

PROBATE SECTION REPORT

BY

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The probate section continues to meet on the second Wednesday of every month beginning at 4:30 p.m. Due to construction in the civil courthouse, the location of our meetings has changed. We are now meeting in the third floor conference room in the criminal courthouse (220 South Main Street).

There is ample free parking in a parking lot on the south side of the courthouse. There is a side entrance to the courthouse available to lawyers, which is the equivalent of the rear basement door in the civil courthouse. The side entrance is directly across from the free parking lot.

After going through security, there is a door leading into the courthouse lobby. Take an elevator to the third floor and go down the hallway until you reach a locked door and a security desk. If a security guard is present, he or she will unlock the door. Otherwise, there is a phone, and you can call someone to unlock the door (my recollection is that you dial 2204). Continue down the hall a short distance to the conference room on the left.

The Probate Section welcomes Jamie Shideler, a UF law graduate who is the new staff attorney for probate and guardianship cases in Baker, Union and Bradford counties. Jamie previously clerked for the federal court in Ocala, was a clerk for Larry Turner, and was a paralegal for several years prior to attending law school.

Following, in no particular order, are some topics discussed at recent meetings.

◆ A question was raised as to whether there is a procedure available to have someone's driver's license involuntarily removed, as in the case of a parent or other senior who presents a danger to the public and should not be driving. The answer is yes. The procedure is outlined in Section 322.126, Florida Statutes. The state has promulgated a form, known as HSMV Form 72190, to initiate the process.

Ideally, the elder's doctor would sign the form certifying the person should not be driving. If the doctor won't sign, any person with knowledge may sign. DMV will follow up with a letter to the driver advising that the driver's license will be revoked unless the driver can prove the ability to drive, either by taking the driving test or otherwise providing satisfactory proof via doctor's evidence.

◆ Florida's new Land Trust Law was discussed. The new go-to statute for Land Trusts is Section 689.073, Florida Statutes. The new law has been enacted partially to clarify the distinction between a Florida Land Trust and taking title as a trustee under a garden-variety revocable living trust, and partially to address potential conflicts between Ch. 736, Florida Statutes, the Florida Trust Code, and the Florida Land Trust Law, created pursuant to the opinion in the case of Brigham v. Brigham, 11 So.3d 374 (Fla 3d DCA 2009), *rev. denied* 34 So.3d 1 (Fla 2010), dealing with the extent of the fiduciary duties of a trustee owner of real property.

Practitioners should review new 689.073, Florida Statutes; amended 689.071, Florida Statutes (the old Florida Land Trust statute); the Brigham opinion; and the discussion of the new law contained in the August 2013 issue of The Fund Concept Newsletter. Richard White indicated that many practitioners have started adding the following wording in the grantee clause in deeds conveying title to trustees of revocable living trusts, after setting forth the standard language describing the trust by name: "A revocable trust as described in Chapter 736, Florida Statutes, and not a Florida Land Trust under Chapter 689, Florida Statutes."

◆ Kris Lier, who works with Richard White, led a discussion regarding the use of the decanting provisions contained in Section 736.04117, Florida Statutes. In the case discussed, there was an irrevocable trust that owned a home occupied by a beneficiary but which did not contain sufficient language for the beneficiary to obtain a homestead tax exemption. Kris and Richard created a new trust with the same terms, adding homestead tax language. The trustee then transferred all of the assets from the old trust to the new trust. No court involvement was required.

◆ A discussion was also held regarding clients who indicate an intention to name two or more personal representatives or trustees. The consensus among the group was to try to talk the clients out of this intention, as it typically leads to problems down the road, usually due to the co-fiduciaries' inability to effectively communicate with each other and/or the inability to agree on a single course of action. The same goes for clients who wish to leave real property to multiple heirs as tenants-in-common.

If you are interested in being added to the email list to receive notice of future section meetings, please send me an e-mail at lciesla@larryciesla-law.com.