

**Agenda for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar at the Labor Day Retreat**

Saturday, September 2, 2023, 9:30 a.m. – 11:30 a.m., Salon I & II

Kenny Murena, Chair kmurena@dvllp.com
Adina Pollan, First Vice-Chair (Legislative) apollan@mcglinchey.com
Matthew Hale, Second Vice-Chair (Study Groups) mhale@srbp.com
Hon. Mindy Mora, Judicial Chair

I. Welcome & Approval of Minutes from the Prior Meeting - Exhibit A
Kenny Murena

II. Introductions of Special Guests and Pro Bono Reminder
Kenny Murena

The Section reaffirms its goal to achieve 100% participation in pro bono service by Business Law Section members and attorneys in their firms. One way to achieve this goal is to participate in the Veterans' Financial Literacy Project and the Middle District of Florida Bankruptcy Court's Districtwide Virtual Pro Se Clinic (Volunteer attorneys and unrepresented parties who want a virtual consult with a volunteer attorney can register at: <http://www.bankruptcyproseclinic.com> and will then be matched up for a virtual consult at a mutually convenient time).

III. Business Law Section Update & Welcome

Mark Stein, Section Chair
Manny Farach, Section Chair-Elect
Stephanie Lieb, Section Treasurer
Peter Valori, Section Secretary
Gregory Yadley, Section Chair of Long-Range Planning
Doug Bates, Section Immediate Past Chair

IV. Legislation

A. Legislative Overview for 2023 Session

Robert Barron, Legislation Committee Chair
Woody Pollack, Legislation Vice Chair
Aimee Diaz Lyon, Section Lobbyist

2024 Legislative Session is in January so all legislative initiatives that we want to pass in that session needs to be finalized and approved at this meeting so it can be approved by EC on Monday and sent to the Big Bar for approval in October.

B. Legislative Review Subcommittee

Adina Pollan, Legislative Vice Chair
Jodi Dubose, Andrew Layden, James Silver, Luis Rivera, Thomas Zeichman, Dave Slenn

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Subcommittee is considering the proposed legislative position, the white paper, and the proposed bill presented by the Legislative Committee of the RPPTLS regarding disputes under the Florida Uniform Disposition of Community Property Rights at Death Act (sec. 732.216-732.228) (attached as **Exhibit B**). Th bill proposes to statutorily exempt title disputes arising under the Act from Florida’s creditor claim procedures. Claims raised under the proposed Act may also be raised in connection with a dispute related to business litigation, a bankruptcy proceeding, or a corporate change of control situation. If this Committee determines that the proposed bill affects our interests, we will propose to form a Study Group.

Subcommittee is considering the White Paper and proposed bill (attached as **Exhibit C**) proposed by the RPPTLS regarding disputes under the Florida Uniform Disposition of Community Property Rights at Death Act. According to the White Paper, the Act proposes to statutorily exempt title disputes arising under the Act from Florida’s creditor claim procedures. Claims raised under the Act may also be raised in connection with a dispute related to business litigation, a bankruptcy proceeding, or a corporate change of control situation.

Subcommittee considered proposed legislation to amend Section 1.01, Fla. Stat., to revise the definition of “registered mail.” and White Paper and concluded that it is innocuous and does not impact the Committee’s interest.

C. 2024 Legislative Items

a. Judgment Lien Amendments

Prof. Jeff Davis, Jodi Dubose

[HB 27](#) by Rep. Benjamin (D-Miami Gardens)

Amendments proposed by the Study Group were presented to and approved by this Committee at the June 2023 Annual Meeting

b. Warehouse Lien Amendments (§713.585)

Dennis LeVine

Wrecker and Towing-Storage Operators [HB 1085](#) by Rep. Maney (R-Fort Walton Beach)

The Section approved the amendments. The Bill was introduced in both the House and Senate during the last Legislative session. We were told it had backing of leadership of both houses. Towing lobby was very organized and attempted to stop the legislation. The legislation did not make the agenda at the last Committee stop.

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Sponsor will take up the Bill again in the next Legislative session. Please reach out to Dennis LeVine and Adina Pollan if you want to help with this effort.

- c. *FDUTPA*: Revisions to Fla. Stat. § 501.207(3)
R. Scott Shuker, Michael A. Friedman

Triple motion on the revisions passed, but we did not get a sponsor in time, so we are hoping to get one soon. Task Force was considering looking for another bill to attach its revisions to, but there may not be a vehicle for it in the 2024 session. Task Force may out to Attorney General's office for input and assistance.

- d. *UCRERA Amendments*
Kathleen DiSanto, Judge Mindy Mora

As of the 2023 Annual Meeting, there was no agreement among the title insurance and traditional real estate members of RPPTLS and BLS regarding the language of the proposed glitch bill and the RPPTLS backed off and put it in our hands. Our Study Group will make a recommendation of whether and how to proceed.

- e. *Florida Statutes, Chapter 517 Amendments*
Will Blair

The Chapter 517 Task Force is proposing legislation that updates and modernizes Chapter 517 of the Florida Statutes – The Florida Securities and Investor Protection Act. The Task Force provided to this Committee a proposed bill, an explanatory white paper, and the triple motion (attached as **Exhibit D**) that it will make during the Executive Council meeting on Monday, September 4, 2023 to support its proposed bill.

The Task Force is seeking this Committee's input and approval of the proposed bill before it brings the triple motion before the Executive council.

The Triple Motion will seek the Executive Council's approval of the following:

RESOLVED, that the Florida Bar Business Law Section (the "Section") supports proposed legislation updating and modernizing Chapter 517 of the Florida Statutes – The Florida Securities and Investor Protection Act (the "Proposed Legislation"), substantially in the form of the draft legislation, dated as of August 4, 2023, presented to the Executive Council of the Section, and subject to

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such further changes as are deemed appropriate and approved by the Chapter 517 Task Force and the Executive Council of the Section; and it is further

RESOLVED, that the Proposed Legislation: (1) Is within the Section's subject matter jurisdiction as described in the Section's bylaws; (2) Either is beyond the scope of the bar's permissible legislative or political activity, or is within the bar's permissible scope of legislative or political activity and the proposed Section position is consistent with an official bar position on that issue; and (3) Does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

D. Legislative Items to be Monitored

a. Foreclosure Notice Bill

April Stone, Hon. Catherine Peek McEwen

b. Motor Vehicle Exemption Bill

Luis Rivera, Kelly Roberts

Value of Motor Vehicles Exempt from Legal Process

[HB 981](#) by Rep. Benjamin (D-Miami Gardens)

[SB 1014](#) by Sen. Polsky (D-Boca Raton)

This Committee formed a study group last year to look at the Florida exemptions available in comparison to the exemptions available in other states. There has been no new activity since June as to interest expressed in the topic or a proposed or filed Bill. The Committee and study group will monitor this during the 2024 Legislative Session, and, if there is no activity, the study group will prepare and submit a final report at the June 2024 meeting.

c. H.R.1017 - Bankruptcy Venue Reform Act

118th Congress (2023-2024)

John Hutton, Hon. Catherine Peek McEwen

As of the 2023 Annual Meeting, the House Bill had bipartisan support, it had approximately 10 sponsors including U.S. Rep. Katherine Castor, we needed Republican cosponsors, and there was no companion Senate Bill. There was a report that Senator Warren will help and that Rep. Laurel Lee was mulling it over.

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d. Congressional Legislation affecting Student Loans

H.R. 306 – *Stopping Abusive Student Loan Collection Practices in Bankruptcy Act of 2023*: Attorney’s fees and costs for the debtor if ultimately discharged.

H.R. 138 – *Private Student Loan Bankruptcy Fairness Act of 2023*: private student loans to be discharged regardless of undue hardship.

S. 136 – *ISA Student Protection Act of 2023*: educational income share agreements would not be subject to same undue hardship standard typical of student loan discharges.

e. Congressional Legislation on Exemptions

H.R. 962 – *Protecting Gun Owners in Bankruptcy Act of 2023*. Increases the exemption for firearms to \$3,000, and clarifies that such firearms are household goods not subject to liens in bankruptcy.

f. Congressional Legislation on Health Savings Accounts

H.R. 2959 and companion S. 2621 – *Health Savings Act of 2023*. Seeks, among other things, to exempt HSA’s from creditor claims under federal bankruptcy exemptions (Florida law already provides for this in F.S. sec. 222.22.)

E. Study Groups

a. **New:** UCC 9-Financing Statements

Adina Pollan apollan@mcglinchey.com

Mark Wolfson mwolfson@foley.com

The 11th Circuit decision in the case *In re NRP Lease Holdings, LLC*, 50 F.4th 979 (11th Cir. 2022) which held that under Florida law, because the Florida Secured Transaction Registry did not employ “standard search logic” for searches of financing statements, the statutory safe harbor for financing statements that fail to correctly name the debtor could not apply, and so the financing statements filed by creditor that incorrectly named debtor were “seriously misleading” and ineffective to perfect creditor’s security interest in debtor’s assets. In answering the 11th Circuit’s certified questions, the Florida Supreme Court in *1944 Beach Boulevard, LLC v. Live Oak Banking Co.*, 346 So.3d 587, 593 (Fla. 2022) adopted “the definition of ‘standard search logic’ accepted in the secured transactions industry,

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which requires the search to identify specific hits, if any,” and held that “the search option offered by the Registry, which returns the entire index, is not a ‘standard search logic.’” The court held that “section 679.5061(3) provides one way and one way only to search the filing office's records for purposes of determining whether the safe harbor applies to a financing statement that incorrectly names a debtor— i.e., ‘using the filing office's standard search logic, if any.’” *Id.* As a result, the court explained that “[b]ecause the Registry lacks a ‘standard search logic,’ the search contemplated by section 679.5061(3) is impossible, which means that filers are left with the zero-tolerance rule of section 679.5061(2).” *Id.* Because the zero-tolerance rule applies “until the Registry employs a standard search logic, ... any financing statement that fails to correctly name the debtor as required by section 679.5031(1) is ‘seriously misleading’ and therefore ineffective.” *Id.*

Study group is to make recommendation regarding possible legislative or administrative proposal to bring Florida’s search registry into the 21st century and provide a safe harbor as well as review other states with the requisite search logic which could serve as a model.

b. Commercial Financing Disclosure Law - Product Brokers & Providers

[HB 1353](#) by Rep. Bankson (R-Apopka)

Jocelyn Macelloni, Diane Wells, Mark Wolfson, John Hutton

The bill creates the “Florida Commercial Financing Disclosure Law,” which requires a provider that consummates more than five commercial financing transactions of \$500,000 or less in a 12-month period to give each business that enters into a consumer financing transaction certain written disclosures regarding the total cost of the transaction, and the manner, frequency, and amount of each payment. The bill provides exemptions to these disclosures. The bill provides that a provider’s characterization of accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money.

Study group is looking into this and what is happening in Florida and nationwide and is preparing a position paper regarding a possible legislative proposal to address definition of “business,” “business purpose transaction,” “accounts receivable purchase transaction,” the Attorney General as the “exclusive” authority to enforce legislation, as well as any other matters deemed necessary.

c. UCC Article 12

Robert Kain rkain@conceptlaw.com

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Matthew Hale
Hon. Mindy A. Mora

UCC Article 12 Task Force presented to the Committee and the Study Group proposed Amendments to Florida's UCC Article 12, a draft Florida UCC Article 12 Bill, and a white paper (attached as **Exhibit E**), and requested input.

UCC Art 12 Task Force met Aug 15, 2023 to discuss the proposed legislation and white paper and any input from the Study Group.

Study Group members identified a number of issues with the proposed Amendments and recommended further review and consideration of the proposed Amendments, various terminology used, and how it cross-references and affects other Florida Statutes.

Members with UCC experience and expertise are encouraged to join the Study Group and provide input regarding the proposed Amendments.

d. Motor Vehicle Exemption Study Group
Kelly Roberts, Luis Rivera

See Legislative Items to be Monitored (above)

e. ABC Study Group
Trish Redmond, Jodi Dubose

Study group to remain intact following "glitch bill" amendments to monitor potential movement relating to model Assignment for the Benefit of Creditors Act.

V. Continuing Legal Education, Communications, and Publications

A. Bankruptcy/UCC Committee CLE Programs

a. Previously Held CLE Programs

- i. Panel Discussion: Benefits and Pitfalls of Subchapter V*
Course No. 6887
January 25, 2023

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Panelists: Luis E. Rivera, Amy Denton Mayer, Judge Roberta Colton, Judge Jacob Brown, and Judge Jason Burgess
Sponsored by: Shuker & Doris, P.A., Gray Robinson and Stichter, Riedel, Blain & Postler, P.A.,

- ii. *A.B.C. (Fla. Stat. §727): The State Court Alternative to Bankruptcy Court*
April 12, 2023: 12:00 p.m. – 1:00 p.m. Webinar
Course No. 6721
Speakers: R. Scott Shuker, Mark C. Healy, & Patricia Redmond
Fee: \$50.00 Members, \$110.00 Non-Section Members

- iii. *Practices & Procedures: Bankruptcy Judges of the Jacksonville Division of the Middle District of Florida* Course No. 7165
March 30, 2023: 12:00 p.m. – 1:00 p.m. Webinar with In-Person Attendance in Courthouse
Speakers: United States Bankruptcy Judges for the Middle District of Florida, Jacksonville Division, Honorable Jacob Brown, and Honorable Jason Burgess
Moderator: Adina Pollan
Fee: Free

- iv. *Practices & Procedures: Bankruptcy Judges of the Orlando Division of the Middle District of Florida* Course No. 7163
April 19, 2023: 4:00 p.m. – 5:15 p.m. Webinar
Speakers: United States Bankruptcy Judges for the Middle District of Florida, Orlando Division, Honorable Tiffany Geyer, Honorable Grace Robson, and Honorable Lori Vaughan

Moderator: Ana DeVilliers, Staff Attorney with Chapter 13 Trustee Office
Fee: Free

- v. *Bank/UCC & BDA Committees Present the New UCC Article 12: Why, When and What Does It Do?* Course No. 7455
June 22, 2023; 2:00 p.m. – 4:00 p.m.
The Boca Raton, Grand Ballroom J

Speakers: United States Bankruptcy Judge for the Southern District of Florida, West Palm Beach Division, Honorable Mindy A. Mora, Robert Kain, Jaime Leggett, Michael Dunn, Edwin Smith, Steven Wiese, and Andrew Hinkes

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b. Future Programs

i. Labor Day Retreat 2023 - CLE

September 2, 2023 (at the end of this meeting)

Litigating Confirmation Issues

The program will examine the most commonly litigated confirmation issues in a Subchapter V Bankruptcy Case with a focus on evidence needed to support or oppose confirmation. Specific topics include litigating what constitutes fair and equitable under 11 U.S.C. § 1191(c), litigating best interests test under 11 U.S.C. §1129(a)(7) and 1191(b), and litigating feasibility under 11 U.S.C. §1129(a)(11) and 1191(b)

ii. The Judge Michael G. Williamson View From the Bench 2023

November 2, 2023 (Tampa), Reception (11/01/2023): New Location
USF Health CAMLS (124 S Franklin St, Tampa, FL 33602)
November 3, 2023 (Miami)

Fellows are encouraged to contact Brad Saxton to assist with the digesting of cases, which will work towards fellows' project requirements.

B. Communications Committee Report & Newsletter

Crystal Potts crystal@potts-legal.com

April Stone astone@tmppllc.com

Shirley Palumbo shirley.palumbo@gmlaw.com

Field Code Changed

Requesting articles and blogs for the section newsletters and social media outlets. Here are the submission guidelines for your reference. <https://flabizlaw.org/blog-submission/>
Topics: what your committee/task force is doing this year, including CLEs, meetings, projects, etc. If any CLE presenter would like to provide a written synopsis of their presentation, we welcome that as well.

C. CLE Committee Report & Florida Bar Journal

Luis Rivera luis.rivera@gray-robinson.com

CLE Programs at Retreat Sponsored by Other Committees:

- i. Discovery in Bankruptcy: from Contested Matters to Adversary Proceedings (Bankruptcy Judicial Liaison Committee)*
September 1, 2023

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- ii. Legislative Update (Business Litigation Committee)
September 1, 2023
- iii. Inside Information: Understanding Data Privacy Legal Protections for
U.S. Consumers & Employees (Computer Law & Technology Committee)
September 1, 2023
- iv. Building Your Career: From Resume to First Chair & Beyond
September 1, 2023
- v. Legislative Update (Business Litigation Committee)
September 2, 2023
- vi. Business Court Roundtable
September 2, 2023
- vii. Updates from a Forensic Accountant & Valuation Perspective: the
Surfside Building Collapse & Others (Corporations, Securities &
Financial Services Committee)
September 2, 2023
- viii. Beyond the Code: Mastering the Art of Software Licensing Strategies (IP
Committee)
September 2, 2023

Future CLE Programs Sponsored by Other Committees:

- i. Webinar: from Business Litigator to Problem Solver (Business Litigation
Committee)
October 26, 2023
- ii. 40th Annual Federal Securities Institute (Corporations, Securities &
Financial Services Committee)
February 11, 2024

D. Out of State Division Newsletter Submissions

Don Workman, Hon. Catherine Peek McEwen

All members, especially young lawyers, are encouraged to submit articles which are almost guaranteed to be published. Most editions have articles from Bankruptcy/UCC members.

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VI. Cross-Committee Partnership and Other Liaison Reports

A. Other Liaison Reports

- i. *IMF Committee* – Kelly Roberts, Katherine Van de Bogart
- ii. *Financial Literacy* – John Hutton, Tara Trevorrow
- iii. *Membership Committee* – Juan Mendoza, Christina Taylor
- iv. *Pro Bono* – Jim Moon, Tara Trevorrow, Hon. Laurel Myerson Isicoff
- v. *Scholar and Fellows Retention Task Force* – Zack Hyman, Chris Broussard, Hon. Catherine McEwen
- vi. *Regional Bankruptcy Bar Liaisons*
Megan Murray mmurray@underwoodmurray.com
(BBA-ND Fla., BBA-SD Fla., TBBA)
Christian Haman chaman@dallagolaw.com (CFBLA, JBBA, SFBPA)
- vii. *American Bankruptcy Institute (ABI)*
Adina Pollan
- viii. *Commercial Law League of America (CLLA)* – Robert Charbonneau
- ix. *Florida Institute of CPAs (FICPA)* – Don Workman

The FICPA recently undertook some personnel changes. The person who was our main point of contact left and was replaced, and the FICPA is reviewing who will do what at the organization. Nevertheless, our part of the Liaison continues to push our Legislative agenda, networking, and educational programs. In that regard, we have been working with the Financial Literacy Task Force to organize a financial wellness program for young professionals in both the Bar and the FICPA worlds. That program is progressing, and you will receive a more detailed report from the Task Force. We also continue to coordinate with the FICPA on legislative initiatives.

VII. New Business

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VIII. Future Meeting Dates & Events

The Florida Bar, Winter Meeting – January 24-27, 2024, Rosen Shingle Creek, Orlando, FL

Annual Florida Bar Convention – June 19–22, 2024, Signia by Hilton Orlando, Bonnet Creek & Waldorf Astoria, Orlando, FL

IX. CLE Program

Litigating Confirmation Issues

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Speakers (Bios attached as **Exhibit F**):

Hon. Roberta Ann Colton, United States Bankruptcy Judge for the Middle District of Florida, Tampa Division

Megan W. Murray, Shareholder of Underwood Murray

Amy Denton Mayer, Shareholder at Stichter, Riedel, Blain & Postler, P.A.

R. Scott Shuker, Partner, Shuker & Dorris, P.A.

Program Chair/Steering Committee:

Mariane L. Dorris and R. Scott Shuker

X. Adjourn