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The Inventory and Final Report

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In this case the witness owned the property and testified that the reasonable rental value was \$3,000 per year. The court held that since there was no evidence to the contrary, and since the presumption in favor of the Commissioner's findings is one of law only and is not evidence, there was nothing to support the Tax Court finding that the reasonable rental value was \$600 instead of \$3,000, as testified by the only witness. The foregoing rule is of utmost importance to all trial practitioners before the Tax Court.

THE INVENTORY AND FINAL REPORT

JOHN L. GRIFFITH

of the Denver Bar and Clerk of the Denver County Court

The intent of this discussion is to cover the most overlooked details in the preparation of the inventory and closing an estate. Grace Whitcomb, Inventory Auditor and Bookkeeper, Denver County Court, states that the inventory is the most important document filed in the county court.

The inventory is the basic document: for determining sufficiency of the bond, whether property is being or has been administered upon; for determining the sufficiency of orders for sale or disposition of assets; for auditing fiduciary accounts, intermediate and final reports; for clearance with the Inheritance Tax Department upon closing; to bar creditors;¹ and for fixing docket fees.² Unless all property is inventoried, it will be necessary to reopen the estate, inventory or correct the original inventory to include the omitted property, obtain clearance from the Inheritance Tax Department, and then reclose the estate.

All property administered upon and distributable through the Colorado county court, including the property received from ancillary administration elsewhere, should be inventoried. Property which is not part of the estate and which is not to be administered upon through the Colorado county court, as well as property held in joint tenancy and life insurance policies payable to a specific beneficiary (not the personal representative or estate), should not be inventoried.

Values reported should be those at date of death of decedent and at the date of appointment of a guardian or conservator. Income accumulated to date of death of decedent and to date of appointment of a guardian or conservator should be dealt with as corpus. If property was being purchased under contract, the gross value of the property should be stated with the balance due being treated as an encumbrance. In reporting an interest in a partnership, the trial balance, net worth statements, or account-

¹ COLO. STAT. ANN., c. 176, § 207 (1935).

² COLO. STAT. ANN., c. 66, § 23 (1) (1935).

ant's report should be attached to explain the valuation given to the partnership interest.

A court appraisal is generally necessary to determine the value of a life estate in real and personal property; the mortality tables will establish the value of specific cash payments for life. A valuation should not be stated for veteran's benefits and benefits which may be terminated at the will of the grantor. In such cases, the docket fee will be fixed upon the amount received.

If additional assets are discovered, they may be reported in a supplemental inventory describing the newly discovered assets, writing in the other schedule "no change," or by filing an amended inventory reporting the total assets to date. The additional docket fee, except the docket fee for sale or mortgage of real estate, is payable at the time of filing the inventory.

If the status of the fiduciary changes as from special administrator to executor or from conservator or guardian to special administrator, administrator, or executor, then a new inventory should be filed. If the second appointment is made before the inventory is filed for the first appointment, a joint inventory may be submitted. For example: Joe Doe as special administrator and executor of the estate of Richard Roe, deceased.

INSTRUCTIONS FOR THE PREPARATION OF THE INVENTORY

The instructions approved by Judge C. Edgar Kettering of the Denver County Court are the most concise directions as to the proper way of preparing an inventory form with which I am acquainted. Since these instructions are the same ones that are applicable for use on the standard inventory form approved by the Colorado Bar Association's Committee on the Standardization of County Court Forms,³ and since they are no longer printed on the inventory form itself, they are reproduced here for the guidance of interested attorneys.

The inventory must be completed and filed within one month from the date letters of appointment are issued. Whenever any property shall come to the possession or knowledge of the representative which was not included in the inventory first filed, a supplemental inventory must be filed showing such additional property.

If the heirs or legatees of an intestate or testator are unknown, or if known and there is no person qualified to receive the distributive shares of such heirs or legatees, the administrator or executor filing this inventory shall serve the Attorney General with one copy in person or by registered mail. (See Ch. 176, Secs. 145 and 146.)

If space provided under any schedule is insufficient, additional sheets with appropriate schedule headings should be attached. If the estate owns no property specified under any schedule, the word "None" should be inserted in that schedule.

³ John L. Griffith, chairman; County Judge William T. Eckhart; B. C. Hilliard, Jr.; Robert H. LaGrange; William A. Mason; William F. Robinson, Jr.; Hon. C. M. Somerville; County Judge Christian D. Stoner; Benjamin A. Woodcock.

SCHEDULE A—REAL ESTATE. List each parcel separately, giving legal description, type of property, as, for example, dwelling house or store building, street address, if any, and state title by which held. Enter the estimated gross value of each parcel in the column headed "Value," and total encumbrances, if any, against each parcel in the column headed "Encumbrances." Examples:

| | Value | Encumbrances |
|--|-------------|--------------|
| Lots 1 and 2, Block 1, Doe's Addition, Denver, being a dwelling house commonly known as 1234 Doe St. Title in fee..... | \$ 5,000.00 | \$2,500.00 |
| An undivided one-half interest in Lots 24 and 25, Block 2, Doe's Addition, Denver, being a business block known as the Doe Building, and numbered 2400 Doe St. Title in fee subject to a lease expiring January 1, 1960..... | 10,000.00 | None |

SCHEDULE B — CASH AND BANK ACCOUNTS. State amount of cash on hand. List each bank account separately, giving names and addresses of banks, and state whether checking or savings accounts. If savings account give number thereof and interest rate. Enter amount of cash on hand and amount of each bank account in column headed "Amount." Examples:

| | Amount |
|---|----------|
| Cash on hand..... | \$150.00 |
| Checking account, Tenth National Bank, Denver..... | 222.50 |
| Savings account No. 1234, First State Bank, Denver; interest rate 2%..... | 558.00 |

SCHEDULE C — BONDS. In first column give the face value, by whom issued, kind of bond (for example, refunding, special improvement, or sinking fund), interest rate, type of security (for example, bond, first mortgage or debenture), date issued, date due, optional due date, if any, and what coupons, if any, are attached. In second column state whether good, doubtful or desperate, and in third column enter estimated value. List alphabetically. Examples:

| | | |
|--|----------|------------|
| \$1,000.00 Middletown, Colorado, Improvement District No. 1, 5% bonds, issued 6/15/37, due 6/15/57, optional 6/15/55, with 6/15/49 and subsequent coupons attached | Good | \$1,040.00 |
| 2,000.00 The Roe Corporation sinking fund 7% debentures, issued 1/1/39, due 1/1/59, with 7/1/43 and subsequent coupons attached | Doubtful | 250.00 |

SCHEDULE D — NOTES AND ACCOUNTS. Notes, accounts, contracts and all other evidences of indebtedness except bonds and bank accounts should be listed in this schedule. As to notes, state in first column the amount of unpaid principal, name of maker, date made, date due, interest rate and when payable, and date to which interest has been paid, followed by brief description of security (if unsecured, so state). As to accounts, state in first column the amount, type of account, name of debtor, when incurred (in case of running accounts this is the date of the last item) and the date due. As to all items in this schedule state in the second column whether good, doubtful or desperate, and enter the estimated value in the third column. List items alphabetically. Examples:

| | | |
|---|------|------------|
| \$2,000.00 Note of John Doe, made June 1, 1949, due June 1, 1954, 6% interest payable quarterly, interest paid to June 1, 1950, secured by first trust deed on 4321 Doe St., Denver | Good | \$2,000.00 |
|---|------|------------|

| | | | |
|--------|--|-----------|--------|
| 150.00 | book account of Sarah Due incurred June 11, 1948, due July 1, 1948..... | Doubtful | 100.00 |
| 100.00 | note of Richard Roe, made June 1, 1945, due June 1, 1946, 8% interest payable at maturity; no interest paid; unsecured | Desperate | 0.00 |

SCHEDULE E — CORPORATE STOCKS. Give number of shares, per value, class of stock (common or preferred), name of corporation, and where incorporated. If company has more than one kind of stock of the class described give data sufficient to identify it. Enter estimated value of shares in column headed "Value." List alphabetically. Examples:

| | | |
|-----|--|-------------|
| 100 | shares of \$100 par value common stock of American Telegraph company, a Colorado corporation..... | \$17,800.00 |
| 10 | shares of no par value cumulative 7% first preferred stock of Foreign Power Company, a Colorado corporation..... | 950.00 |
| 5 | shares of no par value cumulative \$6 dividend series preferred stock of Foreign Power Company, a Colorado corporation | 480.00 |

SCHEDULE F — ALL OTHER PERSONAL PROPERTY. Under this schedule list all personal property other than that described under Schedules B, C, D and E, stating, as required by Ch. 176, Sec. 145, 1935 Colorado Statutes Annotated, the kind, number, amount and value of the several articles. Enter the estimated value of each item in the column headed "Value."

FINAL REPORT AND CLOSING

"The Final Report is the most important document filed in the county court," states Dolores M. Rowley, Chief Auditor of the Closing Department, Denver County Court, with great originality.

Before preparing the final report, it is advisable to examine the court file, probate fee book and claim register in the Clerk's office to determine whether all statutory publications have been made, to determine whether any claims or assignments of interest have been filed without notification to the attorney for the estate, and to determine whether all docket fees and fees for sale or mortgage of real estate, guardian ad litem fees, appraiser's fees, dedimus expense, publication costs, and costs of adjudication in cases of mental incompetent, have been paid. It should also be ascertained whether the report of the Inheritance Tax Commissioner or certificate of waiver of inheritance tax has been filed and whether service is complete in determination of heirship proceedings. If the value placed by the Inheritance Tax Department is greater than that reported in the inventory, an additional docket fee may be payable. The foregoing information may be obtained by telephoning the Clerk's office.

From the experience of the Closing Department of the Denver County Court, the following items are those most likely to be overlooked in closing an estate, in the order stated:

1. Inheritance tax, plus 10% for old age pension should be deducted from the individual shares of heirs or legatees unless otherwise provided for in the will.

2. Payments from estate funds should be supported by claims filed within the six month period for items over \$25.⁴

3. Subsequently discovered assets should be inventoried and reported to the Inheritance Tax Department prior to closing the estate.

4. All claims, whether paid or not, should be allowed or disallowed by the fiduciary, and notice should be sent by registered mail by the Clerk (upon your request) at least ten days before final settlement to claimants whose claims have not theretofore been allowed or disallowed by the court.⁵ Even though the estate is declared insolvent and the claims cannot be paid in full, they should be allowed or disallowed by the fiduciary, and the distribution pro rated in accordance with the statutory priorities.

5. Approval by distributees, or by a court order, should be obtained when items of personalty are distributed in lieu of cash. Such distribution should be based upon court appraisal unless personalty is a listed security which may be distributed based on the market value.

6. Successor fiduciaries should approve the final report of the former fiduciary.

7. Personal service should be made on all heirs and guardians residing in Colorado for hearing on determination of heirship.⁶

8. When partial distribution has been made during administration to arrive at the amount finally distributable, the partial distribution should be added into the balance on hand shown on the final report before distributive shares are computed, then deducted from the individual's share, rather than using the figure on hand for distribution and then deducting the advance.

9. A certified copy of letters of appointment of personal representative should be furnished (unless appointment is in probating court) when distribution is being made to the estate of an heir or legatee who dies during process of administration, or to person under legal disability.

10. Application for widow's allowance must be filed within six months from the date letters are issued.⁷ An election of the surviving spouse must be filed within six months from the date that the will is admitted to probate.

11. A check should be made to make certain that the five dollar fee on petition to sell real estate and the \$2.50 fee per thousand on the sale is paid before making up final report.

12. Only *after* a ward reaches his majority or a mental incompetent is restored to reason may he be served with notice of final settlement four weeks hence and a report of accounts and actions of the guardian or conservator.

⁴ COLO. STAT. ANN., c. 176, § 201 (1935). See also § 207A.

⁵ *Id.*, at § 228.

⁶ *Id.*, at § 14.

⁷ *Id.*, at § 207.

13. The *maximum* fiduciary fee is set by statute. A fee of three per cent is allowable on sale, mortgage, or rentals from real estate.⁸ This is a maximum fee, not a flat "statutory fee."

14. Distributees who are minors or mental incompetents must have representatives appointed before an order of distribution can be made by the court. If the distribution is for \$500 or less, and order of transfer may be used under the Small Estates Act.⁹

15. A decree of heirship is not necessary in estates declared insolvent. Publication of notice of final settlement must be made if the fiduciary is to be discharged.

16. A sufficient bond must be furnished to cover cash, personalty, and gross rents for a year. A personal bond will be accepted if the will dispenses with a bond or if the above described assets are \$500 or less. This is a statutory requirement.¹⁰

17. Appraisals must be completed and filed within one month from the date of issuance of the warrant.¹¹

18. Court orders should be secured for expenditures other than costs of administration in the absence of claims or power under will.

19. If in any case of a testamentary trust it shall appear to the county court that it was not the intention of the testator that the court should continue the administration of the estate after the payment in full of all debts and legacies except the trust fund or property, such court may proceed to final settlement of such estate as in other cases and order the trust fund or property to be turned over to the trustee as such.¹²

In closing insolvent estates, the safer practice is to petition the court to set the matter down for hearing upon the priorities of claimants and amount of distribution to them. The court should then be asked to determine the manner of service of the notice of such hearing to be given each claimant and parties in interest. The petition should set forth the priorities as seen by the attorney for the guidance of the court.

It is always well to remember that an objection to any expenditure of a fiduciary may be made at any time prior to the approval of the final report and that an expenditure approved in any intermediate report may again be reviewed by the court upon presentation of the final report.

It is the practice of the Denver County Court to authorize distribution to the testamentary trustee, accept the receipt from the trustee, and discharge the fiduciary if the will provides that the trust is not to be under the jurisdiction of the county court. In the absence of such provision, or upon a showing that it was

⁸ *Id.*, at § 232.

⁹ *Id.*, at § 77.

¹⁰ *Id.*, at § 95.

¹¹ *Id.*, at § 237.

¹² *Id.*, at § 227(c).

not the intention of the testator that the court should continue the administration of the estate, the appointment of a testamentary trustee should be made before distribution to him.

Since the writer has to continue amicable relations with both Miss Whitcomb and Mrs. Rowley, he has attempted to maintain a neutral position as to which is the most important—the inventory or the final report. Both documents are very important, and if carefully prepared will save many hours of time.

CONTINUING A BUSINESS AFTER OWNER'S DEATH BY MEANS OF LIFE INSURANCE

HARRY S. BERNSTEIN*

Man finds the thought of dying rather unpleasant, but the man of wealth must find it most repelling. Not only is he barred from Heaven (for he is assured that his entrance will be made with the ease and grace of a camel passing through the eye of a needle), but he is also confronted with the prospect of separating himself from possessions which have given his life so much significance and comfort before he can set forth on his unhappy journey.

Unfortunately the state of the law has not progressed to such an extent that it can give counsel which will aid man in a better world. It will, therefore, be necessary to limit this discussion to comments on how life insurance can be used to aid the man of property in the divestiture of his possessions to the maximum benefits of his survivors and to his own greatest satisfaction.

The business of life insurance has moved farther and more quickly than the law which supports it. The life insurance superstructure is a much more complex and integrated construction than is the legal foundation which supports it, and when examples of insurance contracts are introduced which seem to rest on little or no legal foundation, it is because no decisions are available on which to test these innovations, as statutory law has not yet caught up with this phase of the insurance business.

Business insurance is an extremely useful tool in estate planning. The man who has the greatest portion of his wealth invested in a business faces a much more serious problem in estate planning than does a man who has his wealth in real estate, stocks or bonds.

In order to insure that the full value of his estate is realized, a business man must insure that his business interests will not be liquidated immediately after his death. He must arrange for the continuance of his business, for if he does not the forced liquidation of his business may result in a depletion of his estate

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