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ActionLine

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Florida Title Insurance Rate Review

By John T. LaJoie, Esq., Senior Regional Counsel for First American Title Insurance Company, Tallahassee, FL

The Florida Department of Financial Services, Office of Insurance Regulation, held a Title Insurance Rate Workshop on November 8, 2005. Based on the comments made by the Office of Insurance Regulation, it is clear that the Department believes that the rate structure is flawed. The Office expressed that the current rate for title insurance is too high, and that title insurance agents do not earn their respective share of the title insurance premium. It is clear from this posture that the Department does not fully understand the role of title insurance agents in a real estate transaction.

The Florida Land Title Association submitted a letter to the Department, on behalf of the Florida title insurance industry, in response to the industry outcry over the Department's approach to this rate review. The Department issued a Data Call prior to the workshop, to consider industry input before setting or modifying the current rate. *See* Fla. Stat. §627.782 (2005). The rule promulgated pursuant to Florida Statutes, Section 627.782, titled "Title Insurance Statistical Gathering", provides that licensed title insurance agencies and title insurers submit statistical data to the Office and that the data include the following:

1. income, loss and expense information to ana-

See "Rate Review" page 15

Message from the Chair:

Council Members are Working Hard for *You*

By Julius J. Zschau, Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., Chair



The 2005-2006 Section year has begun very well. The Annual Legislative and Case Law Update was an outstanding success under the leadership of Silvia Rojas, Debbie Goodall and Sancha Whynot. Our attendance of 426 was perhaps the best turnout that we have had in many years. The speakers gave timely, useful, hard-hitting lectures on the latest legislation and case law developments. All of the events were well attended and were most enjoyable. In addition, the tapes of the legislative update are selling at an extremely rapid rate. If you missed the Legislative Update, you can still buy the tapes and materials for $225.00 (See page 25.) It is an investment well spent, and you can also obtain CLE credit. Special thanks go out to all involved in this most successful Legislative Update, especially the chairs and co-chairs, the speakers and our Section Administrator, Terry Hill.

The Section is also off to a fabulous start with a series of very well attended CLE seminars and tape and material sales. Our membership is up significantly over last year and we are hoping to attract even more members to our Section. Total membership has reached 9,156 which is the highest number ever achieved by the Real Property Probate and Trust Law Section. In October,

See "Message From the Chair," page 7

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Raising the Stakes in Lawyer Professionalism: The Rising Influence of Board Certification

By Ralph Artigliere

"Technical proficiency without professional integrity still adds up to a bad lawyer."
— Florida Supreme Court, 1981

How does one measure a lawyer's character and reputation for professionalism amongst peers, rivals, and competitors? At the beginning of my legal career, I grappled with Martindale Hubbell's inquiries about whether certain of my fellow lawyers deserve a "v" rating or not. Martindale's other "A-B-C" scale for lawyer competence seemed easier to apply for certain lawyers than whether they also merited a "v" for ethics and professionalism.

As I approach my fourth decade as a lawyer including a few years on the bench, I clearly see the importance of distinguishing between a lawyer who is technically good and one who is both competent and trustworthy. While the task of identifying and applying standards for character and professionalism is not easy, it is essential that our profession make lawyers adhere to this important component of our profession; without it we are no longer a *profession*, just another business.

The Florida Supreme Court and The Florida Bar recognize this need. Both found a useful vehicle for focusing on professionalism in the certification program, which identifies lawyers qualified to achieve the special distinction of board certification. The Supreme Court requires that The Bar's certification committees confirm a lawyer's professionalism and ethics during review of applications for initial certification and recertification. Mandated professionalism for certification is an important step that is creating a positive impact on the behavior of Florida lawyers and our legal system.

From the infancy of The Bar's efforts to certify specialists in discrete areas of law, the Florida Supreme Court recognized that every lawyer meriting certification by The Bar should be evaluated as to character, ethics, and reputation for professionalism. In a 1981 decision rejecting an early version of the certification plan submitted by The Bar, the Court opined that technical proficiency is not the only mark of a true professional. "The significant qualities distinguishing good from bad lawyers — and, thus the areas for truly major concern about 'competence' – are matters of character, judgment, wisdom, morals, and attitude, not the business of technical proficiency... . Technical proficiency without professional integrity still adds up to a bad lawyer."[1]

Notwithstanding this strong language, the very next year, the Court approved The Bar's proposed plan for the two initial certification areas of Tax and Civil Trial without expressly requiring a professionalism peer review component. Over the next sixteen years, lawyers seeking certification by The Florida Bar in those two specialties and the various new areas of certification, were required to show substantial involvement and experience in their specialty area, specialized continuing legal education, mastery of the law needed for the specialty demonstrated through examination, and peer review on *competence*.[2] These requirements apparently did not fully satisfy the Supreme Court's preference for a certification plan that ensured that only lawyers of true character and trustworthiness would become certified.

In 1998, when the certification plan had been in existence for almost 16 years, the Florida Supreme Court reinforced its commitment to professional integrity by adding peer reviewed professionalism as a specified component of the *Minimum Requirements for Qualifying for Certification.*[3] This changed everything. Now all lawyers seeking certification and recertification are subject to peer review from judges and lawyers on professionalism as well as proficiency. Even lawyers who have achieved certification and recertification over the years are now encountering peer review denials of recertification. As a result, lawyer behavior is changing for the better to accommodate the professionalism requirement.[4]

To understand the scope and impact of the change in requirements, simply refer to the "new" rule language in the Supreme Court's 1998 opinion, which pervades and imbues the rules, policies, and actions of the certification program and its committees: "The applicant shall also be evaluated as to character, ethics, and reputation for professionalism. An applicant otherwise qualified may be denied certification on the basis of peer review."[5]

The Court's opinion details how and from whom peer review is to be solicited.[6] By entrusting the assessment of professionalism to the applicant's peers,[7] the Court obviously assumes that professionalism is not too subjective to be fairly evaluated and that this is an appropriate charge for members of a profession sworn to honesty and trustworthiness. Nonetheless, the peer review process includes multiple levels of committee and board involvement to ensure that applicants facing denial of certification receive a fair and complete assessment. Judicial peer review is particularly important in many areas of practice. Area committees give applicants the opportunity to supplement the record by listing additional potential peer reviewers.

Having been involved in the program while on BLSE[8] for many years, I can attest that the process works. Only a few denials on peer review have been appealed. While the peer review assessment process in certain cases can be extremely challenging, in my experience peer review is an effective and fair way to review and assess the character,

continued, next page

trustworthiness, and reputation for professionalism of certification applicants. Peer reviewers take their job seriously and most provide specific examples and reasons for negative ratings on professionalism. Members of the area committees are familiar with the details of practice in their particular specialties, and peer review comments are weighed and reviewed for consistency with the totality of the evidence.

There are also significant safeguards against malicious, biased, and arbitrary decisions through the various levels of review. Members of the BLSE and Board of Governors ensure diversity of opinion and interests and are committed to fairness for all applicants and for the good of the program. An applicant with appealable issues can ultimately seek recourse in the Supreme Court.

Mandating professional conduct is not without criticism. Some contend that professionalism is not defined[9] and therefore cannot be effectively measured or assessed; others contend that such subjectivity means that the peer review process can be unfair. These criticisms are outweighed by the importance of the Supreme Court's objectives for this process.

Board certification is a voluntary program, and applicants agree to all the rigorous requirements of the program, including confidential peer review. Board certification was conceived and is operated under the mandate of the Supreme Court as a program for the benefit of the public, not the lawyers who seek certification. The consuming public, not to mention the reputation of all certified lawyers, can be negatively impacted by the certified lawyer who behaves unprofessionally. Certifying a lawyer with a bad reputation for professionalism hurts the program.

Furthermore, a certification program with high standards for professionalism and lawyer conduct positively influences other lawyers by example and by virtue of the fact that certification is becoming an increasingly important component of a lawyer's career as the program grows in size, influence, and importance to those who use and refer to lawyers. Lawyers who want to be certified will behave like certified lawyers: beyond reproach. This creates a snowball effect, which benefits the system of justice and all who participate in it, including lawyers themselves.[10]

Another potential criticism of the professionalism component of certification bears mention here. At least one lawyer has taken the position that requiring peer review on professionalism will cause lawyers to care more about what their opponents and the judges think of them than what is in their client's best interest. In other words, it is postulated that lawyers desiring certification will make concessions in their cases just to keep peers happy, which cuts against zealous advocacy.

While I have to admire the ingenuity of this argument, as I would never have thought to make it myself, the argument misses a very important point of professionalism. It is not valid to equate behaving professionally with weakness. The truly professional lawyer is *always* a zealous advocate, and advancing every *appropriate* argument and position for the client garners respect, not rebuke, from peers. It is the untoward manner in which some lawyers advance their positions, or the advancement of unmeritorious positions due to lack of preparation or for reasons of delay or harassment, that is deemed unprofessional. In virtually every case, true professional behavior enhances rather than detracts from effective advocacy and is therefore in the client's best interest. Some of the best and most professional lawyers are bulldogs – they just know who, when, and how to bite, when to hold on, and when to let go.

Every Florida lawyer should exhibit levels of behavior and trustworthiness that bring credit, respect, and honor to our profession while performing the important role of advocate for clients. It is my personal opinion that this obligation is inviolate for all lawyers as officers of the court and as licensed and sworn members of the Bar. While others may disagree and contend that professionalism is only aspirational for Florida lawyers pending definition and codification,[11] that leeway no longer exists for those seeking certification.

The board certification program is charged by the Supreme Court to enforce professionalism as a mandate for those who wish to become or remain certified. The results of this change are encouraging. Mandatory professionalism is for the good of not only the certification program and the public it serves, but for the profession of law itself; and it is working to all our benefit.

About the Author: *Ralph Artigliere became a Circuit Judge after twenty-four years as a trial lawyer. He is a Fellow of the American College of Trial Lawyers and board certified in Civil Trial. Judge Artigliere is immediate past-chair of the Florida Bar's Board of Legal Specialization and Education and teaches trial issues, ethics, and professionalism to lawyers and judges. He is on the faculty of the Florida College of Advanced Judicial Studies. The opinions contained herein are those of the author and not the BLSE or The Florida Bar.*

Endnotes:

1 *The Florida Bar Re Amendment to the Integration Rule (Certification Plan),* 399 So. 2d 1385, 1386 (Fla. 1981).

2 It is not clear whether the Court intended the initial approved plan's peer review component to impliedly encompass character, ethics, and reputation for professionalism.

3 *In re Amendments to the Rules Regulating the Florida Bar,* 718 So. 2d 1179, 1223 (Fla. 1998).

4 Lawyers appearing before BLSE have described changes they have personally made to avoid behavior that would cause negative peer review. Failure to acknowledge and adjust to the new requirement creates the risk of peer review denial of certification.

5 *Id.*

6 Of course, there are also specific ethical and disciplinary standards in addition to the professionalism requirements. *Id.*

7 The procedure may include written references from lawyers and judges, solicitation of public input, and independent inquiry. *Id.*

8 BLSE is the Board of Legal Specialization and Education, which oversees the certification programs.

9 See Rizzardi, "Defining Professionalism — I Know It When I See It?", 79 *Fla. Bar J.* at 38 (Jul/Aug 2005)(calling for a definition of professionalism and specific, enforceable Bar rules of professionalism).

10 I have found that it is far easier to have a bad day when a colleague, opponent, or judge behaves unprofessionally than when a hearing is lost. It sticks with you far longer too.

11 79 *Fla. B. J.* at 39.

A Certification Examination Iliad

By Kimberly A. Ashby, Construction Law Certification Committee, Chair
Akerman Senterfitt, Orlando

The scene

A conference room. The cast: eight other people — some of whom you have met, others of whom are complete strangers. The task: create a certification exam from scratch, a test that should take the applicants approximately six hours to complete — no more, no less; An exam that is challenging without being pedantic or fanciful; A test that is thorough but not picky, that favors no particular subspecialty but recognizes, with appropriate balance, the various niches in the certification area.

The Florida Bar always sends off the test-building team with its most earnest support.

Back to School

Luck might play a part, but the individual committee members' diligence is the meat and potatoes of any certification exam's success. Most certification committee members never have had any experience with a written exam other than taking one.

Fortunately, The Florida Bar provides examination education for the committee through Dr. Sue Legg, a University of Florida professor who specializes in the preparation and grading of exams. The committee "goes to school" on holistic grading, balancing question types and subject areas, and getting a real sense of what would be fair and would accurately assess the collective knowledge and skill in the specialty area. Dr. Legg presents at least two full sessions to the committee, and she assists the committee in scoring and ultimate selection of the pass/fail line.

Crafting the Instrument

Most committees draft all of the exam questions, a process that can span over six months. As a wise man once said, "It is not the questions that concern me, it is the answers!" Indeed, the hardest challenge is drafting model answers backed up by research to demonstrate what the committee is seeking as ideal answers.

Some members invariably err on the side of drafting questions that are too easy; others fail by making the questions too hard, or too obscure. The committee leadership must ensure that the questions neither coddle nor penalize the test taker. Ultimately, only the actual administration of the exam will prove whether the test was a success.

Implementation

The exam's administration is scary from the inside. On the day of the inaugural construction law certification exam, those committee members in attendance were cowed by the presence of the deans of the practice who were about to tackle the committee's year-long work product. The feeling can be described as much like that of expectant fathers during delivery: "Will the baby be alright?" Many of the examinees praised the exam in our presence, and castigated us later for making the test too Homeric, and for using words like "Homeric" in the exam.

Grading

Lest you forget "dead week" in law school, let me assure you that grading days are much the same. Spending vast amounts of time pouring over legal theories — some in handwriting that has not attempted to write a full essay by hand in decades — convinced the committee that many of the test takers are one stroke away from writing medical prescriptions.

More than 100 examinees took the construction law certification exam, which contained a total of six essay questions, so you can do the math on how many essay answers the committee had to read. A further complicating factor is that some questions were "opt in/opt out," another quandary for the committee when constructing the test to give flexibility to the test taker to reside in her or his niche area. The good news is that multiple choice questions are graded by computer.

At least two committee members read each exam essay question and agree on a score for each question. The committee determines a pass/fail line based on a number of factors, especially those suggested by Dr. Legg. The Florida Bar liaison posts the list of individuals who passes, and is responsible for advising those applicants.

Certification Approval

Review of the applications is a vital part of the process, as the committee fields requests for waivers of requirements in CLE and practice requirements, or addresses ethical matters. Every exception granted detracts from the applicants who went to the trouble to comply with all of the requirements, and thus the majority of such requests must be denied.

Once all of these tasks are complete, the process begins again with the review of next year's applications, marketing and public relations efforts, and review of exam specifications and other administrative tasks to keep the area vibrant.

Certification is one of the few practice recognitions that compares to the completion of a marathon. It requires experience, preparation, ambition and tenacity, but crossing the finish line is worth every step.

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Message From the Chair
from page 1

alone, we added 222 new members.

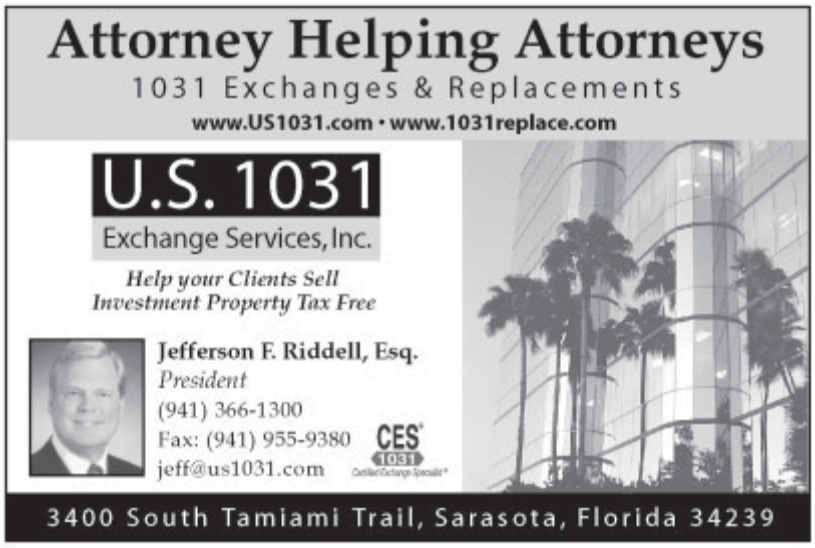
The Section's Legislative initiatives continue at a rapid pace and have been capably handled by our Legislative Committee and lobbyists. Our Real Estate Law Division is continuing its collaborative efforts with the joint committee of realtors and attorneys to fine tune the FAR/BAR contract. Thanks to the efforts of our Legislative Chair, Brian Felcoski, and former Section Chair, Laird Lile, and the excellent service provided by our Section's governmental affairs representatives, Pete Dunbar and Martha Edenfield, our Probate & Trust Law Division's proposed new Trust Code is presently working its way through the Legislature.

The Florida Bar has recently established a special committee to study paralegal regulation. Phil Baumann is our Section's representative to that committee. During last month's hearings, Sandy Diamond, our Probate & Trust Law Division Director, provided testimony regarding the Section's position on this issue.

Our position, in essence, is that there are very few specific examples offered in support of the need to regulate paralegals. While there may be instances in which paralegals have provided or may provide legal services without appropriate (or any) attorney supervision, those cases would more appropriately be dealt with by enforcing or strengthening existing laws related to the unlicensed practice of law. Our Section has also taken the position that, if there is to be additional oversight of legal assistants, that responsibility should logically belong to The Florida Bar and to the Judiciary rather than the Legislature.

As you can see, your Section continues to move forward in the advancement of our profession. Each and every one of you is an important and significant part of the Section, and I encourage you to become active in the Section by taking part in work of our committees whether they be probate and trust law related committees, real property committees, or general standing committees. We need your support and participation and we welcome your attendance at committee meetings. Please avail yourself to the use of our excellent CLE program. If you cannot attend in person, the course materials can be purchased at a reasonable price.

Our website is being updated and made more user-friendly (see www.flabarrpptl.org). Please feel free to use it; it is an important tool in our Section communications. Among other things, it provides information regarding what is going on in the Section in terms of legislation and the opportunities that exist for involvement in committee activities. Active involvement in your Section will make you a better lawyer and assist in positive developments in probate trust law and real property law. Your participation makes a major difference.



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LEGISLATIVE UPDATE

By Peter M. Dunbar, Esq., RPPTL Legislative Counsel

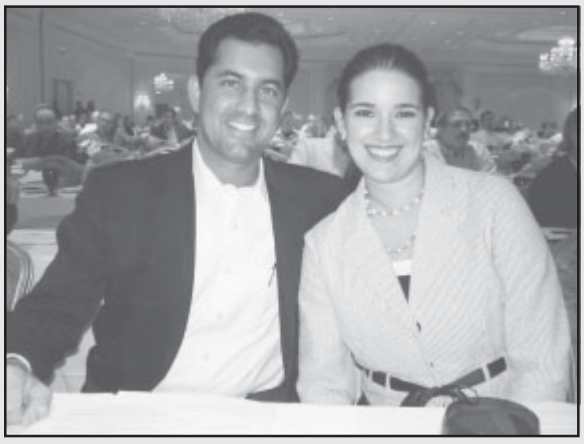
Outstanding Legislators Awarded


PETE DUNBAR

The annual "Legislator of the Year-Distinguished Service Awards" of the Real Property Probate and Trust Law Section for outstanding legislative service during the 2005 Regular Legislative Session have been presented to **Senator Lisa Carlton** and **Representative Joe Negron**. Both legislators were recognized for their important contributions to the Section's successful 2005 Session initiatives. Section members extend their sincere appreciation for the work and accomplishments of these two Members of the Legislature.

The Section also presented its "Rising Star Awards" to freshmen **Representative Anitere Flores, Representative Thad Altman** and **Representative Trey Traviesa** for their contributions to the Section during the 2005 Session and for distinguishing themselves as effective contributing members to the legislative process.

Senator Carlton was the Senate sponsor of the RPPTL's comprehensive initiative on benefit plans, updating the state law for a variety of new benefit plans that have been authorized by Congress and extending state protections for health and education savings plans. Senator Carlton is the Chair of the Senate Ways and Means Committee, and she serves as the Alternating Chair of the Legislative Budget Commission. She also serves as a member of the powerful Rules and Calendar Committee. Senator Carlton is an attorney, and she is the co-owner and manager of a Sarasota-based citrus and cattle business. She was first elected to the Senate in 1998 after serving two terms in the Florida House of Representatives.


The Section presented its "Rising Star Awards" to freshmen Representative Anitere Flores (right) and Representative Trey Traviesa.

Representative Negron was the prime sponsor of the House companion measure of the Section's benefit plans initiative. He has also successively sponsored Section initiatives in each of the last four years, and he has been a consistent supporter of the Section's legislative efforts through out his legislative career. Representative Negron serves as the Chairman of the House Fiscal Council, as the Alternating Chair of the Legislative Budget Commission, and as a member of the powerful House Rules and Calendar Council. He is an attorney from Stuart, and he is serving in his third term in the Florida House. Representative Negron is an announced candidate for the Republican nomination for Attorney General.

Representative Anitere Flores was elected to the House of Representatives in 2004 and currently serves as a member of the House Committees on Education Appropriations, Colleges and Universities, Health Care, Utilities and Telecommunications, and Judiciary. She is a graduate of Florida International University and the University of Florida College of Law, and she is a recent appointee to the Select Committee to Protect Private Property Rights. Representative Flores represents 114th District that includes portions of Miami-Dade County. During the last session she sponsored the Section's major initiatives to revise the "Dead Persons Statute" and contributed to the passage of several other initiatives.

Representative Thad Altman was the primary sponsor of the Section's comprehensive initiative on benefit plans in the House of Representatives. He was elected to the House of Representatives in 2003 in a special election and has been subsequently reelected. He currently serves as a member of the House Committees on Business Regulation, Education Appropriations, and Water and Natural Resources, and he is the Vice Chairman of the House Spaceport and Technology Committee. Representative Altman is a graduate of Rollins College, and he represents 30th District that includes portions of Brevard County.

Representative Trey Traviesa was elected to the House of Representatives in 2004 and his district includes portions of Hillsborough County. He currently serves as a member of the Committees on Transportation and Economic Development Appropriations, Insurance, Juvenile Justice and PreK-12 Education. He is a 1992 graduate of Florida State University, and he received his MBA from the University of Texas in 1997. Representative Traviesa was a prime sponsor of the Section's major initiative on "Statutory Ways of Necessity" in the 2005 Session, and he was recently appointed to the House Select Committee on Property Rights.

Life Settlements: An Estate and Business Planning Alternative for Unneeded Life Insurance

By Jon B. Mendelsohn, President and CEO of Ashar Group, LLC – Life Settlement Specialists, Sponsor of the RPPTL and Tax Sections

"As they are well aware, fiduciaries holding life insurance as a trust asset have many duties to regularly deal with this special type of property. The Life Settlement market is an option to use when policies are no longer needed, and may offer the fiduciary an opportunity to maximize the value of life insurance well beyond its cash surrender value."

— Roy M. Adams, Esq.– Member of the Ashar Group Advisory Board

What are the obligations of the Attorney and Trustee when making recommendations about a poorly performing or thinly funded life policy that is held within a trust? What recommendations are made to a retiring business owner with Key-Person life insurance that is no longer needed?

What is a Life Settlement?

In the simplest terms, a Life Settlement is the sale or assignment of a life insurance policy to a financial institution for a lump sum cash payment in excess of the cash surrender value. The buyer of the policy becomes the policy owner, assuming the responsibility for paying future premiums and also becoming the policy's beneficiary. The average life settlement ranges from two to five times the cash surrender value. This creates tremendous economic leverage for the owner and beneficiaries. The policy must be beyond the two-year contestability period in order to qualify.

The secondary market for life insurance is expanding significantly, and incorporating Life Settlements as an exit-strategy is becoming a natural step in the planning process. The market is expected to grow from less than $5 billion in 2003 to $45 billion by 2007.*

Case example #1: Estate Tax Planning - Change in estate size

Due to the increase in the estate tax exemption, this 77-year-old male no longer needed the $3,340,000 Universal Life policy for estate tax purposes. The policy owner could surrender the policy for $255,000. After completing the Life Settlement process, the client received $700,000 for the same policy; almost 3 times the original cash surrender value.

Case example #2: Business Term Insurance – Executive Retiring

A 70-year-old business owner was retiring and no longer needed his $3 million Key-Person insurance. This was a Term policy that had the option to convert to a permanent policy. It was listed as $0 on the balance sheet, and was thought to have minimal value once the executive retired. After completing the Life Settlement process, the policy owner received $180,000.

Who is Eligible and What Types of Policies Qualify?

Anyone age 65 or older, who has had a change in their financial plan or health since the original issue of the policy, is eligible for a life settlement. All types of policies are able to be reviewed: Universal Life, Whole Life, Variable Life, Survivorship and even Term policies that are not beyond the conversion period. The face value of policies that can be reviewed ranges from $100,000 to $100 million. Ashar Group, LLC December 2005, 800-384-8080.

Changing Circumstances

A life settlement is advantageous to the policy owner and the trust when:

- Beneficiaries no longer require the protection
- Estate tax concerns have been removed or reduced
- Policy is being replaced for a more efficient product
- Key executives retire or businesses are dissolved
- Change of health since the policy was issued
- Policy premiums are no longer economically feasible

Circumstances change constantly in the lives of a family. Professional advisors search for solutions that will not only solve current issues, but also position the family for the future. The question must be asked, "Is the life policy consistent with the objectives of the trust or business goals of the client?" If the answer is no, it is the responsibility of the advisor to explore alternative options for the client. A Life Settlement might be the most advantageous exit-strategy.

Who Becomes the Policy Owner?

continued, next page

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Life Settlements

from preceding page

Since the entrance of sophisticated capital into the Life Settlement market, there have been over two-dozen institutions purchasing policies. Each institution has a specific pricing model, qualifications, and parameters for reviewing policies. Once the transfer of ownership occurs, all future premiums are paid by the institution. Because insurable interest is identified at issue, coupled with the fact that policies must be beyond the two-year contestable period, a Life Settlement is viewed as a legitimate exit-strategy for the client.

"Every professional financial advisor and trustee should be aware of the intricacies of a Life Settlement market and have a formal process for reviewing their senior clients' life insurance on an annual basis."

— Ted R. Ridlehuber, Esq. - President and CEO of the Cannon Financial Institute and Member of the Ashar Group Advisory Board

Incorporating Life Settlements into Your Practice

Providing a comprehensive financial plan for your client is the key objective. This additional exit-strategy can serve as a tool to maintain the current assets of your clients' estate, and create additional liquidity that can be used in another area of their estate plan. A life settlement can provide the policy owner tremendous economic leverage. Because the policy valuation process is non-binding, there is not a downside for the client. In fact in this volatile economy, a policy review can be viewed as a proactive strategy in demonstrating a commitment to a client's best interests. Regardless of the Life Settlement value of the policy, the policy owner will benefit from the true assessment of an unrealized asset.

Endnote: Miller, Dean Edwards, Life Settlements, and Trust Accounts: A Possible Modification of Trustee's Responsibility. The Banking Law Journal, May 2002. *Source: Erich Sippel and Company, Conning & Company, 2003/California Broker, February 2004

Jon B. Mendelsohn *is President and CEO of Ashar Group, LLC, a Life Settlement firm located in Maitland, FL, that services estate, trust, and business planning advisors. Regarding questions or feedback, please contact either Jon B. Mendelsohn or Jason T. Mendelsohn by phone at 800.384.8080 or via email at jm@ashargroupllc.com. Ashar Group is an approved sponsor of both the RPPTL and Tax Sections of the Florida Bar.*

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The Legislative & Case Law Update Seminar and Executive Council Meeting

Palm Beach, August 19-20, 2005

By Robert S. Swaine, Esq., Swaine, Harris & Sheehan, P.A., Sebring, FL

The Section and RPPTL-PAC held the 25th Annual Legislative and Recent Case Law Update on August 19, 2005. The activities were held in beautiful Manalapan, Florida, and the seminar was coordinated by Silvia Rojas, Debbie Goodall and Sancha Brennan Whynot. The seminar topics covered a wide range of subject matter, including: judgments, disclaimers, ways of necessity, trusts, Realtors' liens, IRAs, college savings, bankruptcy, title insurance, evidence, mortgage releases, business entities, construction law, condominiums, Treasury Department Circular 230 and updates on recent Real Estate, Probate and Trust Law cases.

As many of you know, the Section is proactive in the legislative arena; proposing new statutes and revisions to existing statutes for the Legislature's consideration. The Section, along with other sections of the Bar and various trade organizations, were involved in drafting all of the legislation presented at the Update and the Section has drafted a proposed Florida Trust Code which will be considered for adoption next year.

In conjunction with the Legislative Update, the Section held its first Executive Council meeting of the 2005-2006 year, under the guidance of the Section's new Chair, Jay Zschau. Both prior to and after the meeting, attendees had the opportunity to participate in discussions held by the Section's various committees, such as:

- The Probate Law and Procedure committee discussed the viability of permitting pre-death caveats;
- The Real Property Problems Study discussed the potential claims problem created by having the standard survey exception removed from a title insurance policy when the surveyor does not carry errors & omissions malpractice insurance;
- The Condominiums and Planned Development committee discussed potential statutory revisions to allow governing associations to take emergency action, especially in the case of hurricanes and other natural disasters;
- The Property Rights in Real Property committee discussed the effect of the United States Supreme Court's decision in *Kelo v. City of New London*, 125 S. Ct. 2655, 2005 U.S. LEXIS 5011 (2005) on eminent domain law and whether Florida's definition of "blight" is sufficiently clear for practical application;
- The Real Property Roundtable Breakfast, though not a committee, discussed an issue currently being considered by the Florida Bar Ethics Committee, where a lawyer wishes to act as a mortgage broker to obtain a loan for a client after the initial representation is concluded. One of the issues is whether an attorney-client relationship exists in the attorney/broker context, and, if so, whether it is ethical to base the brokerage compensation on the terms of the loan; and
- The Web Site-Information Technology committee discussed potential alternative delivery mediums for CLE classes and materials, including webcasts and conference calls; and discussed an expansion of CLE offerings, including holding periodic 1-2 hour long classes on a specific issue, e.g. elective share trust valuation.

Anyone interested in weighing in on these debates, or other issues being considered by the various committees, should contact either Melissa Jay Murphy, Director of the Real Property Division, at melissam@salterlaw.net or Sandy Diamond, Director of the Probate and Trust Division, at sdiamond@wdclaw.com.

In addition to these committee meeting discussions, there was an active Executive Council meeting on Saturday, August 20, 2005. The Council considered several action items from both the Real Property Division and the Probate and Trust Division, including amendments to the Uniform Title Standards; the Land Trust Act; *Fla. Stat.* 731.201; 731.102; 732.103; 732.104; 732.108; 732.401; 732.4015; 732.507; 732.603; 733.212, 732.2135; 732.402; 744.3701; a proposed new Florida Trust Code and a letter from the Section to the IRS commenting on IRS Rev. Proc. 2005-24. A copy of the proposed Florida Trust Code, list of circuit representatives and other information about the Section can be found at www.flabarrpptl.org.

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Executive Council Review



Many thanks to our Section sponsors.



Section Chair, Jay Zschau, and his wife, Leila.



Attendees at the Thursday night reception.



The Executive Council meeting on Saturday.



The Legislative and Case Law Update was very well attended.



Pat Hancock added flare to her speech with her various wigs and hats.

Photos courtesy of Michael Gelfand and John Neukamm

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- ☞ Complete at least 45 hours of continuing legal education (CLE) in real estate activities within the three year period immediate-ly preceding the date of applica-tion.
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It is imperative that the members of the Real Property, Probate, and Trust Law Section of The Florida Bar are actively involved in addressing the Department's course of action in reviewing the title insurance rates. The Florida Land Title Association recognizes that Member involvement early on is critical to a fair result. The FLTA welcomes any input available from all Real Property Section members and encourages members to contact the Office of Insurance Regulation directly with any comments or concerns.

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Resolution

The Executive Council of the Real Property, Probate & Trust Law Section
of
The Florida Bar
Recognizing the Service and Contributions of

Daniel L. Adams

Whereas, Daniel L. Adams, a respected and deeply loved member of the Real Property, Probate & Trust Law Section of The Florida Bar, died at the age of 68 on September 21, 2005, following a courageous battle with cancer; and

Whereas, Dan is survived by his devoted and loving wife, Julie, and their daughters, Meghan and Cristin; and

Whereas, Dan had a long history of dedicated involvement with his church and community, which included serving as a Eucharistic Minister and as a director on the boards of numerous community organizations; and

Whereas, Dan, after receiving both his undergraduate and law degrees from The Ohio State University, had a long and distinguished career as a real estate attorney, which included private practice, extensive involvement with Attorneys' Title Insurance Fund ("The Fund"), serving on the Marketable Records Act Study Commission, and dedicated service to the Real Property, Probate & Trust Law Section of The Florida Bar; and

Whereas, Dan's extensive involvement with The Fund began in 1960 when he joined Attorneys' Title Services of Broward County, which was ultimately merged into the Fund, and culminated in 2004 when he served as Vice President of Examination Standards for The Fund. He also served as a Staff Attorney for The Fund, as a member of The Fund's Board of Trustees for a period of nearly 20 years, and as Chairman of that Board; and

Whereas, in the late 1960s, Dan joined the Ft. Lauderdale law firm of English, McCaughan & O'Bryan, where he specialized in real estate law with an emphasis on representation of financial institutions, and established himself as a prominent real estate attorney; and

Whereas, Dan also rendered long-standing and dedicated service to the Real Property, Probate & Trust Law Section, which included his membership and participation on its Executive Council, and serving in leadership positions, including Chair of the Title Standards Committee and Co-Chair of Liaison with Title Insurers Committee; and

Whereas, the Executive Council of the Real Property, Probate & Trust Law Section recognizes the extraordinary dedication and service that Dan has provided to his family, his church, his community, and The Florida Bar, particularly its Real Property, Probate & Trust Law Section, during his lifetime, and acknowledges that he will be sorely missed.

Now, Therefore, be it resolved by the Executive Council of the Real Property, Probate & Trust Law Section of the Florida Bar, that the loss of Daniel L. Adams is mourned, and that his distinguished service and rich contributions to the practice of law, particularly to the practice of real estate law, are respected, appreciated and acknowledged, and will be remembered forever.

Unanimously Adopted by the Executive Council of the Real Property, Probate & Trust Law Section of The Florida Bar at Sarasota, Florida, this 19th day of November, 2005.

Julius James Zschau, Chair
Real Property, Probate & Trust Law Section,
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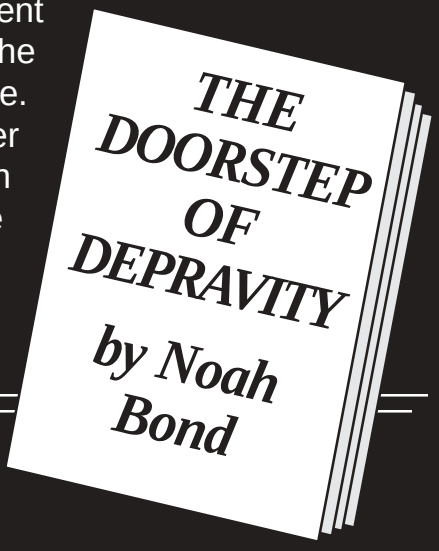

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Real Property Case Summaries

By Patricia J. Hancock, Esquire, Fidelity National Title Insurance Company

Mortgage Foreclosure Judgment can be Satisfied by Paying Into the Court Registry.

Mortgage Electronic Registration Systems vs. Mahler, 30 Fla. L. Weekly D2563 (4th DCA November 9, 2005)

A final judgment of mortgage foreclosure had been entered against the borrower. Thereafter, but before the foreclosure sale, Everett and Joshlyn Daley purchased the property from the borrower, and paid into the court registry the sum of the judgment, plus statutory interest. MERS complained that the final judgment was not "satisfied" by the payment into the court registry of the face amount, plus interest, because MERS had incurred an additional $7,581.85 which had not been added into the foreclosure judgment. Trial court ruled that the final judgment of mortgage foreclosure was duly satisfied by Daleys' payment, pursuant to Section 55.141(1), Florida Statutes, which required payment of the face amount of the judgment, plus accrued interest, before actual levy of execution in order to be satisfied. The mortgage foreclosure judgment was a final judgment, and the amount liquidated in the judgment was the amount which needed to be paid to satisfy it. Trial court was affirmed.

Assignment of mortgage after foreclosure suit was filed did not deny standing when defendant failed to assert such defense and facts showed equitable transfer of mortgage prior to the filing of the complaint.

Glynn v. First Union National Bank, 30 Fla. L. Weekly D2362 (4th DCA October 5, 2005)

Defendant Glynn filed a motion to vacant a final judgment of foreclosure and objection to the sale, raising for the first time, the defense that the servicer lacked standing to bring the lawsuit. The court held that "although an assignment to First Union by its servicing agent, Fairbanks, was not formally executed until after suit was filed, it is clear from the undisputed record that equitable transfer to First Union occurred prior to filing the complaint."

Failure to remedy municipal code violation cannot result in equitable lien on homestead, unless funds obtained through fraud or egregious conduct were used to invest in, purchase or improve the homestead.

Pelecanos v. City of Hallandale Beach, 30 Fla. L. Weekly D2654 (4th DCA November 23, 2005)

Code enforcement liens were recorded against Pelecanos' property, which was his homestead. City filed suit seeking injunction requiring him to bring property in compliance and for a monetary judgment lien. A stipulation was reached, but Pelecanos failed to comply. After several hearings, the court fined Pelecanos $2,500 and entered an order allowing the City to demolish the structure and to place a lien on it for the demolition costs. Pelecanos filed for a declaratory order that he has entered into a contract for sale of the property and that the purchaser should take title free of the liens. City conceded the property was homestead, but argued that it was entitled to an equitable lien on the property due to Pelecanos' egregious conduct in failing to abide by the code, stipulation, and court orders. Trial court granted the City's motion, but the appellate court reversed. The appellate court held that the Florida Constitution, Article X, Section 4, "expressly provides for only three exceptions to the homestead exemption: (1) for the payment of taxes and assessments thereon; (2) for obligations contracted for the purchase, improvement or repair thereof; or (3) for obligations contracted for house, field or other labor performed on the realty." The City's code enforcement liens were not permitted exceptions to the homestead exemption from liens. The Court also stated that equitable liens against homestead have been found "only where funds obtained through fraud or egregious conduct were used to invest in, purchase or improve the homestead." Here no funds were used to invest in, purchase or improve the homestead.

Lack of sufficient facts to warrant reformation of deed.

West Edge II v. Kunderas, 30 Fla. L. Weekly D2269 (2nd DCA September 23, 2005)

Kunderas sold by warranty deed a lot (Lot 55) and a mooring lot (Lot 55M), which deed also said "Lot 55, Section 14-G, Flor-a-Mar and Moor Lot 55M as herein described may not be sold separately or independent of each other." Later Kunderas recorded a corrective deed with the same legal descriptions, but omitted the sentence prohibiting sale of one without the other. Then, Kunderas filed a reformation lawsuit, averring that the mooring lot was never to have been included in the deed. West Edge II denied her assertions, and further showed that the Declaration of Restrictions also prohibited mooring lots to be separated from its corresponding land lot. Kunderas then argued that the contract for sale did not specifically include the mooring lot, and to later have included the mooring lot in the deeds was a mistake. Court ruled in favor of West Edge, holding that Kunderas failed to show that West Edge knew or did not know of the "mistake", that she failed to refute the affirmative defenses, and that she only included her "opinion" of what was or was not included in the contract for sale.



Probate & Guardianship Case Summaries

By Barbara Landau, Esq., Nova Southeastern University, Fort Lauderdale, FL

Where will stated that there was only one child, but there was another child, the court concluded that a latent ambiguity existed and extrinsic evidence was properly considered by trial court to ascertain the testator's intent.

Harbie v. Falk, 907 So.2d 566 (Fla. 3d DCA 2005)

When the Testator executed his will in 1994 he was forty-six years old and married to Catia. The testator and Catia had one child together. The child, Rita, was two years old when the will was executed. The testator had another child, Carlos, from a previous marriage. Carlos was twenty years old when the will was executed.

The will provided that part of the testator's estate pass to Catia. The will also provided (a) that part of the estate "shall vest equally in my children" in trust, (b) that "I have only one child at the time of this Will, Rita Harbie," and (c) that if "any of my issue does not so survive me, ….his/her share of this bequest shall go to his or her issue, per stirpes…or if there be no such issue, to my then remaining children."

The testator died in 2002 and Carlos claimed a share of the estate as a child of the testator. The personal representative filed a motion for summary judgment and an affidavit of the drafting attorney. Among other things, the drafting attorney said that (1) the testator never told him about Carlos, (2) the testator wanted to leave the bulk of his estate to Rita, and (3) the reference to "children" was inserted to cover children that might be born after the will was signed.

Carlos did not submit any affidavits in opposition to the motion for summary judgment, and the trial court granted the motion. Carlos appealed, arguing that the drafting lawyer's affidavit was inadmissible. The Third District Court of Appeal concluded that "the existence of a second child when the will states there was only one child creates a latent ambiguity, " and therefore, parol evidence was admissible to resolve the ambiguity. The Third District Court of Appeal concluded that the affidavit resolved the ambiguity and therefore affirmed the trial court. (The Third District Court of Appeal noted that parol evidence would be admissible whether the ambiguity was latent or patent, citing *In re Estate of Rice*, 406 So.2d 469 (Fla. 3rd DCA 1981)).

Absent a provision in the will to the contrary, the intestacy statute in effect at the time the will which created the testamentary trust was executed controls, rather than the intestacy statute in effect when testamentary trust terminates.

Karasek v. William Lamping Trust, 909 So.2d 552 (Fla. 4th DCA 2005)

Testator's will was executed in 1967. The will created a trust for the benefit of testator's wife until her death or remarriage. Testator's two children were the remainder beneficiaries of the trust. Testator died (although the opinion doesn't state when), survived by his wife and the two children. The testator's wife died in 2003 and the trust terminated by its terms. However, both of testator's children had predeceased testator's wife. The will said: "In the event that both my named children shall not be living at the time of my wife's death or re-marriage, and thus not be living at the time designated for the termination of this trust, then in that event, I direct that the proceeds be distributed to my deceased children's heirs at law."

One of the children, William, who died in 1984, was survived by (a) six children from his first marriage, (b) his second wife, Caroline, the appellant in this case, and (c) two children by his marriage to Caroline. When the testator's will was executed in 1967, Florida's intestate statute included a surviving spouse as an heir at law, but only for an amount equal to a child's share. However, in 1983 the intestacy statute was changed to give a surviving spouse a one-half share of the intestate estate if the surviving spouse was not the parent of all of the decedent's children. The result was the same under the intestate statute in effect when the testator's wife died in 2003 and the trust terminated. Caroline claimed that she was entitled to a one-half share of the remaining trust assets as the surviving spouse of the testator's deceased intestate son, William.

The Fourth District Court of Appeals, relying on *Jenkins v. Donohoo*, 231 So.2d 809 (Fla. 1970), concluded that the law in effect at the time the will was executed governed, there being a presumption that the testator intended that the law in effect when the will was made be the applicable law, absent a contrary expression of intent in the will. Therefore, Caroline was entitled to only a one-ninth share (eight children plus Caroline).

The Florida Supreme Court has confirmed that the protection of homestead under the Florida Constitution takes precedence over the abatement statute. Protected homestead may not be used to satisfy a specific or a general devise absent a specific direction in the will that the property be sold and the proceeds be made part of the estate.

McKean v. Warburton, 30 Fla. L. Weekly S613a (Fla.2005)

In *Warburton v. McKean*, 877 So.2d 50 (Fla. 4th DCA 2004), the Fourth DCA held that protected homestead devised by the residuary clause of a decedent's will could be used to satisfy a general devise when there were insufficient probate assets to satisfy the general devise. In reaching that conclusion, the Fourth DCA concluded that the abatement statute trumps the constitutional rules governing homestead in those circumstances. However, the

Fourth DCA certified the following question to the Supreme Court as one of great public importance: WHERE A DECEDENT IS NOT SURVIVED BY A SPOUSE OR ANY MINOR CHILDREN, DOES DECEDENT'S HOMESTEAD PROPERTY, WHEN NOT SPECIFICALLY DEVISED, PASS TO GENERAL DEVISEES BEFORE RESIDUARY DEVISEES IN ACCORDANCE WITH SECTION 733.805, FLORIDA STATUTES?

The Florida Supreme Court has said no. The homestead was protected homestead since it passed through the residuary clause to persons within the definition of heirs under the intestacy statute. The Court stated that "nothing in the statutes indicates that the protected homestead should be distributed as part of the decedent's estate." The Court concluded that the facts in *Warbuton* were virtually identical to the facts in *Snyder v. Davis*, 699 So.2d 999 (Fla. 1997), where the Court recognized that the protected homestead was not only unavailable to pay creditor's claims, but that it was unavailable to satisfy a preresiduary cash gift to the decedent's daughter as well.

The Florida Supreme Court held in *Warburton* that "[b]ecause the law is clear that the protected homestead is not a part of the decedent's estate for purposes of distribution," the only way that the proceeds of sale of the homestead could have been used to satisfy specific and general devises would have been if the decedent had provided in his will that the homestead be sold and "ordered that the proceeds be made a part of his general estate."

Passenger who was injured in car accident in which decedent was driver was a reasonably ascertainable creditor entitled to actual notice of the probate proceedings.
Longmire v. Estate of Ruffin, 909 So.2d 443 (Fla. 4th DCA 2005)

The decedent, Ruffin, was the driver of a car that collided with a tractor trailer. The driver of the tractor trailer was cited in the accident. The decedent was not cited although there was some evidence that she was speeding, which was apparently noted in the accident report. There were four passengers in the decedent's car, including the decedent's husband, Mr. Ruffin. Everyone in the car was injured in the accident.

Before Ruffin died, attorneys for everyone in the car met to discuss strategy with respect to a personal injury suit against the driver and the owner of the tractor trailer and the possibility of naming Ruffin as a co-defendant. Longmire, one of the passengers in the car, agreed to put her claim against Ruffin on hold.

Ruffin died about seven months after the accident, and shortly after Ruffin's death, the four passengers filed suit against the driver and the owner of the tractor trailer.

A petition for probate of Ruffin's estate was filed on September 27, 2001 and a notice to creditors was published. Longmire learned of the administration of Ruffin's estate

continued, next page

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when Longmire's attorney, on November 6, 2001, received a copy of Mr. Ruffin's amended complaint in the personal injury action against the driver and the owner of the tractor trailer in which Mr. Ruffin alleged wrongful death. November 6, 2001 was forty days after the first publication of the notice to creditors.

On January 11, 2002, one hundred four days after publication of the notice to creditors, Longmire filed her claim in the estate. The trial court denied Longmire's motion to extend the time to file the claim concluding that Longmire was not a known or reasonably ascertainable creditor, that Longmire's claim was "contingent and conjectural," and therefore, Longmire was not entitled to actual notice.

Longmire appealed the denial of her motion to extend the time to file her claim. The Fourth DCA reversed and remanded, holding that a personal injury cause of action based on events that have already occurred is not a contingent claim. Longmire was a reasonably ascertainable creditor, and therefore, actual notice was required.

The Fourth DCA also noted that Section 733.212(a), Florida Statutes, was subsequently amended to specifically include "contingent" claims and that the amendment "is essentially a clarification of existing law."

Compensation paid to trustee in his capacity as CEO of business owned by the trusts was not subject to scrutiny under rules applicable to fiduciaries.

Parker v. Shullman, 906 So.2d 1236 (Fla. 4th DCA 2005)

Beneficiary of two trusts objected to the compensation that the trustee of the two trusts paid to himself for services he provided as CEO of a retail company, the stock of which was owned by the two trusts. The trustee had been the settlor's accountant and had also served as personal representative of the settlor's estate.

When the settlor died, the trustee elected himself president of the company. The trust agreements gave the trustee broad power to manage the business interests. The trust agreements also allowed the trustee "to participate directly in the management of [the business], or render services to [the business], and receive reasonable compensation" for doing so. The trustee paid himself compensation as CEO of the company. The beneficiary objected to the compensation, claiming that the compensation that the Trustee received as CEO was subject to review under fiduciary rules and standards, not business standards.

The Fourth DCA disagreed, concluding that the beneficiary could object to the trustee fee and have that subjected to scrutiny under the rules applicable to fiduciaries. However, with respect to her challenge to the compensation received from the business, the Fourth DCA held that the beneficiary might be able to bring a shareholder's derivative action and prove that the compensation paid the CEO from the business was unreasonable under principles of corporate law.

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The Florida Bar Continuing Legal Education Committee and the Real Property, Probate and Trust Law Section present

Your 2006 Trust & Estate Symposium

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Live Presentations: February 8, 2006 • Miami Lakes • Don Shula's Hotel
February 9, 2006 • Tampa • Airport Marriott

Video Replays (8 locations): February 23, 2006 - March 16, 2006

Course No. 0322R

8:15 a.m. – 8:55 a.m.
Late Registration

8:55 a.m. – 9:00 a.m.
Opening Remarks
Jack A. Falk, Jr., Coral Gables, Program Chair

9:00 a.m. – 9:40 a.m.
Self-Dealing and Fiduciary Duty of Holders of Power of Attorney
William Fletcher Belcher, St. Petersburg

9:40 a.m. – 10:30 a.m.
Trust Litigation Topics and the Proposed New Trust Code
Laird A. Lile, Naples
Barry F. Spivey, Sarasota
Jack A. Falk, Jr., Coral Gables

10:30 a.m. – 10:40 a.m. **Break**

10:40 a.m. – 11:20 a.m.
The Ten Commandments of Professional Conduct
Paul R. Lipton, Miami

11:20 a.m. – 12:00 noon
Bad Facts or Bad Folks: Avoiding Undue Influence Claims
James R. George, Fort Lauderdale

12:00 noon – 1:15 p.m.
Lunch (Included in registration for Miami Lakes & Tampa)

1:15 p.m. – 1:55 p.m.
A Potpourri of Estate Tax Litigation
Harris L. Bonnette, Jr., Jacksonville

2:00 p.m. – 2:40 p.m.
When Does the Fiduciary Have to Face a Jury?
Rohan Kelley, Fort Lauderdale

2:40 p.m. – 2:50 p.m. **Break**

2:50 p.m. – 3:30 p.m.
Selected Topics in Trust and Estate Litigation
Robert W. Goldman, Naples

3:30 p.m. – 4:05 p.m.
Conflicts for Fiduciary Clients
William T. Hennessey, III, West Palm Beach

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- ❑ **Jacksonville* - February 24, 2006 -** (154) Jacksonville Omni Hotel
- ❑ **St. Petersburg* - March 2, 2006 -** (263) St. Petersburg Bar Association
- ❑ **Tallahassee* - March 9, 2006 -** (054) The Florida Bar Annex Room 114
- ❑ **West Palm Beach* - March 9, 2006 -** (232) Palm Beach Count Bar Association
- ❑ **Fort Myers* - March 10, 2006 -** (271) Quality Inn Hotel
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The Florida Bar Real Property, Probate and Trust Law Section & the RPPTL-PAC present

25th Annual Legislative and Recent Case Law Update

Course Number 0257R

August 19, 2005 • Ritz Carlton • Palm Beach

AUDIO TAPE ORDER

8:00 a.m. – 8:30 a.m.
Late Registration

8:30 a.m. – 8:35 a.m.
Introduction
Julius J. Zschau, Clearwater

8:35 a.m. – 9:05 a.m.
Legislative Potpourri
Peter Dunbar, Tallahassee

9:05 a.m. – 9:20 a.m.
Judgments and UCC Assignments -Changes Under SB370
Barry Ansbacher, Jacksonville

9:20 a.m. – 9:40 a.m.
Disclaimers: New Chapter 739
Richard Gans, Sarasota

9:40 a.m. – 9:55 a.m.
Statutory Way of Necessity
Rod Neuman, Tampa

9:55 a.m. – 10:10 a.m.
Changes to Trust Code
Don Tescher, Boca Raton

10:10 a.m. – 10:25 a.m.
Break

10:25 a.m. – 10:45 a.m.
Commercial Real Estate Lien
Burt Bruton, Miami

10:45 a.m. – 11:00 a.m.
IRA and Qualified Plan Update
Kristen Lynch, Boca Raton

11:00 a.m. – 11:05 a.m.
College Savings Saved: Thanks Florida Legislature
Charles Ian Nash, Melbourne

11:05 a.m. – 12:00 p.m.
2005 Bankruptcy Act - Panel Discussion
Charles Ian Nash, Melbourne
Marsha Rydberg, Tampa
Barry Nelson, North Miami Beach

12:00 p.m. – 1:15 p.m.
Lunch and Awards Ceremony

1:15 p.m. – 1:35 p.m.
Title Insurance Update
Norwood Gay, Orlando

1:35 p.m. – 1:55 p.m.
Demise of the Dead Man's Statute
Jack Falk, Coral Gables

1:55 p.m. – 2:15 p.m.
Mortgage Releases
Wayne Sobien, Winter Park

2:15 p.m. – 2:35 p.m.
Limited Partnerships and Business Entities
Greg Marks, Miami

2:35 p.m. – 2:50 p.m.
Construction Law
Fred Dudley, Tallahassee

2:50 p.m. – 3:05 p.m.
Break

3:05 p.m. – 3:20 p.m.
Bert Harris Turns 10
Susan Spurgeon, Tampa

3:20 p.m. – 3:40 p.m.
HOA and Condominiums
Michael Gelfand, West Palm Beach

3:40 p.m. – 4:05 p.m.
IRS Circular 230
Jonathan Blattmachr, New York

4:05 p.m. – 4:35 p.m.
Update on Real Estate Cases
Pat Hancock, Maitland

4:35 p.m. – 5:05 p.m.
Update on Probate and Trust Law Cases
David Brennan, Orlando

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RPPTL-PAC

Members of the Real Property Probate and Trust Law Section of The Florida Bar and other interested parties have created a Committee of Continuous Existence (RPPTL-PAC) to participate financially in the State elections process. Burt Burton (Chairman), Louis Guttmann (Vice Chairman), Sandra Diamond (Treasurer), Peter Dunbar (Secretary), Steve Hearn, Chip Waller, Jay Zschau, Robert Goldman, Bruce Stone, Melissa Murphy, Charlie Nash and Tom Smith are the current members of the PAC's Board of Directors. RPPTL-PAC is not formally associated with the Section, but the PAC membership believes the interests of the PAC are consistent with the goals and interests of the Section and the PAC officers and members encourage other Section members to join and participate.

RPPTL-PAC intends to meet quarterly in conjunction with meetings of the Section's Executive Council to review pending elections for state officials and members of the Florida Legislature. The PAC also intends to act on recommendations for support of candidates and to make contributions to candidates who support and understand the issues of the Section and its members.

Membership is extended to all who contribute to RPPTL-PAC consistent with the dues schedule listed below.

Each member is entitled to full participation regardless of the amount of the member's contribution. Contributions are not limited to individual checks, and firm and corporate contributions are acceptable. Once the annual contribution is received, the contribution is acknowledged, the contributor is added to the membership roster, and the member will receive all notices and other written communications for the PAC. **Checks should be made payable to "RPPTL-PAC"** and can be mailed or delivered to the PAC advisor, Marc Dunbar, at the following address:

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ActionLine Publication Schedule

Publication deadlines for upcoming issues of *ActionLine*:

***ACTIONLINE* ISSUE**	**PUBLICATION DEADLINE**
Spring 2006	January 31, 2006
Summer 2006	April 30, 2006
Fall 2006	July 31, 2006
Winter 2006	October 31, 2006

ActionLine is in constant need of brief, newsworthy articles, and readers are invited to submit material for publication. Please forward any proposed articles concerning **real estate, estate planning, probate, guardianship, or articles of general interest** to Dresden Brunner at dresden@comcast.net. The article shold be in Word format. Please do NOT include graphics in the article, unless they are illustrative charts or graphs. Prospective authors may call Dresden Brunner at (239) 580-8104 to obtain additional publication guidelines.

Persons with comments or suggestions for improvement of *ActionLine* may e-mail them to the above address.

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LOAN NUMBERS— We title insurance underwriters and agents receive numerous requests from lenders looking for copies of their title insurance loan policies. While sometimes they genuinely don't have their policies because we have not yet prepared and sent them, oftentimes we have to send copies over and over again each time a lender requests a copy. These requests can be processed quicker and with less effort if you will include the loan number on the loan policy. Some of you may already include the loan number on the first page of the recorded mortgage which also helps. These two steps will help all of us to more easily retrieve copies of loan policies for the insured lender. HOWEVER, on a HELOC (equity loan) please make sure that the loan number is not a credit card number as oftentimes they are. It is not a good idea to record a credit card number in the public records!

—Patricia J. Hancock, Esq.

Welcome New Liasion—Ken Walton of The Walton Law Firm in Miami, FL is the newly appointed RPPTL Section Liaison to the Young Lawyers Division of The Florida Bar.

Thank You, *ActionLine* Contributors! —Thank you to everyone who made *ActionLine* possible this year: writers, advertisers, photographers, editors, layout, Section's Program Administrators, officers, and the readers.

—S. Dresden Brunner,
Editor-in-Chief

Send in Bulletin Board items you can share with others.

(Submission information below)

This space is dedicated to providing space and opportunity to readers to share practice tips and brief items of general interest to the RPPTL reader. Contributions may be submitted to Jo Claire Spear by fax or email: Fax: (727) 327-8338; email: Joclairespearpa@aol.com. *Each item should be limited to 100 words or less and should contain your name.*

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