

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

### **Pro-Bono Committee Offers Model Law School Program**

The Pro-Bono Committee has made available, on its web site, a Model Law School Independent Study Course/Clinical Program focusing on 'Non-Profit Real Estate Transactions' and Habitat for Humanity. Law schools can provide their students the benefits of learning residential real estate transactional law in a practical setting while serving Habitat for Humanity. The model independent study course is available courtesy of **Rhonda Chung-de Cambre**, Pro Bono Committee member, who has compiled the course materials she and several other University of Florida Levin College of Law students (now attorneys) designed several years ago. Law students, communities and HFH benefit from the interaction provided in such a clinical course experience. You are encouraged to advise your local law schools of the benefits of offering such a clinical course partnering with Habitat for Humanity.

### **SENATE FINANCE COMMITTEE**

The Senate Finance Committee has been investigating various improvements in nonprofit governance and oversight for the past year. In connection with hearings in June 2004, the committee staff issued a discussion draft, or white paper, setting forth a number of proposed changes in the federal rules governing charities and other nonprofits.

[The white paper is available at <http://finance.senate.gov/hearings/testimony/2004test/062204stfdis.pdf> .]

Public comment and reaction is requested by February 18, so the panel may report back to the Finance Committee in early March. For more details, and the preliminary set of recommendations, go to the panel's web site at <http://www.nonprofitpanel.org/>.

### **Report on Uniform Environmental Covenants Act**

In August, 2003, the National Conference of Commissioners on Uniform State Laws adopted the Uniform

Environmental Covenants Act ("UECA"). UECA, as adopted by the Commissioners, can be viewed on a Web site maintained by the National Conference. It can be located at "UNIV. ENVTL. COVENANTS ACT (Final act-adopted at the 2003 Annual NCCUSL Meeting), available at <http://www.environmentalcovenants.org>."

The ABA and the Section were represented by **Roger Schwenke** in the drafting process for UECA and Roger continues to serve as a member of a UECA Task Force established by the Conference to assist in state evaluation and adoption of UECA. The UECA is important because it confirms the legal validity and enforceability of recorded use restrictions negotiated in connection with what are called "risk-based cleanups" of contaminated real estate. As UECA is adopted by various states, it is expected to encourage development of a single standard national approach to the documentation of such cleanups. This process should provide all affected parties-regulators, buyers, sellers, lessors, those responsible legally for the cleanup, lenders, users, title companies and the environmental community, with a much greater ability to rely on the enforceability of such covenants over time. It is hoped that, in turn, this would encourage a substantial reuse of properties that have otherwise been abandoned or left in distress condition.

Only Ohio has adopted UECA thus far. However, several other states are currently considering it and support for it has been strong.

Anyone interested in learning more about UECA, or in participating in their state's evaluation of it, should feel free to contact **Roger Schwenke** at [rschwenke@carltonfields.com](mailto:rschwenke@carltonfields.com), (813) 229-4152.

### **U.S.A. PATRIOT ACT/ GATEKEEPER INITIATIVE**

Concerns have arisen that legislation or regulations intended to curtail money laundering or the financing of terrorism may, among other things, impinge upon important ethical rules governing our practices, such as the attorney-client privilege and duty of client confidentiality.

**Kevin Shepherd** and **Mark Mehlman** are heading a task force appointed by the Executive Committee to attempt to communicate to the U.S. Department of Treasury the strongly held views of the Section and, if possible, to engage in an on-going dialogue with Treasury regarding the potential impact on lawyers of any proposed legislation or regulations.

On November 17, 2004, Kevin and Mark participated in a second meeting with senior staff members of Treasury to address issues of concern relating to the U.S.A. Patriot Act and Gatekeeper Initiative. The meeting was held in Washington, D.C.

Kevin reports that the meeting was extremely productive, that Treasury appears sensitive to the concerns raised by the Section and other groups in attendance and that Treasury seems strongly inclined to work with the Section and these groups in an effort to develop an approach to the issues that will not undermine any of the essential ethical underpinnings of our practices.

### **Alabama Supreme Court Rules that Arbitrators Need Not Be Lawyers -- No Violation of State's UPL Statute**

In a recent case, the Alabama Supreme Court ruled that arbitrators need not be lawyers. In the case of *Bowater Inc. v. Zager*, Justice Robert Bernard Harwood, Jr., writing the opinion for the Court, stressed that arbitration is a matter of contract and that the parties are free to delineate that non-lawyers with other unique credentials will serve as arbitrators of their dispute. The trial court had previously ruled that arbitrators must be licensed to practice law somewhere -- preferably in Alabama. In overturning the trial court decision, Justice Harwood opined that "the plaintiffs' argument [that the arbitrators must be licensed attorneys] is a sophism, relying on a series of invalid premises." Arbitration is a matter of contract, the Court stated, and case law has long recognized that parties to such agreements have the right to insist that the method they have chosen for selecting an arbitrator be followed. The Court went on to assert that the plaintiffs' argument that the state unauthorized practice of law statute undermines the arbitration agreement is flawed. It

acknowledged the statute's language that one is engaged in the practice of law if he "[a]s a vocation, enforces, secures, settles, adjusts, or compromises" disputes between parties;" the Court also conceded that arbitration is a mode of settling a dispute. However, the Court added there is no suggestion that any of the eligible arbitrators in this matter arbitrates disputes "as a vocation." Therefore, the state UPL law has no effect on the case.

### 16th ANNUAL REAL PROPERTY AND ESTATE PLANNING SYMPOSIA

April 27-30, Park Hyatt & The Fairmont, Washington, DC

ADVANCE REGISTRATION: Register by March 18, 2005, and receive the Early Bird discounted rate of \$485 for Section Members. The registration deadline is April 15, 2004; after this date, registration will be taken onsite at The Fairmont.

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/2005> to view the complete brochure and register.

### RPPT FELLOWSHIP PROGRAM IN ITS 5<sup>TH</sup> YEAR

The program, in its fifth year, represents a commitment by the Section to increase the participation of young lawyers in Section activities. For a full description of roles and responsibilities, please visit: [www.abanet.org/rppt/fellows.html](http://www.abanet.org/rppt/fellows.html)

Applications are due by June 3, 2005.

### 2005 STUDENT WRITING CONTEST

The Jacques T. Schlenger Student Writing Contest is open to all law students currently attending an ABA-accredited law school. The contest is designed to encourage and reward law student writing on real property, probate and trust law subjects of general and current interest.

Complete rules as well as an entry form are also available online at [www.abanet.org/rppt/writingcontest](http://www.abanet.org/rppt/writingcontest).

The deadline for submitting papers is June 15, 2005.

### NEW COMMITTEE GUIDES

Please watch your mail for the new RPPT Committee Guides. You should expect to receive these within the next month.

If you are not yet a member of a group and/or committee, you are not taking full advantage of the Section. All RPPT members can join, for free, online at [www.abanet.org/rppt/join](http://www.abanet.org/rppt/join).

If you have any questions about joining online, please call the Section at 312.988.5824.

### RPPT PUBLICATIONS

Check out our most recent titles, for *real property*, The Commercial Lease Formbook and Land Use Regulation, Second Edition.

For *probate and trust*, the newest books are The Funding of Living Trusts, The Family Limited Partnership Deskbook, and Wills, Trusts, and Technology.

Please go to <http://www.abanet.org/abastore> to find these and all other RPPT titles, which may be ordered now, online.

### 2004 FALL COUNCIL AND COMMITTEE ORIENTATION MEETING

The Section's Fall Council and Committee Orientation Meeting was held at the Grand Hyatt in Tampa in early November. For the first time, the meeting was preceded by very successful Symposia by both Divisions--in depth discussions on Bioethics by the Probate and Trust side and Mold by the Real Property group, both including national speakers to much acclaim.

### MEETING MATERIALS NOW AVAILABLE ONLINE

Past meeting materials are now available online. You may order CDs and audio tapes as well as view most of the program materials directly from [www.abanet.org/rppt/meetings\\_cle/home.html](http://www.abanet.org/rppt/meetings_cle/home.html)

### 5-Year National Health Care Decisions Week Campaign a Success

National Health Care Decisions Week 2004 marked the fifth and final year of the Section's initiative to educate the public about the important topics of health care advance directives and organ and tissue donation. The initiative was funded by the Health Resources and Services Administration of the US Department of Health and Human Services, and co-sponsored by the American Medical Association, National

Medical Association, and National Bar Association. Aggregate participation totals for the program reveal that during the five-year campaign over 90 bar associations hosted programs for more than 13,000 attendees.

Although the funding for Section sponsorship has now concluded, bar associations who wish to continue public education programs can obtain organ and tissue donor cards at no charge from the Health Resources and Services Administration of the US Department of Health and Human Services (contact: Venus Walker [[vwalker@hrsa.gov](mailto:vwalker@hrsa.gov)]).

The Section will also be happy to provide complimentary copies of our organ and tissue donation brochure, *A Legacy for Life* (available in both English and Spanish) while quantities last, please contact the Section office at 312.988.5824.

### UPCOMING EVENTS

#### February 9-15

ABA Midyear Meeting  
Salt Lake City, UT

#### March 31-April 2

ABA Tech Show  
*Sheraton Hotel & Towers*  
Chicago, IL  
[www.abanet.org/techshow](http://www.abanet.org/techshow)  
\*\*\*enter promoter code PP28 to receive an extra \$100 off of registration.

#### April 27-30

Spring Symposia and Council Meeting  
*Park Hyatt/Fairmont*  
Washington, DC  
[www.abanet.org/rppt/meetings\\_cle/2005](http://www.abanet.org/rppt/meetings_cle/2005)

#### June 9-10, or June 16-17

Charitable Giving Techniques, ALI-ABA  
*Hotel TBA*  
Seattle, WA

#### July 14-16

Estate Planning for the Family Business Owner  
*Ritz-Carlton*  
Boston, MA

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