

ActionLine

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

Due Process and Tax Deed Sales

Section 1031 Exchanges and Tax Ownership

Donor-Advised Funds

Vol. XXVIII, No. 3
Spring 2007

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By Rohan A. Kelley, Jr.
Section Chair
2006 - 2007

Chair's Column

The Section year for this Chair is drawing to a close, even though it seems just to have started. The next (and last) Section event of my year, to which each of you is specifically invited, is our Section Convention. It will be held at The Westin Diplomat Resort & Spa at 3555 South Ocean Drive, Hollywood, Florida beginning on Thursday, May 24, 2007 through Sunday, May 27, 2007. The phone number for reservations is 888-627-9057. It is an impressive facility and destination resort.

This is your opportunity to see the inner workings of our Section, meet and exchange ideas with Section leadership, attend outstanding CLE, and look at the probate or real property specific products or services offered by exhibitors. On Thursday, many of the Section's substantive committees will meet. These meetings are exceptionally interesting and you can participate or just observe. In these committees, new legislation is proposed, current cases are discussed, practice problems are addressed and identified, and CLE seminars are planned. For example, this year's legislative initiatives include changes to the Trust Code and elective share, elimination of the filing requirement for the Florida estate tax return, non-resident title insurance agents regulation, termination of condominium provisions, construction lien law changes, condo and community association changes, and several others. These changes originate in Section committees. The saying is "try it, you'll like it."

There is a welcome cocktail reception on Thursday night. Tickets are required and can be obtained by contacting Terry Hill at The Florida Bar (the Section's administrator). Friday there are separate seminars for the dirt and death lawyers. The exceptionally popular 2007 Trust and Estate Symposium and Bankruptcy Issues for Real Property Lawyers will be presented concurrently. Lunch is included in the registration fee.

Saturday begins with our separate probate and real property roundtable working breakfasts at 8am. Tickets are required and include breakfast. These meetings are where the committee reports and action items of each division are

See "You'll Like It," page 20

2007 - 2008
Executive Council Meeting Schedule

Executive Council Meeting &
Legislative Update
August 2 – 5, 2007
The Breakers, Palm Beach
Reservation Phone # 561-655-6611
Room Rate: $165.00 (Superior King)
$175.00 (Deluxe Double)
Cut-off date: July 2, 2007

Annual Out-of-State
Executive Council Meeting
*** * * *IRELAND* * * ***
October 17 – 21, 2007
The Ritz-Carlton, Powerscourt IRELAND
Reservation Phone # 011 353 (1) 274 01 01
Room Rate: 265 Euro per night Garden View
295 Euro per night Mountain View
355 Euro per night Club Level
Cut-off date: May 17, 2007
You may e-mail your reservation request to:
Jill O'Hare, Director of Sales & Marketing
"Jill O'Hare" <jill.ohare@ritzcarlton.com>

Executive Council Meeting
January 10 – 13, 2008
Casa Marina Resort & Beach Club, Key West
Reservation Phone # 866-397-6342
Room Rate: $189.00
Cut-off date: December 10, 2007

Executive Council Meeting
April 3 – 6, 2008
Hilton University of Florida, Gainesville
Reservation Phone # 352-371-3600
Room Rate: $145.00
Cut-off date: March 3, 2008

Section Convention & Executive Council Meeting
May 22 – 25, 2008
Hyatt Regency Coconut Point, Bonita Springs
Reservation Phone # 800-233-1234
Room Rate: $189.00
Cut-off date: May 21, 2008

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

About the Cover: While sailboats and palm trees are found in Florida too, the cover photograph is of a bay in Barcelona, Spain. Section Member **Silvia Rojas** snapped the picture during the Executive Council's out-of-state meeting in April 2006.

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Get Included in *ActionLine!*

Readers are invited to submit material for publication concerning real estate, probate, estate planning, estate and gift tax, guardianship, and Section members' accomplishments. **We also accept paid advertising from outside vendors.**

Forward any proposed **ARTICLE OR NEWS OF NOTE t**o Dresden Brunner at Dresden@comcast.net.

For information on ADVERTISING, please contact Diane Preston Moore at DMoore@fowlerwhite.com.

The deadlines for all submissions are as follows:

Issue	**Deadline**
Summer 2007	April 30, 2007
Fall 2007	July 31, 2007

For GENERAL INQUIRIES about the RPPTL Section, contact Terry Hill at The Florida Bar at 800-342-8060 extension 5619, or at *thill@flabar.org*. Terry is the Section's program administrator and can help with most everything, such as membership, the Section's website, committee meeting schedules, and CLE seminars.

Construction Law Specialty Is Popular Among Florida Lawyers

Board Certification Application Deadline is October 31, 2007

By Lisa McKnight Garcia, APR, Consultant to The Florida Bar, Board of Legal Specialization and Education, Tallahassee, FL

It's been only three short years since the Florida Supreme Court approved construction law as a specialty available for board certification, and 132 construction lawyers statewide already have achieved certification status.

In Florida, only certified lawyers are permitted to call themselves specialists or experts. If construction law is your substantial area of practice, why not make it official and seek board certification?

Lawyers who have achieved certification say its practice and professionalism benefits are numerous. Kimberly Ashby of Akerman Senterfitt in Orlando, who chaired the inaugural construction law certification committee in 2005, is among the program's strong supporters.

"Certification offers the challenge and the reward that pays back exponential benefits, especially in the quality of life in the practice," said Ashby, who is board certified in construction law and appellate practice. "Opportunities flow abundantly to the board certified members of The Florida Bar in the increased level of sophistication of clients and their legal matters."

Construction law is 1 of 22 legal specialties available for board certification. The application filing period is September 1 – October 31 every year; the application and standards are available online at FloridaBar.org/certification. Lawyers interested in construction law certification may contact certification specialist Zina Jackson at ajackson@flabar.org or 850/561-5768.

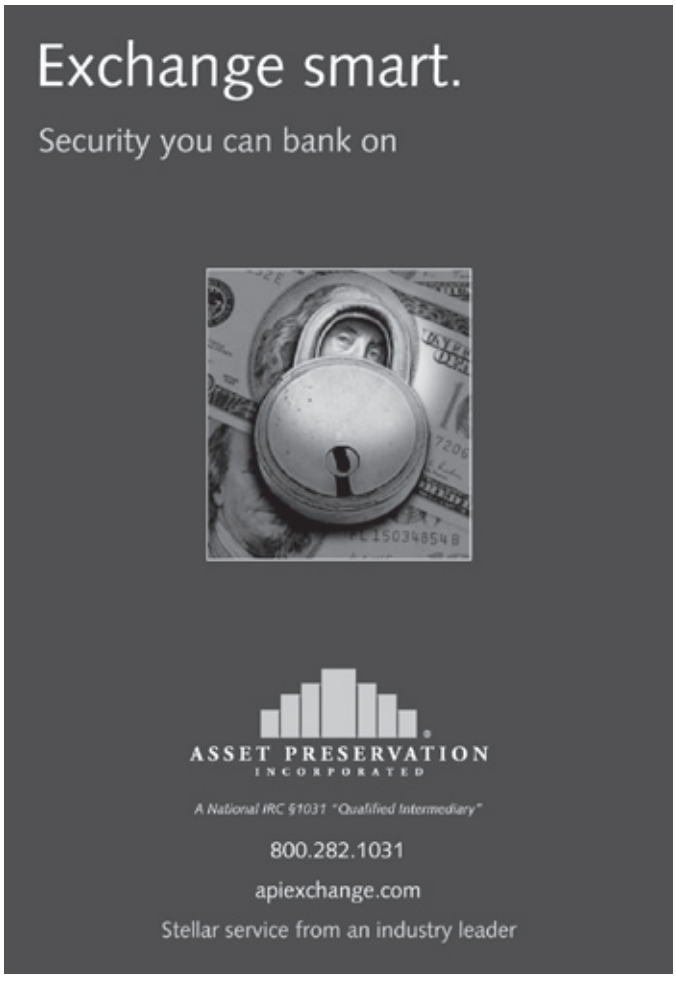
Lawyers certified in construction law deal with matters relating to the design and construction of improvements on private and public projects including construction dispute resolution, contract negotiation, preparation, award and administration, lobbying in governmental hearings, oversight and document review, construction lending and insurance, construction licensing, and the analysis and litigation of problems arising out of the Florida Construction Lien Law and the federal Miller Act.

Board certification is valid for five years, during which time the attorney must continue to practice law and attend Florida Bar-approved continuing legal education courses. To be recertified, requirements similar to those for initial certification must be met. Not all qualified lawyers are certified, but those who are board certified have taken the extra step to have their competence and experience recognized.

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

Minimum requirements for construction law certification include:

- At least five years of law practice of which at least 40 percent has been spent in active participation in construction law;
- At least three years of practice immediately preceding application;
- Satisfactory peer review assessment of competence in the construction law field as well as character, ethics and professionalism in the practice of law;
- At least 45 hours of continuing legal education within the three years preceding application; and
- Passage of a written examination demonstrating knowledge, skills and proficiency in the field of construction law.



Due Process and Tax Deed Sales - Unclaimed Mail and New Addresses

by Mark B. Kleinfeld, Palm Beach, FL

In 2006, both the United States Supreme Court and the Florida Supreme Court addressed the Fourteenth Amendment procedural due process requirement as applied to tax deed sales. The Florida Supreme Court in *Rosado v. Vosilla,* 944 So. 2d 289 (Fla. 2006), invalidated a tax deed sale where notice of the sale was mailed to the physical address of the property which was sold and the mailing address on the property appraiser's assessment roll, but not to new addresses provided by the property owners in correspondence sent to the tax collector issuing the tax certificate and to the clerk of court who conducted the sale and issued the tax deed. The United States Supreme Court, in *Jones v. Flowers*,126 S. Ct. 1708 (2006), invalidated an Arkansas tax deed sale because two notices regarding the sale, sent by certified mail approximately two years apart, were returned as unclaimed and no further effort, other than by publication, was made by the State of Arkansas to provide notice. This article reviews the Florida scheme with respect to delinquent ad valorem taxes, primarily as set forth in the Florida Administrative Code ("F.A.C."). The article also discusses the *Rosado* and *Jones* opinions with reference to the Florida scheme.

There is a procedure set forth for tax collectors to correct errors in the collection of taxes, but the payment of taxes is never excused.

Statutory and Administrative Overview of the Procedures Leading to a Tax Deed Sale

Function of the property appraiser. Each county property appraiser prepares a separate tax assessment roll each year, which includes the just value of each unique parcel and applicable exemptions. F.A.C. 12D-8.001. The property appraiser is required to complete valuation and prepare the assessment roll not later than July 1st of each year, subject to extension by the Executive Director of the Florida Department of Revenue. F.A.C. 12D-8.002. The assessment roll is to include "the owner or fiduciary responsible for payment of taxes on the property, his or her address including postal zip code and an indication of the fiduciary capacity . . . as appropriate." F.A.C. 12D-8.007(2)(a).

The property appraiser obtains the name and mailing address from the deed of record, which by statute sets forth the name and post office (mailing) address for the grantee (Section 695.26(1)(f), Fla. Stat. (2006)) and the property appraiser's property control number (Section 689.02(2), Fla. Stat. (2006)). In addition, the Florida Department of Revenue form DR-501, original application for homestead, includes a space for listing a mailing address. The physical address for each parcel is most likely determined by the county or municipal code. For example, in the City of West Palm Beach, it is the construction services department (the building official) who assigns the physical address to each parcel. There is no specific state statutory or administrative provision precisely stating the steps an owner should take to correct an error in the address or to change a mailing address acquired initially by the property appraiser from the deed of record, a Notice of Application for Tax Deed (Form DR-513), or some other source.

Once the assessment roll has been completed, the property appraiser certifies the roll and provides the original to the tax collector. F.A.C. 12D-8.016 and F.A.C. 12D- 8.017. The Florida Department of Revenue reviews the assessment roll within 90 days of receipt. F.A.C. 12D-8.020. The property appraiser may submit a Certificate of Correction for the Tax Roll to correct errors, including an "[e]rroneous listing of ownership of property." F.A.C.12D-8.021(2)(a)(22).

Function of the tax collector. The tax collector is to mail a notice that the tax roll is open for collection to each taxpayer appearing on the tax roll. F.A.C. 12D-13.037. Section 197.3635, Fla. Stat. (2006) prescribes a form of notice of ad valorem taxes and non ad valorem assessments which includes notification that failure to pay will result in issuance of a tax certificate. If there are unpaid back taxes on the property, notice of those outstanding tax certificates is to be mailed to the taxpayer under Section 197.322(3), Fla. Stat. (2006), with the statement of current taxes due. Taxes are due and payable on November 1st of the year in which they are assessed, or as soon thereafter as the tax collector receives the tax roll. F.A.C. 12D-13.002. If taxes are not paid by April 1st of the year following the year of assessment, they are considered delinquent, but may be paid thereafter, prior to issuance of a tax certificate, with interest at 18% per annum (with a minimum charge of 3%). F.A.C. 12D-13.004.

There is a procedure set forth for tax collectors to correct errors in the collection of taxes, but the payment of taxes is never excused. F.A.C. 12D-13.006(2). This regulation requires that the tax collector, clerk of court and property appraiser advise each other of errors with respect to the tax rolls. F.A.C. 12D-13.006(3), (4) and (5). There is also a regulatory procedure for correcting tax certificates once the certificate has been issued. F.A.C. 12D-13.006(10).

There is no statutory or regulatory provision directing the constitutional officers (tax collector, clerk of court and property appraiser) to track notices of change in address from property owners. While F.A.C. 12D-8.007(2)(a) provides that the property appraiser should include the mailing address of the owner or fiduciary responsible for payment of taxes on the annual assessment roll, which is submitted to the tax collector, that Section does specify the source to which the property appraiser should refer.

continued, page 21

Connecting the Dots: §1031 Exchanges and Tax Ownership

By Jon Christianson, Esq. and Robert P. Blaesser, Jr., Esq., Asset Preservation, Inc., Jacksonville, FL

A common but often misunderstood principle among those familiar with tax deferred exchanges under Internal Revenue Code Section 1031 is the notion that the vesting of the replacement property acquired in the exchange must match the vesting of the property sold by the taxpayer. In other words, if title to the property relinquished in the exchange is in a corporation, then title to the replacement property must be acquired by the same corporation. Although the foregoing statement may be true in many cases, it is merely a guideline for structuring an exchange.

What is required to complete an otherwise valid §1031 exchange is that the "tax owner" of the relinquished property must acquire tax ownership of replacement property within the exchange period permitted under §1031. Fortunately, there are many ways to acquire tax ownership of property that can involve the use of certain business entities or trusts that are disregarded for federal income tax purposes. Through the use of these entities in a tax deferred exchange, a wide variety of structuring opportunities become available, some of which can address an exchange-client's other investment goals such as limited liability and succession planning. In these cases, the vesting of the relinquished property may be very different than the vesting of the replacement property, although tax ownership of the replacement property is the same both before and after the exchange.

What is required to complete an otherwise valid §1031 exchange is that the 'tax owner' of the relinquished property must acquire tax ownership of replacement property within the exchange period.

To make sense of the proposition set forth above, it is necessary to distinguish between: (i) federal tax ownership, (ii) state law ownership, and (iii) vesting. In any given case, all three indicators of ownership might match up, such as an individual who holds title to investment property as "John Smith, an unmarried man." But even in this simple case, Mr. Smith might not actually own the property to which he holds title under state law or federal tax law. For example, many states recognize nominee arrangements under which Mr. Smith might hold title for the benefit of another person who actually owns the property. If there were such a nominee arrangement, Mr. Smith would be the record title holder, but not the tax owner or the state law owner of the property. If Mr. Smith sells property that he holds as nominee for Mr. Saunders, then the gain on the sale would be reported by Mr. Saunders.

Similarly, if title to property is held in the ABC limited liability company (ABC, LLC), we know what vesting should look like and that the state law ownership rests in the limited liability company, but who is the tax owner? The answer depends on how ABC, LLC is characterized for federal income tax purposes. If the company has elected to be taxed as a corporation, then tax ownership would be in the company. If the limited liability company has more than one member and has not elected to be treated as a corporation for tax purposes, then it is treated as a partnership for federal income tax purposes and, again, the company is the tax owner of the property. If, however, Mr. Smith is the sole member of ABC, LLC and the company has not elected to be treated as a corporation for federal tax purposes, then Mr. Smith is the owner of the property for federal income tax purposes. Under federal tax law, a single member limited liability company is a "disregarded entity" and its assets are treated as owned by the sole member of the company. Thus, if Mr. Smith sells property in a §1031 deferred exchange (property that was titled in his name), he could acquire property in ABC, LLC provided that he is the sole member and the company is a disregarded entity. The same result would follow where ABC, LLC sells relinquished property and Mr. Smith acquired replacement property in his individual name.

Revocable trusts are another area where tax ownership, state ownership and vesting may diverge. During the lifetime of the person who forms a revocable trust (a Settlor) and during the time he or she retains the right to revoke the trust, federal law treats the Settlorr as the tax owner of assets held in the trust. So, as the Settlor, Mr. Smith is the tax owner of assets held is his revocable trust, but the trust is treated as an entity under state law and for purposes of vesting and ownership of trust property. Thus, Mr. Smith might sell property owned by his revocable trust as part of a tax deferred exchange and acquire replacement property in his own name. Alternatively, if Mr. Smith sells property owned by his trust, he could also acquire replacement property in a disregarded limited liability company in which he was the sole member, or, he could acquire replacement property in a disregarded limited liability company *owned solely by Mr. Smith's revocable trust*.

In most of the foregoing examples, a valid exchange can be accomplished in circumstances where the vesting of the relinquished property does not match the vesting of the replacement property, so the notion that vesting of the relinquished property and the replacement property must be the same is not a hard and fast rule. What matters is that the tax owner of the relinquished property acquires tax ownership of replacement property. The determination of tax ownership is not always a simple matter, especially for those not steeped in federal tax law, but accountants

and tax attorneys can assist in structuring an exchange transaction to maximize the taxpayer's advantage.

In the last example in the proceeding paragraph in which Mr. Smith relinquishes property owned in his revocable trust and acquires replacement property in a disregarded limited liability company owned solely by Mr. Smith's revocable trust, Mr. Smith not only obtained tax deferral under §1031, he obtained limited liability under state law that would protect the trust and himself from liabilities that might arise out of his ownership and operation of the property, and ensured that the property was properly held in his trust to be disposed of in accordance with his overall estate plan.

Individuals are encouraged to obtain competent tax and/or legal advice in structuring an exchange transaction. As an experienced qualified intermediary, the authors have seen a broad array of transactions that qualify as tax deferred exchanges under IRC §1031. However, because of the non-tax considerations surrounding the structure of an exchange transaction (such as limited liability, liability protection and succession planning), many exchange clients would benefit by consulting their personal tax and/or legal advisors before engaging in an exchange transaction.

This information is not intended to replace qualified legal and/or tax advisors. Every taxpayer should review their specific transaction with their own legal and/or tax counsel.
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The 2007 Lawyers' Challenge for Children

The 2007 Florida Bar Fee Statement will soon be arriving in your mailbox. Chances are, most of you won't give it a second thought, and mail it back right away.

However, if you took another moment—and just a few more pen strokes—you could make a lasting difference in the life of a child.

The 2007 Lawyers' Challenge for Children invites attorneys to consider contributing $45 or more on the Florida Bar Fee Statement to help provide legal services for the most vulnerable members of our community. All you have to do is mark the check-off box and add in the dollar amount.

Last year, more than 4,200 Florida attorneys and judges knew to mark that box. By doing so, they contributed more than $205,000 to help fund legal services for low-income children. That money, awarded through grants administered by The Florida Bar Foundation, went directly to local legal aid programs in your community.

Because of your donations, disabled children like Kevin Estinfil in Miami-Dade County will be able to have warm blankets to wrap themselves in. Kevin has severe cerebral palsy, is blind, and has a shunt in his brain to drain excess fluids. He has daily seizures. And his body can't regulate its own temperature. To keep Kevin from getting too cold, he must have special thermal blankets, costing around $10 apiece. He goes through about three of the blankets each month. And last year, in a highly publicized event, Kevin was denied the extra blankets. Because of the efforts of Legal Services of Greater Miami, Kevin will now get his blankets at least through June 2007, when he will have to resubmit his care plan to the state for approval. Lizel Gonzalez was one of Kevin's attorneys and said, 'It appears that the state does not want to prolong this litigation and instead wants to use its resources to help the disabled within our community. We hope this continues so that others can also get the benefits they need.''

To see who joined the 2006 challenge in your area, please visit The Florida Bar Foundation's Web site at http://www.flabarfndn.org/ and click on the donors tab.

After you have made your $45 donation this year, your name will be published on our Web site, beginning November 15, 2007. And, with any donation of $100 or more, your name will be on our Web site, and also published in the 2007 annual report of The Florida Bar Foundation.

Won't you take the challenge when your Florida Bar Fee Statement arrives this year? Please make a check next to Lawyers' Challenge for Children. With your help this is a challenge everyone can win.

Michelle C. Lyles
Assistant Director of Development
mlyles@flabarfndn.org





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Florida Trust Code - Effective Date Rules

By The Trust Law Committee of the RPPTL Section

Below is a summary of effective date rules under the Florida Trust Code:

Section:	
736.1303	Unless otherwise specifically provided in the Code: The Code applies to all trusts created *before, on, or after* **July 1, 2007.** The Code applies to all judicial proceedings concerning trusts commenced *on or after* **July 1, 2007**. The Code applies to judicial proceedings concerning trusts commenced *before* **July 1, 2007** (unless the court finds that application of a particular provision of the Code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the Code does not apply and the superseded law applies). Any rule of construction or presumption provided in the Code applies to trust instruments executed *before* **July 1, 2007** (as well as after) unless there is a clear indication of a contrary intent in the terms of the trust. An act done *before* **July 1, 2007** is not affected by the Code. If a right is acquired, extinguished, or barred on the expiration of a prescribed period that has commenced to run under any other law *before* **July 1, 2007**, that law continues to apply to the right even if it has been repealed or superseded.
736.0403(2)	An *irrevocable* trust executed by a Florida domiciliary is not required to be executed with will formalities *after* **June 30, 2007**, for its testamentary aspects to be valid. The validity of testamentary aspects of *revocable* trusts created by a Florida domiciliary *on or after* **July 1, 2007,** is governed by 736.0403(2)(b) of the Code. The validity of testamentary aspects of both *revocable* and *irrevocable* express trusts executed in Florida *after* **September 30, 1995,** and *before* **July 1, 2007,** continues to be governed by existing 737.111, Fla. Stat., as in effect on **June 30, 2007**.
736.0502(1)	The Code's requirement that a spendthrift clause must restrain both voluntary and involuntary transfers of a beneficiary's interest in order to be valid does not apply to any trust *in existence* on **July 1, 2007**.
736.0602(1)	The new rule that a trust is revocable unless the trust terms expressly provide that it is irrevocable applies only to trusts *executed after* **June 30, 2007**. Any trust *executed before* **July 1, 2007**, will be subject to the common law rule that it is irrevocable unless the trust terms provide that it is revocable.
736.0813(5)	This subsection provides that the trustee's duties to account under the Code apply to accountings rendered for periods *beginning on or after* **January 1, 2008**. **Note:** A technical corrections bill to be introduced in the 2007 legislature provides that s. 736.0813 shall apply to accountings rendered for periods *beginning on or after* **July 1, 2007**.
736.1011(2)	**Note:** A technical corrections bill to be introduced in the 2007 legislature provides that s. 736.1011(2) applies only to trusts *created on or after* **July 1, 2007**. That subsection provides that a trustee who drafts an exculpatory provision or causes it to be drafted has the burden of proving that the term is fair under the circumstances and that its existence and contents were adequately communicated directly to the settlor, else it will be invalid as an abuse of the fiduciary relationship. Currently, the subsection applies to all trusts, whenever created.
736.1106(5)	Currently, this subsection provides that this section on antilapse, survivorship with respect to future interests, and substitute takers applies to all trusts except trusts that are *irrevocable before* **July 1, 2007.** **Note:** A technical corrections bill to be introduced in the 2007 legislature provides that subsections (1) through (4) of 736.1106 apply to all trusts except trusts that are *irrevocable before* **July 1, 2007**. It further provides that s. 732.603, 732.604, and 737.6035, as they exist on **June 30, 2007**, continue to apply to <u>other</u> trusts *executed on or after* **June 12, 2003**.

"Grand Ole Nashville"

Executive Council's Out of State Meeting

Nashville, Tennessee, November 30 – December 3, 2006

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

Howwwdeeee! That characteristic greeting of Minnie Pearl can be remembered as one takes in the sites of Nashville, Tennessee. Rohan Kelley took the Executive Council's out-of-state meeting to the "Buckle of the Bible Belt" from November 30 through December 3, 2006.

Continuing the life-sized-terrarium scenery as was enjoyed at the Gaylord Palms in Kissimmee, the venue was the Gaylord Opryland Hotel. The Hotel atrium was decorated with poinsettias, giant ornaments, lights, indoor "river"boat rides, and an outdoor nativity display. It set the mood for Christmas. For those arriving on Thursday, the entertainment options included the Rockettes Radio City Music Spectacular show at the Grand Old Opry House or dinner and concert at the Bluebird Café. The Café featured live "in the round" entertainment by established songwriters. With the one-hour time difference, some of those attending the Café concert had a later-than-usual night, which made the Friday morning meetings arrive all the sooner.



Statue of Minnie Pearl sitting with Roy Acuff in the lobby of the Ryman Auditorium.

Friday, December 1, the roundtables met for breakfast and to hear reports of the divisions. The Executive Council meeting was held on Friday morning, rather than the usual Saturday morning. The Council considered and acted on a number of action items at this meeting.

On The Real Estate Side

On the real estate side, the Council approved a proposed bill that clarifies provisions of the recently adopted Land Trust Act by limiting its scope to land trust deeds, correcting potential internal inconsistencies, and conforming to existing case law and land trust practice. Another item was presented by the Condominium & Planned Development Committee regarding the Business Law Section's proposed revisions to Chapter 617. Michael Gelfand explained concerns that the changes work for the not-for-profit and charitable organizations but present issues for groups such as not-for-profit homeowners associations. The Council passed a motion to oppose the proposed revisions and to continue to work with the Business Law Section to resolve the differences.

The Title Insurance Committee presented proposed amendments to a condominium fees estoppel letter that was proposed by the Real Property Problems Study Committee. After some on-the-spot drafting work done by committee members, a revised proposed amendment passed.

The final real estate action item was a bill that proposes clarification of what a title agent does for his or her share of the title insurance premium. It was explained that insurance activities are in one category while a separate category is the agent's closing services (not the agent's insurance services). Norwood Gay provided an excellent explanation on recent reports released concerning the title insurance industry. Mention was made of "deregulation" of closing services (where the current regulation says that costs cannot be less than the actual costs incurred). The motion to table this matter passed.

On The Trust And Estate Side

On the trust and estate side, the Trust Law Committee proposed legislation to create a statute to codify the case of *Phipps v. Palm Beach Trust Co.*, 196 So. 299, 142 Fla. 782 (1940) to permit a trustee to distribute the trust property in further trust. The banker representatives and Section members asked for amendments that required the motion to table the item to pass.

The Asset Preservation Committee presented proposed legislation to amend the statutes and add a section to limit remedies available for claims against partnership interests of partners or general and limited liability partnerships as well as against membership interests of members of limited liability companies. The commercial banker representatives opposed the scope of the legislation and the motion to accept the amendments to the legislation passed.

It was reported that the Clerks of Courts are proposing changes to what documents will be recorded as part of the filing fee. The Probate Law and Procedure Committee and the real estate division will be asked to work on the issue.

The Section's budget was discussed. And the Amicus

Committee gave a report on the *Rayborn* case. Chair-elect Melissa Murphy gave a report about the next out-of-state Council meeting in Dublin, Ireland from October 17 through 21, 2007. Activities anticipated are tours of Dublin, Guiness beer, Trinity College, St. Patrick's Cathedral, an Irish farmhouse, a castle, and, of course, Irish pubs. A golf tournament will likely also be offered. The Executive Council meeting will be held on a Friday morning.

Later on Friday, dinner was held at the Wildhorse Saloon. Afterwards, attendees had several options. A group went to see a live performance of the classic Grand Ole Opry at the "Mother Church of Country Music," the Ryman Auditorium. The Auditorium was the original home of the Grand Ole Opry until the Opry moved to its current location (which was near Opryland amusement park; the park was closed and torn down and replaced with Opry Mills Mall). Interestingly, the Auditorium was built in 1892 as a tabernacle for a Nashville preacher and called the Union Gospel Tabernacle. Another group went to see the Dixie Chicks perform. After both events, Fletcher Belcher guided others to historical bars such as "Tootsie's Orchid Lounge" where Willie Nelson wrote "Hello Wall, I Didn't See You Standing There" and "The Stage".

On Saturday, December 2, a site-seeing tour of Nashville was enjoyed by many. The stops included Ryman Auditorium, the Country Music Hall of Fame and Museum, and a tour of RCA's Studio B. Studio B is where all but one of Elvis' records were recorded. It was explained that Dolly Parton wrote the notable song, "I'll Always Love You", as a goodbye to her co-host on the television show she was leaving in order to launch her solo singing career. Interestingly, Whitney Houston made the song popular again with international exposure. Saturday was concluded with dinner and a show on the General Jackson show boat during a cruise down the Cumberland River.

The weekend concluded with the traditional farewell breakfast on Sunday. Everyone left with a greater appreciation for Nashville and what it has to offer.

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"Reptiles" in Nashville

Nashville photos courtesy of
George Meyer and John Neukamm.



Outside the RCA Studio B, gathered around Nashville's iconic symbol: the guitar.



Inside the Gaylord Opryland Hotel atrium.



At the Studio B recording studio.



A performance of the Grand Ole Opry at the Ryman Auditorium.

"Reptiles" in Nashville



Above: The Executive Council meeting on Friday.



Rohan Kelley gave the out-of-state meeting a country-music flair. Here, a group is at the Ryman Auditorium awaiting the Grand Ole Opry.



At the Wildhorse Saloon.



Nashville Nightlife.



Melissa Murphy, John Neukamm, and Sandra Diamond flanked by two "hosts" at the Wildhorse Saloon.

Helping your Clients with Charitable Giving Focus on: Donor-Advised Funds

By Brock McClane, Esq., McClane, Tessitore, Orlando, FL

One of the satisfactions of being an advisor is helping clients do something that benefits them and, at the same time, makes a difference in the community. More and more, clients are interested in their options for charitable giving as both a tax strategy and as a way to have an impact on the social issues they care about most.

There are a number of tools an advisor can use to help these clients. One tool, the **donor-advised fund at a community foundation**, is ideal for the client who says, "I want to give money to help the community. I'm not sure each year who to give to and how much. I'd like to take one year at a time and make charitable decisions that way. Some advice about different nonprofit organizations would be really helpful."

The donor-advised fund is typically less expensive and easier to administer than setting up a private foundation, making this an attractive option. Indeed, the popularity of these funds has surged; the number of donor-advised funds grew by about 75% between 1991 and 2001. Nationally in 2000, there were more than 37,000 individual accounts containing total assets of $10.2 billion and awarding $1.4 billion in grants.

How They Work

Donor-advised funds are simple to set up and manage:

- The client makes a gift to a community foundation. This can be in the form of cash, appreciated stocks, real estate, or other assets.
- The community foundation sets up a special fund in the client's name.
- The client receives tax benefits the year the gift is made.
- The client and his/her family recommend uses for the fund, working with the community foundation's professional staff to support the programs and agencies the client cares about most.
- The client's recommendations are presented to the community foundation board for approval.
- The community foundation handles all the administrative details and issues grant awards to charitable organizations in the name of the client's fund (or, if the client prefers, grants can be made anonymously.)

Did You Know:

- A number of donor-advised funds are established at the end of the year, when it's to the client's advantage to expedite a gift but the client is unsure about which charitable causes to give.
- Donor-advised funds can be set up so that more than one individual can contribute to it.
- Unlike with private foundations, donor-advised funds do not required clients to pay out 5% annually.
- A community foundation can create a donor-advised fund for your client's lifetime and have it convert to a designated fund (one which makes grants each year to a predetermined set of organizations) after the client dies.
- Contributors to donor-advised funds are allowed more substantial deductions than contributors to private foundations: for cash gifts, up to 50% of adjusted gross income (30% for private foundations); for appreciated assets, up to 30% of adjusted gross income (20% for private foundations).
- The donor receives periodic statements detailing contributions, earnings, expenses, distributions, and balance. Typically funds will incur an annual administration charge (such as 1%) determined by their value.

- If the client wishes, the gift can be placed in an endowed fund that is carefully invested and can grow over time; a portion of the fund is used to address community needs every year.

Account minimums range from $10,000 to $50,000; subsequent donations can be as small as $1,000. The fund is owned and controlled by the community foundation, but the donor retains the ability to recommend where and how the money is distributed.

A Good Option for Families

Donor-advised funds provide a convenient and flexible tool for families who want to be personally involved in suggesting grant awards from their fund. Families in which different members have their own ideas about where money should be given find the donor-advised fund especially helpful; it can accommodate a range of interests and grants. The funds can focus on a particular issue, such as education, or can be flexible.

What might this look like in practice? Take a hypothetical family – the Johnsons. They set up the Johnson Family Fund at their local community foundation. Each year, Mr. and Mrs. Johnson meet with the community foundation staff to recommend uses of their fund. One year, they recommend funds go to after-school sports programs for disadvantaged children, because their own two boys are active in sports. The next year, they recommend grants to several day and overnight camps to offer scholarships to low-income children. This approach helps the family build a tradition of giving; they involve their teenage children in making the decisions about where grants should be awarded.

An Option for Businesses

Not just individuals but also companies can open donor-advised funds. Many companies want to be more charitable but are overwhelmed by the numbers of appeals they receive and uncertain about how to choose among them. A company can set up a donor-advised fund and add a percentage of profits to it each year. Company management or a team of employees can meet each year with community foundation staff to recommend uses for the fund.

Benefits of Donor-Advised Funds for Your Clients

Clients reap a number of benefits:

- They can establish a charitable legacy in the name of their family.
- Their gift can be combined with the gifts of others to increase impact.
- The gift will be carefully invested and managed.
- They are eligible to receive maximum tax benefits.
- Their gift can generate the long-term advantages of endowment funding – principal from the gift can be invested, not spent; investment income is then used to make annual grants to nonprofit agencies.
- The client can establish a fund today and make grant recommendations now or in the future.
- The client can add to the fund at any time, and receive tax benefits with each new gift.
- The client has most of the practical benefits of a private foundation organized by them, but without many of the hassles and with a proven "back office" to make sure all goes smoothly.

Community Foundations Make These Funds Work

Community foundations, because they are local with deep roots in the community and have professional staff, have broad expertise about community issues and needs. They can introduce your clients to a range of community issues and organizations. For example, if a client is particularly interested in involving children in the arts, community foundation staff can research local organizations and present information about several programs for your client's consideration. The community foundation can conduct the due diligence on the nonprofits, so that your client does not have to worry about money being misused.

For More Information

Log onto www.communityfoundationsfl.org for more information or to connect to a community foundation near you.

This article is the second of a six-part series of articles written by the Community Foundations of Florida to help advisors work with their clients on charitable giving. Next issue: Listening for Charitable Opportunities.



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RPPTL-PAC Endorsements

RPPTL-PAC, the political action committee of contributing members of the Real Property, Probate and Trust Law Section, was an active participant in the 2006 State Legislative races. All 120 seats in the Florida House of Representative and 20 seats in the Florida Senate were up for election in 2006. The Primary Elections were held on September 5, 2006, and the General Elections were held on November 7, 2006. RPPTL-PAC endorsed and contributed to the successful election campaigns of the candidates for the State House and Senate shown below:

Senator: Don Gaetz (District 4)
Senator: Jim King (District 8)
Senator: Rhonda Storms (District 10)
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Senator: Arthenia Joyner (District 18)
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Senator: Jeremy Ring (District 32)
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Representative: Michael Scionti (District 58)
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Representative: Will Weatherford (District 61)
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Representative: Seth McKeel (District 63)
Representative: Marty Bowen (District 65)
Representative: Ron Reagan (District 67)
Representative: Bill Galvano (District 68)
Representative: Doug Holder (District 70)
Representative: Mike Grant (District 71)
Representative: Nick Thompson (District 73)
Representative: Garrett Richter (District 76)
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Representative: Anitere Flores (District 114)
Representative: J. C. Planas (District 115)
Representative: Juan Zapata (District 119)
Representative: Ron Saunders (District 120)

"You'll Like It!"

from page 1

discussed in depth by Executive Council members. The most significant items are condensed and brought to the Executive Council meeting which begins at 10 AM and lasts until around noon. This is your opportunity to observe your Section's Executive Council in action. On this particular meeting's agenda, there will be significant new legislation discussed which will be proposed and lobbied by the Section to the legislature.

Following the Executive Council meeting, there is a luncheon for which tickets are required. All Section members are invited to attend any or all of these events. The meetings, except the roundtable breakfast, are without charge and the cocktail party, round table and luncheon are optional but tickets are required.

In an earlier column, I encouraged Section members to participate in our substantive committees. A surprising number of you responded and volunteered, for which I am grateful. For those who are still thinking about it, I invite you to attend one or more committee meetings and, if you like what you see, then you should volunteer and become a regular participant. It is the policy of the Section to identify those who participate and contribute to the committees and to appoint these people to positions of greater responsibility as members of the Executive Council, as vacancies become available.

If you have not previously seen your Section in actual operation, this is the opportunity to do so-- at the same time you attend important CLE. Some of the committees apply for and receive CLE credit for the committee meetings as well.

In summary, Thursday, May 24 has scheduled Section working committee meetings; Friday, May 25 has the CLE seminars; and Saturday, May 26 until Noon has scheduled the various Executive Council meetings. I hope you are able to attend. Again, for all ticketed events, contact Terry Hill at The Florida Bar to purchase tickets.

As this year draws to a close, it is appropriate to review what has happened. Most important, as I see it, is the Section's diversity initiative. This is only beginning, but such important projects cannot be accomplished overnight. If you would like to participate or have any ideas to offer, contact the co-chairs of the Section's membership diversity committee, Ken Walton and Tae Bronner: Ken@WaltonLawFirm.com and Tae@estatetlaw.com.

Also this year, we have emphasized organization, procedures, accountability and systems in Section operation. Our Section, still the largest in The Florida Bar, is approaching 10,000 paid members and $1,000,000 in gross revenues. That is big business which cannot be operated as informally as it was in the past. Section leadership, specifically members of the Executive Council, is more accountable for the contribution it makes to the Section's business. The Section, itself, is becoming more productive and thereby more influential in the Bar and in the practice. Our Section is larger than many state bar associations. The Florida legislature, the President and Board of Governors of The Florida Bar, the Florida judiciary, and the public all see the accomplishments of our Section and consider us as a "player" in the ongoing refinement of the law. That reflects well on you, our members.

The RPPTL Section is in a transition phase, from a small group of lawyers who came together 50 years ago to consider and advance the practice of "death and dirt law," to a large, influential group of lawyers that serves the public and the profession in very many ways. We cannot operate as we did before, because not only the times, but also our ability and our mission have changed. We need to put aside the "small club" thinking that served us well in the early days, to take on the large organization mindset which reflect what we have become. In the past, we were able to accomplish a few small things that were good for the profession and the public. Now we are able to shape policy and accomplish numerous and large things which do the same. We're no longer the little guys with big heart. We're the 800-pound gorilla and that means we can accomplish much better things, but with that goes the greater responsibility. We need to continue our reorganization while maintaining the consistent quality in our leadership and our membership. The way to accomplish each of these goals is to continue to expand participation in the Section activities by its brightest members – such as *you.*

I look forward to seeing you at our Convention.

Officer Nominations for 2007 - 08

The Long Range Planning Committee met on February 23, 2007. Nominations for the officers were taken and the following individuals were nominated for the offices set forth next to their name:

Chair Elect	Sandra Diamond
RP Division Director	John Neukamm
Probate Division Director	Brian Felcoski
Treasurer	Fletcher Belcher
Secretary	George Meyer
Circuit Rep Director	Peggy Rolando

The Out-of-State Representatives nominees are John E. Fitzgerald, Jr., Michael P. Stafford, and Pamela Stuart.

This slate of nominees will be voted upon by the Section Members at the Election Meeting on Friday, May 25, 2007 at the Section's Convention to be held in Fort Lauderdale, Florida at the Westin Diplomat Resort.

Report submitted by Melissa Jay Murphy, Chair of Long Range Planning Committee.

Tax Deed Sales

from page 7

The lien of taxes levied pursuant to Florida law becomes a first lien on taxable property as of January 1st each year. F.A.C. 12D-13.011. The lien is created through the sale of the tax certificate, but the certificate may not be foreclosed or enforced except as prescribed by Chapter 197, Florida Statutes. The tax collector is required to advertise in a publication selected by the board of county commissioners, once each week for three consecutive weeks, a list of properties on which tax certificates will be sold to pay delinquent taxes, including the date of the tax certificate sale and other information relating to the sale. F.A.C. 12D-13.036.

The face amount of the tax certificate sold by the tax collector includes delinquent taxes, interest accruing between the date of delinquency and the date of the sale calculated at a monthly rate of 18% per annum and costs and other charges including advertising charges. F.A.C. 12D-13.045(3). The bidding for the certificate starts at 18% per year (on the face amount). F.A.C. 12D-13.045(4). The certificate is issued to the party who will demand the lowest rate of interest on the amount due. F.A.C. 12D-13.045(5). Redemption is accomplished when the legal title holder of the property, or someone acting on behalf of the legal title holder, pays the amount required to cancel and invalidate the tax certificate, or a portion thereof.

If a tax certificate is not redeemed, the holder of the certificate may apply to the tax collector for issuance of a tax deed at any time after two years have elapsed since April 1st of the year of issuance of the tax certificate and before expiration of seven years from the date of issuance. F.A.C. 12D-13.060. Upon receipt of a tax deed application, the tax collector is responsible for the preparation of an abstract or title search, referred to as the "tax collector's report."[1] This report provides the list of persons to be notified of the sale under Section 197.522, Fla. Stat. (2006) F.A.C. 12D-13.061 sets forth the minimum standards for preparation of the abstract or title search used for the tax collector's report. The report is to include the names and addresses of legal title holders of record and the owner's address as it appears on the record of conveyance. F.A.C. 12D-13.060(4)(c)1.[2] If no address is shown on the record of conveyance, the report should indicate the absence of this information. The report must also include persons to whom the property was last assessed on the tax roll and their addresses. F.A.C. 12D-13.060(7). This is in accord with the Section 197.502, Fla. Stat. (2006) notice requirements. Accordingly, the report contains not only the address appearing on the deed, but also the address on the last tax roll.

Once the tax collector's report is prepared, that office prepares a Notice of Application for Tax Deed (Fla. Dept. of Revenue Form DR-513) and submits the tax deed application and the tax collector's report to the clerk of court. F.A.C. 12D-13.060(4). The DR-513 also lists all tax certificates outstanding on the land described in the tax

continued, next page

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deed application, the face amount of the certificate, interest earned on the certificate and the tax collectors' costs and fees. F.A.C. 12D-13.060(4)(a). The clerk of court makes an additional interest calculation through the day of the last month in which the tax deed sale is to be held. F.A.C. 12D-13.060(4)(b)2.

Function of clerk of court. Following receipt of a DR-513, the clerk notices a sale and publishes the notice of sale once a week for four consecutive weeks. F.A.C. 12D-13.062. The notice of sale contains the statutory warnings[3] set forth in Section 197.522(2)(a), Fla. Stat. (2006) and is mailed to the property owner and to others listed in the tax collector's statement.

Further, Florida Administrative Code Section 12D-13.062 requires the clerk to deliver a notice of sale to a sheriff, for physical delivery to the property owner, as follows (set forth in F.A.C. 12D-13.062(2)):

> At least 30 days prior to the date of sale, the clerk shall prepare a notice containing the warnings required by Section 197.522(2)(a), F.S., for owners of the property to be sold and by Section 197.522(2)(b), F.S., for owners of contiguous property listed in the tax collector's statement pursuant to Section 197.502(4)(h), F.S., and:
>
> 1. If the owner of the property to be sold resides in the same county in which the property is located, deliver an original and sufficient copies of the notice to the sheriff of that county;
>
> 2. If the owner resides in Florida outside the county where the land is located, deliver an original and sufficient copies of the notice to the sheriff of the county in which the property is located, unless the property is assessed as non-agricultural acreage or vacant land;
>
> 3. If the owner resides outside the State of Florida, the clerk shall send notice to the sheriff of the county where the property is located, unless the property is assessed as nonagricultural acreage or vacant land;
>
> 4. For the owners of the property contiguous to the property to be sold, deliver an original and sufficient copy of the notice described in Section 197.522(2)(b), F.S., to the sheriff of the county in which the contiguous property lies.

The sheriff is to effect service of the notice at least 20 days prior to the date of the sale. In addition, the sheriff of the county in which the property is located "shall post the notice in a conspicuous place on the property." F.A.C. 12D-13.062(2)(b). The clerk is further required to mail notices, by certified mail, to the owner as listed in the tax collector's report at least 20 days prior to the date of sale, which notice is to include the Section 197.522 warning. The clerk also prepares an affidavit of delivery of the notice and records the same in the public records of the county. The property may be redeemed and the tax deed sale avoided prior to the tax deed sale. Upon sale of the property, the Clerk issues a tax deed to a successful bidder.

Rosado v. Vosilla

Notice sent and posted as set forth as required by statute, but no additional notice sent to a new address provided by the title holder

The pertinent facts in *Rosado* are as follows. After non-payment of their 1997 taxes, a tax certificate on the Rosados' property in Altamonte Springs was issued on May 27, 1998. The tax collector sent the notice required with respect to the tax certificate for the 1997 taxes to the address on the property appraiser's tax rolls. On September 25, 1998, the Rosados notified the tax collector – not the property appraiser – in writing that they moved to a new residence with an address in Apopka, Florida. The Rosados' notice requested that any and all correspondence from the tax collector's office be sent to a post office box in Zellwood, Florida. The letter also informed the tax collector that a legally incapacitated relative and his female caretaker resided at the Altamonte Springs residence and that the

RPPTL
Section Convention

The Westin Diplomat Resort & Spa
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May 24 - 27, 2007

Hotel Reservations: 888/627-9057

Thursday, May 24
- Committee meetings
- Welcome cocktail reception

Friday, May 25
- CLE: 2007 Trust and Estate Symposium
- CLE: Bankruptcy Issues for Real Property Lawyers

Saturday, May 26
- Probate and Real Property roundtable breakfasts
- Executive Council meeting
- Luncheon

Watch your mail and the section website for more information.

(There is no charge to attend the meetings, except for the roundtable breakfasts, and the cocktail party, round table and luncheon are optional but tickets are required.)

caretaker did not speak English.

The *Rosado* opinion is silent as to whether the Rosados' letter to the tax collector included any parcel number to identify the property or tax certificate number to identify the outstanding certificates. The *Rosado* opinion also does not address whether the tax collector mailed the tax bill for 1998 or 1999 to the property address in Altamonte Springs, to the new residence address in Apopka, Florida and/or the post office box in Zellwood, Florida. The 1998 and 1999 tax bills would have noted the 1997 taxes as being delinquent. The *Rosado* opinion does not discuss whether these later bills were received by the Rosados. Nor does the opinion discuss whether the Rosados made inquiry to the tax collector if they had not received their 1998 and 1999 tax bills.

The next communication referred to in the *Rosado* opinion is a letter dated February 21, 2000 from the Rosados addressed to and received by the clerk of the court – not the property appraiser – that the Rosados' mailing address had changed to the Apopka residence and that the Zellwood post office box should be used as a secondary address. The opinion does not state whether the Rosados' letter included any property control number or other identifying parcel number for the property.

On April 3, 2000, the holder of the tax certificate for the 1997 delinquent taxes applied for a deed for the Altamonte Springs property. Although not noted in the opinion, as a practical matter, this is the clerk's first active involvement because the statutory and regulatory collection procedure does not provide for notice by the clerk until after an application for tax deed was made. Thus, at the point in time when the clerk received the February 21, 2000 notice of change of address from the Rosados, in the absence of unusual circumstances, the clerk would not have had any reason to maintain any file for the Rosados.

The *Rosado* opinion notes that Section 197.522(1)(a) and Section 197.502(4)(a) require notice of the application for deed be sent to the address of the legal title holder as listed on the latest tax assessment roll, which is prepared by the property appraiser. If the Rosados had timely notified the property appraiser, which is the office responsible for preparation of the tax assessment roll, the new address would have been reflected on the 1998 and 1999 tax assessment rolls and in all notices sent thereafter. The *Rosado* court also noted that the sheriff attempted to post notice of the tax deed sale at the property address and provided notice to the clerk that the Rosados no longer lived there.

Ultimately, on December 18, 2000, the residence was sold at a tax deed sale. A complaint was thereafter filed to quiet title to the property. The Rosados were served and sought to set aside the sale, claiming improper notice and a violation of procedural due process. The *Rosado* court did not decide whether F.S. Section 197.522 and the administrative procedures are facially unconstitutional, but reviewed the issue as an "as applied" challenge. The court concluded that the notice of sale did not comply with procedural due process under the facts of the case.

The Florida Supreme Court rejected an argument that the Rosados should have provided notice of their change of address to the property appraiser, who is the person responsible for updating the tax assessment roll. Although the statutory scheme provides that the property appraiser prepares the tax roll (off of which the tax collector and later the clerk send notices), the statute does not specify to whom changes of address should be addressed. The court stated:

> Although the property appraiser prepares the tax assessment roll for real property, see §193.114(1)(a), Fla. Stat. (2000), there is no provision in chapter 193, Florida Statutes (2000), which governs tax assessments on all real and personal property in this state, specifying the taxing authority to which notice of a titleholder's change of address should be mailed. Nor is there any such provision in chapter 197, which governs tax collections, sales, and liens in this state. In the absence of a statutory provision requiring that a change of address be directed to a specific taxing authority, we decline to disturb the factual findings of the trial court and the decision of the Fifth District solely because the Rosados failed to also notify the property appraiser of their change of address.

Rosado, 944 So. 2d at 300. The court concluded that under the facts of this case, with the clerk having received actual notice of a change of address and notice that the owner no longer resided at the property, due process required the clerk to take additional steps to provide notice to the property owner. *Id*. at 300. Procedural due process, according to the *Rosado* court, requires that notice be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action. *Id*. at 294. In reaching this conclusion, the *Rosado* court disapproved precedent from the Second District in *Alwani v. Slocum,* 540 So. 2d 908 (Fla. 2d DCA 1989), which held to the contrary in a similar situation where an owner had provided a notice of change of address. The *Alwani* court noted that the owner could not complain because the owner of property is aware that the taxes are unpaid.

In reaching its conclusion to the contrary, the *Rosado* court relied on two earlier opinions, *Dawson v. Saada,* 608 So. 2d 806 (Fla. 1992) and *Delta Prop. Mgt., Inc. v. Profile Investments, Inc.,* 875 So. 2d 443 (Fla. 2004). In *Dawson,* the clerk complied with Section 197.522(1)(1987) by mailing a notice of a pending tax deed sale to the property owner at the address shown in the tax collector's statement. However, the clerk did not comply with Section 197.522(2) because the clerk failed to provide the sheriff with the necessary documents to personally serve or post notice. The court held that Section 197.522(1) regarding notice by certified mail was mandatory and the clerk had complied with this requirement, thereby satisfying due process. Section 197.522(2) requiring additional notice by the sheriff, the court opined, was only directory, and the failure to comply with that provision would not invalidate the sale. *Dawson,* 608 So. 2d at 809. The *Dawson* court also held that neither Section 65.081(3), Fla. Stat. (1987) (providing that no attack upon a tax deed shall be made except that taxes are paid prior to issuance of the tax deed) nor Section 197.404, Fla. Stat. (1987) (enumerating the statutory grounds for invalidating the tax deed sale, which do not include lack of notice) prohibited a challenge to the tax deed sale on the additional grounds of inadequate notice. Accordingly, in the *Rosado* case, the property owners were allowed to challenge inadequacy of notice, even though there is no express statutory provision providing that such inadequacy is a basis for setting aside the sale and

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notwithstanding that the clerk had fully complied with the statutory requirements in mailing notices to the Rosados using the addresses certified in property appraiser's tax roll.

The *Rosado* court did note several district court opinions where the title holder took no action to inform the "taxing authorities" of an updated or accurate address, stating:

> The common element in these cases is that the title-holder took no action to provide the taxing authorities an updated or accurate address. Thus, even though the titleholders did not receive actual notice of the pending tax deed sale, compliance with the statutory requirements led the courts to conclude that no due process violation occurred.

Rosado, 944 So. 2d at 296. In such cases, the sales were confirmed and such a result does not conflict with the holding in *Rosado.* As to the Rosados' situation, however, the court applied the logic of *Delta Prop. Mgt., Inc. v. Profile Investments, Inc.* There, the court held that, although the clerk mails the notice of the tax deed sale to the titleholder at the address listed in the tax collector's statement, notice must also be sent to the titleholder's address as it appears on the latest assessment roll, where the roll lists a different address. The court observed that there may be circumstances which require the clerk to look beyond the tax collector's statement when there is reason to believe the statement no longer reflects the manner in which notice should be provided, citing *Baron v. Rhett,* 847 So.2d 1032, 1035 (Fla. 4th DCA 2003). The *Rosado* court also relied on *Jones v. Flowers,* 547 U.S. 220, 126 S. Ct. 1708 (2006), which is cited for the proposition that when notice of a tax deed sale is mailed and returned unclaimed, due process requires government to take additional reasonable steps, if practicable, to provide notice. The *Rosado* opinion concluded that the notice sent to the Rosados was not reasonably calculated to apprise them of the sale under the peculiarities of the situation where they had sent notice of change of address to the tax collector and the clerk. Due process required additional reasonable steps by the clerk to notify the Rosados, "such as checking to determine whether a change of address had been submitted."

Jones v. Flowers

Notice mailed to the title holder is returned as unclaimed

The facts in *Jones v. Flowers,* 547 U.S. 220, 126 S. Ct. 1708 (2006) contrast with those in *Rosado* because there is no evidence of any correspondence by and between the delinquent taxpayer and the Commissioner of State Lands



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("Commissioner"), who notified Jones of the tax delinquency and thereafter sold the property. Jones had purchased his house in 1967 and resided there until 1993, when he and his wife separated. Jones moved to an apartment and his wife continued to live in the house. For a period of thirty years, Jones paid his mortgage and the mortgage company would pay the property taxes. After Jones paid off his mortgage in 1997, the taxes went unpaid and were certified as delinquent. In April of 2000, the Commissioner notified Jones of his tax delinquency and right to redeem property, by sending a certified letter to Jones at the address of the subject property (North Bryan Street address). The correspondence advised Jones that if he did not redeem the property, it would be subject to a public sale two years later. No one signed for the letter at the house and no one appeared at the post office to retrieve the letter within the next fifteen days. The post office returned the unopened correspondence to the Commissioner marked "unclaimed."

Two years later, and a few weeks before the public sale, the Commissioner published a notice of public sale in the newspaper. No bids were submitted, which authorized the State of Arkansas to negotiate a private sale. Linda Flowers submitted a purchase offer. The Commissioner mailed another certified letter to Jones at the North Bryan Street address, attempting to notify him that his house would be sold if he did not pay his taxes. This letter was also returned as "unclaimed." Flowers purchased the house and had an unlawful detainer notice delivered to the property and served on Jones' daughter, who then contacted Jones and notified him of the tax sale.

This view of the 'taxing authorities' as a single organism is somewhat inconsistent with the existence of three separate county constitutional officers, who have specific roles from assessment to collection to enforcement.

The *Jones* Court noted that due process does not require that a property owner receive actual notice before the government may take his property. However, the notice must be reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Id.* at 1714, relying on *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652 (1950). The test is whether the notice is reasonably calculated to reach the intended recipient "when sent." However, the Court noted it had never before addressed whether "due process entails further responsibility when the government becomes aware prior to the taking that its attempted notice has failed." *Jones*, 126 S. Ct. at 1714. Interestingly, the Court put the requirement of notice "reasonably calculated to reach an intended recipient" in the context of a "desire to inform" stating:

> We do not think that a person who actually desired to inform a real property owner of an impending tax sale of a house he owns would do nothing when a certified letter sent to the owner is returned unclaimed. If the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner's office to prepare a new stack of letters and send them again. No one "desirous of actually informing" the owners would simply shrug his shoulders as the letters disappeared and say "I tried." Failure to follow up would be unreasonable, despite the fact that the letters were reasonably calculated to reach their intended recipients when delivered to the postman.

Jones, 126 S. Ct. at 1716

The Court noted that, where the prospect of the loss of a house is involved, a sender would ordinarily attempt to resend a returned letter "if it is practicable to do so." *Id.* In language which was quoted in *Rosado*, the *Jones* Court stated "we have required the governments to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case." *Id.* Examples given by the Court included a situation where a notice of forfeiture proceedings was sent to the home address when the state knew the owner was in prison and where a mailed, posted and published notice of foreclosure was inadequate because town officials knew the property owner was incompetent and without a guardian. The Court observed that, in those situations, "the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice." *Id.*

The Court's analysis in this regard raises an interesting issue of when a government entity has actual knowledge of unique information about a citizen who may be subject to forfeiture of his or her property. The issue of constructive notice to government was not discussed in the opinion.

The *Jones* Court rejected the Commissioner's argument that the notice was provided to an address that Jones had a legal obligation to keep updated. *Jones,* 126 S. Ct. at 1717. The Court also rejected the Commissioner's argument that the property owner was on "inquiry notice" that his property was subject to governmental taking by failing to receive a property tax bill and to pay property taxes, stating that a party's knowledge of delinquency in the payment of taxes is not the equivalent to notice that a tax sale is pending. The Court opines that "Jones' failure to pay his taxes in a timely manner cannot by itself excuse inadequate notice" [of the sale]." *Id.* The Court also rejected the argument that Jones was obliged to insure that those persons occupying the property would alert him if his ownership was in jeopardy, stating:

> In fact, the State makes it impossible for the occupant to learn why the Commissioner is writing the owner, because an occupant cannot call for a certified letter without first obtaining the owner's signature. For all the occupant knows, the Commissioner of State Lands might write to certain residents about a variety of matters he finds important, such as state parks

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> or highway construction; it would by no means be obvious to an occupant observing a certified mail slip from the Commissioner that the owner is in danger of losing his property. In any event, there is no record evidence that notices of attempted delivery were left at 717 North Bryan Street.

Id. The *Jones* Court identified what it characterized as reasonable steps the government could have taken. The state could have resent the notice by regular mail, so that a signature was not required. The Court noted that "the use of certified mail may make actual notice less likely in some cases - the letter cannot be left like regular mail to be examined at the end of the day and it can only be retrieved from the post office for a specified period of time." *Id*. at 1719. Another reasonable measure would have been to post the notice on the front door or to address otherwise undeliverable mail to "occupant." *Id*. The Court rejected the Commissioner's complaint that the requirement of posting the notice would be burdensome, comparing it to the burden and expense of a newspaper advertisement, the cost of which is passed through to the purchasers at the tax deed sale. The Court also rejected publication of the notice as a suitable follow up.

Notably, the *Jones* Court steered clear of any duty of active inquiry by the taxing authorities, rejecting the argument by Jones that the Commissioner could have searched for his new address in the Little Rock phone book and in other governmental records such as tax rolls. The Court was cautious of the burden which "an open-ended search for a new address - especially when the state obligates the taxpayer to keep his address updated with the tax collector" would impose on the State. *Jones*,126 S. Ct. at 1719. Instead, the opinion is limited to requiring some additional effort by the Commissioner to give notice when the mailed notice is returned unclaimed, such as resending as an uncertified letter, providing a mailed notice to "occupant" or posting.

Conclusion

It may be tempting to view *Rosado* as covering the same ground as *Jones*, but the impact of each must be considered. The decision in *Jones* focused on a situation where a notice is returned as "unclaimed" and government was well aware that the owner has not received notice. No other attempts were made to give notice other than by publication in a newspaper. In *Rosado*, on the other hand, none of the correspondence was returned as unclaimed. The notice of tax deed sale which was mailed by the clerk in October, 2000 to the Rosados via certified mail was signed for by Regina Carmona, who was residing on the property. Although the court does not identify the manner in which Regina Carmona was related to the Rosados, it may be that she was the caretaker to whom the Rosados had referred in their 1998 letter to the tax collector as residing at property. Also, in *Rosado*, a notice was posted, precisely what the *Jones* Court suggests is a reasonable measure, although the deputy reported back that the Rosados no longer lived at the subject property.

The *Rosado* court held that if a title holder has submitted a notice of address change to the "taxing authorities," then failure by the clerk to mail a notice of sale to the new address results in an "as applied" due process violation. The *Rosado* opinion, however, does not define the term "taxing authorities" but is presumably referring to the property appraiser, tax collector and clerk of court. This view of the "taxing authorities" as a single organism is somewhat inconsistent with the existence of three separate county constitutional officers, who have specific roles from assessment to collection to enforcement. A property owner is on notice that the property appraiser is the one who prepares the assessment rolls and it is from this roll that the tax collector obtains the mailing address.

It is important to note that, even if the *Rosado* requirement is met and notice is sent to the new address via certified mail pursuant to Florida procedure, *Jones* may impose an additional duty to send the notice by regular mail if the original notice is returned unclaimed. Florida does have a procedure for posting, but if reasons exist to equate a failure of posting with the return of an "unclaimed letter," then some other form of notice, such as service by regular mail of a notice of tax deed sale, may be implicated.

Section 65.081, Florida Statutes, provides that grantees under a tax deed shall have a remedy to quiet title to the property purchased at the tax deed sale. One question is whether the diligent search and inquiry, which would support constructive service by publication against the title holder who was divested of title, would include inquiry to the taxing authorities with respect to receipt of a change of address notice prior to tax deed sale and mailed notice to that address. In terms of a regulatory response to *Jones*, one step, although costly and an administrative burden, is to amend the regulations to require that the notice of tax deed sale be sent both by certified mail and by uncertified first class mail, either simultaneously or upon return of an unclaimed certified letter. A corollary change would be to address a regular first class mail notice to "Occupant" in addition to the title holder of record. A second regulatory response could involve formalizing defined procedure for a change of address requiring the property owner (1) to properly identify the parcel or tax certificate via the numbering system used by the taxing authorities; (2) to submit the change of address information to a specific officer and (3) to provide for a fixed point in time when it must be sent, either in relation to the preparation of the annual tax roll (so it is included on the current roll, which can then be referred to by the clerk) or in relation to the scheduling of a sale. The refinement of procedural due process requirements with regard to real property tax collection should account for the particular roles and duties of the constitutional officers involved, as provided by the legislature and defined under the Florida Administrative Code.

Endnotes:

1 The tax collector may retain a private company to prepare the report. F.A.C. 12D-13.061(5).

2 There are also a number of others who must receive notice, including lien holders, mortgagees, vendees under contract for deed, persons appearing on the property appraiser's assessment roll, etc.

3 The notice warns that back taxes are due and the property may be sold at a tax deed sale, and includes an address and phone number for the Clerk of Court. See Sec. 197.522, Fla. Stat.(2006).

Probate Case Summaries

By Leslie A. Peterson, Second Year Law Student, Washington College of Law, American University, Washington, D.C.

The First District Court of Appeal overrules probate court decision directing personal representative to pay decedent's funeral expenses where funeral expense claim was filed more than two years after decedent's death.

Hope v. Webb, 31 Fla. L. Weekly D2529a (1st DCA 2006)

Decedent's will bequeathed all her property to appellant and directed that her "just debts, funeral and administration expenses be paid as soon after [her] death as may be practical . . . ." Although decedent died in February 2002, her children delayed for two years filing claims against the estate for her funeral expenses. The trial court ordered the Personal Representative, decedent's sister, to pay the expenses and she appealed.

The Personal Representative argued that the filing was untimely pursuant to Section 733.710(1), Florida Statutes. A "claim" is defined in part as a "liability of the decedent, whether arising in contract, tort, or otherwise, and *funeral expense*." §731.201(4), Fla. Stat. (2001) (emphasis added).

The First DCA stated the Florida Supreme Court's interpretation of Section 733.710 as "obviously represent[ing] a decision by the legislature that 2 years from the date of death is the outside time limit to which a decedent's estate in Florida should be exposed by claims on the decedent's assets." *May v. Ill. Nat'l Ins. Co.*, 771 So. 2d 1143, 1157 (Fla. 2000). Under that reasoning, the First DCA held that the claims of decedent's children were barred, regardless of the directive in decedent's will to pay her funeral expenses. *See Marshall Lodge No. 39, A.F. & A.M. v. Woodson*, 190 So. 749, 751 (Fla. 1939). The First DCA held that to do otherwise would subject the estate to inescapable uncertainty and undermine the purpose of Section 733.710(1).

The Fourth District Court of Appeal finds that the trial court erred in failing to recognize that there was reasonable possibility of criminal prosecution, and ultimately applied the wrong law, in ordering a personal representative to answer deposition questions, particularly in light of a threat of criminal prosecution if the personal representative chose to remain silent. Although the Fifth Amendment privilege generally does not apply to the documents that personal representatives prepare as a part of their fiduciary duty, the court perceived difficulties applying privilege to deposition questions but not to related final accountings.

Pisciotti v. Stephens, 940 So. 2d 1217 (4th DCA 2006).

Sister and Brother experienced the death of both parents in a four-month period. When Mother died, her entire estate passed to the Father and at his death, his will provided that the estate was to be divided equally between the two children. Sister was appointed Personal Representative of Mother's estate and, although never formally appointed, also assumed the same role for her Father's estate. However, Brother questioned Sister's actions regarding her duties as Personal Representation in spite of her testimony after uncovering three undisclosed checks -- two purporting to have been signed and dated by Father after his own death.

Brother filed adversary proceedings for the removal of Sister as Personal Representative, accusing her of stealing money by forging signatures on checks and giving false testimony at the hearing. Although Brother sought judgment against Sister for the funds and other assets wrongfully taken, the parties entered into an agreed order wherein sister agreed to resign as Personal Representative from both estates. At subsequent depositions, Sister refused to speak and asserted her Fifth Amendment privilege to all questions posed despite her Brother's threats to pursue criminal prosecution. The trial court, in both instances, granted Brother's motion to direct her to answer the questions and ordered that Sister provide an accounting of both her parents' estates.

Noting that the trial court did not review the nature of the deposition questions on a question-by-question basis, the Fourth DCA analyzed self-incrimination and compelling discovery in civil cases. The Fourth DCA agreed with Sister's argument that the trial court's order requiring her to answer deposition questions violates her Fifth Amendment privilege against self-incrimination, particularly in light of Brother's comments regarding her possible criminal prosecution. The Fifth Amendment to the United States Constitution was expanded to grant a witness in a civil proceeding the right to refuse to respond to a question on the grounds that his answer may tend to incriminate him. *See Kastigar v. United States*, 406 U.S. 441, 444-45 (1972); *DeLisi v. Bankers Ins. Co.*, 436 So.2d 1099, 1101 (Fla. 4th DCA 1983).

The Fourth DCA found the right to assert the Fifth Amendment privilege especially true when the litigant has reasonable grounds to believe that the response to a discovery request would furnish a link in the chain of evidence needed to prove a crime against the litigant. Moreover, the Fourth DCA reiterated the holding in *Magid v. Winter*, 654 So.2d 1037, 1039 (Fla. 4th DCA 1995), which stated that "[i]t need not be probable that a criminal prosecution will be brought or that the witness's answer will be introduced in a later prosecution; the witness need only show a realistic possibility that the answers will be used against him." Following the holding of the Fifth DCA in *O'Neal v. Sun Bank, N.A.*, 754 So.2d 170, 171-72 (Fla. 5th DCA 2000), the Fourth DCA held that it was reasonable for Sister to believe that direct answers to deposition could create a link in the chain of evidence and subject her to a perjury charge.

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With regard to the mandatory final accountings, the Fourth DCA recognizes that privilege generally does not apply to documents that are required under the law to be prepared by a personal representative to carry out a fiduciary duty. However, the Fourth DCA did note while the privilege may attach to a personal representative's personal documents, it does not attach to those documents the personal representative is required by law to prepare. *In re Rasmussen*, 335 So.2d 634, 636 (Fla. 1st DCA 1975). Nevertheless, the Fourth DCA distinguished the present case from *Rasmussen* in that refusing to allow Sister to apply the privilege to the order for a final accounting document would have the rather perverse effect of protecting her from giving testimonial answers conceivably providing a link in the chain of evidence but then refusing the same protection by requiring her to file accountings yielding the same information. Therefore, the Fourth DCA reversed the trial court's order compelling Sister to testify and produce final accountings.

The Second District Court of Appeal affirmed the probate court's ruling and stated that the probate court did not abuse its discretion when it granted a personal representative's motion to strike claim when claimant failed to file independent action within 30 days of objection, notwithstanding claimant's contention that only that portion of claim to which there had been a formal objection could be stricken.

In re Estate of Cadgene, 938 So. 2d 581 (2d DCA 2006).

Company signed settlement agreement to end litigation over an environmental problem with property purchased from a Family Partnership. In the settlement agreement, the Family Partnership acknowledged that it and its partners were jointly and severally liable for the cost of the environmental cleanup on the property. After Decedent, partner in the Family partnership, died, Company filed a statement of claim in the estate administration proceeding. The basis of the claim was Decedent's liability under the terms of the settlement agreement. The Personal Representative objected to part of the claim and argued that the Company failed to bring the action for the claim within the 30-day period as provided in Section 733.705, Florida Statutes (2000).

The Personal Representative filed a motion to strike the Company's claim because it had failed to file an independent action on the claim within the 30-day time limit imposed by Section 733.705. In response, the Company asserted that since the Personal Representative had failed to object to the portion of the statement of claim dealing with the Decedent's obligations under the settlement agreement, there was no right to have that portion of the statement of claim stricken. The probate court granted the estate's motion to strike the Company's claim.

In reviewing Section 733.705, the Second DCA found that the Personal Representative met both requirements of the statute. The Second DCA also noted that with the exception of a personal representative's statement of claim, Florida does not utilize the concept of a "partial objection" to a statement of claim. Since the Personal Representative met his requirements, the Company was required to file an independent or declaratory action on the claim within 30 days of service of the objection. Because of this failure, the probate court did not abuse its discretion when it granted the Personal Representative's motion to strike the claim.

Additionally, the Company argued that the Personal Representative should be estopped from requesting that the entire claim be stricken because the partial objection lulled it into a false sense of security that only part of the claim would be stricken. *See Kelly Assisted Living Services, Inc. v. Estate of Reuter*, 681 So. 2d 813, 814-15 (Fla. 3d DCA 1996). The Second DCA refused to reverse the trial court's ruling based on the Company's assertion that this argument was properly presented to the probate court and supported by sufficient evidence because there was no evidence of record for the court to review.

The Fourth District Court of Appeal finds that a separate writing was not a proper devise of tangible property pursuant to the statute and directs the probate court on remand to address issue that writing constituted a codicil, which purported beneficiary raised in timely motion for rehearing.

Baldwin v. Estate of Winters, 944 So. 2d 437 (4th DCA 2006).

Testator executed a Revocable Trust Agreement and a Last Will and Testament which stated that she included a paragraph indicating that she could leave a written statement to serve as a listing of tangible personal property to be disposed of. She subsequently prepared a written ten-page statement for this purpose and did not include the purported Beneficiary under that writing. In February 1998, the Testator executed a First Codicil to Last Will and Testament. Approximately a year later, in April 1999, the Testator prepared the following: 1) handwritten note on plain white paper with the signature of one attesting witness which stated that she would like one of the personal representatives "to give [the purported Beneficiary] a new car from" her estate; and 2) small piece of white paper with blue lines, absent a witness' signature, directing one of the personal representatives "to give [the purported Beneficiary] a new car from [her] estate". A month later, two copies of a typewritten letter were prepared on the testator's personal stationery which again directed the same personal representative "to give to [the purported Beneficiary] a new car of his choice from [her] estate." Each copy was signed by the testator, witnessed, and notarized.

The Testator died on Christmas Day 2003. In petitioning for administration of the estate, the personal representatives filed all the described documents. The court appointed the designated personal representatives and entered an order admitting the Will and Codicil to probate but not the letter. A Final Accounting of Personal Representatives and a Petition for Discharge were filed in July 2005. Immediately afterwards, the purported Beneficiary filed a Petition for Compulsory Distribution, claiming to be a beneficiary of the estate and alleged entitlement to an automobile of his choice: a $50,000 Mercedes Benz to replace his existing car. He requested distribution of $50,000 to purchase the car.

The Fourth DCA agreed with the probate court that the purported beneficiary was proceeding under Section 732.515. Thus, the personal representative was not directed to surrender the cash value of a new Mercedes automobile to the purported beneficiary because the separate writing was

not a proper devise of tangible property under the 1997 version of Section 732.515.

However, the Fourth DCA acknowledged the importance of trying to interpret the intent of the testator. *Morgenthaler v. First Atl. Nat'l Bank of Daytona Beach*, 80 So. 2d 446, 452 (Fla. 1955). The purported beneficiary has the burden of showing that the probate court erred when it rejected his argument that the May 22, 1999 letter was a codicil. Since the personal representatives filed the May 22, 1999 letter when petitioning for estate administration, they were aware of its existence. The Fourth DCA held that that trial court should address issues raised in motions for rehearing when the ends of justice would be served and directed the probate court to determine if the May 22, 1999 letter constituted a valid codicil.

The Third District Court of Appeal affirms the trial court's ruling which revoked will from probate and submitted prior will for probate administration. Evidence supported the determination that decedent, who was hospitalized and under the influence of strong medication, suffered from an insane delusion at the time she executed her will, and therefore lacked requisite testamentary capacity.

Miami Rescue Mission, Inc. v. Roberts, 943 So. 2d 274 (3d DCA 2006).

Decedent, while hospitalized with severe pain and under the influence of very strong medication, executed a new will to replace her old 2003 will. The following day she passed away. The effect of decedent's new will was to disinherit her longtime caregiver, and, instead, leave her residuary estate to four charities, in equal shares. The caregiver petitioned for revocation of the new will and for administration of the old 2003 will, arguing that decedent lacked the requisite testamentary capacity. The caregiver presented clear and convincing evidence that decedent was suffering from an insane delusion when she executed her new will, believing that the caregiver had abandoned her, "let her dog die," and was stealing from her.

One of the charities listed in the new will appealed the trial court's granting of the caregiver's petitions. After careful review, the Third DCA found that the trial court's findings of fact were supported by competent and substantial evidence and that the trial court correctly interpreted the legal effect of the evidence. Specifically, the testimonies of doctors who treated the decedent and the detailed descriptions of how the medication given to decedent affected her in the days leading up to her passing supported the caregiver's assertions. Furthermore, their testimonies noted the complete change in decedent's personality on January 16, 2005, the date decedent's failed to recognize the caregiver and started believing that the caregiver had failed her and her dog. Concerned with decedent's behavior, a doctor ordered a psychiatric consultation and it was concluded that decedent was either hallucinating or delusional. Believing the trial court to be in a superior position to gauge witness credibility, the Third DCA affirmed the trial court's findings of fact.

Additionally, the Third DCA agreed with the trial court's interpretation of the legal effect of the evidence presented. Although the decedent was classified as "alert," an observation that a patient is alert does not equate to a legal finding that the patient possesses testamentary capacity. "Where there is an insane delusion in regard to one who is the object of the testator's bounty, which causes him to make a will he would not have made but for that delusion, the will cannot be sustained." *Newman v. Smith*, 82 So. 236, 236 (Fla. 1919).

Further, "an insane delusion has been defined as a spontaneous conception and acceptance as a fact of that which has no real existence except in imagination. The conception must be persistently adhered to against all evidence and reason." *Hooper v. Stokes*, 145 So. 855, 856 (Fla. 1933). Thus, the Third DCA reasoned that decedent's continued belief that the caregiver was ignoring her propelled her to change her will. However, the reality was that the caregiver continued to visit decedent on a daily basis and tend to her duties. Therefore, the Third DCA affirmed the trial court's finding that decedent's new will was the product of an insane delusion and should be revoked from probate.

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— Former Florida Supreme Court Chief Justice Harry Lee Anstead

Real Estate Case Summaries

By Stephen E. Silkowski, Esq., Jacksonville, FL

Court cannot order specific performance of homestead sale contract over homestead title-holder spouse's objection, even if property is titled in only non-objecting spouse's name, property has not been tax-homesteaded, and objecting spouse has not lived continuously on property.
Taylor v. Maness, No. 3D06-578 (Fla. 3d DCA Nov. 15, 2006).

Mr. and Mrs. Maness were married on June 14, 1986. Sometime in September 1986, Mr. Maness purchased a vacant lot that was titled solely in the name of "Maness, as a married man", hereafter, the "Marathon Property". Between 1991 and 1994, the Manesses had a single family home built on the Marathon Property. Sometime in 1998, the Manesses moved from their marital homestead property in Miami to the Marathon Property and, except for temporary absences, have remained there since. In August 2002, Mrs. Maness and the Manesses' minor son, Everett, moved temporarily to Martin County, Florida, in order for Everett to attend public school there. Mr. Maness remained in the Marathon Property. On or about September 25, 2002, Mr. Maness, as the seller, and the Taylors, as the purchasers, entered into a contract, whereby Mr. Maness agreed to convey the Marathon Property to the Taylors. Mrs. Maness did not execute the contract, nor was she named in the contract. Closing was to take place on or before December 2, 2002. Mrs. Maness, however, refused to execute the deed transferring the Marathon Property to the Taylors, claiming that she has a homestead interest in the Marathon Property, thereby precluding consummation of the contract.

Florida courts have consistently held that the protections afforded by the homestead exemption in the Florida Constitution Article X, Section 4 must be liberally construed. The plain import of Article X, Section 4, subsection (a) is to prevent forced sale under process of any court the homestead property owned by a natural person, except in three specific exceptions. This homestead exemption is limited to the residence of the owner or the owner's family. Therefore, if the Marathon Property were the homestead residence of Mr. Maness or his family, the protections of the homestead exemption would apply and the contract in this case would be incapable of being specifically performed, as the court cannot force the sale of the homestead by a decree of specific performance.
In this case, there is no question that Mr. Maness is the title owner of the Marathon Property. There is also no dispute that Mr. Maness permanently resided in the Marathon Property since 1998 and intended to remain there indefinitely. Thus, the court concluded that the Marathon Property constituted Mr. Maness' homestead and consequently, the homestead of his family as well.

An intact marriage can only have one homestead. The Manesses originally had a homestead in Miami that they jointly owned. When the Manesses moved from and sold their Miami homestead residence and moved to the Marathon Property in 1998, their homestead protection also moved to the Marathon Property and attached thereto, until the Manesses took up a permanent homestead residence elsewhere. The fact that the Manesses did not claim a homestead exemption for tax purposes until recently was irrelevant to whether the homestead protections attach to the Marathon Property. The homestead exemption from forced sale is different from the homestead exemption as defined for tax purposes. Failure to claim the homestead tax exemption is not evidence that property is not in fact homestead.

The individual claiming the homestead exemption need not hold fee simple title to the property. Article X, Section 4 does not designate how title to the property is to be held and it does not limit the estate that must be owned, i.e., fee simple, life estate, or some lesser interest. Thus, even if Mrs. Maness owned only a beneficial interest in the Marathon Property, she was entitled to claim a homestead exemption to the forced sale of the property. Further, the Florida Constitution places certain restrictions on the homestead owner's right to alienate his family's homestead property. Both spouses must join in a conveyance of a homestead owned by one spouse to a third party.

Good-faith purchaser's lack of notice of unrecorded prior deed out gives him priority, upon recording, over holder of previously delivered unrecorded deed.
Rice v. Greene, 941 So.2d 1230 (Fla. 5th DCA Nov. 17, 2006).

Rice and Greene each thought they had purchased a parcel of real property from Virginia Schwartz. Their beliefs were not unwarranted, since they separately entered into contracts to purchase the property from Schwartz, and, after paying the purchase price, received a warranty deed from her. What they did not know, because neither of them conducted a proper title search, was that Virginia Schwartz had conveyed the same property to both of them.

Michael Schwartz took title to the property in November 1981. Mr. Schwartz owned the property until his death in 1994. In his will, Mr. Schwartz devised all of his property to his wife, Virginia Schwartz, to whom he had been continuously married. Mr. Schwartz's will never went to probate, either in his home state of North Carolina or in Florida. On June 25, 2004, Mrs. Schwartz, "on behalf of her deceased husband," entered into a contract to sell the property to Rice. On August 4, 2004, Mrs. Schwartz executed and delivered a warranty deed to Rice, purporting to convey the property to him in accordance with their agreement. For

reasons not clear from the record, Rice failed to promptly record the deed. Nearly two months later, Mrs. Schwartz entered into another contract to sell the property to Greene. On October 28, 2004, Mr. Greene paid the purchase price and received a warranty deed to the property from Mrs. Schwartz. Greene recorded his deed on November 8, 2004. Rice recorded his deed a few weeks later.

Upon learning of the situation, Rice filed suit against Greene and Mrs. Schwartz, seeking declaratory relief against Mr. Greene concerning his right to the property, and claiming that Mrs. Schwartz had breached her contract with him. Rice argued that the trial court erred in granting summary judgment in favor of Greene, because Mrs. Schwartz did not have the title of the property at the time she conveyed it to Greene. He contended that, at best, she had a mere expectancy. As a result, he posited that Florida's recording act does not apply. Thus, according to Rice, under common law, Rice's agreement with Mrs. Schwartz has priority.

In support of his argument, Rice pointed to Section 733.103(1), Florida Statutes (2004). Section 733.103(1) provides that "[u]ntil admitted to probate in this state or in the state where the decedent was domiciled, the will shall be ineffective to prove title to, or the right to possession of, property of the testator." While true, Mr. Rice's argument failed to consider Section 732.514, Florida Statutes (2004), that provides, "[t]he death of the testator is the event that vests the right to devises unless the testator in the will has provided that some other event must happen before the devise vests." Rice is correct that under Section 733.103, Mr. Schwartz's unprobated will was ineffective to "prove title" to the property under Section 732.514; but, it was Mr. Schwartz's death that vested Mrs. Schwartz's rights in the property. Reading these statutes in concert, it is clear that because Mrs. Schwartz never offered Mr. Schwartz's will for probate, she lacked marketable title to the property. She, however, clearly acquired equitable title to the property upon her husband's death, assuming, as have the parties, that Mr. Schwartz's will, that had been presented to the court below, was authentic. Admittedly, because Mrs. Schwartz's title was not marketable, under certain circumstances, it might have been subject to divestment for the payment of claims, expenses of administration or taxes. Regardless, those are matters that affect the quality of the title, and were not at issue here. Instead, the only issue was which party had a priority claim to the property as between Rice and Greene.

Florida's recording statute provides that an unrecorded deed is not good or effectual in law or equity against creditors or subsequent purchasers for valuable consideration who are without notice of the transaction. Therefore, because Greene had no notice of the earlier warranty deed between Rice and Mrs. Schwartz, and because Greene paid valuable consideration for the property, Greene's recording of his warranty deed before Rice gives Greene priority to the property.

No boundary by acquiescence when true boundary was shown on survey, even though survey did not indicate encroaching fence that was basis for acquiescence claim.

Tarin v. Sniezek, No. 4D05-2465 (Fla. 4th DCA November 29, 2006)

This action arose out of a dispute between Tarin and the Sniezeks over a fenced-in parcel of residential land. Tarin acquired record title to Lot 97 in 1995. The Sniezeks acquired record title to an adjoining property to the north, Lot 99, in 2003. When Tarin acquired Lot 97, there was an existing fence from Lot 97 that traversed and enclosed a portion of Lot 99, the disputed property. Since 1995, Tarin repaired and maintained the fence and was in exclusive control, care and maintenance of the disputed property.

In connection with his purchase of Lot 97, Tarin obtained a survey that showed the true boundaries of Lot 97 and revealed the encroachment of the fence onto Lot 99. Of the three segments comprising the fence, however, only the western segment appeared on the survey. The northern and eastern segments were not identified, the eastern section representing the border that Tarin sought to establish as the boundary by acquiescence between Lots 97 and 99.

Shortly after the Sniezeks purchased Lot 99 in 2003, they reviewed an appraisal that showed their property's true boundaries. The appraisal revealed that the fence encroached onto Lot 99 and that the disputed property was actually part of their lot. The Sniezeks informed Tarin of the encroachment. Tarin responded by filing a declaratory judgment action seeking to establish ownership of the disputed property through the doctrine of boundary by acquiescence, based upon the location of the fence and Tarin's possession and control for more than seven years. The Sniezeks denied the allegations and, more than seven years after Tarin acquired title to Lot 97, filed a counterclaim for ejectment to recover possession of the disputed property.

Tarin then filed a motion for summary judgment on the counterclaim, asserting that since he had been in open, notorious, and exclusive possession of the disputed property since 1995, the Sniezeks' counterclaim was foreclosed as a matter of law by Section 95.12, Florida Statutes (2006). The Sniezeks responded with a cross-motion for summary judgment, asserting that Tarin could not sustain his claim to establish a boundary by acquiescence, because the true boundary line was never in dispute. The trial court denied Tarin's motion for summary judgment and granted the Sniezeks' cross-motion. In so doing, the court found that the recorded instruments in the chains of title, in addition to the survey that Tarin received upon purchase of Lot 97, clearly indicated the boundaries of the two lots. As such, the court concluded that Tarin was foreclosed from arguing that the mislocated fence created the requisite doubt or uncertainty needed to establish a boundary by acquiescence.

In his first point on appeal, Tarin argued that the trial court prematurely rejected his claim of boundary by acquiescence as a matter of law. He contended that the placement of the fence permitted reasonable inferences in his favor regarding the element of mutual uncertainty as to the true boundary between Lots 97 and 99. The district court disagreed and affirmed the trial court's decision.

To establish a boundary by acquiescence, a party must prove (1) uncertainty or dispute as to the location of the true boundary; (2) location of a boundary line by the parties; and (3) acquiescence in the location for the prescriptive period. Moreover, uncertainty means actual lack of knowledge on the part of both owners as to the true boundary. To be entitled to summary judgment based upon the doctrine

continued, next page

from preceding page

of boundary by acquiescence, the moving party must establish the existence of all three elements based on the undisputed material facts.

Tarin contended that the trial court erred in granting the Sniezeks' cross-motion for summary judgment, because there was a genuine issue of material fact as to the uncertainty or dispute as to the location of the true boundaries of his property. He first argued that the mere placement and duration of the fence for the prescriptive period evidenced the requisite "dispute" or "uncertainty" about the true boundary required to establish a boundary by acquiescence. Tarin, however, received a survey of Lot 97 when he purchased it in 1995. Therefore, he was aware of the precise limits of his property at the inception of his ownership and he did not have to rely on the fence to identify those boundaries.

Tarin also argued that he was uncertain as to the boundaries of his property because he had not read the survey. A person, however, has no right to shut his eyes or ears to avoid information, and then say that he has no notice; it will not suffice the law to remain willfully ignorant of a thing readily ascertainable by whatever party puts him on inquiry, when the means of knowledge is at hand. When Tarin had received the survey upon purchase of his property, he was charged with notice of its true boundaries. His assertion that he did not understand or did not read the survey did not serve as a defense. Therefore, his failure to read the survey did not provide him with the requisite uncertainty to support a boundary by acquiescence. Furthermore, the survey's failure to fully illustrate the fence as an encroachment onto Lot 99 did not support the conclusion that the property within the fence was Tarin's.

Tarin also argued that there was a genuine issue of material fact as to whether the counterclaim for ejectment was time-barred under Section 95.12, Florida Statutes (2006) ("No action to recover real property or its possession shall be maintained unless the person seeking recovery . . . was seized or possessed of the property within seven years before the commencement of the action."). The court disagreed. Although seisin can be destroyed by acquiescence, Tarin did not satisfy the elements of boundary by acquiescence. Therefore, he never divested the Sniezeks of possession of the disputed property. The requirement of seisin under Section 95.12 is met when a party is possessed of legal title, and this seisin can only be destroyed by establishing the fact that the other party acquired title by adverse possession.

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Lease agreement allowing tenant to renew indefinitely with a fixed rent-increase formula, bind landlord and successors forever, as well as exercise purchase option, was void as unreasonable restraint on alienation. Tenant to be equitably compensated for improvements made in anticipation of unlimited renewals.
Peavey v. Reynolds, No. 5D05-3640 (Fla. 5th DCA December 15, 2006)

The issue in this case was whether a lease agreement between the landlord and tenant was void as an unreasonable restraint on the alienation of property. Besides an option to purchase, the lease agreement provided for an automatic renewal for subsequent two-year periods, with the rental amount increasing by $50.00 per month, per anniversary, for as long as the tenant desired.

The rule against unreasonable restraints on alienation is founded entirely upon considerations of public policy, specifically, the idea that the free alienability of property fosters economic and commercial development. The test to be utilized with respect to restraints on alienation is the test of reasonableness. The validity or invalidity of a restraint depends upon its long-term effect on the improvement and marketability of the property. An unlimited lease-renewal restriction would discourage the owner from making any improvements to the property, and, as long as there were an inflationary market, it was unlikely that the owner would ever sell the property. Therefore, such a provision would be void as an unreasonable restraint on alienation.

In this case, the lease granted the tenant the right to renew the lease indefinitely at a rental rate fixed by the terms of the lease. The lease also provided that any subsequent landlord would be bound by the terms of the lease. If upheld, the lease would have had the potential to forever prevent the landlord and her successors from being able to utilize the property for any purpose other than renting the property to the corporate tenant at a predetermined rate. The landlord would, however, remain obligated to pay the property taxes and the expense of properly maintaining the exterior of the property's structure, regardless of the cost.

The landlord had little incentive to make improvements on her property. Furthermore, it is highly questionable whether the landlord would be able to sell the property to a third person, as few people would be willing to purchase a property that they might never have the right to use, other than to rent it at a predetermined rate. Accordingly, the court found the lease to be void as an unreasonable restraint on alienation.

The court also recognized the tenant might have made improvements to the property based on its belief that it had the right to renew its lease indefinitely. Therefore, on remand, the trial court was instructed to consider using its equitable powers to ensure that full justice be done between the parties. Specifically, it would appear that if the tenant would be required to vacate the property, it should be compensated for the value of any improvements it made to the leased property based on its expectation of remaining on the premises for a lengthy period of time.

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FRIDAY, April 13, 2007

8:00 a.m. – 8:25 a.m. **Late Registration**

8:25 a.m. – 8:30 a.m.
Introduction
Robert G. Stern, Tampa, Program Chair

8:30 a.m. – 9:05 a.m.
FAR/BAR Contract
James R. Mitchell, Orlando

9:05 a.m. – 9:45 a.m.
Case Law and Statutory Update
Eugene E. Shuey, West Palm Beach

9:45 a.m. – 10:20 a.m.
Construction Liens
Charles Cacciabeve, Orlando

10:20 a.m. – 10:35 a.m. **Break**

10:35 a.m. – 11:10 a.m.
Environmental Issues
Roger Schwenke, Tampa

11:10 a.m. – 11:45 a.m.
Title Insurance—Affirmative Coverages
Alan K. McCall, Winter Park

11:45 a.m. – 1:00 p.m. **Lunch (included in registration fee)**

12:30 p.m. – 1:00 p.m.
Real Property Ethical Considerations
Homer Duvall, St. Petersburg

1:00 p.m. – 1:30 p.m.
Commercial and Residential Landlord/Tenant Issues
David Weisman, Hollywood

1:30 p.m. – 2:00 p.m.
Public Lands and Water Boundary Issues
Alan B. Fields, Naples

2:00 p.m. – 2:30 p.m.
Marketable Record Title Act
Melissa Scaletta, Orlando

2:30 p.m. – 3:00 p.m.
Foreclosures
Alfred LaSorte, West Palm Beach

3:00 p.m. – 3:15 p.m. **Break**

3:15 p.m. – 3:45 p.m.
Florida Homestead
Wilhelmina F. Kightlinger, Tampa

3:45 p.m. – 4:25 p.m.
Condominiums and Condominium Associations
William P. Sklar, West Palm Beach

4:25 p.m. – 5:00 p.m.
Homeowners Associations
Michael J. Gelfand, West Palm Beach

SATURDAY, April 14, 2007

8:25 a.m. – 8:30 a.m. **Opening Remarks**

8:30 a.m. – 9:00 a.m.
Documentary Stamp Taxes
E. Burt Bruton, Jr., Miami

9:00 a.m. – 9:30 a.m.
Surveys and Legal Descriptions
Edward Hamann, Orlando

9:30 a.m. – 10:00 a.m.
Tenancies and Conveyancing Issues
Robert M. Schwartz, Boca Raton

10:00 a.m. – 10:15 a.m. **Break**

10:15 a.m. – 10:40 a.m.
HUD-1 Settlement Statement
Roland D. Waller, New Port Richey

10:40 a.m. – 11:05 a.m.
Business Entities
Barry B. Ansbacher, Jacksonville

11:05 a.m. – 11:30 a.m.
Zoning and Permitting
Richard Davis, Tampa

11:30 a.m. – 12:00 p.m.
Bankruptcy Issues
Marsha Rydberg, Tampa

12:00 p.m. – 1:00 p.m. **Lunch (on your own)**

1:00 p.m. – 1:30 p.m.
Tax Liens and Tax Titles
Robert Stern, Tampa

1:30 p.m. – 2:10 p.m.
Real Estate Finance Notes & Mortgages—Rent Assignments & Receivership
David R. Brittain, Tampa

2:10 p.m. – 2:45 p.m.
Real Estate Opinion Letters
Roger A. Larson, Clearwater

2:45 p.m. – 3:00 p.m. **Break**

3:00 p.m. – 3:30 p.m.
Land Trusts
Andrew M. O'Malley, Tampa

3:30 p.m. – 4:00 p.m.
Judgments & Judgment Liens
Patricia J. Hancock, Maitland

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COURSE CLASSIFICATION: ADVANCED LEVEL

Live Presentations: April 26, 2007 • Tampa • Airport Marriott
April 27, 2007 • Miami • Hyatt Regency Downtown

Video Replays (10 locations): May 10, 2007 - June 7, 2007

Course No. 0497R

8:30 a.m. – 8:55 a.m.
Late Registration

8:55 a.m. – 9:00 a.m.
Opening Remarks
Bruce M. Stone, Coral Gables
Barry F. Spivey, Sarasota

9:00 a.m. – 9:50 a.m.
You Gotta Do Whatcha Gotta Do (Mandatory provisions of the Florida Trust Code – Section 736.0105)
William R. Lane, Jr., Tampa

9:50 a.m. – 10:40 a.m.
Settlor, May I? (Drafting trustee powers considering the duties of loyalty, impartiality, and statutory authorization for self-dealing.)
Tami F. Conetta, Sarasota

10:40 a.m. – 11:00 a.m.
Break

11:00 a.m. – 11:50 a.m.
You Say Yes, I Say No, Goodbye-Hello to the Trustee (Drafting for trustee resignation, appointment of successor trustees, and exculpation of trustees.)
Charles Ian Nash, Melbourne

11:50 a.m. – 1:15 p.m.
Lunch (on your own)

1:15 p.m. – 2:05 p.m.
Who's Driving This Trust Anyway? (Representatives, designated representatives, trust advisors, trust protectors and directed trustees.)
Diana S. C. Zeydel, Miami

2:05 p.m. – 2:55 p.m.
Oh, the Places I'd Go. (Choice of law, governing law, and principal place of administration under the Florida Trust Code.)
Christopher W. Boyett, Miami

2:55 p.m. – 3:45 p.m.
It's Irrevocable – But that Could Change" (Drafting with trust modification, termination, combination, severance, and nonjudicial settlement agreements in mind.)
Barry F. Spivey, Sarasota

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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/CD/video 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 "Drafting Trusts Under Florida's New Trust Code" Seminar

TO REGISTER OR ORDER AUDIO/CD/VIDEO 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 _____

City/State/Zip _____ Phone # _____

TLH: Course No. 0497R

LOCATIONS (CHECK ONE):

- ❑ **Tampa** - April 26, 2007**
  (049) Tampa Airport Marriott
- ❑ **Miami*** - April 27, 2007**
  (024) Hyatt Regency Downtown
- ❑ **Fort Lauderdale* - May 10, 2007**
  (122) Broward County Bar Association
- ❑ **Fort Pierce* - May 18, 2007**
  (299) Courthouse Room 105
- ❑ **Sarasota* - May 18, 2007**
  (042) Hyatt Sarasota
- ❑ **Fort Myers* - May 24, 2007**
  (295) Clarion Hotel
- ❑ **Jacksonville* - May 31, 2007**
  (154) Omni Hotel
- ❑ **West Palm Beach* - May 31, 2007**
  (232) Palm Beach County Bar Association
- ❑ **Orlando* - June 1, 2007**
  (071) Sheraton Orlando Downtown Hotel
- ❑ **Pensacola* - June 6, 2007**
  (040) Escambia/Santa Rosa Bar Assn.
- ❑ **St. Petersburg* - June 7, 2007**
  (263) St. Petersburg Bar Assn.
- ❑ **Tallahassee* - June 7, 2007**
  (054) The Florida Bar Annex

*** Live ** Videotaping *Video Replay

REGISTRATION FEE (CHECK ONE):

- ❑ Member of the Real Property, Probate and Trust Law Section: $135
- ❑ Non-section member: $160
- ❑ Full-time law college faculty or full-time law student: $80
- ❑ Persons attending under the policy of fee waivers: $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.)

METHOD OF PAYMENT (CHECK ONE):

- ❑ 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: _____

Card No. _____

❑ 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.

❑ Enclosed is my separate check in the amount of $50 to join the Real Property, Probate and Trust Law Section. Membership expires June 30, 2007.

COURSE BOOK – AUDIO/CD/VIDEO – ON-LINE – PUBLICATIONS

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 04/30/07. TO ORDER AUDIO/CD/VIDEO 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.**

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.

❑ 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) $135 plus tax (section member) $160 plus tax (non-section member) **TOTAL $ _____**	(includes course book) $135 plus tax (section member) $160 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.

THE FLORIDA BAR CLE

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

Wills, Trusts & Estates Certification Review and Advanced Practice Update

COURSE CLASSIFICATION: ADVANCED LEVEL

One Location:
April 13-14, 2007 • Hyatt Regency International Airport
9300 Airport Boulevard • Orlando, FL 32827 • 407-825-1234

Course No. 0450R

This seminar is intended to assist those who have applied to take the certification exam in preparing for the exam or thinking about taking the test in the future. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Those who have developed the program, however, have had no communication with the certification committee that prepares and grades the examination and they have no information regarding the examination content or format other than the information contained in the exam specifications which are also provided to each examinee. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination or that the examination will cover all topics in the course material.

Friday, April 13

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

8:30 a.m. – 8:35 a.m. **Introduction & Welcome**

8:35 a.m. – 9:15 a.m.
Advanced Issues in Dealing With Homestead
Charles Ian Nash, Melbourne

9:15 a.m. – 10:35 a.m.
Probate Code Substantive Law And Procedure
Debra L. Boje, Tampa
Richard E. Warner, Marathon

10:35 a.m. – 10:50 a.m. **Break**

10:50 a.m. – 11:20 a.m.
Case Law Update
David C. Brennan, Orlando

11:20 a.m. – 12:00 noon
Tax Deferral Doesn't Last Forever
IRA Distributions & Planning
Anne K. Buzby, Jacksonville, Program Vice-Chair

12:00 noon – 1:30 p.m.
Lunch and Ethics (Included in Registration Fee)
David M. Garten, West Palm Beach

1:30 p.m. – 3:30 p.m.
Taxes Part 1
Prof. David F. Powell, Tallahassee

3:30 p.m. – 3:45 p.m. **Break**

3:45 p.m. – 5:00 p.m.
Taxes Part 1 (cont'd)
Prof. David F. Powell, Tallahassee

CLE CREDITS

CLER PROGRAM
(Max. Credit: 16.5 hours)

General: 16.5 hours
Ethics: 1.5 hours

CERTIFICATION PROGRAM
(Max. Credit: 16.5 hours)

Elder Law: 16.5 hours
Tax Law: 16.5 hours
Wills, Trusts & Estates: 16.5 hours

Saturday, April 14

8:30 a.m. – 10:30 a.m.
Taxes Part 2
Prof. David F. Powell, Tallahassee

10:30 a.m. – 10:45 a.m. **Break**

10:45 a.m. – 12:00 noon
Taxes Part 2 (cont'd)
Prof. David F. Powell, Tallahassee

12:00 noon – 1:00 p.m. **Lunch (on your own)**

1:00 p.m. – 2:00 p.m.
Probate and Trust Litigation
Jack A. Falk, Jr., Coral Gables

2:00 p.m. – 2:30 p.m.
Joint Assets
Marilyn M. Polson, Saint Petersburg – Program Chair

2:30 p.m. – 2:45 p.m. **Break**

2:45 p.m. – 4:00 p.m.
Trust Administration (Including Principal and Income Act)
Richard R. Gans, Sarasota

4:00 p.m. – 4:30 p.m.
Board Certification
Nancy S. Freeman, Winter Park – Board Certification Committee Member

REAL PROPERTY, PROBATE & TRUST LAW SECTION

Rohan Kelley, Fort Lauderdale — Chair
Melissa J. Murphy, Gainesville — Chair-elect
Lee A. Weintraub, Fort Lauderdale — CLE Coordinator

FACULTY & STEERING COMMITTEE

Marilyn M. Polson, Program Chair
Anne K. Buzby, Program Vice-Chair
Debra L. Boje, Tampa
David C. Brennan, Orlando
Jack A. Falk, Jr., Coral Gables
Nancy S. Freeman, Winter Park
Richard R. Gans, Sarasota
David M. Garten, West Palm Beach
Charles Ian Nash, Melbourne
Prof. David F. Powell, Tallahassee
Richard E. Warner, Marathon

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.

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HOTEL RESERVATIONS: A block of rooms has been reserved at the Hyatt Regency Orlando International Airport Hotel, at the rate of $159 single/double occupancy. To make reservations, call the Hyatt Regency Orlando International Airport directly at (407)825-1234. Reservations must be made by 3/23/07 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

Register me for the "Wills, Trusts & Estates Certification Review and Advanced Practice Update" Seminar

ONE LOCATION: (234) HYATT REGENCY INTERNATIONAL AIRPORT, ORLANDO (APRIL 13-14, 2007)

TO REGISTER OR ORDER AUDIO/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 _____

City/State/Zip _____ Phone # _____

TLH: Course No. 0450R

REGISTRATION FEE (CHECK ONE):

- ❑ Member of the Real Property, Probate & Trust Law Section: $305
- ❑ Non-section member: $330
- ❑ Full-time law college faculty or full-time law student: $180
- ❑ Persons attending under the policy of fee waivers: $30
  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.)

METHOD OF PAYMENT (CHECK ONE):

- ❑ Check enclosed made payable to The Florida Bar
- ❑ Credit Card (Advance registration only. Fax to 850/561-5816.) ☐ MASTERCARD ☐ VISA

Signature: _____ Exp. Date: _____/_____ (MO./YR.)

Name on Card: _____ Card No. _____

❑ 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.

❑ Enclosed is my separate check in the amount of $50 to join the Real Property, Probate & Trust Law Section. Membership expires June 30, 2007.

COURSE BOOK – AUDIO/CD – ON-LINE – PUBLICATIONS

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 4/14/07. TO ORDER AUDIO/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.**

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.

❑ **COURSE BOOK ONLY**	❑ **AUDIOTAPES**	❑ **AUDIO CD**
Cost $50 plus tax	(includes course book)	(includes course book)
(Certification/CLER credit is not awarded for the purchase of the course book only.)	$305 plus tax (section member)	$305 plus tax (section member)
	$330 plus tax (non-section member)	$330 plus tax (non-section member)
TOTAL $ _____	**TOTAL $** _____	**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.

What's Happening Within the Section...

April 13 – 14, 2007
"Wills, Trusts & Estates Certification Review & Advanced Practice Update" CLE (Orlando)
Course Registration: 850/561-5831

April 13 – 14, 2007
"Real Estate Certification Review & Advanced Practice Update" CLE (Orlando)
Course Registration: 850/561-5831

April 26, 2007
"Drafting Trusts Under Florida's New Trust Code" CLE (Tampa)
Course Registration: 850/561-5831

April 27, 2007
"Drafting Trusts Under Florida's New Trust Code" CLE (Miami)
Course Registration: 850/561-5831

May 10 – June 7, 2007
Video Replays of "Drafting Trusts Under Florida's New Trust Code" CLE (Multiple Locations)
Course Registration: 850/561-5831

May 24 – 27, 2007
Section Convention & Executive Council Meeting – Westin Diplomat Resort, Fort Lauderdale
Hotel Reservations: 888/627-9057

June 14-17, 2007
Attorney / Trust Officer Liaison Conference – The Breakers, Palm Beach
Hotel Reservations: 561/655-6611

For the most up-to-date information on Section activities, visit the Section website (www.flabarrpptl.org) or The Florida Bar's website (www.floridabar.org).

2006 PROBATE & GUARDIANSHIP FORMS

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www.flssi.org

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ARE YOU A VICTIM OF IDENTITY THEFT?

In addition to notifying local authorities, you may file a complaint with the Federal Trade Commission's Identity Theft Hotline toll-free at 1-877-IDTHEFT (438-4338) TDD 866-653-4261. Or you may mail written complaints to: Identity Theft Clearinghouse, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

— Identity Theft online brochure published by the Florida Department of Financial Services.

REVISIONS TO FLORIDA PROBATE RULES

The Florida Supreme Court approved the Probate Rules Committee's "fast-track" report, effective February 1, 2007. The 2007 Probate Rules pamphlet (known as the "gray book") does not reflect these latest amendments. You can access updated rules that do reflect the fast-track amendments by going to the following link: http://www.floridabar.org/DIVCOM/PI/DirEntries.nsf/WSubHeadings?OpenView. Scroll down and click on "Florida Rules of Procedure," then click on "Florida Probate Rules" for the updated rules.

– J. Craig Shaw, Staff Liaison to PRC, The Florida Bar, Tallahassee, FL

FLORIDA SUPPLEMENT TO ICE

The Section's Affordable Housing Committee's Community Land Trust (CLT) Manual is now available on the Section's website.

– Jaimie A. Ross, Affordable Housing Director, Tallahassee, FL

INTEREST RATE ON A MONEY JUDGMENT

The Chief Financial Officer for the State of Florida has set the 2007 rate of interest payable on Florida judgments at 11% per annum or .0003014 per day. For additional information please view www.fldfs.com/aadir/interest.htm.

– Pat Hancock, Fidelity National Title Insurance Company, Maitland, FL

DEADLINE

for submissions for the next issue of ActionLine is

April 30, 2007.

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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Tallahassee, FL 32399-2300

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