



written by Rohan Kelley on this subject, based on a recent discussion he had with the General Counsel for the State of Florida Agency for Health Care Administration. According to the General Counsel, the following address may be used for service of the Notice to Creditors: Agency for Health Care Administration, Office of the General Counsel, 2727 Mahan Drive, MS #3, Tallahassee, FL, 32308. This address was proposed due to the confusion sometimes created by providing notice to the Medicaid estate recovery unit's private contractor, which has changed several times in recent years. The current contractor is Xerox State Healthcare, LLC, the address of which is P. O. Box 12188, Tallahassee, FL, 32317 (the same address used by ACS Recovery Systems, the former contractor). It is my understanding that Xerox simply purchased ACS, and nothing else about ACS has changed.

For whatever it's worth, I am continuing to use the ACS Post Office Box as I have never had any problem getting back my green return receipt cards. It was also pointed out by Mr. Kelley that, regardless of which entity and address practitioners choose for service of the Notice to Creditors, e-service is not appropriate. Notice to Creditors should be sent via certified mail, return receipt requested, and the return receipt should be filed in the

court file so that the probate judge can see that there has been compliance with the statutory notice requirement.

◆ The meeting proceeded to a report by your author regarding the latest word from The Fund regarding "Ladybird" deeds. The issue discussed was first raised in the November 2013 issue of The Fund Concept newsletter, in example #6 of "2013 Title Teasers - Part II."

A hypothetical example was given which involved the grantor of a Ladybird deed who, pursuant to the power reserved in the deed, changed the remainder persons named in a Ladybird deed by executing and recording a new Ladybird deed. The grantor then dies. The "new" remainder person then goes to sell the property. The question presented is whether, for insuring purposes, a deed is required from anyone other than the "new" remainder person. In the answer section, The Fund indicated that deeds from the two original remainder persons would be required.

Your author wrote to The Fund to inquire as to why the extra deeds would be required. The Fund's written response can be summarized as follows: The Fund refers to this scenario as one involving "Unilateral Elimination of Interest of Remaindermen." The Fund recognizes that there is no case law on point. The Fund states that its position is based purely on a risk analysis basis due to The Fund's

concern regarding the potential for litigation from the original remainder persons.

The Fund's view is as follows: If the original remainder persons are willing to give a deed, there is no problem; if they refuse, there is a potential of litigation. One other negative that The Fund has taken into consideration is the fact that the new remainder person/seller has received ownership of the property without consideration. In The Fund's view, this makes for a weaker case when it comes to insuring title.

The Fund goes on to address the possible solution of beefing up the language employed in the Ladybird deed on the issue of the right of the grantor to change remainder persons. It is The Fund's position that this would be of no avail as it would not eliminate the potential for litigation from the original remainder persons. The Fund concludes by emphasizing that it will still insure title in the case of a sale or mortgage by the grantor during his/her lifetime where the remainder persons have not been changed.

◆ The meeting proceeded with a discussion led by Richard White, with assistance from Ellen Gershow, regarding the operation of Section 732.4017, Florida Statutes. This statute was enacted in 2010 and deals with

a procedure that may be employed by a homestead owner who is single and has a minor child as a way to avoid the title to the homestead passing to the child in the event of the untimely death of the homeowner during the child's minority.

The statute contains, among others, the following significant provisions:

(1) A transfer of the title by the (single parent) property owner into a trust (during the child's minority) does not constitute a "devise" for purposes of descent of the title upon the death of the property owner, so long as the grantor does not retain the power to revoke the trust (i.e., the trust is irrevocable).

(2) The grantor may retain the right to change/alter beneficiaries (i.e., reserve a limited power of appointment, which also has the effect of making the transfer be viewed an incomplete gift for IRS purposes so as not to trigger the gift tax). This allows the grantor to include after-born children as beneficiaries.

(3) The grantor may retain a life estate in the homestead (so as to preserve the grantor's right to homestead for tax exemption and SOH purposes).

(4) The grantor may specify an event in the future for termination of the interests of the beneficiaries (i.e., the youngest child's 18th birthday).

(5) The trust may provide that ownership of the property reverts back to the grantor upon occurrence of the foregoing event.

Although not set forth in the statute, such a trust would typically contain provisions for the trust to continue beyond the youngest beneficiary reaching 18 in the event there is an untimely death of the grantor (i.e., continuation to age 25, 30, 35, etc.). Title would be held by the trustee, who could sell, if desired, and then continue to manage the sales proceeds in trust until the ages specified in the trust. Other assets, such as life insurance proceeds, could also be placed in the trust, especially if it is the grantor's intent that the property not be sold in the event of the untimely death of the grantor.

The discussion then reverted back to the question originally posed a couple of months ago by Susan Mikolaitis: Is there a good solution to the estate planning question of what to recommend to a homestead-owning single parent with one or more minor children. The answer seems



All interested parties are invited to participate in probate section meetings. Please contact my office if you wish to be added to the e-mail list to receive notice of future meetings (lciesla@larryciesla-law.com).