

OFFICE OF  
APPELLATE COURTS

JAN 18 1984

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C3-84-146

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STATE OF MINNESOTA

IN SUPREME COURT

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In Re Proposed Minnesota Probate Rules

Hearing on Rules Recommended by  
Advisory Committee on Probate Rules

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ADVISORY COMMITTEE STATEMENT AND APPENDIX ON PROPOSED RULE 8

Member of Advisory Committee:

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## Question Presented

Should problems with respect to the administration of real property in decedents' estates be addressed in proposed rule 8.

## Statement of the Case

The Supreme Court established an advisory committee on probate rules by its order dated January 24, 1984. The advisory committee submitted proposed rules which the Court considered at a public hearing on July 30, 1986. On September 24, 1986, the Court determined to return the rules to the advisory committee for additional drafting and to seek legislation authorizing the promulgation of such rules. Minnesota Statutes section 480.051 was amended by Chapter 377 of the Session Laws for 1987 empowering the Court to promulgate probate rules.<sup>1</sup> In 1988, the advisory committee submitted revised rules to the Court with its recommendation for adoption. Two members of the advisory committee dissent from the recommendation to adopt rule 8.

## Statement of the Facts

### I. MINNESOTA'S SYSTEM OF ESTATE ADMINISTRATION

The Uniform Probate Code (UPC) was drafted by the National Conference of Commissioners on Uniform Laws. It was approved by that organization and the American Bar Association in August, 1969, and recommended for adoption in all states.<sup>2</sup>

The project which produced the UPC received considerable attention when widespread public discussion of probate law reform was generated by the 1966 bestseller How to Avoid Probate and other publications.<sup>3</sup> The UPC is intended to provide ways in which the time may be substantially shortened, the procedure simplified and the expense lessened in probating a will or administering an estate.<sup>4</sup>

Article III of the UPC covers the subject of probate and contest of wills, appointment of personal representatives, status, powers and duties of personal representatives, and administration and distribution of decedent's estates. Overall, the Article creates what has been called "The Flexible System of Administration of Decedents' Estates". The objective of the system is to provide necessary opportunities and safeguards to permit persons interested in decedents' estates to be able to settle estates with quite minimal contact with any public office. The key concept, changing the relationship between probate courts and personal representatives, is that the court or registrar,

though inevitably involved in the creation of the status of personal representative, does not exercise supervisory jurisdiction over its appointee. Without regard for whether appointment was secured in formal proceedings before the court, or obtained in informal proceedings before the registrar, the appointing court or registrar has no authority to check the work of a personal representative or to make orders relating to him or her, except when either the representative or other interested person petitions for some order or relief in proceedings begun after the appointment has been completed (or when supervised administration is ordered).<sup>5</sup>

Beginning on January 1, 1976, settlement of decedents' estates in Minnesota has been carried out within the system for administration established in Article III of the Minnesota Uniform Probate Code (MN UPC).<sup>6</sup>

This system for the administration of decedents' estates is discussed in the "General Comment" preceding the text of Article III of the UPC.<sup>7</sup> Its essential characteristics include:

- (1) After the decedent's death, interested persons may obtain the appointment of a personal representative, who will acquire through appointment the duties and powers attending the office of personal representative.
- (2) Two methods of securing probate of wills are provided: (i) informal probate, which is a non-adjudicative determination, and (ii) formal probate, a judicial determination after notice to all interested persons. Informal probate of a will is not a final adjudication of its validity and the validity of the will may be challenged in a formal testacy proceeding commenced within the later of twelve months from the informal probate or three years after the decedent's death. If not so challenged, an informally probated will becomes final under a statute of limitations.
- (3) Two methods of securing the appointment of the personal representative are provided: (i) informal appointment, which is appointment without notice and without final adjudication of matters relevant to priority for appointment, and (ii) formal appointment, which is appointment by judicial order after notice to interested persons.
- (4) Personal representatives have statutory powers enabling them to collect, protect, sell, distribute and otherwise handle all steps in administration without further order of the Court except that when supervised administration is sought and ordered the personal representative may be subject to special restrictions on power as endorsed on

his letters and he shall not exercise his power to make any distributions of the estate without the prior order of the Court. No difference in the duties or powers of the personal representative turns on the method of appointment except that in Minnesota a personal representative appointed in an informal proceeding does not secure the power to sell, encumber, lease or distribute real estate until 30 days after the issuance of letters.

- (5) Purchasers from personal representatives and from distributees of personal representatives are protected so that adjudications regarding the testacy status of a decedent or any other question going to the propriety of a sale or distribution are not required in order to protect purchasers.

II. PROTECTION OF PURCHASERS FROM PERSONAL REPRESENTATIVES AND DISTRIBUTEES IS ESSENTIAL TO MINNESOTA'S SYSTEM OF ESTATE ADMINISTRATION.

The protection afforded purchasers from personal representatives and distributees is an essential characteristic of Minnesota's system of estate administration because without that protection, the possibilities of informal probate and appointment proceedings and distribution of estates without court supervision are not feasible. This protection is provided under Minnesota Statutes sections 524.3-714 and 524.3-910.<sup>8</sup>

**Illustration:**

1. O, a widow and the owner of real property, dies. O's will is probated and PR is appointed personal representative of O's estate. PR sells the real property to A for value, delivering to A (i) a certified copy of letters (30 days have elapsed since issue) and (ii) his deed conveying the real property to A. The fact that A knows he is dealing with PR, as personal representative of O's estate, does not require A to inquire into the existence of PR's power to convey the real property or the propriety of its exercise. A is protected as if PR properly exercised his power as personal representative of O's estate. If O's will provides that PR is prohibited from selling real property, this provision of O's will is not effective as to A unless he had actual knowledge of the provision.

A purchased the real property with the protection stated in section 524.3-714. Absent actual knowledge of a will prohibiting PR's sale, A need have no concern with O's testacy status.

If A's good title to the real property required him to know whether a provision of O's last will prohibited PR's sale to him, PR would need to secure an adjudication determining (i) whether O

died testate, (ii) the identity of O's will if he died testate, and (iii) the construction of O's will if based on the facts at the time of sale it is unclear whether the provisions of O's will prohibits the sale to A. Informal probate of O's will would not provide good title to A because it could be changed or replaced by a second testamentary instrument in a subsequent probate adjudication.

#### Illustration:

2. O, the owner of real property, dies survived by his wife W. O's will, which names W as sole devisee and personal representative, is probated. W is appointed personal representative of O's estate. W, as personal representative, but without judicial settlement of the estate, distributes the real property to herself as distributee, delivering (i) a certified copy of letters (30 days have elapsed since issue) and (ii) her deed conveying the real property. As distributee, W sells the real property to A for value, delivering her deed conveying the real property to A. Whether or not the distribution to W was proper, A is protected and takes title to the real property free of any claims of the estate and any interested person and incurs no personal liability to them. If O's will provides a specific gift of the real property to C, this provision of O's will is not effective as to A unless he had actual knowledge of the provision.

A purchased the real property with the protection stated in section 524.3-910. If A were not afforded that protection, W would be required to seek a judicial settlement of O's estate in order to give A good title to the real property.

### III. CURRENT PRACTICE IN ESTATE ADMINISTRATION OF REAL PROPERTY.

In practice, Minnesota's system of estate administration is significantly affected by requirements with respect to the administration of real property. The requirements are those recommended in an article commonly referred to as the "White Pages", included in Minnesota Title Standards, a publication of the Section of Real Property Law of the Minnesota State Bar Association.<sup>9</sup> Generally, the portion of the article stating the author's recommendations as to instruments required to sell or distribute real property in a decedent's estate evidence current practice in Minnesota.

In Illustration 1, PR delivered a certified copy of his letters and his deed to A. Current practice would require PR to also deliver to A a certified copy of O's will and a certified copy of the order probating the will. The certified copies would be recorded with the County Recorder in each county in the state in which the real property is located. The full text of the will

would be set forth in the abstract of title with respect to every such parcel of real property. Recording and publication in abstracts of O's will would cause a loss of privacy to O's family. The will might contain sensitive provisions concerning members of the family. The estate will incur the expense of the certified copies and their recording and the expense of including the will and order in each abstract of title. In every future sale of the real property, the purchaser will incur the additional expense of his title examiner's study of the provisions of O's will. If the real property consists of 80 acres which at a later date is subdivided into 60 lots, the abstract of title to each lot will publish O's will and the purchaser of every lot on every occasion that the lot is sold will incur the additional expense of the study of O's will by the purchaser's title examiner. While A and any subsequent purchaser has no duty to inquire concerning the existence and provisions of O's will, the publication of the will in the abstract of title to the property gives actual knowledge to each purchaser who examines the title, requiring a full text study of the provisions of the will.

The notion that a purchaser from an estate must make a full text study of the decedent's will is a relatively recent development. As the White Pages still provide, a purchaser from an estate prior to July 1, 1976, required the recording of a certified copy of the will if the power of the executor to convey was based on a power of sale contained in the will. Examiners considered it sufficient if the abstract of title set forth the boiler plate provisions stating that the power of sale and a full text study of the will was not undertaken in spite of the now perceived risk that a dispositive provision of the will might have made a specific devise of the will in a manner which would have effectively prohibited the executor from making the sale. While the current practice requires the full text study of the will, it requires no assurance that the will is final. Thus, the purchaser may rely on an informally probated will with no provision prohibiting sale by the personal representative in spite of the risk that the will may be changed or replaced in a subsequent probate adjudication.

Generally, policy favors testacy and the public believes that it is desirable for individuals to make a will. In an estate with real property, the cost of administration will be increased if the decedent died testate because of the current practice requiring the recording and publication in abstracts of title of the decedent's will.

If a decedent dies testate, it is generally believed that it is desirable to probate the will. In Illustration 1, the decision might have been made not to probate O's will. In that case, PR would not be required to deliver a certified copy of the will, a family's privacy would be preserved and the additional expense would be saved by both the estate and the purchaser.

Current practice requirements for distribution of real property create a more significant problem. Our citizens are effectively denied the choice of non-judicial settlement which our system of estate administration was intended to make available to them.

The White Pages present exceptions to the general requirement of judicial settlement for every distribution of real property.<sup>10</sup> But satisfying an exception is so exceedingly complex that conservative practice strongly encourages the "safe" approach of seeking a judicial settlement in each estate. The cost of a personal representative's error in relying on an exception could be significant, possibly including adjudications to reopen and close O's estate and the loss of a sale or damages for failure to deliver to purchaser as promised.

A personal representative willing to rely on one of the exceptions must first determine whether it applies to the facts. For example, W in Illustration 2 might rely on an exception which would allow her to deed the real property to herself without a judicial settlement. Referring to an exception is nearly as challenging as finding one which applies to specific facts. If in Illustration 2, O's will was informally probated, it appears that the facts fit one of the exceptions stated in sub-paragraph (i) of paragraph (a) [Testate Probates:] of sub-section (1) [Under informal probate proceedings.] of Section a. [DISTRIBUTION PROCEDURES.] of Sub-part 2. [PROBATE UNDER MINNESOTA STATUTES CHAPTER 524.] of Part F [PROBATE DEEDS] of CHAPTER 1 [INSTRUMENTS REQUIRED TO TRANSFER TITLE TO REAL PROPERTY IN MINNESOTA] of the White Pages. A shorter reference might be WP 1 F 2 a (1)(a)(i).<sup>11</sup>

This exception requires W (as personal representative) to deliver a certified copy of O's will and a certified copy of the order probating the will to herself (as distributee) for recording in every county in which the real property is located. If current practice recognized section 524.3-910's protection of a purchaser for value, W would not need to record the will. If the White Pages' premise is that a purchaser from W (as distributee) must examine O's will to determine whether the distribution to W was proper, then reliance on this exception is a mistake because O's will is informally probated and may be changed or replaced by a second testamentary instrument in a subsequent probate adjudication. Logically, it would seem that if you need to know the will's provisions, you need to know the final will.

The will in Illustration 2 devised the entire estate to W. WP 1 F 2 a (1)(a)(i) would also except the requirement of judicial settlement if O's will devised not the entire estate but only the residue to W.<sup>12</sup> If the purchaser must examine the will to ascertain whether the distribution to W was proper, this exception seems wrong because the will examination will not establish that the distribution was proper. As an example, if

O's will made a \$100,000 devise to C and the residuary devise to W, the distribution of the real property to W would be improper if the personal representative would be left with insufficient assets to make full distribution of the devise to C. So too, examination of a will devising the entire estate to W cannot assure a purchaser that distribution is proper; it may be that the personal representative would be left with insufficient assets to pay creditors.

If in Illustration 2 the will was formally probated, W may not rely on the WP 1 F 2 a (1)(a)(i) exception, but the WP 1 F 2 a (2)(a) exception should apply.<sup>13</sup> Again, the same certified copies must be delivered and recorded.

#### IV. EX PARTE SETTLEMENT OF ESTATES BY REGISTRARS.

Article III of the Minnesota UPC specifies three functions which are performable by the registrar.<sup>14</sup> The functions performable by the registrar may be performed by the judge of the court or by a person, including the court administrator or deputy court administrator, designated by the court.

The key functions concern the two informal proceedings which are part of Minnesota's system of estate administration.<sup>15</sup> When presented with a will and an application for its informal probate, the registrar shall accept the application and issue a written statement of informal probate or decline the application. When presented with an application for appointment of a personal representative, the registrar shall appoint the applicant or decline the application. In each proceedings, the registrar's decision whether to accept or decline is an administrative determination made without notice and without final adjudication.

The third function is the release of security given by a personal representative, or his surety, when the personal representative appears to have fully administered the estate in question and his appointment has terminated.<sup>16</sup> The release does not affect the liability of the personal representative or any surety.

In addition, section 524.1-307 authorizes the registrar to perform specified administrative acts and such other acts as the court may by written order authorize as necessary or incidental to the conduct of informal proceedings.<sup>17</sup>

In practice, some Minnesota registrars issue orders making the following determinations.<sup>18</sup>

- (a) The names of the persons who are the devisees under a will giving property "to my children" or "to my spouse".
- (b) The legal description of the real property which is the subject of a devise of "my homestead".



- (c) The name and relationship of each heir of the decedent, and the interest or fractional share of each heir in specific property.

Registrars have no authority to make such determinations unless authorized to do so by court order.<sup>19</sup> It is not known to what extent such authority has been granted by order of the courts of Minnesota.

Registrars have made these determinations in response to White Pages exceptions to the current practice that a distribution of real property must be based on a judicial settlement of the estate. Determinations (a) and (b) are made in estates in which a will is informally probated.<sup>20</sup> Determination (c) is made in estates in which no will has been probated.<sup>21</sup> Certified copies of the orders making these determinations are recorded in order to satisfy the specific White Pages exceptions.

Generally, registrars are court administrators or deputy court administrators. Few are lawyers. The determinations in question purport to determine the rights of interested persons to receive distribution of estate assets. The orders issued are intended to serve a perceived need of current real property practice in lieu of a judicial settlement of the decedent's estate. The determinations are not final adjudications on notice to interested parties, but ex parte administrative acts.

Courts determine the rights of parties in a judicial proceeding with notice and other requirements of due process accorded all interested persons. Registrars are not authorized to make judicial determinations and should not purport to make non-judicial determinations of such rights. The determinations in question lack finality and are not adjudications which will bind interested persons. Improperly, they are accorded weight by personal representatives and others who act or forebear from action in reliance on them. In practice, the determinations may affect the rights of interested persons without due process or require personal representatives and others who acted in reliance on them to make up losses resulting from what a later adjudication determines was an improper distribution of estate assets.

A registrar who issues an order determining the identity of the heirs of a decedent and the interest or fraction of each heir in specific property acts on the information presented in an application for informal appointment of the personal representative and does so at the time the order appointing the personal representative is issued. Rarely will the registrar possess the legal education necessary to recognize the issues which must be considered or the evidence which must be presented in order to make a proper determination. Often the information needed to make a proper determination will not be ascertained for months and a plan of distribution made at the beginning of administra-

tion will be inadequate. Issues to be resolved may include the following:

- (a) Whether payment of expenses of administration, funeral expenses, and creditors' claims may require the sale of a specific asset which is the subject of the order.<sup>22</sup>
- (b) Whether payment of maintenance to a surviving spouse or to minor children may require the sale of a specific asset which is the subject of the order.<sup>23</sup>
- (c) In an estate in which the surviving spouse is entitled to the first \$70,000, plus one-half the balance, the value of estate assets may be necessary.<sup>24</sup>
- (d) Whether a relative of the decedent conceived before death was born thereafter or may yet be born.<sup>25</sup>
- (e) Whether a relationship of parent and child exists may need to be established to determine succession by, through, or from a person.<sup>26</sup>
- (f) Whether the decedent gave property in his lifetime to one or more heirs which should be treated as an advancement, and the value of the property advanced as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs.<sup>27</sup>
- (g) Whether one or more heirs were indebted to the decedent and the present value of any indebtedness not due.<sup>28</sup>

V. LACK OF UNIFORMITY IN ESTATE ADMINISTRATION OF REAL PROPERTY.

A survey of Minnesota registrars indicates a significant lack of uniformity with respect to their practice and procedures. A majority will not make some of the determinations which the White Pages require to satisfy its exceptions to a judicial settlement of each estate.<sup>29</sup>

A survey of Minnesota examiners of titles indicates the majority will accept procedures which satisfy White Pages requirements. But a significant lack of uniformity is evidenced.<sup>30</sup>

While most personal representatives will conduct the administration of the decedent's estate in a way which will satisfy White Pages' requirements for the handling of real property, there is a lack of uniformity from two sources:

- (a) Some take advantage of the flexibility and choice our system of administration was designed to provide;

electing to distribute the estate without judicial settlement.

- (b) Some consider a judicial settlement essential to protect a purchaser from a distributee and will not rely on the administrative determinations of a registrar in lieu of adjudication.

The result is a lack of uniformity in administering real property in Minnesota and the conflict that results when one person's procedure fails to satisfy another person's standard.

### Argument for Rule 8

- I. THE PURPOSE AND EFFECT OF SECTIONS 524.3-714 AND 524.3-910 ARE CLEAR; PURCHASERS ARE PROTECTED AND RELIEVED FROM THE NEED TO INQUIRE (1) INTO THE EXISTENCE OR PROPER EXERCISE OF THE PERSONAL REPRESENTATIVE'S POWER OF SALE OR (2) INTO THE PROPRIETY OF THE PERSONAL REPRESENTATIVE'S ACTION IN MAKING DISTRIBUTION IN KIND.

The express language of section 524.3-714 clearly states its purpose and effect.<sup>31</sup> It is intended to relieve one purchasing real property from an estate of the need to inquire into the existence and provisions of the decedent's will. The comment to the UPC counterpart to section 524.3-714 confirms this.<sup>32</sup> It is essential to Minnesota's system of estate administration that a purchaser be relieved of the need to make such inquiry. Except as to a purchaser with actual knowledge, section 524.3-714 effectively provides the protection which relieves the purchaser of the need to inquire.<sup>33</sup>

Section 524.3-910 is equally clear.<sup>34</sup> It is intended to relieve one purchasing from the distributee of an estate of the need to inquire whether the personal representative acted properly in making distribution of the property in kind. It is essential to Minnesota's system of estate administration that a purchaser be relieved of the need to make such inquiry. Except as to a purchaser with actual knowledge, section 524.3-910 effectively provides the protection which relieves the purchaser from the need to inquire.

- II. SECTIONS 524.3-714 AND 524.3-910 DO NOT DEPRIVE HEIRS OR DEVISEES OF A PROPERTY INTEREST WITHOUT DUE PROCESS OF LAW.

Rights of succession to the property of a decedent, whether by will or by intestacy, are of statutory creation. Nothing in the United States Constitution forbids the legislature to limit, condition or even abolish the power of testamentary disposition.<sup>35</sup>

Illustration:

3. O, a widow and the owner of real property, dies. O's will is probated and PR is appointed personal representative of O's estate. The will provides for a devise of real property to C. PR sells the real property to A for value. A has no actual knowledge of the provision of O's will making the devise of the real property to C. A makes no inquiry whether the sale by PR is proper. A is protected and takes title to the real property as if PR properly exercised his power as personal representative of O's estate.

Section 524.3-714 qualifies the effect of the provision in O's will which purports to devise the real property to C. The provision is not effective as to A who is afforded the statutory protection. C's interest in the real property is subject to section 524.3-714 and C is not deprived of a property interest when its application protects A.

Illustration:

4. O, the owner of real property, dies and PR is appointed personal representative of O's estate. PR distributes the real property to C, and C sells the real property to A for value. A makes no inquiry whether PR acted properly in making the distribution in kind to C. Whether or not the distribution to C was proper, A is protected and takes title to the real property free of any claims of the estate and any interested person and incurs no personal liability to them.

Section 524.3-910 qualifies the rights of the heirs or devisees of O's estate to distribution of the real property. Their right to distribution is not effective as to A who is afforded the protection of section 524.3-910. The interest of O's heirs or devisees in the real property is subject to the section and they are not deprived of a property interest when its application protects A.

III. PROBLEMS WITH RESPECT TO THE ADMINISTRATION OF REAL PROPERTY IN DECEDENTS' ESTATES REQUIRE THE ADOPTION OF RULE 8.

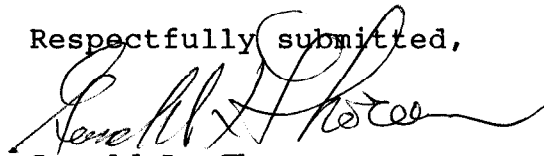
Generally, current practice with respect to the administration of real property in Minnesota is premised on the position that sections 524.3-714 and 524.3-910 fail to provide a purchaser with the protection intended. The sections are intended to relieve the purchaser from inquiry as to the provisions of the decedent's will and as to whether the personal representative acted properly in making distribution of the property in kind. Current practice has the exact opposite effect, of imposing upon the purchaser the duty to make such inquiries. The consequences of current practice are:

- (a) Minnesota's system of estate administration cannot function as intended.
- (b) Privacy with respect to family property dispositions and other sensitive matters stated in wills is lost by requirements for recording wills and their publication in abstracts of title.
- (c) Intended economy in the administration of real property is lost by the requirements for recording and publication in abstracts.
- (d) The duty of inquiry intrudes purchasers into family settlement of decedents' estates and imposes on purchasers the burden of determining whether the provisions of a will restrict in any manner the power of the personal representative to sell.
- (e) The public is deprived of the availability of non-judicial settlement procedures intended by the MN UPC.
- (f) Probate registrars grant ex parte settlement of estates by administrative act, without notice to interested parties: often on an untimely basis, without consideration of relevant issues, and without the competence or evidence necessary to address such issues.
- (g) There is a substantial lack of uniformity in estate administration of real property.

Families and the public generally should not find their desire for simple effective settlement of decedents' estates severely compromised by the cost of unnecessary judicial proceedings, the baffling complications of existing procedure and practice, and the delay involved in bringing proceedings to a conclusion.<sup>36</sup>

If practice with respect to estate administration of real property is carried out in conformance with Rule 8, Minnesota's system of estate administration can function as intended. The MN UPC was intended to simplify and clarify the law concerning the affairs of decedents and promote a speedy and efficient system for liquidating the estate of a decedent and making distribution to his successors. Current practice deprives the public of those purposes.

Respectfully submitted,



Gerald L. Thoreen

## TABLE OF AUTHORITIES

### Footnote:

- 1 Minnesota Statutes, section 480.051
- 2 Uniform Probate Code (ULA), III and 1 (1983)
- 3 Uniform Probate Code Practice Manual, xiii (1972)
- 4 Uniform Probate Code Practice Manual, ix (1972)
- 5 Uniform Probate Code Practice Manual, xvi-xvii (1972)
- 6 Minnesota Statutes, Chapter 524.
- 7 Uniform Probate Code (ULA), 218-220 (1983)
- 8 See Appendix A-1 and A-2
- 9 See Appendix A-3
- 10 Minnesota Title Standards, White Pages, 25-28 (1986)
- 11 Minnesota Title Standards, White Pages, 25 (1986)
- 12 Minnesota Title Standards, White Pages, 25 (1986)
- 13 Minnesota Title Standards, White Pages, 27 (1986)
- 14 Minnesota Statutes, sections 524.1-201(36) and 524.1-307
- 15 Minnesota Statutes, sections 524.3-302, 524.3-305, 524.3-307 and 524.3-309
- 16 Minnesota Statutes, section 524.3-1007
- 17 Minnesota Statutes, section 524.1-307
- 18 Coursebook for May 1985 Annual Meeting of Minnesota State Bar Association, Probate and Trust Law Section, materials for lecture by Robert A. Burns, Dorsey & Whitney, Minneapolis, Minnesota, on subject, Real Property in the Probate Process, Appendix A, Probate Court Registrars Questionnaire, 230-231; see Appendix A-4
- 19 Minnesota Statutes, section 524.1-307
- 20 Minnesota Title Standards, White Pages, 26 (1986)
- 21 Minnesota Title Standards, White Pages, 26 (1986)
- 22 Minnesota Statutes, section 524.2-101

- 23 Minnesota Statutes, sections 524.2-101, 525.15 and 525.151
- 24 Minnesota Statutes, section 524.2-102
- 25 Minnesota Statutes, section 524.2-108
- 26 Minnesota Statutes, section 524.2-109 and the Minnesota Parentage Act, sections 257.51 to 257.74
- 27 Minnesota Statutes, section 524.2-110
- 28 Minnesota Statutes, sections 524.2-111 and 524.3-903
- 29 Coursebook for May 1985 Annual Meeting of Minnesota State Bar Association, Probate and Trust Law Section, materials for lecture by Robert A. Burns, Dorsey & Whitney, Minneapolis, Minnesota, on subject, Real Property in the Probate Process, Appendix A, Probate Court Registrars Questionnaire, 230-231; see Appendix A-4
- 30 Coursebook for May 1985 Annual Meeting of Minnesota State Bar Association, Probate and Trust Law Section, materials for lecture by Robert A. Burns, Dorsey & Whitney, Minneapolis, Minnesota, on subject, Real Property in the Probate Process, Appendix B, Probate Court Registrars Questionnaire, 232-233; see Appendix A-5
- 31 See Appendix A-1
- 32 Uniform Probate Code (ULA), 332-333 (1983); see Appendix A-6
- 33 Cowley v. Kaechelle, 144 Ariz. 205, 696 P 2d 1354 (1984); The Arizona code provision requiring court confirmation of the sale of real property in supervised administration was a complication which is not present in the UPC or the MN UPC; despite this complication the court gave effect to the statutory protection of the purchaser
- 34 See Appendix A-2
- 35 Irving Trust Co. v. Day, 314 U.S. 556, 86 L Ed 452, 62 S Ct. 398 (1942); 23 Am Jur 2d, Descent and Distribution §§9 and 10
- 36 Derek C. Bok, "A flawed system", Harvard Magazine, 38 (May-June 1983)

524.3-714 PERSONS DEALING WITH PERSONAL REPRESENTATIVE; PROTECTION.

(a) A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters a provided in section 524.3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

(b) If property is wrongfully transferred by a person acting as a personal representative to a person who is not in good faith, a subsequent good faith purchaser is protected as if the original transferee dealt in good faith. Any purchaser in good faith is protected as if all prior transfers were made in good faith.

**History:** 1974 c 442 art 3 s 524.3-714; 1977 c 156 s 1; 1978 c 525 s 15; 1986 c 444 s 1.



**524.3-910 PURCHASERS FROM DISTRIBUTEES PROTECTED.**

If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and any interested person, and incurs no personal liability to them, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

**History:** 1974 c 442 art 3 s 524.3-910; 1975 c 347 s 61; 1976 c 161 s 10

F. PROBATE DEEDS.

1. PROBATE UNDER CHAPTER 525. This section applies to all probate proceedings commenced and completed prior to January 1, 1976, the effective date of Chapter 524, known as Uniform Probate Code, or UPC.

a. Deeds from distributee in probate decree, require:

- (1) Certified copy of Decree of Distribution, Decree of Descent, Decree of Omitted or Incorrectly Described Property, or Summary Decree of a Minnesota Court.
- (2) Deed from person or persons who are decreed property, and spouses, if any.

NOTE: Above applies whether decedent died testate or intestate or whether decedent was a resident or nonresident. If land is located in Minnesota, there must be a Minnesota probate proceeding.

b. Deeds as result of sale during period of Probate.

NOTE: If Homestead: MINN. STAT. § 525.63 stated "The homestead of a decedent, when the spouse takes any interest therein, shall not be sold, mortgaged or leased unless the Written consent of the spouse has been filed," i.e. filed in the Probate Court file.

- (1) Executor's deed or Administrator's C.T.A. deed pursuant to power of sale contained in Will, require:
  - (a) Certified copy of Will;
  - (b) Certified copy of Order Admitting Will to probate;
  - (c) Certified copy of letters;
  - (d) Executor's or Administrator C.T.A.'s Deed.

NOTE: If the Will is a foreign Will, the certified copy of order should admit the foreign Will (MINN. STAT. § 525.271), a Minnesota Court must appoint a Minnesota representative, and the deed must be from the Minnesota representative.

- (2) Executor's Deed where Will contains no power of sale, or Administrator's Deed pursuant to Court Order, require:
  - (a) Certified copy of letters testamentary or letters of administration. See Minn. Title Standard No. 39.
  - (b) Certified copy of Order Directing Sale. See MINN. STAT. § 525.641.
  - (c) Certified copy of Order confirming Sale. See MINN. STAT. § 525.662.
  - (d) Executor's or Administrator's Deed. See MINN.

- c. Deeds pursuant to a contract for deed of a decedent, require:
  - (1) Certified copy of letters.
  - (2) Certified copy of Order for Conveyance pursuant to contract. See MINN. STAT. § 525.69.
  - (3) Executor's or Administrator's deed pursuant to a contract for deed of a decedent.

2. **PROBATE UNDER MINNESOTA STATUTES CHAPTER 524.** This section applies to all probate proceedings commenced or completed after January 1, 1976, the effective date of Chapter 524, known as Uniform Probate Code, or UPC.

**NOTE:** An informal probate proceeding without appointment by a Minnesota Court will not be recognized as effective to transfer an interest in real property.

- a. **DISTRIBUTION PROCEDURES.** (By deed, decree or order, including any interest decedent owned in real property, whether it be a fee interest, individual interest, vendor or vendee's interest under a contract for deed, or a leasehold interest of three years or more).

- (1) Under informal probate proceedings.

**CAVEAT:** Under all informal proceedings the title examiner must substantiate from evidence available that the notice required by MINN. STAT. § 524.3-310 has been given. If the Probate Court will permit letters to issue without requiring evidence that the notice requirements will be fulfilled, the title examiner must ascertain that such notice requirements will be fulfilled. We recognize that unless the Probate Court requires evidence of the giving of notice be filed, that this requirement places an extremely difficult, if not impossible, burden of substantiation on the examiner.

- (a) Testate Probates:

- (i) If Will identifies real property and is specific in designation of devisee or devisees by name, or where entire estate or residue is given to a devisee or devisees by name, require:

- (aa) Certified copy of unrestricted letters (30 days must have elapsed since date of letters; also certificate must state that no objection to appointment has been filed and/or no formal proceedings have been commenced or title examiner must check

Probate Court file for this information.  
MINN. STAT. § 524.3-310).

- (bb) Certified copy of Will and verification that Will is admitted for probate.
- (cc) Personal representative's deed of distribution to devisee together with consent of surviving spouse if appropriate.
- (dd) Deed from devisee and spouse, if any.

NOTE: It is proper for personal representative to convey to self if the Will meets qualifications of (i) above.

- (ii) If Will describes a class of devisees or the spouse without specific names (for example, I give Blackacre "to my children" or "to my spouse"), in addition to (i) (aa), (bb), (cc), and (dd) above, require certified copy of Registrar's Determination of Heirs, or a court order determining heirs and/or devisees.
  - (iii) If the Will devises "my homestead" without a legal description of said homestead, in addition to (i)(aa), (bb), (cc), and (dd) above, require certified copy of Registrar's Determination stating the legal description of the homestead, or a court order determining the legal description of the homestead.
  - (iv) If Will does not conform to (i), (ii) or (iii) above, then require documents set forth under Supervised Proceedings *infra*.
- (b) Intestate Probates require:
- (i) Certified copy of unrestricted letters (30 days must have elapsed since date of letters; also certificate must state that no objection to appointment has been filed and/or no formal proceedings have been commenced or title examiner must check Probate Court file for this information. MINN. STAT. § 524.3-310).
  - (ii) Certified copy of Registrar's Determination of Heirs of decedent, setting forth the relationship and interest or fractional share of each heir in the property.
  - (iii) Personal representative's deed of distribution in accordance with Registrar's determination.

(iv) Deed from distributee and spouse, if any.

NOTE: If the Registrar determines that the personal representative is an heir then the personal representative may convey to self the interest determined by the Registrar.

NOTE: Even though the proceeding is commenced as an informal probate proceeding, it is possible during the proceeding to petition the Court for an Order Determining Heirs, Order of Distribution, or Decree. If such is the case, require the certified copy of letters as set forth at (i) above, certified copy of the Court's Order or Decree, and a personal representative's deed in accordance with the Order (deed not required if Decree), and a deed from distributee and spouse, if any.

(2) Under Formal (Unsupervised) Testacy and Appointment Proceedings.

NOTE: This procedure may be commenced for the purpose of establishing a Will or determining intestacy. A personal representative appointed under an informal proceeding, after notice, shall refrain from exercising his power to make further distribution during the pendency of the formal proceeding, unless Court confirms appointment.

(a) Testate Probates, require:

- (i) Certified copy of unrestricted letters which are in full force and effect.
- (ii) Certified copy of Order which shall:
  - (aa) establish the will;
  - (bb) identify by name the devisees if not identified by specific names in the will; and
  - (cc) set forth the legal description of homestead, if any, if not described in the will, unless the homestead is devised to the surviving spouse as a part of the residue of the estate.
- (iii) Certified copy of Will.
- (iv) Personal Representative's deed of distribution to persons named in Will or Order Establishing Will.
- (v) Deed from devisees and spouse, if any.

- (b) Intestate Probates.
  - (i) Certified copy of unrestricted letters which are in full force and effect.
  - (ii) Certified copy of Order determining heirs, setting forth the relationship to decedent and interest of each heir in the property.
  - (iii) Personal Representative's deed of distribution to heirs pursuant to Order.
  - (iv) Deed from heirs and spouse, if any.
- (3) Under formal Supervised Proceedings, require:
  - (a) Certified copy of letters.
  - (b) Certified copy of Order of Distribution.
  - (c) Personal Representative's deed of distribution to person named in order.
  - (d) Deed from person named in Order and spouse, if any.OR
  - (a) Certified copy of Decree.
  - (b) Deed from person named in Decree and spouse, if any.
- (4) Deed pursuant to Partition (MINN. STAT. § 524.3-911).
  - (a) Where partition is made without a sale.

Require:

    - (i) Certified copy of order appointing the referees to make partition in same manner as provided by MINN. STAT. § 558.04.
    - (ii) Certified copy of order confirming the partition in same manner as provided by MINN. STAT. §§ 558.06 and 558.07.
    - (iii) Certified copy of final judgment that such partition be effectual in same manner as provided by MINN. STAT. § 558.07.
    - (iv) Deed from distributee and spouse, if any.
  - (b) Where the Court directs the personal representative to sell the property.

Require:

    - (i) Certified copy of letters.

- (ii) Certified copy of Order authorizing sale.
  - (iii) Certified copy of Order confirming sale in same manner as provided by MINN. STAT. § 558.21.
  - (iv) Certified copy of final judgment directing personal representative to execute deed in same manner as provided by MINN. STAT. § 558.21.
  - (v) Deed of personal representative to purchaser.
- (5) Deed from Distributee Determined by Private Agreement  
MINN. STAT. § 524.3-912.

**Require:**

- (a) Certified copy of unrestricted letters. (If informal proceeding see requirements for letters under informal probate proceedings.)
  - (b) Certified copy of Order determining heirs and interest of each or certified copy of Registrar's Determination of heirs and interest of each or certified copy of Will and Order for probate.
  - (c) Recordable contract executed by all persons affected by its provisions including spouses.
  - (d) Deed of distribution from personal representative to distributee.
  - (e) Deed from distributee and spouse, if any.
- (6) Deed from Distributee Determined by Decree Distributing Omitted or Incorrectly Described Property pursuant to MINN. STAT. § 524.3-413 or MINN. STAT. § 524.3-1008.
- (a) **Require:**
- (i) Certified copy of Decree.
  - (ii) Deed from distributee and spouse, if any.

**b. SALES PROCEDURES.**

**NOTE:** A sale or encumbrance by a personal representative to self, spouse, agent or attorney, or others set forth in MINN. STAT. § 524.3-713 should not be made unless the Will or a contract entered into by the decedent expressly authorizes the transaction, or the Court by Order permits the sale.

**CAVEAT:** Under all informal proceedings the title examiner must substantiate from evidence available that the notice required by MINN. STAT. § 524.3-310 has been given. If the Probate Court will permit letters to issue without requiring evidence that the

notice requirements will be fulfilled, the title examiner must ascertain that such notice requirements will be fulfilled. We recognize that unless the Probate Court requires evidence of the giving of notice be filed, that this requirement places an extremely difficult, if not impossible, burden of substantiation on the examiner.

Under informal, formal or supervised probate,

(1) Testate Probate, require:

(a) Certified copy of unrestricted letters. (If the proceeding is informal, 30 days must have elapsed since date of letters; also certificate must state that no objections to appointment have been filed and/or no formal proceedings have been commenced or else title examiner must examine the Probate Court file to verify this information. MINN. STAT. § 524.3-310).

(b) Certified copy of Will and verification that it is admitted for probate.

NOTE: If the proposed sale is in conflict with a specific devise in the Will (for example, proposed sale is to a person other than the named devisee) then require: (1) Court Order to Sell or (2) deed from devisee and spouse, if any, with proper searches. If Will prohibits the sale, then require a Court Order to sell.

(c) Personal Representative's deed of sale which should contain marital status of decedent, and consent of spouse, if any.

(2) Intestate Probates, require:

(a) Certified copy of unrestricted letters. (If proceeding is informal, 30 days must have elapsed since date of letters; also certificate must state that no objections to appointment have been filed and/or no formal proceedings have been commenced or else title examiner must examine the Probate Court file to verify this information. MINN. STAT. § 524.3-310.)

(b) Personal Representative's deed of sale which should contain marital status of decedent, and consent of spouse, if any.

NOTE: In regard to potential Estate Tax Liens, see Minn. Title Standard No. 101.



c. **PERSONAL REPRESENTATIVE'S DEED PURSUANT TO CONTRACT FOR DEED OF A DECEDENT.**

Require:

- (1) Certified copy of letters issued to Personal Representative. (If informal proceedings, 30 days must have lapsed since date of the letters.)
- (2) Personal Representative's deed which should contain marital status of decedent, and consent of spouse, if any. If the contract for deed is not of record, then the Personal Representative's deed should contain a statement that the deed is given pursuant to a contract for deed and identify the vendors and vendees in said contract for deed and their assigns, if any, and the date of said contract.

d. **DEED FROM DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE.**

A deed from a domiciliary foreign personal representative acting under the procedure of MINN. STAT. § 524.4-204 creates an unmarketable title; therefore the procedure of appointment of a local personal representative should be followed.

APPENDIX A

Probate Court Registrars Questionnaire

Response: 56 of 87 (64%)

1. If an application for informal probate of a will lists real estate as one of the estate assets, will the application be denied solely because real estate is involved?

<u>2</u>	Yes
<u>50</u> <sup>50%</sup>	No
<u>4</u>	Sometimes (Please explain briefly):
	_____
	_____
	_____

2. If your answer to Question 1 is Yes, please indicate the primary reason or reasons for this.

<u>1</u>	Policy set by the Probate Court Judge
<u>1</u>	Examiner of Titles in our county will not pass title for real estate <u>distributed</u> from a personal representative appointed informally.
<u>1</u>	Examiner of Titles in our county will not pass title for real estate <u>sold</u> by a personal representative appointed informally.
<u>2</u>	Local attorneys will not pass title for real estate distributed from or sold by a personal represented appointed informally.
<u>2</u>	Other (please comment briefly): <u>If no attorney; advised by a retired judge not to accept informal</u>

3. If requested to do so by the applicant or the applicant's attorney, will you make a finding in the Order for Informal Probate as to the legal description of the homestead real estate?      12 Yes      41 No

4. If requested to do so by the applicant or the applicant's attorney, will you make a finding in the Order for Informal Probate as to the legal description of the "non-homestead" real estate that is referred to in the will but not by legal description (such as "my commercial building" or "the duplex at 2345 First Avenue")?

<u>8</u>	Yes	<u>43</u>	No
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5. If requested to do so, will you make a finding in the Order for Informal Probate as to the identity and relationship of the heirs-at-law in an intestate situation?

37 Yes 17 No

6. If requested to do so, will you make a finding in the Order for Informal Probate as to the identity of the "spouse" or "children" or other such terms that may be used in the testator's will?

28 Yes 22 No

7. If requested to do so and the spouse of the decedent survives the decedent, will you make a finding in the Order for Informal Probate identifying real estate as either "homestead" or "non-homestead" in an intestate situation?

13 Yes 39 No

Thank you for the time you have taken to complete this survey. Please make any comments you would like in the space below.

COMMENTS:

1. Uncertain whether Registrar has authority to make above findings. No specific statutory authority.
2. No appearance required for formal probate; no reason not to go formal if real estate involved.
3. Findings would read as follows: "Pursuant to the application, and based solely thereon, the Registrar finds that. . . ."
4. 95% of probates are informal in our county.
5. During first few years of UPC attorneys in our county were reluctant to use informal probate if real estate was involved; now all use informal probate and are comfortable with it.
6. Our probates are about 99% informal. Only time problem arises is when real estate is distributed from the estate and distributee sells within 3 years of distribution.
7. The Registrar does not make findings.
8. Never been asked to make findings as set forth above. Not sure how I would respond.
9. Have never been asked to do the above.

APPENDIX B

Examiner of Titles Questionnaire

Response: 33 of 79 (42%)

1. Will you accept a deed of sale from the personal representative, assuming the other necessary documents are also presented?      27 Yes      4 No

2. Assuming the will identifies by legal description a specific parcel of real estate and contains a devise giving that real estate to a named beneficiary, would you accept a deed of distribution from the personal representative conveying that real estate to that person?      25 Yes      6 No

3. In an intestate situation, will you accept a deed of distribution from the personal representative in favor of the heirs-at-law identified in the Probate Court Registrar's Order Determining Heirs?      17 Yes      14 No

4. In a testate situation, will you accept a deed of distribution from the personal representative in favor of residuary devisees specifically named in a will if the real estate is not specifically described in the will, assuming the other necessary documents are also presented?      18 Yes      11 No

5. Assuming your answer to any of the above questions is Yes, will you accept a deed after a closing statement has been filed?

<u>19</u>	No
<u>3</u>	Deed of distribution only
<u>0</u>	Deed of sale only
<u>7</u>	Yes (both).

6. Assuming the will identifies the decedent's spouse by name and includes a specific bequest of "my homestead" (but no legal description) to the spouse, would you accept a deed of distribution from the personal representative conveying the homestead to the spouse if the Order for Informal Probate contained a finding as to the legal description of the homestead?      21 Yes      10 No

7. In an intestate situation, assuming the Order for Informal Probate includes a finding that identifies the homestead by legal description and identifies the decedent's spouse and children by name, would you accept a deed of distribution from the personal representative conveying a life estate in the homestead to the spouse and the remainder interest to the children? 19 Yes 12 No

8. Assuming the Order for Informal Probate includes a finding that identifies the decedent's "wife," would you accept a deed of distribution from the personal representative conveying all real estate to the person named in the Order as the wife, if the decedent's will gave to his "wife" (but not by name) his entire estate? 18 Yes 12 No

Thank you for the time you have taken to complete this survey. Please make any comments you would like in the space below.

COMMENTS:

1. Does Registrar have power to determine heirs? (See §524.1-302 and §§524.1-307, 524.3-303 and 524.3-308)
2. Lawyers in our county are not using informal probate when real estate is involved.
3. Since no appearance is required in our county for formal proceeding, when real estate is involved attorneys proceed with a formal probate.
4. I think it is a poor practice to convey real estate in informal probate. Whenever real estate is involved my practice is to have a formal closing.
5. In most cases I have been contacted in advance by the attorney representing the estate and I request that the estate be formally closed.
6. I think it is time for Minnesota lawyers, judges, registrars and County Recorders to follow the provisions of the informal probate provisions of the Minnesota Probate Laws. The intent of these provisions is to simplify the probate system - not to make the system more difficult.
7. I refuse to accept a deed to real estate through an informal proceeding period. . . . It is a sloppy proceeding often by persons without a sufficient knowledge of real estate law.
8. Registrar in our county will make findings as to names of spouse and other heirs, but will not make findings as to homestead. Obtaining a Decree of Distribution after commencing an informal probate is a rather simple procedure in our county and does not require a second publication of notice.

### **Section 3-714. [Persons Dealing with Personal Representative; Protection.]**

A person who in good faith either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in Section 3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

#### **COMMENT**

This section qualifies the effect of a provision in a will which purports to prohibit sale of property by a personal representative. The provisions of a will may prescribe the duties of a personal representative and subject him to surcharge or other remedies of interested persons if he disregards them. See Section 3-703. But, the will's prohibition is not relevant to the rights of a purchaser unless he had actual knowledge of its terms. Interested persons who want to prevent a personal representative from having the power described here must use the procedures described in Sections 3-501 to 3-505. Each state will need to identify the relation between this section and other statutory provisions creating liens on estate assets for inheritance and other taxes. The section cannot control whether a purchaser takes free of the lien of unpaid federal estate taxes. Hence, purchasers from personal representatives appointed pursuant to this Code will have to satisfy themselves concerning whether estate taxes are paid, and if not paid, whether the tax lien follows the property they are acquiring. See Section 6234, Internal Revenue Code [26 U.S.C.A. § 6324].

The impact of formal recording systems beyond the usual probate procedure depends upon the particular statute. In states in which the recording system provides for recording wills as muniments of title, statutory adaptation should be made to provide that recording of wills should be postponed until the validity has been established by probate or limitation. Statutory limitation to this effect should be added to statutes which do not so provide to avoid conflict with power of the personal representative during administration. The purpose of the Code is to make the deed or instrument of distribution the usual muniment of title. See Section 3-907, 3-908, 3-910. However, this is not available when no administration has occurred and in that event reliance upon general recording statutes must be had.

If a state continues to permit wills to be recorded as muniments of title, the above section would need to be qualified to give effect to the notice from recording.