Understanding Florida Ancillary Administrations

Presented by:

LEGAL EDUCATION

Please contact the Education Registrar at
(888) 407-7775 regarding this seminar or to
register for any other Fund seminars

All references herein to title insurance policy forms and endorsements are intended to refer to the policy forms and endorsements issued by Fund members as duly appointed title agents of Old Republic National Title Insurance Company.

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.

Table of Contents

Understanding Florida Ancillary Administrations

Kara Scott
Legal Education Attorney

4

Ancillary Administrations - Topics

- Introduction
- The Foreign Will
- Spousal Rights
- The Personal Representative – Ancillary PR (APR) and Domiciliary PR (DPR)
- Procedure
- Title Requirements

5

5

Introduction

6

What is Ancillary Administration?

- Ancillary Administration – administration in a state other than the state of domicile, in which the decedent owned property.
- Domiciliary Administration – administration of a decedent's estate in his/her state of domicile.

7

7

Ancillary vs. Domiciliary Administration

Similarities	Differences
• Proof of death • Will admitted to probate • Personal Representative (PR) • Beneficiaries identified • Creditors – 2 yr. statute of limitations • Estate tax lien clearance	• Never homestead • Authenticated copies • No elective share rights • Heightened concern for community property rights • Short form – admitting foreign will to record

8

The Fund

8

Ancillary Administration

- Foundation of State Sovereignty
- No court in one state may determine the ownership of real estate in another state
- Probate of a will does not fall within the full faith and credit clause of the U.S. Constitution
- One can even contest a will that has been admitted to probate in the domiciliary state or country

In re Estate of Barteau, 736 So. 2d 57 (Fla. 2d DCA 1999)

28

9

The Fund

9

Common scenarios

- *A will devising nonresident decedent's Florida real property is probated in another state*
- *No probate is opened in domiciliary jurisdiction of nonresident testate decedent who owned Florida real property*

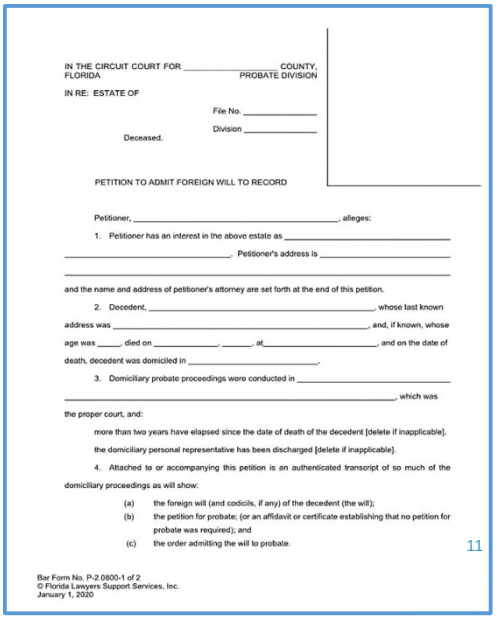
10

10

Forms

Florida Lawyers Support Services, Inc. (FLSSI) https://flssi.org

- Petition to Admit Foreign Will to Record *(P-2.0800)*
- Petition for Ancillary Administration (Testate) *(P-3.0140, P-3.0150, and P-3.0151)*
- Petition for Ancillary Administration (Intestate) *(P-3.0160, P-3.0170, and P-3.0171)*



IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

PETITION TO ADMIT FOREIGN WILL TO RECORD

Petitioner, _____, alleges:

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

2. Decedent, _____, whose last known address was _____, and, if known, whose age was ____, died on _____, _____, at _____, and on the date of death, decedent was domiciled in _____.

3. Domiciliary probate proceedings were conducted in _____ _____, which was the proper court, and:

more than two years have elapsed since the date of death of the decedent [delete if inapplicable].

the domiciliary personal representative has been discharged [delete if inapplicable].

4. Attached to or accompanying this petition is an authenticated transcript of so much of the domiciliary proceedings as will show:

(a) the foreign will (and codicils, if any) of the decedent (the will);

(b) the petition for probate; (or an affidavit or certificate establishing that no petition for probate was required); and

(c) the order admitting the will to probate.

11

Bar Form No. P-2.0800-1 of 2
© Florida Lawyers Support Services, Inc.
January 1, 2020

11

Governing Law

- Florida Probate Code

  Chapters 731-735 Florida Statutes

- Florida Probate Rules

  Chapter 5, Florida Rules of Court Procedure

  https://www.floridabar.org/rules/ctproc/

12

12

Governing law

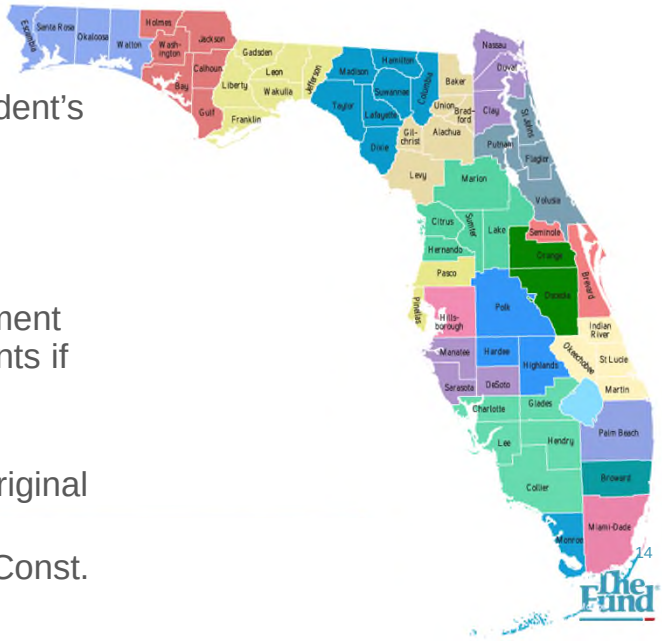
- *Sec. 731.1055, F.S.* – Real Property
  - The validity and effect of a disposition, whether intestate or testate, of real property in this state shall be determined by FL law

- *Sec. 731.106, F.S.* – Personal Property
  - (2) When a nonresident decedent, whether or not a citizen of the United States, provides by will that the testamentary disposition of tangible or intangible personal property having a situs within this state shall be construed and regulated by the laws of this state, the validity and effect of the dispositions shall be determined by FL law

13

13

Venue & Jurisdiction



Venue – in county where decedent's property is located

- Real property
- Personal property
- Commercial paper (e.g., promissory notes), investment paper, and other instruments if located in FL at death

Circuit courts have exclusive original jurisdiction

- Art. V, Sec. 20(c)(3), Fla. Const.

14

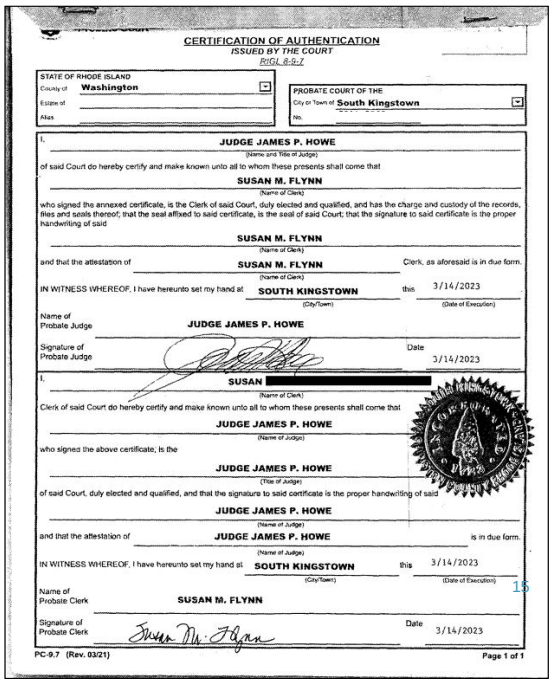
14

Authenticated Copies

- Defined in §731.201(1), F.S. as a certified copy or copy authenticated according to the Federal Rules of Civil Procedure
- Rule 44 – Proving an Official Record

  (A) an official publication of the record; or

  (B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal



CERTIFICATION OF AUTHENTICATION
ISSUED BY THE COURT
R(GL 8-9-7

STATE OF RHODE ISLAND
County of Washington
Estate of
Alias

PROBATE COURT OF THE
City or Town of South Kingstown
No.

I, JUDGE JAMES P. HOWE
(Name and Title of Judge)
of said Court do hereby certify and make known unto all to whom these presents shall come that
SUSAN M. FLYNN
(Name of Clerk)
who signed the annexed certificate, is the Clerk of said Court, duly elected and qualified, and has the charge and custody of the records, files and seals thereof; that the seal affixed to said certificate, is the seal of said Court; that the signature to said certificate is the proper handwriting of said
SUSAN M. FLYNN
(Name of Clerk)
and that the attestation of SUSAN M. FLYNN (Name of Clerk) Clerk, as aforesaid is in due form.
IN WITNESS WHEREOF, I have hereunto set my hand at SOUTH KINGSTOWN (City/Town) this 3/14/2023 (Date of Execution)

Name of Probate Judge: JUDGE JAMES P. HOWE
Signature of Probate Judge: [signature] Date: 3/14/2023

I, SUSAN [redacted]
(Name of Clerk)
Clerk of said Court do hereby certify and make known unto all to whom these presents shall come that
JUDGE JAMES P. HOWE
(Name of Judge)
who signed the above certificate, is the
JUDGE JAMES P. HOWE
(Title of Judge)
of said Court, duly elected and qualified, and that the signature to said certificate is the proper handwriting of said
JUDGE JAMES P. HOWE
(Name of Judge)
and that the attestation of JUDGE JAMES P. HOWE (Name of Judge) is in due form.
IN WITNESS WHEREOF, I have hereunto set my hand at SOUTH KINGSTOWN (City/Town) this 3/14/2023 (Date of Execution)

Name of Probate Clerk: SUSAN M. FLYNN
Signature of Probate Clerk: [signature] Date: 3/14/2023

PC-9.7 (Rev. 03/21) Page 1 of 1

15

15

The Foreign Will

16

Foreign Will

- When admitted to record, the foreign will shall be as valid and effectual to pass title to real property and any right, title, or interest therein as if the will had been admitted to probate in this state. *(Sec. 734.104(4), F.S.)*
- Foreign will duly admitted in FL permits valid conveyance of FL real estate by devisees named in will
  - *Title Standard 5.16* (Foreign Will as Muniment of Title)

17

17

Terms:

- Holographic Will – a handwritten will
  - Note: A handwritten will that is properly signed and has 2 attesting witnesses is not considered holographic
- Nuncupative Will – a will delivered orally to witnesses, or a recording that purports to be a will
- Notarial Will – a will dictated to and taken down by a civil law notary (a/k/a "Notaire"), which is then permanently stored by the notary

18

The Fund

18

Validity of Will

- Nonresident's will (other than a holographic or nuncupative will), executed in compliance with FL law, or laws of state or country in which executed, may be probated in FL
  - *Sec. 732.502(2), F.S.*

30

- If written in foreign language must be accompanied by true and complete English translation
  - *Sec. 733.204(1), F.S.* and *Fla. Prob. R. 5.216*
- Copy of notarial will may be admitted if original would qualify
  - *Sec. 733.205, F.S.*

19

The Fund

19

Validity of Will

Malleiro v. Mori, 182 So.3d 5 (Fla. 3d DCA 2015)

- New York will valid under FL law – signed and witnessed
- Subsequent "notarial will" made and admitted to probate in Argentina – it was not signed by testatrix or witnesses
  - Notarial wills must comply with Sec. 732.502(2), F.S. which prohibits holographic and nuncupative wills
- Held: Argentine will was nuncupative since it was not signed or attested
  - NY will was admitted to probate in FL

20

Validity of Will

In re Estate of Barteau, 736 So.2d 57 (Fla. 2d DCA 1999)

- Appellants sought to establish and admit a lost will executed in FL
- A later will, executed in Mexico, was admitted to probate there
  - Appellants alleged it had been procured through fraud etc.
  - Trial judge ruled will contest must take place in Mexico
- Held: DCA disagreed - the will is subject to jurisdiction of FL courts for determination of validity when presented in FL for purpose of devising FL real property

21

Intestate Succession

- Sec. 732.102, F.S. Spouse's share of intestate estate
  - All or one-half (depends on descendants of the decedent)
- Sec. 732.103, F.S. Share of other heirs
- TN 2.05.01 Determination of Heirs by Foreign Jurisdiction
  - Relying on transcripts from other states to establish descent
- Title Standard 5.1

22

22

Spousal Rights & Ancillary Administration

23

Spousal rights

- No Elective Share for non-FL resident *(Sec. 732.201 F.S.)*
- Intestate share of surviving spouse *(Sec. 732.102 F.S.)*
- Marriage recognized in FL if valid where created
  - *Goldman v. Dithrich*, 179 So. 715 (Fla. 1938)

24

The Fund

24

Two types of property ownership in U.S.

Common Law

- Adopted by 41 states (including Florida)
- Each spouse is a separate individual with separate legal and property rights

Community Property

- Adopted by 9 states
- Analogous to partnership
- Each spouse contributes to the "community" and shares in the profits and income earned by the "community"
  - marriage = "community"

25

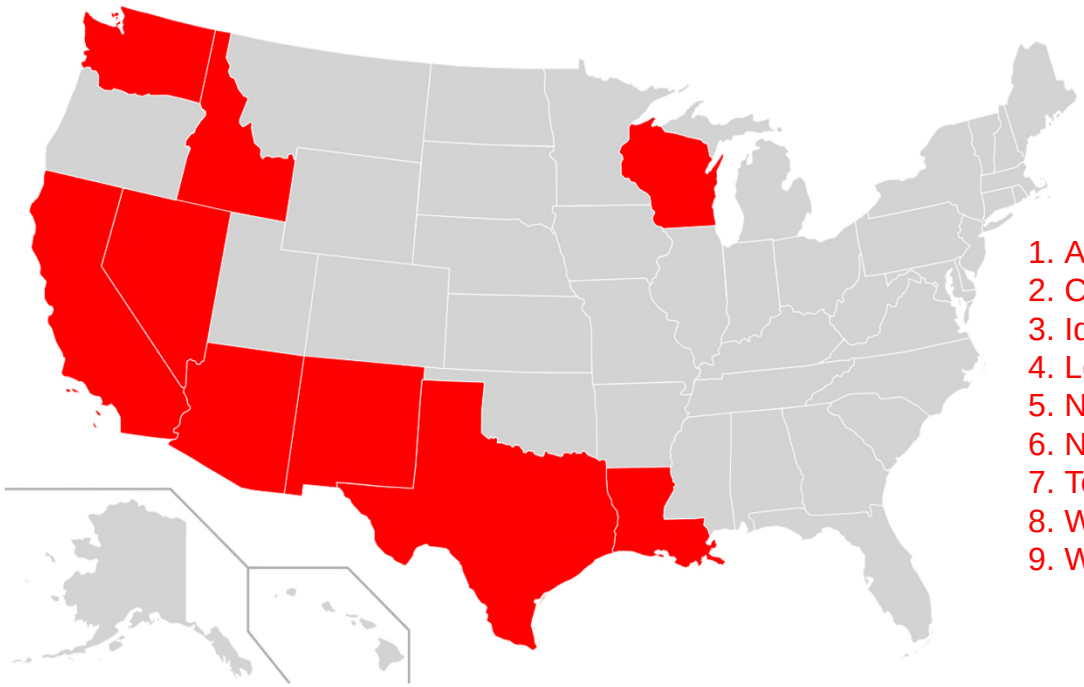
The Fund

25

Community Property

- Each spouse automatically owns 50% of all property acquired during marriage regardless of source and manner titled
  - Nine states (Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington and Wisconsin), as well as Guam and Puerto Rico
- Probate Asset: one-half interest in FL real property acquired in decedent's name with funds traceable in whole or in part to a "community property" transaction *(Sec. 732.217 F.S.)*

26



1. Arizona
2. California
3. Idaho
4. Louisiana
5. Nevada
6. New Mexico
7. Texas
8. Washington
9. Wisconsin

The Fund

27

FUDCPRDA

- "Florida Uniform Disposition of Community Property Rights at Death Act" (Secs. 732.216 – .228, F.S.)
- Statutory protection for surviving spouse of rights emanating from community property protections provided elsewhere
  - Real property acquired in decedent's name in FL with funds traceable in whole or in part to a CP transaction
- **Many exceptions including TBE and homestead property**
- NEW - Can be waived by surviving spouse
  - *(Sec. 732.219 (2), F.S.)*

28

28

FUDCPRDA

Procedure – NEW Sec. 732.2211, F.S.

- NEW – any demand or dispute arising under FUDCPRDA shall be determined in an action for declaratory relief.
- NEW – complaint for declaratory relief must be brought within 2 years of decedent's death or be forever barred.
- NEW – action for declaratory relief is not a "claim"

"2024 Update: Community Property Rights in Florida", Jeffrey H. Skatoff https://skatoff.com/florida-probate-lawyer/2024-update-community-property-rights-in-florida/ (last visited August 16, 2024)

29

29

Personal Representative

(Foreign PR and Ancillary PR)

30

The Personal Representative

- The fiduciary appointed by the court to administer the estate.
  - a/k/a "administrator" or "executor"

    Sec. 731.201 (28) F.S.

31

31

Ancillary Personal Representative

Order of Preference *(Sec. 733.301, F.S.)*

43

- Testate:
  - PR designated in will to administer FL property; or
  - Foreign PR, if qualified to act in FL; or
  - Alternate or successor named in will; or
  - One selected by majority interested in FL property
- Intestate:
  - Foreign PR, if qualified; or
  - Apply preference in appointment rules of Sec. 733.301(1)(b), F.S.
    - (1) the surviving spouse, (2) person selected by majority of heirs, (3) the heir in nearest degree.

32

The Fund

32

Personal Representative – Qualifications

- Persons not qualified *(Sec. 733.303(1), F.S.)*
  - Felony conviction
  - Mentally or physically unable to perform
  - Under 18 years of age
- Nonresidents cannot qualify unless: *(Sec. 733.304, F.S.)*
  - Legally adopted child or adoptive parent of decedent;
  - Related by lineal consanguinity to decedent;
  - Spouse or brother, sister, uncle, aunt, nephew, or niece of decedent, or someone related by lineal consanguinity to any such person; or
  - Spouse of a person otherwise qualified under this section

33

33

Formal Administration – Ancillary PR

- APR has same rights, powers & authority as all PRs in Florida
- Bond – same rules as for other PRs *(Sec. 733.402, F.S.)*
  - Required unless waived by the will or by the court
- PR must publish and serve Notice to Creditors unless over 2 years from death
- After administration expenses and claims are paid, court may order remaining property transferred to Foreign PR or distributed to beneficiaries

Sec. 734.102(4)-(7), F.S.

34

34

When Ancillary PR need not be appointed:

- Maintain actions in FL if appointed in another state or US territory *(Sec. 734.101(1), F.S.)*
- Be sued concerning property in this state; defend actions or proceedings if duly appointed in another state or country *(Sec. 734.101(2), F.S.)*
- Receive payments, satisfy mortgages, and receive personal property, over 90 days from appointment provided no FL PR or FL curator has been appointed *(Sec. 734.101(3)(4), F.S.)*
- Obtain contents of safe-deposit box *(Sec. 655.936, F.S.)*

35

35

Ancillary PR needed – Florida Real Estate

Foreign PR has no powers in Florida (T.N. 2.05.04A)

- A foreign court has no authority over the disposition of Florida real property – no authority to enter an order affecting FL real estate
- A foreign personal representative has no authority over Florida real property, regardless of whether the will does or does not confer upon the foreign personal representative a power of sale
- The APR in some cases may be the same individual who is the foreign PR, but he/she has no authority to act in Florida unless and until installed by the Florida probate court

36

Procedure

37

Non-Resident Decedent with FL real property

Ancillary Administration

- Formal Administration
- Summary Administration
- Admit Foreign Will to Record

38

38

Ancillary Formal Administration

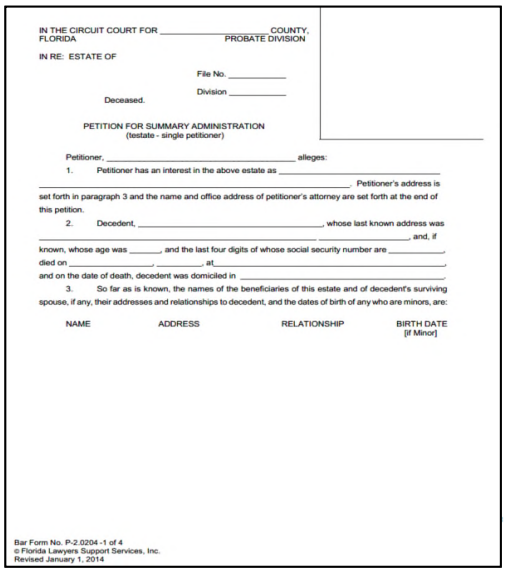
- Contents of petition (Rule 5.200, Fla. Prob. R.) are the same
- PLUS Authenticated copies of domiciliary proceedings
  - Testate: will, petition for probate, order admitting will, foreign personal representative (FPR) authority (Letters Administration or Letters Testamentary)
  - Intestate: petition for administration and FPR authority
- Statement of grounds for appointment of Ancillary PR (APR) if someone other than FPR is to be appointed
- Formal notice to others qualified who have not waived or joined petition; and to all FPRs who have not waived or joined

39

39

Summary Administration – Ch. 735, F.S.

- Resident and nonresident decedent's estates – same rules
  - Will must not require formal administration
  - Value of assets subject to probate $75K or less; or
  - More than 2 years after death
- Contents of petition *(Fla. Prob. R. 5.530)*
- Notice to known or reasonably ascertainable creditors *(Sec. 735.2063, F.S.)*



IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

PETITION FOR SUMMARY ADMINISTRATION
(testate - 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, if known, whose age 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 _____.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationships to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE [if Minor]

Bar Form No. P-2.0204 -1 of 4
© Florida Lawyers Support Services, Inc.
Revised January 1, 2014

40

Short Form of Ancillary Administration

<u>Sec. 734.104, F.S. – Admit Foreign Will to Record</u>

- Decedent dead more than 2 years (or foreign estate closed)
- Authenticated copies
- Will valid under law of state where it was drafted and executed *(Sec. 732.502(2), F.S.)*
- Effective to pass title

41

The Fund

41

Other Short Form of Ancillary Administration

Sec. 734.1025, F.S. – FL assets less than $50,000

- Authenticated transcript
- No PR appointed in FL
- Foreign PR must publish notice to creditors & serve known creditors
- What if creditors file a claim?

42

Title Insurance Requirements

43

Importance of public records

"Attorneys handling estate proceedings should always have as one objective leaving recorded evidence sufficient to enable future title examiners…to assure themselves the estate was completely and properly administered"

"Nonresident Testate Decedents and Florida Real Property – Conveying Insurable Title to a Purchaser for Value" *36 Fund Concept 63 (Jun. 2004)*

44

44

Title Insurance Requirements

TN 2.09.03

Record in Official Records:

- Proof of death
- Estate tax clearance

45

Estate Tax Clearance – Title Notes SC 2.10

* No Florida Estate Tax – after 1/1/2005

  Record Affidavit of No Florida Estate Tax Due - AFF-46 50

  No more DR-312 or DR-313

* Certain transactions divest the lien

  * Surviving Spouse – arm's length transaction to BFP

51 52

46

What to Record: Ancillary Formal Administration

TESTATE ESTATE

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

ORDER OF SUMMARY ADMINISTRATION
(testate nonresident decedent)

On the petition of _____ for summary administration of the estate of _____, deceased, the court finding that the 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; that the will dated _____, _____, has been admitted to probate by order of this court as and for the last will of the decedent; and that the decedent's estate qualifies for summary administration and an Order of Summary Administration should be entered, it is

ADJUDGED that:

1. There be immediate distribution of the assets of the decedent as follows:

Name Address Asset, Share or Amount

Record in Official Records:

- Order Admitting Foreign Will to Probate
- Authenticated copy of the will
- Letters of Administration

47

What to Record: Ancillary Formal Administration

INTESTATE ESTATE

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

ORDER OF SUMMARY ADMINISTRATION
(testate nonresident decedent)

On the petition of _____ for summary administration of the estate of _____, deceased, the court finding that the 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; that the will dated _____, _____, has been admitted to probate by order of this court as and for the last will of the decedent; and that the decedent's estate qualifies for summary administration and an Order of Summary Administration should be entered, it is

ADJUDGED that:

1. There be immediate distribution of the assets of the decedent as follows:

Name Address Asset, Share or Amount

Record in Official Records:

- Petition for Ancillary Administration
- Letters of Administration

48

48

Other documents that may be needed:

Record in Official Records:

- Affidavit of Non-Homestead
- Order Authorizing Sale by APR
- Order Closing Estate & Discharge of FPR

49

49

What to Record – Ancillary Summary Administration

Record in Official Records:

- Authenticated copy of the will (if testate)
- Order of Ancillary Summary Administration – include Order Admitting Foreign Will to Probate
- Affidavit of no known creditors and diligent search and inquiry (Aff-45) – unless over 2 years

50

50

Intestate without Ancillary Administration

Conveyance of Florida Real Property by Heirs (TN 2.05.03)

- Only after 2 year statute of limitations for creditor claims
- Record Certified Transcript of:
  - Foreign Petition (identifying heirs of decedent)
  - Letters of Administration or Letters Testamentary
  - Order closing foreign estate and discharge of foreign PR (TN 2.09.03)

51

51

736 So.2d 57
District Court of Appeal of Florida,
Second District.

In re ESTATE OF Azalea Lawson BARTEAU, Deceased, John S. Biederman, John S. Biederman, Jr., Sadie T. Wilcox, Linda S. Gilbert, Colin E. Brett, Nan L. Sundano, Ellen Biederman a/k/a Jane Ellene Biederman Creamer, and Mercedes Biederman, Appellants,

v.

Jesus Rene Guzman Ramos, Petitioner for Personal Representative of the Estate of Azalea Lawson Barteau, Under Mexican Will dated November 24, 1997, Appellee.

No. 98–03795.
|
May 28, 1999.

Synopsis

In consolidated probate actions, the Circuit Court, Pinellas County, Patrick K. Caddell, Acting Circuit Judge, required any contest as to validity of subsequent Mexican will to be held in Mexico. Beneficiaries under earlier Florida will appealed. The District Court of Appeal, Campbell, Acting Chief Judge, held that Mexican will was subject to jurisdiction of Florida courts for determination of validity of that will.

Reversed and remanded.

West Headnotes (1)

[1] **Wills** Particular Courts, Judges, or Other Officers

A will executed in another country by a domiciliary of the other country, and probated in the other country, is subject to the jurisdiction of Florida courts for the determination of the validity of that will when it is presented in Florida for the purpose of devising real property in Florida.

Attorneys and Law Firms

***57** Mark R. Lewis, Sr., St. Petersburg, for Appellants.

Martin Errol Rice, P.A., St. Petersburg, for Appellee.

Opinion

CAMPBELL, Acting Chief Judge.

Appellants, beneficiaries under Decedent's earlier will, challenge the trial court's order that required any contest as to the validity of Decedent's subsequent will dated November 24, 1997, be held in Mexico and not in Florida. We reverse.

This appeal is from two consolidated probate actions filed in Pinellas County after the January 29, 1998 death in Mexico of Azalea Lawson Barteau (Decedent). In a petition for probate, the first action below, Appellants sought to establish and admit to probate a lost Last Will and Testament of the Decedent executed in Florida on August 12, 1993 (the "Florida Will"). The second action, filed by Appellee, was for Ancillary Administration of a Spanish language Will (the "Mexican Will") that Decedent executed in Mexico ***58** on November 24, 1997. The two actions were consolidated at trial. In response to Appellee's petition for ancillary administration of the Mexican Will, Appellants filed a declaration of adversary proceedings and an objection. (The Decedent's domicile at the time of her death has not been established in the Florida proceedings.)

Appellee then moved to dismiss Appellants' petition for probate of the Florida Will, alleging the existence of later wills executed by Decedent in Mexico. Appellee attached copies of those alleged later wills to his motion to dismiss and further alleged that the last dated Will (the Mexican Will) had been admitted to probate in Mexico so that any contest to the validity of or ancillary probate of that will must be in Mexico.

Appellants alleged that Decedent was domiciled in Pinellas County and owned real property there as well as in Mexico. Appellants further alleged that the Mexican Will was procured through fraud, undue influence and overreaching, and that Decedent lacked testamentary capacity at the time of execution of the Mexican Will. The trial judge agreed

with Appellee and ordered that all proceedings related to the wills, including the petition for ancillary administration of the Mexican Will, be conducted in Mexico. In doing so, the trial judge rejected the applicability of *In re Swanson's Estate,* 397 So.2d 465 (Fla. 2d DCA 1981), *In re Roberg's Estate,* 396 So.2d 235 (Fla. 2d DCA 1981), and *In re Estate of Hatcher,* 439 So.2d 977 (Fla. 3d DCA 1983), instead, apparently relying upon a theory utilizing forum non conveniens. This was error. While we have found no cases, and none have been cited to us, applicable to proper probate jurisdiction proceedings between Florida and foreign countries, we believe *Swanson, Roberg* and *Hatcher,* involving that same question albeit between different states, properly apply here. As was held in those cases, a will executed in another state by a domiciliary of the other state, and probated in the other state, is subject to the jurisdiction of Florida courts for the determination of the validity of that will when it is presented in Florida for the purpose of devising real property in Florida.

We, therefore, reverse and remand for further proceedings on the substantial validity of Decedent's wills. In doing so, the place of Decedent's domicile at the time of her death is a valid subject for determination.

WHATLEY and STRINGER, JJ., Concur.

All Citations

736 So.2d 57, 24 Fla. L. Weekly D1283

End of Document

732.502 Execution of wills.—Every will must be in writing and executed as follows:

(1)(a) *Testator's signature.*—

1. The testator must sign the will at the end; or

2. The testator's name must be subscribed at the end of the will by some other person in the testator's presence and by the testator's direction.

(b) *Witnesses.*—The testator's:

1. Signing, or

2. Acknowledgment:

a. That he or she has previously signed the will, or

b. That another person has subscribed the testator's name to it,

must be in the presence of at least two attesting witnesses.

(c) *Witnesses' signatures.*—The attesting witnesses must sign the will in the presence of the testator and in the presence of each other.

(2) Any will, other than a holographic or nuncupative will, executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state if valid under the laws of the state or country where the will was executed. A will in the testator's handwriting that has been executed in accordance with subsection (1) shall not be considered a holographic will.

(3) Any will executed as a military testamentary instrument in accordance with 10 U.S.C. s. 1044d, Chapter 53, by a person who is eligible for military legal assistance is valid as a will in this state.

(4) No particular form of words is necessary to the validity of a will if it is executed with the formalities required by law.

(5) A codicil shall be executed with the same formalities as a will.

History.—s. 1, ch. 74-106; s. 21, ch. 75-220; s. 11, ch. 77-87; s. 961, ch. 97-102; s. 42, ch. 2001-226; s. 5, ch. 2003-154.

Note.—Created from former s. 731.07.

182 So.3d 5
District Court of Appeal of Florida,
Third District.

Manuel Angel MALLEIRO, Appellant,
v.
Axel MORI, Martin Mori, and
Patricia Corallo, Appellees.

No. 3D14–95.
|
Sept. 30, 2015.
|
Rehearing Denied Jan. 12, 2016.

Synopsis

Background: Representative of beneficiaries of testator's New York will filed petition for administration of the New York will in Florida. Representative of beneficiaries of testator's Argentine will objected, and filed competing petition for administration of testator's notarial Argentine will. The Circuit Court, Miami–Dade County, Celeste Hardee Muir, J., admitted the Argentine will to probate. New York beneficiaries appealed.

Holdings: The District Court of Appeal, Logue, J., held that:

[1] testator's Argentine will was a nuncupative will, and thus could not be admitted to probate, and

[2] statutory prohibition of nuncupative wills did not bar all notarial wills, but barred notarial wills that were unsigned by the testator.

Reversed and remanded.

Wells, J., filed specially concurring opinion.

West Headnotes (3)

[1] **Wills** Public act
Wills Making and effect in general

Testator's unsigned, notarial will that was executed in Argentina was a "nuncupative will" that could not be admitted to probate under Florida law, and thus did not operate to revoke the New York will, which was executed prior to testator's Argentine will; although the Argentine will was made before a notary in the presence of three witnesses, was read back to the testator and orally approved by her in the presence of the witnesses, and was apparently admitted to probate in Argentina, the Argentine will failed to comply with Florida law because it lacked the signatures of the testator and witnesses. West's F.S.A. §§ 732.502(1, 2), 733.205.

2 Cases that cite this headnote

[2] **Wills** Public act

A "notarial will" is a will dictated to and taken down by a notary.

[3] **Wills** Public act

Statutory prohibition of nuncupative wills does not bar all notarial wills, but does bar notarial wills that are unsigned by the testator. West's F.S.A. § 732.502(2).

1 Cases that cite this headnote

Attorneys and Law Firms

***6** Therrel Baisden, P.A.; Law Offices of Terrence S. Schwartz, and Terrence S. Schwartz, for appellant.

Law Offices Mendez & Mendez, P.A., and Sergio L. Mendez and Daniel J. Mendez, for appellees.

Before WELLS, SALTER, and LOGUE, JJ.

Opinion

LOGUE, J.

This is a dispute over whether the distribution of a testator's real and personal property in the United States is governed by an earlier will executed in New York or a subsequent unsigned, notarial will executed in Argentina. The trial court

admitted the Argentine will to probate and held that it revoked the New York will. We reverse. We hold that the Argentine will, although a notarial will, is a nuncupative will prohibited by the Florida Probate Code because it is unsigned.

FACTS AND PROCEDURAL HISTORY

Elena Isleno, the Testator, was born in Argentina. She died in Florida at the age of seventy-nine, without a spouse or child. At the time of her death, she owned property in both the United States and Argentina.

Approximately five years before her death, the Testator executed a will in New York with the usual formalities of American wills, including her signature at the end, with attestations by three witnesses who subscribed in the presence of each other and the Testator. It is undisputed that the New York will complies with the formalities of Florida law. *See* § 732.502(1), Fla. Stat. (2013). The New York will was limited to distributing the Testator's real and personal property located in the United States. The beneficiaries of the New York will were nieces and other family and friends who lived in the United States or Argentina.

Four months later, the Testator executed a second will in Argentina. At the time, she apparently was a citizen of Argentina holding an Argentine national identity card with an Argentine address. The Testator orally pronounced her testamentary wishes to a notary who transcribed them. The Argentine will sets forth that the Testator made her attestations before the notary in the presence of three witnesses who were identified by name, address, and national identity card number. The Argentine will explains that the notary typed up the testamentary wishes and presented the typed document to the Testator, who declined to read it. The document was then read back to the Testator, who orally approved ***7** it in the presence of the witnesses. The notary signed and stamped the will, but the Testator and the witnesses did not sign it.[1] The Argentine will, which distributed all of the Testators' assets, was apparently admitted to probate in Argentina. It revoked "any other testament that is contrary to the present [one]." The beneficiaries of the Argentine will were a nephew, family members, and friends who lived in Argentina. None of the beneficiaries of the Argentine will were named as beneficiaries of the New York will, and none of the beneficiaries of the New York will were named as beneficiaries of the Argentine will. The notary and witnesses were not beneficiaries of the Argentine will.

Manuel Angel Malleiro, on behalf of the beneficiaries of the New York will, filed a petition for administration of the New York will in Florida. However, Axel Mori, Martin Mori, and Patricia Corallo, on behalf of the beneficiaries of the Argentine will, objected and filed a competing petition for administration of the subsequent Argentine will. After a hearing, the court admitted the Argentine will to probate. The court concluded that both wills complied with Florida law, but that the Argentine will revoked the New York will. This appeal followed.

ANALYSIS

A. *Whether the Argentine Will is a Prohibited Nuncupative Will.*

[1] The first and dispositive issue on appeal is whether the unsigned, notarial Argentine will can be admitted to probate under Florida law. Three provisions of the Probate Code bear on this issue.

First, the creation of a will in Florida requires compliance with certain formalities, the first and foremost being the witnessed signature of the testator. § 732.502(1). In this regard, the Probate Code reads:

> (a) Testator's signature.—
>
> 1. The testator must sign the will at the end; or
>
> 2. The testator's name must be subscribed at the end of the will by some other person in the testator's presence and by the testator's direction.
>
> (b) Witnesses.—The testator's:
>
> 1. Signing, or
>
> 2. Acknowledgment:
>
> a. That he or she has previously signed the will, or
>
> b. That another person has subscribed the testator's name to it, must be in the presence of at least two attesting witnesses.
>
> (c) Witnesses' signatures.—The attesting witnesses must sign the will in the presence of the testator and in the presence of each other.

§ 732.502(1); *see also Allen v. Dalk,* 826 So.2d 245, 247 (Fla.2002) ("A testator must strictly comply with these

statutory requirements in order to create a valid will."). The signatures of the testator and witnesses limit fraud and mistake. *See generally* Restatement (Third) of Property: Wills & Other Donative Transfers § 3.3 cmt. a (1999).

Second, the Probate Code relaxes its strict formalities for the wills of nonresidents. Without defining the term "nonresident," ***8** the Probate Code recognizes as valid a foreign will that does not comply with all of the formalities required of a resident's will, if the nonresident's will is valid under the laws of the state or country where executed. § 732.502(2). Even if executed by a nonresident, however, two types of wills are never recognized by the Probate Code. The two types of wills that are never valid in Florida are holographic wills[2] and nuncupative wills. *Id.* Regarding the wills of nonresidents, the Probate Code reads:

> (2) Any will, *other than a* holographic or *nuncupative will, executed by a nonresident* of Florida, either before or after this law takes effect, *is valid as a will in this state if valid under the laws of the state or country where the will was executed.* A will in the testator's handwriting that has been executed in accordance with subsection (1) shall not be considered a holographic will.
>
> § 732.502(2) (emphasis added).

The Probate Code does not define the term "nuncupative." As a Florida court lamented in 1964, and as is still true today, "[t]here is a dearth of authority in this jurisdiction as to nuncupative wills." *In re Vaughn's Estate,* 165 So.2d 241, 243 (Fla. 1st DCA 1964). Black's Law Dictionary, noting the name derives from the Latin word meaning to declare publicly and solemnly, defines a "nuncupative will" as a "will made by the verbal declaration of the testator, and usually dependent merely on oral testament for proof." Black's Law Dictionary 965 (5th ed.1979). The classic nuncupative will is declared by the testator to friends and family on his or her deathbed. *See, e.g., In re Carlton's Estate,* 221 So.2d 184, 185 (Fla. 4th DCA 1969) ("At the time of his last sickness, Testator called four members of the family to his bedside and spoke a nuncupative will...."). While Florida once admitted nuncupative wills to probate, it no longer does, even if executed by a nonresident. *See* Henry P. Trawick, Jr., Redfearn Wills & Administration in Florida § 3:2 (2014); *see also* § 732.502(2).

Third, the Probate Code recognizes nonresidents' "notarial wills" by providing that a copy may be admitted to probate if the original is required to be retained in the foreign country and "if the original could have been admitted to probate in this state." § 733.205, Fla. Stat. (2013). This statute reads:

> (1) When a copy of a notarial will in the possession of a notary entitled to its custody in a foreign state or country, the laws of which state or country require that the will remain in the custody of the notary, duly authenticated by the notary, whose official position, signature, and seal of office are further authenticated by an American consul, vice consul, or other American consular officer within whose jurisdiction the notary is a resident, or whose official position, signature, and seal of office have been authenticated according to the requirements of the Hague Convention of 1961, is presented to the court, it may be admitted to probate *if the original could have been admitted to probate in this state.*
>
> (2) The duly authenticated copy shall be prima facie evidence of its purported execution and of the facts stated in the certificate in compliance with subsection (1).
>
> (3) Any interested person may oppose the probate of such a notarial will or may petition for revocation of probate of such a notarial will, as in the original probate of a will in this state.
>
> § 733.205 (emphasis added).

[2] The Probate Code does not define the term "notarial will." A creature of ***9** civil law sometimes referred to as an "authentic" will or "will by public act," a notarial will is a will dictated to and taken down by a notary. The main characteristic of a notarial will is the central role played by the civil law notary in supervising the creation of the will and permanently storing the will. When performing this task, the civil law notary is acting in a quasi-judicial capacity in a manner that has no counterpart in common law jurisdictions and which should not be confused with the ministerial functions of a common law notary public. *See* Thomas A. Thomas & David T. Smith, Florida Estates Practice Guide, § 7.04(5) (2015).

A treatise that surveyed the practices of different countries concerning notarial wills noted four stages commonly involved in the creation of a notarial will:

> First, the testator makes an oral declaration of the will to the notary and two witnesses. Second, the notary (or an assistant) reduces the will to written form. Third, after being read aloud by the notary, the will is signed by testator, notary, and witnesses, with the notary adding information

about the execution, including, usually, its date and place and the names of witnesses. Finally, the will is retained by the notary and, in some countries, registered in a central register.

1 Kenneth G.C. Reid, Marius J. de Wall & R. Zimmerman, Comparative Succession Law, Testamentary Formalities 449 (2011). Significantly, according to this treatise, the required third step in the creation of a notarial will is the signing of the will by the testator. Indeed, the treatise does not mention or acknowledge any type of notarial will that is not signed in some manner by the testator. *Id.*

Turning to the will at issue, the Argentine will obviously fails to comply with the formalities of Florida law because it lacks the signatures of the Testator and witnesses. § 732.502(1). Similarly, the parties do not dispute that the Argentine will is a notarial will. But is the will nuncupative?

In one sense, every notarial will is nuncupative: it is orally pronounced by the testator to the notary. There is some authority for this sweeping classification. The record contains a document signed by a judge of the Argentine 94th Civil Court of the First Instance, which, in the translation provided by the Argentine beneficiaries, refers to the Argentine will as "nuncupative." Moreover, Louisiana, which retains the civil law practice of notarial wills, once referred to a notarial will as "a nuncupative testament by public act." 2 William J. Bowe & Douglas H. Parker, Page on Wills § 20.31, 20.32 & 20.36 (3d ed.1960). It has since, however, dropped that terminology. La. Civ.Code Ann. art. 1574 cmt. a (2015) (noting that the 1997 revisions changed "the law by suppressing the 'public and private nuncupative' and 'mystic' testaments found in the Civil Code of 1870. The so-called statutory testament is revised and retained by this Article, to be called the notarial testament.").

[3] Nevertheless, there would be no point to recognize foreign notarial wills in section 733.205 if they were all barred by the prohibition of nuncupative wills in section 732.502(2). We decline to interpret these provisions in a manner that renders one of them a nullity. *Woodgate Dev. Corp. v. Hamilton Inv. Trust,* 351 So.2d 14, 16 (Fla.1977) ("Where possible, it is the duty of the courts to adopt that construction of a statutory provision which harmonizes and reconciles it with other provisions of the same act."). Instead, we hold that section 732.502(2)'s prohibition of nuncupative wills does not bar all notarial wills, but does bar notarial wills that are ***10** unsigned by the testator. We reach this conclusion based upon the near universal emphasis in both foreign and domestic probate laws on the importance of the testator's signature. This reading of the statute honors the policy of comity reflected in section 733.205 by recognizing the validity of most notarial wills, almost all of which are apparently signed by the testator according to the authorities disclosed by our research. It also honors the policy of limiting fraud and mistake reflected in section 732.502(1)'s strict formalities for wills in general and 732.502(2)'s exclusion of nuncupative wills from acceptable foreign wills.

Applying this determination to the facts of this case, we conclude that the Argentine will is a notarial will, but it is a type of notarial will that is nuncupative because it is unsigned by the testator. Even if the Testator was a nonresident of Florida at the time she executed the Argentine will, the claim of the beneficiaries of the Argentine will cannot prevail.[3] Because it is a nuncupative will, the unsigned Argentine will cannot be admitted to probate in Florida and, therefore, does not operate to revoke the New York will.

B. *Benefit of Clarifying Legislation.*

We cannot close this decision, however, without noting that this area of the law would benefit from clarifying legislation. When it comes to the recognition of wills executed by nonresidents or recent residents, the Probate Code lacks definitions of important terms, including "notarial," "nuncupative," "holographic," and "nonresident." The definition of these terms implicates important rights and policy choices.[4]

Florida is already a global community and global marketplace. The people of Florida benefit from the way many citizens of distant states and countries visit, invest, and often stay to live out their golden years in Florida. Some are drawn by the ***11** comfort of Florida's sunshine and coastlines. Others come for the security provided by our low tax economy in which the personal income tax is barred by our traditions and expressly by our Florida Constitution. We owe it to them to ensure that their testamentary intentions are strictly honored regarding the disposition of their Florida property. This goal would be advanced by legislation providing definitions of some of the Probate Code's essential terms.

Reversed and remanded.

SALTER, J., concurs.

WELLS, J. (specially concurring).

I agree that the order on appeal admitting to probate a nuncupative will should be reversed. I do so because Florida, while recognizing the validity of notarial wills of non-residents if valid where made, does not recognize a nuncupative will under any circumstance. *See* § 733.205, Fla. Stat. (2013) (recognizing the validity of notarial wills executed by non-residents); § 732.502(2), Fla. Stat. (2013) (settling that wills executed by non-residents will be recognized in Florida if valid where made even if non-compliant with Florida's statutory mandates for executing a valid will[5], but confirming holographic and nuncupative wills are not valid in Florida irrespective of by whom or where executed: "[a]ny will, *other than a holographic or nuncupative will,* executed by a nonresident of Florida, ... is valid as a will in this state if valid under the laws of the state or country where the will was executed." (Emphasis added.)).

All Citations

182 So.3d 5, 40 Fla. L. Weekly D2226

Footnotes

1 The Argentine will is translated as naming and identifying the three witnesses and then reading "and who in witness thereof sign along with the testatrix," although no such signatures appear on the will. Documents in the record indicate the Argentine will was admitted to probate in Argentina. For purposes of this appeal, we assume, without deciding, that the Argentine will complied with the formalities of Argentine law.

2 A holographic will is a handwritten will.

3 The parties dispute whether the Testator was a nonresident under section 732.502(2). The trial court did not make a fact finding on this point. For the reasons explained, we are able to resolve this dispute without such a fact finding. In cases turning on section 732.502, however, the trial court should make a factual determination whether the testator was a nonresident.

4 To give one example, as discussed above, the Probate Code provides that the will executed by a nonresident of Florida is "valid as a will in this state if valid under the laws of the state or country where the will was executed." § 732.502(2). The Probate Code, however, leaves undefined the term "nonresident." If "nonresident" means "nonresident at the time of death," then a person moving to Florida must be careful to remake existing wills to conform to the required formalities of Florida law because only wills that conform to Florida law will be recognized as valid for any person who dies a resident of Florida. In contrast, if "nonresident" means "nonresident at the time the will was executed," a person moving to Florida would not need to remake existing wills because Florida would recognize the wills as valid because they were valid where executed when the person was a nonresident of Florida. Under the latter definition, however, a person, having become a resident of Florida, cannot return temporarily to his or her previous state or country for the purposes of creating a will in that state or country and expect to have that will recognized in Florida unless that will fully conforms to the formalities required by Florida law. We note that the model Uniform Probate Code advocates a very expansive definition. *See* Unif. Probate Code § 2–506 (amended 2010) ("A written will is valid if executed in compliance with Section 2–502 or 2–503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national."). The policy choice involves balancing comity with the need to limit fraud and mistake regarding the testator's true intentions.

5 *See generally* § 732.502(1), Fla. Stat. (2013) (requiring that wills be signed by the testator/testatrix in the presence of two witnesses who must also sign the will in the presence of the testator/testatrix and each other).

732.102 Spouse's share of intestate estate.—The intestate share of the surviving spouse is:

(1) If there is no surviving descendant of the decedent, the entire intestate estate.

(2) If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse, and the surviving spouse has no other descendant, the entire intestate estate.

(3) If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, one-half of the intestate estate.

(4) If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, one-half of the intestate estate.

History.—s. 1, ch. 74-106; s. 8, ch. 75-220; s. 15, ch. 2001-226; s. 5, ch. 2007-74; s. 2, ch. 2011-183.

732.103 Share of other heirs.—The part of the intestate estate not passing to the surviving spouse under s. 732.102, or the entire intestate estate if there is no surviving spouse, descends as follows:

(1) To the descendants of the decedent.

(2) If there is no descendant, to the decedent's father and mother equally, or to the survivor of them.

(3) If there is none of the foregoing, to the decedent's brothers and sisters and the descendants of deceased brothers and sisters.

(4) If there is none of the foregoing, the estate shall be divided, one-half of which shall go to the decedent's paternal, and the other half to the decedent's maternal, kindred in the following order:

(a) To the grandfather and grandmother equally, or to the survivor of them.

(b) If there is no grandfather or grandmother, to uncles and aunts and descendants of deceased uncles and aunts of the decedent.

(c) If there is either no paternal kindred or no maternal kindred, the estate shall go to the other kindred who survive, in the order stated above.

(5) If there is no kindred of either part, the whole of the property shall go to the kindred of the last deceased spouse of the decedent as if the deceased spouse had survived the decedent and then died intestate entitled to the estate.

(6) If none of the foregoing, and if any of the descendants of the decedent's great-grandparents were Holocaust victims as defined in s. 626.9543(3)(a), including such victims in countries cooperating with the discriminatory policies of Nazi Germany, then to the descendants of the great-grandparents. The court shall allow any such descendant to meet a reasonable, not unduly restrictive, standard of proof to substantiate his or her lineage. This subsection only applies to escheated property and shall cease to be effective for proceedings filed after December 31, 2004.

History.—s. 1, ch. 74-106; s. 8, ch. 75-220; s. 1, ch. 77-174; s. 16, ch. 2001-226; s. 145, ch. 2004-390; s. 102, ch. 2006-1; s. 6, ch. 2007-74.

732.2211 Demands or disputes; statute of repose.—

(1)(a) Any demand or dispute arising, wholly or partly, under ss. 732.216-732.228 regarding any right, title, or interest in any property held by the decedent or surviving spouse at the time of the decedent's death shall be determined in an action for declaratory relief governed by the rules of civil procedure. Notwithstanding any other law, a complaint for such action must be filed within 2 years after the decedent's death or be forever barred.

(b) An action for declaratory relief instituted pursuant to this section is not a claim, as defined in s. 731.201, and is not subject to ss. 733.701-733.710.

(2) The personal representative or curator has no duty to discover whether property held by the decedent or surviving spouse at the time of the decedent's death is property to which ss. 732.216-732.228 apply, or may apply, unless a written demand is made by:

(a) The surviving spouse or a beneficiary within 6 months after service of a copy of the notice of administration on the surviving spouse or beneficiary.

(b) A creditor, except as provided in paragraph (c), within 3 months after the time of the first publication of the notice to creditors.

(c) A creditor required to be served with a copy of the notice to creditors, within the later of 30 days after the date of service on the creditor or the time under paragraph (b).

(3) The rights of any interested person who fails to timely file an action for declaratory relief pursuant to this section are forfeited. The decedent's surviving spouse, personal representative or curator, or any other person or entity that at any time is in possession of any property to which ss. 732.216-732.228 apply, or may apply, shall not be subject to liability for any such forfeit rights. The decedent's personal representative or curator may distribute the assets of the decedent's estate without liability for any such forfeit rights.

(4) This section does not affect any issue or matter not arising, wholly or partly, under ss. 732.216-732.228.

History.—s. 6, ch. 2024-238.

SKATOFF, PA (HTTPS://SKATOFF.COM)

2024 Update: Community Property Rights in Florida

Florida is not a community property state. However, community property rights acquired in community property states can be enforced in Florida, including at death (https://skatoff.com/category/florida-probate-lawyer/).

What is Community Property?

Community property is everything a married couple acquires during the marriage, while living in a community property state. Community property rights can be claimed by a surviving spouse, in addition to the other spousal entitlements under Florida law (https://skatoff.com/category/florida-surviving-spouse-rights/).

What is Florida's Uniform Disposition of Community Property Rights At Death Act?

Florida has enacted the Uniform Disposition of Community Property Rights at Death Act (the "Act"). The Act applies to personal property acquired as, or that became and remained, community property under the laws of another jurisdiction; was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, community property; or, is traceable to that community property. *Section* 732.217, Fla. Stat.

Section 732.219 governs the disposition of community property on death:

> Upon the death of a married person, one-half of the property to which ss. 732.216–732.228 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state.

Johnson v. Townsend: Texas meets Florida

In Johnson v. Townsend (https://skatoff.com/wp-content/uploads/2024/06/Johnson-v.-Townsend.pdf), the court determined that community property rights are a claim that must be pursued, not an automatic right in Florida. Therefore, a timely creditor claim must be filed in Florida to enforce community property rights acquired in a community property state.Johnson v. Townsend involved a married couple that moved from Texas (a community property state) to Florida. The husband died, and was survived by his wife and his children from a prior marriage.

Decedent's will was admitted to probate and his surviving spouse was appointed personal representative in March 2015. The surviving spouse published a notice to creditors on March 31, 2015, notifying creditors of the pending estate and containing the following standard language:

> All creditors of the decedent and other persons having claims or demands against decedent's estate, on whom a copy of this notice is required to be served, must file their claims with this court ON OR BEFORE THE LATER OF 3 MONTHS AFTER THE TIME OF THE FIRST PUBLICATION OF THIS NOTICE OR 30 DAYS AFTER THE DATE OF SERVICE OF A COPY OF THIS NOTICE ON THEM.
>
> All other creditors of the decedent and other persons having claims or demands against decedent's estate must file their claims with this court WITHIN 3 MONTHS AFTER THE DATE OF THE FIRST PUBLICATION OF THIS NOTICE.
>
> ALL CLAIMS NOT FILED WITHIN THE TIME PERIODS SET FORTH IN FLORIDA STATUTES SECTION 733.702 WILL BE FOREVER BARRED.

In September 2017, over two and ½ years after decedent's death, the surviving spouse filed a claim under the Florida Uniform Disposition of Community Property Rights at Death Act. Therein, the surviving spouse sought to confirm and effectuate her vested 50% community property interest in an investment asset acquired and titled in the decedent's name while the decedent and the wife were domiciled in Texas. The decedent's children objected, and probate litigation ensued.

According to the Johnson case, the deadline to file a community property claim is 30 days, three months, or 2 years. The deadlines for filing creditor claims apply to community property claims. Here is how the Johnson case arrived at this result:

The Florida Uniform Disposition of Community Property Rights at Death Act does not contain a deadline for pursuing community property rights. The surviving spouse argued no deadline existed (the argument being that the assets are already owned by the wife under community property laws, and are not assets of the decedent). The children argued the creditor claim deadlines apply (the assets are within decedent's probate estate and the surviving spouse needs to establish her right to the assets).

The Florida appellate court agreed with the children, stating:

> First, we agree with the daughters' argument that the wife's petition to determine her community property interest is a "claim" as that term is defined in section 731.201(4). Section 731.201(4) defines a "claim" as *a liability of the decedent*, whether arising in contract, tort, or otherwise, and funeral expense. The term does not include an expense of administration or estate, inheritance, succession, or other death taxes. (emphasis added). The wife's community property interest is "a liability of the decedent." Although the decedent's possession of the community property in his name may have created a resulting trust, *see Quintana*, 195 So. 2d at 580 ("A resulting trust is generally found to exist in transactions affecting community property in noncommunity property states where a husband buys property in his own name."), upon the decedent's death, his estate became liable to the wife for her community property interest. Thus, upon the decedent's death, the wife's community property interest was a claim which the wife had to pursue.

Therefore, the surviving spouse had three months after publishing the notice to creditors to file her community property claim, and in any event had two years after decedent's death to file her claim under section 733.710. The surviving spouse did neither, and the community property claim was barred.

The following question was certified to the Florida Supreme Court

> Whether a surviving spouse's vested community property rights are part of the deceased spouse's probate estate making them subject to the estate's claims procedures, or are fully owned by the surviving spouse and therefore not subject to the estate's claims procedures.

The Florida Supreme Court denied the surviving spouse's petition to review the decision.

2024 Florida Probate Legislation

On June 13, 2024, Governor DeScantis signed HB 923 to amend the Florida Probate Code (https://skatoff.com/wp-content/uploads/2024/06/Enatced-Statute-Ch-2024-238.pdf), including clarifying how community property rights can be preserved, legislatively overruling the Johnson case. The legislation also removes community property status from certain investments.

Elimination of community property status for reinvestment in tenancy by the entireties property.

As explained by the House Analysis, the bill:

Amends s. 732.225, F.S., to provide that the reinvestment of any community property in real property located in Florida which is or becomes real or personal property held by tenants by the entirety creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

New Section 732.225 now reads as follows:

732.225 Acts of married persons.—Sections 732.216-732.228 do not prevent married persons from severing or altering their interests in property to which these sections apply. The reinvestment of any property to which these sections apply in real property located in this state which is or becomes real or personal property held by tenants by the entirety or homestead property creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

Elimination of necessity to file creditor claim

The House Analysis (https://skatoff.com/wp-content/uploads/2024/06/House-Staff-Final-Analysis-Cs-HB-923.pdf) pointed out the erroneous decision of the Fourth District in requiring a creditor claim to perfect community property rights:

Nothing in the Act requires a surviving spouse to make a probate creditor claim to preserve his or her community property rights. However, in 2018, the Fourth District Court of Appeal held that probate creditor claim procedures apply to title disputes arising under the Act. In other words, the court held that a surviving spouse's attempt to confirm his or her community property rights is a probate creditor claim, and, thus, subject to the statute of limitations period and the two-year statute of repose applicable to such claims.48 This has the potential to result in the unintended forfeiture of a surviving spouse's community property rights where the surviving spouse fails to bring a timely creditor claim and is thus forever barred from asserting his or her rights.

The House Analysis explained the amendment to the community property statute:

The bill repeals s. 732.221, F.S., relating to perfection of title of personal representative or beneficiary, and s. 732.223, F.S., relating to perfection of title of surviving spouse, and replaces these sections with newly-created s. 732.2211, F.S., which section creates a new dispute resolution mechanism for certain demands and disputes arising under the Act. Specifically, under the bill, any demand or dispute arising under the Act regarding any right, title, or interest in any property held by the decedent or surviving spouse when the decedent died must be determined in an action for declaratory relief governed by the Florida Rules of Civil Procedure, which action the bill expressly exempts from the definition of creditor claim and all rules and procedures applicable thereto. Such an action must be filed within two years after the decedent's death or is forever barred, and the rights of any interested person who fails to timely file an action for declaratory relief under this section are forfeited. The decedent's surviving spouse, personal representative, or any other person or entity that at any time possesses any property to which the Act applies, or may apply, is not subject to liability for any such forfeit rights, and the decedent's personal representative may distribute the assets without liability for any such forfeit rights.

New Section 732.2211 provides as follows:

732.2211 Demands or disputes; statute of repose.—

(1)(a) Any demand or dispute arising, wholly or partly, under ss. 732.216-732.228, regarding any right, title, or interest in any property held by the decedent or surviving spouse at the time of the decedent's death shall be determined in an action for declaratory relief governed by the rules of civil procedure. Notwithstanding any other law, a complaint for such action must be filed within 2 years after the decedent's death or be forever barred.

(b) A action for declaratory relief instituted pursuant to this section is not a claim, as defined in s. 731.201, and is not subject to ss. 733.701- 733.710.

The new statute is a complete legislative overruling of the Johnson case, which has been widely criticized.

Jeffrey H. Skatoff

4440 PGA Blvd., Suite 600 Palm Beach Gardens, Florida 33410

561-842-4868 (tel:5618424868)

jeffrey@skatoff.com (mailto:jeffrey@skatoff.com)

Contact Us (https://skatoff.com/contact-jeffrey-skatoff/)

Privacy Policy (/privacy-policy/)

Terms and Conditions (https://skatoff.com/terms-and-conditions/)

Guardianship (https://skatoff.com/category/florida-guardianship-lawyer/)

Probate (https://skatoff.com/category/florida-probate-lawyer/)

Spousal Rights (https://skatoff.com/category/florida-surviving-spouse-rights/)

Meet the Team (https://skatoff.com/author/jeffrey/)

733.301 Preference in appointment of personal representative.—

(1) In granting letters of administration, the following order of preference shall be observed:

(a) In testate estates:

1. The personal representative, or his or her successor, nominated by the will or pursuant to a power conferred in the will.

2. The person selected by a majority in interest of the persons entitled to the estate.

3. A devisee under the will. If more than one devisee applies, the court may select the one best qualified.

(b) In intestate estates:

1. The surviving spouse.

2. The person selected by a majority in interest of the heirs.

3. The heir nearest in degree. If more than one applies, the court may select the one best qualified.

(2) A guardian of the property of a ward who if competent would be entitled to appointment as, or to select, the personal representative may exercise the right to select the personal representative.

(3) In either a testate or an intestate estate, if no application is made by any of the persons described in subsection (1), the court shall appoint a capable person; but no person may be appointed under this subsection:

(a) Who works for, or holds public office under, the court.

(b) Who is employed by, or holds office under, any judge exercising probate jurisdiction.

(4) After letters have been granted in either a testate or an intestate estate, if a person who was entitled to, and has not waived, preference over the person appointed at the time of the appointment and on whom formal notice was not served seeks the appointment, the letters granted may be revoked and the person entitled to preference may have letters granted after formal notice and hearing.

(5) After letters have been granted in either a testate or an intestate estate, if any will is subsequently admitted to probate, the letters shall be revoked and new letters granted.

History.—s. 1, ch. 74-106; s. 62, ch. 75-220; s. 21, ch. 77-87; s. 1, ch. 77-174; s. 988, ch. 97-102; s. 98, ch. 2001-226.

Note.—Created from former s. 732.44.

Florida Edition Attorneys' Title Insurance Fund, Inc.

The Fund® CONCEPT

June 2004, Volume 36

Nonresident Testate Decedents and Florida Real Property – Conveying Insurable Title to a Purchaser for Value

by J. Edward Weber, Fund Claims Counsel

A nonresident owning Florida real property dies testate. An estate administration took place in the state of the domicile. Assuming that title was insurable as vested in the decedent, what must be done to convey insurable title to the Florida property to a purchaser for value?

Because attorneys encounter this fact situation so frequently, and because the Florida Probate Code is both detailed and subject to frequent attention from the Legislature, THE FUND herein sets forth its view on the question.

In answering the principal question, the Fund Member Agent may find it helpful to keep in mind three smaller and separate issues: (1) The status of the title upon the decedent's death (remembering that Florida law primarily controls the disposition of real property located in Florida), (2) possible creditors' claims against the decedent, and (3) the impact of estate taxes and the necessity of clearing them.

Where is the Title? As attorneys will recall from law school, it is a maxim of real property law that title at all times vests somewhere, even though some steps may be necessary to determine where. In general, the Florida Probate Code provides two methods for the transfer of title of decedents' real property situate in Florida: (1) Ancillary administration, either formal or summary; and (2) admission of the decedent's will and domiciliary estate administration proceedings to record in Florida. In addition to these, a procedure authorized under Sec. 734.1025, F.S., may apply in very limited circumstances.

Ancillary Administration. An estate administration occurring in Florida in a case where the decedent was not a Florida resident

(Continued on page 67)

In This Issue

Nonresident Testate Decedent ...

(Continued from page 63)

and the decedent's estate has been administered in another, domiciliary, state is an ancillary administration. A will which is valid under the laws of the state where it was drafted and executed, qualifies for admission to probate in Florida, except for nuncupative or holographic wills, Sec. 732.501(2), F.S., but it does not follow that either the foreign domiciliary personal representative or the foreign probate court has any authority over the Florida property. To the contrary, neither a foreign court, nor a foreign personal representative has any authority over Florida real property, regardless of whether the will does or does not confer upon the foreign personal representative a power of sale and regardless of whether the foreign court enters an order purporting to authorize the sale of the Florida real property. This authority belongs exclusively to the Florida court and to the ancillary personal representative who is appointed by, and holds letters of administration from, the Florida court. The ancillary personal representative in some cases may be the same individual or corporation who is the domiciliary personal representative, but the ancillary personal representative has no authority unless and until he or she has been appointed by the Florida probate court and holds letters of administration issued by it. The personal representative then acts qua Florida, and not domiciliary, personal representative. Sec. 733.304, F.S., disqualifies as personal representative most non-Florida residents who are not related to the decedent by blood or marriage and this causes occasional heartburn for domiciliary personal representatives.

The authorization and particulars for ancillary administration are found in Sec. 734.102, F.S.

Requirements for conveyance by a duly appointed and acting Florida personal representative in an ancillary administration are the same as in a Florida domiciliary estate administration. In fact, they are somewhat simplified because the concern about possible homestead status and a consequent lack of authority of the personal representative to convey homestead does not exist with a nonresident decedent. The questions, therefore, are: Does the decedent's will give a power of sale of real property to the personal representative? If a power of sale exists, does the proposed conveyance which is to be insured fall clearly within the scope of the power of sale and free from any limitation of or exceptions to such power of sale? Is the personal representative in the Florida administration a person or entity who was specifically nominated in the will either as the first choice or a named alternative to serve as the personal representative? If all three of these questions can be answered in the affirmative, THE FUND will rely upon a deed of conveyance from the Florida personal representative, but if any of the three questions has a negative answer, then the personal representative must obtain and record an order from the Florida court specifically authorizing the proposed conveyance. The more specific the order, the better. If the conveyance is made without a prior order, THE FUND will rely upon a recorded order from the court confirming the conveyance which has already been made.

Conveyance by a personal representative assumes that the ancillary administration is a formal administration. However, if the decedent's will does not direct formal administration, summary administration may be available in an ancillary proceeding, depending upon the value of the Florida assets and the decedent's date of death. For estates of decedents dying on and after Jan. 1, 2002, the maximum value of the estate subject to administration in a summary administration is $75,000. Sec. 735.201, F.S. For estates of decedents dying before Jan. 1, 2002, the maximum value was $25,000. The

summary administration limits are the same irrespective of whether the Florida administration is ancillary or domiciliary. They are jurisdictional if summary administration begins within two years following the decedent's death. If the decedent died more than two years before estate administration begins, Sec. 735.201, F.S., provides that summary administration is available without regard to the value of the estate, and this applies to ancillary administrations as well as domiciliary.

What should be recorded in an Ancillary Administration? Attorneys handling estate proceedings should always have as one objective leaving recorded evidence sufficient to enable future title examiners without direct knowledge to assure themselves that the estate was completely and properly administered. This objective has attained especial importance in recent years as some court clerks have begun to destroy probate files.

If a formal ancillary administration is required, the petition for administration, authenticated copy of the will, order admitting the nonresident's will to probate (often combined with an order appointing the ancillary personal representative) and letters of ancillary administration should be recorded, just as if the estate administration were a domiciliary proceeding. THE FUND strongly recommends but does not require recording a certified copy of the death certificate.

If ancillary summary administration is available, there will of course be no ancillary personal representative appointed, but the petition, death certificate, will, order of ancillary summary administration and order admitting the will to probate (if not contained within the order of ancillary summary administration) should be recorded.

Admission of Will from Foreign Probate to Record in Florida. Sec. 734.104, F.S., provides that an authenticated copy of a will purporting to devise real property in Florida may be admitted to record under certain circumstances. The will must have been executed as provided by Ch. 732, F.S., and it must have been admitted to probate in the appropriate foreign jurisdiction. Sec. 734.104(a) and (b), F.S. Additionally, either the decedent must have been dead for more than two years, or the personal representative in the domiciliary jurisdiction must have been discharged. The statute provides the particulars of admitting the will to record. Admitting the will to record does not simply mean recording an authenticated copy in the public records. Rather, it means petitioning and obtaining an order from the Florida court specifically admitting the will to record in Florida. If this is done, the admission of the will to record shall be as valid and effectual to pass title to real property in Florida as if the will had been admitted to probate in Florida. The petition, will, death certificate, and order admitting to record should be recorded in all Florida counties wherein real property is located. There are no jurisdictional limits for this procedure. Since this is not an estate administration, there is no personal representative. Title is vested in those persons to whom the decedent has devised it by the will, and those devisees must personally convey their interests to a purchaser for value whose title is to be insured.

For title insurance purposes, THE FUND authorizes reliance upon the procedure set forth in Sec. 734.104, F.S., together with a warranty deed or special warranty deed from all devisees receiving an interest under the nonresident decedent's will to the proposed insured purchaser for value. For creditors' claims where the insured conveyance will occur within two years of the decedent's death, however, see below.

Sec. 734.1025, F.S. In its current version as amended by the 2001 Florida Legislature, Sec. 734.1025, F.S., permits a foreign (domiciliary)

personal representative to petition a Florida circuit court to admit a nonresident decedent's will to probate in Florida provided that all property subject to administration in Florida does not exceed $50,000. The amount is jurisdictional. The petition must be submitted *before* the expiration of two years following the decedent's death. The petitioner shall file authenticated copies of "so much of the foreign proceedings as will show the will and beneficiaries of the estate as provided in the Florida Probate Rules." Sec 734.1025(1), F.S. The statute also provides that the foreign personal representative may cause a notice to creditors to be published and served as provided in Ch. 733, F.S. However, if a claim is filed a Florida personal representative must be appointed. The statute confers no authority upon the foreign personal representative to convey Florida real property or, in fact, to exercise any other functions of an administrator in Florida.

The limited jurisdictional amount and the fact that the procedure is available only if the petition is filed within two years of the decedent's death mean that this provision will probably have marginal usefulness for Florida real property practitioners. Nevertheless, THE FUND will rely upon a warranty or special warranty conveyance by those devisees whom the will shows to be in title to the subject property, provided, however, that no creditors' claims have been filed and either that two years have elapsed since the decedent's death or that the creditors' claims period has expired following publication of the notice to creditors. THE FUND does not authorize a conveyance by the foreign personal representative, since the authority for such conveyance is not vouchsafed under the statute.

Creditors' Claims. Whenever the conveyance to be insured occurs within two years of the decedent's death, the member agent must be concerned with creditors' claims. If the ancillary administration is a formal administration, THE FUND does not require that proceeds be held pending the determination of creditors. As to ancillary summary administration, for decedents dying after Dec. 31, 2001, Sec. 735.206(2), F.S., requires the petitioner for summary administration to make a diligent search and reasonable inquiry for decedent's creditors who are known or are reasonably ascertainable, and to serve a copy of the petition for summary administration upon them, and to make provision for payment of their claims to the extent that assets are available before an order of summary administration will be granted. If a recorded sworn statement exists, either contained within the petition for summary administration or in a separate recorded affidavit of the petitioner for summary administration which sworn statement recites either that (1) diligent search and inquiry have been made and no creditors have been ascertained, or in the alternative (2) all of the following: service has been made upon all interested persons including known and reasonably ascertainable potential creditors, and at least 30 days have elapsed following service and no claims have been filed, and the member agent has no knowledge of potential unasserted claims, then THE FUND authorizes reliance upon the recorded sworn statement. However, if the order of summary ancillary administration requires the payment of the sale proceeds into the registry of court or some other procedure other than payment of the proceeds to the persons vested with title by virtue of the will and order of summary administration, then the member agent must comply with the provisions of the order.

Sec. 734.710, F.S., bars creditors' claims where no claim is filed for two years following the decedent's death. Therefore, where the decedent's death occurred more than two years prior to the filing of a petition for ancillary administration (either formal or summary)

creditors' claims against the decedent need not be excepted on the title insurance policy of a purchaser for value.

The predecessor to Sec. 704.104, F.S., formerly contained a procedure to clear creditors' claims, but that procedure is no longer available. Therefore, where the member agent wishes to rely upon the admission of a foreign will to record in Florida, two years must have elapsed before the conveyance to be insured in order for creditors' claims to be ignored. Since it is unlikely that a purchaser or the purchaser's mortgage lender will accept an exception for creditors' claims in a title insurance policy, if the conveyance to be insured will occur within two years of the nonresident decedent's death, THE FUND recommends ancillary administration.

Federal and Florida Estate Taxes. A comprehensive discussion of the potential existence of federal or Florida estate tax liens is beyond the scope of this article and may be found in TNs 2.10.01 through 2.10.09. The following generalities may be helpful, however.

First, the Fund Member Agent should always assume that the property is or may be subject to estate tax liens unless the records clearly indicates the contrary. In many cases, it will be up to the agent to perfect the record by obtaining and recording proof rebutting the possibility of such liens.

Second, federal estate tax liability constitutes a lien of ten years from date of death and Florida estate tax liability has a lien of up to 20 years on the Florida real property of nonresident decedents.

Third, foreign fiduciaries sometimes mistakenly believe that Florida has no estate tax. Occasionally titles to Florida property will be encountered where a substantial federal estate tax was paid on a nonresident decedent's estate but no estate tax was paid to Florida attributable to the Florida asset. With the passage of time and the accrual of penalties and interest, the Florida estate tax liability may be substantially greater than it would have been had the federal estate tax return been timely filed with the Florida Department of Revenue and the tax paid. Federal law limits the time in which a fiduciary may amend the federal estate tax return and recover sums paid to the United States, which should have been paid to the State of Florida, with the result that the estate pays twice exclusive of penalties and interest.

Fourth, both federal and Florida law provide that in certain circumstances, property included in the decedent's gross estate of tax purposes wherein the decedent owned something less than a full fee simple estate may be sold free and clear of estate tax liens. However, these exceptions do not apply to nonresident decedents insofar as Florida estate tax is concerned.

Finally, the possibility of estate tax liability and attendant liens may be rebutted in three ways. First, evidence may be recorded establishing that the estate was insufficient large to require a federal estate tax return filing requirement or incur an estate tax liability. For decedents dying prior to Jan. 1, 2000, evidence generally was a Florida Non-Taxable Certificate, and for decedents dying thereafter, the Affidavit of No Florida Estate Tax Due. For estates which did have a federal estate tax return filing requirement, proof that the amount of the liability was reached with the Internal Revenue Service and the Florida Department of Revenue and the full amount paid should be recorded. The proof generally consists of a federal estate tax liability form, and a Final Certificate and Receipt for Estate Tax (DR-304). These items are required in the estate administration file, where there is a formal administration before the personal representative is discharged. As noted above the current practice of some court clerks to destroy files thus destroying this important evidence makes it increasingly important to record. Finally, when conveyances occur before estate tax liability is determined and paid,

transaction-specific releases may be available from the Internal Revenue Service and from the Department of Revenue. If they are obtained and recorded, then title may be insured without reference to the possibility of estate tax liens. If this cannot be done, Fund Member Agents may obtain permission from THE FUND's underwriting department on an ad hoc basis to enter into escrow arrangements and to insure title with an exception for the possibility of estate tax liens but including affirmative coverage against loss incurred thereby. ❑

Cases ...

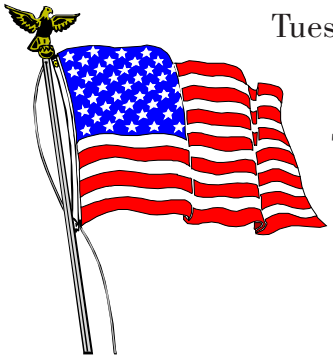
(Continued from page 65)

period had expired. The court noted that although case law excuses the failure to file a contractor's affidavit before the complaint is filed the affidavit could not be filed after the 60-day limitation period had expired.

THE FUND Closed for Independence Day

THE FUND will be closed Monday, July 5, in observance of Independence Day.

THE FUND will reopen on Tuesday, July 6.



Regular hours for THE FUND are Monday through Friday, 9 a.m. to 5 p.m.

More FUND-Trained Paralegals Available for Placement

by Susan Hosier, Fund Paralegal Certification and Placement Manager

For the past three years, THE FUND has partnered with community colleges across the state to offer a special Paralegal Certification and Placement Program (PCAP), providing additional training for paralegal students to help make the transition to the real estate attorney's office a smooth one.

PCAP came out of a need, expressed by Fund Member Agents, for qualified, well-trained support staff for their real estate practices.

PCAP consists of a 16-week training course for students completing their paralegal studies. The course is intended to expand their real estate knowledge and marketability. Most important of all, THE FUND has designed the curriculum to focus on "real world" situations geared to a real estate attorney's office. For example, students learn how to complete all aspects of a closing outside of the controlled environment of the classroom.

The course is led by a Fund-certified Trainer and a professor holding a Juris Doctor from the hosting college. Using real-life examples, attendees learn how to use THE FUND's Automated Title Information Data System (Web ATIDS), ProPel®, and DoubleTime® in various closing scenarios. Training includes basic title examination, policy rating, preparation of commitments, HUD, closing documents and final policies, and skills relating to a number of Fund procedures.

Upon successful completion of the course with a grade of "C" or above, attendees are eligible to take THE FUND's Certification Exam. Those passing the Certification Exam with a grade of

(continued on page 74)

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-NA) 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: _____

Affidavit

[Arms' Length Transaction — by Surviving Spouse]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant"), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

   [i*nsert legal description of real property*] ("Subject Property")

2. Affiant is the surviving spouse of _____ ("Decedent"), and the owner of Subject Property by virtue of that certain deed recorded _____ in O.R. _____, Page_____, and/or under Instrument No. _____, of the Public Records of _____County, Florida.

3. Affiant was continuously married to Decedent from a time prior to taking title to Subject Property through the date of death of Decedent.

4. Decedent was a U.S. citizen or permanent resident at the time of his death.

5. Affiant is conveying Subject Property to a bonafide purchaser for full and adequate consideration in an arms' length transaction.

6. This affidavit is made to induce **Old Republic National Title Insurance Company** ("Title Insurer") to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

_____
(Affiant)

Print Name: _____

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: _____

Affidavit

[Continuous Marriage — by Surviving Spouse]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant"), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

   [*insert legal description of real property*]

2. Affiant is the surviving spouse of _____, deceased, ("Decedent") and the owner of the real property described in item 1 above by virtue of that certain deed recorded _____ in O.R. _____, Page_____, and/or Instrument No. _____, Public Records of _____County, Florida.

3. Affiant was continuously married to Decedent from a time prior to taking title under the deed described in item 2 through the date of death of Decedent.

4. This affidavit is made to induce **Old Republic National Title Insurance Company** ("Title Insurer") to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

_____
(Affiant)

Print Name: _____

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: _____

Affidavit

[Estates — Diligent Search and Inquiry Regarding Creditors]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant"), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

   [*insert legal description of real property*] ("Subject Property")

2. Affiant filed a Petition for Summary Administration in the Estate of _____ ("Decedent"), under Case No. _____ in the County of _____, State of Florida.

3. Decedent was the owner of Subject Property at time of death.

4. Affiant has made a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors of the Estate of Decedent and found none to which the estate is indebted.

_____

(Affiant)

Print Name: _____

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 Public

[Notary Seal]

Printed Name: _____

My Commission Expires: _____

NALA | THE PARALEGAL ASSOCIATION

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. 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.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Length In Hours	**Session Topics (Description and Speakers)**	**Validation of Attendance**
1.0	Understanding Florida Ancillary Administrations / Kara Scott	*Kara Scott*

Name of CP (Please Print)				NALA Account Number (On Mailing Label)
				149113
Signature of CP				Name of Seminar/Program Sponsor
				Understanding Florida Ancillary Administrations / ATFS, Inc.
Address				Authorized Signature of Sponsor Representative
				Kara Scott
				Date of Educational Event:
City:		State (XX):		
Preferred e-mail address				Location:
				Recorded Webinar

For Office Use Only	
Substantive hours	
Non-substantive hours	
Ethics	

FL BAR Reference Number: 2504101N

Title: Understanding Florida Ancillary Administrations

Level: Intermediate

Approval Period: 09/01/2025 - 03/31/2027

CLE Credits

General	1.0

Certification Credits

Real Estate	1.0