

RIGHTS OF HEIRS AND LEGATEES AND THEIR PURCHASERS IN ILLINOIS REAL ESTATE

With Chart on Intestate Descent

This booklet is an expansion of the prior excellent pamphlet "Perfecting Title to Illinois Real Estate of Foreign Decedents" by Bernard Goodman, former President of Chicago Title Insurance Company.

The appended chart is an update of the previously published and widely used chart "Rights of Surviving Spouse and Law of Descent in Illinois" by John D. Lagorio, Jr. former Vice President of Chicago Title Insurance Company.

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INTRODUCTION

The lawyer dealing with real estate previously owned by a deceased sole owner or tenant in common must often resolve the conflicting rights of heirs, legatees,¹ claimants, and purchasers and decide whether to institute time consuming and expensive probate proceedings. How a lawyer proceeds will vary from case to case depending on whether the heirs, the legatees, or a third party purchaser will be the ultimate title holder, whether there are unpaid claims against the estate, and whether a foreign decedent is involved. This publication is intended to assist the lawyer in understanding these conflicting rights and to aid in deciding whether probate proceedings are desirable in a particular case. It will discuss how title insurance can be used to insure against risks when probate proceedings are not contemplated.

Prohibited, Decreased or Void Transfers

Complicating this process are the provisions of the Probate Act which may affect the passage of title by any vehicle, whether through intestacy, will, trust, joint tenancy, tenancy by the entirety or transfer on death. Sanctions are imposed where an heir murdered an ancestor², where a party taking was convicted of financial exploitation, abuse or neglect of an elderly or disabled person³, where a parent neglected a deceased child⁴, or where a person is convicted or found civilly liable for certain abuses against the deceased elderly or disabled person⁵. Further complicating passage of title is the new presumption that the entire transfer instrument and not just the specific transfer is void if it includes a transfer on death to a non-family caregiver in excess of \$20,000⁶.

Deceased Joint Tenants / Tenants by the Entirety

Passage of title to real estate formerly owned by a deceased joint tenant⁷ or tenant by the entirety⁸ ordinarily provides few problems and should not require probate proceedings. As a general rule, on the death of a joint tenant the interest of the deceased joint tenant passes by operation of the joint tenancy to the surviving joint tenants. The title is subject to the lien for any state estate tax or federal estate tax due against the estate of the deceased joint tenant. Generally, judgments solely against the interest of the deceased joint tenant perfected after the creation of the joint tenancy but not levied upon do not affect the interest of the surviving joint tenant.⁹ Once the attorney has ascertained that the decedent held title in joint tenancy and the joint

¹ *Legatee, as defined in 755 ILCS 5/1 – 2.12, includes devisee.*

² 755 ILCS 5/2-6

³ 755 ILCS 5/2-6.2

⁴ 755 ILCS 5/2-6.5

⁵ 755 ILCS 5/2-6.6

⁶ 755 ILCS 5/4a-5 et seq.

⁷ 765 ILCS 1005/1

⁸ 765 ILCS 1005/1c

⁹ See *Gayton v. Kovanda*, 368 Ill.App.3d 363, 857 N.E.2d 929 (1st. Dist. 2006). See, however, 305 ILCS 5/5-13.5 and 305 ILCS 5/3-10 providing for the survival against the share of the deceased joint tenant of the lien for Medicaid payments and for payments for Aid to the Aged, Blind or Disabled provided for the benefit of the deceased joint tenant and *United States v. Craft*, 535 US 274 (S.Ct. 2002) holding a federal revenue lien against the deceased tenant by the entirety remained against half of the homestead of the surviving tenant by the entirety

tenancy was not severed,¹⁰ he should obtain a certified death certificate, a copy of the last will and testament, if any, a state estate tax release and a federal estate tax release¹¹ or a certification that no taxes were due.

Considerations for the deceased joint tenant should also relate to the deceased tenant by the entirety. Additionally, an ordinary judgment creditor whose lien was perfected after the creation of the estate cannot enforce its lien solely against the interest of a tenant by the entirety until the estate is terminated except if the estate was created for the sole intent of avoiding payment of existing debts beyond the transferor's ability to pay those debts as they become due.¹²

The death certificate must be examined for the date of death, the identity of the decedent, and the cause of death. The cause of death must be reviewed since a party who intentionally and unjustifiably causes the death shall not receive any property, benefit or interest by reason of the death.¹³ This test appears to be a codification of existing case law which applied to lesser crimes than murder.¹⁴

A person convicted of certain crimes against the elderly or disabled may not receive any benefit from the joint tenancy or tenancy by the entirety but would retain what interest in the property they had prior to the crime.¹⁵ Also, if a caregiver is the surviving joint tenant, consideration must be given to the presumption that the entire transfer instrument is presumed void.¹⁶

The will of the deceased joint tenant or tenant by the entirety should be examined to ascertain that the case law dealing with joint and mutual wills or the doctrine of election is not applicable. A joint and mutual will, executed by both the deceased joint tenant and the surviving joint tenant, can create a contract to devise the property to the devisees set forth in the joint and mutual will.¹⁷ While title still passes through the joint tenancy to the surviving joint tenant, the title is subject to the survivor's contract which may be enforced by the devisees against the survivor, his estate, or in some cases, his purchaser. The doctrine of election, on the other hand, arises where the deceased joint tenant's will devises the specifically described joint tenancy property to someone other than the surviving joint tenant and devises other property to the surviving joint tenant. The surviving joint tenant must decide whether to take as a surviving joint tenant or as a legatee under the will.¹⁸

The final items to be considered, the lien for state estate tax and federal estate tax, will be

¹⁰ *Lawwe v. Byrne*, 252 Ill. 194; *Szymczak v. Szymczak*, 306 Ill. 542; *Duncan v. Suby*, 378 Ill. 194.

¹¹ A bona fide purchaser for an adequate and full consideration from a surviving joint tenant has the protections afforded by 26 U.S.C. 6324 (a)(2) and Revenue Ruling 56-144, 24 U.S.L.W. 2506 with respect to the lien for federal estate taxes, but some title insurers are hesitant to rely on this revenue ruling, especially where a large estate tax is due.

¹² 735 ILCS 5/12-112

¹³ 755 ILCS 5/2 – 6.

¹⁴ *State Farm Life Insurance Co. v. Davidson*, 144 Ill. App. 3d 1049.

¹⁵ 755 ILCS 5/2-6..2 and 2-6.6

¹⁶ 755 ILCS 5/Article 4a, the Presumptively Void Transfer article.

¹⁷ *Tontz v. Heath*, 20 Ill.2d 286.

¹⁸ *Carper v. Crowl*, 149 Ill. 465. See, however, *Williamson v. Williamson*, 657 N.E.2d 651, 257 Ill.App.3d 999 (1st Dist. 1995) holding the doctrine of election inapplicable to joint tenancy property unless the will shows a clear intent to put the beneficiary to the election.

discussed at length in a later section.

Title Passing via Residential Real Property Transfer on Death Instrument (TODI)

Decedents dying on or after January 1, 2012 may pass title to their residential real estate through the use of a recorded Transfer on Death Instrument (TODI) to the beneficiaries named in the TODI. To be effective, the TODI and any revocation of the TODI must meet the essential elements and formalities of a deed, state the transfer is to occur at the owner's death, meet the signing, attestation and acknowledgement formalities of the Illinois Residential Real Property Transfer on Death Instrument Act (TODI Act)¹⁹ and must be recorded during the lifetime of the owner in the county that the property is located in. During the owner's lifetime, the TODI does not affect the right of the owner to sell or encumber the real estate and gives the beneficiary no vested interest in the real estate until the owner's death.

Upon the grantor owner's death the beneficiaries or their representative may record a Notice of Death Affidavit.²⁰ If a beneficiary predeceases the owner, title will pass per the TODI Act. Title is subject to all liens and encumbrances affecting the title at the time of the owner's death, rights of heirs or devisees to contest the TODI within the earlier of two years from the death of the owner or 6 months from the issuance of letters of office for the owner's estate, state inheritance and federal estate taxes and most likely subject to claims against the estate of the owner.²¹ A purchaser or mortgagee for value and without notice before the recordation of a *lis pendens* for an action to set aside or contest the transfer on death instrument for any reason takes free and clear of any such action or contest by the heirs or devisees to set aside the TODI.²² Clearance of claims against the estate of the owner and state inheritance and federal estate taxes is based upon documentation similar to that obtained with a deed in lieu of probate, which is discussed subsequently.

Title to the Real Estate of an Intestate Decedent

When the owner of Illinois real estate dies intestate, title to his real estate vests by operation of law in his heirs as determined by the Illinois laws²³ in effect on the date of death.²⁴ These laws have undergone a series of evolutionary changes over the past century. For the convenience of the reader, the appendix to this pamphlet sets forth the various rules of descent and distribution in effect in Illinois between 1872 and 2014.

Title to Real Estate of a Testate Decedent

If the decedent died testate, the situation is more complex. The legatees have the right to divest the heirs and vest title in themselves as of the date of death of the decedent by having the will of

¹⁹ 755 ILCS 27/1 et seq.

²⁰ 755 ILCS 27/75 Note, however, that such a Notice of Death Affidavit was required prior to January 1, 2015

²¹ 755 ILCS 27/85 While unsettled, consider the nontestamentary transfer discussed in *Rush University Medical Center v. Sessions*, 2012 IL 112906, 980 N.E.2d 45, 366 Ill.Dec. 245, which held a trust is subject to claims against the settlor's estate to the extent that a settlor retained benefits in the trust assets at the time of his death.

²² 755 ILCS 27/90 as amended January 1, 2015

²³ 755 ILCS 5/2.1; *McNamara v. McNamara*, 303 Ill. 191, *certiorari denied*, 260 U.S. 734.

²⁴ *McCormick v. Hall*, 337 Ill. 232.

the decedent admitted to probate in a court of competent jurisdiction in Illinois.²⁵ An unadmitted will does not vest title to Illinois real estate in the legatees. Even a will which has been admitted to probate in a foreign state is insufficient to vest title to Illinois real estate.²⁶ Probate of the will gives the heirs an opportunity to examine the will and, if they desire, to contest the validity of the will in court or submit a different will for admission to probate. The order admitting the will to probate vests title in the legatees effective as of the date of death of the decedent.²⁷ It divests the heirs and renders conveyances by the heirs, or liens affecting the real estate by reason of title in the heirs, ineffective against the decedent's land.²⁸ There is no statutory time limit for the filing of a petition to admit the will to probate.

The will may need to be interpreted. The most innocuous clause in a will can lead to a will construction suit that may not be filed for years after the probate proceedings have closed.²⁹

Determining Heirship

Problems may arise in determining heirship due to children born out of wedlock,³⁰ a posthumous child,³¹ adopted heirs or parties inheriting from adopted decedents,³² persons intentionally and unjustifiably causing the death of the decedent,³³ persons convicted of the financial exploitation, abuse or neglect of the decedent,³⁴ parents neglecting a deceased child,³⁵ parties convicted of certain offenses against the elderly or disabled,³⁶ disclaimers,³⁷ simultaneous deaths³⁸ and missing or unknown heirs. Additionally, with the recognition of civil unions³⁹ in Illinois in 2011, a party to a civil union has the same rights and responsibilities as a spouse, including the right of inheritance, the right to a surviving spouse's award and the right to renounce a will, and the affidavit of heirship must affirmatively deal with civil unions. Same sex marriages are also authorized in Illinois.⁴⁰ In those cases in which the heirship is uncertain or contested, a probate

²⁵ 755 ILCS 5/4-13; *Barnett v. Barnett*, 284 Ill. 580.

²⁶ 755 ILCS 5/7-5, *Sternberg v. St. Louis Union Trust Co.*, 394 Ill. 462; *Plenderleith v. Edwards*, 328 Ill. 431.

²⁷ *In re Estate of Stokes*, 225 Ill.App.3d 834, 587 N.E.2d 564

²⁸ See, however, *Eckland v. Jankowski*, 407 Ill. 263, holding an innocent purchaser from the heirs, relying on a probate proceedings adjudicating the deceased died intestate, was protected from the devisees claiming under a subsequently discovered will by his reliance on the public record. Accord *Catholic University of America v. Boyd*, 227 Ill. 281 (1907)

²⁹ A classic example of a will construction suit is *O'Connell v. Gaffney*, 23 Ill. 2d 611, wherein the Illinois Supreme Court reversed the Appellate Court and held that the share of a predeceased brother under the legacy "... to be paid in equal shares to my two brothers, James Gaffney and Edward Gaffney ... lapsed as the clause did not create a class gift and was to be distributed to the parties taking under the residuary clause of the will.

³⁰ 755 ILCS 5/2-2, which defines those parents eligible to inherit and provides for an unpaid child support offset. See *Estate of Hicks*, 174 Ill.2d 433 holding section 2(d), which then permitted only the maternal side to inherit from an intestate illegitimate without spouse or descendants, unconstitutional. The heirs of illegitimates have changed over time.

³¹ 755 ILCS 5/2-3.

³² 755 ILCS 5/2-4. The law as to adopted children has changed over time.

³³ 755 ILCS 5/2-6.2 and 2-6.6.

³⁴ 755 ILCS 5/2-6.2

³⁵ 755 ILCS 5/2-6.5

³⁶ 755 ILCS 5-2-6.6

³⁷ 755 ILCS 5/2-7.

³⁸ 755 ILCS 5/3-1

³⁹ 750 ILCS 75/1 et. seq

⁴⁰ 750 ILCS 80/1 et seq., effective 6/1/14, authorizing same sex marriages, may make civil unions rare

proceeding may be necessary to obtain an order declaring heirship.

Avoidance of Probate in Vesting Title Where the Decedent Left a Will

If the decedent dies testate, probate proceedings may be necessary to vest the legatees with title. Until there is an order admitting the will to probate, title remains in the heirs subject to the rights of the legatees to perfect their title by having the will admitted. This does not necessarily mean that the will must be admitted to probate in every instance. Often, the heirs and legatees are the same parties and take the same share of the decedent's real estate under the laws of intestacy or the terms of the will. In such a case, probate proceedings will not change the title. Alternatively, if the heirs and legatees are different parties or take different shares, and the heirs are all competent adults, title can be confirmed in the legatees by conveyances of record from all the heirs. If all the heirs and legatees deed to a third party by warranty deed, the deeds should be effective to convey after acquired title in case the will is subsequently admitted to probate.⁴¹

Even in those cases where it is necessary to have the will admitted to probate in Illinois, full probate proceedings may be avoided by simply having the will admitted to probate without having a personal representative appointed⁴² or by the use of Summary Administration.⁴³ Summary Administration provides for the admission of the will to probate, the entry of an order declaring heirship, and the transfer of personal (but not real) property to the legatees without liability on the part of the transferor. Under both procedures the will is subject to the customary will contest items discussed later. Neither procedure shortens the period in which a claimant against the estate may enforce his lien against the real estate since a personal representative is not appointed.⁴⁴ The petition of Summary Administration does, however, make representations regarding possible state estate and federal estate tax.

An order admitting the will to probate in any county in Illinois vests title in the legatees in all counties in Illinois. However, if the will has been probated in a county other than where the property is located, the legatees are advised to place third parties on constructive notice of their rights under the will by recording an authenticated copy of the will and the order admitting it to probate in the county where the real estate is located.⁴⁵ This recording procedure can also be utilized to place third parties on constructive notice of legatees' rights to have the will admitted in Illinois where a will already has been admitted in a state other than Illinois.

Conditions of Title Affecting All Estates

In addition to establishing title in the heirs or legatees, the lawyer must concern himself in any estate with claims against the estate of the decedent, possible federal estate tax and possible state estate tax, as well as the rights of any personal representative that may be appointed.

⁴¹ A warranty deed per 765 ILCS 5/9 conveys after acquired title. An unmodified quit claim deed, per 765 ILCS 5/10 does not convey after acquired title.

⁴² 755 ILCS 5/6-8.

⁴³ 755 ILCS 5/9-8 and 9-9.

⁴⁴ 755 ILCS 5/18-12.

⁴⁵ 765 ILCS 5/33; See *Lewis v. Barnhart*, 145 U.S. 56, holding no constructive notice was imparted by a recorded will that failed to comply with the statute.

As noted earlier in the second section, the Probate Act has penalties for wrongdoing of a party taking from the deceased on death. Wrongdoing includes murder or financial abuse of the elder, including the presumption that a transfer instrument to defined caregivers is void.

Claims against the estate of the decedent attach as liens against the real estate in favor of a creditor of the deceased.⁴⁶ A creditor enforces his lien by timely filing a claim in a pending probate proceeding with either the probate court or the personal representative of the decedent, or both.

If the name and address of the claimant is known or reasonably ascertainable to the personal representative, the personal representative must mail or serve notice of the probate estate to the claimant. The claimant has three months from such mailing or personal service to file his claim. If the name and address of the claimant is not known or reasonably ascertainable to the representative, the claimant has six months after issuance of letters of office to the personal representative within which to file a claim, or if publication of the notice of the estate is late, within 6 months of publication. In any event, claims not otherwise barred will be barred upon the expiration of 2 years from the date of death.

If the heirs or legatees do not have a personal representative appointed, a creditor may have one appointed within the applicable claims period.⁴⁷

A sale of real estate by the court appointed personal representative will divest the lien of the creditor on the real estate since the sale substitutes the sale proceeds for the real estate in the estate.⁴⁸

Federal estate tax constitutes a lien against the real estate of the decedent. The federal estate tax is a tax upon the right to transmit property at death.⁴⁹ Any tax due is a secret lien upon all assets of the estate, enforceable against subsequent purchasers without notice.⁵⁰ Generally, the lien for any unpaid tax exists for a period of ten years from the date of death of the decedent or until the tax is paid in full.⁵¹ Where an estate includes a closely owned business, the time for payment of the tax may be extended to a maximum of 15 years.⁵² Additionally, if a qualified

⁴⁶ 755 ILCS 5/18-1 to 18-15 deals with claims against the estate.

⁴⁷ 755 ILCS 5/9-3(j).

⁴⁸ 755 ILCS 5/20-15, 20-18 and 28-9.

⁴⁹ 26 U.S.C.A., par. 2001. *A discussion of federal estate tax is beyond the scope of this pamphlet. The taxable estate can include such non-probated items as insurance proceeds and gifts in excess of the annual exclusion. See www.irs.gov. A filing is required for estates with combined gross assets and prior taxable gifts \$625,000 for decedents dying in 1998; \$625,000 for decedents dying in 1999; \$675,000 for decedents dying in 2000 and 2001; \$1,000,000 for decedents dying during 2002 and 2003; \$1,500,000 in 2004 - 2005; \$2,000,000 in 2006 - 2008; \$3,500,000 for decedents dying in 2009; and \$5,000,000 or more for decedent's dying in 2010 and 2011 (note: there are special rules for decedents dying in 2010); \$5,120,000 in 2012, \$5,250,000 in 2013, \$5,340,000 in 2014, \$5,430,000 in 2015, \$5,450,000 in 2016, \$5,490,000 in 2017, and \$11,200,000 in 2018.*

Beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused exemption to the surviving spouse. This election is made on a timely filed estate tax return for the decedent with a surviving spouse. Note that simplified valuation provisions apply for those estates without a filing requirement absent the portability election.

⁵⁰ **Detroit Bank 23 v. United States**, 317 U.S. 329.

⁵¹ 26 U.S.C.A., par. 6324.

⁵² 26 U.S.C.A., par. 6166.

farm or real estate used in a trade or business is involved, a reduction for federal estate tax purposes in the valuation of the real estate is allowed. That reduction can be recaptured in whole or in part if the real estate is sold or the trade or business discontinued within a 10 year period.⁵³ While the liens imposed under these two special sections are extended, a purchaser is not affected under either section unless a notice of such a lien is filed in the county in which the real estate is located.⁵⁴

The lien imposed by the State of Illinois on account of the decedent's death is a lien on the decedent's real property. The amount of that lien is determined by the statute in effect as of the date of death of the decedent.⁵⁵

The state lien is not valid as against any purchaser, mortgagee, pledgee or other holder of a security interest for a full and adequate consideration in money or money's worth, as the lien attaches to the proceeds of the sale. No release from the Attorney General shall be required with respect to such sales or mortgages.⁵⁶ A purchaser or mortgagee will, however, take subject to a prior recorded notice of lien for taxes due the State of Illinois in excess of the federal estate tax exemption on account of Section 2032A election by the estate.⁵⁷ For property in the hands of an heir or legatee, the state lien lasts until the latter of 10 years from the date of death or one year after the last deferred payment if the payments are deferred or payable in installments.⁵⁸

Finally, the title is subject to the rights of the personal representative of the decedent, if and when appointed. Included in these rights are the right to possess the real estate⁵⁹ and the right to sell, lease or mortgage the real estate, either pursuant to court order for the payment of claims or for the proper administration of the estate,⁶⁰ all under supervised administration or pursuant to a power of sale in the will⁶¹ or pursuant to the representative's powers under independent administration.⁶²

The rights of the personal representative are not terminated until the closing of a probate proceeding or until an order is entered divesting the representative of his rights in the real estate. There is no limitation as to when an estate may be opened and accordingly, if no estate has been opened, there is no limitation as to when the rights of a personal representative may be exercised. Practically, however, if no probate proceeding has been opened within 2 years of the date of death of the decedent, the time within which unknown creditors could commence a hostile

⁵³ 26 U.S.C.A., par. 2032A.

⁵⁴ 26 U.S.C.A., pars. 6324A and 6324B.

⁵⁵ 35 ILCS 405/1 et. Seq. See <http://illinoisattorneygeneral.gov/publications/estatetax> for the Illinois Attorney General's summary of the exemption amount for recent specific years. Generally, an *Illinois Estate and Generation Skipping Transfer Tax will be due for estates in excess of a federal taxable estate of \$1,000,000 for decedents dying in 2003, \$1,500,000 for decedents dying in 2004 and 2005 and \$2,000,000 for decedents dying between 2006 and 2009. There was no estate tax in 2010. The exemption was \$2,000,000 for decedents dying in 2011, \$3,500,000 for decedents dying in 2012 and \$4,000,000 for decedents dying in 2013 to 2018.*

⁵⁶ 35 ILCS 405/10

⁵⁷ 35 ILCS 405/6 and 405/10.

⁵⁸ 35 ILCS 405/10.

⁵⁹ 755 ILCS 5/20-1.

⁶⁰ 755 ILCS 5/20-2 and 20-4.

⁶¹ 755 ILCS 5/2-15.

⁶² 755 ILCS 5/28-8(i).

proceedings has passed and the likelihood of an heir or legatee filing a proceeding after that point is minimal.

Conditions of Title When the Will is Admitted to Probate

In addition to the items discussed in the foregoing section, the legatees' title under a will admitted to probate is subject to the right of the heirs to have the will formally proved, the right of the heirs or alternative legatees to contest the will, and the rights of other legatees under the will.

A will may be admitted to probate without prior notification of the heirs and legatees, based upon a petition filed by the representative⁶³ and affidavits by the witness to the will of the proper execution of the will.⁶⁴ The petitioner must then give notice of his petition and the order admitting or denying admission of the will to all heirs and legatees of the decedent who have not appeared in the proceeding and/or waived notice within 14 days of the entry of the order.⁶⁵ The notice must include the prescribed explanation of the rights of the heirs or legatees.⁶⁶

The order entered is ineffective as to any omitted or improperly notified heir or legatee who had not appeared or waived notice. Lack of notice may be cured by a subsequent appearance, waiver of notice, and consent to entry of the order on behalf of the omitted or improperly notified heir or legatee. If this is not obtained, an amended petition to admit the will to probate must be filed. The periods within which an omitted or improperly notified heir can petition for formal proof of, contest, or renounce the will commence on the date of entry of the amended petition.⁶⁷

An heir or legatee has the right to petition the court to have the will formally proved using stricter evidence standards.⁶⁸ The petition must be filed within 42 days of the entry of the order admitting the will.

The heirs or legatees also have the right to contest the validity of the will within six months of the order admitting the will to probate.⁶⁹ The petition to contest the will may be filed either with, or instead of, a demand for formal proof of the will.

Within seven months after entry of the order admitting the will, a spouse or party to a civil union has the right to renounce the will and to take a statutory one-third share of the estate (one-half of the estate if there are no children).⁷⁰

The legatees obviously take their title subject to the provisions of the will. Depending on the terms of the will and the value of the estate, the legatees may be subject to the rights of other

⁶³ 755 ILCS 5/6-2.

⁶⁴ 755 ILCS 5/6-4.

⁶⁵ 755 ILCS 5/6-10.

⁶⁶ *Supreme Court Rule*.

⁶⁷ 755 ILCS 5/6-11.

⁶⁸ 755 ILCS 5/6-21.

⁶⁹ 755 ILCS 5/8-1.

⁷⁰ 755 ILCS 5/2-8.

legatees under the will to abatement or contribution.⁷¹ There is no priority of distribution between real and personal assets of the estate.

Sales by Heirs and Legatees if a Personal Representative has not been Appointed

As a general rule, if a personal representative of the decedent's estate has not been appointed, a purchaser from the heirs and legatees of the decedent acquires his title subject to the same defects in title that affected the title of the heirs and legatees. This is in stark contrast to the protections against all parties claiming through the decedent's estate given by statute to a purchaser from the personal representative of the decedent. When there has been no court determination, the purchaser must ascertain who the heirs are, whether the decedent died testate, whether a will is valid and is, in fact, the last will, and who the legatees are. If the decedent died testate, the purchaser must obtain deeds from all heirs and all legatees to cover the possibilities that the will may or may not ever be admitted to probate or may be contested.

In addition to determining ownership, the purchaser must concern himself with possible claims against the estate of the decedent, state estate tax, federal estate tax, and the rights and powers of the personal representative if and when appointed. The first three items, discussed earlier, have statutes of limitations protecting a purchaser. While there is no statute of limitations for the rights of the personal representative, if the above items have been resolved, the possibility of the personal representative dealing with the property contrary to the wishes of the heirs and devisees is very minimal.

A purchaser can often obtain title insurance to protect himself over these four items before statutes of limitation have run.

Effect of the Appointment of a Personal Representative on the Heirs, Legatees, and Purchaser

The issuance of letters of office to a personal representative of a decedent's estate in Illinois invests the representative with broad powers to deal with real estate. An independent representative acting pursuant to the provisions of Article XXVIII of the Probate Act has the power to take possession of, lease, sell or mortgage real estate without notice to interested parties.⁷² A good faith purchaser or lender from the independent representative takes title free of the rights of all persons having an interest in the estate, including the heirs, legatees, and claimants.⁷³ A will may grant similar powers to the personal representative and have the same effect.⁷⁴ Even if the decedent died intestate and independent administration is not elected or is unavailable, the personal representative still has the powers under Article XX of the Probate Act to possess, lease, sell or mortgage the real estate which is not the residence of an heir or devisee after petitioning the court and giving appropriate notice to interested parties.⁷⁵

⁷¹ 755 ILCS 5/24-3.

⁷² 755 ILCS 5/28-8(i).

⁷³ 755 ILCS 5/28-9.

⁷⁴ 755 ILCS 5/20-15.

⁷⁵ 755 ILCS 5/20.1, 20-2, and 20-18.

Each time real estate is sold by a personal representative, the proceeds of the sale must be covered by a bond.⁷⁶ If the testator waived surety for his representative, the bond filed at the beginning of the estate automatically increases and a separate bond for the sale of real estate need not be filed. In all other estates, a separate bond must be filed in conjunction with the sale of real estate.

This bond is required by Statute before the purchaser becomes a protected party when the sale is had pursuant to court order or the sale is had pursuant to a power of sale in the will.⁷⁷ The purchaser from an independent representative appears to be protected without a bond, however.⁷⁸ The remedies for the failure of the independent representative to file this bond if it was required appear to be limited to actions against the personal representative or the attorney for the estate.

The sale by a personal representative does not affect the lien for federal estate tax. Accordingly, evidence that no tax is due or releases of the tax should be obtained.

It may be desirable to have the personal representative sell real estate if there are unpaid claims, if the heirs or legatees do not want the property, if there are numerous heirs or legatees, if there are minors involved, or if there is conflict among the heirs or the legatees. In addition to adjudicating who the heirs and legatees are and providing a vehicle for conveniently selling, leasing or mortgaging real estate, probate proceedings also shorten the period within which claims may be filed, thereby permitting a faster distribution of estate assets.

During the pendency of the estate the title of the heirs or legatees is subject to the rights of the personal representative, claims against the estate, state estate tax, and the rights to contest the will, all of which have been previously discussed. Title is also subject to expenses of administration and to possible surviving spouse's or civil union partner's and children's awards. Expenses of administration include such items as attorney's fees and the personal representative's fees. Surviving spouses' and children's award are allowances "... free from execution, garnishment or attachment in the hands of the representative ... (in) such a sum of money as the court deems reasonable for proper support ... for the period of nine months after the death of the decedent ..."⁷⁹ The priority of the distribution of the assets of the estate is governed by statute. All claims including expenses of administration and surviving spouses' and children's awards must be paid prior to any distribution to the heirs or legatees.⁸⁰ The priority of distribution among the legatees is also set forth.⁸¹ In a supervised administration, unless the final account is waived based upon consents of all interested parties, the final account of the personal representative should show proof of payment and indicate the proper distribution of assets.⁸² The order discharging the personal representative and closing the estate confirms the distributions indicated on the final account.

⁷⁶ 755 ILCS 5/12-9 and 28-1; *Major Revisions of Probate Act Simplifies Settlement of Decedent's Estates* by Morton Jon Barnard, John C. Williams, and James N. Zartman, Ill. Bar Journal 68:248, pp. 253 and 254.

⁷⁷ 755 ILCS 5/20-15 and 20-18 referring to 20-5(e).

⁷⁸ 755 ILCS 5/28-9.

⁷⁹ 755 ILCS 5/15-1, 15-2 and 20-18.

⁸⁰ 755 ILCS 5/18-10 and 18-13.

⁸¹ 755 ILCS 5/24-3.

⁸² 755 ILCS 5/24-1

In estates governed by the provisions of Independent Administration, while the heirs or legatees receive a final account, no final account need be filed with the court unless an interested party requests an accounting as in supervised administration.⁸³ If the real estate is being retained by the heirs or legatees, the independent representative is required to confirm title in the heirs or legatees by recording an instrument of release and distribution with the recorder of deeds in the county where the real estate is located.⁸⁴ The instrument of release and distribution must set forth the parties entitled to the real estate and the legal description of the real estate. Courts in different counties have approved their own form of instrument of release and distribution. An independent representative may demand the return of the real estate in the hands of the heirs or devisees if the need so arises during the pendency of the estate, even after recording the instrument of release and distribution. A purchaser from the heirs or legatees relying on the instrument of release and distribution, however, is protected against all parties claiming through the estate.⁸⁵

If the heirs or legatees retain an interest in real estate at the end of the probate estate, a Notice of Probate must also be recorded in the county in which the property is located prior to the termination of the probate proceeding. If independent administration is involved, the Notice of Probate may be combined with the Instrument of Release and Distribution.⁸⁶

Attached as Exhibit A is the combined Notice of Probate and Instrument of Release and Distribution used in Cook County.

Foreign Decedents

As set forth previously, whenever Illinois real estate is involved, Illinois law will apply.⁸⁷ The heirs and their shares are determined by Illinois law as of the date of death. If the decedent died testate, it may be necessary to have the will admitted to probate in Illinois to vest title to Illinois real estate in the legatees. A foreign probate proceeding, including an order admitting the will to probate in a foreign state, does not vest title to Illinois real estate. The recording of an exemplified copy of the will of a foreign decedent admitted in a foreign state only constitutes constructive notice of the rights of the legatees to have the will admitted to probate in Illinois.

A foreign will may be admitted to probate in Illinois if it was executed in conformity with the laws of the State of Illinois, with the state where it was executed, or with the testator's domicile at the time of execution and must be proved pursuant to statute.⁸⁸ Such conveyances by the foreign representative are subject to claims against the estate of the decedent, federal estate taxes, and if the sale is held pursuant to a power of sale under a will which has been admitted to probate in Illinois, to the right to have the will formally proved, the right to contest the will and the right of the surviving spouse to renounce the will.

⁸³ 755 ILCS 5/28-11(a)

⁸⁴ 755 ILCS 5/28-10(a)

⁸⁵ 755 ILCS 5/28-10(d).

⁸⁶ 755 ILCS 5/20-24.

⁸⁷ See *Sternberg v. St. Louis Union Trust Co.*, 394 Ill. 452, wherein a will which was valid in Missouri, was construed to have been revoked under then existing Illinois Law.

⁸⁸ 755 ILCS 5/7-1.

If the executor or trustee under a foreign will is a foreign corporate trustee, it must be qualified to accept and execute trusts in Illinois.⁸⁹ An unqualified corporate trustee could not act as trustee or executor in Illinois or validly exercise a power of sale relating to Illinois real estate either as executor or as trustee, even though ancillary proceedings to probate the will are had in Illinois.⁹⁰ Foreign trust companies can qualify to do a trust business in Illinois and act as executor or trustee if the laws of the state in which they are incorporated authorize Illinois trust companies to qualify under the Illinois law. If a foreign trust company does not qualify under Illinois law, an administrator with the will annexed must be appointed in Illinois in order to exercise a power of sale in a will. In the case of a foreign trustee in title, it would be necessary to have a qualified successor trustee appointed.

The Role of Title Insurance

The role of title insurance in any real estate transaction is first to provide an assurance as to who owns the real estate and what liens or restrictions the real estate is subject to; secondly, to provide a legal defense and compensation if that assurance is wrong; and finally, to provide a party capable of assuming risks over matters that are uncertain, unknown, or unacceptable to the insured. A primary reason for the growth of title insurance is the expertise in this specialized field of the title insurers and their willingness to assume risks not only over known matters but over matters not ascertainable from the public records, such as unknown heirs, subsequently discovered wills, fraud or forgery, an unadjudicated incompetency or inchoate liens.

The expertise of the title insurer comes into play when an examination of a formal probate proceeding is made. The proceeding must be checked for compliance with the statutory provisions. The will, if any, must be interpreted. The most innocuous clause in a will can lead to a will construction suit that may not be filed for years after the probate proceedings have closed.⁹¹ Finally, a conclusion must be drawn as to the effect of the probate proceeding.

The vesting of title without full probate proceedings being had and the items that the title is subject to have been discussed earlier. Determining heirship and the validity of a last will and insuring over the rights of creditors are the big issues. The willingness of a title insurer to insure title when no probate proceedings are had often provides a faster, easier, and less expensive alternative to probate proceedings. A list of the requirements and fees of a title insurer to insure over the items that title is subject to when no probate proceedings are had is attached as Exhibit B-1.

Relative to the items at Exhibit B-1, a title insurer will require state estate tax clearance if no purchaser is involved, federal estate tax releases or evidence that no such taxes were due, and, unless the decedent died more than two years earlier, satisfactory information, indemnities, and premiums to permit the title insurer to guarantee over claims against the estate and possible rights of the personal representative.

⁸⁹ 205 ILCS 620/4-1.

⁹⁰ 755 ILCS 5/22-4. *The Pennsylvania Co. for Insurance on Lives v. Bauerle*, 143 Ill. 459

⁹¹ 755 ILCS 5/22-6.

The affidavit of heirship provides the most difficulty. It should recite facts concerning the decedent's heirship sufficient to determine who the heirs are, state there are no other heirs, and conclude with a statement that the affidavit is made to induce the title insurer to show specified parties as the sole heirs of the decedent. The preparer should keep in mind that Illinois statutes provide for representation per stirpes. It also should be remembered that heirs dying after the deceased owner of the land are themselves deceased owners whose heirs (including spouse) and legatees must also be considered. An affidavit checklist is attached as Exhibit B-2.

If the heirship is more remote than the spouse and children, the appended chart should be consulted. In such cases the existence of any surviving heirs in each closer class must affirmatively be denied until the class that contains the decedent's closest surviving heir is reached.

The form of the statement of information and undertakings required by the title insurer before it will guarantee over claims against the estate of the decedent vary from company to company and county to county. Attached as Exhibit B-3 is the Statement of Information, and as Exhibits B-4 and B-5, the undertakings for intestate and testate decedents, respectively, which are acceptable to Chicago Title Insurance Company in Cook County, Illinois. The amount of the premium that will be charged for insuring over claims against the estate of the decedent once the statement and undertaking are obtained depends upon the amount of the policy issued and the amount of time remaining in the two years from date of death in which a proceeding to enforce a claim may be commenced. If that period has elapsed and no proceeding has been filed, claims against the estate will be deleted without documentation or a premium being required.

If the decedent died testate, the rights or the heirs to contest the will and the rights of the legatees to admit the will are customarily dealt with by proper deeds from all heirs and legatees. The rights of the heirs to contest the will can also be deleted if the will has been properly admitted to probate, the period in which a will contest could have been filed has elapsed and no such contest has in fact been filed.

Title insurance can be utilized to avoid some of the court time, paperwork, and expense involved in a formal probate proceeding. Additionally, it can often prove to be faster and less expensive. When the claims period has elapsed, title insurance is preferable unless probate becomes necessary to vest title. Additionally, a title insurer has the expertise to aid and assist the attorney in providing the best resolution for his client.

CONCLUSION

Vesting title to real estate owned by a decedent can be accomplished without resort to a probate proceeding if the heirs and legatees are competent, cooperative adults. Title can also be vested in the legatees by having the will admitted to probate without appointing a personal representative of the decedent's estate. Title insurance can be utilized to guarantee the effectiveness of these procedures and to provide protection over the various liens affecting the title to a decedent's real estate. Use of these methods in lieu of full probate proceedings permits an attorney to provide his clients with prompt, efficient results at minimal cost.

EXHIBIT A

NOTICE OF PROBATE AND RELEASE OF ESTATE'S INTEREST IN REAL ESTATE (Rev. 8/1/00) CCP 0421

NOTICE OF PROBATE UNDER SUPERVISED OR INDEPENDENT ADMINISTRATION

The undersigned, who was appointed representative of the estate of _____, deceased, on _____, 20__, by the Circuit Court of Cook County Department, Probate division (Case No. _____, Docket _____, Page _____,) and is currently acting as representative, gives notice pursuant to Section 5/20-24(a) of the Probate Act that:

Decedent of _____ (address) died on _____, ____ owning the following described real estate (INSERT OR ATTACH LEGAL DESCRIPTION. If decedent had a partial interest, state the extent of the interest.)

Permanent Real Estate Index No: _____.
The street address of the real estate is _____.

RELEASE OF ESTATE'S INTEREST IN REAL ESTATE UNDER INDEPENDENT ADMINISTRATION

Pursuant to Sections 5/28-8(i) and 5/28-10(a) of the Probate Act, the undersigned independent representative releases the estate's interest in the above real estate and confirms that title passed at decedent's death to the following heirs or legatees: (INSERT OR ATTACH LIST.)

Name	Address	Share
------	---------	-------

Dated: _____

Representative(s)

Print or type name(s) of Representative(s)
Address(es): _____

State of _____
County of _____

Acknowledged before me this _____ day of _____, 20____, by _____, *a duly authorized officer of _____, a _____ corporation, on behalf of the corporation.

(Notary Public)

This instrument was prepared by and should be mailed to:

Send subsequent tax bills to:

*Use only for a corporate acknowledgment.

EXHIBIT B-1

CHICAGO TITLE INSURANCE COMPANY REQUIREMENTS FOR ACCEPTANCE OF PERSONAL UNDERTAKING AND ADDITIONAL PREMIUM PAYMENT IN LIEU OF PROBATE

I. The following documentation is required for presentation to the Examiner of Title Underwriter for review.

- Affidavit of Heirship (See attached checklist)
- A Certified or Uncertified Copy of the Death Certificate
- Joint Tenancy Affidavit (if applicable)
- A Copy of Will (if decedent died testate)
- Illinois Estate Tax and Illinois Generation-Skipping Transfer Tax release or final receipt (if applicable)
- Federal Estate Tax release or estate closing letter (if applicable)
- Notarized Statement of Information (See attached copy)
- Personal Undertaking form (See attached copy)
- Paid funeral bill(s)
- Paid hospital bill(s)
- Paid personal physician bill(s)

II. Upon review and acceptance of the above documentation the Examiner or Title Underwriter will arrange for the billing of the appropriate premium. The premium charged is based on the date of death, as follows:

<u>Date of Death is</u>	<u>Premium is</u>
Within past year	2%
1 to 2 years ago	1%

The premium is based on the decedent's interest in the property. The minimum premium is \$100.00. Upon payment of the premium the applicable exception(s) will then be waived.

NOTE: It should be noted that the above list of requirements above is not meant to be exclusive. There may be additional documentation which may be required in certain circumstances. Please be sure to confer with the examiner or title underwriter well in advance of the anticipated closing to avoid unnecessary delays.

EXHIBIT B-2

AFFIDAVIT OF HEIRSHIP

The following constitute the elements of a proper affidavit or table of heirship of a deceased owner of real estate for title insurance purposes.

1. An affidavit in form which is signed and sworn by a person in a position to know the facts, such as a close relative or close acquaintance. The affidavit must be notarized and the affiant's address should appear on the instrument.
2. Where the affiant claims to be the sole heir, then a corroborative affidavit by a disinterested person should be provided.
3. The affidavit should contain the following facts:
 - a. The date of death.
 - b. A recital that the decedent was the owner of the land.
 - c. The value of the decedent's estate for Federal Estate Tax purposes.
 - d. Whether the decedent died testate or intestate.
 - e. The number of times the decedent was married, the name of each spouse, and whether the marriage ended by death or dissolution.
 - f. The number of times the decedent entered into a civil union, the name of the other party to the civil union, and whether the civil union ended by death or dissolution.
 - g. The number of children born of each marriage, the name of each child, and his or her age and marital status.
 - h. A positive statement that only the children listed were born of each marriage or civil union.
 - i. A positive statement that only the children listed were born of the deceased.
 - j. Whether any child of the decedent has died, if so, the date of death and all of the information necessary to determine whether there may be per stirpes distribution.

NOTE: If a child or spouse died after the deceased owner, that heir's share will pass through the heir's estate. Therefore, the heir's estate will have to be examined separately to determine the devolution of that share. If the heir's estate is not probated, a separate table of heirship should be provided.

- k. Whether the decedent did or did not adopt any children.
- l. If the decedent left no descendants or spouse or party to a civil union, the affidavit must affirmatively so state before listing ancestors or collaterals.

EXHIBIT B-3
STATEMENT OF INFORMATION

STATEMENT OF INFORMATION				
Chicago Title Insurance Company			Order #:	
Interrogatories Re: Estate of _____ deceased				
NAME OF AFFIANT			ADDRESS OF AFFIANT	
RELATIONSHIP OF AFFIANT TO THE DECEASED			OCCUPATION OF THE DECEASED	
RESIDENCES OF DECEASED FOR THE TEN YEARS PRECEDING DATE OF DEATH				
FROM (DATE)	TO (DATE)	STREET NUMBER	CITY	STATE
IS THE ESTATE OF THE DECEDENT BEING PROBATED? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, STATE CASE NUMBER, COUNTY AND STATE:				
HAVE THE ADMINISTRATION PROCEEDINGS BEEN COMPLETED? <input type="checkbox"/> YES <input type="checkbox"/> NO				
DID THE DECEDENT LEAVE A WILL? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, HAS IT BEEN ADMITTED TO PROBATE? <input type="checkbox"/> YES <input type="checkbox"/> NO				
IF NO, HAS IT BEEN FILED WITH THE CIRCUIT COURT IN THE UNPROVEN WILL BOX? <input type="checkbox"/> YES <input type="checkbox"/> NO				
WHAT WAS THE TOTAL VALUE OF THE ESTATE OF THE DECEDENT, INCLUDING THE PROPERTY DESCRIBED IN THE ABOVE TITLE INSURANCE COMMITMENT, AS WELL AS ALL PERSONAL PROPERTY AND OTHER REAL ESTATE IN ILLINOIS OR ELSEWHERE IN THE U.S., PROCEEDS OF THE INSURANCE ON THE LIFE OF THE DECEDENT, CASH, SECURITIES, BANK DEPOSITS AND THE INTEREST OF THE DECEDENT IN REAL, OR PERSONAL PROPERTY, IF ANY, HELD IN JOINT TENANCY? \$				
IS THE ESTATE OF SUFFICIENT SIZE TO BE SUBJECT TO FEDERAL ESTATE TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO				
HAVE ALL STATE AND FEDERAL TAXES DUE AND OWING BY THE DECEDENT OR HIS OR HER ESTATE BEEN FULLY PAID AND DISCHARGED? <input type="checkbox"/> YES <input type="checkbox"/> NO				
HAVE ALL EXPENSES OF THE LAST ILLNESS AND BURIAL OF THE DECEASED, DOCTOR'S, HOSPITAL, AND UNDERTAKER'S BILLS BEEN PAID IN FULL? <input type="checkbox"/> YES <input type="checkbox"/> NO				
IS THE ESTATE LIABLE TO OR SUBJECT TO A CLAIM ON THE PART OF ANYONE FOR PERSONAL OR NURSING SERVICES RENDERED OR ROOM AND BOARD FURNISHED TO THE DECEDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO				
IF YES, DESCRIBE TO WHOM AND FOR HOW MUCH ON REVERSE SIDE.				
NOTE: PAID RECEIPTS FOR THESE ITEMS SHOULD BE PROVIDED.				

EXHIBIT B-3

HAVE ALL DEBTS OF THE DECEASED, INCLUDING PARTNERSHIP OBLIGATIONS, IF ANY, AND CLAIMS AGAINST THE ESTATE BEEN FULLY PAID?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
IF NO, DESCRIBE ALL UNPAID ITEMS IN DETAIL ON REVERSE SIDE.			
IS THE DECEDENT'S ESTATE LIABLE ON ANY LEASE, CONTRACTS, MORTGAGE, JUDGMENT, DEFICIENCY DECREE OR OTHER OBLIGATIONS?		<input type="checkbox"/> YES	<input type="checkbox"/> NO
IF YES, DESCRIBE FULLY ON REVERSE SIDE.			
AFFIANT STATES THAT THE FOREGOING ANSWERS TO INTERROGATORIES ARE TRUE AND MAKES THIS AFFIDAVIT AND ANSWERS TO INTERROGATORIES TO INDUCE CHICAGO TITLE INSURANCE COMPANY TO ISSUE ITS COMMITMENT AND ITS TITLE INSURANCE POLICY ON THE ABOVE-REFERENCED ORDER NUMBER FREE AND CLEAR OF CLAIMS, ADMINISTRATION EXPENSES, TAXES AND OTHER EXCEPTIONS, IF ANY, RELATING TO THE ESTATE OF SAID DECEDENT.			
_____ (SIGNED)			
STATE OF ILLINOIS) SS		
COUNTY OF		SUBSCRIBED AND SWORN TO BEFORE ME	
BY THE SAID _____			
THIS ____ DAY OF _____, 19____.			
_____ NOTARY PUBLIC			
PRESENTED TO CHICAGO TITLE INSURANCE COMPANY			
BY _____			
ADDRESS _____			

INTESTATE ESTATE – PERSONAL UNDERTAKING

Order Number:

Date: _____

To: Chicago Title Insurance Company

In consideration of the issuance of your title insurance policy on the above-referenced order number, the undersigned do hereby, jointly and severally, for themselves, their heirs, personal representatives and assigns, covenant and agree forever fully to indemnify, protect, defend and save you harmless from and to reimburse you for any and all loss, costs, damages, suits, attorneys' fees and expenses of every kind and nature which you may for any cause, at any time and from time to time, suffer, expend or incur by reason or in consequence of the issuance of said policy, and of any and every other insurance policy or policies covering the same real estate, or any part of parts thereof, or interest herein free and clear of the following exceptions:

1. Claims (including awards, if any) against the Estate of _____ deceased.
2. Federal Estate Tax, Illinois Estate Tax and Illinois Generation-Skipping Transfer Tax which may be charged against the Estate of said decedent.

Address _____

Address _____

Address _____

Address _____

Address _____

Address _____

NOTE: To be executed by all of the Heir(s) of the Decedent.

TESTATE ESTATE – PERSONAL UNDERTAKING

Order Number:

Date: _____

To: Chicago Title Insurance Company

In consideration of the issuance of your title insurance policy on the above-referenced order number, the undersigned do hereby, jointly and severally, for themselves, their heirs, personal representatives and assigns, covenant and agree forever fully to indemnify, protect, defend and save you harmless from and to reimburse you for any and all loss, costs, damages, suits, attorneys' fees and expenses of every kind and nature which you may for any cause, at any time and from time to time, suffer, expend or incur by reason or in consequence of the issuance of said policy, and of any and every other insurance policy or policies covering the same real estate, or any part of parts thereof, or interest herein free and clear of the following exceptions:

1. Claims against the Estate of _____ deceased.
2. Federal Estate Tax, Illinois Estate Tax and Illinois Generation-Skipping Transfer Tax which may be charged against the Estate of said decedent.
3. Legacies, if any, created by the will of said decedent.
4. Rights to contribution.

 Address _____

 Address _____

Address _____

Address _____

Address _____

Address _____

_____, the named executor(s) in said will, hereby covenants, agrees and certifies (1) that there will be no necessity to exercise the power of sale, if any, contained in said will, and, therefore, said power will not be exercised, and (2) that if appointed executor, I/we will procure immediately an order of divestiture if I/we shall be deemed in law to have taken possession of the real estate aforesaid, inasmuch as the property will not be needed for purposes of administration.

 Executor(s)
 Address _____

NOTE: To be executed by all of the Heir(s), Legatee(s) and by the Executor(s) named in the Decedent's will.

APPENDIX

Since July 1, 1923, the Illinois law governing the devolution of title to the real estate of a decedent has been the subject of numerous statutory changes. These changes have been directed mainly to correcting certain inequities existing under former law, which, it was thought, deprived a surviving spouse of a proper and equitable share of the estate of a decedent, and to establish safeguards to protect the spouse in the obtaining of his or her statutory share.

The practicing attorney has been required to familiarize himself with all these numerous statutory changes to determine the rights of the heirs-at-law or legatee of a decedent under the statutes in effect at the time of the decedent's death. It is the purpose of the charts shown here to lighten somewhat this task by providing a ready reference to the rights of such persons arising under the applicable statutes at a given date. The practicing attorney should also keep in mind the infrequent problems noted in the "Determining Heirship" section of this pamphlet, including the issue of parties to a civil union being treated as spouses as of 2011.

January 26, 2014