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SIMPLE DEVICES FOR THE TRANSFER OF ASSETS WITHOUT ADMINISTRATION

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The transfer of property from a decedent is usually accompanied by a formal administration proceeding in the county court. The fact that during last year 4,260 Denver residents died and approximately 2,100 estate proceedings were instituted in the county court would indicate that about only half of these decedents had property warranting administration proceedings. The additional fact, however, that during the same period approximately 4,000 inheritance tax applications were filed from Denver leads to a conclusion that practically every decedent possessed assets subject to inheritance tax, irrespective of estate proceedings.

This article deals with the means or devices by which assets are thus transferred without formal administration. The device or means of transfer will be found to vary with the type of property involved. There is no comprehensive law or regulation; rather, real property and many forms of personal property are affected by specific laws or regulations.

GOVERNMENT BONDS

Consider first United States Government bonds. At this time there are approximately $60,000,000,000 invested in government bonds, and some ten million investors have payroll or checking account deduction plans. We are considering in this regard only government bonds known as United States Savings Bonds and particularly the series "E", "F", and "G", which are the most popular. These bonds may all be held by persons in their individual names, in the names of two individuals as co-owners, or in the name of one individual payable on death to a designated beneficiary. Series "F" and "G" bonds may, in addition, be issued in the name of a corporation, partnership, or fiduciary, but all co-owner or beneficiary bonds must be in the name of natural persons only.

These bonds are authorized by the Second Liberty Bond Act, and the issuance and transfer are governed by Treasury Department regulations, as now contained in Treasury Department Circular No. 530. The co-owner form of registration authorized by the Treasury Department is "Mr. John Jones or Mrs. Mary Jones" and, of course, either co-owner can redeem with or without the consent or knowledge of the other co-owner. In the event of the death of one co-owner no evidence of any kind is required for redemption of the bond by the other co-owner and the survivor is the sole owner.

In the Colorado case of *In re Estate of Stanley,*[1] the decedent and another were co-owners of government bonds, but decedent's will contained a legacy bequeathing all bonds. In the controversy between the legatee and the surviving co-owner, the court upheld the ownership of the surviving co-owner as provided by the Treasury Department regulations.

Re-issuance in Lieu of Redemption

If the surviving co-owner, however, desires that the bond be re-issued rather than redeemed, that request for re-issuance is made on Treasury Department form PD 1787. The bond, the completed form, and a death certificate of the deceased owner are presented and the re-issuance is accomplished. Form PD 1787 merely requires the description of the bond, the designation of the requested form of re-issuance, the signature by the surviving owner, and the certification of that signature by a proper official. This same form is used in connection with beneficiary bonds where it is desired to omit a designated beneficiary, to omit a present beneficiary and name another person as beneficiary or co-owner, to change the present beneficiary to co-owner, and to add a co-owner or beneficiary. It is to be noted that if a beneficiary is designated on the surrendered bond and is living, he must execute the consent to the change which is a part of the form, executing the same before an authorized certifying officer. If the designated beneficiary is deceased, proof of his death must accompany the request.

Now, in the event of the death of a single owner or the death of both co-owners, the procedure to be followed is determined by the fact of whether or not there is an estate proceeding. If there is such a proceeding, payment is requested by the personal representative who must furnish a certified copy of letters and a death certificate of the first co-owner, if a co-owner bond is involved. If the letters were issued more than six months prior to the request for redemption, they must be certified to be in full force and effect. If the estate, however, is closed, then the person found by the court to be entitled to the bond requests the redemption, furnishing a certified copy of the court order upon which the ownership is based and a death certificate of the first deceased owner, if a co-owner bond. If re-issue rather than redemption is requested, then the representative of the estate prior to distribution requests re-issue using form PD 1455; or the person entitled to the bonds as legatee by the court order requests the re-issue, using the first designated form PD 1787. Form PD 1455 is to be used by the fiduciary for re-issue and is subject to the restriction that the fiduciary may not request re-issue in

[1] *In re* Estate of Stanley, 102 Colo. 422, 80 P. 2d 332 (1938).

co-ownership or beneficiary form. If the person entitled thereto desires a beneficiary or co-owner bond, the fiduciary must first complete PD 1455, and the individual then completes PD 1787. If there are two or more persons entitled to the bond, a separate form must be used for each distributee. If desired, a single bond may be divided in authorized denominations between two or more distributees.

Transfer Where There Is No Administration

Turning now to a matter more pertinent to the subject, we consider the transfer of bonds where there has been no administration. Where the owner or surviving owner died intestate and the face amount of the bonds does not exceed $500, re-issue or redemption may be requested on form PD 1946. If the debts of the decedent and his estate have not been paid, the unpaid creditors must join in the application. Payment will be made to a creditor, but not re-issue. In the absence of unpaid creditors, payment or re-issue will be made to the heirs of the decedent, and the application must be signed by all who are listed as heirs. Where the deceased bond owner left a will but it has not been admitted to probate and no administration is intended, or if the face amount of the bonds exceeds $500, then form PD 1646 is used. This form includes a more detailed description of those persons normally entitled to the estate of the decedent. It provides for the names, addresses and ages of all who are or might be heirs; the gross value of the decedent's estate; names, addresses and amounts of the bills of the undertaker, physician, nurses, hospitals, and other persons rendering services or furnishing supplies in connection with the last illness and burial of the decedent; a statement whether the bills have been paid or not; a statement whether there are other debts of the decedent; and finally, a request for re-issuance or redemption. Ordinarily, such an application for re-issue or redemption without administration will not be approved unless all debts of the decedent and of his estate have been paid or provided for and receipts or receipted bills or creditors' consents furnished covering the expenses of last illness and burial. By use of this form where redemption is sought, creditors will be paid from the proceeds of the bonds, and if unpaid creditors are not so provided for in the application, written consent of the creditor to the requested redemption or re-issue must be obtained and submitted with the form. In this connection, it is to be noted that the heirs by use of this form may agree on a re-issue or redemption among them not in accordance with the laws of descent and distribution. The application must be signed by all of the heirs. In the experience of the Federal Reserve Bank in Denver, amounts up to $1600 in face value of bonds have been either re-issued or redeemed through the use of this particular form.

Problems Where Minor Is Involved

Beneficiary bonds may be cashed by the beneficiary upon proving his identity and providing a death certificate of the owner with the bond. The minority of an owner or beneficiary of a bond is not indicated on the face of the bond unless there is a legal guardianship proceeding. If the legal guardianship proceeding is noted on the bond, then it is dealt with by the legal representative, insofar as redemption is concerned, in the same manner as if the legal representative were the owner. If the minority of the owner is not noted on the bond, it is dealt with as any other bond with the minor requesting re-issue or redemption just as an adult, subject only to the condition that the certifying officer believes that the minor knows what he is doing. If the certifying officer believes that the minor is not of sufficient age to have the necessary judgment, payment of such bond may be requested by the parent or other person with whom the minor resides upon furnishing satisfactory proof of identity. Any re-issue involving the bond of a minor will be restricted to such registration as will adequately protect the minor's rights.

In dealing with government bonds, no inheritance tax release is necessary.

POSTAL SAVINGS CERTIFICATES

Postal savings certificates constitute another popular medium of investment as evidenced by the fact that there are 21,000 depositors in Denver who have on deposit $18,000,000. In connection with postal savings certificates, it is to be remember that the maximum amount that can be deposited by any one individual is $2500, and certificates cannot be issued in co-ownership or beneficiary form. The procedure for the issuance and cashing of postal savings certificates is governed by postal laws and regulations under the direction of the Third Assistant Postmaster General. Very few of these regulations are in printed form, and merely come down by memorandum to the respective post offices.

In dealing with postal savings certificates belonging to a deceased owner, if administration proceedings are had, whether testate or intestate, the personal representative submits a certified copy of the letters to the post office and payment is made to that representative. Here, if the appointment was more than nine months prior to the request, the letters again must be certified to be in full force and effect.

In a situation where there is no administration of the decedent's estate and the deposit is reduced below $500 by paying or reimbursing a person who has paid the expenses of last illness and funeral of the decedent, then the heir or relative applies for reimbursement and payment using forms PS 114 and PS 136.

If the expenses of last illness and funeral are not paid prior to the application, then the creditor may be paid directly by the Post Office Department by using the two forms just mentioned, plus forms PS 115 and PS 115A. Any balance then remaining after the creditors' claims have been satisfied is paid to the heirs.

The Forms Necessary

PS 114 is the application form for payment. It requires a full description of the applicant, the deceased, the amount on deposit, the place of death of the deceased depositor, a statement that no administration has been had upon the estate, and a description by name, age, address, and relationship of the persons surviving the decedent who would be entitled by law to a distributive share in the estate. The accompanying form PS 136 is a statement as to the expenses incurred in connection with the last illness and funeral of the decedent, showing the name and address of the creditor, together with the amount of the bill. If those bills or any of them are not paid, then forms PS 115, which is a statement by the creditor, and PS 115A, which is a verification of the creditor's statement, are filed with the other forms.

These forms, therefore, provide a method for distributing the proceeds of postal savings certificates of a decedent by paying all expenses of last illness and funeral and remitting the balance to lawful heirs. If a distribution among the heirs is desired which is otherwise than the normal laws of descent and distribution direct, then an additional form PS 134 must be signed by all heirs designating the desired method of distribution. It is to be noted in this connection that if the funds on deposit are not ample to pay all creditors, then a pro-ration among the creditors will be made by the Post Office Department.

If the deceased depositor left a widow and there has been no administration of his estate, an amount up to $2500, the maximum deposit accepted, can be paid to the widow. This is true even though the decedent died testate, if the will has not been probated, and no administration is intended. The widow applies for such payment, again using form PS 114, and the same protection is afforded to creditors rendering services during the course of the last illness or funeral. Again, the creditors will be paid directly, or if payment is not thus made, they must consent to the payment of the widow.

Form PS 114 seems to be the basic form and it is merely amended by striking inapplicable language and inserting pertinent information where a transfer or distribution is sought in accordance with a court decree. In such case the form is executed by the fiduciary and accompanied by a certified copy of the decree. The same form is used where the account is being trans-

ferred under our small estates statute. In dealing with postal savings deposits, no inheritance tax release or waiver is necessary or need accompany the application.

TRANSFER OF FAMILY AUTOMOBILE

Many attorneys have been confronted with the frustrating problem of probating a will or administering an intestate estate where the only asset was the family automobile. In 1949, the Colorado legislature provided a method whereby car title may be transferred without administration proceedings.[2]

In such case an application, being essentially an affidavit, is filed with the Director of Revenue. In it are contained the facts concerning the decedent, description of the car, statement of the heirs at law of the decedent, statement that there were no unpaid bills or claims against the decedent, that all expenses of funeral and last illness have been paid, that there are no liens against the car, and a request that the title be re-issued to the applicant as the legal owner of the automobile. The present application form is designed to be used where the widow applies for the re-issuance, but it can be adapted to other situations by interlineation and amendment.

The application is accompanied by an indemnity bond protecting the Department of Revenue by reason of the requested issuance. The bond is usually in an amount double the value of the automobile, although the Director has in the past exercised some discretion in this particular regard. If there are existing liens against the car, the re-issuance is in such form as to protect the lien holder.

JOINT TENANCY, A LESS NOVEL DEVICE

Joint tenancy ownership of real property is such a well-known, widely used and much discussed device for transferring property without administration that no attempt will be made to expand on it here. A bank account in the names of two or more persons payable to them "or" any of them is deemed to be owned in joint tenancy.[3] Securities may be similarly held, but note that the word "or" will not here suffice. The statutory language should be followed.[4]

The title to an automobile also may be in joint tenancy. The authorization lies in a ruling of the Attorney-General rather than in the statutes. If the title itself indicates an intention of the owners to hold as joint tenants, the Director of Revenue will recognize such intent and re-issue to the surviving owner. A death certificate and inheritance tax release must accompany the request for re-issue. Such intention would probably be clear

[2] COLO. STAT. ANN., c. 16, § 13 (12-15) (Supp. 1949).
[3] COLO. STAT. ANN., c. 18, § 45 (1935).
[4] COLO. STAT. ANN., c. 92, § 17 (1935).

where the words "joint tenants" or "jointly" were used. The writer is not informed whether the words "and" or "or" inserted between the owners' names would suffice. No doubt the Attorney-General would rule in such a situation.

Other More Homely Devices Frequently Backfire

There are many other devices used to transfer property without administration, some finding legal justification as in the use of living trusts or conveyances with a reserved life estate. There are still others such as joint safety boxes, envelopes containing currency or property with a designated beneficiary's name on the envelope, unrecorded deeds, and similar ingenious devices which, more frequently than not, result in litigation and a complete frustration of the original owner's desires.

Those that we have considered, however, constitute the principal devices now in use where property is transmitted from one person to another without court proceedings. It is readily apparent that it is possible to transfer property of an almost unlimited value by the use of several of these devices. The family home, automobile, bank account, securities, postal savings deposits, and government bonds can all be held or owned in such a manner that upon the death of one person beneficial ownership passes to another without estate proceedings. Those who are qualified may draw conclusions or point a moral by reason of this fact. This article does no more than summarily consider these *simple devices.*

TESTAMENTARY TRUSTS SHOULD REMAIN UNDER COUNTY COURT JURISDICTION

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The purpose of this comment is to discourage the practice in will-drafting of taking a testamentary trust out of the jurisdiction of the county court.[1] In nearly every case a testator who does it, acts under the misapprehension that he thereby shows his confidence in his trustee and eases his burden. He is doing quite the opposite. Then, again, some will-drafters are confusing this with the entirely justifiable practice of granting broad powers to the trustee—a subject with which it has no connection.

The effect is that every time the trustee needs or wants to construe the will, or interpret his rights or duties under the same, a need which may frequently occur, he must file a separate suit in the district court. This of course is not as simple a procedure for him as to file a petition in the county court, if the trust

[1] Colo. Stat. Ann., c. 176, § 227(c) (1935).