

PROBATE 101
Presented by the Estate Planning/Probate Law Section
Thursday, May 17, 2018
MBA Office, 145 Court Ave., 3rd Fl.

1. Probate Jurisdiction
 - a. TCA § 16-16-201
2. Initial Client Interview
 - a. When to have the initial client interview?
 - b. Identify the client(s)
 - i. Who needs to be at the interview?
 - ii. Who do you prefer to be at the interview?
 - iii. Do you ever prohibit anyone from the initial interview?
 - iv. Who needs to be contacted before opening estate?
 - v. Who is going to be appointed as Personal Representative?
 1. Declinations/Joinders
 2. Is Personal Representative out of state?
 - a. Joint Control vs. Co-Personal Representative vs. Bond
 - c. Goals of Client Interview
 - i. Gather necessary information
 - ii. Orient the client to the process
 - iii. Manage expectations
 1. Distributions (when/how much)
 2. Claims against estate
 3. Attorney fees and expenses
 4. Timeframe
 - iv. What do you want to know about the family dynamics?
 1. Do you ask about these things or let the clients bring it up?
 - d. Will or Intestate?
 - i. Tennessee Intestacy Statute TCA § 31-2-104
 1. Share of spouse
 - a. No descendants vs. descendants

- i. Spouse takes either one-third, or child's share of the entire estate, whichever is greater
 - ii. Share of other heirs is per stirpes
 - ii. Will
 - 1. What are you looking for when a client brings you the Will of a recently deceased person?
 - a. Witness signatures and attestation clause
 - b. Affidavit of Witnesses
 - c. Bond and inventory waived
 - d. Accountings waived
 - e. Specific Bequests
 - f. Who are the Residual Beneficiaries?
 - i. The same as heirs at law?
 - 1. Who was written out of the will? Is there potential for a dispute?
 - 2. Solemn Form vs. Common Form
 - e. Asset Information/Determining Type of Probate
 - i. Standard Administration
 - ii. Small Estate
 - iii. Muniment of Title
 - iv. Distribution Directly from Bank (TCA § 45-2-708, 45-2-711, 45-3-514, 45-3-524)
 - v. No Probate needed
3. Opening Estate
 - a. "Petition to Open"
 - i. Title depends on Testate or Intestate
 - ii. Petition contents – TCA § 30-1-117
 - 1. Name and Address of Petitioner(s)
 - 2. Decedent, name, age, date and place of death, and residence address at date of death
 - 3. Copy of Will- attached as exhibit
 - a. If no will, then statement decedent died without will after diligent search
 - i. Plus name, address, and relationship of all heirs at law
 - b. If will, then names, relationships and mailing address of beneficiaries, PLUS those of the heirs at law
 - i. Statement that Petitioner believes this to be the last will and testament of deceased and that they are not aware of any documents revoking the will
 - 4. Identify whether or not any heirs or beneficiaries are minors or under a disability

5. If bond not waived by will or all interested parties (heirs/beneficiaries) then a statement regarding an estimate of estate assets.
 - a. Good thing to know regardless of whether you expect bond to be waived. Judge may order bond when you do not expect it.
6. Order Opening Estate
 - a. Granting relief requested
 - b. Inventory and Bond Waived
- b. What do you do before you head to court?
 - i. Pre-approved for Bond?
 - ii. Client's ride with you or meet you there?
 - iii. Anything else?
- c. Court, Clerk's Office, and after Court
 - i. Do you have the client sign petition at Court or at your office?
 1. Do you have a preference?
 - ii. Examination of your witness(es)
 - iii. Clerk's Office
 1. Swearing in of client, letters, orders
 - iv. Opening Estate Bank Account
4. Administering the Estate (not intended to discuss every issue or requirement)
 - a. Notice to Appropriate Parties
 - i. Beneficiaries – TCA §30-2-301
 - ii. TennCare – TCA § 71-5-116
 - iii. Creditors – TCA § 30-2-306
 1. Published in Daily News
 2. Personal Representative provides notice to creditors who are actually known or who are reasonably ascertainable
 - b. Affidavits Regarding Notice to TennCare and Beneficiaries must be filed within 60 days
 - c. Inventory filed within 60 days – TCA § 30-2-301
 - d. Taxes
 - i. Income taxes for individual and estate
 - ii. Estate Tax
 - e. Claims by Creditors
 - i. Last day for Creditors to file – TCA §§ 30-2-306 – 30-2-310
 - ii. Last day to file exceptions – TCA § 30-2-314
 1. 30 days after 4 months
 2. 30 days from date the personal representative receives notice from clerk of the filing of the claim if claim if filed after the 4 month period
 - iii. Payment of claims before time period for claims has run – TCA § 30-2-318

5. Closing Estate
 - a. Distribution
 - b. On Receipt and Waiver or Final Accounting?
 - i. Receipt and waiver
 - ii. Final Accounting
 - iii. Fees and expenses
 1. Attorney
 2. Personal Representative
 - c. Insolvent Estates
 - d. Petition to Close should state the following:
 - i. That personal representative has properly administered the estate.
 - ii. That personal representative has paid or settle all lawful claims and that written satisfaction has been filed in this cause of the same.
 - iii. That the personal representative has paid or set aside funds to pay all expenses of administration.
 - iv. Notice to creditors has been published and all known or reasonably ascertainable creditors have been give notice pursuant to TCA § 30-2-306 (d).
 - v. Estate been distributed according to will or laws of intestate succession.
 - vi. TennCare has been notified, affidavit filed, and release attached.
 - vii. Beneficiaries notified and affidavit filed regarding the same.
 - viii. For decedents who passed in 2016, a Tennessee inheritance tax closing letter is no longer required.
 - ix. Whether any beneficiary is under a disability.
 - x. Receipt and waiver obtained and filed with petition (or accounting filed and approved by clerk).
 - e. Order
 - i. Granting requested relief by discharging personal representative and closing estate
 - f. Reopening Estates
 - i. When, How and Why?
6. Small Estates- TCA § 30-4-101 et seq.
 - a. What is a small estate?
 - i. Personal Property payable to the decedent's estate where the value does not exceed \$50,000
 - b. When is a small estate affidavit ripe?
 - i. 45 days from date of decedent's death
 - c. Who can file a small estate affidavit?
 - i. Any Adult Beneficiaries of Estate (Testate or Intestate)
 - ii. Nominated Personal Representative in Will
 - iii. Any Creditor proving that creditor's debt on oath before the court
 - d. What is needed to file?
 - i. Death certificate

- ii. Proof of asset value
 - 1. If you cannot determine value of asset, will you be allowed to file small estate affidavit?
 - e. Bond
 - i. When is it required?
 - 1. No waiver above \$25,000 per local practice???
 - ii. How to get it waived?
 - f. What about Creditors?
 - i. Ability to elect whether or not to give notice to creditors as required in regular administration
 - g. What happens after filing?
 - i. Affiant takes affidavit to those entities or person indebted to decedent's estate or any person having possession of property belonging to estate.
7. Muniment of Title- TCA § 32-2-111
- a. A will may be admitted for the limited purpose of establishing a Muniment of title to real estate.
 - i. No personal representative, letters testamentary, or publication to creditors
 - ii. File is closed the same day it is opened by the Clerk's office
 - iii. Pursuant to local rule XXI, a Petition to Admit Will as Muniment of Title and Affidavit as to Small Estate may be filed in the same decedent's estate
 - iv. Petition
 - v. Order
 - vi. Record a true and attested copy of the order and copy of the will with County Register's office
 - b. Admitting foreign will as Muniment of title only
8. Affidavits of Heirship
- a. No will, but real property is still in name of decedent
 - b. Requirements