

INVENTORY & NON-PROBATE PROPERTY

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PROBATE VS. NON-PROBATE: HOW CAN YOU TELL?

- **Probate** assets are those owned by the decedent alone at the time of his or her death.
- **Non-probate** assets are owned by the decedent and another person, either jointly or as a beneficiary.
- Determining probate and non-probate assets is the threshold for deciding the type of administration that you will conduct for a decedent's estate.
- Trust assets: probate or non-probate?

HANDLING NON-PROBATE ASSETS

- Examples of non-probate assets?
 - Insurance policies, POD accounts, joint accounts, joint with rights of survivorship, beneficiary designations, etc.
- Non-probate real estate
 - Survivorship deeds, transfer on death designation affidavits, deeds by the entirety, etc.
- Other non-probate property

DOCUMENT PREPARATION FOR NON-PROBATE ASSETS

- Even though the assets are not probated, clients often want attorneys to prepare transfer forms, affidavits, or other related documents.
- Probate attorneys should familiarize themselves, at least generally, with basic tax law.
 - Talk to a tax preparer or accountant
 - Work with client's financial advisor
- Preparation of affidavit of surviving tenant or affidavit confirming transfer on death beneficiaries.
- Trust documents.

PROBATE ASSETS: ASSEMBLING AN INVENTORY

- Everything that the decedent owns at the time of his or her death that has no joint owner and no beneficiary is a probate asset.
- Bank accounts, real property, tangible personal property, motor vehicles, investments, pets, housewares, proceeds from another estate, proceeds from a life insurance policy... and the list goes on...
- What goes on an inventory?
 - As much information as you can supply to the court.

ASSEMBLING AN INVENTORY

- MOST important step is to gather complete and accurate information.
- Standard Probate Forms?
 - 6.0 – Inventory and Appraisal
 - 6.1 – Schedule of Assets
 - 6.3 – Notice of Hearing on Inventory
- Where to begin?

ASSEMBLING AN INVENTORY

- To appraise or not to appraise?
- When is an inventory due?
 - 90 days after the fiduciary is appointed by the court.
 - An extension may be obtained, if necessary.
- Begin with schedule of assets.
 - Separate assets based on category: real property, tangible personal property, intangible personal property.

ASSEMBLING AN INVENTORY: REAL ESTATE

- Real property should be listed by address and percentage of interest.
 - Legal description must be included.
 - Always review last deed of record before preparing inventory.
 - If appraised, must have either appraisal report or appraiser must sign 6.0.
 - If not appraised, use auditor's value and include auditor's card.
 - Summit and Cuyahoga County have a Fiscal Office instead of Auditor.

ASSEMBLING THE INVENTORY:TANGIBLE PERSONAL PROPERTY

- Automobiles should be listed with the year, make, model , and VIN
 - EX: 2010 Jeep Wrangler – VIN #GHE234ES04594
 - Value can be obtained from one of three sources:
 - Kelley Blue Book
 - NADA Guides
 - Private appraisal
- Remember that a surviving spouse will be able to transfer automobiles outside of probate but must be listed on the inventory if taken as part of the allowance for support.

ASSEMBLING THE INVENTORY: TANGIBLE PERSONAL PROPERTY

- Household property
 - Personal property in someone's home can be the most fraught area of probate practice.
 - Usually there is very little monetary value to the items of personal property someone has in their home.
 - The value of these assets is often subjective, determined by how much the beneficiaries feel connected to them.
- Jewelry, art collections, collectibles...
 - Almost always need to appraise property like this.

ASSEMBLING THE INVENTORY: INTANGIBLE PERSONAL PROPERTY

- Bank accounts or investment accounts should be listed by last four digits of account number.
 - Remember to use date of death balances and not current balances.
 - Obtain exact date of death balances from financial institution after fiduciary appointed.
 - Any change in balance from date of death to present must be accounted for on fiduciary's account.

ASSEMBLING THE INVENTORY: INTANGIBLE PERSONAL PROPERTY

- Shares of stock can be tricky to list on an inventory.
 - Are they shares of common or preferred stock?
 - Has the company done a stock split since your decedent purchased shares?
 - If dividends are paid on stocks, it would be best to review the most recent stub from a dividend payment.
 - Value of shares of stock is calculated by taking the highest and lowest value on decedent's date of death and averaging them.
 - What if date of death is on a weekend?

FILING THE INVENTORY

- Remember to file supplemental documents with your SPF's
 - Appraisal
 - Auditor's card
 - KBB/NADA values
 - Legal description for real estate
 - Stock values

FILING THE INVENTORY

- If you file an inventory without waivers of notice of hearing for all beneficiaries, your inventory will be set for a counter hearing.
 - In Summit County, you will be required to send notice of hearing to all beneficiaries.
 - If no one objects to the inventory, no one needs to attend the hearing.
 - Objections must be filed in writing with the probate court within 5 days of the date of the counter hearing.
- You must send a copy of the inventory to each of the beneficiaries of the estate.
 - You do NOT need to send it via certified mail.

HELP! I FORGOT SOMETHING!

- Depending on the asset, you should file an amended inventory or a newly discovered asset form.
 - If you are changing the value of something that is already on the inventory, you should file an amended inventory.
 - If you are adding an asset that was previously unlisted, you should file a report of newly discovered assets.

QUESTIONS?

- Questions?
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