

EQUIPPER

Summer, 1980

To our Friends

With this the first issue of "Equipper" we inaugurate a valuable service to friends of Southeastern Seminary. We hope to accomplish two things with the "Equipper" newsletter. First, to offer information on financial planning and, second, to help you become aware how planned stewardship can be an integral part of your personal financial planning.

We will call on experts from the world of business, law, and financial planning to share their knowledge so that you may benefit in your own planning. With each issue we will also explain a stewardship topic that relates to the considered subject.

The title of our newsletter, "Equipper," was inspired by our commitment to 2 Timothy 3:17, "that all men of God be equipped to do His work . . ." To equip men and women in the work of the churches requires that all of us support seminary training either through the Cooperative Program or by gifts directly to Southeastern. We have no other source of support other than individual committed Christians.

We wish to thank Mr. J. Russell Nipper, Clerk of Superior Court, Wake County, North Carolina for consenting to be guest author of portions of this issue. Mr. Nipper, with over twenty years experience as Clerk of Court, offers us experienced insight into the will probate process. Although Mr. Nipper gives North Carolina law in his comments, other states may have similar procedures for administering estates. It is best that you check this with your attorney. The process of having a will validated is something all of us read about and talk about. Few have any firsthand experience. This issue of "Equipper" deals with the mechanics of the probate process.

The Editor

Probating A Will

by J. Russell Nipper

Clerk of Court's Function in the Estate Process

In North Carolina, the Clerk of Superior Court has general oversight in directing the administration of estates. This process begins with a formal presentation of the deceased person's will by an estate representative; that is, offering the will for probate. To probate is to give legal effect to a will and is done by an examination of witnesses to the will and of the person offering the will for probate. After the examination is successfully completed, the Clerk of Court orders the will probated. The probate process must take place in the deceased person's county of residence.

Getting the Will to the Clerk's Office

Initiative in getting the probate process started does not rest with the Clerk of Court's office. This first step must be taken by the individual likely to be named as estate representative or by some other person who has an interest in the deceased's estate. A presentation of the will to the Clerk of Court is the first step.

Before the will can be offered for probate it must be located. It is important that the estate representative know where the deceased kept his will. Many individuals store their wills in bank safe-deposit boxes — perhaps one of the best and most widely used places to keep such a document. If this is the case, there is a procedure for retrieving the will from the safe-deposit box. State law requires that a bank safe-deposit box be sealed at death and not be opened until a member of the Clerk's office, a member of the deceased's family, and a bank representative can conduct an inventory of the safe-deposit box. During the inventory, if a

will is discovered, the Clerk of Court will take possession and begin the probate process.

It may interest you to know that the Clerk of Court's office provides a free, safekeeping service for wills.

Length of Time to Settle an Estate

After a will has been offered for probate, notice must be given to creditors of that estate. This is done through a notice in local papers that appear once a week for four consecutive weeks. Thereafter, creditors have up to six months in which to submit their claims. Consequently, the estate cannot be closed during this period of time. Generally, the estate administration process takes a year to be completed. If there are complications, it can take two years or longer to close the estate.

Among the most frequently experienced complications in the administration process are problems such as collecting debts owed to the estate; or there may be litigation to be resolved or difference among heirs over division of the estate. It is often the case that hard-to-dispose-of real estate will delay closing of the estate.

When conditions set out in the will have been satisfied, and claims and taxes have been paid, then the estate representative may request permission to close the estate. Formal closing of the estate comes after the executor's final accounting has been approved by the Clerk of Court.

Cost of Administering and Estate

North Carolina law provides that an executor (representative of an estate with a will) or administrator (representative of an estate without a will) is entitled to a reasonable fee for his services. The fee cannot exceed five percent of the value of personal property in the estate. Receipts and disbursements into and out of the estate are the basis of determining the executor's fee.

Receipts are defined as the value of personal property in the estate. Disbursements are

defined as amounts expended for payment of debts. Disbursements do not include distributions to beneficiaries. Real estate is not used in determining the executor's fee unless the will directs the executor to sell real estate and distribute proceeds.

Factors to be considered in determining the estate representative's fee are: size of the estate, time required of the executor or administrator, responsibilities that must be assumed by the estate representative, the need for services of an attorney or other professional advisor, or court actions related to the estate.

Handling Estate Disputes

There can be varying types of disagreements experienced in the estate settlement process. However, they are usually of two kinds: those involving division of personal property and the division of real estate. Estate representatives are generally given certain latitude in settling these kinds of disputes, particularly those involving personal property. His options are to distribute, in kind, the disputed property to beneficiaries, or to sell the property and distribute dollar values. The estate representative usually has the final word in these matters.

If there is disagreement among beneficiaries over the division of real estate, the disagreement is resolved by a legal action where interested parties (beneficiaries) are brought together in court to sue for division of the property. The court, through its appointed commissioners, will divide the property according to the ownership rights of each of the parties. If this does not lend itself to an orderly division, the commissioners can order the property sold and proceeds divided according to the beneficiary's ownership interest.

A Public Record

Wills that are accepted for probate are public records. Being public records means that will records in the Clerk's office are open to inspection by the general public. However, the Clerk of Court does provide a safekeeping

service to the public for wills. These wills are not available to the public for inspection until they are offered for probate. This safekeeping service is offered without charge. ■

For information on financial planning, we invite you to request your complimentary copy of our booklet, "Estate Planning." This booklet is designed to give you information on:

- The objectives of estate planning.
- Information needed by your advisor.
- Importance of a will to your estate plan.
- New federal estate and gift tax laws.
- How to review your existing plan.

To receive your copy of this booklet, please return the enclosed reply card.

Stewardship Through Your Will

Today, more and more people are asking themselves what would become of their property if they were to die suddenly. Perhaps this question is prompted by increased estate value brought about by inflation or uncertain economic times. Our attention is drawn to the subject because of the abundance of information about the topic. Almost certainly the question arises from a real concern about the financial security of our families and our obligation to see the work of the churches perpetuated.

Christian Stewardship of Your Estate Requires . . .

That you state clearly the objectives of your estate plan to provide for:

1. Your lifetime needs
2. Family and dependent needs
3. Others to whom you are obligated
4. The work of the churches

The estate you possess represents a lifetime of accumulation; it has been accumulated

through hard work, wise investment, and management. Christian stewardship requires that you plan carefully for the ultimate disposition of your estate. Your estate plan can be a way for your influence for Christ to be extended into the future. Your will is a way for you to witness for Christ through what He has entrusted to you during your lifetime. There are other ways to create a positive estate plan; however, your will can be the basic part of an overall plan.

A Solid Plan

With a properly drawn and executed will you can have the assurance of knowing that your property is going to be disposed of according to your wishes. Without a properly drafted will you can't be sure, under the state's laws of distribution, that your estate will be apportioned adequately among family members. The state's distribution plan may require a larger portion to be reserved for children while allowing an inadequate portion for the wife's needs. In addition, good planning with your attorney will allow you to take full advantage of tax-saving techniques such as the marital deduction and family trusts. Furthermore, you can't assume that your lifetime pattern of annual gifts to institutions such as South-eastern Seminary will be continued by your estate. You may have expressed a wish to family and friends that your giving be continued, but the court is not allowed to take this action on your behalf. Only when you specify such gifts in your will is your estate representative allowed to act.

For a more detailed discussion concerning the advantages of proper estate planning and how planned stewardship can be included in your personal financial plan, we invite you to request our complimentary booklet on "Estate Planning." You may receive a copy by returning the enclosed reply card. You are further encouraged to consult your attorney on how information contained here may fit your own situation. ■

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