

**THE FLORIDA BAR BUSINESS LAW SECTION
EXECUTIVE COUNCIL MEETING AGENDA**

Monday, September 5, 2016
8:30 a.m. – 11:30 a.m.
Ritz Carlton, Naples Florida

- I. Call to Order, and Introductions by Council Members – Jon Polenberg, Chair**
- II. Approval of Minutes – Michael Chesal, Secretary-Treasurer**
- A. Minutes of June 16, 2016 Annual Meeting (EXHIBIT “A”)
B. Minutes of June 16, 2016 Executive Council Meeting (EXHIBIT “B”)
- III. Treasurer’s Report – Michael Chesal, Secretary-Treasurer (EXHIBIT “C”)**
- IV. Report from The Florida Bar Leadership – Michael Higer, President Elect**
- V. Matters Requiring Executive Council Vote or Consideration**
- A. Triple Motion on UVTA – (EXHIBIT “D”)
Legislative Committee, Jay Brown, Chair
B. Bylaws Task Force – Phil Schwartz, Chair (EXHIBIT “E”)
C. Pro Bono Committee – John Macdonald, Chair (EXHIBIT “F”)
- VI. Reports of Special Committees and Task Forces**
- A. Chapter 607 Sub-Committee – Phil Schwartz and Gary Teblum, Co-Chairs
B. Sponsorships Task Force – Doug Bates, Chair
C. Rule 4-4.2 Task Force – Manny Farach, Chair
- VII. Standing Committee Reports**
- A. Bankruptcy/UCC – Jodi Cooke, Chair; Hon. Cathy McEwen, Judicial Chair
B. Bankruptcy/Judicial Liaison – Lynn Sherman, Chair; Hon. Paul Hyman, Judicial Chair
C. Business Litigation – Irwin Gilbert, Chair; Hon. Ed LaRose, Judicial Chair
D. Communications – Paige Greenlee, Chair
E. Computer & Technology Law – Keith Kanouse, Chair
F. Continuing Legal Education – Stephanie Lieb, Chair
G. Corporations, Securities & Financial Services – Robert Barron, Chair
H. eDiscovery Committee – Christian Dodd, Chair
I. Inclusion/Mentoring/Fellowships – James Moon, Chair
Hon. John Olson and Hon. Gill Freeman, Co-Judicial Chairs
J. Intellectual Property – Woody Pollack, Chair
K. Legislation – Jay Brown, Chair
Aimee Diaz Lyon & Greg Black, Legislative Consultants
L. Long Range Planning – Greg Yadley, Chair; Hon. Michael G. Williamson, Judicial Chair
M. Membership & Law School Relations – Amir Isaiah and Zach Hyman, Co-Chairs
N. Pro Bono – John MacDonald, Chair; Hon. Laurel Isicoff, Judicial Chair
O. Labor Day Weekend Retreat – Dineen Wasylik, Chair
P. State/Federal Courts Liaison – Detra Shaw Wilder, Chair; Hon. Gill Freeman, Judicial Chair
Q. Third Party Opinion Standards Committee – Robert Barron, Chair

VIII. Other Reports:

- A. Historian/Parliamentarian Report – Phil Schwartz
- B. Council of Sections Report – Jon Polenberg
- C. Board of Governors – Leslie Lott
- D. RPPTL Liaison Report – Jamie Marx/Marsha Rydberg
- E. Tax Liaison Report –
- F. Liaison to FICPA Report – Donald Workman
- G. Liaison to Out-of-State Practitioners Report – Donald Workman
- H. Young Lawyers Division Liaison Report – Andrew Jenkins/Christian George
- I. Chair’s Report – Jon Polenberg
- J. Chair-Elect’s Report – Melanie Damian

IX. Future Meeting Dates

- A. Mid-year Meeting – Gaylord Palms, Orlando January 26, 2017
- B. Spring Retreat – PortoBay Liberdade Hotel, Lisbon Portugal April 26, 2017

X. Motion to Adjourn

EXHIBIT A

**MINUTES OF THE ANNUAL MEETING
OF THE BUSINESS LAW SECTION OF
THE FLORIDA BAR**

**THURSDAY, JUNE 16, 2016
HILTON BONNET CREEK- ORLANDO, FLORIDA**

The annual meeting of the Executive Council of the Business Law Section (“BLS” or “Section”) of The Florida Bar was called to order by G. Alan Howard, Chair at 3:30 p.m.

I. NOMINATING COMMITTEE REPORT

Hon. Michael G. Williamson, Co-Chair

Judge Williamson reported the Nominating Committee has nominated the following officers for the 2016-17 Bar Year: Jon Polenberg as Chair, Melanie Damian as Chair-Elect and Michael Chesal as Secretary/Treasurer.

II. ELECTION OF OFFICERS

Chair Alan Howard asked all members of the Section to vote, and those members in attendance unanimously approved the nominated officers.

III. ANNOUNCEMENT OF THE NEW OFFICERS

Chair Alan Howard announced the 2016-17 officers -- Jon Polenberg, Chair, Melanie Damian, Chair- Elect, and Michael Chesal, Secretary/Treasurer.

IV. ADJOURNMENT

Motion to adjourn was duly seconded, and unanimously approved.

/S/ Melanie Damian

Melanie Damian
Secretary

EXHIBIT B

**MINUTES OF THE MEETING OF THE EXECUTIVE COUNCIL OF THE
BUSINESS LAW SECTION OF THE FLORIDA BAR**

THURSDAY, JUNE 16, 2016

3:30 P.M. – 6:30 P.M.

HILTON BONNET CREEK, ORLANDO

The meeting of the Executive Council of the Business Law Section (“BLS” or “Section”) of The Florida Bar was called to order by G. Alan Howard, Chair, at 3:45pm.

I. QUORUM:

As the first order of business, as is the Section’s tradition and regular practice, the Chair requested that everyone present sign the “Attendance List” to confirm that a quorum was present for the transaction of business. (Accompanying these minutes as **Exhibit A** is the Attendance Sheet.)

II. APPROVAL OF MINUTES:

- A.** Ms. Damian presented the minutes of the January 29, 2016, Meeting of the Executive Council (Exhibit A to Agenda). Upon motion duly made and seconded, the minutes of Annual Council Meeting of January 29, 2016 (with friendly amendment to fix typos -- thank you Gary Teblum) were unanimously approved.

- B.** Chair Alan Howard reported the results of the email Vote of the Members of Executive Council taken in February 2016 on the following triple motion:

**RESOLVED, THAT THE BUSINESS LAW SECTION
OF THE FLORIDA BAR PROVIDE TECHNICAL
ADVICE TO THE PROPONENTS OF REFORMS TO
CHAPTER 559 OF THE FLORIDA STATUTES, AS
SET FORTH IN SB 562/HB713 OR SIMILAR
LEGISLATION, RELATING TO NOTIFICATION OF
LEGAL REPRESENTATION PROVIDED TO
CREDITORS, WITH THE PURPOSE OF ENSURING
THAT ANY AMENDMENTS TO CHAPTER 559 DO
NOT DIMINISH SUBSTANTIVE CONSUMER
PROTECTION PROVIDED BY CURRENT LAW.**

24 aye, 0 nay, and 1 abstention

- C. Chair Alan Howard reported the results of the email vote of the Members of Executive Council taken in February 2016 on the following triple motion:

RESOLVED, THAT THE BUSINESS LAW SECTION OF THE FLORIDA BAR PROVIDE TECHNICAL ADVICE TO PROPONENTS OF LEGISLATION SEEKING TO ADDRESS INCONSISTENT POSITIONS TAKEN BY A DEBTOR/DEFENDANT IN A BANKRUPTCY CASE AND FORECLOSURE ACTION.

31 aye, 3 nay, 1 abstention.

III. TREASURER’S/ BUDGET COMMITTEE REPORT:

Ms. Damian presented the Treasurer’s Report for the Section, and reported that as of the April 2016 financial statements, the Section continued to be fiscally sound. Following a motion to approve which was seconded, the Executive Council unanimously approved the financial report.

OFF AGENDA ITEMS:

***The Chair recognized special guests to address the council:

- Lanse Scriven, candidate for President-Elect of the Florida Bar
- Bill Schifino, incoming President of the Florida Bar
- Michael Higer, President-Elect of the Florida Bar (from our own “greatest section in the bar”)
- Michelle Suskauer, candidate for President-Elect of the Florida Bar.

IV. MATTERS REQUIRING EXECUTIVE COUNCIL VOTE OR CONSIDERATION:

- A. Doug Bates and Jason Barnett moved the Council convert the Sponsorship Task Force to a Standing Committee. Michael Chesal seconded the motion. Following additional discussion concerning the merits of the motion, the motion passed unanimously.

- B. After allowing representatives of the Metz firm to leave the room, Judge Williamson moved the Council renew the Legislative Contract with the Metz firm on same terms as last year's contract. The motion was seconded by Michael Chesal and passed unanimously.
- C. Mindy Mora moved the Council renew the contract with the Section photographer, Paul Perdomo, for another year at the same pricing. The motion was seconded by Kacy Donlon and passed unanimously.
- D. Amanda Fernandez moved the Council create a cross committee task force to study and make recommendations concerning the potential adoption by Florida of the Uniform Real Estate Receivership Act. The Motion was seconded by Zach Hyman and it passed unanimously.
- E. Michael Chesal, as Chair of the Legislation Committee, moved the Council adopt the Standing Positions of Section attached hereto as Exhibit B. The Motion was seconded by Brian Gart and passed unanimously.

V. **REPORTS OF SPECIAL COMMITTEES AND TASK FORCES:**

A. **BYLAWS TASK FORCE:**

Phil Schwartz, *Chair*

Phil Schwartz gave the Task Force's report concerning the status of the Section's proposed Bylaws review by The Florida Bar staff. The Section is waiting for a report from The Florida Bar Board of Governors.

B. **CHAPTER 607 SUB-COMMITTEE:**

Phil Schwartz, and Gary Teblum, *Co-Chairs*

Phil Schwartz reported that the Sub-Committee continues to work in earnest. Articles 1 through 8 are largely complete. The Committee is tackling several substantive issues that were deferred in those Articles and, upon completing that process will move to address the remainder of the statute. The Committee is targeting a legislative proposal for the 2018 legislative year.

C. **PROCEEDINGS SUPPLEMENTARY TASK FORCE:**

Michel Weisz, *Co-Chair*

The Proceedings Supplementary Task Force has completed its work. Mr. Weisz thanked everyone involved in the success of the legislation. Diane Wells moved to disband the task force. The Motion was seconded by Michel Weisz and passed unanimously.

D. SPONSORSHIP TASK FORCE:
Doug Bates, *Chair*

Mr. Bates reported that under the new structure as a Committee, Sponsorship will be active in coordinating with leadership and the Retreat committee to support the section.

E. RULE 4-4.2 TASK FORCE:
Manny Farach, *Chair*

Manny Farach reported that the Task Force will continue to defend the wall.

VI. STANDING COMMITTEE REPORTS:

A. BANKRUPTCY/UCC:
Lynn Sherman, *Chair*

Lynn Sherman gave the report for the Committee. The Committee meeting had robust attendance and lively discussion. The Committee will continue to monitor legislation. The Annual View from the Bench Seminar will be held in Tampa and Miami November 2nd and 3rd. The Committee is working on the Uniform Avoidable Transfer Act and will appoint Committee representatives to the Task Force regarding the Uniform Commercial Real Estate Receivership Act.

B. BANKRUPTCY/JUDICIAL LIAISON COMMITTEE
The Honorable Paul Hyman, *Chair*

Report by Lynn Sherman that the Committee had a great meeting and dinner.

C. BUSINESS LITIGATION COMMITTEE:
Detra Shaw-Wilder, *Chair*

Ms. Shaw reported the Committee discussed several legislative issues. The Business Litigation Committee will have representatives working with Bankruptcy/UCC Committee on the Uniform Voidable Transfer Act and will appoint members to the Uniform Commercial Real Estate Receivership Act Task Force.

D. COMMUNICATIONS:
Paige Greenlee, *Chair*

Paige Greenlee reported that the committee is working on its “policies and procedures” as requested from every committee by the Chair Alan Howard, including a proposed

Social Media policy. The Committee recently completed a several year beta testing of Lexology. Ms. Greenlee moved to work with Lexology on an opt-in contract. The motion was seconded by Mindy Mora and passed unanimously.

E. COMPUTER & TECHNOLOGY LAW COMMITTEE:

Robert Kain, Chair

Mr. Kain reported that the Committee met and discussed potential CLEs regarding 1) US Supreme Court decisions, 2) data security; and 3) online contracts and agreements.

F. CONTINUING LEGAL EDUCATION COMMITTEE:

Stephanie Lieb, Chair

The CLE Committee reported that it is working to create a team of people from across the Section with diverse geographical and substantive areas of interest to work on a CLE plan that would raise awareness about the Business Law Section. Manny Farach, Zach Hyman, Russell Landy, Jennifer Morando, and Chris Broussard volunteered to serve.

G. CORPORATIONS, SECURITIES AND FINANCIAL SERVICES COMMITTEE:

Stefan Rubin, Chair

Mr. Rubin reported the meeting was well attended and included lively discussion regarding Chapter 607 issues.

H. E-DISCOVERY COMMITTEE:

Steve Tepler, Chair

Steve Tepler reported that the Committee is putting on a sold out 4 hours CLE during The Florida Bar Annual Meeting. In addition, the Committee is compiling and distributing information regarding e-discovery materials and is hard at work helping the Sponsorship Committee.

I. INCLUSION/MENTORING/FELLOWSHIPS COMMITTEE:

Carlos Sardi, Chair

Jim Moon reported that the fellowship initiative is successful and working. The Committee discussed helping with the Orlando tragedy. The Committee moved that the Section support the One Orlando Fund by making a \$5000 donation. The motion was seconded and passed unanimously.

J. INTELLECTUAL PROPERTY COMMITTEE:

Woody Pollack, Chair

Mr. Pollack reported that the Committee had a moderately attended meeting where the members engaged in a spirited discussion regarding legislation. Mr. Pollack also reported that the IP certification exam has a very low pass rate. The Committee is looking at that issue.

K. LEGISLATIVE COMMITTEE:

Michael Chesal, Chair

Mr. Chesal reported that the Committee basked in their glory of the 2016 session. The Committee will continue working on the legislative items set forth on Exhibit B.

L. LONG RANGE PLANNING COMMITTEE:

Greg Yadley, Chair

No additional report

M. MEMBERSHIP & LAW SCHOOL COMMITTEE:

Amir Isaiah, Chair

Zach Hyman gave the report. Jon Polenberg added that Membership will be a priority during his tenure.

N. PRO BONO COMMITTEE:

John Macdonald, Chair

The mission of the Pro bono Committee is to achieve 100% participation in Pro Bono Service by Business Law Section members and attorneys in their firms.

Mr. Macdonald reported that the Florida Bar Foundation will present a proposal for seed funding for a pro bono position in South Florida.

O. LABOR DAY WEEKEND RETREAT COMMITTEE:

Dineen Wasylik, Chair

Dineen Wasylik reported that Retreat planning is well underway and asked all council members to consider sponsoring the retreat.

**P. STATE/FEDERAL COURTS LIAISON:
Jude Cooper, *Chair***

Jude Cooper reported that the State/Federal Courts Liaison Committee will be presenting the Business Court Roundtable again at the Naples retreat.

**Q. THIRD PARTY OPINION STANDARDS COMMITTEE:
Robert Barron, *Chair***

Mr. Barron reported the Committee is working on its first supplement to the Opinions Report.

VII. OTHER REPORTS:

**A. HISTORIAN/PARLIAMENTARIAN REPORT:
Phil Schwartz**

Phil Schwartz reported that the Bylaws Committee is back on track and Mr. Schwartz and Russ Blain are working on a Section history.

**B. COUNCIL OF SECTIONS REPORT:
Jon Polenberg**

No report.

**C. THE FLORIDA BAR BOARD OF GOVERNORS' REPORT
Michael Higer**

No additional report

**D. RPPTL LIAISON REPORT:
Jamie Marx**

Mr. Marx reported regarding certain legislative initiatives of the RPPTL section.

**E. TAX LIAISON REPORT:
Vacant**

No report.

**F. LIAISON TO FICPA REPORT:
Donald Workman**

No report.

**G. LIAISON OUT-OF-STATE PRACTITIONERS REPORT:
Donald Workman**

The Division is accepting articles.

**H. YOUNG LAWYERS DIVISION LIAISON REPORT:
Andrew Jenkins**

No report.

**I. CHAIR'S REPORT:
G. Alan Howard**

Alan Howard extended his gratitude for Council Members service during his tenure as Chair and recognized Manny Farach, as this Year's Outstanding BLS Member, a well-deserved honor. Much applause ensued.

**J. CHAIR-ELECT'S REPORT:
Jon Polenberg**

Jon Polenberg conveyed the gratitude of the Section for Alan Howard's service and a fantastic year. Many people were envious of the Scotch gift.

Mr. Polenberg announced that the EC retreat will be in Lisbon, Portugal. After some technical difficulties, there was a video presentation showing the sites of Portugal.

VII. FUTURE MEETING DATES:

- A. Labor Day Retreat – Ritz Carlton, Naples; September 2, 2016–September 5, 2016
- B. Mid-year Meeting – Gaylord Palms, Orlando January 26, 2017

VIII. ADJOURNMENT:

Motion to adjourn was duly seconded, and unanimously approved.

/s/ Melanie E. Damian

Melanie Damian
Secretary

EXHIBIT C



THE FLORIDA BAR

BUSINESS LAW SECTION

JUNE 2016 FINANCIAL STATEMENT

YEAR TO DATE OVERVIEW

REVENUE:	\$670,892
EXPENSES:	\$761,059
NET:	\$-90,167
BEGINNING FUND BALANCE:	\$463,196
TOTAL CURRENT FUND BALANCE:	\$373,029

TOTAL CURRENT MEMBERSHIP: 5367

	June 2016 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
Total Business Law				
=====				
31431 Sect Dues	900	255,108	260,000	98.12
31432 Affil Dues	150	3,090	2,500	123.60

Total Dues Income Net	1,050	258,198	262,500	98.36

32191 CLE Committee Course	3,464	106,856	101,381	105.40
32293 NonSect Mem Cost Dif	220	10,725	17,000	63.09
35003 Ticket Events	0	3,718	3,000	123.93
35201 Sponsorships	0	111,500	122,000	91.39
35601 Bankruptcy Judge Rec	0	0	2,500	0.00
35604 Sect Registration	0	117,261	105,000	111.68
35606 Judl Liaison Dinner	5,239	24,484	30,000	81.61
35721 Rtrt/Registration	335	50,419	0	*
38499 Investment Alloc	1,372	-15,122	11,527	-131.19
39999 Miscellaneous	0	2,853	0	*

Other Income	10,630	412,694	392,408	105.17

Total Revenues	11,680	670,892	654,908	102.44

36998 Credit Card Fees	526	3,669	2,900	126.52
51101 Employee Travel	967	7,212	7,468	96.57
61201 Equip Rental	0	17,706	10,000	177.06
71001 Phone/Direct	149	851	750	113.47
71005 Internet Charges	0	0	700	0.00
81411 Promo Printing	0	0	500	0.00
84001 Postage	4	531	550	96.55
84002 Printing	20	450	2,000	22.50
84007 Membership	0	3,180	4,500	70.67
84009 Supplies	135	610	600	101.67
84010 Photocopying	0	30	250	12.00
84040 Judges Trav Annl Mtg	3,749	5,250	5,000	105.00
84041 Judges Trav Napl Ret	0	12,359	33,000	37.45
84042 Judges Trav Sprg Ret	3,431	16,488	15,000	109.92
84043 Judges Trav Fall Mtg	0	4,406	5,000	88.12
84044 Judl Liaison Dinner	23,020	38,063	30,000	126.88
84052 Mtg Travel Exp	421	1,679	8,000	20.99
84054 CLE Speaker Exp	0	912	2,000	45.60
84061 Reception	0	50,977	45,000	113.28
84062 Luncheons	0	13,452	8,000	168.15
84063 Family Dinner	0	136,307	100,000	136.31
84101 Committee Exp	129	3,160	10,000	31.60
84107 Diversity Initiative	4,380	20,634	25,000	82.54
84201 Board Or Council Mtg	320	67,296	40,000	168.24
84202 Annual Mtg	18,982	18,982	12,000	158.18
84204 Midyear Mtg	0	21,320	10,000	213.20
84216 Strategic Planning	0	0	2,000	0.00
84237 Entertainment Exp	0	16,138	15,000	107.59

	June 2016 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
Total Business Law				
===== 84264 Social Media & Other	1,000	6,000	7,500	80.00
84282 Law School Program	0	0	500	0.00
84286 FL Bar Foundation	0	50,000	50,000	100.00
84301 Awards	2,878	2,878	4,000	71.95
84330 Leadrshp Acad	0	0	10,000	0.00
84422 Website	4,411	23,122	15,000	154.15
84501 Legis Consultant	20,000	80,110	80,000	100.14
84701 Council Of Sections	0	300	300	100.00
84914 Bkrpcy Pro Bono Dona	0	0	10,000	0.00
84991 Special Projects	0	5,000	1,500	333.33
84998 Operating Reserve	0	0	32,894	0.00
84999 Miscellaneous	0	1,105	700	157.86
88265 Refreshment Breaks	0	5,820	8,000	72.75
88269 Breakfast	0	34,714	20,000	173.57
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Total Operating Expenses	84,522	670,711	635,612	105.52
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31433 Section Mgmt Fee	399	90,348	91,713	98.51
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Total TFB Support Services	399	90,348	91,713	98.51
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Total Expenses	84,921	761,059	727,325	104.64
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Net Operations	-73,241	-90,167	-72,417	124.51
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21001 Fund Balance	0	463,196	434,233	106.67
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Total Current Fund Balance	-73,241	373,029	361,816	103.10
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	13-14 Actual	14-15 Actual	15-16 Budget	15-16 Projected Actual	16-17 Proposed
Business Law Revenue	492,396	449,975	427,908	444,296	471,018
Dues	257,625	259,760	262,500	262,850	287,590
31431 Dues	254,815	257,510	260,000	260,260	285,000
31432 Affiliate Dues	2,810	2,250	2,500	2,590	2,590
Revenue	234,771	190,215	165,408	181,446	183,428
32191 CLE Courses	124,853	113,040	101,381	115,000	115,000
32293 Section Differential	26,255	21,945	17,000	17,050	22,000
35003 Ticket Events	5,708	0	3,000	3,000	3,000
35601 Bankruptcy Judge Rec	1,344	0	2,500	2,500	2,500
35606 Judl Liaison Dinner	29,555	12,057	30,000	30,000	30,000
38499 Investment Allocatio	47,056	(1,733)	11,527	13,896	10,928
Business Law Expense	482,292	387,691	493,965	451,458	464,622
Staff & Office Expense	1,061	915	1,450	900	900
71001 Phone/Direct	624	861	750	750	750
71005 Internet Charges	437	54	700	150	150
Travel	3,854	6,190	5,258	5,258	5,366
51101 Employee Travel	3,854	6,190	5,258	5,258	5,366
Other Expense	380,697	289,426	395,544	353,625	366,682
36998 Credit Card Fees	516	1,196	900	900	900
84001 Postage	462	243	275	275	275
84002 Printing	730	44	350	350	350
84007 Membership	1,873	(672)	4,500	4,500	10,000
84009 Supplies	1,188	315	500	500	500
84010 Photocopying	72	57	125	100	100
84040 Judges Trav Annl Mtg	4,938	5,231	5,000	5,000	5,000
84041 Judges Trav Napl Ret	12,614	0	13,000	0	0
84042 Judges Trav Sprg Ret	14,396	19,745	15,000	15,000	18,000
84043 Judges Trav Fall Mtg	5,192	5,363	5,000	5,000	5,000
84044 Judl Liaison Dinner	29,942	29,060	30,000	30,000	30,000
84052 Meeting Travel Expen	16,824	2,136	8,000	8,000	8,000
84054 CLE Speaker Expense	2,461	3,360	2,000	2,000	2,500
84101 Committee Expenses	4,586	2,514	10,000	8,000	8,000
84107 Diversity Initiative	9,272	8,205	25,000	20,000	10,000
84201 Board Or Council Mee	49,306	43,765	40,000	40,000	40,000
84202 Annual Meeting	18,196	13,767	12,000	12,000	14,000
84204 Midyear Meeting	22,062	25,338	10,000	20,000	10,000
84264 Social Media & Other	1,107	6,483	7,500	7,500	7,500
84286 FL Bar Foundation	50,000	0	50,000	50,000	0
84301 Awards	5,491	4,342	4,000	4,000	4,000
84330 Leadrshp Acad Contr	14,000	10,000	10,000	10,000	10,000

	13-14 Actual	14-15 Actual	15-16 Budget	15-16 Projected Actual	16-17 Proposed
84422 Website	22,965	23,609	15,000	15,000	20,000
84501 Legislative Consulta	80,225	80,023	80,000	80,000	80,000
84701 Council Of Sections	300	300	300	300	300
84914 Bkrpcy Pro Bono Dona	9,000	0	10,000	10,000	10,000
84991 Special Projects	2,311	5,000	1,500	5,000	1,500
84998 Operating Reserve	0	0	32,894	0	40,557
84999 Miscellaneous	0	0	200	200	200
Admin & Internal Svcs	96,680	91,160	91,713	91,675	91,675
31433 Section Mgmt Fee	82,843	83,216	91,713	91,675	91,675
Beginning Fund Balance	492,094	437,838	434,233	463,196	364,257
Beginning Fund Balance	492,094	437,838	434,233	463,196	364,257
21001 Fund Balance	492,094	437,838	434,233	463,196	364,257
Business Law Retreat Revenue	195,718	214,283	227,000	229,036	230,000
Revenue	195,718	214,283	227,000	229,036	230,000
35201 Sponsorships	105,850	118,500	122,000	111,500	115,000
35604 Sections Registratio	89,868	95,783	105,000	117,536	115,000
Business Law Retreat Expense	260,027	251,219	233,360	290,813	262,755
Staff & Office Expense	16,994	23,113	10,000	17,706	20,000
61201 Equipment Rental	16,994	23,113	10,000	17,706	20,000
Travel	1,882	2,439	2,210	0	2,255
51101 Employee Travel	1,882	2,439	2,210	0	2,255
Other Expense	235,792	223,729	221,150	273,107	240,500
36998 Credit Card Fees	2,464	2,564	2,000	1,703	2,000
81411 Promotional Printing	578	0	500	400	500
84001 Postage	790	396	275	448	300
84002 Printing	1,982	672	1,650	1,000	1,000
84009 Supplies	0	112	100	75	100
84010 Photocopying	0	0	125	50	100
84041 Judges Trav Napl Ret	0	18,734	20,000	12,000	18,000
84061 Reception	56,574	22,590	45,000	50,977	50,000
84062 Luncheons	8,171	9,750	8,000	13,175	10,000
84063 Family Dinner	102,103	116,913	100,000	136,307	130,000
84237 Entertainment Expens	30,303	16,048	15,000	16,138	10,000
84999 Miscellaneous	249	241	500	300	500
88265 Refreshment Breaks	8,969	3,561	8,000	5,820	8,000
88269 Breakfast	23,535	27,081	20,000	34,714	10,000

EXHIBIT D

**THE BUSINESS LAW SECTION OF THE FLORIDA BAR
SUPPORT FOR PROPOSED AMENDMENTS TO CHAPTER 726 –
FRAUDULENT TRANSFERS.**

Summary

The proposed bill (the “Amendment”) enacts as Florida law the amendments to the Uniform Fraudulent Transfer Act (“UFTA”) promulgated by the Uniform Law Commission in the summer of 2014. Florida adopted the UFTA in 1988, which is found in Chapter 726, Florida Statutes (the Florida Uniform Fraudulent Transfer Act or “FUFTA.”) Although the Amendments to the UFTA are minor, the Amendments include a change in name to the Uniform Voidable Transactions Act (“UVTA”), discussed more fully below. The Amendment does not incorporate all of the amendments to the UFTA, also discussed more fully below.

The Bankruptcy / UCC Committee of the Florida Bar formed a study group that utilized contributions from current participants in all facets of fraudulent transfer law, to adopt most of the changes set forth in the UVTA, and to draft proposed revisions which will, if enacted, leave the intent of the FUFTA fully intact while addressing a small number of narrowly-defined issues to better accommodate current practices and conditions. The principal features of the amendments are listed below.

Enactment Status.

The UVTA has been enacted in nine states and introduced for consideration in seven states as of August 2016.

Statutory Background

Fraudulent transfer law developed as a result of recognition by legislative bodies and the courts that debtors sometimes try to deplete their assets in order to hinder, delay or defraud creditors. Fraudulent transfer law has developed drawing upon the common law, the Bankruptcy Code, the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act.

American fraudulent transfer laws date back to 1571 and the Statute of Elizabeth. That statute allowed the English crown to receive as a penalty one half of property recovered and it prohibited conveyances made “with the intent to delay, hinder or defraud creditors and others of their just and lawful actions.”¹ Because such transfers were deemed illegal, it soon became enshrined in common law as a means for creditors to sue to recover the illegally transferred

¹ 15 Eliz. Ch. 5 (1571).

property from the transferee.² The law regarding fraudulent transfers has now been codified in most, if not all, states.³

Florida adopted the predecessor to the current Uniform Fraudulent Transfer Act in 1923. The act was patterned after the Uniform Fraudulent Conveyance Act, which was promulgated by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in 1918. NCCUSL approved a revised version of the law in 1984 entitled the “Uniform Fraudulent Transfer Act.” The Uniform Fraudulent Transfer Act (“UFTA”) has been adopted by 44 states, including Florida, which adopted the UFTA in 1987.⁴ One purpose of the change in title to the act was to reflect that it was applicable to transfers of personal property as well as real estate.

Summary of Changes to Uniform Fraudulent Transfer Act

The UVTA makes the following changes to the UFTA:

1. Change in Title and Style: The title of the Act was changed from the “Uniform Fraudulent Transfer Act” to the “Uniform Voidable Transactions Act.” Throughout the Act, the term “fraudulent” was changed to “voidable.”
2. Evidentiary Matters: The standard of proof with respect to claims and defenses has been clarified to be a “preponderance of the evidence” in Sections 4, 5, and 8 of the Act.
3. Choice of law: A new choice of law rule is provided in Section 10 of the UVTA.
4. Insolvency: Section 2(c) of the UFTA, which provided a definition of “insolvency” for partnerships, has been deleted. The definition of insolvency has been modified to address liabilities subject to bona fide disputes and the burden of persuasion of insolvency if the transferee is presumed to be insolvent.
5. Defenses: Section 8(a) of the UFTA was amended to provide that reasonably equivalent value must be given to the debtor, and Section 8(b) was amended to be more consistent with the Bankruptcy Code.

² Alces and Dorr, *A Critical Analysis of the New Uniform Fraudulent Transfer Act*, (1985). <http://scholarship.law.wm.edu/facpubs>; *Bay View Estates Corporation v. Southerland*, 114 Fls. 635, 651, 154 So. 894, 899 (1934).

³ West’s, Florida Statutes Annotated Volume 12B, Chapter 726 (2011)

⁴ Florida Statutes Sections 726.101 et seq.

6. Acknowledgment of Series Organizations: A new Section 11 was added that acknowledges series organizations and treats a “protected series” of a “series organization” as a person under the UVTA.

Changes to the Uniform Fraudulent Transfer Act.

A. Change in Title and Style. The title “Uniform Fraudulent Transfer Act” was changed to the “Uniform Voidable Transactions Act.” This change in title and terminology is not a change in the law, but rather a clarification of what the intent of Chapter 726 has always been. This change reflects the move from characterizing voidable transfers and obligations as “transfers” to the more appropriate term of “transactions,” since Chapter 726 encompasses both transfers made and obligations incurred. Further, the term “fraud” implies common law fraud, or a legal wrong, which is not an element of a claim under Chapter 726, and never has been.

The term “fraud” has also lead to confusion with respect to the standard of proof in courts; some courts have erroneously required a “clear and convincing” evidence standard be met for fraudulent transfers just as is required for pleading fraud.

Further, there has been concern that those who assist with transactions that are characterized as “fraudulent” might be liable under a secondary form of liability (*e.g.*, aiding and abetting or conspiracy.) While the UVTA does not address secondary liability for non-transferees (other than as provided in Section ___) who are involved in a voidable transaction (*e.g.*, as a legal wrong that supports secondary liability, a separate cause of action, unethical, criminal, etc.), the change reflects the fact that fraud is not an element of a fraudulent transfer. The change in evidentiary standard also reflects the position that common law fraud should not be confused with a fraudulent (or voidable) transaction.

The Amendment adopts the changes in style and title as reflected in Section _____.

B. Choice of law. Neither the Uniform Fraudulent Transfer Act, nor the Uniform Fraudulent Conveyance Act before it, provided a choice of law provision, leading to a variety of approaches in multi-jurisdictional controversies. Some courts have relied upon the 11 factor test set forth in the Restatement of Conflicts 2nd, which has resulted in considerable uncertainty and inconsistent results. In addition, the lack of clarity has resulted in litigation over the proper choice of law, as well as uncertainty with respect to transactional planning. The UVTA provides a simple rule that is easy to apply; the law applicable to the contested transaction is the law of jurisdiction where the debtor is located at the time of the transfer or obligation. For individual debtors, the UVTA defines the debtor’s location as the individual’s principal residence. For organizational debtors, the location is defined as the place of business, and in the case where there is more than one place of business, the location is the chief executive office of the business.

The Amendment, which helps provide guidance on an issue that has relatively little

guidance in Florida courts,⁵ adds to the uniform text of this provision a clause stating that application of another jurisdiction's voidable transaction law does not impair the protection afforded to an individual's exempt property under Florida's statutory or constitutional laws, including an individual's homestead under the Florida Constitution, to the extent such protection is applicable.⁶ The result prescribed by the added clause should follow from the uniform text of

⁵ See *Mukamal v. Nat'l Christian Charitable Foundation (In re Palm Beach Finance Partners)*, Adv. Case No. 11-02940-PGH (Bankr. S.D. Fla. Dec. 10, 2014), ECF No. 100. ("To further complicate matters, the Court notes that in both Florida and the Eleventh Circuit, there is a surprising dearth of case law analyzing choice of law issues in the context of fraudulent transfer actions.⁷ Indeed, the Court could only locate three such cases, all of which are of limited value to the Court's analysis here: (1) *Perkins v. Champagne (In re Int'l Mgmt. Assocs., LLC)*, 495 B.R. 96 (Bankr. N.D. Ga. 2013); (2) *In re Friedlander Capital Mgmt. Corp.*, 411 B.R. 434; and (3) *Alexander v. Delong, Caldwell, Novotny & Bridgers, LLC (In re Terry Mfg. Co., Inc.)*, 03-32063 WRS, 2007 WL 1560087 (Bankr. M.D. Ala. May 29, 2007) vacated and remanded, 03-32063-WRS, 2008 WL 4493240 (M.D. Ala. Sept. 30, 2008).")

⁶ See *Havoco of Am., Ltd. v. Hill*, 790 So. 2d 1018, 1028 (Fla.), opinion after certified question answered, 255 F.3d 1321 (11th Cir. 2001). ("The transfer of nonexempt assets into an exempt homestead with the intent to hinder, delay, or defraud creditors is not one of the three exceptions to the homestead exemption provided in article X, section 4. Nor can we reasonably extend our equitable lien jurisprudence to except such conduct from the exemption's protection. We have invoked equitable principles to reach beyond the literal language of the exceptions only where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead.");

Republic Credit Corp. I v. Upshaw, 10 So. 3d 1103, 1105 (Fla. Dist. Ct. App. 2009). ("We note that "[t]he transfer of nonexempt assets into an exempt homestead with the intent to hinder, delay, or defraud creditors is not one of the three exceptions to the homestead exemption provided in article X, section 4." *Havoco of Am., Ltd. v. Hill*, 790 So.2d 1018, 1028 (Fla.2001).");

In re Bifani, 580 F. App'x 740, 747 (11th Cir. 2014). ("Although the state constitution lists only three specific exemptions, Florida courts have "invoked equitable principles to reach beyond the literal language of the excepts" where "funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead." *Havoco*, 790 So.2d at 1028; see also *Zureikat v. Shaibani*, 944 So.2d 1019, 1024 (Fla. Dist. Ct. App. 2006) (affirming an equitable lien placed on a homestead where proceeds obtained from fraudulent conduct were used to invest in, purchase, or improve the homestead).")

Hirchert Family Trust v. Hirchert, 65 So. 3d 548, 552-53 (Fla. Dist. Ct. App. 2011) ("We conclude that institution of a constructive trust and/or the placement of an equitable lien over the Kissimmee Property, as the California court did based on Richard Hirchert's constructive fraud emanating from his breach of fiduciary duty, fits within the equitable exception to the homestead protections afforded by the Florida Constitution. Accordingly, although we hold that the Quitclaim Deed is not entitled to full faith and credit, we nevertheless hold that the trial court's order, to the extent it implies that the California *553 court lacks the authority to enforce the order enjoining Appellee to convey the Kissimmee Property, is reversed and this case is remanded to the trial court with instructions to enforce the injunction to convey title to the Kissimmee Property out of comity with California.")

[Choice of law forces pleading in alternative as it is not clear which state's law should apply to fraudulent transfer.] *Steinberg v. A Analyst Ltd.*, No. 04-60898-CIV, 2009 WL 806780, at *11 (S.D. Fla. Mar. 26, 2009). ("The Receiver has not limited his recovery of the alleged fraudulent transfer to causes of action solely under Florida law. The Receiver has asserted causes of action under Florida and "other applicable law." The Receiver's pleadings leave open the possibility that the laws of states other than Florida may apply to the Receiver's recovery of the transfers, and the Receiver has preserved his right to proceed under "other applicable law." This allegation serves to preserve the Receiver's claims against FirstRand in the event the substantive law of some other state governs the Receiver's claims. The Receiver raises the possibility that the law of New York, which provides for a six-year statute of limitation, may be applicable to this action. If New York law applies, the statute of limitations may not have run on the First Redemption. As previously stated, the Court has insufficient information as to whether Florida, New York

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the provision, but the Committee deemed it desirable to make the point explicit in order to allay any possible doubt. The choice of law provision only determines which state's voidable transaction law applies, and is not a choice of law provision for the determination of statutory or constitutional exemptions or any other issue.

C. Insolvency. The definition of insolvency under the UVTA is adapted from the definition of the term in the Bankruptcy Code.⁷ Insolvency is presumed from proof of a failure generally to pay debts as they become due,⁸ however, the UVTA provides that a debt subject to a bona fide dispute should not be included in the calculation of debt. Further, if there is a presumption of insolvency (e.g., the debtor is not paying debts as they come due), the UVTA provides that the burden of persuasion is shifted to the transferee.

The UVTA also removes the unique rule of insolvency as it pertains to partnerships under the UFTA. The Prefatory Note to the UVTA provides that partnership-specific rule was deleted because: (1) the original § 2(c) gave a partnership full credit for the net worth of each of its general partners, which “makes sense only if each general partner is liable for all debts of the partnership, but such is not necessarily the case under modern partnership statutes,” and (2) “the general definition of “insolvency” in § 2(a) does not credit a non-partnership debtor with any part of the net worth of its guarantors. To the extent that a general partner is liable for the debts of the partnership, that liability is analogous to that of a guarantor. There is no good reason to define “insolvency” differently for a partnership debtor than for a non-partnership debtor whose debts are guaranteed by contract.”

The Amendment adopts the changes to the definition of insolvency and the deletion of the special rule for insolvency as it pertains to partnerships, as reflected in Section _____.

D. Evidentiary Matters. There has been a lack of uniformity among the States in applying burdens and standards of proof in fraudulent transfer litigation.⁹ The lack of a uniform rule regarding burdens and standards of proof can result in the application of different evidentiary rules and impact the outcome of litigation pertaining to alleged voidable transactions.¹⁰ The UVTA provides uniformity by requiring a creditor prove the elements of a voidable transaction and also places the burden of proving elements of a defense on the

or the BVI better satisfies the “significant relationship test” of the Restatement (Second) of Conflict of Laws. If it is determined that New York law should apply and, if it is shown that the New York statute of limitations has not run as to the First Redemption, the Receiver's causes of action against FirstRand to recover the First Redemption would be timely, even without application of equitable tolling. Because at the motion to dismiss stage, a complaint may be dismissed on the basis of a statute of limitations defense only if it appears beyond a doubt that plaintiffs can prove no set of facts that toll the statute, FirstRand's motion to dismiss Counts II and III are denied as to other applicable law for the First Redemption.”)

⁷ Prefatory Note to the Uniform Voidable Transactions Act.

⁸ *Id.*

⁹ See Kenneth C. Kettering, *Codifying a Choice of Law Rule for Fraudulent Transfer: A Memorandum to the Uniform Law Commission*, 19 AM. BANKR. INST. L. REV. 319 (2011).

¹⁰ *Id.* at 324.

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transferee. Consistent with the theme that a voidable transaction does not equate to fraud, the burden in each of the foregoing scenarios is a “preponderance of the evidence.”

The Amendment adopts the change in evidentiary matters as reflected in Section _____. The evidentiary changes do not conflict with how Florida courts have applied the burden and standards of proof in fraudulent transfer cases.¹¹

E. Defenses. Several clarifications were made to Section 8, dealing with defenses to voidable transactions. The first change requires that a transferee who asserts the good faith defense for taking in good faith and for reasonably equivalent value must provide such reasonably equivalent value to the debtor. Section 8 was also changed to require that any

¹¹ See *Wieczoreck v. H & H Builders, Inc.*, 475 So. 2d 227, 228 (Fla. 1985). (“In *Canal Authority v. Ocala Mfg., Ice and Packing Co.*, 332 So.2d 321 (Fla.1976), however, this Court stated that “[i]t is rudimentary that proof of fraud must be by clear and convincing evidence.” *Id.* at 327, citing two pre-Rigot decisions from the district courts of appeal. These authorities were, however, expressly overruled in *Rigot* and consequently are of no precedential value. 245 So.2d at 53. We hereby recede from that portion of the *Canal Authority* opinion to the extent it announces a rule of law contrary to that expressed in *Rigot*.”);

Beal Bank, SSB v. Almand & Associates, 780 So. 2d 45, 59 (Fla. 2001) (“Preponderance of the evidence” is the generally accepted burden of proof in civil matters. See *Seropian v. Forman*, 652 So.2d 490, 494 (Fla. 4th DCA 1995); see also *Wieczoreck v. H & H Builders, Inc.*, 475 So.2d 227, 228 (Fla.1985) (holding that the burden of proof in a fraud action is preponderance or greater weight of the evidence), cited in *Passaat, Ltd. v. Bettis*, 654 So.2d 980, 981 (Fla. 4th DCA 1995). We find no reason to deviate from that standard here. We disapprove *Terrace Bank v. Brady*, 598 So.2d 225, 228 (Fla. 2d DCA 1992), to the extent it imposes a higher burden of proof.”)

See In re Berkman, 517 B.R. 288, 300 (Bankr. M.D. Fla. 2014). (“The ultimate burden of proof on an actual fraudulent transfer claim rests with the party seeking to avoid the transfer to establish by a preponderance of the evidence that the transferor effectuated the transfer in question with actual fraudulent intent to hinder, delay or defraud creditors.⁴³ Similarly, on a constructive fraudulent transfer claim, the party seeking to avoid the transfer must establish by a preponderance of evidence that the transferor received less than reasonably equivalent value in exchange for the transfer”

“The proof required to show that a transfer is fraudulent is the preponderance of the evidence standard. *Kapila v. Plave (In re Paul)*, 217 B.R. 336, 337 n. 2 (S.D.Fla.1997) (citing *Wieczoreck v. H & H Builders, Inc.*, 475 So.2d 227 (Fla.1985)).” *Mejia v. Ruiz*, 985 So. 2d 1109, 1113 (Fla. Dist. Ct. App. 2008).

Gulf Coast Produce, Inc. v. Am. Growers, Inc., No. 07-80633-CIV, 2008 WL 660100, at *6 (S.D. Fla. Mar. 7, 2008). (“The fraudulent act, the clandestine act of hiding money, is allegedly committed by a defendant and another, to the exclusion of the plaintiff. This is in stark contrast to a common law fraud claim where a plaintiff alleges that a defendant made a material false statement or omission directly to the plaintiff. Under such circumstances, the plaintiff is in a position to plead with the specificity required by Rule 9(b). This Court concludes that despite the use of the word “fraud,” a fraudulent transfer claim is significantly different from other fraud claims to which Rule 9(b) is directed. See *Nesco Inc. v. Cisco*, No. Civ.A. CV205-142, 2005 WL 2493353, * 3 (S.D.Ga. Oct.7, 2005) (finding common law fraud and fraudulent transfer “bear very little relation to each other” since the element of false representation need not be proven in fraudulent transfer cases). Given this lack of access to information on the part of a plaintiff in a fraudulent transfer case, the application of a heightened pleading standard is inappropriate.”)

immediate or mediate transferee seeking to use such defense must, like the first transferee, take such property in good faith. Such a defense for transferees applies to recovery of property in addition to a money judgment, thereby more closely following the relevant Bankruptcy Code sections (550(a) and (b)). Section 8 was modified to provide an elimination of strict foreclosure from the safe harbor for exercise of remedies under UCC Article 9.

F. Series Organizations. UVTA Section 11 provides for rules pertaining to series organizations. Such organizations are recognized in several jurisdictions, (e.g., Delaware and Illinois.) Generally, the operations of a “protected series” are insulated from the operations of other organization and other series within such organization. Under UVTA, each series and the organization are treated as a separate person, despite not being characterized as a separate entity under applicable state law. Because Florida does not currently recognize series organizations, the study group added this non-uniform language to proposed Section 726.112(1)(c): “Law other than ss. 726.101 – 726.115 determines whether and to what extent a series organization and each protected series of the organization is a separate person for purposes other than this Uniform Voidable Transactions Act.”

Official Comments.

Further explanation of provisions added or revised by the UVTA may be found in the Official Comments to those provisions. However, as with all other previously adopted uniform acts, Florida does not officially adopt the Official Comments.

The Official Comments have received negative criticism from members of a study group formed by the Real Property Probate and Trust Law Section of the Florida Bar (“RPPTL study group.”), and from the Tax Section. The most common objections to the Official Comments deal with the Official Comments to Section 4 of the UVTA, particularly with respect to (a) “asset substitution” (b) entity formation (c) entity conversion and (d) asset protection trusts.

It is important to recognize that Section 4 of the UFTA (current Chapter 726.105) – which sets forth the standards for determining when a transfer or obligation is voidable as to present or future creditors -- is virtually unchanged. The UVTA does not make any substantive revisions to Section 4, other than to clarify the burden of proof (which is not disputed by the RPPTL study group or the Tax Section). Thus, the enactment of the UVTA in Florida will have absolutely no impact on the current Florida standards for determining when a transfer or obligation is voidable. Nevertheless, the RPPTL study group and the Tax Section urge the wholesale rejection of the UVTA based upon unfounded concerns that courts will use the revised Official Comments – which are NOT adopted in Florida – to interpret Chapter 726 in ways that they believe will impact legitimate tax and estate planning. These concerns are completely misguided.

First, regardless of whether Florida adopts the UVTA, given that Section 726.105 of the

Florida Statutes is not being substantively changed, the Official Comments to the UVTA could be referenced and used by the courts as a guide in interpreting the current UFTA, just as the courts may use any article or publication that they may find helpful or persuasive. Thus, the attempt by the RPPTL study group or the Tax Section to torpedo the entire UVTA – based upon Official Comments that are not adopted in Florida – does not prevent the perceived “harm” that they portend.

Second, the RPPTL study group and the Tax Section have expressed concerns merely because the Official Comments to the UVTA expand the comments to include as examples of transactions that *could be* subject to a claim under Chapter 726 the following: (a) “asset substitution” (b) entity formation (c) entity conversion and (d) asset protection trusts. However, under current Chapter 726, the definition of “transfer” is broad: “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.” This definition, which is virtually unchanged in the UVTA, obviously encompasses any of the transactions provided as an example in the revised Official Comments. But this is nothing new or novel. At the same time, in order to make a claim or challenge any transfer or transaction, under both the current UFTA in Florida, or with the enactment of the UVTA, a creditor has the burden of proof of establishing under Section 726.105(1) that the transfer was made “With actual intent to hinder, delay or defraud any creditor of the debtor.” Alternatively, the creditor would have to meet the burden of proof under Section 726.105(1)(b). If any of the transactions that the RPPTL or Tax Sections are concerned about are done for legitimate purposes, and without the intent to “hinder, delay or defraud” creditors under Chapter 726.105, the transactions will not be subject to avoidance, either under the current UFTA in Florida, or under the proposed UVTA. However, if a creditor is able to prove that the transactions were done with the intent to “hinder, delay or defraud” creditors, or proved that the transaction satisfied the requirements for constructive fraud, the transactions will be equally subject to avoidance under the either the current UFTA in Florida, or the proposed UVTA. Simply put, the enactment of the UVTA in Florida does not change the standard for determining what is, and what is not a voidable transaction, and does not change Florida law in this regard one iota.

As a result of the perceived impact that UVTA will have on the foregoing planning techniques, some have requested that the Official Comments be expressly disavowed and that Section 11 (dealing with choice of law, more fully explained below) not be adopted in the Amendment. For the reasons stated above, the Business Law Section does not support expressly disavowing the Official Comments and supports the adoption of Section 11.

To be added:

We are clarifying the “fraudulent nature” issue with respect to the one year rule. This should be added:

“There is no precedent on the question from Florida's state courts, and courts interpreting the Uniform Act in other jurisdictions have reached differing results. *Compare Schmidt v. HSC, Inc.*, 131 Hawai'i 497, 319 P.3d 416, 426 (2014) (holding that one-year period commences on date of discovery of the fraudulent nature of the transfer), *and Freitag v. McGhie*, 133 Wash.2d 816, 947 P.2d 1186 (1997) (en banc) (same), *with In re Hill*, No. 3:03-cv-1034-J-32, 2004 WL 5694988, at *3 (M.D.Fla. Nov. 4, 2004) (*Hill I*) (holding that one-year period runs from the discovery of the transfer), *and Treinish v. Spitaleri*, No. 05-94988, 2006 WL 4458357 (Bankr.N.D. Ohio May 9, 2006) (same). Our review on this question of statutory *504 construction is de novo. *McDade v. State*, 154 So.3d 292, 297 (Fla.2014).”

Nat'l Auto Serv. Centers, Inc. v. F/R 550, LLC, 192 So. 3d 498, 503-04 (Fla. Dist. Ct. App. 2016), reh'g denied (May 25, 2016) (Court held “fraudulent nature” is not required: “Furthermore, interpreting the term “transfer” in the savings clause to mean “the facts showing that the transfer was fraudulent” would cause that term to mean different things in the same statute. The presumption is that when the legislature uses the same term multiple times in the same statute, that term carries the same meaning each time it is used. *See Rollins*, 761 So.2d at 298 (“[T]he same meaning should be given to the same term within subsections of the same statute.” (citing *WFTV, Inc. v. Wilken*, 675 So.2d 674, 678 (Fla. 4th DCA 1996))). Every other time the term “transfer” is used in section 726.110, it unambiguously carries the statutorily defined meaning of the disposition of an asset. When subsections (1), (2), and (3) say that an action must be brought within four years or one year, as the case may be, of the transfer, they mean within four years or one year of the disposition of the asset. It would make no sense for these subsections to say that a cause of action is extinguished unless brought within four years or one year of “the fraudulent nature of the transfer” or within one year or four years of the “facts underlying the cause of action.” Although the savings clause is different from the rest of section 726.110 in that it is the only provision of the statute that runs from the discovery of an event, the legislature nonetheless chose to use the same term “transfer” as the trigger. The same meaning must be accorded to that term throughout the statute. *See id.*”) Nat'l Auto Serv. Centers, Inc. v. F/R 550, LLC, 192 So. 3d 498, 507 (Fla. Dist. Ct. App. 2016), reh'g denied (May 25, 2016).

The 2014 Florida Statutes

Title XLI

STATUTE OF FRAUDS, VOIDABLE TRANSACTIONS, AND GENERAL ASSIGNMENTS

Chapter 726

VOIDABLE TRANSACTIONS

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CHAPTER 726

VOIDABLE TRANSACTIONS

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History.—s. 1, ch. 87-79.

726.101 Short Title.—This act, which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Florida Voidable Transactions Act.

726.102 Definitions.—As used in this ss. 726.101 – 726.115:

(1) “Affiliate” means:

(a) A person that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(b) A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person that operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(2) “Asset” means property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid lien;

(b) Property to the extent it is generally exempt under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) “Charitable contribution” means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(4) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) "Creditor" means a person that has a claim.

(6) "Debt" means liability on a claim.

(7) "Debtor" means a person that is liable on a claim.

(8) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(9) "Insider" includes:

(a) If the debtor is an individual:

1. A relative of the debtor or of a general partner of the debtor;
2. A partnership in which the debtor is a general partner;
3. A general partner in a partnership described in subparagraph 2.; or
4. A corporation of which the debtor is a director, officer, or person in

control;

(b) If the debtor is a corporation:

1. A director of the debtor;
2. An officer of the debtor;
3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership described in subparagraph 4.; or
6. A relative of a general partner, director, officer, or person in control of

the debtor.

(c) If the debtor is a partnership:

1. A general partner in the debtor;

2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
 3. Another partnership in which the debtor is a general partner;
 4. A general partner in a partnership described in clause (C); or
 5. A person in control of the debtor.
- (d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor.
- (e) A managing agent of the debtor.

(10) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(11) "Organization" means a person other than an individual.

(12) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity.

(13) "Property" means anything that may be the subject of ownership.

(14) "Qualified religious or charitable entity or organization" means

(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(17) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(18) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(19) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

History.—s. 2, ch. 87-79; s. 1, ch. 2013-189.

726.103 Insolvency.—

(1) A debtor is insolvent if, at a fair valuation, the sum of the debtor’s debts is greater than the sum of the debtor’s assets.

(2) A debtor that is generally not paying the debtor’s debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under ss. 726.101-726.115.

(4) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

History.—s. 3, ch. 87-79; s. 936, ch. 97-102.

726.104 Value.—

(1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor’s business to furnish support to the debtor or another person.

(2) For the purposes of ss. 726.105(1)(b) and 726.106, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

History.—s. 4, ch. 87-79.

726.105 Transfer or obligation voidable as to present or future creditor.—

(1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(2) In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider.

(b) The debtor retained possession or control of the property transferred after the transfer.

(c) The transfer or obligation was disclosed or concealed.

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) The transfer was of substantially all the debtor's assets.

(f) The debtor absconded.

(g) The debtor removed or concealed assets.

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) The debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

History.—s. 5, ch. 87-79; s. 937, ch. 97-102.

726.106 Transfer or obligation voidable as to present creditor.—

(1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to s. 726.103(2), a creditor making a claim for relief under subsection (1) or (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

History.—s. 6, ch. 87-79.

726.107 When transfer made or obligation incurred.—For the purposes of ss. 726.101-726.115:

(1) A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee.

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under ss. 726.101-726.115 that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not so perfected before the commencement of an action for relief under ss. 726.101-726.115, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

- (5) An obligation is incurred:
 - (a) If oral, when it becomes effective between the parties; or
 - (b) If evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

History.—s. 7, ch. 87-79; s. 28, ch. 91-110.

726.108 Remedies of creditor.—

(1) In an action for relief against a transfer or obligation under ss. 726.101-726.115, a creditor, subject to the limitations in s. 726.109 may obtain:

- (a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
- (b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and
- (c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
 - 1. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - 2. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - 3. Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

History.—s. 8, ch. 87-79.

726.109 Defenses, liability, and protection of transferee or obligee.—

(1) A transfer or obligation is not voidable under s. 726.105(1)(a) against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is voidable in an action by a creditor under s. 726.108(1)(a), the following rules apply:

(a) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

1. The first transferee of the asset or the person for whose benefit the transfer was made; or
2. An immediate or mediate transferee of the first transferee, other than:
 - A) a good faith transferee that took for value; or
 - B) an immediate or mediate good-faith transferee of a person described in clause (A).

(b) Recovery pursuant to s. 726.108(1)(a) or (b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph (a)(1) or (2).

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under ss. 726.101-726.115, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (a) A lien on or a right to retain an interest in the asset transferred;
- (b) Enforcement of an obligation incurred; or
- (c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under s. 726.105(1)(b) or s. 726.106 if the transfer results from:

- (a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (b) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under s. 726.106(2):

- (a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;
- (b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
- (c) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1)(b) or 726.106(1).

(8) However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

(a) The transfer was consistent with the practices of the debtor in making the charitable contribution; or

(b) The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

(9) The following rules determine the burden of proving matters referred to in this section:

(a) A party that seeks to invoke subsection (1), (4), (5), or (6) has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in paragraphs (c) and (d), the creditor has the burden of proving each applicable element of subsection (2) or (3).

(c) The transferee has the burden of proving the applicability to the transferee of subsection (2)(a)2.(A) or (B).

(d) A party that seeks adjustment under subsection (3) has the burden of proving the adjustment.

(10) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

History.—s. 9, ch. 87-79; s. 2, ch. 2013-189.

726.110 Extinguishment of claim for relief.—A claim for relief with respect to a transfer or obligation under ss. 726.101 – 726.115 is extinguished unless action is brought:

(1) Under s. 726.105(1)(a), not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation, and its wrongful nature, was or could reasonably have been discovered by the claimant;

(2) Under s. 726.105(1)(b) or 726.106(1), not later than four years after the transfer was made or the obligation was incurred; or

(3) Under s. 726.106(2), not later than one year after the transfer was made.

History.—s. 10, ch. 87-79.

726.111 Governing Law.

- (1) In this section, the following rules determine a debtor's location:
 - (a) A debtor who is an individual is located at the individual's principal residence.
 - (b) A debtor that is an organization and has only one place of business is located at its place of business.
 - (c) A debtor that is an organization and has more than one place of business is located at its chief executive office.
- (2) A claim for relief in the nature of a claim for relief under ss. 726.101 – 726.115 is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. "Local" law means the substantive avoidance law of the referenced jurisdiction, and not its choice of law rules.

(3) This Section 726.111 does not purport (and should not be interpreted) to be a choice of law rule for any other claims or issues as between the parties. If this Section directs the application of a foreign state's substantive law governing claims for relief in the nature of a claim for relief under ss. 726.101 – 726.115, because the debtor was "located" in such foreign state at the time when the transfer was made, such a choice of law determination would not apply to the determination of which state's exemption laws apply, would not import the foreign state's constitutional or statutory exemptions, and would not have any impact on the debtor's entitlement to Florida's constitutional homestead protection (Article X, section 4(a)).

726.112 Application to series organization.

- (1) In this Section:
 - (a) "Protected Series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (2).
 - (b) "Series Organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:
 1. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.
 2. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with

the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

3. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(c) A series organization and each protected series of the organization is a separate person for purposes of ss. 726.101 – 726.115, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. Law other than ss. 726.101 – 726.115 determines whether and to what extent a series organization and each protected series of the organization is a separate person for purposes other than this Uniform Voidable Transactions Act.

726.113 Supplementary provisions.—Unless displaced by the provisions of ss. 726.101-726.115, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement those provisions.

History.—s. 11, ch. 87-79.

726.114 Uniformity of application and construction.—Chapter 87-79, Laws of Florida, shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the law among states enacting it.

History.—s. 12, ch. 87-79.

726.115 Relation to Electronic Signatures in Global and National Commerce Act. SS. 726.101 – 726.115, modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 10(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7001(b).

726.201 Fraudulent loans void.—When any loan of goods and chattels shall be pretended to have been made to any person with whom or those claiming under her or him, possession shall have remained for the space of 2 years without demand and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder or otherwise in goods and chattels, and the possession thereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and the absolute property shall be with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded.

Title XLI

STATUTE OF FRAUDS, ~~FRAUDULENT TRANSFERS~~ VOIDABLE TRANSACTIONS, AND GENERAL
ASSIGNMENTS

Chapter 726

~~FRAUDULENT TRANSFERS~~

VOIDABLE TRANSACTIONS

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CHAPTER 726

FRAUDULENT TRANSFERS

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History.—s. 1, ch. 87-79.

726.101 Short ~~title~~Title.—This act ~~may be, which was formerly~~ cited as the “Uniform Fraudulent Transfer Act, may be cited as the Florida Voidable Transactions Act.”

~~History.—s. 1, ch. 87-79.~~

726.102 Definitions.—As used in this ss. 726.101-~~726.112~~ – 726.115:

(1) ~~(1)~~ “Affiliate” means:

(a) ~~(a)~~ A person ~~who~~that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person ~~who~~that holds the securities:

1. ~~1-~~ As a fiduciary or agent without sole discretionary power to vote the securities; or

2. ~~2-~~ Solely to secure a debt, if the person has not in fact exercised the power to vote.

(b) ~~(b)~~ A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person ~~who~~that directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person ~~who~~that holds the securities:

1. ~~1-~~ As a fiduciary or agent without sole discretionary power to vote the securities; or

2. ~~2-~~ Solely to secure a debt, if the person has not in fact exercised the power to vote.

(c) ~~(c)~~ A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) ~~(d)~~ A person ~~who~~that operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

(2) ~~(2)~~ “Asset” means property of a debtor, but the term does not include:

(a) ~~(a)~~ Property to the extent it is encumbered by a valid lien;

(b) ~~(b)~~ Property to the extent it is generally exempt under nonbankruptcy law; or

(c) ~~(c)~~ An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) ~~(3)~~ “Charitable contribution” means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) ~~(a)~~ A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) ~~(b)~~ Cash.

(4) ~~(4)~~ “Claim,” except as used in “claim for relief,” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) ~~(5)~~ “Creditor” means a person ~~whethat~~ has a claim.

(6) ~~(6)~~ “Debt” means liability on a claim.

(7) ~~(7)~~ “Debtor” means a person ~~whethat~~ is liable on a claim.

(8) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(9) ~~(8)~~ “Insider” includes:

(a) ~~(a)~~ If the debtor is an individual:

1. ~~1.~~ A relative of the debtor or of a general partner of the debtor;

2. ~~2.~~ A partnership in which the debtor is a general partner;

3. ~~3.~~ A general partner in a partnership described in subparagraph 2.; or

4. ~~4.~~ A corporation of which the debtor is a director, officer, or person in

control;

(b) ~~(b)~~ If the debtor is a corporation:

1. ~~1.~~ A director of the debtor;

2. ~~2.~~ An officer of the debtor;

3. ~~3.~~ A person in control of the debtor;

4. ~~4.~~ A partnership in which the debtor is a general partner;

5. ~~5.~~ A general partner in a partnership described in subparagraph 4.; or

6. ~~6.~~ A relative of a general partner, director, officer, or person in control of

the debtor.

(c) ~~(c)~~ If the debtor is a partnership:

1. ~~1.~~ A general partner in the debtor;

control of the debtor; 2. ~~2-~~A relative of a general partner in, a general partner of, or a person in

3. ~~3-~~Another partnership in which the debtor is a general partner;

4. ~~4-~~A general partner in a partnership described in ~~subparagraph 3.~~clause
(C); or

5. ~~5-~~A person in control of the debtor.

(d) ~~(d)~~An affiliate, or an insider of an affiliate as if the affiliate were the debtor.

(e) ~~(e)~~A managing agent of the debtor.

(10) ~~(9)~~“Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(11) “Organization” means a person other than an individual.

(12) ~~(10)~~“Person” means an individual, ~~partnership, corporation, association, organization~~business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision~~-or,~~ agency, ~~business trust, estate, trust, or any other~~or instrumentality, or another legal or commercial entity.

(13) ~~(11)~~“Property” means anything that may be the subject of ownership.

(14) ~~(12)~~“Qualified religious or charitable entity or organization” means:

(a) ~~(a)~~An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) ~~(b)~~An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

(15) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) ~~(13)~~“Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(17) “Sign” means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(18) ~~(14)~~ “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(19) ~~(15)~~ “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

History.—s. 2, ch. 87-79; s. 1, ch. 2013-189.

726.103 Insolvency.—

(1) ~~(1)~~ A debtor is insolvent if, at a fair valuation, the sum of the debtor’s debts is greater than ~~all the sum~~ of the debtor’s assets ~~at a fair valuation~~.

(2) ~~(2)~~ A debtor ~~who that~~ is generally not paying ~~his or her~~ the debtor’s debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. ~~(3) A partnership is insolvent under subsection (1) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of all of the partnership’s assets and the sum of the excess of the value of each general partner’s nonpartnership assets over the partner’s nonpartnership debts. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.~~

(3) ~~(4)~~ Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under ss. 726.101-~~726.112~~, 726.115.

(4) ~~(5)~~ Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

History.—s. 3, ch. 87-79; s. 936, ch. 97-102.

726.104 Value.—

(1) ~~(1)~~ Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor’s business to furnish support to the debtor or another person.

(2) ~~(2)~~ For the purposes of ss. 726.105(1)(b) and 726.106, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) ~~(3)~~ A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

History.—s. 4, ch. 87-79.

726.105 ~~Transfers fraudulent~~Transfer or obligation voidable as to present ~~and/or~~ future ~~creditors~~creditor.—

(1) ~~(1)~~—A transfer made or obligation incurred by a debtor is ~~fraudulent~~voidable as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) ~~(a)~~—With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) ~~(b)~~—Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. ~~1~~—Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. ~~2~~—Intended to incur, or believed or reasonably should have believed that ~~he or she~~the debtor would incur, debts beyond ~~his or her~~the debtor’s ability to pay as they became due.

(2) ~~(2)~~—In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:

(a) ~~(a)~~—The transfer or obligation was to an insider.

(b) ~~(b)~~—The debtor retained possession or control of the property transferred after the transfer.

(c) ~~(c)~~—The transfer or obligation was disclosed or concealed.

(d) ~~(d)~~—Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) ~~(e)~~—The transfer was of substantially all the debtor’s assets.

(f) ~~(f)~~—The debtor absconded.

(g) ~~(g)~~—The debtor removed or concealed assets.

(h) ~~(h)~~—The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) ~~(i)~~—The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) ~~(j)~~—The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) ~~(k)~~ The debtor transferred the essential assets of the business to a lienor ~~who~~that transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

History.—s. 5, ch. 87-79; s. 937, ch. 97-102.

726.106 ~~Transfers fraudulent~~Transfer or obligation voidable as to present ~~creditors~~creditor.—

(1) ~~(1)~~ A transfer made or obligation incurred by a debtor is ~~fraudulent~~voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) ~~(2)~~ A transfer made by a debtor is ~~fraudulent~~voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to s. 726.103(2), a creditor making a claim for relief under subsection (1) or (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

History.—s. 6, ch. 87-79.

726.107 When transfer made or obligation incurred.—For the purposes of ss. 726.101-~~726.112~~726.115:

(1) ~~(1)~~ A transfer is made:

(a) ~~(a)~~ With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against ~~whom~~which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee.

(b) ~~(b)~~ With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under ss. 726.101-~~726.112~~726.115 that is superior to the interest of the transferee.

(2) ~~(2)~~ If applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not so perfected before the commencement of an action for relief under ss. 726.101-~~726.112~~726.115, the transfer is deemed made immediately before the commencement of the action.

(3) ~~(3)~~ If applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) ~~(4)~~ A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) ~~(5)~~ An obligation is incurred:

(a) ~~(a)~~ If oral, when it becomes effective between the parties; or

(b) ~~(b)~~ If evidenced by a **writing**record, when the ~~writing-executed~~record signed by the obligor is delivered to or for the benefit of the obligee.

History.—s. 7, ch. 87-79; s. 28, ch. 91-110.

726.108 Remedies of ~~creditors~~creditor.—

(1) ~~(1)~~ In an action for relief against a transfer or obligation under ss. 726.101-~~726.112~~,726.115, a creditor, subject to the limitations in s. 726.109 may obtain:

(a) ~~(a)~~ Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) ~~(b)~~ An attachment or other provisional remedy against the asset transferred or other property of the transferee ~~in accordance with~~if available under applicable law; and

(c) ~~(c)~~ Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

1. ~~1-~~ An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

2. ~~2-~~ Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

3. ~~3-~~ Any other relief the circumstances may require.

(2) ~~(2)~~ If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

History.—s. 8, ch. 87-79.

726.109 Defenses, liability, and protection of transferee or obligee.—

(1) ~~(1)~~ A transfer or obligation is not voidable under s. 726.105(1)(a) against a person ~~who~~that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is voidable in an action by a creditor under s. 726.108(1)(a), the following rules apply:

(a) ~~(2)~~ Except as otherwise provided in this section, ~~to the extent a transfer is voidable in an action by a creditor under s. 726.108(1)(a)~~, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

1. ~~(a)~~ The first transferee of the asset or the person for whose benefit the transfer was made; or

2. An immediate or mediate transferee of the first transferee, other than:

A) ~~(b) Any subsequent transferee other than~~ a good faith transferee ~~who~~that took for value; or ~~from any subsequent transferee.~~

B) an immediate or mediate good-faith transferee of a person described in clause (A).

(b) Recovery pursuant to s. 726.108(1)(a) or (b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph (a)(1) or (2).

(3) ~~(3)~~ If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) ~~(4)~~ Notwithstanding voidability of a transfer or an obligation under ss. 726.101-~~726.112, 726.115~~, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) ~~(a)~~ A lien on or a right to retain anyan interest in the asset transferred;

(b) ~~(b)~~ Enforcement of anyan obligation incurred; or

(c) ~~(c)~~ A reduction in the amount of the liability on the judgment.

(5) ~~(5)~~ A transfer is not voidable under s. 726.105(1)(b) or s. 726.106 if the transfer results from:

(a) ~~(a)~~ Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) ~~(b)~~ Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) ~~(6)~~ A transfer is not voidable under s. 726.106(2):

(a) ~~(a)~~ To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made ~~unless, except to the extent~~ the new value was secured by a valid lien;

(b) ~~(b)~~ If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) ~~(c)~~ If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7) ~~(7)(a)~~ The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1)(b) or 726.106(1).

(8) ~~(b)~~ However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

(a) ~~1~~—The transfer was consistent with the practices of the debtor in making the charitable contribution; or

(b) ~~2~~—The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

(9) The following rules determine the burden of proving matters referred to in this section:

(a) A party that seeks to invoke subsection (1), (4), (5), or (6) has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in paragraphs (c) and (d), the creditor has the burden of proving each applicable element of subsection (2) or (3).

(c) The transferee has the burden of proving the applicability to the transferee of subsection (2)(a)2.(A) or (B).

(d) A party that seeks adjustment under subsection (3) has the burden of proving the adjustment.

(10) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

History.—s. 9, ch. 87-79; s. 2, ch. 2013-189.

726.110 Extinguishment of ~~cause of action.~~ —A cause of action claim for relief.—A claim for relief with respect to a ~~fraudulent~~ transfer or obligation under ss. 726.101-~~726.112~~ – 726.115 is extinguished unless action is brought:

(1) ~~(1)~~ Under s. 726.105(1)(a), ~~within 4~~not later than four years after the transfer was made or the obligation was incurred or, if later, ~~within 1~~not later than one year after the transfer or obligation, and its wrongful nature, was or could reasonably have been discovered by the claimant;

(2) ~~(2)~~ Under s. 726.105(1)(b) or ~~s.~~ 726.106(1), ~~within 4~~not later than four years after the transfer was made or the obligation was incurred; or

(3) ~~(3)~~ Under s. 726.106(2), ~~within 1~~not later than one year after the transfer was made ~~or the obligation was incurred~~.

History.—s. 10, ch. 87-79.

726.111 Governing Law.

(1) In this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under ss. 726.101 – 726.115 is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. "Local" law means the substantive avoidance law of the referenced jurisdiction, and not its choice of law rules.

(3) This Section 726.111 does not purport (and should not be interpreted) to be a choice of law rule for any other claims or issues as between the parties. If this Section directs the application of a foreign state's substantive law governing claims for relief in the nature of a claim for relief under ss. 726.101 – 726.115, because the debtor was "located" in such foreign state at the time when the transfer was made, such a choice of law determination would not apply to the determination of which state's exemption laws apply, would not import the foreign state's constitutional or statutory exemptions, and would not have any impact on the debtor's entitlement to Florida's constitutional homestead protection (Article X, section 4(a)).

726.112 Application to series organization.

(1) In this Section:

(a) "Protected Series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (2).

(b) “Series Organization” means an organization that, pursuant to the law under which it is organized, has the following characteristics:

1. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

2. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

3. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(c) A series organization and each protected series of the organization is a separate person for purposes of ss. 726.101 – 726.115, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. Law other than ss. 726.101 – 726.115 determines whether and to what extent a series organization and each protected series of the organization is a separate person for purposes other than this Uniform Voidable Transactions Act.

726.113 Supplementary provisions.—Unless displaced by the provisions of ss. 726.101-~~726.112~~,726.115, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement those provisions.

History.—s. 11, ch. 87-79.

~~726.112~~726.114 Uniformity of application and construction.—Chapter 87-79, Laws of Florida, shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the law among states enacting it.

History.—s. 12, ch. 87-79.

726.115 Relation to Electronic Signatures in Global and National Commerce Act. SS. 726.101 – 726.115, modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 10(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7001(b).

726.201 Fraudulent loans void.—When any loan of goods and chattels shall be pretended to have been made to any person with whom or those claiming under her or him, possession shall have remained for the space of 2 years without demand and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder or otherwise in goods and chattels, and the possession thereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and the absolute property shall be with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded.

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Moved cell	
Split/Merged cell	
Padding cell	

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EXHIBIT E

AMENDED AND RESTATED BYLAWS OF THE
BUSINESS LAW SECTION

ARTICLE I
NAME AND PURPOSES

Section 1.1. Name. The name of the section is "Business Law Section" of "The Florida Bar" (the "section").

Section 1.2. Purposes. The purposes of the section are to:

(a) provide an organization within The Florida Bar for discussion and interaction among section members who deal with issues of "business law" (including, without limitation, the substantive areas of corporations, limited liability companies and other alternative entities, securities, bankruptcy, banking, commercial finance, franchise, antitrust, intellectual property and computer law), and involving both business transactions and business disputes;

(b) provide a forum for discussion and exchange of ideas leading to the improvement of business laws, and to propose and comment on legislation and regulations about substantive areas of business law;

(c) provide a forum for collaborative learning and interaction among those who are involved in substantive business law issues, including transactional lawyers and litigators, and by and among practicing lawyers and members of the state and federal judiciary;

(d) provide education and professional development for members of the section in substantive areas of business law (including practice management) practiced by the members of the section, and to enhance business law education generally;

(e) enhance the administration of justice and help facilitate the improvement of the legal profession;

(f) enhance the sense of professionalism within, the satisfaction of, and the ethical and competent practice of law by, members of the section;

(g) inculcate in section members and promote, support and take actions consistent with the principles of duty and service to the public, including the importance of providing pro bono services in the practice of business law and in the section's activities; and

(h) inculcate in section members and promote, support and take actions consistent with the principles of diversity, inclusion, and fellowship in the practice of business law and in the section's activities.

ARTICLE II
MEMBERSHIP

Section 2.1. Regular Member Eligibility. Any member in good standing, and any "law faculty affiliate," as defined in Chapter 1 of the Rules Regulating The Florida Bar, interested in the purposes of the section is eligible to be a regular member of the section, on

application and payment of the section's annual dues. Any regular member who ceases to be a member in good standing of The Florida Bar (or ceases to have "law faculty affiliate" status) no longer is a regular member of the section. Law professors who qualify as "law faculty affiliates" are regular members of the section so long as they qualify. Reinstatement as a member of The Florida Bar in good standing automatically reinstates the person as a regular section member, provided that the member is current in the payment of section dues.

Section 2.2. Affiliate Membership Eligibility.

(a) The section's executive council may enroll, on request and payment of the prescribed dues, as affiliate members of the section, other persons who have an interest in and intent to make a contribution to the section's activities as defined in these bylaws. The purpose of affiliate membership is to foster and promote the development and communication of information concerning business law, but not to encourage the unlicensed practice of law. The number of affiliate members may not exceed 1/3 of the section's membership. An affiliate member is an affiliate member of this section only. Affiliate membership affords the affiliate member no status as or any of the rights of a member of The Florida Bar.

(b) To qualify as an affiliate member of the section, a person must either:

- 1) hold a Juris Doctor degree from an accredited law school, be employed full time as a professor of law at an accredited law school, and not qualify as a "law faculty affiliate" under Chapter 1 of the Rules Regulating The Florida Bar;
- 2) be an "authorized house counsel" pursuant to Chapter 17 of the Rules Regulating The Florida Bar;
- 3) be admitted to practice law and in good standing under the laws of any state or territory of the United States or the District of Columbia or under the laws of any foreign nation;
- 4) be a student currently enrolled in an accredited law school;
- 5) be a graduate of an accredited law school who has applied for, but not yet been admitted to, membership in The Florida Bar;
- 6) be a foreign legal consultant as defined in Chapter 16 of the Rules Regulating The Florida Bar or an arbitrator (whether or not a lawyer) who is qualified to participate in international arbitration proceedings that are permitted to take place in Florida under Rule 1-3.11 of the Rules Regulating The Florida Bar; or
- 7) be a paralegal registered as a Florida Registered Paralegal by The Florida Bar or be a "legal assistant" who meets the qualifications set forth in subsection (d) below.

(c) Affiliate members of the section may not vote or hold a section office, participate in the selection of officers or members of the executive council, or vote on the adoption, change, or revision of any provision of these bylaws.

(d) For purposes of these bylaws, a "legal assistant" is a person who assists a member of The Florida Bar in the delivery of legal services in the area of business law and who has satisfied one of the following minimum requirements:

- 1) successful completion of the certified legal assistant (CLA) examination of the National Association of Legal Assistants, Inc.;
- 2) graduation from an ABA-approved program of study for legal assistants or graduation from any accredited law school;
- 3) graduation from a course of study for legal assistants which is institutionally accredited but not ABA-approved and which requires not less than the equivalent of 60 semester hours of classroom study;
- 4) graduation from a course of study for legal assistants, other than those set forth in subsections (2) and (3), above, plus not less than 1 year of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing;
- 5) a bachelor degree in any field, plus not less than 1 year of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing; or
- 6) five years of in-house training as a legal assistant in a law firm or legal office under the supervision of 1 or more members of The Florida Bar in good standing.

Section 2.3. Honorary Section Membership. The executive council may make any person whom the executive council finds to have made an outstanding contribution to the section or finds to have made an outstanding contribution in the field of business law an honorary member of the section. An honorary section member designated by the executive council may participate in section activities and attend meetings of section committees and the executive council, but may not hold any office or position in the section, may not vote and is not required to pay dues. Honorary membership affords the honorary member no status as or any of the rights of a member of The Florida Bar.

Section 2.4. Administrative Year. The administrative year of the section runs concurrently with the administrative year of The Florida Bar.

Section 2.5. Annual Dues. The annual dues for regular members and for affiliate members of the section are the amounts fixed from time to time by the executive council and approved by the Board of Governors of The Florida Bar. There is no proration of annual dues. On becoming a regular or affiliate member of the section, dues will be payable in advance for each membership year. Any member whose annual section dues are not paid by the date on

which Florida bar membership dues are owed becomes delinquent and ceases to be a member of the section.

ARTICLE III OFFICERS AND EXECUTIVE COMMITTEE

Section 3.1. Selection of Officers. The officers of the section are a chair, a chair-elect, a secretary, and a treasurer. The chair-elect becomes chair in the manner provided by these bylaws. The chair-elect, the secretary, and the treasurer are elected at the annual meeting of the section each year in the manner provided in these bylaws. In January of each year, the chair will appoint a nominating committee consisting of not fewer than 3 members of the long range planning committee. The nominating committee will nominate active regular members of the section for the offices of chair-elect, secretary, and treasurer. Other nominations may be made by any 10 regular members in good standing of the section who file a petition with the secretary, at least 30 days prior to the annual meeting, setting forth the name(s) of the nominees. If a petition is received, the secretary will notify the other officers of the section of the nominations. At the election held at the annual meeting of the section, nominations for the offices of chair-elect, secretary, and treasurer will not be permitted unless the nominations have been made in the manner provided in this section.

Section 3.2. Duties of Officers.

(a) *Chair.* The chair presides at all meetings of the section, the executive committee and the executive council. The chair appoints (subject to the approval and concurrence of the executive committee) the chairs and vice-chairs of all section committees and task forces, prepares all reports to be submitted to The Florida Bar, and performs other duties as customarily pertain to the office of section chair. While serving as chair, the chair is an ex-officio member of all section committees and task forces.

(b) *Chair-elect.* The chair-elect becomes chair in the event of the death, resignation, or failure of the chair to serve for any reason. In the case of temporary disability or absence of the chair, the chair-elect serves as acting chair only for the duration of the chair's disability or absence. The chair-elect is responsible for duties as the chair designates. While serving as chair-elect, the chair-elect is an ex-officio member of all section committees and task forces.

(c) *Secretary.* The secretary keeps the permanent files and records of the section, including minutes of meetings of the section and of the executive council, unless these services are performed by staff members of The Florida Bar. The secretary also has oversight responsibility for section committees that are responsible for the section's communications (such as the section committees responsible for the section's website and publications). The secretary becomes chair in the event of the death, resignation, or failure to serve of the chair, the chair-elect, and the treasurer. In the case of temporary disability or absence of the chair, the chair-elect, and the treasurer, the secretary serves as acting chair only for the duration of the disability or absence of the chair, the chair-elect, or the treasurer.

(d) *Treasurer.* The treasurer accounts for all funds of the section, approves all section disbursements and prepares all section financial statements, unless these services are performed by staff members of The Florida Bar. The treasurer also has oversight responsibility

for section committees that are responsible for the section's budgeting and financial activities (such as the section's budget committee and the committee responsible for planning the section's annual retreat). The treasurer becomes chair in the event of the death, resignation or failure to serve of the chair and the chair-elect. In the case of temporary disability or absence of the chair and the chair-elect, the treasurer serves as acting chair only for the duration of the disability or absence of the chair and the chair-elect.

Section 3.3. Term of Office.

(a) *Chair.* The chair's term of office begins immediately after the conclusion of the annual convention of The Florida Bar and ends at the conclusion of the next annual convention of The Florida Bar, at which time the chair is automatically succeeded as chair by the chair-elect.

(b) *Chair-elect.* The term of office of the chair-elect runs concurrently with that of the chair. At the end of the chair's term as chair, the chair-elect automatically becomes chair.

(c) *Secretary and Treasurer.* The term of office of the secretary and the term of office of the treasurer run concurrently with that of the chair and the chair-elect.

Section 3.4. Vacancies. The chair (with the approval and concurrence of the executive committee) fills all vacancies except vacancies in the offices of chair, chair-elect, secretary, and treasurer, which will be filled in the manner provided by these bylaws. In the event that the offices of chair, chair-elect, secretary, or treasurer become vacant, the executive committee will propose members of the section to fill the unexpired term, subject to approval by the section's executive council, and, at the next annual meeting of the section, vacancies will be filled in the manner provided for in these bylaws.

Section 3.5. Executive Committee. The executive committee of the section consists of the section's officers and the chair of the section's long range planning committee. The immediate past chair of the section is an ex-officio non-voting member of the executive committee. The executive committee is the planning agency for the executive council and convenes periodically. The executive committee has the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and with respect to any other matter which the executive committee reasonably determines requires action between meetings of the executive council; *provided, however,* that only the executive council may approve legislative, administrative, and judicial positions of the section. The executive committee may not take any action that conflicts with an approved position of the executive council. The executive committee also must:

(a) approve and concur with the selections of the chair-elect of the chairs and vice chairs of the section's committees and task forces and the section's liaisons for the upcoming administrative year; and

(b) make recommendations for consideration by the section's long range planning committee of projects to be undertaken by the long range planning committee.

Section 3.6. Reports of the Executive Committee to the Executive Council. Any action taken on behalf of the executive council between meetings must be reported to the executive council no later than the executive council's next regular meeting.

Section 3.7. Actions of Executive Committee. All actions that require the advice and consent of the executive committee require the affirmative vote of a majority of the members of the executive committee.

ARTICLE IV EXECUTIVE COUNCIL

Section 4.1. Governing Body. The executive council is the section's governing body. The chair of the section is the chair of the executive council and the secretary of the section is the secretary of the executive council. The executive council conducts its business at regular and special meetings, as provided for in these bylaws, and between meetings, by correspondence, telephone, facsimile, electronic mail, or other electronic means to the extent authorized in these bylaws.

Section 4.2. Membership. The membership of the executive council consists of:

- (a) the members of the executive committee;
- (b) the chairs (including any judicial chair) and 1 vice-chair of each substantive law committee of the section;
- (c) the chairs (including any judicial chair) and 1 vice-chair of each standing committee of the section;
- (d) all members of the long-range planning committee;
- (e) the chairs and 1 vice chair of any task force of the section;
- (f) up to 5 liaisons between the section and other organizations who are selected in the manner set forth in Section 5.5 below;
- (g) the liaison to the section from the Board of Governors of The Florida Bar; and
- (h) up to 5 at-large members designated by the chair-elect to serve for the upcoming administrative year.

Section 4.3. Term of Office. Each member of the executive council serves a term of one year. Members of the executive council may be reappointed for 1 or more additional one-year terms.

Section 4.4. Vacancies. If at any time during the term of office of a member of the executive council that office becomes permanently vacant by reason of death, resignation, ineligibility, or other reason, the chair (with the approval and concurrence of the executive committee) will appoint a successor to serve for the balance of the term.

ARTICLE V COMMITTEES

Section 5.1. Committees and Task Forces. The section may establish 1 or more substantive law committees, standing committees, and task forces (including task forces officially designated as subcommittees of a particular section committee but organized for a significant section project). The following standing committees are permanent committees of the section: long range planning, budget, legislation, and diversity/inclusion. Committees and task forces may be established from time to time by the executive council, by the affirmative vote of more than a majority of the members of the executive council in attendance at a regular meeting of the executive council at which more than a majority of the current members of the executive council are in attendance. The section will maintain a list of all committees and task forces of the section that have been established, including a brief description of the role played by each committee and task force. The list of section committees and task forces will be updated at least annually and will be made available for viewing on the section's website.

Section 5.2. Functions and Responsibilities of Committees and Task Forces. Substantive and standing committees and task forces of the section have responsibility for the subject matter indicated by their respective names and/or for the tasks described in the resolutions of the executive council approving the organization of the committee or task force. Standing committees oversee section activities that support the section's substantive law committees and task forces, and the section's purposes.

Section 5.3. Organization of Committees and Task Forces. The chairs and vice-chairs of each committee and task force of the section are appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the upcoming administrative year. Chairs and vice chairs of section committees and task forces may be reappointed for additional one year terms.

Section 5.4. Change in Committee Structure. Subject to the procedures set forth in and the requisite vote required by Section 5.1 above, the executive council may abolish any committee or task force of the section, merge any 2 or more committees or task forces of the section or create any new committee or task force of the section without amendment to these bylaws. Proposed changes of committee and task force structure will be included in the notice of any meeting of the executive council at which changes are to be considered.

Section 5.5. Liaisons. Annually, the chair-elect of the section (with the approval and concurrence of the executive committee), may designate 1 or more persons to act as liaisons for the upcoming administrative year. Liaisons may be appointed with any section, committee, subcommittee, or other entity of the American Bar Association, The Florida Bar or any other legal organization (i.e. bar organizations), with any or all of the public and private law schools in the state of Florida (i.e., faculty liaisons), or with any or all of the federal or state courts of Florida (i.e., judicial liaisons). The executive council may abolish any designation or make new designations without amendment to these bylaws. The section will maintain a list of all liaisons and the organizations to which each of them liaise. The list of liaisons will be updated at least annually and will be made available for viewing on the section's website.

Section 5.6. Legislation Committee. The legislation committee oversees the section's legislative activities. The legislation committee is composed of at least 3 regular members of the section appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. Additionally, a designated vice chair or representative from each substantive law committee of the section serves as a member of the legislation committee.

Section 5.7. Diversity/Inclusion Committee. The diversity/inclusion committee, or a committee with an alternative name whose focus is comparable, is responsible for promoting, supporting and taking actions consistent with the principles of diversity, inclusion, and fellowship in the practice of law and in the section's activities. The diversity/inclusion committee is composed of at least 3 regular members of the section appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. Additionally, a designated vice chair or representative from each substantive law committee of the section serves as a member of the diversity/inclusion committee.

Section 5.8. Long Range Planning Committee. The long range planning committee performs tasks requested by the executive committee and provides advice to the executive committee and the executive council on those matters that are requested from time to time. The membership of the long range planning committee consists of former chairs of the section who wish to serve on the long range planning committee and other members of the section with more than 10 years of distinguished service on the executive council who are nominated for appointment to the long range planning committee by the chair-elect (with the approval and concurrence of the executive committee) and are approved for service on the long range planning committee by both the executive council and a majority of the current members of the long range planning committee. Annually, the chair-elect of the section (with the approval and concurrence of the executive committee) will appoint, from among the current members of the long range planning committee, the chair of the long range planning committee and a parliamentarian of the section to serve for the next administrative year.

Section 5.9. Budget Committee. The budget committee is responsible for overseeing preparation and implementation of the section's budget and for providing oversight of the section's financial performance. The treasurer chairs the budget committee and its members include the immediate past chair of the section, a member of the long range planning committee selected by the long range planning committee, and 2 other executive council members appointed by the chair-elect of the section (with the approval and concurrence of the executive committee) for the next administrative year. The secretary serves as an *ex-officio* member of the Budget Committee.

ARTICLE VI MEETINGS

Section 6.1. The Section. The section's annual meeting will be held at the same time and place as the last meeting of the executive council immediately preceding the completion of the annual convention of The Florida Bar. Notice to all section members as to time and place of the annual meeting must be given at least 30 days in advance of the meeting. The members of the section present in person at the annual meeting constitute a quorum, and a majority vote of those section members present is binding.

Section 6.2. Executive Council.

(a) The executive council will hold its organizational meeting immediately after the annual meeting of the section required by Section 6.1 above. The executive council will also hold 1 or more additional meetings between organizational meetings of the executive council. Meetings may be held in person or by telephone conference call. It is expected that at least two additional in-person meetings of the executive council will be held between organizational meetings. The executive council may only meet telephonically if all members of the executive council in attendance at the meeting are able to hear one another at that telephonic meeting.

(b) Between meetings, the executive council may conduct business by correspondence, telephone, facsimile, electronic mail, or other electronic means, to the extent authorized by the executive committee. Any action of the executive council taken by written consent requires notice of the requested written consent to the entire executive council, approval of the written consent by more than a majority of the current members of the executive council, and notice to the entire executive council of the action taken within ten days after the requisite written consents approving the action are received. Votes by written consent may be received by facsimile or electronic mail so long as the executive council member voting on the matter can be identified.

(c) Notice of the organizational meeting and of each regular in-person meeting of the executive council must be delivered to members of the executive council at least 30 days before that meeting. Notices of special meetings of the executive council, including meetings to be held by telephone conference call, must be delivered to members of the executive council at least 5 business days prior to each special meeting. The date, time, location, and manner of executive council meetings will be determined by the chair.

(d) Members of the executive council may grant proxies to other members of the executive council to vote on matters to be considered by the executive council, and these proxies may be voted by the holder designated. The executive council may establish procedures for granting proxies and for the authentication of proxies. In all circumstances, proxies must be in writing and, if voted, the minutes of the meeting at which these proxies were voted must reflect a record of votes by proxy.

(e) Except as otherwise set forth in these bylaws, members of the executive council in attendance at a meeting of the executive council, whether in person or by written proxy, constitutes a quorum for any regular or special meeting and the affirmative vote of the majority of those present at the meeting in person or by written proxy constitutes the act of the executive council and is binding. Notwithstanding the foregoing, actions by the executive council on (i) affirmative section legislative, administrative, or judicial positions (including amicus positions), (ii) changes in the designation of section committees and task forces, and (iii) amendments to these bylaws, may only be taken (x) at properly called meetings of the executive council at which more than a majority of the current members of the executive council are present or (y) by a written consent of executive council members meeting the requirements of subsection (b) above.

Section 6.3. Committees and Task Forces. The chair of each section committee and task force calls meetings and determines the time, place and notice for each meeting of that committee or task force.

Section 6.4. Conduct of Meetings. Except where it conflicts with these bylaws, the chair may invoke the provisions of the current edition of "*Robert's Rules of Order*" to govern the conduct of a meeting or portion of a meeting of the executive council. Decisions of the section's parliamentarian on these matters is final.

ARTICLE VII AMENDMENTS

These bylaws may be amended at any meeting of the executive council by the affirmative vote of more than a majority of the current members of the executive council; *provided, however,* that no amendment to these bylaws becomes effective until approved by The Florida Bar. Before they are approved, proposed changes to these bylaws must be considered at not less than 2 meetings of the executive council and must be published on the section's website for comment by section members at least 30 days before they are considered for formal approval by the executive council. Notice that proposed amendments to these bylaws will be considered for formal approval at an upcoming meeting of the executive council must be included in the notice of the meeting.

ARTICLE VIII MISCELLANEOUS

Section 8.1. Action of The Florida Bar. No action of the section may be represented or will be construed as the action of The Florida Bar unless the action is approved by Board of Governors of The Florida Bar. All recommendations of the section to The Florida Bar, any branch of the judiciary or to any other group or body to which the recommendations may be directed must first be approved by the executive council and if made to other than The Florida Bar, must have the prior approval of The Florida Bar or comply with bar policies and procedures permitting the action without the bar's approval.

Section 8.2. Financial Obligations. Before payment, all section financial obligations must first be approved in the manner specified by the executive council.

Section 8.3. Compensation and Expenses. No salary or other compensation may be paid to any member of the section for performance of services to the section, but the executive committee may authorize the payment of reasonable out-of-pocket expenses resulting from performances of these services. The executive council may also authorize payment of travel and other expenses of faculty and judicial liaisons in connection with executive council meetings if these expenses are in accordance with the policies established by the executive council with respect to reimbursements.

Section 8.4. Conformance with Policies of The Florida Bar. The section may take no actions contrary to the policies of The Florida Bar.

Required approvals:

Approved by Executive Council:

January 29, 2016

Approved by PEC:

July 28, 2016

Approved by Rules Committee:

August 16, 2016

Approved by Board of Governors:

[To be considered for approval
on September 30, 2016]

EXHIBIT F

Executive Council Agenda Item from Pro Bono Committee

The Pro Bono Committee requests approval for funding of the following initiative:

The Florida Bar Foundation is creating a new position for a Pro Bono Coordinator, whose initial responsibilities for the first year will be coordination and administrative support of pro bono activities within Miami-Dade and Monroe Counties, but who will also gather transactional and corporate pro bono opportunities statewide, with the projection to expand the Coordinator's responsibilities statewide as the project matures. The position requires seed money to supplement support from the Florida Bar Foundation and other sources.

The Pro Bono Committee requests approval of a one-time contribution of \$10,000.00 to the Florida Bar Foundation dedicated to support the position, on the conditions that (a) the Coordinator spend no less than 20% of the position's time applied to statewide transactional and corporate pro bono activities, and (b) the position be approved and otherwise funded by the Foundation or other sources.

**POSITION ANNOUNCEMENT
PRO BONO PROGRAM OFFICER/SOUTH FLORIDA
AT THE FLORIDA BAR FOUNDATION**

The Florida Bar Foundation (the Foundation) seeks a Pro Bono Program Officer/South that will foster stakeholder collaborations and partnerships utilizing both traditional and innovative pro bono service models in South Florida--including Miami-Dade, Monroe, Broward & Palm Beach counties. The Foundation provides leadership and funding to expand access to justice in Florida by funding programs that:

- Expand and improve representation and advocacy on behalf of low-income persons in civil legal matters;
- Improve the fair and effective administration of justice; and
- Promote pro bono and public service among lawyers as an integral component of the law school experience.

The Pro Bono Program Officer/South Florida will report to the Foundation's Director of Pro Bono Partnerships and be responsible for:

- Collaborating with stakeholders include Foundation grantees, law schools, law firms, legal service providers, pro bono programs, Florida Bar Sections and Committees as well as voluntary bars.
- Developing and creating rural/urban partnerships to assist residents/workers in rural pockets of South Florida by utilizing resources in nearby urban areas.
- The successful candidate will be a solution-oriented team player with strong analytical, verbal and written communication skills requiring minimal supervision. Sound judgment, integrity, a sense of humor and a demonstrable commitment to the Foundation's mission are key qualifications.

Skills and Qualifications:

- JD required. Florida Bar member or willingness to take the Florida Bar.
- Two to five law-related experience.
- Demonstrable pro bono/volunteer service and familiarity with access to justice issues as they impact low and moderate income families and vulnerable populations.
- This position is located in South Florida