

## **Part 7**

### **Duties and Powers of Personal Representatives**

#### **75-3-701 Time of accrual of duties and powers.**

The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

Enacted by Chapter 150, 1975 General Session

#### **75-3-702 Priority among different letters.**

A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

Enacted by Chapter 150, 1975 General Session

#### **75-3-703 General duties -- Relation and liability to persons interested in estate -- Standing to sue.**

- (1) A personal representative is a fiduciary who shall observe the standard of care applicable to trustees as described by Section 75-7-902. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.
- (2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.
- (3) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue

and be sued in the courts of this state and courts of any other jurisdiction as his decedent had immediately prior to death.

Amended by Chapter 89, 2004 General Session

**75-3-704 Personal representative to proceed without court order -- Exception.**

A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but may invoke the jurisdiction of the court in proceedings authorized by this code to resolve questions concerning the estate or its administration.

Amended by Chapter 110, 1988 General Session

**75-3-705 Duty of personal representative -- Inventory and appraisalment.**

Within three months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item. The personal representative shall send a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the court.

Amended by Chapter 194, 1977 General Session

**75-3-706 Employment of appraisers.**

The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

Enacted by Chapter 150, 1975 General Session

**75-3-707 Duty of personal representative -- Supplementary inventory.**

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisalment showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

Enacted by Chapter 150, 1975 General Session

**75-3-708 Duty of personal representative -- Possession of estate.**

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property

or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

Enacted by Chapter 150, 1975 General Session

**75-3-709 Power to avoid transfers.**

The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative. The personal representative is not required to institute such an action unless requested by creditors who must pay or secure the cost and expenses of litigation.

Enacted by Chapter 150, 1975 General Session

**75-3-710 Powers of personal representatives -- In general.**

Until termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust, however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court, unless otherwise specifically provided by this code.

Amended by Chapter 226, 1983 General Session

**75-3-711 Improper exercise of power -- Breach of fiduciary duty.**

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in Sections 75-3-712 and 75-3-713.

Enacted by Chapter 150, 1975 General Session

**75-3-712 Sale, encumbrance or transaction involving conflict of interest -- Voidable -- Exceptions.**

Any sale or encumbrance to the personal representative, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate, except one who has consented after fair disclosure, unless:

- (1) The will or a contract entered into by the decedent expressly authorized the transaction; or
- (2) The transaction is approved by the court after notice to interested persons.

Amended by Chapter 30, 1992 General Session

**75-3-713 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 75-3-504, 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.

Enacted by Chapter 150, 1975 General Session

**75-3-714 Transactions authorized for personal representatives -- Exceptions.**

Except as restricted or otherwise provided by this code, by the will or by an order in a formal proceeding and subject to the priorities stated in Section 75-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- (1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
- (2) receive assets from fiduciaries, or other sources;
- (3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
  - (a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
  - (b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- (4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
- (5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally;
- (6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

- (7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, or raze existing or erect new party walls or buildings;
- (8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;
- (9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
- (10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (11) abandon property when, in the opinion of the personal representative, it is valueless, is so encumbered, or is in condition that it is of no benefit to the estate;
- (12) vote stocks or other securities in person or by general or limited proxy;
- (13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
- (14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
- (15) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;
- (16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
- (17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
- (18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
- (19) sell or exercise stock subscription or conversion rights; and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;
- (21) employ persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
- (22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;
- (23) sell, mortgage, or lease any real or personal property of the estate or any interest in it for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;
- (24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:
  - (a) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

- (b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or
  - (c) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;
- (25) incorporate any business or venture in which the decedent was engaged at the time of his death;
- (26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;
- (27) satisfy and settle claims and distribute the estate as provided in this code.

Amended by Chapter 30, 1992 General Session

**75-3-715 Powers and duties of successor personal representative.**

A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

Enacted by Chapter 150, 1975 General Session

**75-3-716 Co-representatives -- When joint action required.**

If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of a majority is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Enacted by Chapter 150, 1975 General Session

**75-3-717 Powers of surviving personal representative.**

Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.

Enacted by Chapter 150, 1975 General Session

**75-3-718 Compensation of personal representative and attorney.**

- (1) A personal representative and an attorney are entitled to reasonable compensation for their services. If a petition is filed which either directly or indirectly seeks approval of the personal representative's compensation or the attorney's compensation and if no objection is filed by an interested person to the compensation requested, reasonable compensation shall be

the compensation sought in the petition. When an interested person objects to the personal representative's compensation, the court shall determine reasonable compensation for the personal representative based on the quality, quantity, and value of the services rendered to the estate and the circumstances under which those services were rendered, including the practice for other fiduciaries who are in similar circumstances to the personal representative in question. When an interested person objects to the attorney's compensation, the court shall determine reasonable compensation for the attorney.

- (2) When a petition seeks approval of or objects to a personal representative's compensation or an attorney's compensation, at least 10 days before the time set for the hearing of the petition, the petitioner or the petitioner's attorney shall send a copy of the petition to all interested persons either by certified, registered, or first class mail or by hand-delivery.
- (3) If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

Amended by Chapter 245, 2013 General Session

**75-3-719 Costs and expenses in estate litigation.**

- (1)
  - (a) In a judicial proceeding involving the administration of an estate, the court may, as justice and equity may require, award costs and expenses, including reasonable attorney fees, to any party to be paid by another party or from the estate that is the subject of the controversy.
  - (b) This Subsection (1) does not apply to the Office of the Attorney General when the Office of the Attorney General is a party to a judicial proceeding involving the administration of an estate to protect a public or charitable interest.
- (2) If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, the personal representative is entitled to receive from the estate the necessary expenses and disbursements, including reasonable attorney fees incurred. This Subsection (2) expressly applies in a will contest to any person nominated as a personal representative in a testamentary instrument submitted in good faith.

Amended by Chapter 421, 2023 General Session

**75-3-720 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.**

After notice to all interested persons, on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative, including any attorney, auditor, investment advisor, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for the personal representative's own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

Amended by Chapter 179, 1992 General Session

