

## PROBATE CORNER

### ARTICLE: RIGHTS THAT TERMINATE AT DEATH

The purpose of the article is to explore those rights that terminate at death, i.e., those rights that are not enforceable either by or against the decedent's estate.

**PRIVACY RIGHTS:** Privacy rights are personal and die with the individual. *See Nester v. Posner*, 857 So. 2d 953 (Fla. 3<sup>rd</sup> DCA 2003). In *Nester*, the decedent's employees signed confidentiality agreements which barred the disclosure of any information regarding the decedent's private life, finances, state of mind, health, etc. One of the employees was a witness to the decedent's will. When the decedent's grandchildren sought information from the employee concerning the decedent's testamentary capacity and possible undue influence, the PR sued the grandchildren for tortious interference with the employee's confidentiality agreement. The grandchildren moved to have the confidentiality agreements nullified so they can conduct informal discovery interviews with the decedent's employees. The appellate court, in affirming the trial court's order nullifying the agreement as to the decedent's employee, reasoned that the PR could not enforce the agreement against the employee because the decedent's privilege did not survive his death. Privacy rights are personal and die with the individual. Although the agreement survives the employee's employment, there is no provision that requires confidentiality after the decedent's death.

**CONTRACTS "PERSONAL" TO THE DECEDENT:** A PR can properly refuse to perform the decedent's contract when the contract is "personal" to the decedent. A contract is "personal" to the decedent when the contract contemplates only the personal performance of the decedent, i.e., the PR could not perform as fully and as well as the decedent might have. *See Bloom v. K & K Pipe & Supply Co.*, 390 So. 2d 770 (Fla. 4th DCA 1980) and *Gunderson v. Sch. Dist.*, 937 So. 2d 777 (Fla. 1st DCA 2006).

In *Bloom*, the decedent sold all of his stock of a corporation to another stockholder. In connection with that transaction, the decedent entered into a contract pursuant to which he agreed neither to compete with the corporation nor answer questions relating to the corporation's business, in exchange for which, the decedent was to receive weekly payments for 10 years and two months. The decedent died after about one year, and the corporation stopped making the weekly payments provided for in the contract. The PR sued on the contract for the weekly payments. The appellate court, in affirming the trial court's dismissal of the complaint, reasoned that the covenant required the decedent to "answer any questions and respond to any request for information from K & K...." This covenant became impossible to enforce because of the decedent's death. Since the contract contemplated only the personal performance of the decedent and prohibited only the decedent from performing certain actions, the purpose of the contract was frustrated by the death of the decedent and therefore, became unenforceable by the PR.

In *Frankel v. Bernstein*, 334 So. 2d 37 (Fla. 3rd DCA 1976), the lessee entered into a lease of an apartment owned by lessors for a term of two years, to commence on the day following the termination date of her existing lease. The lessee died several months prior to the commencement of the second lease. Lessors filed an action against lessee's estate to enforce the

renewal lease. The appellate court, in affirming the trial court's dismissal of the cause of action for accrued unpaid rent under the renewal lease, reasoned that under the terms of the lease it was meant only to have been a personal obligation of the lessee, namely her personal residence, and as such there was the implied condition that her death would have terminated the lease. *But see Kensington Assocs. v. Moss*, 426 So.2d 1076 (Fla. 4th DCA 1983)(A PR is liable under a lease if the lease contains a clause binding the heirs, executors, and assigns of the decedent/lessee and/or contained a clause allowing the decedent/lessee or his successors to assign the lease. Such language diminishes the personal nature of the lease terms.).

In *Gunderson v. Sch. Dist.*, 937 So. 2d 777 (Fla. 1st DCA 2006), the decedent and his employer entered into a settlement of a workers' compensation claim before the decedent's passing. The agreement required the decedent to execute a general release and a voluntary resignation and stated that it was effective and binding upon the entry of an order approving a motion for attorney's fees. The decedent failed to execute either a general release or sign a voluntary resignation prior to his death. The widow, as PR, sought and received an order approving her motion for attorney's fees and later executed a general release and voluntary resignation on her husband's behalf. The appellate court, in reversing the trial court's order denying the PR's request to enforce the agreement, reasoned: "The main purpose of this settlement agreement was to bring to a close all litigation regarding the claimant's workers' compensation claims in return for a settlement payment. The duty of performance on the claimant's part was a duty which could statutorily be performed by his representative in the event of his death through the effectuation of the necessary documents. These were not duties which the claimant's death rendered impossible to perform. More importantly, the death of a claimant following the execution of a settlement agreement will not affect the agreement's enforcement if the personal representative can show that a binding contract was reached."

**CONSTITUTIONAL RIGHTS:** A person's constitutional rights terminate at death. If any rights exist, they belong to the decedent's next of kin. *See State v. Powell*, 497 So. 2d 1188 (Fla. 1986)(parents' action claiming damages for the alleged wrongful removal of their sons' corneas and seeking a judgment declaring §732.9185, F.S. unconstitutional); *Crocker v. Pleasant*, 778 So. 2d 978 (Fla. 2001)(county's alleged violation of due process rights for failing to notify parents of their son's death).

**ALIMONY:** An obligation to pay alimony ceases upon the death of the obligor, unless that person expressly agrees that the estate shall be bound to continue to pay alimony after his death. *See O'Malley v. Pan Am Bank of Orlando, N.A.*, 384 So. 2d 1258 (Fla. 1980); *Faile v. Fleming*, 763 So. 2d 459 (Fla. 4<sup>th</sup> DCA 2000). *Compare Sobelman v. Sobelman*, 541 So. 2d 1153 (Fla. 1989)(life insurance proceeds are not postmortem alimony. Upon the death of an insured, the insurance company, not the insured's estate, pays the insurance proceeds to the beneficiary).