

# Miscellaneous Procedures & Ancillary Administration

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## MISCELLANEOUS PROCEDURES

- Collection of Personal Property by Affidavit
- Summary Proceedings
- Subsequent Administration
- Determination of Descent

# COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT

- A probate proceeding can be avoided entirely if the net value of the probate assets is less than \$50,000.
- After August 1, 2016, the amount is increased to \$75,000
- Assets can be collected by the person entitled to them by providing an affidavit to the person holding the assets (MCLE-P680)

# COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT

- This affidavit may be used when:
  - Probate assets do not exceed \$50,000 (or \$75,000 after 8/1) without regard to non-probate assets, less liens and encumbrances;
  - 30 days must have elapsed since decedent's death;
  - There must not be any application pending or granted for appointment of a personal representative in any jurisdiction; and
  - The claiming successor must be entitled to the property.

# COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT

- Types of Property:
  - Safe deposit box contents.
  - Tangible personal property.
  - Bank accounts, securities.
  - Debts owed to the decedent.
  - Does NOT work for real estate. Real estate of any value requires a probate proceeding.
  - Although the statute contemplates using this form for motor vehicles, the Department of Motor Vehicles has its own form

# COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT

- Procedure
  - Present the affidavit declaring the facts set forth above and identifying the property to be collected, along with a certified copy of the decedent's death certificate, to the person holding the property.
  - Only a successor may collect the property, except that a state or county agency may use the affidavit to collect amounts due for a medical assistance claim under Minn. Stat. section 256B.15.

# COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT

- Procedure
  - A successor is a person who take by intestate succession or a devisee.
  - If the affidavit is used to open a safe deposit box, the person controlling access to decedent's safe deposit box need not open the box if the person has received notice of a written or oral objection from any person, or if the decedent's key or combination is not available.

# SUMMARY PROCEEDINGS

- Summary Administration
- Summary Distribution
- Residue Not Exceeding \$100,000 in a Non-Exempt Estate

# SUMMARY PROCEEDINGS

- A personal representative or an interested party may file a petition (MCLE P-800) with the court asking for a determination that the decedent's assets should be summarily assigned and distributed to the appropriate persons without the need for administration or appointment of a personal representative. A hearing and notice is required to obtain a decree.

# SUMMARY PROCEEDINGS

- Summary Administration
  - Three situations in which summary administration is appropriate:
    - No probate assets exist – if the sole asset of the estate turns out not to be a probate asset, can petition the court to close the administration summarily.
    - Assets have been lost irretrievably – if an effort to begin a probate to preserve an asset or recover one is unsuccessful, the probate may be closed summarily.
    - Only exempt assets exist – no need for a creditor payment period.

# SUMMARY PROCEEDINGS

- Only Exempt Assets Exist
  - Homestead
  - Selected Property
  - Family Allowance

# SUMMARY PROCEEDINGS

- Homestead
  - The homestead is defined by area and value. See Minn. Stat. § 510.02.
  - Homestead exemption applies if the property passes to a spouse or to descendants, even if the descendants are adults and even if the spouse and/or descendants did not live in the home.
  - A homestead may be abandoned and the exemption lost if the decedent was absent from the residence for more than 6 months without filing a notice of intent to return.

# SUMMARY PROCEEDINGS

- Homestead
  - A homestead may be abandoned and the exemption lost if the decedent was absent from the residence for more than 6 months without filing a notice of intent to return.
  - For example, if a decedent was living in a nursing home for more than 6 months before death, the property is no longer homestead, and not exempt, unless a notice of intent is return is filed.

# SUMMARY PROCEEDINGS

- Homestead
  - Exemption does not apply if there are medical assistance, or state hospital claims outstanding. If the claims can be paid by some other means, the homestead can be summarily decreed.

# SUMMARY PROCEEDINGS

- Selected Property
  - If there is a surviving spouse:
    - Household furniture, furnishings, appliances, and personal effects (subject to an award of sentimental property under Minn. Stat. § 525.152) not exceeding \$10,000 in value net of any security interests (\$15,000 after 8/1/16).
    - Other personal property of the estate to the extent necessary to make up the difference between \$10,000 and the value of the sentimental property.
    - One automobile, without regard to value.

# SUMMARY PROCEEDINGS

- Selected Property
  - If there is not a surviving spouse, the decedent's children, including adult children (but not children omitted in decedent's Will), are entitled to the selected property.
  - Selected property distributed to decedent's adult children is subject to claims for state hospital care, medical assistance, general assistance medical care, care at University of Minnesota and county burial, and administrative & funeral expenses, and debts and taxes with preference under federal law.

# SUMMARY PROCEEDINGS

- Family Allowances
  - Reasonable maintenance payable to the surviving spouse and minor children whom the decedent was obligated to support, and children who were in fact being supported by the decedent.
  - Minn. Stat. § 524.2-404 suggests that \$1,500 monthly is reasonable, but more can be allowed by the Court. Payment can be made for up to one year in an insolvent estate and 18 months in a solvent estate. (\$2,300 per month after 8/1/16).

# SUMMARY PROCEEDINGS

- Summary Distribution – Minn. Stat. § 524.3-1203
  - A petitioner may elect to use the summary administration procedure if it appears from the inventory that the entire estate, less liens and encumbrances, does not exceed the sum of the following:
    - Exempt homestead and exempt personal property;
    - Family allowances;
    - Expenses and claims.

# SUMMARY PROCEEDINGS

- Summary Distribution – Minn. Stat. § 524.3-1203
  - Ex parte order
  - Used if the estate does not contain a homestead and the entire estate is appropriated to pay statutory allowances and funeral expenses.

# SUMMARY PROCEEDINGS

- Residue not Exceeding \$100,000: the Nonexempt Estate
  - If, after payment of expenses, assets are available to heirs or devisees, summary distribution is available for estates that do not exceed \$100,000. Minn. Stat. § 524.3-1203, subd. 5. (effective 8/1/16, \$150,000).
  - Required:
    - Hearing with published notice. (no notice to the commissioner of human services is required by statute)
    - Proof of payment of statutory allowances, priority claims, and any other valid claims

# SUMMARY PROCEEDINGS

- Residue not Exceeding \$100,000: the Nonexempt Estate
  - Court might require expiration of 4-month notice period before issuing the decree
  - Court might require petitioner (or personal representative, if one is appointed) to post a bond as protection for any unpaid creditors

# SUMMARY PROCEEDINGS

- Small Estates; Closing by Sworn Statement of Personal Representative
  - A personal representative may close an estate administered under the summary proceedings of Minn. Stat. § 524.2-403 by filing with the Court, at any time after disbursement and distribution of the estate, a statement that:
    - The entire estate did not exceed exempt property, costs and expenses;
    - Estate has been fully administered; and
    - A copy of the statement has been sent to all distributees and creditors or claimants and furnished an accounting to distributees.

# SUBSEQUENT ADMINISTRATION

- Transfer of Assets During One-Year Period After Filing of Closing Statement
- Correction of Orders or Decrees to Include Omitted or Incorrectly Described Property
- Formal Proceeding
- Informal Proceeding

# SUBSEQUENT ADMINISTRATION

- Transfer of Assets During One-Year Period After Filing of Closing Statement
  - Simplest way to transfer after-discovered property or omitted property is have the original personal representative transfer the property to the correct beneficiary.
  - After filing of the informal closing statement under Minn. Stat. § 524.3-1003(b), the personal representative's authority is in full force and effect for one additional year.

# SUBSEQUENT ADMINISTRATION

- Transfer of Assets During One-Year Period After Filing of Closing Statement
  - If an inventory was filed, and omitted property is found, a supplementary inventory must be filed.
  - Copies of the supplementary inventory must be provided to the interested persons.
  - Proof of service by mail of the supplementary inventory must be filed with the court “prior to any transfer of the omitted property.”

# SUBSEQUENT ADMINISTRATION

- Correction of Orders or Decrees to Include Omitted or Incorrectly Described Property
  - Available to have the appropriate order or decree corrected to include the omitted or inaccurately described property, or to obtain a decree of descent. Minn. Stat. § 524.3-413.
  - Interested person must petition the court in which the original probate proceeding was held. (MCLE P-285, P-286, P-287, and P-288).
  - Court is asked to issue a decree or amend the deed, decree, or order of distribution.

# SUBSEQUENT ADMINISTRATION

- Formal Proceedings
  - Can handle omitted or incorrectly described property in a complete subsequent formal administration under Minn. Stat. § 524.3-1008.
  - Minn. Stat. § 524.3-1008 was amended in 1995 to provide the probate registrar with authority to appoint a successor personal representative, so might be possible to proceed with an informal proceeding.

# SUBSEQUENT ADMINISTRATION

- Informal Proceedings
  - Registrar has authority to appoint a successor personal representative to administer subsequently discovered estate assets, even if the original administration was commenced in a formal (unsupervised) proceeding. Minn. Stat. § 524.3-1008.

# DETERMINATION OF DESCENT

- If creditor claims are barred by passage of time, then the only remaining purposes of probate is collection of assets and distribution of assets.
- Requirements for Determination of Descent under Minn. Stat. § 525.31:
  - Decedent has been dead for at least 3 years;
  - Decedent left real or personal property;
  - No original Will has been probated or proceedings in Minnesota and no ancillary probate.

# DETERMINATION OF DESCENT

- Requirements for Determination of Descent under Minn. Stat. § 525.31:
  - Decedent has been dead for at least 3 years;
  - Decedent left real or personal property;
  - No original Will has been probated or proceedings in Minnesota and no authenticated copy of a Will probate in another jurisdiction has been offered for a Minnesota ancillary probate.

# DETERMINATION OF DESCENT

- Requirements for Determination of Descent under Minn. Stat. § 525.31:
  - Requires a Petition (MCLE P-670, P-671, P-672, and P-673) filed in the district court in the county of the decedent's residence, or in which the affected real or personal property is located.
  - Proceedings can be consolidated for more than one decedent if, for example, real estate would pass to more than one decedent.

# DETERMINATION OF DESCENT

- Requirements for Determination of Descent under Minn. Stat. § 525.31:
  - Clearance from medical assistance is required to be filed with the Court. The application (MCLE P-090) must be submitted to the agency in the county in which the determination of descent is pending.
  - If decedent received no medical assistance, the county agency will issue a clearance. The petitioner must file the clearance with the Court.

# DETERMINATION OF DESCENT

- Requirements for Determination of Descent under Minn. Stat. § 525.31:
  - If medical assistance was received, the clearance will state that a claim exists and the total amount of the claim. The claim is unbarred and undischarged (unlike all other claims), and shall be paid from the decedent's property.
  - The court may issue a partial decree of descent to facilitate the good faith sale of distributees' real or personal property.

# DETERMINATION OF DESCENT

- Requirements for Determination of Descent under Minn. Stat. § 525.31:
  - Requires a hearing and notice to interested persons and published notice. Notice to creditors is not required because claims are barred (other than medical assistance).
  - Decree will assign the real or personal property to the persons entitled thereto according to the decedent's Will or rules of intestacy.

# ANCILLARY PROBATE

- Used when real or personal property owned by a decedent and located in Minnesota, but a personal representative has been appointed in another state.
- A personal representative appointed in the estate of a non-Minnesota domiciliary would not have authority to transfer, sell, or distribute the decedent's Minnesota real or personal property without further steps being taken.

# ANCILLARY PROBATE

- Alternatives:
  - Domiciliary personal representative appointed in decedent's non-Minnesota home state may transfer certain assets without any local qualification at all in a Minnesota district court.
  - Domiciliary personal representative may qualify in a Minnesota district court as a foreign personal representative.
  - Domiciliary personal representative may qualify in a Minnesota district court as a local personal representative.

# ANCILLARY PROBATE

- Alternatives:
  - If no fiduciary has been appointed in another state, but administration in Minnesota is required, an original administration can be commenced in Minnesota under the regular probate procedures.

# ANCILLARY PROBATE

- Domiciliary Personal Representative Acting Without Local Qualification
  - Minn. Stat. § 524.4-201 to 524.4-203 contain a limited grant of authority to the domiciliary personal representative to collect a non-resident decedent's intangible personal property without local qualification.
  - Cannot be used to transfer real estate or tangible personal property.
  - Cannot be used if a probate administration is pending in Minnesota.

# ANCILLARY PROBATE

- Domiciliary Personal Representative Acting Without Local Qualification
  - Foreign personal representatives are specifically authorized to bring civil actions in Minnesota under Minn. Stat. § 573.05.

# ANCILLARY PROBATE

- Qualification by Domiciliary Representative as a Foreign Personal Representative
  - This option allows the domiciliary personal representative to exercise additional powers, and to act with the sanction of the Minnesota district court.

# ANCILLARY PROBATE

- Qualification by Domiciliary Representative as a Foreign Personal Representative
  - Domiciliary personal representative must file with the probate court the following:
    - Certified or authenticated copy of the appointment and any official bond given;
    - Notice of an intention to exercise as to Minnesota assets all of the powers of a local personal representative.

# ANCILLARY PROBATE

- Qualification by Domiciliary Representative as a Foreign Personal Representative
  - Published notice is necessary, but not notice to interested persons or creditors.
  - After expiration of 60 days after the initial filing, the domiciliary personal representative may exercise, as to assets in Minnesota, all powers of a local personal representative.
  - May be used to transfer real estate.

# ANCILLARY PROBATE

- Local Administration in Minnesota of the Estate of a Nonresident Decedent
  - Requires complete local administration in Minnesota.
  - While this is the most complicated procedure, offers the greatest degree of court sanction for the fiduciary's actions.
  - If an estate administration has been commenced in the decedent's domicile state, the Minnesota probate will be an "ancillary probate." If not, the Minnesota procedure will be an original administration.

# ANCILLARY PROBATE

- Local Administration in Minnesota of the Estate of a Nonresident Decedent
  - Two differences between ancillary proceedings and regular proceedings:
    - First, there is no time limit on the probate of a Will or appointment of a personal representative, which would have to occur within 3 years of decedent's death in a regular proceeding.
    - Second, proper venue is in any county in which the decedent's property was located, and any subsequent proceedings will be in that county.

# ANCILLARY PROBATE

- Local Administration in Minnesota of the Estate of a Nonresident Decedent
  - Regular priority rules for who can serve as the personal representative, except that the foreign personal representative has priority of appointment unless:
    - the estate is insolvent and the court may then appoint any qualified person upon the petition of a creditor; and
    - if the decedent's Will actually nominates different persons to serve in different states.

# ANCILLARY PROBATE

- Local Administration in Minnesota of the Estate of a Nonresident Decedent
  - In general, creditors' claims may be presented in an ancillary estate in the same manner as in the estate of a resident decedent.
  - After payment of creditors' claims and other proper charges, the ancillary personal representative must make appropriate final distribution of the local estate assets, generally to the domiciliary personal representative for the benefit of the decedent's successors.

# QUESTIONS?