

Preventing REO Closing Delays & Diversifying Your Business

— *An Introduction to Probate*

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On April 7th, Michelle Garcia Gilbert, Esq., presented for REOMAC a webinar on the basics of probate and how you can incorporate these services into your business. Items discussed:

What Is Title Insurance?

- Title insurance protects you against any unknown claims that may be already attached to the ownership of your home.
- One-time fee, and covers your property for you and your heirs, for as long as you own the property.

Two Types of Title Insurance:

- Owner's Policy—protects your property rights for as long as you or your heirs own home.
- Lender's Policy—required by lender and protects lender's financial interests, buyer pays for it.

What Does Title Insurance Protect

- Undisclosed heirs.
- Gaps in the chain of title.
- Legal documents recorded improperly.
- Documents executed under expired powers of attorney.
- Wills and deeds executed by persons lacking the legal capacity to do so.
- Errors in tax records.
- Omissions and mistakes resulting in improper abstracting.
- Rights of divorced parties.
- Deeds by persons who have falsely portrayed their marital status.
- Probate matters.

What Is Probate?

- Probate: jurisdiction over assets of decedent, titled in decedent's name at death.
- Court supervises payment of debts, taxes, probate fees, and distribution of the remainder to the person(s) named in a will, or to the heirs if there is no will.
- Florida probate law varies depending on the type of property.



A Florida Probate Can Include:

- Proving will is valid.
- Identifying and preparing an inventory of decedent's property
- Determining value of deceased person's property.
- Paying all debts and any taxes due.
- Distributing remaining property as the will or the law directs.
- Attorney and court fees which may be paid from estate assets.



FORMAL PROBATE ADMINISTRATION

- Nonexempt estate assets > \$75,000 (homestead real property is exempt).
- May take time to gather assets.
- APPROXIMATELY 12 months to complete.
- Personal Representative appointed to handle estate affairs.
- Petition for administration and for APPOINTMENT OF Personal Representative
- Notice to Creditors published, creditors have 3 months to file their claims.
- Petition to determine homestead real property filed- order filed after creditors' period.
- After 3 months, personal representative pays debts and heirs/beneficiaries.
- Petition for discharge filed, ORDER OF DISCHARGE entered

SUMMARY PROBATE PROCESS FOR SMALL ESTATES

- Smaller or older estates, shorter and less expensive than the formal administration
- Decedent passed more than 2 years ago
- Value of the estate, not including exempt property < \$75,000
- Does not work in certain cases, such as minor or missing heirs, or assets or debts unknown.
- **FLORIDA HOMESTEAD PROPERTY PROTECTION:** protect families, homestead real property passes free from creditors' claims except for mortgage



"Non-Exempt"
\$75,000

Investors Target Probate Homes

Personal Representative or heirs do not want to manage.

No sale without order permitting sale or order determining homestead status.

Many probate properties listed shortly after probate case filed.

Commercial, Acreage, Duplexes, Condominiums, Apartment Buildings, Strip Malls, Office Buildings, Ranchland, Farms.

May or may not need repairs.

Title may be survivor/entireties, avoiding probate.

Probate Issues Affecting Title

- Incorrect legal descriptions in court orders.
- Divorce proceedings.
- Lack of proper notice to beneficiaries or heirs.
- Missed beneficiaries or heirs.
- Unrecorded disclaimers of interest.
- Unrecorded death certificate.
- Lack of affidavit of continuous marriage.
- **Tip:** have closing agent order title commitment to identify other issues to resolve in probate or as title curative matter.
- **Realtor tip:** seller is estate, personal representative, or heirs/beneficiaries, depending upon type of probate.

