



Section News

Section Officer and Council Nominations

In accordance with article 6, section 1(d), of the Bylaws of the Section, the Nominations Committee presents the following slate for Section officer, delegate, and council member vacancies that will occur at the close of the current Association year. In addition, the Nominations Committee has recommended individuals to be appointed as assistant secretaries to the Real Property and Probate and Trust Divisions.

The Nominations Committee is chaired by Philip J. Bagley III of Richmond, Virginia. The vice-chair is Edward F. Koren of Tampa, Florida; and the members are Dennis M. Horn of Washington, D.C.; David J. Dietrich of Billings, Montana; and Edward T. Brading of Johnson City, Tennessee.

The current Section Chair-Elect, Christine L. Albright, will automatically succeed Kevin L. Shepherd as Chair of the Section at the close of the Annual Meeting scheduled for August 2006 in Honolulu.

The election for officers and council members will be held at the annual Section business meeting on Saturday afternoon, August 5, at the Sheraton Surfriider Hotel in Honolulu.

The Nominations Committee nominates the following officers, council members, and Section delegate:

Chair-Elect: Kathleen M. Martin
Real Property Division Vice-Chair:

Roger D. Winston

Probate and Trust Division Vice-Chair:

Steve R. Akers

Section Secretary:

Tina Hestrom Portuondo

Finance and Corporate Sponsorship

Officer: Gideon Rothschild

Section Delegate to the House of

Delegates: David M. English

Probate and Trust Council Members:

Jo Ann Engelhardt

Christopher H. Gadsden

William P. LaPiana

Barbara A. Sloan

Probate and Trust Assistant Secretary:

Terrence M. Franklin

Real Property Council Members:

Nancy J. Appleby

Robert C. Paul

David A. Thomas

Ira J. Waldman

Real Property Assistant Secretary:

Victoria M. de Lisle

Summary of Section Activities

Christine L. Albright

Winston & Strawn

Chicago, Illinois

Automatically assumes the office of Section Chair, term ending August 2007.

Positions held in Section: Chair, Estate Planning & Drafting; Marital Deduction Committee; Chair, Tax Legislation and Regulation Committee; Co-Chair,

Probate and Trust Division CLE Committee; Member, Section CLE,

Publications, Nominations, Diversity, Membership, Digital Signatures/E-

Commerce, and Planning Committees; Group Chair and Supervisory Council

Member, Estate Planning for Families and Other Beneficiaries Group; Section

Representative, National Conference of Lawyers and Corporate Fiduciaries;

Supervisory Council Member, Charitable Planning and Exempt

Organization Group, Non-Tax Estate Planning Consideration Group, and

International and Multistate Group; Co-Chair, Committee on Committees;

Chair, CLE and Publications Committees; Section Vice-Chair, Probate

and Trust Division.

Kathleen M. Martin

Malkerson Gilliland Martin LLP

Minneapolis, Minnesota

Nominated for Section Chair-Elect, term ending August 2007. Positions held in

Section: Chair, Condemnation and Solo and Small Firm Practice Committees;

Co-Chair, Multijurisdictional Practice Committee; Member, Bylaws and

Handbook, Membership, Decisions, Condemnation, Real Estate, and

Mortgage Investment Committees; Member and Vice-Chair, Continuing

Legal Education, Planning, and Publications Committees; Section

Liaison, ABA Commission on Women in the Profession and ABA Solo and Small Firms Committee; Member, ABA Standing Committee on Solo and Small Firm Practitioners and Lawyers Title Guaranty Funds; Council Member; Section Secretary; Section Vice-Chair, Real Property Division.

Steve R. Akers
Bessemer Trust
Dallas, Texas

Nominated for second term as Section Vice-Chair, Probate and Trust Division, term ending August 2007. Positions held in Section: Vice-Chair, Co-Chair, and Chair, Corporate Sponsorship Committee; Co-Chair, Task Force on Chapter 14 Proposed Regulations, Probate and Trust Division CLE Committees; Chair and Vice-Chair, Lifetime Transfers Committee; Member, Membership, Publications, Planning, Continuing Legal Education, and Bylaws and Handbook Committees; Assistant Secretary, Probate and Trust Division Council; Council Member; Finance and Corporate Sponsorship Officer.

Roger D. Winston
Linowes & Blocher LLP
Bethesda, Maryland

Nominated for first term as Section Vice-Chair, Real Property Division, term ending August 2007. Positions held in Section: Chair, Common Interest Community Associations and Development and Financing of Condominium Projects Committees; Member, Special Committee on Affordable Housing; Chair, Managing Editor, and Editor Emeritus, Books and Media Committee; Member, Publications, CLE, Nominations, and Planning Committees; Member, Homeowners, Community and Common Interest Community Associations Committee; Co-Chair, Committee on Committees; Council Member; Assistant Finance and Corporate Sponsorship Officer; Finance and Corporate Sponsorship Officer.

Tina Hestrom Portuondo
University of Miami
Coral Gables, Florida

Nominated for second term as Section Secretary, term ending August 2007. Positions held in Section: Member, Publications, Probate Advisory Board, Nominations, Coordination of Governmental Submissions, and Planning Committees; Vice Chair, Continuing Legal Education Committee; Supervisory Council Member; Member, Task Force on Estate and Gift Tax Reform; Chair and Co-Chair, Probate and Trust Division CLE Committee; Member, ABA Standing Committee on Continuing Legal Education of the Bar; Council Member.

Gideon Rothschild
Moses & Singer LLP
New York, New York

Nominated for first term as Finance and Corporate Sponsorship Officer, term ending August 2007. Positions held in Section: Chair, Asset Protection Planning Committee; Chair, International Estate Planning Committee; Member, Section CLE Committee; Co-Chair, Probate and Trust Division CLE Committee; Council Member; Member and Co-Chair, Corporate Sponsorship

Letter to the Editor

The article "A Matter of Principle and Interest," in the March/April issue of *Probate & Property*, was interesting and thought provoking. However, it did not deal with the concept of the payment of interest under Islamic law, which has resulted in a body of laws and financial structures so as to comply with the Shari'ah prohibition against the receipt and payment of interest.

I have been involved in Shari'ah compliant financial transactions, which present interesting legal issues for the Western lawyer. Your attention is called to an article, "Banking by Faith" by Leslie A. Gordon, in the April 2005 issue of the *ABA Journal*, which gives a brief introduction to this area of the law.

Sidney S. Goldstein
McCarter & English, LLP
New York, New York

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Committee; Supervisory Council Member, Income and Transfer Tax Planning Group.

David M. English
University of Missouri—Columbia
Columbia, Missouri

Nominated for first full term as Section Delegate. Positions held in Section: Vice-Chair, Significant Current Probate and Trust Legislation Committee; Keeping Current—Probate Editor, *Probate & Property*; Chair, Long Term Health Care, Limited Liability Companies, Healthcare Decisions, and Organ and Tissue Donation Committees; Member, Bylaws and Handbook Committee; Probate and Trust Division Council Member; Supervisory Council Member, Elder Law and Disability Planning Group; Member, Continuing Legal Education, Publications, Diversity, and Nominations Committees; Member, Study Committee on Law Reform; Member, Section Advisory Board; Vice-Chair, Bio-Ethics Committee; Co-Chair, Uniform Acts for Probate and Trust Law Committee.

Probate and Trust Division Council

Jo Ann Engelhardt
Bessemer Trust
Palm Beach, Florida

Nominated for second term as Council Member, Probate and Trust Division, term ending August 2009. Positions held in Section: Member and Vice-Chair, Continuing Legal Education Committee; Member, Probate and Trust Division CLE Committee; Chair, Co-Chair, and Vice-Chair, Estate Planning and Drafting: Pre-Death Planning Issues Committee; Chair, Administration and Distribution of Trusts Committee; Member and Co-Chair, Membership Committee; Vice-Chair and Member, Diversity Committee; Member, Administration and Distribution of Estates and Trusts and Guardianship Committee; Member, Non-Tax Issues in Planning and Drafting Lifetime and Testamentary Transfers Committee; Member and Vice-Chair, Corporate Sponsorship Committee; Member, Planning and Investments

Committees; Section Liaison, Young Lawyers Division and Law Student Division; Section Liaison, Commission on Women in the Profession; Supervisory Council Member, Non-Tax Estate Planning Consideration, Wealth Planning and Investment, and Financial Planning Groups.

Christopher H. Gadsden
Gadsden Schneider & Woodward LLP
King of Prussia, Pennsylvania

Nominated for first term as Council Member, Probate and Trust Division, term ending August 2009. Positions held in Section: Chair, Professional Responsibility and Liabilities of the Estate Lawyer Committee; Member, Study Committee on Professional Responsibility; Member and Co-Chair, National Conference of Lawyers and Corporate Fiduciaries; Chair, Non-Tax Estate Planning Consideration Group.

William P. LaPiana
New York University
New York, New York

Nominated for second term as Council Member, Probate and Trust Division, term ending August 2009. Positions held in Section: Keeping Current—Probate Contributing Editor, *Probate & Property*; Vice-Chair, Income Taxation of Estates, and Beneficiaries, Lifetime and Testamentary Charitable Gift Planning, and Significant Developments in Probate and Trust Case Law, Legislation, and Literature Committees; Co-Chair, Postmortem Transfer Tax Planning Committee; Co-Chair, Fiduciary Income Tax Committee; Section Liaison to ABA Gramm-Leach-Bliley Task Force; ABA Advisor to NCCUSL Drafting Committees on Amendments to the Uniform Durable Power of Attorney Act; Member, Continuing Legal Education and Diversity Committees; Supervisory Council Member, Non-Tax Estate Planning Consideration Group.

Barbara A. Sloan
McLaughlin & Stern LLP
New York, New York

Nominated for first full term as Council Member, Probate and Trust Division, term ending August 2009. Positions held in Section: Co-Chair, Committee on Committees; Member, Section Advisory Board; Assistant Secretary, Probate and Trust Division; Member, Continuing Legal Education, Nominations, Committee Revitalization, and Planning Committees.

Terrence M. Franklin
Sacks, Glazier, Franklin & Lodise
Los Angeles, California

Recommended appointee for second term, Assistant Secretary, Probate and Trust Division, term ending August 2006. Positions held in Section: Chair, Attorneys Partnering with Non-Lawyers Committee; Section Liaison to ABA Section on Dispute Resolution; Chair, Ethics & Malpractice Committee; Section Liaison to ABA Task Force on Attorney Client Privilege; Group Vice-Chair, Practice Management Group; Member, CLE and Diversity Committees.

Real Property Division Council

Nancy J. Appleby
Bracewell & Giuliani LLP
Washington, D.C.

Nominated for second term as Council Member, Real Property Division, term ending August 2009. Positions held in Section: Chair and Vice-Chair, Loan Practices and

Lender Liability Committee; Chair, Entertainment, Gaming and Related Estate Issues Committee; Member, Homeowners, Community and Common Interest Community Associations, Collateral for Commercial Real Estate Loans, and Foreclosure and Related Remedies Committees; Member, Planning Committee and Committee on Committees; Member and Vice-Chair, Continuing Legal Education Committee; Chair, Real Property Division CLE Committee; Supervisory Council Member, Legal Education and Uniform Laws Group.

Robert C. Paul
The Rockefeller Group
New York, New York

Nominated for first term as Council Member, Real Property Division, term ending August 2009. Positions held in Section: Vice-Chair and Chair, Securitization and REITs Committee; Editor, *Real Property, Probate and Trust*

Journal; Member, Publications Committee; Member, Section Advisory Committee.

David A. Thomas
Brigham Young University
Provo, Utah

Nominated for second term as Council Member, Real Property Division, term ending August 2009. Positions held in Section: Chair and Co-Chair, Legislation Committee; Member, Limited Liability Companies Committee; Member and Vice-Chair, Section Advisory Board; Chair and Member, Significant Decisions Committee; Chair, Continuing Education and Development Group; Chair, Legal Education and Uniform Laws Group; Associate Acquisitions Editor, *Real Property, Real Property Probate and Trust Journal*; Chair, Section Advisory Board.

Ira J. Waldman
Cox, Castle & Nicholson LLP
Los Angeles, California

Nominated for first term as Council Member, Real Property Division, term ending August 2009. Positions held in Section: Vice-Chair, Workouts, Foreclosures and Bankruptcies Committee; Section Advisor to NCCUSL Drafting Committee on Uniform Nonjudicial Foreclosure Act; Member, Section Advisory Board; ABA Advisor to NCCUSL Drafting Committees on Uniform Assignment of Rents Act; Member, Joint Editorial Board for Uniform Real Property Acts; Member, Nominations, Corporate Sponsorship, and Planning Committees; Member, Property Preservation Task Force.

Victoria M. de Lisle
Locke Liddell & Sapp LLP
New Orleans, Louisiana

Recommended appointee for second term, Assistant Secretary, Real Property Division, term ending August 2007. Positions held in Section: Vice-Chair and Chair, Housing for the Elderly Committee; Member, Nominations and Planning Committees; Chair and Vice-Chair, Senior Housing and Assisted Living Committee; Group Vice-Chair, Residential, Multifamily and Special Use Group; Member and Vice-Chair, Membership Committee.

Seven Associations Form Synergy Summit

Recognizing the convergence of the different disciplines that today make up financial and wealth preservation and planning, the leadership of seven major legal, accounting, and financial service organizations announce formation of the Synergy Summit. The Synergy Summit is a unified think tank of the leadership of these organizations—

- the American Institute of Certified Public Accountants (Tax Section),
- the American Institute of Certified Public Accountants (PFP Section),
- the National Academy of Elder Law Attorneys,
- the National Association of Estate Planners & Councils,
- the American Bar Association (RPPT Section),
- the American Bar Association (Tax Section, Estate & Gift Tax Committee), and
- the Society of Financial Service Professionals.

The Synergy Summit offers a dynamic vehicle to share information on membership programs and activities as well as viewpoints on substantive issues of concern to the financial service professions. These seven organizations together represent over 200,000 lawyers, accountants, financial planners, insurance, and other professionals.

Through the Synergy Summit, chaired during 2006 by Harold A. Schwartz Jr. of Chattanooga, Tennessee, these seven organizations bring to their respective members and national policymakers a resource that can access varying viewpoints of the nation's largest and most influential financial services organizations.

Information about the Synergy Summit and its constituent organizations is available on its web site at SynergyPro.org. The web site is sponsored by Leimberg & LeClair, Inc. and Leimberg Information Services, Inc.

PROFILES IN MEMBERSHIP

Michael D. Goler

Michael Goler began his involvement in the Real Property Division of the RPPT Section through the Workouts and Enforcement of Creditors Rights Committee. The committee's retiring chair was in search of a new chair; Michael volunteered and was promptly selected. When his term ended, he was asked to lead the Economics, Technology and Practice Methods Committee. He was later elected to the Section Council while remaining involved in Section committees and becoming involved in a variety of new Section projects.

When asked what he does at his firm, Michael said, "I represent parties in many types of real estate and commercial financing transactions from a variety of perspectives (including owners, tenants, and lenders), as well as different kinds of real estate related disputes, including creditor representation in workouts and bankruptcies." When his children were younger, some of his most enjoyable moments after closing development projects involved taking them to a construction site. "Kids can't appreciate the time and paper spent on a

securities offering or a complex legal opinion, but they understand bricks and concrete."

"Involvement in the Section has helped me create a phenomenal network of colleagues whom I can call upon to refer matters, for advice, or just to get a different perspective on a perplexing issue. At the same time, my Section activities have allowed me to contribute to my profession and my community."

Michael believes that he has been fortunate to have had many opportunities to work on Section projects. He is most proud of helping to create and sustain *E-Dirt*, the Real Property Division's electronic newsletter, and of his work to establish a subcommittee of the Economics, Technology and Practice Methods Committee. This subcommittee was initially founded to provide legal support for Habitat for Humanity chapters throughout the country, but over a few years it evolved into the Pro Bono Committee, which, since its inception, has been one of the largest and most consistently active committees of the Section.

In his spare time, Michael enjoys photography, skiing, golf, and music, from jazz to opera—he has sung with the Cleveland Orchestra Chorus for eighteen years. For many years Michael also has contributed time and service to the Cleveland Hearing & Speech Center, the country's oldest hearing and speech agency. "At the Center we make a difference for the more than 10,000 people of all ages, from infants to seniors and every age in between." ■



Donna G. Barwick

Donna Barwick became interested in bar activities right out of law school, when she and her husband became very active in the State Bar of Georgia. "We both served as president of the Younger Lawyers Division and attended ABA/YLD meetings as delegates from Georgia." The Chair of the ABA/YLD



appointed her YLD Liaison to RPPT. Her contact with the leaders of the RPPT Section as YLD liaison, combined with an election to the House of Delegates, gave her an immediate role in the RPPT Section. Donna went on to serve two terms on the Council and as one of the Section Delegates to the ABA House of Delegates. She also has the distinction of being the first probate and trust articles editor when *Probate & Property* magazine

was started.

Donna started in the trusts and estates department of a large law firm right out of law school, just as a sweeping change was enacted in the estate and gift tax laws. Donna says, "That was a perfect time to attend CLE seminars where lawyers who were drafting documents were adjusting to those changes, and the RPPT Section was where many of the seminars took place."

Today, Donna is a senior director with Mellon Financial Corporation's Private Wealth Management group. In that capacity, she serves in a number of roles, including meeting with individual high-net-worth clients to ascertain their goals, reviewing their documents to make sure that they achieve those goals, making lawyer referrals if they are unrepresented by a trusts and estates attorney, and fielding other legal questions that they may have. Donna is also a member of Mellon's Wealth Management Council, which oversees education for portfolio managers on wealth management topics, works on marketing and sales materials on wealth management topics, and is involved with outreach efforts to the bar and other professionals.

Having made friends in the Section over the years has helped Donna in more ways than she can mention. "I can always call someone from another state to make a referral or ask a question about the law of that other state." Donna has served as chair of the Fiduciary Law Section of the State Bar of Georgia and is a member of ACTEC, which she attributes in large part to interacting with the people she got to know through the RPPT Section. In her free time, Donna spends time with her family and likes to cook, garden, and do needlepoint. ■

A project of the Section's Standing Committee on Membership

Homeowner Associations and Unneighborly Brouhaha

By Robin S. Cromer

Homeowner associations (HOAs) are pervasive in new developments. The good news for lawyers is that these matters require an array of legal services. Lawyers are needed to set up the restrictive covenants for the developments, to advise the developer and/or HOA on interpreting the covenants and rules and regulations, and to resolve disputes between developers, HOAs, and homeowners. There is no shortage of legal issues to resolve in these disputes. For example, the following issues may be raised: Were the original covenants valid? Did the HOA enforce them or waive them by failing to enforce them? Is the HOA interpreting the covenants, rules, and regulations correctly? When and how can the HOA make changes to covenants and regulations drafted by the original developer? In fact, some have blamed lawyers for stirring up HOA trouble just to earn more fees.

Most often, the HOA is the plaintiff against the homeowner, enforcing the covenants created to protect all of the HOA members. But HOAs need to be prepared to defend suits, as well. In

one recent case, a group of plaintiffs sued a condominium association and developer after a devastating fire destroyed several condominiums and hurt many people. The lawsuit, while not resolved, alleges that the condominiums had insufficient fire walls and were possibly lacking sufficient insurance coverage. The potential liabilities of the HOA need to be assessed and reviewed regularly.

Tips for Counsel

Many homeowners do not realize the power of the HOA when they purchase their property. Often, the first time they realize they are members of a HOA is when they receive a bill in the mail or a letter informing them that they are violating some HOA regulation. Most of the HOAs created in the last ten years mandate that all homeowners be members of the association upon the purchase of the property. These HOAs have mandatory dues that, if unpaid, can give the HOA the right to foreclose upon the property.

In most cases, a HOA can more easily and quickly foreclose on a lien than a lender can foreclose on a mortgage because few, if any, consumer protection laws govern the conduct of HOAs. California, however, passed a law last year that provides more protection to homeowners, and several states are considering such legislation. Nevada has introduced legislation that promotes fair HOA board elections by requiring secret ballot elections. Furthermore, Nevada's bill proposes that prospective home purchasers sign a disclosure statement at closing that informs them of the implications of association living. States such as California, Florida, and Nevada are at the forefront of HOA legislation because they have the highest rates of

new home development, have the greatest number of HOAs, and have seen the most HOA litigation.

Even in HOAs that have no mandatory dues, association boards often attract people who enjoy telling their neighbors what to do. An innocuous regulation can quickly become burdensome, depending on who is judging whom. The web site for the American Homeowners Resource Center contains plenty of stories and news articles illustrating these personal conflicts among neighbors. Given the site reports that over 50 million Americans now live in HOAs, these stories will likely increase.

Any lawyer representing a home buyer must make an effort to explain the buyer's obligations to the HOA involved, as well as the deed restrictions, restrictive covenants, and HOA regulations. Although such steps will not stop every dispute, they will go a long way to prevent those "surprise" nonjudicial HOA foreclosures and even may prevent some "unneighborly brouhahas." ■

Ask the Mentor

Query: How do I become the chair of a substantive committee?

If you are interested in becoming a substantive committee chair, you should keep two words in mind: (1) *knowledge* and (2) *participation*. If you can demonstrate knowledge in your area of expertise and committed, active participation, including speaking on CLE panels, writing articles for Section publications, and reporting on recent legislative and regulatory developments in your practice area, you will have established a reputation in your area of expertise and as a reliable contributor to the RPPT Section. These attributes will be recognized by the leadership of the Section, and your responsibilities will increase until you become a vice-chair and then a chair of a substantive committee.

For more information on the YLN, please contact:

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