

## SELLING REAL ESTATE WHILE IN PROBATE



sales of probate real estate must be approved by the Probate Judge unless the Personal Representative is authorized by the Last Will and Testament to do so. (Probate Court authorization is not required if the deed of distribution has already properly transferred the real property out of the probate estate.)

### ◆ Step One - Filing

File a **Petition** (no form available) and **Summons** (civil format) along with a **\$150 filing fee**.

### ◆ Step Two - Service

Serve a clocked copy of the Summons and Petition upon **all interested persons** (Personal Representative, if not the Petitioner, heirs or devisees, G.A.L. (for minors, incapacitated adults, imprisoned persons, etc.), unpaid creditors, bondsman, and any other interested parties. Form #130PC is available for appointment of G.A.L.

File proof of service at Probate Court, following SCRCP service rules. For those requiring service by publication, see SCRCP, 15-9-710; Form #122PC is available.

Prepare Lis Pendens (15-11-10). File original with Clerk of Court at Courthouse; file clocked copy with Probate Court. [When action is over, release Lis Pendens.]

### ◆ Step Three - Answer

Written response (**Answer**<sup>1</sup>) are to be filed at Probate Court within 30 days after date of service.

### ◆ Step Four - Hearing

Thereafter, contact Probate Court to **set a hearing**<sup>2</sup>, keeping in mind a 20-day notice of the hearing is required. File Notice of Hearing [Form #110PC] and Proof of Delivery [Form #120PC] with Probate Court. [Minors and G.A.L.'s are required to be present at the hearing.]

At the hearing, a **disinterested appraiser or Realtor** must testify as to the fair market value of the property. [If agreeable with all parties, a notarized affidavit may be submitted in lieu of testimony.]

Following the hearing, the prevailing attorney will prepare an order for the Probate Judge to sign. Please file a copy of the recorded deed with Probate Court. If applicable, have proper surety bond posted before releasing funds to Personal Representative. Sales proceeds will need to be accounted for by the Personal Representative on the accounting filed with Probate Court.

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<sup>1</sup>To waive 30 days, file Answer/ Waiver of notice time from all interested parties along with the Summons/Petition.

<sup>2</sup>To waive hearing, file Answer/Consent to Sale/Waiver of Hearing from all interested parties, notarized affidavit of appraiser/Realtor, Summons, Petition, filing fee, and proposed Order.