



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

The Language of Estates

New Clerks School – UNC School of Government

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Atty L. Funderburk
Pam Barlow
Dana Hackney



The Language of Estates

Jurisdiction (28A-2-1) – The Clerk of Superior Court is **the** Judge of Probate and has jurisdiction over the probate of wills and the administration of decedents' estates in North Carolina.

Venue (28A-3-1) – Options:

- County where decedent was domiciled
- County where the decedent had property or assets
- For non-resident motorists (wrongful death) - anywhere



NORTH CAROLINA
ADMINISTRATIVE OFFICE
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2 Essential Skills for the New Estates Clerk – 2011

The Language of Estates

Testate

- Having made a valid will;
- One who has died leaving a will.

Intestate

- Without making a valid will;
- One who has died without leaving a will.



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New Clerks January 2015

The Language of Estates

Decedent

- A person who is dead.

Decedent's Estate

- The nature of a person's assets, heirs or devisees, and debts as of the date of death.
 - What IS in the Estate?
 - What IS NOT in the Estate?

The Language of Estates

Last Will and Testament

A document by which a person directs his or her estate to be distributed upon death. The Will expresses the intent of the testator.

Testator

A person who has made a will or a person who dies leaving a will

Caveat

A formal challenge to a probated will.

The Language of Estates

Types of Wills

- Holographic
- Attested
- Self Proven
- Nuncupative
- Codicil – An addendum to the will

The Language of Estates

Devisee/Beneficiary

- Any person entitled to take real or personal property under the provisions of a valid, probated will.

Heir

- Any person entitled to take real or personal property of a decedent upon intestacy under provisions of the Intestate Successions Act.

The Language of Estates

Fiduciary

- One having duty created by his undertaking to act for the benefit of another person and not for his own benefit.
 - Bound to act with the highest degree of good faith in transacting business or handling property.
 - Personal Representatives, Trustees and Guardians are all fiduciaries in estates matters.
 - You may also hear the term used outside of Estates

Letters

Document issued by the Clerk giving authority to act as a Personal Representative or other Fiduciary

The Language of Estates

Personal Representatives (G.S. 28A-1-1)

- Appointed by the Clerk and charged with the fiduciary duty of administering the decedent's estate by paying creditors, distributing inheritance to heirs, and properly managing the assets of the estate in accordance with the law
- May collect a commission up to 5% (or more, depending on terms of the will) of the receipts on personal property and upon lawful expenditures in the estate
- Should be bonded unless there is a valid legal reason to excuse the bond

The Language of Estates
Types of Personal Representatives

- **Testate Decedent**
 - Executor
 - Administrator cta
 - Administrator cta, dbn
 - Ancillary Executor
 - Collector
- **Intestate Decedent**
 - Administrator
 - Administrator dbn
 - Ancillary Administrator
 - Public Administrator
 - Collector

What's missing from this list? Collector by Affidavit – NOT a PR

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The Language of Estates

- **Executor**

The personal representative named in the will who applies for letters testamentary.

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The Language of Estates

- **Administrator c.t.a**
 - cum testamento annexo - 'with the will annexed'
 - Administration granted where the will does not name an executor or the named administrator is incapable or refuses to serve.
- **Administrator d.b.n.c.t.a**
 - de bonis non cum testamento annexo
 - A subsequent appointment after the formal administration upon discovery of additional assets.

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The Language of Estates

- Ancillary Executor
 - Where property owned here but primary estate is in another state.
- Successors
 - When upon death, resignation, removal of the executor a successor is appointed by the clerk.

The Language of Estates

Collector (G.S. 28-A-11-1)

- A type of Personal Representative appointed for a limited time and for a specific purpose.
- A Collector is sometimes appointed in Caveats to preserve estate assets as provided by law.
- Appointment used when a delay is encountered in the issuance of letters to a personal representative; or when the clerk finds that the best interest of any estate would be served by the appointment of a collector.
- Once appointed, a Collector may take such possession, custody or control of personal property of decedent as is necessary for its preservation.

The Language of Estates

Collector by Affidavit

- An affiant that completes forms AOC-E-203 and AOC-E-204 to administer a decedent's estate.
- Not a Personal Representative.

The Language of Estates

Public Administrator

A person or group of persons that each elected Clerk chooses to appoint to qualify as administrator in estates where no other suitable person is available to administer the estates.

G.S. Chapt. 28A, Art. 12.

The Language of Estates

Real Property

Land and whatever is permanently attached to or erected or growing upon the land.

TYPES OF OWNERSHIP OF REAL PROPERTY

- Tenancy in Common
- Tenancy by the Entireties
- Joint Tenancy with Right of Survivorship
- Sole Ownership

The Language of Estates

Tenancy in Common:

- Ownership of real property by two or more persons.
- Decedent's interest may be devised in decedent's will, or passes intestate if decedent does not have a will.
- A decedent's interest is a "non-probate asset," but is **subject to his creditors.**
- Owners are referred to as tenants in common.

The Language of Estates

Tenancy by the Entireties:

- Special ownership of real property by spouses.
- Upon the death of one spouse, 100% ownership immediately vests in the surviving spouse.
- Non-probate asset that is **not subject to creditors**. (See Part III on the Preliminary Inventory)
- Owners referred to as tenants by the entirety.
- Tenancy by the Entirety is formed when a married couple buys property. *Not automatically formed when a couple that owns property gets married.*

The Language of Estates

Joint Tenancy With Right of Survivorship:

- Ownership of real property by two or more persons jointly with right of survivorship.
- 100% ownership interest vests in last surviving tenant.
- Decedent may not effectively devise his interest in his will.
- Owners are referred to as joint tenants with right of survivorship.

The Language of Estates

Personal Property

All property other than real estate.

Ref.: **Black's Law Dictionary, 8th Ed.**

TWO TYPES OF PERSONAL PROPERTY

- Tangible
- Intangible

The Language of Estates

Personal Property, cont'd

Tangible Personal Property

- Property such as a chair or watch which may be touched or felt in contrast to a contract.

Examples: cash on hand, household furnishings, vehicles.

The Language of Estates

Personal Property, cont'd

Intangible Personal Property

- Property that cannot be felt or touched, but rather is represented by a value, number, contract, bank statement, or other document that represents a right.

Examples: Stocks, bonds, checking accounts, ownership in a company, trademarks, copyrights, etc.

The Language of Estates

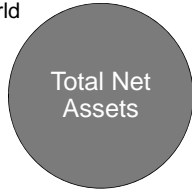
Probate Assets/Property of the Estate

- Property owned by the decedent at death.
- Property given directly to the estate or executor.
- Not property passing directly to another person upon death by other instrument or by operation of law.
- Checking accounts, stocks, bonds, vehicles in sole name of decedent, household furnishings.
- The last will and testament of the decedent and/or Intestate Succession control the disposition of probate assets.

Elective Share – Chapter 30

- Applicable share of total net assets a surviving spouse may receive

-Different:
statute, valuation, world



Alternatives to Formal (Full) Administration aka Small Estates Administration

- Year's Allowance
- Small Estates Administered by the Clerk
- Assignment of Title
- Affidavit for Collection of Personal Property
- Summary Administration
- Limited PR

Alternatives to Full Administration

Year's Allowance

An amount, set by statute, that a surviving spouse and qualifying children of the decedent may receive following decedent's death.

This amount is taken free from the claims of creditors.

Alternatives to Full Administration

Administration by the Clerk aka Payment to the Clerk

This process allows the Clerk to administer Estates under \$5,000, although some Clerks choose to only administer smaller estates (for example, up to the amount of the funeral bill).

Alternatives to Full Administration

Assignment of Title

Process by which a title to a motor vehicle may be transferred using a DMV Affidavit without a full estate administration.

Alternatives to Full Administration

Affidavit for Collection of Personal Property

- An estate may be administered by Affidavit for Collection depending on the size of the estate and date of death.
- The Collector by Affidavit is NOT a Personal Representative and is NOT the same as a Collector.
- The Affiant files affidavits with the Clerk regarding the collection and handling of property.

Alternatives to Full Administration

Summary Administration

Available when the surviving spouse is the sole devisee or heir.

Alternatives to Full Administration

Limited Personal Representative

In limited cases, there may be a Notice to Creditors without an estate administration. The cases appropriate for a Limited PR include estates where there are no probate assets or that meet the criteria set out in G.S. 28A-29-1.

Additional Terms

Language of the AOC

Computer Systems

- VCAP – ciVal CAse Processing
- Estates Tracking

Committees

- RRK – Rules of Recordkeeping
- Forms

Litigation

- Subpoenas
- Lawsuits

Language of the Bar

- Lawyer's Assistance Program
- Injunctions
