Estate of Han Solo:
Unusual Aspects of Estate Administration

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HAN SOLO KILLED

Compiled from wire services

Former Rebellion General Han Solo was killed yesterday during the Resistance strike on Starkiller Base, the fortress-planet that served as the headquarters for the First Order.

According to a release provided by the Resistance, Mr. Solo was killed by Kylo Ren, the leader of the Knights of Ren, shortly before the Starkiller Base exploded.

"The galaxy has lost a true hero with Han Solo's death," the release stated. "He played a central role in ridding the galaxy of the oppressive Galactic Empire and played an equally critical role in today's successful assault on Starkiller Base. The Resistance and, in fact, the galaxy shall be forever in his debt."

Mr. Solo rose to galactic fame in 1977 when he assisted the Rebellion (the forerunner of the Resistance) in its attack on the first Death Star, which was destroyed during the battle by Luke Skywalker. Mr. Solo was later instrumental in the destruction of the second Death Star in 1983, which was the crushing blow to the Empire.

Mr. Solo's rise to his leadership position in the Rebellion has been well-documented. Orphaned at a young age, Mr. Solo turned to crime to survive. He briefly attended the Imperial Naval Academy, where he became a skilled pilot, but later was expelled from the Academy when he refused to kill the enslaved Wookiee Chewbacca. Instead, he freed the

Wookie, who swore a "life debt" to Mr. Solo and was a constant presence in his life thereafter.

Ousted from the Imperial Navy, Mr. Solo returned to crime and later became a renowned smuggler, with Chewbacca by his side.

In 1977, fate intervened when Mr. Solo was contracted by Luke Skywalker and Ben Kenobi to transport them to Alderaan, which, unbeknownst to them, had just been destroyed by the first Death Star. Arriving on the scene shortly after the planet's obliteration, Mr. Solo, Chewbacca and their passengers later assisted Princess Leia Organa in her escape from the Death Star. After he helped with the destruction of the Death Star in an ensuing battle, Mr. Solo was commissioned as a Rebellion General, a position he held through the Battle of Hoth and the climactic Battle of Endor, which resulted in the destruction of the second Death Star.

Mr. Solo married Princess (later General) Leia, and together they had a son, Ben. In recent years, Mr. Solo returned to a smuggler's life, while General Organa led the Resistance.

General Organa did not respond to requests for an interview, and there is no public information regarding what led to their separation.

Mr. Solo is survived by General Organa. The whereabouts of his son are unknown.

Memorial services will be held Sunday. In lieu of flowers, donations may be made in Mr. Solo's name to the Resistance or to the Wookiee Freedom Fund.
Leia Not Letting the Wookiee Win

Compiled from wire services

General Leia Organa, widow of the late Han Solo, has filed papers with the Register of Wills to be named administrator of Mr. Solo's estate. At this time, no one has presented a will signed by Mr. Solo. Opposing her request is Mr. Solo's longtime first mate, Chewbacca, who has filed a competing petition to have himself appointed as administrator.

Organa bases her claim to administer the estate on grounds that she is Mr. Solo's surviving spouse. As such, she argues that she has first priority under the law to be appointed.

Chewbacca is objecting to her appointment on dual grounds. First, he alleges that Organa forfeited her right to claim an interest in Mr. Solo's estate or serve as administrator when she "abandoned" Mr. Solo during their marriage, willfully deserted him and failed to provide Mr. Solo with financial support. The latter required Mr. Solo to return to work with Chewbacca as a smuggler. Second, Chewbacca alleges that Mr. Solo promised to leave his entire estate to Chewbacca in exchange for the Wookiee promising to work with him indefinitely for little or no pay. Thus, as a creditor of the entire estate, he argues that even if General Organa did not forfeit her rights in the estate, he is entitled to receive all of the assets.

When reached for comment, a representative for General Organa stated, "Our petition speaks for itself. Frankly, the General thought Chewbacca was better than this."

PATRICIDE:
Ren was Ben

Compiled from wire services

Multiple sources within the Resistance confirmed that Kylo Ren, the First Order enforcer who killed former Rebellion General Han Solo, was in fact Mr. Solo's son, Ben Solo. Representatives of Ben Solo's mother, General Leia Organa, declined to comment. Calls to the First Order were not returned.

According to a source close to General Organa, Ben Solo was being trained to become a Jedi Knight by Luke Skywalker, who, as General Organa's brother, is Ben Solo's uncle. At some point, Ben turned to the Dark Side and left his Jedi training to join the Knights of Ren.

The reclusive Skywalker has not been seen in public in many years and could not be reached for comment.

REN: “I’m no slayer”

Compiled from wire services

Kylo Ren, a.k.a. Ben Solo, the estranged son of the late Han Solo, has filed an action with the Orphans' Court for a determination that he is not a "slayer" within the meaning of the law. A finding that Ren, who killed Mr. Solo, is a "slayer" would strip him of any rights he has in Mr. Solo's estate.

Multiple witnesses were present when Ren pierced his father's heart with the end of his crudely constructed lightsaber. However, Ren has argued in court papers mitigating circumstances. Meanwhile, in his ongoing criminal case, Ren has indicated that he will plead not guilty by reason of insanity.
I. Disposition of Remains

A. General Rule. The Orphans’ Court has jurisdiction over the control of a decedent’s burial. 20 Pa. C.S. §711(1). Section 305 addresses who shall make decisions regarding the disposition of a decedent’s remains:

1. Subject to the provisions of a valid will, the surviving spouse has sole authority in all matters pertaining to the disposition of a decedent’s remains, absent allegations of enduring estrangement, incompetence, contrary intent or waiver and agreement, proven by clear and convincing evidence. 20 Pa. C.S. §305(a), (b).

2. In the absence of a surviving spouse, and subject to the provisions of a valid will, the next of kin shall have sole authority in all matters pertaining to the disposition of a decedent’s remains, absent allegations of enduring estrangement, incompetence, contrary intent or waiver and agreement, proven by clear and convincing evidence. 20 Pa. C.S. §305(a), (c).

3. The right to dispose of a decedent’s remains is not a property right, but rather a grant of authority to dispose of a decedent’s remains. Kulp v. Kulp, 920 A.2d 867 (Pa. Super. Ct. 2007) (addressing disposition of child’s cremated remains among child’s parents).

Practice Tip: If a client feels strongly about how their remains shall be disposed (e.g., cremation, Catholic burial, etc.), the estate planning attorney should consider including a provision in the will addressing the client’s wishes. Some clients also pre-plan (and pre-purchase) their funerals, leaving detailed instructions to their surviving loved ones.

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1 Title 20 of the Pennsylvania Consolidated Statutes (the Probate, Estates and Fiduciaries Code) is sometimes referred to herein as the “PEF Code.”
B. Definitions.

1. “Contrary intent” is an oral or written “explicit and sincere expression” made by the decedent prior to death and not revoked that a person other than the one authorized by Section 305 shall determine the disposition of his or her remains.

2. “Enduring estrangement” is a “physical and emotional separation from the decedent at the time of death” which has existed “for a period of time that clearly demonstrates an absence of due affection, trust and regard for the deceased.”

3. “Next of kin” means the spouse and blood relatives of the decedent, in the order that they be authorized to receive the decedent’s estate under the intestacy statutes, provided the person is an adult or an emancipated minor. 20 Pa. C.S. §305(e).

   a) The order of priority for the next of kin is as follows: (i) issue, (ii) parents, (iii) siblings or their issue, (iv) grandparents and (v) uncles, aunts and their children and grandchildren.

   b) The Pennsylvania Supreme Court cautioned that this rule of priority is not absolute and should be flexibly applied within reason dependent on the facts and circumstances, particularly with regard to the “nearness of the kinship and the personal relations between them and the decedent.” Pettigrew v. Pettigrew, 56 A. 878, 880 (Pa. 1904).

   c) In Pettigrew, the Pennsylvania Supreme Court noted that a non-family member may have priority over the next of kin in exceptional circumstances, and that each case “must be considered in equity on its own merits, having due regard to the interests of the public, the wishes of the decedent and rights of the [next of kin].” Id.

C. Procedure for Disqualification. Section 305(d) requires that a petition alleging enduring estrangement, contrary intent, etc., be filed with the Orphans’ Court within 48 hours of the later of the decedent’s death or the discovery of the decedent’s body. The Court may then direct that no final disposition of the remains shall be made until the petition is finally decided. The statute further sets forth the procedure that will apply when such a petition is filed, including who is to receive notice, the consequences if two or more persons have equal standing to decide but cannot agree, and the ability of the Court to award counsel fees if the petition is not supported by clear and convincing evidence. 20 Pa. C.S. §305(d).

1. Where the next of kin appear to be equally as close to the decedent, the Orphans’ Court may look to more objective criteria, including the named agent under the decedent’s health care power of attorney and financial power of attorney, in determining who shall have authority over the decedent’s remains. See, e.g., In re Weiss, 29 Fid. Rep. 2d 479 (O.C. Phila. 2009).
2. Where divorcing parents could not agree on the disposition of their daughter’s remains, the mother was permitted to inter the daughter over the father’s wishes to cremate based on evidence that the daughter had a closer relationship with the mother. Estate of N.P., 22 Fid. Rep. 2d 473 (O.C. Berks 2002) (citing Section 305(d)(2)).

3. The court found enduring estrangement where the Pennsylvania decedent lived apart from his Alaska-resident wife and children for six years preceding his death. Without first obtaining a divorce, the decedent entered into a second marriage. Based on the enduring estrangement, the court gave the rights to dispose of the decedent’s remains to his “second wife.” In re Ebert, 27 Fid. Rep. 2d 317 (O.C. Berks 2007).

Note: The court in Ebert said that one possible solution to the dispute was to divide the decedent’s cremains, although it declined to do so. Id. at 319. Anecdotally, judges addressing the disposition of cremated remains often make that suggestion as a means to resolve the dispute, because the disposition of remains is an “all or nothing” proposition.

4. The surviving spouse waived her right to dispose of the decedent’s remains in favor of the decedent’s mother, who had the decedent cremated. Decedent’s father (who was incarcerated in Texas) filed an action in state (Luzerne County) and federal court seeking damages on grounds that (a) the surviving spouse had been estranged from the decedent and (b) the decision by decedent’s mother (and the father’s ex-wife) to cremate the decedent violated his rights under Section 305. After the District Court for the Middle District of Pennsylvania dismissed the complaint on grounds that Pennsylvania law does not provide a private right of action for damages under these circumstances, the Third Circuit affirmed. In addition to agreeing that there was no private right of action, the Third Circuit found that the father had not filed his initial petition within the 48-hour period set forth in Section 305(d). When the father argued that the defendants engaged in fraud to deprive him of his rights, the Third Circuit ruled that he had not alleged fraud with sufficient particularity. Higgins v. Frank Bonin Funeral Parlor, 629 Fed. Appx. 168, 2015 WL 7253660 (3d Cir. Nov. 17, 2015) (non-precedential); see also Higgins v. Frank Bonin Funeral Parlor, 168 A.3d 278 (Pa. Super. 2017) (non-precedential) (affirming dismissal of state action on motion for judgment on the pleadings).

D. Slayer’s Act. The Slayer’s Act prevents anyone who participates in the willful and unlawful killing of another person to acquire property “or receive any benefit as the result of the death of the decedent.” 20 Pa. C.S. §8802. The Slayer’s Act is to be broadly construed “to effect the policy of this State that no person shall be allowed to profit from his own wrong, wherever committed.” 20 Pa. C.S. §8815.

E. Disinterment/Reinterment. With regard to the reinterment of a decedent’s remains, Pennsylvania case law creates a strong presumption against the removal of remains that have already been interred. Pettigrew, 56 A. at 880; Kulp, 920 A.2d 867.

Several factors may be considered in a reinterment request, including:

1. The degree of relationship that the party seeking reinterment bears to the decedent and the strength of that relationship;

2. The degree of relationship that the party seeking to prevent reinterment bears to the decedent;

3. The desire of the decedent, including the “general presumption that the decedent would not wish his remains to be disturbed,” or a specific statement of desire by the decedent;

4. The conduct of the party seeking reinterment, especially as it may relate to the circumstances of the original interment;

5. The conduct of the person seeking to prevent reinterment;

6. The length of time that has elapsed since the original interment; and

7. The strength of the reasons offered in favor of and in opposition to reinterment.


F. Burial Costs. The public policy of the Commonwealth of Pennsylvania favors a proper and decent burial for every decedent. Absent a testamentary direction providing otherwise, the amount of the decedent’s funeral and burial charges to the estate must be proportionate with the decedent’s station in life and commensurate with the size of the decedent’s estate. In re Caruso’s Estate, 72 Pa. D. & C. 411 (O.C. Del. 1950); see also In re Clark’s Estate, 75 Pa. D. & C. 2d. 525 (O.C. Dauphin 1976).

Strictly speaking, funeral expenses are not “debts” of the decedent; rather, funeral expenses are treated as a preferred charge upon the decedent’s estate which is imposed by law. If the assets of the estate are insufficient to pay all proper claims and expenses in full, the only categories of expenses that take priority over funeral and burial costs are obligations to the United States (e.g., unpaid income tax), estate administration expenses and the family exemption. 20 Pa.C.S. §3392(3).

In the absence of special circumstances, the decedent’s estate is primarily liable for the payment of funeral expenses, even though the surviving spouse, followed by the next of kin, have the right to bury the dead. In re Vranesevich’s Estate, 73 Pa. D. & C. (O.C. Beaver 1975).
“I don't know who you are or where you came from, but from now on you'll do as I tell you, okay?”

II. Appointment of Administrator

A. Terminology.

1. The term “personal representative” means an executor or administrator of any description. 20 Pa. C.S. §102.

2. “Letters testamentary” are granted to an executor designated in a will. 20 Pa. C.S. §3155(a).

3. “Letters of administration” are granted in all other circumstances. 20 Pa. C.S. §3155(b).

   a) When there is a will, but no executor qualifies, the Register of Wills may grant “letters of administration cum testamento annexo” (“letters of administration C.T.A.”) to the person or persons entitled thereto. 20 Pa. C.S. §3158.

   b) When an entire vacancy occurs in the office of personal representative before the administration is completed, the Register of Wills may grant:

      (1) “Letters of administration de bonis non” (“letters of administration D.B.N.”), in the case of an intestacy, or

B. **General Rule.** Section 3155(b) addresses the appointment of an administrator if an executor is not appointed under a will, or if a duly appointed executor is unable to serve or declines to serve. Section 3155(b) provides that letters of administration shall be granted by the Register of Wills, in such form as the case shall require, to one or more of the following persons and, except for good cause, in the following order:

1. Those entitled to the residuary estate under the will;
2. The surviving spouse;
3. Those entitled under the intestate law as the Register of Wills, in his or her discretion, shall judge will best administer the estate, giving preference, however, according to the sizes of the shares of those in this class;
4. The principal creditors of the decedent at the time of his or her death; and
5. Other fit persons.

20 Pa. C.S. §3155(b)(1)-(5).

C. **Renunciation of Presumptive Administrator.** If any one of the foregoing persons renounces his, her or its right to letters of administration, then the Register of Wills, in his or her discretion, may appoint a nominee of the person so renouncing in preference to the persons set forth in any succeeding paragraph. 20 Pa. C.S. §3155(b)(6).

*Example:* If a decedent died intestate survived by his wife and three children, the wife would be the presumptive administrator. If the wife does not wish to serve, she may renounce her right to serve and nominate a substitute administrator to be considered by the Register of Wills.

Where the decedent’s three children (and sole heirs) could not agree upon an administrator, the Register appointed the nominee of two of the children over the objection of the third child, who wanted a neutral administrator. The third child provided no justification why his siblings’ nominee should not be appointed and no evidence that he, or anyone else, would be a superior choice. Gorski Estate, 22 Fid. Rep. 2d 69 (R.O.W. Alleg. 2001).

*Practice Tip:* Where the presumptive administrators are a class of beneficiaries – for example, the decedent’s children – and only one member of the class wishes to serve, the other members of the class should file renunciations and nominations of the member to serve with the Register of Wills.

D. **Additional Permissible Administrators.** If an administrator is not identified pursuant to the ordering rule described above, then the Register of Wills may appoint (in the following order):
1. A guardianship support agency serving as guardian of an incapacitated person who dies during the guardianship administered pursuant to Subchapter F of Chapter 55 of the PEF Code (relating to guardianship support); or

2. A redevelopment authority formed pursuant to the act of May 24, 1945 (P.L. 991, No. 385), known as the Urban Redevelopment Law.

20 Pa. C.S. §3155(b)(7)-(8).

E. “Good Cause” Shown. Letters of administration will not be granted to the persons identified above if “good cause” is shown or, with respect to a nominee, the Register of Wills does not find the nomination acceptable within his or her discretion. Good cause is a facts and circumstances test. While the Register may exercise some degree of discretion, it must be within the statutory framework. The Register may not deviate from the order of appointment set forth in the statute absent good cause shown. In re Estate of Tigue, 926 A.2d 453 (Pa. Super. Ct. 2007).

1. Good cause was shown to deviate from the statutory priority, and justified the appointment of a non-heir, where the heir who sought appointment threatened to destroy the decedent’s real property. Lapp, Sr. Estate, 7 Fid. Rep. 3d 183 (O.C. Lycom. 2017).

**Practice Tip:** If the appointment of an administrator is expected to be contested, an interested party might consider filing an informal caveat with the Register of Wills. An informal caveat is a one-page pleading by which an interested party requests that the Register of Wills not issue letters without notice to the filing party. 20 Pa. C.S. §906.

An interested party wishing to serve as administrator may also file with the Register a petition seeking his or her own appointment. This could be the form Petition for Grant of Letters of Administration or a more formal Petition to Show Cause why the filing party should not be appointed as administrator. In a Petition to Show Cause, the interested party wishing to serve as administrator asks the Court to issue a decree directing the presumptive administrator(s) to show cause as to why the interested party should not serve as administrator. In either scenario, notice would be given to all heirs, who would have the right to participate in the proceeding. The party filing either type of petition is advised to collect as many renunciations or consents as he or she can to strengthen his or her position.

F. Standard of Review. On appeal of a Register’s appointment to the Orphans’ Court, review is not *de novo*, as an a will contest. Instead, the court plays an error-correcting role.

1. “In granting or revoking letters of administration, the Register is acting in a quasi judicial capacity. Hence, when his ruling is appealed, the Orphans’ Court’s authority is limited to a review of ‘his discretion as that of an inferior judicial officer:’" Phillip’s Estate, 293 Pa. 351, 355, 143 A. 9, 10 (1928).
Pennsylvania courts caution that in such cases the matter at issue is not to be tried de novo. Instead, the burden is on the petitioner to show an abuse of discretion by the Register: *Martin Estate*, 5 Pa. D. & C. 4th at 425. … As the Pennsylvania Supreme Court explained, while an appeal from the grant of letters of administration by the Register ‘brings the matter complained of before the Orphans’ Court de novo, that court does not, strictly speaking, act originally but is confined to a review of the discretion exercised by an inferior judicial officer.’ *McMurray’s Estate*, 256 Pa. 233, 236, 100 A. 798, 799 (1917).” *Cooper Will*, 26 Fid. Rep. 2d 401, 403, 2005 WL 3739299, *2 (O.C. Phila. 2005).

2. “When sitting as a judicial officer, the decisions of the Register of Wills will not be disturbed absent a finding that the Register abused her discretion or made an error of law.” *Lapp, Sr.*, 7 Fid. Rep. 3d 183, 186 (citing Tigue, supra).

G. **Time Limitation.** A 30-day waiting period may apply with respect to the appointment of an administrator. Section 3155(c) provides that, except with the consent of (i) those entitled to the residuary estate under the will, (ii) the surviving spouse and (iii) those entitled under the intestate law, no letters of administration shall be issued to the principal creditors of the decedent, other fit persons or to a redevelopment authority until 30 days after the decedent’s death. 20 Pa. C.S. §3155(c).

H. **Death Charges.** The Register of Wills shall not grant letters testamentary or letters of administration to any person charged, whether by indictment, information or otherwise, by the United States, the Commonwealth of Pennsylvania or any of the several states, with voluntary manslaughter or homicide, except homicide by vehicle, in connection with a decedent’s death unless and until the charge is withdrawn, dismissed or a verdict of not guilty is returned. 20 Pa. C.S. §3155(d).

I. **Persons Not Qualified.** Section 3156 identifies certain persons who shall *not* serve as personal representative. These include:

1. Individuals under 18 years of age;

2. A corporation not authorized to act as fiduciary in the Commonwealth of Pennsylvania;

3. A person, other than an executor designated by name or description in the will, found by the Register of Wills to be unfit to be entrusted with the administration of the estate;

4. The nominee of any beneficiary, legatee or person having any interest whatsoever, which such beneficiary, legatee or person is a citizen or resident of any country outside the territorial limits or possessions of the United States, when it shall appear doubtful to the Register of Wills that in the distribution of the estate any such person will have the actual benefit, use, enjoyment or control of the money or other property representing his or her share or interest therein; and
5. An individual charged, whether by indictment, information or otherwise, by the United States, the Commonwealth of Pennsylvania or any of the several states, with voluntary manslaughter or homicide, except homicide by vehicle, in connection with a decedent’s death unless and until the charge is withdrawn, dismissed or a verdict of not guilty is returned.

20 Pa. C.S. §3156(1)-(5); see also 20 Pa. C.S. §3181(c) (relating to revocation of letters granted to someone so charged).

J. Nonresidents. In addition, the Register of Wills shall have discretion to refuse letters of administration to any individual not a resident of the Commonwealth of Pennsylvania. 20 Pa. C.S. §3157.

K. Revocation of Letters. Section 3181 describes when the Register of Wills may revoke letters granted to a personal representative. Revocation by the Register is based on improper issuance in the first instance and should be distinguished from removal of a personal representative by the Orphans’ Court pursuant to 20 Pa. C.S. §§3182-3183.

1. No Will. The Register may revoke letters of administration whenever it appears that the person to whom they were granted is not entitled thereto. 20 Pa. C.S. §3181(a).

a) The Register properly revoked letters granted to the surviving spouse when it was later shown that the spouse had deserted the decedent within the meaning of the intestate statute, such that she was not entitled to share in his estate. In re Estate of Racht, 2016 WL 2909701 (Pa. Super Ct., May 17, 2016) (non-precedential).

b) Decedent was believed to have died intestate, and the Register appointed one of her siblings (who were the sole intestate heirs) to administer the estate. Subsequently, a holographic will was found that made specific bequests to Decedent’s stepchildren but otherwise resulted in an intestacy and did not name a personal representative. The Register revoked the letters granted to Decedent’s brother and granted letters of administration to the stepchildren’s attorney. The Orphans’ Court upheld the validity of the holographic will but revoked the letters of administration granted to the attorney on grounds that Decedent’s brother had priority under 20 Pa. C.S. §3155(b). Carpenter Estate, 22 Fid. Rep. 2d 426 (O.C. Luz. 2002).

c) The Register of Wills granted letters of administration to the adult decedent’s half-siblings instead of his mother on grounds that the mother could not inherit because her interest was forfeited under 20 Pa. C.S. §2106(b)(1) due to her abandonment of her son during his minority. On appeal, the Orphans’ Court ruled that the Register erred because, despite the abandonment, Section 2106 does not apply when the decedent was an adult at death. Johnson Estate, 26 Fid. Rep. 2d 357 (O.C. Phila. 2005)
(vacating decree granting letters to half-siblings and directing Register to grant letters to mother).

2. **When a Will.** Note that a will may be offered for probate at any time. 20 Pa. C.S. §3133. If a will appears after the Register has granted letters of administration, the Register may amend or revoke the letters granted if they are not in conformity with the provisions of the will admitted to probate. 20 Pa. C.S. §3181(2).

3. **Later Will.** Similarly, if the Register grants letters testamentary and later reopens its record to accept a later dated will (either under Pa. C.S. §3138 or upon an appeal to the Orphans’ Court), it may amend its record and revoke the prior grant of letters.

4. **Death Charges.** If, despite the provisions of 20 Pa. C.S. §3156(5), letters issue to a person who is charged with voluntary manslaughter or homicide, except homicide by vehicle, as set forth in Sections 3155 and 3156, the Register may revoke such letters, unless the charges have been dismissed, withdrawn or terminated by a verdict of not guilty. 20 Pa. C.S. §3181(3).

5. **Administrator pendente lite.** “Whenever the circumstances of the case require, letters of administration durante minoritate, durante absentia, or pendente lite may be granted to any fit person or persons, after such notice, if any, as the register shall require.” 20 Pa. C.S. §3160. For example, the Register will often appoint an administrator *pendente lite* while a probate appeal is litigated so that someone is authorized to pay expenses, collect assets, etc.

When the Register appoints an administrator *pendente lite*, it may appoint any fit person. The statutory scheme provided under 20 Pa. C.S. §3155(b) does not apply to appointment of an administrator *pendente lite*. *Witherspoon Estate*, 30 Fid. Rep. 2d 423 (O.C. Phila. 2009).
III. Intestate Succession

A. General Rule. Chapter 21 of the PEF Code governs intestate succession, which applies when all or any part of a decedent’s estate is not effectively disposed of by will or otherwise.

1. If there is a Surviving Spouse:
   a) If there is no surviving issue or parent of the decedent, the surviving spouse will receive the entire intestate estate. 20 Pa. C.S. §2102(1).

   b) If there is no surviving issue of the decedent, but the decedent is survived by a parent or parents, the surviving spouse will receive the first $30,000 plus one-half of the balance of the intestate estate. The parent or parents of the decedent will receive the other one-half balance of the intestate estate.2 20 Pa. C.S. §§2102(2); 2103(2).

   c) If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, the surviving spouse will receive the first $30,000 plus one-half of the balance of the intestate estate. The surviving issue of the decedent will receive the other one-half balance of the intestate estate. 20 Pa. C.S. §§2102(3); 2103(1).

   d) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, the surviving spouse will receive one-half of the intestate estate. The surviving issue of the decedent will receive the other one-half of the intestate estate. 20 Pa. C.S. §§2102(4); 2103(1).

   e) Note: In the case of a partial intestacy, any property received by the surviving spouse under the will shall by applied to satisfy the $30,000 spousal allowance, if applicable.

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2 In the case of a decedent who died as a result of the 9/11 terrorist attacks, a surviving spouse shall be entitled to 100% of any compensation award paid pursuant to the Air Transportation Safety and System Stabilization Act. 20 Pa. C.S. §2102(2).
2. **If there is No Surviving Spouse:** The decedent’s entire intestate estate shall pass in the following order:

a) Issue

b) Parents

c) Brothers, sisters or their issue

d) Grandparents

(1) One-half to the paternal grandparent or grandparents, or if both of them are dead, to the children of each of them and the children of the deceased children; and

(2) One-half to the maternal grandparent or grandparents, or if both of them are dead, to the children of each of them and the children of the deceased children.

(3) If both of the paternal grandparents or both of the maternal grandparents are dead leaving no child or grandchild to survive the decedent, then the half which would have passed to them or to their children and grandchildren shall be added to the half passing to the grandparent or grandparents or to their children or grandchildren on the other side.

e) Uncles, aunts and their children, and grandchildren

f) Commonwealth of Pennsylvania

20 Pa. C.S. §2103(1)-(6).

B. **Additional Rules of Succession.**

1. In general, shares are distributed on a per stirpital basis. 20 Pa. C.S. §2104(1), (2). Note that Section 2104(1) cuts off inheritance at second cousins: “[N]o issue of a child of an uncle or aunt of the decedent shall be entitled to any share of the estate unless there be no relatives as close as a child of an uncle or aunt living and taking a share therein, in which case the grandchildren of uncles and aunts of the decedent shall be entitled to share, but no issue of a grandchild of an uncle or aunt shall be entitled to any share of the estate.”

2. There is no distinction between whole bloods and half-bloods. 20 Pa. C.S. §2104(3).

3. Persons related to a decedent through two lines shall take one share only, which shall be the larger share. 20 Pa. C.S. §2104(9).
4. An heir must survive the decedent by five days. 20 Pa. C.S. §2104(10).

5. For purposes of descent by, from and through a person born out of wedlock, the child shall be considered to be the child of the mother. 20 Pa. C.S. §2107(a).

6. For purposes of descent by, from and through a person born out of wedlock, the child shall be considered to be the child of the father when the identity of the father has been determined in any one of the following ways:

a) If the parents of a child born out of wedlock shall have married each other;

b) If during the lifetime of the child, the father openly holds out the child to be his and receives the child into his home, or openly holds the child out to be his and provides support for the child which shall be determined by clear and convincing evidence; or

c) If there is clear and convincing evidence that the man was the father of the child, which may include a prior court determination of paternity. 20 Pa. C.S. §2107(b).

C. Forfeiture of Intestate Share by Surviving Spouse. A spouse who, for one year or upwards previous to the death of the other spouse, has: (a) willfully neglected or refused to perform the duty to support the other spouse, or (b) willfully and maliciously deserted the other spouse, shall have no right or interest under the intestate statute in the real or personal property of the deceased spouse. 20 Pa. C.S. §2106(a)(1). The surviving spouse shall be a competent witness as to all matters pertinent to forfeiture under Chapter 21. 20 Pa. C.S. §2106(d).

1. Burden of Proof. The parties asserting forfeiture have the initial burden to prove that the surviving spouse willfully and maliciously abandoned or failed to support the decedent for upwards of a year prior to the deceased spouse’s death. See, e.g., In re Crater’s Estate, 93 A.2d 475, 477 (Pa. 1953); see also In re Mehaffey’s Estate, 156 A. 746, 748 (Pa. Super. Ct. 1931). If the parties asserting forfeiture meet that burden, the burden shifts to the surviving spouse to prove that the initial separation was the fault of the deceased spouse. Crater, supra, at 477. “[I]t must always be remembered that forfeitures are not favored in the law and must be strictly construed.” In re Estate of Scarpaci, 176 A.3d 885, 890 (Pa. Super. Ct. 2017) (citing In re Wallace’s Estate, 263 A.2d 421, 422 (Pa. 1970)).

2. Desertion. Desertion must be differentiated from separation. “Desertion is an actual abandonment of matrimonial cohabitation with intent to desert, without cause or consent of the other party. … It is presumed to be willful and malicious where one spouse withdraws from the common home without legal reasonable cause.” Fellabaum v. Alvarez, 67 A.2d 788, 790 (Pa. Super. Ct. 1949) (citations omitted).
a) Separation of the spouses does not create a presumption of willful and malicious desertion. In re Estate of Kostick, 526 A.2d 746, 748 (Pa. 1987); see also Lodge’s Estate, 134 A. 472, 473 (Pa. 1926) (stating “Mere separation is not desertion. There must be an actual abandonment of matrimonial cohabitation with intent to desert, willful and persisted in without cause for a year.”); Talerico Estate, 137 A.3d 577 (Pa. Super. Ct. 2016).

b) Separation by mutual agreement or consent is not willful and malicious desertion. In re Phillips’ Estate, 114 A. 375 (Pa. 1921).

c) Consensual separation can transform into desertion by express conduct, such as adultery. Lodge, 134 A. 472. In Lodge, a married couple lived together for three years. The wife left, with no apparent signs of willful or malicious desertion. However, the wife soon entered into an adulterous relationship with a man with whom she then cohabitated until the husband’s death. In finding forfeiture, the Supreme Court observed: “What more tangible act indicative of an intent to renounce the marriage relation could there be than the fact of adultery coupled with the actual physical separation persisted in for more than a year … .” Id. at 473-74.

d) Where there is separation by consent and both spouses later enter into adulterous relationships, both spouses forfeit their interests in the other’s intestate estate, regardless of who was the first spouse to transgress. Talerico, supra; In re Archer’s Estate, 70 A.2d 857 (Pa. 1950).

e) Where husband condoned wife’s adulterous relationship during amicable separation, her right to receive an intestate share of his estate was re-established. In re Bowman’s Estate, 152 A. 38 (Pa. Super. Ct. 1930); see also Lodge, 134 A. at 474.

f) “[T]he nature of the deserting spouse’s conduct, either before or after the separation, and the extent to which it is inconsistent with the marital relationship, is dispositive of whether the separation is a willful and malicious desertion within the meaning of the forfeiture statute.” In re Estate of Cochran, 738 A2.d 1029, 1032 (Pa. Super. Ct. 1999). In Cochran, the Superior Court concluded that the husband’s absence from the marital home for more than a year after an issuance of a Protection From Abuse order against him “constituted a de facto desertion.” Id. The court also considered the husband’s conduct towards his wife prior to the desertion, which resulted in his removal from the home and “was wholly inconsistent with the marital relationship.” Id.

g) A husband who left the marital home “without explanation or warning,” remained absent for the following six years until his wife died, and never contributed toward her support was found to have willfully and maliciously deserted her. Estate of Russell, 86 Pa. Super. 494 (1925).
h) Husband and wife married in Yugoslavia, and husband emigrated to the United States shortly thereafter. Eighteen years later, he arranged transportation for his wife to come to America. Less than a year later, the wife left the marital home due to physical abuse. Husband did not visit her or provide support. Although the husband denied the abuse, he admitted that he did not look for, or support, his wife after she left. Six years later, the wife adopted another man’s last name and introduced him as her “husband,” although there was nothing to indicate an actual marriage occurred. When she died, the court found that the facts that she took another man’s name and referred to him as her husband “does not entitle [the “first” husband] to restitution of those rights in her estate which he had forfeited by his willful and malicious desertion of her in 1925. His wife’s wrongful conduct in 1931 does not nullify the legal effects of his own wrongful conduct in 1925.” In re Jac’s Estate, 49 A.2d 360, 364 (Pa. 1946).

i) The then-effective forfeiture statute was deemed to be inapplicable to bar the surviving spouse’s share because it did not apply retroactively. In re Hoover’s Estate, 3 Pa. D. & C. 697 (O.C. Westmore, 1922). However, had the statute applied, the court found the surviving spouse would not have forfeited her share when she left the marital home after the decedent “emphatically and with considerable profanity ordered her to go. Leaving his home under such circumstances would not constitute a willful and malicious desertion.” Id. at 698-99.

j) No desertion despite a roughly 20-year consensual separation (husband on Pennsylvania, wife in Florida) given the loving communications between the spouses, the fact that neither entered into other intimate relationships, and wife’s health problems over the last several years of the marriage that justified her remaining in Florida. Bortz Estate, 2 Fid. Rep. 3d 342 (O.C. Westmore, 2012).

k) No desertion despite spouses living apart for 15 years where husband ordered second wife to leave the marital home for her own safety, due to his son’s fragile state that resulted in aggressive behavior towards women. The court further concluded that this mutual separation never rose to the level of desertion, and there was no evidence of a willful failure to support. Krichmar Estate, 1 Fid. Rep. 3d 411 (O.C. Phila. 2010).


a) Where the spouses separated by consent and signed an agreement whereby the husband would provide support to the wife and their child,
the husband forfeited his intestate share in the wife’s estate when he moved away, left no forwarding address and provided no support. Hudak, supra.

b) Husband left the marital home due to conflict with wife’s daughter from a prior marriage, who had husband arrested for assault and battery. His departure was not caused by the wife, and he made no offer to live with or support his wife, who subsequently was financially supported by her children. The court ruled that the husband forfeited his interest in the wife’s estate due to his failure to support her and, therefore, did not reach the issue of desertion. In re Pruski’s Estate, 27 A.2d 292 (Pa. Super. Ct. 1942).

c) Wife’s will left her estate to her “heirs as provided by the intestate laws of the Commonwealth of Pennsylvania,” and husband claimed his share. The spouses never had a marital home, although they occasionally lived together, and the wife retained her maiden name. The husband failed to support her during the last two years of her life, but his total income during that period was $22.80 and he owned no property. The court concluded that the husband had not willfully failed to provide support and allowed the husband to take his share. In re Jury’s Estate, 112 A.2d 634 (Pa. 1955).

d) Husband who knew of wife’s dire financial situation but failed to support her despite being able to do so following a nonconsensual separation, in which wife moved out of marital home, forfeited his interest in her estate. In re Wallace’s Estate, 263 A.2d 421 (Pa. 1970).

e) Elderly, “crotchety, curmudgeon like” husband refused assistance for himself or his wife, and his own declining condition led to his inability to maintain their standard of living. “Being an irascible, irritable, choleric old man is not, however, grounds for spousal forfeiture.” In re Estate of Fonos, 698 A.2d 74, 78 (Pa. Super. Ct. 1997) (also denying relief under the Older Adults Protective Services Act).

f) Wife filed complaint for divorce and requested exclusive possession of the marital residence. Husband agreed to move out of the home and did not file an action requesting spousal support. The mere ability of husband to request spousal support and impose a duty of support is not sufficient to impose such a duty of support on wife. Where wife’s duty to support husband was not established, her failure to voluntarily support husband does not result in her forfeiture of her right to a spousal share under the failure to support provisions of the statute. In re Estate of Scarpaci, 176 A.3d 885 (Pa. Super. Ct. 2017).

4. Pending Divorce. A spouse has no interest in the property of the deceased spouse if: (a) the decedent was a Pennsylvania domiciliary who died during
divorce proceedings; (b) no decree of divorce had been entered pursuant to 23 Pa. C.S. §3323; and (c) grounds for divorce have been established as provided in 23 Pa. C.S. §3323(g). 20 Pa. C.S. §2106(a)(2).

a) Grounds for divorce are established where both parties have filed affidavits of consent, or where one party consents and the other has been convicted of committing a personal injury crime against the other party such that his or her consent is presumed per Section 3301(c)(2). In re Estate of Scarpaci, 176 A.3d 885, 889 (Pa. Super. Ct. 2017).

D. Forfeiture of Intestate Share by Parent. A parent who, for one year or upwards previous to the death of the parent’s minor or dependent child, has: (1) failed to perform the duty to support the minor or dependent child or who, for one year, has deserted the minor or dependent child; or (2) been convicted of one of three specified offenses under Title 18 [§4303 (relating to concealing death of child); §4304 (relating to endangering welfare of children); or §6312 (relating to sexual abuse of children)] or an equivalent crime under Federal law or the law of another state involving his or her child; shall have no right or interest under the intestate statute in the real or personal estate of the minor or dependent child. 20 Pa. C.S. §2106(b).


2. Minor or Dependent Child at Time of Death. The statute is intended to protect minors or dependent children who are not legally competent to make a will, and to prevent a parent who has failed in his or her duty of support from gaining a windfall from the minor’s death. The provisions of the parental forfeiture statute are inapplicable where decedent is not a minor or dependent child at the time of his or her death. In re Kistner, 858 A.2d 1226, 1229 (Pa. Super. Ct. 2004); see also Johnson Estate, 26 Fid. Rep. 2d 357 (O.C. Phila. 2005) (despite desertion by parent when decedent was a minor, Section 2106 does not apply when the decedent was an adult); Small Estate, 8 Fid. Rep. 3d 229 (O.C. Phila. 2018) (20 Pa. C.S. §2106(b) does not apply where thirty-seven year old paraplegic son was fully independent and “capable of executing a last will and testament disposing of his estate accordingly”).

3. Failure to Support. The determination of whether the parent has failed to perform the duty to support the minor or dependent child shall be made by the court after considering the quality, nature and extent of the parent's contact with the child and the physical, emotional and financial support provided to the child. The statute was amended in December 2000 to remove the requirement that such failure to support of a minor or dependent child be willful; however, the seminal case regarding parental forfeiture based on non-support is In re Estate of Teaschenko, 574 A.2d 649 (Pa. Super. Ct. 1990), which was decided prior to the amendment and included the element of “willfulness” in determining whether the parent failed to perform the duty to support the child.
a) Although mother’s support consisted almost exclusively of providing food to child during visits, support was commensurate with her sole income of welfare benefits, which is the minimum necessary to support mother and child in her custody. In re Estate of Teaschenko, 574 A.2d at 652 (no forfeiture).

b) Court-ordered support indicated that mother was aware of her duty to support her child and capable of providing such support, and mother’s complete failure to comply with the ordered support reflected her willful failure to support child. In re Estate of Moyer, 758 A.2d at 212.

c) Forfeiture established where Father “was aware of the duties attendant to being a parent, that he had the means to contribute to [the child’s] well-being, and that he willfully avoided those duties and missed those opportunities.” Woodie v. City of Philadelphia, 24 Fid.Rep.2d 46 (O.C. Phila. 2003).

d) Forfeiture established, despite Father’s frequent stays in prison, when Father knew of duty to support and had regular income, but “willfully neglected” to provide support. Johnson v. Neshaminy Shore Picnic Park, 8 Fid. Rep. 3d 305 (O.C. Phila, 2018) (emphasis in original).


f) Father, who “was aware that he had a duty to provide financial support but chose not to do so until threatened with jail and subjected to forcible garnishment by [the Domestic Relations Office],” forfeited his interest due to his “failure to provide support voluntarily.” In re Thompson, 26 Fid. Rep. 2d 496 (O.C. Chester 2006) (also finding desertion).


4. Desertion. The determination of whether the parent has deserted the minor or dependent child shall be made by the court after considering the quality, nature and extent of the parent’s contact with the child and the physical, emotional and financial support provided to the child. The statute was amended in December 2000 to remove the requirement that such desertion of a minor or dependent child be willful; however, the decision in Estate of Cynthia Ann Fuller held that desertion within the meaning of the forfeiture statute “is a parent's


b) Father not deemed to have deserted child where he incurred legal fees and expenses in order to enforce visitation rights and made continued inquiries regarding the child and her care despite child’s refusal to see him, which resulted in little to no contact between father and child during last year of child’s life. In re Estate of Fuller, 87 A.3d at 335.

E. Forfeiture of Intestate Share by Slayer. A person who participates, either as a principal or an accessory before the fact, in the willing and unlawful killing of any person shall not in any way acquire or receive any benefits as the result of such killing. Instead, the property or benefits will be distributed pursuant to Chapter 88 of the PEF Code (i.e., the Slayer’s Act). 20 Pa. C.S. §2106(c). A more complete discussion of the Slayer’s Act appears in Section IV below.
“I’ve got a bad feeling about this.”

IV. Slayer’s Act

A. General Provisions.

1. A “slayer” is “any person who participates, either as principal or as an accessory before the fact, in the willful and unlawful killing of any other person.” 20 Pa. C.S. §8801 (emphasis added).

2. A slayer may not “in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in [Chapter 88 of the PEF Code].” 20 Pa. C.S. §8802.

3. The Slayer’s Act is “construed broadly in order to effect the policy of this State that no person shall be allowed to profit by his own wrong, wherever committed.” 20 Pa. C.S. §8815.

B. Effect on Specific Property Interests.

1. The slayer is “deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent or distribution or having been acquired by dower, by curtesy or by statutory right as surviving spouse.” 20 Pa. C.S. §8803. See Pinder’s Estate, 61 Pa. D. & C. 193, 194 (O.C. York 1947) (holding as a matter of law that if widow was deemed a slayer, she would forfeit her “widow’s exemption” as a statutory right).

2. The slayer is similarly deemed to have predeceased the decedent with respect to property that would have passed to or for the benefit of the slayer by devise or legacy. 20 Pa. C.S. §8804. See Harty Estate, 10 Fid. Rep.2d 348 (O.C. Bucks 1990) (where residuary clause in Will provided only for a trust for the slayer, victim’s residuary estate would be distributed under the intestacy laws).
3. “One-half of any property held by the slayer and the decedent as tenants by the entirety shall pass upon the death of the decedent to his estate, and the other half shall be held by the slayer during his life, subject to pass upon his death to the estate of the decedent.” 20 Pa. C.S. §8805. See Ulatoski Estate, 29 Fid. Rep. 27 (O.C. Beaver 1978) (where house owned by entireties was sold, slayer husband was entitled to claim a lump sum payment representing “the value of his life interest in one-half of the real estate from the proceeds of the sale”); DeAngelo Estate, 12 Fid. Rep. 2d 373 (O.C. Schuy. 1991) (regarding a bank account held by the entireties, slayer entitled only to the interest generated by one-half of the account during his lifetime and not permitted to pay his legal bills out of the principal).

4. Jointly-owned, non-entireties property is treated similarly to entireties property:

a) Slayer and decedent as joint owners: one half of property passes to decedent’s estate and the other half passes the decedent’s estate upon the death of the slayer “unless the slayer obtains a separation or severance of the property or a decree granting partition.” 20 Pa. C.S. §8806(a). See Ozenbaugh Estate, 23 Fid. Rep. 627 (O.C. 1973) (victim’s estate entitled to 100% of proceeds from sale of home owned as joint tenants with slayer); Larendon’s Estate, 266 A.2d 763, 767 (Pa. 1970) (concluding that where a creditor obtained a sheriff’s sale of a slayer’s interest in jointly owned property, such sale affected a severance and the purchaser obtained fee title to one-half of the property).

b) Three or more owners, including slayer and decedent: Slayer not entitled to any enrichment from death of victim. If the slayer is the final surviving owner of the property, then “one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.” 20 Pa. C.S. §8806(b).

5. “Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of the decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period.” 20 Pa. C.S. §8807.

6. “Any interest in property, whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.” 20 Pa. C.S. §8808. See Trust Estate of Jamison, 636 A.2d 1190, 1194 (Pa. Super. 1994) (where slayer was
designated to receive one-half of the principal of a trust if she survived the victim and one other family member, slayer’s interest would be paid to her issue who were designated to take if she predeceased those two lives).

7. Similarly, where the slayer has a contingent remainder or other future interest in property, “subject to become vested in him or increased in any way for him upon the condition of the death of the decedent,” then the slayer is deemed to have predeceased the victim and/or the interest cannot be vested or increased “during the period of the life expectancy of the decedent.” 20 Pa. C.S. §8809. See Harty Estate, 10 Fid. Rep.2d 348 (O.C. Bucks 1990) (“The slayer shall be deemed to have predeceased the decedent with respect to any contingent remainder or future interest held by the slayer which was subject to vest upon the decedent’s death[.]”)

8. Property appointed by the will of the decedent to the slayer is distributed as if the slayer predeceased, and property presently enjoyed by the slayer, but subject to termination or divestment by the decedent’s exercise of a power, shall be treated as if the victim exercised that power. 20 Pa. C.S. §8810.

9. The Slayer’s Act covers two areas of life insurance and other beneficiary-designated property such as IRAs:

   a) Insurance on the life of the victim naming slayer as beneficiary is paid to any alternate beneficiary or to the victim’s estate. 20 Pa. C.S. §8811(a). See Mihalko Estate, 25 Fid. Rep. 2d 319 ((O.C. Beaver 2005) (woman charged with murdering husband could not “disclaim” interest in life insurance before the criminal charges are resolved; if convicted, she cannot “disclaim” in favor of a secondary beneficiary because Section 8811 controls what happens to the insurance proceeds); Harty Estate, 10 Fid. Rep.2d 348 (O.C. Bucks 1990) (beneficiary-designated IRAs disposed of like insurance policies under Section 8811).

   b) Insurance on the life of the slayer naming victim as beneficiary is paid to the victim’s estate unless there is an alternate beneficiary named or the slayer names a new beneficiary or otherwise assigns the policy to another. See Ozenbaugh Estate, 23 Fid. Rep. 627 (O.C. 1973) (estate of victim who was named beneficiary of slayer’s insurance policy must receive the proceeds even if the policy contains a provision regarding a pre-deceased beneficiary).

   c) Note: In a recent Oregon case, the Oregon Court of Appeals held that the Employment Retirement Income Security Act (ERISA) preempted the Oregon slayer’s statute, as it applied to a life insurance policy provided through an employee benefit plan, and remanded the case to permit the personal representative of the victim’s estate to amend its complaint to state a claim under federal law. Herinckx v. Sanelle, 385 P.3d 1190 (Or. Ct. App. 2016). The Court held that under the facts the Oregon slayer’s
statute “govern[ed] a central matter of plan administration,” “interfer[ed] with nationally uniform plan administration” and “related to” an employee benefit plan governed by ERISA. Id. at 1196-97.

C. Pre-Adjudication Procedure.

1. Within seven days of charging a person with homicide or manslaughter, the district attorney shall notify the Register in Wills in writing of the name of the defendant, the name of the decedent, and the charge(s). 20 Pa. C.S. §8814.1(c); see also Mikalko, 25 Fid. Rep. 2d at 320.

2. If a person has been charged with a willful killing in any U.S. jurisdiction, then any property that may pass to such defendant from the victim’s estate is held in escrow by the victim’s personal representative pending the outcome of the charge(s). The escrowed property shall pass as if no charges had been filed if the charges are withdrawn or dismissed, or if a verdict of not guilty is returned. If the defendant is convicted, the property held in escrow shall pass in accordance with Chapter 88. 20 Pa. C.S. §8814.1(a).

D. Effect of the Criminal Process. The outcome of the criminal process often determines the application of the Slayer’s Act, but not always. Following a conviction or acquittal in the Criminal Division, a separate proceeding in the Orphans’ Court might be necessary to confirm whether or not the accused is entitled to certain property.

1. Criminal Offenses; Defenses; Mitigation.

a) Title 18, Chapter 25 of the Pennsylvania Consolidated Statutes sets forth the various forms of “criminal homicide”:


   (2) Murder of the second degree: a homicide “committed while defendant was engaged as a principal or an accomplice in the perpetration of a felony.” 18 Pa. C.S. §2502(b). Offense is commonly called “felony murder.”

   (3) Murder of the third degree: “All other kinds of murder shall be murder of the third degree.” 18 Pa. C.S. §2502(c). “In the context of third-degree murder, the Commonwealth need not establish a specific intent to kill, or even a specific intent to harm the victim. The Commonwealth need only establish a killing with malice, i.e., the death of another brought about by an intentional act which indicates a wickedness of disposition, hardness of heart, wantonness, cruelty, recklessness of consequences, or a mind

(4) Voluntary manslaughter: “A person who kills an individual without lawful justification commits voluntary manslaughter if at the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by: (1) the individual killed; or (2) another whom the actor endeavors to kill, but he negligently or accidentally causes the death of the individual killed.” 18 Pa. C.S. §2503(a). In addition, a “person who intentionally or knowingly kills an individual commits voluntary manslaughter if at the time of the killing he believes the circumstances to be such that, if they existed, would justify the killing under Chapter 5 of this title (relating to general principles of justification), but his belief is unreasonable.” 18 Pa. C.S. §2503(b).

(5) Involuntary manslaughter: “A person is guilty of involuntary manslaughter when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person” 18 Pa. C.S. §2504(a).

(6) Aiding suicide: “A person who intentionally aids or solicits another to commit suicide is guilty of a felony of the second degree if his conduct causes such suicide or an attempted suicide, and otherwise of a misdemeanor of the second degree.” 18 Pa. C.S. §2505(b).

(7) Drug delivery resulting in death: “A person commits a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of . . . The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.” 18 Pa. C.S. §2506(a).

b) Title 18, Chapter 3 sets forth some of the more common defenses and mitigations that can apply to a charge of willful killing:

(1) Duress: “It is a defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.” 18 Pa. C.S. §309(a).
(2) **Self-defense:** “The use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.” 18 Pa. C.S. §505(a).

(3) **Insanity:** “The mental soundness of an actor engaged in conduct charged to constitute an offense shall only be a defense to the charged offense when the actor proves by a preponderance of evidence that the actor was legally insane at the time of the commission of the offense. For purposes of this section, the phrase ‘legally insane’ means that, at the time of the commission of the offense, the actor was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if the actor did know the quality of the act, that he did not know that what he was doing was wrong.” 18 Pa. C.S. §315(a)-(b).

(4) **Guilty but mentally ill:** “A person who timely offers a defense of insanity in accordance with the Rules of Criminal Procedure may be found ‘guilty but mentally ill’ at trial if the trier of facts finds, beyond a reasonable doubt, that the person is guilty of an offense, was mentally ill at the time of the commission of the offense and was not legally insane at the time of the commission of the offense.” 18 Pa. C.S. §314(a).

c) **Homicide by vehicle while driving under influence** occurs when a person “unintentionally causes the death of another person as the result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance).” 75 Pa. C.S. §3735.

2. **Conviction.**

a) A record of conviction “of having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under” the Slayer’s Act. 20 Pa. C.S. §8814.

b) A conviction of murder or of voluntary manslaughter acts as a conclusive bar of a slayer’s right to share in the victim’s estate. See, e.g., In re Kravitz’s Estate, 211 A.2d 443 (Pa. 1965) (murder); In re Estate of Bartolovich, 616 A.2d 1043 (Pa. Super. Ct. 1992) (voluntary manslaughter).

c) Husband convicted of voluntary manslaughter is a slayer not entitled to share in the wife’s estate; he is entitled to a life estate in

**d)** A conviction of murder but mentally ill acts as a bar. **Estate of McAndrew**, 131 A.3d 988, 990 (Pa. Super. Ct. 2016) (distinguishing between “guilty but mentally ill” and “not guilty by reason of insanity”); see also **Prudential Insurance v. Roberts**, 8 Fid. Rep. 2d 309 (C.P. Westmore. 1988). This verdict was created by statute to permit the fact finder to find that the defendant committed a crime, but should be eligible to receive treatment for mental illness in addition to his punishment for the offense.

**e)** A conviction for involuntary manslaughter does not prevent the defendant from sharing in the decedent’s estate. **Klein Estate**, 378 A.2d 1182, 1185 (Pa. 1977) (stating that “by requiring that a killing be ‘willful,’ the Legislature intended to exclude involuntary manslaughter from the scope of the Slayer’s Act”).

**f)** A conviction of vehicular homicide while under the influence, which depends on a finding that the defendant “unintentionally” caused the death does implicate the Slayer’s Act, which requires a “willful” killing. **Marsh Estate**, 25 Fid. Rep. 2d 217 (O.C. Chester 2005).

**3. Charges Resolved by Plea.**

**a)** Son who pleaded no contest to a charge of the third-degree murder of his parents was deemed to be a slayer. **Abbott Estate**, 6 Fid. Rep. 3d 80 (O.C. Butler 2015).

**b)** Daughter who pleaded guilty to third-degree murder of her mother lost her rights under her mother’s irrevocable trust pursuant to 20 Pa. C.S. §8809. **In re Trust Estate of Jamison**, 636 A.2d 1190 (Pa. Super. Ct. 1994). However, while the Superior Court was deciding the daughter’s entitlement to a share of the trust, the Orphans’ Court declined to remove her as trustee (in part because the trust had terminated), but denied her commissions. **Ethel Jamison Trust**, 13 Fid. Rep. 2d 360 (O.C. Montg. 1993). Immediately following the assisted suicide of Ethel Jamison, the daughter aided in the suicide of her sister. Although apparently not charged in that death, the Orphans’ Court determined that the person had aided and abetted her sister in committing suicide and, therefore, was a slayer unable to inherit from her sister. **Leslie Jamison Estate**, 13 Fid. Rep. 2d 353 (O.C. Montg. 1993).

**c)** Wife pleading guilty to voluntary manslaughter is a slayer for purposes of her interests under the decedent’s will, his life insurance trust

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3 An identical copy of the opinion also appears at 26 Fid. Rep. 2d 17 (O.C. Chester 2005).
and his Individual Retirement Accounts.  


4. Acquittal.

a) A verdict of not guilty by reason of insanity does not necessarily mean the Slayer’s Act does not apply.  DeMatteo Estate, 1 Fid. Rep. 2d 57, 16 D. & C.3d 184 (O.C. Westmore 1980), aff’g 27 Fid. Rep. 377 (O.C. Westmore 1977).  The court, applying a preponderance of the evidence standard, may still conclude that the acquitted defendant participated in a willful, unlawful killing of the decedent.

b) In Ford Estate, 18 Fid. Rep. 2d 324 (O.C. Montg. 1998), however, the court determined that a person acquitted because he was insane at the time he killed the decedent could not form the requisite  mens rea.  As such, his acts could not have been “willful” within the meaning of the Slayer’s Act, so he was permitted to inherit.  See also In re Gabel’s Estate, 27 Fid. Rep. 322 (O.C. Alleg. 1977).

c) Even an acquittal for involuntary manslaughter does not render the Slayer’s Act inapplicable, but opens the convicted person to a Slayer’s Act challenge from any other party in interest.  Wellons v. Met. Life Ins. Co., 12 Pa. D. & C. 3d 109, 111 (C.P. Phila. 1979) (denying motion for summary judgment of acquitted defendant who admitted killing the victim and stating that “[a] finding of not guilty in a criminal proceeding does not determine the issues involved in a civil proceeding; the burden of proof is not the same, nor are the parties to the action”).

d) If a person is charged with a willful killing but proves he killed in self-defense, he is not a slayer.  Pinder’s Estate, 61 Pa. D. & C. 193 (O.C. Del. 1947) (wife convicted of voluntary manslaughter proved self-defense in the Orphans’ Court and received her spousal exemption); see also St. Clair’s Estate, 22 Fid. Rep. 119 (O.C. Beaver 1972) (wife acquitted of charges of murder and voluntary manslaughter based on self-defense; Orphans’ Court concluded the Slayer’s Act does not apply to “legally justifiable and excusable” killing based on self-defense).

E. Application to Murder-Suicide.  Notwithstanding the foregoing section, conviction (or even a criminal proceeding) is not necessary where there is no factual dispute that one was a slayer.  Drumheller v. Marcello, 532 A.2d 807, n. 3 (Pa. 1987) (Slayer’s Act applies to husband in murder-suicide).  Courts will apply the Slayer’s Act where a slayers kills the victim, and then himself or herself, to prevent the slayer’s estate from receiving a financial benefit.

1. In the midst of a divorce proceeding, Husband killed Wife then killed himself.  Husband’s personal representative successfully terminated the divorce and equitable distribution proceedings on grounds that the parties to the divorce
were dead. The Supreme Court reversed, finding that Husband “acquired a benefit” by avoiding a direction to hand over assets to Wife. As such it concluded: “Since the Slayer’s Act is necessarily to be construed broadly, we hold that under circumstances where a spouse slays another spouse prior to the entry of a decree in divorce, the slayer is estopped from terminating the equitable distribution action upon the legal theory that the divorce action abated [due to the death of a spouse].” Drumheller v. Marcello, 532 A.2d 807, 812 (Pa. 1987).

2. Husband killed Wife and then killed himself. The couple had marital debt, and Husband’s estate was insolvent. The court ruled that Wife’s estate would pay the marital debt (which was unrelated to the killing), but that Wife’s estate would not be required to pay any claims solely against Husband’s estate, including the costs of his funeral and burial. Baker Estate, 21 Fid. Rep. 2d 9 (O.C. York 1999) (observing that the “public policy of preventing any benefit to the slayer resulting from his willful killing extends to the slayer’s estate upon the slayer’s death”) (citing Drumheller, supra).
“Never tell me the odds!”

V. Missing Heirs

A. General Rule. A fiduciary must give notice to all beneficiaries of an estate or trust, and certain other persons regarding the administration of an estate and distribution upon the audit of an account. Both the Orphans’ Court Rules and PEF Code address these requirements. The failure to notify all parties in interest entitled to notice is a jurisdictional defect and may render a decree of the Orphans’ Court void. In re Estate of Alexander, 758 A.2d 182 (Pa. Super. Ct. 2000).

B. Relevant Orphans’ Court Rules.4

1. Notice of Estate Administration. Rule 10.5 (former Rule 5.6) provides that, within three months after the grant of letters, the personal representative to whom original letters have been granted or the personal representative’s counsel shall send a written notice of estate administration in the form approved by the Supreme Court to:

   a) Every person, corporation, association, entity or other party named in decedent’s will as an outright beneficiary whether individually or as a class member;
   b) The decedent’s spouse and children, whether or not they are named in, or have an interest under, the will;
   c) Where there is an intestacy in whole or in part, to every person entitled to inherit as an intestate heir;
   d) The appointed guardian of the estate, parent or legal custodian of any beneficiary who is a minor child under the age of eighteen years;

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4 All references to the Pennsylvania Orphans’ Court Rules are to the Rules in effect as of September 1, 2016. References to the old Rules (prior to September 1, 2016) are included in parenthesis for the convenience of our readers.
e) The appointed guardian of the estate or, in the absence of such appointment, the institution or person with custody of any beneficiary who is an adjudicated incapacitated person;

f) The Attorney General on behalf of any charitable beneficiary (i) which is a residuary beneficiary, including as a beneficiary of a residuary testamentary trust; (ii) whose legacy exceeds $25,000; or (iii) whose interest in a legacy will not be paid in full;

g) The Attorney General on behalf of any governmental beneficiary;

h) The trustee of any trust which is a beneficiary; and

i) Such other persons and in such manner as may be required by any local rule of court.

Pa. O.C. Rule 10.5 (former Pa. O.C. Rule 5.6). Notices under Rule 10.5 shall be given either (i) by personal service or (ii) by first-class, prepaid mail to each person and entity whose address is known or reasonably available to the personal representative.

2. Notice of Accounts. With respect to the filing of an account, “[n]o account shall be confirmed or statement of proposed distribution approved unless the accountant has given written notice of the filing of the account as provided in subparagraph (d) of this Rule to . . . any other individual or entity known to the accountant to have or claim an interest in the estate or trust as a beneficiary, heir, or next of kin . . . .” Pa. O.C. Rule 2.5 (former Pa. O.C. Rule 6.3). Notice of the filing of an account shall be in accordance with Rule 2.5(d) (see also Pa. O.C. Rule 4.2, Pa O.C. Rule 4.4; see former Pa. O.C. Rules 5.1 to 5.5).

3. Report by Fiduciary. In addition, “[w]henever the existence, identity or whereabouts of a distributee is unknown . . . , the accountant or his or her counsel shall submit to the court or auditor, as the case may be, a written report outlining the investigation made and the facts relevant thereto. The report shall be in such form and may be filed at such place and time as shall be prescribed by local rule or order of the court.” Pa. O.C. Rule 2.10(b) (former Pa. O.C. Rule 13.3).

C. Relevant Statutory Law.

1. Notice of Accounts. With respect to the filing of an account, “[t]he personal representative shall give written notice of the filing of his account and of its call for audit or confirmation to every person known to the personal representative to have or assert an interest in the estate as beneficiary, heir, next of kin or claimant, unless the interest of such person has been satisfied or unless such person fails to respond to a demand under section 3532(b.1) (relating to at risk of personal representative).” 20 Pa. C.S. §3503. This provision used to explicitly apply to through former Section 7183(1), but that Section was repealed in 2006 when Pennsylvania enacted the Uniform Trust Act.
2. **Trust-Related Judicial Proceedings.** Section 7709 provides that notice of a judicial proceeding must be given as provided by the applicable rules of court. 20 Pa. C.S.§7709(d). Accordingly, one should follow the Orphans’ Court Rules regarding notice requirements to parties in interest. Notice “must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document,” such as by “first-class mail, personal delivery, delivery to the person’s last known place of residence or place of business and a properly directed electronic message.” 20 Pa. C.S. §7709(a).

3. **Notice to Beneficiary with Unknown Identity or Location.** “Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee, but the trustee shall create and maintain indefinitely a written record of the steps the trustee took to identify or locate the person.” 20 Pa. C.S. §7709(b). This Section is similar to Orphans’ Court Rule 2.10(b) (former Rule 13.3), which requires a fiduciary to provide a written report to the Court outlining the fiduciary’s investigation and relevant facts.

D. **Giving Notice to a Missing Party in Interest.**

1. A fiduciary must notify all potential beneficiaries “who were ascertainable by the exercise of due diligence on the part of the executor or administrator.” In re Estate of Alexander, 758 A.2d 182, 187 (Pa. Super. Ct. 2000).

2. Pennsylvania case law and statutory law, and the Orphans’ Court Rules suggest that a thorough search for an unknown beneficiary and a report under Orphans’ Court Rule 2.10(b) (former Rule 13.3) summarizing those efforts may suffice for notice purposes. However, such a report is not a “safe harbor.” For example, the comments to Section 7709 specifically indicate that the statutory language does not define what fulfills the notice requirement.

3. In addition, the standard for determining whether an adequate investigation occurred can be a post hoc determination that is subject to reinterpretation by a later court. For example, in Alexander, the Orphans’ Court originally found that the executor performed a sufficient search for foreign heirs and that legal notice was adequately provided. On review, the Superior Court found that the executor failed to perform a reasonable investigation, citing the executor’s failure to use information in his own files to identify surnames of heirs, hiring of a translator to perform a search rather than an experienced genealogist and failure to notify the foreign consulate. Alexander, 758 A.2d at 184; cf. In re Estate of Alexander, 18 Fid. Rep.2d 21 (O.C. Bucks 1997). As such, a fiduciary runs the risk that an earlier court decree can be declared void for lack of notice, and the fiduciary can be surcharged for making distributions to an incorrect beneficiary.
4. A prudent course of action would be to request the appointment of a trustee *ad litem* pursuant to Pa. O.C. Rule 5.5(a) (former Rule 12.4(a)); see also 20 Pa. C.S. §751(5)(ii), (iv). Rule 5.5(a) states that a trustee *ad litem* may “represent an absentee, a presumed decedent, or unborn or unascertained persons not already represented by a fiduciary” “if the court considers that the interests of the non-*sui juris* individuals are not adequately represented.” Pa. O.C. Rule 5.5(a) (former Pa. O.C. Rule 12.4(a)).

a) The “purpose of the statutory requirement of *ad litem* representation for minors, born and unborn, and for unascertained persons in Orphans’ Court proceedings is that those persons shall receive notice of the proceedings, and, having been represented, the judgment of the court is effective and conclusive upon all present and future interests.” Estate of Pew, 655 A.2d 521, 536 (Pa. Super. Ct. 1994) (citing In re Kenna’s Estate, 348 Pa. 214, 219 (Pa. 1940)). As such, the appointment of a trustee *ad litem* will help ensure that the notice requirements are fulfilled, and will provide substantial protection to the fiduciary if a court later evaluates the sufficiency of the fiduciary’s efforts to locate a possible beneficiary or heir.

5. With respect to trust matters, the trustee may be able to provide notice to unknown beneficiaries through the virtual representation rules of Section 7723. See, e.g., 20 Pa. C.S.§7723(3)-(9).

*Practice Tip:* For smaller specific bequests in a will, consider including a provision that would cause the beneficiary’s interest to lapse if the fiduciary cannot locate the beneficiary within two years (or another reasonable period of time) following the decedent’s date of death and after making a diligent search for such beneficiary.
VI. Elective Share

A. Overview. Generally speaking, absent a marital agreement, a married decedent cannot completely disinherit his or her surviving spouse. The elective share statutes of the various states generally permit a surviving spouse receiving less than a certain percentage of a decedent’s augmented estate to file a claim to elect against the augmented estate to receive a statutory share (typically one-third).

To prevent unjust results, many jurisdictions prohibit a surviving spouse from claiming an elective share where the surviving spouse has exhibited some form of wrongdoing. Such reasons commonly include:

1. The failure to perform the duty of support for a specified period of time;
2. Abandonment of the decedent spouse by the surviving spouse for a specified period of time or at the time of death;
3. Living separate and apart for a specified period of time or at the time of death; and
4. Other grounds giving rise to divorce.


1. Elective Share and Augmented Estate. The surviving spouse of a decedent domiciled in Pennsylvania has a right to an elective share of one-third of the following property:

a) Property passing from the decedent by will or intestacy (i.e., the decedent’s probate property). 20 Pa. C.S. §2203(a)(1);
b) Income or use for the remaining life of the surviving spouse of property conveyed by the decedent during marriage to the extent that the decedent at the time of his or her death had the use of the property or an interest in or power to withdraw the income thereof. 20 Pa. C.S. §2203(a)(2); 

c) Property conveyed by the decedent during his or her lifetime if the decedent had the power to revoke the conveyance at the time of his or her death or “to consume, invade or dispose of the principal for his [or her] own benefit.” 20 Pa. C.S. §2203(a)(3); 

(1) In Zebe Estate, 20 Fid. Rep. 2d 39 (O.C. Montg. 2000), the Orphans’ Court held that the designation of a beneficiary under an IRA is not a “conveyance,” which is defined in 20 Pa. C.S. §2201 as an act intended to create an interest in real or personal property. Therefore, IRAs are not included in the augmented estate and are not subject to the elective share of the surviving spouse. To date, there has been no appellate authority on this point. 

(2) Note that retirement assets that are covered by ERISA require that one’s spouse be designated as the primary beneficiary (absent a waiver or consent). 

(3) “Pay on death” accounts are conveyances subject to spousal election. Rood Estate, 5 Fid. Rep. 3d 15 (O.C. Berks 2014). 


d) Property conveyed by the decedent during the marriage to the decedent and anyone else with a right of survivorship “to the extent of any interest in the property that the decedent had the power at the time of his [or her] death unilaterally to convey absolutely or in fee.” 20 Pa. C.S. §2203(a)(4). The theory behind this category is that the decedent had the power to revoke the conveyance as to his or her one-half or other fractional share by unilaterally changing it to a tenancy in common; 

e) Survivorship rights of an annuity contract purchased by the decedent during the marriage if the decedent was receiving annuity payments at the time of his or her death. 20 Pa. C.S. §2203(a)(5). This category is analogous to retained income; and 

f) Property conveyed during the marriage and within one year of death to the extent the conveyance exceeds $3,000. 20 Pa. C.S. §2203(a)(6). McCloskey Estate, 28 Fid. Rep. 2d 450 (O.C. Centre 2007). This category is intended to capture transfers that are likely to be made in contemplation of death. 

In addition, in construing this subsection, a power in the decedent to withdraw income or principal, or a power in any person whose interest is not adverse to the decedent to distribution to or use for the benefit of the decedent any income or
principal, shall be deemed to be a power in the decedent to withdraw so much of the income or principal as is subject to such power, even though such income or principal may be distributed only for support or other particular purposes or only in limited periodic amounts. 20 Pa. C.S. §2203(a).

2. **Excluded Property.** Certain property is excluded from a decedent’s electable estate and is not subject to election by the surviving spouse:

   a) Any conveyance made with the “express consent or joinder” of the surviving spouse. 20 Pa. C.S. §2203(b)(1);

   b) Any life insurance proceeds on the decedent’s life, including accidental death benefits. 20 Pa. C.S. §2203(b)(2);

   c) Interests in “any broad-based nondiscriminatory pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other such plan established by an employer for the benefit of its employees and their beneficiaries.” 20 Pa. C.S. §2203(b)(3); and

   d) Property passing pursuant to the decedent’s exercise or nonexercise of a power of appointment if such power of appointment was given to decedent by a third party (i.e., someone other than the decedent). 20 Pa. C.S. §2203(b)(4).

   e) In addition, any transfers for value are excluded from a decedent’s electable estate. 20 Pa. C.S. §2205.

3. **Release or Disclaimer of Property.** If a surviving spouse elects against the decedent’s estate, the surviving spouse must release or disclaim certain property. 20 Pa. C.S. §2204(a), (b). If the surviving spouse has already accepted such property and does not wish to release it, then such property must be charged against the elective share. 20 Pa. C.S §2204(c). Property subject to release or disclaimer includes the following:

   a) Property subject to the surviving spouse’s election that the spouse does not receive as part of the elective share. 20 Pa. C.S. §2204(a)(1);

   b) Property passing to the surviving spouse pursuant to the decedent’s exercise of a power of appointment, and property passing to the surviving spouse in default of the decedent’s exercise of a power of appointment to the extent the decedent could have diverted such property away from the surviving spouse. 20 Pa. C.S. §2204(a)(2);

   c) Property held in a trust for the surviving spouse that was created by the decedent during his or her lifetime. 20 Pa. C.S. §2204(a)(3);

   d) Any life insurance proceeds on the decedent’s life that pass to the surviving spouse, including accidental death benefits, the premiums of
which were paid by the decedent, the decedent’s employer, the decedent’s partner or the decedent’s creditor. 20 Pa. C.S. §2204(a)(4);

e) Any annuity contract passing to the surviving spouse purchased by the decedent, the decedent’s employer, the decedent’s partner or the decedent’s creditor. 20 Pa. C.S. §2204(a)(5);

f) Interests passing to the surviving spouse in “any pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other such plan established by an employer for the benefit of its employees and their beneficiaries, exclusive of the Federal social security system and railroad retirement system, by reason of services performed or disabilities incurred by decedent.” 20 Pa. C.S. §2204(a)(6);

g) Community property passing to the surviving spouse to the extent such property represents the decedent’s earnings or contributions. 20 Pa. C.S. §2204(a)(7);

h) Any joint or entirety property passing to the surviving spouse to the extent such property represents the decedent’s contributions. 20 Pa. C.S. §2204(a)(8)); and

i) All property given to the surviving spouse by the decedent during the decedent’s lifetime which, or the proceeds of which, are owned by the surviving spouse at the time of the decedent’s death. 20 Pa. C.S. §2204(a)(9).

The following categories of property noted above must be released or disclaimed by the surviving spouse, and charged against the elective share, even though such property is excluded from the calculation of the decedent’s electable estate under Section 2203(a):

a) Property passing to the surviving spouse pursuant to the decedent’s exercise of a power of appointment, and property passing to the surviving spouse in default of the decedent’s exercise of a power of appointment. 20 Pa. C.S. §2203(b)(4);

b) Life insurance proceeds on the decedent’s life that pass to the surviving spouse, but only to the extent premiums were paid by the decedent, the decedent’s employer, the decedent’s partner or the decedent’s creditor. 20 Pa. C.S. §2203(b)(2); and

c) Interests passing to the surviving spouse in any pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other such plan established by an employer for the benefit of its employees and their beneficiaries. 20 Pa. C.S. §2203(b)(3).
Note: If the charges against the elective share are greater than the value of the elective share, the spouse receives nothing on account of the elective share and does not have to pay anything to the estate. Bense Estate, 27 Fid. Rep. 2d 223 (O.C. Montg. 2007).

4. Satisfaction of the Elective Share. If a surviving spouse exercises his or her right to claim an elective share, the Court of the decedent’s domicile determines all aspects of the election, including which property is subject to the spouse’s election and which property must be charged against the spouse’s elective share. 20 Pa. C.S. §2211(a).

a) In general, the elective share will be paid as follows:

(1) Property that would otherwise pass by intestacy will first be used to satisfy the elective share.

(2) Thereupon, “[t]he balance of the elective share shall then be charged separately against each conveyance subject to the election, the passing of property by will to be treated as a conveyance for this purpose, but the spouse shall have no right to share in any particular item of property within each conveyance.”

This means that the surviving spouse is entitled to a portion of both probate and non-probate assets, to the extent assets passing by intestacy do not satisfy the elective share. Fox Estate, 26 Fid. Rep. 2d 243 (O.C. Montg. 2006).

(3) After the value of the electing spouse’s fractional interest in each conveyance at the time of distribution is determined, items of property within the conveyance may be allocated disproportionately at distribution values between the elective and nonelective shares in order to give maximum effect to the decedent’s intention with respect to the disposition of particular items or kinds of property. 20 Pa. C.S. §2211(b)(1).

b) “Property in the nonelective share shall be distributed among the beneficiaries of each conveyance in accordance with the rules of abatement or by analogy thereto.” 20 Pa. C.S. §2211(b)(1).

c) If the surviving spouse has disclaimed an interest that would have terminated at the spouse’s death or was contingent upon the spouse surviving the decedent, the interests of others shall be as they would have been if the surviving spouse had predeceased the decedent. Otherwise, any disclaimed interests shall pass to other beneficiaries of the conveyance according to the general rules of interpretation of disclaimers. 20 Pa. C.S. §2211(b)(2), (3).
d) Notwithstanding the foregoing, if the election and disclaimers, releases and conveyances made by a surviving spouse in connection with an elective share claim results in another beneficiary receiving an increase in the value of his or her interest, the Court may require the “windfall” beneficiary to make contributions, directly or by sequestering the disclaimed, released or conveyed interests, in relief of other beneficiaries. 20 Pa. C.S. §2111(b)(4).

e) The elective share is satisfied after payment of estate administration expenses. See, e.g., Estate of Rittenhouse, 353 A.2d 404 (Pa. 1976). That means creditor’s claims are superior to that of an electing spouse, even if the creditors receive the entire estate, such as pursuant to a contract to make a will. See Beeruk Estate, 241 A.2d 755 (Pa. 1968).

f) An electing spouse may still take advantage of a tax clause to not have his or her share reduced by estate or inheritance taxes. See Neamand Estate, 318 A.2d 730 (Pa. 1974) (also stating that, by electing, the surviving spouse does not forfeit the right to serve as personal representative or exercise a power of appointment given under the will).

C. Example. Assume Leia has not waived or otherwise forfeited her right to an elective share, and assume Han owned the following assets, valued as of the date of his death:

<table>
<thead>
<tr>
<th>Assets</th>
<th>Amount</th>
<th>Electable Estate</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tangibles:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Millennium Falcon</td>
<td>$800,000</td>
<td>$800,000</td>
<td>Included under 20 Pa.C.S. §2203(a)(1)</td>
</tr>
<tr>
<td>Medal of Honor</td>
<td>100,000</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>100,000</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>Imperial Naval Academy Credit Union Checking/Savings</td>
<td>600,000</td>
<td>600,000</td>
<td>Included under 20 Pa.C.S. §2203(a)(1)</td>
</tr>
<tr>
<td>Endor Residence (owned jointly with Leia Organa; purchased by Han)</td>
<td>300,000</td>
<td>0</td>
<td>N/A; tenants by entireties property</td>
</tr>
<tr>
<td>Vanstar IRA Beneficiary: Chewbacca 100%</td>
<td>500,000</td>
<td>0</td>
<td>Excluded under Zebe</td>
</tr>
<tr>
<td>Rebellion Pension Beneficiary: Leia Organa 100%</td>
<td>100,000</td>
<td>0</td>
<td>Excluded under 20 Pa.C.S. §2203(b)(3)</td>
</tr>
<tr>
<td>First Galactic Insurance Policy Beneficiary: Chewbacca 100%</td>
<td>1,000,000</td>
<td>0</td>
<td>Excluded under 20 Pa.C.S. §2203(b)(2)</td>
</tr>
<tr>
<td>First Galactic Insurance Policy Beneficiary: Leia Organa</td>
<td>100,000</td>
<td>0</td>
<td>Excluded under 20 Pa.C.S. §2203(b)(2)</td>
</tr>
</tbody>
</table>
Han’s gross estate is $3,600,000. The electable estate is $1,650,000, one-third of which is $550,000. However, $500,000 is chargeable against Leia’s one-third share, leaving a total elective share claim of $50,000. Leia receives $500,000 in non-probate assets, for a total of $750,000. Now suppose that the Rebellion Pension was valued at $100,000 and the First Galactic Insurance Policy payable to Leia was valued at $500,000. The total value of Han’s assets and the electable estate remains the same. However, $900,000 would now be chargeable against Leia’s one-third of the electable estate, making an elective share claim undesirable.

D. Waiver. “The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage or before or after the death of the decedent.” 20 Pa. C.S. §2207.

1. For example, a surviving spouse may waive his or her right to an elective share in a pre- or post-marital agreement. See Estate of Friedman, 398 A.2d 615 (Pa. 1978); see also Weiss Estate, 23 Fid. Rep. 2d 197 (O.C. Chester 2003) (even if the electing spouse could prove common law marriage following entry of a divorce decree, she waived the right to elect under the marriage settlement agreement).

2. Pre- and post-marital agreements are evaluated under the same criteria as other contracts. Simeone v. Simeone, 581 A.2d 162, 165 (Pa. 1990). “Absent fraud, misrepresentation, or duress, spouses should be bound by the terms of their agreements.” Id.

3. Marital agreements are presumptively valid, although each party must make a full and fair disclosure of his or her financial position. Simeone, 819 A.2d at 167. This disclosure, however, need not be exact. Id. at 167. A list of a spouse’s assets can be sufficient so long as the other spouse is aware of the general value of such assets. In re Disco’s Estate, 28 Fid. Rep. 392 (O.C. Phila. 1977).

4. A valid marital agreement need not show that a spouse was informed of his or her statutory rights. Stoner v. Stoner, 819 A.2d 529, 533 (Pa. 2003)
(agreement was not invalidated where wife was unaware of her rights regarding alimony, counsel fees and support).

E. **Forfeiture.** A surviving spouse who would not be entitled to a share of the decedent’s estate if the decedent had died intestate shall be deemed to have forfeited his or her right to elect against the decedent’s estate. 20 Pa. C.S. §2208.

1. Under the intestacy statutes, “[a] spouse who, for one year or upwards previous to the death of the other spouse, has willfully neglected or refused to perform the duty to support the other spouse, or who for one year or upwards has willfully and maliciously deserted the other spouse, shall” have no right of election. 20 Pa. C.S. §2106(a)(1); see, e.g., In re Supplee’s Estate, 73 Pa. D. & C. 203 (O.C. Montg. 1950) (forfeiture based on grounds of non-support); In re Estate of Kostick, 526 A.2d 76 (Pa. 1987) (forfeiture based on grounds of willful and malicious desertion); McCloskey Estate, 28 Fid. Rep. 2d 450 (O.C. Centre 2007) (no forfeiture where spouse did not live with decedent for eight to nine months prior to death and there was no finding that the separation constituted abandonment).

2. A party claiming forfeiture has the burden to prove that the surviving spouse forfeited his or her right to election. See Kostick, 526 A.2d 746; In re Banks’ Estate, 189 A.2d 154 (Pa. 1963). However, the facts in a particular case may shift the burden to the surviving spouse to prove that statutory grounds for forfeiture have not been established. See, e.g., In re Wallace Estate, 263 A.2d 421 (Pa. 1970); Banks, 189 A.2d 154.

3. For example, if forfeiture is based on desertion, desertion without cause or consent will be presumed willful and malicious, and the burden will shift to the surviving spouse to prove it was not malicious. Estate of Fisher, 276 A.2d 515, 518 (Pa. 1971). Cause that will rebut the presumption must be sufficient to have entitled the spouse to a divorce. Id.

4. Desertion without cause or consent will be presumed to be willful and malicious, but the mere fact of separation does not create a presumption of willful and malicious desertion nor that separation was without cause or consent. In re Kostick, 526 A.2d 746; Sexton Estate, 10 Fid. Rep. 2d 241 (O.C. York 1990); Buzzelli Estate, 9 Fid. Rep. 2d 228 (O.C. Fay. 1988); Ortmann Estate, 5 Fid. Rep. 2d 242 (O.C. Montg. 1985); see also Hovey Estate, 25 Fid. Rep. 122 (O.C. Lanc. 1975) (widow held not to have forfeited right to elect despite twenty-six years of living separate and apart).

5. The right of election is not forfeited by separation which is justifiable and for adequate cause. Schleid Estate, 27 Fid. Rep. 469 (O.C. Alleg. 1977); see also Rollins Estate, 3 Fiduc. Rep. 3d 448 (O.C. Chester 2014) (widow’s departure from husband because of physical abuse was not desertion which would deprive her of elective share).
6. Right of election forfeited based on more than a 50-year separation, during which the spouses continued periodic sexual relations with each other, but also parented children out-of-wedlock (including the electing widow, who had six children by another man). *Reason Estate*, 21 Fid. Rep. 2d 173 (O.C. Chester 2001).

7. The claimant spouse is competent as to all matters “other than the creation of his [or her] status as the surviving spouse.” 20 Pa. C.S. §2209; see, e.g., *Massey Estate*, 3 Fid. Rep. 2d 26 (O.C. Alleg. 1982).

F. How to Claim an Elective Share. In order to claim the elective share, the surviving spouse must file a written signed election to take an elective share with the clerk of the Orphans’ Court in the county where the decedent was domiciled at the time of his or her death within six months of the decedent’s date of death or the date of probate, whichever is later. 20 Pa. C.S. §2210; see also *Campbell Estate*, 701 A.2d 767 (Pa. Super. Ct. 1997).

1. A court may extend the time for election for such period and upon such terms and conditions as the court deems proper under the circumstances on application of the surviving spouse filed with the clerk within the six-month time limit described above. 20 Pa. C.S. §2210(b).

   a) For example, in *Seay Estate*, No. 1871 MDA 2015 (Pa. Super. Ct. June 20, 2016) (non-precedential), the Court held that a surviving spouse who had filed an election to take against his deceased wife’s will could revoke his revocation because he did not understand the effect of his election on joint property owned with the decedent at the time he made the election.

   b) The Court in *Seay Estate* cited *Appeal of Kreiser*, 69 Pa. 194 (1871), for the general rule that “... the party is not bound to make an election until all circumstances are known, and that the state, condition and value of the funds are clearly ascertained... To bind the widow she must have full knowledge of the facts.”

   c) Second wife who knew she was omitted from the decedent’s will but claimed to not know of her right to elect was barred from election when she did not file her election or seek an extension of time within the six-month period provided in Section 2210. *Johnson Estate*, 22 Fid. Rep. 2d 37 (O.C. Centre 2001).

2. However, the absence of probate does not extend indefinitely a spouse’s right to elect. Failure of the spouse to compel probate under 20 Pa. C.S. §3137 constituted a waiver of her right to elect within six months after probate. As such, because the spouse did not file an election within six months after death and did not request an extension of time under 20 Pa. C.S. §2210(b), she waived the right

3. Notice of the election must be given to the decedent’s personal representative, if any. 20 Pa. C.S. §2210(a).

4. The costs of filing and recording the election shall be reimbursed out of the estate as part of the administration expenses. 20 Pa. C.S. §2210(c).

5. Any award to the electing spouse is conditioned upon (a) the surviving spouse’s delivery of any disclaimers, releases or conveyances as may be appropriate to insure protection to the person or persons entitled to disclaimed, released or conveyed property, and (b) the filing with the court of proof of compliance with such condition. 20 Pa. C.S. §2204(e).

6. A surviving spouse’s elective share right is personal to the surviving spouse and may be exercised in whole or in part only during the surviving spouse’s lifetime by the surviving spouse or his or her agent under a power of attorney. 20 Pa. C.S. §2206.

   a) In the case of a minor spouse, the right of election may be exercised only by the surviving spouse’s guardian. 20 Pa. C.S. §2206.

   b) In the case of an incapacitated spouse, the right of election may be exercised only by the surviving spouse’s guardian or agent under a durable power of attorney. 20 Pa. C.S. §2206.

   c) In the case of an election by a guardian, the election shall be exercised only upon order of the court having jurisdiction of the minor or incapacitated person, after finding that exercise of the right is advisable. 20 Pa. C.S. §2206; see *D’Angelis Estate*, 2 Fid. Rep. 3d 298 (O.C. Phila. 2012) (invalidating purported election by an incapacitated person’s guardian who did not obtain court approval; surviving spouse died before the guardian could file a petition for approval).

   d) Note: Section 2206 is a “may” and not a “shall” statute. In *Bond Estate*, the Court held that an agent under power of attorney of surviving spouse may, but was not required to, elect against deceased spouse’s estate. *Bond Estate*, 7 Fid. Rep. 3d 313 (O.C. York 2017). In Bond, the Department of Human Services objected to an account filed by the executor of the deceased spouse’s estate on the basis that surviving spouse’s agent failed to take reasonable steps to obtain resources to which surviving spouse was entitled. Under the deceased spouse’s will, the surviving spouse received a specific bequest in an amount equal to her elective share claim that was payable to a sole use trust for her benefit and therefore is not counted as an “available resource” as to surviving spouse for purposes of Pennsylvania’s Medical Assistance (MA) Estate Recovery Program. If the agent for surviving spouse had made an elective share
claim, the amount subject to the claim would have been recoverable upon surviving spouse’s death under the MA Estate Recovery Program because it would have been paid to surviving spouse outright and includable in her estate.

7. A surviving spouse is competent to testify about all matters pertinent to his or her rights under Chapter 22 of the PEF Code other than the creation of his or her status as the surviving spouse. 20 Pa. C.S. §2209.

G. Death During the Pendency of Divorce

1. General Rule. A surviving spouse is not entitled to claim an elective share if: (a) the decedent died domiciled in Pennsylvania during the course of divorce proceedings; (b) no decree of divorce has been entered pursuant to 23 Pa. C.S. §3323; and (c) grounds for divorce have been established as provided in 23 Pa. C.S. §3323(g). 20 Pa. C.S. §2203(c).

2. In such case, the surviving spouse is entitled to equitable distribution under the Domestic Relations Code (Title 23 of the Pennsylvania Consolidated Statutes), rather than elective share rights under the PEF Code. See also Beal Estate, 5 Fid. Rep. 3d. 247 (O.C. Phila. 2015).

   a) But see Tosi v. Kizis, 85 A.3d 585 (Pa. Super. Ct. 2014), in which the Court held that a surviving spouse could discontinue the divorce action following the death of her spouse after grounds for divorce had been established. The Court held that Section 3323 of the Divorce Code is not mandatory; rather Section 3323 permits the parties to continue the divorce action and determine the economic claims under the principles of equitable distribution. A discontinuance of the divorce action pursuant to Pennsylvania Rule of Civil Procedure 229 is still permissible.

   b) Pennsylvania Rule of Civil Procedure 1920.17 was enacted shortly after Tosi v. Kizis to clarify that “[i]n the event one party dies during the course of the divorce proceedings, no decree of divorce has been entered and grounds for divorce have been established, neither the complaint nor economic claims may be withdrawn except by the consent of the surviving spouse and the personal representative of the decedent. If there is not agreement, the economic claims shall be determined pursuant to the Divorce Code.” Pa. R.C.P. 1920.17 (emphasis added). In other words, the parties may agree to discontinue the divorce and revert to elective shares rights under the PEF Code. The surviving spouse does not have a unilateral power to determine whether the assets of the deceased spouse are to be distributed under the Divorce Code or the PEF Code.

3. The surviving spouse of a decedent who died during divorce proceedings may also be precluded from receiving benefits through the decedent’s will, revocable conveyances, and certain beneficiary designations. See 20 Pa. C.S.
§§2507(2), 6111.1, 6111.2. In Estate of Easterday, 171 A.3d 911 (Pa. Super. Ct. 2017), the Court held that the same principles under Pennsylvania Rule of Civil Procedure 1920.17, which requires mutual agreement of the parties (i.e., the surviving spouse and the personal representative of the deceased spouse) to discontinue the divorce proceeding after death, also apply to the disposition of beneficiary-designated assets. See, e.g., Estate of Michael J. Easterday, No. 15 MAP, 2019 WL 2509377 (Pa. 2019) (holding Section 6111.2 did not apply to revoke beneficiary designation on life insurance policy where grounds for divorce were not established before decedent’s death).

VII. Pretermitted Beneficiaries

A. Pretermitted Spouse

1. General Rule. Chapter 25 of the PEF Code governs wills, and Section 2507 addresses various instances that require modification of a will, or of probate distribution, owing to particular circumstances. Section 2507(3) creates rights for a spouse married after the execution of a Will (a “pretermitted spouse”):

   Marriage.—If the testator marries after making a will, the surviving spouse shall receive the share of the estate to which he would have been entitled had the testator died intestate, unless the will shall give him a greater share or unless it appears from the will that the will was made in contemplation of marriage to the surviving spouse.

20 Pa. C.S. §2507(3).

a) A pretermitted spouse is not required to take under Section 2507(3). Even if the Will was executed prior to the marriage, if the surviving spouse is happy with what it provides under its terms, there is no need to invoke Section 2507(3).

b) A pretermitted spouse may not be permitted to take a share under Section 2507(3) if “it appears from the will that the will was made in contemplation of marriage to the surviving spouse.”

c) Note that an effective marital agreement can eliminate a surviving spouse’s rights under Section 2507(3).
2. **Application of Chapter 21 when Section 2507(3) is invoked.**

a) **Property available to pretermitted spouse.**

(1) Section 2507(3) entitles a pretermitted spouse to “the share of the estate to which he would have been entitled had the testator died intestate.” The PEF Code defines the “intestate estate” as “[a]ll or any part of the estate of a decedent not effectively disposed of by will or otherwise.” 20 Pa. C.S. §2101(a).

(2) It is settled law that the only assets subject to distribution pursuant to the intestacy statute are probate assets because those are the only assets of a decedent that have not been “effectively disposed of” upon his death. 20 Pa. C.S. §2101(a); Estate of Long, 600 A.2d 619, 620 (Pa. Super. Ct. 1992).

(3) Section 2507(3) does not reach *inter vivos* trusts. Trust Under Deed of David P. Kulig, 175 A.3d 222 (Pa. 2017) (Kulig is discussed in greater detail below).

b) **Amount of property available**

(1) Pretermitted spouse is entitled to an “intestate share” of the probate estate as set forth in 20 Pa. C.S. §2102 (see also, Section III(A)(1), *supra*).

(2) If there is *no surviving issue or parent of the decedent*, the surviving pretermitted spouse will receive the entire probate estate. 20 Pa. C.S. §2102(1). For example, if A executed a will leaving her entire probate estate to charities, and then married B a year later, at A’s death where B survived, B would inherit 100% of the probate assets and the charities would receive nothing.

(3) If there are *surviving issue of the decedent all of whom are issue of the surviving spouse also*, the surviving spouse will receive the first $30,000 plus one-half of the balance of the probate estate. 20 Pa. C.S. §§2102(3). The other one-half balance of the probate estate will pass under the will. (But see next Section regarding after-born children, if that applies.)

(4) If there are *surviving issue of the decedent one or more of whom are not issue of the surviving spouse*, the surviving spouse will receive one-half of the probate estate. 20 Pa. C.S. §§2102(4). The other one-half of the probate estate will pass under the will. (But see next Section regarding after-born children, if that applies.)
3. **Alternative to spousal election.**
   
a) The 1992 Joint State Government Commission comment to Section 2507(3) says that a surviving “spouse’s right of election against the will is not affected and would be the same regardless of whether the will was executed before or after the marriage.”

b) Practice in Pennsylvania is that a pretermitted spouse can *decide* whether to take a pretermitted share under Section 2507(3) or spousal election under Chapter 22 of the PEF Code. Chapter 22 creates a formula under which a surviving spouse is entitled to approximately 1/3 of various probate and non-probate assets, subject to certain offsets.

4. **History of protections for pretermitted spouses.**
   
a) Statutory protections allowing pretermitted spouses to obtain an intestate share of an estate have existed in Pennsylvania for hundreds of years. See, e.g., *M’Night v. Read*, 1 Whart. 213, 219 (Pa. 1836) (examining a 1748 statute deriving from English common law).

b) The purpose of the pretermitted share in Pennsylvania law is “to protect a surviving spouse from the negligence of the decedent in failing to update his will after marriage.” *Estate of Long*, 600 A.2d 619, 621 (Pa. Super. 1992).

c) This assumption of *negligence* contrasts with the purpose behind spousal election, which was enacted (and later expanded) to protect a surviving spouse from a decedent’s *intentional* attempts to disinherit him or her. See *Brégy On Selected Sections of the Pennsylvania Probate, Estates and Fiduciaries Code*, Chapter 22 at 1-6, 14-16 (1991 rev’d ed.).

5. **Pennsylvania UTA does not impact the pretermitted share.**
   

   (1) Section 7710.2 states that the “rules of construction that apply in this Commonwealth to the provisions of testamentary trusts also apply as appropriate to the provisions of inter vivos trusts.” The Joint State Government Commission comment to Section 7710.2 references Section 2507.

   (2) The surviving spouse argued that this provision of the UTA, in conjunction with its comments, meant that she was entitled to an “intestate share” of both the decedent’s probate estate
and his funded, revocable trust. This presented an issue of first impression in Pennsylvania.

(3) The Orphans’ Court and Superior Court agreed with the spouse that the enactment of Section 2507(3) constituted a change in the law, and they concluded that *inter vivos* trusts of a decedent created before a marriage were now subject to Section 2507(3).

b) A divided Pennsylvania Supreme Court reversed, concluding that the enactment of Section 7710.2 was not intended to alter the scope of Section 2507(3) and effect a change in the law. Therefore, pretermitted spouses could claim an intestate share of a decedent’s probate estate where the will predated the marriage, but could not claim such a share of any *inter vivos* trusts created by the decedent before the marriage.

6. **Example:**

<table>
<thead>
<tr>
<th>Assets</th>
<th>Amount</th>
<th>Includable</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tangibles:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Millennium Falcon</td>
<td>$800,000</td>
<td>$800,000</td>
</tr>
<tr>
<td>Medal of Honor</td>
<td>100,000</td>
<td>100,000</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>100,000</td>
<td>100,000</td>
</tr>
<tr>
<td><strong>Imperial Naval Academy Credit Union</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Checking/Savings</td>
<td>600,000</td>
<td>600,000</td>
</tr>
<tr>
<td><strong>Endor Residence</strong> (owned jointly with Leia Organa; purchased by Han)</td>
<td>300,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>Vanstar IRA</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beneficiary: Chewbacca 100%</td>
<td>500,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>Rebellion Pension</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beneficiary: Leia Organa 100%</td>
<td>100,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>First Galactic Insurance Policy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beneficiary: Chewbacca 100%</td>
<td>1,000,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>First Galactic Insurance Policy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Beneficiary: Leia Organa</td>
<td>100,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>Gift to Lando Calrissian prior to death</strong></td>
<td>53,000</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>$3,600,000</td>
<td>$1,600,000</td>
</tr>
</tbody>
</table>

**Pretermitted Share if No Slayer**

($30,000 plus half the balance):

$815,000

**Pretermitted Share if Slayer:**

$1,600,000
As a pretermitted spouse, Leia would receive her intestate share of Han’s probate estate, plus she would keep all of the non-probate assets she received, without no offsets, as with the elective share.

B. Pretermitted Children

1. General Rule. Chapter 25 of the PEF Code governs wills, and Section 2507 addresses various instances that require modification of a will, or of probate distribution, owing to particular circumstances. Section 2507(4) creates rights for a child born or adopted after the execution of a will (a “pretermitted child”):

   **Birth or adoption.—** If the testator fails to provide in his will for his child born or adopted after making his will, unless it appears from the will that the failure was intentional, such child shall receive out of the testator's property not passing to a surviving spouse, such share as he would have received if the testator had died unmarried and intestate owning only that portion of his estate not passing to a surviving spouse.

   20 Pa. C.S. §2507(4).

   a) Note that to qualify, the will cannot contain language suggesting that the testator acted *intentionally*. If the will contains terms stating that the testator chose not to provide for any children or that she/he provided for children by some other means, Section 2507(4) cannot be invoked.

   b) Also note that to qualify, a child has to be left out *entirely*. If a child can receive something under the will, he or she cannot seek relief under this section even if the will was executed prior to birth or adoption. *Schaper v. Pittsburgh Coal Co.*, 109 A. 762, 763 (Pa. 1902) (devise “to my remaining children” included a child born after the will was signed).

   c) There is no “adequacy” test for testamentary gifts to pretermitted children. *Newlin’s Estate*, 58 A. 846, 849 (Pa. 1904) (“Any provision which does that is sufficient, and the inquiry whether large or small, equal or unequal, vested or contingent, present or future, is irrelevant[.]”).

2. Amount of property available.

   a) The fund potentially available to a pretermitted child will consist of the probate estate, less any property given to the surviving spouse by will. Section 2507(4) (“such child shall receive out of the testator’s property not passing to a surviving spouse”). If the decedent leaves 100% of his probate assets to his spouse, pretermitted children will take nothing.
b) The pretermitted child then receives the portion of the remaining fund that “he would have received if the testator had died unmarried and intestate[.]” Section 2507(4).

c) Issue of an intestate decedent take “in equal shares” under Section 2104(2), so a pretermitted child’s share will be dependent upon the total number of decedent’s children. For example, if the decedent had two children, one born before the will was signed and one after, the pretermitted child is entitled to 50% of the “intestate” fund. Similarly, if the decedent had five children, three born before the will was signed and two after, each of the pretermitted children is entitled to 20% of the “intestate” fund.

d) Note that the children born before the will is signed have no statutory right to take beyond what is left to them in the will after the pretermitted child takes his or her statutory share.

3. Examples:

a) DeBias Estate, 15 Fid. Rep. 58 (O.C. Bucks 1995). Doris DeBias executed her will in 1987, when she had two children, and she left the residue of her estate in trust, specifically naming those two children and a godchild as beneficiaries. Doris’s third child, Jessica, was born in 1989, and Doris died shortly thereafter. “Under the clear mandate of Section 2507(4), I find that Jessica is entitled to one-third of the residuary estate, before distribution to the trustee(s) for the other minor beneficiaries.” Id. at 66. In other words, Jessica received 1/3 of the residue outright and the other 2/3 were placed into trust for the two other children and the godchild.

b) Fleigle Estate, 14 Fid. Rep. 162 (O.C. York 1993). Charles Fleigle, Jr. died, leaving a will dated 1975 that left his estate to his parents or to his brother if his parents predeceased him. Decedent’s daughter, Wanda, was born out of wedlock in 1985, and he acknowledged paternity. Decedent also left an ambiguous note regarding his property, dated in 1990, that mentioned Wanda. After the Orphans’ Court concluded that the 1990 note could not qualify as a testamentary instrument, the judge concluded that Wanda was a pretermitted child, the 1975 Will containing nothing to suggest that decedent intended to exclude her as an heir, and Wanda, therefore, “is entitled to receive her intestate share, which, in this case, is decedent’s entire estate.” Id. at 166.

c) Estate of Rothberg, 166 A.3d 378 (Pa. Super. 2017). A child born before the Will was executed, but who was never known by the decedent, nonetheless is not eligible to make a claim under Section 2507(4) because the statutory protection is reserved for children born or adopted after execution of the instrument.
d) Walker v. Hall, 34 Pa. 483 (1859). Mere precatory language indicating that the testator has confidence that his spouse will take care of any after-born children will not obviate the statutory rights of after-born children. Note that while the statutory law at the time of Walker was quite different, the concept is likely the same, meaning that an expression of confidence in a spouse alone, without a deliberate statement that after-born children are not provided for, likely will not eliminate the operation of Section 2507(4). (Of course, a will that leaves everything to the surviving spouse moots the operation of Section 2507(4).)

VIII. Family Exemption

A. General Rule. Section 3121 provides for a basic family exemption of $3,500 that is available to the surviving spouse of a decedent. If there is no surviving spouse, or if the surviving spouse has waived or forfeited his or her rights, then the decedent’s children who are members of the same household as the decedent may claim the exemption. 20 Pa. C.S.§3121.

1. The family exemption provisions are not inheritance provisions. Rather, the purpose of the statute is to provide immediate funds to the family following the death of a head of the family. See, e.g., In re Schwartz Estate, 71 A.2d 831 (Pa. Super. Ct. 1950); In re Bell’s Estate, 10 A.2d 835 (Pa. Super. Ct. 1940).

2. A decedent cannot deprive a family member of his or her right to claim the exemption by any provision in his or her will. Compher v. Compher, 25 Pa. 31 (Pa. 1855).

B. Property Available. The exemption may be satisfied in either real or personal property; provided, however, that any property specifically devised or bequeathed by the decedent, or otherwise specifically disposed of by the decedent, shall not be claimed as the personal exemption if other assets are available for the exemption. 20 Pa. C.S.§3121.

C. Waiver. The right to the family exemption may be waived. The Courts have found the following to constitute a valid waiver of the family exemption:

1. Express provision for waiver in a valid marital agreement;

2. Failure to make a claim within a reasonable period of time; and

3. Failure to make the claim before dying.


D. **Forfeiture.** The right to the family exemption may be forfeited by the surviving spouse by:

1. Abandonment of the decedent without such reasonable cause as would entitle the abandoning spouse to a divorce;
2. Desertion;
3. Divorce or conduct entitling the decedent to a divorce;
4. Voluntary separation;
5. Remarriage; and
6. Material involvement in the cause of the death of the decedent (with respect to a surviving spouse or family members generally).

Note that a determination of forfeiture as a ground for disallowing the family exemption is not identical to the conditions prescribed by the laws of intestacy that prohibit a surviving spouse from claiming an interest in the decedent’s property. See, e.g., In re Sadowski’s Estate, 43 A.2d 907 (Pa. Super. Ct. 1945); In re Fenyo’s Estate, 161 A. 606 (Pa. Super. Ct. 1932); In re Mehaffey’s Estate, 156 A. 746 (Pa. Super. Ct. 1931); In re Pinder’s Estate, 61 Pa. D. & C. 193 (O.C. Del. 1931).

**IX. Substitution of the Estate of a Deceased Party**

A. **Upon Death.** When a party dies after civil litigation has been commenced, the attorney for the deceased must file a notice of death with the prothonotary upon learning of the death. Pa. R.C.P. 2355. The attorney must also serve the notice of death upon every other party to the action. Pa. R.C.P. 2355. Recall, however, that a surviving spouse’s elective share right must be exercised during the surviving spouse’s lifetime. 20 Pa.C.S §2206. Thus, assume that the surviving spouse made an elective share claim and died shortly after making such claim.

B. **Substitution.** After the notice of death has been filed, a successor in interest can take the place of the deceased party.

1. **Generally.** “Substitution of the personal representative of a deceased party to a pending action or proceeding shall be as provided by law.” 20 Pa.C.S. §3372. The procedure to substitute the personal representative of a deceased party is done in accordance with Pa. R.C.P. 2352.
2. **No Substitution.** An action against the “Estate” of a decedent is a nullity. The action must be initiated against the personal representative. When an action is initiated against the “Estate” and an attempt to substitute the personal representative is made after expiration of the applicable statute of limitations, the case will be dismissed. See, e.g., Wilkinson v. Knight, 7 Fid. Rep. 3d (O.C. Crawford 2017) and numerous appellate decisions cited therein. In Wilkinson, Plaintiff sued the tortfeasor and later found out she had died. Plaintiff filed a writ summons against her estate after the statute expired and sought to have a personal representative appointed. The court concluded that because the “Estate, the named defendant, cannot be made a party to litigation, substitution seems improper here.” Id. at 343. Moreover, the court ruled that the statute was not tolled by filing a writ against the Estate. Id. at 346.

3. **Successors.** A successor can either be a voluntary substitute or an involuntary substitute.

   a) **Voluntary.** The successor must file a Statement of Material Fact in Support of Voluntary Substitution pursuant to Pa. R.C.P. 2352.

   1) When a mortgage was assigned after a foreclosure action had been commenced, the mortgage assignee filed a Statement of Material Fact in Support of Voluntary Substitution. The statement detailed who the original party to the action was, what property the action is over, and why the successor is a successor in interest. The court found that the mortgage assignee had standing to foreclose the mortgage. Gerber v. Piergrossi, 142 A.3d 854, 856-57 (Pa. Super. 2016).

   2) Where a business owner’s son voluntarily informed the trial court of his intention to participate in litigation as substitute and successor to his father, and such substitution was accepted by the court, the son could not later object that he was not bound by the result. Bata v. Central-Penn Nat. Bank of Phila., 224 A.2d 174, 178 n.3 (Pa. 1966).

   3) In order to voluntarily substitute for an existing party, however, the volunteer must actually be a proper legal successor to that existing party. Eckert, a taxpayer, brought an action challenging the grant of a bid to a construction firm, but failed to appear at the administrative hearing. Later, another taxpayer claimed to serve as Eckert’s substitute, but the Commonwealth Court concluded otherwise, finding that the ersatz substitute was merely another possible plaintiff, not a legal successor. Engle v. Beaver County, 754 A.2d 729, 730 (Pa. Commw. Ct. 2000).

   b) **Involuntary.** The adverse party must file a Praecipe of Substitution of Successor. Once filed, the prothonotary is required “to
enter a Rule upon which the successor to show cause why he or she should not be substituted as a party.” Pa. R.C.P. 2352.

1) After an action was commenced against a doctor by Mr. Walsh, the doctor died. Mr. Walsh filed a Praecipe for Substitution of Successor with the prothonotary’s office seeking to substitute the executor for the doctor in the litigation. The praecipe was never served upon the executor. The court noted that the prothonotary was required to enter a Rule upon the successor. Walsh v. Kubiak, Exec’x, M.D., 27 Phila. Co. Rptr. 239, 244 (C.D. Phila. Jan. 6, 1994).

2) In the similar case of Murtha v. Crozier-Chester Medical Center, 576 A.2d 979 (Pa. Super. 1990), the plaintiff filed his medical malpractice complaint while Dr. Jones was alive, but was unable to effect service before he died. Plaintiff timely sought to substitute Dr. Jones’ executor, who argued that the substitution needed to happen prior to the expiration of the statute of limitations for torts. The Superior Court disagreed and held that where the physician was alive when the complaint was filed, but died before service, and plaintiff took steps to substitute and serve the doctor’s legal successor, the statute of limitations would be tolled and the doctor’s executor should be involuntarily substituted.

4. **Definition.** “A successor is anyone who by operation of law, election or appointment has succeeded to the interest or office of a party in the action.” Pa. R.C.P. 2351. Examples of a successor would be the executor or administrator of the decedent’s estate, or a newly elected or appointed successor for an office that carries the interest in the pending cause of action. 7 Goodrich Amram 2d §2351:3 (2017).

C. **Time Limitations.** While there is no time limit in which to make a substitution, if a petitioner dies in a pending action and a personal representative is not appointed within a year, then any defendant or respondent “may petition the court to abate the action as to the cause of action of the decedent.” 20 Pa. C.S. §3375. The court will grant the Motion for Abatement and Dismissal of Action for Failure to Substitute Parties unless the delay in appoint can be reasonably explained. 20 Pa. C.S. §3375.

1. Walsh sued Dr. Kubiak for performing allegedly unnecessary surgery on him. After Kubiak died, Walsh filed a praecipe to substitute his executor, but the prothonotary never issued a rule to show cause on Kubiak’s estate as required by Rule 2352. Kubiak’s executor later filed a motion to abate the and dismiss the action for failure to substitute. The trial court denied the motion, concluding that the error was the prothonotary’s, not the plaintiff’s, and that the executor had not been prejudiced by the situation. Walsh, supra.
2. Where (a) all parties were aware of the death of the minor plaintiff (who was being represented in a malpractice action by his father); (b) the father filed a suggestion of death and later filed for substitution after receiving letters of administration a year later; and (c) the defendant fully participated in the litigation throughout this time, the defendant’s motion to abate the action under 20 Pa. C.S. §3375 would be denied. Even though plaintiff’s father did not properly substitute himself as administrator until after the one-year period set forth in Section 3375, the defendant doctor waived his claim to abatement by continuing to participate in the proceedings. Berdine v. Washington Hosp., 17 Pa. D. & C. 3d 26 (C.D. Wash. 1980).

“Laugh it up, fuzzball.”

X. Contracts to Make a Will

A. Statute. Contracts concerning succession (i.e., a contract to make a will or to die intestate) that are entered into on or after January 1, 1993 are governed by Section 2701 of the PEF Code:

(a) Establishment of contract.--A contract to die intestate or to make or not to revoke a will or testamentary provision or an obligation dischargeable only at or after death can be established in support of a claim against the estate of a decedent only by:

(1) provisions of a will of the decedent stating material provisions of the contract;

(2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or
(3) a writing signed by the decedent evidencing the contract.

(b) Joint will or mutual wills.--The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

20 Pa. C.S. §2701.

1. The Joint State Government Commission comment to Section 2701 (which quotes the comment to corresponding Section 2-701 of the Uniform Probate Code) indicates that requiring a contract concerning succession to be in writing was intended to reduce litigation.

2. In Estate of Balter, 703 A.2d 1038 (Pa. Super. Ct. 1997), the claimant alleged that the decedent had given her a pin made of precious stones, but later requested that the claimant return it to her in exchange for the decedent’s promise to bequeath jewelry with a value equal to that of the pin. The claimant alleged this created an enforceable contract to make a will. The Superior Court concluded that the claimant failed to satisfy any of the three requirements under Section 2701(a). Id. at 1041 (stating “the fact is, the will contains no explanation of the terms of the alleged contract nor any express reference to the existence of an oral contract”); see also Flaxer Estate, 26 Fid. Rep. 2d 23 (O.C. Phila. 2004).

3. Claimant was unable to prove that he had an oral contract in which he agreed to “deed” certain property to the decedent in exchange for the decedent leaving a will that gave his estate to the claimant. In re Estate of Bucher, 2013 WL 11253517 (Pa. Super. Ct., Oct. 28, 2013) (non-precedential) (finding that none of the decedent’s wills referred to any contract with the claimant, and claimant did not produce a separate writing). See also, Stanley v. Hendershot, No 814 MDA, 2018 WL 2275789 (Pa. Super. Ct. 2018) (non-precedential) (finding claimant failed to meet any Section 2701 requirements to prove existence of agreement to live with and care for decedent in exchange for decedent’s entire estate).

4. Because Section 2701 relates to “contracts concerning succession,” it applies in situations other than contracts to make a will. See, e.g., Stein Estate, 4 Fid. Rep. 3d 218 (O.C. Montg. 2014) (holding unenforceable an alleged oral pledge by an intestate decedent to leave his entire estate to charity, where there was no writing); Yoder Estate, 30 Fid. Rep. 2d 352 (O.C. Chester 2010) (finding unenforceable an alleged oral contract to waive the right of spousal election).

B. Pre-1993 Agreement. The requirements to prove the existence of a contract to make a will that arose prior to 1993 are set forth in case law.

1. The common law recognizes oral contracts to make a will, but the claimant “must meet the exacting evidentiary burdens placed by our law upon one who seeks to establish an oral contract to make a will.” Estate of Friedman, 398 A.2d 615 (Pa. 1978).
2. The Supreme Court set forth those “exacting burdens” as follows:

   Certain rules have been established in this area of the law: (a) a contract to make a will or to bequeath by will, as other contracts, must be established by proof of an offer, an acceptance and legal consideration …; (b) the terms of the contract must be shown with certainty and lucidity …; (c) the evidence must be scrutinized with great care …; (d) there must be “direct evidence” in proof of the contract …; (e) as in the case of other claims against a decedent’s estate, the evidence in proof of the contract, must be “clear, direct, precise and convincing” …;

   … There must be shown by believable testimony that the decedent, in the presence of the claimant, made statements, in the form of a promise or offer, upon which the claimant could reasonably be expected to act in reliance on such statements. Such a rule is sound because a contract to bequeath by will must be shown as any other contract must be shown; essential to such proof is evidence that the minds of the parties met on the terms of the contract … [.]

Fahringer v. Strine’s Estate, 216 A.2d 82, 85-86 (Pa. 1966) (citations omitted); see also Friedman, supra.

3. Decedent’s oral contract to give his nephew his entire estate if the nephew emigrated from Poland was upheld. Decedent had executed a will giving the nephew the residue of his estate and told the scrivener about the agreement. The decedent subsequently married and revised his will to give residue to his wife. The court awarded the residue to the nephew over the wife’s objection. In re Estate of Beeruk, 241 A.2d 755 (Pa. 1968).

4. Court enforced an oral agreement to leave one daughter “the farm” to the exclusion of decedent’s other children if she moved into the house and took care of the decedent. Meyers Estate, 5 Fid. Rep. 3d 107 (O.C. Montg. 2015) (applying factors listed in Fahringer and Friedman). Although the decedent died in 2008 and the case was decided in 2015, the court found substantial evidence that the contract arose prior to the enactment of Section 2701.


Note: The court in Smallwood stated that the measure of damages was not the entire estate, but the value of services. This notion, espoused in dicta in Fahringer, supra, was flatly rejected by the Supreme Court in Beeruk.
See Beeruk, 241 A.2d at 759 (stating “[t]he dictum in Fahringer is disapproved and the cases upon which it relies are overruled”); see also Meyers, 5 Fid. Rep. at 121-22 (following Beeruk).

6. **Practice Tip:** If the claimant is alleging a contract to make a will based on services rendered and the evidence is uncertain or lacking, consider stating an alternative claim for a *quantum meruit* recovery.

Dead Man’s Rule. The surviving party to a contract to make a will is incompetent to testify under Pennsylvania’s Dead Man’s Rule, 42 Pa. C.S. §5930. See, e.g., Nakoneczny Estate, 319 A.2d 893 (Pa. 1974); Meyers, *supra*; Hipp, Sr. Estate, 8 Fid. Rep. 3d 233 (O.C. Chester 2018). Failure to raise the Dead Man’s Rule at trial waives the issue on appeal. See, e.g., Beeruk, *supra*, at 417, n.1.

“I stole it. From Unkar Plutt. He stole it from the Irving Boys, who stole it from Ducain.”

“Who stole it from me! Well, you tell him that Han Solo just stole back the Millennium Falcon for good.”

**XI. Other Estate Administration Issues.**

A. **Illegal Assets.** Issues might include how to address the assets with law enforcement; valuation; taxability; and ownership. Consider the following:

1. **Technical Advice Memorandum 9207004.**

   a) In this matter, the decedent died after his small airplane crashed in Florida. The plane was carrying 459.5 pounds of marijuana. Two of the decedent’s accomplices were later arrested carrying an additional 204.9 pounds of marijuana that had belonged to the decedent. The marijuana was subject to forfeiture under Florida and federal drug laws.
b) Analyzing analogous cases in the income tax case law, the IRS concluded that the marijuana was includible in the decedent’s gross estate for federal estate tax purposes under I.R.C. §2033. The IRS determined that, because the marijuana had been destroyed, it was reasonable to conclude that the marijuana was of average quality, and to value the marijuana based on its street-value, applying the standard of Treas. Reg. §20.2031-1(b), the value equals the price paid by a “willing buyer and willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts.”

c) The IRS also concluded that there were no deductions available to the estate under I.R.C. §2053, relating to administrative expenses or claims against the estate, or I.R.C. §2054, relating to losses incurred during the settlement of an estate arising from fires, storms, shipwrecks, or other casualties, or from thefts, when such losses are not compensated by insurance or otherwise. Analogizing this scenario to business income tax deductions for income produced in illegal activities, the IRS held that to permit a deduction to offset a forfeiture under the drug laws would be contrary to public policy.

2. Ileana Sonnabend Estate.

a) Ileana Sonnabend died owning Robert Rauschenberg’s Canyon, a collage piece including a stuffed bald eagle. The Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act banned the sale of Canyon and imposed fines for its possession.

b) The estate reported the value of the artwork at $0. The IRS valued the artwork at $65 million and assessed a $29.2 million tax deficiency, along with a substantial valuation understatement penalty. The IRS did not account for the artwork’s criminal properties in reaching its valuation.

c) The taxpayers argued that the government could not eliminate a commercial market for an item by passing the laws protecting the bald eagle and then assess estate tax based on a hypothetical value of a protected item notwithstanding its criminal character. Ultimately, the case settled, Canyon was distributed to the Metropolitan Museum of Art and no additional estate tax or penalties were due.

B. Stolen Property. Issues might include creditor claims/ownership disputes; voidable transfers; and other property rights, including rules of possession. Consider the following:


a) In this matter, the decedent sold a number of works of medieval art from Quedlinburg, Germany while stationed there during World War II. He gave away some items during his lifetime, and sold some items, but
ultimately died in possession of many items of artwork. Upon the
decedent’s death, the decedent’s brother and sister inherited his estate, but
did not report any items of artwork.

b) The decedent’s brother and sister attempted to appraise and sell
some of the artwork, even after they had knowledge that it had been
stolen.

c) Ten years after the decedent’s death, the German town of
Quedlinburg discovered that the decedent had stolen the works of art and
instituted a suit against the decedent’s brother and sister. The IRS held
that the stolen artwork was includible in the decedent’s gross estate under
I.R.C. §2033. In valuing the artwork, the IRS took into consideration that
the decedent and his family were able to dispose of some of the artwork in
legitimate and illegitimate markets, and assessed the value of the artwork
at the highest price that would have been paid in the black market or in the
legitimate retail market.

d) Because the decedent’s siblings only enjoyed the property for ten
years, the IRS treated the value of the property as a ten-year term of years
interest and applied a present value discount. The IRS did not permit a
deduction under I.R.C. §2053 as a claim against the estate because the
claim was not enforceable under state law and the claim, whether potential
or contingent, did not become certain and was not asserted before the end
of a reasonable period of administration.

C. Firearms and Other Weapons. Issues might include handling and safety;
valuation; securing, transporting and insuring; selling; ownership; and transferring
ownership.

D. Offshore Assets. Issues might include protection from possible creditor claims;
taxation; and jurisdictional issues.