



BUSINESS LAW SECTION
OF THE FLORIDA BAR

EXECUTIVE COUNCIL¹ TELEPHONIC MEETING AGENDA

Wednesday, September 18, 2019 at 5 PM
Toll Free Call In: 888.376.5050
Participant Pin: 1352846759

I. Call to Order and Introductory Remarks – Jay Brown, Chair

II. Commitment to Pro Bono Service

The Section reaffirms its goal to achieve 100% participation in pro bono service by Business Law Section members and attorneys in their firms.

The Section proudly acknowledges the following Executive Council members who have pledged at least \$1000 to The Florida Bar Foundation Endowment Trust to become Fellows of The Florida Bar Foundation: Michael Chesal, Jay Brown, Kacy Donlon, Stephanie Leib, Hon. Catherine McEwen, James “Scott” Curry, Carlos Sardi, Woodrow “Woody” Pollack, Paige Greenlee, Hon. Caryl Delano, Adina Pollan, Douglas Bates, Mark Stein, Jodi Cooke, Manuel Farach, Detra Shaw-Wilder, Philip Schwartz, Hon. Laurel Isicoff, Ron Rosenwasser, Hon. Gill Freeman (Ret.), Gary Teblum, Dineen Wasyluk, Irwin Gilbert, Deborah Baker-Egozi, Donald Workman and John Macdonald. Special thanks to John Macdonald for your tireless and inspiring efforts in this regard. Sincere apologies to any member who may have been inadvertently omitted from this list.

III. Recognition of Sponsors

The Section acknowledges the generous contribution of all its sponsors, including the following Diamond (\$10,000), Sapphire (\$7,500) and Emerald (\$5,000) sponsors.

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Ankura

Sequor Law

Shutts & Bowen

Petrucelli, Piotrowski

SunTrust

**IV. Approval of Minutes of June 27, 2019 Winter Meeting – Doug Bates, Secretary
(EXHIBIT B)**

¹ EC Members for 2019-2020 bar year are reflected in Exhibit A.

**V. Report of Legislation Committee - Mark Stein, Chair; Prof. Jeffrey Davis, Academic Chair; Aimee Diaz Lyon, Legislative Consultant, including triple motions as follows:
(EXHIBIT C)**

1. Supports legislation to enact the Uniform Commercial Real Estate Receivership Act (UCRERA) as developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and as revised by the UCRERA Task Force of the Business Law Section.
2. Supports legislation to update and clarify Section 55.205, F.S., Effect of judgment lien, to explicitly cross-reference section 319.27, F.S.

Proposed legislation and white papers are attached as COMPOSITE EXHIBIT C.

VI. New Business

- A. Motion to Approve Compressed Labor Day Weekend Make Up Meeting – Tampa Marriott Water Street November 5-6, 2019

VII. Good and Welfare

VIII. Future Meeting Dates

- A. Tentative Compressed Labor Day Weekend Make Up Meeting – Tampa Marriott Water Street November 5-6, 2019
- B. Winter Meeting – Hyatt Regency, Orlando, Florida, February 5-8, 2020
- C. Executive Council Retreat – Greece, Main Trip Wednesday, April 29 to Sunday, May 3, 2020, Pre-Trip (Santorini) April 25-28, 2020, Possible Pre-Pre-Trip Croatia (Details Will be Forthcoming)
- D. Annual Meeting – Hilton Orlando Bonnett Creek, June 17-20, 2020

IX. Adjournment

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EXHIBIT A

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The Florida Bar Business Law Section Executive Council 2019-2020

BLS OFFICERS/EXECUTIVE COMMITTEE			
Position	Name	Email	Phone
*Chair	Jay Brown	jacob.brown@akerman.com	904-798-3700
*Chair-Elect	Leyza Blanco	lblanco@sequorlaw.com	305-372-8282
*Treasurer	Kacy Donlon	kdonlon@wiandlaw.com	813-347-5104
*Secretary	Doug Bates	dbates@clarkpartington.com	850-434-9200 x117
*Immediate Past Chair	Michael Chesal	mchesal@pch-iplaw.com	305-341-3002 x20
*Chair, Long Range Planning	Gregory Yadley	gyadley@shumaker.com	813-227-2238

SUBSTANTIVE LAW COMMITTEES

Bankruptcy/UCC			
*Chair	John Hutton	huttonj@gtlaw.com	305-579-0788
*Vice Chair	Jennifer Morando	jennifer@morandolegal.com	407-720-6200 C: 239-340-6929
Second Vice Chair	James Moon	jmoon@melandrussin.com	305-358-6363
*Judicial Chair	Hon. Catherine McEwen	cmcewen@flmb.uscourts.gov	813-301-5082
Academic Chair	Prof. Jeffrey Davis	davis@law.uf.edu	352-273-0956

Business Litigation			
*Chair	Keith Bell	kbell@clarkpartington.com	850-320-6838 C: 850-261-0932
*Vice Chair	Giacomo Bossa	gbossa@anmpa.com	305-559-1600
Second Vice Chair	Allison Leonard	aleonard@dvllp.com	305-371-3960
*Judicial Chair (State)	Hon. Edward LaRose	larosee@flcourts.org	813-272-3430
*Judicial Chair (Federal)	Hon. Darrin Gayles	gayles@flsd.uscourts.gov	305-523-5170
Academic Chair			

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Computer Law and Technology			
*Chair	Steven Blickensderfer	sblickensderfer@carltonfields.com	305-539-7340
*Vice Chair	Peter James Maskow	pmaskow@mcglinchey.com	954-356-2509
Second Vice Chair	Joshua Marks	jmarks@focal-point.com	561-319-8070
Judicial Chair			
Academic Chair	Prof. Vincenç Feliú	vfeliu@nova.edu	954-262-6210

Corporations, Securities & Financial Services			
*Chair	Andrew Schwartz	andrew.schwartz@akerman.com	954-468-2452
*Vice Chair	Willard Blair	wblair@shumaker.com	813-227-2356
Second Vice Chair	Stephen Sandiford	stephen.sandiford@hkllaw.com	305-789-7472
Academic Chair	Prof. Stuart Cohn	cohn@law.ufl.edu	352-273-0925

Intellectual Property			
*Chair	Jacqueline Tadros	jtadros@intellectualpropertynow.com	954-351-7479
*Vice Chair	James Matulis	Jim@MatulisLaw.com	813-451-7347
Second Vice Chair	Michele Moss	mgmoss@johnsonmosslaw.com	407-273-7027 C: 407-476-1971
*Judicial Chair	Hon. Mary Scriven	chambers_flmd_scriven@flmd.uscourts.gov	813-301-5710
Academic Chair	Prof. Jake Linford	jlinford@law.fsu.edu	850-644-3449

PERMANENT AND OTHER COMMITTEES

Bankruptcy Judicial Liaison			
*Chair	Stephanie Lieb	slieb@trenam.com	813-227-7469
*Judicial Chair	Hon. Roberta Colton	roberta_colton@flmb.uscourts.gov	813-301-5118

Budget Committee			
Chair (Treasurer)	Kacy Donlon	kdonlon@wiandlaw.com	813-347-5104
Immediate Past Chair	Michael Chesal	mchesal@pch-iplaw.com	305-341-3002 x20
Long Range Planning	Hon. Michael Williamson	mwilliamson@flmb.uscourts.gov	813-301-5520

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At-large Member (Retreat)	Paige Greenlee	paige@greenleelawtampa.com	813-802-8215
At-large Member (Sponsorship)	Stefan Rubin	srubin@shutts.com	407-835-6735
Secretary (<i>ex officio</i>)	Doug Bates	dbates@clarkpartington.com	850-434-9200 x117

Communications

*Chair	Matthew Hale	mhale@srbp.com	813-229-0144
*Vice Chair	Adina Pollan	apollan@pollanlegal.com	904-475-2187
Second Vice Chair	Chris Thompson	crthompson@burr.com	407-540-6652
*Judicial Chair	Hon. Paul Hyman	paul_hyman@flsb.uscourts.gov	561-514-4125

Continuing Legal Education (CLE)

*Chair	Matthew Horowitz	mhorowitz@cozen.com	305-397-0813
*Vice Chair	Robert Charbonneau	rpc@agentislaw.com	305-722-2002
Second Vice Chair			
*Judicial Chair	Hon. Caryl Delano	cdelano@flmb.uscourts.gov	813-301-5190

Electronic Discovery and Digital Evidence

*Chair	Darren Spielman	dspielman@complexip.com	954-768-9002
*Vice Chair	Zachary Catanzaro	zachary@zlclaw.com	561-807-1830
Second Vice Chair	Chioma Rucshana Deere	cdeere@wlclaw.com	561-615-5666
*Judicial Chair	Hon. William Matthewman	matthewman@flsd.uscourts.gov	561-803-3440

Inclusion/Mentoring/Fellowships

*Chair	Sara Paris	receivershiplawfirm@gmail.com	305-606-6846
*Vice Chair	Michelle Suarez	msuarez@floridaentrepreneurlaw.com	954-361-4238
Second Vice Chair	Christina Taylor	ctaylor@lseblaw.com	407-481-5800
*Judicial Chair (State)	Hon. Virginia Norton	nortonvb@coj.net	904-255-1300

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*Judicial Chair (Federal)	Hon. John Olson	john_k_olson@flsb.uscourts.gov	954-769-5772
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Labor Day Retreat			
*Chair	Paige Greenlee	paige@greenleelawtampa.com	813-802-8215
*Vice Chair	Amanda Fernandez	afernandez@dvllp.com	305-371-3960
Immediate Past Chair	Russell Landy	rlandy@dvllp.com	305-371-3960

Legislation			
*Chair	Mark Stein	mark@marksteinlaw.com	305-356-7550 C: 786-280-2870
*Vice Chair	Manuel Farach	mfarach@mcglinchey.com	954-356-2501
At-large (Bankr/UCC)	Jennifer Morando	jennifer@morandolegal.com	407-720-6200 C: 239-340-6929
At-large (Business Litigation)	Giacomo Bossa	gbossa@anmpa.com	305-559-1600
At-large (Computer Law)	Josh Saltz	jsaltz@pch-iplaw.com	305-341-3000
At-large (Corporations)	Willard Blair	wblair@shumaker.com	813-227-2356
At-large (I.P)	James Matulis	Jim@MatulisLaw.com	813-451-7347
At-large	Jodi Dubose	jdubose@srbp.com	850-637-1836
At-large	Detra Shaw-Wilder	dps@kttlaw.com	305-372-1800
At-large	Woodrow "Woody" Pollack	wpollack@shutts.com	813-463-4894
At-large	Bart Valdes	bvaldes@dsklawgroup.com	813-251-5825
At-large	Stephanie Lieb	slieb@trenam.com	813-227-7469
At-large	Robert Barron	rbarron@bergersingerman.com	954-712-5145
At-large	Robert Kain	rkain@complexip.com	954-768-9002 C: 954-768-9002
Academic Chair	Prof. Jeffrey Davis	davis@law.ufl.edu	352-273-0956
Academic Chair	Prof. Stuart Cohn	cohn@law.ufl.edu	352-273-0925

Long Range Planning			
*Chair	Gregory Yadley	gyadley@shumaker.com	813-227-2238

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*Judicial Chair	Hon. Michael Williamson	mwilliamson@flmb.uscourts.gov	813-301-5520
*Parliamentarian	Philip Schwartz	philip.schwartz@akerman.com	954-468-2455 C: 305-790-3536

Marketing, Promotions & Sponsorships

*Chair	Stefan Rubin	srubin@shutts.com	407-835-6735
*Vice Chair	Brett Lieberman	brett@elrolaw.com	954-400-1499 C: 305-710-9483
Second Vice Chair	Jacqui Calderin	jc@agentislaw.com	305-722-2002

Membership

*Chair	Dyanne Feinberg	def@kttlaw.com	305-372-1800
*Vice Chair	Terry Sanks	tsanks@bwsmiplaw.com	407-926-7707
Second Vice Chair	Andrew Layden	alayden@bakerlaw.com	407-649-4000
FAMU Liaison			
FSU Liaison	Prof. Manuel Utset, Jr.	mutset@law.fsu.edu	850-644-4759
NSU Liaison	Prof. Marilyn Cane	canem@nova.edu	954-336-7179
UF Liaison	Prof. Jeffrey Davis	davis@law.uf.edu	352-273-0956
UM Liaison	Prof. Andrew Dawson	adawson@law.miami.edu	305-284-8446
*Judicial Chair	Hon. Karen Specie	karen_specie@flnb.uscourts.gov	850-521-5030

Opinion Standards

*Co-Chair	Robert Barron	rbarron@bergersingerman.com	954-712-5145
*Co-Chair	Gary Teblum	gteblum@trenam.com	813-223-7474 C: 813-227-7457

Pro Bono

*Chair	Lynn Sherman	ls Sherman@trenam.com	727-820-3980
*Vice Chair	Carlos Sardi	carlos@sardilaw.com	305-697-8690
Second Vice Chair	Amanda Finley	afinley@sequorlaw.com	305-372-8282 C: 239-699-4186
*Judicial Chair	Judge Laurel Isicoff	laurel_m_isicoff@flsb.uscourts.gov	305-714-1750

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State & Federal Courts Judicial Liaison			
*Chair	Amir Isaiah	aisaiah@gjb-law.com	305-913-6679
*Vice Chair	Zach Hyman	zhyman@bergersingerman.com	954-525-9900
*Judicial Chair (State)	Hon. Lisa Walsh	lwalsh@jud11.flcourts.org	305-349-7029
*Judicial Chair (Federal)	Hon. Thomas Smith	thomas_smith@flmd.uscourts.gov	407-835-4305

TASK FORCES AND SUBCOMMITTEES

Amicus Brief Guideline Subcommittee			
*Chair	Dineen Wasylik	dineen@ip-appeals.com	813-778-5161
*Judicial Chair	Hon. Edward LaRose	larosee@flcourts.org	813-272-3430

Antitrust and Trade Regulation Subcommittee			
*Chair	Dee Dee Fischer	deedee.fischer@akerman.com	305-982-5570
Vice Chair			
*Judicial Chair	Hon. Edward LaRose	larosee@flcourts.org	813-272-3430

Blockchain & Cryptocurrency Task Force			
*Chair	Woodrow “Woody” Pollack	wpollack@shutts.com	813-463-4894
*Vice Chair	Jude Cooper	jcooper@beckerlawyers.com	954-985-4160
Second Vice Chair	Robert Kain	rkain@complexip.com	954-768-9002 C: 954-768-9002

Business Courts Task Force			
*Co-Chair	Hon. Gill Freeman (ret.)	gfreeman@jamsadr.com	305-371-5267
*Co-Chair	Jon Polenberg	jpolenberg@beckerlawyers.com	954-987-7550

Chapter 607 Subcommittee			
*Co-Chair	Philip Schwartz	philip.schwartz@akerman.com	954-468-2455 C: 305-790-3536
*Co-Chair	Gary Teblum	gteblum@trenam.com	813-223-7474 C: 813-227-7457

Financial Literacy Task Force			
*Chair	Amanda Finley	afinley@sequorlaw.com	305-372-8282

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			C: 239-699-4186
*Vice-Chair	James Murphy	jbmurphy@gmail.com	813-416-3706
*Judicial Co-Chair	Hon. Laurel Isicoff	laurel_m_isicoff@flsb.uscourts.gov	305-714-1750
*Judicial Co-Chair	Hon. Karen Specie	karen_specie@flnb.uscourts.gov	850-521-5030

Health & Wellness Task Force			
*Co-Chair	Dineen Wasyluk	dineen@ip-appeals.com	813-778-5161
*Co-Chair	Irwin Gilbert	igilbert@conradscherer.com	954-462-5500 C: 561-818-7201
*Judicial Chair	Hon. Jerry A. Funk	jerryala@comcast.net	904-301-6560

Proposed Amendments to the Fla. R. Civ. P. Task Force			
*Chair	Bart Valdes	bvaldes@dklawgroup.com	813-251-5825
*Judicial Chair	Hon. Ralph Artigliere	artigliere@gmail.com	706-851-4121

Scholar and Fellows Retention Task Force			
*Chair	Mariane Dorris	mdorris@lseblaw.com	407-481-5800
*Vice Chair	Kimra Major-Morris	kimra@majormorrislaw.com	407-230-0540
*Judicial Chair	Hon. Mindy A. Mora	mamora@flsb.uscourts.gov	561-514-4130

Uniform Commercial Real Estate Receivership Act (UCRERA) Task Force			
*Co-Chair	Kenneth Murena	kmurena@dvllp.com	305-371-3960
*Co-Chair	Amanda Fernandez	afernandez@dvllp.com	305-371-3960

Uniform Voidable Transfers Act (UVTA) Task Force			
*Chair	John Hutton	huttonj@gtlaw.com	305-579-0788
*Vice Chair	David Slenn	dslenn@slk-law.com	813-229-7600

LIAISONS			
*TFB BOG	Greg Weiss	gweiss@mrachek-law.com	561-655-2250
TFB CLE	Matthew Horowitz	mhorowitz@cozen.com	305-397-0813
Council of Sections	Leyza Blanco	lblanco@sequorlaw.com	305-372-8282
*RPPTL Section	James Marks	james@marxrosenthal.com	305-577-0276

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*Out-of-State Division	Lawrence Kunin	lkunin@mmmlaw.com	404-233-7000
*YLD Section	Cherine Valbrun	cvalbrun@kvllaw.com	954-527-1115
*FICPA	Donald Workman	dworkman@bakerlaw.com	202-861-1602 C: 703-400-3637
TFB Diversity and Inclusion	Mariane Dorris	mdorris@lseblaw.com	407-481-5800
Working Group on Legal Opinions	Philip Schwartz	philip.schwartz@akerman.com	954-468-2455 C: 305-790-3536

AT-LARGE MEMBERS OF EXECUTIVE COUNCIL			
*At-large Member	John Macdonald	john.macdonald@akerman.com	904-798-3700
*At-large Member	Russell Landy	rlandy@dvllp.com	305-371-3960
*At-large Member	Peter Valori	pvalori@dvllp.com	305-371-3960
*At-large Member	Marisa Rosen Dorough	mdorough@bakerdonelson.com	407-422-6600
*At-large Member	Jason Burnett	jason.burnett@gray-robinson.com	904-598-9929

* Member of Executive Council pursuant to Section 4.2 of Amended and Restated Bylaws of the Business Law Section.

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EXHIBIT B

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MINUTES OF THE FLORIDA BUSINESS LAW SECTION
ANNUAL MEETING
Thursday, June 27, 2019
Boca Raton Resort and Spa
Boca Raton, Florida

I. Call to Order– Michael Chesal, Chair

Michael Chesal, Chair of the Business Law Section, duly called the 2019 Annual Meeting of The Florida Bar Business Law Section to order at approximately 3:42.

II. Report of Nominating Committee and Election of Officers for 2019-2020 – Greg Yadley, Chair, Long Range Planning Committee

Mr. Yadley presented the slate of officers for the upcoming Bar year as follows:

Chair – Jay Brown
Chair-Elect – Leyza Blanco
Treasurer – Kacy Donlon
Secretary – Doug Bates

Upon the motion being made and duly seconded, the Executive Council voted to approve the slate as presented

III. New Business/Adjournment

Hearing no further new business, Mr. Chesal entertained a motion to adjourn the Annual Meeting of the Business Law Section. Upon the motion being made and duly seconded, the Executive Council voted to adjourn the meeting at 3:47 and continue with the meeting of the Executive Council.

**MINUTES OF THE FLORIDA BUSINESS LAW SECTION
EXECUTIVE COUNCIL
ANNUAL MEETING
Thursday, June 27, 2019
Boca Raton Resort and Spa
Boca Raton, Florida**

IV. Call to Order and Introductions by Council Members – Michael Chesal, Chair

Michael Chesal, Chair of the Business Law Section, duly called the 2019 Annual Meeting of The Florida Bar Business Law Section’s Executive Council to order at approximately 3:48 p.m., immediately following the Annual Meeting of the Section for the election of officers for the upcoming 2019-20 year.

In lieu of introductions, Mr. Chesal referred the Executive Council to Exhibit A to the Agenda which lists the roster of Executive Council members. He also asked that all members of the Executive Council sign the attendance list to confirm the presence of a quorum. (A copy of the attendance list is attached hereto as Exhibit A.)

V. Reaffirmation of Commitment to Pro Bono

Mr. Chesal began the meeting by reiterating the Section’s commitment to Pro Bono activities on behalf of the Bar. He also acknowledged those Section members who are Florida Bar Foundation Fellows: Michael Chesal, Jay Brown, Kacy Donlon, Stephanie Lieb, Hon. Catherine McEwen, Scott Curry, Carlos Sardi, Woody Pollack, Paige Greenlee, Hon. Caryl Delano, Adina Pollan, Doug Bates, Mark Stein, Jodi Cooke, Manuel Farach, Detra Shaw-Wilder, Philip Schwartz, Hon. Laurel Isicoff, Ron Rosenwasser, Hon. Gill Freeman (Ret.), Gary Teblum, Dineen Wasyluk, Irwin Gilbert, Deborah Baker-Egozi, Donald Workman and John Macdonald.

VI. Recognition of Sponsors

Mr. Chesal recognized our Sapphire and Emerald sponsors for their generous support:

Sapphire Sponsors:

*Berger Singerman
Eisner Amper
Michael Moecker & Associates
Morgan & Morgan*

Emerald Sponsors:

*Akerman
Clarivate Analytics
GrayRobinson, P.A.
Messana, P.A.
Navigant
Peretz Chesal & Herrmann, P.L.
Sequor Law
Shutts & Bowen*

VII. Approval of Minutes of the January 17, 2019 Winter Meeting – Kacy Donlon, Secretary

Kacy Donlon, Secretary, presented the Minutes of the January 17, 2019 Winter Meeting which took place in Orlando. (A copy of the Minutes was attached to the Agenda as Exhibit B.) Upon motion duly made and seconded, the Minutes were unanimously approved as drafted.

VIII. Approval of Minutes of the March 11, 2019 Spring Retreat Meeting – Kacy Donlon, Secretary

Kacy Donlon, Secretary, presented the Minutes of the March 11, 2019 Spring Retreat Meeting which took place in Israel. (A copy of the Minutes was attached to the Agenda as Exhibit C.) Upon motion duly made and seconded, the Minutes were unanimously approved as drafted.

IX. Treasurer’s Report – Leyza Blanco, Treasurer

Leyza Blanco, Treasurer, reported that the fiscal state of the Section is strong. The budget report for the Section for the period ending May 31, 2019 was attached to the agenda as Exhibit D. The budget process will be underway at the Labor Day Retreat.

X. Reports of Substantive Law Committees and Legislation Committee

- A. Bankruptcy/UCC - Stephanie Lieb, Chair, John Hutton, Vice Chair, Jennifer Morando, Second Vice Chair, Hon. Catherine McEwen, Judicial Chair, Prof. Jeffrey Davis, Academic Chair

Stephanie Lieb, Chair of the Bankruptcy/UCC Committee, reported that the Committee reviewed the successful legislative session and the bills supported by the Committee. The Committee has also set up a study group to review the 2018 amendments to sections 9-406 and 9-408, as well as group to examine whether any amendments are needed for the judgment lien statute. Finally, the Committee discussed federal house bill 2938/senate bill 679 Honoring American Veterans in Extreme Need Act of 2019 (“the HAVEN ACT of 2019”) which would exempt from the monthly income calculations in bankruptcy certain benefits paid by the Department of Veteran Affairs and the Department of Defense. After its discussion, the Committee moved by triple motion as follows:

That the Business Law Section support the Honoring American Veterans in Extreme Need Act of 2019 (“HAVEN Act”) or any similar subsequent legislation.

Upon vote taken, the Executive Council voted to adopt this triple motion (with all judges abstaining).

- B. Business Litigation – Zachary Hyman, Chair, Keith Bell, Vice Chair, Giacomo Bossa, Second Vice Chair, Hon. Edward LaRose Judicial Chair (State), Hon. Darrin Gayles, Judicial Chair (Federal)

Zachary Hyman, Chair of the Business Litigation Committee, reported that the Committee discussed the proposed UCRERA legislation as well as the work being done on the non-compete legislation. The Committee also moved for the creation of a subcommittee to review and make recommendations to the Executive Council regarding the submission of amicus briefs on behalf of the Section. The proposed

subcommittee would have 3 to 5 members, serving 3 to 5 year terms and be appointed by the Chair. Upon the motion being made and duly seconded, the Executive Council voted to approve the creation of the subcommittee with three nays recorded (all judges abstaining).

C. *Computer & Technology Law Committee – James “Scott” Curry, Chair, Steven Blickensderfer, Vice Chair, Josh Saltz, Second Vice Chair, Prof. Vincenc Feliu, Academic Chair*

Steven Blickensderfer, on behalf of Scott Curry, Chair of the Computer & Technology Law Committee, reported that the committee worked diligently to put together more CLEs this past year. In April, the Committee organized an online CLE presentation in April regarding the ADA’s application to websites, which was presented by Susan Stephan, Associate Dean and Adjunct Professor at Nova Law. The Committee is planning a live CLE on data privacy laws for the Labor Day Retreat committee meeting.

The Committee discussed various bills that were filed this past legislative session, including the new law that creates a blockchain taskforce to study such technology and make proposals. The Committee also discussed surprising bills that were introduced but failed to pass, including the biometric privacy and social media bills. Members of the Committee authored whitepapers on these bills that are available and can be used for position papers in the future if the bills are reintroduced.

The Committee also discussed its name and there was debate whether the words “new” or “emerging” should be added to reflect the group’s expanding and expansive subject area expertise. The matter was tabled for future consideration. After the Committee meeting, the Committee hosted a successful CLE titled “Blockchain for the Florida Lawyer.”

D. *Corporations, Securities & Financial Services – Andrew Schwartz, Chair, David Tobin, Vice Chair, William Blair, Second Vice Chair, Prof. Stuart Cohn, Academic Chair*

Andrew Schwartz, Chair of the Corporations, Securities & Financial Services Committee, reported that the Committee was very pleased with the passage of the Chapter 607 legislation this session. The Committee discussed next steps including a possible Chapter 607 glitch bill, any amendments to chapter 605 in light of the Chapter 607 legislation as well as any CLE and/or publication opportunities related to the new legislation.

E. *Intellectual Property – Terry Sanks, Chair; Jacqueline Tadros, Vice Chair, James Matulis, Second Vice Chair, Hon. Mary Scriven, Judicial Chair, Prof. Jake Linford, Academic Chair*

Terry Sanks, Chair of the Intellectual Property Committee, reported that the Committee’s 10th Annual IP Symposium, held April 11-12, 2019, had the best attendance to date (77 people). Six attorneys sat for the IP Certification exam in May 2019. The IP certification exam is changing in 2020 where the format will be a unified test. Since the last time the IP Committee developed certification examination preparation material was 2007, a task force has been established to develop updated material. The Committee has also created a subcommittee to review and update the Committee’s brochure, and look into getting the brochure posted online through the Section and The Florida Bar. This subcommittee is also going to work at developing a brochure/publication tailored for in-house decision makers. The intent is to let in-house decision makers know that Florida has a strong, organized IP legal community as represented by the BLS IP Committee.

F. Legislation – Doug Bates, Chair; Mark Stein, Vice Chair, Prof. Jeffrey Davis, Academic Chair, Prof. Stuart Cohn, Academic Chair

Doug Bates, Chair of the Legislation Committee, thanked our legislative consultants Aimee Diaz Lyon and Doug Bell and Vice Chair for all of their help during a very busy legislative session. He also moved that the Executive Council approve the consulting contract for Metz Husband & Daughton to continue as our legislative consultants for the upcoming bar year. The contracted amount, \$80,000, as well as the language of the agreement is the same as last year. Upon the motion being made and duly seconded, the Executive Council unanimously voted to approve the contract for bar year 2019-2020.

XI. Old Business

A. Judge William Van Nortwick memorial recognition – Michael Chesal

Chair Michael Chesal reported that the Executive Committee had decided to honor Judge VanNortwick by naming the annual winetasting, held during the Labor Day Retreat, in memory of him.

XII. New Business

A. Proposed establishment of a Cannabis Law Committee – Jay Brown

Jay Brown, Chair-Elect of the Section, moved to create a Cannabis Law committee. The motion was seconded and the floor was opened for discussion. Prior to any discussion, Phil Bates moved to table the motion indefinitely. The motion to table was seconded and carried by a vote of 23-17 (all judges abstaining). There was further discussion regarding the creation of a study group on the topic with the Chair to appoint the members of that study group. It is anticipated that the Study Group will come back to the Executive Council with a recommendation at the Labor Day Retreat.

B. Proposed establishment of Financial Literacy Task Force – Jay Brown

Jay Brown, Chair-Elect of the Section, moved to create a Financial Literacy Task Force to help implement the new legislation passed related to high school requirements to offer financial literacy courses. Amanda Finley will be asked to lead the new task force. Upon the motion being made and duly seconded, the Executive Council unanimously voted to approve the creation of the task force.

XIII. Reports of Special Committees and Task Forces

A. Antitrust and Trade Regulation – Ron Rosenwasser, Chair, Hon. Edward LaRose, Judicial Chair

No report.

B. Blockchain and Cryptocurrency Task Force – Woody Pollack, Chair, Jude Cooper, Vice Chair, Robert Kain, Second Vice Chair

Woody Pollack, Chair of the Blockchain and Cryptocurrency Task Force, reported that the Task Force discussed the new law establishing a statewide committee on BlockChain Technology which will have 13 members appointed by the Governor. The Task Force hoped to have at least one of its members appointed to this committee. In any case, the Task Force will support and hopefully guide the statewide committee and (B) monitor proposed blockchain bills. The latter effort may require input from various

other substantive committees since the Task Force knows about technology side issues but will need help on the interaction of blockchain technology in other legal fields.

C. Business Courts Task Force – Hon. Gill Freeman and Jon Polenberg, Co-Chairs

Jon Polenberg, Co-Chair of the Business Courts Task Force, reported that the Task Force continues to work diligently to make a recommendation to the Section as to how to proceed regarding business courts. Currently there is a three part approach involving (1) amendments to the Rules of Judicial Administration; (2) an Administrative Order from the Supreme Court regarding how business courts manage cases; and (3) a state appropriations bill. The Task Force hopes to make a recommendation to the Executive Council at the Labor Day Retreat.

D. Chapter 607 Subcommittee – Phil Schwartz, & Gary Teblum, Co-Chairs

Phil Schwartz, Co-Chair of the Chapter 607 Subcommittee, reported that the Governor signed the new chapter 607 legislation into law on June 7th. The Subcommittee is working on ways to publicize and educate lawyers regarding the new legislation.

E. Health & Wellness Task Force – Dineen Wasyluk and Irwin Gilbert, Co-Chairs

Dineen Wasyluk, Co-Chair of the Health & Wellness Task Force, reported that the Task Force is working on programming for the Retreat and increase awareness through social media regarding health and wellness efforts of the Section.

F. UCRERA Task Force – Kenneth Murena, Chair, Amanda Fernandez, Vice Chair, Stephanie Lieb, Second Vice Chair

Ken Murena, Chair of the UCRERA Task Force, reported that the Task Force worked with representatives of the Business Litigation and Bankruptcy/UCC committees regarding the proposed legislation to address any concerns. He will be attending the RPPTL meeting at the Breakers in July to discuss any issues that the RPPTL Section may have with respect to the proposed legislation.

G. Proposed Amendments to the Fla. R. Civ. Procedure Task Force – Bart Valdez, Chair, Hon. Ralph Artigliere, Judicial Chair

Bart Valdes, Chair of the Proposed Amendments to the Fla. R. Civ. Procedure Task Force, reported on the status of the proposed amendment to Rule 1.380 and the drafting of a proposed amendment to Rule 1.010 to harmonize the Florida Rules with the Federal Rules. The Task Force also discussed amendments to Rule 1.200 and 1.201 to provide a mandatory meet and confer in certain circumstances as well as potential amendments to Rule 1.280 and other related rules to consider proportionality and cost-shifting provisions. Lastly, the Task Force examined adding a requirement to the Florida Rules to state objections to discovery with specificity versus the use of boilerplate objections.

H. Proposed Amendments to the Rules for Certified and Court-Appointed Mediators Task Force – Peter Valori, Chair

Peter Valori, Chair of the Proposed Amendments to the Rules for Certified and Court-Appointed Mediators Task Force, reported that the Task Force had prepared a white paper opposing the proposed mediation rules, which proposed rules would require that all mediators be certified. Those proposed rules were withdrawn and new proposed rules were presented that would require that mediators follow parts 2

and 3 of the mediation rules. The Task Force is reviewing this new proposal and is considering revising its white paper.

I. Proposed Revisions to Chapter 48 (Service of Process) Task Force – Giacomo Bossa, Chair

Giacomo Bossa, Chair of the Proposed Revisions to Chapter 48 (Service of Process) Task Force, reported that the Task Force is continuing its work but will not be ready to propose legislation for the 2020 legislative session. Additionally, the Task Force is reaching out to the International Law Section for input on the Task Force's work product.

J. Scholar and Fellows Retention Task Force – James Moon and Jason Burnett, Co-Chairs

Mariane Dorris, on behalf of James Moon, Co-Chair of the Scholar and Fellows Retention Task Force, reported that the Task Force had sent out surveys to past Fellows. The Task Force is retooling that survey and is starting an exit interview process.

K. UVTA Task Force – John Hutton, Chair, David Slenn, Vice Chair

John Hutton, Chair of the UVTA Task Force, reported that other states, including Pennsylvania and New York, have adopted this uniform law. However, the Task Force is likely to table the legislation again relative to the 2020 legislative session.

XIV. Reports of Permanent and Other Committees

A. Bankruptcy Judicial Liaison – Carlos Sardi, Chair; Hon. Roberta Colton, Judicial Chair

Judge Roberta Colton, Judicial Chair of the Bankruptcy Judicial Liaison Committee, reported that the meeting was well attended. The Committee received reports from all Chief judges and Clerks of Court for each of the three districts. Filings appear to be steady or slightly up all across the board in the State. Judges are still experiencing a high volume of pro se filings, ranging between 5% to 12%. Finally, Judge Colton led a discussion regarding discharge and violations of a discharge injunction as well as began a CLE on application of privileges in bankruptcy which will be continued at the Labor Day Retreat.

B. Budget Committee – Leyza Blanco, Chair

No report.

C. Communications – Matthew Hale, Chair, Mark Nichols, Vice Chair, Adina Pollan, Second Vice Chair, Hon. Paul Hyman, Judicial Chair

Adina Pollan, on behalf of Matthew Hale, Chair of the Communications Committee, reported that the Committee has started a new Instagram page, is working on updating the website, and is looking for more contributions to the Section's blog. Also, the Committee is continuing its efforts to gather and archive white papers created by Section members.

D. Continuing Legal Education – Paige Greenlee, Chair, Corali Lopez-Castro, Vice Chair, Matthew Horowitz, Second Vice Chair, Hon. Caryl Delano, Judicial Chair

Judge Caryl Delano, Judicial Chair of the Continuing Legal Education Committee, reported that the Committee has added a CLE Calendar to the Section website. Also, the Committee needs help from

the CLE program chairs for each substantive committee in getting information to populate the calendar which in turn will help to market these CLEs. Also, the Committee thanked Section members for contributing to the Florida Bar Journal on behalf of the Section. Due to their work, the Section had articles in all six issues. Finally, the Committee is waiting to get bar year-end financial information before it can make any recommendations on fee splitting as it relates to CLEs. The Committee will revisit this issue at the Labor Day Retreat.

E. eDiscovery Committee – David Hazouri, Chair, Darren Spielman, Vice Chair, Chioma Rucshana Deere, Second Vice Chair

Darren Spielman, on behalf of David Hazouri, Chair of the eDiscovery Committee, reported that the Committee is continuing to review ediscovery rules and any need for amendments and is presenting a four hour CLE at the Annual Convention that is very popular. Finally, the Committee continues its mission to educate in this area by offering and presenting both CLEs and CJs.

F. Inclusion/Mentoring/Fellowships – Mariane Dorris, Chair, Sara Paris, Vice Chair, Michelle Suarez, Second Vice Chair, Hon. Virginia Norton, Judicial Chair (State), Hon. John Olson, Judicial Chair (Federal)

Mariane Dorris, Chair of the Inclusion/Mentoring Fellowships Committee, reported that the Committee has chosen eight new fellows to join the six fellows from last year. The Committee is planning to participate in diversity events in central Florida and Hillsborough County. Finally, the Committee is still working to make a connection with FIU law school to increase the Section's relationship with that school.

G. Labor Day Weekend Retreat – Russell Landy, Chair, Paige Greenlee, Vice Chair, Adina Pollan, Immediate Past Chair

Russell Landy, Chair of the Labor Day Weekend Retreat Committee, continued its discussions concerning planning the upcoming retreat. The retreat will be returning to the Naples Ritz Carlton, and the committee plans to incorporate the Bar's focus on health and wellness into this year's retreat programming.

H. Long-Range Planning – Greg Yadley, Chair; Hon. Michael G. Williamson, Judicial Chair, Philip Schwartz, Parliamentarian

No report.

I. Marketing, Promotions and Sponsorships – Manuel Farach and Woodrow “Woody” Pollack, Co-Chairs, Stefan Rubin, Vice Chair, Brett Lieberman, Second Vice Chair

Woody Pollack, Co-Chair of the Marketing, Promotions and Sponsorship Committee, reported that the Committee is actively seeking each Executive Committee member's participation in the sponsorship of the Section. If you have any questions regarding sponsorship opportunities, contact either Woody Pollack or Steph Rubin.

J. Membership & Law School Relations – Allison Leonard, Chair, Dyanne Feinberg, Vice Chair, James Moon, Second Vice Chair, Hon. Karen Specie, Judicial Chair

Allison Leonard, Chair of the Membership & School Relations Committee, reported that membership has increased by over 400 members since August. The Committee is working on choosing Scholars at each of Florida's law schools. Also, the Committee has made inroads toward new faculty liaisons with Stetson and Cooley law schools.

K. Opinion Standards – Robert Barron, Chair, Giacomo Bossa, Vice Chair

Robert Barron, Chair of the Opinion Standards Committee, reported that the Committee continues its work on the First Supplement to the Opinions Standards Report. The Committee is aiming to have its work done on the supplement by Labor Day or the Mid-Year meeting at the latest.

L. Pro Bono – Marisa Dorough, Chair, Lynn Sherman, Vice Chair, Hon. Laurel Isicoff, Judicial Chair

Marisa Dorough, Chair of the Pro Bono Committee, reported that the Committee is still promoting the Pro Bono Pledge wherein Section members pledge to complete at least 20 hours of pro bono work each year. Also, the Committee continues its work through three subcommittees: (1) website efforts; (2) updating the Pro Bono Best Practices Guide for law firms; and (3) communications within the Section, including recognition of pro bono efforts.

M. State/Federal Courts Liaison – Amir Isaiah, Chair, Peter Valori, Vice Chair, Hon. Lisa Walsh, Judicial Chair (State), Hon. Thomas Smith, Judicial Chair (Federal)

No report.

XV. Reports of Section Liaisons

A. The Florida Bar Board of Governors – Deborah Baker-Egozi

No official report. However, the Executive Council heard remarks from outgoing Bar President Michelle Suskauer as well as individuals considering their candidacy for Bar President 2021-22 – Renee Thompson and Michael Tanner. Finally, it was reported to the Council that Manny Farach was receiving the Florida Bar’s Anstead Award for the Board Certified Lawyer of the Year.

B. The Florida Bar Council of Sections – Jay Brown

Kacy Donlon, on behalf of Chair-Elect Jay Brown, reported that she and Philip Schwartz attended the Council of Sections meeting on behalf of the BLS. The Council of Sections reported that the streamlined process it proposed to the Big Bar for the amendment of section bylaws had been well received and was expected to be approved.

C. The Florida Bar Diversity & Inclusion Committee – Mariane Dorris

Chair-Elect Jay Brown announced his reappointment of Mariane Dorris as the Section representative to the Florida Bar Diversity and Inclusion Committee.

D. The Florida Bar Real Property, Probate & Trust Law (RPPTL) Section – James Marx

No report.

E. The Florida Bar Young Lawyers (YLD) Division – Cherine Valbrun

No report.

F. The Florida Institute of CPAs (FICPA) – Donald Workman

Donald Workman, Liaison to the Florida Institute of CPAs, reported that there was a face to face meeting with FICPA representatives in June and there would be a reception in Ft. Lauderdale in September. He encouraged greater participation from Section members in growing this relationship.

G. The Out-of-State Division of The Florida Bar – Lawrence Kunin

Donald Workman, on behalf of Lawrence Kunin, Liaison to the Out-of-State Division of the Florida Bar, reported that the Out-of-State Division continues to grow. The Division networked with the Board of Governors at its meeting in Washington D.C. and was looking forward to meeting with the YLD in Nashville. The Division extended its thanks to Judge McEwen for continuing to contribute newsletter articles for the Division.

H. The Working Group on Legal Opinions (WGLO) – Philip Schwartz

Philip Schwartz, Liaison to the WGLO, stated that WGLO was established by the ABA and 5 state bars and now has 120 law firm members and representatives from 38 state or local bars examining third party legal opinions. At the next meeting of the Executive Council at the Labor Day Retreat, he will provide further information about WGLO and why the Section supports its efforts.

XVI. Other Reports

A. Chair’s Report – Michael Chesal

Michael Chesal, Chair, extended his thanks to his fellow Executive Committee members as well as Section Administrator Stephanie Svisco for their help in making this year run so smoothly. In recognition of his stellar work during a busy legislative season, the Chair named Legislation Chair Doug Bates as the Member of the Year.

B. Chair-Elect’s Report – Jay Brown

Jay Brown, Chair Elect, thanked everyone who was able to attend the Section luncheon with guest speaker Donna Orender, commending her message and her book to those who were unable to attend.

In appreciation for Mr. Chesal’s service to the Section, Mr. Brown presented Mr. Chesal with a number of gifts including kayaking equipment and a plaque with pictures from the Executive Council Retreat to Israel.

Mr. Brown then reported on his plans for the upcoming Executive Council Retreat, which is scheduled for Athens, Greece April 29th through May 3rd, with an optional pre-trip to Santorini April 25th through April 28th.

XVII. Good and Welfare

XVIII. Future Meeting Dates

Mr. Chesal announced the following future meeting dates:

- A. Labor Day Weekend Retreat – The Ritz Carlton, Naples, Florida (August 30 – September 2, 2019)
- B. Winter Meeting – Hyatt Regency, Orlando, Florida (February 5-8, 2020)
- C. Executive Council Retreat – Greece – April 25-May 3, 2020

XIX. Motion to Adjourn

With all reports being heard, Mr. Chesal entertained a motion to adjourn. The motion was duly made, seconded and passed unanimously at approximately 5:45 p.m.

Katherine C. Donlon
Katherine C. Donlon, Secretary 2018-19

EXHIBIT C

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WHITE PAPER

prepared by

The Florida Bar Business Law Section's Task Force

for the

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

Brief Summary of UCRERA

The Uniform Commercial Real Estate Receivership Act (UCRERA) is a comprehensive body of law that provides for the circumstances and conditions under which a receiver may be appointed over commercial real estate, the scope and procedures of a receivership proceeding, the effect of the appointment of a receiver, the authority of the receivership court, and the powers, duties and liability of the receiver.

Definition and Purpose of a Receivers

A receiver is a person appointed by a court to take possession of the property of another and to “receive, collect, care for, and dispose of the property or the fruits of the property.” 1 Clark on Receivers § 11(a), at 13 (3d ed. 1959).

“A receiver is typically appointed in foreclosure proceedings to preserve the status quo, preserve the property, and collect and apply rents and profits to the payment of the mortgage.” *DeSilva v. First Cmty. Bank of Am.*, 42 So.3d 285, 290 (Fla. 2d DCA 2010); *see also Baumgartner*, 128 So. at 248 (observing same). “The appointment of a receiver ... should be approached with caution and circumspection.” *DeSilva*, 42 So.3d at 288 (alteration in original) (quoting *Edenfield v. Crisp*, 186 So.2d 545, 548 (Fla. 2d DCA 1966)). A cautious approach to the appointment of a receiver is appropriate because such an appointment “is in derogation of the fundamental right of the legal owner to possession of the property.” *Twinjay Chambers P'ship. v. Suarez*, 556 So.2d 781, 781 (Fla. 2d DCA 1990); *see also Plaza v. Plaza*, 78 So.3d 4, 6 (Fla. 3d DCA 2011) (“Appointing a receiver is a rare and extraordinary remedy.”); *Warshall v. Price*, 617 So.2d 751, 752 (Fla. 4th DCA 1993) (“Before ... trial[,] ... a motion for the appointment of a receiver of the property of the defendant is a drastic matter constituting a taking of property and requires a showing of exigent circumstances.”); *Electro Mech. Prods., Inc. v. Borona*, 324 So.2d 638, 639 (Fla. 3d DCA 1976) (“The appointment of a receiver is a drastic matter in that it constitutes a taking of property and, therefore, should not be used by the courts except in cases of necessity.”).

Under *Carolina Portland Cement Co. v. Baumgartner*, 99 Fla. 987, 128 So. 241 (Fla. 1930), the seminal case governing the appointment of a receiver, courts are required to balance the mortgagor's right to own and possess its property against the interests of the mortgagee in protecting its security in the property. Thus, to be entitled to the appointment of a receiver, the movant must show, at a minimum, "that [the] property is subject to a serious loss," and that the movant has a "clear legal right ... to the property." *Plaza*, 78 So.3d 4, 6 (Fla. 3d DCA 2011) (alteration in original) (quoting *Apalachicola N.R. Co. v. Sommers*, 79 Fla. 816, 85 So. 361, 361 (Fla. 1920)).

The Need for a Uniform Act

1. There is no clear standard as to when a receiver should be appointed over real property, when there is waste or another potential adequate remedy at law. See *MB Plaza, LLC v. Wells Fargo Bank Nat. Ass'n.*, 113 So. 3d 1020, 1024 (Fla. 2d DCA 2013) ("Waste would have provided a justifiable basis for the trial court to exercise its discretion by appointing a receiver in *Seasons Partnership*, but this court did not intend to make waste a condition precedent to such an appointment."); *McAllister Hotel v. Schatzberg*, 40 So. 2d 201, 203 (Fla. 1949) (holding an appointment of receiver should be exercised only in those cases where exigencies demand it and no other protection to the applicants can be devised by the court). See also, *Sharon Gardens Assoc. v. Florescue*, 629 So.2d 1002 (Fla. 4th DCA 1993) (holding that Plaintiff is not entitled to receiver where partner or partnership was not insolvent); *Wheeler v. Matthews*, 70 Fla. 317 (Fla. 1915) (holding where a president of an insolvent corporation collects the corporate assets and uses the money to pay some creditors in full, some in part, and some receive none, such conduct does not constitute fraud or a spoliation); *Recarey v. Rader*, 320 So.2d 28 (Fla. 1975) (holding appropriate and effective relief could have been granted and no receiver needed where appellees requested the court to appoint a receiver to take charge of assets and operations of the hospital after appellants voted at stockholders' meeting to sell hospital, eliminating all of appellees' equity as stockholders). *Atco Const. & Development Corp. v. Beneficial Sav. Bank, Fla. Stat.B.*, 523 So. 2d 747 (Fla. 5th DCA 1988); *Florida Reinvestment Corp. v. Cypress Sav. Ass'n*, 509 So. 2d 1352 (Fla. 4th DCA 1987); *Boyd v. Banc One Mortgage Corp.*, 509 So.2d 966, 967 (Fla. 3d DCA 1987); *Polycoat Corp. v. City Nat'l Bank of Miami*, 327 So.2d 126, 127 (Fla. 4th DCA 1976) (reversing ex parte receivership because there were no "extreme circumstances of irreparable damage"); *Edenfield v. Crisp*, 186 So.2d 545, 548 (Fla. 2d DCA 1966) (affirming receivership based on allegations that property and assets had been diverted); *Cassara v. Wofford*, 159 Fla. 565, 28 So.2d 904, 905 (Fla. 1947) (quashing ex parte receivership because it was not apparent that giving notice of intent to appoint receiver would result in immediate injury).

Very few states have comprehensive statutory guidance regarding the appointment and powers of receivers for commercial real estate. In the vast majority of states, receivers are appointed pursuant to a court's general equitable power to appoint a receiver, with minimal statutory guidance either expressly confirming or limiting the power of a receiver. A small handful of states (including California, Indiana, Nebraska, New Mexico, Ohio, Oklahoma, and South Dakota) provide a moderate amount of statutory guidance regarding the appointment and powers of receivers. Only two states — Washington and Minnesota —

provide a comprehensive statutory codification of the laws governing the appointment and powers of receivers and receivership procedures.

Because courts often determine whether to appoint a receiver based on standards governing the entry of a preliminary injunction, the lack of guidance with respect to the standards governing the appointment of a receiver creates a problem, especially where there is equity in the subject property, such that damages are otherwise available to the mortgagor. Considering the foregoing inconsistencies, the Act was prepared to provide consistency and guidance with respect to when a receiver should be appointed and will ensure that the *status quo* is preserved while a foreclosure or other action affecting the real property is pending.

2. No uniform law addresses the appointment and powers of real estate receivers in a comprehensive fashion. Although the Uniform Assignment of Rents Act (UARA), promulgated in 2005, does address the evidentiary showing necessary to obtain the appointment of a receiver, UARA's focus is limited to appointment at the request of an assignee of rents, and nothing in UARA explicitly addresses either receivership procedure or the scope of the powers that a receiver of real estate may exercise before foreclosure.
3. There is variation from state to state with regard to the laws governing appointment and powers of receivers. Furthermore, because most states have such minimal statutory guidance, there is even variation from one county, district, parish, or municipal subdivision to the next within a state, as individual judges might have disparate perspectives on the circumstances in which a receivership constitutes an appropriate remedy.
4. In many states, existing receivership statutes simply do not address a number of questions concerning receivership procedure. For example, many state statutes do not address such issues as the necessity or amount of the receiver's bond, the necessity or amount of a bond from the person seeking appointment of a receiver, the eligibility requirements for service as a receiver, or the requirements for notification to creditors. These shortcomings make it more difficult for "best practices" to develop in the receivership context.
5. The existing receivership laws in most states do not adequately set forth the powers that a receiver may (or may not) exercise, either with or without prior approval of the court. This can result in potential uncertainty regarding the ability of a receiver to borrow money, to approve or reject executory contracts entered into by the owner of the property (including unexpired leases), to sell receivership property other than in the ordinary course of business, or to make improvements to receivership property.

Summary of the Primary Provisions of the Act as Revised by the Business Law Section

- **Notice and Opportunity for a Hearing (Section 3)**. Under the Act, the court may enter orders only after notice and opportunity for a hearing as is appropriate under the circumstances. § 3(a), (b). Because the Florida Rules of Civil Procedure, and, more specifically, Rule 1.610(b) governs the entry of an injunction without notice, and comports with due process, Section 3 was revised so it is consistent with Rule 1.610(b) to ensure

adequate due process protections are guaranteed, in a flexible manner that is consistent with Florida jurisprudence.

- **Scope (Section 4)**. The Act applies to receiverships for real property as well as incidental personal property that is related to the real property or used in its operation. § 4(a). It only governs a receivership for an interest in residential real estate certain limited circumstances. § 4(b). The Act does not provide the exclusive method for the appointment of a receiver. § 4(c). The Act respects Florida homestead rights and exemptions pursuant to bankruptcy law. § 4(d). The Act comports with Fla. Stat. §§ 671.103 and 726.111 and provides examples of principals of law and equity that supplement this Section, unless they are displaced by another Section of the Act.
- **Court (Section 5)**. The state’s court of general equity jurisdiction has exclusive jurisdiction of the receivership proceeding. § 5.
- **Appointment (Section 6)**. The Act establishes standards under which a court may appoint a receiver in the exercise of its equitable discretion. § 6(a). The Act also establishes standards under which a petitioning mortgage lienholder is entitled to appointment of a receiver, either as a matter of right or as a matter of the court’s discretion. § 6(b). Section 6 was adopted to provide consistency and guidance with respect to when a receiver should be appointed and will ensure that the status quo is preserved while a foreclosure or other action affecting the real property is pending. In Section 6(a), which lists the conditions under which receiver can be appointed pre-judgment, “substantial diminution of value” was added to the list of “waste, loss, dissipation or impairment” of the property or its revenue-producing potential. Section 6(b) provides a non-exhaustive list of facts and circumstances a court may consider in deciding whether to appoint a receiver in such a proceeding (adding “substantial diminution in value” to list of “waste, loss, transfer, dissipation or impairment”). This is more consistent with existing Florida jurisprudence than requiring the appointment of a receiver as a matter of entitlement. *See, e.g., Carolina Portland Cement Co. v. Baumgartner*, 99 Fla. 987, 128 So. 241, 247 (Fla. 1930) (“it was held in *Armour Fertilizer Works v. First National Bank*, 87 Fla. 436, 100 So. 362, that the power to appoint a receiver is one inherent in a court of equity; one that was not a matter of right but rested in the discretion of the court...”).
- **Identity and Independence of Receiver (Section 7)**. Because a receiver holds receivership property for the benefit of all interested parties, the Act requires that the receiver provide sworn evidence of the receiver’s independence, § 7(a), (b), subject to an exception to prevent disqualification based on certain pre-existing relationships that are de minimis in nature. § 7(c). While a party seeking the appointment of a receiver may nominate a person to serve as a receiver, the nomination is not binding on the court. § 7(d).
- **Effect of Appointment; Stay; Injunction (Section 10, 11, 14)**. On appointment, a receiver has the status and priority of a lien creditor with respect to receivership property. § 9. Appointment of a receiver does not affect the validity of a pre-receivership security interest in receivership property, and property acquired after appointment is subject to any pre-receivership security agreement to the same extent as if no receiver had been appointed. § 10. On appointment, persons having possession, custody or control of receivership property must turn the property over to the receiver, and persons owing debts that constitute

receivership property must pay those debts to the receiver. § 11. After notice and a hearing, if necessary to protect against misappropriation of, or waste relating directly to, the receivership property, a court that appointed the receiver may enter a stay applicable to all persons, of an act to obtain possession of, exercise control over, or enforce a judgment against receivership property (or a portion thereof), as well as an act to enforce a lien against receivership property. § 14(a). In appropriate situations, the court can expand the scope of the stay, § 14(b), and grant relief from the stay, § 14(c). However, for policy reasons, certain actions are outside the scope of the stay. § 14(d). The court shall determine whether an additional bond or alternative security will be required as a condition to entry of the stay and, if required, direct the party requesting the stay to post a bond or alternative security as a condition for the stay or injunction to become effective.

- **Powers and Duties of Receiver; Duties of Owner (Section 12, 13)**. The Act sets forth the receiver’s presumptive powers, § 12(a), as well as those that the receiver may exercise only with court approval. § 12(b). The Act also sets forth the duties of the receiver, § 12(c), and the duties of the owner of receivership property. § 13.
- **Engagement and Compensation of Professionals (Section 15)**. The Act authorizes the receiver to engage and pay professionals to assist in the administration of the receivership following court approval. § 15.
- **Use, Sale, Lease, License, or Other Transfer of Receivership Property Other than in Ordinary Course (Section 16, 20, 21)**. Before judgment, with court approval, the Act permits the receiver to use, sell, lease, license, exchange or otherwise transfer receivership property other than in the ordinary course of business if the owner of the property expressly consents or fails to object before or at hearing after the Receiver has provided reasonable advance notice of the transfer and established that the property is subject to waste, loss, dissipation, or substantial diminution in value. § 16(b). After judgment, with court approval after notice and a hearing, a receiver may dispose of receivership property to carry the judgment into effect or to preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment (consistent with appointment standard). § 16(c). Unless the agreement of transfer provides otherwise, the transfer is free and clear of all liens, which attach to the proceeds of the transfer with the same validity, perfection, and priority as they had with respect to the property. § 16(d). The sale may be conducted as a private sale, and creditors with valid secured claims may credit bid. § 16(e). The Act also provides a safe harbor for purchasers, in case a party objects to the sale but fails to get a stay of the order approving the sale. § 16(f). Secured creditors are entitled to the proceeds of their collateral according to the priority rules established by law other than this Act, § 20(g), although the court may award the receiver the reasonable and necessary fees and expenses for carrying out the receiver’s duties. § 21(a).
- **Executory Contracts and Unexpired Leases (Section 17)**. With court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. § 17(b). The Act covers the mechanics for adoption or rejection of executory contracts. § 17(c). The receiver may also assign an adopted executory contract to the extent permitted by the contract and applicable law other than this Act, but free of so-called “ipso facto” clauses. § 17(d), (f). The Act specifies the consequences of a receiver’s rejection of

an executory contract. § 17(e). The Act contains protections for purchasers in possession of real property or real property time share interests that are analogous to those contained in the Bankruptcy Code. § 17(g). The Act also limits the receiver's ability to reject the unexpired lease of a tenant, permitting rejection of the lease only in very limited situations. § 17(h).

- **Immunity of Receiver (Section 18)**. Consistent with the receiver's status as an officer of the court, the Act provides the receiver with immunity for acts or omissions within the scope of the receiver's appointment. § 18(a). Further, the Act incorporates the Barton doctrine and provides that a receiver cannot be sued personally for an act or omission in administering receivership property except with the approval of the appointing court. § 18(b).
- **Claims (Section 20)**. The Act requires the receiver to notify creditors of the appointment of the receiver unless the court orders otherwise, § 20(a), (e), and requires creditors to file claims with the receiver as a precondition to obtaining any distribution from receivership property or the proceeds of such property. § 20(b). The Act permits the receiver to recommend disallowance of claims. § 20(e). The Act also authorizes the court to forgo the filing of unsecured claims where the receivership property is likely to be insufficient to satisfy secured claims against the property. § 20(f).
- **Receiver's Reports (Sections 19, 23)**. The receiver must file interim reports (as directed by the court) and, on completion of the receiver's duties, a final report. §§ 19 and 23.
- **Ancillary Receivership (Section 24)**. Where a receiver has been appointed by another state, the Act authorizes the court to appoint that person or its designee as an ancillary receiver for the purpose of obtaining possession, custody and control of receivership property located within this state. § 24(a). The Act also permits the court to enter any order necessary to effectuate an order of a court in another state appointing or directing a receiver. § 24(b).
- **Receivership in Context of Mortgage Enforcement (Section 25)**. The Act makes clear that the appointment of a receiver on request by a mortgagee or assignee of rents, and actions taken by the receiver, do not make the mortgagee or assignee of rents a "mortgagee in possession," do not constitute an election of remedies or make the secured obligation unenforceable, and do not constitute an "action" within the meaning of a state's "one- action" rule. § 25(a). In a state with anti-deficiency rules, where a receiver conducts a sale of receivership property free and clear of a lien, the state's anti-deficiency rules will apply to any person that held a lien extinguished by the sale to the same extent those rules would have applied after a foreclosure sale not governed by the Act. § 25(b).

Status of Enactment in Other States

Thus far, 7 states have enacted it and 1 has introduced it:

1. Oregon (Enacted 2017)
2. Utah (Enacted 2017)
3. Nevada (Enacted 2017)
4. Tennessee (Enacted 2018)
5. Michigan (Enacted 2018)
6. Arizona (Enacted 2019)
7. Maryland (Enacted 2019)
8. Connecticut (Introduced 2019)
9. Florida (To Be Introduced 2020?)

Amendment to 55.205

White Paper

In 2005, five years after the judgment lien statute, F.S. 55.200 *et sec.*, was enacted, the used car dealers succeeded in amending Section 319.27 regarding notation of liens on certificates of title. The effect of the amendments made clear that the section applies to judgment liens.

Amended s. 319.27 states:

“(2) No...nonpossessory lien...upon a motor vehicle or mobile home upon which a Florida certificate of tile has been issued shall be enforceable in any of the courts of this state against creditors or subsequent purchasers for valuable consideration and without notice, unless a sworn notice of such lien has been filed in the department and such lien has been noted upon the certificate of title of the motor vehicle or mobile home...”

The result is that the car can be sold free of the judgment lien and current judgment lien statute is misleading because it does not cross-reference the certificate statute. Countless lawyers and judgment creditors have been surprised to discover that their judgment liens on motor vehicles and mobile homes are limited in effect by amended s.319.27. Accordingly, for clarity, we recommend amending the judgment lien statute explicitly to cross-reference the limiting effect of that section.

It is significant that s. 319.27 does not say that a nonpossessory lien is invalid if not noted on the certificate of title. All it says is that such a lien is not enforceable against creditors and subsequent purchasers for value without notice. Clearly, the lien is otherwise enforceable, meaning it is enforceable against the judgment debtor. So, just as any judgment creditor, with or without a judgment lien, can execute on a motor vehicle or mobile home, so can a judgment creditor holding a nonpossessory judgment lien.

Accordingly, we recommend the addition of the following subparagraph to s. 55.205:

55.205 Effect of judgment lien.—

(5) Motor Vehicles and Motor Homes. If the personal property of the judgment debtor includes a motor vehicle or motor home for which a Florida certificate of title has been issued, a judgment lien on such property is valid and enforceable against the debtor, but a judgment lien is not enforceable against creditors or subsequent purchasers of such property for valuable consideration whose interests have been noted on the certificate of title as provided in s. 319.27.