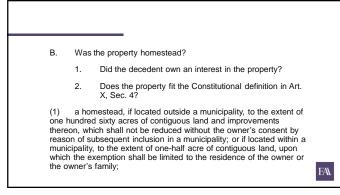
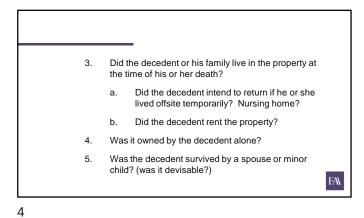


### PROBATE AND THE TRANSFER OF REAL PROPERTY

Stephen C. L. Chong, Esquire Mateer & Harbert, P.A.

I.	Pre	elimi	inary Determinations	
	A.	Who	o owns the property? Try to get a copy of the Deed	
		1.	Did the decedent own it alone?	
		2.	Was the decedent married?	
		3.	Are there survivors in title?	
		4.	Was it owned by an entity like a trust, limited liability company, or corporation?	
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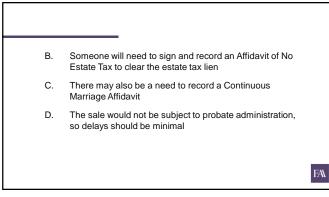


Ind	ividual ownership by the Decedent	
A.	If it was the decedent's homestead, it does not need to be included in the probate proceeding	
В.	However, it is advisable to have a judicial determination of homestead under Rule 5.405 Fla. Prob. Rules in the probate proceeding to resolve title issues, creditor and other claims	
C.	The Order Determining Homestead will establish the owners who must sign the listing agreement, sales contract and closing documents	FA

D.	The proceedings to obtain an Order Determining Homestead will take at least six months since the creditors of the estate will need to be included in this proceeding	
E.	Creditors normally have the later of three months after the first publication of the Notice to Creditors or thirty days after service of a Notice to Creditors to file their claims in the estate. Sec. 733.702(1) Fla. Stat. Therefore, be sure the contract provides that the closing date can be extended to obtain all necessary Court orders.	
F.	If the property was not the homestead of the decedent, the Personal Representative of the estate will need to sign the listing agreement, sales contract, and closing documents. The process of appointing the Personal Representative will take about thirty days after filing a Petition for Administration.	FA

# G. Further, if an Order Approving the Sale is required, that can take another forty-five days (if there is no Will, no power to sell real property in the Will, the Personal Representative has a conflict of interest, or if the beneficiaries do not get along). Sec. 733.613(1) Fla. Stat. Hence, provide in the sales contract for extensions of the closing date to obtain the necessary Court orders. H. If the decedent was survived by a spouse, there could be an elective share claim that could delay distribution of the proceeds. Sec. 732.201 et seq. Fla. Stat.

11.	Ten	ancy b	y the Entireties (Husband and Wife named in the Deed)	)
	A.		e decedent had a surviving spouse, that spouse can the property without approval from any other party	
		1.	The surviving spouse would sign the listing agreement, sales contract and closing documents	
		2.	Recording a Death Certificate without the cause of death will transfer title to the surviving spouse	
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₩.	Joint Deed	Tenants with Right of Survivorship (the decedent and at least one other person on the with specific mention of survivorship rights)	
	A.	Upon the death of one of the joint owners, the surviving owners would be the title holders to sign the listing agreement, sales contract and closing documents	
	B.	You still need to record a Death Certificate and an Affidavit of No Estate Tax	
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C. The sale would not be subject to probate administrationD. If the survivors do not include the decedent's surviving spouse, you may need to watch out for an elective share claim

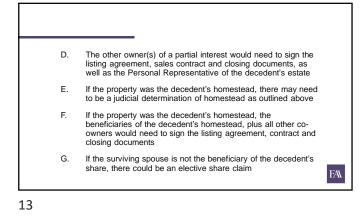
E. An elective share claim may not hold up closing, but it could delay disbursement of the proceeds

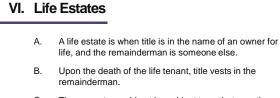
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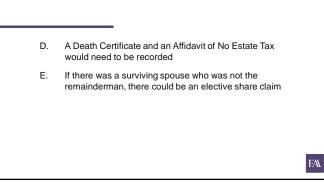
V.	Tenants in Common (the decedent and at least one other person on the Deed without any mention of survivorship rights)					
	A.	The decedent's share of the property will be subject to probate, unless it was the decedent's homestead				
	В.	A Court Order may be needed to sell a partial interest in the property				
	C.	Likewise, the other owners would have to agree to sell the property or a partition under Chpt. 64 Fla. Stat. would be needed				
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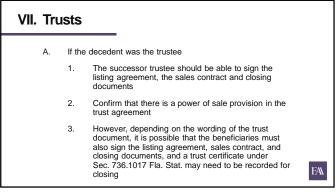


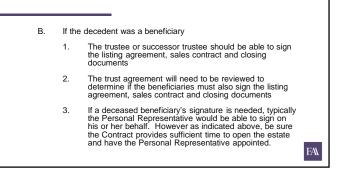


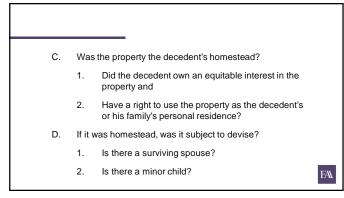
C. The property would not be subject to probate, so the remainderman would have the authority to sign the listing agreement, contract and closing documents

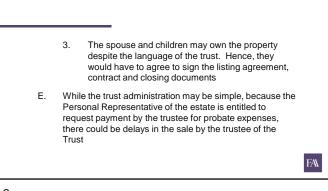
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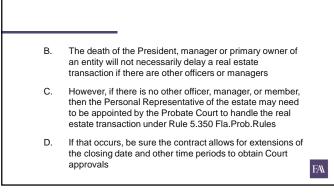


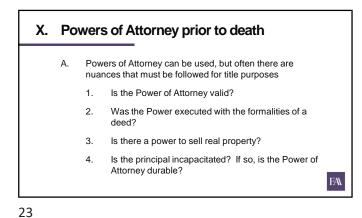


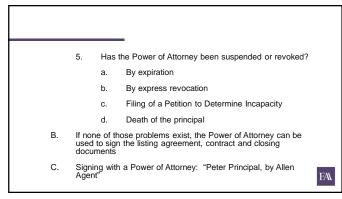


VIII.	Indiv	vidual Retirement Accounts and Qualified Retirement Plans	
	Α.	If the property is titled in the name of the custodian or trustee of an Individual Retirement Account or qualified retirement plan, the listing agreement, contract and closing documents can be signed by the custodian or trustee	
	В.	The custodian or trustee should sign: "as custodian or trustee of the plan for the benefit of"	
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### XI. Ancillary Administrations A. These situations occur when a property is owned in Florida, but the decedent was a resident of another state B. The same procedures and considerations apply as above, but clearly the property would not be considered the decedent's homestead

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### XII. Context A. You now have the technical information to do what needs to be done to sell or clear title to the property B. But the missing piece that may set your services apart will be your emotional understanding 1. The family will be grieving in many of these situations 2. The family may have a hard time making good business decisions

 The family may have no one onsite to help with the normal decisions and actions such as repairs, disposition of personal property, and clean up

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<ol> <li>Your knowledge, reassurance, and expertise will be called upon to comfort and lead the family through these emotionally trying times</li> </ol>	
5. You may even be called upon to mediate interfamily disputes over the sale	
<ol><li>Do not be afraid to tell your clients that you do not have all the answers, but can lead them to other professionals that can also help</li></ol>	
<ol> <li>This will set you apart as a professional and hopefully lead you to a more satisfied client, and repeat or referral business</li> </ol>	FA
	-

## Questions 1. What is elective share and how does it work? A. Under Sec. 732.201, *et.seq.*,Fla.Stat., a minimum of 30% of a decedent's estate needs to go to the surviving spouse B. This prevents the surviving spouse from being disinherited below a certain level C. The total assets of the decedent, including bank accounts, brokerage accounts, homestead, jointly owned property, transfer or death assets, life insurance, transfers within the last year of life, retirement accounts, and trust benefits are calculated

D. Then 30% is determined

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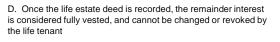
 E. Thereafter, whatever the surviving spouse is entitled to receive from the decedent is compared to be certain it meets or exceeds 30% calculation
 F. If it does not, then property needs to be transferred to the surviving

spouse to bring the amount to 30%

G. This would be in addition to the surviving spouse's right homestead, exempt property and family allowance (Sec. 732.2015 Fla.Stat.)

H. The Personal Representative of the estate is empowered and directed to collect these funds or assets before making any distribution to other beneficiaries

2.	What is a "ladybird" deed?	
	A. This is also known as an "enhanced life estate deed", but was historically named after Lady Bird Johnson, the wife of President Lyndon B. Johnson	
	B. The normal life estate divides the life estate from the remainder interest	
	C. When the owner of the life estate dies, title to the property is automatically transferred to the remainderman	
		FA



E. However, with a ladybird deed, the life tenant (usually the grantor) retains the right to cancel or change the remainderman

F. So the interest of the remainderman is  $\boldsymbol{not}$  vested

G. Therefore, whenever you have a ladybird deed you need to confirm after the death of the life tenant that he or she did not change the remainder beneficiary during his or her lifetime

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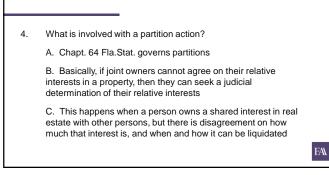
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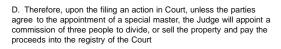
3. How do appraisal rights work?

A. Unless waived, appraisal rights automatically arise when certain major company or corporate actions are approved, such as a merger or a proposed sale of substantially all of the assets of a company or corporation

B. In those cases, any dissenting members or shareholders are entitled to have their ownership interest bought out by the company or corporation

C. There are complicated rules governing valuation, notices and the timing of notices, so you need to strictly follow the procedures in Sec. 605.1006 *et.seq.*, Fla.Stat. and Sec. 607.1301 *et.seq.*, Fla.Stat.





E. The Judge will then divide the proceeds after holding a trial or hearing

5. What will be needed for a single purpose entity to transfer real estate?

A. This is often done with commercial property to prevent liability arising from one asset to affect other assets owned by an owner

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B. However when there is a proposed sale of a single purpose entity's property, all the owners of the single purpose entity need to be informed of the proposed sale since this would constitute a sale of substantially all of the assets of the company or corporation C. Hence, appraisal rights arise if there are dissenting members or shareholders D. Minutes of a meeting of the members or shareholders need to be kept to document that the meeting was properly called to consider the action, that the notice to members or shareholders was properly and timely given, that a quorum for the meeting was reached, and that the vote was properly taken and results recorded

E. If the transaction was approved, the minutes should reflect who dissented and who was authorized to sign the documents to consummate the sale

F. If there were dissenters, then appraisal rights need to be given to each dissenter as mentioned previously

