Presented by Idaho State Bar
Taxation, Probate & Trust Law Section

8th Annual Estate Planning Basics

May 19, 2023
The Law Center, Boise, Idaho
& Live Webcast

IDAHO STATE BAR

Approved by the Idaho State Bar for
3.0 CLE Credits of which .5 is Ethics

Agenda

8:30 a.m. – 9:00 a.m.	**Registration & Continental Breakfast**
9:00 a.m. – 10:00 a.m.	**Starting the Probate Process and Overview of Common Forms** *Ty Ketlinski* *Ketlinski Law Office, PLLC*
10:00 a.m. – 10:30 a.m.	**Ethics in Estate Administration** *Kimmer Callahan* *Callahan & Associates, Chtd.*
10:30 a.m. – 10:45 a.m.	**Break**
10:45 a.m. – 11:45 a.m.	**Common Administration Issues and Creditor Claims** *Corey Smith* *Lake City Law Group, PLLC*
11:45 a.m. – 12:15 p.m.	**Closing the Estate** *Richard Gardner* *U.S. Bank*
12:15 p.m.	**Program Concludes**

This program was produced in 2023. Since the law is constantly changing, you are cautioned to use this information only as a starting point for your own research and are urged to consult applicable resources to determine the current state of the law. Similarly, since the application of law is dependent upon each particular fact pattern, you should always independently research the particular issues in any case.

About the Speakers

Ty Ketlinski
Ketlinski Law Office, PLLC
Meridian, Idaho

Ty A. Ketlinski is an attorney at Ketlinski Law Office, PLLC in Meridian, Idaho. Mr. Ketlinski grew up in Boise and attended Borah High School. He graduated with a degree in architecture from the University of Idaho in 1994, and subsequently graduated with a JD from the University of Idaho, College of Law in 1997. Mr. Ketlinski passed the bar later in 1997 and has since practiced law in the Treasure Valley for the last 26 years. After years of civil litigation, Mr. Ketlinski joined the Canyon County Prosecuting Attorney's Office in 2009. Mr. Ketlinski eventually became a Unit Chief in the criminal prosecution division, where he specialized in violent crime and elder abuse, exploitation, and neglect.

Mr. Ketlinski opened Ketlinski Law Office, PLLC in 2016 where he and his wife Kelli Ketlinski practice exclusively estate planning, elder law, and probate. They live in Meridian with their two kids and three obnoxious dogs.

Kimmer W. Callahan
Callahan & Associates, Chtd.
Coeur d'Alene, Idaho

Kimmer W. Callahan, JD, LL.M(Tax), EPLS, AEP, is the principal attorney at Callahan & Associates, Chtd., in Coeur d'Alene. Mr. Callahan practices in the areas of estate planning, probate, trusts, VA Benefits and elder law. He received his J.D. from Gonzaga University School of Law and an LL.M. (Taxation) from the University of Denver, and he is a Fellow of The American College of Trust and Estate Counsel (ACTEC), and is certified as an Estate Planning Law Specialist by the Estate Law Specialist Board, Inc., the only estate planning certification entity approved by both the American Bar Association and the Idaho State Bar Association. Mr. Callahan is a past chairman for the Taxation, Probate & Trust Section of the Idaho State Bar.

Corey Smith
Lake City Law Group, PLLC
Coeur d'Alene, Idaho

Corey Smith is a partner at Lake City Law Group, PLLC. He received his J.D. from the University of Idaho, along with a B.B.A in Finance and a Masters in Accounting, Taxation from Boise State University.

His practice focuses on Taxation, Estate Planning, and Probate/Trust Administration. Corey began his legal career at the Idaho Office of the Attorney General, assigned to the Idaho Tax Commission, where he worked on issues related to individual and business income taxation, as well as income tax apportionment issues for multi-state entities. In addition to his experience in private practice, Corey has also gained valuable experience as Vice President of Trust and Investment Administration of Idaho Trust Bank and as associate at Harris, CPAs, specializing in trust and probate administration.

Richard Gardner
U.S. Bank
Boise, Idaho

As a Wealth Trust Advisor, **Richard Gardner** is responsible for understanding his clients' wealth planning, estate planning and wealth transfer needs. Rich also researches and recommends fiduciary strategies and opportunities.

Rich began his career in the banking and financial services industry in 2014. Prior to that, he practiced law for seven years as an estate planning attorney with the law firm of Van Cott, Bagley, Cornwall & McCarthy in Salt Lake City. Additionally, he clerked for one year with the Idaho Supreme Court. His professional background includes extensive experience developing personalized strategies for achieving clients' financial goals and bringing a holistic approach to managing their wealth. He especially enjoys helping his clients turn their wealth into a legacy to benefit the people and causes they care about.

Rich is an active member of his community and serves with several nonprofit professional organizations to promote legal ethics and the rule of law, mentor new attorneys and advocate for better laws relating to trusts and estates.

Rich resides in Meridian, Idaho. When he is not at work, he enjoys skiing, playing the piano and spending time with his wife Karena, their four children and a dog named Maple.

Starting Probate and Overview of Common Forms

Idaho State Bar

Idaho State Bar Taxation, Probate & Trust Law Section

8th Annual Estate Planning Basics

1

Introduction

2

Probate Court

- Succession: gratuitous transfer of property at death
- Historically, such transfers were only readily available through use of a probate court (surrogate's court, orphan's court, chancery court, etc.)
- Common law basic core functions of probate court (*prevent chaos*)
  1. Provide evidence of transfer of clean title to new owner;
  2. Protect creditors by providing a procedure for payment of the decedent's debts; and
  3. Distribute the decedent's property to the intended beneficiaries.

3

Problems with Probate Court of Old….

- Probate courts had developed the reputation for becoming cumbersome, expensive, and slow
- "Will-substitutes" developed to avoid probate court
  - Inter vivos trusts (living trust, revocable living trusts, etc.)
  - Payable on death (POD) and transfer on death (TOD) contracts
  - Life insurance proceeds to named beneficiaries
- Uniform Law Commission response……

4

Idaho Uniform Probate Code (IUPC)

- Idaho first state to adopt a substantial version in 1971
- Purpose of IUPC:

  "*[T]o simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons*."

  Idaho Code 15-1-102
- Flexible and modular system
- Expansive set of laws

5

Chapter 1 General Provisions, Definitions and Probate Jurisdiction of Court
Chapter 2 Intestate Succession—Wills
Chapter 3 Probate of Wills and Administration
Chapter 4 Foreign Personal Representatives Ancillary Administration
Chapter 5 Protection of Persons Under Disability and Their Property
Chapter 6 Nonprobate Transfers
Chapter 7 Trust Administration
Chapter 8 Trust and Estate Dispute Resolution Act
Chapter 12 Uniform Power of Attorney Act
Chapter 13 Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
Chapter 14 Revised Uniform Fiduciary Access to Digital Assets Act
Chapter 15 Uniform Recognition of Substitute Decision–Making Documents Act

6

7

Terminology

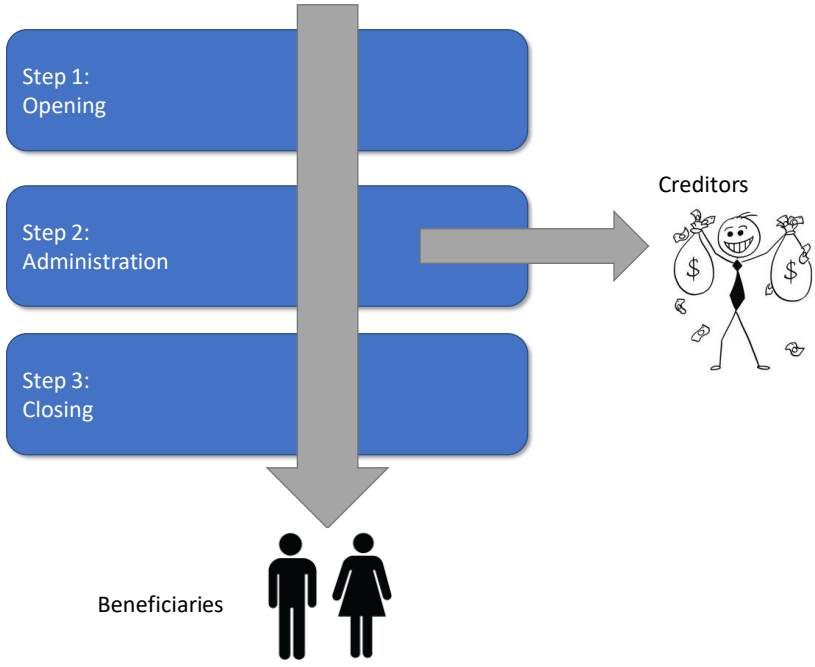
- "Probate"
  - The judicial procedure to establish that a testamentary document is the decedent's will ("to admit to proof")
  - More generally, probate is the system to administer a decedent's estate (including intestacy)
- "Probate assets" – assets going through probate court
- "Non-probate assets" – assets passing to beneficiaries outside of probate court (trusts, beneficiary designations, etc.)
- "Personal representative" – term for both an executor (testate) and an administrator (intestate) I.C. 15-1-201(35)

7

Overview of Probate Case

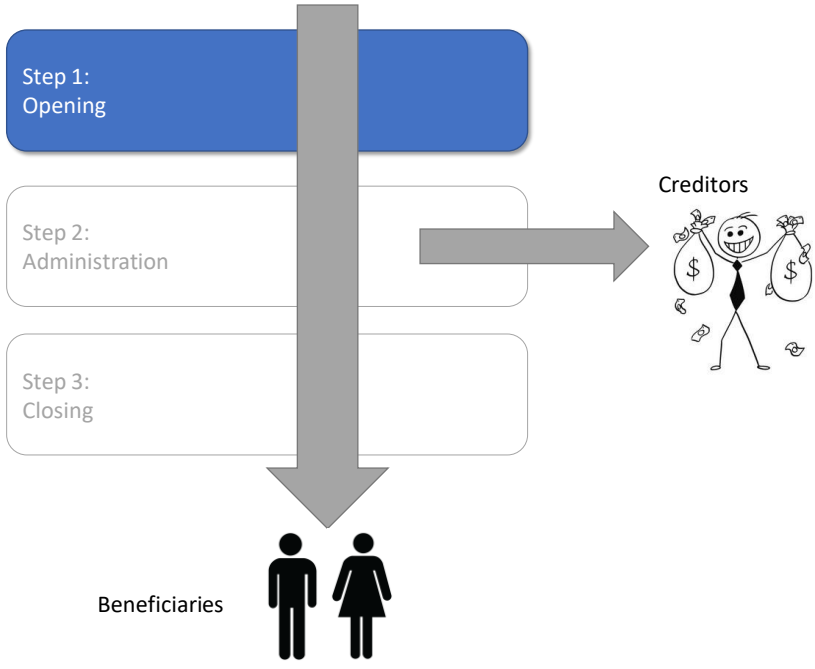
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Anatomy of a Probate Case



9

Anatomy of a Probate Case



10

Opening a Probate Case

11

Opening Probate: Typical Proceedings

Summary Probate	Informal Probate	Formal Probate
Application: • Surviving spouse is sole beneficiary of decedent's estate • Or "Summary Administration Where Spouse is Sole Beneficiary" Advantages: • Less attorney's fees	Application: • Uncontested cases • Expedited (or *ex parte*) appointment of personal representative – no hearing required • Post-appointment notice to heirs and devisees (beneficiaries) Advantages: • Faster appointment of PR	Application: • Contested cases (or potentially contested cases) • Hearing required • Notice to heirs and beneficiaries before hearing

12

Summary Probate: Idaho Code 15-3-1205 Objectives

- Obtain Decree (Judgment) from court to allowing surviving spouse to claim ownership of:
  - Assets titled in only deceased spouse's name (e.g. bank and financial accounts, vehicles)
- Removal of deceased spouse's name from community residence
  - Requires legal description in Petition and proposed Decree
  - Certified copy of signed Decree recorded in relevant recorder's office
    - Assessor will remove deceased spouse's name from ownership roll
    - Surviving spouse can sell property with clean title (title company happy)

13

Summary Probate: Basics

- Only available when spouse is sole beneficiary of estate by:
  (1) terms of the will, or
  (2) there is no will and the spouse is the sole heir (estate consists solely of community property)
- If testate, original will is required to be filed. I.C. 15-3-1205(a)
- No administration or closing – surviving spouse assumes and is liable for all of decedent's indebtedness. I.C. 15-3-1205(c)
- Requires hearing (petitioner and attorney not required to attend)
- Requires notice per I.C. 15-1-401 to "any interested person"

14

"Interested Person"

- I.C. 15-1-201(25):"[H]eirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against . . . the estate of a decedent . . . which may be affected by the proceeding. . . . The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. . . ."
- Generally, children of the decedent should receive notice, particularly children from a different marriage
- When in doubt…… provide notice

15

Summary Probate Checklist

- ❑ Prepare:
  - Civil Case Information Sheet
  - Petition (Appendix A)(IUPC Form 28)
    - Include schedule of property, including legal description of real property
    - Must be verified by surviving spouse. I.C. 15-3-1205(a)
  - Notice of Petition and Hearing (Appendix B)(IUPC Form 30) after obtaining hearing date from clerk
  - Prepare Decree (Appendix C)(IUPC Form 29)
    - Include schedule of property, including legal description of real property
- ❑ Serve Petition on interested persons via I.C. 15-1-401 (mail, personal service, or publication)
- ❑ Record certified copy of Decree after hearing

16

Summary Probate: Common Problems

- Must have original will (NOT a copy)
- Spouse must be sole beneficiary of will – a devise to another person or entity (such as a specific gift) requires informal or formal proceeding
  - Personal property memorandum? I.C. 15-2-513
- Pour-over wills – summary administration not available
- Schedule of property not complete, or forgotten items
  - "All bank accounts in decedent's name…." catch all on schedule
- Intestate: real property only in decedent's name. See I.C. 15-2-102

17

How to avoid a Summary Administration

Proactive (pre-death):

- Properly funded inter vivos trust
- Recorded community property (devolution) agreement, with legal description of real property. I.C. 15-6-201(c)
- Community property deed ("community property with right of survivorship") I.C. 15-6-401

Reactive (post-death):

- Affidavit of non-probate (Appendix D and E)
- Small estate affidavit. I.C. 15-3-1201 (Appendix N)

18

Informal Probate: I.C. 15-3-301 et seq Objectives

- Expedited (non-adversarial) appointment of personal representative to administer estate
  - "Applicant" applies to court for appointment of personal representative (either testate or intestate decedent)
  - Assuming requirements met, Court appoints Applicant as personal representative without a hearing
- Obtain legal authority over decedent's property and affairs
  - Letters Testamentary (testate)
  - Letters of Administration (intestate)

19

Informal Probate Contents of Verified Petition

- Statement of Applicant's interest (child, devisee, heir, etc.)
- Name, date of death and age of decedent, and county and state of domicile at time of death
  - If not in Idaho, then statement showing venue
- Names and addresses of spouse, children, heirs and devisees, and ages of any minors
- Statement identifying any other person currently appointed as PR in Idaho or other state

20

Informal Probate
Contents of Petition (con't)

- Statement indicating whether Applicant received a demand for notice, or is aware of a demand for notice, of any probate or appointment proceeding in Idaho or elsewhere
- The time limit for informal probate or proceedings has not expired (3 years)

21

Informal Probate
Contents of Petition (con't)

For informal probate of will:

- The original will is (1) in possession of the court, (2) will be filed with the court, or (3) a certified (or exemplified) copy of the will probated in another jurisdiction will be or is filed with the Court
- To the best of Applicant's knowledge, the will has been validly executed
- The Applicant is unaware of revocation or the will, and that the will submitted is the decedent's last will

22

Informal Probate
Contents of Petition (con't)

For appointment of PR in intestacy:

- The Applicant is unaware of any unrevoked testamentary instrument
- The Applicant's priority of appointment (I.C. 15-3-203), and the names of persons with equal or higher priority of appointment
  - Persons with equal or higher priority may renounce, or renounce and nominate. I.C. 15-3-203(c); (Appendix F and G; IUPC Form 5)

23

Informal Probate Checklist

- ❑ Prepare:
  - Civil Case Information Sheet
  - Verified Application (Appendix H or I; IUPC Forms 8 or 12)
  - Acceptance of Appointment (Appendix J; IUPC Form 37) I.C. 15-3-602
  - If necessary, Renunciation/Renunciation and Nomination (Appendix F or G; IUPC Form 5)
  - Statement of Informal Probate/Appointment (Appendix J or K; IUPC Form 9 and 13)
  - Letters Testamentary OR Letters of Administration (Appendix L or M; IUPC Form 39)

24

Informal Probate Checklist (con't)

- ❑ After electronic filing, physically file original will with Court
  - Include case number on sticky note on will or cover letter
  - Personal property memorandum?
- ❑ Administration preview: send notice of heirs and devisees within 30 days (post-appointment notice requirement). I.C. 15-3-705

25

Informal Probate: Common Problems

- Must have original will (NOT a copy)
- Failure to file a joint probate. I.C. 15-3-111
  - Commonly deed issue – decedent's spouse also on deed
  - 3-year time limit commences on death of 2nd spouse
- Failure to note AKAs on application, statement, and letters
- Court declines application
  - No appeals (not an adjudication) I.C. 15-3-305; 15-3-309
  - Must amend Application or proceed formally

26

Informal Probate:
Objections or counter petitions for formal probate

- Informal probate proceedings can be converted to formal proceedings. I.C. 15-3-402; 15-3-414
  - Usually issues regarding validity of will or suitability of personal representative appointed

27

Formal Probate

- "Litigation" (I.C. 15-3-401) or potential litigation.
- Generally, to (1) determine if the decedent left a valid will, I.C. 15-3-401, or (2) determine priority or qualifications of the proposed personal representative, I.C. 15-3-414.
- Common usages:
  - Copy of a will submitted to probate (c.f. I.C. 15-3-402(b), -409 and In Re Killgore's Estate 86 Idaho 386)
  - Multiple persons with equal priority of appointment
  - Multiple wills
  - Holographic wills (?) I.C. 15-2-503 and non-self proved wills (?) I.C. 15-2-504

28

Formal Probate Requirements

- Petition must contain same requirements as informal application. I.C. 15-3-402
- Hearing required. I.C. 15-3-403
- Notice of petition and hearing required:
  - Those demanding notice per I.C. 15-3-204
  - Surviving spouse, children, heirs, devisees, executors in all probated wills or wills being offered for probate, and "other persons." I.C. 15-3-403(1)

29

Formal Probate Proof

- Uncontested cases. I.C. 15-3-405
  - Order probate or intestacy based on "strength of pleadings" without testimony
  - Order probate based on testimony or affidavits by attesting witnesses
- Contested cases. 15-3-406 through 15-3-414

30

Formal Probate Checklist

- ❑ Prepare:
  - Civil Case Information Sheet
  - Verified Petition (Appendix O and P; IUPC Forms 18 or 19)
  - Acceptance of Appointment (Appendix J; IUPC Form 37) I.C. 15-3-602
  - If necessary, Renunciation/Renunciation and Nomination (Appendix F or G; IUPC Form 5) Notice of Petition and Hearing (Appendix B)(IUPC Form 30) after obtaining hearing date from clerk
  - Order (Appendix Q; IUPC Form 22)
  - Letters Testamentary OR Letters of Administration (Appendix L or M; IUPC Form 39)

31

Miscellaneous

- Self-proved wills. I.C. 15-2-504
  - Formal probate: compliance with signature requirements for execution conclusively presumed. I.C. 15-3-406
- Bond. I.C. 15-3-603
  - Not required in informal proceedings, unless (1) appointment of special administrator, (2) express requirement in will, or (3) 15-3-605.
  - May be required in formal proceeding, unless the will relieves the PR of bond in the will.
- Joint probate. I.C. 15-3-111

32

Questions?

33

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APPENDIX A

Attorney for Petitioner _____

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **PETITION FOR SUMMARY ADMINISTRATION OF ESTATE WHERE SURVIVING SPOUSE IS SOLE BENEFICIARY** (I.C. 15-3-1205)

PETITIONER, _____, STATES AND REPRESENTS TO THE COURT THAT:

1. Petitioner's interest in this matter is that of ***[the surviving spouse of the decedent OR a person claiming title to property through or under the surviving spouse]

2. The decedent, _____ died on _____, 20__.

3. Venue is proper because at the time of death the decedent was ***[domiciled in this county OR domiciled in _____ County, _____, but owned property located in this County]

4. The decedent and _____ were duly married at _____ on _____, and remained married until the date of decedent's death.

5. ****[The decedent died intestate leaving Petitioner as the decedent's surviving spouse and sole heir] OR ***[the decedent died testate leaving a will in which the surviving spouse is named as the sole devisee. The original of the decedent's will, dated _____, will be provided to the Court.]

6. The schedule of property attached to this petition is a full and complete inventory of the property owned by the decedent. The nature of the property (community/separate) is set forth in the schedule.

7. The surviving spouse of the decedent is the sole devisee or heir of the decedent and is therefore entitled to have all of the interest and estate of the decedent distributed to and vested in the surviving spouse, free and clear of the claims of any person or persons claiming or attempting to claim under the estate of the decedent as heir, devisee, or otherwise, except as a proper creditor.

WHEREFORE, PETITIONER REQUESTS THAT:

1. The Court fix a time and place of hearing and that notice be given as required by law.

2. That the Court enter its Decree that the decedent and the surviving spouse were duly married and that the surviving spouse is the sole heir and devisee of the decedent and vested with all of the interest and estate of the decedent, free of the claims of any person or persons claiming or attempting to claim under the estate of the decedent as heir, devisee, or otherwise, except as a proper creditor.

   Dated _____, 2020.

/s/ Ty A. Ketlinski
Ty A. Ketlinski
Attorney for Petitioner

VERIFICATION:

Pursuant to I.C. §9-1406 and IRCP 2.7, the undersigned states that ***[he/she] is the Petitioner named in the foregoing Petition, that ***[he/she] has reviewed the contents therein, and hereby certifies under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Dated: _____

_____
***[name], Petitioner

SCHEDULE OF PROPERTY

Property:	**Community or Separate (C/S):**
1. Real property and residence located at _____, and more specifically described as follows: **[legal description]** APN:	C
2. Personal property located at residence	C
3. Automobile: 1969 Chevrolet Camaro SS	C
4. Idaho Central Credit Union checking account no. ending ____	C
5. Any and all bank accounts owned by decedent	C
6.	
7.	
8.	

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Attorney for Petitioner _____

APPENDIX B

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **NOTICE OF PETITION AND HEARING** (I.C. 15-1-401)

1. Notice is hereby given that on _____, 202_, _____ filed a Petition For Summary Administration of Estate Where Surviving Spouse is Sole Beneficiary.

2. ***[A copy of the petition accompanies this Notice OR A copy of the petition is on file with the Clerk of the Court and may be reviewed upon request]

3. The Petition has been set for **telephone or video** hearing in this Court on **(day),** _____ **___, 202_**, at **__:__ o'clock, _.m.**

How to Attend:

Online:	**By Telephone:**
https://zoom.us/join Meeting ID: _____ Passcode: _____	Toll free: (877) 853-5257 or (888) 475-4499 Meeting ID: _____ Passcode: _____

Dated _____, 202_.

/s/ Ty A. Ketlinski
Ty A. Ketlinski
Attorney for Petitioner

PROOF OF MAILING

On _____, 20__, the undersigned deposited in the United States mail of the foregoing notice, enclosed in a sealed envelope with first-class postage prepaid, addressed to the following persons at the following address:

Name: Address:

Pursuant to I.C. §9-1406 and IRCP 2.7, I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

/s/ Ty A. Ketlinski
Ty A. Ketlinski
Attorney for Petitioner

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Attorney for Petitioner _____

APPENDIX C

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **DECREE VESTING ESTATE IN SURVIVING SPOUSE** (I.C. 15-3-1205)

Upon consideration of the Petition for Summary Administration of Estate Where Surviving Spouse is Sole Beneficiary filed by _____ on _____, 20___ the Court finds that:

1. The facts set forth in the petition are true.

2. The required notice has been given or waived.

3. The decedent, _____ died on _____, 20___, domiciled in _____ County.

4. Venue is proper.

5. The decedent and _____ were duly married at _____, on _____, and remained married until the date of decedent's death.

6. The surviving spouse, _____, is the ***[sole heir OR devisee] of the decedent.

7. ***[The decedent died intestate. OR The decedent died testate, leaving a will dated _____. The will was validly executed and is the last will of the decedent.]

8. The schedule of property attached to this Decree is a full and complete inventory of the property owned by the decedent and properly characterizes the property as community or separate property.

THEREFORE, it is ordered, adjudged and decreed as follows:

1. _____ is the surviving spouse of the decedent and is the sole heir or devisee of the decedent.

2. The property of the decedent described on the schedule attached to this Decree is hereby vested in and distributed to _____ free and clear of all right, title, claim or demand of any person or persons claiming or attempting to claim under the estate of the decedent as heir, devisee, or otherwise, except as a proper creditor.

3. The surviving spouse shall assume and be liable for any and all indebtedness that might be a claim against the estate of the decedent.

4. There shall be no administration of the estate of the decedent.

Dated: _____ _____
MAGISTRATE

SCHEDULE OF PROPERTY

Property:	**Community or Separate (C/S):**
1. Real property and residence located at _____, and more specifically described as follows: **[legal description]** APN:	C
2. Personal property located at residence	C
3. Automobile: 1969 Chevrolet Camaro SS	C
4. Idaho Central Credit Union checking account no. ending ____	C
5. Any and all bank accounts owned by decedent	C
6.	
7.	
8.	

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, I caused a true and correct copy of the foregoing to be served, by the method(s) as indicated, upon:

TY A. KETLINSKI
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Place
P.O. Box 1463
Meridian, Idaho 83680

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Via email *tyketlinski208@gmail.com*

_____
Deputy Clerk

APPENDIX D

PURPOSE AND REQUIREMENTS FOR AFFIDAVIT OF SURVIVING SPOUSE OF TESTATE DECEDENT (Will Exists and Probate not Commenced)

This Affidavit is for use in Ada County only; if the property is in another county please consult that county's Assessor's Office for local requirements.

- **Purpose**
  - Idaho Code § 63-306 requires the Ada County Assessor's Office to keep track of record property ownership in Ada County. This affidavit, prepared by the Ada County Prosecutor's Office, is to be used to make of record the information the Ada County Assessor's Office needs to remove a deceased spouse from its ownership records.

- **Requirements**
  - The surviving spouse and the decedent must be in community property ownership of the property as established in the records of the Ada County Recorder's Office. If the surviving spouse is not a deeded owner of the property proof of community property ownership must be of record or provided to our office.
  - The affidavit must be completed in its entirety by the surviving spouse, the surviving spouse's court appointed representative or a child of the deceased. This includes a notarized signature for the affiant and a legal description(s) of the property the affidavit is intended to change the ownership of.
  - A certified original death certificate from the Idaho Bureau of Vital Records and Health Statistics, or from an equivalent agency in the state where the death occurred, must be recorded either with the affidavit or separately.
  - The affidavit must be recorded with the Ada County Recorder's Office at 200 W Front St. Boise, ID 83702. If the affidavit is mailed a self addressed stamped envelope is required so the recorded document can be returned. Please call the Recorders office @ 287-6840 for recording fees.

The Ada County Assessor's Office recommends you seek advice from a licensed attorney before signing and recording this Affidavit in the Ada County Recorder's Office.

- **After recording**
  - The information provided on the Affidavit and the attached document(s) will be evaluated by the Ada County Assessor's Office. Recording the Affidavit does not guarantee that the Assessor's Office's ownership records will be changed. The Assessor's Office reserves the right to request additional information.
  - If the property in question has a homeowner's exemption the surviving spouse may receive an information update request in the mail. Please complete the form and return it to the Ada County Assessor's Office via mail or fax to avoid any interruption in the homeowner's exemption.

AFFIDAVIT OF SURVIVING SPOUSE OF TESTATE DECEDENT

STATE OF IDAHO)
) SS.
COUNTY OF ADA)

I, _____, being first sworn, deposes and says:

1. **That** _____, the Decedent, died on the _____ day of _____, 20____, in _____ County, State of _____. A true and correct copy of the death certificate is attached hereto.

2. **That** the Decedent died more than three years ago, leaving a last will and testament, and the Decedent's will was not probated in any court.

3. **That** Decedent and I were married on the _____ day of _____, _____, and remained married until the time of death.

4. **That** the below-described property was community property at the time of death:

_____

_____

_____

_____.

5. **That** I am currently named as the property owner along with my deceased spouse.

_____

Signature

Mailing Address:_____

_____

_____

_____

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20__, before me, a notary public, personally appeared _____, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

_____

Notary Public for Idaho

Commission Expires _____

APPENDIX E

AFFIDAVIT OF SURVIVING SPOUSE OF INTESTATE DECEDENT

STATE OF IDAHO)
) SS.
COUNTY OF ADA)

I, _____, being first sworn, deposes and says:

1. That _____, the Decedent, died on the _____ day of _____, 20____, in _____ County, State of _____. A true and correct copy of the death certificate is attached hereto.

2. That Decedent died intestate, leaving no last will, and that administration of Decedent's estate has not been initiated.

3. Said Decedent and I were married on the _____ day of _____, _____, and remained married until the time of death.

4. That the below-described property was community property at the time of death:

_____

_____

_____

_____.

5. That I am currently named as the property owner along with my deceased spouse.

_____

Signature

Mailing Address:_____

_____

_____

_____

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 20____, before me, a notary public, personally appeared _____, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

_____

Notary Public for Idaho

Commission Expires _____

PURPOSE AND REQUIREMENTS FOR
AFFIDAVIT OF SURVIVING SPOUSE OF INTESTATE DECEDENT
(No Will Exists, Probate not Commenced)

This Affidavit is for use in Ada County only; if the property is in another county please consult that county's Assessor's Office for local requirements.

- **Purpose**
  - Idaho Code § 63-306 requires the Ada County Assessor's Office to keep track of record property ownership in Ada County. This affidavit, prepared by the Ada County Prosecutor's Office, is to be used to make of record the information the Ada County Assessor's Office needs to remove a deceased spouse from its ownership records.

- **Requirements**
  - The surviving spouse and the decedent must be in community property ownership of the property as established in the records of the Ada County Recorder's Office. If the surviving spouse is not a deeded owner of the property proof of community property ownership must be of record or provided to our office.
  - There can be no known will in existence for the decedent.
  - The affidavit must be completed in its entirety by the surviving spouse, the surviving spouse's court appointed representative or a child of the deceased. This includes a notarized signature for the affiant and a legal description(s) of the property the affidavit is intended to change the ownership of.
  - A certified original death certificate from the Idaho Bureau of Vital Records and Health Statistics, or from an equivalent agency in the state where the death occurred, must be recorded either with the affidavit or separately.
  - The affidavit must be filed with the Ada County Recorder's Office at 200 W. Front St. Boise, ID 83702. If the affidavit is mailed a self-addressed stamped envelope is required so the recorded document can be returned. Please call the Recorders office @ 287-6840 for recording fees.

The Ada County Assessor's Office recommends you seek advice from a licensed attorney before signing and recording this Affidavit in the Ada County Recorder's Office.

- **After recording**
  - The information provided on the Affidavit and the attached document(s) will be evaluated by the Ada County Assessor's Office. Recording the Affidavit does not guarantee that the Assessor's Office's ownership records will be changed. The Assessor's Office reserves the right to request additional information.
  - If the property in question has a homeowner's exemption the surviving spouse may receive an information update request in the mail. Please complete the form and return it to the Ada County Assessor's Office via mail or fax to avoid any interruption in the homeowner's exemption.

APPENDIX F

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Applicant _____

IN THE DISTRICT COURT OF THE ***[FOURTH/THIRD] JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ***[ADA/CANYON]
MAGISTRATE DIVISION

In the Matter of the Estate of _____, Deceased.	Case No. _____ **RENUNCIATION (***name)** (I.C. 15-3-203)

The undersigned, _____, a ***[child, heir] of the decedent, hereby renounces the right to appointment as personal representative of the estate of the above-named decedent.

DATED: _____

_____
***[Name]
***[Address]

APPENDIX G

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Applicant _____

IN THE DISTRICT COURT OF THE ***[FOURTH/THIRD] JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ***[ADA/CANYON]
MAGISTRATE DIVISION

In the Matter of the Estate of _____, Deceased.	Case No. _____ **RENUNCIATION AND NOMINATION (***name)** (I.C. 15-3-203)

The undersigned, _____, a ***[child, heir] of the decedent, hereby:

1. Renounces the right to appointment as personal representative of the estate of the above-named decedent.

2. ***[Renounces the right to nominate another for appointment as personal representative. OR Nominates _____, whose address is _____, as personal representative of the estate of the above-named decedent.]

DATED: _____

_____
***[Name]
***[Address]

APPENDIX H

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Applicant _____

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of _____, Deceased.	Case No. _____ **APPLICATION FOR INFORMAL PROBATE OF WILL AND INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE** (I.C. 15-3-301)

Applicant, _____, states and represents to the court that:

1. Applicant's interest in this matter is that of ***[an heir, a child, the spouse, a creditor, a person having priority for appointment as personal representative, a person having a property right in or a claim against the decedent's estate, a fiduciary representing an interested person] of _____ ("decedent").
2. The person whose appointment as personal representative is sought is ***[Applicant, OR (another person) whose address is _____] and is qualified to act as such and has priority because ***[there is no person with a higher or equal priority for appointment,

each person with a higher or equal priority for appointment has renounced the same in writing filed with the Court or has concurred in nominating or applying for appointment of the person whose appointment is sought herein].

OR

The person whose appointment as personal representative is sought has priority for appointment as: ***[the person nominated in, or pursuant to the exercise of a power conferred by, the decedent's will; the personal representative appointed by the Court of the decedent's domicile; the surviving spouse of the decedent; a devisee of the decedent; an heir of the decedent; a creditor of the decedent and 45 days have elapsed since the death of the decedent; a nominee of a person named in _____).

3. ***[The decedent died on _____, at the age of _____ years. OR The decedent died on _____, at the age of ___ years. The marital community of the decedent and _____ was dissolved by the death of _____ on _____. At such death, the decedent was entitled to all the property of _____ by will, law, or both, and the decedent died before any proceeding had been commenced for the probate of _____. Pursuant to I.C. 15-3-111, the estates of both the decedent and _____ may be joined for probate in this proceeding.]
4. Venue is proper because at the time of death the decedent was ***[domiciled in this county. OR domiciled in _____ County, _____, but owned property located in this county.]

5. ***[The decedent was not married at the time of his/her death. The names and addresses of the children, heirs, and devisees of the decedent, and the ages of those who are minors so far as known or ascertainable with reasonable diligence by applicant are: OR

   The names and addresses of the spouse, children, heirs, and devisees of the decedent, and the ages of those who are minors so far as known or ascertainable with reasonable diligence by applicant are:]

Name:	**Address:**	**Age** (if minor)**:**	**Relationship:**

6. No personal representative has been appointed in this state or elsewhere whose appointment has not been terminated. ***[other options in IUPC]
7. Applicant has neither received nor is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere. ***[other options in IUPC]
8. The time limit for informal probate or appointment has not expired because not more than three years have passed since the decedent's death. ***[other options in IUPC]
9. The original of the decedent's will, dated _____, will be provided to the Court. To the best of Applicant's knowledge, neither that will nor any other will of the decedent has been the subject of a previous probate order. ***[other options in IUPC]
10. Applicant believes that the will which is the subject of this application was validly executed.

11. Having exercised reasonable diligence, Applicant is unaware of any instrument revoking the will which is the subject of this application and believes that such will is the decedent's last will.
12. To the best of applicant's knowledge, the will to which this application relates is not part of a known series of testamentary instruments (other than wills or codicils), the latest of which does not expressly revoke the former.
13. Bond is not required under I.C. 15-3-603. ***[other options in IUPC]
14. Any required notice has been given or waived.

WHEREFORE, APPLICANT REQUESTS THAT:

1. The decedent's will, dated _____, be informally probated.
2. _____ be informally appointed personal representative of the estate of the decedent, to act without bond. ***[other options in IUPC]
3. Upon qualification and acceptance, letters testamentary be issued.
4. ***optional[The estates of both the decedent and _____ be joined for probate in a single proceeding pursuant to I.C. 15-3-111.]

Dated: _____

/s/ Ty A. (Kelli B.) Ketlinski
Ty A. Ketlinski (Kelli B. Ketlinski)
Attorney for Applicant

VERIFICATION:

Pursuant to I.C. §9-1406 and IRCP 2.7, the undersigned states that he/she is the Applicant named in the foregoing Application, that he/she has reviewed the contents therein, and hereby certifies under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Dated: _____

_____

_____, Applicant

APPENDIX I

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
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1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Applicant _____

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **APPLICATION FOR INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE IN INTESTACY** (I.C. 15-3-301)

Applicant, _____, states and represents to the court that:

1. Applicant's interest in this matter is that of ***[an heir, a child, the spouse, a creditor, a person having priority for appointment as personal representative, a person having a property right in or a claim against the decedent's estate, a fiduciary representing an interested person) of _____ ("decedent").
2. The person whose appointment as personal representative is sought is ***[Applicant, OR (another person) whose address is _____] and is qualified to act as such and has priority because ***[there is no person with a higher or equal priority for appointment, each person with a higher or equal priority for appointment has renounced the same in

writing filed with the Court or has concurred in nominating or applying for appointment of the person whose appointment is sought herein].

OR

The person whose appointment as personal representative is sought has priority for appointment as: ***[the personal representative appointed by the Court of the decedent's domicile; the surviving spouse of the decedent; an heir of the decedent; a creditor of the decedent and 45 days have elapsed since the death of the decedent; a nominee of a person named in _____).

3. ***[The decedent died on _____, at the age of _____ years. OR The decedent died on _____, at the age of ___ years. The marital community of the decedent and _____ was dissolved by the death of _____ on _____. At such death, the decedent was entitled to all the property of _____ by will, law, or both, and the decedent died before any proceeding had been commenced for the probate of _____. Pursuant to I.C. 15-3-111, the estates of both the decedent and _____ may be joined for probate in this proceeding.]
4. Venue is proper because at the time of death the decedent was ***[domiciled in this county. OR domiciled in _____ County, _____, but owned property located in this county.]
5. ***[The decedent was not married at the time of his/her death. The names and addresses of the children, heirs, and devisees of the decedent, and the ages of those who are minors so far as known or ascertainable with reasonable diligence by applicant are: OR

The names and addresses of the spouse, children, heirs, and devisees of the decedent, and the ages of those who are minors so far as known or ascertainable with reasonable diligence by applicant are:]

Name:	**Address:**	**Age:**	**Relationship:**

6. No personal representative has been appointed in this state or elsewhere whose appointment has not been terminated. ***[other options in IUPC]
7. Applicant has neither received nor is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere. ***[other options in IUPC]
8. The time limit for informal probate or appointment has not expired because not more than three years have passed since the decedent's death. ***[other options in IUPC]
9. Administration of the estate will be in intestacy. After the exercise of reasonable diligence, Applicant is unaware of any unrevoked testamentary instrument which may relate to the property subject to the laws of this state.
10. Bond is not required under I.C. 15-3-603. ***[other options in IUPC]
11. Any required notice has been given or waived.

WHEREFORE, APPLICANT REQUESTS THAT:

1. _____ be informally appointed personal representative of the estate of the decedent, to act without bond.
2. Upon qualification and acceptance, letters of administration be issued.

3. ***optional[The estates of both the decedent and _____ be joined for probate in a single proceeding pursuant to I.C. 15-3-111.]

Dated: _____

/s/ Ty A. (Kelli B.) Ketlinski
Ty A. Ketlinski (Kelli B. Ketlinski)
Attorney for Applicant

VERIFICATION:

Pursuant to I.C. §9-1406 and IRCP 2.7, the undersigned states that he/she is the Applicant named in the foregoing Application, that he/she has reviewed the contents therein, and hereby certifies under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Dated: _____ _____

_____, Applicant

APPENDIX J

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Applicant _____

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **STATEMENT OF INFORMAL PROBATE OF WILL AND INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE** (I.C. 15-3-303 and 15-3-308)

Upon consideration of the Application for Informal Probate of Will and Informal Appointment of Personal Representative filed by _____, the Court finds that:

1. The application is complete.

2. Applicant has made oath or affirmation that the statements contained in the application are true to the best of applicant's knowledge and belief.

3. Applicant appears from the application to be an interested person as defined by the Idaho Uniform Probate Code.

4. ***[The decedent died on _____, at the age of _____ years. OR The decedent died on _____, at the age of ___ years. The marital community of the decedent and _____ was dissolved by the death of _____ on _____. At such death, the decedent was entitled to

all the property of _____ by will, law, or both, and the decedent died before any proceeding had been commenced for the probate of _____. Pursuant to I.C. 15-3-111, the estates of both the decedent and _____ may be joined for probate in this proceeding.]

5. On the basis of the statements in the application, venue is proper.

6. An original, duly executed, and apparently unrevoked will, dated _____, is in the Court's possession. ***[other options in IUPC]

7. Any required notice has been given or waived.

8. On the basis of the statements in the application, the will to which the application relates is not part of a known series of testamentary instruments (other than wills or codicils), the latest of which does not expressly revoke the former.

9. On the basis of the statements in the application, no personal representative has been appointed in this state or elsewhere. ***[other options in IUPC]

10. On the basis of the statements in the application, neither the will to which the application relates nor any other will of the decedent has been the subject of a previous probate order in this state.

11. It appears from the application that the time limit for informal probate and appointment has not expired.

12. The application does not indicate the existence of a possible unrevoked testamentary instrument which may relate to property subject to the law of this state, and which is not filed for probate in this Court.

13. Based on the statements in the application, the person whose appointment as personal representative is sought is qualified to act as personal representative and has priority entitling said person to the appointment.

14. Bond is not required. ***[other options in IUPC]

15. The applicable time period within which no action can be taken on an application for informal probate and appointment has elapsed.

THEREFORE:

1. The will of the decedent, dated _____, is hereby informally probated.

2. _____ is hereby appointed personal representative of the estate of the decedent, to act:
   without bond.
   OR
   with bond in the amount of $_____.

3. Upon qualification and acceptance, letters testamentary shall be issued.

4. Notice shall be given in accordance with I.C. 15-3-705.

5. ***optional[The estates of both the decedent and _____ be joined for probate in a single proceeding pursuant to I.C. 15-3-111.

DATED: _____ _____
MAGISTRATE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, I caused a true and correct copy of the foregoing to be served, by the method(s) as indicated, upon:

TY A. KETLINSKI
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Email *tyketlinski208@gmail.com*,

_____
Deputy Clerk

APPENDIX K

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Applicant _____

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **STATEMENT OF INFORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE IN INTESTACY** (I.C. 15-3-303)

Upon consideration of the Application for Informal Appointment of Personal Representative in Intestacy filed by _____ the Court finds that:

1. The application is complete.

2. Applicant has made an oath or affirmation that the statements contained in the application are true to the best of applicant's knowledge and belief.

3. Applicant appears from the application to be an interested person as defined by the Idaho Uniform Probate Code.

4. ***[The decedent died on _____, at the age of _____ years. OR The decedent died on _____, at the age of ___ years. The marital community of the decedent and _____ was dissolved by the death of _____ on _____. At such death, the decedent was entitled to all the property of _____ by will, law, or both, and the decedent died before

any proceeding had been commenced for the probate of _____. Pursuant to I.C. 15-3-111, the estates of both the decedent and _____ may be joined for probate in this proceeding.]

5. On the basis of the statements in the application, venue is proper.

6. Any required notice has been given or waived.

7. On the basis of the statements in the application, no personal representative has been appointed in this state or elsewhere. ***[other options in IUPC]

8. It appears from the application that the time limit for informal probate and appointment has not expired.

9. On the basis of the statements in the application, the decedent died intestate.

10. The application does not indicate the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this Court, or there is such an instrument but the application states the reasons why it is not being probated.

11. Based on the statements in the application, the person whose appointment as personal representative is sought is qualified to act as personal representative and has priority entitling said person to the appointment.

12. Bond is not required. ***[other options in IUPC]

13. The applicable time period within which no action can be taken on an application for informal appointment has elapsed.

THEREFORE:

1. _____ is hereby appointed personal representative of the estate of the decedent, to act without bond.

2. Upon qualification and acceptance, letters of administration shall be issued.

3. Notice shall be given in accordance with I.C. 15-3-705.

4. ***optional[The estates of both the decedent and _____ be joined for probate in a single proceeding pursuant to I.C. 15-3-111.

DATED: _____

_____
MAGISTRATE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, I caused a true and correct copy of the foregoing to be served, by the method(s) as indicated, upon:

TY A. KETLINSKI
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Email *tyketlinski208@gmail.com*,

_____
Deputy Clerk

APPENDIX L

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Applicant

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of _____, Deceased.	Case No. _____ **LETTERS TESTAMENTARY** (I.C. 15-3-702)

1. _____ was duly appointed and qualified as general personal representative of the estate of the above-named decedent by the Court with all authority pertaining thereto.

2. Administration of the estate is unsupervised.

These letters are issued to evidence the appointment, qualification, and authority of the said personal representative.

WITNESS, my signature and the Seal of this Court, dated: _____

_____
MAGISTRATE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, I caused a true and correct copy of the foregoing to be served, by the method(s) as indicated, upon:

TY A. KETLINSKI
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Email *tyketlinski208@gmail.com*

_____
Deputy Clerk

APPENDIX M

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Applicant

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of _____, Deceased.	Case No. _____ **LETTERS OF ADMINISTRATION** (I.C. 15-3-702)

1. _____ was duly appointed and qualified as general personal representative of the estate of the above-named decedent by the Court with all authority pertaining thereto.

2. Administration of the estate is unsupervised.

These letters are issued to evidence the appointment, qualification, and authority of the said personal representative.

WITNESS, my signature and the Seal of this Court, dated: _____.

_____
MAGISTRATE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____ I caused a true and correct copy of the foregoing to be served, by the method(s) as indicated, upon:

TY A. KETLINSKI
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Email *tyketlinski208@gmail.com*,

_____
Deputy Clerk

APPENDIX N

IDAHO SMALL ESTATE AFFIDAVIT FOR COLLECTION OF DECEDENT'S PROPERTY, POSSESSIONS, & ACCOUNTS

(Total Value Less Than $100,000.00)

I, _____ (Print Full Name), being first duly sworn upon oath, depose and state as follows:

1. This Affidavit is made upon my personal knowledge.

2. I am the surviving _____ (Relationship) of _____ (Print Full Name of Deceased Person), who has passed away and who is hereafter referred to in this Affidavit as "the Deceased Person."

3. The Deceased Person died on _____ (Date).

4. A certified copy of the Death Certificate issued following the death of the Deceased Person is attached to this Affidavit.

Initial the blank next to either Option One or Two, below, to indicate which is applicable:

5. _____ (Initials) **Option One:** At the time of death, the Deceased Person left a Last Will and Testament. Under the terms of that Last Will and Testament, I am the person named as the Executor or Personal Representative who is to serve under that Last Will and Testament. A copy of that Last Will and Testament is attached to this Affidavit.

6. _____ (Initials) **Option Two:** To the best of my knowledge, when the Deceased Person passed away, he or she left no Last Will and Testament. Since there is no Last Will and Testament, I am entitled to inherit part or all of the Deceased Person's property, possessions, and accounts.

7. At the time of death, the Deceased Person was the owner of certain items of personal property, possessions, and accounts. However, the Deceased Person did ***not*** own any real property or real estate at the time of death.

8. To the best of my knowledge, the value of the Deceased Person's property, possessions, and accounts, less any liens, debts, and encumbrances, is less than $100,000.00.

9. As is required by law, at least thirty (30) days have elapsed between the date of the death of the Deceased Person and the date that this Affidavit is presented for the collection of the Deceased Person's property, possessions, and accounts.

10. To the best of my knowledge, no Probate Application for the Appointment of an Executor or Personal Representative is pending, anticipated, or has been granted.

11. I understand that all property, possessions, and accounts inherited from the Deceased Person under this Affidavit shall continue to be subject to the claims of the Deceased Person's creditors unless and until either (a) the Decedent's Last Will and Testament has been admitted to probate and the Decedent's estate has been properly administered, or (b) the Decedent's intestate estate has been administered under the laws of intestate succession.

12. Under Section 15-3-1201 of the ***Idaho Code***, this Affidavit permits me to collect property (***but not real estate***), possessions, and accounts with a total value (after the deduction of liens, debts, and encumbrances) of up to $100,000.00 without the requirement of probate.

13. Under Section 49-514 of the ***Idaho Code,*** this Affidavit shall govern the disposition and transfer of any and all registered or licensed vehicles, trailers, or boats in which the Deceased Person held an interest at the time of death.

DATED this _____ day of _____, 20____.

_____

Signature

_____

Printed Name

(Notarization of your signature is required on next page. Certified Death Certificate [and a copy of the Deceased Person's Last Will & Testament, if applicable] must be attached to this Affidavit in order for it to be valid)

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, 20_____, before me a notary public in and for the state of Idaho, personally appeared _____ (printed name) known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he or she executed the same.

_____
Notary Public for Idaho
Residing at _____, Idaho
My commission expires: _____

(Notary Seal)

APPENDIX O

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
(208) 288-4444
(208) 605-7012 fax
tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Petitioner

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **PETITION FOR FORMAL PROBATE OF WILL AND FORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE** (I.C. 15-3-402)

PETITIONER, _____, STATES AND REPRESENTS TO THE COURT THAT:

1. Petitioner's interest in this matter is that of

   a. an heir of the decedent, OR

   b. a child of the decedent, OR

   c. a devisee under the decedent's will, OR

   d. the spouse of the decedent, OR

   e. a creditor of the decedent, OR

   f. a person having priority for appointment as personal representative, OR

   g. a person having a property right in, or a claim against, the decedent's estate, OR

h. a fiduciary representing an interested person.

2. (Choose a or b)

a. The person whose appointment as personal representative is sought is

i. Petitioner, or _____, whose address is _____, and

ii. qualified to act as such and has priority because

1. there is no person with a higher or equal priority for appointment, OR

2. each person with a higher or equal priority for appointment has

a. failed to request appointment or to nominate another for appointment; OR

b. renounced the right to appointment and has renounced the right to nominate another to appointment; OR

c. renounced the right to appointment or has nominated the person whose appointment is sought herein.

All such renunciations and/or nominations have been filed with the Court.

b. The status in which such person seeks appointment is as

i. the person nominated in, or pursuant to the exercise of a power conferred by, the decedent's will; OR

ii. the personal representative appointed by the Court of the decedent's domicile; OR

iii. the surviving spouse and a devisee of the decedent; OR

iv. a devisee of the decedent; OR

v. the surviving spouse of the decedent; OR

vi. a creditor of the decedent and 45 days have elapsed since the death of the decedent; OR

vii. a nominee of a person named in (2) through (5) above.

3. (Choose a or b)

a. The decedent died on _____, 20_____, at the age of _____ years.

b. The decedent died on _____, 20___, at the age of _____ years. The marital community of the decedent and _____ was dissolved by the death of _____ on _____, 20___. At such death, the decedent was entitled to all the property of _____ by will, law, or both, and the decedent died before any proceeding had been commenced for the probate of _____. Pursuant to I.C. 15-3-111, the estates of both the decedent and _____ may be joined for probate in this proceeding.

4. Venue is proper because at the time of death the decedent was

a. domiciled in this county; OR

b. domiciled in _____ County, _____, but owned property located in this county.

5. The names and addresses of the spouse, children, heirs, and devisees of the decedent and other persons entitled to notice pursuant to I.C. 15-3-403, and the ages of those who are minors so far as known or ascertainable with reasonable diligence by petitioner are:

Name:	Address:	Age, if minor	Relationship:

6. (choose a or b or c)

a. No personal representative has been appointed in this state or elsewhere whose appointment has not been terminated.

b. No personal representative has been appointed in this state, but _____, whose address is _____ has been appointed as the decedent's personal representative in the state of the decedent's domicile.

i. Petitioner is the decedent's domiciliary personal representative; OR

ii. Petitioner is the nominee of the decedent's domiciliary personal representative.)

c. No Personal Representative has been appointed outside of this county, but

i. on _____, 20___, petitioner was appointed personal representative by this Court in informal proceedings, OR

ii. on _____ 20___, _____, whose address is _____ was appointed personal representative by

1. this Court in informal proceedings; OR

2. this Court in formal proceedings.

7. (choose a or b)

a. Petitioner has neither received nor is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

b. Petitioner has neither received nor is aware of any demand for notice of any probate or appointment proceeding concerning the decedent, other than the demand(s) received by and on file with the Court.

8. The time limit for formal probate and appointment has not expired because

a. not more than three years have passed since the decedent's death; OR

b. more than three years have passed since the decedent's death, but tardy probate and appointment are authorized because

i. a previous proceeding, initiated within such three-year period, was dismissed because of doubt about the decedent's death, the decedent died prior to the initiation of the previous proceeding, and petitioner has not delayed unduly in initiating this proceeding; OR

ii. not more than three years have passed since the duly appointed conservator of the decedent's estate became able to establish the decedent's death; OR

iii. the decedent was not a resident of this state, and the will to which this application relates has been previously probated, and a prior appointment

of a personal representative has been made in the state of the decedent's domicile; OR

iv. the will to which this petition relates was previously informally probated within the last twelve months in _____, and a prior appointment of a personal representative has been made in _____)

c. not more than three years have passed since the decedent's death. The three-year provision applies only to the death of the decedent and not to the death of _____, pursuant to I.C. 15-3-111.]

9. (choose a or b or c or d)

a. The original of the decedent's will, dated _____, is in the possession of the Court.

b. The original of the decedent's will, dated _____, accompanies this petition.

c. An authenticated copy of the will of the decedent, dated _____, and of the statement or order probating it in the State of _____ accompany this petition.

d. The original of the decedent's will is lost, destroyed, or otherwise unavailable, but its contents are described in the exhibit attached hereto and incorporated herein by reference.

10. Petitioner believes that the will which is the subject of this application was validly executed.

11. Having exercised reasonable diligence, petitioner is unaware of any instrument revoking the will which is the subject of this petition and believes that such will is the decedent's last will.

12. (choose a or b or c or d)

a. Bond is not required under I.C. 15-3-603.

b. Bond is required because:

i. the decedent's will contains an express requirement of bond. OR

ii. bond has been requested prior to appointment, by an interested party. OR

iii. a written demand for bond has been filed in accordance with I.C. 15-3-605.

c. Character and estimated value of the decedent's property (***complete only if bond is required and the bond amount is not specified in the will):

Personal Property	$
Annual income from real and personal property	$
SUBTOTAL	$
Less assets deposited in domestic financial institutions in a manner that prevents their unauthorized disposition	($)
TOTAL	$

d. The amount of bond specified under the will is $_____.

WHEREFORE, PETITIONER REQUESTS THAT:

1. The Court fix a time and place of hearing.

2. Notice be given as required by law.

3. The decedent's will, dated _____, be formally probated.

4. The Court enter an order determining the devisees of the decedent.

5. (choose a or b)

    a. _____ be formally appointed personal representative of the estate of the decedent, to act

        i. without bond, OR

        ii. with bond in the amount of $_____.

    b. The prior informal appointment of _____ be formally confirmed.

6. Upon qualification and acceptance, letters testamentary be issued.

7. (***optional) The estates of both the decedent and _____ be joined for probate in a single proceeding pursuant to I.C. 15-3-111.

DATED:

/s/ Ty A. Ketlinski
Ty A. Ketlinski
Attorney for Petitioner

VERIFICATION:

Pursuant to I.C. §9-1406 and IRCP 2.7, the undersigned states that he/she is the Applicant named in the foregoing Application, that he/she has reviewed the contents therein, and hereby certifies under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Dated: _____

_____

_____, Petitioner

APPENDIX P

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646
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tyketlinski208@gmail.com
kellik@ketlinski.com

Attorney for Petitioner _____

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **PETITION FOR FORMAL ADJUDICATION OF INTESTACY AND FORMAL APPOINTMENT OF PERSONAL REPRESENTATIVE** (I.C. 15-3-402)

PETITIONER, _____, STATES AND REPRESENTS TO THE COURT THAT:

1. Petitioner's interest in this matter is that of

   a. an heir of the decedent, OR

   b. a child of the decedent, OR

   c. the spouse of the decedent, OR

   d. a creditor of the decedent, OR

   e. a person having priority for appointment as personal representative, OR

   f. a person having a property right in, or a claim against, the decedent's estate, OR

g. a fiduciary representing an interested person.

2. (Choose a or b)

a. The person whose appointment as personal representative is sought is

i. Petitioner, or _____, whose address is _____, and

ii. qualified to act as such and has priority because

1. there is no person with a higher or equal priority for appointment, OR

2. each person with a higher or equal priority for appointment has

a. failed to request appointment or to nominate another for appointment; OR

b. renounced the right to appointment and has renounced the right to nominate another to appointment; OR

c. renounced the right to appointment or has nominated the person whose appointment is sought herein.

All such renunciations and/or nominations have been filed with the Court.

b. The status in which such person seeks appointment is as

i. the personal representative appointed by the Court of the decedent's domicile; OR

ii. the surviving spouse of the decedent; OR

iii. an heir of the decedent; OR

iv. a creditor of the decedent and 45 days have elapsed since the death of the decedent; OR

v. a nominee of a person named in (2) through (5) above.

3. (Choose a or b)

a. The decedent died on _____, 20_____, at the age of _____ years.

b. The decedent died on _____, 20___, at the age of _____ years. The marital community of the decedent and _____ was dissolved by the death of _____ on _____, 20___. At such death, the decedent was entitled to all the property of _____ by will, law, or both, and the decedent died before any proceeding had been commenced for the probate of _____. Pursuant to I.C. 15-3-111, the estates of both the decedent and _____ may be joined for probate in this proceeding.

4. Venue is proper because at the time of death the decedent was

a. domiciled in this county; OR

b. domiciled in _____ County, _____, but owned property located in this county.

5. The names and addresses of the spouse, children, heirs, and devisees of the decedent and other persons entitled to notice pursuant to I.C. 15-3-403, and the ages of those who are minors so far as known or ascertainable with reasonable diligence by petitioner are:

Name:	Address:	Age, if minor	Relationship:

6. (choose a or b or c)

   a. No personal representative has been appointed in this state or elsewhere whose appointment has not been terminated.

   b. No personal representative has been appointed in this state, but _____, whose address is _____ has been appointed as the decedent's personal representative in the state of the decedent's domicile.

      i. Petitioner is the decedent's domiciliary personal representative; OR

      ii. Petitioner is the nominee of the decedent's domiciliary personal representative.)

   c. No Personal Representative has been appointed outside of this county, but

      i. on _____, 20___, petitioner was appointed personal representative by this Court in informal proceedings, OR

      ii. on _____ 20___, _____, whose address is _____ was appointed personal representative by

         1. this Court in informal proceedings; OR

         2. this Court in formal proceedings.

7. (choose a or b)

a. Petitioner has neither received nor is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

b. Petitioner has neither received nor is aware of any demand for notice of any probate or appointment proceeding concerning the decedent, other than the demand(s) received by and on file with the Court.

8. The time limit for formal probate and appointment has not expired because

a. not more than three years have passed since the decedent's death; OR

b. more than three years have passed since the decedent's death, but tardy probate and appointment are authorized because

i. a previous proceeding, initiated within such three-year period, was dismissed because of doubt about the decedent's death, the decedent died prior to the initiation of the previous proceeding, and petitioner has not delayed unduly in initiating this proceeding; OR

ii. not more than three years have passed since the duly appointed conservator of the decedent's estate became able to establish the decedent's death

c. not more than three years have passed since the decedent's death. The three year provision applies only to the death of the decedent and not to the death of _____, pursuant to I.C. 15-3-111.]

9. (choose a or b)

a. Having exercised reasonable diligence, petitioner is unaware of any instrument revoking the will which is the subject of this petition and believes that such will is the decedent's last will; OR

b. Attached hereto and incorporated herein by reference is a statement explaining why any testamentary document of which the petitioner is aware is not being probated.

10. (choose a or b or c or d)

a. Bond is not required under I.C. 15-3-603.

b. Bond is required because:

i. the decedent's will contains an express requirement of bond. OR

ii. bond has been requested prior to appointment, by an interested party. OR

iii. a written demand for bond has been filed in accordance with I.C. 15-3-605.

c. Character and estimated value of the decedent's property (***complete only if bond is required and the bond amount is not specified in the will):

Personal Property	$
Annual income from real and personal property	$
SUBTOTAL	$
Less assets deposited in domestic financial institutions in a manner that prevents their unauthorized disposition	($)
TOTAL	$

WHEREFORE, PETITIONER REQUESTS THAT:

1. The Court fix a time and place of hearing.
2. Notice be given as required by law.
3. The Court enter an order finding that the decedent died intestate and determining the decedent's heirs.
4. (choose a or b)
    a. _____ be formally appointed personal representative of the estate of the decedent, to act
        i. without bond, OR
        ii. with bond in the amount of $_____.
    b. The prior informal appointment of _____ be formally confirmed.
5. Upon qualification and acceptance, letters of administration be issued.
6. (***optional) The estates of both the decedent and _____ be joined for probate in a single proceeding pursuant to I.C. 15-3-111.

Dated:

/s/ Ty A. Ketlinski
Ty A. Ketlinski
Attorney for Petitioner

VERIFICATION:

Pursuant to I.C. §9-1406 and IRCP 2.7, the undersigned states that he/she is the Applicant named in the foregoing Application, that he/she has reviewed the contents therein, and hereby certifies under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Dated: _____

_____

_____, Petitioner

Ty A. Ketlinski (ISB No. 5610)
Kelli B. Ketlinski (ISB No. 5452)
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
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kellik@ketlinski.com

Attorney for Petitioner

APPENDIX Q

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____
MAGISTRATE DIVISION

In the Matter of the Estate of #, Deceased.	Case No. _____ **ORDER OF FORMAL ***[PROBATE OF WILL, ADJUDICATION OF INTESTACY, AND/OR APPOINTMENT OF PERSONAL REPRESENTATIVE]** (I.C. 15-3-401, et seq.)

Upon consideration of the petition for:

(a) ___ formal probate of the decedent's will dated _____,

(b) ___ formal adjudication of intestacy,

(c) ___ formal appointment of _____ as personal representative of the decedent,

filed with the Court by _____ on _____, 20 ___, the Court finds that:

1. The required notice has been given or waived.

2. The proceeding was commenced within the time period provided by law.

3. (a) ___ The decedent died on _____, 20___, domiciled in _____ County, _____.

(b) ___ The decedent died on _____, 20___, domiciled in _____ County, _____. The marital community of the decedent and _____ was dissolved by the death of _____ on _____, 20___. At such death, the decedent was entitled to all the property of _____ by will, law, or both, and the decedent died before any proceeding had been commenced for the probate of _____. Pursuant to I.C. 15-3-111, the estates of both the decedent and _____ may be joined for probate in this proceeding.

4. Venue is proper.

5. (a) ___ The testamentary instrument to which the petition relates is the decedent's last will.

(b) ___ The decedent left no will.

6. _____ is entitled to appointment as the personal representative of the decedent's estate to act:

(a) ___ without bond.

(b) ___ with bond in the amount of $_____.

7. The devisees/heirs of the decedent are as follows:

NAME	RELATIONSHIP

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:

1. (a) ___ The will of the decedent, dated _____, is hereby formally probated.

(b) ___ The Court hereby determines that the decedent died intestate.

2. (a) ___ _____ is hereby formally appointed as the personal

representative of the estate of the decedent to act:

(1) ___ without bond.

(2) ___ with bond in the amount of $_____.

(b) ___ Upon qualification and acceptance, letters

(1) ___ testamentary

(2) ___ of administration

shall be issued.

3. Any previous informal appointment of personal representative is hereby terminated.

4. ***OPT[The estates of both the decedent and _____ are hereby joined for probate in a single proceeding pursuant to I.C. 15-3-111.]

DATED: _____ _____

MAGISTRATE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, I caused a true and correct copy of the foregoing to be served, by the method(s) as indicated, upon:

TY A. KETLINSKI
KELLI B. KETLINSKI
KETLINSKI LAW OFFICE, PLLC
1910 N. Lakes Pl.
Meridian, Idaho 83646

☐ U.S. Mail
☐ Hand Delivery
☐ Facsimile
x Email *tyketlinski208@gmail.com*
kellik@ketlinski.com

_____
Deputy Clerk

NOTES

8th Annual Estate Planning Basics

Ethical Considerations in Probate

Presented By:
Kimmer W. Callahan
Callahan & Associates, Chtd.

1

Who is the Client

- Three Views
  - The Estate As Client
    - Duties run to the Estate
    - PR is agent of the estate
    - Idaho does not hold to this view

2

Who is the Client

- Beneficiary of estate is client
  - No jurisdiction holds to this theory
  - Some jurisdictions do hold the attorney owes some duties to the beneficiaries and allows beneficiaries to sue the estate attorney directly
  - It is important to define relationship with beneficiaries

3

Who is the Client

- The Personal Representative (Idaho)
  - Allen v. Stoker, 138 Idaho 265
  - Represent in Fiduciary Capacity
  - The Estate and Beneficiaries are incidental, not intended beneficiaries of attorney/client relationship

4

Who is the Client

- The Personal Representative (Idaho)
  - To impose a duty to the beneficiaries would create conflicts of interest
  - The estate and beneficiaries have other recourse

5

Who is the Client

- Avoiding conflicts of interest - Communication With Beneficiaries
  - The Personal Representative should be the primary source of communications with the beneficiaries, not the PR's attorney
  - Explain relationship to beneficiaries at the onset of representation - Form Letter No.4A
  - Inform beneficiaries of their right to have independent representation

6

Who is the Client

- Avoiding conflicts of interest - Personal Representative
  - Define the scope of representation with the Personal Representative

7

Who is the Client

LIMITATION ON SCOPE OF REPRESENTATION

It is understood and agreed to that the attorney is representing you in your capacity as Personal Representative of the Estate, and that the attorney is NOT representing you in any other capacity, including, but not limited to, your capacity as an heir, devisee, beneficiary, or joint-owner. If you need advice or representation in regards to your rights in any capacity other than in your role as Personal Representative, you will need to obtain that advice and representation from independent legal counsel. Further, you acknowledge that if at any point your role in such other capacity conflicts with your duties as Personal Representative, you may have an affirmative duty to withdraw as the Personal Representative. The attorney reserves the right to withdraw from this representation if at any time the attorney believes that a conflict exists between your role as Personal Representative and your role in any other capacity, such as beneficiary or joint-owner.

8

Competance

- Rule 1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

9

Common Problems

- Beneficiary serving as Personal Representative
  - Explain fiduciary obligations

10

Common Problems

A fiduciary must act with due regard to his obligation as a fiduciary. Although the obligations of a fiduciary are not enumerated in the statute, they are well established in the law. Often deemed its first duty, the fiduciary owes a duty of loyalty. **The fiduciary owes a duty to the beneficiary to administer the estate in the interest of the beneficiaries alone, and to exclude from consideration his own advantages.** Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit the agent to place himself in a situation in which he may be tempted by his own private interest to disregard that of his principal.

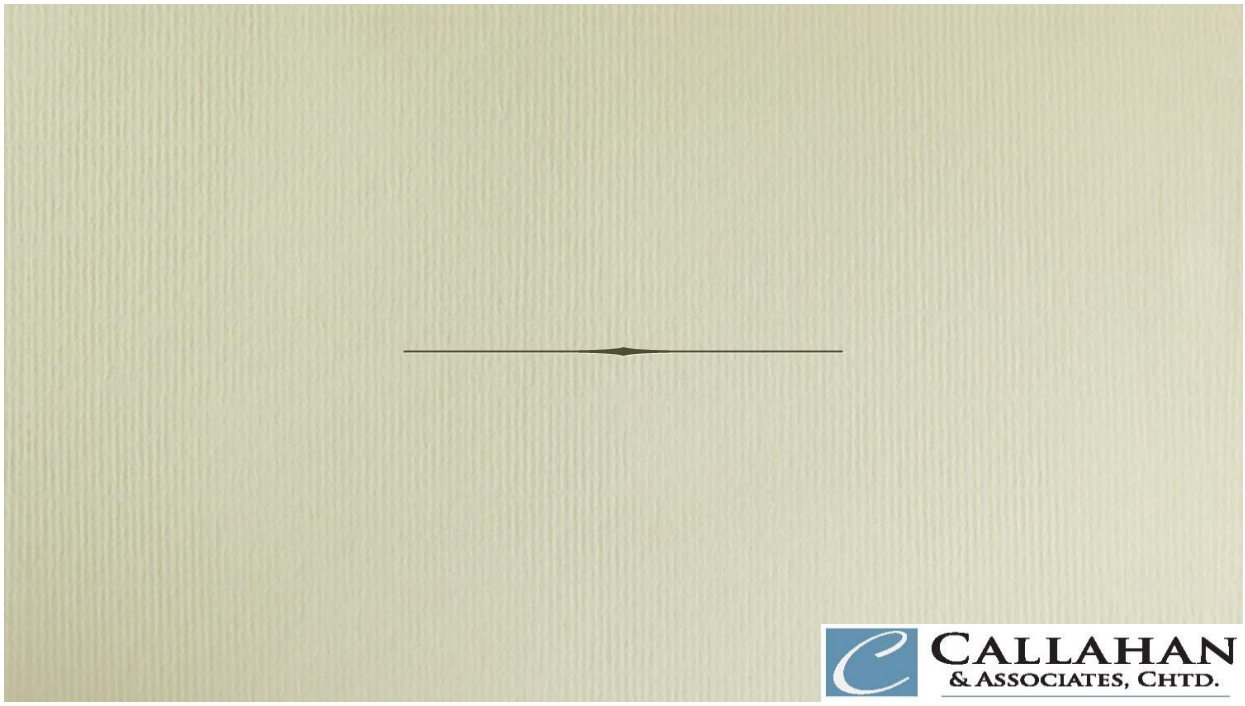
Edwards v. Edwards, 122 Idaho 963 842 P.2d 299 (Idaho App. 1992).

11

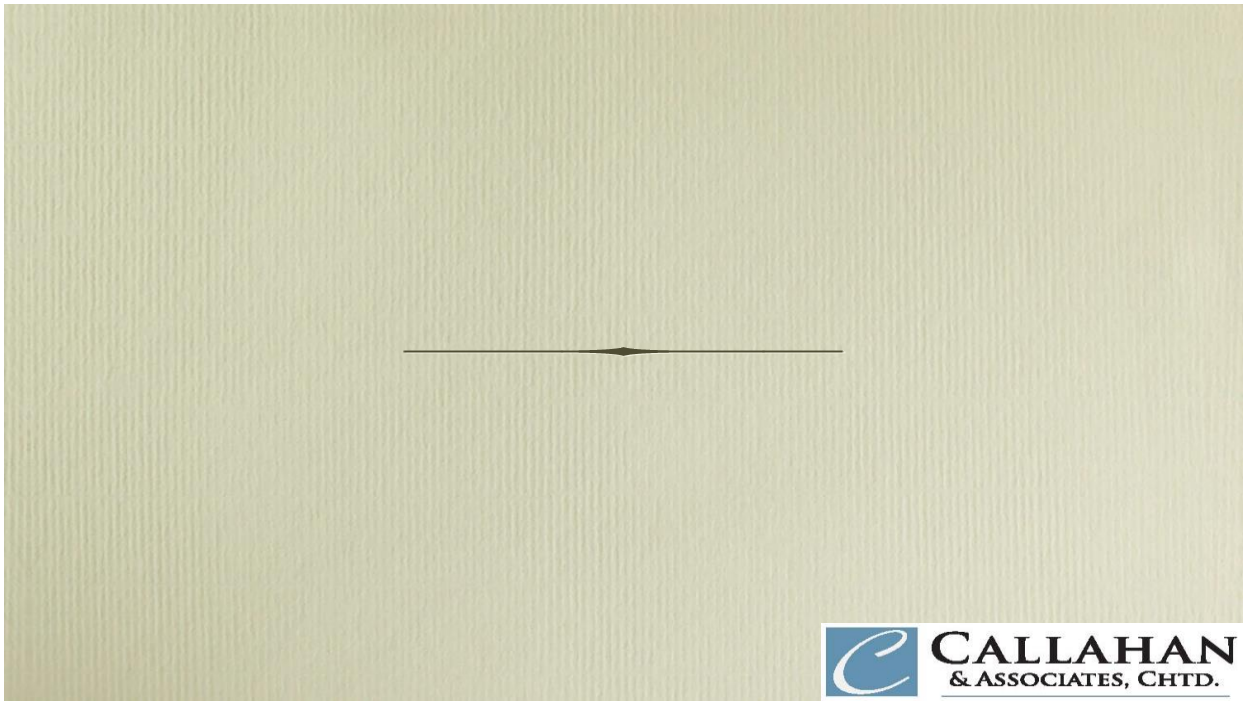
Common Problems

- Beneficiary serving as Personal Representative
  - Explain fiduciary obligations
  - Duel Representation

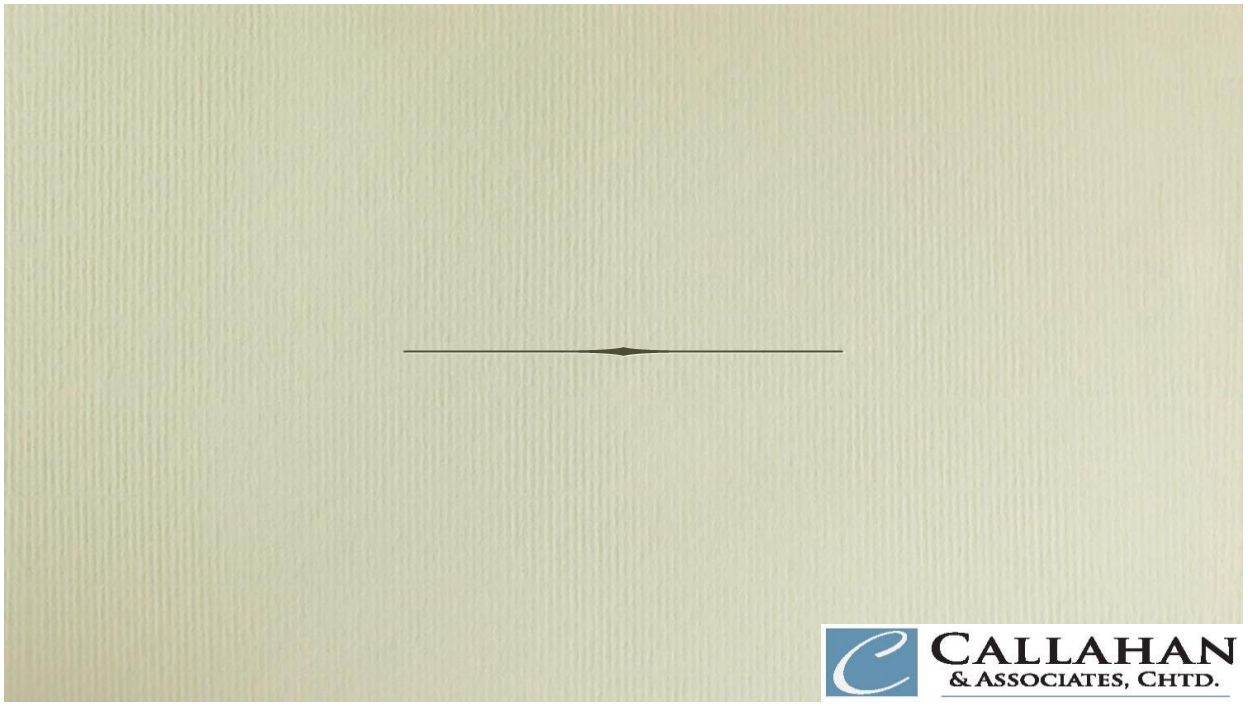
12



13



14



15

Common Problems

- Communications with beneficiaries …
  - Or lack thereof.
  - RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS
    - Accountings, proposed distributions, and other communications with beneficiaries

16

Common Problems

- Communications with beneficiaries
  - Care must be taken - avoid communication that may lead a beneficiary to believe the attorney is representing them
  - Only advice to give a beneficiary - obtain independent counsel

17

Common Problems

- Confidentiality
  - RULE 1.6: CONFIDENTIALITY OF INFORMATION (a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent

18

Common Problems

- Death of Estate Planning client
  - Obligation continues post-death
  - Exceptions:
    - Expressed or implied authorization
    - PR authorizes disclosure

19

Common Problems

- Confidentiality
  - Lawyer for Fiduciary
    - RULE 3.3: CANDOR TOWARD THE TRIBUNAL - may require the lawyer for a court-appointed fiduciary to disclose to the court certain acts of misconduct committed by the fiduciary

20

Common Problems

- Confidentiality
  - Lawyer for Fiduciary
    - RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS - the lawyer may not knowingly provide the beneficiaries or others with false or misleading information

21

Common Problems

- Confidentiality
  - Lawyer for Fiduciary
    - RULE 1.6(b)(3) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime in furtherance of which the client has used the lawyer's services

22

Common Problems

- Breach of Duty by the PR
  - RULE 1.2: SCOPE OF REPRESENTATION
    - (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

23

Common Problems

- Breach of Duty by the PR
  - RULE 1.2: SCOPE OF REPRESENTATION
    - Comment [11] The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. The lawyer must, therefore, withdraw from the representation of the client in the matter. In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime of fraud. See Rule 4.1

24

Common Problems

- Breach of Duty by the PR
  - PR - Personal Liability
    - Idaho Code 15-3-712 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.

25

Common Problems

- Breach of Duty by the PR
  - Transactions are voidable
    - Idaho Code 15-3-713. Any sale or encumbrance . . . affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate . . . .

26

Common Problems

- Breach of Duty by the PR
  - Attorney Fees
    - Personal expense of the PR, not to be paid by the Estate.
    - Kolouch v. First Sec. Bank, 128 Idaho 186 @193
    - Applies to Trustees - Frizzle vs. DeYoung, Ko. County District Ct. CV 2013-3998

27

Common Problems

- Breach of Duty by the PR
  - Attorney - Personal Liability
    - IRCP Rule 11 (b) By presenting to the court … an attorney … certifies that …
    - (1) it is not being presented for any improper purpose
    - (2) warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing law;
    - (3) the factual contentions have evidentiary support

28

Ethical Considerations

- Ethical Issues in Drafting
  - Naming Estate Fiduciaries

29

Ethical Issues In Drafting

- Naming Estate Fiduciaries
  - Full Disclosure
    - Economic ties
    - Referral Relationship
    - Fiduciary Retain As Counsel

30

Ethical Issues In Drafting

- Naming Estate Fiduciaries
  - If there is a significant risk that the lawyer's independent professional judgment in the selection of a fiduciary would be materially limited by the lawyer's self- interest or any other factor, the lawyer must obtain the client's informed consent, confirmed in writing. ACTEC COMMENTARY ON MRPC 1.7

31

Ethical Issues In Drafting

- Naming Estate Fiduciaries
  - If the client is selecting a fiduciary that is affiliated with the lawyer, such as a trust company owned by the lawyer's firm, the lawyer must obtain the client's informed consent, confirmed in writing. ACTEC COMMENTARY ON MRPC 1.7

32

Naming Fiduciaries

- Can you name yourself/firm/partner?
  - IRPC 1.8 - A lawyer shall not enter into a business transaction with a client unless: (1) the transaction and terms are fair and reasonable and are fully disclosed in writing; (2) the client is advised in writing and is given a reasonable opportunity to seek the advice of independent legal counsel; and (3)the client gives informed consent, in a writing.

33

Naming Fiduciaries

- Can you name yourself/firm/partner?
  - Comment [8] IRPC - This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7. The lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

34

Naming Fiduciaries

- Can you name yourself/firm/partner?
  - A individual is generally free to select and appoint whomever he or she wishes to a fiduciary office As a general proposition, lawyers should be permitted to assist adequately informed clients who wish to appoint their lawyers as fiduciaries. Accordingly, a lawyer should be free to prepare a document that appoints the lawyer to a fiduciary office so long as the client is properly informed, the appointment does not violate the conflict of interest rules of MRPC 1.7, and the appointment is not the product of undue influence or improper solicitation by the lawyer. ACTEC COMMENTARY ON MRPC 1.7

35

Naming Fiduciaries

- Can you name yourself/firm/partner?
  - A client is properly informed if the client is provided with information regarding the role and duties of the fiduciary, the ability of a lay person to serve as fiduciary with legal and other professional assistance, and the comparative costs of appointing the lawyer or another person or institution as fiduciary. ACTEC COMMENTARY ON MRPC 1.7

36

Naming Fiduciaries

- Can you name yourself/firm/partner?
  - Yes, but care must be taken in solicitation of such role
  - A lawyer who is drafting a will for a client may not suggest that he be named as personal representative or as trustee to serve without bond for a reasonable fee. However, the lawyer may accept the nomination if asked independently by the client. Michigan Eth. Op. RI 291 (1997)

37

Naming Fiduciaries

- Can you name yourself/firm/partner?
  - Yes, but care must be taken in solicitation of such role
  - A lawyer who neither promotes his or her appointment nor exercises undue influence on the client may draft an instrument appointing the lawyer as fiduciary if the lawyer makes full disclosure to the client, obtains the client's written consent, and charges a reasonable fee. Georgia ethics opinion Op. 91-1 (1991)

38

Naming Fiduciaries

- Can you name yourself/firm/partner as legal counsel?
  - The ethical propriety of a lawyer drawing a document that directs a fiduciary to retain the lawyer as his or her counsel involves essentially the same issues as does the appointment of the scrivener as fiduciary. ACTEC COMMENTARY ON MRPC 1.7

39

Naming Fiduciaries

- Can you name yourself/firm/partner as legal counsel?
  - Although the appointment of a named fiduciary is generally necessary and desirable, it is usually unnecessary to designate any particular lawyer to serve as counsel to the fiduciary. ACTEC COMMENTARY ON MRPC 1.7

40

Naming Fiduciaries

- Can you name yourself/firm/partner as legal counsel?
  - The scrivener should advise the client that it is neither necessary nor customary to include such a direction in a will or trust.
  - A client should be advised as to whether or not such a direction is binding. In most states such a direction is usually not binding.
  - ACTEC COMMENTARY ON MRPC 1.7

41

Naming Fiduciaries

- Serving as both fiduciary and legal counsel?
  - Similar Conflict of Interests issues.
  - the lawyer should explain the costs of such dual service, the financial implications for the lawyer and the estate, and the alternatives to dual service.
  - A lawyer undertaking to serve in both capacities should attempt to ameliorate any disadvantages that may come from dual service

42

43

Ethical Considerations

- Rule 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client

43

Timely Action

- Comment 2 - A lawyer's workload must be controlled so that each matter can be handled competently

44

Timely Action

- Comment 3 - Perhaps no professional shortcoming is more widely resented than procrastination. A client's interest often can be adversely affected by the passage of time or the change of conditions . . . . Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness…

45

Ethical Considerations

- Continuing Duty to Client
- To avoid any misunderstanding, the best practice is for lawyers to specifically terminate the relationship upon the completion of the actions to which they are engaged.

46

ETHICAL CONSIDERATIONS IN PROBATE

By: Kimmer W. Callahan
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1) Who is the Client.

a) Three primary theories –

i) The Estate? Under this theory, the attorney represents the Estate as an entity, similar to any attorney who represents a corporation. The attorney's duties run to the entity of the Estate, with the personal representative as an agent of the Estate. Idaho does not subscribe to this theory.

ii) The Beneficiaries? No jurisdiction subscribes to a theory of direct representation of the beneficiaries by the attorney for the estate. However, some jurisdictions do hold that the attorney for the estate owes the beneficiaries a heightened duty and allows beneficiaries to sue the attorney for the estate for breach of that duty. Idaho does not subscribe to this theory.

Caution – An attorney's failure to clearly define scope of representation and limiting communications with a beneficiary could potential give rise to a reasonable assumption by the beneficiary that there is an attorney/client relationship.

iii) The Personal Representative – In Idaho, the client is the Personal Representative in their fiduciary capacity. The controlling case on this issue is: *Allen v. Stoker, 138 Idaho 265, 61 P.3d 622 (Idaho App. 2002).*

(1) The attorney is hired to assist the PR in the performance of his duties.

This is so because heirs are not necessarily intended beneficiaries of the attorney's services and, in fact, are frequently in a position of conflict with the attorney's client, the personal representative. The attorney is not hired to benefit any particular heir, but to assist the personal representative in the performance of his or her duties. The imposition of a duty owed by the attorney to the heirs would create a conflict of interest whenever a dispute arose between the personal representative and an heir.
Stoker, at 624.

(2) The estate and beneficiaries are incidental, not intended beneficiaries.

(3) To impose a duty on the attorney running to the estate or beneficiaries would create conflicts of interest and be unduly burdensome on the legal profession.

(4) The estate and beneficiaries are not without recourse.

> This is so because heirs are not necessarily intended beneficiaries of the attorney's services and, in fact, are frequently in a position of conflict with the attorney's client, the personal representative. The attorney is not hired to benefit any particular heir, but to assist the personal representative in the performance of his or her duties. The imposition of a duty owed by the attorney to the heirs would create a conflict of interest whenever a dispute arose between the personal representative and an heir.
> Stoker, at 624.

b) How to avoid conflicts

i) **Communication with Beneficiaries of Fiduciary Estate. The lawyer engaged by a fiduciary to represent the fiduciary generally in connection with a fiduciary estate may communicate directly with the beneficiaries regarding the nature of the relationship between the lawyer and the beneficiaries. However, the fiduciary is primarily responsible for communicating with the beneficiaries regarding the fiduciary estate. An early meeting between the fiduciary, the lawyer, and the beneficiaries may provide all parties with a better understanding of the proceeding and lead to a more efficient administration. As a general rule, the lawyer for the fiduciary should consider informing the beneficiaries that the lawyer has been retained by the fiduciary regarding the fiduciary estate and that the fiduciary is the lawyer's client; that while the fiduciary and the lawyer will, from time to time, provide information to the beneficiaries regarding the fiduciary estate, the lawyer does not represent them; and that the beneficiaries may wish to retain independent counsel to represent their interests. ACTEC COMMENTARY ON MRPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

ii) **In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved. IRPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS Comment [27]**

iii) **Send a letter to interested parties informing of your representation of the PR. See, Idaho Probate And Estate Administration Forms, 3rd Addition (2004), Letter No. 4A.**

iv) **Send letter to the PR defining role. I include the following in my initial letter of engagement that I send to my client:**

LIMITATION ON SCOPE OF REPRESENTATION

It is understood and agreed to that the attorney is representing you in your capacity as Personal Representative of the Estate, and that the attorney is NOT representing you in any other capacity, including, but not limited to, your capacity as an heir, devisee, beneficiary, or joint-owner. If you need advice or representation in regards to your rights in any capacity other than in your role as Personal Representative, you will need to obtain that advice and representation from independent legal counsel. Further, you acknowledge that if at any point your role in such other capacity conflicts with your duties as Personal Representative, you may have an affirmative duty to withdraw as the Personal Representative. The attorney reserves the right to withdraw from this representation if at any time the attorney believes that a conflict exists between your role as

Personal Representative and your role in any other capacity, such as beneficiary or joint-owner.

v) ***Limitation on the Representation Must Be Reasonable*. This Rule recognizes that a lawyer and client may limit the scope of the representation in a manner that is reasonable under the circumstances. For example, a lawyer and client may agree that the lawyer will represent the client with respect to a single matter, such as the preparation of a durable power of attorney. See discussion of Adequate Information in the ACTEC Commentary on MRPC 1.0 (Terminology). Unless the scope of the representation is expanded by a subsequent agreement, the lawyer is not obligated to provide advice or services regarding other matters. ACTEC COMMENTARY ON MRPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

2) Competence

a) **A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. MRPC 1.1**

i) **A lawyer who initially lacks the skill or knowledge required to meet the needs of a particular client may overcome that inadequacy through additional research and study. The needs of the client may also be met by involving another lawyer or other professional who possesses the requisite degree of skill or knowledge.**

ii) **Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. IRPC 1.1 Comment 6**

iii) **In re Greene, 557 P.2d 644 (Or. 1976). A lawyer was put on probation for selling estate property without properly ascertaining its value and for failing to discover other assets of the estate.**

3) Common problem issues

a) **Beneficiary serving as Personal Representative**

i) **Joint Representation – waiver and informed consent**

Representation of Fiduciary in Representative and Individual Capacities. Frequently a lawyer will be asked to represent a person in both an

individual and a fiduciary capacity. A surviving spouse or adult child, for example, may be both an executor and a beneficiary of the estate, and may want the lawyer to represent him or her in both capacities. So long as there is no risk that the decisions being or to be made by the client as fiduciary would be compromised by the client's personal interest, such a "dual capacity representation" poses no ethical problem. The easiest case would be where the client is the sole beneficiary of the estate as to which the client is the fiduciary. But even there, since a fiduciary owes duties to creditors of the estate, it is possible for a conflict to emerge. Given the potential for such conflicts, a lawyer asked to undertake such a dual capacity representation should explain to the client the nature of the fiduciary role and insist that the client execute an informed waiver of any right to have the lawyer advocate for the client's personal interest in a way that is inconsistent with the client's fiduciary duty. If the client is not willing to do this, the lawyer should decline to undertake the dual capacity representation. If such a dual capacity representation has been undertaken and no such waiver has been obtained, and such a conflict arises, the lawyer should withdraw from representing the client in both capacities.

ACTEC Commentaries On MRPC 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(1) Fees need to be tracked and billed separately. The Estate should not pay for any fees related to representation of the PR in any other capacity or role other than in the fiduciary capacity.

(2) If a conflict arises in the duel representation, the attorney must withdraw from representation in both capacities.

(3) So long as the Attorney has advised and informed the PR of his duties and obligations, waivers and consents are not necessary from the beneficiaries to accept duel representation.

ii) Limit Scope – separate representation for each role. As stated above, this is my preferred approach to limit my representation to advising in the fiduciary capacity and have the PR seek independent representation for any conflicting roles. See sample language above.

iii) Actual conflict – if an actual conflict arises which affects the PR's fiduciary duties, the attorney may have to advise the PR to resign. If the PR refuses, the Attorney may need to withdraw.

iv) **A fiduciary owes a Duty of Loyalty. A fiduciary must act with due regard to his obligation as a fiduciary. Although the obligations of a fiduciary are not enumerated in the statute, they are well established in the law. Often deemed its first duty, the fiduciary owes a duty of loyalty. The fiduciary owes a duty to the beneficiary to administer the estate in the interest of the beneficiaries alone, and to exclude from consideration his own advantages. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit the agent to place himself in a situation in which he may be tempted by his own private interest to disregard that of his principal.** ***Edwards v. Edwards, 122 Idaho 963842 P.2d 299 (Idaho App. 1992).***

b) Communications with beneficiaries – or lack there of.

i) Lawyer May Not Make False or Misleading Statements. In all cases the lawyer shall not, in dealing with third persons, make a false statement of material fact or law or fail to disclose a material fact when disclosure is required in order to avoid assisting a criminal or fraudulent act by a client. See MRPC 4.1 (Truthfulness in Statements to Others). This requirement applies to accountings or other documents that the lawyer for a fiduciary may prepare on behalf of the fiduciary. ACTEC COMMENTARY ON MRPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

ii) Duties to Beneficiaries. The nature and extent of the lawyer's duties to the beneficiaries of the fiduciary estate may vary according to the circumstances, including the nature and extent of the representation and the terms of any understanding or agreement among the parties (the lawyer, the fiduciary, and the beneficiaries). The lawyer for the fiduciary owes some duties to the beneficiaries of the fiduciary estate although he or she does not represent them. The duties, which are largely restrictive in nature, prohibit the lawyer from taking advantage of his or her position to the disadvantage of the fiduciary estate or the beneficiaries. In addition, in some circumstances the lawyer may be obligated to take affirmative action to protect the interests of the beneficiaries. Additionally, the lawyer's communications with the beneficiaries should not be made in a manner that might lead the beneficiaries to believe that the lawyer represents the beneficiaries in the matter except to the extent the lawyer actually does represent one or more of them. In this connection, note the Comment to MRPC 4.3 (Dealing with Unrepresented Person) stating that a lawyer should "not give advice to an unrepresented person other than the advice to obtain counsel." ACTEC COMMENTARY ON MRPC 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

c) Confidentiality

i) Obligation After Death of Client. In general, the lawyer's duty of confidentiality continues after the death of a client. Accordingly, a lawyer ordinarily should not disclose confidential information following a client's death. However, if consent is given by the client's personal representative, or if the decedent had expressly or impliedly authorized disclosure, the lawyer who represented the deceased client may provide an interested party, including a potential litigant, with information regarding a deceased client's dispositive instruments and intent, including prior instruments and communications relevant thereto. The personal representative or client may also authorize disclosure of other confidential information learned during the representation if there is a need for that information. A lawyer may be impliedly authorized to make appropriate disclosure of client confidential information that would promote the client's estate plan, forestall litigation, preserve assets, and further family understanding of the decedent's intention. Disclosures should ordinarily be limited to information that the lawyer would be required to reveal as a witness. ACTEC COMMENTARY ON MRPC 1.6: CONFIDENTIALITY OF INFORMATION

ii) Disclosures by Lawyer for Fiduciary. The lawyer for the fiduciary ordinarily owes some duties to the beneficiaries of the fiduciary estate. The existence of those duties alone may qualify the lawyer's duty of confidentiality with respect to the fiduciary. Moreover, the fiduciary's retention of the lawyer to represent the fiduciary generally in the administration of the fiduciary estate may impliedly authorize the lawyer to make disclosures in order to protect the interests of the beneficiaries. In addition, the lawyer's duties to the court may require the lawyer for a court-appointed fiduciary to disclose to the court certain acts of misconduct committed by the fiduciary. See MRPC 3.3(c) (Candor Toward the Tribunal), which requires disclosure to the court "even if compliance requires disclosure of information otherwise protected by MRPC 1.6." In addition, the lawyer may not knowingly provide the beneficiaries or others with false or misleading information. See MRPCs 4.1-4.3 (Truthfulness in Statements to Others; Communication with Person Represented by Counsel; and Dealing with Unrepresented Person). ACTEC COMMENTARY ON MRPC 1.6: CONFIDENTIALITY OF INFORMATION

(1) RULE 1.6(b)(3) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime in furtherance of which the client has used the lawyer's services

(a) Comment [6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes an exception for a client's stated intention to commit a crime. Idaho's rule differs from the ABA Model Rule in that a lawyer may reveal the client's stated intention to commit any crime, not just those involving potential death or potential bodily injury. It is also important to note that this is a permissive rule, in that he lawyer may reveal such confidences but is not required to do so.

(b) Comment [8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime thereafter employs a lawyer for representation concerning that offense.

iii) Disclosure of a Fiduciary's Commission of, or Intent to, Commit a Fraud or Crime. When representing a fiduciary generally, the lawyer may discover that the lawyer's services have been used or are being used by the client to commit a fraud or crime that has resulted or will result in substantial injury to the financial interests of the beneficiary or beneficiaries for whom the fiduciary is acting. If such fiduciary misconduct occurs, in most jurisdictions, the lawyer may disclose confidential information to the extent necessary to protect the interests of the beneficiaries. The lawyer has discretion as to how and to whom that information is disclosed, but the lawyer may disclose confidential information only to the extent necessary to protect the interests of the beneficiaries. ACTEC COMMENTARY ON MRPC 1.6: CONFIDENTIALITY OF INFORMATION

4) Breach of Duty by the Personal Representative

a) IRPC 1.2(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

i) IRPC 1.2 Comment [11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime of fraud. See Rule 4.1.

ii) IRPC 1.2 Comment [12] Where the client is fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

iii) See Confidentiality, Above.

b) Idaho Code 15-3-712 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.

c) **Idaho Code 15-3-713. 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 (1) who has consented after fair disclosure, unless: (a) the will or a contract entered into by the decedent expressly authorized the transaction; or (b) the transaction is approved by the court after notice to interested persons.**

d) **Attorney Fees – Attorney fees incurred by the PR in defending against a claim of breach of duty, or other matters not specifically related to the administration of the estate, may not be an expense of the estate, but an expense of the personal representative personally. See, Grover v. Grover, 109 Idaho 687 710 P.2d 597 (Idaho 1985).**

5) **Ethical Considerations in Attorney playing multiple roles**

a) **Drafting attorney as Personal representative**

i) IRPC 1.8 Conflict of Interest: Current Clients: Special Rules – A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3)the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

ii) This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position. Comment [8] IRPC

iii) *Appointment of Scrivener as Fiduciary*. An individual is generally free to select and appoint whomever he or she wishes to a fiduciary office (e.g., trustee, executor, attorney-in-fact). Comment [8] to MRPC 1.8 makes clear that Rule 1.8(c) "does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another

potentially lucrative fiduciary position" provided that doing so does not run afoul of MRPC 1.7. As a general proposition, lawyers should be permitted to assist adequately informed clients who wish to appoint their lawyers as fiduciaries. Accordingly, a lawyer should be free to prepare a document that appoints the lawyer to a fiduciary office so long as the client is properly informed, the appointment does not violate the conflict of interest rules of MRPC 1.7, and the appointment is not the product of undue influence or improper solicitation by the lawyer.

The designation of the lawyer as fiduciary will implicate the conflict of interest provisions of MRPC 1.7 when there is a significant risk that the lawyer's interests in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. See ACTEC Commentary on MRPC 1.8. (Conflict of Interest: Current Clients: Specific Rules) (addressing transactions entered into by lawyers with clients).

For the purposes of this Commentary, a client is properly informed if the client is provided with information regarding the role and duties of the fiduciary, the ability of a lay person to serve as fiduciary with legal and other professional assistance, and the comparative costs of appointing the lawyer or another person or institution as fiduciary. The client should also be informed of any significant lawyer-client relationship that exists between the lawyer or the lawyer's firm and a corporate fiduciary under consideration for appointment.

ACTEC COMMENTARY ON MRPC 1.7

iv) Most jurisdictions, including Idaho, allow the scrivener to appoint himself, or his firm as fiduciary, RPC 1.7 and1.8 are complied with. However, this is not true in all jurisdictions. Further, <u>naming the scrivener as the fiduciary may not be an ethics violation, but care must be taken in the solicitation of such role</u>.

(1) An attorney was suspended for three years for drafting estate planning documents naming the attorney as a fiduciary in violation of Rule 1.7 and 7.3. The court distinguished its earlier case, State v. Gulbankian, 196 N.W.2d 733 (Wis. 1972), in which it had warned against this practice but had declined to discipline the lawyers involved in that case. In re Disciplinary Proceedings Against Felli, 291 Wis. 2d 529, 718 N.W.2d 70 (2006)

(2) A lawyer who is drafting a will for a client may not suggest that he be named as personal representative or as trustee to serve without bond for a reasonable fee. However, the lawyer may accept the nomination if asked independently by the client. Michigan Eth. Op. RI 291 (1997)

(3) A lawyer who neither promotes his or her appointment nor exercises undue influence on the client may draft an instrument appointing the lawyer as fiduciary if the lawyer makes full disclosure to the client, obtains the client's written consent, and charges a reasonable fee. Georgia ethics opinion Op. 91-1 (1991)

(4) A lawyer may draft a will naming the lawyer as personal representative or trustee or in which the fiduciary is directed to retain the lawyer as attorney if the client consents after being informed of alternate representatives, all fees involved, and of the lawyer's own financial interest. A lawyer's suggestion of

himself as fiduciary may constitute improper solicitation. Virginia ethics opinion Op. 1358 (1990)

(5) A lawyer may, at a client's request, draft an estate planning document naming the lawyer as a fiduciary, but first must ensure that he is competent to perform the fiduciary role; discuss the client's options in choosing a fiduciary, including the relative costs of having the lawyer or someone else serve as fiduciary; and make a reasonable determination whether his personal interest in serving as fiduciary requires the client's informed consent. A lawyer may not nominate himself by default to serve as fiduciary in estate planning documents he presents to a client. If a lawyer actively solicits clients to nominate the lawyer to serve as fiduciary, Rule 1.8(a) may apply. New Hampshire ethics opinion Op. 2008-09/1.

b) Naming drafting attorney as attorney for fiduciary

i) *Designation of Scrivener as Attorney for Fiduciary*. The ethical propriety of a lawyer drawing a document that directs a fiduciary to retain the lawyer as his or her counsel involves essentially the same issues as does the appointment of the scrivener as fiduciary. However, although the appointment of a named fiduciary is generally necessary and desirable, it is usually unnecessary to designate any particular lawyer to serve as counsel to the fiduciary or to direct the fiduciary to retain a particular lawyer. Before drawing a document in which a fiduciary is directed to retain the scrivener or a member of his firm [see MRPC 1.8(k) (Conflict of Interest: Current Clients: Specific Rules)] as counsel, the scrivener should advise the client that it is neither necessary nor customary to include such a direction in a will or trust. A client who wishes to include such a direction in a document should be advised as to whether or not such a direction is binding on the fiduciary under the governing law. In most states such a direction is usually not binding on a fiduciary, who is generally free to select and retain counsel of his or her own choice without regard to such a direction. See also the discussion of the lawyer serving as both fiduciary and counsel to the fiduciary in ACTEC Commentary on MRPC 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer). ACTEC COMMENTARY ON MRPC 1.7

ii) *fiduciary to serve also as lawyer for the fiduciary*. Such dual service may be appropriate where the lawyer previously represented the decedent. It may also be appropriate where there was a long-standing relationship (personal or professional) between the lawyer and the decedent. The client may request the lawyer to serve in both capacities during the estate planning process, or the beneficiaries might request this post-mortem. Regardless of when the request is made and by whom, the lawyer should explain the costs of such dual service, the financial implications for the lawyer and the estate, and the alternatives to dual service. A lawyer undertaking to serve in both capacities should attempt to ameliorate any disadvantages that may come from dual service, including the potential loss of the benefits that are obtained by having a separate fiduciary and lawyer, such as the checks and balances that a separate fiduciary might provide upon the amount of fees sought by the lawyer and vice versa. A lawyer serving in such a dual capacity must ensure that he or she complies with the relevant conflict of interests rules. See MRPC 1.7 (Conflict of Interest: Current Clients),

1.8(a) (Conflict of Interest: Current Clients: Specific Rules) and 1.10 (Imputation of Conflicts of Interest: General Rule) and the ACTEC Commentaries thereon.

6) **Provide Effective and Timely Counsel**
   a) **A common complaint is the failure of a lawyer to handle matters in a timely fashion**
      i) Rule 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.
      ii) A lawyer's workload must be controlled so that each matter can be handled competently. Comment [2] IRPC 1.3 Diligence
      iii) Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions. Comment [3] IRPC 1.3 Diligence

NOTES

Creditor Claims & Common Administration Issues

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LAKE CITY LAW

1

Creditor Claims

2

Statute of Limitations (Creditor Claims)

- **§15-3-803(a)**: All claims against a decedent's estate which arose before the death of the decedent, (except claims for state taxes), *whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis*, if not barred earlier by another statute of limitations or nonclaim statute, are *barred against the estate, the personal representative, and the heirs and devisees of the decedent*, unless presented within the earlier of the following dates:
  - (1) Three (3) years after the decedent's death; or
  - (2) Within the time provided in section §15-3-801(b), Idaho Code, for creditors who are given actual notice, and within the time provided in section § 15-3-801(a), Idaho Code, for all creditors barred by publication.

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3

PR Gives Notice to Creditors

- Notice to **Unknown** Creditors §15-3-801(a):
  - A personal representative upon his appointment **may** publish a notice to creditors once a week for three (3) successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within four (4) months after the date of the first publication of the notice or be forever barred.
- Notice to **Known** Creditors §15-3-801(b):
  - A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within four (4) months after the published notice if given as provided in subsection (a) of this section or within sixty (60) days after the mailing or delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) of this section or a similar notice.

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4

PR Gives Notice to Creditors

- There are two ways to shorten the 3-year Statute of Limitations for Creditor's Claims.
  - 1) The PR may publish notice in the newspaper for three consecutive weeks, which supersedes the 3-year SOL and creates a **4-month** timeframe for all creditors to file their claim, or be forever barred. §15-3-801(a)
  - 2) The PR may give written notice, by mail, to any creditor notifying the creditor to present their claim within four months after the publication (above) or within **60 days** after mailing of the notice, whichever is later, or be forever barred. §15-3-801(b)

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5

What Claims Need be Presented

- What claims need to be presented:
  - Money
  - Unliquidated
  - Contingent
  - Etc.
- Note: Secured creditors need not file a claim (to the extent of their security)
  - If the claim is greater then the collateral – Claimant needs to file a claim identifying the potential unsecured claim (Deficiency) within the timeframe.

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6

Secured Claims

- Examples of Secured Creditor claims are a result from:
  - Mortgage
  - Deed of Trust
  - Car/Vehicle Loans
  - Article 9 Secured Interests

7

Manner of Presentation of Claim I.C. 15-3-804

- (a) Claimant shall deliver tor mail to the PR a written statement of the claim indicating:
  - Its basis,
  - Name and Address of Claimant, and
  - Amount Claimed
- AND file a written statement of the claim with the clerk of the court.
- The claim is deemed presented on the last to occur

8

Presentation of Claims (Contingent & Unliquidated)

- (1) Contingent Claims must state when it will become due
- (2) Contingent or Unliquidated Claims must state the nature of the uncertainty.
- (3) If the claim is secured, the security shall be described
  - This is used for potential deficiency claims for secured creditors
  - I.C. States that secured claimants do not need to file a claim, to the extent of their security.

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9

Denial of Claims (15-3-806)

- Claims that are properly presented under §15-3-804, within the time frame of §15-3-803, the PR may mail a notice of disallowance to any claimant.
- Said claim will be forever barred unless the claimant file a Petition for Allowance within 60 days of the mailing of the Notice of Disallowance.
- Failure of the PR to mail notice to the Claimant of action on his claim within 60 days after time of presentation of the claim has the effect of a Notice of Allowance.
  - NOTE: The ID Supreme Court has confirmed no response does not equate to a Judgement or deny the heirs the opportunity to contest the claim offering proof with reference to such claim. (In re Coryell's Estate, 16 Idaho 201, 101 P. 723 (1909)

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10

Allowance of Claims I.C §15-3-806

- Upon a Petition by the PR or a Claimant, the Court may allow in whole or part any claim or claims presented to the PR and filed with the Clerk of Court, within the time frames of subsection (a).
- Notice shall be given to the PR, Claimant, and those other persons interested in the estate.

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Counterclaims (§15-3-812)

- In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant.
- §15-3-812 give the Judge authority to reduce the claimant's amount by the counterclaim amount, and even issue a judgement against the Claimant if the Counterclaim is greater than the original claim.

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Administration in More Than One State (§15-3-815)

- Note: All assets of estates being administered in Idaho are subject to all claims, allowances, and charges existing or established against the PR wherever appointed.
- Legislative Comments: It is necessary, however, that the personal representative of any portion of the estate be aware of other administrations in order for him to become responsible for claims and charges established against other administrations.

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13

Priority in Payments to Creditors I.C §15-3-805

- (1) costs and expenses of administration;
- (2) reasonable funeral expenses;
- (3) debts and taxes with preference under federal law;
- (4) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- (5) debts and taxes with preference under other laws of this state;
- (6) all other claims.
  - (b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due. (Pro-Rata)

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Homestead Allowance (§15-2-402)

- §15-2-402: Homestead Allowance: Often misunderstood because of the name- Very Powerful Tool
- Exempt from and has priority over all other claims of the estate.
- $50,000 claim against the Estate (Do not need to own a home)
- Entitled to make the claim if:
  - (1) If Surviving Spouse, to the Surviving Spouse.
  - (2) If no Surviving Spouse, then equally to all children:
    - (a) under 21 years old (if decedent was obligated to support) and/or
    - (b) Any child being supported who is disabled under 42 USC 1382(c)d
- Amount is in addition to any share passing to persons described in 1 & 2 above.
- NOTE: Can be waived through a Will (ex: give children $50,000- all can be wiped out if not done)

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15

Exempt Property Allowance (I.C. §15-2-403)

- §15-2-403: Exempt Property
- In addition to the Homestead Allowance, surviving spouse (or children if none) are entitled to value not exceeding $10,000 in tangible personal property
  - Ex: household furniture, automobiles, furnishings, appliances, family heirlooms, and personal effects
  - Subject to limitation or elimination pursuant to §15-2-406.

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16

Homestead Allowance & Exempt Property Allownace

- Both Allowances are subject to IC §15-2-406 limitations
- Claims must be presented within the time period for Creditor Claims
- No actual notice is required to be made by the Personal Representative.
- In kind valuation governed by IC §15-3-906.
  - FMV on date of distribution.

17

Federal and State Income Taxes

- This area can be difficult to navigate.
- Federal:
  - General SOL: IRS has 10 years from assessment of tax due to collect said tax.
- State:
  - §15-3-803 States claims for State income taxes must be presented within 3 years from the latest of:
    - Decedent's Death;
    - Due date of return; or
    - **Date return was filed**

18

Common Administration Issues

19

Common Administration Issues

- 2 Hats (Beneficiary & PR)
- Breach of Fiduciary Duties
  - Prudent Investor Rule, Duty to Inform, Duty to Account, Conflict of Interest, etc.
- Testacy v. Intestacy & Lost Wills
- Revocation by Divorce
- Non-probate Transfers
- Joint Owner Bank Accounts
- Insufficient Assets
- TEDRA

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20

Most Common Issue

- The most common issue steam from a Beneficiary named as Personal Representative
  - Be careful to distinguish in which capacity you are representing the Client (which hat)
  - Must put the interests of the other Beneficiaries ahead of their own.
  - Must treat all Beneficiaries impartially
- PR might need separate representation in their Beneficiary capacity if Conflicts of Interest
  - Examples: Service Contract, Purchasing property from Estate, Compensation, etc.

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Fiduciary Duties of Personal Representative

- Duty to Inform
- Duty to Prepare Inventory
- Prudent Investor Rule
- Duty to Account
- Avoiding Conflicts of Interest

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General Duty of Personal Representative

- §15-3-703: A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 15-7-302
  - §15-7-302: Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.
- 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.

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Duty to Inform (15-3-705)

- Not later than thirty (30) days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees.
- The information shall include:
  - Name and address of the personal representative,
  - Indicate that it is being sent to persons who have or may have some interest in the estate being administered,
  - Indicate whether bond has been filed, and
  - Describe the court where papers relating to the estate are on file.

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Duty to Prepare Inventory (15-3-706)

- Within three (3) months after his appointment, a personal representative, shall prepare an inventory of property owned by the decedent at the time of his death.
- Listing with reasonable detail, each items:
  - Fair Market Value (Date of Death)
  - Type and Amount of any Encumbrance
  - (include backup documentation to support values- Protect PR)
- The Personal Representative SHALL send a copy to interest persons who request it, and MAY file it.

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Estate Inventory (Cont.)

- §15-3-707: Appraisers: The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value.
- §15-3-708: Supplemental Inventory:
- 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 appraisement 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 send copies thereof to all interested persons to whom copies of the original inventory were sent pursuant to section 15-3-706, Idaho Code.

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Voidable Sales (§15-3-713)

- §15-3-713: Sale, Encumbrance, or Transaction- Conflict of Interest:
- 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 (1) who has consented after fair disclosure**, unless:
  - (a) the will or a contract entered into by the decedent expressly authorized the transaction; or
  - (b) the transaction is approved by the court after notice to interested persons.
- TIP: Get approval of all Beneficiaries or the Court (Motion to Approve Sale Price).

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Compensation of Personal Representative (§15-3-719)

- I.C. §15-3-719: A personal representative is entitled to reasonable compensation for his services.
  - Fee must bear some relation to the value of the services.
    - *Chapman v. Ada County*, 48 Idaho 632, 284 P. 259 (1930)
  - Difference between Lay person and professional
    - Higher duty of care and higher compensation rates.
  - Idaho case law has upheld $25 per hour as reasonable compensation for a lay PR
  - Conflict of Interest Issue: Follow Voidable Sale rule:
    - Beneficiary Consent or Court Order approving the compensation is reasonable.

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Compensation of Personal Representative (Cont.)

- If removed, authority to prohibit the PR from receiving compensation.
  - See *Kolouch v. First Sec. Bank*, 128 Idaho 186, 911 P.2d 799 (ct. App. 1996)
- A personal representative may also renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.
-

29

Litigation Expenses (§15-3-720)

- IC §15-3-720: Expenses in Litigation
- If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred.
  - Question of whether fees are reimbursable if you have created personal liability acting outside the scope of your PR duties. (See §15-3-712).
  - The services rendered must benefit the estate and cannot be incurred to protect personal interests. (*In re Estate of Eliasen*, 105 Idaho 234, 241)

30

Litigation Expenses (Cont.)

- A personal representative who litigates his own personal interests or bequests is not entitled to attorney fees for such litigation from the estate. (Which Hat?)
  - See *In re Estate of Berriochoa*, 108 Idaho 474, 474
  - Son was to get business if he was "the Manager" at death. In litigating if this precedent was met, he was not entitled to legal fees (protecting his own interest)

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Insufficient Assets (Insolvent)

- Idaho Code §15-2-404 provides, in part: "If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property."
- Can close without a hearing (§15-3-1204)

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Joint Owned Bank Accounts

- IC §15-6-102 States it is immaterial what a financial institution defines as the owner.
  - Ex: Joint Ownership with Rights of Survivorship = No effect in ID
  - Must be listed on POD to take as a nonprobate transfer.
- The intent to gift that money to the joint owner must be proven by clear and convincing evidence
  - "Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate if an intent to give the account can be shown by the surviving party or parties." Idaho Code §15-6-104
    - Burden is on the person claiming the completed gift.

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Joint Owned Bank Accounts (Cont.)

- This is further outlined in case law.
- "Where money in a joint account is deposited by one party, and thereafter a question of the depositor's intent arises, the party asserting the gift must prove all the elements of a gift, excepting irrevocable delivery, by clear and convincing evidence."
  - *Matter of Lewis' Estate*, 97 Idaho 303, 543 P.2d 856 (1975) (citing *Idaho First Nat'/ Bank v. First Nat'/ Bank of Caldwell*, 81 Idaho 295,340 P.2d 1100 (1959)).
- Common fact pattern: Joint owners and decedent only person to contribute funds.
  - Was intent to gift or was the Joint owner added for convenience? Presumed convenience
  - Can trace contributions if both owners contributed to the account.

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Inter Vivos Gifts

- The essential elements of a "gift inter vivos" are:
  - (1) A donor competent to contract;
  - (2) freedom of will of donor;
  - (3) the gift must be complete and nothing left undone;
  - (4) the property must be delivered by the donor and accepted by the donee;
  - (5) the gift must go into immediate and absolute effect.

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TEDRA

- §15-8-101: Purpose
  - The overall purpose of this chapter is to set forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under title 15, Idaho Code.
- §15-8-201: Judicial Resolution
  - Any party may have a judicial proceeding for the declaration of rights or legal relations with respect to:
  - (a) Any matter, as defined in §15-8-103, Idaho Code;
  - (b) The resolution of any other case or controversy that arises under the Idaho Code and referenced judicial proceedings under this chapter; or
  - (c) The determination of the persons entitled to notice under §15-8-204, Idaho Code.

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TEDRA (Cont.)

- §15-8-302: Nonjudicial Resolution
  - If all parties agree to a resolution of any such matter, then the agreement shall be evidenced by a written agreement signed by all parties.
  - the written agreement shall be binding and conclusive on all persons interested in the estate or trust.
  - If the agreement or a memorandum of the agreement is to be filed with the court under §15-8-303, Idaho Code, the agreement may, but need not, include provisions specifically addressing jurisdiction, governing law, the waiver of notice of the filing and the discharge of any special representative who has acted with respect to the agreement.

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37

Questions?

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38

Current Example

- 2 parcels of property in question
  - Specific Bequest Property
  - General property with issues related to chain of title
- Can and Should PR make an interim Distribution?
- Authority to do so under TEDRA

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39

Closing the Estate

8th Annual Estate Planning Basics – May 19, 2023 – The Law Center, Boise
final session – 11:45am-12:15pm

presented by: Richard K Gardner

1

1

Closing the Estate

8th Annual Estate Planning Basics – May 19, 2023 – The Law Center, Boise
final session – 11:45am-12:15pm – the last thing standing between you and lunch!

presented by: Richard K Gardner

2

2

Closing the Estate

1. what: overview, general principles
2. how: procedure, options
3. when: timelines, SoLs
4. like, actually how: strategy, practical considerations, forms
5. bonus: death & taxes

3

3

WHAT

Overview

- when in doubt, read the statutes!
  - Title 15, Idaho Code
- closing = optional (but often necessary)
  - premise of UPC: devolution automatic, administration as needed
  - 15-3-101, 15-3-901: property devolves at death "subject to" administration
  - 15-3-108: probate commenced within 3 years of death (or not at all)
  - 15-3-102: absent probate, devisee in possession may rely on unprobated will
- key issues at opening = testacy status + appointment of PR
- key issues at closing = administration status and discharge of PR

4

4

WHAT

Overview - continued

- "settled":
  - assets marshalled
  - creditor claims resolved
  - expenses paid
  - taxes paid
  - assets distributed
  - everything accounted for
- estate administration = mini chapter 7 bankruptcy
  - orderly winding down

5

5

HOW

Procedure, Options

- choose your own adventure:
  - 15-3-1001 formal closing — adjudication via court order
  - 15-3-1003 closing by verified statement — aka 'informal' closing
  - nonjudicial — run out the clock

6

6

HOW

Formal Closing

- formal adjudication = court order — may include:
  - adjudicate testacy (if not previously)
    - not mandatory—per 15-3-1002 may rely on informally probated will
  - construe will, determine heirs/distributees
  - approve or compel accounting
  - approve or direct past or proposed distributions
  - discharge PR
  - final settlement of estate (all outstanding issues)
- any party may petition

7

7

HOW

Closing by Verified Statement

- aka 'informal' closing
- filed by PR
- must include the following:
  - creditor claims period has expired
  - estate fully administered
  - accounting provided to distributees

8

8

HOW

Nonjudicial Closing

- no filing, just "run out the clock"
  - not really a "closing"
    - sometimes "good enough" actually is
  - 15-3-906(b) PR may give notice of proposed distribution
  - 15-3-1004 undischarged creditor may collect from distributee, right of contribution against other distributees

9

9

WHEN

Estate Closing Timelines

- formal closing (15-3-1001/1002):
  - PR may petition at any time
  - other interested person one year after PR appointed
- closing by verified statement (15-3-1003):
  - PR may file 6 months after appointed
- not closing at all:
  - nothing to file, just ride off into the sunset . . . and hope no one is following

10

10

WHEN

Estate Statutes of Limitations

- elective share (15-2-205) – surviving spouse elect within 9 months of death or 6 months of probate petition (later of)
- homestead + exempt property (15-2-405) – apply for in same manner as creditor claim
- creditor claims (15-3-803(a)) – present within 3 years of death, or sooner if actual (60 days) or public (4 months) notice
- post death claims (15-3-803(b)) – within 4 months
- PR notice of proposed distribution (15-3-906(b)) – 30 days to object

11

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WHEN

distributee SoLs

- 15-3-1006 claim against distributee
  - such as:
    - improperly distributed property (15-3-909) (BFPs protected per 15-3-910)
    - creditor claim / right of contribution (15-3-1004)
  - barred 3 years after death / 1 year after distribution (later of)

12

12

WHEN

PR SoLs

- termination
  - 15-3-608 termination ends PR's power to act except as necessary to protect estate and/or deliver assets to successor PR
    - termination does not discharge PR
    - still fiduciary, duty to account, preserve/deliver assets
  - 15-3-610(b) formal closing order terminates appointment
  - 15-3-610(a) appointment terminates 1 year after closing statement (if no pending proceedings)
  - death, disability, resignation, removal, change of testacy status

13

13

WHEN

PR SoLs

- discharge
  - formal: adjudicated per court order
  - informal: 15-3-1005 creditor/successor claims barred v. PR 6 months after verified statement (except fraud)
  - no closing: see other generally applicable SoL
  - federal tax follows its own rules
    - 31 USC 3713: "A representative of a person or an estate . . . paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government"
    - et al, ad nauseam

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HOW part 2

Practical Considerations

- form-driven



"Use the for[ms], Luke"

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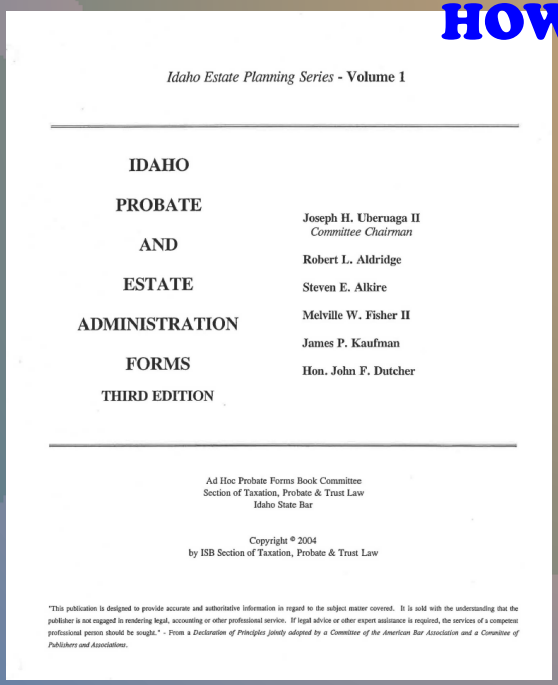
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HOW part 2

Idaho State Bar

Section of Taxation, Probate & Trust Law

form book available for purchase at https://isb.idaho.gov/member-services/cle-programming/publications/



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16

HOW part 2

Practical Considerations

- the importance of accounting
  - who tells your story?
- elements of an accounting
  - beginning balance (tie to inventory)
  - receipts/disbursements
  - gain/loss on disposition
  - end balance/assets on hand (tie to proposed reserve/distribution)



inventory → accounting → schedule of distributions

17

17

HOW part 2

Fiduciary Liability

- no good deed goes unpunished
  - the great asymmetry: all downside, no upside
  - fiduciary burden: guilty until proven innocent
  - permission v. forgiveness
- receipts, releases, consents, repayment agreements
  - use leverage wisely—while you have it
- special case: attorney fees
  - think carefully about retainer and liability issues up front
    - just like a divorce, injury suit, or class action, leverage is everything—but with fiduciary duties attached
    - "sad" (*n.*): a non-bene PR (esp. uncle) who pays out of pocket to defend against personal liability for trying to help his ungrateful nephews/nieces

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HOW part 2

Fiduciary Liability

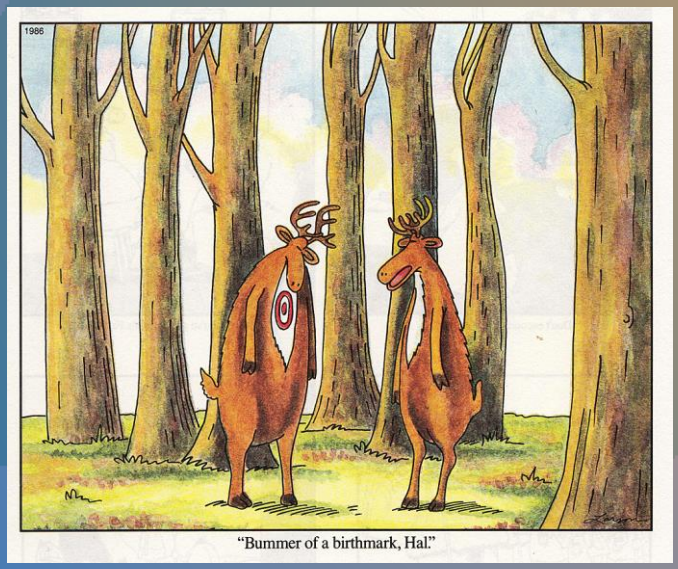


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HOW part 2

Fiduciary Liability



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HOW part 2

Fiduciary Liability



Client: "When is it my turn to shoot against the other team?"
Attorney: "You're the goalie, kid. This is all there is."

21

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HOW part 2

Fiduciary Liability



22

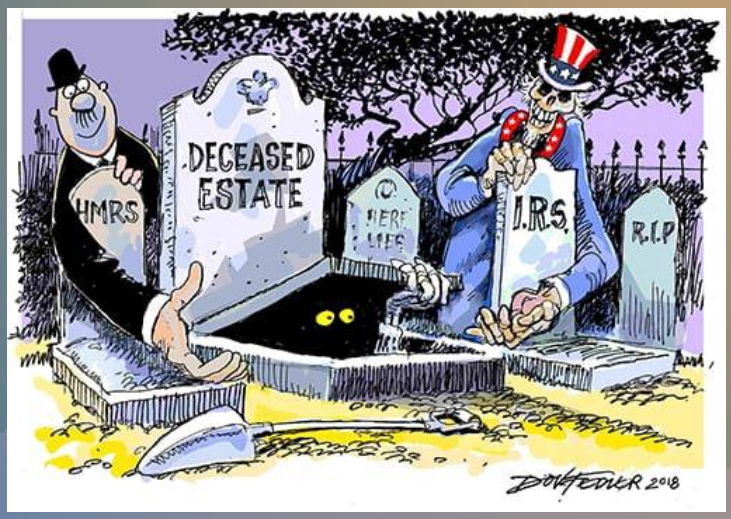
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BONUS

Bonus: Death and Taxes

"[I]n this world nothing can be said to be certain, except _____."

Benjamin Franklin, 1789



See, e.g., https://en.wikipedia.org/wiki/Death_and_taxes_(idiom) idiom), 10/17/

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BONUS

Bonus: Death and Taxes

"[I]n this world nothing can be said to be certain, except _____."

Benjamin Franklin, 1789



See, e.g., https://en.wikipedia.org/wiki/Death_and_taxes_(idiom) idiom), 10/17/

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24

BONUS

Bonus: Death and Taxes

- estate tax (due 9 months from date of death)
  - payment due!!!! whether or not the estate has liquidity to pay it
  - liens, personal liability, transferee liability, etc
    - consider requesting closing letter, using repayment agreements, etc
  - TEDRA not binding on tax authorities
- income tax
  - decedent's final income tax return (1040) – same due date, dead or alive
  - estate also files its own income tax return (1041) – may elect fiscal year

25

25

That's All Folks

Disclosures

- I am not your attorney. This presentation is for educational purposes only and is not legal or tax advice about a specific situation.
- It may or may not be worth the money you paid for it. (Indeed it may be worth exactly as much as I am getting paid to present it.) No warranties expressed or implied. Rely at your own risk.
- The views expressed (however correct and insightful they may be) are attributable to the author alone and do not in any way reflect on his employer.

26

26

DOUBLE BONUS

Appendix: sample forms

27

27

Sample form:

Verified Statement Closing Small* Estate

*means "insolvent"

IN THE MATTER OF THE ESTATE OF)
)
)
)
INSERT NAME HERE)
)
)
)
Deceased.)
_____)

CASE NO.

VERIFIED STATEMENT
CLOSING SMALL ESTATE
(I.C. 15-3-1204)

1. The undersigned, Insert Name Here, as personal representative of the estate of the above-named decedent, states and represents that:
(a) ___ To the best of undersigned's knowledge, the value of the entire estate of the decedent, less liens and encumbrances, did not exceed the homestead allowance, exempt property, family allowances, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent.
(b) ___ The estate has been fully administered by the undersigned by disbursing and distributing it to the persons entitled thereto.
(c) ___ A copy of this closing statement has been sent by the undersigned to all distributees of the estate and to all creditors or other claimants of whom the undersigned is aware whose claims are neither paid nor barred, and the undersigned has furnished a full account in writing of his administration to the distributees whose interests are affected.
(d) ___ There is no order of Court prohibiting the closing of this estate, and this estate is not being administered by a supervised personal representative.

2. This statement is filed for the purpose of closing this estate and terminating the appointment of the undersigned as personal representative.

DATED this day of Month 20##.

28

28

Sample form:

Verified Statement Closing Estate

VERIFIED STATEMENT OF PERSONAL REPRESENTATIVE CLOSING ESTATE
(I.C. 15-3-1003)

The undersigned, Insert Name Here, as personal representative of the estate of the above-named decedent, states and represents that:

(a) ___ The undersigned has determined that the time limitation for presentation of creditors' claims has expired.

(b) (1) ___ The undersigned has fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration, estate, inheritance and other death taxes, and the assets of the estate have been distributed to the persons entitled to receive said assets and in the amount and manner to which they were entitled.

(2) ___ The undersigned has fully administered the estate of the decedent by making payment, settlement, or other dispositions of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except Insert language here.

and the assets of the estate have been distributed to the persons entitled thereto,

(i) subject to possible liability, with agreement of the distributees.

(ii) ___ and the following arrangements have been made to accommodate the outstanding liabilities Insert language here.

(c) The undersigned has sent a copy of this statement to all distributees of the estate, and to all creditors or other claimants of whom the undersigned is aware whose claims are neither paid nor barred, and:

(1) ___ has furnished a full account in writing of the undersigned's administration to the distributees whose interests are affected thereby.

(2) ___ any accounting required under I.C. 15-3-1003 has been waived by all of the distributees, as evidenced by the written consents attached hereto.

(d) There is no order of court prohibiting the closing of the estate and the estate is not being administered by a supervised personal representative.

(e) Each distributee has consented to the closing of the estate by the filing of this statement as evidenced by the written consents attached hereto. [paragraph (e) is optional]

2. This statement is filed for the purpose of closing this estate and terminating the appointment of the undersigned as personal representative.

DATED this day of Month 20##.

29

29

Sample form:

Petition for Closing Order*

*pleading name depends on what is requested

PETITION FOR ORDER
___ **APPROVING FINAL SETTLEMENT AND DISTRIBUTION**
___ **DETERMINING TESTACY**
___ **DETERMINING DEVISEES**
(I.C. 15-3-1001)

PETITIONER, Insert Name Here, as personal representative of the estate of the above-named decedent represents to the Court that:

1. The time for presenting claims which arose prior to the death of the decedent has expired. Notice to creditors was published as required by law.

2. Petitioner has fully administered the estate of the decedent by collecting and managing the assets of the estate, preparing an inventory of property owned by the decedent at the date of death of the decedent, making payment, settlement, or other disposition of all lawful claims against the estate, and performing all other acts required of petitioner by the laws of the State of Idaho pertaining to estates of decedents.

3. Final accounting:

(a) ___ Any accounting required under I.C. 15-3-1001 or I.C. 15-3-1002 has been waived by all of the distributees, as evidenced by the written consents attached hereto; or

(b) ___ Petitioner has filed herewith the final accounting.

4. Testacy status:

(a) ___ The decedent died testate. The Court has previously informally probated the will of the decedent. Petitioner affirms the statements set forth in petitioner's application for informal probate heretofore filed, except Insert language here.

(b) ___ The decedent died testate. The Court has previously formally probated the will of the decedent.

(c) ___ The decedent died intestate. The Court has previously informally appointed petitioner as personal representative of the estate of the decedent. Petitioner affirms the statements set forth in petitioner's application for informal appointment heretofore filed, except Insert language here.

(1) ___ A determination of heirs is requested; or

(2) ___ No determination of heirs is requested.

(d) ___ The decedent died intestate. The Court has previously formally appointed petitioner as personal representative of the estate of the decedent.

(1) ___ A determination of heirs is requested; or

(2) ___ No determination of heirs is requested.

5. Idaho Estate Taxes:

(a) ___ The estate is not required to file a federal estate tax return; that no Idaho estate tax is due and owing under the Estate and Transfer Tax Reform Act of 1988, I.C. 14-401 et seq.; and that the estate is not subject to the restrictions of I.C. 14-411(1).

(b) ___ The estate has filed a federal estate tax return; that no Idaho estate tax is due and owing under the Estate and Transfer Tax Reform Act of 1988, I.C. 14-401, et seq. A copy of the Idaho Estate Tax Closing letter is attached hereto.

(c) ___ The estate has filed a federal estate tax return; that the Idaho estate tax due and owing under the Estate and Transfer Tax Reform Act of 1988, I.C. 14-401 et seq., including applicable interest and penalties, has been paid in full. A copy of the Idaho Estate Tax Closing letter is attached hereto.

(d) ___ The estate has filed a federal estate tax return; that an agreement for the payment of the Idaho estate tax due and owing under the Estate and Transfer Tax Reform Act of 1988, I.C. 14-401, et seq., including applicable interest and penalties, has been entered into for the payment of the tax on an installment basis. A copy of the Idaho Estate Tax Closing letter is attached hereto.

6. Petitioner has filed herewith a Schedule of Distribution which sets forth prior distributions made and final distributions to be made. After making final settlement and distribution according to said annexed Schedule of Distribution, petitioner should be discharged as personal representative and the administration of this estate should be closed.

WHEREFORE, PETITIONER REQUESTS THAT:

1. The Court fix a time and place for hearing.

2. Notice be given as required by law.

3. After notice and hearing, the Court enter an order:

(a) ___ (1) ___ formally probating the last will of the decedent heretofore informally probated and determining the devisees of the decedent and their respective interests in the decedent's estate as set forth in the attached Determination of Devisees.

(2) ___ finding that the decedent died intestate and determining the decedent's heirs and their respective interests in the decedent's estate as set forth in the attached Determination of Heirs.

(b) ___ Approving the final account of petitioner filed herewith.

(c) ___ Authorizing and directing petitioner to transfer title in the assets of the estate and distribute them to the distributees in the amount and manner set forth in the annexed Schedule of Distribution, approving all prior distributions set forth in the Schedule of Distribution, and after petitioner has made such final settlement and distribution and has filed petitioner's receipts herein, discharging petitioner and closing the administration of this estate.

30

30

Sample form:

Final Account

(annex to petition)

FINAL ACCOUNT ANNEXED TO PETITION FOR APPROVAL OF FINAL SETTLEMENT AND DISTRIBUTION
(I.C. 15-3-1001)

1. Inventoried assets (or on hand at last accounting)
   See Schedule 1 attached. _____

2. Receipts during accounting period
   Include only amounts received from sale of assets in excess of value shown for the assets on Inventory. See Schedule 2 attached. _____

3. Total assets and receipts _____

4. Disbursements
   See Schedule 3 attached. _____

5. Losses on sales
   See Schedule 4 attached. _____

6. Total disbursements and losses on sales _____

7. Total assets on hand (line 3 less line 6) _____

   Total assets by type:

   Cash
   See Schedule 5 attached. _____

   Bonds
   See Schedule 6 attached. _____

   Realty
   See Schedule 7 attached. _____

   Other property
   See Schedule 8 attached. _____

8. Total assets on hand
   (This must equal line 7)
   _____

9. Reserve
   See Schedule 9 attached. _____

10. Total Available for Distribution
    _____

31

31

Sample form:

Final Account*

*customized version used by local practitioner, not from form book

FINAL ACCOUNT ANNEXED TO PETITION FOR APPROVAL OF FINAL SETTLEMENT AND DISTRIBUTION
(I.C. 15-3-1001)

1) Inventoried assets (or on hand at last accounting)
   See Schedule 1 attached. _____

2) Receipts during accounting period
   Include only amounts received from sale of assets in excess of value shown for the assets on Inventory. See Schedule 2 attached. _____

3) Total assets and receipts (Lines 1+2) _____

4) Disbursements
   See Schedule 3 attached. _____

5) Losses on sales
   See Schedule 4 attached. _____

6) Total disbursements and losses on sales (4+5) _____

7) Total assets on hand (line 3 less line 6)
   See Schedule 5 attached _____

8) Reserve
   See Schedule 6 attached. _____

9) Total Available for Distribution _____

Schedule 1
Original Inventoried assets

Schedule 2
Receipts

Schedule 3
Disbursements

Schedule 4
Losses Upon Disposition

Schedule 5
Total Current Assets

Schedule 6
Reserve

32

32

Sample form:

Final Account*

*yet another example from a practitioner

In the Matter of the Estate of: _____, Deceased.	**FINAL ACCOUNTING** Probate No. _____

Summary of Account

Accounting Period Beginning _____ to _____

1.	Assets on Hand at Beginning of Accounting Period, _____ ([[date of death OR date of inventory or previous accounting]]). See Schedule 1.	$_____
2.	Receipts During Accounting Period. See Schedule 2.	$_____
3.	Disbursements During Accounting Period. See Schedule 3.	$_____
4.	Change in Value of Assets, Including Net Gain or Loss on Sale or Other Disposition of Assets. See Schedule 4.	$_____
5.	Total Assets on Hand as of End of Accounting Period, April 30, 2005. See Schedule 5.	$_____

33

33

Sample form:

Estate Closing Order

ESTATE CLOSING ORDER
(I.C. 15-3-1001)

Upon consideration of the Petition for Order Approving Final Settlement and Distribution filed by Insert Name Here, the personal representative of the estate of the above-named decedent, on Month ##, 20##, the Court determines and finds that:

1. The time for presenting claims which arose prior to the death of the decedent has expired, and notice to creditors was published as required by law.

2. Petitioner has fully administered the estate of the decedent by collecting and managing the assets of the estate, preparing an inventory of property owned by the decedent at the date of death of the decedent, making payment, settlement, or other disposition of all lawful claims against the estate, and performing all other acts required of the petitioner by the laws of the State of Idaho pertaining to estates of decedents.

3. Final accounting:
(a) ___ Any accounting required under I.C. 15-3-1001 or 15-3-1002 has been waived by all of the distributees, as evidenced by the written consents attached to the Petition; or
(b) ___ Petitioner has filed the final accounting with the Petition.

4. Testacy status:
(a) ___ The decedent died testate. The Court has previously informally probated the will of the decedent. Petitioner affirmed the statements set forth in petitioner's application for informal probate heretofore filed, except Insert language here.
(b) ___ The decedent died testate. The Court has previously formally probated the will of the decedent.
(c) ___ The decedent died intestate. The Court has previously informally appointed petitioner as personal representative of the estate of the decedent. Petitioner affirmed the statements set for the in petitioner's application for informal appointment heretofore filed, except Insert language here.
(1) ___ A determination of heirs is requested; or
(2) ___ No determination of heirs is requested.
(d) ___ The decedent died intestate. The Court has previously formally appointed petitioner as personal representative of the estate of the decedent.
(1) ___ A determination of heirs is requested; or
(2) ___ No determination of heirs is requested.

5. Idaho Estate Taxes:
(a) ___ The estate is not required to file a federal estate tax return; that no Idaho estate tax is due and owing under the Estate and Transfer Tax Reform Act of 1988, I.C. 14-401 et seq.; and that the estate is not subject to the restrictions of I.C. 14-411(1).
(b) ___ The estate has filed a federal estate tax return; that no Idaho estate tax is due and owing under the Estate and Transfer Tax Reform Act of 1988, I.C. 14-401 et seq.
(c) ___ The estate has filed a federal estate tax return; that the Idaho estate tax due and owing under the Estate and Transfer Tax Reform Act of 1988, I.C. 14-401 et seq., including applicable interest and penalties, has been paid in full.
(d) ___ The estate has filed a federal estate tax return; that an agreement for the payment of the Idaho estate tax due and owing under the Estate and Transfer Tax Reform Act of 1988, I.C. 14-401, et seq., including applicable interest and penalties, has been entered into for the payment of the tax on an installment basis.

6. Petitioner has filed with the Petition a Schedule of Distribution setting forth prior distributions made and final distribution to be made. After making final settlement and distribution according to the Schedule of Distribution, petitioner should be discharged as personal representative and the administration of this estate should be closed.

7. All of the allegations and statements in the petition are true.

8. All required notices have been given or waived.

9. The estate has been administered according to the laws of this State and the orders of this Court and should be closed.

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:

1. (a) ___ The will of the decedent heretofore informally probated by the Court is hereby formally probated. The devisees of the decedent and their respective interests in the decedent's estate are as set forth in the attached Determination of Devisees.
(b) ___ The decedent died intestate. The heirs of the decedent and their respective interests in the decedent's estate are as set forth in the attached Determination of Heirs.

2. ___ The final account of petitioner is hereby approved.

3. Petitioner is hereby authorized and directed to deliver and distribute title and possession of the assets of the estate to the distributees in the amount and the manner set forth in the annexed Schedule of Distribution, and all prior distributions shown in the Schedule of Distribution are hereby approved. Upon making such delivery and distribution, and duly filing receipts with this Court, petitioner shall be fully and finally released and discharged from petitioner's office and trust as personal representative and, together with petitioner's surety, shall be released and discharged from petitioner's bond, if any, and from any and all liability arising in connection with the performance of petitioner's duties as personal representative and from further claim or demand of any interested person, and the administration of this estate shall be closed.

DATED this ___ day of Month 20##.

34

34

Sample form:

Schedule of Distribution

- and -

Determination of Heirs

(annex to closing order)

SCHEDULE OF DISTRIBUTION – ANNEXED TO ESTATE CLOSING ORDER

Name of Distributee	Description of Property Previously Distributed	Distribution Value	Description of Property to be Distributed	Distribution Value	Total Distribution Value
Insert Name Here		$###		$###	$###
Insert Name Here		$###		$###	$###
Insert Name Here		$###		$###	$###
Insert Name Here		$###		$###	$###

___ The foregoing distribution is subject to any remaining reasonable administration expenses of the estate incurred prior to closing and/or final distribution. Any now unknown or hereafter discovered or acquired assets and any income net of reasonable administration expenses received, subsequent to the date hereof, shall be distributed

(a) ___ in the same proportions as set forth above; or
(b) ___ as follows: Insert language here.

DATED Month _____, 20___ APPROVED AND ORDERED BY THE COURT

DETERMINATION OF HEIRS – ANNEXED TO ESTATE CLOSING ORDER

Names of all Heirs	Addresses of all Heirs	Ages of Any Heirs Who Are Minors	Relationship to Decedent
Insert Name Here	Insert Address Here	##	Son/Daughter/Husband/Wife
Insert Name Here	Insert Address Here	##	Son/Daughter/Husband/Wife
Insert Name Here	Insert Address Here	##	Son/Daughter/Husband/Wife
Insert Name Here	Insert Address Here	##	Son/Daughter/Husband/Wife

DATED Month _____, 20___ APPROVED AND ORDERED BY THE COURT:

35

35

Sample form:

Receipt / Release / Consent

IN THE MATTER OF THE ESTATE OF)
)
)
)
INSERT NAME HERE)
)
)
)
Deceased.)

CASE NO.

RECEIPT AND RELEASE
(I.C. 15-3-1001 and 15-3-1002)

The undersigned, Insert Name Here, as a distributee of the above-named estate hereby:

1. Acknowledges receipt from Insert Name Here, the personal representative of the estate of the above-named decedent, of the property set forth in the schedule attached hereto.

2.* (a) ___ Accepts such property in full payment and satisfaction of the undersigned's interest in the estate.
(b) ___ Accepts such property subject to possible liability as follows: Insert language here.

3.* (a) ___ Acknowledges receipt of a full, written accounting of the personal representative's administration of the estate and approves the same.
(b) ___ Waives any accounting required under the Idaho Uniform Probate Code.

4.* Releases the personal representative and the estate from any and all liability in connection with the undersigned's interest in the estate.

IN THE MATTER OF THE ESTATE OF)
)
)
)
INSERT NAME HERE)
)
)
)
Deceased.)

CASE NO.

RECEIPT AND RELEASE, AND CONSENT TO CLOSING BY SWORN STATEMENT
(I.C. 15-3-1003)

The undersigned, Insert Name Here, as a distributee of the above-entitled estate hereby:

1. Acknowledges receipt from Insert Name Here, the personal representative of the estate of the above-named decedent, of the property set forth in the schedule attached hereto.

2. Accepts such property in full payment and satisfaction of the undersigned's interest in the estate.

3. Accepts such property subject to possible liability as follows: Insert language here.

4. (a) ___ Acknowledges receipt of a full, written accounting of the personal representative's administration of the estate and approves the same.
(b) ___ waives any accounting required under the Idaho Uniform Probate Code.

5. Releases the personal representative and the estate from any and all liability in connection with the undersigned's interest in the estate.

6. Consents to the informal closing of the estate by sworn statement filed by the personal representative pursuant to I.C. 15-3-1003.

DATED this ___ day of Month 20##.

36

36

Sample form:

Decree of Final Discharge

IN THE MATTER OF THE ESTATE OF)
)
)
INSERT NAME HERE)
)
)
)
Deceased.)

CASE NO.

DECREE OF FINAL DISCHARGE
(I.C. 15-3-1001 and 15-3-1002)

The personal representative of the estate of the above-named decedent, having filed all necessary final receipts showing that the personal representative has fully complied with the Estate Closing Order entered on the ## day of Month 20##, and the Court finds that the personal representative should be fully discharged.

IT IS THEREFORE ORDERED THAT:

1. Insert Name Here, the personal representative of the estate of the decedent, be and is hereby released and discharged from
(a) said personal representative's office and trust as personal representative;
(b) any and all liability arising in connection with the performance of said personal representative's duties; and
(c) further claim or demand of any interested person or any devisee who is a party to the proceeding and those whom said devisee represents.

2. Said personal representative and the personal representative's sureties be and are hereby released and discharged from liability on the personal representative's bond, if any.

DATED this ___ day of Month 20##.

37

37

NOTES