



UNIVERSITY OF
FLORIDA

Fredric G. Levin College of Law

ASSIGNMENTS FOR
FIDUCIARY ADMINISTRATION

PROFESSOR LEE-FORD TRITT

WEEKS 1 and 2
(3 classes)

Class 1:

Please read the following items in bold.

Terms.

- A. Fiduciaries
- B. Executors/Personal Representatives
- C. Trustees
- D. Guardians
- E. Conservators
- F. Custodians
- G. Attorneys-in-fact
- H. Default Rules

General Administrative Issues Concerning Class.

Review expectations for student performance in class.

Introduction to overview of class.

- A. Estate Planning vs. Fiduciary Administration.
- B. Brief Overview of Fiduciary Administration of Estates and Trusts.
 - 1. **Unif.Probate Code § 3-703, Unif.Trust Code § 801**
 - 2. **Unif.Trust Code § 105**
- C. Comparison of Different Fiduciary Offices.
 - 1. Personal Representatives/Executors/Administrators
 - 2. Trustees
 - 3. Guardians/Conservators/Custodians
 - 4. Attorneys-in-Fact and other Agents

Class 2:

- I. Where to Begin: Pre-probate and Preliminary Stages of Estate Administration.

- A. Initial Interview.
 - 1. Meet with Family.
 - 2. Sign Retainer?
 - 3. Assemble Contact Information.
- B. Pre-probate.
 - 1. When Do Fiduciary Duties and Powers Commence (relation back)?
 - a. **Unif.Probate Code § 3-701, F.S. § 733.601**
 - 2. Death of Client/Proof of Death.
 - a. **Unif.Probate Code § 1-107, F.S. § 731.103**
 - 3. Locating Funeral Arrangement Instructions and Original Will.
 - a. Contact decedent's t&e lawyer, surviving spouse, next-of-kin, caregivers, etc. Review Will for any information about funeral arrangements.
 - b. Safety Deposit Box - without Court Order. **F.S. §§ 655.935, 655.936, 655.937**
 - c. Safety Deposit Box - by Court Order. If court order is required, file: "Petition to Open Safe Deposit Box" and "Order to Open Safe Deposit Box."
 - 4. Disposition of the body.
 - a. Determine whether the decedent made pre-need funeral arrangements (contracts).
 - b. The NOMINATED personal representative in the Will may carry out written instructions of the decedent relating to his body and funeral arrangements.
 - i. **F.S. § 732.804.**
 - c. Under, FL law, if no written instructions in his will, then surviving spouse or next-of-ken may dispose of the body.
 - d. ***Kirksey v. Jernigan*, 45 So. 2d. 188 (FL 1950).**
 - e. ***Cohen v. Guardianship of Cohen*, 896 So.2d 950 (FL 2005)**
 - f. ***Arthur v Milstein and Stern*, 949 So.2d 1163, 2007 WL 602630 (Fla.App. 4 Dist.)**
 - g. Do NOT PERSONALLY GUARANTEE the payment of funeral expenses—estate may become insolvent.
 - i. **F.S. § 733.707(1)(b)**
 - 5. Anatomical Gifts – Its important to determine as soon as possible whether the decedent or an authorized person made or desires to make a gift of body organs under **F.S. § 765.512.**
 - a. **MAKE SURE INSTRUMENT WAS NOT AMENDED OR REVOKED.**
 - 6. Notify Financial Institutions, Insurance Providers and Death Benefits Providers.
 - a. Notify banks. Instruct not to honor a power of attorney.
 - b. Notify life insurance companies of death. Notify other insurance providers and request personal representative be

added to each policy as an additional insured and obtain copies of endorsements. Make sure home, car and other estate valuables adequately insured.

- c. Consider changing locks on the decedent's residence.
- d. Verify decedents monthly payments (mortgage, electricity, etc.) and make sure either paid or terminated. Notify magazines, etc. and get refund.
- e. Secure any risk of liability items—cars, boats, etc.

Class 3:

Terms.

- A. Domicile
- B. Residence
- C. Situs
- D. Domiciliary Administration
- E. Ancillary Administration

III. Opening of an Estate Administration

- A. Division of estate administration into three categories:
 - 1. Opening/Preliminary Stages of an Estate.
 - 2. Mid-Administration of an Estate.
 - 3. Closing an Estate.
- B. Why do we administer an estate?
 - 1. **F.S. § 731.201(14)**
- C. Reasons for estate administration:
 - 1. Serves to establish title of decedent's property and provides orderly distribution of Decedent's Property to Successors.
 - a. Effect of Probate.
 - b. **F.S. § 733.103.**
 - 2. Commences Statute of Limitations on Decedent's debts.
 - a. **F.S. § 733.702(1) and F.S. § 733.710.**
 - 3. Facilitates collection of debts and assets.
 - 4. Provides method of determining and paying taxes.
- D. Where do we administer an estate? (Goal: Understand the basics of domicile, jurisdiction, venue and ancillary administration.)
 - 1. Choice of law issues.
 - a. Validity of Instrument vs. Construction of Instrument.
 - b. (However, the decedent or settlor may be able to designate a state in which the principal place of administration is deemed to take place and that designation will be respected if possible.)

- c. **Unif. Prob. Code § 2-703, Unif. Trust Code § 108 and F.S. § 732.6005.**
- 2. Domicile.
 - a. Why do we care about domicile other than probate?
 - b. Conflicts. ***Riley v. New York Trust Co.*, 315 U.S. 343 (1942).**
 - c. See, however, **Unif. Probate Code § 3-202.**
 - d. **F.S. § 731.201(13) and (33), F.S. § 222.17** (sworn statement manifesting and evidencing FL domicile).
 - e. Change of domicile (*see handout*).
- 3. Jurisdiction.
 - a. **Art. V, § 20(c)(3) of the Florida Constitution and F.S. § 26.012(2)(b)** vest the circuit courts with exclusive original jurisdiction for all proceedings relating to the settlement of the decedent's estate.
 - b. **F.S. § 731.201(13) and (33).**
 - c. ***Biederman v. Cheatham*, 161 So.2d 538 (1964).** In Florida, the primary place for the probate of a Will is in the jurisdiction wherein the testator was domiciled at the time of death, the Will being governed by that law.
 - d. True or False: In Florida, there is no basis to grant Letters Testamentary unless there are assets within the state if the decedent was a nonresident of the state.
 - e. True or False: When Letters Testamentary are granted to the Personal Representative by a state's probate court based upon the decedent's domicile there, this does not prevent the court of another state from finding that the decedent died a domiciliary of its own jurisdiction and therefore granting Letters.