



Course Objectives

- To develop a basic familiarity with terms used in the administration of Decedent's Estates.
- Note:
 - Estates Courses/Additional Training and Resources
 - The use of the term “generally”

Terminology – People

Decedent

- A person who has died.

Decedent's Estate

- A person's assets and debts as of the date of death.

Devisee/Beneficiary

- Any person entitled to take real or personal property under the provisions of a valid, probated will.

Heir

- Any person entitled to take real or personal property of a decedent upon intestacy under provisions of the Intestate Succession Act.

Terminology - People

Fiduciary

- One having duty created by his undertaking to act for the benefit of another person and not for his own benefit.
 - Bound to act with the highest degree of good faith in transacting business or handling property.

Terminology – People

Types of Fiduciaries

- Trustees
- Guardians
- Executors
- Administrators
- Collectors (not Collectors by Affidavit)

Terminology - People

Personal Representatives

- Represents deceased and administers the estate, pays creditors, and distributes the estate.
- A personal representative is a fiduciary.
 - Executor
 - Administrator
 - Collector (not Collectors by Affidavit – if individual is NOT a PR, they may not collect a commission)

Terminology - People

Collector

A type of Personal Representative appointed for a limited time and for a specific purpose.

- Once appointed, a collector may take such possession, custody, or control of personal property of Decedent as is necessary for its preservation.
- Most common in Caveat proceedings.

Terminology - People

Collector by Affidavit

- An affiant that completes forms AOC-E-203 and AOC-E-204 to administer a Decedent's estate.
- Not a Personal Representative, does not collect commission.

Terminology - People

Public Administrator

- A person or group of persons that each elected Clerk chooses to appoint to qualify as personal representative in estates where no other suitable person is available to administer the estates.

Terminology - Process

Venue – Physical Location/County where the Estate will be filed

- North Carolina Resident
 - County where Decedent was domiciled at the time of death.
 - If in a rest home (matter of intent)
 - Did the resident intend to reside there permanently?
 - Clerk relies on sworn statement of PR as to domicile.

Terminology - Process

Venue cont...

- No domicile in NC at time of death
 - Venue is in the county where Decedent had property or owned assets.
- Non-resident motorist of NC who died in state
 - Venue is in any county.

Terminology - Process

- For Decedents owning property in multiple states, or owed money in multiple states, there may be multiple estate administrations:
 - Domiciliary Administration – The primary estate administration, generally in the home state of the Decedent.
 - Ancillary Administration – The secondary estate administration. Occurs in a second state.

Terminology - Process

Jurisdiction

- The authority of a court to hear a case.
- The Clerk's jurisdiction is set out in statute.
- An order is invalid and void if the person issuing the order lacked subject matter jurisdiction over the matter.
- Jurisdiction cannot be conveyed by consent.

Administrative Office of the Courts

13

Terminology - Process

Testate

- Having made a valid will;
- One who has died leaving a will.

Intestate

- Without making a valid will;
- One who has died without leaving a will.

Partially Testate, Partially Intestate

- A person may be partially testate when they leave a valid will but the will does not dispose of ALL of their property.

Administrative Office of the Courts

14

Terminology - Property

Probate Assets/Property of the Estate

Generally, property owned by the decedent at death, and property devised directly to the estate or executor. The last will and testament and/or intestate Succession control the disposition of the assets.

Does not include certain property passing immediately and directly to another person upon death.

Contrast: Property that does not pass by operation of law.

Examples: checking account in Decedent's sole name, stocks, bonds, household furnishings, vehicles titled to the Decedent.

Administrative Office of the Courts

15

Terminology - Property

Non-Probate Assets

Property owned by a person or entity other than the decedent, and property that passes immediately upon death to another owner by intestacy, by operation of law, or under any instrument other than the will.

Examples: real estate, joint with right of survivorship checking account, most IRAs payable to named beneficiaries.

Administrative Office of the Courts

16

Terminology - Property

Non-Probate Assets Subject to Debts of Estate

- Some pieces of property, even if passed outside the estate, may be brought into the estate to pay debts of the Decedent.
 - Examples: joint accounts with right of survivorship, real estate held jointly or in common
- Other pieces of property are never subject to the debts of the Decedent.
 - Examples: real estate held as tenants by the entirety, most IRAs

Administrative Office of the Courts

17

Terminology - Property

Real Property

- Land and whatever is permanently attached to or erected or growing upon the land.

- Note: Mobile Homes

Personal Property

- Generally, everything that is the subject of ownership and is not real property.
 - Tangible - Can be felt or held
 - Intangible - Cannot be felt or held - Represented by a value, number, contract, bank statement

Administrative Office of the Courts

18

Terminology - Property

Types of Ownership of Real Property

- Tenancy in Common
- Tenancy by the Entireties
- Joint Tenancy with Right of Survivorship
- Sole Ownership

Terminology - Property

Tenancy in Common

- Ownership of real property by two or more persons.
- Decedent's interest may be devised in Decedent's will, or passes intestate if Decedent does not have a will.
- A Decedent's interest is a "non-probate asset," but is subject to his creditors.
- Owners are referred to as tenants in common.

Terminology - Property

Tenancy by the Entireties

- Special ownership of real property by a husband and wife.
 - Applies to mobile homes – this is the only personal property exception
- Upon the death of one spouse, 100% ownership immediately vests in the surviving spouse.
- Non-probate asset that is **not subject to creditors**.
- Owners referred to as tenants by the entirety.

Terminology - Property

Joint Tenancy with Right of Survivorship

- Ownership of real property by two or more persons jointly with right of survivorship.
- 100% ownership interest vests in last surviving tenant.
- Decedent may not effectively devise his interest in his will.
- A Decedent's interest is a non-probate asset.
- Owners are referred to as joint tenants with right of survivorship.

Terminology - Process

Probate

- The act or process of proving the validity of the will.
- A will is not effective to pass real or personal property unless it has been proved valid, and the clerk enters a certificate of probate.

Terminology - Process

Caveat

- Proceeding attacking the validity of an instrument purporting to be a will.
 - Must be filed within three (3) years after the will is probated.
 - Filed in the existing Estates file.
 - A \$200 bond is required if Decedent died 12/31/11 or earlier; \$200 filing fee required if Decedent died 1/1/12 or later.
 - Clerk issues order to suspend all further estate proceedings except acts to preserve property of the estate.

Terminology - Documents

Attested Written Will

A written will that is signed by the testator and attested by at least two competent witnesses.

Terminology - Documents

Holographic Will

- A will entirely in the handwriting of the testator.
- No witnesses at the time of signing are required to probate as holographic.
- Signed by the testator.
- A holographic will that is witnessed by at least two competent witnesses may be probated as an attested will.

Terminology - Documents

Nuncupative Will

- Oral will – made on deathbed.
- Can only distribute personal property.
- Must have two (2) witnesses.
- Must be probated within six (6) months unless reduced to writing by witnesses within 10 days after it was made.

Terminology - Documents

Codicil

- Addendum to a will.
- May change the terms of the prior will without revoking it.
- Must be proved valid in the same manner as a will.

Terminology - Process

- Small Estate Administration
 - Methods other than a "Full" estate administration for handling a Decedent's estate.
 - Includes:
 - Year's Allowance
 - Collection by Affidavit
 - Summary Administration
 - Probate without Qualification
 - Recording of Will without Probate
 - Assignment of Title (of motor vehicle)
 - Payment to the Clerk
 - Limited Personal Representative

Terminology - Process

Bond

- The amount of security a personal representative must post before being qualified to manage the estate.
- Whether a bond is required is impacted by the terms of the Decedent's will, whether the Decedent had a will, the ages of potential beneficiaries, the wishes of the beneficiaries, and other factors.
- Bond requirements are set out in statute.

Terminology - Process

Commission

- The compensation paid to the Personal Representative for managing the Decedent's estate.
- Approved by the Clerk prior to payment.
- Only Personal Representatives receive commission.

Terminology - Process

Distribution of assets

Per capita distribution

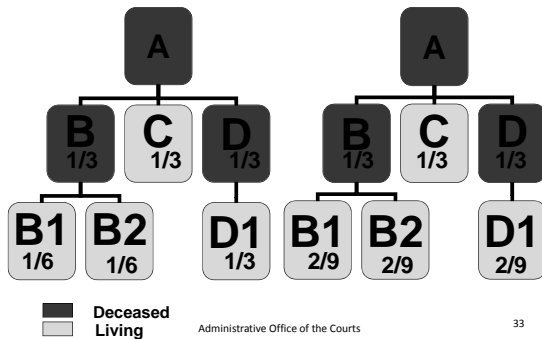
- Method of dividing shares of an estate where *heirs of the same generation* each receive the same share.

Per stirpes distribution

- Method of dividing shares of an estate where each *branch* of a family receives an equal share of an estate.

Per Stirpes

v. Per Capita



Terminology- Process

Wrongful Death

- When a Decedent is killed by the actions of another, the Decedent's estate may seek monetary damages against the wrongdoer.
- Proceeds are disbursed pursuant to the law of the state where the wrongful death action is filed.
- In NC, wrongful death proceeds are distributed pursuant to the Intestate Succession Act, and are not generally subject to creditors. Part of the recovery may be used towards burial expenses, medical expenses, and expenses incurred to pursue the wrongful death action.

Select Resources

- Clerk Procedures Manual
 - Available in print and online
- AOC Helpdesk – 919-890-2407
- AOC Legal – 919-890-1300
- AOC InTRAnet
 - Memos
 - Checklists
 - Manuals
- Amy Funderburk, AOC Assistant Counsel
amy.l.funderburk@nccourts.org
919-890-1302