

RULE 12. SPECIAL PETITIONS

12.1 FAMILY EXEMPTION

Rule 12.1(1) When Petition Required.

A petition for a family exemption shall be required only if the claim for the exemption is refused by the personal representative or if the exemption is claimed in whole or in part out of property, the value of which can be ascertained only by means of an appraisal.

Rule 12.1(2) Voluntary Distribution.

When the personal representative at his own risk delivers assets of the estate in satisfaction of the exemption, he shall set forth the same as a credit in the account. The same may be the subject of an Objection filed by any claimant or party in interest in the personal representative's account.

Rule 12.1(3) Family Exemption. Allowance.

A petition claiming the family exemption may be filed with the Clerk of Court at any appropriate time prior to filing of the account of the personal representative in order that the same may be made a matter of record, and a copy thereof shall be forthwith served upon the personal representative. Upon the filing of such petition and service of a copy thereof upon him the personal representative shall not sell or otherwise dispose of the property claimed therein without the written consent of the party claiming the exemption, except by leave of Court for cause shown and after such notice as the Court may direct. Except in unusual cases and

on special allowance by the Court upon cause shown, judicial action on such petition for the family exemption will be deferred until and included within the matters considered. If the petition does request and the Court shall specially allow proceedings for the exemption, the practice and procedure thereon as to appraisal, advertising, and notice shall be as prescribed by special order in each case.

12.2 ALLOWANCE TO SURVIVING SPOUSE OF INTESTATE

Rule 12.2(1) Procedure on Allowance.

The procedure for distribution of the statutory allowance to the surviving spouse shall be the same as the procedure set forth in Monroe Co. O.C.R. 12.1(1) through 12.1(3), unless otherwise directed by special order of Court.

12.3 REVOCATION, VACATING AND EXTENSION OF TIME FOR FILING OF SURVIVING SPOUSE'S ELECTION

Rule 12.3(1) Extension of Time. Contents of Petition and Procedure.

(a) A petition for the extension of time in which the surviving spouse may file an election to take against the will and other conveyances shall set forth the facts relied upon to justify an extension of time in which to file the election.

(b) Upon the filing of the petition, the Court shall issue a citation to the personal representative and all parties in interest who have not joined in the petition to show cause why the extension should not be granted and shall fix a return day. The

Court, on the

return day and after considering the facts relied upon to justify an extension of time, may grant the extension.

12.4 APPOINTMENT OF A GUARDIAN AD LITEM OR A TRUSTEE AD LITEM

Rule 12.4(1) Appointment - Time to File Petitions.

When the appointment of a guardian ad litem or a trustee ad litem is required, counsel for the accountant shall present said petition not later than two (2) weeks after the date the account is filed with the Clerk.

Rule 12.4(2) Time of Filing Report.

The decree appointing a guardian ad litem or a trustee ad litem shall specify the time within which said guardian or trustee shall file a report.

12.5 APPOINTMENT OF GUARDIAN FOR ESTATE OR PERSON OF A MINOR

Rule 12.5(1) Appearance at Presentation of Petition.

The appearance in Court of a minor shall be necessary in all cases involving appointment of a guardian for the estate or person of the minor, unless waived by the Court. Except as may be required by the Court, the appearance in Court of a minor under fourteen (14) years of age to make the selection of a guardian of the estate or of the person is required.

Rule 12.5(2) Restricted Accounts. Waiver of Bond.

In lieu of the entry of bond, the Court in appropriate cases may:

(a) Authorize the guardian to deposit the funds of a minor in the minor's name, by the guardian, in an interest bearing account or instrument in the minor's name in a bank or association located within Monroe County which deposits are insured by a federal governmental agency; subject to the express restriction, to be noted on the interest bearing account or instruments, certificate of deposit, savings account book, to be marked that the funds are not to be redeemed, assigned, negotiated or otherwise alienated before (the date of minor reaching majority) _____, except by order of Court;

(b) Direct the bank to re-invest annually from the account's accumulated interest such sums as determined by the Court.

Rule 12.5(3) Certificate of Appointment Security.

If bond is required of a guardian, the Clerk shall not issue the certificate of his appointment until the bond and surety have been approved by the Court. Where the guardian is appointed for several minor children of the same parents, one bond may be filed to cover the several estates.

Rule 12.5(4) Withdrawals.

When a petition is necessary for a withdrawal from a minor's estate, the petition shall set forth the proper caption of the case:

(a) The manner of the guardian's appointment and

qualification, and the dates thereof;

(b) The age and residence of the minor, whether his parents are living, the name of the person with whom he resides, the name and age of his spouse and children, if any;

(c) The value of the minor's estate, real and personal, and the net annual income;

(d) The circumstances of the minor, whether employed or attending school; if the minor's father, or other person charged with the duty of supporting him, is living, the financial condition and income of such person and why he is not discharging his duty to support the minor; and, whether there is adequate provision for the support and education of the minor, his spouse, and children;

(e) The date and amount of any previous withdrawal by the Court;

(f) The financial requirements of the minor and his family unit, in detail, and the circumstances making such allowance necessary; and,

(g) If the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if any, given by him for his failure to do so.

Rule 12.5(5) Allowance of Counsel Fee.

A petition for the allowance of a counsel fee shall include a statement of counsel setting forth in detail the nature and extent of the services performed by him. Ten (10) days notice of the presentation of such petition shall be given to the guardian, minor, both parents or surviving parent if whereabouts are known

or if both parents are deceased or whereabouts unknown, the adult person with whom the minor resides or the superintendent or other official in charge of the institution having custody of the minor, and in all cases of a married minor, the minor's spouse if the whereabouts of such spouse is known.

12.6 APPOINTMENT OF A TRUSTEE

Rule 12.6(1) Exhibits.

The following exhibits shall be annexed to the petition:

- (a) a copy of the trust instrument;
- (b) the consent by the proposed trustee to act as such; and
- (c) any consent or joinders of parties in interest.

12.7 DISCHARGE OF A FIDUCIARY AND SURETY

Rule 12.7(1) Discharge of Personal Representative Under Section 3531 of Probate, Estates and Fiduciaries Code.

A petition with account annexed under Section 3531 of Probate, Estates and Fiduciaries Code, 20 Pa. C.S.A. §3531, shall conform to the extent practicable with the requirements of a petition for the settlement of a small estate under Section 3102 of Probate, Estates and Fiduciaries Code, 20 Pa. C.S.A. §3102, as set out in Monroe Co. O.C.R. 1.2(14).

12.8 PARTITION

12.9 PUBLIC SALE OF REAL PROPERTY

Rule 12.9(1) Public Sale. Contents of Petition. Additional Requirements.

- (a) When a personal representative, trustee, or guardian is

required to petition the Court to sell real property at public sale, the petition (in addition to requirements of Pa. O.C.R. 12.9) shall, where applicable, set forth the following in separate paragraphs:

(1) the name, residence, and date of death of the decedent; whether he died testate or intestate; and, the date of the grant of letters;

(2) that the Fiduciary is not otherwise authorized to sell by the Code, or is not authorized or is denied the power to do so by the will, or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;

(3) whether an inventory and appraisement has been filed; the total value of the property shown therein; and, the value at which the real property to be sold was included therein;

(4) if the Fiduciary entered bond with the Register, the name of the surety and the amount of such bond;

(5) the names and relationships of all parties in interest; a brief description of their respective interests; whether any of them are minors, incapacitated, or deceased, and if so, the names of their fiduciaries, if any; and, if a minor, his or her age;

(6) the improvements on the property; by whom it is occupied; and, its rental value and current tax assessment; and,

(7) sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and

distribution of the estate and trust.

(b) A petition by a guardian shall also set forth the names of the ward's next of kin and notice given them of the presentation of the petition.

Rule 12.9(2) Exhibits.

The following exhibits shall be attached to a petition by a personal representative, trustee, or guardian to sell real property at public sale:

(a) a copy of the will, deed, or decree by which the Fiduciary was appointed;

(b) any consents or joinders of parties in interest, and the names of and a copy of the notice which has been given to those parties who do not consent or join;

(c) list of all liens, and charges, if any, and of all unpaid taxes certified by counsel to be correct; and

(d) consent by any mortgagee whose lien would otherwise not be discharged by the sale or, if not attached, the reason therefor.

Rule 12.9(3) Notice.

After the allowance of a petition for public sale of real property, notice of the public sale shall be given:

(a) by advertisement once a week for three consecutive weeks in a legal publication designated by the President Judge and in a newspaper of general circulation in Monroe County;

(b) by personal notice or certified mail to all parties in interest of the time and place of the proposed sale at least ten

(10) days prior thereto; or

(c) by such other notice as the Court may by special order direct.

Rule 12.9(4) Return.

Returns of public sale of real property for the purpose of an approval or confirmation by the Court shall be in the form of an affidavit, which shall set forth;

(a) the information required by Monroe Co. O.C.R. 5.4(1) and the advertisement made;

(b) the price obtained; and,

(c) the name and address of the purchaser and that he was the highest bidder.

Rule 12.9(5) Security.

On the return day of the sale, the Court, in the decree approving or confirming the public sale, will fix the amount of bond or additional security which the personal representative, trustee, or guardian shall be required to enter or will excuse the Fiduciary from entering additional security.

12.10 PRIVATE SALE OF REAL PROPERTY OR OPTIONS THEREFOR

Rule 12.10(1) Exhibits.

The following exhibits shall be attached to a petition by a personal representative, trustee, or guardian to sell real estate at private sale:

(a) a copy of the will, deed, or decree by which the

Fiduciary was appointed;

(b) any consents or joinders of parties in interest, and the names and a copy of the notice which has been given to those parties who do not consent or join;

(c) consent by any mortgagee whose lien would otherwise not be discharged by the sale or, if not attached, the reason therefor;

(d) a copy of the agreement of sale, if any; and

(e) affidavits as to value by two real estate appraisers.

Rule 12.10(2) Security.

The Court, in the decree approving or confirming the private sale, will fix the amount of bond or additional security which the personal representative, trustee, or guardian shall be required to enter or will excuse the Fiduciary from entering bond or additional security.

Rule 12.10(3) Petition by Personal Representative to Fix or Waive Additional Security.

(a) Form of Petition

In a sale, whether public or private, of real estate by a personal representative without benefit of an order of Court directing or authorizing such sale, where he was required to give bond as such personal representative, he shall present his petition to the Court before the proceeds of the sale are paid to him by the purchaser, setting forth:

(1) the date of death of the decedent;

(2) the date of the grant of letters to the petitioner;

(3) the amount of the bond or bonds filed by him, the

date of such filing, and the name or names of his surety;

(4) the total valuation of the personal estate as shown in the inventory and appraisal, if any, and the total proceeds of any real estate sold previously;

(5) a short description of the real property sold, the name of the purchaser, and the amount of the consideration to be paid;

(6) a prayer for an order fixing the amount of additional security or for an order excusing him from filing additional security, as the case may be; and

(7) the Court may require other criteria which it deems necessary.

(b) Surety on Additional Bond

The surety on any additional bond, except for cause shown, shall be the same as on the original bond.

12.11 MORTGAGE OR LEASE OF REAL PROPERTY

Rule 12.11(1) Additional Requirements.

(a) Contents of Petition

A petition to mortgage real property by a personal representative, trustee, or guardian shall conform as closely as practicable to the requirements of these rules with regard to a petition to sell real property at public sale; set forth the amount and terms of the proposed mortgage loan; and, shall set forth sufficient facts to enable the Court to determine whether the proposed mortgage should be approved. Petition should contain a statement of what the mortgage proceeds will be used for.

(b) Exhibits

The following exhibits shall be attached to the petition: any consents or joinders of parties in interest, and the names of and a copy of the notice which has been given to those parties who do not consent or join, and a copy of the will, deed, or decree by which the Fiduciary was appointed.

(c) Security

The amount of the bond or additional security required to be entered, or the waiver thereof, will be determined by the Court in its decree approving the proposed mortgage or loan.

12.12 INALIENABLE PROPERTY

12.13 DESIGNATION OF A SUCCESSOR CUSTODIAN

12.14 CONFIRMATION OF APPOINTMENT

12.15 MISCELLANEOUS PETITIONS

Rule 12.15(1) Title to Real Property. Determination.

(a) In General

A petition for the determination of title shall set forth:

- (1) the name of the petitioner and his relationship to the decedent;
- (2) the facts on which the claim of the petitioner is based, and legal brief showing the Orphans' Court authority to determine legal title to real estate;
- (3) whether the decedent died testate or intestate, and where, when and to whom letters were granted;
- (4) a description of real property located within the Commonwealth, and the place, book and page of recording the last deed thereto;

(5) the names and addresses of all known creditors and parties in interest;

(6) the facts material to a determination of the title; and

(7) reference to all liens of record.

(b) Exhibits

The following exhibits shall be attached to the petition:

(1) the notice which has been given to creditors and parties in interest; if the heirs of the decedent are unknown, a copy of the notice given to the Attorney General;

(2) a copy of decedent's will, if any; and

(3) a list of all liens of record.