

ANATOMY OF A PROBATE CASE: DECEDENT ESTATES

By

Kevin Sanker

Court Attorney

Wayne County Probate Court

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I. IN GENERAL

a. Probate Proceedings Basics

- i. The fiduciary in these matters is called the Personal Representative.
- ii. Probate proceedings involve transferring assets from a decedent to heirs, devisees, or beneficiaries. These proceedings have a unique dynamic compared to litigation in other courts.
- iii. Parties are typically under a great deal of stress as they attempt to deal with challenging and emotional situations.
- iv. Most probate cases contemplate ongoing involvement by a fiduciary, who must preserve and transfer assets. Sometimes, due to the nature of the assets, the difficulty in locating them, and disputes amongst the interested persons, these proceedings can be open for months or years.

b. Structure of Probate Proceedings

- i. Probate proceedings involve a group of people called *“interested persons”*.
 - 1. They have a right to be notified of a case and to become involved if they choose.
 - 2. They cannot veto an action by the Judge but are entitled to provide input and state their preferences or opinions on the case to the court.
 - 3. See **MCR 5.125** for a list of interested persons in probate proceedings.

- ii. Contrast this to the litigation of cases in other courts which involve adverse parties.
 - 1. Plaintiff v. Defendant; Prosecutor v. Accused

II. ESTATE PROCEEDING OVERVIEW

a. In General

- i. An estate probate proceeding is the process by which the estate of a decedent is opened, a personal representative appointed, and a will admitted, if any. It involves two steps:
 - 1. Opening the Estate by filing an Application or Petition with the court
 - a. Application for Informal Probate and/or Appointment of Personal Representative (PC558)
 - b. Petition for Formal Probate and/or Appointment of Personal Representative (PC559)
 - 2. Determination of Testacy Status
 - a. Admitting the will (if any)
 - i. This can be done by a formal or informal proceeding.
 - b. Determination that decedent dies intestate.

ii. Appointment of Personal Representative

- 1. Priority for Appointment as Personal Representative **MCL 700.3203(1)**.
 - a. Personal Representative nominated in will.
 - b. Surviving spouse if devisee under will
 - c. Other devisees
 - d. Surviving spouse
 - e. Other heirs
 - f. **42 days** after decedent's death, the nominee of a creditor if the court finds the nominee suitable.
 - g. Public Administrator if **63 days** after the decedent's death, or if the court determines exigent circumstances exist.
- 2. Renunciation and/or Nomination **MCL 700.3203(3)**.
 - a. SCAO Form Used: Renunciation of Right to Appointment, Nomination of Personal Representative and Waiver of Notice (PC567)
 - b. The surviving spouse, other devisees, and other heirs may nominate a qualified person to act as personal representative.
 - c. A person may renounce their right to appointment or nominate a personal representative by filing the above SCAO form.

- d. If people share priority, those that do not renounce must agree to the nomination of another to act for them or in applying for appointment.
 - iii. Probate administration is the process by which assets owned by the decedent are transferred from the decedent to heirs and devisees. This involves several steps:
 - 1. Choose the type of administration: Supervised or Unsupervised
 - 2. Filing Acceptance of Appointment
 - 3. Filing Bond of Fiduciary (if required)
 - 4. Filing an Inventory
 - 5. Notice to Creditors
 - 6. Payment of Claims
 - 7. Preparing and Distributing Account
 - 8. Payment of Taxes
 - 9. Distribution of Estate Assets
 - 10. Closing the Estate

b. Choosing an Estate Proceeding – Informal Application v. Formal Petition

- i. There are two options for opening a probate estate:
 - 1. informal application (no adjudication), or
 - 2. formal petition (adjudication by a judge).
 - ii. Whichever method is chosen, estate administration is by default unsupervised. **MCL 700.3402(2)(c) and 700.3502.**
 - iii. **Informal Application:**
 - 1. **SCAO Form Used:** Application for Informal Probate and/or Appointment of Personal Representative (PC558).
 - 2. The Probate Register grants or denies the application. If granted, the applicant must complete and serve form PC 575 Notice of Informal Probate (no personal representative appointed) **MCL 700.3306** or PC 573 Notice of Appointment and Duties of Personal Representative **MCL 700.3705.**
 - a. **SCAO Form Used:** Register's Statement (PC568)
 - 3. The denial of an informal application is not an adjudication and therefore is not subject to appeal. If the informal application is denied, you may still proceed with the estate via Petition for Formal Probate.
 - 4. In an informal application, a person with the highest priority (cannot be equal to anyone else) can become personal representative immediately, with no prior notification to any other interested person (but is still required to inform interested persons after appointment).
 - a. In an informal application, the conservator, or if none, the court appointed guardian of a minor or legally

incapacitated individual may exercise the right to nominate or waive. **MCL 700.3204(1).**

- i. Nobody else has the authority to exercise a minor or legally incapacitated individual's right to nominate, renounce, or waive in an informal application, this includes the parent of a minor.

5. Notice of Intent to Seek Informal Appointment:

- a. SCAO Form Used: Notice of Intent to Request Informal Appointment of Personal Representative (PC557)
- b. If the person who is nominated to become personal representative does not have the highest priority, they *must* give notice of intent to seek appointment and a copy of the application to all persons who have greater or equal priority for appointment that have not renounced that right. **MCR 5.309(C)(1).**
 - i. The notice of intent and copy of the application must be served as least 14 days (via mail) or 7 days (via personal service) before submitting the application and proof of service to the court. **MCR 5.309(C)(2) & (3).**

- 6. An objection to appointment of a personal representative can only be done in a formal proceeding. **MCL 700.3203(2).**
 - a. If a personal representative was appointed with an informal application, a petition for formal proceeding must be filed to determine the issue of who should be personal representative if there is an objection.

iv. Formal Petition:

- 1. SCAO Form Used: Petition for Formal Probate and/or Appointment of Personal Representative (PC559) is adjudication of:
 - a. the appointment of the personal representative,
 - b. whether the decedent left a valid will,
 - c. determination of decedent's heirs
 - d. Although commonly done, the appointment of a personal representative and adjudication of a will does not have to be litigated at the same time.
- 2. If supervised administration is sought, this *must* be requested as part of the formal petition or a stand alone pleading. **MCR 5.310(B).**
- 3. In the interest of justice, the court *may* allow the custodial parent who has filed an appearance to file a formal petition on behalf of the minor child, if the child is an interested person in the estate. **MCR 5.302(D).**
 - a. This rule is not mandatory, and the court may appoint a guardian ad litem.

4. An objection to the appointment of a personal representative must be done via formal petition.
 5. Appointment of a person not having priority must be done in a formal proceeding. **MCL 700.3204(2).**
 6. *Please remember*, the court can refuse an appointment if it finds the individual to be “unsuitable”.
 - a. Determination of the suitability of a nominated personal representative must be done in a formal proceeding. **MCL 700.3204(3).**
- v. **Factors to Consider in Selecting an Estate Proceeding:**
1. EPIC allows the parties to determine the level of court involvement they desire (informal/formal or unsupervised/supervised).
 2. **Factors:**
 - a. Decedent died testate.
 - i. It is *strongly recommended* that the estate be opened via formal petition. The objection period to contest a will admitted formally is 21 days from the entry of the order.
 - ii. If a will is admitted informally, *there is no time limit to object to the will*, this could be done even after the completion of administration or years after the will was admitted.
 - b. Complexity of estate
 - i. It may be more prudent to open a large, complex estate via formal petition with supervised administration to ensure that it is overseen by the court and all distributions are proper.
 - c. Relationships between interested parties
 - i. Do the heirs/devisees/family members interact harmoniously or are their interactions acrimonious and likely to be disputes/objections?
 - d. Comfort level of attorney
 - i. If you are confident in your ability to administer an estate with little court involvement and the decedent died intestate, consider informal application.
- c. **Administration of Estate and Duties of Personal Representative**
- i. Personal Representative must give notice of appointment and surviving spouse’s right to election within 28 days of appointment (PC 573). **MCL 700.3705.**
 - ii. Qualifying as Personal Representative
 1. Filing Acceptance of Appointment (WCPC571) and Bond of Fiduciary (PC570)

- a. Once a person is appointed by the court to serve as personal representative, they must qualify by filing an acceptance of appointment. This applies to all personal representative appointments.
 - b. Some appointments may require the filing of a bond for the personal representative to qualify. This is only required if the Judge ordered a bond at the time of appointment.
- 2. Once the personal representative has qualified for their appointment (Acceptance of Appoint and Bond if required), letters of authority will be issued by the court.
 - a. These letters are evidence of the personal representative's power to administer the estate and may contain restrictions on that power.
- 3. Bonds under EPIC
 - a. Not required in informal proceedings unless a special personal representative is appointed, the will directs a bond, or requested by a person with interest of at least \$30,000 in the estate (adjusted for inflation). **MCL 700.3603(1).**
 - b. In formal proceedings the court may order a bond at the time of the personal representative's appointment.
 - i. If the will does not direct a bond, the court can only order a bond if requested by an interested person and the court is satisfied that bond is desirable. **MCL 700.3603(2).**
 - ii. If the will mandates a bond, it can be waived if the court determines a bond to be unnecessary. **MCL 700.3603(2).**

d. Filing an Inventory

- i. SCAO Form Used: Inventory (Decedent Estate) (PC577)
- ii. An inventory is a listing of all probate assets included in an estate based on the date of death.
- iii. The inventory *must* list with reasonable detail the probate assets owned by the decedent at the time of death and indicate the fair market value as of the date of death. **MCL 700.3706(1).**
 - 1. If the inventory does not describe with reasonable detail the probate assets owned by the decedent at the time of death it will be rejected by the court.
 - a. Descriptions such as "investigating" or "TBD" on an inventory will not be accepted by the court as it does not reasonably inform or provide notice to the interested persons as to what the probate assets are.

- iv. Information necessary to verify the amounts listed on the inventory is also required for the probate court to calculate the inventory fee. This includes bank statements or the SEV of real property from the year of death. **MCL 700.3706(2).**
 - 1. An inventory is not considered “FULL” and complete until verification for the inventory amounts is submitted to the court. An estate may not be closed unless an inventory is complete and verified.
 - v. A copy of the inventory must be given to all interested persons within 91 days of the personal representative’s appointment. **MCL 700.3706(1)**
 - vi. If an asset is missing or was not accurately valued, the personal representative must prepare and serve a supplementary inventory.
 - vii. **Use of Inventory:**
 - 1. The inventory provides information and notice to the interested parties of the probate assets.
 - 2. An inventory fee is assessed on all decedent’s estates based on the value of their assets.
 - 3. It is used as a check to ensure that all items properly included in the decedent’s estate is listed.
 - viii. **Presented Inventories:**
 - 1. Inventories in unsupervised estates are not required to be filed with the court but may be “presented” to the court for the calculation of the inventory fee. **MCL 5.310(C)(1) & MCR 5.307(A).**
 - 2. Most attorneys have their clients file the inventory with the court unless there are significant privacy issues or concerns.
- e. **Closing Estates**
- i. Notice of Continued Administration
 - 1. **SCAO Form Used:** Notice of Continued Administration (PC587)
 - 2. Filed in both supervised and unsupervised estates.
 - 3. If the estate is not closed within 12 months, the personal representative must file with the court a notice that the estate remains under administration. **MCL 700.3951(1).**
 - a. This notice must be filed within 28 days of the anniversary date of the personal representative’s appointment.
 - b. Copy of the notice must be sent to all interested persons.
 - 4. The notice must state the reasons the estate has not been closed and remains under administration.
 - 5. **What happens if this notice is not filed by the personal representative?**
 - a. An interested person may petition for a settlement order or for a hearing on the need for continued administration. **MCL 700.3951(2).**

- b. If this notice is not filed or a petition is not pending, the court can send notice to the personal representative and interested persons that the estate will be closed unless within 63 days the notice or petition is filed. **MCL 700.3951(3).**

ii. **Two Methods to Close an Estate under EPIC**

1. **Petition for Order of Complete Estate Settlement:**

- a. SCAO Form Used: Petition for Complete Estate Settlement (PC593)
- b. Can be used in supervised or unsupervised estates.
 - i. This method to close an estate is considered a formal closing.
 - ii. Order for Complete Estate Settlement is a formal order that *discharges the personal representative and any bond that may be filed.*
 - 1. A bond may only be discharged by formal order of the Judge.
- c. The personal representative or, one year after appointment, an interested person may petition for order of complete estate settlement. **MCL 700.3952(1).**
 - i. This petition cannot be accepted by the court until the time for presenting claims has expired.
- d. Can include a request to determine testacy (if not previously done), consider a final account, approve accounting and distribution, construe a will, determine heirs, and adjudicate final settlement and distribution. **MCL 700.3952(2).**

2. **Sworn Statement:**

- a. SCAO Form Used: Sworn Statement to Close Unsupervised Administration (PC591) or Sworn Closing Statement, Summary Proceeding, Small Estates (PC590)
- b. This method of closing an estate may only be used in an unsupervised estate and is considered an informal closing.
- c. Cannot be filed by the personal representative sooner than five months after their appointment. **MCL 700.3954(1).**
- d. Personal representative must send a full written account to all distributees whose interests are affected by the administration of the estate. **MCL 700.3954(1)(d).**
 - i. Must include the amount paid by the estate for the attorney, fiduciary, and any other professional fees.
- e. If an objection is received within 28 days of filing the Sworn Statement, it will be set for hearing and proceed with a formal closing.

- f. *Practice Tip:* Be sure to read the Sworn Statement form completely, as you are swearing an oath that each item listed has been completed.
 - i. This includes that publication for creditors has been completed and the claims period has passed, the estate has been *fully* administered, and a *full account* has been provided to distributees.
- g. *Another Practice Tip:* Do not use this method to close an estate if there is a bond.
 - i. A bond cannot be discharged through an informal closing.
- h. Liability of Personal Representative:
 - i. There is ongoing liability of the personal representative and of the surety (bond) in an informal closing.
 - ii. No order of discharge for the fiduciary or order cancelling bond is issued.
 - iii. The case remains open for one year after the Sworn Statement is filed pursuant to **MCL 700.3954(2)**.
- i. Certificate of Completion:
 - i. SCAO Form Used: Certificate of Completion (PC592)
 - ii. If no objection is received within 28 days, a certificate of completion may be issued. **MCL 700.3958.**
 - iii. The certificate of completion is not a closing document, but only evidence that 28 days have passed from filing the Sworn Statement with no objections filed.
 - iv. This does not preclude an action against the personal representative or surety.

III. SMALL ESTATES

- a. SCAO Form Used: Petition and Order for Assignment (PC556)
- b. This is an expedited procedure that is available for estates that meet the maximum asset threshold, indexed for inflation, after deduction of funeral and burial expenses. **MCL 700.3982.**
- c. Summary of Process:
 - i. The court can order that after the funeral bill has been paid, with proof submitted, the person who paid these expenses can be reimbursed and the remainder distributed to the spouse, or if no surviving spouse, to the decedent's heirs.
 - 1. Cannot be distributed to trusts or devisees of a will.
- d. Inventory Fee:

- i. Beginning January 1, 2024, for real property only, when calculating the inventory value, any lien against the real property must be deducted from the gross value of the real property, up to \$250,000.00 (adjusted for inflation). **MCL 700.3982(5).**
 - 1. Real property inventory value cannot be less than zero.
 - ii. For personal property, the gross value and inventory value are the same.
- e. Debts of Decedent
 - i. Unless the heir is a surviving spouse or a minor child that is entitled to allowances under EPIC, for 63 days after the order for assignment is issued, the heir receiving the assignment is responsible for any unsatisfied debt of the decedent up to the value of the property received. **MCL 700.3982(3).**
 - 1. Claims for these debts are handled by the circuit or district court.
- f. Wills
 - i. If a person dies with a will, the will is filed with the court but not used under small estate procedures.
 - ii. The decedent is treated as if they passed intestate.

IV. CONCLUSION & RESOURCES

Hopefully, this has provided a brief overview of estate proceedings. Feel free to use this item as a “road map” or “cheat sheet” in these areas. For a more detailed description of estate administration, ICLE publishes “Estate Administration in Michigan” which contains forms and detailed discussion of estate administration. Also, the court’s website www.wcpcc.us, is always a great resource to use for information and links to the current SCAO forms.