Ancillary Estate Proceedings in Connecticut

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A Practice Note summarizing the procedures for ancillary estate proceedings in Connecticut. This Note identifies key issues, laws, and procedures relating to ancillary estate proceedings, including why and when ancillary estate proceedings are necessary or permissible, where ancillary estate proceedings may be commenced, the procedure for filing and conducting an ancillary estate proceeding, who may be appointed as ancillary fiduciary, and the applicability of the Connecticut estate tax to ancillary estate proceedings.

If a non-domiciliary dies with certain connections to Connecticut, such as owning property in Connecticut or leaving certain claims that are subject to suit in Connecticut, a second estate proceeding may be necessary in Connecticut, called an ancillary estate proceeding.

The ancillary proceeding in Connecticut is secondary to the estate proceeding in the decedent's state of domicile. The ancillary proceeding is handled by a fiduciary appointed by a Connecticut court, typically with the advice and supervision of a Connecticut lawyer hired by the decedent's estate to assist with the ancillary proceeding. An ancillary proceeding in Connecticut is controlled by Connecticut law, which can be particularly complicated for an out-of-state attorney. This Note provides an overview of the ancillary proceeding process in Connecticut.

OVERVIEW OF ANCILLARY ESTATE PROCEEDINGS

An ancillary estate proceeding is necessary in Connecticut when an individual domiciled in another state dies:

- Owning an interest in Connecticut real property.
- Owning tangible personal property located in Connecticut that is not voluntarily relinquished to the executor, administrator, or other personal representative appointed in the state of the decedent's domicile.
- Leaving claims against persons subject to suit in Connecticut, such as a wrongful death claim (see *Hoffman v. Scoville*, 9 Conn. Law Trib. No. 49, p. 14 (D. Conn. Dec. 5, 1983); *McCoy v. Raucci*, 239 A.2d 689 (Conn. 1968); *Rhoads v. Newman Enters.*, 1993 WL 407918 (Conn. Super. Ct. Oct. 7, 1993)).

An ancillary estate proceeding in Connecticut may also be granted for the protection of local creditors or beneficiaries (see *Upton v. Hubbard*, 28 Conn. 274 (Conn. 1859)). An ancillary proceeding generally is secondary to an original proceeding in the decedent's state of domicile.

An ancillary estate proceeding where a non-domiciliary decedent died with a will is called an ancillary probate and is handled by the ancillary executor appointed by the Connecticut court. An ancillary estate proceeding where a non-domiciliary decedent died without a will is called an ancillary administration and is handled by the ancillary administrator appointed by the Connecticut court.

WHY AND WHEN CONNECTICUT ANCILLARY PROCEEDINGS ARE NECESSARY OR PERMISSIBLE

The basis for all probate proceedings conducted in Connecticut is that Connecticut law does not permit a deceased person to continue to own property (*Skindzier v. Comm'r of Social Services*, 2001 WL 51663 (Conn. Super. Ct. Jan. 4, 2001)).

A Connecticut ancillary probate is only appropriate for a decedent who was not a Connecticut domiciliary at death (see Domicile). However, under certain circumstances, Connecticut probate courts are granted jurisdiction to probate wills of non-domiciliaries in an original or primary probate, rather than an ancillary, proceeding (Conn. Gen. Stat. Ann. §§ 45a-98 and 45a-287; see Primary or Original Probate of Will of Non-Domiciliary Decedent).

An ancillary estate proceeding is necessary in Connecticut when a person who is domiciled in another jurisdiction dies:

- With an interest in real property located in Connecticut (see Real Property Located in Connecticut).

- Owning tangible personal property located in Connecticut (see Tangible Personal Property Located in Connecticut).
- With claims against another person subject to suit in Connecticut (see Claims Against Persons Subject to Suit in Connecticut).

DOMICILE

Under Connecticut law, domicile is generally understood as the place that an individual intends to be her permanent home and to which the individual intends to return whenever absent. Domicile, once established, continues until the individual moves to a new location with the bona fide intention of making her fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time. (Conn. Agencies Regs. § 12-701(a)(1)-1(d); see *Adame v. Adame*, 225 A.2d 188 (Conn. 1966); *McDonald v. Hartford Trust Co.*, 132 A. 902 (Conn. 1926); *Amen v. Law*, 2005 WL 1089985 (Conn. Super. Ct. Apr. 14, 2005); *Comm'r of Revenue Servs. v. Krause*, 1996 WL 488916 (Conn. Super. Ct. Jul. 25, 1996).)

Before filing a primary or ancillary estate proceeding, counsel for the decedent's estate should:

- Make an initial determination of the decedent's domicile.
- Marshal all facts in support of the determination of domicile to support the chosen location.

Because a Connecticut statute requires that the nominated Executor in a Will apply for probate of the Will within 30 days of the decedent's death and do so in the district in which the decedent was domiciled, a petition for an ancillary estate proceeding in Connecticut may be filed only for a decedent who was not domiciled in Connecticut at the time of her death (Conn. Gen. Stat. Ann. § 45a-283).

The probate court in which a petition for ancillary probate is filed must make a finding of the domicile of the decedent based on the facts presented by the counsel for the decedent's estate (Conn. Gen. Stat. Ann. § 45a-309(a) and see Finding of Domicile). However, any finding is subject to a subsequent determination of domicile for estate tax purposes by the Connecticut Commissioner of Revenue Services (Conn. Gen. Stat. Ann. § 45a-309(b)).

REAL PROPERTY LOCATED IN CONNECTICUT

The estate of a decedent who dies owning property located in Connecticut generally must file for an ancillary estate proceeding. The proceeding differs depending on whether the property is:

- Owned solely by the decedent or owned by the decedent as a tenant in common (see Sole Owner or Tenant in Common).
- Owned by the decedent as a joint tenant (see Joint Tenancy).
- Owned by the decedent's revocable trust (see Property Owned by Revocable Trust).
- Subject to a mortgage (see Property Subject to Mortgage).

Sole Owner or Tenant in Common

If a non-domiciliary decedent held an interest in real property located in Connecticut at the time of her death, either as the sole owner or as a tenant in common, an ancillary probate of the decedent's will in Connecticut, and the appointment of an ancillary executor, are necessary to pass title to that real property (see *Appeal of Irwin*, 33 Conn. 128 (Conn. 1865) and *Ferriday v. Grosvenor*, 86 A. 569 (Conn. 1913)). This is true even if the decedent's will has been probated in the decedent's state of domicile.

A fiduciary appointed in another state has no power to lease, sell, mortgage, or otherwise dispose of real property located in Connecticut, even if those powers are included in the decedent's will, unless and until that fiduciary is appointed as an ancillary executor in Connecticut (see *Ferriday v. Grosvenor*, 86 A. 569 (Conn. 1913)). An ancillary administrator also must be appointed in Connecticut if the non-domiciliary decedent owning real property in Connecticut, either as sole owner or as a tenant in common, died without leaving a will (intestate) (Conn. Gen. Stat. Ann. § 45a-433(a)). In that case, the ancillary administrator is authorized by the probate court to deal with the real property in the same manner as an administrator of a decedent who died domiciled in Connecticut. Distribution of the real property subject to the ancillary proceeding is made to those entitled to it under the Connecticut law of descent and distribution (Conn. Gen. Stat. Ann. §§ 45a-437 to 45a-452).

Joint Tenancy

If a non-domiciliary decedent owned an interest in Connecticut real property held by the decedent with another person as joint tenants with rights of survivorship, an ancillary probate in Connecticut is not necessary to pass title to the property to the surviving joint tenant because a joint tenancy interest passes by operation of law (Conn. Gen. Stat. Ann. § 45a-450). However, a tax-only proceeding is necessary to clear title to the property interest from the Connecticut estate and probate fee liens (see Tax Proceeding Only Ancillary Administration).

Under Connecticut law, real property owned by two or more persons, including by spouses, is presumed to be held as tenants in common in the absence of express words of survivorship. A deed to two or more persons as joint tenants vests ownership as joint tenants with rights of survivorship. (Conn. Gen. Stat. Ann. § 47-14a.)

Property Owned by Revocable Trust

If a non-domiciliary decedent's revocable trust holds an interest in real property located in Connecticut at the time of the decedent's death, a tax-only proceeding is necessary to clear title to the property interest from the Connecticut estate and probate fee liens (see Tax Proceeding Only Ancillary Administration). However, a formal ancillary probate proceeding is not necessary under those circumstances. The passing of title to the real property owned by the trust is evidenced by the recording of a deed from the trustees of the revocable trust to the beneficiaries of the property under the terms of the trust. If the trustees conveying the real property are different from the trustees who originally took title to it, an affidavit of facts identifying the new trustees should be recorded on the land records together with the deed (Conn. Gen. Stat. Ann. § 47-12a).

Property Subject to Mortgage

If a non-domiciliary decedent held an interest in Connecticut real property as a mortgagee, which is considered an interest in real property during the decedent's lifetime, at the decedent's death, the mortgage interest is transformed by the doctrine of equitable conversion into intangible personal property (see *Pigeon v. Hatheway*, 239 A.2d 523 (Conn. 1968)).

An ancillary proceeding in Connecticut is not necessary to assign or release the decedent's interest as mortgagee. The executor of the decedent's will or the administrator or trustee of the estate of any deceased nonresident may, by a release or assignment executed in the manner required for the execution of instruments conveying title to real estate in Connecticut, release or assign any mortgage of Connecticut real estate held by a deceased or nonresident person. To do this, the fiduciary must file for record with the town clerk of the town in which the real estate is situated a certificate of the fiduciary's appointment and qualification, issued by the court having jurisdiction of the settlement of the decedent's estate. (Conn. Gen. Stat. Ann. § 49-12.)

TANGIBLE PERSONAL PROPERTY LOCATED IN CONNECTICUT

If a non-domiciliary decedent owned tangible personal property located in Connecticut and that property is not voluntarily relinquished to the domiciliary executor or administrator, the domiciliary fiduciary has no authority to collect or distribute the property without being appointed as an ancillary fiduciary in Connecticut (see *Appeal of Lawrence*, 49 Conn. 411 (Conn. 1881)). This is for the protection of local creditors.

The Connecticut probate court in that case normally orders the balance of the personal estate remaining after satisfaction of amounts due local creditors to be transferred to the fiduciary in the decedent's state of domicile for administration and distribution there (see *Marcy v. Marcy*, 32 Conn. 308 (Conn. 1864)). If, in its discretion, the court decides to distribute the personal estate in Connecticut, it orders distribution according to the laws of the state of the decedent's domicile (see *Marcy v. Marcy*, 32 Conn. 308 (Conn. 1864)).

CLAIMS AGAINST PERSONS SUBJECT TO SUIT IN CONNECTICUT

If a decedent had claims against persons subject to suit in Connecticut and those claims are not voluntarily paid to the domiciliary fiduciary, an ancillary fiduciary must be appointed to bring suit and enforce those claims in Connecticut (see *Hartford & N.H.R. Co. v. Andrews*, 36 Conn. 213 (Conn. 1869)).

PRIMARY OR ORIGINAL PROBATE OF WILL OF NON-DOMICILIARY DECEDENT

Connecticut probate courts have jurisdiction to admit wills to probate of non-domiciliaries whose wills may be proved in their domiciliary jurisdictions (Conn. Gen. Stat. Ann. § 45a-98).

The statute cannot be used to admit the will of a non-domiciliary decedent whose will has been denied probate in the testator's domicile, unless that denial is for a cause that is not grounds for rejection of the will of a Connecticut testator (Conn. Gen. Stat. Ann. § 45a-287(b)).

However, in some circumstances, original probate in Connecticut of the will of a non-domiciliary decedent is appropriate, such as if:

- The decedent who owns property in Connecticut is an executor in a US corporation, is transferred abroad, and no longer has a US domicile but original probate in the US is practical.
- An elderly decedent lived in an out-of-state nursing home but had family, advisors, and assets in Connecticut.

(Conn. Gen. Stat. Ann. § 45a-287.)

VENUE FOR ANCILLARY ESTATE PROCEEDING

A will admitted to probate in a testator's state of domicile may be recorded for ancillary probate in any Connecticut probate court district where:

- The decedent last resided.
- Any of the decedent's real or tangible personal property is located.
- Any of the decedent's bank accounts are maintained.
- Any tangible personal property of the decedent is located.
- Any one of the executors or trustees named in the will resides or, in the case of a bank or trust company, has an office.
- Any cause of action in favor of the testator arose or any debtor of the testator resides or has an office.

(Conn. Gen. Stat. Ann. §§ 45a-287(a) and 45a-288(a).)

If the decedent's will may be recorded in more than one probate district, the Connecticut probate court that first assumes jurisdiction has jurisdiction over all of the decedent's Connecticut property at the time of the decedent's death and over any property that subsequently comes into possession of the executors, trustees, or other fiduciaries appointed in Connecticut (Conn. Gen. Stat. Ann. §§ 45a-287(a) and 45a-288(a)).

PROCEDURE FOR ANCILLARY ESTATE PROCEEDING

The procedure for an ancillary estate proceeding in Connecticut involves:

- An interested party filing the petition for ancillary probate (see Petition for Ancillary Probate).
- A finding of domicile by the probate court (see Finding of Domicile).
- The appointment of an ancillary fiduciary (see Appointment of Ancillary Fiduciary).
- Filing a notice for land records if the estate contains real property with the clerk of the town where the property is located (see Notice for Land Records of Probate of Real Property).
- Filing an inventory of all property subject to the ancillary estate proceeding (see Inventory).

PETITION FOR ANCILLARY PROBATE

To open an ancillary probate in Connecticut, the executor admitted in the decedent's domicile or any other person interested in the estate, such as a beneficiary or creditor of the decedent, must first file the ancillary probate petition along with supporting documents, such as the decedent's will and a record of the domiciliary probate proceeding (see Copy of Decedent's Will and Record of Proceedings).

The request to the Connecticut probate court for ancillary probate is made by a Petition/Ancillary Probate of Will (Form PC-201). The petition must provide the jurisdictional basis for the request and must include:

- Information about:
  - the decedent's surviving spouse and heirs at law as defined in Conn. Gen. Stat. Ann. Sections 45a-436, 45a-437, and 45a-439;
  - the beneficiaries under the decedent's will;

  - any testamentary trusts established under the decedent's will; and
  - the decedent's conservators, if any.
- A representation that no other petition for ancillary probate has been filed in Connecticut.
- Whether the decedent, spouse, or children did or did not receive aid or care from the State of Connecticut.

(Conn. Gen. Stat. Ann. § 45a-287(a).)

The petition must be accompanied by:

- Authenticated and exemplified copies of the decedent's will and any codicils.
- The record of the proceedings proving and establishing the decedent's will and any codicils by a court of competent jurisdiction.
- A complete statement of the property and estate of the decedent in Connecticut, which requires:
  - a legal description of any real property; and
  - appraisals of any tangible personal property and real property, if available at the time of filing.

(Conn. Gen. Stat. Ann. § 45a-288 and see Instructions to the Petition/Ancillary Probate of Will (Form PC-201) and Copy of Decedent's Will and Record of Proceedings.)

The petitioner must also represent whether the time for taking an appeal from the proceedings in the decedent's jurisdiction of domicile has or has not expired (see Instructions to the Petition/Ancillary Probate of Will (Form PC-201)).

If the proposed ancillary executor is a foreign corporation, the petitioner must also file:

- A document appointing the Connecticut Secretary of State as agent for service of process.
- An affidavit of reciprocity with the domiciliary state.
- A consent of the corporation to act as ancillary executor.

(Conn. Gen. Stat. Ann. §§ 52-60 and 52-61.)

If the proposed ancillary executor is a nonresident individual, the proposed ancillary executor must file an appointment of the judge of probate as agent for service of process, an acceptance of office, and a bond in an amount to be determined by the probate judge. If the proposed ancillary executor is a Connecticut corporation or individual, a consent or acceptance to act must be filed.

When a petition for ancillary probate and the required accompanying documents are filed in a Connecticut probate court, the court must give notice of the petition to the parties in interest as the court orders (Conn. Gen. Stat. Ann. § 45a-288(a)). As suggested by the form Petition/Ancillary Probate of Will (Form PC-201), this presumably includes:

- The decedent's surviving spouse.
- The decedent's heirs at law as defined in Conn. Gen. Stat. Ann. Sections 45a-436, 45a-437, and 45a-439.
- Beneficiaries under the decedent's will.
- Trustees of testamentary trusts.
- Conservators of the decedent.

While the statute was amended in 2016 to delete a provision expressly requiring notice to the Commissioner of Revenue Services, Connecticut probate courts routinely include the Commissioner among the parties who receive notice of the petition.

Copy of Decedent's Will and Record of Proceedings

Where a will offered for ancillary probate has already been admitted to probate in another state, proof of the will in Connecticut is made by obtaining from the court that admitted the original will authenticated and exemplified copies of certain documents from the estate proceeding in the decedent's jurisdiction of domicile, including:

- The decedent's will.
- The application for probate.
- The decree admitting the will to probate.
- The letters testamentary.
- Documents filed by the domiciliary executor to qualify, such as bond, acceptance of trust, oath of office, and power of attorney, if any.
- Affidavits, if any, taken in proof of due execution of the will.
- If probate of the will has been in solemn form, the citation, order of service, return of service, and order for hearing.

Copies of the documents filed with the court are authenticated and exemplified by what is known as a triple certificate. The triple certificate is a three-step process that includes a certificate by each of:

- The clerk of the domiciliary court that the copies are true copies of the record in her custody.
- The judge of the court about the genuineness of the signature and official capacity of the clerk and that her certification is in due form of law.
- The clerk of the Connecticut court about the genuineness of the signature and official capacity of the judge.

(Settlement of Estates in Conn. § 5:19 (3d ed.).)

The probate court where the ancillary petition is filed is not obligated to record copies of a will and the related proceedings of the domiciliary court, just because that will has already been admitted in another jurisdiction. The court instead must perform an independent review of the will. The Connecticut probate court is not bound by the full faith and credit clause of the United States Constitution, *res judicata*, or collateral estoppel in making its determination. (See *Goodwin v. Colchester Probate Court*, 2012 WL 4123002 (Conn. Super. Ct. Aug. 28, 2012).)

If, after a hearing, no sufficient objection to recording copies of the original documents is shown, the court must file and record the documents (Conn. Gen. Stat. Ann. § 45a-288(a)). If the court does find sufficient objection, the applicant must offer competent proof of the contents of the documents and legal sufficiency of the will, except that the original will need not be produced unless the probate court directs (Conn. Gen. Stat. Ann. § 45a-288(c)).

If the court orders the submitted copies of the documents to be filed and recorded, the copies become a part of the files and records of the court and have the same effect as if the will had been originally proved and established in the court (Conn. Gen. Stat. Ann. § 45a-288(a)).

FINDING OF DOMICILE

When a petition for ancillary administration is made in Connecticut, the court must first make a finding about the domicile of the decedent (Conn. Gen. Stat. Ann. § 45a-309 and see Domicile). Any finding of domicile is expressly made subject to a subsequent determination of domicile for Connecticut estate tax purposes (Conn. Gen. Stat. Ann. §§ 12-391 to 12-399).

The court routinely gives notice of ancillary probate petitions to the Commissioner of Revenue Services to enable the Commissioner to consider whether the decedent may have been a domiciliary of Connecticut for estate tax purposes. If the Commissioner has insufficient information to make a determination, the Commissioner will likely object to the grant of ancillary administration and request a postponement of any hearing on the issue of domicile (Conn. Gen. Stat. Ann. §§ 45a-287 and 45a-303).

The petitioner for ancillary administration may be able to avoid or reduce a delay caused by the Commissioner by submitting full documentation of the facts supporting out-of-state domicile with the petition for ancillary administration. This may be done by completing the Connecticut Department of Revenue Services State of Connecticut Domicile Declaration (Form C-3) and attaching supporting documentation (Conn. Gen. Stat. Ann. §§ 45a-287 and 45a-303).

Any person interested in the ancillary estate may appeal from the probate court's finding of domicile within 30 days of the date of the decree. Nonresidents who did not have legal notice of and were not present at the hearing on domicile have 12 months from the date of the decree in which to appeal. (Conn. Gen. Stat. Ann. §§ 45a-187(a), 45a-286, and 45a-309.)

APPOINTMENT OF ANCILLARY FIDUCIARY

After the decedent's will is recorded, the probate court appoints an ancillary fiduciary. The ancillary fiduciary is called an ancillary:

- Executor if the decedent died with a will (see Ancillary Executor).
- Administrator if the decedent died without a will (see Ancillary Administrator).

Ancillary Executor

If the decedent died with a will, an ancillary executor is appointed for a Connecticut ancillary probate. Once appointed, the ancillary executor has all the powers of a domiciliary Connecticut executor regarding the decedent's estate in Connecticut.

First priority for appointment of an ancillary executor in Connecticut is given to the executor and any successors named in the decedent's will. The Connecticut Supreme Court has said that the probate court will, as a matter of course, give the executor named in the will the right to prove the will in Connecticut, unless the named executor refuses to act (see *Appeal of Lawrence*, 49 Conn. 411, 421 (Conn. 1881)).

While the domiciliary court determines who is properly named as executor in a will, in a subsequent Connecticut ancillary proceeding, the probate court applies Connecticut law on the question of whether a named executor is unable or unwilling to accept the appointment (see *Appeal of Murdoch*, 72 A. 290 (Conn. 1909)).

The domiciliary executor is generally the logical choice for appointment as ancillary executor. An independent ancillary executor might be a better choice in certain situations, such as where the domiciliary executor:

- Is asserting a claim against the ancillary estate.
- Cannot qualify in the ancillary jurisdiction for any reason.

Ancillary Administrator

If a decedent died without a will domiciled outside the state but leaving property in Connecticut, the probate court can grant an ancillary fiduciary, called an ancillary administration, the power to dispose of the Connecticut property (Conn. Gen. Stat. Ann. § 45a-303(c)(2)).

The court generally names an ancillary administrator in the priority order of:

- The surviving spouse.
- Any child of the decedent or any guardian of the child as the court shall determine.
- Any grandchild of the decedent or any guardian of the grandchild as the court shall determine.
- The decedent's parents.
- Any brother or sister of the decedent.
- The next of kin entitled to share in the estate or, on their refusal, incapacity, or failure to give bond or on the objection of any heir or creditor to the appointment found reasonable by the court, to any other person whom the court deems proper.

(Conn. Gen. Stat. Ann. § 45a-303(c)(1).)

NOTICE FOR LAND RECORDS OF PROBATE OF REAL PROPERTY

If a nonresident decedent died owning real property in Connecticut, within two months after becoming qualified to act, the ancillary fiduciary must file with the town clerk of each town where the real property is located a written certificate stating:

- The fact and date of death of the decedent.
- The place where the decedent last lived.
- Whether the decedent left a will.

(Conn. Gen. Stat. Ann. § 45a-322(a).)

The certificate is recorded in the land records of the town where the property is located (Conn. Gen. Stat. Ann. § 45a-322(a)).

If the fiduciary fails to record the notice, she must pay the town 25 dollars, which is recovered from the fiduciary in either a civil action against the fiduciary or by an action on the fiduciary's probate bond (Conn. Gen. Stat. Ann. § 45a-322(c)).

The requirement to file a notice for land records does not appear to apply to an interest that a non-domiciliary decedent had as a mortgagee of real property located in Connecticut, likely because the decedent's interest in that mortgage is changed at death from real property to personal property by the doctrine of equitable conversion (see *Pigeon v. Hatheway*, 239 A.2d 523 (Conn. 1968) and Property Subject to Mortgage).

The fiduciary appointed in the decedent's jurisdiction of domicile may, by a release or assignment executed in the manner required for the

execution of instruments conveying title to real estate in Connecticut, release or assign any mortgage of Connecticut real property held by the decedent, provided the fiduciary files for record with the town clerk of the town in which the real property is situated a certificate of the fiduciary's appointment and qualification, issued by the court having jurisdiction of the settlement of the decedent's estate (Conn. Gen. Stat. Ann. § 49-12). The recording of the foreign certificate of appointment appears to provide the requisite notice in this case.

INVENTORY

Within two months after an ancillary fiduciary is appointed, the fiduciary must file an inventory of all Connecticut property subject to the ancillary proceeding (Conn. Gen. Stat. Ann. § 45a-341).

The inventory includes the decedent's interest in real property and in tangible personal property situated in Connecticut. Intangible personal property subject to administration in another state is expressly excluded (Conn. Gen. Stat. Ann. § 45a-341(a)(3)). Any intangible personal property subject to ancillary administration in Connecticut is likely included on the inventory (see Claims Against Persons Subject to Suit in Connecticut).

All property must be appraised by the fiduciary at its fair market value, and the value of the property is included in the inventory (Conn. Gen. Stat. Ann. § 45a-341).

CLAIMS AGAINST ANCILLARY ESTATE

The Connecticut ancillary estate is subject to the claims of all creditors, including those in the domiciliary estate (see *Appeal of Lawrence*, 49 Conn. 411 (Conn. 1881)).

The ancillary fiduciary must notify potential creditors of the decedent's ancillary estate by publication in a newspaper within 14 days of the appointment of the ancillary fiduciary (Conn. Gen. Stat. Ann. § 45a-354(a)). Creditors have 150 days from the date of the fiduciary's appointment to present a claim (Conn. Gen. Stat. Ann. § 45a-356(a)).

The newspaper notice must state:

- The name of the fiduciary and the address at which claims should be presented.
- That individuals or entities with claims should promptly present those claims to the fiduciary.
- That failure to promptly present any claim may result in the loss of the right to recover on the claim.

The publication is informational only and does not affect the substantive rights of creditors or other interested parties (Conn. Gen. Stat. Ann. § 45a-356). If the ancillary fiduciary is a nonresident of Connecticut, claims against the ancillary estate may be filed with the Connecticut probate judge, and the judge must provide a copy to the fiduciary (Conn. Gen. Stat. Ann. § 45a-358(b)).

If the ancillary fiduciary waits until 150 days after the fiduciary's appointment to distribute the ancillary estate to beneficiaries, then, to the extent distributions are made, creditors must pursue their claims against the beneficiaries instead of against the fiduciary (Conn. Gen. Stat. Ann. § 45a-357).

Within 60 days following the expiration of the 150-day claims period, the ancillary fiduciary must file with the probate court a return of notice to creditors and a list of claims presented against the estate and must state about each claim whether and to what extent it was allowed or rejected (Conn. Gen. Stat. Ann. § 45a-361).

As an alternative to publication, the ancillary fiduciary may give actual written notice to known creditors. If the fiduciary elects to give actual notice to a creditor, that creditor must present a claim within 90 days of the notice or be barred from asserting the claim against the fiduciary, the estate, or the beneficiaries. (Conn. Gen. Stat. Ann. § 45a-357.)

The Connecticut statute of limitations period is applicable to all claims against the ancillary estate (Conn. Gen. Stat. Ann. § 45a-375). A creditor whose claim is barred in the decedent's state of domicile may be able to pursue the claim in the decedent's ancillary estate in Connecticut (see *Hobart v. Conn. Turnpike Co.*, 15 Conn. 145 (Conn. 1842)).

PROBATE COURT FEES FOR ANCILLARY ESTATE PROCEEDING

Probate court fees for the administration of a decedent's estate, including ancillary administration, are calculated as a percentage of a computation basis (Conn. Gen. Stat. Ann. § 45a-107).

The computation basis is the greatest of:

- The gross estate for succession tax purposes (a prior Connecticut death tax that has been repealed for decedents dying after December 31, 2004).
- The probate inventory, including all supplements.
- The Connecticut taxable estate as defined in Conn. Gen. Stat. Ann. Section 12-391.
- The gross estate for estate tax purposes.

(Conn. Gen. Stat. Ann. § 45a-107(b)(1).)

Any part of the basis for calculating the fee that is determined by property passing to the decedent's surviving spouse is reduced by half (Conn. Gen. Stat. Ann. § 45a-107(b)(1)). There is no deduction in the basis for property passing to charitable organizations.

Fees currently range from $25 for an estate computation basis of $500 to a cap of $40,000 for an estate computation basis of $8,877,000 or higher (Conn. Gen. Stat. Ann. § 45a-107(b)(2)). For example, the fees for an estate computation basis of up to $2,000,000 are currently $5,615 plus 0.5% of amounts above $2,000,000 (up to the $40,000 cap).

In the case of a decedent who was not domiciled in Connecticut but who owned real property or tangible personal property situated in the state on the date of death that is subject to a Connecticut ancillary estate proceeding, only the fair market value of the real property or tangible personal property situated in Connecticut is included in the computation basis for determining the Connecticut probate court fees for the non-domiciliary decedent's estate (Conn. Gen. Stat. Ann. § 45a-107(b)(5)).

CONCLUDING ANCILLARY ESTATE PROCEEDING

To conclude an ancillary estate, the ancillary fiduciary:

- Files a final administration account if one is necessary or required (see Final Administration Account).

- Distributes the property in the ancillary estate (see Distribution of Property).
- Obtains and files a Certificate of Devise, Descent, or Distribution of Real Property if the ancillary estate includes real property (see Certificate of Devise, Descent, or Distribution of Real Property).

FINAL ADMINISTRATION ACCOUNT

Probate courts may require ancillary executors and administrators to file an account for the estates entrusted to them (Conn. Gen. Stat. Ann. § 45a-98). The probate courts have jurisdiction of the interim and final accounts of executors and administrators (Conn. Gen. Stat. Ann. § 45a-175).

While there is no specific **statutory** requirement for a final accounting by an ancillary executor or administrator, it has been held that because of the nature of the office, an executor or administrator is bound by duty to wind up an estate and submit a final account within a reasonable time, whether a court orders it or not (see *Chase Nat'l Bank v. Guthrie*, 90 A.2d 643 (Conn. 1952)). Fiduciaries are required by the Connecticut Probate Rules of Procedure to submit a final financial report or account when they have completed settlement of a decedent's estate. A fiduciary also must submit a final financial report when she seeks to resign or is removed by the Probate Court. (Conn. Prob. Ct. R. & Proc. § 30.19(a).) If the court orders an account at the conclusion of the ancillary administration, the fiduciary must file with the probate court an account showing receipts and disbursements of the ancillary estate (Conn. Prob. Ct. R. & Proc. §§ 38.1 to 38.5).

DISTRIBUTION OF PROPERTY

On approval of the final account and the payment of all debts and ancillary administration expenses, the ancillary fiduciary must:

- Distribute any specifically bequeathed tangible personal property and the proceeds of any wrongful death action.
- Turn over the balance of the Connecticut personal property estate to the domiciliary executor.

(See *Perkins v. Stone*, 18 Conn. 270 (Conn. 1847).)

CERTIFICATE OF DEVISE, DESCENT, OR DISTRIBUTION OF REAL PROPERTY

For any real property subject to ancillary probate in Connecticut, within one month after the acceptance by the court of the final administration account, the ancillary fiduciary must get from the court a Certificate of Devise, Descent, or Distribution containing the name, place of residence, and interest of each person to whom the real property is devised or distributed. The fiduciary must record the Certificate in the land records of each of the towns in which the real property is situated. (Conn. Gen. Stat. Ann. § 45a-450(a).)

On the request of the fiduciary and after any notice and hearing as the court may order, the court may issue the Certificate before the acceptance of a final administration account if it finds that issuing the Certificate early is in the best interests of the parties in interest. This is commonly done if the property subject to the ancillary estate is being sold or mortgaged before the filing and acceptance of the account. (Conn. Gen. Stat. Ann. § 45a-450(b).)

Because of the possibility of a court-ordered sale of real property included in a decedent's estate, an executor's or administrator's deed, executed and delivered by the fiduciary to the parties entitled to the real property, does not provide marketable title to the real property until either:

- Acceptance by the court of probate of the fiduciary's final administration account and subsequent issuance and recording of a probate Certificate of Devise or Descent.
- The passage of ten years from the death of the decedent without completion of administration of the estate.

(See A Practical Guide to Probate in Connecticut Exhibit 10N, Connecticut Standard of Title 13.3, Comment 5 (1999 Edition, Revised through Nov. 11, 2013).)

CONNECTICUT ESTATE TAX AND ITS APPLICABILITY TO ANCILLARY ESTATE PROCEEDINGS

Effective for decedents dying on or after January 1, 2005, Connecticut imposes a separate estate tax that is decoupled from but based on the federal estate tax (Conn. Gen. Stat. Ann. § 12-391). It applies to a non-domiciliary decedent to the extent the decedent owns real property or tangible personal property situated in Connecticut at the time of death (Conn. Gen. Stat. Ann. § 12-391).

The amount of the tax is computed by multiplying:

- The tax determined on the decedent's entire Connecticut taxable estate (assuming that the decedent was a Connecticut domiciliary), using the Connecticut estate tax rate schedule in Conn. Gen. Stat. Ann. Section 12-391(g).
- By a fraction, the numerator of which is the value of that part of the decedent's gross estate over which Connecticut has jurisdiction for estate tax purposes (real property or tangible personal property situated in the state) and the denominator of which is the value of the decedent's gross estate.

(Conn. Gen. Stat. Ann. § 12-391(e)(1).)

There is no filing threshold for the Connecticut estate tax return. A return must be filed no matter how small the decedent's gross estate may be. However, no Connecticut estate tax is payable if the Connecticut taxable estate (the federal gross estate less allowable deductions, other than the deduction for state death taxes) is $2,000,000 or less (Conn. Gen. Stat. Ann. § 12-392(b)(3)(D)). The Connecticut estate tax return is due and any tax is payable within six months after the date of the decedent's death (Conn. Gen. Stat. Ann. § 12-392(a)(1)).

If the decedent's Connecticut taxable estate is $2,000,000 or less, the return is filed with the probate court. After reviewing the return, the judge of probate is directed to issue a written opinion, called an Opinion of No Connecticut Estate Tax Due, to the fiduciary in each case in which the judge determines that the estate is not subject to tax. If the Connecticut taxable estate exceeds $2,000,000, the return is filed with the Commissioner of Revenue Services, with a copy to the probate court. (Conn. Gen. Stat. Ann. § 12-392.)

TAX PROCEEDING ONLY ANCILLARY ADMINISTRATION

If all Connecticut situs property passes outside of the probate process, such as real property owned as joint tenants with rights of survivorship or real property owned by the trustees of the decedent's revocable trust, then no ancillary probate of that property is necessary

to pass the property to the intended beneficiaries. However, since that real property is still subject to the Connecticut estate tax, a tax proceeding only (TPO) administration is necessary to clear title to that real property (Conn. Gen. Stat. Ann. §§ 12-363 and 12-366).

A TPO administration ordinarily consists solely of the filing of the required estate tax return by the surviving joint tenant or other transferee of taxable property as well as paying the probate court fee, which is due even if there is no probate property (Conn. Gen. Stat. Ann. § 45a-107).

RELEASE OF CONNECTICUT ESTATE TAX LIEN

The Connecticut estate tax is a lien on real property, including Connecticut real property owned by a non-domiciliary decedent at the time of her death, in favor of the State of Connecticut that exists from the due date of the estate tax until the tax is fully paid (Conn. Gen. Stat. Ann. § 12-366).

Any person is entitled to a certificate of release of lien for the interest of the decedent in the real property if either the probate court (for Connecticut taxable estates of $2,000,000 or less) or the Commissioner of Revenue Services (for Connecticut taxable estates greater than $2,000,000) find that payment of the tax is adequately assured or that no Connecticut estate tax is due (Conn. Gen. Stat. Ann. § 12-398).

The certificate of release of lien should be recorded in the office of the town clerk of the town where the real property is located and is conclusive proof that the property has been released from the operation of the lien (Conn. Gen. Stat. Ann. § 12-398).

10-17