

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

**Special Focus:
Business Planning Group**

The Business Planning Group covers choice of entity, estate planning, and estate administration for clients who own business entities or interests in farms or ranches. The entities may be active businesses or formed to hold investments. Entities include partnerships (general, limited, and/or limited liability), limited liability companies, and corporations (including those with an "S" election in place). Please visit its web page at <http://www.abanet.org/rppt/cmtes/pt/c-group/home.html>, which also takes you to its committees' web pages that have additional information.

The Business Planning Group of committees has made comments on special rules that apply when family members own stock in an S corporation. These comments can be found at <http://www.abanet.org/rppt/cmtes/pt/c-group/ScorpsBAcommentsIRS.pdf> and <http://www.abanet.org/rppt/cmtes/pt/c-group/ScorpsBAcommentsSenate.pdf>.

The Group has telephone conferences the first Wednesday of every month starting at noon Central time and continuing for up to an hour. All are welcome to informally discuss (or just listen, if you prefer) current developments and committee projects and to "talk shop." To receive notices of monthly meetings and information on selected current developments, please join at http://www.abanet.org/committee_join/cj_join.cfm?comm=RP. Joining provides you with information and opportunities but does not obligate you to participate.

The next meeting, December 7, will focus on members' recent experiences in audits of family limited partnerships. One member will share an information request letter

(http://www.abanet.org/rppt/cmtes/pt/c-group/flp_tax_lett.pdf) that he received from the IRS. To join the call, dial 1-800-503-1676 (pass code is 520657 followed by the # key).

For additional information, please contact the Group's chair, **Steve Gorin**, at sgorin@thompsoncoburn.com.

Community Outreach Committee Expands its Efforts

The Standing Committee on Community Outreach was created as part of the Section's implementation of the ABA's Goal IX: to increase the diversity of the profession. For several years, the Committee has presented 1-day CLE programs at the basic level (3 hours on real estate transactions and 3 hours on estate planning and probate) at the Section's Fall and Spring CLE meetings. At the invitation of Section member **Deke Clayborn**, the Committee joined forces with the National Bar Association's Real Estate and Probate Law Section (which Deke chairs this year) to present a 1-day program at the NBA's annual meeting in Orlando.

The Community Outreach Committee also plans and staffs 10 to 14-week seminars in a number of cities designed to assist lawyers in solo practice and small firms who are interested in concentrating their practices in real estate, estate planning, and probate work, but who lack a mentor or other experienced attorney to help them get started. Although the Committee is particularly interested in attracting more minority lawyers to our areas of practice, the seminars are free and open to any lawyer who wishes to register. Committee Chair **Emmanuel Halper** began the extended real estate seminar in New York City several years ago. Similar real estate programs are now held in Chicago, Washington, DC, Atlanta, and Los Angeles and are planned to begin within the next few years in Tampa as well. Committee member Marc Bekerman developed a similar estate planning and probate

seminar in New York three years ago. The Committee will begin estate planning and probate programs in Washington, DC and Chicago in 2006, and hopes to add programs in Atlanta, San Francisco, and Tampa by 2008. The Committee identifies coordinators for each city and then collaborates with minority bar associations in each city to identify teachers, subjects, and meeting locations, publicize the seminars, and provide teaching materials to instructors who prefer not to develop their own.

Anyone interested in receiving more information about the Committee's seminars, or helping to plan, coordinate, or staff them, should contact Committee Chair **Manny Halper** (Emmanuel.Halper@hofstra.edu or 516-625-8300), or Vice-Chairs **Barry Nekritz** (RP) (bnekritz@sonnenshein.com or 312-876-3120) and **Amy Morris Hess** (PT) (ahess@utk.edu or 865-974-6805).

**Hurricane Disaster Assistance--
FEMA Authorizes Reimbursement for
Debris Removal from Private
Property**

In its continuing efforts to lessen the pain of Hurricanes Katrina, Rita and Wilma, the Federal Emergency Management Agency recently reversed its prior policy and authorized funding to reimburse municipal applicants for the cost of debris removal from private property, including gated communities. The FEMA directive applies to the states of Alabama, Louisiana, Mississippi, Texas and Florida. Section 403 of the Stafford Act, 42 U.S.C. 5170b, permits FEMA to fund debris removal from private property to (1) eliminate immediate threats to life, public health, and safety; or (2) eliminate immediate threats of significant damage to improved public or private property, provided the removal is in the public interest and is not otherwise covered by insurance. The new policy directive recognizes the catastrophic damage caused by the recent parade of hurricanes along the Gulf Coast and

Southern Florida and the need not only to pay for removal of debris from public property but also the public interest served by removal from private property. For further information please contact **Gary A. Poliakoff**, Group Chair of Hospitality, Community Recreation and Common Interest Developments Group, gpoliakoff@becker-poliakoff.com.

Land Use and Environmental Group presents "Hot Topics" at Fall Leadership Meeting: Kelo and New EPA Rule's "All Appropriate Inquiry"

At the Fall 2005 Fall Section Leadership Meeting held at the Broadmoor Hotel, Colorado Springs, Colorado from November 3-6, the Real Property Division Land Use and Environmental Group made two Hot Topics Presentations.

In the first presentation, **Professor Steven Eagle**, Group Vice Chair, gave an up-to-date review of the legislative responses to the recent U.S. Supreme Court case of *Kelo v. City of New London*, 125 S.Ct. 2655 (2005). In *Kelo*, the Court permitted the city of New London to use the power of eminent domain to acquire a non-blighted private residence for subsequent retransfer to a private party for economic redevelopment. According to Professor Eagle, three states---Alabama, Delaware, and Texas---have passed legislation effectively restricting eminent domain for private redevelopment and thereby limiting the effects of *Kelo*. Other states have similar legislation under consideration. Legislation also has been proposed in Congress, and both the Senate and the House held hearings on *Kelo*. On September 20, 2005, Professor Eagle testified before the United States Senate Committee on the Judiciary on "The *Kelo* Decision: Investigating Takings of Homes and Other Private Property." In his concluding remarks, Professor Eagle explained how difficult it was for cities to compete with the suburbs for development because of the shortage of large tracts available for assembly in cities. Eminent domain of non-blighted private property for private redevelopment under *Kelo* was a method of placing cities in a position to compete with the suburbs but Congress and the States, both of which were feeling the pressure of the moral component of pri-

vate property rights, were in the process of limiting the effects of *Kelo* through legislation.

In the second presentation, **Roger Schwenke**, Group Chair, announced the issuance by the EPA on November 1, 2005, of the new Environmental Site Assessment Rule, 70 Federal Register 66070, "Standards and Practices for All Appropriate Inquiries." The Rule, which was issued in final form after a lengthy comment period, establishes federal standards and practices for conducting all appropriate inquiries as required under sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The final rule establishes specific regulatory requirements and standards for conducting all appropriate inquiries into the previous ownership and uses of a property for the purposes of meeting the all appropriate inquiries provisions necessary to qualify for certain landowner liability protections under CERCLA. The final rule is effective November 1, 2006. The new rule affects most directly those persons and businesses purchasing commercial property or any property that will be used for commercial or public purposes and who may, after purchasing the property, seek to claim protection from CERCLA liability for releases or threatened releases of hazardous substances. Under section 101(35)(B) of CERCLA, as amended by the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118, 115 stat. 2356, "the Brownfields Amendments") such persons and businesses are required to conduct all appropriate inquiries prior to or on the date on which the property is acquired. Prospective landowners who do not conduct all appropriate inquiries prior to or on the date of obtaining ownership of the property may lose their ability to claim protection from CERCLA liability as an innocent landowner, bona fide prospective purchaser, or contiguous property owner. Mr. Schwenke observed that the underlying question posed by the new rule is "how much inquiry is required?" He further explained that the new rule is beneficial in that it gives us a degree of certainty in process and diligence.

The Section will be sponsoring an ECLE on the new rule, please watch for the upcoming

Teleconference/Webcast. Mr. Schwenke and others will describe then in much greater detail the tests and elements for "all appropriate inquiries" as found in the new Rule.

RPPT PUBLICATIONS - New Books

Real Property:

[The Commercial Lease Formbook: Expert Tools for Drafting and Negotiation](#)

Probate and Trust:

[Estate and Trust Planning](#)

[Asset Protection Strategies, Volume II](#)

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

TELECONFERENCES

Probate and Trust:

Section 2036 - The IRS's Favorite Weapon? When Retained Interests in or Powers Over Transferred Assets Trigger Estate Inclusion
Wednesday, December 7, 2005
1:00 PM - 2:30 PM Eastern Time

Real Property:

Recent Developments in Real Estate Law - Patrick Randolph's Top Ten
Wednesday, January 18, 2006
1:00 PM - 2:30 PM Eastern Time

MEETINGS

January 9-13

40th Annual Philip E. Heckerling Institute on Estate Planning
Miami Beach, FL
Come visit the Section at Booth #39
New publications will be available for purchase.

February 8-13

ABA Midyear Meeting
Chicago, IL

Save the Date - Spring CLE & Council Meeting

The Section's Spring CLE & Council Meeting will be held at the Manchester Grand Hyatt in San Diego, CA on May 4-7, 2006.

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