

ActionLine

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

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Chair's Column

By George J. Meyer

Section Chair, 2011- 2012

A Great Start!

This being my first article as Chair of the Section, I can't think of a better way to begin it than by congratulating Brian Felcoski on the great year he had as Chair. The Section has benefited from his leadership and has much to thank him for.

Looking back over Brian's successful year, as well as the successful years of all the Chairs before him, I know I have a daunting assignment ahead of me during my year as Chair to match their success. Luckily I have been blessed with an exceptional group of Section members to work with on the Executive Committee. That team being made up of Fletch Belcher, Chair-Elect, Peggy Rolando, Real Property Law Division Director, Michael Dribin, Probate & Trust Law Division Director, Debra Boje, At-Large-Members Director, Michael Gelfand, Secretary, Andrew O'Malley, Treasurer, Deborah Goodall, CLE Seminar Coordination Committee Chair, Barry Spivey, Legislative Committee Chair, and of course, Brian Felcoski, Immediate Past Chair. With having that exceptional Executive Committee team to work with, as well as all of the other many talented and dedicated Section members who make up the Executive Council, I can't but have a high level of confidence about the coming year.

That confidence is further bolstered by the great start we have had so far. As I write this article, the Section already has had two highly successful Executive Council meetings and within the coming week will be starting its third Executive Council meeting. The first Executive Council meeting was the Section's Legislating and Case Law Update program at the Breakers; where, once again, Bob Swaine and his excellent crew of Co-Chairs put on an exceptional seminar program. The second Executive Council meeting was the Section's Out-of-State meeting which was held in Prague, Czech Republic. Between the seminar program and sightseeing tours, as well as the interaction we had with the Czech judiciary and legal community representatives, the approximately 120 people in attendance were able to experience a part of Europe that many had not experienced before.

The forthcoming third Executive Council meeting will be held at the Marriott Resort in Marco Island and will already have been held by the time this edition of Actionline is published. That meeting has a very full agenda, including various Section legislative initiatives and a special "best practices" training session for all Section Committee Chairs and Vice-Chairs.

The Section's next Executive Council meeting after Marco Island will be held on March 1st through 4th at the Sawgrass Marriott Resort in Ponte Vedra, Florida. As a reminder, many of the Section's Committees hold their meetings in conjunction with the Executive Council meetings. Almost all such Committee meetings are open to all Section members and many of those Committee meetings also allow attendance via conference call.

The fifth and final Executive Council meeting during my year as Chair will be held on May 31st through June 3rd, at the Don Cesar Beach Resort in St. Petersburg, Florida. That meeting also will be the Section's Annual Convention. It is anticipated the Section will be having on June 1st an all-day seminar in conjunction with the Convention. As a Section member benefit, there will be no registration fee charged to Section members for that seminar and it also is anticipated the seminar will have a high concentration of ethics credits. It is hoped that those Section members who attend this seminar and who are not actively involved with any of the Section's various Committees or otherwise actively involved with the Executive Council, also will take this opportunity to observe and participate in some of the Section Committee meetings, as well as the Executive Council meeting itself, that will be held in conjunction with the Convention. This is your opportunity to see first-hand what the Section does on behalf of its members and the Florida legal community. Hopefully it may encourage you to become more actively involved in the Section.

As some of you already know, the Section's Program Administrator for the past couple of years, Elizabeth Gerstman, recently left The Florida Bar. Though Ms. Gerstman will be missed, the Section is very lucky in that Yvonne Sherron has agreed to accept the position as the Section's new Program Administrator. Ms. Sherron is a highly experienced and regarded staff member of The Florida Bar and the Section is very grateful to have her as part of our leadership team.

In closing, I wish to again thank all of the other members of the Executive Committee and Executive Council for all of their dedication and hard work on behalf of the Section. I also wish to extend an offer to any and all Section members who may be interested in getting more involved in the Section, to not hesitate to reach out to me or any other member of the Executive Committee. We are all more than happy to talk with you and to assist you in getting more involved.

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

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ABOUT THE COVER:

A photo of Beautyberries in the berry stage.

Photo by Jennifer Weitzel.

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

Changes to ACORD's Certificate Forms

By Scott P. Pence, Carlton Fields, P.A., Tampa, FL

The Association for Cooperative Operations Research and Development, or "ACORD" as it is more commonly referred to in the insurance industry, "is a global, nonprofit standards development organization serving the insurance industry and related financial services industries."[1] ACORD recently updated its family of forms known as Certificates. The purpose of this paper is to discuss some of the practical effects of the most significant change to some of the more commonly used certificate forms ("Forms").[2]

What is a Certificate of Insurance?

Generally, a certificate of insurance is a document that summarizes a policy holder's current insurance coverage. It is typically requested by the policy holder to provide evidence to another party as proof of compliance with contractual insurance requirements. For example, a tenant may need to provide evidence to its landlord that it has appropriate liability insurance; a mortgagor of a building may request evidence of property insurance coverage upon closing; or a construction contractor may need to provide evidence to a developer that it has workers' compensation/employer's liability and appropriate liability insurance coverage in place. Whatever the circumstances, the party to whom the certificate of insurance is provided, referred to as the certificate holder, often mistakenly believes it can rely upon the information in the certificate of insurance in the same way it could rely upon the information within the actual insurance policies.

Certificate holders need to be aware of the numerous disclaimers within the Forms that effectively limit the certificate holder's ability to rely upon the information within them. Each of the Forms generally contain the following disclaimers : (1) the certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder; (2) the certificate of insurance does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies identified within it; (3) The certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder; (4) the certificate of insurance certifies that the policies identified within it have been issued to the insured for the policy period indicated; and (5) notwithstanding any contract or other document for which the certificate of insurance is issued, the insurance afforded by the policies identified within the certificate is subject to all of the terms, exclusions and conditions of such policies.

So what does this mean? Generally speaking, a certificate of insurance is merely evidence that the policies identified within it are in force at the time the certificate of insurance is issued. It should be viewed as a snapshot in time, with no assurance that the coverage identified within it will not be modified or cancelled.

Recent Changes to Notice Language.

The most significant recent change to the Forms relates to the insurer's requirement to provide notice in the event any of the policies identified within the certificate are cancelled before the expiration date noted therein.

The previous versions of the Forms contained language that said if any policy was cancelled before the expiration date of that policy, the issuing company would "endeavor to mail ___ days written notice to the certificate holder." Frequently, certificate holders required the removal of the words "endeavor to." Virtually every state does not allow a change in a certificate of insurance that attempts to modify a policy unless the revised certificate is filed and approved by the state as a policy form. Because most insurance policies require only that the insurer provide notice to the primary insured, the removal of the words "endeavor to" raised questions as to whether or not this constituted an attempt to modify the terms of the policy.

Driven by recent Certificate of Insurance Bulletins issued by the South Dakota Insurance Department, ACORD recently replaced the "endeavor to" language in the new forms with language stating if any policy is cancelled before the expiration date of that policy, "notice will be delivered in accordance with the policy provisions."[3] As noted above, the standard insurance policy requires the insurer to provide notice only to the primary insured. Therefore, this language is problematic from a certificate holder's perspective because the insurer has no obligation to provide notice of cancellation to the certificate holder.

Possible Solutions.

So, what can the certificate holder do to address this issue? Following are a few options, and potential drawbacks associated with some of them, to consider:

Require the insured's agent to issue the old version of the ACORD form, without the "endeavor to" language. This seems like the most obvious response. However, the problem with this is that agents are not authorized to use any other forms than the most recent versions and doing so is a violation of the ACORD licensing agreement.

Require the insured's agent to issue a "non-ACORD" certificate of insurance. Also an apparently obvious option. However, this raises several issues. First, there are copyright concerns if the certificate holder proposes the use of a specific form substantially similar to the ACORD form. For example, if an owner of a construction project requires a contractor to provide a certificate of insurance form with references to ACORD (e.g. copyright notice and logo) removed and modifications to the notice and dis-

continued, next page

claimer language, the owner could be subject to statutory copyright violations. Second, if the terms of the certificate are construed as an attempt to modify the policy, the certificate might need to be filed and approved by the state as a policy form.

Require the insured contractually to provide notice of any cancellation, non-renewal or modification of the insurance policies directly to the certificate holder. This may provide some additional protection to the certificate holder, but there could be disincentives to the insured party doing so. For example, if the policy is cancelled because the insured party fails or refuses to pay the required premium, it is unlikely the insured party will be very keen on notifying the certificate holder of that cancellation. Therefore, this solution by itself is probably not sufficient.

Have the insured obtain and endorsement to the policy requiring the insurer to provide the notice. This is probably the best solution for the certificate holder, but not all endorsements are the same. There are two different types of endorsements the insurer might be willing to provide:

Blanket Endorsement: Under a blanket endorsement, the insurer agrees to provide notice to the certificate holder if the insured has agreed to do so contractually. This is a good solution assuming the insurer is told to whom it is required to provide notice. However, there are several places where a breakdown in communication could prevent the insurer from obtaining this information. The insured must first notify its agent if it enters into a contract requiring cancellation notice to be given by the insurer to the other party to the contract. Then, the agent must similarly notify the insurer. If either of these parties fails to notify the next in line, the insurer will not know that is required to provide cancellation notice to the insured and the certificate holder will not receive the benefit of the endorsement.

Scheduled Endorsement: Under a scheduled endorsement, the insurer agrees to provide notice to the specific entity named as the certificate holder and the insurer adds that entity's name and contact information to the policy itself. This is much better than a blanket endorsement because there is no potential breakdown in communication to prevent the insurer from knowing to whom it is required to send the cancellation notice.

Instead of limiting the insured's obligation to provide a certificate of insurance to just once, the certificate holder could require an updated certificate of insurance to be provided according to an established schedule or established milestones (e.g. with each payment application, with any scheduled draws, monthly, quarterly, etc.) Each time the certificate holder receives a new certificate of insurance, it would provide a fresh "snapshot." Employing this option by itself, however, has potential drawbacks because the insured is not required to be provided notice in the event of a cancellation. Therefore, it is possible that the policy could be cancelled without the certificate holder's knowledge sometime between the established intervals.

Conclusion.

Accepting a standard ACORD form certificate of insurance at the onset of a project as the sole form of evidence that another party is in compliance with specified insurance requirements does not provide adequate assurances to the certificate holder of continued compliance by the insured. There are several options available to the certificate holder that can increase the likelihood of being notified of any cancellation in coverage. However, no matter what options the certificate holder chooses to pursue, the key is to start exploring those options early in the negotiations process because they take time and, if started too late in the process, have the potential of delaying the finalization of the deal.

Endnotes:

1 ACORD, http://www.acord.org/about/Pages/default.aspx (last visited October 7, 2011).

2 While there are eight different certificate and evidence of insurance forms within the Certificates family of forms, this paper focuses only on the following forms: ACORD Form 24, Certificate of Property Insurance; ACORD Form 25, Certificate of Liability Insurance; ACORD Form 27, Evidence of Property Insurance; and ACORD Form 28, Evidence of Commercial Property Insurance.

3 ACORD, Certificates FAQ's, http://www.acord.org/standards/forms/Documents/ACORDCertificatesFAQ_201004.pdf (last visited October 11, 2011).

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Supreme Court Adopts New Appellate Rule 9.170

Submitted on behalf of the Probate & Trust Litigation Committee

A new appellate rule specifically governing appeals in probate and guardianship cases goes into effect on January 1, 2012. Rule 9.170, Appeal Proceedings in Probate and Guardianship Cases, was developed to address concerns that Rule 9.110(a)(2) did not sufficiently address the issue of finality in probate and guardianship cases. Under the old Rule 9.110(a)(2), which has been removed since the enactment of Rule 9.170 to avoid confusion and redundancy, orders in probate and guardianship matters were final if they "finally determine a right or obligation of an interested person." New Rule 9.170 contains the same criteria for determining the finality of orders in probate and guardianship matters, but also contains a list of 24 types of final orders. This list is non-exclusive as Rule 9.170 is not intended to limit what types of orders would be final. Rule 9.170 also contains provisions governing the record, briefs, and scope of review as it relates to proceedings to review orders in probate and guardianship cases.

Practitioners should familiarize themselves with the non-exclusive list of orders in Rule 9.170(b) as these orders, once entered, are final and any appellate review of such orders is subject to the deadlines set forth in Rule 9.170. Included in the non-exclusive list of final orders are orders that: determine a petition or motion to revoke probate of a will; grant or deny a petition for administration pursuant to F.S. § 733.2123; remove or refuse to remove a fiduciary; refuse to appoint a personal representative or guardian; make distributions to any beneficiary; determine a motion or petition for enlargement of time to file a claim against an estate, an objection to a claim or an independent action on claim filed against an estate; and award attorneys' fees or cost.

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Secret Trusts: (Some) Questions and (Fewer) Answers About Florida's New Designated Representative Statute

By Robert J. Naberhaus III, Esq. (Dean Mead) and Mark R. Parthemer, Esq. (Bessemer Trust) and Thomas C. Lee, Jr., Esq. (Gunster Yoakley)

Representation by a designated representative is a new and unique provision of the Florida Trust Code which attempts to strike a balance between the settlor's right to privacy and the beneficiaries' right to trust information, but with it comes some interesting issues.

This article discusses representation by a settlor designated representative, a new and unique provision of the Florida Trust Code allowing a settlor to appoint a person to receive trust information on behalf of and bind a trust beneficiary, even in the presence of a conflict of interest. The article explains the designated representative provision, including the rationale for its enactment and how it differs from the Uniform Trust Code. Included is a discussion of why a trust settlor may want to use a designated representative, limitations on the designated representative's authority, liability implications for Trustees who make disclosures only to the designated representative, and more.

Every trust beneficiary deserves "adequate" representation. Historically, this was imbedded in the fiduciary duty imposed on trustees, leading on occasion to an impractical, if not awkward, dynamic. Florida law often serves to rescue such situations via a mechanism of representation. Part III of the Florida Trust Code (the "Code") contains the representation provisions applicable to Florida trusts.[1] **Representation in this context refers to the authority of one person to act on behalf of a trust beneficiary.** Under the Code, notice, information, accountings, and reports given to a representative serve as a substitute for and have the same effect as sending such information to the beneficiary directly.[2] Further, actions taken by a representative bind the beneficiary to the same extent as if such actions were taken by the beneficiary.[3] As many practitioners know, Florida's Trust Code was substantially rewritten in 2007 and now includes five types of representation:

- Representation by the holder of a power of appointment,[4]
- Representation by fiduciaries and parents,[5]
- Representation by a person having a substantially identical interest,[6]
- Court-appointed representation,[7] and
- Representation by a settlor designated representative.[8]

This article will discuss the fifth form, representation by a settlor designated representative, particularly as it is a new and unique provision of the Code adopted for the first time in 2007 and amended in 2009.

Framework

Representation by a designated representative is new to Florida law and was included in the Code to strike a balance between the settlor's right to privacy and the beneficiaries' right to trust information. There is no counterpart provision in the Florida Probate Code, Florida's prior trust laws under Chapter 737 of the Florida Statutes, or the Uniform Trust Code from which about half of Florida's Code was adopted. A few other states have also adopted similar provisions allowing settlors to limit disclosures of trust information as competition increases among the states for trust business.[9]

Under the Code, the term "qualified beneficiaries" includes then living beneficiaries who are currently eligible to receive trust distributions and those beneficiaries who would become eligible to receive trust distributions if either the current beneficiary's interest terminated or the trust terminated.[10] Contrast this with the Code's definition of "beneficiaries" which includes all beneficiaries, including all future and contingent beneficiaries.[11] The Code requires the trustee to provide qualified beneficiaries with information concerning the trust and its administration including, upon request, a copy of the trust instrument, information concerning the trust's assets and liabilities and the particulars concerning the administration of the trust (this includes distributions to beneficiaries).[12] In addition, the trustee is required to send detailed accountings to the qualified beneficiaries at least annually and upon termination of a trust or on change of the trustee.[13] There are also a number of other areas under the Code where information should be given to certain beneficiaries, such as in trust modification

and termination proceedings,[14] exercise of the trustee's authority to "decant" a trust[15] or combine or divide a trust,[16] the appointment and removal of trustees,[17] and approval of certain transactions by the trustee.[18]

While a settlor cannot waive a trustee's duty to notify, account to, and respond to the requests for information by qualified beneficiaries,[19] the provisions of the Code governing the trustee's duty to inform and account clearly provide that the representation provisions of the Code apply with respect to all rights of a qualified beneficiary to trust information.[20] Thus, through effective use of Florida's designated representative statute, a settlor is now permitted under the Code to limit disclosures of some or all trust information to some or all trust beneficiaries. This is done by the settlor designating a representative in the trust instrument to receive information on behalf of, and to represent and bind, the beneficiaries of the trust. In making the appointment, the settlor can limit the representative's authority or the beneficiaries the representative represents.

Uses of a Designated Representative

Many settlors are surprised and taken aback to learn about the qualified beneficiaries' right to trust information and other rights under the Code. Often, settlors view these rights as overreaching or "crossing a line." In fact, there may be any number of reasons for these reactions, including what the settlor sees as a right to keep "his" finances private, a desire for efficient trust administration, protection of a beneficiary whose relationship with other beneficiaries may be strained, or protection of a beneficiary whose knowledge of the trust or access to its assets may cause the beneficiary to become complacent with their goals or increase their substance abuse or financial problems.

Take, for example, the elderly settlor who creates a credit shelter trust solely for the benefit of his spouse for her lifetime, and upon her death, distributes to his descendants from his prior marriage. The qualified beneficiaries of such trust include his spouse and *all* of his then living descendants (this could include several generations of descendants, many of whom may be minors). Under the Code, all of these qualified beneficiaries are entitled to trust information, such as account statements, and to be notified of certain trust matters, including distributions to the current beneficiary (recall she is their step-mother). Many settlors would find this objectionable – if not an invitation for disharmony and litigation. This is a definitive situation for the use of a designated representative, who could represent the descendants in perhaps a less meddlesome way.

In addition to limiting disclosures of trust information, effective use of the designated representative provision can also make trust administration more efficient and provide protection to the trustee. Florida allows non-charitable trusts to last for 360 years.[21] As a trust gets older, the number of trust beneficiaries typically increases and consequently so does the amount of trust administration work and expense. Use of a designated representative can certainly promote efficiency and reduce administration expenses because it can be used to minimize otherwise required disclosures, and it can also reduce the burden of getting approval (or lack of objection) from a large class of people (say to decant or adopt the power to adjust). In addition, many provisions of the Code only require the trustee to give trust information to qualified beneficiaries. A trustee who then only accounts or provides notice to qualified beneficiaries may be subject to liability to all other beneficiaries unless such other beneficiaries are otherwise adequately represented. Effective use of the designated representative allows the trustee to notify and account only to the designated representative who represents and binds *all* beneficiaries, not just qualified beneficiaries. This is particularly useful to a settlor whose objectives include providing protection to a Trustee who acts in good faith.

Statutory Limitations

Importantly, there are limitations on a designated representative's ability to represent and bind beneficiaries that may not be overridden by the trust terms.[22] The first is a limitation on who can be appointed as designated representative. A second is how a designated representative may be appointed. Under the Code, a representative may be designated in the trust expressly by name or the trust may provide a mechanism by which a designated representative may be appointed. However, the designated representative may not be the trustee nor may the trustee appoint the designated representative.[23] This limitation was included to insure that the trustee is not in a position to approve its own actions. Lastly, a beneficiary may only serve as the designated representative if he or she is either expressly appointed in the trust or is a "close relative" of the represented beneficiary or the represented beneficiary's spouse (i.e., is their spouse, grandparent, or descendant of their grandparent).[24] This requirement was included to minimize the risk of bad faith by the designated representative.

A Designated Representative is Not a Fiduciary

The Code also imposes upon the designated representative a duty to act in "good faith". A designated representative is not, however, a fiduciary and is not liable for acts or omissions so long as the designated representative has not acted in bad faith.[25] It is important to note that there is no conflict of interest limitation to the designated representative's authority as there is for most other forms of representation under the Code. Thus, a designated representative may represent and bind beneficiaries even in the presence of a conflict of interest so long as the designated representative's actions or omissions do not constitute bad

faith. The Code, however, provides no guidance on determining what actions may constitute bad faith on the part of the designated representative, and there are no Florida cases (yet) on the subject. Florida cases have, however, generally defined "bad faith" as follows:

> "…generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, …not simply bad judgment or negligence, but rather implies the conscious doing of a wrong because of dishonest purpose or moral obliquity;"[26]

As the designated representative provision becomes more widely used, the authors expect Florida case law will further define the duties of the designated representative and the limitations on their authority to act.

Too New to Have All the Questions Answered

There are several areas of concern among practitioners concerning use of a designated representative. The first relates to the application of the designated representative concept outside of the Code. If a beneficiary is adequately represented under the Code, is that beneficiary represented for all legal purposes such as for purposes of the Probate Code? What about for purposes of litigation? Under the Probate Code, the term "beneficiary" of an estate that is devised to a trust includes each qualified beneficiary of the trust if each trustee of the trust is also a personal representative of the estate.[27] If the trust appoints a designated representative and each trustee of the trust is also a personal representative, is it sufficient for probate administration purposes to include only the trustee and the designated representative as beneficiaries of the estate?

More concerning is the question of whether a designated representative may receive notice and bind a trust beneficiary in a trust litigation proceeding (as opposed to routine trust administration disclosures). Representation has long been recognized by Florida courts as a permissible means to bind interested parties who are not before the court. In addition, both the Code and the Probate Code reference its provisions having application in *all* judicial proceedings involving estates and trusts.[28] Further, nothing in Part III of the Code governing representation indicates that otherwise effective representation does not apply in the context of trust litigation. In fact, the Code's express language provides that the designated representative may represent and bind a beneficiary with respect to *any* notice.[29] When Florida enacted the Code from the Uniform Trust Code, it made significant variations in its representation provisions. First, as mentioned above, the concept of a settlor designated representative is unique to Florida and was not derived from the Uniform Trust Code. Second, while the Comments to the representation provisions of the Uniform Trust Code state that the representation principles apply for purposes of settlement of disputes, whether by a court or nonjudicially, the Uniform Trust Code expressly grants the represented beneficiary the power to object to the representation.[30] Because this right to object to the representation was not adopted by Florida as it was by most other states adopting the Uniform Trust Code, the inference is that the designated representative has the legal authority to bind a beneficiary even over the objection of such beneficiary. It should be noted, however, that under the Code the court always has the power to take any action necessary in the interests of justice.[31] It would seem then that a beneficiary who objects to being represented or to a representative's action may have standing at least to ask the court to intervene. But in the absence of such court involvement, presumably the beneficiary will be bound by the representative's actions, including if the beneficiary is unaware of the representative's actions. To reach a contrary result essentially would render the designated representative provision meaningless. It is conceivable, however, that there will be Florida cases which find that refusal to notify an adult competent beneficiary of an action relating to his interest in a trust constitutes a violation of his constitutional due process rights.[32]

A troubling aspect of the designated representative provision is that it does not clearly describe the authority of the representative, it merely refers to the authority to "bind" the beneficiary. Does this mean the representative has sufficient standing to enforce the trust on behalf of the represented beneficiary? If the representative's authority is merely to receive trust information and to bind the beneficiary with respect to disclosed transactions, then who has standing to enforce the beneficiary's rights for other matters? If trust information provided only to the representative discloses a potential claim against the trustee, does the representative have standing to file suit against the trustee or does the representative need to notify the beneficiary, and can the beneficiary then file suit? Further, what if the representative consents to a proposed trustee action and the beneficiary in contrast seeks to object – on whose response can the trustee rely? The Code also is silent on the rights of a represented beneficiary. Does such beneficiary have standing to demand trust information from either the trustee or the representative in the absence of bad faith? As discussed above, the court always has the power to take any action necessary in the interests of justice and therefore a beneficiary will likely always have the right to be heard. But in such action, does the designated representative have standing to enforce his representative authority?

Trustees, especially corporate trustees, may be reluctant to rely upon the authority of the designated representative even though the Code protects the trustee for acting in reasonable reliance on the trust terms.[33] Such reluctance might result, at least in part, from an express provision

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of the Code allowing the trustee to give trust information directly to a represented beneficiary and protecting the trustee for so doing.[34] There is no similar express protection for a trustee who gives trust information only to the designated representative.

Finally, use of the designated representative raises tax issues. A beneficiary often is granted an interest in, or rights under, an irrevocable trust to achieve certain tax objectives. Examples include withdrawal rights over contributions intended to qualify for the annual exclusion from federal gift tax under Section 2503(b) of the Internal Revenue Code,[35] and the right of a spouse to make trust property productive of income so such property qualifies for the federal estate tax marital deduction.[36] The Internal Revenue Service has routinely ruled that a fiduciary, such as a legal guardian, having the legal authority to exercise certain rights on behalf of a beneficiary is sufficient to continue the tax benefits that were dependent upon the beneficiary having such rights.[37] However, since the designated representative is not a fiduciary and is held only to a standard of good faith, uncertainty results. Until there is some clarity, cautious drafters may conclude it not prudent to have a designated representative representing a beneficiary granted rights required for tax reasons. On the other hand, use of a designated representative to provide beneficiary consents made in good faith and without the knowledge of the beneficiary may be useful to minimize the beneficiary's gift tax exposure if the beneficiary's direct consent could be deemed a gift (e.g., during a decanting of a trust).

There are certainly some issues with the designated representative provision of the Code that remain to be resolved. But for now, settlors creating trusts in Florida can appoint a designated representative, create administrative efficiency and potentially even keep their trust business private. AL

Endnotes:

1 Fla. Stat. §§736.0301 to 736.0306

2 Fla. Stat. §736.0301(1)

3 Fla. Stat. §736.0301(2)

4 Fla. Stat. §736.0302

5 Fla. Stat. §736.0303

6 Fla. Stat. §736.0304

7 Fla. Stat. §736.0305

8 Fla. Stat. §736.0306

9 D.C. Code §19-1301.05(c)(3) allows the settlor to appoint a person to receive trust information on behalf of a trust beneficiary but note D.C. Code §19-1303.01(b) allows a represented beneficiary to object thus preventing his representative from binding him; 12 Del. C. §3303(a)

10 Fla. Stat. §736.0103(14)

11 Fla. Stat. §736.0103(4)

12 Fla. Stat. §736.0813(1)

13 Fla. Stat. §736.0813(1)(d)

14 Fla. Stat. §§736.04113, 736.04115, 736.0412, 736.0413, 736.0414, 736.0415 and 736.0416

15 Fla. Stat. §736.04117

16 Fla. Stat. §736.0417

17 Fla. Stat. §§736.0704 and 736.0706

18 Fla. Stat. §736.0802

19 Fla. Stat. §736.0105(2)(r), (s) and (t)

20 Fla. Stat. §736.0813(3)

21 Fla. Stat. §689.225(2)(f)

22 Fla. Stat. §736.0105(2)(h)

23 Fla. Stat. §736.0306(1) and (2)

24 Fla. Stat. §736.0306(3)

25 Fla. Stat. §736.0306(4)

26 *Bosso v. Neuner,* 426 So.2d 1209 (Fla. 4th DCA), *pet. for rev. denied,* 436 So.2d 100 (Fla. 1983); *Parker v. State of Florida Board of Regents,* 724 So.2d 163 (Fla. 1st DCA 1998); *Ford v. Rowland,* 562 So.2d 731 (Fla. 5th DCA 1990); Black's Law Dictionary 139 (6th ed. 1990)

27 Fla. Stat. §731.201(2)

28 Fla. Stat. §§731.303, 736.0305(2) and 736.1303(1)(b)

29 Fla. Stat. §736.0306(1)

30 Unif. Trust Code §301(b) (amended 2010)

31 Fla. Stat. §§736.0105(2)(e) and 736.0201

32 *Barber v. Barber*, 837 P.2d 714 (Alaska 1992) which held that the refusal to allow an objection by an adult competent beneficiary violated due process; but note that the subject beneficiary was not properly represented under Alaska law

33 Fla. Stat. §736.1009

34 Fla. Stat. §736.0301(4) which was not part of the counterpart Uniform Trust Code provision

35 Rev. Rul. 80-261, 1980-2 C.B. 279

36 Treas. Reg. §20.2056(b)-5(f)(5)

37 Priv. Ltr. Rul. 9232013 (May 4, 1992); Priv. Ltr. Rul. 8712014 (Dec. 18, 1986); Priv. Ltr. Rul. 8022048 (Mar. 4, 1980)

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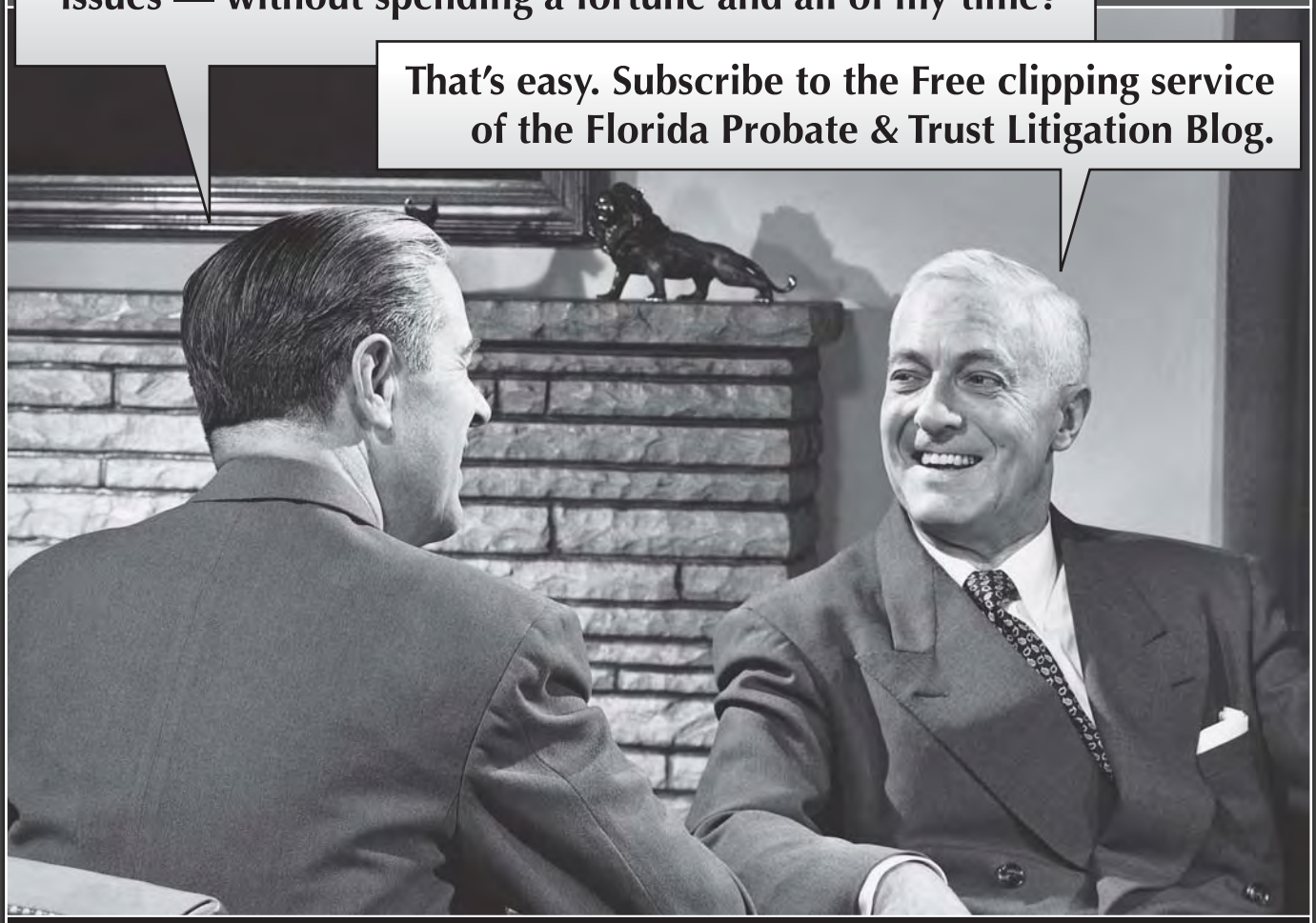

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Mediation Strategies

By D. Robert Hoyle Harrison, Kirkland, Pratt & McGuire, P.A., Bradenton, FL

"Discourage litigation, Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser – in fees, expenses and waste of time."

— Abraham Lincoln

Preparing the Client for Mediation

The most important step you can take in preparing for mediation is to prepare your client. Your client is even more pivotal to the process in mediation than in a trial and should be ready to play that role. Well prepared clients do not need to be protected from themselves, and can be your most useful weapon of sincerity and empathy. Preparing your client for mediation is not only good practice, it is also an ethical responsibility.

The Florida Rules of Professional Conduct apply to the preparation of your client. Rule 4-1.2 (a) provides "…a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 4-1.4, shall reasonably consult with the client as to the means by which they are to be pursued…a lawyer shall abide by a client's decision whether to settle a matter." The comment to Rule 4-1.2 states that "decisions specified in subdivision (a), such as to whether to settle a civil matter, must also be made by the client." (emphasis added)

Rule 4-1.4 (b) states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The comment to Rule 4-1.4 provides "a lawyer who receives from opposing counsel an offer of settlement in a civil controversy…must promptly inform the client of the substance unless the client has previously indicated that the proposal will be acceptable or unacceptable, or has authorized the lawyer to accept or reject the offer…. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued to the extent the client is willing and able to do so."

Rule 4-2.1 states that in representing a client, a lawyer shall exercise independent professional judgment, render candid advice, and may refer not only to law but to other considerations, such as, moral, economic, social, and political factors that may be relevant to the client's situation. The comment to Rule 4-2.1 states "…when a matter is likely to involve litigation, it may be necessary under Rule 4-1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation."

Ultimately, it is your obligation under the Rules of Professional Conduct to fully advise your client of all information so that the client can make an informed decision regarding case issues. This duty to inform applies squarely to mediation preparation.

Consider the following points in preparing your client for mediation:

Educate Your Client About the Mediation Process

- The client needs to know the opportunity presented by mediation. Communicate the process in writing. Develop a standard memo to send clients that explains mediation. Your job is to teach your client about the process.
- Send the client the mediator engagement letter to confirm an understanding regarding the computation of fees. If necessary, obtain an advance payment to cover the anticipated mediator fees.
- Your client should know the purpose of the mediation, the potential gamesmanship that may occur and the likely goals and strategies of the other party.
- Confirm the client is aware of the possibility of an impasse and is prepared to discontinue the mediation if further negotiations appear to be futile. Explain that the option to adjourn the mediation is also available to provide the parties with the opportunity for further negotiations.
- Whether mediation is being considered by the parties as an alternative to litigation or has been ordered by the court, communicate in writing to your client the relevant points outlined in this article. On the one hand, the party has a right to make an informed decision to participate in the mediation. Equally important, the client must be fully informed in order to participate effectively at the mediation.
- Explain to your client the statutory rules that govern mediations, including issues such as confidentiality and appearance with the authority to settle the dispute. It is very important for a party to understand the restrictions on mediation participants and the potential sanctions for noncompliance.
- Explain how the mediation session is typically conducted

continued, page 17

with the goal that the client will understand the procedures and will not be surprised by the process.

- Proper client preparation avoids the need for posturing in front of the client during a private caucus.
- Show your client a template agreement that includes standard terms. Also, your client should review any release that you intend to offer as part of the settlement.
- Compare the confidential nature of mediation with public display of a trial. Compare the dynamics of a trial, i.e. expense, time, inconvenience, and stress with the mediation process.

Make Sure Your Client Knows the Case

- Discuss the status of the case so the client understands how much or how little time a settlement can save.
- Explain the law as it has been created by the State so that clients understand the result they get will not necessarily be what they think is fair but what the law allows.
- Examine the alternatives to the client's objectives to help the client think in terms other than win/loss. Explain to the client the consequences of not settling including risks, delays, appeals and enforceability/collectability of judgment problems. The client must realize that having a trial and receiving a verdict or judgment is not necessarily the end of the process.
- Explain the facts as the law sees them so that the client understands that what matters is not the facts but the admissible evidence.
- Explain the status of any negotiations that have occurred so the client can approve of the starting point for negotiations.
- Work with the client to determine and set the goals the client is seeking from the resolution process so that you are certain you are headed in the right direction in the mediation session. Define your client's objectives to set concrete goals. Work with the client to create an aspirational "bottom line," taking into consideration relevant factors such as fees and costs, provable damages, collectability and the likelihood of success.

Prepare Yourselves as a Team

- Clarify your respective roles in the mediation. Define the extent to which you will be the leader, or whether the client should be a dominant participant.
- The client must be prepared in the areas of expected legal fees and possible exposure to costs. Discuss any exposure to a prevailing party award of fees and costs.
- If you have a client who can speak well consider permitting him or her to interact with the mediator and the other side directly. A well informed client will be more relaxed and make a better impression.
- Clients must know and be assured that they are an integral part of the process and presentation, and that the mediation will not be a one-person show by the attorney.
- Review with your client any pre-mediation papers you have prepared.
- Explore initial unrealistic positions and sensitive issues.
- Review the strengths and weaknesses of the case. Discuss with the client solutions that might work for both sides. Remind your client that a settlement must be an agreement that is acceptable to all parties, and will require compromise by both parties.
- Confirm that you have every relevant document and computation from the client that you need to support your client's claim or defense. You do not want any surprises at the mediation conference.

Conduct at Least Two Pre-mediation Conferences After You Have Explained the Process in Writing

- The first client conference should be at least a week before the mediation conference. Devote sufficient time to deal with the suggestions in this article.
- Another meeting should take place immediately prior to the mediation conference to finalize your plan and answer any questions.
- Rehearse your client's story. Prepare an outline for the client to review at home. The client should be able to describe what happened without your assistance. Practice so that important points are made without omissions or adding new details.

Evaluate Settlement Parameters

- Prioritize the client's goals regarding monetary and non-monetary compensation. Does the client have a clearly defined need or goal to achieve from the mediation?
- Determine the importance to the client of reaching a settlement. Consider the consequences for your client, the other party and possible third parties if no agreement is reached through negotiation.
- Help the client articulate his or her best alternative to a negotiated agreement and worst alternative to a negotiated agreement.
- Discuss possible settlement options. Brainstorm with the client to see if there are solutions that might work for both sides.
- Reality test your client with an assessment of the strengths and weaknesses of their case. Ask your client their opinion on this issue.
- Recognize and advise the client that you may have to

work on a new bottom line offer if the mediation yields new information that affects your client's position.

General Preparation Tips

- Contact the mediator to determine if the mediation will convene with a joint session, or with an individual caucus followed by a joint session.
- When preparing the client and discussing the process, make sure the client knows that the process allows the opponent to hear from the other side's attorney.
- The client should be prepared to hear facts and argument presented by the other side with which the client will likely not agree or which may hurt the client's case. Remind the client that learning about and considering the other side's case is an important part of the settlement process.
- Tell the client that at the mediation, the client should listen as if the client was a juror or the judge and try to be as objective as possible.
- Make a list of questions to ask the other side. Determine if it will be best for the client to ask the questions.
- Emphasize that your side needs to remain calm and professional. Leave the name calling and histrionics to the other side.

Share the Opponent's Mediation Summary With Your Client

If you get a summary from the opponent, share it with your client. The client should go into the mediation with an understanding of the facts and law as viewed by the other side. Explain that the mediation is not a matter of taking positions, but is a recognition of needs. Litigation can take on a life of its own. Clients become invested in the process emotionally and financially. The client may be seeking some form of vindication in the lawsuit that is difficult to give up by settlement. The dismissal of the lawsuit without determining a winner or a loser may not satisfy the client's perceived need to win, but is preferable to the cost and risk of a trial.

Your client must realize that the adverse party will never be persuaded that they are wrong and your client is right. Advise the client that the mediator is neutral and will not try to persuade the other party that they should settle favorable to your client. You should stress that mediation is not an adversarial proceeding and that your client should not expect you to engage in vacuous hyperbole. Your client should be prepared for a negotiation that is hard on the merits but easy on the people.

Fellowship Program Open to All RPPTL Attorneys!

The Real Property, Probate and Trust Law (RPPTL) Section of the Florida Bar is pleased to announce that we are currently accepting applications for our 2012-2014 Fellowship class.

Our Fellowship Program is designed to attract and retain lawyers to the RPPTL Section. The Fellowship program allows young and new lawyers to be substantially involved in the Section work, receive leadership training and work closely with leading attorneys in their field. The RPPTL Section hopes this program will cultivate and develop future leaders to continue the strong presence of the Section as a leader in The Florida Bar.

The Fellowship Program is open to all lawyers who are members of the RPPTL Section and (a) have been admitted to the bar for fewer than 12 years or (b) are younger than 38 years of age who practice in the area of Real Property, Probate or Trust law. Fellowships are provided for a two-year term and each Fellow will receive a subsidy of up to $2,500 annually (not to exceed actual out-of-pocket expenses) to help defray the expense of attending RPPTL Section meetings.

The deadline to apply is APRIL 1, 2012. The application is available through the RPPTL Section website at www.RPPTL.org or from Marsha Madorsky, mmadorsky@carltonfields.com.

See Application form, next page

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REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR

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Years admitted to Fla. Bar: Years of Practice:

Race or Ethnic Heritage or Disability[1]:

Please describe the area(s) of the law in which you focus your practice:

Please list your employment history for the past 5 years:

How long have you been a member of the RPPTL Section of the Florida Bar?

Have you ever been the subject of any disciplinary action by any Bar association? If yes, please describe in detail the nature of the disciplinary action and the outcome. Attach additional sheets if necessary.

Please state why you are interested in being chosen as a Fellow for the RPPTL Section. Attached additional sheets if necessary.

Please describe your involvement in any local, state, voluntary and national level bar association, including any leadership positions you currently hold or have held in the past. Attach additional sheets if necessary.

Please describe any funding or support (including allowing time to fulfill your obligations as described in the Fellows Memo) that you may receive from your firm or employer, or other organization(s) that would support your activities as a Fellow. Attach additional sheets if necessary.

Please identify at least two substantive committees that you would be interested in joining as a Fellow:

Please list the name, email address and phone number for two members of the Florida Bar (other than members of your own firm) who can provide information regarding your professional qualifications and experience:

PLEASE NOTE the Fellows will be required to attend a minimum of 3 RPPTL executive council meetings during the Fellowship year.

[1] Information requested is optional

21634185.1

RPPTL Section Executive Council Meeting

The Breakers, Palm Beach
August 3rd through August 7th, 2011

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

As has been the tradition with the Real Property, Probate and Trust Law Section of the Florida Bar, the summer meeting was held at The Breakers Resort in Palm Beach. The weather was sunny and warm with little rain and the Atlantic Ocean was beautiful as usual.

The committee meetings kicked off on Wednesday evening with the Homestead Problem Study committee and picked up again starting at 8:00 a.m. on Thursday morning. Thursday was jam-packed with committee meetings as Friday was devoted to the 31st Annual Legislative Update.

Thursday evening from 6:00 p.m. until 8:00 p.m. was the Welcome Reception, held in an amazing venue called the "Circle Dinning Room." This was a reception room overlooking the ocean with an absolutely amazing painted ceiling. This room has been undergoing renovations by The Breakers and was not available for use in previous years. In addition to it being just a gorgeous location, the food was, as always, outstanding and fellowship up to the usual high standards.

The hospitality suite was open Thursday and Friday evening starting at 8:00 p.m. and lots of folks partook in the refreshments and light deserts that were served.

The legislative update began bright and early Friday morning at 8:00 a.m. The update covered significant legislation and case law over the past year and highlighted the successful efforts of the Section's Legislative Review Committee. As always, the attendance at the legislative Update was standing room only.

Friday evening saw cocktails served in the Mediterranean Ballroom and then dinner with musical entertainment in the Venetian Ballroom overlooking the Atlantic Ocean. Attendees were able to enjoy the many outstanding features at The Breakers, having a wonderful evening both Thursday and Friday, without ever having to leave the grounds.

Saturday morning the Roundtables commenced at 8:00 a.m. and the Executive Council Meeting began around 10:00 a.m.

At the Executive Council Meeting five (5) different Real Estate committees, Condominium & Planned Development, Construction Law, Landlord Tenant, Mortgage and other Encumbrances, and Real Property Problem Study, all came forward with important legislative positions. On the Probate and Trust Law side, there were four (4) committees with legislative positions including Probate Law and Procedure, Principal and Income, IRA, Insurance and Employee Benefits, Guardianship and Advanced Directives so as you can see, our Section continues to be highly active in the legislative arena.

Saturday evening was a reception and dinner not to be missed. The Norton Museum of Art is very well known to those of us that live in this area of the state, and its restaurant has always had an excellent reputation. The Section members and guests who attended the Norton event had full run of the many outstanding exhibits throughout the museum including permanent collections featuring American, Chinese, Contemporary and European Art and Photography as well as the temporary exhibits of Extraordinary Costumes from Film and Television. Of course, there was lots of conversation about the up-coming out-of-state meeting in Prague in September.

If you missed The Breakers meeting, you missed a productive yet relaxing and luxurious weekend at a world-famous resort. I hope you can come to a future meeting.

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Photos by Michael Gelfand and John Neukamm.
Arrangement by Kelly Catoe, Photo Editor.



Fifth Annual Construction Law Institute Set for March 22-24, 2012

On March 22-24, 2011, the **Fifth Annual Construction Law Institute** will be held at the **Reunion Resort & Club, Reunion, Florida.** In addition to advanced level seminars, the event will include a golf tournament on Thursday, March 22nd, and evening receptions on March 22nd and March 23rd. Over 350 Construction Lawyers and Industry Professionals attended the 2011 Institute and we expect more in 2012. The Saturday morning breakfast speaker will be Economist, Henry H. Fishkind, Ph.D. Dr. Fishkind will give a presentation on the economic outlook for the Florida Construction Industry. We thank the sponsors listed below for their commitment to the Fifth Annual Construction Law Institute.

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For more information regarding sponsorship opportunities or attendance, please contact Yvonne Sherron at the Florida Bar at (850) 561-5626.

Real Estate Case Summaries

Prepared by Navin R. Pasem, Esq.,
Law Office of Navin R. Pasem, P.L., Tampa, Florida

Buyer alleged that Seller breached contract by failing to substantially complete condominium within two years of date of signing agreement to which Seller raised affirmative defense that a later agreement superseded first agreement providing Seller additional time to complete condominium. Trial court erred in entering summary judgment for plaintiff Buyer because a trial court may not make extraneous findings and conclusions of law sua sponte on matters not raised by the parties. Statute requiring transfers of real estate to be signed by grantor in presence of two subscribing witnesses does not apply to contract for purchase and sale.

TRG-Brickell Pointe NE, LTD., LLC v. Mariano Gravante, 36 Fla. L. Weekly D2263 (Fla. 3rd DCA 2011)

On May 16, 2005, the parties entered into a purchase and sale agreement for a condominium unit. Pursuant to the agreement, Seller TRG agreed to substantially complete the building within two years of the date of the signing of the agreement. When TRG failed to complete the condominium within the two-year time period and did not return Buyer's deposit upon request, Buyer brought action for breach of contract. Defendant Seller filed an affirmative defense claiming that a later-signed purchase agreement, Form H, superseded the first agreement and gave TRG additional time to complete the unit. In response, Plaintiff Buyer filed a motion for partial summary judgment claiming that his signature on Form H was forged.

The trial court granted Plaintiff Buyer's motion for partial summary judgment, not on the issue of whether the signature was a forgery, which was not decided by the court, but on the finding that Form H, as a contract for purchase and sale, was not witnessed or dated and therefore was invalid as a matter of law. These latter issues were brought up by the trial court sua sponte as they were never raised by Plaintiff TRG. The trial court denied TRG's motion for reconsideration which contended that Form H was dated and that Florida law did not require Form H, as a contract for purchase and sale, to be witnessed. TRG appealed.

The appellate court agreed with TRG and found that 689.01, Fla. Stat. (2010) regulates the conveyance of real property and does not apply to documents such as Form H, which is a contract for purchase and sale and not an instrument of conveyance of real property. The appellate court further opined that, in ruling on motions for summary judgment, a trial court may not make extraneous findings and conclusions of law sua sponte on matters that were not raised by the parties.

Trial court erred in granting summary judgment after improperly shifting burden regarding absence of genuine issues of material fact to nonmoving party, the tenant, where tenant had alleged affirmative defenses to which the landlord's motion for summary judgment was silent. A tenant may maintain an action for breach of covenant of quiet enjoyment even where Landlord's actions do not rise to the level of a constructive eviction.

Coral Wood Page, Inc. v. GRE Coral Wood, LP, 36 Fla. L. Weekly D2233 (Fla. 2nd DCA 2011)

Landlord GRE owns a shopping center which was leased to Tenant Coral Wood Page. Not long into the lease, GRE filed an action for eviction and damages to which Page answered with affirmative defenses, asserting that GRE breached its covenant of quiet enjoyment. Specifically, Tenant Page claimed that GRE hired off-duty police officers as security personnel who harassed and stalked Page's customers. Despite Page's numerous complaints to GRE, the situation was never rectified.

After the eviction was granted, GRE filed a motion for summary judgment on damages and an affidavit addressing the Tenant's breach of the lease. However, GRE affidavit's was completely silent on Tenant Page's affirmative defenses. At the summary judgment hearing, the trial court granted summary judgment because Tenant Page did not file any affidavits or other evidence to support their affirmative defenses.

The appellate court ruled that this was error because summary judgment is proper only where the moving party shows conclusively that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Holl v. Talcott,* 191 So. 2d 40, 43 (Fla. 1966); Fla. R. Civ. P. 1.510(c). The appellate court found that Landlord GRE, as the moving party in a summary judgment motion, failed to address the affirmative defenses or establish that they are legally insufficient.

On appeal, Landlord GRE also argued that a tenant cannot maintain an affirmative defense based on an alleged breach of the covenant of quiet enjoyment without proving a claim of constructive eviction by the Landlord. The appellate court disagreed with this based on the holding of

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Construction dispute? Does your mediator talk the talk?

GREGORY S. MARTIN

- Bachelor of Building Construction — University of Florida, 1987
- Juris Doctorate — University of Florida, 1990
- Board Certified in Construction Law by The Florida Bar
- Certified Circuit Court Mediator, Florida — May 2006
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Carner v. Shapiro, 106 So. 2d 87, 89 (Fla. 2d DCA 1958). There, the tenants leased a portion of the first floor, and the landlord was found to have breached the covenant of quiet enjoyment by its remodeling of upper floors.

Initial rightful owner of property who knew that property had been conveyed by forged deed, but failed to previously assert any interest in property prior to final conveyance to bona fide third party purchaser, is equitably estopped from asserting any interest in property superior to bona find third party purchaser for value.

Marilyn Ann Nunes v. Allstate Investment Properties, Inc., et. al., 36 Fla. L. Weekly D1971 (Fla. 4th DCA 2011)

Nunes filed a declaratory action against among others, Alvarez, to determine Nunes's right to certain property which she contended was wrongfully conveyed to Alvarez through a series of conveyances originating with a forged deed. The parties stipulated to the following facts: Nunes's former son in law and husband, Gilman, forged a warranty deed transferring Nunes's interest in the property to Allstate Investment Properties, Inc., recorded in the public records on October 6, 2003. A forged corrective deed, conveying the property to Allstate Investment Properties, Inc., was then filed in the public records on December 3, 2003. Allstate, not knowing that the deed was forged, transferred the property to Intilli on December 25, 2003. Intilli, not knowing that the deed was forged, transferred the property to Alvarez on December 15, 2004.

Nunes commenced this action on August 25, 2005 and agreed that she had constructive notice of the forged warranty deeds on October 6, 2003 when the deeds were recorded in the public record and that her divorce attorney had actual knowledge of the forged deeds in May, 2004 when he deposed Gilman. Despite this, Nunes decided to take no action to protect or assert her interest in the property in her divorce case in which a claim for partition of the property was filed. In December, 2004, Alvarez, in reliance on the public records which did not indicate any notice that Nunes had an interest in the property, purchased the property for value.

The court sided with Alvarez as an innocent, bona fide purchaser of the property for value. While Nunes did not directly cause the fraudulent deeds to be recorded, once she knew of them she had a duty to give notice so that others would not be harmed. Because of Nunes's actual knowledge of the forgery prior to the purchase by Alvarez, Nunes is equitably estopped from asserting her interest.

Trial court did not err in granting final summary judgment in favor of Defendant Landlord because there was no evidence to suggest that Defendant exercised any control over the premises or public access to it. The Defendant sold the business operating on the Premises to Tenant whose president testified that he ran the daily operations and was responsible for maintaining the premises.

Jones v. Basha, Inc. d/b/a Central Food Market, 36 Fla. L. Weekly D1958 (Fla. 2nd DCA 2011)

Jones was the victim of an attempted carjacking outside of a convenience store where Basha owned the property housing the store, but had recently sold the business operations of the store to Becker, the tenant. After such sale, Basha argued that he had no involvement or control over the management or operation of the store, and therefore had no duty to ensure security at the store. Basha supported this assertion with the deposition of Becker's president, Nafel, who explained that he ran the day-to-day operations of the store and was responsible for maintaining the premises.

The appellate court upheld the trial court's award of summary judgment to Defendant Basha holding that if the landlord surrenders possession and control over the leased premises to the tenant, the landlord is not liable for injury to a third party that occurs on the premises. *Brown v. Suncharm Ranch, Inc.,* 748 So. 2d 1077, 1078 (Fla. 5th DCA 1999). The court also found that the fact that Basha kept in contact with Becker did not create an issue of control because there was no evidence that any of the contact was for the purpose of Basha's exercising control over the premises. Additionally, the court cited the lease agreement between the parties which placed the responsibility for maintaining the premises in a careful and proper manner exclusively on Becker required Becker to maintain a comprehensive public liability insurance policy, and required Becker to indemnify Basha from all liabilities, losses and damages arising from Becker's use of the premises.

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A previously recorded plat may be validated and relied upon only if referenced in future deeds. Purchasers acquire rights to a previously recorded plat only if the plat is conveyed by incorporating it and referencing it in the deed.

Miami-Dade County v. Torbert, 36 Fla. L. Weekly D1674 (Fla. 3rd DCA 2011)

Torbert requested a determination from the Miami-Dade Department of Planning and Zoning to confirm that he could develop one-acre residences on a 65 acre parcel that was being used to grow agricultural crops. The parcel was platted and recorded in 1926, as a subdivision of a larger plat known as Florida City Pines. The parcel was currently zoned GU Interim District, which requires a minimum lot size of five acres per homesite. The Department of Planning and Zoning issued a letter declining to approve the use of Torbert's parcel for one-acre home sites, determining that the 1926 plat was invalid and could not be relied upon to change the zoning of the GU Interim District. The Department stated that the plat was invalid and now could not be relied upon because, even though it had been recorded in 1926, it had not been referred to or relied upon in subsequent deeds for sale and purchase thereby invalidating the plat.

Torbert appealed the Department's determination in circuit court which reversed the decision in favor of Torbert. The circuit court concluded that the Department applied incorrect law—holding that the correct law was that the plat was valid as it was recorded in 1926 and had never been revoked.

The appellate court reversed the circuit court and affirmed the determination of the Department because the circuit court applied incorrect principles of law when it failed to properly determine the issue of validity of the plat under established Florida law set forth in the Supreme Court cases, *Wahrendorff v. Moore,* 93 So. 2d 720 (Fla. 1957) and *McCorquodale v. Keyton,* 63 So. 2d 906 (Fla. 1953). The appellate court also pointed to *Tallahassee Investments Corp v. Andrews,* 185 So. 2d 705 (Fla. 1st DCA 1966), which holds that where a deed of conveyance contains no reference or reservation of an easement for streets, a beach or public areas, as embodied in a recorded plat, the titleholder is estopped from relying on the plat and from maintaining a position inconsistent with the deed. The appellate court applied these same principles of law to the present case—that reservations encompassed in a plat must be referenced in deeds of conveyance in order for the reservations to pass along with title and to be validated.

Where declaration was not recorded, a failure to reference the declaration's "recording data" in the contract cannot be used as a basis for revoking the contract for violating ILSFDA. The purpose of ILSFDA is preventing fraud through disclosure of pertinent information, not ensuring technical compliance with state recording statutes.

Boynton Waterways Investment Associates, LLC v. Jevgenijs Bezkorovainijs, 36 Fla. L. Weekly D1519 (Fla. 4th DCA 2011)

In Fall 2006, Buyer entered into a contract for the purchase of a pre-construction condominium unit. In September 2008, Buyer filed suit to revoke the contract under ILSFDA based on non-compliance with section 718.109, Florida Statutes (2006), which provided that "Following the recording of the declaration, a description of a condominium parcel by the number or other designation by which the unit is identified in the declaration, together with the recording data indentifying the declaration, shall be a sufficient legal description for all purposes." Section 1703(d)(1) of ILSFDA requires that any contract or agreement which is for the sale or lease of a lot provide a description of the lot which makes such lot clearly identifiable and which is in a form acceptable for recording by the appropriate public official responsible for maintaining land records in the jurisdiction in which the lot is located. Buyer was not provided with recording information for the declaration and, therefore, claimed that because the sales contract failed to provide a legal description as defined by § 718.109, Fla. Stat., it ran afoul of section 1703(d)(1) of ILSFDA, thereby allowing buyer to revoke the contract.

The appellate court reversed the trial court's ruling, in favor of Buyer, based on the similar issue addressed in *Taplett v. TRG Oasis (Tower Two), Ltd.,* 755 F. Supp. 2d 1197 (M.D. Fla. 2009). There, although the court found that the contract did fail to reference the declaration's "recording data," it found that the Seller actually gave more: the proposed declaration itself along with a contractual obligation to file it prior to closing. The court refused to penalize a developer for giving the entire document rather than a mere identifying reference. ILSFDA is not aimed at ensuring technical compliance with state recording statutes. Rather, its focus is preventing fraud through the disclosure of pertinent information. The court also recognized that § 718.109, Fla. Stat., does not apply until the declaration is recorded.

This court agreed with the *Taplett* ruling and rationale and found that there was no violation of ILSFDA. The court acknowledged that Buyer received the actual prospectus, the unit number, address, development name, site map, and floor plans, thereby making the property purchased "clearly identifiable" and "in a form acceptable for recoding." Accordingly, the court found that Seller actually gave Buyer more information than required by section 1703(d)(1) of ILSFDA..

Probate Case Summaries

Prepared by Theodore S. Kypreos
Jones, Foster, Johnston & Stubbs, P.A., West Palm Beach, FL

ESTATES:

Holding that the three-month limitation period of F.S. 733.212(3) bars any untimely objection to the qualifications of a personal representative, including an objection that a personal representative was never qualified to serve, except where fraud, misrepresentation, or misconduct is not apparent on the face of the petition for administration or discovered within the three-month limitation period.

Hill v. Davis, 36 Fla. L. Weekly S487 (Fla. 2011)

Appellee Douglas Davis, a New York resident, filed his petition for administration asserting that he was entitled to be appointed personal representative because he was the decedent's stepson and was nominated to serve as personal representative in the decedent's will. Appellee was subsequently appointed personal representative and his notice of administration was thereafter properly served upon Appellant Solveig Edna Hill, the decedent's mother, on July 24, 2007. On August 6, 2008, Appellant filed a motion challenging Appellee's qualifications to serve as personal representative. After the trial court issued a verbal ruling on March 9, 2009 that Appellee was qualified to act as personal representative, Appellant filed a renewed motion to disqualify Appellee wherein she argued Appellee was not a lineal descendant of the decedent's spouse under § 733.304, Fla. Stat. because the decedent's spouse (Appellee's father) predeceased the decedent. On July 10, 2009, the trial court issued its written order finding that Appellee was qualified to serve as personal representative, and Appellant's objection to Appellee's qualifications as personal representative was time-barred because it was not filed within the three-month time frame set forth in § 733.212(3), Fla. Stat.

On appeal, the First District did not address the merits of whether Appellee was qualified under the nonresident personal representative statute, but instead affirmed the trial court's ruling on grounds that Appellant's objection was time-barred under § 733.212(3), Fla. Stat. See *Hill v. Davis*, 31 So. 3d 921 (Fla. 1st DCA 2010). However, recognizing that its decision conflicted with a prior ruling in *Angelus v. Pass,* 868 So. 2d 571 (Fla. 3rd DCA 2004), the First District certified conflict to the Supreme Court of Florida.

The Supreme Court affirmed the First District's decision. The Court noted that, contrary to the ruling in *Angelus*, there is no exception to the limitation period in § 733.212(3), Fla. Stat. for objections that a personal representative was never qualified to serve. The Court therefore determined that a claim that a nonresident is not qualified to serve under § 733.304, Fla. Stat. is itself an objection to the qualifications of a personal representative, and therefore subject to the unambiguous provisions of § 733.212(3), Fla. Stat. In reaching its ruling, the Court found it significant that Appellant "knew at the outset of the administration of the estate that [Appellee] was the son of decedent's deceased husband. Nothing was concealed or misrepresented, as apparently occurred in Angelus." In affirming the First District's decision, the Court also approved *Angelus* to the extent it involved fraud or misrepresentation that was not revealed in the petition for administration. The Court disapproved *Angelus* "to the extent it broadly holds that section 733.212(3) does not apply to bar objections that a personal representative was never qualified to serve."

Error to award attorney's fees against beneficiary's share of estate absent finding of bad faith, wrongdoing or frivolousness.

Levin v. Levin, 67 So. 3d 429 (Fla. 4th DCA 2011)

Appellant Gail Levin appealed the trial court's judgment assessing attorney's fees against her share of the decedent's estate, and taxing costs against her after her unsuccessful challenge of the decedent's will and trust. On appeal, the Fourth District reversed the trial court's award of attorney's fees against Appellant's share of the estate. Relying on its prior decisions in *Geary v. Butzel Long, P.C.*, 13 So. 3d 149 (Fla. 4th DCA 2009) and *Estate of Lane*, 562 So. 2d 352 (Fla. 4th DCA 1990), the Court determined that a finding of either bad faith, wrongdoing, or frivolousness is a prerequisite to assessing attorney's fees against Appellant's share of the estate. Accordingly, the Fourth District reversed and remanded the case for the trial court to determine whether appellant engaged in any bad faith, wrongdoing, or frivolous conduct in connection with the underlying litigation. Given its prior ruling in *Levin v. Levin*, 60 So. 3d 1116 (Fla. 4th DCA 2011) (reported in Summer 2011 edition of *ActionLine* Vol. XXXII, No. 5), the Fourth District directed that the trial court should not make its determination of bad faith, wrongdoing or frivolousness until after first deciding whether the challenged will and trust were the product of an "insane delusion." For similar reasons, the Court reversed the trial court's order taxing costs, finding that such award is dependent upon who is ultimately the prevailing party, which cannot be determined until the trial court first makes its determination on Appellant's insane delusion claim.

Case law update. Please note that the *Basile v. Aldrich* case reported in the Summer 2011 edition of ActionLine Vol. XXXII, No. 5, has been withdrawn and a new opinion was recently issued.

Basile v. Aldrich, 36 Fla. L. Weekly D1868 (Fla. 1st DCA 2011)

Appellants sought review of a summary final judgment entered in favor of Appellee in which the trial court held that § 732.6005(2), Fla. Stat. required all property of the decedent acquired after she executed her 2004 will to pass to Appellee as the sole remaining beneficiary named in the 2004 will.

In 2004, the decedent prepared an "E-Z Legal Forms" will. Under the article for bequests, the decedent hand-wrote that the possessions she listed be bequeathed to her sister if living and if not, to her brother (Appellee). The will contained no other distributive provisions or a residuary clause. Subsequently, the decedent's sister died leaving her entire estate to the decedent, including certain real property and cash. The decedent thereafter died without having revised her will. Adversary proceedings followed concerning the disposition of the property the decedent inherited from her sister. The trial court granted Appellee's motion for summary judgment and rejected Appellants' argument that the after-acquired property should pass by intestacy.

On appeal, the First District reversed the trial court's ruling. The Court first found that the provisions of §732.6005(2), Fla. Stat., concerning after-acquired property, were inapplicable to the instant case because the language of the 2004 will was unambiguous, and that language made no provision to dispose of the property in question. The Court stated that "[i[n order for property, after-acquired or not, to pass under a will, the will must dispose of it in some manner. Whether acquired before, after, or at the time a will is executed, assets covered by no provision of the will . . . are not disposed of under the will." The Court determined that the unambiguous terms of the decedent's 2004 will did not express any intention to dispose of any property other than the property identified in the will. The Court noted the long-standing principle that a testator may choose to dispose of certain property by will, and allow the balance of his or her estate to descend under the laws of intestacy. Accordingly, the Court reversed the trial court and determined that the decedent's property not specifically identified in the 2004 would pass to the decedent's intestate heirs.

Notwithstanding its ruling, the First District, in an abundance of caution, certified the following question to the Supreme Court of Florida: WHETHER SECTION 732.6005, FLORIDA STATUTES (2004), REQUIRES CONSTRUING A WILL AS DISPOSING OF PROPERTY NOT NAMED OR IN ANY WAY DESCRIBED IN THE WILL, DESPITE THE ABSENCE OF ANY RESIDUARY CLAUSE, OR ANY OTHER CLAUSE DISPOSING OF THE PROPERTY, WHERE THE DECEDENT ACQUIRED THE PROPERTY IN QUESTION AFTER THE WILL WAS EXECUTED?

Dismissal of appeal on grounds that appeal of order appointing personal representative was untimely, and appeal of Letters of Administration was premature given Appellants' objections to appointment of personal representative and counter-petition for appointment of personal representative were still pending.

Naftel v. Pappas, 68 So. 3d 368 (Fla. 1st DCA 2011)

The guardian for the decedent's surviving spouse commenced probate proceedings by her filing of a "Petition to Admit Will of Decedent; Petition for Formal Administration; and Petition to Waive Bond of Personal Representative." The trial granted the guardian's petition and appointed John T. Marshall as personal representative. The trial court subsequently issued Letters of Administration to Mr. Marshall. Prior to the issuance of Letters of Administration, Appellants filed objections to the appointment of Mr. Marshall as personal representative and a counter-petition for appointment of personal representative.

Upon the trial court issuing Letters of Administration to Mr. Marshall, Appellants filed their notice of appeal with respect to the trial court's "Order Appointing Personal Representative; Order Waiving Bond of Personal Representative; and Order Admitting Will to Probate," and the Letters of Administration issued to Mr. Marshall. Given Appellants' notice of appeal was filed over two months after the trial court's Order Appointing Personal Representative; Order Waiving Bond of Personal Representative; and Order Admitting Will to Probate, the First District dismissed Appellants' appeal with respect to that order for being untimely under Fla. R. App. P. 9.110(a)(2). With respect to their appeal of the Letters of Administration issued to Mr. Marshall, Appellants argued that the issuance of the Letters of Administration constituted an appealable order because it effectively disposed of their prior filed objections to the appointment of Mr. Marshall and counter-petition for appointment of personal representative. The First District disagreed. The Court noted that the trial court had not yet held a hearing on Appellants' objections and counter-petition, the time limitation provisions of § 733.2123, Fla. Stat., were not applicable to Appellants because they were not served with any formal notice, and the challenged Letters of Administration did not address Appellants' pending objections and counter-petition. Accordingly, the Court dismissed the appeal of the Letters of Administration as being premature under Fla. R. App. P. 9.100(l).

Affirmance of trial court's ruling that surviving spouse waived all rights under deceased husband's will by subsequently signing post-nuptial agreement.

Steffens v. Evans, 36 Fla. L. Weekly D2184 (Fla. 4th DCA 2011)

On January 4, 2002, the decedent, Jeffrey Steffens,

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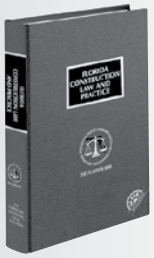

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executed his last will and testament wherein he named his wife, Appellant Andrea Steffens, as a substantial beneficiary. Subsequently, Jeffrey and Andrea Steffens contemplated divorce, and on June 6, 2007, they entered into a post-nuptial agreement. In the post-nuptial agreement, Jeffrey and Andrea each waived, among other things, all rights in the property of the other in the event of dissolution of marriage or death. Additionally, the post-nuptial agreement provided that the "waiver contained herein is to be broadly construed pursuant to Section 732.702, Florida Statutes."

Jeffrey Steffens passed away on January 9, 2009. Appellant thereafter filed her petition for administration, and the trial court admitted the decedent's 2002 will for probate and appointed Appellant personal representative. The decedent's former wife, Denise Evans, on behalf of the decedent's minor children, filed a petition to determine beneficiaries wherein she claimed that Appellant had waived all rights to decedent's property and estate. The trial court agreed and entered an order determining that the provisions of the post-nuptial agreement and § 732.702, Fla. Stat., "create[d] a waiver of all of the Surviving Spouse's rights under the Decedent's will.

On appeal, the Fourth District noted that § 732.702, Fla. Stat., expressly provides that, unless the waiver provides to the contrary, a waiver of "all rights" or equivalent language constitutes, among other things, a "renunciation by the waiving party of all benefits that would otherwise pass to the waiving party from the other by intestate succession or by the provisions of any will executed before" the waiver. The Court emphasized that the post-nuptial agreement contained several provisions wherein the decedent and Appellant waived "all rights" in each other's property and estate. Accordingly, the Court determined that because the decedent's will was executed before the execution of the post-nuptial agreement, Appellant had waived any benefits that would have otherwise passed to her under the 2002 Will. The Court also noted that the Third District had reached a similar result in the case of *Hulsh v. Hulsh,* 431 So. 2d 658 (Fla. 3rd DCA 1983).

GUARDIANSHIP:

Affirmance of trial court's order requiring alleged incapacitated person to pay examining committee fees notwithstanding dismissal of petition to determine incapacity.

Faulkner v. Faulkner, 65 So. 3d 1167 (Fla. 1st DCA 2011)

Incapacity and guardianship proceedings under Chapter 744, Fla. Stat., were commenced against Appellant Laura B. Faulkner by her children. During the course of those proceedings, the trial court appointed an emergency temporary guardian for Appellant. Eventually, the trial court dismissed the children's petition to determine incapacity, but found that the petition was filed in good faith and ordered Appellant to pay the fees of the examining committee and the fees and costs of the emergency temporary guardian. Appellant appealed those orders.

The First District affirmed without comment the trial court's findings that the petition was filed in good faith, the examining fees were reasonable, the fees and costs awarded to the emergency temporary guardian were reasonable and the fees and costs of the emergency temporary guardian were properly assessed against Appellant. In addressing the trial court's decision to require appellant to pay the examining committee fees, the Court examined the provisions of § 744.331(7), Fla. Stat. The Court noted that § 744.331(7)(b), Fla. Stat., provides that examining committee fees "shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state . . . ," and that § 744.331(7)(c), Fla. Stat., provides that upon dismissal of a petition to determine incapacity, "costs and attorney's fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith." The Court acknowledged the "gap" in § 744.331(7), Fla. Stat., as the statute "does not specify who pays the examining committee fees when the petition is dismissed or denied and there is no finding" that the petition to determine incapacity was filed in bad faith. The Court noted that this "gap" was also observed by the Fourth District and Fifth District in *Ehrlich v. Severson*, 985 So. 2d 639 (Fla. 4th DCA 2008), and *Levine v. Levine,* 4 So. 3d 730 (Fla. 5th DCA 2009), respectively.

The Court concluded it was not necessary to resolve the "gap" in § 744.331(7), Fla. Stat., in the instant appeal because, unlike the *Ehrlich* case where a guardianship was never established, an emergency temporary guardian was appointed for Appellant and, thus, the Court concluded Appellant was a ward during the pendency of the incapacity proceeding. The Court noted that § 744.102 (22), Fla. Stat., defines "ward" as "a person for whom a guardian has been appointed." Because "the examining committee fees were incurred, and ordered, while the emergency temporary guardian had legal control over Appellant's property," the Court determined the examining committee fees were properly assessed against Appellant pursuant to § 744.331 (7)(b), Fla. Stat.

Reversing trial court's denial of compensation to emergency temporary guardian, and denial of attorney's fees and costs to petitioners who commenced Chapter 744 proceedings that eventually led to determination of ward's total incapacity and appointment of plenary guardians.

Thorpe v. Myers, 67 So. 3d 338 (Fla. 2nd DCA 2011)

Two of the ward's nine children commenced Chapter 744 proceedings to determine their mother was incapacitated and for the appointment of a professional guardian,

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Appellant Jana Thorpe, as plenary guardian of the person and property. The ward's other children intervened and litigation among the children concerning the ward's alleged incapacity and the appointment of a guardian ensued. In the interim, the trial court appointed Appellant as emergency temporary guardian for the ward. Although one child filed a motion to revoke Appellant's appointment, the trial court never revoked her appointment as emergency temporary guardian, and in fact the trial court later extended Appellant's original 90-day appointment.

After the examining committee found the ward to be totally incapacitated and recommended the appointment of a plenary guardian, the children settled their litigation. Per their settlement, the ward was declared totally incapacitated, one of the ward's sons was appointed plenary guardian of the ward's person, and a daughter was appointed plenary guardian of the ward's property. The settlement agreement did not address the fees and costs of Appellant or the petitioners' attorneys. Appellant subsequently petitioned for guardian fees. After conducting an evidentiary hearing, the trial court entered an order denying Appellant compensation because the trial court found her services "were of minimal, if any[,] benefit to the Ward, and were intended to benefit [petitioners] in the Petition for Emergency Temporary Guardian." The trial court similarly denied petitioners' request for attorney's fees and costs based on its finding that the services provided "were not on behalf of the Ward but were on behalf of the petitioners and other family members."

On appeal, the Second District reversed the trial court's rulings. As to Appellant's request for guardian fees, the Court found that the trial court misread § 744.108(1), Fla. Stat., in its determination that Appellant's entitlement to compensation was conditioned on a showing that her services benefited the ward. Unlike attorney's services, the Court determined that § 744.108(1), Fla. Stat., presupposes that a guardian's services benefit the ward or the ward's estate. The Court also concluded that the trial court's finding that Appellant's services were of minimal benefit to the ward lacked evidentiary support. As to petitioners' request for attorney's fees and costs, the Second District reversed the trial court's order to the extent it denied petitioners their fees and costs related to their efforts in seeking a determination that the ward was incapacitated and for the appointment of a guardian. The Court found such services benefitted the ward, thus petitioners' attorneys were entitled to reasonable fees and costs under §744.108(1), Fla. Stat.

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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

• Live
• Live Webcast
• Audio CD
• Video DVD

Estate Planning – Leaping Into the Future

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live and Webcast Presentation: Wednesday, February 29, 2012
Tampa Airport Marriott • 4200 George J. Bean Parkway • Tampa, FL 33607

Course No. 1301R

8:15 a.m. – 8:45 a.m.
Late Registration

8:45 a.m. – 8:50 a.m.
Opening Remarks

8:50 a.m. – 9:35 a.m.
Drafting "Leaky Faucet" (Conduit) Trusts and "Stopped Up Faucet" (Accumulation) Trusts
Linda S. Griffin, Clearwater

9:35 a.m. – 10:15 a.m.
Fixing Broken Beneficiary Designations
Richard R. Gans, Sarasota

10:15 a.m. – 10:35 a.m.
Break

10:35 a.m. – 11:15 a.m.
Life Insurance and Annuity Forensics – Contract Diagnosis & Prognosis
L. Howard Payne, Sarasota and David F. Sterling, Sarasota

11:15 a.m. – 11:55 a.m.
Roth Conversions in 2012 and Planning for Portability with IRAs
Lester B. Law, Naples

11:55 a.m. – 1:10 p.m.
Lunch Presentation – Privilege Issues in Estate Planning – Ethics Credit
Jonathan A. Galler, Boca Raton

1:10 p.m. – 1:50 p.m.
Using the $5M Gift Tax Exemption With Self-Settled Trusts
Jerome L. Wolf, Boca Raton

1:50 p.m. – 2:30 p.m.
Planning Opportunities for the $5 Million Gift Tax Exemption
Jeffrey A. Baskies, Boca Raton

2:30 p.m. – 2:45 p.m.
Break

2:45 p.m. – 3:25 p.m.
Defined Value Clauses - Progress by Leaps and Bounds
Charles I. Nash, Melbourne

3:25 p.m. – 4:05 p.m.
GST Planning in 2012 and Beyond– Don't "Skip" the Opportunity
Tasha K. Dickinson, West Palm Beach

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.

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(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.

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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 resource 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, each Section committee has list serves that discuss issues and current hot topics, available to committee members.

SCHEDULE

EXECUTIVE COUNCIL MEETINGS

MARCH 1 – MARCH 4, 2012

Sawgrass Marriott Ponte Vedra
Ponte Vedra, Florida

Reservations: 1-800-457-4653
http://www.sawgrassmarriott.com/
Room Rate: $149.00
Cut-off Date: February 8, 2012

MAY 31 – JUNE 3, 2012
RPPTL Section Convention

Don CeSar Beach Resort
St. Petersburg, Florida

Reservations: 1-800-282-1116
http://www.loewshotels.com/en/Hotels/St-Pete-Beach-Resort/Overview.aspx
Room Rate $160.00
Cut-off Date: May 9, 2012

2012 CLE SCHEDULE:

Note: Detailed information can be found on the Florida Bar website: www.floridabar.org/CLE. Search by course number.

February 29, 2012
ESTATE PLANNING
Course No. 1301
Tampa

March 9-10, 2012
WILLS, TRUST & ESTATE CERTIFICATION REVIEW COURSE
Course No. 1345
*Orlando

March 22, 2012
PROBATE LAW
Course No. 1325
Ft. Lauderdale

March 23, 2012
PROBATE LAW
Course No. 1325
Tampa*

March 22-24, 2012
CONSTRUCTION LAW CERTIFICATION REVIEW COURSE
Course No. 1335
Reunion Resort

March 22-24, 2012
5TH ANNUAL CONSTRUCTION LAW INSTITUTE
Course No. 1336
Reunion Resort

April 20, 2012
RPPTL / ENVIRONMENTAL & LAND USE LAW SEMINAR
Course No. 1315
Tampa*

April 26, 2012
POWER OF ATTORNEY
Course No. 1292
Tampa*

April 27, 2012
CONDO ASSOCIATION LAW
Course No. 1346
Tampa*

May 18, 2012
ADR COMMITTEE CLE
Course No. 1399
Tampa Airport*

May 18, 2012
REAL ESTATE LITIGATION
Course No. 1400
Tampa Airport*

** Webcast & Live*

Courses scheduled later in the year will appear in future editions of ActionLine.

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).

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New Rule 1.720: File 10 days in advance a Party Representative Disclosure. Read the Rule at the ADR Committee webpage on www.RPPTL.org.

Florida Supreme Court Adopts new Appellate Rule 9.170 regarding appealable orders in probate.
(See page 7 for more information.)

APPLICATIONS SOUGHT FOR FELLOWSHIP

RPPTL Section currently accepting applications for our 2012-2014 Fellowship class
(See pages 17 & 18 for more information).

ARTICLES

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

Do You Know...

The Florida Bar's CLE is available to you **24/7**? Visit *www.floridabar.org/CLE* and check it out!

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.)

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