

WASHINGTON PROBATE CLE
INTERIM PROBATE ACTIVITIES

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Once the probate has been successfully opened we get into the administrative portion of the estate. The purpose of this presentation and these materials is to provide you with a general overview of the administrative process for a typical probate estate. This will discuss both probate administration as well as some probate alternative administration procedures and information.

When talking about the “Interim probate activities” it seems to me that we’re basically talking about everything except opening the probate and closing the probate. Which is...a lot of stuff.

This presentation won’t be able to cover everything under the sun in the world of probate administration, but will focus on the most common tasks required and will give some guidance on how to carry out those tasks.

I strongly encourage the use of the Washington State Probate Deskbook. It is an excellent resource for new and seasoned practitioners alike.

NON PROBATE TRANSFERS

Before getting too deep into the Probate weeds it’s important to determine if there are any assets in the estate which do not need to go through the Probate process. These are generally known as “non probate transfer assets.” These assets are usually transferred outside of the probate process, and need no direct court intervention to gain access.

Small Estate Affidavit

- RCW 11.62.010 permits the use of a Small Estate Affidavit for estates consisting of personal property with a total value of \$100,000 or less. This figure excludes any assets

transferring due to a non-probate designation (such as a beneficiary designation, joint ownership with rights of survivorship, and property passing to a surviving spouse under community property law).

- The following requirements must be met to administer an estate with a Small Estate Affidavit:
 - Decedent was a WA resident at the time of their passing.
 - No Personal Representative has been appointed.
 - Forty days have elapsed since the decedent's passing.
 - All debts of the decedent have been paid or otherwise disposed of or resolved.
- Using the Small Estate Affidavit.
 - Affiant provides notice to all other heirs. 10 days or consent/waiver signed.
 - Affiant presents the affidavit to the appropriate financial institution. Photocopy is generally accepted.
 - Financial institution turns over funds into affiant's hands, after which affiant is obliged to distribute assets pursuant to:
 - Instructions in the Will, or
 - Laws of intestacy.
- Once assets are distributed no formal closing process.

Beneficiary Designated Assets

- Not part of the probate process, though some practitioners will choose to include non probate assets in the formal probate estate inventory.
- PR/Administrator rarely has much to do with distribution of non-probate assets. Their involvement, if any, usually involves finding out who the beneficiaries are, and informing them of their status. Beneficiaries generally will need to file their own independent claim.
- Types of beneficiary designated assets.
 - Life insurance policies.
 - Retirement accounts (IRAs, 401ks, etc.)
 - Assets Jointly held with right of survivorship (JTWROS).

- Bank accounts with POD designations
- Investment accounts with TOD designations
- Transfer on Death Deeds for real property.
 - TOD Deeds have a different process. No claim packet from the insurance company. The beneficiary should file a Real Estate Excise Tax Affidavit (REETA) in the county where the property exists, and pay a small fee (currently \$10), which transfer the property over to the beneficiary.
- *Practice Tip: I like to have the non-probate beneficiaries sign a confirmation that the PR/Admin has turned over responsibility for filing the claim forms. Not necessary, but creates a nice paper trail to ensure that the PR/Admin is not responsible for making sure the other beneficiary gets their money.*
- *Example: Will with different instructions than BDs/PODs/TODs/JTWROS. How to proceed.*

INTERIM PROBATE TASKS

Notices

Notices are a hugely important part of the estate administration. The nature and types of the notices were covered in the previous section. Our purpose here will be to discuss how the notices may impact the ongoing administration of the estate.

- Later Learned Information:
 - *Example: PR client doesn't always give all the information you need to properly give notice. Recent case where one of the intestate heirs had been in prison.*
 - *Example: Decedent's husband in intestate estate failed to give notice to step-son and closed probate entirely.*
- *Practice Tip: Provide more information rather than less. I typically provide, with the notice to heirs, a copy of the Will if there is one, rather than wait for them to request it.*
- *Practice Tip: Include language in your notice to heirs telling them that you are not their counsel, and that if they choose to retain counsel they or their counsel should reach out to you ASAP so you know whether or not they are represented.*

- Failure to provide notice can cause major problems down the road. Ultimately the courts rely heavily on our representations, especially in a non-intervention system. We, in turn, are heavily reliant on the honesty and understanding of our clients.

Inventory

This is sometimes the easiest part of the administration and sometimes the hardest, depending largely on the complexity of the decedent's estate, and the thoroughness of their record keeping.

- Assets
 - All those assets owned by the decedent at the time of their passing.
 - Real estate
 - Tangible personal property
 - Liquid assets
 - Receivables
 - Business interests
 - Entity ownership interests
- Liabilities
 - All of those debts owed by the decedent up to the date of their passing.
 - Mortgages
 - Credit cards
 - Personal loans
 - Student loans
 - Lines of credit
 - Medical debt
 - Other liens or encumbrances
- Date of Death Valuations - Assets
 - Valuation on accounts is straight forward – the account was worth a certain dollar figure. This can be found on a statement, or even a valuation letter from the company confirming the value of the account on the exact date of passing.
 - Valuation of real property becomes more complicated.
 - Hierarchy of valuation source strength:

- Tax assessed value
- Comparative Market Analysis
- Licensed Appraisal
- Which type of valuation to be used can vary depending on how strong you feel it needs to be.
 - Taxable estate?
 - Contested estate?
 - Blended family?
 - Creditors?
- Creditor Negotiation
 - Particularly in insolvent estates, or estates where there are low liquid assets, negotiating settlement with creditors can be a great value to the estate.
 - *Example: Case involving \$25,000 of saved money in various forms of creditor rejections/negotiations/etc.*
- Creditor Claim Evaluation
 - Important to evaluate the validity of each creditor claim. Not only the truthfulness of the claim (i.e. whether they really did owe the money) but also to determine whether the creditor met their obligation in properly filing the claim.
 - To properly file the claim the creditor must:
 - File the original signed claim in court in the proper county and under the proper cause number;
 - Serve or mail a copy of the signed claim to the PR/Admin or their attorney.
 - Claim must be timely (i.e. before the end of the creditor claim period).
 - Ascertainable creditors
 - Known creditors
 - Unknown creditors

Distribution of Estate

Now we come to the part that all the beneficiaries are interested in. Distribution of estate assets.

This can range from very simple, to very complicated, depending on the planning, the inter personal dynamic, the nature of the assets, the nature of the liabilities, etc.

- Hierarchy of Distributions of Money
 - Costs of estate administration – Basically, anything that needs to be paid out because of the death of the decedent. Post mortem expenses.
 - Legal fees
 - In Washington prior court approval is not required. In some states, however, it is. Oregon, for example, generally requires prior court approval before payment of attorney fees.
 - Filing fees
 - Deed recording fees
 - Court fees/costs
 - PR/Admin fees and cost reimbursements
 - PR/Admin fee does not generally require court approval in WA. Some jurisdictions (OR for example) does require court approval before payment of PR fee.
 - If the Will is silent as to the PR/Admin fee then a reasonableness standard typically applies.
 - Reasonableness can be determined by the complexity of the estate, the skill of the PR, the amount of time invested, etc.
 - Note that PR/Admin costs should also be reasonably related to the administration of the estate.
 - *Practice Tip: Before PR takes fees I recommend sending a notice to the beneficiaries/creditors of the PR's intention to be paid and the total fee amount they propose to be paid. Either get a consent and waiver signed by each beneficiary, or wait out a notice period.*

I like to be safe and give a long notice objection period on this, as PR/Admin fees can be a very contested matter.

- *Practice Tip: PR/Admin fees are considered taxable income to the PR/Admin and need to be reported on their personal tax returns for the following year. This sometimes dissuades PR/Admin from taking a fee if the PR/Admin is also a beneficiary of the estate.*
 - Tax preparation fees
 - Realtor fees
 - Appraisal fees
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- Valid creditor claims
- Specific distributions
- Residual distributions
- Instructions for the distributions can sometimes be more complex than simply straight cash or property to the beneficiaries.
 - Testamentary trusts
 - Supplemental Needs Trusts
 - Credit Shelter Trusts
 - Minor/underage beneficiary trusts
 - Trust for troubled children
 - Etc.
 - With a testamentary trust the beneficiary of the estate is not, in fact, the person necessarily, but is actually the trustee of the trust for the benefit of that person.
 - Still, depending on the circumstances, keeping that person informed can be helpful.
 - *Example: Parent's estate distributed outright to three kids, but into trust for fourth child.*
 - PR/Admin Discretion
 - Rare, but comes up once in a while. Testator writes a Will stating that the PR gets to decide how everything is to be distributed. Or, the Will directs

that all assets go to the PR and the PR will “take care of everyone.” From a drafting standpoint my personal opinion is that this is poor drafting, for many reasons. But you may see it from time to time.

- Discretionary trust distributions.
 - Sometimes a Will might state that the PR can alter the distribution to the beneficiary depending on certain circumstances.
 - Disabled, receiving means tested benefits, drug/alcohol abuse, etc.
- Intestacy Distributions
 - If the decedent passed without any Will and left assets subject to Probate, then we are looking at the laws of intestacy.
 - Most common distribution patters:
 - Married with joint descendants
 - Married with no descendants
 - Married with blended descendants
 - Single with descendants
 - Single with no descendants
- Distribution Proposal and Receipts
 - It is best practices to send to each beneficiary a distribution proposal prior to making final distributions.
 - Does not necessarily have to include a full accounting of assets (unless otherwise requested). However, it can be helpful to show roughly what has been done with the estate assets prior to distribution and how much each person will receive, what the proposed PR fees are, etc. Getting this out, and either getting signed consents or at least waiting out an objection period can certainly help prevent or quickly shut down arguments down the road about how things were handled.

Conclusion

Once all assets are distributed ready to move to closing. But that’s a topic for another, more skilled and talented attorney than myself....