



**FLORIDA
WEBINAR SERIES**
A WFG EVENT

Practical Probate

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Probate Terms: Essential Foundation

- Probate
- Decedent
- Testate
- Intestate
- Heir
- Beneficiary
- Personal Representative AKA PR
- Per Stirpes
- Per Capita
- Devise

Why do we need Probate?

- Allows us to legally identify to whom the property belongs
- Legally transfer title
- Legally recognize the beneficiaries
- Legally permits PR or heirs to convey title
- Probate in current transaction due to death of current owner
- Probate needed based on previous title holder

When do we need probate?

Probate-YES OR NO?

- Husband and wife or tenants by the entirety or as a married couple- **NO PROBATE**
- Mark and Debbie Davids, husband and wife
NO PROBATE
- Mark Davids and Debbie Davids
If married prior to taking title
NO PROBATE WITH CMA
- Mark Davids, a married man
YES PROBATE

When do we need probate?

Probate-YES OR NO?

- **Joint tenants with right of survivorship**
 - Mark Davids and Sherwood Weisman as joint tenants
YES PROBATE
 - Mark Davids and Sherwood Weisman as joint tenants with rights of survivorship
NO PROBATE

When do we need probate?

Probate-YES OR NO?

- **Tenants in common**
 - Mark Davids, a single man and Debra Feld, a single woman
Later they get married **YES PROBATE**
 - Mark Davids and Debra Feld as Joint Tenants **YES PROBATE**
 - Mark Davids, a married man and Debra Davids, a married woman, as Joint tenants **YES PROBATE**
 - Mark Davids and/or Debra Davids and/or Aaron Davids
YES PROBATE

When do we need probate?

Probate-YES OR NO?

Divorce

- Mark Davids and Debra Davids, husband and wife- Later divorced
YES PROBATE
- Mark Davids and Debra Davids, husband and wife as joint tenants with rights of survivorship-Later Divorced
NO PROBATE

When do we need probate?

Probate-YES OR NO?

- Title vested in:
 - **Corporation**
 - Corporation continues upon death of shareholder
NO PROBATE
 - **LLC**
 - Death of member
 - Review Operating agreement
 - If OA provides for transfer on death- **NO PROBATE**
 - If OA silent **YES PROBATE**

When do we need probate?

Probate-YES OR NO?

- Title vested in:
 - **Trust** **NO PROBATE**
 - **Life Estate**
 - Regular vs Enhanced
 - Death of Remainderman before life tenant
NO PROBATE ON DEATH OF LIFE TENANT
REMAINDERMAN-YES IF REGULAR LE

When do we need probate?

Probate-YES OR NO?



- Title vested in
 - 2 couples
 - Fred and Wilma Flintstone, husband and wife and Barney and Betty Rubble, husband and wife
- 1 couple plus one
 - Fred and Wilma Flintstone, a married couple and Pebbles Flintstone

NO PROBATE ON DEATH OF 1ST SPOUSE



NO PROBATE ON DEATH OF SPOUSE YES ON DEATH OF PEBBLES

Death of Heir/Beneficiary

- Death of Heir AFTER decedent
 - Title vests in heir on death
 - Interest passes to heirs of deceased heir
 - Need a probate on deceased heir to determine his/her heirs
- Death of Heir BEFORE decedent
 - Title vests in heirs of the deceased heir
 - Can determine heirs in decedent's probate, don't need a separate probate
 - Probate merely confirms legally who those heirs are

PROBATE NEEDED IN BACK CHAIN

- Title vested in Mark Davids, a married man
- Next deed is from Debra Davids, an un-remarried widow
- Need to go back do a probate Mark to have title legally vested in Debra and/or Mark's heirs

Different Types of Probate

- Summary Administration (F.S. 735.201) [SA]
 - Assets less than \$75,000 or
 - Decedent dead for more than 2 years
- Full Administration-All other
- Foreign Administration
 - Ancillary Summary
 - Ancillary Full
 - Florida Court Order Admitting Foreign Will

So we need a probate, what documents are needed?

- Summary Administration:
 - IN SA **NO PERSONAL REPRESENTATIVE**
 - Petition for Summary Administration
 - Order for SA (record)-Acts as a conveyance
 - Will and Order admitting will (if have one, record)
 - Order Determining Homestead (record)
 - Death Certificate (record)
 - Deed from all beneficiaries named in Order of Summary Administration

So we need a probate, what documents are needed? Continued...

- Full Administration:
 - Petition for Administration-Review
 - Letters of Administration. (record)
 - Check for requirement for Order authorizing a sale
 - Order appointing PR (record)
 - Petition to Determine Homestead
 - Order to Determine Homestead (record)
 - Order admitting Will to Probate (record)
 - Will (record)
 - Order Authorizing PR to convey (non-homestead; record)

Foreign Probate -if Florida Property

- Ancillary Summary Administration
 - Need deeds from the beneficiaries
- Ancillary Full Administration
 - Need deeds from Florida appointed PR
- Florida Court Order Admitting Foreign Will to Probate
 - F.S. 734.104
 - Deeds from beneficiaries named in the will

HOMESTEAD and MINOR CHILD

- **Was the property the decedent's homestead?**
 - Is there a waiver under F.S. 732.7025?
- **If so, was the decedent survived by a spouse or minor child?**
 - Is it homestead?
 - Property appraiser-homestead exemption
 - Letters of Administration
 - Where was decedent living prior to death?
 - Address on DC

YES IT IS HOMESTEAD

- Article X, Section 4(c) of the Florida Constitution and F.S. 732.4015(1), provide that: *“ the homestead shall not be subject to devise if the owner is survived by a spouse or minor child, except the homestead may be devised to the owner's spouse if there is no minor child.”*
- F.S. 732.401- *“If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent’s death per stirpes.”*

YES IT IS HOMESTEAD

- **Spouse -no minor child**
 - Spouse is only person to whom homestead can be devised
- **Spouse AND minor child/children**
 - Spouse gets a life estate
 - Remainder in children
- **PR has no authority over homestead property**
 - Even if have a court order stating otherwise
- **Exceptions to this rule:**
 - No spouse or minor child and will leaves HX to non-heir
 - No spouse or minor child and will directs PR to sell HX property
- **Title vested in heirs upon death**
 - Judgements against heirs will attach

Who gets the Property?

- **Non-Homestead-Intestate**

- F.S. 732.102 –Surviving Spouse's share
 - Spouse 100% if no descendants or if all descendants are also descendants of surviving spouse
 - If descendants of decedent but not of SS, then $\frac{1}{2}$
- F.S. 732.103-Portion not passing to surviving spouse
 - Descendants of Decedent
 - No descendants, father and mother
 - None of above, brothers and sisters and descendant's of deceased brothers and sisters
 - None of the above then $\frac{1}{2}$ to paternal and $\frac{1}{2}$ to maternal relatives:
 - Grandfather and grandmother
 - Uncles and aunts

- **Non-Homestead- Testate**

- As the will directs
- PR can sell

Who gets the Property?

- **Homestead-Intestate**

- Surviving Spouse for life estate
- Remainder to decedent's descendants
- Need deeds from spouse AND children
- If no spouse then based on F.S. 732.103
- If spouse signed a waiver in the deed under F.S. 732.702-treat as pre-deceasing

Who gets the Property?

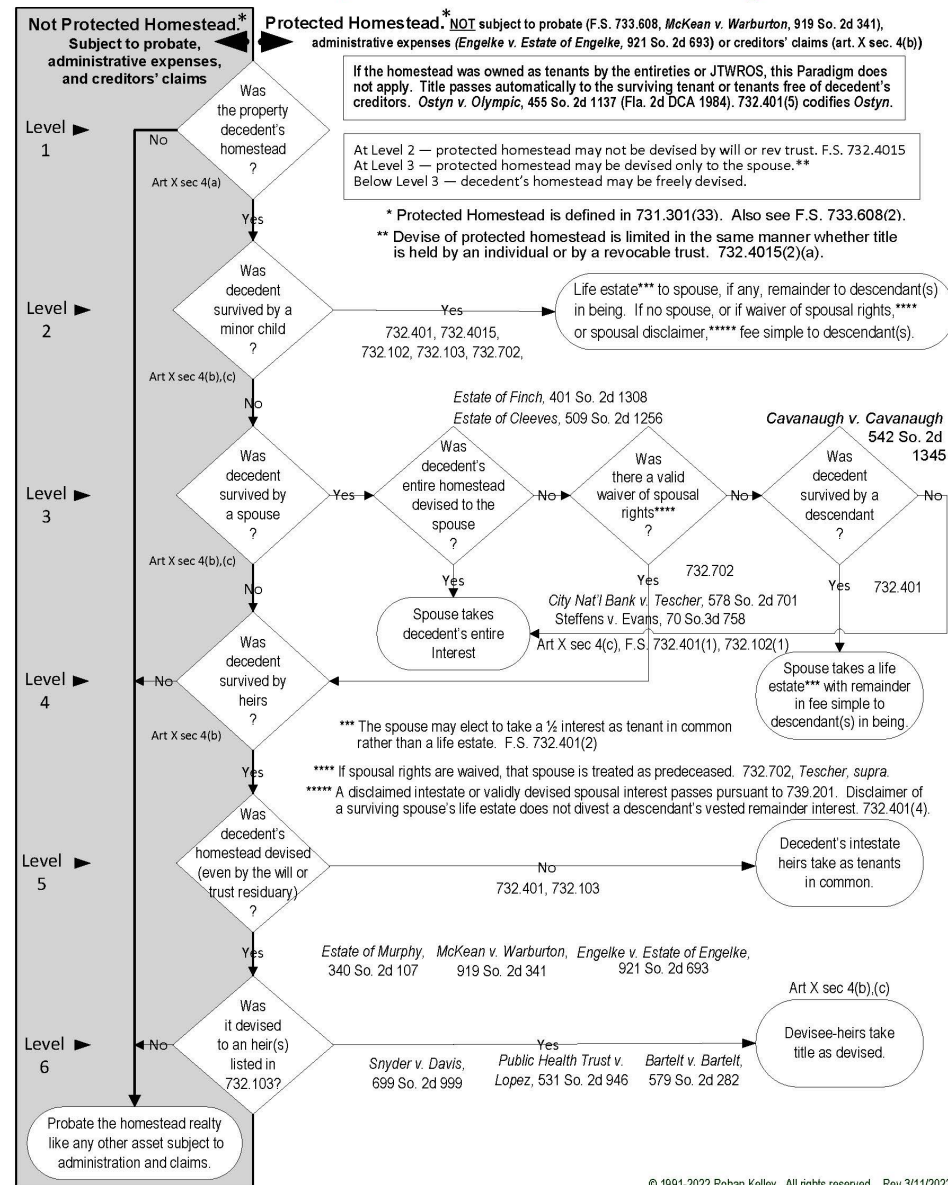
- **Homestead-Testate**

- If survived by spouse but no minor child can only devise to spouse
- Need deed from surviving spouse and descendants
- No SS or minor child and will leave HX to heir defined in 732.103, deed from the heir
- No SS or minor child, HX devised to non-heir, PR can sell
- Under F. S. 732.401 (2) Spouse can elect to take $\frac{1}{2}$ interest with Tenants in Common with remainder of $\frac{1}{2}$ interest

Who gets the Property?

- **Authority of Personal Representative to Convey**
 - F.S. 733.608 – *All real and personal property of the decedent, **except the protected homestead** ... shall be assets in the hands of the personal representative*
 - F.S. 733.607 -*every personal representative has a right to, and shall take possession or control of, the decedent's property, **except protected homestead***

Kelley's Homestead Paradigm



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Disclaimers: How do they work?

- **F.S. 739.104**
 - In writing
 - Declare it to be a disclaimer
 - Describe the interest being disclaimed
 - Signed, witnessed and acknowledged in the manner provide for deeds
 - Recorded
 - Cannot be used if disclaimant is insolvent when the disclaimer becomes irrevocable
- **F.S. 739.601- Recording of Disclaimer**
 - Legal description of the real estate
 - Recorded
- **Effect of Disclaimer**
 - Treated as pre-deceasing the decedent
 - Intestate or per stirpes-goes to descendants of person disclaiming
 - If per capita then share goes to remaining beneficiaries
 - Disclaimer cannot designate to whom their share goes

Partition Action

- Heir cannot be found or unwilling to co-operate
- F.S. 64.061 –Appointment of Special Magistrate
- F.S. 64.071-Sale where nondivisible
- Diligent search for personal service or constructive service if not located
- Special Magistrate appointed
- Final Judgement and Order of partition
- Heir's share then deposited with the court

Judgements

- **Against Decedent F.S. 733.702**
 - Mortgages, security interests and any other liens on the property
 - Federal Tax liens.
- **Against beneficiary**
- **Sale without exception for claims of creditors**
 - PR selling non-homestead property with power of sale in will
 - PR selling non-homestead property with court order authorizing
 - Intestate-prior to ODH
 - Deed from all heirs
 - Deed from PR with order authorizing sale
 - Testate-prior to ODH
 - Power of sale in will AND deeds from heirs to BFP
 - Will directs PR to sell
 - Court Order authorizing sale and deed from PR AND heirs defined in F.S. 732.103

7 year statute F.S. 95.22 and UTS 5.15

- **F.S. 95.22**

[Title VIII](#) [Chapter 95](#) [View Entire Chapter](#)
LIMITATIONS LIMITATIONS OF ACTIONS; ADVERSE POSSESSION
95.22 Limitation upon claims by remaining heirs, when deed made by one or more.—
(1) When any person owning real property or any interest in it dies and a conveyance is made by one or more of the person's heirs or devisees, purporting to convey, either singly or in the aggregate, the entire interest of the decedent in the property or any part of it, then no person shall claim or recover the property conveyed after 7 years from the date of recording the conveyance in the county where the property is located.
(2) This section shall not apply to persons whose names appear of record as devisees under the will or as the heirs in proceedings brought to determine their identity in the office of the judge administering the estate of decedent.
History.—s. 1, ch. 10168, 1925; CGL 4659; s. 14, ch. 20954, 1941; s. 15, ch. 73-334; s. 16, ch. 74-382; s. 526, ch. 95-147.

- **UTS 5.15**

WHERE A DEED, WHICH CONTAINS A RECITAL THAT THE GRANTORS ARE THE SOLE AND ONLY HEIRS OF A NAMED DECEDENT, HAS BEEN OF RECORD FOR MORE THAN SEVEN YEARS, SUCH RECITAL MAY BE ACCEPTED AS SUFFICIENT TO ESTABLISH THE TRUTH OF THE RECITAL IN THE ABSENCE OF EVIDENCE OR INFORMATION TO THE CONTRARY.

- **Deed has to state they are the sole heirs of the decedent**

Simultaneous Death

- F.S. 732.601
 - Property distributed $\frac{1}{2}$ as if one had survived and $\frac{1}{2}$ as if other had survived
 - Probate needed on both

732.601 Simultaneous Death Law.—Unless a contrary intention appears in the governing instrument:(1) When title to property or its devolution depends on priority of death and there is insufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if that person survived.
(2) When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is insufficient evidence that the beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal parts as there are successive beneficiaries and the parts shall be distributed to those who would have taken if each designated beneficiary had survived.
(3) When there is insufficient evidence that two joint tenants or tenants by the entirety died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them so died, the property thus distributed shall be in the proportion that one bears to the number of joint tenants.
(4) When the insured and the beneficiary in a policy of life or accident insurance have died and there is insufficient evidence that they died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

Probate and Divorce

- F.S. 732.507
- After divorce, any provision in the will that affects the spouse shall become void. Treated as pre-deceased.
- After divorce parties own as Tenants in Common

[Title XLII](#)
ESTATES AND
TRUSTS

[Chapter 732](#)
PROBATE CODE: INTESTATE SUCCESSION AND
WILLS

[View Entire
Chapter](#)

732.507 Effect of subsequent marriage, birth, adoption, or dissolution of marriage.—

(1) Neither subsequent marriage, birth, nor adoption of descendants shall revoke the prior will of any person, but the pretermitted child or spouse shall inherit as set forth in ss. [732.301](#) and [732.302](#), regardless of the prior will.

(2) Any provision of a will that affects the testator's spouse is void upon dissolution of the marriage of the testator and the spouse, whether the marriage occurred before or after the execution of such will. Upon dissolution of marriage, the will shall be construed as if the spouse died at the time of the dissolution of marriage.

(a) Dissolution of marriage occurs at the time the decedent's marriage is judicially dissolved or declared invalid by court order.

(b) This subsection does not invalidate a provision of a will:

1. Executed by the testator after the dissolution of the marriage;
2. If there is a specific intention to the contrary stated in the will; or
3. If the dissolution of marriage judgment expressly provides otherwise.

(3) This section applies to wills of decedents who die on or after June 29, 2021.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 90-23; s. 45, ch. 2001-226; s. 14, ch. 2007-74; ss. 2, 45, ch. 2021-183.

Note.—Created from former ss. 731.10, 731.101, 731.11.

Probate and Murder/Slayer Statute

- F.S. 732.802
- If a joint tenant intentionally kills another joint tenant, then the killer has no rights by survivorship. The joint tenancy is severed! The decedent's share passes without any right of survivorship to the killer.

732.802 Killer not entitled to receive property or other benefits by reason of victim's death.—

(1) A surviving person who unlawfully and intentionally kills or participates in procuring the death of the decedent is not entitled to any benefits under the will or under the Florida Probate Code, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who unlawfully and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies with right of survivorship and tenancies by the entirety in real and personal property; joint and multiple-party accounts in banks, savings and loan associations, credit unions, and other institutions; and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement; and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer, including a life estate in homestead property, shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of murder in any degree is conclusive for purposes of this section. In the absence of a conviction of murder in any degree, the court may determine by the greater weight of the evidence whether the killing was unlawful and intentional for purposes of this section.

Agreements among Distributees

- F.S. 733.815
- Words of conveyance
- Executed with formalities of a deed

733.815 Private contracts among interested persons.—Subject to the rights of creditors and taxing authorities, interested persons may agree among themselves to alter the interests, shares, or amounts to which they are entitled in a written contract executed by them. The personal representative shall abide by the terms of the contract, subject to the personal representative's obligation to administer the estate for the benefit of interested persons who are not parties to the contract, and to pay costs of administration. Trustees of a testamentary trust are interested persons for the purposes of this section. Nothing in this section relieves trustees of any duties owed to beneficiaries of trusts.

History.—s. 1, ch. 74-106; s. 94, ch. 75-220; s. 1024, ch. 97-102; s. 165, ch. 2001-226.

Pre and Ante Nuptial Agreements

- F.S. 732.702
 - Rights to HX property may be waived before or after marriage by signed written agreement.
 - Not survived by minor child

732.702 Waiver of spousal rights.—(1) The rights of a surviving spouse to an elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate or any of those rights, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses

Title Vests in Minor

- If minor will receive less than \$15,000 in net proceeds, they can have a natural guardian sign for them
- If minor will receive more than \$15,000 need Florida guardianship
 - Order appointing guardian
 - Order authorizing the sale

Revocable Trusts & Homestead: Aronson

- Homestead property conveyed to revocable trust by married couple
 - Not waived in deed under F.S. 732.1025 effective July 1, 2018
 - Signed by waiving spouse
 - Waiver of homestead in deed
 - Operates upon the death of the spouse holding the ownership
 - Homestead title in 1 spouse
 - Settlor of a revocable trust
 - Life tenant with enhanced life estate
- Both parties are Settlers of the Trust.
- Then one of Settlers dies.
- What now?
 - Does Trust leave homestead property outright to the surviving spouse?
 - If not, there is a violated devise restriction
- Need deed from surviving spouse, both individually and as trustee
- Need deeds from lineal descendants. of the decedent.

Estate Tax

- No Florida Estate Tax
- In 2022 Federal Estate Tax exemption is \$12.06 million
- For Foreign Estates taxes at 40% above \$60,000
- DR-312 or Affidavit of No Estate tax

MISCELLANEOUS

- Grantor dies prior to delivery of deed
- POA is not valid AFTER principal dies
- If decedent died in Florida County A (probate done in county A) but also owns property in Florida County B, can just record the probate docs in County B
 - Make sure property located in County B was included in probate

CREDIT:

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**THANK
YOU !**

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