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The Least Restrictive Way to Limit Letters of Administration

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In New York, although a practitioner might expect the Surrogate's Courts to act uniformly as part of the New York State Unified Court System, Surrogate's Courts in various counties may operate differently when assessing petitions. One example is with respect to restrictions placed on letters of administration. While under-restricting letters of administration may result in inadequate safeguards on the interests of non-consenting distributees, over-restricting letters could result in (i) a hindrance of a fiduciary's powers statutorily granted under EPTL §11–1.1, (ii) an unnecessary burden on the court's limited resources caused by additional applications to remove the restrictions, (iii) delayed administration of estates, and (iv) conflicts with the legislative intent as expressed in the Bennett commission.

In 1961, New York legislature created the temporary state commission on the modernization, revision, and simplification of the laws of estates, commonly referred to as the Bennett commission (*Trusts and Estates Law; Statutory Powers of Fiduciaries Versus Court Oversight*, N.Y.L.J, Nov. 14, 2006, at 3, col. 1). A goal of the Bennett commission when enacting legislation was to grant fiduciaries broad powers to administer decedents' estates pursuant to the provisions of EPTL §11–1.1 and minimize unneeded court intervention (*Id.*). Subsequently, there have been court decisions denying petitions wherein fiduciaries seek permission to obtain powers they already possess, and instead holding that the surrogate generally should not usurp fiduciaries' powers (*See, e.g., In re Osterndorf*, 75 Misc. 2d 730 [Sur. Ct. Nassau County 1973] [holding that the administrator should exercise business judgment utilizing the powers already afforded to him]; *In re Blackman,* 2007 WL 7625228 [Sur. Ct. Kings County 2007] [holding that fiduciaries should exercise the authority given to them and not seek court approval"… "unless there was a real need"], *Matter of Hamilton*, N.Y.L.J., Jan. 29, 2014, at 22, col. 6 [Sur. Ct. Bronx County 2014] [stating that "another court order is not necessary to permit the administrator to exercise her rights and responsibilities as a fiduciary" and "[i]f that were so, duplicitous applications would waste the court's time and overly tax the court's limited resources"]). The more letters are over-restricted, the more fiduciaries must return to Surrogate's Courts for amendments and/or additional proceedings. Thus, in our view, it is important for Surrogate's Courts to find the least restrictive way to limit letters of administration within the boundaries of the law while still providing sufficient protection for non-consenting distributees of the estate.

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The Small Estate Threshold

SCPA §801 (1) provides that no bond shall be required if the assets to be administered do not exceed the small estate limit, which is currently $50,000 (SCPA § 1301). Since a voluntary administrator of a

small estate is not subject to the imposition of a bond and does not need consent from other distributees, it is justifiable that an administrator should receive as much authority as a voluntary administrator. Thus, the least restrictive way to limit letters when the estate assets are valued from $1 to $50,000 is to issue letters with a $50,000 collection limit, without the requirement of a bond. When the estate assets are greater than $50,000, the court will then need to determine whether a bond is required (SCPA §805 [1]).

Collection Limits and Bonds

Limitations on the amount of assets the administrator can receive and distribute directly correspond with bond amounts to protect non-consenting distributees' interests in estate assets (SCPA §801 [1]; SCPA §702 [2]; SCPA §805 [1]; SCPA §805 [3]). These collection limits can vary depending upon: (i) if there is only one distributee or if all distributees consent to petitioner's appointment and to dispense with a bond; or (ii) if only some distributees consent to petitioner's appointment and to dispense with a bond. SCPA §702 (2) provides for collection limits to ensure that a "bond in the full amount required by statute" is filed. In order to assess the amount required (SCPA §702 [2]), one must turn to SCPA §801 (1) and SCPA §805 (1).

SCPA §801 (1) states that the amount of a bond, when required, shall not be less than the total of three categories of assets: "(i) [v]alue of all personal property receivable by the fiduciary", "(ii) [e]stimated gross rents of real property receivable by the fiduciary for 18 months", and "(iii) [p]robable recovery in any cause of action prosecuted by the fiduciary" (SCPA §801 [1]). SCPA §805 (1) states that before letters are issued to an administrator, temporary administrator, or administrator c.t.a, a bond *shall* be filed, but provides the surrogate with discretion to dispense with or reduce the amount of the bond if all persons interested in the estate consent to dispense with a bond or the person seeking letters is the sole distributee. If some, but not all of the distributees consent, the surrogate has discretion to proportionately reduce the bond amount and set a collection limit to protect the interests of the non-consenting distributees to ensure that, should more assets be discovered, a bond in the full amount of the non-consenting distributees' interests is filed (SCPA §702 [2]).

For example, if a petition sets forth decedent's personal property at $300,000 and decedent's distributees are three children, under EPTL §4-1.1, each child would have a one-third interest in the estate. The first child is petitioner. The second child executed a waiver to consent to petitioner's appointment and to dispense with a bond. The third child did not consent and defaulted on the citation. In this situation, the surrogate would typically issue letters to petitioner with a collection limit of $300,000 upon filing a bond in the amount of $100,000 (the estimated amount of the non-consenting child's one-third interest). If the administrator subsequently discovers more assets and petitions to amend the letters to increase the collection limit to $450,000, the order granting same would require an additional $50,000 bond (one-third of the additional assets). Conversely, if the estate assets exceed the small estate threshold of $50,000 and the administrator is the sole distributee or all distributees consent to dispense with a bond, neither a bond nor a collection limit is necessarily required. Thus, the most permissive way to limit letters when the estate assets exceed $50,000 is either (1) without a bond or collection limit where there is a sole distributee or where all distributees consent to petitioner's appointment and to dispense with a bond, or (2) with a collection limit in the amount of the property listed in the petition and the requirement of a bond in the proportionate share of the non-consenting distributees' interests in the estate.

Real Property Restrictions

SCPA §805 (3) states that before an administrator receives the proceeds of a sale or disposition of real property pursuant to his or her fiduciary powers under EPTL §11–1.1, a further bond shall be filed unless it has been dispensed with pursuant to SCPA §805 (1) or the existing bond is sufficient to cover the proceeds of the sale. "In the absence of contrary instructions in a will or court order, EPTL §11–1.1 gives the fiduciary broad powers to proceed with contracts to sell real property without court intervention" (*In re Blackman,* 2007 WL 7625228). Although the value of the real property is not listed in SCPA §801 (1) as one of the estate assets considered in the bond determination, as a practical matter…the value of the real property, or at least the equity in the real property , may be included in the bond determination (Andrew L. Martin, *Fiduciary Bonds in Surrogate's Court*, 15-6-2009 Warren's Heaton, Surrogate's Court Practice Legislative & Case Digest 062009-1 [2015]). Thus, if the administrator is the sole distributee or all distributees consent to dispense with a bond, a court

determination to dispense with a bond and forgo SCPA §805 (3) restrictions with respect to the proceeds of any sale of the real property may be appropriate upon the court's initial review of the petition.

However, if there are non-consenting distributees, further analysis is needed. Some Surrogate's Courts add SCPA §805 (3) restrictions to letters when real property is listed in the petition and a subsequent petition is then necessary to remove restrictions when the administrator intends to sell the real property. Upon the proper filing of the petition, the amount of the sale proceeds is, in effect, added to the estate assets in SCPA §801(1) subject to the consideration of a bond. Although commonly misconstrued, SCPA §805 (3) is not intended to infringe on the administrator's power to sell real property or trigger the need for court approval pursuant to SCPA §1901 (1), but rather the purpose of SCPA §805 (3) is to defer the court's determination of a bond with respect to the proceeds of the sale or disposition of real property should the fiduciary administer it as an estate asset. Therefore, if there are non-consenting distributees and real property is listed in the petition, petitioner could be provided with the option of the Surrogate's Court: (1) including the authority to collect the proceeds of the sale or disposition of the real property and requiring a bond; or (2) excluding the value of the real property from the bond computation and restraining the administrator from collecting the proceeds pursuant to SCPA §805 (3).

Cause of Action Restrictions

SCPA §702 (1) provides the Surrogate's Court with discretion to issue letters restraining administrators from compromising *any* claim or cause of action until further order of the court. However, the only actions an administrator *must* be restrained from compromising are those related to decedent's death, typically wrongful death and personal injuries, in order to ensure the Surrogate's Court makes the requisite determination of allocation and distribution of any proceeds recovered therein (EPTL §5-4.4; EPTL §5-4.6). Administrators possess statutory power to compromise and settle actions in favor of the estate without court approval, including personal injury actions unrelated to decedent's death (EPTL §11-1.1 [b] [13]). Accordingly, in our view, if an action for personal injuries, wrongful death, or any other action that has potential to be causally related to decedent's death is disclosed in the petition, the least restrictive way to issue letters is to restrain the administrator from compromising any cause of action arising from decedent's death until further order of the court (SCPA §702 [1]). Careful wording on the letters is important because restraining an administrator from compromising actions "arising from decedent's death" does not affect an administrator's power to compromise actions unrelated to decedent's death, while it simultaneously ensures the administrator's return to Surrogate's Court if the actions he/she wishes to settle are in fact causally related to decedent's death. Arguably, SCPA §702 (1) restrictions should be on all letters issued in decedents' estates, regardless of whether the petition discloses a cause of action or not (*See Wrongful Death Compromises: A Proposal; Trusts and Estates Law*, N.Y.L.J, Jan. 4. 2021 at 3, col. 1).

Conclusion

Limiting letters of administration only when statutorily required advances the legislative intent of the Bennett commission by empowering administrators to exercise their authority under EPTL §11–1.1 and minimizing applications to the Surrogate's Court. Moreover, this practice clarifies administrators' statutory scope of authority with respect to all causes of action. Adopting these suggestions would allow today's Surrogate's Court to modernize and simplify its practice, and thereby allocate its limited resources to critical areas in order to ensure expanded access to justice and efficient delivery of its services.

Disclaimer: The views and opinions expressed in this article are those of the authors and do not necessarily reflect the opinions, position, or policy of the Unified Court System.

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