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Special Proceedings MIS Office Normal JOJO 2 111 2002-01-14T03:27:00Z 2002-01-14T03:27:00Z 2 3307 18855 Supreme Court of the Philippines 157 37 23155 9.2720 110

6. General Powers and Duties of Executors and Administrators

An executor and administrator has the following powers and duties:

6.1 To maintain the estate in 'tenantable repair' and deliver the same in such repair to the heirs or devisees when directed by the court;⁷⁴

6.2 To possess and manage the estate of the deceased for the payment of the debts and expenses of administration;⁷⁵

6.3 To have access to partnership books and property where the deceased was a partner, under pain of contempt by the probate court;⁷⁶

6.4 With the approval of the court, to compound or compromise with a debtor of the deceased.⁷⁷

7. Inventory And Appraisal

Within three (3) months after his appointment, an executor or administrator shall file a true inventory and appraisal of all the real and personal estate of the deceased, with the assistance of one or more inheritance tax appraisers, as may be ordered by the court.

7.1 Exclusions from the inventory

The articles that should not be inventoried are: (a) the wearing apparel of the surviving spouse and minor children, (b) the marriage bed and bedding, and (c) such provisions and other articles as will necessarily be consumed in the subsistence of the family of the deceased. They shall not be considered as assets, nor administered as such.⁷⁸

7.2 Allowance to widow and family

The widow and minor or incapacitated children of the deceased, during the settlement of the estate, shall receive such allowance as are provided by law.⁷⁹

7.3 Questions of title

A probate court can resolve questions of title only provisionally. All that the court can do is to determine whether the properties should or should not be included in the inventory or list of properties to be administered by the administrator. If there is no dispute, well and good, but if there is, then the parties, the administrator and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so.⁸⁰

8. Sales And Mortgages

The need for approval by the probate court exists only where specific properties of the estate are sold and not when only ideal and indivisible shares of an heir are disposed of.⁸¹ The sale or mortgage of specific estate property may be approved by the court under the following circumstances:

8.1 For the payment of debts

The sale or encumbrance of real property to pay the obligations of the estate, if beneficial, may be approved when personal property is not enough to pay for the obligations of the estate, or where its sale or mortgage may be injurious to those interested and where the testator has not otherwise provided.

Note: If a part of the real property cannot be sold, or otherwise encumbered without injury to those interested in the remainder, the disposition may be of the whole of the property, or so much as is necessary or beneficial under the circumstances.⁸²

8.2 If beneficial

The court may authorize the sale of the whole or a part of said estate, although it is not necessary to pay the obligations of the estate so long as it is beneficial but such authority should not be inconsistent with the provisions of a will. The proceeds shall be given to the persons entitled to the estate in the proper proportions.⁸³

8.3 Bond to prevent sale, etc.

Persons interested may prevent a sale, mortgage or encumbrance by giving a bond in a sum to be fixed by the court, conditioned to pay the obligations of the estate. Such bond shall be for the security of the creditors, as well as the executor or administrator.⁸⁴

8.4 Regulations for granting authority to sell, mortgage, or otherwise encumber estate.

8.4.1 The executor or administrator shall file a written petition, setting forth (i) the debts due from the deceased, (ii) the expenses of administration, (iii) the legacies, (iv) the value of the personal estate, (v) the situation of the estate to be sold, mortgaged, or otherwise encumbered, and (vi) such other facts as will show that the sale, mortgage, or other encumbrance is necessary or beneficial.

8.4.2 The court shall then cause notice to the persons interested, stating the nature of the petition, the reason for the same, and the time and place of hearing. The court may cause further notice by publication or otherwise.

8.4.3 The court may direct the executor or administrator to give an additional bond to account for the proceeds of the sale, mortgage, or other encumbrance.

8.4.4 The court may then grant the petitions in proper cases, such part of the estate as is deemed necessary. The court may authorize the sale to be public or private, as would be most beneficial to all parties concerned.

8.4.5 If the property is to be sold at auction, the mode of giving notice of the time and place of the sale shall be governed by the provisions concerning notice of execution sale.⁸⁵

8.4.6 The transaction and the court order shall be recorded in the registry of deeds.⁸⁶

9. Actions By And Against Executors And Administrators

In general, executors and administrators may bring or defend actions that survive. Claims that do not survive are money claims that have to be filed in the estate proceedings.

9.1 Actions that survive are those actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or

personal.⁸⁷

9.2 Actions that do not survive are the money claims or (a) all claims for money arising from contract, express or implied, due, not due or contingent;⁸⁸ (b) all claims for funeral expenses; (c) expenses for the last sickness of the decedent; and (d) judgment for money against the decedent, which should be presented in the form of claims against the estate.⁸⁹

9.3 Mortgage due estate may be foreclosed

If the deceased was a mortgagee or assignee of the right of a mortgagee, the mortgage may be foreclosed by the executor or administrator.⁹⁰

9.4 Proceedings when property concealed, embezzled, or fraudulently conveyed

9.4.1 When a person is suspected of having concealed, embezzled, or conveyed away any of the money or chattels of the deceased, or such person possesses or knows of a document which contains evidence of or tends to disclose the right of the deceased to real or personal estate, or his last will and testament, the court may cite such suspected person to appear or to answer, and may examine him on oath⁹¹

9.4.2 If the person so cited refuses to appear and give rogatories, the court may punish him for contempt and may commit him to prison until he submits to the order of the court. The interrogatories, if any, and his answers thereto, shall be in writing and shall be filed in court.⁹²

9.5 Rendition of account

A person entrusted by the executor or administrator with property of the deceased, may be compelled to render a full account on oath before the court.⁹³

9.6 Embezzlement before letters issued

A person who embezzles or alienates property of the deceased before issuance of letters testamentary or of administration, is liable for double the value of the property embezzled. ⁹⁴

9.7 Remedy for fraudulent conveyance by the deceased during his lifetime

The remedy may be by action of the executor or administrator or by a creditor under the following circumstances.

9.7.1 Action by executor or administrator

When there is a deficiency of assets to pay its debts, but the deceased during his lifetime conveyed property with intent to defraud his creditors, the conveyance would by law be void as against his creditors, and the subject of the attempted conveyance would be subject to attachment in his lifetime. The executor or administrator may file an action to recover such property but is not bound to do so, unless the creditors pay for the costs and expenses thereof or give security as the court deems equitable.⁹⁵

9.7.2 Action by the creditor

On the other hand, a creditor may file such an action in the name of the executor or administrator upon the filing by the creditor of a bond approved by the court to indemnify the executor or administrator. The creditor shall have a lien on the judgment recovered for costs and expenses as the court deems equitable.⁹⁶

Note: Where the conveyance or attempted conveyance was made by the deceased in his lifetime in favor of the executor or administrator, the action of the creditor shall be filed in the name of all the creditors without need of court permission or the court and the filing of a bond.⁹⁷

10. Money Claims Against The Estate; Notice To Creditors

Immediately after granting letters testamentary or of administration, the court shall issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of court.⁹⁸

10.1 Time within which claims shall be filed

In said notice, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. However, before an order of distribution is issued, the court may, for cause shown and on such terms as are equitable, allow a claim to be filed within a time not exceeding one (1) month.⁹⁹

10.2 Publication of notice to creditors

The executor or administrator shall immediately cause the notice to be published three (3) weeks successively in a newspaper of general circulation in the province, and to be posted for the same period in four (4) public places in the province and in two (2) public places in the municipality where the decedent last resided.¹⁰⁰

10.3 Filing copy of printed notice

Within ten (10) days after the publication and the posting, the executor or administrator shall file in court a printed copy of the notice, accompanied with an affidavit of publication setting forth the dates of the first and last publication thereof and the name of the newspaper in which the same was printed.¹⁰¹

10.4 Filing of claims

The claims which must be filed under the notice are:

10.4.1 all claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent;

10.4.2 all claims for funeral expenses and expenses for the last sickness of the decedent; and

10.4.3 judgment for money against the decedent.¹⁰²

Note: Under the 1997 Rules of Civil Procedure, an action for a contractual money claim against a defendant who dies before entry of final judgment, must proceed until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced as a money claim against the estate of the defendant which shall be filed in the estate proceeding.¹⁰³

10.5 Time bar

Claims that are not filed within the time limited in the notice, are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants.

10.6 Set off

Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime.- A debtor may set forth in an action by the executor or administrator against him, by answer the claims he has against the decedent, instead of presenting them independently as a claim against the estate, and mutual claims may be set off against each other in such action. Claims not yet due, or contingent, may be approved at their present value.¹⁰⁴

10.7 How to file a claim¹⁰⁵

A claim may be filed with the clerk of court with the necessary vouchers and supporting affidavits, serving a copy thereof on the executor or administrator.

10.7.1 If the claim is not due, or is contingent, it must also be supported by affidavit stating the particulars thereof. When the affidavit is made by a person other than the claimant, he must set forth therein the reason why it is not made by the claimant.¹⁰⁶

10.7.2 The court, in its discretion, and as a matter of convenience, may order all the claims to be collected in a separate folder.¹⁰⁷

10.8 Disposition of admitted claim

Any claim admitted by the executor or administrator shall immediately be submitted by the clerk to the court who may approve the same without hearing; but the court may order that known heirs, legatees, or devisees be notified and heard.¹⁰⁸

10.9 Trial of contested claim

If an heir, legatee, or devisee opposes the claim, the court may allow him fifteen (15) days to answer the claim. Upon the filing of an answer or upon the expiration of the time for such filing, the clerk of court shall set the claim for trial with notice to both parties. The court may refer the claim to a commissioner.¹⁰⁹

10.10 Judgment appealable

The judgment of the court approving or disapproving a claim, is appealable. A judgment against the executor or administrator that he pay shall not create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.¹¹⁰

11. Payment Of Debts

If there are sufficient assets to pay the debts, the executor or administrator shall pay the same within the time limited for that purpose.¹¹¹

11.1 Source of payment as designated by the testator

The debts of the testator, expenses or administration, or family expenses, shall be paid according to the provisions of the will; but if the provisions are not sufficient, such part of the estate not disposed of by will, if any, shall be appropriated for that purpose.¹¹²

11.2 Personalty first chargeable for debts, then realty

The personal property of the deceased shall first be chargeable with the payment of debts and expenses; but if it is not sufficient, or its sale would be detrimental to the participants of the estate, the whole of the real estate not disposed of by will, or so much thereof as is necessary, may be sold, mortgaged, or otherwise encumbered by the executor or administrator, after obtaining the authority of the court therefor.¹¹³

11.3 Preference of payment if estate insolvent

If the assets are not sufficient for the payment of debts, they shall be paid in accordance with the provisions of Articles 1059 and 2239 to 2251 of the Civil Code on concurrence and preference of credits.¹¹⁴

11.4 When and how claim proved outside the Philippines against insolvent resident's estate paid

If claims have been duly proven in another country against the estate of an insolvent who was at the time of his death an inhabitant of the Philippines, and that the local executor or administrator knew of such claims and an

opportunity to contest their allowance, the court shall add a certified list of such claims to the list of claims proved in the Philippines so that a just distribution of the whole estate may be made, but the benefit of this and the preceding sections shall not be extended to the creditors in another country if the property of the deceased there found is not equally apportioned to the creditors residing in the Philippines and the other creditors, according to their respective claims.¹¹⁵

11.5 Time for paying debts and legacies

The executor or administrator shall pay the debts and legacies of the deceased within a period of time fixed by the court, which shall not exceed one (1) year, but the court may, on motion of the executor or administrator and after hearing, extend the time as the circumstances of the estate require not exceeding six (6) months for a single extension, but the whole period allowed to the original executor or administrator shall not exceed two (2) years.¹¹⁶

12. Accountability And Compensation Of Executors And Administrators

Except as otherwise expressly provided in the following sections, every executor or administrator is chargeable (a) with the whole of the estate of the deceased which has come into his possession, at the value of the appraisal contained in the inventory; (b) with all the interest, profit, and income of such estate; and (c) with the proceeds of so much of the estate as is sold by him, at the price at which it was sold.¹¹⁷

12.1 Increase or decrease in value

No executor or administrator shall profit by the increase, or suffer loss by the decrease or destruction, without his fault, of any part of the estate.

12.1.1 He must account for the excess when he sells any part of the estate for more than the appraised value, and if any is sold for less than the appraisal, he is not responsible for the loss, if the sale has been justly made.

12.1.2 If he settles any claim against the estate for less than its nominal value, he is entitled to charge in his account only the amount he actually paid on the settlement.¹¹⁸

12.2 Accountable for income from realty used by him

If the executor or administrator uses or occupies any part of the real estate himself, he shall account for it as may be agreed upon between him and the parties interested, or adjusted by the court with their assent. If the parties do not agree, the amount may be ascertained by the court, whose determination shall be final.¹¹⁹

12.3 Accountable for delay

When an executor or administrator unreasonably delays to collect the debts, sell estate of the deceased, or neglects to pay over the money he has in his hands, and the value of the estate is thereby lessened or unnecessary cost or interest accrues, or the persons interested suffer loss, the damage sustained may be charged against him, and he shall be liable therefor on his bond.¹²⁰

12.4 Expenses and fees allowed executor or administrator¹²¹

An executor or administrator shall be allowed the necessary expenses in the care, management, and settlement of the estate, and for his services, four pesos per day for the time actually and necessarily employed, or a commission upon the value of so much of the estate as comes into his possession and is finally disposed of by him in the payment of debts, expenses, legacies, or distributive shares, or by delivery to heirs or devisees, of :

12.4.1 2% of the first Php 5,000;

12.4.2 1% of more than Php 5,000 but less than Php 30,000;

12.4.3 1/2% of more than Php 30,000, but less than Php 100,000; and

12.4.4 1/4% of more than Php 100,000.

Note: But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed. If objection to the fees allowed to be taken, the allowance may be re-examined on appeal.

12.5 Two or more executors or administrators

If there are two or more executors or administrators, the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively.¹²²

12.6 Attorney's fees prohibited

When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him,¹²³ but he may employ counsel.¹²⁴

12.7 Compensation provided in the will

When the deceased by will makes some other provision for the compensation of his executor, it shall be a full satisfaction for his services unless by a written instrument filed in the court he renounces all claim to the compensation provided by the will.¹²⁵

12.8 When executor or administrator to render account

Every executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration, unless the court otherwise directs because of extensions of time for presenting claims against, or paying the debts of, the estate, or for disposing of the estate. He shall render such further accounts as the court may require until the estate is wholly settled.¹²⁶

12.9 Examinations on oath with respect to account

The heirs, legatees, distributees, and creditors of the estate and the executor or administrator may be examined on oath on any matter relating to an administration account.¹²⁷

12.10 Notice to examine the account of the executor or administrator

Before the account of an executor or administrator is allowed, notice shall be given to persons interested of the time and place of examining and allowing the same; and such notice may be given personally or by advertisement in a newspaper or newspapers, or both, as the court directs.¹²⁸ A person liable as surety in respect to such account may, upon application, be admitted as party to such accounting.¹²⁹

4. Distribution and Partition¹³⁰

The distribution of the estate can only be made after strict compliance with the provisions in Rule 90, Rules of Court.

1. When Distribution Is Made

1.1 Payment of obligations required

The estate may be distributed only if the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, have been paid. (Note: What is provided in the law is only an estate tax

payable by the heir has already been abrogated.)

1.1.1 The court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession.

1.1.2 If there is a controversy as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.¹³¹

1.2 Advance distribution

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.¹³²

2. Partial distribution, without paying estate taxes

A judge commits a grave abuse of discretion when he orders a partial distribution of the estate without the payment of estate taxes.¹³³

3. Expenses of partition

Expenses of partition may be paid by the executor or administrator when it appears equitable to the court and not inconsistent with the intention of the testator; otherwise, they shall be paid by the parties in proportion to their respective shares or interest in the premises, and the apportionment shall be settled and allowed by the court, enforceable by execution.¹³⁴

4. Project of Partition

The practice in this jurisdiction is to prepare and present a project of partition to the court. It is merely a proposal for the distribution of the hereditary estate and determine the persons entitled thereto.¹³⁵

5. Final order of partition; recording the order of partition of the estate

Certified copies of final orders and judgments of the court relating to the real estate or partition thereof shall be recorded in the registry of deeds.¹³⁶

74 Rules of Court, Rule 84, Sec. 2.

75 Ibid, Sec. 3.

76 Ibid, Sec. 1.

77 Rules of Court, Rule 87, Sec. 4.

78 Rules of Court, Rule 83, Sec. 2.

79 Ibid, Sec. 3.

80 Sanchez v. Court of Appeals, G. R. No. 108947, September 29, 1997, 279 SCRA 647.

- 81 Heirs of Pedro Escanlar v. Court of Appeals, G. R. No. 119777, October 23, 1997, 281 SCRA 176.
- 82 Rules of Court, Rule 87, Sec. 2.
- 83 Ibid, Rule 89, Sec. 4.
- 84 Ibid, Sec. 3.
- 85 Rules of Court, Rule 39.
- 86 Rules of Court, Rule 89, Sec. 7.
- 87 Rules of Court, Rule 87, Sec. 1.
- 88 These claims are specifically described as contractual money claims in the Rules of Court, Rule 3, Sec. 20.
- 89 Rules of Court, Rule 86, Sec. 5; Belamala v. Polinar, No. L-24098, November 18, 1967, 21 SCRA 970.
- 90 Rules of Court, Rule 87, Sec. 5.
- 91 Rules of Court, Rule 87, Sec. 5.
- 92 Ibid., Sec. 6.
- 93 Ibid., Sec. 7.
- 94 Rules of Court, Rule 87, Sec. 8.
- 95 Ibid., Sec. 9.
- 96 Ibid., Sec. 10.
- 97 Rules of Court, Rule 87, Sec. 10.
- 98 Ibid, Rule 86, Sec. 10.
- 99 Ibid, Sec. 2.
- 100 Ibid.
- 101 Rules of Court, Rule 86, Sec. 4.
- 102 Ibid, Sec. 5.
- 103 Rules of Court, Rule 3, Sec. 20.
- 104 Rules of Court, Rule 86, Sec. 5.
- 105 Ibid, Sec. 9.
- 106 Ibid.
- 107 Rules of Court, Rule 86, Sec. 9.
- 108 Ibid, Sec. 11.

109 Ibid, Secs. 11 and 12.

110 Rules of Court, Rule 86, Sec. 13

111 Rules of Court, Rule 88, Sec. 1.

112 Ibid, Sec. 2.

113 Ibid, Sec. 3.

114 Rules of Court, Rule 88, Sec. 7.

115 Rules of Court, Rule 88, Sec. 10.

116 Ibid, Sec. 15.

117 Rules of Court, Rule 85, Sec. 1.

118 Ibid, Sec. 2.

119 Rules of Court, Rule 85, Sec. 4.

120 Ibid, Sec. 5.

121 Ibid, Sec. 1.

122 Rules of Court, Rule 85, Sec. 1.

123 Ibid, Sec. 7.

124 Dacanay v. La Mancomunidad de Telepuis, 72 Phil. 50 [1941]; Aldamiz v. Judge of the Court of First Instance of Mindoro, 85 Phil. 228 [1949].

125 Rules of Court, Rule 85, Sec. 7.

126 Ibid, Sec. 8.

127 Ibid, Sec. 9.

128 Rules of Court, Rule 85, Sec. 10.

129 Ibid, Sec. 11.

130 Rules of Court, Rule 90.

131 Rules of Court, Rule 90, Sec. 1, first and second paragraphs.

132 Ibid, second paragraph.

133 Vera v. Navarro, No. L-27745, October 18, 1977, 79 SCRA 408.

134 Rules of Court, Rule 90, Sec. 3.

135 Moran, Comments on the Rules of Court, 1997 ed., Vol. 3, pp. 688-9.

136 Rules of Court, Rule 90, Sec. 4.

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