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Tales from the Docket – Single Parent Dies Without a Will

BY REBECCA MACGREGOR • SEPTEMBER 10, 2021

A divorced person died leaving 2 children under the age of 18 years of age. The decedent did not have a Last Will and Testament (“Will”), which means that we did not know who the decedent wished to nominate as the Personal Representative (formerly known as executor) of the estate. When someone dies without a Will nominating a Personal Representative, the Massachusetts probate code provides an order of priority for who may apply to the court seeking appointment as the Personal Representative. Since the children will receive the estate, they are in the order of priority to seek appointment. However, since the children are minors, they were unable to apply to the court for the appointment or to nominate someone else. The only other person with priority to seek appointment was a public administrator, and the family did not want a stranger handling the estate of their deceased loved one.

Instead, the family filed a petition with the probate court seeking the appointment of a conservator for each child. Once the conservators were appointed by the court, the conservators nominated a Personal Representative for the estate of the decedent. The person nominated by the conservators then filed a petition seeking appointment as Personal Representative of the estate. Upon receiving appointment from the court, the Personal Representative gathered all of the decedent’s assets, paid the valid creditor claims, and then, with court approval, divided and transferred the remaining assets to the conservators for each of the minor children. The conservators must hold the assets until each child attains the age of 18 years old, when the child is no longer a minor. Since there was a substantial sum of money held by the conservators in this case, the conservators petitioned the probate court to allow the assets to be transferred out of the conservatorship to a Uniform Transfer to Minors Account, to allow the funds to be held until each child attains the age of 21 years.

Each of the above petitions takes months of time to process through the probate court and all of them incur their own filing fees and related costs, such as publication of notices in the newspaper. In addition, the attorneys, accountants, and the conservators are paid for their time spent administrating the cases. Sadly, this could have been avoided if prior to his death, the decedent had engaged an attorney to draft a Will and a trust for the minor children. Please contact us if you are a single parent with minor children so that we may assist you with creating an estate plan to transfer your assets in a more efficient and cost-effective manner.

For more information, please contact the alert author or your Bowditch attorney at 508-791-3511.

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