



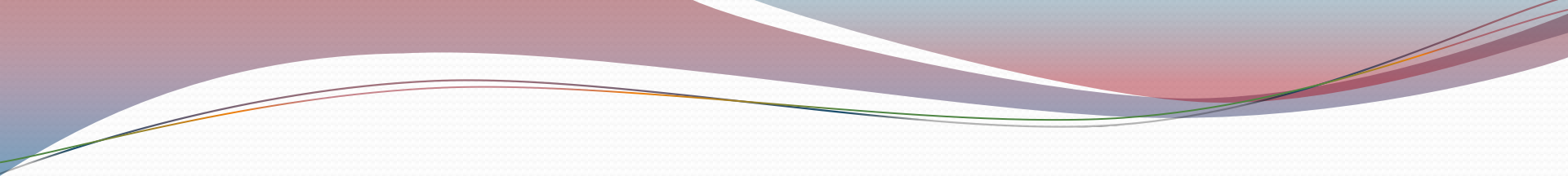
PROBATE AND STUFF

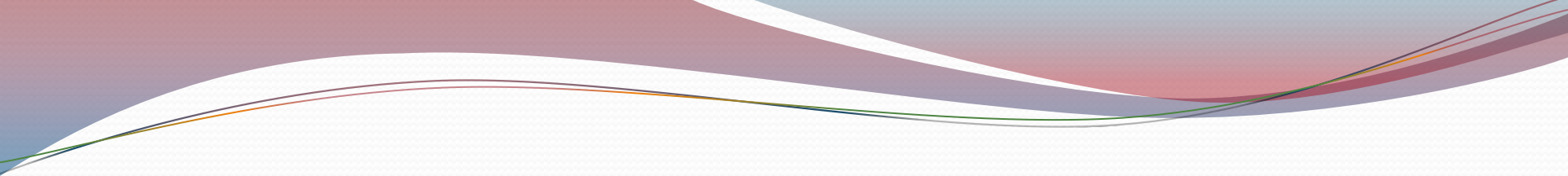
Presented by: SUNNY JOHNSON

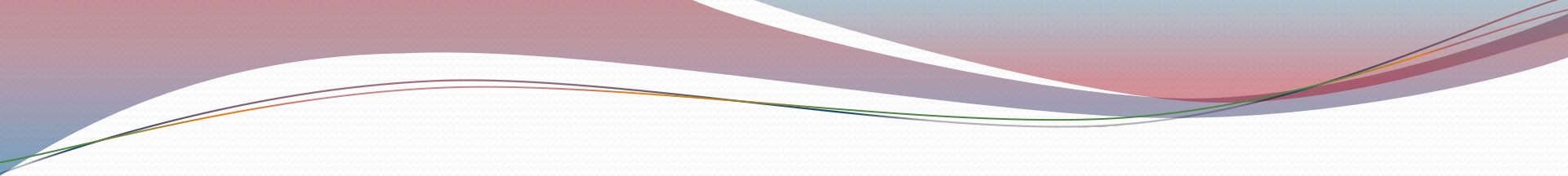
Date: November 2014

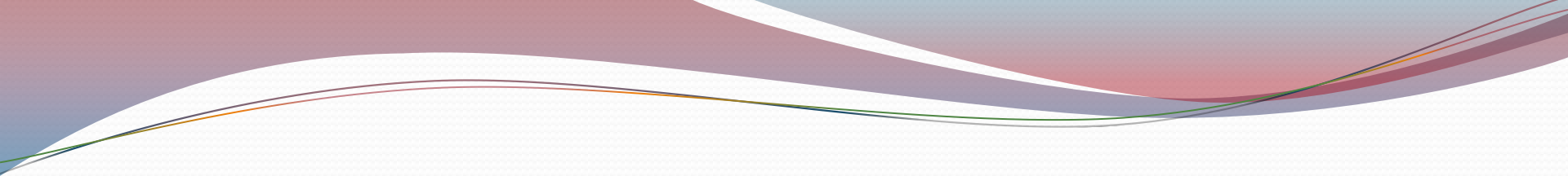


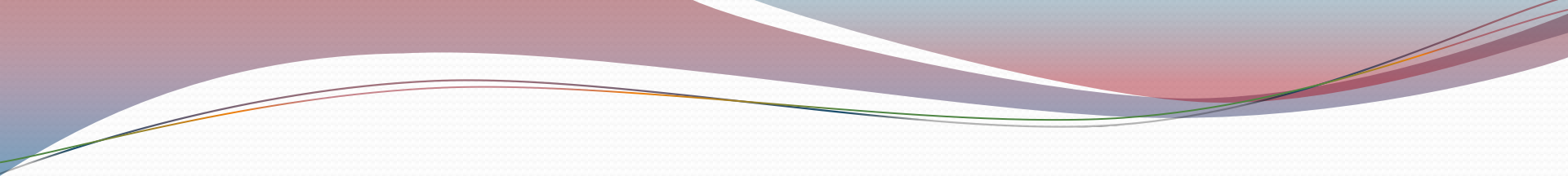
As defined by the law, Probate is the process of administering the estate of an individual who is deceased.

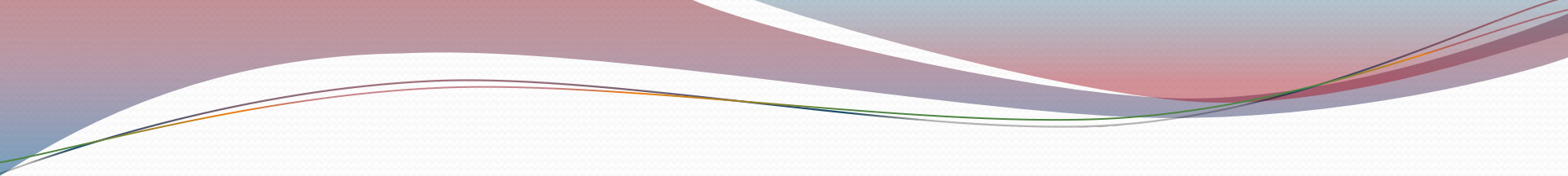
- 
- Upon the death of an owner, title to real property immediately vests in a successor or successors;
 - One who inherits through a probated will is called a devisee;
 - Without a will either the laws of descent will control (heirs at law) or specific statutes control;

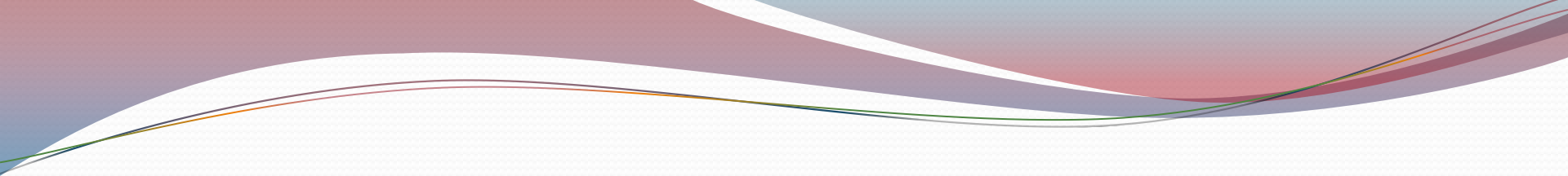
- 
- In Washington State probate is not mandatory;
 - Any will must be filed with the probate court within 40 days of death;
 - Per statute anyone over the age of 18 and of “sound mind” may execute a will;

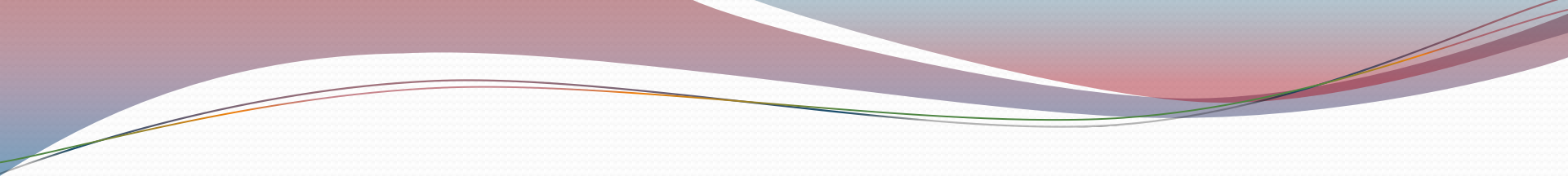
- 
- Every will must be signed by the testator in the presence of 2 competent witnesses;
 - Witnesses must sign the will or an affidavit that complies with statute;

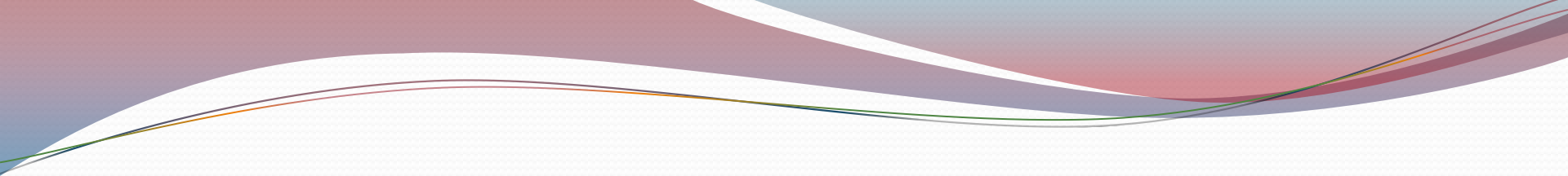
- 
- Wills can be revoked in part or in whole by a subsequent will that revokes the prior;
 - Dissolution of marriage can terminate a will unless specifically stated otherwise;

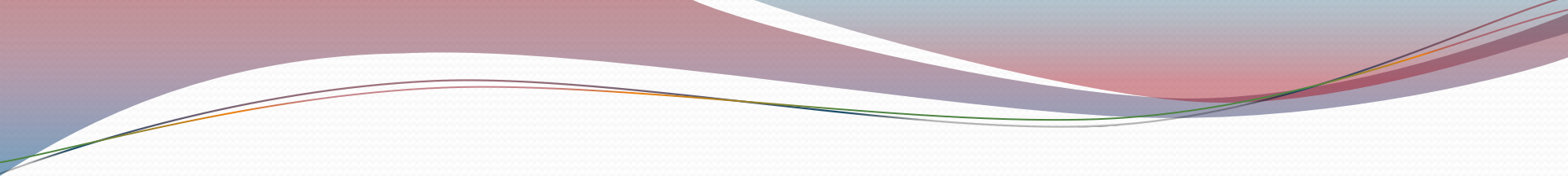
- 
- Once a full probate is open and letters testamentary granting non-intervention powers have been filed-the PR can sell or mortgage without court intervention;
 - If there is no will-letters of administration will be issued;

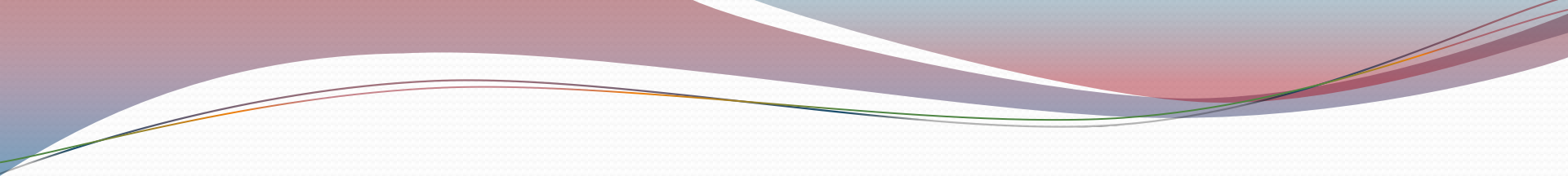
- 
- The PR may distribute the estate and the estate may be closed with a Declaration of Completion without a separate court order;
 - The PR cannot delegate authority to any other person by POA or other means;

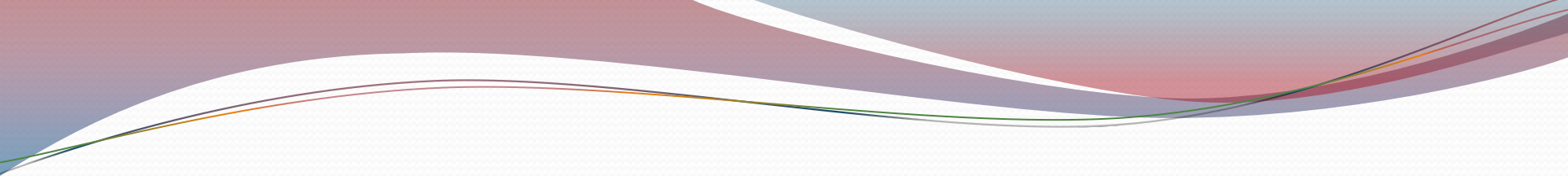
- 
- Once the probate is closed the PR no longer has any powers, including the power to convey real property;
 - If there's been no conveyance by the PR title would be vested as provided for in the decree of distribution or declaration of completion which should have identified the devisees or heirs;

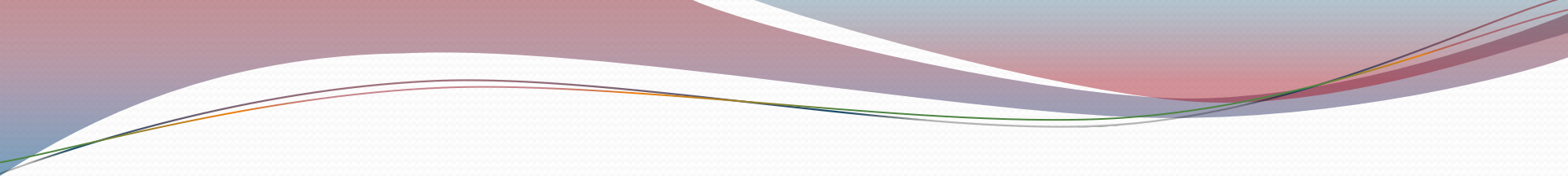
- 
- If there is no will and no conveyance and we're unable to determine who receives the real property, we may request the probate be re-opened and distributed or take the information we do have and go lack of probate;

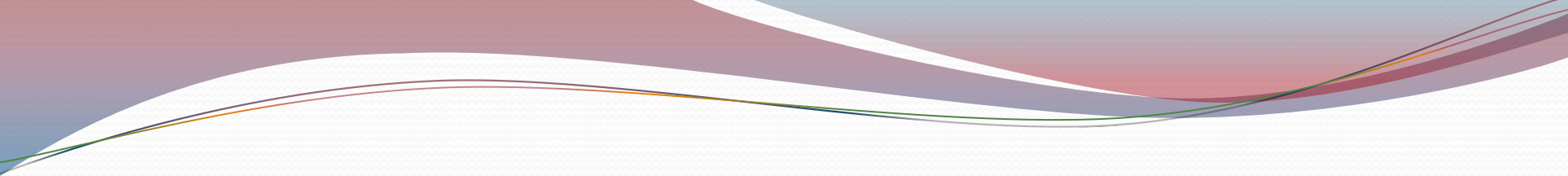
- 
- The main concern we have is when a distribution is not made during the pending probate is whether creditors' claims have been properly dealt with.
 - Any concerns that creditors might still have unresolved claims against the estate should be referred to counsel or underwriting;

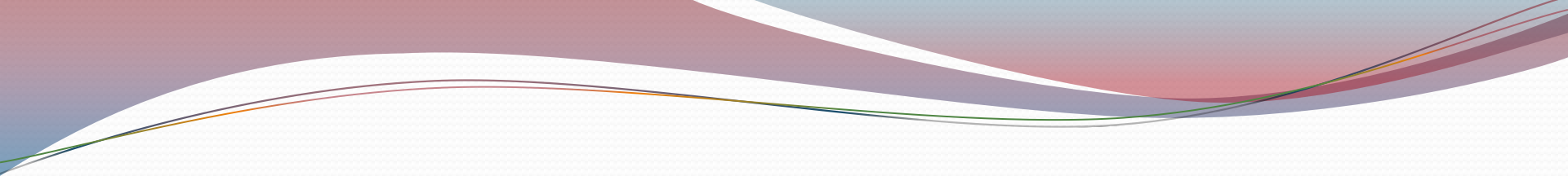
- 
- If there is no order granting non-intervention powers or the court revoked those powers, we would need a court order approving any transaction;
 - Court intervention is found typically if it's a large estate or an estate that is being contested;

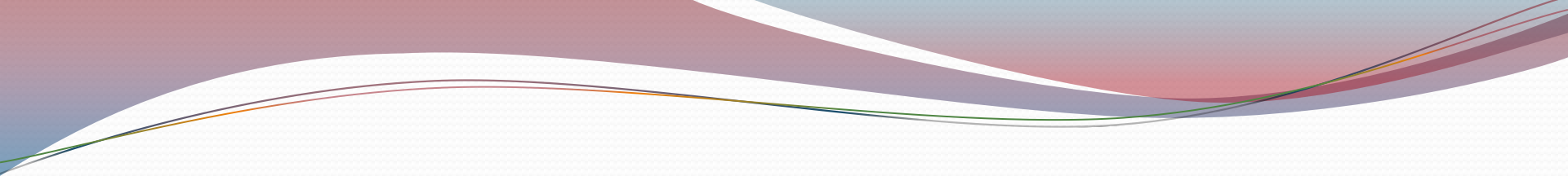
- 
- If our transaction is a sale out of a probate in which non-intervention powers have not been granted, the PR is required to:
 - Obtain an order of sale authorizing the marketing of the property which is subject to a 30 day appeal period;
 - There must be a return of sale presenting to the court a specific sale for approval;

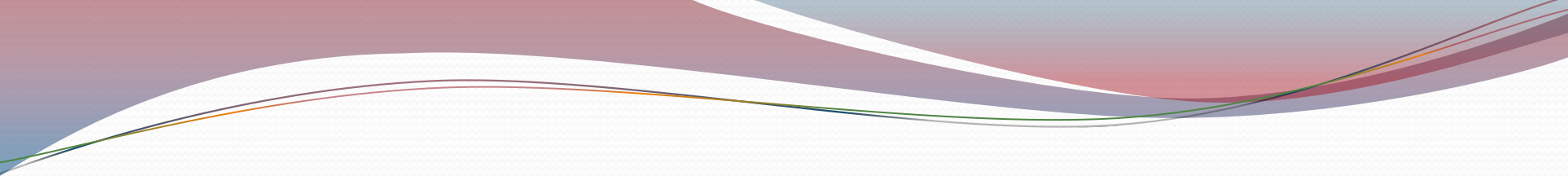
- 
- The sale must be for at least 90% of appraised value;
 - After the return of sale and expiration of a 10 day publication period the court must confirm the sale before the PR can convey the property;
 - Unlike other court orders, there is no appeal period for this order--once the order is entered we can close;

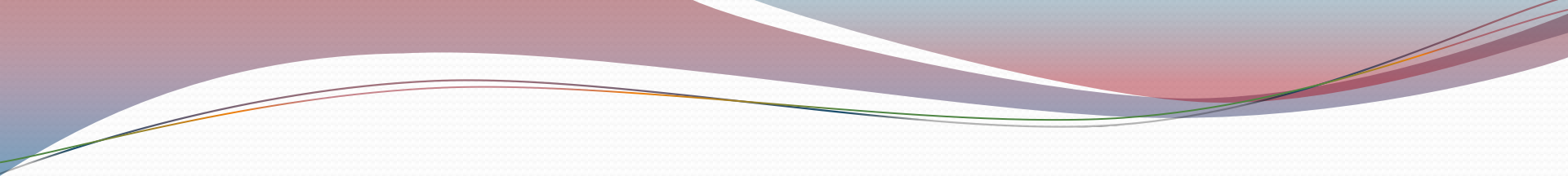
- 
- If the property is distributed out of the estate it must be by decree of distribution entered by the court;
 - The key here is to fully understand what is going on;
 - From the escrow side: be sure you understand the exception showing on your commitment—court order vs. non-intervention;

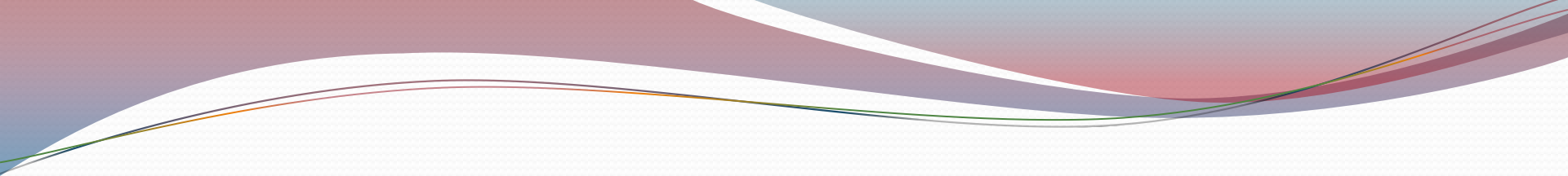
- 
- On the title side-examiners and title officers: be sure to review the probate case carefully and set out the exception properly;
 - If our transaction is for a mortgage or a lease, this must be done under an order of the court as well. The requirements are similar;

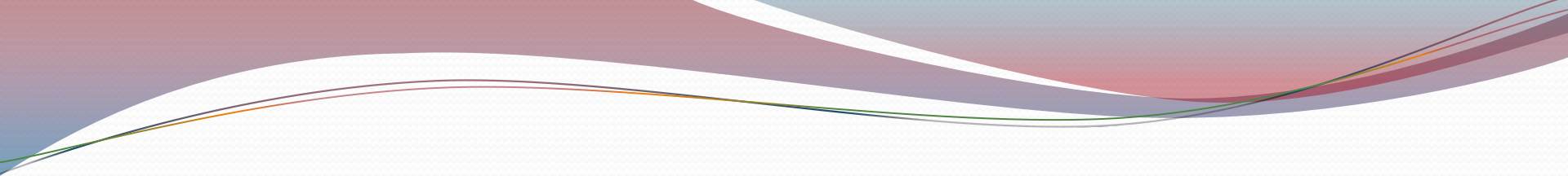
- 
- We would want to see a probate in place if we discovered that there were minors or incompetent heirs; or
 - if according to the non-probated will that the property was left to someone outside the laws of descent; or
 - if the estate has a high value, especially where potential estate tax liabilities exist;

- 
- There are times when probate may be required as we can't always insure through a lack of probate

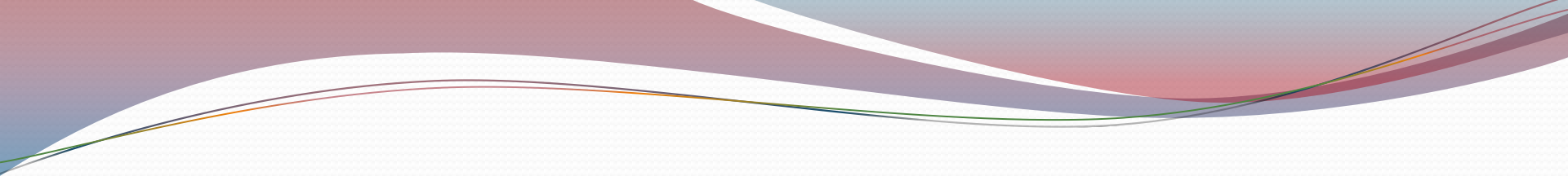
- 
- Another situation we may see when dealing with probates is the “testamentary trust”;
 - This is a trust created in a will;
 - There is no separate “trust document”;

- 
- The terms of the trust are contained in the will for further disposition of the property;
 - If the trustee of the testamentary trust is dealing with the property we are insuring and the probate is still pending it's best to have the PR convey to the trustee of the trust;

- 
- Once the probate is closed title may be vested in the trustee of the trust;
 - These rules for a testamentary trust apply **ONLY** when the will is probated;
 - If you have any questions or concerns when working with this type of trust- contact your underwriter or counsel

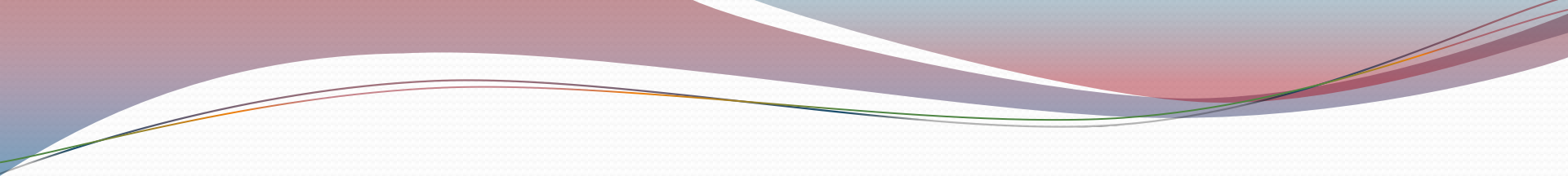
- 
- When your commitment vesting reads:
“The Heirs and/or Devisees of....., Dec’d”
you need to check the probate paragraph in
your commitment to find the name of the PR
as the deed must be executed by the PR -
an example:

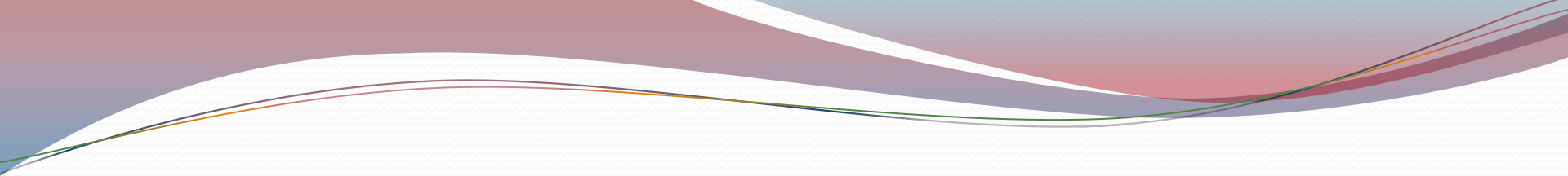
“Sue Smith, Personal Representative
for the estate of Sam Smith, deceased

- 
- We are still seeing deeds where the grantor is showing as “The Heirs....”
 - The recording personnel should be reminded of that as well as we have actually recorded that way

SMALL ESTATE PROBATE

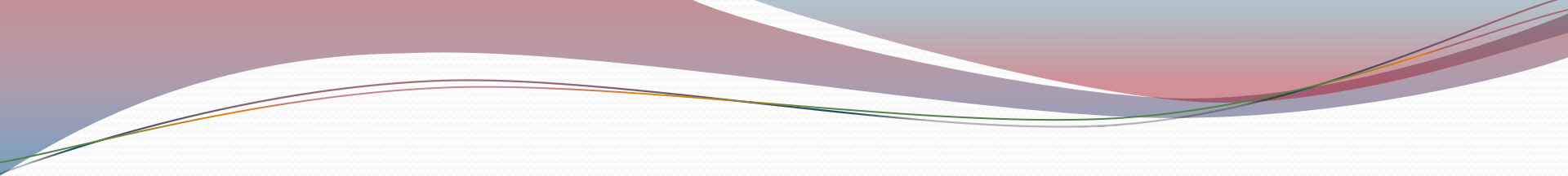
- The abbreviated probate proceedings as provided by statute are generally regarded as “small estate probate”;
- The statute provides for the disposition of assets of estates valued at less than \$100,000.00;

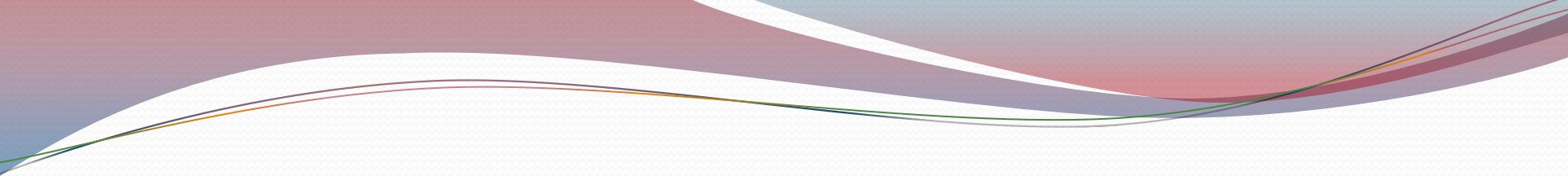
- 
- While the amount includes the value of both real and personal property, the statute itself applies only to distribution of personal property and does not apply to real property;
 - We should not rely on small estate probate for distributing real property assets;

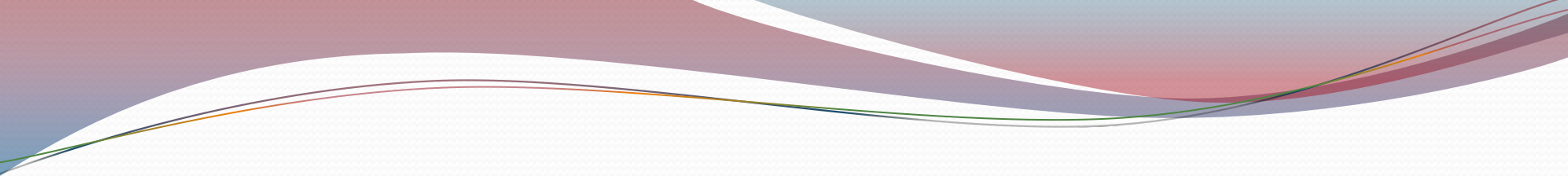
- 
- If the decedent had interest in real property a full probate would be required or the estate should be treated as a “lack of probate”;
 - This might be helpful if the decedent was a contract seller or a beneficiary under a deed of trust or a mortgagee as these interests are considered personal property;

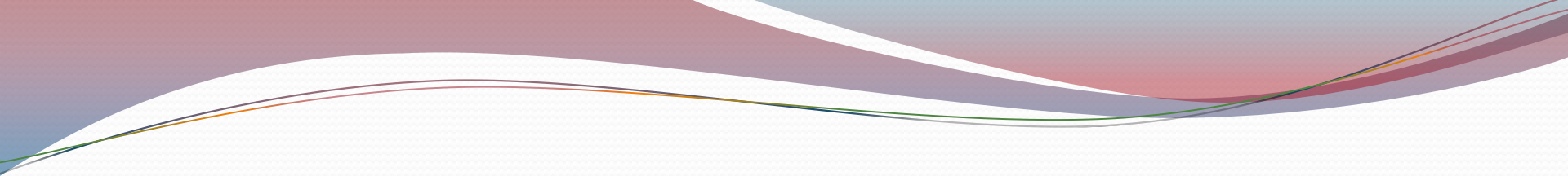
LACK OF PROBATE

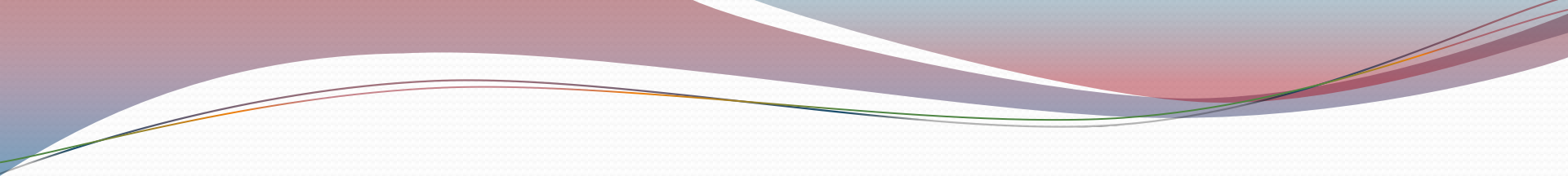
- As a title insurer we cannot require the property be probated;
- We can decline to insure unless the property is probated if we find the risk outweighs the benefit;

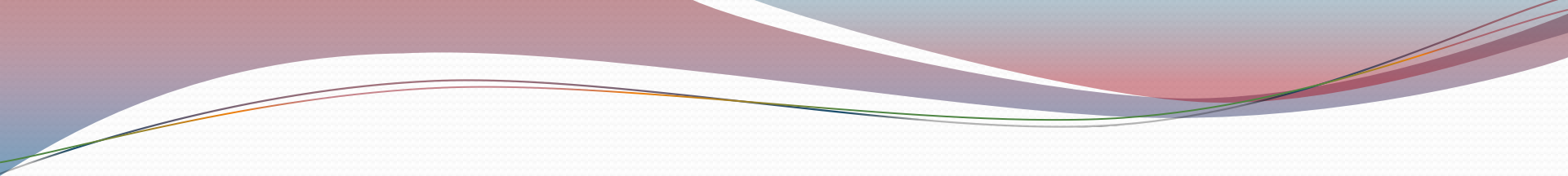
- 
- We cannot give advice to the parties involved in the transaction and we should always advise they consult an attorney for any question relating to legal rights and responsibilities;
 - We do what we can for our customers, but every now and then it's out of our control

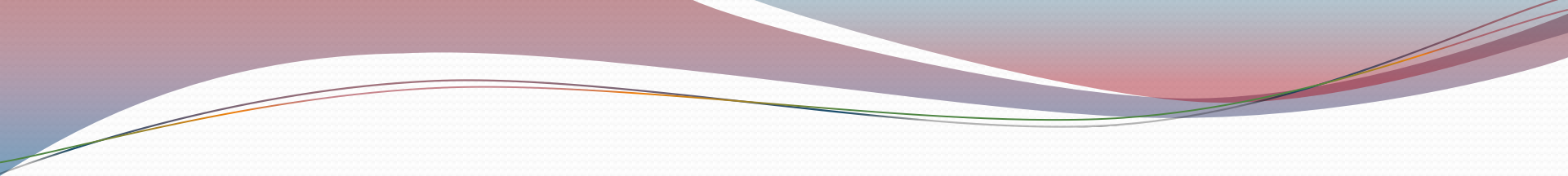
- 
- A reminder that an out of state probate will be handled as a lack of probate unless ancillary proceedings are filed;
 - The foreign court filings can be used as additional information along with the completed lack of probate affidavit;
 - The PR from a foreign probate cannot sign in that capacity;

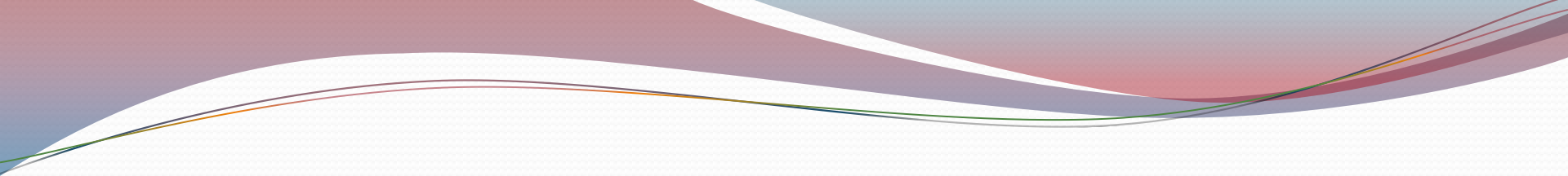
- 
- Required documentation for insuring through a lack of probate are:
 - Proof of death-certified copy of the death cert;
 - Community Property agreement;
 - Properly completed and signed lack of probate affidavit;

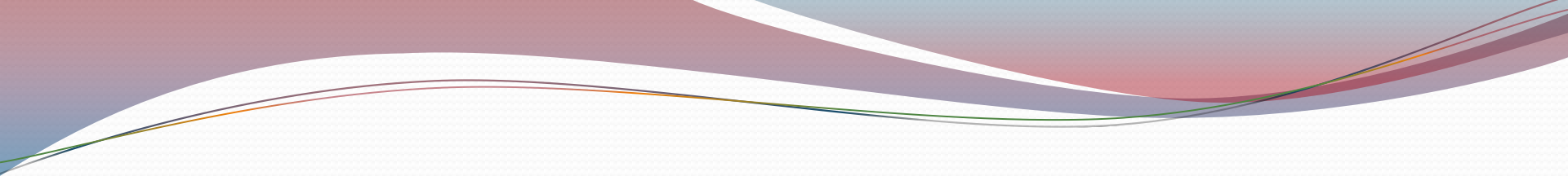
- 
- Complete copy of the will, if there is one;
 - Evidence of payment of creditors' claims;
 - Letters or evidence of payment or exemption from payment of estate tax;
 - We need to be sure to clear the question as to the State of Washington medical assistance lien;

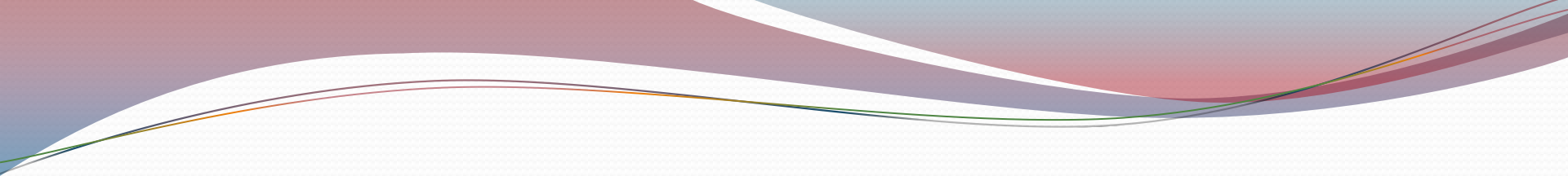
- 
- This lien would attach to a life estate or a joint tenancy interest and there is no time period;
 - The lack of probate affidavit must be filled out completely and thoroughly as this is what we are relying on to pass title and insure;

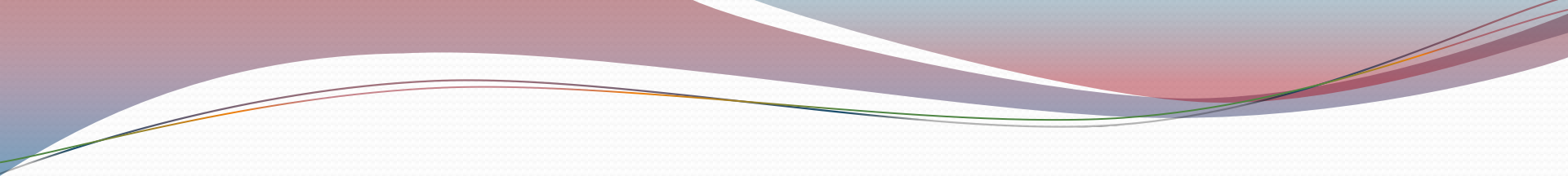
- 
- Also, as a reminder-lack of probate affidavits are for internal use only, title and escrow;
 - It is not to be distributed to anyone else, unless the affiant gives written permission;
 - And **do not record**;

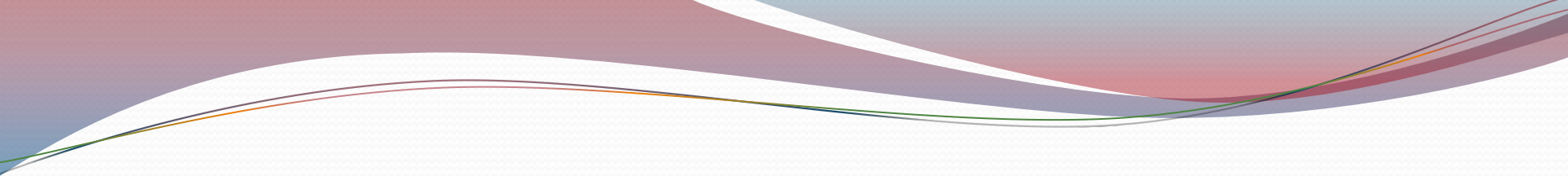
- 
- With the affidavit and the non-probated will, we have information as to who needs to sign depending on the type of property we are working with;
 - If it's community property and the surviving spouse is selling or mortgaging and the property was acquired after '74 we could pass title to the survivor, as separate property;

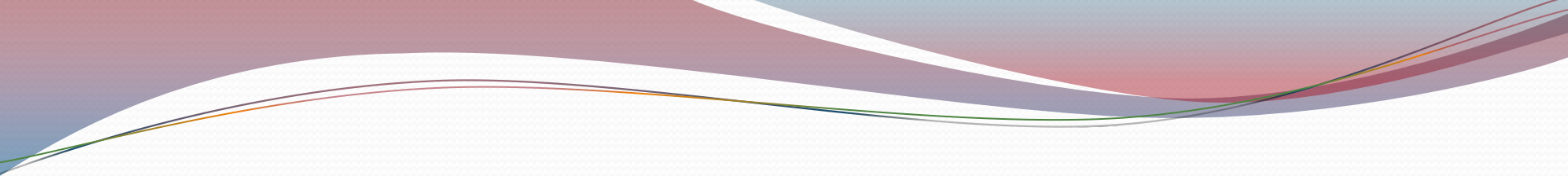
- 
- If the will showed that the community property was devised to someone other than the spouse, that party must join in any conveyance or mortgage along with the surviving spouse;
 - If the subject property was the separate property of the deceased, all heirs, including the spouse must execute any conveyance or mortgage;

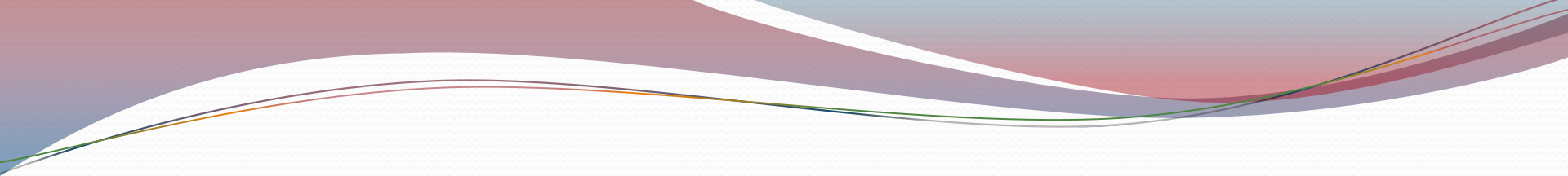
- 
- After the will and lack of probate affidavit have been reviewed and the title personnel is satisfied as to the identity of heirs, a supplemental could be issued approving the documentation and confirming who needs to sign;

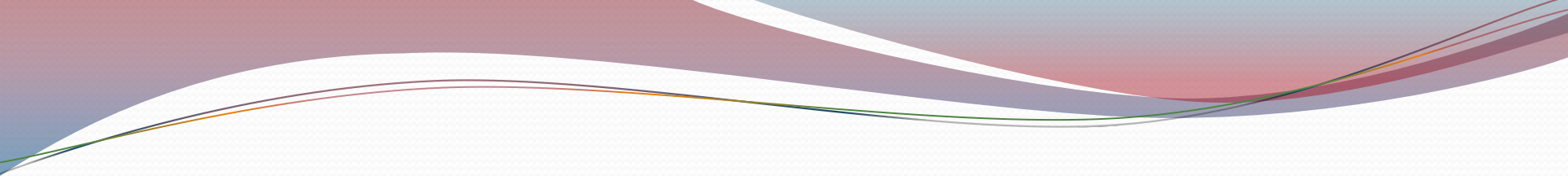
- 
- An example would be:
“Susie Smith, Jack Jones and Jerry Jones being all the heirs of Jon Jones, deceased, as their interests may appear”;
 - Once we know who is involved and who needs to sign, the transaction can move forward;

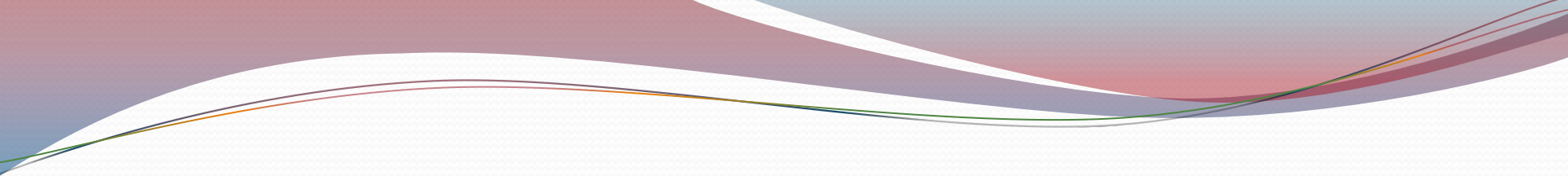
- 
- When drawing the documents for the transaction, you need to be sure that the deed or mortgage shows the specific heir(s) and the name of the deceased for constructive notice;

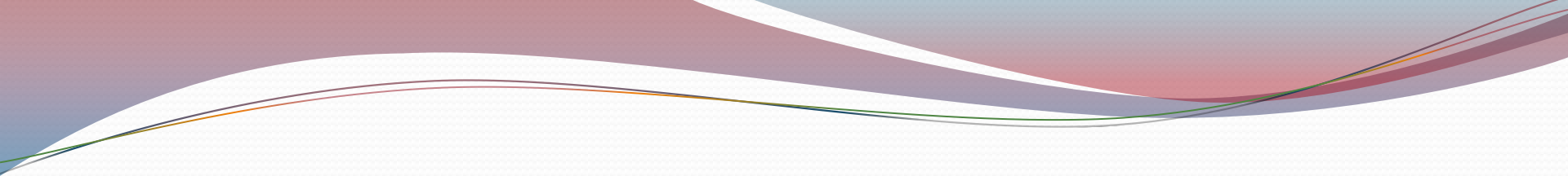
- 
- Unlike an heir at law, a devisee is not a devisee until the will is probated.
 - When dealing with the non-probated will we need to be concerned about the possible claim of interest of a named devisee, based upon the will;

- 
- This applies even if the will was filed with the superior court or probated in a foreign jurisdiction - as a foreign probate is the same as a lack of probate for title insuring purposes - unless there is an ancillary probate filed in a Superior Court;

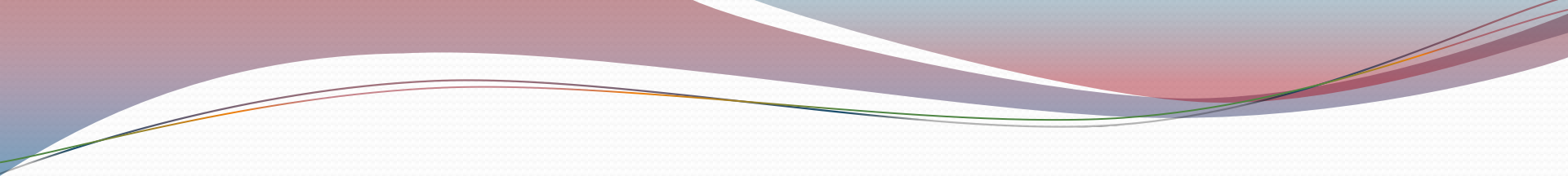
- 
- Many people are not aware of the requirement to file a will locally upon the death of the testator. The custodian of the will is liable for damages to any party aggrieved by the failure to file it.
 - (RCW 11.20.010)

- 
- If there is no will and the property is not trust property, Washington law provides how property is distributed through the laws of descent;
 - We, the title company, review the lack of probate affidavit and we make that determination as to who needs to sign

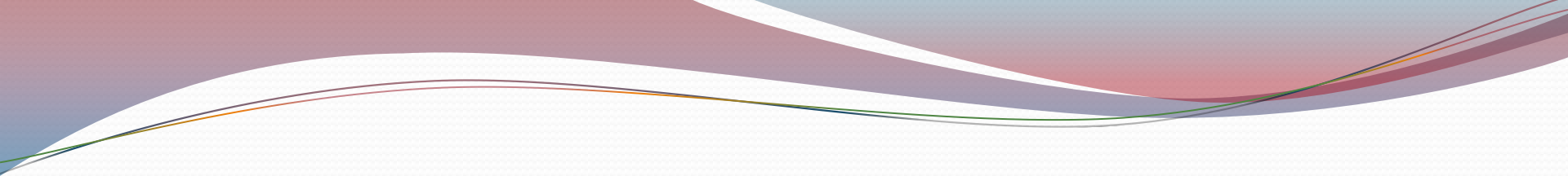
- 
- If it's community property, that is property that was acquired as a marital community and after 1974 we can feel comfortable passing title to the surviving spouse;
 - Property acquired prior to '74-is a bit more complicated! In these cases you may want to refer the issue to your underwriter or state counsel;

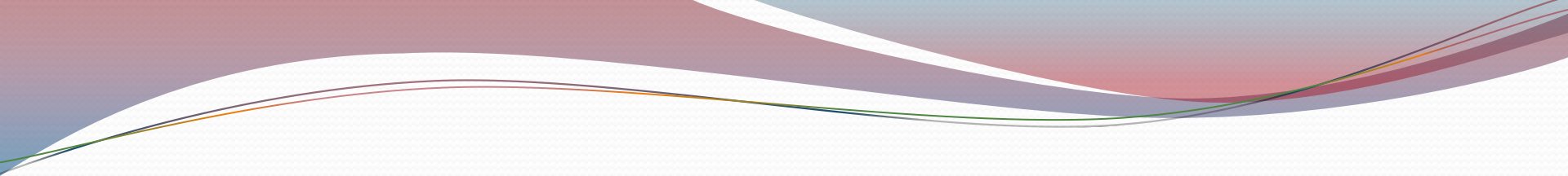
- 
- If the property to be insured was the separate property of the deceased, that is property acquired prior to marriage, property confirmed separate by a recorded quit claim deed or the property was inherited, we would look for a community property agreement that converted all separate property to community property;

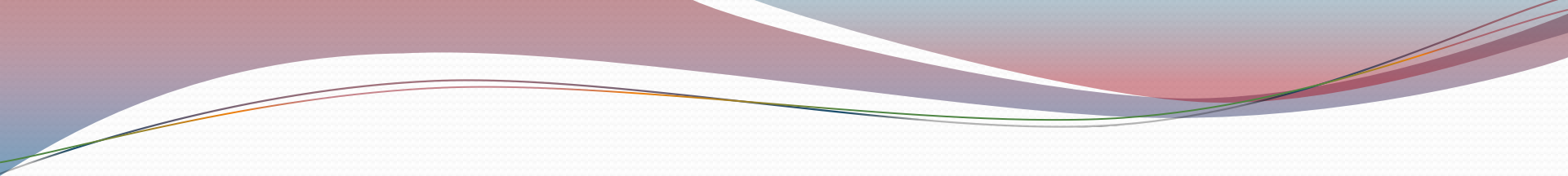
- If there is no CPA then the separate property of a married person would vest in all the known statutory heirs including the surviving spouse. The vesting should be:
“Joe Smith surviving spouse of Mary Smith, deceased as a separate estate and in the heirs and/or devisees of Mary Smith, deceased, as their interests may appear”

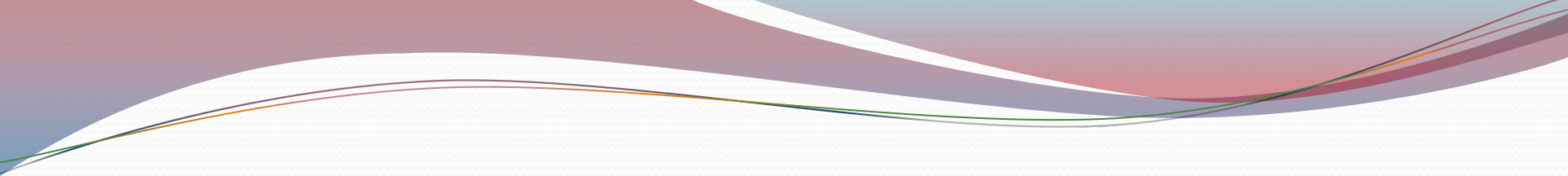
- 
- Any conveyance would have to be executed by all the heirs including the surviving spouse.
 - We would make this determination by reviewing the lack of probate affidavit and any other documentation that was provided as requested;

- If the property to be insured is the separate property of the deceased and the deceased was not married at death, the entire estate would vest in the heirs at law;
- The deed or mortgage then should read:
“Mary Jones and Bob Smith, being all the surviving heirs of Harry Smith, deceased”
- This is to impart constructive notice;

- 
- For escrow, it is imperative to request all information early on in the transaction and to get the information to your title officer as quickly as possible as they need adequate time to review and make the determination as to the required signatures;
 - This is not something that should be sent over the day of signing or recording;

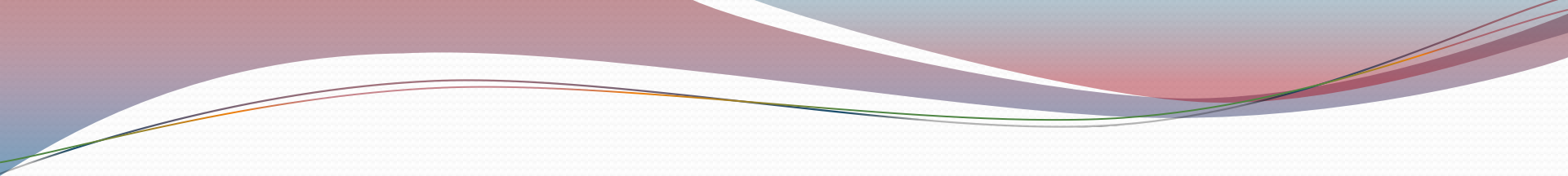
- 
- You and your customer may not be happy with the end results – such as required signature or deed from heirs or the requirement to probate the estate;
 - If there is no will, the law of descent determines how real property is to be distributed after death;

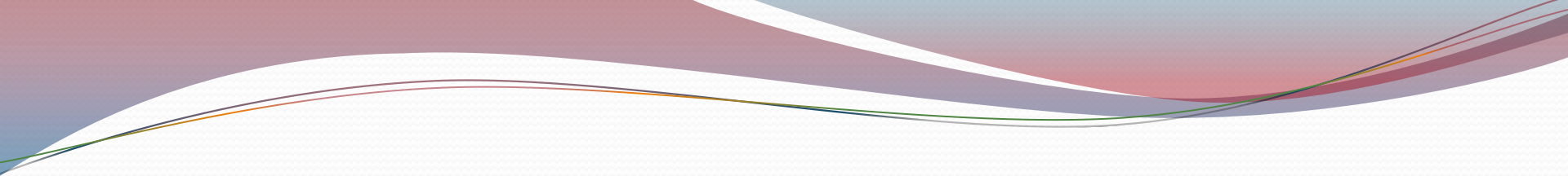
- 
- Simplified list for succession:
 - Spouse, if there is one;
 - Children
 - Parents
 - Brothers and/or sisters
 - Surviving grandparents, aunts, uncles
 - The state

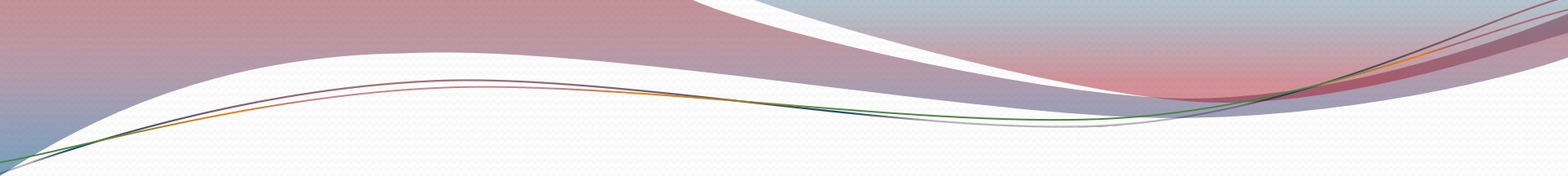
- 
- We need to determine if the property is separate or community as that is going to have an affect on who needs to sign;
 - If additional signatures or deeds are required, you will want time as these items cannot be indemnified nor can they be completed post closing;

ESTATE TAXES

- The lack of probate affidavit asks for the value of the estate;
- If that amount is around \$1,000,000.00 we must assume that an estate tax is payable;
- Washington has an estate tax that is levied on the value of the estate of the decedent and payable by the estate;

- 
- It is a lien against the assets of the estate;
 - Estate taxes may be due upon the death of a life tenant; or
 - Upon the grantor of a TODD;
 - Washington does not have an inheritance tax however the estate of the deceased might be subject to this tax if levied in another state;

- 
- If estate taxes are due and you are offered an indemnity from the PR or the attorney for the estate-reconsider accepting this indemnity;
 - Once the probate is closed the indemnity is essentially worthless since the estate is empty and the PR has no personal liability;

- 
- The indemnity should be signed by a party that will exist after the probate is closed;
 - In-house counsel or underwriting should approve any indemnity or other assurance offered in connection with any estate tax liability-state or federal;

DEATH Of a Property Owner

*As of June 12, 2008, domestic partnerships treated the same as marriage for these purposes

**domestic partner treated the same as spouse

Married or Domestic Partner* at Death & Community Property

REQUIRE
proof of death

Married or Domestic Partner* at Death

Community property

EXAMPLES
Died before 10/1/74
+ Acquired before or after marriage*, then 3-prong CPA or deed
Died after 10/1/74
+ Bought after marriage*, no CPA or deed needed

1

2

3

4

No will
(No Probate)

No will
(Probate)

Will
(Probate)

Will
(No Probate)

Spouse** inherits

All devised to spouse** in will

All NOT devised to spouse** in will

Affidavit

Affidavit

Need deed form:
Spouse/Domestic Partner**

Need deed from:

- PR if probate open
- Distributees or devisees (including spouse**) if probate closed

Need deed from:

- PR if probate open
- All devisees (including spouse** if married) if probate closed

Need deed from:

- Spouse** &
- Kids (or if none: grandkids, parents, siblings) &
- Anyone named in will

Married or Domestic Partner* at Death & Separate Property

**DEATH
Of a Property Owner**

REQUIRE
proof of death

Married or Domestic Partner* at Death

Community property

EXAMPLES
 + Acquired before marriage*, - no CPA or deed
 + Inherited after marriage* - no CPA or deed

*As of June 12, 2008, domestic partnerships treated the same as marriage for these purposes

 **domestic partner treated the same as spouse

1

Will
(Probate)

All devised to spouse** in will

All NOT devised to spouse** in will

Need deed from:

- PR if probate open
- Distributees or devisees (including spouse**) if probate closed

Need deed from:

- PR if probate open
- All devisees (may include spouse** if married) if probate closed

2

Will
(No Probate)

Need deed from:

- Spouse** &
- Kids (or if none: grandkids, parents, siblings) &
- Anyone named in will

3

No will
(No Probate)

Need deed from:

- Spouse** &
- Kids (or if none: grandkids, parents, siblings)

4

No will
(Probate)

Need deed from:

- PR if probate open
- All distributees (including spouse**, if married) if probate closed

Affidavit

Single at Death

**DEATH
Of a Property Owner**

REQUIRE
proof of death

Single at Death
(not married or domestic partner)

1

2

3

4

No will
(No Probate)

Will
(Probate)

Will
(No Probate)

No will
(No Probate)

Affidavit

Need deed from:

- PR if probate open
- All distributees if probate closed

Need deed from:

- Kids (or if none: grandkids, parents, siblings) &
- Anyone named in will

Need deed from:

- Kids (or if none: grandkids, parents, siblings)

QUESTIONS OR COMMENTS??

