

RPPTL – REAL PROPERTY ROUNDTABLE

MIAMI AGENDA

Saturday, June 6, 2015 – 8:00-10:00 am

Thank you to our Roundtable sponsor: Fidelity National Title Group

* Page numbers refer to pages in the Executive Council Agenda

** Refers to attachments to the Roundtable agenda

¡BRING THIS AGENDA TO THE MEETING!

1. SPONSOR ANNOUNCEMENT

2. RECOGNITION – Guests, students, dignitaries in attendance.

3. APPROVAL OF ORLANDO MINUTES (attachment “A”)**

4. EC AGENDA: ACTION/INFORMATION ITEMS FOR REAL PROPERTY

DIVISION

Action Item:

1. **Residential Real Estate & Industry Liaison Committee** --- *Salome J. Zikakis, chair*

Committee Motion to approve the 2015 edits to the FR/BAR Residential Contract for Sale and “Homeowner’s/Flood Insurance”, proposed by the Florida Realtor-Attorney Joint Committee primarily to address requirements of the Consumer Financial Protection Bureau (“CFPB Requirements”) and changes being implemented by mortgage lenders as of 8/1/2015 for residential real estate closings. pp. 62-71*

Information Items:

1. **Real Property Litigation Committee** --- *Susan K. Spurgeon, chair*
 - A. Report on possible revisions to F.S. 90.902 concerning authentication of electronic records. pp. 72-77*
 - B. Report on possible revisions to F.S. 95.281 to a) clarify 95.281 as a statute of repose versus a statute of limitation b) make the repose period for a lien arising from advances by mortgagee simpler to calculate and c)

to restore to mortgage holders the common law subrogation rights they had for tax advances prior to enactment of this section. pp. 78-86*

- C. Report on possible revisions to F.S. 57.011 and 559.715 to delete non-resident cost bond and amend assignment of consumer debt notice. pp. 87-92*

2. **Real Property Problems Study Committee** --- *William Theodore Conner, chair*

- A. Report on possible revisions to F.S. 713.07 regarding construction lien stop/start procedures to provide a way of safely resetting priority, in part, between lienors and a mortgage or deed that is given by the owner during the construction of improvements after the recording of a Notice of Commencement. pp. 93-111*
- B. Report on possible revisions to F.S. 82, unlawful detainer to address the problem of squatters in vacant property. pp. 112-114*

5. UPCOMING ISSUES

Title Insurance and Title Insurance Liaison - *Raul Balaga, Chair*

Report on proposed rule change to FAR 69B-186.010 by Florida Department of Financial Services concerning unlawful inducements to the issuance of title insurance.

6. COMMITTEE REPORTS

7. COMMITTEE GOALS/ADMINISTRATION

- a. List of 2015-2016 Real Property Division Officers (attachment "B")**
- b. Appointment of Legislative Liaisons
- c. Publications – ActionLine/ Florida Bar Journal/ Appointment of CLE Liaisons
- d. Committee Action Plans for 15-16

Real Property Law Division Reports *Andrew M. O'Malley, Director*

1. **Commercial Real Estate** - Art Menor, Chair; Burt Bruton and Adele Stone, Co- Vice Chairs.
2. **Condominium and Planned Development** - Steven H. Mezer, Chair; Christopher Davies and Alex Dobiev, Co-Vice Chairs,
3. **Construction Law** - Hardy Roberts, Chair; Scott Pence and Lee Weintraub, Co-Vice Chairs.
4. **Construction Law Certification Review Course** - Deborah Mastin and Bryan Rendzio, Co' Melinda Gentile, Vice Chair.
5. **Construction Law Institute** - Henderson, Chair; Sanjay Kurian, Diane Perera and Jason Quintero, Co-Vice Chairs.
6. **Development & Land Use Planning** - Vinette Godelia, Chair; Mike Bedke and Neil Shoter, Co-Vice Chairs.
7. **Foreclosure Reform (Ad Hoc)** - Jeffrey Sauer, Chair; Mark Brown, Burt Bruton and Alan Fields. (2,0-Vice Chairs Insurance & Surety - W. Cary Wright and Fred Dudley, Co-Chairs; Scott Pence and George Meyer, Co-Vice Chairs.
8. **Insurance and Surety** – Fred Dudley, Cary Wright, Co-Chairs, Michael Meyer, Scott Pence, Co-Vice Chairs
9. **Landlord and Tenant** - Lloyd Granet, Chair; Rick Eckhard and Brenda Ezell, Co-Vice Chairs.
10. **Legal Opinions** - Kip Thornton, Chair; Robert Stern, Vice-Chair.
11. **Liaisons with FLTA** - Norwood Gay and Alan McCall, Co-Chairs; Alexandra Overhoff and James C. Russick, Co-Vice Chairs.
12. **Real Estate Certification Review Course** - Jennifer Tobin, Chair; Manual Farach and Martin Awerbach, Co-Vice Chairs.
13. **Real Estate Structures and Taxation** - Cristin C. Keane, Chair; Michael Bedke and Deborah Boyd, Co-Vice Chairs.
14. **Real Property Finance & Lending** - Jim Robbins, Chair; Homer Duval, Ill, Richard S. McIver and Bill Sklar, Co-Vice Chairs.
15. **Real Property Litigation** - Susan Spurgeon, Chair; Manny Farach, Vice Chair.

16. **Real Property Problems Study** - W. Theodore "Ted" Conner, Chair; Mark A. Brown. Jeff Dollinger, Stacy Kalmanson and Patricia J. Hancock, Co-Vice Chairs.
17. **Residential Real Estate and Industry Liaison** - Salome Zikakas, Chair; Trey Goldman and Nishad Khan, Co-Vice Chairs.
18. **Title Insurance and Title Insurance Liaison** - Raul Ballaga, Chair; Alan Fields and Brian Hoffman, Co-Vice Chairs.
19. **Title Issues and Standards** - Christopher W. Smart, Chair; Robert M. Graham, Brian Hoffman and Karla J. Staker, Co-Vice Chairs.

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Roundtables

Friday, March 20, 2015
The Ritz Carlton Grande Lakes
Orlando, Florida

Prepared by Brian M. Malec, Esq., Orlando, Florida, and Jane L. Cornett, Esq., Stuart, Florida

Highlights of the Meeting of the RPPTL Section REAL PROPERTY DIVISION Roundtable

Thank you to the Roundtable Sponsor, Fidelity National Title Group.

The meeting was called to order by Division Director Drew O'Malley shortly after 3:00 p.m. on March 20, 2015.

Sponsor Announcement. The Division Director thanked the sponsor, Fidelity National Title Group. Snacks, drinks and candy were offered compliments of the sponsor.

Recognition - The Division Director welcomed a number of law students who were attending as guests from Stetson and Barry University. The Division Director announced that due to being pressed for time, information items found later in the agenda would be addressed first so they don't get missed.

Committee Goals/ Administration

Legislation Committee - Robert Freedman and Robert Swaine, Co-Chairs: Rob Freedman offered his thanks to those who helped during this legislative session. Rob emphasized how difficult it was sometimes with response times as short as two hours. Rob reminded everyone to start thinking about the 2016 legislature and proposals that committees want to put forward in that session. The 2016 session will start the first Tuesday in January so everything will be accelerated. Rob requested each committee to establish the person to be the liaison for legislation and predicts a busy summer. Rob also emphasized that comments should be marked on the bill itself. The committee needs marked up legislation sent back and comments without the markup doesn't help.

Executive Council voting procedure. The Division Director announced that, at the Executive Council Meeting tomorrow, a new voting procedure will be followed. Upon entering,

each Executive Council Member will receive a package with voting cards. The cards will be used for important votes. The red cards signifies “no” and the green card “yes” and the yellow card an abstention. The cards will be collected at the end of the meeting.

Publication: ActionLine/Florida Bar Journal/Appointment of CLE Liaisons. The Section is always looking for new articles and Drew O’Malley, Division Chair, commented, “I know there are good articles lurking out there.” David Brittain is the contact for articles for the Florida Bar Journal and Silvia Rojas is the contact for articles for ActionLine. Each committee must have a liaison for CLE and publications.

Committee Action Plans for 2015-2016. The Division Director reminded everyone that all committees should have action plans ready and they need to be presented to him as soon as possible.

Committee Webpage. Nicole Kibert suggested everybody take a look at the website as it is full of really useful information. Melissa Murphy also reported that the ALTA Best Practices are posted on the website.

Information Items

Real Property Litigation Committee - Susan K. Spurgeon, Chair: Susan was attending a hearing so the report was provided by Alan Fields. The Committee recently provided comments to the Civil Procedure Rules Committee of the Florida Bar. The Civil Procedures Rules Committee was under the impression that the order to show cause was only applicable for commercial issues. The Real Property Litigation Committee pointed out that it can be used for all kinds of property related questions. (See pages 81-113 of the RPPTL Section March, 2015 meeting agenda).

Upcoming Issues

Commercial Real Estate Committee - Art Menor, Chair: Art reported on a joint task force with two other committees on the issue of open or expired permits. Open or expired permits can significantly delay a closing. The Committee interviewed officials of municipalities and noted that a vast variety of approaches are taken within different jurisdictions. There are problems presented when the original contractor is not willing to cooperate and there may be problems if the code has changed since the permit was pulled. The terms of the current FR/BAR Residential Contract does not require a seller to clean up an open or expired permit. The contract only requires the seller to cooperate. The Committee considered two different approaches. One would be a statute of limitations of three to five years after which a municipality could not take action but concluded that approach could be problematic if a life safety issue was involved. The Committee has come up with an approach to permit the owner to hire an inspector and certify compliance with the code. The municipality would be required to accept the certification. The Committee is working in that direction and looking for input

from other relevant committees. The related problem of what to do if a permit was never issued has not yet been addressed.

Condominium & Planned Development - Steve Mezer, Chair: Pending legislation to change the statute of repose from ten years to seven years seems to be stalled which is a good thing because such a change would potentially present a large problem for condominiums since the developer may retain control of an association for a period of seven years, thus, denying the association the ability to ever bring a legal claim. Steve also reported on the proposed estoppel bill which would significantly limit estoppel fees which can be charged in connection with a transfer of property located within a condominium or homeowner association community. Steve reported that, while a great deal of time and discussion have been spent on this issue, the Committee has not taken a position primarily because there were so many divergent opinions including the opinions of the title industry. Condominium terminations was also a topic of proposed legislation and much discussion because so much bad press had been received in a case where a termination resulted in the loss of a homestead by one or two homeowners. Representatives from the Condominium & Planned Development Committee met with sponsors of the bill and worked on compromises. Their objective was to require that a mortgage be paid in full and an objecting owner receiving 110% of the purchase price. The Committee is still working with the sponsors in hopes to finally draft a bill that is a fair protection for consumers but also accomplishes the need for redevelopment.

Construction Law - Hardy Roberts, Chair: Scott Pence reported on House Bill 87 which includes amendments to Sec. 558, F.S., regarding the prerequisites to filing construction defect claims and construction defect lawsuits. The Committee addressed a few minor issues in the bill. For example, where the bill required the claimant to identify the location of the defects, the Committee asked for the addition of "to the extent known." The Committee was hopeful that these changes would be accepted.

Real Property Finance & Lending - Jim Robbins, Chair: Jim reported that the rights of tenants in foreclosure found in federal law has already sunset. Florida is now considering its own bill and the Committee has been working with the drafters of the bill but Jim was unable to predict its future.

Real Property Litigation - Susan Spurgeon, Chair: Susan reported that the Committee will have two proposals for the next session on problems that have arisen due to efilings. There is an issue relating to the need for certified copies for judicial notice as this is not currently covered under the efilings rules. The proposal of the Committee would allow an attorney to efile a certified copy and allow the judge to take judicial notice from a website, such as from another proceeding. Additionally, proposed revisions to Sec. 57.011, F.S., was supported by the Committee in order to delete the requirement that an out of state entities file a one hundred dollar bond. The Committee also proposed a change to Sec. 559.715, F.S., which required that a debtor receive thirty days' notice of intent to assign the debt. The chief judge of Pinellas County has requested that section be revised to say that the thirty day notice is not a prerequisite to the filing of a foreclosure.

Real Property Problems Study - W. Theodore "Ted" Conner, Chair: Ted reported on the unlawful detainer statute, Sec. 82.071, F.S. The proposal of the Committee is to make the statute more accessible. The Committee is requesting comments. Ted also commented on proposed amendments to Sec. 713.07, F.S., concerning construction lien starts and stops. The problem has been the loss of priority of a mortgage executed and recorded in the midst of construction as against any construction liens filed pursuant to a pre-existing notice of commencement. The general wisdom was that work had to stop for at least twenty-four hours which caused unnecessary delays and required that the contractor be paid in full. The proposed change is intended to simplify that process, require payments subject to retainage, if any, and the recording a new notice of commencement to allow the project to keep going. The Committee is working with the Construction Law Committee on this and also plans to draft changes to the notice of commencement statute.

Discussion of Deutsche Bank v. Beauvais: Kristopher Fernandez reported on a case in which a mortgage foreclosure had been dismissed with prejudice. The condominium association obtained title and defended its title against a foreclosure of a pre-existing bank mortgage based on the statute of limitations, Sec. 95.11(2)(c), F.S. The trial court agreed and the Third DCA affirmed the trial court's order which determined that the current action was barred by the statute of limitations but reversed the trial court's order which declared the mortgage null and void. The Third DCA based its opinion on the statute of repose, Sec. 95.281(1)(a), F.S., with the result that the mortgage in question remained a valid lien until March 1, 2041.

Real Estate Structures and Taxation - Cristin Keane, Chair: The Committee is proposing that any transfer between spouses be exempt from transfer taxes. At this time transfers in a divorce are exempt but transfers between married spouses and not associated with a divorce are not.

Discussion of Same Sex Marriage Implications, Ad-Hoc Committee - Jeffrey Ross Dollinger, Co-Chair (Real Property): While the Committee had prepared an 11 page proposal on changes to Florida Statutes that may be needed when same sex marriages are recognized in Florida, the Committee determined no proposed legislation should be offered since it appears the Florida Supreme Court and/or the legislature are addressing the issue.

Committee Reports

Construction Law Institute - Reese Henderson, Chair: Reese reported the Institute was last week and had been an outstanding success.

Insurance and Surety - Fred Dudley, Cary Wright, Co-Chairs: Fred reported the Committee is looking into alternatives for cash bonds with regards to Sec. 713, F.S.

Real Estate Certification Review Course - Jennifer Tobin, Chair; Manuel Farach, Co-Vice Chairs: Manny reported that about 100 attorneys attended the class with 25 attending by video conference/email.

RPPTL RP DIVISION 2015-16 COMMITTEE OFFICERS

Committee	Committee Chair/Vice Chair	Phone Number; Ext.	Email
Commercial Real Estate			
	Adele Stone, Chair	954-703-3900; 1210	adele.stone@fowlerwhite.com
	Burt Bruton, Co-Vice Chair	305-579-0593	bruton@gtlaw.com
	Martin Schwartz, Co-Vice Chair	305-350-2367	mschwartz@bilzin.com
Condominium & Planned Development			
	Bill Sklar, Chair	561-650-0342	wsklar@cfjblaw.com
	Alex Dobrev, Co-Vice Chair	407-418-6445	alex.dobrev@lowndes-law.com
	Steve Daniels, Co-Vice Chair	561-833-9800	sldaniels@arnstein.com
Construction Law			
	Hardy Roberts, Chair	813-229-4105	hroberts@cfjblaw.com
	Scott Pence, Co-Vice Chair	813-223-7000; 4322	spence@cfjblaw.com
	Reese Henderson, Co-Vice Chair	904-632-8459	reese.henderson@gray-robinson.com

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	Bryan Rendzio, Co-Chair	904-396-1800; 302	brendzio@fi-law.com
	Melinda Gentile, Vice Chair	305-385-2600	mgentile@pecklaw.com
Construction Law Institute			
	Reese Henderson, Chair	904-632-8459	reese.henderson@gray-robinson.com
	Sanjay Kurian, Co-Vice Chair	239-433-7707	skurian@becker-poliakoff.com
	Diane Perera, Co- Vice Chair	305-252-1388	dperera@dpconstructionlaw.com
	Jason Quintero, Co-Vice Chair	813-229-4103	jquintero@cfjblaw.com
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	Mike Bedke, Vice Chair	813-222-5924	Michael.bedke@dlapiper.com
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	W. Cary Wright, Co-Chair	813-229-4135	cwright@cfjblaw.com
	Scott Pence, Co- Chair	813-229-4322	spence@carltonfields.com

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	Rick Eckhard, Chair	813-227-6417	rick.eckhard@hklaw.com
	Brenda Ezell, Vice Chair	904-353-6410	brenda@ezellfirm.com
Liaison with FLTA			
	Norwood Gay, Co-Chair	407-240-3863	rngay@thefund.com
	Alan McCall, Co-Chair	407-312-9132	amccall@firstam.com
	James C. Russick, Co-Vice Chair	800-342-5957	jrussick@oldrepublictitle.com
	Alex Overhoff, Co-Vice Chair	850-270-8648	alex@flta.com
Real Estate Certification Review Course			
	Jennifer Tobin, Chair	407-835-6960	jtobin@shutts.com
	Manual Farach, Co-Vice Chair	561-803-3501	mfarach@richmangreer.com
	Martin Awerbach, Co-Vice Chair	727-725-3227; 101	msa@awerbachcohn.com

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	Lloyd Granet, Co-Vice Chair	561-999-9300	lgranet@granetlaw.com
Real Property Finance & Lending			
	David Brittain, Chair	813-227-7444	drbrittain@trenam.com
	Richard S. McIver, Co-Vice Chair	813-405-2750	rmciver@kasslaw.com
	E. Ashley McRae, Co-Vice Chair	813-225-4134	amcrae@foley.com
	Robert Stern, Co-Vice Chair	813-223-7474	rstern@trenam.com
Real Property Litigation			
	Susan Spurgeon, Chair	813-639-9599	susan@penningtonlaw.com
	Manny Farach, Co-Vice Chair	561-803-3501	mfarach@richmangreer.com
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RPPTL RP DIVISION 2015-16 COMMITTEE OFFICERS

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Residential Real Estate & Industry Liaison			
	Salome Zikakas, Chair	954-728-9799	szikakis@parziklaw.com
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	Nishad Khan, Co-Vice Chair	407-228-9711	nak@nishadkhanlaw.com
Title Insurance & Title Insurance Liaison			
	Raul Ballaga, Chair	305-999-5304	raul@ballagafreedmar.com
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	Brian Hoffman, Co-Vice Chair	850-266-2312	bhoffman@carverdarden.com

RPPTL RP DIVISION 2015-16 COMMITTEE OFFICERS

Title Issues & Standards			
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