

Wills, Trusts,
and Estates

Class 11

The Probate Proceeding

- **Step 1:** Gather all relevant information and documents; i.e. Wills, Trusts, etc.
- **Step 2:** Fill out a probate petition.
- **Step 3:** Send out notices to all interested parties that they have a right to contest the Will and/or Trusts at a hearing and ask them to sign a waiver of this right.
- **Step 4:** (hopefully) Get all the waivers in order and send them into the probate court.

OR

- **Step 4A:** Hold any Will contest hearings that need to be held.
- **Step 5:** Get “letters testamentary” that “admit” the Will to probate and officially appoint Executor or Administrator. These can also appoint guardians for minors.

The Probate Proceeding (cont.)

- **Step 6:** Fill out a preliminary estate tax form with an estimate of how much will be due and pay that amount.
- **Step 7:** Gather and/ or account for all decedent's assets (may have to be done by a professional bookkeeper or accountant).
- **Step 8:** Pay off any debts owed by the decedent and/or expenses incurred by the estate.
- **Step 9:** Calculate and pay estate tax (or get a refund from what was paid in step 6).
- **Step 10:** Pay out the assets in accordance with the Will and/or Trusts and/or the rules of intestacy.
- **Step 11:** Close the estate by showing the probate court that everything called for by the estate plan has been accomplished.

The Probate Proceeding – Jurisdiction

- Governed by the law of each individual state (some states have adopted the Uniform Probate Code in whole or in part)
- States have special courts that handle the probate proceeding (e.g. “Surrogate’s Court”)
- Jurisdiction by State:
 - Any state in which the decedent is domiciled or a resident of has jurisdiction over the estate
 - Any state has jurisdiction over real property within its borders even if the decedent was not a resident of that state
 - Two or more states can sometimes have probate jurisdiction over a person if both states claim the decedent as a resident (*See In re Dorrance's Estate*, 309 Pa. 151 (1932)). BUT, watch out for due process concerns if a state overreaches in this manner.

Will Contests

- Bases for a Will Contest:
 - Forgery
 - Lack of testamentary intent (i.e. mistake as to the nature of the document)
 - Lack of testamentary capacity
 - Fraud
 - Undue influence

Will Contests (cont.)

- “No contest” (“*in terrorem*”) clause:
 - The clause states that anyone who challenges the Will is automatically disinherited (as a means to discourage challenging the Will).
 - Of course, if the Will is successfully challenged, the whole thing, including the *in terrorem* clause is invalid. The only thing you really must not do is challenge the Will and lose.
 - Some states do not allow *in terrorem* clauses to be effective if the challenge was in good faith.

Personal Representative for an Estate

- **Executor** (if there is a Will) or **Administrator** (if no Will)
- Order of Appointment:
- [**“Competence” is required of any Representative.** One of the things that needs to be shown in the probate proceeding is competence of the representative.]
 - The person named in the Will as Executor
 - Surviving spouse; so long as he or she is a beneficiary under the Will
 - Another beneficiary under the Will
 - Surviving spouse that’s not a beneficiary
 - Another natural heir who is not a beneficiary
 - A Creditor of the estate

Personal Representative for an Estate (cont.)

- Other issues relevant to representatives:
 - **Authority:** Usually very broadly defined in the Will, but limited by law (e.g. representative usually cannot make risky investments or start businesses with the estate funds)
 - **Duty of loyalty** (no “self dealing”) to the estate
 - **Duty of care**
 - Can be personally liable for the contracts he enters into on behalf of the estate unless the contracts are specifically drafted to avoid such liability

Collecting Debts from an Estate

- Nonclaim statutes
 - Limit the time an unsecured creditor has to file a claim against an estate.
 - The purpose is to have the Executor pay off the debt before the distribution. After the distribution, it would be a mess figuring out which heir has to pay what to satisfy the debt.
 - Some states apply this rule to contingent claims, some do not.
 - For secured loans, the creditor can maintain the security interest or accelerate the debt and call for immediate payment. Either way, the Executor must have the option to pay off the debt so that the distribution of the estate funds can be cleaner.

Collecting Debts from an Estate (cont.)

- Order of payment of claims where the estate can't afford to pay them all:
 1. Administration expenses;
 2. Funeral expenses and expenses of last illness (up to a stated dollar amount);
 3. Family allowance;
 4. Debts given preference under federal law, such as tax claims;
 5. Secured claims (up to the value of the security interest);
 6. Judgments entered against the decedent during his lifetime; and
 7. All other claims, such as unsecured creditors.

Letters Testamentary

SURROGATE'S COURT OF THE STATE OF NEW YORK
ORANGE COUNTY

CERTIFICATE OF APPOINTMENT OF FIDUCIARY

File No. 580/2002

IT IS HEREBY CERTIFIED that Letters in the Estate of the decedent named below have been granted by this Court as follows:

NAME OF DECEDENT:

DOMICILE OF DECEDENT:

DATE OF DEATH:

FIDUCIARY(S) TO WHOM
LETTERS ARE ISSUED:

TYPE OF LETTERS ISSUED: LETTERS TESTAMENTARY

DATE LETTERS ISSUED: September 17, 2002
LIMITATIONS ON LETTERS: NONE

and such letters are unrevoked and in full force as of this date.

Dated: September 18, 2002

IN TESTIMONY WHEREOF, the seal of the
Surrogate's Court of Orange County has been
affixed.

L.S.

WITNESS: Hon. Elaine Slobod, Surrogate of the
County of Orange.

Joy V. Morse
Chief Clerk of the Surrogate's Court

THIS CERTIFICATE IS NOT VALID WITHOUT THE RAISED SEAL OF THE COURT

(Note: SCPA 710 PROVIDES IN PART: "4. No fiduciary shall remove property of the estate without the state without the prior approval of the court and upon filing a bond if required by the Court.")

Ancillary Letters Testamentary

Surrogate's Court of the County of New York

ANCILLARY LETTERS OF ADMINISTRATION C.T.A.
The People of the State of New York Send GREETINGS:

Index#2003-3869

KNOW all men by these presents that J. [REDACTED] deceased, late of Israel having executed a last will and testament which was duly admitted to probate by REGISTRAR OFFICE FOR WILLS COURT, TEL-AVIV, ISRAEL, a court of competent jurisdiction in Israel where said will was executed and where the testator resided at the time of death, full power and authority is hereby granted to [REDACTED] to administer the estate of said decedent in the State of New York pursuant to the will and subject to the jurisdiction and supervision of this court.

IN TESTIMONY WHEREOF, I have hereupon subscribed my name and affixed the seal of the Surrogate's Court of New York County this October 29, 2003.


Jane

Clerk of the Surrogate's Court

NOTICE

Attention is called to the provision of Sec.11-1.6 of Estates, Powers and Trusts Law and sec.719 of Surrogate's Court Procedure Act, which make it a misdemeanor and a cause for removal for an executor, administrator trustee or guardian to deposit or invest estate funds in his individual account or name. All estate funds must be deposited in the name of the executor, administrator, trustee or guardian in his or her representative capacity and to the credit of the estate. Sec.708 and Sec.711 of the Surrogate's Court Procedure Act provide that if a fiduciary shall change his address he shall promptly notify the court of his new address and that failure to do so within thirty (30) days after such change may result in the suspension or revocation of letters.

* THIS ORIGINAL LETTER IS NOT VALID WITHOUT A RAISED SEAL OF THE COURT *

Quiz Time!
