



ActionLine

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

*When “Uniform” Doesn’t Mean “Uniform”
– Reviewing Trusts Governed Under
Other UTC Jurisdictions*

*Here We Go Again: Distressed Commercial
Real Estate In A Pandemic Part II-
Foreclosures And Bankruptcies*

*Recent Developments And
Common Pitfalls In The
Creditors’ Claims Process*





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

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Get Included In *ActionLine!*

Readers are invited to submit material for publication concerning real estate, probate, estate planning, estate and gift tax, guardianship, and Section members' accomplishments.

ARTICLES: Forward any proposed article or news of note to Jeff Baskies at jeff.baskies@katzbaskies.com. Deadlines for all submissions are as follows:

<u>VOLUME NO.</u>	<u>ISSUE</u>	<u>DEADLINE</u>
1	Fall	July 15
2	Winter	October 15
3	Spring	January 15
4	Summer	April 15

ADVERTISING: For information on advertising, please contact Jason Ellison at jellison@elattorneys.com.

PHOTO SUBMISSIONS: If you have a photo that you'd like to have considered for the cover, please send it to the photo editor, Janellen Green, at jane@emeraldgreenconsulting.com.

GENERAL INQUIRIES: For inquiries about the RPPTL Section, contact Mary Ann Obos at The Florida Bar at 800-342-8060 extension 5626, or at mobos@flabar.org.

Mary Ann can help with most everything, such as membership, the Section's website, committee meeting schedules, and CLE seminars.

Roundtable

Highlights of the Meeting
of the RPPTL Section

PROBATE AND TRUST DIVISION

Saturday, December 5, 2020

Hybrid Meeting Disney Yacht Club/Virtual, Florida

Prepared by Eamonn Gunther, Esq., Boca Raton, Florida, Joseph M. Percopo, Orlando, Florida, and Antonio P. Romano, Palm Beach Gardens, Florida

Thank you to the Roundtable Sponsors:

Stout

Sarah Butters, Director of the Probate and Trust Division, called the meeting to order at 8:12 a.m. The meeting was the Section's first hybrid meeting, with participants invited to attend via Zoom or in person at the Disney Yacht Club in Orlando, Florida.

Introduction of Current and New Section Fellows

Current Fellows (2019-2021):

Anthony Romano, Palm Beach Gardens

Joseph Percopo, Orlando

New Fellows (2020-2022):

Nicole Bell – St. Pete

Lilleth Bailey – Ft. Lauderdale

Interim Action of the Executive Committee – Sarah

Butters. The Asset Protection Committee's proposed changes to Chapter 222 to clarify the impact of an assignment or pledge on certain exempt property (the fix to *Kearney v. Kearney*, 129 So. 2d 381 (Fla. 1st DCA 2014)) has been approved by the Executive Committee (the "Kearney fix").

Legislative Committee Report – John Moran, Co-Chair.

The RPPTL Section has several proposed legislative initiatives for 2021, including: a robust Estate and Trust bill that will likely address the uniform directed trust act, community property trust act, trustee employee liability concept, *Goodstein* fix (revisions to Chapter 69), *Gordon* fix (devises to former spouses), and homestead and trust proposals; a separate electronic wills glitch bill; *Kearney* fix; and guardianship bill rewrite.

CLE Report – Sancha Brennan, Co-Chair. Reported that there were 179 attendees at the last virtual Probate Law CLE program coordinated by Travis Hayes. Due that program's success, the intent is to continue to use the virtual format and potentially use it for the next charitable law symposium, and upcoming estate & trust symposium. If you are interested in participating or presenting a RPPTL CLE, please contact Sancha Brennan, Co-Chair of the CLE Committee. A list of the upcoming CLEs is as follows:

Date of Presentation	Crs. #	Title	Location
2/12/2021	4362	Condo Law Certification Review	Virtual Replay
3/1/2021	4446	Advanced Construction Law Certification Review	Video Available on Demand
3/18/2021	4027	(Condo Series 1) RPPTL Audio Webcast - When is a Condominium Common Element not a Common Element: The IconBrickell Analysis	Audio Webcast
3/23/2021	4029	RPPTL Audio Webcast - CLC CLE on Florida's new summary judgment standard.	Audio Webcast
3/31/2021	4028	RPPTL Audio Webcast: Everything You Need to Know About the Small Business Reorganization Act and Sales of Assets and the Assignment and Assumption of Leases and Contracts in Chapter 11 Proceedings.	Audio Webcast

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Probate and Trust Division Roundtable, from page 36

4/15/2021	4023	(Condo Series 2) RPPTL Audio Webcast: Covid-19 and Community Associations: A Pandemic Enters its Terrible Twos Addressing Burgeoning Pandemic Related Issues & Ethical Obligations for Attorneys	Audio Webcast
4/1/2021	4448	Leasing Seminar	Virtual Replay
5/7/2021	4363	Trust & Estate Symposium	Virtual Replay
4/9/2021	4073	Real Property Certification Review	Video Available on Demand
4/9/2021	4074	Wills Trusts and Estates Certification Review	Video Available on Demand
5/12/2021	4030	CYBER -Stalking CLE	Audio Webcast
5/20-22/2021	4447	Construction Law Institute	JW Marriott Grand Lakes, Orlando
6/4/2021	TBD	Convention CLE	Marco Island Marriott

There were no Probate Division Action Items or Informational Items on this meeting's Executive Council agenda.

General Standing Committees Reports:

Homestead Issues Study – Jeffrey S. Goethe Co-Chair. Reported that Silvia Rojas has a subcommittee that has been working on a Revocable Transfer on Death (RTOD) Deed act. The RTOD act would be an option in addition to the enhanced life estate deed (aka lady bird deed) that allows for transfer of real property on death. Notably, in its current form the RTOD deed requires the acceptance of the designated beneficiary, as well as provide creditors a period to make claims against the property. The intent behind the act is to provide a statutory method of transfer of real property on death for those not comfortable with the lady bird deed. The draft of this act is still in its initial stages.

Information Technology & Communication – Michael A. Sneeringer, Co-Vice Chair. Reported that work is being done to enhance the RPPTL website concerning committee content, agenda items and projects that are currently in progress, as well as a description of the committee (the objective or role of the committee), method to join the committee, and information about upcoming meetings.

Model and Uniform Acts – Patrick Duffey, Co-Chair. Reported that the Committee is monitoring the Uniform Laws Commission's proposed model and uniform acts so as to be prepared should legislation be proposed by another section or legislative sponsor. The Committee is currently reviewing model acts that are in various stages of drafting, including crowdsource funding and the economic rights of unmarried co-habitants. Additionally, the Committee is monitoring the drafting of a model act addressing conflicts in trust administration. The Committee is looking for new members to form small groups that will prepare a portfolio of

whitepapers analyzing existing model & uniform acts within the Section's purview.

PT Division Committees:

Ad Hoc ART Committee – Alyse Comiter, Chair. For those interested in joining please email Alyse to get involved.

Ad Hoc Florida Business Corporations Committee – Brian Sparks, Chair. No new report. This committee's work is finished and will be dissolved this year.

Ad Hoc Guardianship Law Revision Committee – David Brennan, Nicklaus Curley, and Stacy Rubel, Co-Chairs. The re-write of the Guardianship Statutes is complete and the plan is to move this forward legislatively although it is not likely to make the 2021-2022 legislative session.

Ad Hoc Electronic Wills Committee – Angela Adams, Chair. Currently reviewing FLTA's proposed bill that would substantively revise various e-notary provisions. The bill provides three points of clarification, as well as a significant change requiring the audio video recording to be held by an established service provider and not the notary. The Committee also has its own, separate e-wills glitch bill, that is designed to fix mistakes and errors in the 2019 legislation but does not propose any substantive changes.

Ad Hoc Study Professional Fiduciary Licensing Committee – Angela Adams, Chair. The committee aims to create a statutory requirement that professional fiduciaries who are compensated be licensed (including guardians, POA, and designees). Family members and trust companies (with trust powers) would be exempt from this licensing requirement.

Ad Hoc Study Estate Planning Conflict of Interest Committee – William Hennessey, Chair; Paul Roman, Vice-Chair. No Report. This Committee's work is complete and will likely be dissolved this year.

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Ad Hoc Study Due Process, Jurisdiction & Service of Process Committee – Barry Spivey, Chair; Sean Kelley and Christopher Wintter, Co-Vice Chairs. No report.

Asset Protection – Brian Malec, Chair. The Committee is working on changes to Chapter 222 to address the fix to *Kearney v. Kearney*, 129 So. 2d 381 (Fla. 1st DCA 2014) to prevent general blanket asset pledges from including certain otherwise exempt assets (like a 401(k) or IRA). Brian reports that the Committee plans to include the Kearney fix as a 2021 legislative action. Rick Gaines also reported leading a subcommittee on tenants by the entirety trusts. The intent of the TBE trust is to allow a married couple to realize and/or maintain TBE status on assets transferred to the TBE trust. While there has been debate as to whether this is possible under current law, a recent middle district bankruptcy case (*IN RE Givans*, 2020 WL 5833180 (signed Sep. 30, 2020) held that upon a transfer into the trust the unity of marriage is lost and therefore TBE ownership is not possible.

Attorney/Trust Officer Liaison Conference – Mitchell Hipsman, Co-Vice Chair. The conference is still planned for August 19-21, 2021 at The Breakers, Palm Beach. Committee is in the process of contacting the speakers and sponsors who were originally slated to participate in the 2020 Conference to participate in the 2021 Conference.

Charitable Planning and Exempt Organizations Committee – Seth Kaplan, Chair. Seth discussed the Charitable Symposium Conference and the positive reviews it received. The goal for next symposium is for the Conference to be a half day event aiming to cover a broad spectrum of charitable planning topics relevant to estate planners.

Elective Share Review Committee – Jenna Rubin, Chair; Cristina Papanikos and Lauren Detzel, Co-Vice-Chairs. No report.

Estate and Trust Tax Planning – Robert Lancaster, Chair. Rob reported on the success of the Committee's five hour CLE. The Committee continues to work on IRS guidance regarding obtaining IRS closing letters, a CLE presentation on estate planning strategies under the Biden administration, and a white paper regarding the transfer of interests at death.

Guardianship, Power of Attorney and Advanced Directives – Nicklaus Curley, Chair. No report.

IRA, Insurance and Employee Benefits – Alfred Stashis, Co-Chair. Reported that the *In re Lerbakken* (949 F.3d 432 (8th Cir. 2020) fix for IRAs transferred incident to divorce, should be moving forward in a separate bill in the upcoming legislative sessions, and ACTEC has sent three letters to the IRS seeking further guidance on the SECURE act.

Liaisons with ACTEC – Elaine Bucher, Shane Kelley, Charles Nash, Bruce Stone, Diana Zeydel and Tami Conetta. No Report.

Liaisons with Elder Law Section – Travis Finchum and Marjorie Wolasky. No Report

Liaisons with Tax Section – Lauren Detzel, William Lane, and Brian Sparks. No Report.

Liaison with Professional Fiduciary Council – Darby Jones. Darby reported initial success with the Professional Fiduciary Council with much interest in membership from professional fiduciaries, professional guardians, law firms, and other organizations. The goal of the Council is to produce a list of qualified professional fiduciaries as a resource to attorneys and individuals. The Council aims to provide training and education to individuals, with a focus on ethical hotspots to avoid and how to be a more effective fiduciary.

Principal and Income – Edward Koren and Pamela Price, Co-Chairs; Joloyon Acosta and Keith Braun, Co-Vice Chairs. The Committee finished in depth reviews of all of the Uniform Fiduciary Income and Principal Act ("UFIPA"). The intention is to adopt the UFIPA with only necessary changes for Florida purposes. The Committee is working jointly with Florida Bankers and FICPA on a white paper and a draft version of the Florida Act.

Probate and Trust Litigation – Rich Caskey, Chair; Angela Adams, James George and Lee McElroy, Co-Vice Chairs. No report.

Probate Law and Procedure – Travis Hayes, Chair. Travis reported on a successful and well attended CLE program, and a special thanks to all the speakers, organizers, and sponsors. The Committee is looking into the priority of payment of expenses of administration for Class 1 creditors under Florida Statute § 733.707. A subcommittee will be looking into the Uniform Community Property act in light of the *Johnson v. Townsend*, 259 so.3d 851 (4th DCA 2018), ruling where the court held that any claim for a one-half interest in community property must be claimed within 2 years of date of death. Additionally, the ACTEC Foundation has sponsored a project led by UF COL Prof. Wright to study changes to Florida's intestacy statutes to include considerations relating to blended families (i.e. stepchildren) in estates. A new subcommittee was formed and tasked with following Prof. Wright's progress in her study.

Trust Law – Matthew Triggs, Chair; Jennifer Robinson, David Akins, Jenna Rubin, and Mary Karr, Co-Vice Chairs. No report.

Wills, Trusts and Estates Certification Review Course – Jeffrey Goethe, Chair. The Will Trust certification course will continue to be held on April 9, 2021 in the virtual format.

Adjournment. The next Probate and Trust Division Roundtable meeting will be held at in a similar hybrid virtual/in-person format at the Hammock Beach Resort, Palm Coast, Florida on April 24, 2021.