

Preventing REO Closing Delays & Diversifying Your Business

– An Introduction to Probate



Michelle Garcia Gilbert, Esquire

Managing Partner, *Gilbert Garcia Group, P.A.*

Managing Partner, *Sapphire Title & Escrow Company*

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 home-
stead status.

Many probate properties listed shortly after probate case filed.

Commercial, Acreage, Duplexes, Condominiums, Apartment Build-
ings, 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.