ActionLine

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



Documentary Stamp Tax Changes
Protecting Tenants at Foreclosure Act
Guidance for ILIT Trustees

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RPPTL Section Plans for New Term



By John B. Neukamm

Section Chair 2009 - 2010

Chair's Column

I am thrilled to be the new Chair of the Real Property, Probate & Trust Law Section despite the fact that my predecessor, **Sandra Fascell Diamond**, set extremely high standards for this position. Under Sandy's leadership, our Section has thrived, and I sincerely hope to continue the tradition of strong leadership exemplified by Sandy and her predecessors so that, despite these challenging times, the RPPTL Section will remain the strongest and most dynamic Section of The Florida Bar when **Brian Felcoski** takes over as Section Chair next July.

Our Section has grown steadily since its establishment 55 years ago to nearly 10,000 lawyers. With 18 real property division committees, 16 probate law committees, 20 general standing committees, 23 liaisons with other Sections or organizations and several representatives from each judicial circuit, it is easy to understand why our Executive Council consists of more than 250 actively involved Section leaders and has an annual budget of nearly $1,000,000. Recognizing that our large size presents both significant opportunities and unique challenges, Sandy asked me to assemble a diverse group of Section leaders to provide input during a planning retreat last April so we could formulate a proposed comprehensive strategic plan to provide guidance to our Section's leaders over the next several years. That plan was submitted for consideration at our annual Convention in May and was unanimously approved by the Section's Executive Council. An article in the last issue of *ActionLine* identified the participants and described the planning process, the product of which was a 21 page plan which addresses future Section goals with respect to the following issues:

(1) Section governance
(2) Membership
(3) Legislative and advocacy efforts
(4) Section communications
(5) CLE, and
(6) Finances

The formulation and adoption of that plan would not have been possible without the enormous assistance provided by **Dresden Brunner**, who handled all logistical arrangements related to the planning retreat, or the phenomenal efforts of the other members of the Steering Committee, former Section Chairs, **Sandra Diamond**, **Melissa Murphy** and **Laird Lile**, who provided the necessary guidance as we established the proposed framework of the plan. The strategic plan establishes clearly defined objectives, targeted deadlines and assigns responsibility for attaining the various objectives to specific officers or committees, and a copy of the plan may be reviewed by all Section members at www.rpptl.org.

While the strategic plan addresses many proposed changes and improvements, we also recognize that some aspects of our Section should not be changed. We are blessed with a very well-defined organizational structure, a long leadership track, an extremely active cadre of former Section Chairs (23 of whom vigorously participated in our Section's Long Range Planning Committee's nomination of this year's slate of officers earlier this year) and an extraordinary number of bright, energetic and dedicated members and leaders of our Section's numerous committees. There are no plans to make any adjustments with respect to those Section strengths, all of which I firmly believe have contributed significantly to our Section's incredible successes over the years.

I would like to briefly highlight some of our Section's successes during Sandy's tenure before addressing some new and ongoing Section projects.

Our CLE programs have always been the heart of the Section. Section committees produced 14 continuing legal education programs last year, including three certification programs. We attracted nearly 500 attendees to our annual Legislative and Case Law Update Seminar last July, which was capably chaired by **Sancha Whynot Brennan** (who was assisted by **Robert Swaine** and **Stuart Altman**) and featured an impressive slate of speakers, including **Chief Justice Peggy Quince**. The 2008 Legislative Update was one of the first CLE programs to utilize a live web broadcast, and that feature has been added to many of our subsequent CLE programs.

The RPPTL Section is seriously involved in legislative advocacy efforts, so we are fortunate to have an enormously hardworking and effective lobbying team led by **Pete Dunbar** and **Martha Edenfield**. We are also extremely appreciative of the help that The Florida Bar's General Counsel, **Paul Hill**, provides to us. Through the efforts of our substantive law committees, our Legislative Committee, which was ably led by **Burt Bruton** over the last two years (and who was assisted by **Michael Gelfand** and **Debra Boje**), our legislative consultants and Bar staff, nearly all of our Section's initiatives passed and all nine bills opposed by the Section failed to pass this year. In addition, our Section provided substantial assistance with respect to The Florida Bar's court funding initiative and provided significant technical assistance to the Legislature with respect to a number of additional bills. Section legislative initiatives

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

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ABOUT THE COVER:

This pelican enjoys the beach outside the Renaissance Vinoy Resort in St. Petersburg, the location of the May Executive Council Meeting. Photo courtesy of Michael Gelfand.

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Get Included in *ActionLine!*

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

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

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The deadlines for all submissions are as follows:

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

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

A Tribute to Sandra F. Diamond, Esquire

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



S. DIAMOND

The position of Chair of the Real Property and Probate Trust Law section of the Florida Bar for the year 2008-2009 has been most ably filed by Sandra Fascell Diamond of the firm Williamson, Diamond & Caton, P.A., in Seminole, Florida (the city, not the county, Sandy points out), located not far from St. Petersburg. Sandy has been practicing in this state ever since her graduation from Villanova University School of Law in 1978. She is Board Certified in wills, trusts and estates and has been named as a Florida Super Lawyer every year since 2006.

Sandy Diamond is one of those rare people who is an actual native of the State of Florida. While Sandy was born and raised in Miami, she reports that it wasn't until she became the Chair of the Real Property, Probate and Trust Law Section that she got to visit places in Florida that she had missed before like Pensacola and Ocala. One "perk" of being the section Chair is travel throughout the state.

Sandy has been involved in Real Property, Probate and Trust Law activities since her very early days of practicing law. She was "drafted" into being a Circuit Representative when the firm for which she worked was headed up by a former Chair of the section. From there she became the Chair of the CLE Committee, spent four years as the Legislative Chair ("a fabulous experience") and a number of years on the Executive Committee. Sandy reports that she has held every position except Secretary and Director of Circuit Reps. Sandy has been immersed in service to the Real Property, Probate and Trust Law Section for the vast majority of her legal career.

One of the other "perks" accorded to the Chair of our section is the ability to choose the location of the out of state meeting. Sandy chose Quito, Ecuador and the Galapagos Islands and reports that the trip was a personal high-point in her year, as she was fortunate enough to have her family accompany her on the trip. Her son, who is a lawyer in Tallahassee, and her daughter, a doctor in Portland, Oregon, along with her husband, all were able to accompany Sandy and visit the sea lions and big iguanas as well as the giant Galapagos turtles, one of which now decorates the screen saver on Sandy's office computer.

When asked to describe her year as Chair, Sandy stated it was very intense and went by very quickly. She was especially pleased by the opportunity to make friends among the real estate lawyers. Having been a probate attorney for so many years, she missed out on getting to know the folks on the other side of the aisle. Another very special event was the annual luncheon at the Vinoy in May, attended by General Livingston, General Skjaerpe and many international representatives from the Central Command International Coalition Against Terrorism.

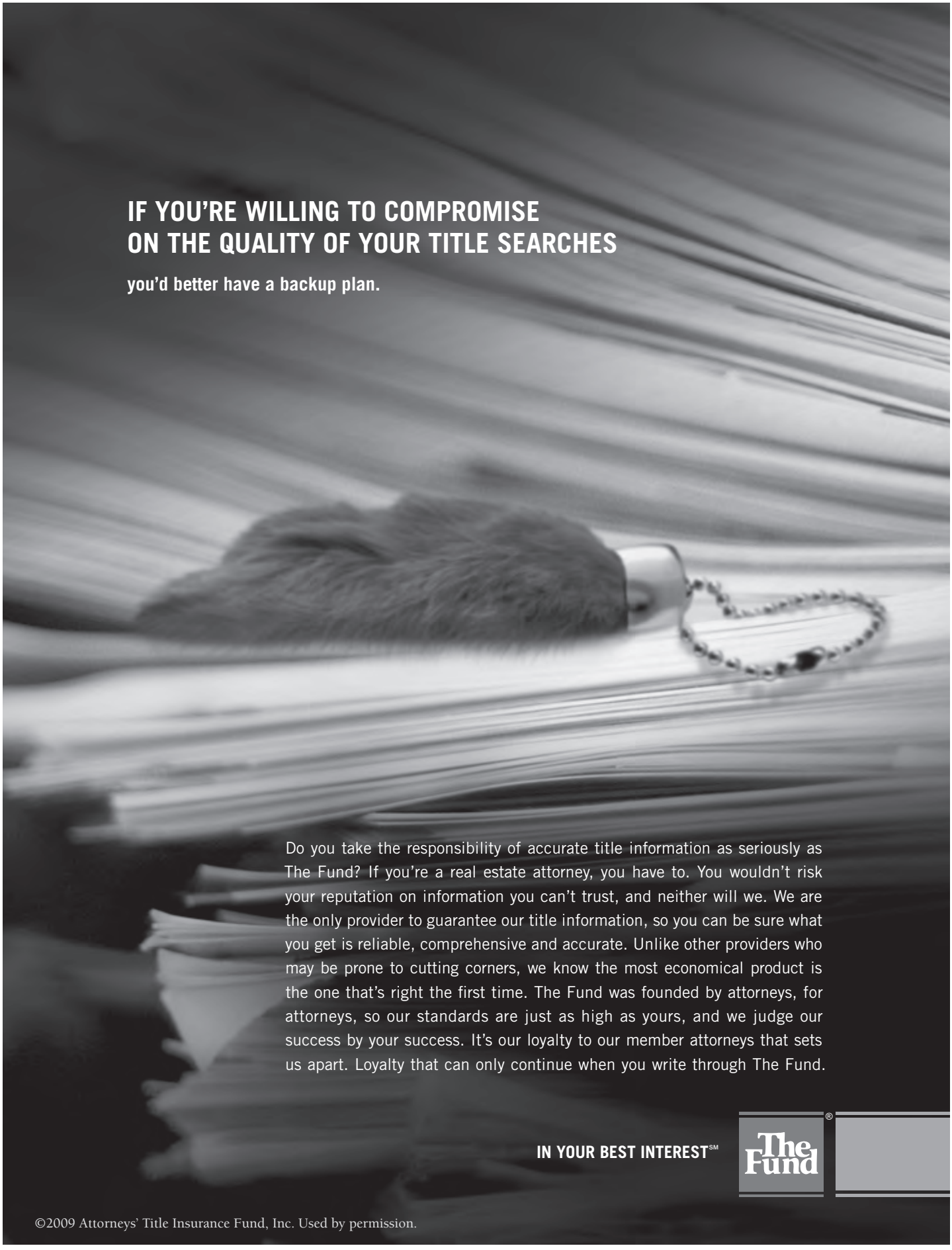
Among the many professional highlights of her year as section Chair, Sandy is understandably proud of the establishment of the section fellowships, creating an opportunity for folks who might not otherwise be able to be members of the section, the emphasis on diversity and the progress in developing a written document outlining a strategic plan as a guide for future years (Sandy gives John Neukamm lots of credit for the strategic plan). Sandy reminds us all that the many accomplishments of our section are achieved by volunteers, with only one paid staff person to assist in all the variety of substantive work that is done for members of our bar and the citizens of the state of Florida. Until she served as Chair, Sandy relates that she did not fully appreciate the extent of accomplishments by our section volunteers.

When asked about biggest challenges and surprises during her tenure as Chair, Sandy reported that she really wasn't prepared for the wide range of issues and vast number on inquiries that the Chair would have to deal with on a daily basis. Her advice to future Chairs of the section is to have a great sense of humor and expect the unexpected.

Apparently the section Chair gets inquiries from all over Florida, ranging from the Chief Justice of the Supreme Court to the average citizen. One day earlier this year, I had an email from Sandy asking that I try to assist her to locate a resource within our circuit. Sandy had been contacted by a local resident who had been through a real estate transaction in 2008, and had some unresolved issues concerning tax prorations from that real estate closing. Sandy personally was attempting to find for this person the resources to both assist the citizen and help the attorney involved to find a resolution to what might of otherwise been a "sticky situation." If Sandy devoted that kind of time and energy to an inquiry from an individual citizen, just think of the time she must have devoted to her role throughout this year.

But Sandy is not done yet. The Chief Justice of the Florida Supreme Court had requested that Sandy be appointed to the mortgage foreclosure task force, a very intense process with weekly meetings. Since the final report for that task force is due in September, hopefully Sandy will soon be able to enjoy a much deserved rest and take her rightful place on the "Back Row" at Executive Council meetings.

Sandy has been a very public face for our organization throughout the state during her tenure. Our section can be very proud of the representation Sandy has provided for our probate, trust and real estate attorneys. She has been an outstanding leader and a great representative for all of us.


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Change in the Documentary Stamp Tax Law

By James A. Schmidt, Esq. of James A. Schmidt, P.A., Tampa, FL

As of July 1, 2009 there are significant changes to Florida's documentary stamp tax. This winter the Legislature passed Senate Bill 2430 which effectively stamped out (no pun intended) the property conveyance technique known as the "drop and swap." The drop and swap combines a sanctioned form of tax free conveyance of real property with the non-taxable transfer of entity ownership interests in an attempt to avoid the documentary stamp tax.

By way of background, the documentary stamp tax is an excise tax on deeds or other documents that convey an interest in Florida real property.[1] All conveyances of real property interests to a purchaser for consideration are subject to the documentary stamp tax unless a public policy exception exists, such as the transfer to an irrevocable trust for estate planning purposes.

In 2005 the Florida Supreme Court held in Crescent Miami Center v. Department of Revenue, 903 So.2d 913 (Fla.2005) that "the transfer of property between a grantor and its wholly owned grantee, absent any exchange of value, is without consideration or a purchaser and thus not subject to the documentary stamp tax."[2] The argument behind the case was that in this day and age business principals are regularly moving assets among wholly owned entities for tax and business structuring reasons, and absent a bona fide purchaser and consideration, these transfers should not be subject to the tax.

This winter the Legislature passed Senate Bill 2430 which effectively stamped out (no pun intended) the property conveyance technique known as the "drop and swap."

Then came the drop and swap. This two step technique co-opts the Crescent decision to avoid the stamp tax on transactions that would otherwise be subject to the tax. First, the real property subject to conveyance is 'dropped' from the owner into its wholly owned grantee. Pursuant to Crescent, this transaction is non-taxable for lack of a purchaser or consideration. Second, the grantee entity exchanges its ownership interests with a buyer for monetary consideration. This is the "swap." After the second step, the buyer owns the ownership interests in the new entity, including its real estate asset, and the original grantor received bargained for consideration for its property. Under these facts, the real property is effectively transferred without paying the documentary stamp tax on the conveyance.

The Department of Revenue vigorously litigated the Crescent case in anticipation that the sought after relief would be applied by taxpayers to ordinary real property transfers to avoid the payment of documentary stamp tax. They were right. The Senate staff analysis of recently enacted Senate Bill 2430 explains that widespread application of the Crescent holding and the drop and swap technique has reduced an important source of revenue to the State's General Fund.[3]

In the new law the Legislature expressly accepts the holding in Crescent as it applies to the specific facts of that case but expressly rejects its application to cases with incomparable facts.[4] The Legislature says that the Crescent holding interprets the documentary stamp tax statute in a manner "inconsistent with the intent of the Legislature" and results in impermissible "tax avoidance."[5]

The new law adds a new taxing provision to §201.02, Florida Statutes. Under it, transfers of a grantor's direct or indirect ownership interest in a conduit entity for consideration are now subject to the documentary stamp tax.[6] A "Conduit Entity" is defined as a legal entity to which real property is conveyed after July 1, 2009 for less than full consideration by a grantor who owns a direct or indirect interest in the entity, or a successor entity.[7] "Full consideration" means the consideration that would be paid in an arms length transaction between unrelated parties.[8]

The tax applies to transfers of all or any portion of an ownership interest in the conduit entity within 3 years of the initial conveyance from the grantor.[9] When an ownership interest is transferred from a conduit entity that owns assets other than the real property previously conveyed to it, the tax shall be prorated based on the percentage the value of the real property represents as a percentage of the total value of the assets owned by the conduit entity.[10]

The new law expressly codifies two public policy exceptions. First, the gift of an ownership interest in a conduit entity is not subject to tax to the extent there is no consideration.[11] Second, the transfer by a natural person of an interest in a conduit entity to an irrevocable grantor trust is not subject to the tax.[12] The law also expressly rejects the taxation of the transfer of shares or similar equity interests in a conduit entity when they are traded on public regulated security exchanges or markets.[13]

Only transfers of ownership interests in conduit entities by the original grantor are subject to the tax. Once the tax has been paid on the transfer of the ownership interest by the original grantor, the grantee is no longer a conduit entity for purposes of evaluating subsequent transfers of

continued, next page

Documentary Stamp Tax Law

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that ownership. Thus, the tax is supposed to be collected once, and the change to the law is intended only to capture the taxes that were not being paid due to the drop and swap and to be "revenue neutral."

To illustrate how the new law works, assume that Greenacre is transferred from its owner to its owner's wholly owned business entity, Greenacre, LLC, in facts similar to Crescent. The grantee entity owns no other assets, the transfer occurs after July 1, 2009 and no consideration is exchanged for the real property. The transfer is not subject to the documentary stamp tax provided there was no mortgage on Greenacre at the time of the conveyance.[14]

For 3 years following the date of the sale, Greenacre, LLC is a conduit entity and transfers of ownership interests of the LLC are taxable under the new law. If the original grantor sells 50% of Greenacre, LLC to Buyer A, the documentary stamp tax will be due on the value of the interest transferred to Buyer A. If Buyer A subsequently sells its ownership interest in Greenacre, LLC to Buyer B, no tax is due.[15]

To illustrate the grantor trust exemption, assume the Owner of Greenacre transfers a 99% tenant-in-common interest in Greenacre to Greenacre Family, LP and transfers the remaining 1% tenant-in-common interest to Green Family GP, LLC. At this stage, no tax is due on the transfers based on Crescent. However, for the next 3 years Green Family, GP and Green Family, LP are conduit entities under the new law. If the Owner transferred all or a portion of its interest in those entities to a grantor trust during that time, the transfer will not be taxable based on the grantor trust exemption found at F.S. 201.02(1)(b)5.[16]

The statute provides that the law, is "to be construed liberally to effectuate" the purpose of taxing transfers of beneficial interests in real property.[17] The new law authorizes the Department of Revenue to issue emergency regulations which may be forthcoming even before this issue hits the press.[18] During the six months in which those regulations will be effective, the DOR will host a series of practitioner workshops in order to work through additional examples and help produce effective final regulations.

Endnotes:

1 F.S. §201.02(1).

2 Crescent Miami Center, LLC v. Florida Department of Revenue, 903 So.2d 913 (Fla. 2005) at 919.

3 The Florida Senate Bill Analysis and Fiscal Impact Statement, CS/CS/CS/ SB 2430 and SB 1960, p. 6, April 19, 2009 citing the Office of Economic and Demographic Research, The Florida Legislature, et al., Florida Tax Handbook, Including Fiscal Impact of Potential Changes, 56 (2008), available at http:/edr.state.fl.us/reports/taxhandbooks/taxhandbook2008.pdf (last visited August 8, 2009).

4 F.S. §201.0201(3).

5 F.S. §201.0201(1).

6 F.S. §201.02(1)(b)2.

7 F.S. §201.02(1)(b)1.a.

8 F.S. §201.02(1)(b)1.b.

9 F.S. §201.02(1)(b)2.

10 F.S. §201.02(1)(b)3.

11 F.S. §201.02(1)(b)4.

12 F.S. §201.02(1)(b)5.

13 F.S. §201.02(1)(b)4.

14 Example adapted from Demise of the Crescent Miami Drop and Swap, Burt Bruton, Esq., The Florida Bar Real Property Probate and Trust Law Section PAC 29th Annual Legislative and Case Law Update Seminar on July 31, 2009, at The Breakers in Palm Beach Florida.

15 Id.

16 Id.

17 F.S. §201.02(1)(b)6.

18 Laws of Florida, Chapter 2009-131, Section 6.

RPPTL Committees: Choose Your Communication Liaison!

By S. Dresden Brunner, Esq., submitted on behalf of the Member Communications and Information Technology Committee

The Section wants to make its website a valuable resource for its members and a place that is looked to for a variety of information. The **Member Communications and Information Technology Committee** ("MCIT") has been tasked with implementing this goal. One way to increase value to the members is to increase valuable content on the website (*www.rpptl.org*).

Each Section Committee is responsible for providing timely and appropriate content for its committee webpage. An initial step in this process is for each Section Committee to designate a "Communication Liaison". For his or her committee, the Communication Liaison ("CL") will provide to the Webmaster information such as its mission statement, minutes, agendas, white papers, committee member roster, and information about joining the committee.

In addition to providing committee content to the Webmaster, the CL will moderate the committee's listserve, if applicable, and will be the contact person for the MCIT Committee.

Oh, and by the way, the committee chair will have to be the CL if no one else is appointed.

Each committee is requested to designate its Communication Liaison and communicate that person's contact information to either Nicole Kibert (nkibert@carltonfields.com) or Dresden Brunner (dresden@comcast.net) by October 1, 2009.

Case Law Guidance for Life Insurance Trust Trustees

By Patrick J. Lannon, of Counsel, Goldman Felcoski & Stone P.A., Coral Gables, and Barry Flagg, CFP®, CLU, ChFC, of TheInsuranceAdvisor.Com

A version of this article was published in Steve Leimberg's Estate Planning Email Newsletter - Archive Message #1486,June 29, 2009

While many trustees are facing increased scrutiny of their investment performance in these difficult economic times, trustees of trusts holding life insurance (often referred to as irrevocable life insurance trusts, or "ILITs")[1] face additional challenges in their management of this "special asset." Acknowledging the potentially serious trustee liability, a few states have passed legislation that reduces the trustee's fiduciary responsibility for life insurance as an investment.[2] However, such protective statutes do not help a trustee to determine how to manage life insurance to maximize the benefit for the trust beneficiaries.

Outside of the few states with protective statutes, the Uniform Prudent Investor Act ("UPIA") and similar statutes such as Florida's Prudent Investor Act[3] require as rigorous a management model for life insurance as for other types of assets,[4] subject only to protective language in the trust document and defensive steps taken by the trustee.[5] However, until now trustees have had no court guidance regarding the application of the UPIA to life insurance. A recent Indiana Court of Appeals case (the first such case known to these authors) appears to provide some comfort to ILIT trustees (and perhaps some consternation to ILIT beneficiaries) in UPIA states by setting a low bar for investment due diligence with respect to life insurance. However, this case is the first such case involving a claim of breach of fiduciary duty for ILIT trustees (at least the first such case known to these authors). As such, it can hardly be considered evolved case law. This case is nonetheless instructive as to the various claims dissatisfied beneficiaries may make. It is also instructive to examine the arguments that the plaintiff attorneys could have made so as to provide a road map for trustees intent on avoiding future lawsuits.

Case Law Guidance

In *In re Stuart Cochran Irrevocable Trust*,[6] ILIT trust beneficiaries alleging violations of Indiana's version of the UPIA and breach of trust sued KeyBank, N.A.[7] as trustee.

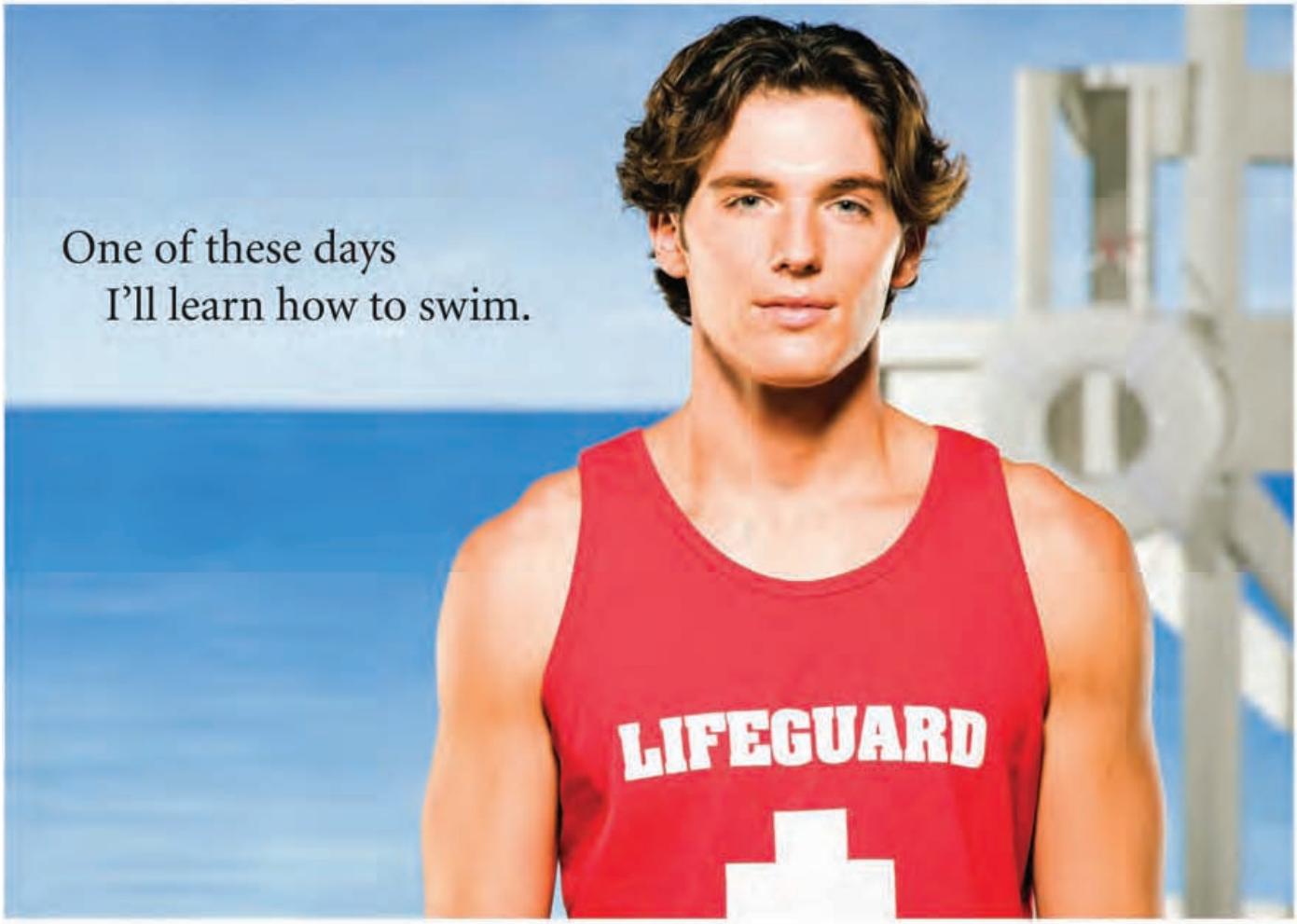
Immediately upon taking office as successor ILIT trustee in 1999, KeyBank approved of an exchange of policies in the trust which had been arranged by the insured's insurance advisor (i.e., the agent/broker who appears to have sold the various policies that are the subject of this case). This exchange raised the collective death benefit from $4,753,539 to $8,000,000. Due to market losses in 2001 and 2002, KeyBank retained an independent outside insurance consultant to review these replacement policies in 2003. The review of hypothetical illustrations of policy values suggested that the policies would likely lapse long before the insured reached his life expectancy, but the consultant initially recommended only further monitoring. Even though the independent consultant recommended only further monitoring, the insured's insurance agent/broker/advisor recommended the purchase of a replacement policy with an expected face value of $2,787,624[8] guaranteed to age 100. KeyBank's consultant reviewed this policy, noting that surrender charges of $107,764 would be incurred, and recommended that the old policies be retired in favor of the new policy. KeyBank, as trustee, subsequently surrendered the old policies and purchased the new policy. Soon after the purchase of the new policy, the insured died unexpectedly at the age of 53.

The ILIT beneficiaries promptly sued KeyBank as trustee for breach of fiduciary duty. The trial court framed the question in a way that almost assured the outcome: "Was it prudent for the Trustee to move the trust assets from insurance policies with significant risk and likelihood of ultimate lapse into an insurance policy with a smaller but guaranteed death benefit?" While admitting that the "process was certainly less than perfect," the trial court focused on the prudence of replacing the old policies in general rather than the prudence of choosing the new policy, and specifically and unsurprisingly determined that the change in policies was prudent.

The appeals court agreed, first determining that there was no imprudent and improper delegation of decisionmaking functions to the insured and his advisor. Key to this determination was the fact that KeyBank had retained "an outside, independent entity with no policy to sell or any other financial stake in the outcome" to review the policies and the recommendations of the insured's advisor. Next, the court determined that KeyBank did not imprudently disregard its consultant's advice. While the consultant did not initially recommend replacement of the old, higher face value, policies, it eventually recommended purchase of the new policy and KeyBank followed this advice. The appeals court then examined KeyBank's investigation of the alternatives to the purchased policy, and agreed with the trial court that while "the process was not perfect," it was sufficient that the trustee "examined the viability of the existing policies and at least one other option." Finally, the court noted that the UPIA prohibits the use of hindsight in determining the appropriateness of investments, dismissing the insured's early death and the subsequent recovery of the economy as factors to consider in determining the prudence of the purchase.

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Life Insurance Trust Trustees

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The appeals court also considered several other issues, concluding that (i) sufficient information was provided to beneficiaries despite the fact that annual reports were sent to the non-custodial parent of the beneficiaries, and the trustee made documents available to the beneficiaries but did not mail them copies, and failed to solicit the consent or approval of the beneficiaries prior to changing insurance policies,[9] (ii) the trustee did not breach a duty of loyalty by its communications with the insured, and (iii) the change in insurance policies was not inconsistent with the grantor's intent.

Lessons Learned

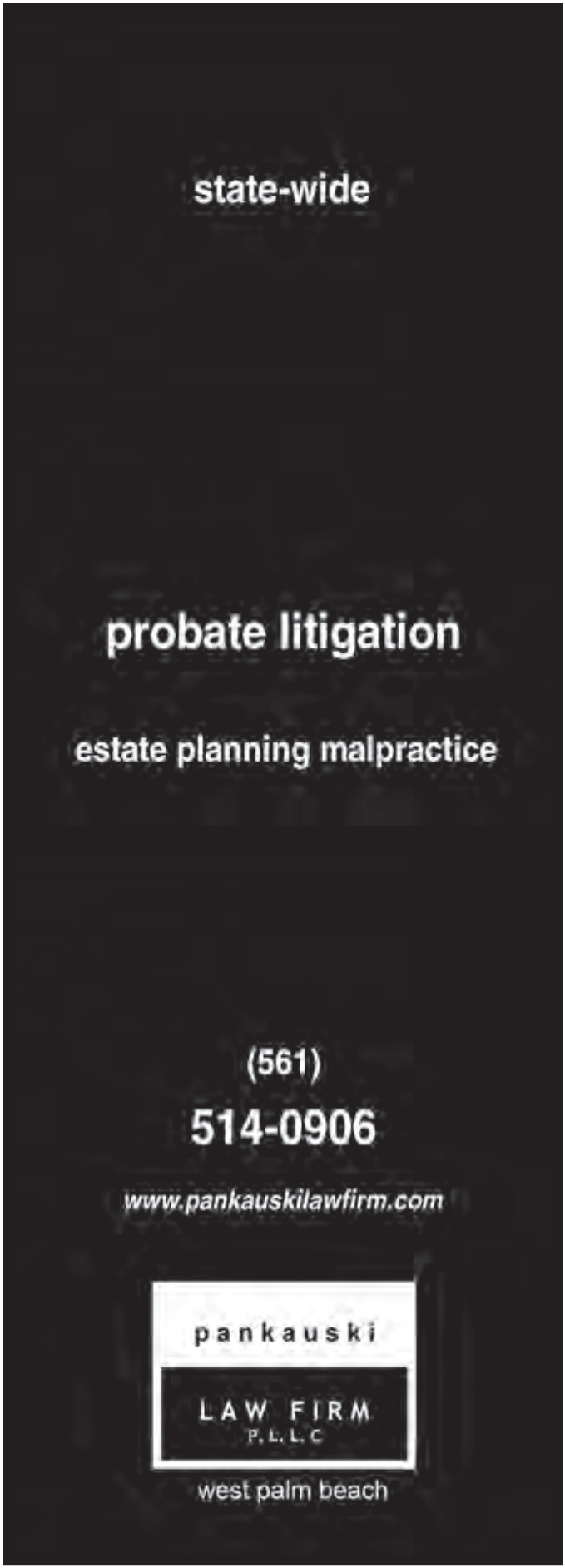
This case is a must-read for any individual or corporate trustee of an ILIT. The quite emphatic and favorable decisions of both the trial court and appeals court should give trustees a degree of comfort, especially considering the unfortunate result for the beneficiaries in light of the insured's unexpected death.

However, the cautious trustee will recognize that the actions of KeyBank were considered by the court to be less than ideal. Any standard for trustee due diligence should consider the actions of KeyBank to be a bare minimum which cautious trustees will strive to improve upon if faced with similar issues. Most importantly, it appears that this case could easily have gone the other way on the issue of "prudent process."

Under the Indiana version of the UPIA, a trustee is required to "exercise reasonable care, skill, and caution" in managing trust assets as a prudent investor would. In this case, KeyBank considered only the existing life insurance and one other policy. The court did not shed any light on any examination of underlying costs and performance assumptions that might or might not have been performed. While admitting that "of course it could have done more," the court found this due diligence adequate. It is difficult to imagine the court reaching the same conclusion had a trustee considered one mutual fund to replace two existing funds, without discussing the trustee's examination of fees, expenses and historical performance for either the universe of possible alternatives or at least a relevant benchmark. It remains to be seen whether other courts will be similarly satisfied by this level of review in the future. While this case is silent on the issue, it would be interesting to know whether other life insurance portfolio management activities (such as a reduction in death benefit of the existing insurance, purchase of a competing policy of the same type, or purchase of a different type of policy) would have achieved a better result under these circumstances.

In addition, Indiana's version of the UPIA provides that a trustee may only "incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee."[10] While the trustee's

continued, next page



Life Insurance Trust Trustees

from preceding page

consultant did make the trustee aware of new expense charges, including commissions and surrender charges (of $107,764), the court does not tell us whether the consultant or the trustee investigated, measured or justified the cost of insurance charges (COIs), fixed administration expenses (FAEs), cash-value-based "wrap fees" (M&Es) and premium loads in either existing policy holdings or the alternative(s) under consideration. Without such details we cannot know whether the trustee could have gotten a better deal on a similar policy.

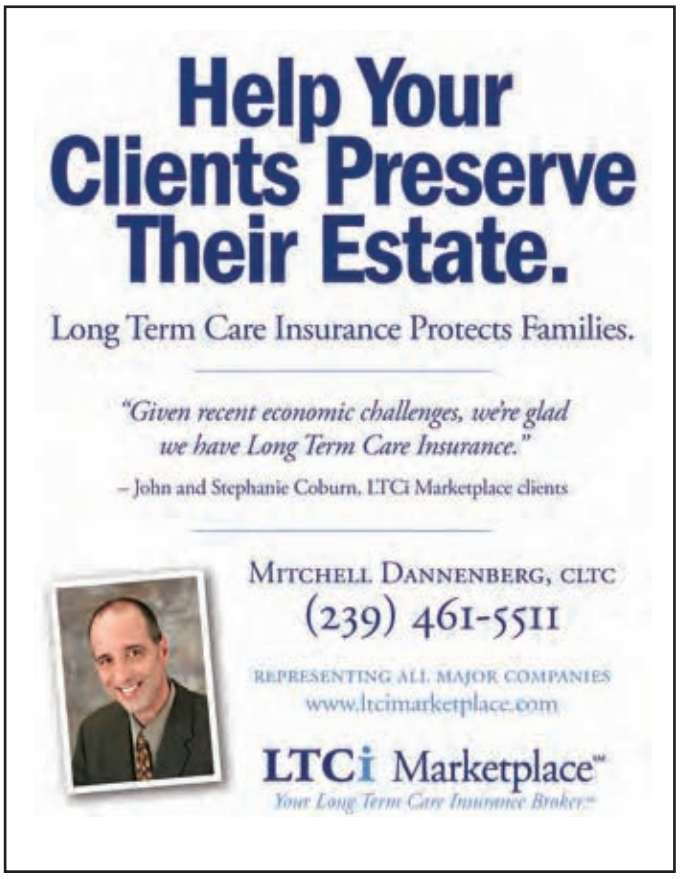
Some additional lessons from this case are as follows:

(1) The court makes clear that in this case the insured died unexpectedly. The unexpected nature of the death is bolstered by the fact that the insured had recently qualified for substantial life insurance. While not discussed in this case, a trustee dealing with a difficult insurance decision and a cooperative insured may want to take additional steps to determine the life expectancy of an insured before relying on government tables.

(2) The court notes that KeyBank relied on an outside consultant that "was an outside, independent entity with no policy to sell or any other financial stake in the outcome." Presumably the consultant was engaged because KeyBank either lacked the internal resources to analyze the policies or because it wanted to distance itself from the decisions. It is logical to assume that KeyBank would have faced an uphill battle if it could not show either sufficient internal expertise or a disinterested outside advisor. Trustees should make sure that they are compensated sufficiently to retain sufficient expert advice as they may need.

(3) The court determined that the beneficiaries were kept sufficiently informed. A cautious trustee will be attuned to such issues as custody of minors and family dynamics generally. While the court was correct to determine that lack of information was not a proximate cause of any damages in any event, a cautious trustee should consider obtaining consents from beneficiaries or at least consider a formal accounting that will start a statute of limitations for challenges running. While states' requirements for reporting to beneficiaries vary greatly, in states that require disclosure a failure to disclose can make even innocent actions appear nefarious and perhaps lower the bar for a finding of bad faith.

The court in this case found no breach of duty associated with coordination with the insured/grantor. While the court's reasoning appears sound, a trustee should be careful to remember that its fiduciary duties run to the beneficiaries and not to the insured/grantor. In this case, the court ignored such items as the "outside, independent entity" repeatedly referring to the insured as KeyBank's "client." If, for example, the insured/grantor had hired KeyBank to manage his other assets, the court may have investigated the relationship much more closely. However, as a practical matter an ILIT trustee will have to coordinate with the insured/grantor to some extent, since (i) ILITs are often dependent upon continuing contributions to support the insurance policy and (ii) many trustee choices, such as the ability to purchase new insurance, are constrained by the insured's willingness to cooperate.



Endnotes:

1 For a general discussion of ILITs, see Patrick J. Lannon, Planning Opportunities With Irrevocable Life Insurance Trusts, Estate Planning Volume 34, Number 5 (May 2007).

2 Patrick J. Lannon, "Trust Owned Life Insurance Portfolio Management – Statutory Reduction of Fiduciary Liability," Steve Leimberg's Estate Planning Email Newsletter - Archive Message #1342, September 10, 2008.

3 F.S. §§ 518.11, 518.112,

4 Barry D. Flagg, Life Insurance Portfolio Management – The Missing Link?, Steve Leimberg's Estate Planning Email Newsletter - Archive Message #1287, May 3, 2008, Richard C. Hitchins, The New Standard – "Annual" Irrevocable Life Insurance Trust and Trust Owned Life Insurance Policy Reviews, ActionLine Winter 2009, Richard M. Flah and Lori W. Denison, Proper Care and Feeding of Trust-Owned Life Insurance, ActionLine Summer 2008.

5 See Patrick J. Lannon, The ILIT "Accommodation" – Florida Law Options, ActionLine Fall 2008.

6 901 N.E.2d 1128 (Indiana Court of Appeals, March 2, 2009).

7 Shortly before the actions complained of KeyBank replaced Pinnacle Bank as trustee. According to the published opinion, Pinnacle Bank resigned as trustee based on the insured's insistence on having third parties involved in the trustee's decisionmaking process. In light of subsequent events, Pinnacle Bank appears to have made the right decision.

8 Due to underwriting considerations the eventual actual face value was $2,536,000.

9 The court noted that any shortcomings in providing information to beneficiaries were not in any event the proximate cause of any damages.

10 F.S. § 518.11((1)(f) includes a "duty to incur only reasonable and appropriate costs."

Representative Tom Grady Makes an Impact During his Freshman Term

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

From Florida House intern in 1979 to State Representative in 2008, Representative Tom Grady has spent the better part of the last 30 years as an active participant in Florida politics. He made a strong impact during the 2009 Legislative Session, and his colleagues and constituents have taken notice of the fruit of the freshman Representative's efforts— Governor Charlie Crist approved three bills sponsored by the Representative during his first term. House Bills 483, 965, and 991 became effective July 1, 2009.



As an attorney, Representative Grady brings valuable experience and a new perspective to the House. Representative Grady has practiced law in the areas of Securities and Complex Commercial Litigation, and this expertise has shaped his approach to legislative reform. He sponsored House Bill 483, the Investor Protection Bill, which expands the investigative, enforcement, and prosecutorial authority of the Florida Attorney General's Office. The Bill enables the Attorney General to act on its own initiative, with the permission of the Office of Financial Regulation, to pursue crimes committed by the likes of Bernie Madoff. The Bill also provides the OFR with greater authority to investigate financial crimes, promulgate rules to establish sanction guidelines, and seek specified court orders and penalties.

Additionally, RPPTL members may already be familiar with House Bill 965 which revises the Florida Trust Code. In summary, the Bill provides an additional limitation on terms of trust prevailing over Florida Trust Code provisions; authorizes trust instruments to authorize specified persons to designate one or more persons to represent and bind a beneficiary and receive information; authorizes a cotrustee to delegate investment decisions to the cotrustee and provides that the cotrustee that has delegated investment functions is not liable for investment decisions; revises representation authority for holders of powers of appointment and provisions for absence of liability of excluded trustees; and revises the beneficiary definition to exclude specified interests as beneficial interests and the definition applicable to antilapse of trust distribution.

Dedicated to education, Representative Grady also sponsored House Bill 991, known as Florida's Equal Opportunity in Education Act, which provides for increased public school accountability and improvement to enhance student performance. The Bill also requires the Department of Education to support schools with tracking the progress of all students.

Hard work and dedication are the driving force of Representative Grady's professional achievements. He has earned the respect of his colleagues as evidenced by their kind words. Representative Grady's mentor, Dudley Goodlette, also an attorney, who previously served as Florida Representative from 1998 to 2006 and currently serves as chief of staff to Florida House Speaker Larry Cretul stated: "Tom is an incredibly hard working, intelligent and talented attorney. The profession is fortunate to have people of his caliber offer themselves for public service. He will quickly emerge as a leader in the legislative process."

Post-session, Representative Grady has spent time interacting with constituents, which influenced his decision to run for a second term in the House rather than for Florida's Attorney General as previously announced. His constituents seem pleased.

RPPTL-PAC Chair, Laird A. Lile, Esquire, stated: "In addition to having been friends with Tom, and his wife Ann, for many years, I am also fortunate to be one of Tom's constituents in District 76. Tom focuses on good policy and carefully considers legislation. Tom's willingness to serve as a citizen legislator is a benefit to all Floridians. The fact that Tom is also a practicing attorney affords him a perspective on our profession not available to many legislators. We are better off because Tom Grady serves in the Florida House."

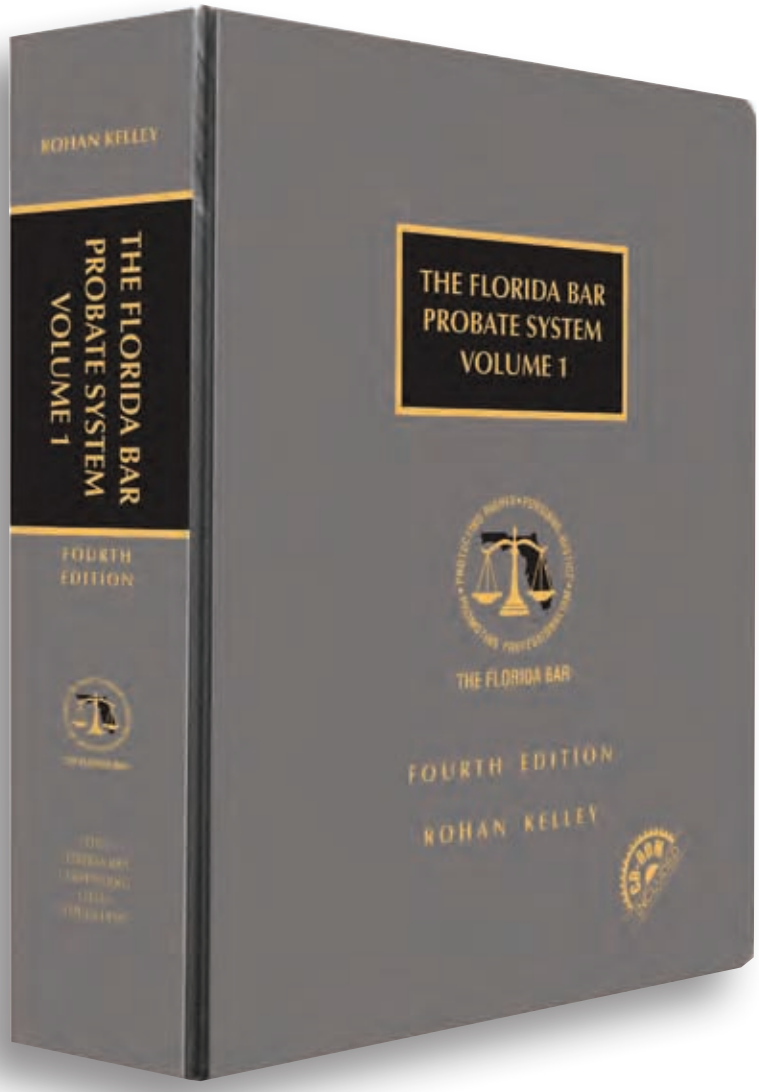
One of Representative Grady's primary goals is to improve the transparency of the budget process. He intends to focus on budget reform with the support of State Senator Garrett Richter who previously held Representative Grady's House seat. Representative Grady also supports legislative priorities to protect property rights.

Born in Ohio, Representative Grady moved to Florida over 25 years ago. He graduated *summa cum laude* from Florida State University and from the Duke University School of Law, with distinction. He currently resides in Naples, Florida with his wife, Ann, and two children.

Representative Grady is affiliated with various organizations including the Boy Scouts of America; Economic Development Council of Collier County; and Safe Florida Foundation, Inc. Additionally, since 2002, he has served as Chairman of the Board of Trustees of Quest for Kids, a mentoring program to send kids to college. Between participating with Quest for Kids and sponsoring House Bill 991, Representative Grady's efforts to improve education are apparent.

The RPPTL Section looks forward to working with Representative Grady and wishes him luck for the next legislative session.

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Message From the Chair

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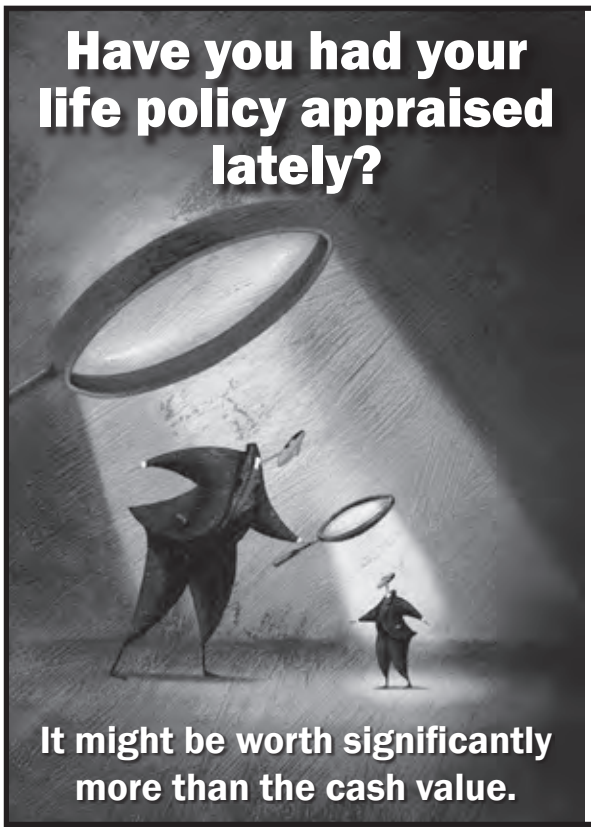
which were enacted this year included bills re-writing the lis pendens statute and addressing trust administration, condominium law, estate planning, construction defects and documentary stamp taxes.

We have always approached our judicial advocacy efforts carefully, but, during this last year, our Section was simply swamped with amicus cases. Last December, the Eleventh Circuit Court of Appeals issued its decision in the *Pugliese v. Pukka* case involving the interpretation of the Interstate Land Sales Act in a manner that was consistent with the position advocated by the Section in it amicus brief. Undoubtedly due to the phenomenal work product produced by our Amicus Committee Co-Chairs, **Bob Goldman** and **John Little**, we received three amicus requests from the Third DCA early this year, and we recently received another amicus request from the Fourth DCA. Fortunately, in order to assist with the workload, Bob and John convinced one of their law school classmates, retired Florida Supreme Court Justice **Ken Bell**, to serve as another Amicus Committee co-chair this year.

We have worked very hard to strengthen communications with our members by expanding our *ActionLine* publication. When I served as editor of this publication in the late 1990's, *ActionLine* was a simple newsletter; it has evolved, primarily through the efforts of the past editor, **Dresden Brunner**, and the current editor, **Rich Caskey**, into an impressive quarterly magazine with up to date information and analyses of current legal issues and practices and is circulated to all Section members by both mail and e-mail. We have also committed significant Section financial resources to re-building our website by engaging a webmaster and improving our list serves, so our Member Communications and Information Technology Committee, led by **Al Colby**, has been very busy. All of our committees communicate through the website and their individual list serves, all committee agendas, minutes and reports are available on the website to any RPPTL Section member, and some materials, such as the Uniform Title Standards, are available to any visitor to the site.

One of my first actions as Section Chair was to establish a new committee, the Electronic Court Filing Committee. That committee was created in order to offer technical and practical assistance to the Florida Courts Technology Commission with respect to the uniform implementation of e-filing in the courts on a state-wide basis, as mandated by recent legislation and a July 1, 2009, Administrative Order issued by **Chief Justice Peggy Quince**. Since it appears that implementation will begin in the probate courts, our Section offered its assistance to the Commission's Chair, **Judge Judy Kreeger**, and our offer was readily accepted. The Commission, in conjunction with the Office of State

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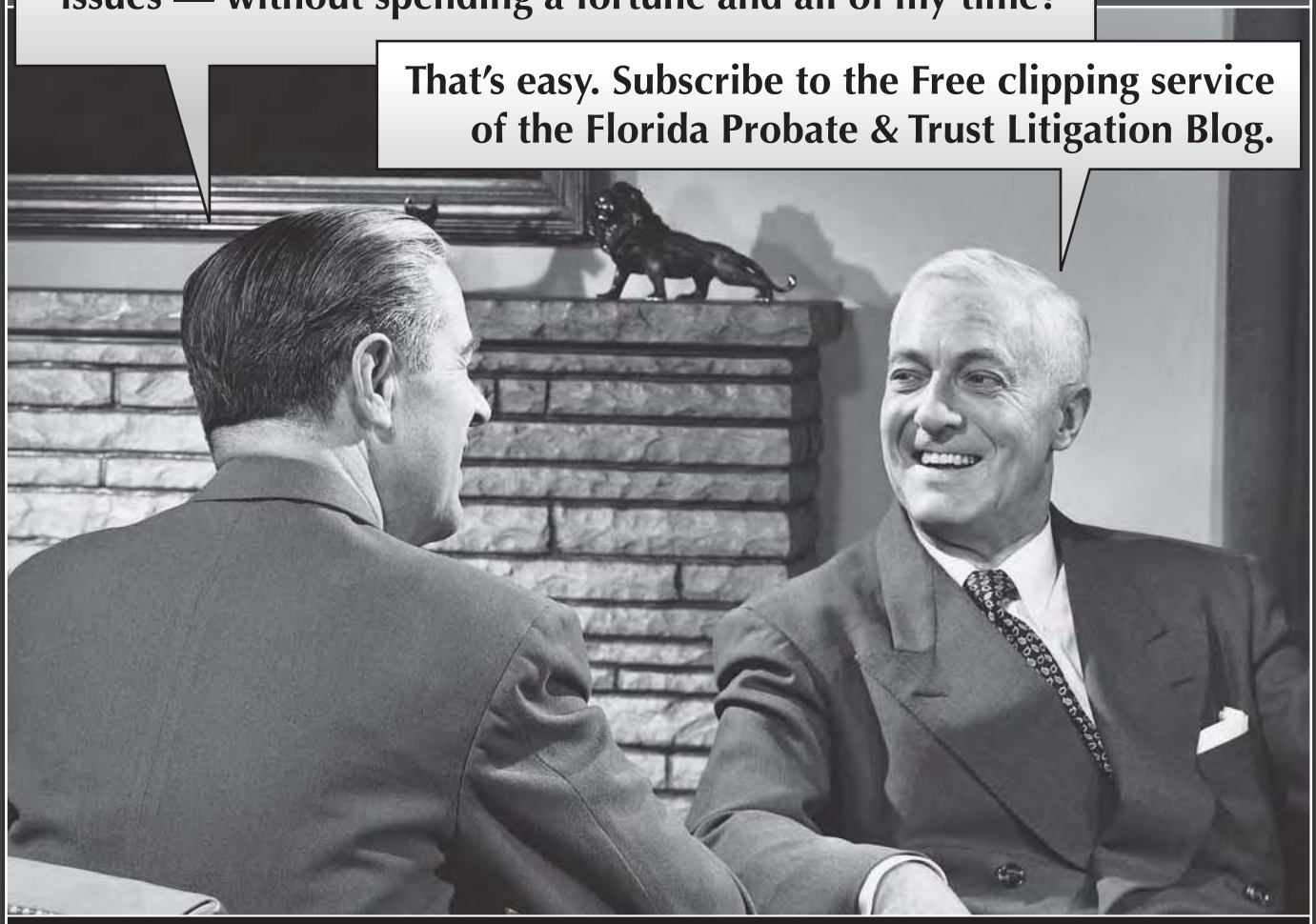
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Message From the Chair

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Courts Administrator, has been charged with establishing statewide standards for electronic access to courts. For several reasons, including the highly forms-driven nature of probate practice utilizing pleadings and other forms formulated by our former Section Chair, **John Arthur Jones**, many years ago, and continually updated by our Probate and Guardianship Law Committees, the Commission plans to first implement electronic court filing in the probate division of the circuit courts. Two of our Sections' former Chairs, **Rohan Kelley** and **Laird Lile**, have graciously agreed to lead our Section's Electronic Court Filing Committee and have been appointed by Judge Kreeger to serve on the working group charged with establishing standards for the implementation of e-filing in probate cases. In addition, our Section has recently agreed to provide funding to the working group to facilitate "in person" meetings in an effort to facilitate dialogue between the attorneys, court administrators, judges and clerks serving on the working group.

We are continuing the vigorous diversity effort initiated during **Tae Kelley Bronner**'s tenure as chair of our Section's Diversity Committee. Our Section has devoted significant energy and resources to attract minority members to the Section, and we hope to expand our program to include attorneys with disabilities this year. As a complement to our Diversity Program, and as an effort to attract younger attorneys to the Executive Council, we instituted a Fellowship Program, which provides stipends to our Fellows to defray the cost of attending Executive Council meetings. Our first class of four Fellows was chosen last year from a pool of 90 outstanding applicants, and those Fellows are now actively working with Section committees and attending Executive Council meetings. They come from diverse backgrounds and bring with them an enormous amount of energy and enthusiasm. Our Fellowship Committee, led by **Tae Kelley Bronner**, **Phil Baumann** and **Michael Bedke**, has already begun the process of soliciting our next group of Fellows.

As noted in Sandy's Chair's Column in the last issue of *ActionLine,* the extraordinary efforts and accomplishments of our Pro Bono Committee and Circuit Representatives and their involvement with Florida Attorneys Savings Homes project merit special praise. **Adele Stone**, **Drew O'Malley** and **Peggy Rolando** have spent countless hours working with Florida Legal Services – recruiting volunteers to take foreclosure prevention cases. The intake process has produced an avalanche of requests for help, so despite 1,802 case assignments thus far, the demand for assistance has exceeded the supply of volunteers, and 818 cases are presently awaiting assignment. Thus, we continue to seek volunteers for this worthwhile program. A recent *Florida Bar News* article highlighted several of the successful outcomes arising from this program, so, if you wish to volunteer, you may do so at *www.floridaprobono.org* .

I will conclude by noting that, with all of the committees and activities of our Section, I have no doubt that every attorney who wishes to attain professional and personal fulfillment through involvement with the Section should have no difficulty in doing so. Thus, if you are not already actively involved in the Section, I encourage you to contact any committee chair or officer, including me, to get involved. Our contact information is readily available on our Section website at *www.rpptl.org*.

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Corporate Transactions Involving Florida Real Estate – Don't Get Tripped by F.S. 193.1556

**By Stuart T. Kapp, Partner and Jordan S. Wigdor, Associate,
Proskauer Rose LLP, Boca Raton, FL**

It is easy to overlook Florida Statute 193.1556 when completing a merger or stock transaction involving companies that own Florida real estate, but the consequences can be expensive.

Florida does not have a state income tax. So, among the many ways that Florida generates tax revenue in lieu of an income tax is to have significant real property taxes. With the rapidly escalating real estate prices during the last several years, shrewd Florida real estate investors found a legal way to camouflage the increased value of the real estate from the local property appraiser. Instead of selling real estate by delivering a deed to a buyer, it became commonplace to trade real estate by buying and selling the stock, membership interests or partnership interests in the companies that owned the real property. By doing so, the ownership of the property effectively changed hands to the "new owner" of the company that holds title to the real estate, but a deed was never recorded to show the change in ownership. This was all legal and quite easy given that the majority of real estate investments were owned by single purpose entities.

Failing to comply with Florida Statute 193.1556 can lead to significant penalties.

Because a deed is not recorded when the equity interests are sold, local property appraisers are generally not aware that property has changed hands, and, therefore, they may not be aware that it is an appropriate time to consider reassessing the value of the property. To address this problem, in July 2008, Florida Statute 193.1556 became effective and required property owners to notify local property appraisers of any "change of ownership or control" in real property. While the statute was clearly intended to apply to "off-record" transfers of real estate assets (i.e., entity deals), it has also had the unintended consequence of capturing typical M&A, stock and entity transactions involving "true" operating companies that happen to own real estate in Florida.

Since many corporate professionals are not aware of the statute's existence or its reporting requirements, it is likely that many transactions will close without compliance with the statute. By way of example, assume that a company headquartered in California acquires all of the stock of a Michigan company engaged in the national distribution business that owns a significant facility in Florida. In such a case, the new property owner must report the change of ownership to the local property appraiser, contemporaneously with such change of ownership, by filing Florida Department of Revenue Form DR-430 with the local property appraiser. Most professionals conducting a typical M&A or stock transaction, especially where assets are located in many different states (and perhaps only a few in Florida), would not envision that any filing with the local property appraiser would be necessary, but, in Florida, that would be a mistake.

Failing to comply with Florida Statute 193.1556 can lead to significant penalties. First, if the property appraiser determines that the real property was under-assessed for any year within the prior 10 years, the property appraiser can reassess the value of the property and the property owner will be liable for the taxes avoided. Second, the property owner may be charged interest at 15 percent per annum on the taxes avoided plus an additional penalty of 50 percent of such taxes. Finally, the property appraiser may record a tax lien against the real property for the taxes avoided. Interestingly, if the real property was under-assessed, yet the subject property is no longer owned by the party that failed to report the change of control, a lien can be recorded against any other Florida real property owned by the same entity.

While merger agreements and stock purchase agreements often contain representations, warranties and covenants regarding seller consents and filings required for the transaction to be completed, these are not particularly helpful because a buyer is responsible for filing Form DR-430 with the local property appraiser.

Since the statute is relatively new, there are specific circumstances which have not been addressed at this point. For example, there is nothing on the face of the statute requiring the local property appraiser to be notified if there is a change of ownership of the parent (i.e., holding company) whose subsidiary owns real estate located in Florida. It will take some time for administrative regulations and court decisions to address this and other open issues. Nevertheless, it is clear that many corporate professionals are not aware of Florida Statute 193.1556 and the financial penalties triggered for failing to comply with its reporting requirements.

Protecting Tenants at Foreclosure Act of 2009

By Arthur J. Menor and Lauren S. Atherton, Shutts & Bowen LLP, West Palm Beach, FL

As the bubble in the residential real estate market has continued to burst, a flood of mortgage foreclosures has swamped Florida courts. Many of these foreclosures involve residential properties purchased by speculators. These speculators had hoped to flip their properties quickly for a substantial profit. When the market turned and there was no longer a ready supply of purchasers for these flips the speculators were stuck with the carrying costs of the properties. To help defray these carrying costs while they waited for a hoped for market recovery, many of these speculators rented their properties, often for rents that did not cover the carrying costs. Many speculators have reached a point where they are no longer able or willing, or both, to continue to pay the mortgage debt on their properties with no prospect in sight of market recovery and this has resulted in a spate of foreclosure actions.

Among the casualties of this economic tragedy have been the tenants of the speculators. The tenant's interest in the property under the lease is usually subordinate to the mortgage. Therefore, when the mortgage goes into default, the lender can and often does wipe out the leasehold interest in the foreclosure action. After the foreclosure sale the lender can obtain a Writ of Possession evicting the tenant from the property, often on very short notice. In addition, many of the cash-strapped, speculator mortgagors have spent any security deposits and advance rent they received from their tenants and, thus, the tenant is often deprived of these funds.

To address the plight of the tenants victimized in this scenario, several bills were introduced in the Florida Legislature during this past session with the purpose of protecting tenants from being removed from their rented homes with little notice and protecting tenant security deposits. Although none of these bills passed the Legislature this session, Congress recently passed a bill to protect tenants from being removed from their rented homes without notice upon foreclosure of their landlords.

On May 20, 2009, President Barack Obama signed into law the *Helping Families Save Their Homes Act of 2009*, which includes, as Title VII, the *Protecting Tenants at Foreclosure Act of 2009* (the "Act"). The Act, which remains in effect until December 31, 2012, provides tenants under *bona fide leases* of foreclosed properties with the right to remain in the foreclosed property for the remainder of their lease term or at least 90 days, depending on the circumstances, following conclusion of a foreclosure action.

The Act provides that, in the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential property after the date of enactment of the Act, the immediate successor in interest to the mortgagor pursuant to the foreclosure assumes its interest subject to:

(1) providing a bona fide tenant with at least 90-days notice to vacate the property before the effective date of such notice; and

(2) the rights of any bona fide tenant existing on the date of the notice of foreclosure:

(A) under a bona fide lease entered into before the notice of foreclosure to continue to occupy the property for the remainder of the lease term, except that a successor in interest may terminate the lease effective on the date of sale of the property to a purchaser that will occupy the premises as a primary residence, subject to receipt by the tenant of the 90-day notice under Subsection (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under Subsection (1).

A lease or tenancy under the Act shall be considered *bona fide* only if:

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a federal, state, or local subsidy.

The Act also applies to Section 8 tenants and goes on to amend the "leases and tenancy" section of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) to provide that a housing assistance payment contract entered into by the public housing agency and the owner of the dwelling unit shall provide that in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease, vacating the unit prior to sale shall not constitute good cause for termination of the lease, except that an owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner will occupy the unit as a primary residence and has provided the tenant 90 days notice to vacate. The Act further adds to that section that in the case of any foreclosure on any federally-related mortgage loan or any residential property where the recipient of assistance resides, the immediate successor in interest pursuant to foreclosure assumes its interest in the property subject to the lease and the housing assistance payments contract.

However, nothing in the Act shall affect the requirements for termination of any Federal or State subsidized tenancy,

continued, page 19





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Protecting tenants

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or of any State or local law that provides longer time periods or additional protections for tenants.

It appears that the Act is intended not only to provide temporary protection to tenants, but also to assist in the reduction of the increasing vacancy rates of foreclosed properties. The Act does not provide the tenant on a foreclosed property with any additional rights of termination of their lease. It also does not provide protection for tenant security deposits, as was proposed in several of the bills introduced in the Florida Legislature during the 2009 session.

Whether the Act is overreaching or whether it merely provides tenants sufficient time to obtain alternative arrangements after the foreclosure on their landlords, it will no doubt trigger additional issues such as the determination of bona fide tenants and leases, the right to terminate bona fide leases due to a tenant's default, exceptions in title insurance policies, and other issues that will arise in time through the implementation of the Act's intended temporary relief to tenants.

For instance, in response to the Act, most if not all title insurance underwriters have adopted policies requiring inclusion of new exceptions in commitments relating to properties involved in foreclosure, such as the policy recently adopted by Lawyers Title Insurance Corporation and Commonwealth Land Title Company, which provides that:

> all foreclosure commitments, title commitments calling for the issuance of a title policy to the foreclosing lender or purchaser at a foreclosure sale and commitments on the first sale of REO property by a lender in foreclosure that cover residential one-to-four family properties must contain the following exception: "The rights of tenants in possession under bona fide leases pursuant to the provisions of the Federal 'Helping Families Save Their Homes Act of 2009.'"

Additionally, the Act is not clear on when the lender can send a notice to a tenant to terminate its lease. Presumably, the earliest the successor in title under the foreclosure action would be able to provide the required notice would be after actual ownership is transferred to the successor in title. But could a lender send the notice before completion of the foreclosure? Would such a notice meet the Act's 90-day notice requirement if the tenant is not required to vacate until at least 90 days after the tenant received the notice?

The Act is repealed, and all requirements under it are terminated, on December 31, 2012. Until then, landlords and tenants alike will need to keep a close eye on this new legislation and how it will impact rights of tenants and new owners of foreclosed properties.

***

The Landlord/Tenant Committee of the RPPTL Section provides information about legislative and case law developments in the area of landlord and tenant law, provides expertise and input regarding proposed legislation affecting the landlord and tenant areas of Florida law; acts as a resource to its members to discuss and share information about landlord/tenant practice matters; and cooperates with Continuing Legal Education Committee of The Florida Bar to educate members of The Florida Bar as to any developments in the area of landlord and tenant law. Committee members' areas of practice and expertise include residential, commercial, retail, office, industrial and mobile home leasing with both transactional and litigation practices.

If you would like to become a member of the Landlord/Tenant Committee, please contact Neil B. Shoter, Committee Chair (nshoter@shutts.com).

CCWBA Launches Legal Aid Project

During the past several years, there has been increased attention paid by the general public to the importance of individuals obtaining living wills and health care surrogates. However, for low-income and poor individuals, issues surrounding estate planning, including living wills and health care surrogates are, in many cases, not a priority.

The Collier County Women's Bar Association (CCWBA), Legal Aid Services of Collier County (LASCC) and the Neighborhood Health Clinic (NHC) located in Naples, Florida are working together in order to educate and inform low-income individuals about the importance of memorializing their final wishes in the form of a living will, as well as designating a surrogate to make health care decisions in the event that they are unable. Through this partnership, the CCWBA, LASCC and NHC will prepare brochures (in English, Spanish and Creole) for distribution to patients of the NHC to inform them about the importance of obtaining a living will and designating a health care surrogate. In addition, the organizations plan to hold quarterly legal aid clinics in both the Naples and Immokalee, Florida areas to reach out to the general public regarding the importance of these documents.

The CCWBA and LASCC will work in conjunction to recruit volunteer attorneys to meet with individuals one-on-one to discuss these documents and assist with preparation. The organizations anticipate reaching 10,000 low-income members of the public.

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Section Executive Council Meeting

Renaissance Vinoy Resort, St. Petersburg, May 21 - 24, 2009

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

The May meeting of the Real Property Probate and Trust Law Section Executive Council at The Renaissance Vinoy Resort in St. Petersburg had all the usual components of fun, relaxation, education and good meetings with the added dash of a very special event.

The Renaissance Vinoy bills itself as a timeless treasure and it truly is. It first opened in December 1925. For many years it was open only during the winter season and you can see lots of the special features that were built for a pre-air conditioning era such as the wide verandas and porches that surround the building. The buildings and grounds have a very rich history which is depicted in a special History Gallery including pictures, articles and narrative. In the 70's the hotel went into a bad decline and was closed in 1974. It sat unused for eighteen years but the restoration, when it finally came, had a fabulous result. The only complaint I heard from any of the attendees was that they were not able to get rooms in the resort itself but that is also a common problem at the July meeting at the Breakers.



The beautiful Renaissance Vinoy Resort, site of the May Executive Council meeting.

As is the standard practice the weekend kicked off on Thursday with lots and lots of committee meetings. At the end of the many meetings on Thursday a very well attended reception was held on the Mezzanine Terrace overlooking the lobby of the resort.

While there were a number of committee meetings on Friday, many section members attended the excellent seminar titled "A Study in Fine Arts."

Friday was the Convention Annual Luncheon where new officers and members of the Executive Council were elected. This however, was a very unique occasion. When I walked into the Luncheon there was a Naval Officer from Japan seated at my table. Other officers from a variety of Coalition forces were scattered throughout the room. The Coalition Force Coordinating Center is located in this part of our state and those of us attending lunch had an opportunity to meet representatives of many of the Coalition partners from a wide variety of countries. The Coalition Command Center located in Tampa was established in 2001 after September 11. About 200 staff officers from all over the world are stationed here, representing many nations. As explained by our luncheon speaker who was from Norway, this is a group of highly skilled military technicians who work together bringing their operational and tactical experience from a wide variety of military venues. The role of this group is to provide alternative perspectives to regional issues, insight into cultural awareness, international perspective on shared problems and rapid access to and from foreign military channels. Since this occurred on Memorial Day weekend, I think all of us who attended were especially appreciative of this opportunity to learn first-hand about the workings and achievements of the Coalition forces. This luncheon proved to be a truly unique experience for everyone who attended.

Friday evening was capped off with the annual awards dinner held at the St. Petersburg Museum of Fine Arts.

Saturday morning started out bright and early with the Real Property & Probate Round Tables. Then the Executive Council meeting was called to order by Sandra Diamond. This was Sandy's final call to order and she was warmly welcomed to the "back row." The minutes of that meeting will be posted on the section website.

One item of particular interest reported by our Chair was the Supreme Court Task Force on Foreclosures. Sandy Diamond has been appointed to that committee by the Chief Justice. Sandy relates that the job of the Task Force is to make recommendations on how to deal with residential foreclosures in light of the huge number of cases filed throughout the state. The Task Force is meeting often and a report will be due in September.

A special event at this convention was a photo competition and Sandy Diamond announced the winners during the course of the Executive Council meeting.

Saturday evening was capped off with a mystery dinner and reception in the Grand Ballroom of the Vinoy and was great fun for all who attended.

Executive Council Meeting

Section Work Addressed in Palm Beach

The Breakers, July 30 – August 2, 2009

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

The Section's 2009-2010 fiscal year began as it always does with its committee meetings, CLE seminar, and Executive Council meeting in Palm Beach, Florida. This year's Section Chair, John Neukamm, planned a productive and informative event.

On Thursday, July 30, the day began with committee meetings starting at 7:30 a.m. and running back-to-back until 6:30 p.m. For any Section member looking to hear experienced attorneys wrestle with real legal issues and possible solutions or discussing what has not worked, the committee meetings present many, many opportunities. All Section members are encouraged to get involved within the Section's activities. As a respite from the meetings and as an opener to The Breakers/Palm Beach event, the Welcome Reception was held in the beautiful "Circle" room.

On Friday, July 31, the Section's annual Legislative and Recent Case Law Update was held. Excellent speakers reviewed the 2009 Florida legislative changes and recent case law pertaining to subject matters relevant to Section practitioners. Copies of the materials can be obtained through the RPPTL website: *www.rpptl.org*. Another full day concluded with a lovely reception and dinner at The Breakers.

On Saturday, the month of August found the Probate and the Real Estate Roundtables underway. A lively debate occurred in the Probate Roundtable regarding social policies relating to legislation drafted to propose asset-protection, self-settled spendthrift trusts. During the Executive Council meeting, many action items were undertaken. By way of review, Travis Hayes, Esq., a Circuit Representative for the 20th Judicial Circuit, offers the following notes:

Real Property Division Action Items

1. Title Issues and Standards Committee - Pat Jones, Chair

PASSED - Revisions to the standards in Chapter 18 - Homestead, updated to reflect current statutes and case law (used to consist of 12 standards; 3 standards have been deleted; citations and authority have been updated)

2. Real Property Problem Studies Committee - Wayne Sobien, Chair

PASSED - Proposed legislation to cure certain defects as to electronic documents and electronically recorded documents under URPERA (if recorded prior to electronic guidelines)

PASSED - Proposed Legislation to address the "hidden lien" title issue (over 50% of counties had hidden liens)

3. FAR/BAR Committee - William Haley, Chair

PASSED - Proposed final draft of merged FAR/BAR Residential Contract for Sale and Purchase (the Section still does not like the indemnification and mandatory arbitration clauses; still needs FAR approval)

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Probate and Trust Law Division Action Items

1. Ad Hoc Study Committee on Homestead - Shane Kelley, Chair

PASSED - Support proposed amendment of the Florida Probate Code by enactment of new Section 732.4017, F.S., clarifying that a valid irrevocable inter vivos conveyance of an interest in homestead real estate (outright or in trust) shall not be considered a devise subject to restrictions upon death of the grantor

2. Probate Law & Procedure Committee - Tae Kelley Bronner, Chair

PASSED - Support proposed amendments to Section 731.110 of the Florida Probate Code to clarify the right of an interested person (other than a creditor) to file a caveat with the clerk of court before the death of an individual and reconcile that statute with the corresponding Probate Rule

PASSED - Support proposed amendments to Section 732.804 of the Florida Probate Code to clarify the right of a decedent to control the disposition of his or her remains and, absent specific directions from the decedent, who is legally authorized to do so

PASSED - Support proposed amendments to Sections 655.934 and 655.935, F.S., to conform durable power of attorney terminology with prior amendments to Section 709.08, F.S., and require the preparation and maintenance

continues, page 28



LEFT: Nicole Kibert (left), recipient of the RPPTL Real Property Division Rising Star award, and Tae Kelley Bronner (right), recipient of the RPPTL Probate Division Rising Star award, with Section Chair Sandra F. Diamond (center) at the Annual Convention.

BELOW LEFT: Laird A. Lile received the William S. Belcher Lifetime Professionalism Award at the Annual Convention, in recognition of his lifetime contributions to the RPPTL Section, the Executive Council, Florida attorneys, the public, and in promoting the highest standards of ethics and professionalism.

BELOW: The Section's Annual Service Award was presented to Adele Stone (left), Peggy Rolando (right), and Drew O'Malley (not pictured), in recognition of their service as members of the Coordinating Committee of the Florida Attorneys Saving Homes Project. Section Chair Sandra F. Diamond (center) presented the Award at the Annual Convention.







PHOTOS COURTESY OF JOHN NEUKAMM AND MICHAEL GELFAND.
ARRANGEMENT BY KELLY CATOE..


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Executive Council – Palm Beach

from page 25

of a record of documents removed from a decedent's safe-deposit box

General Standing Committee Action Items

PASSED - Approval of proposed legislative consultant contract

Additionally Travis Hayes offers a few additional issues which were discussed during the Executive Council meeting, as follows:

1. The State of Florida will be moving forward with instituting electronic filing. E-filing will begin in October and will start in the Probate Divisions. The plan is to fully implement e-filing by March 2010.

2. As a result of the Florida Attorney General's investigation into Lexis-Nexis billing practices, The Florida Bar had to eliminate its entire auto-ship distribution list for all existing Bar publications. As a result, members of the Bar will no longer automatically receive materials, such as supplements and updates, unless specifically requested (opting-in) in writing. You will need to pay close attention to Bar mailings and proactively contact the Bar if you wish to continue to receive these materials.

3. As mentioned previously within the Section, more volunteers are still needed for the Florida Attorneys Savings Home ("FASH") program. While the program has been a great success so far, more volunteers are needed to assist families in need (especially in Lee County; many of these cases are being referred to Collier County volunteers). If you could take on even one or two of the cases, it would be a great help. If you are interested in becoming a volunteer, please visit *www.floridaprobono.org* to sign up with your contact information

Saturday concluded with a 1950s style dinner and entertainment at Ragtops restaurant. As is traditional, the meeting-event concluded with the Farwell Breakfast on Sunday.

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Florida Hometown Democracy: The Vote Is On!

Submitted by Nicole Kibert on behalf of the Development & Governmental Regulation of Real Estate Committee

Voters will decide whether to amend the Florida Constitution to require a referendum each time a local government approves a comprehensive plan amendment. Actually, the decision will be made by those voters who actually make it to the polls, and then by those who actually make their way down the ballot to referendum issues!

At first blush it seems innocuous, but as with any constitutional amendment, the proposal spawns numerous practical issues. In short background: A comprehensive plan is akin to a local government's growth management constitution. Florida's 1985 Growth Management Act requires each community to adopt a comprehensive plan and follow the plan when approving development. Changes to the comprehensive plan must be reviewed by the Department of Community Affairs ("DCA") and adopted by the local governing body. A comprehensive plan can theoretically be amended twice per year but there are numerous statutory exceptions allowing numerous changes per year.

Proposed Constitutional "Florida Hometown Democracy" Amendment debate can spur true reform in Florida if we can bring people together to fix the growth management system.

The proposed amendment is a reaction to the plethora of comprehensive plan amendments. Amendment proponents are perturbed that comprehensive plans, as originally adopted after great debate and publicity, are not being followed and feel that the plans are being amended at will by developers through a process that, by practicality, has less public involvement. The DCA reviews an average of 12,000 proposed comprehensive plan amendments each year. Thus, proposed amendment drafters' frustration is held by many.

While advocates believe that the proposed amendment will remedy Florida's growth concerns, arguably their vision is shortsighted and their proposed solution impracticable. Increased public participation is a stated goal of the proposed amendment, but the practical effect may be growth driven more than ever by special interests that can pay for expensive advertising in communities where a particular comprehensive plan amendment is desired, particularly skewing results in elections when a small contingent of voters, typically 10% or less of registered voters, actually vote.

The volume of proposed comprehensive plan amendments would impose an incredible, if not impossible, burden on a voter approval process. Tallies in local elections demonstrate voters' lack of time, or inclination, or both, to study highly complex and technical issues before voting. Then there is the burden of the expense of additional elections.

The reality is that local governments cannot entice citizens to cast votes for a local election. Will a special election called for a "comprehensive plan amendment" entice greater voter participation? Proponents hope that the proposed constitutional amendment will halt the numerous proposed comprehensive plan amendments.

Thus, as in all significant efforts, the "devil is in the details." With this, it is feared that the proposed constitutional amendment will devastate Florida growth management, causing burdensome delays, increased costs, unnecessary layers of bureaucracy, combative lobbying campaigns, voter confusion and, ultimately, unwise, uneducated or misguided results.

Instead of local ballot initiatives, is it more productive to promote a constructive dialogue on improving Florida's growth management laws? Jeffrey Kleeger, on behalf of the Development & Governmental Regulation of Real Estate Committee, published an article in the Fall 2007 Actionline, *http://tinyurl.com/menr7o.* In addition, Mr. Kleeger has written a new article on Hometown Democracy including background about the theoretical political aspects of citizen initiatives which you can access here: http://tinyurl.com/mvlknx.

The "Florida Hometown Democracy" Amendment will be on the November 2010 General Election ballot, designated as "Amendment 4" to amend Article II, §7 of the Florida Constitution. A copy can be found on the State of Florida website at: *http://election.dos.state.fl.us/constitutional-amendments/2010-proposed.shtml.*

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29th Annual RPPTL Legislative and Case Law Update

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Section Welcome and Introduction to RPPTL-PAC
John B. Neukamm, Tampa, RPPTL Section Chair
Laird A. Lile, RPPTL-PAC Chair

Legislative Potpourri and "Storm Warnings" on the Horizon
Peter M. Dunbar, Tallahassee

2009 Amendments to Lis Pendens Statute
Martin S. Awerbach, Clearwater

Growth Management and Property Taxes: The New Deal in 2009
Nicole C. Kibert, Tampa

The Continuing Evolution of Florida Statutory Disclaimer Law
Richard Gans, Sarasota

New Court Filing Fees: Another Reason to Avoid Probate?
Brian J. Felcoski, Coral Gables

Unsettled About Settlement Statements? Changes to HUD-1 and Policy Coverage
William T. Connor, Orlando

Clearing the Air on Elective Share
Debra L. Boje, Tampa

Demise of the Crescent Miami Drop & Swap
Ed Burt Bruton, Jr., Miami

Nitpicking the Trust Code (2009 edition)
Barry F. Spivey, Sarasota

The Gift of Life: Anatomical Gifts
Charles F. Robinson, Clearwater

Court Funding and Clerks of Court
Honorable Chief Justice Peggy A. Quince, Tallahassee

Lions (Corporations), Tigers (CDDs) and Bears (Timeshares), Oh My! ... but No Wolves (Condos)
Robert S. Freedman, Tampa

"Standing on Principal … or is it Income?" A discussion of changes to Section 738.602 of the Uniform Principal and Income Act
Kristen M. Lynch, Boca Raton

Chapter 558 – Notice of Defect and Opportunity to Cure Changes
Larry R. Leiby, Ft. Lauderdale

Exemptions, Exemptions … and More: Probate Update
Charles I. Nash, Melbourne

The Ethics of Mortgage Reform: Foreclosure Rescue Consultants and the Unlicensed Practice of Law
Susan Spurgeon, Tampa

Recent Cases Involving Ethics and Professionalism – and Why it Matters To Your Practice
Deborah P. Goodall, Ft. Lauderdale

Florida Real Property Case Law Update: A Survey of Significant Recent Florida Appellate Decisions Affecting Real Estate Practitioners
Michael Gelfand, West Palm Beach

Recent Cases: Probate, Trust and Guardianship Law
David C. Brennan, Orlando

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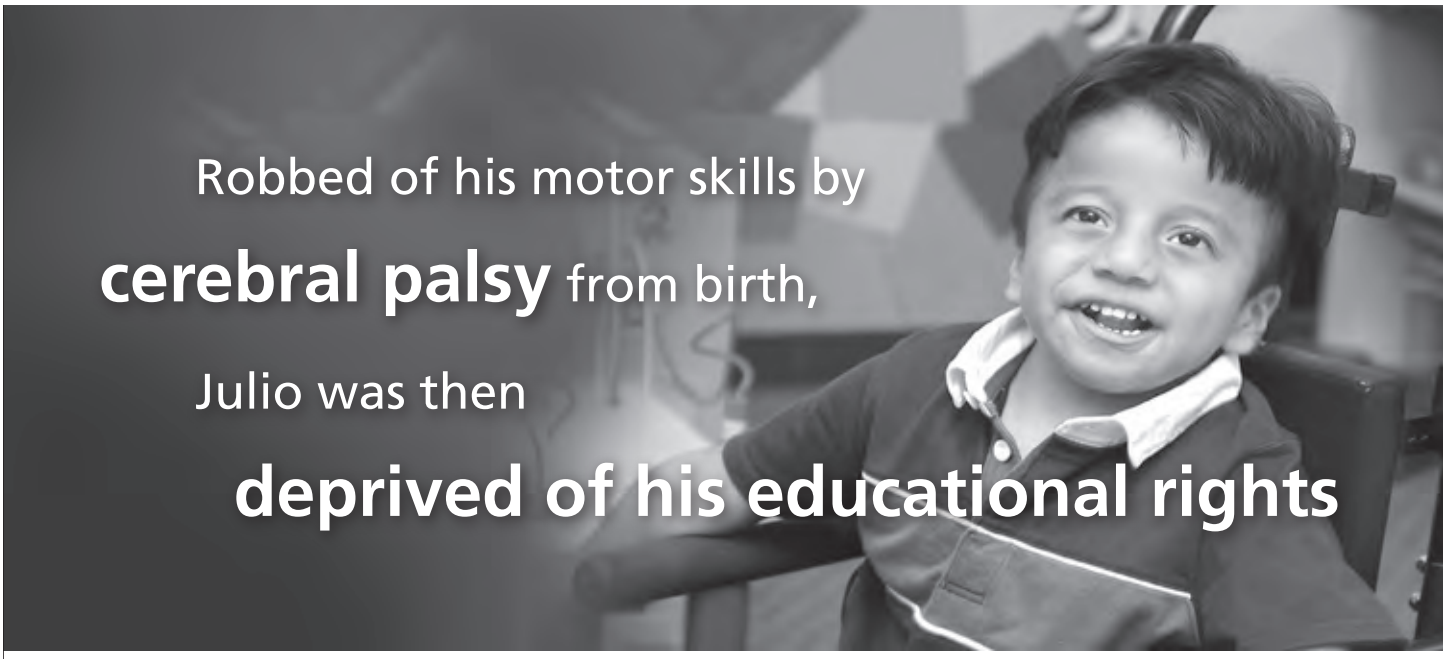
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New *Lis Pendens* Statute Effective July 1, 2009

By Aniella Gonzalez, Esq., RPPTL Fellow 2008-2010
Krinzman Huss & Lubetsky, LLP, Miami, FL

On May 20, 2009, Governor Crist signed into law SB 1552, revising section 48.23, Florida Statutes (the "Lis Pendens Statute"), which become effective on July 1, 2009. The changes were submitted to the Florida Legislature by the RPPTL Section to address recent developments and long-standing problems with section 48.23, the purpose of which is to give third parties constructive notice of the pendency of an action affecting real property.

The new Lis Pendens Statute:

- Protects most transferees or mortgagees of property during a pending lawsuit where the lis pendens is discharged, expires, or is withdrawn, even if the lawsuit is continuing;
- Permits a notice of lis pendens to include either the date the action was filed, the date of the clerk's electronic receipt, or the case number, as opposed to the time of the institution of the action, and requires the lis pendens to be filed in the official records;
- Extends the time for holders of unrecorded interests to intervene from 20 days to 30 days; and
- Requires a court to control a lis pendens based on an unrecorded interest as it would an injunction.

I. Avoiding Discharged and Expired Lis Pendens from Affecting Property

Under the prior and the new lis pendens statute, a notice of lis pendens expires one year from the commencement of the action, unless the relief sought is based upon a duly recorded instrument or a lien claimed under part I of chapter 713, Florida Statutes. Thus, a plaintiff whose action is founded on a duly recorded instrument (e.g., a mortgage), does not suffer any risk of expiration or discharge of its lis pendens. However, a plaintiff whose action is founded on an unrecorded interest risks having its lis pendens expire after one year, or being discharged by the court after a hearing. Prior to the change in the statute, even though a lis pendens was no longer of record because it had expired or been discharged, title insurers generally refused to insure title without an exception for the lawsuit because there was actual notice of the pendency of the action. Under the new statute, the owner of the property can sell or mortgage to a third party for value, and such third party will take its interest free of any interest claimed in the action, if the lis pendens was discharged, withdrawn or expired during the pendency of the lawsuit.

II. Technical Requirement of the "Time of Institution of the Action" Clarified

In *Oz v. Countrywide Home Loans, Inc.*, 953 So. 2d 619 (Fla. 3d DCA 2007), the Third District Court of Appeal upheld discharge of two lis pendens because they failed to, among other things, contain "the time of institution of the action," which was required under the old statute. Under the new statute, a notice of lis pendens is effective when it references the date the action was filed, the clerk's electronic receipt, or the case number. These identifiers will permit an individual searching title to locate the action, and since clerks often stamp the case number on the face of a lis pendens when the action is filed, such change simplifies the contemporaneous filing of a complaint and lis pendens.

III. Holders of Unrecorded Interests Have 30 Days to Intervene

Under the new statute, holders of unrecorded interests, who may not be checking property records frequently, are given an additional 10 days to intervene in an action by extending the time to intervene from 20 days to 30 days.

IV. Trial Court Must Control Lis Pendens Based on Unrecorded Interest Like an Injunction

The old statute provided that a court "may" control a notice of lis pendens as it would grant and dissolve injunctions. The new statute now mandates that the court treat a notice of lis pendens that is not based upon a duly recorded instrument as it would an injunction. If it is determined by the trial court that the lis pendens should remain of record, the court must determine the amount of bond to be posted to protect the owner against loss in the event the plaintiff does not prevail.

2009-2010

RPPTL Section Budget

The following budget was approved by the Executive Council and by The Board of Governors in January 2009. The Section has approved a line item to pay speaker(s) expense(s) in excess of $50 per day as allowed by CLE policy but there has been no maximum specified at this time. All travel and office expense payments are in accordance with Standing Board Policy 5.23. Travel expenses for other than Bar members or Bar staff may be made if in accordance with 5.23(5)(h), a copy of which is available from Bar headquarters upon request.

REVENUE

Section Dues	465,000
Affiliate Dues	1,750
Admin Fee to TFB	163,450
Registrations	140,000
CLE Courses	189,250
DVD-Section Service	10,000
Compact Disc-Section Service	19,200
Book Sales	3,500
Actionline Advertising	12,000
Spouse Program	10,000
Exhibit Fees	15,000
Sponsorships	210,000
Meals	50,000
Investment Allocation	17,654
Board / Council Meeting Reg	160,000
Section Differential	20,000
Total Budgeted Revenues	**$1,486,804**

EXPENSES

Credit Card Fees	3,672
Employee Travel	6,525
Equipment Rental	15,000
1st Class & Misc Mail	300
Express Mail	1,500
Promotional Printing	2,000
Promotional Mailing	14,000
Postage	7,000
Printing	2,500
Newsletter	40,000
Supplies	300
Photocopying	500
Registration Support	3,000
Officers Conference	1,200
CLE Speaker Expense	3,000
Reception	67,500
Luncheons	60,000
Golf Tournament Expense	11,000
Committee Expenses	50,000
Realtor Relations	5,000

EXPENSES (continued)

Diversity Initiative	15,000
Exhibitor Fees	250
Entertainment	20,000
Board or Council Meeting	400,000
Council Mtg Recreation	35,000
Hospitality Suite	20,000
Sleeping Rooms	2,500
Speaker Gifts	2,000
Council Mbrs Handbook	3,500
Service Recognition	5,000
Law School Liaison	7,500
Fellowships	10,000
Website	50,000
Legislative Consultants	100,000
Legislative Travel	12,000
Memorial Tributes	500
Operating Reserve	79,684
Miscellaneous	500
Steering Committee	1,500
Speakers Expense	7,000
Speakers Hotel	3,700
Outline Print-Inhouse	7,000
Outline Print-Contract	13,000
Course Credit Fee	150
Meeting Meals	84,800
Refreshment Breaks	13,000
AV Ctr Dup Prod	1,600
Breakfast	38,000
Time CLE Courses	500
Meetings Administration	4,456
Advertising News	4,958
Graphics & Art	12,686
Registrars	2,500
Total Budgeted Expenses	**$1,252,281**
Net Operations	**234,523**
Budgeted Beginning Fund Balance	**882,682**
Budgeted Fund Balance	**$1,117,205**

Spotlight on Development & Government Regulation of Real Estate

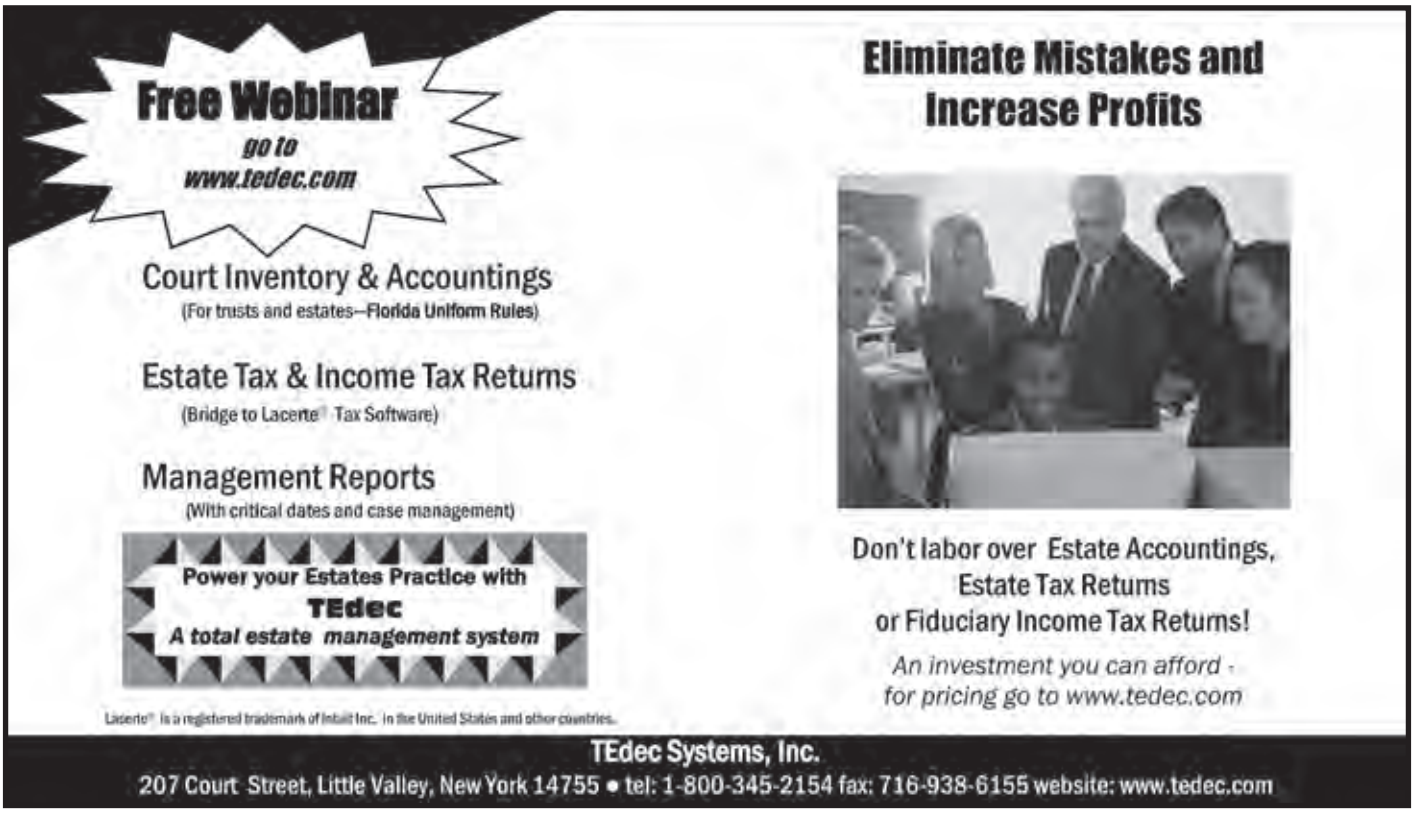
By Jane L. Cornett, Esq., Cornett, Googe & Associates, P.A., Stuart, Florida

The Development & Governmental Regulation of Real Estate Committee has a somewhat unique position among the committees of the Real Property Division of our Section. The role of this committee is to provide background and information to the members of our Section on any kind of regulations that impact real estate practitioners so that we Section members can, in turn, better serve the citizens of Florida. The committee has, in recent years, dealt with land use issues and environmental regulations, both at the state and federal levels. A new growing area of interest to the real estate practitioners and this committee is energy and energy efficiency. The committee is chaired by Eleanor Wynn Taft with Nicole Courtney Kibert serving as Vice Chair.

This committee is responsible for seminar presentations, providing speakers for seminars prepared by other committees and articles for publication in ActionLine. The committee has also been requested to provide comments on proposed legislation to our Section lobbyists and is currently working on a draft position statement for presentation in September relative to the "Hometown Democracy" constitutional amendment that will be on the ballot as Amendment 4 in the 2010 General Election. Nicole Courtney Kibert, Vice Chair of the committee, reports that the hometown democracy amendment has presented many challenges in attempting to develop an appropriate strategy on how to best approach this far-reaching constitutional proposal. The goal will be to explore ways to effectively educate the Bar and the public on the impact this amendment would have on local governmental function.

The committee is the co-sponsor of "The Changing World of RESPA & Regulatory Compliance" seminar to be held October 8th (Tampa / Webcast) and October 9th (Fort Lauderdale). On January 29th, 2010 (Tampa / Webcast), the committee will again offer an updated version of its popular program "Environmental & Land Use Law Issues for Real Estate Practitioners" in conjunction with the Environment and Land Use Law section of the bar.

As you can see, this is a committee that is deeply immersed in current issues. The committee has a fluctuating membership of between ten to twenty lawyers involved in some aspect of real estate, environmental and land use law. The committee would welcome new members to its fold. The Vice Chair stated: "Our committee would LOVE to have new members." If you're interested in joining this active and vital committee, feel free to contact Ellie at *etaft@taftlawnaples.com* or Nicole at *nkibert@carltonfields.com*.



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Probate Case Summaries

Prepared by Hung V. Nguyen

Welbaum Guernsey, Coral Gables, Florida

Attorneys for a personal representative who were hired through a prepaid legal services program were entitled to 100% of their fees where the trial court did not find the hours spent on the case or the prepaid legal services rate where unreasonable.

Glantz and Glantz, P.A. v. Chinchilla, 34 Fla. L. Weekly D1124 (Fla. 4th DCA 2009)

A personal representative hired a law firm to help administer the estate through a prepaid legal services program. The personal representative then wrote the court concerned about the law firm's billing.

The court held an evidentiary hearing on the matter. Pursuant to the prepaid legal services program, the law firm charged $115 per hour, 51% of their normal billing rate of $225 an hour. The total amount charged was $12,400 plus costs, which was for services that included defending a will contest, filing and pursuing a motion to disqualify another attorney, and working with a curator in connection with the sale of the estate's property. The law firm submitted an affidavit of an expert attesting to the reasonableness of the fees and costs, and specifically that $13,500 was a reasonable amount. In addition, testimony evidenced that the total charges already received the discount.

After the hearing, the trial court entered an order awarding the law firm $6,885, which was 51% of the $13,500 reasonable amount attested to by the expert. A motion for rehearing was denied. Apparently, the trial court reduced the fees and costs to 51% of what was requested despite the fact that the fees and costs were already reduced to 51% from the original rate of $225 an hour.

The appellate court cited Section 733.6171, Florida Statutes, noting that attorneys representing probate estates are entitled to receive reasonable compensation, and reversed the trial court's decision because there was no finding by the trial court that the already discounted fees and costs were unreasonable.

Trial court can assess attorney's fees against a personal representative individually based upon frivolous litigation.

Geary v. Butzel Long, P.C., 13 So. 3d 149 (Fla. 4th DCA 2009)

A law firm withdrew as counsel for the personal representative and submitted its last bill for $4,127. The personal representative, who was also a beneficiary of the estate, hired another law firm to object to the bill for $4,127 and also sought disgorgement of fees previously paid to the original law firm. The trial court ultimately awarded $4,127 to the original law firm and found that there was no basis for disgorgement of previously received fees.

When the estate did not pay the fees awarded, the original law firm petitioned to remove the personal representative and for appointment of an administrator ad litem who would pay the fees. It also filed a petition for payment of fees of $19,000 and costs of $4,000 incurred in litigating the $4,127 fee dispute. The estate paid the $4,127 but the litigation regarding the fees for litigating the original $4,127 continued. Ultimately the trial court awarded the original law firm $49,000 in fees and costs.

While the fees on fees litigation continued, the personal representative paid herself $18,600 and the estate's new law firm $43,000. The remaining beneficiaries objected to the personal representative's fees as well as the fees paid to the new law firm. The trial court ultimately ruled that the personal representative should have obtained court approval prior to paying herself the $18,600 and $43,000 to the new law firm because the original attorneys were substantial creditors and the estate did not have enough money to pay the creditor's claims as well as the personal representative's fees and the fees for the estate's new law firm. The trial court further held that the initial litigation challenging the $4,127 may have been justified but the litigation over fees incurred in litigating the $4,127 fee was not. The trial court ordered the personal representative and the new law firm to disgorge the fees they received during the fees on fees litigation, made the personal representative personally responsible for the payment of the new law firm, and made her liable for the original law firm's attorney's fees associated with the fees on fees litigation from the personal representative's portion of the estate. Finally, the court awarded an additional $28,000.00 in fees and granted a judgment against the estate, the personal representative's portion of the estate, and the personal representative, individually.

The personal representative appealed the trial court's order which 1) ordered her, as personal representative of the estate, to be personally responsible for attorney's fees and costs incurred in challenging the original law firm's attorney's fees, 2) assessed the original law firm's attorney's fees and costs against her, and 3) ordered her and the new law firm to refund fees they received. The personal representative argued there had to be a finding of bath faith on her part in order for the trial court to rule the way it did.

The appellate court cited Sections 733.6175(2) and

733.106(4), Florida Statutes, that would permit a court to direct from what part of an estate a fee assessment would be paid, and held that frivolous litigation can be the basis for an assessment of attorney's fees against the personal representative of an estate, rejecting the argument that a finding of bad faith was needed. However, the appellate court held that the trial court erred in awarding fees against the personal representative for litigation which occurred during the initial litigation over the $4,127 because there was no finding that this litigation was frivolous. In fact, the trial court wrote that the initial litigation may have been justified. On this same basis, the appellate court reversed that part of the trial court's order which made the personal representative liable for the new law firm's fees incurred in defending the initial litigation over the $4,127.

A trustee may not challenge a settlor's revocation of an inter vivos revocable trust on undue influence grounds.

MacIntyre v. Wedell, 12 So. 3d 273 (Fla. 4th DCA 2009)

Prior to her death, the decedent created a revocable trust, which provided that at the time of the settlor's death the residue would be divided equally among the settlor's three sisters, and transferred her assets into the trust. She also had a pour over will in favor of the trust.

After the settlor's death, the trustee, who was one of the settlor's sisters, filed suit against another sister, alleging that just weeks prior to her death, the decedent transferred money into an account jointly titled in the decedent and the defendant's name and that the decedent also transferred cash and securities to the defendant (which removed funds from the trust). It was alleged that the decedent made the transfers during a time when she was suffering from physical and mental ailments and that they were the results of undue influence.

The trial court dismissed the law suit with prejudice based upon *Florida National Bank of Palm Beach County v. Genova*, 460 So. 2d 895 (Fla. 1984), which bars an undue influence challenge to a settlor's removal of funds from her revocable trust. The appellate court used language from *Genova* stating that concepts of undue influence could not be resorted to in order to deprive a settlor of her right to revoke her trust absent a judicial determination or medical certification of physical or mental incapacity.

Furthermore, the appellate court distinguished the instant case from *Paananen v. Kruse*, 581 So.2d 186 (Fla. 2d DCA 1991), whereby the court invalidated a trust, created as the product of undue influence, that later ripened into a testamentary disposition. In the instant case, the inter vivos trust was revoked during the settlor's lifetime and never ripened into a testamentary disposition.

Curator of estate could not impose lien on decedent's homestead real property without meeting the requirements of Section 733.608, Florida Statutes, which includes taking possession of the property where it is not occupied by a person who appears to have an interest in the property, and incurring fees for the purpose of preserving, maintaining, insuring, or protecting the homestead property.

Herrilka v. Yates, 13 So. 3d 122 (Fla. 4th DCA 2009)

As a result of a dispute regarding the appointment of a personal representative, the trial court appointed a curator to administer the estate. The curator performed legal services on behalf of the estate as a whole, but the services were not conducted for the specific purpose of preserving, insuring, and protecting the homestead property. There was no dispute that the real property in question was homestead property and it was occupied by the decedent's alleged surviving spouse and joint owner of the homestead property.

The curator filed a motion to impose a lien on the estate's homestead property pursuant to Section 733.608, Florida Statutes which was granted by the trial court. An appeal was taken by the alleged surviving spouse.

The appellate court reversed the trial court's decision because the curator did not meet the requirements of Section 733.608, Florida Statutes prior to imposition of a lien. Specifically two requirements of the statute were not met, to wit, 1) the curator did not and could not have taken possession of the homestead property because it was occupied by an "interested person", the alleged surviving spouse; and 2) the fees incurred by the curator were not specifically incurred for the purpose of preserving, maintaining, insuring, or protecting the homestead property.

The State did not meet its burden by clear and convincing evidence to involuntarily commit an individual where the State's psychiatrist had incomplete information regarding the individual's mixing of medication and alcohol and could not articulate any threats made by the individual other than a threat to sue for violation of his civil rights.

Lehrke v. State of Florida, 12 So. 3d 307 (Fla. 2d DCA 2009)

The trial court ordered the appellant to be involuntarily

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Probate Case Summaries

from preceding page

placed in a public facility for a period not to exceed two months pursuant to Chapter 394, Florida Statutes.

At the outset, the appellate court noted that the appeal was not moot even though the appeal was heard after the appellant was released because the trial court's order of involuntary placement could provide the basis for the State to seek a lien against the appellant's property for the costs associated with the commitment long after completion of the commitment.

The appellate court reversed the trial court's order of involuntary placement because it found that the State did not meet its burden using the clear and convincing standard. Before the State can involuntarily place an individual, it must, pursuant to Section 394.467, Florida Statutes, show 1) that an individual has a mental illness and has either refused voluntary placement or is unable to determine whether placement is necessary, and 2) either that the individual is likely to suffer neglect without treatment or that there is a substantial likelihood that in the near future he will inflict serious bodily harm on himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm.

It was undisputed that the appellant was diagnosed with atypical psychosis and refused voluntary placement. The issue was whether the appellant would suffer from neglect without treatment or there was a substantial likelihood that he will inflict harm on himself or another person. At the hearing before the magistrate, the State's psychiatrist testified that he had incomplete records for information regarding the appellant's mixing of his medication and alcohol and he could not articulate what threats the appellant had made other than to sue for a violation of his civil rights. The appellate court reversed the trial court's order of involuntary commitment because the record did not contain clear and convincing evidence to support the State's burden.

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Real Estate Case Summaries

Prepared by Meredith Freeman, Bush Ross, Tampa, FL

The Appellate Court reversed the trial court's dismissal with prejudice because the developer's challenges of Plaintiff's failure to satisfy a condition precedent contained in the parties' listing agreement were defenses and not deficiencies in the complaint.

Lonestar Alternative Solution, Inc. v Leview-Boymelgreen Soleil Developers, LLC, 10 So. 3d 1169 (Fla. 3d DCA 2009).

The parties entered into a listing agreement wherein the developer agreed to pay the broker a commission for sales of condominium units. The purchase agreements for the condominium units provided the buyer with a fifteen day rescission period from the date of signing and the right to rescind the purchase agreement within fifteen days of receiving an amendment which materially and adversely altered the offering. The listing agreement provided that the final commission would be paid "upon the occurrence of the closing or the developer's default." After the broker sold approximately six units, but before the broker received its final commission, the developer made a material, adverse change to the offering. All of the broker's buyers cancelled their purchase agreements due to the material and adverse change. The broker filed suit alleging that the developer failed to pay all commissions due and owing under the listing agreement and that the developer defaulted under the listing agreement, by making material and adverse changes to the offering. The developer moved to dismiss arguing that the listing agreement contained a condition precedent that had to be satisfied before the commissions were due. The trial court dismissed with prejudice. The Appellate Court reversed, finding that the developer's arguments were defenses and did not attack the sufficiency of the complaint.

The doctrine of "Caveat Emptor" (let the buyer beware) does not protect the seller of commercial property from the active concealment of a known defect.

Hayim Real Estate Holdings, LLC. v. Action Watercraft International Inc., 34 Fla. L. Weekly D1418 (Fla. 3d DCA 2009)

The parties entered into a contract for the purchase of commercial property. The contract required all plumbing systems, among other systems, to be in working order at closing. The contract further required the seller to communicate its knowledge of specific problems regarding the property. After the sale of the property, the buyer discovered latent problems with the septic tank and draining field which resulted in the buyer filing suit. The trial court granted summary judgment in favor of the seller relying on the doctrine of "Caveat Emptor." The Appellate Court stated "Florida Law distinguishes between the mere non-disclosure of a known defect, a non-actionable offense, and the active concealment of one, an actionable offense…" The Appellate Court found that whether the seller actively concealed a known defect was a genuine issue of material fact in dispute and reversed.

A property owner stated a cause of action for declaratory relief when she sought a determination of her rights to construct a boat lift under a settlement agreement entered into by her homeowners' association and the previous owner of the property.

Murphy v. Bay Colony Property Owners Association, 12 So. 3d 924 (Fla. 2d DCA 2009)

The previous owner of Plaintiff's property and the ho-

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meowners' association entered into a settlement agreement which restricted the construction of a boat lift without the homeowners' association's approval. The settlement agreement was to run with the land. Plaintiff purchased the property and sought the homeowners' association's approval of a boat lift. The homeowners' association denied Plaintiff's request. Plaintiff filed suit seeking a declaration of her rights under the settlement agreement and alleged that the homeowners' association's denial of her request to construct a boat lift was arbitrary and capricious. The homeowners' association filed a motion to dismiss arguing that the settlement agreement unambiguously gave it the right to approve or deny Plaintiff's request to construct a boat lift. The trial court dismissed with prejudice. The Appellate Court reversed, finding that the trial court improperly ruled on the merits of the claim.

In granting Defendant's Motion for Summary Judgment, the trial court improperly relied on an appraiser's affidavit to resolve a patent ambiguity with regard to the parties' intent, which was a question of fact for the trier of fact.

Skopelos Seafood & Steak Restaurant, Inc. v. Estate of Silivos, 34 Fla. L. Weekly D1720b (Fla. 1st DCA 2009)

The lessee of a property provided notice of its intent to exercise the purchase option included in the parties' lease. The purchase option contained a method for calculating the sales price of the property. However, the language in the lease created a patent ambiguity as to whether the value of the property was the "current fair rental value" or the "fair market value." In granting summary judgment in favor of Defendant, the trial court relied on extrinsic evidence in the form of an appraiser's affidavit submitted by Defendant. The affidavit purported to explain the general appraisal methodologies commonly used by appraisers. Based on the appraiser's affidavit, the trial court found that the method for calculating the sales price did not require any particular approach. The Appellate Court reversed, holding that the patent ambiguity in the lease created an issue as to the parties' intent that should have been resolved by the trier of fact.

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PROBATE & GUARDIANSHIP FORMS

EFFECTIVE JANUARY 1, 2009
DEVELOPED BY MEMBERS OF THE REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR

FIRM: _____

ATTORNEY NAME: _____ ATTORNEY #: _____

PHYSICAL ADDRESS: _____

CITY/STATE/ZIP: _____

PHONE: (___)_____ E-MAIL ADDRESS: _____

2009 PROBATE FORMS

OPTION #1 ALL 2009 FORMS WITH INDEX ON DISK $379.10
OPTION #2 2009 NEW AND REVISED FORMS WITH INDEX ON DISK. .$189.55
OPTION #3 1 PHYSICAL COPY OF ALL 2009 FORMS WITH INDEX . . .$389.10

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IF YOU WOULD LIKE TO ORDER INDIVIDUAL FORMS, PLEASE VISIT WWW.FLSSI.ORG TO DOWNLOAD OUR "LONG" ORDER FORM WHICH LISTS EACH FORM FOR SEPARATE PURCHASE.

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 2009 GUARDIANSHIP FORMS IN AN INTERACTIVE FORMAT PLEASE VISIT WWW.FLSSI.ORG TO VIEW OUR LIST OF OFFICIAL LICENSED VENDORS.

METHOD OF PAYMENT

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The Florida Bar CLE
Audio CD / DVD List & Order Form

TO ORDER

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

TURNAROUND TIME

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

TO QUALIFY FOR THE SECTION MEMBER PRICE

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

PLEASE INCLUDE SALES TAX WITH YOUR ORDER

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

TO QUALIFY FOR TAX EXEMPT STATUS

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

SHIPPING

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

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

Audio CD / DVD Order Form

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CLER Deadline: _____ Certification Deadline: _____

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Month Year

The Florida Bar CLE Audio/Video List

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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.

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							
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 In DVD
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 In 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 In DVD
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 In DVD
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 In DVD
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**

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
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**
0717	Hard Times: Foreclosures, Bankruptcy Offers of Judgment, MERS & Such **CD & DVD**	**5.0**	**1.0 E**	RE = 5.0	01/23/2009- 07/23/2010	**S = $145.00** **N = $170.00**	**S = $250.00** **N = $275.00**
0718	Trust & Estate Symposium 2009: The Best Laid Plans... A Showdown Between the Drafters and the Litigators **CD & DVD**	**7.0**	**0**	EP = 5.5	02/12/2009- 08/12/2010	**S = $255.00** **N = $280.00**	**S = $275.00** **N = $300.00**
0691	Advanced Construction Law & Certification Review Course 2009 **CD Only**	**19.0**	**1.0 E**	BL = 19.0 CC = 19.0 CL = 19.0 RE = 19.0	03/06/2009- 09/06/2010	**S = $350.00** **N = $375.00**	Not Available In DVD
0721	So You Think You Can Dance... But Can You Do the Probate Shuffle? **CD & DVD**	**8.0**	**1.0 E**	ED = 6.0 EP = 6.0 RE = 8.0 TX = 6.0	03/19/2009- 09/19/2010	**S = $270.00** **N = $295.00**	**S = $350.00** **N = $375.00**
0696	Wills, Trusts and Estates Certification Review & Advance Practice Update **CD Only**	**17.5**	**2.0 E**	ED = 17.5 EP = 17.5 TX = 17.5	04/03/2009- 10/03/2010	**S = $310.00** **N = $335.00**	Not Available In DVD
0697	Advanced Real Estate Law and Certification Review Course **CD Only**	**16.5**	**1.0 E**	CC = 16.5 CL = 16.5 RE = 16.5 TX = 12.5	04/03/2009- 10/03/2010	**S = $405.00** **N = $430.00**	Not Available In DVD
0724	Ins and Outs of Community Association Law **CD & DVD**	**7.5**	**0**	RE = 7.5	04/23/2009- 10/23/2010	**S = $215.00** **N = $240.00**	**S = $295.00** **N = $320.00**
0725	Issues Facing Today's Community Association Practitioner **CD & DVD**	**7.0**	**2.5 E**	RE = 7.0	04/24/2009- 10/24/2010	**S = $230.00** **N = $255.00**	**S = $310.00** **N = $335.00**
0726	A Study in Fine Arts: Mixed Media of Real Estate, Probate, and Taxes **CD & DVD**	**4.0**	**0**	EP = 3.0 RE = 4.0 TX = 3.0	05/22/2009- 11/22/2010	**S = $185.00** **N = $210.00**	**S = $250.00** **N = $275.00**
1037	29th Annual RPPTL Legislative and Case Law Update **CD & DVD**	**8.0**	**1.0 E**	AP = 1.0 ED = 2.0 EP = 6.0 RE = 8.0 TX = 1.0	07/31/2009- 01/31/2011	**$235.00**	**$235.00**

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).

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.

SCHEDULE

THE CHANGING WORLD OF RESPA & REGULATORY COMPLIANCE

Oct. 8, 2009 – Tampa Airport Marriott, Tampa
Oct. 9, 2009 – Hilton Fort Lauderdale Airport, Fort Lauderdale
Oct. 8, 2009 – Live Webcast / Virtual Seminar

Hotel Reservations: (850) 561-5831

GUARDIANSHIP LAW: TRICKS AND TREATS

Oct. 23, 2009 – Live Presentation and Webcast
Tampa Airport Marriott
4200 George J. Bean Parkway • Tampa, FL 33607 • (813) 879-5151

Hotel Reservations: (850) 561-5831

TODAY'S ISSUES IN COMMERCIAL LEASING TRANSACTIONS

Nov. 5, 2009 – Hilton Fort Lauderdale Airport, Fort Lauderdale
Nov 6, 2009 – Tampa Airport Marriott, Tampa
Hotel Reservations: (850) 561-5831

TRUSTS IN FLORIDA: THE OUTER LIMITS

Live and Webcast Presentations:
Nov. 12, 2009 – Tampa Airport Marriott, Tampa
Nov. 13, 2009 – Hilton Fort Lauderdale Airport, Fort Lauderdale

Hotel Reservations: (850) 561-5831

EXECUTIVE COUNCIL MEETING

Jan. 14 - 17, 2010
The Casa Monica Hotel
St. Augustine, Florida

Hotel Reservations: (904) 827-1888
www.casamonica.com
Room Rate: $199.00
Cut-off Date: December 14, 2009

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).

The Florida Bar
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DEADLINE

for submissions for the next issue of ActionLine is

OCTOBER 31, 2009.

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