

Business Law Section 2022-2024 Legislative Positions

1. Bankruptcy / Uniform Commercial Codes / Debtor-Creditor Issues

- a. Opposes any amendment to existing Florida law governing real property foreclosures unless those amendments carefully preserve and protect the property rights and due process rights of the holders of interests in or affecting Florida real property.
- b. Supports the Uniform Fraudulent Transfer Act in Florida, as promulgated by the National Conference on Uniform State Laws (NCCUSL), which would amend the current Chapter 727, Uniform Fraudulent Transfers Act.
- c. Supports the Bankruptcy Venue Reform Act of 2021 or any similar subsequent legislation.
- d. Opposes amendments to Section 689.151, Fla. Stat. that would (1) permit an owner of personal property create a tenancy by the entireties by a direct transfer to the owner and the owner's spouse, notwithstanding the absence of the required common law unities of time and title, and/or (2) change the presumptions to (a) require "clear and convincing" proof that TBE was not intended or created, and (b) create a "conclusive presumption" as to the "intent to create a tenancy by the entirety" when a spouse's name is added to an ownership document.
- e. Supports changes to Chapter 222 F.S. that protect Florida residents from unintentionally assigning, pledging, or waiving rights to assets that are otherwise exempt from legal process.
- f. Supports the creation of §702.13 Florida Statutes, providing for notice to homeowner in mortgage foreclosure action of possibility of relief under U.S. Bankruptcy Code.
- g. Supports amendments to Chapters 55, 56 and 319 to (i) clarify the effect of a certificate of title on a judgment lien, and (ii) establish procedures for enforcement of a judgment lien against a motor vehicle, mobile home, or vessel.
- h. Supports legislation to amend Fla. Stat. Chapter 713.78 to clarify that (1) storage liens on motor vehicles and vessels can be foreclosed only under the procedures set out in Fla. Stat. 713.78 and 559.917; (2) the same procedures for a lender or owner of a vehicle or vessel to request an inspection related to a towing and storage liens is the same as set out in 713.585 for a repair lien are also applicable to towing and storage liens for vehicles and vessels under Fla. Stat. 713.78; (3) the same procedures for posting a bond regarding repairs on vehicles and vessels in 713.585 and 559.917 are also applicable to towing and storage liens for vehicles and vessels under Fla. Stat. 713.78.
- i. Supports (1) legislation to update and clarify Section 55.205, F.S., Effect of judgment lien, to explicitly cross-reference Section 319.27, F.S; (2) support amendments to Chapters 55, 56 and 319 F.S. to (i) clarify the effect of a certificate of title on a judgment lien, and (ii) establish procedures for enforcement of a judgment lien against a motor vehicle, mobile home, or vessel; (3) support legislation to expand the scope of the Florida Judgment lien on personal property to reach accounts and payment intangibles as defined in Ch . 679, F.S. only of a judgment debtor that is located in this state; and (4) support legislation that makes clear that the above judgment lien can be enforced only through judicial process and not through self-help or replevin without the express consent of the judgment debtor in a post-default record.

j. Supports the original version of SB528 providing for an increase in the exemption for a debtor's interest in a personal motor vehicle set forth in Fla. Stat. §222.25 that is applicable equally to all debtors and (2) oppose any legislation providing for a higher exemption amount solely applicable to debtors in bankruptcy.

2. Business Entities / Securities / Financial Services

a. Opposes legislation to impose income tax on limited liability companies and subchapter S corporations.

b. Opposes legislation that would transfer the functions of the Division of Corporations in the Department of State to the Department of Revenue.

c. Opposes “sunset” of the Division of Corporations of the Department of State.

d. Opposes changes to Ch. 607, F.S. which addresses the filing of biennial reports by domestic and foreign corporations.

e. Supports proposed legislation updating and modernizing the Florida Business Corporation Act, The Florida Revised Limited Liability Company Act and other for profit and not for profit business entity statutes.

f. Supports the legislative proposals amending of Chapter 517, the Florida Securities and Investor Protection Act

g. Opposes legislation, including without limitation currently proposed legislation to amend Section 542.275, Florida Statutes, that directly or indirectly requires pre-closing notice and/or providing of information to the Office of the Florida Attorney General as to certain merger and acquisition transactions and/or requires post-closing filing of a notice and/or providing information to the Office of the Florida Attorney General without reasonable exemption for Florida’s Sunshine Laws.

3. Business Litigation / Alternative Dispute Resolution

a. Supports amending Florida Statute 542.335 relating to restrictive covenants in a manner to provide exemptions to employees receiving limited compensation and to provide the court additional discretion in those same cases to interpret restrictions in a manner consistent with traditional contract rules of construction.

b. Supports changes to Ch. 48, F.S. and other statutory provisions addressing service of process to (1) simplify the methods of service of process on business entities to eliminate redundancies and inconsistencies, (2) clarify the statutory scheme to avoid confusion, (3) better elucidate the methods for effectuating service of process in foreign countries, and (4) modernize the methods and procedures for service of process on business entities, while ensuring compliance with fundamental notions of due process.

c. Supports the Real Property, Probate and Trust Law Section of The Florida Bar position to create Section 49.072, F.S., establishing a process to serve unknown parties in possession of real property.

d. Opposes codification of tortious interference claims that: (1) creates uncertainty in commercial transactions; (2) stifles competition; (3) imposes treble or punitive damages; (4) allows for one-sided attorney's fees; and (5) is vague and ambiguous.

4. Intellectual Property / Computer Law

a. Opposes changes that weaken contracts governed under current franchise laws and expand claims available under Florida's Unfair and Deceptive Trade Practices Act.

b. Supports legislation that defines blockchain technology in such a manner as to encourage innovation in the blockchain space without tying any statutory definition to a specific implementation of the technology.

c. Supports amending pending legislation relating to trade secret information to require Florida state agencies to inform potential bidders, vendors, service providers, contractors and/or others that may engage in business with state agencies that their submission of information to an agency may waive trade secret protection and to further require informed consent by potential bidders, vendors, service providers, contractors and/or others that may engage in business with the state agencies, in order to prevent inadvertent waiver of said trade secrets and potential litigation.

d. Supports legislation relating to data privacy and protection, including cybersecurity, that strikes the appropriate balance between protecting personal information without placing undue restrictions on business development or unnecessarily stifling technological advancement in this state.

5. Judiciary / Administration of Justice

a. Supports adequate funding of the state courts' system, state attorneys' offices, public defenders' offices, and court-appointed counsel.

b. Supports legislation consistent with the Supreme Court of Florida's certification of need for additional judges.

c. Supports adequate funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act.

d. Opposes term limits for judges at any level of Florida's state court system.