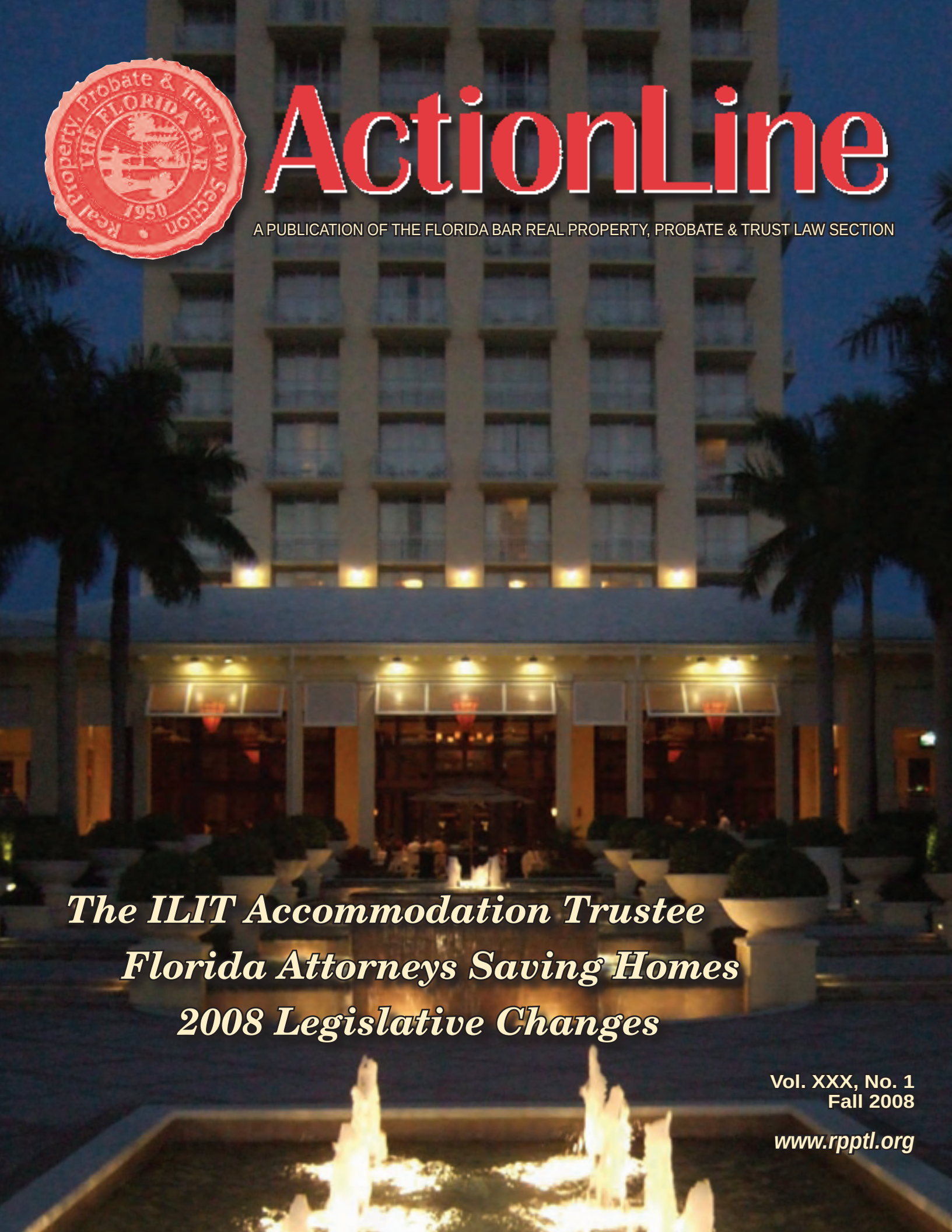

ActionLine

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

The ILIT Accommodation Trustee
Florida Attorneys Saving Homes
2008 Legislative Changes

Vol. XXX, No. 1
Fall 2008

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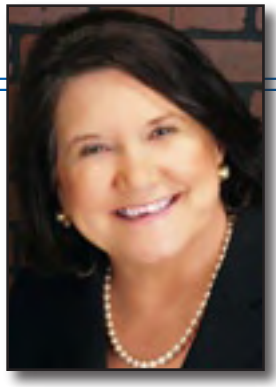

By Sandra F. Diamond

Section Chair 2008 - 2009

Chair's Column

"It Takes a Lawyer." That was the phrase used by Florida's CFO, Alex Sink, when she spoke to the attendees of the 28th Annual Legislative Update in July at The Breakers in Palm Beach. It was a phrase that caught the attention of the more than 500 attorneys in the audience. The CFO was commenting on a series of articles in the *Miami Herald* exposing widespread mortgage fraud by unlicensed mortgage brokers, many with criminal backgrounds. I took her comment as a lament that lawyers often are shut out of the mortgage lending process. Buyers are usually unrepresented, signing reams of paper with little understanding and almost no review. Lawyers, I took the comment to mean, would have recognized the problems inherent in those transactions. Certainly the obvious ones: rates that were fixed - but only for the first few years; additional closing and loan costs that were undisclosed; blank documents to be completed later, undoubtedly with terms very different than those promised. The more sophisticated fraud techniques might not have been apparent, but the blatant ones would probably never have been attempted.

Rampant real estate speculation, mortgage fraud, lack of regulation and the downturn in the economy have resulted in Florida and the rest of the nation facing an avalanche of foreclosures. It may take years to fully address this problem. Judge Lauren Laughlin of the 6th Circuit recently called me to say that there are more than 1,000 foreclosures filed each month in Pinellas County. The monthly filings in larger counties are even greater. Many of those defendants appear *pro se* and, according to Judge Laughlin, often do not fully comprehend that they are actually facing the loss of their home.

The Real Property, Probate and Trust Law Section, in conjunction with the Florida Bar Foundation, Florida Legal Services and, hopefully, other Bar groups, such as the Business Law Section and the Young Lawyers Division, has stepped forward in an effort to address part of the problem. **Florida Attorneys Saving Homes** has been created to assist low income individuals avoid foreclosure and keep their homes. The program is limited to situations in which a foreclosure complaint has not yet been filed, and is limited to homeowners. We are not providing pro bono help to those buying investment properties or speculating. The goals of the program are limited - but the need and numbers are, nonetheless, huge. There are hundreds of requests coming into the Bar's toll-free hotline.

It takes a lawyer. And it is going to take a lot of volunteer lawyers. You may be helping a working family, often with kids, or a senior on a fixed income. Someone in the household may have lost a job, or maybe both parents did; someone might have gotten sick; or someone might have made a bad decision, and now that someone and their family may lose their home. My sincere hope is that you will volunteer to take at least one case. We have plenty of free training and support. Just go to www.floridaprobono.org to sign up.

If you are not a real estate lawyer, lean on a friend who is, tell them to sign up or encourage your law firm to participate. But if you can't do that, become involved in one of the myriad of other projects that are ongoing in the Section. Many of those are mentioned in this issue of *ActionLine*. Join a committee. We have 40 or so. Just take a look on our website at www.rpptl.org. E-mail our Mentorship Committee Chair, Steve Hearn, and sign up to become a RPPTL Mentor. E-mail our Diversity Committee Chair, Tae Bronner, and ask to assist her with our Section's diversity efforts. Become active in our re-energized Professionalism and Ethics efforts led by Debbie Goodall and Adele Stone. There are countless opportunities to become involved.

The *St. Petersburg Times* recently reported that the volunteer rate in Florida ranks 49th among the 50 states and the District of Columbia, ahead of only New York and Nevada. While that statistic may be accurate for the population as a whole, I don't have to have a special study to know that the volunteer rate is higher among Florida lawyers. I know that every non-profit board I am on, and all those with which you are involved, have many lawyer volunteers. We volunteer for Little League, Boy Scouts, our churches, synagogues and hospitals. But while we may be active community volunteers, our pro bono legal efforts may have slipped. The Florida Bar reports that the 84,000 Florida lawyers performed 52,038 fewer pro bono hours through June, 2007 than in the prior Bar year. The Florida Bar's aspirational goal is to perform 20 hours of pro bono work each year. The American Bar Association recommends 50 hours.

I sometimes hear RPPTL lawyers complain that there are no pro bono opportunities that are appropriate for them. We are unqualified to take pro bono criminal cases and are uncomfortable accepting pro bono marital dissolution cases. But the mortgage foreclosure crisis is unique. It takes someone with a special skill set and training. Many RPPTL members have those skills.

Sign up to save a home. It takes a lawyer!

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

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ABOUT THE COVER:

The many water features of the Hyatt Regency at Coconut Point provided a beautiful environment for the Section Convention. At night, the lighted fountains guided the path to the hotel. Photo courtesy of Rich Caskey.

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The deadlines for all submissions are as follows:

Issue	Deadline
Spring	January 31
Summer	April 31
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Winter	October 31

For GENERAL INQUIRIES about the RPPTL Section, contact Yvonne Sherron at The Florida Bar at 800-342-8060 extension 5626, or at *ysherron@flabar.org*. Yvonne can help with most everything, such as membership, the Section's website, committee meeting schedules, and CLE seminars.

The ILIT "Accommodation"– Florida Law Options

By Patrick J. Lannon, Of Counsel, Goldman Felcoski & Stone P.A., Coral Gables, FL

At first blush the irrevocable life insurance trust ("ILIT") as an estate planning strategy appears almost too good to be true. By the relatively simple step of arranging for the ownership of life insurance by a trustee rather than by the insured, the insured can (assuming a properly formed and administered trust) avoid estate taxation of the insurance proceeds upon death.[1] All the insured needs to do is come up with the essential ingredients: An insurance agent to sell the policy, a grantor to pay the premiums, an attorney to draft the trust and a trustee to administer the trust. For those with sufficient health to be insurable and sufficient wealth to afford the policy and the (often comparatively modest) attorney fees, finding an experienced insurance agent and attorney is a straightforward task. Only when the topic of trustee selection comes up (often after a client has been completely sold on the idea of an ILIT) does the strategy hit a bump in the road. An ILIT needs a conscientious trustee to maximize the amount ultimately available to the beneficiaries and to minimize the estate tax risk, but the position of ILIT trustee is a difficult role to fill. This article will review why the role of ILIT trustee is difficult to fill and will suggest some strategies intended to attract a qualified fiduciary to fill the position. These strategies work by reducing the risk inherent in the role without completely removing protection for the beneficiaries.

ILIT Administration

Many ILITs begin their existence with few or no assets other than a life insurance policy insuring the life of the grantor. As a practical matter, the average grantor expects the trustee to initially limit its duties to (a) signing paperwork prepared by the life insurance agent working with the grantor to effectuate a purchase of life insurance on the life of the grantor, and (b) keeping up with "Crummey" notice requirements corresponding to trust contributions (which are typically used to pay policy premiums). The perfect trustee, from the average grantor's perspective, is one who will perform these tasks, no questions asked, for free or for a minimal fee. If available, the grantor will often name a spouse, child, or family friend (the "Family Trustee") to serve as trustee. If no Family Trustee is available, or if the grantor believes (often with good reason) that those available to serve as Family Trustee will fail to properly carry out even the minimal duties expected by the grantor, the grantor will prevail upon a trust company or sophisticated advisor such as an accountant or attorney (the "Professional Trustee") to serve. The Professional Trustee knows, however, that it has a fiduciary duty to perform more than the minimal duties that the grantor expects. In addition, the trustee could face a substantial fiduciary liability if the life insurance underperforms or lapses, or if estate tax is assessed as a result of trustee action or inaction. It makes little sense to accept this liability in return for the modest compensation that the average grantor is willing to agree to. As a result, most individuals and entities being considered for the role of Professional Trustee will decline the role unless they have a compelling reason – such as the threatened loss of lucrative unrelated business – to accept it.

The Accommodation Trustee

As previously noted, the average grantor expects very little from the ILIT trustee. Whether the trustee is a Family Trustee or a Professional Trustee, the average grantor often does not expect (and is unwilling to pay for) such fiduciary responsibilities as reviewing the ILIT to confirm that the trustee will have an insurable interest in the policy, keeping track of beneficiaries, sending annual accountings, and, most importantly, managing the ILIT assets (often just the insurance policy) in accordance with the applicable prudent investor rules. The trustee, for its part, generally does not want the role to begin with but is serving as an accommodation to the grantor. The "Accommodation Trustee" would like to have its fiduciary duties narrowed so that it is responsible for nothing more than what the grantor expects of it. It may be possible, by selective reduction of fiduciary duties, to attract a higher quality trustee to the ultimate benefit of the trust beneficiaries.

This article will review why the role of ILIT trustee is difficult to fill and will suggest some strategies intended to attract a qualified fiduciary to fill the position.

Helping the Accommodation Trustee Sleep at Night

The grantor can ameliorate the fiduciary dilemma of the Accommodation Trustee to some extent by taking affirmative steps to reduce trustee liability and by helping the trustee take advantage of opportunities for liability reduction offered by existing Florida law. Some partial solutions and the benefits and detriments of these partial solutions are discussed below.

Choose a Favorable Trust Situs

A few states have passed legislation removing the

continued, next page

from preceding page

fiduciary duty of an ILIT trustee with respect to any investment decisions involving the insurance.[2] While this type of legislation has not been passed in Florida, it may be possible for a grantor to create an ILIT in a jurisdiction where such legislation has passed (a "favorable trust situs"). Many banks and trust companies have affiliates in Delaware, for example, that may be willing – or at least less reluctant – to accept the role of ILIT trustee in the case of a large existing relationship.[3]

Such legislation goes a long way toward solving the Accommodation Trustee's dilemma, but the grantor must carefully consider the increased risk to the beneficiaries. Without a motivated trustee reviewing the life insurance regularly, the insurance may underperform or even lapse. Such legislation strips from the trustee role that most essential and defining of trustee responsibilities – the duty of the trustee to act as a fiduciary in the best interests of the beneficiaries. Accordingly, a trustee with no liability for investment of the trust's sole asset becomes a mere custodian, leaving the beneficiaries without recourse in the event that their inheritance is reduced or eliminated due to poor or nonexistent management of the insurance policy. However, this result may be acceptable to the grantor, since a Professional Trustee is more likely to accept appointment if there is reduced liability and the participation of a Professional Trustee instead of a Family Trustee may, on balance, be the best choice for the beneficiaries.

Drafting Considerations and Trustee Options

Draft to Reduce Liability

It is not possible in Florida to replicate the environment of a favorable trust situs by drafting a trust that releases the trustee from liability for investment decisions relating to life insurance. Florida Statutes Section 736.0105(2)(b) provides that the terms of the trust **do not** prevail over the duty of the trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. Thus, any attempt in the document to reduce the trustee liability is limited by the good faith standard – failing to act in good faith in the interests of the beneficiaries will always be a breach of trust. A grantor may, however, give the trustee some comfort by providing that trustee liability is limited to the minimum standard allowed by Florida law.

Special
"CLE" section
starting on page 45.

Exculpate the Trustee

Similarly, it is not possible to fully relieve the trustee from any liability for breaching its duty as trustee with respect to management of life insurance. Florida Statutes Section 736.1011 limits the enforceability of an exculpatory term relieving a trustee of liability for breach of trust to the extent the term offers relief for a breach committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries, or if the term was inserted as a result of an abuse by the trustee of a fiduciary or confidential relationship. Exculpation is especially likely to fail in the case of a Professional Trustee who has an existing relationship with the grantor. A grantor may, however, give the trustee some comfort by providing for exculpation to the extent allowed by Florida law.

Delegate the Duty

Florida Statutes Section 518.112(2) allows the trustee, after written notice to beneficiaries, to delegate investment management of life insurance to (a) the grantor of a revocable trust, (b) a vested or contingent trust beneficiary, (c) the spouse, ancestor, or descendant of a person described in (a) or (b) above, or (d) any person or entity nominated by a majority of beneficiaries entitled to notice under Florida Statutes Section 518.112(3)(b). This delegation may apparently be made without the usual duty of reasonable care, judgment, and caution in selecting the agent and establishing the terms of the delegation and without any continuing duty to review the agent's actions. Delegation may also be made to an investment agent without any duty to review the agent's actions if the trustee exercises reasonable care, judgment, and caution in selecting the investment agent and in establishing the scope and specific terms of the delegation. The agent, upon acceptance of appointment, is subject to the same standards as the trustee.[4]

This enhanced delegation authority is a very powerful tool to remove liability from the trustee, while imposing a fiduciary duty on the agent. In theory, exercise of this delegation authority accomplishes the release of trustee liability provided for in a favorable trust situs while ensuring that someone is responsible for proper management of the life insurance policy. As a practical matter, however, there may be no one willing to accept this delegation, since anyone willing to accept most likely would have been named trustee in the first place. In addition, exercise of this authority may accomplish little if the agent is unsophisticated, is lax in its management or lacks the assets necessary to make the beneficiaries whole for a breach of fiduciary duty. A grantor may attract a qualified trustee by assisting in the identification of an appropriate and willing delegee.

Directed Trustee

The directed trustee provisions of Florida Statutes Section 736.0703(9), as recently amended, offer a similar powerful tool. This statute allows a "directing trustee" to

assume full responsibility for a matter while the "excluded trustee" has no obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power by the directing trustee. The excluded trustee is not liable for complying with the exercise of the power by the directing trustee unless it has actual knowledge of willful misconduct by the directing trustee, and the directing trustee is liable to the beneficiaries for its actions as if the excluded trustee were not in office. The directing trustee has the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the power. This provision will allow a grantor to choose a Professional Trustee who may be trusted to send Crummey letters and carry out administrative tasks to serve with a Family Trustee who has sole responsibility for investment management of life insurance. As with the delegation of investment authority under Florida Statutes Section 518.112(2), however, the directing trustee must take its role seriously for the beneficiaries to have realistic protection. A grantor may attract a qualified trustee by assisting in the identification of an appropriate and willing cotrustee.

Beneficiary Consent and Accountings

Florida Statues Section 736.1012 relieves the trustee of liability for actions if the beneficiary consented after sufficient disclosure with no improper trustee conduct in the inducement.[5] With virtual representation, Florida Statutes Sections 736.0301 – 736.0304, or with the help of a designated representative under Florida Statutes Section 736.0306, it may be possible to obtain a release for actions relating to management of the life insurance. Absent beneficiary consent, liability can be limited through frequent trust accountings as provided for in Florida Statutes Section 736.08135 and use of a limitations notice under Florida Statutes Section 736.1008. However, a release or limitation covering prior actions and periods is unlikely to help a trustee sleep at night when every new day brings potential new issues, and these provisions alone are unlikely to attract a quality trustee to the ILIT trustee role.

Grantor Indemnity

An Accommodation Trustee may ask the grantor for a personal indemnity with respect to its service as trustee. While such an indemnity may turn out to be worthless, in many cases a timely filed contingent claim in the grantor's probate estate may discourage any claim against the trustee. Offering an indemnity to a reluctant potential trustee may convince the trustee to serve.

A Balanced Trust

Given the limitations of the various methods of reducing trustee liability, and the potentially adverse consequences for the beneficiaries of successful liability reduction, the drafting attorney may wish to advise the grantor that the trustee role is difficult and the trustee should be chosen and compensated accordingly. Potential estate tax savings generally justify payment of reasonable fees to a skilled fiduciary. Ideally an ILIT should contain a mix of assets and be administered in the best interests of the beneficiaries. While life insurance is by its nature a difficult asset to manage, a qualified and attentive trustee is more likely to accept the role of ILIT trustee if promised reasonable compensation and a diversified mix of assets.

Conclusion

The role of Accommodation Trustee often entails substantial risk for little compensation. The options described above may help the ILIT grantor find a willing and able trustee to serve; however each has its own shortcomings and risks to the trust beneficiaries. As is the case whenever a trust is created, the grantor should carefully weigh the burden on the trustee against the protections available to the beneficiaries to strike the right balance under the circumstances.

Endnotes:

1 For a general discussion of ILITs, see Patrick J. Lannon, *Planning Opportunities With Irrevocable Life Insurance Trusts,* 34 Estate Planning Volume 26 (May 2007).

2 See, e.g., 20 Pa. Cons. Stat. §7208 (2008), W. Va. Code § 44-6-2a (2008), 12 Del. C. § 3302(d) (2008).

3 A Professional Trustee may be reluctant to accept the role of ILIT trustee even where it has no liability for management of the life insurance because it could still face liability disproportionate to its compensation for any administrative error leading to a lapse of the policy or loss of favorable estate tax treatment.

4 FLA. STAT. § 518.112(6) (2008).

5 See also FLA. STAT. § 736.0111, allowing nonjudicial settlement agreements.





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Legislative Changes From the 2008 Regular Session

By Peter M. Dunbar, Esq.
Pennington, Moore, Wilkinson, Bell and Dunbar, P.A., Tallahassee, FL



P. DUNBAR

The 2008 Regular Session of the Legislature produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were a part of the Section's legislative package. Most of the changes were part of the CLE Program at the Section's Annual Legislative Update, and a brief summary of all of the relevant changes is found below.

The full text of each enrolled bill, including the legislative staff reports and Chapter Law citation, are available on the legislative web sites (www.leg.state.fl.us; www.flsenate.gov; www.myfloridahouse.com). The Section-sponsored initiatives appear first in the chronological listing and the other items of interest follow in the second group of legislation

I. Section Initiatives and Technical Assistance

HB 435 (Trust Administration) by Representative Hukill revises the Florida Trust Code and provides for a limitation on causes of action against a trustee. The **Section's trust initiatives** that permit the fiduciary's attorney's fees to be paid from trust assets and allow for directed trusts are contained in **HB 435**. **(*Chapter 2008-76, Laws of Florida*.)**

HB 464 (Transfer Fee Covenants) by Senator Aronberg is a **Section initiative** that, as a matter of public policy, prohibits the enforcement of transfer fee covenants requiring payment to the original land owner each time the property is sold. **(*Chapter 2008-35, Laws of Florida.*)**

CS/HB 601 (Condominiums) by Representative Hudson contains five **Section initiatives** that amend ss. 718.111, 718.115, 718.116, 718.117, and creates new s.720.30851. The bill also renames the Division of Florida Land Sales, Condominiums and Mobile Homes, and on the effective date of the bill it will be known as the Division of Florida Condominiums, Timeshares and Mobile Homes. The key initiatives provide for the following:

1. **Insurance:** The insurance provisions of s. 718.111 (11) are reformatted; "Pooled insurance" products must now be approved by the Office of Insurance Regulation; and the Division's *Plaza East* decision is modified to allow associations to rely on community document provisions in maintenance matters and makes unit owners responsible for their negligence that results in damages to the condominium property.
2. **Common Expense:** The legislation provides that government-mandated improvements, such as fire safety equipment and master utility meters, are deemed to be a common expense of the condominium association.
3. **Estoppel Certificates:** The legislation provides that the expense for providing an estoppel certificate under s. 718.116 (8) will be the responsibility of the unit owner, and the charge will be collected at closing or paid by the owner in the same manner as assessments are paid. A similar measure for home owners is created in the bill as new s. 720.30851.
4. **Termination:** The legislation clarifies the provisions of s. 718.117 (17) to provide that a lender's share of the termination proceeds cannot exceed the share allocated to the unit encumbered by the mortgage.
5. **Board Member Abstention:** An amendment to the bill on the final day of the Session modifies the language that passed earlier in the Session in CS/HB 995, and the change provides that when a board member abstains from a vote, the abstention will not be counted for any purpose**. (*Chapter 2008-240, Laws of Florida*.)**

"The full text of each enrolled bill, including the legislative staff reports and Chapter Law citation, are available on the legislative web sites: www.leg.state.fl.us; www.flsenate.gov; www.myfloridahouse.com."

HB 643 (Foreclosure Fraud) by Representative Ford places restrictions on foreclosure consulting practices and prohibits a foreclosure consultant from providing any services unless the parties have first entered into a written agreement. The legislation is an initiative of the Attorney General, and the **Section provided technical assistance** on the legislation. **(*Chapter 2008 - 79, Laws of Florida*.)**

SB 648 (Insurable Interests) by Senator Posey is the **Section's initiative** to clarify and define "insurable interests" under the Florida Insurance Code. **(*Chapter 2008-36, Laws of Florida.*)**

continued, next page

Legislative Changes

from preceding page

CS/CS/HB 679 (Community Associations) by Representative Gardiner proposed a series of modifications to Chapters 514 and 720. It also modified the board certification process in condominium elections contained in CS/HB 995. The **Section had more than 3 dozen technical concerns** with the bill that were resolved by amendments prior to passage, but **this bill was vetoed**. The bill would have accomplished the following:

1. **Swimming Pools:** The bill provided an exemption from regulation under Chapter 514 for homeowners association swimming pools serving no more than 32 parcels.
2. **HOA Procedures:** The legislation clarified the times when board meetings may be closed to the home owners; modifies the procedures for accessing records of the homeowners association and provides for the recovery of personnel costs incidental to record production; clarifies the process when voting is done by secret ballot; requires newly-elected board members to sign a certification that they have read the community governing documents; and prohibits compensation of directors and officers of the association with limited exceptions.
3. **HOA Financial Procedures and Disclosures:** The bill modified the policies and disclosure requirements for homeowners association reserve accounts; made minor changes to the assessment guarantee requirements of the developer; and required new disclosures for assessments by a community development district.
4. **Fines:** The bill permitted a fine of more than $1,000 against a parcel owner to become a lien against a parcel.
5. **Dispute Resolution:** The bill was amended to include a modified version of **HB 1185** that provides the option to either mediate or arbitrate disputes in homeowners associations, but the alternative dispute resolution provisions contain an effective date of July 1, 2009.
6. **Insurance Deductible Pools:** The legislation authorized 3 or more condominium associations to create a "self-insurance pool" for policy deductibles. It is a new and unregulated insurance product concept.
7. **Board Member Certification:** An amendment to the bill on the final day of the Session modified the language that passed earlier in CS/HB 995 and provides that a board member must certify that he or she has read the documents and the law after the election and not before**. (*Vetoed by the Governor.*)**

CS/HB 697 (Condominiums - Energy Savings Devices) by Representative Aubuchon is the omnibus energy package and Section 3 of the bill amends s. 163.04 to authorize the use of solar collectors, clotheslines and other energy savings devices within the boundary of a condominium unit (the identical provision passed as Section 3 in HB 7135). Section 25 of the bill creates new s. 718.113 (6) that permits the board of a condominium association to install solar collectors, clotheslines and other energy savings devices on the common elements without the prior approval of unit owners. The provisions were modified prior to passage with the **Section's technical assistance**. **(*Chapter 2008 - 191, Laws of Florida*.)**

HB 739 (Guardian Advocates for Developmentally Disabled) by Representative Ambler provides new procedures for the appointment of a guardian advocate for developmentally disabled individuals. The **Section provided substantial assistance** with the procedures and content of the bill. **(*Chapter 2008-124, Laws of Florida.*)**

HB 743 (Foreclosure Fraud) by Representative Lopez-Cantera will require law enforcement officials to notify the property appraiser in cases of mortgage fraud and require the property appraiser to re-examine the valuation to determine whether or not the property value had been inflated. The **Section opposed an initial provision in the bill banning use of quit claim deeds**, and the bill was amended prior to final passage to delete the objectionable provision. **(*Chapter 2008-80, Laws of Florida.*)**

HB 937 (Title Insurance Study Commission) by Representative Ambler creates a study commission task force to consider comprehensive revisions to the regulation of title insurance. This is an **initiative approved by the Section** at the request of the Section's Title Insurance Committee and the Section will have designated members of the Task Force. **(*Chapter 2008-198, Laws of Florida*.)**

CS/HB 995 (Condominiums) by Representative Robaina makes a series of changes to the Condominium Act, and the bill is the work product of the House Select Committee that was chaired by Representative Robaina. The legislation contained numerous provisions of **concern to the Section** that were resolved through the amendment process. **CS/HB 995** was signed by the Governor on May 2, 2008. A portion of CS/HB 995 relating to abstain board member votes was subsequently modified with the passage of **CS/HB 601**. A summary of the legislation includes the following:

1. **Association Administration:** The bill eliminates alternative voting procedures for board elections for all communities containing more than 10 units; eliminates voting rights of units owned by the association; permits unit owners to add agenda items to meetings of the board by petition; imposes new disclosure language for limited proxies used to waive reserves; requires membership meetings to be held within 45 miles of the community; requires special disclosures for any contract with an entity where a member the board has a financial interest; and grants emergency powers to boards of directors in times of an emergency declared by the Governor.
2. **Board of Directors:** The bill articulates the fiduciary standards imposed on officers and directors; limits board members to terms of one year unless the bylaws

permit staggered terms and the staggered terms have been approved by a majority of voting interests of the association; requires candidates for the board to certify that they have read the community documents and the law; permits the division to remove board members for violations of the law; and limits eligibility to members who have not been removed by the division or who are not delinquent in their assessments.

3. **Community Management:** The bill amends Chapter 468 to extend regulation to firms that are engaged in community management; requires all communities in excess of 10 units to use a licensed management company if they do not self-manage; and prohibits a management company from doing business with any affiliated company without prior disclosure to the board.
4. **Condominium Records:** The legislation limits access to social security, driver's license, and credit card numbers. It imposes civil penalties on officers and directors who intentionally destroy records; requires records to be maintained within 45 miles of the community or within the county where the condominium is located; requires records to be kept for at least 7 years; and authorizes the Division to subpoena records that have not been produced after two written requests.
5. **Condominium Financial Matters:** The bill provides that the statutory financial reporting can not be waived for more than 3 consecutive years; requires additional cost-breakdowns in special assessment notices; requires additional disclosures when waiving or reducing the funding of reserves; and requires 30-day written notice before a lien can be filed against a delinquent unit. (This provision also appears in CS/HB 1105.)
6. **Receivership:** The bill imposes new notice requirements on a unit owner seeking a receivership for the condominium association, and legislation requires an additional notice to be provided by the court if a receiver is appointed. (This provision also appears in CS/HB 1105.)
7. **Hurricane Protection and Religious Displays:** The legislation amends s. 718.113 and allows additional options for communities to provide hurricane protection that meet or exceed applicable building codes. It also permits the display of religious objects of limited size on the front door area of a condominium unit.
8. **Building Inspection:** The legislation creates a new provision requiring a professional engineer to inspect condominiums of greater than three stories at least once every five years, with an optional waiver of the report by a vote of the membership. The bill also requires a new report on the condition of the building(s) to be provided by the developer at the time of transition.
9. **SLAPP Suits:** The bill prohibits SLAPP suits in the same manner that Chapter 720 imposes such prohibition on mandatory homeowners associations.
10. **Division Jurisdiction:** The legislation expands the power of the Division by granting it the authority to remove board members, order restitution by the developer, and certify education and training programs for board members, officers and unit owners. The bill also limits the Division's post-transition jurisdiction to financial issues, election procedures and records access, and it extends the authority of the Ombudsman to assist in resolving disputes that are not within the jurisdiction of the Division. **(*Chapter 2008 - 28, Laws of Florida*.)**

HB 1105 (Community Associations - Receivership) by Representative Rivera provides new notice requirements and procedures when a receivership proceeding is under consideration for a condominium, cooperative, or mandatory homeowners association. The bill also requires a 30-day written notice to a delinquent unit owner in a condominium or cooperative prior to filing of a lien by the association, and **the Section provided technical assistance** to correct problems with the lien provision. **(*Chapter 2008 - 202, Laws of Florida*.)**

continued, next page



Legislative Changes

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SB 1378 (Display of the United States Flag) by Senator Fasano allows any homeowner to erect a flag pole not to exceed 20 feet in height on the owner's private property to display the United States flag and flags of the branches of the armed services. The legislation preempts provisions in a community's governing documents or rules and regulations that restrict the right authorized by the bills. The **Section's technical concerns** with the bill were resolved by amendment prior to final passage. **(*Chapter 2008 - 45, Laws of Florida*.)**

HB 1489 (Landlord-Tenant) by Representative Patterson authorizes a termination fee for breach of the lease agreement by the tenant. The **Section had technical concerns** with the bill, but amendments adopted at the Section's request resolved the concerns. **HB 1489** is pending action by the Governor. **(*Chapter 2008 - 131, Laws of Florida*.)**

SB 1986 (Community Associations - Delinquent Assessments) by Senator Ring is intended to make technical corrections to s. 720.3085 relating to the collection procedures for delinquent homeowners association assessments and the priority of the lien of a first mortgagee. The **Section provided technical assistance** on the language in the bill. **(*Chapter 2008 - 175, Laws of Florida*.)**

II. Initiatives of Interest

CS/CS/SB 542 (Land Use – "Working Waterfronts") by Senator Saunders re-authorizes Florida Forever, the state's land acquisition initiative. Sections 21-24 of the bill create an expanded program in conjunction with local government to preserve working waterfronts for commercial fishing, marine industries, improvements for water access, aquaculture, and seafood marketing. **(*Chapter 2008 - 229, Laws of Florida*.)**

HB 727 (Fire Safety) by Representative Gibbons requires the owner of any multi-unit residential structure that is of truss-type construction to install special signage approved by the Fire Marshal to advise fire and emergency operations personnel concerning the truss-type construction. **(*Chapter 2008 - 192, Laws of Florida*.)**

CS/HB 773 (Judicial Sales) by Representative Dorworth authorizes judicial sales of real and personal property to be conducted electronically, and directs the clerk of court to provide appropriate public access to the electronic sale process. **(*Chapter 2008-194, Laws of Florida.*)**

CS/HB 853 (Eminent Domain - Cemetery Lands) by Representative Troutman imposes additional restrictions on the taking of cemetery lands by eminent domain. **(*Chapter 2008-83, Laws of Florida.*)**

CS/HB 909 (Property Taxes) by Representative Nehr modifies the criteria for determining the valuation of the highest and best use of real property; revises procedures for value adjustment boards; provides training for magistrates hearing tax appeals; rejects the property appraiser's presumption of validity for property valuations; and prohibits private counsel representing a value adjustment board from also representing the property appraiser, tax collector, local government or a property owner. **(*Chapter 2008-197, Laws of Florida.*)**

HB 1037 (Escrow Agents) by Representative Poppell prohibits unauthorized persons or companies from using the term "escrow" in the name or title and authorizes aggrieved persons to bring court action the recovery of damages and other relief. The bill exempts attorneys, title insurance agents and companies, realtors, and financial institutions from the new provisions. **(*Chapter 2008 - 200, Laws of Florida*.)**

CS/SB 1706 (Developments of Regional Impact) by Senator Margolis modifies the criteria for DRI substantial deviations by granting a 3-year extension for development orders and related governmental approvals adopted between July 1, 2006 and July 1, 2007 because of current market conditions. The extension applies even if substantial construction has not been commenced. **(*Vetoed by the Governor*.)**

CS/SB 1790 (Court Fee Increases) by Senator Crist contains a lengthy list of fee increases and new fees to help defray the revenue shortfall in state judicial funding. Among the many fee adjustments are increases in charges by the clerk of the circuit court for a variety of services, including judicial sales and proceedings to enforce foreign judgments; filing fee increases in probate matters; annual filings in probate and guardianship proceedings; competency proceedings; court-ordered mediation proceedings; and eminent domain actions. There are also increases in fines for non-criminal civil offenses, and the bill creates new fees for filing of cross-claims, counterclaims, third-party complaints, cross-appeals, and motions to intervene in appellate proceedings. **(*Chapter 2008 - 111, Laws of Florida*.)**

CS/CS/SB 2012 (UCC Title Insurance) by Senator Deutch is the Session's comprehensive insurance bill. Section 23 of the bill provides for UCC title insurance products and establishes criteria for filing with the Office of Insurance Regulation and criteria for OIR rate approval of the title insurance product. **(*Chapter 2008 - 220, Laws of Florida*.)**

HB 7019 (Real Property Transfer Returns) by Government Efficiency Council repeals the requirement for execution and filing of returns in s. 201.022 relating to transfers of interests in real property as a condition to recording deeds that transfer such interests. **(*Chapter 2008-24, Laws of Florida.*)**

2008 Legislative Awards

By Peter M. Dunbar, Esq.
Pennington, Moore, Wilkinson, Bell and Dunbar, P.A., Tallahassee, FL

The annual Legislator of the Year Distinguished Service Awards of the Real Property Probate and Trust Law Section for outstanding legislative service during the 2008 Regular Legislative Session have been presented to **Senator Dennis L. Jones, Senator Dave Aronberg, Representative Dorothy L. Hukill** and **Representative Kevin C. Ambler**. These legislators were recognized for their important contributions to the Section's successful 2008 Session initiatives, and Section members extend their sincere appreciation for the work and accomplishments of these four Members of the Legislature.

The Section also presented its Rising Star Award to freshmen **Representative Charles McBurney** for his contributions to the Section during the 2008 Session and for distinguishing himself as an effective new member of the Florida Legislature.


SEN. JONES

Senator Dennis L. Jones was the Senate sponsor of the Section's four revisions to the Florida Condominium Act that: (i) corrected the casualty insurance provisions caused by the Division's *Plaza East* decision; (ii) clarified the estoppel letter procedures for unit owners; (iii) made common expense provisions for governmentally-mandated additions to the common elements; and (iv) clarified the distribution of proceeds at the time of termination of a condominium. Senator Jones was also the Senate sponsor of the Section's initiative to modify the Trust Code. He is the Chair of the Committee on Regulated Industries and serves on the powerful Committee on Rules. Senator Jones also serves as a member of the Committees on General Government Appropriations, Environmental Preservation and Conservation, Health Regulation, Ethics and Elections, as well as the Economic Opportunities Policy and Calendar Committee. Senator Jones is a chiropractor from St. Petersburg and he is Vice President of Economic Development and Innovative Programs at St. Petersburg College.


SEN. ARONBERG

Senator Dave Aronberg was the prime sponsor of the Section's legislation to ban transfer fee covenants in Florida. He has also successively sponsored Section initiatives in each of the last 4 years and has been a consistent supporter of the Section's legislative efforts throughout his tenure in the legislature. Senator Aronberg is the Minority (Democratic) Whip and serves as the Alternating Chair of the Joint Legislative Committee on Everglades Oversight and Vice Chair of the Committee on Criminal Justice and the Committee on Communications and Public Utilities. He is also a member of the Committees on Regulated Industries, Health Regulation and General Government Appropriations. Senator Aronberg is an attorney practicing in Palm Beach County and has served in the Florida Senate since being elected in 2002.


REP. HUKILL

Representative Dorothy L. Hukill was the prime sponsor of the Section's initiative on insurable interests and the prime sponsor of the House companion of the Section's Trust Code initiative. She has also been a sponsor of other Section initiatives in prior years and has been a consistent supporter of the Section's legislative efforts. Representative Hukill serves as the Acting Chair of the Committee on Economic Development and Vice Chair of the Economic Expansion and Infrastructure Council. She also serves as a member of the Committees on Constitution & Civil Law and Post Secondary Education and as a member of the House Safety & Security Council and the powerful House Policy & Budget Council. Representative Hukill is a practicing probate attorney from Volusia County and she is currently completing her second term in the House.


REP. AMBLER

Representative Kevin C. Ambler was the primary sponsor of the Section's initiative to create the Title Insurance Study Commission, which includes two Section appointees. Representative Ambler was also the key figure in guiding the passage of the final version of this year's Guardian Advocates legislation. Representative Ambler is the Co-Chair of the Joint Legislative Sunset Committee and serves as a member of the powerful House Policy & Budget Council and on the Committees on Courts, Education Innovation & Career Preparation and Utilities & Telecommunications. Representative Ambler is an attorney practicing in Tampa and he is currently completing his third term in the House.


REP. MCBURNEY

Representative Charles McBurney was elected to the House of Representatives in a special election in 2007 and his district includes portions of Duval County. During the 2008 Regular Session, he was the House's prime sponsor of the Section's legislation to ban transfer fee covenants. Representative McBurney is the Vice Chair of the Committee on Education Innovation & Career Preparation and serves as a member of the Committees on Business Regulation and State Affairs. He is a practicing attorney in Jacksonville and he is a former member of the Jacksonville City Council.

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Community Development Districts: *Issues in Handing Over Control to Residents*

By Nicholas J. Weilhammer, Esq. and Twyla Sketchley, Esq.,
The Sketchley Law Firm, P.A., Tallahassee, FL

Since the Uniform Community Development District Act of 1980 was passed, Florida has seen a dramatic recent increase in the number of Community Development Districts (CDDs) from 14 in the 1980s to just over 100 in the 1990s to 574 today.[1]

Having weathered a limited constitutional challenge and early criticism, including comparisons of a CDD to a "business masquerading as a public body in order to take advantage of lower interest rates on public bonds,"[2] these independent special districts are now the most popular method for developers in Florida[3] to finance and operate infrastructure, in addition to their other general and special powers.[4]

Not surprisingly, as the number of CDDs have increased, so has public criticism, including allegations of Sunshine Law violations,[5] mismanagement and inexperience by governing boards.[6] As the number of CDDs grows and these special districts mature, the handling of the transfer of control from landowner-developer to residents requires special attention by the practitioner.

"As the number of CDDs grows and these special districts mature, the handling of the transfer of control from landowner-developer to residents requires special attention by the practitioner."

The Transition Period to Residents

Phase I: The Initial Board

The board of supervisors of the CDD exercises the powers granted to the CDD under Chapter 190, Florida Statues.[7]

Regardless of the size of a CDD, the landowner-developer (who is most frequently the petitioner) consents to the creation of the CDD and designates the initial board of supervisors of the CDD.[8] Despite the natural concerns with allowing a developer's employees or family members to dominate a board that controls a unit of government, board members are granted a limited exemption from conflicts of interest under Chapter 112, Florida Statutes. As a result, a board member can also be a stockholder, officer, or employee of a landowner or of an entity affiliated with a landowner.[9]

However, while this exemption allows the board member to have an affiliation with the landowner, it does not provide any other exemption for the board member's conduct or shield him/her from liability, and the District, a unit of government, must serve a public purpose,[10] and is subject to due process, disclosure, accountability, ethics, and government-in-the-sunshine requirements.[11] This arrangement precludes the business of the district from being conducted as a business.

Phase II: Landowner elections

The landowner election for all supervisors must be held within 90 days after the CDD is established.[12]

For the first landowner election, the two candidates receiving the highest number of votes are elected for a period of 4 years, and the three candidates receiving the next largest number of votes are elected for a period of 2 years.[13] For the second and subsequent elections, the two candidates receiving the highest number of votes serve for a 4-year period, and the remaining candidate serves for a 2-year period.[14] Each landowner casts one vote per acre for each person to be elected.[15]

This voting procedure has survived a constitutional challenge by a State Attorney, who argued it violated the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. Finding an exception to the "one person, one vote" principle, the Florida Supreme Court upheld the procedure since the CDD does not exercise general governmental functions, and has a disproportionate impact on landowners who theoretically bear the initial burden of the CDD's costs.[16]

At the last landowner election, the remaining board member is elected by the landowner for a four-year term and is not required to be a qualified elector.[17] The net effect is that the landowners have majority control of the CDD for eight years, and get to elect at least one supervisor for at least 10 years.

Throughout the course of this period of control by the landowner-developer, it should be expected that a supervisor may resign. While the landowner-developer may still have appointed the supervisors, who ultimately vote to fill the vacancy, publication of such an agenda item is advisable.[18]

Phase III: Transition To Residents

Residents do not get to vote for supervisors until after six years, if the CDD has enough qualified electors.[19] At that time for most CDDs, qualified electors elect two board members for four-year terms.[20]

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CDDs: Handing Over control

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The transfer of control of the CDD to residents through general elections is a key component of the constitutionality of CDDs, though residents and supervisors have lamented that while the developer-landowner remains in control for these eight years "all the financial decisions are made then that will affect residents the next 30 years"[21] through the issuance of long-term bonds.

Transition Issues for the Landowner-Developer

While it is unlikely a landowner-developer has not accomplished financing infrastructure within the eight years it remains in control, for larger CDDs there may be additional projects imposed on the developer that remain for the development of lands contained with the CDD's boundaries. Faced with losing "control" over the CDD, one method of approach by the developer may be to create another CDD by removing unimproved lands, and "re-start" its control over the CDD board.

This approach leads to several problems. For starters, there is no mechanism for "subdivision" under Chapter 190, Florida Statutes; therefore, the developer would have to simultaneously "contract" the lands in one petition,[22] then "create" the CDD in another petition.[23] In addition to duplicative costs, to create another CDD the petitioner would have to explain its actions under the state comprehensive plan,[24] specifically addressing why the removal of certain lands from the impending transfer of control of residents is compatible with maximizing citizen involvement,[25] and how the plan meets the explicit policy to encourage direct governance by residents through citizen participation "at all levels of policy development, planning, and operations."[26]

The landowner-developer might consider asking its landowner-elected board to impose contractual obligations that limit the ability of future, residentially-run boards to operate. These plans, however, could fail absent adequate consideration, and invite government oversight under the Uniform Special District Accountability Act.[27]

As mentioned earlier, the CDD throughout its life has to fulfill a public purpose (not for the benefit of the developer), and remains a unit of government. Therefore, the developer would be well-advised to not challenge or impede the transition to residents.

Transition Issues for Residents

Judging by recent news articles, residents may approach issues regarding the CDD feeling uninformed and disappointed regarding the previous disclosures of information relating to the public financing and maintenance of improvements of CDDs. Residents migrating from other parts of the country may also be naturally confused regarding this type of special district, which does not exist in some parts of the country.[28]

In a recent limited survey conducted by a committee for the Florida Senate, all homeowners surveyed found disclosures to prospective residents of CDDs to be inadequate.[29]

Without question, the disclosures are limited. First, Section 190.009 vaguely requires the CDD to "take affirmative steps" to provide existing and prospective residents with the full disclosure of information, and furnish to the developer copies of the disclosure, who is in turn tasked with the responsibility of providing the information to the initial purchaser of property only.[30] Secondly, the disclosure under Section 190.048 in the contract for the initial sale of a unit contains uniform language, and does not provide the purchaser with any specific information regarding the debt obligations of the district or the lack of control by residents.

"...the CDD throughout its life has to fulfill a public purpose (not for the benefit of the developer), and remains a unit of government. Therefore, the developer would be well-advised to not challenge or impede the transition to residents."

As a result of residents' disenfranchisement before or during the transition period, some CDDs have been identified as a source of deteriorating community relations,[31] and heated election cycles. Nonetheless, residents are clearly interested in gaining control of the governance of the CDD and participating in the election process,[32] which currently has an extremely low qualifying fee. Recent interest by residents in the governance of CDDs has also led to a criticism that the candidates may lack understanding of board governance procedures[33] and lack experience that has led CDDs to operate with a deficit.[34]

Transition Issues for Staff and Legal Counsel

Staff of the CDD plays an important role, especially the district manager.[35] As control of the CDD migrates to residents, current staff of the CDD, which is employed by the landowner-elected board, may find themselves under scrutiny. Given the limited availability of expertise needed to manage a CDD, it would not be surprising for staff to have an affiliation or other contractual relationships with the developer.

While the district manager or other staff of the district can be a stockholder, officer, or employee of a landowner or of an entity affiliated with a landowner,[36] this exemption is limited in the same manner that it is for supervisors,[37] and does not allow the district staff to act as agents for the developer. Ties that appear to the residents to present

impermissible conflicts of interests are likely to be questioned by the new residential board. Given the disruption to governmental operations caused by overhauling staff and potential liability and accountability, the landowner-developer and staff would be well advised to maintain an arms-length, independent relationship.

The limited statutory exemption allowing legal staff to have an affiliation with the developer is of course meaningless as attorneys are beholden to the Rules Regulating the Florida Bar. Legal counsel for the CDD will almost certainly have to be independent from the developer throughout the life of the CDD given the potential for lawsuits between the developer and the district,[38] as well as the need for arms-length negotiation, drafting, and implementation of various contractual agreements that may be executed between the two parties, such as cost share agreements between the CDD and the developer and other funding agreements.[39] If district counsel has a prior relationship with the developer, the lawyer's duty of loyalty prohibits him/her from undertaking representation directly adverse to the CDD's interests in many cases.[40]

A lawyer's duty of communication also prevents district counsel from presenting resolutions requested by the developer-client without full disclosure and explanation to the CDD board to permit it to make informed decisions. [41] The duty of communication would also presumably require district counsel to disclose the party behind any requested action of the board and identify all alternative courses of action for the CDD.

These transition issues that will be encountered by residents, staff, and the developer may lead to friction in the CDD and its administration as it navigates its way through the transition period, handing over control to the residents. However, that friction can be reduced by all parties if careful effort is made to ensure the CDD is operated like the unit of government it is, relationships between the developer and the CDD are arms-length, the board and its support staff adhere to ethical requirements, and residents are provided with accurate information regarding the CDD.

Endnotes:

1 *See* State of Florida Official List of Special Districts, <http://www.floridaspecialdistricts.org/OfficialList/index.cfm>

2 Douglas S. Roberts, Note: Constitutional Law -- No Land, No Vote: Validating The One-Acre-One-Vote Provision For Elections In Florida's Community Development Districts -- State v. Frontier Acres Community Development District -- 472 So. 2d 455 (Fla. 1985), 14 Fla. St. U.L. Rev. 183, 206 (1986).

3 Catherine Shoichet, "Board Pulls Apart Amid Squabbling," St. Petersburg Times (Oct. 12, 2007 at 3).

4 See Fla. Stat. §§ 190.011, .012.

5 Nicholas Azzara, "Trailer Park Divided Over Sunshine Law," Bradenton Herald (Apr. 7, 2008 at 1).

6 Catherine Shoichet, "Board Pulls Apart Amid Squabbling," St. Petersburg Times (Oct. 12, 2007 at 3).

7 *See* Fla. Stat. § 190.006(1).

8 *See* Fla. Stat. §§ 190.005(1)(a)(3), .005(2)(a).

9 *See* Fla. Stat. § 190.007(1).

10 *See* Fla. Stat. § 189.402(6).

11 *See* Fla. Stat. § 190.002(1)(b).

12 *See* Fla. Stat. § 190.006(2)(a).

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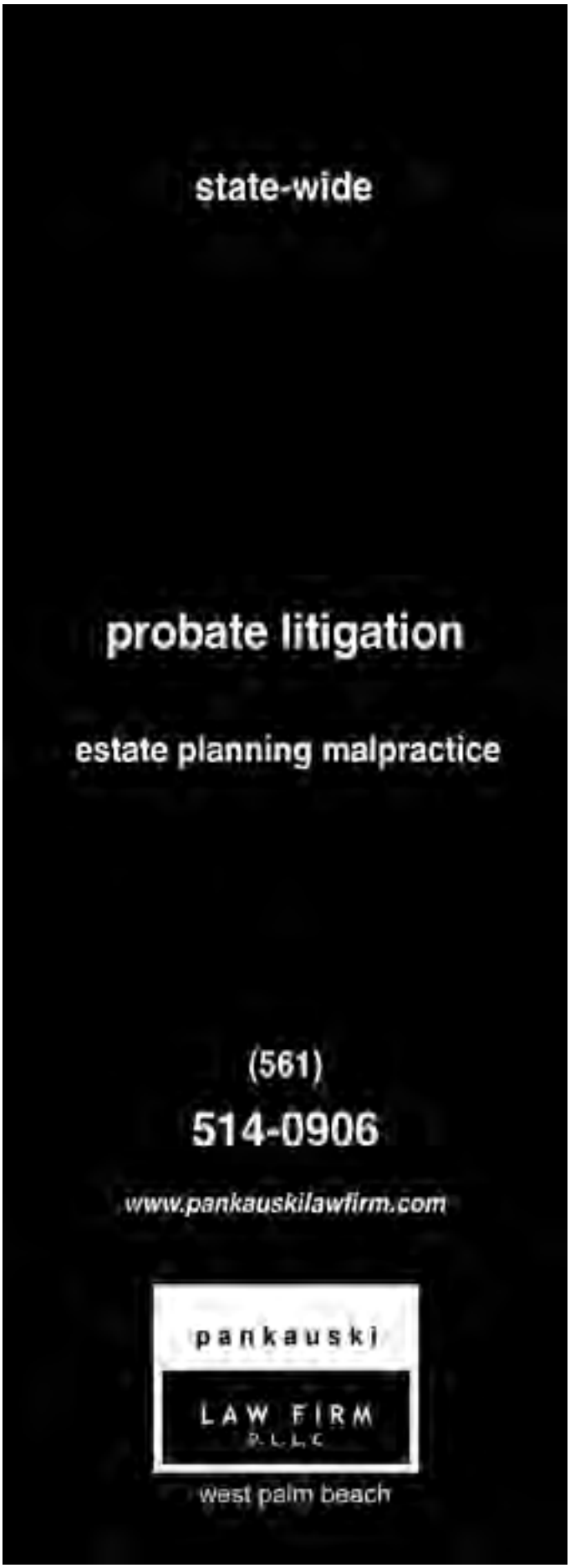

CDDs: Handing Over control

from preceding page

13 *See* Fla. Stat. § 190.006(2)(b).

14 *See id.*

15 *See id*.

16 *State v. Frontier Acres Community Dev. Dist.,* 472 So. 2d 455, 457 (Fla. 1985).

17 *See* Fla. Stat. § 190.006(3)(a)(2)(b).

18 *See* Government-in-the-Sunshine Manual (Feb. 25, 2008 ed.).

19 *See* Fla. Stat. § 190.006(3)(a)(2)(b).

20 *See* id.

21 Michael Van Sickler et al., "Living in a CDD? Plan to Pay," St. Petersburg Times (Jan. 6, 2004 at Pasco Times 1).

22 See Fla. Stat. § 190.046.

23 See Fla. Stat. § 190.005.

24 See Fla. Stat. §§ 190.006(1)(e), (2)(c).

25 Fla. Stat. § 187.201(25) states: "Systematic planning capabilities shall be integrated into all levels of government in Florida with particular emphasis on improving intergovernmental coordination and maximizing citizen involvement." (emphasis added).

26 Fla. Stat. § 187.201(25)(b)(6).

27 See Fla. Stat. § 189.428; Fla. Ag. Gen. Op. 2005-22.

28 Michael Van Sickler et al., "Living in a CDD? Plan to Pay," St. Petersburg Times (Jan. 6, 2004 at Pasco Times 1).

29 Committee on Comprehensive Planning, Int. Proj. Rep. 2004-121, The Florida Senate (Nov. 2003) at 3.

30 In order to ensure the resident is fully informed, it would be wise for the resident or his/her counsel to retrieve all disclosure of public finance from the public records, or obtain a copy from the Department of Community Affairs, in addition to all improvement plans of the CDD.

31 Catherine Shoichet, "Board Pulls Apart Amid Squabbling," St. Petersburg Times (Oct. 12, 2007 at 3); Laura Kinsler, "District, Residents At Odds Over Contract," Tampa Tribune (Jul. 25, 2007) at 4 (noting the "the transition from developer to homeowner control often is anything but smooth," with a public hearing reverting to a shouting match with board supervisors and residents lobbing insults and accusations at one another.); Dong-Phuong Nguyen, "A 'Charlie Brown' CDD Meeting," St. Petersburg Times (May 16, 2008) at 6.

32 Christian Wade, "CDD Hopefuls Crowd Ballot," Tampa Tribune (Jul. 20, 2008 Pasco Sec. pg. 1) (In Pasco County, as more CDDs come under the control of residents, it is anticipated the roster of candidates could outnumber the number of candidates for the county commission, school board and other public offices.)

33 Catherine Shoichet, "Board Pulls Apart Amid Squabbling," St. Petersburg Times (Oct. 12, 2007 at 3).

34 Bill Coats, "Sleepy CDD Races Are Starting to Wake Up," St. Petersburg Times (Jul. 25, 2008 at 1).

35 See Fla. Stat. § 190.007 (the district manager, inter alia, supervises the works of the district and maintains and operates the equipment owned by the district, and for performing such other duties as may be prescribed by the board) ; 190.008(2) (the district manager prepares the budget)

36 See Fla. Stat. § 190.007(1).

37 See notes 10, 11, supra.

38 Laura Kinsler, "Lennar Blamed For Money Woes," Tampa Tribune (Jul. 16, 2008 at 3).

39 *See* R. Regulating Fla. Bar 4-1.7 (**"**a lawyer shall not represent a client if: (1) the representation of 1 client will be directly adverse to another client; or (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."); Comment, R. Regulating the Fla. Bar 4-1.9 ("When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited.")

40 *See* Comment, R. Regulating Fla. Bar 4-1.7.

41 *See* R. Regulating the Fla. Bar 4-1.4.

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CONTINUING EDUCATION CREDITS: To be assigned.

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A block of rooms has been reserved at the Caribe Royale at the rate of **$149.00 a night, (queen double).** To make reservations, please **call the hotel directly at (800) 823-8300 and be sure to tell them you are registering for The Probate Team 2008!** Reservations must be made by September 29, 2008, to assure the group rate. Availability is on a first-come, first-served basis.

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(Luncheon and reception included with registration fee.)
If space is available, onsite registration will be by check only and a $25.00 late registration fee will apply.

Refunds will be given for cancellation requests postmarked by October 24, 2008, returning ORIGINAL confirmation. A $25 cancellation fee will be retained. no telephone, email or fax cancellations.

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What Every Attorney Should Know About Life Settlements

By Jamie Mendelsohn and Jon Mendelsohn, Ashar Group, LLC*

For individuals 65 and older, a life insurance policy may represent an untapped asset of which they are likely unaware. Until recently, the owner of an unneeded or unwanted policy had three options: "sell" the policy back to the company that issued it for its cash surrender value (if any); exchange it as part of a Section 1035 exchange; or allow it to lapse. Now there is a fourth and potentially better option in the secondary market, also known as a life settlement. Per conversations with wealth managers and fiduciaries, advisors who do not inform a client of this option may not only be harming the client but may also be negligent in their professional responsibility to be aware of what the market offers.

"Attorneys are in an ideal position to advise their clients about life settlements, but they must first understand the life settlement proposition."

Attorneys are in an ideal position to advise their clients about life settlements, but they must first understand the life settlement proposition. Here is an outline of the process, followed by guidelines to help determine who is a good candidate for a life settlement and tips for getting the best value for the policy from a well-qualified life settlement purchase.

The Life Settlement Process

- Identify outlet to the secondary market. The advisor should work through a qualified company to obtain bids on the policy.
- The client provides basic personal and financial information, along with authorization to release his or her medical records with a HIPAA-compliant form and insurance release.
- The advisor obtains life expectancy (LE) quotes for the insured from independent companies. The client does not have to undergo a medical exam.
- The life settlement broker negotiates the highest possible (nonbinding) settlement offer on behalf of the client. (Some states require brokers to be licensed.)
- The attorney and professional advisors evaluate the economic and tax consequences of the offer.
- Disclosures to the client may include: The number of bidders for a policy may be limited, and proceeds from sales of similar policies may vary and may be subject to claims of creditors. Receipt of proceeds may impact eligibility for government benefits and entitlements.
- If the offer is accepted, contracts and closing documents are completed.
- Ownership transfers to the financial institution.
- Funds are released from escrow to the seller.

Qualifying Criteria for Clients

A life insurance policy can become unneeded or unwanted for many reasons. Prior to sale, the insured should consider the continued need for coverage, impact to estate plans, availability of insurance, cost of comparable coverage, and tax implications. Some of the possible reasons for relinquishment of an existing policy are:

- Estate size has changed.
- Original need for the policy no longer exists, or more cost-efficient coverage is available.
- Key executives retire.
- Businesses are sold or closed.
- Policy premiums have become too expensive.

Whatever the reason, the Attorney should assist the client in evaluating a life insurance policy that meets the following criteria:

- Insureds 60 and older fit the market parameters, although typical insureds are in their mid-70's, unless there are major health impairments.
- Policy face amounts between $250,000 ($100,000 in some cases) and $100 million meet market criteria.
- The medical underwriting should identify the insured's life expectancy to be between 25 months and 20 years for there to be the probability of the case having value in the life settlement market.
- The insurance policy must be beyond the two-year contestability period to be considered for a life settlement.

Case Scenario

The insured had a $5,000,000 life insurance policy. She purchased the policy for estate planning purposes, but after an insurance audit identified that she could have a similar policy with much less premium outlay, her advisor suggested she have the current policy evaluated. Before surrendering the policy for $206,069, she identified the present value for the policy was $1,016,000.

Client:	80
Policy Face:	$5,000,000 UL
CSV:	$206,069
Life Settlement:	$1,016,000
Wealth Created:	$809,931

Jamie Mendelsohn, *is Regional Vice President of Ashar Group, LLC, Orlando, FL. She can be reached at 407-772-1818 or jamie.mendelsohn@ashargroupllc.com.* ***Jon Mendelsohn,*** *President of Ashar Group, LLC, Orlando, Fl. He can be reached at 407-772-1818 or jon.mendelsohn@ashargroupllc.com*

** Contributions from Susan J. Bruno, CPA/PFS, CFP, Beacon Wealth Consulting LLC of Rowayton, Conn.*

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Contact: Juan C. Antúnez / 305-379-4008 / jantunez@smpalaw.com

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Spotlight on Pro Bono Committee

Florida Attorneys Saving Homes Pro Bono Foreclosure Prevention Project

By Jane L. Cornett, Esq., Cornett, Googe & Associates, P.A., Stuart, FL

The pro bono committee chaired by Andrew O'Malley with Adele I. Stone as vice chair, has been exceptionally busy in the last few months. The committee members have been actively involved on a day-to-day basis with establishment of the Florida Attorneys Saving Homes Project, designed as a pro bono foreclosure prevention program. Andrew O'Malley and Adele I. Stone, together with Peggy Rolando, the director of the Circuit Representatives of the Section, have served as the point people for gathering information and recruiting Project volunteers.

The committee started working on this program several months ago in conjunction with The Florida Bar, Florida Bar Foundation and Florida Legal Services. The pro bono committee has provided the liaison between and among all the involved entities.

The Project is designed to match an indigent homeowner with a Florida attorney to help prevent foreclosure. The program is open only to folks who are residing in their primary residence and who meet the financial guidelines established by The Florida Bar for pro bono credit. A large group of Florida lenders has agreed to work with the homeowners in restructuring the loans.

The Florida Bar has set up a statewide hotline for people who are in arrears but not in foreclosure. Information is gathered and then referred to Dionne Meyers at Florida Legal Services, which has received funding to staff this program from the Florida Bar Foundation. Dionne does the screening of clients and then sends the information on to a member of the Real Property Probate and Trust Law Section who works as a captain within his or her circuit. The circuit captains are all members of the circuit representative committee.

In the meantime the pro bono committee is working to recruit volunteer attorneys on a daily basis, Andrew and Adele then send on to the captains, contact information about Project volunteers. Adele also appeared at the circuit representatives meeting on July 24th, 2008 to help "stir up the troops."

If you or anyone you know is interested in becoming a Project volunteer, please see the informational article in this issue of ActionLine or email Andrew O'Malley at aomalley@cowmpa.com or Adele Stone at astone@atkinson-diner.com. Please let them know how to reach you and the judicial circuit in which you are located.





Life Settlements can provide policyowners with a cash settlement many times their policy's cash surrender value. Consider having your client's life insurance policy appraised before surrendering it, letting it lapse or completing a 1035 exchange. Many fiduciaries feel it is their responsibility to explore all available alternatives for their clients.

We provide advisors with a non-binding valuation of their clients' life insurance policies in the secondary market, going above and beyond, to provide the highest settlement possible.

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The Virtual Paralegal Advantage: Leverage Technology and Paralegal Support for Maximum Profitability

By Karen E. Howe, CP, APC; www.paralegalsvs.com; Tallahassee, FL

Most attorneys are aware of the benefits of increased technology to the practice of law and the value that an experienced competent paralegal can add to a firm's bottom line. Many attorneys are not aware, however, that the combination of these two resources in the form of a Virtual Paralegal can boost morale, increase productivity and add profitability never before realized in the traditional employment relationship between attorney and paralegal.

A virtual paralegal whose experience and skills complement your practice needs can effectively extend the reach and quality of your practice without the commitment of hiring additional staff.

Virtual paralegals (VPs) are self-employed paralegal professionals who work offsite and online creating work product to your specifications and tailored to your practice. VPs are available to take on short-term or long-term projects such as drafting estate planning documents or assisting with litigation case management on a freelance or contract basis. Attorneys who utilize VPs on a contract basis avoid the responsibilities of employment tax, wage withholding responsibilities, sick leave, holiday and overtime pay, and insurance and retirement benefits associated with a traditional employment relationship. Thus, a VP whose experience and skills complement your practice needs can effectively extend the reach and quality of your practice by allowing you to expand your client base and case load without the commitment of hiring additional staff.

The following is an illustration of how a VP may be profitably used on a typical estate planning file. Assume the following:

1. A fixed fee of $2,500 will be billed to the attorney's estate planning client.
2. The hourly rate for the attorney is $250.
3. If the attorney and the attorney's legal secretary were not actually doing many of the tasks on this file, they could be serving other clients on other matters.
4. In Case I – The Traditional Approach, the legal secretary receives $20 per hour.
5. In Case II – The VP Approach, the VP receives $50 per hour.

In addition to the $405 additional profit realized in Case II, the attorney has an additional 2 hours and the secretary has an additional 4 hours to serve other clients on other matters for a total profit over standard hourly rates of $1,885 ($1,305 + $500 + $80) – more than double the profit over The Traditional Approach.

Utilizing a VP can also boost employee morale and provide for a less stressful firm environment. Some attorneys may be concerned that their staff members will feel threatened by the utilization of outside support. However, more often than not, overburdened in-house secretaries

continued, next page

Case I – The Traditional Approach:

	Time Consumed (Hours)	
Functions:	**Attorney**	**Secretary**
Interviewing client	1.0	0.0
Advising and obtaining information	1.0	0.0
Reviewing and organizing information	1.0	0.0
Drafting estate planning documents	2.0	4.0
Document execution conference	1.0	0.5
Finalizing documents post-execution	0.0	0.5

Cost (measured by economic input)
Total Cost $1,600
Fee $2,500

Profit over standard hourly rate $ 900

Case II – The VP Approach

	Time Consumed (Hours)		
Functions:	**Attorney**	**VP**	**Secretary**
Interviewing client	1.0	0.0	0.0
Advising and obtaining information	1.0	0.0	0.0
Reviewing and organizing information	0.5	0.5	0.0
Drafting estate planning documents	0.5	3.0	0.0
Document execution conference	1.0	0.0	0.5
Finalizing documents post-execution	0.0	0.0	0.5

Cost (measured by economic input)
Total Cost $1,195
Fee $2,500

Profit over standard hourly rate $1,305

Virtual Paralegals

from preceding page

and paralegals are relieved the attorney has taken action to address the firm's heavy case load.

A typical VP has obtained a formal education, usually a 2 or 4 year degree in Legal Studies from an accredited college or university, has been certified by either the National Association of Legal Assistants or the National Federation of Paralegal Associations, and has more than 10 years of experience working in a traditional law firm setting specializing in a specific area of the law such as estate planning and probate, litigation or real estate law.

The Professional Ethics Committee of the Florida Bar affirmed Proposed Advisory Opinion 07-02 on the issue of outsourcing at its meeting of January 18, 2008. The opinion stated in part that "Law firms frequently hire contract paralegals to perform services such as legal research and document preparation. It is the committee's opinion that ...contracting for such services does not constitute aiding the unlicensed practice of law, provided that there is adequate supervision by the law firm."

Still, the utilization of a VP raises ethical concerns regarding the unauthorized practice of law, supervision of non-lawyers, conflicts of interest, and confidentiality. Therefore, the selection of a VP should go far beyond evaluating how the VP will help you better manage your time, tasks and in-house support staff.

Some key points to consider in the selection process:

- The VP selection process should start with a personal consultation, face to face or by phone.
- The VP should be able to provide you with information regarding the VP's education, experience and qualifications along with a list of references of current clients and former employers. Ideally, the VP should have a minimum of 10 years' experience working in his or her specialty area.
- Check the information provided and contact the VP's references just as you would if hiring an in-house paralegal.
- Request written information as to the VP's fee structure. Fees typically range from $30 to $65 an hour depending on the geographic location, experience and years in business of the VP. Keep in mind that the VP's work can be billable client hours that you can mark up at a profit.
- The VP should be able to provide you with a written paralegal support services agreement for your review and consideration which details the fees and expectations of a given project.
- Determine what processes are utilized by the VP to avoid conflicts of interests and breach of confidentiality. For example, does the VP utilize a personal firewall on the VP's computer to protect information transmitted from or transmitted to the computer? Who, other than the VP, has access to the VP's computer, office, etc.? How long are computer files stored on the VP's computer once a project is complete?
- A VP should be able to conduct all activities electronically from a remote location. Effective electronic integration is essential and requires compatible email, word processing, document management and database capabilities.

By leveraging the benefits of increased technology with the advantages that a VP with practice area expertise offers, your law firm can realize increased profits, reduced stress and greater client satisfaction.

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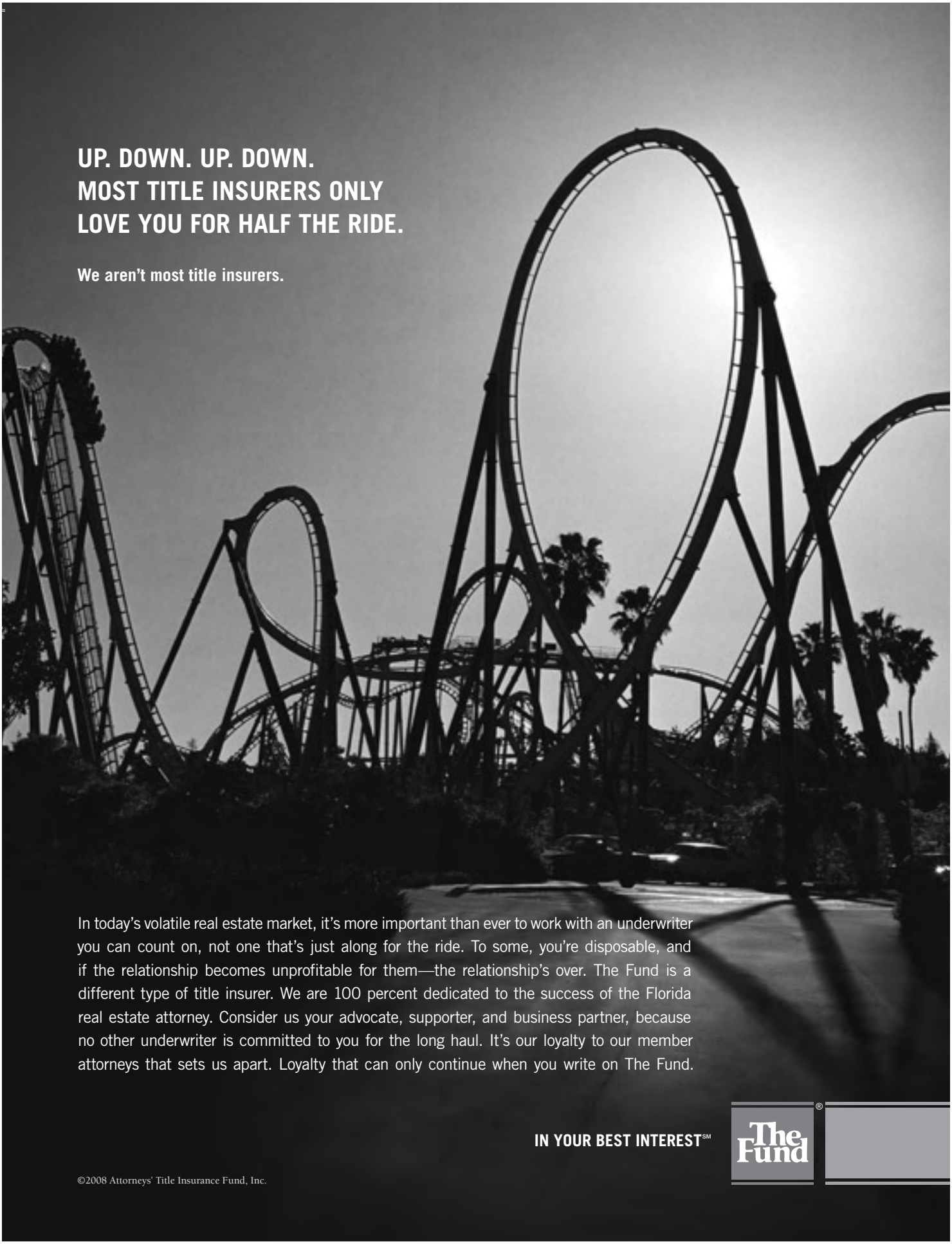
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Executive Council Meeting – Spring in Gainesville

April 3 – 6, 2008

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

In April of this year, then-Section Chair, Melissa Murphy, brought the Executive Council and related RPPTL Section Committees to her home town of Gainesville, FL. The Spring weather suited perfectly for the many activities the Section had planned.

Thursday, April 3 and Friday, April 4 were filled with Section Committee meetings which, as usual, ran consecutively all day. Thursday ended with a welcome reception at the Hilton University of Florida, located adjacent to the UF campus. Friday's meetings were broken up with an informative lunch presentation by Elizabeth Tarbert, staff counsel for The Florida Bar. She discussed recent and proposed changes in the Ethics Rules that impact Section members' practice (ethics credits were granted for the presentation). Friday night's reception and dinner were across the way from the hotel, at the Harn Museum of Art. The attendees enjoyed a lovely reception, a tasty buffet, and strolled through the galleries observing the local art collection.

On Saturday, the Probate and the Real Estate Roundtables as well as the Executive Council meeting were held at the UF law school. Each meeting was held in one of the new classrooms with great meeting facilities for the business at hand. A lively discussion on the ethical aspects of the drafting lawyer being nominated to serve as personal representative took place in the Probate Roundtable.

During the Executive Council meeting, many action items were undertaken. By way of review, Jon Scuderi, Esq., a Circuit Representative for the 20th Judicial Circuit, offers the following notes:

Real Property Division Action Items

1. Approved ratification of Executive Committee's approval of proposed opposition to any legislation that would require both mediation and arbitration prior to commencing a lawsuit over a homeowner association dispute.
2. Approved ratification of Executive Committee's authorization for the Section to appear as an amicus party in the *Pukka* and *Trotta* lawsuits (dealing with ILSA exemptions) in the 11th Circuit.
3. Approved the "Statement on the Role of Customary Practice in the Preparation and Understanding of Third-Party Legal Opinions" proposed by the ABA's Real Property, Trusts & Estate Section and ACREL's Legal Opinion's Committee.
4. Approved the proposed deletion of the contracts identified as Forms 1.1 and 1.3 from the Real Property Forms.
5. Approved proposed revisions to Chapter 10 (Names) of the Uniform Title Standards.
6. Approved proposed revisions to Chapter 12 (Tax Liens) of the Uniform Title Standards.
7. Approved support for the Title Insurance Study Commission.

Probate and Trust Division Action Items

1. Approved ratification of Executive Committee's approval of proposed Section legislative position opposing HB 599 and SB 2040 regarding documentary stamp taxes.
2. Approved ratification of Executive Committee's approval of proposed Section legislative position opposing SB 1124 regarding summary guardianship for mentally ill individuals.
3. Approved ratification of Executive Committee's approval



Legislative Review Committee Chairman Burt Bruton always has fun checking in for Executive Council meetings.



Is this a committee meeting or a flashback to law school?

of proposed Section Legislative position opposing SB 668 regarding guardian advocates.

General Standing Committees Action Items

1. Approved resolution to the legislature to approve appropriate funding for the court system. The language is the same as that used by The Florida Bar.

After the Council's meeting concluded, many people went to historic downtown Gainesville for the annual Santa Fe Community College Spring Arts Festival. There was a variety of art, performing artists, a hands-on arts area for children, food, and, of course, the 25th Annual Shrimp & Beer Party hosted by Melissa Murphy's law firm. Saturday evening concluded with dinner at the hotel.

Traditionally, the meeting-weekend concluded with the Farewell Breakfast on Sunday.

(Oh, by the way, the dress code for the entire weekend was "Orange and Blue Casual")

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Wilhelmena Kightlinger and John Neukamm pose in their Seminole and Gator gear.



The Harn Museum of Art at the University of Florida provides an excellent reception venue.



Steve Mezer and Mike Gelfand address the Executive Council.



The Baumanns and Joneses share a table in the shade.

RPPTL Section Executive Council Meets in Bonita Springs

May 22 - 25, 2008

By Jane L. Cornett, Esq., Cornett, Googe & Associates, P.A., Stuart, FL

As a resident of Florida's East coast for more than fifty years, I've always been a little bit of an "ocean snob." Never once have I thought that our West Coast could rival all the wonderfulness that we have here on the east. That all came to change however, after my visit to Bonita Springs and the Hyatt Regency at Coconut Point in May, 2008. Not only were the location and the accommodations outstanding, the activities were great and the meetings very informative.

If you missed the Real Property, Probate and Trust Law Section meeting at the Regency Hyatt Hotel in Bonita Springs, you missed a wonderful weekend. The site and facilities could not have been more attractive, relaxing and comfortable. The hotel is located right on the Estero Bay with great amenities including lots of kid-friendly pools, a local marina and boardwalk, beautiful fountains, and boat service to an island beach.

The weekend kicked off on Thursday, May 22, with substantive committee meetings followed by a lovely evening reception out by the waterfalls. Friday morning brought a very well attended seminar called "Planning for the Non-traditional Family in the 21st Century." Lunch included the election of new officers and a very interesting presentation by a section member who had been appointed as guardian ad litem for the infant child of Anna Nicole Smith. While his presentation was very entertaining, he still had a serious underlying lesson; the case would have never happened if Anna Nicole had put in place appropriate legal documents.

Friday afternoon was packed with further subcommittee meetings followed by a dinner and awards presentation.

Saturday morning started bright and early with breakfast at 7 o'clock, the round tables at 8 o'clock, and the Executive Council meeting at 10:30 am. Minutes from that meeting are posted on the RPPTL website. Four real property items were approved for support and lobbying, including proposed revisions to the land trust agreement and related forms (Real Property Forms, Michael Pyle), approval of proposed revisions to Chapter 558 to address alternatives to litigation in construction disputes (Construction Law Committee, William Cary Wright), approval of revisions to the *pro se* landlord tenant litigation forms (Landlord and Tenant Committee, Neil Shoter) and revisions to Chapter 15 of the uniform title standards addressing title issues (Title Issues and Standards, Patricia Jones). On the probate side there were three proposals including some revisions to the elective share language (Probate Law and Procedure Committee, Charlie Nash) and ratification of the Executive Committee's approval of a contract with professor Powell at FSU, as proposed by the Power of Attorney Committee, Tami Conetta.

The Council also approved a Fellowship program presented by the Diversity Committee, Tae Bronner. The Fellowship program is open to lawyers who are members of this Section and admitted to the bar for less than ten years or less than thirty-six years of age. Four Fellowships were authorized and the purpose of the Fellowship is to assist these up and coming folks in attending Executive Council meetings.

Also reported was that the long-awaited revised website will soon be up and running.

Saturday afternoon's event began with a boat ride at Estero Bay (what a great, relaxing way to spend an afternoon with some very convivial company!), followed Saturday evening with a barbeque dinner (who would have ever expected Maine Lobster at a very reasonably priced barbeque?). If you haven't attended a RPPTL Section meeting, you are really missing out on a lot of fun.

Thank you, sponsors!

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Rich and Wendy Caskey enjoy the reception with their son, Parker.



Melissa Murphy and Marsha Rydberg.



Melissa Murphy in the SunTrust money machine!



Probate Law Committee Chairman, Charlie Nash, speaks at the convention seminar.



Allen Schofield, Gene Shuey and Pete Dunbar discuss Section issues.



Left: Thursday night's welcome reception at the Hyatt Regency Coconut Point.

Right: The boat ride on Estero Bay.



Executive Council Recognizes Outstanding Service and Contributions

By Rose LaFemina, Buchanan Ingersoll & Rooney, PC, Aventura, FL and Scott Pence, Carlton Fields,P.A., Tampa, FL

Executive Council Resolutions

At the April 5, 2008 meeting in Gainesville, the Executive Council adopted a **Resolution honoring Robert Harold Willis,** a recently deceased and distinguished longstanding member of the RPPTL Section. The resolution, which described many of Mr. Willis' lifetime civic and legal achievements, was read and presented to Mr. Willis' widow and son. Among his numerous legal achievements, Mr. Willis served on The Florida Bar Board of Governors from 1975 to 1981, served as the President of the St. Petersburg Bar Association in 1972, was nominated and elected as a Fellow of the American College of Trust and Estate Counsel, and was very active in and dedicated to the RPPTL Section, including serving upon or chairing the Scholarship & Awards Committee for almost 25 years.

At the May 24, 2008 Bonita Springs meeting, the Executive Council adopted a **Resolution honoring Joseph W. Fleece, Jr.** for his distinguished service and rich contributions to the practice of law. Mr. Fleece was a member of RPPTL's Executive Council from 1976 until his retirement this year. During his time on the Executive Council, Mr. Fleece served as a member of the Elective Share and Membership Liaison Committees, Chair of the Trust Law Committee and the Sponsorship Committee and represented the Sixth Circuit as a Circuit Representative. Mr. Fleece is Of Counsel with the firm Baskin Fleece in Clearwater, Florida and is a Florida Bar Board Certified Wills, Trusts and Estates Attorney.

Robert C. Scott Memorial Award

William J. Haley received the RPPTLS Robert C. Scott Memorial Award at the Executive Council meeting in Bonita Springs on May 24, 2008. Granted only when the occasion requires, the Robert C. Scott Memorial Award is given to a RPPTL member who best exemplifies Robert C. Scott's extraordinary devotion and continued service to the Section and The Florida Bar. Mr. Haley is a shareholder of the firm Brannon, Brown, Haley & Bullock, P.A. in Lake City, Florida and is a Florida Bar Board Certified Real Estate Attorney.

Annual Service Award

The RPPTLS Executive Council awarded the Section's Annual Service Award to **Robert W. Goldman** at the Bonita Springs meeting on May 24, 2008. Mr. Goldman has been a long-time active participant in the Section and serves as co-chair of the Amicus Coordination committee. His efforts in connection with the drafting and coordination of amicus briefs on behalf of the Section are greatly appreciated. The Annual Service Award is presented to a RPPTL member who has rendered dedicated and outstanding service to the Section throughout the year. Mr. Goldman is a shareholder of the firm of Goldman Felcoski & Stone, P.A. in Naples, Florida and is a Fellow of the American College of Trust & Estate Counsel.



Rohan Kelley poses with Shane Kelley and the Award of Merit he received at the Annual Convention of The Florida Bar

Rohan Kelley Awarded Florida Bar Award of Merit

By Tae Kelley Bronner, Tae Kelley Bronner, PL, Tampa, FL

At the most recent Florida Bar Annual Convention in Boca Raton, Florida, outgoing Florida Bar President, Frank Angones, presented Rohan Kelley with the President's Award of Merit for his "dedication to diversity within The Florida Bar and in honor of your leadership of the Real Property, Probate & Trust Law Section and the establishment of its Membership Diversity Committee." President Angones recognized and thanked Mr. Kelley for his willingness to step forward and carry out the Bar's "call to action" to reach out and create a more inclusive environment where all attorneys regardless of their racial or ethnic heritage or disability are encouraged, welcomed, and embraced.

Under Rohan's leadership, the RPPTL section created a Membership Diversity Committee to attract and retain minority members with the goal that diversity of the membership of the Section would one day more nearly reflect the diversity of membership of The Florida Bar. Toward this goal, among several ongoing initiatives, the Committee has developed and presented a series of seminars that are co-sponsored by more than 16 minority bar associations and offer instruction to attorneys of diverse backgrounds who wish to become more involved or develop a practice in real property, probate or trust law.

Tribute to Melissa Jay Murphy, Esq.

By Jane L. Cornett, Esq., Cornett, Googe & Associates, P.A., Stuart, FL



The outgoing chair of the Real Property, Probate, Trust Law Section of the Florida Bar, Melissa Jay Murphy, is one of those dynamo-type people, and the accomplishments of Melissa's year as chair should have been enough to exhaust any normal human being. Fortunately for us all, Melissa survived her term and is still an active member of the Executive Council.

Melissa was born and raised in Gainesville and is a proud 1979 graduate of the University of Florida College of Law. Melissa is a partner in the Gainesville firm of Salter, Feiber, Murphy, Hutson & Menet, P.A. and devotes her practice to real estate-related matters including transactions as well as real estate development. In addition to her very active practice, Melissa has also served for several years as an adjunct professor at the University of Florida law school teaching land finance. More recently, she has been involved at the Warrington College of Business, Real Estate Department, (at the University of Florida of course), teaching masters program students basic property law. Melissa reports an absolute love for teaching and hopes to do more in that field.

If you have been reading Melissa's column in *ActionLine* throughout the year, then you are familiar with her many accomplishments in the 2007-2008 season (if you missed those articles, they are on the Section website). Under Melissa's leadership, the Section's legislative initiatives were all successful and of course everyone has enjoyed the outstanding locations for the Executive Council meetings, most especially the amazing trip to Ireland.

Melissa reports that for her, the most rewarding part of being chair of the Section was her role as the public representative for all Section members. She states that she truly enjoyed talking with citizens, other members of the Bar, testifying before the Department of Insurance Regulation on title insurance, appearing before the Board of Governors, and of course, chairing our Executive Council meetings.

We can all recognize the immense amount of time and energy that must be devoted to the position of chair of our Section. We owe Melissa a huge "thank you" for investing all the resources required to make this another highly successful year for the Real Property, Probate, Trust Law Section of the Florida Bar. Welcome to the "Back Row", Melissa. Put your feet up and enjoy!



Sandy Diamond presents a plaque to Melissa Murphy at the Section's Annual Convention honoring Melissa's service as the 2007-2008 Section Chair.

Section Judiciary Members Recognized for Excellence

Congratulations are in order for RPPTL Section Executive Council members: **Probate Administrative Judge Maria M. Korvick** and **Judge Celeste Hardee Muir.**

Judge Korvick has been named the 2008 Outstanding Woman in Law and Government, awarded by Miami-Dade County Mayor Carlos Martinez at ceremonies at Vizcaya honoring women across the professions. Judge Celeste Hardee Muir was awarded The Miami-Dade County Probate and Guardianship Committee's 2008 Award for Excellence, an award named in honor of Judge Maria M. Korvick in 2006.

Charitable Lead Trusts: Strike While Rates Are Low

By Thomas O. Katz, Esq., Boca Raton, FL

Charitable lead trusts are vehicles that can be used to provide substantial estate, gift and income tax planning benefits, while helping clients achieve charitable goals. Charitable lead trusts are most advantageous when interest rates are low, so now is a perfect time to discuss with clients incorporating a charitable lead trust into their plans. When funded with family limited partnership interests, charitable lead trusts can provide even greater estate and gift planning benefits.

A charitable lead trust is a tool for individuals who make yearly charitable donations because it allows the individual to continue making the donations, but also allows the individual to transfer assets to family members with a tax savings and, in some cases, can provide a charitable income tax deduction.

"The combination of the family limited partnership with the charitable lead trust further enhances planning opportunities for your client."

A charitable lead trust can also be used to create a donor-advised fund, like those maintained by community foundations. The client can take advantage of the community foundation's knowledge of local issues, and gain access to its professional services to develop a family charitable plan. Clients have the flexibility to recommend where their charitable gifts go using the universe of qualified charitable organizations, and can also benefit from the asset management of community foundations, given their larger investment pools.

Charitable Lead Trust

A charitable lead trust is a trust that grants a "qualified income interest" to charitable organizations, while the remainder passes to non-charitable beneficiaries. The charitable lead interest can be defined by a number of years, or by reference to the life of certain persons.

When the charitable lead trust is funded, the donor is treated as having made a completed gift to the charitable organization of the present value of the charitable lead interest, and a separate completed gift of the remainder amount to the non-charitable beneficiaries. At the end of the charitable term, whatever is then available to pass to the remaindermen will do so without any income, gift or estate tax.

The present value analysis is based upon (a) the stream of payments required under the terms of the charitable lead trust to be made to charity, over (b) the term of the charitable lead interest (or the life expectancy of the person whose life measures the charitable lead interest), discounted by (c) the applicable interest rate published by the Internal Revenue Service ("7520") for the month in which the charitable lead trust is established. In today's economy, this low rate offers charitable lead trust advantages.

Assume donor funds a 20 year charitable lead trust with $1,000,000, which requires an annuity payment of 5 percent ($50,000 annually). The 7520 rate for June 2008 is 3.8 percent. The value of the annuity interest (what the IRS considers to be the charitable interest) is $691,710. The value of the remainder (the taxable gift portion) is $308,290.

If the charitable lead trust was funded following the death of the donor, then the value of the charitable interest (i.e. the $691,710 in the example above) will be deductible to the estate as a charitable devise. If created during the life of the donor, the remainder interest will be treated as a gift (the charitable interest may or may not be deductible, depending on the structure of the trust). So in the above example, the donor has made a gift to the remaindermen of $308,290. A gift tax return will need to be filed. If the donor has not used the applicable credit amount, then no tax will be due at that time.

Assume the same example as above, but that the 7520 rate is 9.4 percent, as it was in 1995. In that case, the value of the charitable interest is only $443,710. The reduction in interest rates this year has, by comparison, increased the charitable deduction by 155 percent! The value of the remainder interest using a 9.4 percent rate is increased to $556,290. By structuring a charitable lead trust when rates are low, the amount of the gift is decreased by nearly $250,000.

Assume the example immediately above, where the remainder interest was initially valued at $0. Although many investors are currently experiencing little or negative growth in their portfolios, it is unlikely this will continue forever. If the trust yields an average annual return of 7 percent over the term of the trust, then upon the end of the 20 year term, the value of the assets passing to the remaindermen will be in excess of $600,000.

Charitable Lead Trust With Limited Partnership

Family limited partnerships are very popular estate and family planning tools. Essentially, assets are generally contributed by senior family to the limited partnership in exchange for limited partnership interests. Among the

benefits of a family limited partnership is that in valuing the interests owned by the limited partners, one must take into account the appropriated discounts resulting from lack of control and marketability. These discounts generally range from 25 percent to 40 percent.

The combination of the family limited partnership with the charitable lead trust further enhances the planning opportunities for your client. Using the example from above, assume that the limited partner contributes a 50 percent limited partnership interest to a charitable lead trust, which provides for an annuity payment of $50,000 for 20 years. The valuation professional concludes that the combined discounts for lack of control and lack of marketability total 30 percent. Therefore, the value of the limited partnership interest is $990,000, reduced by the discount of 30 percent, which nets to $693,000. Using the same present value analysis described earlier, based upon a 7520 rate of 3.8 percent, the charitable lead interest is valued at $692,000, and the remainder interest is valued at $1,000.

If the trustee of the charitable lead trust was only able to earn a yield of 5 percent on assets of $693,000 (which equals the $50,000 per annum), then after 20 years the assets of the trust would be $185,000, not a significant amount for the remaindermen (although charity has benefited, which is an important consideration for many donors). However, the underlying assets of the partnership attributable to the interest owned by the CLAT total $960,000. If the partnership is able to earn 5 percent on its assets, the amount ultimately passing to the remaindermen will be nearly $975,000. And if the Partnership earns 7 percent on its investments, the remaindermen will receive over $1,750,000.

Conclusion

Charitable lead trusts can be a very effective estate planning tool while still allowing an individual to meet his or her charitable goals. They are especially beneficial during times like these when interest rates are relatively low. If you have a client who makes significant charitable contributions each year, encourage the client to continue to do so, but in a more tax efficient manner. And remember that client's charitable interests may change over time. A donor advised fund at a community foundation will offer all of the tax advantages described herein without having to make your client commit irrevocably as to which charities will benefit.

For More Information

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

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Real Estate Case Summaries

By Stephen E. Silkowski, Esq., Jacksonville, FL and
Gerardo Rodriguez-Albuzi, Third-Year Law Student, University of Miami School of Law, Miami, FL

Deed from corporate secretary/treasurer, without authorizing resolution or seal, insufficient to convey title

DGG Development Corp. v. Estate of Capponi, 983 So. 2d 1232(Fla. 5th DCA 2008).

The issue here was whether a deed, executed by the secretary/treasurer of a corporation in the presence of two witnesses, but without the corporate seal or an authorizing resolution from the board of directors, is effective to convey title to real property to a good faith purchaser for value. The court held that such a deed does not convey title to corporate property.

Under Florida law, corporations may convey real property in accordance with the requirements of either section 689.01, Florida Statutes (2004), section 692.01, Florida Statutes (2004), or section 692.02, Florida Statutes (2004). Section 689.01 requires any conveyance of real property to be signed in the presence of two subscribing witnesses by a person or persons authorized to sign on behalf of the corporation, but does not require a seal. Section 692.01 provides that a corporation may convey any interest in real property by a document sealed with the common or corporate seal, and signed in its name by its president, vice-president, or chief executive officer. A document executed in this manner need not be witnessed.

If a deed is executed by the corporation's president, vice-president or chief executive officer in compliance with section 692.01, no corporate resolution from the board of directors is required to evidence the authority of the person executing the document. Such authority is granted by statute. If the person executing the deed does not hold one of these offices, an authorizing resolution must be obtained and should be recorded. Similarly, if a deed is executed in compliance with section 689.01 but is signed by someone other than the president, vice-president or chief executive officer, an authorizing resolution from the board of directors must be obtained. Because the deed purporting to convey the subject property from DGG to the Capponis was executed by Mr. Capponi as DGG's "officer/administrator," it was ineffective on its face to convey title, as it was not executed in compliance with either of the conveyancing statutes.

While conceding that the deed from DGG to the Capponis did not comply with section 692.01, the Grantees argued that section 607.1405, Florida Statutes (2001), validates the deed that Mr. Capponi executed to himself and his wife, as the corporation was dissolved at the time. The court disagreed. Section 607.1405 provides that a corporation continues its corporate existence after dissolution and has the power to transfer title to its property and do other acts necessary to wind up and liquidate the business. The court construed the statute to mean that a conveyance of a dissolved corporation's real property may be made in the same manner as required before dissolution in order to convey title, and did not accept the Grantees' contention that section 607.1405 validates a conveyance not otherwise in compliance with one of the conveyancing statutes or expands the category of persons expressly authorized by statute to execute a deed on behalf of a corporation.

Finally, the court turned to the Grantees' contention that if the deed from the corporation to the Capponis was invalid, they are entitled to protection as bona fide purchasers for value without notice of any title defect. To be a bona fide purchaser, three conditions must be satisfied. The purchaser must have (1) acquired the legal title to the property in question, (2) paid value therefor, and (3) been innocent of knowledge of the equity against the property at the time when consideration was paid and title acquired. A purchaser is not entitled to protection as a bona fide purchaser when he takes property with notice of an outstanding interest in the property. Successors in title take title subject to those interests of which they have notice. Forms of notice include possession, actual notice and constructive notice of publicly-recorded matters.

The defects in the deed from DGG to the Capponis were of record and appeared in the chain of title. That was enough to place a prospective purchaser on notice of its faulty execution. Recording the deed was constructive notice to subsequent purchasers, not only of its own existence and contents, but also of any other fact concerning the instrument that would have been ascertained from the record if it had been examined and if inquiries suggested by it had been prosecuted.

Because the Grantees had at least constructive notice of the defective deed, they were not entitled to the protections afforded bona fide purchasers. In reaching this conclusion, the court did not suggest that the Grantees acted in bad faith. To the contrary, the Grantees had obtained a title insurance commitment and policy, both of which failed to disclose the title defect. Notwithstanding the Grantees' good faith, the Grantees' subsequent purchase of the property did not entitle them to protection as bona fide purchasers.

Death of joint tenant before final judgment entered abates partition action

Mercurio v. Headrick, 983 So. 2d 773 (Fla. 1st DCA 2008).

Because Headrick had died before the proceedings below produced a final order of partition, the joint tenancy was intact at his death. Mercurio, by reason of the joint tenant's death, owned an undivided interest in the property. Therefore, the

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court reversed the posthumously rendered partition order.

Both the original judge and his successor judge had denied Mercurio's summary-judgment motion against the partition, finding that Mercurio's admissions in her answer signified the parties' mutual intent to partition the property. The district court, nonetheless, held that partition does not survive the death of a joint tenant and, accordingly, absent a final judgment of partition at the tenant's death, the action is abated, because the surviving tenant receives full title to the property, consistent with the right of survivorship. Only a complete, final conveyance or disposition of jointly held property severs a joint tenancy with right of survivorship. The court found further support in analogous Florida family law cases in which courts have held that the death of one party terminates a pending divorce action. This case, as many divorce cases, involved a dispute over the disposition of jointly held property. In the case of a joint tenancy, the death of one party resolves that dispute by operation of law.

In foreclosure action, motion for fees must only put opposing party on notice that they are being sought
McDaniel v. Edmonds, 2D07-4056 (Fla. 2nd DCA July 25, 2008).

The trial court had denied the McDaniels' motion for attorney's fees and costs, even though it had already determined their entitlement to such, because the McDaniels' motion did not specifically state the legal basis for the award. The appellate court reversed, based on its determination that the motion was facially sufficient.

While the motion did not specifically state that the court determined entitlement pursuant to the mortgage and promissory note, the specific legal basis for the fee award was not at issue. At the time the McDaniels filed their motion, the only issue left to determine was the amount of fees and costs to which they were entitled, pursuant to the order. The McDaniels' motion put Edmonds on notice that they were seeking fees pursuant to this award. Therefore, the motion was facially sufficient under rule 1.100(b), Florida Rules of Civil Procedure. Rule 1.100(b) does not impose a requirement that motions for attorney's fees and costs be accompanied by affidavits setting forth the amount of fees and costs claimed. In the absence of such a requirement, there is no basis to deny a motion for attorney's fees for failing to request a particular amount of fees or costs or identify the specific costs sought or legal services performed.

Law of unreasonable restraints, not Rule against Perpetuities, applies to right of first refusal.
Old Port Cove Holdings, Inc. v. Old Port Cove Condominium Association One, Inc., SC07-1032 (Fla. July 10, 2008).

Section 689.225, Fla. Stats., does not retroactively abolish the common law rule against perpetuities, and the rule against perpetuities does not apply to rights of first refusal anyway.

The rule is against remoteness or remote vesting of an estate or interest therein. It is not a rule that invalidates interests that last too long, but interests that vest too remotely. In other words, the rule is concerned not with the duration of estates but with the time of their vesting. The rule against perpetuities has been adopted by statute, amended, and later abrogated. Based on the language of the Florida statute itself, abrogation of the rule does not apply retroactively. Because the same concerns about remote vesting do not exist with respect to rights of first refusal, the rule does not apply to such rights.

In the absence of clear legislative intent to the contrary, a law is presumed to operate prospectively. In determining whether a statute applies retroactively, a court considers two factors: (1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether retroactive application is constitutional. The court concluded that the plain language of section 689.225 does not evince an intent that the statute apply retroactively. In Florida, an option does not create a legal or equitable interest in property. Until an optionee exercises the right to purchase in accordance with the terms of his option, he has no estate, either legal or equitable, in the lands involved. The status of parties to the ordinary lease with an option to purchase remains that of landlord and tenant until the option is exercised and the lessee has no equitable interest in the property. Therefore, a right of first refusal— which may or may not ripen into an option depending on whether the owner decides to sell— cannot create an interest in land either. While the fixed-price repurchase option could violate the rule against unreasonable restraints, the law is clear that a repurchase option at market or appraised value for unlimited duration is not an unreasonable restraint.

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Probate Case Summaries

Prepared by:Gerardo Rodriguez-Albizu and T. Raquel Rodriguez-Albizu, Law Student, University of Miami School of Law, Miami, FL

Estates:

General grant in a will or codicil to have all legal debts paid out of the estate will not suffice as evidence of the testator's intent to transfer property to a specific devisee free of its encumbrance.

In re Estate of Woodward, 978 So. 2d 865 (Fla. 2d DCA 2008).

A residual beneficiary challenged the personal representative's use of estate funds to satisfy the encumbrance on certain properties devised to a specific beneficiary. The probate court denied the residual beneficiary's objections but the appellate court concluded that the denial was inconsistent with Fla. Stat. § 733.803, which provides that a specific devisee of encumbered property shall have the encumbrance satisfied with estate funds only if the decedent's will or codicil evidenced that intent. The appellate court ruled that a general grant to have all legal debts paid from the estate will not suffice as evidence of such intent.

Personal representative set forth sufficient allegations concerning jurisdiction to allow daughter to be served as an interested person by formal notice where it was alleged that decedent owned a brokerage account at time of his death, that upon his death the account was an estate asset, and that wife, as initial personal representative, improperly distributed the account proceeds to herself and her daughter. However, an evidentiary hearing is needed to determine whether the daughter is required to return the property to the Estate.

Hall v. Tungett, 980 So. 2d 1289 (Fla. 2d DCA 2008).

Charles Lloyd Tungett, personal representative (the "PR") of the Estate of Jack E. Green, filed a "Motion to Compel Surrender of Estate Information and Surrender of Estate Assets" in the probate court, seeking an order directing Valerie Renee Hall to return the assets to the Estate. The probate court granted the motion and Ms. Hall appealed, arguing that 1) the probate court lacked personal jurisdiction over her and 2) that the court must hold an evidentiary hearing before it can order her to transfer property to the PR.

The PR's motion alleged that at the time of Mr. Green's death the brokerage account was titled in his name, it was wrongfully distributed to Ms. Hall by her mother, the predecessor personal representative, and the proceeds were currently in Ms. Hall's possession. Further, the motion asserted that the account and other property belonged to the Estate and should be returned to it, or otherwise, if it was not in Ms. Hall's possession, she must return the equivalent value, as well as any income earned on the assets or any gain with respect to the assets.

At a hearing on the PR's motion, Ms. Hall's attorney argued that under Florida law, Ms. Hall was not an "interested person" or a "distributee" and pursuant to Fla. Stat. § 731.301, formal notice was insufficient to give the court jurisdiction over his client. Alternatively, if the court did find that it had jurisdiction, Ms. Hall's attorney further maintained that an evidentiary hearing was needed to resolve issues of fact relating to the ultimate relief requested by the PR. The probate court held that it had personal jurisdiction and that the assets should be turned over to the PR.

The appellate court affirmed the probate court's decision regarding the personal jurisdiction issue, holding that the allegations were sufficient to meet the PR's pleading requirement and supported service upon Ms. Hall by formal notice. Additionally, the appellate court acknowledged that the probate court could find that it had jurisdiction over Ms. Hall to the extent of her interest in the estate because she did not contest the allegations by affidavit or other sworn proof. However, the appellate court reversed and remanded the probate court's decision that the appellant must turn over assets to the PR on the grounds that Ms. Hall, as an interested person regarding the disputed property, was entitled to be heard and to present evidence in support of her position that she should not be ordered to transfer property to the PR.

Estate entitled only to reasonable attorney's fees, despite egregious conduct on part of proponent of will, pursuant to inequitable conduct doctrine.

Hoegh v. Estate of Johnson, 985 So. 2d 1185 (Fla. 5th DCA 2008).

The trial court found that Hoegh participated in forging the will that she filed with the court as the decedent's last will and testament. The trial court denied Hoegh's petition to admit the forged will and Hoegh appealed. The appellate court affirmed the trial court's decision and also found that pursuant to the inequitable conduct doctrine, the estate was entitled to recover its reasonable appellate attorney's fees.

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On a motion to review the trial court's award of appellate attorney's fees, the appellate court held that the estate is only entitled to recover reasonable appellate attorney's fees. The appellate court determined that the trial court erred when it approved 135 hours of attorney time where appellant did not raise any justiciable issue of law in her appeal and there was no oral argument. Ultimately, the appellate court approved an award of $22,000 for 80 hours of work as a reasonable fee.

Guardianship:

No presumption of reasonableness attaches to a guardians' petition for fees. Probate court did not err in reducing fee petitions based on the recommendation of the Elder Justice Center.

In re Guardianship of Shell, 978 So. 2d 885 (Fla. 2d DCA 2008).

In February 2003, Lutheran Services of Florida, Inc. ("Lutheran"), was appointed as plenary guardian of Bertha Shell. After several fee petitions were reduced by the probate court in accordance with the recommendations of the Elder Justice Center (the "EJC"), Lutheran challenged the reductions. Lutheran also claimed that the EJC's recommended reductions were arbitrary and requested the court enjoin EJC from reviewing fee petitions. At the conclusion of an evidentiary hearing, the probate court denied Lutheran's requests for relief.

The appellate court noted that pursuant to Fla. Stat. § 744.108(1), a guardian is entitled to a reasonable fee for services provided to the ward, but that "no presumption of reasonableness attaches to a guardian's petition for fees, and no statute or case law requires the probate court to simply accept the guardians' fee petition at face value and rubber stamp it." According to the appellate court, the guardian carries the burden of demonstrating through appropriate proof that services claimed were actually performed and that the fee requested is reasonable and should take into consideration the factors set forth in Fla. Stat. § 744.108(2) when calculating a reasonable fee. In this case, the appellate court was satisfied that the probate court considered the statutory factors in making its decision and affirmed the decision.

Statute of limitations cannot begin to run based on the knowledge of an incapacitated emancipated adult. Friends or family's knowledge of injuries cannot be imputed to incapacitated emancipated adult until a plenary guardian has been appointed.

Thomas v. Lopez, 982 So. 2d 64 (Fla. 5th DCA 2008).

Tammy Thomas, when she was twenty-eight weeks pregnant, began seeing Dr. Lopez to treat her chronic hypertension. After an unsuccessful amniocentesis was performed on March 31, 2003, Tammy became short of breath and was hospitalized where she went into cardiac and respiratory arrest. As a result Tammy suffered brain injury and mental incapacitation. Her mother, Mrs. Thomas, was subsequently appointed as Tammy's plenary guardian on December 31, 2003. On August 10, 2005, Mrs. Thomas filed a notice of intent to pursue a medical malpractice claim and on February 1, 2006 she filed a complaint alleging medical negligence. All defendants asserted that the statue of limitations began to run either when Tammy was injured on March 31, 2003 or when Mrs. Thomas first confronted Dr. Lopez of her suspicions of medical malpractice on April 2, 2003 and had therefore expired. Conversely, Mrs. Thomas claimed that the limitations period began to run when she became Tammy's plenary guardian. The trial court concluded the action was untimely as the limitations period "commenced when [Mrs. Thomas] was aware of [Tammy's] injury and the reasonable possibility that it was caused by medical negligence."

Florida's discovery rule, codified in Fla. Stat. § 95.11(4)(b), establishes a subjective component (what the plaintiff actually knew) and an objective component (what a reasonable person should have discovered through the exercise of due diligence). When either component is satisfied, a plaintiff's cause of action accrues and the statute of limitations begins to run. The appellate court concluded that because Tammy had no knowledge of her injury, she did not have notice to start the statute of limitations. Additionally, the appellate court concluded that since Tammy was an emancipated adult at the time of her injuries, "Mrs. Thomas had no right or duty to institute suit on Tammy's cause of action." Thus, Mrs. Thomas' knowledge could not be imputed to Tammy, at least not until Mrs. Thomas was appointed Tammy's plenary guardian, and therefore the subjective component of the discovery rule was not satisfied.

Regarding the satisfaction of the objective component, the Court held that resolution of that issue "require[d] a determination of when the injured party, or his or her representative, became possessed of sufficient information . . . to prompt a reasonable person to inquire further." Consequently, the appellate court determined that summary judgment was improper as this issue required the resolution of a question of fact. Accordingly, the trial court's grant of summary judgment in favor of the defendants was reversed and remanded.

Court departed from essential requirements of law by appointing temporary guardian without conducting an evidentiary hearing to determine best interests of child.

Gomez v. Suarez, 33 Fla. L. Weekly D1662c (Fla. 5th DCA June 27, 2008).

Following the death of her parents in Florida, seven-year-old Nahomy Dieppa was taken to New Jersey by her maternal grandmother, Caridad Gomez. There, Ms. Gomez obtained temporary custody of Nahomy and Nahomy's half-brother, Leonardo, by order of a New Jersey court dated July 9, 2007. Meanwhile, Nahomy's paternal grandfather, Mr. Suarez, filed a guardianship petition in a Florida court

to obtain permanent custody over Nahomy. The circuit court determined that Florida was Nahomy's home state for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act (Fla. Stat. § 65.503(7)). Subsequently, the New Jersey court determined that the Florida court had assumed jurisdiction pursuant to the aforementioned order.

Mr. Suarez then filed a motion to have Nahomy returned immediately to Florida and to appoint a temporary guardian. The trial court, over the objection of Ms. Gomez's counsel, appointed Mr. Suarez as temporary guardian until a determination was made with respect to the best interests of the child. The appellate court affirmed the portion of the trial court's order directing Nahomy to be immediately returned to Florida, but reversed the appointment of Mr. Suarez as temporary guardian because the trial court failed to address the best interests of Nahomy when it appointed Mr. Suarez as temporary guardian without an evidentiary hearing. The appellate court instructed Ms. Gomez to return Nahomy to Florida and directed that an evidentiary hearing on the temporary guardianship issue be held expeditiously.

Procedural statute for determining incapacity does not make the potential ward responsible for examining committee fees where the guardianship petition is dismissed or denied

Ehrlich v. Severson, 985 So. 2d 639 (Fla. 4th DCA 2008).

Appellate court reversed trial court's ruling that required appellant, who was the subject of a guardianship petition that was ultimately denied, to pay the fees of the examining committee. While acknowledging that the payment of the examining committee's fees should not be contingent on the outcome of the competency determination, the appellate court determined that where guardianship petitions are dismissed or denied, the procedural statute for determining incapacity (Fla. Stat. § 744.331(7)) does not make the potential ward responsible for the examining committing fees. The appellate court called on the legislature to specify how the examining committee fee should be paid in this circumstance.

Trusts:

While a foreign court (California) did not have in rem jurisdiction over property located in Florida, it did have sufficient personal jurisdiction to impose a constructive trust on property.

Hirchert v. Hirchert Family Trust, 33 Fla. L. Weekly D1745a (Fla. 5th DCA July 11, 2008).

Richard Hirchert and his first wife created a family trust in 1992. This trust provided upon the death of either spouse, their assets would be divided into a Survivor's Trust and a Residuary Trust, and only if all of his or her assets were "fully dissipated," could the surviving spouse access the principal of the Residuary Trust. The Hircherts' deposited 75 percent of the marital home in California in the Residuary Trust and 25 percent in the Survivor's Trust.

After the passing of his first wife, Richard married Ann. He conveyed title to the marital home from the trust to himself and then used the proceeds to pay for a new residence. Subsequently, the couple moved to a new residence in California, using the proceeds from the sale of the first residence, taking title as joint tenants.

When Richard died, Ann moved to Florida. Richard's son, the Trustee of the Residuary Trust, sued Ann in California. Apparently, Richard's assets were not "fully dissipated," which caused him to breach his fiduciary duty to the Residuary Trust. Thus, Richard's son sought to impose a constructive trust on the proceeds from the sale of Richard's original marital residence and to order Ann to convey those assets back to the Residuary Trust.

The California court, finding that Richard did indeed breach a fiduciary duty to the trust, imposed a constructive trust on Ann's Florida property for 75 percent of its value, or $431,422.00. Richard's son then sought to domesticate the judgment in Florida. However, Ann contested the validity of the foreign judgment, arguing that the court lacked *in rem* jurisdiction over her Florida property. She also sought a declaratory judgment regarding the effect of the foreign judgment on her homestead rights. The lower court approved the imposition of the constructive trust on the basis that "the court's *in personam* jurisdiction alone provides the court with authority to determine the equitable rights of the parties" and "[a] court of equity, having authority to act upon the person, may *indirectly* act upon real estate in another state, through the instrumentality of this authority over the person."

The appellate court agreed with the lower court's analysis and affirmed its ruling on the constructive trust issue. However, the appellate court disagreed with the lower court's failure to address the homestead status issue and remanded the case for a judicial determination of homestead status and the legal effect, if any, of the California's judgment on Ann's property.

Where trustee paid compensation to himself as CEO of corporation whose stock was held in the name of the trusts, trustee was in position of conflict under section 737.403(2); there was no error in denying objections that trustee/personal representative's failure to fund subtrusts for decedent's daughter and granddaughter and to distribute revocable trust's net income violated trust instruments, construction order previously issued by trial court, and Florida law because statute provides that interests of all beneficiaries of revocable trust are subject to a trustee's duty to pay expenses of administration and obligations of the grantor's estate.

Parker v. Shullman, 33 Fla. L. Weekly D1306a (Fla. 4th DCA May 14, 2008).

Barbara Katz Silberman started a successful women's sportswear business called Barbara Katz Sportswear ("Sportswear"). She also created the Barbara Katz Silberman Revocable Trust as well as a trust for her husband, called the Paul Silberman Marital Trust. Both trusts had sub-trusts for her daughter Lauri and granddaughter Cassie. Barbara had designated Steven Shullman, the ac-

continued, next page

from preceding page

countant for Sportswear, as the successor trustee of all of the trusts and named Shullman as personal representative of her estate. Barbara died and Shullman became trustee of the trusts.

When Shullman filed accountings as personal representative and trustee for the years 2001, 2002, and 2003, Lauri filed several objections, and in April 2003, she filed a complaint based on her objections on behalf of herself, individually and as guardian of Cassie. Among other things, the complaint alleged that Shullman violated his duty under the Prudent Investor Rule and sought to surcharge Shullman for paying fees to himself from the trust without court order. The trial court denied the surcharge claim against Shullman, as well as all of Lauri's remaining objections and Lauri appealed.

The first issue addressed by the appellate court related to the denial of appellant's objection that Shullman failed to fund the trusts for appellant and her daughter and distribute the net income to them. Appellant alleged the failure to fund was in violation of the trust instruments, a construction order entered by the lower court and Florida law. In dismissing this issue, the appellate court relied on the holding in *First Union National Bank v. Jones,* 768 So. 2d 1213, 1215 (Fla. 4th DCA 2000), which held, generally, that a trustee could not make trust distributions until provision had been made for expenses. Accordingly, the Court held that the trustee was unable to make a complete distribution of the trust because the probate proceeding had not been substantially concluded and expenses paid.

Next, the court held that Shullman did not violate the Prudent Investor Rule, as codified in Fla. Stat. § 518.11(1). The appellate court found that there was competent substantial evidence in the record to support the trial court's conclusion that Shullman, in his capacity as trustee, reasonably relied on his investment advisor.

Appellant also argued that Shullman should be surcharged for paying fees from the trusts without court order. Pursuant to the appellate court's decision in *J.P. Morgan v. Siegel,* 965 So. 2d 1193 (Fla. 4th DCA 2007), the court concluded that at the time the fees were paid without court order, Shullman was in a position of conflict under the version of Fla. Stat. § 737.403(2), in effect at the time and that the lower court erred in denying the objection to Shullman's fee payment without court order. However, the appellate court reversed this decision without prejudice to Shullman's ability to seek court approval for the fees incurred defending that action.

Trustee has standing to bring action for reformation of trust, based on a claim that mistake has occurred and that trust as written does not reflect settlor's intent.

Reid v. Temple Judea, 33 Fla. L. Weekly D1546a (Fla. 3d DCA June 11, 2008).

Edgar Sonder executed a trust and amendments thereto, naming himself as trustee and Cecelia Reid as sole successor trustee. The trust provided for a number of gifts to be distributed upon Sonder's death, including pecuniary gifts to ten charities and the Hebrew Union College Jewish Institute of Religion and a $25,000 gift and the decedent's apartment to Reid. Following decedent's death, Reid, as personal representative, discovered that the trust could not satisfy all of the gifts provided for in the trust. Reid sought an order abating the enumerated pecuniary gifts proportionately, while alleging that the apartment was a devise not subject to abatement.

After her motion was denied, Reid petitioned the court to reform the trust on the basis that the trust instrument did not evidence the settlor's intent, which was to give his apartment to Reid without being subject to abatement. Two beneficiaries moved to dismiss the reformation petition, primarily on the basis that Reid, as Trustee, was not an interested person and therefore lacked standing to file the petition. The probate court dismissed the case due to lack of standing.

The appellate court reversed the probate court, holding that Reid, acting solely in her capacity as trustee, did have standing to bring an action for reformation of the trust on the basis that a mistake had occurred and that the trust as written did not reflect decedent's intent. The appellate court stated that "it is clear that...in cases involving a determination of the settlor's true intent, a trustee is an 'interested person,' and an 'interested person' has standing to seek reformation of a trust."

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

Asset Protection in Florida

• Live
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COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Two Live Locations:

November 12, 2008 • Tampa Airport Marriott • Tampa • 813-879-5151
November 13, 2008 • Hyatt Pier 66 • Fort Lauderdale • 954-525-6666

Course No. 0714R

8:30 a.m. – 9:00 a.m.
Late Registration and Check-in

9:30 a.m. – 9:35 a.m.
Opening Remarks
Jerome L. Wolf, Boca Raton - Program Chair

9:35 a.m. – 10:05 a.m.
Fraudulent Transfers and Conversions and Ethical Considerations
Keith S. Kromash, Melbourne

10:05 a.m. – 10:35 a.m.
General Exemptions from Creditors
Sam W. Boone, Jr., Gainesville
Michael S. Singer, Palm Beach Gardens

10:35 a.m. – 11:05 a.m.
IRA and Qualified Plan Benefits
Richard R. Gans, Sarasota

11:05 a.m. – 11:15 a.m. **Break**

11:15 a.m. – 11:45 a.m.
Asset Protection Provided with Florida Business Entitites
Thomas O. Wells, Coral Gables

11:45 a.m. – 12:15 p.m.
Homestead: Creditor Issues
Barry A. Nelson, North Miami Beach

12:15 p.m. – 1:30 p.m. **Lunch (on your own)**

1:30 p.m. – 2:00 p.m.
Homestead: Non-Creditor Issues
Charles Ian Nash, Melbourne

2:00 p.m. – 2:30 p.m.
Creditors' Rights to Assets in Trust
Jerome L. Wolf, Boca Raton

2:30 p.m. – 3:00 p.m.
Section 529 Arrangements
Charles Ian Nash, Melbourne

3:00 p.m. – 3:15 p.m. **Break**

3:15 p.m. – 3:45 p.m.
Relationship Dissolution Planning
Elaine M. Bucher, Boca Raton

3:45 p.m. – 4:15 p.m.
Offshore Asset Protection Trusts
James J. Flick, Orlando

A copy of the newly released Florida Bar / LexisNexis publication ***Asset Protection in Florida*** is included in registration for this course.

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Register me for the "Asset Protection in Florida" Seminar

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Course No. 0715R

8:30 a.m. – 8:55 a.m.
Late Registration and Check-in

8:55 a.m. – 9:00 a.m.
Opening Remarks
Silvia Rojas, Miami – Program Chair

9:00 a.m. – 9:30 a.m.
The Attorney General Wants You! Foreclosure Rescue and Other Recent Changes in Florida Law
Alan Fields, St. Petersburg

9:30 a.m. – 10:00 a.m.
Selected Florida Fraud Cases: Dirty Deeds Done Dirt Cheap
Richard Taylor, Deland

10:00 a.m. – 10:30 a.m.
Practice Pointers to Avoid RESPA Violations
Homer Duvall, Tampa

10:30 a.m. – 10:45 a.m. **Break**

10:45 a.m. – 11:15 a.m.
What Your Files Say About You
Robert Cohen, Miami

11:15 a.m. – 12:00 noon
Websites that Can Save Your Practice
Richard Georges, St. Petersburg

12:00 noon – 1:30 p.m.
Lunch and a Movie (included in registration of Tampa / Fort Lauderdale locations only)
Homer Duvall, Tampa

1:30 p.m. – 2:00 p.m.
Prosecution of Real Estate Fraud
Thomas Palermo, AUSA, Tampa
Jeffrey Kay, AUSA, Fort Lauderdale

2:00 p.m. – 2:30 p.m.
Mortgage Fraud – Newest Schemes and Scams
Stephen Gross, FBI, Tampa
William Stern, FBI, Miami

2:30 p.m. – 3:00 p.m.
Money, Money, Money: Where Did it Go?
James Russick, Tampa

3:00 p.m. – 3:15 p.m. **Break**

3:15 p.m. – 4:30 p.m.
Name that Broken Law (Panel Discussion)
Richard Taylor, Deland
Rod Neuman, Tampa
Patricia Hancock, Maitland
Robert Cohen, Miami

4:30 p.m. – 5:30 p.m.
Newtorking Reception (included in registration of Tampa / Fort Lauderdale locations only)

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COURSE CLASSIFICATION: INTERMEDIATE LEVEL

One Live Location: October 24, 2008
Hyatt Regency Orlando Airport • 9300 Airport Blvd. • Orlando, FL 32827
www.orlandoairport.hyatt.com • 407-825-1234

Course No. 0762R

9:30 a.m. – 10:00 a.m.
Late Registration and Check-in

10:00 a.m. – 10:05 a.m.
Opening Remarks
Craig A. Mundy, Lakeland – Program Co-Chair
Sandra G. Sheets, Lakeland – Program Co-Chair

10:05 a.m. – 12:05 p.m.
Generation-Skipping Transfer Tax Part I
Professor David Powell
Florida State University College of Law
Tallahassee

12:05 p.m. – 1:05 p.m.
Lunch (included in registration for Orlando attendees)

1:05 p.m. – 3:05 p.m.
General-Skipping Transfer Tax Part II
Professor David Powell
Florida State University College of Law
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General: 5.0 hours
Ethics: 0.0 hours

CERTIFICATION PROGRAM
(Max. Credit: 4.0 hours)

Elder Law: 4.0 hours
Tax Law: 4.0 hours
Wills, Trusts & Estates: 4.0 hours

Seminar credit may be applied to satisfy CLER / Certification requirements in the amounts specified above, not to exceed the maximum credit. See the CLE link at www.floridabar.org for more information.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News or available in your CLE record on-line) you will be sent a Reporting Affidavit if you have not completed your required hours (must be returned by your CLER reporting date).

HOW TO REGISTER	ON-LINE:	MAIL:	FAX: 850/561-5816
	www.floridabar.org/CLE	Completed form w/check	Form w/credit card info.

REFUND POLICY: Requests for refund or credit toward the purchase of the audio CD / DVD 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. Registrants who do not notify The Florida Bar by 5:00 p.m., October 17, 2008 that they will be unable to attend the seminar, will have an additional $35 retained. Persons attending under the policy of fee waivers will be required to pay $35.

Register me for the "What Every Estate Planner Needs To Know About the Generation-Skipping Transfer Tax" Seminar

ONE LOCATION: (234) HYATT REGENCY ORLANDO AIRPORT, ORLANDO (OCTOBER 24, 2008)

TO REGISTER OR ORDER AUDIO CD / DVD 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. 0762R

LOCATIONS (CHECK ONE):

❑ **Orlando** - October 24, 2008**
(234) Hyatt Regency Orlando Airport

❑ **Live Webcast / Virtual Seminar* - October 24, 2008**
(317) Online

***Registrants who participate in the live webcast will receive an e-mail with a web-link and log-in credentials 2 days prior to the seminar to include access to the course materials.**

** Videotaping

REGISTRATION FEE (CHECK ONE):

❑ Member of the Real Property, Probate and Trust Law Section: $160
❑ Non-section member: $185
❑ Full-time law college faculty or full-time law student: $75
❑ Persons attending under the policy of fee waivers: $35
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, 2009.

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

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 10/24/08. TO ORDER AUDIO CD / DVD OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax to the price of CD / DVD 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 / CD / DVD 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**
Cost $35 plus tax
(Certification/CLER credit is not awarded for the purchase of the course book only.)
TOTAL $ _____

❑ **AUDIO CD**
(includes course book)
$160 plus tax (section member)
$185 plus tax (non-section member)
TOTAL $ _____

❑ **DVD**
(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.

SPECIAL CLE SECTION

The Florida Bar CLE Audio/Video List & Order Form

TO ORDER

ONLINE www.floridabar.org/CLE Using the Audio/Video List, search 'By Course Number', 'By Sponsor' or 'By Title'.	**FAX** 850-561-5816 order form with credit card information for **MasterCard** or **Visa** *(We are unable to accept American Express at this time.)*	**MAIL** *completed form with check to*: The Florida Bar CLE Programs 651 East Jefferson Street Tallahassee, Florida 32399-2300

TURNAROUND TIME

- PLEASE ALLOW 4 WEEKS FOR DELIVERY.
- FLORIDA BAR COURSES ARE AVAILABLE FOR CREDIT ON-LINE 24/7 AT: www.floridabar.org/CLE
  Go to 'Online Courses'
- Attorneys with deadlines need to plan accordingly.

TO QUALIFY FOR THE SECTION MEMBER PRICE

- The attorney must be a member of the section sponsoring the course being purchased.
  Include the attorney's name and Florida bar number on the order form.
- Entities (government agencies, law firms, libraries, etc.) are **not** Section members and must pay the Non-Section member price. S = Section member, N = Non-Section member.

PLEASE INCLUDE SALES TAX WITH YOUR ORDER

- There is an automatic 6% sales tax in Florida + any surtax that your county may require.
  Example: Hillsborough = 7%, Lee Co. = 6%, Leon Co. = 7.5%, Miami-Dade = 7%, Orange Co. = 6.5%
- Out of state residents do not pay tax.

TO QUALIFY FOR TAX EXEMPT STATUS

- Include the tax exempt ID number on the order form or a copy of the tax exempt certificate.
- Include the entities complete name, street address, phone number, and indicate to whom the package should be shipped (Attn: John Doe).
- Pay the Non-Section member price.
- Do not use the attorney Florida Bar number – attorneys are not tax exempt.
- A tax exempt customer number has been or will be assigned to each entity. Please include this customer number when placing orders or for inquiries.

SHIPPING

- The Florida Bar uses UPS to ship. Please include a shipping address on this order form.
- If UPS is not a viable option, orders may be sent to a P.O. Box via U.S. Postal Service.
- Please indicate your preference on the order form.

CD's and Tapes come with a Course Book unless otherwise indicated on the AV Tapes List

ORDER FORM FOLLOWS

Audio/Video Order Form

Attorney's Name: _____ Florida Bar Number: _____

Firm Name:_____Phone Number: _____

Street Address: _____ Suite/Apt. #: _____

City: _____ State: _____ Zip Code: _____

CLER Deadline: _____ Certification Deadline: _____

OR:

Customer Number: _____ Tax Exempt ID#: _____

Entity Name: _____Attn: _____

Street Address: _____ Suite/Apt. #: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Purchase Order Number: _____

PLEASE ALLOW FOUR WEEKS FOR DELIVERY.
FLORIDA BAR COURSES ARE AVAILABLE FOR CREDIT ON-LINE 24/7 AT:
www.floridabar.org/CLE ➔ Go to 'Online Courses'

Course Title	Course #	Format CD = Audio CD V = Videotape (VHS) DVD = Video on DVD	Cost *(Include 6% sales tax + your County surtax)
1.			$
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
	Subtotal ➔		$
	***Sales Tax (FL Resident)** Include sales tax unless ordering party is tax-exempt		$
	TOTAL ➔		$

PAYMENT TYPE:

☐ **Check #** _____ **Check Amount $**_____

☐ **MasterCard** ☐ **Visa** ➔ **Fax #: 850-561-5816**

We are unable to accept American Express at this time.

Name of Cardholder: _____ Signature: _____

Card #: _____ Expiration Date: _____ – 20_____
Month Year

The Florida Bar CLE Audio/Video List

www.floridabar.org

850-561-5629

KEY TO ABBREVIATIONS - CERTIFICATION CREDIT HOURS

AD = Admiralty and Maritime
AG = State & Federal Government & Admin. Practice
AP = Appellate Practice
AT = Antitrust & Trust Regulation
AV = Aviation
BL = Business Litigation
CA = Criminal Appeal
CC = City, County, Local Gov't
CL = Construction Law
CR = Criminal Trial
CT = Civil Trial
ED = Elder Law
EP = Wills, Trusts, & Estates
FL = Marital & Family Law
HL = Health Law
IL = International Law
IP = Intellectual Property
IM = Immigration & Nationality
LE = Labor & Employment
RE = Real Estate
TX = Tax
WC = Workers' Compensation

PLEASE ALLOW FOUR WEEKS FOR DELIVERY.

Revised 07/17/2008

Course No.	COURSE TITLE FORMAT AVAILABLE CD = AUDIO CD V = VIDEOTAPE (VHS) DVD = VIDEO ON DVD	CREDITS HOURS General	E = Ethics P = Professionalism S = Substance Abuse MIA = Mental Illness Awareness	Certification	Approval Period	COSTS S = Section Member N = Non-Section Member CD	Video or DVD
REAL PROPERTY, PROBATE & TRUST LAW SECTION							
0426	Trusts & Estate Symposium–2007 Edition **CD & V**	**6.5**	**1.0 E**	ED = 5.0 EP = 5.0 TX = .50	05/17/2007- 11/17/2008	**S = $225.00** **N = $250.00**	**S = $250.00** **N = $275.00**
0531	Bankruptcy Issues for Real Estate Lawyers (and Vice Versa) **CD Only**	**5.5**	**0**	BL = 4.0 CL = 1.0 RE = 4.0	05/25/2007- 11/25/2008	**S = $185.00** **N = $210.00**	Not Available
0503	27th Annual RPPTL Legislative & Case Law Update (No Course Book Available) **CD Only**	**7.5**	**0**	BL = 5.5 CL = 7.5 ED = 5.5 EP = 5.5 RE = 5.5 TX = 5.5	08/03/2007- 02/03/2009	**$240.00**	Not Available
0543	Estate Administration Issues Resulting from Good Planning, Bad Planning or No Planning **CD & V**	**7.0**	**0**	ED = 7.0 EP = 7.0 TX = 7.0	09/26/2007- 03/26/2009	**S = $165.00** **N = $190.00**	**S = $250.00** **N = $275.00**
0634	Creative Estate Planning Ideas You Should Be Thinking About When No One is Paying You to Think About Them **CD & V**	**6.0**	**0**	ED = 4.5 EP = 4.5 TX = 4.5	11/08/2007- 05/08/2009	**S = $175.00** **N = $200.00**	**S = $250.00** **N = $275.00**
0577	Environmental & Land Use Considerations for a Real Estate Transaction **CD & DVD**	**8.5**	**0**	AG = 6.5 CC = 8.5 RE = 6.5	01/25/2008- 07/25/2009	**S = $155.00** **N = $180.00**	**S = $250.00** **N = $275.00**

0581	Trust & Estate Symposium: Litigating Under Florida's New Trust Code **CD & DVD**	**6.0**	**1.0 E**	ED = 4.5 EP = 4.5 TX = 4.5	02/07/2008- 08/07/2009	**S = $145.00** **N = $170.00**	**S = $250.00** **N = $275.00**
0590	2008 Construction Law Certification Review Course **CD Only**	**20.0**	**1.0 E**	BL = 15.0 CC = 15.0 CL = 20.0 RE = 20.0	03/07/2008- 09/07/2009	**S = $350.00** **N = $375.00**	Not Available
0595	Ins and Outs of Florida Condominium Law – 2008 Edition **CD Only**	**7.0**	**0**	RE = 7.0	04/10/2008- 10/10/2009	**S = $160.00** **N = $185.00**	Not Available
0663	Current Issues in Community Association Law for Developers: What You Don't Know May Hurt You! **CD Only**	**7.0**	**0**	RE = 7.0	04/11/2008- 10/11/2009	**S = $190.00** **N = $215.00**	Not Available
0605	Wills, Trusts & Estates Certification Review & Advanced Practice Update **CD Only**	**17.0**	**1.5 E**	ED = 13.0 EP = 13.0 RE = 3.5 TX = 7.0	04/18/2008- 10/18/2009	**S = $315.00** **N = $340.00**	Not Available
0606	Real Estate Certification Review Course **CD Only**	**15.5**	**1.0 E**	CC = 15.5 CL = 15.5 RE = 15.5	04/18/2008- 10/18/2009	**S = $340.00** **N = $365.00**	Not Available
0633	Planning for the Nontraditional Family in the 21st Century **CD Only**	**4.0**	**0.5 E**	ED = 3.0 EP = 3.0 FL = 3.0 RE = 3.0	05/23/2008- 11/23/2009	**S = $120.00** **N = $145.00**	Not Available

MISCELLANEOUS

0642	Litigating Cases in Arbitration & Court: Practical Lessons for the Defense & Plaintiff Bar **CD & V**	**4.5**	**1.0 E**	BL = 3.5	06/29/2007- 12/29/2008	**$90.00**	**$250.00**
0542	Special Topics in Eminent Domain **CD & V**	**7.0**	**1.0 E**	AG = 7.0 CC = 5.5 RE = 5.5	09/27/2007- 03/27/2009	**$135.00**	**$250.00**
0660	2008 Survey of Florida Law (No Course Book Available) **CD Only**	**11.5**	**4.0 E**	CA = 1.0 CR = 1.0 CT = 1.0 ED = 1.0 EP = 1.0 FL = 2.0 HL = 1.0 TX = 1.0	02/13/2008- 08/13/2009	**$50.00**	Not Available
0661	Masters Seminar on Ethics 2008 **CD Only**	**3.5**	**3.5**	0	06/20/2008- 12/20/2009	**$50.00**	Not Available

The maximum amount of credit hours for each course is indicated under the Credits/General column. To be in compliance, you must have completed the Total Minimum Requirement of **thirty (30) General hours**, including **five (5) hours of Ethics, Professionalism, Substance Abuse or Mental Illness Awareness (any combination) during each CLER cycle.**

Hours can be reported/viewed on The Florida Bar web site: www.floridabar.org

Every member's Florida Bar News label reflects a CLER reporting date. To avoid suspension, return your completed CLER affidavit prior to that date (Rules Regulating The Florida Bar 6-10.5).

What's Happening Within the Section...

As one of the largest sections of The Florida Bar, the RPPTL Section provides numerous opportunities to meet and network with other attorneys who practice in real property and probate & trust areas of the law, whether through getting involved in one of the various RPPTL Section committees or attending a RPPTL Section sponsored CLE course. Members have access to a wealth of information on the RPPTL Section website, including up-to-date news and articles regarding case law and legislative changes, other publications such as ActionLine, upcoming RPPTL Section sponsored CLE courses, and a whole host of relevant links to other real property, probate & trust law websites.

Additionally, the Section is working on human resources pages where searches can be done for out-of-state licensed Section members, law students available for clerkships or special project assistance, and other classifications. Further, Section committees each have list serves that discuss issues and current hot topics, available to committee members.

CLE COURSE SCHEDULE

Course Registration: (850) 561-5831
or at WWW.FLORIDABAR.ORG unless otherwise stated.

REAL ESTATE: ETHICAL FRAUD & OTHER FAIRY TALES (#0715)

October 16, 2008 - Tampa Airport Marriott • Tampa
October 17, 2008 - Hyatt Pier 66 • Fort Lauderdale
Live Webcast Virtual Seminar - Simultaneous Internet Broadcast

WHAT EVERY ESTATE PLANNER NEEDS TO KNOW ABOUT THE GENERATION-SKIPPING TRANSFER TAX (#0762)

October 24, 2008
Orlando Hyatt Regency International Airport

THE PROBATE TEAM 2008

October 31 & November 1, 2008
Caribe Royale Resort, Orlando
Reservation Phone No. (877) 784-6835
Room Rate : $149.00 (Queen Dbl)
$159.00 (Std King)
Cut-off Date: September 25, 2008
Seminar brochure & registration
available August 2008 at *www.flssi.org*

GUARDIANSHIP LAW & PROCEDURE (#0716)

November 6, 2008
Ft. Lauderdale Hyatt Regency Pier Sixty-Six
November 7, 2008 - Tampa Airport Marriott
Multiple Video Replays
November 6 – December 11, 2008

ASSET PROTECTION IN FLORIDA (#0714)

November 12, 2008 - Tampa Airport Marriott
November 13, 2008 - Hyatt Pier 66 • Fort Lauderdale
Live Webcast Virtual Seminar - Simultaneous Internet Broadcast

RPPTL FORECLOSURE & CREDITOR'S RIGHTS

January 23, 2009 - Tampa Airport Marriott
Multiple Video Replays
February 6 – February 13, 2009

2009 TRUST & ESTATE SYMPOSIUM (#0718)

February 12, 2009
Ft. Lauderdale Hyatt Regency Pier Sixty-Six
February 13, 2009 - Tampa
Multiple Video Replays
February 27 – March 13, 2009

EXECUTIVE COUNCIL MEETINGS

EXECUTIVE COUNCIL MEETING

September 18 – September 21, 2008
Ritz-Carlton, Key Biscayne
Reservation Phone # 305-365-4500
Room Rate: $180.00
Cut-off Date: August 18, 2008

EXECUTIVE COUNCIL MEETING

December 4 – December 7, 2008
DoubleTree Hotel, Tallahassee
Reservation Phone # 850-224-5000
Room Rate: $129.00
Cut-off Date: November 3, 2008

EXECUTIVE COUNCIL OUT-OF-STATE MEETING

January 29 – February 6, 2009
Swissotel Quito, Quito Ecuador &
Galapagos Islands Cruise
Hotel Phone # 593 2 2567 600 ext. 6722
Hotel Fax # 593 2 2568 080
Hotel E-Mail lramirez@swissuio.com
Group Reservation Coordinator: Lorena Ramirez
Room Rate: $110 USD (Luxury Single)
$130 USD (Junior Suite)
$200 USD (Business Suite)

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

ACTIONLINE BULLETIN BOARD

FLORIDA ATTORNEYS SAVING HOMES

The Florida Bar and Florida Legal Services are seeking RPPTLS members to assist with the Pro Bono Foreclosure Prevention Project. If you are **interested in becoming a volunteer, please email Andrew O'Malley at aomalley@cowmpa.com or Adele Stone at astone@atkinson-diner.com**.

ACTIONLINE ON LINE

Recall an article that you saw in *ActionLine* but don't remember the issue? Each issue is posted onto the Section's website: www.rpptl.org. You must log on to the private home page (request the password be emailed to you) and click on "RPPTL Publications" (lower right). The *ActionLine* archive includes the issues from the "old" site, before the redesign. The Google search engine now on the website allows you to search the *ActionLine* PDFs. For example, a search using the words "Tortoise Island" returns the Summer '04 issue of *ActionLine*.

PROPERTY APPRAISERS MUST BE NOTIFIED

The Title Insurance Committee of the RPPTL Section would like to direct your attention to Section 193.1556, Florida Statutes, which became law in 2007 and was amended in the most recent legislative session. This statute provides that a property owner must notify the property appraiser of any change of ownership or control of real property that is assessed for ad valorem property taxes. Even when legal title is not transferred, the property appraiser must be notified of a transfer of beneficial ownership or when there is a transfer of ownership of the legal entity in title. Failure to notify the property appraiser may result in penalties and interest.

New Committee Forming

Become a member of the new
REAL PROPERTY INSURANCE COMMITTEE!
If you are interested, please e-mail your contact information to the new committee chair, Jay Mussman at jmussman@chapin-law.com, or to vice chair, Andrea Northrop, at andrea.northrop@ioausa.com.

DEADLINE

for submissions for the next issue of ActionLine is

OCTOBER 31, 2008.

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
651 East Jefferson Street
Tallahassee, FL 32399-2300

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