution is attributable to a covered gift or bequest is rebuttable; however, the Final Regulations do not contain a detailed list of the types of information that may be used to rebut this presumption.

Distributions from Domestic Trusts

If a covered expatriate contributes assets to a domestic trust ("DT"), the DT is liable for payment of the §2801 Tax in the calendar year in which the contribution is made. In turn, a U.S. Beneficiary who receives a distribution from that DT will not be subject to the §2801 Tax.

The Final Regulations provide an option for a FT to elect to be treated as a DT for §2801 Tax purposes. If such an election is made, the electing trust becomes responsible for paying the §2801 Tax, thereby shifting the tax burden away from the U.S. Beneficiary. Form 708 shows how to calculate the §2801 Ratio for FT's electing to be treated as a DT in Section 3 of Part IV.

Income Tax Coordination with Distributions from Trusts

Because a distribution from a trust may carry out income to the U.S. Beneficiary, it is important to note that the U.S. Beneficiary is allowed to deduct the §2801 Tax paid in a given year from the U.S. Beneficiary's gross income for that year.[11] Notably, the distribution of accumulated income, which is known more formally as Undistributed Net Income (an "accumulation distribution"), from a FT to a U.S. Beneficiary is subject to the §2801 Tax, and the full amount of the §2801 Tax attributable to such accumulation distribution is not deductible against the "throwback tax" described in Code §§665 through 668 under the Final Regulations. As a result, the application of the §2801 Tax and the "throwback tax" rules could apply simultaneously! If both apply, it is possible that the tax in this situation could exceed 100% of the distribution![12]

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What Are a U.S. Beneficiary's Compliance Obligations Related to the §2801 Tax?

The Final Regulations clarify that the §2801 Tax will not apply to gifts or bequests received by a U.S. Beneficiary prior to June 17, 2008. The IRS provided relief for the reporting requirements and the tax obligations required by the §2801 Tax for gifts or bequests made after June 17, 2008 by deferring the same pending issuance of IRS guidance.[13] As no additional guidance has been issued on this point (but Form 708 has now been issued), there is an open question with respect to the application of the §2801 Tax for the years 2008 – 2024.

A U.S. Beneficiary who receives a covered gift or bequest must timely file Form 708. The Final Regulations indicate that the due date for Form 708 is on or before the 15th day of the 18th calendar month following the close of the calendar year in which the covered gift or covered bequest was received. A U.S. Beneficiary is not required to file Form 708 for a calendar year in which the total fair market value of all covered gifts and bequests received by such individual during the calendar year is less than or equal to the annual gift tax exclusion amount in effect for such calendar year (e.g., $19,000 for 2026). Further, the Final Regulations state that an automatic 6-month extension of time to file Form 708 will be available to taxpayers who apply for an extension on the appropriate form.[14] The draft instruction to Form 708 states that Form 7004 will be used for requesting an extension.[15]

If a taxpayer fails to file Form 708 or pay the §2801 Tax, various penalties may be applicable.[16] As with all IRS penalties, these penalties can become substantial.[17] Notably, a U.S. Beneficiary may apply for an extension of time to file, but not for additional time to pay the §2801 Tax.

How Does A U.S. Beneficiary Know He or She Received A Covered Gift or Bequest?

The Final Regulations place the burden of determining whether the transferor is a covered expatriate, and whether the transfer is a covered gift or covered bequest, on the U.S. Beneficiary.[18] In limited circumstances, which have yet to be defined, the IRS will disclose to a U.S. Beneficiary whether the donor or decedent was a covered expatriate and whether the transfer was a covered gift or covered bequest. The Final Regulations contemplate creating a procedure by which a covered expatriate can authorize the disclosure of certain information relevant to computing the §2801 Tax by the IRS to U.S. Beneficiaries and a corresponding procedure for requesting such information.

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The Final Regulations create a rebuttable presumption that a donor expatriate is a covered expatriate and that a gift is a covered gift, unless a living donor expatriate authorizes the disclosure of the donor expatriate's relevant return or return information to the U.S. Beneficiary of any gift.[19] A reasonable assumption might be that one of the ways, which are yet to be defined, to allow this disclosure would be that a donor expatriate will be able to authorize the U.S. Beneficiary to have access to this information presumably on the donor expatriate's filed IRS Form 8854. To the extent that such presumption applies, a U.S. Beneficiary must then undertake a potentially impossible task to prove to the IRS whether a gift from an individual to him or her does not include assets transferred by a covered expatriate. This said, although one might think that a copy of the expatriate donor's Form 8854 and proof of filing might suffice, the Final Regulations do not clearly advise what is sufficient to prove that the expatriate donor was not a covered expatriate.

In addition, the Final Regulations allow a taxpayer who receives a gift or bequest and concludes that such gift or bequest is not a covered gift or covered bequest to file a protective Form 708.[20] The act of filing a protective Form 708 will commence the running of the period of limitations for assessment of tax, if the protective return includes all of the information otherwise required on Form 708, along with an affidavit signed under penalty of perjury, setting forth the information on which the U.S. Beneficiary relied in concluding that the donor or decedent was not a covered expatriate or that the transfer to a trust was not a covered gift or covered bequest. The U.S. Beneficiary taxpayer must also attach a copy of the completed Part III of IRS Form 3520 for all trust distributions, or Part IV of IRS Form 3520 for all gifts and bequests, when applicable.[21]

Key Takeaways

Practitioners should keep additional due diligence items in mind when counseling their clients relating to the §2801 Tax. For example, if your client is a trustee, such individual or company will have to track and compute information regarding the §2801 Tax and provide U.S. Beneficiaries with such information upon making distributions, so that the U.S. Beneficiaries can determine the §2801 Tax liability. Trustees will need to be cognizant of Form 708 and the deadlines for filing and paying the tax. Either way, practitioners will need to inquire whether their clients' assets include assets or future inheritances, whether in trust, or otherwise, are being or have been given to them by a covered expatriate.

U.S. Beneficiaries who are recipients of gifts or bequests from individuals they know are covered expatriates will need to inform their U.S. tax return preparer of such covered gifts and bequests for purposes of timely filing Form 708 (and applicable Form 3520). U.S. Beneficiaries who receive gifts or bequests from individuals they are not aware are covered expatriates, or receive distributions from a trust that they are not aware was funded by a covered expatriate, should discuss with their U.S. tax advisors to determine whether they should file Form 708 (or a protective Form 708) for such gift, bequest or distribution from that trust. With the Form 708 now issued, tax return preparers, trustees and U.S. Beneficiaries should be ready to comply with §2801 Tax for the 2025 tax year.

Practitioners may consider advising every U.S. Beneficiary who receives a gift or bequest from a foreigner to file a protective Form 708 with respect to such gift or bequest.

If you are counseling a U.S. individual planning to expatriate, we highly recommend that such individual engage (or authorize you, the practitioner, to engage) in communication with such individual's children and family members about their expatriation. Copies of their Form 8854 and other related expatriation documentation should be maintained with their estate planning or other important documents.

Further, we caution practitioners to carefully consider the IRS' position regarding typical marital trust planning (whether a QTIP or QDOT), by not deferring the §2801 Tax as to any foreign situs assets transferred to a marital trust for a client who is planning to expatriate (or has already expatriated), but whose spouse plans to remain a U.S. Person. As noted above, the easiest way to avoid the §2801 Tax on covered gifts or bequests to a U.S. Beneficiary spouse is to give the spouse an outright gift.


N. BARCIA

Nellie E. Barcia *concentrates her practice on private wealth services and tax law at Bilzin Sumberg, where she advises high net worth individuals and closely-held companies on sophisticated tax and estate planning matters. Her work encompasses the structuring of inbound and outbound investments, the establishment and administration of domestic and foreign trusts, probate matters, private trust company design, tax compliance, and the acquisition and disposition of U.S. real estate and other investments.*

Nellie's comprehensive understanding of complex tax and estate planning issues enables her to distill multifaceted challenges into clear strategies, empowering clients to make well-informed decisions aligned with their long-term family objectives. She earned her J.D. and LL.M., cum laude, from the University of Miami in 2016 and her B.A. from Barnard

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College in 2011. Nellie is fluent in Spanish and has been admitted to practice in Florida and the District of Columbia.


J. WIONCEK

***Jennifer J. Wioncek** is the head of Bilzin Sumberg's Tax & Private Wealth Group. She is a highly experienced tax attorney with extensive expertise in handling the tax and succession planning needs of high net worth clients for domestic and cross-border families. She is a Fellow of the American College of Trust and Estate Counsel ("ACTEC"). She is also an adjunct professor at the University of Miami School of Law Tax LLM program where she has taught multiple classes in the area of trust and estates. She is an active member of the Society of Trust and Estate Practitioners ("STEP") with TEP recognition, as well as the Florida Bar Tax Section. Jennifer is ranked in Chambers High Net Worth and Chambers Florida Tax; was recognized as a "Power Woman" attorney by Citywealth, as well as being consistently recognized by Florida Super Lawyers and the South Florida Legal Guide.*


T. TREECE

***Thomas Treeces'** practice focuses on the creation and administration of U.S. and foreign, grantor and non-grantor, onshore and offshore trusts with an emphasis on efficient income, estate and gift tax planning strategies for domestic and cross-border clients.*

Endnotes

1 Form 708 (December 2025); and see Instructions for Form 708 (Rev. December 2025).

2 A "U.S. Beneficiary" means a United States citizen or U.S. estate and gift tax domiciliary (a "U.S. person") or trustee of a domestic trust or of a foreign trust electing to be treated as a domestic trust (discussed herein). An individual is considered domiciled in the U.S. for U.S. federal estate and gift tax purposes if such individual is physically present in the U.S. with the intent to remain indefinitely. *See* U.S. Treasury Regulation Section ("Reg. §") 20.0-1(b)(1) and Reg. §25.2501-1(b). It should be noted that a Green Card is only a factor in determining an individual's domicile.

3 A foreign tax credit may be available to reduce the §2801 Tax, subject to certain limitations.

4 A "covered gift or bequest" means: (i) any property acquired by gift directly or indirectly from an individual who, at the time of such acquisition, is a covered expatriate; and (ii) any property acquired directly or indirectly by reason of the death of an individual who, immediately before such death, was a covered expatriate. *See* Code §2801(e)(1)(A) and (B). A "covered expatriate" means a U.S. citizen or long-term resident who renounces citizenship or relinquishes a Green Card on or after June 17, 2008, and who on such date, (a) has an average annual net income tax liability for the previous five tax years greater than $211,000 (the 2026 inflation adjusted amount); (b) has a net worth of $2 million or more; or (c) fails to certify such individual complied with all U.S. tax obligations for the previous five tax years. *See* Code §877A(g)(1).

5 *See* Code §2801(e)(3) and *see* Reg. §28.2801-3(c)(5).

6 *See* Reg. §20.2056(b)-7 with respect to the QTIP election, and *see* Reg. §20.2056A-2 regarding the QDOT election.

7 *See* Reg. §28.2801-3(c)(5).

8 *See* page 3382 of the Federal Register Volume 90, No. 8 (Tuesday, January 14, 2025).

9 *See* Code §2801(e)(3), which provides (emphasis added) that a covered gift or bequest "shall not include any property with respect to which a deduction would be allowed under Code §2055, 2056, 2522, or 2523, whichever is appropriate, if the decedent or donor were a United States person."

10 The IRS might have been able to solve this differently, by tying §2801 and §2044 together, and deeming that a deduction was obtained for this purpose. It is unclear if the IRS did not believe it had the authority to do so. Regardless, one might consider filing a Form 8275-R in the right circumstances.

11 *See* Reg. §28.2801-4(a)(3)(ii).

12 For more background on this, *see* page 3389 of the Federal Register Volume 90, No. 8, (Tuesday, January 14, 2025).

13 *See* IRS Notice 2009-85.

14 *See* Reg. §28.6081-1.

15 Form 7004 (Rev. December 2025).

16 *See* Reg. §28.2801-6(d) and Reg. §28.6081-1(d); *see* also Code §6651.

17 *See* Reg. §28.2801-6(d) and Code §6662(g) relating to a penalty of 20% related to a substantial understatement, and Code §6662(g) relating to a gross valuation understatement which increases the penalty to 40%. The Final Regulations also impose those accuracy related penalties pursuant to Code §6695A, arising from a substantial and gross valuation misstatements attributable to incorrect appraisals. In such circumstance pursuant to Code §6695A(b), the accuracy-related penalty is the lesser of (1) the greater of 10% of the tax underpayment, or $1,000, or (2) 125% of the income the appraiser received for the appraisal.

18 *See* Reg. §28.6081-7 (a); and *see* Reg. §28.6081-7 (b)(1), pursuant to which the IRS will be creating a procedure by which a covered expatriate can authorize the disclosure of certain information relevant to computing the §2801 Tax by the IRS to U.S. Beneficiaries and a corresponding procedure for requesting such information pursuant to Reg. §601.601(d)(2)(ii)(b); *see* also, Reg. §601.601(d)(2)(ii)(b).

19 *See* Reg. §28.6081-7 (b)(2).

20 Query: Could an individual who is unsure of their U.S. domicile file a protective return (i.e. an individual studying in the U.S. with no current plans to remain but who receives a covered gift or bequest)? What if that individual stays in the U.S. and is later challenged by the IRS as to domicile at the time of receipt?

21 *See* Reg. §28.6011-1(b) which provides the safe harbor procedures for filing a protective Form 708.



In Memoriam

SHAWN P. WOLF

FEBRUARY 2, 2026

We mourn the passing of Shawn P. Wolf, whose exceptional career, leadership, and humanity left a lasting imprint on the legal profession and tax community, and the many clients and colleagues he served.

Shawn was widely regarded as one of nation's preeminent private wealth and international tax attorneys. Over the course of his career, he advised domestic and international high-net-worth individuals, multi-generational families, and closely held businesses on complex U.S. and cross-border tax, estate planning, expatriation, and compliance matters. He was particularly sought out for his ability to guide clients through intricate, multi-jurisdictional issues with clarity, sound judgment, and unwavering integrity.

Shawn earned his undergraduate degree in Business Law and International Finance & Marketing from the University of Miami, followed by his Juris Doctor degrees from the University of Pittsburgh and the University of Miami, and a Master of Laws in Taxation with an International Tax Certificate from the University of Miami School of Law. His academic foundation reflected the global and sophisticated nature of the work he would go on to lead throughout his career.

Shawn's professional credentials reflected the highest levels of distinction in the tax and private wealth field. He was a Florida Bar Board Certified Tax Lawyer, a designation held by a select group of practitioners and widely regarded as a benchmark of excellence. He served in numerous leadership roles within The Florida Bar Tax Section, including as Chair, and was a Fellow of both the American College of Tax Counsel and the American College of Trust and Estate Counsel, honors reserved for lawyers who have demonstrated exceptional skill, integrity, and leadership. His professional excellence was recognized nationally and internationally through honors such as *Chambers USA*, *Chambers High Net Worth*, *The Best Lawyers in America*, *Florida Super Lawyers*, and *Lawdragon's 500 Leading Global Tax Lawyers*.

Shawn was deeply committed to education and invested in mentorship. He served as an adjunct professor of international taxation at University of Miami, Florida International University, Florida Gulf Coast University, and Instituto Tecnológico Autónomo de México (ITAM), and was a frequent lecturer and contributor to professional journals and conferences. He was also a prolific and highly respected author and speaker on international and private wealth tax matters. His writings, published in *The Florida Bar Journal*, *STEP Journal*, *Florida CPA Today*, and Bilzin Sumberg's *Tax & Wealth Services Report*, were widely regarded for their clarity, intellectual rigor, and practical insight. Through his scholarship, Shawn helped practitioners navigate some of the most complex and evolving areas of U.S. and cross-border taxation.

Beyond his professional accomplishments, Shawn was known for his warmth, intellectual curiosity, and unmistakable presence. A devoted fan of the Pittsburgh Steelers and a lifelong enthusiast of Star Wars, The Lord of the Rings, comic books and graphic novels, his passions reflected a deep appreciation for storytelling, strategy, and enduring narratives of courage, loyalty, and perseverance. Those who knew him best cherished his wit, generosity of spirit, and rare ability to form genuine, lasting connections with people from every walk of life. Shawn's legacy of love, laughter, and unwavering devotion to family endures through all who were fortunate enough to know him. His greatest hope for his children was that they pursue their dreams, without limitation, and live lives filled with purpose, joy, and adventure. For family, friends, and colleagues alike, the most meaningful way to honor Shawn's memory is to live fully, love deeply, and approach the world with the same curiosity, kindness, and enthusiasm that defined his life.

Shawn will be remembered as a consummate professional of the highest integrity, a generous mentor, and a tireless advocate for excellence in the practice of international tax and private wealth. His contributions to the legal profession and tax community, his dedication to education, and his leadership in professional organizations left an indelible mark on colleagues and students alike. He touched the lives of many through his expertise, his kindness, and his unwavering commitment to his clients and his community.

Winning The War, Not Just The Battle:

Unraveling The "Significant Issues" Test

By Brian T. Allen, Esq., Carlton Fields, P.A., Tampa
and Connor O. Smedberg, Esq., Foley & Lardner LLP, Tampa

Attorney's fees can decisively shape the course of a Florida construction dispute, often rivaling the significance of the underlying claims themselves. Florida generally adheres to the "American Rule," meaning each litigant bears its own legal costs unless a statute, rule, or contractual provision shifts fees. In construction contracts, it is common to see language entitling the "prevailing party" to recover attorney's fees. Yet determining who truly won a multi-faceted construction lawsuit is more intricate than it might appear.

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Historically, Florida courts used a net judgment approach under which the side that wound up with a monetary award was considered the victor for fee-shifting purposes. Over the past few decades, however, the Florida Supreme Court has redirected courts toward a more nuanced "significant issues" standard reflecting modern litigation complexities. This evolution is demonstrated in two influential decisions, *Moritz v. Hoyt Enterprises, Inc*.[1] and *Prosperi v. Code, Inc*.[2], where the Court rejected the mechanical net judgment rule in favor of a deeper, instinctive approach.

Moritz signaled that Florida courts should ask whether a litigant "prevailed on the significant issues" that truly shaped the outcome. In *Moritz*, purchasers sued a contractor over construction of a custom single-family home, alleging the contractor had breached contractual requirements for quality and specifications, and seeking to recover their deposit. The contractor denied the allegations and filed a counterclaim, asserting the purchasers' repudiation forced it to sell the home at a reduced price. Although the purchasers recovered part of their deposit and obtained a judgment against the contractor, the trial court found they breached the contract and denied their motion for attorney's fees. The Florida Supreme Court affirmed, reasoning that the key question was which side bore legal responsibility for failing to perform and which side was entitled to compensation under the contract. Because the contractor prevailed on that fundamental question of breach, it was deemed the "prevailing party" for attorney's fees. The Court's ruling undercut prior decisions that relied solely on comparing net monetary awards, rather than focusing on liability and substantive success.

Prosperi arrived soon after, offering a closely related analysis in a case where both lien enforcement and contractual claims were tried together. In *Prosperi*, the owner hired a contractor for property improvements. A dispute over payments arose, prompting the contractor to leave the job and the owner to hire a replacement. The contractor initially sought to foreclose a mechanic's lien, but ultimately failed on that claim because it submitted false interim affidavits. Although the contractor lost on the lien claim, it recovered a net monetary award. The owner argued that defeating the lien entitled him to attorney's fees under Fla. Stat. § 713.29 (1989)[3], which is designed to reward the prevailing party in lien actions. Under a strict "net judgment" approach, the contractor would not have owed fees, as it recovered money on its contract claim. However, the Florida Supreme Court rejected that reasoning, emphasizing that, "the trial judge must have the discretion to consider the equities and determine which party has in fact prevailed on the significant issues."[4] Given that the contractor's lien claim was nullified by its own fraudulent affidavits—a central controversy underpinning the entire suit—the contractor could not sidestep liability for the owner's fees merely by securing a monetary award on an alternate theory. The Court thus reinforced that trial judges should focus on the real substance of the parties' successes and failures, rather than on any one-dimensional tally of net dollars. The result was a broader, flexible standard that, together with *Moritz*, marked a clear departure from utilizing pure arithmetic to determine fee entitlement.

This multi-issue terrain arises frequently in construction suits, which often include multiple breach-of-contract counts, *quantum meruit* alternatives, lien or bond enforcement actions, cross-claims, and counterclaims. A recent illustration of Florida's flexible approach comes from the Fourth District Court of Appeal's ruling in *Lemartec Corp. v. East Coast Metal Structures Corp*.[5] The dispute arose out of the construction of three separate buildings, including an office building, a molding building, and a pulping building. The contractor provided a subcontractor with three Letters of Intent (LOIs) and later provided formal subcontracts, which the subcontractor never signed. Unlike the bare-bones LOIs, the draft subcontracts contained a cross-default provision, effectively allowing the contractor to offset any breach on one building project against amounts owed on the others. Although the subcontracts were never signed, the subcontractor moved forward with the work on all three buildings.

The subcontractor completed two of the buildings but failed to install stairs at the pulping building. In the contractor's view, that omission constituted a material breach; the contractor withheld final payment not just for the pulping building, but also for the other two, asserting that the cross-default provision authorized it to offset the entire withheld sum. The subcontractor disputed whether the cross-default provision ever took effect, claiming that the "real" agreements were the signed LOIs, not the unsigned subcontracts. This debate went to the heart of who would be deemed at fault, and who might owe attorney's fees.

At trial, the subcontractor managed to recover a monetary judgment for the steelwork it completed, minus the offset for the uninstalled stairs. Because the court found the subcontracts were enforceable (despite being unsigned), the cross-default provision applied. Ultimately, the subcontractor's initial damages claims were reduced substantially. Nonetheless, the trial court concluded the subcontractor was the "prevailing party" because it recovered an affirmative judgment.

On appeal, the Fourth District disagreed and emphasized that securing "some of the benefit" does not automatically control who prevails under Florida law.[6] Instead, the Fourth

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District looked at how the subcontractor lost on most of its major arguments: it did not get the full contract balances, it failed to avoid offset for the stairs, and it was deemed to have breached the subcontract. The court pointed out that "a defendant who successfully defeats most of a plaintiff's claimed damages can be considered the prevailing party, especially when the amount of damages is a significant point of contention between the parties."[7] Thus, because the contractor prevailed on many of the critical issues, the Fourth District held that the trial court erred by naming the subcontractor as the prevailing party for purposes of an attorney's fee award.

This outcome reiterates that, even where a plaintiff obtains a partial recovery, the defendant may still be deemed the victor if it neutralizes the lion's share of claimed damages or shows that major disputed provisions control the outcome. *Lemartec,* therefore, stands as a stark reminder that net positive dollars do not necessarily secure fee entitlement in Florida construction litigation.

Florida's adoption of the "significant issues" test can have significant practical consequences for owners, contractors, and subcontractors. Parties who once felt safe simply because they "got a judgment" may lose out on attorney's fees, if the opposing side prevails on substantial portions of the case. A partial victory may still leave a litigant on the losing end of the fee equation. This reality can affect litigation strategy by making parties more cautious about bringing large, all-encompassing claims, for fear of looking as if they overreached if the ultimate award is a fraction of the amount sought.

Because the determination of "significant issues" is discretionary, outcomes can vary from judge to judge. One court might weigh a setoff heavily, seeing it as a key dispute, while another might focus more on a single claim that produced a positive recovery. Contract drafting is critical under this framework. Many lawyers recommend clarifying in the contract precisely how "prevailing party" fees are to be assessed, defining it as the side that wins the central breach arguments, or specifying that partial recoveries will not necessarily entitle a litigant to fees. Some contracts even incorporate the *Moritz* wording, instructing that if the parties dispute who prevailed, the court shall decide which one carried the day on the most significant issues raised.

While this standard is undoubtedly more equitable in many situations, it has also introduced a degree of uncertainty absent from the older, more literal approach. Parties can no longer say, "We got more money, so we are the prevailing party." Each side must consider that if it loses on the core contractual question or sees its damage claim drastically reduced, it might forfeit the chance to recover fees. At the same time, that risk can encourage settlements or more measured damage claims. It can also incentivize thoughtful drafting, since a well-defined contract that spells out fee entitlements might spare everyone a lengthy post-trial fight over fees.

Ultimately, Florida's construction litigators must be prepared for a careful, issue-by-issue evaluation at the end of trial. Lawyers and their clients should not assume that winning a portion of the requested damages will automatically confer prevailing party status and the right to fees; they must show that they prevailed on the truly contested points, whether that means establishing a subcontract's enforceability, proving that a cross-default clause applies, or defeating a major lien or bond claim. In the words of the Florida Supreme Court in *Moritz*, "the fairest test to determine who is the prevailing party is to allow the trial judge to determine from the record which party has in fact prevailed on the significant issues tried before the court."[8]



C. SMEDBERG

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Endnotes

1 604 So. 2d 807 (Fla. 1992).
2 626 So. 2d 1360 (Fla. 1993)
3 Although amended in 2023 to extend its scope to liens which have been transferred to a security, the substance of the statute remains unchanged.
4 *Prosperi*, 626 So. 2d at 1363.
5 391 So. 3d 426 (Fla. 4th DCA 2024)
6 *Lemartec*, 391 So. 3d at 435.
7 *Id.* at 435.
8 *Moritz*, 626 So. 2d at 810.

FELLOWSHIP PROGRAM ACCEPTING APPLICATIONS



The Real Property, Probate and Trust Law Section of the Florida Bar is now accepting applications for its Fellowship Program. The Fellowship Program was created in 2009, modeled after the successful Fellowship Program of the American Bar Association. In its inaugural year, the program received over 80 applicants for four positions. The fellows selected have had the opportunity to participate in the Section committees, work with Section leaders and represent the Section as future leaders. Young lawyers who wish to avail themselves of this terrific leadership training opportunity should join the Section and apply for one of the four slots presently available. **The deadline to apply is April 10, 2026.**

The mission of the Fellowship Program is to attract and retain young lawyers to the Section. One method of achieving this goal is by providing subsidized Fellowships to qualified individuals interested in becoming active in the substantive work of the Section. The Fellowship Program allows these individuals to be substantially involved in the Section's work, receive leadership training and work closely with leading attorneys in their field. The aspiration is that through this program, the Section will cultivate and develop future leaders to continue the strong presence of the Section as a leader in The Florida Bar.

The Fellowship Program is open to all lawyers who are members of the RPPTL Section and (a) have been admitted to the Bar for fewer than 12 years, or (b) are younger than 36 years of age. This program will award a maximum of four Fellowships per year. Applicants should be able to demonstrate that a substantial portion of their practice is focused in the area of Real Property, Probate or Trust law.

Fellowships are provided for a two-year term. The Section has over 50 active committees and an Executive Council, with more than 225 active members. The Executive Council (and the Section committees) meet on a quarterly basis, beginning in June each year, at locations throughout the State of Florida. The quarterly meetings usually run from Thursday through Saturday, and include substantive work and social events for networking. Each Fellow will receive a subsidy of up to $3,500 annually (not to exceed actual out-of-pocket expenses) to help defray the expense of attending Section meetings. Each Fellow will be assigned a committee mentor to assist with the Fellow's active involvement in the committee that most closely fits the Fellow's practice area, with the goal of maximizing his or her professional development through the program. In return for the Section commitments, a Fellow is required to attend a minimum of two Executive Council meetings per year, attend and serve as an active member of the Membership Committee and be an active member of at least one substantive committee. As an active committee member, the Fellow will be required to complete one substantive work project on behalf of the committee on an annual basis. This project may include writing an article in his or her area of practice for ActionLine (the Section's publication), chairing a subcommittee, or drafting proposed legislation on behalf of the committee. To assure these requirements are fulfilled, each Fellow must submit a work plan to the Fellowship committee by October of each year, which outlines the substantive work project they have chosen, and a report at the end of each year.

At the end of the Fellowship term, we are confident all Fellows will find the program helped them to enhance their development personally and professionally. We also sincerely hope that all Fellows will continue to be actively involved in the Section committees and work towards becoming a member of the Executive Council.

A copy of the application is included. The application is also available through the Section website at www.RPPTL.org. All applications should be submitted to bfriedman@ff-attorneys.com or by mail to RPPTL Fellowship Program, ATTN: Hilary Stephens, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300. The co-chairs of the committee are Bridget Friedman and Taniquea Reid Wolliston. They are both available for additional information. You can reach them at bfriedman@ff-attorneys.com or treid@treidlaw.com.

FinCEN's Residential Real Estate Rule and Uncertainties Now Faced By The Settlement Agent

**By Shannon L. Widman, Esq., Legislative Counsel,
Old Republic National Title Insurance Company**

At the time of publication, two Federal District Courts have considered challenges to FinCEN's Residential Real Estate Rule (the "Rule"), with differing results. On February 19, 2026, the Middle District of Florida in the case of Fidelity v. Bessent, ruled in favor of FinCEN.[1] On March 19, 2026, the Eastern District of Texas in the case of Flowers v. Bessent, ruled against FinCEN and vacated the Rule.[2]

FinCEN has issued the following ALERT on its website: **ALERT:** In light of a federal court decision, 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*." (Emphasis added).

After much scrutiny and a looming government shutdown in late 2025, FinCEN delayed the implementation date of the Rule to March 1, 2026. As of date of publication, and in light of conflicting decisions, FinCEN has further delayed implementation of the Rule's filing requirement. As real estate settlement agents anxiously await further guidance and resources to help them comply, they must also contend with the introduction of new acronyms and procedures, which come at a time when the industry faces a host of other challenges. Whether the transaction is handled by an attorney through a law firm or a licensed title agent, if the Rule is implemented, it will significantly change the way settlement agents do business.

History of FinCEN

The Currency and Foreign Transactions Reporting Act of 1970, known as the Bank Secrecy Act (the "BSA") authorized the Treasury to issue regulations requiring banks and other financial institutions to implement certain procedures to prevent financial crime by reporting transactions that are deemed *suspicious* on a suspicious activity report (a "SAR") because the transactions fit certain criteria that could indicate nefarious financial activity.[3] Throughout the 1970's and 1980's, law enforcement recognized the strong and obvious correlation between money laundering and sophisticated drug cartels, resulting in legislation that targeted the related crimes.[4]

In 1990, the Treasury established its own network to share intelligence and resources, calling it the Financial Crimes Enforcement Network, or FinCEN.[5] A series of anti-money laundering legislative initiatives passed throughout the 1990s along with the USA PATRIOT Act of 2001, which ultimately expanded FinCEN's mission, incorporated armed special agents, and empowered FinCEN as an independent bureau of the Treasury.[6]

FinCEN's mission is to, "…safeguard the financial system from illicit activity, counter money laundering and the financing of terrorism, and promote national security through strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence."[7]

To help gather the financial intelligence necessary to further its mission and expand its dragnet, FinCEN enlisted the help of real estate settlement agents, requiring them to report certain covered transactions by filing a Currency Transaction Report ("CTR") through its BSA E-filing System.[8] The first Geographic Targeting Order ("GTO") went into effect in January of 2016.[9]

Since 2016, FinCEN has expanded its reach. For instance, the first GTO covered cash transactions for residential real property located in Manhattan or Miami-Dade County, priced at or above $1mm, and purchased by a legal entity.[10] For the past ten years, the GTOs have been extended, 180 days at a time, increasing the scope of a covered transaction. At the time of this article, the Rule's fate remains uncertain, and Settlement Agents are now faced with the question of whether to continue preparing for its implementation.

Scope of the Rule

On August 29, 2024, after publishing a notice of proposed rulemaking in February of 2024, and subsequently receiving comments, the Department of Treasury, through FinCEN, issued its final Residential Real Estate Rule.[11] The Rule applies to all residential cash transactions where the transferee is a legal entity or a trust. Non-profit entities and pooled investment vehicles that are not otherwise registered with

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the Securities Exchange Commission are included as covered transferees. There is no dollar threshold for reporting. The Rule applies to transactions that transfer real property in all 50 U.S. States and all U.S. Territories, including vacant land upon which the transferee intends to build a single family (1-4 unit) residence.[12]

Limited Exceptions

Some transactions are considered "low-risk" and are exceptions to the Rule. These include easements and transactions resulting from death of the owner, divorce, bankruptcy, court supervised transfers, or transactions where the transfer involves a securities reporting issuer, bank, institution or brokerage that has an anti-money laundering policy already in place.[13]

Certain transfers to a trust are exempt where there is no consideration, and the transferor of the real property is also the grantor or settlor of the transferee trust.[14]

Other exceptions include deeds to a 1031 exchange accommodation titleholder as transferee in a reverse 1031 exchange transaction.[15]

Commercial property and vacant land that is not intended for single-family use (1-4 residential units) is not covered by the Rule.[16]

Information to be Collected and Reported

Prior to the Rule, the information required from a transferee in a cash transaction was minimal. A cash buyer could, in many cases, provide the name under which he or she wanted to take title, an address for purposes of notifying the tax collector where to send the bill, wire the money for closing, and be done.

If the Rule is implemented, transferees must provide the names, dates of birth, citizenship, street address, and social security number of all beneficial owners as well as all individuals who have signing authority on behalf of the transferee.[17]

Trust transferees will have to provide further details such as the date of the trust; whether the trust is revocable; the names, dates of birth, citizenship, and street address for each of its grantors, trustees and beneficiaries. This applies to anyone with authority under the trust to dispose of trust assets; demand distributions; revoke or withdraw assets of the trust; or a beneficial owner of a legal entity that has one of the foregoing powers.[18]

Additionally, the transferee in a covered transaction will now have to provide detailed bank information for all payments made for the transaction. This includes the amount of payment, bank name, account name, account number, method of payment for not only the purchase price, but for the closing costs and any personal property included in the transaction or overpayments made, hard money or private loans, and funds involving any non-party.[19] That means, if Aunt Edna sends the settlement agent funds so her nephew can buy his first home, the settlement agent must report Aunt Edna's account name, account number and amount of payment along with the other required information.

Detailed information on the transferor in a covered transaction is also required, but it is not much more than is currently required for 1099-S reporting. The additional information required now includes the transferor's date of birth.

The transferor and transferee information collected to comply with the Rule is required to be retained for a period of five years. The filing of the report, officially called the "Real Estate Report" or "RER" must be made through the BSA E-Filing System by the last day of the month following the month of closing, or 30 calendar days after the transaction, whichever is later.[20]

Reporting Cascade

The Rule provides a hierarchy of transaction participants, which determines the individual responsible for reporting required details of a covered transaction. Sitting alone, atop the reporting cascade, is the settlement agent.[21] It is called a "cascade" because the burden falls to the first person highest on the list to report, but if that person is not part of the transaction, then the reporting burden falls to the next highest person on the list, and so on. FinCEN lists six other real estate professionals that may possibly become a mandatory reporter in a real estate transaction. Those include, in order, the person who prepared the closing or settlement statement; the person filing the deed; the title insurance underwriter; the person who disburses the greatest amount of funds; the person who evaluates title; and the person who prepares the deed.[22] In most transactions, the settlement agent performs all or most of these functions. That is why this article is written using "settlement agent" rather than "reporting person" throughout.

Designation Agreements

The Rule allows the settlement agent (or another reporting person in the reporting cascade) to enter into a written agreement that designates a third party to file the report with the BSA E-Filing System. This does not remove the liability for non-compliance from the original reporting person.[23]

Penalties for Non-Compliance

Negligent violations of the Rule will be met with a civil penalty of not more than $1,394 per violation. A pattern of negligent violations will allow additional civil penalties up to $108,489. Willful violations include imprisonment of no more than five years or a criminal fine maximum of $250,000 or both.[24]

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Challenges to the Rule

For almost two years, since the notice of the proposed rule was introduced, the American Land Title Association ("ALTA") has advocated for a limitation to the Rule, arguing that the cost to the industry will be approximately $453.9 million annually, amounting to almost $500 per real estate report filed.[25] FinCEN estimates that 850,000 reports will be filed annually.[26] ALTA has taken the position with FinCEN that both the cost to the industry and the per-transaction costs are overly burdensome,[27] and has made recommendations to FinCEN to limit the scope of the Rule by raising the dollar threshold from zero dollars, and narrowing the geographic scope, if FinCEN does not completely repeal the Rule.[28]

As of the time of this writing, there are Joint Resolutions pending in the House (H.J. Res. 55) sponsored by Rep. Andrew S. Clyde (R-GA-9), and Senate (S.J. Res. 15) sponsored by Sen. Mike Lee (R-UT), which could essentially eliminate the Rule, making it of no force or effect. There has been no action taken on the two Joint Resolutions since February of 2025.[29]

Settlement Agent Resources

The broad scope of the Rule results in everyday changes to the way a settlement agent does business. Despite the conflicting decisions, industry experts have warned settlement agents to prepare for the Rule should it be implemented, offering continuing education courses, FAQs, webinars, and other preparedness resources.

In addition to its advocacy efforts, ALTA provides resources on its website, including links to the Rule, collection forms to gather the reportable information from the parties, and the Real Estate Report form required to be submitted electronically for compliance.[30] ALTA also offers a two-day "bootcamp" program, taking a deep dive into the Rule's requirements, helping settlement agents understand how to comply.[31]

The Florida Land Title Association ("FLTA") supports Florida's settlement agents and underwriters with its efforts to create awareness and educate its members on the industry changes at the state and grass roots level offering several opportunities for continuing education webinars as well as robust discussion at meetings and networking programs. Nationally, FLTA has worked with ALTA to support its advocacy efforts in Washington, D.C.[32]

Nonetheless, the investment that must be made in training staff, upgrading software, and changing internal processes requires time and money that are already rare commodities to Florida's overly-burdened real estate professionals.

Patti Moser, Broker/Owner of Horizon Realty of Alachua, Inc. and General Manager of Alachua Title Services, LLC is in the unique position of owning both a real estate brokerage and affiliated title company. Moser explained:

> *From a small title agency perspective, trying to prepare for the reporting process has been challenging. Approximately 20% of our closings last year involved an entity paying cash that would be subject to reporting. Each of us has spent more than 15 hours watching webinars, with more planned before implementation. I have attended conferences trying to learn what will be required. The most frustrating aspect is the uncertainty of when and how the reporting will be implemented.*

Third party vendors that currently offer GTO filing support have expanded their services to include report filings. Additionally, major settlement software providers have come to the table with integrated solutions to help settlement agents save steps to collect information through their secured technology platforms.

Charles McGrath, Vice President of Operations at AccuTitle states:

> *AccuTitle is committed to delivering solutions in our software suite for the … FinCEN regulatory changes. Our systems will identify FinCEN-reportable transactions using existing data, allowing title professionals to review, supplement with any additional required information, and approve filings. This will significantly reduce the administrative time and effort required for compliance while maintaining security and accuracy.*

Qualia is another provider that has created tools within its software platform. According to Brian Thome, Chief Customer Officer of Qualia:

> *As the leading technology partner for title and escrow companies, we are fully committed to supporting our customers … That is why we built an integrated solution to track, collect, and report FinCEN information directly in the Qualia platform. To help our customers securely collect this information from buyers and sellers, we are offering the Information Request in Core for free, along with recurring trainings … to ensure our customers know exactly how to use these tools. We want to ensure every customer is prepared to meet the requirements of these rules.*

While settlement agents welcome the third-party services and software integrations, the anxiety of the unknown is the prevailing sentiment, especially at a time when implementation has been delayed pending conflicting decisions. Moser further explained:

> *The major issue that I see is the frustration we are going to face from the Realtors® and customers when trying to collect all the information required. We will face additional push back and frustration regarding any fees we may charge for collecting and preparing the report. Staff time with only 3 employees is already stretched and there is still*

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a lot of uncertainty of how much time it will take to collect and file the report. We will all be learning on the fly.

What to Expect in 2026

Will this be the year that questions get answered? Settlement agents are wondering what the true cost of compliance will be. FinCEN estimates 75-minutes is needed for initial training per staff person with 30-minutes of annual training for each staff person thereafter.[33]

Can the costs of compliance be passed through to the consumer? Should they be? What happens when the parties are unable or unwilling to cooperate with the settlement agent?

FinCEN states it will use a reasonable reliance standard, which means the settlement agent may rely upon the information provided by the parties, but only if that person doesn't have actual knowledge of facts that would reasonably call into question the reliability of the information.[34] That standard is more limited when it comes to trust transferees. In those cases, the settlement agent must have a written certification from the transferee that the information provided is accurate. This certification must be retained by the settlement agent for five years.[35]

Assuming the Rule is implemented in 2026, the industry will be in for a lot of changes over the course of the next year. Many questions cannot be addressed directly by FAQs or by the terms of the Rule itself. Should the settlement agent continue to close the file with inaccurate or incomplete information on the report? Business decisions will need to be made, and settlement agents will have to live with the consequences of those decisions.

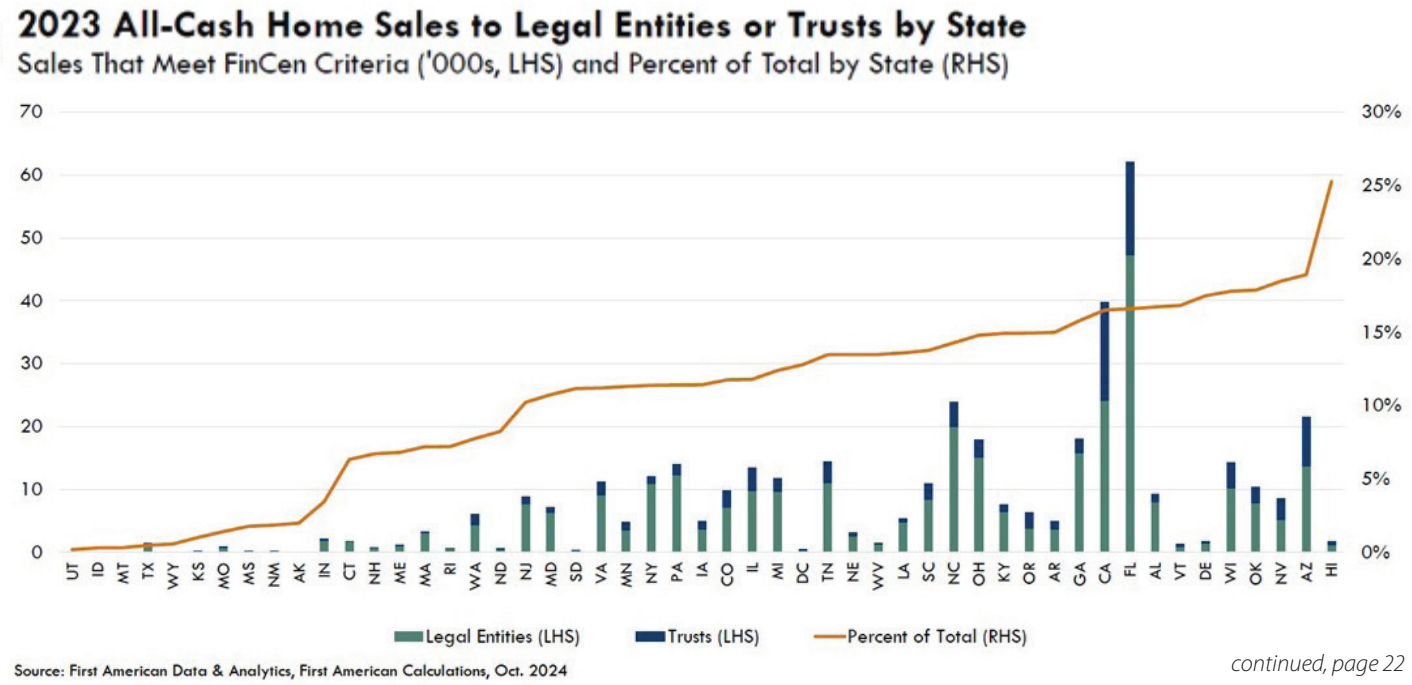
Florida vs. Everybody

Florida attorneys will face their own dilemmas. For example, let's say a client needs help deeding her unencumbered rental property from her personal name into her new LLC, so she may limit her personal liability and reap the tax benefits. This is a common scenario handled by attorneys throughout the state. Florida attorneys that are not regularly acting as settlement agents will have to decide whether they will advise clients on these matters and handle the associated deed preparation and/or filings, which makes them the reportable person under FinCEN's reporting cascade. Will attorneys in Wyoming see as many reportable transactions as attorneys in Florida?

Florida attorney Rick Miller, of Miller Troiano, P.A. in Lakeland, gives his perspective:

Buckle up, closing agents. This isn't HUD mandating a new closing statement, a mandate to file a 1099 for sellers in transactions, or assuring compliance with Dodd-Frank. This Rule places significant responsibility and time on closing agents who handle residential transactions. Consumers can expect closing fees to rise significantly for the affected transactions, particularly on those in Florida where practitioners often recommend the use of an entity to acquire residential property to be used for investment or asset protection purposes.

Miller's sentiment isn't just a hunch. At the ALTA Advocacy Summit in May of 2025, ALTA shared this chart that identified all closings for one calendar year (2003) that met the basic requirements of the Rule, meaning there was no mortgage and the buyer is listed as a corporation, LLC or trust.[36] Florida had the most raw reportable transactions, even assuming the trust transactions might be exempt.[37]



Source: First American Data & Analytics, First American Calculations, Oct. 2024

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Key Takeaways

If the Rule is implemented, practice changes will significantly impact Florida attorneys, title companies, and the title industry. Many predict increased costs for compliance, resulting in increased fees for consumers at closing. This comes at a time when the cost of home ownership, and closing costs are keys issue for consumers and industry professionals.

Industry professionals continue to help each other by sharing compliance information. The additional time and resources needed to educate and familiarize agents, brokers, and consumers on the Rule will ultimately burden the party that handles Rule compliance: the settlement agent.

Assuming the Rule is implemented in 2026, the industry will surely look back to assess the Rule's impact to real estate professionals and the consumer. Will FinCEN do the same? Does the expansion of FinCEN's scope and power over the past 50 years result in fewer financial crimes, justifying the additional consumer costs and industry burden? The answers to those questions are not clear. Florida attorneys and settlement agents are looking forward to a time when there is more clarity and certainty as they navigate the Rule.


S. WIDMAN

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Endnotes

1 *Fidelity National Finance, Inc. et. al. v. Treasury, et. al*., 3:25-cv-00554 (M.D. Fla. May 20, 2025).
2 *Flowers Title Companies, LLC v. Bessent, et al.*, 6:25-cv-00127 (E.D. Tex. April 14, 2025).
3 12 U.S.C. 1829b; 12 U.S.C. 1951-1960; 31 U.S.C. 5311-5314, 5316-5336
4 18 U.S.C. 1956-1957
5 31 U.S.C. 310
6 31 U.S.C. 310; Money Laundering Suppression Act (1994); Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001; Treasury Order 180-01 (2002)
7 fincen.gov/about-fincen/mission
8 bsaefiling.fincen.gov
9 FinCEN Geographic Targeting Order dated January 6, 2016 (https://www.fincen.gov/system/files/shared/Real_Estate_GTO-MIA.pdf)
10 FinCEN Geographic Targeting Order dated January 6, 2016 (https://www.fincen.gov/system/files/shared/Real_Estate_GTO-MIA.pdf)
11 31 CFR Chapter X, RIN 1506-AB54, Anti-Money Laundering Regulations for Residential Real Estate Transfers (2024); 89 FR 70258; 2024-19198
12 fincen.gov/rre-faqs B.2.
13 fincen.gov/rre-faqs B.5., B.6.
14 fincen.gov/rre-faqs B.7., B.8.
15 fincen.gov/rre-faqs B.5.
16 fincen.gov/rre-faqs B.2.
17 fincen.gov/rre-faqs D.3.
18 fincen.gov/rre-faqs D.4.
19 fincen.gov/rre-faqs D.1.
20 fincen.gov/rre-faqs E.1.
21 fincen.gov/rre-faqs C.1.
22 fincen.gov/rre-faqs C.2.
23 fincen.gov/rre-faqs C.3.
24 FinCEN RRE Fact Sheet (https://www.fincen.gov/system/files/shared/RREFactSheet.pdf)
25 ALTA's Comment Letter to FinCEN dated April 16, 2024 (https://www.alta.org/file/ALTA-Comment-Letter-to-FinCEN-NPRM)
26 Docket Number FINCEN-2024-02565; RIN 1506-AB54; Anti-Money Laundering Regulations for Residential Real Estate Transfers
27 ALTA's Comment Letter to FinCEN dated April 16, 2024 (https://www.alta.org/file/ALTA-Comment-Letter-to-FinCEN-NPRM)
28 ALTA's Comment Letter to FinCEN dated April 16, 2024 (https://www.alta.org/file/ALTA-Comment-Letter-to-FinCEN-NPRM)
29 House Joint Resolution 55 provides in substance: "That Congress disapproves the rule submitted by the Financial Crimes Enforcement Network relating to 'Anti–Money Laundering Regulations for Residential Real Estate Transfers' (89 Fed. Reg. 70258 (August 29, 2024)), and such rule shall have no force or effect." H.J. Res. 55, 119th Cong. (2025–2026). Senate Joint Resolution 15 provides in substance: "That Congress disapproves the final rule submitted by the Financial Crimes Enforcement Network relating to 'Anti–Money Laundering Regulations for Residential Real Estate Transfers' (89 Fed. Reg. 70258 (August 29, 2024)), and such rule shall have no force or effect." S.J. Res. 15, 119th Cong. (2025–2026).
30 alta.org/fincen
31 alta.org/events
32 flta.org
33 Docket Number FINCEN-2024-02565; RIN 1506-AB54; Anti-Money Laundering Regulations for Residential Real Estate Transfers
34 fincen.gov/rre-faqs D.2.
35 fincen.gov/rre-faqs D.2.
36 Chart: 2023 All-Cash Home Sales to Legal Entities or Trusts by State, by First American Data & Analytics, First American Calculations, Oct. 2024; courtesy of ALTA.
37 Chart: 2023 All-Cash Home Sales to Legal Entities or Trusts by State, by First American Data & Analytics, First American Calculations, Oct. 2024; courtesy of ALTA.

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CLEARING THE TITLE:

How Florida's Legal Aid Programs Are Confronting Heirs' Property Challenges

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The last comprehensive Section article regarding heirs' property was published in 2018.[1] Now, more than six years later, the heirs' property landscape in Florida has dramatically changed. This year also marks the twentieth anniversary of Hurricane Katrina, which revealed the devastating consequences of unclear property ownership when families could not qualify for federal relief because they lacked clear title.[2] As a result of receiving funding from various sources to focus on resolving the issue of heirs' property, legal aid programs and community advocates have built momentum around heirs' property reform.[3]

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The devastation of Hurricane Katrina revealed how unclear title can amplify disaster. The Federal Emergency Management Agency (FEMA) denied an estimated 5% of aid applications because families could not prove legal ownership, leaving thousands unable to rebuild, despite having lived in their homes for years.[4] That experience helped reform the modern heirs' property movement, forcing lawmakers and advocates to confront how an unclear title may affect access to recovery aid. The lessons of Hurricane Katrina remain pertinent for hurricane-prone Florida, where each storm can expose families to permanent property loss. Although FEMA made changes to address heirs' property ownership hurdles, barriers still exist from state and local government regulations.

The key characteristics of heirs' property are fragmented or fractionated ownership interests among multiple descendants as tenants in common.[5] Historically, this problem has disproportionately impacted African American families in the South, including Florida, where systemic barriers to estate planning left land vulnerable to forced partition sales.[6] Heirs' property disproportionately burdens racial and ethnic minorities, but it affects diverse groups across rural, suburban, and urban areas.[7] The consequences are severe as heirs' property contributes to generational wealth loss, exposes families to predatory practices, and often fosters family conflict when consensus cannot be reached on land use or sale.[8]

Forced sales at below-market values have historically stripped families of property that could otherwise serve as a foundation for generational wealth.[9] The absence of clear title also complicates access to loans, disaster recovery aid, and property improvements, disproportionately affecting south-eastern minority populations.[9] Moreover, intra-family disputes arising from fragmented ownership can damage relationships beyond repair. Thus, heirs' property is not merely a technical property law issue; it is a matter of economic justice, cultural preservation, and family stability.

A Timeline Of Heirs' Property Law In Florida

Before 2020, Florida courts approached partition actions under general partition law, without uniform safeguards for heirs' property owners.[10] Cotenants had the absolute right to partition, which frequently resulted in forced sales where third-party investors could acquire property for far less than fair market value.[11] Families, particularly in low-income and minority communities, often lacked financial resources to prevent such a practice or to pursue buyouts.[12] The disproportionate impact on communities of color was severe as heirs' property exacerbated cycles of poverty and destroyed property ownership.[13]

In 2020, Governor Ron DeSantis signed the Uniform Partition of Heirs' Property Act (UPHPA) into Florida law.[14] By the time Florida passed the UPHPA in 2020, it was the 16th state to do so.[15] The statute introduced critical protections, including provisions for family members to buy out the interests of co-owners who sought partition by sale.[16] Courts must now obtain an independent appraisal to ensure fair market valuation, preventing undervalued sales that have historically stripped families of wealth.[17] The law also ensures that when sales occur, family members are given priority to purchase property before outside buyers.[18] These reforms strike a balance between the right to partition and the preservation of family land. Today, enacted in 26 states and introduced in five others, the UPHPA has one of the highest adoption rates among real property Uniform Law Commission statutes.

The Legal Aid Response

Legal aid organizations have emerged as frontline defenders of heirs' property rights.[19] Given their mission to serve low-income clients, they are uniquely positioned to address this issue. The funding each organization receives for heirs' property programs is specifically designated for outreach, education, legal work and the fees and costs associated with representation of heirs' property owners. These services may include clearing titles to heirs' property through complex probate litigation, deed preparation, and estate planning to avoid probate and the creation of heirs' property.

To date, Florida hosts eight heirs' property programs across the State: Bay Area Legal Services (Tampa/St. Petersburg), Community Legal Services (Central Florida), Dade Legal Aid, Jacksonville Area Legal Aid, Legal Services of Greater Miami (South Florida), Three Rivers Legal Services (North Central Florida), Legal Services of North Florida (North Florida Panhandle) and Legal Aid Society of Palm Beach County.

In 2019, Three Rivers Legal Services' (TRLS) "Home Sweet Home" Project became the first legal aid program in the State to hire full-time attorneys dedicated solely to heirs' property work, recognizing that the problem requires specialized and sustained effort. TRLS' "Home Sweet Home" project continues to help families consolidate ownership, clear title, and preserve property.[20]

The Section, in partnership with Bay Area Legal Services created the "No Place Like Home" initiative, where pro bono lawyers were stationed to clear title for heirs' property clients.[21] Despite the ambitious nature of the initiative, it struggled to maintain consistent participation. The initiative showed that heirs' property work requires substantial work, and it should be done in a sustained manner rather than episodically.

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The Section hosts and supports the Florida Public Interest Heirs' Property Attorneys (PIHPA), attorneys who work with and for legal aid organizations, brought together to enhance the work of legal aid organizations.

To sustain demand for heirs' property work, legal aid organizations have begun building specialized infrastructure.[22] Additionally, many organizations collaborate with law schools, recruiting student interns to assist with fact development and title searches.[23] Since 2023, Florida Agricultural and Mechanical University (FAMU) College of Law students have worked with local legal aids, volunteer attorneys, and community partners, assisting clients with heirs' property matters and estate planning. They engage with clients in communities surrounding the Orlando area, such as Eatonville, Florida. Additionally, in early 2025, the FAMU College of Law hosted the "Heirs' Property Symposium: A Neighborhood Issue."[24] The University of Florida Levin College of Law became the first law school in Florida to create an Heirs' Property Clinic.[25] These efforts mirror broader trends across the South, where legal aid providers are working in partnership with nonprofits, such as LISC Jacksonville, volunteer attorneys, and community groups to deliver heirs' property education and outreach.[26]

Heirs' property reform is as much about legal infrastructure as it is about statutory changes such as the UPHPA. Clearing titles, drafting wills, and guiding families through complex probate processes require sustained institutional financial investment. Without it, the communities most vulnerable to land loss, particularly African American, Hispanic, and low-income families, remain at risk.[27] Moreover, these vulnerabilities differ further between urban and rural communities, where the strategies for tackling heirs' property work take distinct forms.

Urban Vs. Rural Heirs' Property

Heirs' property typically arises when a landowner dies intestate (without a will), leaving the land to multiple heirs as tenants in common.[28] This form of ownership leaves the property vulnerable because any one heir may force a partition, leading either to a physical division of the land or a court-ordered sale.[29] These partition sales disproportionately affect less affluent families, who often lack resources to draft wills or access legal counsel.[30]

Prior to the enactment of the UPHPA, speculators would often exploit this vulnerability by acquiring a small share from one heir, filing a partition action, and forcing the sale of the entire property, frequently at below-market prices.[31] Legal fees consume a large portion of sale proceeds, further eroding family wealth.[32] The U.S. Department of Agriculture has identified heirs' property as the leading cause of involuntary Black land loss, a phenomenon that has been part of a longer historical trend of African American and other minority communities losing land through inequitable practices, including violence, terrorism, and predatory legal tactics in the early 20th century.[33]

Without clear title, heirs' property owners cannot use the land as collateral, struggle to obtain mortgages or farm loans, and risk losing the property to unpaid taxes.[34] They also face barriers in accessing federal disaster recovery funds and agricultural programs.[35] Partition-driven development pressures can also contribute to urban sprawl and habitat destruction.[36]

In examining an heirs' property case, a legal aid advocate must adapt their strategy based on whether the property is located in an urban or rural community**.** In Florida's urban communities, heirs' property often involves single-family homes.[37] Partitioning such property physically is not always practical.[38] Moreover, urban property often lacks income-generating potential, making it harder for families to leverage the property to fund buyouts or improvements.[39] Jacksonville and its surrounding areas are a national epicenter of the heirs' property issue. In Duval County, an estimated 9.2% of all owner-occupied properties are classified as heirs' properties.[40] In Jacksonville alone, estimates suggest there are 10,000 heirs' properties in the city, making it one of the highest concentrations of heirs' properties in the nation.[41] This large concentration of urban property presents unique issues that differ from rural heirs' property.

By contrast, rural land usually includes farmland or large tracts that lend themselves to partition or shared management.[42] Families can generate income through farming or leasing, providing creative solutions that allow co-owners to retain property while deriving financial benefit.[43] Rural contexts may thus offer more flexibility and opportunities for collaboration, though disputes still require careful legal guidance. Tailoring approaches to these different contexts ensures that legal aid remains responsive to both the asset type and community need.

A Three-Prong Solution Framework

Florida's challenges demonstrate that heirs' property issues cannot be resolved by statute alone. A sustainable framework requires three interlocking components: statutory reform, legal aid innovation, and professional education. First, statutory reform establishes the baseline protections necessary to prevent exploitation. The adoption of the UPHPA in Florida introduced critical protections, such as, appraisal requirements, cotenant buyout options, and a preference for open-market sales rather than courthouse auctions.[44] These protections directly address historical inequities that disproportionately harmed low-income families and communities of color.[45]

Florida may explore creating streamlined, cost-effective

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legal mechanisms to transfer ownership. For example, some jurisdictions allow heirs to secure title by filing a simple affidavit of heirship rather than initiating a full probate proceeding.[46] Such tools could significantly reduce costs and delays caused by the probate process, making it easier to consolidate ownership and prevent properties from remaining trapped in tangled title for generations.[47] Further educating property owners about estate planning tools such as Enhanced Life Estate Deeds (Lady Bird Deeds) can also help prevent the continued creation of heirs' property.

Second, legal aid innovation ensures that these statutory rights are enforced. Without accessible legal representation and education, many families remain unaware of their options, such as the UPHPA, or lack the capacity to exercise them. Legal aid organizations in Florida have piloted heirs' property projects, helping families consolidate title, prevent partition sales, and create estate plans to avoid future complications.[48] These initiatives demonstrate how modest investment in legal aid can have outsized effects on property preservation.

Third, professional education equips judges, lawyers, and community leaders with the tools to apply heirs' property law correctly and proactively. The Section has published scholarship, both supporting and critiquing certain aspects of heirs' property law, reflecting healthy debate within the profession.[49] Continuing legal education programs, judicial training sessions, and outreach efforts build the capacity necessary to transform heirs' property law from theory into practice. This three-pronged framework offers a model not just for Florida but for other jurisdictions grappling with heirs' property challenges.

The ultimate goal of heirs' property reform in Florida is to lower the overall concentration of heirs' property statewide**.** Estimates suggest that the value of heirs' property nationwide may reach $243 billion, and every dollar invested in resolution efforts can generate between $2 and $32 in societal benefits.[50] While some areas have especially high concentrations, the problem is statewide and requires a collective response**.** Lawyers, judges, legal aid groups, community organizations, policymakers, and financial institutions all have a role to play. By reducing the prevalence of heirs' property, Florida can unlock trapped housing wealth, strengthen communities, and ensure that more families have the tools to maintain and build generational assets.

Conclusion

Heirs' property in Florida is a matter that touches on family stability, cultural preservation, and economic justice. The consequences of heirs' property are far-reaching, from preventing families from receiving disaster relief and loans to fueling disputes that can divide relatives and erode generational wealth. The challenges look different across the State, and addressing these problems requires more than legislative reform. Legal aid organizations, bar associations, and law schools have shown how education, outreach, and pro bono work can help families hold on to their property. These efforts are strongest when they are sustained and long-term. With stronger support for legal aid, broader professional training, and greater emphasis on estate planning, Florida has the chance to turn heirs' property from a source of vulnerability into economic prosperity for generations to come.

Attorneys interested in participating in a pro bono opportunity with the Section are encouraged to contact the ALMs Committee for more information.


L. L. SMITH

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This author thanks law student Roberto Barrera for his assistance on the researching and preparation of this article.


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Endnotes

1 Manuel Farach, T*he Uniform Partition of Heirs Property Act: A Solution in Search of a Problem*, 92 Fla. Bar J. 9, 56 (Nov. 2018).

2 Richard Mark Kluckow, *The Impact of Heir Property on Post-Katrina Housing Recovery in New Orleans* (Master's Thesis, Colo. St. Univ. 2014), https://api.mountainscholar.org/server/api/core/bitstreams/529cf001-7b3b-4701-92da-afec4848a085/content?utm_source.

continued, page 28

Clearing The Title, from page 27

3 *Legal Aid Expands Heir's Property Project with Palm Beach County Support*, Fla. Bar News (Apr. 8, 2025).
4 *A Methodological Approach to Estimate Residential Heirs' Property in the United States*, FANNIE MAE, https://www.fanniemae.com/sites/g/files/koqyhd191/files/2023-12/heirs-property-research-report_0.pdf.
5 Joan Flocks, Sean P. Lynch II, & Andréa M. Szabo, The Disproportionate Impact of Heirs Property in Florida's Low Income Communities of Color, 92 Fla. Bar J. 8, 57 (Sept. 2018).
6 *Id.*
7 *Id.*
8 *Id.*
9 *"A Privilege and a Challenge": Valuation of Heirs' Property by African American Landowners and Implications for Forest Management in the Southeastern U.S.*, 16 Small-scale Forestry 395, 397–99 (2017).
10 Joseph E. Seagle, *Understanding Partition Actions and Florida's Uniform Partition of Heirs Property Act,* MYLANDTRUSTEE.COM, https://mylandtrustee.com/understanding-partition-actions/.
11 *Id.*
12 *Id.*
13 *Why Florida Passed a Uniform Partition of Heirs Property Act*, DEFENDERS OF WILDLIFE, https://defenders.org/sites/default/files/2020-06/FHP%20White%20Paper%20Final%20 20June2020.pdf.
14 *Id.*
15 *Gov. DeSantis Signs Major Property Act into Law, Protecting Families and Endangered Species*, DEFENDERS OF WILDLIFE, https://defenders.org/newsroom/gov-desantis-signs-major-property-act-law-protecting-families-andendangered-species.
16 Bill Summary for 2020 Senate Bill 2103, FLORIDA SENATE, https://www.flsenate.gov/Committees/billsummaries/2020/html/2103.
17 *See* Fla. Stat. § 64.206 (2020).
18 *See* Fla. Stat. § 64.207(1) (2024).
19 *See*, e.g., Heirs' Property Protection Project, DADE LEGAL AID, *https://www.dadelegalaid.org/heirs-property-protection-project*; *What You Need to Know About Heirs' Property and the Home Sweet Home Project*, THREE RIVERS LEGAL SERVICES, *https://www.trls.org/heirs-property-and-the-home-sweet-home-project*.
20 LaTonya Lipscomb Smith & Trinity Turinetti, *Preserving wealth with Uniform Partition Heirs' Property Act*, JACKSONVILLE DAILY RECORD, https://www.jaxdailyrecord.com/news/2020/sep/03/preserving-wealth-with-uniformpartition-heirs-property-act/.
21 RPPTL Provides "No Place Like Home" Program, REAL PROPERTY, PROBATE & TRUST LAW SECTION OF THE FLORIDA BAR, https://www.rpptl.org/DrawOnePage.aspx?PageID=106.
22 *See supra* note 3.
23 UF Levin College of Law, Heirs' Property Clinic (2025), UNIVERSITY OF FLORIDA, https://www.law.ufl.edu/areas-of-study/experiential-learning/clinics/heirs-property-clinic.
24 Heirs Property Clinic, "Protecting generational ownership for heirs' property" (May 1, 2025), FACEBOOK, https://www.facebook.com/story.php?story_fbid=1409635260087260&id=100031223986731.
25 *Id.*
26 *Nonprofits, Local Governments and Municipalities, GEORGIA HEIRS PROPERTY LAW CENTER*, https://www.gaheirsproperty.org/nonprofits-local-governments-and-municipalities.
27 Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 Ala. L. Rev. 1 (2014).
28 *Id.*
29 *Id.*
30 *Supra* note 5.
31 *Id.*
32 *The True Cost of a Partition Action in Florida: Filing Fees, Attorney Fees, and More*, TORRES MEDIATION SERVICES, https://www.torresmediation.com/florida-partition-action-costs/.
33 Lizzie Presser, *Kicked off the Land: Why So Many Black Families Are Losing Their Property*, LAND TRUST ALLIANCE, https://landtrustalliance.org/resources/learn/explore/kicked-off-the-land-why-so-many-black-families-are-losingtheir-property.
34 *See supra* note 5, 9.
35 Nketiah Berko & Sarah B. Mancini, *Heirs' Property: Policies to Preserve Wealth*, ASSET FUNDERS NETWORK, https://assetfunders.org/wp-content/uploads/AFN_HeirsProperty_Policies-to-Preserve-Wealth.pdf.
36 Caleb S. Doxey & Rachel A. Krause, *Land Fragmentation and Heirs Property: Current Issues and Policy Responses*, 13 Land 459 (2024).
37 Sarah Stein & Ann Carpenter, *Heirs' Property in an Urban Context*, AM. ECON. ASS'N, https://www.aeaweb.org/conference/2022/preliminary/paper/39rFzdTk.
38 *See supra* note 9.
39 *Farmland vs. Urban Real Estate: Which Is a Better Investment?, DELIGHT LIVING SPACES*, https://delightlivingspaces.com/farmland-vs-urban-real-estate-which-is-better-investment.
40 *Addressing Heirs' Property Issues*, FLORIDA HOUSING COALITION, https://flhousing.org/wpcontent/uploads/2023/07/Addressing-Heirs-Property-6.5.23-1.pdf.
41 *Heirs' property resolution and prevention: Jacksonville, FL, RESULTS FOR AMERICA*, https://catalog.results4america.org/case-studies/heirs-property-resolution-and-prevention-jacksonville-fl.
42 *Supra* note 39.
43 *Id.*
44 *Supra* note 16.
45 *Id.*
46 Heirs' Property State Survey, THE NATIONAL AGRICULTURAL LAW CENTER, https://nationalaglawcenter.org/statecompilations/heirs-property/.
47 *Id.*
48 *Supra* note 19.
49 *Supra* note 1; *Supra* note 5.
50 José Diaz, *HEIRS' PROPERTY: Investing to Preserve Wealth, ASSET FUNDERS NETWORK*, https://assetfunders.org/wpcontent/uploads/AFN_Investing_Heirs_Property_Report.pdf.

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RPPTL Executive Council & Committee Meetings

FOUR SEASONS-DISNEY | ORLANDO, FLORIDA

DECEMBER 4 – DECEMBER 6, 2025















Photos by John Neukamm and Silvia Rojas














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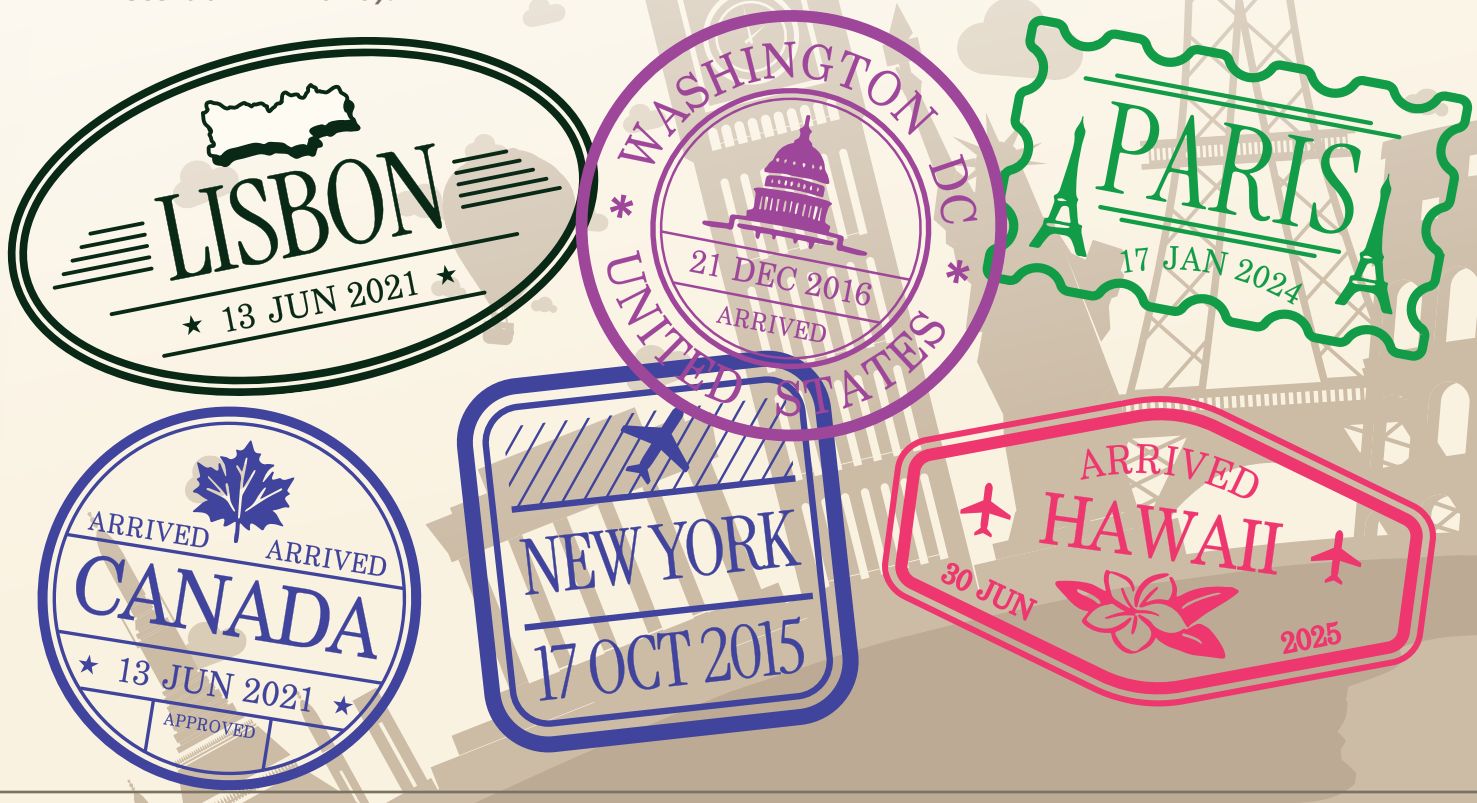
Michael P. Stafford, Esq., Co-Chair, RPPTL History Committee

Oh, the places we've been!!

Calendar year 2026 will be an unusual one for the Section because the Executive Council (EC) will have not one but two out-of-state meetings: Budapest, Hungary, including a river cruise, April 19-24, 2026 (Cary Wright's year as Chair), and Girdwood, Alaska, July 8-12, 2026 (Jon Scuderi's year).

Since its formation as a Florida Bar Section in 1954, the EC traditionally has met five times each Bar Year (July 1 through the following June 30), all of which, including out-of-state meetings, are open to all members of the Section. All EC members and RPPTL Committee Members are volunteers who pay their own expenses of travel, lodging, and meeting events.

It wasn't until 1973-74, under Chair John Grimsley, that the EC went outside Florida for one of its five meetings, a tradition that's lasted now for 52 consecutive years and counting, with only one Covid-caused cancellation (Rob Freedman's planned trip to Amsterdam in 2020).



John Grimsley took the EC to Mexico, as did James Altman a few years after that (82-83) and as did Roger Isphording (90-91). Central and South America have been popular destinations, with trips to Costa Rica (Lewis Kanner in 77-78 and Bruce Marger in 94-95); Panama (John Arthur Jones in 80-81); and Peru and the Galapagos (Sandy Diamond in 08-09).

Several meetings have been held in the islands of the Atlantic and the Caribbean: twice in the Dominican Republic (John Sutherland in 74-75 and David Brennan in 87-88), and once each in Curaçao (Robert Bratzel in 81-82), Antigua (Bill Sherman in 84-85), and the Bahamas (John Norris in 89-90, who claimed that things "were better" there).

Speaking of Islands, two Chairs have ventured all the way to Hawaii for exotic and educational experiences (Lou Guttmann in 03-04 and John Neukamm in 09-10).

In the continental U.S., the Section has invaded some big cities like San Francisco (Richard Harris in 79-80), New York (Louie Adcock in 92-93), New Orleans (Wilson Smith in 00-01), Washington, D.C. (Julie Williamson in 97-98), Chicago (Mike Dribbin in 14-15) and Boston (Drew O'Malley in 17-18).

But "vino" might have been one of the major reasons for the EC's four meetings in California in addition to the "Big City" gathering in San Fran, making California the most popular Section out-of-state destination. Wine aficionados Bob Goldman (96-97) and Steve Hearn (02-03) met in Napa and Sonoma, respectively, while Brian Felkoski (10-11) met in Santa Barbara, and Jerry Aron met in Lake Tahoe (91-92) (give Nevada credit for half of the Tahoe meeting?)

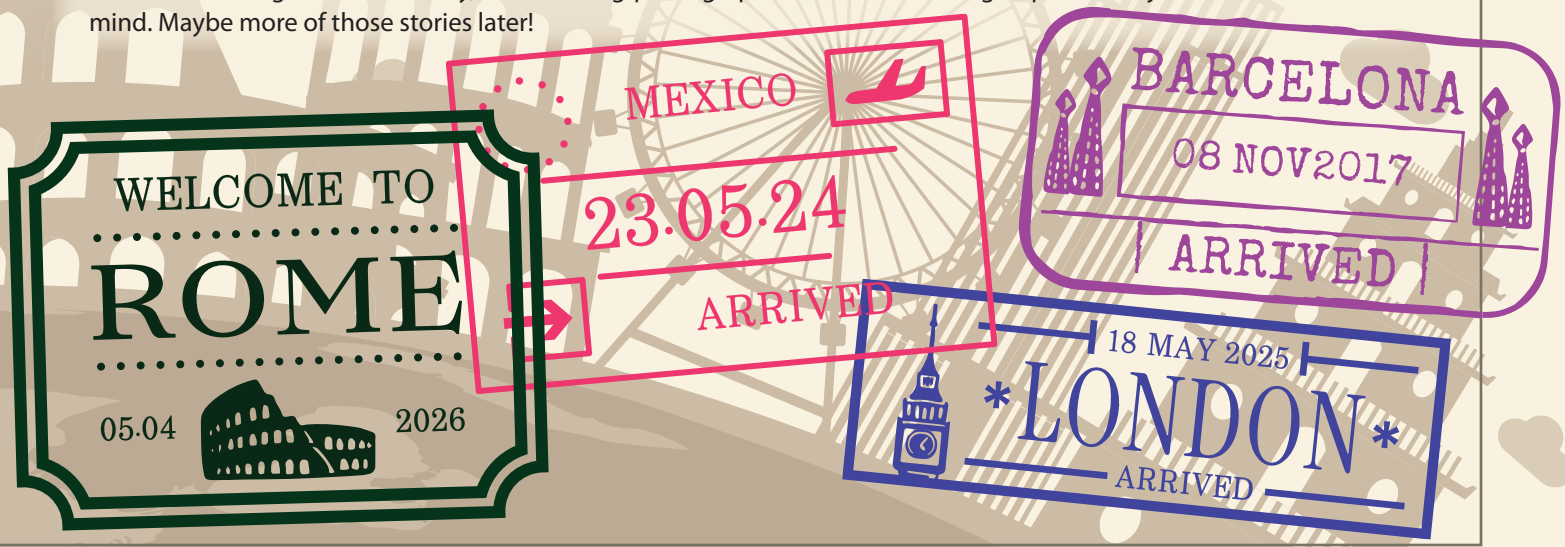
Besides California, States with more than one out-of-State EC meeting are Virginia, with two trips to Williamsburg (Walter Beales in 83-84 and Laird Lile in 04-05); two to Massachusetts (besides Boston, it was Pat Christianson's return to his Harvard law school roots in Cambridge in 85-86); two to Colorado (Ed Koren to Lost Valley Ranch in 88-89, and John Moran to the Broadmoor in Colorado Springs in 24-25). There were also two trips to South Carolina, both to Charleston (Chip Waller in 93-94 and Bob Swain in 21-22).

Many other interesting locations in the continental U.S. hosted EC meetings, including Santa Fe, New Mexico (Ruth Kinsolving in 95-96), St. Michael's on the Eastern Shore of Maryland (Bruce Stone in 98-99), Nashville, Tennessee (Rohan Kelley in 06-07), Biltmore Estate in Asheville, North Carolina (Fletcher Belcher in 12-13), Austin, Texas (Deb Goodall in 16-17), Jackson Hole, Wyoming (Bill Hennessey in 20-21), and Bar Harbor, Maine (Sarah Butters in 22-23).

Jon Scuderi's upcoming July 2026 trip to Alaska will be the first EC trip to that State, but we've been in adjacent Canada on three occasions: Joan Kayser in Montreal in 86-87; Mike Swain in Banff/Lake Louise in 01-02, and Katherine Frazier in Quebec in 23-24.

And last but not least, our EC has had numerous memorable trips "across the pond" to Europe. Cary Wright's April 2026 trip to Budapest followed by a multi-day river cruise, will be the EC's eighth European destination, including meetings in Paris, France (Tom Smith in 99-00); Barcelona, Spain (Jay Zschau in 05-06); Wicklow, Ireland (Melissa Murphy in 07-08); Prague, Czech Republic (George Meyer in 11-12); Lisbon, Portugal (Peggy Rolando in 13-14); Berlin, Germany (Mike Gelfand in 15-16), and Rome, Italy (Deb Boje in 18-19).

The EC trips over the years have combined camaraderie with educational experiences for EC and other Section members, and naturally have included some unusual and unexpected personal stories: false alarms forcing a 2AM Hotel evacuation in frigid New York City, and a roving photographer's run-in with Prague police are just two that come to mind. Maybe more of those stories later!



Real Property Case Summaries

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

The Court erred by in denying the Appellant's motion for writ of possession.

Upland Ventures, Inc. v. Diaz-Pichardo, 419 So. 3d 255 (Fla. 6th DCA 2025)

The Appellees, Ana Diaz-Pichardo and Alejandro Pichardo, obtained a loan from co-appellee HSBC Bank USA, National Association, as Trustee for Ace Securities Corporation ("HSBC"), which was secured by a first mortgage on their property. The Pichardos later took out a second mortgage on the home from HSBC. They subsequently defaulted on the second mortgage loan and HSBC filed a foreclosure action. HSBC prevailed and a Final Judgment of Foreclosure was entered in its favor.

The property was set for sale at a foreclosure sale. At the sale, the Appellant, Upland Ventures, Inc. ("Upland Ventures"), was the highest bidder and purchased the property for $370,600. Following the sale, Upland Ventures received a Certificate of Sale and a Certificate of Title from the Orange County Clerk of Court. After the sale, however, the Pichardos refused to vacate the property.

Upland Ventures filed a motion for writ of possession. The Pichardos opposed the motion, arguing that Upland Ventures acquired only a "judgment on a second mortgage," which did not entitle it to immediate possession of the property. The trial court agreed and denied the motion for writ of possession. Upland Ventures appealed.

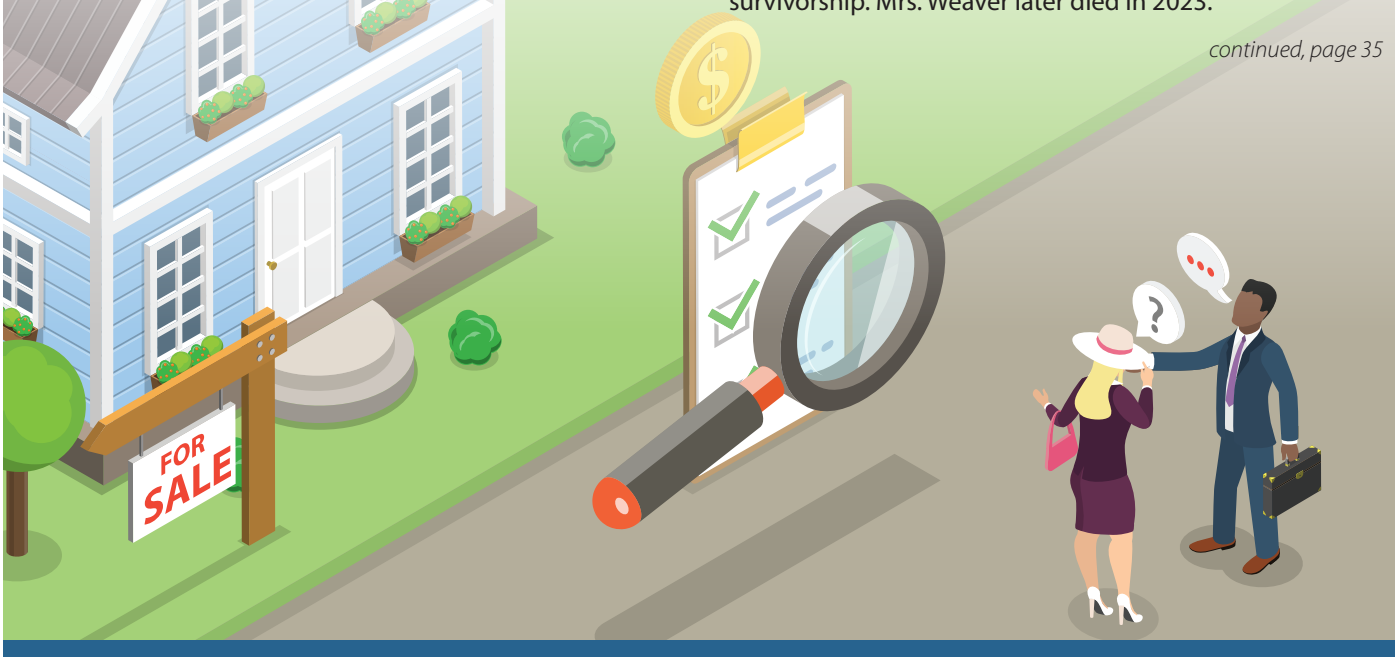
The appellate court noted that foreclosure sales are conducted in accordance with Fla. Stat. § 45.031. The court cited to *Cukierman v. BankAtlantic*, which held that a foreclosure sale of property involves the sale of the property, not a sale of the mortgage being foreclosed or of a "judgment on a mortgage." 89 So. 3d 250, 251-52 (Fla. 3d DCA 2012). The appellate court further found that, pursuant to subsection (6) of Fla. Stat. § 45.031, upon the filing of a certificate of title following a foreclosure sale, the purchaser acquires title to the property. Once the purchaser acquires title, it is entitled to immediate possession of the property. Accordingly, the trial court's order denying the motion for writ of possession was reversed, and the case was remanded.

Trial Court did not err in denying Husband's petition for homestead status and was correct in determining that the husband had waived his homestead rights.

Weaver v. Hatfield, No. 1D2024-2423, 2025 WL 3222580 (Fla. Dist. Ct. App. Nov. 19, 2025)

The Appellant, Mr. Kip Weaver, and his wife, Mrs. Carolyn Weaver, executed an agreement for deed on a property in December 2013 in Okaloosa County. Subsequently, in July 2019, Mr. Weaver assigned "any marital and homestead interest" and "all rights, duties, and obligations" in the property to Mrs. Weaver. Later, in 2022, Mrs. Weaver executed a warranty deed conveying the property to herself and her brother, the Appellee, Rufus Hatfield, as joint tenants with the right of survivorship. Mrs. Weaver later died in 2023.

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Mr. Weaver then filed a petition to determine the homestead status of the real property. Mr. Weaver argued that, upon Mrs. Weaver's death, the homestead property vested in him as the surviving spouse. However, the Appellee, Mr. Hatfield, argued that Mr. Weaver waived his homestead rights in 2019 when he assigned his marital and homestead interests to Mrs. Weaver. The trial court agreed with Mr. Hatfield.

The appellate court affirmed the trial court's decision. The appellate court noted that the case involved a homestead-rights waiver dispute and held that, in order to determine whether a waiver occurred, the court must examine the language of the purported waiver. The court found that the language of the waiver expressed an intent to waive marital and homestead rights. This language was sufficient to waive homestead rights under Fla. Stat. § 732.702(1), which ultimately left Mr. Weaver in a position equivalent to having predeceased his spouse.

As such, due to Mr. Weaver's waiver, Mrs. Weaver was free to convey the property to Mr. Hatfield. Accordingly, the trial court's decision was affirmed.

The trial court erred by failing to award a credit from the partition sale proceeds for the co-tenant's proportionate share of expenses.

Cauble v. Kaczmarski, 421 So. 3d 776 (Fla. 3d DCA 2025), reh'g denied (Oct. 23, 2025)

Megan Cauble (Appellant) and Gregory Kaczmarski (Appellee) purchased two condominium units, Castle Beach and Porto Bellagio, while they were in a relationship. After their relationship ended approximately two years later, Cauble moved into Castle Beach and Kaczmarski moved into Porto Bellagio. The parties agreed that each would bear the carrying costs of the unit he or she occupied.

In December 2009, Cauble lost her job, could no longer afford the Castle Beach unit, and surrendered possession to Kaczmarski. The following month, Kaczmarski began renting the Castle Beach unit through Airbnb and HomeAway.

In 2019, Cauble filed suit seeking partition of both properties. Kaczmarski answered and counterclaimed for breach of contract, equitable lien, unjust enrichment, and accounting, alleging that Cauble had agreed to relinquish her ownership interest in Castle Beach in exchange for $10,000, payable upon satisfaction of the mortgage.

After receiving a Fla. Stat. § 57.105 safe-harbor letter, Cauble abandoned her partition claim as to Castle Beach. Kaczmarski subsequently retained new counsel and filed a separate action seeking partition of the Castle Beach property. Cauble counterclaimed in that action and reasserted her previously abandoned partition claim.

The trial court struck Kaczmarski's answer and counterclaims in the original case, dismissed his second partition action, and entered partial summary judgment granting partition of both properties in favor of Cauble. The properties were sold, and a bench trial followed to determine the proper allocation of the sale proceeds.

At trial, the court denied Cauble's request to present expert testimony regarding the fair market rental value of Castle Beach to offset Kaczmarski's contribution claims. The court found that Cauble remained in joint possession of both properties after surrendering Castle Beach and denied her request for credits related to delinquent Porto Bellagio carrying costs deducted from the sale proceeds. The court awarded Kaczmarski a credit for all Castle Beach carrying costs incurred from 2010 through 2022, totaling approximately $293,000.

On appeal, the court relied on *Barrow v. Barrow*, which holds that when a cotenant in possession seeks contribution for expenses incurred to preserve the property, that claim may be offset by the reasonable rental value attributable to the cotenant's use of the property, limited to the amount of the contribution claim. 527 So. 2d 1373, 1377 (Fla. 1988). The appellate court also cited *Goins v. Goins*, explaining that even absent exclusive possession, rental value may be used as an offset against contribution claims. 762 So. 2d 1049, 1050 (Fla. 5th DCA 2000)

The appellate court found undisputed evidence that Kaczmarski had exclusive possession and use of the Porto Bellagio unit and was responsible for its carrying costs. Accordingly, Cauble was entitled to a credit for one-half of the delinquent charges deducted from the Porto Bellagio sale proceeds. As to Castle Beach, the court held that Kaczmarski's use of the property was disproportionate to his 50% ownership interest and that Cauble was entitled to a credit for one-half of the Castle Beach carrying costs. The appellate court further held that the trial court erred in excluding expert testimony regarding fair market rental value.

Accordingly, the trial court's decision was affirmed in part, reversed in part, and remanded.



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 Jennifer B. Thomas, Esq., Thomas Estate Law, PLLC, Ponte Vedra Beach, Florida

A Totten Trust terminates when all funds are transferred out of the account, and the account is closed.

Izquierdo v. Izquierdo, 50 Fla. L. Weekly D2025a (3d DCA, Sept. 10, 2025)

In 2016, Antonio Izquierdo and Carlos Izquierdo's mother had five bank accounts with designated payable-on-death beneficiaries. Antonio was a joint account holder with his mother. In May 2016, Antonio closed his mother's accounts and opened new accounts in his name held in trust for his mother. In July 2016, brothers Antonio and Carlos were appointed as co-guardians for their mother. In March 2017, the court ordered that all of their mother's funds in Antonio's possession be transferred into a single guardianship restricted depositary account (the "Guardianship Account"). The order contained no language preserving the accounts or the named beneficiaries, and neither Antonio nor Carlos objected. Antonio complied with the order, closed the accounts, and transferred all funds to the Guardianship Account.

Antonio and Carlos' mother died in February 2019. In December 2023, Antonio filed an Adversarial Petition in the probate court seeking to recognize the funds in the Guardianship Account as Totten Trust funds held in trust for the named beneficiaries of the closed accounts. Carlos moved to dismiss, arguing that because the accounts were closed and the funds were transferred to the Guardianship Account prior to their mother's death, the funds should be probated.

The trial court dismissed Antonio's Petition, concluding that the alleged Totten Trusts were tentative trusts that terminated when all funds were transferred to the Guardianship Account.

Antonio appealed, and the parties agreed that the dismissal of an adversary petition is comparable to the dismissal of a complaint. Accordingly, the standard of review was de novo.

The Third District Court of Appeal rejected Antonio's argument that the alleged Totten Trusts were not terminated because of a strong presumption that an absolute trust is created when a depositor of a Totten Trust dies before a beneficiary without revoking the trust. The court focused on the fact that the alleged Totten Trusts were closed and all funds transferred to the Guardianship Account *before their mother passed away*. Further, neither party objected to the court's order to close the accounts and transfer the funds to the Guardianship Account, and no language in the order preserved the named beneficiaries.

Antonio cited *Bene v. SunTrust Banks, Inc.*, for the proposition that the withdrawal of funds from a Totten Trust does not revoke the trust. The court did not think this case was on point because the funds were not merely withdrawn from the alleged Totten Trust account; *all funds* were withdrawn and transferred to a separate Guardianship Account, and the alleged Totten Trust accounts were closed.

The appellate court found that the trial court correctly concluded that the alleged Totten Trusts were terminated when the accounts were closed, and all funds were transferred to the Guardianship Account before the mother's death. Accordingly, the court affirmed the trial court's order dismissing Antonio's Adversary Petition.

The designation of account owners as "joint tenants with rights of survivorship" overcomes an assertion that an account fits the definition of a "convenience account" under Fla. Stat. § 655.80(1).

Pascalides v. Artico, 51 Fla. L. Weekly D40a (Fla. 3d DCA, Dec. 31, 2025)

Theodoros Pascalides died, leaving significant assets in both the United States and Venezuela. A dispute over approximately $2.3 million held in a bank account (the "Account") arose between Theodoros' three daughters, his Estate, and his girlfriend, Gabriela Artico.

The Account was opened in May 1990 and was titled "Theodoros Pascalides and/or Gabriela Artico." In 2004, Theodoros and Gabriela updated the Account to designate Theodoros and Gabriella as "joint tenants with a right of survivorship."

The Estate's Amended Petition contained three counts; however, after discovery, the Estate voluntarily dismissed the initial counts and the court determined that another count had no wherefore clause and no other prayer for relief, leaving only a portion of Count I for the trial court to decide, requesting, "(1) a declaration that (a) the Convenience Accounts were assets of [Theodoros'] estate, and the funds thereon do not belong to [Gabriela]."

The Estate filed a motion for partial summary judgment, and Gabriela moved for summary judgment seeking entitlement to all the funds in the Account.

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The trial court in an omnibus order, granted Gabriela's motion and denied the Estate's motion relying on two sections of the Florida Statutes: (1) Fla. Stat. § 655.79 entitled "Deposits and accounts in two or more names; presumption as to vesting on death" and (2) Fla. Stat. § 655.80 (2005) entitled, "Convenience accounts."

As this was an appeal on orders on motion for summary judgment, the appeals court reviewed the matter de novo.

The appellate court agreed with the trial court in granting summary judgment in Gabriela's favor and affirmed the trial court's decision. First, the court found that the Estate failed to show that there was a genuine dispute that Theodoros created the Account to serve as a convenience account. Second, the court found that Theodoros and Gabriela's designation as joint tenants with rights of survivorship was a "*fatal blow*" to the Estate's assertion that the Account was a convenience account under the definition set forth in Fla. Stat. § 655.80(1).

When a party prevails on a majority of the substantive issues and achieves their primary litigation objectives, they shall be determined to be the prevailing party even if the opposing party also prevails on a minor issue.

Snyder v. McCluney, 50 Fla. L. Weekly D2619d (4th DCA, December 10, 2025)

In October 2022, the Ward's husband and the co-guardians entered into a settlement agreement granting plenary power of the Ward's person and property to the co-guardians. In exchange, the husband received assets and cash.

The husband later filed a motion for contempt and to enforce the settlement agreement, raising five issues in the motion with the objective of expanding his visitation rights. The trial court denied the husband's contempt motion on all but one issue related to the number of days in a weekend, and concluded that the co-guardians were the prevailing party who were entitled to recover their attorney's fees incurred in defending against the husband's motion.

The husband moved for rehearing on his contempt motion. After the hearing, the trial court reiterated its prior rulings, except to find that each party had prevailed on a significant issue, neither being the prevailing party, and each would bear their own attorney's fees and costs.

The appellate court determined that the co-guardians correctly argued and that the trial court erred in finding that the husband was also a prevailing party. The court stated that the husband's limited success on a single issue did not constitute "prevailing" on a significant issue in the litigation. His primary objective was to expand visitation rights and restrict the co-guardians' discretion. The co-guardians' objective was to preserve their authority to act in the Ward's best interests and to maintain the visitation framework set forth in the settlement agreement.

Given that the co-guardians achieved their primary litigation objective, while the husband's win on the number of days in a weekend had a limited effect, the appellate court found that the trial court's finding that neither party had prevailed lacked support in the record and reversed the decision and remanded the case to the trial court for an evidentiary hearing on attorneys' fees.

In a breach of trust matter decided in favor of the trustee, a provision in the judgment that "each party shall be responsible for their own respective attorney's fees and costs" prohibits the trustee from recovering attorney's fees and costs from the trust beneficiary but does not prohibit the trustee from paying his attorney's fees and costs from the trust assets.

Johnson v. Wolter, 50 Fla. L. Weekly D2598e (Fla. 6th DCA, Dec. 5, 2025)

Luke Johnson, as trustee of the Doris Linda Trapnell Living Trust, prevailed in a breach of trust action brought by a trust beneficiary. The final judgment provided that "each party shall be responsible for their own respective attorney's fees and costs" and that the trial court "reserves jurisdiction to enter further orders as it deems necessary."

After receiving the final accounting, the beneficiary filed a motion to enforce the final judgment, claiming that the final accounting revealed that Johnson was "not bearing his own attorney's fees but charging those fees to the trust." The trial court granted the motion after a hearing, concluding that payment of fees from the trust funds would not be in compliance with the final judgment and ordered Johnson to pay his own attorney's fees and costs, and that he was not permitted to pay his attorney's fees and costs from the trust fund.

Johnson appealed the enforcement order, claiming that the final judgment and Florida Trust Code entitle him to pay his attorney's fees and costs incurred in his successful breach of trust defense from trust assets.

The appellate court reviewed the trial court's interpretation of its final judgment and the trust statutes de novo.

Under the Florida Trust Code, Fla. Stat., ch. 736, when a pleading asserting a breach of trust claim is "withdrawn, dismissed, or judicially resolved in the trial court without a determination that the trustee has committed a breach of trust," the trustee who successfully defended the breach of

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trust claim "is authorized to use trust assets to pay attorney fees and costs" incurred in the defense without notice to beneficiaries or order of the court. Fla. Stat. § 736.0802(10)(g) (2023).

The final judgment's provision that "each party shall be responsible for their own respective attorney's fees and costs" prohibits Johnson from recovering his attorney's fees from the beneficiary, and vice versa, but does not prohibit Johnson, as trustee, from paying his attorney's fees and costs from trust assets as expressly authorized by the Florida Trust Code.

Given that the trial court imposed a new restriction on Johnson that is contrary to the Florida Trust Code and not in the final judgment, the appellate court reversed the trial court's decision and remanded the case to the trial court to enter an order denying the beneficiary's enforcement motion.


J. THOMAS

Jennifer B. Thomas *is the founder of Thomas Estate Law, PLLC, in Ponte Vedra Beach, FL, focusing on estate planning, business planning, charitable planning, and probate and trust administration. She earned her B.A. from Florida State University and her J.D. from Emory University School of Law. She is licensed to practice in both Florida and Georgia.*

RPPTL CONNECT

On December 4, 2025, the Membership Committee of the Section hosted its inaugural "RPPTL Connect" conference during the Winter Executive Council and Committee meetings at the Four Seasons Orlando - Disney. The purpose of the event was to introduce new and prospective members to the Section, by providing attendees an opportunity to learn about the history, structure and operations of the Section, while interacting with Section leadership and members.

The event was attended by 15 practitioners and law students from across the Central Florida region who were greeted warmly by current and past Section Chairs, members of the Section's Executive Committee, representatives of the Law School Outreach and Membership Committees and of At-Large Members (ALMs). After a detailed overview of the Section presented by the Membership Committee, ALMs and Section leaders, attendees were paired with a Section member mentor. They were treated to a delicious complimentary buffet lunch before choosing a substantive law committee meeting (Residential Real Estate and Industry Liaison Committee or the Probate and Trust Litigation Committee) to attend.

The Connect attendees and Section Committee members with whom they interacted throughout the afternoon expressed positive feedback for the event and appreciated the opportunity to learn more about the Section and meet colleagues in their areas of practice. The Membership Committee looks forward to hosting a successful RPPTL Connect 2026.

The Membership Committee is especially grateful to the Connect event sponsors: Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A, Dean Mead, Shuffield Lowman and Lowndes.

Summary vs. Formal Administration:

Strategic Considerations

By Emily Crain Evans, Esq., GrayRobinson, P.A., Lakeland, Florida

Summary Administration can be an option for estates when, in a testate estate, the decedent's will does not direct administration as required by chapter 733, and in all estates when the total value of the assets is less than $75,000, excluding exempt property (as defined in the Florida Probate Code), or if the decedent has been dead for more than two years. Formal Administration is the default court supervised administrative process where a Personal Representative is appointed and there is a clear procedure for clearing creditor claims and estate liability before distributions are made to any beneficiaries. While summary administration can be a more streamlined and cost-efficient process for estate administration, there are pitfalls to avoid.

One of the main considerations if the decedent has not been dead for more than two years is whether there is any creditor liability and the extent of this liability. In summary administration, the petitioner(s) give up the ability to challenge the validity of any claims filed and all claims are considered valid claims if timely filed. This can be harmful to a pending summary administration when the estate assets are less than the creditor debts of the decedent.

Additionally, the recipients of the decedent's property under the order of summary administration shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value of the decedent's estate that was actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida. This can cause issues when claims are timely filed after an order of summary administration has been entered and the beneficiaries have received their share of the assets.

Summary administration also requires cooperation between the beneficiaries. The petition must be signed and verified by the surviving spouse, if any, and any beneficiaries, except that joinder in a petition for summary administration is not required of a beneficiary who will receive a full distributive share under the proposed distribution. However, formal notice of the petition must be served on a beneficiary not joining in the petition. For example, if there are family dynamic issues, creditor liability, an elective share, or potential contests to the administration or other distribution considerations, summary administration may not be the right option.

Florida Probate Rule 5.530 states that the Petition for Summary administration must have a description of all assets in the estate and the estimated value of each. If the petitioner cannot accurately describe the assets and the estimated value, summary administration will not be a good choice. If summary administration is used and additional assets are later discovered, the administration must be reopened and administered as it relates to the additional assets discovered.

The best practice for utilizing a summary administration is when the assets can be easily identifiable and described, the beneficiaries agree, and there is minimal creditor liability.



E. EVANS

Emily Crain Evans *is an attorney with GrayRobinson, P.A. in Lakeland, 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.*

Best Practices Refresh:

Preventing Fraud in Florida Real Estate Transactions

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

Florida is known for its unique mix of people: whether you're a local, a transplant, a tourist, or a snowbird, our great state is made up of a truly unique and vibrant mix of people. What makes Florida beautiful also makes it a place vulnerable to fraud: whether it be high transaction volumes, an ever changing population, remote closings, and increasingly sophisticated scammers and scams, real estate fraud is an ever-present concern in Florida. Real estate attorneys should remain vigilant throughout every stage of a real estate transaction. Implementing proven best practices can significantly reduce the risk of financial loss to both firms and clients alike.

Start Out Strong

Establish routes of communication early in the transaction. Sending out an intro e-mail introducing yourself and anyone on your team establishes rapport and lets parties know exactly who they will be interacting with during the transaction. Utilize this initial touch point to request information from the parties to the transaction, and even when working with a trusted referral source, utilize this time to cross-reference contact information. An intro e-mail, followed by a phone call to verify wire instructions, establishes baseline communication standards between your team and the parties to the transaction that can be utilized during the transaction. Ask referring real estate agents to provide you with the contact information they have received from their clients, and cross reference the same against information provided by any transaction coordinator.

Identity Verification Is Critical!

Every party involved in a real estate transaction should have their identity carefully verified, especially any Seller. Prior to closing, government-issued photo identification should be reviewed and compared against public records, prior deeds, and a property's ownership history. Be careful when dealing with out-of-state sellers, estates, trusts, or properties that have been vacant for extended period. No transaction should proceed based solely on email or text communication without verbal or physical corroboration. All parties should be provided notice in advance that legitimate professionals will never send last-minute wiring changes without direct verbal confirmation.

Wire Fraud Prevention

Wire fraud remains one of the most common scams in Florida. Savvy scammers frequently intercept or spoof email addresses to alter wiring instructions just days (or hours!) before closing. To reduce the risk, wiring instructions should never be accepted or changed via email alone. Utilize the telephonic contact information you've obtained via your intro e-mail to call and verify any last minute modifications to wiring instructions. All wire instructions must be verbally confirmed using a trusted, previously verified phone number. When verifying wire instructions, make sure you are confirming the identity of the person you are speaking with, and notate the date and time said instructions were verified and with whom you were speaking. Using secure transaction portals and encrypted communication platforms further reduces exposure to cybercrime.

All earnest money deposits and closing funds should be held in properly managed escrow accounts through reputable title companies, attorneys, or regulated financial institutions. Clients should receive written wire-fraud disclosures and be encouraged to pause and verify before transferring any funds. A single phone call can prevent irreversible financial loss!

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Deed Fraud - Conduct Thorough Due Diligence

Careful due diligence is one of the most effective fraud prevention tools. Reviewing both the B-II exceptions on your title commitment, together with the county public records helps confirm legal ownership, uncover possible fraudulent liens or encumbrances, and identify suspicious recent transfers. Any inconsistencies between the seller's identity and recorded ownership should be thoroughly investigated immediately. Title insurance companies play a vital role. If something feels off, always reach out to your title insurance partners to see if there is a recent alert or notice in the area where the property is located.

Recognizing Red Flags

Certain warning signs often accompany fraudulent transactions, such as: (i) properties offered at prices significantly below market value; (ii) Sellers who pressure Buyer parties to rush closing or bypass standard closing procedures; (iii) resistance from either party to in-person meetings or refusal to provide verification; (iv) sudden changes to closing documents or wiring instructions; and (v) email addresses or domains that closely resemble, but do not exactly match, legitimate companies. For example, the first letter of my name is "L". A lowercase "l" looks quite similar to an uppercase "I", so it's a good idea to use a font with Serif (like Microsoft's new default of Aptos) which can clearly distinguish the difference between the two letters. Sans-serif fonts like Arial make it pretty hard to distinguish between the two! When these red flags appear, transactions should be paused until concerns are resolved, regardless of the pressure you may be receiving from the parties to close.

Preventing real estate fraud in Florida requires diligence, verification, secure communication, and professional oversight. By following best practices at every stage of a transaction, real estate attorney professionals can protect themselves from costly and disruptive fraud schemes.



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.*





Roundtable

SATURDAY, DECEMBER 6, 2025

The Four Seasons, Orlando, Florida

Prepared by Arienne C. Valencia, Esq., Naples, Florida
Highlights of the Meeting of the RPPTL Section

PROBATE AND TRUST and REAL PROPERTY LAW DIVISION JOINT ROUNDTABLE

Thank you to the Roundtable Sponsors
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The Directors of the Probate and Trust and Real Property Law Divisions, Sancha K. Brennan and Steven Mezer, called the meeting to order at 8:00 am.

Recognition and Introductions. Steven Mezer, Director of the Real Property Law Division, motioned to have the minutes from the last meeting approved, and the minutes were voted on and approved. Steve Mezer also reminded committee chairs to submit their agendas on time. Sancha K. Brennan, Director of the Probate and Trust Law Division, reminded everyone that the annual committee chair reports are due, are used by Section leadership in making Chair/Vice-chair appointments, and are kept confidential. She also announced that there will be new shorter quarterly reports to be submitted by each committee to help improve transparency and coordination among committees.

Action Items. None.

Information Items:

Trust Law Committee. ***M. Travis Hayes, Chair; Jolyon D. Acosta, Frederick "Ricky" Hearn, and Jennifer J. Robinson, Co-Vice Chairs*** **–** M. Travis Hayes discussed three information items: The first is the project underway to revise the trust code to include statutory provisions for the pretermitted child, very similar to the probate code. The second is the work of the spendthrift subcommittee to clarify that spendthrift protection applies to a beneficiary serving as trustee where the beneficiary/trustee is limited to an ascertainable standard for discretionary distributions from the trust. The third information item is to announce the newly-formed subcommittee that will be reviewing the uniform law commission's work, and considering whether revisions to the trust code will be necessary in some areas, to conform with the new uniform trust law.

Probate Supreme Court Work Group – Benjamin F. Diamond, Work Group Member: Benjamin F. Diamond reported on the progress of the probate work group which included recommendations to improve upon the state judicial courts' efforts to streamline the probate process by reducing judicial resources in uncontested judicial proceedings. Essentially, uncontested probates will go before a magistrate judge, subject to the circuit court judge conducting a final review of the probate file in conjunction with entry of the Order of Discharge. The Florida Supreme Court has approved the recommendations of the task force. The task force is also working on uniformity issues such as standardizing checklists and probate forms.

Probate Law and Procedure Committee – ***Theo Kypreos, Chair; Ben Diamond, Stacey Prince-Troutman, Michael A. Sneeringer, and J. Grier Pressley III, Co-Vice Chairs.*** Michael Sneeringer provided additional insight on standardizing the probate court checklists and how to implement procedures for uncontested probate cases.

Joint Legislative Committee – Lee A. Weintraub, Co-Chair, and S. Dresden Brunner, Co-Chair: Lee A. Weintraub discussed Senate Bill 116, which restricts the ability of a person over age 65 to sell a home due to presumed capacity issues strictly based on age. S. Dresden Brunner also discussed Senate Bill 120, which restricts the ability of a person over age 60 to enter into a contract, again due to presumed capacity issues strictly based on age. The committee was asked to act on an emergency basis to work on a position for the Section regarding the proposed legislation. The Section plans to oppose the proposed legislation due to due-process concerns, and unintended consequences.

Committee Reports. None.

Adjournment. Meeting was adjourned at 9:30 am.

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