UPDATE ON FLORIDA LEGISLATION AND CASES:

HOW THESE UPDATES CAN AFFECT YOUR PRACTICE

Presented on behalf of the Pinellas County Estate Planning Council

By

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I. LAWS PASSED

Sale of Business—Transfer of Tax Liability:

HB 103 consolidates and revises statutes governing the transfer of tax liabilities when businesses or business assets are transferred to successor owners. In general, a person who buys a business (transferee) assumes the tax liabilities of the seller (transferor), unless an exception applies. This bill allows the transferee to take the business without assuming the transferor's liabilities under **either** of the following two circumstances:

1) The transferee receives a certificate of compliance from the transferor showing that the transferor has not received notice of audit, has filed all required tax returns, has paid the tax due from those returns, and there are no insiders in common between the transferor and the transferee; or

2) The Department of Revenue conducts an audit, at the request of the transferee or transferor, and finds that the transferor is not liable for any taxes.

The bill also repeals two tax-specific statutes relating to sales tax and communications services tax which are substantially similar to the provisions of the bill. As a result of the repeals, the misdemeanor penalty provisions for violations of these statutes are also eliminated. **(*Chapter 2012-55, Laws of Florida*.)**

Insurance and Designations--Divorce:

CS/HB 401 generally nullifies upon divorce or annulment the designation of a spouse as a beneficiary of nonprobate assets such as life insurance policies, individual retirement accounts, and payable on death accounts. Certain state-administered retirement plans are exempt from the bill. If the provisions of the bill apply, an asset will pass as if the former spouse predeceased the decedent. The bill also specifies criteria for a payor of a nonprobate asset to use in identifying the appropriate beneficiary. The bill specifically provides that the payor is not liable in some circumstances for transferring an asset to the beneficiary identified through the bill's criteria. See attached flowchart (page 17).

New Section 732.703, F.S.: Governs the effect of divorce, dissolution or invalidity of marriage on disposition of certain assets at death. A designation made by decedent is void: 1. As of time marriage is dissolved or declared invalid by court order; 2. If designation is made **prior** to dissolution or court order; and 3. Will pass as if former spouse predeceased decedent. **(*Chapter 2012-148, Laws of Florida*.)**

* Thanks to my associate, Nicholas J. Grimaudo, Esquire, for his help in preparing this outline.

Probate Bill - House Bill 733 – Ch. 2012-109:

1. **Clarification of Definition of Protected Homestead -- Section 731.201(33), F.S.** The 2012 amendment to Section 731.201(33), F.S. is a corresponding change to clarify the definition of "protected homestead" in order that it is consistent with the 2010 amendment to Section 732.401(5), F.S. and specifically excludes property owned in joint tenancy with right of survivorship from the definition, "(33) "Protected homestead" means the property described in Section 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead."

2. **Clarification of the effective date of changes to intestate succession laws -- Section 732.102, F.S.** In 2011 the intestate laws were changed such that a spouse would inherit 100% if the lineal descendants were lineal descendants of the spouse and decedent instead of the first $60,000 plus ½ of the balance. There was confusion as to whether this provision applied for decedents dying before the act or after the act.

To avoid any confusion, the effective date of the 2011 amendments to the intestate succession laws was amended as follows: "Notwithstanding section 2 or section 14 of chapter 2011-183, Laws of Florida, the amendments to section 732.102, Florida Statutes, made by section 2 of that act apply only to the estates of decedents dying on or after October 1, 2011.

3. **Clarification of Homestead Life Estate Election by Attorney in Fact for Surviving Spouse -- Section 732.401(2)(c), F.S.** Under current law if a spouse receives a life estate in a homestead with the remainder to lineal descendants, the surviving spouse can make an election to own the homestead as an undivided one-half interest. Such election has to be filed within 6 months of the decedent's death.

The 2012 amendment to Subsection (c) simply clarifies the tolling provisions to accurately reflect the intent of the legislature that the six-month election period would be tolled if a petition by an attorney-in-fact or a guardian was timely filed during the six-month election period. The tolling continues for at least 30 days after the rendition of the order allowing the election, "A petition by an attorney in fact or by a guardian of the property of the surviving spouse for approval to make the election must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. If the petition is timely filed, the time for making the election shall be extended for at least 30 days."

4. **Termination of Parental Rights -- Section 732.1081, F.S.** Prevents a parent(s) whose parental rights have been terminated pursuant to chapter 39 prior to the death of the child from inheriting from that child. The natural or adoptive parent is treated as if the parent predeceased the child for the purposes of intestate succession. The new statute provides as follows "Termination of parental rights. – For the purposes of

intestate succession by a natural or adoptive parent, a natural or adoptive parent is barred from inheriting from or through a child if the natural or adoptive parent's parental rights were terminated pursuant to chapter 39 prior to the death of the child, and the natural or adoptive parent shall be treated as if the parent predeceased the child."

Natural Guardians:

SB 990 amends Chapter 744 to include natural guardians of a minor child within meaning of "parents" and changes "custody" to "parental responsibility" where applicable in the chapter. Under Section 744.301, F.S., the mother and father of a child generally are the natural guardians of the child. The statute gives natural guardians substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed $15,000. This bill conforms terminology used in Section 744.301, F.S., to terminology used in ch. 61, F.S., which relates to divorce and child custody. **(*Chapter 2012-48, Laws of Florida*.)**

UPIA:

CS/SB 1050 makes a number of clarifying and substantive changes to the Florida Principal and Income Act (act). This bill represents the first broad revision of the act since it was enacted in 2002. The bill implements a smoothing rule where fiduciaries calculate the average fair market value of the current year assets and the preceding years' assets to address spikes due to fluctuations in the market. The bill modifies the default guidelines applicable to unitrusts, distribution of income, the partial liquidation rule, marital tax deductions, liquidating assets, income taxes, and property improvements. **(*Chapter 2012-49, Laws of Florida*.)**

Volunteers:

House Bill (HB) 943 makes a number of changes to background screening requirements, primarily relating to individuals who work and volunteer with vulnerable populations. Specifically, the bill:

- Exempts mental health personnel working in a facility licensed under ch. 395, F.S., who work on an intermittent basis for less than 15 hours per week of direct, face-to-face contact with patients and who are not listed on the Florida Department of Law Enforcement's (FDLE) Career Offender Search or the Dru Sjodin National Sex Offender public website from fingerprinting and screening – unless that person works in a facility with a primary purpose of providing treatment for children;
- Establishes a rescreening schedule for those individuals who have been screened and qualified to work by the Agency for Health Care Administration (AHCA);

- Revises a list of professionals to include law enforcement officers such that officers are not required to be refingerprinted or rescreened if they are working or volunteering in a capacity that would otherwise require them to be screened;
- Includes provisions covering the Division of Vocational Rehabilitation's (DVR) background screening needs and requirements;
- Exempts, from the definition of "direct service provider;" individuals who are related to the client, and volunteers who assist on an intermittent basis for less than 20 hours per month of direct, face-to-face contact with a client and who are not listed on FDLE's Career Offender Search or the Dru Sjodin National Sex Offender public website;
- Specifies that employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards, and individuals required to be screened according to the Level 2 screening standards, shall be rescreened every five years, except in cases where fingerprints are electronically retained;
- Creates a definition of the term "specified agency" for purposes of conducting background screening. These agencies include the Department of Health (DOH), the Department of Children and Family Services (DCF), AHCA, the Department of Elder Affairs (DOEA), the Department of Juvenile Justice (DJJ), the Agency for Persons with Disabilities (APD) and DVR;
- Requires fingerprint vendors to meet certain technology requirements;
- Provides that employees may be hired before completing the background screening process but those employees may have no direct contact with vulnerable persons;
- Waives the additional background screening requirement for Certified Nursing Assistants (CNA) under certain circumstances; and
- Provides for requirements relating to fingerprinting including who may take the prints, standards for vendors, and fee collection.

Rule 9.170- Appeal Proceedings in Probate Guardianship Cases:

Florida Rule of Appellate Procedure 9.170, titled "Appeal Proceedings in Probate and Guardianship Cases," took effect on January 1, 2012. The new rule gives clarity to the often cloudy issue of when an order in probate or guardianship is or is not appealable. Rule 9.170 provides a nonexclusive list of 24 types of appealable orders in probate and guardianship proceedings.

Rule 9.170 provides a nonexclusive list of orders rendered in probate and guardianship cases that finally determine a right or obligation and are, thus, appealable. The list includes orders that:

1) determine a petition or motion to revoke letters of administration or letters of guardianship;
2) determine a petition or motion to revoke probate of a will;
3) determine a petition for probate of a lost or destroyed will;
4) grant or deny a petition for administration pursuant to Section 733.2123, F.S.;

5) grant heirship, succession, entitlement, or determine the persons to whom distribution should be made;
6) remove or refuse to remove a fiduciary;
7) refuse to appoint a personal representative or guardian;
8) determine a petition or motion to determine incapacity or to remove rights of an alleged incapacitated person or ward;
9) determine a motion or petition to restore capacity or rights of a ward;
10) determine a petition to approve the settlement of minors' claim;
11) determine apportionment or contribution of estate taxes;
12) determine an estate's interest in any property;
13) determine exempt property, family allowance, or the homestead status of real property;
14) authorize or confirm a sale of real or personal property by a personal representative;
15) make distributions to any beneficiary;
16) determine amount and order contribution in satisfaction of elective share;
17) determine a motion or petition for enlargement of time to file a claim against an estate;
18) determine a motion or petition to strike an objection to a claim against an estate;
19) determine a motion or petition to extend the time to file an objection to a claim against an estate;
20) determine a motion or petition to enlarge the time to file an independent action on a claim filed against an estate;
21) settle an account of a personal representative, guardian, or other fiduciary;
22) discharge a fiduciary or the fiduciary's surety;
23) award attorneys' fees or costs; or
24) approve a settlement agreement on any of the matters listed above or authorizing a compromise pursuant to Section 733.708, F.S..

The new rule also provides the parties may elect to prepare an appendix or to rely on the usual, clerk-prepared record on appeal under Rule 9.200. Especially in a probate proceeding, where the record may be voluminous and contain many matters unrelated to the appeal of a specific order, an appendix may prove advantageous for highlighting the most critical documents for the appellate court's consideration.

II. INITIATIVES OF INTEREST

Additional Homestead Exemption—Surviving Spouse:

CS/HJR 93 is a joint resolution that proposes an amendment to Art. VII, Section 6, State Constitution that would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the U.S. Armed Forces and to the surviving spouse of a first responder who died in the line of duty. The amount of tax relief, to be defined by general law, may partially, or totally, exempt the ad valorem tax owed on homestead property.

Section 32 is added to Art. XII, State Constitution to provide that if approved by voters, the amendment permitting the Legislature to provide ad valorem relief to surviving spouses of veterans who died from service-connected causes and first responders who died in the line of duty shall take effect January 1, 2013.If approved by 60 percent of persons voting in the November 2012 General Election, these provisions will take effect on January 1, 2013. **(*November 2012 General Election Ballot*.)**

Additional Homestead Exemption--Seniors:

CS/HJR 169 is a joint resolution that provides for a proposed constitutional amendment to be placed on the ballot at the November 2012 general election. The proposed amendment to Art. VII, Section 6, State Constitution, would authorize the Legislature, by general law and subject to conditions set forth in the general law, to allow counties and municipalities to grant an additional homestead tax exemption for certain low income seniors. The exemption would be equal to the assessed value of the property with a just value less than two hundred and fifty thousand dollars. To qualify, a person must have maintained permanent residence on the property for not less than twenty five years, must be at least sixty-five years of age and must have a household income less than $20,000.

These provisions shall be submitted to the electors of this state for approval or rejection at the general election in November 2012 or at an earlier special election specifically authorized by law for that purpose. **(*November 2012 General Election Ballot*.)**

Additional Homestead Exemption--Seniors*:*

CS/HB 357 provides that the board of county commissioners or the governing body of a municipality may adopt an ordinance to allow an additional homestead exemption for certain low income seniors. The exemption would be equal to the assessed value of the property with a just value less than two hundred and fifty thousand dollars. A person qualifies for the potential additional homestead exemption if she or he has maintained permanent residence on the property for at least 25 years; has attained the age of 65; and has a household income that does not exceed $20,000. The provisions of this bill require passage of an amendment to the Florida Constitution prior to implementation.

These provisions become effective upon approval of House Joint Resolution 169, or a similar joint resolution having substantially the same specific intent and purpose, at general election in November 2012 or earlier special election specifically authorized by law for that purpose. **(*Chapter 2012-57, Laws of Florida*.)**

Veteran's Guardianship*:*

SB 520 repeals Section 744.103, F.S. which provides that in the event of a conflict between general guardianship law and a provision of the Veterans' Guardianship Law which apply to incapacitated world war veterans, the general guardianship law prevails.

These provisions were approved by the Governor on April 6, 2012 and became effective July 1, 2012. **(*Chapter 2012-40, Laws of Florida*.)**

***Evidence Code**:*

HB 701 creates a hearsay exception to allow a court to consider statements that would otherwise be inadmissible into evidence if a party wrongfully makes a witness unavailable. Specifically, this bill creates a hearsay exception for a statement offered by an unavailable witness against a party that has engaged or acquiesced in wrongdoing intended to make the witness unavailable. The Florida Evidence Code generally prohibits a judge or jury from considering hearsay, which is an out-of-court statement offered by someone other than the declarant while testifying at trial or a hearing used to prove the truth of the matter asserted. These provisions were approved by the Governor on April 27, 2012. **(*Chapter 2012-152, Laws of Florida*.)**

Legal Notices—Electronic Publication:

CS/CS/HB 937 creates a new section of law requiring a legal notice to be placed on a newspaper's website on the same day the notice appears in the newspaper, at no additional charge. Current law provides requirements for publishing legal notices and official advertisements. Publications must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. In addition, the newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.

Effective July 1, 2013, a newspaper that publishes legal notices must provide a free link to access legal notices on its website; optimize online visibility; dominantly present the notices on the website; provide a search function for the notices; upon request, provide free e-mail notification of the notices; and place the notice on the Florida Press Association website established for such notices, www.floridapublicnotices.com.

The bill also:

- Authorizes electronic proof of publication affidavits;
- Limits the rate that may be charged for certain government notices required to be published more than once;
- Requires certain local governmental maps that appear in newspaper advertisements to be noticed online;
- Deletes the requirement that a legal notice be published in Leon County for agency licensee actions, bond validation actions, market offerings for state owned oil or gas leases, and certain administrative complaints;
- Requires that notice to certain professional licensees be posted on a newspaper website and provided to certain broadcast network affiliates;

- Amending requirements relating to the publication of certain notices relating to the sale of bonds by the Division of Bond Finance within the State Board of Administration;
- Deletes requirements relating to newspaper publication of certain notices relating to Department of Agriculture and Consumer Services marketing orders and provides for Internet publication and for information to certain broadcast network affiliates; and
- Allows the Department of Financial Services to require notification of insurer insolvency by e-mail or telephone, instead of by newspaper.

These provisions were approved by the Governor on May 4, 2012 and became effective July 1, 2012. The act applies to legal notices published on or after that date. **(*Chapter 2012-212, Laws of Florida*.)**

Tangible Personal Property Taxes:

CS/HJR 1003 is a joint resolution that provides for a proposed constitutional amendment to be placed on the ballot at the November 2012 general election. The proposed amendment to Art. VII, Section 3, State Constitution, would grant an additional exemption for tangible personal property when property is assessed at more than $25,000, but less than $50,000. In addition, the proposed amendment would allow the Legislature to provide by general law that counties and municipalities may grant additional exemptions for tangible personal property by adopting an ordinance. If adopted by the voters at the 2012 General Election, this resolution will take effect January 1, 2013. **(*November 2012 General Election Ballot*.)**

Property Tax Administration:

CS/HB 7097 is a comprehensive package that makes several clarifying and administrative amendments to the property tax statutes. It clarifies language and repeals obsolete provisions. It reduces the number of reports that tax collectors and value adjustment boards must send to the Department of Revenue. It amends the information required to be included in property tax rolls. It clarifies value adjustment board scheduling requirements and the tax treatment of homestead property that has been rented. It requires the Department of Revenue to provide assistance to other agencies that are investigating property appraisers.

The bill amends statutes relating to property tax exemptions and limitations. It changes the order in which tax exemptions are applied and allows qualifying taxpayers to apply for disability-related exemptions earlier. It clarifies the tax treatment of property when the property no longer qualifies for one assessment limitation, but begins qualifying for another. It clarifies the tax treatment of combined and divided property for assessment limitation purposes. It updates the list of military operations included in the deployed service-member exemption. It provides a property exemption for municipally-owned property that is financed through convention development taxes. It allows the educational facility exemption to apply to property used for education when title to the

land is held by a non-profit organization. It allows spouses to allocate the benefit of their Save our Homes limitation between themselves under certain conditions.

These provisions were approved by the Governor on April 27, 2012 and became effective upon becoming law. Some provisions apply retroactively to the 2012 tax roll. **(*Chapter 2012-193, Laws of Florida*.)**

III. E-MAIL SERVICE

Pursuant to Florida Rule of Judicial Administration 2.516 (June 21, 2012), e-mail service became mandatory on September 1, 2012. The following are the most important points:

A) Under paragraph (a), e-mail service is mandatory for attorneys practicing in the areas of civil, probate, small claims, and family law divisions of the trial courts, as well as in all appellate cases. Applications for witness subpoenas and documents served by formal notice or required to be served in the manner provided for service of formal notice are not required to comply with rule 2.516.

B) Under paragraph (b)(1)(A), upon appearing in a proceeding a lawyer must designate a primary e-mail address, and may designate up to two secondary e-mail addresses, for receiving service. Thereafter, service on the lawyer must be made by e-mail.

C) Under paragraph (b)(1)(E), service of a document by e-mail is made by attaching a copy of the document in PDF format to an e-mail sent to all addresses designated by the attorney or party. All documents served by e-mail must be attached to an e-mail message containing a subject line beginning with the words “SERVICE OF COURT DOCUMENT” in all capital letters, followed by the case number of the relevant proceeding. The body of the e-mail must identify the court in which the proceeding is pending, the case number, the name of the initial party on each side, the title of each document served with that e-mail, and the sender’s name and telephone number. The e-mail and attachments together may not exceed 5 megabytes in size; e-mails that exceed the size requirement must be divided into separate e-mails (no one of which may exceed 5 megabytes) and labeled sequentially in the subject line.

D) Under paragraph (b)(1)(B), the rule does permit a limited exception for attorneys to elect out of the rule. A lawyer may file a motion to be excused from e-mail service that demonstrates that he or she has no e-mail account and lacks access to the Internet at such attorney’s office. The judge may, but is not required, to grant the attorney’s motion to be excused.

E) Under paragraph (b)(1)(C), any party not represented by an attorney may designate one primary e-mail address and up to two secondary e-mail addresses for service if they wish. If a party not represented by an attorney does not designate an e-mail address for service in a proceeding, then service on that party must be by the means provided by other means (paragraph (b)(2)).

IV. FLORIDA CASE LAW

(The speaker expresses great gratitude to David C. Brennan, Esquire for the use of his materials)

Smith v. DeParry. 37 Fla. L. Weekly D1070 (Fla. 2d DCA 2012).

This is a lost codicil case. The codicil, apparently, had provided a $40,000.00 bequest to establish a trust fund for the decedent's dogs. Unfortunately, the codicil was lost. The co-personal representatives of the estate (being the decedent's attorney and the person who was to receive $40,000.00 trust fund for care of the dogs) offered the lost codicil for probate, by offering computer copies of the codicil and testifying as to the testator's intent. The probate court refused to admit the codicil to probate, claiming that the computer generated version of the codicil was not a "correct copy" in accordance with Florida Statute §733.207. The court also found that the co-personal representatives were not disinterested witnesses, as required by the statute, because they were interested parties under the Florida Probate Code.

The appellate court disagreed with the probate court on both points, but, nevertheless, affirmed the decision under the "Tipsy Coachman" doctrine. The court held that a computer generated copy of a will or codicil could constitute a correct copy and that the fact that personal representatives were interested parties in an estate proceeding did not preclude them from being "disinterested witnesses" to testify about the contents of a will. However, the court found that the co-personal representatives were, in this case, personally interested in admission of the codicil to probate and were, thus, disqualified to provide the necessary evidence. There being no other disinterested witness who could testify as to what document may or may not have been presented to the testator, the decision was affirmed.

Rossen v. Bilchik, 46 So.3d 1233 (Fla. 4th DCA 2010).

This case involved litigation over a rarely litigated provision of the probate code: Section 732.901, which requires the custodian of a will to deposit it with the clerk within 10 days after receiving information that the testator is dead. One sister filed a petition to require the other sister to file the will. The court, without hearing, entered an order requiring that sister to produce the will and assessed $2,500.00 in attorney's fees against her. Thus began a parade of "motions, hearings and contempt orders". The appellate court reversed almost every order, because the initial order had been entered without hearing or any notice to her.

Marger v. De Rosa, 57 So.3d 866 (Fla. 2d DCA 2011).

Mr. De Rosa and his mother purchased a home. The warranty deed to them described their ownership as "joint tenants with full right of survivorship and not as tenants in common". At the time of the purchase, Mr. De Rosa had two minor children. When he died, he had no spouse but had two minor children and one adult child. His mother claimed title to the property pursuant to the warranty deed.

The probate court held that the property was not homestead for purposes of administration of the decedent's estate. The appellant claimed that the property should have been afforded homestead status for the benefit of the decedent's children; and that titling the property as joint tenants was, effectively, a "future devise of the homestead upon his death to a third party". Because the decedent had minor children, he would not have been able to devise his homestead property.

The court rejected that interpretation, holding that the constitutional homestead provision did not restrict the type of interests in real property which a person may require or how a person may title his or her property. In this case, the decedent's interest in the property terminated upon his death by terms of the deed which created his interest.

Bowdoin v. Rinnier, 81 So.3d 582 (Fla. 2d DCA 2012).

Mrs. Bowdoin died intestate, leaving her husband and minor child as her sole heirs. The decedent's mother filed a petition for administration requesting that she be appointed personal representative. Mr. Bowdoin filed a counter petition seeking his own appointment. After hearing, the court appointed the decedent's mother. Because, under Florida Statute §733.301, a surviving spouse has preference in appointing a personal representative, the second district reversed. The probate court had found it to be in the best interest of the estate for the mother to be appointed. Apparently, there were allegations made about Mr. Bowdoin's fitness to serve. However, the appellate court noted that there was no evidence presented to support those allegations and, thus, no grounds to not appoint Mr. Bowdoin. He court remanded with instructions to conduct an evidentiary hearing to determine whether or not Mr. Bowdoin lacked necessary qualities for appointment as personal representative.

Lauritsen v. Wallace, 67 So.3d 285 (Fla. 5th DCA 2011).

May a decedent forgive a debt when he does not have sufficient assets to pay his own debts and expenses? Here, the decedent made a will which forgave an indebtedness by one son and his wife. That debt constituted the only non-exempt asset of his estate. Unfortunately, the decedent was considerably indebted himself, for a variety of claims (including for the wrongful death of his wife and stepdaughter) and substantial administration expenses.

The probate court had held that the forgiveness of debt was effective, resulting in no funds available to pay his administration expenses or debts. On appeal, the court held that the forgiveness of debt was, essentially, a devise and that devise could not be elevated over the estate's obligation to pay administrative expenses and creditor's claims. Reversed.

Lituchy v. Estate of Lituchy, 61 So.3d 506 (Fla. 4th DCA 2011).

Mr. Lituchy filed a pro se petition to begin formal administration of his wife's estate. The court denied that petition because Mr. Lituchy was not represented by an attorney. On appeal, the 4th DCA reversed. The petition had alleged that Mr. Lituchy was the sole beneficiary of his wife's estate. Thus he was entitled to file the petition without having an attorney pursuant to Florida Probate Rule 5.030(a).

Basile v. Aldrich, 70 So.3d 682 (Fla. 1st DCA Aug. 23, 2011).

In this case the First District Court of Appeals (the "1st DCA") overturned a trial court opinion that held a will devising certain specifically identified property to certain specifically named beneficiaries, but contained no residuary clause, resulted in a specific beneficiary receiving all assets.

Decedent had an "E-Z Legal Form" Will and she specifically distributed certain specific property to her sister, if she survived her, and, if not, then such specific property would be distributed to her brother. Decedent's Will did not have a residuary clause, which names beneficiaries who would receive the balance of the decedent's estate after specific devises. Decedent had inherited money and investments from her sister, who had predeceased her and did not amend her Will to reflect who would receive such property.

The trial court relied on Section 732.6005(2), Florida Statues, which provides a will is to be construed to pass all property that a testator owns at his death including property acquired after the execution of the will. The trial court relied on Section 732.6005(1), Florida Statues, which states that the rules of construction shall apply to a will unless a contrary intention is indicated by the will, to determine that decedent's clear intent was to leave all of her property to her brother, even though there was no residuary clause.

The 1st DCA reasoned, however, that decedent's clear intent was to leave only the specifically devised property to her brother, if her sister predeceased her. The court could not come to the conclusion that she wanted to leave all property she acquired after the execution of the will to him, even though there was no indication that decedent's intent was to leave her property to anyone other than her sister and brother. Thus, the 1st DCA reversed the summary judgment and remanded to the lower court because if the will fails to dispose of all of a decedent's property "partial intestacy" results and the property would pass to the decedent's heirs as provided in Section 732.101-11, Florida Statutes.

The 1st DCA certified the following question to the Supreme Court: WHETHER SECTION 732.6005, FLORIDA STATUTES (2004), REQUIRES CONSTRUING A WILL AS DISPOSING OF PROPERTY NOT NAMED OR IN ANY WAY DESCRIBED IN THE WILL, DESPITE THE ABSENCE OF ANY RESIDUARY CLAUSE, OR ANY OTHER CLAUSE DISPOSING OF THE PROPERTY, WHERE THE DECEDENT ACQUIRED THE PROPERTY IN QUESTION AFTER THE WILL WAS EXECUTED?

Lubee v. Adams, 77 So.3d 882 (Fla. 2d DCA 2012).

More than one (1) year after the Notice to Creditors was published, the creditor filed his claim in the probate proceedings. He had not been served with a copy of the Notice to Creditors. The estate sought summary judgment on (among other arguments) that the claim was barred because the claim was not filed within three (3) months of date of first publication of the Notice to Creditors and the creditor did not seek an extension of time to file the claim within two (2) years after the decedent's death. The trial court granted summary judgment on other grounds and the district court of appeal (under the "Tipsy Coachman") affirmed.

The creditor had argued that he was a reasonably ascertainable creditor who should have been served with a copy of the Notice to Creditors. Since he was not, he was only required to file his claim within thirty (30) days after actual service of the notice on him or, if the notice was not served, within two (2) years of the decedent's death. Since he was never served with the Notice to Creditors, his claim, filed within two (2) years of the decedent's death, was timely. The appellate court rejected that argument, finding that he was required to seek an extension of time, citing case law from other districts.

Grainger v. Wald, 29 So.3d 1155 (Fla. 1st DCA 2010).

Appellee had filed a claim against the estate and the personal representative moved to dismiss it, arguing that the claim was untimely filed. This one arose from a personal injury lawsuit, final judgment on which was rendered in favor of the creditor after the decedent's death. Notice to creditors was served on appellee's attorney, but a creditor's claim was not filed until approximately ten days after expiration of the appropriate claims period. The probate court ruled in favor of the creditor, finding that service of the notice to creditors was ineffective because it was served on ward's "personal injury" attorney rather than on his "probate" attorney.

On appeal, the probate court decision was reversed. The appellate court held that there was no distinction between a "probate" and "personal injury" attorney and noted that when service is required to be made on an interested person who is represented by an attorney, service shall be made on the attorney. The court also noted that appellee actually signed the claim some days before expiration of the claim period but had failed to timely file the claim. (One judge dissented from this ruling, on the basis that the probate court's denial of the personal representative's petition to strike the claim was not an appealable order. It is also noted that judgment in the personal injury action was entered against the estate, not the decedent.)

Wexler v. Rich, 80 So.3d 1097 (Fla. 4th DCA 2012).

This case explores the criteria for creating tenancy by the entirety bank accounts under the guidelines set forth in Beal Bank SSB v. Almand and Associates 780 So. 2d 45 Florida 2001. Mr. Rich initially had two (2) bank accounts owned by him alone. Through a series of transfers, the funds moved into survivorship accounts with his wife and,

ultimately, into Mr. Rich's revocable trust shortly before he died. Mrs. Rich contended that the transfer to the trust was improper because the accounts had been owned as tenants by the entireties and the transfer was legally ineffective. The trial court ruled in favor of Mrs. Rich. The appellate court's discussion of the facts surrounding the various transfers makes clear the lack of understanding (by both parties and bank employees) of the meaning and effect of tenancy by the entireties accounts. The trial court concluded that Mrs. Rich was entitled to recover the funds in dispute because the accounts had been tenancy by the entirety accounts and that there had been "no express disclaimer of the tenancy by the entirety designation" under the Beal Bank holding.

The district court of appeal reversed, finding that the parties had, in effect, disclaimed tenancy by the entireties status for the accounts in question even though the parties did not understand, and the bank employee did not explain, the implications of the account documents which were signed. Finding that the Beal Bank decision did not require a bank to explain the accounts, it observed that parties have a "duty to learn and know the contents of a proposed contract" before they sign it.

Ortmann v. Bell, 36 Fla. L. Weekly D2066 (Fla. 2d DCA September 16, 2011).

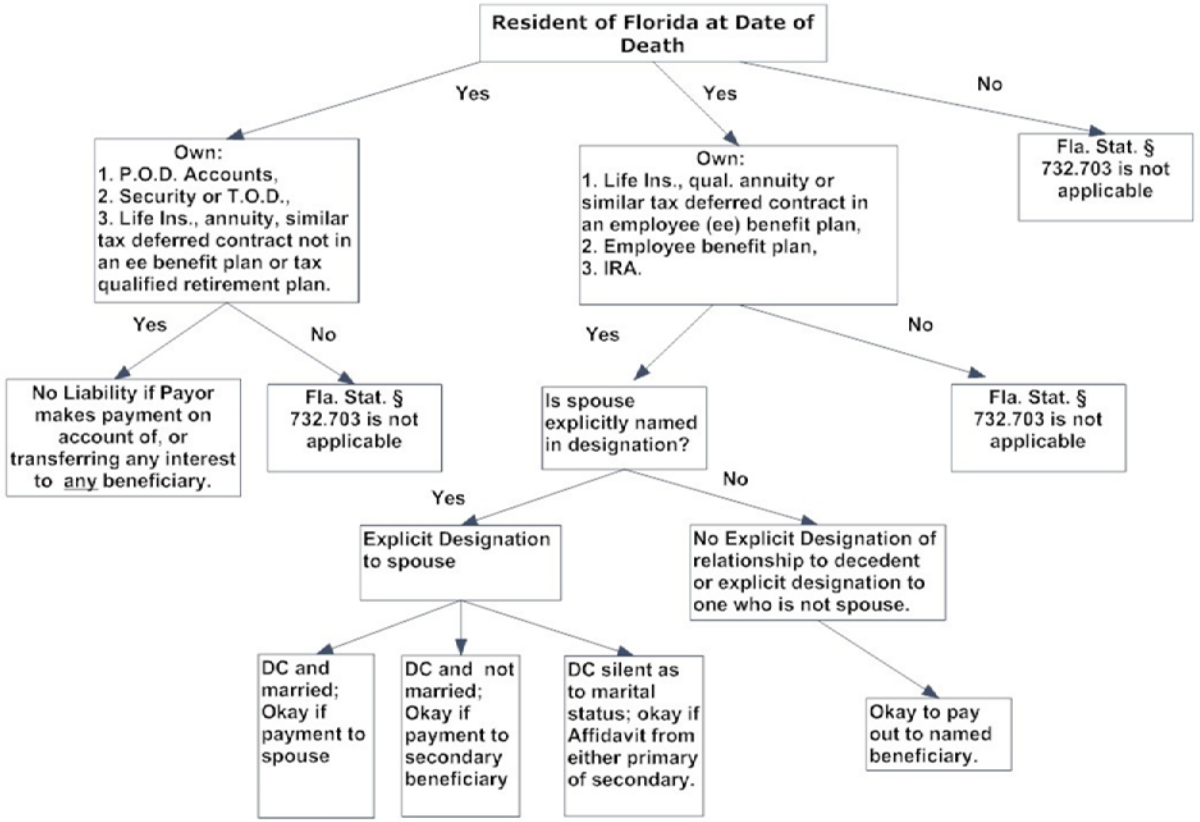
The value of real property used to go up. This case proves the point, or at least partially does. Mr. Hemphill died in June, 2000. At that point, he had a parcel of real property appraised to be worth $455,000.00. Ms. Sloan became trustee of his trust and, in the midst of various disputes with a beneficiary, Ms. Bell, a settlement was reached under which the parcel was to be sold. Before closing, the property was appraised at $625,000.00. The agreement (signed by Ms. Bell), authorized listing the property for $1,225,000.00. Ultimately, the trustee found a buyer and sold the property for net proceeds of $1,315,000.00. Later, it was noticed that the documentary stamps on the deed of conveyance indicated a value of $4.5 million. Ms. Bell sued Ms. Sloan for the "missing" $3 millions. And she won.

On appeal by the trustee, the court examined whether there was competent substantial evidence to support the trial court's finding that Ms. Sloan was responsible for the "lost" $3 million dollars. The court noted that the appellees had not presented any evidence of value of the property but simply relied on the documentary stamps attached to the deed as creating prima facie evidence of the value of the property. The trial court had held that the trustee was responsible for the additional $3 million in sales price because "the doc {sic} stamps are an official record pursuant to statute". The appellate court held that, whatever presumption may have been raised by the documentary stamps, that presumption was overcome by testimony by the trustee that she did not receive anything more than was shown on her closing statement. The court noted that there were actually two transactions involved. One was to the buyer known to the trustee and the second one was from that buyer to another entity for, maybe, $4.5 million. (The court also discussed attorney's fee issues. The court's discussion underlines the need for properly itemizing and categorizing work done in contested trust matters.)

Jervis v. Tucker, 82 So.3d 126 (Fla. 4th DCA 2012).

Ms. Meikle created a revocable trust. Later, she was adjudicated to be partially incapacitated and a limited guardian was appointed for her. A year later, she executed an amendment to the trust which became the subject of litigation. After Ms. Meikle's death, three pre-amendment beneficiaries brought an action to void the post adjudication amendment. The trial court granted summary judgment, finding the amendment to be "void and of no legal effect". Although the appellate court acknowledged that "testamentary capacity is determined only by the testator's mental capacity at the time he executed his will" it, nevertheless, affirmed the trial court judgment citing terminology in the trust agreement dealing with the settlor's incapacity. That provision specified the method by which the grantor's power would be considered restored for purposes of the trust. The court held that, looking within the four corners of the trust, and regardless of the grantor's actual capacity, the amendment was invalid.

Beneficiary Designation Statute If Divorce Fla. Stat. § 732.703



Liability protection notwithstanding Payor's knowledge that person to whom asset is transferred is different from person who would own interest pursuant to this statute.