

**Agenda for the Bankruptcy/Uniform Commercial Code
Committee of the Business Law Section of the Florida Bar**
Annual Meeting – June 27, 2019
Boca Raton Resort & Club

Stephanie Lieb, Chair
John Hutton, Legislative Vice-Chair
Jennifer Morando, Vice-Chair
Hon. Catherine Peek McEwen, Judicial Chair

I. Welcome and Approval of Minutes from the Prior Meeting

Stephanie Lieb
Minutes are attached as **EXHIBIT A**

II. Introductions and Announcements; Incoming Slate

Stephanie Lieb

III. Business Law Section Update & Welcome

Michael Chesal, Section Chair
Jay Brown, Section Chair-Elect
Leyza Blanco, Section Treasurer
Kacy Donlon, Section Secretary

IV. Legislation

a. *2019 Legislative Session Results*

Doug Bates, Section Legislative Chair
Aimee Diaz Lyon, Section Lobbyist

i. Summary of Results of 2019 Legislative Session are attached as
EXHIBIT B

ii. *Financial Literacy* bill is attached as **EXHIBIT C**
Amanda Finley
Hon. Laurel Isicoff
Hon. Karen Specie

iii. *Chapter 607 Revision* is attached as **EXHIBIT D**
Matt Hale

iv. Aviation Bill is attached as **EXHIBIT E**
Lynn Sherman

v. Digital/Cryptocurrency Regulation is attached as **EXHIBIT F**
John Hutton

- b. *Legislative Update for 2020 Session*
 Doug Bates, Section Legislative Chair
 Aimee Diaz Lyon, Section Lobbyist

- c. *Reports for Ongoing Projects*
 - i. *Aviation Committee Legislation*
 Lynn Sherman

 - ii. *ABI – Consumer Law Bankruptcy Commission- The ABI summary of selected findings from the Report is attached as **EXHIBIT G***
 Hon. Laurel Isicoff

 - iii. *Digital/Cryptocurrency Regulation*
 (Section wide task force)
 John Hutton

 - iv. *Uniform Commercial Real Estate Receivership Act – Final proposed document attached as **EXHIBIT H***
 VOTE REQUIRED
 (joint with Biz Lit & RPPTL)
 Lynn Sherman
 Kenny Murena

 - v. *Bankruptcy Venue Reform Act*
 Carlos Sardi
 Hon. Catherine Peek McEwen
 Ivan Reich

 - vi. *Judgment Liens excepted from title vehicle statute- White paper attached as **EXHIBIT I***
 VOTE REQUIRED
 Prof. Davis
 Jodi Dubose

 - vii. *Fla. Stat. § 689.151 Revisions*
 Andy Layden

 - viii. *Personal liability of assignees*
 Scott Underwood

 - ix. *Creating an App for FRBP/Code*
 Mark Healy

d. Items to be Monitored

- i. *Northern District Judgeships/Divisions*
Hon. Karen Specie
Jodi Dubose
- ii. *Judicial Term Limits/Legislative Oversight of Judicial Decisions*
Doug Bates
Jodi Dubose
- iii. *Uniform Voidable Transaction Act Amendments*
John Hutton
- iv. *Chapter 7 No-Asset Trustee Fee Increase*
Carlos Sardi
Judge McEwen
- v. *County Court Jurisdictional Threshold Amendment*
(joint with Biz Lit)
- vi. *Chapter 48 Amendments*
(joint with Biz Lit)
- vii. *Business Court Funding*
John Emmanuel

V. Continuing Legal Education, Communications, and Publications

- a. *Communications Committee Report*
Matt Hale
Shirley Palumbo (BLS Blog)
- b. *CLE Committee Report*
Cori Lopez-Castro
 - i. Florida Bar Journal
- c. *CLE Programs*
 - i. Part 2 of “Pre-Bankruptcy Best Practices in Litigation” series – May 23, Orlando
Andrew Layden
 - ii. Future Committee programs/webinars
Brett Lieberman

iii. *ABI/Stetson Seminar* - January 15-17, 2020, Tampa
Hon. Roberta A. Colton

iv. *2019 View from the Bench Report* – November 6-8, 2019 Tampa and
Miami
Hon. Michael Williamson

d. *Out of State Division Newsletter Submissions*
Hon. Catherine Peek McEwen
Don Workman

VI. Cross-Committee Partnership and Liaison Reports

a. *Current Partnership Initiatives*
Jennifer Morando

b. *Liaison Reports*

i. *Pro Bono* - Lynn Sherman

ii. *IMF Committee* - Mariane Dorris

iii. *Membership Committee* - Jim Moon

VII. Old Business

VIII. New Business

a. Honoring American Veterans in Extreme Need Act of 2019 ("HAVEN
Act") - S.679 and HR.2938- Attached as **EXHIBIT J**

VOTE REQUIRED

Carlos Sardi

b. Proposed Amendments to UCC 9-406 and 9-408 – White paper
attached as **EXHIBIT K**

(joint with Corporations)

Jeff Davis

Matt Hale

d. Foreclosure Notice Bill
Judge McEwen
Douglas Bates

IX. Future Meeting Dates

- a. BLS Retreat – August 30 – September 2, 2019
Ritz Carlton, Naples
- b. BLS Midyear Meeting – January 2020
TBD
- c. BLS Annual Meeting – June 17 – 20, 2020
Hilton Orlando Bonnet Creek

X. Adjourn

**Minutes for the Bankruptcy/Uniform Commercial Code
Committee of the Business Law Section of the Florida Bar**
Mid-Year Meeting Jan. 16-19, 2019
DoubleTree by Hilton Orlando at SeaWorld

Stephanie Lieb, Chair
John Hutton, Legislative Vice-Chair
Jennifer Morando, Vice-Chair
Hon. Catherine Peek McEwen, Judicial Chair

I. Welcome and Approval of Minutes from the Prior Meeting

The Chair called the meeting to order at 9:35 a.m.

The Section's legislative team, Aimee Diaz Lyon, Doug Bell, and Doug Bates, gave a brief overview of the hot topics anticipated for this year's legislative session, including a corporations bill and trademark bill which are products of the BLS. There will also be several legislative issues that may be of importance to this Committee, including a lis pendens bill, financial literacy, and amendments proposed by the RPPTL Section to Chapter 689.

The Committee then considered for approval the minutes of the September 1, 2018 meeting. Dan Stermer made a motion to approve the minutes which was second by Roy Kobert, and the minutes were approved.

II. Introductions and Announcements

The Chair reminded the Committee that the mission of the Section is to achieve 100% participation in pro bono service by the members of the Section as well as the attorneys in their firms.

III. Section Leadership Report

- Chair, Michael Chesal, encouraged members to invite colleagues to participate in the Section. He also requested that committees help keep content on the website and the blog fresh by contributing content. Lastly, he encouraged committee members to participate in non-substantive law committees of the Section in addition to their participation on this committee.
- Chair Elect, Jay Brown, reported that he is currently putting together a slate of leaders for the next Bar year, and encouraged those who are interested in a leadership role to let him know of their interest.

- Secretary, Kacy Donlon, greeted the Committee and requested that a report be emailed to her to assist with preparation of the Executive Council minutes.

IV. Reports from Study Groups

a. Ongoing Projects

- i. *Aviation Committee Legislation -Amendments to Aviation Lien Statute*
Lynn Sherman

Lynn Sherman reported that the goal of the aviation committee is to revise the Florida statute to clarify how to perfect liens as there are currently various approaches. The study group hopes to have a proposed bill by the June meeting or the retreat meeting.

- ii. *ABI – Consumer Law Bankruptcy Commission*
Hon. Laurel Isicoff
Dennis Levine

Dennis Levine reported that public hearings were held in 2018. The Commission finished studying issues and is in the process of drafting its report on the issues. The Commission will publish its report in April at the Spring Meeting.

- iii. *Northern District Judgeships/Divisions*
Hon. Karen Specie
Jodi DuBose

Judge Specie reported that the Northern District did not request an additional judgeship. The next opportunity to do so will be Fall 2020. In the meantime, the district will continue to gather information. Tallahassee and Gainesville divisions are running smoothly, but Panama City and Pensacola are not. Additionally, the panhandle residents are still recovering from Hurricane Michael; the Panama City courthouse was a total loss.

- iv. *Judicial Term Limits / Legislative Oversight of Judicial Decisions / CRC*
Doug Bates
Jodi DuBose

No report.

- v. *Chapter 607 Revision*
Chris Thompson

A report was attached to the minutes from September 1 Retreat meeting. Some additional 607 revisions have taken place since the retreat, but the 607 task force did not ask for the revisions to be reviewed for bankruptcy impact. The study group has primarily reviewed revisions related to dissolution by notice.

- vi. *Digital/Cryptocurrency Regulation*
(Section wide task force)
John Hutton

The Legislature previously indicated that it wanted to take some action on digital currency; however, legislative interest has faded, and no legislation is anticipated for this session.

- vii. *Uniform Commercial Real Estate Receivership Act*
(joint with Biz Lit & RPPTL)
Lynn Sherman
Kenny Murena

The UCRERA report was tabled to later in the meeting to maximize the allotted time.

- viii. *Uniform Voidable Transaction Act Amendments*
John Hutton

The task force decided not to pursue UVTA this year. Last session, the Section worked against the bill in order to prevent it from going through with unfavorable amendments. There is still a chance that Senator Simmons may advance UVTA this session, and then the Section may have to go on the defensive, if unfriendly amendments from the RPPTLs are incorporated. So far, Senator Simmons does not seem to plan to advance UVTA legislation; the RPPTL and Tax section also do not intend to advance UVTA this session.

- ix. *Bankruptcy Venue Reform Act of 2018, S. 2282*
Carlos Sardi
Hon. Catherine Peek McEwen
Ivan Reich

Judge McEwen reported that things are in the planning stages for the 2019 Congressional session. The prior bill required that the appropriate venue for a bankruptcy filing would be the district in which where the company's "home base" is located. Senators Cornyn and Warren have been supporters of this initiative, and the Commercial Law League of

America is vested in the issue. The New York Bar and Delaware Bar have raised huge sums for lobbyists against legislation. Senator Rubio requested a white paper with talking points, including a state by state chart of cases lost. Judge McEwen also recommended that Committee members contact their Senators and Representatives to lobby support.

x. *Financial Literacy Legislation*

Amanda Finley
Hon. Laurel Isicoff
Hon. Karen Specie

Amanda Finley gave the report for the task force. The proposed legislation would require a half-credit of financial literacy education; the half-credit will be part of students' extracurricular requirement. The task force is currently working on drafting a white paper. The task force also plans to launch a letter campaign during session; letter templates will be sent to Committee members so that members can easily revise and send letters to their state representatives. The outlook for this bill is considered to be much better this year than in years past. Last year, the only thing that stopped the bill from passing was a last minute request to make the half-credit an elective instead of a requirement, and the Committee was not willing to budge on that.

xi. *Chapter 7 No-Asset Trustee Fee Increase*

Carlos Sardi
Judge McEwen

Carlos Sardi reported that last year's bill to increase the no-asset trustee fee is dead. The fee has not been increased since 1995. There was an issue with the act in that there was an index for inflation for the trustee's portion of the fee, but there was no corresponding increase for the filing fee. So the trustee's fee would gradually eat into the court's fees over time. The ABI and the National Consumer Law Center supported the increase. There was some discussion on exploring alternative funding sources. Dennis Levine said the ABI Consumer Law Bankruptcy Commission report may have some recommendations on that. Judge McEwen stated that one potential source would be unclaimed funds as there are huge reserves of unclaimed funds.

xii. *County Court Jurisdictional Threshold Amendment
(joint with Biz Lit)*

This report was skipped.

xiii. *Chapter 48 Amendments*
(joint with Biz Lit)
Adina Pollan

Adina Pollan reported that a task force has been created to work on amendments to Chapter 48, service of process. The task force is working with ILS. The primary objectives are to clean up Sections 48.181 and 48.161. The task force is just in its beginning stages.

xiv. *Business Court Funding*
John Emmanuel

This item was skipped.

xv. *UCRERA*
Kenny Murena

Kenny Murena reported on the status of the task force and gave a brief summary of the task force's history. The task force was formed about 2 years ago for purposes of creating uniformity in receiverships for commercial real estate. The task force identified six sections that needed review:

- Section 3 – notice and opportunity for hearing
- Section 4 – scope of the act
- Section 6 – appointment of a receiver
- Section 12 – powers and duties of receiver
- Section 14 – stay
- Section 16 – user transfer of receivership property outside the ordinary course of business

The task force completed its review of the entire act and revised all sections as it deemed necessary. A report was attached to the agenda for today's meeting and is incorporated into these minutes as **Exhibit A**. Between now and the June meeting, the task force is requesting that Section members review the report and provide any comments, questions, or suggestions that they have.

Kenny provided a brief summary of the proposed changes as follows:

- Section 3 was changed to be more consistent with Florida civil procedure;
- Section 4 was changed to clarify what types of commercial real estate it applies to. A section was added with exceptions of what

it does not apply to. The revisions also clarify that there is no impact on homestead laws.

- Section 6 (appointment of a receiver) was revised to clarify the conditions for appointment before judgment and after judgment. Before judgment, the standard is high, and there are requirements for a hearing and notice. The changes make Section 6 consistent with Section 3 and Rule 1.610.
- Section 14 included an automatic stay when it was presented by the Uniform Law Commission, but there was a lot of push back on this. Ultimately, it was decided that there should be no automatic stay; instead, the movant and receiver can request imposition of stay, and notice and a hearing will be required.
- Section 16 included no changes.

The RPPTL Section was invited to participate in discussions, but only a couple people participated from their section.

Judge Mora added that violations of stay are also addressed by the proposal. The provisions would include that stay violations can be voidable, however, damages are not addressed.

The Committee will vote on UCRERA at the June meeting.

Judge McEwen recommended that Michael Moecker be included in the discussions and be given an opportunity to review the final proposal before the Committee and the Section take a vote.

Lynn Sherman inquired about situations involving loan documents that include provision for the appointment of a receiver. Kenny said this is addressed in the report on page 24, section 6(C); ultimately, it is up to the court.

Kenny requested that any additional comments or questions be sent to him prior to the June meeting.

b. New Projects and Study Groups

Moved to *New Business*.

V. Continuing Legal Education, Communications, and Publications

a. Communications Committee Report

Matt Hale

Shirley Palumbo (BLS Blog)

Matt Hale reported that the Communications Committee is creating an archive of white papers. If you have one that you would like to be included, send it to Matt. The committee is also trying to publish at least one substantive blog post per month. Blog posts are between 500-1000 words. If you would like to volunteer to write a blog post, sign up with Matt.

- b. CLE Committee Report
Paige Greenlee
Cori Lopez-Castro

Volunteers are needed to write articles for the Florida Bar Journal. If interested, contact Paige or Cori.

- c. *Future CLE Programs*

- i. Fall and spring short programs/webinars
Brett Lieberman

Brett Lieberman reported that a CLE program was held on November 29, 2018 in Fort Lauderdale. The program hosted 40 in-person attendees live and 60 attendees via telephone. The BLS partnered with the BBA to host this program; CourtCall provided the telephonic broadcast. The sub-committee plans to partner with CFBLA to host a future CLE in Orlando, and Scott Underwood will work on planning a program for Tampa.

Judge Delano informed the Committee that the CLE Committee is putting together comprehensive calendar of BLS CLE opportunities. Please provide CLE dates to Paige Greenlee or another committee contact

The Chair informed the Committee that the new CLE format is intended to substitute for the spring program that has been done in years past due to a continued decrease in attendance and the expense involved in hosting a seminar-style program. The new, shorter programs will be free to BLS members, and the intent is to continue to provide an opportunity for in-person attendance as well as a live broadcast by telephone or webinar.

- ii. *ABI/Stetson Seminar* Feb. 6-8 at Embassy Suites in Tampa (Hon. Roberta A. Colton)

Judge Colton that this year's seminar will involve a great deal of participation from judges. The kickoff will be a debate between Judge McEwen and Judge Williamson.

iii. *2018 View from the Bench Report* (Hon. Michael Williamson)

Judge Williamson reported that this year's seminar drew 173 attendees in Tampa and 154 attendees in Miami. The financials appear to show that the seminars were a success. Liz Green was the moderator and did a great job. Next year's moderator will be Russ Blain, and, in Tampa, the seminar will return to the USF facility which worked well this year. Brad Saxton continues to oversee the updating of materials. The 2019 seminars will take place November 6-8.

d. *Out of State Division Newsletter Submissions*

Hon. Catherine Peek McEwen
Don Workman

Judge McEwen encouraged Committee members to write articles and submit them to Don Workman. Judge McEwen recognized Roy Kobert for submitting an article which was recently published.

VI. Cross-Committee Partnership and Liaison Reports

a. Current Partnership Initiatives

Jennifer Morando

No report.

b. *Liaison Reports*

i. *Pro Bono Committee* – Lynn Sherman

Lynn Sherman reported that the Pro Bono Committee has started a pro bono pledge initiative. Committee members are circulating a written pledge which asks BLS members to commit, in writing, to provide 20 hours of pro bono service this year. At the end of year, the committee will ask members who made the pledge to report back on their pro bono service. The committee plans to recognize members who make the pledge throughout the year.

Lynn mentioned several opportunities for finding pro bono cases, including the Pro Bono Matters website and the Florida law school challenge (floralawschoolchallenge.org), which matches law

students with an alumnus from their law school. Additionally, the BLSE has started CLOC (Certified Lawyers on Call) which provides pro bono attorneys access to board certified lawyers to assist with legal questions.

Lastly, the Committee will be purchasing a table at the annual Florida Bar Foundation dinner in June. If anyone is interested in buying a seat, contact Lynn.

- ii. *IMF Committee* - Mariane Dorris

No report.

- iii. *Membership Committee* - Zach Hyman

No report.

VII. Old Business

VIII. New Business

- a. Judgment Liens excepted from title vehicle statute
Jeff Davis
Jodi Dubose

Lynn Sherman gave a brief report for Jeff Davis who was unable to attend the meeting; a full report will be provided at the June meeting.

- b. Personal liability of assignees
Scott Underwood

Scott Underwood made a motion to create a study chapter 727 to clarify scope of liability for assignees and their professionals. Section 727.105 provides that proceedings may be commenced against an assignee, but the statute is silent on a few things, including: (i) if suit is brought against the assignee, under what situations may the assignee be held personally liable; and (ii) is there any liability for professionals, management companies, agents and brokers engaged by the assignee. In other analogous settings (probate, bankruptcy, trusts) an assignee gets protection if acting in the appropriate capacity. In an ABC, this is not addressed.

Dan Stermer seconded the motion, and all voted in favor. A sign-up sheet was circulated for anyone who is interested in participating in the study group.

- c. Creating an App for FRBP/Code
Hon. Mindy Mora
Jennifer Morando

Judge Mora proposed that an app be created as a member benefit that would provide the Bankruptcy Code and Federal Rules of Bankruptcy Procedure for mobile devices. Mark Healy advised that Moecker & Associates had an app that previously provided this service and may be available for updating. This project will be revisited at the June meeting.

- d. Proposed legislation by the RPPTL Section – new Section 689.151
John Hutton

A white paper concerning the proposed legislation was attached to the materials for today's meeting. No bill has been filed yet with the legislature, but it is expected to be filed. The BLS lobbyists have requested that the proposed legislation be reviewed by both the Bankruptcy/UCC Committee and the Business Litigation Committee.

The proposed legislation would modify the TBE common law doctrine by eliminating unities of time and title, allowing a spouse to create a TBE interest simply by adding the other spouse to title. The proposed legislation would also change legal presumptions established by *Beale Bank*. This legislation will make TBE easier to establish and more difficult to challenge/attack.

The legislative review sub-committee of this Committee has reviewed the proposal. The sub-committee does not object to the elimination of unities, but does believe that any legislation should make it clear that a transfer under the newly proposed section would still be subject to other applicable Florida laws, such as the fraudulent transfer act. Also, the sub-committee recommended that, although it may be okay to codify the presumptions established by *Beale Bank*, the existing legal presumptions should not be expanded. The sub-committee believes that technical amendments could be made to address these issues.

Following John's summary of the proposal and the recommendations of the legislative review sub-committee, the Chair opened the floor for discussion. Some of the comments/concerns voiced included:

- The RPPTLS may not be receptive to amendments to their proposed legislation, which would potentially leave the proposal in its current form;
- Committee members questioned the underlying purpose of eliminating the unities of time and title and whether there were unspoken motivations;

- Doug Bates stated that he has spoken with representatives for the RPPTL section, and they believe they are eliminating the unities of time and title in order to create an efficient way to do away with the “strawman” (e.g., spouse transfers property to a strawman who then transfers to both spouses as TBE). They believe the new statute would modernize the law by making it consistent with changes that have previously been made for transfers involving real property;
- Judge Olson provided some historical background concerning the evolution of TBE interests in personalty, which did not arise from common law, but rather a Florida Supreme Court case from the 1920s. Judge Olson believes that the proposed legislation would make it nearly impossible to levy on personal property owned by a married person;
- Judge Colton provided additional background concerning a prior study undertaken by Judge Jennemann to examine TBE and determine whether changes were needed. Judge Colton said that the study ultimately decided that the issue was too controversial to address in light of the Florida Bar rules that prohibit sections from pursuing legislation that is controversial or divisive;
- Jay Brown voiced opposition to the bill, and reminded the Committee that the RPPTL Section has not cooperated at all with the BLS on its UVTA initiative;
- Mark Hildreth expressed concern that personalty doesn’t involve the same external reference points that real property does.

The Chair closed discussion, and advised the Committee that a decision needed to be made as to whether the Committee should: (1) do nothing, (2) oppose the proposal in its current form but support with acceptable amendments, or (3) oppose the proposed legislation.

Dennis Levine made a motion to oppose the proposed legislation, which was seconded by Jay Brown. All of the judges in attendance abstained from voting, and one committee member voted to oppose the motion; all other committee member voted in favor of the motion, and the motion passed.

IX. Future Meeting Dates

- a. BLS Executive Council Spring Retreat – March 10 – 14, 2019
Israel
- b. BLS Annual Meeting – June 26 – 29, 2019
Boca Raton Resort and Club

X. Adjourn

The meeting was adjourned at 11:33 a.m.