

# Practice Tips

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This is a continuation of highlights from materials Mike McClory and I produced at the 45<sup>th</sup> Annual ICLE Probate and Estate Planning Conference in June.

## **Ancillary Proceedings**

A common situation exists where you have an out-of-state resident with real or personal property in Michigan, however, no probate proceedings are pending in Michigan. Did you know that real or personal property that is sited in Michigan could be sold or distributed directly to a foreign personal representative after the personal representative qualifies in Michigan?

The foreign personal representative would be required to file authenticated copies of their appointment with the Michigan court. Technically, Michigan land could then be conveyed by using a fiduciary deed. I would suggest, however, working closely with a title company on these matters.

Note, however, that the act of qualifying with the Michigan probate court does not result in an appointment by the Michigan court nor does it initiate administration.

## **Informal/Formal Proceedings**

Some of the most common mistakes practitioners make with respect to initiating probate proceedings are failing to recognize the difference between a priority to file an Application and Petition and the priority of appointment. Please see the following relevant statutes with respect to priority to make a petitioner application:

- a) MCL 700.3301 – Must be an interested person.
- b) MCL 700.1105(C) – Defines interested persons.
- c) MCL 700.3204(1) If only interested person is a minor, minor’s conservator may apply/petition.
- d) MCR 5.302(D) Custodial parent who files an appearance may petition to commence proceedings on minor’s behalf when minor is an interested person.

Another common mistake is to reflect parties other than interested persons (heirs/devisees) in the application/petition; *i.e.*, potential wrongful death claimants, contingent devisees, etc.

MCL 700.3203(1) outlines the priority for appointment in EPIC. Recognize that even though you may have a proper petitioner, that petitioner may not have priority to serve as the personal representative.

Note that a personal representative nominated in a will cannot give away his or her priority unless the will provides for the same, or unless he or she otherwise has priority as an heir or devisee (MCL 700.3203(3)). Further, EPIC does not preclude non-residents or foreign citizens from serving and

creditors may serve if the court finds them “suitable.”

With respect to creditors serving as personal representatives, the court may determine a conflict of interest because personal representatives make decisions concerning the validity of claims. Finally, I would note that if you have a probate file with co-personal representatives, recognize that these co-personal representatives must act as one unless the will contains a statement to the contrary (700.3717). As a practice tip, you should consider the practical difficulties of obtaining two signatures and consensus for all actions regarding the estate.

## **Reopening Closed Estates**

The most common mistake that practitioners make in closing estates is closing them prior to a full and complete distribution of all the assets. While this may seem simple, oftentimes we are reopening estates where real estate has not been properly transferred. Oftentimes the personal representative will account for the property listed in their inventory, pay the associated fees with the administration of the real estate and fail to transfer real property by filing a deed. The other most common cause for the reopening of estates is after-discovered assets.

With respect to reopening an estate, please note:

- a) Interested persons are the same as if commencing an estate.
- b) If prior estate was supervised, you must reopen with a petition.
- c) If petitioning and using PC 569 Order of Formal Proceedings, it is not necessary to determine the heirs because you are only requesting the court to reopen a previously administered estate. If you desire the heirs determined, they would be determined as of the date of death, not the date the estate was opened.
- d) Reopened estate is treated as a new case for determining when filing the inventory, calculation/payment of inventory fees, etc.
- e) Continue normal administration procedures. Pleadings filed (Inventory, Sworn Statement, Certification of Completion) will be reflected as Supplemental.

If you have specific questions regarding ancillary proceedings, priorities or reopening of estates, please contact me at your convenience. Stay tuned!