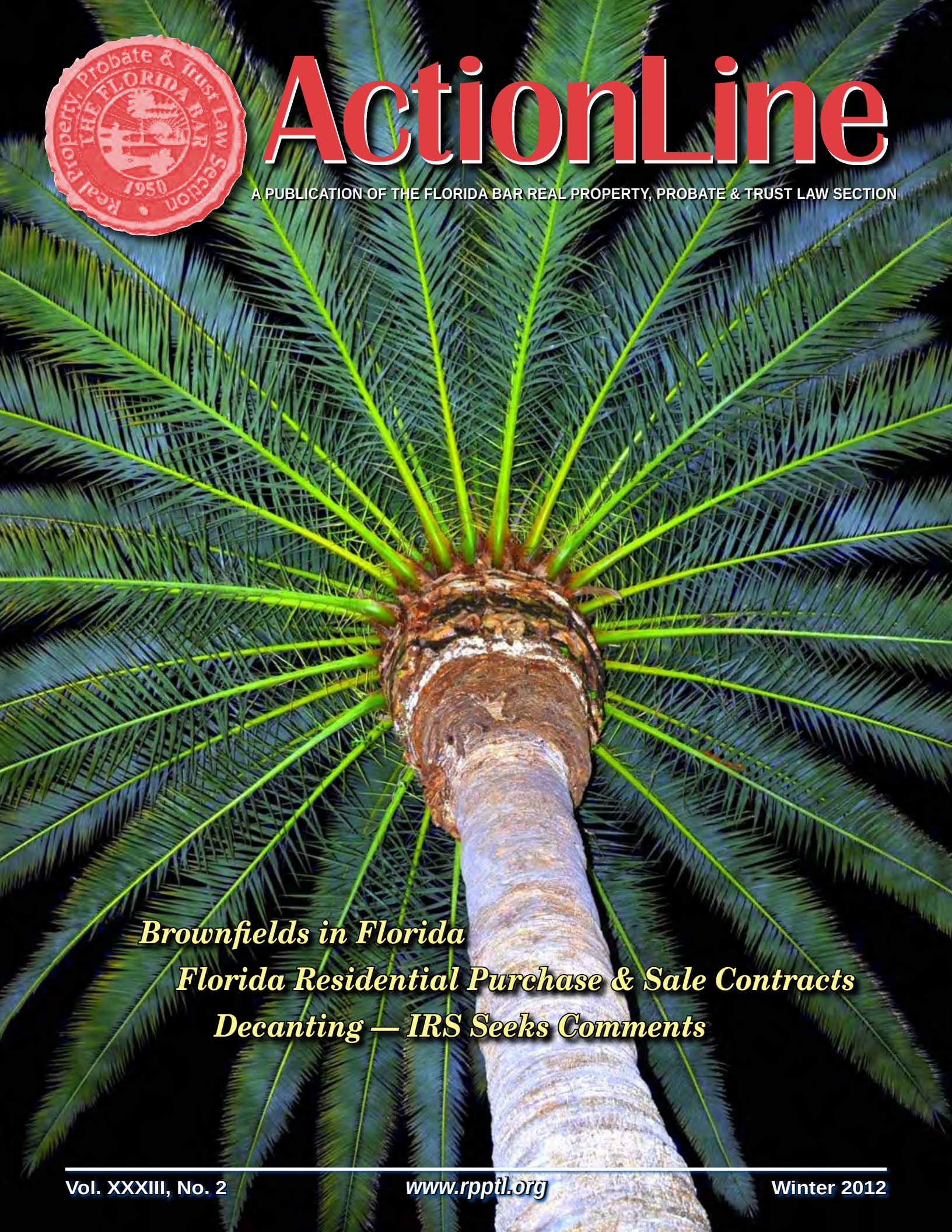

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A PUBLICATION OF THE FLORIDA BAR REAL PROPERTY, PROBATE & TRUST LAW SECTION

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Chair's Column

By George J. Meyer

Section Chair, 2011- 2012

It's Been a Busy Year So Far!

Though this is only my second column as Chair of the Section, it recently occurred to me that approximately two-thirds of my term already has expired. At first I found it amazing how quickly the time has passed, but when I stopped and reflected upon the past several months, what I really found amazing was how much the Section has accomplished. I do not mention the Section's recent accomplishments to take credit for them (and, if the truth be told, most of those accomplishments were achieved with little, if any, involvement by me); rather, my intention is to underscore the fact that those accomplishments are the result of the extensive and exemplary efforts consistently being made by so many of our Section members. I truly believe there is no better example of the highest standards and ideals of The Florida Bar than what is achieved by the Section through its dedicated membership.

The Section continues to develop and present excellent CLE programs that are timely and informative for all lawyers practicing real property, construction or probate and trust law in Florida. Currently, it is estimated there will be at least sixteen CLE programs sponsored by the Section this year. There is the Section's standard line-up of excellent annual programs (i.e., Construction Law Institute, Legislative and Case Law Update, Attorney and Trust Officers Liaison Conference, Real Property Law Certification Review, Construction Law Certification Review and Probate and Trust Law Certification Review). In addition, during the past year, the Section also presented three very successful live seminars across the state addressing the new Florida Power of Attorney Act, which became effective on October 1, 2011. The Section also hosted a telephonic seminar on ad valorum tax challenges, in response to the historic drop in property value that has occurred across the state over the past several years. To view a complete listing of all of the Section's CLE programs that are either upcoming or available via recordings, please visit the Section's website at www.rpptl.org.

The heart and soul of the Section, where the vast majority of the Section work is accomplished, continues to be its various Committees (i.e., 16 Real Property Division Committees, 15 Probate and Trust Law Division Committees and 20 Standing Committees). For example, at the Executive Council meeting held in Marco Island this past December, the Section approved the completely revised and updated Joint RPPTL Section and Business Law Section Report on Legal Opinion Standards. That report is the culmination of several years of work by the Section's Legal Opinions Committee, together with the Business Law Section of The Florida Bar. A copy of the final report can be found on the Section's website.

The Section's Probate and Trust Law Division remains extremely busy and productive. Its Committees are working on several projects, including: instituting a complete review and revision of Florida's Uniform Principal and Income Act; investigating ways of invalidating gifts made to an attorney or their family under a will or trust drafted by that attorney or their law firm; and providing input to the Internal Revenue Service with respect to proposed regulations involving the decanting of an irrevocable trust. The Probate and Trust Law Division is also developing a program in conjunction with the Section's Pro Bono Committee for the provision of certain estate planning services to low income individuals. In addition to the aforementioned projects, at the request of the Probate and Trust Law Division, the Section has submitted to the Supreme Court Local Rules Advisory Committee an application requesting review of a Circuit court's recent administrative order.

The Real Property Division of the Section has been equally busy and productive this year. In addition to the legal opinions report referenced above, this Division has been actively engaged in a number of legislative initiatives, such as seeking certain amendments and modifications to Chapters 255 and 713, *Florida Statutes*, with respect to construction liens and construction payment bonds, as well as seeking an extension to the "Bulk Buyer" provisions in Part VII of the Condominium Act (Chapter 718, *Florida Statutes*). This past year, one of the highest profile and most time consuming efforts of the Real Property Division has been its work in opposing non-judicial foreclosure legislative

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ABOUT THE COVER:

Cover photo of palm tree

by John Neukamm

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

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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.

initiatives and providing technical assistance to Representative Passidomo in regards to her proposed legislation to improve the judicial foreclosure process in Florida.

The Section's amicus activity continues to progress at a strong and steady pace. At the Section's Executive Council meeting held in Ponte Vedra this past February, the Section authorized the Amicus Coordination Committee to file a Motion for Leave to Appear and Amicus Curiae Brief in the Florida Supreme Court with respect to the North Carillon, LLC v. CRC 603, LLC, et al, Case No: SC12-75. The amicus position is that the mere passage of time between an original legislative enactment and a subsequent clarifying legislative enactment does not limit or preclude the retroactive application of the clarifying enactment.

A very significant structural change to the Section occurred this past year. The Section's revised by-laws did away with the old Circuit Representative category for Executive Council membership and created a new category called At Large Members ("ALMS"). The ALMS have two primary responsibilities: communication and projects. The ALMS Director will be appointing two Deputy Assistant Directors, one for communication and one for projects. The ALMS members continue to be a significant conduit for the Section in its communications with Section members around the state. In addition, ALMS members are utilized on Section projects, such as statewide surveys. Recently, the ALMS members collected the foreclosure administrative orders for all Circuits. The results of that project have been posted to the Section's website. ALMS members are now in the process of collecting all probate and guardianship administrative orders for each Circuit. In addition, the ALMS are developing a web-based seminar program for updating the judiciary on certain legislative and rule-making changes.

As you can see from the sampling above, the Section continues its leadership role within The Florida Bar in regards to all matters relating to real property, construction and probate and trust law. The Section's role would not be maintained but for the selfless efforts of the many Section members who volunteer their time and energy to work on all of the Section's various projects and initiatives. If you would like to become more involved in the Section's activities, please consider joining one of the Section's Committees. Essentially, all Section Committees are open to all Section members, and there are only two requirements of a Section member that would like to become more involved: volunteer and deliver.

There is one Executive Council meeting left during my term as Chair. That meeting is also the Section's Annual Convention. It will be held from May 31-June 3 at the Don Cesar Beach Resort on St. Petersburg Beach. The Convention seminar will be held on Friday morning, June 1st and will focus only on ethics, providing 3.5 hours of ethics CLE credit to all attendees. As has been the case the past couple of years, the seminar is free to all Section members. After the seminar, I urge all members to stay for the Section's ALMS meeting and Division Roundtables. Those meetings will provide members with a good overview of the Section's current activities. So get informed and get involved with your Section.

George J. Meyer, Chair

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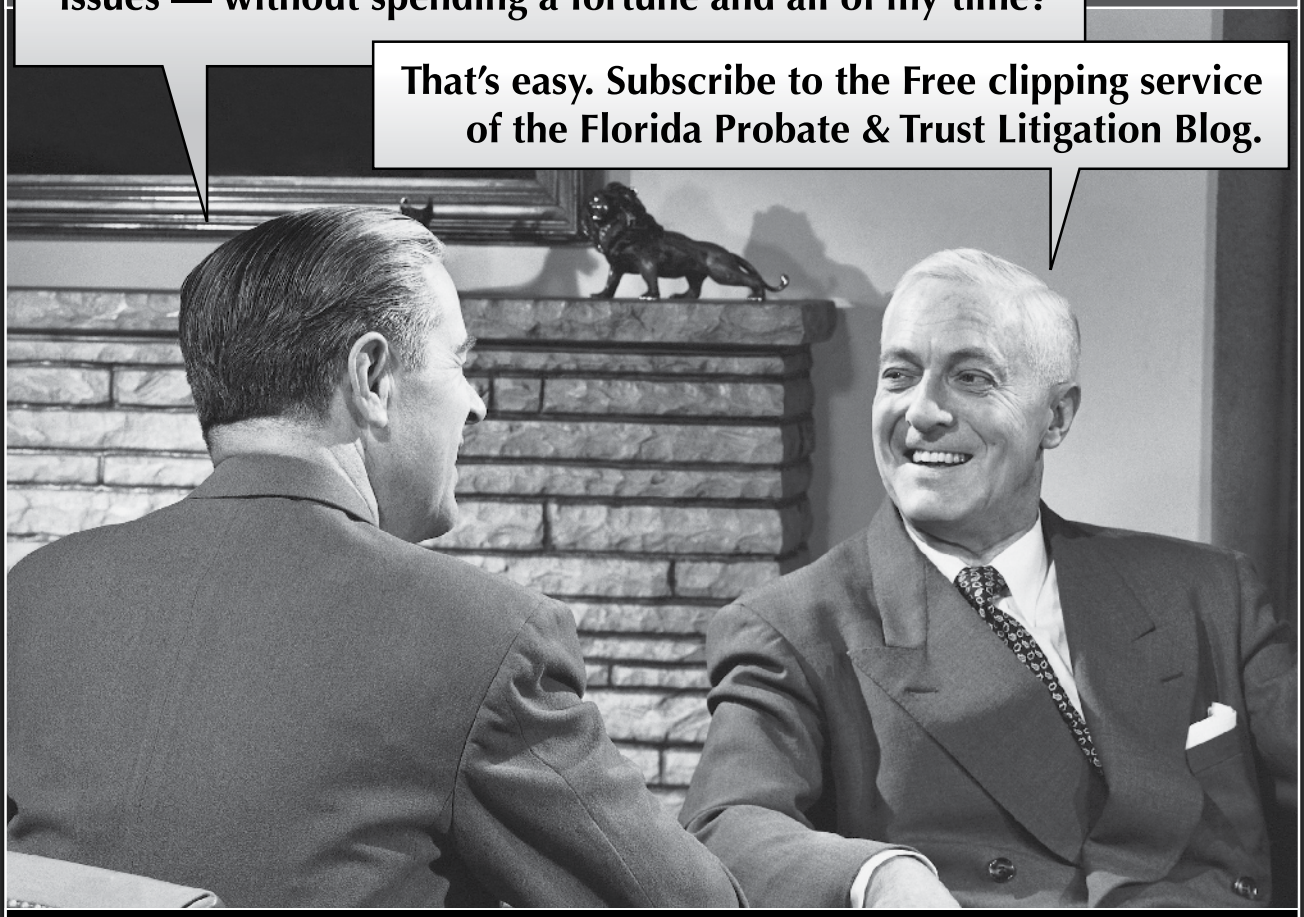

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Brownfields in Florida: A Valuable Tool for Solving Environmental Issues

By Frank L. Hearne and Anne Q. Pollack
Mechanik Nuccio Hearne & Wester, P.A., Tampa, Florida
On behalf of the Governmental Regulation Committee

The Florida Brownfields Program provides a beneficial option for property owners and developers looking to purchase and/or redevelop properties suffering from environmental contamination

If you are active in real estate practice, whether on behalf of owners and sellers, buyers, lenders or development interests, you have certainly come across otherwise attractive sites that have environmental issues. As a real property lawyer, you may well lack the highly technical knowledge needed to help clients cope with these issues and allow development on those sites to proceed. Fortunately, there is now an increasing number of mechanisms available to assist the parties involved. As a result, many of these properties (which would otherwise have been left to wither away) can be successfully redeveloped to the benefit of both the businesses involved and the local community.

One option is the "Florida Brownfields Program" under the *Brownfields Redevelopment Act* (Section 376.77 -376.85 *Florida Statutes* and related statutes.) Under this program, in many cases, a substantial portion of site rehabilitation costs on a site which has been designated under the program can be recouped in the form of tax credits by the person performing the cleanup work subject to an agreement with the State. In addition, the program allows end users who occupy such sites to obtain tax credits of up to $2500 per new job so long as the business and jobs meet certain qualifications. Helpfully, where the person receiving the tax credits cannot make use of the credits, the credits can be, and frequently are, transferred to others at a somewhat discounted rate.

The Brownfield Program is the result of an effort to reinvigorate development of sites with environmental issues. Under environmental law developed since 1980, there are significant financial risks resulting from environmental contamination on or under real property. The environmental risks include: (1) liability for site remediation; (2) liability to third parties offsite or to those on-site (such as site workers or visitors) including personal injury and property damages; (3) interference with construction or operations on the site in the future; (4) limitations on future plans and use of the property; and (5) increased costs of site development.

These factors – all of which can be very scary to an owner or developer – make sale and redevelopment of sites with environmental issues risky and therefore less marketable and less valuable. To make matters worse, many of the properties affected are otherwise quite attractive sites, often at good business locations within urban core areas already serviced by existing infrastructure. Nonetheless, because of the increased risks and decreased value of these sites, development has been forced into suburban or rural areas otherwise referred to as "Greenfields." Consequently, areas which were left fallow for environmental reasons – whether actual or perceived – came to be known as "Brownfields." These sites often represent the skeletons of past ghastly business failures as well as tax deserts for local governments.

In response to this obvious problem, both Florida and the federal government have developed statutory programs in connection with site remediation to: (i) clarify and "simplify" requirements for site rehabilitation; (ii) allow for exceptions to the more draconian liabilities of environmental clean-up law, including limitations on liability for certain types of players; and (iii) provide programs to assist, at least in part, with the costs of site rehabilitation by providing various financial incentives or benefits.[1]

While a thorough discussion of each of these points is beyond the scope of this article, we have focused here on one of the most useful programs providing financial benefits and liability protection: the Brownfields Program operated by the Florida Department of Environmental Protection ("FDEP").[2]

Under the Florida Brownfields Program, an area must be "designated" by the local government under a public process similar to what occurs with zoning, subject to certain required public hearings and notices. There are two ways by which a property may be designated as a Brownfield.

continued, next page

First, the local government on its own initiative may designate an area containing many separately owned parcels. This makes all of the included parcels eligible for benefits under the Brownfields Program.[3] Many local governments, including Plant City, Jacksonville, Clearwater, and Tampa, among others, have elected to designate Brownfield areas for the benefit of these property owners and the City as a whole. Many other local governments have taken this action or are in the process.

A second way for a property to be designated is by request of a property owner or other person who controls a parcel. We have worked with such owners in Manatee County, Sarasota, Plant City, Tampa and other local governmental jurisdictions.

In both cases, designation requires public notice and two hearings before the applicable local government. Further, an additional public hearing at a location near the site or area may be required.

Once the local government has approved the designation of the area and has provided notice of the designation to the FDEP Brownfields Program, the party who will perform rehabilitation of the site (and otherwise qualifies under the statute) can enter into a Brownfields Site Rehabilitation Agreement (or "BSRA" pronounced "Biss-rah") with the FDEP or certain local agencies who have been delegated the authority to do so. The BSRA contains a number of required provisions, including a schedule for activities, site access for the agency, and liability limitations for the responsible party and other terms. Clean-up of the site then proceeds pursuant to Chapter 62-785, F.A.C. This regulation takes into account the management of actual expected risk at the site and allows clean-up of the site to less than pristine standards. For example, in addition to other options, FDEP may permit less than full remediation with the approval of "institutional controls" such as land use restrictions allowing only industrial or commercial use or forbidding the use of groundwater from the site, or "engineering controls" which require parts of the site to be covered by impervious surfaces. In most cases, these solutions are much more cost effective than full remediation and are more targeted to the actual contamination and expected proposed use of the property. Having signed the BSRA, the responsible party and its successors and assigns are eligible for an important, although limited, immunity from further environmental liability.

Significantly, a responsible party who has signed a BSRA and is not responsible for a recent release on the site, can collect tax credits of 50 percent of the costs directly related to site rehabilitation up to $500,000 per year. When the site rehabilitation is done, FDEP issues a completion order, making the responsible party eligible to receive an additional 25 percent of the eligible costs of remediation up to another $500,000. There are additional credits available for projects involving affordable housing, health care facilities and solid waste removals. These benefits and others available for qualified sites are detailed at *http://www.dep.state.fl.us/waste/categories/vctc/default.htm*. Note that there are some limitations: all claimants for the credit draw upon a common pool of $5 million each year, and there are detailed requirements for the application and paperwork to demonstrate the legitimacy of all claimed costs.

In our experience, the Brownfields Program can assist greatly in changing the economics of a particular project for the better and can help distressed properties be remediated and returned to commerce. This benefits both property owner and developer as well as the City, as unused sites are redeveloped providing jobs and taxes. If you are aware of a property which might benefit from the Program or if you are just interested in learning more, you may wish to participate in an upcoming webinar sponsored by the Governmental Regulation Committee of the Section which will provide much more detail on this beneficial program including, among other things, federal programs, such as favorable loans and tax treatment.

Endnotes:

1 This article is focused upon liability for cleanup costs. Other mechanisms have also developed in recent years for addressing some of the other types of risks: for example, the expanded availability of environmental insurance to cover third party real property and personal damages.

2 You may be aware of other state programs focusing upon gas stations and dry cleaners. While those programs are useful, the Brownfields Program applies to a broader group of sites which would not be eligible for those programs.

3 Under the statute, landowners within an area designated by the local government can "opt out" of being included in the designation.

Green Building Subcommittee

Did you know that Florida's local governments are taking the LEED in incorporating sustainable development oriented provisions into comp plans and zoning codes and ordinances? Currently approximately 25% of Florida's local governments have incorporated some aspect of sustainable development.

Check out a complete index to Florida Local Government Sustainable Development Provisions on the RPPTL Construction Committee's Green Building Subcommittee blog located at: http://floridagreenbuildinglaw.com/ The blog is updated as green law developments occur.

The Green Building subcommittee is always looking for new members! Interested? Please email Peyton Lumpkin, subcommittee chair, at *peytonwhitelumpkin@bellsouth.net.*

Notice of Annual Election Meeting

The next annual/election meeting of the RPPTL Section will commence at or about noon on Friday, June 1, 2012, at the Don CeSar Beach Resort, 3400 Gulf Boulevard, St. Pete Beach, FL 33706, in conjunction with the Section's Convention meeting.

The RPPTL Section Long-Range Planning Committee has made the following nominations for election to the Section offices and positions indicated for the 2012-2013 Bar year, and those names will be reflected in the official election ballot at that meeting:

Chair-Elect – Margaret Ann Rolando
Secretary – Deborah Packer Goodall
Treasurer – Andrew Marvel O'Malley
Director of Probate & Trust Law Division – Michael Allen Dribin
Director of Real Property Law Division – Michael J. Gelfand
Director of At-Large Members – Debra Lynn Boje
Representatives for Out-of-State Members – John Edward Fitzgerald, Jr., and Michael P. Stafford

At-Large Members:

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The Long Range Planning Committee, comprised of all of the former Section Chairs, as well as the Chair-Elect, met on January 20, 2012 to nominate the proposed slate of Section Officers, Out-of-State representatives and At-Large Members to be voted upon at the Section Convention. Present at the meeting were the thirteen former Section Chairs in this photo. Approximately ten other former Section Chairs attended the meeting via teleconference (as evidenced by the teleconference speaker that appears in the photo). Photo and information provided by John Neukamm.



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Trying to Put the Cat Back into the Bag – IRS Seeks Decanting Guidance

By George D. Karibjanian, Esq.
Proskauer Rose LLP, Boca Raton, Florida

On December 20, 2011, the Internal Revenue Service (the "Service") issued Notice 2011-101 (the "Notice") seeking public comment by April 25, 2012 on the various tax issues arising from transfers by a trustee of all or part of the principal of a "distributing" irrevocable trust to a "receiving" irrevocable trust that changes the beneficial interests of the beneficiaries (better known as the concept of "decanting").[1] Until now, the Service has remained relatively quiet on the topic while the use of decanting has exploded throughout the country. This article will briefly explain the origins and development of decanting and highlight some of the tax issues for which the Service is seeking guidance.

Background and Decanting Analysis

While the first state statute authorizing decanting was enacted in New York in 1992,[2] decanting has been part of Florida case law since 1940 with the landmark decision *Phipps v. Palm Beach Trust Co.*[3] The *Phipps* case involved an action in equity by the corporate co-Trustee of an irrevocable inter vivos trust seeking clarifications of the actions of the individual co-Trustee. In *Phipps*, Mrs. Margarita C. Phipps created a trust for the benefit of her four children, naming her husband, John S. Phipps ("JSP") and Palm Beach Trust Company ("PBTC") as the Trustees. Section Six of the trust provided, in part:

> "At any time within the duration of this trust, as hereinafter provided, upon the written direction of the then Individual Trustee, the Trustees shall pay over and transfer all or any part of the rest, residue, and remainder of the trust estate, both principal and income, which may at such time remain and be in the hands of the Trustees to the said John H. Phipps, Hubert B. Phipps, Margaret Douglas and Michael G. Phipps and to the descendents [sic] of any of them, in such shares and proportions as the said Individual Trustee, in his or her sole and absolute discretion, shall determine and fix even to the extent of directing the payment of the entire trust estate to one of said parties. The written direction of the said John S. Phipps may be contained in his last will and testament, anything herein to the contrary notwithstanding." [4]

On July 25, 1939, pursuant to Section Six of the trust, JSP executed and delivered to the corporate co-Trustee written directions to transfer the trust estate to JSP and PBTC in trust for the benefit of Mrs. Phipps's descendants with the exception that provision be made for the payment of income to John H. Phipps's wife if he should so provide in his will.

PBTC challenged JSP's transfer directions as an impermissible fiduciary exercise. In allowing the distribution of property from the original trust to the second trust, the Florida Supreme Court held that, "[t]he general rule gleaned from the foregoing and other cases of similar import is that the power vested in a trustee to create an estate in fee includes the power to create or appoint any estate less than a fee unless the donor clearly indicates a contrary intent."[5] The Court rejected the argument of PBTC that the reverse was true, i.e., that the power to create a second trust estate is present under a special power of appointment only where such authority is specifically granted.[6] The Court concluded that, so long as the beneficiaries of the second trust are limited to the class of beneficiaries under the first trust, the power in the trustees to appoint in further trust, much like a power of appointment, is absolute, and to hold otherwise would limit the power of the individual co-Trustee to effectively administer the trust estate as contemplated by the donor of the original trust.[7]

What may be concluded from the *Phipps* decision is that a distribution power in the trustee to distribute property to a beneficiary may be exercised in any manner at least equal to the interest that the beneficiary would receive had the property been distributed outright to the beneficiary. So long as the trust does not prohibit the granting of a lesser interest, this power could include the power to distribute in trust for the benefit of the beneficiary. Further, if the trustee has the absolute power to distribute trust property to any one or more of a class of beneficiaries, absent a restriction in the trust agreement, there is no prohibition against distributing property to a trust for some, but not all, of the beneficiaries.

Decanting has become a major weapon in the practitioner's arsenal for effectively amending an irrevocable trust. Decanting can be used as a non-judicial means of changing both administrative and dispositive provisions of a trust. For example, through decanting, administrative provisions such as situs, governing law, successor trustee appointments and the inclusion of more modern trustee powers, such as the power to invest in derivatives and options or to adjust between income and principal, may be added. Decanting also can effect changes in dispositive provisions, including the removal of a beneficiary, the extension of the term of a beneficiary's interest, the ability to limit distributions to beneficiaries with substance abuse problems and the inclusion of special needs provisions for a disabled beneficiary.[8]

The advent of decanting has created an exponential growth in the adoption of state decanting laws and guidelines. For example, in 2002, only two states had formal decanting statutes – New York and Alaska.[9] Fast forward 10

continued, next page

years later, and at least 11 states have decanting statutes, with Ohio's recently passed statute becoming effective on March 22, 2012.[10] Further, the breadth of newer decanting statutes has reached beyond the concepts in Phipps regarding absolute discretion – several states, including New York (which adopted a revised statute in 2011[11]), permit decanting from trusts where discretion is limited by an ascertainable standard.[12]

Tax Effects of Decanting

While the use of decanting has dramatically increased, questions remain unanswered as to whether decanting results in any income, estate, gift or generation-skipping transfer ("GST") tax consequences. Because the concept is relatively new (as to the uses in estate planning), the Service and practitioners alike are unclear as to tax ramifications of decanting. As a result, the Service announced in 2011 that decanting was added to its "No Private Letter Ruling List" until a more formal pronouncement can be issued.[13] Later in 2011, the Service issued the Notice seeking guidance in making such formal pronouncement.[14]

Various influential groups, including the Real Property Probate & Trust Law and Taxation Sections of the Florida Bar and the American College of Trusts & Estates Counsel, have or are preparing formal comments in response to the Notice. The prevailing thought is that decanting should not result in any adverse income or transfer tax consequences. The comments of most organizations will undoubtedly focus on some or all of the following income and transfer tax issues:[15]

Income Tax Issues

1. Whether the distribution of property from one trust to another involves a distribution of distributable net income, or is the distribution considered to be a non-event with the new trust assuming the tax aspects of the old trust.
2. Whether a beneficiary recognizes gain from a decanting because the interest in the new trust is "materially different" than the interest in the old trust and the effect of state law on the recognition issue.
3. The impact, if any, of a decanting involving negative basis assets.
4. Whether any recognition occurs when decanting a domestic trust to a foreign trust or vice-versa.

Estate and Gift Taxes

1. Whether a statutory requirement of consent, or the failure of a beneficiary to object to a decanting which affects such beneficiary's interest, effects a taxable gift or a transfer for purposes of §§ 2036 or 2038.[16]
2. Whether the existence of a decanting power in a trust that otherwise qualifies for an estate or gift tax marital deduction under § 2056(b)(7) will cause the trust to fail to qualify for the marital deduction.

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GST Taxes

1. Whether the decanting of a GST exempt or grandfathered trust into a new trust causes the loss of GST exempt or grandfathered status.
2. The inclusion ratio[17] of the new trust after a decanting from a trust with an inclusion ratio of zero or less than one.
3. Whether a trust that is not exempt from the GST tax may be decanted so as to permit effective allocation of GST exemption to only a portion of the assets received from the original trust.

Conclusion

While decanting continues to grow, much needed tax guidance is eventually forthcoming. The applicability and effectiveness of such guidance is highly dependent on our collective professional ability to educate the Service on decanting and allow for a reasonable pronouncement as to the apparent tax consequences.

Endnotes:

1 IRS Notice 2011-101, 2011-52 IRB 932 (December 20, 2011).

2 New York Est. Powers & Trusts § 10-6.6(b), effective July 24, 1992.

3 142 Fla. 782, 196 So. 299 (1940).

4 *Id.* at 783-784, 300.

5 *Id.* at 786, 301.

6 *Id.*; *see also* Bogert's Trusts and Trustees (through 2011 Update), Chapter 39, § 812, under the discussion of the express (and unlimited by an ascertainable standard) power in the Trustees to distribute principal.

7 *Id.* at 787, 301.

8 *See generally* Aghdami and Chadwick, *Decanting Comes of Age*, American Bar Association, Section of Taxation, 2011 May Meeting.

9 New York Est. Powers & Trusts § 10-6.6(b), effective July 24, 1992; Alaska Stat. § 13.36.157, effective September 15, 1998.

10 Ohio Rev. Code Ann. § 5808.18, as enacted as part of 129th Ohio General Assembly Sub. S.B. 117 (2011).

11 New York Assembly Bill A8297A, signed into law on August 17, 2011.

12 *See generally* Del. Code Ann. tit 12, § 3528 (2011) and S.D. Codified Laws Ann. § 55-2-15 (2011). In those states, the decanting analysis is extended beyond a trustee's absolute discretionary authority to state that even if the distribution authority is subject to an ascertainable standard, so long as there is authority to distribute property outright, there is authority to distribute in further trust.

13 Rev. Proc. 2011-3, 2011-1 IRB 111 (January 3, 2011); in particular, see Part 5, "Areas Under Study In Which Rulings Or Determination Letters Will Not Be Issued Until The Service Resolves The Issue Through Publication Of A Revenue Ruling, Revenue Procedure, Regulations Or Otherwise."

14 Query whether the adoption of the revised New York decanting statute hastened the issuance of the Notice.

15 For a more detailed analysis of the following issues, see Zeydel and Blattmachr, *Tax Effects of Decanting – Obtaining and Preserving the Benefits*, 111 Journal of Taxation 05 (November 2009), and Aghdami and Chadwick, *Decanting Comes of Age*, American Bar Association 2011 May Meeting.

16 Section references are to the Internal Revenue Code of 1986, as amended.

17 As defined in § 2642.

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Comparison of FAR/FLA BAR 10 and FAR 9 Residential Contracts for Sale and Purchase

By James A. Marx, Esq., Blass Frankel & Marx PLLC, Miami, Florida

This article provides an overview and comparison of the two 'standard' forms of residential real estate purchase and sale contracts that are most customarily used in Florida; the June 2010 Florida Realtors/Florida Bar 10 "As Is" Residential Contract for Sale and Purchase ("New Form"), and the Far 9 Residential Sale and Purchase Contract that was promulgated in 2007 ("FAR-9"). The New Form was prepared by a joint committee consisting of 10 attorneys and 10 realtors, and the FAR-9 Form was prepared by a committee of the Florida Realtors Association ("FAR").

The use of standard forms has an important role to facilitate residential real estate transactions, but it's important to understand that 'standard' does not mean that the forms are the same, and in fact, these two forms are markedly different from one another.

Analysis by Sections:

PROPERTY DESCRIPTION:

The New Form provides boxes to check for additional items that are included in the sale. The FAR-9 does not have this, though both forms provide for additional space to clarify what is included and excluded in the sale.

PURCHASE PRICE:

The New Form allows you to check a box indicating that the initial deposit can be due "upon acceptance;" lines were added for escrow agent's address and phone number, and more importantly checks are now subject to "collection" not "clearance." Collected means not susceptible to charge backs. This is a significant change from the prior forms and the FAR-9, which still permits the use of "cashier's checks."

TIME OF ACCEPTANCE OF OFFER AND COUNTER-OFFERS, EFFECTIVE DATE:

Both forms provide that offers are effective for two (2) days, and Effective Date is the date last signed and initialed. The New Form provides that ***acceptance*** only occurs when the offer has been accepted and delivered to the other party, while FAR-9 permits lesser standard of fact of execution to be communicated in writing to the other party.

EXTENSION OF CLOSING DATE:

The New Form provides that Closing may be extended by up to 7 days for TILA Notice requirements and Lender's failure (see financing section), but be careful as *lender's failure to fund on time does not fall within the definition of Force Majeure*. The FAR-9 does not have any provision relating to TILA, but both forms permit extension of Closing Date for "force majeure".

OCCUPANCY AND POSSESSION:

If Property is subject to a lease, the New Form provides that Seller must comply with information disclosure and timing requirements set forth in Standard D of the form. The FAR-9 has similar provisions in its Rental Addendum. The New Form also provides that if pre-occupancy occurs, that Buyer assumes risk of loss, is responsible for maintenance and deemed to have accepted property in its *"as is" condition, and prorations will be made as of* ***time of taking occupancy***. This provision should be looked at carefully, and consideration should be given to modification for a pre-occupancy or lease/purchase deal. The FAR-9 does not have this provision.

ASSIGNABILITY:

The New Form adds boxes for the parties to determine if the contract is assignable, and if so, to further designate whether assignment releases or does not release Buyer from liability under the Contract. The FAR-9 does not have these options, and provides that Buyer may not assign without Seller's written consent.

FINANCING:

The FAR-9 provides if Buyer remains silent and does not provide Seller with evidence of rejection within the Financing Period, that Buyer will be deemed to have waived the financing contingency for essentially all matters other than that the Property does not appraise. By contrast, the New Form does not have such strong consequences deriving from non-action. The New Form provides that *if Buyer is unable to obtain approval within the Financing Period, either party can terminate the Contract* ***up to the day of Closing***.

CLOSING COSTS, TITLE INSURANCE, SURVEY, HOME WARRANTY, SPECIAL ASSESSMENTS:

The New Form provides that *if Seller is unable to meet its Maintenance Requirement* as required by Paragraph 11, *a sum equal to 125% of estimated cost shall be escrowed at Closing*. If actual costs exceed this amount, Seller shall pay the actual costs, and if not any unused portion of the

continued, next page

escrow amount shall be returned to Seller. The FAR-9 does not have a similar provision. The New Form also *requires delivery of a Title Commitment - at least _____ (if blank, then 5) days prior to the Closing Date* (FAR-9 is 10 business days before Closing Date with copies of policy exceptions, with Buyer to respond within 5 business days from receipt thereof). The New Form requires *Title Commitment to be delivered with legible copies of instruments listed as exceptions attached thereto.* It also requires that ***Seller deliver*** (if it has these items) a *copy of its Owner's Title Insurance Policy and its Survey* to Buyer within 5 days from the Effective Date. Closing costs are similarly treated in New Form and FAR-9, except that New Form provides more specificity and requires that Seller pay for the municipal lien search if the Miami-Dade / Broward Regional Provision (Section 9(c)(iii)) is checked. Note that the *Miami-Dade / Broward Regional Provision codifies customary regional practices* for Seller to provide prior owner's title policy and pay a 'title update' fee, and the fee will be limited to $200 if this provision is checked.

DISCLOSURES:

The New Form has a representation that is not in FAR-9 which states that unless disclosed otherwise "Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed." This should be looked at with Section 12(c) – Property Inspection, Right to Cancel, Seller Assistance and Cooperation in Close Out of Open Permits – which imposes greater standards on Sellers than that provided in the FAR-9; however, as the Section may result in some ambiguity as to Seller's obligations, *Buyers are advised to add in both forms that Seller will close open permits, if any, prior to Closing*.

PROPERTY INSPECTION, RIGHT TO CANCEL:

The New Form has several minor variations from the FAR-9. The New Form *does not require Buyer to furnish Seller with a copy of the Inspection Report to terminate within the Inspection Period, nor to have repair items more than a specified amount as a pre-condition to terminate*. The New Form provides Buyer with a *15 calendar day Inspection Period* (and no cancellation period thereafter), unless otherwise specified. *Buyer or Buyer's representative can specify date and time of walk-through for* one *day prior to the Closing Date or on the Closing Date*. If Buyer's inspection identifies open or needed building permits, Seller shall promptly deliver all plans and other documentation within Seller's possession and promptly cooperate in good faith, and execute necessary consents, but shall not be obligated to expend any money. By contrast, the FAR-9 provides for *10 business days* for inspections with 5 business days to cancel thereafter, that the cost of treatment and repairs must be greater than $250 (unless otherwise specified) and that Buyer must also deliver a copy of the inspection report to terminate.

ESCROW AGENT:

In the New Form Escrow Agents are authorized, and agree by acceptance, to deposit and hold funds subject to COLLECTION, and to disburse in accordance with the Contract. *Failure of funds to become COLLECTED shall not excuse Buyer's performance.* If Escrow Agent is a licensed real estate broker, the New Form states that Escrow Agent must also comply with Chapter 475 and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order. See Florida Statute 475.25(1)(d)1 and DBPR Regulation 61J2-14.011. The FAR-9 does not have these provisions.

PROFESSIONAL ADVICE; BROKER LIABILITY:

The New Form contains a representation that Broker has no personal knowledge of the Property condition or square footage, but it's *important to delete this provision when the Seller is also acting as Broker.* The FAR-9 has similar, but much more extensive exculpatory provisions.

DEFAULT:

The New Form requires that in the event of a Buyer default, portion of the Deposit, IF ANY, paid to the Listing Broker, shall be split equally between Listing Broker and Cooperating Broker; provided, however, that Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay Cooperating Broker. A deposit dispute under this form requires the agreement of two parties (Buyer and Seller). The Brokers' rights to a deposit, if any, will derive from the listing agreement. *Contrast this to the FAR-9, which provides that the Broker will receive 50% of all deposits paid and agreed to be paid* (to be split equally among Brokers) up to the full amount of the brokerage fee. A deposit dispute under

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this form requires the agreement of three parties (Buyer, Seller, and Broker).

DISPUTE RESOLUTION:

This is very different, and in the view of most real estate practitioners, is one of the most important changes from the FAR-9. The New Form requires that if there's a Dispute, Buyer and Seller will have a 10 day period to amicably resolve. *Unresolved disputes after 10 days are to be submitted to mediation. Disputes not resolved through pre-suit mediation may be litigated* (except that injunctive relief may be sought without seeking mediation). By contrast, the FAR-9 provides that parties have 30 business days to resolve deposit disputes through mediation and if that fails, the escrow agent decides the forum to resolve disputes – which may be one of three choices: arbitration, a Florida court, or the Florida Real Estate Commission (FREC).

ATTORNEYS FEES:

The New Form provides for attorney's fees to the prevailing party, whereas the FAR-9 does *not* provide for payment of attorney's fees, and thus, they are only available on FAR-9 for §57.105 frivolous claims or defenses.

Standards:

TITLE:

Both forms provide that *Buyer shall have 5 days after receipt of the Title Commitment to examine it and notify Seller in writing specifying defects, if any, that render title unmarketable*.

SURVEY:

Both forms provide that *Buyer shall deliver written notice of encroachments, easements, etc., within 5 days of Buyer's receipt of the Survey*, but no later than Closing. The New Form further provides that if Seller has delivered a prior survey, Seller shall, at Buyer's request, if applicable, execute an affidavit of "no change" to the Real Property since the preparation of the prior survey.

LEASES:

The New Form provides that *within 5 days after the Inspection Period Seller is required to furnish Buyer with copies of leases, estoppels and last 12 month's income and expense statement.* If Seller is unable to provide estoppels letters, Seller can furnish an affidavit and Buyer may thereafter contact Tenants to confirm this information. If terms of the Leases differ materially from what Seller represents, Buyer may deliver written notice to Seller within 5 days from receipt of the information but no later than 5 days prior to Closing terminating the Contract. At Closing, Seller shall deliver and assign all original leases to Buyer, who shall assume Seller's obligations thereunder. The FAR-9 has similar provisions in its Addendum R.

LIENS:

The New Form requires that Seller shall provide Buyer with an affidavit at Closing attesting to the absence of any financing statement and that there have been no improvements or repairs within the past 90 days; or if so, Seller shall deliver releases for same. This is not in the FAR-9.

TIME:

The New Form provides for CALENDAR DAYS. By contrast the FAR-9 provides for BUSINESS DAYS. Any time periods which end on a Saturday, Sunday or legal holiday (see U.S.C. Section 6103) shall extend to 5:00 pm the next business day. Both forms provide that *time is of the essence*.

FORCE MAJEURE:

The New Form provides that Buyer and Seller shall not be required to perform in the event of *hurricanes*, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, acts of terrorism, and *any other cause not reasonably within the control of Buyer or Seller, and which, by the exercise of reasonable diligent effort, the non-performing party is unable in whole or part to prevent or overcome*. If such Force Majeure continues to prevent performance under the Contract more than 14 days beyond the Closing Date, then either party may terminate the Contract and the Deposit shall be refunded to Buyer. The FAR-9 has a similar provision, but provides for 30 rather than 14 days.

CLOSING LOCATION, DOCUMENTS AND PROCEDURE:

Both forms provide that Closing may be conducted by mail or electronic means.

continued, next page

Correction: The article that appeared in the Fall 2011 issue of *ActionLine* entitled "Secret Trusts: (Some) Questions and (Fewer) Answers About Florida's New Designated Representative Statute" incorrectly included Thomas C. Lee, Jr., Esq. as an author instead of acknowledging Mr. Lee as a contributor. In fact, the only authors of that article were Robert J. Naberhaus III, Esq. and Mark R. Parthemer.

ESCROW CLOSING PROCEDURE:
The New Form establishes a procedure if Closing takes place prior to receipt of COLLECTED funds, and thus, "gap" insurance is not available. This is not in the FAR-9.

PRORATIONS; CREDITS:
Both forms provide for *prorations as of the day prior to the Closing Date (ie, Closing Date is a Buyer's day).* There are several subtle differences, however, in the provisions for proration for Real Estate taxes.

RISK OF LOSS:
The New Form requires Seller to expend up to 1.5% of the Purchase Price to restore or repair any damage occurring between the Effective Date and Closing Date. If repairs are not completed by Closing, 125% of cost of repairs shall be held in escrow at Closing. By contrast, the FAR-9 provides that if the Property is damaged by fire or other casualty and can be restored to its original condition that Seller shall restore the Property by the Closing Date or within 45 days thereafter.

Executive Summary

ITEM	FAR / FLABAR 10	FAR-9
Use of Funds	Checks/funds must be "collected" – ie, not susceptible to charge backs	Cashier's checks acceptable – though not recommended in practice
Preoccupancy	If preoccupancy, Buyer assumes risk of loss and responsibility for maintenance, and prorations as of date of occupancy	No similar provision
Financing	If financing not provided within financing period, ***either party may terminate*** from date of expiration of financing period ***to date of Closing***. Termination requires affirmative action. New Form has more spaces to add financing conditions	If financing not provided within financing period ***Buyer, is thereupon deemed to have waived financing contingency*** except if property does not appraise
Closing Costs	Has optional Miami-Dade/ Broward regional provision that requires seller to pay for Municipal lien search and codifies customary regional practices, with $200 limit for title update fee	No difference for Miami-Dade/ Broward and siient on payment for Municipal lien search. Otherwise similar.
Days	***Calendar*** days	***Business*** days
Inspection Period – Right to Terminate ("As-Is" Contract)	15 calendar days Not necessary to include inspection report	10 business days ***Necessary to include inspection report***
Default	***If*** any portions of deposits are paid to listing broker, shall be split between listing and cooperating broker. Effect is that brokers (unless escrow agent) are not a party to these disputes and rights to deposits, if any, derive exclusively from listing agreement	Broker will receive 50% of all deposits paid and agreed to be paid (to be split equally among brokers) up to full amount of brokerage fee
Dispute Resolution	Parties have 10 days to resolve, then required to mediate prior to filing a ***lawsuit*** (except that mediation is not required prior to filing for an injunction)	If unresolved after 30 days and mediation, ***escrow agent decides the forum*** to resolve disputes – with ***three options: FREC, arbitration or litigation***
Attorney's Fees	**Provides for attorney's fees to prevailing party**	**Does not provide for attorney's fees**
Condominium Rider – Representations	Provides that Seller is not aware of an item on the agenda, or reported in the minutes within 12 months prior to the effective date	No similar provision. Note that **both forms require 718 disclosures and delivery of declaration, bylaws, rules, most recent year end financials, and questions and answers**

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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

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RPPTL Section Executive Council Meeting

The Four Seasons, Prague, Czech Republic
September 21 - 25, 2011

By Jane L. Cornett, Esq., Cornett, Googe & Associates, P.A., Stuart, Florida
(with assistance from Nicole Kibert, Esq., Carlton Fields, P.A.)

The six (6) day trip to Prague in late September, 2011, was a fantastic trip. Nicole reports that the weather was absolutely perfect. The accommodations at The Four Seasons Hotel were absolutely wonderful. The excursions were absolutely outstanding and it was clear that George and Pat had put a lot of time and effort into choosing the right trips and the right tour group. Prague is a beautiful, friendly, very well preserved Old World city and the Real Property Section Members who attended experienced an amazing trip.

One of the great things about The Four Seasons Hotel was the location. The hotel is very close to the St. Charles Bridge and Wenceslas Square. The Wenceslas Square, like everything else in Prague, is a historic area with beautiful architecture and cafes as well as a large clock that attracts lots of attention both by tourists and locals every time that it strikes.

Many folks arrived on Wednesday and enjoyed an afternoon bus tour that provided an overview of the city followed by a welcome reception at the hotel. Thursday started off on a rather somber note with a tour of a Jewish Cemetery and some local synagogues. The tour guides provided detailed historical background information about the plight of the Jewish community during the Holocaust. Also covered in a walking tour were the Old Town Square, Municipal House and Wenceslas Square, with lunch at the French Restaurant which provided a beautiful example of Art Nouveau architecture. Thursday evening offered a river sightseeing boat tour for a new and different vantage point for viewing this gorgeous city.

Friday offered three tour choices including (1) a visit to the Pilsner Brewery and Karlstejn Castle, (2) Moser Glass Factory and the spa town of Karlovy Vary or (3) Kutna Hora, a small town where the Kostnice Sedlec Ossuary is located underneath the Cemetery Church of All Saints. An "ossuary" is a catholic term for a location where bones are stored. This particular church had a patron, the Schwarzenberg famly, who felt it was important to remind people that the important world is the one that comes after death and to do that he directed that the ossuary be artistically decorated with the bones that had been places in the ossuary over the past centuries. It is estimated that the bones from between 40,000 – 70,000 skeletons were used in the ossuary decorations including an elaborate bone chandelier and coat of arms. The work was completed by a woodcarver named František Rint around 1870.

On Friday a private concert was held at St. Francis Church and the attendees were entertained by singers, organ music and other kinds of instrumental entertainmentincluding several renditions of Ave Maria. A delightful dinner on Friday evening was held at the Michelin rated restaurant, Allegro, located in The Four Seasons.

Saturday included a brief meeting of the Executive Council and a presentation by a local attorney on the Czech Reparation Act which allowed folks to recover family property confiscated by the Communists after World War II. Next, RPPTL toured the Prague Castle compound including the Royal Castle and the St. Vitus Cathedral. After completing that tour, some of the group was able to visit the Church of Our Lady Victorious the home of a waxed sculpture of a small baby which was created some time in the 16th century known as the Infant of Prague. This wax baby had belonged to St. Theresa of Avila who possessed miraculous powers and the baby is credited with also possessing those miraculous powers. Many pilgrims come to see the baby every year and there are a group of nuns who are dedicated to care for and dress the baby. There is even a gallery area where the baby's outfits over the years can be viewed.

Saturday evening saw the group return to the Prague Castle compound to dine at the Lobkowicz Palace. This is a palace that is partially open to the public with a beautiful art collection. George had arranged for dinner at the palace and a tour of the private art collection. Nicole reports that there was an absolutely gorgeous ballroom and the castle, being high on the hill, provided balconies to enjoy the beautiful view overlooking the city.

The many and varied tours were all conducted by professional Czech tour guides who were able to fill in everyone on the extensive but sometimes violent history of Prague. Nicole learned that the term "defenestration" actually originated in Prague from an incident that occurred at the Prague Castle around 1618. Defenestration, for those of us who are less knowledgeable (and I was included in that group), is a process whereby an adversary is forcibly removed – i.e. pushed out a window. Nicole reports that the tour guides repeatedly ended their stories of a historic event with defenestration of one sort or another.

As George Meyer said in his letter to all Executive Council Members, a trip to Prague is "like taking a step back in time and truly experiencing what a trip to Europe must have been like in the early 20th century."


RPPTL Executive Council Meeting
Prague, Czech Republic























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TRUSTS AND ESTATES 'New set of options' for exploited seniors

JURY REVIEW MAY BE FIRST IN **UNDUE INFLUENCE** CASE

by Susannah Nesmith, Special to the DBR. In an unusual move, Fort Lauderdale attorneys took their arguments that a woman used undue influence on her boyfriend to gain control of an estate to a civil jury rather than to a probate judge.

Adrian Thomas and Daniel A. McGowan of Fort Lauderdale-based Adrian Phillip Thomas successfully pursued a claim of tortious interference with an inheritance on behalf of the man's daughter.

The attorneys offered autopsy results showing Winfield Willis was suffering from Alzheimer's disease when he changed beneficiaries on 16 accounts and a trust holding a family home a few months before he died in 2009.

The jury verdict involved assets of about $850,000. All told, the daughter is seeking an inheritance worth about $3.5 million.

SEE STORY, PAGE A3

Daniel A. McGowan, left, and Adrian Thomas are helping a woman gain control of her late father's estate from his girlfriend.

MELANIE BELL

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RPPTL Section Executive Council Meeting

Marco Island, December 1-4, 2011

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

In December, 2011, the Executive Council of the Real Property, Probate and Trust Law Section of the Florida Bar met at Marco Island. The meeting was held at the Marriott Resort situated immediately adjacent to the Gulf of Mexico. The accommodations were excellent, the view was lovely and the beach couldn't have been nicer.

Since the meeting started at 9:00 a.m. on Thursday, many of us, especially those of us on the east coast, "schlepped" over on Wednesday evening and had the opportunity to enjoy the warm welcome of our Chair, George Meyer and his lovely wife Pat in the hospitality suite that evening. The snacks provided were excellent and quite hardy for those of us who had traveled without dinner. The view from the top of the building was fabulous and as always, the company was sparkling.

Thursday morning, December 1st meetings started promptly at 9:00 a.m. and went on all throughout the day. The attendees were served a complimentary continental breakfast as well as "grab & go" lunch.

A new item on Thursday was a mandatory training workshop for all Chairs and Vice-Chairs. This was put together by Peggy Rolando and Michael Dribin and its purpose was to review and discuss the best practices, protocols and procedures for Section committee Chairs and Vice-Chairs. The workshop communicated the performance expectations against which Chairs will be measured by the Executive Committee when appointments are being made for the following year. I think everybody who attended felt that it was a worthwhile session.

There was a welcome reception Thursday evening from 7:00 p.m. to 9:00 p.m. which had been planned for the terrace but because of the rather cold weather, was moved inside. There was lots and lots and lots of good food and lots and lots and lots of good folks in attendance. Any time you get to interact with your peers, you come away with new information and insights and that's one of the great things about these Executive Council meetings.

Friday morning saw more meetings starting as early as 7:00 a.m. As a change from past schedules, the Probate & Real Property Roundtables were held on Friday at lunch, differing from the usual Saturday morning breakfast. Just like on Thursday, the Roundtable lunches were complimentary to the attendees and attendance was excellent. There were some very "hot" items discussed by real estate and probate practioners in addition to a very tasty lunch.

Friday evening saw a reception and dinner and this time the weather was a little more hospitable so the reception was held outside on the Palms Terrace overlooking the Gulf with dinner following indoors.

The Executive Council meeting was held from 8:00 a.m. to 11:30 a.m. on Saturday morning with a complimentary breakfast served to those who attended. The minutes for the meeting will be posted on the website where you can read about the many accomplishments. One of the items approved by the Executive Council was the final "report on standards for third party legal opinions of Florida council." This report had been in the works for years and was a joint project of the Real Property, Probate & Trust Law Section in conjunction with the Business Law Section. Extensive information about the report can be found in the January 1, 2012, Florida Bar News.

The revised schedule, holding the Roundtables as luncheons on Friday and the Executive Council meeting earlier on Saturday, allowed a golf tournament to take place on a picturesque course call The Rookery. While I didn't attend (my best golf shot is the overhand) it was beautiful weather to be outside playing with little balls and sticks.

The evening was polished off with a reception and dinner at the Bistro Soleil in the Olde Marco Inn, a both picturesque and tasty venue. The bistro offered "fabulous French nouvelle cuisine" and an extensive wine cellar. The last evening gathering of the weekend was at the Chair's Suite which had moved from rooftop to beachfront. A beautiful evening to end a beautiful weekend.

If you are not involved in the Executive Council, you are missing both an outstanding professional opportunity and a great social time. If you want more details about the Executive Council or want to get involved with a Section committee, check with your local Member at Large. Their names, phone numbers and email addresses are also found on the Section website.

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Real Estate Case Summaries

Prepared by Benjamin B. Bush, Esq.,
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A., Tallahassee, FL

Trial court erred in dismissing complaint alleging wrongful eviction-Fact that plaintiffs have now been lawfully ejected from property is not a complete defense to claim that plaintiffs were wrongfully evicted pursuant to earlier action in county court

Ward v. Ward, 37 Fla. L. Weekly D542 (Fla. 1st DCA 2012)

The trial court involuntarily dismissed Appellants' complaint in which they alleged a cause of action for wrongful eviction and sought the imposition of a constructive or resulting trust. The trial court also granted Appellee's counterclaim for ejectment.

The Appellants' claim for wrongful eviction derives from a dispute in 2006 wherein the Appellee sued in county court for eviction. The Appellants claimed an equitable interest in the property in their answer. The county court granted the eviction and the circuit court affirmed the county court's order. The First District Court of Appeals overturned the county court's order holding that ejectment, not eviction, was the proper remedy where one party has an equitable interest in the property. *Citing Ward v. Estate of Ward*, 1 So. 3d 238, 239 (Fla. 1st DCA 2008). The First District Court of Appeals quashed the order affirming the eviction and remanded the case to the circuit court.

In the present case, the First District Court of Appeal found error in the trial court's dismissal of Appellants' claim for wrongful eviction wherein the trial court held that Appellants failed to prove wrongful eviction or the existence of an equitable interest in the property in the present case. The First District Court of Appeal held that the fact that Appellants were later lawfully ejected is not a complete defense to Appellants' claim that they were wrongfully evicted in the 2006 case. The First District Court of Appeal reversed and remanded the case stating that the trial court should have focused on the events surrounding the 2006 eviction and not the present case.

Trial court did not err in granting mortgagee's motion for appointment of receiver and assignment of rents-Order appointing receiver complies with authority given mortgagee in loan documents executed by mortgagor.

Crestview II, Ltd. v. TotalBank, 37 Fla. L. Weekly D 560 (Fla. 3rd DCA 2012)

TotalBank loaned to Crestview II, Ltd., Marsol One LLC, and Marcial Solis ("Crestview") the sum of $32,000,000.00 for a residential development. The promissory notes incorporated other loan documents and instruments including a construction loan agreement and amendment. The construction loan agreement gave TotalBank the right to complete construction in the event of default, including the right to perform work and labor, to complete improvements, employ contractors and subcontractors and apply for permits. Crestview defaulted under the promissory notes and security instruments and TotalBank sued for breach of promissory notes, guarantees, and the assignment of rents and to foreclose its security interest.

TotalBank served an amended verified motion to appoint a receiver and assignment of rents in favor of TotalBank, which was in accordance with the terms of the security instruments securing the loan. Specifically, TotalBank relied on paragraph 2.05 of the mortgages that stated "[m]ortgagee shall be entitled, as a matter of right and without regard to the value or occupancy of the security, to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the rents and profits therefrom and apply the same as the court may direct, such receiver to have all the rights and powers permitted under the laws of Florida." The trial court held a two day evidentiary hearing on the amended verified motion and found that (i) the fair market value of the property was significantly less than the indebtedness owed, (ii) Crestview failed to pay real estate taxes since 2008, (iii) there was some physical damage to the property and the property showed signs of neglect, (iv) there were outstanding federal tax liens against the property, and (v) the property consisted of homes that were in various stages of completion. Ultimately the trial court granted the amended verified motion for the appointment of a receiver.

Crestview appealed the order granting the amended verified motion for the appointment of a receiver claiming that the powers granted to the receiver exceeded the scope of the receiver's authority in a mortgage foreclosure proceeding. The Third District Court of Appeal noted that paragraph 9, 10 (c), (h), (j), (l) and (m) of the trial court's order were the subject of Crestview's appeal and reprinted those sections in footnote 1 of its opinion. The Third District Court of Appeal held that the authority given to the receiver in the trial court's order was "one and the same as the duties already having been designated to TotalBank in the agreed-to notes, mortgages, and construction loan agreement…" The Third District Court of Appeal also held

continued, next page

that the authority given to the receiver was proper so as to keep the value of the property from further declining and to preserve the status quo.

Trial court's finding that landlord made blanket refusal to enter into any sublease, thereby excusing tenant's continued performance under the lease, was supported by competent substantial evidence-Because the provision permitting a sublease with the landlord's consent provided no standards which the landlord was to utilize in determining whether to approve or reject a sublease, there was an implied obligation of good faith which landlord's blanket refusal violated.

Siewert v. Casey, 37 Fla. L. Weekly D527 (Fla. 4th DCA 2012)

Landlord and tenant entered into a residential lease the term of which was from April 1, 2006 to September 30, 2007. The lease agreement contained the following clause: "ASSIGNMENT. Tenant… may not assign the lease or sublease all or any part of the Premises without first obtaining the Landlord's written approval and consent to the assignment or sublease." In June of 2006, tenant notified landlord that tenant was moving out by the end of the year. Tenant and landlord had extensive oral and written communications over the next six month seeking a resolution to the situation. A sublease was not created, tenant moved out in December of 2006 and tenant stopped paying rent.

Landlord sued the tenant for unpaid rent, late charges and unpaid utility charges. Tenant counterclaimed stating that landlord breached his duty to mitigate damages due to tenant's premature termination of the lease. The trial court held a non-jury trial and heard evidence consisting of testimony from landlord and tenant, landlord's realtor's deposition and various written communications between the parties. The trial court found that landlord issued a blanket refusal to allow any sublease thereby excusing tenant's continued performance under the lease.

Landlord appealed the trial court's order taking issue only with the trial court's factual findings. The Fourth District Court of Appeal noted that the standard of review was whether the trial court's factual findings were supported by competent, substantial evidence. The Fourth District Court of Appeal stated that when a lease contains boilerplate language requiring the landlord's consent to any proposed sublease and such boilerplate language does not contain any specific standards governing landlord's approval, that the landlord may not arbitrarily without its consent. The Fourth District Court of Appeal noted that an implied covenant of good faith "exists in virtually all contractual relationships", including in the context of a landlord's consent to a tenant's assignment of a lease. *Quoting Speedway SuperAmerica, LLC v. Tropic Enters., Inc.*, 966 So. 2d 1, 3 (Fla. 2nd DCA 2007).

The Fourth District Court of Appeal noted that the language of the lease provided no standards by which the landlord was to determine whether or not to approve a sublease; therefore, the implied covenant of good faith applies. The Fourth District Court of Appeal noted that the

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trial court, as the finder of fact, concluded that landlord refused to enter into any sublease and that such blanket refusal was unreasonable and a violation of the implied covenant of good faith. The Fourth District Court of Appeal affirmed the trial court's conclusions and found that competent, substantial evidence existed to support the trial court's finding of fact.

Error to grant summary judgment in favor of bank where bank failed to refute affirmative defense that bank failed to provide requisite notice and opportunity to cure required by mortgage agreement.

Haber v. Deutsche Bank National Trust Company, 37 Fla. L. Weekly D464 (Fla. 4th DCA 2012)

Omar Haber ("Haber") appeals the trial court's entry of summary judgment in favor of Deutsche Bank National Trust Company ("Deutshce") arguing that summary judgment was improper in the foreclosure suit where Deutsche failed to give the notice and opportunity to cure that was required by the mortgage agreement. The mortgage agreement states, in pertinent part:

Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument… The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Agreement, foreclosure by judicial proceeding and sale of the Property.

The Fourth District Court of Appeal found that there was no evidence in the record showing the Deutsche gave the required notice and the opportunity to cure. Therefore, the Fourth District Court of Appeal ruled that Deutsche was not entitled to a final summary judgment of foreclosure

Trial court erred in failing to make a determination regarding the amount of attorney's fees plaintiff's attorney earned advancing her partition count due to the fact that plaintiff's first three counts sought full title in herself and only sought partition in the alternative-Although defendant provided greater services because he had to defend plaintiff's first three counts to get case to partition posture, that fact does not preclude plaintiff's attorney from receiving some award based solely on the acts he or she took towards partition.

Fernandez-Fox v. Reyes, 37 Fla. L. Weekly D424 (Fla. 5th DCA 2012)

Roberta Fernandez-Fox ("Fox") and the decedent, David Lindsay, owned property together as tenants in common. After the decedent died, Fox filed a complaint against Mark Reyes, as personal representative ("Reyes"), alleging several causes of action the result of which would vest title in her name only. In the alternative, Fox included counts for an equitable lien for the amount that Fox spent maintaining the property and for partition of the property. The trial court entered summary judgment in favor of Reyes on all counts except for the counts for an equitable lien and for partition. The case proceeded to final hearing and the parties agreed that partition was the best remedy. The trial court ordered the partition and further ordered that the property be sold because the property could not be properly subdivided. The trial court awarded Fox an equitable lien for in the amount of $2,721.27. The trial court also awarded Reyes attorneys fees for his participation in the partition and made Fox's equitable lien inferior to Reyes' attorneys fees. The trial court held that Fox was not entitled to attorney's fees for participation in the partition action.

The Fifth District Court of Appeal noted that the amount of attorney's fees to be awarded in a partition action is within the discretion of the trial court. *Citing Masle v. Maasbrock*, 120 So. 2d 794 (Fla. 3d DCA 1960). The Fifth District Court of Appeal stated that the award is based upon "[t]he service performed, the responsibility incurred, the nature of the service, the skill required, the circumstances under which it was rendered, the customary charges for like service, the amount involved, and the ability of litigants to respond…" *Citing Adler v. Schekter*, 197 So. 2d 46, 49 (Fla. 3d DCA 1967). The Fifth District Court of Appeal noted that once the trial court establishes the amount of fees, a trial court is to award fees based on Section 64.081, Florida Statutes, which governs fees in partition actions and requires each party to a partition action to pay attorney's fees to the plaintiff's attorney, the defendant's attorney or to each of them. The Fifth District Court of Appeal noted that the share is to be set with reference to the services rendered by each attorney and "to be determined based on equitable principles in proportion to the party's interest." *Quoting* Section 64.081, Fla. Stat. (2010).

The Fifth District Court of Appeal disagreed with the trial court's reasoning that because Fox's complaint was aimed primarily at vesting title in herself and that she only pled for partition in the alternative that it was Reyes that provided the impetus for the partition action. Based on this reasoning the trial court concluded that only Reyes was entitled to attorney's fees. The Fifth District Court of Appeal reasoned that it was Fox that initially pled the partition action to which both parties later agreed that partition was appropriate. The Fifth District Court of Appeal concluded that both parties were entitled to attorney's fees because the attorneys for both parties were instrumental in the partition action. The Fifth District Court of Appeal reversed and remanded the case to the trial court to take evidence on the fees earned by Fox's attorney for the partition action and to apportion that amount in making the final fee award.

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Probate Case Summaries

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

Reversing probate court's denial of petition for determination of homestead status where decedent's American-born son resided in the subject Florida property, decedent and spouse were registered aliens with visa permitting them to reside in Florida, and decedent and spouse were actively pursuing permanent residence status prior to decedent's death.

Grisolia v. Pfeffer, 77 So. 3d 732 (Fla. 3d DCA 2011)

Decedent moved his family to the United States in 2005 following a kidnapping attempt on his son in Venezuela. Decedent's son was a United States citizen with an American passport. In 2006, decedent purchased an apartment in Florida where he lived until his death in 2009. Prior to his death, decedent borrowed $500,000 from Appellees Eric and Carla Pfeffer evidenced by a promissory note. During decedent's probate proceeding, Appellees asserted a claim against decedent's estate to recover the remaining amounts due under the promissory note. Decedent's estate objected to Appellees' claim and filed a petition for the determination of homestead status with respect to the subject Florida apartment. After conducting an evidentiary hearing, the probate court entered an order denying the petition for determination of homestead status. On appeal, the Third District reversed the probate court's ruling and found that the apartment was protected by Florida's homestead exemption from forced sale under Art. X, § 4 of the Florida Constitution. Specifically, the Court found the facts of the case sufficiently demonstrated that decedent intended to make the subject property his family's permanent residence. The Court noted that decedent's son was a U.S. citizen, decedent and his wife were not tourists but instead were registered aliens with a visa permitting them to reside in Florida, decedent and his wife applied for permanent residence in the United States prior to decedent's death, and that decedent and his family intended to reside permanently in the Florida property due to safety concerns stemming from the prior kidnapping attempt on decedent's son. Although decedent never claimed a homestead ad valorem tax exemption for the Florida apartment, the Court reaffirmed its prior ruling in *Taylor v. Maness*, 941 So. 2d 559 (Fla. 3d DCA 2006) that having the homestead tax exemption is not a prerequisite for attaining the homestead exemption from forced sale.

Reversing probate court's determination that wife's interest in husband's living trust vested prior to husband's death where husband and wife died simultaneously.

Darian v. Weymouth, 76 So. 3d 15 (Fla. 4th DCA 2012)

James and Martha Hughes were married in 1999. Pursuant to their prenuptial agreement, James executed a living trust in August of 2000 wherein he devised certain properties to Martha. The living trust was silent as to what was to be done with the property devised to Martha should she not survive James. On September 3, 2004, James and Martha were shot and killed by Martha's adopted son from a prior marriage. The coroner was unable to determine which spouse died first. Accordingly, the probate court entered an Order in James' probate proceeding deeming their deaths to be simultaneous under § 732.601(1), Fla. Stat. Litigation subsequently ensued between Appellant Andrew Darian, who was James' son, personal representative of James' estate and successor trustee of James' living trust, and Appellee Elizabeth Weymouth, who was Martha's daughter and personal representative of Martha's estate. Appellee claimed Martha's interest in James' living trust vested upon creation of the trust and was contingent solely upon James' not revoking the trust. Appellant claimed Martha's interest was contingent upon her surviving James and therefore lapsed when she predeceased him. Competing motions for summary judgment were filed, and the probate court determined that Martha's interest in the living trust vested prior to James' death. On appeal, the Fourth District reversed the probate court's ruling. The Court initially noted that Florida's antilapse statutes (former and current) were inapplicable given the living trust was executed in 2000 and became irrevocable in 2004. Relying on *Travis v. Ashton*, 23 So. 2d 725 (Fla. 1945), the Court found that Martha's interest in James' living trust was merely contingent while James was alive. Because Martha did not survive James, as the probate court had previously determined, her interest in the living trust lapsed. The Court therefore reversed the probate court's summary judgment and remanded for entry of summary judgment in favor of Appellant.

Affirming partial summary judgment and finding that estate creditor's claim was barred because creditor neither filed statement of claim within 3 months of first publication of notice to creditors, nor filed a motion for extension of time to file statement of claim within 2 year period after decedent's death.

Lubee v. Adams, 77 So. 3d 882 (Fla. 2d DCA 2012)

Decedent Edward Caufield died on December 18, 2006. Notice to creditors for decedent's estate was first published on November 16, 2007. On December 18, 2008, Appellant Timothy Lubee filed his statement of claim against decedent's estate in the probate proceeding. Prior to filing his

continued, next page

statement of claim, Appellant was not served with a copy of the notice to creditors pursuant to § 733.2121(3)(a), Fla. Stat. Subsequently, on February 5, 2009, Appellant filed a civil lawsuit against Appellee, who was the personal representative of decedent's estate, seeking to enforce his claim against the estate for services rendered to the decedent. The trial court granted summary judgment against Appellant in the civil lawsuit. On appeal, the Second District affirmed the trial court's summary judgment. In doing so, the Court found as immaterial Appellant's argument that his claim was timely because he was purportedly a "readily" ascertainable creditor that had not received service of the notice to creditors pursuant to § 733.2121(3)(a), Fla. Stat. as was required. Instead, the Court simply concluded that because the personal representative did not actually serve Appellant with a copy of the notice to creditors (regardless of whether or not he was a reasonably ascertainable creditor), Appellant was required to either file his claim in the probate proceeding within the three-month limitations period set forth in § 733.702(1), Fla. Stat., or seek an extension of time within which to file his claim from the probate court pursuant to § 733.702(3), Fla. Stat. within the two-year window of § 733.710, Fla. Stat. Because Appellant did neither, the Second District found Appellant's claim in the probate proceeding was untimely and therefore barred, thus justifying the trial court's summary judgment against Appellant.



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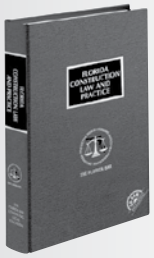

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Authored by experienced construction lawyers, this manual is a comprehensive treatment of construction law. Chapters cover the rights and liabilities of parties to construction projects, the bid process involving public entities, trial preparation, and alternative dispute resolution and partnering. The manual addresses bankruptcy, bond, insurance, and damages issues, and includes a chapter on jury instructions for construction trials.

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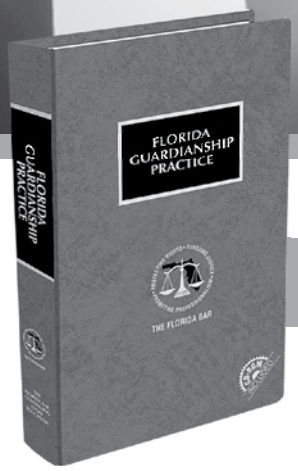

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The Florida Bar Continuing Legal Education Committee, City, County and Local Government Law Section and the Real Property, Probate & Trust Law Section present

Brownfields Redevelopment: Powerful Incentives for Local Governments and Real Estate Interests

• Live Audio Webcast

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Audio Webcast Presentation: Tuesday, April 17, 2012
8:00 a.m. – 12:00 noon EST

Course No. 1531R

Brownfields are properties which are not being redeveloped because of real or perceived environmental issues. In this seminar, local government and real estate development practitioners will be provided an overview of the procedures and programs now available for redevelopment of such sites in Florida. Briefings will be provided by agency officials, experienced City and County personnel who have effectively used the process and attorneys and consultants experienced in representing private development interests. Special emphasis will be placed upon "real world" financial and other benefits available for both private and public interests.

8:00 a.m. – 8:30 a.m.
Panel: Fundamentals of Brownfields: Who, What, When, Where of Brownfields
Kim Walker, Brownfield Liaison, FDEP
Miles Ballogg, Director, Brownfields & Economic Development-Cardno, TBE

8:30 a.m. – 9:00 a.m.
Overview of Florida "Cleanup" Procedures
Frank L. Hearne – Florida 'RBCA" Cleanup Basics

9:00 a.m. – 9:45 a.m.
Panel: Local Government Designation – Perspectives and Procedures
Topics: Issues in Designation of Areas and Sites; E.G. Statutory Ambiguity; Notice; Special Public Meeting; Board Anxieties; Lack of Contamination; BSRA Advisory Committee; Local Approval of Redevelopment
Panelists: Anne Pollack, Tampa; Teri Hasbrouck, Tampa; Mary Yeargan, Tampa; Roger Register, Tallahassee

9:45 a.m. – 10:00 a.m.
Break

10:00 a.m. – 10:45 a.m.
Panel: Real Estate Owners and Developers: Benefits and Opportunities
Topics: VCTC Application Issues; Brownfield Redevelopment Bonus Refunds; Other Development Incentive Packages via Local Government; Environmental Insurance; Revolving Loan Funds
Moderator: Roger Register, Tallahassee
Panelists: Jason S. Lichtstein, Tallahassee; Michael R. Goldstein, Miami; Teresa M. Booeshaghi, Tallahassee; Laurel Lockett, Tampa

10:45 a.m. – 11:30 a.m.
Panel: Financial and Other Benefits for Local Government
Moderator: Miles Ballogg, Clearwater
Panelist: Mary Yeargan, Tampa; Teri Hasbrouck, Tampa

11:30 a.m. – 12:00 noon
Questions and Discussion

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

Litigation and Trust Law Symposium 2012

• Live
• Live Webcast
• Audio CD
• Video DVD

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Two Live Presentations and Live Webcast Presentation:

Thursday, May 10, 2012 • Hilton Fort Lauderdale Marina • Fort Lauderdale
Friday, May 11, 2012 • Tampa Airport Marriott • Tampa • Live Webcast

Course No. 1349R

8:30 a.m. – 8:50 a.m.
Late Registration

8:50 a.m. – 9:00 a.m.
Welcome and Introduction
Thomas Karr, Miami

9:00 a.m. – 9:30 a.m.
There's No Getting Around It – The Trustee's Duty to Account
Sean W. Kelley, St. Augustine

9:30 a.m. – 10:10 a.m.
How Did That Happen? Unintended Results for Multi-State Trusts
Larry Miller, Boca Raton

10:10 a.m. – 10:20 a.m.
Break

10:20 a.m. – 11:00 a.m.
What to Do With Homestead in Revocable Trusts
Rohan Kelley, Fort Lauderdale

11:00 a.m. – 11:50 a.m.
Will the True Intent of the Grantor Be Honored? Modification and Reformation of Trusts
Panel: Mary Karr, Miami – Jack Falk, Miami – John Moran, West Palm Beach

11:50 a.m. – 1:10 p.m.
Lunch (on your own)

1:10 p.m. – 1:40 p.m.
Till Death Do Us Part – Marital Agreements in Probate and Trust Litigation
Eric Virgil, Miami

1:40 p.m. – 2:30 p.m.
You Want to Give Me What? Ethical Rules for Drafting Attorneys
Bill Hennessey, West Palm Beach

2:30 p.m. – 2:40 p.m.
Break

2:40 p.m. – 3:20 p.m.
I'm No Carpenter – Litigating Undue Influence Without the Presumption
J. Richard Caskey, Tampa

3:20 p.m. – 4:00 p.m.
That's Going to Cost You – Recent Developments in Fiduciary Surcharge
Jamie Pressly, West Palm Beach

4:00 p.m. – 4:50 p.m.
Who Says Arranged Marriages Don't Work – Marrying Tax and Asset Protection in Trusts
Jerry Wolf, Boca Raton

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- ❑ **Fort Lauderdale – Thursday, May 10, 2012**
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- ❑ **Tampa – Friday, May 11, 2012**
  (049) Tampa Airport Marriott
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Live and Webcast Presentations: Friday, May 18, 2012

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Course No. 1400R

8:30 a.m. – 8:55 a.m.
Late Registration

8:55 a.m. – 9:00 a.m.
Opening Remarks
Guy W. Norris, Lake City – Program Chair

9:00 a.m. – 9:55 a.m.
Bankruptcy – The Creditor's Approach to Preserving Value and Liens
Marsha Rydberg, Tampa

9:55 a.m. – 10:55 a.m.
Play Fair and Don't Hit Anyone – Ethical Practice in the Real World
Eugene E. Shuey, Gainesville

10:55 a.m. – 11:10 a.m.
Break

11:10 a.m. – 12:00 p.m.
Foreclosure and Real Estate Case Law Updates
Manuel Farach, West Palm Beach

12:00 p.m. – 1:00 p.m.
Lunch (on your own)

1:00 p.m. – 1:55 p.m.
Homeowners Associations v. Lenders – The Fight for Priority
Barry Ansbacher, Jacksonville

1:55 p.m. – 2:50 p.m.
Landlord/Tenant Disputes and Evictions
Guy W. Norris, Lake City

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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.

ONLY $ 100

INCLUDES SALES TAX AND SHIPPING

Firm: _____

Attn: _____ Bar #: _____

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

City/State/Zip:_____

MUST CIRCLE ONE: COMMERCIAL Address or RESIDENTIAL Address

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

E-mail address: _____

CHECK PAYMENT

I have enclosed check #_____

MAIL CHECK TO:

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

CREDIT CARD PAYMENT

Card (Circle One): Visa or Master Card

Card Number: _____

Exparation Date: _____/_____

Signature of Cardholder: _____

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

FLSSI USE ONLY

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

AUTHORIZATION DATE _____/_____/____ # ___ ___ ___ ___ ___ ___ ActionLine 2011

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

FR/BAR CONTRACTS & RIDERS

FOR THE SALE AND PURCHASE OF RESIDENTIAL PROPERTY

Approved by The Florida Bar, Real Property, Probate & Trust Law Section and The Florida Realtors

_____ **Set(s) of 10 FR/BAR CONTRACTS (Revised June 2010)** **$50.00 per set**

_____ **Set(s) of 10 FR/BAR "AS IS" CONTRACTS (Revised June 2010)** **$50.00 per set**

_____ **Package(s) of FR/BAR COMPREHENSIVE RIDERS (Revised June 2010)** **$50.00 per package**
(*a package is ten copies of each rider listed below*)

Condominium Association Disclosure
Homeowners' Association/Community Disclosure
Seller Financing
Assumption of Existing Mortgage(s)
Federal Housing Administration (FHA)/U.S. Department of Veterans Affairs (VA)
Appraisal Contingency
Short Sale Approval Contingency
Homeowners Insurance
Foreign Investment in Real Property Tax Act ("FIRPTA")
Interest-Bearing Account
"As Is"
Right to Inspection and Right to Cancel
Defective Drywall
Coastal Construction Control Line
Insulation Disclosure for New Residence
Lead-Based Paint Disclosure
Housing for Older Persons
Rezoning Contingency
Lease Purchase Option
Pre-Closing Occupancy by Buyer
Post-Closing Occupancy by Seller
Sale Of Buyer's Property
Back-Up Contract
Kick Out Clause
Sellers's Attorney Approval
Buyer's Attorney Approval
Licensee Disclosure Of Personal Interest in Property
Binding Arbitration

Order Sub-Total	$_____
Sales Tax 6.5%	$_____
Shipping & Handling	$ 9.00
TOTAL	**$**_____

Firm:_____

Attn:_____ Attorney Bar #: _____

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

City/State/Zip:_____

PLEASE CIRCLE ONE: COMMERCIAL or RESIDENTIAL Address

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

E-mail address:_____

METHOD OF PAYMENT

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

OR

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

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

Billing Address:_____ _____
Print Name

Action Line July 2010

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

PROBATE & GUARDIANSHIP FORMS

The FLSSI forms are developed by members of the Real Property, Probate and Trust Law Section of The Florida Bar. **Forms carry the Supreme Court required 3" x 3" blank square for Court Clerk's use. Probate Judges prefer and some require the use of 2012 FLSSI forms.**

Firm: _____

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

Physical Address: _____

City/State/Zip: _____

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

2012 PROBATE FORMS

OPTION #1 **2012 FORMS AND INDEX - .PDF ON DISK . . . . . .$ 369.10**
OPTION #2 **2012 NEW & REVISED FORMS ONLY - .PDF ON DISK $135.20**
OPTION #3 **2012 FORMS AND INDEX - 1 PHYSICAL COPY OF EACH . . . . . .$ 389.30**

2012 GUARDIANSHIP FORMS

OPTION #1 **2012 FORMS AND INDEX - .PDF ON DISK . . . . . $ 343.10**
OPTION #2 **2012 NEW & REVISED FORMS ONLY - .PDF ON DISK . . . . . .$ 164.20**
OPTION #3 **2012 FORMS AND INDEX - 1 PHYSICAL COPY OF EACH . . . . . .$ 363.30**

If you would like to order individual forms, please visit www.flssi.org to download our "long" order form which lists each form for separate purchase.

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METHOD OF PAYMENT

Either mail this form with check to the address listed above or include credit card information and fax to 407.515.1504. Prices include shipping, handling and sales tax. **VISA or MasterCard Only.**

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

_____ _____
Credit card billing address (If different from shipping address above) **Printed Name of Cardholder**

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FLSSI USE ONLY

Check # _____ $ _____ Authorization date ____/____/2012 # __ __ ___ ___ _____

SHIP DATE _____/_____/2012 LB_____ $_____ # ___ ___ ___ ___ ___ ___ ___ ___

AL 2012

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

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

JULY 25 – JULY 28, 2012
RPPTL Executive Council Meeting and Legislative Update
The Breakers
Palm Beach, Florida
Reservations: 1-561-655-6611
www.the breakers.com
Room Rate $199.00
Cut-off Date: June 25, 2012

2012 CLE SCHEDULE:

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

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

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

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

Thursday, May 10, 2012
LITIGATION AND TRUST LAW SYMPOSIUM 2012
Course No. 1349
Hilton Fort Lauderdale Marina

Friday, May 11, 2012
Tampa Airport Marriott*

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

Friday, May 18, 2012
REAL ESTATE PRACTICE IN TOUGH TIMES 2012
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).

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

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ACTIONLINE BULLETIN BOARD

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

INTERDISCIPLINARY LEARNING & NETWORKING!
Elder Concert 2012
http://www.afela.org

APPLICATIONS SOUGHT FOR FELLOWSHIP
RPPTL Section currently accepting applications for our 2012-2014 Fellowship class
(See pages 21 & 22 for more information).

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

If you are working on an interesting case or memo of law that you'd be willing to turn into an article for *ActionLine*, we would love to publish it for you! No article is too small or too large. (Submission information on page 4 inside.)

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