

Independent Administration of an Estate

With the passage of Act 974 in 2001 by the Louisiana Legislature, the independent administration of an estate became a reality. This act not only streamlined the probate process, it also became more cost efficient.

Prior to 2001, when an estate was opened where there was a will, the Executor was confirmed and when there was not a will, an Administrator was appointed and confirmed. Thereafter, each and every action for the estate by the executor or administrator was filtered through the court. For example, if there was real estate to be sold, a Petition specifically addressing the piece of property would have to be filed with the court. The sale would have to be advertised on two separate occasions in the official newspaper of the Parish, and if there were no objections, the Judge would sign an Order allowing the sale. The advertising costs were sometimes quite high.

The law which became effective August 15, 2001 allows an independent administration as long as the applicable law is followed. Independent administration of an estate saves time and money.

Any administration of an estate can be converted to independent administration, if the heirs or legatees who are to inherit the balance of the estate all agree. Independent administrators have the powers, rights and duties of any succession representative, but without the unnecessary delays caused by objections, applications to the court, or actions in or by the court. For example, no petitions are necessary for the payment of debts; listing property for sale; sale of property, both movable or immovable; borrowing; leasing; exchanging; or investing succession property. Movable property is personal property and immovable property is real estate.

As with any administration that is not independent, the independent executor or administrator is still required to file a Petition for Possession, Sworn Detailed Descriptive List of Succession Assets and Liabilities, proof that no inheritance tax is due, and a Judgment of Possession before heirs/legatees are sent into possession.

An independent administration may be obtained in both testate (with a will) or an intestate (without a will) succession. In a testate succession, the testament may provide for an independent administration. The statement in

the testament is sufficient authorization for the court to be required to issue letters of independent executorship.

In testate successions where the will fails to authorize an independent administration, an independent administration shall be ordered if the general or universal (not particular) legatees consent. A usufructary and naked owner of an estate must consent to a conversion to an independent administration, if applicable. The independent administration may be requested and consented to upon filing for probate or at a later time. Additionally, a will may prohibit an independent administration if the testator is of the opinion that the succession should be supervised by the courts.

In an intestate succession, the consent of all the intestate successors is required for independent administration. They may collectively designate the independent administrator in the application for administration, or do so later.

Where the statutory requirements are met, the court has no discretion whether to issue Letters of Independent Administration and must do so. It is these letters of Independent Administration that give the administrator the authority to act on behalf of the estate. An independent administrator is not required to post security, except as required by the testament.

An independent administrator may be removed for the same causes as an ordinary administrator, or letters of independent administration may be withdrawn so that the succession would thereafter be administered as an ordinary, not independent, administration.

In conclusion, an independent administration streamlines the administration of an estate, is more cost effective and can expedite the process of opening and closing the estate by placing the heirs or legatee into possession of the decedent's estate sooner.