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IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Re: Petition to Amend the
Bylaws Under the
Integration Rule of The
Florida Bar (Certification
Plan)

BRIEF OF THE FLORIDA BAR, PETITIONER

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STATEMENT OF THE CASE AND FACTS

The Florida Certification Plan was adopted by this Court on January 28, 1982 and became effective July 1, 1982. The Florida Bar Re: Amendment to Integration Rule (Certification Plan), 414 So.2d 490 (Fla. 1982). With its decision, this Court approved standards for certification of both Tax and Civil Trial Lawyers.

Subsequently, article XIX under the Integration Rule Bylaws was amended to provide for certification of lawyers in Marital and Family Law, The Florida Bar Re Amendment to Bylaws of Integration Rule (Certification Plan), 453 So.2d 25 (Fla. 1984) and Estate Planning and Probate, The Florida Bar Re Petition to Amend the Bylaws Under the Integration Rule of The Florida Bar (Certification Plan), 469 So.2d 743 (Fla. 1985).

A petition is pending before this Court to add Criminal Law as the fifth area of certification. The Florida Bar Re Petition to Amend the Bylaws Under the Integration Rule of The Florida Bar (Florida Certification Plan), Case No. 67,784 (October 18, 1985).

By a majority vote of The Florida Bar Board of Governors, the Standards for Real Estate Certification are now ready for review of this Court as the sixth area of law practice available under the Florida Certification Plan.

SUMMARY OF ARGUMENT

The Florida Bar petitions this Court for an amendment to the Florida Certification Plan and submits proposed Real Estate Certification Standards.

When the Certification Plan was established, it was done so with the idea that it would be expanded to include areas of law practice in which attorneys specialize and in which the public would be served by the recognition of those attorneys' special skills and competence. Law practice in the field of real estate encompasses a wide range of services and affects a vast sector of the population. Matters such as the conveyance of property, leases, mortgages, interval ownership, zoning and land use planning, development and financing, and determination of property rights are only a few of the many subspecialties of real estate law.

Certification in real estate law will enable both the public and profession to identify those capable, competent practitioners who are available to deliver accurate, up-to-date advice and counsel on such issues.

ARGUMENT

THE PROPOSED REAL ESTATE STANDARDS SHOULD BE APPROVED UNDER
THE FLORIDA CERTIFICATION PLAN.

Article XXI, Section 2 of the Integration Rule provides that the purpose of the Florida Certification Plan is to establish a formal program ". . . which allows members of The Florida Bar to inform the public concerning areas of law practice in which such members have become certified as having special knowledge, skills and proficiency . . ." Three years of serious study, debate and consideration have resulted in the proposal of Standards for Certification of Real Estate lawyers (Standards).

Early in 1983, the Executive Council of The Florida Bar Real Property, Probate and Trust Law Section (Section) appointed a specialization committee to undertake the task of developing standards for certification of real estate lawyers. By December, a draft had been prepared and published in the section's newsletter, Action Line, for membership comment. Though the response was sparse, no one indicated disapproval of the Standards.

Ten months later, the section's Executive Council voted by a substantial margin to approve the Standards. Likewise, the Board of Certification, Designation and Advertising (BCDA) found them

acceptable and approved their submission to the Board of Governors. The proposed Standards were approved by the Board of Governors at its August, 1985 meeting and are attached to this brief as Appendix A.

Involvement by members of The Florida Bar in this area of practice is evidenced by the fact there are approximately 6,200 members of the Section. There are also presently 540 members designated in Real Property Law under the Florida Designation Plan.

As this Court is no doubt aware, no other area of law has broader application than real estate. Most adults in Florida, at one time or another, will own or rent real property. For many individuals, real estate is the largest and most valuable asset they will own. There are undoubtedly more lawyers in Florida involved, directly or indirectly, in real estate law than in any other area of practice.

Over the last several years, dramatic changes have occurred in this area of the law. The practice of real estate law has become more sophisticated with complex, multi-million dollar transactions now commonplace. New and developing subareas such as condominium law, time sharing, syndications, environmental and local zoning issues are now part of the daily practice. With the large amounts of money involved and the complexities of these subjects, the

practice requires the utmost care, precision, knowledge and expertise. It is in these complex, technical and litigated cases that the public needs adequately trained counsel to properly represent its interests. With the ubiquitous advertising and solicitation by lawyers, syndicators, and title companies, the public is often confused as to whom it should turn for the handling of real estate matters.

The proposed real estate standards are designed to provide the public with a means of distinguishing certified and noncertified practitioners. They will also establish a category of practitioner who may be relied upon by the public.

Appendix A of this brief sets forth the proposed Real Estate Certification Standards. To assist this Court in its consideration of the proposed standards, the various sections will be briefly outlined herein.

Section 1 of the Standards establishes various definitions which are relevant to the Standards--the definitions for the "practice of law" and what constitutes "real estate."

Section 2 contains the minimum standards for applicants seeking certification in Real Estate. Each subsection may be summarized as follows:

(a) Establishes the minimum period of law practice as five years and requires an applicant to have been a member of a state bar for at least five years;

(b) Defines "substantial involvement" as devoting at least forty percent of an applicant's practice during the preceding three years to real estate related work. This three years "immediately preceding" requirement may be waived upon proof of special and compelling circumstances;

(c) Requires the submission, as references, of the names of five attorneys or judges who are familiar with the applicant's practice;

(d) Requires at least 45 hours of approved continuing legal education during the three years immediately preceding application; and

(e) Requires the passage of an examination prior to certification.

Section 3 sets forth the requirements for applicants seeking recertification. Each subsection may be summarized as follows:

(a) Requires continuous and substantial involvement (at least forty percent) in real estate during each year of the five year certification period;

(b) Accumulation of at least 75 hours of approved continuing legal education during the five year certification period;

(c) Submission, as references, of the names of five attorneys or judges who can attest to the applicant's real estate practice.

Since approval of the Florida Certification Plan there has been a general understanding that new areas would be gradually added to the program. Initially, and throughout the first two "cycles" (fiscal year 82-83 and 83-84), Civil Trial and Tax were the only two areas available. Marital and Family Law was introduced during the third "cycle" (fiscal year 84-85). We are now in the midst of the fourth "cycle" with Estate Planning and Probate as the fourth area of certification to be offered.

Because of the "lead time" necessary for implementation of any new area, the Real Estate Standards are being presented to this Court at this time for consideration and adoption. It is the belief of The Florida Bar Board of Governors that Real Estate Certification

(along with the previously submitted Criminal Law Certification Standards) should be approved effective July 1, 1986 so that the certification department of The Florida Bar may begin accepting applications after that date for processing during the Bar's 1986-87 fiscal year.

CONCLUSION

For the reasons set forth in this brief, The Florida Bar Board of Governors respectfully requests this Court adopt the proposed Standards for Certification of Real Estate Lawyers for inclusion as Appendix VI under article XIX of the Integration Rule Bylaws.

Respectfully submitted,



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APPENDIX VI
STANDARDS FOR CERTIFICATION OF A
BOARD CERTIFIED REAL ESTATE LAWYER

Lawyers who are members in good standing of The Florida Bar and who meet the standards prescribed below may be issued an appropriate certificate identifying the lawyer as a Board Certified Real Estate Lawyer. The purpose of the standards is to identify those lawyers who practice in the area of real estate and have the special knowledge, skills, and proficiency to be properly identified to the public as certified real estate lawyers.

Section 1. DEFINITIONS.

(a) "Real Estate" is the practice of law dealing with matters relating to real property transactions including, but not limited to real estate conveyances, title searches, property transfers, leases, condominiums and cooperatives, interval ownership, mortgages, zoning and land use planning, real estate development and financing, real estate litigation, and determination of property rights.

(b) The "practice of law" for this area is defined as set out at Section 5(c)(1) of Article XIX of the Integration Rule Bylaws governing the Florida Certification Plan. Practice of law which otherwise satisfies these requirements but which is on a part-time basis will satisfy the requirement if the balance of the applicant's activity is spent as a teacher of real estate subjects in an accredited law school.

APPENDIX A

Section 2. MINIMUM STANDARDS.

(a) Minimum Period of Practice. Every applicant shall have been engaged in the practice of law in the United States, or engaged in the practice of United States law while in a foreign country, and shall have been a member in good standing of the Bar of any state of the United States or the District of Columbia for a period of five years as of the date of filing an application. The years of law practice need not be consecutive.

(b) Substantial Involvement. Every applicant must demonstrate substantial involvement sufficient to show special knowledge, skills and proficiency in the practice of real estate law during the three years immediately preceding the date of application. Substantial involvement is defined as including devoting at least forty percent or more of one's practice to matters in which issues of real estate law are significant factors and in which the applicant had substantial and direct participation in those real estate issues. Upon an applicant's request and the recommendation of the Real Estate Certification Committee, the Board may waive the requirement that the three years be "immediately preceding" the date of application if the Board determines the waiver is warranted by special and compelling circumstances. An applicant must furnish information concerning the frequency of his work and the nature of the issues involved. For the purposes of this section the "practice of law" shall be as defined in Section 1(b) except that it shall also include time devoted to lecturing and/or authoring books or articles on fields of real estate law if the applicant was engaged in the practice of law during such period. Demonstration of compliance with this requirement shall be made initially through a form of questionnaire approved by the Real Estate Certification Committee but written or oral supplementation may be required.

(c) References for Knowledge and Experience. Every applicant shall submit the names and addresses of five other attorneys or judges who are familiar with his practice, not including attorneys who currently practice in the applicant's law firm, who can attest to the applicant's reputation for involvement in the field of real estate law. The Board and the Real Estate Certification Committee may authorize references from persons other than attorneys in such cases as they deem appropriate. The Board and the Real Estate Certification Committee may also make such additional inquiries as they deem appropriate.

(d) Education. Every applicant must demonstrate that during the three-year period immediately preceding the date of filing an application, he has accumulated accredited continuing legal education in real property law of not less than 45 hours.

(e) Examination. The applicant must pass a written examination which will be practical, objective and designed to demonstrate special knowledge, skills and proficiency in real estate law. An oral examination may be required of some or all of the applicants, or used in lieu of the written examination in special waiver situations, as determined by the Board.

Section 3. RECERTIFICATION. To be eligible for recertification, an applicant must meet the following requirements:

(a) A satisfactory showing, as determined by the Board and the Real Estate Certification Committee, of continuous and substantial involvement in real estate law throughout the period since the last date of certification. The demonstration of substantial involvement of at least forty percent during each year after certification prior to recertification shall be made in accordance with the standards set forth in Section 2(b).

(b) Completion of at least 75 hours of accredited continuing legal education in real estate law since the last date of certification.

(c) An applicant for recertification shall submit the names and addresses of five other attorneys or judges who are familiar with his practice, not including lawyers who currently practice in the applicant's law firm, who can attest to the applicant's reputation for ability of practice and involvement in the field of real estate law. The Board and the Real Estate Certification Committee may also make such additional inquiries as they deem appropriate.