

The BROWARD BARRISTER

OCTOBER, 1980

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PUBLISHED BY THE BROWARD COUNTY BAR ASSOCIATION

Executive Offices: 733 Northeast Third Avenue, 305/764-8040, Fort Lauderdale, Florida 33304

NO GENERAL MEETING IN OCTOBER

The next meeting of Broward County Bar Association will be held on November 20, 1980 — 6:30 P.M.

◆ Location to be announced ◆

The Speaker will be Chief Justice Alan Sundberg.

Mark your calendar now.

PRESIDENT'S MESSAGE

Merit Retention

At the urging of The Florida Bar and interested persons, the Florida Constitution was amended to provide that Justices of the Florida Supreme Court and Appellate Judges would no longer have to run for re-election to those positions, but instead, their positions would be presented to the electorate in a Merit Retention Election, whereby the voters would decide whether the Justices or Judges should be retained in office, based upon their qualifications and ability. Prior to this amendment, many of us will recall that a highly qualified member of the Appellate Bench lost in an election, solely as the results of partisan politics, although he was rated as one of the most highly qualified members of the Appellate Bench.

With the adoption of the Merit Retention Election, we hoped to avoid such results, so that a well qualified Judge or Justice would not lose his office in an election because of partisan politics, pressure groups or vested interest groups. So far, the Merit Retention system has worked well in the State of Florida and we have been able to retain in office those Judges who have been selected for Appellate positions.

Now, an attempt is being made by a certain group to destroy the concept of Merit Retention in the State of Florida, although they perhaps do not recognize this to be the end result of their efforts. Recently, a consumer oriented organization has published and disseminated a report in which it is suggested that Appellate Courts are not deciding enough cases in favor of consumers and that certain Judges should not be retained in office in the Merit Retention election in

November. Judge James C. Downey of the Fourth District Court of Appeal was singled out for non-retention on the basis of the report's claim that his vote in several cases was not sufficiently consumer oriented. The Executive Committee of the Palm Beach County Bar Association examined the report and found that the report's conclusions were false and that the report was in serious error in the analysis which was the basis for the conclusions. The Bar Association's analysis came to the opposite conclusion to that of the organization's report.

This attempt by that group to influence a Merit Retention Election based upon the particular interests of a pressure or vested interest group, is a disservice to the citizens of the State and can only result in the destruction of the Merit Retention system if they succeed in their aims. The basis of the Merit Retention election is to provide for the election of Judges based on integrity, impartiality, judicial temperament and knowledge of the law, and not on any particular groups which seek to influence Appellate Courts to vote in their favor. If this group is successful, every group which has a sizeable constituency, would be in a position to exert influence on the Appellate Courts and the Florida Supreme Court by their threats of voting the Judges out of office if they do not vote in their favor in cases before them. I would urge each member of the Bar to do their utmost to influence their associates, friends and others to vote in favor of Judge James C. Downey and other members of the Appellate Bench for retention, all of whom have been rated by the Bar as qualified to remain in office. If the consumer oriented organization is successful in this election, then the entire Merit Retention system should be discarded and some other system im-

posed in its place.

HARRY G. CARRATT,
President

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OPERATION: UPDATE/TRANSITION

October 22, 1980

Nova Law Center—Room 306
3100 S.W. 9th Avenue
Fort Lauderdale, Florida
5:00 P.M. — 7:00 P.M.

Speaker: Joel K. Gustafson

Topic: Representing Clients before
Local Governmental Agencies

Speaker: Harry A. Stewart
Liability of Local Governmental
Officials

— \$3.00 Registration Fee —

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Filing Fees Increased

Beginning October 15, 1980, the filing fees for all civil actions filed in the Circuit Court in Broward County will be —

Civil Action \$57.50
Dissolution \$60.50

Filing fees for all civil actions in County Court will be as follows:

Claims: Less than \$100 \$13.00
\$100, but less than
\$1,000 24.00
\$1,000 up to and in-
cluding \$1,500 31.00
\$1,500 up to and in-
cluding \$5,000 34.50
Removal of Tenant Actions 39.50

Broward County Bar Association
733 N.E. Third Avenue
Fort Lauderdale, Florida 33304
764-8040

OFFICERS

Harry G. Carratt *President*
Russell E. Carlisle *Pres.-Elect*
Hugh T. Maloney *Sec. - Treas.*
Norma Howard .. *Executive Director*

**YOUNG LAWYERS
SECTION MEETING**

Thursday, October 23, 1980

12:00 Noon

GIAN CARLO RESTAURANT
408 South Andrews Avenue
Fort Lauderdale, Florida

Luncheon: \$6:00 — Members
\$7.00 — Non-Members

Speaker: Honorable James C. Downey
Chief Judge of the Fourth
District Court of Appeal

Topic: "Observations from the
Appellate Bench"

Reservations and checks made payable
to "Young Lawyers Section"
should be sent to —

Robert J. McFann
One Financial Plaza
Suite 1500
Fort Lauderdale, Fla. 33394

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NOTICE

Pursuant to Administrative Order

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8.01.12, Circuit Judge Arthur J. Franza is assigned to the Criminal Division and has assumed all pending criminal cases formerly on the docket of Circuit Judge M. Daniel Futch. Judge Futch is assigned to the Civil Division and has assumed all pending civil cases formerly on the docket of Judge Franza.

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**Young Lawyers/
United Way Run**

This fall, in order to encourage community participation in and support for the annual United Way drive, the Young Lawyers Section, in conjunction with United Way of Broward County, has organized a community run. Burger King Corporation of Miami has become the official race sponsor and the race will be covered live by radio station WIOD.

The "Young Lawyers/United Way Run" will be a 10 kilometer (6.2 miles) run taking place on Saturday, November 1, 1980, in Sunrise, Florida. The City of Sunrise is providing police, rescue and other facilities. All proceeds of the event will go to the United Way, and it is intended that this become an annual running event.

Registration entry fee is \$6.00 for entries post-marked before October 24, 1980. Late registration: October 30-31, 5:00 P.M.—9:00 P.M., Sunrise City Hall, rate fee — \$7.00.

The race will commence at 8:00 A.M. on Saturday, November 1, 1980, at the Sunrise Musical Theatre parking lot. Entrants can pick up their race packets between 7:00 A.M. and 7:30 A.M. the day of the race.

Trophies will be awarded to men and women in six divisions each. In addition, there will be two team trophies for five-member teams. (The entry fee for five-member teams shall be \$25.00 per team.)

Water, toilets and aid stations will be available and splits and final times will be provided to all finishers. Tee shirts shall be included in the entry fee.

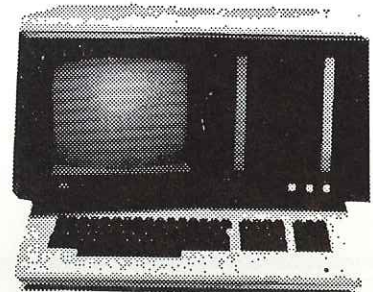
Checks should be made payable to United Way and forwarded to: "Young Lawyers/United Way Run", P.O. Box 14098, Fort Lauderdale, Florida 33302. Additional information can be obtained by calling 467-2756 during business hours.

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REAL PROPERTY SECTION NEWS

Like myself, you probably have seen instances in which a deed recites language as follows: "... subject to conditions, restrictions, reservations, limitations and easements of record". This language may present problems for the unsuspecting purchaser or the purchaser's attorney.

The "standard" (and having seen so many "standard" contracts, I use that term rather loosely) Deposit and Receipt and Contract for Sale and Purchase approved by the Broward County Bar Association and the Fort Lauderdale Area Board of Realtors, Inc. (Revised 11/79) provides under Paragraph B CONVEYANCE:

Seller shall convey title to the subject property to Buyer by Statutory Warranty Deed subject to: (1) zoning and/or restrictions and prohibitions imposed by governmental authority; (2) restrictions, easements and other matters appearing on the plat and/or common to the subdivision; (3) taxes of the year of closing; (4) other matters specified in this Contract, if any.

In a situation where the above "standard" contract is used, acceptance of a warranty deed containing anything but the above Paragraph B language would constitute an amendment to the contract itself without the approval of the purchaser. Also acceptance allows the seller to convey an estate subject to matters beyond those described in the Deposit Receipt Contract.

More troublesome to the purchaser's attorney are the possible detrimental effects imposed by use of such language. *Black's Law Dictionary* (p. 365) defines condition as "a qualification or restriction annexed to a conveyance of lands, whereby it is provided that in case a particular event does or does not hap-

pen, or in the case of grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated". Limitation can be defined (p. 1076) as "the restriction or circumscription of an estate in the conveyance by which it is granted in respect to the interest of the grantee or its duration; the specific curtailment or confinement of an estate, by the terms of the grant, so that it can not endure beyond a certain period or a designated contingency". The word restriction, when used in connection with the grant of an interest in real property, is the equivalent of condition, and either term may be used to denote a limitation upon the full and unqualified enjoyment of the right or estate granted. 37A *Words and Phrases*, page 109. Reservation is the creation in behalf of the grantor of a new right issuing from the thing granted; a reservation is the creation of a new right, something which did not exist as an independent right before the grant. *City of Jacksonville vs. Shaffer*, 107 Fla. 367, 144 So. 888 (1932). With respect to title, an estate is a right, distinct from ownership, to use in some way the land of another without compensation. 37A *Words and Phrases*, page 109.

It should be clear that use of the above terms are at best suspect, and at worst, prohibitive. Is it not arguable that any deed using this suspect language obliterates the common law warranties recognized under Florida Statute §689.03? If the grantor, on the one hand, warrants the fee simple estate in a deed form conforming to §689.02, but at the same time incorporates all matters of record, is not the former reduced to something comparable to a quitclaim deed? An additional disquieting thought concerns the abstractor's certificate which fails to contain entries that later prove injurious to the purchaser's title; can the abstractor disclaim liability, both on a contract as well as negligence theory, due to the purchaser's (plaintiff's) acceptance of

the emasculated deed?

For all of the above reasons, we should be instructing our real estate secretaries or paralegals that use of the above suspect language should be discontinued and in its place, adopt more precise references consistent with the deposit receipt contract being used.

F. ANDREWS TAINTOR
Chairman, Real Property Section

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REAL PROPERTY SECTION MEETING

Tuesday, October 28, 1980

— 5:15 p.m. —

WILLIAMSON'S RESTAURANT
1401 South Federal Highway
Fort Lauderdale, Florida

A debate sponsored by the Real Property Section between E. Clay Shaw and Alan Becker, Republican and Democratic candidates respectively for United States House of Representatives, will follow meeting at 6:00 P.M. Cash bar will be available. Dinner following debate will complete evening. Dinner reservations are required by October 24, 1980. Please use the enclosed card for reservations.

The Real Property Section invites all members of the Broward County Bar Association to attend the debate and the dinner following.

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FAMILY LAW SECTION SEMINAR

Thursday, November 20, 1980

8:30 A.M.—1:00 P.M.

City Commission Room
Fort Lauderdale City Hall
100 North Andrews Avenue
Fort Lauderdale, Florida

(Full details in enclosed flyer)



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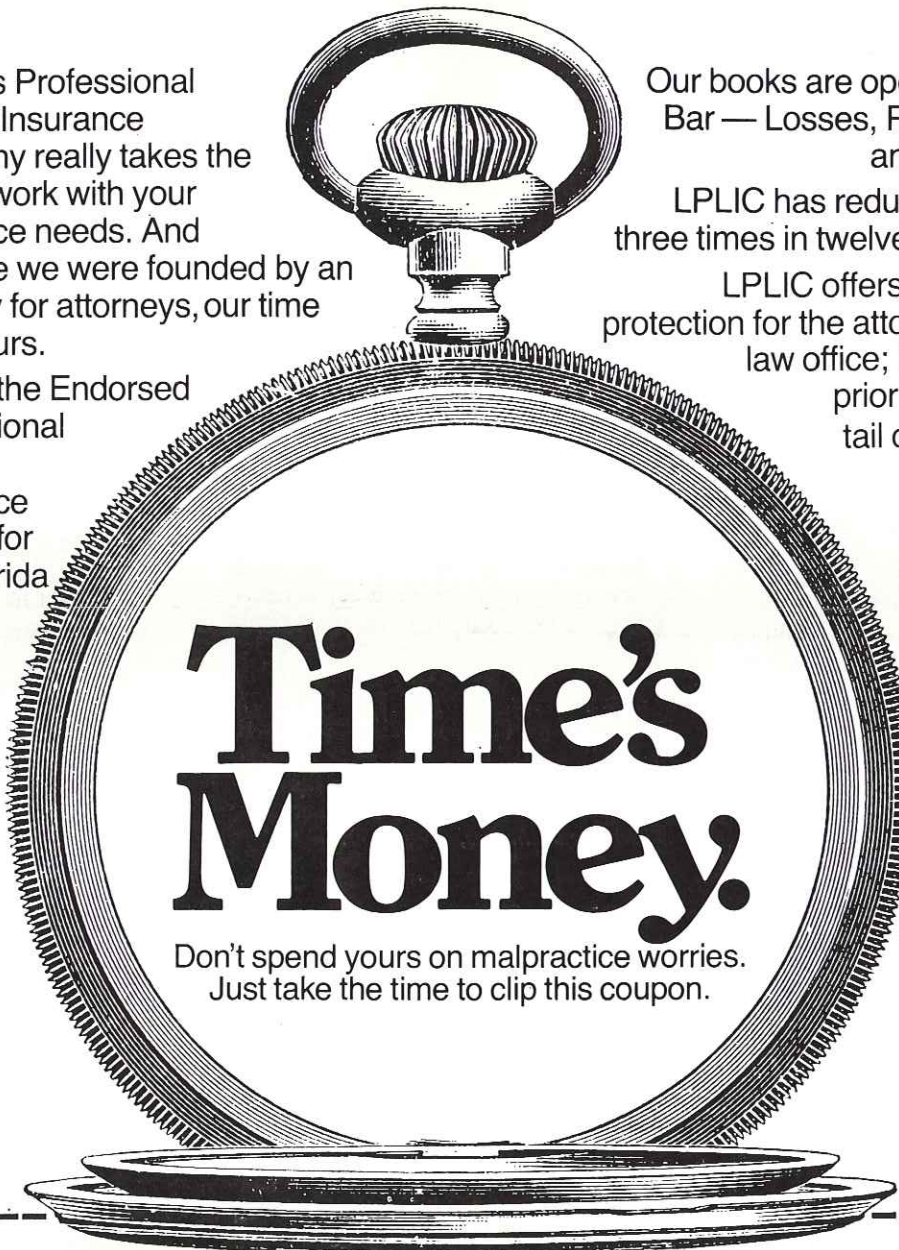
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