

A publication of The Florida Bar Public Interest Law Section

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Message from the Chair



Laura Boeckman
2014–2015 Chair
Public Interest Law Section
The Florida Bar

Welcome to 2015! This year promises to be another great one for PILS. In January, we have our mid-year meeting in Orlando where PILS will be holding its in person meetings on January 23rd. We know travel can be difficult for many of you, but we would love to see as many members as possible get involved with our committees. The committee meetings will be from 10:00 -12:00 on the morning of the 23rd, and the following committees will be holding meetings during this time: Homelessness, Children's Needs, Disability, Consumer, Civil Rights, and Legislative. If you are not able to attend the committee meetings but would like to become more involved with one of our committees, please reach out to the committee chairs (their contact information is listed in this newsletter). Our executive committee will then be holding its meeting from 1:00 - 3:00; all are welcome to stay for the EC meeting as well!

We also look forward to getting the Juvenile Law Certification up and running this year. We are currently waiting for the Supreme Court to approve the certification, and are hopeful that the approval will come this year so that

a certification committee can begin its work of writing the exam and administering the certification. PILS is already working on intermediate level CLEs that can be used to satisfy the CLE requirement for the Juvenile Law Certification.

We are only half way through our year, but we are already looking for members of our executive committee for 2015/2016. If you are interested in serving in a leadership role with PILS, please let me know, and we will be happy to discuss the roles and responsibilities of serving on the EC. Best wishes for a wonderful year, and I look forward to seeing many of you at our mid-year meeting this month! ▪

Hot Topics: News from Practice

US Supreme Court Will Determine if "Lien Stripping" is Available in Chapter 7 Bankruptcies



By **Matt Bayard, Esq.**
 Guest Writer
 Staff Attorney
 Legal Services of Greater Miami, Inc.

This year the U.S. Supreme Court will decide a bankruptcy issue that could impact thousands of Florida homeowners. The Court will decide whether homeowners who file for Chapter 7 bankruptcy can eliminate, or "strip off," debts owed for second mortgages that are not secured by any equity in their homes. In November 2014 the Court granted writs of certiorari for appeals filed in two consolidated cases by Bank of America, *Bank of America v. Caulkett*, No.13-1421 (U.S. Nov. 17, 2014), and *Bank of America v. Toledo-Cardona*, No. 14-163 (U.S. Nov. 17, 2014). These appeals come in the wake of a much-debated 2012 11th Circuit decision in *McNeal v. GMAC*, 735 F.3d 1263 (11th Cir. 2012.) According to Bank of America, the issue currently before the Supreme Court, "may be the single most important unresolved issue in consumer bankruptcy, affecting every debtor or potential debtor with a second mortgage and every lender who made such a loan." See Reply Brief of Petitioner Bank of America N.A. at 1, *Bank of America v. Caulkett*, No.13-1421.

The concept of lien stripping in bankruptcy arises in situa-

tions where a property, often a debtor's homestead, secures more than one debt. Most commonly this occurs when the home is encumbered by both a first mortgage and one or more junior (i.e., second, third, etc.) mortgages. Due to declining home values many homeowners now owe more on their first mortgages than their property is worth and are thus characterized as being "underwater." The U.S. Bankruptcy Code recognizes situations where a debtor's home has no equity to secure a junior mortgage and, in certain situations, allows the debtor to ask the bankruptcy court to void the junior lienholder's security interest. If the court agrees, the junior debt will be discharged at the conclusion of the bankruptcy case and the lien will be wiped out or "stripped off." Lien stripping is well-established practice in Chapter 13 bankruptcy cases. The 11th Circuit's *McNeal* decision was unique because it was the first time that a Circuit Court had allowed a lien to be stripped off in a Chapter 7 bankruptcy case. Three other Circuit Courts that have ruled on the issue, the Fourth, Sixth, and Seventh Circuits, all determined that underwater liens could not be stripped off in Chapter 7 cases, based on their interpretations of the 1992 U.S. Supreme Court case of *Dewsnup v. Timm*, 502 U.S. 410 (1992). When the *McNeal* decision was published in 2013, it became binding precedent on all Chapter 7 cases filed in Florida, Georgia, and Alabama.

Whether lien stripping is available in Chapter 7 cases is of particular importance to low-income homeowners. By definition, a Chapter 13 bankruptcy is only available to debtors with sufficiently stable and regular income to enable such individuals to make monthly payments under a chapter 13 plan.

Chapter 13 plans are typically required to last between 3 to 5 years. Thus, for low income homeowners, or homeowners whose income is temporary or sporadic, the stripping off of an unsecured lien may only be available through a Chapter 7 bankruptcy. It is important to also note that while most of the case law surrounding lien stripping involves junior mortgages, the concept has been extended in Florida to situations involving other types of liens, most importantly, liens secured by debts owed to condominium and homeowners associations. For example, see *In Re Plumber*, 484 B.R. 882 (Bankr. M.D. Fla. 2013).

When one considers the number of homeowners (2.1 million, according to statistics cited by Bank of America in Reply Brief at 5) who have underwater junior mortgages, along with the number of homeowners who may have fallen behind on their condominium or HOA dues, it quickly becomes apparent just how broad the impact of the Supreme Court's upcoming decision will be. ■

The Florida Bar 2015 Winter Meeting

Hilton Orlando Lake Buena Vista
1751 Hotel Plaza Boulevard, Orlando, Florida

PILS Meetings Friday, January 23 in Grand Ballroom 6

10am-12pm	Committee Meetings (Children, Homeless, Disability, Consumer, and Civil Rights)
1pm-3pm	PILS Executive Council Meeting

All are invited to attend. You do not have to be registered for The Florida Bar Convention to attend the PILS meetings. ▪

PILS Executive Council Meeting - January 23rd Agenda

Call to Order and Welcome

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| <ul style="list-style-type: none"> I. Roll Call – Introductions II. Secretary’s Report – Therese Truelove <ul style="list-style-type: none"> A. Approval of Annual Meeting Minutes III. Treasurer’s Report – Fran Tetunic <ul style="list-style-type: none"> A. Unaudited Statement IV. Chair’s Report – Laura Boeckman <ul style="list-style-type: none"> A. Juvenile Law Certification <ul style="list-style-type: none"> i. CLEs B. Amend By-Laws <ul style="list-style-type: none"> i. Legislation Committee ii. Children’s Rights C. Annual Meeting <ul style="list-style-type: none"> i. Speaker ii. Program iii. Other goals for the meeting D. Other V. Chair Elect’s Report – Alice Vickers <ul style="list-style-type: none"> A. Legislation B. Other | <ul style="list-style-type: none"> VI. Committee Reports – Chairs <ul style="list-style-type: none"> A. Legislative – Lisa DeVitto B. CLE – Kathy Grunewald C. Civil Rights – Christopher Jones D. Consumer Protection– Alice Vickers E. Disability Law – Sarah Sullivan F. Homelessness – Kirsten Clanton H. Children’s Rights – Gerry Glynn I. Long Range Planning Committee Report – Tony Musto VII. Old & New Business <ul style="list-style-type: none"> A. Pro Bono Project Update – Robin Rosenberg, Jessica Rae, Tony Musto B. Bar Journal Articles – Fran Tetunic VIII. Upcoming Meetings: <ul style="list-style-type: none"> A. June 2015 – Boca Raton Resort & Club - Boca Raton, FL IX. Adjourn ▪ |
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* Draft subject to change.

Up To Date: Committee Reports & Agendas for PILS Committee Meetings, January 23rd

Civil Rights Committee Update

By **Christopher M. Jones, Esq.**
Committee Chair

Update:

The Civil Rights Committee has a small, core number of interested people who have already taken part in an initial conference call. We will be meeting in person to further develop our section's focus and priorities going forward. We are interested in attracting more people with an interest in civil rights to help us determine and define the direction of the committee.

Agenda:

1. Introductions
2. Priorities (both substantive and Committee Development/Management)
3. Structure (roles, sub-committees, tied to priorities?)
4. Publicity/Scholarship (PILS newsletter, Law Journal Issues, Bar Journal, etc)
5. Legislative Positions
6. CLE's/Webinars

If you are interested in civil rights, please contact Christopher Jones about resurrecting the committee. christopher@floridalegal.org.

Consumer Protection Committee Update

By **Alice Vickers, Esq.**
Committee Chair

Update:

The Committee on Consumer Protection held quarterly telephonic calls in addition to our in person meetings in January and June of 2014. We followed legislation during the 2014 session, weighing in on bad debt collection legislation, which fortunately did not pass. We had a new legislative position on out-of-state cost bonds, but we were unable to nail down a legislator we thought could move the bill. The *Bartram* case, addressing the issue of statute of limitations in foreclosure actions, is before the Florida Supreme Court. We studied whether to appear as amicus. Given the timeframe we were unable to participate, though several members of our group joined their organizations together to file an amicus; we will continue to follow this case. We are preparing for the 2015 legislative session and hope to obtain approval to support an expansion of the Protecting Tenants at Foreclosure Act, if legislation is filed. Lynn Drysdale will be our Legislative Liaison for 2015. We are exploring opportunities to present CLE webinars and important consumer issues. Matt Bayard is our CLE Liaison. We look forward to continuing our efforts in 2015 and encourage others to join our group.

Agenda:

- I. Welcome and Introductions
- II. Presentation and discussion – “Survey of case development”
 - This will be a short CLE on issues of concern in bankruptcy, arbitration, foreclosure, and debt collection (CLE to be applied for).
- III. Committee Business
 - A. Minutes from December telephonic meeting
 - B. Legislative Issues – review of legislation already filed of interest to our group; discussion of our legislative positions
 - C. CLE Planning – topics under review for CLE/webinars
 - New Business
- IV. Our next telephonic meeting will be in March – date to be determined

Please contact Alice Vickers, alicevickers@flacp.org, with any questions. ▪

Disability Law Committee Update

By Sarah Sullivan, Esq.
Committee Chair

Update:

The Disability Committee is in a “building year” and, as such, is identifying member expertise as well as areas for advocacy around the state. The committee has formed several sub-committees based on areas of practice. Each subcommittee is in process of reviewing the PILS standing positions, identifying issues in need of legislative advocacy, and brainstorming possible topics for scholarship/articles. Since our subject matter experts run the gamut from ADA compliance to veterans service discharge upgrades, we have much to discuss and even more that can be accomplished on behalf of Florida’s disabled individuals.

If you are interested in joining this committee, please contact Sarah Sullivan, chair, at ssullivan@fcsf.edu. Thanks!

Agenda:

- I. Welcome, Introductions and Roll Call
- II. Sub-committees—What will we work on this year?

Sub-committees:

- A. Medicaid/Medicare—Kirsten Clanton, Ericka Garcia, Bryan Funk, Curtis Filaroski, Tony DePalma
- B. Civil Rights—Christopher Jones, Jeff Fromknecht, Stephen Senn, Barbara Kornblau, Shanna Austin, Angela Morison, Harold Bennett
- C. Veterans Disability Compensation—Christie Bhageloe, Laura Pichardo-Cruz
- D. Education—Joan Sosin, Jennifer Robinson, Katie Kelly, Kirsten Clanton, Stephanie Moore
- E. Employment—Laura Pichardo-Cruz, Shanna Austin

III. Sub-Committee Action Plans

- a. Identify Goals
- b. Action Plan
- c. Set Deadlines

IV. Articles/Scholarship

- a. PILS Journal
- b. The Florida Bar Journal
- c. Publications of our members

V. Legislative Advocacy and CLE’s

- a. Legislative Advocacy—Who wants to be the legislative chair?
- b. CLE topics—APD/Waiver Medicaid and/or Education Law—Common Core.

VI. Adjourn ▪

Children’s Rights Committee Update

By Gerry Glynn, Esq.
Committee Chair

Agenda:

- 1) Update on Projects
 - lawyers for kids legislation
 - training curriculum
 - parents' attorney committee support
- 2) Updates from other Bar Committees
 - Juvenile Rules
 - Legal Needs of Children Committee
- 3) CLE Work
- 4) Section Assignments
 - positions needed for next year
 - column
 - newsletter pieces
 - recruitment
 - CLE representative
- 5) Legislative Issues

If you are interested in joining this committee, please contact Gerry Glynn, chair, Gerry.glynn@cbccfl.org. ▪

Homelessness Committee Update

By **Kirsten Clanton, Esq.**
Committee Chair

Guest Speaker: Amy Sawyer

Amy Sawyer currently serves as a Regional Coordinator at the United States Interagency Council on Homelessness (USICH), a principal representative and bridge between the work of the full Council and states and communities. In this role, she is responsible for facilitating the strategic implementation of Opening Doors specifically in the Southeast and MidAtlantic regions. Regional coordinators convene stakeholders at every level of government and with the private sector, encouraging implementation of strategies that maximize the impact of Federal resources and supporting strategic planning efforts. Regional Coordinators also disseminate information about proven practices, bridge linkages among communities, and share practical resources to support community efforts and foster momentum through shared knowledge and cross-community collaboration. In Florida, she is currently focusing her efforts in Tampa, Orlando, and Miami. Amy will update us on what the federal government is currently doing to end homelessness and how her office can be a resource to those of us working to end homelessness in the state of Florida.

Agenda:

- 1) Update on Projects
 - Lawyers for Kids Legislation
 - Training Curriculum
 - Parents' Attorney Committee Support
- 2) Updates from Other Bar Committees
 - Juvenile Rules
 - Legal Needs of Children Committee
- 3) CLE Work
- 4) Section Assignments
 - Positions Needed for Next Year
 - Column
 - Newsletter Pieces
 - Recruitment
 - CLE Representative
- 5) Legislative Issues

If you wish to be on the email list for the Committee on Homelessness, please email Kirsten.clanton@southernlegal.org so you can receive the call-in information and agendas for our meetings and other committee news. ▪

January Events of Interest

1. A **Roundtable Discussion on the Implementation of Counsel for Dependent Children in with Special Needs**. This CLE is hosted by the Florida Bar Legal Needs of Children Committee and will be held at Florida Bar Meeting, on Thursday, January 22nd from 3-5 pm. Panelists will share their perspectives on the initial implementation of Fla. 39.01305. Members of the audience will be invited to share their experiences, thoughts and concerns on the implementation of the law.

Panelists include:

Sharon Ray - Assistant General Counsel,
Justice Administrative Commission

Robin Jensen - Statewide Training Director,
Dept. of Children & Families, Children's Legal
Services

Dennis Moore - General Counsel, Guardian
Ad Litem Program

Antony P. Ryan - Director of the Office of Con-
flict and Civil Regional Counsel (4th DCA)

2. The Public Interest Law Section (PILS) is inviting parent's counsel to meet on Friday, January 23rd at 9 am in it's meeting at the Florida Bar meeting to **discuss re-forming a Parent's Counsel Committee** within PILS. PILS had a Parent's Counsel Committee for a short time prior to the creation of the Regional Counsel offices and has had a long-standing Children's Rights Committee which addresses dependency among other mat-

ters. PILS Committees serve as a platform for discussing issues of interest, providing CLE, and taking positions on legislation and in amicus briefs.

The Florida Bar Meeting will take place at the Hilton Orlando Lake Buena Vista. You do not have to be registered for the Meeting in order to attend either of the events. Exact meeting locations will be in the Bar's meeting schedule at the Hilton.

3. The child welfare community in Hillsborough County is hosting a **free screening of Tough Love**, a documentary by Stephanie Wang-Breal, at 7 p.m. on January 28th at the Tampa Theatre. There will be talk-back with the director and folks from the child welfare system after the film.

Offering a rare look at the inner workings of the American child welfare system, *Tough Love* chronicles the lives of two parents—one in Seattle and one in New York City—as each fights to be reunited with children taken out of their custody. Through intimate, verité footage of both families, we witness first-hand the complex and daunting bureaucracy of America's family courts. Moreover, we come to understand the powerful role poverty and prejudice play in keeping parents and children apart— and the challenges parents must overcome in order to put their families back together. ▪

Get on board: *Join a Committee*

The Executive Council of PILS has established a **Long-Range Planning Committee** to develop a strategic plan to guide our Section over the next several years. Contact Laura Boeckman, Chair.

The **CLE Committee** works to put together quality continuing legal education as a section service. Additional programs are in the planning stages. Contact Kathy Grunewald, Representative, if you are interested in joining the Committee (Kathy@floridalegal.org).

The **Legislative Committee** is responsible for the Section's legislative advocacy efforts. Contact Lisa Devitto, Chair, if you are interested in joining this Committee (lisadevitto@gmail.com).

Our substantive committees are an excellent way to connect to other public interest lawyers and work together on relevant legal issues.

Please contact the Chair of the Committee you wish to join for further information:

Consumer Protection

Alice Vickers: alice.vickers623@gmail.com

Civil Rights

Christopher Jones:
Christopher@floridalegal.org

Disability Law

Sarah Sullivan: ssullivan@fcsf.edu

Homelessness

Kirsten Clanton:
Kirsten.clanton@southernlegal.org

Children's Rights

Gerry Glynn: Gerry.glynn@cbccfl.org

Interested in developing a new committee in an area of law not listed here? Contact

Laura Boeckman, Chair of the Section. ▪

The Florida Public Interest Journal: *Call for Submissions*

Do you have a topic you want to write about? PILS is seeking interested members willing to write about public interest law issues. Send us tips about cases, issues, or topics we should be covering.

Contact Kirsten Clanton, Esq. if you are interested at Kirsten.clanton@southernlegal.org.

THE FLORIDA PUBLIC INTEREST JOURNAL

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