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The Settlement of a Decedent's Estate

By BART A. BROWN*

In this article it is assumed the estate owner dies testate, naming as his executor an individual with no previous experience in estate matters, so that the lawyer has responsibility for the business and accounting as well as the legal aspects of the estate. Since counsel is well versed in the legal aspects of estate settlement, major emphasis will be placed upon practical, business and accounting aspects.

The settlement of a decedent's estate may be likened to the liquidation of a business. In the latter case the task of the liquidating agent is to assemble the assets of the business, use those assets to pay claims of creditors and liquidating expenses, and thereafter to distribute remaining assets among stockholders. When an estate owner dies, someone after his death must wind up his business affairs. The Court appoints a personal representative to do this—to wind up his business affairs. Therefore, the duties of a personal representative are, after obtaining Court authority, to assemble the assets of the deceased; to safeguard them during the period they are in his hands; to discharge the decedent's debts, taxes and expenses of administration; to distribute surplus assets to legatees or heirs-at-law; and finally to settle his accounts in Court. These subjects will be discussed in the order enumerated.

Obtaining Court Authority

The first steps in the settlement of a decedent's estate are directed toward probating the will and securing the qualification of the executor. Usually the will is in the decedent's safety vault box, which poses the problem of access. The Bank has contracted with decedent to admit no one to the box except the owner himself or his duly qualified representative. In addition, K.R.S.

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140.250 prohibits access being granted to a decedent's safety deposit box without the consent of the Department of Revenue. Because of the practical necessity of going into the box to locate the will before a personal representative can be appointed, the Bank will permit access to a representative of the decedent's family, when accompanied by a representative of the Department of Revenue (in most counties the County Tax Commissioner), for the purpose of listing the contents and removing the will, if one is located. Nothing else may be removed from the box at this time.

A detailed and accurate list of the contents of the box is very important. Most of the work of the executor will be done, not from the securities themselves (they will be in a safety deposit box), but from the list made of them. It is suggested that the contents be listed somewhat as follows:

- Bonds: 1/\$1000 U. S. Savings Bond, Series G, issued May 1, 1946, No. 1,234,567, in names of John Smith or Mary Smith.
1/\$1000 U. S. Treasury 2-1/2% Bond due 1967-72, No. 6,027,439, with July 1, 1954 and subsequent coupons attached.
- Stocks: 100 (no par) shares Bethlehem Steel Corporation common stock, Certificate No. M 347,716, dated August 16, 1947, registered in name of John Smith.
- Notes: 1/\$335 unsecured note Morgan Bradley, dated January 10, 1952, due 6 months, 6% interest, payable to John Smith, showing credit 1/1053 \$135.00.

When the list is completed, it should be signed by all persons present, and thus it will provide a record of the assets found in the box with which the executor will become chargeable, as well as a record for the tax authorities. The representative of the Department of Revenue will then release the box, subject to qualification. At the same time notification should be given of any bank accounts, so the release will likewise cover those items.

Prior to tendering the will for probate, a number of office copies thereof should be made, to enable the executor to furnish copies to residuary legatees and others who are entitled to know the disposition made by the decedent of his estate. After the will has been located and a preliminary survey made of the assets of the decedent's estate passing under the will, the executor is prepared to file his application for probate of the will and for

his appointment as personal representative. These being matters of legal procedure, they are without the scope of this article.

Upon returning from the Court House, it is suggested that counsel and the executor have an understanding with respect to handling estate matters. Specifically, it is suggested that it be agreed that—

- 1) Bookkeeping will be handled through attorney's office,
- 2) Mail relating to decedent's affairs will come to executor in attorney's care,
- 3) Deposits in executor's bank account will be made through attorney's office,
- 4) Estate checks will be issued from attorney's office, but upon executor's signature,
- 5) Withdrawals from safety deposit box will be made by executor jointly with attorney.

It is recognized that this procedure imposes additional current burdens upon the attorney, but the merit in this procedure will be recognized when the attorney undertakes to prepare the estate's inventory and appraisal, tax returns and court accountings.

It is suggested, also, that it would be opportune at this time and while the executor is with you to—

- 1) Write letter for executor's signature to Postmaster advising that all of decedent's mail be sent to executor in attorney's care.
- 2) Notify all corporations in which decedent held stock of his death and of change of dividend address. (Copy of qualification must accompany this communication.) A similar communication should be sent to the U. S. Treasury Department covering any registered Government bonds paying current interest.
- 3) Address letter to local or other banks, building and loan and brokerage concerns with whom decedent might have done business inquiring as to assets or liabilities known to them.
- 4) Send claimants forms upon which proofs of claim might be filed.
- 5) Write letters to legatees and devisees advising them of their inheritance. A form of letter which has been satisfactorily used is as follows:

“By the will of your uncle, John Smith, probated today in the Gray County Court and of which I am the executor,

you were bequeathed \$1,000.00. The bequest to you is subject to Kentucky Inheritance tax of approximately \$40.00, which will be paid by the executor and deducted from your bequest.

Under K.R.S. 394.520 this legacy is due and payable one year from the date of your uncle's death, and it will be my endeavor as executor to pay same immediately after the expiration of that time."

The next important preliminary step is for the executor to have a clear cut understanding of the steps he is required to take in the administration of the estate and to set up a time schedule for the discharge of each of his responsibilities. Assuming that the decedent died June 23, 1953 (and was a resident of Jefferson County—or some other county having July 1 for a city tax assessment date), the executor's calendar of events might be as follows:

JOHN SMITH ESTATE

Calendar of Events

<i>Date of Death</i>	<i>Date of Qualification</i>
<i>June 23, 1953</i>	<i>June 27, 1953</i>
<i>1953</i>	
June 15	Second installment 1950 Federal Income Tax due.
July 1	Assessment date real estate and tangible personalty—City Taxes.
Aug. 27	Inventory and appraisal.
“ 27	Preliminary notice for Federal Estate Taxes.
Sept. 1	State tax on bank balance.
Oct. 30	Payment 1953 State and County taxes with discount.
Nov. 27	Action to settle estate may be brought by creditor, legatee or distributee.
Dec. 23	Lien in favor of creditors to subject real estate expires.
“ 23	Payment of proved claims may safely be made.
<i>1954</i>	
Jan. 1	Assessment date real estate, tangible and intangible personal property—State and County.
Feb. 10	Payment 1953 City taxes.
Mar. 15	Decedent's final income tax return for 1953—Federal.
Mar. 23	Payment Kentucky inheritance tax with discount.
Apr. 15	Estate's income tax return June 23 to end of year—Federal.

- " 15 Decedent's final return for 1953—Kentucky.
 " 15 Estate's income tax return June 23 to end of year
 —Kentucky.
 June 23 Payment cash legacies to avoid interest.
 " 23 Revaluation date for Federal Estate taxes.
 " 27 Right of renunciation expires.
 " 27 Estate may be safely distributed without regard
 to will contest subsequently filed.
 " 27 Periodical settlement of accounts due.
 July 1 Assessment date real estate and tangibles—City
 only.
 Sept. 1 State tax on bank balance.
 " 23 Federal Estate Tax return to be filed and tax
 paid. Interest begins on unpaid balance.
 Oct. 30 Payment 1953 State and County taxes with dis-
 count.
 Dec. 23 Interest accrues on unpaid Kentucky inheritance
 taxes.
 1955
 Jan. 1 Assessment date intangible personal property.
 Feb. 10 Payment 1954 City taxes with discount.
 Apr. 15 Estate's Federal Income tax return for 1954.
 Apr. 15 Estate's Kentucky Income tax return for 1955.
 June 27 Executor chargeable hereafter with interest on
 surplus assets.

This, also, is an opportune time to consider basic questions such as—

- 1) Abundant solvency of estate,
- 2) Renunciation or disclaimer of will by surviving spouse,
- 3) Existence of pre-nuptial agreement,
- 4) Possibilities of will contest.

The personal financial needs of members of deceased's family should be inquired into and relieved by the executor if he can do so with absolute justice to creditors and other beneficiaries and safety to himself. Remember, a personal representative holds an estate in trust first for creditors, and second for distributees. The widow's exemption of \$1,500 provided for in K.R.S. 391.030 has been held to have preference over all other claims such as the rights of heirs, funeral expenses, debts and costs of administration.¹ It is superior to the claims mentioned in K.R.S. 396.090.

¹ *Blades v. Blades' Adm'r.*, 289 Ky. 556, 159 S.W. 2d 407 (1942).

Assembling and Safeguarding Assets

It is the duty of the executor to locate and place under his control all of the personal property owned by the decedent.

One who settles a decedent's estate is called the personal representative of the estate. He is so called because he represents the personal property of the decedent. He has nothing to do with the real property of the decedent unless by the will he is specifically charged with duties regarding it. Upon death of the owner, title to real estate vests in his devisees or heirs-at-law, while title to personal property vests in his personal representative, who holds such title in trust first for creditors, and next for distributees. The executor has, therefore, no obligations with respect to a decedent's real estate unless specifically so charged by the will.

Likewise, an executor's authority does not extend to joint survivorship personal property, such as bank accounts, U. S. Savings bonds, or shares of corporate stock registered "John Smith or Mary Smith or the survivor" or John Smith, payable on death to Mary Smith. Such joint survivorship property will likely be subject in whole or in part to inheritance and estate taxes, and the executor would be well advised to insist upon indemnity for such co-owner's share of the death taxes before surrendering the property. Again, before surrendering possession, the executor should assure himself that the property was not transferred into joint names to hinder, delay or defraud creditors or to cheat a surviving spouse of marital rights. For our purposes here, suffice it to say that joint survivorship personal property or property registered in the name of a decedent, payable on death to another, does not normally constitute a part of decedent's estate for administration by his personal representative.

Like joint survivorship property, the executor must have a record of life insurance payable to named beneficiaries, taxable gifts made by the deceased or taxable trusts created by him, for the purpose of including these items in his tax returns.

In locating personal property the executor will consult the personal books of account of the deceased, if any, and will check the property located with that reported for State and County taxes and Federal and State income taxes. He will make inquiry of local banks, brokers, building and loan companies, and will

confer with members of the family, friends and confidants, for leads as to assets or liabilities of the deceased.

Having located the assets, it is the executor's duty to take them into possession and to safeguard them during the period of administration. In all such matters his standard of conduct is that of a reasonably prudent business man under similar circumstances. This means that in the selection of depositories for estate funds, a place of safe-keeping for its securities, the protection of tangible personal property from theft or vandalism, the executor must act with prudence, which includes carrying of suitable insurance protection should the unexpected occur.

Where practicable, the executor will make distribution or disposition of household and personal effects, clothing, jewelry and other like articles promptly. If the estate is solvent, delivery can usually be made immediately after appraisal. Sometimes where the estate is of questionable solvency or a will contest might occur, such articles can be delivered to heirs or legatees against a trust receipt, under which the recipient agrees to return such articles upon demand by the executor. Because of the hazard of accidents, it is not advisable for the automobiles to remain in the estate and yet be driven by others not connected with the settlement of the estate.

Paying Debts, Taxes and Costs

At the time assets are located and taken into possession, consideration should be given to their taxability for inheritance and estate taxes and proper tax values placed thereon. An important shortcoming in the settlement of many estates is delaying until time for filing the tax reports before determining which assets are taxable and their proper tax values. The latter is particularly true of valuable real estate, shares of stock in close corporations, partnership interests and mineral rights. Another mistake frequently occurring in estates of small and medium size is establishing a very low tax value for inheritance taxes, only to find that upon sale of the property a much more substantial income tax is payable.

Perhaps the most important business question which confronts an executor is when funds should be raised to pay the debts of the decedent, the taxes due from his estate, the expenses of adminis-

tration and the legacies payable in cash. Within a reasonable period of time after qualification a close approximation of these liabilities can be made, although it is known that the items will not actually be paid until sometime in the future. For example, the executor may defer for six months after qualification before paying creditors claims.² Kentucky inheritance taxes are due and payable 18 months from date of death, but may be paid within 9 months with a 5% discount. Federal Estate taxes are payable within 15 months and cash legacies 12 months from date of death. So here is the executor's problem, does he sell assets now to pay items due six, nine, twelve and fifteen months from qualification, or does he wait until the items are approximately due and then raise the funds.

Akin to the problem of when to sell is what to sell. Many consider the estate in the hands of the executor to be encumbered with a lien in the amount of debts, taxes, costs of administration and cash legacies and set about immediately raising enough cash to free the residuary estate from the lien. Others prefer to effect the sales in installments to capture the average market over the period of administration, but there is little doubt the better opinion on the subject is that a reasonably prudent business man who has a non-renewable obligation to meet does not wait until the maturity of the debt before providing funds to meet it. As to what to sell, after eliminating items specifically bequeathed, the answer should be to sell those assets least attractive from an investment point of view.

The executor should require claims against a decedent's estate to be proved before paying them as required by K.R.S. 396.010. It is recognized that a personal representative is entitled to receive credit on his accounting only for such debts of the decedent as are accompanied by verified proofs of claim.

In the payment of claims the executor must give consideration to (a) time for payment, and (b) order of payment. K.R.S. 395.190 has been construed to mean the executor need wait only six months from qualification before paying claims properly proved within that time. So six months after qualification he may proceed with the payment of claims with immunity to himself.

Claims will be paid in the order of priority. For this purpose

² KY. REV. STAT. Sec. 395.190.

claims are divided into three classes, secured, preferred and general. Secured creditors are those who hold a specific pledge of assets to secure their debt. They are entitled to have their security sold and the proceeds applied against the payment of their claim. If it brings more than the amount of the debt, the excess goes to the executor to be applied toward payment of other claims. If it brings less, the difference between the debt and the sale price of the collateral will constitute a general claim against decedent's estate.

Preferred claims are (1) taxes of various kinds, including income, inheritance and estate taxes, both State and Federal, (2) burial expenses, including appropriate marker at grave, and (3) costs of administration.

If there are not sufficient assets to pay all of the debts, costs and taxes of the decedent and legacies and devises, the estate left by the decedent, is taken in the following order³—

- 1) Intestate personalty
- 2) Intestate realty
- 3) Personalty constituting residuary estate
- 4) Realty constituting residuary estate
- 5) Personalty constituting general legacies
- 6) Personalty constituting specific legacies
- 7) Devised real estate

Distribution to Beneficiaries

When can an executor safely make distribution to beneficiaries? The answers are various. So far as creditors who have not asserted their claims are concerned—six months.⁴ As to a widow who might renounce or a surviving husband who might disclaim—one year.⁵ As to an heir-at-law who might contest—one year.⁶ As to cash legacies, they are by statute made payable one year from date of death.⁷ In addition, distributions made within one year from date of death may interfere with the executor's right of valuation of assets as of one year from date of death as now permitted for Federal Estate taxes under I.R.C. 811.

³ As set out in *Northcutt's Ex'r. v. Farmers National Bank*, 292 Ky. 628, 166 S.W. 2d 971 (1943); *Davis v. Allen*, 198 Ky. 669, 249 S.W. 1013 (1923).

⁴ KY. REV. STAT. Sec. 395.190.

⁵ KY. REV. STAT. Secs. 392.080, 394.320.

⁶ KY. REV. STAT. 394.250.

⁷ KY. REV. STAT. Sec. 394.520.

A cash legacy carries interest at the legal rate from one year from the date of death. The beneficiary of a specific legacy is entitled to the income of the legacy from the death of the testator. For example, dividends on stock declared and paid after the testator's death belong to the legatee of the stock. The representative of the estate is charged with interest on surplus assets in his hands after two years from the time he qualifies.⁸

If after payment of debts, taxes and costs there are not sufficient assets to pay all of the legacies contained in the will, abatement of legacies, in the absence of something to the contrary contained in the will, occur in the following order—

- 1) Legacies contained in residuary clause abate first,
- 2) General legacies next,
- 3) Specific legacies have priority over all other legacies.

In the distribution of estates special consideration must be given to such subjects as rights of adopted and pretermitted children, advancements in intestate or partially intestate estates, lapsed legacies and other like matters.

In the absence of a provision to the contrary in the will, Kentucky Inheritance taxes will be deducted from the portion of the beneficiary who receives the property on account of which the tax is levied. Although it may not be generally so considered, it is submitted that the same is true of the Federal Estate tax, that is, the tax is deductible from the portion of the beneficiary who received the property on account of which the tax is levied, unless there is something in the will to the contrary.⁹

Accountings

This being a strictly legal phase of estate settlement it will be passed over, except for the statement that prior to *Smith v. Louisville Trust Co.*,¹⁰ whenever a personal representative had a large or complicated estate to settle, it was believed he could file a settlement suit in the Circuit Court and with all of the parties before the Court could procure an adjudication of rights as the settlement progressed. The *Smith* case held that one of the basic re-

⁸ Ky. REV. STAT. Sec. 395.310.

⁹ Huber v. Huber, 240 S.W. 2d 89 (Ky. 1951).

¹⁰ 237 S.W. 2d 836 (Ky. 1951).

quirements for such a suit is that there be not sufficient personal property for the payment of debts. It should not be the law that a personal representative must either act at his peril hoping that upon settlement of his account his actions will be approved, or be put to the necessity of filing multiple actions during the course of settlement.

Conclusion

In conclusion many topics in this article have been treated sketchily and others of importance omitted because of space and time limitations. Some of the omitted items are included in the following list of suggestions which are respectfully offered as assistance to an executor who wants to perform his task expeditiously and economically and with best results to those he serves.

ESTATE SETTLEMENT SUGGESTIONS

1. Before probate make sufficient copies of will to provide all interested parties with a copy.
2. Anticipate questions of beneficiaries—particularly advise them how much they will likely inherit and when.
3. Let the beneficiaries know the legal limitations upon paying debts and making distribution.
4. Read will carefully. Make a digest of its provisions. Refer will and digest to an associate to be checked.
5. Never take sides between beneficiaries. Treat them all equally and impartially.
6. Do not let beneficiaries push you into action. Anticipate what is required to be done—do it and let the beneficiaries know what you are doing.
7. The exercise of discretion is your responsibility. Investigate each situation carefully, then exercise your best judgment, getting such beneficiary or court approval as you can.
8. Locate assets—make detailed list—take them into possession—apply proper safeguards for their protection.
9. Use check list for miscellaneous assets.
10. If the asset is tangible—see it—know what you are administering—understand its characteristics, its utility value and its potential.
11. Obtain most reliable estimate of present market value. Use experts to value real estate, furniture, jewelry, etc.
12. Consider income tax as well as death tax aspect of appraisalment of assets.

13. Obtain release from tax department of safety box, bank accounts, etc.
14. Make Calendar of events—set up tickler cards.
15. Arrange for estate bookkeeping—see to it that all transactions are promptly recorded.
16. Notify corporations of death and change of dividend address.
17. Address letters to local banks and trust companies inquiring as to assets and liabilities.
18. Get life insurance forms 706 when insurance is *collected*.
19. Get tax wavers and stocks in shape for transfer at earliest possible date.
20. Resolve questions of income or corpus at time of receipt; also questions of income and inheritance taxation.
21. Inventory includes only personal property coming into hands of personal representative for administration. Does not include—
 - (a) Real estate—unless will charges executor with duties regarding it.
 - (b) Life insurance—unless payable to estate.
 - (c) Joint survivorship securities or bank account.
 - (d) Gifts inter vivos, property passing under power of appointment.
22. Make a survey of liabilities, including debts, taxes and costs of administration at earliest possible moment.
23. Set us a fund to pay these liabilities.
24. Consider right of re-valuation for Federal estate tax purposes.
25. Immediately liquidate trading or other collateral account.
26. Liquidate or sell a going business unless directed otherwise by will.
27. New contracts may not be made.
28. If an executor borrows money and pledges the estate, it is his individual debt until sanctioned by court.
29. A personal representative has no power to bind an estate by signing a renewal note, although it may have been in its interest and for its benefit. *State National Bank v. Thompson*, 277 Ky. 527, 126 S.W. 2d 412.
30. Compromise of claims without the approval of the Circuit Court is at the peril of the personal representative.
31. Over-all considerations—
 - (a) Solvency of estate
 - (b) Possibility of will contest, renunciation, disclaimer, or ante nuptial contract.
32. Widow's exemption of \$1,500.00 has preference over all other claims such as the rights of heirs, funeral expenses, debts and costs of administration.
33. Debts may safely be paid six months after qualification.
34. Distributions to beneficiaries may safely be made—
 - (a) Six months after qualification, and

(b) After all claims have been paid.

Provided, there is—

1. No possibility of a will contest.
2. No question of renunciation or disclaimer.
3. No re-valuation for tax purposes involved.

If any of these elements exist, 1 year should elapse before distributions are made.

35. Income during administration is distributed—

To Specific legatee—income from his legacy

General legatee—interest from 1 year from date of death

Legacy in trust—interest from date of death

Residue in trust—*Grainger's Ex'r v. Pennebaker*, 247 Ky. 324, 56 S.W. 2d 1007.

36. Distributions to residuary legatees should be made in kind if practicable.

37. Executor is under no duty to "clean up" an estate.

38. Personal representative is charged with interest on surplus assets in his hands after 2 years from the time he qualifies. Before the expiration of 2 years, he is charged solely with interest realized on assets.

39. Make use of the administration check sheet.