

ESTATE ADMINISTRATION: ONE SIZE DOES NOT FIT ALL

When an individual dies, family members often delay or fail to assess what kind of estate administration may be necessary. Many times, individuals think that no administration is necessary when the first spouse dies. To the contrary, some kind of administration is often required, and the failure to administer the estate can create big issues in the future. On a brighter note, there are several alternatives to a full estate administration which can serve to transfer title to assets legally without the expense involved in a full administration. These options are discussed below:

1. DMV Form MVR-317. If the only asset to be transferred is a vehicle, then an individual heir can obtain a Form MVR-317 from the DMV and take it to the Clerk of Courts office. The Form is completed by the individual and signed and sealed on the back by the Clerk. The individual then takes this Form to the DMV, and the vehicle can be transferred. **Please remember that vehicles titled jointly in the names of spouses do not automatically pass in full to the other spouse.** Some kind of paperwork is necessary to transfer the one-half (1/2) interest owned by the deceased spouse to the name of the surviving spouse.

2. Affidavit of Collection. If the personal property passing through an estate equals \$30,000.00 with a surviving spouse as the sole heir, or \$20,000.00 where there are other heirs, then an individual can perform an Affidavit of Collection, which does not involve a notice to creditors and which does not cut off creditor's claims. This administration, however, only involves filing an initial Affidavit as well as a final Affidavit of Distribution and Disbursement within three (3) months thereafter. The Clerk issues an Affidavit of Collection with a seal which an individual can take to the bank or DMV for asset transfers.

3. Summary Administration. Where the surviving spouse is the sole heir, any assets which pass through probate can be transferred by a Summary Administration Form, in which all assets are simply assigned to the spouse. The spouse must sign a statement indicating that he or she is accepting all liabilities which may be incurred by the estate.

4. Year's Allowance. North Carolina law entitles a surviving spouse to \$30,000.00 off the top of an estate, whether or not the decedent had a Last Will and Testament. Therefore, if the surviving spouse is the sole heir and the property totals thirty thousand dollars (\$30,000.00) or less, then a Year's Allowance form can be used to give the property to the surviving spouse, even if the Will would direct the property otherwise.

5. Appointment of Limited Personal Representative. For a situation where an Affidavit of Collection, Year's Allowance, or Summary Administration could otherwise be used,

but where an individual wants to cut off creditor's claims, then a Limited Personal Representative can be appointed to cut off those claims and notify creditors.

6. Certificate of Probate. If property is owned jointly by husband and wife or is owned as joint tenants with rights of survivorship, then it passes automatically on death. If property, however, is only in the name of one individual, then the Will must be probated (not simply filed) and a Certificate of Probate must be entered in order to pass title to real estate. These documents must be filed in any county in North Carolina where real estate is owned. Failure to do so results in title not being passed with regard to real estate.

7. Combination. Many of the above-referenced shortcuts can be used in combination with each other to pass many assets without a full Estate Administration. Proper use of these procedures can save a great deal of time and expense.