ActionLine

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



Property Tax Reform: On the Ballot

New Powerful Tool for Trustee is here with the New Statutory Discharge Statute, but some Tweaks are needed

Florida's New Series LLC Statute: What Real Estate Attorneys Need to Know

Vol. XXXXVIII, No. 1 www.rpptl.org Summer 2026

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Past and Future



I've lost track of how many years I have been actively involved in the Section. I almost certainly became a member in 1999. Within a few years after that, I started attending the Section meetings. It's been a long road to serve as your Chair and one that I would do all over again.

When I attend our Section meetings, I am constantly reminded of the extraordinary foundation our Section stands on. We are truly fortunate that thirty-four of our past chairs remain active members of our Executive Counsel. Think about that, thirty-four years' worth of past chairs are still involved in the Section. Their ongoing commitment, long after their terms ended, speaks volumes about the dedication that built this Section into what it is today. Their presence reminds us of the importance of the work we do.

Our newest past chair, William Cary Wright, known by many as "Cary", just completed his term as Chair of the Section. He did a truly exceptional job leading our Section. His calm demeanor and quiet decisiveness made him a steady hand at the helm, and no one will forget the river cruise from Budapest. Thank you, Cary.

At the same time, I have the pleasure of working with the future leaders of our Section, all serving on the Executive Committee. Steven H. Mezer is our Chair-Elect. Sancha K. Brennan serves as Probate Division Director and Wilhelmina F. Kightlinger serves as Real Property Division Director. Angela M. Adams is our Treasurer and Nicklaus J. Curley is our Secretary. Lee A. Weintraub is our At-Large Member Director. Michael V. Hargett and S. Dresden Brunner serve as the CLE co-chairs and Brenda B. Ezell and M. Travis Hayes serve as the legislative co-chairs. I have worked with all of them for years and our Section is in good hands. They are all good people and good lawyers who work hard and share the same unwavering commitment to the Section that our predecessors possessed. I am looking forward to working with all of them and with Cary this Bar year.

I am honored to serve as the Chair of your Section for the 2026 - 2027 Bar year. If you have not already, you will soon see some changes. A new and updated website that we think you will find much more useful and appealing. Our Communications Committee (Michael V. Hargett and Laura K. Sundberg) has been working on publishing the Death and Dirt Digest, or maybe it will be the Dirt and Death Digest, the Section's new monthly electronic newsletter designed to reduce the amount of Section emails you receive from us. Let us know what you think.

Thank you for being a member of the Section. My email inbox is always open.

Sincerely,
Jon Scuderi

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Letter From The Co-Editors-In-Chief



E. FINLEN



M. HINDEN

Greetings Fellow Readers!

In this issue we have several articles about recent statutory changes, as well as Amendment 3 which will be on the ballot in November. See below for more!

- *A New Powerful Tool for Trustee is here with the New Statutory Discharge Statute, but some Tweaks are Needed*, by Jennifer Robinson, Esq. and Alexander S. Douglas, II, Esq.
- *Know Before You Go: Ethical Considerations In Representing Charities* by Tara Rao Bild, Esq., and Jonathan T. Baker, Esq.
- *Florida's New Series LLC Statute: What Real Estate Attorneys Need to Know* by James Marx, Esq., and Julian A. Marx, Esq.
- *Peterson and the Limits on the Ties That Bind Donor-Advised Fund Sponsors and Donors* by Joshua R. Landsman, Esq., and Marguerite Weese, Esq.
- *Trump Accounts: What Estate Planning Attorneys Need to Know* by Rececca C. Bell, Esq. and Denise B. Cazobon, Esq.
- *Property Tax Reform: On the Ballot* by H. French Brown, Esq.

Sadly, after the recent loss of Chip Waller, the Section has also lost Fred Dudley, an institution unto his own in the Construction Law Community. We honor his memory is this issue, and in the Fall issue we will be publishing an article about the Honorable Patricia V. Thomas, longtime Section member and the first woman judge in the 5th Judicial Circuit. While the recent series of in memoriams may seem out of the norm of our regular content, Actionline staff deems it important to honor the people that dedicated their lives to the practice of law and had a profound effect on the Section and its members. Our next Executive Council Meeting will be held at the JW Marriott Marco Island, Marco Island, Florida November 11, 2026 – November 14, 2026, in person and via zoom. I encourage all Section Members to attend.

Warmest Regards,
Erin and Michelle

Editor's note regarding our previous article titled Practice Corner - Probate And Trust Division: Summary vs. Formal Administration: Strategic Considerations, by Emily Crain Evans, Esq., GrayRobinson, P.A., Lakeland, Florida.

In the event a creditor's claim is filed in a summary administration and the petitioner wants to challenge the validity of that claim, since there is no statutory authority granting the ability to object to a creditor's claim in summary administration, it is recommended that the petitioner file a petition to convert the summary administration to a formal administration under Chapter 733, Florida Statutes.

A New Powerful Tool For Trustee Is Here With The New Statutory Discharge Statute, But Some Tweaks Are Needed

By Jennifer Robinson, Esq., The Northern Trust Company, Fort Lauderdale, Florida, and Alexander S. Douglas, II, Esq., Shuffield Lowman, Orlando, Florida

Many trustees have experienced the problem of obtaining release agreements from every qualified beneficiary of a trust when seeking to be discharged as trustee. Often, one beneficiary with a history of failing to cooperate with the trustee or failing to respond to requests, refuses to sign a release agreement. These are the same beneficiaries who will not cooperate with any simple requests and will only sign their name to the back of a distribution check. Such recalcitrant beneficiaries oftentimes force the trust to incur the expense of the trustee's filing for a judicial discharge and judicial approval of accountings, to the detriment of other beneficiaries who are willing to sign a release agreement and avoid the expenditure of trust funds.

Another common scenario is where the trustee and the beneficiaries want to enter into a release agreement to avoid a judicial discharge action but cannot agree upon the form of the release agreement. Often a fiduciary will request both release and indemnity provisions within an agreement, but an indemnity provision may not be acceptable to the beneficiaries.

Newly enacted Fla. Stat. § 736.10081 (2026), titled, "*Nonjudicial settlement and discharge of a trustee; disclosure; objections*," was intended to address both of these situations, and lead to speedier ends to the trust administrations. Unfortunately, during the legislative process, changes were made to the wording of the statute, which seems to restrict the use of the statute.

Statutory discharge statutes provide a cost-effective and efficient statutory method for a trustee to obtain approval of accountings and to otherwise obtain a final discharge when a trust terminates, a trustee resigns, or a trustee is removed. The process is started by the trustee giving notice and full disclosure (*i.e.*, an accounting) to all qualified beneficiaries of the trust upon the termination, resignation, or removal. Then, after a certain time period (45, 60 or 120 days, depending on which state statute you look at), if there is no objection by a beneficiary, the trustee is released, to the same extent as if an order of discharge had been entered by a court. Before the enactment of Florida's statute, nine other states had adopted some form of the statutory discharge statute: Kentucky, Delaware, Indiana, Maryland, Alabama, Tennessee, Ohio, Pennsylvania, and Virginia.[1] The District of Columbia also enacted such a statute.[2]

Several years ago, the Section formed a subcommittee to draft Florida's version of the statutory discharge statute. The authors of this article served along with other talented attorneys on the subcommittee.[3] The subcommittee looked at other state statutes to draw upon the best concepts and language to give Florida practitioners an easy to use but powerful statute.

Overview. Fla. Stat. §736.10081 (2026) was drafted and intended to give trustees another tool in their "toolbox" to obtain a cost-effective way to be discharged, without the need to obtain release agreements from all qualified beneficiaries or a court action seeking the approval of accountings and a discharge. Unfortunately, the changes mentioned above during the legislative process seem to restrict the use of the statute to a very limited time frame. Thus, the authors of this article do not recommend taking advantage of this statute until a "glitch bill" is passed correcting these errors. If practitioners choose to utilize it, they should proceed with caution. Despite the problems with the statute as enacted, the authors would like to provide a summary of the statute so that when the changes are made, practitioners will be familiar with it and will be able to use this great new tool.

The following is a detailed review and commentary of each section of the new statute and includes a discussion of the problematic changes that were made during the legislative process.

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Section 1 – Fla. Stat. § 736.10081 (2026), Nonjudicial settlement and discharge of a trustee; disclosure; objections

Subsection (1) Eligibility/timing to use the process. If a trustee is in substantial compliance with its duty to inform and account under Fla. Stat. § 736.0813 (2025), the trustee may use this section to obtain a settlement of its accounts and be discharged. The statute was drafted so that, if the trustee has been serving for more than six months, the trustee could utilize this section when the trust is terminating, or the trustee is resigning or the trustee is being removed. Unfortunately, the wording of this section was altered during the legislative process and the "more than" language was removed.[4] The statute as enacted states that the statutory discharge process can be used if, six months after the trustee's acceptance, either (i) the trust terminates, or (ii) the trustee resigns or is removed. The apparent fixed date (*i.e.*, six months after the trustee's acceptance) will undoubtedly not fit most fact patterns and will likely render this statute fairly useless until the language can be corrected. For the lucky few that will have a trust terminating six months after the trustee's acceptance, you are good to go!

For trust administrations that are less than six months in duration, this statute would not apply. Thus, under the language that was proposed (*i.e.*, requiring the trustee to have served more than six months), if a trust became irrevocable when the grantor died, and the successor trustee wanted to immediately distribute all the money and get discharged less than six months from accepting its role, this statute would not apply. The trustee would either have to request traditional releases or obtain a judicial discharge.

Subsection (2) Disclosure document – who must receive it and what it must include. A trustee seeking settlement/discharge under this new statute must send a trust disclosure document (as defined in Fla. Stat. § 736.1008 (2025)) to the qualified beneficiaries, any cotrustee, and (if the trust is not terminating) the immediate successor trustee. The document must include specified information, including: (a) the trustee's contact information; (b) a plan of distribution that includes (1) a schedule of assets reasonably anticipated to be disbursed/distributed, (2) the amount of debts/expenses/taxes to be paid, and (3) any reasonable reserve to be held; (c) a trust accounting for any period not previously accounted for if the duty to account has not been waived; (d) a statement that the trust is terminating or that the trustee is resigning or has been removed; and (e) the following notice in at least 12-point font:

> NOTICE: Any claim or cause of action you might have against the trustee arising from any matter disclosed in a trust disclosure document may be barred unless a written statement objecting is received by the trustee from you within 60 days after your receipt of this trust disclosure document and notice. If you have questions, please consult your attorney.

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Note that this subsection requires that the objection must be received by the trustee within 60 days after the recipient's receipt of the notice. However, this language conflicts with subsection 4 below which states that the statutory release statute does not apply if an objection is received within 60 days after sending the trust disclosure document. Again, this was a change made during the legislative process. Until this glitch is fixed by the Florida Legislature, the authors recommend that attorneys send the notice and the required information via a trackable delivery service to show the date of delivery to the beneficiary and count the 60 days from the date the information was received by the beneficiary.

Subsection (3) Additional recipients; service and notice requirements for objections. The trustee must also send the disclosure document to any other person the trustee reasonably believes would be affected by it. The disclosure document and any objections must be sent in compliance with the notice requirements of Fla. Stat. § 736.0109 (2025), except that Fla. Stat. § 736.0109(3) (2025) does not apply. Thus, a trustee may send the notice via first class mail, personal delivery, delivery to the person's last known place of residence or business, facsimile, or email, but not by posting it on a website.

Also, during the legislative process, the word "may" was changed to "must" in this subsection, creating another potential pitfall. The use of "may" was intended to give the trustee flexibility to serve additional persons who may benefit from receiving notice, such as a trust protector, without making such service a legal requirement. The use of "must" means all beneficiaries would have to be served. How far does the trustee need to go with regard to identifying remote contingent beneficiaries? If a remote contingent beneficiary is not served, would the trustee's discharge be ineffective? Again, a glitch bill is needed so "must" can be changed back to "may" in order to preserve the effectiveness of the statute.

Subsection (4) Timely written objection prevents discharge under this section. The statutory release process does not apply if the trustee receives a written objection within 60 days after sending the trust disclosure document. An objection does not need to state grounds or be in any particular form. From a practical standpoint, this means that a beneficiary who wants to object may simply send the trustee an email that says, "I object." The beneficiary's email would then prevent the trustee from further utilizing the statutory discharge statute. As discussed above, please note the discrepancy between the 60-day language in this subsection (4) compared with subsection (2).

Subsection (5) Discharge if no timely objection; scope of protection. If the trustee does not receive a timely written objection, the trustee is discharged upon completion of all distributions and transfers under the plan of distribution and is further discharged from all liability and claims arising from any matter adequately disclosed in the trust disclosure document. The discharge expressly includes a discharge from claims that the trustee was not in "substantial compliance" with Fla. Stat. § 736.0813 (2025). Recall that the statute only applies to trust administrations where the trustee is in substantial compliance with Fla. Stat. § 736.0813 (2025). Thus, if any beneficiary does not believe that a trustee is in substantial compliance with the inform-and-account requirements, the beneficiary must object. When the statute was being drafted by the Section, this provision was added to prevent someone from later trying to collaterally attack the discharge, by arguing that the statute was not applicable because the trustee was not in substantial compliance with the inform-and-account requirements. Most importantly, the trustee's discharge is elevated to have the same preclusive effect as if a court had entered an order approving the trustee's accounting. As with a judicial order approving a trustee's accounting and discharging the trustee, the concept of "modified *res judicata*" applies. If a trustee fails to disclose a wrongful act, an affected beneficiary can still sue the trustee despite the final order of discharge.[5]

Subsection (6) Waiver of objection right. A waiver of the right to object under this section is treated as the expiration of the 60-day period without objection. Thus, if the trustee and the beneficiaries all want to "speed up" the process, the trustee can send each beneficiary a waiver to sign waiving the 60-day waiting period.

Subsection (7) Cumulative remedy. This section is in addition to, and not a replacement of, any other rights a trustee may have to settle accounts. If a beneficiary objects, this statute will no longer be applicable, but the trustee still has the full right to seek a judicial discharge under the Florida Trust Code.

Section 2 – Applies to all trusts that are irrevocable, or trusts that become irrevocable, on or after the effective date of the act. This statute does not apply to revocable trusts.

Section 3 – This act shall take effect upon becoming law. Thus, this statute can be used (in its flawed form) as of April 29, 2026.

Conclusion. Once the language of the statute is fixed, particularly the language in Subsection 1, this new statute will provide a more cost-effective way for a trustee to be discharged, without the need to obtain release agreements from all beneficiaries or a court action seeking the approval of accountings and a discharge. While this new statute will not be suitable for every situation, it should go a long way toward providing Florida attorneys and trustees with an alternative method of bringing finality to a trust administration. For problem-free trust administrations, this statute will likely be the method of choice for obtaining a trustee's discharge. For

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problematic trust administrations, or trust administrations with difficult beneficiaries (especially those who have shown a propensity to be litigious), the traditional judicial discharge or release and indemnity agreement may still be the preferred method of concluding the trust administration. Regardless, once the problematic language of this new statute is fixed, there is no question this statutory discharge option will be a powerful and easy to use tool that will save time and money in many trust administrations.


A. DOUGLAS

Alex Douglas's *extensive legal experience focuses on probate, trust, and guardianship litigation. He is rated by Martindale-Hubbell as an "AV" attorney, the highest rating, has been named a "Super Lawyer" by Thomson Reuters and recognized as a Florida Legal Elite attorney throughout the years. He actively speaks on probate, trust, and guardianship law and participates in The Florida Bar's Real Property, Probate and Trust Law Section. He has also authored several articles relating to probate and trust litigation. He is also an active member of the Orange County Bar's Estate, Trust and Guardianship Committee where he served as the past chair of the Steering Committee.*


J. ROBINSON

Jennifer Robinson *is Associate General Counsel at The Northern Trust Company and leads the team of trust lawyers in the U.S. that support Northern's Wealth Management business. Jennifer has thirty years of experience in the trust and estate practice. She earned her B.S. from the University of Florida and her J.D. summa cum laude from Nova Southeastern University. Prior to joining Northern, Jennifer was in private practice. Her practice focused solely on estate planning, probate and trust administration and related litigation matters. Jennifer is active in RPPTL and currently serves as Co-Vice Chair of the Trust Law Committee.*

Endnotes

1 KRS § 386B.8–180 (2015); 12 Del. C. 3585 (2017); Burns Ind. Code Ann. § 30-4-5-14.5 (2019); Md. Estates and Trusts Code Ann. § 14.5-907 (2020). Code of Ala. § 19-3B-1306 (2021); Tenn. Code Ann. § 35-15-817 (2021); ORC Ann § 5801.20 -- 5801.24 (2023); 20 Pa.C.S.A. §7785.1 (2024); Va. Code Ann. § 64.2-800 (2024).

2 D.C. Code §19-1310.09 (2025).

3 Special thanks to the other subcommittee members, Amber Jade Johnson, Chuck Wohlust, Elizabeth Huges, Eric Virgil, John Cole, Lea Anne Groover, and Theo Kypreos.

4 Thanks to Tae Bronner who first brought this "glitch" to the authors' attention.

5 *See* Fraser v. Southwest First Bank, 417 So. 2d 707 (Fla. 5th DCA 1982) (beneficiaries are barred from questioning later matters, which are disclosed by an accounting, but not those not disclosed).

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Know Before You Go:
Ethical Considerations In Representing Charities

By Tara Rao Bild, Esq., Porter Wright Morris & Arthur LLP, Tampa, Florida, and Jonathan T. Baker, Esq., Dunwody White & Landon, P.A., Naples, Florida.

It is Monday morning. A friend who works for a charity[1] left a voicemail asking you to act as outside counsel on a particular tax matter. You have provided advice to charities on limited matters from time to time, and you have noticed a growing need for legal professionals to be guided by certain practices and procedures when serving in that role.

This article will review key considerations in determining how to proceed primarily based upon the Florida Rules of Professional Conduct (collectively the "Rules" and individually, a "Rule"), and the Regulations Governing Practice Before the Internal Revenue Service ("Circular 230").[2]

We will also discuss: (i) opening and concluding the representation of a charity, (ii) navigating conflicts of interest when representing a charity, and (iii) audit and Circular 230 Matters (tax matters). Finally, we will provide a practitioner's list of items to consider before agreeing to represent a charity.

I. Opening and Concluding Representation of a Charity

Question: What provisions should be included in the engagement letter?

Answer: The engagement letter should clearly identify the scope of the representation.[3] For example, is the work limited to revising Bylaws or perhaps to answering a particular Federal tax question? If so, the engagement letter should specifically state the scope, so that both the client and the attorney understand the legal advice requested.

In addition, the engagement letter should clearly identify the client, in this case, the charity alone. The charity's directors, officers, managers or employees are not the client, individually or in any other capacity, and the engagement letter should state such.[4]

Lastly, the engagement letter should be clear about communications. For example, with whom are you, as counsel, authorized or required to communicate? This question may be affected by who will sign the engagement letter on behalf of the charity. For example, if you are instructed to communicate with two of five directors, you may wish to have all five directors sign the engagement letter acknowledging that limitation. The lawyer shall advise the client (i.e., the charity) that the representation is limited to such represented persons and shall make sure that all parties agree to the limitation.[5]

It is important to discuss these terms up front, as many times lawyers and law firms provide legal services to charities on a pro bono basis, or at a discounted rate. If all parties are not in agreement regarding the scope and the terms of representation, the charity may incur additional expenses. Rule 4-1.6 will also come into play if certain information is deemed confidential.[6] It is important for the lawyer to know with whom he or she is authorized to communicate and when information may be revealed by the lawyer.

Question: What items should you address upon withdrawal from the matter?

Answer: Upon withdrawal, a lawyer shall take steps reasonably practicable to protect a client's interest.[7] Examples include providing reasonable notice to the client and allowing time for the employment of other counsel.[8] The particular grounds for withdrawal may define what is considered reasonable action. For example, if a withdrawal is required, such as when a client has used the lawyer's services to perpetuate a crime or a fraud, the lawyer shall withdraw "even if [such withdrawal] would materially prejudice the client."[9]

Under Rule 4-1.13, a method of permissive withdrawal is set forth, if a violation of law is involved.[10] This method of permissive withdrawal is described further below. In that circumstance, the lawyer must remember that "[a]ny measures taken shall

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be designed to minimize disruption of the [charity], and the risk of revealing information relating to the representation to persons outside the organization."[11]

II. Navigating Conflicts of Interest when Representing a Charity

Question: What are examples of issues when representing a charity that affect the duty of loyalty and conflicts of interest?

Answer: The decision makers may believe that you represent them as individuals.[12]

Of course, this is not the case, and as discussed above, your engagement letter should specify that. Rule 4-1.13(a) provides, a "lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."[13]

Rule 4-1.13 provides that a lawyer may represent the organization and any of its directors, officers, employees, members or other constituents, subject to conflict rules for current clients.[14] Rule 4-1.7 provides that a lawyer may represent a client despite a conflict of interest, if: (i) each affected client provides informed consent, confirmed in writing, (ii) the representation is not prohibited by law; and (iii) the lawyer will not be involved in asserting a position adverse to another client if the lawyer represents both parties in the same proceeding; and (iv) the lawyer reasonably believes you competent and diligent representation can be provided to each affected client.[15] Other procedures apply, such as providing a prior explanation of the risks.[16]

If the lawyer choses to represent the charity and an individual constituent, the lawyer should suggest to the individual that he or she first obtain independent counsel to advise the individual whether to give informed consent to the dual representation.[17] Additionally, exercise caution, as some circumstances may be ripe for conflict. For example, if a particular action of the charity is being questioned or under investigation, the lawyer may not want to represent directors who voted differently on that action.

Question: What should you do to navigate potential conflicts of interest when representing a charity?

Answer: Explain that the organization is your client.

Rule 4-1.13(d) provides that this explanation is a duty, not an option, when the lawyer knows or reasonably should know that the organization's interests are opposed to the constituents with whom the lawyer is dealing.[18] As stated above, this should be clearly stated in the engagement letter.

Question: What should you do upon learning of wrongdoing in an organization?

Answer: Rule 4-1.13(b) provides a fairly broad path for the lawyer when allegations of wrongdoing arise in the representation of an organization. Essentially, if the lawyer knows that a person associated with the charity is or will violate a legal duty to the charity or a legal duty that reasonably might be imputed to the charity and will cause harm to the charity, the lawyer shall proceed as reasonably necessary in the best interest of the charity.[19] Among other reasonable measures, the lawyer may ask for reconsideration of the matter, recommend that a separate legal opinion be sought on the matter, and/or refer the matter to higher authority in the charity.[20] If the highest authority in the charity insists on no change in respect to the alleged wrongdoing, the lawyer may resign.[21]

The topic of investigating wrongdoing, upon the charity's request, within the organization can raise complex issues should the lawyer agree to investigate. If lawyer is not in-house counsel for the charity, or does not have experience conducting such investigations, it may be better for all involved (including the lawyer) to suggest that a different party conduct the investigation. This bifurcation of work may free the lawyer to continue representing the charity in its substantive work as the lawyer was doing before the potential wrongdoing came to light.

III. Audit and Circular 230 Considerations

Question: What rules apply to legal representation when the charity-client is being audited?

Answer: When certain criteria are met, the lawyer may only withhold requested records and information from the Internal Revenue Service ("IRS") that the lawyer believes are privileged.[22] The threshold requirement is that the request must be "proper and lawful."[23] If the request is proper and lawful, and the lawyer believes the requested record or information is privileged, the lawyer must have "reasonable grounds" and a "good faith" belief in his or her assertion of privilege in order to not comply with the request.[24]

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If neither the lawyer nor your client possess a requested record, the lawyer must notify the IRS of that much and inform the IRS of the identity of any person the lawyer believes may possess the record.[25] The lawyer must also make a reasonable inquiry of his or her client for the identity of any person who may possess the requested record.[26]

The lawyer may not give written advice that takes into account the possibility that a matter may never be raised on audit.[27]

The lawyer must do due diligence to determine the accuracy of all representations he or she makes to the IRS.[28]

The lawyer may not participate in giving misleading information to the IRS, knowing the information to be misleading.[29] This rule includes verbal statements, as well as affidavits, declarations or financial statements.[30]

Recall that the lawyer may discuss the legal consequences of proposed conduct with the client, but the lawyer may not counsel a client in what the lawyer should know is fraudulent conduct.[31] The lawyer may help the client to determine the validity and the meaning of the law.[32]

Question: Which IRS requirements or best practices apply when giving tax advice?

Answer: You should consider the best practices set forth in Circular 230.[33]

Best practices include, "[c]ommunicating clearly with the client regarding the terms of the engagement."[34] The lawyer should identify the client's purpose for the representation, and it is advisable for the lawyer to reach an agreement on the "form and scope" of the proposed representation.[35]

The client's impression of his or her tax situation may be different from reality; therefore, it is recommended to "evaluat[e] the reasonableness of any assumptions or representations" prior to beginning work.[36] Identifying the reasonableness of the client's position may have the beneficial side effect of avoiding a potential understatement penalty for the client in the future.[37]

The lawyer "should take reasonable steps to ensure [his or her] firm's procedures for all members, associates, and employees are consistent with" these Circular 230 best practices.[38]

The lawyer may not advise a client to take a position on a tax return (or prepare a part of a return) that: (i) lacks a reasonable basis, (ii) is an unreasonable position described in IRC section 6694(a)(2) [preparer penalty], or (iii) is a willful attempt to understate tax liability or a reckless or intentional disregard of rules or regulations.[39]

The Secretary of the Treasury may impose a monetary penalty on a tax practitioner and the practitioner's firm for violation of Circular 230.[40] The Secretary may also censure, suspend or disbar any practitioner from practice before the IRS for violation of Circular 230.[41]

IV. A Practitioner's (Non-exhaustive) Checklist

1) Does the lawyer have the time and the desire to represent this particular charity?
2) Is the lawyer aware of the ethical issues that may arise when representing a charity?
   Take a brief assessment of whether the lawyer can discharge his or her ethical duties for this particular charity, including competence, confidentiality, and avoiding conflicts of interest.[42]
3) Obtain a signed engagement letter clearly outlining the scope of the engagement.
4) At the beginning of representation, the lawyer should clarify that he or she represents only the charity and as needed, reiterate this fact during representation.
5) Be aware of the situations in which a conflict of interest could arise in the representation of the charity, such as requests from officers or employees for personal legal advice, especially when the advice may be contrary to the charity's interests.
   The lawyer should consider how he or she will respond to requests to provide legal services to those involved in the charity? Does the lawyer have a list of trusted attorneys to whom he or she might refer the person making the request?
6) Know generally what the lawyer will do ahead of time should the lawyer encounter potential wrongdoing.
7) Consider relevant ethical procedures to use if the lawyer encounters a potential conflict of interest, including providing an explanation

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of the risks and the benefits of the requested arrangement, determining whether any conflict is consentable, obtaining informed written consent, and using independent counsel.

8) Before working with the IRS, review Circular 230 and other relevant IRS guidance, especially the rules for providing tax advice.

9) Have others in the lawyer's firm been reasonably briefed on Circular 230 and the seriousness of working with the IRS?

10) If the lawyer withdraws from representation, the lawyer should be clear in his or her communications and should protect the charity's interests as needed.

Conclusion

Representing a charity can be both demanding and rewarding. The lawyer may choose to represent the charity but must be aware of the usual pitfalls while exercising diligence and following appropriate procedures.



T. BILD

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Endnotes

1 The term charity shall refer to an organization described in Internal Revenue Code of 1986, as amended (Code) Section 501(c)(3), whether classified as a private foundation or not a private foundation (generally referred to as a public charity). Other types of tax-exempt organizations such as civic leagues, labor organizations, and chambers of commerce were not considered in the preparation of this article. All Section references refer to the Internal Revenue Code of 1986, as amended, unless otherwise indicated.

2 Per a call placed with the Florida Bar Ethics Hotline, there is no specific guidance under the Florida Rules of Professional Conduct or opinions for representing a tax-exempt organization.

3 R. Regulating Fla. Bar 4-1.2(c) provides in part: [i]f not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if reasonable under the circumstances and the client gives informed consent in writing[.]

4 *See* R. Regulating Fla. Bar 4-1.13 (Organization as Client).

5 *See* R. Regulating Fla. Bar 4-1.2(c) (Objectives and Scope of Representation).

6 *See* R. Regulating Fla. Bar 4-1.6 (Confidentiality of Information).

7 *See* R. Regulating Fla. Bar 4-1.16(d).

8 *Id.*

9 *See* comment to R. Regulating Fla. Bar 4-1.16.

10 *See* R. Regulating Fla. Bar 4-1.13 (Organization as Client).

11 R. Regulating Fla. Bar 4-1.13(b).

12 For further analysis, see Ethical Considerations when Representing Nonprofit and Tax-Exempt Organizations, 21 No. 4 Prac. Tax Law. 37, 38 Shane T. Hamilton (Summer 2007) (Hamilton).

13 *See* Hamilton at 38. For example...it may be in the best interests of the organization to argue that the proper sanction is not for the IRS to revoke the organization s tax-exempt status, but to impose intermediate sanctions personally on the wrongdoers. *Id.*

14 *See* R. Regulating Fla. Bar 4-1.13(e).

15 *See* R. Regulating Fla. Bar 4-1.7(b).

16 *See generally* R. Regulating Fla. Bar 4-1.7.

17 Hamilton at 39-40.

18 R. Regulating Fla. Bar 4-1.13(d) (Identification of Client).

19 *See generally* R. Regulating Fla. Bar 4-1.13(b).

20 *See generally* R. Regulating Fla. Bar 4-1.13(b).

21 *See generally* R. Regulating Fla. Bar 4-1.13(c).

22 31 CFR § 10.20(a)(1) (2026).

23 31 CFR § 10.20(a)(1) (2026).

24 31 CFR § 10.20(a)(1) (2026).

25 31 CFR § 10.20(a)(2) (2026).

26 31 CFR § 10.20(a)(2) (2026).

27 31 CFR § 10.37(a)(2)(vi) (2026).

28 31 CFR § 10.22(a)(2) (2026).

29 31 CFR § 10.51(a)(4) (2026).

30 31 CFR § 10.51(a)(4) (2026).

31 R. Regulating Fla. Bar 4-1.2(d).

32 R. Regulating Fla. Bar 4-1.2(d).

33 The authority commonly referenced as Circular 230 encapsulates the Treasury Department regulations governing the professional practice of individuals before the Internal Revenue Service (IRS). These regulations are provided under Title 31 of the Code of Federal Regulations, Subtitle A, Part 10 (31 C.F.R. Part 10) (2026), and they establish the duties, restrictions, and standards of conduct for those who represent taxpayers.

34 31 CFR § 10.33(a)(1) (2026).

35 *Id.*

36 *See Id.* at (2).

37 *See Id.* at (3).

38 *Id.* at (b).

39 *See* 31 CFR 10.34(a)(1) (2026). The details of preparer penalty are beyond the scope of this article.

40 31 CFR § 10.50(c) (2026). The amount of the penalty may not exceed the gross income derived from the conduct giving rise to the penalty. *Id.*

41 31 CFR § 10.50(a) (2026).

42 *See* R. Regulating Fla. Bar 4.1-2, Comment at Agreements limiting scope of representation (citing competence, communication, confidentiality, and avoidance of conflicts of interest as core duties in legal ethics).

A Q&A On The History Of Florida's Construction Lien Law

By Larry R. Leiby (Retired), Plantation, Florida,
Fred R. Dudley, Esq., Dudley, Healy & Heath, PLLC, Tallahassee, Florida,
Samantha R. Encalada, Esq., Davies Duke, PLLC, Bonita Springs, Florida, and
Richard M. Harrylal, Esq., Hill, Ward & Henderson, P.A., Tampa, Florida.

I. Origins and Purpose of the Lien Law

Question: What problem or gap in the legal system was the lien law originally designed to address?

Generally, the lien law was designed to give lienors a remedy against the improved property. The mechanic's lien is not a concept that came from the English common law. It is a creature of statute seeking to provide security for unpaid amounts by making the improvements collateral for the debt incurred in making or bettering the improvements. In general commerce, if a debt was incurred for the purchase of goods, the unpaid seller could typically retake the goods by replevin. Retaking paint off a wall, or blocks from a wall, was not of any real use to the unpaid seller. Thus, the legislature created a remedy for when goods or services are furnished in construction, to make the improved property collateral for the debt incurred in making the improvements.

Question: Larry and Fred, in your view, what was the legislature's main intention in enacting the lien law? Can you describe the circumstances that led to the creation of Florida's construction lien law?

Mechanics' liens in their modern form were first conceived by Thomas Jefferson, to encourage construction in the new capital city of Washington. Article XVI, Section 22, of the 1885 Florida constitution required that there be a mechanics' lien as a statutory remedy. "The Legislature shall provide for giving to mechanics and laborers an adequate lien on the subject matter of their labor." Fla. Const. Art. XVI, § 22 (1885). The first Florida mechanic's lien law was enacted in 1887.

Since the lien law is a creature of statute there was little uniformity among the states regarding the procedure for the remedy. In the late 1960's, the ABA created a study commission with the intended purpose of creating a uniform mechanic's lien law, much like the Uniform Commercial Code. The ABA did create a uniform lien law, which unlike the Uniform Commercial Code, was enacted in Florida as Part I of Chapter 713, Florida Statutes. The earlier version of the mechanic's lien law was enacted as part of Chapter 83, Florida Statutes.

Question: Larry, you founded the Section's Construction Law Committee in 1976. What was the reason you believed such a committee was necessary?

We wanted to have a forum to discuss construction law issues and to review potential legislation affecting construction. As a part of the Real Property Section of The Florida Bar, we studied and commented on proposed legislation, and we proposed some legislation ourselves.



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II. 1991 Amendment to Lien Law

Question: In 1991, Florida renamed "mechanics liens" to "construction liens" and added protections for owners. Was there a particular purpose for these changes?

In creating a remedy for nonpayment against real property, the legislature had to be mindful of the interests of the property owner, as well as those of the unpaid vendor/contractor, particularly where there was no direct contract between the vendor/contractor and the property owner. This privity issue was addressed legislatively by requiring a written notice to be served on the owner within 45 days of first work, as a preliminary step to obtaining a lien by a non-privity claimant.

Question: Larry, you have authored the Florida Construction Lien Law Manual since 1981. Was there a specific reason you decided that a publication like this was needed?

I wrote the Florida Construction Law Manual in 1981 because there were similar texts for other states, but not Florida. The substantive area of construction law in Florida had grown to where such a text was thought to be helpful in the practice of construction law. The first text was written for Shepard's/McGraw Hill, which was later sold to Thomson Reuters.

Question: Fred, can you give us a brief summary of your extensive service as a Florida state representative and senator?

I was elected a state representative in 1982, and as a senator in the Florida legislature in 1986, and I served through 1998. I became known as a "go to guy" on construction issues in the legislature. I was instrumental in the passing of the 1991 revisions, which were major, based on 28 recommendations of the 1986 Mechanic's Lien Study Commission, which I chaired.

III. Florida Bar Construction Law Certification

Question: Larry, you were a member of the first Florida Bar Construction Law Certification Committee shortly after this amendment passed. Did the 2003 amendment give rise to a need for a certification in construction?

I was the first chairman of the Florida Construction Law Committee in the Real Property Section of The Florida Bar. Hardhat lawyers felt that construction law was a body of law different from land development and simple contract remedies, such that certification in construction law would be helpful.

IV. Achieving Intended Purposes

Question: In 2026, what balance does the law attempt to strike between protecting vendors' interests and safeguarding property owners from double payments?

The current version of the lien law attempts to provide a remedy beyond simple contractual remedies for unpaid lienors, and protecting property owners, by requiring a timely notice before the owner and his/her property are exposed to non-privity claimants.

Question: Larry and Fred, have there ever been an attempt to repeal Florida's lien law?

The current Florida Constitution of 1968 contains no requirement that there be a mechanic's lien law. Thus, the legislature could repeal the mechanic's lien law; however, the construction industry would provide a formidable lobbying effort to prevent repeal. In fact, in the mid-1980s several bills were filed that would repeal the lien law, or exempt residential properties from such liens, based on concerns for private property rights of property owners who were exposed to the possibility of paying twice for the same improvement.

Question: How could the lien law be made simpler or more transparent for all parties involved in construction projects?

The law works well for those who know how to work within it. Education about the law is critical for owners and lienors.

In Memorium, Fred R. Dudley



We at ActionLine are sorry to report that Fred Dudley, one of the real legends of Florida's construction bar, passed away on July 13th at the age of 81.

Fred was admitted to The Florida Bar in 1968 after graduating from Stetson University College of Law, and he served in the Florida House of Representatives from 1982 to 1986. He then served in the Florida Senate from 1986 to 2000, where he chaired the Senate Judiciary Committee, the Senate Appropriations Subcommittee on Education, and served as the Vice Chair of the Senate Appropriations Committee. He was also instrumental in the creation of Florida Gulf Coast University in the early 1990s. After his time in the legislature, he continued practicing in Tallahassee with several firms, eventually forming his own firm, practicing both in construction and in regulatory and licensing law.

Fred's impact on the practice was particularly profound. In 1989, Fred was the sponsor and principal drafter of a major re-write of what we now know as the Construction Lien Law and, for the remainder of his time in the Senate, he sponsored nearly every significant change to the lien law. There may not be a single person who had more influence on the present lien law than Fred. He was also involved in the creation of the Construction Law Board Certification program, and he served several terms on the Certification Committee, including as its chair. It is no surprise that he was one of the early recipients of the Construction Law Institute's Lifetime Achievement Award.

Fred gently pulled folks into greater involvement by perceiving what he thought they could do and might be good at. Fred was unfailingly kind and respectful with a quick wit and great sense of humor. He also possessed a fierce intellect that could quickly see the practical implications of an argument or a statutory revision. He was a friend to so many. He will be deeply missed. Recently, the Young Lawyers Subcommittee submitted for publication in the Florida Bar Journal, a history of the lien law, which features interviews with Fred and another true legend, Larry Leiby, who certainly look forward to seeing it published.

He lived well and generously. He will be missed by all who had the privilege of knowing him.

Courtesy of Bruce D. Partington

For more information on Fred's life and achievements, please visit:
https://floridapolitics.com/archives/807410-fred-dudley-father-of-gulf-coast-university-has-passed-away/

2026 RPPTL AWARD WINNERS



JOHN ARTHUR JONES ANNUAL SERVICE AWARD

Debbie S. Crockett
Real Property

Travis Hayes
Probate and Trust





RISING STAR AWARD

Brett Henson
Real Property

Andrew H. Thompson
Probate and Trust





LYNWOOD ARNOLD, JR. MEMORIAL AWARD

Robert S. Freedman

WILLIAM S. BELCHER LIFETIME PROFESSIONALISM AWARD

Michael Gelfand





ROBERT C. SCOTT MEMORIAL AWARD

Debra L. Boje

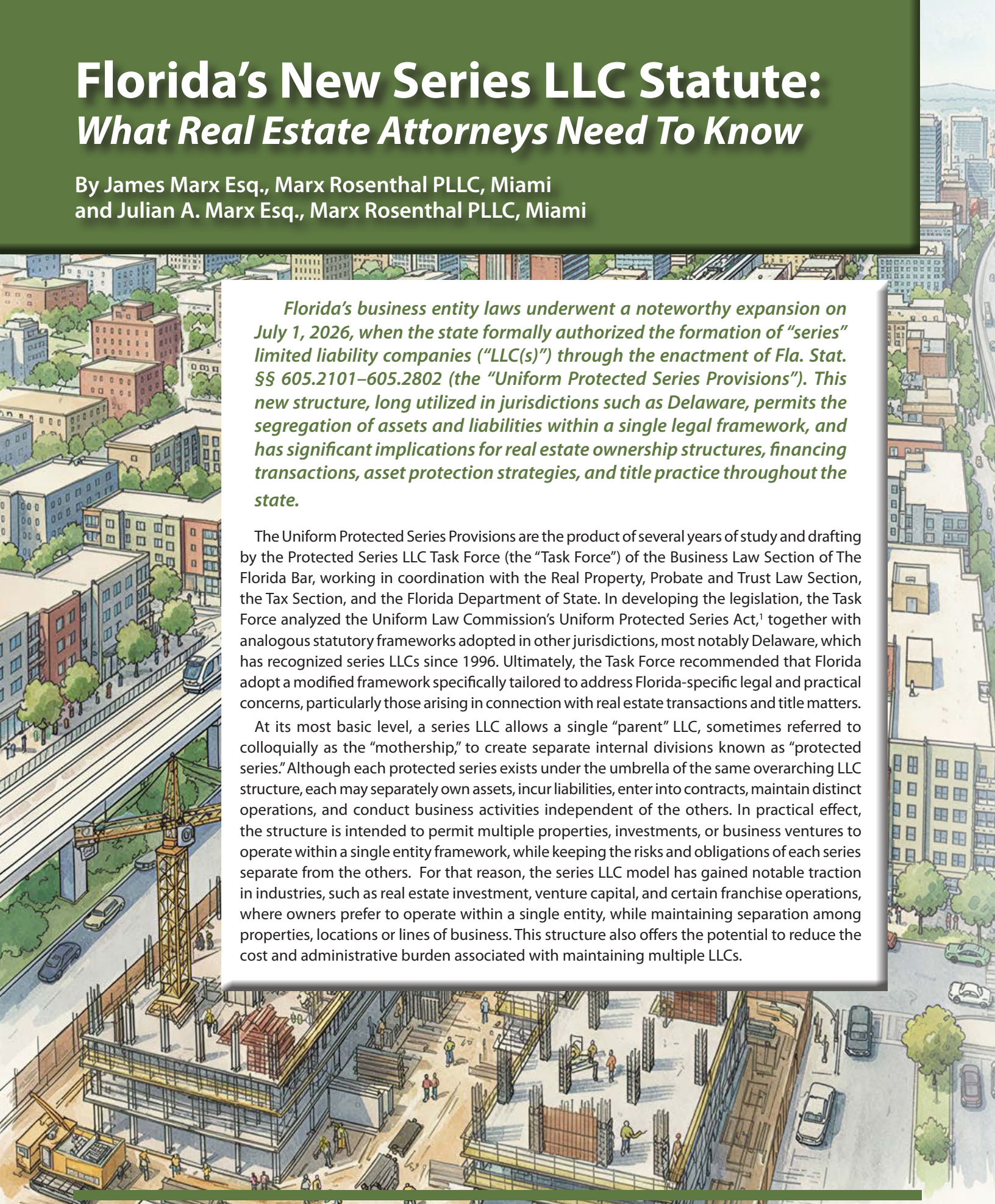
AT-LARGE MEMBER OF THE YEAR AWARD

Silvia Rojas



Florida's New Series LLC Statute:
What Real Estate Attorneys Need To Know

By James Marx Esq., Marx Rosenthal PLLC, Miami
and Julian A. Marx Esq., Marx Rosenthal PLLC, Miami



Florida's business entity laws underwent a noteworthy expansion on July 1, 2026, when the state formally authorized the formation of "series" limited liability companies ("LLC(s)") through the enactment of Fla. Stat. §§ 605.2101–605.2802 (the "Uniform Protected Series Provisions"). This new structure, long utilized in jurisdictions such as Delaware, permits the segregation of assets and liabilities within a single legal framework, and has significant implications for real estate ownership structures, financing transactions, asset protection strategies, and title practice throughout the state.

The Uniform Protected Series Provisions are the product of several years of study and drafting by the Protected Series LLC Task Force (the "Task Force") of the Business Law Section of The Florida Bar, working in coordination with the Real Property, Probate and Trust Law Section, the Tax Section, and the Florida Department of State. In developing the legislation, the Task Force analyzed the Uniform Law Commission's Uniform Protected Series Act,[1] together with analogous statutory frameworks adopted in other jurisdictions, most notably Delaware, which has recognized series LLCs since 1996. Ultimately, the Task Force recommended that Florida adopt a modified framework specifically tailored to address Florida-specific legal and practical concerns, particularly those arising in connection with real estate transactions and title matters.

At its most basic level, a series LLC allows a single "parent" LLC, sometimes referred to colloquially as the "mothership," to create separate internal divisions known as "protected series." Although each protected series exists under the umbrella of the same overarching LLC structure, each may separately own assets, incur liabilities, enter into contracts, maintain distinct operations, and conduct business activities independent of the others. In practical effect, the structure is intended to permit multiple properties, investments, or business ventures to operate within a single entity framework, while keeping the risks and obligations of each series separate from the others. For that reason, the series LLC model has gained notable traction in industries, such as real estate investment, venture capital, and certain franchise operations, where owners prefer to operate within a single entity, while maintaining separation among properties, locations or lines of business. This structure also offers the potential to reduce the cost and administrative burden associated with maintaining multiple LLCs.

Candidly, the author and other members of the Task Force do not expect to advise clients to utilize series LLCs, in lieu of forming separate LLCs for each venture, where limiting liability is a concern. Their effectiveness depends on strict recordkeeping, careful asset segregation, and consistent observance of formalities. If those formalities are not followed, the separation between the series may break down, potentially exposing the assets of one series to the liabilities of another (i.e., the "horizontal shields" may not hold). In addition, given that the statute is new, there is no developed body of case law to guide practitioners or to provide comfort to practitioners in these gray areas.

That said, the decision to adopt the statute was driven, less by the desire to promote widespread use of series LLCs, and more by the practical realities already facing Florida practitioners. As the White Paper explains, series LLCs have been authorized in more than 20 jurisdictions, and Florida attorneys are already encountering foreign series LLCs owning property, entering into leases, and obtaining financing in Florida. In practice, this created challenges, especially for Florida practitioners and title examiners, who were often left navigating gaps and inconsistencies, with limited guidance under non-Florida statutes. The absence of a Florida framework meant these entities operated in something of a gray area, without clear rules for recognition, asset association, or reliance on recorded instruments.

The new legislation is intended to address those concerns by integrating series LLCs into Florida's existing and well-developed LLC statute, while adding transparency and notice provisions designed to better align with Florida real estate practice. In doing so, it provides a clearer, more predictable framework for how these entities are treated in Florida, rather than leaving courts, counsel, and counterparties to resolve these issues on a case-by-case basis.[2] In short, the statute is less about encouraging practitioners to replace traditional LLC structures, and more about giving Florida a clear and workable set of rules for an entity type that is already here and likely to become more common.[3]

Formation of a Protected Series and key terminology

A protected series does not come into existence automatically. Instead, it must be affirmatively established as a series LLC through its operating agreement and a public filing with the Florida Department of State.[4] Specifically, the statute requires the filing of a "protected series designation," which must include the name of the protected series and certain additional required information.[5] Each protected series name must also include the name of the "mothership," along with a designation such as "Protected Series," "P.S.," or "PS."[6] To structure a Florida limited liability company as a series limited liability company, the limited liability company must designate one or more protected series in its operating agreement and file a protected series designation with the Florida Department of State.

Operating Agreement and Internal Governance

Unlike traditional Florida LLCs, which permit operating agreements to be oral or implied, a series LLC requires a written operating agreement.[7] There is only one operating agreement, and it governs both the series LLC (the "mothership") and each of its protected series. As a result, it must address not only the governance of the parent entity, but also the formation, ownership, management, and operation of each protected series established beneath it. In practice, this will require detailed provisions addressing the creation of new series, the identification of each series and its assets, the allocation of members and managers at the series level, and clear rules for capital contributions, distributions, and decision-making. The statute also contemplates that these matters may be organized through separate schedules or exhibits for each protected series, which will likely become standard practice.[8]

Associated Assets and Real Property Considerations

The concept of the "associated asset" is central to the statute and, in many respects, determines whether the liability protections of a series LLC will actually work.[9] A series LLC is intended to keep assets and liabilities separate within each protected series, much like using separate LLCs, but that result depends on properly linking each asset to the correct protected series (or to the "mothership"). Only assets that are properly linked with a particular protected series are intended to benefit from the statute's internal liability shields. Accordingly, if assets are not properly linked with the applicable protected series, those protections may fail, potentially exposing the assets of one series to the liabilities arising from another series or from the "mothership" LLC. Consistent with that structure, the statute requires clear and detailed records identifying which assets are associated with each protected series. Those records must be maintained with sufficient specificity, such that a third party can reasonably identify and distinguish the assets associated with each protected series.

The record keeping requirement for properly associating an asset with a specific protected series is set forth in Fla. Stat. §605.2301(2)(a), which provides:

> … only if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

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(i) identify the asset and distinguish it from any other asset of the protected series, any asset of the series limited liability company, and any asset of any other protected series;

(ii) determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and

(iii) if the protected series acquired the asset from the series limited liability company or another protected series of the limited liability company, determine any consideration paid, the payor and the payee.

Perhaps the most important aspect of the new statute for real estate practitioners - and in many respects the crux of the Section's involvement in the drafting process - is the definition and treatment of "associated assets." This issue was the most heavily debated topic during the drafting of the legislation and was a central focus for one of the authors as a member of the Task Force, as well as for the Section's Ad-Hoc Task Force, which was established by the Section to closely review the statute and to ensure that it would function effectively in the context of real estate transactions and Florida title practice. Given the significant reliance placed upon Florida's public records in real estate practice to determine ownership and authority, the statute incorporates the following important non-uniform provision applicable to both series LLCs and protected series. Practitioners will likely recognize that the provision is closely analogous to the well-known "magic language" contained in Fla. Stat. § 605.04074(3), which has long functioned effectively in the context of traditional Florida LLCs. Specifically, Fla. Stat. § 605.2301(2)(b), provides:

> **A deed or other instrument granting an interest in real property** to or from one or more protected series of a series limited liability company, or any other instrument otherwise affecting an interest in real property held by one or more protected series of a series limited liability company, in each case **to the extent such deed or other instrument is in favor of a person who gives value without knowledge of the lack of authority** of the person signing and delivering such deed or other instrument and is recorded in the office for recording transfers or other matters affecting real property, **is conclusive of the authority of the person signing and constitutes a record that such interest in real property is an associated asset or liability, as applicable, of the protected series."**[10] **(Emphasis Added.)**

This language is particularly important for real estate practitioners. In practical effect, it elevates properly recorded instruments, including deeds and mortgages, from documents that merely evidence title to instruments capable of serving as conclusive proof of both authority and asset association, at least as to a good-faith party who gives value without knowledge of any defect.

Consideration was given to expanding the concept of "conclusiveness" to apply to any recorded instrument, regardless of whether the transaction involved a party who gave value without knowledge of a defect. Ultimately, however, the drafters declined to adopt that broader approach out of concern that it could create unintended consequences in situations involving bad actors, transfers without consideration, or transactions involving known defects in authority, ownership, or internal governance.

Foreign Series LLCs

Even prior to Florida's adoption of the Uniform Protected Series Provisions, foreign series LLCs, particularly those formed in jurisdictions such as Delaware,[11] were already participating in transactions involving Florida real property. The new legislation is therefore significant, not only because it authorizes the formation of Florida series LLCs, but also because it establishes a statutory framework governing the recognition and the treatment of foreign series structures operating within the state.[12] This has immediate implications for title review, lender due diligence, and enforceability.

Under the statute, a foreign series LLC must obtain a certificate of authority to transact business in Florida, and each protected series of that foreign entity that is transacting business in the state must likewise be separately registered. In effect, Florida treats each protected series of a foreign series LLC, for registration purposes, much like a separate entity. This includes the requirement to file appropriate applications with the Department of State, to maintain a registered agent, and to comply with annual reporting obligations.[13]

The Concept of Extrapolation

One of the more technical, yet critically important, concepts embedded in the statute is what may be described as "extrapolation."[14] In general terms, the statute provides that, unless otherwise specified (including where application would be inconsistent with the protected series provisions or where a provision is, by its nature, limited to the series LLC itself, such as formation and filing requirements), the provisions of Chapter 605 applicable to limited liability companies are to be applied to each protected series as if it were a separate LLC. As a result, the existing body of Florida LLC law governing matters, such as management authority, fiduciary duties, distributions, derivative actions, and litigation procedures, does not need to be separately recreated for protected

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series. Instead, those principles are incorporated into the protected series framework and applied by analogy. Notably, this approach differs from the Uniform Protected Series Act, which applies extrapolation only when it is expressly invoked in specific provisions.

Olmstead; Multi v Single Member Treatment

Similar to the current Fla. Stat. § 605.0503, which was enacted in response to and effectively codifies the Florida Supreme Court's decision in *Olmstead v. FTC*, providing that the remedy for a judgment creditor of a muti-member Florida LLC is limited to a charging order, the protected series provisions in Fla. Stat. § 605.2403, apply the same principles to a judgment creditor of the sole member of a single-member protected series, or the sole associated member of a single-member series limited liability company, as applicable.

Conclusion

Florida's adoption of the Uniform Protected Series Provisions introduces a new and complex framework that will require careful consideration by real estate practitioners. While series LLCs may offer flexibility and, in some cases, efficiencies, their effectiveness depends on strict compliance with statutory requirements, thoughtful drafting, and disciplined administration. At the same time, whether practitioners choose to use this structure, series LLCs, particularly foreign ones, are already a part of Florida transactions and are likely to become increasingly more common.

For that reason, familiarity with the statute is important. Understanding how protected series are formed, how assets are properly associated, how authority is established, and how these entities interact with Florida's real property and recording systems will be key to advising clients, structuring transactions, and navigating this developing area of Florida law.



J. MARX

James A. Marx *is a board-certified real estate attorney who practices in Miami and has practiced for more than 35 years primarily in the areas of real estate, financing, and business transactional law. He was actively involved in the drafting of Florida's Revised Limited Liability Company Act in 2013 and Florida's new Protected Series LLC legislation, bringing to those efforts the perspective of an experienced Florida real estate practitioner. Mr. Marx also served as Co-Chair of the RPPTL Section's Ad-Hoc Committee formed to evaluate and participate in the review and drafting of the Protected Series legislation. He currently serves as Group Chair for the American Bar Association Real Estate Financing Group and is a member of the American College of Mortgage Attorneys.*



J. MARX

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Endnotes

1 The Uniform Protected Series Act ("UPSA") was adopted by the Uniform Law Commission in 2017 and was specifically designed to be "plugged into" the Revised Uniform Limited Liability Company Act, which Florida adopted effective in 2014. Consistent with that structure, Florida's Protected Series provisions were added to the existing Florida Revised Limited Liability Company Act with continuous numbering in newly created Fla. Stat. §§ 605.2101 through 605.2802.

2 By adopting its own framework, Florida not only brings those structures into a more predictable legal environment, but also positions itself to retain organizational activity, and the associated filings and revenues, with the Florida Department of State rather than ceding them elsewhere.

3 "The Task Force believes that adding these Protected Series provisions will be beneficial for Florida businesses and residents, as well as for lawyers and judges being asked to address matters affecting both domestic and foreign series limited liability companies that are doing business in Florida utilizing series LLCs." *White Paper.*

4 Fla. Stat. § 605.0207 (2025). As of this writing, the Florida Department of State permits the online creation of a series LLC by filing a Designation of Protected Series for an existing Florida LLC. The filing fee is $25 for the initial Designation of Protected Series and $25 for each additional protected series thereafter.

5 *See* Fla. Stat. § 605.2201 (2025), ("Establishment of protected series; change of designation.")

6 *See* Fla. Stat. § 605.2202 (2025), ("Protected Series name.")

7 Fla. Stat. § 605.2105 (2025).

8 *See* Fla. Stat. § 605.2304 (2025), ("Management"). Note, however, that "[i]f a protected series has no associated members, the series limited liability company is the protected series manager." Fla. Stat. § 605.2304(2) (2025),

9 Fla. Stat. § 605.2301 (2025).

10 The statute includes a comparable provision applicable to assets held directly at the series LLC level, as opposed to a particular protected series, thereby reinforcing that the same core principles apply regardless of whether the real property is held by the "mothership" itself or by one of its protected series. *See* Fla. Stat. § 605.2301(3)(b) (2025).

11 "Delaware has become the default jurisdiction for most series limited liability companies, at least for sophisticated parties who want to take advantage of Delaware's business friendly laws, contractual freedom, and its efficient and competent Court of Chancery which provides a well-developed body of case law, much of which is further reviewed and finally decided by the Delaware Supreme Court." *White Paper.*

12 Fla. Stat. § 605.2202 (2025).

13 Fla. Stat. § 605.2206 (2025.)

14 Fla. Stat. § 605.2108 (2025).

Peterson And The Limits On The Ties That Bind Donor-Advised Fund Sponsors And Donors

By Joshua R. Landsman, Esq., Wilmington Trust, N.A., Palm Beach, Florida, and Marguerite Weese, Esq., Wilmington Trust, N.A., Philadelphia, Pennsylvania[1]

Donor-Advised Funds ("DAF(s)") have risen in popularity for individuals and families looking to make a charitable impact while also taking advantage of the available tax deductions for charitable contributions made to such investment vehicles. According to the 2025 Annual Report published by the Donor Advised Fund Research Collaborative ("DAFRC"), in 2024, the number of DAF accounts reached a record high of 3.56 million, and the total DAF assets reached $326.45 billion.[2]

DAFs have earned a reputation as a "turnkey" alternative to other tax-exempt charitable entities, such as, private foundations, because they offer donors: (1) an immediate fair market value tax deduction (subject to AGI limitations), even if the funds are not immediately donated to charitable organizations; (2) tax-free growth on assets contributed to the DAF; (3) the retention of certain "advisory rights," allowing donors the ability to "advise" on which charitable organizations should receive DAF account assets; and (4) minimal ongoing administrative requirements and fewer technical tax laws with which to comply.

For Federal tax purposes, to qualify as a DAF, the arrangement must meet the definitions in § 4966(d)(2) of the Internal Revenue Code (the "Code").[3] Under § 4966(d)(2)(A)(ii) of the Code, the DAF must be "owned and controlled by a sponsoring organization."[4] If a donor maintains legal control rather than just advisory privileges, the Internal Revenue Service ("IRS") may treat the DAF as a private foundation, potentially triggering excise taxes.[5] Therefore, "sponsoring organizations" must obtain "sole legal ownership and control" to ensure the donor's deduction under § 170 of the Code is valid.[6]

To ensure compliance with the Code, DAF agreements and policies typically expressly provide: (1) contributions are irrevocable and nonrefundable; (2) the sponsoring organization has exclusive ownership and control over contributed assets and earnings; (3) the sponsor retains sole discretion to approve or to deny grant recommendations; (4) donors have no legally enforceable right to compel grants, control investments, or direct timing; and (5) the sponsor may restrict, suspend, or terminate advisory privileges.

Consider a donor, who contributes $5 million to a DAF, carefully articulates a written purpose statement, and recommends grants for fifteen years without incident. Upon the donor's death, the sponsoring organization adopts a new perpetual endowment philosophy and denies the successor advisors' recommendations. The donor's family believes the sponsor has "changed the deal"; legally, however, the sponsor insists the deal never existed.

Peterson v. Christian Community Foundation d/b/a WaterStone has caught the attention of DAF sponsors and professionals who advise clients on charitable planning.[7] *Peterson* centers on a $21 million DAF and challenges the "advisory bargain" long governing DAFs. *Peterson* puts a spotlight on the irrevocable nature of a donor's gift to a DAF, whereby the sponsoring organization becomes the legal owner, and the donor's role is strictly advisory. For Florida practitioners, *Peterson* serves as an example and a potential case study on the limits of donor control and the potential for litigation when "advice" is ignored.

This article provides a background of the *Peterson* case, discusses other case law addressing the enforceability of donor's advisory privileges over DAFs. It explores the issues highlighted by *Peterson* and the potential ways to avoid them, and it summarizes alternatives to DAFs where donors are able to retain control as opposed to advisory privileges.

Background of Peterson

The Peterson Family Stewardship Fund was established in 2005 by Gordon Peterson with WaterStone, a Christian nonprofit DAF sponsor.[8] According to the Complaint filed by the successor donor, Philip Peterson, the son of the donor, Gordon Peterson, his father was meticulous in outlining his "Donor Intent," incorporating a detailed Purpose Statement identifying specific doctrinal objectives and providing a prioritized list of pre-approved charitable recipients.[9]

Based on the Complaint, WaterStone adhered to Gordon Peterson's guidance.[10] Following Gordon Peterson's death in 2019 and the death of his wife, Ruth, in 2021, Philip

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Peterson became the sole successor advisor.[11] According to the Complaint, beginning in 2024, WaterStone leadership proposed a shift in strategy, which involved preserving the DAF's principal in perpetuity and distributing only investment income.[12] The Complaint states this strategy shift would significantly reduce the DAF's customary annual grants.[13]

According to the Complaint, after Phillip Peterson objected to the revised strategy and proposed moving the DAF to a new sponsor, WaterStone revoked his online account access, terminated all communication, denied a $1 million grant recommendation to a long-standing family-approved charitable organization aligning with the fund's original mission, and refused to provide copies of the original DAF agreement or current accountings.[14] The Complaint asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, negligent misrepresentation, and violation of the Colorado Consumer Protection Act.[15] It seeks injunctive relief, accountings, and declaratory judgment defining the legal status of advisory privileges.[16]

Other Relevant DAF Cases

The core legal question in Peterson is whether a donor's advisory privileges constitute a legally enforceable interest that must be honored in good faith. Traditionally, DAF sponsors defend such suits by arguing the donor lacks standing. There is limited case law on DAFs and cases like Peterson are unusual because advisory privileges are generally adhered to by sponsors; however, two cases provide some context on whether advisory privileges provide a donor with enforceable rights.

In *Pinkert v. Schwab Charitable Fund*, the court held certain advisory privileges do not equate to a property right sufficient to confer standing for mismanagement claims.[17] In Pinkert, the donor argued he retained certain property rights to the DAF by retaining the right to direct funds to charities and "excessive fees" charged by Charles Schwab impaired his ability to exercise his property right.[18] Specifically, the donor alleged the higher fees attributable to such advisory services resulted in a smaller percentage of funds being distributed to charitable beneficiaries of Schwab Charitable.[19]

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The court held the donor did not reserve the right to "advise" Schwab Charitable to donate funds to another charity as opposed to collecting them as fees. Rather, the donor agreed, at the time he donated to Schwab Charitable, that some of the funds would be used to pay fees.[20] Therefore, the court focused on what the donor agreed to upon opening the account to help define what advisory rights or control he retained. Given that the donor's rights were limited or removed in the DAF policies and procedures, the court determined no rights were infringed upon.[21] The court did, however, leave the door open for a potential argument, which will be considered in Peterson, as to whether the right to provide nonbinding advice was infringed upon.[22] The donor in Pinkert did not allege this; therefore, the Pinkert court did not consider it for purposes of its holding.[23]

Similarly, in *Fairbairn v. Fidelity Investments Charitable Gift Fund*, while the court acknowledged a possible "special relationship" between the donor and the DAF sponsor, it ultimately focused on the lack of a legal duty regarding the timing of stock liquidations, once donor control had been relinquished.[24] In Fairbairn, the donors donated a large amount of stock in a publicly traded corporation to Fidelity Investments' Charitable Gift Fund a few days after an event took place that caused a dramatic rise in the share price.[25] Fidelity Charitable sold all the shares within two days of the contribution and two days prior to the end of the tax year.[26] The court held there may be a relationship meriting a duty of care because the sponsoring organization provided the donor with the ability to defer transferring the liquidated assets to the charities they recommended until a later date, and the ability to pass on their DAF to their children.[27] The court also did not dismiss the possibility a sponsoring organization could violate the prudent investor rule, but held Fidelity Charitable was not liable where its written policy, which was furnished to the donors prior to the establishment of the DAF, was to sell donated securities at the earliest possible date.[28]

Taking Control When Things Get Out of Control

Pinkert, Fairbairn, and now Peterson illustrate the legal architecture governing DAFs reflects a deliberate policy tradeoff: donors receive an upfront charitable deduction in exchange for surrendering decision-making authority over donated funds. While in practice, advisory privileges are generally honored and conflicts are avoided, herein lies a potential structural disconnect between the marketing of DAFs as "philanthropic partnerships" between donors and DAF sponsors and the strict legal reality that a donor no longer has control over contributed funds once they are placed in the DAF.

For Florida practitioners, the potential disconnect is underscored by Chapter 617, Fla. Stat. (Corporations Not For Profit). Specifically, under Fla. Stat. § 617.2104(6)(c) (FUPMIFA), a charitable "institution" may pursue a modification of a restriction in a gift instrument if it becomes "unlawful, impracticable, impossible to achieve, or wasteful."[29] Accordingly, could a DAF sponsor invoke the "Variance Power" contained in Fla. Stat. § 617.2104, to modify a DAF agreement unilaterally, if the donor's wishes rise to a level of "control" making it impossible for the DAF to qualify under Federal tax laws? The authors are not aware of any case law addressing this question.

Further, the Safeguarding Endowment Gifts Act (Florida SB 1338)(the "Act"), which was introduced in the Florida Senate but did not move forward in the legislative process, would have amended Chapter 617, Fla. Stat. and provided donors with standing to enforce written restrictions in endowment agreements after a 90-day notice period.[30] The Act, if passed, may have given donors and successor donors, such as in Peterson, a procedural path forward where there is none currently under Florida law.

To avoid potential disconnects between DAF sponsors and donors, practitioners may consider the following action items:

For DAF Sponsors:

- Ensure marketing materials do not contradict the legal requirement and the reality of sole ownership.
- Establish clear, transparent internal protocols to be followed when the organization chooses not to follow standing donor suggestions.

For Donors:

- Incorporate detailed Purpose Statements directly into the DAF agreement to define the "reasonable expectation" of the advisory relationship.
- Negotiate for portability provisions allowing for the right to transfer the fund balance to another § 501(c)(3) sponsor if the relationship fails.
- Appoint charitable protectors, third parties with standing to enforce donor intent.[31]

Alternatives to DAFs

For professionals advising clients on charitable giving strategies and options, in particular, where an element of control is important to the donor, other charitable entities should be explained and summarized for clients. A few examples of DAF alternatives include private foundations, supporting organizations and charitable trusts.

Private Foundations offer the maximum level of control, involving full board control where the donor manages investments and grants. The donor (and often family members) can serve as board members, set the mission, and

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retain decision-making authority over charitable recipients and investment strategies. The trade-off to receive this ultimate control is a significant administrative setup, as well as ongoing compliance obligations.

Supporting Organizations are § 501(c)(3) public charities that exist to support one or more designated public charities, while permitting donor-involvement in governance, which is appealing for a donor looking for high control. While the supporting organization must remain close to one or more public charities, donors can often participate in management and influence charitable activities. Similarly to a private foundation, setting up a supporting organization is administratively intensive, involving legal structuring, governance design and IRS filings; however, in exchange for less autonomy than a private foundation, supporting organizations generally benefit from fewer restrictions and more favorable public-charity tax treatment.

Charitable Trusts are trust arrangements in which, generally, the donor irrevocably contributes assets to be held in trust to be designated for charitable purposes. Through the drafting process, the donor defines the charitable purpose, the trustee powers, the distribution standards, and the duration of the trust at its inception. Accordingly, it is important to keep in mind during the drafting process that, once the trust is established, flexibility is limited. Generally, Florida Charitable Trusts are governed under the Florida Trust Code, Chapter 736, Fla. Stat.

Conclusion

Peterson highlights a potential tension when clients think they are having their cake and eating it too (donating to charitable organizations of their choice and getting an upfront tax deduction) when establishing a DAF. For lawyers, *Peterson* is less a warning about bad actors than a reminder DAFs are creatures of contract, not intent. Florida practitioners should revisit their clients' agreements to ensure their clients' expectations of "advice" are not antithetical to the administrative and marketing realities of the DAF sponsor.



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Endnotes

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2 The Annual DAF Report 2025, Donor Advised Fund Research Collaborative available at https://www.dafresearchcollaborative.org/research/annual-daf-report.

3 Code § 4966(d)(2) (2026).

4 Code § 4966(d)(2)(A)(ii) (2026).

5 Code § 4966(a)(1), 4967(2026).

6 Code § 4966(d)(2) (2026).

7 *Peterson v. Christian Community Foundation, Inc. d/b/a WaterStone,* Case No. 1:26-cv-00179 (D. Colo. 2026), Complaint ¶ 1.

8 *Id.* at ¶ 2.

9 *Id.* at ¶ 15.

10 *Id.* at ¶ 19.

11 *Id.* at ¶ 20.

12 *Id.* at

13 *Id.* at

14 *Id.* at ¶ 25-26.

15 *Peterson*, Complaint ¶ 1

16 *Id.*

17 *Pinkert v. Schwab Charitable*, 48 F.4th 1051 (9th Cir. 2022).

18 *Id.* at 1056.

19 *Id.* at 1054.

20 *Id.* at 1055.

21 *Id.* at 1054.

22 *Id.* at 1056.

23 *Id.*

24 *Fairbairn v. Fidelity Charitable Gift Fund*, No. 3:18-cv-04881 (N.D. Cal. 2021).

25 *Id.* at *6

26 *Id.* at *3

27 *Id.*

28 *Id.* at *6.

29 Fla. Stat. § 617.2104(6)(c).

30 Safeguarding Endowment Gifts Act (Fla. SB 1338)

31 *See Smithers v. St. Luke's-Roosevelt Hospital Center Supreme Court*, 281 A.D.2d 127 (N.Y. App. Div. 2001) (holding that a Special Administratix of an estate appointed for the purpose of pursing claims by the estate against a charitable organization had standing to enforce terms of a gift agreement).

TRUMP ACCOUNTS:
What Estate Planning Attorneys Need To Know (Part II)

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In Part I, we examined some of the key aspects of Trump accounts. In this article, we will review some recent developments and additional guidance issued in connection with Trump accounts, and we will examine how Trump accounts compare to other planning vehicles available for minor beneficiaries.

Recent Developments

Since Part I was submitted for publication, the IRS issued Proposed Regulations for Code §§ 530A (Trump accounts) and 6434 (the pilot contribution program). Additionally, the IRS issued Revenue Procedure 2026-25 on June 29, 2026, which provides a gift tax reporting safe harbor for certain contributions to Trump accounts.[1]

The Proposed Regulations provided guidance on who can establish a Trump account for an eligible individual. Even though § 530A provides that the Secretary can elect to open an account based on information available to the Secretary, the Treasury Department and the IRS have determined that the Secretary is unable to do so due to legal constraints, such as federal and state banking, securities and anti-money laundering laws, and Code § 6103, which prohibits the disclosure of information from taxpayers' tax returns or information that is otherwise received, recorded, prepared, furnished to, or collected by the IRS with respect to a taxpayer, unless expressly authorized by the Code. This means that the election to open a Trump account must be made by an authorized individual on behalf of the eligible individual.

The Proposed Regulations also provide that the authorized individual making the election to open a Trump account is representing under penalties of perjury that the individual is authorized to open the initial account and that no other person with a higher priority is available to make the election. If an election is made by someone who was not an authorized individual, then the Secretary is deemed to have made the election to open the Trump account to avoid the account from ceasing to be a Trump account.

The Proposed Regulations for § 6434 introduces: (i) the defined term "pilot program-electing individual," and (ii) the concept of a special tax year for the eligible child. The pilot program-electing individual can make the election for the $1,000 pilot program contribution on behalf of an eligible child, if the individual anticipates that the eligible child will be that individual's qualifying child (i.e., dependent for income tax purposes) for the tax year the election is made. This allows for the pilot program contribution election to be made in the year the child becomes eligible instead of having to wait for the close of the tax year.

The pilot program contribution is not tied to any specific taxable year of the electing individual or the eligible child. Once the election is made, the eligible child is treated as making a $1,000 payment against the child's income tax liability for a special taxable year that begins with the processing of the pilot program election and ends immediately thereafter. This

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results in a $1,000 overpayment for the special taxable year that is not subject to any offsets for past due debts or other tax liabilities of the electing individual or eligible child. The Proposed Regulations confirm that the pilot program election can be made any time after the child becomes eligible, but before the end of the growth period.

Revenue Procedure 2026-25 provides that, if certain requirements are met, contributions made to a Trump account are not subject to gift tax reporting requirements for that year. More specifically, whether a contribution to a Trump account qualifies as an annual exclusion gift that does not require the filing of a gift tax return will depend on whether the taxpayer makes any other gifts during the same calendar year.

The safe harbor under Revenue Procedure 2026-25 requires that: (1) the only taxable gifts made by the taxpayer during the calendar year are cash contributions to one or more Trump accounts; (2) the total gifts during the calendar year to each individual who is an account beneficiary (including the contributions to the Trump account) do not exceed the annual exclusion amount; (3) the contributions to the Trump accounts do not generate any gift or GST tax liability for that calendar year; and (4) disregarding the Trump account contributions, no gift tax return is required to be filed, and no gift tax return is otherwise filed, for that calendar year. If the safe harbor requirements are met, then each Trump account contribution made by the taxpayer during the calendar year will be treated as a gift that qualifies for the annual exclusion for gift and GST tax purposes.

How Do Trump Accounts Compare to Other Planning Techniques for Minor Children

529 Plans

A 529 Plan is a "qualified tuition program" that is established and maintained by a State or a State agency under which a person may make contributions to an account established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.[2]

There are significant differences in the tax treatment of 529 Plans and Trump accounts. With a 529 Plan, earnings and distributions are not includible in the gross income of a designated beneficiary, or a contributor to such program on behalf of a designated beneficiary, if distributions are made for qualified higher education expenses.[3] Qualified higher education expenses include tuition, supplies, equipment and expenses incurred in connection with enrollment or attendance at an elementary or a secondary public, private, or religious school.[4] Although Trump accounts grow as tax deferred during the growth period, distributions after the growth period (less any basis) are taxable to the beneficiary as ordinary income. In addition, unless the funds are used for qualified higher education expenses or some other applicable exception, distributions before the beneficiary attains age 59 ½ are subject to the additional tax on early withdrawals.

Contributions to a Trump account are subject to the annual limit of $5,000 (indexed for inflation starting in 2028).[5] Whereas, a parent or other family member can make tax free gifts to a 529 plan up to the full annual exclusion amount and can even elect to superfund the 529 plan with up to four additional years of annual exclusion gifts. In addition, contributions to a 529 plan qualify for the gift and GST tax annual exclusions. Further, despite the donor's retention of a power to change the beneficiary, the 529 Plan account is not includable in the donor's gross estate, except for any contributions that the donor elected to qualify for the annual exclusion in calendar years beginning after the donor's death.[6]

If the beneficiary of the 529 plan is disabled, the 529 plan may be rolled over to an Achieving a Better Life Experience ("ABLE") account without penalty, if the ABLE account is owned by the designated beneficiary of the 529 plan, or a member of the designated beneficiary's family. The rolled over amount, however, counts toward the annual contribution limit of an ABLE account.[7] A Trump account may only be rolled over to an ABLE account during the calendar year that the beneficiary attains age 17.[8]

A 529 plan also permits a trustee-to-trustee transfer of unused funds to a Roth IRA maintained for the 529 plan beneficiary, subject to a lifetime limit of $35,000 per beneficiary. The 529 plan must have been maintained for at least 15 years prior to the rollover. In making the rollover, a beneficiary is limited to the Roth IRA annual contribution limit ($7,500 in 2026), and the beneficiary must also have earned income for the year in the amount of the contribution.[9] The 529 plan account beneficiary may also be changed to a member of the designated beneficiary's family. [10]

The greater amount that can be contributed on an annual basis, combined with the income tax free distributions for qualified higher education expenses, make the 529 Plan more appealing for those clients looking to prioritize saving for education.

Uniform Transfers to Minors Act ("UTMA") Accounts

An account may be established under the Florida Uniform Transfers to Minors Act if, at the time of the transfer, the transferor, the minor, or the custodian is a Florida resident or the custodial property is located in Florida.[11] Custodial property is created and a transfer is made whenever an asset is registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words, "as custodian for (name of minor) under the Florida Uniform Transfers to Minors Act."[12]

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Similarities and differences exist in the tax treatment of UTMA accounts and Trump accounts. Income generated in the UTMA account is taxable, although the type of UTMA account will determine when the income must be reported. While the funds in the Trump account grow tax-free, distributions from a Trump account will be taxable to the beneficiary as ordinary income. Contributions to a UTMA account do qualify for the gift and GST tax annual exclusions. UTMA accounts are includable in a donor's gross estate if the donor acts as the custodian and dies before the minor reaches the age of majority but will not be includable if the donor designates another person as custodian.[13] Trump accounts would only be includable in the estate of the account beneficiary.

A custodian of a UTMA account has flexibility to make distributions to or for the benefit of the minor or to a trust for the minor;[14] however, no distributions can be made from a Trump account during the growth period.[15]

Except for retirement accounts, a UTMA account may be created so that the beneficiary does not have access or control of the funds until age 21, or even age 25 in some cases,[16] while Trump account beneficiaries (and UTMA retirement account beneficiaries) gain access to the account at age 18.[17] However, if it is important to ensure that neither the minor nor anyone else can access the UTMA account, the UTMA account may not be desirable as an interested person, or the minor if the minor has attained the age of 14 years, can petition the court for an order directing the custodian to deliver or pay to the minor, or expend for the minor's benefit, so much of the custodial property as the court considers advisable for the use and benefit of the minor.[18]

Irrevocable Trusts for Minors

The biggest advantage of an irrevocable trust for a minor over a Trump account or any of the other planning techniques stated above is the flexibility in drafting the terms of the trust to meet the settlor's intent. Although a typical distribution standard would be for health, education, maintenance, or support ("HEMS"), these terms can be broadly defined within the trust instrument, and the trust may be drafted to allow for distributions outside of the HEMS standard, such as for the purchase of a home or the starting of a business. In addition, an independent trustee can be given even broader discretion for making distributions to or for the benefit of the child. Unlike a Trump account, distributions can be made to or for the benefit of the minor beneficiary while the beneficiary is under age 18. Also, depending on how the trust is drafted, the trust can offer protection from the beneficiary's creditors, and the trust assets can be excludable from the gross estate of the beneficiary and the settlor.

Unlike Trump accounts, there are no annual limits for contributions to an irrevocable trust. The irrevocable trust can be drafted, so that contributions qualify for the annual exclusion for gift and GST tax purposes, so the client (and other family members) can make tax free gifts to the trust each calendar year and then decide if they wish to contribute more than the annual exclusion amount in a particular calendar year.

The client also has flexibility in appointing the trustee who will be responsible for managing the trust assets. Further, the irrevocable trust offers more flexibility than a Trump account in how the trust assets are to be invested. Also, if distributions are made, the distributions are taxable to the beneficiary, only to the extent that the distributions carry out trust income, or the trust can be established as a grantor trust, which would allow the settlor to pay the income tax on the income earned by the irrevocable trust as another tax free gift to the trust beneficiary.

Conversions to Roth IRAs

Establishing a Trump account makes sense if the beneficiary is eligible for the pilot program contribution, qualified general contributions or section 128 employer contributions, which can be considered "free" money; however, none of these contributions create basis in a Trump account, and therefore, would be all taxable as ordinary income when withdrawn. If the beneficiary intends to keep the funds in the Trump account and allow the funds to grow until retirement, a Roth conversion should be considered as early as possible.

Once the growth period ends, which again, is the calendar year the beneficiary attains age 18, the Trump account is treated as a traditional IRA and may be converted to a Roth IRA.[19] Upon conversion, any portion that represents basis is not included in income, but the balance is included in the beneficiary's income in the year of conversion.[20] The beneficiary would typically be subject to a low-income tax bracket at age 18, which may provide optimal timing for a Roth conversion; however, the "kiddie tax" will apply to the income on the conversion, if the beneficiary is between the age 18 through 23, and the beneficiary's earned income for such taxable year does not exceed one-half of the amount of the beneficiary's support.[21] Accordingly, the beneficiary may want to delay a Roth conversion until the beneficiary is no longer subject to the "kiddie tax." If the amount of taxable income in the Trump account would cause the beneficiary to be taxed at a higher tax bracket upon the Roth conversion, the beneficiary may wish to spread the conversion over multiple years.

Once the Trump account is converted to a Roth IRA, distributions are not includible in the beneficiary's gross income but are still subject to the tax for early withdrawals, unless an exception applies.[22] Additional contributions can be made up to the annual contribution limit ($7,500 in 2026) if

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the beneficiary has earned income for the year in the amount of the contribution.[23]

Special Needs Trust vs. ABLE Accounts for Disabled Beneficiaries

ABLE accounts and Special Needs Trusts ("SNT")[24] should be considered if a beneficiary is disabled and receives, or may become eligible to receive, needs-based benefits like Medicaid or Supplemental Security Income ("SSI"). Funds held in an ABLE account or in a SNT do not count towards assets limits in determining eligibility for Medicaid or for SSI. The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act is a federal law, enacted in 2014, that authorized each state to establish a program that offers tax-free savings and investment options for disabled individuals whose disability onset occurred before turning age 46.[25] In 2015, a Florida law was enacted to oversee Florida's qualified ABLE program,[26] ABLE United (www.ableunited.com).

Some of the rules that apply to ABLE accounts and SNTs differ, and therefore, the decision regarding which to use must be evaluated based on the disabled beneficiary's circumstances, including when both can be utilized at the same time.

As stated above, Trump accounts and 529 plans can both be rolled over to an ABLE account if the beneficiary is disabled, but with limitations. Trump account rollovers, although not counting towards the annual contribution limit of an ABLE account, must occur during the calendar year in which the account beneficiary attains age 17.[27] 529 plan rollovers to ABLE accounts do count towards the ABLE account annual contribution limit, which is typically tied to the annual federal gift tax annual exclusion amount.[28] However in 2026, the annual limit is $20,000 and is not tied to the 2026 $19,000 federal gift tax annual exclusion amount.[29] SNTs on the other hand have no limitation as to when they can be established, as long as it is a third party transferring funds to the disabled beneficiary's trust (as opposed to a disabled beneficiary transferring their own funds to the special needs trust), and the trust has no limitation on the amount that can be transferred to the trust.

There are significant differences in the tax treatment of ABLE accounts and SNTs. Similar to a 529 plan, distributions or earnings from or on an ABLE account are not taxable as long as distributions are made for qualified disability expenses.[30] The income produced within the SNT is taxable, but a SNT that is a Qualified Disability Trust receives an increased exemption for federal income tax purposes ($5,100 for 2025 compared with the $100 or $300 exemption applicable to other trusts). The exemption is subject to a phaseout when income exceeds $100,000.[31] Contributions to ABLE accounts qualify for the gift and the GST tax annual exclusion, but transfers to a SNT do not qualify for the gift and the GST tax annual exclusion.[32]

Access to account funds, ability to change the beneficiary, and disposition of funds upon the beneficiary's death also differ between ABLE accounts and SNTs. A beneficiary of an ABLE account can access the funds, while a beneficiary of a SNT cannot access the trust assets. Like a 529 plan, the ABLE account beneficiary may be changed to another individual whose disability was onset was before age 46 and who is a member of the former beneficiary's family.[33] A change to the SNT beneficiary may be difficult after the funding of the SNT depending on the drafting of the trust. SNTs may distribute any remaining trust funds to any individual or organization upon the disabled beneficiary's death, whereas an ABLE account is paid to the beneficiary's estate and is subject to the claims of the beneficiary's creditors, including the State, to the extent of Medicaid benefits paid on behalf of the beneficiary.[34] A well drafted SNT will allow the trustee to make distributions to an ABLE account thereby utilizing the benefits of both planning options.

In conclusion, it is prudent to open a Trump account for a disabled minor child to receive the $1,000 pilot contribution, any qualifying general contributions, or any employer contributions, and then subsequently rollover the Trump account to an ABLE account once allowed. However, for significant gifts to a disabled child, it may be preferable to gift the funds to a SNT, so substantial funds do not accumulate in the ABLE account. Similarly, it makes sense to open a Trump account for a nondisabled minor child to receive the $1,000 pilot contribution, any qualifying general contributions, or any employer contributions; however, if the objective is to save for education, a 529 Plan may be the best vehicle for receiving any gifts to the child from other sources. If the intent is to maximize savings for the child's retirement, the maximum amount should be contributed, on an annual basis, to the Trump account and then converted to a Roth IRA at the earliest time it makes sense from an income tax planning perspective. If the donor's objective is to maintain maximum control beyond the beneficiary turning age 18 but have maximum flexibility regarding the distributions, the irrevocable trust will be the best option. Regardless, if your client has a child who is eligible to receive contributions to a Trump account, do not forget to advise your client of this opportunity!


R. BELL

Rebecca C. Bell *is a shareholder of Delzer, Coulter & Bell, PA in Port Richey, practicing in the areas of estate planning, estate and trust administration and elder law. She graduated from Vanderbilt University (B.A., 1997) and Stetson University College of Law (J.D., cum laude, 1999 and LL.M. in Elder Law with distinction, 2011). She is Florida Bar Board certified in Wills, Trusts and Estates*

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and Elder Law. She is currently a member of the Executive Council of the Real Property, Probate and Trust Law Section as a co-vice chair of the IRA, Insurance and Employee Benefits committee.



D. CAZABON

***Denise Cazobon** is shareholder of Dunwody White & Landon, P.A. and is board certified by The Florida Bar in Wills, Trusts and Estates. She focuses her practice on estate and tax planning, estate settlement, and probate and trust administration. Denise earned her LL.M. in Taxation and her J.D., cum laude, from the University of Florida, and a B.A. in Psychology from the University of Miami. A former Fellow of the Real Property, Probate and Trust Law Section, Denise currently serves as a Member on the RPPTL Executive Council and Co-Vice Chair of the Estate and Trust Tax Planning Committee.*

Endnotes

1 Rev. Proc. 2026-25.
2 I.R.C. § 529(b)(1).
3 I.R.C. § 529(c).
4 I.R.C. § 529(c)(7).
5 I.R.C. § 530A(c)(2)(A).
6 I.R.C. § 529(c)(4).
7 I.R.C. § 529(c)(3)(C).
8 I.R.C. § 530A(d)(4)(B).
9 I.R.C. § 529(c)(3)(E).
10 I.R.C. § 529(c)(3)(C).
11 Fla. Stat. § 710.103.
12 Fla. Stat. § 710.111.
13 Rev. Rul. 59-357; I.R.C. § 2038.
14 Fla. Stat. § 710.116.
15 I.R.C. § 530A(d)(1).
16 Fla. Stat. § 710.123.
17 I.R.C. § 530A(a).
18 Fla. Stat. § 710.116.
19 I.R.C. § 530A(a),(b).
20 I.R.C. § 408A(d).
21 I.R.C. § 1(g).
22 I.R.C. § 408A(d).
23 I.R.C. § 408A(c).
24 The SNTs discussed in this article refer to third-party special needs trusts, which are primarily governed by Social Security Administration (SSA) policy in the POMS SI 01120.200 et seq., as opposed to self-settled/first party special needs trust that are governed by 42 U.S.C. §1396p(d)(4).
25 I.R.C. § 529A.
26 Fla. Stat. 1009.986.
27 I.R.C. § 530A(d)(4)(B).
28 I.R.C.§529A(b)(2)(B).
29 Rev. Proc. 2025-32.
30 I.R.C.§529A(c).
31 I.R.C. § 642(b)(2)(c).
32 I.R.C.§529A(c)(2).
33 I.R.C.§§ 529A(c)(1); 152(d)(2)(B).
34 I.R.C. § 529A(f).



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PROPERTY TAX REFORM: On the Ballot

By H. French Brown, IV, Partner, Jones Walker, Tallahassee, Florida

The foundations of Florida's property tax system rest in the State Constitution. Counties, municipalities, school districts, and special districts alone levy property taxes, and they must apply uniform rates within each jurisdiction. Historically, these local governments could spend property tax revenues for any general governmental purpose.

To determine the annual property taxes due, county property appraisers begin with the just value, or fair market value, of each property. Constitutional classifications, limitations, and exemptions then reduce that amount to a taxable value. Property appraisers mail this resulting taxable value in late August to each property owner on the annual Truth in Millage ("TRIM") Notice. In September, taxing jurisdictions set uniform millage rates. Those rates, multiplied by the property's taxable value, produce the amount on the November tax bill.

It is true that local property tax collections have more than doubled since 2015. In 2025, local governments collected nearly $60 billion in property tax: counties received just over $23 billion (39%), school districts nearly $23 billion (39%), and cities $9.4 billion (15%). Combined, homestead property owners paid nearly $21 billion (35%) of all property taxes that year; while non-homestead property owners paid $39 billion (65%).

Special Session and Amendment 3

On May 26, 2026, Governor Ron DeSantis called a special legislative session and released his property tax reform plan. During the two-day Special Session 2026F, the Legislature passed House Joint Resolution 1F, which became Amendment 3 ("Amendment 3" or "Amendment"). The Amendment would change Article VII of the Florida Constitution in several material ways and add a new section to Article XII.

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I. Increased Homestead Exemption

If at least sixty percent (60%) of voters approve it, the Amendment would raise the homestead exemption for non-school taxes from $51,411 in 2026 to $150,000 in 2027 and to $250,000 in 2028. Beginning in 2029, that $250,000 figure would rise each year by any positive percentage change in the Consumer Price Index. The Amendment would leave the current $25,000 school-district homestead exemption unchanged. As a result, a homestead valued at $250,000 or less would owe no county, city, or special-district ad valorem taxes, yet would still pay school-district taxes. State economists estimate the increased exemption would cost local jurisdictions approximately $8 billion in 2028 and grow to $9.6 billion annually by 2031 and thereafter.[1]

In addition to the automatic $250,000 exemption, the Amendment would require the Legislature to create, by general law, a uniform procedure that lets local governments raise the homestead exemption further—up to the full remaining assessed value—for non-school levies. Counties and cities could then set exemptions anywhere from a flat $250,001 or $500,000 to the entire value (100%) of a homestead. Special districts could expand the exemption by referendum. Without further legislative direction, each county commission and city council would decide independently, producing a patchwork of different exemption amounts on a single property tax bill.

II. Permanent Florida Resident Status on December 31, 2026

The higher non-school homestead exemption would apply only to individuals who establish or maintain permanent Florida residency on December 31, 2026. Anyone who establishes residency after that date, or who reestablishes it after a lapse, would receive only the historic $50,000 non-school exemption for the first four years of homestead status, and would become eligible for the $250,000 exemption in the fifth year.

The State tried a similar waiting period in 1982 when it raised the homestead exemption from $5,000 to $25,000. The Florida Supreme Court struck that requirement as a violation of the equal-protection clause and ordered the State to grant the increased exemption immediately to every new homestead owner. *Osterndorf v. Turner*, 426 So. 2d 539 (Fla. 1983). Courts have not yet indicated how they would treat a comparable challenge to Amendment 3, if voters approve it.

III. Annual Assessment Increase Limitations

The Constitution already limits annual increases in a homestead's taxable value to three percent (3%) or the percentage change in the Consumer Price Index, whichever is less, also known as the Save Our Homes cap.[2] In 2025, that limitation removed approximately $900 billion in otherwise taxable value from the rolls. Amendment 3 would leave the three percent (3%) homestead cap and the existing portability rules unchanged.

The Amendment would, however, lower the annual assessment increase limit for non-homestead properties from ten percent (10%) to five percent (5%). Commercial properties, apartments, second homes, and vacant lots that remain under the same ownership would benefit most. State economists estimate this change would reduce local revenues by approximately $166 million in 2028 and grow to $970 million annually by 2031. Non-homestead properties would remain uncapped for school-district taxes and would continue to pay those levies at full just value.

IV. Revenue Restricted to Core Services

If voters approve it, Amendment 3 would constitutionally confine county and city ad valorem revenues to these core purposes:

- Public safety, including law enforcement, fire, and emergency medical services;
- Education and public schools;
- Infrastructure, including roads, bridges, and stormwater;
- Natural-resource projects, including flood control;
- Debt service on existing obligations and bonds that serve the listed purposes;
- Local-government employee retirement benefits; and
- Operations and administration that county or city officers approve, unless general law prohibits them.

The Amendment would not limit a local government's power to raise millage rates or to levy non-ad valorem special assessments and impact-related fees.

Legal Challenge to the Ballot Title and Summary

Shortly after the Legislature approved House Joint Resolution 1F, challengers filed suit. On August 3rd, a Leon County circuit judge held that the ballot title and summary are "clearly and conclusively defective."[3] The court applied longstanding Florida Supreme Court standards that require ballot language to remain accurate, objective, and neutral and that forbid language that "hides the ball" or advocates for a position rather than explains it.

The court granted the plaintiffs' motion for summary judgment and found the Amendment's title "Save Our Homes from Excessive Property Taxes" improper for three reasons.

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First, the word "save" constitutes emotional rhetoric that the Florida Supreme Court has previously disapproved.[4] Second, the phrase "Save Our Homes" misleadingly invokes the existing popular homestead three percent (3%) annual assessment limitation, which Amendment 3 does not change. Third, the word "excessive" is inaccurate because the Amendment neither restricts millage rates nor shields renters or non-homestead owners from possible rate increases the court held.

The court also found the summary defective on multiple independent grounds. It improperly concludes that the Amendment "benefits Florida taxpayers." The phrase "ensuring funding for core services" is neither fair nor accurate. The court held that the Amendment could, for the first time, give the Legislature control over local ad valorem spending—a major structural change that the ballot summary must disclose to voters. The court ordered the removal of the claim that the Amendment protects small businesses, noting that the text neither mentions nor protects them in any way. Likewise, the court found that the Amendment does not protect any non-homestead property from higher millage rates or special assessments. Therefore, the court directed that both the ballot title and the deficiencies contained in the summary be revised.

Florida law requires the Attorney General, once a court finds ballot language defective, to prepare a revised title and summary within ten days that corrects the identified deficiencies.[5] The following revised statement will appear on the ballot in November:

INCREASED HOMESTEAD EXEMPTION; LOWER CAP ON INCREASES IN NON-HOMESTEAD PROPERTY ASSESSMENTS.-

This amendment increases the homestead exemption, for all non-school taxes, to $150,000 in 2027 and $250,000 in 2028, and adjusts for inflation thereafter. It requires the Legislature to prescribe a uniform procedure for counties and municipalities, for their respective levies, to increase the homestead exemption up to full assessed value, and allows special districts, subject to referendum approval, to do the same.

Persons who are not Florida residents on December 31, 2026, will receive the existing homestead exemption upon qualifying for a homestead exemption, with the increased homestead exemption beginning with the fifth year of exemption, to the extent permitted by the U.S. Constitution.

This amendment reduces the annual cap on assessment increases for non-homestead properties from 10% to 5%.

This amendment requires counties and municipalities to use property taxes solely for public safety, education and schools, infrastructure, natural resources, bond debt service, retirement benefits for employees, and operations and administration. Other expenditures may be approved by county officers or county or municipal governing bodies unless prohibited by general law, notwithstanding Article VII, Section 9(a) of the Florida Constitution, which allows counties and municipalities to levy property taxes for their respective purposes.

This amendment takes effect January 1, 2027.

Amendment 3 would represent one of the most significant potential restructurings of Florida's local property-tax base in decades. Its fate rests with voters in November 2026, and the full depth of its impact will emerge only after subsequent legislative and local implementing actions.



F. BROWN

***H. French Brown IV** offers clients nearly twenty of experience practicing law and lobbying in the area of state and local taxation. French specializes in all Florida taxes including sales tax, corporate income tax, motor fuels tax, communications services tax, property tax, and documentary stamp tax.*

Over the last ten years, French has been deeply involved with most major tax legislation moving through the Florida Capitol. Through his representation of some of Florida's largest trade associations and taxpayers, including the Real Property, Probate, and Trust Law Section of the Florida Bar, Florida Chamber of Commerce, Florida Retail Federation, and Florida Realtors, French has directly worked on and advocated for tax legislation to benefit both companies and taxpayers. In 2018, French served as counsel to the successful constitutional proposal to permanently preserve the State's annual ten-percent assessment limitation on commercial property tax increases, which was approved by 66.5% of voters in the general election.

Endnotes

1 https://edr.state.fl.us/Content/conferences/revenueimpact/archives/2026F/_pdf/impact0710.pdf
2 Fla. Const. art. VII, §4.(d)(1).
3 *Save Our Voters from Misleading Ballot Language, Inc. v. Byrd*, Consolidated Case Nos. 2026 CA 1254, 2026 CA 1405, and 2026 CA 1381 (Fla. Cir. Ct., August 3, 2026).
4 *In re Advisory Op. to the Att'y Gen.—Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994).
5 Fla. Stat. §101.161(3)(c).

PROBATE RULES UPDATE

By J. Allison Archbold, Esq., Archbold Law Firm, P.A., Sarasota, Florida

Recently, the Probate Rules were updated so that it modifies the Letters of Curatorship, the Order Appointing Curator, the Petition for Administration, and the Oath of Personal Representative.

In re: Amendments to Florida Probate Rules, 51 Fla. L. Weekly S182 (Fla. June 18, 2026)

Rule 5.025 (Adversary Proceedings) was amended to correct a grammatical error, changing "must be conducted similar to suits" to "must be conducted similarly to suits."

Rule 5.122 (Curators) was amended to require letters of curatorship to address the scope of authority of "the curator to possess or control all or part of the decedent's property, which the court may enforce through contempt proceedings." The order appointing curator must also state whether the curator has the authority to address any demand filed under Rules 5.240 (Notice of Administration) and 5.241 (Notice to Creditors).

Rule 5.200 (Petition for Administration) was amended to require the petition for administration to include a statement regarding whether the person seeking appointment has been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in Fla. Stat. §§ 825.101, 825.102, and 825.103. Prior to the amendment, Rule 5.200 only referenced Fla. Stat. § 825.101.

Rule 5.320 (Oath of Personal Representative) was amended to require the oath of personal representative to include a statement that the prospective personal representative has never been convicted of abuse, neglect, or exploitation of an elderly person or a disabled adult, as those terms are defined in Fla. Stat. §§ 825.101, 825.102, and 825.103. Prior to the amendment, Rule 5.320 only referenced Fla. Stat. § 825.101.

Rule 5.470 (Ancillary Administration) was amended to bring uniformity to the language within the rule for testate and intestate administrations.

Grammatical changes were also made to the rules listed above to comply with *In re Guidelines for Rules Submissions*, Fla. Admin. Order No. AOSC22-78 (Fla. Oct. 24, 2022) (the "Guidelines").

Effective Date: October 1, 2026

Grammatical Style and Cross-Reference Changes

In re: Amendments to Florida Probate Rules, **No. SC2025-1478,** *2026 WL 1831417 (Fla. June 25, 2026)*

All of the rules that reference Florida Rules of General Practice and Judicial Administration Rules 2.516 (Service) and 2.525 (Filing) were amended to reflect the new titles of those rules. Grammatical changes were also made to comply with the Guidelines.

Effective Date: October 1, 2026

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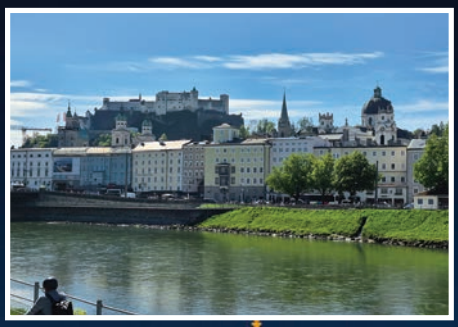


















Photos by Silvia Rojas and Roland Ferrigato



















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MAY 28, 2026 – MAY 30, 2026





























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Real Property Case Summaries

By Lisa M. Super, Zimmerman, Kiser & Sutcliffe, P.A., Orlando, Florida

Failure by a residential tenant to deposit accrued rent into the court registry after entry of a court order on a motion to determine the amount of rent constitutes an absolute waiver of all affirmative defenses under Fla. Stat. § 83.60(2) and entitles landlord to an immediate judgment of possession.

Zambrano v. Quintana, 51 Fla. L. Weekly D1293 (Fla. 3d DCA June 24, 2026)

The Appellant, Angel Guillermo Zambrano, entered into a residential lease agreement with the Appellee, Alberto Quintana, for the rental of an apartment unit within a condominium building. Appellant, the tenant, sent notices to Appellee, the landlord, requesting repairs of the elevator in the building and the air conditioner in the unit. The repairs were ultimately performed, but the parties dispute the extent of the repairs and the timing. Thereafter, upon listing the property for sale, Appellee posted at the property and mailed to the Appellant a thirty-day notice to vacate the premises, reflecting Appellee's intent to terminate the month-to-month lease.

Appellee then filed a complaint seeking only to terminate the lease and to evict the Appellant. Appellant answered, raising twelve affirmative defenses and eleven counterclaims, and requesting a hearing on his motion to determine rent. The trial court ordered the Appellant to deposit $7,200 into the court registry. The Appellant failed to comply with order and to the deposit the payment into the registry.

Appellee moved to strike Appellant's pleadings and requested entry of a default final judgment of possession. The trial court granted the motion, struck Appellee's pleadings, and entered a default final judgment of possession on the basis that Appellant's counterclaim was moot. In response, Appellant requested a jury trial, which Appellee moved to strike. The court struck the request for a jury trial on the basis that the Appellant did not demand jury trial in his answer or counterclaim. Appellant renewed the demand for a jury trial on all claims and counterclaims, which was stricken again by the trial court based on Appellant's failure to comply with the court's rent order. The trial court further ordered Appellee to file a responsive pleading to the counterclaim. Appellant filed an appeal.

The appellate court noted that Fla. Stat. § 83.60(2) (2025) provides that in an action by a landlord for possession of a dwelling unit, if a tenant interposes any defense other than payment, the tenant must pay the accrued rent as alleged in the complaint, and any rent accruing during the pendency of the proceeding, into the court registry when due. The appellate court further noted that the tenant's failure to pay rent into the registry after the trial court entered an order on a motion to determine the amount of rent, constituted an absolute waiver of a tenant's defenses other than payment, and that the landlord was entitled to an immediate default judgment for removal with a writ of possession.

The appellate court cited *Kaufman v. High Seas, LLC*, which held that Fla. Stat. §83.60(2) is not discretionary, and compels payment of rent into the court registry, even if a tenant has pending counterclaims.[1]

In connection with the counterclaims, the appellate court noted that in deciding *Vazquez*, it adopted the analysis of the Fifth District in *K.D. Lewis Enterprises Corp. v. Smith*, which held that the deposit requirement imposed by Fla. Stat. §83.60 applied only to actions for possession, not to actions involving counterclaims for injunctive relief and damages.[2]

Accordingly, the appellate court affirmed the default final judgment of possession, in favor of the landlord, and reversed the trial court's order with direction to reinstate the tenant's counterclaims.

A buyer seeking damages for nondisclosure under *Johnson v. Davis* must timely present evidence that the seller had actual knowledge of a material, non-observable defect. Failure to timely respond to a motion for summary judgment allows a judgment that the seller lacks actual knowledge to remain undisputed.

Davidovich v. Lippoff, 51 Fla. L. Weekly D1328 (Fla. 3d DCA July 1, 2026)

The Appellant, Sara Davidovich, executed an "as is" residential contract for the sale and purchase of a condominium owned by the Appellee, Jill Lippoff. In the trial court, Appellant alleged that Appellee failed to disclose that the travertine floors were installed in the condominium without a permit. Appellee moved for summary judgment, contending in the motion that she lacked knowledge that the floors were installed without a permit. Appellant failed to timely respond to Appellee's motion for summary judgment. The trial court entered an order granting final summary judgment, in favor of Appellee.

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The appellate court affirmed the trial court's decision, holding that the Appellant's failure to timely respond to Appellee's motion for summary judgment allowed the Appellee's assertion that she lacked knowledge of the unpermitted floor installation to remain undisputed in the record. In coming to this decision, the appellate court cited first to Fla. R. Civ. P. 1.510(c)(5), which states, in relevant part, that when filing a motion for summary judgment, "[t]he movant must also serve the movant's supporting factual position… [and] the nonmovant must serve a response that includes the nonmovant's supporting factual position…." The appellate court then citied *Casey v. Mistral Condo. Ass'n, Inc.*, noting that:

> if . . . the movant satisfies its initial burden, [t]he burden then shifts to the nonmovant to establish the existence of at least one fact issue which is both 'genuine' and 'material.' To satisfy that burden, the nonmoving party must present competent evidence that shows a genuine issue for trial.[3]

The appellate court further noted the actual knowledge component established pursuant to *Johnson v. Davis*, which states that:

> where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer.[4]

The court then pointed to *Smith v. Lynch*, which held that a finding of a seller's liability under *Johnson* requires that the seller had actual knowledge of the facts materially affecting the property.[5] As such, the trial court's decision was affirmed.

An upland owner's riparian right of view protects a direct, unobstructed view of the adjoining waterway but does not bar a neighboring landowner from building a dock and boatlift directly in front of their property when the structure does not unreasonably interfere with the neighbor's direct view.

Kessler v. Ayzen, 51 Fla. L. Weekly D1332 (Fla. 3d DCA July 1, 2026)

Jack Kessler (Appellant) and Alexander and Alla Ayzen (Appellees) own neighboring townhomes in Aventura on the Intercoastal Waterway. Both properties have direct, unobstructed views of the Intercoastal. In 2020, the Appellees attempted to build a marginal dock and boatlift immediately behind their home. In connection therewith, they applied for a Class I permit with the Miami-Dade Division of Environmental Resources Management and obtained consent from the homeowners' association for construction of the proposed dock. Appellant objected to installation of the dock as it would partially obstruct Appellant's view of the Intercoastal on one side by 32 degrees.

Appellant filed a complaint against the Appellees for declaratory judgment, seeking to determine "whether the Ayzens' current plan for a dock impermissibly infringes upon Mr. Kessler's riparian or littoral right to an unobstructed view of the Intracoastal Waterway and regarding the extent of the parties' riparian or littoral rights." The Appellees counterclaimed, seeking a declaratory judgment that the proposed dock and boatlift did not violate Appellant's riparian rights. The Appellees moved for summary judgment, arguing that the dock and boatlift would not impermissibly infringe on the Appellant's riparian rights, since it only partially obstructed the view on one side.

The trial court held in favor of the Appellees, reasoning that the dock and boatlift did not "substantially and materially" interfere with Appellant's view of the Intercoastal Waterway as "[Appellant] has a right to an unobstructed view over an area in the direction of the Waterway, such right is not exclusive against all interference when looking upon the Waterway from the upland property in a particular direction."

On appeal, the court relied on *Ferry Pass Inspectors' & Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n,* which held that Florida upland owners hold certain special rights that are incidental to their ownership, which rights include the right to access, the right to use, the right to an unobstructed view, and the rights of alluvion and dereliction.[6] The appellate court also cited *Williams v. Guthrie*, which held that an upland owner may erect a dock in front of their property with permission from the appropriate authority.[7] Further, the appellate court cited Fla. Admin. Code. R. 18-21.004(3)(c), which provides that the dock must be built "in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland owners." Finally, the court relied on *Hayes v. Bowman*, which held that the right to a "direct, unobstructed view" of the water does not include an unobstructed view in all directions to the exclusion of all other's rights.[8]

The appellate court determined that a reasonable jury would not find that the marginal dock and boatlift violated the Appellant's riparian rights. Accordingly, the Appellees were entitled to build a dock and boatlift, provided the structures did not infringe upon the Appellant's rights. The court further found that the proposed structures were situated directly in front of the Appellees' property, and therefore, the structures did not injure the Appellant's "direct, unobstructed view" of the water in front of his property.

As such the trial court's decision was affirmed.

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Probate Case Summaries

By Emily K. Crain Evans, the Law Offices of GrayRobinson, P.A., Lakeland, Florida

Florida's constitutional homestead protection extends to adult children who inherit homestead property held in a revocable trust, shielding the property from estate creditors. The court further concluded that because the trust did not specifically require the sale of the homestead to pay debts, the homestead exemption attached at the decedent's death and prevented the property from being used to satisfy creditor claims.

Schiro v. Est. of Napuunoa, 51 Fla. L. Weekly D1091b (Fla. 2nd DCA May 29, 2026)

Following the death of Sally A. Napuunoa (the "Decedent"), Kim L. Elliott, as personal representative of the estate, filed a petition seeking a determine from the court that the decedent's residence constituted protected homestead of the decedent and was exempt from creditor claims. The petition asserted that, although the property was titled in the decedent's revocable trust (the "Trust") during her lifetime, upon her death the homestead protection from creditor claims inured to the decedent's three children.

Joel and Tammy Schiro (the "Schiros") were judgment creditors who filed statement of claims in the estate. The Schiros moved to dismiss the petition arguing that the homestead protection was limited to the decedent's surviving spouse and minor children. After a hearing, the court denied the motion to dismiss and entered the order.

On appeal, the Schiros argue (1) that the property belongs to the probate estate and not the Trust because the Decedent's will grants the personal representative with the power "to lease or sell personal or real property of the estate, or alternatively (2) if the property belongs to the Trust, the property should be sold to pay creditor claims because the Decedent's will states that property, wherever situated, has been provided for payment of debts and expenses of administration.

The Second District Court of Appeal affirmed. It found that the property was titled in the Trust, not the estate, and that the Decedent maintained ownership in the residence, even though the revocable Trust held the title, because she retained the right to revoke the Trust. It also found that the constitutional exemption extends to the Decedent's three adult children and is not limited to a surviving spouse and minor children, specifically citing that the homestead protection from creditors flows to a trust's "beneficiary who would be otherwise entitled to claim homestead protection had title passed directly to them by devise or intestacy."

The appellate court further found that the Schiros' second argument failed because the property was in the Trust and the language of the Trust did not specifically direct the trustee to sell the property, therefore the homestead protection rights of the Decedent attached at the Decedent's death and the property cannot be sold to satisfy claims of the estate's creditors.

The personal representative satisfied her statutory duty to conduct a reasonably diligent search for reasonably ascertainable creditors through the use of agents, review of the decedent's records, consultation with knowledgeable individuals, and a search of public records. Given that those efforts revealed no indication of an active claim, the creditor was not reasonably ascertainable and was not entitled to an extension of time to file a claim against the estate.

Ceglio v. Womer, 51 Fla. L. Weekly D1071a (Fla. 4th DCA May 27, 2026)

The decedent died in June 2023 and the decedent's sister, Nancy Womer ("Womar"), was the named and appointed personal representative of the estate. A Notice to Creditors was published on September 1, 2023, advising all persons having claims against the estate to file a claim against the estate within three months from the date of first publication.

Womar, who was legally blind, relied on her son and the estate's attorney to assist with identifying potential creditors. These agents reviewed decedent's mail, bills, and documents maintained in his office. The agents also consulted with someone familiar with the decedent's affairs and searched public records for judgements. The decedent's assistant stated there had been some litigation issues with David Ceglio ("Ceglio"), but those had been resolved. A review of the court's docket showed a previous lawsuit where there had been no filings for several years prior to the decedent's death.

Ceglio filed a claim in the estate in March 2024 and Womar served Ceglio with a notice that the claim was untimely. Ceglio filed for an extension of time to file the claim and argued that he was a reasonably ascertainable creditor, but Womar opposed the motion arguing that she conducted a reasonably diligent search through her agents. *continued, page 43*

An evidentiary hearing was conducted and the probate court heard evidence from Ceglio, Womar, and the agents of Womar. Womar and her agents testified that they had no knowledge of the decedent's business affairs, that they reviewed all records, consulted with the decedent's assistant, and believed there was no ongoing dispute.

The trial court found that Womar, through her agents, conducted a diligent search for creditors and that Ceglio was not a reasonably ascertainable creditor and denied Ceglio's motion for an extension of time.

On appeal, the Fourth District Court of Appeal reviewed (1) the standard of review and governing law; and (2) whether the probate court reasonably concluded Ceglio was not a reasonably ascertainable creditor.

A probate court's determination of whether a claimant is a reasonably ascertainable creditor is reviewed for abuse of discretion *Simpson v. Est. of Simpson*, 922 So. 2d 1027, 1029 (Fla. 5th DCA 2006).

Fla. Stat. § 733.2121 states the personal representative must promptly publish a notice to creditors. Fla. Stat. § 733.702(1) states that a creditor must file a claim within three months of publication of the notice to creditors, unless the creditor is entitled to actual notice. Fla. Stat. § 733.2121(3)(a) of the Florida Probate Code requires the personal representative conduct a "diligent search" to identify "reasonably ascertainable creditors" and serve them with notice. However, "[i]mpracticable and extended searches are not required." A reasonably ascertainable creditor is one who can be identified through "reasonably diligent efforts." *Strulowitz*, 839 So. 2d at 879 (quoting *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478 (1988) ("[A]ll that the executor or executrix need do is make 'reasonably diligent efforts' to uncover the identities of creditors.")).

The Fourth District Court of Appeal affirmed the probate court's ruling finding that, based on the record and evidence,the efforts revealed nothing indicating an active claim by Ceglio. Accordingly, Womar and her agents conducted a reasonably diligent search, and Ceglio was not a reasonably ascertainable creditor.

The appellate court further noted that the probate court, as the finder of fact, was in the best position to weigh the witnesses' credibility and was persuaded by the testimony of Womer and other witnesses about the efforts made to discover possible creditors of the estate. Such credibility determinations are entitled to substantial deference.

The court affirmed that the decedent remained domiciled in Florida, holding that the daughters failed to overcome the presumption that an established domicile continues until a new domicile is proven by both physical presence and the intent to remain there indefinitely. Although the decedent and his family had returned to Brazil, the evidence showed he maintained significant ties to Florida, supporting the trial court's finding that Florida remained his domicile for probate purposes.

Oliveira v. Oliveira, 51 Fla. L. Weekly D976a (Fla. 3rd DCA May 13, 2026)

The decedent was a pilot who owned a residence in Coconut Grove, Florida, and five residences in Brazil. In 2019, the decedent was granted an EB-5 visa and he, his wife, and their two minor children were granted Permanent Resident Cards. The family resided at the Coconut Grove residence for several years and the minors were enrolled in school in Miami. The decedent traveled continuously to Brazil to oversee his business interests. In January 2023, the couple and the family returned to Brazil and enrolled their children in local schools. In April 2023, the couple put their condo in Coconut Grove up for sale. Ten days later, the decedent entered into a sales contract but died in a plane crash the following day.

The surviving spouse filed domiciliary probate proceedings in Miami-Dade Florida claiming the decedent's last known residence and domicile as the Coconut Grove property. The adult daughters of the decedent filed a motion to convert the domiciliary proceedings to ancillary probate administration contending the decedent was domiciled in Brazil.

The court had a multi-day evidentiary hearing ultimately denying the motion to convert the proceedings to ancillary proceedings finding that the daughters did not meet their burden of proof in establishing the decedent was domiciled in Brazil.

The appellate court found that, while domicile and residence are synonymous under the Florida Probate Code, a domicile determination requires a totality of the circumstances approach weighing a constellation of the facts and evidence of intent. Once a domicile is established, it continues unless there is a showing of a new residence coupled with the intention of residing permanently or indefinitely at the "new abode."

Since the decedent was domiciled for many years, there was a presumption of continued domicile, and the daughters had the burden of proving the decedent abandoned Florida and intended to remain indefinitely in Brazil. The evidence presented showed the decedent maintained a Florida driver's license, visa, Green Card, maintained Florida vehicle

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PRACTICE CORNER

Real Property Division

BUYERS BEWARE: *What is the Knowledge requirement needed to prove Seller's Fraud under Johnson v. Davis?*

By Camille T. Bailey – Sajdera, P.A., Boca Raton, Florida

Under the Florida Supreme Court's seminal case Johnson v. Davis[1] real property buyers are given a road map for causes of action for fraudulent misrepresentation and/or breach of the FR/BAR contract, specifically where the seller asserts that he or she has no knowledge of any defect materially affecting the value of the home that is not readily observable to the buyer..

The Supreme Court in *Johnson v. Davis* held that "where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer."[2]

So what specifically is the knowledge requirement of a seller that an attorney for a buyer needs to prove in order to have a viable case for fraudulent misrepresentation and breach of contract under *Johnson v. Davis*? Courts have generally held that, in order to prove that the seller had actual knowledge, the courts require more than circumstantial evidence, it requires competent, sufficient evidence of knowledge. [3]

In *Jensen v. Bailey*, the buyer alleged that the sellers failed to disclose a material defect in the property under *Johnson v. Davis*. When the sellers filled out the property disclosure statement before the contract was signed, they answered "No" in response to the question of whether the sellers were aware of any improvements or additions to the property that had been constructed in violation of building codes or without permits. Later, the buyer found out that permits had not been issued for some of the work that had been completed on the property. The buyers then sued the sellers. The court found that there was no evidence that the sellers actually knew about the seller's failure to obtain permits or the improper work completed on the property.

The appellate court further concluded that to hold the seller liable under *Johnson v. Davis,* the buyer must prove the seller's actual knowledge of an undisclosed material defect.[4] The appellate court reversed the circuit court's ruling, which found the seller liable to the buyer under a "should have known" standard.[5] The appellate court held that actual knowledge over the "should have known" standard is required under *Johnson v. Davis*. As such, an attorney must ensure that the client has evidence that goes beyond what the seller should have known, and instead, establishes, through competent evidence, what the seller actually knew in order to have a viable cause of action under *Johnson v. Davis*.



C. BAILEY

***Camille Bailey** practices with the law firm of Sajdera, P.A. in Boca Raton, Florida, where she focuses on condominium and homeowners' association law, as well as business litigation. Ms. Bailey represents associations and individual owners in property disputes, enforcement actions, and trial matters. She completed her undergraduate studies at the University of South Florida and earned her Juris Doctor from Florida Coastal School of Law.*

Endnotes

1 480 So. 2d 625, 629 (Fla. 1985).
2 *Id.*
3 *Jensen v. Bailey*, 76 So. 3d 980, 984 (Fla. 2d DCA 2011) citing *Slitor v. Elias,* 544 So. 2d 255, 25 (Fla. 2d DCA 1989).
4 *Id. at* 983 (Fla. 2d DCA 2011).
5 *Id.*

PRACTICE CORNER

Probate Division

WHEN THE FAMILY CALLS FIRST: *Ethical and Practical Considerations When Relatives Contact You About A Client With Diminished Capacity*

By Jennifer Bost Thomas, Esq., Thomas Estate Law, PLLC, Ponte Vedra Beach, Florida

Few situations place estate planning attorneys in a more uncomfortable position than receiving a call from an adult child or another family member expressing concern that their loved one "isn't thinking clearly anymore." Often, the family member wants to schedule an appointment to explain what changes should be made to a loved one's estate planning documents or to ask the attorney to "help us get Mom's affairs in order."

In many cases, these calls come from loving family members who genuinely want to protect a vulnerable parent and whose concerns may be entirely legitimate. However, the attorney's challenge is not in deciding whether the family is right, but in determining how to respond in a manner that is consistent with the lawyer's ethical duties to the client.

When that call comes, Florida estate planning attorneys should begin with Rule 4-1.14 of the Rules Regulating The Florida Bar, entitled "Clients with Diminished Capacity," and its accompanying commentary.

Rule 4-1.14 instructs attorneys to maintain, as far as reasonably possible, a normal client-lawyer relationship. As the commentary explains, a normal relationship assumes the client, when properly advised and assisted, is capable of making decisions about important matters. It is not uncommon to encounter clients whose cognitive abilities appear to be declining while they, nevertheless, remain capable of understanding advice and making their own decisions.

The rule also recognizes that involving family members or other trusted persons may sometimes assist in the representation. The commentary notes that the presence of these individuals may further the rendition of legal services without waiving attorney-client privilege; however, the lawyer "must keep the client's interests foremost and ... must look to the client, and not family members, to make decisions on the client's behalf." This distinction is easy to state but is much harder to apply when concerned family members are attempting to protect a vulnerable loved one.

When you receive "The Call" it may be advisable to take the following steps:

- Listen to the caller thoughtfully but make no promises about representation or future planning
- Do not disclose confidential information about your client
- Clarify at the outset whom you represent, and whom you do not
- Communicate directly with the client whenever possible, preferably in a private setting, then bring family members in, if it will further the rendition of legal services to the client
- Assess the client's decision-making capacity for the task at hand, rather than assuming incapacity based on age, diagnosis, or family concerns
- Consider whether the proposed plan represents a significant departure from the client's prior planning or what might otherwise be expected under Florida law
- Document your observations
- Determine whether Rule 4-1.14 permits or requires any additional protective action

Although Rule 4-1.14 authorizes protective action in limited circumstances, its starting point is not intervention. Rather, it emphasizes preserving the client's autonomy and, to the extent reasonably possible, maintaining a normal client-lawyer relationship. Far from being an obstacle, Rule 4-1.14 provides a practical framework for supporting vulnerable clients while respecting their right to make their own decisions.



J. THOMAS

Jennifer B. Thomas *is the founder of Thomas Estate Law, PLLC, in Ponte Vedra Beach, FL, focusing on estate planning, business planning, charitable planning, and probate and trust administration. She earned her B.A. from Florida State University and her J.D. from Emory University School of Law. She is licensed to practice in both Florida and Georgia.*



Roundtable

REAL PROPERTY LAW DIVISION ROUNDTABLE

SATURDAY, MAY 30, 2026

Ponte Vedra Inn & Club | Ponte Vedra Beach, Florida

Prepared by Colleen Coffield Sachs, Esq., Santa Rosa Beach, Florida
and Michelle Hinden, Esq., Orlando, Florida

Thank you to the Roundtable Sponsor - The FNF Family of Companies

The Director of the Real Property Law Division, Steve Mezer, called the meeting to order at 8:04 a.m.

Sponsor Announcement

The Chair recognized and thanked the Real Property meeting sponsor, The FNF Family of Companies, represented by Cynthia Manfredi.

Action Items:

Construction Law – Brett Henson

Brett Henson provided background regarding the committee's white paper and proposed legislation on public procurement. He explained that the proposal originated following a Florida Bar Journal article published in November/December identifying ambiguities and conflicts between Florida's Public-Private Partnership (P3) statutes and the Consultants' Competitive Negotiation Act (CCNA). In response, the Construction Law Committee formed a study committee and worked with Nelson Mullins to prepare a white paper addressing these issues.

Key issues addressed by the proposed legislation include the Public-Private Partnership Statutes and the CCNA. While the CCNA applies to public-private partnership projects, an inconsistency exists because the CCNA generally requires a public entity soliciting professional services to receive at least three responses. However, under the current public-private partnership statutes, a public entity may accept certain unsolicited proposals without public advertisement. The proposed legislation seeks to reconcile these conflicting statutory provisions and to provide greater clarity.

In developing the proposal, the committee worked with various organizations within The Florida Bar, as well as numerous construction industry trade groups, to gather input and to address concerns.

The proposal was formally vetted and approved by the Construction Law Committee before being presented to the Executive Council as an Information Item.

The committee moved to approve the white paper and authorize the accompanying legislative proposal. The motion was approved.

Information Items:

Steve Mezer noted that approximately 80% of Section committee webpages require updating and discussions are underway regarding retaining assistance to modernize the websites.

Title Issues and Standards - Amanda Hersem, Lee Offir, and Melissa Scaletta

Melissa Scaletta, who has chaired the Conveyances Subcommittee for the past four years, discussed the proposed revisions to the Conveyances chapter of the Florida Uniform Title Standards.

She reported that Chapter 3 titled, "Conveyances" remains one of the most frequently used portions of the Uniform Title Standards. The chapter has been expanded to 15 standards. The revisions improve organization, clarity, readability, and modernize title practice guidance. The new standards address authority to convey property in incompetency situations, authority involving entity conveyances, and Remote Online Notarization (RON). Existing standards were comprehensively updated. The committee emphasized that the revisions do not create new law, are based entirely upon existing Florida law, and do not adopt aggressive or novel legal positions.

The proposal was presented as an Information Item. The committee intends to present the revised standards for formal approval at the Breakers meeting and requested comments prior to that meeting.

Condominium and Planned Development – Shawn Brown

Shawn Brown presented proposed legislation concerning private arbitration in condominium dispute resolution. The proposal would permit qualified board-certified condominium attorneys to serve as private arbitrators authorized by the Division of Florida Condominiums, Timeshares and Mobile

continued, page 47

Homes; use practitioners with specialized expertise to expedite dispute resolution; incorporate concepts from recent civil procedure amendments; address various technical appellate issues; and clarify procedures involving emergency and injunctive relief.

Shawn Brown reported that substantial feedback had recently been received regarding the proposal. After discussion, the committee determined it would be preferable to continue refining the legislation through use of a task force.

Committee Reports

99-Year Lease Task Force – Lori Ellen Ward

Lori Ellen Ward reported that progress was made during the past year. The task force adopted its mission to develop a proposed statutory framework governing residential ground leases. She said that additional committee members are welcome. The task force recently met following the Real Estate Leasing Committee Meeting and received valuable comments from attendees. Susan Spurgeon inquired whether governmental 99-year leases along the Florida Panhandle coastline would also be addressed.

Commercial Real Estate - Ashley McRae and Alexandra Gabel, Co-Chairs, Michael Maguire and Angela Gasparri, Co-Vice Chairs

Ashley McRae reported that additional CLE presentations are in the works. The plan is to have speakers discussing multiple generations in today's workforce.

Adele Stone and Jeff Dollinger presented a Tale of Two Henrys, Part II on the history of Florida real estate.

Condominium and Planned Development Law - Joel McTeague and Jennifer Bloodworth, Co-Chairs, Jourdan Haynes and Christine Ertl, Co-Vice Chairs

Joel McTeague reported that the committee has been working on a position statement dealing with *Kaufman v. Shere*, which is more procedural than substantive, particularly concerning future application of statutory amendments. The committee continued work on MRTA revitalization reforms, Fla. Stat. § 718.117 condominium termination reforms, Biscayne 21 voting-interest issues, the 99-Year Lease Task Force, and Official Records reform, including AI-related issues.

The committee anticipates presenting additional proposals at the Breakers meeting. Joel also noted that the committee successfully opposed several pieces of legislation introduced during the past legislative session.

Condominium Board Certification Review Course Committee - Alessandra Stivelman, Chair, Alan Schwartzseid and Laura Manning-Hudson, Co-Vice Chairs

Alessandra Stivelman reported that the committee successfully conducted the Condominium Board Certification Review Course at Miami Tower, including a speaker dinner. Attendance included both in-person participants and Zoom attendees. They appreciated the excellent sponsor participation. The committee intends to continue expanding the program.

Joel McTague reported that 15 applicants sat for the certification examination, and five passed. The total number of board certified condominium attorneys now approaches 200 statewide.

Construction Law – Bruce Partington, Chair, Bret Henson and Jason Quintero, Co-Vice Chairs

Bruce Partington congratulated Brett Henson on his Rising Star Award. He reported that the committee held 10 monthly meetings, each including a CLE presentation. It also presented one Section-wide CLE, published three to four ActionLine articles, and published a Florida Bar Journal article. The committee webpage was updated with assistance from Klarika Caplano. The webpage was held out as an example of what a committee webpage should look like.

Construction Law Institute - Trevor Arnold, Chair, Haley Maple and Nikki Bhavsar, Co-Vice Chairs

Trevor Arnold reported that the committee successfully held the 2026 Construction Law Institute, which included a golf tournament, at the Orlando JW Marriott. Programming was coordinated with the Coverage College insurance program. Attendance included numerous first-party practitioners and major sponsors. Planning is underway for the 2027 program in Orlando.

Liaison with Florida Land Title Association (FLTA) - Melissa Murphy, Alan McCall, Alan Fields and Jim Russick, Co-Liaisons

Brian Hoffman reported that significant changes may be forthcoming regarding title insurance rates. Recent amendments to Chapter 120 could impact Florida's promulgated rate system. FLTA continues reviewing available data in anticipation of possible rate review. FLTA is preparing an amicus brief for the *Chris v. Manhattan Palms* clerk indexing litigation. Although FLTA's legal position differs somewhat from the Section's position, both organizations share the same ultimate objective and anticipate continued collaboration.

Real Estate Leasing - Chris Sajdera and Ryan McConnell, Co-Chairs, Terrance Harvey and Adele Stone, Co-Vice Chairs

Adele Stone reported that the committee held a discussion regarding vexing lease provisions. They will continue the discussion at future meetings. Future leasing educational programming remains under consideration.

Real Property Financing and Lending - Jason Ellison and Deb Boyd, Co-Chairs, Jeremy T. Cranford and Klarika J. Caplano, Co-Vice Chairs

Jason Ellison reported that the committee presented more than 7 CLE programs in conjunction with other committees.

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Real Property Law Division Roundtable, from page 47

The committee expressed appreciation for their assistance to Nicole Villarreal on administrative matters and Shawn Brown on CLE matters. They welcomed Rich McIver back as Chair of the Foreclosure Rights Subcommittee.

Jason also discussed an ongoing task force studying the interaction between probate law and judgment liens under Fla. Stat. § 55.10. Jeremy Cranford noted that the task force has not reached consensus regarding the nature of the issue.

Real Property Litigation - Manny Farach and Amanda Kison, Co-Chairs, Sanjay Kurian and Lindsay Moczynski, Co-Vice Chairs

Amanda Kison reported on continued work regarding AI billing guidelines. The committee formed a task force addressing Fla. Stat. §§ 196.031 and 196.161, concerning homestead exemptions. It also expressed concern regarding aggressive audits by certain property appraisers resulting in removal of homestead exemptions, significant back taxes, penalties, and loss of Save Our Homes protections.

Planned CLEs include Beyond *Johnson v. Davis*; Realtor Misrepresentation Claims; and Easement Termination.

Real Property Problems Study - Susan Spurgeon and Brian Hoffman, Co-Chairs, Leonard "Len" F. Prescott, and Scott Pence, Co-Vice Chairs

Brian Hoffman reported continued work regarding *Chris v. Manhattan Palms*; enhanced life estate apportionment issues; and potential statutory amendments addressing maintenance obligations and apportionment rights involving enhanced life estates. The committee continues coordinating with probate on this.

Residential Real Estate and Industry Liaison - Jamie Marx and Kristen Jaiven, Co-Chairs, Rebecca L.A. Wood and Erin Miller, Co- Vice Chairs

Kristen King Jaiven reported on an upcoming CLE concerning Series LLCs. The "Contract to Closing" CLE was recently recorded and is available through the CLE library. They expressed appreciation to Rebecca Wood for her service.

Title Insurance and Title Industry Liaison - Chris Smart, Chair, Leonard F. Prescott, and Shannon Widman, Co-Vice Chairs

Shannon Widman reported that the committee presented a CLE addressing surveys and title insurance and published an ActionLine article. She provided an update on the vacatur of the FinCEN rule. No one expects a stay to be granted. Look for something to happen with that rule after the first of the year. She also noted that the Series LLC legislation becomes effective on July 1, 2026. The committee is also working on proposed legislation on condo termination.

Title Issues and Standards - Amanda Hersem and Lee Offir, Co-Chairs, Robert M. Graham, Cynthia Manfredi, and Melissa Scaletta, Co-Vice Chairs

Amanda Hersem reported that the committee continues to meet monthly by Zoom and is currently revising 3 Title Standards.

American College of Real Estate Lawyers (ACREL) Liaison - Martin Schwartz and William Sklar, Co-Liaisons

Bill Sklar recognized the ACREL Fellows. Florida currently has 53 ACREL Fellows, with approximately 30 remaining active. Sixteen Fellows attended the recent meeting. He noted that some future ACREL meetings will take place at Section meetings.

He recognized Manny Farach and Peggy Rolando for their Board of Governors service, and announced his upcoming service as ACREL President, becoming only the second Floridian to hold that office in approximately 50 years.

Florida Realtors - Trey Goldman

Trey Goldman discussed recent legislative proposals involving deregulation of DBPR-regulated professions, which ultimately did not pass. He reported that Florida Realtors now has approximately 235,000 members. He announced recent consolidation of several large Realtor associations, including the Miami-Dade, Broward, Palm Beach, Hillsborough, and Pinellas associations.

Adjournment:

The meeting adjourned at 9:18 a.m.

Probate Case Summaries, from page 43

insurance, placed personal belongings in storage in Florida, paid federal income taxes. Under the circumstances, the trial court found that the daughters failed to refute the assumption of continuing domicile in Florida, which was affirmed by the appellate court.


E. EVANS

Emily Crain Evans *is an attorney with GrayRobinson, P.A. in Lakelan, Florida and focuses her practice on estate planning, probate, and trust administration. She is passionate about helping individuals and families plan for the future and navigate the legal complexities that arise after a loved one's death. Her practice focuses on creating thoughtful estate plans, guiding personal representatives and trustees through administration, and resolving probate matters efficiently and compassionately. A community advocate, she serves on several boards, including the Lakeland Bar Association and is the current Chair of EMERGE Lakeland, a young professional's group of the Lakeland Chamber of Commerce.*

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Real Property Case Summaries, from page 41



L. SUPER

Lisa M. Super *practices with the law firm of Zimmerman, Kiser & Sutcliffe, P.A. in Orlando, Florida, and focuses primarily on residential and commercial real estate transactions, and lender representation. Ms. Super completed her undergraduate studies at Eastern Michigan University and earned her juris doctor from Ave Maria School of Law. She is currently serving as the President of the Central Florida Real Estate Attorney's Council.*

Endnotes

1 *Kaufman v. High Seas, LLC*, 383 So.3d 509, 511 (Fla. 4th DCA 2024) (citing *First Hanover v. Vazquez*, 848 So.2d 1188, 1190 (Fla. 3d DCA 2003)).
2 *K.D. Lewis Enterprises Corp. v. Smith*, 445 So.2d 1032 (Fla. 5th DCA 1984)
3 *Casey v. Mistral Condo. Ass'n, Inc.*, 380 So.3d 1278, 1285 (Fla. 1st DCA 2024)
4 *Johnson v. Davis*, 480 So.2d 625, 629 (Fla. 1985)
5 *Smith v. Lynch*, 403 So.3d 433, 438 (Fla. 2d DCA 2025) (citing *Jensen v. Bailey*, 76 So.3d 980, 984 (Fla. 2d DCA 2011) ("[T]his court has consistently reversed judgments in favor of the buyer for nondisclosure under *Johnson* in the absence of proof of the seller's actual knowledge of the defect.")
6 *Ferry Pass Inspectors' & Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n*, 57 Fla. 399, 48 So. 643, 644-45 (Fla. 1909)
7 *Williams v. Guthrie*, 102 Fla. 1047, 137 So. 682, 685 (Fla. 1931)
8 *Hayes v. Bowman*, 91 So.2d 795 (Fla. 1957)

Probate and Trust Division Roundtable

Highlights of the Meeting of the Section

PROBATE AND TRUST DIVISION

SATURDAY, MAY 30, 2026

Ponte Vedra Inn and Club | Ponte Vedra Beach, Florida

Prepared by Lyudmyla Kolyesnik, Esq., Jacksonville, Florida

Thank you to the Roundtable Sponsors: Stout and Guardianship Trust.



The Director of the Probate and Trust Law Division, Sancha K. Brennan, called the meeting to order at 8:05 am.

Sponsor Announcement:

The Division Director thanked the sponsors, Stout and Guardian Trust. Garry Marshall was present on behalf of Stout. Travis Finchum was present on behalf of Guardian Trust.

General Announcements:

The Division Director congratulated committee members who were recognized and received awards. The Division Director acknowledged the recent committee member appointments and congratulated those members on their appointments.

Information Items:

Legislation Committee – S. Dresden Brunner, Probate & Trust Co-Chair: Dresden Brunner updated the Section regarding the Section-initiated bill concerning Trustee Discharge (SB 786 / HB 895) that has been signed into law effective April 29, 2026. Also, the bill implementing the Workgroup on Uncontested Probate Proceedings' recommendations was passed into law, with the effective date of July 1, 2026. At the time of the meeting, the changes relating to Homestead Exemption and the 98Year Lease Provision (SB 110 / HB 227) had not been signed by the Governor (but was ultimately signed on June 25th, as Session Law 2026-162).

Dresden provided an update regarding the Florida Supreme Court's amendment to Florida Rule of General Practice and Judicial Administration 2.515, *In re Amendments to Florida Rule of General Practice and Judicial Administration 2.515*, No. SC2026-0673 (Fla. May 28, 2026). Dresden reported that, under the amendment, an attorney's signature on a pleading verifies that the legal authorities cited exist and are accurately represented. The amendment became effective June 15, 2026. Ms. Brunner further noted that the amendment is intended to promote statewide uniformity and that circuit courts may not impose additional certification requirements beyond those provided in the rule.

An update was provided regarding a proposed constitutional amendment addressing Florida's property tax system. It was reported that the Governor had announced a special legislative session for the following week to consider the proposal. The proposal would retain the current 3% annual assessment cap for homestead property, increase the homestead exemption after the first year of ownership, and exempt qualifying homestead property from school district taxes. It was further reported that the assessment cap for non-homestead property would be reduced from 10% to 5%, excluding school district taxes, and that the proposal would also impose additional limitations on county spending.

CLE Committee – Nicklaus Curley, Co-Chair: Nicklaus Curley reported on the success of the Probate Law Seminar. He announced that the Probate and Trust Litigation Symposium would be available on demand beginning June 1, 2026. Mr. Curley also reported that the Board Certification Review Course was well attended and encouraged members seeking board certification to participate in future offerings. In addition, he noted the success of the Committee's recent artificial intelligence seminar.

Trust Law Committee – M. Travis Hayes, Chair; Jolyon D. Acosta, Frederick "Ricky" Hearn, and Jennifer J. Robinson, Co-Vice Chairs: Jeffrey S. Goethe reported on behalf of the Subcommittee on Pretermitted Children regarding proposed legislation, a supporting white paper, and the Section's position request. Mr. Goethe explained that the proposal extends to children born after a parent creates or amends a revocable trust and includes the same protections currently afforded under the Probate Code to children born after a parent executes a will.

Robert H. "Bo" Trudeau reported on behalf of the subcommittee regarding proposed legislation, a supporting white paper, and the Section's position request. Mr. Trudeau explained that the proposal would revise section 736.0502,

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Florida Statutes, to clarify that a spendthrift provision is not invalid solely because a beneficiary, acting as trustee or otherwise, has discretion to make distributions to himself or herself so long as the distributions are made pursuant to an ascertainable standard.

Charitable Planning and Exempt Organizations Committee – Alyssa R. Wan, Chair; Carla DeLoach and Jeffrey Spina-Jennings, Co-Vice Chairs; and Insurance, IRA and Employee Benefits Committee – Charles W. Callahan, III, Chair; Rachel Barlow and Rebecca Bell, Co-Vice Chairs: Denise Cazobon reported on behalf of the subcommittee regarding proposed legislation and the Section's position on the proposals relating to situations where charitable organizations are named beneficiaries on an account or asset, under beneficiary designation instruments other than wills or trust, and financial institutions are refusing to distribute funds to the named charities without first obtaining personal financial information of board members to the charities and requiring that they open accounts at the institution. Denise explained that the proposal would establish a process allowing charitable organizations named as beneficiaries to obtain account information and receive distributions more efficiently without requiring directors, officers, or employees of the charity to provide personal identifying information or requiring the charity to become an account holder with the financial institution. Under the proposal, a charitable organization could submit a statutory affidavit containing the requested information from the institution, after which the financial institution would have 60 days to accept or reject the affidavit and, if accepted, transfer the property to the charitable organization. The proposal would also prohibit financial institutions from requiring the charity to open an account or provide personal information for its board members or employees as a condition of receiving the distribution.

Discussion followed regarding whether similar issues affect individual beneficiaries and whether the proposed legislation should be expanded to address individuals' ability to obtain beneficiary-designated assets.

Principal and Income Committee – Jolyon D. Acosta, Co-Chair, and Susan Kubar, Vice-Chair: Susan Kubar reported on the Committee's review of the 2024 Florida Fiduciary Income and Principal Act and its proposed legislative revisions to address technical issues and clarify provisions of the Act. Susan explained that the proposal would correct unintended alterations to the original statutory text, including revisions relating to references to "the" and "federal real property tax," productive property provisions affecting the marital deduction, the authority of an agent under a durable power of attorney or a guardian to make an elective share election on behalf of a surviving spouse, and clarification of the Act's effective date provisions to apply on or after January 1, 2025. The Committee supported the proposed bill to correct these errors and to revise the Act consistent with its original legislative intent.

Probate Law & Procedure Committee – Theo S. Kypreos, Chair; Benjamin F. Diamond, Stacey Prince-Troutman, Michael Sneeringer and J. Grier Pressly, III, Co-Vice Chairs: Tae Kelley Bronner reported on the Committee's review of the curator legislation enacted during the 2026 legislative session. The legislation, effective July 1, 2026, includes provisions requiring formal notice to all persons otherwise entitled to notice of administration before appointment of a curator, requiring curators to post bond unless waived by the court, and requiring curators to file reports with the court regarding actions taken in their capacity as curator. Ms. Bronner explained that the legislation, which was not legislation initiated by the Section, contains several areas of concern that may affect its practical application; and for that reason, the Committee is considering proposing a "glitch bill" to address these issues.

Probate and Trust Litigation Committee – R. Lee McElroy, IV, Chair: R. Lee McElroy, IV reported on behalf of the subcommittee reviewing proposed revisions to Rule 4-1.6, lawyer confidentiality, as proposed by The Florida Bar Board of Governors' Rules Committee. Mr. McElroy stated that the subcommittee continues to evaluate potential revisions and is seeking input from Section members regarding the distinction between an attorney's duties of confidentiality and the attorney-client privilege. Mr. McElroy reported that the subcommittee remains actively engaged on this issue and anticipates presenting an action item for consideration at the next meeting.

Committee Reports:

Attorney/Trust Officer Liaison Conference – Eamonn W. Gunther, Chair: Eamonn W. Gunther provided an update regarding the upcoming Attorney/Trust Officer Liaison Conference scheduled for July 30 through August 1 at The Breakers Hotel in Palm Beach. Eamonn reported that registration is available through the Florida Bar and RPPTL websites and noted that the conference will include social events, including a pickleball event and golf tournament. Eamonn encouraged members to promote the conference and make announcements to their professional networks, including CPAs, financial planners, and other advisors.

Adjournment:

Meeting was adjourned at 9:20 am.

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