2014 Basic Skills Course
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Probate & Estate Administration
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Materials by
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PROBATE AND ESTATE ADMINISTRATION

I. TYPES OF ESTATE ADMINISTRATION

A. INTESTATE ADMINISTRATION

► "Intestate" means "without a Will" and applies to any estate in which there is no valid Will which can be admitted to probate

► "Administration" is the term the Iowa Code uses for the court-supervised distribution of a decedent’s estate

► The “Administrator” is the personal representative who assists with the intestate administration of a decedent’s estate

1. INITIAL QUESTIONS

a. Did the decedent have a spouse?

b. Did the decedent have children?

c. Were some of the children from a prior marriage (i.e. not the current spouse’s children)?

d. Who are the other relatives of the decedent?

e. Who are the other beneficiaries of the decedent?

2. RULES OF DISTRIBUTION

a. If the decedent left a surviving spouse and no children, the estate passes to the surviving spouse § 633.211

b. If the decedent left a surviving spouse and children, all of whom are also the children of the surviving spouse, the estate passes to the surviving spouse § 633.211

c. If the decedent left a surviving spouse and children, some of whom are not the children of the surviving spouse, the spouse receives:

   (1). One-half in value of all real estate § 633.212(1)

   (2). All personal property in the hands of the decedent as head of household § 633.212(2)

   (3). One-half of all other personal property § 633.212(3)

   The surviving spouse’s share must be at least $50,000.00 § 633.212(4)

d. If the decedent left no surviving spouse, the estate passes to the decedent’s children § 633.219(1)
e. If the decedent left no surviving spouse and no children, the estate passes to the decedent's parents § 633.219(2)

f. If the decedent left no surviving spouse, no children, and no parents, the estate is divided into two portions and distributed to the children of the decedent's father and mother (the decedent's siblings) § 633.219(3)

g. The estate continues to pass until all family connections are exhausted, after which the estate escheats to the State of Iowa § 633.219(7)

“Escheat” is an ancient English (originally Norman French) word for the reversion of land and property to the Crown. The government officials in charge of enforcing this principle were known as “cheaters.” Today, the word has retained its derogatory meaning for a person who takes property or money by unfair means.

WERE YOU AWARE?

B. TESTATE ADMINISTRATION

► “Testate” means “with a Will” and applies to estates where there is a valid Will that has been admitted to probate

► The “Executor” is the personal representative who assists with the testate administration of a decedent's estate

► As used in this outline, a “personal representative” is either the administrator of an intestate estate or an Executor appointed under a Will

1. VALID WILL

a. A Will must be in writing § 633.279(1)

b. A Will must be signed by the Testator, or signed by another at the Testator’s direction and in the Testator’s presence § 633.279(1)

c. A Will must be witnessed

(1). There must be two (2) witnesses § 633.279(1)

(2). Witnesses must be 16 or older § 633.280

(3). Witnesses must be legally competent § 633.280

(4). Witnesses must be disinterested (cannot be a beneficiary) § 633.281

d. A Will should contain a self-proving affidavit, which is an additional statement signed by the Testator and the witnesses and then notarized NEW § 633.279(2)
e. A Will should contain a waiver of the probate bond

(1). The personal representative must post a bond in every probate matter, unless the bond is waived § 633.169; § 633.172

(2). A probate bond is often an unnecessary expense where the Will nominates a personal representative whom the testator trusts

f. The original Will must be submitted to probate

2. DEFECTIVE WILL

a. If there is no self-proving affidavit, the witnesses to the Will must provide testimony as to its validity NEW § 633.295

b. If the witnesses are unavailable, then two other disinterested parties may give testimony that:

(1). The signature to the Will is that of the decedent § 633.297

(2). The signatures of the witnesses are those of the witnesses § 633.297

c. If a properly-executed codicil is added to an otherwise defective Will, it cures the defect § 633.282

d. If the testator is later divorced, any bequest to an ex-spouse is revoked § 633.271

3. FOREIGN WILL

► A Will executed in another state or country is legal in Iowa if it complies with the laws of the state or country in which it was executed § 633.283

C. PROBATE WITHOUT PRESENT ADMINISTRATION

1. A Will can be admitted to probate to validate it without opening the estate (probate without administration) § 633.305

2. An Order admitting the Will to probate must be filed

3. Notice must be published § 633.304

4. Heirs have four months from the date of publication to contest the Will § 633.304

5. Creditors have four months from the date of the second publication to file claims § 633.304
D. FILING THE WILL

1. After death, a decedent’s Will shall be filed with the Clerk of Court, even if no administration will take place § 633.285
2. The original Last Will and Testament and a Confidential Information Sheet must be filed
3. There is no filing fee

II. RIGHTS OF SURVIVING SPOUSE

A. NOTICE TO TAKE UNDER OR AGAINST THE WILL

1. The surviving spouse must be given notice to elect under or against the Will § 633.237(1)
2. The personal representative must serve the surviving spouse with this notice § 633.237(1)

B. ELECTION TO TAKE AGAINST THE WILL

1. The Probate Code provides that a surviving spouse cannot be denied a share of the estate of a deceased spouse
2. The surviving spouse can elect to take against the provisions of a deceased spouse’s Will § 633.236
3. There is a presumption that the surviving spouse will take under the terms of the Will § 633.237
4. The surviving spouse has four months after the date the notice is served (not the date of death) to make the election § 633.237(4)
5. The right to take against the Will is personal to the surviving spouse and can only be exercised by the surviving spouse or a conservator acting on behalf of an incapacitated spouse § 633.237 § 633.242

C. SHARE OF SURVIVING SPOUSE

1. If the surviving spouse elects to take against the terms of the Will, the surviving spouse receives:
   a. One-third in value of all real estate § 633.238(1)(a)
   b. All personal property that, at the time of death, was in the hands of the decedent as head of household § 633.238(1)(b)
   c. One-third of all other property § 633.238(1)(c) § 633.238(1)(d)
2. The surviving spouse’s share in real estate is divided so that the surviving spouse receives the homestead § 633.239
   a. The surviving spouse must affirmatively elect to occupy the homestead § 633.240
   b. The homestead election must be made within four months of the date of service of notice § 633.241
   c. Once made, the election cannot be rescinded § 633.246

D. ANTENUPTIAL AGREEMENTS

1. A valid antenuptial agreement can eliminate the surviving spouse’s ability to take against the terms of the Will

2. Iowa courts have recognized a general presumption in favor of antenuptial agreements as valid, enforceable contracts

   Often, the antenuptial agreement is made to protect children of a prior marriage

3. A premarital agreement will be upheld if it is:
   a. Fair between the parties
      Courts have held that premarital agreements which contain mutual waivers are fair
   b. “Fairly, freely, and understandingly entered into”
      (1). Full disclosure between the parties
      (2). No fraud, duress, or undue influence

III. WILL CONTESTS

Contesting the validity of a Last Will and Testament is difficult

A. NATURE OF PROCEEDING

1. Will contests are actions at law, not equity § 633.33

2. Persons bringing the contest must demonstrate:
   a. A beneficial relationship with the testator (an heir)
   b. An interest created by a prior Will (beneficiary in earlier Last Will and Testament)
B. **ELEMENTS**

1. **Testamentary Capacity.** This alleges that the testator was not of “sound mind” and incompetent to make a Will § 633.264

2. **Undue Influence.** This alleges that the testator was coerced into making a Will. Proponents must prove:
   a. The person was susceptible to undue influence
   b. **Opportunity** to exercise such influence existed
   c. **Intent** to use undue influence to procure an improper favor (inappropriate benefit)
   d. **Result** must clearly appear to be the effect of undue influence

Matter of Herm’s Estate, 284 N.W.2d 191 (Iowa 1979)

IV. **BEGINNING THE ADMINISTRATION PROCESS**

The attorney’s job begins by collecting information; the more information, the better. You need to know about the decedent, the decedent’s family and heirs, and the decedent’s assets and debts

A. **COLLECTING INFORMATION**

1. **INFORMATION ABOUT THE DECEDENT**
   a. The **death certificate** will give you most of the information you need
   b. The original **Will**
   c. The decedent’s last place of **employment**
      (1). The decedent may have a final paycheck
      (2). The employer or former employer may pay death benefits to the estate or survivors
   d. Whether the decedent had spouses or children from a prior marriage or relationship

2. **INFORMATION ABOUT THE FAMILY**
   a. Name, address, age, and SSN of each heir, beneficiary, or family member
   b. You will need to disclose information about heirs on the Confidential Information Form
   c. Even those heirs who may not receive a distribution must be put on notice
d. Identify key emotional issues and family dynamics which may impact the legal matters

If I could collect fees for every time a client told me that their whole family gets along, I would have retired by now

e. Educate the family about the probate process

3. INFORMATION ABOUT MISSING HEIRS

a. If the estate involves a “missing person”, the court is required to appoint a Guardian ad Litem for the absentee § 633.514

b. An order establishing the death of the absentee forever bars any right of homestead, distributive share, or interest in real estate owned by decedent § 633.516

c. Presumptions of death may be made based upon presentation of written findings by government officials or employees § 633.517

d. Otherwise, you may have to impanel a jury to determine the fate of a missing heir § 633.519

4. INFORMATION ABOUT ASSETS AND DEBTS

► This is both the easiest and hardest part of the process. Each answer leads to new questions

a. Real estate owned by the decedent

(1). Is the property individually or jointly owned?

(2). Is there insurance on the property? Good luck finding a carrier who will insure an unoccupied property!

(3). Where is the abstract to the property?

b. Stocks, bonds, Treasury bills, and other securities

(1). You need the amount, number of shares, and date-of-death value

(2). Be sure to get names, addresses, and phone numbers for the securities contact

(3). A stockbroker or the Internet can give you date-of-death values for stocks

c. Value of any cash on hand at the time of death
   
   (1). The last bank statement will provide you with much of your needed information
   
   (2). This includes any money that is actually kept at the decedent’s domicile – some people keep large amounts of cash in their house

If a client calls you to tell you that “Corky has stolen all the money and liquor from Weezie’s house”, the estate may become difficult for you. Were you aware?

d. Life insurance
   
   (1). Face value of the insurance policy
   
   (2). Policy number, issuing company, and address for making a claim
   
   (3). Information on the named beneficiaries
   
   (4). If you can get the original policy (or a copy), it will have most of the information you need

e. Vehicles
   
   (1). Vehicle Identification Number (VIN), make, model, and year of car
   
   (2). Number of miles, any “extras”, and general condition of the vehicle
   
   (3). If the car is not subject to a loan, locate the original vehicle title
   
   (4). Vehicle value calculator: [www.kbb.com](http://www.kbb.com)

f. Type and value of other tangible personal property
   
   (1). Items of significant value like antiques, artwork, and collectibles must be specially valued
   
   (2). In general, miscellaneous personal property is exempt from probate and valuation

g. Gifts made by the decedent within 3 years of death

h. Powers of appointment that the decedent held but did not exercise (typically, from a predeceased spouse’s estate or trust)

i. Annuities, Individual Retirement Accounts, and other “transfer on death” accounts
j. Debts of the decedent
   (1). Account number, lender, contact name and address, phone number, and approximate balance of any mortgage
   (2). Account number, creditor, customer assistance phone number, and balance of any other debt

k. Funeral debts
   (1). Pre-paid funeral plans or insurance policies
   (2). Funeral home bill, whether paid or not
   (3). Other funeral debts, such as the service, music, flowers, or wake may be deductible

In some instances, the request for information about debts may not seem relevant. For example, a surviving spouse may have paid off the balance of a credit card debt or loan. However, the debt of the decedent may be used to reduce inheritance and estate taxes

WERE YOU AWARE?

B. LOCATING THE WILL

1. If the original Will cannot be located, it is presumed that the decedent destroyed it to revoke it § 633.284

2. An original Will may be in several places:
   a. In the possession of the Decedent
   b. In the decedent's safe deposit box at a bank
   c. Deposited for safekeeping with the Court § 633.286

3. It is possible to probate a photocopy of a lost Will, but it is very complicated

WERE YOU AWARE?

Many clients are under the impression that there will be a “reading of the Will.” Part of the education process is to help clients distinguish between Iowa law and Hollywood movies
C. THE SAFE DEPOSIT BOX

1. Some financial institutions require Letters of Appointment before anybody can access a safe deposit box. This is incorrect

2. This sometimes leads to the inaccurate advice to open an estate intestate, get the Will, and convert it to testate administration

3. The law allows a named Executor in a Will to access the safe deposit box for the limited purpose of removing the Will § 524.810A(1)(c)

D. DETERMINING THE SURVIVORS’ IMMEDIATE NEEDS

1. SUPPORT FOR SURVIVING SPOUSE § 633.374
   a. The surviving spouse may receive support during the probate of the estate
   b. This support is dependent upon the needs of the spouse and the assets in the estate
   c. Support is only payable for twelve months following the death of the decedent
   d. The support is taxed as a cost of administration

2. SUPPORT FOR CHILDREN § 633.376
   a. Under the age of 18; OR 18 to 22 and attending school
   b. Do not reside with surviving spouse
   c. This support is dependent upon the needs of the children and the assets in the estate
   d. Support is only payable for twelve months following the death of the decedent

3. NEEDS OF OTHER HEIRS

   Often, heirs who live outside the immediate area will want to wrap up the probate process during the three or four days they are in town for the funeral. They are often nonplussed to learn that the probate process takes around six months, barring complications
V. THE PERSONAL REPRESENTATIVE

A. QUALIFICATION

1. NATURAL PERSON – RESIDENT
   a. Must be a resident of Iowa § 633.63(1)
   b. Must be of “full age” (18 years old) § 633.63(1)
   c. Cannot be under a legal disability § 633.63(1)(a)
   d. Cannot be an alcoholic § 633.63(1)(a)
   e. Cannot be a spendthrift § 633.63(1)(a)
   f. Cannot be otherwise “unsuitable” § 633.63(1)(b)

2. NATURAL PERSON – NON-RESIDENT
   a. A non-resident can act as a personal representative if they meet the above requirements AND § 633.64(1)
   b. An Iowa resident is appointed to act as a co-personal representative § 633.64(1)
   c. The in-state co-personal representative requirement can be waived by “good cause shown” § 633.64(1)

3. BANKS AND TRUST COMPANIES
   ► Banks and trust companies can act as fiduciaries § 633.63(2)
   a. Must be legally organized § 633.63(2)
   b. Must be authorized to act as a personal representative § 633.63(2)
   c. Can be an out-of-state entity if the bank or trust company meets the requirements in its own state § 633.64(2)

B. POWERS

► A personal representative may …

1. Sue, be sued, and defend a suit § 633.81
2. Designate or engage an attorney to assist in the administration § 633.82
3. Designate or engage other specialists to assist with administration § 633.84
4. Continue any business of the decedent for the benefit of the estate § 633.83
5. Deposit money in banks, open estate accounts, etc. § 633.87
6. Release or discharge mortgages, judgments, or liens owed to the estate § 633.95
7. Plat land § 633.94
8. Compromise claims held by the estate § 633.114
9. Compromise claims against the estate § 633.115
10. Abandon property that is valueless or is so encumbered that it is of no value to the estate § 633.116
11. Mortgage, pledge, or otherwise encumber estate assets § 633.117
12. Invest money on behalf of the estate § 633.123
13. Hold and manage investment property § 633.348
14. Sell, mortgage, lease, pledge, or exchange property (either with or without Court approval) § 633.383

C. DUTIES

► A personal representative must …

1. Investigate and gather the assets of the decedent
2. Comply with all reporting requirements, including Report & Inventory § 633.362
3. Take control and possession of all the decedent's personal property § 633.351
4. Collect rents from income property § 633.352
5. Pay taxes and expenses of the estate § 633.352
6. Pay all debts as they come due, if possible § 633.157
7. Deliver specific bequests within twelve (12) months of appointment NEW § 633.355
8. Avoid self-dealing § 633.155
9. Not commingle or squander assets that are not part of the estate § 633.158
D. RESPONSIBILITIES

► The statutory duties and powers granted to the personal representative don’t begin to touch on what the job entails.

► A personal representative’s job is to “wrap up” the decedent’s financial affairs. These duties generally fall into three categories: probate, financial, and everything else

1. PROBATE
   
   a. The personal representative will work closely with an attorney to file the required legal documents to probate the estate

   b. In general, the attorney for the estate will keep track of the filing deadlines and prepare the documents

   c. The personal representative must provide information so that the documents can be prepared quickly and accurately

   A good personal representative, therefore, is responsive to an attorney’s request for information.

2. FINANCIAL

   ► However, the legal portion of the personal representative’s job is only a small part of the overall duties

   a. The personal representative must identify and determine the value of the assets that are part of the estate

   b. The personal representative then must collect, manage, and distribute the assets

   c. It may be necessary to liquidate assets or sell real estate

   (1). The personal representative may hire professionals like realtors and stockbrokers to assist $633.84

   (2). The personal representative is not liable for acts or omissions of these specialists, assuming that reasonable care was exercised in hiring $633.85

   (3). The personal representative must remain active in the process, to sign transfer documents
d. The personal representative may have to pay ongoing bills (such as mortgage payments or utilities) in order to preserve the assets

e. The personal representative is responsible for paying final debts, subject to the availability of assets

f. The personal representative must file the decedent’s final personal income tax return, if one is owed

g. Throughout this process, careful records must be kept. Most probate courts will demand a full and detailed accounting of all money received, spent, or held by the estate

As you can see, a personal representative must be fiscally responsible.

3. EVERYTHING ELSE

► Finally, the personal representative must handle the day-to-day operation of the estate, almost like running a business

a. The personal representative must cancel credit cards

b. The personal representative should review the decedent’s mail and take the name off of mailing lists and cancel subscriptions

c. The personal representative should terminate computer, Internet, and e-mail passwords and accounts

d. The personal representative must return rented equipment or leased vehicles

e. The personal representative will donate items of personal property that can’t be sold

f. The personal representative may be have to inform friends or remote family members of the decedent’s death (Christmas cards from a relative)

g. Most importantly, the personal representative must keep the heirs and family members informed of the status of the estate

Accordingly, a personal representative must have the patience to tend to a multitude of mundane tasks.
E. OTHER CONSIDERATIONS

1. If two or more fiduciaries are acting together, they must concur in the exercise of powers granted to them § 633.76
   ► Provisions in a Will can change this

2. Any personal representative can apply to the court for direction and guidance § 633.76

F. REMOVAL OF PERSONAL REPRESENTATIVE

1. A personal representative can be removed for good cause: § 633.65
   a. Ceases to be a resident of the state
   b. Becomes otherwise disqualified (personal representative who becomes incompetent, e.g.)
   c. Mismanages the estate
   d. Fails to perform required duties

2. Procedure for removal:
   a. Court on its own motion or an interested party can petition to order the personal representative to appear and show cause why the personal representative should not be removed § 633.65
   b. Moving party bears the burden of proving the allegations contained in the removal petition
   c. Burden then shifts to the personal representative to prove why he or she should not be removed

VI. OPENING THE ESTATE – INITIAL DOCUMENTS

A. CONFIDENTIAL INFORMATION FORM

1. Court rules prohibit the disclosure of personal information, including Social Security numbers (SSNs)

2. New estates must be accompanied by a Confidential Information Form, showing:
   a. Name, birth date, and SSN of Decedent
   b. Name and ID number of designated attorney
   c. Name, birth date, and SSN of personal representative
   d. Name, birth date, and SSN of heirs and beneficiaries
B. COVER SHEET

The Supreme Court cover sheet is not required for probate I.R. Civ. P. 1.301(2)

C. PETITION FOR ADMINISTRATION

1. TESTATE ADMINISTRATION

a. Any interested person can petition for a decedent’s Will to be admitted to probate § 633.290

b. The petition for probate should contain:

(1). Name of the decedent § 633.291(1)
(2). Domicile of the decedent at the time of death § 633.291(1)
(3). Date of death § 633.291(1)
(4). Basis for jurisdiction in the county in which administration is sought § 633.291(2)

2. INTESTATE ADMINISTRATION

a. Where there is no Will, an intestate estate may be opened by:

(1). The surviving spouse (Exclusive right in the first 20 days from date of death) § 633.227(1) § 633.228(1)
(2). The heirs of the decedent (Next ten days) § 633.227(2) § 633.228(2)
(3). Creditors of the decedent § 633.227(3)
(4). Any other person showing good cause § 633.227(4)

b. Petition for intestate administration should contain:

(1). Name of the decedent § 633.229(1)
(2). Domicile of the decedent at the time of death § 633.229(1)
(3). Date of death § 633.229(1)
(4). Basis for jurisdiction in the county in which administration is sought § 633.229(2)
(5). Name and addresses of the heirs § 633.229(3)
(6). The estimated value of the value of the estate § 633.229(4)
D. OTHER PRELIMINARY DOCUMENTS

1. TESTIMONY OF SUBSCRIBING WITNESSES
    ▶ If the Will is not self-subscribing, one or more of the witnesses to the original will must swear that the Will is authentic § 633.295

2. WAIVER OF PROBATE BOND
   a. A probate bond is required for every personal representative § 633.169
   b. The bond will be equal to the value of the personal property, plus the anticipated value of any income § 633.170(1)
   c. The bond requirement can be waived in the Will § 633.172(1)
   d. If the Will does not contain a bond waiver clause, or in an intestate estate, all interested parties can agree to waive the requirement of a probate bond § 633.173

3. TAXPAYER IDENTIFICATION NUMBER
   a. Form SS-4, Application for Taxpayer Identification Number, will give the estate its own tax number
   b. The SS-4 can now be completed on-line: www.irs.gov/businesses/small/article/0,,id=102767,00.html

E. ORDER ADMITTING ESTATE
   1. In a testate estate, the Court will enter an order admitting the Will to probate § 633.298
   2. In an intestate estate, the Court will enter an order admitting the estate to administration

D. COURT OFFICER’S OATH and LETTERS OF APPOINTMENT
   1. Any natural person may qualify as a personal representative § 633.63(1)
      a. Must be of “full age” (18)
      b. Must be a resident of Iowa
      c. Must not be legally incompetent, a spendthrift, or a chronic alcoholic § 633.63(1)(a)
      d. Must not be otherwise “unsuitable” § 633.63(1)(b)
2. Non-residents may be fiduciaries, as long as there is a co-personal representative who is a resident § 633.64(1)

3. A non-resident may be the sole personal representative upon “good cause” shown to the Court § 633.64(1)

4. Banks and trust companies can be fiduciaries § 633.63(2)

5. Every personal representative must execute a Court Officer’s Oath § 633.168

6. Upon the filing of the oath and the bond, the Clerk of Court will issue the Letters of Appointment § 633.178

E. COMPENSATION AFFIDAVITS

1. Each personal representative and attorney must complete a Compensation Affidavit § 633.202

2. This affidavit confirms that there is no contract or arrangement for the splitting of fees

3. This is a prerequisite before fees may be awarded

F. DESIGNATION OF ATTORNEY

► The designation of the attorney employed by the personal representative to assist in the administration of an estate must be filed in the estate proceeding, stating: § 633.82

1. The attorney’s name

2. The attorney’s post office address

3. The attorney’s telephone number

4. Cannot list a firm name only

G. NOTICE OF ADMINISTRATION

1. In an intestate estate, the notice of administration puts the public on notice that the estate is open § 633.230

2. In a testate estate, the notice of probate must also advise the public of the time limits to file an action to set aside the Will § 633.304

3. The notice must be published in a weekly-published newspaper for two (2) consecutive weeks § 633.304

4. The estate must remain open for at least four (4) months past the second date of publication § 633.304
H. NOTICE TO ESTATE RECOVERY

1. Estate Recovery is an entity designated by the Iowa Department of Human Services to recover medical assistance debt

2. In every estate, notice must be given to Estate Recovery
   a. Required in intestate administration § 633.231
   b. Required in testate probate § 633.304A

3. The notice is required even though the decedent was not receiving social benefits (Medicaid, etc.)

4. Notice may be sent electronically through a form on Estate Recovery's website: http://www.iowa-estates.com

5. Estate Recovery has a claim for reimbursement and mere notice by publication will not defeat the claim

7. If Estate Recovery sends you a clearance letter, a showing should be made that you sent notice and no claim was filed

I. AFFIDAVIT OF MAILING NOTICE

1. In an intestate estate, notice of the opening of the estate must be mailed to: § 633.230(1)
   a. All known heirs
   b. All known claimants
   c. All claimants who are “reasonably ascertainable”
   d. Estate Recovery Program

2. In a testate estate, notice of the opening of the estate must be mailed to: § 633.304
   a. All beneficiaries under the Will
   b. All known heirs
   c. The surviving spouse
   d. All known claimants
   e. All claimants who are “reasonably ascertainable”
   f. Estate Recovery Program

3. Technically, notice does not have to be given to a creditor whose claim will be paid

4. Notice by ordinary mail to the creditor’s last known address is required; the personal representative may not rely on the publication to defeat the claim of a known creditor

▶ This is commonly called “Pope Notice.” It is not required to be in Latin, however.
VII. ASSETS AND DEBTS OF THE ESTATE

The personal representative must report all property of the decedent, not just probate property. This includes assets payable to third parties.

A. LOCATING AND COLLECTING ASSETS

1. Real estate owned by the decedent

2. Stocks, bonds, Treasury bills, and other securities

3. Value of any cash on hand at the time of death

4. Location and value of any bank accounts

5. Life insurance
   ► Request a Form 712 from the insurance company, showing the exact payout and the beneficiary

6. Vehicles
   ► The county Treasurer can provide you with a form for requesting a replacement for a missing vehicle title

7. Type and value of other tangible personal property

8. Gifts made by the decedent within 3 years of death
   ► This includes adding a child or other heir to title of real estate. This is not an effective estate planning tool and creates a gift tax problem

9. Powers of appointment that the decedent held but did not exercise (typically, from a predeceased spouse’s estate or trust)

10. Annuities, Individual Retirement Accounts, and other “transfer on death” accounts
    ► Remember, TOD and POD accounts are still includable in the taxable estate

11. Debts of the decedent, including secured debts such as mortgages and vehicle loans

12. Funeral debts

Some clients will bring you a grocery sack full of the decedent’s personal effects, including the unopened bills that have accumulated since the date of death. Some clients will save time and forward the decedent’s mail directly to your office.

WERE YOU AWARE?

Ross F. Barnett

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Revised 03/31/14
B. NON-PROBATE ASSETS

► Several assets are exempt from the probate process and are not included in the decedent’s Estate:

1. Life insurance proceeds (unless payable to the Estate) § 633.5
   ► Unless the Will clearly states that the proceeds of life insurance policies payable to the estate are to be used to pay debts, life insurance proceeds may not be used to pay the debts of the decedent Nolte v. Nolte, 247 Iowa 868, 76 N.W.2d 881, 884-95 (1956).

2. Other accident insurance or death benefits payable to the Estate by a mutual aid or benevolent society § 633.333

3. Exempt personal property in the hands of the decedent as head of household § 633.332

C. PROBATE ASSETS

1. Real estate in which the decedent had an interest

2. Cash, stocks, bonds, and other investments

3. Vehicles

4. Other items of personal property

5. Joint-tenancy property, excluding the value that is proven to have belonged to the surviving joint tenant § 450.3(5)

6. Articles of artistic or collectible value
   a. A written “qualified appraisal” is required on any art and antiques worth more than $5,000 IRS Publication 561 (2 / 2000)
   b. If the asset is valued at $20,000 or more, a complete signed appraisal must accompany the tax return, along with a photograph showing the art object IRS Publication 561 (2 / 2000)

7. Assets with a named beneficiary
   a. “Transfer on Death” (TOD) or “Payable on Death” (POD) assets pass directly to the named beneficiary upon the decedent’s death
   b. However, they are still included in the Estate and are subject to inheritance and estate tax
   c. Includes certain qualified annuities and Individual Retirement Accounts (IRAs), up to amount contributed by decedent and decedent’s employer I.R.C. § 2039 (a) I.R.C. § 2039 (b)
D. REPORT & INVENTORY

Within ninety (90) days of the appointment of the personal representative, a report and inventory of the assets and debts of the decedent must be filed with the Clerk of Court § 633.361

The Clerk of Court tracks the filing dates and failure to file in a timely fashion can result in a complaint to the Iowa Supreme Court

1. REPORT & INVENTORY

a. Must be verified or affirmed by the personal representative § 633.361

b. Must contain:

(1). Name, age, and residence of decedent § 633.361(1)
(2). Date of death § 633.361(2)
(3). Whether the decedent died testate or intestate § 633.361(3)
(4). Name and post office address of the personal representative § 633.361(4)
(5). Name and post office address of the surviving spouse § 633.361(5)
(6). Name, relationship, and post office address of each beneficiary or intestate heir § 633.361(6)
(7). The name and address of each child, if any, born or adopted after the execution of the Will § 633.361(7)
(8). Legal description and value of all real estate in Iowa § 633.361(8)
(9). Legal description and value of all real estate outside of Iowa § 633.361(9)
(10). Value of exempt personal property § 633.361(10)
(11). Value of all other personal property § 633.361(11)
(12). List of all items, with value, subject to Iowa inheritance or federal estate tax § 633.361(12)
(13). Report of unified credit reductions available for federal estate tax purposes § 633.361(13)
2. **SCHEDULES**

Schedule A  Legal descriptions of all real estate owned by the decedent alone (no joint tenancy property)

Schedule B  Stocks and bonds owned by the decedent alone

Schedule C  Mortgages and notes owed by someone else to the decedent (decedent is receiving payment); bank accounts, negotiable instruments, cash on hand

Schedule D  Life insurance proceeds that are assets of the estate

Schedule E  All jointly-held property (joint tenancy in real estate or joint bank accounts, for example)

Schedule F  Miscellaneous personal property

Schedule G  Gifts made within three (3) years of decedent’s death and transfers made during the decedent’s life

Schedule H  Powers of appointment

Schedule I  Annuities

Schedule J  Expenses of administration

Schedule K  Debts of the decedent

3. **AMENDED REPORT & INVENTORY**

   a. Whenever any additional information or property not mentioned in the Report and Inventory comes to the knowledge of a personal representative, the personal representative must amend § 633.364

   b. The amendment must be made within thirty (30) days § 633.364

VIII. **TAX RETURNS**

   ▶ Unless you are an attorney specializing in tax matters, you may want to consider associating with a Certified Public Accountant or tax preparation specialist for all but the simplest returns

   ▶ If you do prepare complex tax returns, you may want to apply for extraordinary attorney’s fees § 633.199
A. **DECEDED’S FINAL INCOME TAX RETURN**

1. Both a Federal and State of Iowa
2. Due by April 15th (Federal) or April 30th (Iowa) of the year following death
3. This is a tax on money earned by the **decedent** prior to death

| Very few decedents are courteous enough to die on December 31st, so there will likely be some potentially-taxable income |

4. It is the personal representative’s responsibility to file a decedent’s final income tax returns I.R.C. § 6012(b)(1)

B. **ESTATE INHERITANCE TAX RETURN**

1. State of Iowa only
2. Due within nine (9) months of the date of death
3. This is a tax on money passing to **beneficiaries**
4. Required if net taxable estate is $25,000.00 or more § 450.4(1)
5. **Not** required if all beneficiaries are exempt from inheritance tax (see below)
6. Some heirs and beneficiaries have exclusions:
   a. Surviving spouse 100% exempt
   b. Children 100% exempt
   c. Stepchildren 100% exempt
   d. Grandchildren 100% exempt
   e. Parents 100% exempt
   f. Grandparents 100% exempt
   g. Exempt charities 100% exempt
7. Some heirs are not exempt at all:
   a. Siblings 5% on first $12,500.00
   b. Aunts and uncles 10% on first $50,000.00
   c. Nieces and nephews 10% on first $50,000.00
   d. Friends 10% on first $50,000.00
   e. For-profit companies 15% of total amount
   f. Non-exempt charities 10% of all over $500.00

► After all tax is paid (or if none is due) the Iowa Department of Revenue and Finance will issue an **Inheritance Tax Clearance**
C. FIDUCIARY INCOME TAX RETURN

1. State of Iowa only
2. Due within nine (9) months of the date of death
3. An automatic six-month extension can be sought
4. This is a tax on money earned by the estate after death
5. Required if estate had gross income of $600.00 or more
6. Attorney’s fees and tax preparer fees are deductible to offset income, if they are not deducted elsewhere
7. Personal representative must demonstrate that no tax is due before the Court may close the Estate

After all tax is paid (or if none is due) the Iowa Department of Revenue and Finance will issue a Fiduciary Income Tax Certificate of Acquittance

D. GIFT TAX RETURN

1. Federal only
2. Due after a gift is made
3. This is a tax on money given to others by the decedent prior to death
4. There is currently an exclusion of $14,000 per year per donor for gifts to individuals; no return is required
   Effective 01/01/13
5. Even if a return is required (gift was more than $14,000), no tax is due if the cumulative gifting of the decedent is less than the lifetime exclusion
6. The lifetime exclusion for gifts is $5,000,000 (adjusted for inflation)
   As of 01/01/11

Adding people to title to avoid probate is not an effective estate planning tool and creates a gift tax problem

WERE YOU AWARE?
E. FEDERAL ESTATE TAX RETURN

1. Federal only
2. Due within nine (9) months of the date of death
3. This is a tax on money passing to beneficiaries
4. There is an estate tax exemption (unified credit):
   a. 2010 .......................................................... unlimited
   a. 2011 .......................................................... $5,000,000
   b. 2012 .......................................................... $5,120,000
   c. 2013 .......................................................... $5,250,000
5. The estate tax rates are significant:
   a. 2010 .......................................................... No tax due
   b. 2011 .......................................................... 35%
   c. 2012 .......................................................... 35%
   d. 2013 .......................................................... 40%

IX. CREDITORS’ CLAIMS

A. NOTICE TO CREDITORS

1. Notice of the opening of the estate must be mailed to all known creditors
2. The personal representative has a duty to identify all “reasonably ascertainable” creditors
3. Notice of the opening of the estate must be published in a newspaper
4. You may not rely on mere publication to cut off a reasonably ascertainable creditor

B. TIME TO FILE

1. All claims must be filed within the later to occur: § 633.410(1)
   a. Four (4) months after the second date of publication
   b. One (1) month after the date of mailing notice
2. All claims are barred if the estate is not opened within five (5) years from the date of death § 633.413
3. Secured liens are not affected by these limitations § 633.414
C. PRIORITY OF CLAIMS

If there are insufficient assets to pay all of the debts of the decedent, the claims are paid in the following order:

1. Court costs

2. Other costs of administration
   a. Attorney fees
   b. Personal representative fees
   c. Publication costs

3. Reasonable funeral and burial expenses

4. Federal debts and taxes

5. Reasonable and necessary medical and hospital expenses associated with the last illness of the decedent

6. State debts and taxes

7. Medical assistance reimbursement (Title XIX)

8. Debts owed to employees for work done within 90 days of death

9. Unpaid support payments, costs of dissolution, alimony, child support

10. All other debts

Each “class” of debt is treated equally and paid proportionally

D. DISALLOWANCE AND BAR OF CLAIMS

1. If a creditor files a claim and the personal representative does not admit it in writing, it is presumed to be denied without further action

2. If a creditor does not file a claim within the time period, the claim is barred

3. If a creditor files a claim, but not within the time period, the claim is barred

4. If the claim is contested, the personal representative can disallow it and seek to avoid it
   a. The personal representative can send a Notice of Disallowance of Claim by certified mail to the creditor
   b. The burden then shifts to the creditor to request a hearing on the claim within 20 days
c. If the creditor fails to request a hearing on a denied claim within 20 days of the mailing, it is barred § 633.442

5. If there are insufficient funds to pay the claim, the personal representative can seek a Court determination of which claims to pay

X. **DIVIDING PERSONAL PROPERTY**

► Selling a house or liquidating investments is easy. Dividing personal property is hard. Belongings which have little monetary value can have significant sentimental value.

<table>
<thead>
<tr>
<th>A family fight over the division of personal property can be the most time-consuming event in the probate process. And it’s not even really legal work!</th>
</tr>
</thead>
<tbody>
<tr>
<td>WERE YOU AWARE?</td>
</tr>
</tbody>
</table>

**A. UNDERSTAND THE PROBLEM**

1. Personal belongings have different meanings to each individual
   a. The decedent may have placed a certain importance on items
   b. The survivors may not share the same perceptions

2. Family members may not even be able to agree on a fair process for dividing personal property

3. This is a very important part of the probate process

4. Failure to handle this step can destroy family relationships

**B. CHALLENGES AND HOW THEY ARISE**

1. **THE ISSUE WAS AVOIDED**
   a. This problem occurs because the family ignored the issue of dividing personal property while the decedent was alive
   b. This happens for a number of reasons:
      (1). “I don’t have anything of value.”
      (2). “My kids know how I want things divided.”
      (3). “My children will all get along.”
   c. In this case, there is no starting point for the division of belongings
2. "MOM TOLD ME THIS WOULD BE MINE"

   a. This problem occurs when the decedent made a verbal promise to a family member

   b. There are problems that can arise:
      (1). A verbal agreement isn’t worth the paper it’s printed on
      (2). The decedent may have promised the same thing to more than one person
      (3). The item is broken, sold, or lost
      (4). Without additional evidence, the family member’s statement can’t be verified

   c. The verbal promise at least offers a starting point, no matter how flawed it may be

3. LABELS

   a. This problem occurs when the decedent affixes labels to certain items, designating them for distribution

   b. There are problems that can arise:
      (1). This system isn’t legally binding
      (2). Labels can fall off or be switched
      (3). Not everything can be labeled

   c. The label system is relatively reliable, if completely unenforceable, assuming that nobody disputes it

4. LISTS

   a. Iowa law allows for a written memorandum disposing of items of personal property § 633.276
      (1). Must be referenced in a Will
      (2). Must be dated
      (3). Must be in the testator’s handwriting or signed by the testator

   b. This writing can be altered, added to, or changed after the execution of the Will § 633.276

   c. Property set out in the writing is treated as a specific bequest § 633.276

C. SOLUTIONS

1. "TAKE WHAT YOU WANT"

   a. This is the option that requires the least amount of thought and input

   b. If everybody wants different things, the problem is solved
c. Problems include:
   (1). If two or more heirs want the same item, conflicts arise
   (2). May result in an inequitable distribution of property
   (3). Items of historical significance or sentimental value may be overlooked

2. ROUND-ROBIN
   a. Every heir gets to pick something, in order, until everything is gone
   b. For extra fun, try a “swap” component where an heir can trade one item with another heir
   c. Problems include:
      (1). Must get all heirs in the same place at the same time
      (2). May result in an inequitable distribution of property
      (3). Deciding who goes first can be a problem in itself

3. PRIVATE AUCTION
   a. The only participants are the heirs and family
   b. Every heir can bid on items, using real or “funny” money
   c. This keeps the division process private and relatively equal
   d. Problems include:
      (1). Must get all heirs in the same place at the same time
      (2). If real money is used, wealthy heirs can outbid others
      (3). If bidding escalates, participants may run out of money before everything is distributed

4. SILENT AUCTION
   a. The only participants are the heirs and family
   b. Every heir can bid on items, using real or “funny” money
   c. The “silent” component allows a quiet or less assertive heir to still secure items
Problems include:
(1). Must get all heirs in the same place at the same time
(2). If real money is used, wealthy heirs can outbid others

5. GARAGE / YARD SALE

a. An informal, public sale can work to dispose of items of small monetary value
b. Fair market value is easily determined by what shoppers are willing to pay
c. Problems include:
   (1). Lack of privacy for the family
   (2). Proceeds of the sale become assets of the estate and may be subject to taxation

6. PUBLIC AUCTION / ESTATE SALE

a. A formal, public sale is a good method to dispose of items of historical significance and monetary value
b. Some auction companies will tag and sell the contents of an entire house, leaving the items where they are in the home
c. Problems include:
   (1). Lack of privacy for the family
   (2). Proceeds of the sale become assets of the estate and may be subject to taxation
   (3). The auction company will take a fee or a percentage of the sale, in addition to expenses

The workbook “Who Gets Grandma’s Yellow Pie Plate?” published by the University of Minnesota Extension is a good resource for assisting with the division of personal property, either by a living benefactor or by the family after death.

Copies can be ordered from: University of Minnesota Extension Service Distribution Center
20 Coffey Hall
1420 Eckles Avenue
St. Paul, Minnesota 55108-6068
order@extension.umn.edu
(800) 876-8636
XI. FINALIZING THE ESTATE

A. PROOF OF PUBLICATION

1. Affidavit of publication must be filed with the Clerk of Court § 633.46
2. The estate cannot be closed until at least four (4) months have passed since the second date of publication

B. SALE OF REAL ESTATE

1. If the Will grants the personal representative the authority to sell real estate, said sale may be made at any time on any terms
   a. There is no requirement for a Court Order authorizing the sale of the property or the execution of a Court Officer’s Deed § 633.383
      ▶ This is true whether the power is mandatory or merely discretionary Title Standard 9.1
   b. The sale should still be an arms-length transaction, to avoid self-dealing or wasting of estate assets
2. If the Will does not grant the personal representative the authority to sell, or in the case of an intestate estate, the personal representative must obtain Court approval
   a. Court may order an appraisal of the property
   b. Sale should be an arms-length transaction
3. If the personal representative is merely completing a contract sale that was initiated by the decedent (i.e. giving a deed in satisfaction of an installment contract), no court approval is necessary Title Standard 9.10
   a. The personal representative is completing an executory contract
   b. No lien for death taxes attaches to the real estate
4. Report of the sale should be made to the Court
5. It is not necessary to obtain a release of inheritance tax lien for real property. The inheritance tax lien attaches only to the sale proceeds, not to the real estate itself Title Standard 9.9
C. DISTRIBUTION OF OTHER ASSETS
1. Specific bequests must be delivered within twelve months § 633.355
2. Property may be distributed in kind (e.g. land may be deeded) § 633.472
3. Final distribution of assets must be made within 3 years § 633.473

D. FINAL ACCOUNTING
1. The Court can order a final accounting showing income and disbursements from the estate § 633.469
2. All interested parties can waive a final accounting § 633.470

E. DETERMINATION OF FEES
1. The personal representative is entitled to receive a fee based on the value of the estate: § 633.197
   
   First $1,000.00 6%
   $1,000.00 to $5,000.00 4%
   Over $5,000.00 2%
   
   FORMULA: Gross estate – Exclusions – $5,000.00 
   x 2% 
   + $220.00 
   = FEES

2. The attorney is entitled to receive the same fee § 633.198
a. Attorney’s fees may not exceed the scheduled amount (even with a fee agreement or the assent of the client)
   (You can, however, apply for extraordinary fees)

b. The attorney may make application for the payment of one-half of the fees upon the preparation of the Iowa Inheritance Tax Return Iowa Rule of Probate 2.2

   An easier way to calculate the fees is to take the gross taxable estate, multiply by 2%, and add $120.00

WERE YOU AWARE?
3. Application may be made for extraordinary attorney’s fees: § 633.199
   a. Litigation
   b. Real estate matters
   c. Tax matters
   d. Reopening the estate
   e. Location of unknown and lost heirs
   f. Disposition of unusual assets
   g. Disputed matters

   These are new additions to the extraordinary fee statute

4. Relevant factors for determining extraordinary fees include:
   a. Time spent by personal representative and attorney
   b. Nature of the matters or issues
   c. Extent of services provided
   d. Complexity of issues
   e. Importance of issues to the estate
   f. Responsibilities assumed
   g. Resolution
   h. Experience and expertise of personal representative or attorney

F. INTERLOCUTORY REPORT
   • If the Final Report has not been filed with eighteen (18) months after the date of second publication, an Interlocutory Report must be filed advising the Court of the remaining items and the timetable for completion (Iowa Rule of Probate Procedure 7.7)

G. FINAL REPORT
   • Final settlement of the estate must be made within three years after the date of second publication of notice §633.473

   1. An accurate description of all real estate owned § 633.477(1)
   2. Whether the deceased died testate or intestate § 633.477(2)
   3. The name and address of the surviving spouse § 633.477(3)
   4. The name and residence of all intestate heirs § 633.477(4)
   5. The name and residence of all beneficiaries under the Will § 633.477(5)
   6. Whether any legacy or devise remains a charge on real estate § 633.477(6)
   7. Whether any heir or beneficiary is under a legal disability § 633.477(7)
   8. The conservator or trustee of the beneficiary under a legal disability § 633.477(8)
9. A statement that all taxes have been paid and all filing requirements met § 633.477(10)

10. A verification that all claims have been paid or that the statutes for disallowing the claims have been followed § 633.477(12)

11. A statement as to whether the Decedent left any genetic material which could result in an after-born heir NEW § 633.477(13)

H. ORDER CLOSING ESTATE

1. Recites that all interested parties have been given notice or have waived the right to a hearing on the Final Report

2. Recites that all claims against the estate have been paid or disallowed

3. Verifies that at least four (4) months have passed since the second date of publication

4. Approves the final accounting or notes that all interested parties have approved it

5. Verifies that the personal representative has complied with all tax requirements and that the tax clearances are on file

6. Disposes of a decedent’s real estate

   ► The Order Closing Estate can direct the Clerk of Court to issue a Change of Title for real estate

7. Ratifies all conduct by the personal representative and the attorney

8. Sets fees for the personal representative and the attorney
XII. SMALL ESTATES

A. APPLICABILITY

1. Applicable only to estates worth $100,000 or less § 635.1

B. SMALL ESTATE PETITION

1. The petition for probate should contain:
   a. Name of the decedent § 635.2(1)
   b. Domicile of the decedent at the time of death § 635.2(1)
   c. Date of death of decedent § 635.2(1)
   d. Name, address, and relationship of the surviving spouse and each heir or beneficiary § 635.2(2)
   e. Whether the decedent died intestate or testate and, if testate, the date of the Will § 635.2(3)
   f. Value of Estate § 635.2(4)
   g. Name and address of the proposed personal representative § 635.2(5)

C. NOTICE OF ADMINISTRATION

1. In an small estate, the notice of administration puts the public on notice that the estate is open § 635.13
2. Notice must be given pursuant to § 633.237 and §§ 633.230 & 633.231 if intestate, or §§ 633.304 & 633.304A if testate. § 635.13

D. REPORT & INVENTORY

► Within ninety (90) days of the appointment of the personal representative, a report and inventory of the assets and debts of the decedent must be filed with the Clerk of Court § 635.7

1. EXCESS VALUE SHOWN

1. If the Report and Inventory or its amendments show assets which exceed the limits for a small estate, the estate must be administered as provided in chapter 633 (as a regular estate). § 635.7(3)

2. If an inventory report pursuant to chapter 633 show assets that do not exceed the limits for a small estate, the estate shall be administered as a small estate upon filing of a statement of small estate by the personal representative § 635.7(4)
2. REPORT & INVENTORY

a. Must be verified or affirmed by the personal representative § 633.361

b. Must contain:

(1). Name, age, and residence of decedent § 633.361(1)
(2). Date of death § 633.361(2)
(3). Whether the decedent died testate or intestate § 633.361(3)
(4). Name and post office address of the personal representative § 633.361(4)
(5). Name and post office address of the surviving spouse § 633.361(5)
(6). Name, relationship, and post office address of each beneficiary or intestate heir § 633.361(6)
(7). The name and address of each child, if any, born or adopted after the execution of the Will § 633.361(7)
(8). Legal description and value of all real estate in Iowa § 633.361(8)
(9). Legal description and value of all real estate outside of Iowa § 633.361(9)
(10). Value of exempt personal property § 633.361(10)
(11). Value of all other personal property § 633.361(11)
(12). List of all items, with value, subject to Iowa inheritance or federal estate tax § 633.361(12)
(13). Report of unified credit reductions available for federal estate tax purposes § 633.361(13)

3. AMENDED REPORT & INVENTORY

1. Whenever any additional information or property not mentioned in the Report and Inventory comes to the knowledge of a personal representative, the personal representative must amend § 633.364

2. The amendment must be made within thirty (30) days § 633.364
4. SCHEDULES

Schedule A  Legal descriptions of all real estate owned by the decedent alone (no joint tenancy property)
Schedule B  Stocks and bonds owned by the decedent alone
Schedule C  Mortgages and notes owed by someone else to the decedent (decedent is receiving payment); bank accounts, negotiable instruments, cash on hand
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Schedule E  All jointly-held property (joint tenancy in real estate or joint bank accounts, for example)
Schedule F  Miscellaneous personal property
Schedule G  Gifts made within three (3) years of decedent’s death and transfers made during the decedent’s life
Schedule H  Powers of appointment
Schedule I  Annuities
Schedule J  Expenses of administration
Schedule K  Debts of the decedent

E. CLOSING THE SMALL ESTATE

1. Within a reasonable time from the issuance of the Letters of Appointment, the small estate can be closed § 635.8(1)

2. The personal representative must sign a closing statement stating:
   § 635.8(1)
   a. The value of the estate still qualifies as “small” § 635.8(1)(a)
   b. The estate has been fully administered § 635.8(1)(b)
   c. An accounting and proposed distribution of the estate NEW § 635.8(1)(c)
   d. Closing statement, with notice of opportunity to object and request a hearing, has been sent to all interested parties NEW § 635.8(1)(d)
3. After service of the closing statement, the estate remains open for another thirty (30) days, and if no actions or proceedings are pending in the court, the estate shall be distributed according to the closing statement § 635.8(2)

4. The estate shall close upon the earlier of:
   a. Filing an affidavit of mailing or proof of service of the closing statement and the filing of a statement of disbursements of assets by the personal representative §635.8(3)(a)
   b. Sixty (60) days after filing of the closing statement and affidavit of mailing or other proof of service §635.8(3)(b)

   During this time, the personal representative remains personally liable for incorrect distribution or unpaid valid claims

5. The personal representative’s fees shall not exceed three percent (3%) of the gross value of the estate § 635.8(4)

6. The attorney’s fees shall be a reasonable amount agreed to in writing by the personal representative or as approved by the court § 635.8(4)

7. If a closing statement is not filed within twelve months of the date of issuance of letters of appointment, an interlocutory report must be filed and provided to all interested parties every six months until closing statement is filed § 635.8(5)

8. Final settlement is required within three (3) years § 635.8(5)

XIII. SMALL LEGACIES TO MINORS

A. WHEN AVAILABLE § 633.108
   1. Beneficiary is a minor (under 18)
   2. Distribution to minor does not exceed $25,000.00.

B. UNIFORM TRANSFER TO MINORS ACT Chapter 565B
   ► Avoids establishing a Conservatorship for minor children
XIV. AFFIDAVIT OF NON-PROBATE DISTRIBUTION

A. WHEN AVAILABLE

1. Decedent’s personal property does not exceed $25,000.00

2. No real estate OR real estate passes to persons exempt from inheritance tax under § 450.9

3. At least forty (40) days have passed since the date of death

B. AFFIDAVIT REQUIREMENTS

1. Decedent’s name, social security number, date of death, and place of death § 633.356(3)(a)

2. Attach copy of death certificate § 633.356(3)(b)

3. Recitation of value of decedent’s estate § 633.356(3)(c)

4. Description of property to be transferred § 633.356(3)(d)

5. Name, address, and SSN of successor in interest § 633.356(3)(e)

6. Decedent’s Will admitted to probate (if applicable) § 633.356(3)(f)

7. Statement that no other persons than those listed in the affidavit have a right to decedent’s interest in the property § 633.356(3)(g)

8. Request that the property be paid, delivered, or transferred to decedent’s successors § 633.356(3)(h)


C. EFFECT

1. Any person having assets of the decedent may rely on the affidavit and deliver those assets to the disclosed successors

2. This is especially useful in dealing with banks or other financial institutions
Probate and Estate Administration

Ross F. Barnett

Abendroth and Russell Law Firm
ETHICAL CONSIDERATIONS

• DEADLINES
  Court tracks the filings

• DELINQUENCY NOTICES
  June 1\textsuperscript{st} and December 1\textsuperscript{st}

• COMPLAINTS
  “Failing to act with reasonable diligence”
WILLS

Safe Deposit Box

Iowa Code § 524.810A(1)(c)

Allows the named personal representative to access the safe deposit box for the limited purpose of removing the Will
WILLS

Reading of the Will
WILLS

Iowa Code § 633.285 requires the filing of a Decedent’s Will, even if there will be no administration.
WILLS

Self-Proving Affidavit

- Iowa Code § 633.279(2) changed the language used in the self-proving affidavit

- The Testimony of Subscribing Witness may now be obtained before or after the Testator’s death
WILLS

Notice to Surviving Spouse

• If the surviving spouse is not the personal representative, Iowa Code § 633.237(1) requires service of a notice to elect

• The same is true of settling a revocable trust

• The surviving spouse now has **four months** from the date of notice to elect (not four months from date of death)
WILLS

Retention of Original Will

- New Court rule provides for the retention of the original Last Will and Testament for:
  - Two years after admission to probate
  - End of probate
PROBATE ADMINISTRATION

Affidavit of Mailing Notice

• Notice by ordinary mail to the creditor’s last known address is **required**; the fiduciary may not rely on publication to defeat the claim of a known creditor

PROBATE ADMINISTRATION

Notice to Estate Recovery

- Every estate **must** give notice to Estate Recovery
  - § 633.231
  - § 633.304A
PROBATE ADMINISTRATION

Inventory Report

Under Iowa Code § 633.361, within 90 days of the appointment of the fiduciary, the inventory of decedent’s assets and debts must be filed with the Clerk.
<table>
<thead>
<tr>
<th>Tax Matter</th>
<th>Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decedent’s Final Income Tax Return</td>
<td>Form 1040</td>
</tr>
<tr>
<td>Estate Inheritance Tax Return</td>
<td>Form IA 706</td>
</tr>
<tr>
<td>Fiduciary Income Tax Return</td>
<td>Form 1041</td>
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<tr>
<td>Gift Tax Return</td>
<td>Form 709</td>
</tr>
<tr>
<td>Federal Estate Tax Return</td>
<td>Form 706</td>
</tr>
</tbody>
</table>
PERSONAL PROPERTY

- Iowa Code § 633.276 allows a testator to reference a written memorandum leaving specified property to certain individuals.

- Under Iowa Code § 633.355, specific bequests must be delivered within twelve months of the appointment of the personal representative.
PERSONAL PROPERTY
FINALIZING THE ESTATE

- Iowa Code § 633.473 requires the settlement of the estate within three years after the date of second publication of notice

- Iowa Code § 633.477(13) requires a statement as to whether the Decedent left any genetic material which could result in an after-born heir
FINALIZING THE ESTATE

Determination of Fees

- Attorney and fiduciary are entitled to receive a fee based on the value of the estate; § 633.197

**FORMULA:**

Gross estate
- Exclusions
  - $5,000.00

\[ \times 2\% \]

+ $220.00

= FEES
SMALL ESTATES

• Only applies to estates worth $100,000 or less
• If R&I shows assets are more than limits of small estate, estate must be administrated as a regular estate
• Personal representative’s fees shall not exceed 3% of gross estate
• Attorney’s fees shall be a reasonable amount agreed to in writing by the personal representative or approved by the court
AFFIDAVIT OF NONPROBATE DISTRIBUTION

Available When:

• Decedent’s personal property is or has been, at any time since the Decedent’s death, less than $25,000

• No real estate, OR real estate passes to persons exempt from inheritance tax under § 450.9

• At least 40 days have passed since date of death
AFFIDAVIT OF NONPROBATE DISTRIBUTION

• Affidavit can request that the assets be paid for the benefit of the successors
• Iowa Department of Human Services (Estate Recovery) can be a payee
• Can be used for information gathering