

SELLING REAL ESTATE WHILE IN PROBATE

(For further information, refer to S. C. Code of Laws, §62-3-1301, et seq.)

ALL 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 released the real property from the probate estate.)

Note: You will need the assistance of a probate attorney to complete the following procedure.

▪ **Step One - Filing**

File a **Petition** 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, Guardian ad Litem for minors, incapacitated adults, imprisoned persons, etc., unpaid creditors, bondsman, and any other interested parties]. FORM 130ES is used for appointment of GAL.

File proof of service at Probate Court, following SCRCP service rules. For those requiring service by publication, see SCRCP, § 15-9-710; FORMS 122ES and 409ES are 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 responses (**Answer**¹) 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**², keeping in mind a 20-day notice of the hearing is required. File Notice of Hearing [FORM 326ES] and Proof of Delivery [FORM 120PC] with Probate Court. [Minors and GALs 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. Once the sale has taken place, 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 (FORM 361ES) filed with Probate Court, unless there are no minors involved and all interested parties waive the Final Accounting.

¹To waive 30 days, file Answer that also waives notice time from all interested parties along with the Summons/Petition.

²To waive hearing, file Answers from all interested parties that consent to the sale and waive the hearing, notarized affidavit of appraiser/Realtor, Summons, Petition, filing fee, and proposed Order.

NOTE: The estate Inventory & Appraisalment [FORM 350] must be filed at the Probate Court prior to consideration for approval of a sale.