

**Monthly Meeting
February 28, 2012**

**Real Property, Probate & Trust Law Society
Nova Southeastern University
Shepard Broad Law Center
3305 College Avenue
Ft. Lauderdale, FL 33314**

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Topics For Discussion:

- How title to real property moves through probate estates.
- How probate proceedings impact title, positively and negatively.

Speaker:

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Attorney's Real Estate Council of Broward County, Inc.
Broward County Real Estate Council, Inc.
American Land Title Association
Attorney's Title Insurance Fund*

How title to real property moves through probate estates.

1. Identify and confirm the real property interest you are presented with as to ownership and interest of the decedent and value. (Take nothing for granted.)
 - a. Decedent's papers. Copies of deeds, tax bills, title policies, surveys, leases.
 - b. Pubic search. Public records (name search) , property appraiser website*.
 - c. Certified title search, to determine mortgages, liens & judgments.

2. **Analyze** to determine, what interest, if any, of the decedent, requires probate.

a. Fee simple-100%, in decedent's name alone.

b. Types of real estate:

- residential, (where located, is it decedent's domicile, when was it established) Does it appear to have Homestead status?
- non-residential, (commercial improved, vacant land*)
- Time shares*
- Fractional Interests*

3. It is the duty of the personal representative (PR) to protect and preserve probatable assets of the decedent's estate. What about property that is underwater?*

4. Homestead*

a. Where is it and how long has it been there? Article X, Section 4

b. Survived by spouse or minor children?

c. Who is in possession? PR may (authorized but not required) take possession what reasonably appears to be protected homestead, when the property is not occupied. Homestead not part of probate estate, but must be listed in Inventory. F.S. 733.608(2), (4), must file a Notice of Taking Possession, Fla. Pro. R. 5.404(a), 5.402, may file a lien for monies advance.

Question: What if property, which reasonably appears to be protected homestead, is underwater, then what should the PR do?

5. How to avoid Homestead.

a. JTWROS or TBE

b. Written contract

c. Disclaimer (F.S. Chapter 739)

d. Homestead Trust F.S. 732.4017 (Irrevocable Trust)

6. Is Homestead a part of the probate estate?

a. Inventory

b. Petition to Determine Homestead/Order Determining Homestead

How probate proceeding impact title, positively and negatively.

7. What was the intent of the decedent?
 - a. Terms of will*. For example, decedent specifically directs the sale of Homestead. Is the decedent devising \$\$\$ or Homestead? May remove it from protected status.*
 - b. Does the will adequately describe the property?
 - c. Intestacy
8. Final Distribution: Order of Distribution, recordable conveyance from personal representative. Surrender of possession, final accounting.
 - a. In either a testate or intestate estate, title to real property vests in the beneficiary on the death of the decedent. F.S. 732.101(2), F.S. 732.514. Although no "formal" act is required to convey title, there must still be some proof of ownership through the probate process, subject to PR's right of possession and right of sale.
 - b. Transfer of ownership confirmed by deed from PR or certificate of distribution. If property in Florida county other than county of probate, record certified copies of relevant portions of probate.
9. Need for partition action? F.S. Chapter 64

Note: an "*" denotes a potential area of concern or something that may negatively impact the probate proceeding.