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"HE'S DEAD?"
Real Estate in a Decedent's Estate

JERRY FRANK JONES
OF COUNSEL
IKARD & GOLDEN, P.C.
Austin, TX 78701
jfjones@io.com

JERRY FRANK JONES
OF COUNSEL:
IKARD & GOLDEN, P.C.
106 East 6th Street, Suite 500
Austin, TX 78701
Phone: (512) 476-2929
Fax: (512) 472-3669
jfjones@io.com

Education: Williams College, Williamstown, Mass., B.A. 1967; University of Texas-Austin, J.D, 1971.

Background: Board Certified, Estate Planning and Probate by the State Bar of Texas, Fellow, American College of Trust and Estate Counsel; Instructor: University of Texas, Legal Assistant Program, Estate Planning & Probate.

Real Estate, Probate and Trust Law Section of the State Bar of Texas: Chair (2001-02), Legislative Liaison (1997-present) and Council Member (1994-98).

Author: Probate, Guardianship and Trust, TEXAS LEGISLATIVE REPORTS 1997, 1999 & 2001; "A TOPICAL GUIDE: Advanced Estate Planning and Probate Course Articles;" "A TOPICAL GUIDE: Advanced Drafting: Estate Planning and Probate Course Articles;" COMMUNITY PROPERTY FOR ACCOUNTANTS;" "The 706 for Country Lawyers and Other Simple People;" "DEATH AND TAXES: An Introduction To Taxes Concerning A Probate Attorney," "Estate Planning for PWAs (Persons With AIDS);""Divorce: Effect Upon Life Insurance and Non Probate Assets," 1988, Probate & Property, magazine of the Real Property, Probate and Trust Section, American Bar Association.

ADMITTED TO PRACTICE LAW: All Courts in the State of Texas, United States District Court for the Eastern and Western Districts of Texas, U. S. Court of Appeals 5th Circuit, and United States Tax Court.

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ADVANCED REAL ESTATE DRAFTING COURSE
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"HE'S DEAD?" Real Estate in a Decedent's Estate

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Jerry Frank Jones
Of Counsel
Ikard & Golden
Austin, Tx

1. **Disclaimer.** This writer is not a real estate attorney. This paper and the attached forms are from the point of view of a probate lawyer who works with real estate lawyers, both in assisting those lawyers and in obtaining assistance from them. Use this paper and especially the forms with that caution in mind. Also, I am using the masculine pronoun generally. I know better but it is just too much trouble to be correct. And when my female assistance abandoned her efforts to be correct several years, I assumed it was safe for me as well.

2. **References and Abbreviations.** The sources frequently referred to in this outline have been shortened in description as follows:

a. Section when not otherwise explained means a section of the Texas Probate Code.

b. Johanson means Stanley Johanson's "Texas Probate Code Annotated. This one volume book is the basic tool for this area. It includes not only the Texas Probate Code (as well as the most important annotations and Professor Johanson's comments) it also includes most of the other relevant statutes and constitutional provisions.

c. **Texas Practice** means volumes 17 and 18 of the Texas Practice Series "Probate and Decedents' Estates," by Woodward and Smith. One reference is also made to another two volume set from that same series when discussing intestacy, that reference to "Texas law of Wills," by Leopold and Beyer is clearly distinguished in the text.

d. Advanced Estate Planning and Probate Articles means articles from the annual course for probate and estate planning lawyers which the State Bar has put on since 1976. Many of these articles are available and can be downloaded at www.reptl.org. It is necessary to be a member of the Real Estate Probate and Trust Law Section of the State Bar to access those materials.

e. Standards and Comments to Standards means those Standards and

Comments set out in "Texas Title Examination Standards," Title 2- Appendix following Section 5.151 of the Texas Property Code.

3. **Evidencing and Transferring Title.** When someone dies holding title to real estate, new rules are needed to evidence ownership and to transfer ownership. Obviously the decedent cannot provide his signature. Powers of attorney terminate at death. Someone must succeed to his interest. An orderly mechanism is needed to settle his affairs. To understand the various solutions, a brief discussion of wills, intestacy and probate are necessary.

4. **Probate the Basics.**

a. **Probate.** Probate is the primary process used in Texas to wind up the affairs of the decedent. The purpose of probate is to provide an orderly mechanism to resolve the decedent's affairs and transfer his property to his successors (or evidence the new ownership). That process has four components:

i. Collect and protect the assets;

ii. Pay the lawful debts;

iii. Pay the taxes; and,

iv. Distribute the remaining assets to the beneficiaries (under a will) or heirs (under intestacy).

A probate proceeding has been likened to a bankruptcy. It is a forum for settling the claims of the decedent and claims against the decedent.

b. **Property Passes 3 Ways.** At death property passes one of three ways: By will, by intestacy or by third party arrangements (trusts, multi party accounts, IRAs, life insurance, joint tenancy with right of survivorship). This article focuses primarily on the first two.

c. **Vesting At Death.** It is true that a decedent's property passes to his or her heirs or devisees immediately upon death. Subject to exemptions, debts and administration, the heirs can convey their interest in the property immediately.

i. For a general discussion of the property being subject to administration, see **Texas Practice**, Section 191.

ii. The decedent's property is also subject to the federal estate tax lien, See IRC 6324, see discussion infra.

iii. And, the decedent's property is subject to any homestead, allowance in lieu of exempt property and family allowance rights of the surviving spouse and children of the decedent, see infra.

5. **Homestead, Family Allowance and Exempt Property.** In addition to creditors, the decedent's family has certain protections that must be accommodated.

a. **Homestead.** Section 270 et seq and Texas Constitution Article 16 Sections 50 et seq set out the Texas homestead rights. The homestead is not subject to administration; this means an administrator cannot sell or encumber a homestead. Also see Johanson's Comment at Section 270 distinguishing the possessory homestead from the homestead exempt from

creditors. Johanson says that if there is a constituent member of the decedent's family surviving that the homestead is exempt from creditors, even if that family member does not have any right to live in the home.

b. **Other Exempt Property.** Section 271directs the court to set aside the property exempt from forced sale.

c. **Allowance In Lieu of Exempt Property**. Sections 273 et seq allows for an allowance in lieu of exempt property and sets out the procedure to be followed. Up to $15,000 may be paid in lieu of a homestead and $5,000 in lieu of other exempt property.

d. **Family Allowance.** Sections 286 et seq provide a family allowance for the surviving spouse and/or minor children. The court is to fix an amount necessary to support the spouse and minor children for a year. Also see Texas Practice Sections 841 - 894 and Roger Beebe, "Special Rights of Surviving Spouse--Homestead, Exempt Property and Family Allowance," 1994 Advanced Estate Planning & Probate, Tab I.

6. **Intestacy** . Our intestacy rules are primarily in Sections 38 (separate property) and Section 45 (community property). The only recent change provides that community property passes to the surviving spouse if all of the decedent's children are children of the surviving spouse, Section 45.

a. **Community Property.** Section 45 controls the intestate disposition of community property. Note there is always a surviving spouse with community property. Also, what is set out below is accurate. If you read Section 45 it will suggest a different result. It is truly a misleading statute but which was construed as set out below in Jones v. State, 5 S.W.2d 973 (Tex. Comm. App. 1928).

i. No surviving descendants: All to spouse;

ii. All surviving descendants are descendants of the surviving spouse: All to spouse.

iii. A surviving descendants is not the descendant of the surviving spouse: All to the descendants.

b. **Separate Property.** Section 38 controls the intestate disposition of separate property.

No surviving spouse

●All to descendants

● No descendants, to mother and father.

●●If only one is living, 1 portion to surviving parent and 1 portion to sibling or their descendants.

●● If no surviving siblings or their descendants, all to the surviving parent.

●If no surviving parents, all to surviving siblings or their descendants.

● If none of the above, in two moities: 1 paternal, and 1 maternal.

Surviving spouse

● And descendants
●●Spouse takes
●●●1/3 personalty
●●● life estate in 1/3 of realty
●●Descendants
●●●2/3s personalty
●●●All realty subject to 1/3 life estate

●And no descendants.
●●-Surviving spouse
●●●All personalty
●●●½ realty
●● Other ½ of realty passes by "rules of descent and distribution" see above, b ii (1), (2) and (3).
●● If there is no surviving siblings or their descendants, then all to the surviving spouse

c. **Other Rules**. The preceding covers about 90% of the intestate situations but there are numerous other rules from the common law and the Probate Code. See:

i. The other two volume set in this area, **Texas Practice** series, "Texas Law of Wills." Sections 2.1 through 12.4.

ii. Also, while a bit old, a very good survey is provided by Barbara Ferguson in "Who Are Your Descendants, Adoptions, Half-Bloods, Surrogates Etc.," 1987 Advanced Estate Planning and Probate Tab F.

iii. Finally, the Texas Probate Code

●Section 37 Passage of Title Upon Intestacy,
●Section 37A and B: Disclaimers,
●Section 39: No Distinction Because of source (Father or Mother),
●Section 40: Adopteds,
●Section 41: Persons Not In Being, Half Bloods, Aliens, Convictions and Suicides,
●Section 42: Childrens' Inheritance from Mothers and Fathers,
●Section 43: Per Capital and Per Stirpes,
●Section 44: Advancements,
●Section 46: Joint Tenancies, and
●Section 47: Survival by 120 Hours.

7. **Avoiding Probate (Administration): Non Judicial Solutions.** In certain circumstances title can be evidenced or transferred without a probate proceeding. One mentioned frequently is placing real estate into a revocable trust, sometimes referred to as a living trust. However, that involves title issues in a trust and is beyond this outline. For a discussion of real estate and revocable trusts see "Transferring Real Estate For Estate Planning and Probate Purposes," Tibbets, 1998 Advanced Real Estate Course Tab, EE. The focus here will be on the more traditional title problems arising from wills, probate and intestacy.

a. **Affidavit of Heirship.** This is the oldest of our non probate solutions. In fact it first arose by case law. See Johanson, Commentary following Section 52. They are most appropriate when the decedent had no will and more than four years has passed since his death.

i. **Statutory Form.** In 1999 the Texas Legislature enacted Section 52A. Now there is a non exclusive statutory form for affidavits of heirship. This statute was backed by the title insurance industry and presumably will be viewed with favor. A completed example of that affidavit is attached. That statutory form is attached. However, a copy can be downloaded in WordPerfect form from the Texas Legislature's website, www.capitol.state.tx.us.

ii. **Prima Facie Evidence.** Section 52 says an affidavit of heirship is prima facie evidence of title in a court proceeding, if:

(1) It is properly executed and acknowledged or sworn; and,

(2) It has been on file for 5 years in the county in which the real estate is located.

iii. **May Be Refuted.** Section 52 goes on to say that the "true facts may be proved by anyone interested in the proceeding in which the affidavit or instrument is offered in evidence.

iv. **Affidavits Commonly Accepted.** Despite these limitations, title companies frequently accept affidavits of heirship within four years of the date of death and waive the requirement of a probate proceeding or a judicial determination of heirship. Standard 11.70 authorizes an examiner to "rely upon an affidavit of heirship with respect to the family history and the identity of the heirs of the decedent."

v. **Will Attached.** Sometimes, in an effort to avoid probate, an unprobated will is attached to the affidavit. When a will is attached the heirs at law and the beneficiaries under the will sign the affidavit (in addition to the two disinterested witnesses) or a separate agreement. The beneficiaries then promise in the affidavit or separate agreement that they will not offer the will for probate. The Comment to Standard 11.50 requires that a deed be signed by the heirs at law as well as all beneficiaries of any unprobated will. This Standard might be clearer if it referred to "all" unprobated wills. There is always the risk that the last dated will is invalid for some reason not obvious on its face (fraud, forgery, lack of capacity or undue influence). Then the next will, which may have very different beneficiaries, would be the proper will for probate.

vi. **No Debts or Administration.** Title companies will require the affidavit of heirship (or some other affidavit) to state that there are no unpaid debts or taxes and that no administration is pending. Standard 11.20.

vii. **Heirs May Convey.** With the affidavit the heirs can convey the real estate.

viii. **Purchasers Beware.** Purchasers, however, must be wary of a subsequent administration; they take title subject to any debts or any subsequent administration. **Texas Practice** at Section 191.

(1) If there is a sale in a subsequent administration to pay debts the purchaser's title will be defeated. Again see discussion at **Texas Practice** Section 191

(2) There is a case that says the purchaser's title is not defeated if the sale is to effect a partition, <u>Littlefield v. Ungren</u>, 206 S.W.2d 152 (Tex.Civ.App–1947, writ ref'd n.r.e.)

(3) While there are no cases on point, a sale to pay administrative expenses, taxes, family allowance or other appropriate obligation,

presumably are deemed "debts" which will defeat the purchaser's title.

(4) For the circumstances under which an administration will be established, see Dependent Administrations, infra.

(5) The purchaser from an heir will probably have even greater problems if a will is subsequently produced, see Independent Administrations, infra.

b. **No Community Administration Needed.** Section 155 says no administration is necessary if the community estate passes to the surviving spouse. This is true even if the there are debts because Section 45 says all community property "...passes charged with the debts against it..." While this is available it is rarely used and could create problems for a purchaser.

i. William Roundtree in his excellent article for the Advanced Real Estate Course in 1989, "Roadmap Of Getting Real Estate Titles Through Probate," Tab Q, sets out the following issues for the purchaser to resolve:

(1) That the surviving spouse really took all of the community property;

(2) That the decedent died intestate,

(3) That the property is community property,

(4) That the property is free of debt,

ii. Roundtree says "...a cautious attorney should be reluctant to rely on Tex. Prob. Code Section 155 alone."

iii. He says a deed under Section 160 affords the purchaser a great deal more protection.

c. **Unqualified Community Administrator. Section 160.** Section 160 allows a surviving spouse to deal with community property without any court proceeding. This is endorsed by Standard 11.80.

i. If there is not an administration pending and there is a surviving spouse and debts of the decedent, that surviving spouse may "...sell, mortgage, lease or otherwise dispose of community property for the purpose of paying community debts;..." See, Burns v. Burns, 439 S.W.2nd 452 (Tex Civ App Texarkana 1969, writ ref'd n.r.e.) and **Texas Practice**, Sections 543 and 544.

ii. The right to pay off community debts even includes selling the real estate to reimburse a surviving spouse who has paid for the decedent's funeral or last illness expenses. **Texas Practice**, Sections 544. Martin v. McAllister, 63 S.W. 624 (Tex. 1901) and David v. Magnolia Petroleum Co., 134 S.W.2d 1042 (Tex. 1940).

iii. The surviving spouse can sell even if the decedent's ½ passes to his children, Davis v. Magnolia Petroleum Co., 134 S.W.2d 1042 (Tex. Comm. App. 1940).

iv. If the proceeds are greater than the community debt, the surviving spouse holds those proceeds as trustee for the rightful heirs.

v. A deed using this procedure should clearly state that there is no administration pending, that the property is community property, that community debts are owed and that the grantor is the surviving spouse.

vi. Since an administration cannot be initiated more than

four years after the decedent's death, a 160 deed may be the only way to sell the property to pay a debt after four years.

8. **Avoiding Administration: Judicial Solutions**

a. **Collection of Small Estate by Affidavit.** Sections 137 and 138 allow the transfer of a small estate by an affidavit which is filed with and approved by the probate court. This is limited to estates of less than $50,000, not counting homestead and exempt property. While the affidavit is good to transfer all personal property to the heirs, it is not effective as to any real estate except the homestead, Section 137(c). If the approved affidavit is to be used to "transfer"[1] title to the homestead it must be recorded in the deed records, Section 137(c) Also see **Texas Practice** Sections 481-485.

b. **Determination of No Administration Needed.** Section 180 allows a court to determine that no administration is necessary. This procedure is rarely used. However, it could provide a great deal of protection to a purchaser or a creditor seeking to foreclose and should be considered.

c. **Proceeding to Determine Heirship.**

i. A proceeding to determine heirship, under Sections 48 et seq, is generally coupled with an application for appointment of a dependent administration. However, the administration is not necessary.

ii. If all of the heirs are in agreement and competent, an heirship proceeding may be necessary, or appropriate, rather than just an affidavit of heirship if

(1) A title company will not accept an affidavit, or

(2) There is some issue regarding the proper heirs that needs to be resolved, such as a possible illegitimate child or a person claiming to be a common law spouse.

iii. An heirship proceeding requires personal service or waiver by all heirs

iv. As of September 2001 citation by posting (Section 50(b)) and the appointment of an ad litem (Section 53(c)) is required in all cases.

v. A parent, managing conservator, guardian or ad litem may waive service for a minor under 12 years of age. Section 50(e). However, if the child is 12 or older, they must be personally served with citation and no waiver is possible.

vi. Anyone not served with actual notice has four years to challenge the judgment, Section 55(a). However, bona fide purchasers are protected even if the judgment is later set aside, Section 55(b).

vii. Once the judgment is entered, the heirs can convey and the purchaser has the protection of a court order.

d. **Muniment of Title**. Sections 89A, 89B and 89C permit the probating of a will merely as a muniment of title.

i. This is used when no administration is needed or an administration is not available. A will is

[1] The statute uses the word "transfer." "Evidence" of title is probably a more accurate description.

probated as a muniment of title most commonly when more than four years have elapsed since the date of death and an administration is not available. It is also frequently used on the death of the first spouse and the will leaves everything to the surviving spouse.

ii. The order admitting the will to probate establishes title in the beneficiaries.

iii. The order also declares that there are no debts of the decedent.

iv. Then the beneficiaries can convey and the purchaser has the protection of a court order.

9. **Executors, Administrator and Personal Representatives: Dependent and Independent Proceedings**. The following is an explanation of how often confusing words are used in this outline.

a. **Executors.** Executors are persons named in a will to serve as personal representative. They are generally independent executors but not always. A person named as executor in a will might choose to be appointed a dependent executor with will annexed (Section 145(r)) in an estate with serious creditor problems or where a foreclosure needs to be set aside. Also, the will might have appointed an executor but failed to make him independent, in which case the executor would be dependent with will annexed.

b. **Administrators.** Administrators are persons appointed by a court and not named in a will. These are generally dependent administrations with intestate heirs. However, there could be a will where no executor was named or where none of the named executors are qualified. In that case, the court would appoint an administrator who would administer the estate "with will annexed." Also, the court appointed administer might be independent of the court pursuant to Section 145 (c), wherein all of the distributees of an estate can choose an independent administrator.

c. **Personal Representatives.** Personal representatives are all of the above. The Probate Code defines personal representative, Section 3(aa) as including executors, administrators both independent and dependent. It defines independent executor in Section (q) but does not define executors or administrators.

d. **Dependent Administration.** A dependent administration means the administrator is strictly controlled by the Probate Code and the court. As mentioned above, there may be a will but generally there is not. When there is a will it controls over the Probate Code.

e. **Independent Administration.** An independent administration is free of court supervision and control. Once the inventory is filed the court no longer has any control over the personal representative except upon application specifically authorized by the Probate Code.

f. **Successors in Interest.** Persons who succeed to a decedent's property have a variety of names. Heirs are people who take by intestacy (Section 3(o)). Traditionally people who take under a will were devisees (takers of real estate) and legatees (takers of personalty). Now the

Probate Code defines both of these as interchangeably (Sections 3(h) and (s)) as people who take under a will without regard to whether they take realty or personalty. The Probate Code also uses distributees (Section (o)) to mean any person entitled to a decedent's estate whether under a will or intestacy.

10. **Probate: Dependent Administration.** As mentioned above, dependent administrations generally, but not always, arise when there is no will and the estate passes by intestacy. While not required by statute, most of the statutory probate judges will not appoint a dependent administrator in an intestacy without a simultaneous proof of heirship. Dependent administrations are subject to very strict Probate Code rules and requirements.

a. **Necessity For Administration** An administration will not be opened and letters of administration will not issue unless it is necessary, Section 178(b). Section 178(b) says

i. Necessity is "deemed" to exist if there are two or more debts or if a partition is necessary.

ii. Then it states that there may be other reasons necessitating an administration. While case law is sparse, **Texas Practice** Section 625 suggests such reasons include:

(1) Collecting several claims,

(2) Recovering several assets,

(3) Pursuing claims collectible only by a personal representative (A. some claims against the United States, Butler. v. United States, 23 F.Supp. 143 (S.D. Tex. 1938), also see Section 6(e) setting out venue when administration for purposes of collecting from a governmental source; B. some personal injury claims, C. Federal Employees Liability Act, and D. Texas Wrongful Death Act).

iii. While no case was found, it is assumed that taxes, family allowances and allowances in lieu of exempt property are "debts."

iv. No administration will be permitted if there is only one debt, Rogers v. Barbee, 32 S.W.2d 666 (Tex.Civ. App.–Dallas, 1930 no writ hist.), or one claim or the only estate asset is the homestead which is exempt from creditors, Cohn v. Saenz, 211 S.W. 492 (Tex.Civ.App–SA, 1919 ____________) and Parker v. Miller, 258 S.W. 602 (Tex.Civ.App–Austin, 1924; rev'd on other grounds 268 S.W.726 (Tex. 1925).

v. According to O'Donniley v. Golden, 860 S.W.2d 267 (Tex.App–Tyler, 1993, original mandamus proceeding) the finding of necessity is required even when an administrator is appointed with will annexed. However, under a will there may be additional reasons to need an administrator, for example to allocate assets between two or more beneficiaries such as a bypass trust and a marital trust.

vi. There is not a "necessity" rule for the issuance of letters testamentary, see Section 178(a) and Independent Administrations, infra.

b. **Sale of Real Estate**

i. **Court Order Required.** Section 331 requires a court order to sell real estate.

ii. **When Can a Sale Be Ordered.** Section 341 allows a sale to

(1) Pay expenses of administration, funeral expenses, expenses of last illness, allowances and claims. This subsection provides for sale of property to pay all of the typical expenses of an estate. While the statute does not refer to taxes, family allowance or allowance in lieu of exempt property, they are no doubt included under "expenses of administration" or "claims."

(2) Or, if it is in the best interest of the estate.

Also see **Texas Practice** at Section 969 including pocket part.

iii. **Other Considerations For Sale** Before a sale will be allowed under Section 341, the abatement (Section 322B), apportionment (Section 322A) and most advantageous (Section 340) statutes have to be considered. These statutes control when there is no will or the will is silent as to the payment of claims, administrative expenses and taxes.

(1) **Abatement.** Section 322B, the abatement statute, gives a hierarchy of asset liability for debts and administration expenses.

(a) While the statutory priority is fairly detailed when there is a will, all it says for intestacy is that intestate property is first subject to debts and administrative expenses.

(b) The statute does not say within intestacy whether personalty is to be used first. However, either because the statute is based on Sinnott v. Gadney, 322 S.W.2d 507 (Tex. 1959), or Sinnott v. Gadney still controls in intestate situations, it is generally believed that within intestate property, personal property must be sold before real estate.

(2) **Tax Apportionment.** The liability of assets for paying death taxes is different. Section 322A, the tax apportionment statute, gives an apportionment rule for paying federal estate taxes. Thus Blackacre may be subject to sale because it causes some of the federal estate tax, but is not liable for any debts or administrative expenses if there is sufficient personal property available.

(3) **Most Advantageous.** Section 340 says the real estate to be sold "shall be that which the court deems most advantageous to the estate..."

c. **Court Ordered Sales: The Many Legged Dog.** If, after considering Sections 322A, 322B, 340 and 341, the court concludes that the sale of real estate is proper, then the sale has several additional steps:

i. **Application.** As discussed above, Section 341 requires an application to the court to sell real estate.

(1) While not a part of the statute, most probate courts require an application to sell to include

(2) An appraisal and

(3) The proposed earnest money contract or listing agreement

(a) A personal representative may seek permission to list the property. However, the personal representative may present a proposed earnest money contract to the court.

(b) **SUBJECT TO COURT APPROVAL.** In either event the personal representative **SHOULD NOT SIGN** any earnest money contract or listing agreement unless it clearly states that the **"CONTRACT IS SUBJECT TO COURT APPROVAL**."

ii. **Posting Citation.** Section 344 requires the posting of citation and the order of sale cannot be entered until the return date. The return date (see Sections 33(f)(2) and 33(g)) is the first Monday 10 days after the date of posting. If you file on a Thursday you can have a hearing on the second following Monday. If you file on a Friday you have to wait until the third following Monday. There is no known way around this time frame.

iii. **Hearing.** Section 342 says a hearing shall be set and held by the court. As a practical matter the court signs the order after the return date if there is no opposition and the applicant has complied with the statutory (and court's) requirements. Some courts automatically calendar and sign the order of sale, other require a presentment.

iv. **Notice to Beneficiaries.** There is no requirement that the personal representative notify the beneficiaries of the proposed sale. The cautious personal representative may avoid problems later on if he gives fair notice of the planned sale before it is too late to reverse the process.

v. **Order of Sale.** After proper citation and hearing, if necessary, the court may enter an order of sale, Section 346. Pursuant to Sections 344 and 33((f)(2) say the application must be posted for 10 days before an order can be entered. That order generally approves the earnest money contract and authorizes the personal representative to close the sale.

vi. **Report of Sale.** After the closing in escrow, or mock sale as it has sometimes been described, the personal representative has to file a report of sale, Section 353. The best report attaches a copy of the closing statement showing exactly what charges are made against the estate's interest and what the estate receives from the sale.

vii. **Decree Confirming Sale.** After the report of sale has been on file for five days, Section 355, the court may execute a decree confirming sale. There is no known way around this time frame.

viii. **Administrator's Deed & Release of Funds.** This transaction concludes with the recording of the administrator's deed and the disbursement of funds. See discussion infra regarding Deeds Without Warranties.

ix. **No Shortening of Times.** There is no known authority for shortening the 5 day period or the 10 day posting period: No matter how desperate the issues.

x. **Increase of Bond.** Sections 346 and 354 both require the court to review the adequacy of the bond before entering the order and decree. If necessary, the order or decree confirming sale must increase the amount of the bond.

xi. **Safekeeping Alternative.** An alternative is for the decree confirming sale to require the title company to pay the proceeds into a safekept account under Section 194 subsection 5. With the proceeds held in an account that is not

available to the administrator except by court order, the court does not have to raise the bond.

xii. **Joinder by Heirs.** Title companies sometimes ask for the signatures of the heirs.

(1) Support for that demand is set out in the Comment to Standard 11.40,

> Unless it is clear to the examiner that an administrator has the authority to convey, all heirs of the decedent must join the administrator in any conveyance.

(2) Standard 11.40 covers dependent administrators and not independent executors (they are covered by Standard 11.30). It is easy to understand a title company's demand, in some circumstances, for the joinder of the beneficiaries in an independent administration. However, it is hard to perceive the situation in a dependent administration where the administrator's authority would not be clear, if the proper order of sale and decree confirming sale have been signed.

d. **Documents To Be Recorded.** When the estate's real estate is in a county other than the county of probate, the following documents should be recorded in the deed records of the county where the real estate is located.

i. Application to Appoint Administrator

ii. Returned Citation on Application to Appoint Administrator

iii. Order Appointing Administrator

iv. Recent Letters of Administration

v. Application to Sell Real Estate

vi. Returned Citation on Application to Sell

vii. Order of Sale

viii. Report of Sale

ix. Decree Confirming sale, and

x. The administrator's deed.

e. **Power of Sale in the Will.** If there is a dependent administrator with will annexed, he may sell without a court order if there is a power of sale clause in the will, Section 332. However, such a sale will be limited by any provisions in the will. See discussion under Independent Administrations, <u>infra</u>.

f. **Creditors: Secured by Real Estate**

i. **Election of Claim Status.** Section 295 requires the personal representative to give secured creditors certified mail notice of the administration within two months of receiving letters of administration.

(1) Under Section 306(b) within four months of receiving notice the secured creditor must elect to be treated as either

(a) A matured secured claim (Section 306(a)(1)) or

(b) A preferred debt and lien (Section 306(a)(2).

(2) If no such election is made the creditor is treated as a preferred debt and lien.

(3) A preferred debt and lien means the creditor can look only to the collateral and may not pursue any deficiency claims. However, the proceeds from the collateral first goes to the creditor and are not subject to any other claims or charges. The lien holder can only pursue a foreclosure if the required payments are not made; and then only six months after the administration is established..

(4) On the other hand, a matured secured claimant has rights in the collateral at sale (Class 3 claimant under Section 322) and may pursue a deficiency like any other unsecured creditor (Class 8 claimant, Section 322). The proceeds from the collateral will first go to pay Class 1 claims (funeral and last illness expenses) and Class 2 claims (administration expenses including attorneys fees). Also, with the matured secured status the creditor loses his rights to foreclose.

(5) One difference is well illustrated in Cessna Finance Corp. v. Morrison, 667 S.W.2d 580 (Tex.App.–Hous [1st Dist.] 1984, no writ). The decedent bought and financed a plane with Cessna. He flew it to South America where it crashed and he was killed. A probate was taken out in Harris County and Cessna elected preferred debt and lien status. The court of appeals held that under that election their sole remedy was to go to South America and pick up their collateral. They had no Class 8 claim against the estate.

ii. **Foreclosure** Once a debtor dies the rights of a secured creditor change.

(1) **Non Judicial: Before Administration.** If a secured creditor forecloses after the death of the debtor but before any administration is taken out, a subsequently appointed administrator may set the foreclosure aside, Pearce v. Stokes, 291 S.W.2d 309 (Tex. 1956). Only four years after the decedent's death does such a foreclosure become final, Wiener v. Zweib, 141 S.W. 771 (Tex. 1912). Also see **Texas Practice** Section 921. As a result, the only safe procedure for a secured creditor is to apply for an administration of the decedent's estate.

(2) **Non Judicial: During Administration.** After the establishment of an administration, any non judicial foreclosure is void, Pearce v. Stokes, supra.

(3) **Court Supervised: During Administration.** Section 306(f) sets out the procedure for foreclosing when preferred debt and lien status has been elected. For a thorough discussion see "Claims Procedures in Probate and Guardianship," Schwartzel 1996 Advanced Estate Planning and Probate Tab D and "Handling Claims Against Decedent's Estates," Horrigan, 1997 Advanced Estate Planning and Probate Tab K. Worth noting here:

(a) The secured creditor cannot do anything during the first 6 months after letters are issued. Of course if the property is sold or distributed to an heir, Section 306(e), the creditor will be paid out of the proceeds..

(b) The administrator does not have to make any payments during that 6 months, Section 306(e).

(c) However, if he does not pay all "maturities which have accrued..." the creditor may apply for a sale of the property or foreclosure of the lien after six months, Section 306(e)

(d) Before a hearing on the foreclosure application, any interested person can seek a continuance to have time to have the property appraised, Section 306(h).

(e) At the hearing the judge can allow the foreclosure or he can order a sale, Section 306(i)((1).

(f) If he allows a foreclosure, he may set a minimum price, provided only that it may not exceed the fair market value of the property, Section 306(i)(2).

(g) All of this allows the judge to maximize any equity in the property for the benefit of other creditors or the heirs.

g. **Federal Estate Tax Lien.** At death an estate tax lien is automatically imposed. It continues in place until released or for ten years from the date of death, IRC Section 6324.

i. **Priority.** Federal tax liens appear to have absolute priority. IRC 3713 says the federal debt takes priority over all other debts. Debts include distributions to beneficiaries, Want v. Commissioner, 280 F.2d 777 (2nd Cir. 1960).

ii. **Exceptions.** However, several exceptions have been allowed:

(1) Cost of administration, Abrams v. U.S., 274 F.2d 8, 12-13 (8th Cir. 1960);

(2) Family allowance, Schwartz v. Commissioner, 560 F.2d 311, 314 (8th Cir. 1977);

(3) Funeral expenses, last illness and wages owed to employees of the decedent's household, Rev. Rul. 80-112; and,

(4) Secured creditors whose lien was perfected before the decedent's death, United States v. Bond, 279 F.2d 837, 841 (4th Cir. 1960).

iii. **Unrecorded Lien.** This lien is different from the typical IRS lien which is recorded at the courthouse. This lien is not recorded but is automatically in place.

iv. **Reliance on Inventory.** Quite often real estate attorneys rely on the inventory to determine if the estate is taxable and subject to the lien. In fact, Standard 11.60 says "...an examiner may rely upon a court approved inventory..." Despite this authorization, it is clear that the inventory is not a reliable indicator. This is acknowledged in the third paragraph of the Comments to this Standard saying that information in the inventory "...may be erroneous or incomplete..." The inventory does not reflect non probate assets nor prior taxable gifts. Quite often the probate inventory will show an amount substantially below the taxable threshold ($1,000,000 in 2002), but the life insurance, retirement benefits, multi-party accounts and prior taxable gifts turn it into a taxable estate.

v. **Taxable Estates.** Although it may change at any time, federal estate taxation occurs when the taxable estate and prior taxable gifts reach:

2002-3	$1,000,000
2004-5	$1,500,000
2004-8	$2,000,000
2009	$3,500,000
2010	Estate Tax Repealed
2011	Estate Tax Reinstated

vi. **Release of the Lien.** There are several solutions for passing title free of or in spite of the federal estate tax lien:

(1) IRS will issue a release of lien upon application, U.S. Treas. Reg. 301.6325-1(b)(1).

(2) Although rarely used, the executor can post a bond, U.S. Trea. Reg. 301.6325-1(a)(2).

(3) The lien is also automatically released for property sold under court order to pay debts and administration expenses, IRC 6324(a)(1). This is not available for claims approved solely by an independent administrator, see infra.

(4) The last Comment to Standard 11.60 says an examiner upon satisfaction that there are "adequate liquid assets" may rely on the executor's affidavit that the "taxes will be paid."

(5) Title companies appear to regularly accept letters from the attorney for the estate that no taxes are owed or even that there are sufficient other assets to pay the taxes. Attorneys signing such a letter should be careful. While the title companies do not ask for any language making the attorney responsible, it is easy to envision the title company looking to the attorney if a problem ever arises.

(6) When the taxes have been paid, the executor should file an affidavit in the probate proceeding stating that all taxes have been paid. Copies of the IRS closing letter and the estate's canceled checks should be attached.

h. **Special Recorded IRS Liens.** There are additional liens that arise when taxes are deferred under Section IRC 6166 (IRC Section 6324A) or to secure any additional tax that might arise from the special use valuation under IRC Section 2032A (IRC Section 6324B). These are recorded liens.

i. **Mineral Leases.** Section 367 et seq sets out the procedure for a dependent personal representative to enter into a mineral lease.

j. **Renting Real Estate.** The administrator may rent out real estate without court permission for one year or less. For longer periods court permission is necessary. Section 359.

k. **Exoneration of Liens.** See below in independent administrations for special treatment if a beneficiary is specifically bequeathed real estate that is subject to a mortgage.

l. **Closing and Distribution.**

i. **Mandatory Procedure.** In a dependent administration a final account and discharge are required, Sections 404 through 414.

ii. **Partition.** When the debts and taxes are paid and all other matters of the estate are completed, the administrator must conclude the estate. First, he must determine if there is any property that should be partitioned, sold or distributed in undivided interests. If he concludes it should he must follow the partition rules in Sections 373 through 387.

iii. **Deeds.** In a dependent administration, unless there is a partition or non prorata distribution ordered, there may not be any need for deeds.

(a) If there is a will, see the discussion infra regarding independent administrations.

(b) If there is no order declaring heirship (or affidavit of heirship), deeds will be necessary.

(c) In any event, deeds will be helpful to subsequent title examiners.

iv. **Documents To Be Recorded.** The following documents should be recorded when there is real estate in a county other than the county where the administration is pending:

(a) Application to Appoint Administrator

(b) Returned Citation on Application to Appoint Administrator

(c) Judgment Declaring Heirship

(d) Affidavit That Debts and Taxes Are Paid.

(e) Order Closing Estate.

(f) Distribution Deed to Heirs or Beneficiaries, if any.

v. **Minor Heirs.** If any heir or beneficiary of the estate is a minor, the administrator should carefully consider options before making out a deed or closing the estate.

(1) The administrator may want to apply to the court to transfer the minor's share to a custodian to Custodian under Uniform Transfers to Minors Act, Texas Property Code Section 141.001 et seq.

(a) Section 141.006 allows an executor or trustee to convey to a custodian if authorized by the will or trust.

(b) Section 141.007 allows a fiduciary (including a personal representative under a will) to convey to a custodian even without authorization in the will. First the executor or court must determine:

(i) That it is in the best interest of the minor; and

(ii) That a transfer to a custodian is not prohibited or inconsistent with the will.

(c) A dependent administrator must get court permission.

(2) If this solution is not available, or not appropriate, the administrator may have to require the appointment of a guardian. The alternative is to deed the property to the minor.

11. **Probate: Independent Administrations.** Section 145 through 154A control independent administrations. Independent administrations seldom have to resort to court orders and there is no court supervision. Independent administrations generally arise because the testator appointed someone in his will to serve independent of court control. However, it is also possible under Section 145(c) (when there is no will or there is no independent executor named) to have an independent administrator appointed if all of the heirs or distributees agree.

a. **No Necessity Required.** Under Section 178(a) the applicant does not have to show necessity to obtain the issuance of letters testamentary.

b. **Sales of Real Estate.** If the will gives the executor authority to sell real estate, that governs and not the Probate Code. See Standards 11.30.

i. **Authority In The Will.** Wills generally give a very broad authorization to sell. If authorized by will the independent personal representative may sell without court order, Section 332.

ii. **Restrictions in Will.** If the authorization under the will is limited, the authority to sell is controlled by those limitations, Section 332. Standard 11.30 says the personal representative may convey "...if not prohibited by the will..."

iii. **Restrictions on Limitations.** However, the testator cannot make restrictions that prevent the estate obligations from being paid. That is true, again however, the testator cannot make it impossible for the payment of debts and expenses.

iv. **Priority of Assets.** The testator may provide the priority of items to be sold (Section 322B(d) and Section 322A(b)(2) to pay debts, taxes or expenses of administration.

v. **No Authority In Will To Sell: Implied Authority.** If there is no power of sale clause, the executor can sell without court order under the same circumstances that a dependent administrator could obtain court authorization, **Texas Practice**, Section 499.

vi. **Other Considerations For Sale** Since a judge is not involved, the personal representative must make those same determinations that a judge would in a dependent administration. However, all of these provisions are overridden by any contrary provision in the will.

(1) **Abatement.** Section 322B, the abatement statute sets out the hierarchy of asset liability for debts and administration expenses:

(a) First property not disposed of by a will,

(b) Then personal property in the residuary,

(c) Then real estate in the residuary.

(d) Then general bequests of first personalty and then realty

(e) And finally specific bequests of first personalty and then realty.

(2) **Tax Apportionment.** If there are any death taxes they are apportioned under Section 322A. That means each assets bears it proportional part of the tax it has incurred. This is a detailed statute and has to be reviewed with care by the personal representative.

(a) Subsection (t) allows the personal representative to withhold a portion of the property equal to the amount of the tax owed by that beneficiary.

(b) Subsection (u) says the representative "shall recover...the unpaid amount of the estate tax apportioned..."

(c) Subsection (o) gives the representative a right of reimbursement and authorizes him to petition a court to determine that right of reimbursement.

(d) The statute does not expressly authorize sale of real estate but it is either implied or the right of reimbursement petition should include that relief.

(3) **Most Advantageous.** Section 340 says the real estate to be sold "shall be that which the court deems most advantageous to the estate..." again, absent contrary instructions

in the will, the personal representative should consider this in selecting the real estate for sale.

(4) **No Authority Over Homestead.** The representative is not authorized to sell the homestead. Homestead are not subject to probate administration.

c. **No Court Ordered Sales** The entire sales procedure set out in Sections 331 and 341 through351 does not apply to independent administrations. If a sale is necessary and there is a question about the representatives authority to sell, the only judicial remedy would be a declaratory judgment action. Title companies sometimes demand a court order. Such an order is probably of no force and effect and most judges will not even sign such an order.

d. **Documents To Be Recorded.** When the estate's real estate is in a county other than the county of probate, the following documents should be recorded in the deed records of the county where the real estate is located.

i. Application to Probate Will and Appoint Executor

ii. Returned Citation on Application

iii. Order Probate Willing and Appointing Administrator

iv. Recent Letters Testamentary

v. Will

vi. Executor's deed.

e. **Joinder by Heirs.** Title companies sometimes ask for the signatures of the heirs.

i. Support for that demand is set out in the Comment to Standard 11.40,

> Unless it is clear to the examiner that an administrator has the authority to convey, all heirs of the decedent must join the administrator in any conveyance.

ii. If the purchaser has any doubts about the representatives authority to sell, his easiest remedy is to seek joinder by the beneficiaries. In addition, the beneficiaries can give him warranties in the deed.

f. **Problems in Sales by Independent Personal Representatives.** Because of the freedom from court supervision and court orders, a different set of issues arise in sales in independent administrations.

i. If there is no authority to sell in the will, the purchaser must satisfy himself:

(1) That there two or more debts that need to be paid. If there are no debts, the sale might be declared void, Blanton v. Mayes, 58 Tex. 422 (1993), or

(2) That there is other good reason for the sale

ii. Even if there is an authorization to sell, the purchaser must satisfy himself:

(1) That the personal representative qualified

(2) That a successor personal representative has not been qualified.

(3) That the probate proceeding is in proper order.

(4) That the administration has not been closed. The executor's power terminates when the estate is closed. Since the formal closing procedure is seldom used, the purchaser cannot always

be sure if the executor still has authority even by examining the probate record..

g. **BFPs: Examine the Record.** There is authority for protecting the BFP, Dallas Services for Visually Impaired Chldren, Inc. v. Braodmoor II, 635 S.W.2d 572 (Tex.App.–Dallas 1982, writ ref'd n.r.e.) if they have reviewed the probate record. Dallas Services says to be innocent under Section 188 you must have reviewed the probate record.

h. **Creditors: Secured by Real Estate**

i. **Election of Claim Status.** The procedural rules in dependent administrations do not apply to independent administrations. However, Section 146(b) allows a secured creditor to elect matured secured status. If he does not it is treated as a preferred debt and lien. See the discussion of Dependent Administrations, supra, for the differences between these two lien remedies.

ii. **Foreclosure** In an independent administration, the rights of the creditor do not change as dramatically. As distinguished from a dependent administration, a non judicial foreclosure can occur before or during an independent administration and not be subject to set aside, Pearce v. Stokes, supra, and Pottinger v. S.W. Life Insurance Co., 138 S.W.2d 645 (Tex.Civ.App.–1940, no writ).

iii. In Bozeman v .Folliott, 556 S.W.2d 608 (Tex.Civ.App.–1977, writ ______), the court held that the subsequent replacement of an independent executor with a dependent administrator did not permit the setting aside of a foreclosure.

In particular the court said

> "The assumption of control by the probate court does not invalidate the acts of the independent executor or change the prescribed procedure applicable while the executor had independent control of the estate. It was stated in Taylor v. Williams, 101 Tex. 388, 108 S.W. 815, 817 (1908)."

iv. If matured secure status has been elected, there is no foreclosure available.

v. If preferred debt and lien has been elected, then the creditor may foreclose without judicial permission if there is a default.

vi. Schwartzel, supra, and Horrigan, supra, also discuss claims and foreclosures in independent administrations.

i. **Federal Estate Tax Lien.** Again, at death an estate tax lien is automatically imposed for ten years from the date of death, IRC Section 6324.

i. **Unrecorded Lien, Reliance on Inventory & Taxable Estates.** All of the discussion under a dependent administration, supra, apply except for the court ordered payment of expenses and debts.

ii. **Release of the Lien.** All of the solutions set out under Dependent Administrations are available except that the lien is not released by an independent executor approving the claims. In Kleine v. US, 539 F.2d 427 (5th Cir. 1976) the court held that this procedure does not apply when an independent administrator approves a claim. However, the case goes on to suggest that the release would occur if a district

court approved the claim.

j. **Special IRS Liens.** See discussion under dependent administrations.

k. **Partition** Before closing and distributing the estate, the personal representative must determine if there is any property that must be partitioned or sold.

i. The executor may partition if given that authority under the will.

ii. The executor may make non prorata distributions if given that authority under the will.

iii. However, if the will does not give any power to partition or make non pro rata distributions, the executor may apply to the court under Section 150 for either a partition and distribution or an order of sale for any portion incapable of a fair partition and distribution.

iv. Once Section 150 is invoked Sections 373 et seq control.

l. **Mineral Leases.** Section 367 et seq appears to only cover dependent administrations and not independents. Section 367(b) says personal representatives "acting solely under court order may be authorized by the court..." to enter into leases. See Marshall v. Hobert Estate, 315 S.W.2d 604 (Tex.Civ.App–Eastland 1958, writ ref'd)

m. **Renting Real Estate.** Gatesville Red-Mix, Inc. v. Jones, 787 S.W.2d 443 (Tex.Civ.App.–Waco 1990, writ denied) says an independent executor may not enter into a long term lease if not authorized by the will ands there is no showing that the rental income was necessary for the payment of debt or other estate obligation.

n. **Exoneration of Liens.** If decedent made a specific bequest of real estate and makes no provision regarding any liens against the real estate, that specific bequest passes free and clear of those liens, Currie v. Scott, 187 S.W.2d 551 (Tex. 1945). Also see **Texas Practice** at Section 969 including pocket part.

o. **Closing and Distribution.**

i. **No Action.** In most independent administrations there is no formal closing. The examination of the probate record will not show any evidence that the estate has been closed. Further, an examination of the deed records will not show any evidence that the estate has been closed or that the property has been distributed to the beneficiaries. This creates issues for the purchaser, see Problems in Sales by Independent Personal Representatives, supra.

ii. **Closing Affidavit.** Section 151 provides a mechanism for an independent personal representative to close an estate by filing an affidavit which provides certain information. While rarely used, this makes clear that the estate is closed and third parties may now deal with the beneficiaries. Notice that there is no requirement that the court approve the affidavit.

iii. **Closing Upon Application of Distributee.** Section 152 also permits closing upon application of a distributee. The court may enter an order requiring the executor to file a Section 151 affidavit, close the estate, terminate the powers of the executor and release the surety on a bond. Subsection (b) says that order is sufficient legal authority for all persons to deal with the distributees.

iv. **Deemed Closed.** If neither Section 151 nor Section 152 is used, the estate will be deemed closed when all of the debts have been paid and all of the assets have been distributed, Estate of McGarr, 10 S.W.3d 373 (Tex.App.–Corpus Christi 2000, writ denied).

v. **Conveyances to Beneficiaries.** Generally there are no deeds to the beneficiaries and that can create problems. As seen, a deed can be very important to a purchaser; it shows that the executor is no longer exercising control over the property and the purchaser is safe in dealing with the distributee. In addition, it may be necessary in some circumstances to make clear who is the taker under the will.

(1) The will may be clear, "I leave everything to my three kids, Hewey, Dewey and Lewey." But that does not tell a third party if one predeceased what happened to his share or if there were any subsequently born children who take as a result of the pretermitted child statute, Section 67.

(2) The phrases "all of my children," or "my descendants," will not be clear either. Someone subsequently accepting a deed from three children will not know if there was a fourth or even if he has the right three.

(3) Some wills make two or more bequests in which the executor has to make allocations. The most common example is a tax sensitive will leaving some of the estate to the "bypass trust" and the rest to a "marital trust." In these situations it is vital to deed the real estate to one trust or the other.

vi. **Minor Beneficiaries.** See Dependent Administrations, supra.

vii. **Documents To Be Recorded.** The following documents should be recorded when there is real estate in a county other than the county where the administration is pending:

(a) Application to Probate Will and Appoint Administrator

(b) Returned Citation on Application to Probate Will and Appoint Administrator

(c) Order admitting will to probate and appointing administrator

(d) Will

(e) Affidavit That Debts and Taxes Are Paid.

(f) Affidavit Closing Estate, if any

(g) Distribution Deed to Heirs or Beneficiaries, if any.

12. **Deed Without Warranties.** Warranty clauses are not binding on an estate or its personal representative, Dallas County v. Club Land & Cattle Co., 66 S.W. 294 (Tex. 1902). Also see, Burlerson v. Whaley, 299 S.W. 718 (Tex.Civ.App.–Austin 1927, no writ). Thus it is recommended that executor's and administrator's deeds be without warranty. See **Texas Practice** Section 995. If a purchaser wants warranties his best solution is to insist on the joinder of the heirs or beneficiaries; there is no limitation on their ability to give warranties.

13. **Estate Not an Entity**. In preparing deeds the draftsman should insure not to name an estate as a grantor or grantee. The proper designation is "Joe Blow,

Administrator of the Estate of Sarah Blow." In Price v. Estate of Anderson, 522 S.W.2d 690, 691 (Tex.1975) and Henson v. Estate of Crow, 734 S.W.2d 648, 649 (Tex.1987), the Texas Supreme Court has made clear that an estate is not an entity.

14. **Representative May Not Purchase From The Estate.** Under Section 352 there is a general prohibition against the personal representative of the estate purchasing property of the estate.

a. Section 352 makes three exceptions:

i. If the will expressly authorizes a purchase by the personal representative;

ii. If there was a valid contract, deed of trust etc. pending before death;

iii. If the personal representative serves all of the distributees of the estate and its unpaid creditors and shows a court that the purchase is in the estate's best interest.

b. This rule applies to the personal representative's spouse as well, Wall v. Wall, 172 S.W. 2d 181 (Tex. Civ. App. 1943).

c. While there is no case on point, it is generally believed that the personal representative's attorney is also prohibited from purchasing from the estate, **Texas Practice**, Section 989, note.

d. A purchase in violation of Section 352 can be set aside upon application of any interested person, subsection (e).

15. **Representative May Purchase From Beneficiaries.** Section 352 does not prohibit a personal representative from purchasing from beneficiaries. However, any such purchase will be subject to a very careful scrutiny to insure the beneficiary had full knowledge and there was no overreaching or fraud. Hickman v. Stone, 5 S.W. 833 (Tex. 1887) and **Texas Practice** Section 989, note 66.

16. **Multiple Personal Representatives** If there is more than one personal representative, all personal representatives must join in conveyances, Section 240. This applies only to real estate. All other transactions can be performed with only one of several representatives. Also, if the will provides differently, the will controls.

17. **Community Property.** A personal representatives controls not only the decedent's separate property but also 100% of the decedent's sole management community property and 100% of the joint community property. The surviving spouse retains control over her sole management community property. There is a rarely used community administration set out in Sections 161 et seq. Also see Standard 11.90.

18. **Foreign Wills.** Sections 95 through 107A provide several solutions when there is a foreign will.

a. **Recording In The Deed Records.** Section 96 provides the simplest solution. Section 96 authorizes the filing in the deed records a copy of the will and probate proceeding which bear the

attestation, seal and certificate.

b. **Probate Filing.** If an administrator is needed there are two solutions.

i. If the will was probated in the domiciliary state of the decedent, the executor can file an application with the authenticated probate proceeding. No citation is required., Section 95(b)(1). Upon filing the will and proceedings, the will shall be admitted to probate and no further action is necessary. An executor or administrator will be appointed upon application to the court under Section 105.

ii. If the will was probated in a state that was not the domiciliary state of the decedent, then the application must also include all of the information required for a typical Texas probate with citation issuing to each devisee and each heir had their been no will, Section 95(b)(2).

iii. Section 103 permits the probating of a foreign will when it has not already been probated in another state.

19. **BFP** In various places it is clear that the courts intend to protect bona fide purchasers.

a. Those protections are discussed at various places above.

b. A bona fide purchaser will be protected when he takes based on a court decree, Section 192 **Texas Practice.** This point is well illustrated in Steele v. Renn, 50 Tex. 467 (1878). The purchaser took under a probated will that was later set aside as fraudulent. The court held that the BFP was protected.

c. Likewise, a BFP may rely on a court's determination that there is no need for an administration under Section 180, **Texas Practice**, Section 192.

d. Similarly if community property is titled solely in the name of the surviving spouse, the purchaser from that surviving spouse is protected from the deceased spouse's heirs, **Texas Practice**, Section 193. The heirs complaints must be directed against the surviving spouse, who holds the proceeds from their interest.

e. Protection is also provided to purchasers from unqualified community administrators, see **Texas Practice**, Section 543 and 544.

f. However, anyone who buys from an heir takes subject to any administration, **Texas Practice**, Section 191.

20. **Forms** A list of the forms attached to this article are:

a. Affidavit of Heirship
b. Notice to Secured Creditor
c. Application to Release Lien
d. Certificate Releasing Lien
e. Application to Sell Real Estate
f. Order of Sale
g. Report of Sale
h. Decree Confirming Sale
i. Administrator's Deed
j. Affidavit of No Debts or Taxes
k. Affidavit Of Taxes Paid
l. Executor's Distribution Deed Without Warranties.