

Probate Section Report
by
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The final monthly meeting of the probate section for 2009 was held on December 9th. Richard White began the meeting with a discussion of two proposed statutes regarding homestead real property which have been prepared by the RPPTL section of the Florida Bar. One deals with the situation where there is an attempt to devise a homestead by will, but the attempt is invalid due to the grantor being survived by a spouse and minor children. In such cases, the statute would give the surviving spouse the option to take title as a tenant in common with the children, as opposed to a life estate to the spouse with remainder to the children. The other proposed statute would allow a single parent with minor children to transfer title to the homestead into an irrevocable trust, with the parent and children as beneficiaries. Both proposals are the result of problems encountered by estate planners in attempting to create workable estate plans where these type situations are involved. One of the main problems is the undesirability of ending up with a homestead being owned by minor children. Another primary concern is the undesirability of the life estate form of ownership (which was the subject of a June 2007 Florida Bar Journal article entitled, "The New Homestead Trap: Surviving Spouses Are Trapped by Life Estates They No Longer Want and Can

No Longer Afford"; and is occasionally the subject of litigation between the life estate holder and remainder holders. For example, see the recent case of Vaughn vs. Boerckel, _____ So.3d _____, (Fla. 4th DCA Oct. 21, 2009), holding that the surviving spouse/life tenant can be held personally liable to the remainder holders for money damages due to any failure of the life tenant to pay property taxes; homeowners' insurance; repairs; mortgage payments; association dues or special assessments.

Our Clerk of Court, Buddy Irby, made a special guest appearance to extend best holiday wishes to the section and to update us on the status of the pending statewide efilng project currently being negotiated between the clerks and court administrators. Mr. Irby indicated that probate has been designated as the guinea pig to be the first division which will be required to use efilng. Mr. Irby assured the section that mandatory efilng is just around the corner and that we will be hearing a lot more about how the process will work as soon as the details are finalized.

The meeting concluded with a discussion of the current state of the law regarding whether a lender may obtain a deficiency judgment after foreclosure on a Florida homestead. Following some post-meeting research, it appears that there is currently no prohibition against entry of a deficiency under

such circumstances. However, a bill has been introduced for consideration by the legislature during the 2010 session, HB35, which, if passed, would prohibit entry of deficiency judgments on homestead property, effective July 1, 2010.

The probate section continues to meet on the second Wednesday of each month at 4:30 p.m. in the 4th floor meeting room in the Civil Courthouse. All interested practitioners are invited to attend. If you wish to be added to the email list to receive notices of the meetings, send an email to lciesla@larryciesla-law.com