

I. CAVEAT FILED WITH CLERK SECTION 733.110; RULE 5.260

A. NONRESIDENT CAVEATOR MUST DESIGNATE FLORIDA ATTORNEY IN COUNTY WHERE CAVEAT IS FILED UPON WHOM SERVICE CAN BE MADE

B. IF CAVEAT FILED BY NON-CREDITOR INTERESTED PERSON (BENEFICIARY):

1. DECEDENT'S WILL MAY NOT BE ADMITTED TO PROBATE, AND

2. NOMINATED P.R. MAY NOT BE APPOINTED NOR LETTERS OF ADMINISTRATION ISSUED UNLESS FORMAL NOTICE OF PETITION FOR ADMINISTRATION SERVED ON CAVEATOR OR THEIR AGENT AND CAVEATOR AFFORDED RIGHT TO PARTICIPATE IN PROCEEDINGS ON PETITION FOR ADMINISTRATION AND ISSUANCE OF LETTERS TO P.R.

GROOMS V. ROYCE

638 So. 2d 1019

(5TH DCA 1994)

3. WILL CAN NOT BE ADMITTED NOR BE
ADMINISTERED UNTIL ADVERSARY PROCEEDING
CONDUCTED IF TIMELY FILED UNDER RULE 5.025(b) AND
RULE 5.040(a)

C. NON-CREDITOR CAVEATOR CAN FILE CAVEAT BEFORE OR
AFTER DEATH OF DECEDENT (RULE 5.260(a))

D. IF CAVEATOR OF NON-CREDITOR FILED AFTER WILL
ADMITTED OR LETTERS ISSUED, CLERK MUST PROMPTLY
NOTIFY CAVEATOR OF DATE THAT OCCURRED AND
NAME/ADDRESS OF PR/ PR COUNSEL (RULE 5.260(d))

E. CREDITOR CAVEATOR CAN ONLY FILE CAVEAT AFTER
DEATH OF DECEDENT (RULE 5.260(a))

F. IF LETTERS ISSUED AFTER CAVEAT FILED BY CREDITOR,
CLERK MUST PROMPTLY NOTIFY CREDITOR DATE LETTERS
ISSUED AND ADDRESS OF PR/PR COUNSEL (RULE 5.260(c))

1. IF CLERK FAILS TO NOTIFY CREDITOR
ADMINISTRATION OF ESTATE HAS COMMENCED,
CREDITOR'S CLAIM WOULD NOT BE BARRED UNDER
733.702(1) FOR FAILURE TO FILE CLAIM WITHIN 3 MONTHS
AFTER TIME OF FIRST PUBLICATION OF NOTICE TO
CREDITORS.

a) THIS CREDITOR WOULD HAVE ANY TIME UP TO 2
YEARS PER SECTION 733.710(2)

b) ESTATE OF SOCARRAS V. ROYAL BANK OF CANADA
384 So. 2d 242 (3RD DCA 1980)

G. QUERY: ONCE CREDITOR FILES A CAVEAT, DOES THAT
CREDITOR BECOME A REASONABLY ASCERTAINABLE
CREDITOR REQUIRING P.R. TO PROVIDE THAT CAVEAT
CREDITOR WITH ACTUAL NOTICE UNDER SECTION 733.702(1),
THEREBY OBLIGATING CAVEAT CREDITOR TO FILE A CLAIM
WITHIN 30 DAYS OF SERVICE?

1. YES!! 733.2121(3)(a) REQUIRES PR TO PROMPTLY
CONDUCT DILIGENT SEARCH TO ASCERTAIN CREDITORS.
CHECKING CLERK'S DOCKET WOULD NOT BE DEEMED AN
IMPRACTICAL AND EXTENDED SEARCH FOR PR TO
UNDERTAKE.

II. ESTATE INVENTORY SECTION 733.604; RULE 5.340

A. P.R. MUST VERIFY

B. EACH LISTED ITEM MUST HAVE REASONABLE
IDENTIFIABLE DESCRIPTION AND FMV AT DATE OF DEATH

C. FILED WITH THE CLERK

D. IS CONFIDENTIAL (AFTER 7/1/09) AS IS ANY ACCOUNTING
BUT MUST BE DISCLOSED TO ANY INTERESTED PERSON OR TO
ANY NON-INTERESTED PERSON IF COURT SO ORDERS UPON
SHOWING OF GOOD CAUSE (733.604(4))

E. PR MUST FILE AMENDED OR CORRECTED INVENTORY TO DISCLOSE NEWLY DISCOVERED ITEMS OR TO CORRECT VALUE OR DESCRIPTIONS CONTAINED IN ORIGINAL INVENTORY (733.604(5))

F. UPON WRITTEN DEMAND A RESIDUAL BENEFICIARY IS ENTITLED TO EXPLANATION OF HOW THE VALUE WAS DETERMINED FOR ALL THE ASSETS LISTED IN THE INVENTORY OR COPY OF AN APPRAISAL IF OBTAINED; A SPECIFIC DEVISEE IS LIKEWISE ENTITLED TO THE SAME INFORMATION BUT ONLY FOR THE SPECIFIC PROPERTY TO BE DISTRIBUTED TO THAT BENEFICIARY (RULE 5.340(e))

G. P.R. MUST FILE INVENTORY WITHIN 60 DAYS OF ISSUANCE OF LETTERS

H. HOMESTEAD PROPERTY MUST BE LISTED SEPARATELY BUT ITS FMV NEED NOT BE DISCLOSED

I. IF INVENTORY CAN NOT BE FILED TIMELY, PR MUST FILE FOR AN EXTENSION OF TIME TO FILE THE INVENTORY

J. INVENTORY MUST BE SERVED ON

1. SURVIVING SPOUSE
2. HEIRS AT LAW IN INTESTATE ESTATE
3. RESIDUARY BENEFICIARIES IN TESTATE ESTATES
4. ANY OTHER INTERESTED PERSON WHO FILES A WRITTEN REQUEST (RULE 5.340d)

K. CONCERNS:

1. FAILURE TO FILE TIMELY INVENTORY CAN RESULT IN CREDITORS/BENEFICIARIES TO SEEK REMOVAL OF PR
 - a) CREDITORS NEED INVENTORY TO VERIFY REPRESENTATIONS OF PR AS TO VALUE OF ESTATE WHEN PR IS SEEKING TO SETTLE CLAIMS AT LESS THAN 100% OF VALUE OF CLAIM

2. BY FILING OF TIMELY INVENTORY, BENEFICIARIES CAN ALERT PR TO OTHER ASSETS OF DECEDENT NOT LISTED ON INVENTORY THAT ARE ASSETS SUBJECT TO PROBATE THAT PR OVERLOOKED

3. HOMESTEAD DOES NOT LOSE ITS STATUS AS PROTECTED HOMESTEAD IF PR INCORRECTLY LISTS IT AS AN ESTATE ASSET IN THE INVENTORY

a) MONKS V. STATE 609 So. 2d 174 (1ST DCA 1993)

III. NON-RESIDENTS SERVING AS P.R.

A. IN-LAWS LIVING OUT OF STATE CAN SERVE AS PR SECTION 733.304(4)

B. HOWEVER, SON/DAUGHTER-IN-LAW MARRIED TO DECEDENT'S NON-RESIDENT CHILD NAMED IN WILL TO SERVE AS PR, CAN NOT DO SO IF PRIOR TO DECEDENT'S DEATH DECEDENT'S CHILD DIES OR GETS DIVORCED FROM THE NOMINATED OUT OF STATE IN-LAW

C. IF OUT OF STATE DECEDENT NOMINATED A FRIEND TO SERVE AS PR AND IS OTHERWISE ELIGIBLE TO SERVE IN THAT STATE'S DOMICILIARY ADMINISTRATION, THAT FRIEND IS NEVERTHELESS INELIGIBLE TO SERVE AS PR FOR DECEDENT'S ANCILLARY ADMINISTRATION IN FLORIDA

D. OUT-OF-STATE ATTORNEY HANDLING FOREIGN DOMICILIARY ADMINISTRATION AS PR MAY NOT, EVEN IF LICENSED IN FLORIDA, SERVE AS PR IN FLORIDA ANCILLARY ADMINISTRATION IF NOT A BLOOD RELATIVE OF DECEDENT OR MARRIED TO BLOOD RELATIVE OF DECEDENT.

IV. BONDS 733.402(4)

A. ANY INTERESTED PERSON OR THE COURT ON ITS OWN MOTION CAN:

1. REQUIRE A BOND
2. WAIVE A BOND
3. INCREASE/DECREASE BOND

4. REQUIRE ADDITIONAL SECURITY

B. BONDS DESIGNED TO BENEFIT BENEFICIARIES, HEIRS, AND CREDITORS

C. BOND PREMIUM IS AN ADMINISTRATIVE EXPENSE FOR WHICH PR CAN BE REIMBURSED AS A 733.707 CLASS (1) EXPENSE OF ADMINISTRATION

1. BOND PREMIUMS FOR PROFESSIONAL GUARDIANS ARE NOT REIMBURSABLE

D. BANKS/TRUST COMPANIES NOT REQUIRED TO POST A BOND

E. BONDS PROTECT AGAINST PR'S

1. MISFEASANCE

2. MALFEASANCE

3. NEGLIGENCE

4. OMISSIONS

5. CAVEAT: STANDARD PRACTICE OF WILL DRAFTERS TO INCLUDE LANGUAGE WAVING REQUIREMENT OF A BOND BORDERS ON MALPRACTICE.

BONDS AFFORD PROTECTION AGAINST PERSONAL LIABILITY FOR MALADMINISTRATION AND PROTECT DESIGNATED RECIPIENTS OF TESTATOR'S LEGACY

F. PREMIUM COST FOR PROBATE BOND IS MODEST COMPARED TO CRIMINAL BOND

G. FACTORS WEIGHED IN DETERMINING AMOUNT OF BOND:
SECTION 733.403

1. GROSS VALUE OF ESTATE
2. P.R.'S RELATIONSHIP TO BENEFICIARIES
3. EXEMPT PROPERTY/FAMILY ALLOWANCE
4. LIQUIDITY OF ASSETS
5. KNOWN CREDITORS
6. ANY LIENS/ENCUMBRANCES ON ASSETS

H. RESTRICTED DEPOSITORY IN LIEU OF A BOND

1. AN ALTERNATIVE TO REQUIRING PR TO POST A BOND

2. USE OF RESTRICTED DEPOSITORY CAN BE MORE EXPENSIVE THAN A BOND

a) CUMULATIVE FEES CHARGED BY ATTORNEYS TO SECURE COURT AUTHORIZATION TO WITHDRAW FUNDS FROM RESTRICTED DEPOSITORY MAY WELL EXCEED COST OF BOND PREMIUM

3. GOODSTEIN V. GOODSTEIN ET. AL. (4TH DCA; 1/9/19)

a) COURT OR CIRCUIT MAY NOT HAVE A BLANKET POLICY PROVIDING FOR A DEPOSITORY (OR BOND) BEING USED IN ALL PROBATE CASES

b) SEE SECTION 69.031(1)

V. DURABLE POWERS OF ATTORNEY

- A. SOURCE OF EXTENSIVE LITIGATION IN ESTATE/GUARDIANSHIP ADMINISTRATION

- B. “WEAPONS OF MASS DESTRUCTION” TO REMOVE IN ONE MASSIVE GRAB OR BITS AND PIECES, ACCUMULATED WEALTH OF ELDERLY/INCAPACITATED PERSONS BY PREDATORS

- C. ATTORNEYS, BANKS, AND BROKERAGE FIRMS NEED TO BETTER PROTECT VULNERABLE INDIVIDUALS TO INSURE “DPOA” NOT SO EASILY OBTAINED AND UTILIZED

- D. ATTORNEYS NEED TO DEVELOP SAFEGUARDS TO DETECT IF DPOA IS A PRODUCT OF UNDUE INFLUENCE/LACK OF CAPACITY OR WHETHER THEY ARE UNWITTINGLY FACILITATING A PATTERN EMPLOYED BY SERIAL/HABITUAL ABUSERS BENT ON A MISSION OF SECURING MULTIPLE DPOA TO REIGN FINANCIAL HAVOC ON A MULTITUDE OF VULNERABLE ADULTS

- E. MEASURES TO EMPLOY TO CURB DPOA ABUSE
 - 1. REQUIRE AN AFFIDAVIT FROM RECIPIENT OF DPOA

2. VIDEO RECORD PREPARATION OF DPOA
 3. REQUIRE ISSUER AND HOLDER OF DPOA TO BE PRESENT IN OFFICE AT SAME TIME
 4. INDIVIDUALIZE AND CUSTOMIZE THE DPOA AND DO NOT USE A FORM
 5. BANKS, TRUSTS COMPANIES, BROKERAGE FIRMS MUST IMPROVE THEIR SCREENING PROCESS BEFORE THEY ALLOW WITHDRAWALS AND TRANSFERS OF FUNDS BY A DPOA
 6. REQUIRE HOLDERS OF DPOA TO POST A BOND
 7. CREATE A STATEWIDE SEARCHABLE CENTRAL REPOSITORY FOR DPOA
- F. INCREASING LITIGATION ON HORIZON AGAINST HOLDERS OF DPOA AS WELL AS BANKS AND ATTORNEYS FOR FACILITATING THEFT OF FUNDS FROM DUPED DECEDENTS/WARDS TO RETURN THOSE ASSETS TO THEIR ESTATES

VI. DEATH CERTIFICATES SECTION 731.103; RULE 5.171, RULE 5.205

A. ORIGINAL DEATH CERTIFICATE (“DC”) MUST BE FILED

B. ERRORS IN DC ISSUED IN OTHER STATES OFTENTIMES

EXIST RE: RESIDENCE, MARITAL STATUS/INFORMATION

1. THESE RAISE ISSUES RE: JURISDICTION, EXISTENCE

OF SURVIVING SPOUSE, AND HOMESTEAD

DETERMINATION

2. NORMALLY INFORMANT ON DC IS A RELATIVE WHO

COURT PRESUMES GAVE ACCURATE INFORMATION TO

FUNERAL HOME

3. DID DECEDENT VISIT OUT OF STATE RELATIVE ON A

VACATION OR INSTEAD TRAVEL THERE TO BE CARED FOR

UNTIL THEY DIE?

C. IN BOTH DOMICILIARY AND ANCILLARY FORMAL

ADMINISTRATIONS, THE DC MUST BE FILED NO LATER THAN 3

MONTHS FROM THE DATE OF FIRST PUBLICATION OF NOTICE

TO CREDITORS

1. MOST JUDGES REQUIRE DC PRIOR TO ISSUING THE LETTERS OF ADMINISTRATION

D. IN SUMMARY ADMINISTRATION ORIGINAL DC MUST BE FILED PRIOR TO ENTRY OF SUMMARY ADMINISTRATION ORDER

E. PRESUMPTIVE DC

1. ISSUED IF FLORIDA RESIDENT'S DEATH HAS OR IS PRESUMED TO HAVE OCCURRED BUT THE PERSON'S BODY HAS NOT BEEN LOCATED/RECOVERED AND THE PERSON HAS BEEN ABSENT FROM THEIR LAST KNOWN DOMICILE FOR 5 CONTINUOUS YEARS AND ABSENCE HAS NOT BEEN SATISFACTORILY EXPLAINED AFTER A DILIGENT SEARCH

2. ISSUED BY FLA DEPT. OF HEALTH WHEN COURT ORDERED TO DO SO

3. MEDICAL CAUSE OF DEATH SHALL BE DETERMINED BY JUDGE ISSUING THE ORDER

F. OTHER THAN A MISSPELLING OR AN OMISSION ON A DC CONCERNING THE IDENTITY OF A SURVIVING SPOUSE, THE FLA. DEPARTMENT OF HEALTH CAN NOT CHANGE THE NAME OF A SURVIVING SPOUSE ON THE DC EXCEPT BY ORDER OF A CIRCUIT COURT JUDGE.

1. SECTION 382.016(2)

VII. IS VALUE OF DECEDENT'S HOMESTEAD INCLUDED IN CALCULATING PR'S COMMISSION AND ATTORNEY'S COMPENSATION?

A. P.R.

1. IN DETERMINING COMMISSION: NO

2. 733.617(3)

3. PRIOR COURT APPROVAL NOT REQUIRED

4. IN DETERMINING FURTHER COMMISSION?

5. PRIOR COURT APPROVAL REQUIRED?

a) YES

b) SECTION 733.6171(3)

B. ATTORNEY

1. IN DETERMINING ORDINARY SERVICES FEES?

a) NO

b) SECTION 733.617(3)

2. PRIOR COURT APPROVAL NOT REQUIRED

3. IN DETERMINING EXTRAORDINARY SERVICES FEES?

YES

4. PRIOR COURT APPROVAL REQUIRED

5. SECTION 733.6171(5)

C. WHAT CONSTITUTES SERVICES PERTAINING TO
DECEDENT'S HOMESTEAD PROPERTY THAT WOULD ENTITLE
ATTORNEY TO EXTRAORDINARY COMPENSATION

1. SECTION 733.6171(4)(i)

a) LEGAL ADVICE REGARDING HOMESTEAD
STATUS OR PROCEEDINGS INVOLVING THAT STATUS
AND SERVICES RELATED TO PROTECTED
HOMESTEAD

2. DOES PROPOSED BENEFICIARY QUALIFY AS AN
INTESTATE HEIR TO INHERIT?

3. DOES PROPERTY QUALIFY AS PROTECTED
HOMESTEAD IN A CHALLENGE BY A CREDITOR?

4. DO PROCEEDS FROM SALE OF HOMESTEAD WHILE
DECEDENT ALIVE QUALIFY AS EXEMPT FROM CREDITOR
CLAIMS POST-DEATH?

a) ORANGE BREVARD PLUMBING V. LA CROIX

137 So. 2d 201(Fla. 1962)

ESTATE OF HAMEL V. PARKER

821 So 2d 1276

(2ND DCA 2002)

HARRELL V. SNYDER

913 So. 2d 749

(5TH DCA, 2005)

5. IS PURPORTED HEIR/BENEFICIARY ENTITLED TO A SHARE OF HOMESTEAD PROPERTY?

D. IF PURPORTED HOMESTEAD IS DEvised IN PART TO A NON-HEIR (FRIEND OR CHARITY), THEN THAT SHARE SO DEvised IS INCLUDED IN INVENTORY VALUE OF ESTATE OF PURPOSE OF CALCULATING COMMISSION/COMPENSATION OF PR/COUNSEL FOR PR

1. BOREN V. SUNTRUST

46 So 3d 1156

(2ND DCA 2010)

VIII. WRIT OF GARNISHMENT

A. CAN A CREDITOR WHO RECEIVED A WRIT OF GARNISHMENT AGAINST AN ESTATE BENEFICIARY BECOME INVOLVED AND ENGAGED IN THE ADMINISTRATION OF AN ESTATE?

1. NO!!

MURRAY V. NATIONSBANK OF FLORIDA

846 So. 2d 548

(4TH DCA, 2003)

B. SECTION 733.706 ALLOWS EXECUTION OR OTHER PROCESS TO BE LEVIED AGAINST PROPERTY OF THE ESTATE IF APPROVED BY THE COURT PRESIDING OVER THE ESTATE

1. PROBATE COURT CAN ALLOW GARNISHMENT ORDER ENTERED BY ANOTHER COURT TO BE LEVIED AGAINST PROPERTY OF THE ESTATE THAT COULD BE POTENTIALLY DISTRIBUTED TO AN ESTATE BENEFICIARY AS LONG AS GARNISHMENT DOES NOT INTERFERE WITH THE ESTATE ADMINISTRATION

C. THERE IS A DISTINCTION BETWEEN BEING A CREDITOR OF AN ESTATE AND A CREDITOR OF A BENEFICIARY

D. SECTION 77.19 ALLOWS GARNISHEE (BANK, BROKERAGE FIRM) WHICH POSSESSES MONEY THAT MAY BE GARNISHED TO RETAIN UP TO DOUBLE THE AMOUNT THE HOLDER OF THE GARNISHMENT ORDER SPECIFIES THAT THEY ARE ALLOWED TO RECOVER. THIS ALLOWS GARNISHEE TO USE EXCESS AMOUNT TO PAY ATTORNEY/ADMINISTRATIVE FEES INCURRED AS A RESULT OF THE GARNISHMENT

E. QUERY: SECTION 733.705(2) STATES EITHER A P.R. OR A CREDITOR OR BENEFICIARY CAN OBJECT (AS AN INTERESTED PARTY) TO A CLAIM. CAN A CREDITOR WITH A WRIT OF GARNISHMENT ON AN ESTATE BENEFICIARY FILE AN OBJECTION TO A CLAIM AGAINST THE ESTATE ON BEHALF OF THAT BENEFICIARY WHO IS NOT OTHERWISE INCLINED TO DO SO??

1. PROBABLY NOT. SECTION 733.706 AND MURRAY DECISION HOLD GARNISHMENT ORDER DIRECTED AGAINST A BENEFICIARY'S INTEREST IN ESTATE ASSETS NEED NOT BE HONORED IF IT WOULD DISRUPT THE ADMINISTRATION OF THE ESTATE

F. QUERY: DOES A CREDITOR WITH A WRIT OF GARNISHMENT AGAINST A BENEFICIARY HAVE STANDING TO OBJECT TO INVENTORY FILED BY P.R. FOR FAILING TO INCLUDE WHAT GARNISHMENT CREDITOR BELIEVES ARE OTHER ASSETS OF DECEDENT THAT SHOULD BE INCLUDED IN THE PROBATE ESTATE AND THEREBY ENHANCE THE VALUE OF THAT BENEFICIARY'S DISTRIBUTABLE SHARE?

G. WHICH HAS PRIORITY OVER RECEIPT OF AN ESTATE'S DISTRIBUTION TO A BENEFICIARY; AN ATTORNEY'S CHARGING LIEN, OR A GARNISHMENT ORDER ENTERED BY ANOTHER COURT AGAINST THAT BENEFICIARY'S DISTRIBUTIVE SHARE?

IX. ASSIGNMENT BY A BENEFICIARY OF THEIR BENEFICIAL INTEREST IN DECEDENT'S ESTATE TO INHERITANCE FUNDING COMPANY ("IFC")

A. A VERY TROUBLING AND PERPLEXING ISSUE

B. KAREN PRIOR TO THE OPENING OF THE SUBJECT ESTATE, ASSIGNS \$17,900 OF HER ANTICIPATED BENEFICIAL INTEREST IN DECEDENT'S ESTATE TO INHERITANCE FUNDING COMPANY ("IFC") IN EXCHANGE FOR AN IMMEDIATE CASH PAYMENT OF \$10,000

C. KAREN AUTHORIZED P.R. TO PAY IFC \$17,900 PRIOR TO MAKING ANY DISTRIBUTIONS FROM ESTATE TO HER

D. IF IFC REPAID \$17,900 WITHIN 6 MONTHS FROM DATE OF AGREEMENT, IFC WILL REFUND KAREN \$3,900 RESULTING IN A REDUCED NET ASSIGNMENT AMOUNT KAREN PAYS FOR \$10,000 CASH ADVANCEMENT TO \$14,000

E. IF IFC REPAID \$17,900 BETWEEN 6 MONTHS AND 12 MONTHS IFC WILL REFUND KAREN \$2000 RESULTING IN NET AMOUNT KAREN PAYS FOR \$10,000 CASH ADVANCEMENT TO \$15,900

F. AFTER 12 MONTHS KAREN HAS TO REPAY IFC \$17,900 AND GETS NO REFUND

G. ALL OF KAREN'S INTEREST SHE ANTICIPATES TO DERIVE FROM DECEDENT'S ESTATE ARE ASSIGNED TO IFC:

1. P.R. FEES
2. INTEREST IN DECEDENT'S ANCILLARY ADMINISTRATION
3. INTEREST IN DECEDENT'S HOMESTEAD PROPERTY

H. KAREN AGREES TO DISCLAIM HER INTEREST IN
DECEDENT'S ESTATE

I. KAREN CONSENTED TO AGREEMENT TO BE GOVERNED BY
CALIFORNIA LAW

J. QUERY:

1. MOST ESTATES TAKE AT LEAST 6-12 MONTHS TO
ADMINISTER

2. THIS ALL OCCURRED BEFORE ESTATE OPENED

3. SHOULD REPTILE LOOK INTO THIS

4. WHAT EFFECT DOES THIS HAVE ON GARNISHMENT
CREDITOR OF KAREN

X. SECTION 732.401(2) ELECTION TO RETITLE SURVIVING SPOUSE'S
LIFE ESTATE INTEREST IN DECEDENT'S HOMESTEAD PASSING BY
INTESTACY TO A TENANCY IN COMMON TO BE HELD WITH ONE OR
MORE OF SURVIVING DESCENDANTS OF DECEDENT WHO WERE
ALIVE AT TIME OF DECEDENT'S DEMISE, PER STIRPES

- A. BENEFIT THIS STATUTE CONFERS IS OFTENTIMES LOST
DUE TO OVERSIGHT

- B. ELECTION CAN BE MADE BY:
 - 1. SURVIVING SPOUSE; OR GUARDIAN OF PROPERTY OF
SURVIVING SPOUSE OR HOLDER OF A POWER OF
ATTORNEY WITH PRIOR APPROVAL OF COURT
 - a. COURT MUST DECIDE IF ELECTION IS IN BEST
INTEREST OF SURVIVING SPOUSE DURING THEIR
PROBABLE LIFETIME

- C. ELECTION MUST BE MADE WITHIN 6 MONTHS OF
DECEDENT'S DEATH AND DURING SURVIVING SPOUSE'S
LIFETIME

- D. ONCE MADE, ELECTION IS IRREVOCABLE

- E. ELECTION MUST BE MADE IN WRITING

- F. SURVIVING SPOUSE AFTER ELECTION CAN INSTITUTE A
PARTITION ACTION UNDER SECTION 733.814

G. THE ELECTIONS IS INITIATED BY FILING A NOTICE OF ELECTION IN THE OFFICIAL RECORD BOOK OF THE COUNTY WHERE HOMESTEAD IS LOCATED

XI. IN ANY PETITION TO SELL REAL PROPERTY P.R. MUST INDICATE IF SALE IS AT FMV AND IN AN ARMS-LENGTH TRANSACTION

A. IF EITHER FACTOR NOT PRESENT THAT WILL NOT PREVENT COURT FROM APPROVING TRANSACTION AS LONG AS A SATISFACTORY EXPLANATION IS PROVIDED WHY SALE IS AT LESS THAN FMV OR NOT IN AN ARMS LENGTH TRANSACTION

B. NO STATUTORY REQUIREMENT THAT THESE FACTORS BE SET FORTH IN PETITION FOR SALE. HOWEVER, SEVERAL DECISIONS SUPPORT THE WISDOM OF DOING SO.

1. IN RE: ESTATE OF CORBIN

673 So. 2d 51

(1ST DCA, 1994)

2. IN RE: ESTATE OF COLLINS

279 So. 2d 41

(4TH DCA, 1978)

XII. P.R. TAKING POSSESSION OF POTENTIAL PROTECTED
HOMESTEAD PROPERTY (SECTION 733.608(2)(3); RULE 5.404)

A. IF P.R. CHOOSES, AND THE PURPORTED HOMESTEAD IS
UNOCCUPIED, P.R. HAS AUTHORITY TO TAKE POSSESSION, BUT
IS NOT OBLIGATED TO DO SO

B. PURPOSE FOR P.R. TO TAKE POSSESSION OF HOMESTEAD IS
TO PRESERVE, INSURE AND PROTECT IT FOR PERSON(S) HAVING
AN INTEREST IN THE PROPERTY PENDING A DETERMINATION
BY COURT IF IT'S HOMESTEAD STATUS

C. IF P.R. TAKES POSSESSION, P.R. SHALL

1. FILE NOTICE OF INTENTION TO DO SO WITH COURT

2. SERVE FORMAL NOTICE ON INTERESTED PERSONS
AND ANY PERSON IN ACTUAL POSSESSION OF THE
PROPERTY

3. COLLECT RENTS FOR THE ACCOUNT OF
HEIR/DEVISEE OF THE PROPERTY

D. P.R. HAS NO DUTY TO RENT OR MAKE PROPERTY
PRODUCTIVE

E. IF ANY OBLIGATIONS ARE INCURRED BY P.R. TO
PRESERVE PROPERTY, P.R. IS ENTITLED TO REIMBURSEMENT AS
WELL AS FEES AND COSTS THAT MAY BE SECURED BY A LIEN

XIII. USE OF A FOREIGN WILL TO PASS TITLE TO FLORIDA REAL ESTATE (SECTION 734.104)

A. REQUIREMENTS:

1. AUTHENTICATED COPY OF FOREIGN WILL
2. FOREIGN WILL DEVISES REAL PROPERTY IN FLORIDA OR ANY RIGHT, TITLE OR INTEREST THEREIN
3. FOREIGN WILL MUST BE FILED IN COUNTY WHERE PROPERTY IS RECORDED
4. FOREIGN WILL CAN NOT BE FILED UNTIL AFTER 2 YEARS FROM DATE OF DECEDENT'S DEATH OR AT ANY TIME AFTER P.R. IN DOMICILIARY ADMINISTRATION IN FOREIGN STATE HAS BEEN DISCHARGED IF THERE HAS BEEN NO ESTATE ADMINISTRATION IN FLORIDA
5. FOREIGN WILL WAS EXECUTED IN CONFORMITY WITH SECTION 732.502
6. THE FOREIGN WILL WAS ADMITTED TO PROBATE IN THE PROPER COURT OF ANY OTHER STATE OR COUNTRY

B. THE PETITION TO ADMIT THE FOREIGN WILL TO RECORD
IN FLORIDA MAY BE FILED BY ANY PERSON

C. PETITION SHALL BE ACCOMPANIED BY AUTHENTICATED
COPIES OF

1. THE FOREIGN WILL

2. THE PETITION FOR PROBATE FILED IN THE FOREIGN
STATE

3. ORDER ADMITTING WILL TO PROBATE IN FOREIGN
STATE

D. FLORIDA CIRCUIT COURT IF ALL REQUIREMENTS OF THIS
SECTION ARE MET SHALL ENTER ORDER ADMITTING FOREIGN
WILL TO RECORD

E. THE FOREIGN WILL TOGETHER WITH THE CIRCUIT COURT
ORDER SHALL HAVE THE EFFECT OF PASSING TITLE TO REAL
PROPERTY AS IF THE WILL HAD BEEN ADMITTED TO PROBATE
IN FLORIDA

F. THE ORDER AND FOREIGN WILL NEED TO BE RECORDED
IN THE COUNTY'S PROPERTY RECORDS OFFICE TO EFFECTUATE
THE CHANGE OF TITLE

G. THE LEGALITY OF THIS STATUTE IS PREMISED ON FACT
THAT DECEDENT HAS BEEN DEAD FOR 2 YEARS AND THE
PROPERTY IS NOT HOMESTEAD SINCE ITS OWNER WAS
DOMICILED IN ANOTHER STATE

XIV. MAY A CREDITOR OF A DECEDENT DIRECTLY SUE THE
DECEDENT'S REVOCABLE LIVING TRUST DESCRIBED IN 733.707(3) IN
CIRCUMSTANCE WHERE NO ESTATE IS OPENED FOR DECEDENT, OR
WHERE DECEDENT'S ESTATE HAS INSUFFICIENT ASSETS TO PAY
DEBT OF CREDITOR? NO

A. AMP SERVICES LIMITED V. WALAPATRIAS FOUNDATION,

73 So. 3d 346 (4TH DCA, 2011);

GUARDIANSHIP OF GNEISER

873 So. 2d 573 (2ND DCA, 2004)

B. SECTION 733.607(2) PROVIDES IN RELEVANT PART... “IF ASSETS OF DECEDENTS ESTATE ARE INSUFFICIENT TO PAY EXPENSES OF ADMINISTRATION AND OBLIGATIONS OF THE DECEDENT’S ESTATE, THE PERSONAL REPRESENTATIVE IS ENTITLED TO PAYMENT FROM THE TRUSTEE OF A TRUST DESCRIBED IN 733.707(3) IN THE AMOUNT THE PERSONAL REPRESENTATIVE CERTIFIES IN WRITING TO BE REQUIRED TO SATISFY THE INSUFFICIENCY”

C. A CREDITOR THEREFORE MUST INITIATE AN ESTATE PROCEEDING, SECURE APPOINTMENT OF P.R., FILE A TIMELY CLAIM WITHIN 3 MONTHS/30 DAYS OF PUBLICATION OF NOTICE TO CREDITORS, BUT BEFORE EXPIRATION OF 2 YEARS FROM DATE OF DECEDENTS’ DEATH AND THEREAFTER HAVE PR CERTIFY TO TRUSTEE THAT THERE ARE INSUFFICIENT ASSETS TO PAY DECEDENT’S ESTATE OBLIGATION

XV. DISGORGEMENT/CLAWBACK/SURCHARGE PROCEEDINGS

A. OCCURRING WITH GREATER FREQUENCY

B. INITIATED BY EITHER:

1. BENEFICIARIES
2. CREDITORS
3. TRUSTEE OF POUR OVER REVOCABLE TRUST OR TESTAMENTARY TRUST
4. SUCCESSOR P.R./SUCCESSOR COUNSEL FOR P.R.

C. AGAINST:

1. PRIOR P.R./ COUNSEL
2. EXPERTS RETAINED TO PERFORM SERVICES FOR ESTATE

D. COMMON ISSUE:

1. FEES PAID WERE EXCESSIVE

E. CONTEXT:

1. FREQUENTLY ARISE WHEN PETITION/DISCHARGE OR FINAL ACCOUNTING FILED AND DISCLOSURE OF FEES/COSTS/COMPENSATION ARE DISCLOSED

a) UNLIKE GUARDIANSHIP CASES WHERE FEES ARE PREAPPROVED BY THE COURT SINCE GUARDIANSHIP ASSETS ARE IN RESTRICTED DEPOSITORIES, IN ESTATES FEES ARE NORMALLY PAID BY P.R. WITHOUT NECESSITY OF PRIOR COURT APPROVAL

F. TO SECURE JURISDICTION OVER RECIPIENT OF EXCESSIVE FEES TO ENABLE PROBATE COURT TO ORDER DISGORGEMENT OF INAPPROPRIATE COMPENSATION PAID TO A FIDUCIARY OR PROVIDER OF SERVICES, COMPLAINING PARTY MUST OBTAIN JURISDICTION OVER THE PERSON(S) OVERPAID OR WRONGFULLY PAID BY SERVING THAT INDIVIDUAL WITH INITIAL PROCESS BY SUMMONS/FORMAL NOTICE

1. E-MAIL SERVICE IS INSUFFICIENT TO CONFER JURISDICTION OVER THE TARGETED PERSON(S) HOLDING THE FUNDS PRESUMABLY IN A NON-FIDUCIARY ACCOUNT

G. THIS IS A RULE 5.025(a) ADVERSARY PROCEEDING REQUIRING RULE 5.025(d)(1) SERVICE BY FORMAL NOTICE

H. PROBATE COURT HAS ABSOLUTE AUTHORITY TO REVIEW
THE PROPRIETY OF COMPENSATION PAID TO P.R., P.R. COUNSEL,
OR ANY AGENTS EMPLOYED BY THEM

1. SECTION 733.6275(1)(2)

I. PROBATE COURT AUTHORIZED TO ORDER THAT REFUNDS
BE MADE TO ESTATE WHEN EXCESSIVE OR INAPPROPRIATE
COMPENSATION IS PAID FROM ESTATE ASSETS

1. SECTION 733.6175(3)

J. SIMMONS V. ESTATE OF BARNOWITZ,

189 So. 3d 819 (4TH DCA 2015)

KOZINSKI V STABENOW,

152 So. 3d 650 (4TH DCA 2014)

XVI. FREQUENTLY OVERLOOKED IMPEDIMENT TO CLOSING CASES

A. SECTION 733.2121(d)(e)

1. FAILURE TO NOTIFY A.H.C.A. OF DECEDENT'S
DEMISE IF DECEDENT 55 OR OLDER
 - a) P.R. SHALL PROMPTLY SERVE COPY OF NOTICE
TO CREDITORS AND PROVIDE A COPY OF DEATH
CERTIFICATE TO A.H.C.A WITHIN 3 MONTHS AFTER
FIRST PUBLICATION OF NOTICE TO CREDITORS,
UNLESS A.H.C.A HAS FILED A CLAIM IN THE ESTATE
 - b) NOT REQUIRED TO DO SO IN AN ANCILLARY
ADMINISTRATION
2. SERVE A NOTICE TO CREDITORS ON DEPT OF
REVENUE WHEN THAT AGENCY IS DETERMINED TO BE A
CREDITOR