



UNDERWRITING BULLETIN

To: Florida Agents and WFG employees
From: Florida Underwriting Department
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Name: Record your Probate Documents

The exact documents you must review from a probate file to determine insurability will differ depending on the facts and circumstances, whether an owner had a valid will (testate) or died intestate, and whether the property in question was homestead under Florida's Constitution. The details on what may be required under the various scenarios can be found in Chapter 5 of the Florida **UNIFORM TITLE STANDARDS**.

<http://www.rpptl.org/DrawNews.aspx?NewsArticleID=51>

As part of your closing, you should keep in mind not only your own title examination, AND the likely needs of future title examiners. Rule 2.075 of the Florida Rules of Judicial Administration permit the destruction of probate court files ten years after a final judgment or the closing of the probate.

So, the all important documents you just reviewed may not be there the next time the property is searched. This can lead to claims, demands for indemnity letters and the always painful request that you dig out your old search file (that request is inevitably made in August for records in un-air-conditioned storage).

The simple way to avoid this is to have certified copies of the pertinent probate court records recorded in the permanent Official (land) Records as part of your closing.

At a minimum, you should record:

For an Intestate Estate:

- Petition for Administration;
- Letters of Administration/Letters Testamentary;
- Order authorizing the sale by the Personal Representative;
- Any conveyance documents from the Personal Representative;

- Any order determining heirs of the estate or vesting title in the heirs;
- Order closing the estate and discharging the personal representative;
- Estate Tax clearance(s).

For a Testate Estate

- Petition for Administration;
- Letters of Administration/Letters Testamentary;
- Order admitting Will to Probate (which sometimes includes the appointment of the Personal Representative);
- Certified copy of Will (or excerpts of relevant non-private portions, including any power of sale provision);
- Order authorizing sale by Personal Representative (if will does not contain power of sale);
- Any conveyance documents from the Personal Representative;
- Order closing the estate and discharging the personal representative;
- Estate Tax Clearance(s).

Protected homestead vests automatically in the heirs and does not become an asset within the possession and control of the personal representative. *Spitzer v. Branning*, 135 Fla. 49, 184 So. 770 (Fla. 1938); *Public Health Trust of Dade County v. Lopez*, 531 So. 2d 946 (Fla. 1988). Therefore a conveyance of homestead property by the Personal Representative is ineffective.

Since a subsequent examiner may have difficulty determining whether the property being conveyed by the Personal Representative was or was not the decedent's homestead, the best practice is to clearly indicate on the face of the Personal Representative's Deed that

“The property was not the homestead of [Decedent Name], deceased. [Decedent Name] actually resided at [Street address].”

However, when the property really is homestead property, subsequent examiners will still have doubts. And until the court has determined the identity of the heirs, a conveyance from persons claiming to be all heirs does not create marketable title.¹

¹ Sec. 95.22, Fla. Stat. perfects a title based on a deed by persons purporting to be “all heirs,” the “sole heir” or similar language, 7 years after the deed has been of record. This protects only against other possible beneficiaries whose names did not appear of record under the will of the decedent or in the administration of the estate.

So, when dealing with homestead property, you will also need to record:

In Case of Protected Homestead Property, add:

- Homestead Determination;
- Determination of Heirs (usually part of same document);
- Conveyance from the Heirs receiving the homestead;
- Although a conveyance by the P.R. is not sufficient to convey protected homestead, recording the conveyance can provide protection where there is a degree of uncertainty.
- Release of Personal Representative Liens under 733.608.

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