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# Gathering Information

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### **I. Access to the Safe-Deposit Box**

#### **A. In General**

§2.1 If the decedent had a safe-deposit box, you should gain access to the box as soon as possible. The will and other documents needed for estate administration can often be found in the box.

Joint boxes are not sealed at death. The surviving joint tenant may gain immediate access. MCL 487.721. If the joint tenant is someone other than the personal representative, both the joint tenant and the personal representative have full access to the box.

If the box is jointly leased with someone other than the personal representative, however, the personal representative must open the box in the presence of the

safe-deposit company's authorized employee; a list of items removed by the personal representative must be made and served on the other joint lessee within seven days. MCL 700.2517(2)(b).

Note that if you take possession of items that were located in a safe-deposit box, you should provide a receipt to the personal representative. See form 2.1.

No notice to the Michigan Department of Treasury nor other special procedure is required when a personal representative opens a box.

### **B. Petition and Order to Open the Safe-Deposit Box**

§2.2 Even before a personal representative is appointed, any interested person, as defined in MCL 700.1105(c), may petition the probate court to open a safe-deposit box to look for a will or burial plot deed. MCL 700.2517(2)(a). Use a Petition and Order to Open Safe-Deposit Box to Locate Will or Burial Deed (form 2.2, PC 551).

The probate judge may issue the order at once without notice, after a \$10 fee has been paid. Once the order has been issued, the box may be opened in the presence of an officer or authorized employee of the bank. All those in attendance must sign a certificate stating whether a will or burial deed was found in the box and that no other items were removed. If no safe-deposit box is found, the petitioner must file a written statement to that effect. The approved certificate is the upper portion of the Safe-Deposit Box Certificate and Receipt (form 2.3, PC 552). Items in the safe-deposit box other than the will or burial plot deed may not be removed from the box.

The certificate and any will or burial plot deed found in the box are to be delivered to the probate register by the person named in item 3 of the petition, form 2.2. The register issues a receipt for these materials to the bank where the box was found. The approved form of the receipt is the lower portion of form 2.3.

Note that a personal representative, once appointed, has full access to the box and does not need to use this procedure. *See* MCL 700.2517(2)(b).

## **II. Documents and Records**

### **A. Locating the Will and Obtaining the Death Certificate**

§2.3 Most of the time you will already have the will or it will be given to you by your client when you are first consulted. If not, and if the will is not found in a safe-deposit box, it may have been filed with the probate court where the decedent lived. *See* MCL 700.2515. The Authorization to Release Will Held for Safekeeping (form 2.4, PC 548) should be used to obtain possession of the will. If a will is not located, this is a special problem addressed in chapter 8.

MCR 5.302 now requires that a death certificate be filed along with the Application for Informal Probate and/or Appointment of Personal Representative (form 4.3, PC 558) or Petition for Probate and/or Appointment of Personal Representative (form 5.1, PC 559). Copies of the death certificate will also be needed to transfer joint property, claim life insurance benefits, etc. The funeral director will usually have furnished the personal representative with sufficient copies of the

death certificate. If not, a letter requesting death certificates (form 2.5) should be mailed to the appropriate county or local health department to obtain copies. Because a certified death certificate will also be required by many brokerages, banks, and retirement benefits organizations, life insurance companies insuring the decedent, and for recording purposes to remove the decedent's interests in title, recommend that the personal representative obtain at least 12 certified death certificates from the funeral home or county or local health department.

## **B. Other Estate Planning Documents**

**§2.4** In addition to the will, you must obtain all other documents that were a part of the decedent's estate plan. Ask your client to look among the decedent's records for deeds creating joint tenancies, revocable and irrevocable trusts, and any amendments or codicils.

Some persons hold all their assets in joint names with one or more of their children, trusting that the child will follow through with the parent's wishes after death and distribute the property among siblings. Often a written agreement is prepared memorializing this arrangement. You should see if your client knows about any such agreement.

You should also consult with other professionals who have been involved in the decedent's estate plan, particularly if you were not the decedent's lawyer during life. The decedent's accountant, stockbroker, or financial planner may be able to supply you with additional information about the estate plan. Names of these professionals may be obtained from family members or from an examination of the decedent's financial records.

Checking the decedent's computer for online files and records is critically important. The personal representative should secure the computer; access to a password may be available from family or friends. Otherwise, the personal representative has authority to contact online service accounts for password override access to the information. This special problem is addressed in chapter 8.

## **C. Personal Check Records and Income Tax Returns**

**§2.5** If the decedent was secretive about financial affairs, even family members may not have much information about the extent of the estate. You may need to direct your client in some detective work to unearth assets. Four good places to start are the mailbox, the computer, the check register, and the income tax return.

The mailbox is the easiest access to information. Direct the personal representative to file a change of address form with the postal service, using the personal representative's mailing address for all correspondence to the decedent. In the course of three months, the personal representative should receive statements from most or all of the financial institutions holding assets in the decedent's name, as well as invoices and bills from the creditors.

The computer is an excellent resource for real estate interests and closely-held business interests. Under each county's website in Michigan, a search within the

equalization department will generally result in an opportunity to do a parcel search based on an owner's name. By using the decedent's name, you may discover multiple interests in the county of your search. If you are aware of the decedent's frequent use of a cabin, cottage, or second home, you may need to search multiple counties. Some counties require an online fee for such a search but it is well worth the cost in time savings and thoroughness. The parcel search will generally disclose the ownership, the legal description, and the state equalized value of the subject real property. The online search is a valuable place to start, but a last deed of record (available for a small fee from the county or a title company) is the best indication of the true legal description.

Similarly, an online search within the state of Michigan's Department of Licensing and Regulatory Affairs at [http://www.dleg.state.mi.us/bcs\\_corp/sr\\_corp.asp](http://www.dleg.state.mi.us/bcs_corp/sr_corp.asp) will reveal any corporate, limited liability company, limited partnership, or filed assumed name interests in which the decedent was involved. A search with the Michigan Department of Treasury at <http://www.michigan.gov/treasury/0,1607,7-121-44435-7924--,00.html> will disclose any unclaimed property in which the decedent has an interest. Each state search can be conducted with the decedent's name.

A check register is a financial diary. Entries can alert you and your client to assets you might otherwise have overlooked. Look for checks for life insurance premiums, safe-deposit box rent, real estate taxes, deposits, and other items that signal the existence of assets.

Obtain copies of the decedent's income tax returns for the last two or three years. Income (except for wages, salary, and pensions) comes from assets, and you can use the tax return to check asset information from other sources. If financial information is very difficult to obtain, you may assist the personal representative in an application to the IRS for past income tax returns on IRS Form 4506. Be cognizant, however, that receipt of the returns can take up to several months.

If your research leads you to believe that an asset exists, you can follow up with a letter, enclosing a copy of the personal representative's letters of authority. See the letters in forms 2.6 and 2.7.

#### **D. Asset Checklist**

**§2.6** All of the estate's assets and encumbrances should be determined as quickly as possible. As these assets are valued (see §§2.7–2.9), they may be noted on the supplemental case record (form 1.12) and may be summarized in form 2.8. In addition, if you are aware that there are assets in a certain bank, you may enter the electronic system to download copies of the decedent's checks and account balances. All of this information will assist you in preparing the inventory and determining what type of administration is most appropriate for the estate. Be certain to determine if the liabilities of the estate exceed the assets as soon as possible. If an estate is "underwater," notify the creditors of the estate's insolvency. There is a further discussion of creditors' claims in chapter 3 and insolvent estates in chapter 8.

### III. Estate Valuation

#### A. In General

§2.7 At the outset, it is important for you to have a good estimate of the value of the estate. Many assets, such as bank accounts or listed stocks and bonds, have a readily ascertainable worth. For others, such as real estate and jewelry, the valuation process is more complicated. There are two main reasons for making an initial estimate of value when you begin the probate process: (1) to determine whether to use the summary administration procedures (see §4.31; these procedures will generally be useful if the total probate estate is less than about \$64,000 in 2016) and (2) to know whether U.S. and Michigan estate tax returns will be required. If an estate tax return must be filed, it is due nine months from the date of death. The date six months after the date of death is used as an alternate valuation date, except that for assets disposed of or distributed before then, the alternate value is their value at the time of disposition or distribution. (Both of these dates are included on the significant date lists in forms 1.14 and 1.15.) See chapter 7 for further discussion of estate taxation issues.

#### B. Real Property

§2.8 The personal representative must determine the nature and value of the decedent's interest in all the estate's real property. Review copies of all the decedent's deeds, land contracts, mortgages, abstracts, and title insurance policies to determine accurate legal descriptions and ownership. Obtain title searches if there is any doubt about the decedent's title.

There are many approaches to valuing real estate. Consider the following factors:

1. Recent sale price of the property. *Recent* may be loosely defined as a sale within a year of death, or as long as the property is listed for sale in a reasonably expeditious manner and reasonable offers are pursued, until a final sale.
2. Recent sale price of a comparable property.
3. Assessed valuation for taxation purposes. Real estate in Michigan is supposed to be assessed at one-half its true market value. This is a good rule of thumb, but it is not accurate in many places around the state, especially in light of economic challenges in recent years.
4. Estimated replacement value.
5. Actual appraisal. If the estate is subject to federal or Michigan estate tax, an actual appraisal may be required. You may also want to hire an appraiser if the heirs or will beneficiaries disagree about the property's value.
6. For income property, "capitalization" of its earnings.

For land contracts or mortgages, consider the value of the property, the original sale price, the age of the instrument, the present balance, the monthly payment, the interest rate (compared to market interest), and the payment record. Document all factors that were considered to determine the discount value. Remember: When you discount assets, amounts saved on estate taxes may come

back in additional income taxes because the people who receive the property will do so at a lower “cost” basis. That is, if the value of the gross estate is well under the estate tax exemption or exclusion amount (currently \$5,450,000 per person in 2016), a step-up in basis is most valuable to the devisees of the estate.

When the estate is the buyer or mortgagor, figure the fair market value as you would figure it for real property, less the amount of the lien due. The terms of the land contract or mortgage and whether it is assignable can affect its value.

In addition, be prudent about property insurance. Many times, a home that is empty at the owner’s death is not covered for vandalism under the terms of the policy. Contact the insurance agent to determine if a rider is necessary to keep the property insured after the death of the owner.

### C. Personal Property

§2.9 Automobiles may be valued through a written appraisal from an automobile dealer or by recourse to the current “Blue Book.” Used car valuations are also among the resources available on the Internet. See, for example, <http://www.cars.com> and <http://www.edmunds.com> for online used car valuations. Other personal property, such as jewelry, appliances, furniture, boats, silver, crystal, china, works of art, and books, may be valued by appraisal or, for less costly items, by comparison to similar objects recently sold or to newer examples, discounting for depreciation. Finding a qualified appraiser can be difficult. For special personal effects such as collectibles or art work, auctioneers like Leslie Hindman Auctioneers (<http://www.lesliehindman.com>) or DuMouchelle Galleries (<http://www.dumouchelle.com>) are available on an hourly basis for appraisals. Local antique dealers will occasionally appraise personal effects and jewelry for the opportunity to make an initial offer to purchase. Comparisons may also be carried out online. Many charities such as Goodwill Industries require the donor to determine the value of donated assets. If the devisees have decided to donate all personal effects, an appraisal will be necessary to document the value of the donation. Finally, an estate auction will determine an actual sales price for estate value purposes.

When establishing the value of such personal property, compare its worth to the value of the residence and make sure the personal property is adequately insured.

The personal representative should question surviving joint owners of property to make sure that all jointly owned property was, in fact, jointly owned and not intended to be subject to an agency relationship. Remember, possession does not always mean ownership of property. Obtain copies of any documented gifts or agency agreements.

For listed securities, check the listed value as of the date of the decedent’s death. It will often be necessary to take a “mean” value for that date; that is, the average between the high and low quotations. Certain services can be purchased to determine the values for the estate such as Estate Valuations & Pricing Systems, Inc., accessible at <http://www.evpsys.com>. For unlisted securities, a written valuation from a stockbroker should be obtained. The value of government bonds as of the