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Reform of Administration of Small Estates in Pennsylvania: Collection of Personal Property by Affidavit

Franklin L. Best, Jr.*

I. Introduction

Everyone loses when the collection of assets of a small estate requires intervention by the Register of Wills or the Orphans' Court. The heirs and legatees suffer delay and incur expenses that consume a significant part of the estate.¹ If the attorney retained by the estate is to receive adequate compensation for his time, he must charge more than he feels is appropriate in light of the size of the estate. Often he takes a loss on these estates.² The creditors of the decedent face the danger of depletion of the assets by administrative expenses.³ Commonwealth tax revenues are lost because of deductions available for those same administrative expenses.⁴ Meanwhile, the

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1. "Formal administration of a small estate . . . would result in the costly dissipation of the estate and an unnecessary delay in distributing minimal assets which are most needed by the family immediately upon the death of a decedent." C. WINKLER, J. CROSS & N. FAULKNER, *PROBATE AND ADMINISTRATION OF SMALL ESTATES*, - v. - ().

2. An Alabama Probate Judge commented that "a small estate can be just as time-consuming as a large one, and the lawyer's fee though reasonable for the amount of time spent may nevertheless be unreasonable when compared to the amount realized when distribution is made." Hooper, *Small Estate Law for Alabama*, 4 CUM.-SAM. L. REV. 440, 441 (1974).

3. If the assets of the estate are insufficient to pay all claims in full, costs of administration are given first priority. 20 PA. CONS. STAT. ANN. § 3392 (Purdon 1975).

4. All reasonable expenses of administration are deductible. PA. STAT. ANN. tit. 72, § 2485-611 (Purdon 1964).

Administration expenses include, but are not limited to, letters testamentary or of administration; estate notices; inventory; fees of appraisers, witnesses, personal representatives and attorney; short certificates; affidavits; fees for account and adjudication; public liability insurance premium . . . ; stock transfer stamps; registered mail charges; certified copies of will; fees for recording instruments; bank charges for supervision of entry into safe deposit boxes under Section 1111 of this Act; and costs of interstate arbitration under Act of 1949, P.L. 1726, § 13, 72 PS § 2490.13.

Whether an expense is properly one of administration rather than one chargeable to the distributee of income producing property will be a question to be determined under the facts of the specific situation involved.

corporation holding the assets is plagued by requests from the heirs and legatees to transfer the assets directly to them without requiring appointment of an executor or administrator. Furthermore, the Register of Wills and the Orphans' Court have their busy dockets further burdened by minor matters. To help all those parties, the legislature should simplify the procedures for administration of small estates by allowing transfer of assets without involvement of the Register or the court.

II. Administration of Decedents' Estates

A. Administration by Personal Representatives

The Pennsylvania Decedents, Estates and Fiduciaries Code empowers the Register of Wills to issue letters testamentary or letters of administration to a qualified person, which authorizes that person to serve as personal representative of the decedent.⁵ The personal representative is thereby directed to take possession of all the real and personal property of the decedent and to administer that property.⁶ The personal representative must also file tax returns concerning the estate with the Commonwealth.⁷ In addition, the Code directs the personal representative to advertise the grant of letters and request persons having claims against the estate to make the claims known to him.⁸ Disputes may be resolved through the filing of an account by the personal representative⁹ and the auditing of the account by the court.¹⁰

1963 Report of the Joint State Government Commission, *id.*

5. 20 PA. CONS. STAT. ANN. § 3156 (Purdon 1975). Under the Code a person is disqualified from serving as personal representative if he is:

- (1) Under 18 years of age.
- (2) A corporation not authorized to act as fiduciary in the Commonwealth.
- (3) A person, other than an executor designated by name or description in the will, found by the register 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, when 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 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 share or interest therein.

Id. § 3156.

6. *Id.* § 3311. Although title to all personal property passes to the personal representative, title to real estate passes from the decedent to his intestate heirs or devisees. The personal representative, however, has the authority to administer the real estate. *Id.* § 301.

7. The Inheritance Tax Act requires the personal representative to file an inheritance tax return for property administered by him. PA. STAT. ANN. tit. 72, § 2485-701 (Purdon 1964). The personal representative must also file an income tax return for the decedent. Tax Reform Code of 1971, PA. STAT. ANN. tit. 72, § 7331(e) (Purdon Supp. 1979). Furthermore, all fiduciaries of the estate must make and file returns for the estate. *Id.* § 7331(g).

8. 20 PA. CONS. STAT. ANN. § 3162 (Purdon 1975).

9. *Id.* § 3501.1.

10. 20 PA. CONS. STAT. ANN. §§ 3511, 3512 (Purdon 1975).

The procedure for administration of estates by a personal representative provides some protection to persons having claims against the estate, but it involves unjustified delay and expense for small estates. Even if no disputes exist and the personal representative is willing to make distribution at his own risk, without audit by the court,¹¹ delay and expense continue to result. The appointment of a personal representative requires a petition for the grant of letters prepared¹² and presented to the Register of Wills upon an affidavit administered by the Register¹³ and prevents a quick and easy administration of an estate. In many cases the personal representative must execute and file a bond before the Register grants the letters.¹⁴ Arranging the advertisement of the grant of letters and filing an inventory of assets¹⁵ further delay the distribution of the assets. Furthermore, this process is expensive if an attorney is involved because it is so time consuming. Finally, the expenses of Register's fees, advertising costs, and bond premium increase the burden on the estate.

Because of the delay and expense involved in administration by a personal representative, the parties entitled to the estate would benefit if a person or institution holding assets of the decedent would transfer the assets directly to them without requiring grant of letters to a personal representative. In the absence of a statute that would protect a transferor making a transfer directly to the claimants, the transferor is protected against further claims only if it makes the transfer to the personal representative.¹⁶

A transferor faced with this problem has several available options. First, he could require an indemnification agreement from the person requesting the transfer. Attempts to recover funds pursuant to an indemnification agreement, however, are expensive if the transferee resists the attempt to recover the funds. In addition, this option could prove fruitless if the transferee is judgment-proof.¹⁷ Second, the transferor could require a bond to guarantee indemnification.

11. The statute provides in pertinent part:

A personal representative, at his own risk and without the filing, audit or confirmation of his account, may distribute real or personal property and such distribution shall be without liability to any claimant against the decedent who has not given notice of his claim as provided by this code within one year after the first complete advertisement of the grant of letters to such personal representative or thereafter but prior to such distribution.

Id. § 3532(a).

12. *Id.* § 3153.

13. *Id.* § 3154.

14. *Id.* § 3171. See § 3174 of the Code for circumstances when a bond is not required.

15. *Id.* § 3301.

16. *Id.* §§ 301, 3311. A person in possession of property of the decedent cannot make payment directly to heirs or legatees rather than to the personal representative without risk. T. ATKINSON, HANDBOOK OF THE LAW OF WILLS 570 (2d ed. 1953).

17. "[B]anks, employers, and stock transfer agents . . . often try to help the distributees through indemnity agreements, even at some risk to themselves." Hooper, *supra* note 2, at 442.

Although that would require payment of a premium by the transferee, the premium should be small. Nevertheless, the transferee would be required to obtain a separate bond for each transferor. Therefore, an estate, even though small, may have too many assets for the convenient use of bonds.¹⁸ Last, the transferor could pay the claimant directly with no protection, accepting the risk that a subsequent claim may be made for the asset. Transferors are often called upon to take this risk, and some do, if the amounts are small enough.¹⁹ Estate law, however, should not require heirs and legatees to coax a holder of the decedent's assets to make the payment or transfer. Furthermore, the holder of these assets should not be required to accept the risks. An acceptable statute would protect the transferor at no charge and eliminate the need for bonds.

B. *Pennsylvania Small Estate Law*

Although Pennsylvania has adopted several provisions that permit speedy and inexpensive transfer of assets,²⁰ these provisions of the Decedents, Estates and Fiduciaries Code are inadequate. Section 3101 provides protection, without involvement of the Register or the court, for an employer paying employee benefits not exceeding \$3,500 directly to the family of the decedent.²¹ The provision immunizes employers making these payments by holding "[a]ny person to whom payment is made . . . answerable therefor to anyone prejudiced by an improper distribution."²²

Section 3102 provides for distribution, by direction of the court, of personal property not exceeding \$10,000 in gross value, upon petition of any party in interest.²³ A transfer to a person named in the

18. One commentator suggests using bonds in lieu of probate only if no more than five or six assets are to be transferred. Corcoran, *Probating Illinois Estates: Bond in Lieu of Probate*, 63 ILL. B.J. 712, 714 (1975).

19. Practitioners are advised that "as a practical matter, persons or institutions owing small amounts to a decedent often can be persuaded to make payments to the widow or other person entitled even when no personal representative has been appointed." M. SMITH & R. GROSSMAN, PENNSYLVANIA FIDUCIARY GUIDE 26 (1975).

20. See notes 21-25 and accompanying text *infra*.

21. 20 PA. CONS. STAT. ANN. § 3101 (Purdon Supp. 1979). The statute permits the transfer upon the following conditions:

Any employer of a person dying domiciled in the Commonwealth at any time after the death of the employee, whether or not a personal representative has been appointed, may pay wages, salary or any employee benefits due the deceased in an amount not exceeding \$3,500 to the spouse, any child, the father or mother, or any sister or brother (preference being given in the order named) of the deceased employee.

Id.

22. *Id.*

23. The statute provides in pertinent part:

When any person dies domiciled in the Commonwealth owning property exclusive of real estate and of property payable under section 3101 of this code (relating to payments to family), but including personal property claimed as the family exemption) of a gross value not exceeding \$10,000, the orphans' court division of the county wherein the decedent was domiciled at the time of his death, upon petition of any

decree of distribution has the same effect as a transfer to a personal representative.²⁴ Finally, section 3531 provides for distribution at the court's direction upon petition by the personal representative when the gross value of the estate does not exceed \$10,000. The court may "discharge the personal representative and his sureties from future liability without the expense of proceedings as in a formal account."²⁵

These latter two sections may reduce the expense and delay in administering small estates under the supervision of the Orphans' Court. Nevertheless, any administration, no matter how streamlined, that requires involvement of the court will necessarily require more time and expense than an administration in which the assets are collected and distributed without involving the court.

The only statute in Pennsylvania permitting direct payment of assets to claimants without involvement of the Register of Wills or the Orphans' Court is Section 3101. Its value, however, is limited because it provides for direct payment only of employee benefits. Often in small estates, the only assets, or the only assets not held jointly, are a bank account, shares of stock, or life insurance proceeds payable to the estate of the decedent. Statutory protection should be provided for the expedient transfer of any type of asset, not just employment benefits.²⁶

If a grant of letters is required for the transfer of other assets in the estate, the collection of employee benefits without the need for the appointment of a personal representative does not decrease the cost to the decedent's successors.

party in interest, in its discretion, with or without appraisal, and with such notice as the court shall direct, and whether or not letters have been issued or a will probated, may direct distribution of the property (including property not paid under section 3101 of this code) to the parties entitled thereto. The authority of the court to award distribution of personal property under this section shall not be restricted because of the decedent's ownership of real estate, regardless of its value.

Id. § 3102.

24. *Id.*

25. When the gross real and personal estate of a decedent does not exceed the value of \$10,000, the personal representative, after the expiration of one year from the date of the first complete advertisement of the grant of letters, may present his petition to the court with an annexed account showing the administration of the estate, the distribution theretofore made and suggesting the proper distribution of the estate not theretofore distributed. Thereupon, the court, upon satisfactory proof of notice to all known parties in interest, may approve the distribution theretofore made and order distribution of the assets not theretofore distributed and discharge the personal representative and his sureties from future liability without the expense of proceedings as in a formal account. The court may discharge only the surety from future liability, and may allow the personal representative to continue without surety upon condition that no further assets shall come into the possession of the personal representative until he files another bond, with sufficient surety, as required by the register.

Id. § 3531.

26. "A better method is not to restrict the payment of such claims to a particular type of property such as bank deposits or wages, but to permit the payment, delivery or transfer of any kind of debt or property when the total amount of the estate does not exceed a stated sum." L. SIMES & P. BASYE, *PROBLEMS IN PROBATE LAW* 648 (1946).

Moreover, since Section 3101 provides for direct payment only to members of the family of the decedent, it does not help legatees of the decedent who were not closely related to the decedent. Although avoiding delay is most important to remaining family members who need the assets for their survival, the necessity of direct payment to these destitute individuals should not result in overlooking the advantage of direct payment to claimants who are not family members. All successors of decedents leaving small estates suffer unnecessary loss by expenses of administration, and all would benefit from prompt payment without costly formalities.

III. Collection of Personal Property by Affidavit

A. *The Uniform Probate Code*

The need for direct payment to successors of the decedent in small estates, which Section 3101 of the Decedents, Estates and Fiduciaries Code recognizes but only partially fulfills, is better answered by the Uniform Probate Code (UPC).²⁷ Under Section 3-1201 of the U.P.C., "any person indebted to the decedent," not just an employer, shall pay the indebtedness to any person claiming to be the successor of the decedent, not just a family member,²⁸ upon presentation of the statutorily required affidavit. The affidavit shall state that the value of the entire gross estate does not exceed \$5,000, the decedent died at least thirty days before presentation of the affidavit, no personal representative has been appointed and the affiant is entitled to receive the property.²⁹ Section 3-1202 releases the transferor

27. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Probate Code [hereinafter cited as U.P.C.] to modernize and make uniform throughout the country "laws relating to the affairs of decedents, minors, and certain other persons whose circumstances make protection of their persons or property desirable. . . ." 1 UNIFORM PROBATE CODE PRACTICE MANUAL 1 (2d ed., Richard V. Wellman ed. 1977).

28. "The Uniform Probate Code . . . fully implements the policy of avoiding costs and delays of administration when small estates are involved by permitting all entitled successors to collect personal property by affidavit." Dawson, *Collection of Personal Property by Affidavit and Summary Administration of Small Estates*, in *COMPARATIVE PROBATE LAW STUDIES* 279, 297 (1976).

29.

[Collection of personal property by affidavit] (a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed \$5,000;

(2) thirty days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the ownership on the books of a corporation from the decedent to the successors upon the presentation of an affidavit as provided in subsection (a).

from liability to the same extent as if he dealt with a personal representative. The person to whom payment is made becomes responsible for proper application of the property. He is accountable "to any personal representative of the estate or to any other person having a superior right."³⁰

The popularity of the U.P.C. provisions regarding collection of personal property by affidavit is demonstrated by the number of states adopting similar provisions.³¹ Several other jurisdictions have statutes providing for collection by affidavit that require involvement of a court clerk,³² a judge,³³ or an inheritance tax collector.³⁴ These types of collection procedures, however, provide little improvement over Section 3102 of the Pennsylvania Decedents, Estates and Fiduciaries Code.³⁵ The expeditious collection of assets requires involvement of only the transferor and the transferee.

U.P.C. § 3-1201.

30. *Id.* § 3-1202. This section provides that:

[Effect of affidavit] The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

Id.

31. Jurisdictions that have enacted provisions identical or similar to §§ 3-1201 and 3-1202 include Alaska, ALASKA STAT. §§ 13.16.680-685 (1972); Arizona, ARIZ. REV. STAT. §§ 14-3971 to 3972 (1975); California, CAL. PROB. CODE §§ 630-632 (West Supp. 1979); Colorado, COLO. REV. STAT. §§ 15-12-1201 to 1202 (1973); Delaware, DEL. CODE ANN. tit. 12, §§ 2306, 2307 (Supp. 1978); Hawaii, HAW. REV. STAT. §§ 560:3-1201 to 1202 (Supp. 1978); Idaho, IDAHO CODE §§ 15-3-1201 to 1202 (1979); Illinois, ILL. REV. STAT. ch. 3, §§ 25-1 to 3 (West Supp. 1978); Indiana, IND. CODE ANN. §§ 29-1-8-1 to 2 (Burns Supp. 1978); Minnesota, MINN. STAT. ANN. §§ 524.3-1201 to 1202 (West Supp. 1979); Montana, MONT. REV. CODES ANN. §§ 91A-3-1201 to 1202 (Supp. 1975); Nebraska, NEB. REV. STAT. §§ 30-340 to 342 (1964); Nevada, NEV. REV. STAT. § 146.080 (1967); New Mexico, N.M. STAT. ANN. §§ 32A-3-1201 to 1202 (Supp. 1976); New York, N.Y. Surr. Ct. Proc. Act § 1310 (McKinney Supp. 1978); North Dakota, N.D. CENT. CODE §§ 30.1-23-01 to 02 (1976); Rhode Island, R.I. GEN. LAWS §§ 33-24-1 to 3 (1969); South Dakota, S.D. CODIFIED LAWS §§ 30-11A-1 to 2 (1976); Utah, UTAH CODE ANN. §§ 75-3-1201 to 1202 (1978); Washington, WASH. REV. CODE ANN. §§ 11.62.010-020 (Supp. 1979); Wisconsin, WIS. STAT. ANN. § 867.03 (West 1971).

32. See ARK. STAT. ANN. §§ 62-2127 to 2128 (1971); MASS. GEN. LAWS ANN. ch. 195, § 16 (West Supp. 1979); 3A N.J. STAT. ANN. §§ 6-5 to 7 (West Supp. 1979); N.C. GEN. STAT. §§ 28A-25-1 to 6 (1976); OR. REV. STAT. §§ 114.515-535 (1977); TENN. CODE ANN. §§ 30-2001 to 2004 (1977); TEX. PROB. CODE ANN. art. 137 (Vernon Supp. 1978).

The Illinois and South Dakota statutes also require involvement of the clerk of courts. If the decedent died intestate, the will must be filed with the clerk. ILL. ANN. STAT. ch. 110½, § 25-1 (Smith-Hurd 1978); S.D. CODIFIED LAWS § 30-11A-1 (1976).

33. The following jurisdictions require judicial review of the records: Alabama, ALA. CODE tit. 43, §§ 2-692 to 696 (1975); Missouri, MO. ANN. STAT. § 473.097 (Vernon Supp. 1979); and New Hampshire, N.H. REV. STAT. ANN. §§ 553:31 to 31-a (1974).

34. LA. CODE CIV. PRO. ANN. arts. 3432-3434 (West Supp. 1979).

35. See notes 23-24 and accompanying text *supra*.

B. Modifications of the Uniform Probate Code

Some of the affidavit statutes that are similar to the U.P.C. have improved upon its provisions. Some modifications clarify who is included in the ambiguous designation "person indebted to the decedent."³⁶ Other variations provide additional protection for persons who may be entitled to a portion of the decedent's estate, without the assistance of a court clerk, judge, or inheritance tax official.³⁷

1. "Persons Indebted to the Decedent."—A strict construction of the phrase "person indebted to the decedent" could exclude both the Bureau of Motor Vehicles and an insurer holding proceeds payable to the decedent's estate.³⁸ Several states, however, explicitly apply the affidavit procedure to transfer of motor vehicles, which avoids a strict construction problem.³⁹ Since the Pennsylvania Bureau of Motor Vehicles will transfer title to motor vehicles without the grant of letters,⁴⁰ the incorporation of this provision in a collection by affidavit statute for Pennsylvania would follow present practices.

Similarly, the Indiana statute provides that an insurance company obligated to pay a death benefit to the decedent's estate shall be deemed to be a "person indebted to the decedent,"⁴¹ which clarifies the applicability of the statute to payment of insurance proceeds. The New York statute by defining "debt" to include bank accounts and insurance proceeds has a similar effect.⁴² Under any of these

36. See notes 38-42 and accompanying text *infra*.

37. See notes 43-62 and accompanying text *infra*.

38. Section 3-1201 of the Uniform Probate Code "is obviously intended to facilitate the transfer of decedents' registered titles to personal assets" and "should be liberally construed." 1 UNIFORM PROBATE CODE PRACTICE MANUAL 402 (2d ed., Richard V. Wellman ed. 1977). Nonetheless, the provision would be improved if it were made to communicate its purposes without the aid of liberal construction.

39. ARIZ. REV. STAT. ANN. § 14-3971(D) (West Supp.1978); NEB. REV. STAT. § 30-343 (1964); UTAH CODE ANN. § 75-3-1201(3) (1978). The Indiana statute illustrates the general language of these provisions:

However, if a motor vehicle is part of the estate, nothing in this section shall prohibit a transfer of the certificate of title to the motor vehicle if five [5] days have elapsed since the death of the decedent and no appointment of a personal representative is contemplated. Such transfer shall be made by the bureau of motor vehicles upon receipt of an affidavit containing a statement of the conditions required by subdivisions (1) and (4) of this subsection. The affidavit must be duly executed by the widow or, if there is no widow, then the distributees of the estate.

IND. CODE ANN. § 29-1-8-1(a) (Burns Supp. 1978).

40. M. SMITH & R. GROSSMAN, *supra* note 19, at 28. A person entitled to the title of decedent's automobile must fulfill certain requirements: he must submit "a death certificate or other proof of death, a statement that all debts have been paid, and a statement by three disinterested persons that the persons signing the certificate of title are all the heirs and are sui juris." *Id.* In addition, the transfer of title to a surviving spouse is statutorily permitted "without the necessity of filing for letters of administration notwithstanding the fact that there are minor children surviving the decedent provided the surviving spouse files an affidavit that all the debts of the decedent have been paid." 75 PA. CONS. STAT. ANN. § 1114(b) (Purdon 1977).

41. IND. CODE ANN. § 29-1-8-1(c) (Burns Supp. 1978).

42. N.Y. SURR. CT. PROC. ACT § 1310(1)(a) (McKinney 1967).

provisions heirs and successors can obtain a greater amount of the property of the decedent in a faster and less expensive manner.

2. *Protection of Claimants.*—More important than ambiguity is the problem of protecting persons asserting claims against the estate. A full administration of an estate by a personal representative provides for notice to creditors,⁴³ to persons claiming to be beneficiaries, and to the Inheritance Tax Division of the Department of Revenue⁴⁴ and gives them an opportunity to assert their claims to portions of the estate. The only protection provided to potential claimants by Sections 3-1201 and 3-1202 of the U.P.C. is the provision that makes the payee answerable to those claimants.⁴⁵

a. *Creditors and beneficiaries.*—Some statutes require an averment in the affidavit that the decedent had no creditors.⁴⁶ Other statutes still allow collection by affidavit when the decedent left creditors by requiring an averment in the affidavit that all debts have been paid or provisions made for their satisfaction.⁴⁷ A portion of one statute, which provides for payment after thirty days to a close relative or a creditor, permits paying the creditor directly rather than relying on the heirs or legatees to pay the creditor.⁴⁸ This system would work well if the creditor claimed all the assets, either for himself or on behalf of a group of creditors, but paying both a creditor and an heir would complicate transfers of stock and automobiles. Instead, the statute should provide for payment to a single successor, whether heir, legatee, or creditor, who has given notice to all other successors and is authorized by them to receive the assets.⁴⁹

Other statutes accomplish the goal of protecting persons who claim a share of the estate as beneficiaries by inquiring into their

43. See, e.g., ALA. CODE tit. 43, § 2-60 (1975); N.H. REV. STAT. ANN. § 553:16 (1974).

44. See, e.g., TENN. CODE ANN. § 30-1619 (Supp. 1978).

Such executor, administrator or trustee shall, within nine (9) months from the death of the decedent, prepare and file with the commissioner [of revenue] a copy of the will, if will there be, and a return and inventory of the gross estate, executed under penalty of perjury and shall set forth therein each item of real and personal property separately, showing its full and actual cash value at the date of decedent's death, together with the names, addresses and relationships of the several beneficiaries, the allowable deductions in detail and the costs of administration

Id.

45. See note 30 and accompanying text *supra*.

46. ILL. REV. STAT. ch. 3, § 25-1 (Smith-Hurd Supp. 1978); S.D. CODIFIED LAWS § 30-11A-1 (1976).

47. DEL. CODE ANN. tit. 12, § 2306 (Supp. 1978); WASH. REV. CODE ANN. § 11.62.010 (Supp. 1978).

48. N.Y. Surr. Ct. Proc. Act § 1310(3)(e) (McKinney Supp. 1978).

49. Several jurisdictions protect those who pay the funeral bill by providing that they be paid directly before any other assets are transferred pursuant to the affidavit. *E.g.*, ILL. REV. STAT. ch. 3, § 25-1(7)(a) (Smith-Hurd Supp. 1978); R.I. GEN LAWS § 33-24-1 (Supp. 1978). A more practical method merely requires that the funeral bill be paid or provisions made for its satisfaction. WASH. REV. CODE ANN. § 11.62.010 (Supp. 1978).

identity and by providing for payment of their appropriate shares.⁵⁰ Those statutes, however, create difficulty by merely providing for payment to the intestate heirs of the amount due them. They fail to present the transferor with any means of determining the shares of heirs bearing different relationships to the decedent, as in the case of spouse and children or spouse and parents. Determining the proper shares could be difficult for transferors without adequate legal counsel. States that are too cautious in requiring probate of the will increase the expense and delay in collecting the assets. If the affiant must give notice to all other successors and obtain their authorization to collect the assets, more expedient protection is given to all parties.⁵¹

A problem with some statutory schemes, however, is that they exclude creditors from the definition of "successors."⁵² The inclusion of creditors within the meaning of successor would give notice to creditors and would permit payment to a creditor in addition to an heir or legatee, provided that he was authorized to collect the assets by any other creditors and any heirs or legatees.

b. Protection of tax claims.—A statute that permits collection of assets by affidavit should insure that inheritance taxes are paid. Several statutes protect the departments of revenue by requiring the transferor to mail a copy of the affidavit to the department, although it does not require that the notice be given before the transfer is made.⁵³ The Washington statute provides greater protection by requiring notice to the revenue department ten days prior to the transfer and by requiring that payment be withheld upon notification by the department that an inheritance tax report has been requested.⁵⁴ Another jurisdiction allows payment by affidavit in an even more cautious manner. In Louisiana, the claimant must submit the affidavit to the inheritance tax collector, who must certify by endorsement on the affidavit that no inheritance taxes are due, before payment may be made pursuant to the affidavit.⁵⁵

In Pennsylvania, the legislature designed the Inheritance and Estate Tax Act of 1961⁵⁶ to prevent any corporation organized under or existing under the laws of the Commonwealth from transferring shares of stock registered in the sole name of a deceased Penn-

50. ILL. REV. STAT. ch. 3, § 25-1(7) (Smith-Hurd Supp. 1978); S.D. CODIFIED LAWS § 30-11A-1(8) (1976).

51. WASH. REV. CODE ANN. § 11.62.010(2)(h) (Supp. 1978).

52. "Any person claiming to be a successor solely by reason of being a creditor of the decedent or of the decedent's estate shall be excluded from the definition of 'successor.'" *Id.* § 11.62.005(2)(b).

53. *E.g.*, WIS. STAT. ANN. § 867.03(2) (West 1971).

54. WASH. REV. CODE ANN. § 11.62.010(2)(j) (Supp. 1979).

55. LA. CODE CIV. PRO. ANN. art. 3432 (West Supp. 1979).

56. PA. STAT. ANN. tit. 72, §§ 2485-101 to 1201 (Purdon 1964).

sylvania resident unless the inheritance tax has been paid or the written consent of the Secretary of Revenue has been secured.⁵⁷ The Act, however, does not guarantee payment of inheritance tax due on securities of foreign corporations owned by a deceased Pennsylvania resident, or payment of tax due on assets other than securities.

Other states solve this problem by requiring corporations holding assets of a decedent to withhold sufficient funds to pay inheritance taxes on the assets or to obtain consent from the taxing authority before transferring the assets. This type of statute could be relied upon to protect the taxing authority, eliminating the need for protective provisions in the statute permitting collection by affidavit.

The states adopting variations of the U.P.C. provisions for collection by affidavit, however, have not relied on these tax consent statutes when passing the collection by affidavit statutes.⁵⁸ The provisions requiring consent of the revenue department before payment, however, would introduce a third party into what otherwise would be a simple transaction between the successors of the decedent and the transferor. Further delay would necessarily result. Since only a few of the states that have collection by affidavit statutes also have tax consent statutes, states should proceed with caution in adopting tax consent statutes.

The Wisconsin affidavit statute provides sufficient protection to the revenue department without the usual accompanying delay by requiring the affiant or the transferor to send a copy of the affidavit

57. *Id.* § 2485-831.

58. Of the twenty-one states with statutes providing for collection by affidavit without involvement of a judge, clerk, or inheritance tax official, only one-third have statutes that require consent or withholding before transfer and apply to assets transferrable pursuant to a collection by affidavit statute. Those states are Arizona, ARIZ. REV. STAT. ANN. § 42-1531 (1956); California, CAL. REV. & TAX. CODE § 14345 (West 1970); Colorado, COLO. REV. STAT. § 39-23-139 (Supp. 1978); Hawaii, HAW. REV. STAT. § 236-24 (1976); Illinois, ILL. REV. STAT. ch. 120, § 383 (Smith-Hurd 1974); Indiana, IND. CODE ANN. §§ 6-4.1-8-4 to 5 (Burns 1978); and New York, N.Y. TAX LAW § 249-cc (McKinney Supp. 1978). Since Colorado allows transfer of the first \$5,000 of the total amount of securities and assets owing from one person without a release, only six of those states provide full protection to the taxing authority. COLO. REV. STAT. § 39-23-139 (Supp. 1978).

Of the fourteen other states, four have inheritance tax statutes that require only notice to the taxing authority. MINN. STAT. ANN. § 291.20 (West Supp. 1978); N.D. CENT. CODE § 57-37.1-13 (Supp. 1975); R.I. GEN. LAWS § 44-23-35 (Supp. 1979); S.D. CODIFIED LAWS § 10-41-47 (1967). New Mexico requires withholding of inheritance taxes only before transfer to a personal representative or legal representative outside New Mexico. N.M. STAT. ANN. § 72-33-12(B) (Supp. 1975). Wisconsin exempts payments under its small estates statute from its requirements of withholding or consent. Section 72.29(2) of the Wisconsin Statutes provides that:

Persons in this state in possession, custody or control of any property of a decedent who, on the date of his death, was a resident of this state, may: (a) transfer the property to a personal representative, special administrator, trustee, or an heir, under s. 867.03 and the transfer constitutes a release of any liability under subchs. II and III.

Wis. STAT. ANN. § 72.29(2) (West Supp. 1979). The remaining eight states do not require consent, withholding of inheritance tax, or notice.

to the department in order to notify it of the payment.⁵⁹ This procedure enables the department to request an inheritance tax return if necessary without delaying payment to the successors.

Further protection can be provided by limiting the size of the gross estate in which payments by affidavit may be made. For example, the U.P.C. limits the size of the estate to \$5,000.⁶⁰ Considering the expense of funerals, a gross estate of \$5,000 would be likely to yield a small net taxable estate.⁶¹ Also, in many cases, the family exemption is available, further reducing the size of the net taxable estate.⁶²

IV. Conclusion

Pennsylvania should adopt a statutory scheme that provides for collection of personal property by affidavit.⁶³ This would save time and expense for successors of decedents leaving small estates, or leaving small amounts not held jointly. Attorneys could provide inexpensive assistance to the families of impoverished decedents, and it would help banks, insurance companies, and other institutions and persons holding assets of the decedent's estate by enabling them to grant requests of direct payment to successors in small estates without requiring letters. In addition, this statutory scheme would provide full protection against subsequent claims. This need was recognized by the Pennsylvania legislature when it enacted Section 3101 of Title 20 of the Consolidated Statutes. Section 3101, however, is too limited to be of much help. Pennsylvania requires a statute similar to Sections 3-1201 and 3-1202 of the Uniform Probate Code with the improvements added by some of the states that have adopted the U.P.C. provisions. Any legislative action should substantially conform to the following proposal.

Sec. 3101. [Collection of personal property by affidavit]

(a) Thirty days after the death of a person domiciled in the Commonwealth, any person indebted to the decedent or the decedent's estate or having possession of tangible personal property or an in-

59. WIS. STAT. ANN. § 867.03(2) (West 1971).

60. See note 29 *supra*.

61. Reasonable and customary funeral expenses are deductible. PA. STAT. ANN. tit. 72, § 2485-614 (Purdon 1964).

62. In Pennsylvania, the spouse, children, or parents who were members of the same household as the decedent, may claim as an exemption property to the value of \$2,000. 20 PA. CONS. STAT. ANN. § 3121 (Purdon 1975). Furthermore, the family exemption is deductible. PA. STAT. ANN. tit. 72, § 2485-613 (Purdon 1964).

63. A special subcommittee of the Orphans' Court Committee of the Philadelphia Bar Association examined the Uniform Probate Code in 1969. Although the committee cautioned that "liberalization of rules in this area could provide opportunities for wrong-doers," it concluded that "settlement of a small estate on affidavit . . . should be an easier procedure than is currently provided by Section 202 of the Fiduciaries Act [now Section 3102 of the Decedents, Estates and Fiduciaries Code], and it is believed that there would be any number of small estates where such simplified procedure would be helpful." Hauptfuhrer, *The Uniform Probate Code - A Modern Approach for Pennsylvania*, 41 PA. B.A.Q. 79, 86 (1969).

strument evidencing a debt, obligation, stock or chose in action belonging to the decedent or due the decedent's estate, including banks or similar financial institutions with deposits payable to the decedent's estate and insurers with proceeds payable to the decedent's estate, shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating:

(1) The successor's name and address;

(2) That the decedent was a resident of the Commonwealth of Pennsylvania on the date of his death;

(3) That the value of the total estate of the decedent, wherever located, less liens and encumbrances, does not exceed five thousand dollars;

(4) That thirty days have elapsed since the death of the decedent;

(5) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(6) That all debts of the decedent including funeral and burial expenses have been paid or provided for;

(7) That the claiming successor has mailed notice identifying his claim to all other successors of the decedent and at least ten days have elapsed since said mailing, and the claiming successor is personally, or with the written authority of all other successors of the decedent, entitled to full payment or delivery of the property; and

(8) That the claiming successor has mailed to the Inheritance Tax Division of the Pennsylvania Department of Revenue a notification of his claim in such form as the Department of Revenue may prescribe.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor upon the presentation of an affidavit as provided in subsection (a).

(c) The Bureau of Motor Vehicles of the Pennsylvania Department of Revenue shall transfer title of any motor vehicle from the decedent to the successor upon presentation of an affidavit as provided in subsection (a) and such other forms as the Bureau of Motor Vehicles may require, and upon payment of the necessary fees.

(d) The terms "successor" and "successors" as used in this section and in section 3102 shall mean that person or those persons who are entitled to the property of the decedent under his will, under the laws of intestate succession of the Commonwealth of Pennsylvania, or as his creditors.

Sec. 3102. [Effect of affidavit] The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit, or to see to the payment of any inheritance tax liability. If any person to whom an affidavit is delivered refuses to pay,

deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefore to any personal representative of the estate or to any other person having a superior right.

This proposed statute would not replace Sections 3102 and 3531 of Title 20 of the Consolidated Statutes, which provide for simplified settlement and distribution of small estates pursuant to petition to the Orphans' Court.⁶⁴ In some circumstances, the successors of decedents leaving small estates will need the protection of supervision by the court, and the summary procedures provided by Sections 3102 and 3531 should be available in those circumstances. This statute, however, would serve as a substitute for Section 3101, which provides for the collection of employee benefits.⁶⁵ In place of the narrow provisions of Section 3101, the proposed statute would provide the convenience of direct payment in transferring all assets in small estates to all successors of the decedent. Along with that convenience, the proposed statute would provide greater protection for creditors, heirs and legatees, and the Department of Revenue than is provided by Section 3101. Finally, everyone with an interest in a small estate would benefit.

64. See notes 23-25 and accompanying text *supra*.

65. See notes 21-22 and accompanying text *supra*.