



# **Don't Fear the Requirements**

**Basics of Probate Requirements**

Presented by  
LEGAL EDUCATION DEPARTMENT  
of  
Attorneys' Title Fund Services, LLC

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These materials are for educational use in Fund seminars. They should not be relied on without first considering the law and facts of a matter. Legal documents for others can only be prepared by an attorney after consultation with the client.

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# Don't Fear the Requirements

Basics of Probate Requirements



**Linda Neale Monaco, B.C.S.**  
Senior Legal Education Attorney

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## Overview

- Deceased owner (title holder)
- Who owns the real property now?
  - Who can sell the property?
  - Who signs the deed?
- How do you know?
- Encumbrances?
- Commitment requirements



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# Probate Requirements

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## Probate Requirements

- Title examiner can only review what is in official records
  - Official records may not contain enough information therefore
    - Commitment may have included
      - Unnecessary or
      - Insufficient requirements



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## Probate Requirements

- Certified copies or original documents for recording may be provided by others
  - Attorney for seller or
  - Probate attorney or
  - Personal Representative (hereinafter PR) or
  - Attorney for the PR or
  - Seller
- Settlement agent to review & record items to meet requirements or remove exceptions



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## Required to Record Many Documents

- Title commitment may require items found in decedent's probate court file to be recorded in official records
  - Certified copies or
  - Originals
- Probate records are often destroyed after 10 years
  - Fla. R. Jud. Admin. 2.430 (c)(1)(D)
  - Check – old records may have been saved on microfiche
  - Official records are never intentionally destroyed



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## Official Records

- Sec. 28.223, F.S. “The clerk shall record ...”
  - Wills & codicils admitted to probate
  - Order revoking probate of any wills & codicils
  - Letters of administration
  - Orders affecting or describing real property
  - Final orders
  - Orders of final discharge
- Any such items recorded should appear in a title search
- If already recorded in **official records**, no need to re-record



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# Moment of Death

All Property Owned by a Decedent

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## Moment of Death

- Real property **ownership transfers**
  1. Provisions within deed, or
  2. Homestead (court determination) or
  3. Probate administration
    - Will, or
      - Sec. 732.51, F.S.
    - Intestate
      - Sec. 732.101, F.S.



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## Moment of Death

- **Estate taxes** attach to all property
  - All real estate, including homestead, personal property, life insurance, etc.
  - Florida estate tax
  - Federal estate tax



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## From Moment of Death



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## Proof of Death

*Record satisfactory proof of the death of \_\_\_\_\_, deceased*

- Certificate of death is official declaration that decedent is dead
- EST06

This is a scanned image of a Florida Certificate of Death form. The header includes "STATE OF FLORIDA" and "OFFICE of VITAL STATISTICS". The form is titled "CERTIFICATE OF DEATH" and "FLORIDA". It contains the following information:

- STATE BOARD OF HEALTH BUREAU OF VITAL STATISTICS**
- STATE FILE NO. '60-023882**
- REGISTERED NO. 0000000000**
- 1. PLACE OF DEATH**: Duval
- 2. RESIDENCE**: Florida
- 3. CITY, TOWN, OR LOCATION**: Jacksonville
- 4. NAME OF HOSPITAL OR INSTITUTION**: Mercy Hospital
- 5. DATE OF DEATH**: June 3, 1960
- 6. NAME OF DECEASED**: John Smith
- 7. SEX**: Male
- 8. COLOR OR RACE**: White
- 9. AGE (In years)**: 49 yrs.
- 10. STREET ADDRESS**: 1438 Harrison St.

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## Proof of Death

- Short form certificate of death
  - Cause of death not listed
  - Certified copy from Office of Vital Statistics
    - Seller can provide
      - Funeral home
    - Any person 18 years or older may be issued a certified copy short form certificate of death
      - Apply online
        - Floridahealth.gov
- Out of state death certificate may contain cause of death
  - If clerk will not record
    - Use examiner affidavit – review death certificate etc.



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## Proof of Death

*Record satisfactory proof of the death of \_\_\_\_\_, deceased*

### 1. Obtain

- Certified copy of short form certificate of death from Office of Vital Statistics

### 2. Record

- In official records

### 3. Review

- Last residence of decedent (possible indication of homestead)
- Informant (could be a relative) will also be listed



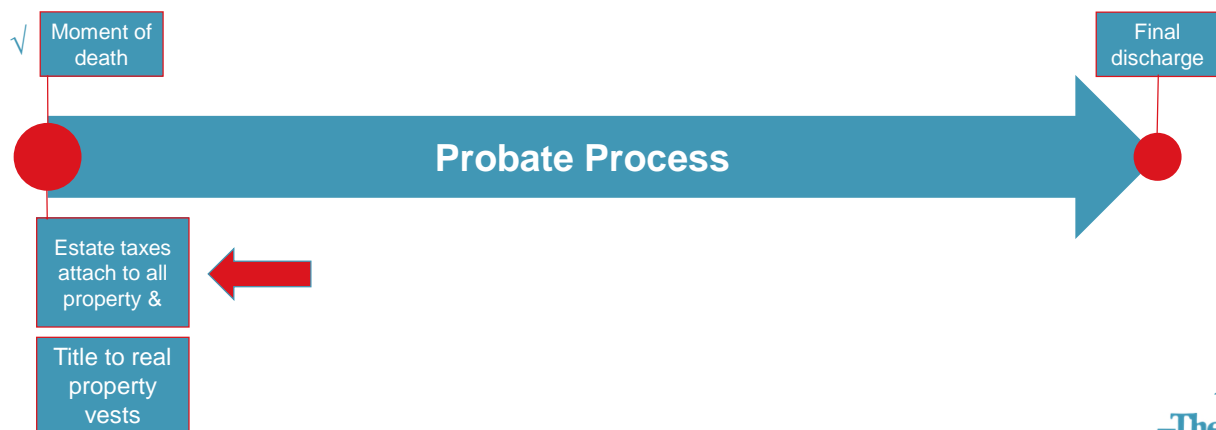
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## Moment of Death

- Because estate taxes attach to all property
  - Always need to clear
    - Florida estate taxes &
    - Federal estate taxes



## From Moment of Death



## Clear Estate Taxes

*Proof of proper estate tax clearances must be recorded with respect to the Estate of \_\_\_\_, deceased*

- Estate taxes attach to all real (including homestead) & personal property at the moment of death
  - Florida estate tax
  - Federal estate tax
- EST07
- TNs 2.10.03, 2.10.04 & 2.10.09



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## Clear Estate Taxes – Taxes due

*Proof of proper estate tax clearances must be recorded with respect to the Estate of \_\_\_\_, deceased*

- Florida estate tax applies **only** to non-residents who died prior to Jan. 1, 2005
  - 20-year statute of limitations & will run on Jan. 1, 2025
    - Sec. 198.33, F.S.
- Federal estate tax applies to a
  - US citizen's estate value over \$13,610,000 (threshold for 2024)
    - Amount adjusted annually (TN 2.10.08)
  - Foreign citizen's estate value is over \$60,000

 **NO** Florida or Federal estate taxes due most of the time 

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## Clear Estate Taxes

*Proof of proper estate tax clearances must be recorded with respect to the Estate of \_\_\_\_, deceased*

- ➡ A. No Florida or Federal estate taxes due
- Florida resident & estate value below threshold amount for year of death
- B. No Florida estate tax due & Federal estate tax due
- Florida resident & estate value is above the threshold amount
- C. Florida estate tax due & no Federal estate taxes due
- Non-Florida resident passing prior to Jan. 1, 2005 & estate value below threshold amount for year of death
- D. Florida & Federal estate taxes due
- Non-Florida resident passing before Jan. 1, 2005 &
  - Estate value is above threshold amount

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## Clear Estate Taxes – None Due – Most Common

*Proof of proper estate tax clearances must be recorded with respect to the Estate of \_\_\_\_, deceased*

- A. No Florida or Federal estate taxes due
- Florida
    - Florida resident or
    - Non-Florida resident passing on or after Jan. 1, 2005
  - Federal
    - Estate value below threshold amount for year of death
      - Beware, foreign property owners have threshold of \$60,000
  - Use Aff-46

| Year | Threshold    |
|------|--------------|
| 2011 | \$5,000,000  |
| 2012 | \$5,120,000  |
| 2013 | \$5,250,000  |
| 2014 | \$5,340,000  |
| 2015 | \$5,430,000  |
| 2016 | \$5,450,000  |
| 2017 | \$5,490,000  |
| 2018 | \$11,180,000 |
| 2019 | \$11,400,000 |
| 2020 | \$11,580,000 |
| 2021 | \$11,700,000 |
| 2022 | \$12,060,000 |
| 2023 | \$12,920,000 |
| 2024 | \$13,610,000 |

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# Clear Estate Taxes

## 1. Obtain

- Proof that no Florida or Federal estate taxes are due
  - Aff-46 No Florida Estate Tax Due
    - Affiant – PR or person in actual or constructive possession of any property in decedent's gross estate to sign

## 2. Record

- In official records

## 3. Review

- For correctness of information &
- Proper person signed

**Affidavit**  
**[No Florida Estate Tax Due]**

I, the undersigned \_\_\_\_\_ [print name of personal representative] do hereby state:

1. I am the personal representative as defined in section 198.01 or section 731.201, Florida Statutes, as the case may be, of the estate of \_\_\_\_\_ [print name of decedent].
2. The decedent referenced above died on \_\_\_\_/\_\_\_\_/\_\_\_\_ [date of death], and was domiciled (as defined in s. 198.015, F.S.) at the time of death in the state of \_\_\_\_\_. On date of death the decedent was (check one): \_\_\_\_ a U.S. citizen \_\_\_\_ not a U.S. citizen.
3. A federal estate tax return (federal Form 706 or 706-N/A) is not required to be filed for the estate.
4. The estate does not owe Florida estate tax pursuant to Chapter 198, F.S.
5. I acknowledge personal liability for distribution in whole or in part of any of the estate by having obtained release of such property from the lien of the Florida estate tax.

Under penalties of perjury, I declare that I have read this Affidavit and the facts stated in it are true. This declaration is based on all information of which the personal representative has any knowledge [ss. 92.525(1)(b); 213.37; 837.06, F.S.].

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Telephone Number: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City/State/ZIP: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ who [ ] is personally known or [ ] has produced \_\_\_\_\_ as identification.

[Notary Seal] Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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# Taxes Cleared

- Always record proof of death
- Always clear Florida & Federal estate taxes



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# Transfer of Title

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## Transfer of Title

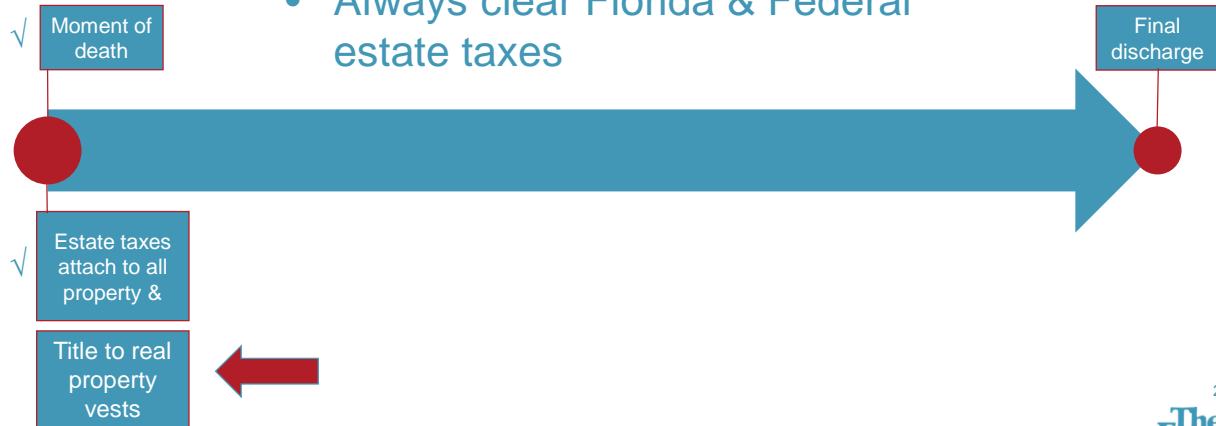
- Happens at moment of death – who is new owner?
- No probate required
  1. Tenants by the entirety
  2. Joint tenants with right of survivorship
  3. Life estate with remainderman (life tenant is decedent)
- Probate required
  - Homestead determination
  - Will
  - Intestate

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## Transfer of Title

- Always record proof of death
- Always clear Florida & Federal estate taxes



# No Probate Required



## Tenants by the Entirety

- Property will automatically belong to remaining living person
  - Deed reads: "Popeye Sailor & Olive Oyl, husband & wife"
    - Olive Oyl dies then Popeye Sailor owns all
    - Homestead **not** a factor
    - Continuous marriage affidavit (Aff-28)



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## Tenants by the Entirety

*Record affidavit establishing that the marriage between \_\_\_\_\_[surviving spouse] and \_\_\_\_\_, deceased, was continuous and uninterrupted from a time prior to their taking title to the subject property until his/her death*

- Prove that TBE remained in place at the moment of death
  - Divorce severs TBE – property now held as tenants in common
  - Remarriage does not reinstate TBE property remains as tenants in common
- MRG01
- Aff-28 Continuous Marriage – by Surviving Spouse

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## Tenants by the Entirety

*Record affidavit establishing that the marriage between \_\_\_\_\_[surviving spouse] and \_\_\_\_\_, deceased, was continuous and uninterrupted from a time prior to their taking title to the subject property until his/her death*

### 1. Obtain

- Continuous marriage affidavit from surviving spouse
- If both spouses have passed, from a person with knowledge

### 2. Record

- In official records

### 3. Review

- Correctness

#### AFFIDAVIT OF CONTINUOUS MARRIAGE

STATE OF FLORIDA     )  
  )ss  
COUNTY OF BROWARD    )

Before me, the undersigned authority, personally  
appeared JUDITH F. NOLAN ("Affiant"), who being duly

RETURNED BY CLERK

(For official use only)

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## Tenants by the Entirety

### 1. Proof of death

### 2. Clear Florida & Federal estate taxes

- Aff-46 or
- Arms' length transaction by surviving spouse (TN 2.10.02)
  - Decedent was either a US citizen or resident at time of death &
  - Adequate & full consideration paid
  - Record in official records original Aff-2 Arms' Length Transaction - by Surviving Spouse

### 3. Make sure arms' length is really arms' length

### 4. Continuous marriage affidavit – Aff-28

### 5. Then title can be transferred to buyer



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## Tenants by the Entirety

- If not continuously married, then
  - Popeye Sailor owns 50% &
  - Olive Oyl's heirs owns 50%
- Treat each 50% separately
- Homestead **is** a factor for Olive Oyl's share
- Probate is required

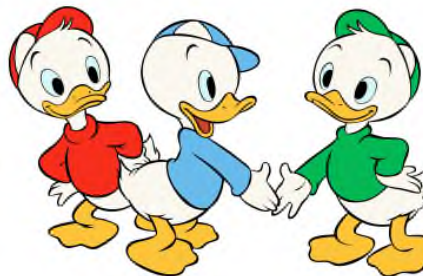


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## Joint Tenants with Rights of Survivorship

- Deed reads: "Huey Duck, Dewey Duck & Louie Duck as joint tenants with rights of survivorship"
  - If one Duck dies remaining two Ducks own property with rights of survivorship
  - If two Ducks die – last Duck living owns all
  - Homestead **not** a factor

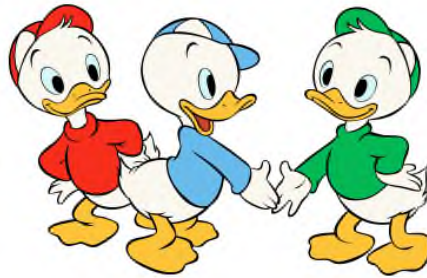


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## Joint Tenants with Rights of Survivorship

- Deed reads: “Huey Duck, Dewey Duck & Louie Duck as joint tenants with rights of survivorship”
  - If one Duck dies remaining two Ducks own property with rights of survivorship
  - If second Ducks die while living in property with wife & minor children – last Duck living **STILL** owns all
  - Homestead **not** a factor

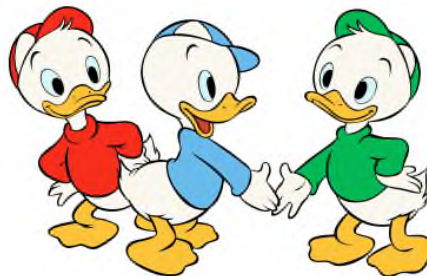


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## Joint Tenants with Rights of Survivorship

1. Proof of death
2. Clear Florida & Federal estate taxes
  - Aff-46
3. Then title is in last living Duck's name

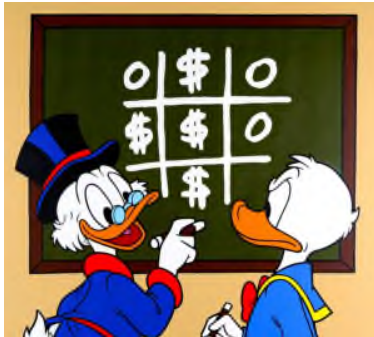


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## Remainderman of Life Estate

- Deed reads: “Scrooge McDuck for his life then to Donald Duck”
  - Scrooge McDuck dies then Donald Duck owns all
  - Homestead **not** a factor
    - Even if Scrooge McDuck was living there with wife and minor children



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## Remainderman of Life Estate

1. Proof of death
2. Clear Florida & Federal estate taxes
  - Aff-46 or
  - Arms' length transaction by remainderman (TN 2.10.06)
    - Decedent was either a US citizen or resident at time of death &
    - Adequate & full consideration paid
    - Record in official records Original Affidavit-4 Arms' Length Transaction - by Remainderman
3. Make sure arms' length is really arms' length
4. Then title can be transferred to buyer

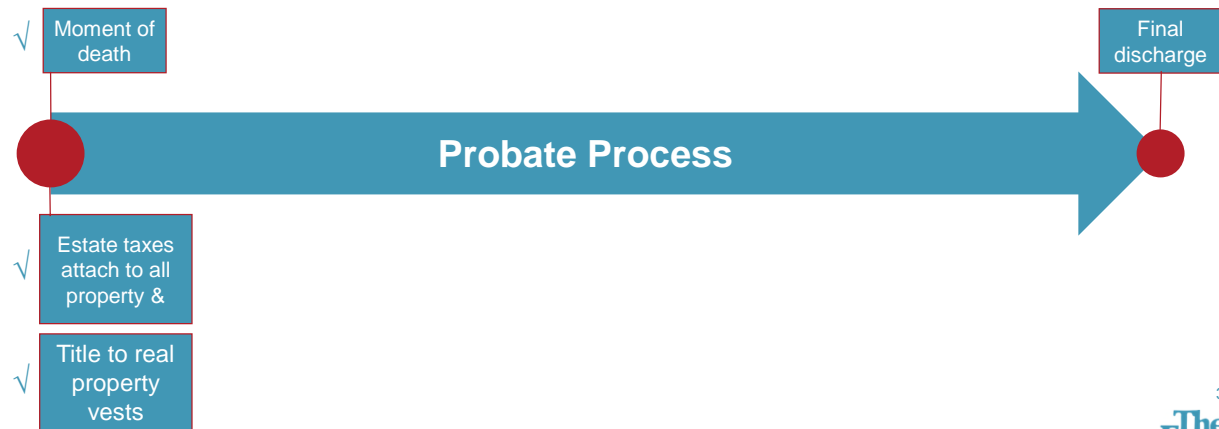


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## Probate Required



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## Remember

- Name search people who inherited property
  - Terms of deed
    - Tenants by the entirety
    - Remainderman
  - Homestead
  - Will
  - Intestate
- Judgments attached for “new” owners at the time of the decedent's death!!

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# Probate Required

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## What is Probate?

- Probate is a circuit court proceeding
  - Identifies
    - Heirs & beneficiaries
    - Decedent's assets
    - Decedent's just debts
  - Validates decedent's will, if any
  - Determines homestead status of real property
  - Protects decedent's assets
  - Pays decedent's just debts



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## Probate Administration

- Formal Administration
  - Court appoints a personal representative (PR)
  - PR completes all probate requirements
  - PR may have an attorney
- Summary Administration – faster
  - Smaller estates, or
  - Decedent passed two or more years ago
  - No PR
- Any probate administration may have a last will and testament




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## Probate Administration

- Identify those
  -  To whom title passed (at moment of death) - who has right to sell
    - PR may have power to sell the real property, or
    - Heir or beneficiary may be owner
- Probate court
  - Has **NO authority over homestead property** (therefore PR cannot sell), unless
    - Decedent is NOT survived by spouse or minor child &
    - Will dictated homestead property to be sold – PR to convey
- Only the court may determine homestead status

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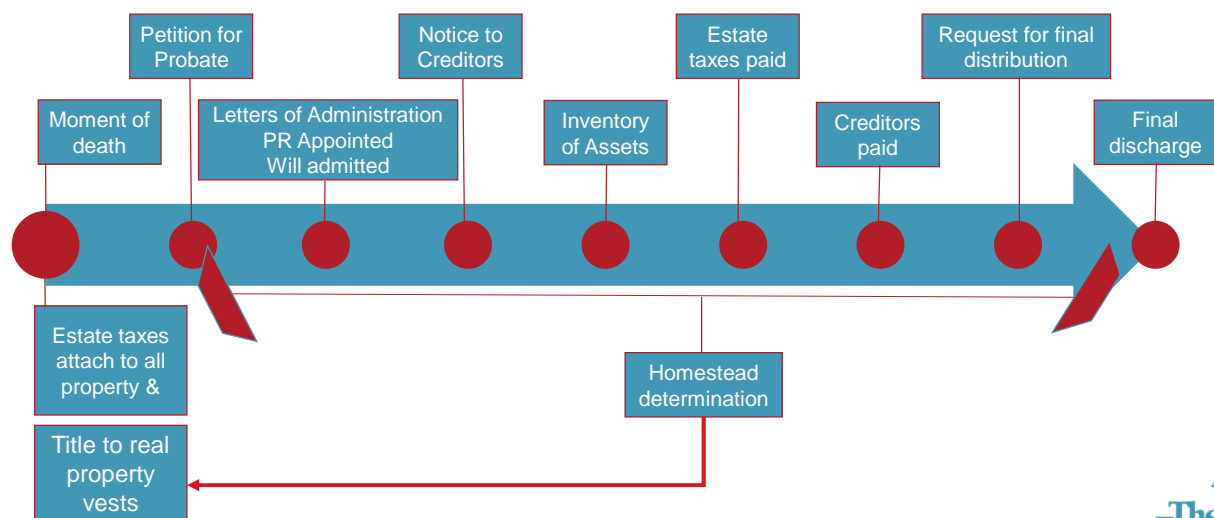


## Commitment

- Fund examiners
  - Reviews
    - Probate docket
    - Probate documents recorded in official records
  - To determine requirements
- What can be found in official records?
  - Nothing
  - Some required items
    - Member will need to review required items for additional requirements
- Commitment may need to be adjusted

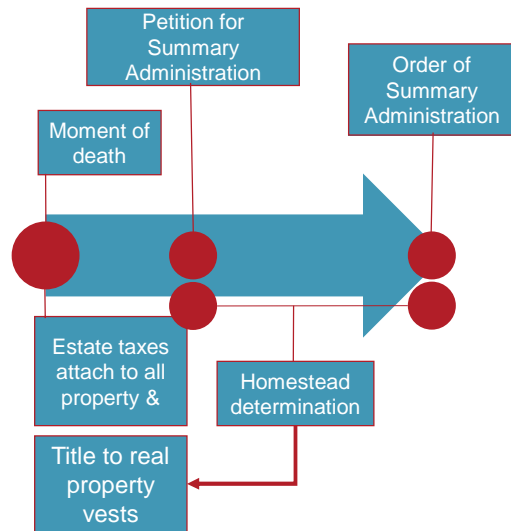
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## Probate Process - Formal



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## Probate Process - Summary



- Limitations
  - Estate less than \$75,000 or
  - Decedent passed more than 2 years ago

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## Disclaimer - Example

- Probate must follow rules
  - Dad dies leaving 3 children (no spouse)
  - Probate is open
  - Child 3 disclaims share of dad's estate
  - What happens?
    - Dad's estate is divided among children 1 & 2 alone or
    - Dad's estate is divided among children 1, 2 & heirs of 3
    - How do you know?
  - Work with underwriting
    - 3's disclaimer should act as if 3 pre-deceased, but is often filled with issues

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# Common Probate Requirements

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## Determination of Homestead - Estates

*Record Order determining homestead and identifying the vested heirs of \_\_\_\_, the decedent*

- Property being sold by heirs without joinder of PR
- Evidence from probate file all interested parties
  - Received notice of, or
  - Joined in, or
  - Consented to petition for Order determining homestead
- EST15
- TN 2.06.01 PR deed – homestead &
- TN 2.07.05 notice requirements for sale by PR

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## Determination of Homestead - Estates

*Record Order determining homestead and identifying the vested heirs of \_\_\_\_, the decedent*

### 1. Obtain

- Certified copy Order determining homestead from Probate Court

### 2. Record

- In official records

### 3. Review

- Legal description – if not correct work with underwriting
- All interested parties
  - Received notice of, or
  - Joined in, or
  - Consented to petition for Order determining homestead

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IN THE CIRCUIT COURT FOR BROWARD COUNTY,  
FLORIDA  
IN RE: ESTATE OF

PROBATE DIVISION

ROBERT SMITH

File No. 1234

Deceased.

Division 23

#### ORDER DETERMINING HOMESTEAD STATUS OF REAL PROPERTY (testate - devised, heirs, no spouse or minor child - exempt from claims)

On the petition of John Smith for an order determining homestead status of real property (the "Property"), all interested persons having been served proper notice of the petition and hearing, or having waived notice thereof, the court finds that:

1. The decedent died testate and was domiciled in Broward County, Florida;
2. The decedent was not survived by a spouse or minor child;
3. Decedent's homestead was devised to one or more heirs of the decedent;
4. At the time of death, the decedent owned and resided on the Property described in the petition; it is

ADJUDGED that the following described Property:

Lot 2, Block 8, Shady Valley Estates, a subdivision as recorded in Plat Book B, page 80, of the Public Records of Broward County, Florida Parcel ID 12345-67890,

constituted the homestead of the decedent within the meaning of Section 4 of Article X of the Constitution of the State of Florida.

ADJUDGED FURTHER that, as of the decedent's date of death, the Property was validly devised to and the constitutional exemption from the claims of decedent's creditors inbvvnnured to the following persons:

| NAME       | ADDRESS                                       | RELATIONSHIP | SHARE |
|------------|---|--------------|-------|
| John Smith | 3344 NW 74th Ave<br>Fort Lauderdale, FL 33301 | Son          | 50%   |

|             |  |          |     |
|-------------|--|----------|-----|
| Sally Jones | 2233 Nw 23rd Ave<br>Fort Lauderdale, Florida 33301 | Daughter | 50% |
|-------------|--|----------|-----|

ADJUDGED FURTHER that the personal representative is authorized and directed to surrender all of the Property which may be in the possession or control of the personal representative to the persons named above, and the personal representative shall have no further responsibility with respect to it.

ORDERED on March 21, 2018.

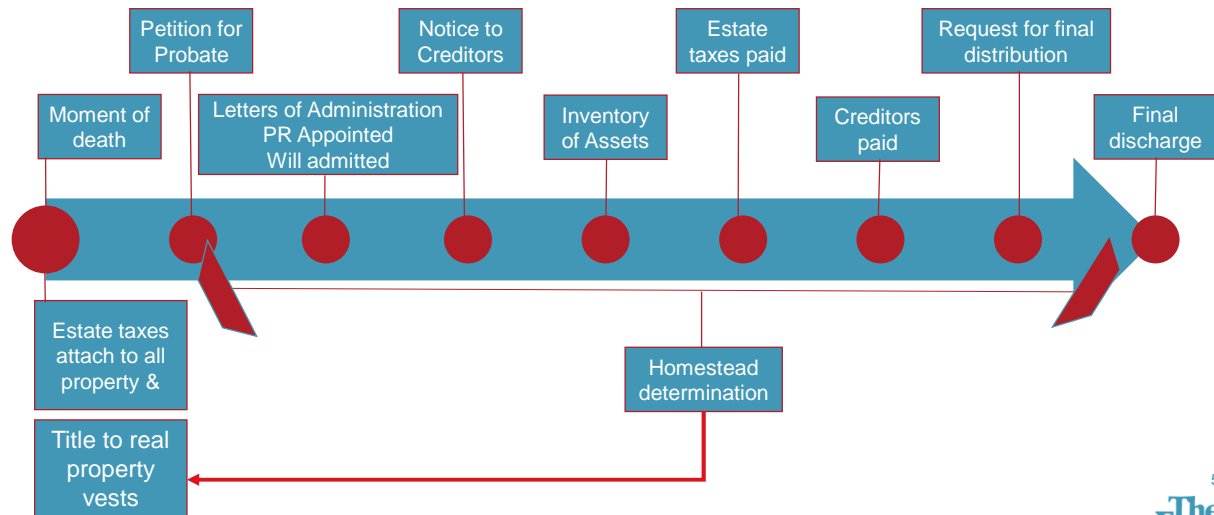
Mark A. Speiser  
Circuit Judge

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## Probate Process - Formal



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## Order Determining Heirs

*Record order determining heirs in the Estate of the decedent*

- Formal probate case
- Determines which heirs to sign deed
- May also involve an Order determining homestead
- May also find in Order of Summary Administration
- EST10
- TN 2.06.01 & TN 2.07.05

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## Order Determining Heirs

*Record order determining heirs in the Estate of the decedent*

### 1. Obtain

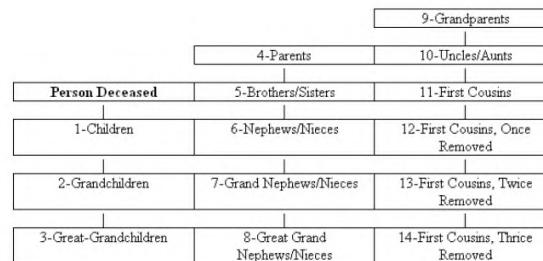
- Certified copy from probate court records

### 2. Record

- In official records

### 3. Review

- Legal description
- All interested parties
  - Received notice of
  - Joined in, or
  - Consented to the petition for Order determining heirs



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## Devised Homestead – Estates

*Record affidavit of a person with firsthand knowledge establishing that \_\_\_\_, decedent, was not survived by a spouse or minor child*

- Property was homestead of decedent &
- Properly devised to someone other than a surviving spouse
- EST17
- TN 2.06.01



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## Devised Homestead – Estates

*Record affidavit of a person with firsthand knowledge establishing that \_\_\_\_, decedent, was not survived by a spouse or minor child*

### 1. Obtain

- Affidavit from person with firsthand knowledge

### 2. Record

- In official records

### 3. Review

- Reason not survived by spouse or minor child
  - Spouse pre-deceased
  - Divorced
  - Never married
  - Children are all over 18 years old



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# Docket Triggered Requirements

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## Order Allowing Sale

*Record Order authorizing the sale by the Personal Representative of the Estate of \_\_\_\_, decedent, to the proposed insured*

- Will does not contain sufficient power of sale for PR, or
- No will
- EST08
- TN 2.06.01 & TN 2.07.05



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## Order Allowing Sale

*Record Order authorizing the sale by the Personal Representative of the Estate of \_\_\_\_, decedent, to the proposed insured*

- Homestead considerations first
- Will does not contain sufficient power of sale for PR, or
- No will
- Also, will need evidence from probate file
  - All interested parties
    - Received notice of sale
    - Joined in sale or
    - Consented to petition for sale
  - TN 2.06.01 & TN 2.07.05

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# Order Authorizing Sale of Real Property

IN THE CIRCUIT COURT FOR BROWARD COUNTY,  
FLORIDA PROBATE DIVISION  
File No.: PR-C-19-0002444

IN RE: ESTATE OF  
HAROLD R. HANSEN,  
Deceased.

Filed in Open Court,  
BRENDA D. FORMAN,  
CLERK  
ON 6-10-19  
BY *gk*

## ORDER AUTHORIZING SALE OF REAL PROPERTY

On the Petition of NANCY N. HANSEN as Personal Representative of the estate of HAROLD R. HANSEN, deceased, the court finding that interested persons have been served proper notice of this hearing or have waived notice thereof, and that it is in the best interests of the estate to sell the property described in the petition at private sale, upon the terms and at the price described in the petition, it is

ADJUDGED that the personal representative is authorized to sell the real property located at 9078 Plymouth Place, Tamarac, Broward County, Florida, which is more particularly described as:

UNIT 21103, HAMPTON HILLS, A CONDOMINIUM, TOGETHER WITH AN UNDIVIDED INTEREST IN THE COMMON ELEMENTS APPURTENANT THERETO, ACCORDING TO THE DECLARATION OF CONDOMINIUM RECORDED IN O.R. BOOK 41345, PAGE 781, AND AMENDMENTS THERETO, ALL OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

Parcel I.D. Number: 4941 08-DA-1830

at private sale for the sum of \$265,000 (Two Hundred Sixty-Five Thousand Dollars) and the personal representative is authorized to execute all instruments and documents necessary to effect such sale.

ADJUDGED FURTHER that the 1/2 proceeds of the sale that is due the estate should be held in trust until the claims period expires for the estate.

## 1. Obtain

- Certified copy from probate court of
  - Order to sell or
  - Court approval of sale (if any)

## 2. Record

- In official records

## 3. Review

- Contract of sale attached or
- Specifics of sale included in order &
- Homestead issues, court may not have authority to sell

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# Clearing Creditor's Claims

*Creditors' claims in the Estate of \_\_\_\_, decedent, must be properly cleared*

- Summary Administration
- Decedent passed within 2 years of transaction
- Probate docket shows creditors' claims
- EST11
- TN 2.02.03



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## Clearing Creditor's Claims

*Creditors' claims in the Estate of \_\_\_\_, decedent, must be properly cleared*

- If within 2 years of decedent's death
  1. **Obtain**
    - Original or certified copy of Order of Summary Administration
  2. **Record**
    - In official record
  3. **Review**
    - Proof that search for & service upon creditors completed
    - No recorded judgment or unresolved litigation against decedent
    - Payment or release of any creditors' claims which have been filed, known, or ascertainable
    - Record Order of Summary Administration



61

## Clearing Creditor's Claims

*Creditors' claims in the Estate of \_\_\_\_, decedent, must be properly cleared*

- If Summary Administration filed more than 2 years after decedent's death
  1. **Obtain**
    - Original or certified copy of Order of Summary Administration
  2. **Record**
    - In official record
  3. **Review**
    - No recorded judgment or unresolved litigation against decedent exist



62

# Official Records Lack Probate Records

63

## Probate Required

*Completion of a proper probate of the Estate of \_\_\_\_\_, decedent*

- Title holder is known to be dead
- Nothing recorded in official records
- Who is current title holder?
- EST05
  - Additional requirements may be needed

64  


64

## Probate Required

*Completion of a proper probate of the Estate of \_\_\_\_\_, decedent*

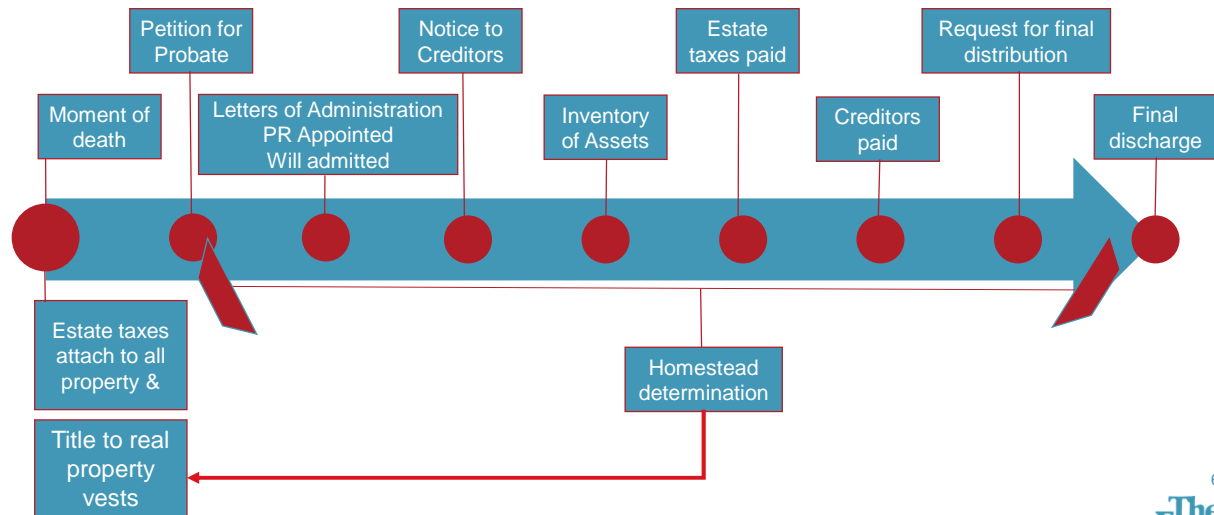
- Requires seller to open & complete either
  - Formal Administration or
  - Summary Administration of the estate



# Intestate

No Will

## Probate Process - Formal



67

The Fund

67

## Formal Administration

*Record certified copy of Petition for Administration, and Letters of Administration for the Estate of \_\_\_\_, decedent*

- Formal Administration
- Intestate Estate (no Will)
- EST01
- TN 2.09.03

68

The Fund

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## Formal Administration

Record certified copy of **Petition for Administration**, and Letters of Administration for the Estate of \_\_\_\_, decedent

- **Petition for Administration** is
  - Request to open probate case in court
  - Identifies survivors of deceased including
    - Spouse
    - Minor children
    - Minor grandchildren
    - Adult children, etc.

69



69

## Formal Administration

### Petition for Administration

IN THE CIRCUIT COURT FOR MARTIN COUNTY, FLORIDA

IN RE: ESTATE OF

**Dorothy K. Twiss**

PROBATE DIVISION

File No. 06-67159

Division \_\_\_\_\_

Deceased.

PETITION FOR ADMINISTRATION  
(testate Florida resident -- single petitioner)

Petitioner, Judith F. Nolan

\_\_\_\_\_, alleges:

1. Petitioner has an interest in the above estate as the named personal representative under decedent's last will

Petitioner's address is:  
5880 Brighton Lane, Davie, FL 33331

INSTR # 1967708 DR BK 02189 PG 2072 RECD 10/18/2006 08:14  
Pgs 2072 - 2074 13p+s  
HARRIS EMMETT MARTIN COUNTY DEPUTY CLERK C Walsh

1. **Obtain**
  - Certified copy from probate court
    - Seller or PR can provide
2. **Record**
  - In official records
3. **Review**
  - For possible heirs

70



70

## Formal Administration

*Record certified copy of Petition for Administration, and **Letters of Administration** for the Estate of \_\_\_\_, decedent*

### • Letters of Administration

- Court order opening probate estate
- Appoints PR
- Sets PR's
  - Authority &
  - Limits
  - Alone will not allow PR to sell property
    - Will must give specific powers of sale (homestead supersedes) or
    - Court order

71



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## Formal Administration

### Letters of Administration

IN THE CIRCUIT COURT FOR MARTIN COUNTY, FLORIDA

IN RE: ESTATE OF Dorothy K. Twiss PROBATE DIVISION  
 File No. 06-671CP  
 Division \_\_\_\_\_

Deceased.

LETTERS OF ADMINISTRATION  
 (single personal representative)

TO ALL WHOM IT MAY CONCERN

WHEREAS, Dorothy K. Twiss  
 a resident of Martin County  
 died on September 23rd, 2006, owning assets in the State of Florida, and

WHEREAS, Judith F. Nolan

2006 OCT 12 AM 10:17  
 MARTIN COUNTY CLERK OF CIRCUIT COURT  
 BY \_\_\_\_\_ D.C.

INSTR. # 1842712 OR BK 02187 PG 2082 REC'D 10/18/2006 08:14:44  
 PM 2006:11:13  
 MARTIN COUNTY DEPUTY CLERK C. Walsh

### 1. Obtain

- Certified copy from probate court
  - Seller or PR can provide

### 2. Record

- In official records

### 3. Review

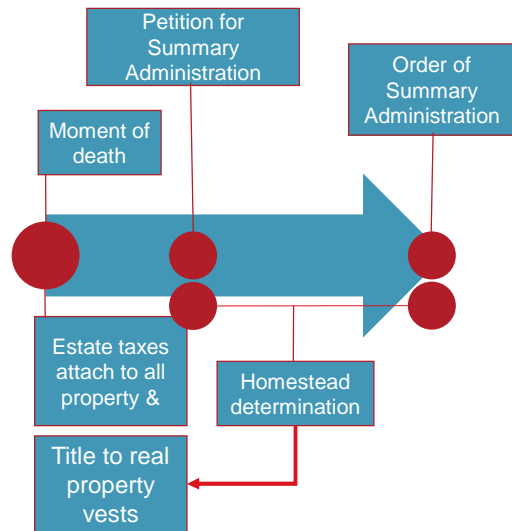
- PR's appointment
  - Authority &
  - Restrictions
- Once PR discharged cannot sign deed

72



72

## Probate Process - Summary



### • Limits

- Estate less than \$75,000 or
- Decedent passed more than 2 years ago

73



73

## Summary Administration

*Record certified copy of Petition and Order for Summary Administration in the Estate of \_\_\_\_, decedent*

- Summary Administration
- Intestate (no will)
- EST03
- TN 2.01.01

74



74



## Summary Administration

*Record certified copy of **Petition** and Order for **Summary Administration** in the Estate of \_\_\_\_, decedent*

### • **Petition for Summary Administration**

- Request court to issue an order confirming contents of petition
- Heirs should be listed
- Look for notice & publication to creditors
  - Must wait 90 days
- No PR
- Limits
  - Estate less than \$75,000 or
  - Decedent passed more than 2 years ago

75



75

## Petition for Summary Administration

IN THE CIRCUIT COURT FOR \_\_\_\_\_ COUNTY,  
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF \_\_\_\_\_

File No. \_\_\_\_\_  
Deceased. Division \_\_\_\_\_

PETITION FOR SUMMARY ADMINISTRATION  
(Intestate — Single Petitioner)

Petitioner, \_\_\_\_\_, alleges:

1. Petitioner has an interest in the above estate as \_\_\_\_\_. Petitioner's address is set forth in paragraph 3 and the name and office address of petitioner's attorney are set forth at the end of this petition.

2. Decedent, \_\_\_\_\_, whose last known address was \_\_\_\_\_, and the last four digits of whose social security number are \_\_\_\_\_, died on \_\_\_\_\_, at \_\_\_\_\_, and on the date of death, decedent was domiciled in \_\_\_\_\_, and died intestate.

3. So far as is known, the names of the beneficiaries of this estate, including the decedent's

### 1. Obtain

- Certified copy from probate court
  - Seller can provide

### 2. Record

- In official records

### 3. Review

- Identifies new owner(s)

76



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## Summary Administration – Intestate

*Record certified copy of Petition and **Order for Summary Administration** in the Estate of \_\_\_\_, decedent*

- **Order for Summary Administration**

- Court order confirms contents of petition
  - No PR is appointed
- Determines ownership of property
- May contain homestead determination
- Closes Summary Administration
- Ends concerns over unsecured creditor claims



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## Order of Summary Administration

IN THE CIRCUIT COURT FOR THE 13TH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
PROBATE DIVISION

IN RE: ESTATE OF: \_\_\_\_\_ FILE NO: \_\_\_\_\_

\_\_\_\_\_  
Deceased. DIVISION: \_\_\_\_\_

ORDER OF SUMMARY ADMINISTRATION  
(testate)

On the petition of \_\_\_\_\_ for summary administration of the estate of \_\_\_\_\_, deceased, the court finding that Decedent died on \_\_\_\_\_; that all interested persons have been served proper notice of the petition and hearing or have waived notice thereof; that the material allegations of the petition are true; and that Decedent's estate qualifies for summary administration and an Order of Summary Administration should be entered, it is

1. **Obtain**

- Certified copy from probate court
  - Seller can provide

2. **Record**

- In official records

3. **Review**

- Beneficiaries
- Identifies new owner(s)
- Anything related to subject property
- Make sure order is consistent with petition

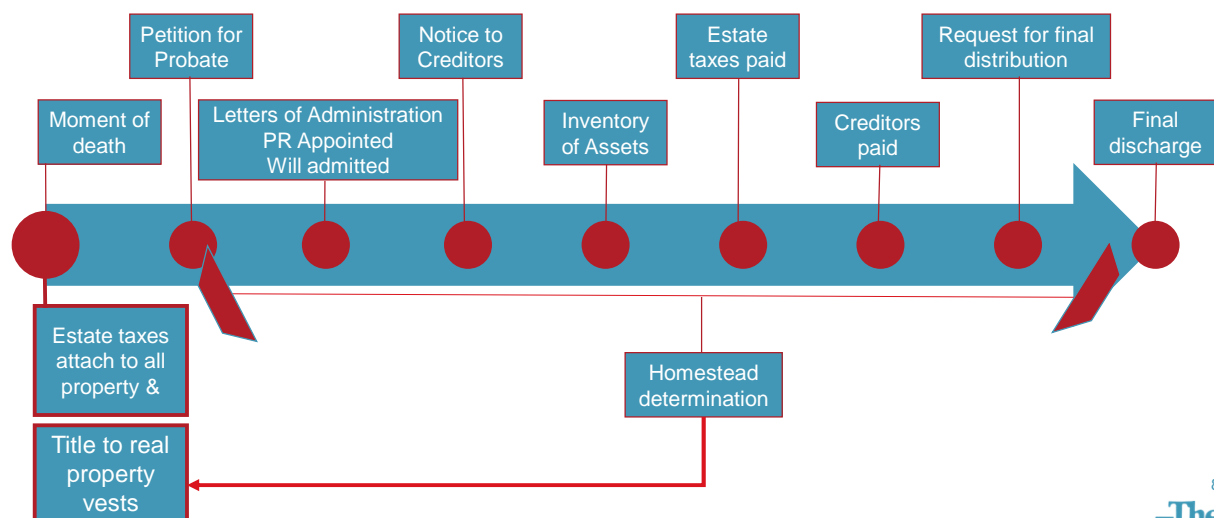
78

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## Reminder

- Name search people who inherited property
  - Homestead
  - Will
  - Intestate
- Judgments attached for new owners at the time of the decedent's death!!

## Probate Process - Formal



# Testate

Will

81

## Probate – Testate

*Record certified copy of Letters of Administration, Order Admitting the Will to Probate, and the Last Will and Testament for the Estate of \_\_\_\_\_, decedent*

- Formal Administration
- Testate Estate (Will)
- EST02
- TN 2.09.03

82  


82

## Probate – Testate

*Record certified copy of **Letters of Administration, Order Admitting the Will to Probate**, and the Last Will and Testament for the Estate of \_\_\_\_\_, decedent*

- **Letters of Administration** - see slides 71 - 72
  - Alone will not give PR power to sell
    - Homestead considerations
      - Vested at moment of death
      - PR can't sell homestead
    - Will must contain very specific instructions

83



83

## Probate – Testate

*Record certified copy of **Letters of Administration, Order Admitting the Will to Probate**, and the Last Will and Testament for the Estate of \_\_\_\_\_, decedent*

- **Order Admitting the Will to Probate**
  - Court's acceptance of this particular will as the last will & testament of decedent
  - If will gives property to anyone who would have inherited at any level of intestate
    - PR cannot sell property, unless
    - Will directs PR to sell & give proceeds
  - Power to sell does not equal direction to sell!!!

84



84

# Order Admitting the Will to Probate

IN THE CIRCUIT COURT FOR MARTIN COUNTY, FLORIDA

IN RE: ESTATE OF

**Dorothy K. Twiss**

PROBATE DIVISION

File No. 06-671CP

Division \_\_\_\_\_

Deceased.

ORDER ADMITTING WILL TO PROBATE  
AND APPOINTING PERSONAL REPRESENTATIVE  
(self-proved)

The instrument presented to this court as the last will of Dorothy K. Twiss

deceased, having been executed in conformity with law, and made self-proved by the acknowledgment of the decedent and the affidavits of the witnesses, made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will in the form required by law, and no objection having been made to its probate, and the court finding that the decedent died on September 23rd, 2006, and that

Judith F. Nolan

FILED FOR RECORD  
MARTIN CO., FL  
2006 OCT 12 AM 10:17  
MARSHA EWING  
CLERK OF CIRCUIT COURT  
BY [Signature] N.C.

INSTR. # 1942711 OR BK 02189 Pg 2081 RECD 10/18/2006 08:14  
P. 2081 (114)  
MARSHA EWING MARTIN COUNTY DEPUTY CLERK C Walsh

## 1. Obtain

- Certified copy from probate court
  - Seller or PR can provide

## 2. Record

- In official records

85



85

# Probate – Testate

*Record certified copy of Letters of Administration, Order Admitting the Will to Probate, and the **Last Will and Testament** for the Estate of \_\_\_\_\_, decedent*

## • Last will and testament

- Decedent's final wishes for
  - Paying just debts
  - Disbursement of assets &
  - Possible sale of real property
    - Must be specific

86



86

# Last Will and Testament

2015  
06-671CP

## LAST WILL OF DOROTHY KINSLEY TWISS

I, DOROTHY KINSLEY TWISS, of Martin County, Florida, declare this to be my will and revoke all earlier wills and codicils, but I do not revoke any earlier separate written statement or list disposing of tangible personal property.

### ITEM 1. FUNERAL INSTRUCTIONS

I desire and direct that my mortal remains be cremated and that my cremains be interred beside those of my late husband, DAVID L. TWISS, in Lindenwood Cemetery (Lot R 1/2, Oak Avenue), Stoneham, Massachusetts.

### ITEM 2. FAMILY

I am an unmarried widow and have no children.

### ITEM 3. FIDUCIARIES

**3.1 Designations.** I appoint my cousin's daughter, JUDITH NOLAN as my personal representative. If she fails or ceases to serve, I appoint my friend, DONALD MARSHALL as my alternate personal representative.

## 1. Obtain

- Certified copy from probate court
  - Seller or PR can provide

## 2. Record

- In official records

## 3. Review - next slide

87



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# Last Will and Testament

## 3. Review

- Devise of property (including residuary clause)
  - Identifies new owner(s)
- Beneficiaries
  - Was property specifically devised
  - Was property part of residuary clause
- Power of sale given to PR
  - Can sell without court approval or
  - Requires court approval or
  - Has sold or
  - Will sell during estate proceeding
- Anything related to subject property

88



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## Summary Administration – Testate

*Record certified copy of Petition and Order for Summary Administration, Last Will and Testament, Order Admitting the Will to Probate in the Estate of \_\_\_\_, decedent*

- Summary Administration
- Will
- EST04
- TN 2.01.01



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## Summary Administration – Testate

*Record certified copy of **Petition and Order for Summary Administration**, Last Will and Testament, Order Admitting the Will to Probate in the Estate of \_\_\_\_, decedent*

- **Petition for Summary Administration** - see slides 75 - 76
- **Order of Summary Administration** - see slides 77 - 78
- **Last Will & Testament** - see slides 86 - 88
- **Order Admitting Will to Probate** - see slides 84 - 85



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# Review

91

## Every Deceased Title Holder

- Proof of death
- Clear Florida & Federal estate taxes
- Other requirements as necessary
  - No probate case required
    - TBE
    - JTWROS
    - Remainderman
  - Probate case required – all other
    - Homestead determination
    - Title ownership determination

92  


92

## Every new Owner

- Name search people who inherited property
  - Homestead
  - Will
  - Intestate
- Judgments attached for new owners at the time of decedent's death!!



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**Thank you**  
**for your time and attention**

For more information please contact:

**Linda Monaco, B.C.S.**

[LMonaco@TheFund.com](mailto:LMonaco@TheFund.com)



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## CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](https://www.nala.org/certification/certtest2view). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

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| Session Length<br>In Hours | Session Topics<br>(Description and Speakers) | Validation<br>of Attendance |
|----------------------------|--|-----------------------------|
| 1.0                        | Don't Fear the Requirements / Linda Monaco   | <i>Linda Monaco</i>         |
|                            |  |                             |
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|                           |  |             | Recorded Webinar                               |  |  |

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| <b>Level:</b> Intermediate                      |
| <b>Approval Period:</b> 07/01/2024 - 01/31/2026 |

### CLE Credits

|         |     |
|---------|-----|
| General | 1.0 |
|---------|-----|

### Certification Credits

|                           |     |
|---------------------------|-----|
| Wills, Trusts and Estates | 1.0 |
| Real Estate               | 1.0 |