

ESTATE ASSETS

1. Managing the Estate Cash

The Personal Representative should begin by making an inventory of cash, undeposited checks, coins and any other unique currency. Silver, gold and other unique coins should be appraised, and a determination made as to whether these constitute “cash,” or whether they are “tangible personal property” valued in excess of face value.

Since the decedent's bank accounts will be closed shortly after the qualification of the personal representative and because cash and checks payable to the decedent are frequently received shortly after the decedent's death, the personal representative should open an estate checking account immediately upon qualification. When the account is opened, the bank will need a copy of the personal representative's Letters Testamentary. An attorney should request copies of the monthly bank statements so that the PR can account for all funds received by and disbursed from the estate in order to prepare the necessary estate accountings.

The bank will request a taxpayer identification number for the estate account (not the decedent's Social Security number). If the estate account is interest bearing, the personal representative or attorney should provide the bank with a completed Form W-9, Request For Taxpayer Identification Number and Certification, to ensure that backup withholding will not apply to the account. Large amounts of cash not immediately needed to pay claims should be deposited in high yield savings accounts or certificates of deposit (depending on the anticipated time of distribution).

If the personal representative maintains the estate's accounts, all receipts of the estate should be deposited directly into the estate checking account with sufficient information relating to the deposit (including the date, to/from whom paid, the purpose and the amount). Also, disbursements of estate funds should be made only from the estate checking account with sufficient information to indicate the purpose or nature of such disbursements. It is particularly difficult and expensive to balance an account to the clerk's satisfaction when receipts or disbursements are not channeled through the estate account or properly labeled.

2. Personal Property.

The heirs are vested with title in the decedent's personal property until a PR is appointed and qualified. Title vests in the PR upon appointment and relates back to the date of death for purposes of administration. N.C.G.S. § 28A-15-2(a).

On the other hand, although the title to realty devised under a valid probated Will vests in the devisees and relates back to the date of death, the PR may be required to take possession of devised real property to pay debts, taxes and expenses. N.C.G.S. § 28A-15-2(b).

The PR should compile a checklist in searching for assets. The attorney and PR should go over important documents of the decedent, including income, intangible and gift tax returns, deeds, mortgages, promissory notes, bank account statements, passbooks, certificates of deposit, stocks, bonds, insurance policies, titles to cars, boats, etc. The attorney should also review county as valorem tax listings for three years prior to death, review county records for land ownership, leasehold interests, mortgages or judgment liens and review bank and brokerage statements, canceled checks and deposit slips for one year period prior to death. The attorney or PR should consider reviewing fire and casualty insurance for schedule of personal effects. You can also contact trade associations, professional associations, travel clubs, etc. of which Decedent was a member, inquiring about group/life/accident insurance and other membership benefits. Contact brokers, local banks, savings and loans, credit unions, insurance companies, local Social Security office, local Veterans Administration office, trade associations, professional associations, travel clubs and the decedent's employer.

N.C.G.S. § 28A-15-12 provides that the PR may institute a special proceeding to discover any assets the PR believes are in the possession of a third party.

The PR institutes a proceeding by filing a petition with the Clerk of the county in which the third party resides or does business stating under oath the reasonable grounds for the PR's belief that an asset of decedent is in the possession of a third party. You may want to file copies of this proceeding in the county of record of the estate. The Clerk may issue

notice to the third party to appear before the Clerk on a specified date which is not less than three days after the issuance of the notice.

The PR or the attorney may examine the third party. If the Clerk finds that the third party has the decedent's property but fails to show any reason for retaining possession, an order may be issued by the Clerk requiring the third party to deliver the property to the PR. The order of the Clerk may be enforced by proceedings for contempt of court.

Within five days of the order of the Clerk, the third party may appeal the Clerk's ruling to the next term of Superior Court or to the resident judge of the district. Prior to the appeal, the third party must post a bond with a value of at least double that of the property. The party against whom the final judgment is rendered will be charged with the costs.

In reviewing the decedent's personal records, the attorney should determine the location of all banks, credit unions and savings and loan associations in which the decedent had an account or a certificate of deposit and the account numbers thereof. If there is any doubt as to whether all of the financial institutions in which the decedent had accounts have been determined, the attorney should send a letter to all financial institutions in the community or communities in which the decedent lived, requesting information in this regard.

The attorney should be aware that some financial institutions, as a matter of policy, will not release account information to anyone other than the PR. In that instance, letters requesting account information should be prepared for the PR's signature.

Accounts held solely in the decedent's name are included in the decedent's estate and are reported on the 90-Day Inventory or a subsequent accounting. Once the necessary information regarding certificates of Deposit have been obtained, the attorney should request that they be redeemed. The timing of the redemption request will depend on the liquidity needs of the estate, the interest rate the funds are earning, and the estimated time for distributions to beneficiaries or heirs.

Life insurance policies should be reviewed to determine if the insured decedent owned the policies. If the decedent had no incidents of ownership, the proceeds will not be included in the gross estate (unless the ownership had been assigned within three years prior to death or the estate is the beneficiary). However, full disclosure is required on the estate tax return.

If the decedent's estate is the beneficiary of insurance on the decedent's life, or if a third party who is designated as the beneficiary predeceases the decedent and no contingent beneficiary is named, the proceeds are usually assets of the probate estate and will normally pass as part of the residuary estate. However, the insurance policy should be carefully reviewed to determine the correct recipient of the proceeds.

Policies which the decedent owned on another person's life are also assets of the decedent's estate for probate and for estate tax purposes. The insurer will provide the date of death value of insurance the decedent owned on the life of another on Part II of IRS Form 712. Please note that the face value of the life insurance policy is not its value if the insured survives the decedent; however, if the insured is terminally ill, the IRS could argue that the value of the policy is closer to the face value.

Under certain circumstances, the decedent's estate may be entitled to payment or to noncash benefits from certain governmental agencies.

If the decedent was receiving Social Security checks at the time of his death, the attorney should contact the local Social Security office to determine if the final check should be returned. Social Security is paid on the 3rd day of each month for the preceding month, and the decedent must have lived for the entire month to be entitled to such check. For example, if the decedent died on June 30, the check received on July 3 must be returned. It should be determined if Social Security checks were deposited directly into the decedent's bank account and if so, such direct deposits should be discontinued.

If the decedent contributed to Social Security, his surviving spouse will be entitled to a lump sum Social Security death benefit, and survivor benefits may be payable to member of the decedent's family. It should be noted that funeral homes are

not eligible for the benefit. However, the lump sum death benefit may be assigned to the funeral home. The eligible beneficiary should contact the local Social Security office and make an appointment to claim the death benefit. The beneficiary should take a certified copy of the death certificate.

If the decedent was a veteran, dependency and indemnity compensation may be payable to the surviving spouse or the decedent's children if the death was service connected, or in certain other limited circumstances. The local Veterans Administration office should be contacted to determine such benefits.

If the PR paid the funeral expenses, the PR may be entitled to a lump sum death benefit up to a maximum of \$300 if the decedent died in a Veterans Administration hospital or was receiving disability payments. Application for this benefit is made on VA Form 21-530, Application for Burial Benefits.

The PR may collect an amount up to \$150 as a plot or interment allowance if the decedent was not buried in a national cemetery. However, the plot allowance is generally available only to wartime veterans or to veterans discharged from duty for disability incurred or aggravated in the line of duty. Application for the benefits should also be made on VA Form 21-530.

A deceased veteran may be entitled to reimbursement for a headstone or grave marker, or deceased veteran may be entitled to a headstone or marker. A deceased veteran may also be entitled to a U.S. flag for burial purposes.

If the decedent was covered by Medicare and the PR has received a claim for medical bills, the PR should contact the doctor-claimant to determine if an assignment of the amount of available Medicare benefits to the doctor-claimant will be accepted in full settlement of the claim, whether or not the claim exceeds the benefit. If the doctor-claimant will accept the assignment Patient's Request for Medicare Payment should be completed and submitted to Medicare. Payment will be made by CIGNA directly to the doctor-claimant. If the doctor-claimant will not accept the assignment, the PR must pay the claim, complete Request for Information Medicare Payment, and submit it, together with the bills marked "paid" by the claimant and a copy of the PR's Letters to CIGNA.

Contact each insurer of the decedent to inquire about possible premium reimbursements. Not only should medical and hospitalization insurers be contacted, but also the insurers for automobile insurance policies, disability income policies, fire and casualty insurance policies, etc.

The estate or survivors of the decedent may be entitled to benefits under various kinds of insurance such a disability income policies, fire and casualty insurance and automobile liability insurance where loss occurred prior to death. All policies of the decedent should be reviewed. Medical and hospitalization insurance policies should be reviewed for the possibility of incidental life insurance benefits. If the decedent's death occurred in someone else's automobile, consideration should be given in collecting any medical insurance under such other person's automobile insurance policy, and a wrongful death suit should be filed if appropriate. In addition, the Decedent may have had credit life insurance on credit card amounts or loans for which the PR should apply. The decedent's past and present employers should be contacted to determine any employment-related insurance benefits.

The decedent may be entitled to income tax refunds and the attorney should review the decedent's income tax returns, and other tax returns, if any, for years not barred by the statute of limitations to determine if the amount of taxed paid is correct and whether or not there is a refund due. To obtain a federal income tax refund, IRS form 1310 should be filed together with IRS Form 1040. An amended income tax return, Form D -400X, should be filed with the North Carolina Department of Revenue to claim a refund on a prior income tax return.

If there is a federal income tax refund of \$500 or less payable to the decedent and the surviving spouse with respect to joint returns filed by them, the refund is the sole and separate property of the surviving spouse. N.C.G.S. § 28A-15-6. If there is a federal income tax refund of \$250 or less, exclusive of interest, payable to the decedent with respect to a separate return filed by the decedent, such refund is the sole and separate property of the surviving spouse. N.C.G.S. § 28A-15-7. N.C.G.S. § 28A-15-8 allows a state income tax refund of \$200 or less, exclusive of interest, to pass to a

surviving spouse from the decedent's North Carolina income tax return. One-half of federal and North Carolina refunds in excess of the above-stated amounts belongs to the surviving spouse and the remainder to the estate. N.C.G.S. § 28A-15-9. If a refund check should be divided between the spouse and the estate, either one may deposit the check and write a check for the appropriate amount to the other.

The debtor on any note or secured obligation due to the estate should be contacted, advised of the decedent's death, and told to whom and at what address future installments should be made. The financial condition of the debtor should be reviewed. If the debt is secured, the attorney should (a) confirm the perfection of the security interest; (b) conduct a physical inspection of the security or confirm that the PR has done so; (c) confirm that the security is adequately insured against damage or destruction; (d) confirm that all ad valorem taxes due on the security have been paid; and (e) obtain the current value of the security. The PR should consider whether to negotiate for full payment of the note. Factors will include the financial condition of the debtor, the payment history, if known, outstanding balance and the term and interest rate of the note. If the note is distributed to a beneficiary, the attorney will need to prepare an assignment from the estate of the beneficiary.

If there is a question as to whether there are any secured notes due to the Decedent, the PR should review the Uniform Commercial Code (UCC) filing at the local Register of Deeds and the Secretary of State's office.

For estate tax purposes, the attorney should consider whether the note should be appraised and whether a discount is appropriate. The date of death and alternate valuation date values should be obtained.

The attorney should obtain a generalized description of all of the decedent's household furnishings and personal effects. If the decedent had any valuable items such as antiques, jewelry, watches, silverware and china separately insured, the values at which they were insured is a useful starting point in the valuation process. However, current appraisals should be obtained on any articles of artistic or collectible value in excess of \$3,000 or any collections whose artistic or collectible value combined

at date of death exceeded \$10,000 (such appraisals will need to be submitted with the estate tax return, if any). Insurance policies should be reviewed to determine that the assets are adequately insured. Early distribution of household furnishings and personal effects should be considered in order to avoid the costs of insurance and safekeeping. In many instances, household furnishings and personal effect will be specifically bequeathed in the Will. If they are not specifically bequeathed, the PR should consider the tax impact of distributing these assets. The PR should obtain a receipt and release for all property distributed to a beneficiary.

If the decedent owned the usual dwelling house occupied by the decedent's surviving spouse at the decedent's death, the PR should not sell or lease any household furnishings located in the house until the expiration of the time within which the surviving spouse can elect a life estate in the dwelling and fee ownership of the household furnishings in lieu of an intestate share pursuant to N.C.G.S. § 29-30(b). See N.C.G.S. § 28A-16-3. If personal property is sold, the PR should execute a bill of sale.

Unless otherwise provided in the decedent's Will, the PR is authorized to continue the farming operations of the decedent until the end of the current calendar year, and until all crops grown during that year are harvested. The net income from the farming operations shall be personal assets of the estate. Any indebtedness incurred in connection with the farming operations after the date of death is preferred over the claims of any heir, legatee or general or unsecured creditor of the estate. N.C.G.S. § 28A-13-4. Unharvested crops of the decedent, remaining ungathered at death, belong to the PR or collector and are included as personal assets of the estate, unless the Will provides that the crops go to the devisee of the land. N.C.G.S. § 28A-15-1(d).

The PR will need to itemize agricultural crops which are unharvested or harvested and stored at the time of the decedent's death. An itemization of livestock and farm equipment must also be made. Any contracts with the North Carolina Department of Agriculture or the United States Department of Agriculture (including crop allotments and conservation agreements) should be reviewed and appropriate persons contacted. Any lienors should be advised of the decedent's death and disposition of such liens

should be determined. The PR should execute a bill of sale if any crops, livestock or equipment is sold. Distributions of such property to a beneficiary should be evidenced by a receipt and release executed by the beneficiary.

If a farm name has been registered under Article 4 of Chapter 80 of the General Statutes, then the registered name of the farm passes to the purchaser of the whole farm, but if the purchaser buys only a portion of the farm, the registered name passes only if it is stated on the deed or conveyance. N.C.G.S. § 80-38.

The attorney should obtain any governing instrument, including wills, trusts or other documents, under which the decedent held a beneficial interest, present or contingent, as a fiduciary or beneficiary of an estate or trust. Upon review of these documents, the attorney should advise the PR as to whether the decedent owned or had a power with respect to any such interest at the time of his death which requires that such interest be included in his estate for death tax purposes. If the decedent had a remainder or reversionary interest, the value of which is includable in his estate for federal estate tax purposes, the PR should determine if the payment of the federal estate tax attributable to the inclusion of the interest in the estate may be deferred for federal estate tax purposes under I.R.C. Section 6163.

If the decedent was a lessee of real or personal property, the lessee's interest in the lease is considered personalty, is a probate asset and belongs to the PR for purposes of administration. If the decedent was a lessor, the PR should take steps to insure rents are collected and the lease is enforced, including notifying the lessee of where to send rental payments.

The PR may take custody of gifts causa mortis when and as needed to satisfy claims against the estate but they are available for distribution to the heirs or devisees.

Where there are insufficient assets to satisfy all claims against the estate, the PR may sue to recover real or personal property which the decedent may have conveyed with the intent to hinder, delay or defraud his creditors. Assets so recovered can be applied to the payment of debts and other claims against the estate. However, if the grantee of the fraudulently acquired property has sold it to a bona fide purchaser for value without notice of fraud, the property is not recoverable but the fraudulent grantee is liable to the PR for the value of the property. Any surplus remaining from such recovery after payment of debts and other claims against the estate will be returned to the grantee or his assigns. N.C.G.S. § 28A-15-10(b).

All tort and contract claims survive the death of the decedent except causes of action for libel and slander (except for slander of title), false imprisonment, or where the relief sought could not be enjoyed or granting it would be nugatory. N.C.G.S. § 28A-18-1. The courts should be advised of the death of the decedent. The court will order the substitution of the PR or his successor in interest.

An action for the wrongful death of the decedent must be prosecuted by the PR. N.C.G.S. § 28A-18-2. The estate may pay the reasonable and necessary expenses, not including the attorney's fees, incurred in pursuing the wrongful death action. Any amount recovered in the action is first applied to reimburse the estate for expenses incurred in pursuing the action, then to the payment of attorney's fees. The wrongful death proceeds are subject to the payment of reasonable burial expenses and reasonable hospital and medical expenses not exceeding \$4,500 (up to 50% of the net damages) incident to the injury resulting in death; but otherwise, damages which are recovered in an action for wrongful death are not subject to the payment of the decedent's debts. All claims filed for the medical, hospital and burial services must be approved by the Clerk. The remaining funds recovered from the prosecution of a wrongful death action must be distributed in accordance with the Intestate Succession Act.