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Question #1: What questions should we as agents ask the potential heirs when the property owner has died? What things we should be aware of before accepting a listing? For example, if there is a will, how do we proceed? If there is not a will, what steps do the heirs need to take?

(a) When a person dies with a will, the person is said to have died "testate." When a person dies without a will, the person has died "intestate."

(b) When a person has died, a search should be made to see if that person (the decedent) left a will. A search should also be made to determine if the decedent had a safe deposit box, since the will and other valuable papers or items may be in the safe deposit box. If a will is discovered in the safe deposit box, it must be filed with the Clerk of Superior Court. [G.S. 28A-15-13(d)]. If there is a will, the Clerk of Superior Court, upon application [Application For Probate And Letters, AOC-E-201], issues "letters" to the person who qualifies as executor of the will. "Letters Testamentary" [Letters, AOC-E-403] are the official written authorization for a person to carry out the responsibilities of executor of a will.

(c) If the decedent dies intestate, that is, without leaving a will, "letters" are issued by the Clerk of Superior Court, upon application, [Application For Letters Of Administration, AOC-E-202] to the person who qualifies as administrator of the estate. "Letters" [AOC-E-403] are the official written authorization for a person to carry out the responsibilities of administrator of an estate. [G.S. 28A-4-1(b)].

Notice to Creditors [Affidavit Of Notice To Creditors, AOC-E-307]

After letters are issued, a personal representative must cause a notice for creditor's claims against the estate to be placed in a newspaper "qualified to publish legal advertisements" which is published in the county where the estate is being administered. If there is no qualified newspaper printed in the county, then:

(i) the notice must be published in a newspaper of general circulation in the county and posted at the courthouse, or

(ii) a copy of the notice must be posted at the courthouse and in four other public places in the county.

Notices to creditors must be published once a week for four (4) consecutive weeks and should state that claims must be filed by a date certain, which date is at least three (3) months from the date of first publication of the notice. Posted notices must state that claims must be filed by a date certain, which date is at least three (3) months from the date of first posting of the notice.

Within seventy-five (75) days after the granting of letters and prior to filing proof of publication and/or posting with the Clerk of Superior Court's office, the personal representative must also personally deliver or send by first class mail a notice about how, when, and where to file claims against the estate to all creditors (including the Department of Health and Human Services, Division of Medical Assistance, if at the time of the decedent's death the decedent was receiving Medicaid) who are actually known or can be discovered upon reasonable investigation. However, no notice need be delivered or mailed with respect to any claim that the personal representative already recognizes as valid and has or will pay the claim. Following publication, a copy of the notice, an affidavit from the newspaper attesting to publication, and, as applicable, an affidavit from the personal representative attesting that he or she has mailed or personally delivered the notice, must be filed with the Clerk of Superior Court. [G.S. 28A-14-1, G.S. 28A-14-2].

A Practical Duty Checklist for an Executor in North Carolina

1. Commencing the Probate Process

As an executor in North Carolina, you must begin the process by critically reading the will, followed by filing a petition with the probate court. It's important to avoid any unreasonable delays in commencing the process since it could cause unnecessary suffering for estate heirs relying solely on the subsequent distribution of the assets. It could also be viewed as a violation of the fiduciary duty.

2. Estate Appraisal in North Carolina

Identify and collect all relevant estate assets. File an inventory, appraise the assets, and ensure the records remain intact. Proper record-keeping allows you to easily provide the North Carolina probate court with an accurate list of current assets. The inventory and appraisal put everything in the open in addition to simplifying the final accounting process.

3. Managing the Estate Assets in North Carolina

Managing the estate is one of the most challenging responsibilities undertaken by an executor in North Carolina. You need to ensure that all assets are well maintained, invested, secured against theft, and protected for distribution to the beneficiaries later. Deposit any cash assets in an interest-bearing account so the beneficiaries can collect a profit on that asset as they await the conclusion of the probate. If there are any high-risk assets, such as risky financial investments, act prudently and liquidate the assets to avoid future losses.

4. Notifying Creditors and Beneficiaries

This is a critical function in the process since all creditors' claims must first be resolved before any distribution of assets to the beneficiaries occur. After commencing the probate process, you have a legal duty to inform all known creditors and beneficiaries of impending hearings. If some creditors are unknown, provide adequate notice through a newspaper. The creditors are then given a chance to submit their claims to the court by the deadline provided in the notice. If for whatever reason, a creditor fails to submit their claim by the deadline, they are forever forbidden from collecting their dues.

5. Paying Taxes and Debts

The North Carolina Probate process also ensures that government taxes are paid and that creditors receive their dues before distributing assets to beneficiaries can occur. It's important to note that not all claims are valid – it's your job to work diligently with the court's help to determine the authenticity of a claim.

6. Record-Keeping and Detailed Accounting

It's your responsibility as the executor to provide a detailed accounting to the court before the estate's closure. File every receipt and document received and present a detailed accounting for the court. If you misplaced some documents and failed to appear in the final document, your accounting may not be accepted by the Court.

7. Closing the Estate and Distribution of Assets to Beneficiaries

Finally, when you're done, file a final account with the probate court as you seek a court order to distribute the remaining assets to the beneficiaries, pay attorneys, and yourself. It's at this point that your account is approved or rejected.

It's important to note that there may arise serious disagreements during the distribution as some beneficiaries receive what they had not expected. At this point, they can follow the legal procedure and contest the will if they so wish.

Question # 2: When is a "free trader" form needed for a transaction?

-A free trader allows a married person to purchase and sell property without the joinder of their spouse. It is typically used :

a) in a separation or pending divorce situation

b) by a married person wishing to hold title alone, and not wanting their spouse to be involved with any future transactions involving the property (sale, refinance, etc.)

**REMEMBER—a free trader is not retroactive...it only applies to property acquired by either spouse AFTER the recording of the agreement

QUESTION # 3: Most fence companies don't put the fence on the property line but move it 2-3" off the property line. Some HOAs require the neighbors to attach to the existing fence. How best can a property owner protect themselves for future survey issues?

-DO NOT have a fence installed without the benefit of a current survey

-If possible, have fencing contractors build along the line. This prevents neighbors from having to encroach to "tie-in" to your fence

-If you know one of the parties will be encroaching on the other, consider having an encroachment agreement drawn to alleviate any future title concerns.

QUESTION # 4: We are hearing about and, in a few instances, experiencing individuals who call in stating they have land or a property to sell and want it listed quickly. They don't want to provide their driver's license id OR get on a zoom call with us. They don't care about the listing price, just a rush to get the property listed. This causes a 'red flag' for the agent. What suggestions or recommendations do you have that might help us identify if this is a scam or not?

-If all of the above facts are true…it's a scam! This is really happening and the risk to everyone involved is too great to not verify a seller's identity.

-INSIST on meeting in person with potential listing clients. If that's not possible, insist on at least a zoom call and have them provide ID. There's really no reason that a person should object to one or the other, and if they do, walk away.

QUESTION # 5: We are hearing more and more attorneys are no longer ordering surveys. Is that a trend you are seeing? Do you order surveys for buyers? If so, what's the turnaround time you are experiencing?

-Yes, as long as the property is within an hour's drive from the Triangle, we will order surveys.
-Turnaround times vary with the market. Our go-to surveyors average about a 3 week turnaround.

QUESTION # 6: We represent the buyer. Seller does not disclose a material fact. In the inspection, buyer finds out the seller was aware of said material fact. This is because the buyer hired a company to inspect, and that company also did work for the seller recently and disclosed the seller was aware of the problem. What recourse does the buyer have at this point?

-The failure to disclose a material fact is grounds for termination of the contract and a return of all deposits to the buyer.

-In this scenario, it would be easy to prove that seller had "actual knowledge" of the material fact. This is often a grey area…a material fact being something the seller "should have known" is not legally sufficient grounds for termination.

QUESTION # 7: Any issues you are hearing about that we as realtors needs to be on aware of?

-Wire fraud is still a concern

-Know your client's marital status!

-Before negotiating concessions, have an idea of actual closing costs