

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
- 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
- D. Representation of PR and of individual PR as a beneficiary
- E. Attorney Advising Spouse of 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