




Title and Probate: Lawyers and Judges Always Agree...Right?

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Area Counsel
Fidelity National Title Group





Judge of Probate in Limestone County, Alabama



LTAAL Webinar
August 24-25, 2025

We welcome our LTAAL members! 1

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WHO WE ARE

- Limestone County Probate Judge Charles Woodroof
- Fastest growing county in Alabama; practiced real estate and probate law for 17 years prior to becoming Probate Judge in 2013
- Worked in the sports information department at Auburn and then served as Assistant Director of Media relations for the Southeastern Conference
- Father and husband
- Auburn graduate and fan

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WHO WE ARE

- Former 28 year Probate and Real Estate attorney Doug Bachuss
- Served as PR, as Conservator, and as Trustee
- Drafted hundreds and possibly into the thousands of wills and POAs
- Alabama graduate and fan, manager with the UA Mens Basketball teams from 1988-1992
- Father and husband

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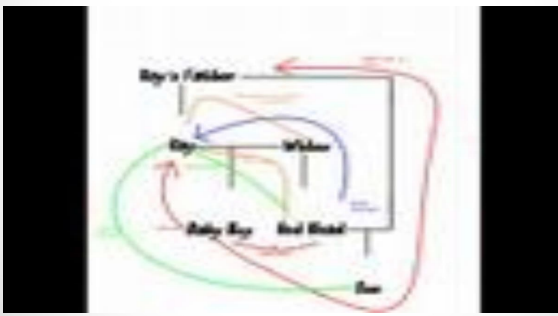
TOPICS

- Sales and inheritance rights
- Estates of Deceased people
- With a will or without a will
- Conservatorships
- Single Transaction Authority
- Questions
- ADOPTION



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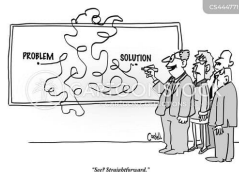
I'm My Own Grandpa-Ray Stevens



We welcome our LTAAL members!

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STRAIGHTFORWARD???



"Not straightforward."

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Who are the HEIRS?

- Surviving Spouse
- Issue (Children)
 - Afterborn
 - Half-Blood
- Grandchildren
- Parents
- Maternal Grandparents
- Paternal Grandparents
- Siblings
- Nieces
- Nephews
- Aunts
- Uncles

IT DEPENDS

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Determining HEIRS

- Require AFFIDAVITS of DEATH & HEIRSHIP from at least **two (2)** *disinterested* parties
- Other resources could include Ancestry.com, FindAGrave.com, SSDI, Obituaries, family Bible
 - These should **NOT** be used primarily
 - Only for far back in the chain or where there is heir property that has not been conveyed for many years

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So, what if there is NO WILL?

Heirship Affidavits

(help determine issue)



Intestate Succession

Ala Code § 43-8-40 et seq.
Ark. Code §28-9-201 et seq.
Miss. Code §91-1-1 et seq.



HEIRS AT LAW

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Determining HEIRS

- Real property passes to the **HEIRS** the moment the decedent dies
- Once you determine the **HEIRS** at law,

we require that the **HEIRS**
EXECUTE THE CONVEYANCE

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Devolution of real property

- Pursuant to [§ 43-2-830\(a\)](#), [Ala.] Code 1975:

"Upon the death of a person, decedent's real property devolves to the persons to whom it is devised by decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of a testate estate, or in the absence of testamentary disposition, to decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates."


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Devolution of real property

- Pursuant to [§ 43-2-830\(c\)](#), [Ala.] Code 1975:

"The devolution of a decedent's property, real and personal, is subject to homestead allowance, exempt property, family allowance, rights of creditors, elective share of the surviving spouse, and to administration."

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Administration

- Pursuant to [§ 43-2-837](#), [Ala.] Code 1975:

"Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration."

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Sale of real property

THREE REASONS

- Sale for payment of debt
 - Section [43-2-441](#) authorizes the sale of real property for the payment of debts where the will does not give the personal representative authority to sell land to pay debts.
 - The same authority is given by Section [43-2-442](#) in cases of intestacy.
- Sale for division
 - Section [43-2-443](#) authorizes a sale when the land cannot be equitably divided among the heirs or devisees. One adult heir or devisee must consent to sell.
- Sale for payment of pecuniary legacy
 - Section [43-2-480](#) authorizes a sale of land for the payment of pecuniary legacies, when such legacies are expressly or by necessary implication made a charge on such lands and the will does not confer upon the personal representative the power or authority to make sale of lands for such purpose.


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Sale of real property

- Without one of the jurisdictional invoking reasons stated in the petition, the probate court has no jurisdiction to order sale.
- The jurisdiction of the probate court to order a sale of lands is statutory, special, and limited. *Hall v. Chapman*, 35 Ala. 553 (1860); *Robertson v. Bradford*, 70 Ala. 385 (1881); *Smith v. Smith*, 266 Ala. 118, 94 So.2d 863 (1957)
- Jurisdiction attaches for a petition stating a statutory ground for the order of sale when regularly filed and recognized by the order of the court. *Howell v. Hughes*, 168 Ala. 460, 53 So. 105 (Ala.1910)
- A purchaser of lands at a sale under a probate decree, founded on a petition by an executor or administrator which does not contain averments necessary to give the court jurisdiction, acquires no legal title and can convey none to a subpurchaser, but he may acquire an equity, enforceable against the heirs, if they receive their share of the purchase money paid. *Wilson v. Holt*, 3 So. 321, (Ala.1887)


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Sale of real property

- Sale for payment of debt
 - A court of probate cannot order a sale of property to pay debts when it may be done under the power in a will. *Riley v. Wilkinson*, 247 Ala. 231, 23 So.2d 582 (Ala.1945).
 - A petition in the probate court, for a sale under this section, must negative the existence of a power of sale in the will, and a decree of sale on a petition failing to allege that fact is void. *Howell v. Hughes*, 168 Ala. 460, 53 So. 105 (Ala.1910).
 - The lands of a decedent will not be ordered sold for the payment of debts when there are no debts or when there are sufficient personal assets for their payment. *Banks v. Speers*, 97 Ala. 560, 11 So. 841 (Ala.1892).


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Sale of real property

- Sale for payment of debt
 - Upon the decedent's death, the Schlumpf children inherited the property subject to the mortgage. Because the mortgagee did not file a claim against the estate, the mortgage is not a debt that can justify forcing the sale of the property to satisfy that mortgage. In the event the mortgage is not satisfied by the Schlumpf children, then the mortgagee has the remedy of foreclosure available if such an action becomes necessary to satisfy the debt. *Schlumpf v. D'Olive* 203 So.3d 57 (Ala. 2016).

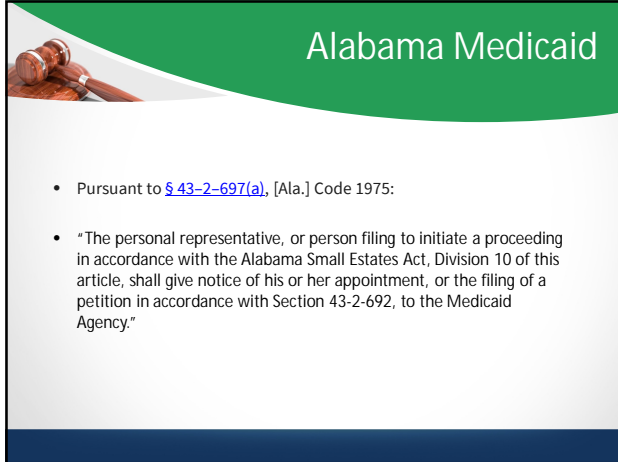
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Sale of real property

- Sale for division
 - Lands of an estate may be sold by order of the probate court having jurisdiction of the estate when the same cannot be equitably divided among the heirs or devisees, when an adult heir or devisee files his written consent that the land be sold.
Section 43-2-443, [Ala.] Code 1975
 - Order of probate court for sale of land without written consent of adult heir or devisee was void. *Forman v. McAnear*, 219 Ala. 157, 121 So. 538 (1929); *Dawkins v. Hutto*, 222 Ala. 132, 131 So. 228 (1930).

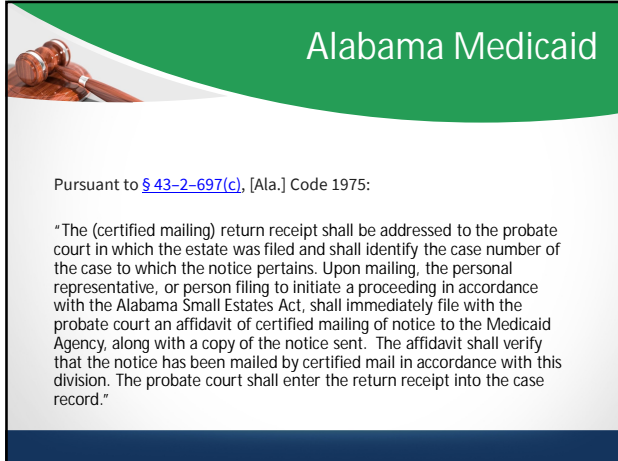
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Alabama Medicaid

- Pursuant to [§ 43-2-697\(a\)](#), [Ala.] Code 1975:
- "The personal representative, or person filing to initiate a proceeding in accordance with the Alabama Small Estates Act, Division 10 of this article, shall give notice of his or her appointment, or the filing of a petition in accordance with Section 43-2-692, to the Medicaid Agency."

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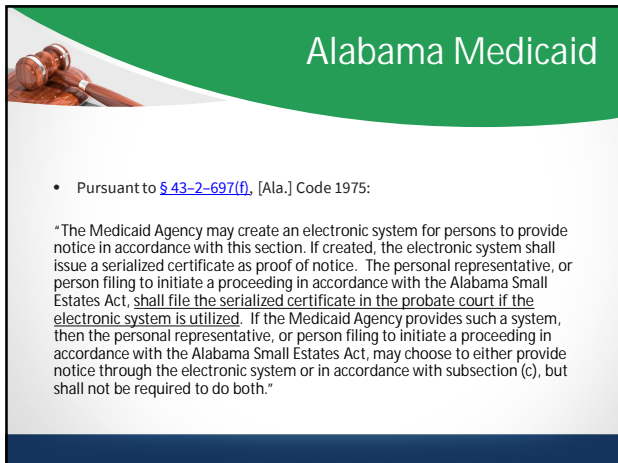


Alabama Medicaid

Pursuant to [§ 43-2-697\(c\)](#), [Ala.] Code 1975:

"The (certified mailing) return receipt shall be addressed to the probate court in which the estate was filed and shall identify the case number of the case to which the notice pertains. Upon mailing, the personal representative, or person filing to initiate a proceeding in accordance with the Alabama Small Estates Act, shall immediately file with the probate court an affidavit of certified mailing of notice to the Medicaid Agency, along with a copy of the notice sent. The affidavit shall verify that the notice has been mailed by certified mail in accordance with this division. The probate court shall enter the return receipt into the case record."

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Alabama Medicaid

- Pursuant to [§ 43-2-697\(f\)](#), [Ala.] Code 1975:

"The Medicaid Agency may create an electronic system for persons to provide notice in accordance with this section. If created, the electronic system shall issue a serialized certificate as proof of notice. The personal representative, or person filing to initiate a proceeding in accordance with the Alabama Small Estates Act, shall file the serialized certificate in the probate court if the electronic system is utilized. If the Medicaid Agency provides such a system, then the personal representative, or person filing to initiate a proceeding in accordance with the Alabama Small Estates Act, may choose to either provide notice through the electronic system or in accordance with subsection (c), but shall not be required to do both."

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Claims



- Probate of Will
 - 6 months from issuance of Letters Testamentary
 - 5 months from first publication of Notice to Creditors
- Administration (No Will)
 - 6 months from the issuance of Letters of Administration
 - 5 months from first publication of Notice to Creditors
- Nothing filed in Probate Court
 - 2 YEARS from date of death

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Closing during Claims Period

- *Either* →
 - the transaction closes and the title agent escrows ALL funds until the end of the claims period
 - Funds paid into Court for further Order
 - Obtain Order for sale free & clear of claims
 - “Open Estate” Bond

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Liens on Heirs

- Disclaimers are often attempted in order to sell property free and clear of a tax or other lien
- We **DO NOT** recognize these as eliminating the claim and require releases or satisfaction



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Closing and Distribution

- Depending on vesting at time of Closing, proceeds of sale will be distributed to Estate or to devisees/heirs
- Whoever is the Seller is who receives the proceeds



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Conservatorships

- Sometimes the property of incapacitated persons needs to be sold or mortgaged.
- INCAPACITATED PERSON. Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions. §26-2A-20
- CONSERVATOR. A person who is appointed by a court to manage the estate of a protected person and includes a limited conservator described in Section 26-2A-148(a). §26-2A-20

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Conservatorships

- (d) A conservator, acting as a fiduciary in efforts to accomplish the purpose of the appointment, may act with prior court authorization, to
- (1) Continue or participate in the operation of any business or other enterprise;
- (2) Demolish any improvements and raze or erect new party walls or buildings;
- (3) Dispose of any real property, including land in another state, for cash or on credit, at public or private sale, and manage, develop, improve, partition, or change the character of estate real property;

§26-2A-152(d)

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Conservatorships

- Section 26-2A-150
- Sale, Encumbrance, or Transaction Involving Conflict of Interest; Voidable; Exceptions.
- Any sale or encumbrance to or purchase from a conservator, the spouse, agent, attorney of a conservator, any person related to the conservator by blood or marriage within the fourth degree, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator which is affected by a substantial conflict between fiduciary and personal interests is voidable unless the transaction is approved by the court after notice as directed by the court.

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SINGLE TRANSACTION

- Section 26-2A-137
- Protective Arrangements and Single Transactions Authorized.
- (a) If it is established in a proper proceeding that a basis exists for the appointment of a conservator or protective order as described in Section 26-2A-130, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include payment, delivery, deposit, or retention of funds or property; sale, mortgage, lease, or other transfer of property, including, but not limited to the leasing of oil, gas, and other mineral rights of the protected person; entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or addition to or establishment of a suitable trust.
- (b) If it is established in a proper proceeding that a basis exists for the appointment of a conservator or protective order as described in Section 26-2A-130, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's property and business affairs, including, but not limited to the leasing of oil, gas, and other mineral rights of the protected person, if the court determines that the transaction is in the best interest of the protected person.
- (c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of the disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

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ADOPTION

(LAGNIAPPE-you mean there is more)

- In Alabama, adoptions are granted in the Probate Courts. §26-10E-1 et seq. for children, §26-10F-1 et seq. for adults, new sections as of 01/01/2024
- If a child is adopted, what are inheritance rights if adopted by close family? By unrelated parties?

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Adoption

- Section 43-8-48 - Parent and Child Relationship.
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- Parent and Child Relationship.
- If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:
- (1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the right of the child to inherit from or through either natural parent;
- (2) In cases not covered by subdivision (1) of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:
 - a. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or
 - b. The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this paragraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

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Thank you for participating today!

QUESTIONS???

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READ EVERYTHING



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