MULTI-STATE ESTATES UNDER THE UNIFORM PROBATE CODE

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INTRODUCTION

Multi-state estates are those estates involving more than one state. In addition to the domiciliary jurisdiction, such estates involve another state in either of two situations: 1) the decedent has property in such state, or 2) a claim is being asserted against the estate in such other state. An example of the first situation would be a retired Nebraska farmer who keeps the farm but moves to Arizona to spend his winters. When that individual dies he has property both in Arizona and Nebraska. Another example would be a businessman in Nebraska who invests some funds in a savings and loan association in Colorado. On his death he will have property in both Nebraska and Colorado. An example of the second situation is a Nebraska resident motorist who is killed in an automobile accident in Idaho. If a Nebraska motorist is the tort-feasor and someone in Idaho is killed in the automobile accident as a result of the Nebraska driver's negligence, the personal representative from Nebraska may be involved in litigation in Idaho. Because of the multi-state estate involved, the personal representative may be forced to litigate in Idaho because of Idaho's Uniform Probate Code.

All of these situations are common since both people and their wealth are mobile. How such estates are handled does not depend on the law in Nebraska. Instead such estates are governed by the law of another jurisdiction either where the property is located or where the event giving rise to the litigation took place.

Before proceeding any further, an identification of terminology used would be helpful. Of course, the estate will have a local personal representative, and may have a foreign personal representative in another jurisdiction. The foreign personal representative may also be a domiciliary representative where the person died domicilled in that jurisdiction. Ancillary administration refers to administration where the property is located other than in the domiciliary state. The Uniform Probate Code recognizes the rights of an individual coming into a state as a domiciliary personal

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representative whether that person comes from another state or from a foreign country.

PROPERTY OF NONDOMICILIARY DECEDENT

With these terms in mind, consider the following situation: a person is domiciled in one state, but has assets in another state, which is a Uniform Probate Code state. When this individual dies, his domiciliary personal representative may want to get those assets in the Uniform Probate Code state. Where such assets are savings and loan account or a bank account, it would be desirable if the personal representative could simply go in and get the assets and not be forced to go through any type of proceeding in the state where the asset is located.

VOLUNTARY PAYMENT OR DELIVERY

The Uniform Probate Code has such a provision in section 4-201, which provides that the personal representative from the domiciliary jurisdiction, within sixty days after the death of the decedent, can contact any person indebted to the estate of the decedent or having possession or control of personal property, an instrument evidencing a debt obligation, stock, or chose in action belonging to the estate of the decedent, and ask for payment or delivery. All that is required is an affidavit stating the date of death, that no local administration application or petition therefor is pending, and that the domiciliary foreign personal representative is entitled to payment or delivery. Upon presentation of this affidavit the debtor can pay or deliver the property to the domiciliary personal representative and be discharged of his obligation if he acted in good faith. The individual holding the assets is not required to make payment or deliver the property. Such payment or delivery will, however, discharge the individual of the debt. This is one possibility for settling small obligations. This procedure does not apply to securities. Securities are covered by section 3 of the Uniform Act for Simplification of Fiduciary Security Transfers. This procedure may not be available for situations wherein the decedent dies in Nebraska, with property in Colorado, and creditors of the decedent in Colorado are relying on that property for payment. The resident creditors in a Uniform Probate Code state can notify the debtor that they are looking to this asset for satisfaction and that they do not want it turned over to the foreign P.R. If notice is given to the individual holding the property or owning the debt, payment or delivery may not be made under Uniform Probate Code section 4-203 (Nebraska Probate Code section 30-2503).
FOREIGN P.R. OBTAINING POWERS

The next possibility for an individual collecting debts or obligations is to file certain documents in the Uniform Probate Code state. For an individual coming from outside into a Uniform Probate Code state, section 4-204 of the Uniform Probate Code provides that the personal representative can, in fact, come in and file certain documents. If an authenticated copy of his appointment and a copy of his official bond if he is given one are filed, the foreign personal representative (that is, the personal representative from Nebraska who goes to Colorado) may exercise all the powers of a local personal representative, and may maintain actions and proceedings in Colorado subject to any conditions imposed upon non-resident suitors generally. If the debt cannot be collected by the first method with the affidavit, then upon filing a copy of his appointment with the court and the copy of the official bond, the powers of a local representative can be used to collect the debt. This procedure is aided by the broad powers given a local personal representative under the Uniform Probate Code. For example, section 3-711 of the Uniform Probate Code says “[a] personal representative has the same power over the title to property of the estate that an absolute owner would have. This power may be exercised without notice, hearing or order of court.” A foreign personal representative who comes in and files the necessary documents also has this broad power. Nebraska in its Probate Code has modified section 3-715, which defines the broad powers of a personal representative in this situation.

ANCILLARY ADMINISTRATION

A third possibility for obtaining the property would be through ancillary administration of the estate in Colorado. Assume that a resident of Nebraska dies in Colorado. Why open ancillary administration when all the powers of a local personal representative are available simply by filing the documents? The answer is that others may start an action for ancillary administration. The Uniform Probate Code has specific provisions about the transition from the situation where the personal representative has filed documents and is exercising the powers of a local representative to the situation involving an ancillary administration, where a local personal representative is desired in the ancillary state. Section 4-206 of the Uniform Probate Code provides that “[n]o person who before receiving an actual notice of a pending local administration has changed his position by relying on the power of a foreign personal representative shall be prejudiced by reason of the application
or petition for or grant of local administration." If a personal representative from Nebraska goes into Colorado and begins to administer the estate by filing documents, and an ancillary administration is subsequently opened, no person in Colorado who has dealt in good faith and has changed his position because of the personal representative filing documents is to be prejudiced by the opening of the ancillary administration.

If an ancillary administration is opened, consideration must be given to who will be appointed P.R. Appointment of individuals is discussed generally in Article 3 of the Uniform Probate Code. In drafting the Uniform Probate Code, Article 4 at one time was a very inclusive article dealing with many facets of these multi-state estates. The draftsmen in the national conference decided that much of Article 4 was repetitious, so they moved a number of these sections concerning appointments into Article 3. Article 4 is now a very short article. Article 3 contains many other provisions about multi-state estates. For example, section 3-203(a) lists a whole series of individuals who have priority for appointment as a personal representative under Article 3. But section 3-203(g) gives overriding priority to the domiciliary personal representative. A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representatives in this state and in the state of domicile. The domiciliary personal representative may nominate another who shall have the same priority as the domiciliary personal representative. If the domiciliary personal representative from Nebraska goes into Colorado and there is a question about the priority of appointment of the personal representative, under the Uniform Probate Code the domiciliary personal representative from Nebraska will have absolute priority in the ancillary administration in Colorado. If the domiciliary personal representative from Nebraska does not want to handle the ancillary administration, he can nominate someone else, and his nominee will have the same priority. A personal representative appointed by the court of the decedent's domicile has priority over all other persons.

The main thrust of the Uniform Probate Code provisions is to unify administration in one state by providing that the domiciliary administration is the one that really should handle all the estate. By use of this device, ancillary administration under the Uniform Probate Code is had where the property is located. The domiciliary personal representative has priority in appointment where the property is located. Even though someone else may come in and ask for an ancillary administration he cannot carry through on
the ancillary administration because the personal representative from the domiciliary state has priority. He, in fact, can supersede anyone else who may have been appointed. Such priority of appointment facilitates unification of the administration of the estate in the hands of the domiciliary personal representative.

Several other factors concerning ancillary administration are worthy of note. For example, an original administration has a three year period of time during which the appointment of a personal representative must be made. That is not true where there has been a prior appointment. If an appointment is made in the domiciliary jurisdiction, for example, and the estate has property in a state which has enacted the Uniform Probate Code, the ancillary appointment of a personal representative can occur in that state even if made more than three years after the death of the individual. Thus a personal representative can be appointed in other jurisdictions where property is later located, and the appointment is not barred by the three year statute of limitations under the Uniform Probate Code. The Code provisions for the appointment of a personal representative also have an effect on venue. Normally proper venue is the domicile of the decedent. In an ancillary administration, the decedent was not domiciled in the state. Section 3-201(a)(2) of the Uniform Probate Code provides that proper venue for such ancillary administration is any county where property of the decedent was located at the time of his death.

Section 3-201(d) provides standards for locating property and determining its location at the time of decedent's death. For example, commercial paper, investment paper and other instruments are located where the instrument is found. Property held in trust is deemed located wherever the trustee may be sued.

Either the formal or informal appointment method may be used for the appointment of a P.R. for ancillary administration. Formal appointment is governed by §3-402 and informal appointment is provided by §§3-307 and 3-308. The Nebraska version of §3-307 (section 30-2420(c) of the Nebraska Probate Code) contains a much broader notice provision than is found in the U.P.C.

If someone decides to open an ancillary administration, he must notify all persons having a prior or equal right to appointment of their decision. If a domiciliary personal representative has been appointed and a person has a prior right to appointment, that person outside the state must be notified. If, for example, a creditor or some member of the family decides to open an ancillary administration in Colorado, notification must be given the personal representative at the domicile and that person then has the
right to come in and take over if he so desires. Such a “take-over” is authorized by section 3-611(b) of the Uniform Probate Code. The statute provides that “unless the decedent’s will directs otherwise, a personal representative appointed at the decedent’s domicile incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another person who was appointed personal representative in this state to administer local assets.” If an ancillary personal representative is named in Colorado, the domiciliary personal representative, then, has a right to be notified and to substitute himself for the person who had been named.

Another problem area addressed by the Uniform Probate Code involves the handling of a multi-state estate and a non-claim statute. This situation arises where an estate is opened in the domiciliary jurisdiction and notice is served of a time limit during which claims against the estate can be presented. The question is what then happens when an ancillary administration is opened in another jurisdiction. Does the statute of limitations start running again for claims in that jurisdiction? Or will those claims that might have been barred at the domiciliary jurisdiction be allowed to be filed in the ancillary administration even though they would be barred in the domiciliary jurisdiction? The result is governed by section 3-803 of the Uniform Probate Code, which bars claims not filed within four months. Nebraska has changed this provision to two months. If the ancillary administration is opened before the claims are barred in the domicile then they can be presented in the ancillary administration. If the time period runs in the original administration, the domiciliary administration, then the claims are barred in the ancillary administration, as provided in section 3-803 of the Uniform Probate Code. Nebraska apparently felt that this was too rigid a rule, and adopted section 30-2485 of the Nebraska Probate Code, which provides a sixty day period of time wherein a party has the right to come in and file a claim although it is in fact barred.

LITIGATION INVOLVING THE ESTATE

In the matter of ancillary administration and foreign personal representatives, where, for example, a personal representative comes in from outside the state and does work on behalf of the estate, there is a question about the jurisdiction of the local courts over this representative. First, any individual appointed by the local court as a personal representative submits himself personally to the jurisdiction of that court in any proceeding relating to the
estate that may be instituted by any interested person. Therefore, a personal representative in an ancillary administration in Colorado has submitted to the personal jurisdiction of the Colorado court for any proceeding relating to the estate. In addition, under provisions of the Uniform Probate Code, any foreign personal representative has submitted himself to the jurisdiction of the local court by filing authenticated copies of his appointment, and the state then can exercise jurisdiction over that individual. Furthermore, when an individual collects money by presenting an affidavit, that individual submits to the jurisdiction of the state to the extent that the money or value of personal property collected. Or, if an individual does any act in the state as the personal representative that would give the state jurisdiction over him personally, that individual, as a personal representative, is subject to the jurisdiction of the state's courts. In conclusion, there are a number of ways that a personal representative from outside the state who comes into the state may submit to the jurisdiction of the local courts. By collecting funds, filing documents or performing duties within the state he is subject to jurisdiction of the state's courts.

There is a jurisdictional provision which is important in probate as well as in other matters. Uniform Probate Code section 4-302 states that “[a] foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.” For example a man from Nebraska driving through Idaho is negligent and is involved in an automobile accident. As a result someone from Idaho is seriously injured and the Nebraskan dies. Assuming that the decedent committed a tortious act prior to his death, he is subject to the jurisdiction of the Idaho courts under the non-resident motorist provision. When he dies, section 4-302 provides that the foreign personal representative is subject to the jurisdiction of the courts of Idaho to the same extent that the decedent was subject to that jurisdiction immediately prior to death. Jurisdiction over such individuals is provided by the Uniform Probate Code. While not necessarily a probate matter, except in terms of the personal representative, jurisdiction over the foreign personal representative can be obtained. The Idaho court simply sends notice of jurisdiction to the personal representative of the decedent in Nebraska. This poses a very interesting question about whether there is a sufficient minimum contact to satisfy the constitutional requirements as stated in International Shoe Co. v. Washington, 326 U.S. 310 (1945). The cases have generally held that there is a suffi-
cient minimum contact and that the courts of Idaho can exercise jurisdiction over the personal representative appointed in Nebraska in this instance. The Uniform Probate Code has an expanded jurisdictional provision concerning personal representatives. Although there has been some question about the validity of provisions of this broad application, the weight of authority supports the position adopted by the U.P.C. in allowing a state to exercise jurisdiction over a P.R. named by another state.

But what about the powers of a personal representative named at the place of domicile? The Uniform Probate Code, if adopted in the place of domicile, authorizes the personal representative to defend when so served. In the previous example the Nebraska personal representative would have the right, under section 3-715 of the Uniform Probate Code, to prosecute or defend any claims or proceedings in any jurisdiction, not just Nebraska, for the protection of the estate and the personal representative in the performance of his duty. The Nebraska personal representative may go to Idaho and defend there the action brought against the estate. Section 3-703(c) of the Uniform Probate Code also provides that a personal representative of the decedent domiciled in this state at his death has the same standing to use and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death. In conclusion, as indicated, the P.R. may have jurisdiction exercised over him, may be sued, and may defend both for probate and nonprobate matters.

The mechanics of service are covered by section 4-303 of the Uniform Probate Code. Nebraska has changed this section markedly, so special attention ought to be given to determine exactly what is provided.

AVOIDING CONFLICTS

One other aspect of this matter remains. That is the effect of an adjudication. The final section of Article 4 provides that an adjudication rendered in any jurisdiction for or against any personal representative of the estate is conclusive as to the local personal representative as if he were a party to that adjudication. Nebraska has an added reciprocity provision which requires that the state from which that judgment is coming have the same type of provision. If it it has that provision, and almost all the Uniform Probate Code states do, the prior adjudication is just as conclusive
on the local personal representative as if he were a party to the adjudication. This provision covers ancillary-ancillary, domiciliary-ancillary, or ancillary-domiciliary situations. It makes no difference in which court the first adjudication occurs. Its effect will be the same as if the local personal representative were a party to the adjudication. This provision is consistent with the idea of unification of administration. A judgment in another jurisdiction will be binding in this jurisdiction. Other than the reciprocity provision, the Nebraska act is the same as the Uniform Probate Code in this area. Also to be considered in connection with this matter are sections 3-408 and 3-409. Section 3-408 concerns the effect to be given a final order of another state, and again Nebraska has added a reciprocity requirement that the other state must also recognize Nebraska judgments in the same way.

NATIONAL BANK AS P.R.

One other problem area, involving a national bank as a foreign personal representative, should be mentioned. The facts are the same: the Idaho court decides to exercise jurisdiction over the P.R. of a Nebraska decedent who was the tort-feasor in an automobile accident in Idaho. If the foreign personal representative being brought into the Idaho court is a national bank, the venue provisions dealing with national banks control in such a situation. It is doubtful whether that particular personal representative can be forced to defend an action in Idaho. The national bank would raise the venue requirement, contending that it can be sued only where its home office is located. The bank has not waived its right to object to venue, and the court will probably honor the venue objection. Such was the holding in *Kader v. First National Bank*, 387 F. Supp. 535 (W.D. Pa. 1975). The jurisdictional reach given by the Uniform Probate Code is taken away by the national banking act. It may occur to someone to obtain a national bank as a personal representative in order to avoid a suit in a foreign jurisdiction. In the example of the automobile accident, if decedent's attorney knows the estate will be involved in litigation but does not want to litigate in Idaho, an apparent solution would be to obtain a national bank as the personal representative in Nebraska and require the opposing party to come to Nebraska if he wants to sue. All that is suggested by the foregoing is that a problem exists when dealing with national banks as personal representatives. The following three recent cases address the issue: *Kader v. First National Bank*,
The matter of a venue provision and the national banks is now before the United States Supreme Court, which granted certiorari in a case involving this issue. Radzanower v. Touche, Ross & Co., 44 U.S.L.W. 3137-38 (Oct. 20, 1975). The Supreme Court may back away from the rigidity with which it has approached this particular problem. But at the present time these three cases represent the law.

CONCLUSION

In conclusion, examination of the provisions of Article 4 of the Uniform Probate Code indicates that the draftsmen hope to achieve some very specific ends:

1. simplification in the handling of assets of the estate outside the domiciliary jurisdiction;

2. unification of administration to avoid conflicting fiduciaries and to simplify and expedite administration; and,

3. centralizing all of the problems in the domiciliary administration.

Also present is the idea of unification of the administration by res judicata/preclusion, the effect to be given to an adjudication in any jurisdiction for or against any personal representative.

All of these attempts of the draftsmen to simplify, unify and centralize, if successful, will make estate administration a much more attractive way of handling the passage of property from one generation to another.