



ActionLine

A PUBLICATION OF THE FLORIDA BAR REAL PROPERTY, PROBATE & TRUST LAW SECTION



Asset Protection Planning With A Rensin Offshore Trust

What Are My Rights Again? Rights Of Refusal And Options In Leases And Contracts: Seems Simple Enough Right? Wrong!

Contesting The Beneficiary Designation – Unique Issues And Strategies

Repair Costs Can Be Consequential Damages: Understanding the Keystone Court's Departure From The "Typical" Definition Of Consequential Damages



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About the Cover:
Sailboats by John Neukamm

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Is Notice To AHCA Required Or Just A Good Idea In A Summary Administration?

By Joesph M. Percopo, Esq., Mateer Harbert, P.A., Orlando, Florida

In a formal probate administration it is clear that, if a decedent is over the age of 55, notice to creditors and a death certificate must be provided to the Agency of Health Care Administration (“AHCA”).¹ In reviewing Chapter 735 of Florida Statutes, there appears on its face no equivalent mandatory provision in a summary administration. However, Fla. Stat. § 735.206 (2019) does require a petitioner to make a “diligent search and reasonable inquiry” for creditors prior to entry of the order of summary administration. The section further states that creditors must be served with a copy of the petition for summary administration. Florida Probate Rule 5.530(a)(9) specifies the petition must state either (1) all creditor claims are barred or (2) “that a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors has been made” and the estate is not indebted or a listing of the known creditors. Therefore, prior to filing the petition for summary administration, a diligent creditor search must be conducted so a true and correct statement as to creditors may be included in the petition; only then may a court enter an order of summary administration.

In conducting a “diligent search,” the petitioner should contact AHCA if the decedent is over age 55 to inquire whether it is a creditor of the estate. This author has had success in emailing AHCA’s designated agent, Conduent Payment Integrity Solutions (flsubro@conduent.com), advising of the

pending probate, providing a copy of the death certificate, and inquiring if AHCA has any claim against the estate. To expedite the response time, the email should include a request that AHCA respond via email and, if there is no claim, to attach a letter stating the same. Upon receiving a response from AHCA, you can complete the creditor statement within your petition prior to filing, provided no other creditors were located and AHCA has stated there is no claim. The petitioner can file a verified² petition for summary administration asserting that a diligent search was performed for creditors and that the estate is not indebted. While the verified statement contained in the petition should be sufficient for the judge to enter the requested order, this author has encountered some courts that still require some form of “proof of service” to AHCA. Rather than risk a delay in having the summary order entered because there is no proof of service to AHCA filed, it is good practice that the petition, include a statement that the estate is not indebted and specific language indicating that AHCA was contacted, that they do not have any claim, and that a letter from AHCA stating the same is attached. This approach is especially useful when there is a time crunch, such as a pending sale, where any delay would result in additional damages or problems.

Endnotes

- 1 Fla. Stat. § 733.2121(3)(d) and Fla. Prob. R. 5.241.
- 2 Petitioner is swearing under penalty of perjury.

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7 Pet Ownership for the Elderly and Persons with Disabilities, 73 Fed. Reg. 63833, 63836 (Oct. 27, 2008) (codified at 24 C.F.R. § 5.303 (2017)).

8 U.S. Department of Justice, Civil Rights Division, Disability Rights Section, ADA Requirements: Service Animals, at p. 2 (July 2011), available at: https://www.ada.gov/service_animals_2010.htm.

9 *Id.*

10 See HUD FHEO Notice 2013-01, *supra* note 6, at p.4.

11 U.S. Department of Justice, Civil Rights Division, Disability Rights Section, Frequently Asked Questions about Service Animals and the ADA, at p. 2, 5 (July 20, 2015) (hereinafter, “DOJ FAQ”) available at: <https://www.ada.gov/regs2010/>

[service_animal_qa.pdf](#).

12 DOJ FAQ, *supra* note 11, at p. 3.

13 *Alboniga v. Sch. Bd. of Broward Cty. Fla.*, 87 F. Supp. 3d 1319, 1332 (S.D. Fla. 2015).

14 *Id.*

15 *Roe v. Providence Health Sys.-Oregon*, 655 F. Supp. 2d 1164, 1168 (D. Or. 2009).