Dual-Resident Impact on Probate Admininistration

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Sunbelt states like Florida include many people who maintain residences in more than one state or jurisdiction. Dual residency can provide both lifestyle and economic benefits. However, when "dual-residents" pass away leaving multiple properties in multiple jurisdictions, the administration of the decedents' estate can become complicated and costly, if not properly structured

In many instances, the estates of people who die owning property in their own name in multiple states will require two probate administrations, one in the state in which the decedent resides at the time of his or her death and the other in the county and state where other property is located. The first administration is referred to as the domiciliary administration and the second, or the out-of-state proceeding is referred to as the ancillary administration. Why is the second proceeding necessary? Because the courts of another state do not have jurisdiction or authority over real property located within another state.

When "Jane Doe" dies a resident of New York, for instance, the domiciliary administration is held in New York and if the other property is in Florida, then in order to transfer the property to the heir or beneficiary of the decedent, it is necessary to obtain from the New York court an authenticated copy of the will, proof of the will, order of probate, and any letters testamentary or letters of administration issued by the New York court, and file those with the Florida court together with either a petition for summary administration, if the value is less than $75,000, or petition for a formal estate if the value is over $75,000 (Ch. 733.206 F.S.) In our example, except for the necessity of obtaining authenticated (or exemplified) copies of the New York probate, an ancillary administration is no different than a domiciliary administration in Florida.

While the courts give preference to the named personal representative in the will of the decedent, it is entirely possible that the person serving as the personal representative (or as sometimes referred to in other states, the executor, if a male, or the executrix, if a female) in the domiciliary state cannot also serve in Florida. Chapter 733.302 of the Florida Probate Code provides that a personal representative must not be a minor and must be a resident of the State of Florida to be qualified to act. The exemptions to the requirement that a person be a Florida resident are that (a) a legally adopted child or adoptive parent of the decedent can act; (b) someone related by lineal consanguinity to the decedent can act; (c) a spouse, or a brother, sister, uncle, aunt, nephew, niece of the decedent or someone related by lineal consanguinity (i.e. a lineal descendant, such as a Father, Son, or grandson, to any of the foregoing can act; and (d) the spouse of a person otherwise qualified can act.

Because estates are administered by the courts, all parties can rest assured that strict adherence to the wishes of the decedent will be followed.

In Florida, both the personal representative and the attorney for the estate are entitled to a fee for services rendered. Although the parties can come to a private arrangement, Chapter 733.617 and 733.6171, Florida Statutes set forth the statutory scheme for fees payable for "ordinary" services rendered by the personal representative

and attorney, and such fees are based on the inventory value of the estate assets and income earned during the administration. For instance, the personal representative is entitled to an initial fee of 3% of the first $1million and the attorney is entitled of $1,500 for the first $40,000; an additional $750 from $40-$70,000; an additional $750 from $70-$100,000; and for estates in excess of $100,000 and up to $900,000 at 3%. Of course, the estate also bears the costs of administration such as filing fees, publication and certified copies. In each of Miami-Dade, Broward and Palm Beach Counties, the filing fees for (a) summary administration is $286, and (b) for formal administration $231.

Although this by no means is an exhaustive list of the requirements for a dual-residency probate, we hope it raises awareness of an increasingly more common trend somewhat unique to "part-time" Floridians. ■

Should you have any questions, please feel free to email either Theda Collins who has practiced law in Florida since 1986 at TCollins@becker-poliakoff.com or Marc Wigder who is licensed to practice law in New York and Florida at MWigder@becker-poliakoff.com or call us at 954-987-7550.

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