

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

Saturday, September 5, 2015
Ritz Carlton Beach Resort
Naples, Florida

MINUTES

1. Call to Order and Welcome. Meeting was called to order at 9:30 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. In addition, the current executive officers of the Section visited the meeting to give an update to those in attendance of the general activities of the Section.
3. Approval of Minutes. Upon motion, duly seconded, the minutes of the June 25, 2015 Committee meeting was unanimously approved.
4. Fictitious Name Statute Section 865.09. Stefan Rubin discussed Florida Statute 865.09 regarding how such statute treats corporations differently from LLCs and other business entities for no apparent policy reason. Motion was made to propose an amendment to the Statute to make the treatment the same for all business entities, subject to the approval by the Department of State. There was a second to the Motion and unanimous approval of the Motion by those in attendance.
5. Chapter 517 Revision Sub-Committee Update. Laurie Green and Robert Brighton reported on the intra-state crowd funding statute which was signed by the Governor and briefly discussed the problems and limitations presented by the statute for practitioners. There was also discussion of a potential national crowdfunding statute. In addition, Ms. Green discussed the legend requirement for a 506 offering and there was discussion by several members regarding this issue. Ms. Green indicated that she would contact the Department to discuss the legend issue with the Department.
6. Chapter 605 Revision. Lou Conti, Philip Schwartz and 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 the next 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. Lou Conti discussed Series LLCs at the national level and the Uniform Series Business Act. Mr. Conti noted that there are numerous legal issues with Series LLCs. Finally, there was discussion among the attendees of the possibility of creating a LLC Resource Page on the Business Law Section's website.

7. 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.

8. Howrey Opinion – Unfinished Business Theory. Robert Barron reported on the “unfinished business” theory raised in the failed law firm case by the Northern District of California in *Hogan Lovells US LLP v. Howrey LLP* dated June 3, 2015.

9. 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.

10. Chapter 607 Appraisal Issue. Gary Teblum briefed the attendees regarding a potential Amicus Brief opportunity in a pending Fourth Circuit Case regarding whether a corporation has an obligation to retain a third party valuation firm in connection with the fair value estimate for an appraisal procedure when a shareholder exercises its appraisal rights. Upon Motion, there was unanimous approval for the committee to invite volunteers to consider writing an Amicus Brief on the issue. Stewart Ames abstained from the vote because his law firm was involved in the pending litigation.

11. 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. Messrs. Schwartz and Teblum reported that Article 8 was almost complete and that the Sub-Committee intended to proceed to Articles 3, 4, 5 and 6 and then, to Article 1. There was significant discussion regarding certain indemnification issues under the Act. Messrs. Schwartz and Teblum presented a memorandum of potential indemnification issues for discussion by those in attendance and alternate proposals were discussed by the attendees.

12. Old Business. There was no old business.

13. New Business – Locations for Future Meetings. There was no new business offered for discussion. The Chair noted that the January 27, 2016 meeting is scheduled to occur in Orlando, but the hotel has not been determined. In addition, the June 2016 meeting is scheduled to occur at Hilton Orlando Bonnet Creek.

14. Meeting Adjourned. The Chair adjourned the meeting at 12:05 p.m.