

# BYLAWS OF THE ELDER LAW SECTION

## ARTICLE I NAME AND MISSION

**Section 1. Name.** The name of this section of The Florida Bar is the "Elder Law Section" (the "section").

**Section 2. Mission.** The Elder Law Section exists to:

(a) cultivate and promote professionalism, expertise, and knowledge in the practice of law regarding issues affecting the elderly and persons with special needs;

(b) advocate on behalf of its members; and

(c) perform such other activities as may be necessary and appropriate to fulfill this mission statement.

## ARTICLE II MEMBERSHIP

**Section 1. Classification of Membership.** The membership of the section shall be active members, affiliate members, honorary members and at large members hereinafter described.

(a) *Active Members.* Any member of The Florida Bar in good standing may become an active member of the section by applying for such membership and paying the section's annual dues as hereinafter prescribed.

(b) *Affiliate Members.* The executive council of the section may, at its discretion, enroll as an affiliate member of the section, any person who has shown interest in any contribution to the section's activities, who is a Professional Guardian and who is a law student enrolled in a Florida law school.

Affiliate members shall pay the annual dues prescribed by the executive council of the section and shall have the conditions, responsibilities, and benefits of membership as established by the executive council, except that they may not hold office or vote. The number of the affiliate members shall be limited by the executive committee.

(c) *Honorary Members.* Any person whom the executive council shall find to have made outstanding contributions in the field of elder law or care to elder citizens may be made an honorary member of the section by the executive council. Such honorary members shall have no

vote at section meetings nor be entitled to hold office in the section nor be required to pay dues unless they become active or affiliate members of the section.

*(d) At Large Members.* The chair shall have the option, with the approval of the executive council, of appointing no more than 5 at large members. Such at large members may, but are not required to, be active members, affiliate members, or honorary members. Examples of possible at large members include, but are not limited to, liaisons to other Florida Bar sections, elder law entities, or organizations concerned with elder needs or the needs of persons with disabilities.

**Section 2. Membership Year.** The membership year of the section shall run concurrently with the membership year of The Florida Bar.

**Section 3. Dues.** The annual dues for members of the section shall be the amount fixed from time to time by the section and approved by the Board of Governors of The Florida Bar. There shall be no proration of annual dues. After becoming a member of the section, a member's dues shall be payable thereafter in advance of each membership year and shall be billed by The Florida Bar at the time that regular dues of The Florida Bar are billed. Any member whose dues are not paid by the date that Florida Bar dues become delinquent shall thereupon cease to be a member of the section.

**Section 4. Removal from Membership.** Any active member who ceases to be a member in good standing of The Florida Bar, automatically ceases to be a member of the section at the same time. All members shall be required to observe the standards of professionalism and ethical conduct expected of members of The Florida Bar. All members of the section shall also be required to adhere to the standards of professionalism and ethics as the executive council for the section may from time to time prescribe. Any member who fails to observe the standards of conduct established by these bylaws may be removed as a member of the section by vote of two-thirds of the members of the executive council.

### **ARTICLE III** **OFFICERS**

**Section 1. Officers.** The officers of the section shall be a chair, a chair-elect, vice chairs of the substantive law division and the administrative division, a secretary, a treasurer, and the immediate past chair of the section, all of whom shall constitute the executive committee. All officers must be active members of the section.

**Section 2. Election of Officers.** The chair-elect, vice chairs of the administrative and substantive law divisions, secretary, and treasurer shall be nominated by the nominating committee or by seconded nomination by active members at the executive council meeting of the section called to vote on that office and elected by the members of the section at the April executive council meeting.

**Section 3. Term of Office.** Each officer will hold office for a term beginning at the close of the annual meeting of the section and ending at the close of the immediately following annual meeting of the section or when each officer's successor has been elected and qualified.

**Section 4. Duties of Officers.** In addition to duties customarily performed by other officers of sections of The Florida Bar and to duties set forth in other articles of these bylaws, the officers of the section shall have the following duties:

(a) *Chair.* The chair shall preside at all meetings of (i) the section, (ii) the executive committee and (iii) the executive council. The chair shall appoint, upon the advice and consent of the executive council, and, unless otherwise specified in these bylaws, any committee chairs. The section chair shall prepare all reports to be submitted to The Florida Bar or to the Board of Governors of The Florida Bar and shall be the designated spokesperson. The chair shall be an ex-officio member of each committee of the section.

(b) *Chair-elect.* The chair-elect shall become chair in the event of the death, resignation, or inability of the chair to serve for whatever reason; provided, however, that in case of temporary disability or absence of the chair, the chair-elect shall serve as acting chair only for the duration of the chair's disability or absence. The chair-elect shall be responsible for such duties as the chair may designate. The chair-elect shall be an ex-officio member of each committee of the section. The chair-elect will, at the conclusion of duties as chair-elect become chair.

(c) *Secretary.* The secretary shall be responsible for all permanent files and records of the section, including the minutes of the meetings of the section, of the executive committee, of the executive council, and shall furnish copies of the minutes to the executive director of The Florida Bar.

(d) *Treasurer.* The treasurer is the chief financial officer of the section. The treasurer shall prepare financial reports for the chair and executive committee, assist the chair-elect in preparing the budget for the subsequent year, and confer with appropriate employees of The Florida Bar in the proper disbursement of section funds and the proper receipt and maintenance of accounting records of these funds.

(e) *Vice chair, administrative division.* The vice chair of the administrative division shall be responsible for the administrative activities of the section, including publications, CLE, public relations, budget, membership and coordination with other sections of the bar.

(f) *Vice chair, substantive division.* The vice chair of the substantive division shall be responsible for all substantive law issues of concern to the section, including the review of legislation, the proposal of legislation, the study of issues, the preparation of substantive writings, the creation of specific committees and the identification of issues the division identifies as a priority.

**Section 5. Vacancies.** The chair shall fill all vacancies except vacancies in the office of chair and chair-elect, which shall be filled as set forth hereafter. If the office of chair becomes vacant, the chair-elect shall immediately assume the office of chair and shall serve as such for the remainder of that year, as well as the year for which the chair-elect was originally elected to serve. If the offices of both chair and chair-elect become vacant, the vice chair, administrative division, shall fill the vacancy of chair, and the vice chair, substantive division, shall become the

chair-elect, and they both shall serve as such for the remainder of that year as well as the following year. In the event that the offices of both chair and chair-elect become vacant and cannot be filled as provided above, then the executive director of The Florida Bar shall call a meeting of the executive council, which will fill the vacancy of chair from among its members for the unexpired term. At the following April meeting of the executive council, a chair and chair-elect shall be elected and take office in the manner provided for in these bylaws.

#### **ARTICLE IV** **EXECUTIVE COUNCIL**

**Section 1. Governing Body.** There shall be an executive council which shall be the governing body of the section between the annual meetings of the section. The chair of the section shall be the chair of the executive council and the secretary of the section shall be the secretary of the executive council. The executive council shall have general supervision and control of the affairs of the section, subject to the provisions of the Rules Regulating The Florida Bar and the bylaws of this section. Pursuant to this right, the executive council shall authorize all commitments or contracts which shall entail the payment of money, and it shall authorize the expenditures of all section funds. It shall not, however, authorize commitments, contracts, or expenditures involving amounts of money in excess of the total amount which is anticipated as receipts from dues and revenues during the fiscal year plus the amount which has been previously collected from dues and revenues and which remains unexpended. As the governing body of the section, it shall be vested with the power and authority to formulate, fix, determine, and adopt matters of policy concerning the affairs and purposes of the section. The executive council shall conduct its business at regular and special meetings as provided for in these bylaws; provided, however, that the business of the executive council between regular meetings may be conducted by correspondence or telephone, computer, electronics, or other appropriate means selected by the executive committee, to the extent authorized by the chair. In the absence of action by the executive council at a regular or special meeting of the executive council, the executive committee shall be responsible for the daily operations of the section and all action taken by the executive committee pursuant to this right shall be subject to ratification by the executive council. All members of the executive council except at large members, if any, shall be active members of the section.

**Section 2. Recommendations of the Section.** All recommendations of the section to The Florida Bar, the Board of Governors of The Florida Bar, any branch of the judiciary, or to any other group or body to which recommendations by the section are authorized to be made must first be approved by the executive council except as provided in section 7.4 of these bylaws. Any recommendation made to other than the Board of Governors of The Florida Bar shall have the prior approval of that body.

**Section 3. Membership of the Executive Council.** The members of the executive council shall consist of the chair, chair-elect, past chairs for the 5 preceeding years, vice chairs, secretary, treasurer, and the chairs of all standing committees and special committees of the section and at large members, if any. For purposes of voting, a member of the executive council who serves in more than 1 capacity as provided hereunder shall have only 1 vote.

## **ARTICLE V** **COMMITTEES**

**Section 1. Standing Committees.** The following shall be permanent, standing committees within the section.

(a) *Executive Committee.* There shall be an executive committee, composed of the chair, chair-elect, vice chairs, secretary, treasurer, and immediate past chair of the section, which shall be responsible for the daily operations of the section between the regular or special meetings of the executive council and shall conduct its business from time to time by correspondence, meeting, telephone conference, computer, electronics, or other appropriate means selected by the committee, to the extent authorized by the chair of the section. All actions of the executive committee shall be subject to ratification by the executive council. The chair of the section shall be chair of the executive committee.

(b) *Nominating Committee.* The nominating committee shall be responsible for submitting nominations for officers on an annual basis. The nominating committee shall be composed of the immediate past chair, the chair, the chair elect, the vice chair of the administrative division, the vice chair of the substantive division and 2 members of the section appointed by the chair. If any of the above named members of the nominating committee (other than the 2 members of the section) are or become unable to so serve, such vacancy in the nominating committee shall remain unfilled. The immediate past chair shall serve as chair of the nominating committee, provided if the immediate past chair is or becomes unable to so serve, the members of the committee shall elect its chair. The composition of the nominating committee shall be announced in January. After the announcement of the nominating committee it shall meet and begin its work. It shall announce the slate of nominations to the members of the section by March 15th. Any nominating committee member being considered for nomination shall be excused from the nominating committee deliberations and votes.

**Section 2. Administrative Division.** The following committees shall be within the administrative division:

(a) *CLE Committee.* The CLE committee shall be responsible for arranging legal seminars and similar programs for the education of attorneys in the field of elder law.

(b) *Publications Committee.* The publications committee shall be responsible for furnishing articles for publication in Florida Bar publications; for publishing and distribution of a section newsletter; and for publishing and distribution of written materials to the public, including the section website.

(c) *Budget Committee.* The budget committee shall be composed of the treasurer, the chair, and the chair-elect. The committee shall prepare proposed budgets and any amendments for submission to vote of the executive council.

(d) *Membership Committee.* The membership committee shall be responsible for making recommendations to the executive council on affiliate membership; the membership directory; and any other functions assigned by the chair of the section.

**Section 3. Substantive Division.** The following committees shall be within the substantive division:

(a) *Exploitation and Abuse Committee.* The exploitation and abuse committee shall identify sources of crime and abuse against elder citizens, identify the appropriate respondent with respect to such sources and what the response should be, determine whether appropriate actions are being taken and assess what legislative, agency, or other means may be necessary to enhance the assistance available to elderly victims of crime and abuse. The committee shall also review, study, and recommend legislative, agency, and other action to address the legal issues relating to age discrimination.

(b) *Estate Planning and Advance Directives Committee.* The estate planning and advance directives committee shall review, evaluate, assist, and provide planning strategies to the elderly and practitioners regarding estate planning alternatives. In addition, the committee shall study and make proposals regarding health care advance directives.

(c) *Guardianship Committee.* The guardianship committee shall review, study, and recommend legislative, agency, and other action to address the problems arising under the Florida guardianship statute and how better to implement the Florida Legislature's goals as stated therein.

(d) *Medicaid and Government Benefits Committee.* The Medicaid and government benefits committee shall study and make proposals regarding the availability of and eligibility for Medicaid and other government benefits.

(e) *Death Care Committee.* The death care committee shall study and make proposals regarding the laws and regulations governing the death care industry and report on trends and other events relating to the death care industry.

(f) *Ethics Committee.* The ethics committee shall review, study, and recommend legislative, agency, and other action to address ethical issues that arise in the legal and other professions, including proposing codes of ethics in dealing with elderly persons for various professions.

(g) *Legislative Committee.* The legislative committee shall from time to time study and make recommendations to the executive council regarding requests for the section to adopt a legislative position, study and make recommendations to the executive council about legislative positions made by other sections, individuals or entities and to disseminate news and opinions of proposed or enacted legislation on elder law matters among the various committees of the section.

(h) *Special Needs Trust Committee.* The special needs trust committee shall study, review, evaluate, assist, and provide planning strategies for the use of special needs trusts to

assist the elderly and persons with disabilities. They shall also review, study and recommend legislative, agency, and other action to address issues that arise in the drafting and administration of special needs trusts.

(i) Veterans Benefits Committee. The Veterans benefits committee shall alert members to benefits available to Veterans, available care settings for Veterans and to provide educational programs for our members regarding various benefits and their respective eligibility rules.

**Section 4. Special Committees.** The chair of the section may appoint any special committee deemed necessary, with the concurrence of the executive committee. Chairs of such special committees shall also be members of the executive council. The special committee shall exist only for the term of the chair who appointed the special committee, however, the special committee may be reappointed during the following term or terms.

**Section 5. Committee Composition.** The chair of each standing and special committee shall be appointed by the chair of the section, upon concurrence of the executive council. All other members of the standing and special committees, except the nominating committee shall be appointed by the chair of that committee. The chair of the section may discharge any committee chair who fails to supervise and operate such committee or who fails to cause such committee to further the purposes of the section.

**Section 6. Committee Meeting.** The committee meeting shall be called, as necessary by the chair of the section or the committee chair. Committee meetings may be held in person, by telephone conference, computer, electronics, or other appropriate means selected by the executive committee, or by unanimous written waiver and consent of the committee membership.

**Section 7. Quorum.** A majority of the members of any committee shall constitute a quorum for the transaction of business; and the majority vote of those present shall be binding.

**Section 8. Subcommittees.** The chair of each committee may designate 1 or more subcommittees of that committee and designate chairs for such subcommittees.

**Section 9. Committee Reports.** The chair of each committee shall submit a written report of the committee's activities since the last meeting to the executive council at least 2 weeks prior to each regularly scheduled meeting of the section or executive council. The reports of any committees will be made part of the minutes of the meeting.

**Section 10. Additions to and Deletions of Standing Committees.** The chair of the section, subject to approval of the executive committee, may create additional standing committees, combine the activities of 2 or more standing committees, or create subcommittees of standing committees, but any of these actions shall be effective only during the chair's term of office.

## **ARTICLE VI** **MEETINGS**

**Section 1. Annual Meeting of the Section.** The chair shall designate the annual meetings of the section each year. The annual meeting may be held simultaneously with (i) the section's annual retreat, if any, or (ii) the annual meeting of The Florida Bar.

**Section 2. Executive Council Meetings.** There shall be no fewer than 3 regular meetings of the executive council each year. The executive council may act or transmit business herein authorized, without meeting, by written approval of the majority of the entire executive council, by correspondence, computer, telephone, or electronic means.

The chair of the section may call meetings of the executive council by giving no less than 30 days' advance written notice to the members of the executive council.

**Section 3. Executive Committee Meetings.** The executive committee shall hold an organizational meeting for each membership year at a date, place, and time selected by the chair of the section. The executive committee may hold such meetings thereafter as the chair of the section may determine. The chair of the section shall fix the date and location of each meeting and shall give written or oral notice of such date and location to each executive committee member at least 5 days prior to the date so selected but, also, at the election of the chair, meetings may be held by telephone, correspondence, computer, electronics, or other appropriate means selected by the executive committee.

**Section 4. Special Meetings.** The executive committee may call special meetings of the entire membership of the section provided 30 days' advance written notice thereof shall be given to each member of the section.

**Section 5. Notice of Meetings.** At least 15 days' notice of the time, date, and place of a meeting of the section or a meeting of the executive council shall be given by mail or by publication thereof in The Florida Bar Journal, in The Florida Bar News, in The Elder Law Advocate, or by way of the section's regular mode of electronic communication to members.

**Section 6. Quorum.** The active section members present at a meeting of the section, the executive council members present at a meeting of the executive council, and the executive committee members present at a meeting of the executive committee shall constitute a quorum; and a majority vote of those present at a meeting shall be binding.

## **ARTICLE VII** **SECTION LEGISLATIVE POLICIES**

**Section 1. General Purpose.** The section may be involved in legislative (or judicial or administrative) action that is significant to the judiciary, the administration of justice, the fundamental legal rights of the public, or the interests of the section or its programs or functions, so long as that involvement is consistent with the policies outlined under these bylaws and consistent with the policies promulgated by Board of Governors of The Florida Bar.



**Section 2. Legislative Positions.** Any legislative, judicial, or administrative position of the section ("legislative position") must be adopted in accordance with the provisions of this article. During the course of the section's activities, and as promptly as possible, the chair or the chair's designee, shall notify the executive director of The Florida Bar of any new or current section-approved legislative positions. In July of each year, prior to the next regularly scheduled meeting of the Board of Governors of The Florida Bar, the chair, or the chair's designee, shall notify the executive director of The Florida Bar of any new or current section-approved legislative positions then in effect. Such legislative positions will be clearly identified as legislative positions of the section only, at all appropriate times before legislative bodies or its members, unless otherwise authorized by the Board of Governors of The Florida Bar.

**Section 3. Procedures.**

*(a) Legislation Initiated by the Section.* Any proposed legislation and the recommendations of the initiating committee of the section will be made agenda items and copies will be affixed to the agenda for distribution to all executive council members at least 1 week prior to the executive council meeting. No proposed legislation will be considered at the executive council meeting unless the section legislative committee or the section chair requests waiver of the rule and such waiver is approved by a vote of two-thirds of the members of the executive council present and voting. Legislation initiated by a committee of the section will be considered in the same manner as any other matter for which a decision is requested of the executive council by a member of the council.

*(b) Other Legislation.* The section's position on legislation not initiated by a committee of the section will be considered under the following procedure:

(1) The executive committee will review all proposed legislation not initiated by a committee of the section, but the section chair has the discretion to remove any item of proposed legislation from consideration by the executive council if he or she shall find that such proposed legislation is not concerned with a matter within the discipline of the section.

(2) All proposed legislation which the executive committee decides should be considered by the council will be forwarded by the section's chair to the chair of a section committee, which, in the opinion of the chair, is most concerned with the subject matter of such proposed legislation. The chair of the section will request a written report from that committee, reporting the decision which the committee recommends to the executive council, and designating a contact person to confer with the section lobbyist and the executive council.

**Section 4. Adoption of Legislative Position.** The executive council of the section, by a two-thirds vote of the members present, must find that any proposed legislative position is within the scope of this policy or as may be otherwise adopted by the Board of Governors of The Florida Bar. The executive council by a two-thirds vote of the members present must also approve the substance of the legislative position presented to the executive council. No legislative position may be taken which is contrary to the legislative position of The Florida Bar. Once adopted, the chair or the chair's designee shall immediately notify the executive director of The Florida Bar, in writing, of the section's adoption of the legislative position. The legislative position of the section may not be advanced or supported before any public body until the

legislative position has been reviewed by the Board of Governors of The Florida Bar and the board has not disapproved the same or, as otherwise may be consistent with the legislative policy of the board of governors. Notwithstanding any provision of this article 7 to the contrary, when time constraints with respect to legislative positions of the section require prompt action, the executive committee of the section may act in lieu of a vote of the members of the executive council. Once approved by the board of governors, a legislative position of the section shall remain for the full biennial session during which the board of governors approved the position, unless otherwise reversed or rescinded by the board, or by a two-thirds vote of the executive council of the section.

In lieu of, or in addition to, giving approval to support or oppose a particular legislative proposal, the executive council may, after debate and consideration of the legislative proposal, adopt a concept the section favors, and report this concept to the section lobbyist for distribution to the members of the Florida Legislature.

**Section 5. Expenses Incurred in Legislative Matters.** The expenses incurred by members of the section in connection with legislative positions of the section shall generally be borne by the individual members, provided, however, the section's lobbyist may request the appearance of section members to attend legislative functions or to appear before various committees of the Florida Legislature to testify concerning proposed legislation, with the members' expenses to be paid by the section in accordance with its budgetary policies. The expenses of such members' appearance shall be approved in advance by either the section chair, the chair of the legislative committee, or the treasurer of the section. Such expenditures shall be consistent with other section policies, and the treasurer shall be promptly notified of the amount of such expenditure.

**Section 6. Section Lobbyist.** Pursuant to the requirements of and the approval of the board of governors, the section may retain a lobbyist to assist the section in its legislative positions or matters. The section shall submit to the board of governors such information as it may require, from time to time, relating to the retention of such lobbyist. No amount shall be budgeted or spent for legislative activities other than the amount budgeted or received as voluntary dues from members of the section.

## **ARTICLE VIII** **MISCELLANEOUS**

**Section 1. Action of The Florida Bar.** No action of the section shall be represented or construed as the action of The Florida Bar until it has been approved by the Board of Governors of The Florida Bar.

**Section 2. Financial Obligations.** Any and all financial obligations must be first approved in the manner to be specified by the executive council before same has been approved by The Florida Bar.

**Section 3. Compensation and Expenses.** No salary or other compensation may be paid to any member of the section for performance of contractual services to the section without the approval of the executive committee, but members of the executive council may be reimbursed

for such reasonable and necessary telephone expenses, reproduction expenses and other similar out-of-pocket expenses that such member incurs in the performance of services for the section and that are specifically authorized by the chair, the treasurer, or by the executive committee.

**Section 4. Policies of the Section.** Policies adopted by the officers or the executive council following the effective date of these bylaws shall be maintained in a separate journal at The Florida Bar headquarters in Tallahassee, Florida together with the other official records of the section.

**Section 5. Amendments.** These bylaws may be amended at a meeting of the executive council. Notice of a proposed amendment to the bylaws, including any proposed amendments, shall be provided to executive council members at least 30 days prior to any such meeting; however, any amendment adopted by the executive council need not be identical to the proposed amendment. These bylaws may be amended only with the consent of the Board of Governors of The Florida Bar upon recommendation made by the executive council of the section.

**Section 6. Conduct of Meetings.** The current edition of Robert's Rules of Order shall govern the conduct of all meetings of the section and its subdivisions.

**Section 7. Effective Date.** The bylaws shall be effective as of January 1, 1991, or upon ratification by the Board of Governors of The Florida Bar, whichever occurs later.