

**THE FLORIDA BAR BUSINESS LAW SECTION**  
**CORPORATIONS, SECURITIES & FINANCIAL SERVICES**  
**COMMITTEE MEETING**

**Thursday, January 28, 2016**  
**Hilton Orlando**  
**6001 Destination Parkway**  
**Orlando, Florida**

**MINUTES**

1. Call to Order and Welcome. Meeting was called to order at 10:05 a.m. by Stefan Rubin, Chair of the Committee, who presided at the meeting.
2. Introduction of Members and Guests Present. All members present at the meeting and all guests attending the meeting, introduced themselves and signed an attendance sheet.
3. Approval of Minutes. Upon motion, duly seconded, the minutes of the September 5, 2015 Committee meeting were unanimously approved.
4. Fictitious Name Statute Section 865.09. Stefan Rubin discussed Florida Statute 865.09 regarding how the statute treats corporations differently from limited liability companies for no apparent policy reason. Stefan advised the Committee that an amendment to the Fictitious Name Statute would not be presented in the upcoming Session of the Legislature. There was discussion regarding including the amendment with the Chapter 607 revisions and the proposed harmonization revisions. There was also discussion regarding reservation of names in connection with the formation of a legal entity.
5. Introduction of Section Guests. Alan Howard, Section Chair and the other current executive officers of the Section visited the meeting to give an update to those in attendance of the general activities of the Section.
6. Legislative Matters. Melanie Damian and Aimee Diaz Lyon reported on the activities of the Legislation Committee, the accomplishments and challenges of the prior Legislative session and the status of the legislation activities of the Business Law Section for the upcoming Legislative session. The Section's efforts related to Chapter 607, the Chapter 605 Glitch Bill and Senator Simmons request for clarification regarding the business judgment rule issue with respect to limited liability companies were discussed.
7. Additional Discussion Regarding Fictitious Name Statute. Professor Cohn raised an issue related to the effect of the Fictitious Name Statute upon the personal liability of a legal entity and/or an individual using the Fictitious Name. There was significant discussion regarding

the effect of agency law in this situation. The members of the Committee agreed that this issue should be addressed in a future revision of the Statute.

8. Chapter 605 Revision. Gary Teblum reported on the Chapter 605 “Glitch Bill”, the negotiations which occurred with legislators relating to certain aspects of the Bill and the changes made to certain fiduciary duties provisions in the Florida Revised Limited Liability Company Act (the “LLC Act”). There was substantial discussion about the possibility of additional revisions to the LLC Act in a future Legislative session in order to address the applicability of the “business judgment rule” to the express terms of a Florida operating agreement under the LLC Act, including the exculpation provisions of a Florida operating agreement. Gary Teblum reported that this issue would not be addressed in the upcoming Legislative Session. The typographical error in Section 605.0102(44) was discussed involving the deletion of “not” in such statute. There was discussion by Committee members regarding the presumption of good faith in Section 605.04093. The Committee discussed the formulation of an amendment proposal addressing the “business judgment rule” issue for the June 2016 meeting of the Committee

9. Third Party Opinions Standards Committee Update. Robert Barron noted that there was no new action to report from the Third Party Opinions Standard Committee. The Committee continues to work on the First Supplement to the Opinions Standards Report.

10. Chapter 607 Revision Sub-Committee Update. Philip Schwartz and Gary Teblum discussed the current status of the revisions to Chapter 607. The Sub-Committee continues to meet every few weeks by phone. There was significant discussion regarding certain indemnification issues under the Act. Messrs. Schwartz and Teblum presented a memorandum dated January 19, 2016 setting forth potential indemnification issues for discussion by those in attendance and alternate proposals were discussed by the attendees. In addition, the Committee discussed various issues related to Section 607.0832 - the director conflict of interest statute.

11. Old Business. There was no old business.

12. New Business – Locations for Future Meetings. There was no new business offered for discussion. The Chair noted that the June 2016 meeting is scheduled to occur at Hilton Orlando Bonnet Creek.