

FUNDAMENTALS OF PROBATE ADMINISTRATION

- A. **IMPORTANT PRELIMINARY ADMINISTRATION ISSUES** Decedent's Remains, Funeral arrangements.
- B. Domicile of Decedent
- C. Identifying Client, Initial client meeting, Role of Lawyer in Administration
- D. "Estate" is not an entity or client
- E. Retainer Letters
- F. PR's obligations to beneficiaries and creditors
- G. What is "the Will" (includes separate writing); Deposit of original of Will

I. SMALL ESTATES

- A. Disposition Without Administration Explained (2 types)
- B. Summary Administration Explained - When to Use
- C. Downfalls of Summary Administration
- D. Creditor claims issues with Disposition without Administration or Summary
- E. Ancillary Summary Administration

II. INITIAL STEPS IN PROBATE OF FORMAL ADMINISTRATION

- A. Testate v. Intestate
- B. Identifying PR (qualifications)
- C. Identifying Probate Assets and non-Probate Assets (include check list)
- D. Petition for Administration
- E. Identifying Interested Parties and service considerations IS INTERESTED PERSON A PARTY??
- F. Confidential Information in Pleadings

- G. Notice considerations (Pre and Post appointment of PR)
- H. Problems and dangers with use of waivers
- I. Notice of Creditors, Notice of Administration (be sure to check for Community Property)
- J. Inventory

III. DUTIES OF PERSONAL REPRESENTATIVE AND MANAGEMENT OF DECEDENT'S PROPERTY

- A. Management of Real Property and Personal Property
- B. Safeguarding Assets and Insurance Issues
- C. Management or Continuation of Businesses
- D. Duties to Interested Parties
- E. Duty of PR to Give Notice if Becomes Unqualified
- F. Timely Closing

IV. HOMESTEAD AND EXEMPT PROPERTY (NOTE that there is or will be a separate Homestead 101 program that will go into more depth.)

- A. Protected Homestead Defined
- B. Vesting of Title
- C. Payment of expenses to maintain property.
- D. Actions to take if PR will take possession of Homestead Property (Lien for costs, rental issues)
- E. Petition and Order Determining Homestead (Forms)
- F. Exempt Property – Identify (If you use Flssi form, waiver runs from signing)
- G. Petition and Order Determining Exempt Property

VI. ELECTIVE SHARE AND FAMILY ALLOWANCE (NOTE that there is or will be a separate Spousal Rights 101 program that will go into more depth.)

- A. Considerations When Spouse Serves as PR

- B. Election for Elective Share
- C. Interest in Addition to Election
- D. Elective Estate and Calculation
- E. Property Excluded from Election Share
- F. Petition to Determine Amount of Elective Share and Contribution
- G. Simple example
- H. Family Allowance

VII. CREDITOR CLAIMS (including IRS issues)

- A. Identifying Creditors and Duties of PR, Reasonably Diligent Efforts
- B. Notice Requirements and Limitations Periods
- C. Community Property and Contingent or Unmatured Claims
- D. Exceptions to Limitations Period
- E. IRS claims
- F. Proof of Service of Notice
- G. Creditor Claim vs. Expense of Administration
- H. Procedural Considerations – Form of Claim
- I. Objections and Independent Actions
- J. PR Proof of Claims

VIII. BASIC INCOME TAX ISSUES FOR ESTATE ADMINISTRATION

- A. Required Tax Returns
- B. Selection of Tax Year
- C. Recognition of IRD Income and Income Tax Implications of Distributions to Beneficiaries)
- D. Recommend PR Hire CPA

E. Payment of final taxes (reserve)

IX. ETHICAL TOPICS

A. Attorney as PR

B. Representation of PR and beneficiaries

C. PR who is creditor (If you are attorney for PR, representing PR as creditor may lead to conflict)

D. Representation of PR and of individual PR as a beneficiary

E. Attorney Advising Spouse of Rights – No need to get into the weeds, but it is permissible for attorney for PR to tell spouse that he/she has certain rights and should consult attorney to claim or preserve those rights

F. Attorneys keeping original wills

G. Due Process - Must give notice to all those entitled to notice!

X. DETERMINATION OF BENEFICIARIES

A. Intestate Estates – Identification of Intestate Heirs

B. Children Born Out of Wedlock, Section 732.108(2) application, Statute of Limitations

C. Wills with Ambiguous Provisions

D. Petition to Determine Beneficiaries (Form)

E. Interested Parties and Notice/Service Considerations

XI. SALE AND TRANSFER/DISTRIBUTION OF ESTATE ASSETS

A. Distribution considerations (Assets Needed for Taxes, Administration Expenses, Claims and Reserve, In Kind Distribution Preferences)

B. PR Authority to Sell Assets (Real Property, Personal Property, Unique Property)

C. Sale of Specifically Devised Assets and Abatement

D. Conflict of Interest

E. Encumbered Property

- F. Petition for Court Authorization for Sale of Asset and Order (don't forget due process!)
- G. Tax Consequences of Sale
- H. PR Release and Certificate of Distribution of Real Property
- I. Receipts and Refunding Language (Form)

XII. ANCILLARY ESTATES

- A. Non-Resident with Real Property in Florida (Short Form- Summary, 734.102 recording of will, procedure or full administration)
- B. Non-Resident with Personal Property in Florida (if no domiciliary state proceeding)
- C. Ancillary PR
- D. Venue
- E. Power of Ancillary PR
- F. Management and Distribution of Property in Ancillary Estate (If real property...
- G. What if decedent is Canadian?
- H. Creditor Claims

XIII. COMPENSATION OF PERSONAL REPRESENTATIVES AND ATTORNEYS

- A. Requirement of Legal Representation for PRs
- B. Calculation of PR fee and Renunciation of Fee
- C. Engagement Letters and Disclosure Requirements, Fee Contracts, Consents
- D. Attorney as PR
- E. Calculation of Attorney Fee, Percentage v. Hourly, Ordinary Services v. Extraordinary Services
- F. Employment of Professional and Agents
- G. Petition to Determine Compensation of Attorney for PR, or Professional Retained by PR and Order – Is it required? Procedure, Notice and Hearing

H. Expert Witnesses

I. Fees for Other Lawyers

XIV. FIDUCIARY ACCOUNTING, FINAL DISTRIBUTION AND DISCHARGE

A. Recording Keeping during Administration

B. Waiver v Full Accounting

C. Form of Accounting

D. Petition for Discharge and Schedules

E. Full Waivers/Partial Waivers for Petition for Discharge