



C R E S C E N T T I T L E

presents:

Succession Issues affecting Real Estate Transactions

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Proper Parties to Transactions

A. Succession Representatives

1. Executors (will)
 - a. Types of wills
 - i. Olographic testament
 - ii. Notarial testament
2. Administrators (no will)
3. Duty to collect, preserve and manage the succession's property in accordance with the law.

B. Heirs and Legatees

1. Legatees (will)
 - a. Universal Legacy is a disposition of all of the estate, or the balance of the estate that remains after particular legacies.
 - b. General Legacies is a disposition by which the testator bequeaths a fraction or a certain proportion of the estate or a fraction or proportion of the balance of the estate that remains after particular legacies.
 - c. Particular Legacies are neither general nor universal.
2. Heirs (no will)
 - a. Forced Heirs (determined at the time of death)
 - i. Children who are 23 years of age or younger
 - ii. Children of any age who because of physical or mental disability are permanently incapable of either managing their affairs or taking care of their persons.
 - b. Disposition
 - i. Forced Portion equals $\frac{1}{4}$ of deceased estate when there is 1 descendant and $\frac{1}{2}$ when there are two or more descendants.
 - ii. Disposable portion can be left to anyone by testament.
 - c. Representation a well-recognized fiction of law by which one person stands in the "place, degree and rank" of a deceased ancestor.



SUCCESSIONS UNDER ADMINISTRATION

A. Ordinary Administration

1. Acts with respect to succession property generally require court authority. This means that the administrator must petition the court for authority and provide notice via advertisement before an order can be obtained and the desired action taken.
2. Must file annual accounts of administration.
3. May be required to file accounts at other times by the court on its own motion or on the application of an heir, legatee or creditor.

B. Independent Administration

1. Provided by the will of the deceased.
2. Authorized by all heirs or universal legatees.
3. Same functions, powers and duties are the same as ordinary administrators, but court authority is not required.
4. Not required to file interim accounts, but any person interested in the estate may demand an annual account or the court may require an independent administrator to furnish accounts at more frequent intervals. Must file a final account unless heirs and legatees have waived.



CLASSIFICATION OF ASSETS & LIABILITIES

A. Community Property

1. Property acquired during marriage through effort, skill, or industry of either spouse.
2. Property acquired with community or separate funds
3. Property donated to the spouses jointly.
4. Income from community and separate property (unless a declaration of paraphernality is filed with respect to separate income)
5. Damages for loss or injury to community property
6. All other property not classified as separate property
7. Transfer by one spouse to the other spouse of his separate property, with the stipulation that it shall be part of the community, transforms the thing into community property. As to both movables and immovable, the transfer by onerous title must be in writing and by gratuitous title must be made by authentic act.



CLASSIFICATION OF ASSETS & LIABILITIES

B. Separate Property

1. Property owned before marriage
2. Gifts and inherited property
3. Property acquired with separate property or with separate and community property when the value of the community property is inconsequential in comparison with the value of the separate things used.
4. Damages for personal injury
5. Damages in an action for breach of contract against the other spouse for breach of contract against the spouse or loss sustained as a result of fraud or bad faith in the management of community property by the other spouse.
6. Things acquired as a result of a voluntary partition of the community during the existence of a community property regime.
7. Donation by one spouse to the other spouse of his undivided interest into separate property of the donee. Unless otherwise provided in the act of donation, an equal interest of the donee is also transformed into separate property. Therefore, all fruits are the donee's separate property.



CLASSIFICATION OF ASSETS & LIABILITIES

C. Community vs. Separate Debts

1. Community Debts

- a. Presumption that debts incurred during the marriage are community debts.
- b. Debts incurred by either spouse during the existence of a community property regime for the common interest of the spouses or for the interest of the other spouse.
- c. Attorney fees and costs in an action for divorce that terminates the community property regime.
- d. Alimentary obligations

2. Separate Debts

- a. A debt incurred by a spouse prior to the establishment of a community property regime, or one incurred during the existence of the community regime that is not for the common interest of both spouses or for the interest of the other spouse.
- b. Debts incurred after the termination of a community property regime.
- c. A debt arising from an intentional wrong not perpetrated for the benefit of the community.
- d. Debts incurred for the separate property of a spouse to the extent that it does not benefit the community, the family, or the other spouse.



LAW OF INTESTACY (No Will)

A. Devolution of Community Property

1. Descendants
2. Surviving Spouse

B. Devolution of Separate Property

1. Descendants
2. Siblings or descendants of siblings subject to usufruct of parents
3. Parents
4. Collaterals
5. Surviving Spouse



USUFRUCT

A. Civil Code Article 890 Usufruct

1. Usufruct over community property to Surviving Spouse when will is silent or when there is an intestate succession.
2. Until remarriage or death, whichever occurs first.
3. Can burden Forced Heir's legitime

B. Testamentary Usufruct

1. Duration and extent determined by testator (can be for life)

C. Conversion of Usufruct (Sale of Asset Subject to Usufruct)



PROCEDURE

A. Administration with Sale

1. Petition for Appointment of Succession Representative
 - a. Court issues Letters of Administration
2. Petition for Authority to Sell
 - a. Must have Purchase Agreement with provision stating that sale is "Subject to Court Approval".
3. Publication of Notice for Authority to Sell
 - a. Sale of Immovable Property requires two publications. The first publication and a second publication 21 days later.
4. Judgment on Application for Authority to Sell
 - a. For sale of immovable property must provide proof of 2 publications 21 days apart and that 7 days have elapsed since last publication.
 - b. Certify that no one has filed an objection to the action requested.
 - c. Court issues Judgment Homologating Authority To Sell.
 - d. Sell Property



PROCEDURE

A. Administration with Sale

5. Petition for Authority to Pay Debts (or Tableau of Distribution)
 - a. Proof of publication and that 7 days have elapsed since publication
 - b. Certify that no objection to the action requested has been filed
 - c. Pay debts

6. Filing Final Account
 - a. Notice to all heirs and legatees by certified mail

7. Judgment Homologating Final Account
 - a. Provide proof of service by certified mail (submitting green cards showing receipt of certified letter)
 - b. 10 days have elapsed since last certified letter received
 - c. Certify that no objection has been filed with the court

8. Petition for Possession and Discharge of Succession Representative
 - a. Provide proof of payment of succession debts
 - b. Obtain Judgment of Possession
 - c. Disburse funds



PROCEDURE

B. Independent Administration with Waiver of Formal Accounting

1. Petition for Appointment
 - a. Includes Affidavits of all heirs and legatees authorizing independent administration of the estate and waiver of formal accounting.
 - b. Court issues Letters of Independent Administration
2. Sell Immovable Property
3. Petition for Possession and Discharge of Succession Representative
 - a. Provide proof of payment of succession debts
 - b. Obtain Judgment of Possession
 - c. Disburse funds

C. Possession without Administration

1. Petition for Possession
2. Judgment of Possession
3. Heirs and Legatees sell property



MISCELLANEOUS ISSUES

A. All succession pleadings will require two individuals to execute an Affidavit of Death and Heirship indicating the deceased marital history and identifying heirs and legatees.

B. If there is a will, the will must be probated or "proved". Notarial wills are self proving. Olographic will require additional proof by someone knowing the handwriting of the decedent.

C. Pleadings will also include a Descriptive List of Assets and Liabilities identifying all things belonging to the estate and any debts of the estate.





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