

ActionLine

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

Taxation of Fees and Costs in Probate and Trust Matters

Promissory Notes and the Internal Revenue Code

RPPTL Fellowships Awarded

Vol. XXX, No. 2
Winter 2008
www.rpptl.org





Florida *Pro*Doc has automated forms for:

- Family
- FLSSI* Probate
- Litigation
- Estate Planning
- FLSSI* Real Estate
- FLSSI* Guardianship
- State Criminal Defense
- Federal Criminal Defense
- Business Organizations
- And More!

* FLSSI is a nonprofit corporation created by the Real Property, Probate, and Trust Law section of the Florida Bar. These forms are created and maintained by leading experts in their field and recognized as the standard in probate courts throughout Florida.

Draft twice the documents in half the time.

Paperwork is the biggest money drain in just about every law office.

40% of the average attorney's time – and 60% of the average legal assistant's time – is spent rushing to get documents done. Paperwork makes it nearly impossible to grow your practice and profits – unless you work long hours or hire more people.

Fortunately, there's an easier way: *Pro*Doc® automated forms for Florida drastically cuts the time your office spends drafting documents. With *Pro*Doc, you and your staff can draft even complex documents in minutes instead of hours.

Because *Pro*Doc forms are kept up-to-date by our staff of attorney-programmers – even as new Florida legislation takes effect – you can trust their accuracy. *Pro*Doc for Florida also includes the latest FLSSI* forms, recognized as the standard in probate courts throughout Florida.

To order or for more information, contact your West Representative, call 1-800-759-5418, or visit prodoc.com.

© 2008 West, a Thomson Reuters business L-342188/7-08

Click ... Click, Documents Done.

prodoc.com

proDOC®

THOMSON WEST

The First Tuesday After the First Monday in March:
The RPPTL Legislative Program



By
Sandra F.
Diamond
Section Chair
2008 - 2009

Chair's Column

As lawyers, we know the first Monday in October traditionally marks the date the United States Supreme Court convenes after its summer recess. As Florida lawyers, it is less likely that we pay any attention to the first Tuesday after the first Monday in March. But this floating date begins the annual 60-day session of the Florida Legislature, and it falls on March 3 in 2009.

For the RPPTL Legislation Committee and our legislature consultants, it is the beginning of an often frantic period that is the culmination of months and sometimes years of work. If this upcoming legislative session follows recent patterns, the RPPTL Section will be seeking passage of 10 to 15 legislative initiatives in 2009. Such an ambitious agenda would, in itself, be enough to keep Legislative Chair, **Burt Bruton**, and Legislation Division Directors, **Debra Boje** and **Michael Gelfand,** scrambling for two months. But our own proposals are the tip of the iceberg. Each year our RPPTL legislative consultants, **Pete Dunbar, Martha Edenfield, Gene Adams,** and **Josh Aubuchon** of the Pennington Law Firm, and our Legislative Committee spend untold hours addressing not only our own proposals, but also 20 or 30 other bills initiated outside of the Section which directly impact real property, probate, trust or guardianship law. The team additionally monitors the process for any initiatives that may affect the dozen standing legislative positions of the Section. Additionally, we are often asked to provide technical assistance to members of the Florida Legislature or their staffs on a variety of legislative or constituent issues. RPPTL committee chairs stand by during the 60-day legislative session to provide prompt input as bills suddenly move through a labyrinth of committees.

The legislative activity of the Section, though always strong, has grown dramatically in recent years. The increase has its roots in a strengthened Section committee structure that includes more than 35 standing committees. Large committees, such as Probate Law, Trust Law, Mortgage Law and Condominium and Planned Development, as well as smaller ones such as Charitable Organizations and Land Trusts, meet throughout the year to initiate, study, review and react to legislative proposals.

The committees sometimes take on long term and comprehensive reviews of Florida law. For example, several years ago, the Probate Law and Procedure Committee, then chaired by **Rohan Kelley,** embarked on a methodical revision of the entire Probate Code. Many committees review and react to a continuing stream of proposals by members of the Legislature, constituents or industry related groups. Each year the Condominium and Planned Development Committee deals with innumerable bills related to community associations, condominiums and homeowners associations.

Often special committees are established to review or initiate particular legislation. These Ad Hoc Committees are usually of limited duration, and many times are composed of representatives of various standing committees. This diverse makeup provides important expertise from different but related areas, such as probate law, trust law or litigation. Often, other Florida Bar sections or interest groups are represented on these special committees. The Ad Hoc Trust Code Committee worked for more than four years to produce a draft of Chapter 736, The Florida Trust Code, with representation from the Elder Law Section, the Tax Section, the Florida Bankers Association and the FICPA. Conversely, representatives from the Section also participate in legislative projects by sister sections of the Florida Bar, such as the comprehensive review and revision of the statutes governing not-for-profit corporations and limited liability companies by the Business Law Section and the Tax Section.

For fear of sounding too much like your ninth grade civics teacher reminding you "how a bill becomes a law" (primarily because I taught 11th grade government years ago, before deserting the classroom to go back to law school), I do want to make the point that the presentation that you see at the Annual RPPTL Legislative Update is the culmination of an enormous amount of work by hundreds of members of the Section.

Section initiatives may begin as a response to a question, complaint or observation made by an individual lawyer who sends an e-mail or letter or makes a call to one of the Section officers or committee chairs. Some calls for legislative changes originate in articles in The Florida Bar *Journal.* For example, **Jeff Baskies'** excellent article, "The New Homestead Trap," led the creation of the Ad Hoc Committee on Homestead Life Estates. We are hopeful that this committee's many hours of discussion, chaired by **Shane Kelley,** will result in a proposal acceptable to both real estate and trust and estate practitioners. Some Section legislative proposals come from reviews of model and

continued, page 5

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

Sandra F. Diamond, Seminole
Chair

John B. Neukamm, Tampa
Chair Elect

Michael A. Dribin, Miami
Secretary

William F. Belcher, St. Petersburg
Treasurer

Brian J. Felcoski, Coral Gables
Director, Probate & Trust Division

George J. Meyer, Tampa
Director, Real Property Division

Margaret A. Rolando
Director, Circuit Representatives

J. Richard Caskey, Tampa
Editor-in-Chief

Patricia J. Hancock, Maitland
Co-Editor, Real Property Law

Rose LaFemina, Aventura
Co-Editor, Probate and Trust Law

Shari Ben Moussa, Miami
Features Editor

Jane L. Cornett, Stuart
Roving Reporter

Scott Pence, Tampa
Advertising Coordinator

Liz Smith, Tallahassee
Program Administrator

J. Craig Shaw,Tallahassee
Bar Staff Editor

Lynn M. Brady, Tallahassee
Layout

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

ABOUT THE COVER:

The Breakers Hotel and Resort in Palm Beach, FL always welcomes the RPPTL Section for our annual Legislative Update and accompanying Executive Council meeting. Photo courtesy of John Neukamm.

IN THIS ISSUE:

Chair's Column – The First Tuesday After the First Monday In March: The RPPPTL Legislative Program 3
Does Florida Rule of Civil Procedure 1.525 Apply to Probate and Trust Proceedings? 7
A Wealth & Well-Being® Perspective: Estate Planning Challenges for Real Estate Investors 11
Tax Issues Related to Term Promissory Notes 12
Executive Council Meets in Key Biscayne 15
RPPTL Section Welcomes Judge Claudia R. Isom to the Thirteenth Circuit Probate, Guardianship & Trust Division 18
2008 Belcher Award Presented to Sandra and Frank Diamond 19
RPPTL Executive Council Meeting - The Breakers, Palm Beach 21
Awards: Professionalism and Outstanding Service 22
Congratulations New Fellows! 23
The New Guardian Advocacy 24
Supreme Court Reverses its Original Opinion in Strand v. Escambia County 25
Back By Popular Demand: Qualified Charitable Distributions 27
The New Standard – "Annual" Irrevocable Life Insurance Trust and Trust Owned Life Insurance Policy Reviews 29
The Cutler En Banc Opinion: Is the Third DCA Eroding the Protection Afforded to Heirs Who Are to Receive Devises of Florida Homestead? 31
Private Foundations: Some Basic Compliance Issues 36
Real Estate Case Summaries 41
Probate Case Summaries 45
What's Happening Within the Section... 63
Actionline Bulletin Board 64

Get Included in *ActionLine!*

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

Forward any proposed **ARTICLE OR NEWS OF NOTE** to J. Richard Caskey at jrcactionline@gmail.com.

For information on ADVERTISING, please contact Scott Pence at spence@carltonfields.com.

The deadlines for all submissions are as follows:

Issue	Deadline
Spring	January 31
Summer	April 30
Fall	July 31
Winter	October 31

For GENERAL INq UIRIES 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.

Message From the Chair

from page 3

uniform acts. The Power of Attorney Committee, chaired by **Tami Conetta,** is reviewing the Uniform Power of Attorney Act with the goal of modernizing Chapter 709 - Florida's Durable Power of Attorney law.

The Bylaws of the Real Property Probate and Trust Law Section require that in order for a legislative proposal to be adopted as an official position of the Section, it must be approved by a two-thirds vote of the members present at the Executive Council. The proposed legislation must be within the scope of our Section's activities, and the use of Section funds must be authorized prior to promoting the proposed legislation.

No legislative position may be advanced unless it is first approved by The Florida Bar Board of Governors. Therefore, after a specific legislative proposal is adopted by the RPPTL Executive Council, it is forwarded to the Board of Governors for approval. The Section currently has over 70 legislative positions approved by the Board of Governors. The list of these positions, which must be reviewed for re-adoption every two years by the Board of Governors, may be found on The Florida Bar website at *www.floridabar.org,* and on the RPPTL website at *www.rpptl.org.*

The methodical consideration, drafting and approval by the Executive Council and The Florida Bar Board of Governors is merely the start of the process. The high hurdles begin as our legislative consultants seek sponsors willing to introduce the proposed legislation in the Florida House and Senate. It goes without saying that our state is facing the same array of pressures and crises as the nation: slowing economy, budget deficits, spiraling health care and education costs. While changes to the Principal and Income Act or clarifying exemptions in the 2008 mortgage foreclosure rescue act may be critical to attorneys or to our clients, these types of changes may not generate the type of broad based concern that would induce a member of the Legislature to step forward to sponsor the proposed legislation, giving up one of the member's limited and valuable bill slots. Many members of the Florida Legislature have generously been willing to act as sponsors of RPPTL legislation. We try to feature those members in *ActionLine* at the end of each legislative session. But, frankly, we are not always able to find a champion for each of our legislative proposals. Remember, legislation in Florida must be limited to a single subject. As much as we would like to, we cannot lump all of our guardianship changes together with trust code revisions. Some of our 70 or so standing positions have been waiting quite a while.

It is not clear if March 3, 2009, is the beginning of the end or is the end of the beginning of this year's Section legislative efforts, but as always, it will be a busy season for all those involved in RPPTL legislation. Be sure to stay tuned and plan to join us at next year's Legislative Update, scheduled for Friday, July 31, 2009 at the Breakers in Palm Beach.



Second Annual Construction Law Institute set for March 2009



On March 5 – 7, 2009, the Second Annual Construction Law Institute will be held at the Omni Orlando Resort, in ChampionsGate, Florida. In addition to advanced level seminars, the event will include a golf tournament on Thursday, March 5th, and evening receptions on March 5th and 6th. Based on the success of last year's event, exhibitor space is filling fast. Below are several quotes from attendees from the previous year's institute:

- "I was more than pleased with the seminar –it was great being able to mingle with some of the big names in Fla. construction law."
- "The seminar was well-planned and opened a great networking opportunity and also presented a number of opportunities to learn valuable information."
- "The Best Florida Seminar I have attended in 28 years!"
- "Excellent –let's do it every year!"

Event Sponsors

Delta Consulting Group -Friday Luncheon
American Arbitration Association –Friday Evening Reception
Liberty Building Forensics Group –Networking Break
Lovett Silverman Construction Consultants, Inc. –Networking Break
SEA, Ltd. –Golf Hole Sponsorship and Golf Foursome
Upchurch Watson White and Max –Golf Hole Sponsorship
URS Corporation –Golf Hole Sponsorship and Golf Foursome
HSA Engineers & Scientists, Inc. –Golf Foursome
Navigant Consulting, Inc. –Golf Foursome
Rimkus Consulting Group, Inc. –Golf Foursome
Trauner Consulting Services, Inc. –Golf Foursome





General Sponsors

American Arbitration Association
The Associated General Contractors of America
Boyken International, Inc.
Delta Consulting Group
FTI Consulting, Inc.
Hill International, Inc.
HSA Engineers & Scientists, Inc.
ICC Consultants
ICON Corporation
Liberty Building Forensics Group
Lovett Silverman Construction Consultants, Inc.
Nautilus Consulting, LLC
Navigant Consulting, Inc.
Nelson Architectural Engineers, Inc.
Paul J. Del Vecchio Construction Consultants, Inc.
Project Development International, Inc.
Rimkus Consulting Group, Inc.
SEA, Ltd.
Slider Engineering Group
Thomson West
Trauner Consulting Services, Inc.
Upchurch Watson White and Max
URS Corporation
Veritas Advisory Group, Inc.
Wagner · Hohns · Inglis, Inc.
Walter P. Moore & Associates, Inc.

Law Firms

Akerman Senterfitt
Bachara Construction Law Group
Becker & Poliakoff, P.A.
Carlton Fields, P.A.
Casey Ciklin Lubitz Martens & O'Connell
Fowler White Boggs, P.A.
Henrichsen Siegel, P.L.L.C.
Hill Ward Henderson
Holland & Knight, LLP
Leiby, Sterns & Roberts, P.A.
Michael C. Sasso, P.A.
Peckar & Abramson, P.C.
Shutts & Bowen LLP
Tritt & Franson, P.A.
David J. Valdini & Associates, P.A.
Vincent F. Vaccarella, P.A.



For more information regarding sponsorship opportunities or attendance, please contact Liz Smith at The Florida Bar at (850) 561-5619.

Does Florida Rule of Civil Procedure 1.525 Apply to Probate and Trust Proceedings?

By Jon Scuderi, Esq., Goldman, Felcoski & Stone P.A., Naples, FL and Rebecca Y. Zung-Clough, Esq., Wealth Strategist, Northern Trust, NA, Naples FL

When the Supreme Court of Florida created Florida Rule of Civil Procedure 1.525, effective January 1, 2001, the landscape of civil procedure changed with regard to the timing of serving requests for attorneys' fees. The rule now states that "any party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal." It is certain that the Supreme Court of Florida intended that the rule be concise, unambiguous and explicit. As applied to a standard civil case, mission probably accomplished. However, it is a different story when one attempts to apply the rule to the various probate and trust attorney fee proceedings.

How does a Florida Rule of Civil Procedure apply to a probate or trust proceeding? The Florida Trust Code states that subject to a few exceptions, "proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Florida Rules of Civil Procedure."[1] In probate, certain proceedings are deemed adversary or can be declared adversary, and if they are so deemed or declared then the Florida Rules of Civil Procedure do apply.[2]

"The uncertainty concerning the application of the rule to probate and trust attorney fee proceedings has boiled over into the lower courts."

The Background

A trial court has continuing jurisdiction, within a reasonable time, to entertain a post-judgment motion for attorneys' fees.[3] F.R.C.P. 1.525 was created "to cure the evil" of uncertainty created by tardy motions for fees and costs; and second, to eliminate the prejudice that tardy motions cause to both the opposing party and the trial court."[4] By establishing an explicit time to serve a motion for attorneys' fees and costs, the rule eliminated the uncertainty created by the reasonable time rule.[5]

F.R.C.P. 1.525 works well in a standard civil litigation case where there are plaintiffs and defendants and maybe some counterclaimants as well. However, attorney fee proceedings in the probate and trust arena present some unique circumstances not addressed by the rule. Specifically, in certain probate and trust cases a non-party (attorney) might have a right to recover fees for services provided on behalf of the estate or trust. Additionally, the interested person who may bear the ultimate responsibility for payment of the fees may not have been a party to the underlying proceeding. Further, in civil litigation the method of taxing attorneys' fees and costs is based on prevailing party considerations.[6] That is not necessarily the case in probate and trust attorney fee proceedings.

The uncertainty concerning the application of the rule to probate and trust attorney fee proceedings has boiled over into the lower courts, mainly because some probate and trust practitioners have incorrectly assumed the rule does not apply. The goal of this article is to assist the practitioner in wading through the various statutes and the relevant case law to provide some thoughts regarding the applicability of F.R.C.P. 1.525 to the various probate and trust attorney fee proceedings.

Breach of Fiduciary Duty Actions

One of the most frequently litigated issues in the probate and trust area is whether a fiduciary has breached its fiduciary duty to the interested persons. Both the Florida Trust Code and the Florida Probate Code contain statutes that address the taxation of attorneys' fees and costs upon completion of the lawsuit. The Florida Trust Code provides in pertinent part that in all actions for breach of fiduciary duty or challenging the exercise, or failure to exercise, a trustee's powers, the court shall *award taxable costs* as in chancery actions, including attorney fees.[7] The statute also applies to various trust modification and reformation proceedings.[8]

The Florida Probate Code provides that in actions for breach of fiduciary duty or challenging the exercise or failure to exercise a personal representative's powers, the court shall *award taxable costs* as in chancery actions, including attorneys' fees.[9]

A review of the plain language of the statutes reveals that these proceedings involve the taxation of costs, including attorneys' fees, against the opposing party, and, therefore, fall within F.R.C.P. 1.525. Hence, it is clear that a party seeking fees or costs under the provisions in either the Florida Trust Code or the Florida Probate Code would indeed be required to serve its motion within thirty days of the judgment.

There is one potential trap of which a trustee ought to be aware: in some instances, the trustee may have been able to pay his attorneys from trust assets during the pendency

continued, next page

of the proceeding. While it may seem that it would not be necessary to file a motion for attorneys' fees at the conclusion of the case if those fees have been paid, such an assumption could be a costly mistake for the trustee. Both the statutory provisions referred to above permit the court to direct payment against a party's interest in the estate or trust or against that party's other property.[10] Therefore, even if the trustee's attorney has been paid from trust assets, the trustee may still need to file a motion to assess the fees against the opposing party's share of the trust. The trustee should be certain to file that motion within the given thirty day time limit so that beneficiaries who did not participate in the litigation are not taxed attorneys' fees and costs against their shares.

Fiduciary Attorneys' Fees

Both the Florida Probate Code and the Florida Trust Code provide statutory provisions that address reasonable compensation for the fiduciary's counsel for services performed in the estate and trust administration.[11] The statutes permit an interested person to petition the court to review the compensation paid or to be paid to a fiduciary's attorney and increase or decrease fees for ordinary services or award compensation for extraordinary services.[12] Further, the statutes provide a list of factors for the court to consider when determining reasonable compensation.[13] Proceedings brought under these provisions are a part of the estate and trust administration process.[14] They are separate proceedings that have nothing to do with a post-judgment proceeding seeking the taxation of fees or costs against an opposing party. Therefore, F.R.C.P. 1.525 does not apply.

A word of caution. The provisions address extraordinary services which can include litigation related services.[15] Nothing in the aforementioned provisions would alleviate the fiduciary's responsibility to serve a timely motion for attorneys' fees and costs if it was otherwise required to do so under F.R.C.P. 1.525. For example, a trustee who neglects to seek timely reimbursement for attorneys' fees from the opposing beneficiary after successfully defending a breach of trust action should not be able to use this provision to recover those fees from the trust.

In addition to the above proceedings, both the Florida Probate Code and the Florida Trust Code contain provisions that allow the court to review the propriety of employment of any person employed by the fiduciary and the reasonableness of any compensation paid to that person or to the fiduciary.[16] For many of the reasons discussed above, this is also a separate proceeding that would not invoke F.R.C.P. 1.525 because it is not a proceeding involving the taxation of fees or costs against an opposing party. This type of proceeding is an independent proceeding brought to determine reasonable compensation, and not the type of matter that would be decided on a post-judgment motion for attorneys' fees.

Another word of caution. These statutory provisions do permit the fiduciary, or the person employed by the fiduciary, to recover its costs, including attorneys' fees, incurred litigating the fee matters.[17] This is commonly referred to as "fees on fees." The one exception to "fees on fees" is when the fiduciary's requested compensation is determined to be substantially unreasonable.[18] Seeking "fees on fees" moves the fiduciary into the post-judgment arena and may potentially invoke F.R.C.P. 1.525. The prudent practitioner will serve any motions for "fees on fees" within thirty days of the date that the final order is rendered.

Attorneys' Right to Fees

Both the Florida Probate Code and the Florida Trust Code provide that an attorney who has provided services that benefit an estate or a trust may be awarded reasonable compensation from the estate or trust.[19] While there are no appellate decisions that directly address the applicability of F.R.C.P. 1.525 to these statutory sections, arguably the rule does not apply. Rule 1.525 applies to a party. The rule begins by stating that "any *party* seeking a judgment…." The statutory provisions apply to the attorney, not the party. Thus the conclusion can be drawn that perhaps Rule 1.525 does *not* apply.

While Florida Rule of Judicial Administration, Rule



2.505(h) states that an attorney is the agent of the client (party), the attorney, when seeking fees under these provisions, is not acting as an agent of the party. However, what if the attorney has already received compensation and currently is seeking reimbursement for his client from the estate or trust assets? In that instance, one could argue that the attorney is acting as the agent for the client, and therefore, the rule should apply. Since the right seems to belong to the attorney, it is unlikely that an analysis of whether F.R.C.P. 1.525 applies will turn on whether or not the attorney is seeking actual payment for herself versus reimbursement for her client.

Further, when analyzing the applicability of F.R.C.P. 1.525 to these statutory provisions it may be significant that the right to fees involves more than simply determining the prevailing party.[20] It involves a determination that the attorney's services actually benefited the estate or trust.[21]

Also, fees under the statutory provisions are not limited to fees for litigation services. Presumably, a beneficiary's attorney who provided valuable tax advice to the fiduciary would be able to recover a fee under these provisions. F.R.C.P. 1.525 would not apply in that situation.

Finally, the argument that F.R.C.P. 1.525 does not apply may be further bolstered by the fact that interested persons may bear the burden of the fees awarded even if those interested persons were not parties or participants to the underlying proceeding. In that instance, the court would not have sufficient jurisdiction over the interested person to rule on a post-judgment motion. The attorney's application for a fee under the statutory provisions could very well require the filing of a separate complaint (trust) or a separate proceeding by formal notice (probate) to join all the interested persons if those interested persons were not joined in the original proceeding.

Proponent of Will

The Florida Probate Code has a provision that may permit a proponent of a will, even if probate of that will is ultimately denied or revoked, to recover costs and attorneys' fees from the estate as long as the proponent acted in good faith in offering the will for probate.[22] The proponent seeking fees under this provision is not a prevailing party.

The determination of entitlement turns not on prevailing party considerations but upon whether the proponent acted in good faith. Denial or revocation of probate may not even be a result of litigation. For example, there may be a proponent who voluntarily withdraws the petition for administration upon learning the will was forged. Finally, the provision is not necessarily designed to seek fees against an opposing party or their particular interest in the estate, although that could be the case. Therefore, F.R.C.P. 1.525 probably does not apply to this statutory provision.

Costs

A motion for costs must be served within the thirty day time limit as provided in F.R.C.P. 1.525. In addition to the specific provisions addressed above, the Florida Trust Code[23] and the Florida Probate Code[24] both contain provisions which address the award of costs. Under either section, the court may direct from what part of the estate or trust the costs shall be paid.

There are no surprises here. However, if the fiduciary has been paying costs from the estate or trust during the pendency of the litigation, the fiduciary may be required to serve its motion within thirty days in order to have the court direct from what part of the estate or trust the costs should be allocated.

Conclusion

Because there is still confusion as to whether F.R.C.P. 1.525 applies to certain probate and trust attorneys' fee proceedings, it is highly recommended that the practitioner serve the motion for fees and costs within thirty days of entry of the final judgment. If everyone follows this advice, the issue will disappear. While a fiduciary may not be required to file a motion in every situation, very careful analysis is suggested before arriving at that conclusion.

Endnotes:

1 F.S. 736.0201(1)

2 Fla. Prob. R. 5.025(d)(2)

3 *Martinez v. Giacobbe*, 951 So. 2d 902, 904 (Fla. 3d DCA 2007), citing *Finkelstein v. North Broward Hospital District*, 484 So. 2d 1241 (Fla. 1986).

4 *Barco v. School Board of Pinellas County*, 975 So. 2d 1116, 1123 (Fla. 2008).

5 *Id*.

6 *Amendments to the Florida Family Law Rules of Procedure (Rule 12.525)*, 897 So. 2d 467 (Fla. 2005).

7 F.S. 736.1004

8 *Id*.

9 F.S. 733.609(1)

10 F.S. 733.609(2); F.S. 736.1004(2)

11 F.S. 733.6171; F.S. 736.1007; With one exception, every personal representative in Florida is required to be represented by counsel to assist in the administration of the estate. A trustee is not required to have representation, but many do, especially in the initial administration of the trust

12 F.S. 733.6171(5); F.S. 736.1007(6)

13 F.S. 733.6171(5); F.S. 736.1007(6)

14 F.S. 733.6175(2); F.S. 736.1007(9)

15 F.S. 733.6171(4); F.S. 736.1007(5)

16 F.S. 733.6175; F.S. 736.0206

17 F.S. 733.6175(2); F.S. 736.1007(9); F.S. 736.0206(4)

18 F.S. 733.6175(2); F.S. 736.1007(9); F.S. 736.0206(4)

19 F.S 733.106(3); F.S. 736.1005.

20 *See Estate of Garvey*, 212 So. 2d 790, 791 (Fla. 3d DCA 1968) *writ discharged, Garvey v. Garvey*, 219 So. 2d 685 (Fla. 1969).

21 *Estate of Brock*, 695 So. 2d 714, 717 (Fla. 1st DCA 1996).

22 F.S. 733.106(2)

23 F.S. 736.1006

24 F.S. 733.106(1)

OLD REPUBLIC TITLE INSURANCE GROUP

Strength & Stability

During these very difficult months of financial uncertainty, it is well worth a look at who's insuring your real property transactions. As potential indemnitors to real property owners and lenders, title insurers need a little scrutiny.

In 2008 and for the 16th straight year, the Old Republic Title Insurance Group received the highest financial strength ratings from all the major rating agencies. No other title group can make that claim. Our superior financial strength can be attributed to and measured by the following:

- Old Republic Title's claims reserves are 6.0 times the 5 year average annual claims payments, which is higher than our competitors. (Go ahead. Ask them what their ratios are!)
- Old Republic Title's parent Company, Old Republic International, is a multi-billion dollar diversified public company with a total debt to equity ratio of less than 5%.
- Founded in 1907, Old Republic Title is here to stay!
- Old Republic Title's self imposed single-site reinsurance retention limit is $500 million*. We proudly continue to insure real property transactions in every state in the Union.

*Where permitted by state law and subject to underwriting approval.

Since 1992, the Old Republic Title Insurance Group has held the distinction of being the highest rated title insurance group in the nation.

Old Republic National Title Insurance Company | Old Republic General Title Insurance Corporation | Mississippi Valley Title Insurance Company | American Guaranty Title Insurance Company

100 South Ashley Drive, Suite 700
Tampa, FL 33602-5358
800.342.5957
oldrepublictitle.com/flnational

A Wealth & Well-Being® Perspective:
Estate Planning Challenges for Real Estate Investors

Douglas K. Freeman, J.D., LL.M.

For many wealth creators, real estate represents the largest asset class in their net worth, or at least a significant part. While it comprises an important part of a family's wealth, it can also present possible estate planning headaches.

The real estate can take many forms …

- Real estate used in, and often leased to, the family business;
- Investment real estate, including commercial and industrial rental properties, as well as single and multi-family dwellings;
- Farm and ranch land, which sometimes doubles as a home as well as working land;
- Personal residences; and
- Vacation property.

It is not unusual for these assets to represent 60% or more of the total estate and the values can range into the millions of dollars. As valuable as these properties may be, they also create some serious and difficult estate planning challenges. Most of these challenges are surmountable, but only if identified early and planned for well in advance.

There is a saying among estate planners: Forewarned is forearmed. There are many important considerations for affluent families with substantial real estate holdings. Here are some of the most important issues to think about and prepare for:

- The more valuable the asset, the greater the potential estate tax. Will cash be available to pay the tax? If not, can the property be refinanced or will it have to be sold? Will the beneficiaries who inherit the real estate have other resources from which to pay the tax, so as to retain the property?
- If the gift is to several beneficiaries who will share ownership, who will have the right to use it and responsibility to manage it? Will the person with management responsibility also have the necessary power to act? Who makes the final decision if there are competing agendas or goals? Whenever there are assets with multiple owners (we call these "Shared Assets"), such questions can create disagreement among the multiple owners, especially when those owners are family members.
- If the property generates income, how will the income be allocated and shared? Who decides if, when, and to what extent, income is distributed? Reinvested? Held in reserve for maintenance and improvements?
- Who is responsible for paying the property's operating expenses? Paying for capital improvements to the property? What happens if one or more of the multiple owners fails to pay?
- Who pays for damages to the asset, especially if a family member was the cause of the damage? What are the consequences to the family member for failure to pay for the repair?
- Who has the power to decide to sell the asset? Encumber the asset? What if there is disagreement among the multiple owners regarding these issues?
- What if an owner wants to sell his or her share? Is it permitted? Who sets the price and terms of the sale? Does the family want, or will they accept, a non-family buyer or transferee?
- What if one or more current owners want to purchase the interest of others? Is that permitted? Who sets the price and terms of the purchase?

For these reasons, thoughtful families develop a comprehensive agreement among all the owners. We call this a Family Shared Asset Ownership Plan.

The Family Shared Asset Ownership Plan focuses on the long range goals, dreams, needs and expectations of the family owners and other stakeholders, each of whom may have a current or future interest in the ownership, income, or use of the Shared Asset. If these voices are not heard, the family may experience anything from internal discord to public fighting and even litigation.

The Family Shared Asset Ownership Plan articulates the collective vision of these stakeholders and establishes the process, policies and procedures to be followed with regard to the ownership of the Shared Asset. It sets realistic expectations, defines responsibilities, and assures accountability. The Family Shared Asset Ownership Plan does not guarantee the continued financial success or economic benefit of the Shared Asset, although that achievement is, of course, the common goal of many of the stakeholders. But the Family Shared Asset Ownership Plan will give those who own the Shared Asset the best chance to achieve continued financial success, while helping to reinforce the bonds of the family and perpetuate the legacy of the wealth creator.

At Gibraltar Private, we are concerned not just with the tax and economic consequences of estate planning, but with the impact of that planning on the lives of those for whom the funds were intended to benefit. Our advisors see the results of both effective and ineffective planning. We are pleased to offer you our insight, experience, and perspective.

Tax Issues Related to Term Promissory Notes

By David Duncan, Esq.
Fisher, Tousey, Leas & Ball, Jacksonville, FL

Today, as a result of the tightening of the credit markets, parents may seek to help their children buy a home by loaning their children money in exchange for a promissory note. However, the issuance of a promissory note generates a host of tax issues that must be considered and minimized or avoided whenever possible. This article will provide a roadmap for how the original issue discount ("OID") rules of Section 1272 of the Internal Revenue Code of 1986, as amended (the "Code") and the below-market loan rules of Code Section 7872 operate with respect to term promissory notes between natural persons that are issued for money and are not publicly traded.

The key in determining which section applies is the interest rate and amount of the loan. If the amount of the loan is $10,000 or less, neither Code Section 1272 nor Code Section 7872 applies. If the loan exceeds $10,000, it is necessary to compare the promissory note's interest rate against the applicable federal rate for the term of the note. If the interest rate is below the applicable federal rate,[1] Code Section 7872 may apply. If the interest rate is equal to or exceeds the applicable federal rate, Code Section 1272 may apply, but the rules under Code Section 7872 will not apply because the loan is not a below-market loan.

"A promissory note generates a host of tax issues that must be considered and minimized or avoided whenever possible."

Code Section 1272

Code Section 1272 sets forth the income tax rules for promissory notes where OID is present and requires the lender to recognize interest income equal to the sum of the daily portions of the original issue discount accrued during the year.[2] Code Section 1272 is an exception to the general rule that natural persons are cash-method taxpayers. Code Section 1272, however, does not apply if the loan is between natural persons and the amount loaned does not exceed $10,000.[3]

The determination of whether OID is present is determined under Code Section 1273(a)(1), which defines OID as the difference between the Stated Redemption Price at Maturity ("SRPM") and the Issue Price ("IP"). In the case of a term promissory note issued for money that is not publicly traded, the IP is the amount loaned.[4] The SRPM equals the sum of all payments provided by the debt instrument other than "qualified stated interest."[5] The term "qualified stated interest" is interest that is unconditionally payable in cash at fixed periodic intervals of one year or less based on a fixed rate of interest.[6] Therefore, interest due at maturity in a balloon note does not constitute qualified stated interest. Thus, if a note provides for payment of principal and interest at maturity, SPRM equals the principal plus all interest payable at maturity. In contrast, where interest is due each year under the term note, then the SRPM equals only the IP because the interest component qualifies as qualified stated interest. In that case, OID equals zero. However, where a lender requires annual interest payments but subsequently waives the payments, the lender will not avoid OID as the interest would not be considered unconditionally payable.[7]

If OID exists, Code Section 1272(a)(3) and Treasury Regulations Section 1.1272-1(b)(1) provide the following step-by-step process (summarized below) to determine the amount of OID where the interest rate will remain constant during the term of the note and there are no contingent payments:

Step One: Determine the debt instrument's yield to maturity ("YTM"), which is the discount rate that will cause the present value of all interest and principal payments under the note to equal the IP.[8] In a balloon note, the YTM will equal the stated interest rate.

Step Two: Determine the accrual period not to exceed one year.[9]

Step Three: Determine the OID allocable to each accrual period by multiplying the adjusted IP (beginning IP plus previously allocated OID) by the YTM and then subtracting out all qualified stated interest allocable to the accrual period.[10]

To illustrate the above steps through an example, assume that on January 1, Year 1, father X gives son Y a $50,000 in exchange for a balloon note that is due in ten years. The note bears a stated rate of interest equal to the long-term applicable federal rate, which is 4.46% at the time the note issued. This would result in the following amounts of interest income each year to father X:

	Yr. 1	Yr. 2	Yr. 3	Yr. 4	Yr. 5	Yr. 6	Yr. 7	Yr. 8	Yr. 9	Yr. 10
YTM	4.46%	4.46%	4.46%	4.46%	4.46%	4.46%	4.46%	4.46%	4.46%	4.46%
Adj. IP	$50,000	$52,230	$54,559.46	$56,992.81	$59,534.69	$62,189.94	$64,963.61	$67,860.98	$70,887.58	$74,049.17
OID	$2,230	$2,329.46	$2,433.35	$2,541.88	$2,655.25	$2,773.67	$2,897.38	$3,026.00	$3,161.59	$3,302.59

Code Section 7872

On the other hand, when the stated interest rate of a term promissory note is less than the applicable federal rate, the below-market loan rules of Code Section 7872 must be examined. Code Section 7872(c) provides that Code Section 7872 applies to any below-market loan that is a gift loan.[11] A gift loan is "any below-market loan where the forgoing of interest is in the nature of a gift."[12] For gift tax purposes, the amount of the gift equals the amount by which the amount loaned exceeds the present value of all payments due under the loan.[13] The present value of a term loan is determined using the applicable federal rate in effect under Code Section 1274(d), compounded semi-annually.[14] Therefore, where the interest rate of the note is below the applicable federal rate, the note will be deemed a below market gift loan. Code Section 7872(a) provides that the forgone interest shall be treated as transferred from the lender to the borrower and retransferred by the borrower to the lender as interest (the interest income).[15] The double whammy of Code Section 7872 is that a taxpayer who makes a gift loan not only has income tax consequences similar to Code Section 1272 but also has gift tax consequences.[16]

To illustrate the implications of Code Section 7872, assume that father X gives son Y a $200,000 promissory note at 0% interest due in 5 years at a time when the applicable federal rate is 4.46%. As a result, X has made a gift of $39,202 to Y.[17] This gift will be recognized by X in the year of the loan.[18] Additionally, X will need to recognize $39,202 of OID over the 5-year term of the loan, as Y will be treated as having paid this amount as interest to X each year.[19]

In addition to the $10,000 de minimis exception of Code Section 7872(c)(2), Code Section 7872(d)(1) also provides a second exception to the general rule of Code Section 7872(a). Code Section 7872(d)(1) can limit, and in some cases avoid, the income tax effects of the gift loan. Code Section 7872(d)(1) should be utilized where the borrower is using the money to buy non-income producing assets, like a house. In order to benefit from Code Section 7872(d)(1), the loan must be a gift loan, as defined above, and must amount to less than $100,000 when aggregated with all gift loans outstanding between lender and borrower.[20] Under such circumstances, the lender's imputed interest income is limited to the borrower's net investment income as defined by Code Section 163(d)(4).[21] And, where the borrower's net investment income is less than $1,000 in the year, the lender recognizes no interest income.[22] Thus, the attorney drafting the promissory note should have an understanding of the borrower's net investment income in determining whether Code Section 7872(d)(1) applies.

Additionally, the gift tax consequences of a term gift loan are determined by Code Section 7872(b)(1).[23] Code Section 7872(b)(1) provides that term gift loan will result in a gift that is equal to the amount of the loan less the present value of all payments required to be made under the terms of the loan. Again, the present value of the note is determined by utilizing a discount rate equal to the applicable federal rate as determined under Code Section 1274(d), compounded semi-annually.[24] Thus, before pursuing this path, the attorney drafting the note must also be cognizant of what gifts the lender(s) has already made during the calendar year to the borrower(s).

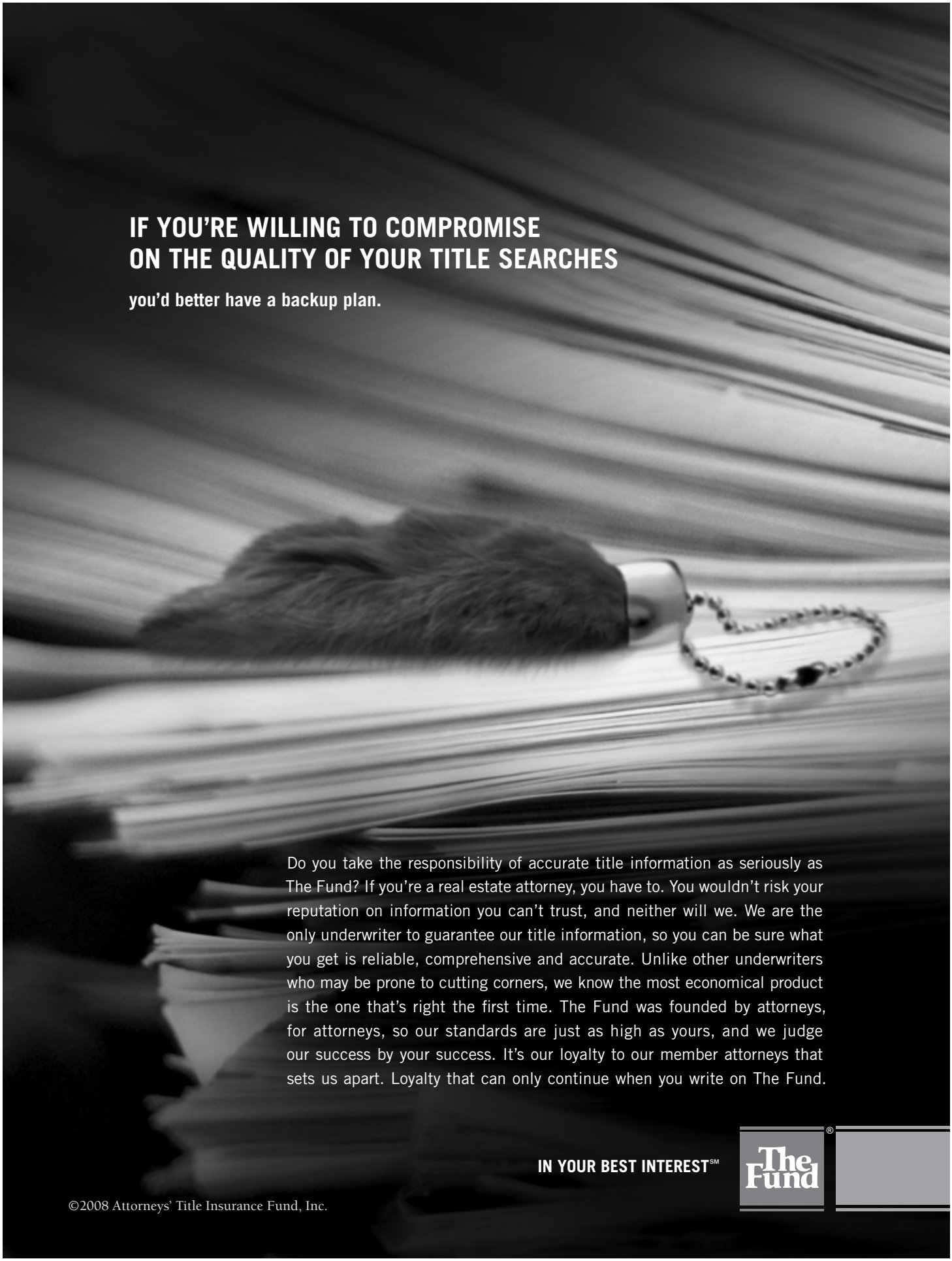
An example of the operation of Code Section 7872(d)(1) follows:

Father X and Mother Y, who have previously made the election to split gifts, make a ten (10) year interest-free gift loan in the amount of $50,000 to daughter A and son-in-law B in 2008. Neither A nor B have any net investment income, and A and B plan to use the gift loan to purchase their first home. If the long-term applicable federal rate is 4.46% at the time of the loan, then the present value of the loan is $32,320. Thus, a gift in the amount of $17,680 has been made by X and Y to A and B, but, assuming no other gifts had been made by X and Y to A and B in 2008, no gift tax is due thanks to the Section 2503(b) annual exclusion. And, because neither A nor B has any net investment income, X and Y recognize no imputed interest income.

In conclusion, while it may be easier to get a loan from the bank of mom and dad in these turbulent financial times, the potential for income and gift tax consequences caused by the issuance of such promissory notes exists, but these income and gift tax consequences may be minimized or avoided as outlined above.

Endnotes:

1 IRC § 1274(d); http://www.irs.gov/taxpros/lists/0,,id=98042,00.html
2 IRC § 1272(a)(1).
3 IRC § 1272(a)(2)(E)(i).
4 IRC § 1273(b)(2); Treas.Reg. § 1.1273-2(a)(1).
5 IRC § 1273(a)(2); Treas. Reg. §1.1273-1(b).
6 Treas. Reg. § 1.1273-1(c).
7 Treas. Reg. §1.1273-1(c)(1)(ii); Prop. Treas. Reg. § 1.7872-11(a) (the forgiven interest is treated as if paid and then gifted back to the borrower).
8 Treas. Reg. §1.1272-1(b)(1)(i).
9 Treas. Reg. §1.1272-1(b)(1)(ii).
10 Treas. Reg. §1.1272-1(b)(1) (iii).
11 IRC § 7872(c)(1)(A).
12 IRC § 7872(f)(3).
13 IRC § 7872(b)(1).
14 IRC § 7872(f)(1),(2).
15 IRC § 7872(a)(1); Prop. Treas. Reg. § 1.7872-1(a).
16 IRC §7872(d)(2)
17 Present Value of $200,000 at 4.46% = $160,798
18 IRC § 7872(b)(1); Prop. Treas. Reg. § 1.7872-7(a)(1)
19 IRC § 7872(a)(1)(B); Prop. Treas. Reg. § 1.7872-7(a)(3).
20 IRC § 7872(d)(1)(D).
21 IRC § 7872(d)(1)(A).
22 IRC § 7872(d)(1)(E)(ii).
23 IRC § 7872(d)(2).
24 IRC § 7872(f)(1),(2).


IF YOU'RE WILLING TO COMPROMISE
ON THE QUALITY OF YOUR TITLE SEARCHES
you'd better have a backup plan.
Do you take the responsibility of accurate title information as seriously as The Fund? If you're a real estate attorney, you have to. You wouldn't risk your reputation on information you can't trust, and neither will we. We are the only underwriter to guarantee our title information, so you can be sure what you get is reliable, comprehensive and accurate. Unlike other underwriters who may be prone to cutting corners, we know the most economical product is the one that's right the first time. The Fund was founded by attorneys, for attorneys, so our standards are just as high as yours, and we judge our success by your success. It's our loyalty to our member attorneys that sets us apart. Loyalty that can only continue when you write on The Fund.
IN YOUR BEST INTEREST℠
The Fund®
©2008 Attorneys' Title Insurance Fund, Inc.

Executive Council Meets in Key Biscayne

September 18 - 21, 2008

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

Due to some business commitments and an immense desire to avoid rush hour traffic, I arrived at the Ritz Carlton in Key Biscayne for the September 18-21, 2008 Executive Council Meeting late Wednesday evening. After being checked in by the exceptionally helpful staff, I arrived at my room on the ninth floor. When I opened the window drapes, I experienced one of those "ah-ha" moments. There was a full moon over the Atlantic Ocean, and the view from the window was just breathtaking. What a great way to start an Executive Council weekend.

Thursday was the usual jam-packed day full of meetings, including a complimentary new member/fellowship lunch and then an outstanding evening reception at Vizcaya Museum and Gardens, a very old, historic structure located on Biscayne Bay. The buses left the hotel at 6 p.m. and the Vizcaya reception and tour were underway. The reception was held outdoors, and a more pleasant venue could not be found; the view was fabulous, and the food was excellent. Tours were given through the building itself by the docents. I was lucky enough to get a private tour from a security guard who had worked there for almost thirty years. He had some great, extra special stories to tell.

On Friday, there were more committee meetings, a spouse and guest South Beach tour, and then an evening reception and dinner in the Ritz Carlton's main ballroom. While the view was not as fantastic as it was at Vizcaya, the food was good, the company was great, and the salsa dancers who performed were certainly outstanding and different than you would usually expect with a bunch of dull Real Property and Probate attorneys.

Saturday morning started bright and early at 8 a.m. with the Probate and Real Property roundtable breakfasts.

Section Chair, Sandra Diamond called the Executive Council meeting to order promptly at 10:30 a.m. and went over the 2008-2009 Real Property Executive Council schedule. The schedule is posted on the RPPTL website (http://www.rpptl.org), and everyone is encouraged to plan his or her calendar to include these upcoming meetings. Treasurer, Fletcher Belcher then provided a report showing the section in good financial condition and also discussed the new budget. The details of the budget are also posted on the website.

Peggy Rolando, in her circuit representative report, updated everyone on the Florida Attorneys Saving Homes Program. By the September 2008 meeting in Key Biscayne, over 600 clients had been matched with volunteer attorneys but more than 200 were still awaiting assistance.

Sandy Diamond reported the Section's two appointees to the Title Insurance Study Commission are Melissa Murphy and Homer Duval. Our Section is well represented on the Study Commission because Norwood Gay and Jim Russick had also been appointed to that committee.

continued, next page



The Executive Council assembles in Key Biscayne.

Under the category of action items, the Real Property Division reported on five different proposals, (all of which can be read and reviewed on the website). The Probate and Trust Division presented two (three are shown on the website but the third item was withdrawn).

As usual, there were lots and lots of committee reports, all of which were informative and interesting. While we cannot report on them all, we encourage everyone to read the minutes posted on the website. We can report that the four fellowship recipients were present at the meeting, attended subcommittee meetings, and became actively involved in the operation of the Section.

Lunch was served on Saturday during the Executive Council Meeting, which helps keep things moving right along (although the lunchboxes were nearly as cute as the ones provided by the Breakers).

Saturday evening concluded with a casual dinner on the Grand Lawn under a gorgeous full moon.



(L-R) Ben Diamond, Pete Dunbar, Florida Supreme Court Justice Kenneth Bell, State CFO Alex Sink, and Section Chair Sandy Diamond.



RPPTLS members gather to tour the Vizcaya Museum in Miami.



Committee meeting in Key Biscayne.



Twins?

Thank you, sponsors!

Attorneys' Title Insurance Fund
Chicago Title Insurance Company
First American Title Insurance Company
Howard Frazier Barker Elliott Inc
Regions Bank
SoftPro
Stewart Title Guaranty Company
Fidelity National Title Insurance Company
Gibraltar Bank
LandAmerica
SunTrust Bank
Community Foundations of Florida
Old Republic National Title Insurance
Management Planning, Inc.
Wachovia Trust
The Florida Bar Foundation



RPPTLS kids enjoy the Palm Beach Zoo!



Sandy Diamond takes time to stop and smell the roses...



(Left) Alex Sink, Peggy Rolando, Dionne Meyers, and Adele Stone continue their discussion of the Florida Attorneys Saving Homes Project.



(R-L) Section Chair Sandy Diamond poses with Chair Elect John Neukamm's mother, Anne Marshall and wife, Kathy before chatting with Ellie Taft.

Photos by John Neukamm

RPPTL Section Welcomes Judge Claudia R. Isom to the Thirteenth Circuit Probate, Guardianship & Trust Division

By J. Richard Caskey; Hines Norman Hines, P.L., Tampa, FL

Probate, guardianship, and trust practitioners in Hillsborough County may have noticed a new face in the courtroom - not in the seats next to or behind them, but rather on the bench. As of July 21, 2008, Judge Claudia R. Isom officially began her service in the Thirteenth Judicial Circuit's Probate, Guardianship & Trust Division. Having most recently served in the Circuit Civil Division before this assignment, Judge Isom brings broad experience to the courtroom, as her prior assignments include family, criminal, and juvenile delinquency and dependency. Judge Isom requested assignment to the Probate, Guardianship & Trust Division to complement her judicial experience and to serve the community in the protective capacity required of judges in probate and guardianship cases.



In fact, it is that protective duty that Judge Isom sees as one of the most meaningful differences between general civil matters and her current assignment. Because there are usually no juries in these matters, and the persons involved (whether minors or incapacitated or deceased persons) are not able to fully assert themselves in the proceedings, Judge Isom understands the impact her rulings may have. "This is a proactive Division," she explained. "Becoming involved in a guardianship or probate proceeding is a great responsibility."

That responsibility is well-understood by Judge Isom's predecessor in the Division, Judge Susan Sexton, who is currently serving a rotation in Hillsborough County's East Circuit Division in Plant City. Judge Isom credits Judge Sexton for easing her transition. "Judge Sexton was very well-organized, and has put excellent systems and procedures in place." Those systems have helped Judge Isom come up to speed quickly and will continue to ensure the Division operates smoothly and efficiently throughout her tenure.

Judge Isom's professional accomplishments and activities are as broad as her judicial experience. She is a current member of the Florida Bar Committee on Judicial Independence and the Florida Conference of Circuit Court Judges, and serves as program chair of the Tampa Bay Inn of Court. She is also a past president of the Tampa Bay Inn of Court, as well as past chair of the Florida Bar Standing Committee on Professionalism and of the Florida Bar Committee on the Rules of Judicial Administration. She has worked as an attorney in both the private sector and the public, as Assistant State Attorney for the 13th Judicial Circuit and as District VI Legal Counsel for the Florida Department of Health and Rehabilitative Services.

Originally from Iowa, Judge Isom moved to Florida to attend law school at Florida State University where she met her classmate and future husband, attorney Woody Isom. "Before coming to Florida," she remarked, "I had never been farther south than the Missouri Ozarks or farther east than Chicago." She has lived in Florida ever since. The couple have four children and one grandchild. Among other interests like hiking and performing volunteer services with organizations such as the Boy Scouts of America, Judge Isom has a hidden talent for singing and is a member of the Tampa Oratorio Singers.

Judge Isom is looking forward to a productive tenure in the Probate, Guardianship & Trust Division. "There are great responsibilities here," she stated. "I hope to have a positive impact upon people's lives."

The RPPTL Section welcomes Judge Isom, and wishes her the best.

See the Special "CLE" section starting on page 49.

2008 William Belcher Award Presented to Sandra Diamond, J.D., and Frank Diamond, M.D.

Sandra and Frank Diamond were presented the 2008 William Belcher Award by the All Children's Hospital Foundation on October 29, 2008 in St. Petersburg, FL. The award was established in memory of the late **William S. (Bill) Belcher.** Mr. Belcher served as chairman and a member of the hospital's board of directors for many years. The award is given to honor those who most represent the spirit and philosophy that Bill Belcher embraced in his support of the hospital and its patients. The award was presented by the All Children's Hospital Foundation at the Annual Society Banquet. The event honors donors for their generous support of the Hospital.



The 2008 Belcher Award was presented to Sandy and Frank Diamond in St. Petersburg, October 29, 2008.

The Diamonds are longtime supporters of All Children's, having made commitments to the All Children's Hospital Foundation recently by giving to the Building Miracles Campaign toward the construction of the new Hospital and giving a future gift as Dream Builders through their estate plan.

"The Diamonds personify the Belcher Award and the attributes of its recipients," said Gary Carnes, CEO of All Children's Hospital and Foundation. "We thank them for their many years of service to our families and children both as advocates and philanthropists."

Sandra, an attorney with the law firm of Williamson, Diamond & Caton, is the current chair of the 10,000 member Real Property, Probate and Trust Law Section of The Florida Bar. She is board certified in Wills, Trust and Estates and is a Fellow of the American College Trust and Estate Counsel. Over the years she has been a key supporter of All Children's Hospital through service on the Planned Gifts Advisory Council, the ACH Foundation Board of Trustees (of which she is a past president), the All Children's Hospital Board, and now the All Children's Health System Board of Directors. She has been active in the Foundation's annual Estate Tax, Legal & Financial Planning Seminar, and is a frequent lecturer across the State of Florida in the areas of trusts, estates and guardianships.

Frank has been an active member of All Children's Hospital medical staff for 30 years: practicing as a board-certified pediatrician and pediatric endocrinologist in Largo for ten years and serving for the past 20 years as a pediatric endocrinologist at All Children's Hospital. Dr. Diamond is a professor of pediatrics at the USF College of Medicine and clinical director of the USF Diabetes Center. As a clinician and researcher he has cared for children with growth and metabolic disorders and diabetes. As a child health advocate he has helped to develop the All Children's Hospital Fit4allkids: a weight management and fitness program for families and is working with pediatricians on Florida's west coast to encourage the use of the program with their patients. For 12 years, Dr. Diamond also shared his passion for children's health as a member and chair of Pinellas County's Juvenile Welfare Board.

All Children's Hospital is the only freestanding children's hospital on Florida's West Coast and a leader in pediatric treatment, education, research and advocacy. It has consistently ranked among America's top 25 children's hospitals in comparative studies done by Child Magazine, which rated All Children's Hospital as the best in Florida in 2007. And independent evaluator Charity Navigator recognizes its fundraising arm, the All Children's Hospital Foundation, with four stars - its highest rating for fiscal responsibility. The mission of this private, not-for-profit hospital is rooted in its beginnings as Florida's first Crippled Children's Hospital for polio victims. All Children's understands that it's not enough to treat disease – that true progress comes from teaching and research to cure disease. All Children's shares its pediatric expertise through research & education affiliations with the University of South Florida (USF Health) as well as the H. Lee Moffitt Cancer Center & Research Institute.

As a regional referral center for children with some of the most challenging medical problems, All Children's draws patients from throughout Florida, all 50 states and 36 foreign countries. Growing regional demand is such that construction is now underway on a new hospital and outpatient center to replace the current 40-year old facility. When completed in 2009, it will represent nearly a million square feet of space dedicated to state-of-the-art pediatric healthcare.

Exploitation has many forms and many faces.



THE LAW OFFICES OF
ADRIAN PHILIP THOMAS P.A.

Trust, Estate, Probate & Guardianship Litigation

Representing clients throughout the State of Florida.

515 East Las Olas Boulevard | Suite 850 | Fort Lauderdale, FL 33301
954-764-7273 | 954-764-7274 (facsimile) | www.florida-probate-lawyer.com

Undue Influence | Will Contests | Elective Share | Lack of Capacity
Removal of Personal Representative or Trustee | Trust Termination

Division of fees paid in accordance with the Florida Bar Rules.

RPPTLS Executive Council Meeting

The Breakers, Palm Beach, July 24-27, 2008

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

The annual July meeting of the Real Property, Probate and Trust Law Section Executive Council held at the Breakers in Palm Beach is always a treat, and this year was no exception.

The schedule of committee meetings started bright and early at 8 a.m. on Thursday, July 24, 2008, and ran until 6 p.m. that evening. Friday meetings were somewhat limited due to the seminar presentation, but a total of thirty different committees met on Thursday and Friday.

The Legislative Update Seminar was very well attended, and all attendees reported that the speakers were outstanding. Section Chair Sandra Diamond agreed, "The seminar was fabulous!"

The Thursday and Friday evening events were also very well attended. The food was great, and the location right on the ocean was outstanding.

Saturday morning was the Real Property and Probate Roundtable, which convened bright and early at 8 a.m. with breakfast served to all those who attended. Sandra called the Executive Council meeting to order at 10:35 a.m.

Sandra started out the meeting by sharing with everyone happenings from The Florida Bar annual convention, including that our own Rohan Kelley received an award. Sandra also talked about the fact that our section, "the Reptiles," is the largest in the Bar and that the involvement of our committees and committee members is much greater than any other section. Chair-Elect John Neukamm provided a short report and encouraged everybody to make their reservations for the Breakers early next year. This is such a popular spot that a number of people reported they weren't able to get in. Sandy also made a point of welcoming the sponsors for lunch, Stewart Title and the Florida Bar Foundation. Because the meetings tend to run for several hours, lunch was provided by our sponsors (and we got those really cool Breakers lunchboxes!). Sandra also reported that the trip to Ecuador was completely sold out.

Next up was the liaison with the Board of Governors report (the report is posted on the website) and then the Treasurer's report showing the section to be in great financial condition.

Peggy Rolando reported for the circuit representatives discussing, the Florida Attorneys Saving Homes Program. She announced the inclusion of sixteen new circuit representatives, and they were all welcomed warmly. Following up on the Program, Adele Stone, Co-Chair of the Pro Bono Committee, reported that over 300 clients so far had been accepted, and over 400 volunteer attorneys were online to assist. Peggy and Adele both stressed the need for additional volunteers. The Program, of course, has been extensively reported in *ActionLine* and provides assistance to owners of homestead property that are not yet in foreclosure.

There was a lengthy list of action items including seven statutory changes and guidelines for the Title Insurance Study Council appointees. The following statutory changes were approved for action and support:

- ✓ Modifications to Sec. 48.23, F.S., the Lis Pendens Statute (proposed by the Real Property Litigation Committee);
- ✓ Revisions to Sec. 735.203, F.S., regarding Petition for Summary Administration (proposed by the Probate Law and Procedure Committee);
- ✓ Revisions to Sec. 736.0813, F.S., Trustee's Duty (proposed by the Trust Law Committee);
- ✓ Revisions to Sec. 736.0306, F.S., regarding designated representatives for Trust Beneficiaries (proposed by the Trust Law Committee);
- ✓ Amendments to Secs. 736.0302 and 736.0103(4), F.S., regarding permissible appointees under a power of appointment (proposed by the Trust Law Committee);
- ✓ Amendments to Sec. 736.602, F.S., put forth by the IRA and Employee Benefits Committee to provide a method for trustees to characterize certain payments as principal or income when payable to a trust named as the beneficiary.

continued, next page

Special Thanks to our sponsors

Attorneys' Title Insurance Fund
Chicago Title Insurance Company
First American Title Insurance Company
Howard Frazier Barker Elliott Inc
Regions Bank
SoftPro
Stewart Title Guaranty Company
Fidelity National Title Insurance Company
Gibraltar Bank
LandAmerica
SunTrust Bank
Community Foundations of Florida
Old Republic National Title Insurance
Management Planning, Inc.
Wachovia Trust
The Florida Bar Foundation

Executive Council Meeting

from preceding page

As we can see, the Trust Law Committee has been really busy.

Next up were reports from the standing committees: lots and lots of interesting reports and useful information. There were too many committees to report in great detail; however, the Fellowship Committee, which is fairly new, had seventy applicants for four spots. It's really good to see that many young, new attorneys are interested in getting involved in the Real Property, Probate and Trust Section, and of course, that is the goal of that committee.

Another new committee is the liaison to the Office of Criminal Conflict and Civil Regional Counsel (OCCCRC). Joe George reported that there are five different offices with 364 staff statewide. The overwhelming job presented to that office is to deal with families and parents; dependency, delinquency, abuse and abandonment cases; and certain kinds of guardianships and criminal conflicts from the public defender.

While it was quite a lengthy meeting, it did adjourn in time for the 3 p.m. volleyball game on the beach.

If you missed the Breakers meeting this year, I recommend you make your reservation now for next year because it is a fabulous venue, and the legislative update is always extremely popular.

Executive Council Awards

Professionalism and Outstanding Service

By Shari Ben Moussa, Katz Barron Squitero Faust, Miami, FL

William S. Belcher Lifetime Professionalism Award

At the September 2008 Executive Council meeting in Key Biscayne, immediate past Section Chair, Melissa Murphy, presented **Andrew M. O'Malley** with the William S. Belcher Lifetime Professionalism Award. The award, established in 2003, is presented to an Executive Council member in recognition of his or her lifetime contributions and service to the Section, the Executive Council, Florida attorneys, and the public. Mr. O'Malley is a distinguished RPPTLS member who has shown extraordinary devotion to the Section throughout the years. He currently serves as Chair of the Pro Bono Committee. Co-Vice-Chair Adele Stone commented: "I've known Drew a number of years now from the Florida Bar Foundation, as its President, and through our committee work in the Section. No question, Drew exemplifies professionalism in every way, from his courteous manner, to his willingness to give so much of his time to those underserved in our State. Those attributes coupled with his reputation as a skilled real estate practitioner make Drew a model of professionalism within the Bar." Mr. O'Malley is a member of the firm Carey, O'Malley, Whitaker & Mueller, P.A. in Tampa, Florida.

Annual Service Award

Immediate past Section Chair, Melissa Murphy, presented **John W. Little, III** with the Annual Service Award at the September 2008 Executive Council meeting in Key Biscayne. The award is presented to a Section member who has rendered outstanding service to the Section, and its varied programs, throughout the current year. Mr. Little is a dedicated, long-time RPPTLS member and currently serves as Co-Chair of the Amicus Coordination Committee with Robert W. Goldman (who received this award at the Bonita Springs meeting in May 2008). Mr. Little has rendered exemplary service and made valuable contributions to the Section, including his work with Mr. Goldman to draft and coordinate amicus briefs on behalf of the Section. Mr. Little is a partner of the firm Brigham Moore, LLP in West Palm Beach, Florida.

Visit the Section website: www.rpptl.org

Congratulations New Fellows!

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

Aniella Gonzalez, Brenda Ezell, John T. Cardillo, and Hung V. Nguyen have been awarded Fellowships by the RPPTL Section of the Florida Bar for 2008 – 2010. The Fellowship program was launched earlier this year to attract and retain young lawyers in the Section. The program, which is open to all attorneys who have admitted to the bar for fewer than 10 years or are younger than 36 years of age, will allow the Fellows to be substantially involved in the Section work, receive leadership training, and work closely with leading attorneys in their field. Each Fellow will also receive a $2,500 annual subsidy to defray the expenses of attending the Section meetings, and has been assigned a mentor who will assist with the Fellow's active involvement in Section committees.

The response to the request for applications to this program was overwhelming. The 2008-2010 Fellows were selected by the Fellowship Committee after reviewing applications submitted by more than 80 young lawyers from across the state. All four Fellows bring extraordinary leadership skills and talent to the Section and have already become active members of Section committees. The Fellows were all in attendance at the September RPPTLS Committee meetings in Key Biscayne and are looking forward to a busy 2-year term as Fellows in the Section.



GONZALEZ

Aniella Gonzalez, who is a graduate of University of Miami School of Law, practices real estate litigation, title litigation and commercial litigation with the firm of Krinzman, Huss & Lubetsky, LLP in Miami. Ms. Gonzalez is a member of the Cuban American Bar Association and the Dade County Bar Association. In addition, she is actively involved with the Junior League of Miami where she previously served on the Board, was chair of a fundraising committee, was a mentor to new members, and currently serves as the League's Diversity Coordinator and Treasurer of the Junior League of Miami Foundation. Ms. Gonzalez also serves as President of the Miami Wellesley Club and as Clerk for the St. Stephen's Episcopal Church Vestry in Coconut Grove. As a Fellow, Ms. Gonzalez has joined the Real Property Litigation Committee, the Title Insurance Committee, and the Membership Development Committee.

Brenda Ezell, a graduate of the University of Florida Fredric G. Levin College of Law, practices with Edwards, Cohen, Sanders, Dawson & Mangu in Jacksonville, FL and specializes in Commercial Real Estate and Land Use. Ms. Ezell is a member of the Real Estate Section of the Jacksonville Bar Association, serves on the Jacksonville Economic Development Commission, is a member of the Board of Directors for Lutheran Social Services of Northeast, Florida and OneJax, and has recently been elected to the Board as a Director-at-Large of CREW-Jacksonville. In addition, Ms. Ezell formerly served as secretary of the D. W. Perkins Bar for two years where she created and implemented a scholarship program for law students. As a Fellow, Ms. Ezell has joined the Development and Governmental Regulation of Real Estate Committee and the Membership Diversity Committee.



EZELL



CARDILLO

John T. Cardillo, a graduate of Florida State University, practices with the law firm of Cardillo, Keith & Bonaquist, P.A. in Naples, FL, with an emphasis in estate and fiduciary litigation and probate administration. Mr. Cardillo is the past president of the Collier County Bar Young Lawyers Division, a member of Board of Directors of the Collier County Bar Trial Lawyer's Section, a member of the Board of Directors of Collier County Legal Aid Society, and a member of the Collier County Inns of Court. As a Fellow, Mr. Cardillo has joined the Probate Law Committee, the Trust Law Committee, the Estate and Trust Litigation Committee, and the Membership Development Committee.



NGUYEN

Hung V. Nguyen, a graduate of University of Miami School of Law, practices with the law firm of Welbaum Guernsey in Miami and specializes in probate, trust, and guardianship law. Mr. Nguyen is the immediate past President of the Asian Pacific American Bar Association of South Florida and is a member of the executive committee of the Asian American Advisory Board to Miami-Dade County. He has also served as a member of the Board of Directors for the Dade County Bar Association representing the Asian Pacific American Bar Association, and is a member of the National Asian Pacific American Bar Association. As a Fellow, Mr. Nguyen has joined the Probate Law Committee, the Trust Law Committee, the Estate and Trust Litigation Committee, and the Membership Development Committee.

Please join the Fellowship Committee in congratulating our Fellows and welcoming them to the Section!

The New Guardian Advocacy

By Twyla Sketchley, Esq., The Sketchley Law Firm, P.A., Tallahassee, FL

On July 1, 2008, substantial changes to Section 393.12, Florida Statutes, took effect. These changes redefine the circumstances under which a guardian advocate can be appointed for a person with a developmental disability, add a process by which advance directives can be recognized, exempt certain guardian advocates from the requirement they have an attorney, and provide for the restoration of rights. On July 10, 2008, the Florida Supreme Court approved amendments to the Florida Probate Rules to accommodate the new changes to Section 393.12. See In Re: Amendments to the Florida Probate Rules, 986 So. 2d 576 (Fla. 2008).

A Guardian Advocate can be appointed for a person with a developmental disability (PWDD), as defined in Section 393.063(9), Florida Statutes (2008). Any adult Florida resident, including the PWDD, can petition to have a guardian advocate appointed so long as the PWDD lacks "decision-making ability" to do some, but not all, of the "decision-making tasks" to care for his or her person or property. Fla. Stat. §393.12(2)(a) (2008). Prior to the changes, the statute required the PWDD to "lack capacity" to do some, but not all, of the tasks necessary to care for his or her property, making the proceeding a determination of capacity, which should be made pursuant to Florida Statutes, Chapter 744, instead of a determination of ability.

Few changes were made to the petition requirements. However, the petition must now specifically state the relationship of the proposed guardian advocate to any healthcare, residential, or other service provider for the PWDD. Fla. Stat. §393.12(3) (2008); Fla. Prob. R. 5.649(a) (2008).

The list of individuals entitled to notice of a Section 393.12 proceeding has grown. Notice must now be served on the PWDD (verbally and in writing), the next-of-kin of the PWDD, any healthcare surrogate, and any agent under a durable power of attorney. Fla. Stat. §393.12(4)(a) (2008); Fla. Prob. R. 5.649(b) (2008).

The Court must now appoint an attorney to represent the PWDD within three days after the petition to appoint a guardian advocate is filed. Fla. Stat. 393.12(5) (2008). The Court must appoint an attorney from the registry compiled pursuant to Section 27.40, Florida Statutes. Fla. Stat. 393.12(5)(a) (2008). This process of appointment of attorneys tracks the procedure for appointment under Florida Guardianship Law, Chapter 744. The court-appointed attorney for a PWDD must meet certain education or experience requirements before he or she is allowed to serve as the court-appointed attorney, which is also required for court-appointed attorneys for an alleged incapacitated person in Chapter 744. Fla. Stat. §393.12(5)(a) (2008). If the PWDD wishes, he or she may substitute his or her own attorney. Fla. Stat. §393.12(5) (2008). The education and experience requirements do not apply to the attorney chosen by the PWDD as a substitute for court appointed counsel. Previously, the appointment of counsel was only required if an attorney did not file an appearance within 10 working days of the hearing. Fla. Stat. §393.12(2)(d) (2007).

The Florida Probate Rules and the Florida Evidence Code apply to all guardian advocacy proceedings. Fla. Stat. §§393.12(1)(b), (6)(e) (2008). Previously, the Florida Rules of Civil Procedure applied. Fla. Stat. §393.12(2)(a) (2007).

The statutory changes now recognize that a PWDD may have an advance directive or a durable power of attorney in place prior to the filing of a guardian advocacy proceeding. The Court must determine whether a PWDD executed a valid advance directive and whether it sufficiently addresses the needs of the person for whom the guardian advocate is sought. Fla. Stat. §393.12(7) (2008); Fla. Prob. R. 5.649(d)(3) (2008). If these documents sufficiently address the needs of the PWDD, the Court cannot appoint a guardian advocate. Fla. Stat. §393.12(7)(a) (2008). However, as under Florida Guardianship Law, any interested person can contest the validity of an advance directive or durable power of attorney by filing a verified statement stating a factual basis for the belief that the advance directive or durable power of attorney is invalid or fails to sufficiently address the needs of the PWDD. Fla. Stat. §393.12(7)(b) (2008). The Court, in its Order appointing a guardian advocate, must state what authority a health care surrogate or attorney in fact has upon the appointment of a guardian advocate. Fla. Stat. §393.12(7) (2008).

Another addition to the guardian advocacy proceeding is the process for restoring the PWDD's rights, similar to the process for restoration of rights provided to wards under Florida Guardianship Law. Fla. Stat. §393.12(12) (2008); Fla. Prob. R. 5.681 (2008). Any interested person, including the PWDD, can file a Suggestion of Restoration of Rights. The Suggestion must state the PWDD is capable of exercising some or all of the rights delegated to the guardian advocate and provide evidentiary support for that assertion. The evidentiary support can include a signed statement from a healthcare professional from whom the PWDD is receiving services or has been evaluated. If the petitioner is unable to obtain evidentiary support, the petitioner can state a good faith basis for the belief in the Suggestion of Restoration of Rights. The Court must appoint an attorney for the PWDD when a Suggestion is filed. Fla. Stat. §393.12(12)(a) (2008). The Notice of Filing of Suggestion of Capacity must be served on the PWDD as well as the guardian advocate. Fla. Stat. 393.12(12)(b) (2008). Objections must be filed within twenty days after service of the Notice. Fla. Stat. §393.12(12)(c) (2008). Depending on the evidence and objections, a hearing is held. Fla. Stat. §393.12(12) (2008). As under Florida Guardianship Law, if some but not all rights are restored, the

Letters of Guardian Advocacy are amended and a new plan must be filed. Fla. Stat. §393.12(12)(g) (2008).

Finally, the changes now allow a guardian advocate to be unrepresented by legal counsel so long as the guardian advocate is not delegated property rights other than the right to be representative payee for any government benefits. Fla. Stat. §393.12(2)(b) (2008); Fla. Prob. R. 5.030(a) (2008). This does not relieve the guardian advocate from the requirement to file an annual plan if he or she has been delegated personal rights. It also may require the guardian advocate to provide proof he or she is the representative payee for any government benefits so that no accounting is required. Fla. Stat. §393.12(10) (2008).

For a complete review of the changes to guardian advocacy, read Fla. Stat. 393.12 (2008) now updated at The Florida Bar website*, www.floridabar.org*.

Supreme Court Reverses its Original Opinion in *Strand v. Escambia County*

By Gabriel E. Nieto, Esq. and Daniel T. Pascale, Esq., Berger Singerman, P.A., Miami FL

Last year, on September 6, 2007, the Florida Supreme Court overturned 27 years of case law when it unanimously held that a referendum was required before tax increment financing ("TIF") bonds could be issued by Escambia County in *Dr. Gregory L. Strand v. Escambia County, Florida, etc. et. al.* At issue was Article VII, Section 12 of the Florida Constitution, which provides that school districts and other local governments must hold a referendum to issue bonds payable from ad valorem taxation and maturing more than twelve months after issuance. Receding from its prior decisions in *State v. Miami Beach Redevelopment Agency,* 392 So. 2d 968, 972 (Fla. 1982) and *Florida v. School Board of Sarasota County,* 561 So. 2d 549 (Fla. 1990), where the Court authorized the issuance of tax increment bonds and certificates of participation (securities which allow investors to purchase shares of lease revenues that are typically used to fund the construction of buildings such as schools) without a referendum, the Court broadened its interpretation of the phrase "payable from ad valorem taxation" and held that the Constitutional referendum requirement applies whenever ad valorem tax revenues are a payment source for the bonds.

On September 17, 2008, and after consideration of Escambia County's motion for rehearing, the Court, in an about face, withdrew the original *Strand* opinion, and issued a new opinion consistent with its past holding in *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980). In the 3-2 decision written by Justice Charles Wells, the Court retreated to its long-standing view of tax-increment financing and abandoned the restrictions on its use espoused in the original *Strand* opinion. It did so primarily on the grounds of *stare decisis,* reasoning that "for the past 27 years there has been widespread reliance upon the *Miami Beach* decision in the issuance of bond financing of many public works that have enhanced the quality of life in our State. Tax increment financing and the undergirding principles of our *Miami Beach* decision have been inextricably woven into the financial fabric of our state. We conclude that receding from the precedent of *Miami Beach* would cause serious disruption to the governmental authorities that have relied upon the precedent for planning public works that are in various stages of development and approval." *Dr. Gregory L. Strand v. Escambia County, Florida,* 992 So. 2d 150 (Fla. 2008)

The original *Strand* opinion called into question the constitutionality of previously issued tax increment financing bonds and certificates of participation. Later, on September 28, 2007, the Court issued a revised opinion clarifying that the Court had not intended to impact the validity of certificates of participation. The September 28, 2007, opinion did not, however, change the Court's position that a referendum would be required prior to the issuance of tax increment financing bonds. Because TIF financing is primarily used by Community Redevelopment Agencies, both of the 2007 *Strand* opinions imposed severe restrictions on the primary source of funds used by local governments to revitalize blighted neighborhoods. Now, one year from the release of the original and revised opinions, the Court has issued a new decision on rehearing that removes the cloud it had placed on TIF financing and returns local governments and any private sector participants seeking draw on such financing to the *status quo ante*. Assuming there are no further revisions, Community Redevelopment Areas are now able to obtain tax increment financing for infrastructure projects without voter referendum, which should welcome in a number of large scale capital improvement projects slated for Florida's major cities.

WealthCounsel®

The Advisors Forum

ELDERCOUNSEL

THE NATION'S PREMIER COMMUNITY OF ESTATE PLANNING AND ELDER LAW PRACTITIONERS

Estate Planning • Elder Law • Special Needs Planning • Marketing



We are pleased to announce that our three affiliated companies have teamed up at **Heckerling** to bring you ...

An Exclusive
COMPLETE PRACTICE SOLUTION
All Included for One Very Special Price!

- **Estate Planning**
- **Elder Law**
- **Special Needs Planning**
- **Marketing**

Join us in the exhibit hall to learn about this truly unique and affordable opportunity to become part of the nation's premier community of estate planning and elder law practitioners.

ENTER 2009 WITH A UNIQUE COMPETITIVE ADVANTAGE

Profitability

Enhance or build a referral-based marketing system with The Advisors Forum complete "system of success."

Competency

Increase your competence ***and*** your confidence by participating in our document-centric webinars and classroom training, and our practice management and marketing teleconferences and listservs. Harness the power of collective wisdom by collaborating with nearly 1800 like-minded attorneys and advisors across the nation.

Efficiency

Introduce operational efficiencies into your practice by quickly drafting estate planning and elder law documents using the WealthDocs™ and ElderDocx™ automated document drafting systems.



Request our 2008 Industry Trends Survey!

Visit us at Booth #205 and #206 to discuss our Heckerling pricing specials!

If we miss you at Heckerling, call us at the number below before offer expires 1-31-09!

- individual membership in one organization
- dual-membership in two organizations
- super-membership in all three organizations

Don't Miss This Limited Time Offer!
For info, call 888-659-4069, ext. 819

www.wealthcounsel.com
www.advisorsforum.com
www.eldercounsel.com

WealthCounsel® is a registered trademark of WealthCounsel, LLC

Back By Popular Demand: q ualified Charitable Distributions

By Kristen M. Lynch, CISP CTFA, Attorney at Law
Ruden, McClosky, Smith, Schuster & Russell, P.A., Boca Raton, FL

Hot off the press! Along with the financial rescue bill, Congress finally passed the Tax Extenders bill, which did not create any new legislation but rather, extended items that had already been passed and had expired. President Bush signed H.R. 1424, also known as the Emergency Economic Stabilization Act of 2008, into law on October 3, 2008. One of the items given new life is the Qualified Charitable Distribution, or IRA Charitable Rollover as it is sometimes called.

The Pension Protection Act of 2006 (PPA) created the Qualified Charitable Rollover, permitting individuals to roll over up to $100,000 from an individual retirement account (IRA) directly to a qualifying charity without recognizing the assets or funds transferred to the qualifying charity as income. In tax years 2006 and 2007, when this was originally available, this generated more than $130 million dollars in charitable gifts. Only IRA owners and beneficiaries of inherited IRAs that are over age 70 ½ are eligible to take advantage of this.

The Distribution Rules for IRAs

IRAs are created under Sections 408 and 408A of the Internal Revenue Code of 1986, as amended (the "Code"). All IRAs are required to be held by a trustee or custodian approved by the IRS to hold IRA assets. The IRA owner cannot normally take out distributions prior to age 59 ½ without a penalty, and except in the case of a Roth IRA, must start taking distributions out by April 1st of the year after the year in which the IRA owner turns 70 ½. This is referred to as the Required Beginning Date.

Once an IRA owner reaches his or her Required Beginning Date, the owner must begin to withdraw funds on an annual basis, based upon his or her life expectancy as determined by tables provided by the IRS. These distributions are referred to as Required Minimum Distributions ("RMDs"). Likewise, once an IRA owner dies and a non-spouse inherits IRA funds, RMDs are required every year. If an IRA owner or beneficiary does not withdraw the minimum amount required, an excess accumulation penalty is imposed, which is 50% of the amount that was not distributed as required.

The Significance of Being Able to Distribute to Charity

Without the ability to make a Qualified Charitable Distribution, an IRA owner who wants to gift funds or property from an IRA would need to take a distribution and recognize the income on their income tax return, and then receive a charitable deduction for the amounts transferred to charity. However, the charitable deduction for contributions does not usually offset the taxes resulting from the distribution entirely. The Qualified Charitable Distribution provides a means for the IRA owner to make a gift directly to the charity of up to One Hundred Thousand Dollars ($100,000) per year while in effect. This charitable distribution, so long as it is equal to or greater than the RMD (up to the $100,000 limit), will serve to satisfy the IRA owner's RMD for that tax year. The IRA owner making the gift lists it on his or her tax return but lists it as non-taxable and therefore the distribution amount is not includible in his or her gross income. Likewise, since no income is being recognized, the IRA owner cannot take a charitable deduction for the contribution.

Which IRA Owners Benefit the Most?

Generally, IRA owners who itemize deductions and whose charitable contributions will be reduced by the percentage of income limitation or by the itemized deduction reduction, may benefit most from a making a Qualified Charitable Distribution. Also, IRA owners who do not itemize or perhaps live in states without state income tax, such as our great State of Florida, might also benefit greatly. IRA owners for whom additional income will cause more of their Social Security to be taxed should consider this carefully as well. Additionally, it is an easy way to reduce a potentially taxable estate by $100,000 for two consecutive years.

It is important for anyone contemplating such a charitable donation to consult with a tax advisor to determine how this might benefit them. Obviously individuals with charitable intent already benefit greatly as this provides an alternative to giving up after-tax dollars. It is important to note that the IRS has clarified that a Qualified Charitable Distribution may be used to satisfy an already existing pledge of support to a charity without creating a prohibited transaction, and likewise may be used for naming opportunities.

What are the Requirements?

✓ **Direct Payment to Charity from IRA:** In order for an IRA distribution to be classified as a "Qualified Charitable Distribution," the distribution needs to be made from the IRA and the check needs to be payable directly to the charity. If funds are withdrawn from the IRA and paid to the IRA owner, who then in turn writes a check to the charity, it will not be considered a Qualified Charitable Distribution.

continued, next page

qualified Charitable Contributions

from preceding page ——————————

✓ **Gift up to $100,000:** The gift may be several to different charities, or one to a particular charity. The total amount that may be gifted in a tax year is $100,000.

✓ **Outright Gift:** The gift must be outright, rather than a long term planned gift or deferred gift. It has been clarified, however, that it may be used to satisfy a previously existing pledge or commitment.

✓ **IRAs Only:** The gift must be from a traditional, rollover or Roth IRA only, and not from another type of pension or qualified plan.

✓ **qualified Charity:** The charity must be an organization described in IRC § 170(b)(1)(A). While donor advised funds and supporting organizations are not included for this giving opportunity, and some private foundations will not qualify either, your local community foundations and other public charities do qualify as organizations eligible to receive Qualified Charitable Distributions.

✓ **No Private Inurement:** As with other charitable gifts, there needs to be confirmation from the charity that no benefits will inure to the donor.

"IT'S NOT THE MONEY, IT'S THE PRINCIPLE...."

Sound familiar?

Amy B. Beller, Esquire
Certified Circuit Civil Court Mediator
and Experienced, AV-Rated Lawyer
Available for Mediation of Estate, Trust and Guardianship Disputes
no travel fees • no cancellation fees
no guaranteed minimum

The Beller Law Firm, P.A.
2101 NW Corporate Blvd., Suite 316
Boca Raton, FL 33431
Tel.: (561) 994-4316
Fax: (561) 423-2728
www.bellerlawfirm.com

✓ **IRA Owner Must Be 70 1/2:** The only IRA Owners that are eligible to make these Qualified Charitable Distributions are individuals who have attained age 70 ½ and are in Required Minimum Distribution status. An IRA Owner in RMD status is able to make a Qualified Charitable Distribution in lieu of taking the taxable Required Minimum Distribution. Beneficiaries of inherited IRAs who are over age 70 ½ may also make a qualified charitable distribution in lieu of taking the taxable required minimum distribution. The author notes that it was perhaps an oversight on the part of Congress and the IRS not to allow this opportunity for beneficiaries of inherited IRAs at a younger age than 70 ½, as RMDs from inherited IRAs start when the IRA is inherited versus IRA owners who are required to start upon attainment of age 70 ½. Additionally, the author perceives this to be a lost opportunity for charities, as many beneficiaries of inherited IRAs are still in the prime of their career years and might be more inclined to give their RMDs to charity rather than recognizing the taxable income while they are wage earners at potentially their highest lifetime tax rate.

✓ **Only Certain Tax Years:** At the time of this writing, Qualified Charitable Distributions will be permitted for tax years 2008 and 2009 only. For tax year 2008, distributions must be made prior to December 31st.

✓ **Documentation is Required:** It is the responsibility of the IRA owner to receive a receipt or acknowledgement from the charity documenting receipt of the gift.

Conclusion

The Qualified Charitable Distribution is a wonderful opportunity for philanthropic IRA owners to make significant gifts to charity while at the same time reducing their own income tax liability as well as the future income tax liability of their heirs. For example, a family that is accustomed to providing annual support to the college they attended can work with their local community foundation to create a Fund in their name that will continue to grant annual gifts in perpetuity. Or, they can use some of their IRA assets to set up a fund that generally supports a charitable interest, such as after school tutoring for high risk children.

Attorneys and other advisors should use this opportunity to discuss the viability of Qualified Charitable Distributions as a means to reduce clients' income tax liability and potential estate tax liability, while at the same time perhaps fulfilling the philanthropic intent of their clients.

This article was written on behalf of The Community Foundations of Florida. ***Community Foundations of Florida*** *is a statewide collaboration of more than 20 community foundations working together to promote philanthropy in our neighborhoods and throughout Florida. Each Florida community foundation is a nonprofit, tax-exempt charitable organization created by and for the people of a particular area. We hope you and your clients will consider giving to a community foundation in your area, a list of which may be found at www.communityfoundationsfl.org.*

The New Standard – "Annual" Irrevocable Life Insurance Trust and Trust Owned Life Insurance Policy Reviews

by Richard C. Hitchins, CPA, MBA, CFP®
R.C. Wealth Management; West Palm Beach, FL

Florida Statutes §518.11 is entitled "Investments by Fiduciaries; Prudent Investor Rule" and states in paragraph (1)(a) that "the fiduciary has a duty to invest and manage investment assets as a prudent investor would…"

As a result of this law, trustees are held to a higher standard and have the responsibility to create and follow procedures for proper administration of all trusts assets, including trust owned life insurance.

In the past, when irrevocable life insurance trusts were set up, a life insurance policy was either transferred to the trust or purchased by the trustee. Once transferred or purchased, if the premiums were paid, the policy was usually considered to be on autopilot. Typically, either no formal reviews were performed or infrequent reviews were performed and no documentation of any such review was prepared.

> ***"In this age of constantly changing circumstances, early problem detection is critical."***

However, much can go wrong with this common practice. If premiums are paid late, interest rates decrease or a variable policy has poor stock market performance, the policy could lapse. A declining insurance company rating may be a cause for concern. If "Crummey Notices" are not issued, the donor risks losing the annual gift tax exclusion. If the family situation changes, the beneficiaries of the trust may not conform to the grantor's wishes.

Under the Prudent Investor Rule, the trustee must now manage the trust assets as a prudent investor. If any of the above situations arise, the trustee, who has sole responsibility for the trust, may be in a difficult situation and subjected to legal exposure.

To avoid the problem of the policy lapsing, proper policy selection is critical. The trustee and his competent insurance professional must use their best efforts to match the insurance policy or policies purchased to the needs of the policy owner. This means going out into the marketplace and obtaining several policy illustrations from at least five different highly rated insurance companies.

For irrevocable life insurance trusts, it is my opinion that in most cases, guaranteed policies, which place the risk on the insurance company rather than the trustee, are preferred. With a no lapse guarantee, a traditional universal life policy will guarantee that if a certain premium is paid timely, the policy will not lapse even if there is no cash value. The guarantee period can even be to age 100, 110, or 120.

In addition to choosing a policy or policies, the trustee or policy owner should monitor the life insurance policy's performance on a regular and continuous basis. If it is prudent to quarterly or annually monitor a trust's stock and bond performance, it is also prudent to monitor the irrevocable life insurance trust and the life insurance policy each year. We believe that under the Prudent Investor Rule, monitoring a policy's performance is required.

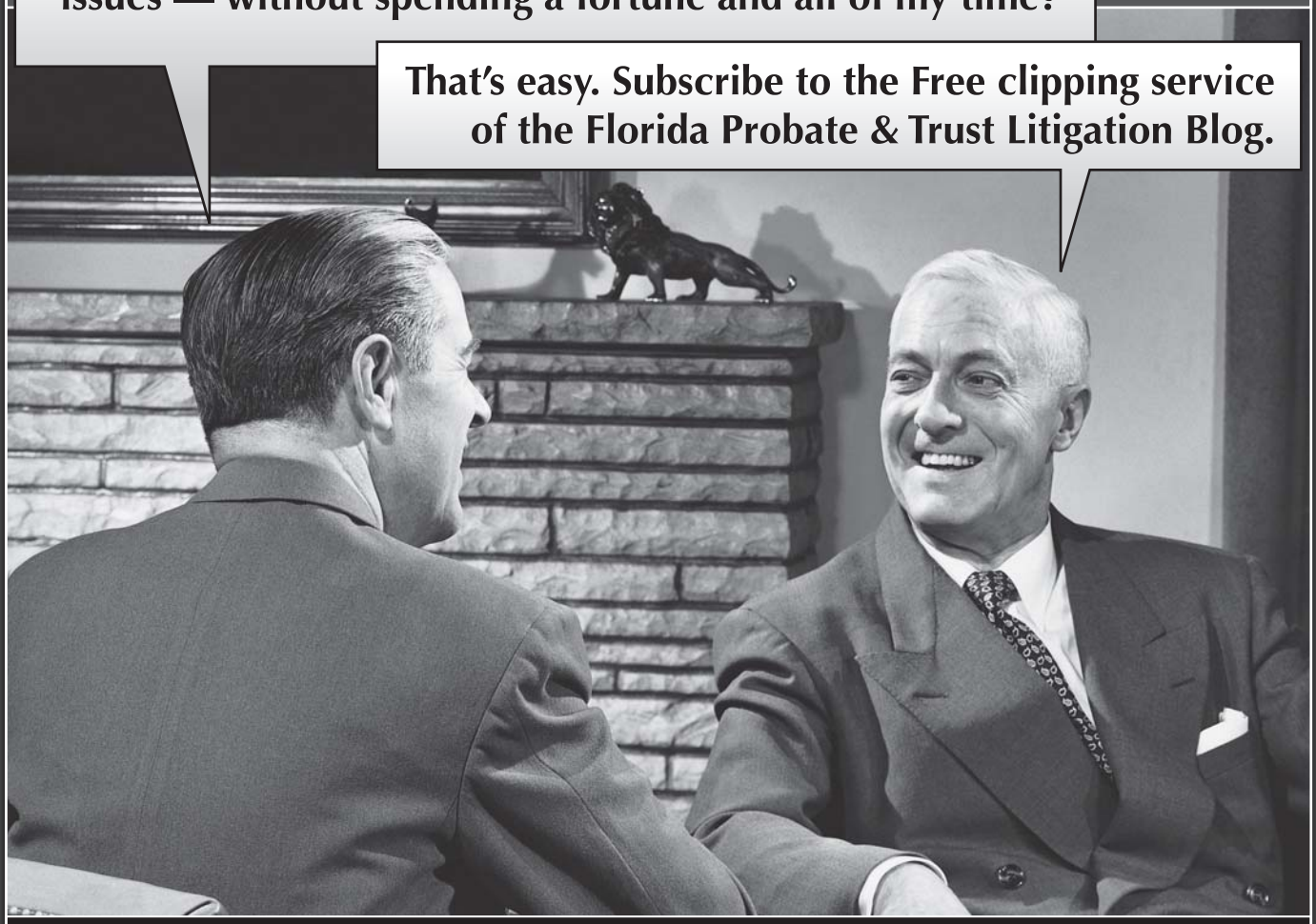
In this age of constantly changing circumstances, early problem detection is critical. How do you deal with early detection? Perform annual irrevocable life insurance trust and life insurance policy reviews. If the policy is not guaranteed, and additional premiums are required, it is better to know sooner rather than later. If the insurance company's rating declines, you need to monitor the situation. If "Crummey Notices" are not sent out, you need to immediately correct the mistake. If the family situation changes, it may be necessary to consider other planning alternatives.

I recommend that trustees set up a file to document the annual reviews of the trust and the life insurance policy. The review should include a review of the trust's investment policy and objectives, the policy's coverage and performance, the policy's guarantees, the premium payment method (cash or premium financing), the insurance company's ratings, the titling of ownership, identification of the beneficiaries, circulation of "Crummey Notices," etc.

In conclusion, under the Prudent Investor Rule, trustees must demonstrate that they have acted in a manner consistent with the fiduciary guidelines of the State of Florida, which we believe require annual documented reviews.

How can I stay up-to-date on probate-related legal issues — without spending a fortune and all of my time?

That's easy. Subscribe to the Free clipping service of the Florida Probate & Trust Litigation Blog.



Subscribe to the Florida Probate & Trust Litigation Blog Clipping Service

Stay current with information you need to know by subscribing to the Florida Probate & Trust Litigation Blog. Our free electronic clipping service delivers notice of new probate and trust Florida case law and related legislative developments, articles and news items plus links to original source documents. Clips are delivered to any e-mail address you choose or via RSS feed.

It's free and easy.
Simply go to www.flprobatelitigation.com, enter your e-mail address and let us keep you informed.

The attorneys at Stokes McMillan Maracini & Antúnez P.A. have extensive experience representing clients in contested probate and trust matters. Contact us today for experienced, principled legal representation. Referrals and co-counsel arrangements are welcomed and honored.

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

Florida Probate & Trust Litigation Blog
www.flprobatelitigation.com

Stokes McMillan Maracini & Antúnez P.A. | Attorneys at Law
Miami Florida
www.smpalaw.com

www.flprobatelitigation.com

The Cutler *En Banc* Opinion:

Is the Third DCA Eroding the Protection Afforded to Heirs Who Are to Receive Devises of Florida Homestead?

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

This article will explore the holding in the recent *en banc* decision of the Florida Third District Court of Appeal in *Cutler v. Cutler, In re: Estate of Edith Alice Cutler*, 33 Fla. L. Weekly D2103a (Fla. 3rd DCA September 3, 2008).

The Florida Third District Court of Appeal, rehearing a decision of that court *en banc,* withdrew the prior opinion of the court and substituted a modified opinion in its stead. The Florida Third District Court of Appeal held that the decedent's homestead was subject to devise, and therefore, the provision in the decedent's Will, which directed that the decedent's debts be satisfied equally from both the decedent's homestead (which was to be distributed to the decedent's daughter) and an adjacent vacant lot (which was to be distributed to the decedent's son), was enforceable, notwithstanding the provisions of Section 4(b) of Article X of the Florida Constitution. The decision of the Florida Third District Court of Appeal sitting *en banc*, in essence, reversed the decision entered by the three judge panel in the court's earlier decision. See *Cutler v. Cutler*, *In re: Estate of Edith Alice Cutler*, 994 So. 2d 341 (Fla. 3d DCA 2008).

> ***"Florida law relating to homestead is one of the more challenging and confusing areas encountered by practitioners."***

In October 2003, Edith Alice Cutler created a land trust for estate planning purposes. The initial trustees of the land trust were Edith and her two adult children, Edward and Cynthia. Edith, a widow, conveyed ownership of her homestead real property and an adjacent vacant lot to the land trust, subject to a life estate which was retained by Edith, individually. The provisions of the land trust agreement directed that the homestead and the adjacent vacant lot were to be distributed, upon the death of Edith, to Edith's estate.

Edith's Will specifically devised her homestead real property to her daughter, Cynthia, and the adjacent vacant lot to her son, Edward. Edith's Will also provided that all claims, charges and allowances against, and costs of administration of, Edith's estate were to be paid out of the residuary portion of Edith's estate. If the assets comprising the residuary estate were not sufficient to satisfy the debts and administration expenses, Edith's Will directed that the balance of such items were to be paid from, and were to reduce equally, the devise of the homestead real property to Edith's daughter, Cynthia, and the devise of Edith's vacant lot to Edith's son, Edward.

After Edith's death on June 6, 2004, the residue of Edith's estate was insufficient to satisfy all of the estate's creditors. Edith's son, Edward, sought to have the homestead and the vacant lot abated, on an equal basis, to obtain the funds needed to pay the balance owed to the creditors of Edith's estate. Edith's daughter, Cynthia, objected to any such abatement on the basis that Section 4(b) of Article X of the Florida Constitution provides that the protection from the claims of creditors available to a decedent inures to the decedent's surviving spouse and heirs. See §4(b), Article X, Florida Constitution.

The holding of the majority in the *Cutler en banc* opinion did not disagree with the conclusion reached by both the trial court and by the three judge panel that the real property devised to Cynthia was Edith's homestead. Rather, the court's departure from the trial court's holding, as well as the holding of the three judge panel in its original decision, revolved around the issue of whether the Florida constitutional exemption from creditor's claims enjoyed by Edith prior to her death inured to the benefit of Edith's daughter, Cynthia, as a result of Edith's death.

The general rule, as clearly set forth in Section 4(b) of Article X of the Florida Constitution, is that the exemption from creditors enjoyed by a Florida resident relative to his or her homestead real property passes to and inures to the benefit of such resident's spouse or heirs upon the death of the resident.

Another provision of the Florida Constitution restricts the ability of a decedent to devise his or her homestead real property at death if such decedent is survived by a spouse or a minor child. See §4(c), Article X, Florida Constitution; §§732.401, 732.4015, Florida Statutes.

Prior cases have consistently held that when a decedent, who is not subject to the restrictions on the devise of homestead set forth in Florida law (Section 4(c), Article X, Florida Constitution and Sections 732.401 and 732.4015, Florida Statutes), directs the sale of homestead real property, the proceeds from such a sale lose their homestead character, become part of the decedent's estate and become subject to administration expenses and the claims of the decedent's creditors. See *Estate of Price v. West Florida Hospital, Inc.*, 513 So. 2d 767 (Fla. 1st DCA 1987); *Knadle v. Estate of Knadle*, 686 So. 2d 631 (Fla. 1st DCA 1967).

Although Edith did not direct that her homestead real property be sold, she did direct, in what the court held was a specific manner, that her homestead be used to satisfy her debts. In the view of the Florida Third District Court of Appeal sitting *en banc*, this specific direction was equivalent to ordering it to be sold.

continued, next page

Cutler En Banc Opinion

from preceding page

Judge Shepherd, joined by Chief Judge Gersten and Judge Lagoa, wrote a dissent that was thirteen pages in length, which was longer than the majority's opinion (which was barely eleven pages in length). The reasons cited in dissenting from the majority decision were as follows:

1. Because the decedent's homestead was specifically devised to the decedent's daughter, title to the homestead passed to the decedent's daughter upon the moment of the decedent's death; it passed outside of the decedent's estate. Note that Florida law does not empower the decedent's personal representative to take possession or control of the decedent's homestead real property. §733.607, Fla. Stat.
2. Because the decedent's homestead is not a part of the decedent's probate estate, Florida's abatement statute (§733.805, Fla. Stat.) does not apply. See §733.607(1), Fla. Stat.; *Thompson v. Laney,* 766 So. 2d 1087 (Fla. 3d DCA 2000).
3. The majority's reliance on the holding in *City National Bank of Florida v. Tescher*, 578 So. 2d 701 (Fla. 1991) is misplaced, as the holding is not applicable to facts of the *Cutler* case. The *Tescher* case involved the validity and enforceability of a provision in a prenuptial agreement by which the decedent's surviving spouse waived his homestead rights under Section 4(c) of Article X of the Florida Constitution. In the *Cutler* case, the decedent's daughter's claim is based on the provisions of Section 4(b) of Article X of the Florida Constitution, and such a right cannot be waived by the decedent. As an heir of the decedent, the decedent's daughter, Cynthia, is a constitutionally protected class member under Section 4(b) of Article X of the Florida Constitution.
4. The cases in which a decedent directed that his or her homestead be sold with the proceeds being distributed to the estate beneficiaries are not applicable in the *Cutler* case because Edith did not, in her Will, direct that her homestead be sold. In both *Estate of Price* and *Knadle*, each decedent specifically directed in their will that the homestead be sold and the proceeds therefrom be distributed to their respective children.

The dissenting opinion also contends that the matters which were to be determined in the *Cutler* case were indistinguishable from those set forth in the decision of the Florida Fourth District Court of Appeal in *Engelke v. Estate of Engelke*, 921 So. 2d 693 (Fla. 4th DCA 2006). In *Engelke*, Paul Engelke and his wife, Judy Engelke, each owned, through their separate respective revocable inter vivos trusts, a one-half undivided interest in their homestead property as tenants in common. Paul Engelke and Judy Engelke each waived their respective homestead rights relative to the restrictions placed on the devise of homestead in Section 4(c) of Article X of the Florida Constitution. Paul Engelke's trust agreement provided that, after his death, his spouse, Judy Engelke, would have the right to live in his one-half undivided interest in the homestead during her lifetime, provided that she pay all of the expenses to maintain the homestead. It further provided that upon the death of Judy Engelke, or her removal from the homestead, Paul Engelke's children would receive his one-half undivided interest in the homestead real property through the residuary provisions of his trust agreement.

Upon the death of Paul Engelke, his estate did not have sufficient funds to pay the claims filed against his estate. The Florida Fourth District Court of Appeal held that the protection from creditors inured to Paul's heirs (his children) even though they retained only a remainder interest in the homestead. The *Engelke* court rejected an attempt to treat a direction to pay estate debts and expenses from Paul's trust estate to the extent sufficient assets are not available in Paul's probate estate as a direction to sell the specific homestead.

Both the majority and the dissent in *Cutler* acknowledged the policy under Florida law that the homestead protections of Section 4 of Article X of the Florida Constitution are to be liberally construed.

The majority in *Cutler* seeks to establish and carry out what certainly appears to be the decedent's intent that the decedent's daughter and son bear the financial impact of the decedent's debts on an equal basis. Certainly, Edith, in her Will, sought to allocate her debts equally between her homestead that was specifically devised to her daughter and the adjacent vacant lot that was specifically devised to her son.

The dissent, while not disagreeing with the majority's statement as to what the decedent's intent may have been, took issue with the holding of the majority because the dissent did not believe that the decedent's attempt to, in essence,



allocate debts between the daughter's devise (the decedent's homestead) and the son's devise (the adjacent vacant lot) was effective under the provisions of the Florida Constitution. Rather, the dissent viewed the rationale of the majority as an effort to extend the limited exception arising when the decedent specifically directed that her homestead be sold, which Edith failed to do, to the circumstances existing in *Cutler*.

Although the majority cited the opinion of the Florida Supreme Court in *McKean v. Warburton*, 919 So. 2d 341 (Fla. 2005) in support of its holding, the facts and holding in *Warburton* do not seem to support the result in *Cutler*. In *Warburton*, the decedent's Will made several specific bequests, with the residuary estate passing to heirs. The decedent in *Warburton* was not survived by a spouse or minor children. The only significant asset in *Warburton* was the decedent's homestead. Although the decedent clearly intended to provide some financial benefit to the specific devisees, the Florida Supreme Court held that the decedent's homestead could not be sold to provide funds to satisfy the specific devises, much less to pay the decedent's creditors or expenses of administering the decedent's estate. Therefore, although the decedent's homestead was subject to devise (because the decedent was not survived by a spouse or minor children), the Florida Supreme Court did not hold that the provisions contained in the decedent's Will for the payment of specific devises was sufficient to deny the residuary beneficiaries, as heirs of the decedent, the constitutional protection provided pursuant to the provisions of Section 4(b) of Article X of the Florida Constitution. In *Warburton*, as in *Cutler*, the decedent could have provided that the homestead was to be sold so that the proceeds would be available to pay all or a portion of the decedent's creditors and the specific legatees.

Florida law relating to homestead is one of the more challenging and confusing areas encountered by practitioners. Not only must one tread lightly and carefully when dealing with Florida homestead real property in both the planning and administration environment, one also must be able to predict how a court may rule if more novel issues are presented.

It will be interesting to see if the Florida Supreme Court is afforded an opportunity to weigh in on the issues presented in this case.

Although not directly addressed in the *Cutler* decision, one issue which has not been adequately addressed or resolved in Florida statutory laws or case decisions is whether the trustee of a revocable inter vivos trust, upon the death of the grantor, may sell homestead real property based on the general statutory authority to sell real or personal property, if the trust agreement directs (whether specifically or generally) that the homestead is to be distributed to the decedent's spouse or heirs (or a continuing trust for the benefit of the decedent's spouse or heirs). It is the author's opinion that the provisions of Section 4(b) of Article X of the Florida Constitution preclude the trustee from exercising any such authority unless (i) the homestead was subject to devise (the restrictions of Section 4(c) of Article X of the Florida Constitution not being applicable), and (ii) a specific power directing the sale of the decedent's homestead (albeit owned by the decedent's revocable trust) ala *Price* and *Knadle* is present

Foreclosure Hotline Helps Florida Homeowners

Florida lawyers are now available to assist low income homeowners facing foreclosure.

The Florida Bar (in conjunction with Florida Legal Services and the Real Property, Probate & Trust Law Section) has launched a foreclosure hotline to assist Florida residents who are facing or fear foreclosure on their home. This project is called the **Florida Attorneys Saving Homes HOTLINE.**

Callers will be put in contact with a free private attorney who will collect information and attempt to resolve the problem. If a caller qualifies (is not already in foreclosure**), he should call 1-866-607-2187. Bar staff will collect information from the callers and Florida Legal Services will screen the calls.

BE A VOLUNTEER!

Lawyers interested in becoming a volunteer can contact either Andrew O'Malley at aomalley@cowmpa.com or Adele Stone at astone@atkinson-diner.com with your contact information and the judicial circuit in which you are located. Volunteer hours spent on this project can count toward pro bono hours.

*** If the caller's home is already in foreclosure proceedings, or there is an auction date set by his lender, the volunteer attorneys will not be able to assist him and he should contact his local legal aid office, or he can be referred through The Florida Bar Lawyer Referral Service [LRS] at 1-800-342-8011. Referrals made through LRS are not based on income eligibility or ability to pay for an attorney.*



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.

ASHAR
GROUP, LLC
Life Settlement Specialists

800.384.8080

www.ashargroupllc.com

Ashar ('ash.ar): prosperity in family and wealth

THE GUARDIANSHIP TEAM 2009

FRIDAY & SATURDAY, FEBRUARY 20 & 21, 2009

InterContinental Tampa Hotel, 4860 West Kennedy Boulevard, Tampa, FL 33096

A seminar for: Attorneys, Guardians, Paralegals and Court Officials

This year:

- ⇒ **Baker Act Proceedings**
- ⇒ **Guardian Advocates**
- ⇒ **Interested Persons (and Gadflies)**
- ⇒ **Exploitation Issues**
- ⇒ **And much more!**

REGISTRATION FEE INCLUDES

* All lecture and seminar materials
* Refreshment breaks
* Friday luncheon
  (extra lunch for guests is $32.00)
* Current Florida Guardianship Forms on disk
  (Sample January 2009)
* The World Renowned "Mobile Symposium" –
  Hors d'oeuvres, soft drinks, beer, wine and open discussion with the speakers

HOTEL REGISTRATION INFORMATION

A block of rooms has been reserved at InterContinental Tampa Hotel at the rate of $174, single or double occupancy. To make reservations, please call the hotel directly at (813) 286-4400 and be sure to tell them you are a Guardianship Team registrant!

Reservations must be made by January 20, 2009, to assure the group rate and availability.

SEMINAR REGISTRATION FORM

THE GUARDIANSHIP TEAM 2009

The registration fee is $275.00, subsequent registrants – from the same firm, **REGISTERING AT THE SAME TIME ONLY** – may attend at the rate of $260.00 per registrant. Refunds will be given for cancellation requests postmarked by February 14, 2009, returning ORIGINAL confirmation. A $25.00 cancellation fee will be retained. (Luncheon included with registration fee.) If space is available, onsite registration is by check only and a $25.00 late registration fee will apply.

ONE REGISTRANT PER REGISTRATION FORM; PLEASE DUPLICATE AS NEEDED

Name:_____

Bar #:_____ FRP#:_____ CLA #:_____ PG L#:_____

First name to appear on tag:_____

Firm:_____

Address:_____

City, State & Zip:_____

Phone:_____ Fax:_____ E-Mail:_____

TO REGISTER, complete this form and mail it with your registration check to:
FLEA, Post Office Box 568187, Orlando, Florida 32856-8187

Private Foundations: Some Basic Compliance Issues

By Kevin A. Sentner; Lefkowitz Shaw & Sentner; Orlando, FL

A private foundation is an organization formed and operated exclusively for charitable purposes, which qualifies for tax exempt status under sec. 501(c)(3) of the Internal Revenue Code. A private foundation typically has a single major source of funding, usually gifts from one family or a business, and usually has as its primary activity the making of grants to other charities, and sometimes to individuals.[1] A private foundation that directly operates a charitable program, for example a summer camp for disadvantaged youth, is known as a "private operating foundation."[2] Private operating foundations are a small fraction of the universe of private foundations, and special rules that affect them are not discussed in this article.

Once an organization has applied for and established its tax exempt status under sec. 501(c)(3), its officers, directors, managers, or trustees have an ongoing responsibility to ensure that the organization maintains its tax exempt status and meets its compliance obligations. This article is an introductory discussion of several of those compliance responsibilities.

I. Minimum 5% Distribution Requirement (and Grants to a Second Private Foundation)

Generally, a private foundation must annually distribute its "Minimum Investment Return," which is equal to 5% of the fair market value of its "non-charitable assets." That is, 5% of its assets that are not used or held for use in performing the organization's charitable function. Office furnishings and equipment are charitable assets, if used in carrying out the foundation's charitable mission. Investments are typically non-charitable assets, even though the income they produce is used to make grants. In calculating Minimum Investment Return, marketable securities are valued at the average of their monthly values during the year, determined on a consistent basis (for example, the closing value on the last day of the month or the average of the high and low sales on the 15th day of the month). All other assets are valued annually, except that for real estate a certified written appraisal can be used for 5 years.[3] Now in a period of rapidly falling values, such as we have been experiencing, a foundation manager may not want to stick with an appraisal for 5 years and is allowed to obtain a new appraisal, and use that one for as many as 5 years.

It is permissible for one private foundation to make a grant to a second private foundation, for example if the grantee has an IRS approved scholarship program and the grantor does not, and the grantor decides it would like to help fund that program. The grantor can make that grant, provided that the grantor exercises "expenditure responsibility," which means applying reasonable procedures to see that the grant is used only for the purpose for which it is made and keeping detailed records of how the funds are spent. If one private foundation does make a grant to a second private foundation, can both of them count that money toward their annual minimum distribution requirement? No. Unless the foundations agree otherwise, only the grantee private foundation can use it. This hardly seems fair, since it was the grantor foundation's money. So the grantor can obtain an agreement from the grantee foundation that the grantee will (1) elect on its annual return not to count the disbursement toward its 5% requirement, and (2) disburse all of the funds by the end of its fiscal year following the year in which the funds are received.[4]

II. UBTI (and Leveraged Investments)

Unrelated Business Taxable Income (UBTI) is income from a trade or business that is regularly carried on by an exempt organization, and that is not substantially related to the performance of its exempt purpose, even if the income is used to fund the exempt purpose.[5] UBTI is taxed at corporate or trust tax rates, whichever apply to the form of organization, subject to deductions for expenses directly related to the unrelated business that produced the income. The private foundation may also take a charitable deduction for its contributions to other charities, but limited to 10% of its UBTI if the organization is a corporation, or 50% if the organization is a trust. UBTI also includes income from debt financed assets (described below). The purpose of taxing UBTI is to eliminate unfair competition by placing the unrelated business activities of the private foundation on the same tax basis as non-exempt businesses with which they may compete.[6] Accordingly, when analyzing whether a particular activity will generate UBTI, it is generally useful to ask if the foundation is providing goods or services, not substantially related to its mission, in competition with for-profit businesses, or that a for-profit might otherwise provide. For example, if the organization's mission is to promote education about art and it has an auditorium that it rents to the local art league, which uses it to show educational movies about art and artists, arguably that activity is substantially related to the charitable mission and would not produce UBTI. On the other hand, if the organization uses the auditorium after hours to show commercial films, in competition with the local cinema, that would be unrelated to the charitable mission and will produce UBTI, even if the proceeds are used to fund grants for art education.

There are some important exceptions to what will be considered an unrelated business, including:

- A business utilizing an all-volunteer workforce;

- A business selling only donated merchandise; and
- Bingo games (if for-profit games cannot regularly be conducted in the jurisdiction).[7]

There are also two common and important types of income which are exclusions from UBTI:

- Rent from real estate, except rent calculated as a percentage of the lessees' net profit. (A fixed percentage of gross qualifies for the exclusion from UBTI); and
- Income from ordinary and routine investments such as interest, dividends, and royalties.[8] (Income received from a controlled entity may not qualify for this exclusion under certain circumstances.)[9]

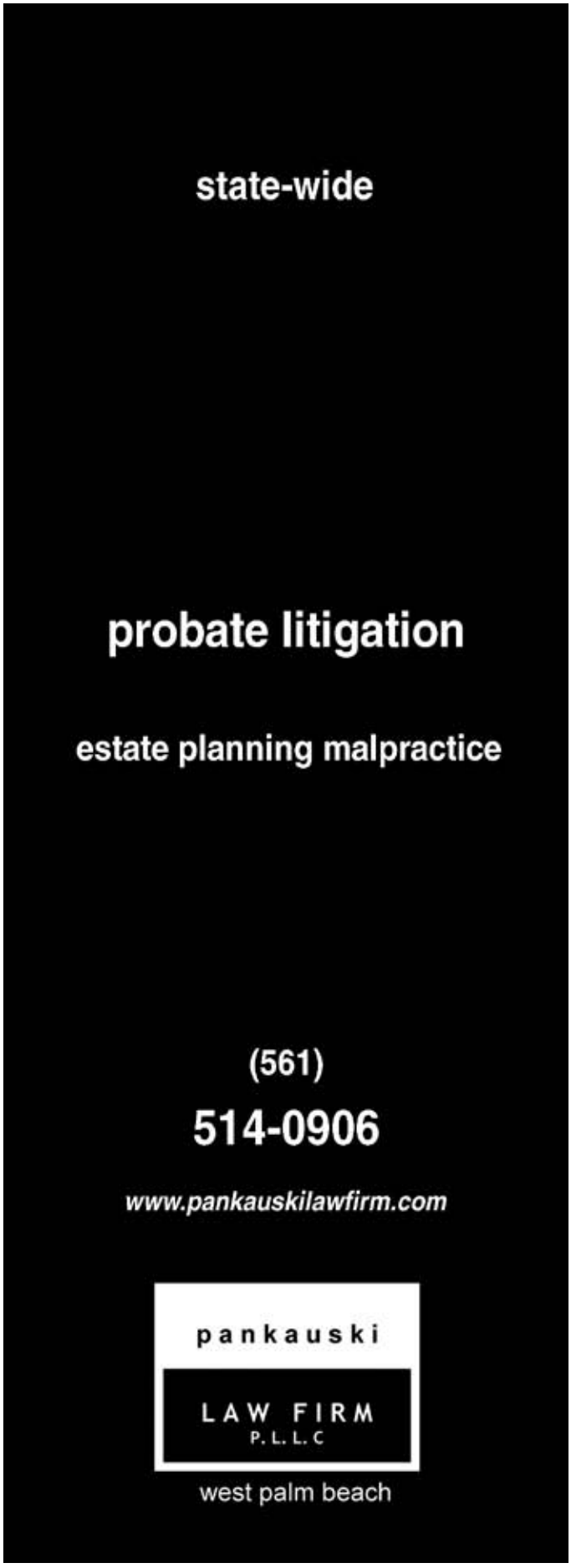
An important exception to the exclusions generally applicable to investment income and rent is "Debt-financed income," which means income from debt financed assets. Debt financed assets include any property held to produce income (including from its eventual sale) for which there is an acquisition indebtedness outstanding at any time during the tax year. It could be real estate, stock, or any other asset. In addition to purchase money debt, acquisition debt includes debt incurred for improvements to the property and includes pre-existing debt on an asset received as a gift. Accordingly, if the private foundation accepts a gift of mortgaged real estate, that is a debt financed asset, even if the foundation does not assume or become liable for the debt. An important caveat: a partner's allocable share of the partnership's acquisition debt is considered acquisition debt of the partner. So if the private foundation is a partner (whether general or limited) in a venture to acquire a property and the partnership takes on acquisition debt, that will flow through to the private foundation and the investment in the partnership will produce UBTI, even though the foundation paid cash for its partnership interest.[10]

There is an exception from the debt financed property rule for assets directly used in the performance of the foundation's exempt purpose. If 85% or more of the use of the property is substantially related to the tax exempt purpose, then the asset will not be treated as debt financed property. If there is a mixed use and less than 85% of the use is for the exempt purpose, then the income from the non-exempt use will be UBTI.

III. Scholarship Programs

Creators of foundations that include "supporting education" or similar language among the charitable purposes of their private foundation tend to assume that the foundation can make grants of scholarships for individual students without IRS approval - especially if the money is paid directly to the school. Since the college or university is a 501(c)(3) public charity, so that a grant to the school would not require any advance IRS approval, private foundation managers may assume that they can fund a specific student's scholarship as long as the grant is paid directly to the school and not to the student. This is not true. If a private foundation makes a grant to the existing scholar-

continued, next page



from preceding page

ship program of a university or other public charity, and is not involved in selecting the recipients, then advance approval is not required. However, if the foundation is going to select the recipient (as opposed to the school making the selection) then IRS advance approval of the scholarship program is required, regardless of whether the money is paid to the school or to the individual.[11] Grants made without such approval are "taxable expenditures," and can result in the imposition of excise tax on the foundation, as well as upon foundation managers if the taxable expenditure was knowing and willful on the part of the manager.[12]

If a private foundation wishes to be involved in selecting scholarship recipients, it must apply to the IRS for advance approval. It must define the group of persons who are eligible to apply for the scholarships, and develop an objective and non-discriminatory plan for selecting the recipients. For example, the plan might define the eligible class as graduates of Lake Mary High School having a 3.0 GPA and attending college or university in Florida, without regard to gender, race, or creed. The program and procedures must be submitted to the IRS. If the IRS does not contact the private foundation within 45 days of the submission of the Scholarship Plan, the private foundation may begin making scholarship grants in accordance with the submitted Plan, unless and until the private foundation hears otherwise from the IRS. In other words, no news is good news.[13] Employer related scholarship and student loan programs must satisfy some special additional requirements, which are not addressed here.

IV. Grants to Individuals for Emergency or Hardship Assistance

An exception to the general rule that private foundations may not make grants to selected individuals without prior IRS approval are certain grants made to relieve human suffering, which may be made without prior approval if particular conditions are met.[14] The IRS divides such grants into two broad categories. Emergency assistance is generally provided after a natural catastrophe, such as a hurricane, flood or tornado. Hardship assistance is generally provided to individuals with longer term needs and may include such things as food, shelter, clothing, medical care, health insurance premiums, and transportation.

A program of emergency or hardship assistance must be directed to a class of beneficiaries, which must be large and indefinite enough that providing aid to members of the class will benefit the community as a whole. By this standard, a plan to benefit victims of a particular fire probably would not be sufficiently general. A plan directed to victims of fires and natural catastrophes who are residents of Seminole County is probably broad enough. Donors may not earmark donations for particular individuals. A private foundation providing emergency or hardship assistance must keep records, including:

- The purpose of the aid
- The assistance provided
- The objective criteria used to select recipients of aid
- How the selection process functions
- Name, address and assistance provided to each recipient
- Any relationship between a recipient and any insider.[15]

If the emergency or hardship assistance does not fall within the charitable purposes described in the foundation's application for recognition of tax exemption, the new activities should be reported to the I.R.S. by a written notice (to P.O. Box 2508, Cincinnati, OH 45201), and on the foundation's annual return.

V. Reasonable Compensation for Insiders

A private foundation is prohibited from allowing its income or assets to benefit insiders. The term "insiders" as used here includes major donors, officers, directors, managers and trustees, or their family members. A prime example of a prohibited benefit to an insider is unreasonable compensation. Any amount of unreasonable compensation can be grounds for loss of tax exempt status.[16] In addition, a prohibited benefit can result in the imposition of self-dealing excise tax on the individual receiving the benefit. So it is important to be able to judge what level of compensation will pass muster. Reasonable compensation is the value that would be paid for like services by like enterprises under like circumstances.[17] The reasonableness of compensation is judged on a number of factors, including but not limited to:

- Qualifications of the payee
- Experience
- Responsibilities
- Duties
- Time dedicated (full or part time)
- Local labor market
- Cost of living in the area
- Salary paid by similar charities in the area for similar services, at arm's length.

Case law under I.R.C. sec. 162 provides useful guidance. It is advisable to have a management consultant or CPA provide a written opinion on the reasonableness of compensation to insulate the foundation and the individuals from penalties.

VI. Confirming Continuing Tax Exempt Status of Grantees

A private foundation may only make grants to other organizations that are also tax exempt (other than the permitted grants to individuals discussed above). These will usually be public charities, since grants to other private foundations involve expenditure responsibility and other issues previously mentioned. Favorable determination letters do not necessarily remain in effect forever, particularly as to

a public charity, whose public status depends on sustaining a broad base of public support. If that base of support narrows, it will lose its public charity classification, and become a private foundation. Tax exempt organizations can also lose exempt status for engaging in political activity, for failure to perform their stated charitable purpose, or other reasons. Also, particularly in the wake of a disaster, such as Hurricane Katrina or the 9/11 attacks, numerous organizations spring up to provide relief (and take advantage of potential donors' emotional response to the victims). Foundation managers must be cautious of organizations that are unfamiliar.

It is important to periodically verify the tax exempt status and public charity status of a private foundation's grantee organizations. This can be done by calling IRS Customer Service at 800-829-1040, or by accessing IRS Publication 78 at www.irs.gov for a list of qualified organizations. The web site includes a listing of recent additions to, and deletions from, the list, as well as suspensions. If more information is desired, a copy of the organization's application for recognition of tax exempt status and annual return can be requested. Do not assume that certain classes of organization, such as libraries, volunteer fire departments or police benevolent associations, are automatically public charities. They may or may not be. Churches, synagogues and mosques are deemed to be public charities without applying for tax exempt status, and will not appear on Publication 78. Likewise for government entities such as municipalities or school districts. When dealing with lesser known churches or other religious organizations, take reasonable care to assure that they are legitimate. Attend a service, tour the facilities, interview the pastor or rabbi, trustees or board members.

Endnotes:

1. I.R.S. Publication 4221-PF, pg. 2
2. I.R.C. sec. 4942(j)(3) and (5)
3. I.R.C. sec. 4942(e)
4. I.R.C. sec. 4942(g)(3)
5. I.R.C. sec. 512(a); I..R.S. Publication 598
6. Treas. Reg. sec. 1.513-1(b); see Ltr. Rul.200832027
7. I.R.C. sec. 513(a)-(f)
8. I.R.C. sec. 512(b)
9. I.R.C. sec. 512(b)(13)(A)
10. I.R.C. sec. 704; I.R.S. Publication 598, pg. 13
11. Treas. Reg. sec. 53.4945-4(a)(3)(ii)
12. Filmore, "Get Grant Making Right"; Trusts and Estates, 12/05
13. Treas. Reg. sec. 53.4945-4(d)
14. I.R.S. Publication 3833
15. Revenue Ruling 56-304
16. I.R.S. Publication 4221-PF, pg. 5
17. I.R.S. Publication 557

RPPTL Sponsor Contacts

The RPPTL Section is grateful to all of its sponsors who faithfully support the good work of the Section. In addition to recognizing them in each issue of *ActionLine* as we do, we want to offer information to you in the event you wish to speak with a sponsor about the services it provides. Below is the name of the sponsor and contact information. Again, thank you sponsors for supporting RPPTL!

- **Attorney's Title Insurance Fund:** Norwood Gay, 1-800-432-9594
- **Chicago Title Insurance Company:** Lynda Durso, (954) 971-2200 Ext. 3134
- **Fidelity National Title Insurance Company:** Jill Baron, (954) 0315-1808
- **First American Title Insurance Company:** Alan McCall, (407) 691-5295
- **Gibraltar Bank:** John Harris, (954) 768-5332
- **Howard Frazier Barker Elliott:** Alex Howard, (713) 225-9580
- **Land America:** Larry Furlong, (407) 645-1070
- **Management Planning, Inc.:** Roy Meyers, (609) 924-4200 ext.109
- **Old Republic National Title Insurance:** Jeanne Murphy, 1-800-342-5947
- **Regions Bank:** Mark Middlebrook, (727) 592-6937
- **SoftPro:** Russ Turner, 1-800-848-0143
- **Stewart Title & Guaranty Company**: Willie Kightlinger, (813) 769-5620
- **SunTrust Bank:** Susie Findell, (407) 237-2455
- **The Community Foundations of Florida:** Terri Murru, (954) 491-2831
- **The Florida Bar Foundation:** Tim Bachmeyer, (407) 451-9187
- **Wachovia Trust:** Gentry Byrnes, (727) 895-2872



The Florida Bar and LegalSpan Bring Online CLE to Attorneys

Since August of 2000, The Florida Bar has been offering quality CLE programs as online, on-demand seminars through their partnership with LegalSpan. The popularity of this type of education delivery method has been growing exponentially ever since.

With increasingly hectic schedules and the rising cost of travel, attorneys are turning to the internet to satisfy their educational needs. Online CLE programs offer the flexibility of viewing programs at your own pace, anytime, anywhere.

Whether a first time or net savvy user, Florida attorneys are finding that online CLE programs are time saving and easy to use.

"I am very pleased to be able to have these seminars made available to members of The Florida Bar in the format that you have provided. With the format you have provided, I feel that I am at the seminar and I have the materials which I can download and save for future reference. Thanks for a great product well presented and technically friendly!" — Andrew, Live Oak

"I found this online seminar to be convenient, understandable, and user-friendly. I will use this method more in the future. Thank you for this informational and convenient seminar" — Gerald, West Palm Beach

"Excellent resource. A very convenient way to engage in continuing education that has high quality speakers and content" — Bruce, Miami Beach

"This is the greatest thing ever invented. I can now complete my CLE requirements at home. Everything was so easy. Thank you." — Sheila, Largo

"Terrific site and material. It makes it much easier to get CLE credit, and makes the materials much more useful since they can be viewed multiple times." — Thomas, Brandon

With the explosion of MP3 players and iPods in the market, LegalSpan developed the technology to enable The Florida Bar to introduce Downloadable Audio versions of their CLE programs. Since it's inception in March of 2006, the Downloadble versions of The Florida Bar's CLE programs have become as popular a method of obtaining education as Online CLE. "We want to foster greater collaboration among members and a more vibrant educational dialogue. Attorneys learn best at their own pace, in their own way, in a comfortable environment. Our online options give members educational content when and where they want it" said Programs Division Director Terry Hill.

The Florida Bar's catalog of online and downloadable programs is robust, offering over 200 programs, covering all practice areas. Attorneys are able to enjoy the time and money savings without sacrificing content, by participating in these types of programs. **The complete catalog of Florida Bar CLE courses can be viewed at *www.floridabar.org/cle* by accessing the LegalSpan link under Online Courses.**

Real Estate Case Summaries

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

Action for wrongfully conveying property subject to recorded marital settlement agreement does not support lis pendens.

Sheehan v. Reinhardt, 988 So. 2d 1289 (Fla. 2d DCA 2008)

The Sheehans petitioned for a writ of certiorari quashing the trial court's order denying their motion to discharge lis pendens or, in the alternative, to require bond. Certiorari is the proper vehicle to review an order denying a motion to discharge a lis pendens.

Reinhardt had filed a notice of lis pendens in conjunction with the filing of her complaint. In count I of her complaint, Reinhardt alleged that a party breached the marital settlement agreement with another party by conveying the marital residence to the Sheehans and not paying the party for his interest in the property. The marital settlement agreement provided that the parties were joint owners of the marital residence, but that the other party would have exclusive use and possession of it. It further provided that she would sell the home and equally divide the proceeds. The party refused to convey half of the proceeds of the sale to Reinhardt because the other party had executed two quitclaim deeds of the property to her. The first deed was unrecorded, and the second deed was recorded. Reinhardt alleged that the deeds were flawed because the witnesses who signed it were related to the party. She sought a final judgment awarding her damages, prejudgment interest, costs, and attorney's fees.

In count II, Reinhardt sought a declaratory judgment defining her legal interest in the property as it relates to the Sheehans. She alleged that the recorded marital settlement agreement gave her a joint interest in the property and that the other party's conveyance to the Sheehans was subject to that continuing interest. The Sheehans filed a motion to discharge lis pendens or, in the alternative, to require bond. After a hearing, the trial court denied their motion. They then filed their certiorari petition.

The purpose of a notice of lis pendens is to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of real property is involved in litigation. Reinhardt's action for declaratory judgment against the Sheehans is based on her allegation that the recorded quitclaim deed is void and that, therefore, her interest in the property continues and inures to her by virtue of the recorded marital settlement agreement. If the initial pleading in a lawsuit is based upon a duly recorded instrument, the petitioner is entitled to maintain a lis pendens on the property in question as a matter of right. The marital settlement agreement is not a duly recorded instrument because enforcement of it does not affect the Sheehans' property. In other words, Reinhardt's complaint based on the marital settlement agreement, which does not contain a legal description of the subject property, does not support a direct claim against the property. A complaint that will not support a claim against the specific property at issue cannot provide a basis for tying it up by a filing of notice of lis pendens. At most, Reinhardt may have a claim for money damages. When the primary purpose of a lawsuit is to recover money damages and the action does not directly affect the title to or the right of possession of real property, the filing of a notice of lis pendens is not authorized. There being no basis for a lis pendens on the Sheehans' property, the trial court departed from the essential requirements of law in failing to grant the Sheehans' motion to discharge. Accordingly, the district court granted their petition for writ of certiorari and quashed the order denying their motion to discharge.

Dissolution-related conveyance judgment cannot order payment to third parties.

Juliano v. Juliano, 991 So. 2d 394 (Fla. 4th DCA 2008).

The issue raised on appeal was that the trial court, in a marital dissolution proceeding, erred in awarding a non-party creditor, the Trust, a judgment interest against the sale proceeds of the former wife's homestead property. The district court agreed and reversed.

Prior to the marriage of the parties, the former husband created the Trust. The former husband was the trustee and grantor of the Trust at that time. The former husband named four children from a prior marriage as the beneficiaries, along with any children the parties might have. At the time of the marriage, it was understood by the former wife that the former husband was having certain legal problems with the IRS and that a tax lien was filed against him. As a result, the former husband could not have any of his assets in his name. The former wife believed that the former husband would keep his assets in the Trust and that she was a beneficiary. The former husband denied ever telling the former wife that she was a beneficiary of the Trust. The former husband resigned as trustee of the Trust, leaving his son as the sole trustee, although the former husband retained written powers of attorney. The former wife and

continued, next page

former husband purchased a home. The former wife put down a $50,000 deposit and the former husband obtained two separate sums, $3.4 million and $400,000, from the Trust. The sums came via a mortgage and promissory note payable to the Trust, respectively. The former wife testified that the former husband told her initially that the Trust did not have to be paid back but later changed his mind.

The home was titled solely in the former wife's name because the former husband wanted it that way, although the former husband did intend to be a title holder in the future. The former wife viewed the home as their retirement home. She maintained her residence there and applied for a homestead exemption on the property. Before the dissolution of the marriage, the mortgage was paid off. The former husband testified that the funds to pay off the mortgage came from the sale of certain properties the former husband and former wife owned but which were titled in the former wife's name to protect the assets from the IRS. The $400,000 promissory note remained outstanding.

The former wife filed a Petition for Dissolution of Marriage. The former husband filed a Counter-Petition for Dissolution of Marriage seeking special equity and the partition of the Ocean Drive home. After a trial, the trial court in its Final Judgment of Dissolution of Marriage Including Judgment of Conveyance of Real Property, discussed how the assets from the sale of the Ocean Drive home should be divided. After paying all reasonable and customary costs of sale, and after satisfying the $400,000 promissory note in favor of the Trust, the remaining proceeds would be equally divided between the parties.

Pursuant to the Florida Statutes, a trial court has the authority to identify all marital liabilities and designate which spouse shall be responsible for each liability. A trial court cannot, however, in a dissolution proceeding, adjudicate property rights of a non-party.

In eviction action, mere payment into court registry before adjudication does not indicate liability.

Dream Closet, Inc. v. Palm Beach Mall, LLC, 991 So. 2d 910 (Fla. 4th DCA 2008).

The tenant in a mall appealed a judgment evicting it. The landlord, who failed to prove the amount of rent due, argued that the District Court should have affirmed the judgment because the payment by the tenant of the rent into the registry of the court was proof that the rent was in default. The Court disagreed and reversed.

The landlord had served the tenant with a notice of default and demanded rent in the amount of $62,436.65. The complaint seeking eviction, which was filed shortly thereafter, alleged that the amount of rent owed was $55,511, but attached the notice of default, which stated the higher amount. The tenant filed a motion to dismiss, contending the notice was defective because of the inconsistency in the amount, and deposited $55,511.09 into the registry of the court, adding another $14,999 a few weeks later. The tenant also filed an answer contesting the amounts claimed by the landlord. The computation as to the amount of rent due in this case was complicated because, in addition to a minimum annual rent, there were percentages based on sales.

The trial court held an evidentiary hearing on the eviction at which the landlord attempted to prove the amount of rent due, but was unable to do so because the witness relied on by the landlord was not competent to testify as to the amount. In spite of this, the court gave the landlord possession, but granted the tenant a stay pending this appeal.

The Florida Statutes provide that, in an action by the landlord which includes a claim for possession of real property, the tenant shall pay into the court registry the amount alleged in the complaint as unpaid, or if such amount is contested, such amount as is determined by the court, and any rent accruing during the pendency of the action, when due, unless the tenant has interposed the defense of payment or satisfaction of the rent in the amount the complaint alleges as unpaid. Unless the tenant disputes the amount of accrued rent, the tenant must pay the amount alleged in the complaint into the court registry on or before the date on which his answer to the claim for possession is due. If the tenant contests the amount of accrued rent, the tenant must pay the amount determined by the court into the court registry on the date that the court makes its determination.

The landlord argued that the tenant failed to comply with this statute because the tenant contested the amount of rent due, but nevertheless paid an amount into the registry of the court, without having the court determine the amount of rent due. The problem with the landlord's argument was that, although it came to the evidentiary hearing with the intention of proving that the tenant had defaulted because it had not paid the correct amount of rent, it was unable to do so. The landlord's sole argument for affirmance was that the mere fact that the tenant had paid a sum into the registry of the court was evidence of a default that would support eviction. Under these facts, where the parties disagreed on the amount and the landlord failed to prove that the tenant defaulted, the court could not agree.

Lease from LLC does not require two witnesses.

Skylake Ins. Ag., Inc., v. NMB Plaza, *LLC*, 3D07-454 33 Fla. L. Weekly D 2215

The question here was whether the commercial ten-year lease in this case was executed with legally sufficient formalities so as to be enforceable. The landlord, NMB Plaza LLC, was the developer of an office building. While the building was under construction, the landlord signed a ten-year lease with the tenant, Skylake Insurance Agency, Inc. The tenant's occupancy was to begin ninety days after completion of the building. A written lease was signed on behalf of the landlord by a member of NMB Plaza LLC, and on behalf of the tenant by the president and vice president of Skylake Insurance Agency, Inc. There were no witnesses to any of the signatures. As the building neared completion, the landlord repudiated the lease because there

were no witnesses to the signatures. The tenant brought an action for specific performance of the lease and made an alternative claim for damages for fraud. The trial court entered summary judgment for the landlord, and the tenant appealed.

The tenant argued that since the Florida statute of frauds has been satisfied, the lease is enforceable. The landlord countered that for a lease of more than one year, there must be a writing signed in the presence of two subscribing witnesses by the party granting such term of more than one year. The tenant pointed out, however, that there is an exception. The last sentence of section 689.01, Fla. Stat., states that corporations may convey in accordance with the provisions of this section or in accordance with the provisions that govern conveyances by corporations. The tenant's reliance on those statutory provisions was misplaced, because the landlord was not a corporation, but was, instead, a limited liability company.

Chapter 608 contains its own provisions regarding the disposition of limited liability company property, including real estate. "Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company, if they are executed in accordance with this chapter." A lease qualifies as a "disposition" of property of the limited liability company.

Section 608.4235, Fla. Stats., addresses the authority of limited liability company members, managing members, and managers. Subsection (3) provides, "Unless the articles of organization or operating agreement limit the authority of a member, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the limited liability company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument."

The lease bears the signature of Eli Hadad on behalf of NMB Plaza LLC as lessor. The lessor's answer admits that the lease was signed and raises no claim that the lessor's signature was unauthorized. As already stated, subsection 608.425(3) provides that the disposition of property of a limited liability company is valid and binding upon the limited liability company, if executed in accordance with that chapter. Thus, it is only necessary that a conveyance by a limited liability company (in this case a lease) comply with chapter 608. It is not necessary that the document contain the signatures of witnesses required under section 689.01.

Free Webinar
go to
www.tedec.com

Court Inventory & Accountings
(For trusts and estates—**Florida Uniform Rules**)

Estate Tax & Income Tax Returns
(Bridge to Lacerte® Tax Software)

Management Reports
(With critical dates and case management)

Power your Estates Practice with
TEdec
A total estate management system

Lacerte® is a registered trademark of Intuit Inc. in the United States and other countries.

Eliminate Mistakes and Increase Profits



Don't labor over Estate Accountings,
Estate Tax Returns
or Fiduciary Income Tax Returns!

$645 for single user system
networking systems available

TEdec Systems, Inc.
207 Court Street, Little Valley, New York 14755 ● tel: 1-800-345-2154 fax: 716-938-6155 website: www.tedec.com

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

NEW

2008 REAL PROPERTY FORMS

Interactive CD Formatted for both WordPerfect and MS Word
= Fill In The Forms, Save To Your Computer & Print

The Real Property Forms Committee of the Real Property, Probate & Trust Law Section of The Florida Bar has completed the arduous task of preparing suggested forms with comments for the Real Property Practitioner. The forms are available through Florida Lawyers Support Services, Inc. to RPP&TL Section members. Please note this disk **DOES NOT** include the FAR/BAR Contracts or Riders, those are available at www.flssi.org.

ONLY $100

INCLUDES SALES TAX AND SHIPPING

Firm: _____

Attn: _____ Bar #: _____

Street Address: _____ (WILL NOT DELIVER TO P.O. BOX

City/State/Zip: _____

MUST CIRCLE ONE: COMMERCIAL Address or RESIDENTIAL Address

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

E-mail address: _____

CHECK PAYMENT

I have enclosed check #_____

MAIL CHECK TO:

Florida Lawyers Support Services, Inc.
Post Office Box 568157
Orlando, Florida - 32856-8157

CREDIT CARD PAYMENT

Card (Circle One): Visa or Master Card

Card Number: _____

Exparation Date: _____/_____

Signature of Cardholder: _____

CUSTOMERS ORDERING WITH A CREDIT CARD
Can fax their orders to 407/515-1504 or
scan and email to info@flssi.org

FLSSI USE ONLY

SHIP DATE _____/_____/_____ LB_____ $_____ # ___ ___ ___ ___ ___ ___ ___ ___

AUTHORIZATION DATE _____/_____/____ # ___ ___ ___ ___ ___ ___ ActionLine 8/2008

Probate Case Summaries

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

Motion to dismiss petition to establish lost or destroyed will must be based upon the four corners of the petition. Court not precluded from entertaining a petition to revoke administration of an earlier-dated will that had already been granted.

Yolanda LaCalle v. Manuel Barquin, 987 So. 2d 1245 (Fla. 3d DCA 2008)

The trial court granted appellee's motion to dismiss appellant's petition to establish a lost or destroyed will and to revoke administration of an earlier will. The appellate court suggested that the trial court, in making its decision, may have relied on two affidavits included with appellee's motion to dismiss or been swayed by the fact that an earlier petition for administration had been granted. The appellate court stated that the trial court's granting of an earlier petition for administration does not estop the advancement of appellant's petition. The appellate court also concluded that it was error for the trial court to consider the affidavits filed with the motion to dismiss because a court may not consider matters outside the four corners of a complaint or petition on a motion to dismiss. Accordingly, the appellate court reversed the order dismissing appellant's petition and remanded for further proceedings.

Constitutional homestead exemption from creditors' claims does not inure to beneficiary where decedent devised her residence in a trust to beneficiary and directed that her debts be satisfied from that property if funds in her estate were insufficient to satisfy her debts. ***(See also page 31 of this issue of ActionLine.)***

Edward T. Cutler v. Cynthia Cutler, 994 So. 2d 341 (Fla. 3rd DCA 2008)

Prior to her death, Edith Cutler created a land trust for estate planning purposes. She conveyed her residence and an adjacent vacant lot to the trust subject to a life estate that she retained for herself. Pursuant to the trust, the remainder interests in these properties were to be distributed to Edith's estate upon her death. Edith's Will, executed on the same date as the land trust, specifically devised the residence to her daughter, Cynthia, and the adjacent vacant lot to her son, Edward. The Will provided that if the funds in Edith's estate were insufficient to satisfy her debts, both properties should be used equally to satisfy those debts.

Following Edith's death, estate funds were insufficient to satisfy all of her creditors. Accordingly, Edward sought to have the two properties abated equally to satisfy the obligations. Cynthia objected on the basis that the residence was exempt from Edith's creditors because it retained its homestead status even though it was titled in the name of the trust at the time of Edith's death. The trial court agreed with Cynthia and this appeal followed.

The appellate court agreed that the property retained its homestead status even though it was titled in the name of the trust at Edith's death. In confirming this portion of the trial court's decision, the appellate court explained that "property held in trust may be impressed, legally speaking, with the character of homestead." However, the appellate court declined to allow the constitutional exemption from creditors' claims to inure to Cynthia's benefit. In reaching that conclusion, the appellate court explained that "it has long been recognized that the owner of homestead property may devise that property in a manner that terminates the protections accorded by article X, section 4" of the Florida Constitution. The appellate court concluded that Edith's express wish that her residence be used to satisfy her debts was equivalent to ordering the residence sold and the proceeds used to satisfy her debts. On that basis, the appellate court determined that the residence was not protected from creditors.

Letters of administration issued in an apparently intestate estate should be revoked when both parties stipulate to admission of decedent's will to probate. Any objections to timeliness of either an answer or counter-petition regarding appointment are thereby waived.

Ferral Lee McCormick, Jr. v. Timothy L. McCormick, 991 So. 2d 437 (Fla. 1st DCA 2008)

Appellee was appointed personal representative of his father's intestate estate. After appellee filed an amended petition for administration, appellant (appellee's half-brother) filed and served a counter-petition, seeking to admit his father's Will to probate and revoke the letters of administration that were issued to appellee. The parties stipulated to admission of the decedent's Will to probate and the trial court concluded that appellee should remain as personal representative, apparently on the basis that appellant failed to timely file a motion to set aside the appointment of appellee as personal representative.

Because of the stipulated admission of the Will, the only issue before the appellate court was whether appellant should replace appellee as personal representative. In

continued, next page

Probate Case Summaries

from preceding page

addressing this issue, the appellate court explained that by stipulating to admit decedent's Will to probate, "appellee implicitly conceded that the proceeding below was for administration of a testate estate and not an intestate estate," and that Fla. Stat. § 733.301(1)(a) requires the trial court to give preference to the personal representative nominated by the Will. The appellate court concluded that letters of administration issued during an apparently intestate estate must be revoked "when a later discovered will is admitted to probate" and "the personal representative nominated by the will is entitled to preference of appointment."

Preventing the appointment of personal representative named in will and obtaining the removal of a representative is a basis for award of attorney's fees.

Duncombe v. Adderly, 991 So. 2d 1013 (Fla. 4th DCA 2008)

Appellant sought attorney's fees for services rendered to an estate in connection with a dispute over who should be appointed as administrator of the estate. Appellees had petitioned for one of the appellees, or her lawyer, to be appointed administrator, while appellant sought the appointment of a third party because of the nominated appellee's apparent conflict of interest. The trial court granted appellant's motion to appoint a third party as administrator, but denied attorney's fees on the basis that there had to be an enhancement in value or an advancement of the testator's intent as set forth in the Will. The appellate court reversed the trial court and indicated that an award of attorney's fees is proper where a party prevented the appointment of a personal representative named in a will or obtained the removal of a personal representative.

THE FLORIDA BAR CLE

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

So You Think You Can Dance ... But Can You Do the Probate Shuffle?

• Live
• Live Webcast
• Audio CD
• Video DVD

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Two Live Locations: **March 19, 2009 • Hyatt Regency Pier 66 • Fort Lauderdale • 954-525-6666**
March 20, 2009 • Tampa Airport Marriott • Tampa • 813-879-5151

Course No. 0721R

8:15 a.m. – 8:50 a.m. **Late Registration**
Doing the Tango with the Legal Chameleon … Homestead and its Impact on Probate Administration
Hip Hopping on the Paternity, Adoption, Surrogates and Virtual Adoption Issues
Income Tax Issues In Estate Administration ... You Have to Learn to Cha Cha Cha with the CPAs
Can the Estate Fiduciary Have a "Pas De Deux" with the Beneficiaries?
Lunch (included in registration)
Are You Dancing with the Stars of the Profession or with the First Couple Voted Off the Stage?
Dancing the Two Step with the Charities in the Probate Administration
Popping and Breaking to the Estate Tax Apportionment Rules
Swinging with the Real Estate Title Issues in Probate
Distribution of IRAs at Death – Tap Dancing with the Custodians and the IRS
Hot Salsa – Litigation Issues in Estate Administration

LOCATIONS/ DATES:

- **Fort Lauderdale*** -** **March 19, 2009** (084) Hyatt Regency Pier 66
- **Tampa**** **March 20, 2009** (049) Tampa Airport Marriott
- **Live Webcast / Virtual Seminar*** **March 20, 2009** (317) Online

REGISTRATION FEES:

- Member of the Real Property, Probate and Trust Law Section: $270
- Non-section member: $295
- Full-time law college faculty or full-time law student: $160
- Persons attending under the policy of fee waivers: $25
  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.)

CLER PROGRAM
(Max. Credit: 8.0 hours)
General: 8.0 hours
Ethics: 0.0 hours

CERTIFICATION PROGRAM
(Max. Credit: 8.0 hours)
Real Estate: 8.0 hours
Tax Law: 6.0 hours
Wills, Trusts & Estates: 6.0 hours

WEBCAST
Registrants will receive dial-in/webcast connection instructions 2 days prior to the scheduled course date via e-mail to include access to the course materials. If you do not have an e-mail address, contact Order Entry Department at 850-561-5831, 2 days prior to the event for the instructions.

To REGISTER, order audio CD or course material, go to FLORIDABAR.ORG/CLE and search by course number 0721R.

Florida Lawyers Support Services, Inc.
PO Box 568157 - Orlando, Florida - 32856-8157 407.515.1501 Fax 407.515.1504 www.flssi.org



PROBATE & GUARDIANSHIP FORMS

Effective January 1, 2008
Developed by members of the Real Property, Probate and Trust Law Section of The Florida Bar

2008 PROBATE FORMS

☐	OPTION #P1	Print on demand disk with all 2008 forms and index $365. 50
☐	OPTION #P2*	Print on demand disks with 2008 new and revised forms and index $109.75
☐	OPTION #P3	10 physical copies of all 2008 forms and index. $384.50
☐	OPTION #P4	1 physical copy of all 2008 forms and index $374.50
☐	OPTION #P5*	10 physical copies new and revised forms and index $120.75

2008 GUARDIANSHIP FORMS

☐	OPTION #G1	Print on demand disk with all 2008 forms and index $330.25
☐	OPTION #G2*	Print on demand disk with 2008 new and revised forms and index $105.50
☐	OPTION #G3	10 Physical copies of all 2008 forms and index. $354.30
☐	OPTION #G4	1 Physical copy of all 2008 forms and index $339.50
☐	OPTION #G5*	10 Physical copies new and revised forms and index $116.50

Print on demand disks provide forms in locked .pdf format. This format will only allow the user to open and print forms. These forms are not interactive and are not able to be saved or modified in any way. If you are looking for the 2008 forms in an interactive format please visit www.flssi.org to view our list of official licensed vendors.

** Options #2 and #5 contain only those forms substantially revised since 2007 or new for 2008.*

Firm: _____

Attorney Name: _____ Bar #: _____

Physical Address: _____

City/State/Zip: _____

Phone: (_____)_____ E-mail Address: _____

****

PAYMENT

To place an order, please either mail this form with check to the address listed above or include MASTERCARD/VISA credit card information and fax to 407.515.1504. Prices include shipping, handling and sales tax.

$ _____ _____ ____/____ _____
Charge **Card Number** **Exp. Date** **Signature of Cardholder**

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

FAR/BAR CONTRACTS & RIDERS

FOR THE SALE AND PURCHASE OF RESIDENTIAL PROPERTY

Approved by The Florida Bar, Real Property, Probate & Trust Law Section and The Florida Association of Realtors
(Revised September 2007)

_____ Set of 25 FAR/BAR CONTRACTS - $50.00 per set

_____ Set of 25 FAR/BAR "AS IS" CONTRACTS - $50.00 per set

_____Set of FAR/BAR COMPREHENSIVE RIDER - $25.00 per set (set is one copy of each rider listed below)

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

Order Sub-Total	$_____
Sales Tax 6.5%	$_____
Shipping & Handling	$_____8.00
TOTAL	**$**_____

Firm:_____

Attn: _____ Attorney Bar #: _____

Street Address:_____ (WILL NOT DELIVER TO P.O. BOX)

City/State/Zip:_____

PLEASE CIRCLE ONE: COMMERCIAL or RESIDENTIAL Address

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

E-mail address: _____

METHOD OF PAYMENT

I have enclosed check #_____, in the amount of $_____, on _____ / _____ / _____

or

Please Circle One: VISA or MASTER CARD Amount to be charged $_____

_____ _____/_____ _____
Card Number Exp. Date Signature of Cardholder (REQUIRED)

FLSSI USE ONLY

SHIP DATE _____/_____/_____ **LB**_____ **$**_____ **#** __ __ __ __ __ __ __ __

AUTHORIZATION DATE _____/_____/____ **#** __ __ __ __ __ __

Office October 24, 2007

THE FLORIDA BAR CLE

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

SPECIAL CLE SECTION

Hard Times: Foreclosures, Bankruptcy, Offers of Judgment, MERS and Such

• Live
• Live Webcast
• Audio CD
• Video DVD

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

One Live Location: January 23, 2009
Tampa Airport Marriott • Tampa International Airport • Tampa, FL 33607
(813) 879-5151

Course No. 0717R

8:30 a.m. – 8:45 a.m.
Late Registration and Check-in

8:45 a.m. – 8:50 a.m.
Introduction
Eugene E. Shuey, Gainesville – Program Chair

8:50 a.m. – 9:40 a.m.
Ethics of Real Estate Practice
Eugene E. Shuey, Gainesville

9:40 a.m. – 10:25 a.m.
Distressed Projects: Is it Safe to Return Yet? Second Guessing and Moving Forward
Michael J. Gelfand, West Palm Beach

10:25 a.m. – 10:35 a.m.
Break

10:35 a.m. – 11:05 a.m.
Proposals for Settlement: Watch Your Back
Kimberly A. Ashby, Orlando

11:05 a.m. – 11:45 a.m.
A Primer on Bankruptcy for Dirt Lawyers
Marsha G. Rydberg, Tampa

11:45 a.m. – 12:15 p.m.
Truth-in-Lending and the Financial Crisis– A Discussion of the Latest TILA Amendment
Homer Duvall, III, Tampa

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

1:15 p.m. – 2:45 p.m.
Project House-Hold: Foreclosure Defense Update
April C. Charney, Jacksonville

2:45 p.m. – 3:30 p.m.
The Mystique of MERS
Roland D. Waller, New Port Ritchey
Susan K. Spurgeon, Tampa

WEBCAST

Registrants will receive webcast connection instructions 2 days prior to the scheduled course date via e-mail. If you do not have an e-mail address, contact Order Entry Department at 850-561-5831, 2 days prior to the event for the instructions.

REAL PROPERTY, PROBATE & TRUST LAW SECTION

Sandra F. Diamond, Seminole — Chair
John Neukamm, Tampa — Chair-elect
Jack A. Falk, Coral Gables — CLE Coordinator

CLE COMMITTEE

Patrick L. Imhof, Tallahassee, Chair
Terry L. Hill, Director, Programs Division

FACULTY & STEERING COMMITTEE

Eugene E. Shuey, Gainesville — Program Chair
Kimberly A. Ashby, Orlando
April C. Charney, Jacksonville
Homer Duvall, III, Tampa
Michael J. Gelfand, West Palm Beach
Marsha G. Rydberg, Tampa
Susan K. Spurgeon, Tampa
Roland D. Waller, New Port Ritchey

CLE CREDITS

CLER PROGRAM

(Max. Credit: 5.0 hours)
General: 5.0 hours
Ethics: 1.0 hour

CERTIFICATION PROGRAM

(Max. Credit: 5.0 hours)
Real Estate: 5.0 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: www.floridabar.org/CLE	MAIL: Completed form w/check	FAX: 850/561-5816 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.

Register me for the "Hard Times: Foreclosure, Bankruptcy, Offers of Judgment, MERS and Such" Seminar

ONE LOCATION: (049) TAMPA AIRPORT MARRIOTT, TAMPA, FL (JANUARY 23, 2009)

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. 0717R

LOCATIONS (CHECK ONE):

- ❑ **Tampa** - January 23, 2009**
  (049) Tampa Airport Marriott
- ❑ **Live Webcast / Virtual Seminar* - January 23, 2009**
  (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

❑ Check here if you have a disability that may require special attention or services. Please 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.

REGISTRATION FEE (CHECK ONE):

- ❑ Member of the Real Property, Probate and Trust Law Section: $145
- ❑ Non-section member: $170
- ❑ Full-time law college faculty or full-time law student: $85
- ❑ Persons attending under the policy of fee waivers: $0
  Includes Supreme Court, DCA, Circuit and County Judges, Magistrates, Judges of Compensation Claims, Administrative Law Judges, and full-time legal aid attorneys if directly related to their client practice. (We reserve the right to verify employment.)

METHOD OF PAYMENT (CHECK ONE):

- ❑ Check enclosed made payable to The Florida Bar
- ❑ Credit Card (Advance registration only. Fax to 850/561-5816.)
  ☐ MASTERCARD ☐ VISA ☐ DISCOVER ☐ AM EXPR
  Exp. Date: ____/____ (MO./YR.)

Signature: _____

Name on Card: _____

Billing ZIP code: _____ CVV# _____*

Card No. _____

(* To aid in the prevention of fraudulent credit card use, we now require the 3 - 4 digit CVV (Credit Validation Verification) Code from the back of your Master Card, Discover or Visa credit card, or from the front of your American Express card.)

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

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 01/26/09. 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**	❑ **AUDIO CD**	❑ **DVD**
Cost $35 plus tax	(includes course book)	(includes course book)
(Certification/CLER credit is not awarded for the purchase of the course book only.)	$145 plus tax (section member)	$250 plus tax (section member)
	$170 plus tax (non-section member)	$275 plus tax (non-section member)
TOTAL $ _____	**TOTAL $ _____**	**TOTAL $ _____**

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

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

THE FLORIDA BAR CLE

The Florida Bar Continuing Legal Education Committee and the Consumer Protection Law Committee present

SPECIAL CLE SECTION

Protecting Consumers from Housing Havoc

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Course Previously Held: June 20, 2008
Boca Raton Resort & Club

AUDIO-CD AND COURSE BOOK ORDER FORM

Course No. 0803R

2:00 p.m. – 2:50 p.m.
Foreclosure Defense
April Charney, Esq., staff attorney, Consumer Law Unit of Jacksonville Area Legal Services
Moderator: Victoria Butler, Consumer Protection Law Committee

2:50 p.m. – 3:00 p.m.
Break

3:00 p.m. – 3:50 p.m.
Mortgage Fraud
Glenn Theobald, Esq., chairman of the Miami-Dade County Mortgage Fraud Taskforce and chief legal counsel of the Miami-Dade Police Department
Moderator: Victoria Butler

3:50 p.m. – 4:00 p.m.
Break

4:00 p.m. – 4:50 p.m.
Renegotiating Mortgages
Laurie Maggiano, deputy director of the Office of Single Family Asset Management in the U.S. Department of Housing and Urban Development
Moderator: Victoria Butler

4:50 p.m. – 5:00 p.m.
Break

5:00 p.m. – 5:50 p.m.
Housing Issues In Bankruptcy
Alan J. Fisher, Esq., bankruptcy and debtor/creditor law practitioner
Moderator: Victoria Butler

5:50 p.m. – 6:00 p.m.
Closing comments

For more information, please contact Susannah "Zannah" Lyle at The Florida Bar at (850) 561-5669

CONSUMER PROTECTION LAW COMMITTEE
Laura Boeckman — Chair
Douglas Lamar Kilby — Vice Chair
Julie Ann Harris, — Vice Chair

PROGRAM COMMITTEE
Victoria Butler and Andrew Spark

CLE COMMITTEE
Patrick L. Imhof, Tallahassee, Chair
Terry L. Hill, Director, Programs Division

CLE CREDITS

CLER PROGRAM
(Max. Credit: 4.0 hours)

General: 4.0 hours
Ethics: 0.0 hours

CERTIFICATION PROGRAM
(Max. Credit: 3.0 hours)

Real Estate Law: 3.0 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: www.floridabar.org/CLE	MAIL: Completed form w/check	FAX: 850/561-5816 Form w/credit card info.

REFUND POLICY: Requests for refund or credit toward the purchase of the CD / audio / video or course books for 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.

"Protecting Consumers from Housing Havoc" Seminar

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

Name_____Florida Bar # _____

Address _____

City/State/Zip_____ Phone # _____

TLH: Course No. 0803R

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 ☐ DISCOVER ☐ AM EXPR Exp. Date: ____/____ (MO./YR.)

Signature: _____

Name on Card: _____ Billing ZIP code:_____

Card No. _____CVV#_____*

(* To aid in the prevention of fraudulent credit card use, we now require the 3 - 4 digit CVV (Credit Validation Verification) Code from the back of your Master Card, Discover or Visa credit card, or from the front of your American Express card.)

COURSE BOOK – AUDIO CD – ON-LINE – PUBLICATIONS

Delivery time is 2 to 4 weeks. TO ORDER AUDIO CD OR COURSE BOOKS, fill out the order form above, including a street address for delivery. **Please add sales tax to the price of tapes or books. Tax exempt entities must pay the non-section member price.**

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

❑ **COURSE BOOK ONLY**
Cost $35 plus tax

(Certification/CLER credit is not awarded for the purchase of the course book only.)

TOTAL $ _____

❑ **AUDIO CD**
(includes course book)

$115 plus tax

TOTAL $ _____

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

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

THE FLORIDA BAR

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

SPECIAL CLE SECTION

2nd Annual Construction Law Institute 2009

COURSE CLASSIFICATION: ADVANCED LEVEL

March 5 - 7, 2009

Omni ChampionsGate Resort, 1500 Masters Boulevard, ChampionsGate, Florida 33896, 407-390-6664

Conference Chair: **Lee A. Weintraub, Fort Lauderdale**

Construction Law Committee Chair: **Wm. Cary Wright, Tampa**

Course No. 0719R

The Advanced Construction Law Seminar and Certification Review Course – 2009 Edition (Course Number 0691R) will be simultaneously taking place at the same location. **(See page 56.)**

Construction Law Institute 2009

Course No. 0719R

DAY 1 (optional) · Thursday, March 5, 2009

12:30 p.m. Shotgun Start
Golf Tournament, National Course



7:00 p.m. – 8:30 p.m.
Welcome Reception

DAY 2 · Friday, March 6, 2009

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

8:30 a.m. – 10:10 a.m.
Best Practices for Evaluating & Preparing Claims of Lien
Lee A. Weintraub, Ft. Lauderdale

10:10 a.m. – 10:30 a.m.
Networking Break

10:30 a.m. – 11:20 a.m.
Resolving Ethical Dilemmas When Dealing with Expert Witnesses
Ben Nolan, Gulf Breeze, Carlos Sires, Ft. Lauderdale & John Vento, Tampa

11:20 a.m. – 12:10 p.m
Strategies for Finding Coverage & Generating Payments From Insurance Carriers
W. Cary Wright, Tampa

12:30 p.m. – 2:00 p.m.
Lunch (included in registration fee)
What Should Lawyers Know About Green Construction
Frederick R. Dudley, Tallahassee

2:00 p.m. – 2:50 p.m.
Defect Digest: A Compendium of Defect Legal Issues
Kimberly A. Ashby, Orlando

2:50 p.m. – 3:40 p.m.
The Spearin Doctrine and Unforeseen Conditions
Melinda S. Gentile, Ft. Lauderdale

3:40 p.m. – 4:00 p.m.
Networking Break

4:00 p.m. – 5:00 p.m.
Creative Strategies for Competing More Profitably In a Competitive Legal Environment: Hear What Your Competitors are Doing
Steve Rakusin, Ft. Lauderdale, Kim Ashby, Orlando & Arnold Tritt, Jacksonville

DAY 3 · Saturday, March 7, 2009

8:30 a.m. – 9:20 a.m.
Changing Dynamics in the Indemnity Relationship Between a Surety & Its Principal in a Downturned Economy
Alan "Pete" Brandt, Jr., Ft. Lauderdale

9:20 a.m. – 10:10 a.m.
Breakout 1: Advanced Arbitration & Mediation Issues and Drafting of Arbitration Clauses
Christi Underwood, Orlando

Breakout 2: Procurement, Bid Protests and Other Peculiar Public Construction Topics
Deborah Mastin, Miami

10:10 a.m. – 10:30 a.m.
Networking Break

10:30 a.m. – 12:00 noon
When Banks Take Over Projects (Panel Presentation from the Perspective of a Lender, Developer, and Contractor)
George Meyer, Tampa, Margaret Rolando, Miami & John Lamoureux, Tampa

12:00 noon – 1:30 p.m.
Lunch (included in registration fee)
The New Seminole Hollywood Hard Rock Hotel & Casino – Design & Construction Challenges Around an Operating Facility
Gerard Shore, Sr. Vice-President of Development for Seminole Gaming
Presentation of Construction Law Lifetime Achievement Award

1:30 p.m. – 2:10 p.m
Can You Name the Causes of Action: A Role Playing Exercise on Issue and Claim Spotting
Bruce Alexander, West Palm Beach & Larry Leiby, Ft. Lauderdale

2:10 p.m. – 3:00 p.m.
Case Law and Statutory Update
Larry Leiby, Ft. Lauderdale



HOTEL RESERVATION INFORMATION

To reserve a sleeping room with the Omni ChampionsGate Resort, ChampionsGate, FL, please call toll free 1-800-THE OMNI. The Florida Bar group rate of $209/night is guaranteed until February 2, 2009, or until the room block is sold out. If the room block is sold out you may be able to get on a wait list pending any cancellations.

REFUND POLICY

Requests for refund 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 that do not notify The Florida Bar by 5:00 p.m., February 26, 2009 that they will be unable to attend the seminar, will have an additional $100 retained. Persons attending under the policy of fee waivers will be required to pay $100.

REAL PROPERTY, PROBATE AND TRUST LAW SECTION

Sandra F. Diamond, Seminole – Chair
John Neukamm, Tampa – Chair-elect
Jack A. Falk, Coral Gables – CLE Chair

CLE COMMITTEE

Patrick L. Imhof, Tallahassee – Chair
Terry L. Hill, Director – Programs Division

CLE CREDITS

CLER PROGRAM
(Maximum Credit: 16.5 hours)

General: 16.5 hours Ethics: 1.0 hour

CERTIFICATION PROGRAM
(Maximum Credit: 16.5 hours)

Construction Law: 16.5 hours
Real Estate Law: 16.5 hours

Thank you, Sponsors!

■ ■ ■ ■ ■

Event Sponsors

American Arbitration Association – *Friday Evening Reception*
Delta Consulting Group – *Friday Luncheon*
Liberty Building Forensics Group – *Networking Break*
Lovett Silverman Construction Consultants, Inc. – *Networking Break*
Upchurch Watson White and Max – *Golf Hole Sponsorship*
SEA, Ltd. – *Golf Hole Sponsorship and Golf foursome*
HSA Engineers & Scientists, Inc. – *Golf foursome*
Navigant Consulting, Inc. – *Golf foursome*
URS Corporation – *Golf foursome*
Rimkus Consulting Group, Inc. – *Golf foursome*
Trauner Consulting Services, Inc. – *Golf foursome*

■ ■ ■ ■ ■

General Sponsors

American Arbitration Association
The Associated General Contractors of America
Boyken International, Inc.
Delta Consulting Group
FTI Consulting, Inc.
Hill International, Inc.
HSA Engineers & Scientists, Inc.
ICC Consultants
ICON Corporation
Liberty Building Forensics Group
Lovett Silverman Construction Consultants, Inc.
Nautilus Consulting, LLC
Navigant Consulting, Inc.
Nelson Architectural Engineers, Inc.
Paul J. del Vecchio Construction Consultants, Inc.
Project Development International, Inc.
Rimkus Consulting Group, Inc.
SEA, Ltd.
Slider Engineering Group
Thomson West
Trauner Consulting Services, Inc.
Upchurch Watson White and Max
Veritas Advisory Group, Inc.
Wagner • Hohns • Inglis, Inc.
Walter P. Moore & Associates, Inc.

■ ■ ■ ■ ■

Law Firms

Akerman Senterfitt
Bachara Construction Law Group
Becker & Poliakoff, P.A.
Carlton Fields, P.A.
Casey Ciklin Lubitz Martens & O'Connell
Fowler White Boggs, P.A.
Henrichsen Siegel, P.L.L.C.
Hill Ward Henderson
Holland & Knight, LLP
Leiby, Sterns & Roberts, P.A.
Michael C. Sasso, P.A.
Peckar & Abramson, P.C.
Shutts & Bowen LLP
Tritt & Franson, P.A.
David J. Valdini & Associates, P.A.
Vincent F. Vaccarella, P.A.

Register me for the "2nd Annual Construction Law Institute 2009" Seminar

ONE LOCATION: (323) OMNI CHAMPIONSGATE RESORT, CHAMPIONSGATE, FL (MARCH 5-7, 2009)

TO REGISTER OR ORDER 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 # _____

LCS: Course No. 0719R

REGISTRATION FEE:

- ❑ Registration: $375 (Registration does not include the Golf Tournament)
- ❑ Golf Tournament: $165.08 (includes tax)
  Pairing Preference: _____
- ❑ Full-time law college faculty or full-time law student: $187.50
- ❑ Persons attending under the policy of fee waivers. Fee waivers are only applicable for in-person attendance: $100
  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 ☐ DISCOVER ☐ AMEX

CVV#_____*

Signature: _____

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

Name on Card: _____

Billing Zip Code: _____

Card No. _____

**** To aid in the prevention of fraudulent credit card use, we now require the 3 - 4 digit CVV (Credit Validation Verification) Code from the back of your Master Card, Discover or Visa credit card, or from the front of your American Express card.***

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

COURSE BOOK

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 3/7/09. TO ORDER COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax to the price of 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 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 & CD ROM ONLY:** Cost $65 plus tax

(Certification/CLER credit is not awarded for the purchase of the course book only.)

TOTAL $ _____

THE FLORIDA BAR CLE

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

SPECIAL CLE SECTION

Advanced Construction Law & Certification Review Course 2009

COURSE CLASSIFICATION: ADVANCED LEVEL

One Location: March 6 - 7, 2009
Omni Resort at ChampionsGate • 1500 Masters Blvd. • ChampionsGate, FL 33896
(407) 390-6664

Course No. 0691R

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

Friday, March 6, 2009

7:30 a.m. – 7:50 a.m.
Late Registration

7:50 a.m. – 8:00 a.m.
Welcome
John B. Neukamm, Tampa
Frederick R. Dudley, Tallahassee

8:00 a.m. – 8:50 a.m.
Prompt Pay
Kimberly A. Ashby, Orlando

8:50 a.m. – 9:40 a.m.
Contract Awards and Protests
Karen Walker, Tallahassee

9:40 a.m. – 9:50 a.m.
Break

9:50 a.m. – 10:40 a.m.
Insurance (Liability, BR and E & O)
William Cary Wright, Tampa

10:40 a.m. – 11:30 a.m.
Bonding (Private & Public: State and Federal)
Kimberly A. Ashby, Orlando

11:30 a.m. – 12:00 noon
Alternate Dispute Resolution (Arbitration and Mediation)
Giselle Leonardo, Fort Lauderdale

12:00 noon – 12:30 p.m.
Spearin Doctrine and Unforeseen Conditions
Melinda S. Gentile, Fort Lauderdale

12:30 p.m. – 2:00 p.m.
Lunch (included in registration fee)
What Lawyers Should Know About Green Construction
Frederick R. Dudley, Tallahassee

2:00 p.m. – 2:50 p.m.
Liability for Design and Construction Defects
Ben W. Subin, Orlando

2:50 p.m. – 3:40 p.m.
Construction Lending
Margaret A. Rolando, Miami

3:40 p.m. – 3:50 p.m.
Break

3:50 p.m. – 4:40 p.m.
Contract Negotiations and Preparation (AIA)
Brian A. Wolf, Fort Lauderdale

4:40 p.m. – 5:30 p.m.
Use of Notice and Opportunity to Cure (Chapter 558)
Stephen Lesser, Ft. Lauderdale
Henry "Chip" Bachara, Jacksonville

Saturday, March 7, 2009

7:50 a.m. – 9:00 a.m.
Construction Lien Law
Lee A. Weintraub, Fort Lauderdale

9:00 a.m. – 9:50 a.m.
Theories of Recovery: General Damages
Steven B. Rakusin, Fort Lauderdale

9:50 a.m. – 10:00 a.m.
Break

10:00 a.m. – 10:20 a.m.
Damages for Delay
Michael K. Wilson, Orlando

10:20 a.m. – 11:10 a.m.
Contractor Licensing and Discipline
Frederick R. Dudley, Tallahassee
G.W. Harrell, Tallahassee

11:10 a.m. – 12:00 noon
Building Code and Commission
Robert Fine, Miami
Jim Richmond, Tallahassee

12:00 noon – 1:30 p.m.
Lunch (included in registration fee)
Design and Construction Challenges Around an Operating Facility
Gerard Shore, Sr. Vice-President of Development for Seminole Gaming

1:30 p.m. – 2:00 p.m.
Bankruptcy for Contractors
Marsha G. Rydberg, Tampa

2:00 p.m. – 2:40 p.m.
Case Law Update
Kimberly A. Ashby, Orlando

2:40 p.m. – 3:30 p.m.
Ethical Considerations
Melinda S. Gentile, Fort Lauderdale

CLE CREDITS

CLER PROGRAM
(Max. Credit: 19.0 hours)

General: 19.0 hours
Ethics: 1.0 hour

CERTIFICATION PROGRAM
(Max. Credit: 19.0 hours)

Business Litigation: 19.0 hours
Construction Law: 19.0 hours
City, County & Local Government: 19.0 hours
Real Estate Law: 19.0 hours



To participate in the Construction Law Institute golf tournament ($165.08) on Thursday, March 5, 12:30 shotgun start, please refer to the Bar's website. Go to www.floridabar.org, click CLE, then search by course number 0719R, and use the CLI brochure to register.

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

REFUND POLICY: Requests for refund or credit toward the purchase of the audio CD or course books for 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., March 3, 2009 that they will be unable to attend the seminar, will have an additional $60 retained. Persons attending under the policy of fee waivers will be required to pay $60.

HOTEL RESERVATIONS: A block of rooms has been reserved at the Omni Resort at ChampionsGate Hotel, at the rate of $209 single/double occupancy. To make reservations, call the Omni Resort at ChampionsGate directly at (407) 390-6664. Reservations must be made by 03/03/09 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

Register me for the "Advanced Construction Law & Certification Review Course 2009"

ONE LOCATION: (323) OMNI RESORT AT CHAMPIONSGATE, CHAMPIONSGATE, FL (MARCH 6-7, 2009)

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

Name _____ Florida Bar # _____

Address _____

City/State/Zip _____ Phone # _____

LCS: Course No. 0691R

REGISTRATION FEE (CHECK ONE):

- ❑ Member of the Real Property, Probate and Trust Law Section: $350
- ❑ Non-section member: $375
- ❑ Full-time law college faculty or full-time law student: $187.50
- ❑ Persons attending under the policy of fee waivers: $60
  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.) Fee Waivers are only applicable for in-person attendees.

❑ Check here if you have a disability that may require special attention or services. Attach a general description of your needs. We will contact you for further coordination.

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 ☐ DISCOVER ☐ AMEX

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

Name on Card: _____ Billing Zip Code: _____

Card No. _____ CVV# _____ *

**** To aid in the prevention of fraudulent credit card use, we now require the 3 - 4 digit CVV (Credit Validation Verification) Code from the back of your Master Card, Discover or Visa credit card, or from the front of your American Express card.***

❑ 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 – ON-LINE – PUBLICATIONS

Private taping of this program is not permitted. **Delivery time is 4 to 6 weeks after 03/06/09. TO ORDER AUDIO CD OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax to the price of tapes or books. Tax exempt entities must pay the non-section member price.**

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

❑ **COURSE BOOK & CD ROM ONLY**
Cost $65 plus tax
(Certification/CLER credit is not awarded for the purchase of the course book only.)
TOTAL $ _____

❑ **AUDIO CD**
(includes course book)
$350 plus tax (section member)
$375 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	FAX 850-561-5816	MAIL
Using the Audio/Video List, search 'By Course Number', 'By Sponsor' or 'By Title'.	order form with credit card information for **MasterCard** or **Visa** *(We are unable to accept American Express at this time.)*	*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 T AX 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 T AX 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

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** ☐ **Discover** ☐ **American Express** ➔ **Fax #: 850-561-5816**

Signature: _____

Name of Cardholder: _____ Billing ZIP Code: _____

Card #: _____CVV#_____* Expiration Date: ____–20____
Month Year

**** To aid in the prevention of fraudulent credit card use, we now require the 3 - 4 digit CVV (Credit Validation Verification) Code from the back of your Master Card, Discover or Visa credit card, or from the front of your American Express card.***

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 Government
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 12/08

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							
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

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
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
0668	28th Annual RPPTL Legislative & Case Law Update Seminar **CD & DVD**	**7.5**	**1.0 E**	CL = 7.5 EP = 5.5 RE = 7.5 TX = 5.5	07/25/2008- 01/25/2010	**$235.00**	**$235.00**
0715	Real Estate: Ethical Fraud & Other Fairy Tales **CD & DVD**	**6.5**	**5.0 E**	BL = 5.0 CR = 1.0 RE = 6.5	10/16/2008- 04/16/2010	**S = $225.00** **N = $250.00**	**S = $250.00** **N = $275.00**
0762	What Every Estate Planner Needs to Know About the Generation-Skipping Transfer Tax **CD & DVD**	**5.0**	**0**	ED = 4.0 EP = 4.0 TX = 4.0	10/24/2008- 04/24/2010	**S = $160.00** **N = $185.00**	**S = $250.00** **N = $275.00**
0714	Asset Protection in Florida **CD & DVD**	**6.0**	**0.5 E**	ED = 4.5 EP = 4.5 RE = 1.0 TX = 4.5	11/12/2008- 05/12/2010	**S = $225.00** **N = $250.00**	**S = $250.00** **N = $275.00**
0716	ABC's and XYZ's of Guardianship **CD & DVD**	**6.5**	**1.0 E**	ED = 5.0 EP = 5.0 FL = 5.0	11/06/2008- 05/06/2010	**S = $195.00** **N = $220.00**	**S = $250.00** **N = $275.00**
0799	Advising the Trustee **CD & DVD**	**3.5**	**0**	EP = 2.5	12/05/2008- 06/05/2010	**S = $115.00** **N = $140.00**	**S = $250.00** **N = $275.00**

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).



Become Board Certified

Florida Bar Board Certification
is available in 22 practice areas

Applications and more information:

FloridaBar.org/certification
or 850/561-5842

Filing Periods and Practice Areas

July 1 – Aug. 31

Admiralty & Maritime Law
Appellate Practice
Aviation Law
Civil Trial
Elder Law
Immigration & Nationality
International Law
Labor & Employment Law
Marital & Family Law
Tax Law

Sept. 1 – Oct. 31

Antitrust & Trade Regulation Law
Business Litigation
City, County & Local Gov't Law
Construction Law
Criminal Appellate
Criminal Trial
Health Law
Intellectual Property Law
Real Estate
State and Fed. Gov't. and Admin. Practice
Wills, Trusts & Estates
Workers' Compensation

Minimum Requirements*

A minimum of five years in the practice of law
Substantial involvement in a practice field
Satisfactory peer review
Completion of the certification area's CLE requirement
Passage of an exam

* To review the specific standards for each practice area, please refer to Chapter 6, Rules Regulating The Florida Bar or visit **FloridaBar.org/certification**

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.

2008 SCHEDULE

BASIC PROBATE AND GUARDIANSHIP 2008

Dec. 10, 2008 - Miami
Dec. 11, 2008- Tampa

(Multiple Video Replays
Jan. 23, 2009 – Feb. 12, 2009)
Course Registration (850) 561-5831

HARD TIMES: FORECLOSURES, BANKRUPTCY, OFFERS OF JUDGMENT, MERS AND SUCH

Jan. 23 - Tampa – Airport Marriott
Course Registration (850) 561-5831

2009 SCHEDULE

EXECUTIVE COUNCIL MEETING / OUT-OF-STATE MEETING

Jan. 29 – Feb. 2 & Feb. 2 – 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: $110.00 USD (Luxury Single)
$130.00 USD (Junior Suite)
$200.00 USD (Business Suite)

2009 TRUST & ESTATE SYMPOSIUM

Feb. 12 - *Ft. Lauderdale Hyatt Regency*
Pier Sixty-Six

Feb. 13 - *Tampa*

(Multiple Video Replays Feb. 27 – Mar. 13, 2009_
Course Registration (850) 561-5831

THE GUARDIANSHIP TEAM 2009

Feb. 20-21 - InterContinental Hotel, Tampa

Reservations: (813) 286-4050
Room Rate: $174.00 single or double occupancy
Cut-off Date: January 20, 2009
Seminar brochure & registration available at www.flssi.org

SECOND ANNUAL CONSTRUCTION LAW INSTITUTE

- and -

CONSTRUCTION LAW CERTIFICATION REVIEW COURSE

Mar. 5-7- Omni Orlando Resort at ChampionsGate

1500 Masters Boulevard
Championsgate, FL 33896
Reservations: (407) 390-6664
Course Registration: (850) 561-5831

PROBATE LAW & PROCEDURE SEMINAR

Mar. 19 - Fort Lauderdale
Mar. 20 - Tampa

Course Registration: (850) 561-5831

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

CANCELLED PORTION OF LIEN NOT SUBJECT TO DOCUMENTARY STAMP TAX

The cancellation of a portion of a seller's debt in a "short sale" of real property was not included in determining the amount of consideration subject to the Florida documentary stamp tax. A "short sale" refers to the sale of real property for a price that is less than the owner's outstanding debt secured by the property. In this case, although the cancellation of debt by the lender was valuable to the seller, the seller and purchaser alone entered into their contract for the transfer of real property and the cancellation was not consideration for the transfer. The owner's agreement with the lender to cancel a portion of the debt was a separate, unrelated transaction. The documentary stamp tax could not be imposed merely because the seller happened to be a party to both transactions. Only the actual purchase money paid or given by the purchaser for an interest in real property constituted consideration subject to the documentary stamp tax.

Technical Assistance Advisement, No. 08B4-006, Florida Department of Revenue, September 23, 2008

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*.

Adele Stone at astone@atkinson-diner.com.

GET INVOLVED WITH RPPTL'S 2009 LAW SCHOOL "LUNCH & LEARN" PROGRAM

The RPPTL Section will soon begin its annual Law School Lunch & Learn Program. Students at Florida's ten law schools will have an opportunity to attend the on-campus event. The goal is to not only educate students about the Section and our fields of practice, but also to encourage students to become active members with the Section after graduation.

Each program will feature a panel of attorneys from varying backgrounds and practice fields. The panelists will discuss their specific area of practice, work environment and participate in a Q & A session with the students. A RPPTL member will serve as moderator, introduce guest panelists and facilitate the Q & A session. Pizza and soda will be provided.

We already have several programs scheduled for February 2009. If you would like to volunteer as a panelist or moderator, please contact Stacy Kalmanson at skalmanson@landam.com or Alan Fields at abfields@firstam.com.

— Stacy Kalmanson, Esq. and Alan Fields, Esq.

DEADLINE

for submissions for the next issue of ActionLine is

JANUARY 31, 2009.

The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

PRSRT-STD
U.S. POSTAGE
PAID
TALLAHASSEE, FL
Permit No. 43