# ActionLine

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



*Individual Trustee Protection*

*Interpretation of Title Insurance Standards*

*More Homestead Issues*

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# Mid-Term Report



By Brian J. Felcoski

Section Chair 2010 - 2011

*Chair's Column*

As I sit here writing this column, it is hard to believe almost six months have elapsed for my year as Section Chair. During that time, we have held three of our five Section executive council meetings. A tremendous amount of work has been performed by our general standing, real property division and probate division committees. The following are some of the highlights.

## General Standing Committees

Our general standing committees are guided this year through the great leadership of the Section's **Chair-Elect George Meyer**. These committees assist with the management of the Section's operations. Their responsibilities include providing this *ActionLine* publication, coordinating our amicus activities, overseeing our budget, managing our CLE, steering our legislative activities, developing and retaining an active and diverse membership, maintaining our website, guiding our pro bono activities, and developing and implementing our strategic planning. A few significant developments arising out of the work of these committees are as follows:

Our bylaws committee, chaired by **Fletcher Belcher**, completed the committee's long term project to review and revise our Section's bylaws. The committee's final proposal was approved by the Section's executive council at The Breakers meeting in August, with one amendment at our Clearwater Beach meeting last November. Thanks to Fletcher and the rest of the bylaws committee for the years of hard work on that project. These proposed bylaws are not effective until they are also approved by the Board of Governors of The Florida Bar, which has not yet occurred. You can review those bylaws on the Section's webpage at http://www.rpptl.org/Content/Committees/Bylaws/RPPTL_PROPOSED_BYLAWS_11-6-10.pdf.

We are blessed to have **Dan DeCubellis** as our section liaison with the Florida Bar's Board of Governors. Dan keeps the Section informed of any developments at The Florida Bar that may impact the Section. For example, we learned that The Florida Bar was considering the issuance of an advisory opinion addressing a lawyer's duty of confidentiality to the lawyer's deceased client. When we received this news, we asked our Section's professionalism committee to provide appropriate input to the Bar's professional ethics committee, which was the committee responsible for drafting the opinion. One of our dedicated section soldiers, **Barry Spivey**, volunteered to act on behalf of the Section to assist the Bar's professional ethics committee. After giving the Section an opportunity to provide input, the Bar's ethics committee has issued Proposed Advisory Opinion 10-3. By the time this article is published, Proposed Advisory Opinion 10-3 is expected to be a final opinion. It is a must read for all lawyers. We thank Dan for keeping the Section advised of Bar developments and Barry for the time he volunteered on this project. We truly appreciate the Bar's Professional Ethics Committee's efforts on this important issue.

It is no secret that the last three years have been extremely tough economically. The recession limited many institutions' abilities to sponsor events. If you looked at the Section's sponsorship revenues currently and over the last few years, however, you wouldn't think there was a recession. A major reason for the Section's success in this area is the hard work of our sponsorship committee, chaired by **Kristen Lynch**. As a result of our sponsorship committee's efforts, we currently have very limited openings for new sponsors, but we know that through the genius of Kristen and the rest of the sponsorship committee, they will create new opportunities for our existing and prospective sponsors.

## Probate Division Committees

At the present time, we have over 15 active probate division committees working under the supervision of **Fletcher Belcher**, our probate division director. The committees are active studying trust, estate and guardianship issues. They assist with the development of CLE programs, provide technical assistance to legislative staff on legislative issues and create proposed legislation.

Our power of attorney committee, chaired by **Tami Conetta**, completed its work on a new power of attorney act for Florida. The committee spent countless hours over the last few years working to take the Uniform Power of Attorney Act promulgated by NCCUSL and to make it work properly in Florida. We thank Tami and the rest of the committee for all of their efforts. We know there is still work to be done in Tallahassee.

Some committees do a tremendous amount of work on a piece of proposed legislation. They educate the Section's executive council about the legal issues involved. There is spirited debate about a proposal. The Section's executive council then votes on whether to approve the proposed legislation. Sometimes the executive council does not approve the legislation after extensive debate. Such was the case with the domestic asset protection trust legislation drafted by the asset preservation committee, chaired by **Jerome**

*continued, page 9*

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**DEADLINES** for all submissions are as follows:

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

# Is There Coverage When an Insured Was Aware of a Title Defect?

**By Mark A. Brown, Esq., Carlton Fields, Tampa**

***Depending on which District you find yourself in, Florida may have three standards.***

## I. Introduction

Exclusion 3(a) in the Standard ALTA policy excludes from coverage "defects, liens [or] encumbrances … created, suffered, assumed, or agreed to by the insured…."

The terms "created, suffered, assumed or agreed to" are not defined in the policy. This has led to varying interpretations.

## II. The Nationwide Divide Over Exclusion 3(A)

### A. "Created"

Two distinct lines of authority have developed over the "created" element of exclusion 3(a). One suggests that all that must be established for this exclusion to apply to a claim under a title policy is that there was some "affirmative act" of the insured which led to the defect, even a negligent act. *See, for example, Mark Twain Kansas City Bank v. Lawyers Title Insurance Co.,* 807 F. Supp. 85 (E.D. Mo. 1992). The other line, first established in *Hansen v. Western Title Insurance Co.,* 33 Cal. Rptr. 668 (1963), adds an intent element – i.e. the requirement that there be a "conscious, deliberate causation" of the defect by the insured, not merely an affirmative act.

Numerous cases have adopted Hansen's interpretation and found negligent or unintentional conduct of the insured not enough to create a 3(a) exclusion under the "created" language. *See, for example, Feldman v. Urban Commercial, Inc.,* 209 A.2d 640 (1965). Some have even carried it a step further.

In *Sims v. Sperry*, 835 P.2d 565 (Colo. App. 1992), the Court appeared to establish a third line of authority finding that not only does "3(a) require the insured to intend the defect to occur," but it suggested that it may be necessary to show some "misconduct or fraud" by the insured. The Court concluded from the lack of any allegation of fraud or misconduct that the insured did not possess the requisite intent to bring about the title defect, and therefore found the claim did not fall within the exclusion.

Other courts have rejected *Sims*' suggested extension of 3(a) to require intentional misconduct, but have stood by the requirement in *Hansen* that some intentional act exist for the "created" element of 3(a). *See, for example, Transamerica Title Insurance v. Alaska Federal Savings and Loan,* 833 F.2d 775 (9th Cir. 1987). Others yet have continued to find that "created" in exclusion 3(a) can apply to *either* an intentional act or simply an affirmative act which results in the adverse claim or defect. *See, for example, Laabs v. Chicago Title Insurance Co.,* 241 N.W. 2d 434 (Wis. 1976); *Arizona Title Insurance and Trust Co. v Smith*, 519 P.2d 860 (Ariz. App. 1974).

### B. "Suffered"

There appears to be general agreement that "the word 'suffered' is synonymous with the word 'permit' and implies the power to prohibit or prevent the lien which has been exercised although the insured has full knowledge of what is to be done with the intention that it be done." *Arizona Title, supra,* at 863; *Hansen, supra. See also Murnan v Stewart Title Guaranty Co.,* 607 F. Supp. 2d 745 (E.D. Va. 2009), *aff'd* 374 Fed. Appx. 459, 2010 WL 1227268 (4th Cir. 2010), (court held that a trustee "suffered" tax liens that attached to her property since she was aware of the tax judgments against her and that they would automatically attach upon receiving title).

### C. "Assumed or Agreed To"

Similar to the "created" element, there are two different lines of authority concerning "assumed or agreed to." Some courts have held that no finding of actual knowledge of the defect is required by the insured, *Lawyers Title Insurance Corp. v. Research Loan & Investment Corp.*, 361 F.2d 764, 769 (8th Cir. 1966), whereas others "require actual knowledge of the insured as to the full extent and amount of the (encumbrance) before the [3(a)] exclusion would become operative." *Arizona Title, supra*, at 863. And the *Sims* court, which suggested the extreme view that "created" requires a finding of fraud or misconduct by the insured, similarly stated that "the terms 'assumed' and 'agreed to' imply intent to bring about the defect."

Whether the insured bought the property before or after the title policy is ordered can be an important factor. In *Lawyers Title Ins. Corp. v Research Land & Investment Corp.,* 361 F. 2d 764 (8th Cir. 1966), the insured knew of specific improvements that were financed by loans associated with the property at the time of its acquisition, and its deed expressly assumed all mortgages on the property. A week later the insured applied for a policy. The court concluded that the insured had to have known about, and therefore assumed, the four deeds of trust that were associated with that construction. It found exclusion 3(a) applied because "it taxes credulity to contend that they did not intend to assume obligations which they reasonably surmised had been placed against the property," in conjunction with the fact

*continued, next page*

that the insured "did not rely on the title insurer to advise it of encumbrances." *Id.* at 769. *Accord Commonwealth Land Title Ins. Co. v Ozark Global L.C.,* 956 F. Supp. 989 (S.D. Ala.), *aff'd.* 127 F. 3d 41 (11th Cir. 1997).

## III. How Florida Weighs In

Depending on which District you find yourself in, Florida may have three standards.

**3d DCA -** The lead case in the Third District is *First American Title Insurance Co. v. Kessler,* 452 So. 2d 35 (Fla. 3d DCA 1984). In *Kessler*, a creditor sued a debtor for monies owing. The suit requested imposition of an equitable lien and then its foreclosure. Unable to immediately affect personal service on the debtor, the lawyer attempted service by publication, obtained a default, and then received a foreclosure judgment.

Prior to the foreclosure sale, the creditor, another lawyer in the firm that handled the foreclosure, and an individual "knowledgeable in real estate matters," agreed to acquire the property at the foreclosure sale and purchased the property, valued at $478,400, for a $9,000 bid. When they sought title insurance from one company, the agent declined as presenting too much risk. They then went to another agent who issued a First American policy.

Two months later, the court set aside the foreclosure judgment and the foreclosure sale finding there was no basis for an equitable lien, the service by publication was ineffective, and the debtor had meritorious defenses. The parties then made a claim under the title insurance policy, which First American denied under 3(a).

The appellate court found that the "created" and "suffered" provisions in 3(a) had no application. In appearing to adopt the "either/or" definition of "created," the Court stated:

'Created' as used in a title insurance policy 'refers to a conscious, deliberate causation or an affirmative act which actually results in the adverse claim or defect….' (emphasis added)

In support, the Court cited various cases with a "Cf" to *Hansen*, indicating that it was not necessarily following the *Hansen* decision.

As to the "assumed or agreed to" language, the Court stated:

Defenses based on this exclusion '**do not necessarily require a finding of actual knowledge** of the defects or encumbrances'…. (citation omitted).

It noted the contrary line of authority on this point with a "*But see*" reference, and concluded by stating:

In the present case, the depositions raise the question of whether (the insured) knew enough about the quality of service of process to create a genuine issue of fact whether he assumed or agreed to the defect…

Thus, it appears that in the Third District, all a title insurer must show is that the insured had some knowledge of a potential defect in order to get to a finder-of-fact on whether 3(a) applies.[1]

**4th DCA** – A different standard has been employed in the Fourth District. *In Lawyers Title Insurance Co. v. D.S.C. of Newark Enterprises, Inc.,* 544 So. 2d 1070 (Fla. 4th DCA 1989), the title policy issued by Lawyers Title in favor of the buyer neglected to reflect certain mineral rights. Because the buyer's attorney's opinion letter referred to an earlier deed that referenced the mineral rights, LTIC denied coverage under 3(a).

The Fourth District stated:

> As matter of public policy a duty is imposed upon the title company to make a thorough and competent search of the record title…. Given the foregoing it follows that *the* title insurance company does not and should not avoid liability when a defective condition of title not excepted from coverage subsequently causes a loss to the insured even though the insured knew or should have known of the particular defect. That is the general principle on which we resolve this case….the courts have been loathe to impose liability on a title insurer for a condition of which the insured had actual, express knowledge…. *We do not attempt to define the limits of the apparent exceptions here nor to reconcile them with the public policy expressed earlier.* On the facts of this case we do not find such actual, express knowledge as would exempt the title insurer from liability.

Thus, it is unclear in the Fourth District what knowledge is required to establish a 3(a) exclusion. Although the facts in *D.S.C.* did not suggest the insured had much knowledge, the Court reserved for another day whether even complete knowledge would be sufficient as a matter of public policy. This despite the fact that the form of the policy in Florida, including 3(a), has been expressly approved by the Office of Insurance Regulation. §627.777, *Florida Statutes*.

Another issue raised by *D.S.C.* is the Court's suggestion that contrary to its terms, 3(a) may be limited to an insured's knowledge only of matters outside the public record, like exclusion 3(b).

**5th DCA -** The Fifth District has recently issued its decision in *Nourachi v First American Title Ins. Co.,* 44 So. 3d 602 (Fla. 5th DCA 2010). The Court sided with *D.S.C.* stating that the "general rule" is there will be coverage whenever there is a defect that was a matter of public record "even where the insured is alleged to have had actual knowledge of a material defect in title at the time

of closing." But the Court nevertheless allowed rescission of the policy due to the "unsavory gamesmanship" by the insured.

Nourachi bought property at a tax sale for $22,600. He later discovered the county made a mistake by selling him property owned by the United States. He then requested First American issue him a policy for $550,000, without disclosing the existence of the United States' claim to the property, and First American failed to discover it. Not satisfied with only $550,000 in coverage for property he understood had a title defect and which he bought for $22,600, a year later Nourachi received an increase in coverage to $1.3 million.

The Fifth District found that Nourachi's failure to disclose the known defect in title when he applied for his policy justified rescission. But significantly, the Court said it was limiting its holding only to those situations where the insured already had acquired the property and therefore did not rely on the title company's search of title. The Court suggested that had Nourachi not yet acquired the property when he sought the title policy, since the defect was recorded in the public records, it may not have come within 3(a) or been the basis for rescission.

## IV. Conclusion

Exclusion 3(a) can be interpreted in different ways depending on the exact facts, as well as depending on where the dispute arises. One Florida appellate court has indicated the insured need only have some notice of a defect, not actual knowledge, for the exclusion to apply; one left for future decision whether 3(a) applies if the defect was known but in the public records; and a third suggests that while 3(a) may not apply if the defect was in the public records, the policy can nevertheless be rescinded (and coverage thereby excluded) if the policy was purchased after the borrower already bought the property.

**Endnote:**

1 *In Lawyers Title Insurance Corp. v. JDC (America) Corp.,* 818 F.Supp. 1543, 1546 (S.D. Fla. 1993), the Court cited to *Kessler* finding that: "Under the language of the exclusion, adverse claims are 'created, suffered, assumed or agreed to,' by the insured where they arise from the insured's deliberate act or omission."


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**Wolf** and **Brian Sparks.** That committee spent many hours working on the proposal, educating the members of the executive council about the policy issues involved and the mechanics of the proposal. In the end, the executive council did not approve the proposed legislation. The whole process, however, was extremely educational, thoughtful and professional. The executive council learned a great deal about domestic asset protection trusts and simply was not ready to take the step of approving this type of policy in Florida. The asset preservation committee, however, should be extremely proud of its work and the education it provided on this subject to the Section.

## Real Property Division Committees

Our 18+ real property division committees have also been actively engaged, including addressing the latest legal developments in the mortgage foreclosure crisis. They are guided by the steady hand of **Peggy Rolando,** our real property division director. Some of the work of this division since July 1, 2010, has included the following:

The title issues and standards committee continues to update the Florida Bar Uniform Title Standards and post them on the Section's website. The executive council recently approved Chapter 5 on Decedents' Estates and Chapter 17 on the Title Standards-Marketable Record Title Act.

The problem study committee and condominium committee prepared a letter on behalf of the Section to the Federal Housing Finance Agency (FHFA) objecting to the "Guidance on Private Transfer Fee Covenants" which FHFA proposes to issue to the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks. This would effectively prohibit them from dealing with mortgages on properties encumbered by private transfer fee covenants. The letter commented on the Guidance and recommended Section 689.28 as an example of an effective, balanced approach. When the Florida Legislature adopted Section 689.28 in 2008, it prohibited private transfer fee covenants, but made exceptions for transfer fees paid to condominium associations, homeowner's associations, and nonprofit or charitable organizations for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community subject to the covenant.

The real property litigation committee has drafted proposed legislation to permit electronic notice of foreclosure sales through a clerk of the court's website as an alternative to publication in a newspaper. The landlord tenant committee and construction law committee have drafted the proposed legislation to modify section 713.10 in light of the *Everglades Electric Supply, Inc. v. Paraiso Granite, LLC* case. The condominium committee has drafted proposed "glitch" legislation to correct provisions in the Distressed Condominium Relief Act, Part VII of Chapter 718.

These are just a few of the Section's committees' accomplishments year to date. We appreciate all of the efforts of those serving on these committees as they continue to perform the work of the Section. As you can see, the Section remains busy doing great things this fiscal year. We are always looking for more Section members to become active and productive in the Section.

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# Protecting the Individual Trustee

**By Dirk Tolle, Esq., Fiduciary Consultants, LLC, Wimauma, FL**

Representing an individual acting as trustee of another's trust presents some challenges unique from those encountered when working with a professional corporate trustee. This is not to say that corporate trustees are perfect, or even close to it, but they do have experience and staff to assist them in avoiding some problems an individual might face. Part of the task of the attorney representing an individual trustee is to keep that person out of trouble. In this article we will look at some of the areas which may present problems.

Communications, or the lack thereof, is the source of many of the problems in the world today. When an individual, or corporation, is dealing with someone else's money, keeping all parties aware of what is happening is vital. Communications can take the form of periodic meetings between the trustee and the beneficiaries, as well as phone contact, and perhaps even more importantly, through the production and distribution of accounting statements. Whatever form they take, it should be impressed on the trustee that information be concise, clear, and as detailed as possible to avoid future criticism. It is very easy for a beneficiary to come back against the trustee with a claim that they were never advised of what was going on. That "no one ever told me what was happening."

Although the individual serving as trustee may resist doing so, it is probably wise to have copies of statements provided either to you as the attorney representing the trustee, or to the individual charged with preparing tax returns for the trust. Encouraging your client to take every opportunity available to provide the beneficiary with information can go a long way to avoid future problems. As a rule of thumb most professional fiduciaries encourage their account officers to have no less than quarterly visits or phone calls with each of their clients. Since an average account load for an officer of a corporate trustee may exceed one-hundred accounts with numerous beneficiaries, your client should be able to find time for the one or two beneficiaries involved. Keep in mind, periodic statements can be utilized to advise the beneficiary that the statute of limitations is running to bar challenging acts disclosed in that statement or in prior communications.

Today's investment environment is complex and constantly changing, and as a result has proven a fertile field for controversy and litigation. An experienced money manager may find keeping up with the markets to be a daunting task. How much more so for the inexperienced investor. While it may be easy to shrug off one's own losses or missed opportunities in the market, it is not so easy when the funds belong to someone else. The individual trustee may not wish to expend the funds necessary to hire a seasoned professional to provide hands on daily management, but there are other alternatives which may be acceptable and allow for the appropriate investment of the trust assets. The first step, of course, is to determine the needs and objectives of the trust beneficiaries. While it may be easy to concentrate on what a surviving spouse may hope to achieve, you need to make sure that your client understands the needs of the remainder beneficiaries as well, and strikes an appropriate balance between the two sets of beneficiaries.

After determining the investment objective which is appropriate for the trust account, the trustee can review a number of well established and successful mutual funds which would serve the trust's needs. A word of caution however. The performance of those funds does require regular review to assure that they continue to meet the objectives of the trust and of its beneficiaries. Simply putting the funds to work and forgetting them can be a problem waiting to ripen. One step up the ladder is the utilization of a "manager of managers," a professional or an organization which selects a group of mutual funds designed to satisfy the stated objectives. Part of this manager's role is to continually monitor and adjust allocations based on market changes. The cost of such an arrangement will be more than the cost of "doing it on your own," but the ultimate results and the reduction or elimination of liability are probably well worth that cost.

Be certain that your individual serving as trustee is aware of the necessity of timely and accurate tax reporting. Especially today when there are numerous unknowns swirling around the tax world, unless the individual happens to be a professional, this is an area best left to someone who knows what they are doing. As mentioned earlier, providing copies of regular statements to you as attorney, or to an outside CPA will facilitate the production of correct returns, and also allow for accounting errors to be identified as they occur, and not a year, or years later.

Professional trustees are acutely aware of the need to avoid any potential or actual conflicts of interest, and to steer clear of anything which might even hint at the existence of a conflict. Avoidance of these problems may not be as clear where an individual – perhaps a family member or a family friend – is serving as trustee. Investment in a business or a real estate venture in which the individual trustee has an interest may appear logical and advantageous. It may even work out well for all parties, but the downside risk is substantial. Even if there is no actual loss, the criticism that there might have been better opportunities carries the risk of surcharge. The individual trustee also needs to understand that the beneficiary's approval of such arrangements may not relieve the trustee of liability in the eyes of the courts. It is prudent to be sure that your client steer far away from such entanglements, perhaps even to the extent of utilizing the services of investment advisers

*continued, next page*

who do not perform similar services for the trustee in his or her individual capacity.

Another area which is often troublesome for any fiduciary, professional or individual, involves the exercise of discretion in non-investment areas. Most often this involves the distribution of income and or principal when the amount of, or the purposes for which such amounts may be distributed, is left to the discretion of the trustee. There are cases in which animosity between trustee and beneficiary has resulted in a failure to provide reasonable support for the beneficiary. If such animosity exists, your client would do well to consider carefully the prudence of continuing to serve. This can also happen as a result of preference for one beneficiary or set of beneficiaries over another. This should be avoided at all costs. Your client must be even-handed in dealing with all beneficiaries or risk the wrath of someone down the line. Also to be avoided is the trustee, who, to paraphrase that great song from Oklahoma says "I'm just a trustee who can't say no." There are times when "no" is the right answer.

Documentation is also important to protect against future liability. In connection with the exercise of any act of discretion, the decision needs to be documented. If a question is raised by a beneficiary, a notation of the question and the response should be placed in a permanent file as should a record of any and all contacts between the trustee and the beneficiary or beneficiaries. Copies of statements and correspondence should be maintained along with copies of tax information. The reasoning behind investment choices should be clearly articulated and filed.

Certainly no one expects an individual to perform the many services and fulfill the many functions of trustee and not be compensated for it. However, a high degree of caution is required when it comes to determining the amount of compensation that is appropriate.

Basing an individual's compensation on the going rate for professional trustees may seem to make sense, but keep in mind that a corporate trustee's fee, perhaps in the range of one and a quarter percent of market value annually, includes a multitude of services, many of which the individual trustee is not capable of providing. The need to utilize, and therefore compensate, outside professionals has been discussed earlier. Your client should take into consideration these additional costs in arriving at a reasonable fee for his or her services. As a rule of thumb, a fee of one-half to three-quarters of the fee charged by corporate fiduciaries in the surrounding area could most likely be justified. The trustees who provide services for nothing, based on the idea that they are serving for a friend or a relative are not being fair to themselves. Your client should understand that failure to charge a fee does not render him or her unaccountable for failure to act as a prudent fiduciary.

Your client needs to understand fully the cash requirements for the trust in question. This may include tax obligations which must be met, future distributions to the beneficiaries, or a whole host of other cash needs. There are numerous cases where a trustee's failure to anticipate and prepare for cash distributions has landed the trustee in court. When there is a known need for $50,000.00 in cash three months from now, it is not prudent to ride the market till a week before the funds are needed and then hope that the common stocks being held have not decreased in value.

In summary, serving as trustee may sound like an honor, and being asked to serve does infer that the individual being asked is held in high regard by the person doing the asking. However, the job is fraught with pitfalls and potential problems. Without causing your client to become paranoid it is important to make sure that these problems and pitfalls are understood, and that the need for regular supervision and review by a trained professional is required. Be careful out there.





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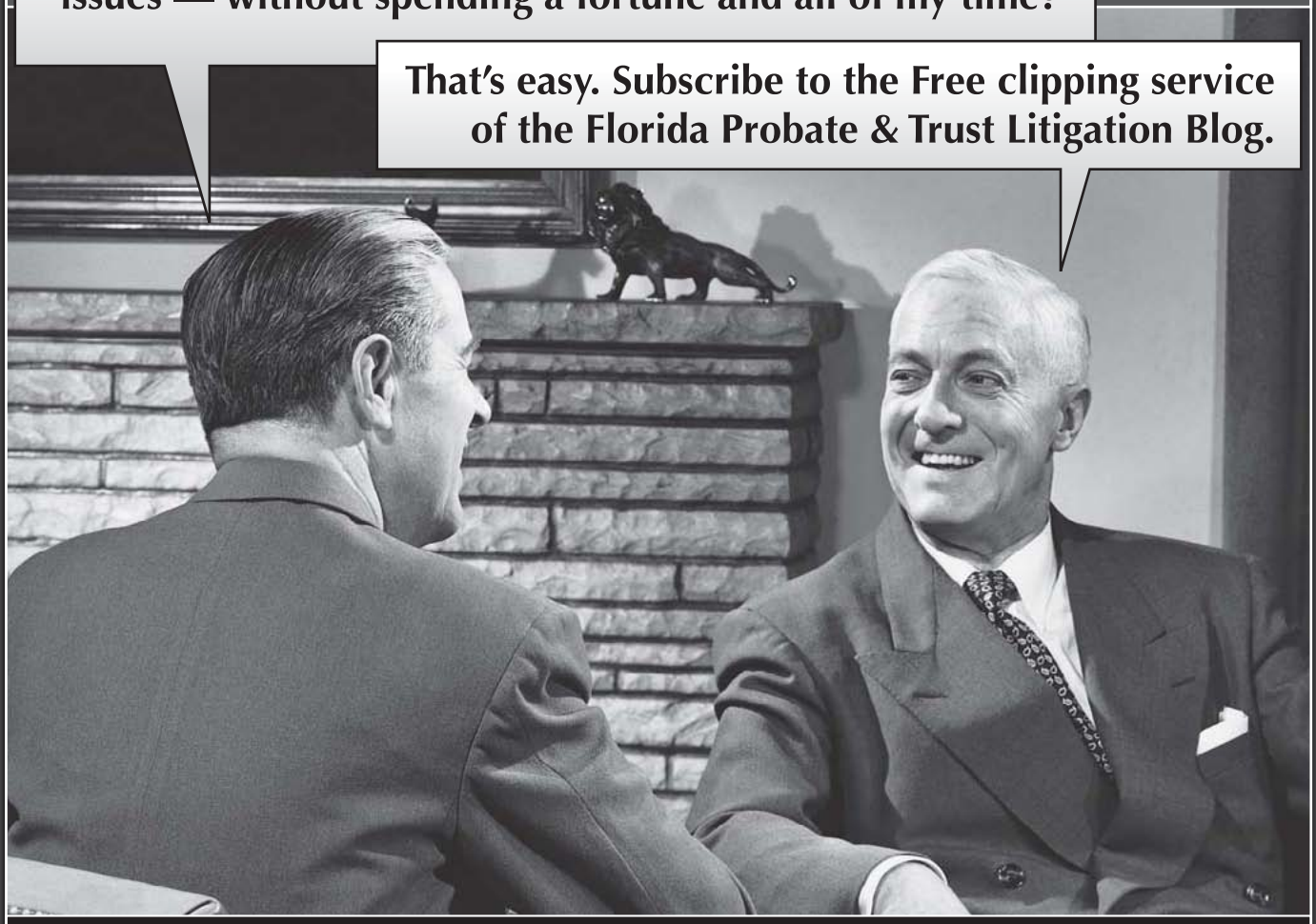

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# Nonlawyer Assisting the Short Sale Seller: Ministerial Acts or UPL?

**By Salome J. Zikakis, Parady & Zikakis, P.A., Fort Lauderdale, FL**

Do you recall the last major real estate recession, in the late 1980's and early 1990's? In my practice at the time, at least half of the closings involved sellers who were "underwater", with their outstanding mortgage indebtedness and other judgments and liens exceeding the net sales proceeds. The phrase "short sale" had not been coined yet, but I and many of my transactional real estate colleagues counseled our seller clients as to their legal options and became adept at crafting settlements with the seller's lender and any other lienholders so as to release the property owner from these burdens and provide marketable title to the purchaser. The transactions closed and the real estate cycle gradually transformed from bust to boom over the ensuing years.

Fast forward to the present bust cycle where the staggering inventory of distressed real property has resulted in plummeting real estate values. A properly vetted and conducted short sale transaction may be an excellent option for the owner of distressed real estate and a reasonable opportunity for the purchaser. The typical property owner, however, lacks the knowledge to process the short sale of real property, is unaware of the legal ramifications and requires professional assistance. While a competent real estate attorney would, in my opinion, offer superior counsel for the property owner throughout the short sale process, many property owners have turned to nonlawyers who market themselves as short sale specialists to guide them through the maze of lender requirements. These nonlawyers typically assert that lawyers do not want to handle short sales or are too expensive or that lawyers want to "kill the deal", so nonlawyers need to fill the void and assist property owners in processing short sale transactions. In particular, nonlawyer title agents and real estate licensees have created a cottage industry to supplement their typical functions by offering to assist owners of distressed real property in obtaining short sale approvals. As attorneys, should we be thankful that these nonlawyers are getting deals closed and benefiting the community by reducing the foreclosure and REO inventory, or are we turning a blind eye to potential and actual public harm?

## UPL Committee Investigates and RPPTL Responds

The Unlicensed Practice of Law ("UPL") Committee of the Florida Bar held a public hearing on February 11, 2011, seeking comments on the following questions:

> Whether a nonlawyer who assists a property owner in a short sale transaction is engaged in the unlicensed practice of law? Would the answer be different if the nonlawyer was a real estate licensee regulated under Chapter 475, Florida Statutes, a title insurance agency/agent regulated under Chapter 626, Florida Statutes, or a mortgage broker or other individual regulated under Chapter 494, Florida Statutes?

The RPPTL Section was informed of the UPL Committee's concerns and, prior to the public hearing, established a subcommittee to examine the issue and provide guidelines to the UPL Committee. The RPPTL subcommittee was comprised of members of the following RPPTL committees: Mortgages and Other Encumbrances Committee, **Residential Real Estate & Industry Liaison Committee, Real Property Problems Study Committee and Professionalism and Ethics Committee. The subcommittee members were real property attorneys from throughout Florida with both positive and negative experiences involving nonlawyers assisting property owners in short sale transactions.**

The subcommittee members included counsel who represent the nonlawyer categories under consideration by the UPL Committee, as well as counsel with years of experience representing property owners in short sale transactions. The subcommittee members extensively discussed the benefits and detriments of having a nonlawyer participate in a short sale with the property owner's lender(s) and other creditors, with the concern being at what point the nonlawyer crossed the line into the unlicensed practice of law. Based upon the consensus of the subcommittee, the RPPTL Section offered the following guidelines for the UPL Committee's consideration regarding a nonlawyer assisting a property owner in a short sale transaction:

> --A non-lawyer who assists a property owner in performing the following in connection with a short sale transaction is <u>not</u> practicing law: fact finding, information and documentation gathering and transmittal of the information and documentation to the property owner's lender(s) to facilitate the approval of the short sale transaction.
>
> --A non-lawyer who assists a property owner in performing the following in connection with a short sale transaction <u>is</u> practicing law: evaluating and/or giving an opinion as to the legal significance of any document, including, without limitation, documents submitted by the property owner to the lender or documents from the lender relating to the terms of the short sale approval or deficiency; providing advice regarding the legal ramifications of a short sale (with or without deficiency waiver), foreclosure, bankruptcy or any other legal recourse.
>
> --A non-lawyer who assists a property owner in ne-

*continued, next page*

gotiating the terms of a short sale approval may or may not be practicing law depending on the particular facts. Generally, if the negotiating involves evaluating, advising or giving a legal opinion, then such negotiating is practicing law. Generally, if the negotiating is simply the transmittal of information from one party to the other without evaluating, advising or opining, then the negotiating is not the practice of law.

Considerable oral testimony was presented by interested parties to the UPL Committee at the February meeting and the RPPTL Section's guidelines were often cited and supported by participants offering testimony at the meeting. According to Lori S. Holcomb of The Florida Bar, the UPL Committee is currently not scheduled to accept further oral testimony, but is accepting written testimony until May 23, 2011.[1] It is unclear what action, if any, the UPL Committee will take on this issue. The RPPTL Section, in its written testimony to the UPL Committee, concluded by stating that since "the unlicensed practice of law can inadvertently or deliberately occur when a nonlawyer assists a property owner in a short sale transaction, the UPL Committee may consider legislation requiring disclosure by any nonlawyer assisting a property owner in processing a short sale transaction."

## Are these Nonlawyers Engaged in UPL?

Although the UPL Committee considered three specific categories of nonlawyers, I confess that I have not encountered a mortgage broker assisting a property owner in a short sale transaction. It has been my experience that notwithstanding recent legislation[2], mortgage brokers prefer to originate new loans due to the profitability factor. Accordingly, this article will focus on the other two categories.

Even though the preparation of a contract for sale and purchase of real estate is the practice of law, the Florida Supreme Court has held that a real estate licensee may prepare the contract "recording his handiwork – that is the bringing together of buyer and seller."[3] Similarly, even though the drafting of legal documents is the practice of law, the Florida Supreme Court has held that nonlawyer title agents can draw legal documents to fulfill the conditions of a title insurance commitment which the title agent has issued.[4] Do any aspects of assisting a property owner with a short sale transaction constitute the practice of law and, if so, is there an applicable carve out for certain nonlawyers?

I have observed real estate licensees who have assisted property owners by initiating a short sale through the online "Equator" system required by Bank of America. In fact, Bank of America requires all of its first mortgage short sales to be initiated through Equator and, up until recently, required that the short sale be initiated by a real estate licensee.[5] Once the short sale request is initiated through Equator, the system prompts the licensee to upload certain documents, such as the listing agreement, contract, hardship letter and the property owner's tax returns, bank statements and other financial documents (privacy concerns are another topic beyond the scope of this article). The mere requesting and uploading of these documents would be information and document gathering and transmittal and should not constitute the practice of law. It is certainly possible for a real estate licensee to undertake only the ministerial acts of document submission and retrieval to obtain a letter from the property owner's lender agreeing to accept a certain sum to release the lien from the property, but it would be difficult to envision this process occurring without the property owner seeking the real estate licensee's opinion during the lender negotiation and upon receipt of any lender documentation. If the real estate licensee offered the property owner advice on the ramifications of applying and proceeding with the short sale versus foreclosure or offered an opinion on drafting the hardship letter, the line would be crossed. If no such advice or opinions were offered and the real estate licensee obtains a written short sale approval from the lender, the real estate licensee cannot opine as to the terms of the approval as that is giving legal advice. The language of the short sale approval letters is often vague and many a real estate licensee has mistakenly thought the approval of the short sale also meant that the lender waived the deficiency. This is a sad case of the blind leading the blind and the potential for public harm is great.

It has been my experience that most real estate licensees prefer to sell real estate rather than submit documents to the seller's lienholders.[6] The typical Florida real estate licensee who lists or sells short sale properties will refer the property owner either to a real estate attorney (no problem there) or to a title agent or title agency[7] to process the short

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sale with the seller's lender(s) and close the transaction. The title agent who is merely gathering information and documents and submitting them to the lender upon request would, similar to the real estate licensee, not be practicing law. For example, in a non-short sale transaction, the title agent sends a form letter with the property owner's authorization requesting a payoff estoppel letter from the mortgage holder(s). There is no need for back-and-forth negotiating or evaluation of the ramifications of the payoff estoppel letter.

The process of obtaining a short sale approval letter from a lender, however, is not as simple as sending a form payoff request and receiving the customary form payoff estoppel letter. Rather, the process, if correctly executed, involves the analysis of the property owner's financial situation and alternatives, the evaluation of the relative rights of all lienholders, the negotiation of the claims of all lienholders[8] and, if the lender does not waive its deficiency rights, a strategy for handling post-sale deficiency claims. Although the properly executed short sale is an excellent vehicle for many, other legal options may be in the best interest of the property owner. None of the nonlawyers has a duty to consider what is in the best interest of the property owner.

While the Florida Supreme Court has granted nonlawyer title agents considerable inroads into the practice of law, the Court has not and should not allow title agents to engage in such evaluation and negotiation as these are strictly within the purview of legal counsel. If nonlawyers are to be permitted to continue to assist property owners in short sale transactions, then at a minimum the nonlawyer must be required to disclose the limitations of the services provided by the nonlawyer. This disclosure must be direct and concise (not buried in fine print) and made upon the initial interaction with the property owner so that there is no doubt that the nonlawyer is only performing ministerial acts and is offering no advice, evaluation or legal opinion whatsoever (other than as contained in the title insurance commitment and policy). If the property owner understands that she has, in effect, merely retained a "secretary" to request and upload documents and elects the ministerial assistance of the nonlawyer in lieu of the advice and counsel of an attorney, then the property owner should be permitted to make this informed choice.

## What Are You Implying?

When a nonlawyer advertises that he is, or holds himself out as, a short sale specialist, having the expertise to assist

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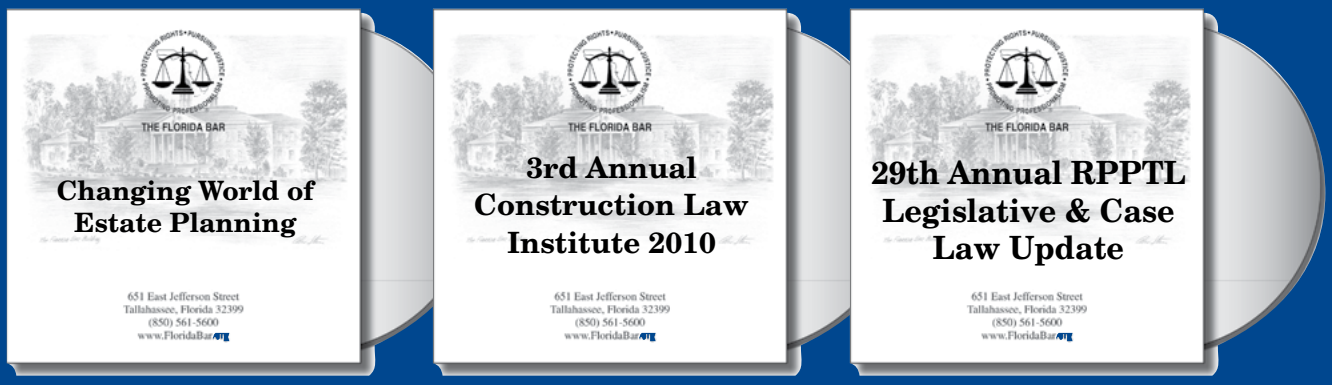


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the property owner in a short sale transaction, the implication is that the nonlawyer has special skills and knowledge of short sales that the ordinary lay person does not possess. Clearly the implication is that these special skills and knowledge are beyond the ministerial acts of requesting and transmitting documents that are not the unauthorized practice of law. The general public would be led to believe that such special knowledge is legal knowledge, namely the skills required to evaluate the options available to the property owner and, if appropriate, negotiate with the various lienholders to obtain the appropriate approvals of the short sale. So the nonlawyer advertising a short sale specialty or expertise is doubly harming the public by implying legal skills while merely providing ministerial services.

An attorney is not permitted to imply or advertise that she is a "specialist" or has expertise in any area of the law unless that attorney is board certified by the Florida Bar in that area. Advertising by nonlawyers in this scenario must be regulated or prohibited because the nonlawyer is implying assistance with legal and quasi-legal issues. The public is acting on the misleading nonlawyer advertising pertaining to short sale assistance, frequently to their detriment.

For example, if a nonlawyer title agent is simply performing the ministerial acts already permitted by the Florida Supreme Court, then any marketing by the title agent must clearly indicate that the nonlawyer will only be submitting the property owner's documents to the short sale lender in an effort to obtain a letter from the lender satisfactory to release the lien of the mortgage from the property. This requires no special skills or expertise pertaining specifically to short sales and all advertising must be consistent with this message. Perhaps, similar to the requirement that individuals seek credit counseling prior to pursuing bankruptcy, property owners seeking assistance from nonlawyers in short sale transactions should be required to first seek legal counsel to determine if the short sale is the appropriate remedy under their specific circumstances.

## Conclusion

The UPL Committee's next meeting has not been scheduled and it is unclear as to what action, if any, the UPL Committee will take. It is anticipated that it may be at least another year or two before the implementation by the Court of any action recommended by the UPL Committee on this topic. While there will likely still be short sales and distressed real property two years from now, there will be hundreds, if not thousands, of short sale transactions being processed and closed in the meantime in Florida by nonlawyers holding themselves out as "specialists" who are clearly misleading the public. While I realize it is rather aspirational to contemplate that each property owner (short sale or not) would have the assistance of a competent real estate attorney, it is critical that the property owner understand that the nonlawyer he hired to assist with his short sale transaction is only permitted to perform clerical functions and does not have any special (i.e., legal) skills pertaining to short sale transactions.

The crisis in the real estate market that we are experiencing is not new and history will repeat itself. As aptly stated by the Florida Supreme Court, "the single most important concern in the Court's defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation."[9] Will we have the mechanisms in place to protect the public the next time around? AL

**Endnotes:**

1 Written testimony may be filed by sending to Jeffrey T. Picker, Assistant UPL Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300.

2 See revisions effective January 1, 2010 to Chapter 494, Florida Statutes

3 *Keyes Co. v. Dade County Bar Ass'n*, 46 So.2d 605, 606 (Fla. 1950)

4 *Cooperman v. West Coast Title Company*, 75 So.2d 818 (Fla. 1954); *The Florida Bar v. McPhee*, 195 So.2d 552 (Fla. 1967)

5 The author is a real estate licensee as well as a member of the Florida Bar and initially submitted short sale approval requests through Equator as a real estate licensee since the system would not otherwise acknowledge the submission. The Equator system was revamped in 2010 to allow attorneys to register and initiate short sale requests.

6 I am told that in rural areas of Florida, real estate licensees are unable to find legal counsel willing to assist property owners in processing short sales. However, in South Florida and the other more populated areas of Florida, real estate licensees have many other options, including reasonably priced legal counsel.

7 For purposes of this analysis, the presumption is that the title agent or title agency is a nonlawyer title agent or title agency.

8 Frequently there are delinquent condominium or homeowner's association assessments that cannot be paid in full and must be negotiated. Likewise, there may be inferior judgment creditors that must be negotiated to a reduced sum. A contribution from the property owner may be requested. It is challenging to contemplate how a nonlawyer could engage in such negotiation on behalf of the property owner without evaluating, advising or opining.

9 *The Florida Bar v. Moses*, 380 So.2d 412, 417 (Fla. 1980)



# Fourth Annual Construction Law Institute Set for March 2011

On March 31-April 2, 2011, the Fourth Annual Construction Law Institute will be held at the Omni Orlando Resort, ChampionsGate, Florida. In addition to advanced level seminars, the event will include a golf tournament on Thursday, March 31st, and evening receptions on March 31st and April 1st. Over 360 Construction Lawyers and Industry Professionals attended the 2010 Institute and we expect more in 2011. The Honorable Chief Justice Charles T. Canady will address the attendees during the Friday lunch session. The Saturday morning breakfast speaker will be Kenneth D. Simonson, Chief Economist The Associated General Contractors of America. We thank the sponsors listed below for their commitment to the Fourth Annual Construction Law Institute.

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# Partial Property Rental May Limit Homestead Protection

**By Kurt E. Lee, Esq., Kirk Pinkerton, P.A., Sarasota, FL**

## Introduction

As the economy continues to compel people to tighten their belts, some are finding that renting rooms or other portions[1] of the property on which they reside provides a welcome source of income. This attempt to satisfy creditors may, however, leave homesteads more vulnerable to creditors. These rentals may result in the partial or total loss of the protection afforded by Florida's homestead exemption found in Article X, §4, of Florida's Constitution.

## Homestead Exemption Cases Relying Upon 1885 Florida Constitution

In *Smith v. Geckenheimer*, 27 So. 900 (Fla. 1900), Smith, the head of a family consisting of a wife and eight minor children, sought to protect his property from being levied upon to satisfy a judgment.[2] The Smith family resided on the upper floor of a two-story building and the ground floor consisted of five storerooms, one of which Smith used for his own business, the rest of which he rented to others.[3] The lower court found that the homestead exemption should not extend to the rented storerooms and required Smith to divide the building along perpendicular lines "so that his place of residence should be immediately over his place of business."[4]

The Florida Supreme Court, working with the 1885 Florida Constitution's exemption language which included a "business house" within the definition of a municipal homestead, affirmed the lower court and took a restrictive view of the homestead exemption. The state's highest court "held that, just as rooms permanently leased to tenants in a building or buildings separate from the owner's residence and business house should not qualify for the homestead exemption, so rooms leased within the owner's home should be denied the exemption."[5] The *Smith* court created a rule requiring "perpendicular consistency of homestead-protected uses in an individual dwelling"[6] to prevent "the skill of the architect" from being used to successfully evade the plain provision of the organic law, and the exemptor, by its use with a single building under one roof, with its many stories piled skyward, could not only fulfill the purpose of this law in supplying himself and family with a residence and business house, but, besides, could supply a score of other families with residences and business houses, to the great pecuniary advantage of himself, but to the great wrong and injury of his creditors.[7]

In 1932, the Florida Supreme Court moved away from the simple clarity of the "perpendicular consistency" rule and expanded the scope of the homestead exemption. In *Cowdery v. Herring*, 143 So. 433 (Fla. 1932), the state supreme court recognized *Smith* but agreed with a lower court's finding that an entire piece of property was protected by the homestead exemption even though the owner had erected two buildings, separate and apart from the residence, which were leased to tenants who ran independent garage and paint businesses from the buildings.[8] The *Cowdery* court reasoned that the widow owner was "without trade or profession or other means of support" and that the rentals were the owner's "business house" and were "being used as a means of making the owner's livelihood."[9]

However, a subsequent property owner who had constructed an apartment house and a garage for rental purposes was found to have lost the homestead exemption as to such portions of his property.[10] In *McEwen v. Larson*, 185 So. 866 (Fla. 1939), a property owner erected and then rented an apartment house and garage on his homestead property.[11] Although the facts in *McEwen* were similar to those in *Cowdry* and both cases involved widows, the Florida Supreme Court ruled that the portion of the homestead parcel which had been leased was no longer homestead property.[12] The *McEwen* court relied upon *Smith*[13] and attempted to distinguish *Cowdry* by downplaying the "entrepreneurial motive"[14] of the property owner in *Cowdry* and by erroneously indicating that there was only one separate building involved in *Cowdry*.[15] The *McEwen* decision did not, however, renew the vitality of *Smith*.

In *Lockhart v. Sasser*, 22 So.2d 763 (Fla. 1945), a testator's property was improved with an "apartment house containing six apartments one of which, comprising the ground floor, was occupied by the owner as his home. The entire house was under one roof and was not divisible by a perpendicular line without destroying or eliminating a part of that occupied by the owner as his home."[16] The *Lockhart* court affirmed a finding that the entire property was homestead and "differentiated" *Smith* by stating that the earlier decision was based upon the improvement having been divisible by a perpendicular line.[17] However, the *Smith* court had expressly considered the factual situation in *Lockhart* and recognized that application of the "perpendicular consistency" rule may cause a whole homestead exemption to "be taken away and defeated."[18]

The Third District Court of Appeal highlighted the inconsistent application of *Smith* in *Weiss v. Stone,* 220 So.2d 403 (Fla. 3d DCA 1969),[19] which appears to be the last homestead case involving the 1885 Florida Constitution and the rental of part of a putative homestead for income producing purposes. The property in *Weiss* consisted of three contiguous lots and a one-story five-unit apartment building where the owner occupied one of the units and leased the remaining four to tenants.[20] The trial court found that "only the premises which the [property owner] actually

occupied, plus an easement for ingress and egress, was to be granted the homestead exemption."[21] The appellate court agreed but noted that "[d]etermination of homestead character is the subject of some conflict in Florida."[22] The *Weiss* court reasoned that, in cases involving property which was partially residential and partially income producing, the test for removing the homestead exemption in such cases now seems to be whether the lower court, after hearing testimony and examining evidence, can find that the property under examination amounted to more than the 'residence and business house of the owner', protected by Fla. Const. Art. X, s. 1. What constitutes this 'residence and business house' is, however, not defined in the Constitution, and this phrase has been held to be a flexible one which should be reasonably construed to effectuate its purpose, depending on the trade, craft or occupation pursued by the judgment debtor to make a living.[23]

Instead of the easy to apply "perpendicular consistency" rule in *Smith*, the *Weiss* court found that the homestead exemption depended upon *ad hoc* factual analyses of trial courts evaluating the applicability of the exemption in light of the property owner's trade, craft, or occupation.

## Homestead Exemption Cases Relying Upon 1968 Florida Constitution

The uncertainty associated with making homestead determinations based upon a property owner's trade, craft, or occupation was, to a great extent, removed by the 1968 Florida Constitution. "The revised homestead exemption clause, Art. X, §4, of the Florida Constitution of 1968, suggests a narrowing of the scope of exemptions allowed under Florida law,"[24] because the revised exemption does not include the "business house" reference set forth in the 1885 constitution.[25] This narrower language seems to make it easier for courts to find that the homestead exemption is limited to those portions of a property in which the owner resides and does not include those portions which are rented to others.

For example, *In re: Rodriguez*, 55 B.R. 519 (Bankr. S.D. Fla. 1985), *In re: Aliotta*, 68 B.R. 281 (Bankr. M.D. Fla. 1986), and *In re: Nofsinger*, 221 B.R. 1018 (Bankr. S.D. Fla. 1998), the courts declined to extend the homestead exemption to those portions of the debtors' properties which were leased to non-parties.[26] While "the former Constitution had allowed exemption even though a portion of the property was leased to and occupied by a third party," the *In re: Rodriguez* court found that the language in the 1968 constitution did not extend the homestead exemption to the rented portion of a building which was separated from the owner's residence by an internal wall and which had a separate entrance.[27] In *In re: Aliotta* the debtors lived in one unit of a four-unit apartment building and used the other three for rental purposes.[28] Chief Judge Paskay found the constitutional language change showed "unequivocal intent to limit homestead exemptions to the residence of the owner and to disallow any claim for an exemption that exceeds the residence of the owner," and found the three units which were not part of the debtors' residence were not entitled to homestead exempt status.[29] The residency requirement applied in *In re: Rodriguez* and *In re: Aliotta* was similarly applied by the *In re: Nofsinger* court in the context of property located outside of a municipality.[30] In *In re: Nofsinger*, the property owner leased a portion of his property to a third party business.[31] The court found that the homestead exemption "only extends to that portion of the property which a debtor uses as his residence and cannot include any portion which is rented to and occupied by a third party or used by the third party as his own business."[32]

A Florida state court discussed the effect of the narrower homestead exemption language in the current constitution in *First Leasing & Funding of Fla., Inc. v. Fiedler*, 591 So.2d 1152 (Fla. 2d DCA 1992). In *First Leasing*, a judgment debtor owned a triplex.[33] The debtor resided in one unit and leased the other two to third parties.[34] The trial court determined that the entire triplex was homestead exempt, but the appellate court, relying upon the constitution's current language, *Smith*, and *McEwen*, reversed the lower court and determined that the two rented units were not protected from creditors because the "homestead protection should not extend to income producing portions of the debtor's property."[35]

Most recently, the court in *Menard v. University Radiation Oncology Associates, LLP,* 976 So.2d 69 (Fla. 4th DCA 2008), noted the difference between the 1885 and 1968 constitutional language involving the homestead exemption and held that "[o]nly that part of debtor's property used as his residence is exempt from levy and execution. That part leased to other occupants is not exempt."[36]

## Conclusion

Today, it appears that courts more consistently decline to extend the homestead exemption found in Article X, §4, of Florida's Constitution to those portions of a property which a property owner leases to third parties.[37] As a result, property owners who are thinking about renting a portion of their property to others in an attempt to earn some money to keep creditors at bay should carefully analyze whether doing so would give them less protection from creditors. Property owners engaged in this analysis will want, for example, to carefully consider the nature and extent of the premises to be leased because the lease of a garage apartment which is an attached part of a single family residence may be treated differently than a unit in a multi-unit dwelling with its own means of ingress and egress. As with most things in life, an ounce of prevention is worth a pound of cure.

**Endnotes:**

1 The effect of a property owner's rental of his entire homestead is discussed in Mark A. Rothenberg and Kara L. Cannizzaro, "The Loss of Homestead Through Rental," Florida Bar Journal, vol. 84, no. 1, p. 34

*continued, next page*

(Jan. 2010).

2 27 So. at 900.

3 *Id.*

4 *Id.*

5 *Edward Leasing Corp. v. Uhlig*, 652 F. Supp. 1409, 1413 (S.D. Fla. 1987)(describing holding in *Smith v. Guckenheimer*).

6 652 F. Supp. at 1413.

7 27 So. at 915.

8 143 So. at 434-35.

9 *Id.*

10 *McEwen v. Larson*, 185 So. 866 (Fla. 1939).

11 185 So. at 868.

12 *But see Union Trust Co. v. Glunt*, 85 So.2d 877 (Fla. 1956)(holding entire property which was improved with a family residence and a one-story cottage and a two-story garage apartment, which were both detached from the residence and used for rental purposes, constituted the homestead); *White v. Posick*, 150 So.2d 263 (Fla. 2d DCA 1963)(detached garage apartment rented to others did not render that portion of the property as non-exempt).

13 In addition to *Smith*, the court relied upon two other decisions. See 185 So. at 868.

14 *Edward Leasing Corp.,* 652 F. Supp. at 1414 (discussing *McEwen*).

15 185 So. at 868. It is difficult to understand the *McEwen* court's misstatement about the number of separate buildings in *Cowdery* because the *Cowdery* court included a map of the subject property in its opinion. *See Cowdery*, 143 So. at 434.

16 *Lockhart*, 22 So.2d at 763.

17 *Id.* at 764.

18 Smith, 27 So. at 915-16. The Smith court had expressly noted that its "perpendicular consistency" rule would defeat homestead exemption of all space above or below the owner's residence regardless of whether the nonexempt improvements were "situated upon the first, second, third, fourth, or tenth floor of a many-storied building." 27 So. at 915. Indeed, the Smith court stated that, "It may be that in the application of this rule the whole of the residence or business house exemption may be taken away and defeated, but in such case the blame must fall upon the exemptor who thus devotes the same soil to the two inconsistent uses, the one legally sufficient to support the exemption contended for, the other legally sufficient to defeat or destroy it." *Id.* at 916.

19 Full citation: *Weiss v. Stone,* 220 So.2d 403 (Fla. 3d DCA 1969), appeal dismissed, 225 So.2d 913 (Fla. 1969).

20 220 So.2d at 404.

21 *Id.* at 405.

22 *Id.*

23 *Id.* at 405-6.

24 Edward Leasing Corp., 652 F. Supp. 1409, at 1414.

25 *Id.* at 1414-15.

26 But see In re: Englander, 156 B.R. 862 (Bankr. M.D. Fla.1992)(allowing homestead exemption for a garage apartment that was rented to a third party because, under a facts and circumstances analysis, the debtors' intent in building the garage apartment was for utility and not for rental purposes), aff'd, *Englander v. Mills*, 95 F.3d 1028 (11th Cir. 1996); *In re: Kuver*, 70 B.R. 190, 191-92 (Bankr. S.D. Fla. 1986)(noting the removal of the "business house" language from the state constitution, discussing *Smith* and other "older cases" and stating that these "[l]egal conclusions were motivated by the heart rather than founded on stare decisis," and finding an entire duplex to be homestead even though half of the building was "rented by the debtor to a tenant for income purposes."); *In re: Makarewicz*, 126 B.R. 127, 128 (Bankr. S.D. Fla. 1991), reh'g denied, 130 B.R. 620 (Bankr. S.D. Fla. 1991)(applying homestead exemption to entire property consisting of a single family residence and a detached garage which contained two apartments which were rented to third parties).

27 55 B.R. at 520.

28 68 B.R. at 281.

29 68 B.R. at 282 ("The fact that the Debtors' residence is attached to other improvements on the property does not render the whole property homestead. … It is clear that the mere fact the claimant occupies part of the property as a residence is not enough to entitle him to an exemption for the whole.").

Other decisions have disallowed the homestead exemption when the owner is leasing all or a portion of the alleged homestead to a third party who occupies the leased premises or when the leased premises are used by third persons as their businesses. *Shillinglaw v. Lawson*, 88 B.R. 406 (S.D. Fla. 1988); *In re: Radtke*, 344 B.R. 690 (Bankr. S.D. Fla. 2006); In re: Bell, 252 B.R. 562 (Bankr. M.D. Fla. 2000); *In re: Nofsinger*, 221 B.R. 1018 (Bankr. S.D. Fla. 1998); In re: Pietrunti, 207 B.R. 18 (Bankr. M.D. Fla. 1997); *In re: Wierschem*, 152 B.R. 345 (Bankr. M.D. Fla. 1993). *But see In re: Ballato*, 318 B.R. 205, 210 (Bankr. M.D. Fla. 2004)(finding homestead exemption would apply to a single family residence even if parts thereof were leased to unrelated persons and distinguishing cases that provided for the partial or complete disallowance of the homestead exemption where severable portions of the property were used solely for income-producing or business purposes on the basis that the property at issue was a single family residence).

30 221 B.R. at 1020 n.1. *See also In re: Wierschem*, 152 B.R. 345 (Bankr. M.D. Fla. 1993)(property located outside of a municipality which was improved with beach apartments was not homestead exempt except for the unit occupied by property owner). *But see In re: Israel*, 94 B.R. 729 (Bankr. N.D. Fla. 1988) ("We find that the lease of a portion of the rural property by the debtor to a third party does not defeat the claim of homestead with respect to that portion such to the lease.").

31 221 B.R. at 1019.

32 *Id.* at 1021.

33 591 So.2d at 1152.

34 *Id.*

35 *Id.* at 1153.

36 976 So.2d at 75.

37 *In re: Bornstein*, 335 B.R. 462, 465-66 (Bankr. M.D. Fla. 2005)(stating that the majority of bankruptcy courts examining this issue "concluded that a debtor is entitled to an exemption only for his or her residence and not for any rented portion of the structure," and finding the "majority opinion is consistent with both Florida law and the Florida Constitution. A debtor can only claim the portion of the duplex used as his or her homestead exempt. The rented portion is not exempt and is subject to claims by the debtor's creditors."); *In re: Blocker*, 242 B.R. 75, 77 n.2 (Bankr. M.D. Fla. 1999) ("The Court notes that the majority view among Florida bankruptcy courts is to disallow claimed homestead exemptions pursuant to Article X, § 4 of the Florida Constitution when a debtor leases all or a portion of the alleged homestead to a third party who occupies the leased premises, whether in a residential or business capacity.").

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# Section Executive Council Meeting

## Clearwater, November 4-7, 2010

**By Jane L. Cornett, Esq., Cornett, Googe & Associates, P.A, Stuart, Florida**
**(with assistance from Michael Gelfand, Esq., Gelfand & Arpe P.A.)**

On November 4th the committee meetings of the Real Property, Probate & Trust Law Section of The Florida Bar got underway shortly after lunchtime at The Sand Pearl Resort. The Sand Pearl Resort is located immediately adjacent to the beautiful wide beach and the Gulf of Mexico in Clearwater. In addition to being known as a prime location for special events and weddings, The Sand Pearl is the first resort in Florida to achieve LEED Silver Certification by the U.S. Green Building Council– an appropriate location for a meeting of environmentally sensitive attorneys!

The weekend kicked off Thursday evening with a cocktail reception held at the Carlouel Yacht Club. This is an exclusive club founded in 1934 with a beautiful building aptly described as "Florida style." The yacht club is located within a short walk of The Sand Pearl, but Thursday evening's weather was somewhat inclement as a cold front started moving through the area, so most folks took the bus. Once everyone arrived at the yacht club there was excellent food, good company and outstanding discussions.

Friday was packed with various committee meetings. Many of the committees had important issues to bring to the Executive Council at the Saturday meeting, so there was much important business conducted during the committee meetings. If you are not a current committee member, you are really missing out on one of the advantages of being a member of the Section.

A very special spouse and guest event took place during lunchtime on Friday. This was a cooking demonstration by a chef from The Sand Pearl, which included wine tastings that were matched to the menu items.

The Friday evening event was a dinner and reception at The Sand Pearl Resort. Since the weather was quite frigid all weekend, it was a good thing that the dinner was held indoors.

Saturday began bright and early at 8:00 a.m. with the roundtables for both probate and real estate. The Executive Council meeting followed promptly at 10:00 a.m. Both the roundtable breakfast and the Executive Council meetings provide complimentary food which is an added incentive to attend these informative and important meetings.

Saturday evening saw dinner on the beach. Unfortunately, the weather wasn't cooperative. The temperature took a sharp plunge and the folks who braved attending the dinner were truly hardy souls. The evening on the beach started with hors d'oeuvres and drinks and then there was an outstanding buffet. The entertainment was very appropriate for an evening which could have been titled "fire and ice." Entertainment was provided by a lovely young lady who danced with fire. As reported by our colleague Michael Gelfand, "watching her warmed our souls and bodies."

Sunday morning before everyone headed out of town, breakfast was served buffet style, providing a fitting end to a weekend of good food and convivial conversation.

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# Real Estate Case Law Update

**Prepared by Benjamin B. Bush, Section Fellow**
**Law Office of Gardner, Bist, Wiener, Wadsworth & Bowden, P.A., Tallahassee, FL**

**Error to deny motion to consolidate two foreclosure cases having at least twelve parties in common, involving the same property, and involving common issues, including a lien priority issue.**

*Browncorp Construction Contracting, Inc. v. Stoneybrook South Community* 47 So.3d 965 (Fla. 5th DCA 2010).

Browncorp Construction Contracting, Inc. ("Browncorp") sought certiorari review of an order entered by the trial court denying Browncorp's motion to consolidate two foreclosure cases. The two foreclosure cases had at least twelve parties in common, involved the same property, and had common issues, including lien priority. The Fifth District Court of Appeal noted that consolidating the two cases would eliminate duplicative efforts and trials, thus accelerating the trial process. The Fifth District Court of Appeal also noted that consolidation would eliminate the risk of inconsistent results on issues that are common to the two cases, a harm for which the involved parties would not have adequate remedy on plenary appeal. The Fifth District Court of Appeal found certiorari relief warranted, quashed the trial court's order denying consolidation, and remanded the matter to the trial court for an entry of an order for consolidation.

**Where material supplier did not serve notice to owner, contractor was not required to identify unpaid material supplier in contractor's final payment affidavit as condition precedent to action against owner---Even if contractor negligently omitted material supplier from final payment affidavit, lien would still be valid.**

*Fetta v. All-Rite Paving Contractors, Inc.* 36 Fla. L. Weekly D40 (Fla. 4th DCA 2010)

All-Rite Paving Contractors, Inc. ("Contractor") filed an action to foreclose its construction lien against Loreto G. Fetta ("Fetta"). Contractor gave a contractor's final payment affidavit to Fetta, but Contractor negligently failed to include a material supplier who had not served a notice to owner. The trial court entered a final judgment in favor of Contractor on the lien foreclosure.

Fetta appealed and argued that Contractor did not satisfy a statutory condition precedent of identifying an unpaid material supplier in the contractor's final payment affidavit pursuant to Section 713.06(3)(d)1., Florida Statutes. Section 713.06(3)(d)1. provides, in pertinent part: "The contractor shall give to the owner a final payment affidavit stating, if that be the fact, that all lienors under his or her direct contract *who have timely served a notice to owner on the owner and the contractor* have been paid in full or, if the fact be otherwise, showing the name of *each such lienor* who has not been paid in full and the amount due or to become due each for labor, services, or materials furnished… . The contractor shall have no lien or right of action against the owner for labor, services, or material furnished under the direct contract while in default for not giving the owner an affidavit… ." (emphasis supplied). The trial court ruled that Fetta was in privity with the material supplier and, therefore, Fetta was on notice of its obligation to pay the material supplier.

The Fourth District Court of Appeal disagreed with the trial court's reasoning but agreed with the trial court's result and affirmed the trial court's decision. The Fourth District Court of Appeal stated that no competent substantial evidence existed that Fetta was in privity with the material supplier; however, the Fourth District Court of Appeal also held that competent substantial evidence existed that the material supplier never served a notice to owner on the owner. The Fourth District Court of Appeal read Section 713.06(3)(d)1. to require that the contractor identify only lienors "who have timely served a notice to owner on the owner." Therefore, the Contractor's final payment affidavit was not defective since the material supplier had never served a notice to owner on Fetta. Further, the Fourth District Court of Appeal found competent, substantial evidence in the record to support the conclusion that Contractor's omission of the material supplier from the final payment affidavit did not prejudice Fetta, therefore, the Contractor's lien was valid.

**Florida statute on recordation is a "notice" statute, and was not converted to a "race-notice" statute by 1967 amendment to section 695.11, Florida Statutes---Subsequently executed mortgage in favor of mortgagee who did not have actual or constructive notice of prior mortgage takes priority over the prior mortgage even though prior mortgage was recorded first.**

*Argent Mortgage Company, LLC v. Wachovia Bank, N.A.* 36 Fla. L Weekly D69 (Fla. 5th DCA 2010)

On August 31, 2004, Gene M. Burkes and Ann Burkes (the "Burkes") executed and delivered a mortgage to Olympus Mortgage Company securing a loan in the amount of $90,000.00 (the "Olympus Mortgage"). The Olympus Mortgage was recorded on January 5, 2005. The Olympus Mortgage was later assigned to Wachovia Bank, N.A., as trustee under a pooling agreement ("Wachovia"). On December 10, 2004, the Burkes executed and delivered a mortgage to Argent

*continued, next page*

Mortgage Company, LLC ("Argent") securing a loan in the amount of $65,000.00 (the "Argent Mortgage"). The Argent Mortgage encumbered the same real property as the Olympus Mortgage. The Argent Mortgage was recorded on January 31, 2005. The Argent Mortgage was later assigned to Wells Fargo Bank.

As a result of a default in the Olympus Mortgage, Wachovia filed a complaint to foreclose the Olympus Mortgage and named Argent as a defendant, alleging that Argent might claim some interest in or lien upon the real property being foreclosed under the Olympus Mortgage. As a result of default, an action to foreclose the Argent Mortgage was initiated. The trial court consolidated the two foreclosure actions. Argent filed a motion for summary judgment claiming that the Argent Mortgage had priority over the Olympus Mortgage. Likewise, Wachovia also filed for summary judgment claiming that the Olympus Mortgage had priority over the Argent Mortgage. The trial court held a hearing on the competing motions and determined that, when read together, Sections 695.01 and 695.11, Florida Statutes, "to be of the race-notice variety". The trial court ruled that the Olympus Mortgage had priority over the Argent Mortgage.

The Fifth District Court of Appeals noted that Wachovia prevails under a race-notice recording statute because, although Argent is a subsequent mortgagee for value and did not have notice of the Olympus Mortgage at the time of execution of the Argent Mortgage, the Olympus Mortgage was recorded before the Argent Mortgage. The Fifth District Court of Appeal also noted that Argent prevails under a notice recording statute because it is a subsequent mortgagee for value and did not have notice of the Olympus Mortgage at the time of execution of the Argent Mortgage. The Fifth District Court of Appeal reversed and remanded holding that Section 695.01, Florida Statutes, is a "notice" recording statute and that notice controls the issue of priority. The Fifth District Court of Appeal noted that commentators uniformly categorize Section 695.01 as a "notice" type of recording statute. Also, the Fifth District Court of Appeal rejected Wachovia's argument that the 1967 amendments to Section 695.11, Florida statutes, effectively converted Florida from a "notice" state to a "race-notice" state.

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**Language of easement providing for "free and unencumbered access" did not clearly prohibit servient owner from erecting gate across easement where gate did not interfere unreasonably with easement.**

*Gilliand v. Heiderich* 46 So.3d 1186 (Fla. 5th DCA 2010)

John Gilliand and Wendy McAllister ("Appellants") purchased a five acre parcel in 2003. The property, the dominant estate, was landlocked and required an easement over property owned by the Davidsons, the servient estate. A fifty-foot-wide easement for "free and unencumbered access," was conveyed with the purchase of the five acre parcel. In 2007, Heather Heiderich ("Appellee") purchased the servient estate from the Davidsons subject to the easement. Appellee informed Appellants of her plan to install an electronic gate at the point where the easement met S.R. 19 so that her horses would not wander onto the roadway. The gate would be activated by remote, keypad or manual override. Appellants objected to the installation of the gate and Appellee filed suit seeking declaratory and injunctive relief. Appellants answered, demanding the easement remain ungated, an asserting their right to the unobstructed use of the driveway.

During the litigation, Appellee installed the electronic gate. Appellee testified that the plate beneath the keypad for the electronic gate displayed the entry code for visitors and delivery personnel. The electronic gate was solar-powered with a battery backup and had a manual override. Prior to trial, Appellants moved and leased the dominant estate. At trial the tenant that occupied the dominant estate testified that both he and his guests had no problems using the electronic gate. Appellants argued that the value of the dominant estate was impaired by the existence of the electronic gate and refused to use the electronic gate to avoid any argument that they consented to its existence. The trial court entered a final judgment declaring that the language of the easement did not prevent Appellee from erecting a gate across the easement and that the electronic gate was not an unreasonable interference with Appellants' access to the dominant estate.

The Fifth District Court of Appeals affirmed the trial court's decision. The Fifth District Court of Appeals reasoned that parties that want to keep an easement free from gates and other obstacles can specifically express that intention in the document. However, failure to do so does not preclude the right to erect a gate so long as it does not interfere unreasonably with the right of way. The Fifth District Court of Appeals also stated that "free and unencumbered access" did not clearly express a prohibition on gates. The Fifth District Court of Appeals also stated that there was competent, substantial evidence to support the trial court's finding that the electronic gate did not unreasonably interfere with Appellants' easement.

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**By John A. Noland, President, The Florida Bar Foundation**

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*Conference Chair:*
**Wm. Cary Wright, Tampa**

*Conference Co-Vice Chairs:*
**Michelle A. Reddin, Orlando**
**Reese J. Henderson, Jr., Jacksonville**

*Construction Law Committee:*
**Brian A. Wolf, Ft. Lauderdale, Chair**
**Hardy L. Roberts, III, Tampa, Co-Vice Chair**
**Arnold D. Tritt, Jacksonville, Co-Vice Chair**

**Course No. 1179R**

**The Advanced Construction Law Certification Review Course – 2011 Edition (Course Number 1180R) will be simultaneously taking place at the same location.**

# Construction Law Institute 2011

**Course No. 1179R**

## DAY 1 (optional) • Thursday, March 31, 2011

12:30 p.m. **Golf Tournament Check-In**
**National Course**
*Shotgun Start at 1:00 p.m.*




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

## DAY 2 • Friday, April 1, 2011

7:45 a.m. – 8:30 a.m.
**Check In and Late Registration**

7:45 a.m. – 8:30 a.m.
**Continental Breakfast**

8:30 a.m. – 8:45 a.m.
**Opening Remarks**
*Wm. Cary Wright, Tampa – Program Chair*
*Margaret A. Rolando, Miami – Director, Real Property Division*
*George J. Meyer, Tampa – Chair-Elect, Real Property, Probate & Trust Law Section of The Florida Bar*

8:45 a.m. – 9:45 a.m.
**Plenary I – Presentation on Federal and State E-Discovery Rules and Case Law**
*Robert W. Pass, Tallahassee*

9:45 a.m. – 10:15 a.m.
**Networking Break**

10:15 a.m. – 11:45 a.m.
**Workshop A: Use of E-Discovery Experts and Integrating the Experts through The Trial Presentation**
*John H. Rains, III, Tampa*
*Jamie E. Berry, Washington, D.C.*

**Workshop B: Issues to Address in Dispute Resolution Clauses**
*Christi Leigh Underwood, Winter Park*
*Larry R. Leiby, Ft. Lauderdale*

11:45 a.m. – 1:30 p.m.
**Lunch Presentation (included in registration)**
**Chief Justice Charles T. Canady, Tallahassee**

1:30 p.m. – 2:45 p.m.
**Workshop C: Inadvertent Document Productions and the Threat of Attorney Disqualifications**
*Etan Mark, Miami*

**Workshop D: Construction Issues for Distressed Assets and REO**
*Kimberly A. Ashby, Orlando*
*Joseph E. ("Ed") Foster, Orlando*

2:45 p.m. – 3:15 p.m.
**Networking Break**

3:15 p.m. – 4:15 p.m.
**Workshop E: Fraud in Construction**
*Lee A. Weintraub, Ft. Lauderdale*

**Workshop F: Advanced Lien Law**
*Bruce G. Alexander, West Palm Beach*
*Brian A. Wolf, Ft. Lauderdale*

6:00 p.m. – 7:30 p.m.
**Reception**

## DAY 3 • Saturday, April 2, 2011

8:00 a.m. – 9:30 a.m.
**Breakfast: Economic Forecast for Construction Industry**
*Kenneth D. Simonson, Chief Economist, The Associated Contractors of America*

9:30 a.m. – 10:45 a.m.
**Workshop G: Update on Chinese Drywall: Litigation, Insurance Coverage and Other Issues**
*Neal A. Sivyer, Tampa*
*Wm. Cary Wright, Tampa*

**Workshop H: Counseling Clients in Public Contracting – Deal Breakers and Negotiation Points**
*Deborah B. Mastin, Miami*
*Joseph L. Passiatore, Orlando*

10:45 a.m. – 11:15 a.m.
**Networking Break**

11:15 a.m. – 12:45 p.m.
**Workshop I: An Inside Look at the Arbitration Panel**
*Denise M. Hammond, Orlando*
*John Sherill, Atlanta, GA*

**Workshop J: Post-Judgment Collections: Garnishment and Proceedings Supplementary, Including the Impact of Bankruptcy**
*John J. Lamoureux, Tampa*
*Marsha G. Rydberg, Tampa*

12:45 p.m. – 2:00 p.m.
**Plenary II – Legislative & Case Law Update**
*Frederick R. Dudley, Tallahassee*

## REAL PROPERTY, PROBATE AND TRUST LAW SECTION

Brian Felcoski, Coral Gables – Chair
George J. Meyer, Tampa – Chair-Elect
Deborah P. Goodall, Boca Raton – CLE Chair
Wm. Cary Wright, Tampa – Program Chair

## CLE COMMITTEE

Candace S. Preston, Wauchula – Chair
Terry L. Hill, Director – Programs Division

## CONFERENCE STEERING COMMITTEE

Kimberly A. Ashby, Orlando
Kendra Cassell, Orlando
Timothy C. Ford, Tampa
Denise M. Hammond, Orlando
Larry R. Leiby, Ft. Lauderdale
Jason J. Quintero, Tampa
John H. Rains, III, Tampa
Bryan R. Rendzio, Jacksonville
Mark A. Smith, Tampa
Arlene C. Udick, Lake Lake
Christi L. Underwood, Orlando

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## HOTEL RESERVATION INFORMATION

To reserve a sleeping room with the Omni ChampionsGate Resort, ChampionsGate, FL, please call toll free 1-800-THE OMNI. The Florida Bar group rate of $201/night is guaranteed until March 9, 2011, or until the room block is sold out. If the room block is sold out you may be able to get on a wait list pending any cancellations.

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## REFUND POLICY

Requests for refund or credit toward the purchase of the audio CD or course books for this program **must be in writing and postmarked** no later than two business days following the course presentation. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. A $25 service fee applies to refund requests. Registrants that do not notify The Florida Bar by 5:00 p.m., April 1, 2011 that they will be unable to attend the seminar, will have an additional $100 retained. Persons attending under the policy of fee waivers will be required to pay $100.

## CLE CREDITS

**CLER PROGRAM**
(Maximum Credit: 14.0 hours)

General: 14.0 hours

**CERTIFICATION PROGRAM**
(Maximum Credit: 14.0 hours)

Construction Law: 14.0 hours
Real Estate Law: 14.0 hours

**CEU CREDIT:** APPLIED FOR

# Register me for the "4th Annual Construction Law Institute 2011" Seminar

**ONE LOCATION: (323) OMNI CHAMPIONSGATE RESORT, CHAMPIONSGATE, FL (MARCH 31 - APRIL 2, 2011)**

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

Name_____ Florida Bar #_____

Address _____

City/State/Zip_____Phone: (  )_____

E-mail* _____

***E-mail address required to transmit electronic course materials and is only used for this order.*** **LCS: Course No. 1179R**

**ELECTRONIC COURSE MATERIAL NOTICE:** Effective July 1, 2010, every CLE course will feature an electronic course book in lieu of a printed book for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable, downloadable, printable material will be available via e-mail several days in advance of the live course presentation or thereafter for purchased products. We strongly encourage you to purchase the book separately if you prefer your material printed but do not want to print it yourself.

## REGISTRATION FEE:

- ❑ Section member: $425 (Registration does not include the Golf Tournament)
- ❑ Non-section member: $475
- ❑ Board Certified Attorneys: $400
- ❑ Full-time law college faculty or full-time law student: $210
- ❑ Persons attending under the policy of fee waivers. Fee waivers are only applicable for in-person attendance: $100
  *Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court-appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice are eligible upon written request and for personal use only, complimentary admission to any live CLE Committee sponsored course. Not applicable to webcast. (We reserve the right to verify employment.)*
- ❑ **Golf Tournament:** $200 ($186.92 + 13.08 tax) – (1179GOLF)
  Pairing Preference: _____

## METHOD OF PAYMENT (CHECK ONE):

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

Signature: _____

Name on Card: _____

Billing Zip Code: _____

Card No. _____

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

## COURSE BOOK – AUDIO CD

Private recordng of this program is not permitted. **Delivery time is 4 to 6 weeks after 04/04/11. TO ORDER AUDIO CD OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax. Tax exempt entities must pay the non-section member price.**

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

❑ **COURSE BOOK ONLY** **(1179M)**

Cost $60 plus tax

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

**TOTAL $** _____

❑ **AUDIO CD** **(1179C)**

(includes electronic course material)

$425 plus tax (section member)

$475 plus tax (non-section member)

**TOTAL $** _____

THE FLORIDA BAR CLE

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

# Rules, Deadlines and Essential Issues and Developments in Probate Practice

• Live
• Live Webcast
• Audio CD
• Video DVD

**COURSE CLASSIFICATION: INTERMEDIATE LEVEL**

**Two Live and Webcast Presentations:**
**Thursday, March 17, 2011 • Tampa Airport Marriott • Tampa • Live Webcast**
**Friday, March 18, 2011 • Hyatt Regency Pier Sixty-Six • Fort Lauderdale**

**Course No. 1177R**

8:25 a.m. – 8:55 a.m.
**Late Registration**

8:55 a.m. – 9:00 a.m.
**Opening Remarks**
*J. Richard Caskey, Tampa – Program Chair*

9:00 a.m. – 9:30 a.m.
**Application of New Estate Tax Laws**
*Sean Kelley, Tampa*

9:30 a.m. – 10:20 a.m.
**Beneficiary Trust Rules for IRAs**
*Rex E. Moule, Melbourne*

10:20 a.m. – 11:10 a.m.
**Reformation of Wills**
*Tae Kelley Bronner, Tampa*

11:10 a.m. – 11:40 a.m.
**Use of Rules of Civil Procedure in Probate**
*J. Richard Caskey, Tampa*

11:40 a.m. – 12:40 p.m.
**Lunch (on your own)**

12:40 p.m. – 1:30 p.m.
**Ethics and Rules of Professional Conduct in Estate Matters**
*Paul E. Roman, Boca Raton*

1:30 p.m. – 2:20 p.m.
**Deadlines Under the Probate Code**
*Debra L. Boje, Tampa*

2:20 p.m. – 3:00 p.m.
**Amendments to Rules of Judicial Administration**
*Laird Lile, Naples*

## WEBCAST CONNECTION

Registrants will receive webcast connection instructions two days prior to the scheduled course date via e-mail. If The Florida Bar does not have your e-mail address, contact the Order Entry Department at 850-561-5831, two days prior to the event for the instructions.

## REAL PROPERTY, PROBATE AND TRUST LAW SECTION

Brain J. Felcoski, Coral Gables — Chair
George J. Meyer, Tampa — Chair-elect
Deborah P. Goodall, Boca Raton — CLE Chair
J. Richard Caskey, Tampa — Program Chair

## CLE COMMITTEE

Candace S. Preston, Wauchula — Chair
Terry L. Hill, Director, Programs Division

## CLE CREDITS

### CLER PROGRAM
(Max. Credit: 6.0 hours)

General: 6.0 hours
Ethics: 1.0 hour

### CERTIFICATION PROGRAM
(Max. Credit: 4.5 hours)

Elder Law: 4.5 hours
Wills, Trusts & Estates: 4.5 hours

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

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

**TO REGISTER** | **ON-LINE:** www.floridabar.org/CLE | **MAIL:** Completed form with check | **FAX:** Completed form to 850/561-5816

**REFUND POLICY:** A $25 service fee applies to all requests for refunds. Requests **must be in writing and postmarked** no later than two business days following the live course presentation or receipt of product. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid.

## Register me for the "Rules, Deadlines and Essential Issues and Developments in Probate Practice" Seminar

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

Name _____ Florida Bar # _____

Address _____ Phone: (  ) _____

City/State/Zip _____ E-mail* _____

***E-mail address required to transmit electronic course materials and is only used for this order.***

**LCS: Course No. 1177R**

**ELECTRONIC COURSE MATERIAL NOTICE:** Effective July 1, 2010, every CLE course will feature an electronic course book in lieu of a printed book for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable, downloadable, printable material will be available via e-mail several days in advance of the live course presentation or immediately for products purchased thereafter. We strongly encourage you to purchase the book separately if you prefer your material printed but do not want to print it yourself.

### LOCATION (CHECK ONE):

- ❑ **Tampa - March 17, 2011**
  (049) Tampa Airport Marriott
- ❑ **Fort Lauderdale - March 18, 2011**
  (084) Hyatt Regency Pier Sixty Six
- ❑ **Live Webcast / Virtual Seminar* March 17, 2011**
  (317) Online

***Registrants who participate in the live webcast will receive an e-mail with a web-link and log-in credentials two days prior to the seminar to include access to the course materials. Call The Florida Bar Order Entry Department at (800) 342-8060, ext. 5831 with any questions.**



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

### LIVE REGISTRATION (CHECK ONE)

### WEBCAST

- ❑ Member of the Real Property, Probate & Trust Law Section: $140 — ❑ $220
- ❑ Non-section member: $190 — ❑ $270
- ❑ Full-time law college faculty or full-time law student: $95
- ❑ Persons attending under the policy of fee waivers: $0

*Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court-appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice; are eligible upon written request and for personal use only, complimentary admission to any live CLE Committee sponsored course. Not applicable to webcast. (We reserve the right to verify employment.)*

### METHOD OF PAYMENT (CHECK ONE)

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

☐ MASTERCARD ☐ VISA ☐ DISCOVER ☐ AMEX

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

Signature: _____

Name on Card: _____

Billing Zip Code: _____

Card No. _____

❑ Enclosed is my separate check in the amount of $50 to join the Real Property, Probate and Trust Law Section. Membership expires June 30, 2011.

## COURSE BOOK – AUDIO CD – DVD – ONLINE – PUBLICATIONS

Private recording of this program is not permitted. **Delivery time is 4 to 6 weeks after 3/18/11. TO ORDER AUDIO CD / DVD OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax to the price. Tax exempt entities must pay the non-section member price.** Those eligible for the above mentioned fee waiver may order a complimentary audio CD in lieu of live attendance upon written request and for personal use only.

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

❑ **COURSE BOOK ONLY 1177M**
Cost $60 plus tax
(Certification/CLER credit is not awarded for the purchase of the course book only.)
**TOTAL $ _____**

❑ **AUDIO CD 1177C**
(includes electronic course book)
$140 plus tax (section member)
$190 plus tax (non-section member)
**TOTAL $ _____**

❑ **DVD 1177D**
(includes electronic course book)
$250 plus tax (section member)
$275 plus tax (non-section member)
**TOTAL $ _____**

**Related Florida Bar Publications can be found at http://www.lexisnexis.com/flabar/**

RECYCLE

THE FLORIDA BAR CLE

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

# Advanced Construction Law and Certification Review Course 2011

**COURSE CLASSIFICATION: ADVANCED LEVEL**

**Live Presentation: April 1 - 2, 2011**

**Omni Championsgate Resort • 1500 Masters Boulevard**
**Championsgate, FL 33896 • 407-825-1234**

**Course No. 1180R**

Those who have applied to take the certification exam may find this course a useful tool in preparing for the exam. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Those who have developed the program, however, have significant experience in their field and have tried to include topics the exam may cover. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination.

## Friday, April 1, 2011

7:30 a.m. – 8:00 a.m.
**Registration**

8:00 a.m. – 8:30 a.m.
**Welcome and Overview of Certification**
*Kim Ashby, Orlando*

8:30 a.m. – 9:40 a.m.
**Construction Contracts/ Understanding AIA Provisions**
*Bruce Alexander, West Palm Beach*

9:40 a.m. – 10:20 a.m.
**Contract Awards & Protests**
*Mia McKown, Tallahassee*

10:20 a.m. – 10:30 a.m.
**Break**

10:30 a.m. – 11:20 a.m.
**Damage Theories of Recovery – Delay Damages**
*Mike Wilson, Orlando*

11:20 a.m. – 11:45 a.m.
**Licensing Issues**
*Larry Leiby, Ft. Lauderdale*

11:45 a.m. – 1:30 p.m.
**Lunch Presentation (included in registration fee)**
*Chief Justice Charles T. Canady, Tallahassee*

1:30 p.m. – 2:00 p.m.
**Construction Contract Specific Issues: Condominiums, Spearin, et al**
*Mindy Gentile, Ft. Lauderdale*

2:00 p.m. – 3:00 p.m.
**Lien Law – Part 1**
*Lee Weintraub, Ft. Lauderdale*

3:00 p.m. – 3:15 p.m.
**Break**

3:15 p.m. – 4:15 p.m.
**Insurance (Liability; E&O, BR)**
*W. Cary Wright, Tampa*

4:15 p.m. – 5:30 p.m.
**Chapter 558 – Construction Defects**
*Fred Dudley, Tallahassee*

## Saturday, April 2, 2011

8:00 a.m. – 9:30 a.m.
**Breakfast: Economic Forecast for Construction Industry**
*Kenneth D. Simonson, Chief Economist, The Associated Contractors of America*

9:30 a.m. – 10:30 a.m.
**Lien Law – Part 2**
*Lee Weintraub, Ft. Lauderdale*

10:30 a.m. – 10:40 a.m.
**Break**

10:40 a.m. – 11:20 a.m.
**Construction Products Liability**
*Stacy Bercun, Ft. Lauderdale*

11:20 a.m. – 12:30 p.m.
**Bonding (Private/Public – State and Federal)**
*John Dannecker, Orlando*

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

1:30 p.m. – 2:30 p.m.
**Prompt Pay**
*Reese Henderson, Jacksonville*

2:30 p.m. – 3:00 p.m.
**Construction Lending**
*Ralf Rodriguez, Ft. Lauderdale*

3:00 p.m. – 3:10 p.m.
**Break**

3:10 p.m. – 4:10 p.m.
**Ethics Issues in Construction**
*Kim Ashby, Orlando*

**REAL PROPERTY, PROBATE & TRUST LAW SECTION**
Brian J. Felcoski, Coral Gables — Chair
George J. Meyer, Tampa — Chair-elect
Deborah P. Goodall, Boca Raton — CLE Chair
Kim Ashby, Orlando — Program Chair

**CLE COMMITTEE**
Candace S. Preston, Wauchula, Chair
Terry L. Hill, Director, Programs Division

## CLE CREDITS

**CLER PROGRAM**
(Max. Credit: 18.5 hours)
General: 18.5 hours
Ethics: 1.0 hour

**CERTIFICATION PROGRAM**
(Max. Credit: 18.5 hours)
Business Litigation: 18.5 hours
Construction Law: 18.5 hours
Real Estate Law: 18.5 hours

**TO REGISTER** | ON-LINE: www.floridabar.org/CLE | MAIL: Completed form with check | FAX: Completed form to 850/561-5816

**REFUND POLICY:** A $25 service fee applies to all requests for refunds. Requests **must be in writing and postmarked** no later than two business days following the live course presentation or receipt of product. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. Registrants who do not notify The Florida Bar by 5:00 p.m., March 25, 2011 that they will be unable to attend the seminar, will have an additional $60 retained. Persons attending under the policy of fee waivers will be required to pay $60.

**HOTEL RESERVATIONS:** A block of rooms has been reserved at the Omni Championsgate Resort, at the rate of $201 single/double occupancy. To make reservations, call the Omni Championsgate Resort directly at 1-800-THE OMNI. Reservations must be made by 3/9/11 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

## Register me for the "Advanced Construction Law and Certification Review Course 2011"

**ONE LOCATION: (323) OMNI RESORT AT CHAMPIONSGATE, CHAMPIONSGATE, FL (APRIL 1- 2, 2011)**

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

Name _____ Florida Bar # _____

Address _____ Phone: ( ) _____

City/State/Zip _____ E-mail* _____

***E-mail address is required to receive electronic course material and will only be used for this order.*** **ECS: Course No. 1180R**

**ELECTRONIC COURSE MATERIAL NOTICE:** Effective July 1, 2010, every CLE course will feature an electronic course book in lieu of a printed book for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable, downloadable, printable material will be available via e-mail several days in advance of the live course presentation or thereafter for purchased products. We strongly encourage you to purchase the book separately if you prefer your material printed but do not want to print it yourself.

### REGISTRATION FEE (CHECK ONE):

- ❑ Member of the Real Property, Probate & Trust Law Section: $385
- ❑ Non-section member: $435
- ❑ Full-time law college faculty or full-time law student: $247.50
- ❑ Persons attending under the policy of fee waivers: $60

*Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice are eligible upon written request and for personal use only, complimentary admission to any live CLE Committee sponsored course. Not applicable to webcast. (We reserve the right to verify employment.)*

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

### METHOD OF PAYMENT (CHECK ONE):

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

☐ MASTERCARD ☐ VISA ☐ DISCOVER ☐ AMEX Exp. Date: ____/____ (MO./YR.)

❑ Enclosed is my separate check in the amount of $50 to join the Real Property, Probate & Trust Law Section. Membership expires June 30, 2011.

Signature: _____

Name on Card: _____

Billing Zip Code: _____

Card No. _____

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

Private recording of this program is not permitted. **Delivery time is 4 to 6 weeks after 04/04/11. TO ORDER AUDIO CD OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax. Tax exempt entities must pay the non-section member price.** Those eligible for the above mentioned fee waiver may order a complimentary audio CD in lieu of live attendance upon written request and for personal use only.

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

❑ **COURSE BOOK ONLY** **(1180M)**
Cost $60 plus tax
(Certification/CLER credit is not awarded for the purchase of the course book only.)
**TOTAL $** _____

❑ **AUDIO CD** **(1180C)**
(includes electronic course material)
$385 plus tax (section member)
$435 plus tax (non-section member)
**TOTAL $** _____

**Related Florida Bar Publications can be found at http://www.lexisnexis.com/flabar/**

THE FLORIDA BAR CLE

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

# Advanced Real Estate Law and Certification Review Course

• Live
• Live Webcast
• Audio CD
• Video DVD

**COURSE CLASSIFICATION: ADVANCED LEVEL**

**Live and Webcast Presentation: Friday & Saturday, April 8 - 9, 2011**

**Hyatt Regency Orlando Airport • 9300 Airport Boulevard • Orlando, FL 32827**
**407-825-1234 • www.orlandoairport.hyatt.com**

**Course No. 1185R**

Those who have applied to take the certification exam may find this course a useful tool in preparing for the exam. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Those who have developed the program, however, have significant experience in their field and have tried to include topics the exam may cover. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination.

## FRIDAY, April 8, 2011

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

8:25 a.m. – 8:30 a.m.
**Introduction**
*W. Theodore Conner – Program Chair*

8:30 a.m. – 9:00 a.m.
**FAR/BAR Contract**
*G. Thomas Ball, Orlando*

9:00 a.m. – 9:50 a.m.
**Case Law and Statutory Update**
*Eugene E. Shuey, Gainesville*

9:50 a.m. – 10:20 a.m.
**Marketable Record Title Act & Curative Statutes**
*Melissa Scaletta, Orlando*

10:20 a.m. – 10:35 a.m. **Break**

10:35 a.m. – 11:25 a.m.
**Homestead**
*John B. Neukamm, Tampa*

11:25 a.m. – 12:00 p.m.
**Construction Liens**
*Lee A. Weintraub, Ft. Lauderdale*

12:00 p.m. – 1:00 p.m.
**Lunch (included in registration fee)**
**Comments on Certification Examination and Benefits**
*Jennifer Slone Tobin, Orlando*
*Deborah Boyd, West Palm Beach*

1:00 p.m. – 1:25 p.m.
**Tax Liens and Tax Titles**
*Robert G. Stern, Tampa*

1:25 p.m. – 2:10 p.m.
**Judgments and Judgment Liens**
*Patricia J. Hancock, Maitland*

2:10 p.m. – 2:40 p.m.
**Real Estate Finance Notes and Mortgages**
*Wilhelmina F. Kightlinger, Tampa*

2:40 p.m. – 2:55 p.m. **Break**

2:55 p.m. – 3:45 p.m.
**Ethics**
*Jan K. Wichrowski, Orlando*

3:45 p.m. – 4:20 p.m.
**Condominiums and Condominium Associations**
*William P. Sklar, West Palm Beach*

4:20 p.m. – 4:50 p.m.
**Homeowners' Associations**
*Michael J. Gelfand, West Palm Beach*

4:50 p.m. – 5:20 p.m.
**Environmental Issues**
*Roger D. Schwenke, Tampa*

## SATURDAY, April 9, 2011

8:25 a.m. – 8:30 a.m.
**Opening Remarks**
*Raul Perez Ballaga, Program Co-Vice Chair, Miami*

8:30 a.m. – 9:10 a.m.
**Documentary Stamp Taxes**
*E. Burt Bruton, Jr., Miami*

9:10 a.m. – 9:50 a.m.
**Tenancies and Conveyances**
*Robert M. Schwartz, Boca Raton*

9:50 a.m. – 10:30 a.m.
**Landlord/Tenant Disputes and Evictions**
*Guy Norris, Program Co-Vice Chair, Lake City*

10:30 a.m. – 10:45 a.m. **Break**

10:45 a.m. – 11:45 a.m.
**HUD-1 Settlement Statement**
*Roland D. Waller, New Port Richey*

11:45 a.m. – 12:15 p.m.
**Zoning and Permitting**
*Richard Davis, Tampa*

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

1:15 p.m. – 2:00 p.m.
**Foreclosures**
*Alfred LaSorte, West Palm Beach*

2:00 p.m. – 2:30 p.m.
**Bankruptcy**
*Marsha Rydberg, Tampa*

2:30 p.m. – 2:40 p.m. **Break**

2:40 p.m. – 3:10 p.m.
**Public Lands and Water Boundaries**
*Alan B. Fields, St. Petersburg*

3:10 p.m. – 3:40 p.m.
**Land Trusts**
*Andrew M. O'Malley, Tampa*

3:40 p.m. – 4:00 p.m.
**Surveys**
*Richard W. Taylor, Deland*

4:00 p.m. – 4:10 p.m.
**Title Insurance**
*W. Theodore Conner, Orlando*

### WEBCAST CONNECTION

Registrants will receive webcast connection instructions two days prior to the scheduled course date via e-mail. If The Florida Bar does not have your e-mail address, contact the Order Entry Department at 850-561-5831, two days prior to the event for the instructions.

### CLE CREDITS

**CLER PROGRAM**
(Max. Credit: 16.0 hours)
General: 16.0 hours
Ethics: 1.0 hour

**CERTIFICATION PROGRAM**
(Max. Credit: 16.0 hours)
Construction Law: 16.0 hours
Real Estate Law: 16.0 hours

| TO REGISTER | ON-LINE: www.floridabar.org/CLE | MAIL: Completed form with check | FAX: Completed form to 850/561-5816 |
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**REFUND POLICY:** A $25 service fee applies to all requests for refunds. Requests **must be in writing and postmarked** no later than two business days following the live course presentation or receipt of product. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. Registrants who do not notify The Florida Bar by 5:00 p.m., April 4, 2011 that they will be unable to attend the seminar, will have an additional $35 retained. Persons attending under the policy of fee waivers will be required to pay $35.

**HOTEL RESERVATIONS:** A block of rooms has been reserved at the Hyatt Regency Orlando Airport, at the rate of $169 single/double occupancy. To make reservations, call the Hyatt Regency Orlando Airport directly at (407) 825-1234. Reservations must be made by 3/8/11 to assure the group rate and availability. After that date, the group rate will be granted on a "space available" basis.

## Register me for the "Advanced Real Estate Law and Certification Review Course"

**ONE LOCATION: (234) HYATT REGENCY ORLANDO AIRPORT, ORLANDO, FL (FRIDAY & SATURDAY, APRIL 8 - 9, 2011)**

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

Name _____ Florida Bar # _____

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City/State/Zip _____ E-mail* _____

***E-mail address is required to receive electronic course material and will only be used for this order.*** **ECS: Course No. 1185R**

**ELECTRONIC COURSE MATERIAL NOTICE:** Effective July 1, 2010, every CLE course will feature an electronic course book in lieu of a printed book for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable, downloadable, printable material will be available via e-mail several days in advance of the live course presentation or thereafter for purchased products. We strongly encourage you to purchase the book separately if you prefer your material printed but do not want to print it yourself.

### LOCATION (CHECK ONE):

- ❑ **Orlando - April 8 - 9, 2011**
  (234) Hyatt Regency Orlando Airport
- ❑ **Live Webcast / Virtual Seminar* April 8 - 9, 2011**
  (317) Online

***Registrants who participate in the live webcast will receive an email with a web-link and log-in credentials two days prior to the seminar to include access to the course materials. Call The Florida Bar Order Entry Department at (800) 342-8060, ext. 5831 with any questions.**

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

### REGISTRATION FEE (CHECK ONE):

| | | WEBCAST: |
|---|---|---|
| ❑ | Member of the Real Property, Probate & Trust Law Section: $425 | $475 |
| ❑ | Non-section member: $475 | $525 |
| ❑ | Full-time law college faculty or full-time law student: $255 | |
| ❑ | Persons attending under the policy of fee waivers: $35 | |

*Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice are eligible upon written request and for personal use only, complimentary admission to any live CLE Committee sponsored course. Not applicable to webcast. (We reserve the right to verify employment.)*

### METHOD OF PAYMENT (CHECK ONE):

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

Signature: _____

Name on Card: _____

Billing Zip Code: _____

Card No. _____

❑ Enclosed is my separate check in the amount of $50 to join the Real Property, Probate & Trust Law Section. Membership expires June 30, 2011.

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

Private recording of this program is not permitted. **Delivery time is 4 to 6 weeks after 04/09/11. TO ORDER AUDIO CD / DVD OR COURSE BOOKS,** fill out the order form above, including a street address for delivery. **Please add sales tax. Tax exempt entities must pay the non-section member price.** Those eligible for the above mentioned fee waiver may order a complimentary audio CD in lieu of live attendance upon written request and for personal use only.

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

| ❑ **COURSE BOOK ONLY (1185M)** | ❑ **AUDIO CD (1185C)** | ❑ **DVD (1185D)** |
|---|---|---|
| Cost $60 plus tax | (includes electronic course material) | (includes electronic course material) |
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| | $475 plus tax (non-section member) | $550 plus tax (non-section member) |
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THE FLORIDA BAR CLE

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

# Wills, Trusts and Estates Certification Review and Advance Practice Update

• Live
• Live Webcast
• Audio CD
• Video DVD

**COURSE CLASSIFICATION: ADVANCED LEVEL**

**Live and Webcast Presentation: Friday & Saturday, April 8 - 9, 2011**

**Hyatt Regency Orlando Airport • 9300 Airport Boulevard**
**Orlando, FL 32827 • 407-825-1234 • www.orlandoairport.hyatt.com**

**Course No. 1186R**

Those who have applied to take the certification exam may find this course a useful tool in preparing for the exam. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Those who have developed the program, however, have significant experience in their field and have tried to include topics the exam may cover. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination.

## FRIDAY, April 8, 2011

7:30 a.m. – 8:00 a.m.
**Late Registration**

8:00 a.m. – 8:05 a.m.
**Introduction and Welcome**
*Anne Buzby-Walt, Jacksonville – Chair*
*Deborah Lynn Russell, Naples – Vice Chair*

8:05 a.m. – 8:45 a.m.
**Case Law Update**
*John B.T. Murray Jr., West Palm Beach*

8:45 a.m. – 10:10 a.m.
**Estate Administration and Probate**
*Richard E. Warner, Marathon*

10:10 a.m. – 10:25 a.m.
**Break**

10:25 a.m. – 11:15 a.m.
**Planning with IRA's**
*Kristen M. Lynch, Fort Lauderdale*

11:15 a.m. – 12:05 p.m.
**Fiduciary Accounting**
*Linda Suzzane Griffin, Clearwater*

12:05 p.m. – 1:30 p.m.
**Lunch and Ethics (included in registration fee)**
*Charles Ian Nash, Melbourne*

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

3:30 p.m. – 3:45 p.m.
**Break**

3:45 p.m. – 5:00 p.m.
**Taxes – Part 1 (continued)**
*Prof. David Powell*

## SATURDAY, April 9, 2011

8:30 a.m. – 10:30 a.m.
**Taxes – Part 2**
*Prof. David Powell*

10:30 a.m. – 10:45 a.m.
**Break**

10:45 a.m. – 11:30 a.m.
**Taxes – Part 2 (continued)**
*Prof. David Powell*

11: 30 a.m. – 12:30 p.m.
**Lunch (on your own)**

12:30 p.m. – 1:45 p.m.
**Probate and Trust Litigation**
*William Hennessey III, West Palm Beach*

1:45 p.m. – 2:45 p.m.
**Elective Share and Homestead**
*Tami F. Conetta, Sarasota*

2:45 p.m. – 3:00 p.m.
**Break**

3:00 p.m. – 4:15 p.m.
**Trust Administration**
*Richard R. Gans, Sarasota*

4:15 p.m. – 4:45 p.m.
**Board Certification Examination Preparation**
*Robert C. Wilkins Jr., Maitland*

### WEBCAST CONNECTION

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### REAL PROPERTY, PROBATE AND TRUST LAW SECTION

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George J. Meyer, Tampa — Chair-elect
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### CLE COMMITTEE

Candace S. Preston, Wauchula, Chair
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General: 16.0 hours
Ethics: 1.0 hour

**CERTIFICATION PROGRAM**
(Max. Credit: 16.0 hours)
Elder Law: 16.0 hours
Wills, Trusts & Estates: 16.0 hours
Tax: 16.0 hours

| TO REGISTER | ON-LINE: www.floridabar.org/CLE | MAIL: Completed form with check | FAX: Completed form to 850/561-5816 |
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Name _____ Florida Bar # _____

Address _____ Phone: ( ) _____

City/State/Zip _____ E-mail* _____

***E-mail address is required to receive electronic course material and will only be used for this order.*** **ECS: Course No. 1186R**

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

### REGISTRATION FEE (CHECK ONE):

| | WEBCAST: |
|---|---|
| ❑ Member of the Real Property, Probate & Trust Law Section: $335 | $425 |
| ❑ Non-section member: $385 | $475 |
| ❑ Full-time law college faculty or full-time law student: $210 | |
| ❑ Persons attending under the policy of fee waivers: $35 | |

*Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice are eligible upon written request and for personal use only, complimentary admission to any live CLE Committee sponsored course. Not applicable to webcast. (We reserve the right to verify employment.)*

### METHOD OF PAYMENT (CHECK ONE):

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

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❑ Enclosed is my separate check in the amount of $50 to join the Real Property, Probate & Trust Law Section. Membership expires June 30, 2011.

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

| ❑ COURSE BOOK ONLY (1186M) | ❑ AUDIO CD (1186C) | ❑ DVD (1186D) |
|---|---|---|
| Cost $60 plus tax | (includes electronic course material) | (includes electronic course material) |
| (Certification/CLER credit is not awarded for the purchase of the course book only.) | $335 plus tax (section member) | $500 plus tax (section member) |
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**Related Florida Bar Publications can be found at http://www.lexisnexis.com/flabar/**

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

# REAL PROPERTY FORMS

(Please note this disk DOES NOT include the FR/BAR Contracts or Riders, those are available at www.flssi.org.)

## Interactive CD Formatted for both WordPerfect and MS Word

### Fill In The Forms, Save Updated Form To Your Computer & Print

(Current update 2008)

The Real Property Forms Committee of the Real Property, Probate & Trust Law Section of The Florida Bar has completed the arduous task of preparing suggested forms with comments for the Real Property Practitioner. The forms are available through Florida Lawyers Support Services, Inc. to RPP&TL Section members.

## ONLY $ 100

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Appraisal Contingency
Short Sale Approval Contingency
Homeowners Insurance
Foreign Investment in Real Property Tax Act ("FIRPTA")
Interest-Bearing Account
"As Is"
Right to Inspection and Right to Cancel
Defective Drywall
Coastal Construction Control Line
Insulation Disclosure for New Residence
Lead-Based Paint Disclosure
Housing for Older Persons
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Pre-Closing Occupancy by Buyer
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Sale Of Buyer's Property
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Kick Out Clause
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| | |
|---|---|
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Phone: (_____)_____ Fax: (_____)_____

E-mail address:_____

**METHOD OF PAYMENT**

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**OR**

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

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Action Line July 2010

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# PROBATE & GUARDIANSHIP FORMS

Developed by members of the Real Property, Probate and Trust Law Section of The Florida Bar. **Forms carry the Supreme Court required 3" x 3" blank square for Court Clerk's use. Probate Judges prefer and some require the use of 2011 FLSSI forms.**

Firm: _____

Attorney Name: _____ **Attorney Bar #:**_____

Physical Address: _____

City/State/Zip: _____

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

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**OPTION #1** **ALL 2011 FORMS WITH INDEX - .PDF ON DISK . . . . . $379.10**
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- Comprehensive revision of the forms

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# 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

**RULES, DEADLINES AND ESSENTIAL ISSUES AND DEVELOPMENTS IN PROBATE PRACTICE**

***Two Live and Webcast Presentations:***

***Thursday, March 17, 2011***
***Tampa Airport Marriott***
***Tampa • Live Webcast***

***Friday, March 18, 2011***
***Hyatt Regency Pier Sixty-Six***
***Fort Lauderdale***

Course Registration: (850) 561-5831

**4TH ANNUAL CONSTRUCTION LAW INSTITUTE AND CERTIFICATION REVIEW COURSE**

***March 31 – April 2, 2011***
***Omni Resort at Champions Gate***
***Orlando, Florida***

Hotel Information: (407) 390-6664
Course Registration: (850) 561-5619

**ADVANCED CONSTRUCTION LAW AND CERTIFICATION REVIEW COURSE 2011**

***April 1 - April 2, 2011***
***Omni Resort at Champions Gate***
***Orlando, Florida***

Hotel Information: (407) 390-6664
Course Registration: (850) 561-5619

**ADVANCED REAL ESTATE LAW & CERTIFICATION REVIEW COURSE**

***April 8 - 9, 2011***
***Hyatt Regency Orlando Airport***

Hotel Information: (407) 825-1234
*www.orlandoairport.hyatt.com*
Course Registration: (850) 561-5831

**EXECUTIVE COUNCIL MEETING / RPPTL CONVENTION**

***May 25-28, 2011***
***Eden Roc Renaissance Miami Beach***
***Miami Beach, Florida***

Reservation Phone: (305) 531-0000

**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
651 East Jefferson Street
Tallahassee, FL 32399-2300

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## WHAT'S GOING ON AT THE "SESSION?"

To learn about the **Spring Legislative Session,** visit the Florida Bar websites (www.floridabar.org) and find "Bill Reports" in Legislative Activites.

## ELECTION AT CONVENTION

The RPPTL Section election meeting is scheduled for May 27, 2011 at the Eden Roc Hotel in Miami, FL. The election ballot is printed for your review on page 13 of this issue of *ActionLine* and is also available on the Section website: www.rpptl.org.

## *Save the Date*
## RPPTL CONVENTION
**May 26 - 29**
**Eden Roc Hotel, Miami**

## ARTICLES
***... for the next issue of ActionLine are being accepted.***
***Contact:***
***jrcactionline@gmail.com***

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 on page 4 inside.)

This issue of ActionLine has been printed on RECYCLED PAPER with soy-based ink!