

The RPPT Bulletin is emailed out on a quarterly basis to all Section members to keep members up-to-date on the activities of the Section.

NEW DEVELOPMENT IN LANDLORD/TENANT BANKRUPTCY LAW

Through an ad hoc committee comprised of **Mike Goler**, **Pat Mears** and **Ray Werner**, with the sage counsel of Past Chair **John Gose**, the Section is addressing the legal issues presented by the recent Seventh Circuit decision in *Precision Industries, Inc., v. Qualitech Steel SBQ*, 327 F3d 537 (7th Cir. 2003). This case held that under Section 363(f) of the Bankruptcy Code, a sale of a debtor's assets free and clear extinguished a tenant's leasehold interest. While the result of this case sent fear through the hearts of tenants, a careful analysis of the facts of the case indicates that a strong argument can be made that the result was dictated by the failure of the borrower to protect its interest as the tenant under the lease. If the debtor had proceeded under a parallel procedure set out in Section 365(h) to reject the lease rather than sell its assets free and clear, the tenant in possession under the rejected lease would be protected by express provisions of that section of the Code. A similar provision is not found in Section 363, and the court held that the tenant protective provisions of Section 365 could not be read into Section 363. In response to this case, the Section is holding educational programs about the case so that tenants' lawyers will know to act promptly to protect their client's rights. Additionally, the Section is watching for the opportunity to propose that a protective provision be added to Section 363 as an amendment to bankruptcy law legislation that is pending in Congress.

SECTION MONITORS PREDATORY LENDING DEVELOPMENTS

The Real Property Division Pro Bono Committee, chaired by **Carol Ann Martinelli**, is monitoring efforts throughout the country to curb predatory lending practices. The Committee has added a number of links on its web page to federal, state and industry groups and information concerning predatory lending. To access this information and many other topics, please visit the Committee's web site at www.abanet.org/rppt/committees/rp/b4/home.html.

UNAUTHORIZED PRACTICE OF LAW UPDATES

Massachusetts Governor Romney recently issued Massachusetts Executive Order No. 455, **Standards of Conduct for Notaries Public**, which states a notary who is not an attorney licensed to practice law in Massachusetts shall not conduct a real estate closing and shall not act as a real estate closing agent. The Executive Order parallels a lower Massachusetts court ruling.

The Supreme Court of South Carolina has ruled that non-lawyer title abstractors engaged in the unauthorized practice of law when they conducted a title search and reported the status of title in connection with a tax foreclosure sale. Copies of the Executive Order and the Massachusetts and South Carolina decisions are available on our web site at www.abanet.org/rppt/upl.

UNIFORM DURABLE POWER OF ATTORNEY ACT

Section member **Abigail Kampmann** is the Section Advisor and Section member **William LaPiana** is the ABA Advisor to the NCCUSL Drafting Committee that is revising the Uniform Durable Power of Attorney Act. The Act's reporter, **Linda Whitton**, is also a Section member. The drafting committee will present a

draft of the Uniform Durable Power of Attorney Act for first reading at the NCCUSL Annual Conference in Portland, Oregon, this August. The decision to revise the current Uniform Durable Power of Attorney Act was the result of a national study and survey that indicate that less than a third of all jurisdictions now follow the legislative approach of the current Uniform Act. The current Act was once followed by 48 jurisdictions.

The draft Revised Act contains a statutory form power of attorney as well as definitional language for various powers that can be incorporated by reference if an attorney is drafting a non-form document. Following a growing trend among the states, the Revised Act covers a number of specific areas, which are not addressed in the current Uniform Act. These include default rules for multiple or successor agents, contingency powers, and agent duties and liability, as well as sanctions for the failure of other persons to accept an agent's authority under a durable power of attorney.

Interested persons can access the most current draft of the Revised Act at www.nccusl.org and may submit comments concerning the draft to **Linda Whitton**, Reporter for the Act (linda.Whitton@valpo.edu), **William LaPiana**, ABA Advisor for the Act (wlapiana@nyls.edu), or **Abigail Kampmann**, Section Advisor for the Act (agkampmann@estplanning.com).

UNIFORM ENVIRONMENTAL COVENANTS ACT

Roger Schwenke has served as the ABA Advisor to the NCCUSL Committee that has drafted the Uniform Environmental Covenants Act. The Act, which has been endorsed by the Section, was heard and approved by the ABA House of Delegates at the ABA Mid-Year Meeting. The Act provides a legal and regulatory framework by which use

restrictions and other institutional controls on contaminated property may be recorded and enforced irrespective of common law doctrine that might otherwise defeat the controls. To review the Act and other NCCUSL initiatives, visit www.nccusl.org.

UNIFORM ESTATE TAX APPORTIONMENT ACT

The ABA's advisor to the NCCUSL drafting committee for the Uniform Estate Tax Apportionment Act ("UETAA") was the Section's nominee **Joseph Kartiganer**.

The UETAA which deals with the issues of the payment of estate taxes and the allocation of the burden of those taxes among those interested in the estate, was approved and recommended for enactment in all states at the Annual Meeting of the NCCUSL in August 2003. Both before and after NCCUSL approval, UETAA was approved by the ABA RPPT Section and, after the NCCUSL approval, by the American Bar Association at its 2003-04 Midyear Meeting in San Antonio, Texas.

NCCUSL's original Uniform Estate Tax Apportionment Act, completed in 1958, was superseded in 1964 by a revision later incorporated into the Uniform Probate Code as UPC §3-916, a section that was slightly changed in 1982. The project to replace the 1964 Act and the Uniform Probate Code section with an updated version was announced at the Conference's 1999 annual meeting, and got underway in November of 2000.

The UETAA has already been introduced in Idaho and is likely to be considered by a number of states contemplating changes to their tax apportionment rules and procedures. Interested persons can access UETAA on NCCUSL web site, www.nccusl.org.

UNIFORM ENTITY TRANSACTIONS ACT

Barry Nekritz, **Thomas Geu** and **Carol Kroch** are representing the Section in the NCCUSL project to draft a Uniform Entity Transactions

Act, the most current draft of which can be found at www.nccusl.org, and in the Business Law Section project to draft the Model Entity Transactions Act. NCCUSL and the Business Law Section have now agreed to merge their respective projects into a Model Entities Transactions Act ("META"). The purpose of META will be to allow conversions, interest exchanges and divisions of one kind of business organization into another.

UNIFORM NONJUDICIAL FORECLOSURE ACT

Shannon Skinner has reported that the Uniform Nonjudicial Foreclosure Act passed all approval hurdles and is available for adoption by the states. The Act, which provides new methods of foreclosure designed to provide higher effective prices, can be viewed at www.nccusl.org.

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Section member **Carol Kroch** is the Section Advisor to the NCCUSL drafting committee working on the revision of the Uniform Management of Institutional Funds Act ("UMIFA"). The committee met February 20-22, 2004. The committee expects the draft, as revised at that meeting, to be presented for a final reading at the Annual Meeting of NCCUSL in August 2004. UMIFA was enacted in 1972 and has not been revised since then. The most significant changes from current UMIFA are as follows:

1. The revision would apply to all wholly charitable trusts, in contrast to current law which applies only to charitable trusts with a charitable institution serving as trustee.
2. The revision eliminates the concept of historic dollar value and permits an institution to spend or accumulate as much of the fund (principal or income, realized or unrealized appreciation) as is prudent under the circumstances, with guidance provided by a series of factors to be considered. There are no floors or caps or a safe harbor.
3. The revision permits an institution to release or modify a restriction without donor consent, but with notice to

the Attorney General, if the restriction has become unlawful, impracticable, impossible to achieve, or wasteful and the fund meets size and age requirements. The committee has suggested \$25,000 as the maximum size and 20 years as the minimum age, but has left the amount and the duration of the fund for each state to determine upon adoption.

4. The draft adopts a standard of care derived from the Model Nonprofit Corporation Act, but lists factors to consider in managing institutional funds that are derived from the Uniform Prudent Investor Act.

Interested persons can access the most current draft of the Revised Act at www.nccusl.org and can submit comments to Carol Kroch (ckroch@rwif.org).

UNIFORM MORTGAGE SATISFACTIONS ACT

Patrick Mears is the ABA's Advisor to the NCCUSL drafting committee working on a uniform act on mortgage satisfactions. The Act will only affect residential lending and will not extend to commercial loans. An initial draft of the act has been circulated for comment, and a revised form is expected shortly. We will keep you updated on the progress of this act.

SECTION ESTABLISHES YOUNG LAWYERS NETWORK

The Section is proud to announce the establishment of the Young Lawyers Network (YLN). The YLN is an ad hoc committee, under the auspices of the Membership Committee. Its mission is to encourage young lawyers' involvement in the Section and to increase young lawyer membership and participation in the social and substantive activities of the Section through programming geared toward young lawyers. The YLN general membership will be open to all members of the Section who have been admitted to practice in their first bar within the past eight years or who are 36 years old or younger.

The YLN will hold its launch event at the 2004 Spring Meeting of the Section in Seattle, which includes a

discussion of the "Top 10" practice tips for young lawyers. This event will be a great opportunity for young attorneys to meet Section and YLN leaders and fellow young lawyers in the Section.

For further information on membership in the YLN and the YLN orientation at the May meeting in Seattle, please contact any of the following YLN leadership: **Julie Kwon** - Probate and Trust Division co-chair at kwon@bessemer.com; **Willie Kightlinger** - Real Property Division co-chair at wilhelmina.kightlinger@piperrudnick.com; **Kalimah White** - Probate and Trust Division co-vice chair at Kalimah.white@nationalcity.com; and **Marcia Facey** - Real Property Division co-vice chair at m2f@quarles.com.

ABA Commission on Racial and Ethnic Diversity

Once again RPPT has been named to the Honor Roll in the ABA Commission on Racial and Ethnic Diversity in the Profession's Goal IX Report for 2003-2004. Please take a moment to read the very favorable review on page 38 of the report. A link to the full report is available on the Commission's web site via the link below. If you would like to receive a hard copy of the report please contact Doug Knapp at knappd@staff.abanet.org.

Congratulations to all who have worked and continue to work hard to achieve diversity in our Section, the ABA and the Profession.
<http://www.abanet.org/minorities/publications/home.html>

COMMUNITY OUTREACH

The Section has formed a committee to develop courses in basic estate administration and estate planning that will be offered free to minority lawyers in selected cities. This is an expansion of a program that **Manny Halper** began for the real property division in 1999 and is part of the Section's response to the ABA's Goal IX on diversity. If you are interested in serving on the committee, helping to develop syllabi and course materi-

als, teaching the courses, or otherwise assisting in getting this program started, please contact Amy Morris Hess at ahess@utk.edu or (865) 974.6805.

15th ANNUAL REAL PROPERTY AND ESTATE PLANNING SYMPOSIA

May 12-14, Grand Hyatt, Seattle, WA

ADVANCE REGISTRATION: Register by April 9, 2004, and receive the Early Bird discounted rate of \$485 for Section Members. The registration deadline is April 26, 2004, after this date, registration will be taken on-site at the Grand Hyatt.

If you have never been to one of our meetings before, be one of the 100 first-time attendees to register and receive a significant discounted rate of \$350.

Please visit our web page at <http://www.abanet.org/rppt/2004> to view the complete brochure and register.

CHANGE IN ANNUAL MEETING FORMAT: SHIFT TO FALL CLE MEETING

To ensure greater availability of real estate, probate and estate planning programs, the Section is shifting CLE programs from the Annual Meeting to a stand-alone CLE meeting in the fall of each year. In 2004, this meeting will be held September 30-October 2 in Boston, Massachusetts. A full complement of CLE programs, similar in scope to that available at our Section's Spring CLE Meeting, will be available at the Fall CLE meeting. Additionally, because the Section is collaborating with the ABA Tax Section in planning the meeting, our Section members will be able to attend all of the Tax Section CLE programming as well.

UPCOMING EVENTS

March 25-27

ABA Tech Show
Sheraton
Chicago, IL
<http://www.abanet.org/techshow/>

April 15-17

Sixth Annual Section of Dispute Resolution Conference
Sheraton NY Hotel & Towers
New York, NY
www.abanet.org/dispute/conference/6th/home.html

April 22-23

Employee Benefits in Mergers & Acquisitions
New York, NY
w3.abanet.org/jceb/2004/ni0422.pdf

May 12-14

15th Annual RPPT Spring CLE and Council Meeting
Grand Hyatt
Seattle, WA
www.abanet.org/rppt/meetings_cle/spring2004/home.html

May 19-21

ERISA Basics 2004
Chicago, IL
w3.abanet.org/jceb/2004/ni0405.pdf

June 10-11

ALI-ABA Charitable Giving Techniques 2004
Ritz-Carlton
Boston, MA
www.ali-aba.org/aliaba/cj087.htm

June 28- July 2

Skills Training for Estate Planners (STEP), Part 1
Emory University
Atlanta, GA
www.ali-aba.org/aliaba/cj103.htm

July 21-23

Estate Planning for the Family Business Owner
Millennium Eldorado Hotel
Santa Fe, NM
www.ali-aba.org/aliaba/ck001.htm

July 26-29

Skills Training for Estate Planners (STEP), Part 2
Emory University
Atlanta, GA
www.ali-aba.org/aliaba/cj103.htm

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<http://www.abanet.org/members/join/coa2.html>.