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HENNEPIN COUNTY DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Probate In Common Form

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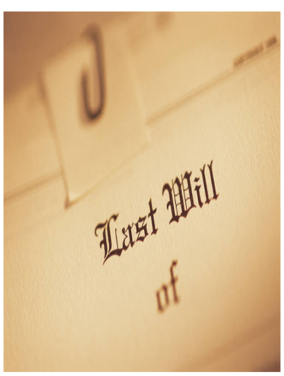

Termination of Appointment of Personal Representative

By Alonna Warns

General Provisions

There seems to be some confusion concerning the terms "termination" and "discharge" as they relate to a personal representative.

Minn.Stat. § § 524.3-608 to 524.3-612 is the point of reference.

How is the appointment of a personal representative terminated?

- Death or disability
- Voluntary
- Removal for Cause
- Change of testacy status

When a personal representative is appointed and qualifies certain powers and rights attach until termination. Termination will end the powers and rights with the following exceptions.

- at any time prior to distribution or
- until restrained by court order, the personal representative:
- may do what is necessary to protect the estate, and
- may deliver assets to the successor personal representative.

Termination by any of the means set forth above is **not** the equivalent of being discharged.

Termination ≠ Discharge

Minn. Stat. §524.3-608. . . "Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the representative of the duty to preserve assets subject to the representative's control, to account therefor and to deliver the assets. ". . .

Termination **does** stop the personal representative from representing the estate in any proceeding currently

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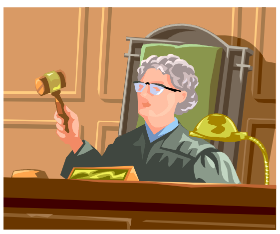
pending or in any future proceeding.

The court retains jurisdiction over the personal representative even though his or her power has been terminated.



Practically, this means the attorney/ personal representative needs to read any order from the court that terminates the authority of the personal representative. Review the Order section for language that says what the court expects of the personal representative, whose authority has been terminated, or his representative (for example, if original personal representative dies prior to completion of an estate administration) to do before he or she may be discharged.

The termination versus discharge issue arises when the final account of a successor personal representative goes on for hearing or comes in on an ex parte review. As part of the audit, the Court reviews the previous orders regarding the appointment of the original personal representative. Has the original personal representative been discharged? Was he or she required to file an accounting following the order terminating his or her authority?

General Rule

The general rule is: if the original administration was unsupervised there would be no need to account to the Court. However, depending on the circumstances surrounding the termination the Court may order an accounting.

The Court will not issue an order approving the account of the successor until the court has dealt with any required accounting of the original personal representative.

Tip: When filing an account where there has been more than one personal representative be sure to label the Inventory, Final Account and Petition

Non-Resident Personal Representatives

Trust and Probate Court Rule 407 Appointment

“**b) Nonresident personal representatives.** The Court or registrar may appoint a nonresident personal representative.”

In Hennepin County appearances are required in all formal proceedings. Remember that the nonresident petitioner personal representative needs to appear to testify at the hearing. In an informal proceeding, the attorney may appear on behalf of the nonresident.

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as that of the original **or** the successor Personal Representative.

Death or Disability

Minn. Stat. § 524.3-609,

states that termination occurs when any of the following events happen:

- The Personal Representative dies
- A Conservator or Guardian is appointed for the estate of a personal representative

The personal representative of the now deceased personal representative or the Conservator or Guardian of the protected person who was serving as personal representative assumes the following responsibilities:

- Duty to protect the estate being administered
- Has the power to perform acts required to protect the estate
- Must account for, and must deliver assets to the successor personal representative

Although not required, it would be a good idea for the personal representative of a deceased personal representative or the Conservator or Guardian to file an informal closing statement after transferring assets to the successor.

Voluntary

Minn. Stat. § 524.3-610

There are three ways a voluntary termination can occur:

- One year after filing the informal closing statement
- An order closing the file under Minn Stat. § 524.3-1001 or 524.3-1002
- Resignation of personal representative

Note: With respect to termination and resignation, the termination is only effective when the successor personal representative has been appointed and qualified <u>and</u> assets have been delivered to the successor.

Removal

Minn. Stat. § 524.3-611 (a)

How is a personal representative removed?

Point of fact: *It is difficult to remove a personal representative*.

A person with an interest in the estate may petition the court to remove a personal representative.

Tip: A letter or an objection either verbal or in writing is <u>not</u> sufficient to remove a personal representative.

Documents to file:

- Petition
- Notice & Order for Hearing
- Proposed Order Removing
- Filing fee if your client is not already a party to the case

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The petitioner needs to give notice to:

- Personal representative
- Other persons as the court may order

Duties

What if you are the attorney representing the personal representative against whom a petition for removal has been filed? The personal representative says to you, "What can I do with respect to the estate while this petition is pending"?

Upon receipt of notice of a petition for removal, the personal representative according to the statute, **shall not act** except to:

- Account
- Correct a problem in the administration, or
- Preserve the estate

unless otherwise ordered to perform a task under Minn. Stat. § 524.3-607 in an order restraining the personal representative.

If removal occurs, the court in its order will state how the assets held in the name of or under the control of the personal representative are to be disposed of.

Removal may occur when:

- Removal is in the best interests of the estate

The statute in paragraph (b) states that in determining the best interests of the estate the personal representative's compensation and fees as well as administrative expenses **shall** be considered.

- Upon proof that personal representative or person seeking the personal representative's appointment intentionally misrepresented material facts leading to the appointment
- Personal representative has disregarded an order of the court
- Personal representative has become incapable of serving and performing duties of his office
- PR has mismanaged the estate
- PR has failed to perform any duty relating to the office

Change of Testacy

Minn. Stat. § 524.3-612

Let's assume for purposes of discussion that a personal representative has been appointed either formally or informally and Letters have issued.

The estate was commenced as an intestate. The parties had no idea there was a will and now comes the call to the attorney, "Guess what I found? A will." Or in a formal proceeding, testacy status was reserved due to multiple wills and now the decision has been made as to which will is to be probated.

When does a change in testacy status occur?

1. The probate of a will following the appointment of a personal representative in intestacy, or
2. The probate of a will super-

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seded by the probate of another will, or

3. The vacating of an informal probate of a will following the appointment of the personal representative pursuant to the terms of the will.

None of these 3 events terminates the appointment of the personal representative.

SURPRISED?

When then does termination occur in a changed testacy situation? Minn. Stat. § 524.3-612, . . ."**Termination occurs upon <u>appointment</u> in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy.**"

(emphasis added)

There is not an automatic change in personal representative.

Let's say that the case started out intestate and a short time later the personal representative found a will nominating someone other than himself or herself as personal representative. The appointment of the personal representative in the intestacy status is not automatically terminated.

This statute says that if no one comes forward requesting a new appointment within **30 days** after expiration of the appeal period in a formal proceeding; or 30 days from informal appointment, the previously appointed personal representative <u>upon request</u> may be appointed under the subsequently probated will or intestacy.

Time Frames

Practical note:

The time frames that an originally appointed personal representative needs to wait following the change in testacy status to confirm appointment are:

30 days informal

90 days formal

Informal probate: Since there is no right to appeal from an informal order the total time that needs to elapse before the original personal representative can seek appointment under the new testacy status is 30 days.

Formal probate: In a formal proceeding the time for appeal plus 30 equals 90 days. If no one has come forward seeking appointment under the change in testacy status during the 90 days, the original personal representative can seek appointment.

Letters

If the personal representative was appointed in intestacy and the change is to testate the new letters will be Letters Testamentary.

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Heirship Basics

HEIRSHIP BASICS

Have you ever seen the expression on the face of someone outside the legal profession when you ask about heirs? Are you saying “air”, “hair”? No h-e-i-r, heir.

What’s an heir? It is a living breathing individual who survives another for a specified period of time and because they survive have legal rights to the property of the decedent.

Definition of an heir from Minn. Stat. § 524.1-201(24)

“Heirs” means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.”

The definition might make you think this is a pretty straight forward topic. That is not always the case. As any of you know, who have practiced in the probate area for any length of time, heirship can become extremely complicated.

When you make an inquiry of a client asking about their heirs or the heirs of the decedent whose estate they are interested in commencing begin by asking,

Who are the descendants of the decedent?

In response to this question include, children that are natural born or adopted, legitimate or illegitimate. If a child has predeceased the decedent and left children surviving, these grandchildren now become heirs of the grandparent (standing in the shoes of their deceased parent).

In a series of newsletters, over time, I hope to dispel some of the mystery around who heirs are in particular fact situations and what that means to those of you who prepare the documents we see at the court on a daily basis.

RULE ONE

All applications and petitions need to identify the decedent’s heirs.

It does not matter whether you are filing a testate or intestate petition heirs must be listed. In Hennepin County, if you do not list heirs your formal petition will be returned to you. An informal application missing this pertinent information will need to be revised at the appointment with the Registrar and/or a new application/interested party list filed.

It is one of our expectations, as Registrars, that the attorney appearing will know and understand the heirship of the case he/she is presenting. And further, he or she will be able to respond to questions that may arise to clarify heirship.

Will Drafting

The best time to obtain the heirship information is when you draft the will. The testator will be your source and your file notes will be invaluable to you at a later date when you prepare the probate documents. If the heirship is complicated, spell it out in the will. A classic situation where we see heirship set forth in the will is: decedent is a single elderly person who came to the US from a foreign country, no family in the US.

Heirship Example One- Surviv-

Heirship Basics

ing spouse, and children

- All children of the marriage
- Surviving spouse has no children not children of the marriage

Who are the heirs? **Spouse and children**

Some will say if spouse takes all don't list the children as heirs. In Hennepin County, the policy is to list **all** heirs regardless of whether or not they take a share of the estate.

The informal order lists the heirs and the share of the estate that the heirs take. Two separate determinations.

The application or petition not only asks you to list the names, addresses, relationship and interest of the heirs but it wants the petitioner/applicant to define the group of heirs in legal terms. This is called the negative allegation statement. Personally, I like to think of the negative allegation as the "heirship circle" for the decedent. Is everyone in the circle accounted for?

The Registrar will look to see if the negative allegation statement is consistent with the information on the interested party list.

Most common mistake—the negative allegation doesn't go far enough.

What negative allegation is used for example one?

Trust and Probate Court Rule 408 Comments (3)

"That decedent left surviving no children, natural or adopted, legitimate or illegitimate, other than herein named and no issue of any deceased children."

The applicant/petitioner is saying that he/she has listed everyone, and there is no one missing.

Heirship Example Two - no spouse, no issue, no issue of predeceased issue—no descendants, parents survive

What negative allegation is used for this example?

The comments to Rule 408 do not provide specific direction, so it is proposed that you use the following language:

That the decedent left no spouse, no issue, no issue of predeceased issue and no parents other than herein named.

In this example, if decedent has a surviving sibling and the sibling is not a devisee or the nominated personal representative, the sibling has no interest and will NOT be on the interested party list. The heirship stops at the "parent" level.

Descendents

The first example was a family where descendents of the decedent were found.

Black's law dictionary defines a **descendent** as "those who are in the bloodstream of the ancestor" . . . "persons who proceed from a body of another such as a child or grandchild, to the remotest degree;"

Under Minnesota law this also includes adopted children.

Think of a descendent as a person going in a direct line down from the decedent in a family tree chart.

Heirship Basics

Ascendants

In the second example, decedent had no descendents. Where does one start to find heirs? The answer is look to the ascendants.

Black's Law Dictionary defines an **ascendant** as "Persons with whom one is related in the ascending line; one's parents, grandparents, great grandparents, etc. "

Going up in a family tree is called going into the ascendancy. The search for heirs takes us to people born before us to find someone to inherit. In the second example, the heirs are found at the first level of the ascendancy so the search for heirs stops

Today, there are many blended families and the term mother and father, mom and dad may in the casual term be a stepparent. For purposes of determining heirship the Court is looking for a legal definition. Don't be afraid to ask the client if the parent adopted the child.

The Registrar makes his/her determination of heirship based on the information set forth in the application.

Rule 415(b)

Rule 415(b)

As many different counties as there are, there are different ways of handling certain aspects of the probate process. As Registrars we often hear, "Well, they don't have us do this or that in county "x"."

An area where practices most often diverge is in the filing of documents relating to the estate administration post issuance of the letters.

Trust and Probate Court Rule 415 (b)

"Registrar has no continuing authority. The registrar does not have any continuing authority over an estate after the informal probate is granted or denied and shall not require the filing of any additional documents other than are required by the code (law) and these rules."

As the Registrar, if you are challenged by attorneys or pro se parties, be sure to emphasize that any additional filings are court policies of your jurisdiction not the law.

There is no statute requiring the filing of:

- An inventory
- A final account
- Receipts, or a
- Closing statement

in an informal probate.

Liabilities

Trust and Probate Court Rule 408(a) says that the application **shall** contain information on the decedent's liabilities.

Two common problems Probate Registrars see in this area are:

- No information
- Mortgage amount

You must say something about the debts, you cannot leave the space blank. If there were no debts you can write "current" or "-0-" but do not leave the space blank or ignore it.

Do not include the amount of any mortgage on real property. The mortgage is viewed as running with the real estate and in the absence of special language in the will telling the personal representative to payoff the mortgage before transferring title the mortgage will be paid upon sale or become the responsibility of the distributee.

A large mortgage amount in the liabilities section can make it appear that an estate is insolvent when it is not.

A related statute on this topic is Minn. Stat. § 524.2-607 on the topic of non-exoneration which is worth reviewing.

Liabilities to include:

- Funeral if not prepaid
- Cemetery and related charges
- Unpaid income taxes
- Unpaid medical bills that will not be reimbursed
- Credit Card debt

Round numbers are sufficient.

The Registrar will compare the liabilities with the non-exempt property to make an initial determination as to whether or not the estate will be insolvent. An estate application with liabilities in excess of the non-exempt property will be denied. All insolvent or potentially insolvent estates must be referred to the Court for a formal supervised administration.

A common case is, the decedent died owning a homestead as the sole probate asset. The homestead is exempt going to a surviving spouse.

There is legitimate debt that will not be paid unless a creditor comes forward and demands payment from multiparty accounts.

Informal probate application is denied.

Another probate procedure to consider, if the goal is to merely transfer title to the surviving spouse, is to proceed with an "insolvent summary assignment (exempt)".

Summary proceedings were discussed in depth in December 2005—January 2006 issue of Probate In Common Form.

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(Continued from Page 5)

If the same personal representative were appointed under a subsequent will then Amended Letters Testamentary will issue.

Intestate ► Testate

Letters of General Administration become Letters Testamentary

Testate (will 1) ► Testate (will 2) becomes Amended Letters Testamentary

Testate ► Intestate

Letters Testamentary become Letters of General Administration

If a totally new personal representative is appointed Successor Letters will issue.

Big News!!

The Fourth Judicial District Registrar's Office is going paperless around June 1st, 2007.

Julie and I will have the honor of being the pilot project in the Fourth District for a system of scanning documents into our court information system. During this process, no manila files will be created. All informal probate documents from the start date forward will be on the computer only. The documents will be scanned into the system at the time the case is initiated and stored in boxes for a specified period of time in chronological order.

Once quality control has been assured, the paper documents will be destroyed and the digital record will become the official record and will be retained in that format.

We are excited to be moving forward with our new technology.

PROBATE COURT MOVE

By the time you receive the next issue of the newsletter Probate Court Administration will be on the move. Our relocation to the newly remodeled third floor of the Court Tower will be **temporary** while the asbestos is abated on C-4 and new improvements made. It is anticipated that the move will take place in late August or early September.

The Registrars will be located on C-3. Please check in at the counter. Our telephone and fax numbers will be the same. Please address your correspondence to C-3.

NEW JUDGE

In September, we will welcome Judge Marilyn Kaman and her staff as the new Presiding Judge for the Probate/Mental Health Division.

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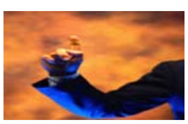

REMINDERS

Please complete the attorney information box with the following information to expedite communication with your office:

- Telephone number
- Fax number
- E-mail address

Please complete the hearing officer portion of your proposed orders, presently the Presiding Judge is:

H. Peter Albrecht

The Referees are: **Bruce Kruger and Richard Wolfson**