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ActionLine

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

Vol. XXIX, No. 1 **Fall 2006**

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Is *Bosonetto* Dead – Or is it on Life Support?

By Charles I. Nash, Esq., Nash, Moule & Kromash, LLP, Melbourne, FL

The decision in *In re Bosonetto,* 271 B.R. 403 (Bankr. M.D. Fla. 2001), wherein U.S. Bankruptcy Judge George L. Proctor held that a debtor could not claim the constitutional homestead exemption from forced sale with respect to homestead property that the debtor owned as trustee of her revocable inter vivos trust ("RIVT"), provided estate planners with the legal basis to caution their clients from titling homestead property in RIVTs. The court in *Bosonetto* reasoned that the homestead exemption from forced sale can only be claimed for property owned by a natural person – and a RIVT is not a natural person. Although many estate planners questioned this reasoning, such practitioners could not be certain that homeowners could safely transfer their homestead property to RIVTs and, at the same time, maintain the constitutional protection from forced sale.

Recently, however, *Bosonetto* has come under attack. Although it has not been vanquished, it may be on its last legs.

On July 25, 2006, in *In re Alexander,* 2006 WL 2055881 (Bkrtcy. M.D. Fla. July 25, 2006), U.S. Bankruptcy Judge Michael G. Williamson issued an order holding that the exemption from forced sale or lien by judgment creditors pursuant to Article X, Section 4(a) of the Florida Constitution applies even when the debtor has legal title to his or her personal residence held in a RIVT established by the debtor. In his order, Judge Williamson cited to several Florida cases which

See "Bosnetto" page 3

Chair's Column:

In Search of a Few (actually, many) Good Members To Become Actively Involved!

By Rohan Kelley, Esq., The Kelley Law Firm, Fort Lauderdale, FL, Chair



Greetings to all of the members of the Real Property Probate and Trust Law Section. I'm the 2006-2007 Section Chair, and this is my first Chair's column.

Our section is the largest section of The Florida Bar, with more than 10,000 dues-paying members. That means that Section leadership has been doing something right after 53 years of service to its members and that you have recognized that fact. However, that does not mean that we cannot do better, and doing it better is one of my goals for the Section during my year as Chair. I'm aware that every elected officer of every elective body (and all of those who would be) promise to cause that body to run more efficiently and deliver more service. Very few deliver on that promise – but I'll try. Those of you who know me know that I continuously emphasize the practical approach – that is the one that produces the most real benefit. That will also be my approach as Chair.

One way I intend to accomplish this is to involve more of the rank and file membership in the business of the Section and its management. More about that below.

Many of you don't know how the RPPTL Section is organized and how it operates. We

See "Chair's Column" page 45

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Bosonetto

from page 1

supported his interpretation of Florida law as it applied in the bankruptcy proceeding.

In *Alexander*, the debtor, Merry Alexander, purchased a single family home at 305 Spring Court in Clearwater, Florida (the "Homestead") on December 11, 1995. The warranty deed contained the legal descriptions for two parcels; the Homestead and a second parcel which was a home at 309 Spring Court. In addition, the warranty deed listed the owners of the Homestead and the other home as the debtor and her parents, Hortence A. Lopez and Alfred Lopez, as joint tenants with right of survivorship. The debtor's parents resided at the residence located at 309 Spring Court. In April 2002, the debtor established two RIVTs. The Homestead was conveyed by quitclaim deed to the RIVT named the Arthur Realty Trust. The debtor was the trustee of the Arthur Realty Trust. In June 2002, the debtor's mother quitclaimed her interest in the Homestead to the debtor as trustee of the Arthur Realty Trust. Note that the debtor's father had already since died at this point. Both the debtor and her mother were the beneficiaries of the Arthur Realty Trust. The debtor's mother subsequently died in March 2003. Then on August 23, 2004, the trust agreement pertaining to the Arthur Realty Trust was amended to reflect that the debtor was the primary beneficiary and the debtor's children were the remainder beneficiaries to receive the Homestead after the death of the debtor.

On June 17, 2005, the debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code. The petition stated that the Homestead, albeit owned by the Arthur Realty Trust, qualifies as homestead property for purposes of Article X, Section 4(a) of the Florida Constitution and, as such, is exempt from the claims of the debtor's creditors. The trustee in bankruptcy and a significant unsecured creditor of the debtor filed a joint objection to the debtor's claim that the Homestead was exempt from creditors.

The crux of the argument made by the bankruptcy trustee and the major creditor of the debtor was that the protection from forced sale or lien set forth in Article X, Section 4(a) of the Florida Constitution only applies if homestead property is owned by a natural person in accordance with a literal reading of that provision and the holding of Judge Proctor in *Bosonetto*. The debtor argued that as the sole trustee and sole primary beneficiary of the Arthur Realty Trust, she retained the equivalent of absolute ownership and thus was entitled to the protection afforded by Article X, Section 4(a) in accordance with several Florida cases addressing this issue, *Callava v. Feinberg,* 864 So.2d 429 (Fla. 3d DCA 2004) (citing *Bessemer Props., Inc. v. Gamble,* 27 So.2d 832 (Fla. 1946)), notwithstanding the decision reached by Judge Proctor in *Bosonetto*.

Judge Williamson agreed with the debtor and determined that the protection afforded to homestead property by Article X, Section 4(a) applies even when homestead property is held in a RIVT for the benefit of the grantor of the RIVT. Judge Williamson declined to follow Judge Proctor's reasoning in *Bosonetto* because it neither cited to any Florida law in support of the ruling made in that case nor has it been followed in subsequent Florida cases, such as *Engelke v. Estate of Engelke,* 921 So. 2d 693 (Fla. 4th DCA 2006) (although such reference appeared to be dicta).

This is the first reported bankruptcy case in Florida directly on point relative to the issue of whether Florida homestead property is protected from forced sale or lien by a judgment creditor if it is owned in a RIVT of which the person treating the homestead as his or her primary personal residence is the sole grantor and sole primary beneficiary. After the issuance of the ruling in *Bosonetto*, many commentators and practitioners in Florida who were heretofore critical of Judge Proctor's ruling in *Bosonetto* may feel vindicated by Judge Williamson's ruling. However, caution should be maintained due to the fact that the holding in Alexander does not overrule *Bosonetto*;

Judge Williamson merely refused to follow the ruling made in *Bosonetto*, and issued a well reasoned order supported by Florida law precedents. Therefore, unless there is an appeal of Judge Williamson's ruling in *Alexander,* what we have in the Middle District of Florida are two conflicting bankruptcy court decisions on the same issue. Care should be taken to advise clients that *Bosonetto* is not dead; it is, however, likely dying. AL

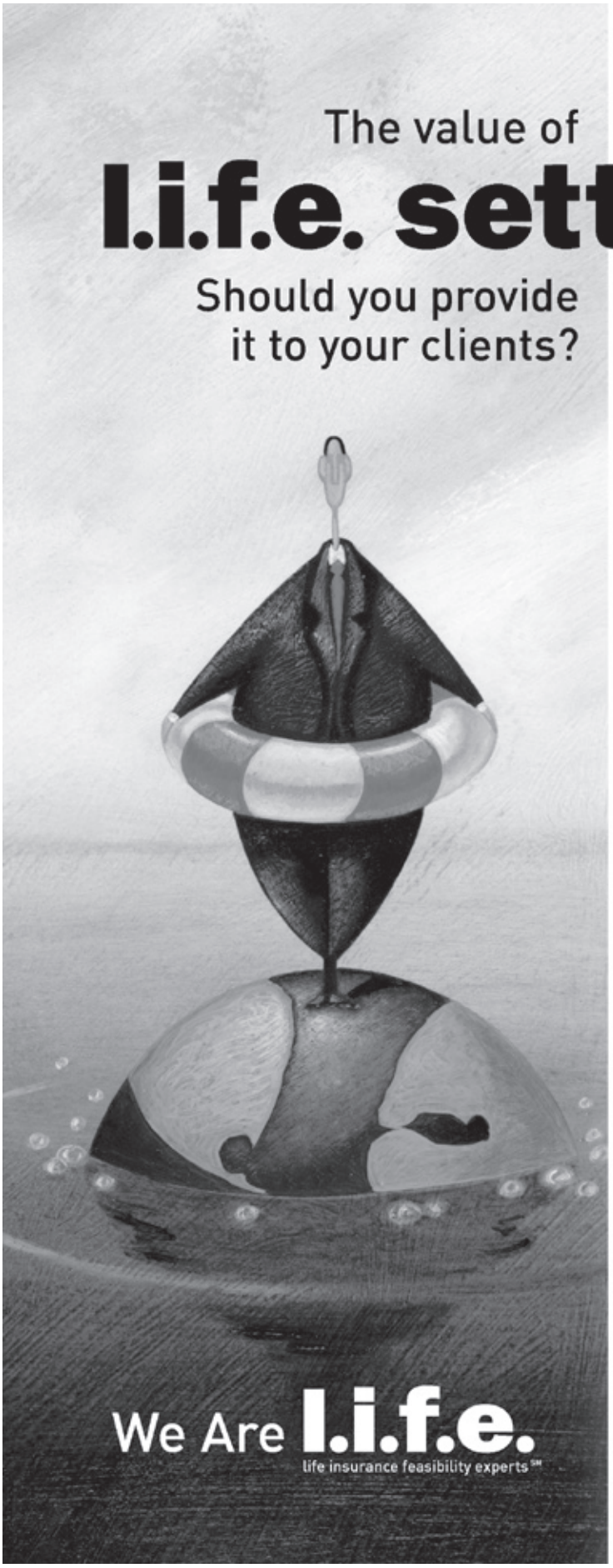
2006-2007
Executive Council Meeting Schedule

SEPTEMBER 28 – OCTOBER 1, 2006
Gaylord Palms Resort, Kissimmee
Executive Council Meeting
Reservation Phone # 407-586-0000
Room Rate $199.00
Cut-off date: 08/28/2006

NOVEMBER 30 – DECEMBER 3, 2006
Gaylord Opryland, Nashville
Out-of-State Executive Council Meeting
Reservation Phone # 615-883-2211
Room Rate $145.00
Cut-off date: 10/30/2006

FEBRUARY 22 – FEBRUARY 25, 2007
Hutchinson Island Resort Marriott
Executive Council Meeting
Reservation Phone # 800-775-5936
Room Rate $189.00
Cut-off date: 01/22/2007

MAY 24 – MAY 27, 2007
Westin Diplomat Resort Fort Lauderdale
Section Convention & Exec Council Meeting
Reservation Phone # 888-627-9057
Room Rate $199.00
Cut-off date: 04/23/2007



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Please contact Jon Mendelsohn or Jason Mendelsohn for additional information.

Legislative Changes From the 2006 Regular Session

By Peter M. Dunbar, RPPTL Legislative Counsel, Tallahassee, FL


DUNBAR

The 2006 Regular Session of the Florida Legislature produced more than two dozen changes that affect the practice areas of RPPTL Section members, many of which were a part of the Section's legislative package. Most of the changes were highlighted at the CLE program at the Section's Annual Legislative Update in Palm Beach. A brief summary of all of the relevant changes is found below. The appropriate Session Law reference numbers follow the summary on each legislative measure.

The full text of each enrolled bill, as well as applicable legislative staff reports for each measure, are available on the Florida Legislature's website (www.leg.state.fl.us). The summary of each measure that passed follows below in numerical bill order. Section-sponsored are noted along with the bill sponsors who introduced and handled the legislation during the session deliberations.

I. Section Initiatives


BOGDANOFF

CS/CS/HB 191 (Guardianship/Court Monitoring) by Representative Bogdanoff and Senator Campbell: The bill is a Section initiative, and it amends s. 737.2065, s. 744.331 (6), and 744.441 (11) and creates s. 744.462 to permit a court-appointed guardian of the property to contest the ward's revocable trust or trust amendment if the court in the guardianship proceeding first finds that such an action appears to be in the ward's best interest. **(Chapter 2006-77, Laws of Florida.)**


CAMPBELL

HB 193 (Guardianship/Court Monitoring – Public Records Exemption) by Representative Bogdanoff and Senator Campbell: The bill is a Section initiative, and it is the companion measure to CS/CS/HB 191 providing for a public records exemption for court records. **(Chapter 2006 –129, Laws of Florida.)**


ATWATER

CS/HB 209 (Intangible Tax Repeal) by Representative Brummer and Senator Atwater: The bill is a Section supported initiative, and it repeals Florida's intangible tax. **(Chapter 2006 – 312, Laws of Florida.)**

CS/CS/CS/HB 391 (Community Associations) by Representative Domino and Senator Bennett: The bill deals with condominiums, cooperatives and homeowners associations and contains two provisions worked on by the Section's Condominium and Planned Development Committee. The bill includes a simplified procedure for obtaining the consent of mortgagees when condominium documents are being amended and a provision moving the mediation of homeowners' association disputes out the Division of Florida Land Sales, Condominiums, and Mobile Homes. The bill makes the following changes:

1. **Condominiums:** In addition to the simplified process for obtaining mortgagee consents, the bill extends the mandatory retrofit of fire sprinklers in condominiums until 2025; clarifies the right of beach access to condominium unit owners and guests; permits unit owners to vote on mandatory membership agreements authorized by the declaration; and clarifies the rights of residential unit owners in a mixed-use condominium.
2. **Cooperatives:** The bill extends the non-discrimination provisions of s. 719.507 to non-residential cooperative equity facilities clubs and provides a definition for "equity facilities clubs."
3. **Non-mandatory Associations:** The bill provides that parcel owners in a residential community that does not have a mandatory homeowners association may revitalized expired covenants under the procedures in ss. 720.403 - 720.407.
4. **Mandatory Homeowners Associations:** In additional to removing the mediation procedures from the Division, the bill applies the open meeting requirements of Chapter 720 to committee meetings of the association; authorizes the association to charge up to $150 for information provided to prospective purchasers and mortgagees; creates a new section to govern architectural control decisions made by the association or a committee of the association; and provides that a parcel owner may recover fees from the association when the owner is a prevailing party in the dispute.
5. **Mandatory Homeowners Associations/Accounting and Financial Standards:** The bill creates new opt-in procedures for association reserves and conforms the accounting policies to those found in the Condominium Act. It also establishes uniform procedures for developer-guaranteed assessments; and requires a transition audit for associations created after December 31, 2006. **(Vetoed by the Governor.)**

CS/CS/HB 457 (Guardianship/Task Force Recommendations) by Representative Sands and Senator Saunders: The bill is a Section initiative, and it contains the recommendations of the Guardianship Task Force. It makes a variety of changes to Statewide Public Guardianship Office, provides for additional protections for a ward in a guardianship, and changes the "best interests of the

continued, next page

Legislative Changes

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SEN. SAUNDERS

ward" rebuttable presumption. **(Chapter 2006 – 178, Laws of Florida.)**

HB 459 (Guardianship/Task Force Recommendations – Public Records Exemption) by Representative Sands and Senator Saunders: The bill is a Section initiative, and it is the companion measure to CS/CS/HB 457 providing for a public records exemption for court records. **(Chapter 2006 – 179, Laws of Florida.)**


SEN. ARONBERG

CS/HB 521 (Elective Share/Probate) by Representative Hukill and Senator Aronberg: The bill is a Section initiative, and it clarifies the deadlines for filing any objection that challenges the validity of a will, qualifications of a personal representative, the venue, or the jurisdiction of the court. Its provisions require that notice of the deadlines for filing an elective share and a petition for determination of exempt property be included in the notice of administration, and they establish the manner of determining deadlines that flow from service of a copy of the notice of administration in cases where service has been waived. It clarifies the deadlines for filing and withdrawing an elective share, and it includes FBA language governing safe deposit boxes. **(Chapter 2006 – 134, Laws of Florida.)**

CS/HB 1009 (Realtors – Disclosure and Brokers Liens) by Representative Cretul: This bill makes a variety of changes to Chapter 475 relating to Realtors. Section 5 of the bill makes changes to the Transaction Broker/Single Agent disclosure language effective July 1, 2006, and makes technical revisions to commercial broker lien law in Sections 14, 15 and 16 of the bill which are supported by the Section. **(Chapter 2006 – 210, Laws of Florida.)**


REP. STARGEL

CS/HB 1141 (IRA – Real Estate Title) by and Representative Stargel and Senator Atwater: The bill is a Section initiative creating s. 689.072 to clarify an ambiguity under Florida law by carving out an exception to the Statute of Uses and codifying the manner in which title to real estate is held within self-directed IRA's. **(Chapter 2005 – 147, Laws of Florida.)**


REP. MAHON

SB 1170 (Florida Trust Code) by Senator Aronberg and Representative Mahon: The bill is a Section initiative that rewrites the Florida Trust Code, adopting provisions of the Uniform Trust Code and making conforming revisions to other portions of the statutes. It also includes the Section's GRAT tax initiative. **(Chapter 2006 – 217, Laws of Florida.)**


SEN. GELLER

CS/SB 1556 (Condominium Termination) by **Senator Geller and Representative Goodlette:** The bill is a Section initiative that amends s. 718.117 providing new and more practical methods for the termination of a condominium to ensure that the value of the condominium property is properly allocated among the unit owners. The bill provides for the following:


REP. GOODLETTE

1. **Plan of Termination:** A plan of termination is required, valuing the individual units, the common elements and other assets of the condominium based upon market value. The plan must state the shares that each owner will receive and notice must be provided to all members before and after the vote on the plan. Eighty percent of the unit owners are required to approve the plan.
2. **Termination Trustee:** The association becomes the trustee of the property once the plan is approved and has authority to dispose of the property and disburse the proceeds according to the plan
3. **Optional Termination:** In addition to the 80% threshold for plan approval, two optional methods are provided. After catastrophic damage, a majority of the owners may approve the plan if the costs to repair the property exceed the fair market value or if local land use restrictions do no permit the property to be restored to its original condition. The bill also permits unit owners to petition the circuit court to entertain a plan of termination when 80% was not achieved, but less than 20% opposed the plan of termination. **(Vetoed by the Governor.)**

Save the Date!

What: The Charitable Organizations and Philanthropic Planning Committee of RPPTL Seminar

When and Where: Friday, February 2, 2007 -- Tampa Airport Marriott Hotel

Who Should Attend: Estate planners, those interested in philanthropy, advisors of charitable organizations, and advisors of clients who are considering forming foundations

Discussions will include: 1) when and how to recommend gift annuities, charitable remainder trusts, and charitable lead trusts; 2) what client situations can be facilitated by charitable planning, such as the sale of a business; 3) ethics of being a donor advisor and a board member of a charity; and, 4) community foundations and their use to donors and estate planners.


REP. SIMMONS

SB 1956 (Land Trust Act) by Senator Aronberg and Representative Simmons: The bill is a Section initiative that creates the Florida Land Trust Act. **(Chapter 2006 – 274, Laws of Florida.)**

II. Initiatives of Interest


REP. PORTH

CS/CS/CS/CS/HB 65 (Foreclosure Proceedings – "Equity Stealing") by Representative Porth: The bill revises foreclosure procedures and was revised with the technical assistance of the Section prior to final passage. It provides new notice procedures for a judicial sale, the requirement for filing of a lis pendens by persons claiming a portion of the surplus proceeds, and new provisions governing the disbursements of the surplus proceeds resulting from the judicial sale. **(Chapter 2006 – 65, Laws of Florida.)**

C**S/CS/CS/HB 217 (Sinkhole Damage to Real Property) by Representative Legg:** The bill provides new procedures to resolve disputes between property owners and their insurance carriers. Section 4 of the bill provides that any insurer who pays a sinkhole claim will be required to file report and certification of the claim in the Official Records with the legal description of the property and the owner's name. The report and certification is not considered a lien, encumbrance, restriction, or defect on the title to the property. It further provides that it shall not create any liability against a title insurer. **(Vetoed by the Governor.)**


SEN. FASANO

CS/SB 264 (Homestead Exemption) by Senator Fasano: The bill provides that a transfer of homestead property to additional grantees does not result in the loss of the homestead exemption for the property if the grantor is also one of the grantees. **(Chapter 2006 – 38, Laws of Florida.)**

CS/CS/HJR 353 (Homestead Exemption/Disabled Veterans) by Representative Lopez-Cantera: The measure is a proposed constitutional amendment that would increase the homestead exemption for low-income seniors to $50,000. **(Referendum to be held during the 2006 General Election.)**


REP. KYLE

CS/CS/HB 567 (Notaries Public) by Representative Kyle: This bill requires that notaries public maintain a paper or electronic journal in compliance with the new law. At the request of the Section, attorneys and any notary employed by an attorney are exempt from the new requirements. **(Vetoed by the Governor.)**

HB 573 (Disabled Veterans – Building Permit Fee Exemption) by Representative Bilirakis: The bill provides an exemption for disabled veterans from building and permit fees when making

continued, next page

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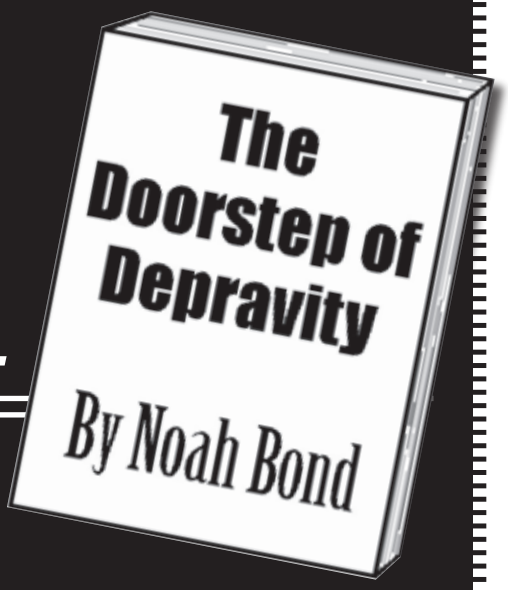

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Legislative Changes

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REP. BILIRAKIS

improvements to the disabled persons dwelling to accommodate the veteran's disability. **(Chapter 2006-250, Laws of Florida.)**

CS/CS/HJR 631 (Homestead Exemption/Disabled Veterans) by Representative Sansom: The measure is a proposed constitutional amendment that would extend to disabled veterans who 65 years of age or older a discount on the property taxes on their homestead property equal to the percentage of their disability. **(Referendum to be held during the 2006 General Election.)**

CS/CS/CS/HB 683 (Developments of Regional Impact) by Representative Traveisa: This bill makes refinements to the provisions governing developments of regional impact; the content of local comprehensive plans relating to working waterfronts and recreational surface water use policies; and manatee protection. It provides that undeveloped property within a Special Road and Bridge District may be removed from the district boundaries. It provides for additional flexibility to DRI threshold elements, and provides for the same exemptions from the substantial deviation provisions of Chapter 380 for workforce housing units and affordable housing units found in CS/CS/CS/CS/HB 1363. The bill also provides for partial exemptions for marinas and dry storage facilities, and an exemption for residential docks of 1000 square feet or less in artificial waterways. **(Chapter 2006 – 220, Laws of Florida.)**

CS/CS/SB 980 (Electric Substations – Residential Siting) by Senator Alexander: This bill preempts local government restrictions on the placement and construction of electric substations in residential areas. It provides for a siting process, optional locations and required buffers for new substations. **(Chapter 2006 – 268, Laws of Florida.)**

CS/HB 1089 (Construction Defects/Statute of Limitations and Converter Reserves) by Representative Galvano: This bill amends s. 95.11 and shortens the statute of limitations for claims against architects, engineers and licensed contractors from 15 years to 10 years. The bill also limits the applicability of s. 718.618 (converter reserves) to circumstances where construction was commenced before the developer designated the property as a condominium and provides that in such circumstances the provisions of s. 718.203 are not applicable. **(Chapter 2006 – 145, Laws of Florida.)**


REP. GALVANO

CS/CS/SB 1112 (Development Permits – Denial) by Senator Bennett: This bill provides that a local government denying a development permit must do so in writing, stating the ordinance or other legal authority that is the basis for denial. **(Chapter 2006 – 88, Laws of Florida.)**

CS/CS/HB 1139 (Construction Defects/Pre-Suit Procedures) by Representative Murzin: This bill extends the provisions of Chapter 558 concerning pre-suit procedures in construction and design defect cases to all construction. The bill also modifies the current contract disclosure language required to implement the pre-suit procedures. **(Chapter 2006 – 281, Laws of Florida.)**


REP. BENSON

HB 1359 (Coastal Reconstruction) by Representative Benson: The bill places restrictions on rigid coastal armoring structures, authorizes DEP to permit the replacement of beach sand that eroded during a storm, and requires DEP approval for reconstruction seaward of the coastal construction line. **(Chapter 2006 – 68, Laws of Florida.)**

CS/CS/CS/HB 1443 (Construction Liens) by Representative Russell:

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This bill provides that the authority responsible for issuing building permits does not need to require a notice of commencement before a permit is issued; provides for the electronic application and issuance of building permits; and extends the effective date of financing statements from June 30th to December 31, 2006. **(Chapter 2006 – 187, Laws of Florida.)**

CS/CS/HB 1503 (Persons with Disabilities) by Representative Galvano: This bill makes a wide variety of changes to the laws governing the Agency for Persons with Disabilities. It provides for consistency and definitions and other conforming changes that relate to the manner in which the agency operates and the people it serves. Section 27 of the bill amends s. 393.11 relating to involuntary admission to residential services and clarifies that the issue of competency for purposes of assigning guardianship shall be determined under Chapter 744. For purposes of determining the competency of a person to proceed in a criminal trial, the Section provides that the determination will be in accordance with Chapter 916. **(Chapter 2006 – 227, Laws of Florida.)**


REP. RUBIO

CS/CS/HB 1567 (Eminent Domain) by Representative Rubio: This bill restrict the reconveyance of property taken by eminent domain to a private entity except for roadways, utility services, common-carrier systems or other public infrastructure. It provides for the limited right of the former owner to reacquire the property if no longer need for the public purpose, and it prohibits the taking of property to eliminate nuisance, slum or blight conditions. **(Chapter 2006 – 11, Laws of Florida.)**

CS/HJR 1569 (Eminent Domain) by Representative Rubio: The measure is a proposed constitutional amendment that would restrict the reconveyance of property taken by eminent domain to a private entity except as authorized by the a general law passed by a three-fifths vote of the Legislature. **(Referendum to be held during the 2006 General Election.)**

CS/CS/CS/SB 1583 (Community Redevelopment) by Representative Davis: The bill places new requirements on community redevelopment agencies. It revises the methods for the creation and approval of new CRAs; it provides methods for modifying the boundaries of CRAs; and it places limits on tax-increment financing. **(Chapter 2006 – 307, Laws of Florida.)**


REP. DAVIS

SB 1948 (Coastal Properties Disclosure) by Senator Smith: The bill requires the seller of property that is seaward of the coastal construction line to provide a written disclosure statement to the purchaser stating that the property may be subject to rigid coastal protection structures, beach nourishment projects and turtle protection restrictions. The bill was amended to address technical concerns expressed by the Section. **(Chapter 2006 – 273, Laws of Florida.)**


SEN. SMITH

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AL8653

Legislative Changes

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CS/CS/SB 1980 (Property Insurance) by Senator Garcia: The bill is the comprehensive property insurance legislation from the Session, dealing with a variety of measures dealing with Citizens Property Insurance and related windstorm insurance issues. Specific provisions of interest include provisions:

1. In Section 2 of the bill, a mitigation program for residential properties up to 4 units in size, providing for inspection and rating for wind resistance.
2. In Section 15 (page 56), a new limitation on coverages available from Citizens, effective July 1,2008, eliminating homes and condominium units with a replacement cost of $1 million or more.
3. In Section 15 (page 76), the option for the Board of Citizens to allow for the waiver of the 10-day waiting period for coverage issued in conjunction with a closing on the residence.
4. In Section 28, the same provision found in CS/CS/CS/HB 217 requiring any insurer who pays a sinkhole claim to file a report and certification of the claim in the Official Records with the legal description of the property and the owner's name. The report and certification is not considered a lien, encumbrance, restriction, or defect

continued...

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Join the RPPTL POLITICAL ACTION COMMITTEE

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. *Laird A. Lile (Board Member and Chair), Sandra Diamond (Board Member and Secretary/Treasurer), Peter Dunbar (Assistant Secretary/Treasurer), Burt Bruton (Board Member), Homer Duval (Board Member), Joel Sharp (Board Member), Margaret Rolando (Board Member), Roland Waller (Board Member), Julius Zschau (Board Member), Melissa Murphy (Board Member), Charlie Nash (Board Member), Louis Guttmann (Board Member), Bob Goldman (Board Member), Bruce Stone (Board Member), Steve Hearn (Board Member),* and *Tom Smith (Board Member)* 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:

Marc W. Dunbar, Pennington Law Firm, Post Office Box 10095,
Tallahassee, Florida 32302-2095, Telephone: (850) 222-3533

Member's Name: _____

Firm Name: _____

Address: _____

City _____ State _____ Zip Code: _____

Phone: (_____) _____ Fax: (_____) _____

DUES SCHEDULE:

(Check your preference)

❑ Regular Member	$50
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❑ Silver Member	$250
❑ Executive Member	$500
❑ Millennium Member	$1,000
❑ Gold Member	$2,000
❑ Platinum Member	$5,000
❑ Double Platinum	$10,000

A Job Well Done, Jay and Leila Zschau

By S. Dresden Brunner, Esq., Naples, FL

The 2005-2006 Section year comes to an end with the passing of the torch to the incoming Chair. At such time, we want to recognize and pay tribute to the immense and tireless efforts of outgoing Section Chair, Jay Zschau and his lovely wife, Leila Zschau.



Jay continued the efforts to increase Section membership and saw the membership rise to over 9,000 members. Also, attendance at the Executive Council meetings and the CLE programs increased. Under Jay's watch, the Section's legislative initiatives include the notable Trust Code and the Land Trust Act. Important for the fiscal well being of the Section, the sponsorships increased significantly. Creatively, sponsorships of individual committees are now available.

Jay and his wife, Leila, live in Dunedin, Florida. Jay practices real estate law with the law firm of Pennington, Moore, Wilkinson, Bell, et al. in its Clearwater office. He is admitted to practice in Illinois as well as Florida. In addition to serving the Section as its Chair, Jay has served in many other roles as well. He has served as Director of the Circuit Representatives (2000-2001), Director of the Real Property Law Division (2002-2004), and Chair-Elect (2004-2005).

During Jay's tenure, the Executive Council meetings were convened at lovely facilities, including three Ritz Carlton hotels. The Council met in Sarasota in November 2005; in Amelia Island in January 2006; in beautiful Barcelona, Spain in April 2006; and in Orlando in May 2006. (See in this issue the beautiful pictures and experiences enjoyed by those who ventured to Barcelona, the out-of-state meeting.) Leila organized creative outings for the spouses and guests of those attending the meetings.

Thank you both for your attention to all of the details (large and small) in leading the Section. As past Chair Laird Lile said at the end of Jay's term, "Welcome to the back row," referring to the back row of seats reserved at each Executive Council meeting for past chairs. AL

Legislative Changes

from preceding page

on the title to the property. It further provides that it shall not create any liability against a title insurer. **(Chapter 2006 – 12, Laws of Florida.)**

CS/HB 7109 (Homestead Property – Assessment after Reconstruction) by Representative Brummer: The bill places limits on the assessed value that may be placed on homestead property that is repaired or replaced after it has been damaged or destroyed. The bill also permits the homestead exemption to be maintained on the property after damage or destruction if the owner intends to repair or replace the home and does not claim a homestead exemption on another piece of property. **(Chapter 2006 – 311, Laws of Florida.)**

CS/HB 7079 (Traffic Control – Private Roads) by Transportation: This bill is a lengthy measure containing this year's changes requested by the Department of Highway Safety and Motor Vehicles. Section 6 of the bill provides that the board of directors of a homeowners' association regulated under Chapter 720 may, by majority vote, elect to have state traffic laws enforced by local law enforcement agencies on private roads controlled by the association. **(Chapter 2006 – 290, Laws of Florida.)**

CS/CS/CS/HB 7121 (Condominiums/Emergency Elevators) by Domestic Security: This bill places a number of mandates on businesses and property owners in times of natural disasters, man-made disasters, civil disturbances and other emergencies. Among them are requirements in Section 12 relating to condominiums, cooperatives and other residential structures that exceed 75 feet in height. These include:

1. **Emergency Elevator Service:** Requires that the structures be retrofitted so that at least one public elevator is capable of operating on an alternative source of emergency power. The emergency power generator must also be capable of operating the building's fire alarm system and lighting all interior common areas of the building. The plans for the retrofit must be verified by the local building department by December 31, 2006, and the retrofit of the building must be completed and approved by December 31, 2007.
2. **Emergency Operations Plan:** Each condominium or cooperative association must have a written emergency plan of operations that details the sequence of operation during the emergency, and it must include an evacuation plan, an emergency electrical supply component, and provisions for the health, safety and welfare of the residents.
3. **Records and Generator Key:** The condominium or cooperative association is required to keep written records of the contracts for alternative power generation equipment and post quarterly inspection records for the emergency equipment in the elevator machine room. The association must also keep a key for the emergency generator in a lockbox posted at or near the emergency generator unit. **(Chapter 2006 – 71, Laws of Florida.)** AL

Annual Section Awards Presented at Convention in Orlando

By S. Dresden Brunner, Esq., Naples, FL

The RPPTL Section is able to accomplish its numerous goals and functions as one of the most successful (and largest) sections of The Florida Bar due to the dedicated work of its members. At the Section's Annual Convention in Orlando this year, Jay Zschau, outgoing Section Chair, announced three awards to honor Section Members.



Mike Swaine (right) receiving the Robert C. Scott Memorial Award award from Jay Zschau.

J. Michael Swaine received the **Robert C. Scott Memorial Award** for his devoted and valuable service to the Section. This award was established in 1985 in memory of Bob Scott, who was the past chair of the Section. The award is presented to Section members who best exemplified Bob's devotion and continued service to the Section and its membership. "The amount of time and effort that Mike has given to the Section over the years in unbelievable," says Jay Zschau. He adds, "Mike steps in and does anything that is needed without asking for credit and always does the job extremely well". Mike joins the very distinguished group of prior recipients of this award, which includes last year's recipient, Roger Isphording, and Tom Smith. Mike was Section Chair in 2001-2002 and practices real estate law with Swaine Harris & Sheehan in Sebring, Florida.



Norwood Gay (left) is presented the Section's Annual Service Award.

R. Norwood Gay received the **Section's Annual Service Award** for his significant efforts on behalf of the Section. The Section presents an Annual Service Award to a Section member who has rendered dedicated and significantly outstanding service to the Section and its varied programs throughout the current year. In selecting the recipient of this annual award, the Section considers both the character and magnitude of the service furnished by the nominee throughout the year and particular emphasis is given to the benefits which accrue to the Section and the lawyers of Florida as a result of such service. "Norwood has accomplished many things for the Section, some of them pretty amazing, and just says 'it is part of his job'" says Jay Zschau. Norwood is a Board Certified real estate attorney with Attorneys' Title Insurance Fund in Orlando, Florida.

Bruce M. Stone received the **William S. Belcher Lifetime Professionalism Award** for his exemplary professionalism. This award was established in 2003 in memory of Bill Belcher, whose professional, civic, charitable, and personal conduct always reflected the highest standards of professionalism and devotion to his profession as an attorney. This award is presented, at the discretion of the Section, to an Executive Council member in recognition of his or her lifetime contributions to the Section, the Executive Council, Florida attorneys, and the public in promoting the highest standards of ethics and professionalism. Jay Zschau states that "Bruce is the embodiment of integrity, professionalism and total competence." Bruce joins a very distinguished group of prior recipients of this award, which includes last year's recipient, Bob Goldman. Bruce was Section Chair in 1998-1999 and practices trust and estate law in Coral Gables, Florida with the firm of Goldman, Felcoski & Stone.



Bruce Stone (right) receiving the William S. Belcher Lifetime Professionalism Award

Congratulations to all of the award recipients and thank you from the entire Section for your dedicated work. AL

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Florida Legal Education Association

The Probate Team 2006

FRIDAY & SATURDAY OCTOBER 20 & 21, 2006

Hyatt Regency Tampa – Two Tampa City Center
Tampa, Florida

SPEAKERS

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- Current Florida Probate Forms on disk (Sample January 2006)
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HOTEL REGISTRATION INFORMATION

A block of rooms has been reserved at the Hyatt Regency Tampa at the rate of $169.00, single or double occupancy. Reservations must be made by September 19, 2006, to assure the group rate and availability. To make reservations, call the Hyatt directly at (800) 233-1234 or (813) 225-1234 and be sure to tell them you are a Probate Team registrant! (NOTE: Attendees staying at the hotel will receive an $8.00 credit toward their parking cost!)

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Erin Brennan Chambers, Executive Director

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International Symposium held in Barcelona, Spain April 18 - 23, 2006

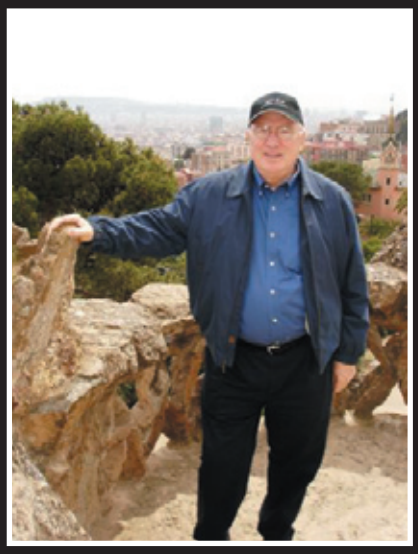
By Silvia B. Rojas, Esq., Sr. Underwriting Counsel, Attorneys' Title Insurance Fund, Miami, FL

The out-of-state meeting this year was held in the picturesque City of Barcelona located in the region of Catalunya, Spain. It was one of our most well-attended meetings ever outside the U.S. and it was highly celebrated by all who attended. Most of us arrived at the Hotel Arts, in Barcelona on Tuesday, April 18th, after many hours in flight and brief stops in several other cities such as Madrid or Paris. The relaxed welcome reception and dinner at Botafumeiro in the centre of Barcelona was a wonderful way to end the day. Botafumeiro is acclaimed by some as the best Galician restaurant in the world. Our group filled several beautifully adorned rooms of the restaurant. We enjoyed a wide variety of delicious appetizers, known as "tapas" throughout Spain, and a sumptuous dinner of the finest seafood available in Barcelona.



Though the languages of Catalunya are Catalan and Spanish, we had no problem in communicating with the wonderful staff of the restaurant.

By the next day we filled two tour buses for the World of Gaudi Tours with a guide from the College of Architects. The renown architect, Antonio Gaudi, left his imprint on many of Barcelona's finest buildings. The church of the Sagrada Familia with its intricate statuary and complex architecture was an awesome sight. Later we ascended through the small streets to the hill of El Carmel and strolled through Parc Guell, a UNESCO World Heritage Site, with its remarkable gardens and whimsical architecture overlooking the city. That evening was our cocktail reception with our hosts from the Barcelona Bar Association. We were welcomed at the Illuste Collegi D'Advocats de Barcelona by its President, Silvia Gimenez-Salinas, its International Dept. Coordinator, Anthony Brown, a member of its Board of Governors, Maria del Mar Espar Almeda, as well as



Special Thanks to the Barcelona Meeting Sponsors

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Barcelona

from preceding page

other Bar members, with spirited conversation, a variety of delightful tapas, music from their all-lawyer choir (see: http://coral.icab.es), and tours of their law library containing manuscripts dating back to the 12th century. We thoroughly enjoyed the hospitality of our colleagues in Barcelona. We later retired to the hotel for a late dinner.

On Thursday, April 20th, we took a broader tour of the surroundings and traveled up a very slim road on a very large tour bus to an altitude of 2,400 feet, two-thirds of the way up Mount Montserrat. Though the journey was amazing enough and we were all relieved at having arrived in one piece, the sight of the impressive compound of buildings edged on the side of the mountain which includes the Benedictine abbey that houses the Black Madonna or "La Moreneta" dating back to the 12th Century was well worth the seemingly perilous journey. Our tour guide gave us a good historical perspective of the grounds and buildings. We later went back on the tour bus and our next stop was the centuries old Codorniu vineyards and cellars where several million bottles of Cava wines are stored. After the guided tour we enjoyed a sip of the bubbly and then headed for a country fare dinner at a converted 17th century farmhouse, now known as Can Travi Nou Restaurant, just outside Barcelona. Some of our members tried their skill at drinking the dessert wine poured at arms' distance from long neck decanters at the urging of the staff and colleagues with a few accidental spills of wine.

Even though we had much more food than we could digest over a two hour period, the four tapas restaurants tour went as scheduled a couple of hours later through the old town. We savored the tapas from four different types of restaurants to get a good idea of the variety of this most-favorite Barcelona pastime in this city that never sleeps.

The gracious hospitality of our colleagues overseas did not end at the cocktail party. Our Executive Council meeting on Friday morning was held at the Barcelona Bar facilities after being treated to a small buffet breakfast. Thereafter, we relocated to a larger conference room for the "2nd International Law Symposium." Issues of investing in Florida and investing in Spain were discussed by several of our Section speakers and Barcelona Bar speakers and a lively question and answer session with the attendees ensued. During the short break between the Florida and Spanish law sessions many a business card was exchanged. While the Section members participated in the seminar and networked with our overseas colleagues, the spouses and guests delighted in the sweet tastes of chocolate concoctions at the local Chocolate Factory and Museum and a tour of the Gothic Quarter.

After lunch back at the hotel, the Section members, spouses and guests enjoyed the sights of Barcelona on their own. Friday evening started with a guided tour leading up to the Picasso Museum located within the old cobblestone lined Gothic Quarter and ended with a fabulous private dinner set up under the arches below the museum.

On Saturday morning, we toured the The Palau Nacional which now hosts the Museu National d' Art Catalunya and is located on Montjuic, i.e. "Jewish Mountain," located on the southeast side of the city. Thereafter, we glided through the air in a breathtaking cable car ride over the east side of the city. After a delicious lunch on the balcony of a café located on the old waterfront section of town, we took a breather for the afternoon and convened in the evening for our farewell dinner at the hotel. We said our goodbyes to a trip we will all long remember.

In closing, let me take this opportunity to convey a special thank you to our colleagues at the Barcelona Bar Association for their most cordial reception and to the 2005-2006 Chair of the Section, Jay Zschau, and his wife, Leila, for choosing this beautiful part of the world for the out-of-state trip and for all the meticulous planning that made this event such a joy to be a part of. ***AL***



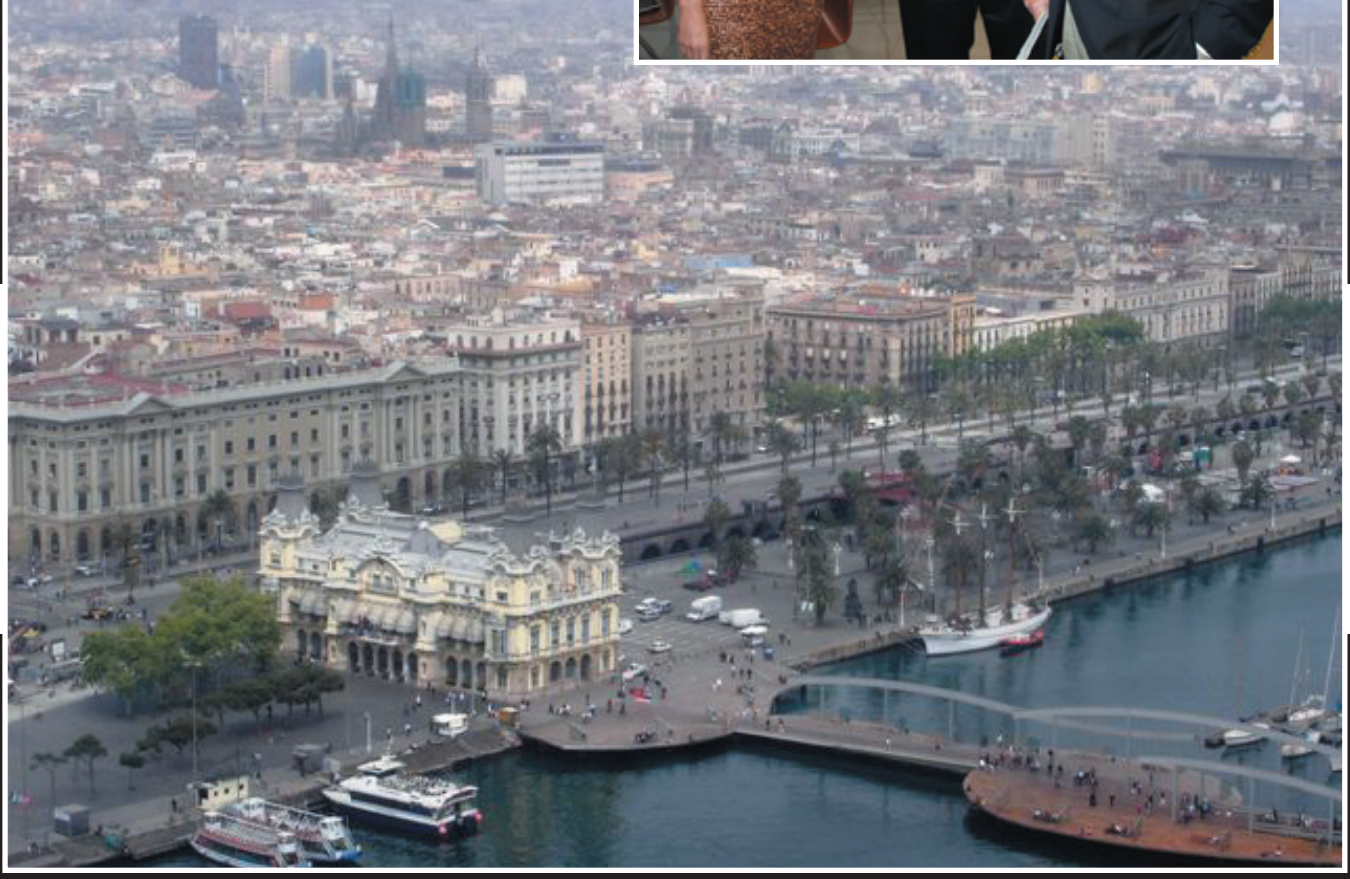






Barcelona



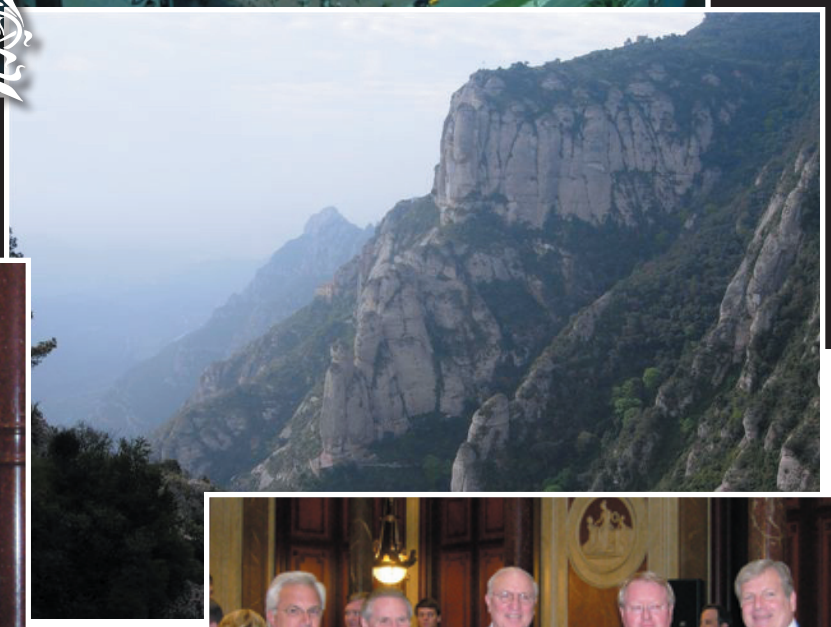






Barcelona



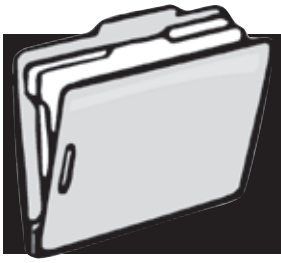








Barcelona photos courtesy of Silvia Rojas & John Neukamm



Real Estate Case Summaries

By Stephen Edward Silkowski, Esq., Jacksonville, FL

A contract for deed does not require two subscribing witnesses.

Free v. Free, 2006 Fla. App. LEXIS 13010 (Fla. 5th DCA August 4, 2006)

Robert asserted that an agreement for deed was invalid because it had not been executed in the presence of two subscribing witnesses. He based this argument on Section 689.01, Florida Statutes, which essentially requires that for a transfer of real estate, or an interest in it, to be valid, the instrument of conveyance must be in writing and signed by the grantor in the presence of two subscribing witnesses. Because this statute and its provisions regulate the mode of conveying real property or of creating an estate in it, the statute does not apply to documents that are not instruments of conveyance.

An agreement for deed is primarily utilized as a security device and an alternative to immediate conveyance of title to the buyer with a purchase money mortgage back to the seller. The Florida Legislature and courts have declared that such agreements are essentially mortgages with attendant rights and remedies provided to mortgagors and mortgagees that include the seller's remedy of foreclosure if the buyer defaults and the buyer's right of redemption. A mortgage creates a lien under Florida law, and, because it does not convey an interest in real property, the requirements associated with its execution are not as exacting as those of instruments of conveyance, such as a deed. Therefore, Section 689.01 does not apply to mortgages, and, because the contract (agreement for deed) executed by Marion here is a mortgage, the fact that it did not contain the signatures of two subscribing witnesses was no impediment to the equitable relief decreed by the trial court.

Will provision forbidding sale or partition during beneficiaries' lifetimes is unreasonable restraint on alienation.

Vinson v. Johnson, 931 So. 2d 245 (Fla. 1st DCA 2006).

Vinson executed a will leaving his farm to his nine living children as tenants in common. The will provided in pertinent part, "the 'Vinson Estate' shall not be subject to partition or forced sale by any heir, but shall only be sold upon agreement of all heirs". Vinson died, and ownership of the real property was transferred to his children according to the devise he had made in his will. Subsequently, a dispute arose between the children, and five of them filed a suit for partition or forced sale naming the other four as defendants.

The controversy between the parties at trial focused on the meaning of the term "heirs" in the clause prohibiting partition or forced sale. The defendants argued that the term referred only to the devisees named in the will and that it was not unreasonable to prohibit a forced sale of the property during their lifetimes. In contrast, the plaintiffs argued that the term "heirs" refers to all of the testator's lineal descendants, so that the clause at issue could interfere with the right to sell or dispose of an individual interest in the property indefinitely, so long as any living descendant withheld his or her consent.

Whether the clause in the will prohibiting partition or sale is an unlawful restraint on alienation of real property is a question of law. The prohibition against partition and sale is an unlawful restraint on alienation even if it applies only to the nine children who were living at the time of the testator's death. The will grants each of the children an undivided fee simple interest in real property, yet the prohibition at issue would deprive them of the normal incidents of property ownership, including the right to sell or dispose of the property during their entire lifetimes. The prohibition against partition cannot stand because it is inconsistent with the devise made in the will.

The court must construe a will in a way that carries out the intent of the testator, but this principle assumes that the action the testator intended to take with respect to his property is lawful. A devise made in violation of the legal requirements for conveying real property is not transformed into a valid devise merely because it was clearly expressed. When real property is conveyed in fee simple, the grantee or devisee acquires a right to sell or dispose of the property as an incident to the right of ownership. The right of alienation is said to be an inherent and inseparable quality of the estate. An absolute restraint on alienation is inconsistent with the right of ownership and is therefore invalid. The rule against restraints on alienation applies to restrictions on partition of real property, as well as restrictions on sale. The right to seek partition of property owned jointly in a tenancy in common is an incident to the right of individual ownership.

The court recognized that a restriction on the right to partition property might be valid if it were effective only for a limited time. The rule against unreasonable restraints is principally concerned with the duration of a restraint on the property. American courts have generally followed the rule that a restraint on alienation is unreasonable if it exists for the lifetime of the grantee or devisee. The right to partition can be waived by agreement, but there is no evidence of such an agreement here. AL

Ethics Questions?
Call The Florida Bar's
ETHICS HOTLINE
1/800/235-8619

The Insurance Committee— New Committee Seeks Members

A new committee has been formed on the Probate side of the Real Property, Probate and Trust Law Section. At the moment, it is entitled simply "The Insurance Committee". Its primary purposes are:

1. To improve the general understanding of lawyers regarding the use of insurance products.
2. To improve the capability of lawyers in understanding insurance proposals.
3. To improve the relationship between lawyers and life insurance underwriters.

While the ultimate plan would be to bring the knowledge gained through participation in this committee's work to The Florida Bar through CLE programs or participation in other CLE programs promoted by other committees, its initial function will be that of promoting the knowledge and interest of people who wish to attend committee meetings.

We have already had one meeting wherein Randy Ellington, a Florida Bar member who sells life insurance, presented a power point presentation on how to understand insurance proposals. While enlightening, this entire area is complex enough where we will probably have several more presentations of this variety. At the August committee meeting in Palm Beach, a presentation by the Ashar Group on life settlement was held. It is anticipated that in the future we will have discussions regarding the various attributes of universal life insurance, what guarantees really mean, and advising irrevocable life insurance trustees on the evaluation of existing life insurance policies.

We are a small committee but hope to have all those who are interested in this whole area, and who have a desire to improve their knowledge, to attend. To join the committee, please contact L. Howard Payne, Committee Chair, at 941/487-2800 or HPayne@lawnav.com. AL

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

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Questions about RPPTL?



For general inquiries about the RPPTL Section, membership, the website, or other Section related matters, contact the Section's Program Administrator at The Florida Bar: TERRY HILL at (800) 342-8060, extension 5619.

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International Investing : What Every Lawyer Should Know

By Amit Khandwala, Chief Equity Officer, Wright Investors' Service Inc., with assistance from Diane Timpany, AIF®, CFP, CEBS, Carol Cheswick Ross and David Tuttle, JD, CFA, Cheswick Wright Wealth Management, LLC

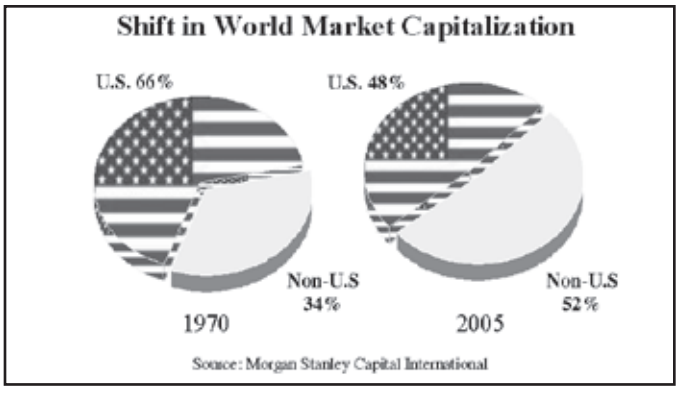
Thomas L. Friedman, in his book *The World is Flat,* reflects on how technological innovations, outsourcing and globalization have changed the way corporations manage their businesses and how individuals benefit from the various synergies created through this flattening. Globalization of world trade, reductions in trade barriers, economic liberalization and a relatively friendly political environment have created opportunities for companies worldwide. (One only has to look at the emergence of international "conglomerate" law firms with revenues in excess of $1 billion to realize the power of these forces.)

We in the U.S. have grown accustomed to various aspects of globalization. Many of us work at multinational organizations, go overseas for vacations and enjoy products made by foreign companies. Despite these globalization trends, many U.S. investors remain extremely insular in their investing habits. According to the Profit Sharing/401(k) Council of America, the average individual investor has less than 3% exposure to international equities. In comparison, according to Pensions & Investments, the top 200 pension funds allocate about 18% of their total plan assets to international equities. This low level of allocation by individual investors prevents them from benefiting from significant investment opportunities.

In this article, we hope to "flatten" your investment world by introducing you to some of the compelling reasons that we believe should lead all investors, including lawyers acting as fiduciaries or advising fiduciaries, to consider investing a portion of their portfolios internationally.

Investment Opportunity Set

Over the past four decades, there has been a dramatic shift in the investment opportunity set available in foreign markets. For example, in 1970 the size of the international public equity market was $289 billion. Today, it is about $14.6 trillion.



Here are some additional facts:

- 52% of the world's listed companies (by market cap) are outside the U.S.
- 71% of the world's gross domestic product is produced outside of the U.S.
- 95% of the world's population lives and consumes outside of the U.S.

Performance of International Equities

International equities have provided robust returns for investors. Contrary to popular belief among U.S. investors, the U.S. equity market has been the best performing developed market only once in the past 24 years.

Best Performing Markets

Among the Ten Largest Developed Markets

Year	Country	Year	Country
1982	U.S.A	1994	Japan
1983	Australia	1995	Switzerland
1984	Hong Kong	1996	Hong Kong
1985	Germany	1997	Hong Kong
1986	Japan	1998	Italy
1987	Japan	1999	Japan
1988	France	2000	Switzerland
1989	German	2001	Austrailia
1990	U.K.	2002	New Zealand
1991	Hong Kong	2003	Greece
1992	Hong Kong	2004	Austria
1993	Hong Kong	2005	Canada

Investors who have invested internationally have increased their opportunity set and have been rewarded with better returns. The chart below shows the growth of a $100 investment in various international markets.



Is foreign really that foreign?

With the majority of listed companies being domiciled outside the U.S., one can argue that the United States is not a complete investment universe. Just as many U.S. based companies get a large portion of their revenue from international markets, many international companies get substantial revenue from the U.S. market. Examples include Toyota from Japan, Nokia from Finland, Infosys from India and Teva from Israel.

continued...

International Investing

from preceding page

Seven of the ten largest publicly traded energy and



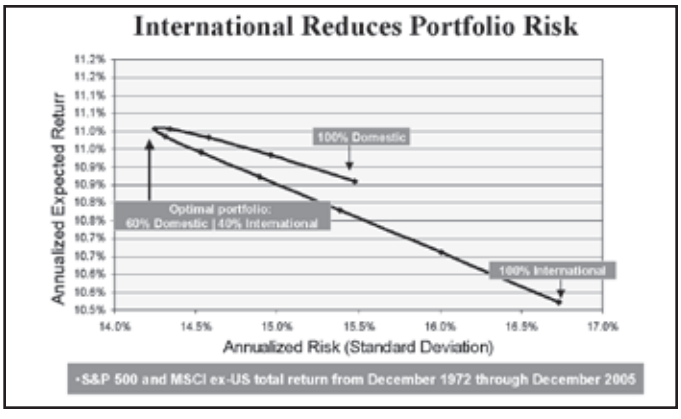
automotive companies are based overseas. Six of the ten largest banks in the world are based overseas. Three of the ten largest companies in the world are non-U.S.

These are some of the well known foreign companies that do business in the U.S.

Does investing internationally increase portfolio risk?

International investments have differing return opportunities and differing risk profiles. However, the important fact is that international equities provide diversification. Just as investors consider investing in stocks, bonds, real estate and other domestic asset classes, they should also consider international equities. When international equities are included within an investor's portfolio it helps reduce portfolio risk and enhance returns.

The chart below shows that over the past 33 years, the optimal trade-off between risk and return would have been a 60% allocation to U.S. equities and 40% allocation to international equities for the equity portion of a portfolio. With this allocation, an investor would have earned the highest return for the amount of investment risk taken.



Challenges to Investing Internationally

Very often we hear the saying, "When in Rome do as the Romans do." Investing internationally entails understanding the cultural issues that affect how the companies are managed and how investors invest in each of these markets. The distance between Germany and France may be less than between New York and California, but the cultural differences and investment attitudes could not be further apart.

For example, historically, German investors were typically much more risk-averse than the French, as indicated by their much higher percentage investment in government bonds versus investments in equities. Perhaps this explains, in part, the higher market capitalization of equities relative to gross domestic product in France than in Germany. Also, prior to the imposition of standard tax structures by the creation of the European Union, dividend yields in a higher tax country were lower than in countries with relatively lower tax rates. Understanding such differences is important when analyzing financial statements and investment opportunities. This ability, or lack of it, should be a critical consideration when choosing an investment manager.

Risks in Investing Internationally

Without risk there is no reward and investing internationally is no exception. Some of the risks specific to investing internationally are:

- Currency fluctuations
- Differing accounting standards and legal and regulatory frameworks
- Nationalization of local companies
- Political and social risks
- Lack of transparency

However, the likelihood that some of these risks might be realized has been reduced over recent years due to globalization, economic liberalization, a relatively friendlier political environment, increased harmonization of international accounting standards, and improved legal and regulatory frameworks. These risks can be reduced further through proper selection of an investment manager. Investing overseas does not have to mean investing in largely unregulated markets in unknown companies. Selecting a skilled and knowledgeable investment manager who focuses on investing in more developed markets and higher quality companies, and who carefully constructs well diversified portfolios, can help you manage these risks.

Is it a good time to invest internationally?

We believe that international equities should be a part of a well-diversified investment program. It is quite difficult, if not impossible, to successfully time the markets with any consistency.

The next chart shows that markets go through cycles. The decades of the 1970's and the 1980's were dominated by the returns produced by international equities. The 1990's favored the U.S. Recently the pendulum seems to have again swung in favor of international equities. Rather than investing in the U.S. *or* in international equities, one should think in terms of investing in the U.S. *and* in international equities in percentage allocations that are consistent with your investment objectives and based upon the risk return trade-off of these asset classes.

With the emergence of China and India, where a majority of the world's population live, work and spend, we are seeing an unprecedented demand for commodities, energy, housing and luxury goods. Along with Taiwan and



5 Year Rolling Return Differential between MSCI EAFE Index and MSCI US Index
Dec. 1969 – Dec. 2005

Hong Kong, China has the largest U.S. dollar reserves in the world. All this points to many investment opportunities both for corporations and investors. Better valuations of internationally based companies lend further support to the invest-internationally thesis. The table below provides some supporting fundamental comparisons.

Fundamentals
July 31, 2006

Country	P/E 2007E	EPS Growth 2007E	Dividend Yield
US	**13.8X**	**7%**	**1.7%**
Europe	12.7X	5%	3.0%
Japan	15.2x	10%	1.1%
Emerging Markets	10.4X	13%	2.5%

Source: Morgan Stanley

How can you invest in International Equities?

Investing internationally is possible via a variety of vehicles such as common stocks, American Depository Receipts (ADRs), Exchange Traded Funds (ETFs), closed-end mutual funds and open-end mutual funds. Due to differing brokerage costs, the need for sub-custodians by country and other complexities of foreign markets, it is often more efficient for all but some of the largest investors to invest via mutual funds or other commingled products. The choice of these vehicles should be determined by the international investment experience of the investment team, their investment performance record and the competitiveness of their fee structure.

Fiduciary Investors

In an article entitled "The Uniform Prudent Investor Act" authored by our colleagues Helen W. George and Diane H. Timpany and published in the February-May 2001 edition of *ActionLine*, they comment on the "unambiguous articulation of the duty to diversify" under Florida's version of the Uniform Prudent Investor Act. They make the point that "[t]he purpose of diversification is to *manage* risk. Wherever possible, therefore, a fiduciary must diversify investments across different levels of risk. The reasonableness of any one investment, that is, its risk/return profile, can only be judged by its position in the portfolio as a whole." It appears that institutional fiduciaries have accepted the benefits of international diversification as reflected by the fact that the top 200 U.S. pension funds allocate about 18% of their total plan assets to international equities. We believe that under Florida's version of the Uniform Prudent Investor Act it is appropriate, and perhaps even required, that individual fiduciaries embrace the benefits of international diversification.

We believe that international equities should be part of most investors' portfolios. Just as institutional investors do, individual investors should take advantage of the higher risk-adjusted returns provided by the addition of international equities to a well diversified portfolio.

Amit Khandwala *oversees all of Wright Investors' Service Inc.'s equity products with specific responsibility for international equity accounts, the Wright International Blue Chip Fund (WIBCX), ADR portfolios, and international long/short hedge accounts.* ***Carol Cheswick Ross*** *and* ***David Tuttle*** *are Managing Directors and Portfolio Managers.* ***Diane Timpany*** (dtimpany@cheswickwright.com) *is Senior Vice President. Cheswick Wright Wealth Management, LLC is an affiliate of Wright Investors' Service and is focused on providing the highest quality investment and wealth management counseling, portfolio management and personal service to the fiduciary and high net worth market.* **AL**

Deadline for next issue: October 31, 2006

ActionLine Publication Schedule

Publication deadlines for upcoming issues of ActionLine:

ISSUE	DEADLINE
Winter 2006	October 31, 2006
Spring 2007	January 31, 2007
Summer 2007	April 30, 2007

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.

Community Foundations Are Your Best Allies

By Hank Raattama, Esq., Akerman Senterfitt, Miami, FL

In the course of doing business, sooner or later you will be called upon to help clients with their charitable giving.

Your clients will be looking for the most effective ways to contribute to charitable causes that they hold dear. They will have questions about specific charitable giving vehicles, such as charitable remainder trusts. And they will want to know how to capitalize on the potential for contributing retirement funds to charity.

The tax considerations are important, but often the favorable tax laws merely facilitate and make it less costly to accomplish a charitable goal. It is easy to find tax lawyers. The non-tax considerations are equally, if not more, important. For example, non-tax considerations include how to support a particular cause, how to find a charity supporting a particular cause, or how to insure endowment money is used for its intended purpose. These questions can be more important than the tax questions and are not as easily answered as are the tax questions.

Perhaps you already raise the charitable question with your clients. Maybe it makes your job more satisfying – not only to provide exemplary client service, but also to contribute to making your community a better place – all by doing your job.

Wouldn't it be great if there were one place that you could go to get all the information that you and your clients need about charitable giving?

Well, in Florida, there isn't just one place – there are more than 22. There are community foundations serving residents in nearly all 67 counties. Each Florida community foundation is a nonprofit, community corporation created by and for the people of Florida. The mission is to help donors make a positive impact on their community.

Community foundations are your very best allies in delivering philanthropic planning, products, and services to your clients. Community foundations offer a variety of giving tools to help people achieve their charitable goals and have expertise on issues and trends in charitable giving instruments and strategies.

Florida's community foundations are part of a growing movement of over 600 community foundations in the United States today. In 2005, Florida's community foundations distributed more than $67 million to nonprofit organizations around our region, and held almost $1.2 billion in philanthropic assets.

Florida's Community Foundations

Three Special Features

There are three special features of community foundations that can help you do your job better:

- **Personalized Service:** Community foundations make giving easy, flexible, and effective, accepting a wide variety of gifts and providing donors the greatest flexibility. Clients can contribute cash, stocks, property, and bequests. They may establish an Unrestricted, Field of Interest, Designated, or Donor Advised Fund in their name or in the name of a loved one. Their gift will gain maximum tax advantage.

- **Local Expertise:** The professional staff of community foundations has an in-depth understanding of the issues, opportunities, and resources that shape your community. They monitor all areas of community need – including human services, education, the environment, healthcare, the arts, and economic development. They can help you and your clients learn more about local agencies and programs that make a difference.

A community foundation makes available a unique body of information to help donors accomplish philanthropic goals. The community foundation works with, not competes with, local charities to create philanthropic synergy. If you ask a client whether they had considered their legacy and they say, "I have been thinking about just that and would like to benefit abused children but do not know how; what do you suggest?" Call your community foundation for assistance.

- **Community Leadership:** They invest in the long term and bring people and organizations together, convening diverse voices to address local issues and opportunities.

During the coming year, in partnership with the John S. and James L. Knight Foundation, a series of articles will be published in *ActionLine* designed to help you with specific aspects of working with your clients on charitable giving. Upcoming topics include: donor advised funds, listening for charitable opportunities, and using retirement funds for charitable purposes. In the meantime, for more information, log onto www.communityfoundationsfl.org or contact your local community foundation. Contact information for all local community foundations can be found on the Community Foundations of Florida website.

Lastly, I can tell you by personal experience, community foundations have built a reputation of community service second to none. They have helped connect local donors with the causes they care about and demonstrated great skill and flexibility in meeting the challenges of a vibrant community. AL

Top 10 Reasons Attorneys and Professional Advisors Work With Community Foundations of Florida:

1. They are local organizations with deep roots in the community.
2. Their professional program staff has broad expertise regarding community issues and needs.
3. They provide highly personalized service tailored to each individual's charitable and financial interests.
4. They accept a wide variety of assets and can facilitate even the most complex form of giving.
5. Their donor advised funds help people invest in the causes they care about most.
6. They partner with professional advisors to create highly effective approaches to charitable giving.
7. They offer maximum tax advantage under state and federal law.
8. They multiply the impact of gift dollars by pooling them with other gifts and grants.
9. They built endowment funds that benefit the community forever and help create personal legacies.
10. They are community leaders, convening agencies and coordinating resources to create positive change. ■

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Information in court filings

Reprinted below is an Administrative Order entered by the Chief Judge of the Circuit Court in and for Broward County regarding certain information in court filings.

– Submitted by the Probate Law and Procedure Committee of the RPPTL Section

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IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO.: IV-06-A-31

IN RE:

SOCIAL SECURITY NUMBERS,
BANK ACCOUNT NUMBERS,
DEBIT ACCOUNT NUMBERS,
CHARGE OR CREDIT CARD
NUMBERS
_____/

In accordance with the authority vested in the Chief Judge pursuant to Fla. R. Jud. Admin. 2.050 and in accordance with §119.071(5), Fla. Stat. which exempts from public records social security numbers, and bank account numbers, debit numbers, charge or credit card numbers , it is hereby:

ORDERED that:

1. Effective July 3, 2006, any and all pleadings, papers, and orders filed with the Clerk of Court for the Probate Division to be included in the publicly available court file shall not contain the complete social security number, bank account number, debit account number, charge or credit card number for an alleged incapacitated person, ward, decedent, or fiduciary. Only the last four digits of a social security number, bank account, debit account, charge or credit card number shall be included in the pleading or paper or orders which will be included in the publicly available court file.

2. The complete social security number, bank account number, debit account number, charge or credit card number for an alleged incapacitated person, ward, decedent, or fiduciary shall be included in any and all pleadings or papers which are filed with the Court and confidential by law. The confidential filings required to contain a complete social security number, bank account number, debit account number, or charge or credit card number, include but are not limited to, Application for Appointment as Guardian, Not for Profit Guardian Disclosure Statement, Employee Statement with a Fiduciary Obligation to Ward, Guardian Mandatory Checklist(s), Estate Inventory, Guardianship Inventory and Accountings, and Guardianship Plans.

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida on this 23rd day of May 2006.

_____
DALE ROSS, Chief Judge

2006 RPPTL Annual Convention in Orlando

May 25-28, 2006

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

The RPPTL Section held its 2006 Convention at the Hilton in the Walt Disney Resort at Lake Buena Vista, Florida from May 25-28. The activities included an election of officers, numerous committee meetings, a CLE seminar, high speed racing, and numerous Walt Disney adventures.

The elected 2006-2007 Officers are:

Rohan Kelley	Chair
Jay Zschau	Immediate Past Chair
Melissa Jay Murphy	Chair Elect
Sandy Diamond	Probate Division Director
John Neukamm	Real Property Division Director
Fletch Belcher	Treasurer
George Meyer	Secretary
Peggy Rolando	Circuit Representatives Director
Brian Felcoski	Legislation Chair
Lee Weintraub	CLE Seminar Coordinator
Gwynne Young	Board Liaison

The Section's Committees continue to discuss current issues and draft legislation for the Legislature's consideration. At this Executive Council meeting, the Probate Law and Procedure Committee proposed amending Florida Statute Section 732.501 to include a definition of testamentary capacity. The proposed revision was the subject of a lively discussion both in the committee and at the Probate Roundtable meeting.

The Executive Council also considered a proposal from Sandy Diamond, as Probate Division Director, for an extensive revision of Florida Statutes, Chapter 617. The revision was presented as an information item and will likely be addressed in the future as a proposed action item.

The CLE seminar included numerous timely issues, capped off with Mike Rubin's musical presentation: "The Ethics of Negotiation: Are there any?" Mike is a Past President of the Louisiana State Bar Association and the President Elect of ACREL, the American College of Real Estate Lawyers. The Section thanks Mike and all of the CLE presenters for their time and professionalism.

After the Executive Council's meeting adjourned, the Section's thrill-seekers got first-hand experience in live race car action, in the Richard Petty Ride Along Program.

To wind down the exciting weekend and the 2005-2006 year, Jay and Leila Zschau hosted Saturday night's dinner at Walt Disney World's Epcot Bistro de Paris and Illumi Nations Extravaganza. Everyone had a blast and the Section thanks Jay and Leila for their service in guiding the Section through another successful year. AL

See photos, next page

Special Thanks to the RPPTL Section Annual Convention Event Sponsors

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A committee meeting on Thursday.



Kevin Shepherd (left), Chair of the ABA Real Property, Probate & Trust Law Section, spoke at the Friday luncheon.

2006 Annual RPPTL Convention



From left: Michael Rubin, Jay Zschau, and Kevin Shepherd.



A new way to present seminar materials!



Leila Zschau was presented with flowers and a plaque to thank her for her wonderful service to the Section.



At the Welcome Reception.

Photos courtesy of John Neukamm and Silvia Rojas



The Executive Council meeting.



Incoming Chair, Rohan Kelley (left), honored Jay Zschau for his service to the Section as the Chair.



""Petty Racing"



The spouses of the awards honorees were also recognized for their contributions to the Section.

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Probate & Guardianship Case Summaries

By Leslie A. Peterson, Law Student, University of Miami, Miami, FL

Extrinsic evidence not allowed in determining the distribution of assets when an elective share is claimed. When the terms of a will are clear and unambiguous, the court cannot consider extrinsic evidence in interpreting the will. Rather, after a decedent's wife claims her elective share, the court should allow the residuary estate to pass according to law of intestate succession.

Owens v. Estate of Davis ex rel. Holzauser, 31 Fla. L. Weekly D1704a; 930 So. 2d 873 (Fla. 2d DCA 2006).

The adopted children of the decedent petitioned for the determination of beneficiaries of their father's estate. They argued that the trial court improperly considered extrinsic evidence in interpreting the decedent's will.

Florida law holds that a testator's intent as expressed in his will controls the legal effect of his dispositions. *In re Estate of Budny*, 815 So. 2d 781, 782 (Fla. 2d DCA 2002); *see also* Section 732.6005(1), Fla. Stat. (2003). When a will is clear and unambiguous on its face, extrinsic evidence of the testator's intent is inadmissible. *In re Estate of Benson*, 548 So. 2d 775, 777 (Fla. 2d DCA 1989); *Dutcher v. Estate of Dutcher*, 437 So. 2d 788, 789 (Fla. 2d DCA 1983). Although the decedent's will was clear and unambiguous, it did not address how the residuary estate should be distributed if the decedent's wife opted to take her elective share.

The Second DCA held that the trial court improperly attempted to "rewrite" the decedent's will when it took evidence into consideration regarding the distribution of the residuary estate. "The court may not alter or reconstruct a will according to its notion of what the testator would or should have done. . . . It is not the purpose of the court to make a will or to attempt to improve on one that the testator has made. Nor may the court produce a distribution that it may think equal or more equitable." *In re Estate of Barker*, 448 So. 2d 28, 31-32 (Fla. 1st DCA 1984) (quoting 18 Fla. Jur. 2d *Decedent's Property* § 358, at 216).

Settlor cannot convey property, in his individual capacity, which he did not legally own in that capacity. Moreover, a quit claim deed that does not adhere to the conveyance requirements of a Settlor's Trust cannot be rendered valid by the court.

Aronson v. Aronson, 31 Fla. L. Weekly D1317a; 930 So. 2d 766 (Fla. 3d DCA 2006).

In early 1996 Settlor was the sole owner of a condominium in Key Biscayne. In July 1996, while in Massachusetts, Settlor created a revocable trust naming himself as both a life beneficiary and a trustee and conveyed his condominium to himself as trustee, by a warranty deed. Finally, in December 1996, Settlor, in his individual capacity as a "married man," conveyed his condominium to his second wife by a quit claim deed. Settlor's sons and trustees of Settlor's trust filed a complaint in 2003 seeking a declaratory judgment invalidating the December 1996 quit claim deed because the condominium had already been conveyed to the Trust in July 1996.

The trial court granted a motion in limine to bar evidence at trial which sought to prove Settlor's intent in the execution of the quit claim deed. At trial, Massachusetts law was applied. The trial court found that Settlor intended to reserve his power to withdraw the condominium from the Trust and that the Trust contains provisions in favor of Settlor's second wife. The trial court held that the quit claim deed conveyed the condominium to Settlor's second wife and complied with the Trust requirement to complete conveyance. Settlor's sons appeal the trial court's finding that the quit claim deed was valid.

The Third DCA reviewed the trial court's order *de novo* because the validity of the conveyance involves a question of law and construction of a written instrument. *See Davis v. Rex*, 876 So. 2d 609, 613 (Fla. 4th DCA 2004); *Smith v. Frontier Commc'ns Int'l, Inc.*, 805 So. 2d 975, 976 (Fla. 2d DCA 2001). Ultimately, the Third DCA reversed the trial court's decision finding that since Settlor did not own the property in his individual capacity, he could not validly convey it by a deed, notwithstanding his intent.

The appellate court acknowledged that Settlor, in his capacity as trustee, became the legal title holder of the trust property when he executed the warranty deed conveying the condominium to himself. *See Buerki v. Lochner*, 570 So. 2d 1061, 1063 (Fla. 2d DCA 1990). Settlor no longer possessed the power to convey the condominium in his individual capacity. Persuaded by the Massachusetts' Supreme Court decision in *Bongaards v. Millen*, 793 N.E.2d 335 (Mass. 2003), the Third DCA applied the logic that where a deed is clear and unambiguous on its face, a mutual intent to convey and receive title to the property is irrelevant. *Id.* at 339. Accordingly, since Settlor did not own the property in his individual capacity, he could not validly convey it by quit claim deed to his second wife.

The Third DCA did consider Settlor's second wife's assertion that "[t]he law of Massachusetts is plain that a valid trust, once created, cannot be revoked or altered *except* by the exercise of a reserved power to do so, which must be exercised in strict conformity to its terms." *Phelps v. State St. Trust Co.*, 115 N.E. 2d 382, 383 (Mass. 1953) (emphasis added). The court, however, did not find that Settlor complied with the provisions in the Trust to properly convey the condominium to his second wife. Since Settlor conveyed real property in his individual capacity, which he did not legally own in that capacity, the subsequent transfer was invalid as a matter of law.

Although both parties gave explanations regarding the true intent of Settlor's conveyance, the appellate declined

continued, next page

to address that issue. The court simply stated that trying to guess Settlor's intent does not produce enduring legal principles under which to consider future cases.

Beneficiaries of a trust protested the Florida proceedings concerning a trust registered or having its principal place of administration in New York. The trial court should have properly applied dictates of Section 737.203. Additionally, when the language of a trust provides the trustee the option to transfer the trust, no choice of law provision can be binding.
Myers v. Meyers, 31 Fla. L. Weekly D1710a; 2006 WL 1816322 (Fla. 5th DCA June 23, 2006).

Upon the decedent's death, in accordance with his trust, one half of the trust assets were to be distributed to the decedent's sons and one half of the trust assets were to be distributed to the decedent's ex-wife. The decedent's trust also provided that all questions concerning the validity, construction, and administration of the trust or future trusts would be controlled by Florida law. The trustee, however, had the option to relocate all trusts if desired. The ex-wife filed a complaint against the successor trustee seeking to compel distribution of her half of the trust. The sons intervened in the action and moved to dismiss for improper venue. The sons appealed the non-final order denying their motion, contending that the trial court should not have entertained the trust proceedings in Florida.

The standard of review of a denial of a motion to dismiss pursuant to Section 737.203 is abuse of discretion. *See Levine v. Steiger*, 765 So. 2d 249 (Fla. 4th DCA 2000). Florida Statutes Section 737.203 provides that Florida will only entertain proceedings when all interested parties cannot be bound by litigation in the state where the trust is administered. The statute is not a jurisdictional bar and does not require the judge to dismiss a case. Rather, the court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state where the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order. *In re Estate of McMillian*, 603 So. 2d 685, 687 (Fla. 1st DCA 1992).

When there is a possibility of litigating in more than one forum, the Fifth DCA held that Section 737.203 recognizes that trust litigation should proceed in the most appropriate forum. *See Levine,* 765 So. 2d at 249; *In re Estate of McMillian,* 603 So. 2d at 685. The Fifth DCA did not find that the ex-wife's complaint contained factual allegations proving Florida was the proper forum. Since the trust was already being administered in New York and a proper objection to venue in Florida had been filed, the appellate court reversed the trial court's order denying the motion to dismiss. Furthermore, because the basis for the trial court's denial of the motion was unclear, the appellate court remanded the matter for the purpose of allowing the trial court to determine whether all interested parties could be bound by litigation in New York. If the trial court finds all parties may be bound by New York litigation, "the court shall continue, stay, or dismiss the suit" filed by the ex-wife. *Perry v. Agnew*, 903 So. 2d 376 at 377 (Fla. 2d DCA 2005). If the parties are not bound, the court may deny the motion to dismiss.

The Fifth DCA also noted that the choice of law provision of the decedent's trust did not designate Florida as the principal place for administration of the trust. Unless specified in the trust agreement, the "principal place of administration of a trust" is "the trustee's usual place of business where the records pertaining to the trust are kept or, if he or she has no place of business, the trustee's residence." Section 737.101(1), Fla. Stat. (2005). The Fifth DCA held that New York was the principal place for administration of the trust because New York is the residence for both the trustee and the trustee's attorney who handled legal matters pertaining to the trust. Additionally, the appellate court found that the language of the trust gave the trustee the discretion to remove the principal place of the trust from Florida to another state if he or she desired.

Summary judgment in favor of defendant could not be sustained based on the claims for equitable relief for constructive trusts and equitable liens under the statute of frauds. The full/partial performance exception to the statute of frauds does not apply when plaintiff made no showing that he has repaid the debt or assumed the terms of the financing arranged by defendant.
Guest v. Claycomb, 31 Fla. L. Weekly D1786; 2006 WL 1788053 (Fla. 5th DCA June 30, 2006).

Appellant, who was in financial difficulty, received assistance from a mortgage loan officer in order to purchase real property located in Brevard County. The loan officer orally agreed to obtain the financing in her name on behalf of Appellant on the condition that Appellant deed the property to the loan officer and her father, who would later deed the property back to Appellant upon repayment satisfying the terms of the agreement.

Appellant claimed that although he complied with the terms of the oral agreement, the loan officer and her father refused to execute the deed which would convey the property back to Appellant. The loan officer and her father denied liability and filed a motion for summary judgment based on Florida's statute of frauds. The trial court entered summary judgment in favor of the loan officer and Appellant appealed.

The Fifth DCA found that the statute of frauds does not apply to Appellant's claims for constructive trust and equitable lien. Florida's statute of frauds is set forth in Section 725.01 of the Florida Statutes (2005) which requires that the agreement be in writing and signed by the party to be charged in order to be lawfully authorized. For a contract to be enforceable regarding land sales, two threshold requirements must be satisfied. First, the contract must be embodied in a written memorandum signed by the party against whom enforcement is sought. *Cavallaro v. Stratford Homes, Inc.*, 784 So. 2d 619, 621 (Fla. 5th DCA 2001). Second, the written memorandum must disclose all of the essential terms of the sale and these terms may not be explained by resort to parol evidence. *Id.*

Appellant acknowledges that no proper written document memorializing the terms of the parties' oral agreement existed to avoid the defense of statute of frauds. However, Appellant argues that the doctrine does not apply to bar his lawsuit against the loan officer and her father because the evidence of record demonstrates the applicability of two statute of frauds exceptions: (1) full/partial performance and (2) request for equitable relief.

The Fifth DCA did not find that the evidence presented by Appellant created a material issue of disputed fact concerning whether the exception for full/partial performance should be applied in this case. The principles that govern which part performances can remove an oral contract for the sale of land from the effect of the statute of frauds are well settled and require proof of contract. Proof may be in the form of: payment (money or services) of all or part property through the influence of a confidential relationship or otherwise obtains an advantage which he should not in good conscience be permitted to retain, courts of equity prevent the abuse of the consideration; possession by the alleged vendee; and the making by the vendee of improvements (valuable and permanent) upon the land with the consent of the vendor. *Miller v. Murray*, 68 So.2d 594, 596 (Fla. 1953). Because Appellant made no showing that he had repaid the debt or assumed the financing terms that the loan officer arranged, the appellate court held that Appellant failed to submit evidence sufficient to create a genuine issue of material fact. Therefore, the Fifth DCA rejected Appellant's argument that his performance bars the application of the statute of frauds.

The appellate court also found that the statute of frauds did not apply to bar equitable relief. The Fifth DCA rejected the loan officer's argument that all counts were precluded by the principle of *res judicata*. Rather, under the principles of unjust enrichment, a court of equity will grant relief in such instances by imposing a constructive trust "which is created by operation of law" and "is not within the statute of frauds and may be proved by parol evidence." *Williams v. Grogan*, 100 So.2d 407, 410 (Fla. 1958) (holding that where conveyance without consideration is executed because of unlimited confidence from a mother/son relationship, a son was entitled to relief by a decree that would construct a trust in his favor subject to any intervening rights of third parties acquired in good faith and for value); *see also Hullum v. Bre-Lew Corp.*, 93 So.2d 727 (Fla. 1957) (holding that the statute of frauds is not a bar to the imposition of an equitable lien). Since Florida courts consistently hold that equitable relief in the form of a constructive trust and an equitable lien are not barred by Florida's statute of frauds, the Fifth DCA reversed and remanded the trial court's summary judgment only as to the equitable relief.

Defendants could not pay their personal attorney's fees out of the trust in defense of their pending litigation. Additionally, the defendants were ordered to return to the trust all monies paid from the trust for defense of the action because court approval is necessary before paying attorney's fees with trust funds when a trustee's individual interests conflict with his or her duties to a trust.
Brigham v. Brigham, 31 Fla. L. Weekly D1517a; 2006 WL 1479831 (Fla. 4th DCA May 31, 2006).

In 1994, Settlor created a trust ("Trust") under which her sons and grandchildren were beneficiaries of the Trust. After Settlor's death, Settlor's grandchildren and son Edward filed a complaint against Settlor's son Dana and his wife alleging, among other things, undue influence, breach of fiduciary duty, self-dealing, conversion of trust assets, mismanagement of trust assets, intentional interference, fraud, and conspiracy. Dana and his wife were sued in their individual capacities as well as their capacities as trustees and successor trustees.

Edward and the grandchildren received an accounting which showed that Dana and his wife were using trust funds to pay their legal fees in the pending litigation. In January 2005, the trial court granted a Motion to Restrict Payment of Attorneys' Fees holding that Dana and his wife were prohibited from paying litigation expenses out of the trust. Further, the trial court concluded that court approval was necessary to do so, as a conflict of interest may exist because Dana and his wife were sued in both their individual capacities and their trustee roles. The Special Master recommended that Dana and his wife personally pay their own attorneys' fees for their defense in the pending litigation and return all monies already taken out of the trust for that purpose. The trial court accepted the Special Master's report. Dana and his wife appealed the court order which (1) precluded them from paying their personal attorneys' fees out of the trust for the pending litigation, and (2) required them to return to the trust all monies paid from the trust for defense of the pending litigation.

The Fourth DCA held that the trial court did not abuse its discretion in ordering Dana and his wife to return to the trust all of the money previously paid to them in defense of the pending litigation and precluding them from using additional trust funds in defending this matter without court approval. *Cf. West Coast Hosp. Ass'n v. Florida Nat'l Bank of Jacksonville*, 100 So. 2d 807, 813 (Fla. 1958). The Fourth DCA stated that in order to establish properly incurred attorneys' fees, the trustee bears the burden of producing sufficient evidence which demonstrates that the attorneys' fees paid out of the trust were spent for the benefit of the trust, rather than to support the trustee's personal claims. *See Vazquez v. Goodrich*, 206 So. 2d 54, 55 (Fla. 3d DCA

continued, next page

CHARITABLE COMMITTEE SEEKS NEW MEMBERS

The **Charitable Organizations and Philanthropic Planning Committee** is seeking RPPTL Section members who wish to participate in working with the nonprofit sector. The purposes of the Charitable Organizations and Planning Committee are: (1) to review Florida law and federal law affecting charitable organizations and charitable donors and recommend changes in Florida law as the committee deems helpful to charitable organizations and donors; and (2) to encourage philanthropy through education and directing focus of Florida Bar members to the not-for-profit endeavors organized or operating in Florida." We are open to new projects brought to our committee within the purview of our mission.

Current committee activities include planning for a 2007 seminar and reviewing possible gift annuity legislation and investment standards for charitable trustees and directors of not-for-profit corporations. Our next meeting will be in Kissimmee, FL at the Section meeting September 28-30. (The specific date/time for our meeting has not yet been determined.) If you would like to participate, please e-mail the committee chair, **Michael W. Fisher,** at **mwf@fishertousey.com.**

1968). Since the trustees failed to present evidence proving that the legal fees paid out of the trust were for the benefit of the trust, therefore, the trustees cannot use the trust to pay the attorneys' fees they incurred in their individual capacity.

The trustees argue that the trust instrument grants son Dana, as trustee, absolute discretion over the payment of expenses relating to the trust. Furthermore, Dana and his wife argue that Sections 737.402 and 737.2041, Florida Statutes (2003) permit Dana, as trustee, to pay his attorneys' fees using the trust assets. However, the appellate court held that since Dana and his wife defended against individual liability, their personal interests conflicted with their position as trustees. *See Shriner v. Dyer*, 462 So. 2d 1122, 1124 (Fla. 4th DCA 1984). When a trustee's individual interests conflict with his or her duties to a trust, court approval is necessary before a trustee can use trust funds to pay his or her own attorneys' fees. Since the trustees' individual interests are intertwined and in conflict with their duties to the trust, Dana and his wife were properly required to obtain court approval before paying attorneys' fees with trust funds pursuant to Section 737.403, Fla. Stat. (2003).

Where the trustees were residents of Minnesota and the trust res was located in Minnesota, the Florida probate court did not have jurisdiction to rule on a personal representative's complaint seeking a determination of trustees' duty to pay estate expenses out of trust assets. Trustees are indispensable parties in all proceedings affecting trust property and cannot be ruled over by the probate court if the probate court did not have jurisdiction to rule on the complaint.
In re Estate of Stisser, 2006 WL 932570, 31 Fla. L. Weekly D1008, (Fla. 2d DCA Apr. 07, 2006)

Prior to her death, Mrs. Stisser executed a restatement or amendment of her inter vivos trust in Minnesota, where the trust assets were then and are now located. The decedent and the co-trustees of her trust--her brother and her father--were Minnesota residents. The trust agreement specified that Minnesota law would control its administration, as the trust has always been administered in Minnesota. After executing the trust agreement, the decedent and her husband moved to Florida, where decedent died.

The decedent's husband, as Personal Representative of the decedent's estate, began probate proceedings and requested that the co-trustees pay certain estate taxes and expenses out of the trust assets pursuant to a provision in the trust agreement. The co-trustees refused to pay and the Personal Representative filed a complaint asking the Florida probate court to "determine the trustees' responsibility to the estate and to resolve a question concerning the administration of the probate estate," and to determine that the trustee is required to pay estate expenses requested by the personal representative. The co-trustees responded by filing a motion to quash service based upon a lack of personal jurisdiction due to their Minnesota residency and the fact that Minnesota law controlled the trust.

The Second DCA held that the probate court erred in finding that it did not require personal jurisdiction over the co-trustees to rule on the Personal Representative's complaint. The appellate court stated that in rem jurisdiction alone is not sufficient to allow the probate court to rule. In suits against a trustee that affect trust property, the law clearly states that trustees as well as the cestuis que trustent should be made party defendants as "a trustee is an indispensable party in all proceedings affecting the estate." *First Nat'l Bank of Hollywood v. Broward Nat'l Bank of Fort Lauderdale,* 265 So. 2d 377, 378 (Fla. 4th DCA 1972) (quoting *Griley v. Marion Mortgage Co.*, 182 So. 297, 305 (Fla. 1937)).

Since the co-trustees were residents of Minnesota, the Personal Representative conceded that the probate court did not have personal jurisdiction over the co-trustees. Therefore, the appellate court concluded that the probate court erred in denying the co-trustees' motion to quash service of process and in taking jurisdiction over the instant case.

When the original will cannot be found and only a copy of the will is found, there is a rebuttable presumption that the testatrix destroyed the will with an intent to revoke it. This presumption, however, can be overcome by competent substantial evidence that an interested party had access to testatrix's home, an opportunity to destroy the will, and a pecuniary interest in doing so.
*Pierre v. Estate of Dieudonne Pierre***,** 31 Fla. L. Weekly D1434a; 928 So. 2d 1252 (Fla. 3d DCA 2006).

Although the decedent's son "lost contact" with his mother for ten years prior to her death, he was with the decedent for a period of time during her hospitalization just prior to her death. After the decedent's death, the decedent's daughter saw her brother enter the decedent's home, take two folders out of the closet where the decedent kept her important papers, and return later with only one of the folders. The decedent's son admitted to taking the two folders, but denied taking the decedent's will.

Although the decedent's original will was unable to be located, a copy of the will was found. After an evidentiary hearing, the trial court granted the petition to establish and probate a lost or destroyed will and to appoint a personal

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representative. Competent substantial evidence presented at the evidentiary hearing overcame the presumption that the decedent destroyed the original will with the intent to revoke it. The evidence provided at the hearing showed that the decedent created a will in 1995 which she later destroyed by creation of a new will in 1998. The 1998 will named the decedent's stepson as personal representative, and he was sent a copy of the document. The decedent's stepson was never notified that the decedent had changed or amended the 1998 will.

The Third DCA stated that when a person who executes a will dies and the original will cannot be located, a rebuttable presumption arises that he or she destroyed the will with an intent to revoke it. *See In re Estate of Hatten*, 880 So. 2d 1271, 1274 (Fla. 3d DCA 2004). This presumption, however, may be rebutted with competent substantial evidence of the existence of persons with an adverse interest in destroying a will who have an opportunity to do so. *See Walton v. Estate of Walton*, 601 So. 2d 1266, 1267 (Fla. 3d DCA 1992). The Third DCA agreed with the trial court's finding that the decedent's son had an adverse interest in destroying a will and an opportunity to do so. Therefore, the presumption of destruction of the 1998 will with intent to revoke was properly rebutted.

It is reversible error to enter summary judgment on a ground not raised with particularity in a motion. Since the liability issue was only raised as a conclusory statement in one footnote of a lengthy complaint devoted solely to the issue of statute of limitations, summary judgment could not stand.

Williams v. Bank of Am. Corp., 31 Fla. L. Weekly D1397a; 927 So. 2d 1091 (Fla. 4th DCA 2006).

The beneficiaries of certain trusts managed and controlled by the Bank brought a class action complaint against the Bank and its parent corporation alleging breach of contract, unjust enrichment, and breach of fiduciary duties by both the Bank and its parent corporation. The Bank's parent corporation moved for summary judgment on the grounds that the beneficiaries' claims were barred by Florida's statute of limitations.

There was no dispute that the Bank's parent corporation did not state any grounds other than the statute of limitations in its 19-page motion for summary judgment. However, the Bank's parent corporation did include a footnote stating that the beneficiaries have no relationship with the Bank's parent corporation – contractual or otherwise – and there is no basis, factual or legal, to support a claim against the Bank's parent corporation.

The Fourth DCA reversed the trial court's order granting summary judgment in favor of the Bank's parent corporation because the Bank's parent corporation did not base its motion for summary judgment on the ground that it had no liability based on the beneficiaries' allegations.

The beneficiaries' lengthy memorandum of law in opposition to the motion for summary judgment only addressed the statute of limitations issue with the exception of a footnote of its own. This footnote stated that their complaint alleged that the Bank's parent corporation aided and abetted the Bank's activities, citing the Restatement (Second) of Trusts and the Restatement of Restitution as support for the notion that it has a claim against the Bank's parent corporation notwithstanding the lack of privity. However, the next paragraph of the memorandum reiterated that, "[t]he sole basis for Defendant's Motion for Summary Judgment is the statute of limitations." Although, the Bank's parent corporation's counsel stated at the outset of the hearing on the motion that the hearing was only to address the timeliness of the case, counsel did manage to generate some minimal discussion concerning the issue of liability at the hearing.

The appellate court held that Florida Rule of Civil Procedure 1.510(c) states that summary judgment motions need to be pled with particularity regarding the grounds to which the substantial matters of law are to be argued. The purpose of this rule is to eliminate surprise and to provide the parties "a full and fair opportunity to argue the issues." *H.B. Adams Distrib. Inc. v. Admiral Air of Sarasota County, Inc.*, 805 So. 2d 852, 854 (Fla. 2d DCA 2001). It is reversible error to enter summary judgment on a ground not raised with particularity in the motion. *See id.; Deluxe Motel, Inc. v. Patel,* 727 So. 2d 299, 301 (Fla. 5th DCA 1999); *City of Cooper City v. Sunshine Wireless Co.*, 654 So. 2d 283, 284 (Fla. 4th DCA 1995). The Fourth DCA held that the trial court should have taken a strict reading of the papers filed by the moving party and found that the Bank's parent corporation's footnote which addressed liability failed to substantively address any facts or law pertaining to its entitlement to summary judgment on the beneficiaries' claims of aiding and abetting or unjust enrichment.

Decedent's domicile does not determine probate court's subject matter jurisdiction. An untimely filed petition which sought to revoke probate on the grounds that decedent was not domiciled in Florida at the time of death was dismissed.

*Pastor v. Pastor***,** 929 So. 2d 5765 (Fla. 4th DCA 2006).

Although Appellant claimed that the decedent was not domiciled in Florida at the time of death, Appellant failed to file his petition within the three months period after service of a copy of the notice of administration triggered Section 733.212(3), Florida Statutes. Since Appellant's claims are barred under Section 733.212(3), Appellant contends that issue of domicile is an attack on subject matter jurisdiction and is not waived by failing to timely file.

The Fourth DCA affirmed the trial court's holding that subject matter jurisdiction is not determined by the decedent's domicile. Rather, it is based on the power of the court over the class of cases to which the controversy belongs. *See Ruth v. Department of Legal Affairs*, 684 So. 2d 181, 185 (Fla. 1996); *Chase Bank of Texas Nat'l Ass'n. v. Department of Ins.*, 860 So. 2d 472, 475 (Fla. 1st DCA 2003). Although residency has been linked with subject matter jurisdiction in other contexts, the Fourth DCA concluded that domicile remains an issue of fact whose significance varies from case to case. Furthermore, the appellate court stated that in probate matters, domicile is considered a component of venue. Moreover, venue only comes into play once the court has subject matter jurisdiction over probate cases. *See Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. State*, 295 So. 2d 314, 316 (Fla. 1st DCA 1974); *see also Parker v. Estate of Bealer*, 890 So. 2d 508, 510 (Fla. 4th DCA 2005).

Despite acknowledgment that Appellant's argument will effectively allow Florida courts to probate a non-domiciliary's estate through domiciliary administration, the appellate court concluded that there is a "strong public policy" in

continued, next page

Florida "in favor of settling and closing estates in a speedy manner." *May v. Illinois Nat'l Ins. Co.*, 771 So. 2d 1143, 1151 (Fla. 2000). Accordingly, the Fourth DCA affirmed that Appellant may not challenge the court's jurisdiction when he has failed to file his claims within the three-month period given to object to jurisdiction after being served with a copy of the notice of administration for an estate whose domicile was determined by a verified petition. The Fourth DCA refused to render Section 733.212(3) meaningless and to allow an estate to be re-opened by belated objections.

The appellate court noted that even where domicile was considered an aspect of subject matter jurisdiction, participation in probate litigation has been held to constitute a waiver of issues of domicile. Citing *In re Estate of Dalton*, 246 So. 2d 612, 614 (Fla. 3d DCA 1971), the Fourth DCA recognized that domicile is distinguishable "from the general power of the court to adjudicate the class of cases to which the subject matter of the case belongs." Thus, when the court lacks subject matter jurisdiction over an objection, the generalization that jurisdiction cannot be waived is limited to where the objection is addressed to the notion of subject matter jurisdiction as the class of cases a court is empowered to hear, allowing principles of waiver to otherwise be applied where the court has power over the class of case in question.

The language of Decedent's trust agreement provided that the Trustees were required to make distributions to Decedent's wife, even if the distributions completely exhausted the trust. Therefore, the Court of Appeal reversed the trial court's order requiring Decedent's wife to return funds and assets she had removed from trust.

Fleck-Rubin v. Fleck, 31 Fla. L. Weekly D1369, 933 So. 2d 38 (Fla. 2d DCA 2006).

Decedent executed a trust agreement in 1973, which called for a division of trust assets into two trust estates upon his death -- Trust A and Trust B. Decedent's wife and brother were appointed as co-trustees. Decedent's wife was named the primary beneficiary after his death and the sole beneficiary of Trust A during her lifetime. After Decedent's death in 1981, the trust became irrevocable and the trust property was divided and placed into Trust A and Trust B.

Trust A was a marital trust consisting of "such portion of the trust property as shall afford to Sidney Fleck's estate the maximum marital deduction allowable in the determination of the federal estate tax which is to be administered according to paragraph 3 of the trust agreement." Trust B was a credit shelter trust consisting of "all property not allocated to Trust A" to be administered according to paragraph 4 of the trust agreement. Trust B terminated when the decedent's wife remarried in November 1987.

About twenty years after the decedent's death, the trust administrator delivered to the decedent's wife the funds and assets of Trust A at her request. The decedent's brother subsequently filed suit. The trial court granted a partial summary judgment in favor of the decedent's brother ordering the decedent's wife to transfer all trust funds and assets she received to the decedent's brother for him to manage for her benefit for her lifetime. The decedent's wife appealed the trial court's interpretation of the trust agreement and the entry of a partial summary judgment.

The Second DCA agreed with the trial court's finding that no genuine issue of material fact existed. Upon *de novo* review, the appellate court examined whether the trial court correctly applied the law determining whether the terms of the trust agreement permitted the wife to remove all the funds and assets of Trust A without the decedent's brother's consent. The Second DCA considered the same provisions of the trust agreement reviewed by the trial court to determine if the decedent's wife had the authority to unilaterally remove the funds and assets of Trust A.

Paragraph 3(b) provided that "[t]he Trustees *shall* make distributions to my wife from the principal of Trust A, even to the complete exhaustion thereof . . . ." (Emphasis added.) Paragraph 9(f) provided that with regard to the administration and disposition of the trust property, neither Decedent's wife nor any of Decedent's lineal descendants "shall, while serving as a Trustee hereunder, participate in the exercise by the Trustees of any *discretionary power or authority* conferred upon the Trustees by any provision of this instrument with respect to the distribution, or the withholding from distribution, of the principal of any trust estate held hereunder for the benefit of such one or with respect to the distribution, the withholding from distribution, or other application of the net income therefrom; and all such powers and authorities shall be exercised solely by the other Trustee." (Emphasis added.)

The Second DCA found that although paragraph 9(f) required the decedent's wife, as beneficiary and co-trustee, to obtain the consent of the decedent's brother for the transfer of the trust funds and assets, it only applied to a trustee's exercise of any discretionary authority. Therefore, the appellate court held that the wife was allowed to demand distribution of all funds and assets in Trust A without the consent of the decedent's brother because the language of paragraph 3(b) specifically states that the trustees "*shall* make distributions" requested by the decedent's wife. AL

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Florida's New Trust Code

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Presentations: September 14, 2006 • Tampa • Hyatt Regency Downtown
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Video Replays (3 locations): September 28, 2006 – November 9, 2006

Course No. 0488R

8:15 a.m. – 9:00 a.m.
Late Registration & Check-in

9:00 a.m. – 9:30 a.m.
Introduction and Summary
Discussion of the scope of the new Florida Trust Code; an overview of the differences and similarities to current law; review of Trust Code structure and relationship to the Uniform Trust Code.

9:30 a.m. – 10:00 a.m.
Representation Under the Code
Analysis of the Code's representation provisions allowing one person to bind another person's trust interest in both judicial and nonjudicial matters; statutory authorization for the use of designated representatives.

10:00 a.m. – 10:15 a.m.
Break

10:15 a.m. – 10:55 a.m.
Trust Creation, Modification and Termination
Formalities of execution of irrevocable and revocable trusts including the relaxed rules for trust executions; review of judicial and nonjudicial modification provisions and court authority to reform trusts and correct mistakes.

10:55 a.m. – 11:35 a.m.
Trustee's Rights and Duties and Rights of Beneficiaries
Areas covered include: creditors' claims; spendthrift and discretionary trusts. Examination of the formalities of the office of trustee, including accepting or declining the office; resignations and removals, rules relating to co-trustees, Review of codification of funadamental common law duties of the trustee and the trustee's powers.

11:35 a.m. – 12:15 p.m.
Trustee Liability and Statutes of Limitations
Liability of trustees for a breach of trust; validity and enforceability of exculpatory clauses; remedies and damages for breach of trust; liability of trustees to nonbeneficiaries; limitations against a trustee.

12:15 p.m. – 1:45 p.m.
Lunch (Included in registration for Tampa, Miami, Fort Myers and Orlando)

1:45 p.m. – 2:15 p.m.
Revocable Trusts
Most of the statutory provisions relating to revocable trusts have been placed in one section of the Code. This section addresses the consequences of revocability; the methods to amend or revoke a revocable trust and the liability of the trustee for unknown trust modifications. A new limitation period for claims against revocable trusts has been established.

2:15 p.m. – 2:45 p.m.
Rules of Construction and Practical Application of the Code
Application of the Code; default rules of construction. Review of new, coordinated and more comprehensive default regime covering antilapse and descendibility issues in both testamentary and nontestamentary context. Miscellaneous and conforming changes with the probate code and other portions of the Florida Statutes.

2:45 p.m. – 3:30 p.m.
Panel Discussion
Opportunity for attendees to discuss the new Code with the panel and seek clarification on specific questions.

CD-ROM & PRINTED MATERIALS

This seminar will provide a detailed examination of new Florida Chapter 736. Seminar materials will include the entire new statute, the comprehensive Scrivener's Summary with notes of the Ad Hoc drafting committee, and the course outline. This material will be provided both in printed form and on CD-Rom to all attendees. The faculty are all members of the Ad Hoc Trust Committee who participated in the multi year review of the Florida common and statutory trust law (Laird Lile, Sandra Diamond, Brian Felcoski and Professor David Powell).

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	Wills, Trusts & Estates: 4.0 hours

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9:00 a.m. – 9:40 a.m.
Why You Might Not Want to "Blow Off" Your Life Insurance Agent – New Thoughts on an Old Product
Howard Payne, Sarasota

9:40 a.m. – 10:20 a.m.
Don't Forget Florida! The State Tax Implications of Our Most Popular Estate Planning Vehicles
Louis Nostro, Miami

10:20 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:10 a.m.
There May be 50 Ways to Leave Your Lover but Only 6 Ways to Leave Your QPRT – How a Qualified Personal Residence Trust Can Terminate and What Happens When it Terminates
Guy Emerich, Punta Gorda

11:10 a.m. – 11:50 a.m.
Part Time Lovers – Stuff We Encounter From Time to Time, But Never Spend Much Time With: 529 College Savings Plan, Reverse Mortgages, Annuities and More....
Brian Sparks, Tampa

11:50 a.m. – 1:00 p.m.
Lunch with Ethics The Client Relationship – Is it 'Till Death Do You Part?' Or is There a Divorce in Your Future? (included in registration fee for Tampa)
Charlie Nash, Melbourne
Linda Griffin, Clearwater

1:00 p.m. – 1:40 p.m.
Live Happily Ever After – Structuring Beneficiary Designations Under the Minimum Distribution Rules
Anne Buzby, Jacksonville

1:40 p.m. – 2:20 p.m.
No, No, No, No. . . . Prohibited Transactions and Disqualified Persons in Self Directed IRAs
John ("Jack") Kelly, Jr., Business Development Officer, Southeast United States for Pensco Trust Company, Boca Raton

2:20 p.m. – 3:10 p.m.
When the Honeymoon is Over: How to Save your Relationship with your IRA if Things Didn't Turn Out as Planned – The Use of Disclaimers
Richard Gans, Sarasota

3:10 p.m. – 3:20 p.m. **Break**

3:20 p.m. – 4:10 p.m.
War Stories From the Trenches: Real Life Stories of Audit Outcomes with the IRS Over FLP Valuations
David Pratt, Boca Raton
Trent Kiziah, Boca Raton

REAL PROPERTY, PROBATE AND TRUST LAW SECTION

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Melissa Murphy, Gainesville — Chair-elect
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Louis Nostro, Jr., Miami
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CLE CREDITS

CLER PROGRAM
(Max. Credit: 8.0 hours)

General: 8.0 hours
Ethics: 1.0 hour

CERTIFICATION PROGRAM
(Max. Credit: 6.0 hours)

Elder Law: 6.0 hours
Tax Law: 6.0 hours
Wills, Trusts & Estates: 6.0 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News) you will be sent a Reporting Affidavit or a Notice of Compliance. The Reporting Affidavit must be returned by your CLER reporting date. The Notice of Compliance confirms your completion of the requirement according to Bar records and therefore does not need to be returned. You are encouraged to maintain records of your CLE hours.

How to register:	ON-LINE: www.FLORIDABAR.org * NEW * SECURE * FASTER *	MAIL: Completed form w/check.	FAX: 850/561-5816 Form with credit card information.

REFUND POLICY: Requests for refund or credit toward the purchase of the audio/video/CD or course books of this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. A $25 service fee applies to refund requests.

Register me for the "Something Old, Something New. . . . Estate and IRA Planning in the 21st Century" Seminar

TO REGISTER OR ORDER AUDIO/VIDEO/CD OR COURSE BOOKS, BY MAIL, SEND THIS FORM TO: The Florida Bar, CLE Programs, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD $25.00. **On-site registration is by check only.**

Name_____ Florida Bar # _____

Address _____

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TLH: Course No. 0479R

LOCATIONS (CHECK ONE):

- ❑ **Tampa*** - October 6, 2006**
  (048) Hyatt Regency Downtown
- ❑ **Orlando* - October 20, 2006**
  (071) Ivanhoe Plaza Hotel
- ❑ **Jacksonville* - October 25, 2006**
  (154) Omni Hotel
- ❑ **Fort Myers** - October 26, 2006**
  (295) Clarion Hotel
- ❑ **St. Petersburg* - October 26, 2006**
  (263) St. Petersburg Bar Association
- ❑ **Pensacola* - November 2, 2006**
  (040) Escambia/Santa Rosa Bar Assn.
- ❑ **West Palm Beach* - November 2, 2006**
  (232) Palm Beach County Bar Assn.
- ❑ **Miami* - November 9, 2006**
  (024) Hyatt Regency Downtown
- ❑ **Sarasota* - November 15, 2006**
  (042) Hyatt Sarasota
- ❑ **Tallahassee* - December 1, 2006**
  (054) The Florida Bar

*** Live ** Videotaping *Video Replay

REGISTRATION FEE (CHECK ONE):

	LIVE	VIDEO REPLAYS
❑ Member of the Real Property, Probate and Trust Law Section:	$185	$155
❑ Non-section member:	$210	$180
❑ Full-time law college faculty or full-time law student:	$120	$90
❑ Persons attending under the policy of fee waivers:	$30	$0

Includes Supreme Court, DCA, Circuit and County Judges, Magistrates, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.)

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❑ Check enclosed made payable to The Florida Bar

❑ Credit Card (Advance registration only. Fax to 850/561-5816.)
☐ MASTERCARD ☐ VISA Exp. Date: ___/___ (MO./YR.)

Signature: _____

Name on Card: _____

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❑ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

COURSE BOOK — AUDIO/VIDEO/cd — ON-LINE — PUBLICATIONS

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 10/20/06. TO ORDER AUDIO/VIDEO/CD OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax to the price of tapes or books. Tax exempt entities must pay the non-section member price.**

❑ COURSE BOOK ONLY	❑ AUDIOTAPES	❑ AUDIO CD	❑ VIDEOTAPES
Cost $35 plus tax (Certification/CLER credit is not awarded for the purchase of the course book only.) **TOTAL $ _____**	(includes course book) $155 plus tax (section member) $180 plus tax (non-section member) **TOTAL $ _____**	(includes course book) $155 plus tax (section member) $180 plus tax (non-section member) **TOTAL $ _____**	(includes course book) $250 plus tax (section member) $275 plus tax (non-section member) **TOTAL $ _____**

ON-LINE PROGRAMS! To view and/or listen to this and other courses on-line, or to download to your computer as a "CLEtoGo," go to **www.legalspan.com/TFB/catalog.asp**

Related Florida Bar Publications can be found at http://bookstore.lexis.com/bookstore/catalog. Click on "Jurisdictions," then "Florida" for titles.

Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the course book/tapes must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.

The Florida Bar Real Property, Probate & Trust Law Section and the RPPTL-PAC present

26th Annual Legislative and Recent Case Law Update

AUDIO ORDER FORM

August 11th, 2006

THE BREAKERS • One South County Road • Palm Beach 33480

Course Number 0471R

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

8:30 a.m. – 8:35 a.m.
Introduction
Rohan Kelley, Fort Lauderdale

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

9:05 a.m. – 9:25 a.m.
New Land Trust Statute
Robert Stern, Tampa

9:25 a.m. – 9:50 a.m.
The End of Robin Hood (or Who Stole My Equity)
Jeff Sauer, Pensacola

9:50 a.m. – 10:00 a.m.
Break

10:00 a.m. – 10:30 a.m.
Highlights of Florida's New Trust Code – Part I
Brian Felcoski, Coral Gables

10:30 a.m. – 10:55 a.m.
Construction Law
Fred Dudley, Tallahassee

10:55 a.m. – 11:15 a.m.
New Homestead Laws, the Good, the Bad and the Ugly
Charles Ian Nash, Melbourne

11:15 a.m. – 11:30 a.m.
Contesting Revocable Trusts: Green Light for the Guardian
William Fletcher Belcher, Saint Petersburg

11:30 a.m. – Noon
Guardianship – An Extreme Makeover – A View from the Bench
Judge Melvin Grossman and Alexandra Rieman, Fort Lauderdale

Noon – 12:15 p.m.
New Rules of Professional Conduct
Steven Hearn, Tampa

12:15 p.m. – 1:30 p.m.
Lunch

1:30 p.m. – 1:50 p.m.
The Great Society – Florida's New Eminent Domain Law
Susan Spurgeon, Tampa

1:50 p.m. – 2:15 p.m.
A Potpourri of Probate Code Clarifications and Revisions
Debra Boje, Tampa

2:15 p.m. – 2:45 p.m.
Highlights of Florida's New Trust Code – Part II
Laird Lile, Naples

2:45 p.m. – 3:00 p.m.
Condominiums
Peggy Rolando, Miami

3:00 p.m. – 3:25 p.m.
Does the Glove Fit? Morphing Condominium Law into Homeowners' Associations
Michael Gelfand, West Palm Beach

3:25 p.m. – 3:40 p.m.
Break

3:40 p.m. – 4:00 p.m.
Taking Title to Real Property in IRA's and Qualified Plans
Kristen Lynch, Boca Raton

4:00 p.m. – 4:30 p.m.
Case Law Update – Real Estate
Patricia Hancock, Maitland

4:30 p.m. – 5:00 p.m.
Case Law Update – Probate & Trust
David Brennan, Orlando

CLE CREDITS

CLER Program
(Maximum Credit: 8.0 hours)
General: 8.0 hours
Ethics: 0.0 hours

Certification Program
(Maximum Credit: 3.5 hours)
Construction Law: 2.5 hours
Elder Law: 3.5 hours
Real Estate: 2.5 hours
Tax: 2.5 hours
Wills, Trusts and Estates: 3.5 hours

Silvia B. Rojas, Miami – Program Chair
Deborah Goodall, Ft. Lauderdale – Program Vice Chair
Sancha Brennan Whynot, Orlando – Program Vice Chair
Rohan Kelley, Ft. Lauderdale – RPPTL Section Chair
Melissa Murphy, Gainesville – RPPTL Section Chair-Elect
E. Burt Bruton, Jr., Miami – RPPTL-PAC Chair
Sandra F. Diamond, Seminole – RPPTL-PAC Treasurer

26th Annual Legislative & Recent Case Law Update
Audiotape and/or Course Book
ORDER FORM ONLY

To order the audiotape and/or course book separately, please complete the form below and mail it, along with your check payable to "**The Florida Bar**" to the address at the bottom of the page.

~ Course date: August 11, 2006, The Breakers Resort & Spa, Palm Beach ~

Name: _____ Florida Bar # _____

Address: _____

City/State/Zip: _____ Phone #_____

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_____ COURSE BOOK **ONLY** (RP015)
Cost: $100 plus your local tax

_____ AUDIO CASSETTE TAPES and COURSE BOOK (RP010)
Cost: $225 plus your local tax

_____ AUDIO CD PROGRAM and COURSE BOOK (RP014)
Cost: $240 plus your local tax

Contact Information:
Terry Hill – Phone: 850-561-5619

The Florida Bar
RPPTL Section 2006 Legislative Update
651 East Jefferson Street
Tallahassee, Florida 32399-2300

THANK YOU!

Course # 0471R

are a subdivision of The Florida Bar but membership in the Section is voluntary. The Section is managed and directed by an Executive Council presently composed of about 240 members. To be an Executive Council member, one must be (1) an elected officer of the Section (elected by the members at our annual convention) or (2) a circuit representative (elected by the members at our annual convention) or (3) a chair or vice-chair of a Section committee (appointed by the Section Chair – that's me).

The Section is most visible as the organization that delivers CLE seminars which are relevant to your practice. The CLE programs that the Section produces are the envy of the entire bar and are more extensive than CLE programs produced by any other section or by The Florida Bar itself.

Many of you recently attended the 26th Annual Legislative and Case Law Update in August at The Breakers in Palm Beach. Those who attended heard about: The new Florida Land Trust Act (amending F.S. §689.071); Florida's new Trust Code, the massive new Chapter 736 adopting Florida's version of the Uniform Trust Code which is the most significant overhaul of the Florida law of trusts in over 30 years; a significant overhaul of the Florida Guardianship Law Chapter 744; and other more focused changes including important changes to Chapters 719 and 720 (relating to co-op, condo and neighborhood associations); changes to procedures regarding exempt property and safe deposit box entry after a death; changes to Chapter 718 relating to condo termination; changes to allow self-directed IRAs to hold title to real property (amending F.S. §689.072); and numerous others. These changes, involving

continued, next page

Committees of the RPPTL Section

Real Property Division Committees

Affordable Housing
Bankruptcy, Creditors' Rights & Real Estate
Condominium & Planned Development
Construction Law
Construction Law Certification Review Course
Development & Governmental Regulation of Real Estate
FAR/Bar & Liaison to FAR
Land Trusts & REITs
Landlord & Tenant
Legal Opinions
Mortgages & Other Encumbrances
Mobile Home & RV Parks
Property Rights in Real Property
Real Estate Certification Review Course
Real Property Forms
Real Property Litigation
Real Property Problems Study
Real Property Professionalism
Title Insurance & Title Insurance Liaison
Title Issues & Standards

THE NUTS & BOLTS OF REAL PROPERTY LAW SEMINAR

Presented by:

**The Dade County Bar Association
Real Property Committee,
Young Lawyers Section and
Put Something Back**

TOPICS: *Closings, Landlord/Tenant, Liens, Foreclosure, Predatory Lending, Partition, Deeds, Fraud & Ethics*

FACULTY:
Ana Camacho, Esq., Barbara Lanshe, Esq., Alain Lecusay, Esq., Barnaby Min, Esq., Oscar A. Sanchez, Esq., & Carlos Ruga, CPA

4.0 CLE hours applied for including .5 Ethics

WHEN:	October 27, 2006
WHERE:	Dade County Courthouse [Courtroom to be announced] 73 West Flagler Street Miami, FL 33131
TIME:	Registration – 12:30 -1:00 pm Seminar – 1:00 – 4:30 pm
COST:	FREE to all attorneys who accept a real property law case. If you cannot accept a case, the cost is $80.00 payable to Legal Aid/PSB.

Name_____ Bar # _____
Address _____
City/State/Zip _____
Firm _____
E-mail _____
Phone _____

___ I will attend and accept a real property law case from Put Something Back
___ I will attend. Enclosed is my check for $_____ made payable to Legal Aid/PSB
___ I cannot attend the seminar but I will accept a pro bono case.

Return to: Put Something Back
123 NW 1st Avenue, Miami, FL 33128
Ph: 305-579-5733 ext. 2249
Fax: 305-372-7693
e-mail: illamosa@dadelegalaid.org

THIS SEMINAR IS GENEROUSLY SPONSORED BY

COLONIAL BANK

hundreds of pages of bills, were all initiated by the Section and guided through the legislative process by the Section. Our Section's legislative program is the envy of every other section of the bar.

Most of you are probably familiar with the probate and guardianship forms produced by the Section (FLSSI forms published by Florida Lawyers Support Services, Inc., a subsidiary of the Section). Courts throughout Florida consistently require the use of these forms because they can be certain of the quality and that the latest rules and statutory changes have been incorporated. The Probate Forms Committee of the Section is responsible for keeping these forms current and adding new forms as new laws and procedures are passed.

Probate Division Committees

Ad Hoc Trust Code
Advance Directives and HIPPA
Asset Preservation
Charitable Organizations
Estate & Trust Tax Planning
Guardianship Law and Procedure
Insurance
IRAs and Employee Benefits
Power of Attorney
Probate & Trust Litigation
Probate and Trust Professionalism & Ethics
Probate Law & Procedure
Trust Law
Wills, Trust & Estates Certification Review Course

The dirt lawyers among you probably also use the various real estate forms the Section produces. Likewise, this is the function of the Real Property Forms Committee.

The Section has an active amicus program. As an example, we filed an amicus brief in McKean v. Warburton, 919 So.2d 341 (Fla. 2005), the recent significant homestead case from the Florida Supreme Court. Our brief disagreed with the approach and the result in the 4th DCA opinion, and the Florida Supreme Court opinion came out exactly on all fours with the Section's position as reflected in its amicus brief. Several potential amicus matters are now pending.

If real estate titles are a part of your practice, you are very familiar with the Florida Title Standards. A committee of our Section is responsible for writing and maintaining those Standards.

My question to you is whether you want only to enjoy the benefits of your Section membership or whether you would like to be directly involved in the process. In the common vernacular, you can lead, follow or get out of the way.

Like the marines, our Section needs a few (or more than a few) good men and women to become actively involved in the business of the Section and then in the Section management. Section committee membership is open (with some exceptions) to any Section member. This provides you with the opportunity to be on the ground floor when changes to the statutes or court rules are being proposed, debated and discussed among the best and brightest lawyers in the state. I'm continuously amazed and thrilled as I sit in the various committee meetings and listen to the debates and the information that flows from the real lawyer leaders that participate. If you aspire to be included in that group, this is my personal invitation to join up. Several of the committees have begun the practice of applying for and receiving CLE credit for the meetings and several more committees are undertaking this practice.

I have provided a list of Section committees in this article. (You can also obtain this information on the Section's website.) If you're willing to devote some of your own time to participation and to work toward the benefit of the Section, the legal community, and the public, then we need you. This is not an honorary position. There will be committee attendance requirements and job- and project-assignments to be completed or you will be dropped from the committee. This is not simply a "resume' builder" but is a working position for really good lawyers who are willing to make a significant contribution to the process. Let me tell you that I get a thrill when I sit in various committee sessions and see the high level discussions and debates that occur and the outstanding product that eventually emerges from the hard work and intellectual energy of our committee members. You can be a part of that.

And, after you have proved yourself as an active committee member, it would be to the Section's benefit to have you advance to become a member of the Executive Council. An organization can become stale if it doesn't bring younger (and not necessarily younger) talent into its production. I'm here to tell you that one of my missions as Chair is to help to infuse this type of new talent into Section operation and management. It is also my intent to do everything I can to promote diversity among those who serve on the committees and in Section management. It is important to have all viewpoints represented so we can fully and properly serve our membership.

General Standing Committees

ActionLine
Amicus Coordination
CLE Seminar Coordination
Committee
Florida Bar Journal Articles
Legislative Committee
Legislative Update Seminar
Member Communications and Information Technology
Mentoring Project
Model and Uniform Acts
Pro Bono
Strategic Planning Meeting 2007 - TBD

If you think you have the ability, and if you know you are willing to dedicate the necessary intellectual and time resources to this work, then I earnestly solicit your participation. You'll be sitting next to and working with some really outstanding legal scholars.

If you are willing to volunteer, please respond by email with your personal contact information (include a phone number), to volunteer@rpptl.org. We need and want your participation. AL

Florida Lawyers Support Services, Inc.
Post Office Box 568157 - Orlando, Florida - 32856-8157 (407) 515-1501 Fax (407) 515-1504 www.flssi.org

FAR/BAR CONTRACT FOR SALE AND PURCHASE FORMS

Approved by The Florida Bar, Real Property, Probate & Trust Law Section and The Florida Association of Realtors
(Revised July 2004)

_____ Pad(s) of 50 FAR/BAR Contracts - $25.00

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_____Set(s) FAR/BAR Comprehensive Rider - $7.00
(one copy of each rider/addenda listed below)

Riders/Addenda
Sold in pads of 25

_____ Condominium Association Disclosure - $8.00
_____ US Department of VA/FHA - $8.00
_____ Homeowners' Association/Community Disclosure - $8.00
_____ Foreign Investment in Real Property Tax Act ("FIRPTA") - $8.00
_____ Lead-Based Paint Disclosure - $8.00
_____ Coastal Construction Control Line - $8.00
_____ Insulation Disclosure for New Residence - $8.00
_____ "As Is" - $8.00
_____ Back-up Contract - $8.00
_____ Buyer's Attorney Approval - $8.00
_____ Seller's Attorney Approval - $8.00
_____ Sale of Buyer's Property - $8.00
_____ Kick Out Clause - $8.00
_____ Seller Financing - $8.00
_____ Assumption of Existing Mortgage (s) - $8.00
_____ Existing Tenant (s) - $8.00
_____ Pre-Occupancy by Buyer - $8.00
_____ Post-Occupancy by Seller - $8.00
_____ Rezoning Contingency - $8.00
_____ Right to Inspection & Right to Cancel - $8.00
_____ Evidence of Title (ABSTRACT) - $8.00
_____ Evidence of Title (S. FL Contracts) - $8.00

Order Sub-Total	$_____
Sales Tax 6.5%	$_____
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AUTHORIZATION DATE _____/_____/____ # ___ ___ ___ ___ ___ ___

ACTIONLINE BULLETIN BOARD

HANDBOOK FOR GUARDIANS.

The Statewide Public Guardianship Office has recently updated its publication - Guardianship Basics/A Handbook for Guardians. The handbook, geared toward the non-professional guardian, provides a general overview for persons who may become or have been recently appointed guardian. Copies are being sent to each clerk's office for distribution and it is available on the SPGO website at http://elderaffairs.state.fl.us/english/PUBGUARD/handbook.html.

-- Steven Hearn, Esq.

COMMUNITY FOUNDATION SURVEY.

Please assist the Community Foundations of Florida in a survey of Florida Bar members' familiarity with community foundations in our state. This survey will take 60 seconds of your time and could help Community Foundations of Florida establish a benchmark to judge its success in reaching out to bar members in its promotion of philanthropy. The survey is at http://www.zoomerang.com/survey.zgi?p=U252K5CZU2TT.

--Michael W. Fisher, Esq.

BOARD CERTIFICATION – WILLS, TRUSTS AND ESTATES

In an effort to expand interest and provide appropriate material and speakers for the Wills, Trusts and Estates Certification Review Seminar, the seminar committee is seeking comments from those who attended the April 8 and 9, 2006 review seminar and took the exam, and from those who attended the review seminar and did not take the exam. Please send any suggestions, recommendations or comments to Marilyn M. Polson, Fisher & Sauls, P.A., PO Box 387, St. Petersburg, FL 33731 or via email to mpolson@fishersauls.com or Anne Buzby, Rogers Towers, P.A., 1301 Riverplace Blvd., Ste 1500, Jacksonville, FL 32207 or via email to abuzby@rtlaw.com. We would appreciate it if you would note on your comments whether or not you took the exam.

-- Marilyn M. Polson, Esq.

DEADLINE

for submissions for the next issue of ActionLine is October 31, 2006.

If you are working on an interesting case or memo of law that you'd be willing to turn into an article for ActionLine, we would love to publish it for you. No article is too small or too large. (Submission information inside.)

The Florida Bar
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