

Probate Refresher

Sale of Property & Distribution
and other estate procedures

Devolution of real property at death

Upon the death of a person, decedent's real property **devolves** to the persons to whom it is devised by decedent's last will or ... in the absence of testamentary disposition, to decedent's heirs

Ala. Code §43-2-830

NOTE: real property owned JTWROS passes to the surviving joint tenant(s) at death.

Devolution of real property at death

Real property is **not** automatically part of the probate estate.

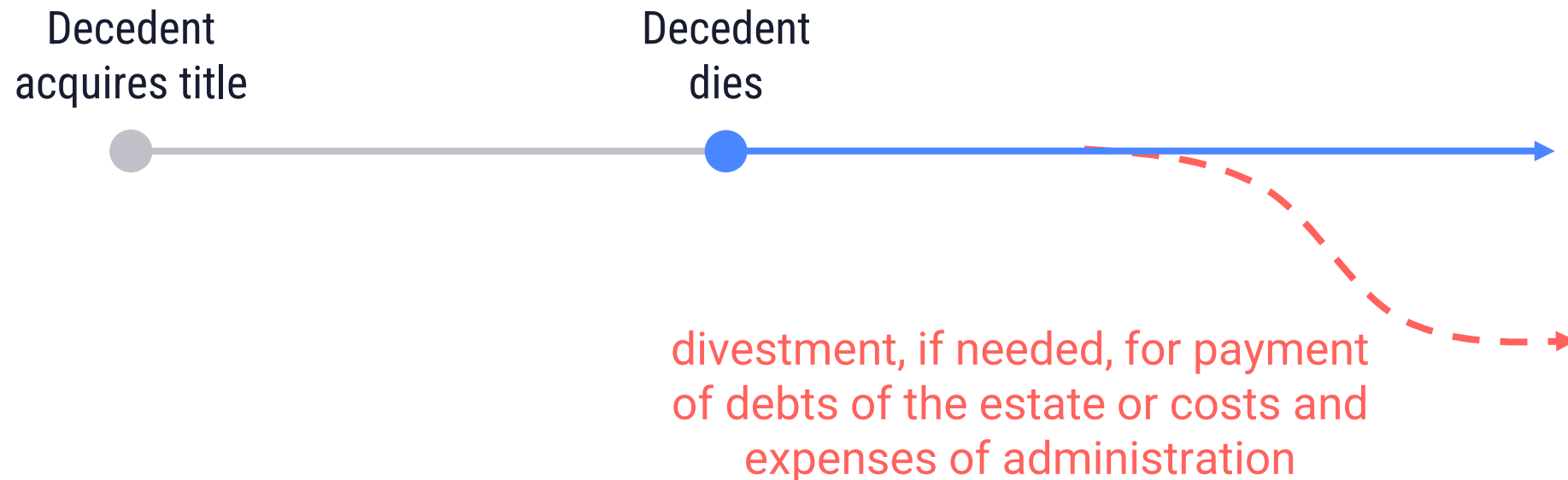
- real property is left with the heirs, the persons presumptively entitled thereto.
- personal representative is generally not in possession or control of the real property.



Devolution of real property at death

Real property **can become** part of the probate estate.

- Devolution is subject to the rights of creditors and to administration.
- personal representative can determine that his possession of the real property is necessary for purposes of administration.



Exceptions to general devolution rules

Exceptions to the general rules regarding the devolution of decedent's real property

First Exception: When the real property is subject to the rights of creditors and to administration under § 43-2-830.

A personal representative can take possession or control of the decedent's real property, if necessary for purposes of administration. See § 43-2-837

Second Exception: If a personal representative to brings an action for sale of lands for division "for the payment of debts" pursuant to § 43-2-442 through § 43-2-444.

Sale of Real Property



There are three primary reasons for the sale of real property by the Personal Representative during the course of administration:

- 1) Sale for the Payment of Debts (i.e. creditors claims, costs, etc.)
- 2) Sale for Division (or Consent)
- 3) Payment of pecuniary legacies (i.e. specific bequests)

Court Approval

- For a Personal Representative of an intestate estate (or testate estate without a power of sale), court approval is **required**.
- Where the will provides for a power of sale, the Personal Representative may sell real property **without** Court approval.
- If the decedent contracted to sell real property, and died prior to conveyance, the Personal Representative may execute the conveyance per the terms of a valid contract. Proceeds are held in escrow pending expiration of statute of nonclaims. Court approval/instruction as to the conveyance is **advisable**.

Application for Sale

- Requires **notice** and a **hearing** (i.e. due process)
- If sale is for division, at least one heir/devisee must consent.
- At least ten (10) days notice must be served on the heirs/devisees.
- A guardian *ad litem* is required for minors or incapacitated persons.
- If the sale is for the payment of debts, notice must be **published** once a week for three successive weeks or **posted** (not typical).
- If there are nonresident heirs/devisees, notice may be published.

NOTE: A minor is still required to be personally served with notice, and his/her GAL cannot accept service, waiver service or consent.



Approval & Conveyance

at the hearing

Testimony to establish that the purchase price of a private sale is within the fair market value.

Usually accomplished by the testimony of a realtor or appraiser.

If not a private sale, the court may order a public sale by advertisement.

if court approves the sale

order authorizing and directing the Personal Representative to execute the conveyance and related documents.

The Personal Representative must file a report of sale within 30 days of closing.

- If the Personal Representative had a personal interest in the sale, it may be contested.
- If the Court is satisfied that the sale was fair, an order of confirmation the sale can may be made within 10 days of the report of sale.

Preliminary distributions by Personal Representative



- When the Personal Representative is satisfied that the estate is solvent, he/she **may**, after 6 months from the grant of letters (i.e. the claim period), make distribution without obtaining an order of court.
- However, if the distributions are improper, the personal representative may be liable on partial/final settlement.
- It is advisable to make a partial settlement, when making preliminary distributions to obtain the protection of court approval.

Preliminary distributions by Court Order



On application of an heir/devisee, after 6 months from the grant of letters (i.e. the claim period), the Court may order a distribution of estate assets.



The personal representative is protected from liability by the court's order.



Requires **notice** and a **hearing** (i.e. due process).

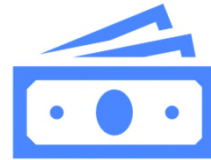


The Court must not exceed the share to which the applicant would be entitled on a final settlement and distribution.

Joint Accounts & Property



Accounts and titled property generally passes to the surviving joint owner at the decedent's death and are not part of the probate estate.



A few common example of joint property are:

- Bank Accounts
- Investment Account
- Certificates of Deposit
- Savings Bonds
- Titled Vehicles



This is a common area for conflict between heirs/distributees.

Distributions to Trusts



A trust may be created by transfer of property to another person as trustee ... by will or other disposition taking effect upon the settlor's death.

ALA. CODE § 19-3B-401.



A trustee, without authorization by the court, may exercise powers conferred by the terms of the trust and [except as limited by the terms of the trust] all powers over the trust property which an unmarried competent owner has over individually owned property.

ALA. CODE § 19-3B-815.

Distributions to Trusts



A trustee has the power to settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust.
ALA. CODE § 19-3B-816(14).



A trustee has the power to collect trust property and accept or reject additions to the trust property from a settlor or any other **person**.
Ala. Code § 19-3B-816(1).
The definition of person includes an **estate**.
ALA. CODE § 19-3B-103(16).



Remember, a trustee has a duty of loyalty and a duty to administer the trust in good faith for the best interest of the beneficiaries.

Calculating Elective Share



- Ala. Code § 43-8-70 through § 43-8-75
- Surviving spouse must be married to the decedent at the time of death,
- Elective share is not automatic; petition must be filed.
- Amount is (1) All of the deceased's estate reduced by surviving spouse's separate estate
OR
(2) 1/3 of the estate of the deceased.
- No augmented estate in Alabama (*Russell v. Russell*).

Homestead Allowance



Allowance

\$16,450¹



Person

For surviving spouse, or minor or dependent children (if no surviving spouse) – divided equally



Exempt

Exempt from claims against the estate



Share

In addition to devise, distributive share or elective share



Domicile

Decedent must have been domiciled in Alabama

¹Adjusted as of July 1, 2020, and applicable to exemptions claimed on or after April 1, 2021.

Exempt Property



Exemption

\$8,225¹



Person

For surviving spouse, or minor or dependent children (if no surviving spouse) – divided equally.

NOTE: Adult children are entitled to exempt property.



Exempt

Exempt from claims against the estate, except homestead allowance and family share



Share

In addition to homestead allowance, any devise, distributive share or elective share



Domicile

Decedent must have been domiciled in Alabama

¹Adjusted as of July 1, 2020, and applicable to exemptions claimed on or after April 1, 2021.

Family Allowance



Exemption

Reasonable
(\$16,450)¹



Person

For surviving spouse,
or minor or dependent
children (if no
surviving spouse) –
divided equally.



Exempt

Exempt from claims
against the estate,
except homestead
allowance



Share

In addition to
homestead
allowance, exempt
property, and any
devise, distributive
share or elective
share



Domicile

Decedent must have
been domiciled in
Alabama

¹Adjusted as of July 1, 2020, and applicable to exemptions claimed on or after April 1, 2021.

Determination Of Family Allowance



Personal Representative

May disburse cash.



Person

Surviving spouse or minor/dependent children can compel payment.



Administration

Not to exceed a period of one year.



Petition to Court

The Personal Representative or Interested Party can petition the court for a determination of the amount (which may be more or less than \$15,000.00)



Lump Sum

Lump sum of \$15,000 or \$500 per month-presumed reasonable.



QUESTIONS?

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about chris - regularly advises and represents clients in probate and estate matters, civil litigation, business transactions and litigation, probate support for personal injury litigation, estate administration, estate and trust litigation, guardianships, conservatorships and taxation.



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