



ILLINOIS STATE BAR ASSOCIATION

# REAL PROPERTY

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

## The Civil Union Act and the execution and preparation of real estate documents

By Richard F. Bales, Chicago Title Insurance Company, Wheaton, Illinois

### Introduction

Public Act 96-1513 (S.B. 1716), effective June 1, 2011, creates the Illinois Religious Freedom Protection and Civil Union Act (hereafter Civil Union Act). The Act is codified at 750 ILCS 75/1 *et seq.* The Civil Union Act establishes procedures for the creation and dissolution of civil unions and is intended to provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law to spouses. See 750 ILCS 75/5.

The passage of the Civil Union Act brings many new challenges to real estate practitioners. For example: How should parties to a civil union be described in deeds and other documents? How should the issue of homestead be addressed in these documents? Can parties to a civil union own their home as tenants by the entirety, and if so, how should they be described in the deed?

### Identifying parties on deeds, mortgages, and other recorded documents

**Example:** Ann Anderson and Betty Barnes are partners in a civil union. They want to buy a home and take title as partners in a civil union. How should they be described in the deed?

*Ann Anderson and Betty Barnes, partners in a civil union, grantees. . . .*

Note: The grantees' tenancy in this deed must still be considered and addressed. That is, the Civil Union Act does not confer any automatic tenancy to grantees who take title as partners in a civil union.

**Example:** Fred Smith and Jack Jones are parties to a civil union who own their own home and want to convey it. How should they execute the

deed?

A "party to a civil union" is a defined term in the statute (750 ILCS 75/10). Therefore, the following is certainly appropriate:

*Fred Smith and Jack Jones, parties to a civil union, convey and warrant to. . . .*

But on the other hand, one might argue that Fred and Jack might be parties to a civil union, but not with each other. For this reason, the more specific term, "partners in a civil union," might be preferable:

*Fred Smith and Jack Jones, partners in a civil union, convey and warrant to. . . .*

**Example:** Joe Doe is not married and he is not a party to a civil union. He owns his home by himself and wishes to execute a deed. Remember that a civil union is not the same as a marriage. Thus, a grantor might be unmarried but still be a party to a civil union. Therefore, a deed wherein the grantor is described only as "an unmarried person" might be construed as being vague. That is, the grantor might be unmarried, but he or she might be a party to a civil union, and thus, the waiving of homestead might be an unresolved title issue.

For this reason, the following language is not appropriate:

*Joe Doe, an unmarried person, conveys and warrants to. . . .*

On the other hand, any of the following are appropriate, with the last one being the simplest and therefore probably preferable:

*Joe Doe, an unmarried person and not subject to a civil union, conveys and warrants to. . . .*

*Joe Doe, an unmarried person and not a party to a civil union, conveys and warrants*

## INSIDE

The Civil Union Act and the execution and preparation of real estate documents . . . 1

Save the Date! . . . . . 5

Upcoming CLE programs . . . . . 6



IF YOU'RE GETTING THIS NEWSLETTER BY POSTAL MAIL AND WOULD PREFER ELECTRONIC DELIVERY, JUST SEND AN E-MAIL TO ANN BOUCHER AT ABOUCHER@ISBA.ORG

to...

*Joe Doe, a single person, conveys and warrants to...*

**Example:** John Jones and Paul Smith are partners in a civil union. Only John owns the home in which they live. The house is going to be sold. Realistically, for purposes of waiving homestead, how should the deed be prepared? That is, how should John be described in the deed in order to convey the property? How should Paul sign the deed in order to waive homestead?

*John Jones, a party to a civil union with Paul Smith, conveys and warrants to...*

*Paul Smith, a party to a civil union with John Jones, signs this deed solely for the purpose of waiving any applicable homestead interest.*

The following is also appropriate:

*John Jones, a partner in a civil union with Paul Smith, conveys and warrants to...*

*Paul Smith, a partner in a civil union*

*with John Jones, signs this deed solely for the purpose of waiving any applicable homestead interest.*

**Example:** Sandra Smith and Isabel Douglas are partners in a civil union. Sandra owns the home in which the two of them live. Sandra now wishes to refinance her original purchase money mortgage. Sandra will execute the new mortgage. The lender is requiring that Isabel waive homestead in this mortgage. How should Sandra be described in the mortgage? How should Isabel sign the mortgage in order to waive homestead?

*Sandra Smith, a partner in a civil union with Isabel Douglas, (hereafter "Mortgagor"), does hereby...*

*Isabel Douglas, a party to a civil union with Sandra Smith, signs this mortgage solely for the purpose of waiving any applicable homestead interest.*

**Example:** Carl Cooper owns a rental property, which he is selling to Greg and Pamela Jones. Carl has entered into a civil union with David Dawson. Neither Carl nor David live in this property.

How should Carl be described in the granting clause of the deed?

*Carl Cooper, a partner in a civil union with David Dawson, conveys and quit claims to Greg Jones and Pamela Jones, husband and wife...*

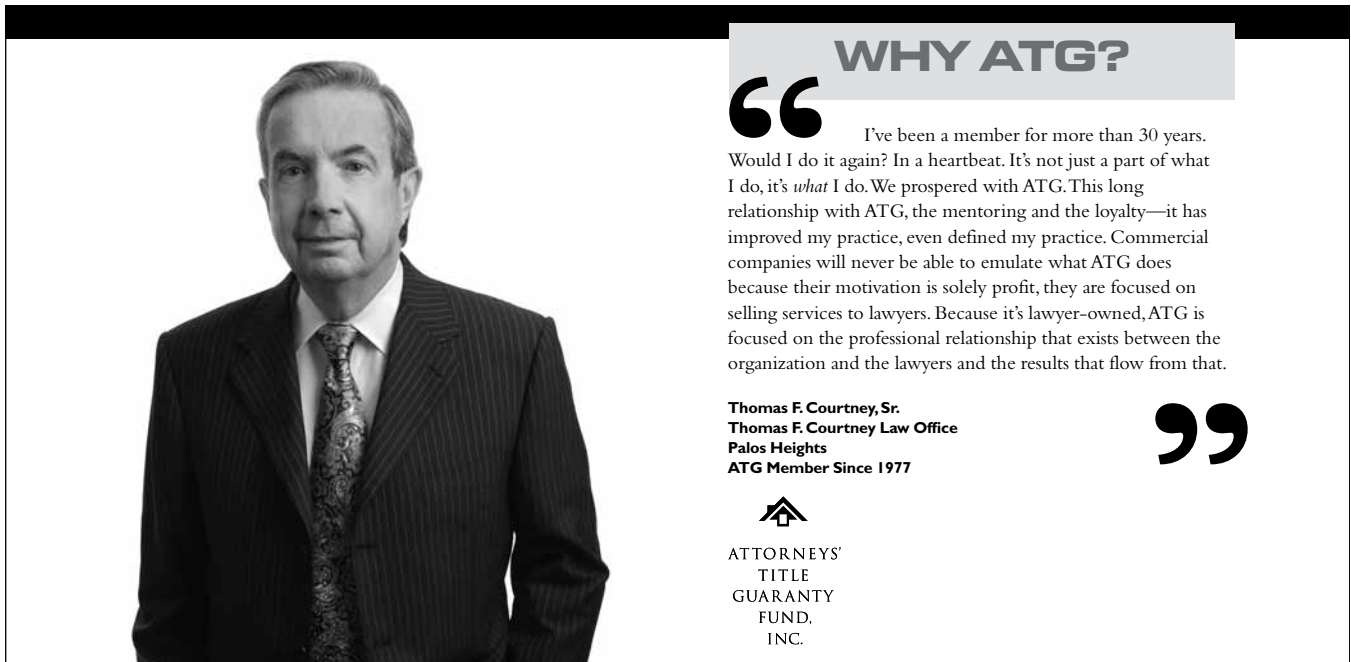
How should the issue of homestead be addressed in Carl's deed? Consider simply adding a statement to the face of the deed:

Appropriate but unnecessarily broad: *This land is not the homestead of grantor, grantor's spouse, or grantor's partner in a civil union.*

Preferable: *This is not homestead property.*

**Example:** Phillip Edwards and Jane Jacobs are two single people who own their own home and want to convey it. How should they execute the deed? As noted above, a description of either party as "unmarried" does not address the issue as to whether or not they are parties to a civil union.

With that thought in mind, any of the following is appropriate:



**WHY ATG?**

“ I’ve been a member for more than 30 years. Would I do it again? In a heartbeat. It’s not just a part of what I do, it’s *what* I do. We prospered with ATG. This long relationship with ATG, the mentoring and the loyalty—it has improved my practice, even defined my practice. Commercial companies will never be able to emulate what ATG does because their motivation is solely profit, they are focused on selling services to lawyers. Because it’s lawyer-owned, ATG is focused on the professional relationship that exists between the organization and the lawyers and the results that flow from that.

**Thomas F. Courtney, Sr.**  
**Thomas F. Courtney Law Office**  
 Palos Heights  
 ATG Member Since 1977

”

ATTORNEYS’  
 TITLE  
 GUARANTY  
 FUND,  
 INC.

**ATG: Making good lawyers better.**

800.252.0402  
WWW.ATGF.COM

Contact us for more information:  
Phil Krawiec  
Business Development Representative  
Direct Phone: 312.752.1219  
E-mail: pkrawiec@atgf.com

ATG is an Illinois Accredited  
Continuing Legal Education Provider.  
Offices in: Champaign | Chicago, | Frankfort  
Libertyville | Lombard | Mt. Prospect | Oak Lawn  
Skokie | Wheaton | Belleville | Madison, Wis.

NLT | Belvidere | Crystal Lake | Rockford

*Phillip Edwards, a single person, and Jane Jacobs, a single person, convey and warrant to. . .*

*Phillip Edwards and Jane Jacobs, unmarried people and not parties to a civil union, convey and warrant to. . .*

*Phillip Edwards and Jane Jacobs, unmarried people and not partners in a civil union, convey and warrant to. . .*

The Civil Union Act is not reserved solely for same sex relationships. A man and woman can enter into a civil union.

With this in mind, consider the following:

**Example:** Frank Adams and Janet Baker own their home in joint tenancy. They have lived together for many years. Neither one has any intention of getting married.

After becoming partners in a civil union ceremony, they decide to deed their home to themselves. How should they describe themselves in the deed?

*Frank Adams and Janet Baker, partners in a civil union, grantors, convey and quit claim to Frank Adams and Janet Baker, partners in a civil union, grantees, in joint tenancy. . .*

**Tenancy by the Entirety**

Section 20 of the Civil Union Act provides that “a party to a civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses.

...” Because of the broad application of this legislation, parties to a civil union should be able to own their homestead as tenants by the entirety.

But remember that Public Act 92-136, a 2002 amendment to 765 ILCS 1005/1c, deleted the statutory requirement that a married couple must be expressly identified as “husband and wife” on deeds creating a tenancy by the entirety. This means that “John Carlson and James Davis, partners in a civil union,” can take title to their homestead merely as tenants by the entirety (i.e., with no indicia of civil union status) and the tenancy should be valid. In addition, this amendment made it clear that the formal language “not as tenants in common, not as joint tenants, but as tenants by the entirety” was not needed in order to create a valid tenancy by the entirety.

That being the case, either one of these grantees is valid:

*John Carlson and James Davis, partners in a civil union, not as tenants in common, not as joint tenants, but as tenants by the entirety*

*John Carlson and James Davis, as tenants by the entirety*

**Conclusion**

Public Act 96-1513 is only a few pages long. Nonetheless, it seems clear that the changes created by this legislation will have a tremendous effect on not only the general public but on real estate attorneys as well. ■

**REAL PROPERTY**

*Published at least four times per year.*

*Annual subscription rate for ISBA members: \$20.*

*To subscribe, visit [www.isba.org](http://www.isba.org) or call 217-525-1760*

**OFFICE**

Illinois Bar Center  
424 S. Second Street  
Springfield, IL 62701  
Phones: 217-525-1760 OR 800-252-8908  
[www.isba.org](http://www.isba.org)

**EDITOR**

Adam B. Whiteman  
118 N. Clinton St.,  
Ste. 17  
Chicago, IL 60661

**ASSOCIATE EDITOR**

Michael J. Rooney  
1419 Majestic Hills Blvd.  
Spicewood, TX 78669

**MANAGING EDITOR/PRODUCTION**

Katie Underwood  
[kunderwood@isba.org](mailto:kunderwood@isba.org)

**REAL ESTATE LAW SECTION COUNCIL**

Michael L. English, Chair  
Ralph J. Schumann, Vice Chair  
Joel L. Chupack, Secretary  
Margery Newman, Ex-Officio

- |                    |                           |
|--------------------|---------------------------|
| Greg C. Anderson   | Erica C. Minchella        |
| William W. Austin  | Ted M. Niemann            |
| Steven B. Bashaw   | John G. O'Brien           |
| Roberta C. Conwell | Tracie R. Porter          |
| Kenneth E. Davies  | Terry S. Prillaman, Jr.   |
| Robert J. Duffin   | Robert F. Russell         |
| Richard M. Guerard | George L. Schoenbeck, III |
| Leslie A. Hairston | Donald P. Shriver         |
| Elmer C. Hawkins   | Bruno W. Tabis            |
| Nancy Hyzer        | Jack H. Tibbetts          |
| Myles L. Jacobs    | Christopher M. Tietz      |
| Samuel H. Levine   | Peter Tsantilis           |
| Jeffrey G. Liss    | Phillip R. Van Ness       |
| Bryan P. Lynch     | Emily R. Vivian           |
| Junko Minami       | Adam B. Whiteman          |

Mary M. Grant, Staff Liaison

Disclaimer: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

**BACK TO SCHOOL SAVINGS!**

**ISBA's Unlimited Law Ed Passport**

Sign up for the *Unlimited Law Ed Passport Live* or the *Unlimited Law Ed Passport Online* and earn unlimited MCLE credit through June 30, 2012!

**To enroll and for more information, please visit [WWW.ISBA.ORG/CLE/PASSPORT](http://WWW.ISBA.ORG/CLE/PASSPORT)**



# It's Time To Analyze Your Professional Liability Insurance...



## Don't assume a simple renewal of your Liability Insurance is the correct course of action.

There is more to providing professional liability insurance to Illinois Lawyers than collecting premiums and paying claims. ISBA Mutual Insurance goes beyond the typical client-insurer relationship. We are actively involved with our members to reduce risk and prevent loss. Our premiums include providing resources, training and advice that is specific to the unique needs of Illinois Lawyers.

These efforts have literally paid dividends for our membership and have afforded them over **\$9,700,000 in premium dividends** since fiscal year 2000. In addition to these hard dollar savings, we believe our investment in our members have saved them countless hours of soft dollar savings providing them more time to focus on their clients.

## ISBA Mutual Insurance has been exclusively serving Illinois lawyers and law firms since 1988.

ISBA Mutual was formed twenty-three years ago through the efforts of Illinois lawyers banding together to help one another by establishing our own insurance company. Our company has grown to be one of the most significant providers of malpractice insurance for lawyers in Illinois.

We specialize in professional liability insurance written specifically and exclusively for the needs of Illinois attorneys. *It's our only business.*



**Strength | Commitment | Dedication**

Professional Liability Insurance

Newly Licensed Attorney Program

Risk Management

Surety Bonds

Rated "A" Excellent by A.M. Best

Endorsed by Illinois State Bar Association

Over \$9.7 Million in Policyholder Dividends Since 2000



ISBA Mutual Insurance Company  
223 West Ohio Street  
Chicago, IL 60654  
(800) 473-4722  
[www.isbamutual.com](http://www.isbamutual.com)

## SAVE THE DATE!



**ILLINOIS STATE  
BAR ASSOCIATION**

## **Real Estate Law Update—2011**

*Presented by the Real Estate Law Section*

*6.25 MCLE hours, including 1.00 Professional Responsibility MCLE credit hours  
(PMCLE credit subject to approval)*

**October 21, 2011  
9:00 a.m. - 4:45 p.m.**

**NORMAL**  
Marriot Bloomington-Normal  
Hotel and Conference Center  
201 Broadway Street

**November 3, 2011  
9:00 a.m. - 4:45 p.m.**

**LOMBARD**  
Lindner Conference Center  
(Located on the Northern  
Seminary Campus)  
610 E. Butterfield Road

It is imperative that real estate practitioners stay up-to-date on the issues, changes and concerns of the real estate arena during these volatile economic times. This full-day seminar discusses recent court decisions and newly-enacted legislation, arming you with the information you need to successfully advise your clients. Topics include: drafting commercial and agricultural leases; the Civil Union Act and its affect on real estate; revisions to the Illinois Statutory Property and Healthcare Powers of Attorney Acts; the new Transfer on Death Instrument; challenging real estate tax assessments; and elder law issues that affect real estate. The ethical issues and concerns that real estate practitioners need to consider are also discussed. Real estate practitioners with all levels of practice experience will benefit from the information presented throughout this program.

**WWW.ISBA.ORG/CLE**





## Upcoming CLE programs

To register, go to [www.isba.org/cle](http://www.isba.org/cle) or call the ISBA registrar at 800-252-8908 or 217-525-1760.

### October

**Tuesday, 10/4/11- Teleseminar**—Fixing Broken Trusts. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 10/5/11- Webinar**—Conducting Legal Research on FastCase. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 10/6/11- Teleseminar**—Environmental Liability in Real Estate Transactions. Presented by the Illinois State Bar Association. 12-1.

**Monday, 10/10/11- Chicago, UBS Towers**—Advanced Workers' Compensation- Fall 2011. Presented by the ISBA Workers' Compensation Law Section. 9-5.

**Monday, 10/10/11- Fairview Heights, Four Points Sheraton**—Advanced Workers' Compensation- Fall 2011. Presented by the ISBA Workers' Compensation Law Section. 9-5.

**Tuesday, 10/11/11- Teleseminar**—Drafting LLC Operating Agreements, Part 1. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 10/12/11- Teleseminar**—Drafting LLC Operating Agreements, Part 2. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 10/13/11- Chicago, USB Towers**—Collaborative Law: The Nuts and Bolts. Presented by the ISBA General Practice, Solo and Small Firm Section; co-sponsored by the ISBA Alternative Dispute Resolution and the ISBA Young Lawyers Division. 8-12.

**Friday, 10/14/11- Springfield, INB Conference Center**—Divorce Basics for Pro Bono Attorneys- 2011. Presented by the ISBA Delivery of Legal Services Council. 1:00-4:45.

**Monday, 10/17/11- Chicago, ISBA Chicago Regional Office**—Hot Topics in Consumer Collection. Presented by the ISBA Commercial Banking, Collections and Bankruptcy Section; co-sponsored by the ISBA Young Lawyers Division. 8:45-4:30.

**Tuesday, 10/18/11- Teleseminar**—2011 Americans With Disabilities Act Update. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 10/18/11- Chicago, ISBA Chicago Regional Office**—What You Need to Know About LLCs. Presented by the ISBA Corporation Securities and Business Law Section. 12:30-4:45.

**Wednesday, 10/19/11- Webinar**—Advanced Legal Research on FastCase. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 10/20/11- Chicago, ISBA Chicago Regional Office**—The IMDMA and the Welfare of Pets. Presented by the ISBA Animal Law Section; co-sponsored by the ISBA Family Law Section and the ISBA Human Rights Section. 1:00-4:30pm.

**Thursday, 10/20/11- LiveWebcast**—The IMDMA and the Welfare of Pets. Presented by the ISBA Animal Law Section; co-sponsored by the ISBA Family Law Section and the ISBA Human Rights Section. 1:00-4:30pm.

**Friday, 10/21/11- Chicago, ISBA Chicago Regional Office**—Preparing Your Case: Pre-Trial Considerations. Presented by the ISBA Tort Law Section. 8:30 – 4:00.

**Friday, 10/21/11- Bloomington-Normal, Marriott**—Real Estate Law Update- 2011. Presented by the ISBA Real Estate Section. 9-4:45.

**Friday, 10/21/11- Galesburg, Soange-taha Country Club**—General Practice Update- 2011 Video Replay. Presented by the ISBA Bench and Bar Section; co-sponsored by the Knox County Bar Association. 8:30-5.

**Friday, 10/21/11- Chicago, John Marshall Law School**—Impact and Opportunities of the Affordable Care Act. Presented by the ISBA Health Care Section. 1-2:15.

**Monday, 10/24/11-Friday, 10/28/11- Chicago, ISBA Chicago Regional Office**—40 Hour Mediation/Arbitration Training. Presented by the Illinois State Bar Association. 8-5 daily.

**Tuesday, 10/25/11- Teleseminar**—Corporate Governance for Nonprofit Organization. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 10/27- Saturday, 10/29/11- Springfield, Hilton Hotel**—7th Annual Solo & Small Firm Conference. Presented by the Illinois State Bar Association. TBD.

**Monday, 10/31/11- Chicago, ISBA Chicago Regional Office**—Environmental Law for Non-Environmental Lawyers—Session 1: Permitting and Due Diligence Issues (STUDIO TAPING- DNP). Presented by the ISBA Environmental Law Section. 9:30-11:30.

### November

**Tuesday, 11/1/11- Teleseminar**—Middle Market M&A, Part 1. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 11/2/11- Teleseminar**—Middle Market M&A, Part 2. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 11/3/11- Lombard, Lindner Learning Center**—Real Estate Law Update- 2011. Presented by the ISBA Real Estate Section. 9-4:45.

**Friday, 11/4/11- Chicago, ISBA Chicago Regional Office**—2011 Federal Tax Conference. Presented by the ISBA Federal Taxation Section. 8:30-4:30.

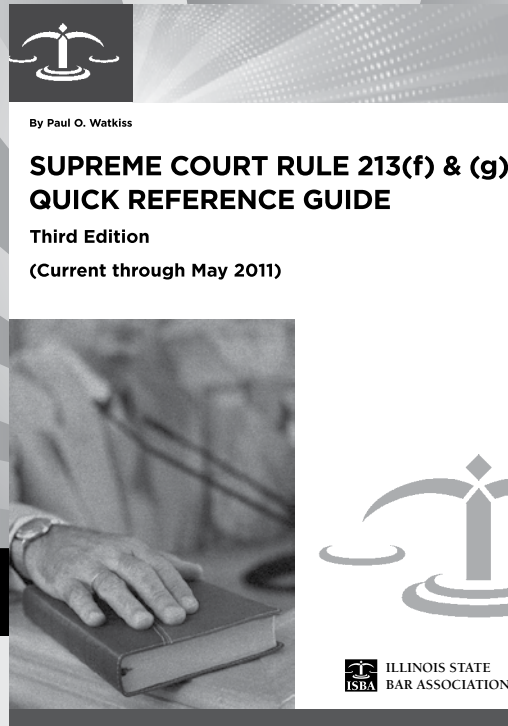
**Tuesday, 11/8/11- Teleseminar**—Title Insurance in Real Estate. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 11/10/11- Teleseminar**—Ethics of Working with Witnesses. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 11/10/11- Chicago, ISBA Chicago Regional Office**—Family Law Nuts and Bolts Chicago 2011. Presented by the ISBA Family Law Section. 8-5.

**Tuesday, 11/15/11- Webcast**—Environmental Law for Non-Environmental Lawyers—Session 1: Permitting and Due Diligence Issues. Presented by the ISBA Environmental Law Section. 10-12. ■

*Don't miss this easy-to-use reference guide to Supreme Court Rule 213(f) & (g)*



## SUPREME COURT RULE 213(f) & (g) QUICK REFERENCE GUIDE (Current through May 2011)

**From Dog Bite to Divorce!** Illinois Supreme Court Rule 213(f) & (g) applies to all civil litigation in Illinois. It governs the procedure for identifying trial witnesses and disclosing their proposed testimony. ISBA is excited to offer this update of our popular *Supreme Court Rule 213(f) & (g) - Quick Reference Guide*, last published in 2002.

The *Guide* is a useful tool for quickly learning the law under Rule 213(f) & (g). It reviews all of the Illinois Appellate and Supreme Court decisions to date concerning Supreme Court Rule 213(f) & (g). In addition to a summary, the *Guide* organizes the propositions for which the cases stand by topics that can be quickly referenced during argument on a motion in limine or motion to bar opinion witnesses.

As every litigator knows, the heart and soul of every case is presented through the witnesses who testify. Accordingly, being able to raise and respond to Rule 213(f) & (g) objections is an essential trial skill. The *Guide* is designed to help the litigator do just that! Written by Paul O. Watkiss, the *Guide* is published in a uniquely useful format and makes clear the pitfalls of ignoring its nuances.

Order the new guide at [www.isba.org/store/books/supremecourtrule213](http://www.isba.org/store/books/supremecourtrule213)  
or by calling Janice at 800-252-8908  
or by emailing Janice at [jishmael@isba.org](mailto:jishmael@isba.org)

### SUPREME COURT RULE 213(f) & (g) QUICK REFERENCE GUIDE

\$35 Member/\$50 Non-Member (includes tax and shipping)  
FastBook price \$32.50 Member/\$47.50 Non-Member



Illinois has a history of  
some pretty good lawyers.  
We're out to keep it that way.



# Illinois Real Estate Lawyers Association

*THE ONLY BAR ASSOCIATION  
REPRESENTING THE INTERESTS  
SOLELY OF REAL ESTATE  
ATTORNEYS IN ILLINOIS*

**Illinois Real Estate  
Lawyers Association**  
2340 S. Arlington Heights Road  
Suite 400  
Arlington Heights, Illinois 60005  
(847) 593-5750 · Fax (847) 593-5171  
[www.irela.org](http://www.irela.org)



Non-Profit Org.  
U.S. POSTAGE  
PAID  
Springfield, Ill.  
Permit No. 820

**REAL PROPERTY**  
ILLINOIS BAR CENTER  
SPRINGFIELD, ILLINOIS 62701-1779  
**SEPTEMBER 2011**  
VOL. 57 NO. 3