



# The Florida Law Practice

# LINK

For Florida Lawyers – By Florida Lawyers

A JOURNAL OF THE GENERAL PRACTICE, SOLO AND SMALL FIRM SECTION

The Florida Bar

Volume XXXII, No. 1

www.gpsf.org

Fall 2011

## A Bank's Entitlement to Rents upon Default

by Camille J. Iurillo and Gina M. Pellegrino

When a borrower is in a foreclosure case, and that borrower has been collecting rents to maintain the property, it is not uncommon for the lender to make demand for turnover of all rents. However, it is important for attorneys to keep in mind when representing a borrower in this situation that even if the lender files a motion requiring that all rents be turned over or deposited into the registry of the court, the attorney should not assume that his or her client will lose all of the rents. The article below sets forth a brief overview of the applicable law

on this issue, specifically addressing why a court will not automatically order that the borrower turn over all rents to the lender or deposit all rents into the court registry.

Scenario: Suppose a borrower obtains a loan from a lender, executing a promissory note, mortgage and assignment of rents. The borrower subsequently defaults on the loan. The lender files a lawsuit against the borrower alleging that the borrower defaulted on the promissory note. The lender also makes written demand to the borrower for turnover of all rents,

pursuant to the assignment of rents. Thereafter, the lender files a motion to require the rents to be deposited into the court registry. The borrower is utilizing the rents to continue operating and maintaining the property. If the rents are deposited with the court, the value of the property will arguably substantially decrease, as the property will no longer be properly cared for. In such instance, will the court automatically order that the borrower deposit all of the rents into the court registry? Not necessarily.

According to the assignment of

*See "Bank's Entitlement," page 13*

## Flying in the Clouds: Practicing Law by Cloud Computing

by Jonathan T. Baker, Entering 3L, Florida State University College of Law

The issue of this article is this: *what can a law office do to reduce the risks of improper access to its clients' confidential information when that information is stored via cloud computing?*

But first, what is cloud computing? Cloud computing is best described as connecting your home to the electricity of a power plant instead of using one's own candles.<sup>1</sup> Put another way, cloud computing is analogous to connecting a home to a city water supply when previously that home drew its

water from a private, individual well.<sup>2</sup> In cloud storage, a user receives a product by a common grid to which all the other users in the city (cloud) might have access.<sup>3</sup> However, in cloud computing, a neighbor can effectively travel through the pipes and arrive in your kitchen. Such a person could be anyone with access to the internet, from a person in a nearby coffee shop to an overseas criminal organization.

Technically speaking, cloud storage is the keeping of one's information on another entity's server. Of

*See "Cloud Computing" page 13*

### INSIDE:

Chair's Message.....	2
Jacksonville Area Legal Aid Wins the General Practice, Solo and Small Firm Section's 2011 "L. Michael Roffino Pro Bono Award".....	3
Joint Comparative Law CLE: The London Symposium - Brochure.....	4
Tradition of Excellence Award Given to Margaret (Peggy) Hoyt.....	8
Annual Ethics Update 2011 - Brochure.....	9
Agriculture Law Update - Brochure.....	11

# Message from the Chair

by Frank Maloney



Fall is such an exciting time in the Bar year. Your executive council met in Tallahassee in early September, toured The Florida Bar headquarters, and got to know many of the staff and their roles in helping your section run smoothly. It was good to be able to put a face and name to all of those functions that always seem to go so smoothly in all our programs and publications.

September also saw the midyear meeting of The Florida Bar at the Hilton Walt Disney World Resort and our *Technology Essentials for the Extraordinary Lawyer* with our CLE Program Chair Peggy Hoyt leading a daylong seminar and luncheon. Peggy was able to draw an excellent faculty for the seminar from as far as New York City and New Orleans. Our own expert Adriana Linares from Orlando, who always keeps the participants on the edge of their seats, shared her wealth of knowledge and FLMIC offered a panel on avoiding malpractice when using technology.

The ever popular Annual Ethics Update will be held on October 21, at

the Tampa Airport Marriott with Eugene Shuey as CLE Program Chair offering five hours of ethics credit. With all the changes being considered by the Board of Governors and the Supreme Court, this is the best way in the whole bar to keep up with all those changes to our ethics and advertising rules.

November will bring our executive council's quarterly meeting to St. Augustine. If you are in the area we would love to see you on the afternoon of November 4, at the Hilton Historic Bay front. At that time we will be finalizing plans for our joint Symposium with other sections, the English Bars and the Solo and Small Firm Conference.

On November 18, University of Florida Professor Doctor Michael Olexa, chair of our Agriculture Law Committee, will be presenting the Agriculture Law Update at the Florida Farm Bureau headquarters in Gainesville. This seminar will also cover changes to land use requirements. Dr. Olexa has promised to have high oleic peanuts for everyone. The

next day is the Gator game against Furman University at the Swamp.

The GPSSF along with other sections are continuing to put the final touches to the *Joint Comparative Law CLE: The London Symposium* with an exciting faculty of legal minds from Florida and the UK. The locale for our May 20-26 2012 symposium is the Charing Cross Hotel in London, a short walk from the courts and Inns of Court. Be sure to make your reservations for this event quickly as space is limited.

Under the leadership of Teresa Morgan the section is planning for our best ever *Solo and Small Firm Conference* to be held in conjunction with the midyear meeting of the Bar at the Palace Hotel at Disney World in September 2012.

The GPSSF Section – 40 years strong this year!



## **SAVE THE DATE!**

### **The London Symposium: The GPSSF Section's Comparative Law CLE A Joint, Multi Florida Bar Sections and British Legal Event**

**May 20-26, 2012**

Comparative law topics to include: perspectives on criminal law, civil litigation, family law, real property and probate law, international law, legal education and newer lawyers, the courts and the judiciary and law practice management.

Nine hours of CLEs plus tours to England's courts and Inns, countryside excursions and a chance to experience London's best. Additional details in brochure on page 4-7.

# Jacksonville Area Legal Aid Wins the General Practice, Solo and Small Firm Section's 2011 "L. Michael Roffino Pro Bono Award"

The General Practice, Solo and Small Firm Section is pleased to announce the winners of the 2011 L. Michael Roffino Pro Bono Award.

The General Practice, Solo and Small Firm Section's "L. Michael Roffino Pro Bono Award" was established in 1990 to be awarded on an annual basis in recognition of outstanding service and significant accomplishments by non-profit organizations which provide pro bono legal aid to the indigent.

Each fall the Section, working with the Florida Pro Bono Coordinators Association, accepts nominations of organizations that are providing innovative programs designed to

deliver legal services to those who could not otherwise obtain legal help. The Section selects three winners and awards a \$3,000 grant to the overall winner and a \$1,000 grant to each of the two runners-up. In the past these grants have been used by these worthy pro bono organizations to acquire computers and software, to conduct legal clinics, to recruit and train volunteer lawyers, to create and produce forms, manuals and video tapes and to otherwise serve the legal needs of Florida's poor who are in need of legal assistance.

This year's winner is: Jacksonville Area Legal Aide and is being recognized for creating its "Northeast

Florida Medical Legal Partnership", a network of medical and legal providers who identify and resolve legal issues that are barriers to the good health and well-being of low-income persons. The two runners-up are Community Legal Services of Mid-Florida, Inc. and Put Something Back.

The Section is pleased to announce that since the inception of this award, the Section has awarded a total of \$104,500 to 22 different winners and runners-up. The Section encourages every pro bono and voluntary bar organization to apply every year so that the Bar can recognize the outstanding efforts of Florida's selfless pro bono and voluntary bar organizations.



Frank Maloney and Jerry Curington present winner's check to Kathy Para of Jacksonville Area Legal Aid.



Runner-up Lena Smith of Community Legal Services of Mid-Florida, Inc., poses with Frank and Jerry.



Frank and Jerry present runner-up check to Bruce Levine of Put Something Back: Share and Enjoy.



The Florida Bar General Practice, Solo & Small Firm Section presents



*Charing Cross Hotel, London*

# *Joint Comparative Law CLE: The London Symposium*

**Course Classification: Intermediate Level**

**One Location**

**May 20 - 26, 2012**

**Charing Cross Hotel**

**The Strand**

**London, United Kingdom**

**Course No. 1397R**

# Schedule of Events

## Sunday, May 20

### Arrival – At Leisure

6:30 p.m. – 7:30 p.m.

### Welcome Reception

## Monday, May 21

### At Leisure

## Tuesday, May 22

### Symposium

9:00 a.m. – 9:10 a.m.

### Welcome

9:10 a.m. – 10:40 a.m.

### Comparative Criminal Law Panel

10:40 a.m. – 10:50 a.m.

### Break

10:50 a.m. – 11:40 a.m.

### Legal Education and Young Lawyers Panel

11:40 a.m. – 1:40 p.m.

### Lunch (included in Registration Fee)

1:40 p.m. – 2:30 p.m.

### Comparative Civil Law Panel

2:30 p.m. – 3:20 p.m.

### Comparative Family Law Panel

3:20 p.m. – 3:40 p.m.

### Break

3:40 p.m. – 4:30 p.m.

### Comparative Law Practice Management Panel

5:00 p.m. – 6:30 p.m.

### Reception (all invited)

## Wednesday, May 23

9:00 a.m. – 9:10 a.m.

### Introduction

9:10 a.m. – 10:00 a.m.

### Comparative Real Property, Probate and Trust Law Panel

10:00 a.m. – 10:50 a.m.

### Comparative International Law Panel

10:50 a.m. – 11:00 a.m.

### Break

11:00 a.m. – 12:00 noon

### Courts and Judiciary Panel

12:00 noon – 1:30 p.m.

### Lunch (Included in Registration Fee)

1:30 p.m.

### Tours

## Thursday, May 24

### At Leisure

## Friday, May 25

### At Leisure

### Farewell Dinner – Thames River Dinner Cruise

## Saturday, May 26

### Departure

**NOTE: Times, sessions, and venues are subject to change.**

## ~ Royal London ~

One of the world's top destinations, LONDON, is a thriving, exciting city with a diverse cross-section of offerings, from Pubs to Palaces. London's cosmopolitan metropolis is the home of historic sights such as Buckingham Palace, London Tower, Westminster Abbey, Nelson's Column, Big Ben, London Bridge, Houses of Parliament, renowned Museums, and more. Up-to-date London also offers world class shopping (don't miss Harrods), the London Eye (best possible view of the City), Antique Markets (Portobello Road & Camden Passage), the famous Chelsea Flower Show (May 22-30, 2012) and Hyde Park. Also enjoy traditional British Pub fare as well as gourmet International cuisine.

**THE CHARING CROSS HOTEL** (The Strand, Charing Cross, London WC2n 5Hx) is located between the Westminster & Bloomsbury districts (near Trafalgar Square). This iconic Hotel is basically in the core of "Old London Town." The Inns of Court, Old Bailey, British Museum, SoHo, West End theater & shopping areas and the Thames River are all nearby, with the Charing Cross Tube only steps away.

Merry Ol' England offers a lifetime of memories!!!

## *The travel package includes:*

- \* Airport/Hotel Transfers, round trip, arriving & departing on group dates
- \* Hotel accommodations for six nights at THE CHARING CROSS HOTEL
- \* Daily Breakfast & Hotel Portorage of two bags per person
- \* VAT and Hotel Pre-registration
- \* Private Meet & Greet Reception
- \* Thames River Dinner Cruise

## *Land travel package costs:*

- \* Per Person, single occupancy: \$2,975.00
- \* Per Person, double occupancy: \$1,730.00
- \* Per Person, triple occupancy: \$1,350.00
- \*Child 16 yrs. and under, no charge in parents' room

## *Payment and cancellation policy:*

\*\*A DEPOSIT OF \$500.00 per person is due by October 24, 2011  
If canceled after Deposit: \$100.00 per person service charge fee  
If canceled after December 1, 2011: \$225 per person cancellation fee  
\*\*FINAL PAYMENT is due March 15, 2012  
If canceled after March 21: an additional 50% Hotel cancellation fee  
If canceled after April 19: an additional 75% Hotel cancellation fee  
No refund after May 3, 2012

## *Note:*

- \* In case of currency fluctuations of more than 3% or amendments in Government taxes or fees, the right is reserved to adjust the tour price accordingly.
- \* No refunds on unused portions of the package.
- \* CUSTOMS REQUIREMENTS: A current PASSPORT, valid for at least six months after completed travel. Infants & Children must also have a valid Passport.
- \* Family & friends are welcome to participate.
- \* Bowen Travel will gladly assist in making optional city/countryside and Pre & Post tours.
- \* If the Section does not receive the required number of reservations by March 12, the Seminar and Travel Package will be subject to cancellation and all monies returned except the non-refundable portions.
- \* Reservations accepted on a space availability basis and prioritized as reserved. Due to the great popularity of London, please make your reservation early, ASAP.
- \* Be sure to send your SEMINAR REGISTRATION to THE FLORIDA BAR in Tallahassee.
- \* Make your Trip Reservations with Cara (see below for contact information) in Tampa.



## *Travel Package Information*

Deposit \$500.00 per person

### *Hotel Info:*

King Bed      Two Beds      Cot/Crib

\* If preference not indicated or not available, hotel will assign bed type

### *Flight Info:*

Air fare is not included. Bowen Travel Service can, however, provide airline reservations. Please contact Cara Thornton at BOWEN TRAVEL SERVICE to make air arrangements. Email: [carat@bowenkeppie.com](mailto:carat@bowenkeppie.com) or Phone: 813-289-8344.

### *Travel Protection:*

Travel Insurance is highly recommended. Call Cara (see above info) to get the best coverage for your particular needs.

### *Trip Reservations:*

Call CARA THORNTON, BOWEN TRAVEL SERVICE, 4905 W. STATE ST., TAMPA, FL 33609-1120. Phone: 813-289-8344.  
Email: [carat@bowenkeppie.com](mailto:carat@bowenkeppie.com).

IF YOU HAVE ANY QUESTIONS OR NEED ADDITIONAL INFORMATION REGARDING THE TRAVEL PACKAGE, CONTACT PAULA WILSON, 813-837-1212 or EMAIL: [pmw1002@aol.com](mailto:pmw1002@aol.com) or 3203 Bayshore Blvd., #1002, Tampa, FL 33629.

# Registration

## Register me for the "Joint Comparative Law CLE: The London Symposium" Seminar

**ONE LOCATION: (359) CHARING CROSS HOTEL, LONDON (MAY 20-26, 2012)**

TO REGISTER BY MAIL, SEND THIS FORM TO The Florida Bar, Order Entry Department, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD \$25.00. **On-site registration is by check only.**

Name \_\_\_\_\_ Florida Bar # \_\_\_\_\_

Address \_\_\_\_\_ Phone: (     ) \_\_\_\_\_

City/State/Zip \_\_\_\_\_ E-mail\* \_\_\_\_\_

*\*E-mail address is required to receive electronic course material and will only be used for this order.*

**RDL: Course No. 1397R**

**ELECTRONIC MATERIALS:** Effective July 1, 2010, every CLE course will feature an electronic course book in lieu of a printed book for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable, downloadable, printable material will be available via e-mail several days in advance of the live course presentation.

### **REGISTRATION FEE (CHECK ONE):**

- Member of the General Practice, Solo & Small Firm Section: \$435  
 Non-section member: \$470

This is a service program sponsored by the General Practice, Solo & Small Firm Section and not bound by The Florida Bar CLE policy governing reduced fees for full-time law college faculty or full-time law students or persons attending under the policy of fee waivers.

### **METHOD OF PAYMENT (CHECK ONE):**

- Check enclosed made payable to The Florida Bar  
 Credit Card (Advance registration only. Fax to 850/561-9413.)  
 MASTERCARD    VISA    DISCOVER    AMEX      Exp. Date: \_\_\_\_/\_\_\_\_ (MO./YR.)

Signature: \_\_\_\_\_

Name on Card: \_\_\_\_\_ Billing Zip Code: \_\_\_\_\_

Card No. \_\_\_\_\_



- Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

**Related Florida Bar Publications can be found at <http://www.lexisnexis.com/flabar/>**

## *CLE Credits*

### **CLER PROGRAM**

(Max. Credit: 9.5 hours)

General: 9.5 hours • Ethics: 0.0 hours

Seminar credit may be applied to satisfy CLER / Certification requirements in the amounts specified above, not to exceed the maximum credit. See the CLE link at [www.floridabar.org](http://www.floridabar.org) for more information.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News or available in your CLE record on-line) you will be sent a Reporting Affidavit if you have not completed your required hours (must be returned by your CLER reporting date).

## *Refund Policy*

A \$25 service fee applies to all requests for refunds. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. Registrants who do not notify The Florida Bar by 5:00 p.m., March 15, 2012 that they will be unable to attend the seminar, will have an additional \$190 retained.

# *Tradition of Excellence Award Given to Margaret (Peggy) Hoyt*

In 1993, the General Practice Section of The Florida Bar initiated the Tradition of Excellence award. This prestigious award was developed to honor recipients whose efforts throughout that year have been beneficial to The Bar and specifically to the general practitioner, and is intended to encourage participation by all Bar members in activities that benefit the general practitioner and the community at large. The 2011 award was presented to Margaret (Peggy) Hoyt at The Florida Bar annual meeting in Orlando.



Ana Veliz, Past Chair of GPSSF Section, Peggy Hoyt and Frank Maloney, Chair



Peggy Hoyt and Teresa Morgan



Peggy Hoyt, Randy Boyd and Teresa Morgan





THE  
FLORIDA  
BAR  
CLE

The Florida Bar Continuing Legal Education Committee and  
the General Practice, Solo & Small Firm Section present

# Annual Ethics Update 2011

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Presentation and Webcast: Friday, October 21, 2011  
Tampa Airport Marriott • 4200 George J. Bean Parkway  
Tampa International Airport • Tampa, FL 33607 • 813-879-5151



Course No. 1298R

8:00 a.m. – 8:30 a.m.

### Late Registration

8:30 a.m. – 8:40 a.m.

### Opening Remarks

*Eugene Shuey, Program Chair, Gainesville*

8:40 a.m. – 9:30 a.m.

### Relationship Between Ethics: Professional Responsibility and Professional Liability

*Bill Loucks, Florida Lawyers Mutual Insurance Company,  
Orlando*

9:30 a.m. – 10:20 a.m.

### Ethical Practice in the Real World

*Eugene Shuey, Gainesville*

10:20 a.m. – 10:30 a.m.

### Break

10:30 a.m. – 11:20 a.m.

### Ethical Practice in the Real World – *continued*

*Eugene Shuey, Gainesville*

10:20 a.m. – 12:10 p.m.

### Ethics and the Technology in Your Law Office

*Bill Costello, Rumberger, Kirk & Caldwell, P.A., Tampa*

12:10 p.m. – 1:00 p.m.

### Ethical Advertising

*Debra Davis, Smith, Tozian & Hinkle, P.A., Tampa*

## GENERAL PRACTICE, SOLO & SMALL FIRM SECTION

Frank Maloney, Macclenny — Chair  
Linda Calvert Hanson, Gainesville — Chair-elect  
Teresa Byrd Morgan, Lake City — CLE Chair

### CLE COMMITTEE

Candace S. Preston, Wauchula, Chair  
Terry L. Hill, Director, Programs Division

### FACULTY & STEERING COMMITTEE

Eugene E. Shuey, Gainesville — Program Chair  
Debra Davis, Smith, Tozian & Hinkle, P.A., Tampa  
Bill Costello, Rumberger, Kirk & Caldwell, P.A., Tampa  
Bill Loucks, FLMIC, Orlando  
Nancy Stuparich, FLMIC, Orlando

## CLE CREDITS

### CLER PROGRAM

(Max. Credit: 5.0 hours)

General: 5.0 hours

Ethics: 5.0 hours

Seminar credit may be applied to satisfy CLER / Certification requirements in the amounts specified above, not to exceed the maximum credit. See the CLE link at [www.floridabar.org](http://www.floridabar.org) for more information.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News or available in your CLE record on-line) you will be sent a Reporting Affidavit if you have not completed your required hours (must be returned by your CLER reporting date).

## WEBCAST CONNECTION:

Registrants will receive webcast connection instructions two days prior to the scheduled course date via e-mail. If The Florida Bar does not have your e-mail address, contact the Order Entry Department at 850-561-5831, two days prior to the event for the instructions.

**REFUND POLICY:** A \$25 service fee applies to all requests for refunds. Requests must be in writing and postmarked no later than two business days following the live course presentation or receipt of product. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid.

**TO REGISTER****ON-LINE:**  
www.floridabar.org/CLE**MAIL:**  
Completed form with check**FAX:**  
Completed form to 850/561-9413**Register me for the "Annual Ethics Update 2011" Seminar****ONE LOCATION: (049) TAMPA AIRPORT MARRIOTT, TAMPA (OCTOBER 21, 2011)**TO REGISTER OR ORDER AUDIO CD OR COURSE BOOKS BY MAIL, SEND THIS FORM TO: The Florida Bar, Order Entry Department, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD \$25.00. **On-site registration is by check only.**

Name \_\_\_\_\_ Florida Bar # \_\_\_\_\_

Address \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

City/State/Zip \_\_\_\_\_ E-mail\* \_\_\_\_\_

**\*E-mail address required to transmit electronic course materials and is only used for this order.****RDL: Course No. 1298R****ELECTRONIC MATERIALS:** Effective July 1, 2010, every CLE course will feature an electronic course book in lieu of a printed book for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable, downloadable, printable material will be available via e-mail several days in advance of the live course presentation or thereafter for purchased products. We strongly encourage you to purchase the book separately if you prefer your material printed but do not want to print it yourself.**LOCATION (CHECK ONE):**

- Tampa, October 21, 2011**  
(049) Tampa Airport Marriott
- Live Webcast / Virtual Seminar\***  
**October 21, 2011**  
(317) Online

**\*Registrants who participate in the live webcast will receive an email with a web-link and log-in credentials two days prior to the seminar to include access to the course materials. Call The Florida Bar Order Entry Department at (800) 342-8060, ext. 5831 with any questions.****REGISTRATION FEE (CHECK ONE):**

- Member of the General Practice, Solo & Small Firm Section: \$135
- Non-section member: \$170
- Full-time law college faculty or full-time law student: \$85
- Persons attending under the policy of fee waivers: \$0

**WEBCAST:**

- \$178
- \$213

*Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit judges, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice are eligible upon written request and personal use only, complimentary admission to any live CLE Committee sponsored course. Not applicable to webcast. (We reserve the right to verify employment.)***METHOD OF PAYMENT (CHECK ONE):**


- Check enclosed made payable to The Florida Bar
- Credit Card (Advance registration only. Fax to 850/561-9413.)
- MASTERCARD  VISA  DISCOVER  AMEX Exp. Date: \_\_\_/\_\_\_ (MO./YR.)

Signature: \_\_\_\_\_

Name on Card: \_\_\_\_\_

Billing Zip Code: \_\_\_\_\_

Card No. \_\_\_\_\_

  Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

 Enclosed is my separate check in the amount of \$35 to join the General Practice, Solo & Small Firm Section. Membership expires June 30, 2012.**COURSE BOOK — AUDIO CD — ON-LINE — PUBLICATIONS**Private recording of this program is not permitted. **Delivery time is 4 to 6 weeks after 10/21/11. TO ORDER AUDIO CD OR COURSE BOOKS**, fill out the order form above, including a street address for delivery. **Please add sales tax. Tax exempt entities must pay the non-section member price.** Those eligible for the above mentioned fee waiver may order a complimentary audio CD in lieu of live attendance upon written request and for personal use only.*Please include sales tax unless ordering party is tax-exempt or a nonresident of Florida. If this order is to be purchased by a tax-exempt organization, the media must be mailed to that organization and not to a person. Include tax-exempt number beside organization's name on the order form.*

**COURSE BOOK ONLY** (1298M)  
Cost \$65 plus tax  
(Certification/CLER credit is not awarded for the purchase of the course book only.)

**TOTAL \$ \_\_\_\_\_**

**AUDIO CD** (1298C)  
(includes electronic course material)  
\$135 plus tax (section member)  
\$170 plus tax (non-section member)

**TOTAL \$ \_\_\_\_\_**Related Florida Bar Publications can be found at <http://www.lexisnexis.com/flabar/>



The Florida Bar Continuing Legal Education Committee, the Environmental & Land Use Law Section and the General Practice, Solo & Small Firm Section and the Agricultural Law Committee presents

# Agricultural Law Update

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Presentation: Friday, November 18, 2011

Florida Farm Bureau Federation Building • 5700 SW 34th Street  
Gainesville, FL • 352-374-1504



Course No. 1306R

8:00 a.m. – 8:20 a.m.

**Late Registration**

8:20 a.m. – 8:35 a.m.

**Welcome**

*Michael T. Olexa, Professor and Director, UF/IFAS Center for Agricultural and Natural Resource Law, Gainesville*

*John Hoblick, President and CEO, FFBF, Gainesville*

*Jack Payne, Senior Vice-President for Agriculture and Natural Resources, UF/IFAS*

8:35 a.m. – 9:25 a.m.

**Farm and Ranch Estate Planning**

*Michael D. Minton, Ft. Pierce*

9:25 a.m. – 10:15 a.m.

**Employment Laws Affecting Farm Operations**

*Michael G. Prendergast, Jacksonville*

10:15 a.m. – 10:30 a.m.

**Break**

10:30 a.m. – 11:20 a.m.

**Agricultural and Natural Resources: Toward a New Balance of Power**

*Patrice F. Boyes, Gainesville*

11:20 a.m. – 12:10 p.m.

**Ethics of Real Estate Practice in Farm Land Sale**

*Eugene E. Shuey, Gainesville*

12:10 p.m. – 1:00 p.m.

**Agricultural Legislative Update**

*Cindy Littlejohn, Tallahassee*

## CLE CREDITS

**CLER PROGRAM**

(Max. Credit: 5.0 hours)

General: 5.0 hours

Ethics: 1.0 hour

**CERTIFICATION PROGRAM**

(Max. Credit: 5.0 hours)

Elder Law: 1.0 hour

Labor & Employment: 1.0 hour

Real Estate: 1.0 hour

State & Federal Gov't & Administrative Practice: 2.0 hours

Wills, Trusts & Estates: 1.0 hour

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## ENVIRONMENTAL & LAND USE LAW SECTION

Martha M. Collins, Tampa — Chair

Erin L. Deady, West Palm Beach — Chair-elect

Tara W. Duhy, West Palm Beach — CLE Chair

**GENERAL PRACTICE, SOLO & SMALL FIRM SECTION**

Frank E. Maloney, Jr., Macclenny — Chair

Linda Calvert Hanson, Gainesville — Chair-elect

Teresa Boyd Morgan, Lake City — CLE Chair

**CLE COMMITTEE**

Candace S. Preston, Wauchula, Chair

Terry L. Hill, Director, Programs Division

**FACULTY & STEERING COMMITTEE**

Michael T. Olexa, Gainesville — Program Chair

Sidney F. Ansbacher, Jacksonville — Program Co-Chair

Patrice F. Boyes, Gainesville

John Hoblick, Gainesville

Cindy Littlejohn, Tallahassee

Michael D. Minton, Ft. Pierce

Michael G. Prendergast, Jacksonville

Eugene E. Shuey, Gainesville

**TO REGISTER****ON-LINE:**  
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## BANK'S ENTITLEMENT

from page 1

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rents statute, Fla. Stat. § 697.07(4), “[u]pon application by the mortgagee or mortgagor, in a foreclosure action, and notwithstanding any asserted defenses or counterclaims of the mortgagor, a court of competent jurisdiction, pending final adjudication of any action, may require the mortgagor to deposit the collected rents into the registry of the court, or in such other depository as the court may designate. However, the court may authorize the use of the collected rents, before deposit into the registry of the court or other depository, to: (a) [p]ay the reasonable expenses solely to protect, preserve, and operate the real property, including without limitation, real estate taxes and insurance; (b) [e]scrow sums required by the mortgagee or separate assignment of rents instrument; and (c) [m]ake payments to the mortgagee.”

Moreover, according to the applicable case law, Fla. Stat. § 697.07 was not written to create an “absolute transfer of ownership interest in rents where none existed before;” rather, it was “intended to be nothing more than additional security.” *In re*

*One Fourth Street North, Ltd.*, 103 B.R. 320, 321 (Bankr. M.D. Fla. 1989) (authorizing the Debtor to use the rents, as cash collateral, to maintain the property and pay its ordinary operating expenses, which includes ordinary maintenance and tenant service). The Court explained in *Fourth Street North*, “if the mortgagee had acquired an ownership right in the rents upon making the written demand, there would be no further need of any proceeding or an adjudication of the mortgagee’s right to the rents, and the statute contemplates some further adjudication or determination of the mortgagee’s right to the rents.” *Id.* at 321-2. The Court reasoned further “section 697.07 on its face provides that the rent proceeds shall be utilized to protect the mortgaged property. This proposition is consistent with the notion only of a security interest in the rents, and not absolute ownership interest. To accept the proposition that a written demand for the rents by the mortgagee, pursuant to the statute, confers absolute ownership would also mean that even if the underlying obligation owed to the mortgagee is satisfied, the mortgagee would still be entitled to collect the rents even though there is nothing further owed by the mortgagor, a proposition which

is absurd on its face.” *Id.* at 322.

It appears that the intention of the assignment of rents statute is to preserve the rents until the parties’ claims to the rents can be determined by the court. Therefore, upon the lender’s demand for the rents from the borrower, the court may require that the borrower deposit the rents into a designated account pending final adjudication of the action; alternatively, the court may permit the borrower to pay expenses associated with the property. *See, In re Venice-Oxford Assocs. Ltd. Partnership*, 236 B.R. 791, 799 (Bankr. M.D. Fla. 1998).

Therefore, whether you represent a borrower or a lender, keep in mind that even if the borrower executed an assignment of rents, upon the borrower’s default on the loan with the lender, the court will not necessarily require that all of the rents be turned over to the lender or placed into the court registry.

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## CLOUD COMPUTING

from page 1

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course, that server is located in a different physical location. In addition, such a system is designated a cloud because it consists of a lump of every customer’s information, whoever those customers may be. Yet, there are no technical barriers separating the information of the various customers.<sup>4</sup> Information can be placed on a particular cloud server from any computer with internet-access; the user does not need a computer equipped with a hard drive. Thus, when a lawyer wishes to access the information she previously stored via cloud computing, she merely goes to the website of the cloud service provider with the proper username and password.

Similarly, cloud computing allows

firms to equip their office computers with the bare minimum software because the server and database of the cloud service provider does the heavy lifting elsewhere. For example, Gmail, Google Docs, and Yahoo! Mail are some common examples of cloud computing. No hard drives are needed to access these applications.

The benefits of having another person bear the energy and space costs of digital storage are stupendous. Cloud technology allows many persons to work on the same document, saving their changes to a master copy which is stored via cloud computing. This avoids the hassle of multiple copies being exchanged during the revision stage.

What are the risks of cloud computing? Simply put, they stem from breaches in a client’s confidential information entrusted to the attorney. Of course, the purest risk is that an unknown party may gain access to

a lawyer’s digital information while that information is stored on a third party’s cloud servers, whoever or wherever that infiltrator may be. Such unauthorized access could be granted either by the negligent or intentional act of a cloud service provider’s employee. “Even if a user ... knows that data is stored in the cloud, it might not be clear exactly where the data is stored.”<sup>5</sup> This statement by Professor Felton of Princeton University expresses the first risk that a lawyer may face when using cloud computing; there is little traceability of the location at which one’s documents are stored. Specifically, cloud computing generates many backups of any document stored on the cloud system. This can be a blessing and a curse as we shall see. Therefore, one document might be stored in sixteen different locations, some of which may be politically unstable nations.<sup>6</sup>

continued...

## CLOUD COMPUTING

from page 13

The international nature of security breaches is indeed real. Even a U.S. Congressman recently noted that foreign governments, such as China, at times have breached the digital security of the House of Representatives.<sup>7</sup>

A further risk is that the license agreement may allow the cloud service provider to share a specific document with anyone who collaborated with your office to produce it.

In that case, why ever store information by cloud computing? Cost savings is the answer. The Federal Government projected that employing cloud computing could save 25-99% of its computing costs in 2010.<sup>8</sup> Likewise, David Barratt, a digital media graduate from University of Central Florida and also Head of the Web Development Team at Relevant Media Group in Orlando states, “cloud storage services are usually more reliable than ... a server in your office[.] ... Most offices do not keep off-site backups. This can lead to huge problems if an office hard drive fails .... Most cloud services keep offsite backups.”<sup>9</sup>

To attempt to answer our issue, the following ideas suggest technical and practical ways for a law office to reduce the chances that an intruder may access its confidential cloud data. Some of these suggestions are novel while some are merely extensions of current procedures.

First, firms should leverage market reputation. In other words, perform research on the various cloud computing service providers and choose the one with the best record of security. Cloud service providers are like law

firms; they need good reputations to stay in business. Since a cloud service provider likely does not owe many contractual duties to a customer, one way to make providers change their standards might be to purchase their competitor’s product. A more unified approach to this suggestion would be for the Florida Bar to provide a list of the most proven and secure cloud service providers as confirmed by the law firms who use them. Even Barratt agrees when he says “a secure cloud is possible if a company is willing to have the title of being the most secure. It is a free market economy that keeps our data private.”<sup>10</sup> On top of this, a ranking officer of Salesforce.com stated before the U.S. House that his organization hosts a website that daily expresses its cloud system’s performance along with the trust its users have grown to feel.<sup>11</sup> Any positive business characteristics like these shall likely motivate cloud service providers to create new security measures.

Yet, the market is never perfect. If an office learns its confidential data was breached, the firm should lock its computers so that they cannot be further used to store data on the cloud servers.<sup>12</sup> After confirming that security is regained, the firm can reauthorize its computers to store data in the cloud.<sup>13</sup> During this lockdown, office workers can use hard drives or flash drives for storage.<sup>14</sup> This suggestion is feasible because cloud service providers record the time at which a document is accessed from the cloud server. In parallel to the free market concept, cloud service providers are likely to tell the consumer when its document is infiltrated because keeping a watchful eye on a customer’s data is likely a coveted market characteristic. Incidentally, this lockdown procedure is

based on a template of the U.S. government’s system of digital security, which is known as the Federal Risk and Authorization Management Program (FedRAMP).<sup>15</sup>

Another such FedRAMP procedure consists of password protection.<sup>16</sup> FedRAMP recommends a specific document be password-protected and made known to only certain employees based on their positions within the office.<sup>17</sup> In our case this may include roles such as partner or primary case worker. In addition, all the data stored on the cloud should be encrypted as a security measure.<sup>18</sup> According to Barratt, even the connection between the firm’s computers and the cloud service should be encrypted; this should be done with a 128-bit Secure Socket Layer.<sup>19</sup>

An extended feature of password protection includes password difficulty. An employee who has access to cloud computing, like any other sensitive matter, should have a rock-solid password.<sup>20</sup> It is recommended that passwords include numbers, symbols, capital and lower case letters and that passwords be changed monthly.<sup>21</sup>

The more complexity the better the security. Recently, the U.S. Chief Information Officer suggested by its endorsement of FedRAMP that an employee be required to input specific characteristics of the machine which she uses in order to access a document.<sup>22</sup> For example, these input requirements could include the machine’s name, owner, serial number, manufacturer, geographic location, software license, network address, or model.<sup>23</sup>

Obviously, the more often cloud activities are monitored the more secure they are. Barratt made a suggestion based on the current practice of some banks, namely whenever a user from an outside location attempts to access the office’s cloud account, the owner of the account is sent a text message.<sup>24</sup> Then the owner must respond with a text message containing a code or password in order for the requesting user to even access the cloud account. In this way, a person in Venezuela cannot access confidential documents without confirmation from home base in Florida.<sup>25</sup>

On the bright side, redundancy may be a firm’s friend. Sometimes in an office, security clearances can overlap. For example, Department A creates a spreadsheet and imposes one form of general security in order to view the document while Department B of

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the same office later inserts a specific authorization requirement in order to view a certain cell of that document. Whereas usually the more security procedures an office employs, the less efficient it becomes, when authorization requests are compounded in the same document, cloud computing security can increase. For this reason, the U.S. Office of Citizen Services and Innovative Technology considers prior authorizations imposed into a document to be positive leverage for cloud security.<sup>26</sup> In this way, security can be increased when many departments contribute to the same document, each imposing its own form of authorization for the section that it contributed.

Beyond the technicalities, the practical suggestion is this: an office should train its staff to securely navigate within the cloud. Once an office has formed a cloud-savvy staff, regular audits are a wise way to ensure your office's internal compliance.<sup>27</sup> Likewise, office security would be more efficient if a Cloud Computing Specialist were appointed within the firm's department of office management, given that the office possesses this level of sophistication. For instance, a Cloud Computing Specialist could recognize the potential security issues posed by the habits of employees. A specialist on staff could also be the innovator on behalf of the office who saves the partners the time of having to read articles such as these.

On top of this, all members of an office must act in unison regarding the policy on cloud security. In assessing cloud computing risks, the U.S. General Services Administration stresses that an office should act as a unit when handling issues of cloud security.<sup>28</sup> Of course, teamwork itself is not novel. Yet, because an office is one body made of several parts, it is advisable to express to employees your expectation that they communicate together by encouraging each other to avoid the risks. The good news is that many new employees may also be young and technologically-astute and therefore already attentive to the risks of cloud computing. If so, the costs of implementing a policy through a specific Cloud Computing division will likely be absorbed more quickly.

The point of these practical suggestions—appointing a specialist, auditing, and actively encouraging teamwork—is

simply to say that the risks of cloud computing are best vaccinated when they are met deliberately. Consider it as valuable as the proper accounting of taxes, trust accounts, and other risk management in the practice of law.

In conclusion, your office may find that cloud computing presents benefits that are too large to forego simply because of the risks. Thus, the risks can and should be addressed by a law firm via an Information Technology expert. That person would do well to employ a progressive strategy that includes some of the suggestions mentioned here, both technical and practical. The progressive nature of technology, as well as the economic impulse of persons who would breach the security of cloud computing, compels a pro-active approach. Surely a sophisticated wrongdoer does not have his head in the clouds, and neither should a contemporary law office.

#### Endnotes:

<sup>1</sup> *Cloud Computing: Benefits and Risks of Moving Federal IT Into the Cloud: Hearing Before the Subcomm. on Government Management, Organization, and Procurement of the H. Comm. on Oversight and Government Reform*, 111th Congo 11 (2010) (statement of Vivek Kundra, Fed. Chief Information Officer for E-Government and Information Technology, Office of Management and Budget).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Telephone interview with David Barratt, Head of Web Development Team, Relevant Media Group (May 29, 2011).

<sup>5</sup> *ECPA Reform and the Revolution in Cloud Computing: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Congo 15 (2010) (statement of Edward W. Felten, Professor of Computer Science and Public Affairs, Princeton University).

<sup>6</sup> *How Cloud Computing Works*, Jonathan Strickland, <http://computer.howstuffworks.com/cloud-computing.htm> (play audio file “The Dark Side of Cloud Computing”) (last visited May 31, 2011).

<sup>7</sup> *Cloud Computing: Benefits and Risks of Moving Federal IT Into the Cloud: Hearing Before the Subcomm. on Government Management, Organization, and Procurement of the H. Comm. on Oversight and Government Reform*, 111th Congo 6 (2010) (statement of Rep. Darrell Issa, Member, H. Comm. on Oversight and Government Reform).

<sup>8</sup> *Cloud Computing: Benefits and Risks of Moving Federal IT Into the Cloud: Hearing Before the Subcomm. on Government Management, Organization, and Procurement of the H. Comm. on Oversight and Government Reform*, 111th Congo 5 (2010) (statement of Rep. Edolphus Towns, Chairman, H. Comm. on Oversight and Government Reform).

<sup>9</sup> E-Mail from David Barratt, Head of Web Development Team, Relevant Media Group to author (May 18, 2011, 00:03:00 EST) (on file

with author).

<sup>10</sup> *Id.*

<sup>11</sup> *ECPA Reform and the Revolution in Cloud Computing: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Congo 39 (statement of David Schellhase, Executive Vice President and General Counsel, Salesforce.com).

<sup>12</sup> Fed RAMP: Control Tailoring Workbook, 1-4 (Oct. 18, 2010) (FedRAMP\_Control\_Tailoring\_Workbook\_Template.pdf available within <https://info.apps.gov/sites/default/files/FedRAMP-Templates.zip>).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> CIO.GOV-Federal Risk and Authorization Management Program (FedRamp): Introduction, <http://www.cio.gov/pages-nonnews.cfm/page/Federal-Risk-and-Authorization-Management-Program-FedRAMP>.

<sup>16</sup> FedRAMP: Control Tailoring Workbook, 4 (Oct. 18, 2010) (FedRAMP\_Control\_Tailoring\_Workbook\_Template.pdf available within <https://info.apps.gov/sites/default/files/FedRAMP-Templates.zip>).

<sup>17</sup> *Id.*

<sup>18</sup> See E-Mail from David Barratt to author, supra note 9.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Fed RAMP: Control Tailoring Workbook, 10 (Oct. 18, 2010) (FedRAMP\_Control\_Tailoring\_Workbook\_Template.pdf available within <https://info.apps.gov/sites/default/files/FedRAMP-Templates.zip>).

<sup>23</sup> *Id.*

<sup>24</sup> See E-Mail from David Barratt to author, supra note 9.

<sup>25</sup> See Telephone interview with David Barratt, supra note 4.

<sup>26</sup> *Cloud Computing: Benefits and Risks of Moving Federal IT Into the Cloud: Hearing Before the Subcomm. on Government Management, Organization, and Procurement of the H. Comm. on Oversight and Government Reform*, 111th Congo 32 (2010) (statement of David McClure, Associate Administrator, Office of Citizen Services and Innovative Technologies, U.S. General Services Administration).

<sup>27</sup> Fed RAMP: Control Tailoring Workbook, 10 (Oct. 18, 2010) (FedRAMP\_Control\_Tailoring\_Workbook\_Template.pdf available within <https://info.apps.gov/sites/default/files/FedRAMP-Templates.zip>).

<sup>28</sup> *Cloud Computing: Benefits and Risks of Moving Federal IT Into the Cloud: Hearing Before the Subcomm. on Government Management, Organization, and Procurement of the H. Comm. on Oversight and Government Reform*, 111th Congo 24 (2010) (statement of David McClure, Associate Administrator, Office of Citizen Services and Innovative Technologies, U.S. General Services Administration).

*This essay was the 2011 winner of the contest co-sponsored by Florida Lawyers Mutual Insurance Company (FLMIC) and the Young Lawyers Division of The Florida Bar. This year's topic focused on risk management practices to avoid a legal malpractice claim due to the integration of cloud computing into a law practice.*